GOODWIN

CLIENT ALERT
April 30, 2020

U.S. FEDERAL RESERVE BOARD ANNOUNCES CHANGES, PROVIDES GUIDANCE ON MAIN STREET LENDING PROGRAM

On April 30, 2020, the Federal Reserve Board (the "Board") announced changes to the Main Street Lending Program ("MSLP"), while also providing guidance through a FAQs. While certain changes broadened the scope and eligibility of MSLP, there were certain changes that further restricted its use. Below provides the highlights with respect to the changes and guidance and describes the effects of any such changes and guidance on borrowers.

MSLP Facilities	New Loan Facility ("NLF")	Priority Loan Facility ("PLF")	Expanded Loan Facility ("ELF")	Description of Changes/Issues from a ***Borrower's*** Perspective
(blue font: good change/purple font: somewhat neutral change/red font: negative change/green font: prior issue not addressed)				
Minimum Loan Size	$500K	$500K	$10MM	1. NLF amount previously $1MM. While the lowering of the amount is helpful, it would have been better if the amount was less so more smaller businesses that may be shut out of PPP (or need more support in addition to PPP) could use the MSLP. 2. ELF amount previously $1MM

Maximum Loan Size	Lesser of (i) $25MM and (ii) an amount when added to existing outstanding and undrawn available debt, is ≤ 4x adjusted 2019 EBITDA	Lesser of (i) $25MM and (ii) an amount when added to existing outstanding and undrawn available debt, is ≤ 6x adjusted 2019 EBITDA	Least of (i) $200MM, (ii) 35% of existing outstanding and undrawn available debt that is pari passu in priority with ELF and equivalent in secured status (i.e., secured or unsecured) and (iii) an amount when added to existing outstanding and undrawn available debt, is ≤ 6x adjusted 2019 EBITDA	1. Fed did not address issue with including undrawn debt in the leverage ratio numerator for the most part (carve-outs included for (i) undrawn commitment that serves as a backup line for commercial paper issuance, (ii) undrawn receivables facility commitment, (iii) undrawn commitment where additional collateral is required to draw and (iv) undrawn commitment no longer available) 2. Provided for adjusted EBITDA. W/r/t to calculating adjusted EBITDA, lender to use methodology (i) for NLF and PLF, it previously used for borrower or similar situated companies on or before 4/24/20 and (ii) for ELF, it previously used when originating/amending existing loan on or before 4/24/20 3. For ELF, (i) increased maximum dollar amount from $150MM to $200MM and (ii) increase percentage of existing outstanding and undrawn available debt prong from 30% to 35% and qualified such type of debt covered by this prong to only include debt that is pari passu in priority with ELF and equivalent in secured status (i.e., secured or unsecured) 4. The changes to this test did not help growth companies with negative EBITDA, which means currently some of these companies (especially those that are VC-backed and could not meet either the affiliation test or necessity test under PPP) may not be eligible for MSLP or PPP. The Board did mention that it will be evaluating the feasibility of an alternative to the EBITDA leverage test

				for non-profit organizations, so there could be some hope if the Board ends up providing an alternative test to EBITDA leverage applicable to all companies, not just non-profit companies. 5. The changes to this test also did not address the fact that asset-based borrowers are generally evaluated on a test other than EBITDA leverage. The Board mentioned that it will be evaluating the feasibility of an alternative test to EBITDA leverage for asset-based borrowers.
Term	4 years	4 years	4 years	Still could present an issue in an ELF for existing loans with a maturity longer than 4 years where there are other lenders in addition to the ELF lender. Addressed this issue with an PLF by allowing new PLF loans to pay off existing lenders not participating in the PLF
Principal Amortization (P + I deferred for year 1; amortization to include PIK'd interest from year 1)	Years 2-4: 33.33% each year	Years 2-4: 15%/ 15%/70%	Years 2-4: 15%/ 15%/70%	Clarified the amount of principal amortization each year. There still remains the issue for an ELF where an ELF loan's larger amortization can present issues for existing lenders not participating in the ELF where their existing loans are amortizing at a much lower amount.
Interest Rate	LIBOR (1 or 3 months) + 3%	LIBOR (1 or 3 months) + 3%	LIBOR (1 or 3 months) + 3%	1. Previously SOFR + 2.5-4% 2. Clarified that to address the potential discontinuance of LIBOR, lender and borrower should include fallback language in the loan agreement
Loan Origination Fee	Up to 100 bps	Up to 100 bps	Up to 75 bps	1. The fee amount was changed to incorporate "up to" language, so technically the borrower could potentially agree with lender to a lower

