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European Capital Markets  
and Bank Finance

**The Latham & Watkins Glossary of  
European Capital Markets and Bank  
Finance Slang and Terminology**

*Second Edition*



Some years ago, a few clever members of our corporate and finance departments in the US created the first Book of Jargon, a glossary of corporate and bank finance slang and terminology. Intended to offer a sort of crash course for recent law and business school graduates navigating Wall Street, the book also served as a desktop reference for not-so-recent graduates. Following fast on the heels of the US book, The European Book of Jargon helped those of us on this side of the pond in the same ways. This Second Edition decodes the new slang, the timeless terminology and the downright confusing phrases used in European capital markets, corporate and bank finance deals and their restructurings. We hope the quick and occasionally clever explanations contribute to your success.

The Book of Jargon®: European Capital Markets and Bank Finance is one of a series of practice area-specific glossaries published by Latham & Watkins.

*The definitions contained in The Book of Jargon® 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 European Book of Jargon is (as the name suggests) drafted from a European practice perspective but we confess to having liberally plagiarized where applicable from the original Book of Jargon. The information contained herein should not be construed as legal advice.*

*If you have suggestions for additional terms or expanded or clarified definitions for the current terms, please send an email to [europianglossary@lw.com](mailto:europianglossary@lw.com).*

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**'33 Act:** another name for the US Securities Act.

**'34 Act:** another name for the US Exchange Act.

**'40 Act:** another name for the US Investment Company Act.

**10b-5 Opinion / Letter:** another name for the Negative Assurance Letter.

**10b-5 Rep / Rule 10b-5 Representation:** this term is generally used by US practitioners as shorthand for a Representation and Warranty by an Issuer, Target or Borrower that the due 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.

**135 Day Rule:** relevant to the Financial Statements of the Issuer in Capital Market deals. SAS 72 permits an accounting firm to give Negative Assurance that it is unaware of certain specified changes in financial statement amounts up to a date that is less than 135 days from the end of the most recent period for which the accounting firm has performed an audit or review. Accounting firms will not give such Negative Assurance post 135 days from the end of the most recent reviewed or audited period (even for Reg S Only deals).

**135(c) Release:** press release announcing the commencement of a private offering by a company subject to the reporting requirements of the US Exchange Act (and certain non-reporting Foreign Private Issuers) in reliance on the Safe Harbour provided by Rule 135(c). Rule 135(c) provides that the Issuer will not be deemed to make an offer of Securities under Section 5(c) if it issues a notice of a proposed or completed unregistered offering in the United States that complies with this rule. See 135(e) Release.

**135(e) Release:** press release announcing the commencement of a private offering by a company subject to the reporting requirements of the US Exchange Act (and certain non-reporting Foreign Private Issuers) in reliance on the Safe Harbour provided by Rule 135(e). Similar to Rule 135(c), Rule 135(e) provides the Issuer will not be deemed to make an offer of Securities under Section 5(e) if the Issuer issues a notice of a proposed or completed unregistered offering, but the notice may contain other information, such as the names of the Initial Purchasers, Managers or Underwriters. The 135(e) Release may not be circulated in the United States.

**144A for Life Offering:** a Rule 144A Offering 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 US Exchange Act. Securities offerings in Europe do not typically include any Registration Rights.

**2.7:** used in the context of P2Ps and shorthand for the announcement required by Rule 2.7 of the Takeover Code, which is an announcement of a firm intention to make a takeover offer. It is very difficult to avoid making a bid once the 2.7 has been made. Also referred to as the Press Announcement.

**21 Day Rule:** a German Insolvency rule that also translates into English as “everybody panic”. Management of a German company must file for Insolvency no later than three weeks after the company becomes insolvent and will face criminal sanctions and personal liability if they fail to do so. Often, companies can find ways to address the state of Insolvency in a restructuring and thus avoid the need to file. Not to be confused with Day 21.

**3(a)(9):** an offer to exchange new debt or Equity Securities for an Issuer's outstanding debt or Equity Securities, which offer is exempt from registration requirements pursuant to Section 3(a)(9) of the US Securities Act. 3(a)(9) provides an exemption for “any security exchanged by the Issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange” and requires that: (i) the Issuer of both the exchanged Securities and the surrendered Securities be identical, (ii) the transaction be a bona fide exchange where the Security holder does not part with anything of value other than the outstanding Securities, (iii) the Securities acquired in the exchange be offered exclusively to the Issuer's existing Security holders and (iv) the Issuer does not pay any remuneration for the solicitation of the exchange.

**5 bis Communication:** a Spanish pre-Insolvency tool whereby the debtor gains an additional three-month period to achieve an agreement with its creditors and one further month to file for Insolvency. In addition, creditors' applications to file for Insolvency during that period will not be accepted and, generally speaking, enforcement actions will be stayed.

**“A” Loan:** another name for a Facility A Loan.

**AAIP:** Agreement Among Initial Purchasers.

**AAOIFI:** Accounting and Auditing Organisation for Islamic Financial Institutions. AAOIFI performs a review of developments in the Islamic finance sector and issues guidance papers.

**AAU:** the Accounting and Auditing Organisation for Islamic Financial Institutions, an international and autonomous not-for-profit Organisation based in Bahrain that prepares accounting, auditing, governance, ethics and Shari’ah standards for Islamic financial institutions. Also, in Capital Markets it is an acronym for Agreement Among Underwriters

**ABL:** Asset-Based Loan.

**ABO:** Accelerated Bookbuild Offering.

**ABS:** Asset-Backed Security.

**Absolute Priority Rule:** a term primarily used in US Bankruptcy law. This rule states that when a company is liquidated or reorganised, 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 Bookbuild Offering:** an offering on the Equity Capital Markets that involves the offering of shares in a short span of time, usually in one or two days, with minimal or no marketing.

**Acceleration:** the end of the line in Bond and loan world. Following an Event of Default, the Bondholders (in accordance with the Terms and Conditions or the Indenture) or Lenders (in accordance with the terms of a Facility Agreement) have the right to, among other things, "accelerate" the Due Date of their debts; in other words, they have the right to declare their Bonds or loans immediately due and payable. Note that the practice in the US and Canada (and in European Indentures or Terms and Conditions) is for Insolvency Event of Default to lead automatically to Acceleration, although this is uncommon in European bank financings, which typically require a direction to the agent by Lenders holding two-thirds or more of the outstanding debt. Note that Acceleration can lead to an obligation on the officers of the Issuer/Borrower to file for Insolvency, thereby precluding the ability to agree to a consensual out-of-court restructuring. See also Place on Demand.

**Accordion Feature:** an Incremental Facility that allows the Borrower to increase the maximum commitment amount under a Revolver or to incur additional Term Loan debt under the Facility Agreement. Contrast with Side-Car.

**Accordo di Ristrutturazione:** a pre-Insolvency procedure for company restructuring in Italy. Filing brings about a stay on creditor action for 60 days, and the company can obtain an immediate stay preceding the agreement in certain circumstances. Must be supported by an Esperto's report and entered into with at least 60% of the company's creditors by value and can be ratified by the bankruptcy court. Unlike the Concordato Preventivo, this procedure is only effective as between the company and participating creditors.

**Account:** can mean many different things but, in Capital Markets, a shorthand reference to the potential buyers of Securities in an offering.

**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 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:** 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 out in the Terms and Conditions or the Indenture.

**Accrued Interest:** Interest that has become earned but has not yet become due and payable (or which has become due but has not been paid) by the Issuer/Borrower.

**Acquisition Facility:** a Delayed Draw Term Facility intended to be used to fund acquisitions. Often combined with a Capex Facility.

**Acquisition Proceeds Prepayment:** a specific type of Mandatory Prepayment. This provision in a Facility Agreement requires the loans to be prepaid with the net cash proceeds of claims under the SPA and against the providers of Due Diligence reports. This prepayment requirement is often subject to a Reinvestment Right.

**Acting in Concert:** European jurisdictions take into account the fact that a publicly listed company may be controlled by several minority shareholders who are Acting in Concert rather than one sole majority shareholder. The details of this concept vary from jurisdiction to jurisdiction but, for example, in the UK the City Code defines persons Acting in Concert as those persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control of the Target or to frustrate the successful outcome of an offer for the Target (see Concert Party). Other countries will use the term differently.

**Actualisation/Actu:** the French term for “update”. Once a reference document or a registration document has been filed with the AMF, the Issuer can (and sometimes must) update certain information provided therein.

**Acuerdo Bilateral de Refinanciación del 71. bis:** bilateral refinancing agreement which is excluded from the scope of Spanish Clawback actions via the Refinanciación Protegida safe haven under the Spanish Ley Concursal provided certain conditions are met, including, amongst others: (i) the agreement increases the previous proportion of assets versus liabilities (e.g., payments in kind), (ii) the quantum of resulting current assets is higher than the quantum of current liabilities, (iii) the value of the Security Interest granted in favour of the creditors, added to the value of the existing Security Interest, does not exceed 9/10 of the outstanding creditor debt, (iv) the Interest Rate applicable to the post-restructuring debt does not exceed the original interest rate by more than 1/3, and (v) the agreement shall be executed in a Spanish public document.

**Acuerdo Colectivo de Refinanciación del 71. bis:** a collective refinancing agreement which is excluded from the scope of Spanish Clawback

actions via the Refinanciación Protegida safe haven under the Spanish Ley Concursal provided certain conditions are met, including, inter alia, approval by creditors holding at least 3/5ths by value of the debts, and the issuance of a certificate by the debtor's auditor acknowledging that the stated majority has been reached.

**Acuerdo de Homologación:** also sometimes called the 'Spanish scheme of arrangement', it is a refinancing agreement which is excluded from the scope of Spanish Clawback actions via the Refinanciación Protegida: safe haven under the Spanish Ley Concursal provided certain conditions are met, including: (i) the agreement significantly increases the funds available to the debtor and/or extends the maturity and/or substitutes the debtor's obligations thereto, but only to the extent that the agreement forms part of the viability plan which allows for the continuity of the business activities of the debtor in the short and medium term, (ii) it is approved by creditors representing 51% of the debtor's total financial liabilities (excluding trade creditors) and debtor's auditor must issue a certificate acknowledging that the stated majority has been reached, and (iii) it is homologated (confirmed) by the relevant mercantile court. In addition, some of the effects of an Acuerdo de Homologación can be imposed to non-participating or dissenting financial creditors to the extent that certain higher majorities are reached.

**A'd:** an Islamic finance term meaning a promise (a unilateral or mutual promise); e.g., used in the context of purchase undertakings and sale undertakings in Ijara lease transactions to purchase the lease asset at the end of the term of the lease.

**Additional Amounts:** like a Tax Gross-Up in a Facility Agreement, a provision in an Indenture that increases the amount of any payment with respect to the Notes by the Issuer to a holder of the Notes so that, after payment of applicable Withholding Taxes, the holder receives what it would have received if no withholding taxes had been imposed.

**ADGM:** the Abu Dhabi Global Market, a financial Free Zone in Abu Dhabi focusing on the following sectors of financial activity: banking and brokerage, capital markets, wealth management, reinsurance and captive insurance, Islamic finance and ancillary services. The ADGM has its own body of law, including corporate law, contracts law and employment law, its own financial services regulator, and its own court system.

**Adjusted EBITDA:** EBITDA on steroids. Refers to EBITDA, adjusted to eliminate the impact of certain unusual or non-cash items that the Issuer/Borrower (or its Sponsor) believes are not indicative of the future performance of its business. Adjusted EBITDA is also a component of the Leverage Ratio and Fixed Charge Coverage Ratio definitions. See also Pro Forma Adjusted EBITDA.



**'Adl:** an Islamic finance term meaning justice, equity or fairness in Islamic jurisprudence.

**Administrador Concursal:** person appointed by a Spanish Insolvency court either to supervise or manage an insolvent company. Generally, this is a single administrator, who must be registered with the public Insolvency registry (registro público concursal) and must have stated the geographic region in which they practice.

**Administration:** a formal Insolvency process in England designed to facilitate the rescue of an insolvent company or achieve a better return to creditors than if the company immediately went into liquidation. It involves the control of the company passing from the directors to an Administrator and a Moratorium on most secured claims and unsecured claims. The procedure has gained notoriety through the use of Pre-packs.

**Administrator:** a licensed UK Insolvency practitioner (usually an accountant) who is appointed by the court, the company's directors or by certain qualifying Secured Parties for the purposes of an Administration.

**Admission and Disclosure Standards:** the rules, published by the London Stock Exchange, containing the admission requirements and the ongoing disclosure requirements which companies with Securities admitted to trading on the markets of the London Stock Exchange have to observe. The rules do not apply to companies admitted to AIM.

**Admission aux Négociations:** French term for listing.

**ADR:** Alternative Dispute Resolution and also American Depositary Receipt.

**ADX:** the Abu Dhabi Securities Exchange.

**Affiliate:** defined slightly differently in different types of agreements and jurisdictions, but generally refers to a subsidiary, corporation, partnership or other person controlling, controlled by or under common control with another entity. The official SEC definition is found in SEC Rule 144 and Rule 405.

**Affiliate Transactions Covenant:** a Negative Covenant that protects against disguised dividends by preventing the Issuer/Borrower from entering into non-arm's-length transactions with its Affiliates, such as paying excessive management fees to deal Sponsors, selling assets to equityholders for less than fair market value or overpaying equityholders/employees through excessive salaries. In Bond world, 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 value thresholds, be approved by disinterested directors. Fairness Opinions are also sometimes required.

**Affirmative Covenant:** another name for a Positive Covenant.

**AFME:** Association for Financial Markets in Europe. A trade body that represents the shared interests of a broad range of global and European participants in the wholesale financial market (their words not ours). Various affiliates have been integrated, including the European High Yield Association.

**AFME's Agreement among Initial Purchasers:** the form Agreement among Initial Purchasers drafted by the AFME that is used in most, if not all, High Yield Bond offerings in Europe.

**Agency Fee:** another name for the Facility Agent Fee.

**Agent:** a generic term that is usually used to describe the Facility Agent, but may also be a reference to any of the following: Security Agent, Documentation Agent, Syndication Agent, Paying Agent, Transfer Agent or Registrar.

**Agreed Security Principles:** used most frequently in loan world, these are typically contained in a schedule to the Facility Agreement and provide the negotiated framework for which Collateral and Guarantees are required to be given in respect of the relevant transaction. Agreed Security Principles will contain a description of the limitations on granting Guarantees and Collateral, guidelines with respect to how Collateral will be taken and Perfected, and what obligations the Collateral giver will be under in the relevant Security Agreement.

**Agreement among Initial Purchasers / Managers / Underwriters:** the agreement that governs the relationship among the Initial Purchasers, Managers or Underwriters. Usually one of AFME's Agreement among Initial Purchasers, AFME's EMEA ECM model agreement among underwriters or ICMA's form agreement among managers is used for this agreement, depending on the context. 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 Rules:** rules under the US Internal Revenue Code that limit a company's ability to deduct Interest on certain high-yield instruments issued with OID. AHYDO (Applicable High Yield Discount Obligations) 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 the Interest is 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).

**AIM:** originally known as the Alternative Investment Market and abbreviated as AIM, the market is operated by the London Stock Exchange. It provides a more flexible regulatory environment than the Main Market of the London Stock Exchange. AIM does not require a particular financial track record or trading history, an established

management team or any minimum market capitalisation, nor does it require minimum thresholds regarding size or number of shareholders, and so it enables smaller and growing companies to access the public market.

**AIM Rules:** the AIM Rules for Companies as published by the London Stock Exchange.

**AJD:** Actos Jurídicos Documentados, the Spanish version of Stamp Duty.

**Al-Baik:** KFC, but in the Western Province of Saudi Arabia only. If you are looking up Islamic finance terms, you might be somewhere, or about to go somewhere, where this knowledge comes in useful.

