VedderPrice

Executive Summary Analysis of Updated Main Street Lending Program

On April 9, 2020, the Board of Governors of the Federal Reserve System (the "Federal Reserve") released term sheets outlining the Main Street Lending Program under the Coronavirus Economic Stabilization Act (the "CARES Act"): (1) the Main Street New Loan Facility ("New Loans"), and (2) the Main Street Expanded Loan Facility ("Expanded Loans"). On April 30, 2020, the Federal Reserve released updated term sheets for New Loans and Expanded Loans; added a third facility, the Main Street Priority Loan Facility ("Priority Loans"); and released Frequently Asked Questions ("FAQ") about the Main Street Lending Program.

These programs are aimed at paving the way for increased lending to small and medium-sized businesses. Under these facilities, the Federal Reserve Bank of Boston will commit to lend to a Main Street Special Purpose Vehicle ("SPV"), which in turn will purchase 85% participations in Priority Loans and 95% participations in New Loans and Expanded Loans. Eligible lenders would hold 15% of the exposure on Priority Loans and 5% of the exposure of New Loans and Expanded Loans. The combined commitment of the Federal Reserve and Treasury Department to the SPV will be up to $600 billion.

The April 30 updates now permit larger businesses to participate in the Main Street Lending Program while relaxing minimum amounts to help more small businesses (which we believe is in reaction to so many businesses being shut out of the SBA Paycheck Protection Program under the CARES Act and the expanded duration of the COVID-19 crisis). Businesses with up to 15,000 employees or $5 billion in annual revenue in 2019 are now eligible, up from earlier limits of 10,000 employees and $2.5 billion in revenue. The minimum loan size has been reduced to $500,000 from $1 million.

While the Federal Reserve had initially unveiled two different loan facilities, one for new debt (New Loans) and one for existing loans (Expanded Loans) leaving banks with a 5% stake in the loans, the April 30 release included a third option for companies with more leverage. Under that Priority Loan Facility, banks will have to maintain a larger 15% stake in the debt sold to the Federal Reserve's SPV. The Priority Loans also can be used as part of a debt refinancing package to enable more leveraged firms to restart with new lenders.

Other notable changes in the April 30 updates include: (i) clarification that EBITDA will be calculated using the adjusted EBITDA methodology employed in existing loan documents; (ii) pricing for all of the loans is LIBOR plus 300 basis points; (iii) all loan payments can be deferred for one year and must be paid in four years with amortization varying depending on which loan is utilized; (iv) clarification that the loans may be secured or unsecured, and where the priorities fall in relation to existing loans as described in more detail below; (v) important clarifications were made to allow pass-through entities like S corporations and limited liability companies to pay tax distributions; and (vi) SBA affiliation rules apply (as modified for the Main Street Lending Program parameters) so that a borrower and all of its affiliates must have less than 15,000 employees or 2019 annual revenues of less than $5 billion.

Unfortunately, even after the April 30 release of new term sheets and an FAQ, no information is yet available on which lenders are participating in the program, how to apply and the launch date. It is clear that the lenders will have a key role in determining underwriting standards and borrower eligibility.

This summary briefly describes the lending programs and compares them in an easy-to-digest chart. We note that this is current as of April 30, 2020, and adjustments to these programs will be made in the future.

Program	Brief Description
Main Street New Loan Facility	New secured or unsecured term loan originated after April 24, 2020 with a maximum loan size equal to the lesser of: • $25 million; or • 4x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt. Cannot be contractually subordinated in terms of priority to other loans or debt instruments but structural subordination appears possible.
Main Street Priority Loan Facility	New secured or unsecured term loan originated after April 24, 2020 with a maximum loan size equal to the lesser of: • $25 million; or • 6x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt. Senior to or *pari passu* with, in terms of priority and security, other loans or debt instruments, other than mortgage debt. **VEDDER OBSERVATION:** Priority Loans are new to the Main Street Lending Program. They can be used as part of a package to refinance existing debt.
Main Street Expanded Loan Facility	Upsizing of an existing secured or unsecured term loan or revolving credit facility that was originated on or before April 24, 2020 with a new term loan tranche equal to the lesser of: • $200 million; • 35% of existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured); or • 6x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt. Senior to or *pari passu* with, in terms of priority and security, other loans or debt instruments, other than mortgage debt.

