Practice Update

Main Street Lending Program Offers Additional Relief to Small and Mid-Size Businesses Under the CARES Act

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On April 9, 2020, the Federal Reserve established a Main Street Lending Program (Main Street) under the Coronavirus Economic Stabilization Act of 2020 (CESA)[1] for the purpose of providing funding of up to $600 billion to ensure credit flows to small and mid-size businesses that require financing due to the exigent circumstances presented by the COVID-19 pandemic. The Main Street program, which is effective until September 30, 2020, authorizes two types of credit facilities: one that will enable eligible lenders to provide new loans originated on or after April 8, 2020 (the Main Street New Loan Facility – "New Facility") and one that will enable eligible lenders to increase the size of existing loans originated prior to April 8, 2020 (the Main Street Expanded Loan Facility – "Expanded Facility").

Companies employing **up to 10,000 employees** or with **revenues of less than $2.5 billion in 2019**, that were in good standing before the coronavirus crisis, will be eligible for Main Street loans. Companies that have taken advantage of the Paycheck Protection Program (PPP) may also take out Main Street loans. However, differently from the PPP, no portion of the Main Street loans will be forgivable. Borrowers will be required to make reasonable efforts to maintain its payroll and retain its employees during the term of the loan and will be subject to compensation,

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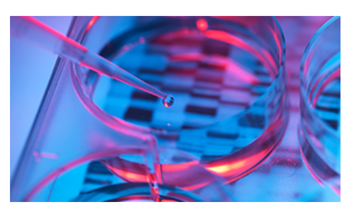

stock repurchase and distribution restrictions further detailed below.

Eligible Borrowers

In addition to the requirements above, a company seeking Main Street loans needs to be created or organized in the United States or under the laws of the United States, with significant operations in and a majority of its employees based in the United States. In addition, borrowers may only participate in either the New Facility or the Extended Facility and may not participate in the Primary Market Corporate Credit Facility, which is a separate Federal Reserve program that provides a funding backstop for corporate debt issued by eligible issuers.

Loan Size

New Facility: Minimum loan size of $1 million and maximum loan size that is the lesser of (i) $25 million or (ii) an amount that, when combined with any existing outstanding and committed but undrawn facility, does not exceed 4x EBITDA for 2019.

Expanded Facility: Upsized tranche minimum loan size of $1 million and maximum loan size that is the lesser of (i) $150 million, (ii) 30 percent of borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when combined with any existing outstanding and committed but undrawn facility, does not exceed 6x EBITDA for 2019.

Loan Terms

A New Facility or the upsized tranche of the loan in an Expanded Facility will have the following terms:

- 4 year maturity
- adjustable interest rate of Secured Overnight Financing Rate (SOFR) plus 2.5 percent to 4 percent

- principal and interest payments will be deferred for one year
- prepayment permitted without penalty
- origination fee of 1 percent of the principal amount; a lender may also require a facility fee of 1 percent of the principal amount of the Federal Reserve Bank's loan participation
- unsecured, provided that any collateral securing an existing loan that is upsized under the Expanded Facility, whether such collateral was pledged under the original terms of the existing loan or at the time of upsizing, will secure loan participation on a pro rata basis.

Additional Requirements and Attestations

- Main Street loans cannot be used to repay, refinance or reduce pre-existing loans or lines of credit
- other debt of equal or lower priority will be subordinated to the Main Street loans
- borrower requires financing due to the exigent circumstances presented by the COVID-19 pandemic and it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan
- borrower will be restricted during the loan term and for twelve months after repayment from: (i) repurchasing any public securities from itself or a parent company other than as required under an existing contractual obligation as of March 27, 2020, (ii) paying any dividends or making other capital distributions with respect to its common stock, and (iii) (A) paying any employee whose total compensation exceeded $425,000 in 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement) (x) total compensation in excess of such 2019 total compensation during any 12 consecutive months of such period, or (y) severance or other termination benefits in excess of 2x such 2019 total compensation and (B) paying

any employee whose total compensation exceeded $3,000,000 in 2019 compensation in excess of $3,000,000 plus 50 percent of the excess over $3,000,000 paid in 2019 during any 12 consecutive months of such period. The term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business.

- no individual that is the President, the Vice President, head of an Executive department, or a Member of Congress or such individual’s spouse, child, son-in-law or daughter-in-law can hold more than 20 percent by vote or value of the borrower or eligible lender[2]

Although the Main Street program is effective as of April 9, 2020, the Federal Reserve is accepting comments on the regulations until April 16, 2020. Thereafter, the Federal Reserve may issue revisions to the regulations governing the Main Street program. The following requirements under the CARES Act were not included in the initial details announced by the Federal Reserve but may apply as the Federal Reserve did not expressly exclude them: [3]

- borrower may not outsource or off-shore jobs for the term of the loan and 2 years after completing repayment of the loan
- borrower may not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan
- borrower will remain neutral in any union organizing effort for the term of the loan

Eligible Banks

Under the Main Street program, the Federal Reserve Bank (through a special purpose vehicle) will purchase 95 percent participations in eligible loans from eligible lenders and the eligible lenders will retain 5 percent of each eligible loan. Eligible lenders will be U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. The Federal Reserve Bank and eligible lenders will share risk on a pari passu basis.

While eligible lenders get ready to provide Main Street loans in the next days, you should consider immediately contacting a lender to begin the process.

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[1] Subtitle A of Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

[2] See section 4019(b) of the CARES Act.

[3] See section 4003(c)(3)(D)(i) of the CARES Act.

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