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Continued Relief for Small and Medium-Sized Businesses as the Federal Reserve Announces Expansion of the Main Street Lending Program

On April 30, 2020, the Federal Reserve Board (Board) announced in a Press Release that it would be expanding the scope and eligibility of the Main Street Lending Program (Program). In response to the COVID-19 pandemic, the Federal Reserve developed the Program to support small and medium-sized businesses that were financially sound before the pandemic. With the approval of the Treasury Secretary, the Program was established under Section 13(3) of the Federal Reserve Act.

After public comment on the initial terms of the Program, the Board expanded the loan options available to businesses and increased the maximum size of businesses that are eligible under the Program. As noted in the Press Release, such changes to the initial terms of the Program include:

- Creating a third loan option, with increased risk sharing by lenders for borrowers with greater leverage;
- Lowering the minimum loan size for certain loans to \$500,000; and
- Expanding the pool of businesses eligible to borrow.

The Program has termed the three loan options available for businesses as “new”, “priority”, and “expanded” and a summary of each loan option has been provided within the Press Release. Under the previously-announced loan options of the Program (the “new” loans and the “expanded” loans), lenders would retain a 5% share on loans while under the new loan option (the “priority” loans), lenders would retain a 15% share on loans that when added to the existing debt of the borrower, do not exceed six times a borrower’s income as

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adjusted for interest payments, taxes, depreciation, and other adjustments. As such, the Program will operate through three facilities: the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF). The Federal Reserve has provided term sheets for each of these facilities and frequently asked questions on the Program, available [here](#).

Eligibility

In addition to the new loan option, the initial Program terms were expanded to include larger businesses. Initially the Program was announced to be for companies with up to 10,000 employees and \$2.5 billion in revenue; however, the Program terms were expanded to include businesses with up to 15,000 employees or up to \$5 billion in annual revenue. In addition to the size criteria for eligibility, the MSNLF, MSPLF, and MSELF term sheets describe further eligibility criteria, which are the same across the three facilities, including:

- The business must have been established prior to March 13, 2020;
- The business must not be an “Ineligible Business” as defined and further modified and clarified by Small Business Administration (SBA) regulations;
- The business must be a U.S. business;
- The business may only participate in one of the Program facilities (MSNLF, MSPLF, or MSELF) and must not also participate in the Primary Market Corporate Credit Facility (PMCCF);
- The business must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Section 4003(b)(1)-(3) of the CARES Act); and
- The business must be able to make all of the certifications and covenants required under the Program.

While a business cannot participate in both the Program and the PMCCF, a business that received financial support through a PPP loan may participate in the Program for additional financial support.

Restrictions

For entities eligible under the Program, certain restrictions under the CARES Act remain. Namely, the Federal Reserve has stated that compensation, stock repurchase, and capital distribution restrictions under Section 4003(c)(3)(A)(ii) of the CARES Act will apply under each of the MSELF, MSNLF and MSPLF.

Compensation Restrictions. The compensation restrictions under the CARES Act state that for eligible businesses (i) officers or employees that received \$425,000 or more in total compensation in 2019 will have their future compensation capped at the amount they received in 2019; and (ii) officers and employees that received \$3,000,000 or more in total compensation in 2019 will have their future compensation capped at \$3,000,000 plus 50% of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in 2019. Both caps apply during the loan period and for twelve months after the loan is no longer outstanding.

Stock Repurchase Restrictions. The stock repurchase restrictions under the CARES Act state that while the loan is outstanding and for twelve months after the loan is no longer outstanding, an eligible business cannot repurchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business.

Capital Distribution Restrictions. The capital distribution restrictions under the CARES Act state that while the loan is outstanding and for twelve months after the loan is no longer outstanding, an eligible business cannot pay dividends or make other capital distributions with respect to the common stock of the eligible business.

Union Neutrality Restrictions. The restrictions as listed under Section 4003(c)(3)(A)(ii) of the CARES Act, which are affirmatively referenced in the Program's frequently asked questions provided by the Federal Reserve, do **not** include union neutrality restrictions. While other sections of the CARES Act applicable to other direct loan facilities do have union neutrality restrictions, such restrictions are not included under the Program. However, the Federal Reserve may issue additional clarifications on the Program and specifically, whether union neutrality restrictions apply to the Program.

The Treasury Department will provide \$75 billion for the Program using funds from the CARES Act. Such funds will be an equity investment by the Treasury Department into a Special Purpose Vehicle (Main Street SPV) in connection with the Program, and the Main Street SPV will purchase up to \$600 billion of participations in eligible loans.

As indicated in the Press Release, a start date for the Program will be announced soon. As you take advantage of the relief provided for under the Program, we encourage you to reach out to your personal Michael Best attorney. We are continuing to monitor the outbreak on a daily and hourly basis, and we are ready to provide you support as you navigate the challenges and uncertainties during the COVID-19 pandemic.

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