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Businesses with up to 15,000 Employees or $5 Billion in Revenue: Federal Reserve Expands Scope and Eligibility for Main Street Lending Program

May 1, 2020

On April 30, 2020, after soliciting and receiving public feedback, the Board of Governors of the Federal Reserve System ("Federal Reserve") announced that it is expanding the loan options and eligibility of the Main Street Lending Program.[1]

In connection with the Main Street Lending Program, the Department of the Treasury ("Treasury Department") will make a $75-billion equity investment in a special purpose vehicle ("Main Street SPV") using funds appropriated to the Exchanges Stabilization Fund under Section 4027 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[2] The Main Street SPV will purchase up to $600 billion[3] of participations in eligible facilities under the Main Street Lending Program.

With the expansion, the Main Street Lending Program now consist of three facilities: (i) the Main Street New Loan Facility, (ii) the Main Street Expanded Loan Facility and (iii) the Main Street Priority Loan Facility (each, a "Facility" and together, the "Main Street Facilities"). Borrowers may only participate in one of the three Main Street Facilities.

This *Alert* provides a brief overview of the revised and expanded terms of the Main Street Lending Program and replaces our April 9, 2020 *Alert*.

Eligible Borrowers

The Main Street Lending Program will provide loans to small and mid-sized companies. In order to be eligible to borrow under the Main Street Lending Program, all borrowers must satisfy the following criteria in addition to the eligibility requirements set forth in the specific term sheet for the Facility they seek to access (as further described below):

- The borrower must have been incorporated prior to March 13, 2020.
- The borrower must not be an "Ineligible Business," which, among others, includes banks, finance companies, life insurance companies, government funded companies, businesses primarily engaged in political or lobbying activities and businesses engaged in any illegal activity.[4]
- The borrower must either (a) have 15,000 or fewer employees or (b) have had annual revenue of $5 billion or less in 2019.
- The borrower must be created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States.
- The borrower must not participate in the Primary Market Corporate Credit Facility[5] or have received specific support pursuant to Subtitle A of Title IV section 4003(b)(1)-(3) of the CARES Act.[6] (For the avoidance of doubt, businesses that have received Payroll Protection Program[7] loans are permitted to borrow under the Main Street Facilities.)
- The borrower must have been in sound financial condition prior to the onset of the COVID-19 pandemic.

Eligible borrowers will also be required to make certain attestations concerning eligibility and the use of loan proceeds, including that:

- The borrower will refrain from repaying the principal balance of, or paying any interest on, any debt until the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due.[8]
- The borrower will not seek to cancel or reduce any of its committed lines of credit with the eligible lender or any other lender.
- The borrower has a reasonable basis to believe that, as of the date of origination of the eligible loan and after giving effect to such loan, 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 period.

- The borrower 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, except that an S corporation or other tax pass-through entity that is an eligible borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.

- The borrower is eligible to participate in the Facility, and such participation will not violate the conflicts of interest prohibition in Section 4019(b) of the CARES Act.[9]

In addition, the borrower must commit to make commercially reasonable efforts to maintain its payroll and retain its employees during the time the eligible loan (or upsized tranche) is outstanding.

Main Street Loan Overview

In connection with the Main Street Lending Program, the Federal Reserve will issue four-year loans to these eligible companies, at an adjustable rate of LIBOR (one or three month) + 300 basis points, with principal and interest payments deferred for one year after the loan is disbursed ("Main Street Loans"). All of the Main Street Facilities allow for prepayment without penalty. Main Street Loans are full-recourse loans and the principal amount cannot be reduced through loan forgiveness.

Main Street New Loan Facility

- Loans will be made for a minimum of $500,000 and may not exceed either the lesser of (a) $25 million or (b) an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed four times the eligible borrower's 2019 adjusted earnings before interest, taxes, depreciation and amortization ("EBITDA").

- No principal is paid in the first year. The loan will be amortized over the remaining term of the loan, with 33.33% of principal due at the end of the second year, 33.33% at the end of the third year, and 33.33% at maturity at the end of the fourth year.

- The loan is not, at the time of origination or at any time during the term of the Main Street New Loan, contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments.

- The Main Street SPV will purchase at par value a 95% participation in the loan. The Main Street SPV and the eligible lender will share risk in the loan on a *pari passu* The eligible lender must retain its 5% of the loan until it matures or the Main Street SPV sells all of its participation, whichever comes first.

Main Street Expanded Loan Facility

- Eligible lenders that have extended an existing term loan or revolving credit facility to an eligible borrower may increase (or "upsize") that extension of credit, by adding a new increment (or "tranche"). At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or *pari passu* with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt. The eligible lender must be one of the lenders that holds an interest in the underlying eligible loan at the date of upsizing.

