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Main Street Lending Program – Revisions and Clarifications from the Fed

May 18, 2020

Note: This presentation supplements the original FDH MSLP presentation, available here.

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Overview of Key Impacts of Main Street Lending Program ("MSLP")* Update

- **Potentially attractive new Main Street Priority Loan Facility** - 6.0x leverage ratio plus ability to refinance certain existing debt
- **Eligibility improved** - Increased employee and revenue caps for borrower eligibility
- **Adjusted EBITDA** - Adjusted EBITDA used in calculating maximum MSLP loan amount
- **Some creditworthiness issues** - Focus on creditworthiness may limit eligibility for some borrowers
- **Affiliation** - SBA Affiliation rules apply but may not pose significant obstacle for portfolio companies of small/mid-size private equity firms due to increased caps
- **Clarity regarding terms** - Updates to terms including interest, amortization, collateral requirements and priority versus existing debt, and required borrower certifications
- **Eligible lender expanded** - Fed expands list of eligible lenders to include, among others, U.S. branches of foreign banks, while still excluding nonbank institutions – Fed also considering further expansion

*See Appendix A for Summary of MSLP Terms.
See also the Fed's MSLP website, which contains a program overview, facility term sheets and other helpful MSLP materials.

NEW Main Street Priority Loan Facility

Fed established a third MSLP facility – the Main Street Priority Loan Facility

Main Street New Loan Facility ("MSNLF")	▪ Eligible lender provides a ***new*** MSLP loan facility ***up to $25mm*** (leverage ratio ≤ ***4x***)
Main Street Expanded Loan Facility ("MSELF")	▪ Eligible lender upsizes an ***existing*** loan facility with a new tranche of MSLP loans ***up to $200mm*** (leverage ratio ≤ ***6x***)
Main Street Priority Loan Facility ("MSPLF") (NEW)	▪ **Eligible lender provides a new MSLP loan facility up to $25mm (leverage ratio ≤ 6x)**

- The new MSPLF most closely resembles the MSNLF with a few notable differences:
  - **Higher leverage ratio:** Capped at 6x adjusted 2019 EBITDA (compared to 4x adjusted 2019 EBITDA for MSNLF)
  - **Use of proceeds to refinance**: Borrower may, at time of loan origination, refinance existing debt owed to a lender that is not the eligible lender providing the MSPLF facility (e.g., use a portion of proceeds to payoff a third party existing lender) (see slide 4)
  - **Priority**: Like MSELF, must be senior or *pari passu* in priority and security with all of borrower's other loan or debt instruments (other than mortgage debt)

NEW Main Street Priority Loan Facility – Potential to Refinance Existing Debt

CAUTION: Current Fed guidance is unclear whether:

- MSPLF borrower may refinance **any** existing third party debt provided by **any lender that is not *the* eligible lender** providing the MSPLF loan ***OR***
- MSPLF borrower may refinance **only** existing third party debt provided by **a lender that does not qualify as *an* eligible lender** under the MSLP (e.g., foreign bank, direct lending funds and/or other alternative lenders)

Also not yet clear whether refinancing can be partial or must be a full refinancing

- If refinancing using MSPLF proceeds is permitted, borrowers gain flexibility to:
  - Remove existing third party lender(s) who may be unreasonable negotiation partners in the wake of the pandemic
  - Replace an existing facility(ies) that has unfavorable rates, amortization or other terms with more favorable MSPLF terms
  - Payoff third party debt with approaching maturity, and replace with the new four-year MSPLF loan

Updates to Borrower Eligibility

Revised Eligible Borrower Criteria

Eligible borrower must meet ***at least one*** of the following two conditions:

- ≤ 15K employees (increase from 10K)
- ≤ $5B in 2019 annual revenues (increase from $2.5B)*

"Ineligible Business"

Eligible borrower must not be an "Ineligible Business" pursuant to the SBA rules**

- For example, hedge funds and private equity firms are "Ineligible Businesses"

Program Goal

- Stated goal of loans is to help companies that were in "sound financial condition" prior to COVID maintain their operations and payroll until conditions normalize
- Eligible lenders will apply their own standards in determining creditworthiness

Other CARES Act Support

- The borrower may receive PPP loans
- But eligible borrower must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)***

SBA Affiliation Rules Apply

SBA affiliation rules apply to the determination of either of the employee or revenue eligibility tests, as applicable

*Determined based on revenue reported in 2019 GAAP audited financials OR annual receipts reported to the IRS, or if neither is yet available, its most recent audited financial statements or annual receipts.

**Set forth in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the PPP.

***For example, passenger air carriers, cargo air carriers or businesses critical to maintaining national security that have received loans made pursuant to Section 4003(b)(1)-(3) of the CARES Act are ineligible for MSLP loans.

Affiliation Rules Apply, with Higher Caps

Affiliation still applies

- The affiliation rules are broad and involve a complex, fact-specific analysis and affiliation may be based upon or arise from (i) ownership, (ii) holding stock options and/or convertible securities and/or the existence of merger or purchase agreements, (iii) control of management and/or (iv) identity of interest.*
- The employee and revenue tests for MSLP loan eligibility apply to the applicant and all of its affiliates
- As with the PPP, existing negative covenants/ protective provisions among stockholders or other forms of contractual "controls" may trigger affiliation rules.

Fewer affiliation exceptions

- Important exceptions from the affiliation rules under the PPP are not available under MSLP, such as:
  - Applicant with existing SBIC investors
  - Restaurant and hospitality companies
  - Franchises.