**All In Cost:** the total cost to a Borrower of obtaining the Facilities, including fees, OID, Interest, Floor and other charges.

**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. If you think you have an "all or substantially all" question, call a Latham lawyer.

**Allocation/Allotment:** when used in Capital Markets, this is the amount of a new issue of Securities allotted to each Syndicate member by the Lead Manager after the final terms of the issue have been fixed. Following Allotment, the Syndicate members will sell the Securities allotted to them to their investor clients.

**Alternative Dispute Resolution:** any process of dispute resolution out of court (and, in some uses of the term, also out of arbitration). Often preferred or required in addition to or in place of standard enforcement and jurisdiction provisions in certain emerging markets.

**Alternative Transactions Language:** a provision in the Fee Letter that says that the investment bank that has committed to one or more Facilities 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. Also referred to as a Deal-Away Fee / Deal-Away Protection.

**Amanah:** an Islamic finance term for a trust, such as a bank account deposit.

**Ameen/Amin:** an Islamic finance term for a custodian or guardian, similar to a custodian or guardianship in common law jurisprudence.

**Amend and Extend:** entering into an amendment with the main intention of extending the Maturity Date under a Facility. This technique is generally employed by Borrowers when difficult lending conditions

mean that a Refinancing is either unavailable or prohibitively expensive. Lenders in such arrangements often require additional amendments as part of the extension, including an increase in the Interest Rates to reflect current market rates.

***Amend and Pretend:*** slang for entering into an amendment or Waiver of Defaults rather than fixing more fundamental problems with a Capital Structure. The amendment or Waiver is completed and everyone then pretends everything is OK.

***American Depositary Receipt:*** a negotiable certificate issued by a bank or trust company and traded in the US markets that represents ownership of Securities of a non-US company. Also known as ADRs. ADRs are denominated in US dollars, with the underlying Security held by a US financial institution overseas. ADRs are US Securities and are thus subject to US Securities regulations.

***AMF:*** Autorité des marchés financiers, the French financial market authority. An independent public agency, it has statutory power to issue regulations, sanction non-compliant Issuers and grant individual decisions, such as approval of Prospectuses or exemption from the obligation to launch a mandatory tender offer.

***'Amil:*** an Islamic finance term meaning the person performing a task as an agent, like any agent in common law jurisprudence.

***AML:*** Anti-Money Laundering. See KYC.

***Amortisation:*** the required periodic repayment in instalments of portions of the principal of a Term Loan or of Bonds prior to their final maturity. Repayment instalments will typically either be in equal instalments or feature a Balloon Payment. Facility B Loans, Facility C Loans, Revolving Facilities, Second Lien Facilities, Mezzanine Facilities and Bonds generally do not amortise and instead feature a Bullet Maturity. In accounting speak, Amortisation is the same concept as Depreciation, except that intangible assets are amortised and tangible assets are depreciated. See Depreciation.

***Amortisation Schedule:*** the schedule of regularly timed repayments of principal prior to the maturity of a Term Loan. See also Amortisation.

***Amortising Loan:*** a Term Loan that amortises, usually a reference to a Facility A Loan.

***Ancillary Facility:*** a Facility made available on a bi-lateral basis by a Lender using mechanics established under a Revolving Facility and which reduces that Lender's commitments under the Revolving Facility accordingly. Established for operational ease when a Revolving Facility has been Syndicated since Ancillary Facilities are typically of a type such that they are best made available bi-laterally — examples of such facilities include overdrafts, short-term loan Facilities and foreign

exchange facilities. Much more common in Europe than Swing Line Loans, which are more frequently seen in the US.

**Angel Investor:** an investor (usually an affluent individual as opposed to a corporation) that provides capital for a business start-up, usually in exchange for Preference Shares, convertible debt or Equity ownership. Think "Dragons Den" (or "Shark Tank" for our US readership), a series of reality television programmes broadcast internationally featuring entrepreneurs pitching their business ideas in order to secure investment finance from a panel of insufferably smug Angel Investors / Venture Capitalists (the eponymous "dragons" or "sharks").

**Anti-Bribery/Anti-Corruption:** a reference to a provision or practice which is intended to prevent acts which are or may be, among other things, designed to influence an individual in the performance of his or her duties, whether through bribery or an abuse of power. Given that a breach of the legislation may result in serious penalties for both the individual and the business, most businesses have introduced policies and compliance procedures to ensure that employees are aware of, and in compliance with, the law. Make sure to check your policy before accepting any gifts.

**Anti-Layering Covenant:** a Covenant that prohibits an Issuer/Borrower from layering in another series of debt between the Senior Debt and the Subordinated Debt. This is essentially a no-cheating rule and in Bond world was historically only used in Senior Subordinated deals, although it has increasingly become common in Senior Notes and Senior Secured Notes deals to include an analogous provision that requires that all debt that subordinates itself to any other debt also subordinate itself to the Senior / Senior Secured Notes, as well. In loan world, this Covenant has become more common in transactions with Senior Debt and a Mezzanine Financing. The Anti-Layering Covenant ensures that the Subordinated Debt occupies the second-class slot and not the third or fourth. This clause is an important consideration when looking to add a Second Lien Facility, "sandwiched" in between the First Lien Facilities and unsecured Bonds, as they may be prohibited by the Anti-Layering Covenant.

**Anti-Money Laundering:** see KYC.

**Apostille:** a certificate issued pursuant to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Convention), which facilitates the circulation of public documents between state parties. It does so by replacing the cumbersome and often costly formalities of a full legalisation process with the mere issuance of a certificate called an Apostille. Instead of legalisation by the appropriate embassy, the notary's certificate and seal are certified as genuine by the competent authority of the state on whose territory the document has been executed. The Convention applies to public documents (such as a notarial act or a document with

notarial authentication of signatures) executed in one state party to the Convention and to be used in another state party to the Convention.

**Applicable Margin:** the additional percentage that is added to a particular borrowing index, usually a relevant IBOR, to determine the Interest Rate payable on variable rate debt. The specified percentage is usually referred to as the Applicable Margin or the Margin.

**'Aqar:** an Islamic finance term for immovable property, such as real estate.

**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.

**'Arbun/Urboon/Arboon:** an Islamic finance term for a down payment paid in advance; for example, a non-refundable deposit paid by a buyer retaining a right to complete a sale.

**Arrangement Fee:** the fee paid to the Arranger for arranging and underwriting the Facilities. Calculated as a percentage of the Facilities that are being provided. Also known as an Underwriting Fee or Upfront Fee.

**Arrangement Letter:** see Auditor Arrangement Letter.

**Arranger:** the bank or financial institution that "arranges" (alone or with other co-Arrangers) a Facility by negotiating original terms with the Borrower and Syndicating the facility to a larger group of Lenders. An Arranger generally has no ongoing obligations under a Facility Agreement after the Closing Date. Also used to describe the bank taking the lead on arranging an EMTN or GMTN Programme.

**ARS:** Auction-Rate Security.

**ASPs:** Agreed Security Principles.

**Assemblea degli Obbligazionisti:** the Bondholders' meeting provided for by the Italian Civil Code, which resolves upon any matters affecting the interests of the holders of the notes issued by an Italian company (e.g., the amendments of the terms and conditions of the notes and the appointment of the Bondholders' representative (Rappresentante Comune)).

**Asset Sale Covenant:** the Covenant that governs the sale or other disposition of assets. In the Terms and Conditions or 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%). The proceeds must be used to repay certain types of debt, reinvest in long-term assets useful in the business or to make an offer to repurchase Bonds at Par. In a Facility Agreement, by contrast,

generally this Covenant strictly limits the Borrower's ability to sell assets, except as may be specifically negotiated on a deal-by-deal basis with limited Carveouts and Baskets. In the Facility Agreement context, see also Asset Sale Prepayment.

**Asset Sale Prepayment:** a specific type of Mandatory Prepayment. This provision in a Facility Agreement requires the loans to be prepaid with the net cash proceeds of certain non-ordinary course asset sales of the Borrower and its subsidiaries. The idea is that 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 net-cash proceeds. This prepayment requirement is often subject to a Reinvestment Right.

**Asset Stripping:** not nearly as exciting as it sounds, this is the act of buying a business whose market value is below its asset value with the intention of selling off the most profitable assets separately to realise a profit (rather than running it). Think Richard Gere's corporate raider character in *Pretty Woman* (Touchstone Pictures, 1990).

**Asset-Backed Security:** a generic term describing Tranched, exchange-listed Bonds issued by Special Purpose Entities backed by financial assets as mundane as residential mortgages (Residential Mortgage-Backed Securities / RMBS), commercial mortgages (Commercial Mortgage-Backed Securities / CMBS), automobile loans and leases, and credit card obligations, or as esoteric as casualty insurance claims ("catastrophe or "cat bonds"), life insurance claims ("viatical settlement bonds") or changes in survival rates ("longevity bonds"). CBOs, CDOs, CFOs and CLOs are all types of Asset-Backed Securities. Asset-Backed Securities are now notorious for being one of the causes of the Credit Crunch.

**Asset-Based Loan:** a Revolving Facility where the total amount that can be borrowed fluctuates based upon the value of the Borrowing Base at a given time. Asset-based lending is a way for companies to meet their short-term cash needs by borrowing against their short-term assets at favourable rates. Asset-Based Loans are particularly popular among retailers, oil and gas Issuers and other businesses with large amounts of accounts receivable and inventory but can be tricky (and therefore expensive) to structure in Europe given the difficulties in some jurisdictions in taking Security over the categories of assets used for the Borrowing Base. The Asset-Based Loan market in the US is therefore significantly more developed than it is in Europe. See Borrowing Base and Borrowing Base Loan.

**Assignment:** a Lender's transfer of its rights and, if possible, obligations under a Facility Agreement to a new Lender. Borrowers frequently like to maintain a degree of control over the Assignment process through consent rights, Whitelists and, in rare cases, Blacklists. Lenders prefer to limit such consent rights in order to maximise Syndication options

and keep the loans more freely tradable but may provide the Borrower with prior consultation rights. It would be extremely unusual for the Borrower to retain consent or consultation rights (as applicable) with respect to transfers to existing Syndicate members or to Affiliates of existing Syndicate members or when an Event of Default is continuing. Note that a Borrower's right to consent to transfers is an important fact that helps distinguish loans from Securities. Under English law, however, whilst you can assign rights, you are not able to assign obligations (see therefore Assignment and Assumption and also Novation).

**Assignment and Assumption:** when an Assignment doesn't work due to the inability under English law to assign obligations, and/or where a Novation isn't practicable due to loss of Security implications, English law uses an Assignment and Assumption — the rights are transferred and the new Lender also assumes the obligations of the old Lender, which is then released from those obligations.

**At Par:** see Par Value.

**Auction-Rate Security:** short-term debt Securities with Interest Rates set at weekly or monthly Dutch Auctions to appeal to investors seeking short-term investments.

**Audit Committee:** a committee of the board of directors of a company that oversees a company's audit, control and financial reporting functions.

**Auditor Arrangement Letter:** letter that sets out the scope of the engagement between the auditors and the Issuer and Initial Purchasers, Managers or Underwriters with respect to the Comfort Letter and related work, which only attaches to the Reg S portion of a deal. The letter permits the Initial Purchasers, Managers or Underwriters to use and rely on the Reg S Comfort Letter and other work outside the US and specifies that the letter does not apply to or affect rights or obligations in connection with the SAS 72 Comfort Letter in the US. Also sometimes called auditor engagement letter.

**Augmentation de capital:** the French term for "capital increase", referring to the issuance of shares by a French company. The total amount of the capital increase can be paid up in cash or in kind by contributing assets to the company (such as chattels, real estate and receivables).

**Authentication:** the signing of a Security (in global or definitive form) by the Registrar or Principal Paying Agent in order to give it legal effect.

**Authorised Person:** a person who is authorised for the purposes of FSMA to carry out a regulated activity.

**Automatic Stay:** the rule under US 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. Equivalent (or similar) restrictions exist in certain European jurisdictions — consult your favourite Latham lawyer for more information.

**Availability:** 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 or obtaining of Ancillary Facilities) 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).

**Availability Period:** the period of time from signing the Facility Agreement during which the Facilities may be drawn, assuming satisfaction of CPs and absence of a Drawstop.

**Available Amounts Basket:** an extra Basket (included in some Facility Agreements but certainly far from common) that may be used for dividends, Capital Expenditures, investments or the prepayment of other (usually subordinated) debt. This is a loan world replica of the way Build-Up Basket and Restricted Payment capacity works in most High Yield Bond Indentures. The Available Amounts Basket generally starts with 50% 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.

**Average Life:** see Weighted Average Life.

**'Ayn:** an Islamic finance term for a tangible (physical) asset, such as silver and gold, which would be the underlying asset in an Ijara.

**"B" Loan:** another name for a Facility B Loan.

**B&D / Billing & Delivery:** the lead Initial Purchaser, Manager or Underwriter that is responsible for collecting money from investors at Pricing and delivering the money to the Issuer (and collecting the fees on behalf of the Initial Purchasers, Managers or Underwriters) at Closing. The B&D Initial Purchaser, Manager or Underwriter will also help with the process of clearing the Securities through the relevant Clearing System

and will have to sign some certificates from the Closing Memorandum. This is basically the only bank that will respond to the lawyers' emails after Pricing.

**Backstop:** an agreement to purchase Bonds at an agreed upon price and coupon in the event that such Bonds are not able to be placed in the market. Such an arrangement comes at a cost to the Issuer and is more common in Sponsor deals.

**Back to Back Financing:** a Facility that is made available to a Borrower through another Lender and (often) where the terms of the two loans match, *i.e.*, Lender A lends to Lender B that, in turn, lends to the Borrower.

**Back-Up:** process by which the Initial Purchasers, Managers or Underwriters and the lawyers verify the statements made in the Offering Memorandum or Prospectus using third-party and other information provided by the Issuer. Back-Up is an essential part of the Due Diligence process.

**Bad Actor:** pursuant to Rule 506(d), eligibility to conduct a Rule 506 private placement is dependent upon, among other things, the absence of any "bad actors", including the Issuer, the Issuer's directors and officers, certain significant shareholders of the Issuer and any person who has received or will receive direct or indirect compensation for solicitation of purchasers in connection with such offering, among others. The parade of horrors that renders one a Bad Actor includes certain criminal convictions, restraining orders and regulatory proceedings in connection with the purchase or sale of a Security involving false statements, certain types of mail fraud and being Keanu Reeves.

**Bagel:** a delicious, donut-shaped bread roll or, in the syndication context, to get zero in an Allocation. As in, "you've gotten bagelled".

**Bahrain Bourse:** a stock exchange in Bahrain listing equities, Bonds, Sukuk and mutual funds, which is regulated by the CBB and was previously known as the Bahrain Stock Exchange. The Bahrain Bourse was incorporated as a Bahraini Closed Shareholding Company in January 2011.

**Bahrain Financial Exchange:** a stock exchange in Bahrain listing equities, Bonds, Sukuk, ETFs, ETCs, REITS, derivatives and Shari'ah-compliant financial instruments, which was established in January 2009 and is regulated by the CBB.

**Bai'/Bay':** an Islamic finance term for a sale, commonly used as a prefix in referring to different types of sales: bai al-dayn (sale of receivables), bai' salam (advance payment for goods to be sold), and bai muajjal or bai 'ajel (credit sale).

