

CORONAVIRUS RESOURCE CENTER

Congress and Financial Regulators: Responses to COVID-19

March 31, 2020

During the week of March 22, the United States Congress, the Federal Reserve Board (“FRB”), Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (together with the FRB and FDIC, the “Agencies”), Securities and Exchange Commission (“SEC”), Commodity Futures Trading Commission (“CFTC”) and other regulators took emergency measures in response to the economic and market disruptions related to the Coronavirus Disease 2019 (COVID-19). These actions are summarized below.

Economic Stimulus

On Friday, March 27, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The legislation appropriates hundreds of billions of dollars for loan programs that will be available to businesses of various sizes and for support to FRB programs to provide liquidity to the economy. Some of the loans may be forgiven, effectively making them grants. The legislation also includes bank regulatory changes and establishment of an oversight framework for the lending programs. We discuss the CARES Act in detail [here](#).

Monetary Policy

Target Rate and Open Market Operations

On March 23, the FRB announced that the Federal Open Market Committee (“FOMC”) will include purchases of agency commercial mortgage-backed securities in its agency mortgage-backed securities purchases.

A link to the FRB press release announcing the FOMC statement may be found [here](#).

Emergency Funding Facilities

During the week, the FRB established a number of additional emergency funding facilities to stabilize the markets. Key terms of each facility are highlighted below.

A link to the FRB press release announcing the establishment of these facilities may be found [here](#).

Primary Market Corporate Credit Facility

- **Structure.** A credit facility (with recourse) extended by the Federal Reserve Bank of New York (the “FRBNY”) to a special purpose vehicle (“SPV”) established to (1) purchase qualifying bonds directly from eligible issuers and (2) provide loans to eligible issuers. The U.S. Treasury, using the Exchange Stabilization Fund, will make an initial \$10 billion equity investment in the SPV in connection with the facility.
- **Eligible Issuers.** U.S. companies headquartered in the United States and with material operations in the United States, but not companies that are expected to receive direct financial assistance under other federal legislation (such as the CARES Act).
- **Eligible Assets/Collateral.** Corporate bonds and loans issued by an eligible issuer with a maturity of four years or less. Issuers must be 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 FRB.
- **Pricing.** The facility will purchase bonds and make loans that have interest rates informed by market conditions.
- **Other Terms.** The facility will cease purchasing eligible corporate bonds or extending loans on September 30, 2020, unless the facility is extended by the FRB. A link to the term sheet may be found [here](#) and a link to our brief discussion of the facility may be found [here](#).

Secondary Market Corporate Credit Facility

- **Structure.** A secured credit facility (with recourse) extended by the FRBNY to an SPV established to purchase eligible individual corporate bonds as well as eligible corporate bond portfolios in the form of exchange traded funds (“ETFs”) in the

secondary market. The U.S. Treasury, using the Exchange Stabilization Fund, will make an initial \$10 billion equity investment in the SPV in connection with the facility.

- Eligible Issuers for Individual Corporate Bonds. U.S. businesses with material operations in the United States, but not companies that are expected to receive direct financial assistance under other federal legislation (such as the CARES Act).
- Eligible Individual Corporate Bonds and ETFs. Corporate bonds issued by an eligible issuer with a maturity of five years or less. Bonds must be rated at least BBB-/Baa3 by a major 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 FRB. The facility also may purchase U.S.-listed ETFs whose investment objective is to provide broad exposure to the market for U.S. investment-grade corporate bonds.
- Pricing. Fair market value in the secondary market. The facility will avoid purchasing shares of eligible ETFs when they trade at prices that materially exceed the estimated net asset value of the underlying portfolio.
- Other Terms. The facility will cease purchasing eligible corporate bonds and eligible ETFs on September 30, 2020, unless the facility is extended by the FRB. A link to the term sheet may be found [here](#).

