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Finance, Restructuring, and Bankruptcy

APRIL 16, 2020 • NO. 6

Federal Reserve Establishes Two Main Street Lending Facilities Providing up to $600 Billion to Small and Mid-Sized Businesses

In a continuing series of measures to support the U.S. economy during the COVID-19 national emergency, the Board of Governors of the Federal Reserve System has announced the exercise of powers under Section 13(3) of the Federal Reserve Act to establish facilities providing financing for small and medium-sized businesses. Unlike the Paycheck Protection Program administered by the Small Business Administration[1] *for certain small businesses, proceeds of financing under the Federal Reserve System facilities may be used for purposes other than the retention of employees and are available for businesses with more than 500 employees. Note that this financing will not be subject to forgiveness.*

On April 9, 2020, the Federal Reserve Board (the "Fed") announced several programs to support the United States economy using money appropriated by Congress under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") signed into law on March 27, 2020. Among these is the Main Street Lending Program. The Fed has now announced that the Main Street Lending Program will comprise two types of facilities that will provide up to $600 billion of liquidity to the financial system through the indirect purchase by the Fed of loan participations from eligible lenders.

The two facilities are the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF"). Both are intended to facilitate lending to small and medium-sized businesses. To implement the facilities, a Federal Reserve Bank will commit to lend funds to a single common special purpose vehicle ("SPV"), which, in turn, will purchase a 95 percent participation interest in eligible loans.

In connection with the announcement of these programs, the Fed issued "term sheets" for the two facilities, which provide general descriptions and set forth certain terms, conditions, and requirements. See MSNLF and MSELF. The term sheets answer some questions about utilization of these facilities but also raise a number of issues, some of which are noted below.

In a separate press release, the Fed stated that as these facilities are being finalized, the Fed seeks input from lenders, borrowers, and other stakeholders, and provided a "feedback" form to submit comments through April 16, 2020. See here. As such, the comparison below is based on the preliminary terms of the MSNLF and the MSELF, showing their similarities and differences as set forth in the term sheets. These may change after the Fed considers comments submitted on the feedback form and further refines and develops these programs.

COMPARISON OF MAIN STREET NEW LOAN FACILITY AND MAIN STREET EXPANDED LOAN FACILITY

Facility	New Loan Facility	Expanded Loan Facility
Eligible Lenders	U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies	Same
Eligible Borrowers	Businesses with up to 10,000 employees or up to $2.5 billion in 2019 revenues; created or organized in the United States, or under the laws of the United States with significant operations in and a majority of its employees based in the United States	Same
Eligibility for other Facility	May not also participate in MSELF	May not also participate in MSNLF
Eligible Loans	New unsecured term loan originated on or after April 8, 2020	Upsized tranche of an existing term loan originated before April 8, 2020
Collateral	None – unsecured	Collateral same as pledged under the terms of the existing loan or at time of upsizing
Maturity	Four years	Same
Amortization	Principal and interest payments deferred for one year	Same
Rate	SOFR[2] + 250-400 bps	Same
Minimum Loan Size	$1.0 million	Same
Maximum Loan Size	Lesser of (i) $25 million or (ii) an amount that, when added to existing outstanding and committed but undrawn debt, does not exceed 4x 2019 EBITDA	Lesser of (i) $150 million, (ii) 30 percent of existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to existing outstanding and uncommitted but undrawn debt, does not exceed 6x 2019 EBITDA
Prepayment	Permitted without penalty	Same
Requirements/ Restrictions	• Cannot use proceeds to repay or refinance existing loans or lines of credit • Cannot repay debt of equal or lower priority except mandatory principal payments unless New Loan is repaid in full • Cannot cancel or reduce existing outstanding lines of credit with the New Loan lender or any other lender • Attest to the need for financing due to COVID-19 pandemic and use of loan proceeds to make reasonable efforts to maintain payroll and retain employees during term of the New Loan • Attest to meeting the leverage requirement for maximum loan amount • Restrictions on compensation, stock repurchases, and capital distributions under section 4003(c)(3)(A)(ii) of CARES Act • Certify to eligibility including no conflict of interest under section 4019(b) of CARES Act	Same

