# Questions and Answers about the Main Street Bank Lending and Primary Market Corporate Credit Syndicated Bank Lending Facilities Established by the Federal Reserve under the CARES Act

As described in our April 9, 2020, Client Alert *Federal Reserve Announces Six New Funding Facilities Based on CARES Act Authorizations*, on April 9 the Federal Reserve issued term sheets for six "new" funding facilities under the CARES Act. Three of those facilities provide for direct loans to companies.

Two "Main Street" funding facilities (the "Main Street New Loan Facility" (MSNLF) and the "Main Street Expanded Loan Facility" (MSELF)) are aimed at "small and middle-market" borrowers that have up to 10,000 employees or $2.5 billion in revenue.

The Primary Market Corporate Credit Facility (PMCCF) requires borrowers to be rated and also covers bond issuances by such rated borrowers.

In a March 23, 2020, press release, the Federal Reserve anticipated establishing all three of these facilities and even issued a term sheet for the PMCCF. All three of the facilities are "new," however, because they have become part of the "emergency lending facilities" authorized by the CARES Act, enacted into law on March 27, 2020.

This Client Alert compares the three lending facilities.

## Part A. Eligible Borrowers and Lenders for the Three Facilities

**1. How does the Federal Reserve lend under the three facilities?**

Under all three facilities a Federal Reserve Bank will lend to a special purpose vehicle (SPV).

Under both of the Main Street facilities, a single SPV will use such loans from a Federal Reserve Bank[1] to acquire 95% pro rata participation interests in loans made by "Eligible Lenders."

Under the PMCCF, a separate SPV will use such loans from the Federal Reserve Bank of New York (FRBNY) to "purchase" up to 25% of syndicated loans.

**2. Who are Eligible Lenders under the two Main Street facilities?**

Any US insured depository institution (i.e., bank, savings and loan, or credit union), US bank holding company, or US savings and loan holding company.

**3. Are there no eligible lender requirements under the PMCCF?**

No. It seems the SPV funded by the FRBNY will acquire a direct syndicate bank interest (not a participation interest as in the Main Street facilities) in the syndicated loan facilities covered by the PMCCF. The FRBNY will presumably clarify how the SPV will acquire interests in syndications.

**4. What companies are Eligible Borrowers under the two Main Street facilities?**

The two Main Street facilities are directed at "small and medium sized businesses." Any US company with up to 10,000 employees *or* up to $2.5 billion in 2019 annual revenues is an "Eligible Borrower" under both Main Street facilities.

**5. What companies are Eligible Issuers under the PMCCF?**

Any US company if:

(A) it was rated[2] at least BBB-/Baa3 on March 22, 2020 and, if it was downgraded after that, is rated at least BB-/Ba3 at the time the SPV makes a purchase under the PMCCF: and

(B) it is not (1) an insured depository institution or depository institution holding company, (2) the recipient of "specific support" under the CARES Act or any subsequent federal legislation, or (3) excluded under the conflicts of interest prohibitions in Section 4019 of the CARES Act.

**6. What is a US company for purposes of being an Eligible Borrower under the Main Street facilities or an Eligible Issuer under the PMCCF?**

For all three facilities, a US company is a company that is created or organized under US law and has significant operations, and a majority of its employees based, in the US. The CARES Act uses this terminology[3] to restrict the beneficiaries of various programs funded by the Act.

**7. What does it mean that an Eligible Borrower under either of the Main Street facilities has up to 10,000 employees *or* up to $2.5 billion in 2019 annual revenues?**

The term sheets for the two Main Street facilities do not explain the meaning. It could be that a company can have neither more than 10,000 employees nor more than $2.5 billion in 2019 revenues. We, and most commentaries we have reviewed, believe it is more likely the Federal Reserve means a company is an Eligible Borrower if it meets either of the tests (i.e., it has no more than 10,000 employees or it has no more than $2.5 billion in revenue). Presumably, the Federal Reserve will answer this question when it issues further clarification of the Main Street facilities through a FAQs or otherwise.

**8. What does it mean that an Eligible Issuer must be rated at least BB-/Ba3 when the PMCCF makes a "purchase" from that Eligible Issuer?**

The term sheet for the PMCCF does not explain the meaning.