Term Asset-Backed Securities Loan Facility

- Structure. A secured credit facility (with recourse) extended by the FRBNY to an SPV to help meet the credit needs of consumers and small businesses by facilitating the issuance of asset-backed securities (“ABS”). The U.S. Treasury, using the Exchange Stabilization Fund, will make an initial \$10 billion equity investment in the SPV in connection with the facility. The SPV initially will make up to \$100 billion of loans available. The loans will have a term of three years, will be nonrecourse to the borrower and will be fully secured by eligible ABS.
- Eligible Participants. All U.S. companies that own eligible collateral and maintain an account relationship with a primary dealer. A U.S. company would be defined as a U.S. business entity organized under the laws of the United States or a political subdivision or territory thereof (including such an entity that has a non-U.S. parent company), or a U.S. branch or agency of a foreign bank.
- Eligible Collateral. U.S. dollar-denominated cash (that is, not synthetic) ABS, issued on or after March 23, 2020, that have a credit rating in the highest long-term or the highest short-term investment-grade rating category from at least two NRSROs and

do not have a credit rating below the highest investment-grade rating category from an eligible NRSRO. All or substantially all of the credit exposures underlying eligible ABS must have been originated by a U.S. company.

Eligible collateral must be ABS where the underlying credit exposures are one of the following: (1) auto loans and leases; (2) student loans; (3) credit card receivables (both consumer and corporate); (4) equipment loans; (5) floorplan loans; (6) insurance premium finance loans; (7) certain small business loans that are guaranteed by the Small Business Administration; or (8) eligible servicing advance receivables.

- **Pricing.** For eligible ABS with underlying credit exposures that do not have a government guarantee, the interest rate will be 1% (100 basis points) over the two-year LIBOR swap rate for securities with a weighted average life less than two years, or 1% (100 basis points) over the three-year LIBOR swap rate for securities with a weighted average life of two years or greater.
- **Other Terms.** The SPV will assess an administrative fee equal to .1% (10 basis points) of the loan amount on the settlement date for collateral. No new credit extensions will be made after September 30, 2020, unless the facility is extended by the FRB. A link to the term sheet may be found [here](#).

Money Market Mutual Fund Liquidity Facility

The Money Market Mutual Fund Liquidity Facility, covered in [last week's update](#), was expanded to include a wider range of securities, including municipal variable rate demand notes and bank certificates of deposit. A link to the term sheet may be found [here](#).

Commercial Paper Funding Facility

The Commercial Paper Funding Facility, also covered in last week's update, was expanded to include high-quality, tax-exempt commercial paper as eligible securities. In addition, the pricing of the facility was reduced. A link to the term sheet may be found [here](#).

Regulatory Capital

During the week, the Agencies continued to take actions to provide regulatory capital relief to banking organizations.

Early Adoption of SA-CCR Methodology

The Agencies announced that they would be allowing early adoption of a new methodology on how certain banking organizations are required to measure counterparty credit risk derivatives contracts, *i.e.*, the “standardized approach for measuring counterparty credit risk,” or “SA-CCR.” The Agencies are permitting a banking organization the flexibility to implement SA-CCR one quarter early (for the reporting period ending March 31) and on a “best efforts basis” if the banking organization chooses to do so.

A banking organization that elects to adopt the SA-CCR methodology must adopt that methodology for all derivative contracts (not only a subset). However, a banking organization may adopt some of the other amendments in the SA-CCR rule whether or not it chooses to early adopt the SA-CCR methodology. The Agencies expect to issue separate Federal Register notices to make related amendments to the Call Report, FFIEC 101, and FR Y-9C, as applicable, filed as of March 31, 2020.

A link to the Agencies’ notice may be found [here](#).

Extension of Transition for New Credit Loss Accounting Standard

The Agencies issued an interim final rule that allows banking organizations to mitigate the effects of the “current expected credit loss,” or “CECL,” accounting standard in their regulatory capital. Banking organizations that are required under U.S. accounting standards to adopt CECL this year can mitigate the estimated cumulative regulatory capital effects for up to two years, in addition to the three-year transition period already in place. Alternatively, banking organizations can follow the capital transition rule issued by the Agencies in February 2019. The Agencies will accept comments on the interim final rule for 45 days from the date of publication in the Federal Register. A link to the interim final rule may be found [here](#).

