

COMMERCIAL PAPER PROGRAMMES AND THE BANK OF ENGLAND'S COVID CORPORATE FINANCING FACILITY

A toolkit for treasurers

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COMMERCIAL PAPER PROGRAMMES AND THE BANK OF ENGLAND'S COVID CORPORATE FINANCING FACILITY //

The UK Government established the [Covid Corporate Financing Facility \(CCFF\)](#) at the end of March to provide a quick and cost-effective way to raise working capital and access liquidity for those large corporates that need to bridge the severe disruption to cash-flows caused by Covid-19. In this toolkit we explain how the CCFF works and the steps that a corporate needs to take to establish a commercial paper (CP) programme and access the CCFF.

What is a commercial paper programme?

CP is an unsecured debt security that has a maturity of less than one year, typically issued by highly-rated corporates or financial institutions. Other than maturity, it has many of the same characteristics as a medium term note (MTN), but is typically not listed or traded.

CP is invariably issued under a CP Programme, allowing for quick and easy issuance. Like an MTN programme, a CP Programme comprises a set of master documentation containing standard terms and conditions and other contractual provisions that can be used to do any number of debt securities issues in the future, subject to a maximum programme limit. Unlike an MTN programme, a CP programme does not need to be updated annually and the initial disclosure requirements are relatively limited.

How does the CCFF work?

The CCFF involves Covid Corporate Financing Facility Limited (CCFFL), a subsidiary fund of the Bank of England, purchasing newly issued CP via dealers. The CP is purchased on terms that the Bank of England considers to be comparable to those prevailing in markets in the period immediately before the Covid-19 economic shock.

How much can be borrowed and at what rate?

CP purchased in the primary market is discounted using a rate based on the maturity matched overnight index swap (OIS) rate. The spread to the OIS rate at which CCFFL purchases CP varies according to the credit rating of the issuer and as set out below. Primary market purchases are subject to individual issuer limits. These limits reflect a range of factors, including an issuer's credit rating. An indicative guide to the maximum limit pre-approved by HM Treasury for issuers at different ratings is set out in the table below.

Applicants should note that the spreads are subject to review and the limits set will be adjusted down at the Bank of England and HM Treasury's discretion in some cases; issuers are encouraged to disclose to the Bank of England the total amount that they wish to borrow. Any extension of the pre-approved issuer limits will require further risk assessment and discussion with the Bank of England.

Rating (or equivalent)	Spread to OIS	Initial issuer limit
A1/PI/F1/R1	20 bps	Up to £1b
A2/P2/F2/R2	40 bps	Up to £600m
A3/P3/F3/R3	60 bps	Up to £300m

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How long will the CCFF be open?

The CCFF will close to new issuers on 31 December 2020. Issuers participating in the CCFF on 31 December will continue to be able to create new issuance until the the CCFF is closed to new purchases. The Bank of England intends to close the CCFF to new purchases on 23 March 2021. CCFFL will purchase new CP (including on a rollover basis to refinance existing CP) with a maturity date beyond 23 March 2021 on any day up to and including 22 March 2021.

Which corporates are eligible for the CCFF?

The CCFF is open to corporates that (i) make a material contribution to the UK economy and (ii) can demonstrate that they were in sound financial health prior to the Covid-19 shock. The CCFF is not open to banks, building societies, insurance companies and other entities predominantly active in businesses subject to financial sector regulation.

Material contribution to the UK economy

UK incorporated companies, including those with foreign-incorporated parents and with a genuine business in the UK, will normally be regarded as making a material contribution to the UK economy, as will those companies with significant employment in the UK or with their headquarters in the UK. The Bank of England will also consider whether the company generates significant revenues in the UK, serves a large number of customers in the UK or has a number of operating sites in the UK.

Sound financial health prior to the Covid-19 shock

The Bank of England will look through temporary impacts on companies' balance sheets and cash-flows by basing eligibility on companies' financial position prior to the Covid-19 shock.

