

Legal Update

SEC Provides Exemptive Relief to Broker-Dealers Acting as TALF Agents

The US Securities and Exchange Commission ("SEC") issued an order¹ on May 15, 2020, granting broker-dealers exemptive relief in connection with their participation in the Term Asset-Backed Securities Loan Facility ("TALF 2020") in response to a request of the Federal Reserve Bank of New York ("FRBNY").² TALF 2020 contemplates that certain broker-dealers will act as intermediaries ("TALF Agents")³ between borrowers⁴ and a special purpose entity established under the program ("TALF SPV") to make loans available to borrowers that are to be fully secured by eligible asset-backed securities. Borrowers must maintain an account with a TALF Agent in order to gain access to TALF 2020 loans through the TALF SPV.

The SEC's Exemptive Order

The SEC order grants an exemption for broker-dealers that are designated by the FRBNY as "TALF Agents" from Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") in connection with their participation in TALF 2020. Section 11(d)(1) of the Exchange Act generally prohibits a person that is both a broker and a dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on

any security (other than an exempted security) that was part of a distribution of a new issue of securities in which the broker-dealer participated as a member of a selling syndicate or group within 30 days prior to such transaction.⁵

Under TALF 2020, TALF Agents are responsible for acting as agents for eligible borrowers, facilitating extensions of non-recourse credit on behalf of the TALF SPV to purchasers of new issues of asset-backed securities that are designated as "eligible collateral." TALF Agents will also (i) assess the eligibility of prospective borrowers and collateral, (ii) receive that portion of the interest and principal distributions on the collateral that is for the account of the borrowers, (iii) disburse such interest and principal to the borrowers, and (iv) perform certain recordkeeping functions.

Absent the SEC's exemptive relief, TALF Agents who participated as a member of a selling syndicate or group with respect to a new issue would not be able to act as TALF Agents with respect to those new issues within the prescribed 30-day period without violating Section 11(d)(1) of the Exchange Act. The order's exemptive relief is applicable only to the extent that a broker-dealer is acting in its role as a TALF Agent, and would not otherwise exempt extensions of credit

regarding new issues that are outside of the scope of TALF 2020.

Conclusion

The success of TALF 2020 is dependent upon the effective participation of market participants such as TALF Agents to facilitate loans under the program. The SEC's order is illustrative of the regulatory flexibility essential to the cooperative efforts of federal regulators to bolster the financial markets during a time of great economic uncertainty.

The operational starting date for TALF 2020 has not yet been announced, but the pieces are beginning to fall into place as FRBNY continues to finalize the details of the program and seek applicable regulatory relief for program participants.

For more information on TALF 2020 or if you have questions regarding broker-dealer compliance, please contact the following Mayer Brown lawyers. Additional information on COVID-19, including Legal Updates for each of the Federal Reserve's assistance programs, is available on our website at [covid19.mayerbrown.com](https://www.mayerbrown.com/covid19).

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Endnotes

¹ *Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) for Certain Asset Backed Securities and Other Collateral*, Rel. No. 34-88884 (May 15, 2020): <https://bit.ly/2XovVOy>.

² TALF 2020 was established in March 2020 to combat the market effects of COVID-19 and to facilitate the issuance of asset-backed securities backed by private student loans, auto loans and leases, consumer and corporate credit card receivables, equipment loans and leases, floorplan loans, insurance premium finance loans, certain small business loans guaranteed by the Small Business Administration, and leveraged loans. For a detailed description of TALF 2020 and its ongoing updates, please read the Mayer Brown Legal Updates available [here](#) and [here](#).

³ FRBNY has noted that TALF Agents will initially consist of FRBNY's [Primary Dealers](#). FRBNY may consider increasing the number of institutions that may be TALF Agents, subject to adequate due diligence and compliance work.

⁴ Other than natural persons, as natural persons do not qualify as participants under the TALF 2020 program.

⁵ 15 U.S.C. § 78k(d)(1).

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