COVID-19 NEWS OF INTEREST

Federal Reserve Announces Update to Main Street Lending Program

May 1, 2020

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On April 9, 2020, the Board of Governors of the Federal Reserve System (the "Board") announced additional actions taken by the Federal Reserve to support the economy during the COVID-19 pandemic. Among these is a $600 billion Main Street Lending Program, which is designed to facilitate lending to small and medium-sized businesses impacted by COVID-19.

On April 30, 2020, the Board updated the terms of the Main Street Lending Program (as so updated, the "Main Street Program"). The Main Street Program expands the scope of eligible borrowers, lenders and loan facilities and provides additional details on the maximum leverage calculations (used in calculating maximum loan size), amortization schedules and pricing associated with loans under the Main Street Program. Two key threshold considerations for many potential borrowers seeking to access the Main Street Program will be (i) whether (together with their affiliates) they satisfy the employee and revenue requirements (no more than 15,000 workers or revenues of no more than $5 billion) and (ii) whether they satisfy the pro forma leverage limitations necessary to incur loans under the Main Street Program. The official launch date for the Main Street Program has not been announced.

The key features of the Main Street Program are summarized below.

Overview

The Main Street Program consists of three loan facilities with a combined capacity of up to $600 billion: the Main Street New Loan Facility (the "New Loan Facility"), the Main Street Priority Loan Facility (the "Priority Loan Facility") and the Main Street Expanded Loan Facility (the "Expanded Loan Facility" and, together with the New Loan Facility and the

Priority Loan Facility, the "Main Street Facilities"). The New Loan Facility and the Priority Loan Facility each provides for new secured or unsecured term loans to eligible borrowers originated after April 24, 2020. The Expanded Loan Facility provides for upsized term loan tranches to existing secured or unsecured term loans or revolving credit facilities that were originated on or before April 24, 2020 and that have a remaining maturity of at least 18 months.

Firms that have taken advantage of the Paycheck Protection Program (the "PPP") administered by the Small Business Administration (the "SBA") may also borrow under the Main Street Facilities. However, eligible borrowers must choose among the New Loan Facility, the Priority Loan Facility and the Expanded Loan Facility and may not participate in more than one facility. In addition, borrowers that obtain financing under any of the Main Street Facilities cannot participate in the Federal Reserve's program to facilitate the purchase of qualifying bonds or syndicated loans under the Primary Market Corporate Credit Facility or other programs under the Federal Reserve's $454 billion lending program authorized by the CARES Act.

The term sheets for the New Loan Facility, Priority Loan Facility and Expanded Loan Facility, together with responses to certain "Frequently Asked Questions," are each available on the Board's website. In addition, Annex A below contains a side-by-side comparison of certain terms of each of the Main Street Facilities.

Borrower Eligibility

To be eligible for the Main Street Facilities, a borrower must be a business that is created or organized in the U.S. with significant operations in the U.S. and a majority of its employees based in the U.S.[1] In addition, a borrower may have up to 15,000 employees or up to $5 billion in 2019 annual revenues; however, in calculating such limitations, employees and revenues must be aggregated with the employees and revenues of their "affiliates" in accordance with SBA regulations. Applicants must include the employees or revenues of any entity that is a majority owner or otherwise "controls" the company, as that term is defined by the SBA regulations, as well as any other company under common ownership or control. However, it remains unclear whether SBA interim final rules issued in recent weeks to govern the PPP would also apply to the calculation of employee numbers or annual revenues for purposes of determining eligibility for the Main Street Facilities (*e.g.*, only U.S.-resident employees are counted for determining eligibility under the PPP).

[1] Borrowers (i) with significant investments from certain Executive Branch officeholders, members of Congress and their families or (ii) categorized as "Ineligible Businesses" under the CARES Act are ineligible for the Main Street Facilities.

Loan Terms

Importantly, as indicated above, loans under the Main Street Facilities are subject to maximum size limitations. These differ between the three facilities:

- Under the New Loan Facility, new term loans cannot exceed the lesser of (i) $25 million and (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed four times the borrower's adjusted 2019 earnings before interest, taxes, depreciation and amortization ("EBITDA").

- Under the Priority Loan Facility, new term loans cannot exceed the lesser of (i) $25 million and (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed six times the borrower's adjusted 2019 EBITDA.

- Under the Expanded Loan Facility, upsized tranches cannot exceed the lesser of (i) $200 million, (ii) 35% of the borrower's existing outstanding and undrawn available debt that is *pari passu* with the loan and equivalent in secured status (*i.e.*, secured or unsecured) and (iii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed six times the borrower's adjusted 2019 EBITDA.

In the case of the New Loan Facility and the Priority Loan Facility, adjusted EBITDA must be calculated using the same methodology used by the lender when extending credit to the borrower or similarly situated borrowers on or before April 24, 2020, and in the case of the Expanded Loan Facility, adjusted EBITDA must be calculated using the same methodology used by the lender when originating or amending the loan on or before April 24, 2020. "Existing outstanding and undrawn available debt" includes amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities, and (subject to certain limited exceptions) all unused commitments under any loan facility.

Otherwise, loans under each of the Main Street Facilities will share the following features:

- a four-year maturity, with principal and interest payments deferred in the first year, with deferred interest being capitalized;

- an adjustable rate of LIBOR (one or three month) plus 300 basis points;

- in the case of the New Loan Facility, the principal amount of each loan will be repaid in three equal installments due at the end of each of years two, three and four, and in the case of the Priority Loan Facility and the Expanded Loan Facility, 15% of the principal amount of each loan will be repaid at the end of each of years two and three with the remaining 70% due at the end of year four;

- minimum loan size of $500,000 (in the case of the New Loan Facility and the Priority Loan Facility) or $10,000,000 (in the case of the Expanded Loan Facility);
- loans under the New Loan Facility may not be contractually subordinated in terms of priority to any of the borrower's other debt and loans under the Priority Loan Facility and the Expanded Loan Facility must be senior to, or *pari passu* with, in terms of priority and security, the borrower's other debt (other than mortgage debt); and
- no prepayment penalties.

