ALERT MEMORANDUM

Summary of U.S. Financial Sector Initiatives Responding to COVID-19

Update of May 15, 2020

This week Federal Reserve Chairman Jerome Powell acknowledged that while the actions taken by Congress, Treasury and the Federal Reserve have provided a measure of relief and stability, the COVID-19 crisis raises longer-term concerns. To mitigate these concerns, Chairman Powell acknowledged that additional policy measures may be necessary, including in the form of additional fiscal support.

To that end, Democrats in the House of Representatives have proposed new legislation that would provide additional funds to entities affected by COVID-19. Proposals relevant to financial institutions include additional assistance to small businesses and mandates for establishment of Federal Reserve facilities focused on mortgage servicers, residential rental property owners and non-profit organizations. The proposed legislation is seen as Democrats' opening bid for negotiations with Republicans.

With regard to previously announced facilities, the Federal Reserve provided additional guidance on the Term Asset-Backed Securities Loan Facility ("**TALF**") in the form of an updated term sheet and FAQs. Among other modifications, the Federal Reserve:

- Clarified that, in addition to the issuer of the asset-backed securities ("**ABS**") and the originator of the obligations backing the ABS needing to be U.S. companies, the underlying credit exposures ("obligors") need to be U.S.-domiciled or with respect to U.S. real property;
- Indicated that an investment fund may be an eligible borrower if it is created or organized in the United States, and managed by an investment manager that is created or organized in the United States that has significant operations in and a majority of its employees based in the United States;
- Declared ineligible (i) any borrower that has and (ii) any investment fund borrower with a manager that has 10% or more of any class of securities owned by a foreign government; and
- Narrowed the application of the conflicts of interest requirements of the Coronavirus Aid, Relief and Economic Security ("**CARES**") Act to borrowers only, instead of both borrowers and issuers.

The Federal Reserve also published updates to the Municipal Liquidity Facility ("**MLF**") to provide pricing and other information for the facility.

On May 12, the Secondary Market Corporate Credit Facility ("**SMCCF**") began purchasing shares of eligible U.S.-listed exchange-traded funds ("**ETFs**"). The Federal Reserve and Treasury also reiterated the intention to have the SMCCF purchase eligible corporate bonds and the Primary Market Corporate Credit Facility ("**PMCCF**") operational in the near term.

Below we provide a concise summary of these actions, as well as other announced programs and guidance to date.

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Summary of U.S. Financial Sector Initiatives Responding to COVID-19

CARES Act ... 4

Federal Reserve and Treasury Actions to Increase Credit and Liquidity to the Market ... 4

Main Street Priority Loan Facility. ... 4

Main Street New Loan Facility ... 6

Main Street Expanded Loan Facility ... 8

Primary Market Corporate Credit Facility. ... 10

Secondary Market Corporate Credit Facility. ... 12

Term Asset-Backed Securities Loan Facility ... 13

Money Market Mutual Fund Liquidity Facility. ... 15

Commercial Paper Funding Facility ... 15

Primary Dealer Credit Facility. ... 16

Paycheck Protection Program Liquidity Facility ... 17

Municipal Liquidity Facility. ... 18

Foreign and International Monetary Authorities Repo Facility. ... 19

Central Bank Liquidity Swap Lines. ... 20

Large-Scale Asset Purchases. ... 21

Discount Window Access ... 21

Cutting Interest Rates. ... 22

Additional Federal Reserve Actions ... 22

Increasing Availability of Intraday Credit. ... 22

Temporary Change to Supplementary Leverage Ratio. ... 22

Delay for Control Framework. ... 22

Reporting Relief ... 22

Supervisory Activities. ... 22

23A and Regulation W Exemption for Certain Asset Purchases. ... 23

Restrictions on Distributions. ... 23

Reserve Requirements. ... 23

Joint Actions by Banking Regulatory Agencies ... 23

Resolution Plan Extensions. ... 23

Temporary Measures to Support PPP Loans. ... 23

Community Bank Leverage Ratio. ... 24

Working with Mortgage Servicers. ... 24

SA-CCR and CECL. ... 24

Small-Dollar Loans. 25
Call Reports 25
Working with Borrowers. 25
Community Reinvestment Act. 26
Capital and Liquidity Buffers. 26
FDIC Actions 26
Deposit Insurance Assessment. 26
Part 363 Annual Reports. 26
FDIC Guidance. 26
New York Department of Financial Services ("NYDFS") Actions 27
NYDFS Relief for New York-Chartered Financial Institutions. 27
NYDFS Guidance on Cybersecurity. 27
NYDFS Emergency Regulation Implementing Executive Order on Forbearance. 27
Executive Order on Forbearance. 27
NYDFS Preparedness Plan. 27
International Actions 28
Deferral of Margin Requirements for Non-Centrally Cleared Derivatives and Implementation of Certain G-SIB Requirements. 28
Deferral of Basel III Implementation. 28

Measures Taken to Confront the Financial Impact of COVID-19

- CARES Act

On March 27, 2020, the CARES Act became law. Of particular importance to financial institutions, the CARES Act:

  - Appropriates up to $454 billion for loans, loan guarantees and investments in support of the Federal Reserve's lending facilities to eligible businesses, states and municipalities;
  - Provides temporary relief (or provides the banking agencies with authority to provide temporary relief) in a number of areas, including (1) delaying the effectiveness of the "current expected credit loss" ("**CECL**") accounting standard, (2) relaxing Office of the Comptroller of the Currency ("**OCC**") lending limits, (3) authorizing the Federal Deposit Insurance Corporation ("**FDIC**") to guarantee bank obligations, including deposits, up to a maximum program amount to be determined, (4) reducing, and providing a grace period for compliance with, the Community Bank Leverage Ratio for certain community banks and (5) authorizing Treasury to guarantee U.S. money market mutual funds; and
  - Establishes the PPP, which facilitates lending to small businesses in order to cover payroll and certain other expenses over the next three months by financial institutions that are approved by the SBA and other bank and nonbank lenders that meet criteria established by the Secretary of the Treasury and Chairman of the Farm Credit Administration.
    - Subsequent to the CARES Act, the Paycheck Protection Program and Health Care Enhancement Act was enacted on April 23. Of particular importance to financial institutions, this Act increases the amount appropriated for SBA loans under the PPP from $349 billion to over $670 billion, with particular allocations to community development financial institutions, minority depository institutions, and community and regional banks and credit unions.

For more information on the CARES Act, please see our alert memorandum available here.

- Federal Reserve and Treasury Actions to Increase Credit and Liquidity to the Market

  Main Street Priority Loan Facility ("MSPLF").

  On **April 30, 2020**, the Federal Reserve announced the establishment of the MSPLF. The current term sheet and FAQs for the MSPLF are available here.

    - Operational Date: Not yet operational.
    - Termination Date: September 30, 2020, unless extended.
    - Purpose: To facilitate lending to small- and mid-sized businesses by purchasing participations in certain loans made by eligible lenders.
    - Structure: The MSPLF is structured as a single special purpose vehicle ("**SPV**") financed by the Federal Reserve Bank of Boston that will support the MSPLF, as well as the Main Street New Loan Facility ("**MSNLF**") and the Main Street Expanded Loan Facility ("**MSELF**").
      - Under the MSPLF, the SPV will purchase 85% participations in certain eligible loans at par value from eligible lenders. Eligible lenders will retain 15% of each loan and will share risk with the SPV on a *pari passu* basis.

- Eligible Lenders: Eligible lenders are U.S. federally insured depository institutions (including a bank, savings association or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings & loan holding company, a U.S. intermediate holding company ("**IHC**") of a foreign banking organization or a U.S. subsidiary of any of the foregoing.
- Eligible Borrowers: Eligible borrowers:

  (1) are entities that are organized for profit as a partnership; limited liability company; corporation; association; trust; cooperative; joint venture with no more than 49% participation by foreign business entities; or a tribal business concern;

  (2) were established prior to March 13, 2020;

  (3) are not "**Ineligible Businesses**," which include "joint ventures" that have more than 49% participation by foreign business entities and businesses that are ineligible to obtain SBA loans (*e.g.*, businesses located in a foreign country, pyramid sale distribution plans, gambling companies, passive businesses owned by developers and landlords that do not actively use or occupy the assets involved in the loan, private clubs and businesses that limit membership);

  (4) either (a) have 15,000 employees or fewer or (b) had 2019 annual revenues of $5 billion or less;

  (5) are created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States;

  (6) do not also participate in the MSNLF, MSELF or PMCCF; and

  (7) have not received specific support pursuant to the CARES Act.

