Federal Reserve Main Street Loan Facilities and Primary Market Corporate Credit Facility

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This Alert describes the key provisions of the Main Street Loan Facilities and the Primary Market Corporate Credit Facility (collectively, the "Facilities") that were recently introduced and expanded by the Federal Reserve and U.S. Treasury, and provides considerations about the programs for borrowers, lenders and other interested parties. Part I provides an Executive Summary; Part II describes the terms of the Main Street Loan Facilities and provides related practical considerations; and Part III describes the Primary Market Corporate Credit Facility and provides related practical considerations.

I. Executive Summary

The Board of Governors of the Federal Reserve System (the "Federal Reserve") has taken significant actions to establish new financing programs in connection with the CARES Act that will directly and indirectly provide, in conjunction with the U.S. Treasury Department ("Treasury"), hundreds of billions of dollars of new financing to small, mid-sized and large business entities.

These programs include the Main Street New Loan Facility ("MSNLF"), the Main Street Priority Loan Facility ("MSPLF") and the Main Street Expanded Loan Facility ("MSELF"), which are intended to provide new financing to small and mid-sized business entities, as well as the Primary Market Corporate Credit Facility ("PMCCF"), which is intended to provide new financing to issuers of investment-grade corporate debt. (In addition, the programs include a Secondary Market Corporate Credit Facility ("SMCCF") which contemplates the purchase in the secondary market of certain previously-issued corporate bonds and U.S.-listed ETFs to provide liquidity to those asset classes. We do not cover the SMCCF in this summary).

On April 9, 2020 the Federal Reserve announced and posted on its website initial term sheets setting forth key terms and conditions for the MSNLF, the MSELF and the PMCCF, and on April 30, 2020 posted revised versions of the MSNLF and MSELF term sheets and an initial term sheet setting forth key terms and conditions for the MSPLF. On April 30 the Federal Reserve also posted on its website an FAQ relating to the MSNLF, the MSPLF and the MSELF (the "Federal Reserve Main Street FAQ"). The Federal Reserve and Treasury will likely make changes to these term sheets and the Federal Reserve Main Street FAQ in the near future and they have reserved the right to make further changes to the terms and conditions of these Facilities. The Federal Reserve Bank of New York posted on its website on May 4, 2020 an FAQ relating to the PMCCF and the SMCCF (the "New York Fed FAQ").

Pursuant to the MSNLF, the MSPLF and the MSELF (the "Main Street Loan Facilities"), Treasury will use funds appropriated to the Exchange Stabilization Fund under Section 4027 of the CARES Act and other existing appropriations to make a $75 billion equity investment in a single common special purpose vehicle in connection with the MSNLF, the MSELF and the MSPLF (the "SPV Loan Participant"). The Federal Reserve

Bracewell has assembled a multidisciplinary task force that draws on the firm's deep experience across all practice areas and industries to provide practical, strategic advice to clients facing difficult situations as this global crisis continues to unfold. The firm also has a dedicated resource page where insights, program guidance, and regular updates on CARES Act program developments can be found. Your Bracewell point of contact can help you learn more.

Bank of Boston will commit to provide secured recourse financing to the SPV Loan Participant such that the combined amount of indirect financing that the SPV Loan Participant can provide to business entities under the Main Street Loan Facilities will be up to $600 billion. According to the Federal Reserve Main Street FAQ, the Federal Reserve and Treasury may adjust this amount in the future.

Pursuant to the PMCCF, Treasury will use funds appropriated to the Exchange Stabilization Fund under Section 4027 of the CARES Act and other existing appropriations to make a $75 billion equity investment in a special purpose vehicle in connection with the PMCCF and the SMCCF (the "SPV Purchaser"). The Federal Reserve Bank of New York will commit to provide secured recourse financing to the SPV Purchaser such that the combined amount of funds available for the SPV Purchaser to use to purchase eligible bonds, syndicated loans and other instruments under the PMCCF and the SMCCF will be up to $750 billion. According to the New York Fed FAQ, (i) the initial allocation of the U.S. Treasury Department's equity investment toward the PMCCF will be $50 billion; and (ii) the SPV Purchaser will leverage Treasury's equity at 10 to 1 when acquiring eligible investment grade corporate bonds and syndicated loans and 7 to 1 when acquiring eligible below investment grade corporate bonds and syndicated loans.

Treasury's equity investments in the SPV Loan Participant and the SPV Purchaser are intended to provide "first loss" support to the Federal Reserve under the Main Street Loan Facilities, PMCCF and SMCCF in the event of credit losses on the financed assets held by the SPV Loan Participant and the SPV Purchaser.

Your Bracewell point of contact can help with any questions or further discuss any aspect of this summary or the Facilities and your proposed or actual participation in any capacity in a transaction under or affected by any Facility.

