April 16, 2020

VIA ELECTRONIC SUBMISSION

Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Steven T. Mnuchin, Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Re: Main Street New Loan Facility and Main Street Expanded Loan Facility

Dear Chairman Powell and Secretary Mnuchin:

The Loan Syndications and Trading Association ("LSTA")[1] appreciates the opportunity to comment on the April 9, 2020 term sheets for the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF") (collectively, the "Main Street Program"). We strongly support the efforts of the Federal Reserve and the Treasury to provide relief and stability to small and medium-sized businesses and their employees by establishing these facilities. While we believe that the Main Street Program will need to be supplemented with additional programs under Section 4003 of the Coronavirus Aid, Relief, and Economic Security Act[2], we also

[1] The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication, and trading of commercial loans. The over 500 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers, and other institutional lenders, as well as service providers and vendors. The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures, and documentation to enhance market efficiency, transparency, and certainty.

[2] Because of size and rating constraints, there are a significant number of companies that do not fit either in the Main Street Lending Program or in the Primary Market Corporate Credit Facility (PMCCF). These are companies with i) no ratings or non-investment grade ratings and ii) annual 2019 revenues over $2.5 billion or more than 10,000 employees. As a result, they fall out of all programs that have been released thus far. Upon an initial review of its loan index and related pricing service, the LSTA tracked more than 230 non-investment grade companies with more than 10,000 employees. In total, this sample of companies had more than nine million employees. The LSTA believes there also are a significant number of non-investment grade companies that utilize high-yield bonds that are not included in our data. We believe that it is important that either this program or another program created under Section 4003(b)(4) address the companies that fall into the cracks between the Main Street Lending Program and the PMCCF. We believe

believe that loans from the Main Street Program, if properly tailored, will be a critical source of liquidity for a large number of companies until the coronavirus crisis stabilizes and markets return to a more normalized state.

In order for the Main Street Program to achieve its goal, we believe it is essential that the parameters and criteria for the MSNLF and MSELF reflect current circumstances and market standards so that this program will be accessible as a practical matter to as many of the intended recipients as possible. In that regard, we discuss below certain key changes that we believe will make the Main Street Program more effective, followed by more detailed comments on the term sheets.

I. Key Measures to Increase Accessibility to the Main Street Program

It is clear that the Federal Reserve and the Treasury are committed to providing liquidity and stability to the many companies that need assistance, and we appreciate the challenge of designing a program that addresses the different financing needs across those companies. In order to ensure that the Main Street Program is accessible to as many qualifying small and medium-sized companies as possible, our core recommendations are to: (i) incorporate more flexible terms to recognize that most eligible borrowers are constrained by existing debt agreements, whether the borrower seeks a loan under the MSNLF or MSELF; (ii) reconsider the proposed EBITDA and leverage-based test which may exclude many otherwise qualifying borrowers from the Main Street Program, (iii) give lenders more discretion to use their judgment and expertise to determine appropriate terms and conditions for these loans, recognizing that lenders will retain exposure to these loans; and (iv) broaden the base of eligible lenders to include non-U.S. and non-bank institutions either directly or as part of a syndicate with other eligible lenders.

A. The Main Street Program should accommodate the constraints that existing debt agreements place on borrowers.

Most borrowers have existing indebtedness that prohibit the incurrence of additional debt and/or liens, subject to specified exceptions. Unless there is an available exception, a consent or amendment from existing lenders or bondholders may be necessary. Such consent may be difficult to obtain, or prohibitively expensive, particularly for broadly syndicated credit facilities or bonds. This issue may be particularly acute where the new indebtedness is secured, as contemplated by the MSELF. Even where a new loan is not secured, such as would be available under the MSNLF, companies may be unable to enter into new loans, for example, with a shorter maturity without consents and amendments.