Revisions to TLAC Rule and Eligible Retained Income

The FRB published in the Federal Register an interim final rule that revises the definition of eligible retained income for purposes of the FRB’s total loss-absorbing capacity (“TLAC”) rule. The interim final rule is effective March 26, 2020. Comments on the interim final rule are due May 11, 2020.

The FRB notes in the preamble to the rule that the spread of COVID-19 has suddenly and significantly impacted financial markets and disrupted economic activity in many countries. Covered companies (for TLAC purposes) may, as a consequence, realize a sudden, unanticipated drop in capital ratios, which could create an incentive for covered companies to limit their lending and other financial intermediation activities in order to

avoid facing abrupt limitations on capital distributions. In response to this concern, the interim final rule revises the definition of eligible retained income in the TLAC rule to the greater of (1) a covered company's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a covered company's net income over the preceding four quarters. The FRB intends for this change to better allow a covered company to continue lending during times of stress.

A link to the interim final rule may be found [here](#).

Agency Statements

This past week, the Agencies also issued a number of press releases and other statements.

Statement on Supervisory Activities

On March 24, the FRB provided additional information to financial institutions on how its supervisory approach would be adjusting in light of COVID-19. In particular, the FRB notes that it has increased its focus on monitoring during this period of uncertainty, and is temporarily reducing its focus on examinations and inspections. For all firms, FRB supervisors will focus on continued monitoring and analysis of operations, liquidity, capital, asset quality, and impact on consumers. For large financial institutions, supervisors will also focus on operational resiliency and potential impacts on broader financial stability.

Exam Activity and CCAR

For supervised institutions with less than \$100 billion in total consolidated assets, the FRB intends to cease all regular exam activity, except where the examination work is critical to safety and soundness, consumer protection, or is required to address an urgent or immediate need. For supervised institutions with assets greater than \$100 billion, the FRB intends to defer a significant portion of planned exam activity, based on the FRB's assessment of the burden on the institution and the importance of the exam activity to the supervisory understanding of the firm, consumer protection, or financial stability.

The FRB notes that, with respect to the upcoming Comprehensive Capital Analysis and Review exercise, firms should submit the capital plans that they have developed by April 6, 2020.

Ongoing Remediation Efforts

The FRB is extending the time periods for remediating existing supervisory findings by 90 days (for example, if a status update would otherwise be due in 30 days, the due date

is extended to 120 days), unless the FRB notifies the firm that a more timely remediation would aid the firm in addressing a heightened risk or help consumers.

Working with Borrowers

The FRB also reiterated, consistent with the [interagency statement](#) issued on March 22, its encouragement for financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19, and that the FRB will not criticize financial institutions that mitigate credit risk through prudent actions that are consistent with safe and sound practices, as described in the interagency statement.

A link to the FRB's statement may be found [here](#).

Regulatory Reporting Relief to Small Financial Institutions Affected by COVID-19

Recognizing that small financial institutions may need additional time to submit certain regulatory reports in light of staffing priorities and disruptions caused by the COVID-19, the FRB announced that it will not take action against a financial institution with \$5 billion or less in total assets for submitting its March 31, 2020, Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) or Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11) after the official filing deadline, as long as the applicable report is submitted within 30 days of the official filing due date. On March 25, the Federal Financial Institutions Examination Council ("FFIEC") also made an announcement offering similar reporting relief to financial institutions affected by COVID-19 for their March 31, 2020 Reports of Condition and Income (Call Reports).

A link to the FRB's statement may be found [here](#) and a link to the FFIEC's statement may be found [here](#).

Other Statements

The Agencies also issued a number of other statements related to COVID-19, including:

- FRB announces implementation delay for changes to its Payment System Risk Policy regarding intraday credit (link [here](#)); and
- Agencies encourage banks, savings associations and credit unions to offer responsible small-dollar loans to consumers and small businesses affected by COVID-19 (link [here](#)).

