Association for Corporate Growth

Via: Electronic Feedback Submission

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.,
Washington, D.C. 20551

April 16, 2020

RE: Comments of the Association for Corporate Growth on "Main Street Lending Program"

The Association for Corporate Growth (ACG) represents 15,000 professionals who operate within the middle market, comprised of 200,000 companies that employ 45 million Americans. ACG received the news of the Main Street Lending Program with optimism because it appeared to be more broadly available to private equity-sponsored businesses than the PPP. America cannot afford the continued exclusion of middle market companies from federal relief programs.

We appreciate the opportunity to comment on the Main Street Lending Program. ACG urges the Federal Reserve to be liberal in its administration of the Main Street Lending Program and recommends the following solutions:

EBITDA Loan Sizing Test

- **Problem** – Unclear whether EBITDA is meant to be unadjusted without any addbacks or pro forma impacts included. Calculating EBITDA without taking into account adjustments and pro forma impact would prevent many companies from meeting the leverage tests as virtually all loan facilities provide for EBITDA on an adjusted basis. For companies that have made acquisitions or dispositions, this creates uncertainty in how EBITDA should be calculated.
- **Solution** – For the Expanded Loan Facility (ELF) leverage sizing test, have EBITDA include the same adjustments and pro forma treatment as under the existing loan facility. For the New Loan Facility (NLF) leverage sizing test, allow the lender and the company to agree on the addbacks and pro forma treatment to be included in EBITDA.
- **Problem** – Because many growth companies do not have positive EBITDA, without another test, most growth companies will be excluded from Main Street Loan Facility (MSLF).
- **Solution** – For private growth companies, provide a test that looks to a percentage of the most recent 409(A) valuation or post-money valuation from the most recent financing round. For public growth companies, provide a test that looks to a percentage of 52-week average market capitalization with the end date for the period covered by such test being a date before the start of the pandemic.

Meaning of "Bank Debt" in the 30% Size Limiting Test for ELP

- **Problem** – It is unclear what "bank debt" is meant to pick up. If this term is to pick up all debt of any kind with banks, cash management arrangements could limit borrowing. If this term was to pick up only debt of banks, then companies that only have debt with a non-bank lender would not be able to take advantage of a MSLF.

- **Solution** – Clarify that this term is meant to include "all loans, notes and loan commitments" with "any lender".

Meaning of "Committed but Undrawn Debt" in the Leverage Size Limiting Test

- **Problem** – The language "committed but undrawn debt" is problematic. It is not typical for undrawn debt to be picked up in a leverage test. It also sends the signal that the company is required to draw on every last dollar available. If this program is to provide companies needed liquidity, this would cause the company to put itself in a very vulnerable situation. The term sheets provide that no existing debt may be reduced or terminated, so even if a company looks to reduce its undrawn commitment to satisfy the leverage test, it cannot do so. Second, it is unclear what "debt" is meant to pick up.
- **Solution** – First, have such leverage test for availability only pick up amounts outstanding and not amounts that are committed but undrawn. Second, clarify that such leverage test only includes loans and notes.

Maturity for Expanded Loan Facility

- **Problem** – Most existing credit agreements prevent new loans to mature inside the maturity of existing loans as existing lenders do not want new loans get paid off before the existing loans.
- **Solution** – Allow for the maturity date of an ELF to be the later of (i) four years and (ii) the latest maturity date of any of the existing loans under the existing loan facility.

Eligible Lenders

- **Problem** – Limits the lenders eligible to participate in MSLF to only US banks and US SLHCs. With many non-bank lenders and foreign lenders in the lending market and that are existing lenders under the ELF, this is going to exclude many lenders and overwhelm the US banks that are eligible.
- **Solution** – Include direct/non-bank lenders and foreign lenders (and clarify that US branches of foreign banks) as eligible lenders.

