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Is the Main Street Lending Program Right For You?

Practical Guidance & Considerations

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The CARES Act & Main Street Lending

- The CARES Act provides financial support for small and medium-sized businesses and targeted sectors of the economy, along with direct cash payments to many Americans and enhanced resources for medical support.
- Fox Rothschild LLP, EisnerAmper and Strategic Capital Investments LLC each have assembled multidisciplinary teams of attorneys, financial industry leaders, and professionals to guide clients in securing the assistance made available through this massive new law.
- Our deep experience in corporate financing and lending, and specific experience in advising on Main Street Lending Program loans, enable us to direct clients to the smartest and most strategic options.

Today's Presenters

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Founding Partner of Strategic Capital Investments LLC, is an accomplished financial executive with experience principally as a CFO, CEO, and financial consultant to middle market, private and public companies. His experience includes SEC reporting, business acquisitions and divestitures, numerous rounds of raising debt and equity, turnaround consulting, IPO transactions, financial modeling, budgeting and strategic planning.

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An attorney in Fox Rothschild's corporate and real estate practices, Gabe advises corporate clients on a wide range of business matters, with a particular focus on mergers and acquisitions, financing transactions and ownership transition programs.

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Robert D. Katz, CTP, CPA, MBA is a Managing Director of EisnerAmper LLP's Financial Advisory Services group and an expert in lender relations and increasing cash flow. He is one of the Founders of TMA's most successful conferences, The Distressed Investing Conference. With over 25 years of experience, Robert works with public and private middle-market companies, both in and out of bankruptcy, who are facing operational or financial challenges to create and execute the strategy needed to restructure or improve operating performance.

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Allen Wilen, CPA, CIRA, CFA, CTP, ABV is a Partner and serves as the National Director of the Financial Advisory Services Group. In this role, he leads a team of over 100 professionals dedicated to assisting the firm's clients through the litigation and restructuring process. Allen provides forensic accounting, valuation and litigation support services specializing in the areas of distress, debt restructuring, and business disputes. He has more than 20 years of financial and accounting experience in both national and regional public accounting firms.

Overview: Main Street Lending Program

- As part of the CARES Act, the Main Street Lending Program (MSLP) was created by the Federal Reserve to provide $600 billion in financing to small and medium-sized business.
- Operates through three facilities:
  - Main Street New Loan Facility (MSNLF)
  - Main Street Priority Loan Facility (MSPLF)
  - Main Street Expanded Loan Facility (MSELF)
  - Separate facilities for non-profits
- MSLP is in effect through December 31, 2020.
- Fed has created a SPV to purchase 95% of participation.

Borrower Eligibility

- For-profit partnerships, LLCs, corporations, trusts and associations with $\leq$ 49% foreign ownership established before March 13, 2020.
- Not an ineligible business according to the SBA.
- Not more than 15,000 employees ***or*** 2019 annual revenue of no more than $5 billion.
  - Apply SBA's affiliation rules for determining employees and revenue.
  - <u>Employees</u>: All full-time, part-time and seasonal employees of borrower and its affiliates.
  - <u>Annual Revenue</u>: (i) Per 2019 GAAP audited financial statements or (ii) receipts of borrower and affiliates for fiscal year 2019 as defined by SBA.

Borrower Eligibility (Cont'd)

- Created or organized in the United States, with significant operations in and a majority of its employees based in the U.S.
  - Borrower's operations should be evaluated on a consolidated basis together with its subsidiaries, but not with its parent or sister companies
- Were on sound financial footing prior to COVID-19 Pandemic.
- Affiliated groups of companies may only participate in one facility, but may receive multiple loans within the same facility
- May participate in the MSLP and Paycheck Protection Program.

MSLP: Application Process

- Potential borrowers are to apply directly to Eligible Lenders.
- Eligible Lenders are expected to conduct an assessment of each borrower’s financial condition creditworthiness.
- Borrower considerations include:
  - Previous relationship
  - Responsiveness to reputation
- Underwriting: Eligibility conditions and facility terms are the minimum requirements under the MSLP. Borrowers must pass under lender’s internal underwriting standards
- Eligible Lenders will service the MSLP

New Loan & Priority Loan Facilities

	New Loan Facility	Priority Loans Facility
Term	5-Year **Term** Loan	5-Year **Term** Loan
Minimum Loan Size	$250,000	$250,000
Maximum Loan Size	Lesser of (i) **$35M** or, (ii) amount when added to existing outstanding and undrawn debt, does not exceed **4x 2019 adjusted EBITDA**	Lesser of (i) **$50M** or, (ii) an amount when added to existing outstanding and undrawn debt, does not exceed **6x 2019 adjusted EBITDA**
Lender Risk Retention	5%	5%
Payment (no prepayment penalty)	P&I deferred in yr 1. Interest only yr 2 Years 3-5: 15%, 15%, 70%	P&I deferred in yr 1. Interest only yr 2 Years 3-5: 15%, 15%, 70%
Rate	LIBOR + 3% (1 or 3 month)	LIBOR + 3% (1 or 3 month)
Lender Transaction Fee	100 basis points of principal amount	100 basis points of principal amount
Origination Fee	100 basis points of principal amount	100 basis points of principal amount