However, higher employee and revenue caps apply

- The significantly higher employee and revenue limits (as compared to the PPP) may make application of the affiliation rules inconsequential to portfolio companies of small/mid-size private equity firms and venture capital firms
- Note: May still present an obstacle for portfolio companies of large cap private equity firms

*Complete text of relevant SBA affiliation rules provided here – 13 CFR 121.301(f) (1/1/2019 ed.)

Use of Adjusted EBITDA in Incurrence Leverage Test

- Previous iteration of MSLP did not provide guidance on calculation of 2019 EBITDA
- For example, the original version did not address addbacks to potentially adjust EBITDA
- This silence led to lending industry comments

The update provides for use of adjusted 2019 EBITDA in a manner consistent with:

- For existing borrowers: previous adjusted EBITDA calculations for the same borrower, or
- For new borrowers; adjusted EBITDA calculations for similarly situated borrowers

Asset Based Borrowers

- Fed is considering adjusting eligibility metrics for asset-based borrowers

Updates to Loan Terms*

Helpful

- **Favorable interest rates based on LIBOR** – 1- or 3- month LIBOR plus 300 basis points (updated from SOFR plus 250-400 basis points)
- **Updates to leverage calculation** - In calculating the maximum loan size based on leverage, debt includes "existing outstanding and undrawn available debt" but now excludes undrawn commitments under existing loan facilities which:
  - Are used as backup for commercial paper
  - Are used to finance receivables
  - Require additional collateral to be drawn
  - Are no longer available due to changed circumstances
- **Flexibility on collateral** – loans under the MSNLF may be secured or unsecured (prior to update, Fed previously contemplated unsecured MSNLF loans only)

Not as helpful

- **No ability to PIK interest** after first year of deferred interest
- **No subordination, which may make MSLP loans less attractive for existing lenders:**
  - MSNLF loans cannot be contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments
  - MSPLF and MSELF loans must be senior or *pari passu* in priority and security with all of borrower's other loan or debt instruments (other than mortgage debt)

*See Appendix A for amortization and other key terms.

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Updates to Borrower Creditworthiness & Related Certifications

The Fed provided additional detail on the lender's creditworthiness considerations and certifications by the borrower, which may be onerous under current circumstances:

Existing loan risk rating and financial condition assessment requirements

- MSNLF and MSPLF – any loans existing from the eligible lender to the eligible borrower as of December 31, 2019 must have had internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system ("pass rating")
- MSELF – the underlying existing loan must have had pass rating as of December 31, 2019
- The lender must conduct an assessment of each potential borrower's financial condition at the time of application

Solvency Certification

- Eligible borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the MSLP loan and after giving effect to such loan:
  - It has the ability to meet its financial obligations for at least the next 90 days and
  - It does not expect to file for bankruptcy during such 90-day period

Updates to Borrower Restrictions and Requirements

Tax Distributions Permitted

- Restrictions on dividends and capital distributions will not apply to tax distributions made by any eligible borrower that is an S corporation or other tax pass-through entity to the extent that such distribution is reasonably required to cover its owners' tax obligations on the entity's earnings

"Commercially Reasonable Efforts" Standard for Employee Retention and Payroll Maintenance

- Eligible borrower should make "commercially reasonable efforts" to retain employees during the term of any MSLP facility
- "Undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor"

Time Limits on Employee Retention and Payroll Maintenance

- Neither requirement extends beyond expiration/termination of the MSLP facility
- Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for MSLP loans

Open Points to be Resolved by the Fed

- **U.S. subsidiaries of foreign companies:**
  - Eligible for the MSLP?
- **Direct lending funds and other alternative lenders:**
  - Will the Fed further expand the definition of "Eligible Lender" to include direct lending funds and/or other alternative lenders?
- **Asset-based borrowers and/or non-profits:**
  - Will the Fed create an alternative loan eligibility/underwriting metric (i.e., an alternative to EBITDA) in order to make the MSLP more accessible to asset-based borrowers and/or non-profit organizations?
- **Administration at the Fed**
  - How will the Fed practically manage any administrative burdens inherited by the Fed-owned SPV's through its purchase of participations in MSLP loans to eligible borrowers (e.g., voting rights, document delivery rights)?

Next Steps

1 Operational status

- Fed currently working to create the infrastructure necessary to implement the MSLP
- Fed will announce further updates on its website with respect to MSLP launch date and other MSLP operational details

2 Eligible borrowers - How to apply

- Contact an eligible lender (whether leveraging an existing banking relationship or starting a new relationship)
- **Note:** Eligible lenders will conduct their own independent underwriting; a borrower may qualify for the MSLP as an eligible borrower but be rejected by an eligible lender for a MSLP loan

3 Eligible lenders – What documents to prepare

- Fed will publish forms of the following agreements:
  - Loan participation agreement
  - Borrower and lender certifications
  - Other form agreements
- Lenders to prepare and provide underlying loan documents

If you have any questions regarding the matters covered in this publication, please contact any of your regular FDH contacts.

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Appendix A: Summary of MSLP Terms

Main Street Lending Program Loan Options*	New Loans	Priority Loans	Expanded Loans
Term	4 years	4 years	4 years; Existing loan facility must have a remaining term of 18+ months
Minimum Loan Size	$500K**	$500K	$10mm
Maximum Loan Size	The lesser of $25mm or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	The lesser of $25mm or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	The lesser of $200mm, 35% of existing outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA
Risk Retention by Eligible Lender	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%
Collateral	Unsecured or secured (including second lien); cannot be contractually subordinated	Must be senior to or *pari passu* with, both as to payment and security, all other debt (other than mortgage debt)	Must be senior to or *pari passu* with, both as to payment and security, all other debt (other than mortgage debt)

*Links to full term sheet with respect to each MSLP facility here: MSNLF, MSPLF and MSELF
**Updates to MSLP Terms in red

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