				fee amount; however, in reality it will likely be the maximum amount 2. W/r/t ELF, fee amount dropped from 100 bps to 75 bps (but not there is a new transaction fee of 75 bps now, so if that gets passed on to the borrower (which it likely will), then the total fees still go up) 3. The MSLP term sheets mention that this fee is to be paid at time of origination; however, the Board mentioned in its FAQs that lender has discretion over whether and when to charge borrower this fee
Transaction Fee (while this fee is paid by MSLP lender to the MSLP SPV, MSLP lender may pass on to borrower) – paid at closing	100 bps	100 bps	75 bps	For ELF, added a new 75 bps fee, which is likely to be passed on by lender to borrower
Loan Servicing Fee Paid by the MSLP SPV (not Borrower) to MSLP Lender	25 bps per annum	25 bps per annum	25 bps per annum	No changes
Prepayments	Permitted without premium	Permitted without premium	Permitted without premium	No changes
Forgivable?	No	No	No	No changes
Can MSLP Facility Be Obtained in Addition to PPP Loan?	Yes	Yes	Yes	No changes
How Many of the 3 MSLP Facilities and the Primary Market Corporate Credit Facility Can be Used by a Borrower?	1	1	1	No changes (other than, of course, that there is the additional PLF now that adds one more facility type that a company cannot employ when using another)

Size-Based Eligible Borrower Test	1. Must either have no more than 15K employees or $5B in 2019 annual revenues 2. Includes borrower's "affiliates" in both tests (similar affiliation test applied for PPP except the waivers of affiliation that applied to PPP do not apply (e.g., for hospitality businesses, franchises or SBIC-supported companies) 3. For employee test, (i) count all full-time, part-time, seasonal or otherwise employed persons, excluding volunteers and independent contractors and (ii) calculate number by taking average total number for each pay period of TTM period prior to origination. 4. For revenue test, borrower may either use (i) 2019 GAAP audited financials or (ii) annual "receipts" (as defined in 13 CFR 121.104(A)) for FY2019 as reported to the IRS. If no 2019 GAAP audited financials or annual receipts, borrower shall use the most recent audited financials or annual receipts	1. Employee amount increased from 10K to 15K and revenue amount changed from $2.5B to $5B; however, an affiliation standard similar to the PPP (without the waivers) was added, which could end up eliminating several companies from MSLP that are owned or controlled by large PE funds. The trade-off of the increased amounts versus the addition of the affiliation standard is likely not worth it for some PE-backed companies 2. The option of meeting the revenue test with either annual audited financials or annual receipts provides companies the flexibility to use the one that has the smaller revenue amount
Notable Eligible Borrower Criteria	1. Must be organized "for profit" 2. Must be formed in US (or under US law) before 3/13/20 3. Must have "significant operations" in US 4. Must have majority of employees based in US 5. Must not be an Ineligible Business under 13 CFR 120.110(b)-(j) and (m)-(s) (as modified by SBA regulations for PPP on or before 4/24/20) 6. Cannot have received support pursuant to section 4003(b)(1)-(3) of the CARES Act (i.e., support received by (i) passenger air carriers, eligible businesses under 14 CFR 145, and approved to perform inspection, repair, replace or overhaul services, and ticket agents (as defined in 49 USC 40102), (ii) cargo air carriers and (iii) businesses critical to maintaining national security) 7. Must be of "sound" financial condition prior to COVID-19 pandemic 8. If borrower had an existing loan with MSLP lender that was outstanding on 12/31/19, it must have an internal risk rating (based on such lender's risk	1. No changes since non-profit companies were already excluded by the EBITDA leverage test 2. Takes newly-formed companies that were getting their legs at the time the pandemic out of MSLP but they likely would have been unable to meet the EBITDA leverage test anyway 3. No changes 4. No changes 5. This removes the same companies from MSLP that were ineligible for the PPP. Keep in mind that this does not exclude (a) a company that grows, produces, processes, distributes or sells products made from hemp (although most cannabis companies would otherwise be