  - There are no rating criteria to be an eligible borrower, but a borrower may not, after taking on the loan, have a debt-to-2019-EBITDA ratio greater than 6x.
- Eligible Loans: Eligible loans are new secured or unsecured term loans made to eligible borrowers after April 24, 2020 with certain other specified features.
  - Eligible loans have a minimum size of $500,000 and a maximum size that is the lesser of (1) $25 million or (2) an amount that could be incurred without causing the borrower's debt-to-2019-EBITDA ratio to exceed 6x.
  - Eligible loans must be senior to or *pari passu* with, in terms of priority and security, all other indebtedness of the borrower, other than mortgage debt.
  - Principal and interest payments on the underlying loans will be deferred for one year, and will be repaid 15%, 15% and 70% in the second through fourth years, respectively.
- Restrictions on Participants:
  - An eligible borrower that participates in the MSPLF may not also participate in the MSNLF, MSELF or PMCCF. However, an eligible borrower that has participated in the SBA's PPP may also participate in the MSPLF.
  - An eligible borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the time a MSPLF loan is outstanding.
  - An eligible borrower must certify that it has a reasonable basis to believe that, as of the date of the origination of the eligible loan and after giving effect to such loan, it has the ability to meet its

financial obligations for at least 90 days and does not expect to file for bankruptcy during that time period.

  - An eligible borrower must commit to compliance with the compensation, stock repurchase and capital distribution restrictions set forth in the CARES Act for direct loan programs, which apply until one year after repayment of the loan.
  - An eligible lender must certify that the methodology used for calculating the eligible borrower's 2019 EBITDA is the same as it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020.
  - Eligible lenders and eligible borrowers must commit not to cancel or reduce existing lines of credit.
  - An eligible borrower must commit not to pay principal or interest on other existing debt, other than mandatory principal and interest payments when due, and an eligible lender must commit not to request that an eligible borrower pay principal or interest on any debt extended by the eligible lender, other than mandatory principal and interest payments or in the case of default and acceleration, while a MSPLF loan is outstanding. An MSPLF borrower may, however, refinance through the MSPLF loan any other debt owed to a lender that is not the eligible lender in the MSPLF loan.
  - Eligible lenders and eligible borrowers are subject to the CARES Act conflict of interest provisions.

- Treasury Support: Treasury will make a $75 billion equity investment in the SPV using funds appropriated to the Exchange Stabilization Fund ("**ESF**") by the CARES Act.
  - The combined size of the MSPLF, MSNLF and MSELF will be up to $600 billion.
  - The leverage of the MSPLF, MSNLF and MSELF is lower than other Federal Reserve facilities because the loan participations purchased by the SPV are not necessarily investment grade.
- Approvals: Treasury approved the establishment of this program under Section 13(3) of the Federal Reserve Act ("**Section 13(3)**").
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Main Street New Loan Facility.

On **April 9, 2020**, the Federal Reserve announced the establishment of the MSNLF.

On **April 30, 2020**, the MSNLF was expanded to, among other things, include a broader range of eligible lenders and eligible borrowers. The current term sheet and FAQs for the MSNLF are available here, with a blackline showing the April 30 revisions to the term sheet available here.

- Operational Date: Not yet operational.
- Termination Date: September 30, 2020, unless extended.
- Purpose: To facilitate lending to small- and mid-sized businesses by purchasing participations in certain loans made by eligible lenders.

- Structure: The MSNLF is structured as a single SPV financed by the Federal Reserve Bank of Boston that will support the MSNLF, MSPLF and MSELF.
  - Under the MSNLF, the SPV will purchase 95% participations in certain eligible loans at par value from eligible lenders. Eligible lenders will retain 5% of each loan and will share risk with the SPV on a *pari passu* basis.
- Eligible Lenders: Eligible lenders are U.S. federally insured depository institutions (including a bank, savings association or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings & loan holding company, a U.S. IHC of a foreign banking organization or a U.S. subsidiary of any of the foregoing.
- Eligible Borrowers: Eligible borrowers:

  (1) are entities that are organized for profit as a partnership; limited liability company; corporation; association; trust; cooperative; joint venture with no more than 49% participation by foreign business entities; or a tribal business concern;

  (2) were established prior to March 13, 2020;

  (3) are not Ineligible Businesses;

  (4) either (a) have 15,000 employees or fewer or (b) had 2019 annual revenues of $5 billion or less;

  (5) are created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States;

  (6) do not also participate in the MSPLF, MSELF or PMCCF; and

  (7) have not received specific support pursuant to the CARES Act.

  - There are no rating criteria to be an eligible borrower, but a borrower may not, after taking on the loan, have a debt-to-2019-EBITDA ratio greater than 4x.
- Eligible Loans: Eligible loans are new secured or unsecured term loans made to eligible borrowers after April 24, 2020 with certain other specified features.
  - Eligible loans have a minimum size of $500,000 and a maximum size that is the lesser of (1) $25 million or (2) an amount that could be incurred without causing the borrower's debt-to-2019-EBITDA ratio to exceed 4x.
  - Eligible loans may not, at the time of origination or at any time during the term of the loan, be contractually subordinated in terms of priority to any of the eligible borrower's other loans or debt instruments.
  - Principal and interest payments on the underlying loans will be deferred for one year, and will be repaid one-third in each of the second through fourth years.
- Restrictions on Participants:
  - An eligible borrower that participates in the MSNLF may not also participate in the MSPLF, MSELF or PMCCF. However, an eligible borrower that has participated in the SBA's PPP may also participate in the MSNLF.
  - An eligible borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the time a MSNLF loan is outstanding.

  - An eligible borrower must certify that it has a reasonable basis to believe that, as of the date of the origination of the eligible loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least 90 days and does not expect to file for bankruptcy during that time period.
  - An eligible borrower must commit to compliance with the compensation, stock repurchase and capital distribution restrictions set forth in the CARES Act for direct loan programs, which apply until one year after repayment of the loan.
  - An eligible lender must certify that the methodology used for calculating the eligible borrower's 2019 EBITDA is the same as it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020.
  - Eligible lenders and eligible borrowers must commit not to cancel or reduce existing lines of credit.
  - An eligible borrower must commit not to pay principal or interest on other existing debt, other than mandatory principal and interest payments when due, and an eligible lender must commit not to request that an eligible borrower pay principal or interest on any debt extended by the eligible lender, other than mandatory principal and interest payments or in the case of default and acceleration, while a MSNLF loan is outstanding.
  - Eligible lenders and eligible borrowers are subject to the CARES Act conflict of interest provisions.
- Treasury Support: Treasury will make a $75 billion equity investment in the SPV using funds appropriated to the ESF by the CARES Act.
  - The combined size of the MSNLF, MSPLF and MSELF will be up to $600 billion.
  - The leverage of the MSNLF, MSPLF and MSELF is lower than other Federal Reserve facilities because the loan participations purchased by the SPV are not necessarily investment grade.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Main Street Expanded Loan Facility.

On **April 9, 2020**, the Federal Reserve announced the establishment of the MSELF.

On **April 30, 2020**, the MSELF was expanded to, among other things, include a broader range of eligible lenders and eligible borrowers. The current term sheet and FAQs for the MSELF are available here, with a blackline showing the April 30 revisions to the term sheet available here.

- Operational Date: Not yet operational.
- Termination Date: September 30, 2020, unless extended.
- Purpose: To facilitate lending to small- and mid-sized businesses by purchasing participations in upsized tranches of previously existing loan agreements made by eligible lenders.
- Structure: The MSELF is structured as a single SPV financed by the Federal Reserve Bank of Boston that will provided combined financing for the MSELF, MSPLF and MSNLF.

