

To Our Clients and Friends

Memorandum

Last Updated June 12, 2020

Main Street Lending: Federal Reserve Releases Further Updates to Main Street Lending Program

The Federal Reserve Board (“FRB”) has established the Main Street Lending Program (the “MSL Program”) to support the provision of credit to small and medium-sized businesses and their employees during the current period of financial strain.

Latest Update: On June 8, 2020, the FRB published modifications to previously issued termsheets for the MSL Program loan facilities that may help make MSL Program loans more accessible. The FRB also published a revised set of Frequently Asked Questions (the “FAQs”), and on June 11, 2020, updated loan documentation forms. In summary, the latest changes:

1. Extend the maturity date of all loan facilities by one year (thereby increasing the term of all MSL Program loan facilities to five years from four years);
2. Defer repayment of the initial instalment of principal under all loan facilities for two years (increased from one year);
3. Extend the principal amortization schedule and reduce the amount of principal that must be repaid prior to maturity;
4. Reduce the minimum loan size (to \$250,000 from \$500,000) under both the New Loan Facility and the Priority Loan Facility;
5. Increase the loan size cap sublimit to \$300 million (from \$200 million) under the Expanded Loan Facility, to \$35 million (from \$25 million) under the New Loan Facility, and to \$50 million (from \$25 million) under the Priority Loan Facility.
6. Amend the maximum loan amount definition under the Expanded Loan Facility so that upsize loans under that facility are no longer capped at 35% of existing outstanding and undrawn available debt that is *pari passu* in priority with the upsize loan and equivalent in secured/unsecured status.
7. Reduce risk sharing to 5% (from 15%) under the Priority Loan Facility, thereby making risk sharing for banks at 5% across all MSL Program loan facilities.

The FRB has stated that it will also accept loans that were originated under the previously announced terms, if funded before June 10, 2020.

The MSL Program, which will be administered by the Federal Reserve Bank of Boston, intends to provide credit support to small and medium-sized businesses in need. However, as currently promulgated, businesses and their banks will need to carefully assess whether using the MSL Program is feasible or appropriate, insofar as the program:

1. Aggregates companies under 50% ownership by private equity sponsors, so individual private equity owned businesses might exceed the size caps described below;
2. Restricts executive compensation and dividends;
3. Carries an interest rate of LIBOR one or three months + 300 bps over the next five years;
4. Requires the borrower to use commercially reasonable efforts to maintain employment levels during the life of the loan; and
5. Requires lenders to accept 5% risk sharing.

Overview

The FRB has published the following core documents in connection with the MSL Program:

- (1) a termsheet for the Main Street Expanded Loan Facility (the "Expanded Loan Facility"), most recently updated on June 8, 2020;
- (2) a termsheet for the Main Street New Loan Facility (the "New Loan Facility"), most recently updated on June 8, 2020;
- (3) a termsheet for the Main Street Priority Loan Facility (the "Priority Loan Facility"), most recently updated on June 8, 2020; and
- (4) the FAQs, as may be updated from time to time, including most recently on June 8, 2020.

This updated memorandum summarizes the key features of the MSL Program in light of these documents. Changes to this memorandum to reflect the updated termsheets and FAQs released on June 8, 2020 are represented by additions made in [blue](#) and crossed-out text in ~~red~~. The MSL Program is not yet operational, however, on June 8, 2020, the FRB issued a press release stating that the FRB "expects the [MSL Program] to be open for lender registration soon and to be actively buying loans shortly afterwards". The FRB also announced that it is working to establish soon one or more loan options for non-profit organizations. Borrowers who are interested in participating in the MSL Program are encouraged to contact an Eligible Lender for more information regarding their plans to participate in the MSL Program and to request more information on the application process and documentation. Updates regarding the MSL Program will be made available on the FRB's Main Street website page. Please feel free to contact any of the partners listed at the end of this memorandum (or any of your ordinary Fried Frank contacts) if you would like to discuss any aspect of the MSL Program, including your eligibility to participate.

