Schulte Roth & Zabel

Alert

TALF 2.0: Private Investment Funds as Eligible Borrowers

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On May 12, 2020, the Federal Reserve Bank of New York ("New York Fed") announced additional information and details regarding borrower and collateral eligibility criteria for the Term Asset-Backed Securities Loan Facility ("TALF 2.0") initially announced on March 23, 2020, which was among several extensive measures designed to support the flow of credit to consumers and businesses, discussed in our initial *Alert*.[1]

In addition to clarifying and expanding upon details of the TALF 2.0, the additional information provides greater insight into the various types of eligible borrowers.

This *Alert* provides an overview of the borrower eligibility criteria applicable to investment funds seeking to borrow under the TALF 2.0 ("TALF Borrower").

Investment Funds as TALF Borrowers

A business that owns eligible collateral may borrow from the TALF 2.0 if it (a) is created or organized in the United States or under the laws of the United States; (b) has significant operations in and a majority of its employees based in the United States; and (c) maintains an account relationship with a financial institution that from time to time is a party to the Master Loan and Security Agreement ("TALF Agent") to be published by the New York Fed ("MLSA"). A borrower that is organized as an investment fund[2] will need to satisfy (a) and (c), whereas its investment manager must satisfy (b).

In order for an investment manager to be deemed to have significant operations in the United States, such manager's activities in the United States must have generated greater than 50% of its consolidated assets, annual consolidated net income, annual consolidated net operating revenues, or annual consolidated operating expenses (excluding interest expenses and any other expenses associated with debt service), as reflected in its most recent audited financial statements.

Notwithstanding the forgoing, an investment fund will not be eligible to be a TALF Borrower if any party that owns 10% or more of any outstanding class of securities of such fund or its investment manager (in each case, a "Material Investor") is, directly or indirectly, a foreign government. In addition, the New

[1] *See SRZ Alert*, "New Term Asset-Backed Securities Loan Facility Established by Federal Reserve in Wake of COVID-19," April 2, 2020, available here.

[2] For this purpose, an investment fund includes (1) any type of pooled investment vehicle that is organized as a business entity or institution, including without limitation, a hedge fund, a private equity fund, and a mutual fund; and (2) any type of single-investor vehicle that is organized as a business entity or institution. Eligible investment funds may be newly-formed and may include those that only borrow from the TALF 2.0 and only invest in the TALF 2.0 eligible asset-backed securities ("ABS"), as well as investment funds that invest in a variety of assets and the TALF 2.0 eligible ABS.

York Fed will publicly disclose information identifying each TALF Borrower and each Material Investor of a TALF Borrower.

Moreover, if an investment fund or any of its affiliates originates loans, such fund may not securitize such loans, acquire the triple-A-rate tranche of the securitization and finance it using the TALF 2.0.

Representations and Certifications

While the New York Fed will be providing further detailed instructions regarding borrower certifications at a later date, a TALF Borrower will be required to certify that it (a) complies with the conflicts of interest requirements of section 4019 of the Coronavirus Aid, Relief, and Economic Security Act; (b) is not insolvent; and (c) is unable to secure adequate credit accommodations from other banking institutions. With regard to (c), an inability to secure adequate credit may be based on unusual economic conditions in the market or markets intended to be addressed by the TALF 2.0. For example, while lending may be available from other banking institutions, the conditions or prices are inconsistent with a well-functioning market. Lack of adequate credit does not mean that no credit is available.

Under the MLSA, each TALF Borrower will make a continuous representation that it is an eligible borrower, continuously meeting the eligibility requirements set forth in the New York Fed's *FAQs: Term Asset-Backed Securities Loan Facility*. It will also be required to disclose all Material Investors and, for as long as the TALF 2.0 loan is outstanding, disclose any new Material Investor.

Additional information regarding the TALF 2.0 and other borrower types can be found in the New York Fed's *FAQs: Term Asset-Backed Securities Loan Facility*.[3]

Schulte Roth & Zabel is working with several clients to participate in the TALF 2.0 and will continue to provide updates as further developments become known. In the meantime, please contact your SRZ attorney or one of the authors if you have any questions.

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This is a fast-moving topic and the information contained in this *Alert* is current as of the date it was published.

[3] *See* https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq.