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Additional Funding Opportunities Under the CARES Act and Certain Credit Facilities of the Federal Reserve for Mid and Large-Sized Businesses

While many businesses will be able to take advantage of the SBA Paycheck Protection Program loans and Economic Injury Disaster Loans, there are several other businesses that will not be able to participate due to their size and other program limitations. Title IV of the CARES Act (effective March 27, 2020) may provide relief for these businesses. This portion of the CARES Act, entitled Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy, provides special relief to specified industries, eligible businesses, states and municipalities that have experienced significant losses and provides significant funding into certain credit facilities administered by the Federal Reserve. The relief may be in the form of loans, loan guarantees and investments.

Direct Loan Programs

A total of \$46 trillion is set aside for direct loan programs from the U.S. Department of Treasury for the passenger air, cargo air and national security industries. Applications for these loans began being accepted in the first week of April. Additional guidance and application materials concerning these programs are available on the [U.S. Department of Treasury website](#).

Recipients under these direct loan programs are subject to several restrictions and prohibitions that borrowers should carefully consider before accepting these loans. Borrowers of any direct loans under any of these Federal Reserve facilities are prohibited, for a period beginning on the date of the loan and continuing for a period of 12 months after the loan is no longer outstanding, from (1) repurchasing any listed equity security of it or its parent (except to the extent required under a contractual obligation in effect March

27, 2020); and (2) paying any dividends or making other capital distributions with respect to the common stock of the borrower.

During this same period that begins on the date of the loan and continuing for a period of 12 months after the loan is no longer outstanding, borrowers must also comply with the following compensation-related limitations. Employment arrangements that do not comply with these limitations will need to be modified or waivers received from the impacted individuals; the existence of a prior employment agreement will not permit the following limitations to be exceeded.

- No officer or employee of the business whose total compensation exceeded \$425,000 in the calendar year 2019 may:
 - receive total compensation during any 12 consecutive months that exceeds their total compensation in 2019; or
 - receive severance pay or other benefits upon termination of their employment which exceeds two times the total compensation received by the officer or employee in 2019.
- No officer or employee of the business whose total compensation exceeded \$3 million in 2019 may receive total compensation during any 12 consecutive months that exceeds the sum of \$3 million-plus 50% of the excess over \$3 million of the total compensation received in 2019. For example, in the case of an officer who received compensation equal to \$4 million in 2019, their total compensation in any 12-month period would be limited to \$3.5 million (\$3 million-plus (0.5 times \$ 1 million)).

Federal Reserve Credit Facilities and Programs

An additional \$454 trillion (and any funds not used for the above-listed industries) will be available for programs and facilities established by the Federal Reserve System under the authority of Section 13(3) of the Federal Reserve Act. The Federal Reserve had already established several credit and funding facilities before the

passage of the CARES Act. The CARES Act specifies one additional program to be established for the benefit of midsize businesses. These Federal Reserve programs generally involve the Federal Reserve purchasing obligations from issuers or from the secondary market, or the Federal Reserve issuing loans.

Only businesses that are created or organized in the U.S., or under the laws of the U.S., and that have significant operations in and a majority of their employees in the U.S. are eligible to be issuers or borrowers under these programs and facilities if the facility or program has been funded under Title IV of the CARES Act.

Midsize Business Loan Program

The new facility specifically identified under the CARES Act is designed for midsize businesses and will be managed by the Federal Reserve providing financing to banks and other lenders that make direct loans to business. These direct loans will have a maximum interest rate of 2% and not require any payments of principal or interest for at least the first six months of the loan. As of April 7, 2020, this facility has not been established and no loans are being issued in connection with the program.

Businesses eligible for these loans must:

- have between 500 and 10,000 employees;
- use the funds to:
 - retain at least 90% of the borrower's workforce at full compensation and benefits until Sept. 30, 2020;
 - restore at least 90% of the borrower's workforce that existed as of Feb. 1, 2020 within four months of the termination of the public health emergency (declared Jan. 1, 2020);
- be domiciled in the U.S. with significant operations and employees in the U.S.;
- not be a debtor in bankruptcy;
- not pay dividends on or repurchase its stock while the loan is outstanding;

- not outsource or offshore jobs for the term of the loan and two years after repaying the loan;
- not revoke any existing collective bargaining agreement during the term and the for two years after repaying the loan; and
- remain neutral in any union organizing effort for the term of the loan.

