

Investment Company Institute and SIFMA AMG

Staff Letter: Participating in the 2020 Term Asset-Backed Securities Loan Facility

May 27, 2020

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1101 New York Avenue, NW, 8th Floor
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Re: Participating in the Federal Reserve Board's 2020 Term Asset-Backed Securities Loan Facility ("TALF 2020")

Dear Messrs. Stevens and Cameron:

As you know, on March 23, 2020, the Federal Reserve Board, with the approval of the Secretary of the U.S. Department of the Treasury ("Treasury"), established TALF 2020 in response to the impact of the COVID-19 pandemic on global financial markets.^[1] To the extent that investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") are considering participating in TALF 2020, we wanted to bring to your attention two no-action letters that we had issued in 2009, one to Franklin Templeton Investments and one to T. Rowe Price Associates, Inc., relating to the Term-Asset Backed Securities Loan Facility established by the Treasury and the Federal Reserve Board in response to the financial crisis of 2008 ("TALF 2008").^[2]

The Franklin Letter generally provided that the Division would not recommend enforcement action to the U.S. Securities and Exchange Commission ("Commission") against a registered closed-end or open-end investment company: (i) under section 18(a)(1), 18(c) or 18(f)(1) of the Investment Company Act if such investment company participated in TALF 2008 without treating the borrowing as a senior security representing indebtedness for purposes of compliance with sections 18(a)(1), 18(c) and 18(f)(1) of the Investment Company Act; and (ii) under section 17(f) of the Investment Company Act, or the rules thereunder, with respect to such investment company's participation in the unique custody arrangements necessitated by TALF 2008.

The T. Rowe Price Letter generally provided that the Division would not recommend enforcement action to the Commission under sections 17(a) or 17(d) of the Investment Company Act or rule 17d-1 thereunder against certain T. Rowe Price affiliated registered investment companies ("Funds") and institutional separately managed accounts and common trust funds ("Accounts") if, without first obtaining an order from the Commission, such Funds and Accounts participated in TALF 2008 by purchasing interests in a section 3(c)(1) or 3(c)(7) pooled investment vehicle that was organized for the specific purpose of acquiring eligible collateral and obtaining loans under TALF 2008 ("Private Fund").

In the staff's view, 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.^[3] Accordingly, we reaffirm our no-action positions in the 2009 Letters as they may relate to registered investment companies' participation in TALF 2020.^[4]

Further, we are expanding the T. Rowe Price Letter in two ways. First, the no-action position in the T. Rowe Price Letter is now available to third parties. Second, the staff is hereby stating a no-action position with respect to section 57(a) of the Investment Company Act: the staff will not recommend enforcement action against a BDC if the facts and circumstances of a transaction are substantially similar to those described in the T. Rowe Price Letter. Therefore, to the extent that a registered investment company's or BDC's facts and circumstances are substantially similar to those described in the underlying requests of the 2009 Letters, the staff will not recommend enforcement action if the registered investment company or BDC acts consistently with the positions in those letters.^[5]

The statements in this letter represent the views of the Division of Investment Management. This letter is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved its content. This no-action letter, like all staff guidance, has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Sincerely,
Jennifer O. Palmer
Senior Counsel

^[1] For more information on TALF 2020, see the Federal Reserve Board's webpage at <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

^[2] Franklin Templeton Investments, SEC Staff No-Action Letter (Jun. 19, 2009), *available at* <https://www.sec.gov/divisions/investment/noaction/2009/franklintempleton061909.htm> (the "Franklin Letter"); 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> (the "T. Rowe Price Letter," together with the Franklin Letter, the "2009 Letters"). For more information on TALF 2008, see Terms and Conditions, Board of Governors of the Federal Reserve System, Term Asset-Backed Securities Loan Facility (Nov. 25, 2008), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20081125a1.pdf>; see also Frequently Asked Questions, Federal Reserve Bank of New York, Term Asset-Backed Securities Loan Facility (Jul. 21, 2010), *available at* https://www.newyorkfed.org/markets/talf_faq.html.

^[3] We are aware that TALF 2020 will have some structural differences from TALF 2008 (e.g., under TALF 2020, loans to U.S. companies will be made by a special purpose vehicle rather than directly by the Federal Reserve Bank of New York, the minimum loan amount is \$5 million rather than \$10 million, the interest rate structure has been streamlined and borrowers would have to provide certain certifications with respect to eligibility) and that certain terms (for example, the scope of eligible collateral) may change. See Term Sheet, Board of Governors of the Federal Reserve System, Term Asset-Backed Securities Loan Facility (May 12, 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200512a1.pdf>; see also FAQs, Federal Reserve Bank of New York, Term Asset-Backed Securities Loan Facility (May 26, 2020), *available at* <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq>. In the staff's view, these structural differences and other potential changes are not relevant for purposes of the provisions of the Investment Company Act at issue in the 2009 Letters.

^[4] In case of doubt, the no-action position in the Franklin Letter also applies to closed-end funds that have elected to be regulated as business development companies ("BDCs") under the Investment Company Act. Sections 18 and 17(f) of the Investment Company Act and rule 17d-1 thereunder are made applicable to BDCs by sections 61, 59 and 57(i) of the Investment Company Act, respectively, as if they were registered closed-end investment companies.

Further, we note that the Franklin Letter contains references to the asset segregation requirements set forth in Investment Company Act Release No. 10666. See Securities Trading Practices of Registered Investment Companies, Investment Company Act Rel. No. 10666 (Apr. 18, 1979) [44 FR 25128 (Apr. 27, 1979)] (“Release 10666”). While we recognize that recently re-proposed Rule 18f-4 under the Investment Company Act contemplates rescinding Release 10666, the condition of the Franklin Letter relating to compliance with Release 10666 remains applicable at this time. See Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers’ Transactions in Certain Leveraged/Inverse Investment Vehicles, Investment Company Act Rel. No. 33704 (Nov. 25, 2019).

[5] It is the staff’s position that a registered investment company or BDC may act consistently with the position in the T. Rowe Price Letter without regard to the borrowing limits on certain Funds that invest in the Private Fund.

See Letter from Maria Gattuso, Willkie Farr & Gallagher LLP, to Nadya Roytblat, U.S. Securities and Exchange Commission, dated Oct. 8, 2009, Condition 2 at p. 8, *available at* <https://www.sec.gov/divisions/investment/noaction/2009/troweprice100809-incoming.pdf>.

Modified: May 27, 2020