BACKDOOR BAILOUTS: THE FEDERAL RESERVE'S NEW ROLE AS MARKET-MAKER-OF-ALL-RESORTS AND THE NEED FOR SECTION 13(3) REFORM

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I. INTRODUCTION

Monday, March 23, 2020, will be regarded as an overlooked day of infamy in the United States, when the Federal Reserve made an oath to support corporate America without limitation. Millions of Americans entered COVID-19 lockdowns across the United States on that very same Monday.[1] Daily updates on the pandemic captured the attention of the United States and the shelves of grocery stores soon became barren. Wall Street continued a downward spiral in anticipation of a looming financial crisis resulting from the imminent lockdowns.[2] As millions of Americans filed for unemployment,[3] the Federal Reserve invoked its emergency lending authority ("Section 13(3)")[4] and announced that it

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[1] *158 Million Americans Told to Stay Home, but Trump Pledges to Keep It Short*, N.Y. TIMES (Apr. 7, 2020), https://www.nytimes.com/2020/03/23/world/coronavirus-updates-usa-world.html.

[2] Thomas Franck, *Dow Briefly Wipes Out All the Gains Since Trump's Election*, CNBC (Mar. 23, 2020, 4:17 PM), https://www.cnbc.com/2020/03/23/dow-loses-all-gains-since-trumps-election-down-nearly-40percent.html.

[3] *Unemployment Insurance Weekly Claims*, U.S. DEP'T OF LAB. (Jan. 14, 2021, 08:30 AM), https://www.dol.gov/ui/data.pdf.

[4] 12 U.S.C. § 343(3). § 343(3) is the Federal Reserve's codified emergency lending authority but it is commonly referred to as Section 13(3), as these emergency lending authorities were originally granted in Section 13(3) of the Federal Reserve Act. See *infra* pt. II(C) for a historical recount of Section 13(3).

would support corporate credit markets by providing *unlimited*[5] quantitative easing[6] and directly purchasing corporate debt.[7]

Few Americans knew about the Federal Reserve's guarantee to support corporate bonds during the crisis, and even fewer criticized the action. One reason for this lack of criticism potentially derives from an external catalyst triggering the bailout, unlike the self-created Great Recession[8] involving the Lehman Brothers, AIG, and other financial institutions. When the Federal Reserve created secured credit facilities to prevent the collapse of the financial system in 2008, it drew mass criticism that ultimately led to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Dodd-Frank primarily focused on the two goals of promoting transparency in the financial system and ending bailouts.[9] Ultimately, Dodd-Frank proved counterproductive because its reforms expanded the eligibility for abusive Federal Reserve bailouts under Section 13(3).[10]

As a direct result of Dodd-Frank's failure to restrain the Federal Reserve's actions, the central bank bailed out *all* of corporate America in the wake of COVID-19. Under the Federal Reserve's emergency credit facilities declared in early 2020, the Federal Reserve now holds corporate debt of Apple, Coca-Cola, Walmart, Boeing, Berkshire Hathaway, and 798 other corporations.[11] Unlike the Emergency

[5] *Federal Reserve Announces Extensive New Measures to Support the Economy*, FED. RSRV. (Mar. 23, 2020, 8:00 AM), https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm [hereinafter *Extensive New Measures Announcement*] ("The Federal Open Market Committee (FOMC) will purchase Treasury securities and agency mortgage-backed securities *in the amounts needed* to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy.") (emphasis added).

[6] Quantitative easing is a monetary policy wherein the Federal Reserve initiates widespread purchases of U.S. government-backed assets, such as Treasury securities, to maintain an optimal target interest rate for stimulating the economy. Lowell R. Ricketts, *Quantitative Easing Explained*, FED. RSRV. BANK OF ST. LOUIS (Apr. 2011), https://files.stlouisfed.org/files/htdocs/pageone-economics/uploads/newsletter/2011/201104.pdf. This purchase of U.S. government-backed assets grants cash to financial institutions, which then increase the availability of loans and decrease the amount of credit risk realized in interest rates. Anna-Louise Jackson & Benjamin Curry, *Quantitative Easing Explained*, FORBES (Feb. 23, 2021, 10:07 AM), https://www.forbes.com/advisor/investing/quantitative-easing-qe/. The availability of cheap and plentiful debt, paired with the Federal Reserve's support, encourage consumers and investors to spur economic growth. *Id.*

[7] *Extensive New Measures Announcement*, *supra* note 5 ("Establishment of two facilities to support credit to large employers – the Primary Market Corporate Credit Facility (PMCCF) for new bond and loan issuance and the Secondary Market Corporate Credit Facility (SMCCF) to provide liquidity for outstanding corporate bonds.").

[8] *See generally* Eric Rauchway, *The 2008 Crash: What Happened To All That Money?*, HISTORY (Jan. 20, 2021), https://www.history.com/news/2008-financial-crisis-causes.

[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1375, 1376 (2010) (codified at 12 U.S.C. §§ 5301–5452).

[10] 12 U.S.C. § 343(3)(A).

[11] *Composition of the SMCCF Broad Market Index*, FED. RSRV. BANK OF N.Y., https://www.

Economic Stabilization Act of 2008 or the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") of 2020, no elected officials bear direct accountability for the Federal Reserve's sponsorship of corporate America. As a result, America's corporate giants made off with trillions.[12]

This Article does not assert that economic recessions are positive or that federal aid for struggling businesses is undue. Rather, this Article examines the laws empowering the Federal Reserve to bail out large corporations with zero accountability to the public, identifies the pressing issues inherent to the Federal Reserve's actions, and discusses possible remedies for the failure of Dodd-Frank. Congress should act immediately to rectify Section 13(3) and expressly preclude the Federal Reserve from assuming the role of "market-maker-of-last-resort."[13]

Part II of this Article discusses the history of the Federal Reserve and its surrounding legislation. A historical recount of the Federal Reserve and its stated goals and powers is necessary for understanding how the central bank's recent actions have been enabled. Part III addresses the traditional concept of central banks as lenders-of-last-resort, and the Federal Reserve's new ad hoc role as market-maker-of-last-resort. Part IV provides a brief discussion of the Federal Reserve's actions concerning the COVID-19 pandemic. Part V identifies the issues inherent to the Federal Reserve's action taken in financial markets and why central banks are not suited for the role of market-maker-of-last-resort. Finally, Part VI provides potential remedies for Congress to investigate.

II. HISTORY OF THE FEDERAL RESERVE

A. The Formation and Development of the Federal Reserve

The concept of a central bank in the United States originated at the nation's founding. Shortly after America's victory in the Revolutionary War, the nation suffered from credit issues and a lack of a central currency.[14] In 1789, Secretary of the Treasury Alexander Hamilton made the first push for central banking in the United States in response to

newyorkfed.org/markets/secondary-market-corporate-credit-facility/secondary-market-corporate-credit-facility-broad-market-index (last visited Sep. 3, 2021) (Secondary Market Corporate Credit Facility holdings are found in Microsoft Excel sheets in the link.).

[12] *Credit and Liquidity Programs and the Balance Sheet*, FED. RSRV., https://www.federalreserve.gov/monetarypolicy/bst_recenttrends.htm (last visited Sep. 3, 2021). Since January 1, 2020, the Federal Reserve's balance sheet has increased by $3.16 trillion. *Id.*

[13] See *infra* pt. III.B for a comprehensive description of "market-maker-of-last-resort."

[14] *What Is the Fed: History*, FED. RSRV. BANK OF S. F., https://www.frbsf.org/education/teacher-resources/what-is-the-fed/history/ (last visited Sep. 3, 2021).

these problems.[15] Thomas Jefferson, the Secretary of State, opposed Hamilton's proposal for a central bank because the Constitution did not empower the federal government to organize a national bank or issue a central currency.[16] Hamilton and the Federalist Party ultimately prevailed, and the First Bank of the United States was created in 1791.[17] The First Bank of the United States was short lived, as legislation to recharter the bank failed in 1811.[18] Congress chartered the Second Bank of the United States in 1816.[19] In *M'Culloch v. Maryland*, the United States Supreme Court unanimously held that "Congress has power to incorporate a [central] Bank" and solidified the constitutionality of a federal central bank.[20] President Andrew Jackson vetoed the recharter of the Second Bank of the United States in 1836, leading to its demise.[21]

The next twenty-five years of decentralized banking are known as the Free Banking Era.[22] Nearly 8,000 state-chartered banks issued their own paper notes.[23] This era ended abruptly when the American Civil War erupted. Aiming to provide ample financing during the American Civil War, Congress passed the National Banking Acts of 1863 and 1864.[24] This legislation declared a uniform national currency, issued only by nationally-chartered banks.[25] The National Bank Act unified currency in the United States, but a defined central banking structure remained absent.[26]

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *History of the Federal Reserve*, FED. RSRV. EDUC., https://www.federalreserveeducation.org/about-the-fed/history (last visited Sep. 3, 2021).

