FRIED FRANK

To Our Clients and Friends

Memorandum

May 6, 2020

Federal Reserve Releases 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.

On April 30, 2020, the FRB published the following documents[1] in connection with the MSL Program:

(1) an updated termsheet for the Main Street Expanded Loan Facility (the "Expanded Loan Facility");

(2) an updated termsheet for the Main Street New Loan Facility (the "New Loan Facility");

(3) a termsheet for a new lending facility called the Main Street Priority Loan Facility (the "Priority Loan Facility"); and

(4) a set of Frequently Asked Questions ("FAQs") related to the MSL Program.

This memorandum summarizes the key features of the MSL Program in light of these new documents. The MSL Program is not yet operational. Borrowers who are interested in participating in the MSL Program should 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. 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.

[1] The Federal Reserve and the Secretary of the Treasury may make further adjustments to the terms and conditions described in the termsheets. The Federal Reseve is also expected to periodically update the FAQs.

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MSL Program Features

I. Eligibility

	Expanded Loan Facility	*New Loan Facility*	*Priority Loan Facility*
Eligible Borrowers:	A business[2] that: (i) meets at least one of the following two conditions: (A) has 15,000 employees[3] or fewer, or (B) had $5 billion in 2019 annual revenues[4] 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.; (iv) is not an "Ineligible Business"[5]; (v) has not chosen 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 "CARES Act") for air carriers, certain related companies, and businesses critical to national security. Businesses that have received PPP loans are permitted to borrow under the MSL Program facilities, provided that they are Eligible Borrowers.		

[2] 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.

[3] 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.

[4] 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 Generally Accepted Accounting Principles-based (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 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.

[5] 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***
Eligible Lenders	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. 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.		

II. Loan Terms

	Expanded Loan Facility	***New Loan Facility***	***Priority Loan Facility***
Eligible Loans	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)	Secured or unsecured term loans made by Eligible Lender(s) to Eligible Borrower(s) and originated after April 24, 2020	
Priority	The upsized tranche must at the time of upsizing and at all times the upsize tranche is outstanding 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)	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	The Eligible Loan must at the time of origination and at times the Eligible Loan is outstanding 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)
Maximum Loan Amount	Lesser of (i) $200 million, (ii) 35% of the Eligible Borrower's existing outstanding and undrawn available debt that is *pari passu* 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	Lesser of (i) $25 million or (ii) an amount that when added to the Eligible Borrower's existing outstanding and undrawn available debt does not exceed ***four*** times adjusted 2019 EBITDA	Lesser of (i) $25 million or (ii) an amount that when added to the borrower's existing outstanding and undrawn available debt does not exceed ***six*** times adjusted 2019 EBITDA
Minimum Loan Amount	$10 million	$500,000	
Term	4-year maturity; principal and interest payments deferred for one year (unpaid interest will be capitalized)		
Principal Amortization	15% at the end of the second year; 15% at the end of the third year; 70% at maturity at the end of the fourth year.	33.3% at the end of the second year; 33.3% at the end of the third year; 33.3% at maturity at the end of the fourth year.	15% at the end of the second year; 15% at the end of the third year; 70% at maturity at the end of the fourth year.
Rate	LIBOR (1 or 3 months) + 300 bps (with ARRC fallback language)		
Prepayment	Permitted without penalty		

	Expanded Loan Facility	***New Loan Facility***	***Priority Loan Facility***
Collateral	Collateral securing the loan (at the time of upsizing or later) must secure the upsized tranche on a pro rata basis	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	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, 2019	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	

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).

	Expanded Loan Facility	***New Loan Facility***	***Priority Loan Facility***
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 (unless debt or interest payment is mandatory and due)	Eligible Borrower must commit to refrain from repaying the principal balance of or interest on any debt until the Eligible Loan is paid in full (unless debt or interest is mandatory or due)	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
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 has 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.		

	Expanded Loan Facility	***New Loan Facility***	***Priority Loan Facility***
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). ***For a more detailed discussion of the restrictions on compensation, stock repurchases and capital distributions, please see our memorandum discussing the CARES Act here.***		
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		

Covenants/Certifications of Lender; Assessment by Lender

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		

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

IV. Federal Reserve Loan Participations

	Expanded Loan Facility	*New Loan Facility*	*Priority Loan Facility*
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 5%		FRB SPV to acquire **85%** participations at par value (pursuant to a "true sale" transaction expeditiously after loan origination); Eligible Lender to retain 15%
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 upsize tranche; (ii) maturity of the existing facility; and (iii) the sale by the FRB SPV of all of its participation.	Eligible Lender must retain its 5% interest until the earlier of (i) maturity and (ii) the sale by the FRB SPV of all of its participation.	Eligible Lender must retain its 15% interest until the earlier of (i) maturity and (ii) the sale by the FRB SPV of all of its participation.

V. Fees

	Expanded Loan Facility	*New Loan Facility*	*Priority Loan Facility*
Upsizing/Origination Fee to Eligible Lender	Up to 75 bps of the principal amount of the upsize tranche at the time of upsizing	Up to 100 bps of the principal amount of the Eligible Loan	
Transaction Fee to 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 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		

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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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