

Alert

Regulated Funds: SEC Staff Reaffirms No-Action Relief Permitting Registered Investment Companies and Business Development Companies to Participate in 2020 Term Asset-Backed Securities Loan Facility (“TALF 2020”)

June 9, 2020

On May 27, 2020, the staff of the Division of Investment Management of the SEC (“Staff”) issued a no-action letter to the Investment Company Institute and SIFMA AMG (“No-Action Letter”)¹ reaffirming that the no-action positions previously taken by the Staff in 2009, with respect to the Term Asset-Backed Securities Loan Facility instituted by the Board of Governors of the Federal Reserve System (“Federal Reserve”) in 2008 (“TALF 2008”), apply to the participation by registered investment companies and business development companies (collectively, “regulated funds”) in the Federal Reserve’s 2020 Term Asset-Backed Securities Loan Facility (“TALF 2020”).² The No-Action Letter notes that, despite some structural differences between TALF 2008 and TALF 2020, the Staff would not recommend enforcement action to the SEC if a regulated fund relies on the positions taken in the no-action letters issued in 2009 to Franklin Templeton Investments (“Franklin Letter”) and T. Rowe Price Associates Inc. (“T. Rowe Price Letter,” together with the Franklin Letter, the “2009 Letters”).³

In the Franklin Letter, the Staff stated that it would not recommend enforcement action to the SEC against a regulated investment company “under section 18(a)(1), 18(c) or 18(f)(1)”⁴ of the Investment Company Act of 1940, as amended (“1940 Act”) “if such investment company participated in TALF 2008 without treating the borrowing as a senior security representing indebtedness for purposes of compliance with such sections of the 1940 Act,” or “under section 17(f) of the 1940 Act, or the rules thereunder, with respect to such investment company’s participation in the unique custody arrangements necessitated by TALF 2008.”⁵ In the T. Rowe Price Letter, the Staff indicated that it would not recommend enforcement against certain affiliated T. Rowe Price registered investment companies and other affiliated accounts under Sections 17(a) or 17(d) of the 1940 Act or Rule 17d-1 thereunder if such funds participated in “TALF 2008 by purchasing interests in a section 3(c)(1) or 3(c)(7) pooled

¹ Investment Company Institute and SIFMA AMG, SEC Staff No-Action Letter (May 27, 2020), available [here](#).

² Announced by the Federal Reserve on March 23, 2020, TALF 2020 is a credit facility intended to support the flow of credit to consumers and businesses by facilitating the issuance of asset-backed securities backed by student loans, auto loans, credit card loans, loans guaranteed by the Small Business Administration and certain other assets. For more information on TALF 2020, please refer to “New Term Asset-Backed Securities Loan Facility Established by Federal Reserve in Wake of COVID-19,” *SRZ Alert* (April 2, 2020), available [here](#).

³ Franklin Templeton Investments, SEC Staff No-Action Letter (June 19, 2009), available [here](#); T. Rowe Price Associates, Inc., SEC Staff No-Action Letter (Oct. 8, 2009), available [here](#).

⁴ Section 18 of the 1940 Act restricts the ability of regulated funds to issue or sell any class of “senior securities,” including certain securities trading practices that result in leverage.

⁵ Section 17(f) of the 1940 Act regulates the custody of a fund’s assets, including its portfolio securities.

investment vehicle that was organized for the specific purpose of acquiring eligible collateral and obtaining loans under TALF 2008.”

In reaffirming the positions taken in the 2009 Letters, the Staff expanded the scope of the T. Rowe Price Letter to apply to third parties not affiliated with T. Rowe Price, and also extended the no-action position in that letter to business development companies (“BDCs”) regulated under the 1940 Act, where the facts and circumstances of a transaction undertaken by a BDC are substantially similar to those described in the T. Rowe Price Letter (as noted in the No-Action Letter, the Franklin Letter was already applicable to BDCs). The No-Action Letter also confirms that the asset segregation requirements referred to in the Franklin Letter remain applicable, despite the recent reproposal of Rule 18f-4 which contemplates changes to the treatment of those requirements.

Given the significant restrictions on the use of leverage imposed on registered investment companies, and to a lesser extent, BDCs under the 1940 Act, the Staff’s reissuance of the guidance set forth in the Franklin Letter permitting regulated funds to exclude TALF 2020 borrowings from their respective asset coverage ratio calculations provides a potential pathway for such regulated funds to meaningfully participate in the TALF 2020, assuming other requirements of participation are met. In addition, the reissuance of the guidance set forth in the T. Rowe Price Letter permits regulated funds to potentially participate in pooled investment vehicles structured to meet the specific requirements of the TALF 2020 program, including under the updated guidance in vehicles that also include third-party capital. As a result, the Staff’s guidance, when taken together as a whole, may encourage greater participation in the TALF 2020 program by regulated funds, particularly where investment advisers or sub-advisers to those funds have a particular focus on the types of assets targeted by the TALF 2020 program.

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