[19] *Id.*

[20] 17 U.S. 316, 316 (1819). Chief Justice John Marshall authored the *M'Culloch* opinion, which found the Second Bank of the United States to be constitutional pursuant to the Necessary and Proper Clause. *Id.*; U.S. CONST. art. I, § 8. The Court opined that "banks, dispersed throughout the country, are appropriate means of carrying into execution [enumerated powers]" such as levying taxes, regulating commerce, raising and supporting armed forces, and carrying on war. *M'Culloch*, 17 U.S. at 354.

[21] *What Is the Fed: History*, *supra* note 14 (noting that President Jackson vetoed the recharter on grounds of unconstitutionality despite the United States Supreme Court ruling in *M'Culloch*).

[22] *Id.*

[23] *Id.* Due to the decentralization of banking, it was difficult "for customers to exchange their notes for gold or silver." *Id.*

[24] *History of the Federal Reserve*, *supra* note 18. State bank notes remained popular, as the centralized national currency had not yet taken root. *Id.* State banks remained subject to federal taxation despite the difference in notes. *Id. See also* University of Groningen, *National Banking Acts of 1863 and 1864*, AMERICAN HIST., http://www.let.rug.nl/usa/essays/general/a-brief-history-of-central-banking/national-banking-acts-of-1863-and-1864.php (last visited Sep. 3, 2021).

[25] *History of the Federal Reserve*, *supra* note 18.

[26] *Id.* The National Bank Act of 1864 imposed an annual 2% duty tax on existing state notes outstanding, effectively forcing state notes to convert to the United States Dollar. National Bank Act, Pub. L. No. 38-106, § 41, 13 Stat. 99, 111 (1864) (codified at 12 U.S.C. § 38).

Following the Reconstruction Period and industrialization of the United States, "bank runs"[27] began to occur regularly. Financial panic reached a critical point in 1907, when a series of bank runs plagued the financial industry.[28] John Pierpont Morgan Sr. (J.P. Morgan) utilized his own wealth as emergency loan money for insolvent banks.[29] After J.P. Morgan cured the sudden demand for cash, the necessity of a central bank became a point of national debate.[30] Soon after, President Woodrow Wilson signed the Federal Reserve Act of 1913[31] ("Federal Reserve Act") into law, establishing the modern Federal Reserve System[32] of the United States.

Congress legislated several critical acts to improve upon the Federal Reserve Act since the Federal Reserve system was established.[33] The Federal Reserve has been tasked with numerous responsibilities, with perhaps the most important responsibility being the implementation of a nationwide monetary policy.[34] Such policies originated in the Employment Act of 1946 and called for the federal government's monetary policy to provide "conditions under which there will be afforded useful employment . . . for those able, willing, and seeking to work, and to promote maximum employment, production,

[27] *Run on the bank*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/run%20on%20the%20bank#:~:text=%3A%20an%20occurrence%20when%20a%20lot,that%20the%20bank%20will%20fail (last visited Sep. 3, 2021) (defining a bank run as "an occurrence when a lot of people take their money out of a bank because they are afraid that the bank will fail"). A bank run happens when a bank does not keep an adequate amount of cash on hand to match customer withdrawals in times of financial turbulence. *What Is the Fed: History*, *supra* note 14. When one bank ran out of cash on hand to distribute to its customers, a resulting chain effect would cause customers to immediately withdraw their money from surrounding banks, causing a liquidity crisis, and often insolvency in financial institutions. *Id.*

[28] Fed. Rsrv. Bank of St. Louis, *The Fed in Five: A History of the Federal Reserve*, YOUTUBE, at 01:10–01:30 (Sept. 2, 2020), https://www.youtube.com/watch?v=M7nj2X-yl_U (explaining a series of bank runs caused by the bankruptcy of the Knickerbocker Trust Company).

[29] *J.P. Morgan*, ENCYC. BRITANNICA, https://www.britannica.com/biography/J-P-Morgan (last visited Sep. 3, 2021) (discussing J.P. Morgan's leadership role in saving the American financial industry). J.P. Morgan is commonly known as the founder of the modern investment bank JPMorgan Chase & Co. *Id.*

[30] *History of the Federal Reserve*, *supra* note 18 (discussing the growing consensus that a healthier banking system was needed despite political division).

[31] Federal Reserve Act of 1913, Pub. L. No. 63–43, 38 Stat. 251 (codified at 12 U.S.C. § 226).

[32] The structure of the Federal Reserve System is discussed *infra* pt. II.B.

[33] Aaron Steelman, *The Federal Reserve's "Dual Mandate": The Evolution of an Idea*, FED. RSRV. BANK OF RICHMOND (Dec. 2011), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2011/pdf/eb_11-12.pdf (providing a detailed account of amendments to the Federal Reserve Act).

[34] 12 U.S.C. § 225a (2018) (emphasis added) (providing that "[t]he Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively *the goals of maximum employment, stable prices, and moderate long-term interest rates*").

and purchasing power."[35] The Federal Reserve Reform Act of 1977 expanded on these principles by tasking the Federal Reserve with its explicit modern goals of promoting "maximum employment, stable prices, and moderate long-term interest rates."[36] These goals have become known as the "dual mandate,"[37] as the mission of long-term interest rates is often viewed as part of the stable prices objective. To effectuate this dual mandate, Congress granted the Federal Reserve broad powers.[38]

Perhaps the Federal Reserve's most powerful tool granted by Congress is Section 13(3). In the wake of the Great Depression, Congress added Section 13(3) emergency lending authorities through the Emergency Relief and Construction Act of 1932.[39] This emergency provision enabled the Federal Reserve to lend financial notes "[i]n unusual and exigent circumstances" to "any individual, partnership, or corporation."[40] With the Great Depression fresh in the collective mind of Congress, Section 13(3) was quickly passed to give private entities a public backstop in situations of extreme financial volatility.

B. The Federal Reserve System

The Federal Reserve System is a unique entity due to its quasi-independence and public and private ownership.[41] The Federal Reserve System is comprised of twelve geographically divided Federal Reserve Banks[42] (collectively referred to as "the Federal Reserve"), each of which

[35] Employment Act of 1946, Pub. L. No. 79-304, § 2, 60 Stat. 23, 23 (codified at 15 U.S.C. § 1021–1024).

[36] Federal Reserve Reform Act of 1977, Pub. L. No. 95-188, sec. 202, § 2A, 91 Stat. 1387, 1387 (codified at 12 U.S.C. § 225a).

[37] Steelman, *supra* note 33.

[38] *See generally Expansionary and Contractionary Policy*, FED. RSRV. BANK OF ST. LOUIS, https://www.stlouisfed.org/in-plain-english/expansionary-and-contractionary-policy#:~:text=The%20Fed%20can%20use%20four,operations%2C%20and%20interest%20on%20reserves (last visited Sep. 3, 2021) (discussing the Federal Reserve's ability to implement monetary policy via the discount rate, reserve requirements, open market operations, and interest on reserves).

[39] Emergency Relief and Construction Act of 1932, Pub. L. No. 72-302, § 210, 47 Stat. 709.

[40] *Id.*

[41] *What Does It Mean that the Federal Reserve Is "Independent Within the Government"?*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/faqs/about_12799.htm (last visited Sep. 3, 2021). While the Federal Reserve is an independent Article I government agency, it receives no funding from the federal government; rather, it is self-funded through interest acquired on government issued securities. *Id.* By design, the Federal Reserve was built to withstand political pressure and independently strive to meet its objectives delegated by Congress. *Id.*

[42] *Federal Reserve Banks*, BD. OF GOVERNORS OF THE FED. RSRV., https://www.federalreserve.gov/aboutthefed/federal-reserve-system.htm (last visited Sep. 3, 2020) (identifying the twelve Federal Reserve Bank locations in Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco).

is run by a local bank president. The Federal Reserve serves "banks, the U.S. Treasury, and, indirectly, the public."[43] All privately-owned and nationally-chartered banks are required to become a "member bank"[44] of the Federal Reserve System. Each private-member bank must purchase the equivalent of 3% of its own capital in Federal Reserve System "stock."[45] As such, the Federal Reserve System provides a "bank of banks" for the federal government and private national banks.

The executive leadership of the Federal Reserve System is comprised of the Board of Governors ("Board").[46] The Board is comprised of seven governors who serve fourteen-year terms after appointment by the President and confirmation by the Senate.[47] While the Board is responsible for various functions, the most important is its power over the Federal Open Market Committee ("FOMC").[48] The Board bears the exclusive authority to exercise Section 13(3) emergency lending in the event of an economic crisis.[49]

C. The Great Recession and Dodd-Frank's Attempt at Reforming Section 13(3)

After enaction in 1932, Section 13(3) remained dormant[50] until the Great Recession.[51] Before Dodd-Frank, Section 13(3) provided the Federal Reserve with a unique tool: the ability to lend emergency money

[43] *The Structure and Functions of the Federal Reserve System*, FED. RSRV. EDUC., https://www.federalreserveeducation.org/about-the-fed/structure-and-functions#:~:text=The%20Reserve%20Banks%20serve%20banksand%2C%20indirectly%2C%20the%20public.&text=As%20the%20bank%20for%20the,cash%20management%20and%20investment%20activities (last visited Sep. 3, 2021).

