Memorandum

Federal Reserve Publishes Updated Term Sheets for Primary Market Corporate Credit Facility and Secondary Market Corporate Credit Facility

April 13, 2020

On April 9, 2020, the Federal Reserve published updated terms sheets for the Primary Market Corporate Credit Facility ("PMCCF") and the Secondary Market Corporate Facility ("SMCCF"). As discussed in our March 24, 2020 memorandum, available here, the PMCCF and SMCCF were among several new measures recently established by the Federal Reserve to support households, smaller and larger businesses, and to enhance overall market functioning and credit provision to the broader economy. The Department of the Treasury increased the size of its equity investment in the two facilities from $10 billion to $75 billion, with $50 billion allocated to the PMCCF and $25 billion to the SMCCF. The combined size of the facilities will be up to $750 billion.

- **PMCCF Term Sheet Updates**: The key updates to the PMCCF term sheet primarily pertain to the eligibility criteria and applicable limitations thereunder, including (but not limited to):
  - Loans: The revised term sheet clarifies that the PMCCF will purchase qualifying bonds as the sole investor in bond issuances and purchase portions of syndicated loans and bonds.
  - Eligible Issuers: The revised term sheet adds a requirement that an eligible issuer must be a business that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States.
  - Ratings: In addition to the requirement that an issue have a credit rating of at least BBB-/Baa3, the revised term sheet indicates that for issuers that were rated at least BBB-/Baa3 as of March 22, 2020 but were subsequently downgraded, the facility may still purchase instruments from the issuer if it is rated at least BB-/Ba3 at the time of the purchase.
  - Limits per Issuer: The revised term sheet indicates that issuers may approach the PMCCF to refinance outstanding debt, from the period of three months ahead of the maturity date of such outstanding debt. Issuers may additionally approach the PMCCF at any time to issue additional debt, provided their rating is reaffirmed at BB-/Ba3 or above with the additional debt by each major nationally recognized statistical rating organization ("NRSRO") of the issuer. The revised term sheet also replaces the prior announced limits (which varied based on an issuer's ratings) by indicating that the maximum amount

of outstanding bonds or loans of an eligible issuer that borrows may not exceed the 130% percent of the issuer's maximum outstanding bonds and loans on any day between March 22, 2019 and March 22, 2020.

- **<u>SMCCF Term Sheet Updates</u>**: Key updates to the SMCCF term sheet also primarily pertain to the eligibility criteria and applicable limitations, including (but not limited to):
  - <u>Eligible Issuers Individual Corporate Bonds</u>: The same set of criteria for determining eligible issuers under the PMCCF is also applied to determine eligible issuers for the underlying corporate bonds being purchased under the SMCCF.
  - <u>Eligible Sellers</u>: Each institution from which the SMCCF purchases securities must be a business that is created or organized in the United States or under the laws of the United States with significant U.S. operations and a majority of U.S.-based employees and must also satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act.[1]
  - <u>Eligible ETFs</u>: The revised term sheet relaxes the requirement that ETFs purchased by the SMCCF have an investment objective to provide broad exposure to the market for U.S. investment grade corporate bonds. Instead the revised term sheet indicates that the SMCCF's preponderance of ETF holdings will be of ETFs whose primary investment objective is exposure to U.S. investment-grade corporate bonds, and the remainder will be in ETFs whose primary investment objective is exposure to U.S. high-yield corporate bonds.
  - <u>Ratings</u>: The revised term sheet implements the same ratings criteria as described above for the PMCCF.

The keys terms of the PMCCF and SMCCF are described below.

[1] Section 4019 of the CARES Act generally prohibits any entity from receiving TALF loans if the entity is at least 20% owned by the U.S. President or Vice President, the head of any Executive department, a member of Congress or certain of their family members, and may not include (i) insured depository institutions or depository institution holding companies (in each case, as defined in the Dodd-Frank Act) or (ii) companies that have received specific support pursuant to the CARES Act of any subsequent federal legislation (such as airlines). The scope of eligible issuers may be expanded in the future.

Primary Market Corporate Credit Facility Key Terms (Updated)

The PMCCF will serve as a funding backstop for corporate debt issued by eligible issuers. Under the PMCCF, the Federal Reserve Bank of New York ("FRBNY") will commit to lend to a special purpose vehicle ("SPV") on a recourse basis. The SPV will (i) purchase qualifying bonds as the sole investor directly from eligible issuers in bond issuances and (ii) purchase portions of syndicated loans or bonds at issuance. The Treasury Department will make an initial $50 billion equity investment in the SPV in connection with the PMCCF.

