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UPDATED: Federal Reserve Provides Pricing and Sale Updates to Municipal Liquidity Facility - Ballard Spahr

On May 11, 2020, the Federal Reserve Board (the Federal Reserve) announced further updates to its Municipal Liquidity Facility loan program (the Facility) authorized under Section 13(3) of the Federal Reserve Act to provide lending support to states, the District of Columbia, and certain large cities and counties in the United States. For our summary of the Federal Reserve Board's initial announcement of, and prior updates to, the Facility, see "[The Fed Throws a Cash Flow Lifeline to State and Local Governments](#)" and "[Updates to the Federal Reserve Board's New Municipal Liquidity Facility.](#)"

How will Eligible Notes be priced?

The Federal Reserve previously announced that pricing of Eligible Notes would be priced at a premium to normal market rates, based on the credit rating of the Eligible Issuer. Now the Federal Reserve has specified that it will price Eligible Notes at a fixed interest rate based on a comparable maturity overnight index swap (OIS) rate plus the applicable spread based on the long-term rating of the security. For Eligible Notes that accrue interest at a tax-exempt rate, the pricing spread will be as follows:

Rating* Spread (bps)

AAA/Aaa - 150

AA+/Aa1 - 170

AA/Aa2 - 175

AA-/Aa3 - 190

A+/A1 - 240

A/A2 - 250

A-/A3 - 265

BBB+/Baa1 - 325

BBB/Baa2 - 340

BBB-/Baa3 - 380

Below Investment Grade - 590

Eligible Notes with taxable interest rates will be priced at a fixed interest rate that is calculated by taking the rate that would apply to such Eligible Notes if the Eligible Notes were tax-exempt, and

dividing that rate by 0.65. If an Eligible Issuer has split ratings, the applicable spread will be determined by calculating an average of all of the confirmed ratings, as further described in the Federal Reserve's [updated FAQs](#).

How will Eligible Notes be sold?

An Eligible Issuer may sell Eligible Notes through a competitive sale process in which the SPV will serve as a backstop and agree to purchase Eligible Notes that are not awarded to other bidders. Alternatively, an Eligible Issuer may sell the Eligible Notes directly to the SPV without the Eligible Issuer first undertaking a competitive sale process. The SPV will not submit a bid in a competitive sale unless an Eligible Issuer (i) is required by law to sell Eligible Notes through a competitive sale process and (ii) does not have the authority to sell Eligible Notes directly to the SPV, even following a competitive sale process in which fewer than all of the Eligible Notes are sold.

Eligible Notes will be closed through DTC and must be assigned CUSIP numbers. As only registered broker-dealers can clear an offering through DTC, the requirement to close through DTC will require Eligible Issuers to engage a broker-dealer to facilitate delivery of the Eligible Notes at closing.

What disclosure is required?

Eligible Issuers offering Eligible Notes in a competitive sale process should provide the same level of disclosure normally prepared in connection with a public offering of securities.

If the Eligible Issuer is not conducting a competitive sale process, the Federal Reserve will review the financial information and operating data provided by the Eligible Issuer on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system (EMMA) and on the Eligible Issuer's website. The updated FAQs provide further detail on the disclosure required for Eligible Notes that are TRANs, TANs, or BANs. Each Eligible Issuer will also be required to provide copies of written materials containing financial information and operating data that have been provided to the rating agencies in connection with the Eligible Issuer's proposed sale.

Each Eligible Issuer must also provide the continuing disclosure information described in Rule 15c2-12 regardless of the method of sale and whether or not the sale of the Eligible Notes would otherwise be subject to Rule 15c2-12. For disclosures that are not made pursuant to Section 15c2-12 (whether because the Eligible Notes are not sold in connection with a public sale, or because the information to be provided is not required by a continuing disclosure undertaking executed pursuant to Rule 15c2-12), the Federal Reserve has not specified what remedies would apply should an Eligible Issuer fail to provide such continuing disclosure. In addition, for all transactions with the SPV, an Eligible Issuer must provide on its website, (A) a report of quarterly cash flows (actual and projected), and the funding of planned set-asides, with an explanation of any negative variances, and (B) access to quarterly financial reports and/or information in a format regularly provided to any governing body or otherwise made public. In addition, the Eligible Issuer must provide to the Federal Reserve, at both six months prior to maturity and again at three months prior to maturity, a written report explaining how it will repay the Eligible Notes at maturity.

How does an Eligible Issuer participate?

Interested issuers will be required to complete a Notice of Interest (NOI) on a form that will be made available on the Federal Reserve Bank of New York's website for the Facility. The Eligible Issuer will be notified when the NOI package has been approved and may then move forward at the appropriate time with documentation of the transaction. Prior to the mailing of a preliminary official statement in a competitive transaction and prior to pricing of any transaction, the Eligible Issuer must submit an

application. Upon approval of the application, the SPV will commit to purchase Eligible Notes and pricing may proceed. The application process will likely result in delays in the posting of a preliminary official statement. In transactions where some Eligible Notes are purchased by bidders at competitive sale and the remainder are purchased by the SPV, the final official statement will presumably list the Eligible Notes purchased by the SPV as “not reoffered.” The Federal Reserve is developing application forms, which will be posted on the Facility’s website when available.

The Facility is not a “first come, first served” program. An Eligible Issuer should not submit an NOI until it has determined its financial needs and schedule. An Eligible Issuer may sell Eligible Notes in one or more issuances to the SPV up to, in the aggregate, the Eligible Issuer’s allocated amount. Eligible Issuers should not use the Facility as a line of credit by conducting frequent, small issuances. The Federal Reserve may establish a maximum number of issuances per issuer or a minimum par amount per issuance.

How have the Facility’s rating requirements changed?

The Federal Reserve has broadened the rating requirement slightly by allowing Eligible Issuers that were rated by only one major nationally recognized statistical rating agency (“NRSRO”) as of April 8, 2020 to participate if (i) the rating was at least BBB-/Baa3 (for a State, City, or County) or A-/A3 (for a Multi-State Entity); (ii) the State, City, County, or Multi-State Entity is rated by at least two major NRSROs at the time the Facility makes a purchase; and (iii) such ratings are at least BB-/Ba3 (for a State, City, or County) or BBB-/Baa3 (for a Multi-State Entity).

Will the amendments improve the attractiveness of the Facility?

The FAQs state that the Facility’s rate is a “penalty” rate intended to discourage use of the Facility except as a last resort while unusual and exigent economic circumstances persist. Consistent with that intent, the pricing announced by the Federal Reserve will assure that Eligible Issuers will only access the Facility if they have no other viable options. For Eligible Issuers who find themselves in that category, the information regarding sale logistics, disclosure requirements and potential impacts on timing should be carefully considered as they evaluate how best to address the economic and cash flow impacts of COVID-19.

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