- **Rated companies** should have a minimum short-term credit rating of A3/P3/F3/R3 from at least one of Standard & Poor's, Moody's, Fitch and DBRS Morningstar as at 1 March 2020. Companies with split ratings where one or more ratings are below the minimum are not eligible. The Bank of England and HMT will consider the eligibility of companies at the lowest rating that were on negative watch or negative outlook as at 1 March.

Some unrated companies are seeking private ratings specifically to access the CCFF. The main credit rating agencies have established 'private internal assessment' products to meet this demand.

- **Companies without short-term credit ratings** can access the CCFF by satisfying the Bank of England of their investment grade equivalent status. In judging investment grade equivalence, the Bank of England will take into account a range of information, including internal rating estimates from the company's commercial bank counterparties.

Credit Benchmark, the financial data analytics company, further to a request from HM Treasury, has provided a credit assessment file to the Bank of England for this purpose, which consolidates, in aggregate form, the corporate credit estimates of a number of the largest UK banks. Credit estimates by individual commercial banks are not shared among the banks themselves.

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Which securities are eligible for the CCFF?

To be eligible, securities must have the following characteristics:

Currency	Sterling
Minimum denomination	£1m nominal amount (and increment of £0.1m) per individual security
Maturity	Between one week and 12 months
Clearing and settlement	Issued directly into Clearstream and/or Euroclear
Interest	Issued at a discount and non-interest bearing
Features	Non-standard features (e.g. extendibility or subordination) may not be accepted
Credit support	Securities issued by a finance subsidiary should be guaranteed by the primary entity of their group. Security is not required (even where the issuer provides security for other indebtedness) provided that the CP ranks pari passu with all unsecured and unsubordinated debt of the issuer.

Can an existing CP Programme be used to access the CCFF?

Yes, if the existing CP Programme allows for the issuance of eligible securities, it can be used to access the CCFF and this may be an efficient option. Issuers will still need to go through the eligibility process with the Bank of England.

We don't have an existing CP Programme. Should we establish a new CP Programme tailored specifically for the CCFF? Or a generic CP Programme that also allows for conventional issuance?

A majority of issuers that want to access the CCFF and do not have an existing CP Programme are establishing new CP Programmes tailored specifically for the CCFF. A smaller number of issuers are taking the opportunity to establish a CP Programme that can also be used for conventional market issuance. The latter alternative, which involves the possibility of investors investing on an arms' length basis, the potential for a greater range and complexity in the terms and conditions of the CP, a broader dealer panel and potentially more extensive

disclosure, may be a more costly and lengthy exercise and feel more akin to a true capital markets transaction than the former alternative.

Who are the key parties? What do they do?

In addition to the Issuer and any Guarantor, the parties include:

- **The Bank of England:** The Bank of England administers the CCFF, approves the applications of eligible issuers and confirms that their CP is eligible.
- **Arranger and dealers:** The arranger arranges the establishment of the programme and may be a possible dealer of any future issue of CP under the programme. Other investment banks are appointed as initial dealers under the programme. For a CP Programme established specifically for the CCFF, there may be a sole dealer who also acts as arranger, whereas there may be a broader dealer panel for a conventional CP Programme. For a dealer to participate in the CCFF, it must be approved by the Bank of England for this purpose.
- **Lawyers:** Lawyers are appointed to draft and negotiate the CP documentation and ensure that

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the issuer has the corporate power and authority to participate in the CCFF. For a CP Programme established specifically for the CCFF, only the issuer may appoint lawyers. For a conventional CP Programme, the arranger and dealers typically appoint separate legal counsel.

- **Issue and paying agent:** The issuer appoints an issue and paying agent to authenticate and deliver the CP on each issue, and make payments to the CP holders on its behalf.
- **Clearing systems:** The issue and paying agent will arrange the issue of the CP into Clearstream and/or Euroclear (the clearing systems). Clearing systems are specialist banks that hold cash accounts and securities accounts for issuers and holders of securities. They ensure simultaneous delivery and payment is made by electronic book-entries into the relevant accounts.

To ensure that the process is smooth, speedy and cost-effective, the parties should be chosen carefully. For example, it may make sense to use existing agents to avoid any new know-your-customer processes.

What documentation is required for a CP Programme and to access the CCFF? What form should it take?