Because the PMCCF does not require that loans "purchased" under that facility be fully funded term loans, it may be that the PMCCF will be available to purchase syndicate member interests in revolving credits and term loans disbursed over time. If so, the rating requirement could apply to each loan made under the facility at the time it is funded or it could apply only to the date on which the SPV acquires its interest in the syndicated loan facility.

It seems more likely the Federal Reserve is contemplating that it will be making only term loans under the PMCCF. Again, the Federal Reserve will presumably answer these and other questions when it issues further clarification of the PMCCF through a FAQs or otherwise.

**9. What does it mean that an Eligible Issuer must have its rating reaffirmed at BB-/Ba3 or above when it issues "additional debt" under the PMCCF?**

This requirement is most easily understood for the bond issuance feature of the PMCCF. It is not as easy to understand how it applies to a syndicated loan. The PMCCF term sheet states "Issuers may approach the Facility to refinance outstanding debt" up to three months before such debt becomes due or "at any time to issue additional debt, provided their rating is reaffirmed at BB-/Ba3 or above with the additional debt." For a syndicated bank loan agreement providing new funding, this suggests the Eligible Issuer's senior unsecured debt (or other) rating would need to be reaffirmed at the required minimum as a condition to the SPV joining that bank syndicate. Again, we can expect the Federal Reserve will issue clarification of this and other issues through a FAQs or otherwise.

## Part B. Basic Differences among the Three Facilities

**1. What is the difference between the "Main Street New Loan Facility" (MSNLF) and the "Main Street Expanded Loan Facility" (MSELF)?**

A. The Main Street New Loan Facility (MSNLF) provides new term loans up to $25 million under new loan facilities entered into on or after April 8, 2020.

B. The Main Street Expanded Loan Facility (MSELF) provides new ("upsized") term loans up to $150 million under loan facilities that existed before April 8, 2020.

Thus, the MSNLF covers completely new term loan facilities. The MSELF, on the other hand, covers existing term loan facilities that are "upsized" on or after April 8. 2020.

As described above, the same companies are "Eligible Borrowers" under the two facilities, but only a company with one or more existing bank loan agreements could borrow under the MSELF. The terms and conditions for loans under the two facilities (but not their amounts) are otherwise nearly identical.

**2. What is an "upsized" loan under the MSELF?**

The term sheet for the MSELF only specifies that the loan must be "upsized" on or after April 8, 2020. It does not explain whether that means a preexisting loan facility must be amended or otherwise revised to increase the amount of term loans or whether unused term loan commitments drawn down on or after April 8 would be considered "upsized" loans.

If the purpose of the MSELF is to encourage new lending, it seems more likely that an "upsized" loan is one that is newly committed on or after April 8, 2020. If so, it seems the MSELF can only be used by Eligible Borrowers that have term debt outstanding from bank lenders that are willing to increase ("upsize") the amount of such term debt. The Federal Reserve will presumably explain its intent in a FAQs or other document it issues for the MSELF.

**3. What is the difference between the Primary Market Corporate Credit Facility (PMCCF) and the two Main Street facilities?**

Only rated companies can borrow under the PMCCF. The terms and conditions for loans under the PMCCF are also very different from those that apply to the Main Street facilities, but the fundamental difference is that (A) any rated US company (but only a rated company) can borrow under the PMCCF and (B) any US company that satisfies the size criteria (but only such a company) can borrow under one of the Main Street facilities.

## Part C. Every Borrower Can Use Only One of the Three Facilities

**1. Can a company borrow under both of the Main Street facilities?**

No. A company can borrow under only one of the two Main Street facilities.

**2. Can a company borrow under one of the Main Street facilities and also borrow under the PMCCF?**

No. A company eligible to borrow under the Main Street facilities that is also rated could not borrow under a Main Street facility and also borrow under the PMCCF. The three facilities are "linked" in that all companies can only borrow under one of the three facilities.

**3. Can a company issue bonds under the PMCCF and also borrow under one of the Main Street facilities?**

No. A borrower under either of the Main Street facilities can not use the PMCCF, even to issue bonds rather than to receive a syndicated loan. We intend to issue a client alert that discusses the bond issuance provisions of the PMCCF and the provisions of the Secondary Market Corporate Credit Facility.

## Part D. Choosing Which of the Three Facilities to Use

**1. How should a borrower choose among using the MSNLF, MSELF, or PMCCF?**

A. A borrower without an existing bank loan agreement has no choice between the two Main Street facilities. Such a borrower would only be eligible for the MSNLF.