[44] 12 U.S.C. § 222 (providing that "[e]very national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this chapter and shall thereupon be an insured bank under the Federal Deposit Insurance Act . . . ").

[45] *The Structure and Functions of the Federal Reserve System*, *supra* note 43.

[46] 12 U.S.C. § 241.

[47] *Id.*

[48] 12 U.S.C. § 263(a). A majority vote to engage in open-market operations requires seven Board members, but the five other votes on the FOMC come from Federal Reserve Bank presidents elected annually. *Id.* No independent Federal Reserve Bank "shall engage or decline to engage in open-market operations" unless in accordance with the FOMC. *Id.* § 263(b).

[49] 12 U.S.C. § 343(3)(A).

[50] Some scholars suggest that Section 13(3) was nearly deployed on multiple occasions. Christian A. Johnson, *From Fire Hose to Garden Hose: Section 13(3) of the Federal Reserve Act*, 50 LOY. U. CHI. L.J. 715, 728 (2019). Such near-use incidents include: "the Penn Central failure, the financial difficulties of New York City in 1975, the Crash of 1987, the Y2K problems, and the airline industry problems after 9/11." *Id.* (footnotes omitted).

[51] For a recount of the Federal Reserve's emergency lending powers, see generally Evan A. Johnson, *Revisions to the Federal Reserve's Emergency Lending Rules*, 35 REV. BANKING & FIN. L. 530 (2016).

to "any individual, partnership, or corporation"[52] designated a non-depository institution,[53] provided the debtor met specific requirements.[54]

When the housing bubble burst in 2008 and financial instruments such as mortgage-backed securities ("MBSs"),[55] credit default swaps ("CDSs"),[56] and collateral debt obligations ("CDOs")[57] collapsed, the credit market dried up. Multiple major investment banks and government-established corporations were on the brink of collapse when the Federal Reserve intervened. The Board exercised Section 13(3), providing an emergency loan lifeline to AIG, Bear Stearns,[58]

[52] Before Dodd-Frank's reform, the full text of the statute read:

> In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 357 of this title, to discount for *any individual, partnership, or corporation*, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank: *Provided*, That before discounting any such note, draft, or bill of exchange for an individual or a partnership or corporation the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All such discounts for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

12 U.S.C. § 343(3)(A) (2006) (amended 2010) (emphasis added).

[53] *Non-Depository Financial Institution*, LAW DICTIONARY, https://thelawdictionary.org/non-depository-financial-institution/ (last visited Sep. 3, 2021) (defining a non-depository financial institution as "an intermediary organization . . . that facilitates transactions between the savers and borrowers").

[54] Such requirements included: (1) unusual and exigent circumstances, (2) the debtor's inability to secure adequate credit accommodations elsewhere, and (3) the necessity of the Federal Reserve's assistance in preventing, correcting, or mitigating serious harm to the economy or financial stability. 12 U.S.C. § 343(3)(A) (2006) (amended 2010).

[55] *Mortgage-Backed Securities*, FINRA, https://www.finra.org/investors/learn-to-invest/types-investments/bonds/types-of-bonds/mortgage-backed-securities (last visited Sep. 3, 2021) (defining mortgage-backed securities as "bonds secured by home and other real estate loans . . . [typically] issued or guaranteed by an agency of the U.S. government").

[56] *Credit Default Swaps*, PIMCO, https://www.pimco.com/en-us/resources/education/understanding-credit-default-swaps/ (last visited Sep. 3, 2021) (defining credit default swaps as credit derivatives that "provid[e] the buyer with protection against specific risks").

[57] *Collateralized Debt Obligation (CDO)*, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/knowledge/trading-investing/collateralized-debt-obligation-cdo/ (last visited Sep. 3, 2021) (defining collateralized debt obligations as a "product that represents different loans bundled together and sold by the lender in the market").

[58] In the bailout of Bear Stearns, the FOMC found that "(1) unusual and exigent circumstances existed; (2) Bear Stearns, and possibly other primary securities dealers, were unable to secure adequate credit accommodations elsewhere; (3) [Federal Reserve] action was necessary to prevent, correct, or mitigate serious harm to the economy or financial stability." *Minutes of the Board of Governors of the Federal Reserve System*, FED. RSRV. SYS. (Mar. 14, 2008, 9:15 AM), https://www.federalreserve.gov/newsevents/pressreleases/files/other20080627a1.pdf.

Citigroup, and Bank of America—the four firms that the Federal Reserve deemed "too big to fail."[59]

While the Federal Reserve's emergency loan bailout to these entities received mass political backlash, the exercise of Section 13(3) is now seen as a widespread success.[60] The macroeconomy ultimately recovered from the crisis, retrospectively adding credibility to the Federal Reserve's unprecedented actions. However, a commonplace view in the United States at that time was that irresponsible bankers on Wall Street nearly collapsed the economy—and got bailed out anyway.[61] Because of this sentiment, Congress was set on legislating reform for Wall Street.

The legislation that ultimately came to fruition was Dodd-Frank in 2010.[62] The preamble of Dodd-Frank describes the act: "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."[63] Section 13(3) received substantial changes:

> In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d) of this ACT [12 USCS § 357], to discount for *any participant in any program or facility with broad-based eligibility* . . . [.] *Provided,* [t]hat before discounting any such note, draft, or bill of exchange, the Federal reserve bank shall obtain evidence that such participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All

[59] *Statement by Ben S. Bernanke Before the Financial Crisis Inquiry Commission*, FED. RSRV. SYS. 20 (Sept. 2, 2010, 9:00 AM), https://www.federalreserve.gov/newsevents/testimony/files/bernanke20100902a.pdf. Former Federal Reserve Chairman Ben Bernanke defined institutions deemed too big to fail as "one whose size, complexity, interconnectedness, and critical functions are such that, should the firm go unexpectedly into liquidation, the rest of the financial system and the economy would face severe adverse consequences." *Id.*

[60] In fact, Federal Reserve Chairman Ben Bernanke was named the Time "Person of the Year" for 2009. Michael Grunwald, *Person of the Year 2009*, TIME (Dec. 16, 2009), http://content.time.com/time/specials/packages/article/0,28804,1946375_1947251_1947520,00.html.

[61] *The Financial Crisis Inquiry Report*, FIN. CRISIS INQUIRY COMM'N (Jan. 2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[62] *Wall Street Reform: The Dodd-Frank Act*, WHITE HOUSE ARCHIVES, https://obamawhitehouse.archives.gov/economy/middle-class/dodd-frank-wall-street-reform (last visited Sep. 3, 2021).

[63] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1375, 1376 (2010) (codified at 12 U.S.C. §§ 5301–5452).

> such discounts for any participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.[64]

Effectively, Dodd-Frank restricted the Federal Reserve's ability to come to the aid of a specific entity,[65] such as Bear Stearns, making such aid available to an entity only if it is part of a "program or facility with broad-based eligibility."[66] The Federal Reserve also now requires approval from the Secretary of the Treasury before invoking Section 13(3) to implement emergency funding.[67] These changes have not limited the Federal Reserve's Section 13(3) power, or ended "too big to fail" as hoped. Rather, the Federal Reserve cannot help *anyone* unless it helps *everyone*, obligating the central bank to depart from its purpose of "lender-of-last-resort" to assume the ad hoc role of "market-maker-of-last resort."

III. THE FEDERAL RESERVE AS LENDER-OF-LAST-RESORT AND NOW, MARKET-MAKER-OF-LAST-RESORT

A. The Role of Lender-of-Last-Resort

The function of lender-of-last-resort[68] is a "bedrock function of central banks."[69] The role of lender-of-last-resort enables a central bank to "lend early and freely (i.e. without limit) to solvent firms, against good collateral, and at 'high [interest] rates.'"[70] Such requirements safeguard against the debtor institution taking advantage of a public backstop,

[64] 12 U.S.C. 343(3)(A) (reflecting the changes made by Dodd-Frank) (emphasis added).

[65] *Id.* § 343(3)(B)(iii) (providing that "[a] program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, *shall not* be considered a program or facility with broad-based eligibility") (emphasis added).

[66] *Id.* §343(3)(A).

[67] *Id.* §. 343(3)(B)(iv).

[68] Sir Francis Baring, a prominent English merchant and banker, coined the term "lender-of-last-resort" in his book *Observations on the Establishment of the Bank of England* (1797). Thomas M. Humphrey, *Lender of Last Resort: The Concept in History*, 75 RICHMOND ECON. REV. 8, 8 (1989), https://www.richmondfed.org/~/media/richmondfedorg/publications/research/economic_review/1989/pdf/er750202.pdf.

[69] Colleen Baker, *The Federal Reserve as Last Resort*, 46 U. MICH. L.J. REFORM 69, 85 (2012).