	rating system) that was a "pass" in the Federal Financial Institutions Examination Council's supervisory system as of such date 9. Must have a reasonable basis to believe that, as of the date of origination of the MSLP loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period 10. Must certify that it is eligible to participate in the MSLP, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.	excluded) or (b) a legal gaming company. 6. This basically removes airlines and other companies that are already receiving support under the CARES Act (but does not exclude companies receiving PPP loans) 7. No description was provided for "sound", which it means will likely end up being determined by the MSLP lender that is now required by MSLP to conduct an assessment of the borrower's financial condition at the time of its MSLP application 8. This adds one additional condition to meet, but practically speaking a bank lender (currently MSLP is not open to direct and other non-bank lenders) would likely not lend further amounts to such type of company anyway considering they will need to keep at least 5% of any MSLP (and 15% for PLF) loan on its books subject to standard risk regulations 9. Several companies looking for a life-saving loan (something the PPP provided for some small companies) will not get that through MSLP; however, such companies may already be kicked out by the EBITDA leverage test 10. No changes
Notable Borrower Covenants	1. Must refrain from repaying the principal balance of, or paying any interest on, any debt until the MSLP loan is repaid in full, unless the debt or interest payment is mandatory and due	1. No change to the actual restriction in #1 or #2 other than (i) to add the language "and due", which if taken literally could mean a borrower would have to wait to

	2. Must not seek to cancel or reduce any of its committed lines of credit with the MSLP lender or any other lender 3. Until 12 months after the MSLP loan is no longer outstanding, must not (i) repurchase an equity security listed on a national securities exchange of borrower (or parent company of borrower) while the NLF is outstanding, except as required under a contractual obligation that is in effect as of the date of enactment of the CARES Act, or (ii) pay dividends or make other capital distributions with respect to the common stock of borrower, except that an S corporation 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 4. Until 12 months after the MSLP loan is no longer outstanding, (a) no officer or employee whose total compensation (i.e., salary, bonuses, awards of stock and other financial benefits) exceeds $425K in CY 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to 3/1/20) will receive (i) total compensation which exceeds, during any 12 consecutive month period, the total compensation received by the officer or employee in CY2019, or (ii) business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum compensation received by the officer or employee in CY2019, and (b) no officer or employee whose total compensation exceeded $3MM in CY2019 may receive during any 12 consecutive month period total compensation in excess of the sum of (i) $3MM and (ii) 50% of the excess over $3MM of the total compensation received by the officer or employee in CY2019 5. Use "commercially reasonable efforts" to maintain its payroll and retain its employees during the time the MSLP is outstanding (but clarified that borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are still eligible to apply for MSLP). "Commercially reasonable efforts" will be determined based in light of the borrower's capacities, economic environment, available resources and the business need for labor.	make a principal or interest payment until its actual due date, (ii) to clarify that (A) revolver repayments in the normal course of business usage on a line of credit are allowed, but the facilities cannot be terminated nor the commitment reduced, and (B) reductions of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in ABL or similar structures are permitted, (C) taking on and paying additional debt required in the normal course of business and on standard terms (such as PMSI debt) is allowed and (D) refinancing maturing debt is OK, and (iii) for NLF only, the borrower is allowed to refinance existing debt owed to a lender that is not the PLF lender at the time the PLF is originated. 2. See #1 directly above. 3. No changes except to allow tax distributions. There is still no carve-out for distributions for holdco expenses for pass-through companies or sponsor management fees or public company equity buybacks, and it still limits the way a company can structure an exit (e.g., if consideration would be in the form of distributions). 4. No changes. There is still no solution for the issue that this restriction seems to include equity compensation arrangements (not through a collective bargaining agreement) entered into prior to the MSLP origination, which could lead to extreme compensation limitations based on illiquid equity and could cause