KEY UPDATES TO MAIN STREET LENDING PROGRAM

1. **Priority Loan Facility:** The Priority Loan Facility is added to the Main Street Lending Program, which facility will purchase participations in newly originated term loans based on 6x adjusted 2019 EBITDA (i.e., looser than New Loan Facility), with an 85% (rather than 95%) participation to the SPV. Priority Loans can be used to refinance existing debt.

2. **Loan Sizing:**
   - Maximum loan sizes are expanded as a result of being based on (i) "adjusted EBITDA", and (ii) "existing outstanding and undrawn available debt", with further guidance provided on how to calculate.
   - Fed and Treasury will evaluate feasibility of adjusting loan eligibility metrics for asset-based borrowers.
   - Maximum loan sizes are expanded to range from $500,000 to $200 million, with separate minimums and caps for each loan facility.

3. **Priority:** Secured and unsecured term loans are included, but subject to priority rules:
   - New Loan Facility: Cannot be contractually subordinated in terms of priority to other loans or debt instruments.
   - Priority Loan Facility: Senior to or *pari passu* with, in terms of priority and security, other loans or debt instruments, other than mortgage debt.
   - Expanded Loan Facility: Senior to or *pari passu* with, in terms of priority and security, other loans or debt instruments, other than mortgage debt.

4. **Eligible Borrowers:**
   - Eligibility expanded to include businesses with either (i) 15,000 employees or fewer, or (ii) $5 billion or less of 2019 annual revenues.
   - Affiliations rules are imposed, which will eliminate many private equity-backed businesses and public companies from consideration.
   - Certain categories of businesses are made ineligible.
   - Financial assessments of each borrower will be conducted by lenders.

5. **Eligible Lenders:**
   - U.S. branches or agencies of foreign banks are included.
   - Alternative lenders continue to be excluded, but Fed is considering options to expand list of Eligible Lenders.
   - If the loan underlying an ELF upsized tranche is part of a syndicated credit facility, the Eligible Lender must be one of the lenders that holds an interest in the underlying loan.

6. **Interest Rate:**
   - LIBOR-based rather than SOFR-based.
   - All facilities have same rate, notwithstanding differing leverage profiles and amortization schedules.

7. **Amortization:** Post year-1 amortization schedules are provided for each loan facility, which are in meaningful amounts.

8. **Tax Distributions:** Permitted to be made by flow-through vehicles such as limited liability companies and S corporations.

9. **Assignability:** Eligible Lenders are restricted from assigning Eligible Loans and upsized tranches as a result of imposition of hold periods.

10. **Repayment/Commitment Reductions:** Certain repayments and commitment reductions of other debt are permitted, including in the case of the Priority Loan Facility, refinancing of existing debt not held by the Eligible Lender.

	Main Street New Loan Facility ("NLF")	Main Street Priority Loan Facility ("PLF")	Main Street Expanded Loan Facility ("ELF")
Availability Period:	Until September 30, 2020 (unless extended).		
Eligible Borrowers:	(1) Businesses that have no more than <u>either</u> (a) 15,000 employees (see below for calculations) **<u>or</u>** (b) $5 billion in 2019 annual revenues (see below for calculations) (must only meet one of these requirements); (2) established prior to March 13, 2020; (3) not an "Ineligible Borrower" (see below); (4) created or organized in the United States with significant operations in and a majority of employees based in the United States; (5) cannot participate in more than one of the NLF, PLF and ELF programs (also, cannot participate in the Primary Market Corporate Credit Facility), but may receive more than one loan under the same program subject to caps; and (6) has not received specific support pursuant to the CARES Act, but recipients of PPP loans are eligible to participate. *"Business" is defined to include, among other things, for-profit entities, partnerships, limited liability companies, associations and trusts. Unlike the PPP program, not-for-profit entities are ineligible.* ***ABL Borrowers:*** *The Federal Reserve and the Treasury will evaluate the feasibility of adjusting the loan eligibility metrics on a basis other than EBITDA for asset-based borrowers.*		
(i) Calculating Employees:	For the purposes of meeting the employee headcount requirement above, Eligible Borrowers should count all full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors. For determining eligibility, the Eligible Borrower should use the average of the total number of employees of the Eligible Borrower and its affiliates for each pay period over the 12 months prior to the origination or upsizing of a loan.		
(ii) Revenues	Eligible Borrowers may use either of the following methods to calculate 2019 revenues: (1) Eligible Borrower may use its (and its affiliates') annual "revenue" per its 2019 GAAP-based audited financials; or (2) Eligible Borrower may use its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the IRS. If a borrower (or its affiliate) does not yet have 2019 audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts. ***VEDDER OBSERVATION:*** *This suggests that pre-2019 numbers can be used if 2019 numbers are not yet available by audit or IRS reporting.*		
(iii) Affiliation:	Both the employee headcount and annual revenue requirements must be calculated using the numbers for the Eligible Borrower's business, as well as those of any affiliated businesses. The affiliation rules (as adjusted for the employee size and annual revenue amounts noted above) are similar to those used under PPP, but do not include exceptions for restaurant or hospitality businesses, franchises or SBIC-backed businesses.		