MSL Program Features

I. Eligibility

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Eligible Borrowers:	<p>A business¹ that:</p> <ul style="list-style-type: none"> (i) meets at least one of the following two conditions: <ul style="list-style-type: none"> (A) has 15,000 employees² or fewer, or (B) had \$5 billion in 2019 annual revenues³ or less; (ii) was established prior to March 13, 2020; (iii) is created or organized in the U.S. or under the laws of the U.S. and has significant operations in, and a majority of its employees based in, the U.S. “Significant operations” should be evaluated on a consolidated basis with subsidiaries of the borrower, but not its parent companies or sister affiliates. The proceeds of a loan must be used only for the benefit of U.S. businesses and may not be used for the benefit of foreign parents, affiliates or subsidiaries; (iv) is not an “Ineligible Business”⁴; (v) has not (nor have any of its affiliates) participated or applied to participate in any other facility under the MSL Program or in the Primary Market Corporate Credit Facility; and (vi) has not received specific support from the Department of the Treasury under specific programs under the Coronavirus Aid, Relief, and Economic Security Act (the “<u>CARES Act</u>”) for air carriers, certain related companies, and businesses critical to national security. <p>Businesses that have received PPP loans or Economic Injury Disaster Loans (EIDL) are permitted to borrow under the MSL Program facilities, provided that they are Eligible Borrowers.</p> <p>The FAQs provide guidance as to how a prospective MSL Program borrower can demonstrate that it is “unable to secure adequate credit accommodations from other banking institutions”—a program participation requirement in FRB programs, such as the MSL Program, promulgated under Section 13(3) of the Federal Reserve Act.</p>		

¹ A “business” is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that “small business concern” in that paragraph should be replaced with “business” as defined herein. Not-for-profit organizations are not included. Other forms of organization may be considered for inclusion as a business under the MSL Program at the discretion of the FRB.

² To determine how many employees a business has, it should follow the framework set out in the Small Business Administration (SBA)’s regulation at 13 CFR 121.106. As set out in 13 CFR 121.106, the business should count as employees all full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors. Businesses should count their own employees and those employed by their affiliates. In determining the applicable number of employees, businesses should use the average of the total number of persons employed by the Eligible Borrower and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the Main Street loan. It is unclear if non-U.S. resident employees must be included as part of this determination.

³ To determine its 2019 annual revenues, businesses must aggregate their revenues with those of their affiliates. Businesses may use either of the following methods to calculate 2019 annual revenues for purposes of determining eligibility: (1) a business may use its (and its affiliates’) annual “revenue” per its 2019 [U.S.](#) Generally Accepted Accounting Principles-based ([U.S.](#) GAAP) audited financial statements; or (2) a Business may use its (and its affiliates’) annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the MSL Program, the term “receipts” has the same meaning as used by the SBA in 13 CFR 121.104(a). If a potential

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Eligible Lenders	<p>A U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.</p> <p>According to the FAQs, multiple affiliated entities may register as Eligible Lenders.</p> <p>In the case of the Expanded Loan Facility, an Eligible Lender must be an existing lender in the underlying Eligible Loan at the time of upsizing. The FAQs clarify that the Eligible Lender under the Expanded Loan Facility is not required to have been the Eligible Lender that originally extended the loan underlying the Expanded Loan Facility <u>as long as it purchased the interest in the loan before April 24, 2020</u>; however, if the Eligible Lender must have purchased the interest in the underlying loan as of December 31, 2019, and the Eligible Lender must have assigned an internal risk rating to the underlying loan equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system as of that date. <u>If the Eligible Lender purchased the interest after December 31, 2019, the Eligible Lender should use the internal risk rating given to that loan at the time of purchase to determine whether the loan is eligible for upsizing under the MSELF.</u></p>		