  - Under the MSELF, the SPV will purchase 95% participations in upsized tranches of certain eligible loans (provided that the loans were agreed to before April 24, 2020, but the upsizing occurred on or after April 24, 2020) at par value from eligible lenders. Eligible lenders will retain 5% of each upsized tranche, and will share risk with the SPV on a *pari passu* basis.

- Eligible Lenders: Eligible lenders are U.S. federally insured depository institutions (including a bank, savings association or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings & loan holding company, a U.S. IHC of a foreign banking organization or a U.S. subsidiary of any of the foregoing.
  - An eligible lender must be one of the lenders that holds an interest in the eligible loan at the date of the upsizing.

- Eligible Borrowers: Eligible borrowers:

  (1) are entities that are organized for profit as a partnership; limited liability company; corporation; association; trust; cooperative; joint venture with no more than 49% participation by foreign business entities; or a tribal business concern;

  (2) were established prior to March 13, 2020;

  (3) are not Ineligible Businesses;

  (4) either (a) have 15,000 employees or fewer or (b) had 2019 annual revenues of $5 billion or less;

  (5) are created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States;

  (6) do not also participate in the MSPLF, MSNLF or PMCCF; and

  (7) have not received specific support pursuant to the CARES Act.

  - There are no rating criteria to be an eligible borrower, but a borrower may not, after taking on the loan, have a debt-to-2019-EBITDA ratio greater than 6x.

- Eligible Loans: Eligible loans are upsized term loan tranches of secured or unsecured term loans or revolving credit facilities made to eligible borrowers on or before April 24, 2020 and that have a remaining maturity of at least 18 months, as well as certain other specified features.
  - Eligible loans have a minimum size of $10 million and a maximum size that is the lesser of (1) $200 million, (2) 35% of the borrower's existing outstanding and undrawn but available debt that is *pari passu* in priority with the eligible loan and equivalent in secured status, or (3) an amount that could be incurred without causing the borrower's debt-to-2019-EBITDA ratio to exceed 6x.
  - At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche must be senior to or *pari passu* with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt. If the existing credit facility is secured (before or after the upsize), the upsized tranche must participate in the security pro rata.
  - Principal and interest payments on the underlying loans will be deferred for one year, and will be repaid 15%, 15% and 70% in the second through fourth years, respectively.

- Restrictions on Participants:
  - An eligible borrower that participates in the MSELF may not also participate in the MSPLF, MSNLF or PMCCF. However, an eligible borrower that has participated in the SBA's PPP may also participate in the MSELF.
  - An eligible borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the time the upsized tranche of a MSELF loan is outstanding.
  - An eligible borrower must certify that it has a reasonable basis to believe that, as of the date of the origination of the eligible loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least 90 days and does not expect to file for bankruptcy during that time period.
  - An eligible borrower must commit to compliance with the compensation, stock repurchase and capital distribution restrictions set forth in the CARES Act for direct loan programs, which apply until one year after repayment of the loan.
  - An eligible lender must certify that the methodology used for calculating the eligible borrower's 2019 EBITDA is the same as it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020.
  - Eligible lenders and eligible borrowers must commit not to cancel or reduce existing lines of credit.
  - An eligible borrower must commit not to pay principal or interest on other existing debt, other than mandatory principal and interest payments when due, and an eligible lender must commit not to request that an eligible borrower pay principal or interest on debt extended by the eligible lender, other than mandatory principal and interest payments or in the case of default and acceleration, while an upsized tranche of a MSELF loan is outstanding.
  - Eligible lenders and eligible borrowers are subject to the CARES Act conflict of interest provisions.
- Treasury Support: Treasury will make a $75 billion equity investment in the SPV using funds appropriated to the ESF by the CARES Act.
  - The combined size of the MSELF, MSPLF and MSNLF will be up to $600 billion.
  - The leverage of the MSELF, MSPLF and MSNLF is lower than other Federal Reserve facilities because the loan participations purchased by the SPV are not necessarily investment grade.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Primary Market Corporate Credit Facility.

On **March 23, 2020**, the Federal Reserve announced the establishment of the PMCCF.

On **April 9, 2020**, the PMCCF was expanded to (1) allow participation by companies recently downgraded to below investment grade and (2) provide for purchases of syndicated loans and bonds, but not "direct lending" (as defined under the CARES Act) by the SPV. The current term sheet and FAQs for the PMCCF are available here, with a blackline showing the April 9 revisions to the term sheet available here.

- Operational Date: Not yet operational (expected to become operational soon).
- Termination Date: September 30, 2020, unless extended.
- Purpose: To provide liquidity to U.S. companies through purchases of corporate bonds and portions of syndicated loans or bonds directly from U.S. companies at the time of issuance.
- Structure: The PMCCF is structured as an SPV financed by the Federal Reserve Bank of New York ("**FRBNY**"), which will (1) purchase qualifying bonds with a maturity of four years or less as the sole investor in a bond issuance and (2) purchase portions of syndicated loans or bonds with a maturity of four years or less at issuance.
  - The maximum amount of instruments that the PMCCF and SMCCF combined may purchase with respect to any eligible issuer is capped at 1.5% of the combined size of the PMCCF and SMCCF.
  - If the loan or bond issuance is syndicated, the PMCCF may purchase no more than 25% of the syndication. If it is not syndicated, and is a direct purchase of corporate bonds, the SPV will be the sole purchaser of the bond issuance.
  - The maximum amount of outstanding bonds or loans of an eligible issuer that borrows from the PMCCF may not exceed 130% of the issuer's maximum outstanding bonds and loans on any day between March 22, 2019 and March 22, 2020.
- Eligible Issuers: Eligible issuers must (1) be businesses that are created or organized in the United States or under the laws of the United States that have significant operations in and a majority of their employees based in the United States, (2) be rated at least BBB-/Baa3 as of March 22, 2020, (3) not have received specific support pursuant to the CARES Act or any subsequent federal legislation, and (4) not be an insured depository institution or depository institution holding company.
  - However, issuers that were rated at least BBB-/Baa3 as of March 22, 2020, but are subsequently downgraded (so-called "**fallen angels**"), must be rated at least BB-/Ba3 at the time the SPV makes a purchase.
- Restrictions on Participants:
  - Eligible issuers that are subsidiaries of a foreign company must use PMCCF proceeds only for the benefit of itself and its U.S. subsidiaries and affiliates, and not for foreign affiliates.
  - Eligible issuers are subject to the CARES Act conflict of interest provisions.
  - Although Treasury clarified that it was using funds appropriated by the CARES Act, the Federal Reserve has not indicated to date that the CARES Act compensation, stock repurchase and capital distribution restrictions will apply.
- Treasury Support: Treasury will make a $50 billion equity investment in the PMCCF using funds appropriated by the CARES Act.
  - The combined size of the PMCCF and the SMCCF will be up to $750 billion.
  - The SPV will leverage Treasury equity at 10-to-1 when acquiring corporate bonds or syndicated loans from issuers that are investment grade at the time of purchase, but only at 7-to-1 when acquiring any other type of eligible asset.
- Approvals: Treasury approved the establishment of this program under Section 13(3).

- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Secondary Market Corporate Credit Facility.

On **March 23, 2020**, the Federal Reserve announced the establishment of the SMCCF.

On **April 9, 2020**, the SMCCF was expanded to (1) allow participation by fallen angels and (2) expand eligible ETFs to include those whose primary investment objective is exposure to U.S. high-yield corporate bonds. The current term sheet, FAQs and seller certification materials for the SMCCF are available here, with a blackline showing the April 9 revisions to the term sheet available here.