<table>
<tr><th></th><th>Main Street New Loan Facility (“NLF”)</th><th>Main Street Priority Loan Facility (“PLF”)</th><th>Main Street Expanded Loan Facility (“ELF”)</th></tr>
<tr><td>Financial Condition:</td><td colspan="3">Eligible Lenders are expected to conduct an assessment of each potential borrower’s financial condition at the time of application. Eligible Lenders will apply their own underwriting standards in evaluating financial condition and creditworthiness of a borrower. Eligible Borrowers may be denied loans for failing to meet an Eligible Lender’s underwriting standards.

VEDDER OBSERVATION: Unlike PPP, lenders will conduct an underwriting process which will likely result in denials or loan amounts that are less than the maximum cap sizes.</td></tr>
<tr><td>Loan Classification:</td><td colspan="2">If the Eligible Borrower had other loans outstanding with the Eligible Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system on that date.</td><td>Eligible Loan must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system as of December 31, 2019.</td></tr>
<tr><td>Ineligible Borrowers:</td><td colspan="3">Ineligible Borrowers include businesses listed in 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. These include businesses like not-for-profits, passive business like real estate owners and landlords, life insurance companies, private clubs, sexual-related enterprises and religious schools. The Federal Reserve may further modify the application of these restrictions to Main Street.</td></tr>
<tr><td>Eligible Lenders:</td><td colspan="3">(1) U.S. federally insured depository institution (including bank, savings association, or credit union);
(2) U.S. branch or agency of a foreign bank;
(3) U.S. bank holding company;
(4) U.S. savings and loan holding company;
(5) U.S. intermediate holding company of a foreign banking association; and
(6) U.S. subsidiary of any of the foregoing.

Syndicated Facilities: If the loan underlying an ELF upsized tranche is part of a multi-lender facility, then the Eligible Lender must be one of the lenders that holds an interest in the underlying loan at the time of upsizing. Only the Eligible Lender for the upsized tranche is required to meet the Eligible Lender criteria; other lenders in the syndicate are not required to be Eligible Lenders.

Alternative Lenders: Alternative lenders are still not eligible.</td></tr>
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	Main Street New Loan Facility ("NLF")	Main Street Priority Loan Facility ("PLF")	Main Street Expanded Loan Facility ("ELF")

Borrower Requirements:	• Will not repay the principal balance of, or pay any interest on, any debt until the Eligible Loan (or, in the case of ELF, solely the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due.
	  • However, for PLF only, the Eligible Borrower may, at the time of origination of the Eligible Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.
	  • Eligible Borrowers may still (i) repay a line of credit (including a credit card) in the normal course of business usage of such line of credit, (ii) take on and pay additional debt obligations required in the normal course of business on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the loan or upsized tranche, and (iii) refinance maturing debt.
	• Will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
	• Eligible Borrower should make commercially reasonable efforts to maintain its payroll and retain its employees while the Eligible Loan (or, in the case of ELF, solely the upsized tranche) is outstanding. Specifically, Eligible Borrower should 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. Eligible Borrowers who have already laid-off or furloughed employees as a result of COVID disruptions are eligible to apply.
	• Eligible Borrower cannot be owned, controlled or held by certain governmental officials or certain of their relatives.
	• Eligible Borrower must have a reasonable basis to believe that, as of the date of the loan or upsize, and after giving effect to the loan or upsize, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file bankruptcy during that time period.
	
