April 16, 2020

VIA Federal Reserve Email

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

Re: Main Street Lending

Dear Board of Governors of the Federal Reserve System:

On behalf of our nation's venture capital investors and the 2.27 million workers who are building the next generation of venture-backed companies driving innovation, job growth and economic expansion in the United States, I write to provide our comments on the Main Street Lending Facility announced by the Federal Reserve ("MSLF"). The changes to MSLF discussed below would further the aim of the Federal Reserve System to bridge the liquidity disruptions arising in connection with the COVID-19 pandemic. We believe that adoption of these changes will permit the programs to more fully satisfy the aim of re-establishing damaged or destroyed liquidity (and the ability to pay current obligations and employee salaries) and support companies and their employees through the COVID-19 crisis.

The comments cover: (1) the EBITDA test and minimum cash flow requirements for a business to be considered for an MSLF loan; (2) the scope of prohibitions on capital distributions; (3) availability of funding for companies addressing the COVID-19 virus and attendant medical challenges; (4) the nature of the limit on employee and executive compensation; (5) priority of existing loans; and (6) payment on other debt.

1. **EBITDA test as gating factor**

   Problem – The current MSLF test for minimum and maximum loan size uses a measure applicable to profitable companies with records of operation that have built up over several years. Because of this test, MSLF risks excluding virtually all companies who are in their growth phases. These companies include venture-backed growth companies that commonly use up investment capital to conduct research and development and invest in hiring and other scaling activities before revenue reaches a level that outstrips current expenses. This activity creates current year losses in a bid for long-term value creation. These businesses may not be profitable or cash flow positive yet. Free cash flow is not the only (or even best) measure of liquidity or potential for a venture-backed growth company, and the absence of free cash flow does not mean that the company is not in good financial standing. Rather, the fact that the venture-backed growth company has capital and an equity valuation means the business has real promise, and by extension employs American workers and benefits the economy.

Solution – An alternate test can accurately reflect an appropriate loan size for venture-backed growth companies. In lieu of using the EBITDA test for venture-backed growth companies, we recommend an additional test based upon percentage of valuation (for private) or market capitalization (for public) for companies in their growth phases. For private venture-backed growth companies, the test could look to the most recent Internal Revenue Code Section 409A valuation; post-money valuation from the most recent financing round in an arms' length transaction by a third party investor; or the dollar amount of investment in the preferred equity held in the company, and then use a percentage (15-25%) to create the upper bound of the loan. For public growth companies, the test could look to a percentage of 50-week average market capitalization for the period ending prior to the beginning of the COVID-19 economic crisis (similar to EBITDA test). The maximum loan size of $25 million would not be changed.

2. **Capital distribution challenge should be clarified**

   Problem – The capital distribution limitation in MSLF may remove liquidity from acquisition or initial public offering (IPO) activity for up to 12 months after repayment of the loan. This would be problematic if the loan is retired as part of an acquisition or an IPO but equity holders cannot receive proceeds for the sale of their equity for a year after that. This could chill IPOs and acquisitions that benefit companies and their customers, employees and the economy.

   Solution – Exempt from the distribution limitation any amounts distributed to shareholders in an acquisition or IPO, provided that the MSLF loan is paid off prior to the acquisition or IPO, or asset or liquidity buffers are retained to ensure full repayment of the MSLF loan prior to distributions.

3. **Possible unavailability to capital access for companies directly combating the COVID-19 crisis**

   Problem – Because availability of MSLF is keyed to needs arising due to "exigent circumstances of COVID-19," some companies could conclude that they are excluded from participation in the MSLF if they need funds to scale up production, distribution or testing to produce products that will directly support efforts to combat the COVID-19 crisis (e.g., vaccines, research and production of testing devices or treatment drugs, development of medical equipment, and more).

   Solution – Clarify that exigent COVID-19 circumstances include activities that further efforts to combat COVID-19 and effect on companies, markets and the economy.

4. **Potential challenges with preexisting stock and equity award agreements with executives**

   Problem – If the limit on executive compensation sweeps in stock vesting from previously agreed upon stock compensation arrangements, even though stock-based compensation is illiquid stock, it may exclude venture-backed growth companies that otherwise would be eligible for the program. While compensation limitations are important, if the rules require counting illiquid stock awards arising from agreements entered into prior to enactment of the CARES Act vests during the period the loan remains outstanding, the rules could create confusion and significant adverse outcomes for venture-backed growth company workers and executives.

Solution – For purposes of calculating compensation during the time period that the loan remains outstanding, disregard stock or equity awards that vest under stock or equity award agreements that took effect prior to March 27, 2020.

5. **Existing lenders' unwillingness to agree to MSLF loans that are pari passu with or senior to existing creditors**

   Problem – Many venture debt arrangements (as well as more traditional debt arrangements) allow existing creditors to prohibit or restrict new debt. This means borrowers must obtain lender consent before MSLF loans can be accepted.

   Solution – Permit other lenders to restructure other debt so long as it does not create debt senior to the MSLF loan, and that the MSLF loan is not used to pay down other debt.

6. **Limitations on reductions in debt and existing lines of credit by the lender**

   Problem – Lenders would lose the ability to restructure credit lines or otherwise reduce debt owed by borrowers when the MSLF loan is outstanding, which would create credit and asset management dangers for banks who provide other loans to the borrower.

   Solution – Provide that limitations on reductions in debt and existing lines of credit by the lender be in place only for the first year of the loan.

Bringing in venture-backed growth companies under the MSLF program would help provide liquidity to these small-to-medium sized enterprises to sustain their businesses and their markets, assist their millions of employees, and provide support for a critical growth engine for our economy post-COVID-19.

Thank you for your remarkably fast work in setting up the MSLF in support of U.S. companies and for your consideration of our comments.

Sincerely,

Bobby Franklin
President and CEO