B. In choosing between the two Main Street facilities, a borrower with an existing bank loan agreement *could* be able to obtain more additional term loans (up to $150 million under the MSELF vs. a maximum $25 million under the MSNLF) by "upsizing" the existing facility under the MSELF rather than entering into an entirely new loan agreement under the MSNLF.

Otherwise, the only differences between the two Main Street facilities, as described below in Question 7 of this Part D, are the requirements (for the MSNLF but not for the MSELF) that the MSNLF be unsecured and the SPV be paid a 100 bps facility fee.

C. Any rated borrower could also consider whether it would be better to use the Primary Market Corporate Credit Facility (PMCCF) rather than either of the Main Street facilities, because a borrower who uses either the MSNLF or MSELF can not use the PMCCF. This will generally not be a choice, however, because most rated companies will be too large to be eligible borrowers under the Main Street facilities.

**2. When would an Eligible Borrower be able to receive more funding under the MSNLF than the MSELF?**

An Eligible Borrower able to borrow under both of the facilities (i.e, an Eligible Borrower with an existing bank loan facility that could be "upsized") will only be able to borrow more under the MSNLF when the Eligible Borrower's "existing outstanding and committed but undrawn bank debt" is less than $83.33 million and the 4x EBITDA debt coverage test described below permits the Eligible Borrower to borrow the maximum $25 million under the MSNLF..

This is because an Eligible Borrower's maximum borrowing amount under the MSNLF is $25 million, but no more than the amount that would cause its total outstanding plus committed but undrawn debt to equal 4x the Eligible Borrower's 2019 EBITDA.

Under the MSELF, such an Eligible Borrower can borrow up to a maximum of $150 million, but not more than (1) would cause its total outstanding plus committed but undrawn debt to equal 6x the Eligible Borrower's 2019 EBITDA or (2) 30% of the Eligible Borrower's "existing outstanding and committed but undrawn bank debt."[4]

The first two limits to borrowing under the MSELF ($150 million and 6x EBITDA debt coverage) are, of course, larger than the corresponding $25 million and 4x EBITDA limits on borrowings under the MSNLF. Only the third condition (that borrowings not exceed 30% of the Eligible Borrower's "existing outstanding and committed but undrawn bank debt") could cause an Eligible Borrower's borrowing limit to be larger under the MSNLF.

Assuming $25 million is the Eligible Borrower's borrowing limit under the MSNLF,[5] this would only happen if the Eligible Borrower's "existing outstanding and committed but undrawn bank debt" were less than $83.33 million (so that 30% of such amount would be less than $25 million).

Thus, the MSNLF facility should mostly interest Eligible Borrowers that have (1) no existing bank loan agreement, (2) no existing bank lender willing to "upsize" an existing term loan (but another lender willing to make an MSNLF loan), or (3) outstanding bank loans and undrawn bank commitments of less than $83.33 million (or even a lower threshold, if the Eligible Borrower's maximum borrowing amount under the MSNLF is less than $25 million).

**3. When would a borrower be able to receive more funding under the MSELF than the MSNLF?**

As explained in the last answer, any Eligible Borrower able to use both facilities (i.e, a company small enough to be an Eligible Borrower that also has an existing bank loan facility) with "existing outstanding and committed but undrawn bank debt" greater than $83.33 million would always be able to borrow more under the MSELF than the MSNLF. To the extent such a borrower's 2019 EBITDA were not sufficient to support a $25 million borrowing under the MSNLF, the MSELF could provide more funding even if the borrower's "existing outstanding and committed but undrawn bank debt" were less than $83.33 million.

Because MSELF eligible borrowers necessarily have existing bank loan agreements, the MSELF will likely provide more funding to such borrowers than the MSNLF. Of course, the lenders with which such a borrower has existing term loan agreements may not be willing to "upsize" such term loans as much as a different lender might be willing to lend under the MSNLF. Then the actual amount of funding available under the MSNLF could be greater, even though the MSELF would have permitted a lender to provide more funding.