	VEDDER OBSERVATION: *There is no longer a certification required that Eligible Borrower requires financing due to exigent circumstances presented by COVID.*
	
	VEDDER OBSERVATION: *We expect that lenders will require covenants that further define such lender's interpretation of the eligibility requirements for borrowers.*		

Lender Requirements:	• Eligible Lender will not request that Eligible Borrower repay debt extended by Eligible Lender to Eligible Borrower, or pay interest on such outstanding obligations, until Eligible Loan (or, in the case of ELF, solely the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration. • Eligible Lender will not cancel or reduce any existing committed lines of credit to Eligible Borrower, except in an event of default. • This does not prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms or due to changes in borrowing bases or reserves in ABL or similar structures. • Eligible Lender would not be prevented from accepting regularly scheduled, periodic repayments on a line of credit from an Eligible Borrower in accordance with the Eligible Borrower's normal course of business usage for such line of credit.		

	Main Street New Loan Facility (“NLF”)	**Main Street Priority Loan Facility (“PLF”)**	**Main Street Expanded Loan Facility (“ELF”)**

Eligible Loans:	Secured or unsecured term loan made by an Eligible Lender to an Eligible Borrower that was originated after April 24, 2020, provided that the loan has the features described below.		• Existing tranche:
			  • Secured or unsecured term loan or revolving credit facility made by an Eligible Lender to an Eligible Borrower that was originated on or before April 24, 2020; and
			  • Must have a remaining maturity of at least 18 months (taking into account any adjustments made to maturity after April 24, 2020, including at the time of upsizing).
			• Upsize tranche must be a term loan that has the features described below.

New/Upsized Loan Features:			
Loan Size:	**Minimum:** $500,000		**Minimum:** $10 million
	Maximum: Lesser of: • $25 million; or • 4x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt.	**Maximum:** Lesser of: • $25 million; or • 6x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt.	**Maximum:** Lesser of: • $200 million; • 35% of existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured); or • 6x adjusted 2019 EBITDA minus existing outstanding and undrawn available debt.
“existing outstanding and undrawn available debt”	• Includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement facilities. • Includes all unused commitments under any loan facility, excluding any undrawn commitment: serving as a backup line for commercial paper issuance; used to finance AR (including seasonal financing of inventory); that cannot be drawn without additional collateral; and no longer available due to change in circumstance. • Calculated as of the date of the loan application and not the date of closing.		

	Main Street New Loan Facility (“NLF”)	Main Street Priority Loan Facility (“PLF”)	Main Street Expanded Loan Facility (“ELF”)
“adjusted EBITDA”	Methodology used by Eligible Lender for calculating adjusted 2019 EBITDA must be the methodology Eligible Lender has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers (or, solely in the case of ELF, when originating or amending the Eligible Loan) on or before April 24, 2020. ***VEDDER OBSERVATION:*** *Eligible Lender must certify as to methodology for EBITDA, which will lead to Eligible Lender’s careful consideration of EBITDA.*		
Interest Rate:	Adjustable rate of LIBOR (1- or 3-month) + 3%		
Maturity:	4 years. ***VEDDER OBSERVATION:*** *If a borrower has existing debtholders whose consent is needed to incur a loan under Main Street, then those debtholders may be uncomfortable if such loan matures prior to their existing debt.*		
Payment Deferrals:	1-year deferral for principal amortization and interest payments (unpaid interest will be capitalized).		
Prepayment:	Yes, with no prepayment premium.		
Amortization:	Year 1: Deferred Year 2: 1/3 at end of 2nd year Year 3: 1/3 at end of 3rd year Year 4: 1/3 at end of 4th year	Year 1: Deferred Year 2: 15% at end of 2nd year Year 3: 15% at end of 3rd year Year 4: 70% at end of 4th year	
Forgiveness:	Not forgivable.		

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<tr><td>Priority:</td><td>Cannot be contractually subordinated in terms of priority to any of the Eligible Borrower’s other loans or debt instruments.

This does not prevent:

• Issuance of Eligible Loan that is secured (including in a second lien or other capacity) to an Eligible Borrower, whether or not there are any outstanding secured loans of any lien position or maturity;

• Issuance of an unsecured Eligible Loan, regardless of the term or secured or unsecured status of an Eligible Borrower’s existing debt; or

• Eligible Borrower from taking on new secured or unsecured debt after receiving an Eligible Loan, provided that the new debt would not have a higher contractual priority in bankruptcy than the Eligible Loan.