Distribution/Equity Repurchase Issues

- **Problem** – Unclear whether the distribution restriction would block distributions from acquisition or IPO activity for up to 12 months after repayment of the loan.
- **Solution** – Provide clarity that distributions to equity holders from an acquisition or IPO will be permitted, subject to full repayment of the MSLF loan prior to distributions.
- **Problem** – The restriction on distributions prohibits public companies to repurchase the equity of officers, directors and estates upon termination of employment, death, etc., especially with respect to officers and directors that enter into agreements with a company after the closing of the loan facility.
- **Solution** – Provide a carve-out from the distribution restriction for such equity buybacks.
- **Problem** – The restriction on distributions does not provide for (i) tax distributions or (ii) distributions for fees or expenses that need to be paid by holding companies.
- **Solution** – Allow for (i) tax distributions and (ii) distributions covering fees and expenses that are to be paid by a holding company.

Issues with Restriction on Ability to Repay "Other Debt of Equal or Lower Priority"

- **Problem** – The restrictions on debt of equal or lower priority creates ambiguity that apparently does not allow for revolving loan repayments. Also, unclear whether existing mandatory **pre**payments are permitted.
- **Solution** – Clarify that (i) revolving loans may be repaid at any time and (ii) mandatory **pre**payments (in addition to scheduled amortization payments) are permitted.
- **Problem** – Causes issues for any seller notes and other debt in effect prior to the closing of the MSLF that have repayments due during the term of the MSLF.
- **Solution** – Allow for repayments, including prepayments, required under any agreements that were in effect prior to the closing of the MSLF.
- **Problem** – Does not clarify what is meant by "debt" and whether such term includes items such as earnouts and holdbacks.
- **Solution** – Clarify that the term "debt" in such restriction means only loans and notes.

Interest Rate Issues

- **Problem** – NLF and ELF only provides a SOFR interest rate option. Many lenders are still developing SOFR procedures and language to implement in their loan documents. Also, there is no base rate option, even in a situation where SOFR is unavailable for any reason.
- **Solution** – Allow also for a base rate option to address these issues. In an ELF, permit the reference rate, including alternate rate provisions related to the end of LIBOR, to be the same as the existing loan.

Foreign Ownership

- **Problem** – Does not provide whether foreign ownership of US companies is permitted or whether non-US subsidiaries may be co-borrowers or guarantors (e.g., where they are part of a credit group in an existing loan facility).
- **Solution** – Clarify that foreign ownership of US companies is allowed and non-US co-borrowers and guarantors are allowed in an ELF to the extent that they are obligors under the existing loan.

Practical Access to ELF

- **Problem** – Existing lenders not providing loans under an ELF may have no incentive to consent, especially where there is no debt flexibility under the existing credit agreement and considering the new loans would be secured by the same collateral on a pari passu basis.
- **Solution** – Have the SPV pay a fee to any existing lenders whose consent is needed that consent to the ELF.
- **Problem** – Many of the terms for an ELF will make it hard to utilize the program due to difficulties with including a new tranche in the existing loan facility or providing the ability to have a new tranche in separate loan documentation. The issues include: (i) requirement to secure an ELF by the same collateral, which can present intercreditor issues, (ii) potentially using a different interest rate in SOFR before LIBOR is phased out or (iii) amortization potentially being different than the existing loans.

- **Solution** – One option would be to allow for a holdco structure where the debt is above the entity level where the existing loans sit (and clarify that the borrower does not need to be an operating company).

COVID-19 forces companies to face a profound confluence of concerns daily, at the forefront is the livelihood of their employees. The Federal Reserve is the fabric that keeps this U.S. economy together - wedding consumer and business interests to make it stable and vibrant. We urge the Federal Reserve to be liberal in allowing access to the relief loans intended to keep people employed and businesses operating and to respect the judgment of business leaders who are willing to assume debt as a means to survive this crisis. Consumer confidence will never rebound if Americans are not gainfully employed.

Respectfully,

Thomas Bohn
President and CEO
Association for Corporate Growth

Martin Okner
Chairman, ACG Global Board of Directors
President and COO, dpHUE