[70] Paul Tucker, Deputy Governor for Fin. Stability, Bank of Eng., The Repertoire of Official Sector Interventions in the Financial System: Last Resort Lending, Market-Making, and Capital, at the Bank of Japan 2009 International Conference, Tokyo (May 28, 2009) (transcript available at https://www.bankofengland.co.uk/-/media/boe/files/speech/2009/last-resort-lending-market-making-and-capital.pdf).

ensure that the debtor is in fact illiquid, and minimize moral hazard.[71] During a financial crisis, when loans are needed on short notice, private banks are at risk of illiquidity.[72] However, central banks acting as lenders-of-last-resort can ensure that emergency liquidity is available for solvent, but illiquid, organizations.[73]

Central banks acting as lender-of-last-resort are, in essence, the "banks of banks."[74] When private banks require more liquidity to provide loans to their customers in the ordinary course of business, private banks lend money to each other at the cost of the overnight lending rate.[75] This overnight lending rate is remarkably important to the broader credit market;[76] in liquidity crises, the overnight lending rate will naturally increase due to a lack of credit supply and heightened demand. The overnight lending rate increase leads to heightened interest rate loans for bank customers.[77] To prevent the interbank-overnight-lending rate from skyrocketing in liquidity shortages, a lender-of-last-resort central bank creates bank reserves[78] to meet liquidity requirements; hence the common nickname, lender-of-last-resort.

The Federal Reserve traditionally fulfills its obligation of implementing monetary policy— "the goals of maximum employment, stable prices, and moderate long-term interest rates"[79]—through its open market operations[80] and discount window powers.[81] By utilizing

[71] Baker, *supra* note 69, at 85.

[72] *Id.*

[73] Tucker, *supra* note 70.

[74] Ben Felix, *Understanding the Fed's "Money Printer" (QE, the Stock Market, and Inflation)*, YOUTUBE at 06:30–06:40 (July 31, 2020), https://youtu.be/K3lP3BhvnSo (explaining how a central bank serves as a backstop to the banking system by creating bank reserves).

[75] The overnight lending rate is "a measure of wholesale, unsecured, overnight bank funding costs." *Overnight Bank Funding Rate Data*, FED. RSRV. BANK OF N.Y., https://apps.newyorkfed.org/markets/autorates/obfr (last visited Sep. 3, 2021).

[76] "The overnight rate is one of the most important macroeconomic variables. Changes in the overnight lending rate may also influence other macroeconomic factors, including the unemployment rate, inflation, and economic growth rate." *What is the Overnight Rate?*, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/knowledge/finance/overnight-rate/ (last visited Sep. 3, 2021).

[77] *Id.*

[78] "Bank reserves are the minimum cash reserves that financial institutions must keep in their vaults at any given time . . . to ensure that major financial institutions possess enough liquidity for withdrawals and obligations and for withstanding the impact of unforeseen market conditions." *What are Bank Reserves?*, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/knowledge/finance/bank-reserves/ (last visited Sep. 3, 2021). In the event financial institutions cannot meet the reserve requirement, they often borrow reserve money from other financial institutions at the overnight rate. *Id.*

[79] 12 U.S.C. § 225a.

[80] 12 U.S.C. § 353.

[81] 12 U.S.C. § 347b.

the powers of open-market operations and the discount window, the Federal Reserve can quickly align the overnight rate to the Federal Funds Rate set by the FOMC.[82] The Federal Funds Rate is the target rate set by the FOMC to implement monetary policy in the broader credit market.[83] The Federal Reserve routinely uses these traditional lender-of-last-resort mechanisms to effectuate a desired change in the overnight lending rate and, ultimately, the availability of credit to businesses.[84]

B. The Role Market-Maker-of-Last-Resort

Under Dodd-Frank's amendment to Section 13(3), the Federal Reserve has deviated from its role as lender-of-last-resort and has become "market maker of last resort,"[85] if it had not already done so during the Great Recession. Market-makers-of-last-resort interact with the market through "outright purchases and sales of a wide range of private sector securities" and accept "illiquid private securities as collateral for repos and at the discount window."[86] The most definitive steps in shaping the Federal Reserve into a market-maker-of-last-resort are Dodd-Frank's changes to Section 13(3) and the recent resulting declaration of unlimited quantitative easing.

Quantitative easing is akin to the Federal Reserve's daily open-market operations because, at their core, they are both examples of asset-swaps; however, they are inherently different in composition and volume. Open-market operations are a swap of bank reserve notes for assets on a given member bank's balance sheet.[87] This produces a neutral impact on the banking system's balance sheet but alters the composition of assets, thereby allowing the Federal Reserve to influence

[82] Koshy Mathai, *Monetary Policy: Stabilizing Prices and Output*, INT'L MONETARY FUND (Feb. 24, 2020), https://www.imf.org/external/pubs/ft/fandd/basics/monpol.htm (explaining that central banks can decrease the overnight rate by increasing money supply through purchasing securities or raise the overnight rate by soaking up bank reserves).

[83] *Open Market Operations*, FED. RSRV. SYS. (July 28, 2021), https://www.federalreserve.gov/monetarypolicy/openmarket.htm (discussing how the FOMC utilizes open market operations to align the overnight rate to the Federal Funds Rate).

[84] *Id.; see What are Bank Reserves?*, *supra* note 78.

[85] "Market-maker-of-last-resort" is a term coined by Willem Buiter and Anne Siebert, though other scholars have given the concept similar names. Willem Buiter & Anne Siebert, *The Central Bank as the Market Maker of Last Resort: From Lender of Last Resort to Market Maker of Last Resort*, VOX EU (Aug. 13, 2007), https://voxeu.org/article/subprime-crisis-what-central-bankers-should-do-and-why.

[86] *Id.*

[87] Felix, *supra* note 74, at 07:50–08:10 (explaining how central banks utilize open market operations).

the overnight rate.[88] Quantitative easing operates by the same principle; quantitative easing "affects the economy through changes in interest rates on long-term Treasury securities and other financial instruments (e.g., corporate bonds). . . . [via] *large-scale* asset purchases."[89] Several prominent theories support the contention that quantitative easing has a strong impact on markets.

Under the portfolio balance theory,[90] quantitative easing lowers long-term interest rates by increasing the money supply,[91] resulting in a friendlier credit-borrowing climate for consumers.[92] Signaling theory provides that where an insider (the Federal Reserve) gains access to useful knowledge unavailable to outsiders (investors), action taken by the insider signals to outsiders that they "stand to gain . . . from making decisions based on information obtained from these signals."[93] This theory suggests that the Federal Reserve's decision to launch large-scale quantitative easing programs sends a positive message to investors that the central bank will further "accommodate monetary policy in the future."[94] Perhaps the most well known hypothesis further supporting the success of quantitative easing is the efficient-market hypothesis. It states that "security prices fully reflect all available information."[95] In the case of quantitative easing, a market fully prices the continued support of the Federal Reserve. These theories demonstrate the importance of the Federal Reserve's commitment to quantitative easing.

While the Federal Reserve has always been able to purchase securities on the open market via its open-market operations, Dodd-Frank enabled the Federal Reserve to fully fill the shoes of a market-maker-of-last-resort by requiring Section 13(3) emergency lending to be used only in programs with "broad-based eligibility."[96] This forces the Federal Reserve to outright purchase private sector securities through

[88] *Id.* "After the transaction, the central bank has a liability, the bank reserves that [have been] created out of thin air, and an asset, the short-term government securities that they purchased from the private bank. The private bank has sold . . . short term [government] securities and gained bank reserves. The net amount of their financial assets has not changed." *Id.*

[89] Ricketts, *supra* note 6, at 1 (emphasis supplied).

[90] James Tobin, *A General Equilibrium Approach to Monetary Theory*, 1 J. MONEY, CREDIT & BANKING 15, 26–29 (1969).

[91] *See id.* at 21–23 (demonstrating the inverse relation between money supply and interest rates on the LM curve).

[92] Felix, *supra* note 74, at 10:30–10:55.

[93] Brian L. Connelly et al., *Signaling Theory: A Review and Assessment*, 37 J. MGMT. 39, 44–45 (2011) (available at https://www.researchgate.net/publication/254121372_Signaling_Theory_A_Review_and_Assessment).

[94] Felix, *supra* note 74, at 10:55–11:10.

[95] Eugene F. Fama, *Efficient Capital Markets: II*, 46 J. FIN. 1575, 1575 (1991) (available at https://onlinelibrary.wiley.com/doi/full/10.1111/j.1540-6261.1991.tb04636.x).

[96] 12 U.S.C. 343(3)(A).

quantitative easing and fully assume the role of market-maker-of-last-resort.[97] Dodd-Frank's patchwork may have aimed to cure the too-big-to-fail problem, but it substantially affected how the Federal Reserve responded to the COVID-19 liquidity crisis in unintended ways.