**Bail-In:** the process which allows resolution authorities to cancel or reduce certain eligible liabilities to creditors or partially or fully to convert such liabilities into debt or Equity Securities of the institution

or another entity in order to protect the solvency of such institution and avoid a bail-out by the government/tax payer. The Bail-In powers have been introduced in order to further ensure that the shareholders and unsecured creditors of a failing credit institution or investment firm are ultimately responsible for the costs of the failure. EEA member states are required to implement Article 55 of the European Union Bank Recovery and Resolution Directive (2014/59) (BRRD), which compels certain EEA financial institutions to include language (the "Bail-in Clause") in applicable contracts acknowledging the possibility that the institution's liabilities may be subject to a Bail-In.

**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 shareholders' Equity. See Income Statement.

**Balloon Payment:** a final payment of an Amortising Loan that is substantially larger than earlier instalments. Contrast with 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 Facility and a Bridge Facility.

**Bank Guarantee:** an undertaking from a bank to cover a debt, risk or liability on a transaction. In other words, if the debtor fails to settle a debt, the bank will cover it. Like a Letter of Credit.

**Bank Meeting:** the initial meeting of potential Lenders to whom an Arranger hopes to Syndicate a 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).

**Banking Monopoly:** refers to the rules whereby in a number of jurisdictions only licensed credit institutions may grant loans to Borrowers in that jurisdiction, subject to various exceptions. CDOs, CLOs and hedge funds get around it quite lawfully.

**Bankruptcy:** in the US this is 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 a US Bankruptcy, as opposed to out of court. Restructuring debts in Europe

is typically an out of court process although court-based procedures such as Schemes of Arrangement are used as implementation tools, with Insolvency being the end of the line and typically court-driven. Outside of the US, a "bankruptcy" usually means liquidation or Insolvency procedure for individuals.

**Bankruptcy Code:** Title 11 of the United States Code.

**Base Case Model:** refers to the financial model and business plan required to be prepared and warranted by the Borrower and delivered to the Lenders under the Facility Agreement as a Condition Precedent, particularly in Leveraged Buyouts. The scheduled repayment instalments under any Amortising Loans and the levels of the Financial Covenants are set by reference to the agreed Base Case Model (in the case of Financial Covenants, through the application of the agreed Headroom to the anticipated performance of the business set out in the Base Case Model). Also referred to as the Business Plan although in certain uses of the term, the Base Case Model can be one case within the Business Plan.

**Base Currency:** the one currency in which the Commitments of the Lenders are denominated even if the Lenders agree that drawings can be made in multiple currencies (being Optional Currencies), typically seen in the context of Revolving Facilities.

**Base Fee:** the fee agreed to between the Issuer or Sponsor and the Initial Purchaser / Underwriter or the Syndicate for the work to be performed in connection with a Securities offering. Contrast with Discretionary Fee.

**Base Prospectus:** in Europe, a Prospectus approved in accordance with the requirements of the Prospectus Directive by one of the European regulators. In the US, 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.

**Basel I:** the first of the regulatory capital accords for international banks published by the Basel Committee on Banking Supervision in 1988. What is left of this is now included in Basel II. See also Capital Adequacy.

**Basel II:** the imaginatively titled follow-up to Basel I, implemented in June 2004. Basel II established a framework for defining risk capital and weightings. The main purpose of Basel II is to link capital levels to the riskiness of the assets, which was missing from Basel I. See also Capital Adequacy.

**Basel III:** the now largely adopted and also imaginatively titled follow-up to Basel II. The main purpose of Basel III is to increase capital requirements for certain types of assets in order to limit certain bank behaviours that were viewed to have contributed to the Credit Crunch. See also Capital Adequacy.

**Basis Point:** one 1/100 of a percentage point (e.g., 50 Basis Points equal 0.50%). Referred to in shorthand as bps.

**Basket:** an exception contained in a Negative Covenant (usually expressed as a fixed amount and/or percentage of some financial metric). 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 million or 5% of Total Assets". See also Carveout and General Basket.

**BB-8/BeeBee-Ate:** the cute droid from Star Wars: Episode VI–The Force Awakens (Walt Disney Studios Motion Pictures, 2015).

**BBA:** British Bankers' Association.

**Bear Market:** bad times. Hang in there for a Bull Market.

**Bearer Bond:** a Security where possession is the only evidence of ownership, and title is transferred by delivery. Only used in Securities offerings that are not offered to investors in the US. If you have a Bearer Bond, please don't lose it.

**Belgian Dentist:** an informal name for the stereotypical private purchaser of Eurobonds.

**Benchmark:** see Comparable Treasury.

**Beneficial Owner:** Section 13(d) of the US 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.

**Benelux:** refers to the political and economic union of Belgium, the Netherlands and Luxembourg.

**Best Efforts Deal:** in Capital Markets, the Initial Purchasers, Managers or Underwriters may be engaged to use their "best efforts" to sell the Securities, but Best Efforts Deals do not require that the Initial Purchasers, Managers or Underwriters guarantee that it will be able to sell the Securities on any particular terms or at a certain price and relieves them from any responsibility to purchase any unsold Securities. In loan world, usually a reference to a deal which involves a Best Efforts Syndication.

**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 "best" efforts (subject to agreed conditions) to find Lenders to provide the loan. Traditionally used for risky Borrowers, and in complex transactions, Syndications in bad markets or in other circumstances (such as Refinancings) where the Borrower doesn't absolutely need the money by a certain time and would prefer not to pay the higher fees associated with committed financings.

**Bible:** only a few would call this holy; this is the name given to the collection of principal deal documents which are collected together after Closing for ease of reference for the main deal participants. Traditionally prepared in paper format but now more commonly prepared electronically on CDs or via a secure electronic transfer. Also known as the Closing Set.

**Bid/Offer or Bid/Ask Spread:** the difference between the highest buying price that a purchaser is prepared to offer ("offer") and the lowest selling price that a seller is prepared to accept ("bid"). Sometimes referred to as the Bid/Ask Spread or Bid/Ask.

**Bid Letter:** in a seller-controlled auction for a company, a letter to potential bidders communicating the requirements for submitting bids and the auction process.

**Bidco:** name typically given to the SPV established by a Sponsor as the acquiring entity in a Leveraged Buyout or by a corporation in a takeover. Usually Bidco will be the main Borrower in acquisition-related Facilities.

**Big Boy Letter:** a letter sometimes entered into in connection with a secondary trade of Securities or a Private Placement 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 defence against insider trading liability. Thus far, there is more legal authority in the US than in Europe to help answer these tricky questions.

**Big Four:** the four largest international professional services firms, offering audit, assurance, tax, consulting, advisory, actuarial, corporate finance and legal services. They are PricewaterhouseCoopers (PwC), Deloitte Touche Tohmatsu Limited (Deloitte), Ernst & Young (EY) and KPMG.

**Bilateral Facility:** a Facility with just one Lender that is not intended to be Syndicated.

**Bill of Exchange:** a written, unconditional order by one party (the "drawer") to another (the "drawee") to pay a certain sum, either immediately or on a fixed date, to the order of a specific person, or the bearer. A Bill of Exchange is a Negotiable Instrument.

**Bill of Lading:** a document acknowledging that specified goods have been received as cargo for conveyance to a named place for delivery. The Bill of Lading serves as a receipt from the carrier that items have been received for shipping. If a Bill of Lading is issued "to order" of the recipient of the goods, then it is a Negotiable Instrument.

**Binding Tax Ruling:** a specific issue in German restructurings where a debt write down can incur taxes for cancellation of debt income. A binding tax ruling can, however, be obtained confirming that a restructuring exemption to the tax will be applied. The application will be supported by a Restructuring Opinion. More generally, Binding Tax Rulings may be obtained in certain other jurisdictions to provide comfort that the tax position of the group will be as the parties assume, including as set out in any Structure Memorandum.

**Blacklist:** a list put together by the Borrower, or the Sponsor, of Lenders to whom a certain loan may not be Assigned or Novated because the Borrower or Sponsor believes that, among other things, the Lenders on the Blacklist will not be easy to deal with (in terms of amendments, Waivers, consents, etc.) over the life of its loans. Not to be confused with the French Blacklist. See also Disqualified Lenders. Compare with Whitelist.

**Blackout Period:** in the Securities context, refers to a period of time during which corporate insiders are legally restricted from trading if they are in possession of relevant information that has not yet been made public. In the IPO context, it refers to the period ahead of publication of the Preliminary Prospectus. During this period analysts' research reports should not be published and previously published reports should no longer be distributed. The purpose of the Blackout Period is to impose a chronological gap between publication of research and publication of the first of the formal IPO offering documents to make it easier to deny a link between the research and any investment decision. There is no particular market practice for the duration of the Blackout Period. In the UK, common practice has been to impose a Blackout Period from four weeks before the date of the Preliminary Prospectus until 30 days after listing. However, it is recognised that such a period may not be achievable and much shorter Blackout Periods are often adopted. There should be no distribution of research reports once the Preliminary Prospectus has been published so as to avoid potentially conflicting information about the Issuer being in the market at the same time.

**Block Sale / Trade:** a sale of a block of Securities. The term is often used interchangeably with the term Bought Deal, particularly where the seller is an existing stockholder rather than the Issuer. See also Bought Deal.

**Blocked Account:** a bank account where monies cannot be withdrawn without the Facility Agent / Security Agent or Lender's specific consent.

**Blood Letter / Blood Language:** in the context of a Securities offering, a letter by Initial Purchasers, Managers or Underwriters acknowledging that they have furnished certain disclosure in the "Underwriting" or "Plan of Distribution" section of the offering document. Such disclosure often relates to the terms of the offering, market-making activities, short sales, stabilizing transactions and penalty bids. Frequently this language

is in either the Purchase Agreement or Underwriting Agreement rather than a separate Blood Letter.

**Bloomberg Screen:** shortly after Pricing, the Capital Markets desks of the relevant investment banks will prepare Pricing Term Sheets. In order to do so, the desks use a Bloomberg data service known as the Bloomberg Screen. These Bloomberg Screens are then forwarded to the relevant sales force at the investment bank, and the sales force will in turn forward these screens via Bloomberg to Accounts that have received Allocations in the offering.

**Blue:** a printer's final proof of an offering document (whether the preliminary or final) prepared as the last step for signoff by the deal teams before the printer begins printing.

**Blue Book:** the colloquial name given to the Takeover Code as it was published in a blue folder. Very imaginative.

**Blue Sky Laws:** US state, as opposed to federal, Securities laws.

**Board Observer Rights:** rights given to Lenders or minority investors to attend (but not vote at) board meetings of a particular Borrower or appropriate other group companies. The board observer attends but is not appointed as a director or board member. Often used in Mezzanine Financings, in particular if the deal has an Equity Kicker and/or VCOC Rights.

**Board of Grievances:** a judicial body in Saudi Arabia, separate and independent of the Shari'ah courts.

**Boilerplate:** general term used to describe standard clauses found in most contracts. Boilerplate clauses include the notices clause, Counterparts clause, governing law clause and so on. Such clauses should be customary and standardised to an extent that only a very limited amount of negotiation is required.

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

**Bondholders Committee/Assemblée des Obligataires:** in France, the "third" (because the statute refers to a general meeting of the bondholders and not strictly to a bondholders committee) Creditors Committee required to approve a restructuring plan in Sauvegarde or Redressement Judiciaire proceedings. It consists of all bondholders of the debtor, irrespective of the terms and conditions of the respective bond issues. Something to think about if you are going to be a Lender subscribing for Mezzanine bonds issued by a French Bidco and the Sponsor will also be putting part of its "equity" to fund the acquisition by way of Bonds — not sure that you will be happy sitting in the same Creditors Committee as the Sponsor at that time.



**Bonds:** debt instruments that represent a fixed principal amount of money and typically a fixed (or floating) Interest Rate. Also known as Notes, Securities or Debentures. In offerings governed by the laws of a state in the US, these puppies are almost always issued pursuant to an agreement known as an Indenture, but are usually issued pursuant to a Trust Deed or Fiscal Agency Agreement (in each case containing the Terms and Conditions of the Bonds) with respect to English law governed offerings. See also Fixed Income Security.

**Book:** (i) shorthand for the Offering Memorandum or Prospectus, regardless of whether in draft form or final. For example, "We'll revise the Book and distribute it in the morning" or (ii) the master list of orders from Accounts, setting out the amounts and pricing. Such orders will generally be scaled. For example, "I'll take €5 million in Bonds at 10% and €20 million at 10.5%".

**Book Entry:** a reference to the computerised ledger systems used by the Clearing Systems.

**Book Value:** the amount in the relevant currency stated for particular assets on a company's Balance Sheet. Given the passing of time, may not be a true reflection of actual value.

**Bookbuilding:** the process of building the Book in a Securities offering amongst the various potential buyers who have been approached and expressed interest in the Securities. See also Accounts.

**Bookrunner:** in loan world, the Arranger who runs the Book during Syndication and determines what portion of a Facility will be allocated to each potential Lender. The Bookrunner should not be confused with the Syndication Agent for a particular Facility. Similarly, the Bookrunner in a Securities offering manages the marketing efforts and determines what portion of the offering will be allocated to each potential investor. See Lead Manager.

**Borrower:** a company that borrows under a Facility Agreement.

**Borrowing Base:** a concept in an Asset-Based Loan where the maximum amount available for borrowing under a Revolver constantly changes. A Cash Flow Revolver does not have a Borrowing Base but rather provides the Borrower with a line of credit up to a fixed Base Currency amount. When there is a Borrowing Base, the maximum amount available for borrowing moves based on the Base Currency value of certain eligible categories of Collateral (e.g., receivables, inventory, equipment) multiplied by a discount factor less a reserve reflecting priority claims, and subject to an overall Cap. For example, Lenders might agree to advance funds against 80% of eligible accounts receivable and 60% of eligible inventory up to a maximum amount of €100 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.

**Borrowing Base Loan:** another name for an Asset-Based Loan.

**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. See Backstop.

**Box:** another name for the Summary Box. The Summary Box is surrounded by a border on all margins (hence the term “box”).

**bps:** shorthand for Basis Points. Generally pronounced “bips”.

**Break Costs / Break Funding:** the losses, costs and expenses incurred by a Lender as a result of a Borrower’s (i) failure to borrow or continue a loan after giving notice requesting the same; (ii) failure to make a prepayment of loans after giving notice thereof; or (iii) making of a prepayment of loans on a day that is not the last day of the applicable Interest Period (*i.e.*, the costs of “breaking” an IBOR loan in the interbank market).

**Bretton Woods:** the IMF Agreement commonly known as the Bretton Woods Agreement, is part of English law (by virtue of Bretton Woods Order in council 1946 S.R. 60. 1946 No.36 and s.6/2) of the International Monetary Fund Act 1979 and, provides, amongst other things, that “Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of any member maintained or imposed consistently with this agreement shall be unenforceable in the territories of any member” (Article VIII(2)(b)).

**Breakup Fee:** in an M&A transaction, a fee the seller must pay to the original prospective buyer in order to compensate the prospective buyer for the wasted costs of an abortive deal where the acquisition is not completed as a result of certain actions by the seller, such as if the seller ends up selling to a different, competing buyer. Compare Reverse Breakup Fee.

**Brexit:** refers to the departure of Great Britain from the European Union. On 23 June 2016 the majority of voters in the UK elected to leave the EU in a national referendum. The terms of any withdrawal are subject to a negotiation period that could last at least two years from the time the UK formally initiates a withdrawal process.

**Bridge Facility:** a Facility pursuant to which Lenders make Bridge Loans. In a committed financing, each series of Notes contemplated to be part of the permanent financing structure is backed up by a Bridge Facility, so in instances where there is more than one series of Notes (for instance, senior and senior secured), there will be multiple Bridge Facilities.