**4. Why would the Federal Reserve limit MSELF borrowings to 30% of an Eligible Borrower's outstanding bank debt plus undrawn commitments for bank debt?**

This restriction is consistent with the PMCCF's limitation of borrowings to 130% of an Eligible Issuer's maximum outstanding bonds and loans during the period one year and one day before March 22, 2020. In both cases the Federal Reserve seems to be suggesting that borrowers need access to 30% more financing than they needed before the current crisis.[6] The MSELF provides 30% more bank debt rather than 30% more debt. Eligible Borrowers under the Main Street facilities are presumably more dependent on bank debt than Eligible Issuers under the PMCCF. Those Eligible Issuers can both enter into syndicated loan agreements and issue bonds under the PMCCF.

**5. Does the Federal Reserve define EBITDA for the MSNLF and MSELF?**

No. As with many things in all three of the facilities discussed in this Client Alert, we can expect that the Federal Reserve will clarify what it means by EBITDA. For its lending programs the Federal Reserve typically posts FAQs that answer such questions.

**6. Why does the Federal Reserve use a stricter EBITDA debt coverage test for the MSNLF than the MSELF?**

The Federal Reserve does not explain this difference in the two term sheets. The differences between the two facilities described in this Part D, however, suggest that the Federal Reserve intends the MSELF as a means to ensure Eligible Borrowers that already rely heavily on bank financing have access to significantly more (30% more) such funding during the current crisis. Eligible Borrowers that have not relied so heavily on bank financing get access to $25 million in new bank funding, so long as they can meet the more restrictive 4x EBITDA debt coverage test for such borrowing.

**7. Are there any other differences between the MSNLF and MSELF**

Yes.

1. MSNLF loans must be unsecured. MSELF loans can, but are not required to, be secured.

   This presumably reflects the fact that the MSELF requires an existing loan agreement. The Federal

Reserve presumably did not want to prohibit Eligible Borrowers from using secured loan agreements to "upsize" an existing term loan under the MSELF. We do not think this permission suggests the Federal Reserve prefers secured MSELF term loans.

2. The MSNLF requires the bank originating the new loan to pay a 1 % (100 bps) facility fee to the SPV on the full amount of its 95% participation in the term loan made under the MSNLF. No such facility fee is payable under the MSELF "upsized" loans.

   This presumably reflects the fact that the MSNLF requires a new loan agreement.

   Both the MSNLF and MSELF require an Eligible Borrower to pay its Eligible Lender a 1% (100 bps) fee on the principal amount of the new or "upsized" Eligible Loan and provide for the SPV to pay the Eligible Lender 25 bps (0.25%) on the principal amount of its participation in the Eligible Loan for "loan servicing."

**8. How is the PMCCF different from the two Main Street facilities?**

Aside from only rated borrowers being eligible to borrow under this facility, PMCCF loans (1) are made only under syndicated loan agreements, (2) can be as large as 130% of the borrower's maximum total amount of loans and bonds outstanding on any day between March 22, 2019, and March 22, 2020, so long as the rating of any "additional debt" created by such borrowing is "reaffirmed at BB-/Ba3 or above" by each major "nationally recognized statistical rating organization" (NRSRO) "with a rating of the issuer," and (3) have pricing dictated only by the pricing provided by other syndicate members, subject to a 100 bps facility fee payable to the SPV (as with the MSNLF).

**9. Can a borrower use the MSELF to increase the amount of a revolving credit commitment?**

No. Neither the MSNLF nor the MSELF provides for the Federal Reserve funded SPV to participate in a revolving loan commitment. Each facility is only available to bring the SPV in as a participant in a term loan. Thus, although the MSELF provides for an existing loan facility to be increased, it only permits the amount of term loans to be increased, even if an existing loan facility might provide for both revolving and term loans.

The MSNLF does not raise this question, because it only covers new term loan agreements.

**10. Can a borrower use the PMCCF to increase the amount of a revolving credit commitment?**

This is unclear. The PMCCF permits bank syndicate members to establish the terms for loans. The term sheet does not specify that such loans must be term loans or that the SPV will only "purchase" interests in term loans, not revolving loans made under a revolving loan commitment.

As noted above, however, in answer to Question 8 in Part A, it seems likely the the FRBNY is contemplating that, through the SPV, it will be making term (not revolving) loans under the PMCCF. Again, this question may be answered in a FAQs or other communication issued by the Federal Reserve for the PMCCF.

