Federal Reserve Further Expands Main Street Lending Program and Opens Lender Registration

I. Background

On June 8, 2020, the Federal Reserve Board announced that it was taking additional actions to expand the scope of, and access to, the Main Street Lending Program ("MSLP").[1] On the same day, the Federal Reserve also released a series of revised frequently asked questions ("FAQs") to help answer additional questions lenders and borrowers may have about the MSLP.[2]

On June 15, 2020, the Federal Reserve Board opened the MSLP for lender registration, which can be accessed here. To establish their eligibility, lenders must first register with the MSLP. Eligible Lenders include:

- US federally insured depository institutions, including banks, savings associations, and credit unions;
- US branches or agencies of foreign banks;
- US bank holding companies;
- US savings and loan holding companies;
- US intermediate holding companies of foreign banking organizations; and
- US subsidiaries of any of these.

II. Main Street Lending Program

The MSLP consists of three loan facility options: the Main Street New Loan Facility ("New Loan Facility"), the Main Street Priority Loan Facility ("Priority Loan Facility") and the Main Street Expanded Loan Facility ("Expanded Loan Facility").

Some of the key revisions to the MSLP from the previous terms announced are:

- New Loan Facility:
  - The Federal Reserve expanded the scope of this facility by lowering the minimum loan size to $250,000 from the previous minimum of $500,000.
  - The Federal Reserve extended the term of loans under this option from four years to five years.
  - The Federal Reserve modified the repayment terms for this loan option by delaying principal payments for two years, rather than one year, and requiring repayments in

[1] The Federal Reserve press release announcing the further expansion of the scope of and eligibility under the Main Street Lending Program can be found here. We previously discussed the initial terms of the MSLP in our memo dated April 14, 2020, which can be accessed here and the subsequent expansion and revision thereof in our memo dated May 13, 2020, which can be accessed here.

[2] The full Federal Reserve FAQs regarding the Main Street Lending Program can be found here. We previously discussed the initial FAQs in our May 13, 2020 memo, which can be accessed using the link above.

years 3, 4 and 5 of 15%, 15% and 70%, respectively. Previously, loans under this option required repayments of 33.33% in each of years 2-4.
  - The Federal Reserve increased the maximum loan size of this loan option to $35 million from $25 million.
  - The Federal Reserve's revised Term Sheet relating to the updated New Loan Facility is attached as Annex A to this memorandum.
- Priority Loan Facility:
  - The Federal Reserve expanded the scope of this facility by lowering the minimum loan size to $250,000 from the previous minimum of $500,000.
  - The Federal Reserve extended the term of loans under this option from four years to five years.
  - The Federal Reserve modified the repayment terms for this loan option by delaying principal payments for two years, rather than one year, and requiring repayments in years 3, 4 and 5 of 15%, 15% and 70%, respectively.
  - The Federal Reserve increased the maximum loan size of this loan option to $50 million from $25 million.
  - The Federal Reserve raised the Reserve Bank's participation to 95% for this loan option from 85%. Lenders would retain a 5% participation in the loans, similar to the New Loan Facility and Expanded Loan Facility.
  - The Federal Reserve's Term Sheet relating to the updated Priority Loan Facility is attached as Annex B to this memorandum.
- Expanded Loan Facility:
  - The Federal Reserve extended the term of loans under this option from four years to five years.
  - The Federal Reserve modified the repayment terms for this loan option by delaying principal payments for two years, rather than one year, and requiring repayments in years 3, 4 and 5 of 15%, 15% and 70%, respectively.
  - The Federal Reserve increased the maximum loan size of this loan option to $300 million from $200 million.
  - The Federal Reserve's Term Sheet relating to the updated Expanded Loan Facility is attached as Annex C to this memorandum.

