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Main Street Lending Program: An Overview of Anticipated Terms

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Main Street Lending Program - The Numbers

- The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides the U.S. Treasury with $454 billion to make loans, loan guarantees and other investments in Federal Reserve programs and facilities to support eligible businesses, States and municipalities.
- On April 9, 2020, the Federal Reserve announced its commitment to purchase up to $600 billion in loans through the Main Street Lending Programs ("MSLPs").
- The Department of Treasury, using funds appropriated to it under the CARES Act, will provide $75 billion in initial equity funding to the Main Street Lending Program.

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Overview

- Main Street New Loan Program & Main Street Expanded Loan Program:
  - Will enhance support for small and mid-sized businesses that were in *good standing* before the crisis.
    - Unlike PPP or EIDL loans, which have no underwriting or "credit elsewhere" testing.
  - The programs will provide liquidity to eligible lenders that make loans to small and medium-sized businesses facing financial difficulties and liquidity issues as a result of COVID-19.

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Loan Participation

- Under the MSLPs, the Federal Reserve Bank (the "Reserve Bank") will lend to a single common special purpose vehicle ("SPV") on a recourse basis.
- The SPV will purchase 95% participation in Eligible Loans issued by Eligible Lenders.
- The SPV and each Eligible Lender will share risk for each loan on a pari passu basis.

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New Loan v. Expanded Loan Programs

- Main Street New Loan Program:
  - This program will provide new unsecured loan facilities to Eligible Borrowers.
- Main Street Expanded Loan Program:
  - This program will provide Eligible Borrowers and Eligible Lenders with secured or unsecured loan facilities in place prior to April 8, 2020 with new financing to "upsize" existing loan facilities.
  - No requirement to pledge additional collateral, but the Fed's term sheet does allude to the possibility.

Eligible Lenders

- Eligible lenders are:
  - U.S. insured depository institutions;
  - U.S. bank holding companies; and
  - U.S. savings and loan holding companies.
    - Non-bank lenders <u>not</u> included.
    - Non-U.S. lenders <u>not</u> included.
- Unclear whether a loan syndicate will qualify, and if syndicated, whether a single ineligible lender in the syndicate (e.g., a non-U.S. bank) would disqualify the entire lender group.

Eligible Lenders' Attestations

- Eligible Lenders are required to make the following attestations:
  - Proceeds of the loan <u>will not</u> be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower;
  - The Eligible Lender <u>will not</u> cancel or reduce any existing lines of credit outstanding to the Eligible Borrower; and
  - The borrower satisfies all of the eligibility requirements of the MSLPs, including in the conflicts of interest prohibition in Section 4019(b) of the CARES Act.
    - Senior federal government official conflict of interest rules.

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Eligible Borrowers

- Eligible borrowers are businesses:
  - with up to 10,000 employees **<u>or</u>** up to $2.5 billion in 2019 annual revenues (unclear how "affiliation" concepts will apply, if at all, in the context of these eligibility calculations); and
  - created or organized in the U.S. or under U.S. law with significant operations, and a majority of its employees based, in the U.S.
- An eligible borrower may <u>not</u>:
  - participate in both of the Main Street Loan Programs; or
  - participate in the Federal Reserve's Primary Market Corporate Credit Facility.
- However, an eligible borrower may participate in the Paycheck Protection Program (PPP).

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Eligible Borrowers' Attestations

- Eligible Borrowers are required to make the following attestations:
  - Proceeds of the loan will not be used to repay or refinance other loan balances;
  - The Eligible Borrower will not seek to cancel or reduce other debt of equal or lower priority (including any outstanding debt with the Eligible Lender), with the exception of mandatory principal payments;
  - The borrower requires the financing due to the exigent circumstances presented by COVID-19 and, using loan funds, will make "reasonable efforts" to maintain its payroll and retain employees during the term of the loan;

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Eligible Borrowers' Attestations (Cont.)

- Eligible Borrowers are required to make the following attestations:
  - The borrower meets the EBITDA leverage conditions;
  - 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; and
  - The borrower satisfies all of the eligibility requirements of the MSLPs, including in the conflicts of interest prohibition in Section 4019(b) of the CARES Act.
    - Senior federal government official conflict of interest rules.

