LATHAM & WATKINS LLP

The BOOK *of* JARGON

The Latham & Watkins Glossary of Corporate and Bank Finance Slang and Terminology

First Edition

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The purpose of this publication is to assist the newest members of the finance community in learning to talk the talk of corporate and bank finance. It is intended to be a sort of "Berlitz Course" for recent law school and business school graduates seeking initiation into the world of Wall Street, and a desktop reference for not-so-recent graduates. In this book, you will find the key to the secret verbal handshakes that make up the code of the Wall Street finance community. While this publication is prepared on the basis of US law and practice, we believe it may be of interest to those involved in finance in the City of London or the other financial centers of the world. Once you know the code, you are well on your way to becoming a full-fledged member of the community.

Welcome to our world.

The definitions contained herein are designed to provide an introduction to the applicable terms. The terms included herein raise complex legal issues on which specific legal advice will be required. The terms are also subject to change as applicable laws and customary practice evolve. As a general matter, The Book of Jargon *is drafted from a US practice perspective.*

The information contained herein should not be construed as legal advice.

The Book of Jargon *is regularly updated. New versions will be posted periodically on our Web site, www.lw.com. If you have any suggestions for additional terms or expanded or clarified definitions for the current terms, please send an e-mail to glossary@lw.com.*

10b-5 Rep: another name for a Rule 10b-5 Representation.

144A for Life Offering: a Rule 144A Financing that does not provide Registration Rights for the buyers of the Securities. Accordingly, the Issuer in a 144A for Life Offering is not required to become a Reporting Company under the Exchange Act.

144A Offering: another name for a Rule 144A Financing.

'33 Act: another name for the Securities Act.

'34 Act: another name for the Exchange Act.

404 Compliant: an Issuer that is compliant with SOX Section 404.

"A" Loan: another name for a Tranche A Term Loan.

AAU: acronym for Agreement among Underwriters.

A/B Exchange Offer: another name for an Exchange Offer.

ABL: acronym for Asset-Based Loan.

ABR Loans: another name for Base Rate Loans.

Absolute Priority Rule: under Bankruptcy law, this rule states that when a company is liquidated or reorganized, senior classes of claims and equity interests must receive full distributions on account of their claims or equity interests before junior classes may receive any distributions, unless the senior classes consent otherwise.

Accelerated Filer: a category of Issuer created by SEC rules. An Issuer's status as an Accelerated Filer, as opposed to a Large Accelerated Filer, a Non-Accelerated Filer or a Smaller Reporting Company, determines when its Financial Statements go Stale and when it has to comply with SOX Section 404. An Issuer qualifies as an Accelerated Filer if (i) its Public Float is between $75.0 and $700.0 million as of the last business day of the second fiscal quarter of the Issuer's preceding fiscal year and (ii) it has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 months, including the requirement to file an annual report. Once an Issuer is in Accelerated Filer land, its Public Float has to fall below $50.0 million to get out. See Latham & Watkins Desktop Staleness Calendar, available at www.lw.com.

Acceleration: the end of the line under an Indenture or Credit Agreement. The definitions of Default and Event of Default describe how we get there. Following an Event of Default, the Bondholders (under an Indenture) or Lenders (under a Credit Agreement) have the right to "accelerate" the due date of their debts; in other words, they have the right to declare their Notes or loans immediately due and payable. Bankruptcy and insolvency Events of Default automatically lead to Acceleration.

Accordion Feature: so called because it resembles the expanding musical instrument whose name it shares, this is a feature in a Credit Agreement that allows the Borrower to increase the maximum

commitment amount under a Revolver or to incur additional Term Loan debt under circumstances specified in the Credit Agreement. The Accordion, however, is not pre-committed financing. It is really just an advance agreement to share Collateral with additional Lenders in the future if the Borrower can find them on the agreed terms. Also known as an Incremental Facility.

Account: when used in secured bank land, this is not a bank account. Under the UCC, an Account is a right to payment for, among other things: (i) property that has been or will be sold, leased, licensed or assigned; (ii) services that have been done or will be done; (iii) insurance policies that have been issued or will be issued; or (iv) secondary obligations that have been incurred or will be incurred. An Account does not include a right to payment that is evidenced by Chattel Paper or an instrument, or which results from commercial tort claims, deposit accounts, investment property, Letter of Credit rights or Letters of Credit.

Account Control Agreement: this is how Lenders in a secured financing Perfect their Security Interest in a Borrower's deposit and securities accounts. It is an agreement among the Borrower, the Collateral Agent and the bank or securities intermediary where the Borrower has its deposit or securities account. Absent an Event of Default, the Borrower usually retains full access to the account. Upon an Event of Default, however, the Collateral Agent may notify the deposit bank or securities intermediary to transfer control over the account to the Collateral Agent. A Security Interest in a securities account is typically Perfected either by means of an Account Control Agreement or by filing a Financing Statement, although a Security Interest Perfected by means of Control has Priority over a Security Interest Perfected by filing a Financing Statement. A Security Interest in a deposit account, by contrast, can be Perfected only by means of an Account Control Agreement or another method of Control, not by filing a Financing Statement.

Accounting Circle Up: another name for a Circle Up.

Accredited Investor: defined under SEC Rule 501 of Regulation D, this refers to people and entities that are permitted to buy Securities in a Private Placement. The term covers virtually all the types of institutions that are participants in the Private Placement market, and also includes people who are either rich or sophisticated. It is, of course, better to be both rich and sophisticated, but one will do for Regulation D purposes.

Accreted Value: this is the original purchase price of a Zero Coupon Bond or Discount Note plus all non-cash Interest that has accrued on the Bond or Note since the date of issuance. The calculation of Accreted Value is set forth in the Indenture under which the Bonds or Notes were issued.

Acquisition Line: a Delayed Draw Term Facility intended to be used

to fund acquisitions.

Adjusted EBITDA: EBITDA on steroids. Refers to EBITDA, adjusted to eliminate the impact of certain unusual or non-cash items that the Issuer or Borrower (or its Sponsor) believes are not indicative of the future performance of its business. For Reporting Issuers, disclosure of EBITDA, Adjusted EBITDA and other "non-GAAP financial measures" must be done within the confines of Item 10 of Regulation S-K (in the case of certain public filings) and Regulation G of the SEC (in all cases). A form of Adjusted EBITDA is also a component of the Leverage Ratio and Fixed Charge Coverage Ratio definitions.

Admin Agent: shorthand for Administrative Agent.

Administrative Agent: the bank that serves as the principal Agent administering the Credit Facilities documented in the Credit Agreement. The Administrative Agent is responsible for processing Interest payments to Lenders, posting notices delivered by the Borrower, and acting as the primary representative of the Lenders under a Credit Agreement in dealings with the Borrower. The Trustee performs an analogous role in Bond land.

Administrative Agent Fee: the annual fee paid to the Administrative Agent for administering a Credit Facility; sometimes referred to as the Agency Fee.

Affiliate: defined slightly differently in different types of agreements, but generally refers to a subsidiary, corporation, partnership, or other person controlling, controlled by or under common control with another entity. The official Securities law definition is found in SEC Rule 144.

Affiliate Transactions Covenant: a Negative Covenant that protects against disguised dividends by preventing the Issuer from entering into non-arm's-length transactions with its Affiliates, such as paying excessive management fees to deal Sponsors, selling assets to stockholders for less than fair market value or overpaying stockholders/employers through excessive salaries. The Affiliate Transactions Covenant typically does not flatly prohibit Affiliate transactions, but rather requires that they be on arm's-length terms and, at certain dollar thresholds, be approved by disinterested directors. Fairness opinions are also sometimes required.

Affirmative Covenant: requires a Borrower or Issuer to affirmatively do something. These are contractual provisions in an Indenture or a Credit Agreement that itemize certain actions the Issuer or Borrower must take to be in compliance with the applicable document. Think of these as the "Thou Shalt" Covenants. Affirmative Covenants are usually more boilerplate in nature, covering such things as a promise by the Borrower to pay Interest and fees, maintain insurance, pay taxes, provide quarterly operating reports, and so forth. In a secured deal, the Affirmative Covenants regarding delivery and maintenance

of Collateral will be more highly negotiated. Compare Negative Covenant.

Agency Fee: another name for Administrative Agent Fee.

Agent: generic term used to describe any of the Administrative Agent, Collateral Agent, Documentation Agent and Syndication Agent.

Agreement among Underwriters: the agreement that governs the relationship among the Underwriters in a registered Securities offering. See Master Agreement among Underwriters. There is no directly comparable document among the members of a bank loan Syndicate, mostly as a matter of custom. See, however, Syndication Agreement.

AHYDO Catch-Up Payment: it is possible to avoid "significant OID" (and thereby avoid the AHYDO Rules altogether) by providing for a "catch-up" payment to holders of certain High Yield instruments issued with OID on or before the first payment date after the fifth anniversary of the original issuance of the debt instrument. The purpose of the AHYDO Catch-Up Payment is to pay enough of the OID in cash so that the Issuer is not more than one year's worth of Interest behind on that date. For a more comprehensive summary of the requirements for an AHYDO Catch-Up Payment that will permit a debt instrument to avoid the AHYDO Rules, see Latham & Watkins Client Alert No. 598, The AHYDO Rules and the PIK Toggle Feature (May 16, 2007), available at www.lw.com.

AHYDO Rules: AHYDO (Applicable High Yield Discount Obligations) Rules under the Internal Revenue Code limit a company's ability to deduct Interest on certain High Yield instruments issued with OID. These rules are particularly important in hot markets when Bonds with a PIK feature are being sold. Normally, a company can deduct Interest from its calculation of taxable income, whether paid in cash or in kind. However, if the AHYDO Rules apply, a company cannot deduct Interest from its calculation of taxable income until it pays the Interest in cash (and the company may be prohibited from deducting a portion of the Interest permanently). If a debt instrument is issued by a partnership (or a limited liability company or other entity that is taxed as a partnership), the AHYDO Rules would apply to any corporate partner of the Issuer.

The AHYDO Rules apply if a debt instrument meets each of the following criteria: (i) it is issued by a corporation; (ii) it has a maturity greater than five years; (iii) it is issued with "significant OID;" and (iv) it is issued at a Yield to maturity that equals or exceeds the applicable federal rate for the month of issuance (the "AFR") plus 500 Basis Points. "Significant OID" generally means that the debt instrument permits the Borrower to pay more than one year's worth of Interest in the aggregate over the first five years of the life of the instrument on a non cash basis. If the AHYDO Rules do apply, then the Issuer (or, in the case of a partnership Issuer, its corporate partners) cannot

take tax deductions for non-cash Interest payments until the Interest is actually paid in cash. In addition, if the Yield to maturity on the debt instrument exceeds the AFR plus 600 Basis Points, and if the AHYDO Rules otherwise apply, then the Issuer (or its corporate partners) can never take the deduction for any Interest over that level. For a more comprehensive summary of the AHYDO Rules, see Latham & Watkins Client Alert No. 598, The AHYDO Rules and the PIK Toggle Feature (May 16, 2007), available at www.lw.com. See AHYDO Catch-Up Payment.

All or Substantially All: no one knows exactly what this phrase means. This phrase is used in various Covenants and other contractual provisions, but the precise meaning is the subject of much debate (and litigation). It does not necessarily mean what it sounds like in general layman's terms. See, for example, *Sharon Steel Corp. v. Chase Manhattan Bank, N.A.,* 691 F.2d 1039 (2d Cir. 1982) and *B.S.F. Co. v. Philadelphia National Bank,* 204 A.2d 746 (Del. 1964).

Alternative Transactions Language: a provision in the Fee Letter that says that the investment bank that has committed to a Senior Secured Credit Facility or Bridge Facility will still get paid all or some of its agreed fees if the Borrower ends up funding the applicable facilities through a different bank. Sometimes this is negotiated down to either giving the original bank a right to play in any new deal (but not a guarantee of payment), or giving the original bank an amount of fees equal to what the alternative bank gets.

Amendment: a change to the provisions of an existing agreement. For instance, a Borrower might amend its Credit Agreement to allow for more indebtedness to be incurred. See also Technical Amendment.

Amortization: the required periodic repayment in installments of portions of the principal of a Term Loan prior to its final maturity. Bonds, Revolving Facilities, and Second Lien Facilities generally do not Amortize. In accounting speak, Amortization is the same concept as Depreciation, except that intangible assets are Amortized and tangible assets are Depreciated. See Depreciation.

Amortization Schedule: the schedule of regularly timed repayments of principal prior to the maturity of a Term Loan. The Amortization Schedule is usually set forth in the Senior Secured Facilities Term Sheet and in the Credit Agreement itself.

Amortizing Loan: usually a reference to a Tranche A Term Loan.

Angel Investor: an investor that provides capital for a business start-up, usually in exchange for convertible Preferred Stock or equity ownership.

Anti-Layering Covenant: a Covenant that prohibits an Issuer from Layering in another series of debt between the Senior Debt and the Subordinated Debt. This is essentially a no-cheating rule and is only

used in Senior Subordinated deals. Senior Notes include an analogous provision that requires that all debt that Subordinates itself to any Senior Secured Credit Facilities also Subordinate itself to the Senior Notes. The Anti-Layering Covenant ensures that the Subordinated Debt occupies the second class slot and not the third or fourth. Since Second Lien Facilities are effectively "sandwiched" in-between the First Lien Facilities and unsecured Bonds, Second Lien Facilities are sometimes prohibited by the Anti-Layering Covenant.

Applicable Margin: the additional percentage that is added to a particular Interest Rate index to determine the Interest Rate payable on variable rate debt. Generally, the Credit Agreement (or the Interest Rate section of the Senior Secured Facilities Term Sheet) will set the Interest Rate at either (at the Borrower's option) the Base Rate plus a specified percentage, or LIBOR plus a specified percentage. The specified percentage is usually referred to as the Applicable Margin. The Applicable Margin for Base Rate Loans is almost always 100 Basis Points lower than the Applicable Margin for Eurodollar Loans.

Arbitrage: to take advantage of a price differential between two or more markets, such as by buying an investment in one market and then immediately selling it at a higher price in another market.

Arranger: the investment bank that "arranges" a Credit Facility by negotiating original terms with the Borrower and Syndicating the facility to a larger group of Lenders. In a Commitment Letter, the name of the Arranger for the Senior Secured Credit Facilities is set forth in the Senior Secured Facilities Term Sheet; the name of the Arranger for the Bridge Loan Facilities is set forth in the Bridge Facilities Term Sheet. Generally, the same entity serves as Arranger for both. The Arranger generally has no ongoing obligations under a Credit Agreement or Bridge Loan Agreement after the Closing Date.

Article 9: the law that governs the validity and Perfection of Security Interests in most personal property. This is the article of the UCC that governs secured transactions. See Perfection.

As-Extracted Collateral: a type of personal property defined in Article 9. It consists of (i) oil, gas or minerals that are subject to a Security Interest before they have been extracted or (ii) accounts from the sale of oil, gas or minerals that the debtor has an interest in before their extraction. For troubled credits, may also include teeth.

Asset-Based Loan: a Revolving Facility where the total amount that can be borrowed fluctuates based upon the value of certain assets of the Borrower at a given time. Unlike a Cash Flow Revolver, which provides the Borrower with a line of credit in a fixed amount that can be borrowed at any time, an Asset-Based Loan limits that line of credit to the lesser of a fixed amount and a percentage of the value of a certain set of assets (typically accounts receivable and inventory). This is often referred to as a Borrowing Base. Asset-based lending is a

way for companies to meet their short-term cash needs by borrowing against their short-term assets at favorable rates. Asset-Based Loans are particularly popular among retailers and other businesses with large amounts of accounts receivable and inventory. See Borrowing Base.

Asset Sale Covenant: the Covenant in an Indenture or Credit Agreement that governs the sale of assets. In an Indenture, the Covenant assures that the Issuer's Balance Sheet stays in balance by making sure that if assets shrink, the Issuer either replaces the assets with new assets or reduces its debt. The company is allowed to sell assets under the Covenant, but it must get fair market value and mostly cash (typically 75-85 percent). The proceeds must be used to repay Senior Debt, reinvested in long-term assets useful in the business or used to make an offer to repurchase Bonds at Par. In a Credit Agreement, by contrast, this Covenant strictly limits the Borrower's ability to sell assets, except as may be specifically negotiated on a deal-by-deal basis. In the Credit Agreement context, see also Asset Sale Prepayment.

Asset Sale Prepayment: a specific type of Mandatory Prepayment. This provision in a Credit Agreement requires the loans to be prepaid with the net cash proceeds of certain (or, in some cases, all) non-ordinary course asset sales of the Borrower and its subsidiaries. The idea is that secured loans are made partly based on the knowledge that a certain amount of asset value is held by the Borrower and pledged as Collateral. To the extent the Collateral is disposed of, the loans are prepaid with the proceeds. This provision will often pick up proceeds of casualty or condemnation insurance, thereby incorporating the Insurance Proceeds Prepayment provision. This repayment requirement is often subject to a Reinvestment Right (if the Borrower reinvests the proceeds within a certain period, it generally does not have to repay the loans with these proceeds).

Asset Sale Sweep: another name for an Asset Sale Prepayment.

Assignment: a Lender's transfer of its rights and obligations under a Credit Agreement or Bridge Loan Agreement to a new Lender. Borrowers frequently like to maintain a degree of control over the Assignment process through consent rights and, in some cases, Blacklists. Lenders prefer to limit such consent rights in order to maximize Syndication options and keep the loans more freely tradable. Note that a Borrower's right to consent to transfers is an important fact that helps distinguish loans from Securities.

At Par: see Par Value.

Automatic Shelf Registration: a Registration Statement on Form S-3 or F-3 filed by a WKSI. The advantage of an Automatic Shelf Registration (as opposed to a plain-vanilla Shelf Registration filed by a company that is not a WKSI) is that it becomes automatically effective, so that sales of the Securities can take place immediately after filing, without

the possibility of SEC review.

Automatic Stay: the rule under Bankruptcy law that once a Bankruptcy case is commenced, creditors and other parties generally are not permitted to collect on claims against the debtor or otherwise obtain or exercise Control or possession over property of the debtor's bankruptcy estate outside of the Bankruptcy proceedings. Creditors may seek relief from the Automatic Stay by filing a motion with the Bankruptcy court. There are also a number of exceptions to the Automatic Stay, such as governmental entities exercising their police power and the termination or liquidation of certain financial contracts.

Availability: this is a term used most frequently in the world of Revolving Facilities. It is a measure of the amount of additional borrowings or other extensions of credit (such as the issuance of Letters of Credit) that would be permitted under the Revolver at any particular point in time. Term Loan Facilities are generally drawn once on the Closing Date, although some allow for delayed draws during a specified period (see Delayed Draw Term Facility). Revolving Facilities are lines of credit that generally may be drawn, repaid and redrawn throughout the life of the facility, but only if there is Availability (in the case of an Asset-Based Loan, under the Borrowing Base formula). The Availability terms are found in the Senior Secured Facilities Term Sheet and then documented in full in the Credit Agreement.

Available Amounts Basket: an extra Basket (included in some Credit Agreements) that may be used for dividends, Capital Expenditures, investments or the prepayment of other (usually Subordinated) debt. This is a bank land replica of the way Restricted Payment capacity works in most High Yield Indentures. The Available Amounts Basket generally starts with 50 percent of consolidated net income or that portion of Excess Cash Flow that is not captured by the Excess Cash Flow Sweep, and builds cumulatively over time (perhaps with the receipt of equity proceeds, in deals where no Equity Sweep is present). Though available for Capex, prepayments of other debt, dividends and investments, the Available Amounts Basket is a single Basket, so usage for one purpose reduces the amount available for other purposes.

"B" Loan: another name for a Tranche B Term Loan.

Balance Sheet: a financial statement on which a company reports its assets, liabilities and equity as of a given point in time. In contrast to an Income Statement, which depicts a company's situation over a period of time, a Balance Sheet provides a "snapshot" as of a moment in time. The term Balance Sheet derives from the accounting principle that a company's assets must equal (or "balance" with) its liabilities plus stockholders' equity. See Income Statement.

Balloon Payment: the payment of principal on a Bond or Term Loan on the Maturity Date. See Bullet Maturity.

Bank Book: shorthand for the Confidential Information Memorandum (or CIM) used to Syndicate the bank loans.

Bank-Bridge Structure: a set of Commitment Papers that contains terms for both a Senior Secured Credit Facility and a Bridge Facility.

Bank Meeting: the initial meeting of potential Lenders to whom an Arranger hopes to Syndicate a Credit Facility, at which meeting the Bank Book will be discussed.

Bank-Only Deal: financing consisting only of bank debt (i.e., no Bridge Facility or Securities).

Bankruptcy: a federal court process under the Bankruptcy Code whereby a company restructures its debt under the auspices of the Bankruptcy court. There are advantages (such as the ability to Cramdown a plan on dissenting creditors) and disadvantages (such as high costs and public disclosure requirements) to restructuring debts in Bankruptcy, as opposed to out of court.

Bankruptcy Code: Title 11 of the United States Code.

Bankruptcy Remote Vehicle: a company that is set up within a corporate group in a way so as to prevent the insolvency of that company from affecting any other company within the group. A Bankruptcy Remote Vehicle is often created for a limited corporate purpose. A typical example would be when a Bankruptcy Remote Vehicle is set up for the purpose of acquiring or operating a particularly risky asset or making investments. Conducting a transaction by means of forming and utilizing a Bankruptcy Remote Vehicle is a type of Off Balance Sheet Arrangement. Also known as a Special Purpose Vehicle (SPV) or Special Purpose Entity (SPE).

Base Prospectus: a Shelf Registration Statement contains two parts: (i) the Base Prospectus (which is in the initial filing) and (ii) the Prospectus Supplement (which is filed along with the Base Prospectus when the Issuer executes a "takedown" off the shelf). See Shelf Takedown.

Base Rate: a Floating Rate of Interest that varies daily, usually equal to the higher of (i) the prime rate and (ii) the Federal Funds effective rate plus ½ percent. Lending rates are set at a margin over the Base Rate, depending on the risk involved. See Applicable Margin and LIBOR.

Base Rate Loans: loans bearing Interest based upon the Base Rate.

Basis Point: one one-hundredth of a percentage point (e.g., 50 Basis Points equals 0.50 percent).

Basket: an exception contained in a Negative Covenant (usually expressed as a dollar amount). For example, a Negative Covenant may be: "Borrower shall not issue additional debt;" a Basket would be: "except for unsecured debt in an amount not to exceed $10.0 million." See also Carveout.

Bear Hug Letter: an offer letter by an acquiror to buy a Target at a

price considerably in excess of the Target's current share price. Called a Bear Hug because the high price is hard to resist.

Beige Book: an informal name for a report published by the Federal Reserve Board eight times a year. The report is a collection of current economic conditions and is gathered by the Federal Reserve Bank in each of the 12 districts and is based on sources such as bank and branch director reports and expert interviews. An overall summary is prepared by a designated Federal Reserve Bank on a rotating basis.

Beneficial Owner: Section 13(d) of the Exchange Act and the Rules adopted thereunder (most notably Rule 13d-3) cover the gory details of this concept. The big picture is this: if you have the power to vote or dispose of a particular Security, either individually or as part of a group acting in concert, then you are probably the Beneficial Owner of that Security.

Best Efforts Syndication: a Syndication where the Arranger commits to provide less than the entire amount of the loans (or even none of them), but agrees to use its "commercially reasonable" efforts (not "best" efforts, notwithstanding the name) to find Lenders to provide the loan. Traditionally used for risky Borrowers, complex transactions or Syndications in bad markets.

Big Boy Letter: a letter sometimes entered into in connection with a secondary trade of Securities where one party to the trade has more information about the Issuer than the other. A Big Boy Letter says something to the effect that one party may have more information than the other about the Issuer, but because they are both "big boys," they are still knowingly and willingly entering into the transaction. Big Boy Letters raise a number of interesting legal issues, including whether the letter itself is actually enforceable and whether or not the letters actually work as a defense against insider trading liability.

Bill of Exchange: a written, unconditional order by one party (the "drawer") to another (the "drawee") to pay a certain sum to a third party (the "payee"), either immediately or on a fixed date, for payment of goods or services received. A Bill of Exchange is not a Negotiable Instrument unless it states that payment is to be made "to order" of the payee.

Bill of Lading: a document issued by a carrier of goods to a shipper, acknowledging that specified goods have been received on board from the shipper as cargo for conveyance to a named place for delivery. If a Bill of Lading is issued "to order" of the recipient of the goods (the "consignee") or another party (usually the shipper), then it is a Negotiable Instrument.

Blacklist: a list put together by the Borrower or the Sponsor of Lenders to whom a certain loan may not be Assigned because the Borrower or Sponsor believes the Lenders on the Blacklist will not be easy to deal with (in terms of Amendments, consents, etc.) over the life of its loans.

Blackout Period: a provision in a Commitment Letter that certain holiday time periods (generally late August, late December and around Thanksgiving) do not count as part of the Minimum Marketing Period and Minimum Syndication Period. In the Securities context, Blackout Period also refers to a period during which certain designated individuals are prohibited from trading in a company's equity Securities. Blackout Periods in the Securities context are governed by SEC Regulation BTR (Blackout Trading Restriction), which came about as a result of Sarbanes-Oxley. Regulation BTR prohibits directors and executive officers of public companies from trading that company's equity Securities during a Blackout Period under the company's pension or 401(k) plans. The regulation came about after several highly publicized cases in which senior executives of soon-to-fail companies sold shares at the same time their employees' plans prohibited the employees from doing so.

Bondholder: exactly what you think it means—a holder of a Bond.

Bonds: debt instruments that represent a fixed principal amount of money and a fixed (or floating) Interest Rate. Also known as Notes or Debentures. These puppies are almost always issued pursuant to an agreement known as an Indenture. See also Fixed Income Security.

Book Value: the dollar amount stated for particular assets on a company's Balance Sheet.

