Client Alert

April 2020

"Main Street" Loan Facilities under the CARES Act

On April 9, 2020, the U. S. Treasury Department ("***Treasury***") announced the Main Street New Loan Facility (the "***New Loan Facility***") and the Main Street Expanded Loan Facility (the "***Expanded Loan Facility***"), two new federal loan programs able to accommodate both "small" businesses meeting and larger businesses exceeding the size limits in the Paycheck Protection Program.

In addition to the New Loan Facility and the Expanded Loan Facility, Treasury also announced the Primary Market Corporate Credit Facility (the "***Primary Market Facility***") and the Secondary Market Corporate Credit Facility (the "***Secondary Market Facility***"). The Primary Market Facility and the Secondary Market Facility are designed to support the corporate bond markets and will be discussed separately in a future update.

The New Loan Facility

Based on a term sheet issued by Treasury, the New Loan Facility works as follows:

1. ***The Basic Structure of New Loan Facility*** – Beginning on April 8, 2020 (the "***Start Date***"), the New Loan Facility supports U.S. banks and other federally insured depository institutions in originating qualifying unsecured loans to eligible U.S. borrowers. If an eligible U.S. lender makes a qualifying loan to an eligible U.S. borrower on or after the Start Date, then a newly established government special purpose vehicle (the "***SPV***") will purchase 95 percent (at par) of the qualifying loan from the eligible U.S. lender.

2. ***Qualifying Loans under the New Loan Facility*** – A loan will qualify for purchase under the New Loan Facility if the loan (a) is made by an eligible U.S. lender to an eligible U.S. borrower on or after the Start Date, (b) is unsecured, (c) contains the Required Terms (as defined below) and (d) does not exceed a specified maximum principal size.

3. ***Size Limit on Loans under the New Loan Facility*** – Under the New Loan Facility, an eligible U.S. borrower can borrow up to the lesser of

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(a) $25 million and (b) the excess (if any) of (1) four times the eligible U.S. borrower's 2019 EBITDA over (2) the eligible U.S. borrower's pre-existing outstanding debt and credit lines (bank or otherwise).

The Expanded Loan Facility

Based on a term sheet issued by Treasury, the Expanded Loan Facility works as follows:

1. ***Basic Structure of Expanded Loan Facility*** – Beginning on the Start Date, the Expanded Loan Facility supports U.S. banks and other federally insured depository institutions in increasing the principal amounts available under existing term loans made prior to the Start Date to eligible U.S. lenders. Beginning on the Start Date, the SPV will purchase from an eligible U.S. lender 95 percent (at par) of the increased principal amount (over the original principal amount) made available under an upsized term loan.

2. ***Qualifying Upsized Portion under the Expanded Loan Facility*** – The upsized portion of an existing term loan will qualify for purchase under the Expanded Loan Facility if (a) the original term loan was made by an eligible U.S. lender to an eligible U.S. borrower prior to the Start Date and (b) the upsized portion of the original term loan (1) contains the Required Terms (as defined below) and (2) does not exceed a specified maximum amount.

3. ***Upsizing Limits under the Expanded Facility*** – Under the Expanded Facility, the upsized portion of an existing term loan is limited to the lesser of (a) 30 percent of the eligible U.S. borrower's outstanding bank debt, (b) the excess (if any) of (1) six times the eligible U.S. borrower's 2019 EBITDA over (2) the eligible U.S. borrower's pre-existing outstanding debt and credit lines (bank or otherwise), and (c) $150 million.

4. ***Collateral for the Upsized Portion*** – The upsized portion of an existing term loan may be secured with collateral pledged under the existing term loan or in connection with the upsizing of the existing term loan. The SPV will share in all collateral (original or additional) on a pro rata basis with the eligible U.S. lender.

Time and Funding Limits

In general, the New Loan Facility and the Expanded Loan Facility are subject to the following conditions:

1. ***U.S. Borrowers Only*** – An eligible U.S. borrower must be a business that is "created or organized" in the United States with up to 10,000

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employees or up to $2.5 billion in 2019 annual "revenues." In addition, the eligible U.S. borrower must have significant operations and base the majority of its employees in the United States. The interaction between the employee limit and "revenues" limit is unclear, and "revenues" is undefined.

2. ***U.S. Bank Lenders Only*** – Under the New Loan Facility and the Expanded Loan Facility, eligible U.S. lenders are limited to U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan companies. So, amounts advanced by private equity and other non-bank lenders will not qualify for purchase under the New Loan Facility or the Expanded Loan Facility.

3. ***No Double-Dipping*** – An eligible U.S. borrower is limited to participation in only one of the following facilities: the New Loan Facility, the Expanded Loan Facility and the Primary Market Facility.

4. ***Required Terms*** – Qualifying loans under the New Loan Facility and the upsized portion of an existing term loan under the Expanded Loan Facility must carry the following terms (the "***Required Terms***"): (a) four-year maturity, (b) deferral of interest and principal payments for one year, (c) interest at an adjustable rate equal to the secured overnight financing rate (SOFR) plus 250 – 400 basis points, (d) a minimum principal amount of $1 million, and (e) no prepayment penalty.

5. ***Restrictions on Use and Permitted Payments*** – An eligible U.S. borrower cannot use loan proceeds to refinance other debt and, except for mandatory principal payments, cannot repay any other debt of equal or lower priority.

6. ***Other CARES Act Restrictions*** – An eligible U.S. borrower must comply with the limits on equity repurchases, dividends and compensation, as specified in Section 4003 of the CARES Act.

7. ***"Exigent" Certification*** – An eligible U.S. borrower must make various certifications, including (a) the requested financing is needed due to "exigent" COVID-19 circumstances and (b) the loan proceeds will be used to maintain payroll and retain employees.

8. ***Total Available Amount*** – The SPV will purchase up to $600 billion of qualifying loans and upsized portions of existing term loans, in the aggregate under the New Loan Facility and the Expanded Loan Facility.

9. ***Termination Date*** – The SPV will not make any purchases on or after September 30, 2020.

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Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the PPP and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation. Click here to access additional materials addressing issues raised by COVID-19.

Please contact the Olshan attorney with whom you regularly work or one of attorneys listed below if you would like to discuss this client alert or have questions about its content.

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