		certain companies that were likely intended to be eligible for MSLP to be excluded. 5. No changes except for (i) the clarification that RIFs and salary reductions made prior to the MSLP loan closing do not disqualify a company from MSLP and (ii) some details on what constitutes "commercially reasonable efforts".
Eligible MSLP Lender Criteria	1. Must be a US federally-insured depository institutions (including banks, savings associations and credit unions), US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of foreign banking organizations or any US subsidiary of any of the forgoing. 2. Requires MSLP lender to certify that it is eligible to participate in MSLP, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act. 3. Eligible Lender (i) must commit that it will not (A) request that the borrower repay debt extended by the Eligible Lender, or pay interest on such outstanding obligations, until the loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration, or (B) cancel or reduce any existing commitment lines of credit outstanding to the borrower, except, in the case of this clause (B), (1) in an event of default and (2) such requirement does not prohibit (x) the reduction or termination of uncommitted liens of credit, (y) the expiration of existing lines of credit in accordance with their terms or (z) the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in ABL or similar structures, and (ii) is not prevented from accepting regularly scheduled, periodic repayments on a line of credit from a borrower in accordance with the borrower's normal course of business usage for such line of credit.	1. Added US branches and agencies of foreign banks, US intermediate holding companies of foreign banking organizations and US subsidiaries of the other eligible MSLP lenders as MSLP lender options for borrowers to use. However, the Fed failed to provide for direct and other non-bank lenders to be MSLP lender options for borrowers. This leaves out a large amount of available lenders that companies (including PE and VC firms) have relationships with and that currently provide credit facilities to such companies (or other portfolio companies of PE and VC firms). This also presents an issue where all of the lenders in an existing credit facility are non-bank lenders (non-bank lenders have a very large presence in the existing credit facility market) – it essentially means that a MSLP loan cannot be provided through an existing credit facility. In addition, this means that banks are likely to be overwhelmed and similar problems that were experienced in the PPP could be experienced with MSLP, especially considering that the MSLP term sheets provide the "minimum" requirements for a MSLP facility and that lenders have to apply their own underwriting standards in

				evaluating a borrower's eligibility for a MSLP loan. The likely reason that the Fed continued to leave out non-bank lenders is that banks are subject to more regulations and the Fed is generally more familiar with banks' procedures and processes than non-bank lenders. The Board did mention that it is considering options to expand the list of eligible MSLP lenders. The Board further mentioned that there is no limit on the amount of participations that the MSLP SPV can purchase from a single MSLP lender. 2. No changes 3. No change other than (i) to clarify certain items mentioned in purple and blue font in #3, and (ii) for NLF only, the borrower is allowed to refinance existing debt owed to a lender that is not the PLF lender at the time the PLF is originated.
MSLP Lender Loan Risk Retention Until Earlier of (a) Maturity and (b) the MSLP SPV Selling All of Its Participation (and, (c) Solely for ELF, the Existing Loan Maturity)	5%	15%	5%	No change, but with the new PLF option, the PLF lender has to retain 15% (i.e., 10% more than for NLF and ELF), which may mean a MSLP lender may not make available (or may prefer to not have borrower use) the PLF option as it will require more exposure for the MSLP lender and will require a higher percentage of the loan to be subject to the MSLP lender's risk calculations and regulations, especially considering currently MSLP lenders cannot be non-bank lenders (non-bank lenders are much more unregulated than banks).
Collateral/Rank/ Subordination (NLF, PLF and ELF may be secured or unsecured; provided that ELF must	Cannot be contractually subordinated in terms of priority (i.e., junior in priority in bankruptcy) to other unsecured debt or	Must be senior to or pari passu with, in terms of priority and security, all other debt,	1. At all times must be senior to or pari passu with, in terms of priority and security,	It was helpful that the Fed clarified that NLF loans could be unsecured. The Fed did not address the issue for ELFs where collateral securing the existing loan had to secure the ELF loan on a pari passu basis, which can