- Operational Date: May 12, 2020 for purchasing eligible ETFs (eligible corporate bond purchases to begin soon).
- Termination Date: September 30, 2020, unless extended.
- Purpose: To provide indirect liquidity to U.S. companies through purchases, in the secondary market, of (1) corporate bonds issued by U.S. companies and (2) U.S. ETFs with a U.S. corporate focus.
- Structure: The SMCCF is structured as an SPV financed by the FRBNY, which will purchase in the secondary market (1) corporate bonds that have a remaining maturity of five years or less, were issued by an eligible issuer and were sold to the SMCCF by an eligible seller, and (2) U.S.-listed ETFs whose investment objective is to provide broad exposure to the market for U.S. corporate bonds (investment grade or high-yield). With respect to ETF holdings, most holdings will be of ETFs whose primary investment objective is exposure to U.S. investment grade corporate bonds.
  - The maximum amount of bonds the SMCCF will purchase from the secondary market of any eligible issuer is capped at 10% of the issuer's maximum bonds outstanding on any day between March 22, 2019 and March 22, 2020.
  - The SMCCF will not purchase shares of a particular ETF if after such purchase the SMCCF would hold more than 20% of the ETF's outstanding shares.
  - The maximum amount of instruments the SMCCF and the PMCCF combined may purchase with respect to any eligible issuer is capped at 1.5% of the combined potential size of the SMCCF and PMCCF.
- Eligible Issuers: Eligible issuers for individual corporate bonds must (1) be businesses that are created or organized in the United States or under the laws of the United States that have significant operations in and a majority of their employees based in the United States, (2) be rated at least BBB-/Baa3 as of March 22, 2020, (3) not have received specific support pursuant to the CARES Act or any subsequent federal legislation, and (4) not be an insured depository institution or depository institution holding company.
  - However, issuers that are fallen angels after March 22, 2020 must be rated at least BB-/Ba3 at the time the SPV makes a purchase.
- Eligible Sellers: Eligible sellers must be businesses that are created or organized in the United States or under the laws of the United States that have significant operations in and a majority of their employees based in the United States.
  - To expedite the implementation, the SMCCF will begin transacting with primary dealers that are eligible sellers and that have completed the seller certification materials. The Federal Reserve will

add additional eligible sellers under the SMCCF, subject to adequate due diligence and compliance work.

- Restrictions on Participants: Eligible issuers and eligible sellers are subject to the CARES Act conflict of interest provisions.
  - Although Treasury clarified that it was using funds appropriated by the CARES Act, the Federal Reserve has not indicated to date that the CARES Act compensation, stock repurchase and capital distribution restrictions will apply.
- Treasury Support: Treasury will make a $25 billion equity investment in the SMCCF using funds appropriated by the CARES Act.
  - The combined size of the SMCCF and the PMCCF will be up to $750 billion.
  - The SPV will leverage Treasury equity at 10-to-1 when acquiring corporate bonds from issuers that are investment grade at the time of purchase or ETFs whose primary investment objective is exposure to U.S. investment grade corporate bonds. The SPV will leverage Treasury equity at 7-to-1 when acquiring corporate bonds from issuers that are below investment grade at the time of purchase, and between 3-to-1 and 7-to-1, depending on risk, when acquiring any other type of eligible asset.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Term Asset-Backed Securities Loan Facility.

On **March 23, 2020**, the Federal Reserve announced the establishment of the TALF.

On **April 9, 2020**, the TALF was expanded to include AAA-rated tranches of outstanding ("legacy") commercial mortgage-backed securities ("**CMBS**") and static collateralized loan obligations as eligible collateral.

On **May 12, 2020**, additional information was announced regarding borrower and collateral eligibility criteria. The current term sheet and FAQs for the TALF are available here, with a blackline showing the April 9 revisions available here and a blackline showing the May 12 revisions available here.

- Operational Date: Not yet operational.
- Termination Date: September 30, 2020, unless extended.
- Purpose: To improve the market conditions for the issuance of securities backed by consumer or business assets.
- Structure: The TALF is structured as an SPV financed by the FRBNY that will initially make up to $100 billion of nonrecourse, three-year loans to U.S. companies that can provide eligible collateral. The loans will be fully secured by eligible collateral.
- Eligible Borrowers: Eligible borrowers must (1) be U.S. businesses that are created or organized in the United States or under the laws of the United States, (2) have significant operations in and a majority of their employees based in the United States and (3) maintain an account relationship with a primary dealer.

  - Eligible borrowers include investment funds that are (1) created or organized in the United States and (2) managed by an investment manager that is created or organized in the United States and has significant operations in and a majority of its employees based in the United States.
  - A borrower may be ineligible if it has, or if it is an investment fund that has a manager that has, 10% or more of any class of securities owned by a foreign government.
- Eligible Collateral: Eligible collateral is (1) U.S. dollar denominated cash ABS that have a credit rating in the highest long-term or, if no long-term rating is available, the highest short-term investment-grade rating category from at least two eligible nationally recognized statistical rating organizations ("**NRSROs**") and do not have a credit rating below the highest investment-grade rating from an eligible NRSRO; (2) highest-rated outstanding ("legacy") CMBS; (3) for collateralized loan obligations ("**CLOs**"), only static CLOs collateralized by leveraged loans.
  - All eligible collateral, other than CMBS, SBA Pool Certificates and Development Company Participation Certificates must be issued on or after March 23, 2020. CMBS must be issued before March 23, 2020, and SBA Pool Certificates and Development Company Participation Certificates must be issued on or after January 1, 2019.
  - All or substantially all (at least 95%) of the credit exposures underlying eligible ABS collateral must (1) for newly issued ABS, except for CLOs, be originated by U.S.-organized entities (including U.S. branches or agencies of foreign banks), (2) for CLOs, have a lead or co-lead arranger that is a U.S. organized entity (including a U.S. branch or agency of a foreign bank) and (3) for all ABS, be to U.S.-domiciled obligors or with respect to real property located in the United States or one of its territories.
  - With the exception of CMBS, all or substantially all of the underlying credit exposures must be newly issued.
  - SBA Pool Certificates and Development Company Participation Certificates that include PPP loans in the underlying collateral pool are eligible ABS.
- Restrictions on Participants:
  - Eligible borrowers must certify that they are unable to secure adequate credit accommodations from other banking institutions and that they are not insolvent.
  - Eligible borrowers are subject to the CARES Act conflict of interest provisions.
  - Although Treasury clarified that it was using funds appropriated by the CARES Act, the Federal Reserve has not indicated to date that the CARES Act compensation, stock repurchase and capital distribution restrictions will apply.
- Treasury Support: Treasury will make a $10 billion equity investment in the TALF using funds appropriated to the ESF by the CARES Act.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: The TALF is structurally similar to the TALF that was in effect from 2009 to 2010. However under the 2009-2010 TALF:
  - Treasury provided $20 billion of credit protection to the FRBNY, and the FRBNY could make up to $200 billion of loans;

  - o Loans were for terms of up to five years; and
  - o Eligible borrowers were defined slightly differently.

Money Market Mutual Fund Liquidity Facility ("MMLF").

On **March 18, 2020**, the Federal Reserve announced the establishment of the MMLF.

On **March 23, 2020**, the MMLF was expanded to include a wider range of securities collateral, including municipal variable rate demand notes and bank certificates of deposit. The current term sheet, request form, borrowing documentation, FAQs and terms and conditions for the MMLF are available here.

