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BUSINESS AND TRANSACTIONS

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Federal Reserve Announces Expansion of Main Street Lending Program to More Small and Medium-Sized Businesses and Proposal to Expand MSLP to Nonprofit Organizations

The Federal Reserve announced on June 8, 2020 that its Main Street Lending Program (MSLP) has been expanded to allow more small and medium-sized businesses to be able to receive support. The MSLP was designed to facilitate lending to small and medium-sized businesses that were in sound financial condition prior to the onset of the COVID-19 pandemic so that they may maintain their operations and payroll until conditions normalize. The MSLP is available to businesses that were unable to access the Payroll Protection Program (PPP) or that require additional financial support after receiving a PPP loan. Borrowers that participate in the MSLP are required to make commercially reasonable efforts to maintain payroll and retain their employees during the time the MSLP loan is outstanding. MSLP loans are not forgivable. The MSLP is operated through three facilities: the Main Street New Loan Facility, the Main Street Priority Loan Facility and the Main Street Expanded Loan Facility.

Changes to the terms of the MSLP include:

- Lowering the minimum loan size for certain loans to $250,000 from $500,000;
- Increasing the maximum loan size for all facilities;
- Increasing the term of each loan option to five years, from four years;
- Extending the repayment period for all loans by delaying principal payments for two years, rather than one; and
- Raising the Reserve Bank's participation to 95% for all loans.

For each MSLP facility, the interest rate will remain at LIBOR plus 3%, interest payments will continue to be deferred for one year and eligible businesses must still have no more than 15,000 employees or 2019 annual revenues of no more than $5 billion. The MSLP opened for lender registration on June 15, 2020.

In addition, on June 15, 2020, the Federal Reserve announced a proposal to expand the MSLP to provide access to credit for “small and medium-sized nonprofits that were in sound financial condition before the coronavirus pandemic and could benefit from additional liquidity to manage through this challenging period.” Under the proposal, two facilities would be offered: the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF). The terms of the NONLF and NOELF are similar to the New Loan Facility and Expanded Loan Facility under the MSLP for for-profit businesses.

A borrower under either the NONLF or NOELF must be a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC) or a tax-exempt veterans’ organization described in section 501(c)(19) of the IRC and must meet the following minimum eligibility requirements:

1. Was established prior to, and has been in continuous operation since, January 1, 2015;
2. Has either 15,000 or fewer employees or 2019 annual revenues of $5 billion or less;

3. Has at least 50 employees;
4. Has an endowment of less than $3 billion;
5. Has 2019 revenues from donations that are less than 30% of total 2019 revenues;
6. Has a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue, greater than or equal to 5%;
7. Has a ratio (expressed as a number of days) of (i) liquid assets at the time of the origination of the loan to (ii) average daily expenses over the previous year, equal to or greater than 90 days;
8. At the time of the loan origination, has a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under the facility, plus the amount of any CMS Accelerated and Advance Payments, that is greater than 65%;
9. Is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
10. Has not also received another loan under the MSLP or the Primary Market Corporate Credit Facility or the Municipal Liquidity Facility; and
11. Has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).

Just as under the for-profit MSLP, certain borrower certifications and covenants are required under the proposed NONLF and NOELF. For example, the borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the loan, and after giving effect to the 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 period. Borrowers must also commit to following the applicable restrictions in the CARES Act on compensation, stock repurchase and capital contributions.

Draft term sheets for the two proposed nonprofit facilities, as well as the existing term sheets for the three for-profit facilities, can be found here. The comment period for the proposed nonprofit facilities ended June 22, 2020, and we expect that final term sheets will be available soon.

The attorneys at Bond, Schoeneck & King can help by answering your questions regarding the MSLP and whether your business or nonprofit organization meets the MSLP eligibility criteria. Please contact Jeffrey B. Scheer, any of the attorneys in the Business and Transactions practice, or the attorney at the firm with whom you are regularly in contact.

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