be secured if the existing loan is secured)	debt instruments, but does not prohibit: (1) issuance of NLF that is secured on a junior basis or other capacity, (2) issuance of NLF on an unsecured basis (regardless of term or secured/unsecured status of existing debt) or (3) additional secured or unsecured debt after closing of NLF, so long as new additional debt does not have a higher contractual priority in bankruptcy	except for mortgage debt	all other debt, except for mortgage debt 2. Collateral that secures existing loan must secure ELF on a pari passu basis (this is the case even if the existing loan is not secured at closing of the ELF but later receives collateral or security)	present intercreditor agreement related issues (this issue could potentially be solved w/r/t a PLF where it is being implemented within an existing credit facility by having the option to pay off an existing lender that is not a PLF lender with the proceeds of the PLF loan – this option is not available under an ELF)
MSLP Termination	The MSLP SPV will cease purchasing participations in MSLP loans on 9/30/20, unless the Board and Treasury extend MSLP. The Federal Reserve Bank will continue to fund the MSLP SPV after such date until the MSLP SPV's underlying assets mature or are sold.			No changes
Federal Reserve MSLP Disclosure Information	The Fed will disclose, among other things, (i) during the operation of the MSLP, info regarding the MSLP, including info regarding names of lenders and borrowers, amounts borrowed, interest rates charged, overall costs, revenues and other fees, and (ii) one year after the effective date of termination by the Board of the authorization of the MSLP, information concerning the MSLP, including names and identifying details of each participant in the MSLP, the amount borrowed, the interest rate or discount paid and info concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the MSLP			As with PPP, the Fed made clear that certain details regarding MSLP loans, the borrowers and the lenders will be made public. The Fed did not make clear whether the information made public will be in more of an aggregated basis or will be per borrower. This may cause some companies discomfort that like to keep their loan information confidential. Unlike PPP though, there is not a "necessity" requirement to participate in MSLP, so some of the scrutiny regarding companies participating in PPP is inapplicable with MSLP.
Private Underwriting	MSLP lenders must apply their own underwriting standards to the MSLP deal and the borrower in addition to the minimum guidelines set forth by the Fed			Unlike PPP that had all of the borrower criteria that a PPP lender could subject a PPP borrower to (which was designed to minimize lender underwriting and to speed up the approval process), the Fed (i) has made clear that MSLP lenders must apply

				their own underwriting standards and diligence requirements in evaluating the financial condition and creditworthiness of a potential MSLP borrower and (ii) mentioned that the MSLP term sheets are the “minimum requirements” for MSLP. The Fed also said that companies that otherwise meet the eligible MSLP borrower requirements may not be approved for a MSLP loan or may not receive the maximum allowable amount. This could slow down the approval process and could complicate the ability of companies that need additional liquidity to get sufficient support in a timely manner, especially considering that banks are currently the only option to provide a MSLP loan and banks underwriting and approval process can sometimes take longer than non-bank lenders that are not subject to the same regulations that banks are. This concern will be somewhat negated for an ELF, because the ELF lender likely has familiarity with the borrower due to already having a credit facility relationship with (and access to financial information of) the borrower.
Notable Additional Features/Conditions:	N/A	May use PLF loan proceeds at the time of the origination thereof to refinance existing debt to a lender that is not a the PLF lender at the time the PLF is originated. This is the only one of the three MSLPs that allows for this.	1. Existing facility must have (i) been originated on or before 4/24/20 and (ii) a remaining maturity of at least 18 months (which maturity condition may be satisfied by the lender extending the existing facility maturity at the time of upsizing)	The additional requirements for the ELF will make it harder to use, as requiring existing lenders to extend their maturity could present issues unless you have enough lender support to use the “yank a bank” provision and have a lender prepared to purchase such non-consenting lender’s portion and is willing to extend the maturity of their portion of the existing loan. The requirement that the ELF lender must be an existing lender limits the amount of lender options available to use an ELF unless a new lender could get an existing lender to sell a minimal portion of the

			2. If the ELF is part of a multi-lender facility, the ELF lender must be one of the lenders that holds an interest in the underlying loan on the date of upsizing (only applicable to the ELF lender)	existing loan to the potential new lender before the ELF closed.

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