IV. THE COVID-19 LIQUIDITY CRISIS

COVID-19 took the world by surprise in early 2020. The rapid spread of the virus caused the entire world to act on a scale never seen before. Financial markets tumbled as international travel came to a grinding halt and nations entered lockdowns.[98] Central banks took immediate action, with the Federal Reserve and European Central Bank leading the charge.[99]

The Federal Reserve invoked Section 13(3) and opened six lending facilities to relieve pressure on distressed financial markets: Commercial Paper Funding Facility ("CPFF"), Primary Dealer Credit Facility ("PDCF"), Money Market Fund Liquidity Facility ("MMLF"), Primary Market Corporate Credit Facility ("PMCCF"), Secondary Market Corporate Credit Facility ("SMCCF"), and Term Asset-Backed Securities Loan Facility ("TALF").[100] While the CPFF, PDCF, and TALF facilities are "very similar" to those created in 2008, the PMCCF and SMCCF[101] are "unlike any 2008 facilities."[102]

[97] Dodd-Frank's amendment to Section 13(3) backs the Federal Reserve into a corner—either fill the role of market-maker-of-last-resort or fail to serve as a public backstop. As evidenced by the PMCCF and SMCCF, the Federal Reserve is both outright purchasing "a wide range of private sector securities" and accepting "a wide range of private sector securities as collateral in repos," as prescribed by the originators of the market-maker-of-last-resort concept. Buiter & Siebert, *supra* note 85.

[98] *See* Franck, *supra* note 2 (noting a nearly 40% loss in the Dow Jones equity market since the beginning of 2020, completely shedding gains made over the last three years).

[99] *See ECB Announces €750 Billion Pandemic Emergency Purchase Programme (PEPP)*, EUROPEAN CENT. BANK (Mar. 18, 2020), https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318_1~3949d6f266.en.html; *Extensive New Measures Announcement*, *supra* note 5.

[100] *Extensive New Measures Announcement*, *supra* note 5.

[101] Corporate credit facilities created by Section 13(3), like the PMCCF and SMCCF, are limited liability companies owned by the Federal Reserve but operated by private organizations. *Investment Management Agreement (Primary Market Corporate Credit Facility)*, FED. RSRV. BANK OF N.Y. 1 (Jan. 6, 2021), https://www.newyorkfed.org/medialibrary/media/markets/pmccf/PMCCF-Investment-Management-Agreement [hereinafter *PMCCF Agreement*]; *Investment Management Agreement (Secondary Market Corporate Credit Facility)*, FED. RSRV. BANK OF N.Y. 1 (June 2, 2021), https://www.newyorkfed.org/medialibrary/media/markets/SMCCF_Investment_Management_Agreement.pdf [hereinafter *SMCCF Agreement*].

[102] MARC LABONTE, CONG. RSCH. SERV., R44185, FED. RSRV.: EMERGENCY LENDING 9 (2020), https://fas.org/sgp/crs/misc/R44185.pdf ("The potential size of these programs is generally limited only by participants' pre-crisis borrowing patterns; the Fed has virtually unlimited ability to fund them. The risk posed to the Fed (and ultimately, the taxpayer) through these facilities is hard to quantify given the uncertainty surrounding COVID-19, but risk is mitigated because the credit is collateralized, and borrowers must qualify based on terms such as credit ratings.").

The PMCCF and SMCCF were created to support corporate bond markets. The PMCCF was created for "new bond and loan issuance[s]"[103] on the primary market,[104] whereas the SMCCF "provide[s] liquidity for *outstanding* corporate bonds"[105] on secondary markets.[106] The Federal Reserve Bank of New York appointed BlackRock Financial Management, Inc. ("BlackRock"), one of the world's largest asset managers, as the manager of two special-purpose vehicles ("SPVs").[107] Through the SPVs, BlackRock manages the Federal Reserve's lent emergency money and implements corporate-credit lending at a mass scale on the market.[108]

The PMCCF and SMCCF are "designed to achieve" multiple goals, including "support[ing] primary [credit] issuance[s] for solvent borrowers,"[109] "provid[ing] broad support for secondary credit markets," and "reduc[ing] the incidence and severity of market dysfunction."[110] To meet these goals, BlackRock may invest emergency money into individual corporate bonds or broader corporate credit exchange traded funds ("ETFs").[111] Upon further examination, the companies eligible to receive the benefit of these broad-based corporate credit facilities likely do not require the Federal Reserve's assistance.

[103] *Extensive New Measures Announcement*, *supra* note 5.

[104] Primary markets are those "in which newly issued securities are sold." *Primary Market*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/legal/primary%20market (last visited Sep. 3, 2021).

[105] *Extensive New Measures Announcement*, *supra* note 5 (emphasis added).

[106] Secondary markets are those "in which previously issued securities are sold," or where existing securities are bought or sold. *Secondary Market*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/legal/secondary%20market (last visited Sep. 3, 2021).

[107] *PMCCF Agreement*, *supra* note 101, at 1; LABONTE, *supra* note 102, at 24. "[T]he Fed structure[s] many of its transactions under Section 13(3) as loans to an LLC or SPV that it created and control[s]. [The Fed] d[oes] so to comply with the Section 13(3) requirement that assistance take the form of a loan." *Id.*

[108] *PMCCF Agreement*, *supra* note 101, at 41 (explaining that BlackRock will implement the Federal Reserve's goals by purchasing eligible corporate bonds and participating in loan syndications).

[109] *Id.*

[110] *SMCCF Agreement*, *supra* note 101, at 41. The SMCCF Agreement also entails other objectives:

> (1) to provide broad support for secondary credit markets to facilitate orderly and timely risk transfer; (2) to support primary issuance for solvent borrowers at borrowing rates that are well aligned with the secondary market reflecting more normalized levels; and (3) to reduce the incidence and severity of market dysfunction, fire sales, and indiscriminate liquidation.

Id.

[111] An ETF is "a type of exchange-traded investment" that "combine[s] features of a mutual fund, which can be purchased or redeemed at the end of each trading day at its [net asset value] per share." *Investor Bulletin: Exchange-Traded Funds (ETFs)*, SEC. & EXCH. COMM'N 1, 1–2 (Aug. 2012), https://www.sec.gov/investor/alerts/etfs.pdf; Cezary Podkul & Dawn Lim, *Exchange—BlackRock Makes Hay Helping Fed*, WALL ST. J., Sept. 19, 2020, at B1.

The PMCCF and SMCCF term sheets provide the definitions of eligible bonds,[112] ETFs,[113] and issuers for each credit facility. Eligible issuers receiving the benefit of direct corporate bond purchases from the Federal Reserve must hold a rating of "at least BBB-/Baa3 as of March 22, 2020, by a major nationally recognized statistical rating organization ("NRSRO")."[114] Or, if the issuing entity is rated by more than one NRSRO, "the issuer must be rated at least BBB-/Baa3 by two or more NRSROs as of March 22, 2020."[115] If the issuer's rating was downgraded, it "must be rated at least BB-/Ba3" before an SPV purchases the issued credit.[116]

In short, only *investment-grade issuers*[117] with "adequate capacity to meet . . . financial commitments"[118] are eligible to receive Federal Reserve money—not those that need it the most. The PMCCF and SMCCF vehicles serve as instrumentalities of the Federal Reserve in executing large-scale asset purchases in quantitative easing programs and enable the central bank to remain a market-maker-of-last-resort.

V. THE FEDERAL RESERVE SHOULD NOT REMAIN A MARKET-MAKER-OF-LAST-RESORT BECAUSE OF ISSUES INHERENT TO THE ROLE

Dodd-Frank's attempted reform of Section 13(3) has inadvertently placed the power—and obligation—of market-maker-of-last-resort on

[112] The PMCCF SPV purchases eligible bonds at issuance if the bonds are "(i) issued by an eligible issuer; and (ii) have a maturity of 4 years or less." *Primary Market Corporate Credit Facility Term Sheet*, FED. RSRV., 1 (July 28, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf [hereinafter *PMCCF Term Sheet*]. The SMCCF SPV may purchase corporate bonds on the open market that were "(i) issued by an eligible issuer; (ii) have a remaining maturity of 5 years or less; and (iii) were sold to the Facility by an eligible seller." *Secondary Market Corporate Credit Facility Term Sheet*, FED. RSRV., 1 (July 28, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a2.pdf [hereinafter *SMCCF Term Sheet*].

[113] ETFs eligible for purchase by the SMCCF on the open market must have the "investment objective . . . to provide broad exposure to the market for U.S. corporate bonds." *SMCCF Term Sheet, supra* note 112, at 1. Additionally, such ETFs must have "exposure to U.S. investment-grade corporate bonds" and the remainder going to "ETFs whose primary investment objective is exposure to U.S. high-yield corporate bonds." *Id.*

[114] *PMCCF Term Sheet*, *supra* note 112, at 1.