II. Main Street Loan Facilities

A. Eligible Borrowers: Any "for profit" entity that is 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 that:

1. Was established before March 13, 2020;
2. Is not an ineligible business as listed in 13 C.F.R. 120.110(b)–(j) and (m) (s). Ineligible businesses include, without limitation:
    a. businesses primarily engaged in the business of lending, such as banks, finance companies and factors;
    b. passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with loan proceeds;
    c. life insurance companies;
    d. businesses located in a foreign company (foreign owned businesses in the United States may qualify); and
    e. speculative businesses (such as oil wildcatting).
3. Has either (a) up to 15,000 employees or (b) 2019 annual revenues of up to $5 billion; and
4. Is created or organized in the U.S. or under U.S. laws, and which has significant operations in the U.S. and a majority of its employees based in the U.S. According to the Federal Reserve Main Street FAQ, to determine the number of a borrower's employees or a borrower's 2019 revenues for purposes of the eligibility requirements, its employees and revenues must be aggregated with the employees and revenues of its affiliated entities as provided in the CARES Act Paycheck Protection Program ("PPP") aggregation rules set forth in 13 C.F.R. § 121.

B. Eligible Lenders: Any U.S. federally insured depository institution, any U.S. branch or agency of a foreign bank, any U.S. bank holding company, any U.S. savings and loan holding company, any U.S. intermediate holding company of a foreign banking organization, or any U.S. subsidiary of these entities.

C. <u>U.S. Treasury Department / Federal Reserve Bank Financing:</u>

1. The Federal Reserve Bank will make loans to the SPV Loan Participant and Treasury will make an equity investment in the SPV Loan Participant;
2. The SPV Loan Participant will purchase at par value pursuant to "true sales" (a) 95% participation interests in "Eligible Loans" (defined below) made by "Eligible Lenders" (defined below) under the MSNLF, (b) 85% participation interests in Eligible Loans made by Eligible Lenders under the MSPLF, and (c) 95% participation interests in the upsized portions of Eligible Loans made by Eligible Lenders under the MSELF; and
3. The SPV Loan Participant will pledge the participation interests it purchases from Eligible Lenders to The Federal Reserve Bank of Boston to secure the Federal Reserve Bank's extensions of credit to the SPV Loan Participant.

D. <u>Participation Interests</u>

1. Each Eligible Lender that sells a participation interest in an Eligible Loan or upsized portion of an Eligible Loan under the MSELF to the SPV Loan Participant must retain its non-participated ownership interest in the underlying Eligible Loan until the loan matures or the SPV Loan Participant sells all of its participation interest in the loan.
2. The SPV Loan Participant and the Eligible Lender(s) are to share risk in the participated portions of the Eligible Loan or upsized portion of an Eligible Loan under the MSELF on a pari passu basis.
3. Each sale of a participation interest in an Eligible Loan or in the upsized portion of an Eligible Loan under the MSELF to the SPV Loan Participant is to be completed "expeditiously after" the origination of the Eligible Loan or upsizing of the Eligible Loan, as applicable.

E. <u>Facility Funding Amounts: :</u> The aggregate amount of loan participations to be purchased by the SPV Loan Participant under all Main Street Loan Facilities will be up to $600 billion.

F. <u>Eligible Loans</u>

1. <u>MSNLF</u>
    a. A secured or unsecured term loan by an Eligible Lender to an Eligible Borrower that was originated after April 24, 2020 which contains the following terms: (i) maturity of four (4) years; (ii) principal and interest payments are deferred for one (1) year (with unpaid interest being capitalized); (iii) floating interest rate of 1 or 3 month LIBOR plus 300 basis points (3%); (iv) amortization of one-third of loan principal 3 at the end of year 2, one-third at the end of year 3 and the remaining one-third at maturity at the end of year 4; and (v) prepayments of the loan can be made without premium or penalty
    b. Minimum original principal amount of $500,000 and maximum principal amount of the lesser of (i) $25 million or (ii) the amount which, when added to the borrower's other existing outstanding and undrawn available debt (including undrawn committed credit under any loan facility, but excluding committed credit which is not available without additional collateral and several other limited exceptions), does not exceed 4 times the borrower's adjusted 2019 EBITDA.
    c. Loan is not at origination or any time during the term of the loan "contractually subordinated in terms of priority" to any of the borrower's other loans or debt instruments. According to the Federal Reserve Main Street FAQ, this means that the MSNLF loan cannot be junior in priority in bankruptcy to the borrower's other unsecured loans or debt instruments, and this requirement does not prevent any of the following:
        i. the issuance of a secured MSNLF loan (including in a second lien or other capacity) to the borrower, whether or not the borrower has an outstanding secured loan of any lien position or maturity;

   ii. the issuance of an unsecured MSNLF loan to the borrower, regardless of the term or secured or unsecured status of the borrower's existing indebtedness; or

   iii. the borrower from incurring new secured or unsecured debt after receiving an MSNLF loan, provided that the new debt would not have higher contractual priority in bankruptcy than the MSNLF loan.