VEDDER OBSERVATION: Existing lenders may be uncomfortable allowing secured debt on shared collateral without contractual subordination. Given leverage profile of NLF, it is possible that there may not be material existing debt.</td><td colspan="2">PLF or upsized tranche of ELF must be senior to or pari passu with, in terms of priority and security, the Eligible Borrower’s other loans or debt instruments, other than mortgage debt.</td></tr>
<tr><td>Collateral:</td><td>Secured or unsecured.</td><td colspan="2">Secured or unsecured. However, any collateral securing an Eligible Loan (at the time of upsizing or a subsequent date) must secure the upsized tranche on a pro rata basis.</td></tr>
<tr><td>Loan Participation:</td><td>SPV will purchase a 95% pari passu participation in the Eligible Loan, at par value.</td><td>SPV will purchase an 85% pari passu participation in the Eligible Loan, at par value.</td><td>SPV will purchase a 95% pari passu participation in the upsized tranche of the Eligible Loan upsized on or after April 24, 2020, at par value.</td></tr>
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	Main Street New Loan Facility ("NLF")	Main Street Priority Loan Facility ("PLF")	Main Street Expanded Loan Facility ("ELF")
Lender Hold Period:	Eligible Lender must retain its portion of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first.		• Eligible Lender must retain its portion of the upsized tranche until the upsized tranche matures or the SPV sells all of its participation, whichever comes first. • Eligible Lender must also retain its interest in the underlying Eligible Loan until it matures, the upsized tranche matures or the SPV sells all of its participation, whichever comes first.
Fees:			
(i) Transaction Fee:	Eligible Lender will pay SPV a transaction fee of 1% of the principal amount of the Eligible Loan at the time of origination. Eligible Lender can require Eligible Borrower to pay this fee.		Eligible Lender will pay SPV a transaction fee of 0.75% of the principal amount of the upsized tranche at the time of upsizing. Eligible Lender can require Eligible Borrower to pay this fee.
(ii) Origination Fees:	In addition, Eligible Borrower will pay Eligible Lender an origination fee of up to 1% of the principal amount of the Eligible Loan at the time of origination.		In addition, Eligible Borrower will pay Eligible Lender an origination fee of up to 0.75% of the principal amount of the upsized tranche at the time of upsizing.
(iii) Servicing Fee:	SPV will pay Eligible Lender 0.25% per annum of the principal amount of its participation in the new loan or upsized tranche.		
Restrictions:			
(i) No Buybacks	No buybacks of equity securities listed on a national exchange until 12 months after the loan is no longer outstanding, except to the extent required under a contractual obligation in effect as of March 27, 2020.		
(ii) No Dividends:	No dividends or other capital distributions with respect to the common stock of the borrower until 12 months after the loan is no longer outstanding (except that an S corporation or other tax pass-through entity (e.g., limited liability company) that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings).		

	Main Street New Loan Facility ("NLF")	Main Street Priority Loan Facility ("PLF")	Main Street Expanded Loan Facility ("ELF")
(iii) Compensation Limitations:	Until 1 year after the loan is no longer outstanding: (a) No officer or employee whose total compensation in calendar year 2019 from the borrower exceeded $425,000 (unless covered by a collective bargaining agreement entered into prior to March 1, 2020): (1) can receive total compensation from the borrower which exceeds, during any 12 consecutive months of such period, total compensation received from the borrower in calendar year 2019; and (2) can receive severance pay or other benefits upon termination of employment which exceeds twice the maximum total compensation received in calendar year 2019. (b) If the officer or employee had total compensation in calendar year 2019 in excess of $3 million, the total compensation limit during any 12 consecutive months of such period is the sum of $3 million plus 50% of calendar year 2019 total compensation in excess of $3 million. Total compensation includes salary, bonuses, awards of stock and other financial benefits provided by the borrower to the officer or employee.		

If you would like to discuss the matters addressed in this bulletin, please contact **Michael A. Nemeroff** at (312) 609-7858, **Venu V. Talanki** at (312) 609-7749, **Daniel J. Robot** at (312) 609-7644 or your Vedder Price attorney.