Bookrunner: the Arranger who determines what portion of a Credit Facility will be allocated to each potential Lender. See Arranger. The Bookrunner should not be confused with the Syndication Agent for a particular Credit Facility. The Syndication Agent role (like the Documentation Agent role) is often driven entirely by a desire to hand out League Table Credit—these other Agents don't actually do much of anything. The Bookrunner actually runs the books during Syndication. Similarly, the Bookrunner in a Securities offering manages the Syndication efforts. See Lead Managing Underwriter.

Booster Shot Provision: a provision in a Lockup Agreement providing for automatic extension of the Lockup (generally by 18 days) in instances where (i) the Issuer has announced material news during the last 17 days of the Lockup period or (ii) prior to the expiration of the Lockup period, the Issuer announces that it will release earnings during the 15-day period following the expiration of the Lockup. The provision is placed in Lockup Agreements because FINRA rules prohibit analysts from issuing positive research (booster shot) reports or reiterating "buy" recommendations around the expiration of a Lockup Agreement. The industry solution to these rules has been to extend the Lockup period so that it would not expire within the 15-day period following an earnings release, thus allowing analysts to publish during the several days following an earnings release.

Borrower: a company that borrows under a Credit Agreement.

Borrowing Base: a concept in an Asset-Based Loan where the maximum amount available for borrowing under a Revolver is a moving target. A Cash Flow Revolver does not have a Borrowing Base. A Cash Flow Revolver provides the Borrower with a line of credit up to a fixed dollar amount. When there is a Borrowing Base, the maximum amount available for borrowing moves based on the dollar value of the pledged Collateral (e.g., receivables, inventory, equipment) multiplied by a discount factor, and subject to an overall Cap. For example, Lenders might agree to advance funds against 80 percent of accounts receivable and 60 percent of inventory up to a maximum amount of $100.0 million. So the amount available on any date is the lesser of the amount of the Borrowing Base and the maximum revolving commitment amount (minus amounts already borrowed and outstanding). See Asset-Based Loan and Availability.

Bought Deal: an offering of Securities in which one or a few Underwriters buy the entire issue at a fixed price before a formal marketing process has commenced.

bps: shorthand for Basis Points and generally pronounced "bips."

Breakage Costs: the losses, costs and expenses incurred by a Lender as a result of a Borrower's (i) failure to borrow, convert or continue a LIBOR Loan after giving notice requesting the same; (ii) failure to make a prepayment of LIBOR Loans after giving notice thereof; or (iii) making of a prepayment of LIBOR Loans on a day that is not the last day of the applicable Interest Period (i.e., the costs of "breaking" a LIBOR Tranche).

Breakup Fee: in an M&A transaction, a fee the seller must pay to the original buyer if the seller ends up selling to a different buyer. Compare Reverse Breakup Fee.

Bridge Facility: a Credit Facility pursuant to which Lenders make Bridge Loans.

Bridge Facility Term Sheet: an annex to the Commitment Letter that contains a summary of the terms of the Bridge Facility. In a committed financing, each series of Notes contemplated to be part of the permanent financing structure is backed up by a bridge, so in instances where there is more than one series of Notes (for instance, senior and senior Subordinated), there will be multiple bridges. These multiple bridges may be described in one or multiple Term Sheets.

Bridge Loan Agreement: a Credit Agreement governing Bridge Loans.

Bridge Loans: short-term loans that typically (although not always) are not intended to be funded. The purpose of a Bridge Loan is to provide a bidder with committed financing in the context of an auction for a business in case the Subordinated acquisition financing cannot be consummated prior to the consummation of the acquisition (i.e., to "bridge" the gap in financing). Traditionally, Bridge Loans are used

by Financial Buyers (Sponsors) in auction situations, but corporate buyers also sometimes use Bridge Loans to finance acquisitions. In the Commitment Papers context, Bridge Loans are sometimes referred to as the Bridge Facility.

Bringdown Certificate of Good Standing: see Certificate of Good Standing.

Bringdown Comfort Letter: a second Comfort Letter, delivered at Closing, that Ticks and Ties to the Final and updates the change period comfort to a date not more than three to five business days prior to the Closing Date.

Bringdowns: shorthand for Bringdown Certificates of Good Standing.

Broker-Dealers: entities that have to register with the SEC because they trade Securities for themselves or on behalf of others.

Bullet Maturity: when the entire principal of a Bond or Term Loan is due and payable on the Maturity Date (i.e., there is no Amortization prior to maturity).

Business MAC: definitions vary, but this is a reference to the Condition Precedent in a Commitment Letter, merger agreement or Credit Agreement that there has been no Material Adverse Change in the operations, business or prospects of the Borrower or the Target company. This should not be confused with a Market MAC, which deals with Material Adverse Changes in market conditions. See also Material Adverse Change, Company MAC and Target MAC.

Call Option: a financial contract between a buyer and a seller, where the buyer has the right or Option to buy a specific quantity of a Commodity or a Security or other financial instrument from the seller at a certain time and at a certain price. Compare Put Option.

Call Premium: the Bond equivalent to a Prepayment Premium in a Credit Agreement. This term refers to the amount of premium payable, calculated as a percentage of the principal amount of the Bonds being redeemed, upon the redemption of such Bonds prior to their maturity. See Optional Redemption.

Call Protection: a feature that requires an Issuer or Borrower to pay a Call Premium or Prepayment Premium, as applicable, under an Indenture or Credit Agreement, as applicable. Bondholders/Lenders like this feature because it gives them a potential upside if the Issuer/Borrower repays the debt and because it compensates the Bondholders/Lenders for the risk associated with having to reinvest the money that they have been paid back. A Non-Call Period is the strongest form of Call Protection, followed by a Hard Call and then a Soft Call.

Call Spread Overlay: a Hedging transaction in which the Issuer simultaneously purchases a Call Option that mimics the Call Option embedded in a series of Convertible Bonds and then sells a Warrant on the same number of underlying shares at a higher strike price. The

net effect is an increase in the Conversion Premium of the Convertible Bonds to the strike price of the Warrant. There may also be favorable tax benefits to the Issuer. Call Spread Overlays are a common companion to new Convertible Bond issuances.

CAM: acronym for Collateral Adjustment Mechanism. It is also known as a Debt Adjustment Mechanism or DAM.

Canadian Wrapper: a Canadian disclosure document that is wrapped around (or stapled to the front of) the US Offering Memorandum or Prospectus. The Canadian Wrapper is required in certain instances where Canadian (or provincial) law requires certain statutory disclosure on the cover of the offering document for sales in Canada.

Cap: generally refers to a dollar limitation, as in, "a cap on the amount of permitted Secured Debt." Caps are often used in Negative Covenants, financial definitions and prepayment provisions. In the Commitment Letter context, Cap refers to the maximum Interest Rate for Bridge Loans. Bridge Loans generally bear Interest at an increasing rate (meaning the Applicable Margin steps up every several months), but the rate stops increasing once the Cap is achieved. This Cap is found in the Interest Rate section of a Bridge Facility Term Sheet.

Cap Table: a simplified Balance Sheet generally included in a Prospectus or an Offering Memorandum that sets forth the Capital Structure (and sometimes other information such as cash holdings) of the Issuer as of a certain date, often on an historical basis and an as-adjusted for the offering basis. A Cap Table is not required by Regulation S-K, but is generally included to make the disclosure more investor-friendly.

Capex: shorthand for Capital Expenditures.

Capital Expenditures: an expenditure by a business that is Capitalized to the Balance Sheet under the rules of GAAP and then Amortized as an Income Statement expense over a period of more than one year rather than being immediately "expensed" to the Income Statement in full in the current period. A Capital Expenditure is distinguished from a plain old current expense because it has a long-term impact that will benefit the business in future years as well as the current year. Buying vegetables for dinner is probably a current expense. Buying a vegetable farm is probably a Capital Expenditure. See Amortization and Capitalize.

Capital Markets: a broad term that refers to the market for raising money through Securities offerings.

Capital Structure: a term referring to the overall structure of the company's debt and equity. A company's Capital Structure is generally divided into several distinct constituencies, such as Senior Debt, Subordinated Debt and common equity.

Capitalize: in accounting terminology, when a company Capitalizes a cost, it is recognizing that cost as a long-term investment rather than

immediately recognizing it as an expense. The company then Amortizes or Depreciates the expense over time on its Income Statement—until eventually all the expense is recognized. Spreading the expense over time like this increases earnings in the short term, because the entire cost is not deducted in the first period. The term Capitalize is also used in the context of PIK Notes, where it refers to adding any accrued and unpaid Interest to the principal amount of the Notes on any Interest Payment Date in lieu of paying that Interest in cash. What does this mean? Technically, PIK (or Pay-In-Kind) Notes should pay Interest by issuing additional Notes on each Interest Payment Date (a payment in kind, rather than cash Interest). However, it is administratively easier (and therefore often preferable) to simply increase the amount each Note is worth on each Interest Payment Date by Capitalizing the accrued Interest to principal (i.e., increasing the principal amount of the Note by the amount of the accrued Interest).

Capitalized Lease: this is a lease that accountants have decided looks more like a loan secured by the property being leased than like a true lease. Leases that are not Capitalized are called "operating leases." Capitalized Leases are treated as debt under GAAP and are shown on the face of the lessee's Balance Sheet as debt in an amount determined by the accountants to be the equivalent of what a loan would be if secured by the leased assets. One typical feature of a Capitalized Lease that is not typical in an operating lease is an Option on the part of the lessee to purchase the leased property upon the expiration of the lease.

Capped Call: a Hedging transaction in which the Issuer purchases a Call Option that mimics the Call Option embedded in a series of Convertible Bonds, subject to a Cap on the maximum share price of the shares covered by the call.

Carveout: an exception to a Covenant or other term. See also Basket.

Cash Cap: a provision in a Bridge Loan Agreement stating that to the extent the Interest payable on the Bridge Loans on any quarterly Interest Payment Date is at a rate that exceeds the Cash Cap, the company will have the option to pay such excess Interest by Capitalizing it to principal on the Bridge Loans. Remember, Bridge Loans progressively increase in rate. See Total Cap.

Cash Equivalent: highly-rated, short-term, liquid investments that are readily convertible to cash and have short maturities. Indentures and Credit Agreements treat Cash Equivalents the same as cash and allow the Issuer/Borrower to make unlimited investments in them.

Cash Flow Revolver: a Revolving Facility that provides the Borrower with a line of credit up to a fixed amount, in contrast to an Asset-Based Loan, which is based on the value of certain categories of the Borrower's assets as of a given time. A Cash Flow Revolver typically contains more Financial Covenants than an Asset-Based Loan, but also

has fewer ongoing reporting requirements. In a Cash Flow Revolver, the Lenders will focus on a Borrower's ability to cover debt service by generating cash flow, whereas in an Asset-Based Loan, the Lenders will focus on the value of certain categories of the Borrower's assets (in particular, the categories that are used in the Borrowing Base), especially the liquidation value of those assets, relative to the Lenders' exposure under the loans (this is known as Collateral coverage).

Cash Flow Statement: a financial statement in which a company reports its incoming and outgoing cash flows during a specified time period (typically monthly, quarterly or annually).

Cash Sweep: another name for Excess Cash Flow Sweep.

CEO: shorthand for "chief executive officer," the CEO is the highest-ranking executive officer of a company, in charge of managing the day-to-day affairs of the company.

Certificate of Good Standing: ordered in connection with a Closing to make sure that the company and its subsidiaries are good corporate citizens, this is a document issued by the Secretary of State of the relevant jurisdiction certifying that an entity is in good standing (i.e., all fees, taxes and penalties owed to the state have been paid, annual reports have been filed, no articles of dissolution have been filed, etc.). A Bringdown Certificate of Good Standing is a short form Certificate of Good Standing that is obtained more quickly and generally ordered for delivery on the morning of the Closing to make sure nothing has happened since the date of the long-form Certificate of Good Standing.

Certain Funds: is a requirement of the UK Takeover Panel (which regulates acquisitions of public companies in the UK) and a number of comparable European regulators that the bank making a takeover offer on behalf of a bidder must verify that the bidder has the money available to close its deal at the time the public offer is first announced. This means the financing commitments for a going private transaction need to be almost completely condition free (so the bidder can be "certain" that it will have the funds when it needs them). Although the Certain Funds requirement only applies as a matter of regulation to acquisitions of European public companies, sellers of private companies in Europe may seek to require that the buyers have Certain Funds commitments to provide the required financing as a condition to winning the private auction of the company being sold. Although there have been some examples of Certain Funds style financing commitments in the US market, they are few and far between. Compare SunGard Provisions.

CFO: shorthand for "chief financial officer," the CFO is the senior officer of a company primarily responsible for managing the company's financing and (usually) accounting activities.

Change of Control: a material change in the ownership of a company

or the makeup of its board of directors. Definitions vary in Indentures and Credit Agreements. See Change of Control Covenant, Change of Control Default and Change of Control Put.

Change of Control Covenant: in an Indenture, this is a reference to the Change of Control Put provision. In most Credit Agreements, the occurrence of a Change of Control is treated as an Event of Default (the Change of Control Default) rather than the trigger for a Put Right. See Change of Control Default and Change of Control Put.

Change of Control Default: under most Credit Agreements, a Change of Control (which will be specifically defined in the Credit Agreement, and will include any Change of Control that occurs under any Bonds of the Borrower) is an immediate Event of Default. Some Second Lien Facilities instead follow the Bond model of a Change of Control Put.

Change of Control Put: this provision of an Indenture and some Second Lien Facilities gives each Bondholder a separate Put Right, generally at 101 percent of Par Value, if a Change of Control (which will be specifically defined in the Indenture) occurs.

Chattel Paper: a type of personal property defined in Article 9. Chattel Paper is a tangible or electronic record or records that has both a monetary obligation and a Security Interest in specific goods or a lease of specific goods. A loan secured by a specific automobile or a lease of a specific automobile are among the most common types of Chattel Paper.

CIM: acronym for Confidential Information Memorandum. See also Bank Book.

Circle Up: in order to receive Ticking and Tying in a Comfort Letter, Underwriters' counsel will send a Circle Up of the Offering Memorandum or Prospectus to the Issuer's auditors, in which such counsel circles each number it would like to see Ticked and Tied.

Class: Lenders holding a particular "class" or Tranche of Term Loans or Revolving Loans.

Class Voting: type of voting where one or more Classes under a Credit Agreement vote separately (and normally the affirmative vote of a majority of each affected Class is required for an Amendment or other action to pass). Class Voting on all matters is unusual except in very strict Credit Agreements. Limited Class Voting is more common with regard to Amendments that one Class of Lenders will care about more than the other Classes of Lenders. For example, when altering the required application of prepayments of loans as between Lenders under a US dollar denominated Term Loan Facility and Lenders under a Canadian dollar denominated Term Loan Facility in a way that benefits the US Tranche Lenders at the expense of the Canadian Tranche Lenders, Class Voting would require the affirmative vote of a majority of the Canadian Tranche Lenders.

Clawback: if a creditor receives assets or payments from a debtor during the 90-day period (or one year period in the case of insiders) prior to the date the debtor files a Bankruptcy petition (see Preference Period) or obtains a Fraudulent Transfer from the debtor prior to the Bankruptcy petition, a Bankruptcy court can require that such creditor return those assets or payments that are determined to be preferential transfers or Fraudulent Transfers. This is known as the Bankruptcy court exercising its "clawback powers." The creditor may be able to assert a defense against a Preference, such as by demonstrating that it gave "new value" to the debtor in exchange for the assets or payments received or that the debtor made the payment in the ordinary course of business.

Cleanup Period: a period during which a Borrower is required to cure any Defaults it closed into after utilizing the Specified Representations limitations on Closing Conditions contained in the SunGard Language. The point here is that even though the Specified Representations provisions allow the Borrower to close a financing in the face of a Default, the Borrower is still in Default and must clean up that Default within the Cleanup Period provided in the Credit Agreement or face the wrath of its Lenders.

Clear Market Provision: found in the text of the Commitment Letter, an agreement by the Borrower/Issuer not to issue new debt, equity, preferred or other Securities during Syndication. The purpose is to protect the banks from having to compete for the same pool of investors as the Borrower's other financings.

Closed Flex: Market Flex structured so that the Arranger may make only the changes that are specifically enumerated. Compare Open Flex.

Closing: the consummation of the deal, when all remaining documents are executed and the money changes hands. Plan on staying up all night working the night before (see Pre-Closing). If the Closing goes smoothly, plan on staying up all night celebrating afterwards.

Closing Condition: another name for a Condition Precedent.

Closing Date: the date on which the Closing occurs.

Closing Dinner: your reward. A dinner organized by the bankers and lawyers to celebrate the Closing of the transaction. The better the deal, the better the wine.

Closing Fee: a fee payable to each Lender on the Closing Date. Bankers sometimes refer to the loans as having been issued with OID. The Closing Fee payable to each Lender is expressed as a percentage of the principal amount of such Lender's loan and is payable from the proceeds of such loan as and when funded on the Closing Date. We prefer not to think of loans as being issued with OID because it has negative consequences in Bankruptcy (e.g., claims for "unmatured

interest," such as OID, may be disallowed in Bankruptcy unless the loans are over-Collateralized).

Closing Memorandum: a formal memorandum used in a Securities offering to set forth actions taken prior to and at Closing. The Closing Memorandum exhibits include the forms of secretary's and officers' certificates.

Club Deal: historically, a smaller loan premarketed to a group of relationship banks—the Arranger is a first among equals and each Lender gets a full cut (or almost a full cut) of the fees. The term Club Deal can also refer to a very large Sponsor LBO transaction where multiple Sponsors pool together in order to buy a multi-billion dollar company.

COBRA: highly venomous snakes including the Naja and Ophiophagus. Also the name of a military attack helicopter. What you should care about, however, is that COBRA is FINRA's Corporate Offerings Business Regulatory Analysis system, which is the Web site system used to make FINRA filings. Such filings are necessary for IPOs and certain secondary equity offerings of newly public companies.

Collar: a form of Hedge that limits the upside and protects the downside on the particular item being Hedged. For instance, an Interest Rate Collar on a Floating Rate Security would establish an upper and lower limit on the Floating Rate.

Collateral: assets of a Borrower and any Guarantors or other Grantors or Pledgors that secure the Borrower's and Guarantors' obligations under the applicable credit documents in a Secured Debt financing.

Collateral Agent: in a Secured Debt financing, the Agent that is responsible for holding any Possessory Collateral in its vault, and to whom, on behalf of all the Secured Parties, all Security Interests in Collateral will be granted.

Collateral Adjustment Mechanism: used in cross-border secured deals where, for tax reasons, debt of US companies is secured only by US assets, and debt of foreign co-Borrowers is secured by both US and foreign assets. The CAM is an agreement among the Lenders intended to equalize the recovery rates of the various groups of Lenders in the case of Default and foreclosure on Collateral, by deeming loans held by Lenders in each group to be automatically shared for purposes of recovery upon the occurrence of certain events, such as Hair-Triggers. Despite the name, it is not a way to spread or allocate the Collateral to loans that the Collateral was not originally intended to secure. Also known as a Debt Adjustment Mechanism or DAM.

Collateral Questionnaire: another name for a Perfection Certificate.

Comfort Letter: the natural enemy of both accounting firms and junior- and mid-level law firm associates. The Comfort Letter is a letter from the Issuer's auditors addressed to the Underwriters (in public

offerings) or the Initial Purchasers (in 144A Offerings) that provides "comfort" that the Numbers included in the Prospectus (in public offerings) or in the Offering Memorandum (in 144A Offerings) are accurate. The prescribed form a Comfort Letter should take is spelled out in SAS 72. The Underwriters or Initial Purchasers (and sometimes the board of directors) seek such a letter in order to help establish a Due Diligence Defense. The Comfort Letter allows the Underwriters or Initial Purchasers to demonstrate reliance on experts for the audited financials and an element of a "reasonable investigation" for the unaudited financials and other unaudited financial information. The Comfort Letter is delivered at Pricing. See also Bringdown Comfort Letter, Negative Assurance and SAS 72.

Commercial Letter of Credit: a Letter of Credit the purpose of which is to provide a means of facilitating payments between parties in the normal course of business. Commercial Letters of Credit are therefore intended to be drawn on and used routinely by the parties. Compare Standby Letter of Credit.

Commercial Paper: an unsecured debt instrument issued by a company to finance short-term liabilities. Commercial Paper usually matures in less than 270 days, therefore allowing the Issuer to avoid registering the paper with the SEC.

Commitment Fee: a fee paid to the Arranger of a Bridge Facility and/or Senior Secured Credit Facility for the commitment provided in the Commitment Letter. Note that the fee for a Bridge Facility is generally payable when the overall deal closes, whether or not the Bridge Loan is funded. The term also refers to a fee that is paid on the undrawn portion of a committed Revolver as compensation to the Revolver Lenders for keeping money available for borrowing. See Undrawn Commitment.

Commitment Letter: the letter by which financial institutions commit to provide loans. In the acquisition finance context, these loans generally consist of a Senior Secured Term Loan Facility and one or more Bridge Loan Facilities to "bridge" any Notes offering expected to be part of the permanent financing—meaning that the Bridge Loans are committed financing that will be available if the company is unable to issue the Notes successfully in time to fund the acquisition Closing. The Commitment Letter consists of the actual text of the letter, along with annexes and exhibits that lay out the terms of the facilities and the Conditions Precedent to funding.

Commitment Papers: a catch-all term referring to the Commitment Letter, Fee Letter and Engagement Letter (and the related annexes and exhibits).

Commodity: a good or resource that investors trade, usually through Futures. A primary characteristic of Commodities is that their prices are determined by the way the market for such Commodities functions as a whole, rather than being differentiated based on qualitative

differences between products of the same type produced by different producers. This is because a Commodity produced by one producer is considered equivalent to a Commodity of the same type produced by another producer. See Trading Places (Paramount Pictures 1983).

Common Stock: the equity slice of the capitalization that sits at the bottom of the Capital Structure. Common Stock has no Interest payments, no principal payments and no Covenants. The only protections for common stockholders are the fiduciary duties owed to them by the board of directors. By contrast, no fiduciary duty is owed to the creditors of a solvent company. The creditors' rights are entirely contractual. See, however, Zone of Insolvency.

Company MAC: another name for a Business MAC.

Comparable Treasury: when the bankers refer to the Comparable Treasury they mean the US Treasury Note having a remaining life to maturity that most nearly approximates the Bond in your deal. An example here would be: "There will be a Make-Whole call at 50 bps above the Comparable Treasury." This means that the discount rate to be used in calculating the Make-Whole redemption price will be the rate on the Comparable Treasury plus 50 Basis Points.

Conditions Annex: an exhibit to the Commitment Letter that contains Conditions Precedent to the Closing of the Credit Facilities. Note that additional Conditions Precedent such as the Business MAC and Market MAC conditions, the Due Diligence Condition and the Inconsistent Information Out are often contained in the text of the Commitment Letter and not in the Conditions Annex. This is a matter of custom only. The location of conditions is of no legal significance.

Conditions Precedent: the conditions that need to be satisfied on or prior to the Closing of the relevant transaction. In the world of finance, they are sometimes called "conditions to funding."

Confidential Information Memorandum: the marketing book used to Syndicate Credit Facilities. Also refers to a marketing book used in a mergers and acquisitions or auction context. Often referred to as the "CIM" for short, or Bank Book.

Confidentiality Provisions: provisions in the text of the Commitment Letter providing that the Commitment Papers and any other advice provided by the Arranger may not be disclosed without the consent of the Arranger. Some Commitment Letters also have Confidentiality Provisions that apply to the Arranger.

Conflicting Interest Provisions: provisions in the text of the Commitment Letter disclosing that the Arranger (and its Affiliates) may have economic interests that conflict with those of the company.

Consent Solicitation: the form of relief sought by Issuers who want to amend Bond Covenants. Consent Solicitations are generally less common than bank loan Amendments. Because Bond Covenants are

incurrence-based, unlike Financial Covenants (which are found in Credit Agreements), Issuers are less likely to need relief under Bond Covenants. For the same reason, Covenant-Lite loan Borrowers (who also usually have liberal Baskets and other Borrower-friendly terms) are unlikely to seek Amendments to the applicable Credit Agreement. Bondholders are also likely to charge Issuers more for consents, in part because the longer and more punitive Call Protection Bondholders typically enjoy gives them greater leverage. See Non-Call Period.

Consolidated: used in the context of Financial Statements, refers to Financial Statements that reflect the assets, liabilities and operating accounts of a company and its subsidiaries, taken as a whole (meaning they are taken together as a single enterprise). Compare Consolidating.

Consolidating: used in the context of Financial Statements, refers to financial information that is broken out to show the results of different parts of a corporate structure. The most common example is the condensed, Consolidating financial information required by Rule 3-10 of Regulation S-X, which applies to certain Issuers with debt Securities that are Guaranteed at the parent or subsidiary level. In certain instances, Rule 3-10 requires a footnote providing condensed, Consolidating financial information in tabular format with columns for the parent company, the Subsidiary Guarantors on a combined basis, any non-Guarantors on a combined basis, Consolidating adjustments and total Consolidated amounts. Compare Consolidated. For a complete discussion of when Consolidating financial information is required, see Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What You Need to Know (May 25, 2007), available at www.lw.com.

Contingent Conversion: Convertible Bonds being convertible only if certain triggers are met.

Contingent Interest: Interest on Convertible Bonds that is payable only if certain conditions are satisfied (usually if the market price of the Bonds exceeds a threshold (e.g., 120 percent) of their Par Value).

Contractual Subordination: Subordination provisions that contractually require the Bondholders to "fork over" to a specified class of senior Lenders anything they get in a liquidation of the company until the senior Lenders are paid in full. This is an express agreement by the holders of the Junior Debt to be Subordinated. Note that the holders of Senior Debt cannot effect this type of Subordination without the agreement of the holders of the Junior Debt. In other words, you don't get to be Senior Debt by saying you are Senior Debt; you get to be Senior Debt by persuading the other guy to say he is Junior Debt. See Subordination.

Control: a means of achieving Perfection under Article 9 for certain types of Collateral. For certain Collateral, such as deposit accounts,

Control is the only method of Perfection. For other Collateral, such as securities accounts, certificated Securities and uncertificated Securities, Perfection can be achieved by filing a Financing Statement, although Perfection by Control has higher Priority in instances where Perfection can be achieved both ways. See Account Control Agreement.

