

Federal Reserve Board Main Street Lending Program

As of June 2, 2020
Summary of Key Terms

This “Term Sheet” provides some of the primary terms and conditions of the form of participation agreement under the Main Street Lending Program (the “Program”) referenced in Section 4003 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). A link to our general summary of the Program and the three facilities (collectively, the “Facilities”) under the Program is available [here](#).

Description:	<p>The participation agreement is the document through which MS Facilities LLC, the special purpose vehicle (“SPV”) established by the Federal Reserve Board, will purchase an undivided participation interest in a Facility from an eligible lender (please refer to our general summary for lender eligibility criteria).</p> <p>The participation agreement comes in two parts: (1) Transaction Specific Terms and (2) Standard Terms and Conditions (each described below), which together constitute a single integrated agreement governing the purchase and sale of the Participation (described below).</p>
Transaction Specific Terms:	<p>The Transaction Specific Terms part of the Agreement sets out the terms that specifically apply to a participation transaction and is completed, signed and submitted by a lender to the SPV. Instructions are provided for a lender to complete the information relevant to a specific transaction, including, the identity of the parties, a description of the underlying credit agreement, the type of Facility, the loan amount, the participation amount and similar information. A link to the Transaction Specific Terms is available here.</p>
Standard Terms and Conditions:	<p>The Standard Terms and Conditions sets out the terms and conditions that apply to all participations under the Program, including the rights and obligations of the lender, as seller, and the SPV, as buyer/participant. A summary of the key terms included in the Standard Terms and Conditions is set forth below. A link to the Standard Terms and Conditions is available here.</p>
Participation:	<ul style="list-style-type: none"> • A lender will irrevocably sell, grant and convey an undivided participation interest in and to a Facility and certain “transferred rights”¹ (a “Participation”) to the SPV in an amount equal to the applicable participated percentage (95% for MSNLF and MSELF and 85% for MSPLF). • The SPV irrevocably acquires a Participation (and generally agrees to reimburse a lender for certain obligations and liabilities of a lender with respect to transferred rights arising on or after the effective date of the participation agreement).

¹ “Transferred rights” generally means all of lender’s rights in its capacity as a lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the Facility, including without limitation any guarantees (but excluding amounts accruing prior to the date of the participation agreement other than any paid-in-kind amount).

	<ul style="list-style-type: none"> • A lender remains responsible for “retained obligations”.² • Until the elevation date (if any and as described below), a lender will hold title to the Facility for the benefit of the SPV to the extent of the SPV’s Participation. • The sale and purchase of a Participation is a “true sale” such that neither party has a right or an obligation to require a lender to buy back or otherwise rescind or void a Participation or permit the SPV sell or otherwise rescind or void a Participation even in the event of breaches under the participation agreement or defaults under the credit documents.
<p>Voting and “Core Rights Act”:</p>	<ul style="list-style-type: none"> • Other than with respect to Core Rights Acts, during the term of a Participation, a lender will have sole authority to exercise (or refrain from exercising) all voting rights in respect of the rights transferred to the SPV and the obligations assumed by the SPV pursuant to the participating agreement. • However, without the prior consent and instruction of the SPV, during the term of a Participation, a lender cannot: (i) take any “Core Rights Act” (described below); or (ii) refrain from taking an action with respect to the SPV’s transferred rights and assumed obligations if inaction would constitute a Core Rights Act.³ • “Core Rights Act” means any action (or inaction) with respect to the SPV’s transferred rights and assumed obligations that would result in any of the following: <ul style="list-style-type: none"> ▪ any extension, increase or reinstatement of any commitment with respect to the transferred rights or assumed obligations; ▪ any reduction in the principal, the rate of interest or any fees or other amounts payable in respect of the transferred rights or assumed obligations, including, without limitation, any loan forgiveness; ▪ any delay or postponement of any date scheduled for any payment of principal, interest, fees or other amounts payable in respect of the SPV’s transferred rights or assumed obligations or any reduction in the amount of, waiver or excuse of any such payment;

² “Retained Obligations” generally means all obligations and liabilities of a lender relating to transferred rights arising or occurring before the effective date of the participation agreement or that result from a lender’s breach of representations, warranties and covenants under the credit documents, and bad faith, gross negligence, or willful misconduct.

³ If the Core Rights Act involved is not divisible (i.e., separately voted based on the respective interests of a lender and the SPV) in respect of the Participation but may be made only in respect of all loans held by the lender under the Credit Agreement, then a lender generally must take such Core Rights Act in accordance with the direction of holders owning or holding interests representing more than 50% of the total amount of the lender’s claims. If the Core Rights Act arises after the start of a bankruptcy, insolvency or a similar proceeding relating to borrower and/or any obligor, and is not divisible in respect of all loans that a lender may own from time to time under the Credit Agreement, but is divisible in respect of all claims of the same class that a lender may have against borrower and/or any obligor, then a lender must generally take such Core Rights Act in accordance with the directions of the majority of holders in respect of all such claims (measured by amount of claims).