- Operational Date: March 23, 2020.
- Termination Date: September 30, 2020, unless extended.
- Purpose: To provide indirect liquidity to money market mutual funds by providing loans secured by assets purchased from money market mutual funds in order to ensure that the funds can meet the demands for redemptions by households and businesses.
- Structure: Under the MMLF, the Federal Reserve Bank of Boston will make nonrecourse loans of one year or less to eligible borrowers. These loans will be secured by high-quality assets, including U.S. Treasuries, agency securities, secured commercial paper, unsecured commercial paper rated A1/P1/F1, municipal variable rate demand notes, bank certificates of deposit and receivables from certain repurchase agreements, purchased by the borrowers from a money market mutual fund that identifies itself as a Prime, Single State or Other Tax Exempt money market fund under item A.10 of Securities and Exchange Commission Form N-MFP.
  - o Advances will be equal in principal amount to the value of collateral securing the advance.
- Eligible Borrowers: Eligible borrowers are (1) U.S. depository institutions, (2) U.S. bank holding companies, including parent companies incorporated in the United States or their U.S. broker-dealer subsidiaries, and (3) U.S. branches and agencies of foreign banks.
- Regulatory Support: The Federal Reserve, FDIC and OCC have issued two interim final rules (i) exempting any asset acquired with MMLF funds from risk-based and leverage capital requirements, and (ii) neutralizing the LCR impact associated with the acquired assets and the facility's non-recourse funding.
- Treasury Support: Treasury will provide $10 billion of credit protection to the Federal Reserve Bank of Boston using the ESF.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: The MMLF is structurally similar to the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility ("**AMLF**") that the Federal Reserve operated from 2008 to 2010. However, under the AMLF:
  - o Eligible assets for purchase from money market mutual funds were limited to asset-backed commercial paper; and
  - o Treasury did not provide credit protection under the AMLF.

Commercial Paper Funding Facility ("CPFF").

On **March 17, 2020**, the Federal Reserve announced the establishment of the CPFF.

On **March 23, 2020**, the Federal Reserve announced it was (1) expanding the CPFF to include high-quality, tax-exempt commercial paper and (2) reducing the pricing of the CPFF. The current terms and conditions, registration materials and FAQs for the CPFF are available here.

- Operational Date: April 14, 2020.
- Termination Date: March 17, 2021, unless extended.
- Purpose: To provide direct liquidity to U.S. issuers of commercial paper.
- Structure: The CPFF is structured as an SPV financed by the FRBNY, which will purchase unsecured, three-month, U.S. dollar-denominated commercial paper (including asset-backed commercial paper) of eligible issuers. At this time, eligible issuers may only sell commercial paper to the CPFF through primary dealers.
  - The maximum amount of a single issuer's commercial paper the CPFF may own at any time is the greatest amount of U.S. dollar-denominated commercial paper the issuer had outstanding on any day between March 16, 2019 and March 16, 2020. If an issuer was downgraded to A2/P2/F2 after March 17, 2020, the maximum amount of the issuer's commercial paper the CPFF may purchase is the amount of U.S. dollar-denominated commercial paper the issuer had outstanding the day before it was downgraded.
- Eligible Issuers: Eligible issuers are U.S. issuers of commercial paper, including municipalities and U.S. issuers with a foreign parent. Eligible U.S. issuers must not have been inactive prior to the announcement of the CPFF. Inactive means that an issuer did not issue asset-backed commercial paper to institutions (other than the sponsoring institution) for any consecutive period of three months or longer between March 16, 2019 and March 16, 2020.
- Eligible Commercial Paper: Commercial paper eligible for purchase by the CPFF must be (1) rated at least A1/P1/F1, or (2) issued by an issuer that, on March 17, 2020, was rated at least A1/P1/F1 but that has been subsequently downgraded, under a one-time sale exception so long as the issuer is rated at least A2/P2/F2.
- Treasury Support: Treasury will make an initial $10 billion equity investment in the SPV using the ESF.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: The CPFF is structurally similar to the CPFF that the Federal Reserve operated from 2008 to 2010. However, the 2008-2010 CPFF:
  - Did not allow a downgraded issuer to sell to the CPFF; and
  - Treasury did not provide a backstop to the FRBNY.

Primary Dealer Credit Facility ("PDCF").

On **March 17, 2020**, the Federal Reserve announced the establishment of the PDCF. The current term sheet, collateral schedule and FAQs for the PDCF are available here.

- Operational Date: March 20, 2020.
- Termination Date: September 20, 2020, unless extended.
- Purpose: To provide cash directly to primary dealers through repo arrangements.

- Structure: Under the PDCF, the FRBNY will extend secured overnight and term repo funding with maturities up to 90 days to primary dealers.
  - Loans will be limited to the amount of margin-adjusted eligible collateral pledged by the primary dealer.
  - Loans will be made at a rate equal to the primary credit rate in effect at the FRBNY.
  - Loans will be made with recourse to the primary dealer.
- Eligible Borrowers: Eligible borrowers are primary dealers.
- Eligible Collateral: Eligible collateral is collateral that can be pledged in open market operations, investment-grade corporate debt securities, international agency securities, investment-grade commercial paper, municipal securities, mortgage-backed securities, asset-backed securities and equity securities.
  - Foreign currency-denominated securities are not eligible collateral.
- Treasury Support: No monetary support from Treasury.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: The PDCF is structurally similar to the PDCF that was in effect between 2008 and 2010. However, under the 2008-2010 PDCF:
  - Only overnight, not term, loans were available to primary dealers; and
  - Primary dealers were charged a frequency-based fee if they accessed the facility on more than 45 business days.

Paycheck Protection Program Liquidity Facility ("PPPLF").

On **April 6, 2020**, the Federal Reserve announced the establishment of the PPPLF.

On **April 30, 2020**, the PPPLF was expanded to allow (1) all PPP lenders approved by the SBA to participate and (2) purchased PPP loans to serve as collateral. The current term sheet, FAQs and borrowing documentation for the PPPLF are available here.

- Operational Date: April 16, 2020.
- Termination Date: September 30, 2020, unless extended.
- Purpose: To encourage loans to be made to small businesses under the SBA's PPP established by the CARES Act.
- Structure: The Federal Reserve Banks will extend nonrecourse loans directly to all lenders that are eligible to originate loans under the PPP, including both depository and non-depository institutions. These loans will be secured by the PPP loans that are guaranteed by the SBA, which the eligible borrower has either originated or purchased.
- Regulatory Support: The Federal Reserve, FDIC and OCC have issued two interim final rules (i) exempting collateral pledged to the PPPLF from risk-based and leverage capital requirements, and (ii) neutralizing the Liquidity Coverage Ratio ("**LCR**") impact associated with the PPP loans and the facility's non-recourse funding.

In addition, in accordance with the CARES Act, loans originated under the PPP will receive a 0% risk weight, whether or not pledged to the PPPLF.

- Treasury Support: No monetary support from Treasury.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Municipal Liquidity Facility.

On **April 9, 2020**, the Federal Reserve announced the establishment of the MLF.

On **April 27, 2020**, the MLF was expanded to encompass smaller U.S. cities and counties, as well as Multi-State Entities (defined below) as eligible issuers. Ratings criteria were also put in place for eligible issuers.

On **May 11, 2020**, the MLF was updated to provide pricing information and to clarify the ratings requirements for eligible issuers. The current term sheet, FAQs and application materials for the MLF are available here.

- Operational Date: Not yet operational.
- Termination Date: December 31, 2020, unless extended.
- Purpose: To help state and local governments manage cash flow pressures by purchasing eligible notes directly from U.S. states and certain U.S. cities and counties.
- Structure: The MLF is structured as an SPV financed by the FRBNY.
  - The SPV will directly purchase eligible notes issued by eligible issuers.
  - The MLF may purchase eligible notes up to an aggregate amount of 20% of the general revenue from own sources and utility revenue of the state, city or county government for fiscal year 2017, or up to an aggregate amount of 20% of a Multi-State Entity's gross revenues for fiscal year 2019. States may request that the MLF purchase eligible notes in excess of the applicable limit in order to assist political subdivisions and instrumentalities that are not eligible for the MLF.
- Eligible Issuers: Eligible issuers are (1) U.S. states, (2) the District of Columbia, (3) U.S. cities with a population of at least 250,000 residents, (4) U.S. counties with a population of at least 500,000 residents, (5) instrumentalities of the foregoing that issue notes on the foregoing's behalf, and (6) entities created by a compact between two or more states and approved by the United States Congress under the Compact Clause of the United States Constitution (*e.g.*, Port Authority of New York and New Jersey) ("**Multi-State Entities**").
  - Only one issuer per eligible state, city, county or Multi-State Entity may participate. However, the Federal Reserve may approve additional issuers per state, city or county to facilitate the provision of assistance to political subdivisions and other governmental entities of the relevant state, city or county.
  - An eligible issuer, other than a Multi-State Entity, must have been rated at least BBB-/Baa3 as of April 8, 2020. If such eligible issuer is subsequently downgraded, it must be rated at least BB-/Ba3 at the time the MLF makes a purchase.

