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*If you have any questions
about this Advisory,
please contact:*

JAMES GREIFZU
203.363.7634
jgreifzu@wiggin.com

BRIAN J. STURM
203.363.7646
bjsturm@wiggin.com

JOSHUA KUTTICHERY
212.551.2867
jkutticherry@wiggin.com

CLIENT ALERT: MAIN STREET LENDING PROGRAM

On April 9, 2020, the United States Department of the Treasury (the "Treasury Department") and the Board of Governors of the Federal Reserve System (the "Federal Reserve") announced new details of their joint "Main Street Lending Program" that is intended to provide additional financing for small- and medium-sized businesses impacted by the ongoing COVID-19 pandemic. The Federal Reserve initially announced the Main Street Lending Program in late March 2020, and the recently enacted Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") provided further funding for the program through the Treasury Department. The Main Street Lending Program is expected to provide up to \$600 billion of liquidity for financial institutions to make loans to eligible business borrowers participating in the program.

STRUCTURE OF MAIN STREET LENDING PROGRAM FACILITIES

The Main Street Lending Program consists of two facilities: the Main Street New Loan Facility (the "New Loan Facility") and the Main Street Expanded Loan Facility (the "Expanded Loan Facility"). Both the New Loan Facility and the Expanded Loan Facility (the "Facilities") will be funded through a single common special purpose vehicle (the "SPV"). The SPV will be funded

initially through a \$75 billion equity investment by the Treasury Department, and the Federal Reserve will provide loans to the SPV.

The SPV will purchase, at par value, 95% participations in eligible loans from eligible lenders (as further described below), with the lender retaining 5% of the loan. Unless the Facilities are extended by the Federal Reserve and The Treasury Department, the SPV will purchase participations until September 30, 2020. Borrowers that are owned by the President, any family member of the President, or any member of Congress will not be able to participate in the Main Street Lending Program loans.

ELIGIBLE LOANS AND ELIGIBLE BORROWERS

The Main Street Lending Program contemplates loans by "Eligible Lenders" to "Eligible Borrowers." Eligible Lenders are any United States insured depository institution, bank holding company or U.S. savings and loan holding company. Eligible Borrowers are businesses that (i) have up to 10,000 employees or \$2.5 billion in annual revenues, (ii) are organized in the United States and (iii) have significant operations and a majority of employees in the United States.

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Eligible Loans for purchase under the New Loan Facility will be unsecured term loans made on or after April 8, 2020, while those eligible for purchase under the Expanded Loan Facility will be term loans originated before April 8, 2020, and upsized in principal amount after that date.

The minimum size for Eligible Loans to be purchased under both the New Loan Facility and the Expanded Loan Facility is \$1 million. Under the New Loan Facility, the maximum loan size is the lesser of (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA"). For the Expanded Loan Facility, the maximum loan size is the lowest of (i) \$150 million, (ii) 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 EBITDA.

LOAN TERMS AND BORROWER AND LENDER REQUIREMENTS

Eligible Loans for both the New Loan Facility and the expanded tranches of Eligible Loans for the Expanded Loan Facility will carry the following general business terms:

- Term: 4- year maturity
- Amortization: Principal and interest

deferred for one year

■ Interest Rate: Adjustable interest rate based on the Secured Overnight Funds Rate plus 250-400 basis points

■ Fees: 100 basis points of the Eligible Loan, payable from the Eligible Lender to the SPV under the New Loan Facility (which may be passed on to the Eligible Borrower); 100 basis points of the upsized principal amount of the Eligible Loan, payable from the Eligible Borrower to the Eligible Lender

■ Prepayment permitted without penalty

Borrowers under the Main Street Lending Program must agree to significant restrictions on the operation of their businesses. These restrictions, which are set forth in the CARES Act, include:

■ During the term of the loan and for 12 months thereafter, the Eligible Borrower cannot (i) repurchase any stock traded on a national exchange absent a contractual obligation, or (ii) make any dividends or distributions on its common stock

■ None of the Borrower's executives whose total compensation exceeded \$425,000 in 2019 may receive any compensation increases (determined on a rolling 12-month basis) during the term of the loan or any severance that exceeds two times such executive's 2019 compensation

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

■ None of the Borrower's executives whose total compensation exceeded \$3 million in 2019 may receive, at any point during the term of the loan, total compensation (determined on a rolling 12-month basis) in excess of the sum of \$3 million plus 50% of the executive's 2019 compensation

In addition, while Eligible Loans for the New Loan Facility will be unsecured, any collateral securing an existing loan eligible for participation in the Expanded Loan Facility will continue to secure the upsized tranche.

Both the borrower and the lender will be required to make several certifications in connection with their participation in the Main Street Lending Program. Specifically, each Eligible Borrower will be required to certify that:

1. It commits to refrain from using Eligible Loan funds to repay other loan balances and will not seek to reduce or cancel its loans or lines of credit with any lender. Other debt of equal or lower priority cannot be repaid during the term of the Eligible Loan, except for mandatory principal payments.
2. It requires the Eligible Loan as a result of the impact of the COVID-19 pandemic, and during the term of the Eligible Loan, it will make "reasonable efforts" to maintain its payroll and retain its employees.
3. It meets the applicable EBITDA ratio condition based on the facility in which it is participating.

4. It will comply with the distribution, stock repurchase and executive compensation restrictions set forth in the CARES ACT and as described above.

5. It is eligible to participate under the conflicts of interests rules prohibiting the President, his family members, and members of Congress from participating.

Each Eligible Lender will be required to certify that:

1. The proceeds of the Eligible Loan (including the upsized tranche under the Expanded Loan Facility) will not be used to repay or refinance loans made by the Eligible Lender to the Eligible Borrower, including the pre-existing portion of any loan upsized under the Expanded Loan Facility.

2. It will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower.

3. It is eligible to participate under the conflicts of interests rules prohibiting the President, his family members, and members of Congress from participating.

APPLICATION PROCESS

While applications for the Main Street Lending Programs have yet to be released to the market, we anticipate that they will be short-form applications similar to those recently released under the Paycheck Protection Program.