Borrower Attestations

In addition to any certifications required by applicable statutes and regulations, each borrower will be required to attest to the following items, which limit the borrower's ability to de-lever under other credit lines:

- it will refrain from voluntary prepayments of any debt until it has repaid its loan under the applicable Main Street Facility in full, except that at the time of origination of a loan under the Priority Loan Facility, the borrower may refinance debt owed to any lender other than the originating lender;
- it will not seek to cancel or reduce any outstanding lines of credit; and
- it has a reasonable basis to believe that, after giving effect to the loan under the applicable Main Street Facility, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time.

Each borrower must use commercially reasonable efforts to maintain its payroll and retain its employees for so long as the loan is outstanding. Each borrower must also attest that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, specifically that:

- it will not buy back stock until at least 12 months after the date the loan is satisfied, except under a preexisting contractual agreement;
- it will not pay dividends or make other capital distributions with respect to its common stock until at least 12 months after the date the loan is satisfied, except that a borrower that is a pass-through entity may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings; and
- it will abide by limits on executive compensation. Specifically, employees who earned more than $425,000 in total compensation in 2019 cannot receive a raise, and cannot receive severance pay or other benefits that are more

than double the 2019 amount in total compensation. Officers and employees who earned more than $3 million in total compensation in 2019 cannot receive total compensation that exceeds $3 million plus 50% of the excess amount over $3 million received in 2019.

Sales of Participations and Lender Eligibility

In connection with the Main Street Facilities, a Federal Reserve Bank will lend to a special purpose vehicle (the "SPV"), which in turn will purchase 95% (or 85% in the case of the Priority Loan Facility) participations in eligible new term loans and upsized tranches from lenders at par value. Lenders will retain the remaining 5% (or 15% in the case of the Priority Loan Facility).

Borrowers may obtain financing under the Main Street Facilities only from one of the following:

- U.S. federally insured depository institution (including a bank, savings association, or credit union);
- U.S. branch or agency of a foreign bank;
- U.S. bank holding company;
- U.S. savings and loan holding company;
- U.S. intermediate holding company of a foreign banking organization; or
- U.S. subsidiary of any of the foregoing.

Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of its application. Lenders will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower.

In addition, loans under the Expanded Loan Facility must have had an internal risk rating equivalent to a "pass" (which generally means that the borrower will repay the loan in accordance with its terms) as of December 31, 2019. In the case of the New Loan Facility and the Priority Loan Facility, if the borrower had other loans outstanding with the originating lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" on that date.

Program Fees

The following fees will be payable under the Main Street Facilities:

- Lenders will pay the SPV a facility fee of 75 basis points (in the case of the Expanded Loan Facility) or 100 basis points (in the case of the New Loan Facility and Priority Loan Facility) of the principal amount of the new or upsized loan, which may be passed on to the applicable borrower; and

- Borrowers will pay lenders a loan origination (or upsizing) fee of up to 75 basis points (in the case of the Expanded Loan Facility) or 100 basis points (in the case of the New Loan Facility and Priority Loan Facility) of the principal amount of the new or upsized loan.

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ANNEX A

<table>
<tr><th>Term</th><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Maximum Loan Size</td><td>Lesser of (i) $25,000,000 and (ii) an amount that, when added to existing and undrawn available debt of the borrower, does not exceed 4x adjusted 2019 EBITDA of the borrower</td><td>Lesser of (i) $25,000,000 and (ii) an amount that, when added to existing and undrawn available debt of the borrower, does not exceed 6x adjusted 2019 EBITDA of the borrower</td><td>Lesser of (i) $200,000,00, (ii) 35% of the borrower’s existing and undrawn available debt that is pari passu in payment priority and equivalent in secured status and (iii) an amount that, when added to existing debt of the borrower, does not exceed 6x adjusted 2019 EBITDA of the borrower</td></tr>
<tr><td>Minimum Loan Size</td><td colspan="2">$500,000</td><td>$10,000,000</td></tr>
<tr><td>Facility Type</td><td colspan="2">Term loan</td><td>Term loan upsize to an existing term loan or revolving credit facility</td></tr>
<tr><td>Ranking</td><td>Secured or unsecured but cannot be subordinated in right of payment to existing indebtedness of the borrower</td><td>Secured or unsecured but must be senior or pari passu in right of payment and lien to any other debt of the borrower other than mortgage debt</td><td>Secured or unsecured but must be senior or pari passu in right of payment and lien to any other debt of the borrower other than mortgage debt</td></tr>
<tr><td>Maturity</td><td colspan="3">4 years</td></tr>
<tr><td>Interest Rate</td><td colspan="3">LIBOR + 300 basis points</td></tr>
<tr><td>Amortization</td><td>1/3 at end of the second year and third year with the balance due at maturity</td><td colspan="2">15% at the end of the second year and 15% at the end of the third year with the balance due at maturity</td></tr>
<tr><td>Transaction Fee</td><td colspan="2">100 basis points</td><td>75 basis points</td></tr>
<tr><td>Upsizing/Origination Fees and Servicing Fees</td><td colspan="2">Up to 100 basis points</td><td>Up to 75 basis points</td></tr>
</table>

Term	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Prepayments	Permitted without penalty		
Retention of Employees	Borrower must use commercially reasonable efforts to maintain its payroll and retain its employees during the term of the loan		