**Bridge Loans:** short-term loans that are not typically (although not always) 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 Notes offering contemplated as part of the 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. Bridge Loans typically have an initial maturity of one year, which automatically converts into a longer maturity Term Loan which can, in certain circumstances, be “flipped” into Exchange Notes.

**Bringdown Call:** the diligence call with management that occurs just before launch, Pricing and Closing that updates the diligence that has been done in connection with the Securities offering.

**Bringdown Comfort Letter:** a second Comfort Letter, delivered at Closing, that updates the comfort to a date not more than three-to-five business days prior to the Closing Date.

**British Bankers' Association:** according to their website, the leading trade association for the UK banking sector.

**Broker-Dealers:** entities that have to register with the SEC, the FCA or another applicable regulatory authority because they trade Securities for themselves or on behalf of others.

**Brown Shoe:** also referred to as a reverse Green Shoe, a provision contained in a public offering Underwriting Agreement that gives the Underwriter the right to sell the Issuer shares at a later date. The Brown Shoe is used to support the price of a share in the event that after a public offering the demand for the stock falls. When the demand falls, the Underwriter buys shares in the open market and then sells them back to the Issuer, stabilizing the share price. See Green Shoe.

**Build-Up Basket:** relevant in some Facilities, particularly Covenant Lite Facility Agreements, but mainly used in the context of the Restricted Payment Covenant in an Indenture. The Build-Up Basket is so called because it “builds up” over time and it is the principal Basket from which the Issuer may make Restricted Payments. A typical formulation provides that the total sum of Restricted Payments since the date of the Indenture (except for certain enumerated exceptions) may not exceed the sum of 50% of the Issuer’s consolidated net income and 100% of proceeds from Equity offerings and capital contributions, as well as certain contributions from restricted investments and from Unrestricted Subsidiaries since the date of the Indenture. Use of the Build-Up Basket is typically subject to certain conditions, including that no Default has occurred and is continuing and that the Issuer can incur at least €1 of additional Ratio Debt under the Ratio Test at the time of making the payment. Sometimes called a Builder Basket.

**Bull Market:** good times, until a Bear Market comes along.

**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 Amortisation prior to maturity). Typical for Bonds, Facility B Loans, Facility C Loans, Second Lien Loans and Mezzanine Loans.

**Business MAC:** definitions vary, but this is a reference to the Condition Precedent in a Commitment Letter, SPA or Facility Agreement that there has been no Material Adverse Change in the operations, business or (more controversially) prospects of the Borrower or the Target company/group. This should not be confused with a Market MAC, which deals with Material Adverse Changes in market conditions that could adversely affect Syndication.

**Business Plan:** see Base Case Model. Also used to refer to the annual business plan often required to be delivered to Lenders under Facility Agreements for Leveraged Buyouts (effectively an update of the Base Case Model).

**Buy Back:** name given to the act of a Borrower (or a member of its group or its shareholders) acquiring part of the Facilities, often at a time when the Facilities are trading at a discount. Facility Agreements now typically include either an absolute prohibition on this (on the basis that all Lenders should receive the benefit of Voluntary Prepayments on a pro rata basis and to prevent affiliates of the Borrower holding debt and disrupting the workings of the Syndicate) or set out the regime that must be followed for any Buy Back (which may involve a Dutch Auction). Sponsors that Buy Back debt of a Portfolio Company are now often subject to Disenfranchisement. The LMA form Facility Agreement for LBOs provides suggested wording. Also used to describe the purchase by an Issuer of its Securities in the open market or pursuant to a more formalised Tender Offer or private agreement.

**“C” Loan:** another name for a Facility C Loan.

**CAC:** commissaire aux comptes, the French term for statutory auditor. The CACs are regulated professionals who are subject to stringent supervision and are involved in certifying the financial information provided to investors in relation to a capital markets transaction, *i.e.* financial statements and the prospectus via a “lettre de fin de travaux”.

**Call Option:** a financial contract between a buyer and a seller, where the buyer has the right (but not the obligation) to buy a specific quantity of a Commodity or a Security or other financial instrument from the seller at a specified time and at a specified price. Also describes the option of an Issuer to redeem its outstanding Bonds on a date earlier than the Maturity Date following the Non-Call Period as described in the Terms and Conditions or the Indenture. Compare Put Option. See also Option.

**Call Premium:** the Bond equivalent to a Prepayment Premium in a Facility 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/Borrower to pay the applicable Call Premium or Prepayment Premium under the Terms and Conditions or the 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 has been paid back prior to the Maturity Date. 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 favourable tax benefits to the Issuer. Call Spread Overlays are a common companion to Convertible Bond issuances.

**Callable:** applied to Bonds and other Convertible Securities, means that Securities are redeemable by the Issuer prior to the Maturity Date under specific conditions and at a price which is usually the Par value together with Accrued and Unpaid Interest. The Issuer might call a Bond in connection with an acquisition or when Interest Rates fall to the point that it makes financial sense to issue new Bonds at lower rates.

**CAM:** Collateral Adjustment Mechanism.

**Canadian Wrapper:** a Canadian disclosure document that is wrapped around (or stapled to the front of) the Offering Memorandum or Prospectus. It is no longer required for most Securities offerings in which Securities are offered primarily outside of Canada. Even if a Canadian wrapper is not required, there are a variety of other regulatory requirements relating to the sale of Securities into Canada, including a requirement to file post-closing private placement trade reports.

**Cancellation:** used in Facility Agreements to refer to the ability of the Borrower to terminate some or all of the Availability and therefore stop paying Commitment Fees. Also used to describe the cancellation by an Issuer of its Securities either on the Maturity Date or on an early redemption of the Bonds.

**Cap:** generally refers to a limitation expressed in the relevant currency, 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 Bridge Facility context, 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, being the maximum Interest Rate, is achieved.

**Cap Table:** a simplified Balance Sheet generally included in a Prospectus or an Offering Memorandum that sets out the Capital Structure (and sometimes other information such as cash holdings) of the Issuer as of a certain date, often on a historical basis and an as-adjusted for the offering basis. A Cap Table is not necessarily required by applicable legislation, but is generally included to make the disclosure more investor-friendly and will always be requested for Securities listed on a stock exchange in the EEA.

**Capacity:** the amount of Headroom an Issuer/Borrower has to incur additional indebtedness under the relevant Covenants in the documents governing its existing indebtedness. Capacity also refers to a suite of legal opinions relating to corporate existence and a company's ability to enter into various transaction documents.

**Capex:** shorthand for Capital Expenditures.

**Capex Facility:** a Delayed Draw Term Facility intended to be used to fund Capex. Often combined with an Acquisition Facility.

**Capital Adequacy:** a requirement of applicable legislation that specifies what capital a bank should have when compared to its business and the risks that it undertakes. See Basel I, Basel II and Basel III.

**Capital Duty:** a tax charged in certain jurisdictions upon the issue of share capital or other Securities. See also Stamp Duty.

**Capital Expenditure:** an expenditure by a business that is Capitalised to the Balance Sheet under applicable accounting rules and then amortised 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, e.g., purchasing capital assets or investing in improvements to existing capital assets. Buying vegetables for dinner is probably a current expense. Buying a vegetable farm is probably a Capital Expenditure. See Amortisation and Capitalise.

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

**Capital Markets Authority:** the name of the regulator of the Securities markets in Saudi Arabia, Kuwait and Oman, respectively.

**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.

**Capitalise:** in accounting terminology, when a company Capitalises a cost, it is recognising that cost as a long-term investment rather than immediately recognising it as an expense. The company then amortises or Depreciates the expense over time on its Income Statement — until eventually all the expense is recognised. 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 Capitalise is also used in the context of Mezzanine Facilities and PIK Debt, where it refers to adding any Accrued Interest to the principal amount of the loans or Notes on any Interest Payment Date in lieu of paying that Interest in cash. This practice is, however, prohibited (for example, in Luxembourg, Italy and Germany) or restricted (as in France, where under French law it may not occur more often than once a year) in certain countries across Europe (as it is an agreement to pay Interest on Interest). See also PIYW.

**Capitalised Lease:** a lease where the lessee assumes some of the risks of ownership and enjoys some of the benefits. In accounting terms, a Capitalised Lease is recognised as both an asset and a liability (for the lease payments) on the balance sheet. Indicators that a lease is a Capital Lease include the transfer of ownership to the lessee, or an Option to purchase the leased property, at the end of the term. Also called a “finance lease”. Leases that are not Capitalised are called “operating leases”.

**Capged 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.

**Carried Interest / Carry:** the share of profits belonging to Sponsors from their investments. Usually the Carry (or Carried Interest) is set at around 20% with the remaining 80% being distributed to investors in the Sponsor.

**Carry Back:** Facility Agreements — in particular for Leveraged Buyouts — often contain an annual Cap on the amount of Capital Expenditure that a Borrower can make. A Carry Back provision enables the Borrower to “over-spend” on Capex in one year in excess of the agreed limit by grabbing a portion of its limit for the following year, which is then reduced. More recently, strong markets have extended the Carry Back concept to other negotiated Baskets. In either case, the amount that the Borrower can grab is the subject of negotiation.

**Carry Forward:** like Carry Back, but here the Borrower can increase the amount of Capex or other transaction, based on the negotiated Baskets, that it makes in a particular year in excess of the agreed limit by rolling forward all (or an agreed percentage) of any unspent amount from the prior year (the unspent amount being the difference between the Covenant Cap and the amount that it actually spent).

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

**Cash Confirmation:** a requirement by the Takeover Code and linked to the requirement for Certain Funds. The Cash Confirmation — which is usually given by Bidco's financial advisor — is needed wherever cash forms part of the purchase price in a P2P and/or takeover and is a statement in the 2.7 / Press Announcement and in the offer document that Bidco has the required cash to pay all accepting shareholders in full.

**Cash Equivalent:** highly rated, short-term, liquid investments that are readily convertible to cash and have short maturities. In Bond and loan world, Cash Equivalents are treated the same as cash and allow the Issuer/Borrower to make unlimited investments in them.

**Cash Flow Cover:** often used as another name for the Fixed Charge Coverage Ratio but this is actually slightly different and more common in European Facility Agreements. Cash Flow Cover is the ratio of cash flow (being EBITDA with adjustments to try to make the end product more akin to true cash for the relevant period) to debt service (being Interest expense but also other finance charges and debt service payments). Where this is included as one of the Financial Covenants, most Facility Agreements usually set the ratio at 1:1 for all testing dates.

**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 fewer ongoing reporting requirements than an Asset-Based Loan. 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 Flow Statements are useful in determining a company's short-term viability, particularly its ability to pay debts as they fall due.

**Cash Overfunding:** in the M&A context, this is where the bidder provides a higher Equity Contribution than is required to complete the acquisition. The overfunded amount can then be used for certain purposes as agreed to in the Facility Agreement, the Terms and Conditions or the Indenture.

**Cash Sweep:** see Excess Cash Flow Sweep.

**Category 1/2/3:** there are three categories of transactions that are eligible for exemptions under Regulation S. Category 1 is the least restrictive because it applies to Securities least likely to "come to rest" in the US,



while Category 3 is the most restrictive (and, consequently, the least attractive). Category 1 transactions include offerings of Securities by foreign Issuers that do not have a “substantial US market interest” or are “overseas directed offerings”; Category 2 transactions include offerings of Equity Securities of a reporting foreign Issuer, debt Securities of a reporting US Issuer and any other debt Securities of a foreign Issuer not covered by Category 1; Category 3 is the Safe Harbour available to all other offerings. An Issuer that is a US company raising Equity will fall in Category 3.

**CBO:** Collateralised Bond Obligation.

**CDO:** Collateralised Debt Obligation.

**CDS:** Credit Default Swap.

**Centre of Main Interests:** the country in which a company is able to file Insolvency proceedings that will be recognised as “main proceedings” under the EU Insolvency Regulation. Known colloquially as COMI. See also COMI Shift.

**Certain Funds:** a requirement of the Takeover Panel and a number of comparable European regulators in a going private transaction (P2P). In order for the Cash Confirmation to be issued (or equivalent step taken in jurisdictions other than the UK), the financing commitments for a P2P 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, vendors of private companies regularly require that any potential buyers, particularly in an auction process, evidence Certain Funds and will not include a Financing Out. Furthermore, even where not required by the vendor, buyers of private companies may also seek from their Lenders Certain Funds commitments to provide the required financing, in particular in LBO transactions, when it is argued that this may give them a competitive advantage over other bidders who do not have Certain Funds. Compare SunGard Language in the US market. See also Cash Confirmation and Takeover Code.

**Certificate of Good Standing:** ordered in connection with a Closing to make sure that the company and its subsidiaries are good corporate citizens and 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.). This is a document often required in US offerings but not available in all jurisdictions.

**Certificate of Incorporation:** the document issued by Companies House in England and Wales (or the applicable companies’ registrars in some other jurisdictions) on the registration and formation of a company as a separate legal entity.

**Certificate of Title:** a UK concept, being a written opinion of legal counsel stating that the title for the relevant real property is vested as stated in the chain of title. The certificate will also summarise the title, and any lease documents and report upon any public searches that have been carried out. It provides a full legal summary of a property in a market Pro Forma and Lender-approved format. Where real property has a material value, Lenders may require certificates as a Condition Precedent. Not required in jurisdictions where title to real property is publicly registered and is therefore conclusively evidenced by an official excerpt from that register.

**Certificated:** where a share or other Security is represented by a certificate.

**Cessation des Paiements:** in France, Belgium and Luxembourg, a company is in a state of Cessation des Paiements when it is unable to pay its debts out of its available assets as they fall due. Unless a French company has already petitioned for the opening of Conciliation Proceedings, the officers of the company must petition for the opening of Redressement Judiciaire or Liquidation Judiciaire within 45 days of the company entering a state of Cessation des Paiements, failing which they may incur civil liability. The notion of Cessation des Paiements in Luxembourg should be distinguished from that of Insolvency. In Luxembourg, a debtor can be solvent (*i.e.*, if the value of its assets exceeds its liabilities) and yet be forced to cease payments if its assets are not sufficiently liquid (*e.g.*, real property or a shareholding in a subsidiary that cannot be sold immediately). Conversely, a debtor may be insolvent and yet not be in a state of Cessation des Paiements. The notion of Cessation des Paiements in Luxembourg should not to be confused with the Suspension of Payments (*sursis de paiement*) procedure under the Luxembourg Financial Sector Act of 5 April 1993, as amended, which deals with the reorganisation and winding-up of certain types of distressed financial sector institutions.

**CFC:** Chelsea Football Club, winners of the English Premier League in the 2014/15 season. Less interestingly, the acronym for a Controlled Foreign Company.

**CFO:** Collateralized Fund Obligation.

**CGN:** classic global note. This type of international debt Security can be issued in either global bearer or registered form and is held in the two main clearing systems for debt Securities in Europe (Euroclear and Clearstream). See also NGN.

**Change of Control:** a material change in the ownership of a company or (in some uses of the term) the composition of its board of directors. Definitions and the consequences of a Change of Control vary between Bond world and loan world and from transaction to transaction. See Change of Control Covenant, Change of Control Prepayment and Change of Control Put.

**Change of Control Covenant:** in Bond world, this is a reference to the Change of Control Put provision. In European Facility Agreements, the occurrence of a Change of Control will usually give rise to a Change of Control Prepayment or a Change of Control Put.

**Change of Control Prepayment:** under European Facility Agreements, a Change of Control (as specifically defined in the Facility Agreement) which either requires an immediate prepayment of the Facilities and results in an immediate cancellation of undrawn commitments or, in rare circumstances, which requires the Majority Lenders to demand such prepayment and cancellation. Note that it is not an Event of Default (contrary to US practice in Facility Agreements where this is the case); however, failure to make the prepayment on the Change of Control would trigger an Event of Default. Contrast to Change of Control Put.