Controlled Company: a public company, the majority of which is owned by an individual or group or another company. Controlled Companies are exempt from some of the stock exchange Independent Director requirements (other than those applicable to the audit committee). See Independent Directors.

Conversion Fee: another name for Rollover Fee.

Conversion Premium: the amount by which the Conversion Price of Convertible Bonds exceeds the current market value of the underlying stock as of the Pricing date. When a Convertible Bond is priced at a 20 percent Conversion Premium, it is said to be "up 20."

Conversion Price: the price at which a given convertible Security can be converted to stock. The Conversion Price is set on the Pricing date at a premium above the current market price of the underlying stock on that date. Rule 144A requires that the premium be at least 10 percent as of the Pricing date for Securities sold in a Rule 144A Offering when the underlying stock is an exchange listed Security.

Conversion Rate: the rate at which a Convertible Bond may be converted into stock, typically expressed as a share number per $1,000 in principal amount of Bonds. This is really just another way of expressing the Conversion Price.

Conversion Value: the value of a Convertible Bond if it were immediately converted into stock at the Conversion Rate then applicable. If the Conversion Value of a Convertible Bond is more than its principal amount, then that Convertible Bond is said to be In the Money.

Convert Deal: a transaction in which Convertible Bonds are issued.

Convertible Bond: a Bond that is convertible into another Security, typically Common Stock.

Coordinated Sell Down Letter: another name for Syndication Agreement.

Countersign Deadline Date: the date by which the Borrower must countersign for the Commitment Papers to take effect. The Countersign Deadline Date is usually found at the end of the Commitment Letter and it applies to the Fee Letter and Engagement Letter as well. It is typically set just a few days into the future. If the Commitment Letter is not signed by this date, the commitment offer terminates. This is not the same as the Drop Dead Date, which is usually several months into the future.

Coupon: the contractual Interest Rate stated on a Bond when the Bond

is issued. Note the Coupon is not the same as the Yield.

Covenant: legalese for an agreement to do something (Affirmative Covenants), not to do something (Negative Covenants), or to maintain something (Maintenance Covenants).

Covenant Defeasance: one of two types of Defeasance (the other kind is Legal Defeasance). Covenant Defeasance relieves the Issuer from complying with its obligations under the substantive Indenture Covenants and waives the related Events of Default. See also Legal Defeasance.

Covenant Lite: a Credit Facility that contains Bond-like Covenants. A Covenant Lite Credit Agreement does not contain Maintenance Covenants. Usually only available in red-hot markets.

Coverage Covenant: a Maintenance Covenant that requires the Borrower to maintain a minimum level of cash flow or earnings relative to specified expenses, most often Interest, debt service (Interest and repayments) and Fixed Charges (debt service, Capital Expenditures and/or rent). See Interest Coverage Ratio and Fixed Charge Coverage Ratio.

Covered Call: a situation where somebody owns shares in a company and sells a Call Option on those same shares. So, for instance, you take your bonus and buy 100 shares of Google at $500 a share and also sell a Call Option on those shares at $550 a share (for which you are paid $25 a share). In this situation, you then have to sell the shares to the person you sold the Call Option to if the shares rise above $550 a share. On these facts, your Covered Call was a good bet if the shares rise to less than $575, but a bad bet if they rise to more than that. The call is a "covered" call because you own the shares you need to deliver if the Option is exercised.

CP Memo: a memo required by some banks in connection with the Closing of a Credit Facility. The CP Memo is prepared by counsel to the Lenders. It confirms the satisfaction of certain mechanical Closing Conditions set forth in the Credit Agreement that require delivery of specified legal documents and points out whether any items have been deferred for delivery after Closing.

CPs: acronym for Conditions Precedent.

Cram: bankers' slang for the Securities Demand. See also Put Bond.

Cramdown: the confirmation of a plan of reorganization by a Bankruptcy court, even though one or more classes of creditors or equity interest holders has objected to the plan. The confirmed plan will bind all classes of creditors and equity interest holders, even those who voted against the plan. Hence the descriptive phrase—the plan proponent "crams down" on dissenters. This is a key tool for debtors and a major reason that some companies restructure in Bankruptcy, rather than out of court. Governed by §1129(b) of the Bankruptcy Code.

Credit Agreement: the legal document in which one or more Lenders agrees to lend money to a Borrower. The Credit Agreement not only sets forth the mechanics for the making of loans and the issuance of Letters of Credit, but also contains Representations and Warranties of the loan parties, Affirmative Covenants, Financial Covenants, Negative Covenants, the remedies of the Lenders after the occurrence of an Event of Default, and expense reimbursement, indemnity and other boilerplate provisions.

Credit Bid: a bid by a secured creditor in a Bankruptcy sale whereby the secured creditor offsets the allowed amount of its secured claim against the price at which it would purchase the assets.

Credit Enhancement: the improvement of the credit quality of a company or its Securities by employing resources, financial instruments or the credit of another entity to support such credit quality. Common methods of Credit Enhancement include Guarantees, Letters of Credit, surety bonds, reserve accounts, cash collateral accounts and Monoline Bond Insurance.

Credit Facility: a collective reference to the loans and commitments of the Lenders. Examples of Credit Facilities include: Revolving Credit Facilities, Term Loan Facilities, First Lien Facilities, Second Lien Facilities and Bridge Facilities.

Credit Rating: designations used by Ratings Agencies to give relative indications of credit quality.

Cure Period: the period provided in an Indenture or Credit Agreement for an Issuer/Borrower to cure (i.e., fix) a Default so it does not mature into an Event of Default. Also called a Grace Period. See Default, Event of Default and Acceleration.

Currency Swap: an arrangement entered into by a company for the purpose of Hedging foreign currency risk associated with the company's operations. For instance, a US-based company with operations in Europe might use a Currency Swap to protect itself from fluctuations in the Euro-to-Dollar exchange rate.

Custody Agreements: agreements signed by Selling Shareholders in IPOs or follow-on equity transactions along with Powers of Attorney. The custodian under the Custody Agreement is authorized to hold the share certificates between Pricing and Closing and deal with the transfer Agent at the Closing. One principal purpose of the Power of Attorney and Custody Agreement is to allow the Underwriters to deal solely with the custodian (rather than with each Selling Stockholder) at the Closing. This is particularly important where there are individual people who are Selling Stockholders. These folks could get hit by a bus (or, more likely, crash their Ferraris) between Pricing and Closing. The Underwriters don't want a busted trade if that happens.

DACA: acronym for deposit account control agreement. See Account

Control Agreement.

DAM: acronym for Debt Adjustment Mechanism. Also known as a Collateral Adjustment Mechanism or CAM.

Deal-Away Fee/Deal-Away Protection: another name for the Alternative Transaction Language.

Deal Toy: a gift (often made of Lucite) handed out to deal participants after the Closing. It makes a nice decoration for your office. Will not biodegrade.

Debenture: a Bond with a maturity longer than 10 years. Bonds with a maturity of 10 years or less are usually called Notes.

Debt Adjustment Mechanism: another name for Collateral Adjustment Mechanism or CAM.

Debt Prepayment: another name for the Debt Sweep.

Debt Sweep: a specific type of Mandatory Prepayment. This provision in a Credit Agreement requires that Term Loans be prepaid with the net cash proceeds of certain debt issuances (generally excluding all Permitted Debt issuances). Of course, any non-Permitted Debt issuance is also an Event of Default under a Credit Agreement, so this provision is somewhat redundant. But if there is a Prepayment Premium required to be paid with all Mandatory Prepayments, this clarifies that the Prepayment Premium is expected to apply at the time of the Debt Sweep. The Debt Sweep provision will not be subject to a Reinvestment Right.

Deemed Dividend: this tax issue is the reason you have to be very careful in structuring foreign subsidiary asset pledges, stock pledges and Guarantees for a US Borrower. A US Borrower whose loan receives support from its foreign subsidiaries, in the form of Security Interests, stock pledges and/or Guarantees, may be deemed to receive a dividend (a Deemed Dividend) for tax purposes from its foreign subsidiaries. A pledge of stock of a foreign subsidiary will not result in a Deemed Dividend if the Lenders settle for a 65 percent stock pledge from "first tier" foreign subsidiaries only (i.e., subsidiaries whose stock is held directly by the US parent or any of its domestic subsidiaries). Because of the Deemed Dividend issue, foreign subsidiaries generally do not provide Guarantees of US debt (although, depending on their tax status, in some instances foreign subsidiaries can provide such Guarantees). One common workaround for a US Borrower with significant operations overseas is for Lenders to make some (or all) of their loans directly to foreign subsidiaries. Because the Deemed Dividend rule does not apply to loans made to foreign subsidiaries, these foreign loans can be Guaranteed and secured by all the foreign subsidiaries and their assets, as well as by the US parent and its domestic subsidiaries. See Collateral Adjustment Mechanism.

Default: the beginning of trouble. Indentures and Credit Agreements

generally have three stages of trouble: the Default, the Event of Default and Acceleration. At stage one, the Default, the Issuer or Borrower has violated some provision of the Indenture or Credit Agreement. Left uncured for a specified period of time, together (in some cases) with notice from a disgruntled Lender or Bondholder, a Default will mature into an Event of Default (and the story continues in that definition).

Default Interest: the extra Interest accruing on amounts under a Credit Agreement following an Event of Default. Often Default Interest accrues on all outstanding amounts at the regularly applicable rate plus 200 Basis Points, but sometimes it only accrues on overdue amounts.

Defeasance: this is a way to escape the Covenants governing Bonds even during a Non-Call Period. Defeasance is a process by which an Issuer may have the Covenants under its Indenture (and even its payment obligations in the case of Legal Defeasance) discharged if the Issuer irrevocably deposits with the Trustee enough money (or US Treasury Securities) to cover all Interest and principal payments on the Notes until either maturity or the first date on which the Notes are Optionally Redeemable. This can be very, very expensive. Defeasance can take the form of Covenant Defeasance or Legal Defeasance. Legal Defeasance is not an available option under current law because no law firm can give the required tax opinion (i.e., "this defeasance will not be a taxable event to Bondholders"). There is no tax problem with Covenant Defeasance under current law because it does not let the Issuer off the hook from its payment obligations. See also Satisfaction and Discharge.

Delayed Draw Term Facility: a Term Loan Facility that is available to be drawn, usually subject to a list of specified conditions, at a certain point subsequent to the Closing Date, or at various times for a period subsequent to Closing. In the Commitment Letter, the terms of any Delayed Draw Term Facility will be included in the Senior Secured Facilities Term Sheet. A Delayed Draw Term Facility is often intended to be used for specifically identified acquisitions or Capital Expenditure programs.

Demand Registration Rights: another name for Demand Rights.

Demand Rights: a type of Registration Right that entitles the holder, subject to certain agreed upon conditions, to force the Issuer to register the Issuer's Securities with the SEC. Compare Piggy Back Registration Rights.

Depository Trust Company: a member of the US Federal Reserve System and an SEC clearing agency that brings efficiency to the Securities industry by retaining custody of millions of Securities issues, effectively "dematerializing" most of them so that they exist only as electronic files rather than as countless pieces of paper. What does this mean? Basically, it's the reason real Securities trading is different than in the movies—the reason you don't have to keep actual physical

Securities in the safe in your grandmother's basement. Instead, DTC takes custody of the Security (which is placed in DTC's vault) and then keeps an electronic record of who the real owners of the Security are.

Depreciation: in accounting, a method of allocating the acquisition cost of a tangible asset over the expected useful life of the asset by attributing portions of such cost to the periods during which the asset is being "used up" to earn revenues. Depreciation is not a method of valuation but rather of cost allocation. The Depreciation of an asset for accounting purposes is not necessarily a reflection of the asset's current market value. In accounting speak, a tangible asset Depreciates over time whereas an intangible asset Amortizes. See Amortization.

Description of Notes: a long-form summary of the Indenture provisions contained in the Offering Memorandum or Prospectus. For the important provisions, the Description of Notes is a verbatim recitation of what will be in the Indenture.

Designated Underwriters' Counsel: a law firm designated by the Issuer to serve as counsel to any investment bank that serves as an Underwriter on that Issuer's Securities offerings (whether public or private).

Diligence: see Due Diligence.

DIP Financing: shorthand for debtor-in-possession financing, which is financing arranged for a company for the period during which it is in the Chapter 11 reorganization process. Notably, claims for principal, interest and fees under a DIP Financing typically take Priority over all existing debt, even pre-Bankruptcy Secured Debt. As long as certain conditions are met, the Bankruptcy Code allows liens securing the DIP Financing to "prime" Liens securing the pre-Bankruptcy filing debt, in order to encourage Lenders to lend money to companies in Bankruptcy.

Directed Share Program: a plan put in place in connection with an IPO to let the Issuer's employees and other friends and family (including customers and suppliers) purchase a portion of the shares sold in the IPO. FINRA does not allow Underwriters or their counsel to buy in the Directed Share Program. Bummer.

Discount Notes: Notes that are issued for less than their face amount (Par Value). The important thing to remember is that although the Notes are issued below their face amount, the Issuer owes the face amount of the Notes when they mature. This means a holder of the Discount Note receives a return both off the Interest payment or Coupon (if there is one) and by having paid less than it will receive back at maturity. A Discount Note has an Accreted Value on the date it is issued equal to what was paid for it. The Accreted Value creeps up over time to equal the Par Value of the Bond. This creeping is called "accreting" and is treated as Interest expense to the Issuer (subject to the AHYDO Rules)

and Interest income to the Bondholder. If you hold a Discount Note close to your ear, you can actually hear the accretion occurring.

Disproportionate Impact Language: many Business MAC provisions contain Carveouts specifying that certain declines in the business will not trigger a Business MAC. Examples include Material Adverse Changes triggered by problems specific to a particular industry, poor economic conditions generally, regulatory changes or an outbreak of war. In many cases, there is then a Carveout to this Carveout known as Disproportionate Impact Language, which states that even if the Business MAC was triggered by one of the causes mentioned in the list of Carveouts (e.g., industry decline or general economic conditions), a Business MAC will be deemed to have occurred if the events had a disproportionate impact on that particular company.

Dividend Blocker Covenant: see Limitation on Restrictions on Payment of Subsidiary Dividends Covenant.

Documentation Agent: a title often granted to a Lender who takes a large portion of a loan commitment in the Syndication process. The position generally does not require any actions or entail any responsibilities. Essentially, it is a means for a Lender to get its name on the cover of a Credit Agreement and receive League Table Credit.

Drag Along Rights: allow a majority shareholder to require that a minority shareholder participate in a sale to a third party. The idea is that a majority shareholder may not be able to recognize the full value of its holdings unless it can sell the entire company to a third party by dragging along minority shareholders. Drag Along Rights would generally provide that the minority shareholder receive the same terms as the majority shareholder. Compare Tag Along Rights.

Drop Dead Date: the date on which the commitments set forth in the Commitment Letter will terminate if the Senior Facilities and the Notes or Bridge Loans (as applicable) have not funded pursuant to the terms and conditions in the Commitment Papers. The Drop Dead Date is usually found towards the end of the Commitment Letter—usually set at one or more months after the date of the Commitment Letter. In an acquisition financing, the Drop Dead Date is usually the same as the Drop Dead Date in the acquisition agreement (i.e., the date on or prior to which the acquisition needs to be consummated). Compare Countersign Deadline Date.

DTC: acronym for the Depository Trust Company.

Due Diligence: what lawyers and bankers do to learn about a company. In the M&A context, the buyer (and its lawyers and bankers) does Due Diligence so it can understand what it is buying. In Securities and Capital Markets transactions, the bankers and lawyers do Due Diligence in order to establish a Due Diligence Defense. In the bank loan market, bankers and lawyers do Due Diligence to make sure the deal makes sense. Diligence activities are broad and range from a

review of relevant documents and Financial Statements to plant visits and interviews with management, outside accountants, counsel and customers and suppliers.

Due Diligence Condition: a Condition Precedent, generally found in the text of the Commitment Letter, that the commitment is subject to the satisfactory completion of Due Diligence by the Arranger. In most cases, the Arranger will be expected to complete its Due Diligence prior to the signing of the Commitment Letter, in which case this Condition Precedent will be removed prior to signing. In early drafts of the Commitment Letter, the Due Diligence Condition is often included in brackets with a footnote indicating that it is expected to be removed upon the satisfactory completion of Due Diligence.

Due Diligence Defense: the Underwriters' principal defense in Securities offerings lawsuits. The Securities laws impose liability on certain persons and entities for damages resulting from any material untrue statement contained in, or omitted from, a Registration Statement. Issuers are strictly liable for the information in the Registration Statement, but other entities (including Underwriters and the board of directors) involved in the offering can avoid liability by demonstrating a Due Diligence Defense. Specifically, Underwriters and the board of directors have an affirmative defense to Section 11 and Section 12 liability if they have relied on experts for the Expertised Parts of the Prospectus and conducted a "reasonable investigation" for the other portions. Similar defenses are available to Rule 10b-5 claims made with respect to 144A/Regulation S offerings.

Dutch Auction: an auction where each seller specifies the price at which it is willing to sell and the purchaser accepts offers to sell until it has spent the amount it intends to spend, starting with the lowest price offered and working up the pricing ladder until the money to be spent is gone. In a "modified Dutch Auction," the process is the same except that all sellers are paid the same price based on the lowest price that will allow the purchaser to spend the intended amount.

EBITDA: this acronym stands for earnings before Interest, taxes, Depreciation and Amortization. Because it eliminates the effects of financing and accounting decisions, EBITDA is often used to assess a company's ability to service debt. See also Adjusted EBITDA.

ECF: acronym for Excess Cash Flow.

EDGAR: acronym for the SEC's Electronic Data Gathering, Analysis and Retrieval system. This is where you can retrieve a company's periodic and other SEC filings. It can be found at www.sec.gov.

Effective Subordination: the situation that occurs when one Tranche of debt is effectively, but not contractually, senior to another Tranche of debt. A Senior Secured Credit Facility and unsecured Senior Notes are examples. Even though the Senior Notes are not contractually Subordinated to the secured borrowings under the Senior Secured

Credit Facility, because the Credit Facility has Security and the Senior Notes do not, the Senior Notes are effectively Subordinated. See Subordination. Compare Contractual Subordination.

Engagement Letter: a letter that outlines the engagement of the Underwriters or Initial Purchasers to sell Securities on behalf of an Issuer. In a Commitment Paper package that contemplates a Bridge Loan component, an Engagement Letter is typically signed along with the Commitment Letter and the Fee Letter to ensure that the Borrower has retained responsible institutions to help it place the Securities to be issued to refinance (or obviate the need for) the Bridge Loan. In a Bank-Only Deal (where there is no Securities financing contemplated), there will usually be no Engagement Letter.

Equal and Ratable: used in the context of Liens to mean that two secured creditors share the same (or equal) rights in the Collateral.

Equitable Subordination: a power of a Bankruptcy court (which is a court of equity, after all) to Subordinate a claim of a party who engaged in fraudulent or otherwise unsportsmanlike conduct, in order to provide a remedy for innocent creditors and shareholders that suffered an injury as a result of the bad conduct. Equitable Subordination is a remedial, not penal, measure. A claim is Subordinated only to the extent necessary to offset the harm caused by the culpable creditor. Claims by insiders are subject to more rigorous scrutiny for Equitable Subordination than are claims by non-insiders.

Equity Claw: this Bond land Optional Redemption provision allows an Issuer to redeem a percentage of the outstanding Notes (generally 35 percent) with the proceeds of certain types of equity offerings during the Non-Call Period. The rationale for this exception to the Non-Call Period is that Bondholders will generally be happy if a portion of their Bonds is redeemed at a hefty premium (typically Par plus the Coupon) as a result of new equity coming into the Issuer.

Equity Commitment Letter: in a Leveraged Buyout, the agreement pursuant to which the Sponsors commit to provide the Equity Contribution.

Equity Contribution: think of this as the "down payment" portion of the purchase price for the Target. It is the portion of the acquisition consideration that is paid using equity money provided by the Sponsor fund. This is generally documented in the Equity Contribution letter, which is drafted by the M&A deal team (i.e., it is not part of the Commitment, Fee and Engagement Letter package). See Rollover Equity.

Equity Cure: an infusion of cash from stockholders in exchange for capital stock of the Borrower in order to cure a Financial Covenant Default. This is a negotiated feature that Sponsors often request. In the most common version of this provision, the proceeds of the equity issuance are treated as EBITDA for purposes of determining Financial

Covenant compliance. If a deal has Financial Covenants, Lenders want to be able to use those Covenants to police the Borrower's operating performance and call Defaults as appropriate. While infusions of junior capital are generally a positive event from a Lender's perspective, by allowing stockholders to inject equity into the company after a Default and treating that equity as if it were EBITDA, Lenders lose the ability to call a Default and to work with the Borrower to negotiate appropriate remedies (including potential changes to the structure, pricing, and Collateral provisions of the Credit Facilities). This masking of operational problems can be particularly harmful over consecutive periods. As a result, use of an Equity Cure (where it is permitted at all) is typically limited in amount and frequency based on negotiations. Note that more conservative versions of the Equity Cure allow the stockholders to inject equity to pay down debt but not to count the new equity as EBITDA.

Equity Kicker: an equity interest offered to a debt provider (i.e., a Lender under a Credit Agreement or a Bond buyer), sometimes in the form of Warrants issued by the company to such debt provider, typically as an incentive for such Lender or Bondholder to buy the debt.

Equity Prepayment: a specific type of Mandatory Prepayment. This provision in a Credit Agreement requires the loans to be prepaid with the net cash proceeds of certain equity issuances by the "top" entity bound by a Credit Agreement, which in some cases may be the Borrower, but in other cases may be a Holdco Guarantor. Note that sales of equity of subsidiaries will not be covered here, as such sales are covered in the Asset Sale Sweep because that equity is an asset of the entity that owns the stock of the subsidiary in question. In a non-public deal, this provision will generally not apply to additional equity issued to the existing equityholders in return for additional capital contributions.

Equity Sweep: another name for an Equity Prepayment.

eToys: an online retailer specializing in the sale of toys. Also the plaintiff in an important 2005 case where the court held that the lead Underwriter in a Firm Commitment Underwriting may have a fiduciary duty to the Issuer in certain circumstances. In light of the decision, most banks now include language (now known as eToys language) in their Commitment Letters and Underwriting Agreements specifically denying the existence of any such fiduciary duty. See *EBC I, Inc. v. Goldman, Sachs & Co.,* 832 N.E.2d 26 (N.Y. 2005).

Eurodollar: although this is technically a reference to the market for dollar-denominated loans outside the United States, it is most often used interchangeably with the term LIBOR to refer to an Interest Rate index determined in London. See LIBOR.

Eurodollar Loans: loans made under the Eurodollar (or LIBOR) option for Interest Rates. See Applicable Margin and LIBOR.

European Selling Legend: disclosure in the plan of distribution section of an Offering Memorandum or the underwriting section of a Prospectus that is inserted to make sure a US-based deal complies with the regulations across the pond.

Event of Default: if you are experiencing one of these, things are not going well. As discussed in the definition of Default, Indentures and Credit Agreements basically have three stages of trouble: the Default, the Event of Default and Acceleration. At stage two, the Event of Default, the Default has matured into an Event of Default because the Issuer or Borrower has failed to cure the Default (and in some cases a disgruntled Lender or Bondholder has provided a required notice) within a specified period of time (or Cure Period). Although note that certain Default events such as Bankruptcy Defaults are automatic Events of Default. So what happens now? See Acceleration.

Evergreen: a provision in a contract that allows for the automatic renewal after the initial term of such contract for successive terms of an agreed upon length so long as neither party gives advance notice of an intent not to renew. As an example, the contract language will look something like this: "The term of this agreement shall commence on January 1, 2009 and continue through December 31, 2009, and shall continue from year to year thereafter unless terminated pursuant to section X." Evergreen provisions are useful because they prevent you from having to renegotiate your entire agreement each year unless one party is demanding it.

Excess Cash Flow: a calculation of how much extra cash the Borrower has generated during a particular period of time that can be used to pay down debt. It is a negotiated formula that starts with Adjusted EBITDA (or sometimes net income), plus some adjustments for changes in Working Capital, minus scheduled repayments of debt, Capital Expenditures, Interest expense and provisions for current taxes. See Excess Cash Flow Sweep.

Excess Cash Flow Sweep: a provision in a Credit Agreement that requires the Borrower to prepay loans in an amount equal to a specified percentage of Excess Cash Flow. The Excess Cash Flow Sweep percentage is sometimes subject to Step Downs.

Exchange Act: the Securities Exchange Act of 1934, which governs the continuing and reporting obligations of companies with registered Securities.

Exchange Note Term Sheet: the Term Sheet for the Exchange Notes found in the Commitment Letter. This Term Sheet is generally an exhibit to the Bridge Facility Term Sheet.

Exchange Notes: the first thing to know about Exchange Notes is that they are not the actual Bonds the Issuer intends to sell to finance the purchase of the Target (although the terms of the two are similar). So what are they? After the Bridge Loans mature (generally in one year),

they automatically convert into Term Loans (if the Bridge Loans have not yet been taken out). These Term Loans can then be "flipped," generally at the option of a certain percentage of the Term Loan holders, into Exchange Notes, which are High Yield Notes, generally with Registration Rights and Call Protection. Note that in some bank forms, Bridge Loans flip automatically into Exchange Notes one year after the Bridge Loan Closing (i.e., without an interim step as Term Loans). Note that Exchange Notes are not the same as Exchangeable Notes.

Exchange Offer: this is the process that allows you to flip (or exchange) the private Notes that were issued in a 144A Offering into SEC-registered Notes. The Exchange Offer is an SEC registered Exchange Offer that takes place within a certain period of time after the Closing of a Rule 144A Offering. In order to comply with its obligations under the Registration Rights Agreement, the Issuer makes an offer to holders of the Rule 144A Notes to exchange those Notes for registered, freely tradable Notes (that otherwise have the same terms). Exchange Offers can be used for Investment Grade and High Yield Notes, but not Convertible Notes. Exchange Offers are also known as A/B Exchange Offers and Exxon Capital Exchange Offers. Recent changes to Rule 144 have significant effects on the likelihood of Exchange Offers. See Latham & Watkins Client Alert No. 669, The Future of Registration Rights in Private Offerings of Debt Securities (January 22, 2008), available at www.lw.com.

