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SECURED FINANCE NETWORK

May 12, 2020

Via Email:

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C., 20220

The Honorable Jerome H. Powell
Chairman
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: **Additional Clarification and Modification to Main Street Lending Programs**

Dear Secretary Mnuchin and Chairman Powell:

I am writing in furtherance of previous correspondence on behalf of the Secured Finance Network (formerly known as the Commercial Finance Association) ("SFNet"), the 1,000 member trade association representing the $4T secured finance industry with both depository and non-depository members. The asset based loan market in particular represents over half a trillion dollars of commitments, primarily to middle market and lower middle market companies. Indeed, our members are key lenders for providing the middle and lower middle markets access to the "Main Street" lending programs. SFNet is supportive of the three Main Street lending programs but we believe that these programs need further clarification and modification to facilitate access by borrowers who have existing ABL facilities or may enter into an ABL facility subsequent to receiving Main Street loans.

SFNet timely submitted its comments when the Main Street lending programs were first announced. We were very encouraged to see that the Federal Reserve Board's subsequent FAQs recognized the need to integrate the treatment of existing ABL facilities with the Main Street lending programs.

SFNet has previously suggested that non depository lenders who represent approximately 40 billion dollars in commitments be given Eligible Lender status under the Main Street lending programs; we

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were gratified to see from the FAQs that such an expansion is being considered. We encourage the Board to move expeditiously in taking such action in order reach an underserved segment of borrowers who do not borrow from depository lenders and therefore currently have no access to the Main Street lending programs.

As the integration of ABL facilities and Main Street lender facilities are now being considered by the Board we would like to suggest the following clarifications and modifications listed in order of priority:

1. We believe it vital to the success of the Main Street loan programs that the SPV's commitment to purchase the Eligible Lender's Main Street loan be provided prior to or at the time of the funding of the origination of any Main Street loan. As presently drafted, it appears that the Eligible Lender must underwrite and advance the entire Main Street facility with no "guarantee" that the SPV will purchase or participate in the facility.

2. We agree with the Federal Reserve Board when it questions the use of Adjusted EBITDA as a metric when evaluating both the eligibility of a borrower with an existing asset based facility for a secured Main Street lending facility and the dollar amount to be borrowed and instead recommend that the EBITDA metric be eliminated for ABL borrowers in favor of requiring a "Fixed Charge Coverage Ratio" that has been 1:1 over the last 12 months ended 12/31/2019. In the case of the MSELF we recommend the maximum dollar loan be amended to be the lesser of 35% of the Eligible Borrower's existing outstanding and undrawn available debt or 4 times average availability defined as borrowing base availability over the last 12 months.

3. a. We believe that the Federal Reserve Board should reinstate the $1,000,000 minimum size of the MSELF as previously announced, so that more borrowers have the opportunity to take advantage of this program.

   b. Because asset based revolving credit facilities are sized based on the value of borrowing base and other collateral over which the lenders have a first priority lien the requirement set forth under both the MSELF and the MSPLF that such facility be *pari passu* with the revolving loans made by the existing lender may make it impossible for an Eligible Lender to participate in the program thereby eliminating any benefit to an Eligible Borrower. Prior to participating in the MSELF, a lender under a typical ABL facility would be entitled to 100% of the proceeds of the existing collateral proceeds and would have capped the available principal amount of the loan based on the value of that collateral. Immediately after funding a ratable secured MSELF loan, the ABL lender's collateral position will be diluted because the borrower will have more debt secured by the same collateral and the existing ABL lender will have to share the proceeds of that collateral on a *pari passu* basis with the SPV in the event of a liquidation. In every model we have run of this dilution (which can be furnished upon request) the lender goes from a positive or surplus coverage position to a negative position.

   Asking a secured lender to, in theory, incur a loss should the borrower ultimately fail, when they would not suffer that loss if the MSELF loan had not occurred is a difficult proposition and we believe will chill many of our member organizations willingness to participate. Conversely, were the SPV to have the benefit of the lien and collateral proceeds behind the lender (i.e., a second lien position) we believe our lenders would willingly participate in the program. The MSELF is a quasi-cash flow loan product. As currently structured, asset based lenders are being asked to materially dilute the collateral position they so carefully constructed and monitor while providing collateral to the SPV that would not be available to the SPV in a true cash flow loan. An alternative might be to have the Eligible Lender have priority in the borrowing base collateral and the SPV and the lender share remaining collateral on a pari passu basis. Therefore, we request that you consider expressly shifting the priority of the repayment of the participation so that the program provides the maximum benefit to those that need it. Should our member organizations be unable to participate due to the current structure of MSELF thousands of borrowers will find themselves unable to avail themselves of this extremely beneficial program jeopardizing jobs and further stalling economic recovery.

We understand that the MSELF program was designed for better borrowers and that the government is not seeking to backstop companies that were under duress before recent economic events and that the government wants to avoid getting into loans that are high risk. We agree with those goals. While the likelihood of default by these Eligible Borrowers may be low, there is significant uncertainty today and in the near term surrounding the progress of any economic reopening and this program, as currently proposed, worsens the ABL lender's position (and possible outcome) while significantly strengthening the SPV's position.

4. In order to encourage participation in the Main Street lending programs by Eligible Lenders who previously extended an ABL facility and are concerned about the risks of liability in participating in the Main Street lending programs it should be made clear that the Eligible Lender need not make any representations or warranties or have liability with respect to the value or collectability of the debt or any of the collateral, the information provided by the Borrower, performance by the Borrower under the credit facility, the financial condition of the Borrower and similar matters.

SFNet commends the extraordinary efforts being undertaken by the United States Treasury Department and the Federal Reserve Board to provide capital to companies impacted by these unprecedented times. We believe that participation by ABL lenders in the Main Street lending programs will ensure that millions of dollars of much needed working capital will be provided to many more companies across the nation that desperately need it.

If you have questions regarding our request for critically needed clarifications and modifications, I may be reached at rgumbrecht@sfnet.com or 212.792.9391.

Respectfully,

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CEO
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