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Federal Reserve Unveils Main Street Lending Program

In an unprecedented show of force, the Federal Reserve announced today $2.3 trillion in emergency lending initiatives. Among them is the much anticipated Main Street Lending Program, which includes relief to mid-sized businesses who were too large to participate in the Paycheck Protection Program (the "PPP") rolled out last week. The Federal Reserve also announced significant enhancements to existing programs. The new initiatives are:

- the Main Street Lending Program, which offers four-year unsecured loans to companies employing up to 10,000 workers or with revenues of less than $2.5 billion;
- the Paycheck Protection Liquidity Facility, which extends credit to financial institutions that originate PPP loans, taking the loans as collateral; and
- the Municipal Liquidity Facility, which offers up to $500 billion in lending to states and municipalities.

In addition, the Federal Reserve expanded the size and scope of three existing programs: the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility and the Term Asset-Backed Securities Loan Facility.

These programs stem from the Federal Reserve's emergency lending authority under Section 13(3) of the Federal Reserve Act. While the Act imbues the Federal Reserve with immense powers, it also imposes stringent limitations, and the structures of these programs can best be understood in this context. Section 13(3) authorizes the Federal Reserve in "unusual and exigent circumstances" to establish lending programs with the approval of the Secretary of the Treasury that meet the following requirements:

- the programs must have broad-based eligibility and not be designed to assist a single specific company;
- the program participants must be unable to obtain adequate credit from other banking institutions;
- the purpose of the program must be to provide liquidity to the financial system and "not to aid a failing financial company" or to lend to insolvent companies;
- any loan by the Federal Reserve must be fully secured and the security must be sufficient to protect taxpayers from losses (in this case, the loan by the Federal Reserve is secured by the assets of a special purpose vehicle created to facilitate the program); and
- the Federal Reserve must provide detailed periodic reports to Congress, including the identity of the recipients, the material terms, and whether any requirements were imposed on the recipients with respect to employee compensation, dividends, or other corporate matters.

Funded with $600 billion in loans from the Federal Reserve and $75 billion in equity from The Department of the Treasury, the Main Street Lending Program offers four-year unsecured loans at a rate of SOFR + 250-400 basis points to small- and mid-sized businesses.

Loan size ranges from a minimum of $1 million to a maximum of $25 million or four times 2019 EBITDA (when aggregated with the borrower's existing outstanding and committed but undrawn debt). Principal and interest on the loans are deferred for one year. Loans may be made by banks, bank holding companies and savings and loan holding companies, and can be made through new or existing facilities. Under the program, the lenders would retain 5% of a loan and sell the remaining 95% to the Main Street facility. Small businesses that have PPP loans may also take out Main Street loans. A borrower would also be required to make a series of attestations which include that:

- it will make reasonable efforts to maintain payroll and retain workers;
- the proceeds of the loan will not be used to repay or refinance pre-existing loans or other debt;
- it will not cancel or reduce any of its outstanding lines of credit; and
- it requires financing as a result of exigent circumstances presented by the COVID-19 pandemic.

In addition, a borrower must agree to the following limits (which apply for the duration of the loan and for one year thereafter) on annual compensation and severance payments for each officer and other employee (other than a unionized employee) whose "total compensation" exceeded $425,000 in 2019. These are the same limitations on compensation (as well as on stock repurchases and dividends below) that apply to direct loans from the Treasury under the CARES Act, and we assume that they will be applied and interpreted in a consistent manner.

- Each such individual cannot receive total compensation during any 12 consecutive months in excess of the <u>lesser</u> of:
  - the total compensation received by the individual in 2019; and
  - the sum of (i) $3,000,000; and (ii) 50% of the amount that the individual's total compensation in 2019 exceeded $3,000,000.
- Severance pay or other benefits upon termination of employment cannot exceed two times the maximum total compensation received by the individual in calendar year 2019.

Borrowers must also agree not to take the following actions for the duration of the loan and for one year thereafter:

- repurchase exchange-listed securities of the company; or
- issue dividends or make distributions on its common stock.

At this juncture, the Main Street Lending Program is not yet operational. All that has been released are brief high-level term sheets. As with the other emergency programs, the terms are likely to evolve as additional details are released.

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