Exchangeable Notes: the term used for Convertible Bonds that are convertible into the stock of an entity other than the Issuer (typically a parent or other Affiliate of the Issuer). These are not the same as Exchange Notes.

Expertised Parts: generally, the audited Financial Statements contained in the Registration Statement. Under Section 11, the Underwriters and board of directors can avoid liability for the expertised portion of the Registration Statement if they can show they had no reasonable grounds to believe, and no actual belief, that such statements were untrue or omitted material facts. Note that unaudited Financial Statements are not expertised.

Exxon Capital Exchange Offer: another name for Exchange Offer. The term derives from the Exxon Capital Holding Corp., SEC No-Action Letter dated May 13, 1988.

Federal Funds: immediately available funds (i.e., a wire transfer that lands in the recipient's account on the day it is sent).

Fee Credit: this is how companies get some of their money back under the Fee Letter if/when they end up issuing the High Yield Bonds following a funded Bridge Loan. Fee Credit refers to provisions that are sometimes agreed to in a Fee Letter (or separate Fee Credit Letter) whereby (i) a portion of the Funding Fee is refunded or credited against

the Placement Fee if the High Yield Bond deal occurs after the Bridge Loans are funded and/or (ii) a portion of the Rollover Fee is refunded or credited against the Placement Fee if the High Yield Bond deal occurs after the Rollover Fee is paid (when the Bridge Loan converts to a Term Loan). Certain institutions have strong preferences for whether this should be structured as a credit or as a refund.

Fee Credit Letter: some banks provide the Fee Credit in a separate letter called the Fee Credit Letter. Other banks include the Fee Credit terms in the Fee Letter itself or in the Engagement Letter.

Fee Letter: the part of the Commitment Papers package that sets forth the fees and contains the Market Flex provisions. This is a separate letter that outlines certain fees to be paid in connection with the various Credit Facilities contemplated by the Commitment Letter. Note that this is a separate letter from the Commitment Letter and is often not shared with the Target (among others). Always be careful as to whom this letter is distributed.

Fiduciary Out: a provision in a merger agreement that allows the board of directors to terminate a proposed merger if a "better" deal arises with another party.

Final: "the Final" is a reference to the Final Offering Memorandum or Prospectus. The Final is printed after Pricing and includes all the Pricing Terms. Compare Red, and see Pricing Supplement.

Financial Buyer: generally, a Sponsor that is acquiring a company as an investment rather than to achieve strategic Synergies. Compare Strategic Buyer.

Financial Covenants: the most famous kind of Maintenance Covenants. See Interest Coverage Ratio, Fixed Charge Coverage Ratio and Leverage Ratio.

Financial Statements: the Income Statement, Balance Sheet and Cash Flow Statement of a company. See Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What You Need to Know (May 25, 2007), available at www.lw.com.

Financing Out: a Condition Precedent in the merger or Stock Purchase Agreement that makes the acquisition transaction subject to financing. The consequence of a Financing Out is that the acquiror does not have to consummate the acquisition if the loan commitments (as set forth in the Commitment Letter) do not fund. The Financing Out is a big deal and is hugely important to the overall structure of the financed acquisition transaction because a Financing Out effectively incorporates into the acquisition agreement all the Conditions Precedent in the Commitment Letter. Without a Financing Out, the acquiror will insist on fewer Conditions Precedent in the Commitment Letter because the acquiror knows it is contractually obligated to consummate the purchase whether or not the financing is still available on the Closing Date.

Financing Statement: the first thing to know is that these are not the Financial Statements. The purpose of Financing Statements is to Perfect a Security Interest in many classes of personal property. A Financing Statement is used in a secured financing and is a simple document that contains the name and address of each of the debtor and the Secured Party and contains a brief description of the Collateral as well as other statutorily required information. The Financing Statement serves as public notice of the Security Interest. To be effective, the Financing Statement must be completed properly (particular attention must be paid to the exact legal name of the debtor) and be filed in the proper filing office. It is always advisable to file a Financing Statement as soon as possible, but in any event, within ten days of the Closing Date, in order to avoid Preference concerns if the debtor were to file for Bankruptcy.

FINRA: acronym for Financial Industry Regulatory Authority, Inc. FINRA is the result of the consolidation of what used to be the National Association of Securities Dealers, Inc. (NASD) and the New York Stock Exchange, Inc.'s (NYSE) member regulation, enforcement and arbitration operations. FINRA is responsible for regulatory oversight of Securities firms. Underwriters must make FINRA filings in connection with IPOs and certain secondary equity offerings of newly public companies. See COBRA.

Firm Commitment Underwriting: this is the type of structure we see in virtually all underwritten deals, whereby upon signing the Underwriting Agreement the Underwriters make a firm commitment to buy the Securities (rather than just agreeing to use their best efforts to find buyers for them).

First Lien: shorthand for "first priority Lien," this Lien has Priority over other Liens, subject to a negotiated list of exceptions for other Liens permitted under the Credit Agreement.

First Lien Facilities: these sit at the top of the Capital Structure. First Lien Facilities are Senior Secured Credit Facilities (usually a Term Loan Facility and a Revolver) that have a First Lien on the Collateral. In a Commitment Letter, the terms of the First Lien Facilities are contained in the Senior Secured Facilities Term Sheet.

Fitch: Fitch Ratings, a subsidiary of Fimalac, S.A. Fitch is a Ratings Agency.

Fixed Assets: assets that have a useful life of more than one year and are not intended to be consumed by or sold to customers. Examples include equipment, machinery, buildings and land. Under GAAP, Fixed Assets are recorded on a company's Balance Sheet at their acquisition cost minus an accumulated charge for Depreciation.

Fixed Charge Coverage Ratio: the ratio of EBITDA (or Adjusted EBITDA) to Fixed Charges. Most High Yield Indentures permit Issuers to incur debt in instances where, Pro Forma for the incurrence of such

debt and the use of the proceeds therefrom, the Issuer's Fixed Charge Coverage Ratio would be above a certain threshold—generally 2.00 to 1.00. The basic idea here is that the Issuer can incur more debt if, after taking into account the newly incurred debt, the Issuer would have at least two dollars of cash flow (or EBITDA) on a trailing twelve-month basis for each one dollar of Interest expense.

Fixed Charges: a more comprehensive way to define Interest expense for Covenant purposes. Fixed Charges are generally defined in an Indenture or Credit Agreement to mean the sum of consolidated interest expense plus certain dividends on Preferred Stock. A portion of consolidated lease expense is also sometimes included. Note that some form Credit Agreements include scheduled principal payments and Capital Expenditures in the definition of Fixed Charges.

Fixed Income: Bonds or Notes are (usually) a type of fixed-income Security because the Interest Rates are generally fixed. By contrast, Credit Agreements generally have Interest Rates that "float," meaning they are a certain margin above LIBOR, which is a moving target. See Applicable Margin.

Fixed Rate: an Interest Rate that is locked in upon issuance of the debt and does not change over the course of the life of the debt. Most (but not all!) Bonds are Fixed Rate debt. Compare Floating Rate.

Fixture: a type of personal property defined in Article 9. Fixtures are goods that are so related to real property that an interest in them arises under real property law. The boiler that heats a building is an example of a Fixture.

Flex: another name for Market Flex.

Floating Rate: an Interest Rate that periodically adjusts based on a market index rate, such as the Base Rate or LIBOR. Most Term Loans and Revolving Loans are Floating Rate debt. Compare Fixed Rate.

Follow-On Offering: an offering of common shares subsequent to the Initial Public Offering.

Forbearance: a deal the Borrower cuts with its Lenders where the Lenders agree to refrain from accelerating the debt for a limited period of time while the Borrower endeavors to get its act together. In a typical situation, Lenders might agree not to exercise remedies while giving the Borrower time, beyond any available Cure Period, to improve performance, find a new financing source or otherwise agree upon an appropriate Amendment to the Facility to reflect the new (and usually unpleasant) circumstances. The Lenders will want to make sure that other creditors (such as Bondholders) have similarly agreed not to exercise remedies during the same time period. The Lenders will typically seek to tighten various terms, such as demanding additional Collateral, increased pricing and stricter financial reporting, in exchange for their Forbearance.

Foreign Private Issuers: certain Issuers of Securities in the United States (other than a foreign government) organized in a jurisdiction outside of the United States. Foreign Private Issuers are treated differently than US domestic Issuers in several important respects, including the types of Financial Statements they are required to file with the SEC. See Latham & Watkins article in the International.

Financial Law Review: Securities Offerings and Listings in the US: an Overview for Non-US Issuers (2007 Update) (March 1, 2007), available at www.lw.com. See also Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What Non-US Issuers Need to Know (May 25, 2007), available at www.lw.com.

Form 8-K: form used to file current reports under Section 13 or 15(d) of the Exchange Act. The form (which you can pull up by googling "Form 8-K") must be filed upon certain specified events (such as the appointment of a new executive officer or the entering into of a material contract).

Form Check: the exercise of checking to make sure that a draft SEC form (such as an S-1 or a 10-K) complies with all the requirements of that form, including all the applicable provisions of Regulation S-K.

Forward: a contract in which a buyer agrees to buy, and a seller agrees to sell, a given quantity of an underlying asset on a specified future date at a price agreed to at the time the contract is entered into. A Forward is an Over-the-Counter transaction. Compare Future.

Fraudulent Transfer: a transfer made by a party (i) that was made with actual intent to hinder, delay or defraud that party's creditors or (ii) in which the party making the transfer received less than reasonably equivalent value in exchange and (a) was insolvent, (b) had unreasonably small capital or (c) intended to incur debts beyond its ability to pay them. A Fraudulent Transfer is subject to Clawback from the company under state Fraudulent Transfer laws and, if the party is in Bankruptcy, under the Bankruptcy Code provided that the statute of limitations has not expired. The statute of limitations is two years for actions under the Bankruptcy Code and is typically four years under state law.

Free Writing Prospectus (FWP): a type of written document that the SEC made available as part of Securities Offering Reform. FWPs are short-form written Prospectuses that are typically used to supplement previously disclosed information. FWPs are an efficient means of disclosing additional information because they are not subject to the strict form and content requirements of full statutory Prospectuses. In most but not all cases, FWPs need to be filed with the SEC concurrently with first use. See Latham & Watkins publication: Christmas in July—the SEC Improves the Securities Offering Process (August 2005), available at www.lw.com.

Full Disclosure Rep: another name for the Representation Regarding Accuracy of Disclosed Information.

Funding Fee: a fee provided for in the Fee Letter that is paid to the Arranger of a Bridge Loan if and only if the Bridge Loan is funded. Also known as a Takedown Fee.

Funds Flow Memorandum: the Closing document that tells everybody where the money is going. In more complex transactions, the memorandum is often executed or initialed by the Issuer/Borrower, particularly when the funding bank is directed to apply the funds in some manner on the Issuer's/Borrower's behalf.

Future: similar to a Forward, except that a Future is based on a standardized set of terms (rather than being specifically negotiated between two parties) and is traded on an exchange.

FWP: acronym for Free Writing Prospectus.

GAAP: generally accepted accounting principles. GAAP represents a set of authoritative standards for recording and reporting accounting information and is the standard by which US companies report their financial statements. US GAAP refers to GAAP in the United States.

General Corporate Purposes: code phrase meaning generally anything the law allows. This is the loosest way to designate the Use of Proceeds. Note that if dividends are permitted to be made from debt proceeds, this should be specifically designated as a Use of Proceeds, as reasonable minds differ on whether dividends are general in nature.

General Intangible: a type of personal property defined in Article 9. General Intangibles are the catch-all category for any property subject to Article 9 that does not fall into any of the other specific definitions of property used in Article 9. Most contracts are General Intangibles.

Grace Period: another name for a Cure Period.

Grantor: an entity (usually a Borrower or a Guarantor) who "grants" to the applicable Secured Parties a Security Interest in its assets pursuant to a Security Agreement.

Green Shoe: a special type of purchase Option named in honor of the Green Shoe Company—the first Issuer to have this provision. Green Shoe is the nickname for the Over-Allotment Option granted to the Underwriters in the Underwriting Agreement. The Green Shoe is an Option, typically for up to 30 days, to allow the Underwriters to purchase up to 15 percent (a Cap imposed by FINRA rules) more shares than the original number sold by the Issuer in the offering. The purchase price per share for exercising the Green Shoe is the same price as in the related offering. The Green Shoe provides protection that allows Underwriters to "over-allot," meaning to sell more shares than the number being sold in the offering. The Underwriters can later use the Green Shoe to cover the Syndicate Short Position created by the

Over-Allotment sales if the Option price is less than the then prevailing market price per share. Underwriters generally use the Over-Allotment Option when demand for a Security proves higher than expected and therefore it is too expensive to buy additional shares back in the open market to cover the Syndicate Short Position. Also referred to as "the Shoe." Note the 15 percent Cap does not apply to 144A Offerings. See Naked Short and Refreshing the Shoe.

Grid Based Pricing: when the Applicable Margin in a Credit Agreement fluctuates based upon a certain metric set forth in a grid (usually known as the Pricing Grid) in the Credit Agreement. Specifically, Grid Based Pricing refers to having the Applicable Margin move based either on the Credit Rating or the Leverage Ratio (or any other agreed upon metric) of the Issuer.

Gross Physical Settlement: see Physical Settlement.

Gross-Up: shorthand for the Tax Gross-Up.

Guarantee: just like when your parents "guarantee" your lease or Mortgage, a Guarantee is a promise by an entity that is not the direct obligor of the debt to be responsible for that debt. For instance, the Issuer's/Borrower's obligation under an Indenture/Credit Agreement are frequently guaranteed by the Issuer's/Borrower's Subsidiaries. See Guarantors.

Guarantors: subsidiaries or parent entities that Guarantee the debt incurred by the Issuer or Borrower. See Guarantee. In Commitment Letters, both the Senior Secured Credit Facilities and the Bridge Facilities will usually have the same Guarantors, which will be described in the Term Sheets. Generally, Credit Facilities are Guaranteed by all domestic subsidiaries and any parent holding companies of a US Issuer or Borrower. For tax reasons, foreign subsidiaries of the Issuer or Borrower generally do not Guarantee the domestic Credit Facilities. See Deemed Dividend.

Gun Jumping: the impermissible offering of, or publicity for, Securities during the Prefiling Period.

Hair-Trigger: certain Defaults under a Credit Agreement that have no Grace Period—these Defaults are automatic Events of Default upon their occurrence.

Haircut: banker slang for a discount.

Half a Turn: see Turn. This is half of it.

Happy Meal: the repurchases of stock made by an Issuer from hedge funds or other Convertible Bond buyers with the proceeds of a Convertible Bond offering. This transaction earned its name because of the convenience to all parties, as stock repurchases are a frequent Use of Proceeds in Convertible Bond offerings and hedge funds frequently Short the Issuer's Common Stock when purchasing its Convertible

Bonds. Happy Meals also generally come with a free toy.

Hard Call: a Prepayment Premium that has to be paid both for Voluntary Prepayments and Mandatory Prepayments. Even a Hard Call provision may include negotiated exceptions for certain Mandatory Prepayment provisions, such as the Excess Cash Flow Sweep. Compare Soft Call.

Hedge: an investment or strategy that attempts to reduce the impact of adverse fluctuations in the price of one asset by taking an offsetting position in another asset. For instance, many companies Hedge their foreign exchange exposure by entering into a Currency Swap.

Hedging Obligation Language: used in the context of Commitment Letters, this language is generally found in the Fee Letter and is a provision granting the Arranger a right of first refusal to provide any required Hedging.

High Yield: the Interest Rate (and Yield) on High Yield Bonds.

High Yield Bonds: Bonds rated below Investment Grade by the Ratings Agencies.

Holdco: another name for Holding Company.

Holdco Debt: debt at the Holdco level. Holdco Debt is an interesting creature. It is generally not Guaranteed by the Operating Company below it. So from the Holdco debtholders' perspective, Holdco Debt is debt. But from the lower operating company perspective, the Holdco Debt is essentially equity—because payments on the Holdco Debt can only be paid with dividends up from the Operating Company. The ability to incur new debt at a Holdco level depends on whether the operating company Indentures and Credit Agreements restrict Holdco Debt.

Holdco Flex: a type of Structure Flex that permits the Arranger to restructure a portion of the debt that was originally to be borrowed by the Operating Company and move it to debt at the Holding Company level. See Holdco Debt.

Holdco Guarantor: any parent entity of a Borrower or Issuer that acts as a Guarantor of the Borrower's or Issuer's debt.

Holder in Due Course: a party who purchases a Negotiable Instrument in good faith for value without notice that the instrument is defective or has been dishonored or claimed against by others. Generally, when a party sells a Negotiable Instrument with a non-apparent defect to a Holder in Due Course, that Holder in Due Course takes good title to the Negotiable Instrument despite the competing claims of another person, subject to certain defenses such as fraud or duress (known as "real defenses").

Holding Company: a company that sits on top of (or "holds" the stock of) the Operating Subsidiary that is directly below it. This concept sometimes connotes a company that does nothing else (i.e., has no

operations). See Holdco Debt and Holdco Guarantor.

IFRS: International Financial Reporting Standards issued by the International Accounting Standards Board. This is the international equivalent of US GAAP. More than 100 countries permit or require use of IFRS for preparing Financial Statements of listed companies, including countries in the European Union, Australia, Brazil, Canada, Chile, China, India, Israel, Mexico, South Africa and South Korea. Rule amendments adopted by the SEC in December 2007 allow Foreign Private Issuers to use Financial Statements without reconciliation to US GAAP if the Financial Statements are prepared using the English language version of IFRS issued by the International Accounting Standards Board (IASB). See Latham & Watkins Client Alert No. 667, SEC Accepts Financial Statements From Foreign Private Issuers Without Reconciliation to US GAAP If Prepared Under International Financial Reporting Standards (January 16, 2008), available at www.lw.com.

In the Money: a stock Option is In the Money when the holder can exercise it for a profit. A Convertible Bond is In the Money when its Conversion Value exceeds its Par Value.

Income Statement: a financial statement on which a company reports its results of operations over a period of time (usually monthly, quarterly or annually). Also commonly referred to as a Profit and Loss Statement or P&L Statement. Think of an Income Statement as a movie and a Balance Sheet as a snapshot. See Balance Sheet.

Inconsistent Information Out: this Condition Precedent lets the Lenders out of their commitment if they discover any new, materially adverse information. This is a Condition Precedent to the financing commitment generally found in the text of the Commitment Letter to the effect that the Arranger has not become aware of any new or inconsistent information with respect to the Target since the date of the Commitment Letter that the Arranger deems materially adverse in relation to the information made available prior to the signing of the Commitment Letter. Also referred to as the No New Information Out.

Incremental Facility: a post-Closing addition to an existing Credit Facility on substantially the same terms as the existing Credit Facility. Incremental Facilities are typically used to finance acquisitions, investments or even dividends. The existing Lenders do not pre-commit to provide the Incremental Facility, but do pre-approve the incremental leverage. At the time a Borrower desires to add on to the existing Credit Facility, it must seek new commitments (from existing or new Lenders). Incremental Facility debt is additional Secured Debt that shares Collateral with the pre-existing First or Second Lien debt. Lenders focus intently on the amount of the pre-approved incremental secured leverage because of potential implications for Credit Ratings and recovery. Further, if the loans under the Incremental Facility have

terms that are more favorable to the incremental Lenders than the terms of the existing loans, then the existing loans may lose value as Lenders trade out of the existing Credit Facilities and into the Incremental Facility. This is why Incremental Facilities sometimes include an MFN Pricing provision, so that if the Incremental Facility is priced more richly than the existing loans, the margin on the existing loans is automatically increased. At the Commitment Papers stage, some terms of the Incremental Facility are set forth in the Senior Secured Facilities Term Sheet. See MFN Pricing. Also known as an Accordion Feature.

Incurrence Covenants: Negative Covenants (such as an Indebtedness Covenant or a Restricted Payments Covenant) that prohibit a Borrower or Issuer from engaging in voluntary actions except under agreed conditions or subject to specified Caps. Compare Maintenance Covenants.

Indebtedness Covenant: this Incurrence Covenant restricts the incurrence of additional indebtedness. In a High Yield Indenture, this Covenant is structured to restrict the incurrence of additional debt unless either a Pro Forma Ratio Test is met or a Permitted Debt Basket is available. In a Credit Agreement, it is generally structured as a flat prohibition on all additional debt other than specific negotiated Baskets of Permitted Debt.

Indemnification Annex: generally the first exhibit to the Commitment Letter, this annex lays out the terms of the indemnification that must be provided by the Borrower or the Sponsor to the Arranger as a condition to the offering of the commitment. Some bank forms incorporate the indemnification provisions into the text of the Commitment Letter.

Indenture: the governing document for a series of Bonds. Generally drafted on a punishing timeframe after the Description of Notes is finalized, the Indenture is a contract between the Issuer and the Trustee (who acts as a sort of Bondholder representative) pursuant to which Bonds are issued.

Independent Contractor Provisions: provisions in the text of the Commitment Letter stating that the Arranger is an independent contractor and that nothing in the Commitment Letter will be deemed to create an advisory, fiduciary or agency relationship. Also called No Fiduciary Duty Provisions. See eToys.

Independent Director: directors who do not have a material relationship with the listed company—i.e., they are outsiders, and certainly not employees. Sarbanes-Oxley and the rules adopted by the stock exchanges have a complex set of requirements as to who qualifies as independent. In general, you know one when you see one. SEC rules require that the audit committee of a company be comprised entirely of Independent Directors. Stock Exchange rules require that the full board be comprised of a majority of Independent Directors.

Index-Linked Pricing: the concept of providing an alternative to Base Rate and LIBOR-based pricing in a Credit Facility. Index-Linked Pricing tracks some form of alternative index that is appropriate for the Borrower in question. In deals featuring Index-Linked Pricing, the applicable Interest Rate is generally the greater of LIBOR plus a given margin and the alternative index plus a given margin.

Initial Public Offering: the first public offering of shares of Common Stock of a company. Following an Initial Public Offering (or IPO), a company becomes an SEC Reporting Company (if it wasn't already).

Initial Purchasers: in a Rule 144A Financing and Regulation S offering, Initial Purchasers play essentially the same role that Underwriters play in a registered transaction. Rule 144A provides a resale exemption from the registration requirements of the Securities Act, permitting the investment banks that initially purchase the Securities from the Issuer in a Rule 144A Financing to resell to big institutions (known as QIBs) without being deemed to be Underwriters under Section 2(a)(11) of the Securities Act. Since we can't call them Underwriters, we call them Initial Purchasers.

Institutional Term Loan: a Term Loan Facility intended to be sold to non-bank institutional investors. Historically, Institutional Term Loans have longer maturities and back-end-loaded repayment schedules. See Tranche B Term Loans.

Insurance Proceeds Prepayment: a specific type of Mandatory Prepayment. This provision in a Credit Agreement requires the loans to be prepaid with the excess proceeds of casualty or condemnation insurance, beyond amounts applied to rebuild the affected asset or otherwise reinvested in the business.

Insurance Proceeds Sweep: another name for an Insurance Proceeds Prepayment.

Integration: a doctrine whereby purported Private Offerings are "integrated" with SEC-registered offerings, thereby blowing the Private Placement exemption. It is important to look at the applicable law and lore whenever you have a public and Private Offering close in time.

Intercreditor Agreement: an agreement that sets forth the rules of engagement between two groups of Lenders with respect to shared Collateral or other intercreditor relationship matters. Think of this as a prenuptial agreement between two classes of creditors. Apart from addressing the obvious point that the First Lien Lenders get paid out first from Collateral proceeds and the Second Lien Lenders get paid out second in First Lien/Second Lien deals, Intercreditor Agreements also lay out a number of important provisions regarding the right of each Lender group to take action with respect to the Collateral and the Borrower generally. For example, in the Mezz market, the terms of

the Subordination are set forth in an Intercreditor Agreement between the Mezz Lenders and the Administrative Agent under the Credit Agreement.

Interest: an amount the Borrower/Issuer pays for borrowing money under the Credit Facility/Notes, generally described as a percentage of the principal amount that is to be paid each year.

Interest Coverage Ratio: often used as another name for the Fixed Charge Coverage Ratio found in most High Yield Indentures. In Credit Agreements, an Interest Coverage Ratio includes only Interest in the denominator, whereas the Fixed Charge Coverage Ratio denominator includes all sorts of other fun stuff. See Fixed Charges.

Interest Payment Date: the date stated in an Indenture or Credit Agreement when an Interest payment is due. See Interest Period.

Interest Period: the period of time under an Indenture or Credit Agreement during which the Interest associated with a particular Interest payment accrues. In most (but not all) Indentures, there are two Interest Periods per year. In Credit Agreements, the number of Interest Periods per year can vary widely, especially if the Borrower chooses to have LIBOR Loans (which may bear Interest based upon 1, 3, 6, 9 or 12-month LIBOR).

Interest Rate: the rate of Interest paid by the Borrower/Issuer.

Interest Rate Swap: an arrangement entered into by a company to Hedge its Interest Rate exposure. Companies frequently use Interest Rate Swaps to effectively convert their Floating Rate debt instruments into Fixed Rate debt instruments.

Internal Controls and Procedures: a company makes a big sale out of its Wichita office. How does that company ensure that the sale properly flows through its accounting books and records and ultimately its Financial Statements (which are assembled at its headquarters in California)? The answer is by having effective Internal Controls and Procedures. The SEC defines Internal Controls and Procedures as a process designed by the CEO and CFO of a company and put into place by the board of directors and management of the company to provide reasonable assurances about the reliability of financial reporting and the preparation of Financial Statements. See SOX Section 404.

