

October 2008 / Special Alert

A legal update from Dechert's Finance and Real Estate and Financial Services Groups

Federal Reserve Board Unveils Commercial Paper Funding Facility

The Federal Reserve Board released additional details this week regarding its recently announced Commercial Paper Funding Facility (“CPFF”). Designed to increase liquidity within the commercial paper market, the CPFF will permit the federal government to purchase eligible three-month unsecured and asset-backed commercial paper from U.S. issuers utilizing funds provided by the Federal Reserve Bank of New York. The new information released by the Federal Reserve Board includes important details regarding eligibility, pricing, and implementation of the massive facility.

Background

Originally unveiled by the Federal Reserve Board on October 7, 2008, the CPFF is intended to address reductions in investor appetite for longer-term commercial paper that have driven up interest rates to extremely high levels. “By eliminating much of the risk that eligible issuers will not be able to repay investors by rolling over their maturing commercial paper obligations, this facility should encourage investors to once again engage in term lending in the commercial paper market,” noted the initial Federal Reserve Board press release. “Added investor demand should lower commercial paper rates from their current elevated levels and foster issuance of longer-term commercial paper.”

The Federal Reserve Board authorized the CPFF on the basis of Section 13(3) of the Federal Reserve Act, which allows the Board to permit Reserve Banks to offer credit to individuals, partnerships, and corporations in “unusual and exigent circumstances.” Under the terms of the facility, a special purpose vehicle (“SPV”) will

be employed to purchase as much as \$1.8 trillion in commercial paper that satisfies ratings and other eligibility criteria. The funds for these purchases, including a special \$50 billion deposit from the U.S. Treasury, will come from the Federal Reserve Bank of New York and will be lent to the SPV on a recourse basis. The SPV will use amounts generated by the maturing commercial paper to repay the New York Fed.

The CPFF will begin purchasing commercial paper on October 27, 2008 and, unless the program is extended by the Federal Reserve Board, will cease purchasing on April 30, 2009. The SPV will remain funded until the commercial paper held as of April 30, 2009 matures.

The Federal Reserve Board has indicated that Pacific Investment Management Company LLC, or PIMCO, will serve as asset manager for the CPFF, while State Street Bank and Trust Co. will serve as custodian and administrator for the program.

A Closer Look

In order to be eligible for purchase under the CPFF, commercial paper will need to be three-month, U.S. dollar-denominated commercial paper that is rated at least A-1/P-1/F1 by a nationally recognized statistical rating organization and issued by an “eligible issuer.” Eligible issuers consist of U.S. issuers, including U.S. issuers with a foreign parent, that have registered with the CPFF and paid a 10-basis point facility fee¹. This facility fee is calculated based upon the maximum amount of commercial paper that an eligible issuer is entitled to sell to the facility—an amount equal to the largest amount of U.S. dollar-denominated commercial paper that such issuer had outstanding on any day between January 1 and August 31, 2008. Upon registration, an eligible issuer will be required to pay its facility fee based upon its entire maximum allowable amount whether or not it expects to sell this entire amount of commercial paper to the SPV. In addition, the SPV is precluded from purchasing additional commercial paper from any eligible issuer that has total commercial paper outstanding in excess of or equal to its maximum amount under the CPFF.

Pricing of commercial paper purchased under the CPFF will be based on the then-current three-month overnight index swap (“OIS”) plus a fixed spread. The spread for asset-backed commercial paper will be 300 basis points per annum. The spread for unsecured commercial paper will be 100 basis points per annum. In addition, a 100-basis point unsecured credit surcharge must be paid by issuers with respect to unsecured commercial paper

¹ Issuers must register no later than Thursday, October 23, 2008 if they wish to access the CPFF on its first day of operation, October 27, 2008. Additional details regarding registration, including registration materials and wire instructions, will be available on Monday October 20, 2008 at <http://www.newyorkfed.org/markets/cpff.html>.

upon the trade execution date. The New York Fed has the ability to waive the unsecured credit surcharge for issuers who are able to provide an acceptable collateral arrangement or an indorsement or guarantee of their obligations. Daily lending rates under the CPFF will be posted on the New York Fed website each day at 8:00 AM eastern time and on the BLOOMBERG PROFESSIONAL service on the CPFF page.

A number of other restrictions will apply to sales of commercial paper under the CPFF. For example, eligible issuers may only sell commercial paper to the SPV through a primary dealer of the New York Fed. Primary dealers will be required to notify the asset manager of the amount of commercial paper that an eligible issuer is interested in selling to the SPV no later than 10:30 AM eastern time on the day of the proposed transaction. Investors may not sell outstanding commercial paper to the SPV. However, eligible issuers may repurchase outstanding commercial paper and subsequently sell this commercial paper to the SPV through a primary dealer. The facility is not available for the purchase of commercial paper with extendable maturities.