- A Multi-State Entity must have been rated at least A-/A3 as of April 8, 2020. If such Multi-State Entity is subsequently downgraded, it must be rated at least BBB-/Baa3 at the time the MLF makes a purchase.
- An eligible issuer must fill out a Notice of Interest to express interest in selling notes to the MLF as the initial step to provide eligibility information to the FRBNY for review.
- The Federal Reserve noted that it is considering expanding the MLF to allow a limited number of governmental entities that issue bonds backed by their own revenue to participate directly as eligible issuers.

- Eligible Notes: Eligible notes are tax anticipation notes, tax and revenue anticipation notes, bond anticipation notes and other similar short-term notes with a maturity no longer than 36 months.
  - Governments are expected to issue general obligations or obligations backed by tax or specific governmental revenues.
  - Entities or agencies organized by governments are expected to have state, city or county revenues committed to the obligation or a guarantee of the state, city or county that organized the entity or agency.
  - Multi-State Entities are expected to issue obligations on parity with obligations that benefit from a senior lien on gross or net revenues.
- Restrictions on Participants: Proceeds from the MLF may be used to help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline, potential reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic and requirements for the payment of principal and interest on obligations of the state, city or county. Proceeds may also be used by a state, city or county (but not a Multi-State Entity) to purchase similar notes issued by, or otherwise to assist, political subdivisions and instrumentalities of the state, city or county for the same purposes noted above.
- Treasury Support: Treasury will make a $35 billion equity investment in the MLF using funds appropriated to the ESF by the CARES Act.
  - The MLF may purchase up to $500 billion of eligible notes.
- Approvals: Treasury approved the establishment of this program under Section 13(3).
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Foreign and International Monetary Authorities ("FIMA") Repo Facility.

On **March 31, 2020**, the Federal Reserve announced the establishment of the FIMA Repo Facility. The current FAQs for the FIMA Repo Facility are available here.

- Operational Date: April 6, 2020.
- Termination Date: October 6, 2020, unless extended.
- Purpose: To provide direct U.S. dollar liquidity to foreign and international monetary authorities through repurchase agreements on U.S. Treasury securities.

- Structure: The FIMA Repo Facility allows eligible participants to enter into overnight repurchase agreements. Under these repurchase agreements, the eligible participants sell U.S. Treasury securities to the Federal Reserve's System Open Market Account.
- Eligible Participants: Eligible participants are FIMA account holders, which consist of central banks and other foreign monetary authorities with accounts at the FRBNY.
  - FIMA account holders must apply to use the facility and have their applications approved by the FRBNY.
- Treasury Support: No monetary support from Treasury.
- Approvals: The Federal Open Market Committee ("**FOMC**") approved the establishment of this program.
- Comparison to 2008 Financial Crisis Program: No comparable program was used during the 2008 financial crisis.

Central Bank Liquidity Swap Lines.

On March 15, 2020, the Federal Reserve announced that it was coordinating with the Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank and the Swiss National Bank to enhance the provision of liquidity via standing U.S. dollar liquidity swap line arrangements. On March 20, the Federal Reserve announced that it was increasing the frequency of operations with these central banks via the swap line arrangements.

On March 19, 2020, the Federal Reserve announced that it was establishing additional temporary U.S. dollar liquidity swap line arrangements with foreign central banks pursuant to its authority under Section 14 of the Federal Reserve Act. The current FAQs for the swap lines are available here.

- Purpose: To improve liquidity conditions in dollar funding markets in the United States and abroad by providing foreign central banks with the capacity to deliver U.S. dollar funding to institutions in their jurisdictions in times of market stress.
- Structure: The Federal Reserve provides U.S. dollars to a foreign central bank in exchange for the equivalent amount of funds in the foreign central bank's currency based on the market exchange rate at the time of the transaction. The Federal Reserve and foreign central bank agree to swap back these quantities of their two currencies at a specified date in the future, which can be as far ahead as three months, using the same exchange rate.
  - The eligible participants with which the Federal Reserve has standing swap arrangements agreed to (1) lower the pricing for the swaps to the U.S. dollar overnight index swap rate plus 25 basis points, (2) offer additional maturities of U.S. dollars (84 days in addition to one week), and (3) increase the frequency of seven-day maturity operations from weekly to daily from March 23, 2020 to at least the end of April 2020.
- Eligible Participants: Eligible participants are the Bank of Canada, the Bank of Japan, the European Central Bank and the Swiss National Bank, with which the Federal Reserve has standing swap arrangements. On March 19, 2020, the Federal Reserve added temporary swap arrangements of at least six months with the Reserve Bank of Australia, the Banco Central do Brasil, Danmarks Nationalbank (Denmark), the Bank of Korea, the Banco de Mexico, the Reserve Bank of New

Zealand, the Norges Bank (Norway), the Monetary Authority of Singapore and the Sveriges Riksbank (Sweden).

  - The arrangements with the Reserve Bank of Australia, the Banco Central do Brasil, the Bank of Korea, the Banco de Mexico, the Monetary Authority of Singapore and the Sveriges Riksbank (Sweden) will support the provision of U.S. dollar liquidity in amounts up to $60 billion each.
  - The arrangements with Danmarks Nationalbank (Denmark), the Norges Bank (Norway) and the Reserve Bank of New Zealand will support the provision of U.S. dollar liquidity in amounts up to $30 billion each.

- Approvals: The FOMC and the policy boards or executives of the respective foreign central banks approved the establishment of these arrangements. In addition, the Federal Reserve has the right to approve or deny requests by foreign central banks to draw on their swap lines.
- Comparison to 2008 Financial Crisis Program: The Federal Reserve instituted similar arrangements with central banks during the 2008 financial crisis. However, under the 2008 central liquidity swap lines, limits were lower with respect to certain central banks.

Large-Scale Asset Purchases.

On March 15, 2020, the Federal Reserve announced that, over the coming months, the FRBNY would purchase at least $500 billion in U.S. Treasury securities and at least $200 billion in agency mortgage-backed securities. The FRBNY will reinvest all principal payments from its holdings of agency debt and agency mortgage-backed securities in agency mortgage-backed securities.

On March 23, 2020, the FOMC stated that the FRBNY will continue to purchase Treasury securities and agency mortgage-backed securities, including agency CMBS, "in the amounts needed to support smooth market functioning" and to maintain the federal funds rate in a target range of 0 to 0.25%. The FOMC noted that it would assess the appropriate pace of securities purchases at future meetings.

- The FOMC also directed the FRBNY to continue conducting term and overnight repurchase agreement operations to support the supply of reserves and the smooth functioning of short-term U.S. dollar funding markets.

On April 13, 2020, the FRBNY announced its intention to reduce the frequency of some repo operations during the period from April 14, 2020 to May 13, 2020.

- Beginning on May 4, 2020, the FRBNY intends to return to regularly conducting one overnight repo operation per day in the morning and to remove the afternoon overnight repo operation.

On May 13, 2020, the FRBNY announced its discontinuation of three-month repo operations during the monthly period from May 14, 2020 to June 11, 2020 in light of more stable repo market conditions.

- Overnight repo operations once per day and one-month repo operations once per week will continue.

Discount Window Access.

On March 15, 2020, the Federal Reserve encouraged depository institutions to turn to the discount window to meet demands for credit, lowered the primary credit rate to 0.25% (a final rule was published reflecting such decrease on March 24, 2020) and extended the timeframe for borrowing to 90 days to support credit demands.

On March 19, 2020, the Federal Reserve indicating it was "encouraged" by the increase in discount window borrowing during that week.

Cutting Interest Rates.

On March 3, 2020, the Federal Reserve lowered its target federal funds rate by half a percentage point—its first unscheduled and largest interest rate cut since 2008.

On March 15, 2020, it further lowered its target federal funds rate to 0–0.25%, an additional full percentage point cut.