2. MSPLF

   a. A secured or unsecured term loan by an Eligible Lender to an Eligible Borrower after April 24, 2020 which contains the following terms: (i) maturity of four (4) years; (ii) principal and interest payments are deferred for one (1) year (with unpaid interest being capitalized); (iii) floating interest rate of 1 or 3 month LIBOR plus 300 basis points (3%); (iv) amortization of 15% of loan principal at the end of year 2, 15% at the end of year 3 and a balloon payment of the 70% balance at the end of year 4; and (v) prepayments of the loan can be made without premium or penalty.

   b. Minimum original principal amount of $500,000 and maximum principal amount of the lesser of (i) $25 million or (ii) the amount which, when added to the borrower's other existing outstanding and undrawn available debt (including undrawn committed credit under any loan facility, but excluding committed credit which is not available without additional collateral and several other limited exceptions), does not exceed 6 times the borrower's adjusted 2019 EBITDA.

   c. At the time of origination and at all times the loan is outstanding, the loan is senior to or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.

   d. In addition, according to the Federal Reserve Main Street FAQ, borrowers may at the time of origination of the MSPLF loan refinance existing debt owed by the borrower to a lender other than the Eligible Lender making the MSPLF loan.

2. MSELF

   a. A term loan (the "MSELF Term Loan") to be made by an Eligible Lender to an Eligible Borrower as an "upsize" of an existing secured or unsecured term loan or revolving credit facility made by an Eligible Lender(s) to the Eligible Borrower that was originated on or before April 24, 2020 and that has at least 18 months remaining to maturity (taking into account any adjustments made to maturity of the loan after April 24, 2020, including at time of upsizing). The fact that the existing credit facility includes non-eligible lenders at the time of the upsizing does not prevent the making of a MSELF Term Loan as long as the lender providing such Eligible Loan is an Eligible Lender.

   b. The MSELF Term Loan will contain the following terms: (i) maturity of four (4) years; (ii) principal and interest payments are deferred for one (1) year (with unpaid interest being capitalized); (iii) floating interest rate of 1 or 3 month LIBOR plus 300 basis points (3%); (iv) amortization of 15% of loan principal at the end of year 2, 15% at the end of year 3 and a balloon payment of the 70% balance at the end of year 4; and (v) prepayments of the upsized tranche can be made without premium or penalty. The Eligible Lender may extend the maturity of the existing Eligible Loan at the time of upsizing in order for the Eligible Loan to satisfy the 18 months remaining to maturity requirement.

   c. Minimum MSELF Term Loan original principal amount of $10 million and maximum principal amount of the lesser of (i) $200 million; (ii) thirty five percent (35%) of the sum of the borrower's existing outstanding and undrawn available debt (including undrawn committed credit under any loan facility, but excluding committed credit which is not available without additional collateral and several other limited exceptions) that is pari passu in priority with the Eligible Loan and "equivalent" in secured status (i.e., secured or unsecured) and (iii) the amount which, when added to the borrower's other outstanding and undrawn available debt, does not exceed 6 times the borrower's adjusted 2019 EBITDA.

   d. At the time of upsizing and at all times while the MSELF Term Loan is outstanding, the MSELF Term Loan is senior to or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.

e. Any collateral securing the Eligible Loan (at the time of upsizing or on any subsequent date) must secure the MSELF Term Loan on a pro rata basis. According to the Federal Reserve Main Street FAQ, if the borrower defaults, the SPV Loan Participant and the lender(s) would share equally in any collateral available to support the loan relative to their proportional interests in the loan (including the MSELF Term Loan); and the Eligible Lender can require the borrower to pledge additional collateral to secure an MSELF Term Loan as a condition of approval.

f. The Eligible Lender must also retain its interest in the underlying Eligible Loan relating to the MSELF Term Loan until the first to occur of the Eligible Loan matures, the MSELF Term Loan matures, or the SPV Loan Participant sells all of its participation interest in the MSELF Term Loan.

g. If the underlying Eligible Loan relating to the MSELF Term Loan is part of a multi-lender facility, the Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan at the date of upsizing; only the Eligible Lender for the MSELF Term Loan is required to meet the Eligible Lender criteria; other members of the multi-lender facility are not required to be Eligible Lenders.

G. Required Certifications and Covenants

1. Eligible Borrowers: Required to make certifications and covenants to their Lenders on the following items:

   a. Limitations on Payments to Existing Debt: The borrower must agree not to repay the outstanding principal of any interest on any debt until the Eligible Loan is paid in full unless the principal or interest payment is "mandatory or due".

   b. No Cancellation or Reduction of Outstanding Lines of Credit: The borrower must agree not to seek to cancel or reduce any other committed lines of credit with the Eligible Lender or any other lender.