**11. Can a Main Street loan facility be a syndicated loan agreement?**

This is not clear. The term sheets for the two Main Street facilities generally seem to contemplate only bilateral loan agreements between an Eligible Lender and an Eligible Borrower in which the SPV acquires a 95% participation interest.

Both term sheets, however, state that an Eligible Loan is a term loan made by "an Eligible Lender(s)." This suggests an Eligible Lender that is part of a syndicate of Eligible Lenders could sell a 95% participation interest in its portion of a syndicated bank loan. If true, this could mean the Eligible Borrower under such syndicated loan agreement might not be subject to the CARES Act restrictions on dividends, buybacks, and compensation described in our answer to Question 3 in Part F below.

**12. Does this mean the CARES Act restrictions on dividends, buybacks, and compensation might only apply to Eligible Borrowers under bilateral loan agreements?**

Yes, but as noted in our answer to Question 1 in Part F below, it is not clear those restrictions should even apply to bilateral loan agreements. Whether syndicated loan agreements are permitted for Main Street facilities and, if so, whether Eligible Borrowers under such agreements need to comply with those CARES Act restrictions will depend upon what the Federal Reserve requires.

## Part E. Pricing and Maturities for the Facilities

**1. What is the pricing for loans made under the two Main Street facilities?**

The term sheets for the two facilities present the same pricing, except for the MSNLF facility fee described above in our answer to Question 7 in Part D.

Both provide for an interest rate of between 250 to 400 basis points over SOFR for loans. The term sheets do not specify how the exact spread will be established. Presumably, this will be explained in a FAQs or other clarification to be published by the Federal Reserve.

**2. What is the pricing for loans made under the PMCCF?**

As explained above in our answer to Question 8 in Part D above, the term sheet for the PMCCF specifies that pricing will be established by the bank syndicate members (presumably not including the FRBNY or SPV).

**3. What are the maturities for loans made under the Main Street facilities?**

4 years.

**4. What are the maturities for loans made under the PMCCF?**

Up to 4 years. The actual maturity for any loan would presumably be established by the bank syndicate members.

**5. What does it mean that loans under the two Main Street facilities have "amortization of principal and interest deferred for one year"?**

The term sheets for these facilities do not explain what this means. The language seems to contemplate that no interest or principal payments will be due the first year a loan is outstanding under either Main Street facility. The Federal Reserve will presumably publish a FAQs or other document clarifying the meaning.

## Part F. Cares Act Limits on Dividends, Buybacks, and Compensation Apply to the Main Street Facilities But Not the Primary Corporate Credit Facilities

**1. Are loans under the Main Street facilities "direct loans" under Section 4003 of the CARES Act?**

The Federal Reserve seems to believe they are, but this is not clear. The term sheets for the two Main Street facilities specify that the compensation, stock repurchase, and capital distribution restrictions in CARES Act Section 4003(c)(3)(A)(ii) will apply. Those restrictions apply to any "direct loan" under Section 4003. The Federal Reserve has apparently concluded that the Main Street facilities provide for "direct loans" because the SPV, acting under a Section 4003 Federal Reserve established program, makes loans to individual borrowers through a loan participation.

The CARES act, however, defines a "direct loan" as one "entered into directly with an eligible business as borrower."[7] The Main Street facilities contemplate an Eligible Borrower entering into a loan agreement with an Eligible Lender, and the Eligible Lender selling a 95% participation interest in that loan to the Federal Reserve Bank supported SPV.

It is not clear why the Federal Reserve apparently believes such participations are "direct loans."[8] The Federal Reserve references to CARES Act Section 4003(c)(3)(A)(ii) in its term sheets for the two Main Street facilities, however, strongly suggests it has reached that conclusion.

Ultimately, the Federal Reserve will determine whether to insist on the certifications (described below in our answer to Question 3 of this Part F) that are required from recipients of "direct loans." The Federal Reserve, of course, has no obligation to participate in any Eligible Loan under either of the Main Street facilities and can impose whatever conditions it wishes, regardless whether those conditions are required by the CARES Act.

**2. Are loans under the Primary Market Corporate Credit Facilities "direct loans" under Section 4003 of the CARES Act?**

No. The term sheet for the PMCCF does not specify that the compensation, stock repurchase, and capital distribution restrictions in CARES Act Section 4003(c)(3)(A)(ii) will apply. Because the PMCCF provides for the SPV to make loans by "purchasing" loans under a syndicated loan agreement, the Federal Reserve has apparently concluded the loans meet the exclusion for syndicated loans[9] in the CARES Act definition of "direct loans."