- Additional Federal Reserve Actions

Increasing Availability of Intraday Credit.

On April 23, 2020, the Federal Reserve announced two actions, which will be in effect until September 30, 2020, to increase the availability of intraday credit extended by Federal Reserve Banks:

  - The Federal Reserve suspended uncollateralized intraday credit limits (net debit caps) and waived overdraft fees of institutions that are eligible for the primary credit program.
  - The Federal Reserve permitted a streamlined procedure for secondary credit institutions to request collateralized intraday credit (max caps).

Temporary Change to Supplementary Leverage Ratio.

On April 1, 2020, the Federal Reserve announced that it was changing the calculation of its supplementary leverage ratio for holding companies to exclude U.S. Treasury securities and deposits at Federal Reserve Banks. This change is in effect from April 1, 2020 until March 31, 2021 and is designed to allow banking institutions to expand their balance sheets to accommodate increased customer deposits while continuing to serve as financial intermediaries and provide credit. The OCC and FDIC have not issued a similar change for depository institutions.

Delay for Control Framework.

On March 31, 2020, the Federal Reserve announced that it was delaying the effective date for its revised control framework from April 1, 2020 to September 30, 2020 in order to reduce operational burdens and allow institutions to focus on current economic conditions.

Reporting Relief.

On March 26, 2020, the Federal Reserve announced that it would not take action against financial institutions with $5 billion or less in total assets that submit the March 31, 2020 Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) or Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11) within 30 days of the official filing due date. Institutions are encouraged to contact the Federal Reserve in advance of the official filing deadline if they anticipate a delayed submission.

Supervisory Activities.

On March 24, 2020, the Federal Reserve provided additional information on the adjustment of its supervisory approach due to COVID-19:

  - The Federal Reserve will temporarily reduce or, in the case of supervised institutions with less than $100 billion in total consolidated assets, cease its regular examination activities and instead focus on monitoring and outreach to help financial institutions understand the challenges and risks of the current environment. The Federal Reserve intends to reassess this approach to examinations in the last week of April.

- Banks still must submit their capital plans developed pursuant to the Comprehensive Capital Analysis and Review by April 6, 2020.
- The Federal Reserve will extend the time period for remediating existing supervisory findings by 90 days, unless it provides notification that a more timely remediation would aid the institution in addressing heightened risk or help consumers.
- The Federal Reserve reiterated that institutions should work with borrowers affected by COVID-19 and that the Federal Reserve will not criticize institutions that mitigate credit risk through prudent actions that are consistent with safe and sound practices.

23A and Regulation W Exemption for Certain Asset Purchases.

On March 17 and 18, 2020, the Federal Reserve issued letters to certain banks, exempting purchases of certain assets from affiliated money market funds and broker-dealers from the quantitative limits in Section 23A of the Federal Reserve Act and Regulation W. The exemptions granted with respect to affiliated money market funds expire six months after the date of the letter, and the exemptions granted with respect to broker-dealers expire one week after the date of the letter.

On March 25, 2020, the Federal Reserve issued a letter to a single bank, exempting purchases of municipal variable rate demand notes from its affiliate broker-dealer from the quantitative limits in Section 23A and Regulation W. The exemption is subject to several limitations and expires in seven months.

Restrictions on Distributions.

On March 17, 2020, the Federal Reserve released an interim final rule to lessen the possibility of a sudden onset of restrictions on distributions if banks dip into their required capital buffers. All banking organizations can calculate their distribution restrictions based on the greater of (1) a banking organization's net income for the four preceding calendar quarters, net of any distributions and associated tax effects, and (2) the average of a banking organization's net income over the preceding four quarters.

Reserve Requirements.

On March 15, 2020, the Federal Reserve announced it would eliminate the reserve requirement for depository institutions, a move designed to free up funds to support lending to households and businesses.

On March 24, 2020, the Federal Reserve published, and requested comment on, an interim final rule that lowers reserve requirements on transaction accounts maintained at depository institutions to 0%. These changes are applicable as of March 26, 2020.

- Joint Actions by Banking Regulatory Agencies

Resolution Plan Extensions.

On May 6, 2020, the Federal Reserve and FDIC announced an extension for the submission of targeted resolution plans from foreign and domestic banks in Category II and Category III to September 29, 2021.

Temporary Measures to Support PPP Loans.

On April 23, 2020, the Federal Housing Finance Authority announced that Federal Home Loan Banks may accept PPP loans as collateral for loans to its members given the SBA's 100% guarantee of the PPP loans' unpaid principal balance. In order to be eligible to post PPP loans as collateral, members must meet certain conditions focused principally on their financial condition.

On April 17, 2020, the Federal Reserve announced that it was temporarily changing Regulation O to allow banks to make PPP loans to small businesses that are owned by the banks' directors, officers and certain shareholders. The Federal Reserve will administer this change in accordance with the SBA's rules and restrictions on PPP loans, including the SBA's prohibition on banks prioritizing a PPP loan application from a director or shareholder.

Community Bank Leverage Ratio.

On April 6, 2020, the Federal Reserve, FDIC and OCC issued two interim final rules that:

- Reduce the minimum community bank leverage ratio to 8%, as required by the CARES Act;
- Provide a gradual transition back to the previously-established 9% leverage ratio requirement; and
- Provide a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1% below the applicable leverage ratio.

Working with Mortgage Servicers.

On April 3, 2020, the Federal Reserve, FDIC, OCC, National Credit Union Administration ("**NCUA**"), Consumer Financial Protection Bureau ("**CFPB**") and the Conference of State Bank Supervisors ("**CSBS**") noted their intention to adopt a flexible supervisory and enforcement approach relating to Regulation X in order to facilitate mortgage servicers offering consumers short-term options for relief, such as the forbearance provided in the CARES Act.

- The agencies emphasized that mortgage servicers can offer CARES Act forbearance or other short-term options based on an evaluation of an incomplete application or no application.
- The agencies also clarified that they will not take supervisory or enforcement action against mortgage services for delays in:
    - Sending certain notices and taking certain related actions required under Regulation X, including loss mitigation-related notices;
    - Establishing or making good faith efforts to establish live contact with delinquent borrowers; and
    - Sending written early intervention notices to delinquent borrowers,

  provided that in all cases the servicers make good faith efforts to undertake these requirements within a reasonable time.

SA-CCR and CECL.

On March 27, 2020, the Federal Reserve, FDIC and OCC announced two actions with regard to capital calculations:

- Allowing early adoption for the reporting period ending March 31, 2020 on a best efforts basis of the "standardized approach for measuring counterparty credit risk" rule or "SA-CCR," which is widely considered to be a significant improvement over the "current exposure method" ("**CEM**") and is expected to release capital being held by banking organizations based on certain imprecise or inflated CEM calculations; and
- Providing an optional extension of the regulatory capital transition for the new CECL accounting standard to mitigate its regulatory capital effects for up to two years in addition to the three-year transition period already in place. The agencies announced that the statutory relief provided under the

CARES Act for transitioning to CECL as an accounting policy matter would run consecutively with the two-year capital extension provided by the agencies.

Small-Dollar Loans.

On March 26, 2020, the Federal Reserve, FDIC, OCC, NCUA and CFPB urged banks, savings associations and credit unions to offer responsible small-dollar loans to consumers and small businesses in order to meet credit needs arising from temporary cash-flow imbalances, unexpected expenses or income disruptions.

Additionally, for borrowers who experience unexpected circumstances and cannot repay a loan as structured, the agencies encouraged financial institutions to consider workout strategies designed to help borrowers repay the principal and mitigate the need to re-borrow.

The agencies noted that they are working on future guidance and lending principles for these small-dollar loans.

Call Reports.

On March 25, 2020, the Federal Reserve, FDIC, OCC, NCUA, CFPB and Federal Financial Institutions Examination Council's State Liaison Committee announced that they would not take action against institutions that submit the March 31, 2020 Reports of Condition and Income (Call Reports) within 30 days of the official filing due date. Institutions are encouraged to contact their primary federal regulator in advance of their official filing date if they anticipate a delayed submission.

Working with Borrowers.