Additional details about the CPFF are certain to come to light in the coming days and weeks as the Federal Reserve Board and the New York Fed roll out the facility. Dechert attorneys will continue to monitor these developments closely and will be available to assist clients interested in the opportunities presented by the CPFF and the commercial paper market more generally.



This update was authored by Malcolm S. Dorris (+1 212 698 3519; malcolm.dorris@dechert.com), with assistance provided by Andrew P. Pontano (+1 212 698 3505; andrew.pontano@dechert.com).

Practice group contacts

For more information, please contact one of the authors or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/financialservices or www.dechert.com/finance&realestate.

Karen L. Anderberg
London
+44 20 7184 7313
karen.anderberg@dechert.com

Kimberly S. Andrascik
London, Philadelphia
+1 215 994 2520
kimberly.andrascik@dechert.com

Peter D. Astleford
London
+44 20 7184 7860
peter.astleford@dechert.com

Margaret A. Bancroft
New York
+1 212 698 3590
margaret.bancroft@dechert.com

Sander M. Bieber
Washington, D.C.
+1 202 261 3308
sander.bieber@dechert.com

Stephen H. Bier
New York
+1 212 698 3889
stephen.bier@dechert.com

Timothy J. Boyce
Charlotte
+1 704 339 3129
timothy.boyce@dechert.com

Lewis A. Burleigh
Boston
+1 617 654 8601
lewis.burleigh@dechert.com

Katherine A. Burroughs
Hartford
+1 860 524 3953
katherine.burroughs@dechert.com

Ciaran P. Carvalho
London
+44 20 7184 7473
ciaran.carvalho@dechert.com

Lawrence A. Ceriello
New York
+1 212 698 3659
lawrence.ceriello@dechert.com

Daphne T. Chisolm
Charlotte
+1 704 339 3153
daphne.chisolm@dechert.com

Christopher D. Christian
Boston
+1 617 728 7173
christopher.christian@dechert.com