**Change of Control Put:** the provisions of the Terms and Conditions, an Indenture or some Facility Agreements which give each Bondholder or Lender a separate Put Right, generally at 101% of Par Value in Bond world and at Par Value in loan world, if a Change of Control (which will be specifically defined in the Terms and Conditions, the Indenture or the Facility Agreement) occurs.

**Chapter 11:** part of the US Bankruptcy Code and the part most often discussed as it governs reorganisations of bankrupt companies in an attempt to turn them around and ensure their survival. Has been used by certain European groups as a restructuring tool.

**Charge:** Security Interest given over an asset which gives the Secured Party the right to have the particular asset and its proceeds of sale applied to the discharge of the debt in question but does not transfer ownership.

**Chargee:** another named for a Secured Party.

**Chargor:** a company or person (usually a Borrower or Guarantor) who grants a Charge or other Security Interest in favour of the applicable Secured Parties pursuant to a Security Agreement. Also known as a Pledgor.

**Cherry Picking:** refers to the ability of an Insolvency officer to choose which assets and obligations of the insolvent company it accepts and which it disclaims, (*i.e.*, he or she “cherry picks” the good ones). Similarly, when negotiating Covenants, counterparties can be accused of Cherry Picking when they only reference precedent that supports their position or if they choose the most favourable provisions from a series of precedents.

**Chinese Wall:** see Ethics Wall. Apparently there is actually a large wall in China — what a coincidence.

**CICE:** crédit d'impôt pour la compétitivité et l'emploi, a French tax incentive granted to companies employing salaried workers and which amounts to a decrease in social security contributions.

**CIM:** Confidential Information Memorandum.

**CIS:** Commonwealth of Independent States, an association of some former soviet republics formed during the breakup of the Soviet Union. It is made up of nine member states.

**Circle-Up:** in order to receive Ticking and Tying in a Comfort Letter, Initial Purchasers, Managers or 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.

**City Code:** shorthand for the UK City Code on takeovers and mergers. See Takeover Code.

**Class:** Lenders holding a particular "class" or Tranche of Term Loans or Revolving Loans. Also used to describe certain Latham lawyers—pure class.

**Class Tests:** also known as the percentage ratio tests. In accordance with the Listing Rules, a number of tests to be performed when a listed company enters into a transaction outside its ordinary course of business. The Class Tests are used to compare the size of the listed company with the size of the transaction in question. The results of the Class Tests are expressed as percentage ratios that are then used to categorise the transaction in accordance with Chapters 10 and 11 of the Listing Rules as a Class 1 or Class 2 transaction, a Reverse Takeover or a related party transaction.

**Class Voting:** type of voting where one or more Classes under a Facility 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 (common in the US) is unusual in European Facility Agreements, however in certain circumstances provisions may be included whereby amendments or Waivers that only affect a particular Class may be approved by the requisite majority of just that Class.

**Clawback:** a fundamental feature of most international Insolvency regimes, permitting the applicable trustee or Insolvency practitioner of the debtor to avoid certain transactions prejudicing the estate in the run up to Insolvency, such as transactions at undervalue and Preferences. Needs to be analysed on a jurisdiction-by-jurisdiction basis. Not to be confused with the Equity Claw provisions often found in Indentures. See Equity Claw.

**Clean-Down:** a provision in certain Revolving Facilities which requires the Borrower to reduce its total borrowings under the Revolving Facility to below a certain level, or even to zero, for a period of consecutive days in each of the Borrower's financial years (or other specified period). Designed to ensure that Revolving Facilities are not being used as

permanent debt like Term Loan Facilities. The “clean-down” threshold is often calculated net of cash such that the Borrower does not actually need to use its available cash to repay the Revolver just to satisfy the Clean-Down.

**Clean-Up Call:** a concept found in some High Yield Bond Indentures, which refers to the right of the Issuer (in connection with a Change of Control Put or Tender Offer) to redeem all outstanding Notes, if holders of at least 90% of the Notes validly tender and the Issuer purchases such Notes. This mechanism only appeared in the market around 2014 and is a useful tool for Sponsors to deal with Bondholder holdouts that could otherwise leave a small stub instrument outstanding. Also sometimes referred to as a Tender Drag or Squeeze-out.

**Clean-Up Period:** the period in which the Borrower can remedy certain events, which would otherwise breach the terms of the Facility Agreement, without causing a Default. These events usually relate to a group of companies acquired pursuant to the proceeds of the Facilities. Historically, Lenders usually agreed to a Clean-Up Period when financing a P2P or only in other cases where the Borrower was only able to carry out limited Due Diligence on the Target group. However, the concept has become more common and is, therefore, usually also seen in financings for acquisitions of private companies as well as applying to any future permitted acquisitions.

**Cleanse:** dissemination of Material Non-Public Information to the public in order to prevent differential disclosure to various investor groups. Also a necessary ritual after an all-night session at the Printer.

**Clear:** the formal completion of a transaction, on delivery of the Securities by the Issuer and payment by the Syndicate. If a transaction does not Clear by the Closing Date, it is said to “fail”. Also known as Settle.

**Clear Market Provision:** found in the text of the Commitment Letter or Underwriting Agreement, an agreement by the Issuer/Borrower not to issue or incur new debt, Equity or other Securities during Syndication or for an agreed period following Closing.

**Clearing System:** the large, complex computer systems that enable Securities to be traded without people handing over paper cash for paper certificates. Clearing Systems are the workhorses behind the computer screens that facilitate all trading, payments, settlement and other back office mechanics. Also known as a clearing house or clearing corporation. The primary Clearing Systems used for debt Securities offerings in Europe are Clearstream, Euroclear and DTC (for US dollar denominated offerings).

**Clearstream:** shorthand for Clearstream Banking, société anonyme. One of the three primary Clearing Systems used in Europe, located in Luxembourg. See Clearing System.

**CLO:** Collateralised Loan Obligation.

**Closed-End(ed) Fund:** an investment entity with a fixed number of shares such as an investment trust. Compare Open-Ended Investment Company.

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

**Close Out:** termination of Hedge transactions. See also Netting.

**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 and, if you are lucky, you might even get a Tombstone.

**Closing Condition:** another name for a Condition Precedent that must be met to allow Closing to occur.

**Closing Date:** the date on which the Closing occurs.

**Closing Fee:** a fee payable to each Lender on the Closing Date. 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 of—and when funded on—the Closing Date.

**Closing Memorandum:** a formal, detailed memorandum used in a Securities offering or in a loan financing to set out actions taken prior to and at Closing. The Closing Memorandum exhibits can include the forms of secretary's and officers' certificates, payment instructions and Cross Receipt.

**Closing Set:** another name for a Bible.

**Club Deal:** historically, a smaller loan premarketed to a group of relationship banks which agree to Take and Hold the loans from the outset with no intention to reduce the commitment to lend through a subsequent Syndication. More common in Bear Markets as banks do not want to take underwriting risk. The term Club Deal can also refer to a very large Sponsor LBO transaction where multiple Sponsors pool together in order to buy a multibillion dollar company.

**CMA:** the UK Competition and Markets Authority is the UK public body responsible for enforcing UK and EU competition and consumer protection laws. Its specific responsibilities include investigating mergers and acquisitions, investigating breaches of the prohibition against anti-competitive agreements or abuses of dominant position, conducting market studies, bringing criminal proceedings against individuals who commit the cartel offence and enforcing consumer protection legislation. On 1 April 2014, it took over many of the functions of the Competition Commission and the Office of Fair Trading. Also an acronym for the

Capital Markets Authority responsible for regulating and developing the capital markets in Saudi Arabia, Kuwait and Oman, respectively.

**CMBS:** see Asset-Backed Security.

**CNI:** consolidated net income.

**CNMV:** Comisión Nacional del Mercado de Valores, the Spanish securities regulator.

**Co-Comm:** slang for a Coordinating Committee, usually in a restructuring or workout process.

**Co-Lead Manager:** a Manager who participates in some of the obligations of the Lead Manager, but who is not a Bookrunner of the Securities.

**Co-Manager:** a Manager who is not a Bookrunner of the Securities and does not typically have any principal obligations in the documentation of the issue but is included in the Syndicate because of its ability to place the Securities.

**Collar:** a form of Hedge whereby the investor purchases a Cap and sells a Floor, which 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 limit (via the Cap) and lower limit (via the Floor) on the Floating Rate.

**Collateral:** assets of a Borrower and any Guarantors or other Chargors or Pledgors that secure the Borrower's and Guarantors' obligations in a Secured Debt financing.

**Collateral Adjustment Mechanism:** used in US cross-border secured deals where, for tax reasons (see Deemed Dividend), debt of US companies is secured only by US assets and debt of non-US co-Borrowers is secured by both US and non-US assets. The CAM is an agreement among the Lenders intended to equalise the recovery rates of the various groups of Lenders in the case of Default and enforcement 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.

**Collateralised Bond Obligation:** a CDO where the assets acquired by the Issuer are mostly Bonds rather than any other type of debt obligation.

**Collateralised Debt Obligation:** a generic term for a type of Asset-Backed Security in which an Issuer issues Bonds that are Tranched into senior and subordinated obligations that are secured by debt obligations purchased by the Issuer with the proceeds of the Bonds. The debt obligations can include Bonds, loans, fund interests or other obligations. See also Collateralised Bond Obligation, Collateralised Fund Obligation and Collateralised Loan Obligation.

**Collateralised Fund Obligation:** a CDO where the assets acquired by the Issuer are collective investment fund interests.

**Collateralised Loan Obligation:** a CDO where the assets acquired by the Issuer are mostly loans rather than any other type of debt obligation. The most typical Collateralised Loan Obligations assets are loans made for LBOs.

**Comfort Letter:** the common 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 Initial Purchasers, Managers or Underwriters that provides "comfort" that the Financial Statements included in the Offering Memorandum or Prospectus are accurate. The prescribed form a Comfort Letter should take is that of the ICMA standard form (for Regulation S offerings) or as spelled out in SAS 72 (for Rule 144A Offerings). The Initial Purchasers, Managers or Underwriters (and sometimes the board of directors) seek such a letter in order to help establish a Due Diligence Defence (in Rule 144A Offerings) or simply as part of their diligence (in Regulation S offerings). The Comfort Letter allows the Initial Purchasers, Managers or Underwriters 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 on the signing of the Purchase Agreement or Underwriting Agreement. The term can also be used to describe a type of Keep Well Agreement, here being where the parent undertaking provides certain "comfort" to a third party with respect to certain proposed or potential action it might or might not take with respect to a subsidiary. See also Bringdown Comfort Letter, Negative Assurance and SAS 72.

**Comités de Créanciers:** in French bankruptcy proceedings, refers to the committees made up of, on the one hand, of creditors (other than trade creditors or Bondholders) having provided financing to the debtor (the "credit institutions committee" and, on the other, of the debtors' major suppliers, *i.e.*, the suppliers whose individual claim on the company is greater than 3% of the total of all of the debtor's trade creditors' claims on the debtor (the "major suppliers committee"). Each of those committees votes on the restructuring plan at a two-thirds majority of its members expressing a vote and such a majority vote binds all members of the relevant committee. See also Bondholders Committee / Assemblée des Obligataires.

**COMI:** Centre of Main Interests.

**COMI Shift:** the process used by restructuring professionals of migrating or moving a company's COMI from a jurisdiction with less favourable Insolvency laws and formal processes to a jurisdiction with more favourable conditions for restructuring or (sometimes, if acting for a Sponsor or Borrower) vice versa. COMI Shifting to the UK has been common, in particular to implement Schemes of Arrangement. Financing



documentation will customarily contain a Covenant preventing COMI Shifting and countering the threat of COMI Shifting to France is one of the reasons why the Double Luxco Structure was devised.

**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 has a maturity of less than one year from the date of issue.

**Commissario:** the public officer appointed in the context of certain Italian Bankruptcy procedures who is responsible for a number of functions, including monitoring management, preparing a report into the circumstances of the company's distress and verifying the execution of the pre-bankruptcy agreement.

**Commitment Fee:** an annual percentage fee that is paid on the available but undrawn portion of a committed Facility as compensation to the Lenders for keeping money available for borrowing. The Commitment Fee is typically paid quarterly in arrears. See Undrawn Commitment and Ticking Fee. The term also refers to the fee paid to the Arranger of a Bridge Facility for the commitment provided in the Commitment Letter — similar to the Arrangement Fee payable in connection with a Senior Secured Facility or a Mezzanine Facility.

**Commitment Letter:** the letter by which financial institutions commit to provide loans. The Commitment Letter consists of the actual text of the letter, along with annexes, schedules and/or 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, if applicable, Engagement Letter (and the related annexes, schedules and/or exhibits).

**Commitment Period:** in Commitment Letters, the period of time that the Lenders have committed that loans be available to the Borrower. If the contemplated transactions do not occur during the Commitment Period, the Lenders are no longer on the hook to fund.

**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.

**Common Carrier:** in a Commitment Letter process with multiple Trees, the team of lawyers that initially reviews and marks up the Commitment Letters and related documents for distribution to the Trees and generally acts as a central clearinghouse for information and questions regarding the auction. The purpose of the Common Carrier is to highlight issues that may be relevant to each Tree and make a process that can involve six or eight Trees (and dozens of lawyers) more efficient.

**Common Code:** the nine-digit Security identification code issued jointly by Euroclear and Clearstream that is unique to each issue of Bonds.

**Common Depositary:** for notes issued in CGN form, the depositary bank is called a Common Depositary and is often the same entity as the Fiscal Agent or Principal Paying Agent.

**Common Safekeeper:** if notes are issued in NGN form, the depositary bank is called the Common Safekeeper who holds the NGN in safekeeping and is usually one of the ICSDs or the common service provider. Also known as the CSK.

**Common Stock:** the Equity slice of the capitalisation 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 equityholders are the fiduciary duties owed to them (or the company) by the board of directors. By contrast, creditors' rights are typically entirely contractual. See, however, Zone of Insolvency. Also known as Ordinary Shares.

**Comp Chart:** a chart that compares the commercial portions of certain Covenants from Notes offerings of comparable Issuers. Most frequently used in the High Yield Bond context. See also Covenant Summary.

**Companies House:** the registry for companies incorporated in England, Wales and Scotland. All forms of companies are incorporated and registered with Companies House. Companies must also make various filings with Companies House, as set out in UK company and Insolvency legislation.

**Company MAC:** another name for a Business MAC.

**Company Voluntary Arrangement:** an Insolvency procedure under English Insolvency legislation. It involves a restructuring proposal that must be approved by more than 75% by value of the company's unsecured creditors present and voting. Its use is limited as it cannot bind Secured Parties without their consent.

**Comparable Treasury:** when the bankers refer to the Comparable Treasury they mean the US Treasury Note (or European government bond equivalent) having a remaining life to maturity that most nearly approximates the Bond in a 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. Also known as the Benchmark.

**Completion:** when the proceeds of a Bond offering are issued into escrow pending the consummation of an acquisition, Completion refers to the time at which the proceeds are released to the Issuer from escrow. The release of the escrow proceeds are subject to the satisfactions of certain conditions, the most important being the closing of the acquisition. See also Closing.

**Compliance Certificate:** Lenders want to know that the Financial Covenants are being complied with. So when the Borrower delivers its Financial Statements for a relevant period ending on a Financial Covenant testing date (typically quarterly or semi-annually), it must also deliver a Compliance Certificate (signed by one or two directors, often one of which must be the CFO) setting out in detail the calculations that show this compliance. Lenders may also ask for the auditors to report on the Compliance Certificate delivered with the annual audited accounts. Compliance Certificates can also contain (among other things) confirmation of no Default, evidence of compliance with the Guarantor Coverage Test and details of Material Companies. In Bond world, Trust Deeds and Indentures also require an annual Compliance Certificate specifying Covenant compliance and no Events of Default.

