June 9, 2020

UPDATE: Federal Reserve Issues Revised Term Sheets for Main Street Lending Facilities

Key Takeaways

- *On June 8, 2020, the Federal Reserve ("Fed") issued revised term sheets governing the Main Street New Loan Facility ("MSNLF"), the Main Street Expanded Loan Facility ("MSELF") and the Main Street Priority Loan Facility ("MSPLF").[1] The Fed also updated the Main Street Frequently Asked Questions ("FAQ") to provide additional guidance on the latest terms and conditions of the Main Street Lending Program.[2]*

- *The changes to the term sheets and FAQs are generally designed to make the program more attractive to borrowers, including by reducing minimum loan amounts, increasing maximum loan amounts and extending the maturity date and deferment of principal payments for an additional year each.*

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The Fed's June 8, 2020 press release explains that by making certain revisions to the terms and conditions of the Main Street Lending Facilities ("Main Street"), it intends to broaden the availability of Main Street loans to more small and medium-sized businesses.[3] We highlight here certain updates and clarifications implemented by the updated term sheets and FAQs. The Fed advises that revisions to previously published Main Street form agreements are underway and will be released when ready.

- Maturity. All three Main Street facilities have had their maturity dates extended to five years from four.

- Repayment Deferment. Under all three Main Street facilities, principal payments are now deferred for two years, rather than one. Interest payments continue to be deferred for one year and will be capitalized pursuant to each lender's customary practices.

- Amortization. MSELF and MSPLF amortization schedules continue to provide for three scheduled payments, 15%, 15% and a balloon payment of 70%, with the timing shifted to the end of the third, fourth and fifth years to account for the additional year added to the loan term. The amortization

1 For the Fed's press release and the revised term sheets, please click here.

2 For the FAQs, please click here.

3 For additional information regarding Main Street's prior guidance, please click here, here and here.

schedule for MSNLF has been revised to mirror that of MSELF and MSPLF, rather than the prior MSNLF schedule that called for three equal payments of one-third at each anniversary.

- Loan Size.
  - *Minimum Loan Size*. MSNLF and MSPLF minimum loan sizes have been reduced to $250,000 from $500,000. MSELF minimum loan size is unchanged at $10 million.
  - *Maximum Loan Size*. While the EBITDA leverage ratio tests for each of the Main Street facilities have not been amended by the revised term sheets, each program's maximum loan amount has been increased, with MSNLF increasing to $35 million from $25 million, MSPLF increasing to $50 million from $25 million and MSELF increasing to $300 million from $200 million. In addition, MSELF's test capping loan size at 35% of certain of the borrower's existing outstanding and undrawn available debt has been eliminated, leaving MSELF loans subject only to the EBITDA leverage ratio test and the $300 million cap, which is consistent with the construct in MSNLF and MSPLF. The latest FAQs also clarify that amounts borrowed and not yet forgiven under the Small Business Administration's Paycheck Protection Program must be treated as outstanding debt when calculating maximum loan size.
  - *EBITDA Calculations*. The revised FAQs explain that borrowers are expected to submit statements evidencing their EBITDA calculations, including audited financial statements or U.S. GAAP compliant financial records, in each case to the extent the borrower is required to prepare, or ordinarily prepares, such materials.
- Fed Participation. MSPLF now provides that the Fed will purchase a 95% participation in loans, increased from 85% and consistent with the Fed's participation in MSNLF and MSELF loans.
- MSELF: Multi-Lender Facilities. Consistent with prior guidance, a loan with multiple lenders may still qualify for an MSELF upsized tranche so long as the lender providing such upsized tranche (i) is an eligible lender and (ii) holds an interest in such loan as of the date of upsizing. Prior FAQs provided that such lender must retain its 5% participation in the upsized tranche and may not share it with other lenders (regardless of whether those other lenders are part of the underlying multi-lender facility). While this requirement remains unchanged, the latest FAQs have been amended to permit multiple eligible lenders within the same existing facility to originate separate MSELF upsized tranches, subject to an aggregate maximum loan size based on MSELF's EBITDA leverage test and $300 million cap per existing facility. While this enables eligible lenders within an existing multi-lender facility to share in MSELF upsized tranches, such lenders will need to coordinate their participations amongst themselves prior to origination.

- Lender Fees. Generally, lenders were not permitted to charge fees to borrowers other than as explicitly permitted under the Main Street facilities except for "de minimis fees for services that are customary and necessary," such as legal fees. The latest FAQs maintain this position, but now also permit MSELF lenders to charge "customary consent fees" as necessary to amend the existing facility's documentation for purposes of the MSELF upsizing.

- Previously Issued Loans. The revised FAQs confirm that any loans funded prior to June 10, 2020 on the terms set out in the April 30, 2020 term sheets will remain eligible to participate in the Main Street facilities. The FAQs further provide that such previously issued loans may be amended or refinanced to reflect the June 8, 2020 term sheets.

Ongoing Updates

The Main Street program remains under continuing review and the Fed and the U.S. Treasury may make adjustments to the terms and conditions of any of the lending facilities described above as they deem appropriate. We will continue to provide updates on any further developments.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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