ALERT MEMORANDUM

New Main Street Lending Facilities Announced; Existing Federal Reserve Facilities to Finance Corporate Debt and ABS Expanded

April 9, 2020

This morning, Treasury and the Federal Reserve announced two new lending facilities and a significant expansion in the size and scope of three existing facilities aimed at assisting corporate borrowers—the Term Asset-Backed Securities Loan Facility and the Primary and Secondary Market Corporate Credit Facilities. Some borrowers that are below investment grade will now be eligible for financing facilitated by the Federal Reserve. Treasury and the Federal Reserve have addressed the disconnect between the historical Federal Reserve approach to addressing Section 13(3) of the Federal Reserve Act (choosing to limit lending support to investment grade issuers), and the purpose of the CARES Act (assisting businesses facing credit and liquidity challenges as a result of the pandemic). The new and expanded facilities reconcile the two mandates by reducing the leverage applied to Treasury's equity investment in the Federal Reserve facilities.

We have set out below a high-level summary of the major changes to these three existing facilities and key eligibility criteria for the two new Main Street lending facilities based on the term sheets released today. This summary is limited to today's announcements regarding the facilities of greatest interest to corporate borrowers; we will soon be providing a memo with a comprehensive update on all of the facilities, including those newly established to support states and municipalities and the SBA's Paycheck Protection Program loans.

Main Street Lending Facilities (new facilities; available to below-investment grade borrowers)
Term sheets (MSNLF; MSELF)

- Treasury and the Federal Reserve will create two new facilities to support lending to mid-sized businesses: the Main Street New Loan Facility and the Main Street Expanded Loan Facility.
- The facilities will support lending to both investment grade and below-investment grade borrowers. In recognition of increased credit risk, the facilities will use lower leverage than the others: up to $600 billion in loan purchases supported by a $75 billion Treasury equity investment using funds appropriated under the CARES Act.
- The two facilities will share an SPV and many design features. As the names suggest, the MSNLF will finance loans originated on or after April 8, 2020 and the MSELF will finance the extension of additional credit (the "upsized tranche") on pre-existing loans originated prior to April 8, 2020. Borrowers may participate in only one facility—either the MSNLF or the MSELF—and may not participate in the Primary Market Corporate Credit Facility (discussed below).

clearygottlieb.com

© Cleary Gottlieb Steen & Hamilton LLP, 2020. All rights reserved.
This memorandum was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice. Throughout this memorandum, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.

- The Federal Reserve is soliciting feedback on the facilities through its feedback form until April 16.
- *Eligible Borrowers.* U.S. companies with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues.
  - Borrowers must have significant operations and a majority of employees based in the United States.
  - There is no indication that affiliates under common control must be taken into account in calculating the size limits (in contrast to the affiliation rules that apply to the SBA's Paycheck Protection Program).
  - There is no indication that participation by a U.S. subsidiary of a foreign company would be prohibited if it meets the specified criteria.
- *Eligible Lenders*. U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.
- *Loan amounts and collateral.*
  - MSNLF loans: unsecured and capped at the lesser of (i) $25 million or (ii) an amount that, when added to existing outstanding and committed but undrawn debt, does not exceed 4x 2019 EBITDA.
  - MSELF loans: upsized tranche of an existing loan. Upsized tranche amounts are capped at the lesser of (i) $150 million, (ii) 30% of the borrower's existing outstanding and committed but undrawn debt or (iii) an amount that, when added to existing outstanding and committed but undrawn debt, does not exceed 6x 2019 EBITDA. May be secured by collateral pledged under original loan terms or at time of upsizing, provided the SPV participation is secured pro rata.
- *Key terms.* Loans for both facilities will have a 4-year maturity, 1-year deferral of amortization of principal and interest, an adjustable rate of SOFR + 2.5-4% and prepayment without penalty.
- *Use of proceeds*. Borrowers must certify that they require financing due to COVID-19 and will make reasonable efforts to maintain payroll and retain employees during the term of the loan; may not use proceeds to repay or refinance pre-existing loans.
- *Other key restrictions.*
  - CARES Act restrictions on compensation, share repurchases and capital distributions apply (under the CARES Act, these apply through one year after the date of repayment).
  - Borrower must commit not to repay other debt of equal or lower priority, other than mandatory principal payments, and borrower and lender must commit not to cancel or reduce existing lines of credit to the borrower.
- *Basic structure*. The SPV will purchase a 95% participation in each loan, with the lender retaining 5%. The 5% risk retention for the lender (an innovation compared to other Federal Reserve programs during this crisis) is presumably designed to ensure that the lending bank has skin in the game, aligning the lender's incentives with the Federal Reserve's in the origination and servicing of the loans.
- *Facility, origination and servicing fees.* Lenders will pay a facility fee equal to 1% of the principal amount purchased by the SPV, and may require the borrower to pay this fee. Lenders will be entitled to a 1% origination fee paid by the borrower to the lender, and a 0.25% per year servicing fee paid by the SPV.
- *Termination.* Facilities expected to close to new participations on September 30, 2020, unless extended.