   According to the Federal Reserve Main Street FAQ, the covenants in clauses (a) and (b) above would not prohibit a borrower from taking any of the following actions during the term of the MSNLF Loan, MSPLF Loan, or MSELF Term Loan:

      i. repaying a line of credit (including a credit card) in accordance with the borrower's normal course of business usage for such line of credit;

      ii. taking on and paying additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the MSNLF loan, the MSPLF loan, or the MSELF Term Loan; or

      iii. refinancing maturing debt.

   c. No Expectation of Bankruptcy: The borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan (or, with respect to MSELF, of the MSELF Term Loan) and after giving effect to such Eligible Loan (or, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.

   d. Limitations on Executive Compensation: The borrower must agree to comply with the CARES Act limitations on executive compensation, as follows:

      i. For all officers or employees whose total 2019 calendar year compensation exceeded $425,000, compensation for any 12 consecutive months during the loan period and for one year thereafter cannot exceed 2019 compensation; and severance pay for such officers or employees cannot exceed twice their 2019 compensation.

      ii. For all officers or employees whose total 2019 calendar year compensation exceeded $3,000,000, compensation for any 12 consecutive months during the loan period and for one year thereafter cannot exceed the sum of (1) $3,000,000 plus (2) 50% of the total compensation received over $3,000,000 for calendar year 2019.

   e. Limitations on Stock Repurchases: The borrower must agree to comply with the CARES Act limitations on equity repurchases, as follows: During the loan period and for one year thereafter, the borrower may not repurchase an equity security of the borrower or any parent company that is listed on a national securities exchange, except as required by an existing contract.

f. Limitations on Dividends / Capital Distributions: The borrower must agree to comply with the CARES Act limitations on capital distributions, as follows: During the loan period and for one year thereafter, the borrower may not pay dividends or make other capital distributions with respect to the common stock of the borrower.

g. Satisfaction of Eligible Borrower Criteria: The borrower must certify that it is eligible to participate in the applicable Main Street Loan Facility, including the conflicts of interest prohibition in CARES Act Section 4019(b).

According to the Federal Reserve Main Street FAQ:

i. the Eligible Lender is required to obtain the required certifications and covenants from the Eligible Borrower at the time of MSLF origination or upsizing;

ii. the Eligible Lender may rely on the Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower;

iii. the Eligible Lender is not expected to independently verify the Eligible Borrower's certifications or actively monitor ongoing compliance with covenants required for Eligible Borrowers under the MSLFs; and

iv. if the Eligible Lender becomes aware that the Eligible Borrower made a material misstatement or otherwise breached a covenant during the term of an MSNLF Loan, MSPLF Loan, or MSELF Term Loan, the Eligible Lender should notify the Federal Reserve Bank of Boston.

2. Eligible Lenders: Required to make certifications and covenants to the SPV Loan Participant on the following items relating to Eligible Loans made to Eligible Borrowers:

a. Limitations on Repayment: The lender must agree not to request the borrower to repay debt extended by the lender to the borrower, or pay interest on such outstanding obligations, until the Eligible Loan (or, with respect to the MSELF, the MSELF Term Loan) is repaid in full, unless the principal or interest payment is mandatory and due, or in the case of default and acceleration.

b. No Cancellation or Reduction of Outstanding Lines of Credit: The lender must agree not to cancel or reduce any of the borrower's other existing committed lines of credit to the borrower, except upon an event of default.

According to the Federal Reserve Main Street FAQ, the covenants in clauses (a) and (b) above would not:

i. prevent the lender from accepting regularly scheduled, periodic repayments on a line of credit from a borrower in accordance with the borrower's normal course of business usage for such line of credit; or

ii. prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms dues to changes in borrowing bases or reserves in asset-based or similar structures.

c. EBITDA Calculation: The lender must certify that the methodology used for calculating the borrower's adjusted 2019 EBITDA for the applicable MSLF Leverage Requirement is the methodology it previously used for adjusting EBITDA when extending credit to the borrower or other similarly situated borrowers (or, with respect to MSELF, when originating or amending the underlying Eligible Loan relating to the MSELF Term Loan) on or before April 24, 2020.

d. Satisfaction of Eligible Lender Criteria: The lender must certify that it is eligible to participate in the applicable Main Street Loan Facility, including the conflicts of interest prohibition in CARES Act Section 4019(b).

H. Loan Classification:

1. With respect to each of the MSNLF and the MSPLF, if the Eligible Borrower had other loans outstanding with the Eligible Lender as of December 31, 2019, these loans are required to have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.

2. With respect to the MSELF, the existing loan or credit facility to be upsized pursuant to the MSELF Term Loan is required to have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019.

I. <u>Financial Condition Requirements:</u> Eligible Lenders are not required to provide Eligible Loans to Eligible Borrowers that satisfy the "pass" criteria unless the proposed transaction meets such lender's independent underwriting criteria. The Eligible Lender must conduct an assessment of the potential borrower's financial condition at the time of that borrower's application for the Eligible Loan.