Accordingly, we believe affording eligible lenders and borrowers maximum flexibility to negotiate the terms of the Main Street Program will be critical to their success. For example, where a small or medium-sized operating company cannot access new loans because of restrictions in their existing debt documents, the Main Street Program could allow the loan to be made to a direct or indirect holding company.[3] We would welcome

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these companies also need and should receive support from Section 4003(b)(4) programs, and we urge the Federal Reserve and the Treasury to continue to develop such programs.

[3] This approach is fully described in the "LSTA Proposal for Loans to Businesses under Section 4003(b) of the CARES Act," a copy of which was provided to the Federal Reserve and the Treasury on April 8, 2020. Under this structure,

the opportunity to discuss this structure with you in more detail and provide any assistance by way of supporting materials, such as a term sheet describing this structure.

B. Access to the Main Street Program should not rely on an EBITDA-based leverage test.

For the reasons we describe in more detail below, requiring all borrowers to comply with an EBITDA-based leverage test could exclude many from the Main Street Program. Some borrowers, such as nonprofits and early-stage growth companies, simply do not have positive EBITDA. For many others, a standardized EBITDA test which is not tailored to the particular business and its industry could give a distorted view of true cash flow and therefore leverage.

We propose relying on the lender and the borrower to agree upon appropriate metrics consistent with a borrower's existing debt agreements and market convention in the borrower's industry in order to determine whether to make a loan under the MSNLF or MSELF. We believe the lender should retain discretion to make prudent credit decisions regarding the maximum size of the loan based on their judgment and expertise, subject to the dollar limit set out in the term sheet for the relevant facility.

C. The Main Street Program should give lenders more discretion to determine appropriate terms and conditions for the loans they originate.

More generally, since lenders will retain a 5% interest in the loan and are in any case bound by "safety and soundness" requirements, we propose they be given more discretion to make prudent decisions based on their credit expertise and knowledge of the borrower and its capital structure. For example, interest rates, whether interest should PIK after the one year deferral period, amortization after the one year deferral period, and collateral are all matters that the lender will be best positioned to tailor to a borrower's particular circumstances. This flexibility will also increase the chance that the Main Street Program loans can be structured to fit with the borrower's existing debt structure.

D. The Main Street Program should broaden the base of eligible lenders.

The current term sheets for the MSNLF and MSELF limits the universe of eligible lenders to "U.S. insured depository institutions, U.S. bank holding companies, and U.S. saving and loan holding companies." However, a significant amount of credit for small and medium-sized U.S. companies is provided by foreign banks and their U.S. branches and by non-bank lenders, such as private debt funds. Foreign banks are often the agent or arranger on syndicated term loans, and both foreign banks and non-bank lenders, such as CLOs and other institutional investors, participate in bank syndicates.

Given the urgent need to provide liquidity to eligible U.S. companies dealing with losses incurred as a result of the coronavirus crisis, we encourage the Federal Reserve and the

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the holding company would be required to invest the proceeds from such loan in the operating company, and the loan could be secured by the assets of the holding company, including intercompany loans and loan receivables, net cash proceeds received from distributions on equity interests in the operating company, accounts into which such loan receivables and distributions are deposited and any proceeds of the foregoing. Such a structure would generally not require consents, waivers and/or inter-creditor arrangements from the operating company's existing lenders.

Treasury to include a broader range of lenders as eligible lenders. But even if they are not included more broadly as eligible lenders in the Main Street Program, we strongly believe at a minimum that the MSELF program should be expanded to allow eligible lenders to lend alongside existing indebtedness even if that existing indebtedness is not itself provided by eligible lenders.

II. Detailed Comments on Term Sheets

A. Existing Financings Under MSELF

MSELF requires a loan to be structured as an increase to a term loan provided by an eligible lender. This excludes borrowers that do not currently have term loans in their capital structure, such as companies with only a revolving credit facility. It also excludes borrowers that have term loans provided by foreign banks, direct lenders, and other non-bank institutions that are not eligible lenders as currently defined, and borrowers whose financing has been syndicated to non-bank term loan B lenders. This exclusion will have a particularly significant impact on the many small to mid-sized companies that rely on direct lenders as a critical source of funding.