- **Eligible Assets**: The PMCCF may purchase (i) eligible corporate bonds as sole investor or (ii) portions of eligible syndicated loans and bonds at issuance.
  - Eligible corporate bonds: The PMCCF may purchase eligible corporate bonds as the sole investor in a bond issuance directly from eligible issuers. At the time of purchase by the PMCCF, eligible corporate bonds must be (i) issued by and eligible issuer and (ii) have a maturity of four years or less.
  - Eligible syndicated loans and bonds purchased at issuance: The PMCCF may also purchase portions of syndicated loans or bonds of eligible issuers at issuance. Eligible syndicated loans and bonds must also be (i) issued by and eligible issuer and (ii) have a maturity of four years or less. The PMCCF may purchase no more than 25 percent of any loan syndication or bond issuance.
- **Eligible Issuers**: "Eligible Issuers" for purposes of the PMCCF are U.S. companies that (i) are headquartered in the United States with significant operations in, and a majority of its employees based in the United States,[2] and (ii) have been rated at least BBB-/Baa3 as of March 22, 2020, by a NRSRO. If rated by multiple major NRSROs, the issuer must be rated at least BBB-/Baa3 by two or more NRSROs as of March 22, 2020. Issuers that were rated at least BBB-/Baa3 as of March 22, 2020, but are subsequently downgraded, must be rated at least BB-/Ba3 at the time the PMCCF makes a purchase. If rated by multiple major NRSROs, such issuers must be rated at least BB-/Ba3 by two or more NRSROs at the time the PMCCF makes a purchase.
  - An issuer must not be an insured depository institution or depository institution holding company, as such terms are defined in the Dodd-Frank Act and must also (i) not have received specific support pursuant to the CARES Act or any subsequent federal legislation and (ii) satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act.
- **Leverage**: The PMCCF will leverage the Treasury equity at 10 to 1 when acquiring corporate bonds or syndicated loans from issuers that are investment grade at the time of purchase. The PMCCF will leverage its own equity at 7 to 1 when acquiring any other type of eligible asset.
- **Limits per Issuer**: Issuers may approach the PMCCF to refinance outstanding debt, from the period of three months ahead of the maturity date of such outstanding debt. Issuers may additionally approach the PMCCF at any time to issue additional debt, provided their rating is reaffirmed at BB-/Ba3 or above with

[2] The term sheet does not define the meaning of the term "significant operations." We expect this criteria will be clarified in future guidance. In addition, a U.S. subsidiary of a foreign company appears to be able to participate in the PMCCF.

the additional debt by each major NRSRO with a rating of the issuer. The maximum amount of outstanding bonds or loans of an eligible issuer that borrows from the PMCCF may not exceed 130 percent of the issuer's maximum outstanding bonds and loans on any day between March 22, 2019 and March 22, 2020.

The maximum amount of instruments that the PMCCF and the SMCCF combined will purchase with respect to any eligible issuer is capped at 1.5 percent of the combined potential size of the PMCCF and the SMCCF.

- **Pricing**: For eligible corporate bonds, pricing will be issuer-specific, informed by market conditions, plus a 100 bps facility. For eligible syndicate loans and bonds, the PMCCF will receive the same pricing as other syndicate members, plus a 100bps facility fee on the PMCCF's share of the syndication.
- **Program Termination**: The PMCCF will cease purchasing eligible assets no later than September 30, 2020, unless extended by the Board of Governors of the Federal Reserve System and the Treasury Department. The Reserve Bank will continue to fund the PMCCF after such date until its holdings either mature or are sold.

Secondary Market Corporate Credit Facility Key Terms (Updated)

Under the SMCCF, the FRBNY will lend, on a recourse basis, to an SPV that will purchase in the secondary market corporate debt issued by eligible issuers. The SPV will purchase in the secondary market eligible individual corporate bonds as well as eligible corporate bond portfolios in the form of exchange-traded funds ("ETFs"). The Treasury Department will make an initial $25 billion equity investment in the SPV in connection with the SMCCF.