Broker-Dealers and Derivatives Dealers

Last week, the SEC, Financial Industry Regulatory Authority (“FINRA”), CFTC and National Futures Association (“NFA”) each issued regulatory pronouncements providing market participants with a variety of forms of temporary relief to discrete regulatory requirements in light of increased demands on information technology and other resources, the implementation of teleworking arrangements and the record volatility and capital flows created by the COVID-19 pandemic. Topics covered included reporting and disclosure requirements, near-term compliance deadlines for new regulatory requirements, registration requirements for major swap participants, and relief from in-person meeting, wet signature, notarization and fingerprinting requirements in connection with various rules.

The Securities Industry and Financial Markets Association also issued a request to the SEC for [regulatory relief](#) on additional discrete matters relating to COVID-19 disruptions, while a long list of U.S. and non-U.S. industry associations issued a joint [industry letter](#) to the Secretariats of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions calling for a global recommendation to national regulators to suspend phases 5 and 6 of regulatory margin implementation for derivatives transactions.

SEC Relief for Broker-Dealers, Investment Companies and Advisers, Public Companies and Other Market Participants.

Reg NMS Order Routing Disclosures

On March 25th, the SEC issued an exemptive order providing [temporary relief](#) to broker-dealers from obligations under Rule 606 of Regulation NMS to disclose aggregated order routing information for the first quarter of 2020, and extending near term compliance deadlines for implementation of other elements of amended Rule 606 for broker-dealers that outsource routing.

Investment Companies and Advisers

Earlier in the week, the SEC [announced](#) temporary flexibility for registered open-end investment companies (other than money market funds (“MMFs”) and insurance company separate accounts) to obtain short-term funding from affiliates. In addition:

- On March 25th, the SEC issued an [order](#) providing a grace period until June 30, 2020 for registered investment advisers and exempt reporting advisers to file Form ADV under the Investment Advisers Act if the delay is COVID-19-related. It also permits registered investment advisers to delay the filing of Form PF under the Investment Advisor Act and delivering their brochures (or a summary of material changes) to existing clients. A link a Debevoise Debrief discussing the relief for investment

advisers as well as certain interpretive matters around custody and employees working remotely may be found [here](#).

- On the same day, the SEC issued an [order](#) extending relief for in-person board meetings for registered investment companies and business development companies and filing requirements for registered investment companies. The time periods for the relief are described in the order.
- The Division of Investment Management also provided [temporary no-action relief](#) to registered mutual funds that are not MMFs or ETFs to permit affiliates to purchase debt securities from the funds in order to enhance liquidity and to fund shareholder redemptions.

Public Companies

The SEC Division of Corporation Finance provided public companies with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and July 1, 2020. A link to a Debevoise Debrief discussing the relief may be found [here](#). The SEC Division of Corporation Finance also issued [Disclosure Guidance Topic No. 9](#), providing the staff's current views regarding disclosure and other securities law obligations that companies should consider with respect to COVID-19 and related business and market disruptions.

Additional Relief

- The SEC provided [relief](#) to Registered Transfer Agents and certain other persons from compliance with requirements relating to, among other things, processing securities transfers, safekeeping of funds and securities and maintaining records of investor ownership.
- Issuers applying for access to the SEC's EDGAR system using Form ID received [temporary relief](#) from notarization requirements through July 1, 2020. In the same temporary rulemaking, [issuers](#) subject to reporting obligations under Regulation A and Regulation Crowdfunding received a 45-day extension for certain filings and reports.
- The SEC Divisions of Corporation Finance, Investment Management and Trading and Markets also issued a [joint statement](#) providing relief from requirements under Rule 302(b) of Regulation S-T regarding authentication of electronic signatures and related recordkeeping.

