

CLIENT ALERT

NY Federal Reserve Bank Issues Commercial Paper Funding Facility Guidance as Part of COVID-19 Stimulus Package

Apr.07.2020

On April 6, 2020, the Federal Reserve Bank of New York (NY Fed) issued the first in what will be a series of guidance and instruction packages for access to Federal Reserve liquidity support programs funded in part by the CARES Act. The initial guidance package provides information regarding the Commercial Paper Funding Facility (CPFF), which has been established to enable firms to access credit to fund short term operational needs by enhancing the liquidity of the commercial paper market. The CPFF will be structured as a credit facility funded by the NY Fed to a special purpose vehicle (SPV), which will purchase from eligible issuers (rated at least A1/P1/F1) three-month U.S. dollar denominated unsecured and asset-backed commercial paper (subject to certain limits on an individual issuer basis). The SPV will commence purchasing commercial paper on April 14, 2020 and will continue such purchases through March 17, 2021 (unless extended by the NY Fed).

Eligible Issuers

Eligible issuers under the CPFF are U.S. issuers of commercial paper, including municipal issuers and U.S. issuers with a foreign corporate parent, with a rating of at least A1/P1/F1 by a major nationally recognized statistical rating organization (NRSRO) or, if rated by multiple major NRSROs, with a rating of at least A1/P1/F1 by two or more major NRSROs (“Required Ratings”).

An issuer that does not meet the Required Rating as of March 17, 2020, but meets it at a later date, may sell commercial paper to the SPV at the time it has achieved the Required Rating.

If an issuer with a Required Rating as of March 17, 2020 is subsequently downgraded, the issuer will be able to make a one-time sale of commercial paper to the SPV so long as the issuer has a downgraded rating of at least A2/P2/F2 by a major NRSRO.

The SPV will not purchase commercial paper from “inactive” issuers – meaning those issuers that did not issue 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.

Limits Per Issuer

The maximum amount of a single issuer’s commercial paper the SPV can own at any time will be the greatest amount of commercial paper the issuer had outstanding on any day between March 16, 2019 and March 16, 2020, as certified to the SPV by the issuer. An “issuer” is the legal entity issuing commercial paper. If an issuer has multiple commercial paper programs, it should sum the total outstanding commercial paper across all of its programs to calculate its limit. Commercial paper programs of affiliated issuers would have individual limits (if they are separate legal entities).

For an issuer with a Required Rating as of March 17, 2020 that is subsequently downgraded but has a downgraded rating of at least A2/P2/F2, the maximum amount of commercial paper the SPV will purchase is the amount of commercial paper the issuer had outstanding the day before it was downgraded.

The SPV will not purchase additional commercial paper from an issuer whose total commercial paper outstanding to all investors (including the SPV) equals or exceeds the issuer's limit under the CPFF.

Pricing

For commercial paper rated A1/P1/F1: then-current 3-month overnight index swap (OIS) rate plus 110 basis points.

For commercial paper rated A2/P2/F2: then-current 3-month OIS rate plus 200 basis points.

Issuer Fees

At the time the issuer registers to use the CPFF, it must pay a facility fee equal to 10 basis points of the maximum amount of its commercial paper the SPV may own (regardless of whether the issuer intends to sell the maximum allowable amount).

Additional Conditions

In addition to the required ratings, Issuers must certify to the following:

- a. The Issuer is not insolvent (i.e., not in bankruptcy or resolution, generally able to make payments during the previous 90 days), and it is not receiving assistance for the purpose of lending the proceeds to a person or entity that is insolvent.
- b. The Issuer is unable to secure adequate credit accommodations from other banking institutions. This certification may be based on economic conditions in the market or markets intended to be addressed by the facility. Lack of adequate credit does not mean that no credit is available. Lending may be available, but at prices or on conditions that are inconsistent with a normal, well-functioning market.

Facility Commencement Date

The SPV will begin making commercial paper purchases on April 14, 2020.

Facility Termination Date

SPV will cease purchasing commercial paper on March 17, 2021 unless the Federal Reserve Board extends the facility.

Registration Dates and Process

Issuers must register with the CPFF. Completed registration materials may be submitted any time after 9:00 am ET on April 7, 2020. To access the CPFF on April 14, 2020, issuers must have completed registration by April 9, 2020. Thereafter, issuers will be required to register at least two business days prior to the date of their intended participation in the CPFF.

Commercial paper purchased by the SPV will settle through the Depository Trust Company's settlement system.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Scott Lessne

Senior Counsel – Washington, D.C.

Phone: +1 202.624.2597

Email: slessne@crowell.com

Nicholas James

Counsel – Washington, D.C.

Phone: +1 202.624.2959

Email: njames@crowell.com