J. <u>Employee Retention Requirements:</u> The Eligible Borrower should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding. According to the Federal Reserve Main Street FAQ, an Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor.

K. <u>MSLF-Related Fees</u>

1. <u>Eligible Borrowers</u>
   a. MSNLF and MSPLF: The borrower is required to pay the Eligible Lender an origination fee in an amount of up to 100 basis points (1%) of the principal amount of the Eligible Loan at the time of origination. The Federal Reserve Main Street FAQ provides that Eligible Lenders have discretion over whether and when to charge Eligible Borrowers this origination fee.
   b. MSELF: The borrower is required to pay the Eligible Lender an origination fee in an amount of up to 75 basis points (0.75%) of the principal amount of the MSELF Term Loan at the time of upsizing. The Federal Reserve Main Street FAQ provides that Eligible Lenders have discretion over whether and when to charge Eligible Borrowers this origination fee.
2. <u>Eligible Lenders</u>
   a. MSNLF and MSPLF: The lender is required to pay the SPV Loan Participant a transaction fee in the amount of 100 basis points (1%) of the principal amount of the Eligible Loan at the time of origination. According to the Federal Reserve Main Street FAQ, the Eligible Lender may pass this fee on to the Eligible Borrower.
   b. MSELF: The lenders is required to pay the SPV Loan Participant a transaction fee in the amount of 75 basis points (0.75%) of the principal amount of the MSELF Term Loan at the time of upsizing. According to the Federal Reserve Main Street FAQ, the Eligible Lender may pass this fee on to the Eligible Borrower.
3. <u>SPV Loan Participant:</u> The SPV Loan Participant is required to pay the Eligible Lender a loan servicing fee in the amount of 25 basis points (0.25%) of the principal amount of the SPV Loan Participant's participation in the Eligible Loan per annum.

L. <u>Participation Purchase Termination Dates:</u> The SPV Loan Participant must cease purchasing participations in Eligible Loans under each Main Street Loan Facility on September 30, 2020, unless such date is extended by the Federal Reserve and Treasury.

M. <u>SPV Loan Participant Funding:</u> The Federal Reserve Bank of Boston will continue to fund the SPV Loan Participant after the applicable Participation Purchase Termination Date(s) until the SPV Loan Participant's underlying assets mature or are sold.

N. Participation in Other Federal Reserve / U.S. Treasury Department Programs

1. Main Street Loan Facilities: Eligible Borrowers may participate in only one of the three Main Street Loan Facilities.
2. Primary Market Corporate Credit Facility: Eligible Borrowers that participate in any of the Main Street Loan Facilities may not participate in the PMCCF.
3. CARES Act Support: Eligible Borrowers that participate in any Main Street Loan Facility may not have received or receive specific support pursuant to Subtitle A of the CARES Act.
4. PPP: Eligible Borrowers that obtained PPP loans may still participate in any Main Street Loan Facility.

O. Disclosure of Participation in Facilities: The Federal Reserve will publicly disclose information regarding the Main Street Loan Facilities, which according to the Federal Reserve Main Street FAQ includes among other things names of lenders and borrowers, amounts borrowed and interest rates charged.

P. Practical Considerations: In deciding whether to participate in one of the Main Street Facility loan programs, or with a given counterparty, a prospective participant should:

1. Determine eligibility to participate in any Main Street Loan Facility and whether participation in any Main Street Loan Facility is more or less beneficial than participation in another desired financing program, such as PMCCF (to the extent the borrower is eligible for both).
2. Consider implications of satisfying eligibility requirements under the Main Street Loan Facility, particularly the requirement for consistency and transparency in the lender's methodology for calculating the applicable EBITDA leverage requirement discussed above.
3. Consider restrictions of the Main Street Loan Facilities, such as compensation limits, stock repurchases and dividend limitations, both during and for 12 months following repayment of Eligible Loans.
4. Review existing agreements, instruments and documents and applicable laws to determine whether any legal or contractual restrictions or limitations exist on the ability to enter into and incur loans under any Main Street Loan Facility.
5. Consider implications of the SPV Loan Participant being an indirect lender or, following elevation after a bankruptcy event, a direct lender, given that (a) the form and/or required terms of the "loan participation agreement" between the SPV Loan Participant and Eligible Lenders (and in the case of the MSELF, existing lenders, including non-bank lenders) have not yet been discussed or provided; and (b) the terms of any "secured creditor" documentation between the SPV Loan Participant and the Federal Reserve Bank of Boston have not (yet) been disclosed.
6. Consider what forms of loan documents and loan participation documents to use to govern participation in any Main Street Loan Facility, given that forms have not been provided (yet) by Treasury or the Federal Reserve (a similar problem that plagued parties at the beginning of the PPP loan program).
7. Consider the timeline for entering into, finalizing and closing a desired Main Street Loan Facility transaction and what amendments and/or waivers would need to be made to or obtained for any existing financing and collateral (including intercreditor) agreements to facilitate such transactions.

