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Summary of Main Street Business Lending Program

The attorneys at Bodman PLC summarized the recently announced changes to the Main Street Business Lending Program (Main Street Program) that were previously announced on April 9, 2020, by the Treasury Department and Federal Reserve as part of the CARES Act. This summary focuses on the changes to the Main Street Program which were announced on April 30, 2020 in response to feedback from the public relating to the initial terms sheets.

The information in this summary is based on existing guidance and this information is subject to change as Treasury Department and the Federal Reserve develop and release additional guidance. The Federal Reserve has stated that additional guidance will be issued and that the start date for the Main Street Program will be announced soon.

What is the Main Street Program?

The Main Street Program is a lending program that will provide up to $600 billion in financing to small and mid-sized businesses. A single special purpose vehicle (SPV) will be created to purchase a participating interest in eligible loans originated by eligible lenders through September 30, 2020 (which date may be extended). The SPV will be financed by both loans from the Fed as well as a $75 billion equity investment from Treasury (using funds appropriated under the CARES Act).

What has changed with the available loan facilities?

The Main Street Program is now comprised of three loan facilities (previously two): the New Loan Facility, the Priority Loan Facility and the Expanded Loan Facility. The terms of the Main Street Program were revised, among other things, to create a third loan option (with increased risk sharing by lenders) for borrowers with greater leverage, lowering the minimum loan size for certain loans, and expanding the pool of businesses eligible to borrow. All three facilities are structured as 4-year term loans bearing interest at a rate of LIBOR +3%, with the first year of payments deferred (and with year 1 interest being added to the outstanding principal balance). All three facilities may be secured or unsecured (except, in the case of the Priority Loan Facility and the Expanded Loan Facility, the eligible loan or the upsized tranche (as applicable) must be senior to or *pari passu*, in terms of priority and security, with the eligible borrower's other loans or debt instruments (other than mortgage debt)).

Under the New Loan Facility, the SPV will purchase 95% participations in eligible loans. The originating lenders will retain the other 5% of each eligible loan. The minimum loan size is now

$500,000 and maximum loan size is the lesser of $25 million or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA (while the original term sheets required the use of basic, unadjusted EBITDA, the current guidance allows for adjusted EBITDA, subject to certain limitations). No principal is due during the first year of the loan and the loan will be amortized over the remaining term of the loan with one-third of principal due at the end of each of years 2, 3, and 4. An eligible loan under this facility must not be contractually subordinated in terms of priority (in bankruptcy) to any of the eligible borrower's other loans or debt instruments.

Under the <u>Priority</u> Loan Facility, the SPV will purchase 85% participations in eligible loans. The originating lenders will retain the other 15% of each eligible loan. The minimum loan size is $500,000 and maximum loan size is the lesser of $25 million or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA. No principal is due during the first year of the loan and the loan will be amortized over the remaining term of the loan with 15% of principal due at the end of each of years 2 and 3, and a balloon payment of 70% of principal at the end of year 4. An eligible loan under this facility must be senior to or *pari passu*, in terms of priority and security, with the eligible borrower's other loans or debt instruments (other than mortgage debt).

Under the <u>Expanded</u> Loan Facility, the SPV will purchase 95% participations in upsized tranches of eligible loans. The eligible lenders will retain the other 5% of each upsized tranche. The minimum loan size is $10 million and maximum loan size is the lesser of $200 million, 35% of existing and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA. No principal is due during the first year of the loan and the loan will be amortized over the remaining term of the loan with 15% of principal due at the end of each of years 2 and 3, and a balloon payment of 70% of principal at the end of year 4. An upsized tranche under this facility must be senior to or *pari passu*, in terms of priority and security, with the eligible borrower's other loans or debt instruments (other than mortgage debt).

Who are eligible borrowers and lenders?

Eligible borrowers are businesses with up to 15,000 employees (previously 10,000) or businesses with up to $5 billion in 2019 annual revenues (previously $2.5 billion). These businesses must be created or organized in the United States or under the laws of the United States, with significant operations in and a majority of their employees based in the United States. The new guidance incorporates certain SBA eligibility and affiliation rules, which will apply to these and the other tests under the Main Street Program. Businesses that have received a Paycheck Protection Program loan are eligible for a Main Street Program loan and an eligible borrower can obtain program loans under only one of the three program facilities, but other direct assistance under the CARES Act or other lending programs may disqualify a business from the Main Street Loan Program. Numerous other eligibility considerations apply to potential borrowers, including various certifications and covenants that must be provided to lenders. Subject to a good faith requirement, lenders may rely upon a borrower's certifications and covenants. Eligible borrowers must also have been in sound financial condition prior to the COVID-19 pandemic.

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. In addition, the category of eligible lenders has been expanded to included U.S. branches and agencies of non-U.S. banks, intermediate U.S.

holding companies of non-U.S. banking organizations, and non-bank subsidiaries of U.S. bank holding companies. Lenders may rely upon a borrower's certifications and covenants.

What are some of the covenants and certifications that an eligible borrower must make?

An eligible borrower must refrain from repaying the principal balance of, or paying interest on, any debt until the eligible loan (or, in the case of the Expanded Loan Facility, the upsized tranche of the eligible loan) is repaid in full, unless the principal or interest payment is "mandatory and due" (as defined in the Fed guidance). However, in the case of the Priority Loan Facility, the eligible borrower may, at the time of origination of the eligible loan, refinance existing debt owed by the eligible borrower to a lender that is not the eligible lender. In addition, an eligible borrower cannot seek to cancel or reduce any committed lines of credit.

An eligible borrower must certify that it is eligible to participate in the applicable Main Street facility and that it has a reasonable basis to believe that it has the ability to meet its financial obligations for at least the 90 day period following its receipt of the loan and does not expect to file for bankruptcy during that time period. It must also comply with certain CARES Act limitations on compensation, stock repurchases and capital distributions.

An eligible borrower must also agree to make commercially reasonable efforts to maintain its payroll and retain its employees during the term of the eligible loan (or, in the case of the Expanded Loan Facility, the upsized tranche of the eligible loan).

What type of documentation will the Main Street Program involve?

The Federal Reserve has stated that it will issue a form of master participation agreement to be entered into by the eligible lenders under the Main Street Program and the SPV. The Federal Reserve will also publish forms of the borrower and lender certifications required under the terms of the term sheets, and other form applications or other agreements that are necessary for the implementation of the Main Street Program. To date, however, the Federal Reserve has indicated that it does not intend to provide the form of loan agreement to be entered into by the eligible borrower and the eligible lender. These forms will need to be prepared by the eligible lender, along with other documentation that an eligible lender may require.

Where do I find additional information?

The Federal Reserve has issued a detailed term sheet for each of the facilities under the Main Street Program. These term sheets, along with extensive guidance in the form of frequently asked questions (to be updated from time to time), provide significant detail regarding the Main Street Program, each of the facilities available under the program, eligibility, miscellaneous terms and conditions, and other important details of the Main Street Program.

Please contact your Bodman attorney or Hebba Aref at (313)393-7525 or haref@bodmanlaw.com or Joe Kochanek at (313) 393-7505 or jkochanek@bodmanlaw.com for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.