Other Federal Reserve Credit Facilities

The other Section 13(3) facilities of the Federal Reserve, not specifically addressed in the CARES Act, include the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Term Asset-Backed Securities Loan Facility, the Money Market Mutual Fund Liquidity Facility, the Commercial Paper Funding Facility and the Primary Dealer Credit Facility. These facilities were generally made available on or about March 23, 2020, and will discontinue new lending or investment activities by Sept. 30, 2020, except as noted below.

The Federal Reserve has also announced plans for a new program to be known as the Main Street Business Lending Program to support small and mid-sized companies. As of April 7, 2020, the Main Street Business Lending Program has not been established and no loans are being issued in connection with the program.

On April 6, 2020, the Federal Reserve announced plans to establish a new facility designed to provide term financing to lenders backed by Paycheck Protection Program loans guaranteed by the SBA as established by the CARES Act. Additional details concerning this facility are expected to be announced in the near term.

A. Primary Market Corporate Credit Facility (PMCCF)

The PMCCF functions through the use of a special purpose vehicle to support corporate debt through purchasing qualifying bonds directly from issuers or providing loans.

Eligible Issuers/Borrowers:

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- S. companies with material operations in the U.S.;
- Excludes companies that are expected to receive direct financial assistance under the CARES Act (e.g., participants in the Paycheck Protection Program loan program) and possibly other future legislation; and
- Issuer is rated at least BBB-/Baa3 by a major nationally recognized statistical rating organization ("NRSRO") and, if rated by multiple major NRSROs, rated at least BBB-/Baa3 by two or more NRSROs, in each case subject to review by the Federal Reserve.

Limits per Issuer/Borrower:

The maximum amount of outstanding bonds or loans of an eligible issuer may not exceed the applicable percentage of the issuer's maximum outstanding bonds and loans on any day between March 22, 2019, and March 22, 2020:

- 140% for eligible assets/eligible issuers with a AAA/Aaa rating;
- 130% for eligible assets/eligible issuers with a AA/Aa rating;
- 120% for eligible assets/eligible issuers with a A/A rating; or
- 110% for eligible assets/eligible issuers with a BBB/Baa rating.

General Terms

- Maximum maturity of four years;
- Commitment fee of 1%;
- Interest rate based on market conditions;
- Borrowers may defer principal and interest during the first six months of the loan; and
- Bonds are callable by the issuer at any time at par.

B. Secondary Market Corporate Credit Facility (SMCCF)

Under the SMCCF, the Federal Reserve will, through a special purpose vehicle, purchase secondary market corporate debt issued by eligible issuers.

Eligible debt

- Individual bonds of issuers with material operations in the U.S. (not including businesses that are expected to receive direct financial assistance under other legislation) that rated at least BBB-/Baa3 by a NRSRO with remaining maturity of five years or less; and
- Exchange traded funds with an investment objective to provide broad exposure to the market for U.S. investment grade corporate bonds up to 10% of an issuer's maximum bonds outstanding on any day between March 22, 2019, and March 22, 2020.

C. Term Asset-Back Securities Loan Facility (TALF)

Under the TALF, the Federal Reserve will lend, through a special purpose vehicle, to holders of AAA-rated asset backed securities (ABS) backed by consumer and small business loans to improve the flow of credit to both consumers and businesses. The loans will be made on a nonrecourse basis

Eligible collateral includes ABS with the following underlying credit exposures: auto loans and leases, student loans, credit card receivables, equipment loans, floorplan loans, insurance premium finance loans, certain SBA guaranteed small business loans and eligible servicing advance receivables. All the underlying credit exposure must be newly issued to qualify.

While more detailed terms and conditions are expected at a later date, the general terms include an interest rate that is either 100 basis points over the 2-year LIBOR swap rate or 100 basis points over the 3-year LIBOR swap rates (subject to adjustment with the transition away from LIBOR) based on the weighted average life of the loan, an administrative fee equal to 10 basis points, and loan terms of three years.