We propose making MSELF available to borrowers who have any existing indebtedness[4] so long as the MSELF loan itself is provided by eligible lenders. In that regard, where there are multiple lenders in an existing loan facility, MSELF should permit expansions of such facility by eligible lenders, including where eligible lenders extend credit alongside other lenders that do not themselves qualify as eligible lenders.

We also request clarification that MSELF is not limited to "upsizing" an existing tranche of a term loan but can be provided as incremental expansions of existing facilities by eligible lenders. Because of the differing terms between those of the existing debt and those of the "upsize", the existing credit agreements will not allow for the expansion to be an increase of the existing loan tranche, rather it will need to be structured as a separate tranche.

B. Maximum Loan Size and Leverage Attestations

The proposed criteria for determining the maximum loan size in the MSNLF and MSELF will significantly limit borrowers' ability to access needed funds. In particular, the requirement that each borrower must attest that it satisfies proposed EBITDA leverage tests may disqualify many companies without inclusion of the proposals described below.

1. EBITDA: Although both the MSNLF and MSELF propose to use an EBITDA construct as the basis for a cap on the size of eligible loans and a leverage test for borrowers, the term sheets do not define EBITDA. If the intention is to define and use EBITDA uniformly and narrowly, we believe it would preclude many borrowers from satisfying the leverage tests and accessing loans. It would also be inconsistent with market standards which

[4] Existing indebtedness could relate to term loans or non-term loans, whether provided by an eligible lender or non-eligible lender.

do not use a uniform EBITDA metric to measure risk. Instead, customary debt agreements typically tailor the definition of EBITDA to eliminate non-cash and other items to establish a more accurate picture of cash flow available to service debt for each particular borrower's business. Furthermore, as noted above, some borrowers, such as nonprofits and early-stage growth companies, simply do not have positive EBITDA. For these companies, an EBITDA-based leverage metric is typically not used to measure creditworthiness. Application of such a metric as a requirement to access the Main Street Program will likely exclude these companies from receiving liquidity that they need.

We believe the Main Street Program should permit lenders to use an EBITDA definition that is consistent with that used in the borrower's existing credit agreements or commonly used in the borrower's industry for purposes of calculating the maximum loan amount of an eligible loan and the leverage test. Furthermore, for companies for whom an EBITDA-based metric is not appropriate, we propose permitting lenders to use alternative creditworthiness metrics that are customary in that company's industry.

2. Debt: For purposes of the leverage calculations used to establish a cap on the size of an eligible loan and the leverage test for borrowers, "debt" includes undrawn commitments, but the term sheets do not otherwise explain how such debt will be calculated. For example, it is not clear whether "debt" would include financing leases, guarantees of parent company debt, intercompany indebtedness or contingent obligations, and whether it would be calculated on a net or gross basis. Furthermore, inclusion of undrawn commitments as debt in a leverage test is atypical and would likely result in an eligible borrower's inability to access these loans.

   To ensure that the broadest swath of eligible borrowers is able to benefit from the Main Street Program, we believe undrawn commitments should not be included as "debt" for purposes of determining the maximum loan amount or in the leverage calculation. More generally, lenders should be permitted to use debt definitions that are consistent with those set forth in individual company's existing debt agreements for ratio calculation purposes.

3. Leverage: Even with the proposed modifications to the EBITDA metric noted above, the leverage tests (i.e., four times for MSNLF and six times for MSELF) are likely too restrictive for many otherwise eligible borrowers. In some instances, as highlighted above, any EBITDA-based leverage test would simply disqualify certain companies (e.g., growth companies with negative EBITDA, not for profits, real estate companies, etc.).