III. Primary Market Corporate Credit Facility

A. Eligible Issuers

1. An Eligible Issuer is any business that is "created or organized in the U.S. or under U.S. laws" and has significant operations in and a majority of its employees based in the U.S., other than (x) an insured depository institution or (y) a depository institution holding company, and satisfies the credit rating requirements set forth in Part B below.
2. The issuer cannot have received specific support pursuant to the CARES Act or subsequent U.S. Federal legislation.

3. The issuer must satisfy the applicable conflicts of interest requirements of CARES Act Section 4019.

According to the New York Fed FAQ, (a) a company may form a new entity to be an Eligible Issuer to the SPV Purchaser for purposes of the PMCCF, and that new issuer entity may rely on the credit ratings history of any U.S. affiliate guaranteeing the issuance and (b) non-profit organizations that satisfy the eligibility requirements can also be Eligible Issuers.

The New York Fed FAQ clarified the following points with respect to the phrase "significant operations in and a majority of its employees based in the United States":

a. if the issuer in question is not a subsidiary the sole purpose of which is to issue debt, the issuer must satisfy the "significant operations in and a majority of its employees based in the United States" requirement on a consolidated basis (i.e., together with its consolidated subsidiaries), and the Federal Reserve Bank of New York would not consider any parent company or "sister affiliate" of the issuer for this purpose;

b. if the issuer in question is a subsidiary the sole purpose of which is to issue debt, any corporate affiliate of the issuer to which 95 percent or more of the proceeds from the syndicated loan or corporate bond purchase are transferred for use in its operations (defined in the New York Fed FAQ as the "primary corporate beneficiary") must have "significant operations in and a majority of its employees based in the United States" on a consolidated basis; and if there is no such "primary corporate beneficiary", the Federal Reserve Bank of New York will require that corporate affiliates that, in each case have "significant operations in and a majority of its employees based in the United States" on a consolidated basis must receive in the aggregate 95% or more of the proceeds from the syndicated loan or corporate bond purchase;

c. examples of what would constitute "significant operations in the United States" for an issuer seeking to participate in PMCCF include an issuer with greater than 50% of its consolidated assets in, annual consolidated net income generated in, annual consolidated net operating revenues generated in, or annual consolidated operating expenses generated in, the U.S. as reflected in its most recent audited financial statements; and

d. an Eligible Issuer may be a subsidiary of a foreign company if (i) that Eligible Issuer is created or organized in the United States or under the laws of the United States and (ii) that Eligible Issuer on a consolidated basis has significant operations in and a majority of its employees based in the U.S.; and any such foreign subsidiary Eligible Issuer will be required to use the proceeds from its participation in the PMCCF only for the benefit of that Eligible Issuer, its consolidated U.S. subsidiaries, and other affiliates of that Eligible Issuer that are U.S. businesses, and not for the benefit of its foreign affiliates.

In addition, according to the New York Fed FAQ, in order to comply with Section 13(3) or the CARES Act, an Eligible Issuer will need to provide a written certification that it is unable to secure adequate credit accommodations from other banking institutions or the capital markets and that it is not insolvent the New York Fed FAQ provides on this requirement that (a) the issuer, in making the "unable to secure adequate credit accommodations" certification, may consider economic or market conditions in the market as compared to normal conditions, including availability and price of credit; and (b) lack of available credit does not mean that no credit is available – credit may be available but at prices or on conditions that are inconsistent with a normal, functioning market.

B. Eligible Issuer Credit Rating Requirements

1. The issuer must have a credit rating from a major nationally recognized statistical rating organization accepted by the Federal Reserve ("NRSRO") as follows: (a) if the issuer is rated by only one NRSRO, a credit rating of at least BBB- / Baa3 as of March 22, 2020 or (b) if the issuer is rated by two or more NRSROs, a credit rating from two or more NRSROs of at least BBB- / Baa3 as of March 22, 2020.

2. If the issuer satisfied the credit rating requirements described above as of March 22, 2020, and the issuer is rated (a) by one NRSRO but the issuer's credit rating is subsequently downgraded, the issuer must have a credit rating from the NRSRO of at least BB- / Ba3 at the time the SPV Purchaser purchases eligible bonds or syndicated loans from the issuer; or (b) if the issuer is rated by two or more NRSROs but the issuer's

credit rating is subsequently downgraded, the issuer must have a credit rating of at least BB- / Ba3 by two or more NRSROs at the time the SPV Purchaser makes such purchase.

3. The issuer's credit rating is subject to review by the Federal Reserve.
4. The initially accepted NRSROs are S&P Global Rating, Moody's Investor Services Inc., and Fitch Ratings, Inc. The Federal Reserve is considering including other NRSROs under the PMCCF.
5. The issuer's credit ratings must be published ratings.