Investment Grade: a rating of Baa3 or better by Moody's, BBB- or better by S&P or BBB- or better by Fitch. For a discussion of Investment Grade Bond Covenants, see White Paper, Improving Covenant Protections in the Investment Grade Market (December 17, 2007), published by the Credit Roundtable in association with the Fixed Income Forum, available at www.creditroundtable.org.

Investment Grade Bonds: Bonds with an Investment Grade rating that traditionally have significantly fewer Covenants than High Yield Bonds.

IPO: acronym for Initial Public Offering.

Issuer: the company that is the seller (or Issuer) of Securities.

Issuing Bank: the financial institution that issues Letters of Credit under the Credit Agreement.

Item 10: Item 10 of Regulation S-K, which imposes additional disclosure requirements and restrictions when a non-GAAP financial measure is included in certain formal SEC filings. See also Regulation G.

Itemized Flex: another name for Closed Flex.

Judgment Currency: in Credit Agreements with a foreign Borrower or where there are one or more foreign Tranches, there are typically provisions that allow for the original currency of the loans to be converted into an alternative currency for the purpose of obtaining judgment in any court. This alternative currency is known as the Judgment Currency. The Judgment Currency provisions exist because, although Credit Agreements generally provide for payments in a specified currency, it is important to have a conversion mechanism to deal with the possibility that a judgment may nevertheless be awarded in an alternative currency.

Junior Debt: a general reference to a slug of debt that is "lower" in the Capital Structure than other debt. For example, if a company has both Senior Subordinated Notes and Senior Notes, the Senior Subordinated Notes are "junior," even though the word "senior" appears on the cover of the Indenture because those holders have agreed to be Subordinated in right of payment to the Senior Notes. Compare Senior Debt.

Junk Bonds: another name for High Yield Bonds or Non-Investment Grade Bonds.

KFC: acronym for Kentucky Fried Chicken.

KYC: acronym for "Know-Your-Customer;" refers to a policy implemented to conform to a customer identification program mandated under the USA PATRIOT Act. KYC policies have become increasingly important globally to prevent identity theft, fraud, money laundering and terrorist financing.

L Plus: shorthand for "LIBOR plus," used in stating the Applicable Margin in respect of a Floating Rate of Interest that is to be tied to LIBOR, such as "L+300 bps."

Lady Macbeth Strategy: a takeover tactic used by a third party pretending to be a White Knight. After the third party has gained the Target's confidence, it teams up with the hostile bidders to acquire the Target.

Large Accelerated Filer: a category of Issuer created by SEC rules. An Issuer's status as a Large Accelerated Filer, as opposed to an Accelerated Filer, a Non-Accelerated Filer or a Smaller Reporting Company, determines when its Financial Statements go Stale and

when it has to comply with SOX Section 404. An Issuer qualifies as a Large Accelerated Filer if (i) its Public Float is greater than $700.0 million as of the last business day of the second quarter of the Issuer's preceding fiscal year and (ii) it has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 months, including the requirement to file an annual report. Once an Issuer is in Large Accelerated Filer land, its Public Float has to fall below $500.0 million to get out. See Latham & Watkins Desktop Staleness Calendar, available at www.lw.com.

Layering: see Anti-Layering Covenant.

LBO: acronym for Leveraged Buyout.

LBO Fund: another name for a Sponsor.

L/C: shorthand for a Letter of Credit.

Lead Arranger: in a transaction with more than one Arranger, the primary or original Arranger engaged by a Borrower or Sponsor in connection with structuring a particular financing.

Lead Manager: in bank land, another name for the Lead Arranger. In Securities land, another name for the Lead Managing Underwriter.

Lead Managing Underwriter: the Underwriter designated by the Issuer as the Lead Managing Underwriter will generally run the show for the Underwriters, selecting counsel, actively participating in the drafting and serving as Bookrunner for the Syndication. The Lead Managing Underwriter will receive Left Placement on the cover of the Prospectus and in any tombstone advertisement. The Agreement among Underwriters authorizes, among other things, the Lead Managing Underwriter to execute (and therefore negotiate) the Underwriting Agreement on behalf of all the Underwriters.

League Table Credit: league tables are lists kept by certain institutions and publications, such as Thomson Financial and Bloomberg, that keep track of deal volume and deal size by investment bank and law firm. League Table Credit refers to receiving credit for a specific deal for purposes of determining the rankings.

Left: see Left Placement.

Left Placement: in a Securities offering, the Lead Managing Underwriter receives Left Placement—meaning its name is placed on the left of the top line of the list of Underwriters on the back and front cover of the Prospectus (or for a 144A Offering, the list of Initial Purchasers on the covers of the Offering Memorandum). Getting Left Placement is a big deal because such placement means the bank will serve as Lead Managing Underwriter.

Left-Side Arranger: another name for a Lead Arranger whose name appears on the left side of all marketing materials relating to the Credit Facilities with respect to which it is the Lead Arranger.

Legal Defeasance: one of two types of Defeasance. The other is Covenant Defeasance. In theory, Legal Defeasance allows an Issuer to get completely out from under its payment obligations under a series of Notes by depositing in an escrow account enough money (or US treasuries) to make all principal and Interest payments on the Notes through maturity. Practically, Legal Defeasance is not a real option because all Indentures require, as a condition to Legal Defeasance, the delivery of a tax opinion stating that holders will not suffer an acceleration of income as a result of the Legal Defeasance—and this is not possible under current tax law.

Lender Counterparty: a Lender, Agent or an Affiliate of a Lender or Agent that is a counterparty to a Hedge agreement entered into for the purpose of Hedging foreign currency risk or Interest Rate exposure associated with the Borrower's and its subsidiaries' operations. Also known as a Qualified Counterparty.

Lenders: the financial institutions party to a Credit Agreement as lenders (i.e., the ones lending the money).

Letter of Credit: most Revolving Facilities provide that a portion of such facility may be used in the form of Letters of Credit. A Letter of Credit, or L/C, essentially acts as a Guarantee by one of the Lenders (i.e., the Issuing Bank) under the Revolving Facility that kicks in if the Borrower (the "account party") does not meet an obligation to a third party (the "beneficiary"). A Borrower may post a Letter of Credit in favor of a third party as a Guarantee to that third party that it will pay out on an obligation if needed, or will fulfill a governmental requirement, etc. If the third party requires payment, the Issuing Bank must pay under the L/C, and can look to the other Revolving Lenders for reimbursement as if the payout were a Revolving Loan made by all the Revolving Lenders as a group. The two main types of Letters of Credit are Commercial Letters of Credit and Standby Letters of Credit.

Level of Comfort: used in Comfort Letters, this phrase refers to which Tick Mark an auditor provides with respect to a given number in an Offering Memorandum or Prospectus. For instance, one type of Tick Mark might say that the accountants had "compared the number in the disclosure to the audited financials and found them to be in agreement."

Leverage Ratio: an important measurement of the "leverage" of a company, which compares the company's overall debt level as of a particular date to the EBITDA the company generated over the most recently completed four-quarter period. Investors and analysts care about the Leverage Ratio because it measures the company's debt level against the company's cash performance measure. In the leveraged finance context, the Leverage Ratio is the ratio of indebtedness to EBITDA (or Adjusted EBITDA). Credit Agreements traditionally (although not always) have Maintenance Covenants requiring a

Borrower to maintain a certain Leverage Ratio. See Covenant Lite.

Leveraged Buyout: a transaction in which a Sponsor or Leveraged Buyout Firm uses debt to buy a Target company. The secured portion of the debt is secured exclusively by the stock and assets of the Target company and any Guarantors. The transaction allows Sponsors to finance large acquisitions while only putting up a small portion of the purchase price in the form of equity capital.

Leveraged Buyout Firm: another name for a Sponsor.

LIBOR: the London Interbank Offered Rate, which refers to the rate at which major financial institutions can borrow from each other in the London interbank market. Most Credit Facilities have Interest Rates that are set at certain margins above LIBOR. See Applicable Margin.

LIBOR Floor: a concept in a Credit Facility that prevents LIBOR, for purposes of that Credit Facility, from falling below a certain threshold—even if actual LIBOR does drop below that threshold. The idea is to protect Lenders under Floating Rate Credit Facilities in environments where LIBOR is abnormally low due to world events and changes in monetary policy.

LIBOR Loan: another name for Eurodollar Loan.

LIBOR Tranche: a collective reference to LIBOR Loans under a particular Credit Facility having Interest Periods starting on the same date and ending on the same date. Credit Agreements generally limit the number of LIBOR Tranches a Borrower may have outstanding at any time. A typical Credit Agreement will permit the Borrower to convert Base Rate Loans into LIBOR Loans (and vice versa) and to "continue" LIBOR Loans as LIBOR Loans upon the expiration of any Interest Period applicable to such LIBOR Loans, so that the Borrower need not repay a LIBOR Loan at the end of the chosen 1, 3, 6, 9 or 12-month Interest Period, but rather can simply begin a new Interest Period by rolling existing loans into a new LIBOR Tranche. For instance, one LIBOR Tranche might consist of (i) LIBOR Loans that were funded at the start of a given 3-month Interest Period; (ii) Base Rate Loans previously outstanding that were converted into LIBOR Loans at the beginning of the same Interest Period; and (iii) existing LIBOR Loans continued at the start of that same Interest Period. In such an instance, this single LIBOR Tranche would then share the same 3-month Interest Period that starts and ends on the same date.

Lien: depends on the context. Often used interchangeably with Security Interest; however, Lien is a broader term and includes non-consensual encumbrances on property such as tax Liens or Liens in favor of warehousemen or carriers as well as consensual Security Interests.

Lien Subordination: the Subordination of Second Lien debt to First Lien debt. Here, both Tranches of debt may be Pari Passu in terms of

payments, and secured by the exact same Collateral, but the Second Lien is Subordinated because its beneficiaries agree that in the case of the receipt of any proceeds of sales of that Collateral in a Bankruptcy, the First Lien Lenders will be paid prior to any payouts on the Second Lien debt. See Subordination.

Liens Covenant: a Covenant that restricts the incurrence of Liens and serves to protect the seniority position of debt by preventing more Secured Debt from either getting ahead (this is what unsecured Senior Notes are worried about) or becoming Pari Passu (this is what the Lenders under a secured Credit Agreement are worried about). Senior Subordinated Lenders will want protection that prevents Security over any other Subordinated Debt. See also Negative Pledge.

Limitation on Restrictions on Payment of Subsidiary Dividends Covenant: a Covenant that protects the flow of cash from a company's subsidiaries to the company by preventing subsidiaries from being subject to dividend blocking arrangements in other agreements. You need to pay particular attention to this Covenant in Holding Company deals where there is debt at the Operating Company level—because if the Operating Company debt prevents dividends to the Holding Company, the Holding Company may not be able to meet its obligations when they come due.

Limited Recourse Financing: a type of financing in which the Lender has limited (or no) ability to make claims against the Borrower's equityholders if the Collateral for a defaulted loan is insufficient to repay the debt. Compare Non-Recourse Financing.

Liquidity: the degree to which an asset can be converted into cash. While US treasuries are considered highly liquid, a 49 percent interest in a Malaysian paper mill probably is not. The term can also be used to refer to a company's ability to meet its near term payments.

Lockup: required by the Underwriters in connection with IPOs and other equity offerings, Lockups "lock-up" the shares of officers, directors and other insiders as well as the Issuer so that no new shares will hit the market during a certain period following the Closing of the offering. The purpose of the Lockup is to help stabilize the stock price following the offering by controlling supply. See also Booster Shot.

Lockup Agreements: the letters signed by officers, directors and other insiders setting forth the terms of their Lockups. These are usually negotiated in connection with the Underwriting Agreement (which is where the Issuer's Lockup can generally be found).

Lockup Letters: another name for Lockup Agreements.

Long: the opposite of Short. You have a Long position in a particular Security if you own the Security.

LSTA: useful for standard forms or fighting speeding tickets in

Louisiana, this is an acronym for many associations, including the Loan Syndication and Trading Association and the Louisiana State Troopers Association. The former is a non-profit organization dedicated to promoting the development of a fair, efficient, liquid and professional trading market for corporate loans originated by commercial banks and other similar private debt. A number of standard forms and market practice documents and publications can be found at www.lsta.org. The latter is an association of state troopers.

LTM: acronym for "latest twelve months" that refers to an accounting period consisting of the latest 12 months. The term is usually used to refer to the most recently completed four-quarter period (even if that is not the latest 12 months).

M&A: shorthand for mergers and acquisitions.

MAC: acronym for Material Adverse Change.

Macaroni Defense: a tactic used by a corporation that is the Target of a hostile takeover bid in which the Target issues a large number of Bonds that must be redeemed at a higher value if the company is acquired. In the event of a takeover, the debt will expand, just as macaroni expands when cooking.

MAE: acronym for Material Adverse Effect.

MAE Qualifier: this is an exception to what would otherwise be an absolute assertion or representation, for example: "I have not been drinking, except to such extent as would not be likely to have a Material Adverse Effect on my drafting." See Material Adverse Change and Material Adverse Effect.

Maintenance Covenant: a contractual provision in a Credit Agreement that requires a Borrower to maintain a certain state of affairs, for example, to meet or exceed various financial performance measures. Financial Covenants are one category of Maintenance Covenants. Financial Covenants generally require the Borrower to meet a high threshold (typically 80-90 percent) of its projections. Credit Facilities (other than Covenant Lite Credit Facilities) generally contain Financial Covenants, while Indentures do not. Maintenance Covenants (including Financial Covenants) are also sometimes found in Second Lien Term Loans, Bridge Loans and Mezzanine Financings. See also Fixed Charge Coverage Ratio, Interest Coverage Ratio and Leverage Ratio.

Make-Whole: shorthand for a "make whole call" feature, which allows the Issuer of a series of Bonds to redeem those Bonds without the consent of the Bondholders at a "make whole price" that is the sum of the present values of each remaining payment on the Bonds (until maturity or until the date on which the Bonds otherwise become redeemable at a fixed price, if applicable). These present values are calculated using a discount rate equal to the Comparable Treasury rate plus a Spread (usually 50 Basis Points). The sum of the present

values of the remaining payments on a High Yield Bond can often substantially exceed the principal amount of the High Yield Bond. A "make whole price" of 120 percent of principal amount is not unheard of in the context of a make whole redemption of a High Yield Bond. This feature is generally available to Issuers during the Non-Call Period or in a Change of Control context.

Management's Discussion and Analysis: shorthand for Management's Discussion and Analysis of Financial Condition and Results of Operations. This is a textual discussion in a Prospectus, Offering Memorandum or Periodic Report that provides information that the Issuer believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. The MD&A also includes a discussion of Liquidity and capital resources and segment information. The purpose of the MD&A is to provide color and context to the Financial Statements. The MD&A is required disclosure, and the SEC has provided substantial guidance on how MD&A should be drafted.

Mandatory Offer to Purchase: provisions in Indentures that require the Issuer to make an offer to purchase the Notes after certain designated events, generally following asset sales or a Change of Control.

Mandatory Prepayments: provisions in a Credit Agreement that require the prepayment of Term Loans (and sometimes the prepayment and permanent reduction of commitments under a Revolving Facility) with certain cash of the Borrower. Generally includes one or more of the following: Debt Sweep, Asset Sale Prepayment, Insurance Proceeds Prepayment, Equity Prepayment and Excess Cash Flow Sweep.

Mark-to-Market: an accounting requirement to write assets down (and in some cases up) to update the value of a financial instrument to its current market price. This is required by GAAP for certain assets in certain industries.

Market Flex: a powerful provision included in the Fee Letter portion of the Commitment Papers that allows the Arranger to change the terms, conditions, pricing and/or structure of the facilities provided in the Commitment Letter if the Arranger determines that the changes are advisable to ensure the Successful Syndication of the facilities the Arranger has agreed to provide to the Borrower. The exact terms of Market Flex will be heavily negotiated. See Pricing Flex, Structure Flex, Open Flex and Closed Flex.

Market MAC: this is a reference to a Condition Precedent that there shall not have been any disruption or adverse change to the financial, banking or Capital Markets generally, or the Syndicated loan and High Yield markets, specifically. Compare Business MAC.

Market Maker Prospectus: an arcane animal that is a creation of a funny provision in Section 2(11) of the Securities Act. That section defines an Underwriter to be anyone who buys from an Issuer with

a view to distribution in a public offering. It also defines Issuer (for purposes of Section 2(11) only) to include Affiliates of the Issuer. This creates a technical problem for a Broker-Dealer that wants to make a market in the Securities of one of its Affiliates. Technically, regular investors who buy from a Broker-Dealer that is Affiliated with the Issuer will be treated as Underwriters for purposes of the Securities Act. That is major league bad news for those regular investors and doesn't really make any sense. In practice, the SEC has solved this glitch by requiring the Broker-Dealer to deliver a Prospectus in all such market making transactions involving Securities of an Affiliate of the Broker-Dealer. That Prospectus is called a Market Maker Prospectus and must be kept up-to-date by the Issuer and its Broker-Dealer Affiliate for so long as the Broker-Dealer is making a market in the Issuer's Securities. The regular investor who buys from the Broker-Dealer does not have to do anything special here, notwithstanding the literal reading of Section 2(11).

Marketing Period: see Minimum Marketing Period.

Master Agreement among Underwriters: a generic Agreement among Underwriters that many investment banks have signed up to. Most banks have their own master form of Agreement among Underwriters, and most banks have signed on to every other bank's master form of Agreement among Underwriters. The terms of a particular Master Agreement among Underwriters are made applicable to a specific offering by invitation of the Lead Managing Underwriter to join the Syndicate and acceptance by the underwriting Syndicate members.

Material Adverse Change: just like it sounds, this phrase refers to a "material adverse change" in something—generally either the business (see Business MAC) or the market (see Market MAC). This term is used in two general contexts: either (i) as a Condition Precedent (for instance, a seller would not have to close on an acquisition if there had been a Material Adverse Change to the business) or (ii) as a qualifier to a Representation and Warranty (for instance, the environmental representation is limited to instances where violations of the representation could (or would) lead to a Material Adverse Change). However, when used as a qualifier to a Representation and Warranty, most agreements use the term Material Adverse Effect. See MAE Qualifier.

Material Adverse Effect: just like it sounds, this refers to a material adverse effect and is just another way of expressing the concepts embedded in the phrase Material Adverse Change.

Maturity Date: the date on which a Bond or amounts outstanding under a Credit Facility must be repaid in full.

Maximum Leverage Ratio Condition: basically a bright-line version of the Company MAC, this Condition Precedent requires the company's Leverage Ratio to be below a specified maximum threshold or else the

Lenders will not be required to fund. Lenders love this one.

MD&A: shorthand for Management's Discussion and Analysis of Financial Condition and Results of Operations.

Merger Covenant: an Indenture Covenant that contains conditions to a merger of the Issuer and to the transfer of All or Substantially All the Issuer's Consolidated assets. The most important condition is that the merger/sale cannot take place unless the Indenture follows to the new entity (i.e., becomes the obligation of the new entity).

Mezz: shorthand for Mezzanine Financing.

Mezz Lenders: shorthand for the Lenders in a Mezzanine Financing.

Mezzanine Financing: an unsecured debt instrument with certain equity-like characteristics. The Mezzanine component of a Capital Structure is Subordinate in the right of payment to Senior Debt and carries a Coupon similar to High Yield Bonds. Mezzanine debt is often issued at the Holdco level. Mezzanine often has equity features, frequently referred to as Equity Kickers, which may take the form of Warrants that permit the holder to purchase equity at a preset price, or conversion features upon certain events (such as a Change of Control). The combination of the debt Coupon and the Equity Kicker gives Mezz investors a higher return than High Yield Bonds.

MFN Pricing: acronym for Most Favored Nation Pricing.

Mini Perm: in the context of a construction financing, a type of short-term loan, typically three to five years, used by a Borrower to pay off construction financing or initial acquisition financing during the period a project is being completed or becoming stabilized as an income-producing asset. Borrowers enter into Mini Perms during this phase because long-term financing is not yet available because the project has an insufficient operating history. Mini Perms typically have Balloon Payments at the end of their terms that are intended to be Refinanced by long-term financing. In the context of coiffures, a Mini Perm is a partial perm that can be done to achieve body or curl in a particular area so that just the right amount of volume and control is obtained. See Mullet.

Minimum EBITDA Condition: basically a bright-line version of the Company MAC, this Condition Precedent requires a minimum EBITDA level as a condition of funding. Lenders love this one.

Minimum Hold: the minimum percentage of a particular series of loans that the Arranger agrees to hold (meaning not assign) for some agreed upon period of time. Borrowers like a Minimum Hold in the context of Bridge Loans because it keeps the Bridge Loans in the hands of the friendly relationship banks, potentially making it easier to get a necessary vote in favor of an Amendment to the Bridge Facility should the need arise. Lenders don't love this one.

Minimum Marketing Period: a Condition Precedent in the Commitment Letter that the banks will have a period of a certain number of consecutive days (generally 20 to 30, depending on the transaction and the anticipated length of the Road Show) following receipt of the Offering Memorandum to place the Notes. This is the Bond land cousin of the Minimum Syndication Period.

Minimum Syndication Period: a Condition Precedent in the Commitment Letter that the banks will have a period of a certain number of consecutive days (generally 15 to 30, depending on the transaction) following the launch of the general Syndication of the facilities (usually starting on the day of the Bank Meeting) to Syndicate the Credit Facilities prior to the Closing Date. This is the bank land cousin of Minimum Marketing Period.

Money Market: the global financial market for short-term borrowing and lending. Short-term paper such as Treasury bills and Commercial Paper are bought and sold in the Money Market.

Monoline Bond Insurance: insurance provided by a triple-A-rated insurance company that insures the payment of Interest and principal on Bonds. Companies that provide this type of insurance are commonly referred to as Monoline insurance companies because Bond insurance is their only line of business.

Moody's: Moody's Investors Service, Inc., a subsidiary of Moody's Corporation. Moody's is one of the two most powerful Ratings Agencies. S&P is the other big one. Fitch is hot on their heels.

Mortgage: a Security Agreement that grants a Security Interest in a real property right, whether that real property is owned in fee simple (a "fee Mortgage") or leased (a "leasehold Mortgage"). Leasehold Mortgages are less commonly required to be provided in secured deals than fee Mortgages.

Most Favored Nation Pricing: Usually a condition to funding an Incremental Facility, requiring that the existing Term Loans receive "most favored nation" treatment—if the new Incremental Facility has an Interest Rate higher than, or often more than 25-50 bps higher than, the existing Term Loans, then the existing Term Loans will be repriced upon the Closing of the Incremental Facility to receive the same (higher) Interest Rate as the incremental loans.

Munis: shorthand for "municipal Securities," which are tax-exempt Bonds issued by state and local governments, typically to finance large capital projects.

Naked Short: in the underwriting context, a Naked Short refers to the portion of a Syndicate Short Position that is not covered by the Over-Allotment Option—in other words, the Underwriter has taken orders for a number of shares in excess of all the shares the Issuer is obligated to sell to the Underwriter even once you take into account the Over-

Allotment Option. Consider an example. There is an IPO for 1.0 million shares of ABC Co., where the Underwriter has an Over-Allotment Option to purchase an additional 150,000 shares of ABC from ABC at the offering price. The Underwriter, unsure of the total demand for the shares and concerned with post-offering market support, builds a book (takes orders) for 1.2 million shares. The Underwriter now owes investors 200,000 more shares than it is buying from the Issuer in the initial offering. It's as if a florist took orders for 120 bouquets of roses on Valentine's Day, but only ordered 100 from the supplier. The Underwriter is Short 200,000 shares (and the florist is Short 20 bouquets). Remember, though, that the Underwriter has an Option to purchase an additional 150,000 shares from ABC at the offering price (and the florist has on reserve an extra 15 bouquets that can be purchased from its supplier). So, the Underwriter's Naked Short is the remaining 50,000 shares (the florist's Naked Short is five bouquets), i.e., the number not covered by the Shoe. Simple, right?

Nancy Reagan Defense: the Gipper's wife just says no to drugs. In the M&A context, the Nancy Reagan Defense refers to a potential Target of an acquisition just saying no to the proposal (or proposals) of a potential acquiror.

NASD: acronym for the (now former) National Association of Securities Dealers, Inc., which was consolidated with the NYSE's member resolution, enforcement and arbitration operation to create FINRA. See FINRA.

NASDAQ: the Nasdaq Stock Market, Inc. NASDAQ is the largest electronic screen-based equity Securities market in the United States. In August 2006, the Nasdaq Stock Market commenced operations as a registered national Securities exchange for Nasdaq-listed Securities. NYSE and NASDAQ are the two principal market centers for buying and selling equity Securities in the United States. See Latham & Watkins publication: Selecting a Securities Exchange: NYSE, NASDAQ, and Key European Exchange Listing Requirements for Equities (May 18, 2007), available at www.lw.com.

NC: acronym for Non-Call. If a Bond is NC4/103/102/101, it is Non-Call for the first four years (i.e., the Non-Call Period is four years from the Closing Date), and then becomes optionally redeemable in year five at a Call Premium of 3 percent in year five, 2 percent in year six, and 1 percent in year seven.

Negative Assurance: in a Securities deal, a reference to what the auditors say in the Comfort Letter about the quarterly financials and the period since the end of the last quarter (hopefully that there have been no material changes). This is a "we didn't see anything" standard, not a promise that everything is actually okay.

Negative Assurance Letter: a letter provided by both Issuer's and Underwriters' counsel at the Closing of a Securities offering. The letter

states that based on the lawyers' Diligence efforts, nothing has come to their attention indicating that the Prospectus (for registered deals) or the Offering Memorandum (for 144A deals) contains any misstatements of material facts or any material omissions. This is not an opinion, but it is sometimes incorrectly referred to as a "10b-5 opinion." Also known as a "10b-5 letter."

Negative Covenant: a contractual provision in an Indenture or a Credit Agreement that prohibits the Issuer or Borrower from engaging in specified activities, such as making investments, incurring new debt or Liens, selling assets or making acquisitions. Think of these as the "Thou Shalt Not" Covenants. Negative Covenants are usually highly structured and customized to an Issuer's or Borrower's specific condition. Compare Affirmative Covenant.