A summary of the key terms of the three loan options under the MSLP is set forth below:

Main Street Lending Program Loan Options	**New Loan Facility**	**Priority Loan Facility**	**Expanded Loan Facility**
Term	5 years	5 years	5 years
Minimum Loan Size	$250,000	$250,000	$10,000,000
Maximum Loan Size	Lesser of $35M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	Lesser of $50M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	Lesser of $300M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA
Lender Risk Retention	5%	5%	5%
Principal Repayment	Principal deferred for two years Year 3 Repayment: 15% Year 4 Repayment: 15% Year 5 Repayment: 70%	Principal deferred for two years Year 3 Repayment: 15% Year 4 Repayment: 15% Year 5 Repayment: 70%	Principal deferred for two years Year 3 Repayment: 15% Year 4 Repayment: 15% Year 5 Repayment: 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%
Fees	• 100 basis points from lender to SPV due at origination (lender can require borrower to pay this amount); plus • Up to 100 basis points from borrower to lender at origination; plus • 25 basis points from SPV to lender per annum	• 100 basis points from lender to SPV due at origination (lender can require borrower to pay this amount); plus • Up to 100 basis points from borrower to lender at origination; plus • 25 basis points from SPV to lender per annum	• 75 basis points from lender to SPV due at origination (lender can require borrower to pay this amount); plus • Up to 75 basis points from borrower to lender at origination; plus • 25 basis points from SPV to lender per annum
Interest Payments	Deferred for one year	Deferred for one year	Deferred for one year
Priority	May not be contractually subordinated, in terms of priority, with borrower's other loans or debt instruments	Senior to or *pari passu* with, in terms of priority and security, borrower's other loans or debt instruments, other than mortgage debt	Senior to or *pari passu* with, in terms of priority and security, borrower's other loans or debt instruments, other than mortgage debt

III. Main Street Lending Program FAQs

The Federal Reserve also revised its FAQs to provide further guidance on various aspects of the MSLP. Select sections as of June 8, 2020 are highlighted below.

1. **Can Principal Amounts of Loans under the MSLP be Reduced? (FAQ A.10)**
    - No, the MSLP is not a grant program and is subject to the prohibition on loan forgiveness in section 4003(d)(3) of the CARES Act.
    - However, in the event of restructuring or workouts, the Main Street Special Purpose Vehicle ("SPV") may agree to reductions in interest (including capitalized interest), extended amortization schedules and maturities, and higher priority "priming" loans

2. **Can an Eligible Borrower Use the Proceeds of an MSPLF Loan to Refinance its Existing Loans? (FAQ C.4)**
    - At the time of origination of an MSPLF loan, an Eligible Borrower may use the proceeds of the MSPLF loan to prepay existing debt that is outstanding and owed to lenders other than the Eligible Lender that originates the MSPLF loan.
    - After origination and until the MSPLF loan is repaid in full, the Eligible Borrower must refrain from repaying the principal balance of, or paying any interest on, any debt other than the MSPLF loan, unless the debt or interest payment is mandatory and due.
    - We note that there is no comparable FAQ regarding MSLP loans other than MSPLF loans.

3. **Can an Eligible Lender Share its 5% Retention of the MSELF Upsized Tranche? (FAQ D.8 and D.12)**
    - No, even in a multi-lender facility, the Eligible Lender must retain 5% of the MSELF Upsized Tranche until (i) the MSELF Upsized Tranche matures or (ii) neither the Main Street SPV nor a Governmental Assignee holds an interest in the loan in any capacity, whichever occurs first.

4. **Is a Private Equity Fund or its Portfolio Company Eligible to Borrower Under the Program? (FAQ E. 11 and E. 12)**
    - A private equity fund is ineligible to borrow under the MSLP, as Eligible Borrowers must not be Ineligible Businesses under 13 CFR 120.110, as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. The SBA has determined that private equity funds are primarily engaged in investment or speculation, and that such businesses are therefore ineligible.
    - Portfolio companies of private equity funds are eligible to borrow under the MSLP so long as they pass the affiliation tests set forth in 13 CFR 121.301(f) and the other general requirements under the MSLP.

5. **What if no EBITDA Methodology was used when Originating or Amending the Loan Underlying an MSELF Upsized Tranche? (FAQ D.9, G.13 and G.14)**
    - The Eligible Lender must require the Eligible Borrower calculate its adjusted EBITDA using a methodology that the Eligible Lender has required to be used in other contexts for the Eligible Borrower or, if there is no such calculation, for other similarly situated borrowers; or

- If a range of methodologies was used for similarly situated borrowers, then the Eligible Lender should choose the most conservative method it has employed.
- Similarly situated borrowers are borrowers in similar industries with comparable risk and size characteristics.