On March 22, 2020, the Federal Reserve, FDIC, OCC, NCUA, CFPB and CSBS encouraged financial institutions to work with borrowers who are or may be unable to meet their loan obligations because of COVID-19, including by using loan modification programs.

- The agencies emphasized that they would not criticize institutions for working with affected borrowers and would not direct supervised financial institutions to categorize automatically all COVID-19 related loan modifications as troubled debt restructurings ("**TDRs**"). The agencies confirmed with the Financial Accounting Standards Board that short-term modifications made on a good faith basis in response to COVID-19 to borrowers who are less than 30 days past due on their contractual payments prior to any relief, are not TDRs.
  - On April 7, 2020, the agencies clarified that, as provided for under the CARES Act, a financial institution is not required to report as TDRs loan modifications that are (1) related to COVID-19; (2) executed on a loan that was not more than 30 days past due as of December 31, 2019; and (3) executed between March 1, 2020, and the earlier of 60 days after the presidentially-declared national emergency terminates or December 31, 2020. However, financial institutions should maintain records of the volume of these loans.
  - The agencies also confirmed that loan modifications not falling within the guidelines of the CARES Act may not need to be categorized as TDRs if they are short-term modifications made on a good faith basis in response to COVID-19 to borrowers who are less than 30 days past due on their contractual payments prior to any relief.
- The Federal Reserve, FDIC and OCC noted that efforts to work with borrowers of one-to-four family residential mortgages in the same manner, where the loans are prudently underwritten and not past due

or carried in nonaccrual status, will not result in the loans being considered restructured or modified for purposes of their respective risk-based capital rules.

- The agencies clarified that if loans are not otherwise reportable as past due, financial institutions are not expected to designate loans with deferrals granted due to COVID-19 as past due because of the deferral.
- The agencies noted that generally short-term loans to stressed borrowers should not be reported as nonaccrual.

Community Reinvestment Act ("CRA").

On March 19, 2020, the Federal Reserve, FDIC and OCC encouraged banks to work with customers and communities affected by COVID-19, particularly those that are low- and moderate-income. The agencies emphasized that prudent efforts to modify and/or ease the terms on new or existing loans for such customers would receive CRA consideration and not be subject to examiner criticism.

Capital and Liquidity Buffers.

On March 15, 2020, the Federal Reserve encouraged banks to use capital and liquidity buffers built up since the 2008 financial crisis to lend to households and businesses affected by COVID-19. On March 17, 2020, the Federal Reserve, FDIC and OCC reiterated in a joint statement that banks should use their buffers to support lending activity.

On March 19, 2020, the Federal Reserve, FDIC and OCC issued questions and answers in response to public inquiries on these statements. For more information regarding the capital and liquidity issues, please see our alert memorandum available here.

- FDIC Actions

Deposit Insurance Assessment.

On May 12, 2020, the FDIC approved a proposed rule that would mitigate the deposit insurance assessment effects of participating in the PPP, PPPLF and MMLF.

Part 363 Annual Reports.

On March 27, 2020, the FDIC announced that it would not take action against insured depository institutions that submit the Part 363 Annual Report or a written notification of late filing within 45 days of the 90- or 120-day official filing due date. Institutions are encouraged to contact the FDIC in advance of their official filing date if they anticipate a delayed submission. The Federal Reserve, OCC and state banking regulators have confirmed this supervisory treatment.

FDIC Guidance.

On March 13, 2020, the FDIC encouraged financial institutions to assist customers and communities affected by COVID-19. The FDIC specifically urged financial institutions to work with borrowers, especially small businesses and borrowers from industry sectors that are most affected by the current situation, including by potentially modifying terms of existing loans.

The FDIC also noted that it will work with affected financial institutions to reduce the burden of examinations, such as by increasing use of off-site reviews, and with financial institutions that may experience challenges fulfilling their regulatory reporting responsibilities.

- New York Department of Financial Services ("**NYDFS**") Actions

NYDFS Relief for New York-Chartered Financial Institutions.

On April 16, 2020, the NYDFS provided temporary regulatory relief for New York-chartered financial institutions, allowing them to:

- Conduct required meetings virtually during the disaster emergency and for 60 days thereafter; and
- Delay annual stockholder meetings to within seven months of the beginning of an institution's fiscal year if the prior deadline for the stockholder meeting occurs during the disaster emergency.

NYDFS Guidance on Cybersecurity.

On April 13, 2020, the NYDFS released guidance identifying areas of heightened cybersecurity risk to regulated institutions as a result of COVID-19, including with respect to remote working and coordinating with critical third-party vendors. The NYDFS instructed regulated institutions to assess the identified risks and address them appropriately in accordance with its cybersecurity regulation.

NYDFS Emergency Regulation Implementing Executive Order on Forbearance.

On March 24, 2020, the NYDFS released an emergency regulation implementing Governor Cuomo's March 21, 2020 executive order. The regulation clarifies that the executive order requires forbearance only with respect to residential mortgages of individuals. The forbearance requirement and other elements of the executive order, as implemented in the regulation, apply only to New York regulated banking organizations and mortgage servicers. The regulation also requires banking organizations to eliminate ATM fees, overdraft fees and credit card late payment fees for individuals who can demonstrate financial hardship from COVID-19. For more information regarding the emergency regulation, please see our alert memorandum available here.

Executive Order on Forbearance.

On March 21, 2020, Governor Cuomo signed an executive order that included the following provisions specific to the financial sector:

- Deemed it an unsafe and unsound business practice if, in response to COVID-19, any NYDFS-regulated bank does not grant a 90-day forbearance to any person or business that experiences financial hardship due to COVID-19;
- Required the Superintendent of the NYDFS to ensure (under reasonable and prudent circumstances) that regulated entities grant forbearance of mortgage payments for New York State persons and entities experiencing financial hardship due to COVID-19; and
- Empowered the Superintendent of the NYDFS to promulgate emergency regulations to restrict or modify ATM, overdraft and credit card late fees (taking into account the financial impact on the consumer, the safety and soundness of the regulated entity and any applicable federal requirements).

NYDFS Preparedness Plan.

On March 10, 2020, NYDFS issued a letter requiring regulated institutions to submit a plan of preparedness for managing the risk of disruption to services and operations due to COVID-19 as soon as possible, and in no event, later than April 9, 2020. The NYDFS also issued a letter on the same day requiring regulated institutions to submit a plan regarding managing potential financial risks arising from COVID-19 on the same timeline.

- International Actions

Deferral of Margin Requirements for Non-Centrally Cleared Derivatives and Implementation of Certain G-SIB Requirements.

On April 3, 2020, the Basel Committee announced additional steps to alleviate the impact of COVID-19 on the global banking system:

- The implementation of the final two phases of margin requirements for non-centrally cleared derivatives will be deferred by one year to September 1, 2021 for covered entities with an aggregate average notional amount ("**AANA**") of non-centrally cleared derivatives exceeding €50 billion and September 1, 2022 for covered entities with an AANA of non-centrally cleared derivatives exceeding €8 billion; and
- The implementation of the G-SIB revised assessment methodology and higher loss absorbency requirement will be postponed to 2022.

Deferral of Basel III Implementation.

On March 27, 2020, the Basel Committee delayed the implementation of certain remaining Basel III standards by one year to free up additional operational capacity for banks and supervisory institutions to respond to COVID-19:

- The Basel III standards finalized in December 2017 (sometimes known as "Basel IV" or the "Basel III end-game") now will be required to be implemented on January 1, 2023, and the accompanying transitional arrangements for the output floor will be required to be implemented on January 1, 2028;
- The revised market risk framework finalized in January 2019 will be required to be implemented on January 1, 2023; and
- The revised Pillar 3 disclosure requirements finalized in December 2018 will be required to be implemented in January 1, 2023.

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Cleary Gottlieb has established a COVID-19 Resource Center, providing information and thought leadership on developing events. In addition, we have a COVID-19 Task Force that is acting as a repository for practical solutions, best practice and issue-spotting to help our clients by sharing market experience, insight and advice from across our global presence.

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