**Concert Party:** a person or group of persons acting together to achieve a common or shared goal. See Acting in Concert.

**Conciliation Proceedings:** French proceedings available to companies facing legal, economic or financial difficulties (whether actual or foreseeable) that have not been in a state of Cessation des Paiements for more than 45 days. Upon request of the company, the president of the commercial court appoints a conciliateur to facilitate negotiations between a company and its creditors. Conciliation Proceedings last a maximum of five months and are confidential unless the parties decide, at the end of the process, to seek ratification of the restructuring by the commercial court whose decision will publicise the Conciliation Proceedings and the existence of an agreed restructuring.

**Concordato Fallimentare:** an Italian plan of reorganisation, available after commencement of Fallimento proceedings. The plan must be approved by a majority of creditors by value, and requires the support of the Creditors Committee. If the creditors are divided into different classes, approval requires a majority of creditors by value in a majority of classes.

**Concordato Preventivo:** another Italian plan of reorganisation, known as a pre-Insolvency composition, implemented without the commencement of a Fallimento proceeding. Filing brings about an immediate stay on actions by all creditors that typically lasts until the end of the procedure. Must be supported by a report from an Esperto, and approved by a

majority of creditors by value (if the creditors are divided into different classes, approval requires a majority of creditors by value in a majority of classes) and by the Bankruptcy court. Once the plan is approved, the relevant agreement is binding on all creditors and therefore may be used to Cramdown on the non-consenting creditors.

**Concurso Culpable:** Spanish term for gross negligence or wilful misconduct in the creation or worsening of Insolvency by the company's directors, shadow directors and liquidators (including those holding those positions in the two years prior to the declaration of Insolvency), leading to potential personal liability. There is a rebuttable presumption as to the existence of gross negligence or wilful misconduct (i) where the directors of the company fail to meet their obligation to file for the declaration of Insolvency within two months from the date they became aware (or should have become aware) of the Insolvency of the company (*i.e.*, when the company is unable to regularly meet its payments due to creditors) and (ii) where there is an unreasonable rejection (as determined by an independent expert) by the directors or shareholders to a capitalization of the company's debt or the issuance of Securities frustrating the achievement of an Acuerdo Colectivo de Refinanciación del 71. bis or an Acuerdo de Homologación to the extent that such issue or capitalisation would have given the company a preferential acquisition right in the sale of the shares or Securities to third parties or to non-holding companies.

**Condition of Issue:** in a German law-governed Bond offering, these are the detailed terms, conditions and sometimes Covenants that are contained in the Offering Memorandum or Prospectus.

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

**Conditions Subsequent:** the conditions that need to be satisfied by the Borrower within a set time period following Closing. Failure to fulfil any such condition within the set time period will usually trigger an Event of Default.

**Confii:** shorthand for Confidentiality Agreement.

**Confidential Information Memorandum:** the marketing book used to Syndicate Facilities. Also refers to a marketing book used in a mergers and acquisitions or auction context. Often referred to as the CIM, IM, Info Memo or Bank Book.

**Confidentiality Agreement:** a written agreement stating that the disclosure of certain information is only being provided for specific limited purposes, which is entered into prior to disclosure of any confidential information and where the recipient of such information agrees to keep it confidential.

**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 by the Borrower without the consent of the Arranger and that confidential information relating to the Borrower/Target may not be disclosed by the Arranger without the consent of the Borrower.

**Confirmation:** the document that evidences a “transaction” under an ISDA Master Agreement. It is called a Confirmation because typically the transaction is effected over the telephone, even for very large transactions, and then one party follows up with the Confirmation.

**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.

**Conformed Copy:** the name given to a copy of an executed document in which all signatures are recorded in typed form. A Conformed Copy will also be periodically updated to include all amendments post-execution.

**Consent Solicitation:** the process by which Issuers propose changes to amend Bond Covenants or other terms of their Bonds. Consent Solicitations are generally less common than bank loan amendments. Because Bond Covenants are incurrence-based, unlike Financial Covenants (which are found in Facility Agreements), Issuers are less likely to need relief under Bond Covenants. For the same reason, Covenant Lite and Covenant Loose loan Borrowers (who also usually have liberal Baskets and other Borrower-friendly terms) are unlikely to seek amendments to the applicable Facility Agreement. Bondholders are also likely to charge Issuers more for consents, in part because the longer and more punitive Call Protection that Bondholders typically enjoy gives them greater leverage. For English law-governed Bonds, a meeting of Bondholders is typically required in order to amend the Terms and Conditions, although, increasingly, amendments are made by written resolutions or the use of electronic consents.

**Consob/CONSOB:** Commissione Nazionale per le Società e la Borsa, the Italian securities regulator, the Italian equivalent of the SEC.

**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. Compare Consolidated.

**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%) of their Par Value).

**Contract for Differences:** a form of investment to make money by reference to fluctuations in the value or price of various things such as an index or Commodity or property.

**Contractual Subordination:** Subordination provisions that are imposed by contract (i.e., typically in the Intercreditor Agreement). Such provisions (among other things) contractually require the holders of Junior Debt 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 and include other provisions such as Payment Blockage Provisions and Standstill Periods. 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 and Turnover.

**Contribution Debt:** a Basket found in the Indebtedness Covenant of High Yield Bonds and Covenant Lite Facility Agreements that permits an Issuer/Borrower to incur additional debt in an amount equal to a percentage of the aggregate amount of cash contributions made to the Issuer/Borrower’s share capital or through Subordinated Shareholder Loans.

**Convenio Anticipado:** in Spain, an advanced composition agreement which may be filed at the beginning of the Insolvency proceedings when the company or a third party files for Insolvency, provided certain conditions are met, but must be filed before the expiry of the term for filing proof of claims. It must be agreed in advance by creditors holding at least 10% or 20% of the total debts depending on the moment of filing.

**Conversion Fee:** a 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 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% 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% 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.

**Convertible Bond:** a Bond that is convertible into another Security, typically Ordinary Shares.

**Convertible Preferred Equity Certificate:** PECs that are convertible into Equity interests.

**Coordinating Committee:** used in restructurings, in particular where the Syndicate is large. The Coordinating Committee acts as the interface between the Borrower and the Lenders, looking to agree the terms of a restructuring. Members typically include the largest debt holders in the Syndicate. Their leader is known as the Coordinator. The Coordinating Committee can't bind the rest of the Lenders. Also known as a Creditors Committee or Steering Committee.

**Coordinator:** the lead institution on the Coordinating Committee.

**Cornerstone Investment:** an investment by one or more investors, usually called "cornerstone investors", who agree in advance of a forthcoming Initial Public Offering to purchase or subscribe for a certain number of shares at the price set in the offering.

**Corporate Benefit:** a requirement under certain legal regimes in Europe that a company must derive an actual benefit, consideration or advantage from any transaction in order for it to be lawfully entered into without its officers risking personal liability or a prison sentence or (worse) making the transaction void or unenforceable. This is particularly the case for decisions involving the granting of Guarantees or Security Interests with respect to the liability of a third party. The extent to which a company can take into account the benefits derived by other members of its group when assessing the existence of Corporate Benefit differs between jurisdictions. The Corporate Benefit regime applicable to each relevant jurisdiction will, in particular, be reflected in any Guarantee Limitation Language.

**Cost of Funds:** what it costs a Lender to borrow funds to provide to a Borrower. In Facilities, a Lender's Cost of Funds is intended to be passed on to the Borrower and, on the assumption that Lenders raise their funds in the relevant interbank market, is represented by the applicable IBOR. IBOR is usually considered a fair reflection of a Lender's Cost of Funds but this is not always the case, in particular when markets are volatile

and liquidity between financial institutions is scarce (although Lenders are often reluctant to admit this). See Market Disruption Clause.

**Counterparts:** under many legal systems not all signatories to a document need to sign the same hardcopy document; each separate hardcopy document that is signed is known as a Counterpart and together they create a binding agreement.

**Countersign Deadline Date:** the date by which the Borrower must countersign the Commitment Papers for them 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, if applicable, Engagement Letter, as well. It is typically set just a few days into the future but Borrowers may be able to negotiate longer periods. If the Commitment Letter is not signed by this date, the commitment offer terminates. This is not the same as the Longstop 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 (Positive Covenants), not to do something (Negative Covenants) or to maintain something (Maintenance Covenants). Also referred to as an “undertaking”. See also Incurrence Covenants.

**Covenant Defeasance:** one of two types of Defeasance found in Indentures (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:** either (i) a Facility that contains Bond-like Incurrence Covenants and only limited Positive Covenants or (ii) a Bond that contains only a small number of Covenants; e.g., Negative Pledge and Change of Control. Note that whilst one distinguishing feature of a Covenant Lite Facility is that it does not contain any Financial Covenants, the Facility Agreement may contain a Springing Covenant for the benefit of the Lenders under the Revolving Facility only. Historically, only available in red-hot markets, but becoming more common in Europe.

**Covenant Loose:** like Covenant Lite but with (typically) one Financial Covenant.

**Covenant Strip:** in the context of a Consent Solicitation, when the requisite percentage of Bondholders consent to remove most or all of the Covenants from an Indenture or Trust Deed so that they no longer apply to the Restricted Group.

**Covenant Summary:** a description of the commercial terms of the Covenants that will be included in an Indenture, usually in the context of a High Yield Bond offering. Typically, bankers ask for this so their



syndicate desks selling the Notes will be able to address questions raised by investors. See also Comp Chart.

**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 Cash Flow Cover, Interest Coverage Ratio and Fixed Charge Coverage Ratio.

**Covered Bonds:** general non-deposit obligation Bonds of the issuing bank secured by cash flows from mortgages or public sector loans that remain on the bank's Balance Sheet. This is essentially a corporate Bond with recourse to a pool of assets that "covers" the Bond if the Issuer becomes insolvent; the Issuer must continuously ensure that the asset pool sufficiently backs the Covered Bond and, upon default, the investor has recourse to both the pool and the Issuer. If the issuing bank becomes insolvent, the assets in this pool are separated from the issuing bank's other assets solely for the benefit of the covered Bondholders. Covered Bonds are similar in many ways to residential mortgage Asset-Backed Securities, with the major difference being that the loans backing a Covered Bond are also guaranteed by the bank.

**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 US\$500 a share and also sell a Call Option on those shares at US\$550 a share (for which you are paid US\$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 US\$550 a share. On these facts, your Covered Call was a good bet if the shares rise to less than US\$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.

**Covered Funds:** the entities that banking entities are restricted from investing in or sponsoring under the Volcker Rule. A covered fund generally includes any Issuer that would be an investment company, as defined in the US Investment Company Act, but for the exclusions contained in Section 3(c)(1) or 3(c)(7) of such act.

**CPEC:** Convertible Preferred Equity Certificate.

**CPS:** Conditions Precedent.

**CP Satisfaction Letter:** a letter required by some banks (or the Facility Agent on their behalf) and some Borrowers in connection with the Closing of a Facility. The CP Satisfaction Letter is prepared by counsel to the Lenders. It confirms the satisfaction of certain mechanical Closing Conditions set out in the Facility Agreement that require delivery of specified legal documents and points out whether any items have been deferred for delivery after Closing as a Condition Subsequent.

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

**Cramdown:** means different things in different jurisdictions but broadly speaking is a term used to describe a process of forcing or imposing a restructuring proposal on the dissenting or non-consenting creditors or other stakeholders of that company.

**CRD IV:** the fourth amendment to the Capital Requirements Directive (2002/87/EC). CRD IV is a European Union legislative package consisting of the Capital Requirements Directive (2013/36/EU) and the Capital Requirements Regulation (575/2013) that contains rules for banks, building societies and investment firms which aim to ensure that such firms hold enough financial resources to cover the risks associated with their business and are able to meet their liabilities as they fall due. CRD IV strengthens the existing framework in response to the financial stability concerns that arose during the latest financial crisis.

**Credit Agreement:** another name for a Facility Agreement.

**Credit Bid:** the acquisition of assets by creditors from a debtor where the purchase price is paid by some form of debt forgiveness. Commonly employed in restructurings, particularly to implement Debt For Equity swaps. Issues can arise in dealing with non-participating creditors in the class of debt that will be bid, for example, amongst Lenders of Senior Debt. Non-participants can be dealt with in a number of ways, including being cashed-out, but more ideally by being subject to a Cramdown through the use of some kind of statutory plan, e.g., a Scheme of Arrangement.

**Credit Crunch:** the reduction of the availability of loans (credit) and tightening of requirements to obtain a loan. Most often is used to describe the tightening of credit conditions that occurred as a result of the 2007-2008 global financial crisis.

**Credit Default Swap:** a contract, using ISDA form documentation, whereby one party agrees to pay the other party if certain catastrophic "credit events" (such as payment default, Insolvency or restructuring) occur under a debt undertaking of an obligor.

**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 and cash collateral accounts.

**Credit Facilities Basket:** this Basket in the Indebtedness Covenant of High Yield Bonds allows the Issuer to incur debt under Facilities up to an agreed amount. This Basket is particularly important, as this is one of the few significant categories of debt that can be Secured Debt.

**Credit Rating:** designations used by Ratings Agencies to give relative indications of credit quality in relation to companies or their Securities.

**Credit Risk:** the risk that a counterparty to a financial transaction will fail to perform its payment or other obligations, typically because of Insolvency.

**Creditors Committee:** in the restructuring context, see Coordinating Committee. A quite separate Creditors Committee may also be established in formal Insolvency proceedings, as in the case of English Administration or liquidation proceedings. Here the committee is intended to be representative of the general body of creditors, with consultation and (in liquidation) certain approval rights in respect of various matters. In French Sauvegarde or Redressement Judiciaire proceedings for large companies or upon request of the company, a restructuring plan proposal must be submitted to three separate Creditors Committees, one including the main suppliers of the debtor, another including its Lenders holding bank debt and other creditors (other than major suppliers or Bondholders) having extended credit to the debtor, and the last including its Bondholders (see Bondholders Committee). The three Creditors Committees have six months after the opening of the Sauvegarde or Redressement Judiciaire proceedings to adopt a restructuring plan, in identical terms by a majority (for each committee) of its members representing two-thirds of the debtor's total debt. Similarly, in Italy, a Creditors Committee plays a significant role in the Concordato Preventivo and in Fallimento proceedings. See also Term-Out.

**Creditors Voluntary Liquidation:** a type of English liquidation proceeding approved by a company's creditors. An alternative form of voluntary liquidation where a Members Voluntary Liquidation cannot apply because the company is not solvent.

**Créditos Concursales:** refers to Spanish Insolvency claims that are subject to Insolvency proceedings and, unlike the claims against the insolvency estate, are paid in accordance with the waterfall set forth in the Spanish Ley Concursal. In the event of liquidation of the insolvent company, claims are paid in accordance with the Waterfall (*i.e.*, claims against the Insolvency estate first, specially privileged claims (to the extent secured) second, generally privileged claims third, ordinary claims fourth and subordinated claims last). In the event that there is more than one creditor within a particular class, claims are paid on a pro rata basis.

**Créditos Contra la Masa:** refers to claims against the debtor's estate under Spanish Insolvency law, which are payable when due according to their own terms. Claims against the debtor's estate include legal costs, the receiver's fees, or claims resulting from obligations entered into by the receivers, or the debtor under the authorisation of the receivers, during the Insolvency proceeding. These claims are given preference above all others except for privileged claims specifically relating to the assets subject to the relevant Security interest or special privilege.