[115] *Id.*

[116] *Id.*

[117] *Moody's Rating Scale and Definitions*, MOODY'S, https://www.moodys.com/sites/products/productattachments/ap075378_1_1408_ki.pdf (last visited Sep. 3, 2021). While each NRSRO has a different credit classification method, Moody's rating scale places the rating of Baa3 as the lowest rung of investment grade corporate bond. *Id.* Baa bonds are "subject to moderate credit risk [and] are considered medium-grade . . . as such may possess speculative characteristics." *Id.*

[118] *S&P Global Ratings Definitions*, S&P GLOB. RATINGS (Jan. 5, 2021), https:/www.standardandpoors.com/en_US/web/guest/article/-/view/sourceId/504352 (defining insurers rated BBB, the required classification for purchase by the PMCCF and SMCCF).

the Federal Reserve. While the Federal Reserve's quick action helped stabilize markets in free-fall, its actions do not come without consequences; the credibility and independence of the Federal Reserve are at risk.[119]

A. The Federal Reserve is Now Forced to Pick Winners and Losers on the Open Market

One important issue is how the Federal Reserve determines which businesses deserve emergency money. The SPV investment guidelines limit Section 13(3) emergency loan money to publicly traded companies of sound financial rating.[120] This requirement cuts thousands of publicly traded entities from qualifying for Federal Reserve aid and completely precludes non-publicly traded companies.

Small businesses received federal aid via the CARES Act and Paycheck Protection Program ("PPP"), authorized by Section 7(a) of the Small Business Act ("SBA").[121] However, it is worth noting that small businesses must meet other eligibility requirements, apply for funding,[122] and do not receive any indirect benefit from a recovering equity market.[123] In fact, the $349 billion allocated for the PPP was exhausted after *two weeks*, and only 4% of PPP applicants were approved.[124]

Unlike small businesses, publicly traded entities have enjoyed the benefit of the Federal Reserve's impact in equity markets as well. Since March 23, 2020, when the Federal Reserve announced unlimited quantitative easing and the primary and secondary corporate credit

[119] James A. Dorn, *Fed's Intervention in Corporate Credit: A Risky Venture,* CATO INST. (July 13, 2020, 11:52 AM), https://www.cato.org/blog/feds-intervention-corporate-credit-risky-venture.

[120] *See supra* text accompanying notes 82–83.

[121] "[T]he amount authorized for commitments for general business loans authorized under [the Small Business Act] . . . shall be $349,000,000,000." Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102(b)(1), 134 Stat. 281, 293 (2020).

[122] *Id.* at 292.

[123] One redeeming aspect of the SBA PPP loans was the lack of a collateral requirement, ultimately making the program available to more small businesses without significant assets. 15 U.S.C. § 636(a)(36)(J).

[124] Mark Niquette & Jennifer Jacobs, *Small Business Relief Funds Drained Fast with Many Shut Out*, BLOOMBERG (Apr. 16, 2020, 6:28 PM EDT), https://www.bloomberg.com/news/articles/2020-04-16/virus-rescue-program-for-small-business-runs-out-of-money.

facilities, the S&P 500 has increased 95%.[125] Similarly, the Russell 2000 has increased 123%,[126] and the Nasdaq Composite index grew 119%.[127]

In contrast, the average American citizen received little to no benefit from the Federal Reserve's action. Rather, the Federal Reserve has now vicariously purchased corporate debt in Boeing, Apple, Coca-Cola, Walmart, and Berkshire Hathaway through corporate credit facilities.[128] In fact, Boeing turned down a bailout from Congress that would have given the federal government an equity stake in Boeing and prevented the company from laying off employees.[129] Instead, Boeing announced on March 24, 2020—the day after Section 13(3) was invoked—that it no longer needed federal aid from Congress.[130] Rather, Boeing issued $25 billion in debt with no strings attached and investors provided the funding immediately.[131] Thanks to the Federal Reserve's commitment to support corporate credit markets, Boeing proceeded to lay off 10% of its workforce even after securing $25 billion in loans.[132]

B. The Federal Reserve Market-Making Has Reinforced "Too Big to Fail" by Assuming Responsibility for Financial Markets

By forcing the Federal Reserve to go broad or go home, Dodd-Frank has ensured that "too big to fail" is here to stay—and that every major player in the market is included. The market is now ripe with liquidity for those who meet the Federal Reserve's standards.[133]

[125] *S&P 500 Index*, CNBC, https://www.cnbc.com/quotes/.SPX?qsearchterm=s&p (last visited Sep. 3, 2021).

[126] *Russell 2000 Index*, CNBC, https://www.cnbc.com/quotes/.RUT?qsearchterm=russell (last visited Aug. 28, 2021).

[127] *NASDAQ Composite*, CNBC, https://www.cnbc.com/search/?query=nasdaq&qsearchterm=nasdaq (last visited Sep. 3, 2021).

[128] *Composition of the SMCCF Broad Market Index*, *supra* note 11; *see supra* text accompanying note 12 on the rapid expansion of the Federal Reserve's balance sheet.

[129] Kate Duguid et al., *How Boeing Went from Appealing for Government Aid to Snubbing It*, REUTERS (May 1, 2020), https://www.reuters.com/article/us-boeing-debt-investors-analysis/how-boeing-went-from-appealing-for-government-aid-to-snubbing-it-idUSKBN22E025.

[130] *Id.* (citing to several bond investors crediting the Federal Reserve's backstopping of credit markets as the reason for successful capital raising) (emphasis added on date).

[131] *Boeing Statement on Bond Offering*, BOEING (Apr. 30, 2020), https://boeing.mediaroom.com/news-releases-statements?item=130676 (Boeing stated, "We're pleased with the response to our bond offering today, which is one of several steps we're taking to keep liquidity flowing through our business and the 17,000 companies in our industry's supply chain," and "[t]he bond offering includes debt instruments with an aggregate principal amount of $25 billion.").

[132] Chris Isidore, *Boeing Plans More Job Cuts on Top of 16,000 Announced This Spring*, CNN BUS. (Aug. 18, 2020, 11:58 AM), https://www.cnn.com/2020/08/18/business/boeing-more-job-cuts/index.html.

[133] *See PMCCF Agreement*, *supra* note 101; *SMCCF Agreement*, *supra* note 101.

When it intervened in the free market and corrected otherwise plummeting investor sentiment, the Federal Reserve assumed responsibility for correcting markets in freefall. This is a step far outside of conventional monetary policy and into investment policy.[134] Because the Federal Reserve dedicated itself to purchasing corporate debt (vicariously through BlackRock) at market price, it created a price floor without a price ceiling.[135] This role results in the Federal Reserve "buying private securities and financial assets to restore liquidity when financial markets break down."[136] Some investors have expressed discomfort with the Federal Reserve's activist approach, fearing that any step backwards could result in a negative reaction in equity markets.[137] The extension of new credit via established facilities under the CARES Act, including the PMCCF and SMCCF, expired on December 31, 2020,[138] but concerns about their returns in future market downturns remain.

To combat a potential sell-off resulting from the Federal Reserve discontinuing quantitative easing, the central bank will have to take steps past the purchase of corporate debt.[139] The Federal Reserve may even have to implement emergency facilities for the direct purchase of

[134] James A. Dorn, *The Fed's Corporate Lending Facilities: A Case of Pseudo Markets*, CATO INST. (May 26, 2020, 8:40 AM), https://www.cato.org/blog/feds-corporate-lending-facilities-case-pseudo-markets.

[135] Baker, *supra* note 69 (presenting issues inherent to a central bank's involvement with the free market).

[136] *Id.* at 93.

[137] Kevin Coldiron, *The Fed Is Going to Buy Stocks*, FORBES (July 18, 2020, 7:00 AM), https://www.forbes.com/sites/kevincoldiron/2020/07/18/the-fed-is-going-to-buy-stocks/?sh=4ef04465eb49. Other investors also fear inflation due to the Federal Reserve's recent actions and other base factors. Richard Cookson, *The Fed's Inflation Logic Is Flawed, and Dangerous*, BLOOMBERG (June 4, 2021, 1:30 AM EDT), https://www.bloomberg.com/opinion/articles/2021-06-04/inflation-the-fed-s-response-is-flawed-and-dangerous. Inflation fears are not unfounded, as the "all items index [of the Consumer Price Index] rose 5.4% for the 12 months ending July." *Consumer Price Index Summary — July 2021*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/news.release/cpi.nr0.htm (last visited Sep. 3, 2021).

[138] Letter from Steve T. Mnuchin, Sec'y of the Treasury, U.S. Dep't of Treasury, to Jerome H. Powell, Chairman of Fed. Rsrv. Sys., U.S. Fed. Rsrv. (Nov. 19, 2020), https://home.treasury.gov/system/files/136/letter11192020.pdf (requesting the Federal Reserve return unused funds to the Treasury upon planned expiration of programs on December 31, 2020); Letter from Jerome H. Powell, Chairman of Fed. Rsrv. Sys., U.S. Fed. Rsrv., to Steve Mnuchin, Sec'y of the Treasury, U.S. Dep't of Treasury (Nov. 20, 2020), https://www.federalreserve.gov/foia/letter-from-chair-powell-to-secretary-mnuchin-20201120.htm (approving of Secretary Mnuchin's request and stipulating to corporate credit facilities' year-end termination). It is imperative to note that the end of the corporate credit facility purchases is independent of the Federal Reserve's treasury security quantitative easing program, which will likely continue for the foreseeable future. *See* Tobias Beljean & Alain Geier, *The Swiss Debt Brake — Has It Been a Success?*, 149 SWISS SOC'Y ECON. & STAT. 115, 115–16 (2013), https://sjes.springeropen.com/track/pdf/10.1007/BF03399384.pdf.

