

MEMO# 32490

May 28, 2020

SEC Staff Issues No-Action Relief Related to Registered Fund Participation in the Federal Reserve's Term Asset- Backed Securities Loan Facility

[32490]

May 28, 2020 TO: ICI Members SUBJECTS: Alternative Investments

Closed-End Funds

Fixed Income Securities

Investment Advisers

Portfolio Oversight

Systemic Risk

Trading and Markets RE: SEC Staff Issues No-Action Relief Related to Registered Fund Participation in the Federal Reserve's Term Asset-Backed Securities Loan Facility

On May 27, the SEC Division of Investment Management staff provided no-action assurances regarding registered funds' participation in the Term Asset-Backed Securities Loan Facility (TALF 2020).^[1] The facility is one of several that the Federal Reserve Board (FRB) established in response to the impact of the COVID-19 crisis on the financial markets.^[2] This memorandum provides background information about TALF 2020 and briefly describes the staff's no-action assurances, which extend to all registered funds that comply with the applicable terms and conditions.

Background on TALF 2020

TALF 2020 is a credit facility intended to help meet the credit needs of consumers and businesses by facilitating the issuance of asset-backed securities (ABS) on or after March 23, 2020 and improving the market conditions for ABS more generally.

The TALF 2020 program, like its predecessor during the 2008-09 financial crisis (TALF 2008), allows investment funds to participate as eligible borrowers.^[3] Specifically, an investment fund, including a mutual fund, can qualify as an eligible borrower if the fund's manager has significant operations and a majority of employees in the United States. An investment fund would not be eligible as a borrower, however, if a foreign government owns 10 percent or more of any outstanding class of securities in the fund or its manager. Among other requirements, eligible borrowers also must certify that they are unable to secure adequate credit accommodations from other institutions.

SEC Staff No-Action Relief

In 2009, the SEC staff issued two no-action letters providing conditional relief under the Investment Company Act to allow registered funds to participate in the TALF 2008 program. In its May 27 letter, which is addressed to ICI and SIFMA, the SEC staff has reaffirmed that relief for funds intending to participate in TALF 2020 on the basis that “the terms and conditions of TALF 2020 are substantially similar to those of TALF 2008 for purposes of the staff no-action positions taken in the 2009 Letters.”

For funds that intend to participate directly in TALF 2020, the SEC staff has reaffirmed the Franklin Templeton Investments no-action letter.^[4] Under that letter, the SEC staff stated that it would not recommend enforcement action against a registered closed-end or open-end fund under section 18(a)(1), 18(c), or 18(f)(1) of the Investment Company Act if a participating fund did not treat the TALF program borrowing as a senior security. Further, the staff would not recommend enforcement action under section 17(f) of the Investment Company Act if a participating fund created unique custody arrangements due to TALF program requirements. The no-action position relied on several representations, including that a participating fund would segregate liquid assets in an amount equal to the fund’s outstanding principal and interest on the TALF loan. The SEC staff has not changed this or any other conditions for funds wishing to rely on the Franklin letter to participate in TALF 2020.^[5]

For affiliated funds that intend to participate in TALF 2020 indirectly by purchasing interests in a 3(c)(1) or 3(c)(7) pooled investment vehicle organized to acquire eligible collateral and obtain loans under the program (“Private Fund”), the SEC staff has reaffirmed the T. Rowe Price Associates, Inc. no-action letter.^[6] Under the T. Rowe letter, the SEC staff indicated that it would not recommend enforcement action under sections 17(a) or 17(d) of the Investment Company Act against affiliated registered funds and institutional separately managed accounts participating in TALF through a Private Fund. The relief in that 2009 letter was based upon representations made in the no-action request and was limited to the requesting parties.

Importantly, in its recent letter, the SEC staff expanded the availability of the relief provided in the T. Rowe letter to “third parties.” The staff also affirmed that it will not recommend enforcement action against a business development company (BDC) under facts and circumstances substantially similar to those described in the T. Rowe letter.^[7]

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endnotes

^[1] See Staff Letter: Participating in the 2020 Term Asset-Backed Securities Loan Facility (May 27, 2020), available at <https://www.sec.gov/investment/ici-sifma-052720>.

[2] See ICI Memorandum No. 32436, *available* at <https://www.ici.org/covid19/latest/memo32436> (discussing Federal Reserve Board funding facilities in response to the COVID-19 crisis).

[3] See Term Asset-Backed Securities Loan Facility Term Sheet (May 12, 2020), *available* at <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200512a1.pdf>; and FAQs: Term Asset-Backed Securities Loan Facility (Effective May 26, 2020), *available* at <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>.

[4] See Franklin Templeton Investments, SEC Staff No-Action Letter (Jun. 19, 2009), *available* at <https://www.sec.gov/divisions/investment/noaction/2009/franklintempleton061909.htm>.

[5] The staff acknowledges that the Franklin letter refers to the asset segregation requirements in Investment Company Act Release No. 10666 and that proposed Rule 18f-4 contemplates rescinding that release. The staff confirms, however, that “the condition of the Franklin Letter relating to compliance with Release 10666 remains applicable at this time.” See footnote 4 in the May 27 letter.

[6] T. Rowe Price Associates, Inc., SEC Staff No-Action Letter (Oct. 8, 2009), *available* at <https://www.sec.gov/divisions/investment/noaction/2009/troweprice100809.htm>.

[7] The staff likewise clarified that the no-action position in the Franklin letter applies to closed-end funds that have elected to be regulated as BDCs.