Negative Pledge: a variant on the Liens Covenant that allows the Issuer to place Liens on its assets that would not otherwise be allowed by the Baskets so long as the Issuer gives an Equal and Ratable Lien to the Bondholders, therefore putting the "on/off" switch for the Lien in the hands of the other investors. This Covenant is typical in Investment Grade Bond deals.

Negotiable Instrument: a financial instrument stating that the holder thereof is entitled to receive (or direct) payment of a specified amount of money on a specified date, or on demand. A party obtains rights as the entitlement holder under a Negotiable Instrument by having possession of it. Negotiable Instruments can be transferred without the knowledge or permission of the Issuer thereof, usually by physical delivery or endorsement. Promissory Notes and bearer Bonds are common examples of Negotiable Instruments.

Net Debt: a measure of a company's total debt minus its cash and Cash Equivalents (or some agreed portion of it).

Net Lease: a lease under which the tenant is required to pay, in addition to fixed rent, some or all the property expenses that are normally paid by the property owner. A tenant pays (i) rent plus taxes under a single Net Lease; (ii) rent plus taxes and insurance under a double Net Lease; and (iii) rent plus taxes, insurance and maintenance costs under a triple Net Lease.

Net Share Settlement: a settlement mechanic for Convertible Bonds where the Conversion Value up to the principal amount of the Bond is settled in cash, with the remainder settled in stock (or sometimes stock or cash at the Issuer's option).

No Fiduciary Duty Provisions: another name for Independent Contractor Provisions.

No New Info: endearing banker nickname for a No New Information Out.

No New Information Out: another name for the Inconsistent Information Out.

No-Shop Provision: an agreement by one or both companies involved in a merger only to deal with its merger partner and not to solicit other bids or provide information to other possible bidders.

Non-Accelerated Filer: a category of Issuer created by SEC Rules. An Issuer's status as a Non-Accelerated Filer, as opposed to a Large Accelerated Filer, an Accelerated Filer or a Smaller Reporting Company, determines when its Financial Statements go Stale and when it has to comply with SOX Section 404. An Issuer qualifies as a Non-Accelerated Filer if (i) its Public Float is less than $50.0 million as of the last business day of the second fiscal quarter of the Issuer's preceding fiscal year or (ii) it has not otherwise qualified as an Accelerated Filer or Large Accelerated Filer. See Accelerated Filer and Large Accelerated Filer. See also Latham & Watkins Desktop Staleness Calendar, available at www.lw.com.

Non-Call: term used when describing the terms of Bonds or loans that cannot be optionally redeemed (in the case of Bonds) or voluntarily prepaid (in the case of loans). See NC.

Non-Call Period: a period during which the Non-Call provision applies. The Optional Redemption provisions (for Bonds) or Voluntary Prepayment provisions (for loans) kick in at the end of the Non-Call Period. This period generally lasts for four years on a seven year Bond and five years on a 10 year Bond. The Non-Call Period allows Bondholders to lock in their Yield during the Non-Call Period. If a Bond is NC4/103/102/101, it is Non-Call for the first four years (i.e., the Non-Call Period is four years from the Closing Date), and then becomes optionally redeemable in year five at a Call Premium of 3 percent in year five, 2 percent in year six, and 1 percent in year seven.

Non-Investment Grade: rated Ba1 or lower by Moody's, BB+ or lower by S&P or BB+ or lower by Fitch.

Non-Recourse Financing: a type of financing in which the Lender has no ability to make claims against the Borrower in excess of the value of the Collateral if such Collateral is insufficient to repay the debt. Compare Limited Recourse Financing.

Notes: another name for Bonds with a maturity of 10 years or less.

Numbers: sometimes used as banker and lawyer shorthand for Financial Statements. See Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What You Need to Know (May 25, 2007), available at www.lw.com.

Numerosity: a Bankruptcy plan of reorganization is deemed accepted by a class of creditors or equityholders if that plan is accepted by (i) more than one half of the creditors/equityholders in the class who

actually voted and (ii) holders of at least two-thirds in amount of the claims/equity interests in the class who actually voted. The requirement described in subsection (i) of the previous sentence is known as the Numerosity requirement.

NYSE: the New York Stock Exchange—now part of NYSE Euronext, which was formed in April 2007. The NYSE dates back to the Buttonwood Agreement of 1792, which was signed when 24 prominent brokers and merchants gathered on Wall Street to create a mechanism for trading Securities. In contrast to more modern exchanges, NYSE transactions are still conducted on a trading floor located on Wall Street. See Latham & Watkins publication: Selecting a Securities Exchange: NYSE, NASDAQ, and Key European Exchange Listing Requirements for Equities (May 18, 2007), available at www.lw.com.

OC: acronym for Offering Circular.

Off Balance Sheet Arrangements: refer to methods of financing used to keep debt or liabilities off of a company's Balance Sheet. Rules adopted in connection with SOX require that the MD&A portion of a Prospectus or Periodic Report include a distinct section listing and explaining all Off Balance Sheet Arrangements.

Offering Circular: some investment banks call the Offering Memorandum an Offering Circular. It's the same thing.

Offering Memorandum: the equivalent of a Prospectus for a 144A Financing. This is the marketing and legal disclosure document. Some investment banks call it an Offering Circular.

OID: acronym for Original Issue Discount.

OM: acronym for Offering Memorandum.

One-on-One: a meeting between a potentially large investor in a Securities offering and the Issuer. One-on-Ones usually occur during the Road Show.

Open Flex: Market Flex structured so that the Arranger may change all terms, conditions, pricing and/or structure as are reasonably necessary for Successful Syndication (usually subject to some limits, e.g., the total amount of the facilities may not be changed and pricing is Capped at some level). Compare Closed Flex.

Open Kimono: an unfortunately graphic term used to describe the act of sharing all the previously undisclosed information about a company, structure or situation. For example, when a company gives Underwriters, Lenders or opposing counsel full access to its books, records and Diligence information, it has "opened the kimono." Also used to describe a situation or meeting where participants are expected to hold no secrets from one another, and are expected to share, well, their "private" information.

Operating Expense: the ongoing and day-to-day costs incurred

in operating a business. Unlike Capital Expenditures, which are Capitalized, Operating Expenses are "expensed," meaning that they are recorded as current expenses in the Income Statement as incurred.

Operating Subsidiary: a subsidiary of a Holding Company that holds assets and runs operations.

Option: a contract that gives the owner of the contract the right, but not the obligation, to purchase (in the case of a Call Option) or sell (in the case of a Put Option) an asset at a future date at an agreed price (known as the "exercise price" or "strike price"). When a Call Option's strike price is below the current market price of the underlying asset, or when a Put Option's strike price is above the current market price of the underlying asset, the Call Option or Put Option is In the Money. When a Call Option's strike price is above the current market price of the underlying asset, or when a Put Option's strike price is below the current market price of the underlying asset, the Call Option or Put Option is Out of the Money. Being In the Money is better.

Optional Prepayment: another name for Voluntary Prepayment.

Optional Redemption: an Indenture feature that allows the Issuer to redeem Bonds at the Issuer's option. The Optional Redemption provisions become available to the Issuer at the end of the Non-Call Period. The specifics of the Optional Redemption provision are finalized at Pricing. In a typical 10 year deal, the Optional Redemption price would be Par plus half the Coupon in year six, reducing to Par at the end of year eight.

Org ID Number: a company's organizational identification number. Not to be confused with Tax ID Number, the Org ID Number is a unique number assigned to a registered organization by its jurisdiction of organization. In most jurisdictions, Org ID Numbers are required to be included in Financing Statements. Note, however, that the State of Delaware does not require Org ID Numbers to be included in Financing Statements (even though it issues Org ID Numbers). In addition, the State of New York does not assign Org ID Numbers. Compare Tax ID Number. Isn't this fun?

Org Meeting: shorthand for Organizational Meeting.

Organizational Meeting: in a Securities offering, the initial meeting among the Issuer, the investment banks that are serving as Underwriters or Initial Purchasers, the auditors and the lawyers. This is where the agenda for the deal is set and the initial Due Diligence with management is performed. Generally considered the beginning of the Quiet Period in public offerings.

Original Issue Discount: discount relative to Par at which Bonds or loans may be sold to an investor. OID increases the all-in Yield to investors and accordingly facilitates the Syndication of the Bonds or

loans. See Closing Fee.

OTC: acronym for Over-the-Counter.

Out of the Money: a stock Option is Out of the Money when the holder cannot exercise it for a profit. A Convertible Bond is Out of the Money when its Conversion Value is less than its Par Value.

Outs: Conditions Precedent to the Lenders' obligation to fund a financing in a Commitment Letter. If the Borrower does not fulfill one of the Conditions Precedent, the committed Lender gets "out" of funding its commitment.

Over-Allotment Option: see Green Shoe.

Over-the-Counter: the trading of financial instruments directly between two parties pursuant to a bilateral contract rather than on an exchange or through an intermediary.

P&L Statement: shorthand for Profit and Loss Statement.

Pac-Man Strategy: in a hostile takeover situation, when a takeover Target company launches a tender offer for the company that is trying to acquire it.

Par/Par Value: in Bond land, Par Value is the stated value or face value of a Bond. So if a $1,000 Bond is redeemed at Par, it is redeemed for the full $1,000 (plus accrued Interest up to the redemption date). Bonds are said to be redeemed "above Par" or "below Par" if redeemed for more or less (as applicable) than their Par Value.

Pari Passu: equal in right of payment.

Parity Trigger: in Convertible Bond land, refers to a Contingent Conversion trigger based on the trading price of the Bonds.

Patriot Act Provisions: provisions in the Commitment Letter notifying the Sponsor, the company and the Target that pursuant to the USA PATRIOT Act, each Lender may be required to obtain, verify and record certain information.

Patriot Act Requirements: general reference to the information (e.g., name, address, Tax ID Number, etc.) that Lenders and Agents are required to obtain under KYC and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Pay-In-Kind: this feature allows the Issuer to pay Interest (or dividends) in the form of additional Bonds (or shares of Preferred Stock) in lieu of paying in cash. See AHYDO Rules.

Payment Blockage Provision: a standard feature in a Subordination contract for a High Yield deal (and other types of Subordinated Debt). It provides that the Issuer of the Subordinated Debt is forbidden from making payments on the Subordinated Debt in certain circumstances (for example, when the Senior Debt is in Default). Note that this is not the same as a Remedy Bar. If the Subordinated Debt does not get

paid when it is supposed to be paid because of a Payment Blockage Provision, the Subordinated creditors can pursue all available remedies unless they are also subject to a Remedy Bar.

Payment Date: another name for an Interest Payment Date.

Perfect or Perfection: what a holder of a Security Interest (i.e., the Lenders) has to do to make that Security Interest enforceable against third parties. A Security Interest that is valid and enforceable but has not been Perfected is enforceable against the debtor but not third parties. In order for a Security Interest to be enforceable against other creditors of the debtor, including any Bankruptcy trustee, Perfection is required. While parties can create a Security Interest that is valid between the parties simply by executing a Security Agreement and giving value, typically Perfection requires another act. There are five basic methods of Perfection under Article 9: filing of a Financing Statement, Control, possession (either directly or through a third party), temporary perfection and automatic perfection. The easiest and most common method of Perfection is the filing of a Financing Statement. Filing a Financing Statement is sufficient to Perfect a Security Interest in most (but not all) UCC Collateral.

Perfection under Article 9: filing of a Financing Statement, Control, possession (either directly or through a third party), temporary perfection and automatic perfection. The easiest and most common method of Perfection is the filing of a Financing Statement. Filing a Financing Statement is sufficient to Perfect a Security Interest in most (but not all) UCC Collateral.

Perfection Certificate: this is how a Lender finds out what assets a company has and where to find them. It is a certificate signed by the authorized officers of the Borrower and each other Grantor under the Security Agreement, which sets forth certain information regarding the Borrower, the other Grantors and their respective assets. The Perfection Certificate typically grants the Collateral Agent authority to file UCC Financing Statements in order to Perfect the Secured Parties' Lien on the Collateral.

Periodic Reports: the annual report on Form 10-K and the quarterly reports on Form 10-Q required to be filed with the SEC by all public companies. The Securities laws specify precisely who is required to file these reports, but as a general matter they are filed by companies that have completed an IPO, have Securities listed on an exchange, or have a class of Securities registered under the Exchange Act.

Permanent Securities: the Securities (usually High Yield Bonds) that are intended to be issued to finance an LBO. These are the Securities that the Bridge Loans bridge in case the offering of Permanent Securities is unsuccessful. Generally addressed in the Engagement Letter.

Permitted Debt: a concept in the High Yield version of the Indebtedness

Covenant referring to a series of Carveouts for debt that can be incurred even where the Ratio Test cannot be satisfied.

Physical Settlement: in Convertible Bond land, refers to settlement of a conversion in stock. "Gross" Physical Settlement is thus settlement entirely in stock. Compare Net Share Settlement.

Piggy Back Registration Rights: Registration Rights that permit holders of private Securities to "piggyback" into a Registration Statement originally filed by the Issuer for a separate purpose. These rights give the holder the ability to "jump onto" an offering that another party (either the Issuer itself or another Security holder) initiated. Compare Demand Registration Rights.

PIK: acronym for Pay-In-Kind.

PIK Notes: Notes with a PIK feature. See also Capitalize and Pay-In-Kind.

PIK Toggle: an Interest Rate feature that gives the Issuer or Borrower the option to pay all, half or none of the Interest for any period (generally during the Non-Call Period) in kind. Typically, an Interest Rate Step Up (often 75 bps, but sometimes higher) will apply to any portion of Interest that is paid in kind. PIK Toggles are attractive to Issuers and Borrowers because of the ability to "toggle" out of cash Interest payments in times of a Liquidity crunch—meaning if the Borrower or Issuer is short on cash, it can stop making cash Interest payments and just let the interest PIK. See AHYDO Rules. See also Latham & Watkins Client Alert No. 598, The AHYDO Rules and the PIK Toggle Feature (May 16, 2007), available at www.lw.com.

PIK Toggle Notes: Notes with a PIK Toggle feature. See AHYDO Rules. See also Latham & Watkins Client Alert No. 598, The AHYDO Rules and the PIK Toggle Feature (May 16, 2007), available at www.lw.com.

PIPE: acronym for "private investment in public equity." In a PIPE transaction, a public company issues equity Securities to Accredited Investors in a Private Placement and undertakes to register the equity Securities for public resale promptly after the transaction closes.

Placement Fee: a fee paid to the investment bank when the Bond placement occurs (i.e., when the Bond deal closes). This fee is provided for in the Engagement Letter.

Plain English Rules: SEC rules that require certain portions of the Prospectus be written in Plain English. The six basic SEC Plain English principles are: use short sentences; use definite, concrete, everyday words; write in an active voice; utilize bullets, tables and charts where possible; eliminate legal jargon or unnecessarily technical business terms; and avoid using double negatives. Also, don't use sentences with lots of semicolons.

Pledge Agreement: how Lenders take the shares of a Borrower or its subsidiaries as Collateral. This is an agreement that creates a Security Interest in equity interests owned by a Pledgor in favor of the applicable Secured Parties. In many instances, the pledge of equity interests is included in the Security Agreement and a separate Pledge Agreement will not be required.

Pledgor: an entity that "pledges" the equity interests it owns in its subsidiaries to the applicable Secured Parties as Security for the payment or performance of obligations under a Credit Agreement and other loan documents.

Poison Pill: an action taken by a company to make its equity less attractive to potential acquirors in order to prevent being acquired in a hostile takeover. Two common types of Poison Pills are the "flip-in," whereby a company allows current shareholders to purchase additional shares at a discount as a way to dilute the share ownership of the company, thereby making the acquisition of a controlling interest in the company more difficult and expensive, and the "flip-over," whereby, in the event of a takeover, shareholders are allowed to buy the acquiring company's shares at a discount.

Portfolio Company: a company that has been purchased by a Sponsor and now sits in that Sponsor's "portfolio."

Possessory Collateral: this is Collateral in which possession by the Collateral Agent is a permissible method of Perfection. All Collateral that is capable of Perfection by possession may also be Perfected by the filing of a Financing Statement; however, possession generally results in a higher Priority. Although all tangible Collateral (including goods) can be Perfected by possession, generally only certificated Securities, promissory Notes and negotiable documents are required to be delivered to the Collateral Agent. Yes, this means actual possession. The Collateral Agent actually has to take the certificates and put them in its safe.

Post-Closing Flex Letter: a letter executed by the Arranger and the Borrower prior to the funding of the loans in which the Borrower consents in advance to cooperate fully with the Arranger's Flex rights after Closing. The Post-Closing Flex Letter is used when the Credit Facility has not been fully Syndicated prior to Closing and the Fee Letter allows for Post-Closing Flex. The letter is important because in contrast to plain-vanilla pre-Closing Flex, Post-Closing Flex is exercised after the facilities have funded. The Post-Closing Flex Letter reaffirms that the Flex rights still exist and sometimes puts into place the mechanics for amending the Credit Facilities in order to implement such Flex.

Post-Effective Period: in a registered Securities offering, this period begins right after Pricing when the Registration Statement is declared effective by the SEC. The Underwriters then confirm orders using the Pricing Supplement, and then shares begin trading the next morning.

Closing generally happens three business days later. See T+ Legend.

Power of Attorney: an instrument permitting an individual to serve as the attorney or authorized agent of the grantor. In the Secondary Offering context, Selling Shareholders will generally grant a Power of Attorney to someone (often a company officer) authorizing that person (an "attorney-in-fact") to sell to the Underwriters the number of shares listed in the Underwriting Agreement and to execute the Underwriting Agreement. Generally signed in combination with a Custody Agreement.

Precedent: the transactions or transaction documents that are being used as an example for the new deal. Always be careful with Precedent, as every transaction is different.

Pre-Closing: the night before Closing when you complete all the work so you can have a smooth Closing the next day. Don't plan on getting much sleep.

Preference: transfers made during the Preference Period (i) to a creditor; (ii) on account of an antecedent debt owed by the transferor before the transfer is made; (iii) while the transferor was insolvent; and (iv) that enable the creditor to receive more than it would have received in a Chapter 7 liquidation case under the Bankruptcy Code. Preferential transfers are subject to Clawback, but creditors may avail themselves of certain defenses to a Clawback action such as the "ordinary course of business defense" and the "new value defense." One rationale behind Preference rules is that they prevent creditors from making a mad grab for assets when they learn that the debtor is becoming insolvent and prevent debtors from favoring some creditors over others as Bankruptcy nears. See Clawback.

Preference Period: See Clawback and Preference.

Preferred Stock: Preferred Stock sits in between debt and Common Stock in the Capital Structure. Preferred Stock has Priority over Common Stock in a liquidation, generally pays a fixed dividend (the equivalent of the Interest paid on debt) and does not share in the upside to the same degree as Common Stock.

Prefiling Period: in a registered Securities offering, once there is agreement in principle to go forward with an SEC-registered offering (generally at the Organizational Meeting), the Issuer enters the Prefiling Period. The Prefiling Period is the Quiet Period during which Gun Jumping is prohibited. Consequences of being "loud" during the Quiet Period include a cooling off period and a substantial delay in the deal timeline.

Preliminary Prospectus: another name for a Red.

Pre-Pack: a "pre-packaged" Bankruptcy plan of reorganization. A Pre-Pack is a plan of reorganization that is formulated and agreed to between a company's shareholders and its creditors prior to the

company's filing for Bankruptcy. In fact, votes on the plan are solicited even before the Bankruptcy case is filed. The Pre-Pack is filed with the Bankruptcy court at the time of the Bankruptcy filing and confirmation of the plan could follow a few weeks later. The purpose of a Pre-Pack is to shorten the duration of the Bankruptcy proceedings and reduce costs.

Prepayment Premium: seen in Term Loan Facilities, this is a fee paid by the Borrower for prepaying the loans. The fee is expressed as a percentage of the amount of the loans being prepaid. Typically, prepayment fees will be set on a sliding scale, for instance, 2 percent in year one and 1 percent in year two. The fee may be applied to all prepayments of Term Loans or only those made from a Refinancing or at the discretion of the Borrower. See Call Premium, Hard Call and Soft Call.

Pricing: the moment at which the Securities are priced—i.e., at which the price of the shares is set in equity deals and the Coupon (Interest Rate) and any discount is set in Bond deals. In most underwritten and 144A deals, this corresponds with the time the contract for the sale of the Securities is confirmed. See Pricing Term Sheet. For a discussion of Pricing outside the range, see Latham & Watkins Client Alert No. 546, Recirculation and IPOs—Pricing Outside of the Range (October 14, 2006), available at www.lw.com.

Pricing Flex: a Flex provision that allows the Arranger to change the pricing of the facilities. Pricing Flex refers to the changes that the Arranger may make to the Interest Rates if needed to facilitate the Successful Syndication of the Credit Facilities. See Market Flex.

Pricing Grid: see Grid Based Pricing.

Pricing Supplement: a Term Sheet distributed to accounts immediately after the Pricing of Securities. In addition to the price, the Pricing Supplement contains any other material information that has not already been disclosed to accounts. The Pricing Supplement came into fashion in response to Rule 159 adopted in connection with Securities Offering Reform. See Latham & Watkins publication: Christmas in July—the SEC Improves the Securities Offering Process (August 2005), available at www.lw.com.

Pricing Term Sheet: another name for Pricing Supplement.

Primary Offering: an offering of shares by the Issuer itself (rather than by Selling Shareholders).

Priming Loan: a secured loan that has Priority over another secured loan.

Priority: as among two or more creditors, the ranking of their Security Interests or their rights to receive payments. Generally, unless otherwise agreed, the first Secured Party to file a Financing Statement or otherwise Perfect will be entitled to Priority. In a First Lien/Second

Lien transaction, the holders of Second Lien obligations would expressly agree in the Intercreditor Agreement that the holders of the First Lien obligations are entitled to Priority upon the realization of the Collateral.

Private Lender: see Public/Private Information Undertaking.

Private Offering: another name for Private Placement.

Private Placement: a Private Placement of Securities (rather than a public offering) done pursuant to an exemption from Section 5 of the Securities Act. See Section 4(2) and Regulation D.

Pro Forma: means "for the sake of form" in Latin. In the leveraged finance and Securities offering context, Pro Forma refers to Financial Statements calculated to reflect the impact of contemplated future events as if they had already occurred. These are the "what if?" Numbers. For example, a company could have $1.0 million of debt on its Balance Sheet as of December 31. If that company plans to borrow another $1.0 million of debt in January, the company's December 31 debt, Pro Forma for the January borrowing, would be $2.0 million.

Profit and Loss Statement: another name for Income Statement.

Project Finance: a type of Non-Recourse Financing or Limited Recourse Financing whereby debt is incurred by a project developer (known as the "project company," which is formed by a "project Sponsor"), often in combination with equity contributed by the project Sponsor, to finance the development and construction of a capital-intensive project, such as a power plant or toll road, typically by means of construction loans that later convert to Term Loans upon completion of the project. A primary feature of Project Finance is that the Lenders advance debt on the basis of their evaluation of the projected revenue-generating capability of the project, rather than the credit quality of the project Sponsor or the value of the project assets. The equity of the project company and the project assets, including the project's revenue-generating contracts and other cash flows, are pledged as Collateral for the debt.

Prospectus: registered or public offerings are effected through the use of a marketing document called a Prospectus that is included in the Registration Statement filed with the SEC. This document forms the core of the sales material and the liability of the participants. Plural is "prospectuses."

Prospectus Supplement: a Shelf Registration Statement contains two parts: the Base Prospectus (which is in the initial filing) and the Prospectus Supplement (which is filed when the Issuer sells Securities in a Shelf Takedown).

Public Float: the portion of a company's outstanding shares that is not held by company insiders or controlling-interest investors, but rather is held publicly.

Public Lender: Lenders in a Credit Facility financing that are prohibited from seeing "private" (non-public) information about the Borrower (such as projections) because they want to retain freedom to trade in the Securities of the Borrower. Note that most Credit Facility transactions involve Public Lenders even where the Borrower is not a "public" Reporting Company. See Public/Private Information Undertaking.

Public/Private Information Undertaking: a provision in the Commitment Letter that provides that the company will make two versions of the Bank Book: one for Public Lenders and one for Private Lenders. The public book will generally be the same as the private book, but will have been scrubbed of any material non-public information about the Target. Note that projections are almost always considered to be material non-public information. Note also that even deals for private companies will include Public Lenders and, therefore, will generally require two versions of the Bank Book.

Purchase Accounting: this is an accounting method used for all business combinations, such as mergers, consolidations and stock acquisitions, initiated after June 30, 2001. Prior to June 30, 2001, there was an alternative method of accounting called "pooling of interests," which simply added together the Balance Sheet items of the acquiror and the acquired company. Purchase Accounting treats the acquiror as having purchased the assets and assumed the liabilities of the acquired company on the date of the acquisition. The Book Values of the acquired assets and liabilities are reset to their respective fair market values as of the acquisition date, and the difference between the purchase price and the aggregate fair value of the assets acquired is attributed to goodwill.

Purchase Agreement: the equivalent of the Underwriting Agreement in a Rule 144A Financing. Also shorthand for a Stock Purchase Agreement in an M&A deal. Make sure you know which is being discussed.

Push-Down Accounting: an accounting method that requires the Financial Statements of a subsidiary to reflect the costs or debts incurred at a Holding Company level.

Put Bond: another endearing banker nickname for the Securities Demand.

Put Bond Holiday: another name for a Securities Demand Holiday.

Put Option: a financial contract between a buyer and a seller, where the seller has the right or Option to sell a specific quantity of a Commodity, Security or other financial instrument to the buyer at prices and within time periods that are stated in the contract. Compare Call Option.

Put Right: in the leveraged finance context, an Option giving Bondholders a right to force the Issuer to buy back its Bonds at a specified amount. High Yield and some Investment Grade Indentures generally provide Bondholders with this right upon a Change of Control

of the Issuer. See Change of Control Covenant and Change of Control Put.

QIB: acronym for Qualified Institutional Buyer.

Qualified Counterparty: another name for a Lender Counterparty.