- Loans will be made for a minimum of $10 million and may not exceed either the lesser of (a) $200 million; (b) 35% of the eligible borrower's existing outstanding and committed but undrawn bank debt; or (c) an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times the eligible borrower's 2019 adjusted EBITDA.

- No principal is paid in the first year. The loan will be amortized over the remaining term of the loan, with 15% of principal due at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

- The Main Street SPV will purchase at par value a 95% participation in the upsized tranche of the eligible loan, provided that it is upsized on or after April 24, 2020. The Main Street SPV and the eligible lender will share risk in the upsized tranche on a *pari passu* The eligible lender must retain its 5% portion of the upsized tranche of the eligible loan until the upsized tranche of the eligible loan matures or the Main Street SPV sells all of its 95% participation, whichever comes first. The eligible lender must also retain its interest in the underlying eligible loan until the underlying eligible loan matures, the upsized tranche of the eligible loan matures, or the Main Street SPV sells all of its 95% participation, whichever comes first.

Main Street Priority Loan Facility

- Loans will be made for a minimum of $10 million and may not exceed any of the following: (a) $200 million, (b) 35% of the eligible borrower's existing outstanding and committed but undrawn bank debt, or (c) an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times the eligible borrower's 2019 adjusted EBITDA.

- No principal is paid in the first year. The loan will be amortized over the remaining term of the loan, with 15% of principal due at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

- At the time of origination and at all times thereafter while the eligible loan is outstanding, the eligible loan is senior to or *pari passu* with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt.

- The Main Street SPV will purchase at par value an 85% participation in the eligible loan. The Main Street SPV and the eligible lender will share risk in the eligible loan on a *pari passu* The eligible lender must retain its 15% of the eligible loan until it matures or the Main Street SPV sells all of its participation, whichever comes first.

Eligible Lenders

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies. Eligible lenders will be required to make certain certifications, including that:

- The eligible lender will not request that the eligible borrower repay debt extended by the eligible lender to the eligible borrower, or pay interest on such outstanding obligations, until the eligible loan (in the case of the Main Street Expanded Loan Facility, the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.

- The eligible lender will not cancel or reduce any existing lines of credit outstanding to the borrower, except in an event of default.

- The methodology used for calculating the eligible borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers (in the case of the Main Street Expanded Loan Facility, when originating or amending the existing extension of credit) on or before April 24, 2020.
- The eligible lender is eligible to participate in the Facility, and such participation will not violate the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

Facility Termination

The Main Street Lending Program is authorized to purchase participations in the Main Street Facilities until Sept. 30, 2020. The Main Street SPV will cease purchasing loan participations on Sept. 30, 2020, unless the Main Street Lending Program and Main Street Facilities are extended by the Board of Governors of the Federal Reserve and the Treasury Department.[10]

For more information, please see the Main Street New Loan Facility term sheet here, the Main Street Expanded Loan Facility here or the Main Street Priority Loan Facility here. In addition, the Federal Reserve has created an FAQ page with more details, which it intends to further supplement as warranted.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] The Main Street Lending Program was created to support small and medium-sized businesses affected by the COVID-19 pandemic through the provision of credit in order to help them maintain their payroll and day-to-day operations.

[2] The CARES Act is a $2-trillion stimulus bill that was signed into law on March 27, 2020, with the goal of providing financial support to individuals and businesses that have been affected by the COVID-19 pandemic.

[3] The Federal Reserve and the Treasury Department will continue to assess the situation and needs of eligible borrowers and may adjust the

Main Street Lending Program's size in the future.

[4] For a full list of ineligible businesses, please refer to those listed in 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by the Small Business Association.

[5] The Primary Market Corporate Credit Facility was created by the Federal Reserve to support large companies through the purchase of eligible corporate bonds from, and lending through syndicated loans to, large companies.

[6] Section 4003(b)(1)-(3) of the CARES Act authorizes up to $46 billion for direct Treasury support for passenger air carriers (and certain specified related businesses), cargo air carriers and businesses critical to maintaining national security.

[7] The Payroll Protection Program was established by the CARES Act and implemented by the Small Business Administration to support the payroll and operations of small businesses through the issuance of government-guaranteed loans that include a forgiveness feature for borrowers that satisfy the requirements of the Payroll Protection Program.

[8] For the Main Street Priority Loan Facility, the eligible borrower may, at the time of origination of the eligible loan, refinance existing debt owed by the eligible borrower to a lender that is not the eligible lender.

[9] Section 4019 of the CARES Act is intended to prohibit any business that is directly or indirectly owned by the president, vice president, the head of all executive branch departments (but not other federal agencies) and any member of congress, as well as their spouse, child (including adult children) or son- or daughter-in-law.

[10] The Federal Reserve Bank of Boston will continue to fund the Main Street SPV after such date until the Main Street SPV's underlying assets mature or are sold.

This is a fast-moving topic and the information contained in this Alert is current as of the date it was published.

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