C. <u>U.S. Treasury Department / Federal Reserve Financing</u>

1. The Federal Reserve Bank of New York will make loans to the SPV Purchaser and Treasury will make an equity investment in the SPV Purchaser.
2. The SPV Purchaser will purchase (a) eligible corporate bonds from Eligible Issuers as the sole investor in a bond issuance and/or (b) up to twenty-five percent (25%) of eligible syndicated loans and bonds from Eligible Issuers at issuance.
3. The SPV Purchaser will pledge the bonds and syndicated loans it purchases from Eligible Issuers to the Federal Reserve Bank of New York to secure the Federal Reserve Bank of New York's loans to the SPV Purchaser.

D. <u>Facility Funding / Purchase Amount:</u> The aggregate amount of eligible bonds and eligible syndicated loans to be purchased by the SPV Purchaser under the PMCCF will be an amount which, when added to the aggregate amount of bonds and related debt instruments purchased by the SPV Purchaser under the SMCCF, will not exceed $750 billion.

E. <u>Eligible Assets</u>

1. Corporate bonds (to be purchased by the SPV Purchaser as sole investor in the bond issuance of an Eligible Issuer): must be (a) issued by an Eligible Issuer and (b) have a maturity of four (4) years or less at time of purchase by the SPV Purchaser.
2. Portions of syndicated loans or bonds (to be purchased by the SPV Purchaser other than as sole investor): must be (a) issued by an Eligible Issuer and (b) have a remaining maturity of four (4) years or less at time of purchase by the SPV Purchaser.
3. According to the New York Fed FAQ, (a) the PMCCF will initially focus on "purchasing bonds at issuance"; (b) investment grade senior secured bonds issued by a non-investment grade issuers are not Eligible Assets; (c) non-U.S. Dollar denominated corporate bonds are not Eligible Assets; (d) the SPV Purchaser may purchase privately placed bonds pursuant to SEC Rule 144A; and (e) (i) if the SPV Purchaser is the sole participant in an offering, the SPV Purchaser only will purchase fixed-rate bonds, (ii) the SPV Purchaser generally will only purchase fixed-rate debt when participating in a syndicated issuance and (iii) to the extent that the SPV Purchaser is approached to participate in a syndication of floating-rate debt, the SPV Purchaser generally will expect any debt priced off LIBOR to include adequate fallback language.

F. <u>Eligible Asset Pricing and Fees</u>

1. Eligible corporate bonds as sole investor: Pricing on the eligible corporate bonds purchased by the SPV Purchaser as sole investor will be "issuer specific, informed by market conditions"; and the issuer will pay a facility fee to the SPV Purchaser equal to 100 basis points (1%) of the principal amount of bonds purchased.
2. Eligible syndicated loans or bonds: The SPV Purchaser will receive the same pricing as that paid by and received by the other bond purchasers / bank group members at issuance; and the issuer will pay a facility fee to the SPV Purchaser equal to 100 basis points (1%) on the SPV Purchaser's "share of the syndication or issuance".

3. The facility fee will be applicable to each issuance to, or borrowing from, the SPV Purchaser.
4. The New York Fed FAQ further emphasized that (a) when the SPV Purchaser purchases portions of syndicated loans or bonds, its participation is expected to be alongside that of other participants at the same pricing and terms; (b) the PMCCF is intended for issuers which are unable to secure adequate credit accommodations; and (c) syndicated loan and corporate bond market pricing should not be "lowered" for the purpose of decreasing demand from market participants in order to "fill deal capacity via the PMCCF".

G. <u>Limitations on PMCCF Access</u>

1. Eligible Issuers may approach the PMCCF to have the SPV Purchaser purchase Eligible Assets to refinance outstanding debt from the period of three months ahead of the maturity date of that debt. The New York Fed FAQ makes clear that maturing loans can be refinanced and replaced with corporate bonds under the PMCCF.
2. Eligible Issuers may approach the PMCCF at any time to have the SPV Purchaser purchase additional Eligible Assets so long as the issuer's credit rating is reaffirmed, by each NRSRO then providing a credit rating for the issuer, of at least BB- / Ba3 or above after giving effect to the additional debt underlying the Eligible Assets to be purchased. The PMCCF will consider only published ratings.
3. The maximum amount of outstanding bonds or loans of an Eligible Issuer that sells Eligible Assets to the SPV Purchaser cannot exceed 130% of the issuer's maximum aggregate outstanding bonds and loans on any day between March 22, 2019 and March 22, 2020. According to the New York Fed FAQ, the term "outstanding bonds and loans" includes current and non-current portions of corporate bonds and loans, including drawn portions of "term loans," drawn portions of long-term "revolving facilities" (i.e., having a maturity greater than one year), and long-term bonds (whether USD denominated or otherwise); any operating leases, non-recourse debt, commercial paper, and other short-term liabilities are not included; information on debt should be consistent with the issuer's audited financial reports maintained during the March 22, 2019 to March 22, 2020 period, including the value of non-USD denominated debt; and issuers that are public companies may not use a higher amount of outstanding bonds and loans than is reflected in public filings.
4. The maximum amount of Eligible Assets that the SPV Purchaser can purchase with respect to any Eligible Issuer under the PMCCF and the SMCCF is 1.5% of the maximum combined aggregate size of the PMCCF and the SMCCF.
5. According to the New York Fed FAQ, the above referenced 130% and 1.5% limitations are to be calculated with respect to an Eligible Issuer at the "top-tier parent level".

