CLIFFORD CHANCE

CORONAVIRUS: DEBT CAPITAL MARKETS FACILITIES TO SUPPORT UK AND EEA COMPANIES

Governments, regulators and banks across the world are taking steps to support businesses affected by the COVID-19 pandemic. In this briefing, we set out the eligibility criteria for the following schemes that have been implemented, or recently expanded, by the Bank of England and the European Central Bank (ECB) to help companies in need of liquidity:

1. the Bank of England's Covid-19 Corporate Finance Facility (CCFF) for the purchase of commercial paper;

2. the ECB's pandemic emergency purchase programme (PEPP); and

3. the Bank of England's £200 billion expansion of its asset purchase scheme for corporate bonds.

Executive Summary

- Bank of England to purchase commercial paper from larger firms in order to help manage cashflow disruption
- Bank of England to expand its asset purchase facility by £200 billion
- ECB to expand scope of asset purchases under its corporate sector purchasing programme and increase it "*by as much as necessary and for as long as needed*", initially by €750 billion

BANK OF ENGLAND COVID-19 CORPORATE FINANCING FACILITY (CCFF)

- The CCFF is a new lending facility from the Bank of England which is intended to help support liquidity among larger firms, helping them bridge coronavirus disruption to their cash flows. The aim is to help businesses across different sectors to pay wages and suppliers whilst they are suffering from cashflow disruption. Currently, the CCFF is scheduled to last for at least 12 months.
- The CCFF will provide funding to businesses by purchasing commercial paper of up to one-year maturity which is issued by non-financial firms where those firms:
  - make "*a material contribution to the UK economy*"; and
  - had, prior to being affected by the COVID-19 pandemic, a short term rating of investment grade, or financial health equivalent to an investment grade rating.
- The CCFF will purchase securities at a spread above a reference rate, based on the current sterling overnight index swap (OIS) curve, with spreads set such that pricing is close to the market spreads prevailing before the COVID-19 economic shock.
- Unlike other asset purchase programmes that operate predominantly in the secondary market to increase liquidity and support pricing, the CCFF provides direct support to firms by purchasing their securities in the primary market upon issuance via a Dealer.
- There are a number of criteria that must be satisfied by a company before it can be eligible to access the CCFF and these are set out below. Details of banks that can assist with commercial paper issuance are set out here.

ELIGIBILITY CRITERIA FOR ACCESSING THE CCFF

An issuer **must**:

be making a material contribution to the UK economy	When assessing whether a company is making a material contribution to the UK economy, the Bank of England will consider whether it has, in the UK, significant employment, headquarters, significant revenues, a large number of customers, or a number of operating sites. UK incorporated companies with a genuine business in the UK (including those that are part of a foreign group) are expected to meet this requirement.
have had a minimum short term credit rating of A-3 / P-3 / F-3 / R3 from at least one of S&P, Moody's, Fitch and DBRS Morningstar as at 1 March 2020	If an issuer does not currently meet this rating requirement as a result of being downgraded after 1 March 2020, HM Treasury will still consider approving such issuer's eligibility.
if it does not have a short-term credit rating, have equivalent financial strength	The Bank of England is expected to allow long-term credit ratings to be used to assess eligibility and is also looking at other ways of assessing the financial health of companies who do not have either short-term or long-term credit ratings.
not be a financial sector entity or leveraged investment vehicle	Banks, building societies, insurance companies, other financial sector entities regulated by the PRA or the FCA, leveraged investment vehicles and companies within a group that is predominantly active in businesses subject to financial sector regulation are not eligible to participate in the programme.

An issuer **can**:

be a finance subsidiary	The Bank of England will, however, require a guarantee in an acceptable form from the parent company. As such, obligor structures in financings that are currently in place will be the starting point for issuances to the CCFF.
never have issued commercial paper before	A company does not need to have issued commercial paper before in order to access the CCFF. For more information on how to establish a commercial paper programme see "Documentation required" below.