[139] Coldiron, *supra* note 137.

equity or equity ETFs.[140] The Federal Reserve's purchase of individual corporate debt instruments has opened the door to such possibilities.

C. Wealth has Become More Concentrated in the Hands of Fewer People

Section 13(3)'s use in 2020 led to massive growth in the billionaire class. Fifty-six people became new billionaires by the end of 2020, bringing the total to over six hundred fifty.[141] The billionaire class added $560 billion to its combined net worth, bringing its total worth to over *$11.4 trillion*.[142] This is largely credited to the Federal Reserve's intervention and subsequent bailout of corporate America.[143] As a result, the billionaire class had a successful 2020; this stands in stark contrast to the broader American public, which was plagued with high unemployment during that year.[144]

VI. CONGRESS SHOULD ACT TO REMEDY THE FEDERAL RESERVE'S IMPROPER ROLE OF MARKET-MAKER-OF-LAST-RESORT

While Congress may have had positive intentions when drafting Dodd-Frank, its reform ultimately weaponized the Federal Reserve to become a market-maker-of-*all*-resorts. In the wake of the COVID-19 financial crisis, it is imperative to search for remedies to ensure the free market can function independently and return the Federal Reserve to its rightful place as lender-of-last-resort. To achieve this, Section 13(3) must be reformed.

[140] *Id.* Carry trades, or equity investments funded by low interest debt, have become crucial for the success of the broader economy. *Id.* In the event of another contraction, the Federal Reserve may have to roll out new methods to keep such carry trades afloat or risk the broader economy collapsing. *Id.*

[141] Martha C. White, *Wall Street Minted 56 New Billionaires Since the Pandemic Began—But Many Families Are Left Behind*, CNBC NEWS (Dec. 30, 2020, 9:51 AM), https://www.nbcnews.com/business/business-news/wall-street-s-best-year-ever-why-pandemic-has-been-n1252512.

[142] Chase Peterson-Withorn, *The World's Billionaires Have Gotten $1.9 Trillion Richer in 2020*, FORBES (Dec. 16, 2020, 7:00 AM EST), https://www.forbes.com/sites/chasewithorn/2020/12/16/the-worlds-billionaires-have-gotten-19-trillion-richer-in-2020/?sh=6f3a9b077386 (emphasis added).

[143] White, *supra* note 141.

[144] *Unemployment Insurance Weekly Claims*, *supra* note 3.

A. Congress Should Clearly Define the Dual Mandate, Set Broad Constraints on When Section 13(3) Activates and Deactivates, and Allow the Federal Reserve to Internally Determine Automatic Stabilizing Parameters for the Federal Reserve's Quantitative Easing and Federal Funds Rate Functions.

The Federal Reserve's foremost strength—and controversy—is its independence. Despite its imperfections, the Federal Reserve is still viewed as a credible organization that calls objective economic shots regardless of near-term political goals.[145] Congress designed the Federal Reserve's very structure and governance to insulate the central bank from political pressure.[146] One way to solve the present standoff between markets and the Federal Reserve is to harness the power of the bank's independence via internally determined automatic stabilizers.

Several European countries have utilized automatic stabilizers in the fiscal policy context to establish explicit limitations on a nation's expenditures and revenues.[147] For example, Switzerland enacted a "revenue brake" or "debt brake" equation that balances the federal government's budget.[148] The brake operates "by capping annual federal spending to estimated tax revenues multiplied by a business cycle adjustment factor."[149] Naturally, exceptional circumstances may warrant a deviation from the debt brake upon a majority vote in both Swiss parliament legislatures.[150] The Swiss brake mechanism successfully provided the Swiss federal government with an annual budget surplus and decreased the federal debt to gross domestic product ratio by 28.2% in ten years.[151] While this Swiss brake mechanism deals with a completely different fiscal issue than the one facing the Federal Reserve, the concept of an effectively executed automatic stabilizer could successfully be deployed by the Federal Reserve to discard its newfound role of market-maker-of-last-resort.

[145] Scott A. Wolla, *Independence, Accountability, and the Federal Reserve System*, FED. RSRV. BANK OF ST. LOUIS (May 2020), https://research.stlouisfed.org/publications/page1-econ/2020/05/01/independence-accountability-and-the-federal-reserve-system.

[146] *Id.*

[147] Beljean & Geier, supra note 138, at 115–16.

[148] Ryan Bourne, *Budget Restraints That Work: Lessons from Chile, Switzerland, the United Kingdom, and the United States*, CATO INST. (Feb. 21, 2018), https://www.cato.org/tax-budget-bulletin/budget-restraints-work-lessons-chile-switzerland-united-kingdom-united-states.

[149] *Id.*

[150] *Id.*

[151] Beljean & Geier, *supra* note 138, at 119.

Congress should legislate clearer parameters as to what constitutes "unusual and exigent circumstances,"[152] as well as the dual mandate's goals. Within these congressionally defined parameters, the Federal Reserve must issue periodic, defined automatic stabilizers that demonstrate how the central bank will act upon shifts in market conditions. Such automatic stabilizers would activate Section 13(3) emergency powers when unemployment, volatility, and interest rates reach pre-defined automatic stabilizing levels within the set congressional parameters. Conversely, the automatic stabilizers would also indicate when Federal Reserve support would end. Every automatic stabilizer placed in service by the Federal Reserve would sunset in a period set by Congress and require the central bank to reissue updated guidance. Doing so could put an end to the longstanding quantitative easing and low interest rate environment the Federal Reserve is currently letting run wild.

The benefits of this plan are threefold: (1) pre-defined Section 13(3) automatic stabilizers would remedy the current lack of definition for "unusual and exigent circumstances"[153] and unclear dual mandate; (2) financial markets would be fully informed of both positive and negative future Federal Reserve action under financial theories, reducing overall market surprise; and (3) the Federal Reserve would retain its independence and credibility in the eyes of financial markets.

1. The Federal Reserve Can Provide Definitions for The Dual Mandate and "Unusual and Exigent Circumstances"

By delegating the task of issuing automatic stabilizers to the Federal Reserve, Congress would allow the Federal Reserve to harness its independence and fill the numerical gap in the current dual mandate. For example, Congress could provide that the Federal Reserve can only activate Section 13(3) emergency lending if unemployment surpasses 8%—indicating that the Federal Reserve can only provide a public backstop in extreme economic contractions. Conversely, Congress could also expressly discontinue Section 13(3) powers at another predetermined level.

Automatic stabilizers set by the Federal Reserve would then further define how Section 13(3) will be utilized once the requisite congressionally mandated metric is met. Congress would retain the

[152] 12 U.S.C. § 343(3)(A).

[153] *Id.* (providing no definition for "unusual and exigent circumstances").

ability to override the Federal Reserve's automatic stabilizers upon a supermajority vote in both legislatures. This would limit the Federal Reserve to activating Section 13(3) emergency funding in only truly critical circumstances and holds Congress accountable to the American public in the event that the Federal Reserve deviates from its plans.

2. Financial Markets Will Not Be Surprised by Federal Reserve Action or Inaction

If Section 13(3) emergency power automatic stabilizers were in place for a set term, financial markets would be able to better predict Federal Reserve involvement. Under the signaling theory[154] and efficient-market hypothesis,[155] financial markets would consider the definitive end of Federal Reserve Section 13(3) aid upon market conditions returning to the predefined automatic stabilizer levels. The Federal Reserve would signal to investors that it can provide emergency liquidity upon certain economic conditions deteriorating to predefined levels, and that the emergency aid will end once the economic conditions have recovered a certain amount.[156] The efficient-market hypothesis demonstrates that this information would be considered in asset pricing, therefore lowering the risk of negative surprise in financial markets.[157]

Currently, the Federal Reserve still provides unlimited quantitative easing[158] and will one day have to inform the market of its decision to discontinue support. Some investors believe this conduct will result in a sell off as the market has not priced in a defined end-date for the Federal Reserve's involvement.[159] Automatic stabilizers would remedy this situation by informing the market in advance that Federal Reserve quantitative easing will end upon satisfaction of certain defined metrics in the dual mandate.

[154] *See supra* text accompanying note 93.

[155] *See supra* text accompanying note 95.

[156] This proposition is analogous to the Swiss brake mechanism in concept. The Swiss debt brake serves the purpose of automatically regulating taxation where the Swiss federal government runs at a surplus or deficit. If the Swiss federal government runs at a deficit, income tax is raised; conversely, if a surplus is discovered, taxation is consequently lowered. Beljean & Geier, *supra* note 147, at 128–31. Limitations are placed on maximum taxation and the minimum can be altered by a simple legislative majority. *Id.* at 132.

[157] Such information would be taken into account under the efficient-market hypothesis. Fama, *supra* note 95, at 1575 (explaining that "security prices fully reflect all available information").

