# COVID-19: FEDERAL RESERVE BANK RELEASES UPDATE ON THE MAIN STREET LENDING PROGRAM

Date: 2 June 2020

**U.S. Banking and Asset Finance Alert**

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On May 27th, 2020, the Federal Reserve Bank of Boston released updated information, instructions, required certifications, and a set of agreements for the three loan facilities offered as part of "Main Street Lending Program" (the Program) pursuant to the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act: the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF) and the Main Street Expanded Loan Facility (MSELF and collectively, the Facilities). In this e-alert, you will find:

- an updated version of our previously published combined term sheet summarizing and comparing the key aspects of each Facility;
- a summary description of each of the newly released instructions, required certifications and set of agreements, including links to documents;
- a new term sheet summarizing the principal terms of the loan participation by the special purpose vehicle formed by the Federal Reserve Bank of Boston for purposes of the Program (the SPV); and
- a redline comparison of the May 27th version of the Federal Reserve Board's (FRB) "Frequently Asked Questions" publication (the FAQs) for the Program marked to the original version of the FAQs released on April 30, 2020.

Although the updated FAQs, instructions, certifications, and agreements provide prospective participants with greater clarity on the terms and requirements of the Program, certain important issues have not been resolved through this latest iteration from the FRB. These issues have the potential to negatively impact the Program's successful implementation. In that regard, there are a few points worth noting:

- The minimum loan size for MSNLF and MSPLF was reduced to $500,000, but may still be too high of a threshold for lower middle-market companies in need of less liquidity. For these companies, the required debt load coupled with a four-year amortization schedule, could make the terms unfeasible, or they could fail to qualify for the minimum loan amount. Further, the FRB has acknowledged that many middle-market companies may fail to qualify because they do not have positive EBITDA.
- For prospective borrowers with existing debt or credit facilities, it is likely any financing under the Program will require the consent of existing lenders, and such consent may be challenging given that the prospective borrower's leverage will increase and collateral may be diluted.

 

- The FAQs clarify that the limits imposed by the CARES Act on dividends and capital distributions do not apply to distributions made by an S corporation or other tax pass-through entity to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings. However, other restrictions imposed by the CARES Act, including limits on executive compensation, stock buybacks, and other dividends and capital distributions, remain in place. These restrictions are likely to prove unpalatable for many companies.
- Private non-bank lenders continue to be excluded as participants in the Program (both as borrowers and lenders).
- The SPV may sell, transfer, or elevate its participation to an assignment without the consent of the eligible lender or borrower in certain distressed situations. In the absence of consent rights, eligible lenders will not have control over the selection of co-lenders or participants.
- Consent of the SPV (and assignees to whom the SPV transfers its interest) is required with respect to so-called "Core Rights Acts," which include matters beyond customary sacred rights, such as a consent right with respect to the exercise of rights and remedies arising from a cross-acceleration. In light of the economic uncertainty facing companies generally, both lenders and borrowers may be reluctant to afford such rights to the SPV, particularly in light of the FRB's stated approach of making "commercially reasonable decisions to protect taxpayers from losses on Main Street loans" and statement that it "will not be influenced by non-economic factors when exercising voting rights" including "with respect to a borrower that is the subject of a workout or restructuring."

Our team will continue to monitor for future guidance and additional information from the FRB. For additional information relating to Program, please see the e-alert prepared by our policy team available here. As always, please also feel free to contact any member of our team for direct assistance with the Program.

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