II. Loan Terms

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Eligible Loans	<p>Upsize term loan tranches of existing secured or unsecured term loans or revolving credit facilities made by an Eligible Lender(s) to an Eligible Borrower on or before April 24, 2020, with a remaining maturity of at least 18 months (taking into account adjustments made to the maturity after April 24, 2020 including at time of upsizing).</p> <p>An existing secured or unsecured term loan or revolving credit facility that does not have an “accordion” clause or does not otherwise contemplate an upsize tranche is eligible for upsizing under the Expanded Loan Facility, but would need to be amended to satisfy applicable requirements.</p> <p>The FAQs additionally require the underlying existing credit facility to be currently held, at</p>		

borrower (or its affiliate) does not yet have audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts.

⁴ The definition of “Ineligible Business” includes businesses deemed ineligible under the SBA regulations as modified by the CARES Act Paycheck Protection Program (“PPP”) and guidelines, including notably hedge funds and private equity firms, banks and life insurance companies. The full list of “Ineligible Businesses” remains subject to further updates.

	Expanded Loan Facility	New Loan Facility	Priority Loan Facility
	least in part, by an Eligible Lender.		
Priority	<p>The upsized tranche must at the time of upsizing and at all times the upsized tranche is outstanding be senior to or <i>pari passu</i> with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments (other than <u>mortgage debt that does not secure any other tranche of the underlying facility, and including</u> mortgage debt <u>in the case of secured loans</u>). The FAQs clarify that a secured or an unsecured upsized tranche must not be contractually subordinated in terms of priority to the Eligible Borrower's other unsecured Loans or Debt Instruments. See <i>Negative Pledge requirement under "Covenants/Certifications" section here below.</i></p> <p>"Loans or Debt Instruments" means debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, and all guarantees of the foregoing.</p> <p>"Mortgage Debt" means (i) debt secured by real property at the time of the Expanded Loan Facility Upsized Tranche's origination <u>and (ii) limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment.</u></p>	<p>The Eligible Loan must not at the time of origination or at any time during their term be contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments. See <i>Negative Pledge requirement under "Covenants/Certifications" section here below</i></p>	<p>The Eligible Loan must at the time of origination and at times the Eligible Loan is outstanding be senior to or <i>pari passu</i> with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments (other than mortgage debt). See <i>Negative Pledge requirement under "Covenants/Certifications" section here below</i></p> <p>If secured, the collateral coverage ratio for the Eligible Loan must be either (i) at least 200% or (ii) not less than the aggregate collateral coverage ratio for all of the Eligible Borrower's other secured Loans or Debt Instruments (other than Mortgage Debt).</p>
Maximum Loan	Lesser of (i) \$ 200 300 million, (ii) 35% of the Eligible Borrower's existing outstanding and	Lesser of (i) \$ 25 35 million or (ii) an amount that when added to the Eligible Borrower's	Lesser of (i) \$ 25 50 million or (ii) an amount that when added to the borrower's

	Expanded Loan Facility	New Loan Facility	Priority Loan Facility
Amount⁵	<p>undrawn available debt that is <i>pari passu</i> in priority with the Eligible Loan and equivalent in secured/unsecured status or (iii) an amount that when added to the Eligible Borrower's existing outstanding and undrawn available debt does not exceed six times adjusted 2019 EBITDA.</p> <p>To calculate the amount under (ii) above, the FAQs advise Eligible Lenders to use the following framework:</p> <ul style="list-style-type: none"> • If the upsize tranche is part of a secured loan: all secured debt for borrowed money of the Eligible Borrower that has not been made junior in priority through contractual subordination should be included in the calculation, regardless of the value or type of collateral; • If the upsize tranche is part of an unsecured loan: all unsecured debt for borrowed money of the Eligible Borrower that has not been made junior in priority through contractual subordination should be included in the calculation. 	existing outstanding and undrawn available debt does not exceed four times adjusted 2019 EBITDA	existing outstanding and undrawn available debt does not exceed six times adjusted 2019 EBITDA
	<u>PPP loans should be factored in as outstanding debt for the purposes of determining the maximum loan amount.</u>		
Minimum Loan Amount	\$10 million	\$500,000 <u>\$250,000</u>	
Term	<u>five</u> 4 -year maturity; principal <u>deferred for two years</u> and interest payments deferred for one year (unpaid interest will be capitalized <u>during such one-year period in accordance with the Eligible Lender's customary practices</u>)		
Principal Amortization	15% at the end of the second <u>third year</u> ; 15% at the end of the third <u>fourth year</u> ; 70% at maturity at the end of the fourth <u>fifth</u>	33.3 <u>15</u> % at the end of the second <u>third year</u> ; 33.3 <u>15</u> % at the end of the third <u>fourth year</u> ; 33.3 <u>70</u> % at maturity at the end of the fourth	15% at the end of the second <u>third year</u> ; 15% at the end of the third <u>fourth year</u> ; 70% at maturity at the end of the fourth