COMPARISON OF MAIN STREET NEW LOAN FACILITY AND MAIN STREET EXPANDED LOAN FACILITY (CONTINUED)

Facility	New Loan Facility	Expanded Loan Facility
Loan Origination Fee to Eligible Lender	Borrower to pay lender origination fee of 100 bps on the principal amount of New Loan	N/A
Loan Upsizing Fee to Eligible Lender	N/A	Borrower to pay lender fee of 100 bps on the principal amount of upsized tranche at the time of upsizing
Facility Fee to SPV	Eligible Lender pays SPV 100 bps on the principal amount of participation purchased by the SPV (Eligible Lender can pass through to Eligible Borrower)	None
Participation	95 percent purchased by SPV; SPV and Lender share risk on a pari passu basis	95 percent of the upsized tranche purchased by SVP collateral pledged under original loan or at time of upsizing will secure participation pro rata
Servicing Fee	SPV will pay Eligible Lender servicing fee of 25 bps per annum on principal amount of SPV's participation	Same
Termination of the Main Street Facility	SPV will cease purchasing participations on September 30, 2020, unless extended; Fed will continue funding SPV after such date until SPV assets mature or are sold	Same
Forgiveness	Principal amount shall not be reduced by forgiveness	Same

ADDITIONAL ISSUES

- Maximum Loan Size for Expanded Loan Facility – "Committed but undrawn ***bank*** debt" in the 30 percent test (as compared with just "debt" in the leverage test):
  - Reason for "debt" vs. "bank debt."
  - Does this only include term debt and undrawn delayed-draw term loans or also revolver debt and undrawn commitment?
  - Does "debt" in the leverage test include all debt (*e.g.,* mezzanine debt, shareholder debt, capitalized leases)?
  - Does "debt" include non-U.S. dollar denominated debt under the existing credit facility if Eligible Borrower is co-obligor?
  - Date for determining.
- EBITDA
  - Will there be a standard definition or defer to negotiation and adjustments between Eligible Lender and Eligible Borrower (or existing credit agreement definition)?
  - Pro forma impact of 2019 acquisitions and divestitures.
- Amortization terms for years 2, 3, and 4.
- Documentation for Expanded Loan Facility (*e.g.,* amendment to the existing credit agreement).
- Do all lenders in a syndicated credit facility participate in the Expanded Loan Facility?
  - Must all lenders in a syndicated credit facility be Eligible Lenders?
- Intercreditor Issues for New Loan Facility if a company's existing lender is not an Eligible Lender and for Expanded Loan Facility with collateral.
- Can the upsized tranche of the Expanded Loan Facility be subordinated, whether by debt subordination or lien subordination, to the pre-existing original tranche?
- Restriction on repaying "debt of equal or lower priority."
- Assuming the proceeds of the debt borrowed under either Facility are used in a manner consistent with the above-stated requirements, can such proceeds still be used to fund acquisitions or put to other non-ordinary course uses?
- Will borrowers under revolving credit facilities be able to participate in MSNLF or MSELF?

The details of the Main Street Loan Programs, including application forms and changes resulting from comments received from interested parties, are expected soon after the comment period ends on April 16, 2020. These programs are complex and must be applied to the particular facts and circumstances for each lender and borrower.

We are available to assist our clients in assessing the applicability of these facilities to their particular facts and circumstances in all of their roles, whether as borrowers, lenders, or other interested parties.

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1. See Small Business Administration Rolls Out Details for $349 Billion Paycheck Protection Program.
2. SOFR refers to the Secured Overnight Financing Rate, a measure of the cost of borrowing cash overnight collateralized by Treasury securities. On April 14, 2020, SOFR was 0.06 percent.