- any change of the pro rata sharing provisions or application of proceeds provisions in the credit documents affecting the SPV's transferred rights or assumed obligations;
- any release of all or substantially all of the collateral provided for the SPV's transferred rights or assumed obligations in any transaction or series of transactions or all or substantially all of the value of the guaranties in respect of the SPV's transferred rights or assumed obligations;
- the waiver of any condition precedent to closing, effectiveness or funding under the credit agreement to the extent applicable to the SPV's transferred rights or assumed obligations;
- any amendment to, modification of, waiver of or consent to any departure from any provision in any credit document, including any mandatory prepayment, relating to a borrower's certifications and covenants for eligibility under the CARES Act and the Federal Reserve Act;
- any amendment to, modification of, waiver of or consent to any departure from any provision in any credit document requiring the periodic financial reporting by a borrower or any other obligor (subject to certain carve outs for temporary (but not permanent) waivers);
- the express subordination of (A) a Facility or (B) any encumbrance in or over all or substantially all of a Facility's collateral under the credit documents;
- any greater restriction on the ability of, or any additional consent necessary for, any lender to assign, participate or pledge its rights or obligations under any credit document;
- an adverse effect on the SPV's transferred rights that would be disproportionate to the effect on any other class of obligations under a credit document;
- any amendment to, modification of, waiver of or consent to any departure with respect to any provision in any credit document that provides a default or event of default upon the acceleration of any other indebtedness owed by borrower to a lender or a commonly controlled affiliate of a lender (any such default or event of default, a "Debt Cross-Acceleration");
- the declaration, or failure to declare, any obligations of a borrower due and payable upon the occurrence and during the continuance of a Debt Cross-Acceleration;
- the exercise, or failure to exercise, of any rights or remedies with respect to any of a Facility's collateral at any time that a lender or any commonly controlled affiliate of a lender, or any of their respective agents or representatives, is exercising rights or remedies with respect to any collateral securing, or purporting to secure, any indebtedness owed by a borrower to

	<p>such lender or commonly controlled affiliate the default under which has resulted in a Debt Cross-Acceleration; and</p> <ul style="list-style-type: none"> ▪ any change to any lender voting approval level under or pursuant to any credit document with respect to any of the foregoing. • If a lender would take a Core Rights Act or would refrain from taking an action with respect to the SPV’s transferred rights and assumed obligations where inaction would constitute a Core Rights Act that would, in either case, result in forgiveness of a loan in violation of the CARES Act, the SPV is automatically deemed to have requested an elevation.
<p>Pre- and Post-Elevation Transfers and Subparticipations by the SPV:</p>	<ul style="list-style-type: none"> • Prior to an “elevation” (described below), without the consent of a lender, the SPV may not assign or subparticipate its Participation or its rights under the participation agreement (or any interest therein) <u>unless the assignment constitutes a Specified Permitted Transfer</u> (defined under the heading “Specified Permitted Transfer” below). No consent of lender is required for such an assignment or subparticipation that constitutes a Specified Permitted Transfer by the SPV. • <u>After</u> an elevation, without the consent of or notice to a lender, the SPV may assign or subparticipate its Participation and or otherwise transfer all or any portion of its transferred rights, the participation agreement and its rights thereunder (or any interest in any of the foregoing), but only to the extent of such elevation. Unless a lender otherwise consents, a lender shall continue to deal solely and directly with the SPV in connection with the SPV’s obligations under the participation agreement.
<p>Elevation, Assignment, and Assumption:</p>	<ul style="list-style-type: none"> • Without the consent of a lender, a borrower and any other necessary parties (such as the administrative agent of a multi-lender facility), the SPV may not “elevate” its participation interest to become a direct lender under the credit agreement unless the elevation constitutes a Specified Permitted Transfer (defined below). No such consent is required for such an elevation that constitutes a Specified Permitted Transfer. • On the elevation date, the SPV assumes all obligations and liabilities of a lender relating to the SPV’s transferred rights arising or occurring on or after the effective date of a participation agreement (excluding certain retained obligations) and the participation agreement terminates (except for certain indemnification survival rights). • The Federal Reserve Board (FRB) in its FAQs publication (available here) states that it does not expect the SPV to use its right to elevate its participation interest as a matter of course and will instead rely on a lender to follow market-standard workout processes and to exercise the same duty of care in approaching such proceedings as it would exercise if it retained a beneficial interest in the entire loan. In general, the FRB “expects” that it would not elevate and assign except in situations where (i) the economic interests of a lender and the SPV are misaligned or (ii) the loan amount is relatively large in comparison to other loans in the SPV’s portfolio.

<p>Specified Transfer:</p>	<p>Permitted</p> <p>A “Specified Permitted Transfer” means any of the following:</p> <ul style="list-style-type: none"> • an elevation to the SPV (or an assignee) and any pre-elevation transfer or subparticipation made by the SPV once a borrower has failed to make any payment under a Facility; • any elevation to the SPV (or an assignee) and any pre-elevation transfer or subparticipation made by the SPV on the occurrence of a bankruptcy-related default under a Facility; • a deemed elevation described above under the heading “Core Rights Act” with respect to actions or inactions that would result in loan forgiveness in violation of the CARES Act; • any pre-elevation transfer or subparticipation by the SPV (other than for securitization purposes) of the full Participation to any governmental assignee;⁴ • any elevation, pre-elevation transfer or subparticipation made by the SPV required by any statute or court; or • any elevation, pre-elevation transfer or subparticipation made by the SPV at any time either a lender (or a direct or indirect parent company of a lender) has become subject to a bankruptcy or insolvency event.
<p>Bankruptcy Code Section 507(a)(2) Waiver:</p>	<p>The SPV covenants and agrees it will not file or assert, and waives and disclaims any right to assert, any claim under or pursuant to Section 507(a)(2) of the Bankruptcy Code relating to the credit documents that would give the SPV special administrative priority over a lender in a proceeding under the Bankruptcy Code.</p>

⁴ A “governmental assignee” means any Federal Reserve Bank, any vehicle authorized to be established by the FRB or any Federal Reserve Bank, any entity created by an act of Congress or any a vehicle established or acquired by the U.S. Department of the Treasury or any other department or agency of the federal government of the U.S.