   Accordingly, we propose permitting lenders to extend loans to such companies that exceed those levels if the lender, based on its judgment and expertise, is otherwise comfortable doing so. For companies for which EBITDA-based leverage is not an appropriate metric, as noted above, we further propose relying on the lender to identify metrics other than EBITDA and leverage consistent with the borrower's existing debt agreements or market standard for the borrower's industry when deciding whether to extend a loan to the borrower. This approach would make Main Street Program loans available to a broad set of companies for which an EBITDA-based leverage ratio is not an appropriate or accurate metric.

4. Maximum Dollar Amount in the MSELF – 30% Cap: The determination of the maximum loan size relies on a calculation of undrawn commitments of "bank debt." The inclusion of undrawn commitments in this calculation is problematic for the reasons described above. Furthermore, the term sheet does not define "bank debt" or explain whether or how "committed but undrawn bank debt" differs from "committed but undrawn debt" referenced in the leverage calculations. We propose that the 30% calculation be aligned with the leverage test to refer to "debt" broadly. To the extent a distinction is intended, however, we propose that "bank debt" be clarified to include loans made by non-banks and syndicated term loans held by non-bank institutional and other lenders.

C. Loan Features

1. Structure and Security: Most companies will have limited debt and lien capacity under their existing debt agreements, so they may not be able to borrow under the Main Street Programs without a waiver or consent from their existing lenders or bondholders. As discussed in Section I.A above, obtaining a waiver or amendment to permit the incurrence of additional loans may be challenging in many situations, especially for companies with debt held by a large syndicate of lenders, even if the new loan is unsecured such as contemplated by the MSNLF.

   To address these challenges, we request that where a company's existing debt agreements do not permit them to incur additional secured debt, the MSELF permit an upsized tranche to be unsecured even if the existing loan is secured, as long as the eligible lenders extending the loan are willing to make the loan on an unsecured basis.

   In addition, we further propose permitting companies to incur Main Street Program loans at a holding company level on a secured basis if their existing debt documents do not permit them to incur any additional debt at the operating company. We believe that structure would be consistent with the goals of the program, i.e. providing much needed liquidity while safeguarding taxpayer funds.

2. Tenor and Amortization: For borrowers that have existing loans, many credit agreements require new debt to have a maturity outside the maturity of the existing debt so the four-year maturity term may violate the weighted average life and maturity requirements in their existing credit agreements. Since a typical term loan will have a maturity of five to seven years, some qualified borrowers may be precluded from borrowing new debt with a four-year maturity. For some otherwise eligible borrowers, lenders may not be willing to make a loan with a four-year tenor, but would be willing to extend

a loan with a shorter maturity. We also note that there is a potential market risk in having all Main Street Program loans maturing at the same time.

We propose relying on eligible lenders' judgment and expertise and permitting eligible loans to have tenors of up to seven years. This would provide borrowers and lenders with flexibility to address different scenarios and allow for staggered maturities for the Main Street program loans.

In addition, the current term sheets do not specify the amount of amortization following the one year deferral period. We would similarly propose relying on the borrower and lender to determine the appropriate amortization following the one year deferral period.

3. <u>Benchmark</u>: The MSELF requirement that eligible loans, which are "upsized tranches of existing loans," must use a SOFR rate is problematic given that the existing loan references a different benchmark. The MSELF should permit the eligible loan to reference the same benchmark as the existing loan.

4. <u>Interest</u>: The 400 basis points cap on margin may not provide sufficient incentive for lenders to make loans to certain higher leveraged creditworthy companies, even if they retain only 5% of the loan exposure. It also is unclear whether deferred interest will be paid-in-kind and itself accrue interest during the deferral period, or whether interest can continue to be paid-in-kind following the deferral period.