All issuers will need to complete the CCFF eligibility documentation. Issuers which do not have an existing CP Programme will also need to put in place programme documentation.

CCFF Eligibility documentation

The Bank of England's website contains links to the documentation it requires from issuers that want to participate in the CCFF:

- **Issuer eligibility form:** This form comprises (a) information related to the issuer including evidence of its financial health prior to the Covid-19 shock, (b) information related to the issuer's group, including confirmations that the group's revenues are experiencing disruption related to Covid-19, that no financial covenant breach or default under

any of the group's financing arrangements is likely to occur as a result of issuing the CP and that issuing the CP Programme will not result in the breach of any borrowing limit of the issuer or its group, (c) information related to the CP Programme, including a confirmation that the CP documentation is substantially in the form of the ICMA templates and confirmations related to the ranking of the CP and any guarantee that supports it, (d) contact information and (e) the other documentation required by the Bank of England, including the CP Programme documentation, the most recent annual report and accounts for the issuer and the group and an organogram of the group.

- **Issuer undertaking and confidentiality agreement:** In this agreement the issuer makes certain representations to the Bank of England, including as to its financial health, its corporate status and corporate capacity and authority to enter into and comply with its obligations related to the CCFF and its compliance with the eligibility criteria. Both the issuer and the Bank of England undertake to keep confidential the issuer's participation in the CCFF (subject to disclosure required by law).
- **Evidence of signing authority:** The Bank of England requires that authorised signatories provide evidence of their authority to sign on behalf of the issuer. Because the Bank of England has very specific requirements in this regard and because an issuer's signatories are likely to be less available than normal due to Covid-19, issuers and their advisors should consider carefully the guidance provided by the Bank of England and confirm signing processes for documentation at an early stage.
- **Rating agency confirmations or evidence of equivalent financial health:** The Bank of England requires documentary evidence of an issuer's financial health, either from a credit rating agency or via another means (such as a commercial bank's internal model).
- **Legal opinion in relation to overseas guarantors:** The Bank of England requires a legal opinion in relation to the capacity and authority of an overseas guarantor to provide a guarantee (and has provided a pro forma for this on its website).

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CP Programme documentation

The ICMA Primary Market Handbook contains recommendations and certain standard documents in relation to CP Programmes. These are widely followed by market participants using a CP programme for conventional market issuance. They are available on the ICMA website.

The Bank of England's [CCFF webpage](#) contains links to the ICMA CP documentation. It also includes links to 'slimmed down, CCFF specific' versions of the ICMA dealer agreement and the global note. The 'slimmed down, CCFF specific' versions may be more appropriate for issuers establishing a CP Programme solely to access the CCFF.

- **Dealer agreement:** This document governs the relationship between the issuer (and any guarantor), the arranger and dealers. It typically includes appointment of dealers, selling restrictions, representations and warranties of the issuer, conditions precedent as well as covenants and an indemnity from the issuer. Market practice is still developing in relation to adaptations that should be made to these to reflect the CCFF, particularly in relation to additional representations from the issuer and additional confidentiality obligations of the dealer.
- **Issue and paying agency agreement:** This document governs the relationship between the issuer (and any guarantor) and the issue and paying agent. It typically provides for the appointment and removal of the issue and paying agent and includes payment mechanics, an indemnity from the issuer in favour of the issuer and paying agent and provisions for the issue and delivery of the commercial paper on each issue. Agent banks typically have their own preferred forms of these. Market practice continues to develop in relation to how these should be adapted to the CCFF.
- **Deed of covenant:** The deed of covenant gives CP holders direct rights of enforcement against the issuer should the issuer default on a payment.
- **Information memorandum:** An information memorandum based on the ICMA form (containing an overview of the programme, short-form disclosure related to the issuer's business and operations, selling restrictions and the forms of the notes to be issued with that contain the terms and conditions) is standard for CP Programmes aimed at conventional market issuance. An information memorandum is not required for CP Programmes established solely for the CCFF. Some issuers are choosing to produce very short-form 'information summaries' to assist other parties (and to qualify representations made in the dealer agreement). The Bank of England has added a form of 'information summary' to its website for this purpose.
- **Deed of guarantee:** This creates the guarantee by the guarantor of the obligations of the issuer under the CP in favour of the holders. A form of guarantee is on the Bank of England's website. The Bank of England has confirmed that if the guarantee is provided by an investment grade entity, no other companies are required to guarantee the CP whether or not they provide other corporate guarantees in relation to the issuer's other financing arrangements.
- **Global note:** The notes are word-processed documents based on the ICMA standard document representing in global form all the notes to be issued under the programme. For a CP Programme established solely for the CCFF, there is a simplified form of the ICMA document on the Bank of England's website allowing only for CCFF eligible securities (sterling denominated and discount issuance).
- **Legal opinions:** As noted above, a legal opinion is required by the Bank of England in relation to any overseas guarantor. Market practice has not settled as to whether additional legal opinions are required by the dealer for a CP Programme established solely for the CCFF and if so, who should provide them. Opinion requirements should be discussed at an early stage.
- **Board minutes:** Given the context of the CCFF and the financial shock that issuers are experiencing related to Covid-19, many issuers are considering (in conjunction with their legal advisors) their financial condition, ability to repay and directors' duties in more detail than they would usually.