- **Eligible Individual Corporate Bonds**: The SMCCF may purchase corporate bonds that, at the time of purchase by the SMCCF, (i) were issued by an eligible issuer, (ii) have a remaining maturity of five years or less and (iii) were sold to the SMCCF by an eligible seller.
- **Eligible ETFs**: The SMCCF also may purchase U.S.-listed ETFs whose investment objective is to provide broad exposure to the market for U.S. corporate bonds. The preponderance of ETF holdings will be of ETFs whose primary investment objective is exposure to U.S. investment-grade corporate bonds, and the remainder will be in ETFs whose primary investment objective is exposure to U.S. high-yield corporate bonds.
- **Eligible Issuers for Individual Corporate Bonds**: To qualify as an "Eligible Issuer" for purposes of the SMCCF, the issuer must (i) be a business that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States and (ii) have been rated at least BBB-/Baa3 as of March 22, 2020, by a NRSRO. If rated by multiple major NRSROs, the issuer must be rated at least BBB-/Baa3 by two or more NRSROs as of March 22, 2020. An issuer that was rated at least BBB-/Baa3 as of March 22, 2020, but was subsequently downgraded, must be rated at least BB-/Ba3 as of the date on which the SMCCF makes a purchase.
    - An issuer must not be an insured depository institution or depository institution holding company, as such terms are defined in the Dodd-Frank Act and must also (i) not have received specific support pursuant to the CARES Act or any subsequent federal legislation and (ii) satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act.
- **Eligible Seller**: Each institution from which the SMCCF purchases securities must be a business that is created or organized in the United States or under the laws of the United States with significant U.S. operations and a majority of U.S.-based employees. The institution also must satisfy the conflicts-of-interest requirements of section 4019 of the CARES Act.
- **Leverage**: The SMCCF will leverage the Treasury equity at 10 to 1 when acquiring corporate bonds from issuers that are investment grade at the time of purchase and when acquiring ETFs whose primary investment objective is exposure to U.S. investment-grade corporate bonds. The SMCCF will leverage its equity at 7 to 1 when acquiring corporate bonds from issuers that are rated below investment grade at the time of purchase and in a range between 3 to 1 and 7 to 1, depending on risk, when acquiring any other type of eligible asset.

- **<u>Limits per Issuer/ETF</u>**: The maximum amount of instruments that the SMCCF and the PMCCF combined will purchase from any eligible issuer is capped at 1.5% of the combined potential size of the SMCCF and PMCCF. The maximum amount of bonds that the SMCCF will purchase from the secondary market of any Eligible Issuer is also 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 that ETF's outstanding shares.
- **<u>Pricing</u>**: The SMCCF will purchase eligible corporate bonds at fair market value in the secondary market. The SMCCF will avoid purchasing shares of eligible ETFs when they trade at prices that materially exceed the estimated net asset value of the underlying portfolio.
- **<u>Program Termination</u>**: The SMCCF will cease purchasing eligible corporate bonds and eligible ETFs no later than September 30, 2020, unless extended by the Federal Reserve. The FRBNY will continue to fund the SMCCF after such date until the SMCCF's holdings either mature or are sold.

We offer a dedicated team of advisors to help businesses weigh available options and seek assistance under one or more of the liquidity and support programs established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Whether in the form of direct funding from Treasury, loans or other credit support from a Federal Reserve lending facility or participation in Small Business Administration loan programs, our team has the expertise to help navigate the complex political and legal challenges associated with obtaining government financial assistance and the experience to help access the programs if a decision is made to do so.

Led by Lee Meyerson, who guided the Firm's financial crisis team that advised Treasury in developing, structuring and documenting its $250 billion TARP program for purchasing equity in U.S. financial institutions and related programs, and Keith Noreika, who recently served with Treasury Secretary Mnuchin as acting Comptroller of the Currency, a role in which he also acted as a director of the FDIC and member of the Financial Stability Oversight Council, the cross-disciplinary team also includes financing and governance lawyers, as well as former Treasury and Federal Reserve counsel.

See our Accessing Emergency Government Support Programs webpage for further information.

CONTACTS

Lee A. Meyerson
+1-212-455-3675
lmeyerson@stblaw.com

Keith A. Noreika
+1-202-636-5864
keith.noreika@stblaw.com

NEW YORK CITY

J. Alden Millard
+1-212-455-2871
jmillard@stblaw.com

Arthur D. Robinson
+1-212-455-7086
arobinson@stblaw.com

Patrick J. Ryan
+1-212-455-3463
pryan@stblaw.com

William B. Sheehan
+1-212-455-3355
wsheehan@stblaw.com

Ismael Duran
+1-212-455-3425
iduran@stblaw.com

Spencer A. Sloan
+1-212-455-7821
spencer.sloan@stblaw.com

WASHINGTON, D.C.

Joshua Ford Bonnie
+1-202-636-5804
jbonnie@stblaw.com

Christopher Brown
+1-202-636-5513
cbrown@stblaw.com

Adam J. Cohen
+1-202-636-5578
adam.j.cohen@stblaw.com

Jonathan H. Pacheco
+1-202-636-5565
jonathan.pacheco@stblaw.com

PALO ALTO

Michael Vernace
+1-650-251-5182
mvernace@stblaw.com