**3. What restrictions apply to borrowers under the Main Street facilities if they borrow under "direct loan" programs?**

The CARES Act requires that each borrower of a "direct loan" certify:

a. *No dividends or buybacks*: until one year after the loan is repaid, it will not pay dividends, or make any other capital distribution, on its common stock or repurchase any of its or its parent's equity securities, except under an agreement in effect on the date of the CARES Act.

b. *Restrictions on employee compensation and severance*: from the date the loan agreement is executed until one year after the loan is fully repaid, no employee or officer (A) who received total compensation of more than $425,000 in 2019 (other than an employee paid under a collective bargaining agreement) can receive annual total compensation more than such person's 2019 total compensation, and (B) who received total compensation of more than $3 million in 2019 can receive annual total compensation greater than $3 million plus 50% of the amount of total compensation above $3 million received in 2019.

Also, no such employee or officer receiving 2019 total compensation over $425,000 (other than under a collective bargaining agreement) will be paid severance or other termination benefits greater than twice the amount of such 2019 total compensation.

**4. Are loans under all three facilities subject to the conflicts of interest limitations in Section 4019 of the CARES Act?**

Yes. Only the term sheet for the PMCCF states this, but the same limitations will apply to the Main Street facilities and all other facilities established under CARES Act Section 4003.

**5. What are the conflicts of interest restrictions that will apply to the three facilities under Section 4019?**

Section 4019 prohibits any Section 4003 program from funding an entity "controlled" by the President, Vice President, head of an Executive Department, or Member of Congress or by any of their immediate family (including son or daughter in-law).

## Part G. Other Restrictions and Certification Requirements

**1. Are there any other restrictions that apply to borrowers under the two Main Street facilities?**

Yes. In addition to borrower certifications of compliance with the EBITDA tests described above in Part D and the CARES Act restrictions described above in Part F, along with a general certification of eligibility(including a COVID-19 connection for the borrowing need), both Main Street term sheets require that:

A. Each Eligible Borrower commit not to reduce available credit and not to repay other debt (outside mandatory payments or payments on more senior debt) before repaying it Main Street facility loan. The specific requirements are:

> "The Eligible Borrower must commit to refrain from using the proceeds of the Eligible Loan to repay other loan balances. The Eligible Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.
>
> The Eligible Borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the Eligible Lender or any other lender."

B. Each Eligible Borrower commit to make reasonable effort to retain employees and their compensation. The specific requirements are:

> "The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic, and that, using the proceeds of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan."

**2. Are Eligible Lenders required to make certifications under the Main Street facilities?**

Yes. In addition to certifications about eligibility to participate in the Main Street facility, including compliance with the conflicts of interest prohibitions described above in answer to Question 5 in Part F, each Eligible Lender must attest that the proceeds of the Main Street loan it makes will not be used to repay or refinance other debt owed by the Eligible Borrower to the Eligible Lender and that the Eligible Lender will not cancel any existing lines of credit it provides to the Eligible Borrower. That specific requirements in the Main Street term sheet are:

> "The Eligible Lender must attest that the proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower.
>
> The Eligible Lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower."

**3. Are Eligible Issuers required to make certifications under the PMCCF?**

The PMCCF term sheet does not specify any. Presumably, the Federal Reserve will require an Eligible Issuer to provide some form of confirmation that it fulfills the Eligible Issuer requirements described in our answer to Question 5 in Part A above.

## Part H. Minimum Loan Amounts, Prepayments, Fees, Start and End Dates

**1. Are there minimum loan amounts under the three facilities?**

Yes for the two Main Street facilities' term sheets, which specify a $1 million minimum loan amount.

No for the PMCCF term sheet, but the FRBNY might impose minimum borrowing amounts.

**2. Are loans prepayable under the three facilities?**

Yes for the two Main Street facilities' term sheets, which specify "prepayment permitted without penalty."

The PMCCF term sheet does not specify, but presumably this is part of the pricing and other terms that will be determined by the loan syndicate members.