D. Money Market Mutual Fund Liquidity Facility (MMLF)

The MMLF is a joint effort of the OCC, Federal Deposit Insurance Corp. (FDIC) and Federal Reserve Board, and bears resemblances to the Asset Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF) that was created in 2008 to assist with that crisis. The MMLF will lend funds to U.S. depository institutions, U.S. bank holding companies and U.S. branches of foreign banks for the purposes of buying assets from money market mutual funds. The intent is to supply liquidity to these funds, which would limit any needs they might otherwise have to sell investments at a discount in order to maintain liquidity when investor demand for redemptions is higher than anticipated. While a popular low risk investment vehicle for businesses and households, money market mutual funds are not federally insured deposits. As a result, high fund withdrawal demands by investors otherwise could risk the funds' stability during economically stressful periods.

Under this program, the Federal Reserve will provide a nonrecourse advance to an eligible borrower to purchase certain types of assets from an eligible money market mutual fund. To be eligible, the money market mutual fund must identify 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. Loans to the eligible money market mutual funds would be secured with the assets of that fund.

If the money market mutual fund is eligible, it is not necessary that they have a master account with the Federal Reserve Bank of Boston. A correspondent with an account will be sufficient. Existing Federal Reserve account holders that do not have OC-10 documentation on file will need to provide this before accessing the program. There are additional certifications that will also be required at that time.

E. Commercial Paper Funding Facility (CPFF)

The CPFF will fund purchases of commercial paper that is issued by eligible issuers. A special purpose vehicle will purchase three-month U.S. dollar-denominated commercial paper through the New York Fed's primary dealers from eligible issuers. An eligible issuer is any U.S. issuer of commercial paper (including municipal issuers) and includes U.S. issuers with a foreign parent company.

In order to be eligible, the commercial paper (which includes asset-backed commercial paper) must be rated at least A1/P1/F1 by a major nationally recognized statistical rating organization. If it is rated by more than one nationally recognized statistical rating organization, it must be rated as set forth above by two or more of these organizations, subject, in each case, to review by the Federal Reserve.

There are special rules that apply if an issuer previously met the requirements above but was recently downgraded to a rating not less than A2/P2/F2, which could permit a one-time sale of commercial paper to the CPFF special purpose vehicle, subject in each case to review by the Federal Reserve. In addition, asset-backed commercial paper will not be purchased if the 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.

The CPFF special purpose vehicle will not purchase from any single issuer commercial paper that is more than the issuer had outstanding on any day between March 16, 2019, and March 16, 2020, or that exceeds the issuer's limit. If the issuer is downgraded as described above, the limit is the amount of U.S. dollar-denominated commercial paper the issuer had outstanding the day before it was downgraded.

Pricing will be based on the then-current three-month overnight index swap (OIS) rate plus 110 basis points for commercial paper rated A1/P1/F1. The interest rate increases to the then-current three-month OIS rate plus 200 basis points, for commercial paper rated A2/P2/F2.

To use the CPFF, an issuer must pay a facility fee equal to 10 basis points of the maximum amount of its commercial paper the special purpose vehicle may own.

The CPFF special purpose vehicle will cease purchasing commercial paper March 17, 2021.

F. Primary Dealer Credit Facility (PCDF)

If the PCDF seems familiar, it is. It was originally created by the Federal Reserve for the 2008 crisis to provide overnight loans to primary dealers through their clearing banks in exchange for eligible collateral. The original PCDF closed in 2010.

On March 17, 2020, a new PCDF was created. It offers loans of up to 90 days, which differs from its predecessor that funded only overnight obligations.

In order to access the facility, one must be a “primary dealer” which generally includes trading counterparties of the New York Federal Reserve. Primary dealers are listed in the FAQs that are issued by the New York Federal Reserve. The rate of interest that is paid on the loan will be the same as the primary credit rate at the Federal Reserve Bank of New York in effect at the time the loan is made regardless of the term of the loan.

Investment grade debt securities, commercial paper and bonds will all serve as collateral for the loans, provided that it meets specific ratings requirements. There is a schedule of collateral that is acceptable available. If the schedule does not provide sufficient clarity, the New York Federal Reserve can answer specific questions regarding acceptable collateral.

The new PCDF started March 20, 2020, and will remain available for at least six months but may be extended if conditions warrant.

For more information on the funding opportunities available for midsize and larger businesses and other financial assistance available to businesses under the CARES Act, please contact [Kim Mauer](#), [Shannon Kuhl](#) or any attorney in Frost Brown Todd’s [Finance](#)

Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#), including a special team focusing on business funding options under the CARES Act. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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