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SECURED FINANCE NETWORK

April 15, 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: **Response to Main Street Lending Program Guidance**

Dear Secretary Mnuchin and Chairman Powell:

I am writing on behalf of the Secured Finance Network (formerly known as the Commercial Finance Association) ("SFNet"), representing the $4T secured finance industry to respond to the request for comments and suggestions to facilitate the objectives of the Main Street Expanded Loan Facility and the Main Street New Loan Facility as set out in last Thursday's publication by the Federal Reserve (the "Programs").

SFNet congratulates and supports the extraordinary and groundbreaking efforts being undertaken by the United States Treasury Department and the Federal Reserve Board to provide capital to companies impacted by these unprecedented times. However, it is our belief that the majority of

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potentially Eligible Borrowers who would benefit from the Program have existing secured/collateralized debt so it is critical that the Program specifically address the relationship between these existing secured loans and the additional loans provided for in the Programs in order to meet its stated objectives.

SFNet is a trade organization founded in 1944 representing depository and non-depository lenders engaged in asset-based lending, factoring, trade and supply chain finance with 1,000 member organizations throughout the United States. Our network of secured lenders, finance companies, service providers and others do the essential work of providing capital that fuels our nation's economy.

The secured finance industry underpins, either directly or indirectly, about one-fifth of the transaction volume that makes up the $20 trillion US gross domestic product. We estimate the number of those directly employed in either providing or supporting secured financing activity is approximately 60,000 individuals at over 5,000 commercial banks and another approximately 1,500 non-depository lenders across the US.

Secured transactions provide financing to over 1 million US commercial entities, ranging from single-employee firms to large corporate and public enterprises. Roughly one-third of the approximately 4.6 million firms in the US with at least two employees directly feel the impact of secured finance. And the benefits affect not only the enterprises, but also more broadly their employees, customers, communities and the economy as a whole.

As you prepare to implement regulations in support of the Program, we urge you to consider the following recommendations in order to integrate the potentially Eligible Borrowers' pre-existing and future secured loans into the Program.

1. Allow for non-depository lenders to be Eligible Lenders under the Program. This community provides well in excess of $100B in capital to the small and middle market businesses which the Program is intended to protect with most of these loans being secured by the borrower's collateral. Failure to include these critical sources of funding would materially limit accessibility to the Program facilities for Potential Borrowers for the following reasons.
    a. Existing Potential Borrowers who have existing secured loans from non-depository lenders would now be forced to re-affiliate their lending relationship and their existing facilities with a new depository lender during a crisis environment and who, at the same time, are trying to service their existing borrowers under the Program facilities making it unlikely or causing long delays before the Potential Borrower would able to enter into a Program facility, if at all.
    b. Allowing the non-depository lenders to be Eligible Lenders would minimize the integration between the existing or future secured loan and a Program facility as it would be handled by just one institution.
    c. These non-depository lenders are, for the most part, well capitalized and enjoy unique skills and expertise in servicing middle market borrowers and would therefore expedite the process of achieving a Program facility.

2. As the Eligible Borrower in most instances already has secured or possibly unsecured lines of credit in existence at the time the Program facility is being provided, it is imperative that it be a requirement that the SPV "participant" not be allowed to cancel, amend, modify or reduce

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any existing lines of credit and that upon a default under the pre-existing credit facility by the Eligible Borrower the rights and remedies of the pre-existing lender are not adversely affected or otherwise modified, amended or vitiated with respect to the terms of the applicable pre-existing credit facility.

3. In order to facilitate the implementation of the Programs, and for ease of execution and certainty with regard to preserving the existing terms of the current capital structure and loan facilities of an Eligible Borrower, the guidance for the Programs should expressly provide that the rights of the government SPV are as is customarily provided to a "participant" rather than as a direct lender such that the SPV will be a purchaser of an interest in the loans made by the Eligible Lender, the SPV is not in privity with the Borrower, and the Eligible Lender may manage the lending relationship, including with respect to amendments, waivers and other aspects of the administration of the facility, including as to the assignability of the Eligible Lender's debt and for purposes of dealing with other creditors of the Eligible Borrower.

4. In order to facilitate the Program's aims provide that the Eligible Lender does not make any representations or warranties, and has no liability to the SPV participant, with respect to the value or collectability of the debt or any collateral, the information provided by the Borrower, performance of the Borrower under the credit facility, the financial condition of the Borrower and similar matters and actions of the Eligible Lender taken in the administration of the credit facility in its reasonable judgment.

5. For a revolving asset-based credit facility, the proposal that the term loans made under the Main Street Expanded Loan Facility be pari passu with the revolving loans made by the lender will actually reduce the amounts available to the Eligible Borrowers rather than increase them, which is obviously the exact opposite of the purpose of such Program. Without clarification this will be a significant adverse unintended consequence. The asset-based lender determines how much credit it can make available to a borrower for its working capital based on the ability to be repaid from the sale of the collateral first. For any debt that shares that position, as is proposed for the Expanded Loan Facility, the asset-based lender will because of the fundamental mandate of the product, reduce the amount it will lend by the amount of such debt. Therefore, the Program needs to expressly shift the priority of the repayment of the participation by the SPV.

6. Allow Eligible Lenders to continue to use LIBOR for some period of time before being required to use SOFR. The transition to SOFR is not anticipated until January 1, 2022 and banks have not yet established appropriate processes and controls around the new reference rate.

Uncertainty as to the protections available to secured lenders under the Program may lead to a failure among some potentially Eligible Borrowers or potentially Eligible Lenders to participate in the Program facilities or restrict their participation. These negative consequences would have a direct impact on these potentially Eligible Borrowers by limiting access to this critical source of capital, imperiling jobs and jeopardizing economic recovery. The benefit of clarifying and amending these protections, as suggested above, would, in our opinion, mitigate the current economic hardship being experienced by Eligible Borrowers and bolster this critical part of the capital supply chain.

Thank you for your consideration of our concerns and for your continued support of our country during these unprecedented times. If you have questions regarding this urgent request for critically needed action, I may be reached at rgumbrecht@sfnet.com or 212.792.9391.

Respectfully,

Richard D. Gumbrecht
CEO
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