Term Asset-Backed Securities Loan Facility (existing facility; investment grade collateral requirement)

Term sheet (TALF)

Blackline of term sheet showing revisions (TALF)

- Treasury and the Federal Reserve have expanded the eligible collateral for the TALF to include ABS backed by leveraged loans (e.g., CLOs) and commercial mortgages (e.g., CMBS).
  - Eligible collateral continues to be limited to ABS issued on or after March 23, 2020 where all or substantially all underlying credit exposure is newly issued; except that eligible CMBS collateral is limited to legacy CMBS issued before March 23, 2020.
  - Eligible legacy CMBS must be backed by exposure to real property in the United States, and cannot be "single-asset single-borrower" CMBS.
  - Eligible CLOs must be static CLOs—no loan substitution allowed—and cannot be commercial real estate CLOs.
  - Servicing advance receivables have been removed from the list of permitted credit exposures underlying eligible ABS collateral.
- The revised term sheet also includes updates to pricing and a haircut schedule for pledged collateral.
- There is no change to the structure or funding of the TALF, which involves a $10 billion Treasury equity investment in an SPV and Federal Reserve lending to the SPV to enable it to purchase up to $100 billion in non-recourse secured loans.
- The Federal Reserve is soliciting feedback on TALF through the Board's feedback form and the Federal Reserve Bank of New York's email address.

Primary and Secondary Market Corporate Credit Facilities (existing; newly available for non-investment grade assets)

Term sheets (PMCCF; SMCCF)

Blacklines of term sheets showing revisions (PMCCF; SMCCF)

- The assets eligible for purchase by the PMCCF and SMCCF have been expanded to include certain non-investment grade assets.
  - Obligations of issuers that were rated investment grade (BBB-/Baa3) as of March 22, 2020 that have since been downgraded to no less than BB-/Ba3 are now eligible (in addition to issuers that remain investment grade).
  - Securities of U.S.-listed ETFs that provide exposure to U.S. high-yield corporate bonds are now eligible for the SMCCF. The preponderance of the SPV's ETF holdings will be ETFs whose primary investment objective is exposure to U.S. investment-grade corporate bonds.
- The PMCCF will be authorized to purchase participations in syndicated loans in addition to eligible corporate bonds, and will no longer make direct loans.
- Purchases involving bonds from investment-grade issuers and ETFs focused on investment-grade bonds will remain leveraged 10x, but purchases involving other assets will involve less leverage (7x for below-investment grade bonds from corporate issuers, and from 7x to as low as 3x for other eligible assets).

- Today's announcement increases the size of the Treasury investment in the SPV that supports the two facilities from $10 billion to $75 billion, which will now support up to $750 billion in lending. The revised term sheets do not specify whether CARES Act funds will be used for the increased Treasury investment.
  - The removal of direct lending from the PMCCF's planned activities may remove any question about whether the CARES Act restrictions applicable to "direct loans" (which do not apply to participation in syndicated lending and securities and capital markets transactions) apply.

*   *   *

Cleary Gottlieb has established a COVID-19 Resource Center, providing information and thought leadership on developing events. In addition, we have a COVID-19 Task Force that is acting as a repository for practical solutions, best practice and issue-spotting to help our clients by sharing market experience, insight and advice from across our global presence. If you have any questions or would like to discuss this, or other topics relating to the coronavirus outbreak, further, please do not hesitate to reach out to your regular contacts at the firm or contact our COVID-19 Task Force by clicking here.

…

CLEARY GOTTLIEB