6. What does "Significant Operations in the United States" Mean?(FAQ E.8)[3]

- The business' operations, when consolidated with its subsidiaries, but not with its parents or sister affiliates, has greater than 50% of:
  - Assets located in the United States;
  - Annual net income generated in the United States;
  - Annual net operating revenues generated in the United States; or
  - Annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) located in the United States.

7. Can a Lender Charge a Borrower Additional Fees Above the Origination Fee and/or Interest Above LIBOR+300 Basis Points? (FAQ G.12)

- Eligible Lenders may charge additional *de minimis* fees for services that are customary and necessary in the Eligible Lender's underwriting of commercial and industrial loans to similar borrowers, such as appraisal and legal fees.
- Eligible lenders may also charge customary consent fees if such fees are necessary to amend existing loan documentation in the context of upsizing a loan in connection with the MSELF.[4]

8. How Must a Main Street Borrower Demonstrate that it is "Unable to Secure Adequate Credit Accommodations from Other Banking Institutions"? (FAQ H.9)

- Being unable to secure adequate credit accommodations does not mean that no credit from other sources is available to the borrower. Rather, the borrower may certify that it is unable to secure "adequate credit accommodations" because the amount, price, or terms of credit available from other sources are inadequate for the borrower's needs during the current unusual and exigent circumstances. Borrowers are not required to demonstrate that applications for credit had been denied by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate.

9. Will Standard Loan Documents be Provided for Main Street Loans, or should Eligible Lenders Use their Own Loan Documentation? (FAQ I.4)

- Each participating Eligible Lender should use its own loan documentation in relation to Main Street Loans, which should be substantially similar, including with respect to required covenants, to the loan documentation that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers.

[3] This is a non-exhaustive list of examples borrowers can consider when evaluating eligibility under this criterion.

[4] See FAQ D.5 for further information on amending existing loan provisions

10. Are Eligible Lenders Required to Commit and Pre-Fund Loans under the MSLP before the SPV has Committed to Purchase its Participation in a Loan? (FAQ L.4)

- Eligible Lenders may (i) extend an MSLP loan and then seek participation from the Main Street SPV by submitting all of the required documentation for processing or (ii) make funding of the loan contingent on a binding commitment from the Main Street SPV that it will purchase a participation in the loan.

Additional topics covered in the FAQs include:

- what it means to require MSPLF loans and MSELF upsized tranches to be "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" (FAQ C.5 and D.11), including a requirement that the aggregate value of any relevant collateral security, including the *pro rata* value of any shared collateral divided by the outstanding aggregate principal amount of the relevant debt (the "Collateral Coverage Ratio") at the time of origination must be either (i) at least 200% or (ii) not less than the aggregate Collateral Coverage Ratio for all of the Borrower's other secured loans or debt instruments, and

- how Eligible Borrowers are to prepare financial records and determine their inputs in calculating 2019 adjusted EBITDA when applying for a loan (FAQ H.10).

Included in the FAQs are three appendices. Appendix A contains a checklist of items that must be reflected in the loan documentation in order for the Main Street SPV to purchase a participation in the loan, Appendix B includes certain model covenants that Eligible Lenders can elect to reference when drafting their loan documentation to satisfy Appendix A's requirements, and Appendix C includes a list of the financial information that Eligible Lenders must require Eligible Borrowers to provide on an ongoing basis until the loans mature or are paid off.

The MSLP forms and agreements can be found at the Federal Reserve Bank of Boston's website here.

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If you have any questions about the issues addressed in this memorandum, please do not hesitate to call or email authors Geoffrey E. Liebmann at 212.701.3313 or gliebmann@cahill.com; John Papachristos at 212.701.3691 or jpapachristos@cahill.com; Richard Pan at 212.701.3654 or rpan@cahill.com; or Paul Rafla at 212.701.3388 or prafla@cahill.com; or email publications@cahill.com.