Qualified Institutional Buyer: large institutional investors that must have at least $100.0 million invested in Securities or under management. Qualified Institutional Buyers are the permitted purchasers of Securities in Rule 144A Offerings. See Rule 144A.

Quiet Period: in a registered Securities offering, the Prefiling Period for the Issuer is a Quiet Period—so called because the Issuer must be very careful not to make any oral or written offers prior to filing the Registration Statement. Consequences of being "loud" during the Quiet Period include a cooling off period and a substantial delay in the deal timeline. See Prefiling Period and Gun Jumping.

Ranking: the level of Priority that a particular Tranche of debt occupies in the overall Capital Structure. See Subordination, Junior Debt and Senior Debt.

Ratings Agencies: see Fitch, Moody's and S&P. Ratings Agencies rate companies, Securities and loans on a risk spectrum. The ratings received will directly impact the cost of borrowing. As a result, the Ratings Agencies are feared by companies and bankers alike.

Ratings-Based Flex: a Flex provision that gives the Arranger certain increased Market Flex rights if the Credit Facilities are not rated above a certain threshold. For example, such a provision might allow the Arranger to increase the pricing (Interest Rate) on the Credit Facilities by a greater amount if a certain level of ratings is not obtained.

Ratings Condition: a Condition Precedent in the Commitment Letter that makes the commitment subject to the company either obtaining or using its commercially reasonable efforts to obtain ratings for the new Credit Facilities. Note that the term Ratings Condition does not necessarily require the Borrower/Issuer to obtain a particular rating—it may just require that some/any rating be obtained.

Ratio Debt: most High Yield Indentures permit Issuers to incur debt in instances where, Pro Forma for the incurrence of such debt, the Issuer's Fixed Charge Coverage Ratio would be above a certain threshold—generally 2.00 to 1.00. Debt so incurred is often referred to as Ratio Debt. The purpose of the Ratio Test is to allow the Issuer to incur more debt as the Issuer's credit improves in proportion to the Issuer's ability to cover Interest expense.

Ratio Test: the Fixed Charge Coverage Ratio based debt incurrence test in most High Yield Indentures. See Ratio Debt.

Record Date: Indentures set forth Record Dates and Interest Payment Dates. The Record Date is the date when the Trustee determines

which Bondholders are entitled to receive a given Interest payment on the related Interest Payment Date. The Record Date is generally 15 calendar days prior to the related Interest Payment Date.

Red: the Preliminary Prospectus or Offering Memorandum (which has the red font legend printed horizontally on the left margin of the cover page) stating that the Prospectus or Offering Memorandum is subject to completion. This is the document used for the Road Show, before the Pricing information is inserted.

Refinancing: the repayment of existing debt with the proceeds of a new debt issuance. Any Refinancing will require a careful review of existing Indentures and Credit Agreements to make sure the debt being Refinanced can, in fact, be repaid and to verify that any debt being left in place permits the incurrence of the new debt. Indenture and Credit Agreement debt Baskets will generally allow the Refinancing of existing debt, but subject to certain conditions that must be read carefully. See Latham & Watkins Client Alert No. 696, Restructuring High Yield Bonds: Getting Ready for the Next Phase of the Cycle (April 21, 2008), available at www.lw.com.

Refreshing the Shoe (or Reloading): the situation where the Underwriter has covered part or all of its Syndicate Short Position through open market repurchases and then shorts the stock again up to the full amount of the Over-Allotment Option. Consider the example provided in the definition of Naked Short. There is an IPO for 1.0 million shares of ABC, with an Over-Allotment Option for 150,000 additional shares. This time, the Underwriter commits to provide to accounts 1.15 million shares. The stock initially drops, and so rather than exercising the Green Shoe, the Underwriter buys a portion of the 150,000 shares on the open market (because they are cheaper on the open market than through the Over-Allotment Option, which is at the offering price less the Underwriting Discount). Then the stock price rises above the initial offering price. The Underwriter then Refreshes the Shoe, meaning the Underwriter immediately sells (or Shorts) the shares it purchased at the lower price in the open market—and meaning the Underwriter is again dependent on the Over-Allotment Option to cover the extra 150,000 shares that were allocated.

Reg Rights: shorthand for Registration Rights.

Registration Rights: rights of a Security holder to force an Issuer to register its Securities with the SEC. These rights enhance the Liquidity of the Securities because registered Securities are freely tradable. Registration Rights (or Reg Rights) can take several forms. Holders of equity Securities obtained in a Private Placement often have rights to demand that the Issuer register their Securities or to piggyback onto an offering in which the Issuer is already engaging. See Piggy Back Registration Rights and Demand Registration Rights. In Private Offerings of High Yield and convertible debt Securities, Issuers

customarily provide purchasers with Registration Rights to enhance the post-Closing Liquidity of the Securities sold in the offering and, in the case of private company Issuers, agree to become Reporting Companies under the Exchange Act. The February 2007 changes to Rule 144 will have a significant effect on how Registration Rights are granted in connection with Private Offerings. See Latham & Watkins Client Alert No. 669, The Future of Registration Rights in Private Offerings of Debt Securities (January 22, 2008), available at www.lw.com.

Registration Statement: the document filed with the SEC in connection with a public offering of Securities. The Registration Statement contains the Prospectus.

Regulation D: spells out the rules for a valid Private Placement. Under the Securities Act, any offer to sell Securities must either be registered with the SEC or made pursuant to an exemption. Regulation D (or Reg D) provides a safe harbor for sales of Securities in transactions "not involving any public offering" within the meaning of Section 4(2) of the Securities Act. Reg D also contains two more widely known exemptions from the registration requirements, which allow some smaller companies to offer and sell their Securities without having to register the Securities with the SEC. The primary requirements of Regulation D are (i) no general solicitation and (ii) only offering and selling to investors who are either Accredited Investors or sophisticated investors (as defined in Reg D).

Regulation FD: the SEC fair disclosure regulation. It says that if you share material inside information with one person, you have to share it with everybody. When an Issuer discloses material nonpublic information to certain enumerated persons (in general, Securities market professionals and holders of the Issuer's Securities who may well trade on the basis of the information), Regulation FD (or Reg FD) requires the Issuer to make public disclosure of that information. The timing of the required public disclosure depends on whether such Selective Disclosure (as it is known) was intentional or non-intentional: for an intentional Selective Disclosure, the Issuer must make public disclosure simultaneously; for a non-intentional disclosure, the Issuer must make public disclosure promptly.

Regulation G: requires specific disclosure and analysis around any non-GAAP financial measure contained in any public disclosure by an Issuer. Reg G says that non-GAAP Numbers generally must be reconciled to the most directly comparable GAAP financial measure. In other words, Reg G says it is okay to disclose your financial information in a non-GAAP sort of way as long as you explain (through numerical reconciliation) how what you disclosed differs from GAAP. Note that EBITDA is a non-GAAP measure. See Item 10.

Regulation S: provides an exemption from the registration requirements of Section 5 of the Securities Act for certain offshore transactions. Most

Rule 144A Financings also have a Regulation S component to allow for offshore sales. Rule 144A/Regulation S financings do not have to be registered with the SEC because the purchasers are either QIBs buying pursuant to Rule 144A or outside the US and buying pursuant to Regulation S.

Regulation S-K: the heart of the SEC's integrated disclosure system, which provides the standard instructions for filing SEC forms. The SEC's registration forms (such as Form S-1) and periodic reporting forms (such as Form 10-K) will all have cross-references to Regulation S-K. Regulation S-K then provides an outline of all the detail that needs to go into these forms. See Form Check.

Regulation S-X: the SEC's accounting rules for the form and content of Financial Statements. All Financial Statements included in SEC filings must comply with Regulation S-X. Rule 144A Financings are not technically required to comply with Regulation S-X, although they generally come very close as a matter of industry custom. See Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What You Need to Know (May 25, 2007), available at www.lw.com. See also Latham & Watkins publication: Financial Statement Requirements in US Securities Offerings: What Non-US Issuers Need to Know (May 25, 2007), available at www.lw.com.

Reinvestment Right: sometimes included in an Asset Sale Prepayment and/or Equity Prepayment provision. This right usually gives the Borrower an option, within some specified number of days, to reinvest insurance proceeds or proceeds of asset sales or equity issuances into assets used or useful in the business, rather than applying such proceeds to pay down Term Loans.

Remedy Bar: a Subordination provision that is not found in regular High Yield deals but is found in certain kinds of Mezzanine Financings (usually only if the Mezz Lenders have the benefit of Financial Maintenance Covenants) and often in Second Lien Facilities. A Remedy Bar will prevent the Subordinated (or Second Lien) Lenders from taking certain (or possibly any) remedies during an agreed upon time-frame even if they are experiencing an Event of Default. Note that this form of Subordination is much more severe than a Payment Blockage Provision, which does not prevent the junior creditors from pursuing remedies (including putting the Borrower into Bankruptcy) if there is an Event of Default.

Rep: shorthand for Representation and Warranty.

Reporting Company: a company that files Periodic Reports with the SEC.

Representation and Warranty: an assertion of fact in a contract (such as a merger agreement, Credit Agreement or Underwriting Agreement). Representations and Warranties are the means by which one party to

a contract tells the other party that something is true as of a particular date.

Representation Regarding Accuracy of Disclosed Information: the representation by the company in the Commitment Letter that all information (other than financial projections) provided directly or indirectly by the Sponsor, the company or the Target in connection with the contemplated acquisition is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. Also known as a Full Disclosure Rep. See Rule 10b-5 Representation.

Repricing Amendment: an Amendment to a Credit Agreement only seen in improving markets, where the Interest Rate on an existing loan is lowered. This generally requires the affirmative vote of 100 percent of the existing Lenders (or replacement Lenders through the use of a Yank-a-Bank provision). This is sometimes (especially when not all existing Lenders are willing to agree to this type of Amendment but other Lenders would be willing to lend money at the new lower rate) accomplished by creating a new Tranche of Term Loans under the Credit Agreement, identical to the existing loans, but with a lower Interest Rate. The proceeds of the new loans are used to pay off the old loans in full, and the less expensive new loans live on.

Required Class Lenders: for any Class, the Lenders holding more than 50 percent of the aggregate principal amount of outstanding loans and unfunded commitments (if any) under a Credit Agreement with respect to such Class.

Required Lenders: the Lenders holding more than 50 percent of the aggregate principal amount of outstanding loans and unfunded commitments under a Credit Agreement. Usually required for approval of Amendments and Waivers under a Credit Agreement, although certain Amendments require a 100 percent vote. See also Class Voting.

Requisite Lenders: another name for Required Lenders.

Reserve Adjusted Eurodollar Rate: essentially, the same as LIBOR.

Restricted Junior Payment or Restricted Payment: dividends and other distributions on account of equity interests, equity repurchases and retirements or repayments of Subordinated Debt prior to maturity. This term is designed to capture voluntary transfers of value to people lower down in the Capital Structure.

Restricted Payments Covenant: a Covenant that protects Bondholders' and Lenders' access to value by limiting undesirable restricted payments. Virtually all High Yield Indentures and Credit Agreements contain Covenants limiting the ability of Issuers and Borrowers to make

Restricted Payments. In Indentures, certain investments in entities that are not Restricted Subsidiaries are included in the definition of Restricted Payments, whereas these investments are usually the subject of a separate investments Covenant in Credit Agreements.

Restricted Securities: Securities that have been issued on a private (unregistered) basis and are not yet eligible for public resale pursuant to Rule 144. See Latham & Watkins Client Alert No. 685, SEC Reduces Restrictions on Resale of Restricted Securities (March 25, 2008), available at www.lw.com.

Restricted Subsidiary: a defined term in an Indenture that captures the Issuer's subsidiaries to which the Covenants apply. Some Credit Agreements also have a concept of Restricted Subsidiaries. See Covenant Lite. Compare Unrestricted Subsidiary.

Reverse Breakup Fee: in an M&A transaction, a fee paid by the buyer to the seller if the buyer decides not to consummate the transaction. When included in a transaction, the Reverse Breakup Fee can, in some cases, provide the buyer an option to back out of a transaction at a certain cost.

Revolver: shorthand for a Revolving Facility.

Revolver Grid: another name for a Pricing Grid, when only the Revolver (but not the Term Loans) has Grid Based Pricing.

Revolving Facility: a Senior Secured Credit Facility structured as a line of credit that can be borrowed, repaid and reborrowed at any time prior to maturity, at the Borrower's discretion. A Revolving Facility can also often be used for the issuance of Letters of Credit. See Borrowing Base and Cash Flow Revolver.

Revolving Loans: loans under a Revolving Facility.

Right: see Right Placement.

Right Placement: a managing Underwriter who has not received Left Placement is said to have Right Placement. Substantively, this means that the Underwriter is still a joint Bookrunner, but is not running the show to the same degree. From a cover perspective, it means that the name of that Underwriter still goes on the top line (in the big font) of the back and front covers of the Prospectus, but to the right of the Underwriter with Left Placement.

Road Show: the trip around the country (or around the world), often on private jets, that Issuers and bankers (but not lawyers) go on in order to meet with potential purchasers of the Securities being offered. This is the heart of the marketing process in a Securities offering. See also One on Ones.

Roll-up Financing: a type of DIP Financing whereby a Secured Lender's pre-petition debt claim is "rolled up" into a post-petition loan, with the proceeds of the post-petition loan being used to pay off the

pre-petition claim.

Rollover Equity: in order to retain management or other insiders, certain acquiring companies will allow/ask management to "roll over" its equity in the Target, meaning such individuals will retain an equity stake in the Target following the acquisition.

Rollover Fee: a conversion fee paid on the first anniversary of the Closing of a Bridge Loan, when the Bridge Loans are converted into Term Loans. Also known as a Conversion Fee.

Rollover Loans: another name for Term Loans into which the Bridge Loans can convert at their maturity on the first anniversary of the Closing of a Bridge Loan.

Rule 10b-5: the SEC rule regarding employment of manipulative and deceptive practices. This is one of the most important SEC rules. It seeks to prohibit fraud or deceit in connection with the purchase or sale of any Security, including insider trading.

Rule 10b-5 Representation: this term is generally used as shorthand for a Representation and Warranty by an Issuer, Target or Borrower that the Diligence information provided is complete and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. This is "magic" language based on Rule 10b-5.

Rule 10b5-1 Plan: a plan used by company insiders to sell shares in the company without running afoul of restrictions on insider trading. The title of the plan is derived from SEC Rule 10b5-1, which creates an affirmative defense to charges of insider trading when shares are sold pursuant to a qualifying plan. In general, qualifying plans must set forth in advance what shares will be sold and when. The basic idea is that the actual sales will then occur automatically irrespective of what information the seller may actually know or not know at the time of the sale.

Rule 144: a rule under the Securities Act creating a safe harbor from Underwriter status for public sales of Restricted Securities. See Latham & Watkins Client Alert No. 685, SEC Reduces Restrictions on Resale of Restricted Securities (March 25, 2008), available at www.lw.com. See also Latham & Watkins Client Alert No. 669, The Future of Registration Rights in Private Offerings of Debt Securities (January 22, 2008), available at www.lw.com.

Rule 144A: provides a resale exemption from the registration requirements of the Securities Act. The rule permits persons who purchase Securities in Private Placements to resell them freely in the secondary market if (i) the subject Security is not listed on a national Securities exchange and (ii) the sales are to Qualified Institutional Buyers. See Rule 144A Financing for why this rule is so important.

Rule 144A Financing: a transaction where an investment bank buys Securities from an Issuer pursuant to a Private Placement and immediately resells the Securities to QIBs in reliance on Rule 144A. Virtually all High Yield Bond deals and many Convert Deals are structured as Rule 144A Financings. Rule 144A Financings are attractive to Issuers because these transactions can be consummated without SEC registration, allowing greater speed to market. In a 144A for Life Offering, there is an added bonus—there are no post-Closing Reg Rights, so the Issuer is never required to become a Reporting Company. See 144A for Life Offering and Registration Rights.

Rule 159: Rule 159 under the Securities Act was adopted in connection with Securities Offering Reform. The key implication of Rule 159 is that Section 12(a)(2) and 17(a)(2) liability are determined by reference to the total package of information conveyed to the purchaser in a Securities offering at or before the time of sale. What this means is that investors need to have all the material information about the Issuer before orders are confirmed (which happens directly after Pricing). Investors get all this information through a combination of the Red and the Pricing Supplement. See Latham & Watkins publication: Christmas in July—the SEC Improves the Securities Offering Process (August 2005), available at www.lw.com.

S&P: Standard & Poor's, a Division of The McGraw-Hill Companies, Inc. S&P is one of the two most powerful Ratings Agencies. Moody's is the other big one. Fitch is hot on their heels.

Sale and Leaseback: a transaction where a company sells an asset (usually to a financial services company of some kind) and then immediately leases back that same asset. Companies engage in Sale and Leasebacks for a variety of reasons including to raise cash, get assets off their Balance Sheets and shift the market risk on the underlying asset. Sale and Leasebacks are very similar economically to Secured Debt, and are therefore treated very similarly under Indentures and Credit Agreements.

Sarbanes-Oxley: in response to the wave of corporate scandal that included Enron and Worldcom, in 2002 Congress passed, and President Bush signed into law, the Sarbanes-Oxley Act of 2002, enacting a broad range of changes to the Securities laws that govern public companies and their officers and directors. See SOX Section 404.

SAS 72: this is the bible for Comfort Letters. SAS 72 is Statement on Auditing Standards number 72. SAS 72 was written by accountants for accountants and provides detailed instructions regarding the text of the Comfort Letter (but little guidance regarding Tick Mark procedures).

Satisfaction and Discharge: provisions that allow an Issuer to deposit a pile of cash with the Trustee equal to all amounts due under an Indenture and be immediately released from all the Indenture's requirements, including all Covenants and payment obligations. Satisfaction and

Discharge is typically only allowed if the Bonds are coming due within one year, either because they are maturing or because they have been called for Redemption. The key differences between Legal Defeasance and Satisfaction and Discharge are (i) the "due-within-one-year" provision does not apply in the context of Legal Defeasance and (ii) Legal Defeasance is not actually possible under current law because no law firm can give the required tax opinion. There is no tax opinion requirement for a Satisfaction and Discharge. See Legal Defeasance.

SEC: acronym for the US Securities and Exchange Commission.

Second Lien: a second Priority Lien that comes behind the First Lien. See Second Lien Facilities.

Second Lien Facilities: a Senior Secured Credit Facility that has a second Priority Lien on the assets that secure the First Lien Facilities. Second Lien Facilities are included in some, but not all, transactions. In the Commitment Papers, the terms of the Second Lien Facility are usually (but not always) contained in a separate Term Sheet attached as an annex to the Commitment Letter. See Latham & Watkins Client Alert No. 382, Second Lien Financings—Answers to the Most Frequently Asked Questions (April 15, 2004), available at www.lw.com.

Secondary Offering: an offering of shares in a registered transaction by Selling Shareholders. Compare Primary Offering.

Section 4(2): exempts from Section 5 of the Securities Act any offerings of Securities in "transactions by an Issuer not involving a public offering." This is the statutory origin of Private Placements. Regulation D is the safe harbor that gives definition to this statutory provision. See Regulation D.

Secured Debt: indebtedness that is secured by a Lien on Collateral.

Secured Lenders: Lenders who hold a given Security Interest. See Secured Parties.

Secured Leverage Ratio: the ratio of total Secured Debt of the Borrower as of a given date to EBITDA of the Borrower for the last four quarters. This is a Leverage Ratio that counts only the Secured Debt of the Borrower in the numerator.

Secured Parties: those who hold a given Security Interest. Generally defined to include the Lenders, the Administrative Agent, the Collateral Agent, the L/C Issuing Bank and the Lender Counterparties, this group will incorporate all parties in favor of whom a grant of Security over assets has been made.

Securities Act: the Securities Act of 1933, which governs the registration of Securities.

Securities Demand: a negotiated right that enables the Broker-Dealer arm of the investment bank that provided the Bridge Loan to require the Borrower to market Permanent Securities, usually Bonds, to repay

the Bridge Loan. The terms of the Securities Demand are documented in the bridge Commitment Papers (usually, but not always, in the Fee Letter). Sometimes the Securities Demand also contains the right to require the Borrower to market new loans rather than Securities.

Securities Demand Holiday: the pause period sometimes negotiated before the Securities Demand can be exercised. In some cases, this period can be as long as 180 days after the funding of the Bridge Loans.

Securities Offering Reform: a series of new and amended SEC rules that took effect on December 1, 2005 and dramatically reformed the Securities offering process. See Latham & Watkins publication: Christmas in July—the SEC Improves the Securities Offering Process (August 2005), available at www.lw.com.

Securitization: a structured finance transaction in which a party owning a pool of cash-flow producing financial assets (the "originator") sells the assets to a Bankruptcy Remote Vehicle (the "issuer") that then sells Securities to investors that are secured by those assets. In a Securitization transaction, the transfer of the pool of assets from the originator to the issuer is designed to be a True Sale rather than a financing so that if the originator goes Bankrupt, the assets of the Issuer will not be distributed to the originator's creditors.

Security: definition depends upon the context. In Bond and equity land, a Security is a thing that is regulated by the Securities laws. The Supremes know it when they see it. We hope it does not include a loan. See *Reves v. Ernst & Young,* 494 U.S. 56 (1990). In bank land, Security is a reference to the granting of a Lien on assets to secure a debt obligation. See Secured Debt and Security Interest.

Security Agreement: a contract that creates a Security Interest in favor of the applicable Secured Parties. Other terms for Security Agreement include: guarantee and collateral agreement, collateral agreement, and pledge and security agreement. In some instances, Security Interests in equity interests are dealt with separately in a Pledge Agreement.

Security Interest: a Lien created by a Security Agreement over certain assets (i.e., the Collateral) to secure the payment or performance of obligations under a Credit Agreement, Indenture or other debt documents. A Security Interest gives the beneficiary of the Security Interest (i.e., the Secured Parties) the right to foreclose upon the Collateral and use the proceeds thereof to repay its loan. It also significantly improves the Secured Parties' rights in a Bankruptcy. For example, only Secured Parties are entitled to post-petition interest in a Bankruptcy. In short, it is better to be secured than unsecured.

SEDAR: the Canadian equivalent of EDGAR. The Web site (www.sedar.com) provides access to documents filed with the Canadian Securities Administrators. This should not be confused with "seder,"

which is the traditional dinner held on the first and second nights of Passover.

Selective Disclosure: see Regulation FD.

Selling General and Administrative Expense: a company's selling, general and administrative expenses that are reported on the Income Statement and that do not correspond with production. These include everything from salaries to rent to utility payments. As a general matter, it is better to have low SG&A.

Selling Shareholders: shareholders of the Issuer that are selling their shares in a registered Securities offering, as opposed to a Primary Offering in which the Issuer is selling its own shares. See Secondary Offering. It is possible for an offering to be part Secondary Offering and part Primary Offering.

Senior Debt: a level of Ranking. This is not a specific type of debt, but rather a general reference to a slug of debt that is "higher" in the Capital Structure than other debt. For example, if a company has both Senior Subordinated Notes and Senior Notes, the Senior Notes are "senior." If that company also has Secured Debt, the Secured Debt is effectively "senior" to the Senior Notes to the extent of the value of the Collateral granted in favor of the Secured Debt. Compare Junior Debt. It is better to be Senior Debt than Junior Debt.

Senior Notes: Bonds that are structurally senior to Senior Subordinated Notes and any other Junior Debt.

Senior Secured Credit Facilities: Syndicated bank loans generally secured by the assets of the Borrower and its subsidiaries. See First Lien Facilities and Second Lien Facilities.

Senior Secured Facilities Term Sheet: an annex or exhibit to the Commitment Letter that contains the terms of the Senior Secured Credit Facilities.

Senior Subordinated Notes: Bonds that are Subordinated to any Senior Notes (or Senior Secured Credit Facilities), but senior to other Subordinated Debt.

SG&A: acronym for Selling, General & Administrative Expense.

Shelf Registration: a registration process that lets an Issuer complete most of the SEC registration procedures (including the filing of a Registration Statement) before it is ready to go to market. The registrant can then "take Securities off the shelf" by filing a Prospectus Supplement when it is ready to launch an offering. See Shelf Takedown.

Shelf Registration Statement: used for a Shelf Takedown, a Shelf Registration Statement contains two principal parts: the Base Prospectus (which is in the initial filing) and the Prospectus Supplement (which is filed, along with the Base Prospectus, when the Issuer takes down the shelf).

Shelf Takedown: a public offering where you issue Securities off the shelf that were previously registered in a Shelf Registration. See Shelf Registration.

Shoe: another name for the Green Shoe.

Short: someone who is Short a Security makes money if the value of that Security goes down. It is the opposite of being Long—which, in the most basic sense, means you own a Security and you benefit if its value goes up. An investor can take a Short position by selling a Security she does not own—this is sometimes called a Naked Short. Short has many uses in the finance world. See Syndicate Short for how it is used in the Securities offering context. The term also means not very tall.

Sight Draft: a written demand for immediate payment. For example, when a beneficiary of a Letter of Credit determines to make a draw on the Letter of Credit, the beneficiary will submit a Sight Draft to the L/C Issuing Bank demanding payment under the L/C.

Smaller Reporting Company: a category of Issuer created by SEC rules that took effect in February 2008. An Issuer that is otherwise a Reporting Company qualifies as a Smaller Reporting Company if its Public Float is below $75.0 million as of the last business day of the second fiscal quarter of the Issuer's preceding fiscal year. Smaller Reporting Companies have scaled down reporting requirements under Regulation S-K and later Staleness deadlines than other Issuers. See Latham & Watkins Desktop Staleness Calendar, available at www.lw.com.

Soft Call: a Prepayment Premium payable only on Voluntary Prepayments and, in some cases, Voluntary Prepayments triggered by the proceeds of a Refinancing. What is covered by a Soft Call varies from deal to deal. Compare Hard Call.

Solvency Certificate: a certificate delivered at Closing and signed by a financial officer (typically the CFO) of the Borrower, certifying that after giving effect to the transactions contemplated by the Credit Agreement or Indenture, the Borrower/Issuer and its subsidiaries (usually, on a consolidated basis) are and will be "solvent" (defined by reference to Bankruptcy law). This is a very important Condition Precedent in any set of Commitment Papers.