⁵ In the event more than one entity in an affiliated group seeks to participate in a facility under the MSL Program, the Maximum Loan Amounts available to all members must be evaluated on a consolidated basis based on each borrower's own leverage, the leverage level of the affiliated group on a consolidated basis, and the size of any loan extended to other affiliates in the group. If an Eligible Borrower is the only Business in its affiliated group that has sought funding through the MSL Program, its affiliated group's debt and EBITDA are not relevant to determining whether that Business can qualify, except to the extent that the Borrower's subsidiaries are consolidated into its financial statements. If the Eligible Borrower has an affiliate(s) that has previously borrowed or has an application pending to borrow from a MSL Program facility, then the entire affiliated group's debt and EBITDA are relevant to the determining the Eligible Borrower's maximum loan size.

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
	year.	fifth year.	fifth year.
Rate	LIBOR one or three months) + 300 bps (with ARRC fallback language)		
Prepayment	Permitted without penalty		
<u>Application of Payments</u>	In the manner specified in the underlying loan documents; however, lenders should “make efforts to align their approach with the expected amortization schedule specified for each loan type”.		
Loan Forgiveness	Loan forgiveness not permitted		
Collateral	Collateral securing the loan (at the time of upsizing or later) must secure the upsized tranche on a pari passu basis. The upsized tranche must be secured if, at the time of origination, the Eligible Borrower has any other secured Loans or Debt Instruments, other than Mortgage Debt (as defined above). Specifically, the upsized tranche must be secured by the collateral (including, if applicable, any Mortgaged Debt) securing any other tranche of the underlying credit facility on a pari passu basis. Eligible Lenders and Eligible Borrowers may add new collateral to secure the loan (including the upsized tranche on a pari passu basis) at the time of upsizing. If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the upsized tranche needs to share collateral on a pari passu basis with the term loan tranche(s) only.	n/a	n/a
Adjusted 2019 EBITDA Calculation	Same as previously used for calculating adjusted EBITDA when originating or amending the underlying loan on or before April 24, 2020. If EBITDA was not calculated or included in the loan documentation or internal risk analysis when originating the loan or revolving credit facility underlying an Expanded Loan Facility Upsized Tranche, adjusted EBITDA must be calculated using a methodology that the Eligible Lender has used in other contexts for the Eligible Borrower or, if there is no such calculation, for similarly situated borrowers.	Same as previously used for calculating adjusted EBITDA when extending credit to the Eligible Borrower or to similarly situated borrowers on or before April 24, 2020	
Loan Classification	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,	If the Eligible Borrower has 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	

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
	2019, <u>or otherwise satisfies the following criteria</u> . If an existing loan was originated <u>or purchased by an Eligible Lender</u> after December 31, 2019, the Eligible Lender should use the internal risk rating given to that loan at origination <u>or purchase (as applicable)</u> to determine whether the loan is eligible <u>satisfies the “pass” criterion</u> for upsizing under the Expanded Loan Facility.		
Co-Lender Agreement for Bilateral Facilities	A prescribed form of Co-Lender Agreement must be completed by the Eligible Lender for bilateral facilities in order to provide agency and operational mechanics to accommodate multiple lenders.		