[158] Jerome Powell, 16th Chair of the Fed. Rsrv., Getting Back to a Strong Labor Market, at the Economic Club of New York (via webcast), (Feb. 10, 2021) (transcript available at https://www.federalreserve.gov/newsevents/speech/powell20210210a.htm) ("Also important is a *patiently accommodative monetary policy stance* that embraces the lessons of the past—about the labor market in particular and the economy more generally.") (emphasis added).

[159] *See* Coldiron, *supra* note 137.

3. The Federal Reserve Would Retain Its Independence and Credibility

Independence is critical to the Federal Reserve's success as an institution. Recent polls demonstrate that most Americans view the Federal Reserve in a favorable light.[160] Financial markets revere the word of the Federal Reserve as it is ultimately the largest organization involved in monetary policy.[161] Stripping the Federal Reserve of all independence could be disastrous, and Congress is likely not a better vehicle to dictate monetary policy due to its inherently political nature.

Use of congressionally set parameters for automatic stabilization methods would hold the Federal Reserve more accountable to the public while retaining its day-to-day functional independence. Congress would serve as the elected proxy between the American public and the Federal Reserve, establishing a clear line of accountability through congressionally set parameters. On the other hand, this would not bind the Federal Reserve in all respects; the Federal Reserve would still be able to make its own decisions independently if the decisions are within the thresholds set by Congress.

4. The Federal Reserve Would Be Forced to Abandon Quantitative Easing and Perpetual Low Interest Rates, Resulting in a Return to Its Rightful Place as Lender-of-Last-Resort

Ultimately, the desired result of this congressional action is for the Federal Reserve to abandon its newfound role as market-maker-of-last-resort. This change cannot come about unless quantitative easing and permanently low interest rates come to an end.[162] Automatic stabilizers established within congressionally set parameters would ensure that *pure economic conditions*, rather than timing or short-term interests, drive the Federal Reserve's decisions. Instead of becoming a national investment authority, the Federal Reserve would "focus on its monetary

[160] *Public Holds Broadly Favorable Views of Many Federal Agencies, Including CDC and HHS*, PEW RSCH. CNTR. (Apr. 9, 2020), https://www.pewresearch.org/politics/2020/04/09/public-holds-broadly-favorable-views-of-many-federal-agencies-including-cdc-and-hhs/.

[161] Baker, *supra* note 69, at 71.

[162] Chairman Powell claims that the Federal Reserve has made "substantial further progress" in combating inflation and that the tapering of asset purchases may begin before the end of 2021. *Monetary Policy in the Time of COVID*, FED. RSRV. (Aug. 27, 2021) https://www.federalreserve.gov/newsevents/speech/powell20210827a.htm. Interestingly, Chairman Powell also states that the Federal Funds Rate will remain untouched. *Id.* A "different and substantially more stringent test" has been developed to determine when the rate will be raised—kicking the can further down the road. *Id.*

responsibility to provide temporary liquidity to banks that are solvent and let Congress engage in spending decisions to support the private sector."[163]

B. As It Relates to Corporate Credit Facilities, Congress Should Expressly Deny the Federal Reserve From Funding SPVs That Invest in Primary or Secondary Markets on Its Behalf and Abolish Section 13(3) Lending to Nonbanks

Section 13(3) must allow the Federal Reserve "to lend freely, for good collateral, at high interest rates to solvent institutions."[164] The Federal Reserve's recent actions lent emergency funds to BlackRock SPVs at near zero interest rates[165] to invest on behalf of the Federal Reserve. Instead, the emergency money should have been lent to illiquid financial institutions with good collateral, at a high rate of interest. Central banks are ill-equipped to engage in corporate lending and should not become investment authorities.[166]

If Congress acquiesces and continues to allow the Federal Reserve to remain a market-maker-of-last-resort, the Federal Reserve will be exposed to even broader criticism.[167] Risk of moral hazard is rampant;[168] the central bank is currently providing a price floor on credit markets, determining winners and losers on the open market, [169] and subsidizing highly leveraged businesses.[170] Central banks are, by design, meant to implement monetary policy, not take responsibility for the success of

[163] Dorn, *supra* note 119.

[164] Baker, *supra* note 69, at 84.

[165] *Open Market Operations*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/monetarypolicy/openmarket.htm (last visited Sep. 3, 2021) (demonstrating that the Federal Funds Rate is the lowest in years at a level of 0.00–0.25%).

[166] Dorn, *supra* note 119 ("Hiring BlackRock as a manager [for corporate credit facilities] and coordinating with the Treasury adds more layers of bureaucracy. It also opens the Fed to politicization as monetary and fiscal policy merge. Consequently, the market allocation system for corporate credit is tainted.").

[167] *Id.*

[168] Chairman Powell remarked that "markets started working again fairly soon after we announced the facilities" and that "[the Federal Reserve] step[s] in to provide credit at times when the market has stopped functioning." Jerome Powell, Press Conference via Webcast (July 29, 2020) 6, 25 (transcript at https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20200729.pdf). The Chairman of the Federal Reserve stating that financial markets do not function when they are decreasing in value is of questionable moral standing. It also implies that the Federal Reserve will intervene in future sell-offs.

[169] Baker, *supra* note 69, at 92 (discussing a market-maker's impact on asset pricing).

[170] Dorn, *supra* note 119 ("When companies can borrow at rates that don't fully reflect the risks involved, the moral hazard problem can become serious—leading to even more risky investments and 'zombie' corporations kept alive by 'cheap' credit. This process saps funds from more profitable enterprises, slows economic growth, and reduces economic freedom.").

financial markets.[171] By wielding quantitative easing as a "cure-all" and purchasing corporate debt, the Federal Reserve has diminished its image as a wholly neutral entity.[172]

To prevent the further erosion of free markets and the Federal Reserve's image, Section 13(3) should not permit the Federal Reserve to directly purchase equity or credit on the primary or secondary market outside of daily functions.[173] The free market would remain untouched by the Federal Reserve, leaving asset prices unaffected by an artificial price floor. Granting undue relief to organizations in good financial standing does not help struggling businesses; it merely reinforces the strong.[174] Disallowing the Federal Reserve from directly or vicariously purchasing private-corporate assets would remove its ad hoc role of market-maker-of-last-resort.

C. Dodd-Frank's Broad-Based Eligibility Requirements Should be Repealed

While Congress likely had good intentions, Dodd-Frank's unintended consequences have become apparent. The Federal Reserve is no longer a mere regulator in monetary policy, but rather a determining factor of success in financial markets. Section 13(3) was never meant to be a bailout mechanism for broad financial markets when enacted by Congress in 1936.[175] The time to reverse course is now, as "[i]f the Fed is going to forswear intervention in credit markets . . . it will have to abandon its historic aversion to commitment and rules."[176]

To ensure that free financial markets are not unduly influenced by monetary policy authorities, Congress must swiftly act and repeal Dodd-Frank's changes to Section 13(3). The time for action is now, while Congress's collective memories of the COVID-19 pandemic and its influence on financial markets are fresh. Thankfully, the Federal Reserve's funding of corporate credit facilities was small in comparison to its quantitative easing campaign, but now that the door to more

[171] Baker, *supra* note 69, at 71–72.

[172] *See* Dorn, *supra* note 119.

[173] *See id.*

[174] *Id.*

[175] Johnson, *supra* note 50, at 719–20.

[176] Robert L. Hetzel, COVID-19 and the Fed's Credit Policy 35 (July 2020) (unpublished manuscript) (available at https://www.mercatus.org/system/files/hetzel-covid-fed-credit-mercatus-working-paper-v2.pdf).

impactful endeavors in this area is open, Congress must quickly close it.[177]

VII. CONCLUSION

It is imperative that the Federal Reserve maintain its independence in lending emergency funds. However, it is the duty of Congress to appropriately mend the Federal Reserve's overreach; thus far, little action has been taken. In enacting Dodd-Frank, Congress inadvertently blurred the line between the Federal Reserve and corporate America. Providing publicly traded companies with an immense line of credit exposes the Federal Reserve's bias towards big business in America. The line between the Federal Reserve and an active participant in the corporate credit market is nearly non-existent. To return to a time of free markets, Section 13(3) must be reformed.

[177] *Secondary Market Corporate Credit Facility*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/monetarypolicy/smccf.htm (last visited Sep. 3, 2021). Periodic Report XLSX data dated Feb. 9, 2021, provides that the SMCCF only holds $14.2 billion in corporate credit assets as compared to the $750 billion authorized under the SMCCF term sheet. While the corporate credit facilities ceased asset purchases at the end of 2020, "the Fed now has a blueprint for successfully supporting credit markets if the need ever arises again." Craig Torres & Paula Seligson, *Fed Plans to Wind Down a Pandemic Corporate Credit Facility*, BLOOMBERG (June 2, 2021, 4:30 PM EDT), https://www.bloomberg.com/news/articles/2021-06-02/fed-plans-to-wind-down-a-pandemic-corporate-credit-facility.