

Global Financial Restructuring

Client Alert

Global

BAKER & MCKENZIE

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Our experienced lawyers have guided clients through the turbulent times over the last three decades, including the 1980s debt crisis in Latin America, the early 1990s debt crisis in the US and Europe and the 1997 Asian financial crisis.

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U.S. Government \$1,000 Billion Loan Facility is Available to Non-U.S. Investors

In an effort to increase lending to consumers and small businesses, the United States Department of the Treasury and the Federal Reserve have created the Term Asset-Backed Securities Loan Facility (TALF). TALF is structured to provide loans to investors in newly issued asset-backed securities (ABS) backed by credit exposures to credit card receivables, automobile loans, loans for college expenses and government-guaranteed loans to small businesses. This list may soon be expanded to include commercial real estate mortgages, non-Agency residential mortgages and corporate debt.¹

TALF offers an opportunity for non-U.S. investors seeking exposure to these classes of ABS to obtain low-cost, non-recourse financing. Non-U.S. investors may apply for loans on the same basis as U.S. companies through any U.S. subsidiary or affiliate that has "significant operations" within the country. Branches and agencies of foreign banks are also allowed to participate. Finally, any "investment fund" that is incorporated in the U.S. and managed by a U.S. investment manager is eligible. "Investment funds" include private equity funds, hedge funds, mutual funds and similar structures. The only restriction on non-U.S. investors is that none of the U.S. entities may be controlled or managed by foreign governments.

TALF loans have a duration of up to three years and are priced between 50 and 100 basis points over LIBOR, depending on the class of ABS used as collateral. Loans are subject to an initial margin requirement of between 6-14% of the price of the eligible collateral, and are not subject to any remarking requirements. TALF also contains an explicit "put option", in that borrowers may in most circumstances, surrender their collateral in full satisfaction of a loan at any time. The collateral must meet certain requirements in addition to the types of underlying credits: among other criteria, it must be rated "AAA" (or its equivalent)

¹ For a more detailed description of the TALF program and its implications for investors, see Baker & McKenzie's CLIENT ALERT: Treasury Secretary Geithner Outlines Principal Features of the Obama administration's Financial Stability Plan to Normalize the Financial Markets and CLIENT ALERT: U.S. Financial Stability Plan likely to benefit investors active in ABS, distressed debt (February 2009). Both alerts are available on our [website](#).

by at least two major rating agencies; it must be dollar-denominated; and almost all of the underlying credits must be from U.S. domiciliaries and originated no later than 2007. Additionally, borrowers may not obtain loans by pledging collateral which they have originated or sponsored.

In short, non-U.S. investors may establish a new U.S. entity, retain a U.S. investment manager, and invest in the U.S. ABS market using non-recourse loans made available by the Federal Reserve. The first submissions for loans may be made on March 17th, 2009 and on a monthly basis for the rest of 2009.

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