III. Covenants/Certifications

Required Covenants/Certifications of Eligible Borrower

An Eligible Lender is expected to obtain the certifications and covenants summarized below from each Eligible Borrower at the time of the upsizing of the Eligible Loan (in the case of the Expanded Loan Facility) or at the time of the origination of the Eligible Loan (in the case of the New Loan Facility and the Priority Loan Facility). The FAQs confirm that Eligible Lenders should use their own documentation for MSL Program loans, but that such documentation should be “substantially similar,” including with respect to required covenants, to the loan documents that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers, “adjusted only as appropriate to reflect the requirements of the Program.” The FAQs provide model covenants as examples for convenience, with the caveat that Eligible Lenders are permitted to use variations of such provisions to the extent they serve the same “substantive purpose” and are otherwise “substantially similar” to provisions that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers.

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
No Repayment of Other Debt	Eligible Borrower must commit to refrain from repaying the principal balance of or interest on any debt until the upsized tranche is paid in full or neither the SPV or an Governmental entity continues to hold an interest in the loan (unless debt or interest payment is mandatory and due)	Same as Expanded Loan Facility.	Same as New Loan Facility; except Eligible Borrower may (at the time of origination of the Eligible Loan) refinance existing debt owed to a lender that is not the Eligible Lender

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
	<p>The FAQs offer guidance on the meaning of “mandatory and due”:</p> <ul style="list-style-type: none"> Existing Debt. With respect to debt predating MSL Program loans, “mandatory and due” includes principal and interest payment: <ul style="list-style-type: none"> (A) scheduled to be paid on any future date upon which they were scheduled to be paid as of April 24, 2020 the date of origination of the MSL Program loan, or (B) payable upon the occurrence of an event that automatically triggers mandatory prepayments under a contract for indebtedness that the Eligible Borrower executed prior to April 24, 2020 the date of origination of the MSL Program loan, except that any such prepayments triggered by the incurrence of new debt can only be paid if such prepayments are (i) <i>de minimis</i> or (ii) under the Priority Loan Facility, at origination. The FAQs suggest that the latter <i>de minimis</i> condition only applies under the Expanded Loan Facility and the New Loan Facility. If an Eligible Borrower has an existing debt arrangement that requires prepayment of more than a <i>de minimis</i> amount upon the incurrence of new debt, the Eligible Borrower cannot receive a New Loan Facility Loan or an Expanded Loan Facility Upsized Tranche unless such requirement is waived or reduced to a <i>de minimis</i> amount by the relevant creditor. New Debt. For future debt incurred by the Borrower in compliance with the terms and conditions of the Program loan, principal and interest payments are “mandatory and due” on their scheduled dates or upon the occurrence of an event that automatically triggers mandatory prepayments. <p>Eligible Borrowers may continue to pay, and Eligible Lenders may request that Eligible Borrowers pay interest or principal payments on outstanding debt on (or after) the payment due date, provided that the payment due date was scheduled <i>prior to</i> April 24, 2020 the date of origination of the MSL Program loan.</p> 		
No Cancellation of Committed Credit Lines	Eligible Borrower must commit that it will not seek to cancel or reduce any committed lines of credit		
Solvency Certification	Eligible Borrower must certify that it is not Insolvent as that term is used in 12 CFR 201.d(4)(5)(iii). Notably, the inability to pay debts as they come due to business disruptions because of the Covid-19 situation is excluded from the insolvency definition. Debtors in bankruptcy proceedings continue to be ineligible Borrowers. Borrower must have a reasonable basis to believe it has (as of the date of origination and after giving effect to the loan) the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during such time period		
Maintain Employment	Eligible Borrowers should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the upsize tranche of the Eligible Loan or Eligible Loan (as applicable) is outstanding. Specifically, a 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. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street loans.		
Restrictions on Compensation, Stock Repurchases and Capital Distributions	Eligible Borrower will follow the compensation, stock repurchase and capital distribution restrictions that apply to direct loan programs under the CARES Act ⁶ (except an S Corp or other tax pass-through entity 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). <i>For a more detailed discussion of the restrictions on compensation, stock repurchases and capital distributions, please see our memorandum discussing the CARES Act here.</i>		

⁶ For a more detailed discussion of the restrictions on compensation, stock repurchases, and capital distributions, please see our memorandum on the CARES Act.

