

Financial Reporting

June 4, 2020

Each of the Main Street Lending Programs (MSLP) require detailed financial reporting from borrowers. Some reporting is due annually, while other reporting is due quarterly. Borrowers under the Main Street Expanded Loan Facility (MSELF) program are required to provide additional quarterly data that is not required from borrowers under the other Main Street programs. The specific requirements are listed in Appendix C to the updated MSLP FAQs.

While Appendix C, on first blush, appears very detailed, much of the financial reporting required annually can be derived from financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP). Among the more particular annual reporting requirements that might not be found in an income statement, balance sheet and cash flow statement prepared in accordance with GAAP are the following: Total Debt (including undrawn, available lines of credit), Unadjusted EBITDA, Adjusted EBITDA, Description of EBITDA Adjustments, Distributions to Equityholders, Fixed Charges, Guarantor Net Assets, Senior Debt Balance, Additional Pari Passu Debt Balance, Collateral Type (broken down between real estate and non-real estate, to the extent the loan is secured by each), Collateral Value (for loans that require periodic valuation of the collateral, together with the dates of such valuations) and Financial Covenant Status (including information on the nature and date of any financial covenant breaches and the dates of any cures of such financial covenants).

Much of the financial reporting required quarterly can also be derived from financial statements prepared in accordance with GAAP. Among the more particular quarterly reporting requirements applicable to all borrowers that might not be found in financial statements prepared in accordance with GAAP are the following: Total Debt (including undrawn, available lines of credit), Unadjusted EBITDA, Adjusted EBITDA, Distributions to Equityholders, Senior Debt Balance, Additional Pari Passu Debt Balance and Financial Covenant Status (including information on the nature and date of any financial covenant breaches and the dates of any cures of such financial covenants). Borrowers with a MSELF loan have additional quarterly financial information disclosure requirements not applicable to borrowers under other Main Street Lending Programs, including a Description of EBITDA Adjustments, Fixed Charges, Guarantor Net Assets, Collateral Type (broken down between real estate and non-real estate, to the extent the loan is secured by each), Collateral Value (for loans that require periodic valuation of the collateral, together with the dates of such valuations) and additional information that should be able to be derived from financial statements prepared in accordance with GAAP.

The financial reporting is required to be in a form and substance reasonably acceptable to the lenders, and where applicable, reasonably detailed calculations of the required data. It is not known if such required financial information will need to be provided in a particular format, but there is no indication in existing guidance that any special format will be required.

There is an exception to the above reporting requirements with respect to MSELF Upsized Tranches involving a multilender facility. In lieu of the above mandated reporting requirements, any financial

reporting provision that was negotiated in good faith among the borrower and lenders prior to April 24, 2020, in connection with the underlying loan shall be deemed sufficient.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

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