**Creeping Tender:** the gradual acquisition of the shares or Bonds of a company on the open market rather than through a registered Tender Offer in order to avoid the requirements of the US Exchange Act. The acquirer is able to gain a controlling interest in the Target without a formal bid to all shareholders offering to purchase at a premium.

**CREST:** an electronic settlement system for UK and Irish Securities operated by Euroclear. It offers firms and individual investors the opportunity of holding Securities in uncertificated form and transferring them electronically.

**CREST Shareholder:** a shareholder holding his/her shares or Securities electronically within CREST, whose name appears on the company's shareholder register as the legal owner of those Securities, with entitlement to all rights and benefits attached.

**Cross Acceleration:** an Event of Default that occurs when other indebtedness of the Issuer/Borrower or in the Restricted Group above an agreed threshold is actually Accelerated. Seen commonly in Bonds but less often in the loan world. Contrast to Cross Default.

**Cross Default:** an Event of Default which occurs when other indebtedness of the Borrower or in the Restricted Group above an agreed threshold is not paid when due or may be Accelerated whether or not the relevant creditors actually Accelerate, so basically the Lenders under the Facility Agreement benefit from and can rely on the occurrence of an Event of Default with respect to more stringent obligations agreed in another agreement, and therefore Cross of Default is unpopular with Borrowers/Issuers. Contrast to Cross Acceleration.

**Cross-over Credit:** a Security that is on the cusp of being, but is not quite, Investment Grade.

**Cross Receipt:** a receipt sometimes signed at the Closing of an issue of Securities, whereby the Issuer confirms receipt of the net proceeds of the issue and the Managers confirm receipt of the Securities. The receipt of net proceeds and Securities is deemed to take place simultaneously.

**Cross-Stream:** from a company to another company in the same group that isn't its parent company or its subsidiary (*i.e.*, its sister company). For example, a Guarantee granted by a company to support the debt of a sister company is a Cross-Stream Guarantee. Compare Downstream and Upstream.

**Crystallisation:** the process whereby a Floating Charge becomes a Fixed Charge over the assets to which it relates. Crystallisation can take place as a result of a notice (*e.g.*, after an Event of Default) or, in some circumstances, may occur automatically on an Event of Default or other agreed event.

**CSK:** Common Safekeeper.

**Cum:** used to abbreviate “cum dividend” or “cum rights”. A share purchased cum dividend (as opposed to ex dividend) has the right to receive a dividend that has been declared but not yet paid. A share quoted with cum rights carries the right to subscribe for new shares under an already announced Rights Issue.

**Curatore Fallimentare:** the public officer in Italy appointed by the Bankruptcy court and charged with administering a debtor's Fallimento and, in particular, the management of the debtor's assets.

**Cure:** the act of coming into compliance with a Covenant or otherwise eliminating a Default or an Event of Default. A standard Indenture or Facility Agreement might provide that certain Defaults only become Events of Default following the Cure Period. If a Cure is effected after an Event of Default has occurred (*i.e.*, after the Cure Period has expired), is that good enough? How about after Acceleration? Ask your Latham lawyer. See also Equity Cure and Deemed Cure.

**Cure Period:** another name for a Grace Period.

**Currency Swap:** an arrangement entered into by a company for the purpose of Hedging foreign currency risk, such as that associated with the company's operations or debt structure. For instance, a German-based company with operations in the US, or debt denominated in US dollars, might use a Currency Swap to protect itself from fluctuations in the Euro-to-dollar exchange rate.

**CUSIP:** Committee on Uniform Securities Identification Procedures. This is a nine character identification number unique to each issue of Bonds. Generally, this is used for US dollar denominated Bonds that clear through DTC.

**Custodian:** a financial institution holding Securities in safekeeping for a client either as part of an issue of Securities or generally.

**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 authorised 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 shareholder) at the Closing. This is particularly important if there are individual people who are selling shareholders. 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. Also used to describe the agreement whereby a Custodian is appointed to take custody of certain Securities on behalf of a company.

**CVA:** Company Voluntary Arrangement.

**CVL:** Creditors Voluntary Liquidation.

**"D" Loan:** another name for a Facility D Loan.

**Dain:** an Islamic finance term for a loan or other debt.

**DAM:** Debt Adjustment Mechanism.

**Daman:** an Islamic finance term for a contract of Guarantee or a liability.

**Dataroom:** the actual or virtual room established to allow Due Diligence to take place. Not a very exciting place.

**Date Certain / Data Certa:** a requirement under Italian law to make a deed enforceable against third parties and to establish priority amongst different claimants/creditors. Date Certain is achieved by: (i) Notarisation, (ii) authentication of the signature by a notary public, (iii) preparation of a certified copy of the deed by a notary, (iv) registration of the document upon payment of a registration tax and (v) service by court bailiff or by *piego raccomandato*. So not cumbersome at all, really.

**Day 21:** the first permitted Closing Date after a takeover offer has been made under the City Code.

**Day 60:** the last day on which a takeover offer may be declared or become unconditional as to acceptances under the City Code.

**Day Count Convention:** determines how Interest accrues across investments. Most currencies assume that each month has 30 days and therefore each year has 360 days, which mechanically slightly increases the Interest the Borrower actually pays. Sterling is one of the few currencies that takes the actual number of days, so each year has 365 or 366 days.

**Daylight Facility:** a Facility which is borrowed and repaid on the same day, most commonly used to facilitate intra-group reorganisations.

**DCM:** debt Capital Markets.

**DD:** Due Diligence.

**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.

**Dealer:** an investment bank agreeing to act for an Issuer under a MTN Programme in respect of the Issuer's issues of Notes but without any upfront underwriting or subscription commitment.

**Dealer Agreement:** an agreement between an Issuer and a group of Dealers setting out the terms on which the parties are prepared to issue Notes under an MTN Programme. Sometimes called an attribution agreement.

**Dealer Manager Agreement:** the contract pursuant to which an investment bank, called the dealer manager, is engaged to act in connection with an Exchange Offer or Tender Offer. In contrast to a Purchase Agreement, no Securities are being initially purchased or underwritten by the dealer manager but are being either repurchased or exchanged directly by the Issuer, so the liability considerations are different. In an Exchange Offer, because new Securities are being issued, a Dealer Manager Agreement will contain Representations and Warranties similar to those in a Purchase Agreement and a dealer manager will customarily perform due diligence and request comfort letters and 10b-5 Letters in connection with the Exchange Offer Memorandum.

**Debenture:** historically, a Bond with a maturity of more than 10 years. These days, all Bonds, even those with a maturity of more than 10 years, are called Notes. In the UK, Debenture refers to a Security Agreement whereby a company creates Fixed Charges and/or a Floating Charge over the whole or substantially the whole of its assets and undertakings.

**Debt Adjustment Mechanism:** see Collateral Adjustment Mechanism.

**Debt Capacity:** used to describe the amount of debt that an entity can repay in a timely manner (from available means or resources) without jeopardising its financial viability. Also used to describe the total amount of debt that an entity can incur by virtue of being required to comply with Negative Covenants or other restrictions such as in its constitutional documents.

**Debt for Equity:** the process whereby a debt interest is extinguished in exchange for an Equity interest. Used to re-structure a company's Balance Sheet in a restructuring. See also Credit Bid and Loan To Own.

**Debt Prepayment:** another name for a Debt Sweep.

**Debt Purchase / Buy Back:** a process whereby either a Borrower or a related party of the Borrower (an affiliate, parent or investor) purchases the Borrower's debt from the Lenders. Although rare in practice, this process may provide an opportunity for companies and their shareholders to repurchase debt which may be trading below Par.

**Debt Pushdown:** see Pushdown.

**Debt Sweep:** a specific type of Mandatory Prepayment. This provision in a Facility Agreement requires that 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 Facility Agreement, so this provision is somewhat redundant. But if there is a Prepayment Premium that is 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. It is unusual to see this in European Facility Agreement.

**Debt Test:** a reference to the Covenant restricting the incurrence of debt by the Issuer and its Restricted Subsidiaries. See also Ratio Debt.

**Declared Default:** an Event of Default that has resulted in Acceleration. Often this is used as the trigger to allow enforcement of Collateral rather than the mere occurrence of the Event of Default itself.

**Deed:** a written document under English law that must be executed in compliance with certain formalities (including those required as a result of Mercury). Certain documents must be executed as Deeds, including Security Interests and Powers of Attorney.

**Deed of Covenant:** Deed signed by the Issuer to an MTN Programme granting Direct Enforcement Rights to Bondholders.

**Deed Poll:** a Deed but with no counterparty. The person entering into the Deed Poll promises to do certain things for the benefit of certain third parties and the third parties can enforce this obligation even though not parties to the Deed Poll.

**Deemed Consent:** a person is deemed to have provided consent in connection with a consent/Waiver as a result of failing to respond within the specified period of time. This provision is usually included in a Facility Agreement where the Borrower has a consent right to transfers by the Lenders.

**Deemed Cure:** another name for a Soft Mulligan.

**Deemed Dividend:** tax issue that is a reason to be careful when structuring subsidiary asset pledges, stock pledges and Guarantees for Borrower entities, particularly in respect of US Borrowers, but also in certain other jurisdictions. Where relevant, a Borrower whose loan receives support from its foreign subsidiaries, in the form of Security Interests, share pledges and/or Guarantees, may be deemed to receive a dividend (a Deemed Dividend) for tax purposes from its foreign subsidiaries. Depending on the relevant jurisdiction, it may be possible to structure some support appropriately, so that no Deemed Dividend issues arise, however care will need to be taken (for example, in the US, a pledge of stock of a non-US subsidiary will not result in a Deemed Dividend if the Lenders settle for a 65% stock pledge from "first tier" non-US subsidiaries only (i.e., subsidiaries whose stock is held directly by the US parent or any of its domestic subsidiaries)). This issue is the reason why non-US subsidiaries generally do not provide Guarantees of US debt (although, depending on their tax status, in some instances foreign subsidiaries can provide such Guarantees). See Collateral Adjustment Mechanism.

**Default:** the beginning of trouble. Terms and Conditions, Indentures and Facility Agreements generally have three stages of trouble: the Default, the Event of Default and Acceleration. At stage one, the Default, the Issuer/Borrower has violated some provision of the Terms and Conditions, Indenture or Facility Agreement. Left uncured for a specified period of



time, together (in some cases) with notice from a disgruntled Bondholder or Lender (or the requisite majority thereof), a Default will mature into an Event of Default (and the story continues in that definition). Also known as a Potential Event of Default in English law governed Bonds where Default can therefore be used to describe both Potential Events of Default and Events of Default, just to confuse you further.

**Default Interest:** extra Interest accruing on due-but-unpaid amounts under a Facility Agreement. Default Interest accrues on all such overdue amounts at the regularly applicable rate plus (typically) 100 Basis Points. Contrast this to practice in the US where Default Interest can accrue on all outstanding amounts (whether or not overdue; often at the regularly applicable rate plus 200 Basis Points) following the occurrence of any Event of Default (*i.e.*, it is charged on the total loans rather than just amounts that have not been paid on their Due Date). Note that the ability of Lenders to recover Default Interest may be subject to local Insolvency restrictions in different jurisdictions.

**Defaulting Lender:** name used to describe a Lender that fails to fund, rescinds the Facility Agreement or related documentation, or becomes subject to Insolvency proceedings. The consequences of becoming a Defaulting Lender vary between Facility Agreements but can include loss of entitlement to any Commitment Fee, inability to vote on amendments and Waivers and/or being caught by a Yank-a-Bank.

**Defeasance:** this is a way to escape the Covenants governing US-law governed 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 appropriate government issued Cash Equivalents) 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. Defeasance is not included in the English law governed Bonds as a matter of market practice. See also Satisfaction and Discharge.

**Definitive Bond:** a physical certificate representing part of a new Securities issue and held in physical form by the Bondholder. Used for Bonds placed with retail investors (such as Belgian Dentists) who wish to hold the actual Bond (usually under their mattress).

**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. A Delayed Draw Term Facility is often intended to be used for acquisitions or Capital Expenditure programmes. See Acquisition Facility and Capex Facility.

***Delivery Versus Payment:*** delivery of Securities against payment of proceeds where the two are deemed to take place simultaneously. Both occur at exactly the same time, and it is, therefore, not possible for the Issuer to say it will only release the Securities when it receives the proceeds, or for the manager to say it will only release proceeds when it receives the Securities. Also known as DVP.

***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.

***Dematerialised:*** the term used to describe Securities which are no longer evidenced by share certificates or physical Notes but are held electronically in a depository system such as CREST.

***Demerger:*** the division of a business into two or more separate organisations. Also known as a Spin-Off.

***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 Amortises. See Amortisation.

***Description of Notes:*** a long-form summary of the Indenture or Condition of Issue 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 or Condition of Issue. Historically, this only appeared in US-law governed offerings, but in recent years we have seen the arrival of German law governed High Yield Bonds that also contain a Description of Notes.

***Desequilibrio Patrimonial:*** in Spain, the reduction of a company's net asset value to below half of its share capital value as a result of accumulated losses. In such circumstances, the directors of the company must call for a shareholders' meeting within a period of two months to dissolve the company or file for Insolvency, unless the share capital of the company is adequately increased or decreased.

***DFM:*** a stock exchange located in Dubai that lists public shareholding companies, Bonds issued by the government and public institutions, investment funds and other financial instruments and provides clearing, settlement and depository services.

**DFSA:** Dubai Financial Services Authority, the independent regulator of all financial services and ancillary services conducted through the DIFC. Firms wishing to provide financial services or ancillary services in or from the DIFC must obtain a license to do so from the DFSA.

**Dharar:** an Islamic finance term for harm or damage, such as harm to an 'Ayn subject to a Ijara.

**DIFC:** Dubai International Financial Centre, a 110-acre financial Free Zone in Dubai focusing on the following sectors of financial activity: banking and brokerage, capital markets, wealth management, reinsurance and captive insurance, Islamic finance and ancillary services. The DIFC has its own body of law, including corporate law, contracts law and employment law, its own financial services regulator, the DFSA, and its own court system. The DIFC is home to a stock exchange, NASDAQ Dubai, and the offices of Latham & Watkins in Dubai.

**Diminishing Musharaka:** an Islamic finance term meaning a Musharaka structure where the share of a partner in the Musharaka is purchased by the other partner (or customer) periodically and in scheduled amounts.

**Ding the Basket:** Basket in this context refers to the Build-Up Basket in the Restricted Payments Covenant. An Issuer is said to Ding the Basket when it makes a payment or investment pursuant to a Carveout to the Restricted Payment Covenant which reduces the total amount available for Restricted Payments under the Build-Up Basket.

**Direct Enforcement Rights:** rights granted by an Issuer to Bondholders pursuant to a Deed granting them the right to enforce directly amongst the Issuer upon the occurrence of certain limited events, such as an Event of Default. See also Deed of Covenant.

**Direct Participant:** each Bondholder who is shown in the records of the Clearing Systems as a holder of Securities.

**Disclaimer:** a notice or statement, for example, in a Prospectus, which is designed to limit or avoid potential legal liability and often required by Managers or Underwriters, for instance to bring to the notice of investors that the Managers or Underwriters do not take any responsibility for the information provided in the Prospectus regarding the Issuer and its business and financial position.

**Disclosure Guidance and Transparency Rules:** the guidance and rules for Issuers on the disclosure and control of inside information and transactions by PDMRs and others, as contained in the FCA's Disclosure Guidance and Transparency Rules Sourcebook. The Disclosure Guidance, which contains signposts to the relevant provisions in MAR, replaced the old disclosure rules when MAR came into force on 3 July 2016.