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What about timing and costs?

A well-advised issuer can complete the entire process, including both the Bank of England eligibility application and the establishment of the CP Programme (either solely for the CCFF or also to allow for conventional market issuance), and be ready to issue CP for the CCFF in two to three weeks. The Bank of England eligibility application and the establishment of the CP Programme work streams can run concurrently. The Bank of England is also willing to engage in queries related to eligibility in advance of a formal application being made.

The key costs involved in establishing a CP Programme will be lawyers' fees (which may be reduced if there is only one set of lawyers) and the fees of the dealer, agent and any rating agency. These should be commensurate with work involved, reflect the cost of capital that the Bank of England provides under the CCFF and may compare favourably with the costs involved in alternative forms of finance such as a working capital facility.

Once issuer eligibility has been confirmed and the CP Programme has been established, issuance involves the following:

- The Bank of England must confirm an issuer's access to the CCFF and the maximum programme size. The Bank of England has not committed to a specific timetable for this, but our experience has been that the Bank of England makes this confirmation promptly and not more than a few days after receipt of the full documentation.
- If confirmation is received by 16:00, the issuer can access the CCFF the following day.
- The issuer accesses the CCFF by one of the authorised persons requesting an issue, specifying amount and tenor. This can be done by email or by phone to the dealer. This needs to be done before 10:00 in time for Bank of England opening window between 10:00 and 11:00.
- Between 10:00 and 11:00 the dealer confirms that the Bank of England will buy the CP (this day is 'T').
- Shortly after 11:00 on day T, the dealer will confirm the issuance to the issuer.
- Ideally on T but at any rate no later than T+1, the issuer must confirm the amount and tenor to the agent, by signing a confirmation. This needs to be signed by two of the authorised persons. The confirmation can be signed in counterpart (i.e. the two signatories sign on two separate copies of the confirmation).
- On T+2 the agent pays the issuer the funds and the issuer confirms receipt.

Confidentiality and market announcements

The confidentiality obligation of an issuer to the Bank of England in relation to its participation in the CCFF (under the issuer undertaking and confidentiality agreement) is subject to legal disclosure obligations. Having considered their obligations under the EU Market Abuse Regulation to disclose inside information, some issuers have concluded it necessary to put out RNS announcements confirming eligibility for the CCFF. Whether CCFF eligibility constitutes inside information can be a difficult question in current circumstances which issuers are advised to consider carefully in conjunction with their brokers and legal advisors.

While an inside information announcement is required by law, issuers should refrain from making other announcements confirming that they now have access to additional liquidity to re-assure bankers, shareholders, suppliers and staff without discussing this with the Bank of England in advance.

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Slaughter and May are a leading law firm in relation to the CCFF and related CP Programmes. Slaughter and May advised HM Treasury on the implementation of the CCFF scheme in coordination with the Bank of England. We are currently advising more than 50 companies on access to the CCFF.

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