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Eligibility Certification	Eligible Borrower must certify that it is eligible to participate, including in light of the conflict of interest prohibitions in s. 4019(b) of the CARES Act		
<u>Financial Reporting and Certifications</u>	<p>Loan documentation must contain a financial reporting covenant requiring the regular delivery of specified financial information and calculations as detailed in the FAQs.</p> <p><u>Eligible Borrower must certify that (i) it has provided financial records to the Eligible Lender and a calculation of the Borrower's adjusted 2019 EBITDA, reflecting only those adjustments permitted pursuant to the methodology that the Borrower agreed upon with the Eligible Lender, and (ii) such financial records fairly present, in all material respects, the financial condition of such entities for the period covered thereby in accordance with U.S. GAAP (if applicable), consistently applied, and that such adjusted EBITDA calculations are true and correct in all material respects. Eligible Borrowers are expected to submit statements to their Eligible Lender as follows:</u></p> <ul style="list-style-type: none"> • <u>U.S. GAAP compliance;</u> • <u>Financial Statements (Eligible Borrowers that typically prepare audited financial statements must submit audited financial statements. Otherwise Eligible Borrowers should submit reviewed financial statements or financial statements prepared for the purpose of filing taxes. If an Eligible Borrower does not yet have audited or reviewed financial statements for 2019, the Eligible Borrower should use its most recent audited or reviewed financial statements);</u> • <u>Eligible Borrowers that typically prepare financial statements that consolidate the Eligible Borrower with its subsidiaries (but not its parent companies or sister affiliates) must submit such consolidated financial statements. If an Eligible Borrower does not typically prepare consolidated financial statements, it is not required to do so, unless so required by the Eligible Lender.</u> 		
Negative Pledge	<p>Must not be contractually subordinated to other debt in or outside of bankruptcy.</p> <p>Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers. For upsized tranches where the underlying loan is part of a multi-lender facility, any lien covenant or negative pledge that was negotiated in good faith prior to April 24, 2020 as part of the underlying loan shall be deemed sufficient.</p> <p>The Federal Reserve provides a model covenant.</p>	<p>Must not be contractually subordinated to other debt in or outside of bankruptcy.</p>	<p>Must not be contractually subordinated to other debt in or outside of bankruptcy.</p> <p>Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, baskets, materiality thresholds, and qualifiers that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers.</p> <p>The Federal Reserve provides a model covenant.</p>

	Expanded Loan Facility	New Loan Facility	Priority Loan Facility
Material Breach Mandatory Prepayment	A participating borrower must submit signed Borrower Certifications and Covenants in connection with any MSL Program facility in prescribed forms (see here for the Expanded Loan Facility, here for the New Loan Facility, and here for the Priority Loan Facility). If the Board determines that the borrower made a material misstatement in certifications, or materially breached covenants, relating to the CARES Act, the Federal Reserve Act, or the Board's Regulation A, the Federal Reserve will notify the Eligible Lender to trigger a mandatory prepayment. To implement these measures, the Borrower Certifications and Covenants should be referenced in loan documents as set forth in the FAQs and include a material breach mandatory prepayment covenant. The Federal Reserve provides a model covenant.		
Cross-Acceleration	Must include a cross-acceleration provision; for upsize tranches where the underlying loan is part of a multi-lender facility, any cross-default or cross-acceleration provision that was negotiated in good faith prior to April 24, 2020 as part of the underlying loan shall be deemed sufficient.	Must include a cross-acceleration provision	Must include a cross-acceleration provision

Covenants/Certifications of Lender; Assessment by Lender; Servicing Agreement

An Eligible Lender is expected to provide the certifications and covenants, and make the assessment, summarized below.

