SEC Staff Issues No-Action Letter Regarding Fund Participation in the Federal Reserve Board's 2020 Term Asset-Backed Loan Facility

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On May 27, 2020, the SEC staff issued a no-action letter to the Investment Company Institute (ICI) and the Securities Industry and Financial Markets Association (SIFMA) permitting registered funds to participate in the Term Asset-Backed Securities Loan Facility (TALF 2020) program established by the Board of Governors of the Federal Reserve System (Fed) and the U.S. Department of the Treasury on March 23, 2020. TALF 2020 was established to address the effects of the COVID-19 pandemic on financial markets to support the availability of credit to consumers and businesses through the Fed's issuance of loans for the purchase of AAA-rated asset-backed securities (ABS) backed by student loans, auto loans, credit card loans, loans guaranteed by the Small Business Administration and certain other assets. TALF loan proceeds are disbursed to the borrower upon receipt by TALF 2020's custodian of eligible collateral (i.e., TALF-eligible ABS), an administrative fee and a "haircut" (i.e., a percentage of a TALF-eligible ABS's value calculated in accordance with a standardized schedule). A similar program was established in 2008 in response to the global financial crisis (TALF 2008).

Following the establishment of TALF 2008, the SEC staff in 2009 issued two no-action letters regarding the participation by registered funds in that program. The first no-action letter, issued to Franklin Templeton Investments on June 19, 2009, provided that the SEC staff would not seek enforcement action against a registered fund that participated in TALF 2008 (1) under Section 18 of the Investment Company Act of 1940 for failure to treat TALF loans as senior securities or (2) under Section 17(f) of the 1940 Act or related rules with respect to the unique custody arrangements necessitated by TALF loans. The Franklin Templeton no-action letter also required participating funds to segregate liquid assets equal in value to the outstanding principal and interest under each TALF loan. The second no-action letter, issued to T. Rowe Price Associates, Inc. on October 8, 2009, provided that the SEC staff would not seek enforcement action under Section 17(a) or 17(d) of the 1940 Act or Rule 17d-1 thereunder for purchasing interests in a private pooled investment vehicle formed for the specific purpose of acquiring eligible collateral and obtaining TALF loans. Reliance on each no-action letter was subject to certain conditions set forth in each letter.

The May 2020 no-action letter issued to the ICI and SIFMA affirmed the no-action positions taken in 2009 relating to the participation by registered funds in TALF 2008, noting that TALF 2020 and TALF 2008 have substantially similar terms and conditions. Additionally, the May 2020 no-action relief expands upon the 2009 relief issued to T. Rowe Price by permitting third parties to rely on that relief and by extending that relief to Section 57(a) of the 1940 Act, which permits reliance by business development companies.

The SEC staff's May 27, 2020 no-action letter issued to the ICI and SIFMA is available here.

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