New Loan & Priority Loan Facilities (Cont'd)

	New Loan Facility	Priority Loan Facility
Collateral Reqs.	Secured or Unsecured	Must be secured if, at the time of origination, borrower has other secured loan or debt instruments (other than mortgage debt) Need not share lien with other collateral securing Borrower's other loans
Priority	May not be contractually subordinated in terms of priority to any of the Borrower's other loans May not be junior in priority in bankruptcy	May not be contractually subordinated in terms of priority to any of the Borrower's other loans If secured, must be and remain senior or pari passu with the lien of other creditors (other than mortgage debt)

Expanded Loan Facility

	Expanded Loan Facility – Term Loan or Revolving
Term	5 year
Minimum Loan Size	$10,000,000
Maximum Loan Size	Lesser of (i) **$300 Million** or, (ii) an amout when added to existing and undrawn debt, does not exceed **6x 2019 adjusted EBITDA**
Risk Retention	5%
Payment	P&I deferred in year 1. Principal deferred in year 2 Years 3-5: 15%, 15%, 70%
Rate	LIBOR + 3% (1 or 3 month)
Priority	Senior or equal with, in terms of priority and security, with borrowers other loans.

- Provides funds to increase existing secured or unsecured **term loans** or **revolving credit** facilities originated on or before April 24, 2020. ("upsized")
- Existing facilities must have been made by an Eligible Lender or be held, in part, by an Eligible Lender.
- Remaining maturity of at least 18 months.

Use of MSLP Proceeds

- Priority Loan allows refinancing existing debt at origination.
- Expanded Loan allows funding a revolving facility.

- MSLP proceeds are to be used to maintain an Eligible Borrower's ongoing operations and retain employees.
- Current guidance does not prevent a MSLP from being used to expand operations or add employees.
- MSLP proceeds must be used only for the benefit of the Borrower, its consolidated U.S. subsidiaries, and other affiliates that are U.S. businesses
- MSLP proceeds may not be used for the benefit of such Eligible Borrower’s foreign parents, affiliates or subsidiaries.

Use of MSLP Proceeds; Borrower Criteria

- Borrowers must commit to refrain from repaying principal balance or interest on any debt until the MSLP is repaid in full, unless debt or interest payment is mandatory and due.
- Borrower must commit that it will not seek or cancel or reduce any of its committed lines of credit with the MSLP lender or other lenders
- Borrowers may in the ordinary course may:
    i. Repay a line of credit;
    ii. Incur equipment financing or similar debt secured by new property of lower priority; and
    iii. Refinance debt that is maturing.

Compensation Limitation

Until 1 year after the MSLP has been paid in full, a Borrower may not:

- Pay dividends or capital distributions on common stock.
- Pay any officer or employee who received compensation in 2019 in excess of $425,000:
  - More than such person's 2019 total compensation during any consecutive 12-month period; or
  - More than twice such person's 2019 total compensation in severance pay.
- Pay any officer or employee whose compensation exceeds $3 million in calendar year 2019 more than $3 million plus 50% of the amount above $3 million that such person received in calendar year 2019 during any 12-month period.

Borrower’s Certification

- Borrowers must certify that it is are unable to secure *adequate credit accommodations* from other banking institutions.
  - “Adequate credit accommodations” means the amount, price and terms of credit available from other sources are inadequate for borrower’s needs.
  - Borrowers are not required to show credit has been denied or is unavailable.

- Borrowers must make *commercially reasonable efforts* to maintain their payroll and retain their employees during the term of the loan.

Calculating EBITDA

- New and Priority Loans: The methodology an Eligible Lender requires an Eligible Borrower to use when calculating its adjusted 2019 EBITDA must be a methodology the Eligible Lender previously required to be used for adjusting EBITDA when extending credit to the Eligible Borrower or to similarly situated borrowers on or before April 24, 2020

- Expanded Loans: The methodology an Eligible Lender requires an Eligible Borrower to use when calculating its adjusted 2019 EBITDA must be the methodology the Eligible Lender previously required to be used for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020

"Existing Outstanding and Undrawn Available Debt"

- Includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement facilities.

- Also includes all unused commitments under any loan facility, excluding:
  (1) Any undrawn commitment that serves as a backup line for commercial paper issuance;
  (2) Any undrawn commitment that is used to finance receivables (including seasonal financing of inventory);
  (3) Any undrawn commitment that cannot be drawn without additional collateral; and
  (4) Any undrawn commitment that is no longer available due to change in circumstance. Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

Sound Financial Condition Prior to COVID

- The MSLP and availability of additional credit is intended to help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.

- The borrower's existing loan's must have had an internal risk rating (based on the Eligible Lender's risk rating system) that was equivalent to a "pass" in the Federal Financial Institutions Examination Council's (FFIEC) supervisory rating system as of December 31, 2020.

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