	Expanded Loan Facility	New Loan Facility	Priority Loan Facility
No Demand for Payment or Repayment	Eligible Lender must commit that it will not request that Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan (in the case of the Expanded Loan Facility) or the Eligible Loan (in the case of the New Loan Facility and the Priority Loan Facility) is repaid in full (unless the debt or interest payment is mandatory and due or in the case of default and acceleration)		
No Cancellation of Committed Credit Lines	Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower (except in an event of default)		
Eligibility Certification	Eligible Lender must certify that it is eligible to participate in the facility, including in light of the conflict of interest prohibitions in s. 4019(b) of the CARES Act		
EBITDA Certification	The Eligible Lender must certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement in determining the maximum loan size is the methodology it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020	The Eligible Lender must certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement in determining the maximum loan size is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020	
Lender Assessment	Eligible Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application		
Servicing Duties			

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Servicing Agreement	Eligible Lenders will be required to enter into a Servicing Agreement (the form of which is available on the website of the Federal Reserve Bank of Boston), which sets forth “enhanced reporting services” that the Eligible Lender undertakes to the FRB SPV in consideration for a servicing fee.		

IV. Federal Reserve Loan Participations

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Participation Percentages	FRB SPV to purchase 95% participations at par value (pursuant to a “true sale” transaction expeditiously after loan origination); Eligible Lender to retain full 5%.		FRB SPV to acquire 85 95 % participations at par value (pursuant to a “true sale” transaction expeditiously after loan origination); Eligible Lender to retain full 45 5 %.
Eligible Lender Holding Requirement	Eligible Lender must retain its existing interests in the underlying loans until the earlier of (i) the maturity of the new upside tranche; (ii) maturity of the existing facility; and (iii) neither the FRB SPV nor a governmental assignee holds an interest in the upside tranche.	Eligible Lender must retain its 5% interest until the earlier of (i) maturity and (ii) neither the FRB SPV nor a governmental assignee holds an interest in the upside tranche.	Eligible Lender must retain its 45 5 % interest until the earlier of (i) maturity and (ii) neither the FRB SPV nor a governmental assignee holds an interest in the upside tranche.
	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Documents Required	A participation is effected with the execution of a Loan Participation Agreement consisting of two parts (collectively, the “ <u>Loan Participation Agreement</u> ”): (A) Transaction Specific Terms (accessible here) and (B) Standard Terms and Conditions (accessible here).		

V. Fees

	<i>Expanded Loan Facility</i>	<i>New Loan Facility</i>	<i>Priority Loan Facility</i>
Upsizing/Origination Fee to Eligible Lender	Up to 75 bps of the principal amount of the upside tranche at the time of upsizing	Up to 100 bps of the principal amount of the Eligible Loan.	
Transaction Fee to FRB SPV	75 bps of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing, which the Eligible Lender may pass on to the Eligible Borrower	100 bps of the principal amount of the Eligible Loan at origination payable to the FRB SPV, which the Eligible Lender may pass on to the Eligible Borrower	
Servicing Fee	25 bps of the principal amount of its participation in the Eligible Loan per annum for loan servicing due from the FRB SPV to the Eligible Lender. The FAQs advise that Eligible Lenders should not charge Eligible Borrowers servicing fees or any additional fees, except <i>de minimis</i> fees for services that are customary and necessary in the Eligible Lender’s underwriting of commercial and industrial loans to similar borrowers, such as appraisal and legal fees, and customary consent fees if such fees are necessary to amend existing loan documentation in the context of upsizing a loan in connection with the Expanded Loan Facility.		