Steven Choo
London
+44 20 7184 7370
steven.choo@dechert.com

Laura G. Ciabarra
Hartford
+1 860 524 3926
laura.ciabarra@dechert.com

Elliott R. Curzon
Washington, D.C.
+1 202 261 3341
elliott.curzon@dechert.com

Douglas P. Dick
Washington, D.C.
+1 202 261 3305
douglas.dick@dechert.com

Patrick D. Dolan
New York
+1 212 698 3555
patrick.dolan@dechert.com

Malcolm S. Dorris
New York
+1 212 698 3519
malcolm.dorris@dechert.com

Peter Draper
London
+44 20 7184 7614
peter.draper@dechert.com

Jennifer O. Epstein
London
+44 20 7184 7403
jennifer.epstein@dechert.com

Ruth S. Epstein
Washington, D.C.
+1 202 261 3322
ruth.epstein@dechert.com

Susan C. Ervin
Washington, D.C.
+1 202 261 3325
susan.ervin@dechert.com

Dr. Olaf Fasshauer
Munich
+49 89 21 21 63 28
olaf.fasshauer@dechert.com

Joseph R. Fleming
Boston
+1 617 728 7161
joseph.fleming@dechert.com

Steven A. Fogel
London
+44 20 7184 7444
steven.fogel@dechert.com

David W. Forti
Philadelphia
+1 215 994 2647
david.forti@dechert.com

Brendan C. Fox
Washington, D.C.
+1 202 261 3381
brendan.fox@dechert.com

Wendy Robbins Fox
Washington, D.C.
+1 202 261 3390
wendy.fox@dechert.com

Richard Frase
London
+44 20 7184 7692
richard.frase@dechert.com

William Fryzer
London
+44 20 7184 7454
william.fryzer@dechert.com

Joseph V. Gatti
Washington
+1 202 261 3436
joseph.gatti@dechert.com

David M. Geffen
Boston
+1 617 728 7112
david.geffen@dechert.com

John J. Gillies, Jr.
Hartford
+1 860 524 3938
john.gillies@dechert.com

John Gordon
London
+44 20 7184 7524
john.gordon@dechert.com

David J. Harris
Washington, D.C.
+1 202 261 3385
david.harris@dechert.com

Richard L. Heffner
London
+44 20 7184 7665
richard.heffner@dechert.com

Joseph B. Heil
San Francisco
+1 415 262 4510
joseph.heil@dechert.com

Robert W. Helm
Washington, D.C.
+1 202 261 3356
robert.helm@dechert.com

Bruce D. Hickey
Boston
+1 617 654 8602
bruce.hickey@dechert.com

Andrew Hougie
London
+44 20 7184 7373
andrew.hougie@dechert.com

Geoffrey K. Hurley
New York
+1 212 698 3598
geoffrey.hurley@dechert.com

Paul Huey-Burns
Washington, D.C.
+1 202 261 3433
Paul.huey-burns@dechert.com

Andrew Hutchinson
London
+44 20 7184 7428
andrew.hutchinson@dechert.com

Eric P. Iversen
New York
+1 212 698 3538
eric.iversen@dechert.com

Les Jacobowitz
New York
+1 212 698 3814
les.jacobowitz@dechert.com

Richard D. Jones
Philadelphia
+1 215 994 2501
richard.jones@dechert.com

Andreas Junius
New York
+1 212 698 3578
andreas.junius@dechert.com

Jane A. Kanter
Washington, D.C.
+1 202 261 3302
jane.kanter@dechert.com

Geoffrey R.T. Kenyon
Boston
+1 617 728 7126
geoffrey.kenyon@dechert.com

Angelyn Lim
Hong Kong
+852 3518 4718
angelyn.lim@dechert.com

David M. Linder
San Francisco
+1 415 262 4511
david.linder@dechert.com

Stuart Martin
London
+44 20 7184 7542
stuart.martin@dechert.com

George J. Mazin
New York
+1 212 698 3570
george.mazin@dechert.com

Ralph R. Mazzeo
Philadelphia
+1 215 994 2417
ralph.mazzeo@dechert.com

Steven J. Molitor
Philadelphia
+1 215 994 2777
steven.molitor@dechert.com

Jack W. Murphy
Washington, D.C.
+1 202 261 3303
jack.murphy@dechert.com

John V. O'Hanlon
Boston
+1 617 728 7111
john.ohanlon@dechert.com

Sean H. Porter
New York
+1 212 698 3579
sean.porter@dechert.com

Jeffrey S. Poretz
Washington, D.C.
+1 202 261 3358
jeffrey.poretz@dechert.com

Jon S. Rand
New York
+1 212 698 3634
jon.rand@dechert.com

Robert A. Robertson
Newport Beach
+1 949 442 6037
robert.robertson@dechert.com

Keith T. Robinson
Hong Kong
+1 852 3518 4705
keith.robinson@dechert.com

Alan Rosenblat
Washington, D.C.
+1 202 261 3332
alan.rosenblat@dechert.com

Jason S. Rozes
Philadelphia
+1 215 994 2830
jason.rozes@dechert.com

Kevin P. Scanlan
New York
+1 212 649 8716
kevin.scanlan@dechert.com

Frederick H. Sherley
Charlotte
+1 704 339 3100
frederick.sherley@dechert.com

Timothy A. Stafford
New York
+1 212 698 3504
timothy.stafford@dechert.com

William C. Stefko
New York
+1 212 698 3895
william.stefko@dechert.com

Barry J. Thorne

London
+44 20 7184 7413
barry.thorne@dechert.com

John M. Timperio

Charlotte
+1 704 339 3180
john.timperio@dechert.com

Stephanie M. Tita

New York
+1 212 698 3896
stephanie.tita@dechert.com

Patrick W. D. Turley

Washington, D.C.
+1 202 261 3364
patrick.turley@dechert.com

Brian S. Vargo

Philadelphia
+1 215 994 2880
brian.vargo@dechert.com

David A. Vaughan

Washington, D.C. / New York
+1 202 261 3355 / +1 212 698 3652
david.vaughan@dechert.com

Cynthia J. Williams

Boston
+1 617 654 8604
cindy.williams@dechert.com

Anthony H. Zacharski

Hartford
+1 860 524 3937
anthony.zacharski@dechert.com

Jay Zagoren

Philadelphia
+1 215 994 2644
jay.zagoren@dechert.com



www.dechert.com

© 2008 Dechert LLP. All rights reserved. Materials have been abridged from laws, court decisions, and administrative rulings and should not be considered as legal opinions on specific facts or as a substitute for legal counsel. This publication, provided by Dechert LLP as a general informational service, may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

U.S. Austin • Boston • Charlotte • Hartford • Newport Beach • New York • Philadelphia
Princeton • San Francisco • Silicon Valley • Washington, D.C. • **EUROPE** Brussels
London • Luxembourg • Munich • Paris • **ASIA** Beijing • Hong Kong