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Eligible Loans

- Eligible loans must have the following features:
  - 4 year maturity
  - Deferment of principal and interest for one year
  - Adjustable rate equal to the Secured Overnight Financing Rate ("SOFR" – currently, 0.01%) plus an additional 2.5% - 4.0%
  - Minimum loan size of $1 million
  - No prepayment penalty

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Eligible Loans (Cont.)

- Maximum loan size under the Main Street New Loan Program must be the lesser of:
  - $25 million; or
  - an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed **4x** the borrower's 2019 EBITDA. (Problematic if negative EBITDA.)
- Unclear if customary EBITDA adjustments will be permitted.

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Eligible Loans (Cont.)

- Maximum loan size under the Main Street New Loan Program must be the lesser of:
  - $150 million;
  - 30% of the borrower's existing outstanding and committed but undrawn bank debt; or
  - an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed **6x** the borrower's 2019 EBITDA. (Problematic if negative EBITDA.)

Restrictions

- No stock buybacks of equity securities listed on a national securities exchanges of Borrower or parent and no divided payments or capital distributions on common stock of the Borrower, until 12 months after the loan has been repaid.
- Loans are not eligible for forgiveness.
- Compliance with Section 13(3) of the Federal Reserve Act requirements, including the following:
  - The Federal Reserve must assign a value to all collateral to ensure loans are sufficiently secured to protect taxpayers from losses; and
  - Borrowers cannot be insolvent as defined by the Dodd-Frank Act or as the Federal Reserve determines.

Restrictions (Cont.)

- During the period from when the loan is executed and one-year after the loan is repaid:
  - officers and employees whose total compensation (including salary, bonuses, awards of stock and other financial benefits) in 2019 exceeded $425,000 is frozen (on a 12 consecutive months basis) (except for certain compensation determined through an existing CBA entered into prior to March 1, 2020);
  - Officers and employees whose pay exceeds $425,000 cannot receive severance pay in excess of 2X their total compensation in 2019; and
  - No officer or employee whose total compensation exceeded $3 million in 2019 may receive pay (on a 12 consecutive months basis) in excess of the sum of (i) $3M and (ii) 50% of the excess over $3M of total compensation received in 2019.
    - Certain of the restrictions/limitations could be complicated to apply in the context of a sale, recapitalization or similar transaction.

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Fees

- **Facility Fee**: An Eligible Lender will pay the SPV a fee equal to 100 basis points of the principal amount of the Eligible Loan.
  - No facility fee charged under the Main Street Expanded Loan Facility.
  - The Eligible Lender may – and likely will – require the Eligible Borrower to pay this fee.

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Fees (Cont.)

- **Origination/Upsizing**: An Eligible Borrower will pay an Eligible Lender a fee equal to 100 basis points of the principal amount of the Eligible Loan.
- **Servicing Fee**: The SPV will pay an Eligible Lender a fee equal to 25 basis points of the principal amount of the Eligible Loan per annum.

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Facility Termination

- The SPV will cease purchasing participation in Eligible Loans on September 30, 2020, unless extended by the Federal Reserve/Treasury.
- The Federal Reserve will continue to fund the SPV until the SPV's underlying assets mature or are sold.

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Practical Considerations

- Borrowers should:
  - Determine their eligibility for and decide on participation among the two MSLPs and the Primary Market Corporate Credit Facility.
  - Review existing and contractual commitments to determine what (if any) consents/waivers are needed to proceed with these programs.
    - MFNs, baskets, maturity terms, subordination, etc.
  - Remain apprised of any changes to the MSLPs by the Federal Reserve or the Department of Treasury.

Other Considerations

- Lenders are not required to make loans, so will presumably need to be negotiated with each bank
- Unclear what the loan documentation process will entail (e.g., standardization vs. bank-to-bank forms)
- Need more detail regarding application of pre-existing loan terms to "new" portion of "upsized" loans

Other Considerations (Cont.)

- Absence of other potential CARES Act certifications is noteworthy, especially those related to union issues, employee retention/comp targets and off-shoring
  - Sample term sheets do reference possible additional certifications "required by applicable statutes and regulations"
- Fed collecting feedback on initial terms through April 16

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