Proskauer

Corporate Credit Facilities under the CARES Act

April 16, 2020

On April 9, 2020, the Federal Reserve announced additional programs under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") to provide up to $2.3 trillion in loans and other investments to support the U.S. economy. These actions include:

- Supplying liquidity to financial institutions participating in the Small Business Administration's Paycheck Protection Program (the "PPP") (for more information on the PPP, see here);
- Establishing a new $600 billion Main Street Lending Program, aimed to ensure credit flows to small and mid-sized businesses that were in good standing before the COVID-19 pandemic (the "Main Street Lending Program") (for more information on the Main Street Lending Program, see here);
- Announcing a $500 billion Municipal Liquidity Facility for states and municipalities;
- Expanding the size of the Primary Market Corporate Credit Facility (the "PMCCF") and the Secondary Market Corporate Credit Facility (the "SMCCF"), and the scope of the Term Asset-Backed Securities Loan Facility (the "TALF"), which will support up to $850 billion in credit to companies rated investment-grade as of March 22, 2020, the secondary market for investment-grade corporate debt, and holders of AAA-rated asset-backed securities, respectively (for more information on the TALF, see here).

The announcement of the various programs was accompanied by the publication of short-term sheets describing each program. This article focuses on the PMCCF and SMCCF, as described in the program term sheets that were published by the Federal Reserve on April 9, 2020. The PMCCF term sheet is available here and the SMCCF term sheet is available here. The Department of the Treasury will use funding from the $454 billion appropriated under Title IV, Section 4003(b)(4) of the CARES Act to provide $75 billion in equity to the PMCCF and SMCCF utilizing a special purpose vehicle (the "SPV") operated by the Federal Reserve.

The PMCCF will serve as a funding backstop for corporate debt issued by eligible issuers and the SMCCF will provide liquidity to the market for outstanding corporate bonds. In addition to significantly upsizing the funds available under the PMCCF, SMCCF and TALF from the amounts initially announced on March 23, 2020, pursuant to the April 9 term sheets, the PMCCF and SMCCF may now purchase securities from companies with non-investment grade ratings.

The PMCCF, initially funded with $50 billion of equity from Treasury, will leverage its equity ten times when acquiring bonds or syndicated loans from investment grade issuers, and seven times when acquiring other eligible assets. The SMCCF, initially funded with $25 billion of equity from Treasury, will leverage its equity ten times when acquiring corporate bonds from investment grade issuers and ETFs whose primary investment objective is exposure to investment grade corporate bonds. It will leverage its equity seven times when acquiring corporate bonds from issuers rated at below investment grade, and from three to seven times when acquiring other eligible assets, depending on risk.

PMCCF

Under the PMCCF, the SPV may purchase corporate bonds (i) directly from an issuer as the sole investor in a particular issuance or (ii) as a participant in a syndicated loan or bond offering.

Issuer Eligibility

To be eligible for purchase of its bonds or loans by the PMCCF, an issuer must be 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. In addition, the issuer must have been rated at least BBB- / Baa3 as of March 22, 2020 by a nationally recognized statistical rating organization. If rated by multiple such organizations, the issuer must have had at least two ratings at such levels as of March 22, 2020. The issuer must not be an insured depository institution or depository holding company, each as defined in the Dodd-Frank Act. Notably, unlike with respect to certain of the other programs available under the CARES Act, the issuer must not have otherwise received support under the CARES Act or subsequent federal legislation.

Pricing

Interest rates of bonds issued solely to the PMCCF will be informed by market conditions, plus a facility fee of 100 basis points. With respect to syndicated bonds and loans, the PMCCF will receive the same pricing terms as other syndicate members, plus a facility fee of 100 basis points on its share of the syndication.

Certain Limitations

Debt issued to PMCCF must have a maturity of four years or less, and the PMCCF may purchase no more than 25% of any syndicated bond offering or loan. The maximum amount of bonds or loans borrowed by an issuer from the PMCCF may not exceed 130% of such issuer's maximum outstanding bonds and loans on any date between March 22, 2019 and March 22, 2020. Issuers may approach PMCCF to refinance outstanding indebtedness beginning three months prior to its maturity date, and at any time to issue additional debt, provided the issuer's rating is reaffirmed at BB-/Ba3 or above.

SMCCF

The SMCCF may purchase corporate bonds in the secondary market issued by eligible issuers at the date of purchase, including eligible corporate bond portfolios in the form of US-listed Exchange Traded Funds (ETFs) whose investment objective is to provide broad exposure to the market for US corporate bonds. The majority of the SMCCF's ETF investments will be in ETFs whose primary exposure is to investment-grade corporate bonds, with the minority in ETFs with primary exposure to high-yield corporate bonds.

Issuer and Seller Eligibility

To be eligible for purchase of its bonds or loans by the SMCCF, an issuer must meet the same qualifications as described above with respect to the PMCCF. In addition, the institution from which the SMCCF purchases securities must be 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.

Pricing

The SMCCF will purchase bonds in the secondary market at fair market value. It will avoid purchasing shares of ETFs which trade at prices that materially exceed the estimated net asset value of the underlying portfolio.

Certain Limitations

Corporate bonds purchased by SMCCF must have a remaining maturity of five years or less at the time of purchase. The SMCCF may purchase no more than 10% of an issuer's maximum bonds outstanding on any date between March 22, 2019 and March 22, 2020, and will not purchase shares of a particular ETF if after such purchase it would hold more than 20% of such ETF's outstanding shares.

In addition to the limitations described above with respect to each facility, the maximum amount of securities that the PMCCF and SMCCF may purchase on a *combined basis* with respect to any one issuer is 1.5% of the combined potential size of both facilities ($11.25 billion, based on the combined maximum facility size of up to $750 billion).

Each facility will cease purchasing bonds and loans on September 30, 2020, unless the programs are extended by the Federal Reserve and Treasury. The Federal Reserve Bank will continue to fund each facility after such date, until its holdings mature or are sold.

What's Next?

The Federal Reserve is using its emergency powers and moving quickly to provide aid to businesses under the CARES Act. As a result, the terms of the PMCCF and SMCCF are not as detailed as they might be under less exigent circumstances and the term sheets posted by the Federal Reserve on April 9 contemplate that the Federal Reserve and the Secretary of the Treasury may make adjustments to program terms. We will continue to monitor additional or modified information about the PMCCF and SMCCF as it becomes available.

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Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. We will continue to evaluate the CARES Act, related regulations and any subsequent legislation to provide our clients guidance in real time. Please visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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