H. <u>Required Certifications and Attestations:</u> The issuer must certify to the FRBNY that the issuer is in compliance with the eligibility criteria, and that it is in compliance with CARES Act requirements, including U.S. business requirements and conflict of interest requirements. (The requirements and processes for certification are under development by the FRBNY and will be provided in the near future, prior to the launch of the PMCCF.)

I. <u>Purchase Termination Date:</u> The SPV Purchaser will cease purchasing Eligible Assets under the PMCCF no later than September 30, 2020, unless such date is extended by the Federal Reserve and Treasury.

J. <u>SPV Purchaser Funding:</u> The Federal Reserve Bank of New York will continue to fund the PMCCF after the Purchase Termination Date until the SPV Purchaser's holdings mature or are sold.

K. <u>Limitation on Participation in Main Street Loan Facilities:</u> Companies that participate in any of the Main Street Loan Facilities cannot participate in the PMCCF and companies that participate in the PMCCF cannot participate in any of the Main Street Loan Facilities.

L. Disclosure of Participation: The Federal Reserve will publicly disclose information regarding the PMCCF, which according to the New York Fed FAQ includes among other things participants and transaction amounts.

M. Investment Manager: According to the New York Fed FAQ, Blackrock Financial Markets Advisory will initially be the investment manager for the PMCCF, acting at the sole direction of the Federal Reserve Bank of New York, on behalf of the PMCCF, pursuant to investment guidelines of the Federal Reserve Bank of New York (and not its own internal guidelines) implementing the central objective of supporting availability of credit to large employers in the U.S.

N. Requesting Participation in PMCCF: According to the New York Fed FAQ -

1. For corporate bond offerings and syndicated loan facilities for which the SPV Purchaser is intended to be a participant in a group of purchasers:
    a. After a bond or syndicated loan transaction is announced and shown to prospective purchasers, in the event of insufficient demand (i.e., demand for less than 100 percent of the offering) and a desire by the issuer to approach the Federal Reserve Bank of New York for participation in the PMCCF to complete the transaction, the issuer and all leads on the syndication may approach the PMCCF via the Investment Manager and request participation by the SPV Purchaser in up to 25 percent of the offering.
    b. Issuers will be required to certify compliance with all PMCCF eligibility criteria and provide additional data on the proposed transaction, including, but not limited to, tenor, seniority, offering format, transaction size, initial price talk and expected final yield. The method of certification will be announced prior to launch of the PMCCF.
2. Eligible Issuers and their underwriters also may approach the PMCCF via the Investment Manager to request that the SPV Purchaser be the sole purchaser of a bond; issuers will be required to certify compliance with all eligibility criteria; and the method of certification will be shared prior to launch of the PMCCF.

O. Practical Considerations: In deciding whether to participate in the PMCCF, or with a given counterparty, a prospective participant should:

1. Determine eligibility to participate in the PMCCF and whether participation in another desired financing program, such as either Main Street Loan Facility and the PPP, is more beneficial.
2. Consider implications of satisfying (and potentially no longer satisfying) eligibility requirements under the PMCCF, particularly the applicable credit rating requirements.
3. Review existing agreements, instruments and documents and applicable laws to determine whether any legal or contractual restrictions or limitations exist on ability to enter into and issue bonds to or obtain loans under the PMCCF.
4. Consider implications of the SPV Purchaser being a bondholder or a syndicated bank group member – additional required terms (if any) of the "purchase" arrangement between the SPV Purchaser and Eligible Issuers, and the "bond / loan purchase secured financing" arrangement between the SPV Purchaser and the Federal Reserve Bank of New York, have not yet been disclosed.
5. Consider what forms of bond transaction documents and syndicated loan documents to use govern participation in the PMCCF, given that no forms have not been provided (yet) by the Federal Reserve or Treasury.
6. Consider the timeline for entering into, finalizing and closing a desired PMCCF transaction and what amendments and/or waivers would need to be made or obtained to or for any existing bond transaction documents, syndicated credit agreements and collateral documents, including intercreditor agreements, to facilitate such transactions.

There are and will be a number of other issues raised by the term sheets for the various programs discussed above, as well as questions to be resolved and ambiguities to be addressed with respect to participation by any particular issuer, borrower, guarantor, other collateral or credit support provider, administrative agent, collateral agent, indenture trustee, lender or loan participant, or other affected party, in any of these financing transactions. Please reach out to your Bracewell point of contact who will be pleased to assist you on any aspect of your prospective participation in these programs.