The commercial paper **must**:

have a maturity of between one week and 12 months	Although not eligible for the CCFF, longer term debt may be eligible, however, for the other asset purchase frameworks described below.
be issued directly into Euroclear and/or Clearstream	The standard time period for approval of documentation by Euroclear/Clearstream may be up to 10 business days and will drive the timetable.
not be complex	The Bank of England has indicated it will not approve commercial paper that includes certain non-standard features (e.g. extendibility or subordination). In addition, the issuer will need to confirm that the commercial paper

	will benefit from any guarantee or similar arrangements that have been provided by the group for the benefit of the issuer's other creditors.
be issued in sterling	To the extent non-sterling debt is required, the issuer will need to consider putting in place currency swaps.

DOCUMENTATION REQUIRED

Companies that do not have existing commercial paper programmes may consider establishing a programme to participate in the CCFF. A standard commercial paper programme usually takes around 4-6 weeks to establish, but it is expected that in the current circumstances the parties will be motivated to compress this timeframe as much as possible, and an establishment may take as little as 2-3 weeks. The Bank of England's requirement for the documentation to be substantially in the form of the International Capital Market Association (ICMA) template and without complex features will facilitate this expedited timetable. In addition, the issuer and dealers will need to consider the application forms and documentation required to be completed by the Bank of England, which can be found here, and its interaction with the ICMA documents and any existing facilities or agreements the issuer may have in place.

The contractual documents required in order to establish a programme are -

Information Memorandum	This document is the public marketing document for the programme and contains: the terms and conditions of the commercial paper; brief disclosure about the business of the issuer(s) (note no risk factors are required); and sales restrictions and other boilerplate language.
Dealer Agreement	This document sets out the relationship between the programme dealers and the issuer and will typically include representations and warranties from the issuer and an indemnity in favour of the dealers.
Agency Agreement	This document sets out the relationship between the agent and the issuer and governs the technical process around issuing the paper into the clearing systems and making payments in respect of the paper.
Deed of Covenant	This document contains the payment obligation of the issuer in favour of the holders of commercial paper.
Deed of Guarantee	This document, if required, contains the guarantee obligation of the guarantor in favour of the holders of commercial paper (in this case, including the Bank of England, and an opinion as to its enforceability will additionally be required).
Conditions Precedent	The conditions precedent are relatively limited and customarily comprise of legal opinions on capacity, enforceability and tax, ratings confirmations and corporate approvals.

BANK OF ENGLAND ASSET PURCHASE SCHEME

In addition to the CCFF, the Bank of England has announced that it plans to increase its holdings of sterling non-financial investment-grade corporate bonds which it buys on the secondary market. So far, the exact amount that will be allocated to the corporate bond purchase programme and details of the programme have not yet been announced (only that the total amount for the acquisition of both UK government bonds and sterling non-financial investment-grade corporate bonds will be £200 billion).

The eligibility criteria for the current asset purchase scheme are set out below (although the Bank of England could change these for the expanded programme) -

Eligible issuers must	**Eligible securities must**

• be making a material contribution to the UK economy • not be a financial sector entity or leveraged investment vehicle	• be conventional senior unsecured or secured, unsubordinated debt • be rated investment grade by at least one major rating agency and be subject to the Bank of England’s assessment process • be cleared and settled through Euroclear and/or Clearstream • have a minimum amount in issue of £100 million • have a minimum residual maturity of twelve months and not be perpetual debt • have been in issue for at least one month • be admitted to the regulated market of an EEA or UK stock exchange

ECB PANDEMIC EMERGENCY PURCHASE PROGRAMME (PEPP) AND THE CORPORATE SECTOR PURCHASE PROGRAMME (CSPP)