   We propose permitting lenders and borrowers to negotiate a rate that appropriately reflects the credit risk, possibly up to an increased cap. Furthermore, because we believe Main Street Program loan proceeds are better used to continue to support and stabilize existing businesses rather than to pay interest, we also propose that the loans require interest to be paid in cash only to the extent there would be sufficient cash to continue operating the company and avoid triggering a violation of a financial covenant or operating covenant under the company's existing debt structure. When there is insufficient cash under the foregoing construct, in lieu of making such payment, the borrower should have the option to elect that such accrued and unpaid interest be paid-in-kind and added to the principal amount of the loan.

D. <u>Attestations and Certifications</u>

1. <u>Prepayment/Repayment of Other Debt</u>: Both the MSNLF and MSELF would limit prepayment of equal or lower priority debt, with the exception of mandatory principal payments, until the Main Street Program loans are repaid. We request clarification that this restriction does not prohibit the repayment of existing debt (of whatever priority) at maturity. We also request clarification that this restriction does not apply to a company's ability to repay draws and reborrow from revolving credit facilities in the normal course as long as the size of the facility is not reduced.

2. CARES Act Provisions: Both the MSNLF and MSELF require borrowers to comply with certain provisions of the CARES Act (e.g., limitations on stock buybacks, dividend/capital distributions, increases in salary) for 12 months after a Main Street Program loan is repaid.

For borrowers that are structured as limited liability pass-through entities, we request clarification that the prohibition on dividends/capital distributions is intended only to limit extraordinary payments and not the payments necessary for paying tax obligations, and other similar ordinary course day-to-day operations of the business. It is customary for such entities to make regular distributions to the direct or indirect parents of the borrower in order to permit such equity holders to maintain their existence, pay customary ordinary course operating expenses, and pay taxes and tax distributions in accordance with the terms of the borrower's organizational documents.[5]

We also request that if a loan is repaid in full as a result of a sale, conveyance, transfer or other disposition of all of the property or assets or equity interests of the borrower or the entire business is merged into another company or otherwise sold or otherwise disposed of in its entirety (a "disposition"), then upon giving effect to the change of control to a new unaffiliated third party and the repayment of the Main Street Program loans, all restrictive covenants imposed on the business will fall away. We believe that allowing such restrictions to fall away in these circumstances would result in earlier repayments of Main Street Program loans by making such transactions more attractive to prospective lenders and investors.

E. Loan Participations

Special Purpose Vehicle ("SPV") Participation Rights: If the Federal Reserve and the Treasury determine that they want to acquire their interests in the Main Street Program loans via participations, many lenders would like to understand certain operational aspects of the SPV's participation interest, and in that respect, a form of participation agreement would be helpful.

The LSTA has promulgated a Form of Participation Agreement which is used by loan market participants to document the settlement of certain loan acquisitions where, for example, the lender is denied borrower's consent and is unable to join the syndicate as a lender. As the creator of that market standard, LSTA would be happy to engage further with the Federal Reserve and the Treasury to assist with the tailoring of a standard participation agreement for the Main Street Program. The LSTA's Form could be modified to suit such loan acquisition by the Federal Reserve and the Treasury. For example the

[5] Where businesses are structured as limited liability companies rather than corporations, such pass-through entities do not pay income taxes at the operating company level, but rather typically pass through payments in an amount equal to their taxes to their equity holders because their equity holders are responsible for reporting and paying their share of profits and losses on their tax returns. In the absence of guidance clarifying that the prohibition on dividends does not limit dividends necessary for paying tax obligations, this prohibition could prevent such businesses from accessing liquidity under the Main Street Program.

typical buyer's representations could be streamlined to suit the SPV and the standard buyer indemnities could also be revised. We would be happy to explore these types of modifications with you and assist in the creation of a form for these purposes if you decide to proceed with the participation structure as opposed to the traditional method of acquiring a loan via an assignment.

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The LSTA appreciates the opportunity to comment on the Main Street Program and would be pleased to answer any questions that you might have concerning our comments or provide any additional information. Please do not hesitate to contact me at lshaiman@lsta.org or (212) 880-3002.

Respectfully submitted,

Lee Shaiman
Executive Director