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CLIENT ALERT - COVID-19: INCHING CLOSER TO A REVISED MAIN STREET LENDING PROGRAM

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On April 9, 2020, the Federal Reserve issued preliminary terms sheets for its eagerly anticipated Main Street Lending Program ("MSLP"). That same day, we issued a Client Alert outlining some of the key terms of the MSLP. In the ensuing 3 weeks, the Federal Reserve received approximately 2200 comment letters on the preliminary terms. Yesterday, the Federal Reserve issued new and revised term sheets, including adding a third loan option. This article outlines the key terms of each of the 3 MSLP loans and highlights the terms that were revised from the April 9 term sheets.

In addition to the original Main Street New Loan Facility ("New Loan") and the Main Street Expanded Loan Facility ("Expanded Loan"), the Federal Reserve has now added a Main Street Priority Loan Facility ("Priority Loan"). Here are the basics for each of the 3 loan types:

- New Loans have a 4-year term, a minimum loan amount of $500,000 (down from the original $1 million), a maximum loan amount of the lesser of $25 million or 4 times 2019 adjusted EBITA, 5% lender risk sharing, principal and interest deferment for 1 year, and debt repayment in years 2-4 of 33% each year.
- Expanded Loans have a 4-year term, a minimum loan amount of $10 million, a maximum loan amount of the lesser of $200 million (up from the original $150 million) or 35% of the outstanding and undrawn available debt (up from the original 30%) or 6 times EBITA, 5% lender risk sharing, principal and interest deferment for 1 year, and debt repayment in years 2-4 of 15%, 15% and 70% respectively.
- Priority Loans (the new loan option) have a 4-year term, a minimum loan amount of $500,000, a maximum loan amount of the lesser of $25 million or 6 times 2019 adjusted EBITA, 15% lender risk sharing, principal and interest deferment for 1 year, and debt repayment in years 2-4 of 15%, 15% and 70% respectively. As you can see, the lender risk sharing percentage is a key differentiating factor for these loans.
- The interest rate on all 3 loan types is LIBOR plus 3%. Previously, the Federal Reserve had indicated it would base the interest rate on SOFR but has now elected to base it off of LIBOR. This week's average LIBOR was reported to be 0.99% which, if the MSLP was active now, would result in an interest rate for the loans of just under 4%.

Here are some of the key terms and characteristics of these loans:

- All loans under the MSLP are full-recourse and are not forgivable.
- These loans are intended to address the credit needs of small and medium-sized businesses. The business must have 15,000 or fewer employees (up from the original 10,000), or have had 2019 annual revenues of $5 billion or less (up from the original $2.5 billion).

- Additional eligibility criteria include but are not limited to: the business must have been established prior to March 13, 2020, not be an "ineligible business" as modified and clarified by the SBA for PPP purposes, be created or organized in the U.S. with significant operations and a majority of its employees based in the U.S., and must have been in sound financial condition prior to the onset of the COVID-19 pandemic.
- Borrower/applicants will be required to make certifications as part of the application process which the lender is authorized to rely upon. However, unlike the PPP, lenders are directed to view the eligibility criteria as minimum requirements for the MSLP and apply their underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. The Federal Reserve has indicated that, as a result, businesses that otherwise meet the eligibility criteria may not be approved for a loan or may not receive the maximum allowable amount.
- New Loans cannot at the time of origination or at any time during their terms be contractually subordinated in terms of priority to the borrower's other loans or debt instruments.
- Borrowers who received a PPP loan, or that has affiliates who received PPP loans, are permitted to borrow under the MSLP.
- Presently, non-profits are not eligible to participate in the MSLP although the Federal Reserve indicated it is reviewing this.
- Loans under the MSLP can be either secured or unsecured.
- New Loans and Priority Loans carry 2 fees: the lender pays 100 basis points, and the borrower pays the lender a fee of up to 100 basis points. Expanded Loans also have 2 fees: the lender pays 75 basis points, and the borrower pays to the lender a fee of up to 75 basis points.
- Recipients of loans under the MSLP are required to use "commercially reasonable efforts" to maintain payroll and retain employees. The Federal Reserve has clarified this standard by indicating borrowers are required to undertake "good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor." A business that has already laid-off or furloughed workers as a result of the pandemic remains eligible to apply for a loan under the MSLP.
- The MSLP restricts certain compensation, stock repurchase and capital distributions for its borrowers.
- Importantly, the Federal Reserve has not yet set a "launch date" for the MSLP, but it has indicated that the MSLP will end on September 30, 2020.

It is anticipated that further modifications and clarifications will be forthcoming from the Federal Reserve up to and perhaps even after the MSLP is launched. We will continue to monitor and update as soon as more information becomes available.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this Client Alert is issued. We therefore encourage you to monitor our website, review our future Client Alerts and generally remain alert for additional updates or modifications to laws and regulations.

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