**3. What are the fees payable under the three facilities?**

As noted in our answer to Question 7 in Part D above, the MSNLF term sheet specifies that an Eligible Lender pay the SPV a 1% facility fee on the principal amount of the loan participation purchased by the SPV.

Both the MSNLF and the MSELF term sheets require an Eligible Borrower to pay its Eligible Lender a 1% (100 bps) fee on the principal amount of the new or "upsized" Eligible Loan and provide for the SPV to pay the Eligible Lender 25 bps (0.25%) on the principal amount of its participation in the Eligible Loan for "loan servicing."

The PMCCF term sheet states that the SPV ("the facility") will be paid a 1% (100 bps) facility fee on its share of any loan syndication.

**4. When will funding be available to borrowers under the three facilities?**

The Federal Reserve or the relevant district Federal Reserve Banks will need to announce start dates and provide further information about the facilities.

**5. When will funding under the three facilities stop being available?**

September 30, 2020, unless the facilities are extended. The term sheets for each of the facilities state that purchases will "cease" on September 30, 2020, unless the facility is extended (although the PMCCF states such purchases will cease "no later than September 30, 2020, unless that facility is extended). All three term sheets also state that the relevant Reserve Bank will continue to fund the relevant Facility until its holdings mature or are sold.

## For More Information

If you would like further information concerning the matters discussed in this article, please contact the Chapman attorney with whom you regularly work.

1 The term sheet for the facilities state "a Federal Reserve Bank" will lend to the SPV. This could mean the Federal Reserve will specify a specific Reserve Bank to make such loans or, perhaps more likely. that the local district Federal Reserve Bank where the Eligible Lender (or, less likely, the Eligible Borrower) is located would make the loan. This should be specified in the FAQs or other communication the Federal Reserve will need to issue to establish procedures for making loans under the Main Street facilities.

2 The term sheet for the PMCCF consistently refers to an issuer's rating, not the rating of debt of the issuer. Presumably, through a FAQs or otherwise, the Federal Reserve will clarify the nature of the required rating (e.g., senior unsecured debt for an Eligible Issuer trying to issue such debt under the PMCCF).

3 We are using the term US company to avoid repetition. The CARES Act simply repeats the full "definition" we are providing each time it identifies such companies.

4 We have noted confusion over the meaning of this phrase. We believe "existing outstanding and committed but undrawn bank debt" mean the sum of (A) the borrower's outstanding bank debt and (B) the amount of debt the borrower could draw down under committed, but not fully used, bank funding commitments. This seems clear for the EBITDA debt coverage test in both the MSNLF and MSELF, which limits a borrower's loan to an amount that would not cause the borrower's outstanding debt plus undrawn funding commitments to exceed a multiple of the borrower's 2019 EBITDA. As we note in our answer to Question 4 in this Part D, the 30% limit means a borrower is limited

to bank debt plus unused bank lending commitments after a Main Street loan equal to not more than 130% of its outstanding bank debt and unused bank lending commitments before the Main Street loan was made. As that answer explains, this achieves the result of letting the Main Street program provide a borrower 30% more bank debt than the borrower had before the Main Street program.

5 The 4x EBITDA debt coverage requirement could, of course, cause that borrowing limit to be much less than $25 million, making the MSELF potentially even more attractive with its 6x EBITDA debt coverage requirement.

6 Endtnote 4 above discussed confusion over the meaning of "existing outstanding and committed but undrawn debt."

7 The full definition for "direct loan" is: ''direct loan'' means a loan under a bilateral loan agreement that is —

(I) entered into directly with an eligible business as borrower; and

(II) not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.

8 The Federal Reserve may believe that the 95% participation means that, in substance, the SPV is the real lender to the Eligible Borrower. The fact the Federal Reserve requires an Eligible Lender to retain a 5% interest in the Eligible Loan suggests, however, the Federal Reserve considers the Eligible Lender a true lender to the Eligible Borrower, not a mere conduit for Federal Reserve funding. The Federal Reserve may also be concerned that the CARES Act "direct loan" definition does not provide an exclusion for "loan participations" as it does for "syndicated loans." The syndicated loan exclusion, however, is necessary for the PMCCF, because the SPV is a direct lender in the syndication. It should not be necessary for a loan participation unless the Federal Reserve considers that such a participation means the participant is contracting "directly" with an Eligible Borrower.

9 See endnote 7 above for that exclusion.

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