On May 27, 2020, the Securities and Exchange Commission’s (SEC) Division of Investment Management (Division) issued a no-action letter (the Letter) that confirmed that registered open-end and closed-end investment companies (registered funds) and business development companies (BDCs) may participate in the Term Asset-Backed Securities Loan Facility (TALF 2020) in reliance on prior SEC staff no-action letters. These no-action letters had provided no-action relief to registered funds who participated in a similar lending facility established by the Federal Reserve Board in response to the financial crisis of 2008 (TALF 2008).

**TALF 2020** was established by the Federal Reserve Board on March 23, 2020 in response to the impact of the COVID-19 pandemic, and similar to TALF 2008, it was designed to support the flow of credit to consumers and businesses by facilitating the issuance of asset-backed securities and improving the market for asset-backed securities generally. Under TALF 2020, the Federal Reserve will lend on a non-recourse basis to eligible holders of certain asset-backed securities. Asset
managers have been assessing the investment opportunities presented by TALF 2020, but prior to the issuance of the Letter, it had been unclear whether registered funds could rely on the prior SEC staff no-action letters to participate in TALF 2020. The Letter clarified that registered funds may do so in reliance on [Franklin Templeton Investments](#) (Franklin Letter) and/or [T. Rowe Price Associates, Inc.](#) (T. Rowe Price Letter) (collectively, the 2009 Letters).

### The 2009 Letters

The Franklin Letter permitted registered funds to participate in TALF 2008 without violating Sections 18(a)(1), 18(c) or 18(f)(1) of the Investment Company Act of 1940 (the Act) if the funds took TALF loans without treating the borrowing as a senior security representing indebtedness for purposes of compliance with Section 18. The Division’s no-action position was subject to certain conditions, including, among other things, that funds would comply with the asset coverage requirements of Section 18 in the manner set forth in [Investment Company Act Release No. 10666](#) (April 18, 1979) on reverse repurchase agreements. Moreover, the Division stated that because TALF 2008 did not raise the safekeeping concerns underlying Section 17(f) of the Act or rules thereunder, it would not recommend enforcement action under Section 17(f) with respect to a fund’s participation in the unique custody arrangements required by TALF 2008.

The T. Rowe Price Letter provided that the Division would not recommend enforcement action under Sections 17(a) or 17(d) of the Act, or Rule 17d-1 thereunder, if T. Rowe Price Associates, Inc. and certain affiliated registered funds, institutional separately managed accounts and common trust funds (collectively, T. Rowe Price) indirectly participated in TALF 2008 without first obtaining an exemptive order pursuant to Section 17(b) of the Act or Rule 17d-1 thereunder. Under the relief, registered funds and accounts managed by T. Rowe Price were permitted to purchase interests – either in cash or through contribution of securities in-kind – in private investment pools (private funds) that: (i) relied on the exclusion from investment company status under Sections 3(c)(1) or 3(c)(7) of the Act, and (ii) were organized specifically for the purpose of acquiring eligible collateral and loans under TALF 2008.

The T. Rowe Price Letter contained 12 conditions that were designed to address potential affiliation issues, including that no registered fund could invest more than 5% of its total assets in the private funds and no single investor could own 25% or more of the private funds. The T. Rowe Price Letter expressly stated that the no-action relief could not be relied on by third parties due to the fact-specific nature of T. Rowe Price’s request.

### The Letter

In the Letter addressed to the Investment Company Institute and the Securities Industry and Financial Markets Association, the Division confirmed that it viewed the terms and conditions of TALF 2020 to be substantially similar to those of TALF 2008 for purposes of the no-action positions taken in the Division’s 2009 Letters. Accordingly, the Division reaffirmed the no-action positions taken in the 2009 Letters as they may relate to a registered fund’s participation in TALF 2020 as long
as the fund’s facts and circumstances are substantially similar and the fund acts consistently with the Division’s positions in the 2009 Letters. Of note, the Letter states that compliance with Release 10666 remained applicable at this time, although re-proposed Rule 18f-4 (derivatives rule) under the Act contemplates rescinding Release 10666.

The Division also expanded the T. Rowe Price Letter in two ways:

- Third parties may rely on the T. Rowe Price Letter.
- BDCs may participate in TALF 2020 without violating Section 57(a) of the Act if the facts and circumstances of a transaction are substantially similar to those described in the T. Rowe Price Letter.

Practice Points

Registered funds and BDCs who wish to participate directly or indirectly in TALF 2020 should review the representations and conditions contained in the 2009 Letters and their specific facts and circumstances to determine their ability to rely on the no-action relief. Asset managers may also wish to review disclosures in fund prospectuses and their compliance policies and procedures to evaluate whether enhancements may be necessary before participating in TALF 2020.

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