* * *

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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Appendix I Forms and Agreements

(excerpted from the Federal Reserve Bank of Boston website, as of June 12, 2020)
(Please refer to this [link](#) for a list that may be updated from time to time)

Instructions

Lender Registration Documents:

- **Lender Registration Certifications and Covenants:** To be signed and submitted by the Eligible Lender at the time of its registration with the FRB SPV. It must be signed by the Eligible Lender's CEO and CFO (or officers performing similar functions).
- **Lender Wire Instructions:** Eligible lenders must complete and submit this document, providing wire instructions for the bank account into which the FRB SPV will transfer the purchase amount, servicing fees, and any other payments related to New Loan Facility, Priority Loan Facility, or Expanded Loan Facility transactions.

Documents Required at the Time a Loan Participation Is Sold to the FRB SPV:

- **Loan Participation Agreement:** This agreement comes in two parts: Transaction Specific Terms and Standard Terms and Conditions.
 - **Loan Participation Agreement Transaction Specific Terms:** The Eligible Lender must complete, sign, and submit the Transaction Specific Terms in order to effect the sale of a loan participation to the FRB SPV.
 - **Loan Participation Agreement Standard Terms and Conditions:** This document sets out the terms and conditions for all Main Street loan participations and is incorporated into the Transaction Specific Terms. This document will continue to be available on this webpage. Eligible lenders do not need to submit a copy of this document when selling a loan participation to the FRB SPV.
- **Servicing Agreement:** The Eligible Lender must complete, sign, and submit the Servicing Agreement at the time a loan participation is sold to the FRB SPV.
- **Assignment-in-Blank:** An Assignment-in-Blank must be completed, signed, and submitted by the Eligible Lender to the FRB SPV at the time a loan participation is sold to the FRB SPV. The eligible borrower must also sign this document. Eligible lenders should reference the specific instructions on the Assignment-in-Blank's cover pages to determine how to properly complete this agreement. Note that for existing multi-lender facilities in relation to the Expanded Loan Facility, the form assignment-in-blank that must be submitted to the FRB SPV is not the form provided here. Instead, the form would come from the documentation for the existing multi-lender facility.
- **Co-Lender Agreement:** This agreement comes in two parts: Transaction Specific Terms and Standard Terms and Conditions. Note that this document is not required for existing multi-lender facilities.
 - **Co-Lender Agreement Transaction Specific Terms:** The Eligible Lender must complete, sign, and submit the Transaction Specific Terms at the time a loan participation is sold to the FRB SPV. The eligible borrower must also sign this document.
 - **Co-Lender Agreement Standard Terms and Conditions:** This document sets out the terms and conditions for the Co-Lender Agreement and is incorporated into the Transaction Specific Terms. This document will continue to be available on this

webpage. Eligible lenders do not need to submit a copy of this document when selling a loan participation to the FRB SPV.

- **Facility Transaction Specific Lender Certifications and Covenants:** The Eligible Lender must submit one of these documents in relation to each loan in which it participates to the FRB SPV. The document must be signed by an authorized officer of the Eligible Lender. These documents vary by MSL Program facility:
 - **New Loan Facility Lender Transaction Specific Certifications and Covenants**
 - **Expanded Loan Facility Lender Transaction Specific Certifications and Covenants**
 - **Priority Loan Facility Lender Transaction Specific Certifications and Covenants**
- **Facility Borrower Certifications and Covenants:** The CEO and CFO (or officers performing similar functions) of the eligible borrower must sign one of these documents for each loan in which they participate to the FRB SPV. The Eligible Lender must submit this document at the time a loan participation in the eligible borrower's loan is sold to the FRB SPV. These documents vary by MSL Program facility:
 - **New Loan Facility Borrower Certifications and Covenants**
 - **Expanded Loan Facility Borrower Certifications and Covenants**
 - **Priority Loan Facility Borrower Certifications and Covenants**

Loan Document Checklist: Appendix A to the [FAQs](#) sets out a checklist of items that must be included in the loan documentation for eligible loans originated by Eligible Lenders to eligible borrowers.