- The PEPP is an expansion of the ECB's CSPP, which is a programme through which the ECB buys corporate bonds of eligible issuers on the secondary market.
- The €750 billion PEPP was announced by the ECB on 18 March 2020 and follows the extra temporary envelope of €120 billion of asset purchases announced on 12 March 2020.
- The PEPP is intended as a temporary crisis measure and purchases under the PEPP will be conducted only until the ECB judges that the COVID-19 crisis phase is over, but will not cease before the end of 2020.
- Significantly, the PEPP expands the range of eligible assets under the CSPP to non-financial commercial paper, as long as it meets credit quality and other ECB eligibility criteria requirements.
- In addition to the CSPP, the PEPP will also cover certain public sector bonds, asset-backed securities and covered bonds.
- The market is still awaiting further details on the programme. However, the eligibility requirements under the CSPP, as modified by the PEPP, have been set out below:

An issuer must:	• be incorporated in a Member State whose currency is the euro. • not be: (i) a "credit institution"; (ii) a "supervised entity" (as defined in Regulation (EU) No 468/2014) or a member of a "supervised group", in each case contained in the list published by the ECB on its website. It should also not be a subsidiary of any of those supervised entities or supervised groups; (iii) an "investment firm"; (iv) a national asset management and divestment fund established to support financial sector restructuring and/or resolution; or (v) an eligible issuer for the public sector asset purchase programme. • not have: (i) a parent undertaking that is a "credit institution"; or (ii) a parent company which is subject to banking supervision outside the euro area. • not be an entity, whether publicly or privately owned, that: (i) has as its main purpose the gradual divestment of its assets and the cessation of its business; or (ii) is an asset management vehicle resulting from a resolution action in the form of the application of an asset separation tool.

	• not have issued: (i) an asset-backed security, (ii) a *multi cédula*, or (iii) a structured covered bond.
The debt security must:	• be denominated in euro. • pursuant to the CSPP, have a minimum remaining maturity of 6 months and a maximum remaining maturity of 30 years and 364 days at the time of its purchase by the relevant Eurosystem central bank. **However**, the PEPP is expected to expand the range of eligible assets under the CSPP to cover non-financial commercial paper of sufficient credit quality. • comply with the eligibility criteria for marketable assets for Eurosystem credit operations, the key criteria are described below.
Credit assessment	Under CSPP, only credit assessment information provided by an external credit assessment institution accepted within the Eurosystem credit assessment framework will be taken into account for the assessment of the credit quality requirements of the marketable debt instrument.
Eurosystem eligibility criteria	The key Eurosystem eligibility criteria are: • *Listing exchange*: regulated markets; and non-regulated markets accepted by the ECB (including the STEP Market) • *Place of issue*: EEA • *Custody structure*: New Global Note/New Safekeeping Structure • *Status*: non-subordinated

OTHER SOURCES OF ASSISTANCE

The UK government has also taken a number of other measures to support businesses, including business rates holidays and grant funding for eligible businesses, the deferral of VAT and income tax payments and a job retention scheme through which the UK government will reimburse businesses for 80% of the wage costs of furloughed workers. Additionally, the Bank of England has announced an expansion of its term funding scheme, which allows banks and building societies to access Bank of England funds with the aim of increasing lending to the real economy at an interest rate close to the Bank of England's base rate.

Other jurisdictions throughout the EEA are putting in place similar schemes in order to support their economies.

EUROPEAN COMMISSION STATE AID CLEARANCE REQUIRED

The CCFF and certain other measures taken by the UK government to support businesses will need to be cleared by the European Commission before implementation, as the as the UK remains bound by EU State aid rules during the Brexit transition period. Consequently, it will need to comply with the limits set out in the European Commission's "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak" (for further details of that framework, see our briefing here), which include minimum thresholds for interest rates and maximum thresholds for loan sizes. Clearance is expected to be imminent, as large scale aid packages for a number of EU countries have already been cleared within a matter of days.

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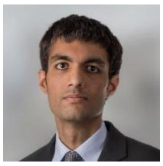

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