SOX: shorthand for Sarbanes-Oxley.

SOX Section 404: under this section of Sarbanes-Oxley and the related SEC rules, most reporting companies (subject to certain phase-in requirements) must establish and maintain Internal Controls and Procedures. Compliance with Section 404 is extremely expensive, and has been a matter of considerable controversy.

SPE: acronym for Special Purpose Entity.

Special Purpose Entity: another name for a Bankruptcy Remote Vehicle.

Special Purpose Vehicle: another name for a Bankruptcy Remote Vehicle.

Specified Representations Language (or Specified Reps): a provision found in the text of the Commitment Letter. It states that notwithstanding anything else in the Commitment Letter, the only representations relating to the Target the accuracy of which are a condition to the Availability of the facilities on the Closing Date are (i) representations made with respect to the Target (but only to the extent the Sponsor has the right to terminate the acquisition as the result of a breach of such representations) and (ii) certain Specified Representations, as defined. The list of Specified Representations is a matter of some negotiation, but generally would include representations relating to incorporation or formation; organizational power and authority to enter into the documentation relating to the facilities; due execution, delivery and enforceability of such documentation; solvency; no conflicts with laws; charter documents or (in some instances) material agreements; Federal Reserve margin regulations; the Investment Company Act; status of the Senior Facilities as First Lien Senior Debt; and Perfection of Security Interests. Also sometimes called SunGard Language.

Sponsor: the private equity firm whose fund is the purchaser in a Leveraged Buyout, or the primary holder of the equity interests in a particular Borrower/Issuer. The Sponsor representative in a meeting will be the one asking why things can't be done faster.

Spot Market: a market in which Commodities are purchased and sold for cash and delivered "on the spot" or very soon after the sale. Also called a "cash market." A sale on the Spot Market is known as a "spot sale." A company sells Commodities on a "contracted" basis rather than a "spot" basis if it enters into a contract to sell the Commodities over a period of time at a specified price or pursuant to a specified price generating formula.

Spread: another name for the Underwriting Discount.

SPV: acronym for Special Purpose Vehicle.

Stale: see Staleness.

Staleness: a term referring to the dates on which Financial Statements go Stale. Once Financial Statements go Stale, they can no longer be included in an SEC filing (and the SEC will no longer declare the Issuer's Registration Statement effective)—meaning the Issuer has to wait until the Financial Statements for the next quarter are completed in order to file a Registration Statement or have the SEC declare a Registration Statement effective. See Latham & Watkins Desktop Staleness Calendar, available at www.lw.com.

Standard & Poor's: another name for S&P.

Standby Letter of Credit: a Letter of Credit the purpose of which is to provide credit support only in the event of a performance Default by

the account party (i.e., the Borrower) or some other contingent event. Compare Commercial Letter of Credit.

Standstill: see Remedy Bar.

Staple Financing: a financing package being offered up by the investment bank that is acting as the sell-side advisor in connection with the auctioning of a Target company. Called "staple" because the financing package (the Commitment Papers) is "stapled" to the bid materials that are sent out to potential buyers. Staple Financings are a useful way for the investment bank acting as the advisor to a company that is putting itself on the auction block to also be involved in the financing of the acquisition by the buyer.

Staple Papers: Commitment Papers being used in a Staple Financing.

Step Down: a reduction in the percentage used for purposes of the Excess Cash Flow Sweep (and sometimes the Equity Sweep) if the Borrower is able to achieve an agreed upon Leverage Ratio.

Step Up: the increase in Interest Rates on a Bridge Loan that occurs if the loan is still outstanding after certain increments of time.

Stock Purchase Agreement: the acquisition agreement pursuant to which the acquiror is purchasing the shares of the Target. This is sometimes referred to as the "SPA" or the "PSA" (which is an acronym for Purchase and Sale Agreement). Not to be confused with a Purchase Agreement in the Securities offering context.

Straight-Line Basis: to Amortize or Depreciate an asset on a "straight-line basis" means to Amortize or Depreciate the asset in equal amounts at regular intervals over the course of the Amortization or Depreciation calculation period.

Strategic Buyer: a corporate acquiror in an acquisition that is acquiring for strategic reasons (e.g., to eliminate a competitor or expand into a new market). Strategic Buyers often have an advantage in an auction since they usually expect to benefit from Synergies if the deal goes through and can therefore pay more for the Target. Compare Financial Buyer.

Structural Subordination: non-Contractual Subordination created where a slug of debt is issued by a Holding Company or other parent entity, with no Guarantee from the Operating Subsidiary that is the Borrower/Issuer under other indebtedness, thereby becoming effectively Subordinated to the debt held closer to the operating assets (since all the Operating Subsidiary's debt gets paid in full in a Bankruptcy before anything is dividended up to the Holding Company). See Subordination.

Structure Flex: the changes that the Arranger may make to the structure (i.e., the type of debt offered, or the location of the Borrower within the

credit group) of the Credit Facilities provided for in the Commitment Letter if needed to facilitate the Successful Syndication of the Credit Facilities. Holdco Flex is a type of Structure Flex.

Subordinated Debt: sits in-between Senior Debt and equity in the Capital Structure. Generally raised by selling High Yield Bonds or through a Mezzanine Financing. Subordinated Debt always has looser Covenants than the Senior Debt, which is compensated for with a higher Interest Rate.

Subordinated Intercompany Note: a promissory Note evidencing intercompany debt that provides for the Subordination of the intercompany debt to the obligations under the Credit Agreement and the other loan documents. Serves a variety of purposes such as clearly keeping Affiliate entities out of the same class of Lenders as Credit Agreement Lenders in a Bankruptcy, and also creating a piece of Possessory Collateral (the Note itself) that can be put into the Collateral Agent's vault.

Subordination: types include Contractual Subordination, Lien Subordination, Structural Subordination and Effective Subordination. See also Junior Debt and Senior Debt.

Subrogation: the substitution of one party in the place of another party with respect to a claim by that other party against a third party, so that the substituted party succeeds to the rights of the other party with respect to such claim. Confusing, isn't it? An example would be if an insurer pays an insurance claim to a third party payee on behalf of an insured party, and then "steps into the shoes of" the insured party to make a counterclaim against the third party payee in order to get back all or a portion of the payment.

Subsidiary Guarantor: subsidiary of the Borrower that acts as a Guarantor.

Substantive Consolidation: the pooling of the assets and liabilities of separate legal entities in a Bankruptcy. Creditors of substantively consolidated entities will have a claim against the single pool of assets and guaranty claims. The notion that a Bankruptcy court can order the Substantive Consolidation of the assets and liabilities of multiple Affiliate debtors dates back many years. The remedy of Substantive Consolidation is "equitable," not statutory, and is not the same thing as piercing the corporate veil. Whether it will be ordered in a particular case will turn on how the court chooses among and applies standards that have developed as judge made law, rather than through analysis of a statute. Historically, Substantive Consolidation has been reserved for cases where (i) the financial affairs among Affiliates are so entangled—whether by design or sloppy business practices—that an accurate assessment of which entity is obligated to a particular creditor or group of creditors cannot be determined or could only be determined at undue cost or (ii) where creditors generally had dealt

with the enterprise as a single consolidated entity (rather than separate legal entities). Courts routinely state that Substantive Consolidation is to be granted "rarely," though courts routinely permit Substantive Consolidation when it is consensual. Over time, a variety of standards or "tests" for when Substantive Consolidation should be ordered over an objection have been articulated. See *In re Owens Corning*, 316 B.R. 168 (Bankr. D. Del. 2004), reversed by 419 F.3d 195 (3d Cir. 2005).

Successful Syndication: in Commitment Paper land, a number of things happen once the Arranger has achieved a Successful Syndication. For example, Flex rights terminate. The term is not always defined in Commitment Papers, but when it is, it is usually with reference to the level of remaining commitment held by the Arranger. For example, if the original commitment is $500.0 million, Successful Syndication may be defined as the point at which the Arranger has Syndicated (or assigned away) commitments such that it is only on the hook for $50.0 million.

SunGard Language: another name for Specified Representations language, so-named because SunGard was the first deal to contain those provisions. Also includes a second part that provides that the failure to Perfect a Security Interest in any Collateral (other than Possessory Collateral which must be delivered, and Collateral that can be Perfected by filing a Financing Statement) will not be a Condition Precedent to Closing a financing unless the Borrower does not use some specified level of effort to Perfect.

Superholdco: a Holding Company that is the parent (or the parent's parent, etc.) of another Holding Company. It is often seen wearing a cape and tights. A Superholdco is generally not a Guarantor under any Credit Agreement or Indenture for debt incurred or issued at any of its subsidiaries. See Holding Company.

Supermajority Voting: situation where a percentage of the Lenders under a Credit Agreement greater than a simple majority (usually 65 percent to 80 percent) is required for certain material Amendments, such as changes in Amortization and releases of Collateral.

Suretyship: the undertaking by a party (the "surety") to be liable for the debts or other obligations of another party. The terms surety and Guarantor are often used interchangeably and a Guarantor is a type of surety under the UCC. Technically speaking, when the secondary obligor is directly liable under a three-party contract with the primary obligor and the obligee, such contract is considered a Suretyship contract, whereas if the secondary obligor is liable under a two-party contract with the obligee, with the primary obligor being obligated to the obligee separately, such contract is considered a Guarantee. A "Suretyship defense" is a defense under which a surety or Guarantor claims that it is no longer liable under its secondary obligations due to changes to the underlying obligation between the obligee and the

primary obligor.

Swap: an Over-the-Counter transaction in which the parties agree to exchange specified cash flows at specified intervals (e.g., one party agrees with the other party that it will exchange a Floating Rate for a Fixed Rate on a specified notional amount of principal at the end of each quarter). This is a tool that Borrowers use to manage their exposure to changes in Interest Rates.

Swing Line Loans/Swingline Loans: not nearly as cool as they sound. This is a little, tiny short-term revolving sub-facility provided as a convenience to Borrowers as part of a Revolving Facility. It permits smaller amounts to be borrowed, often on a same-day basis. All Swing Line Loans are Base Rate Loans.

Syndicate: as a verb, the process whereby an Arranger of a Credit Facility assigns (sells) the loans and commitments to other banks and funds. As a noun, the group of banks and funds that have become the Lenders under the Credit Facility. See Bookrunner and Syndication.

Syndicate Covering Transaction: a transaction in connection with a Securities offering whereby the managing Underwriter places a bid or effects a purchase of shares on behalf of the underwriting Syndicate in order to reduce a Syndicate Short position.

Syndicate Short: managing Underwriters in public equity offerings generally over-allot the shares—that is they accept orders for more shares than are being sold by the Issuer in the offering. These extra orders are referred to as the Syndicate Short because the Underwriters are Short by this number of shares. A similar practice occurs in Convert Deals. See also Naked Short, Green Shoe and Refreshing the Shoe.

Syndication: the process by which the Arranger sells loans and/or commitments to a number of Lenders. Remember that the Arranger is in the distribution business and not the storage business.

Syndication Agent: often, a title granted to a Lender during the Syndication process that carries no responsibilities (similar to a Documentation Agent), but occasionally a name for an Agent who helps the Arranger and/or Administrative Agent in Syndicating loans before or after the Closing Date, or that has other specific responsibilities outlined in a Credit Agreement. Essentially, it is a means for a Lender to get its name on the cover of a Credit Agreement and receive League Table Credit.

Syndication Agreement: an agreement among Arrangers (in a deal with more than one of them) as to how they will sell off their unsyndicated loan exposure after a transaction has closed. Under a Syndication Agreement, the Arrangers might agree that for a limited period of time (usually one to two months) none of them will sell the loans they share without giving the other Arrangers a right to sell on a pro rata basis. The purpose is to bring order to the Syndication process

and avoid the chaos associated with a fire sale where all the Arrangers are simultaneously selling loans at varying prices.

Synergies: the cost savings and other efficiencies that are projected to materialize when two companies in the same industry are merged. Examples include reduced SG&A, increased purchasing power, more efficient utilization of factories, warehouses and distribution centers, and headcount reduction in the sales force. See Strategic Buyer.

Synthetic Letter of Credit: a Letter of Credit under a facility that has been "pre-funded" by the Lenders on the Closing Date (with the proceeds from such funding typically being deposited in a cash collateral account) rather than being funded on a later date upon the occurrence of a contingent event requiring payment under the L/C to the third party. See Letter of Credit.

T+ Legend: under Rule 15c6-1 of the Exchange Act, trades in the secondary market are required to settle (i.e., you are supposed to close) three business days after Pricing, unless the parties otherwise agree. So in any deal where the Closing is pushed out beyond the mandated three days, a T+ Legend should be included in the Prospectus or Offering Memorandum.

Tag Along Rights: the contractual rights of a minority shareholder to be included in (or to tag along in) a transaction where the majority shareholder is selling its interests to a third party. Compare Drag Along Rights.

Takedown Fee: another name for Funding Fee.

Target: the company or business being purchased in a transaction.

Target MAC: a Business MAC focused specifically on the Target.

Tax Gross-Up: a provision in a Credit Agreement that increases the amount of any payment by a Borrower to a Lender so that, after payment of applicable withholding taxes, the Lender receives what it would have received if no withholding taxes had been imposed. A Tax Gross-Up generally protects Lenders that are not otherwise subject to tax in the Lender's jurisdiction from the possible imposition, after the Closing Date, of withholding taxes by a taxing authority.

Tax ID Number: a company's Federal Employer Identification Number (FEIN). One of the items of information a Lender must obtain from the Borrower in order to comply with Patriot Act Requirements.

Technical Amendment: an Amendment that is necessary for technical reasons, perhaps because a Credit Agreement inadvertently prohibits a certain activity that the Borrower has always engaged in. To be distinguished from a substantive Amendment that, for instance, would be entered into to allow the Borrower to incur more debt or make more investments. In many cases, the difference between a Technical Amendment and a substantive Amendment is very much in the eye

of the beholder. Both types of Amendment will typically be subject to the Amendment mechanics (including a Required Lender vote) of the Credit Agreement.

Tenor: the length of time between the creation of a Credit Facility or Bond and its final maturity.

Term Loan: a loan for a specific amount that the Borrower borrows on day one and then pays back according to a predetermined schedule. In Bridge Loan Commitment Papers, there are generally two types of Term Loans: (i) the Term Loan component of the Senior Secured Credit Facility and (ii) the Rollover Loans into which the Bridge Loans flip at their maturity (generally one year after the Closing Date). See Term Loan Facility. Compare Revolver.

Term Loan A: another name for a Tranche A Term A Loan.

Term Loan B: another name for a Tranche B Term A Loan.

Term Loan Facility: a Senior Secured Credit Facility consisting of Term Loans, which are generally borrowed in their entirety at Closing and repaid according to an Amortization Schedule or a Bullet Maturity. See, however, Delayed Draw Term Facility.

Term Loan Term Sheet: generally, the Term Sheet for the Rollover Loans (see Term Loan) provided for in a Commitment Letter. This Term Sheet is generally an exhibit to the Bridge Facility Term Sheet.

Term-Out Option: an option of a Borrower to convert a Revolver (commonly a short-term Revolver of 364 days) to a Term Loan.

Term Sheet: the exhibits and annexes attached to a Commitment Letter that detail the terms of the Senior Secured Credit Facilities and the Bridge Facility.

Tick Marks: Tick Marks refer to the letters (e.g., "A," "B," "C") accountants write next to accounting books and records data that appear in the Offering Memorandum as part of the Comfort Letter. Each Tick Mark represents a negotiated procedure designed to demonstrate a "reasonable investigation" with respect to Numbers that are not covered by the text of a Comfort Letter. Each Tick Mark explains how the given number was verified by the accounting firm as part of the comfort process. For instance, the auditor might say that it "compared the number in the disclosure to the audited financials and found them to be in agreement."

Ticking and Tying: the procedure of providing Tick Marks in a Comfort Letter.

Ticking Fee: a fee associated with a long-term commitment to provide a Bridge Loan or other Credit Facility, which starts accruing the day the Fee Letter is signed (or a specified number of days thereafter) and terminates when the underlying transaction is either consummated or terminated. The Ticking Fee is set forth in the Fee Letter.

Total Cap: see Cap.

Trade Letter of Credit: a Letter of Credit issued for the purpose of providing the principal payment mechanism for the purchase of goods through the presentation of documents to the Issuing Bank.

Tranche: this term, which means "slice" in French, refers to an individual class or series of Bonds within an offering (which may have different ratings) or to individual Credit Facilities within the same Credit Agreement (e.g., a single First Lien Credit Agreement may have a Tranche A Term Loan, a Tranche B Term Loan, a Delayed Draw Term Facility and a Revolving Facility, each of which is a separate loan Tranche).

Tranche A Term Loans: Term Loans that are structured to appeal to the commercial bank loan market—for instance, by featuring meaningful Amortization. Prior to the entrance of institutional investors into the loan market in the early 1990s (at which point Tranche B Term Loans became more popular), most Syndicated Term Loans were sold to commercial banks as Tranche A Term Loans.

Tranche B Term Loans: Term Loans that are structured to appeal to institutional investors (read "hedge funds") who are more focused on keeping their funds invested at attractive Yields than on Amortization. Tranche B Term Loans typically Amortize at a rate of 1 percent per year (or, in the case of Second Lien Facilities, have no Amortization), mature six to 12 months after the maturity of the Tranche A Term Loans and have a higher Interest Rate than the Tranche A Term Loans of the same Borrower.

Tree: a perennial plant with a woody main stem. In the acquisition finance context, Trees are references to different bidders or financing sources. If a company puts itself up for sale (in an auction), there will be multiple bidders (generally Sponsors, but sometimes Strategic Buyers) looking at the Target, and each bidder will in turn be examining possible financing from a variety of banks. So if Sponsor A and Sponsor B were looking at the Target, and each had two possible financing sources (drafting Commitment Papers), there would be four financing Trees. Ideally, at least three of those Trees would be using Latham & Watkins.

True Sale: a transaction in which actual legal title to an asset is transferred, as opposed to the asset being loaned or pledged as Collateral in a financing transaction. The issue of whether a transaction is a True Sale or a financing has Bankruptcy implications, because if a transferor goes Bankrupt, unless the asset in question is deemed to have been sold in a True Sale transaction, the Bankruptcy court can determine that the asset is still owned by the transferor and can therefore be included as part of the Bankruptcy assets that are distributed to creditors.

Trustee: performs as the Bond equivalent of a Credit Agreement

Administrative Agent. The Trustee has certain assigned duties and rights under the Indenture that become particularly important following Defaults or Events of Default.

Turn: (i) banker slang for a unit of measurement equal to the LTM EBITDA of a Borrower, often used with reference to leverage (e.g., a banker may ask you to draft a Closing Condition that leverage not exceed "three Turns"). If the Borrower's LTM EBITDA was $100.0 million, that condition would be that total leverage not exceed $300.0 million. (ii) The process of making changes to and redistributing a document following a round of comments—usually requested in a half-time timeframe, as in "do you think we will see the next Turn by tomorrow morning our time?"

UCC: the Uniform Commercial Code. The UCC is one of a number of uniform acts that have been promulgated in conjunction with efforts to harmonize the law of sales and other commercial transactions in all 50 states within the United States—although each state's version of the UCC may be slightly different from another's. The UCC deals primarily with transactions involving personal property. See Larry Safran.

UCC Diligence Certificate: another name for Perfection Certificate.

UCC-1: the precise form of the filing required to Perfect by filing.

UCC-3: also known as a "UCC-3 termination statement," this is the form of filing made to terminate or release (and in some states, amend) Security Interests.

Underwriters: the investment banks that buy Securities in the initial purchase from the Issuer and then immediately resell them to the public in a public offering. More technically, and in brief, Section 2(a)(11) of the Securities Act defines an Underwriter as any person who has purchased a Security from an Issuer or a controlling person of an Issuer with a view to distributing the Security.

Underwriting Agreement: the contract pursuant to which Underwriters agree to purchase Securities from an Issuer.

Underwriting Discount: the money the Underwriters make from a Securities offering. Underwriters make their money by selling the new Securities at a markup from what they paid. For example, the Underwriters might buy each share in an IPO from the Issuer for $16.50 and sell it into the market at the offering price of $20. Here, the Underwriting Discount (or Spread) is $3.50 per share.

Undrawn Commitment: in a Revolving Facility or Delayed Draw Term Facility, the loans the Lenders have agreed to make available to the Borrower, but that the Borrower either has not yet requested, or in the case of a Revolving Facility, may have requested but has paid back (and therefore has the option to reborrow in the future). Interest is not payable on undrawn committed amounts, but a Commitment Fee will be due in some amount lower than the Interest that would be payable if

the loans were drawn. The Commitment Fee compensates the Lenders for keeping the funds available for the Borrower.

Unrestricted Subsidiaries: subsidiaries to which most of the Indenture or Credit Agreement Covenants do not apply. For this reason, the Covenants place a firewall between the Restricted Subsidiaries and the Unrestricted Subsidiaries, and transactions between a Borrower/ Issuer and its Unrestricted Subsidiaries will be treated similarly to transactions with unrelated parties. See Restricted Subsidiaries.

Use of Proceeds: the specification in the Term Sheet (or Prospectus or Offering Memorandum) of what the proceeds of the financing will be used for, and a Rep and Covenant by a Borrower in a Credit Agreement (or an Issuer in an Underwriting Agreement) that this is in fact where proceeds will go.

Voluntary Prepayments: prepayments of a Term Loan made at the Borrower's option that are not required pursuant to the Amortization Schedule. Compare Mandatory Prepayments.

Waiting Period: the period in a registered Securities Offering after the Registration Statement has been filed with the SEC when offers are permitted but sales are prohibited (i.e., the Marketing Period). This is the period when the SEC reviews the Registration Statement. The Issuer must continue to be very careful about what it says during the Waiting Period.

Waivable Mandatory Prepayment: in some Credit Agreements, Mandatory Prepayments can be waived by the First Lien Lenders. The rejected amounts typically get offered to the Lenders under the Second Lien Facility and, if rejected again, the Borrower is typically permitted to keep the funds. However, in some cases, prepayments that have been waived by both the First Lien and Second Lien Lenders are required to be rerun through the prepayment Waterfall without any right for Lenders to waive.

Waiver: a waiver of a past Default under a Credit Agreement or Indenture. In contrast to an Amendment that actually amends the text of a Credit Agreement or Indenture going forward, a Waiver generally applies to a one-time Default and may last only for a limited period of time. Also, Waivers tend to be given after a Default has occurred whereas Amendments are granted prior to the occurrence of a Default (ideally). Amendments are generally better—plan ahead if you can.

Warrants: derivative Securities setting forth a time period within which the holders may buy Securities from the Issuer at a given price (the "strike" or "exercise" price); sometimes a feature of Mezzanine Financing that provides a higher return to Mezzanine investors.

Waterfall: sometimes called a "payment waterfall," generally refers to the order of application of funds or proceeds. Think of the funds in question as water running down a flight of stairs with a bucket placed

on each step—the water (money) flows to the top step first and fills that bucket before the overflow continues on to the second step, and fills that bucket before proceeding to the third step, etc. So, if your deal is that you get paid before someone else, your proverbial bucket will be placed higher in the waterfall. The guy most likely to be left with an empty bucket (or in practice, an unpaid obligation) is of course whoever is at the bottom of the waterfall. Similar to choosing a seat on the water rides at Six Flags, the goal of negotiating your position in a waterfall is not to come out dry.

Weighted Average Life: this is shorthand for "weighted average life to maturity" which is calculated based on the average of the time remaining for the remaining principal payments on a debt obligation. In the case of most High Yield Bonds, this is easy since they do not have any Amortization requirements—it is simply the time remaining until the Maturity Date of the Bonds.

Well Known Seasoned Issuer (WKSI): WKSIs are large-scale, seasoned Issuers that benefit from special treatment in public Securities offerings. In particular, WKSIs are able to make offers to sell Securities before a Registration Statement has been filed and without regard to previously applicable Gun Jumping restrictions. In addition, WKSIs are entitled to Automatic Shelf Registration on demand without SEC review. WKSIs were introduced as part of Securities Offering Reform. See Latham & Watkins publication: Christmas in July—the SEC Improves the Securities Offering Process (August 2005), available at www.lw.com.

WGL: acronym for Working Group List.

White Knight: in a hostile takeover situation, a friendly bidder who makes a rival bid for the Target in an effort to prevent a hostile bidder from acquiring the Target.

WKSI: acronym for Well Known Seasoned Issuer.

Working Capital: a measure of a company's short-term Liquidity, calculated by subtracting current liabilities from current assets.

Working Capital Facility: a Revolver used by the Borrower to fund Working Capital needs.

Working Group List: a list containing the contact information for each banker, attorney, accountant and Issuer or Borrower representative working on a particular deal.

Wrapped Bond: a Bond that is insured by Monoline Bond Insurance.

Yank-a-Bank: a Credit Agreement provision that allows the Borrower to throw a Lender out of a Credit Facility if it won't agree to an Amendment. Certain Credit Agreement Amendments (including Amendments affecting pricing of the loans) cannot be achieved without approval of all Lenders. Yank-a-Bank provisions enable the Borrower to squeeze out dissenting Lenders in a 100 percent vote situation so

long as a majority of the Lenders has approved the Amendment. The "yanked" Lender is replaced with a new Lender who does approve the Amendment and is willing to purchase the outstanding loans and commitments of the yanked Lender, usually at Par.

Yield: the total rate of return to a Bond investor (which may include both Interest payments and accrual of Original Issue Discount or market discount). The Yield on a Bond may be higher or lower than the Coupon.

Zero Coupon Bond: a Bond that is issued with substantial OID and calls for no Interest payments at all—just a single principal payment at maturity. See also Discount Notes.

Zone of Insolvency: no, this is not a bad TV sitcom. When a previously solvent Borrower gets close to insolvency, the courts have held that the board of directors' fiduciary duties morph to include the Borrower's creditors. Prior to entering the Zone of Insolvency, Borrowers do not owe their creditors any fiduciary duties.

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