FINRA

Supervisory Priorities

Early last week, FINRA [informed members](#) that it remains fully operational and will focus its regulatory operations on monitoring for fraud, illicit schemes and other manipulative activities seeking to take advantage of the tumultuous conditions created by COVID-19 and ongoing market volatility. FINRA also announced that it is temporarily limiting new routine requests for information, including in connection with cycle examinations, in light of its members' needs to focus on employee safety, client service and critical operational issues. FINRA will continue to review, investigate and address situations where FINRA suspects, detects or is made aware of potential investor or market harm.

COVID-19 FAQs

FINRA has begun using its COVID-19 [FAQ webpage](#) to provide interpretive relief and other guidance relating to practical problems in implementing its rules under current conditions. Last week, FINRA provided 17 new responses to questions on various topics, including: advertising regulation, anti-money laundering, best execution, broker-dealer registration, business continuity planning, filing extensions for annual reports and FOCUS reports, fingerprint information, individual registration, Rule 4530 reporting requirements and supervision. FINRA also provided an [extension](#) from fingerprinting requirements for broker-dealer employees under FINRA Rule 1010(d) until June 29, 2020. FINRA provided this relief to implement and extend a prior SEC order providing conditional relief from Rule 17f-2 under the Exchange Act.

CFTC No-Action Letters Regarding MSP Threshold

On March 20, 2020, the CFTC issued a “third wave of relief” to market participants in response to COVID-19. The relief includes CFTC Staff Letter No. 20-10, which was addressed to an individual bank that requested relief from counting certain commodity swaps toward its major swap participant (“MSP”) registration threshold. The letter reflects the CFTC’s willingness to provide relief to market participants faced with unprecedented challenges as a result of COVID-19.

As explained in the letter, the bank engages in collateralized lending to a wide range of oil and natural gas exploration and production companies and enters into commodity swaps with many of these borrowers to hedge or mitigate the risks of such loans. As a consequence of dramatic commodity price swings in connection with the COVID-19 pandemic the bank experienced an increase in aggregate uncollateralized outward exposure, to the point where it is highly likely that the bank will exceed an MSP registration threshold by the end of the next calendar quarter.

A link to the no-action relief may be found [here](#).

NFA Provides Relief to Introducing Brokers

On March 26, 2020, the NFA issued a notice providing all IB members with (1) a 30 calendar day extension for filing certified financial reports for fiscal years ending in December 2019 through March 2020 and (2) a 10 business day extension for filing semi-annual, quarterly and monthly reports for periods ending February through April 2020. The notice explains that the relief is automatic and does not require a request for relief or notice to the NFA.

A link to the notice may be found [here](#).

New York State Emergency Actions

On March 21, New York State Governor Andrew Cuomo signed Executive Order No. 202.9 (the “Order”) to provide temporary relief to borrowers in light of the COVID-19 pandemic. The Order provides that it will temporarily (through April 20) be deemed an unsafe and unsound practice for any bank subject to the New York State Department of Financial Service’s (“NYDFS”) jurisdiction to fail to grant forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of 90 days.

The Order also requires NYDFS to issue an emergency regulation to require that the application for such forbearance be made widely available to consumers and provide relief to New Yorkers demonstrating financial hardship from the COVID-19 pandemic. Accordingly, on March 24, NYDFS issued a regulation requiring that New York State-regulated institutions make application for forbearance of any payment due on a residential mortgage of a property located in New York widely available to any individual who resides in New York and, subject to the safety and soundness requirements of the regulated institutions, grant such forbearance. The emergency regulation also requires that New York-regulated banking organizations eliminate fees charged for the use of ATMs that are owned or operated by the regulated banking organization, overdraft fees, and credit card late payment fees for any individual who demonstrates financial hardship as a result of the COVID-19 pandemic, again subject to the safety and soundness requirements of the regulated banking organization.

A link to the Order may be found [here](#) and a link to the NYDFS regulation may be found [here](#).

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Please do not hesitate to contact us with any questions.

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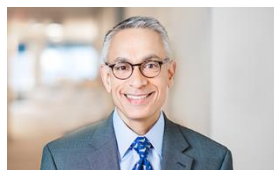


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