**Disclosure Letter:** in the M&A context, the letter by which the sellers disclose to the buyers certain events or circumstances which would otherwise constitute breaches of the Representations and Warranties

in the SPA. Disclosure Letters are less common in the debt financing context but can be used by Borrowers to make disclosures to the Lenders against the Representations and Warranties in the Facility Agreement. This is not, however, usual as the Representations and Warranties have materiality thresholds in them such that Lenders do not generally want to pre-approve matters that exceed the agreed thresholds or, to the extent that they are agreed, such carve-outs should be included in the Facility Agreement itself for ease of reference.

**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 Note. This creeping is called "accreting" and is treated as Interest expense to the Issuer and Interest income to the Bondholder. If you hold a Discount Note close to your ear, you can actually hear the accretion occurring.

**Discretionary Fee:** in the context of a Best Efforts Deal, a fee that is sometimes paid at the discretion of the Issuer/Borrower to the Initial Purchasers, Underwriters or the Arrangers in addition to the other fees, including any Base Fee, typically understood to be an acknowledgement of a very successful transaction.

**Disenfranchisement:** if an affiliate of the Borrower (including a Sponsor) enters into a Buy Back, it is likely to be subject to Disenfranchisement meaning that it does not get to vote on amendments and Waivers, receives no information sent to Lenders, can't attend Lender meetings, etc. The aim is to prevent Lenders with conflicting interests from disrupting the Syndicate. In Bond world, affiliates of the Issuer (including any Sponsor of the Issuer) are always Disenfranchised.

**Disproportionate Impact Language:** Business MAC provisions may 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 these 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 nonetheless be deemed to have occurred if the event(s) had a disproportionate impact on that particular company.

**Disqualified Stock:** any stock which is or could be redeemable prior to the maturity date of the Bonds plus a number of days (typically 91 days).

**Distressed Debt:** debt trading (well) below Par due to concerns about the financial health of the Borrower. See Loan To Own.

**Distressed Debt Fund:** an investor that only looks to purchase Distressed Debt.

**Distressed Exchange Offer:** an Exchange Offer for the debt Securities of a company that is undergoing financial hardship and likely will not make its next Interest payment without undergoing a debt restructuring.

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

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

**DMA:** Dealer Manager Agreement.

**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 (or warrant additional fees!). Essentially, it is a means for a Lender to get its name on the cover of a Facility Agreement and receive League Table Credit. Not overly common in Europe.

**Document de Base:** the French term for "registration document", which is the portion of the Prospectus that describes the Issuer and its business and is filed and registered in connection with a French IPO. Also known as DDB. Similar to an S-1 in the United States. Can now be registered in English or French.

**Document de Référence:** in France, an annual report issued by a listed Issuer, which details the accounts, governance, control and structure of a company and can be incorporated by reference for the purpose of Capital Markets transactions.

**Dodd-Frank Act:** the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010 in response to the financial crisis of 2008-2009. The Dodd-Frank Act represents the most significant legislative change to financial supervision in the US since the 1930s, contemplating more than 350 rule-making initiatives, as well as numerous studies and reports "to promote the financial stability of the United States by improving accountability and transparency in the financial system". Many of the significant rulemakings have been implemented and are affecting every financial institution that operates in the US and many that operate from outside the US.

**DoN:** Description of Notes.

**Double Dip:** in the financial world, the term used to describe the circumstances when a recession quickly follows a prior recession.

**Double Luxco Structure:** a post-Credit Crunch method of structuring Facilities in mid- to large-cap LBO acquisitions of French Target groups in order to try to avoid the Sponsor or the Obligor group putting themselves (or threatening to put themselves) in Sauvegarde. Two Luxcos are put in place above the first French company, with the top Luxco granting a Security Interest over the shares in the second Luxco which owns the French Bidco. How does this help? Well, under the EU Insolvency Regulation, the enforcement of this Security Interest is allowed notwithstanding the opening of Sauvegarde proceedings against the top Luxco (which might happen if its COMI is in or has been moved to France). Generates a host of Intercreditor Agreement issues with the Sponsor and the Mezz Lenders. Rarely encountered since 2015, not so much because the French restructuring landscape has changed, but because market participants have determined in their wisdom that they can do without it. Best to call Latham if your deal is going to involve a Double Luxco Structure.

**Double Taxation Treaty:** an agreement between countries (usually bilateral) which is intended to prevent taxpayers being taxed on the same amount of profit or gains in each country. This often includes reducing the rate of Withholding Taxes that would otherwise be due in respect of payments made by a person in one of the countries to a person resident in the other country, so long as the requirements of the Double Taxation Treaty are met.

**Downstream:** from a parent company to a direct or indirect subsidiary. For example, a Guarantee granted by the parent to support the debt of a subsidiary is a Downstream Guarantee. Compare Upstream and Cross-Stream.

**DPS:** droit préférentiel de souscription, a French statutory right available to shareholders of limited liability companies. An anti-dilution device that allows the beneficiary to subscribe to every subsequent share or equity securities issuance paid in cash. The DPS can be severed from the share and sold separately.

**Drag Along Rights:** rights that 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 recognise the full value of its shares 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. In loan world, it also refers to a provision whereby if Senior Debt holders are making amendments or giving consents, the Junior Debt holders are automatically deemed to have given the same amendment or consent, and is therefore subject of much negotiation.

**Drawdown:** in Bond world, the issue of a series of Notes under a Medium Term Note Programme, up to the established programme limit. In loan world, the borrowing of funds.

**Drawstop:** in a Facility Agreement, an event (such as a breach of a Covenant or Representation and Warranty) that gives the Lenders the right to refuse to make further loans.

**Drive By:** outside of the criminal context, a Bond deal that is priced the same day it is announced (with very limited marketing).

**Drop Dead Date:** another name for the Longstop Date.

**Drop Hands:** settlement under which the parties agree to bear their own costs.

**DTC:** the 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 “dematerialising” 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. See Clearing System.

**Dual Currency Bond:** an issue of Securities denominated in one currency but where Interest and/or principal is repayable in another currency.

**Dual Track:** occurs when a Sponsor wants to either sell a Portfolio Company or IPO that Portfolio Company, but won't decide until the very last minute which option is best. Until decision day, the M&A and Capital Markets deals are prepped on parallel tracks, so either is ready to go at the push of a button.

**Dubai Department of Economic Development:** the Dubai government department responsible for business registration and licensing. Entities incorporated in Dubai (outside of the DIFC) are required to obtain a trade licence from the Dubai Department of Economic Development.

**Due Date:** the anticipated end of a tough nine months and the beginning of a tougher and longer period. Also the date on which Interest and/or principal is due to be paid to the Lenders or Bondholders.

**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 (and/or relies on Due Diligence prepared by the vendor's advisors which is provided to them with a Reliance Letter) so it can understand what it is buying. In Capital Markets transactions, the bankers and lawyers do Due Diligence in order to establish a Due Diligence

Defence (in Rule 144A Offerings) or for their general diligence purposes (in Regulation S offerings). 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 (often in a Data Room) and Financial Statements to plant visits and interviews with management, outside accountants, counsel, customers and suppliers. The process in Europe in the loan world typically results in the preparation of Due Diligence reports by advisors to the Borrower (or vendor), which are sometimes provided with a Reliance Letter in favour of the initial Lenders under a Facility Agreement and those institutions becoming Lenders during Syndication. In an LBO, typical Due Diligence reports may include an accountants' report, legal report, environmental report, insurance report, market report and/or pensions report.

**Due Diligence Condition:** a Condition Precedent that the commitment is subject to the satisfactory completion of Due Diligence by the Arranger. In most cases and in particular in the Certain Funds context, 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 Defence:** the Initial Purchasers' principal defence in Securities offerings lawsuits arising from Rule 144A Offerings. The US 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 Defence. Specifically, Underwriters and the board of directors have an affirmative defence 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 defences 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.

**DVP:** Delivery Versus Payment.

**DZIT:** Department of Zakat and Income Tax responsible for collecting zakat and tax in the Kingdom of Saudi Arabia.



**E Plus:** “EURIBOR plus”, used in stating the Applicable Margin in respect of a Floating Rate of Interest that is to be tied to EURIBOR, such as “E+100 bps”.

**Early Bird Fee:** from the common phrase “the early bird catches the worm” and used to signify a payment or fee made to those quick off the mark. For example, in the context of an amendment, the Issuer/Borrower could structure the fees offered such that any Lender or Bondholder who agrees to the amendment within a short period of time following the Borrower’s or Issuer’s request receives an additional fee compared to Lenders or Bondholders accepting later.

**Earn-out:** an arrangement under which all or part of the purchase price on the sale and purchase of a business, or the shares in a company in the M&A context, is calculated by reference to the future performance of the business or company being purchased. Commonly used as a management incentive whereby owner-managed businesses are sold and the managers continue to work in the business for an agreed period following the sale.

**EBIT:** earnings before Interest and taxes. See also EBITDA and Adjusted EBITDA.

**EBITDA:** earnings before Interest, taxes, Depreciation and Amortisation. 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.

**EBITDA Cure:** an Equity Cure where the proceeds are deemed to increase EBITDA rather than decrease debt. Given the ratio nature of the Financial Covenants, an EBITDA Cure will have a significantly greater effect for the purposes of re-calculating the Leverage Ratio than a reduction in debt and, as a result, an Equity Cure may, therefore, be successfully effected by applying significantly less proceeds than would otherwise be the case.

**EBITDAR:** earnings before Interest, taxes, Depreciation, Amortization and restructuring or rent costs.

**EBITDAX:** earnings before Interest, taxes, Depreciation, Amortization and exploration expense. Typically used for companies that are in the oil or mineral exploration industries.

**ECB:** European Central Bank or the English Cricket Board, depending on where your interests lie.

**ECF:** Excess Cash Flow.

**ECM:** Equity Capital Markets.

**ECP:** Euro Commercial Paper, issued only to European investors. See Commercial Paper.

**EDGAR:** the SEC's Electronic Data Gathering, Analysis and Retrieval system. This is where you can retrieve a Reporting Company's periodic and other SEC filings. It can be found at [www.sec.gov](http://www.sec.gov).

**EEA:** European Economic Area.

**EEA Legend:** disclosure in the plan of distribution or subscription and sale section of an Offering Memorandum or the underwriting section of a Prospectus that is inserted to make sure a deal complies with European Securities regulations and, in particular, the Prospectus Directive.

**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 Facility that sits alongside unsecured Senior Notes without an Intercreditor Agreement that subordinates the Senior Notes to the Senior Secured Facility is an example of effective Subordination. Even though the Senior Notes are not contractually subordinated to the secured borrowings under the Senior Secured Facility, because the Facility has Security and the Senior Notes do not, the Senior Notes are effectively subordinated. See Subordination. Compare Contractual Subordination and Structural Subordination.

**EGC:** Emerging Growth Company. A new category of Issuer created by Title I of the JOBS Act. To qualify as an EGC, a company must not have priced its IPO prior to December 9, 2011 and must have annual revenue for its most recently completed fiscal year of less than \$1.0 billion. Qualification as an EGC allows the Issuer to utilize the so-called "IPO on-ramp", a transition period from private to public company that eases certain burdens of the IPO process by scaling back financial disclosure requirements, permitting confidential SEC submissions and pre-filing offers to Institutional Investors and allowing research analysts to publish reports on EGCs immediately after they become public companies.

**EIB:** European Investment Bank.

**EMEA:** Europe, Middle East and Asia.

**Emiratisation:** an initiative by the government of the UAE to promote the employment of its citizens in the private and public sectors.

**EMTN:** see Medium Term Notes.

**Encumbrance:** another word for Lien, typically used in the real estate context. Like a Lien, an Encumbrance does not have to be consensual and involves a claim against an asset that does not typically prohibit passing title but often impedes transferability by diminishing value or marketability. For example, an easement of a utility to run power lines over your property would be considered an Encumbrance.

**Engagement Letter:** a letter that outlines the engagement of the Initial Purchasers, Managers or Underwriters 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, there will usually be no Engagement Letter.

**Equal and Rateable:** used in the context of Liens to mean that two Secured Parties share the same (or equal) rights in the Collateral.

**Equitable Subordination:** means different things in different places. In certain European jurisdictions such as Germany and Italy, this term is used to describe the automatic Subordination of any debt claims against an insolvent company that are held by the Equity holders of such company unless an applicable exemption applies (for example, with respect to Germany, see Restructuring Privilege). The concept can also extend further. For example, in Italy, shareholders can also be required to reimburse any repayments on such loans received in the year before the opening of the Insolvency proceedings. Whilst Equitable Subordination typically only applies to shareholders, in certain jurisdictions such as Germany it could apply to Lenders if they exercise too high a degree of corporate control over the Borrower. Contrast this to the US where the term means the power of a Bankruptcy court 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.

**Equity:** in Capital Markets, refers to stock, shares or any other Security representing an ownership interest in a company. As an accounting term on a company's balance sheet, refers to the amount of the funds contributed by the owners (the stockholders) plus the retained earnings (or losses).

**Equity Claw:** this Bond world Optional Redemption provision allows an Issuer to redeem a percentage of the outstanding Notes (generally 35 or 40%) 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 (which may be "pure" Equity and/or Subordinated Shareholder Loans). This is generally documented in the Equity Commitment Letter, which is drafted by the M&A deal team (*i.e.*, it is not part of the Commitment Papers package). See Rollover Equity.

**Equity Cure:** an infusion of cash from shareholders in exchange for Equity of the Borrower (or by way of Subordinated Shareholder Loan) in order to cure a Financial Covenant Default. The inclusion of this feature and the way in which the proceeds of the Equity Cure are treated for purposes of determining Financial Covenant compliance are often heavily negotiated. Whilst Lenders will typically want the Equity Cure to be treated as, for example, a repayment of Loans, a Sponsor would expect the Equity Cure to be treated as EBITDA as this would have a much greater impact on, for example, the Leverage Ratio. 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 shareholders to inject Equity (and/or Subordinated Shareholder Loans) into the company after a Default and allowing those amounts to cure breaches of Financial Covenants, 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 Facilities). This masking of operational problems can be particularly harmful over consecutive periods. As a result, use of an Equity Cure is typically limited in amount and frequency based on negotiations.

**Equity Kicker:** an Equity interest offered to a debt provider (*i.e.*, a Lender under a Facility Agreement or a Bond investor), sometimes in the form of Warrants issued by the company to such debt provider or contractual Equity co-investment rights, typically as an incentive for such Lender or Bondholder to buy the debt.

**Equity Linked:** Securities either convertible into, or with Warrants to purchase, Equity interests of the Issuer or another company.

**Equity Prepayment:** a specific type of Mandatory Prepayment. This provision in a Facility Agreement requires the loans to be prepaid with the net cash proceeds of certain Equity issuances by or above the "top" entity bound by a Facility 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 Prepayment 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 but would catch proceeds received from an IPO (which would either result in a requirement for complete prepayment or be subject to Step Downs).

**Equity Sweep:** another name for an Equity Prepayment.

**ERISA:** the Employee Retirement Income Security Act in the US, a US federal law covering private company employee benefit plans. ERISA establishes legal guidelines for pension benefit plans and welfare benefit plans, including guidelines concerning pension investments,

pension loans, administration, setting standards for fiduciary conduct and making fiduciaries personally liable for breaches of responsibility. See also VCOC Rights.

**Escrow:** used colloquially to mean the holding of signed documents to prevent them becoming operative until a specified event, e.g., “we will hold the documents in Escrow until the Closing Date”. Also means the holding of proceeds from an offering of Securities or a Facility that are to be used for a specific purpose (usually an acquisition) until the closing of the transaction. If the acquisition does not happen, then the proceeds are repaid to the investors. Can be informal or governed by a written agreement, with or without a third party acting as Escrow agent.

**ESMA:** the European Securities and Markets Authority, an independent EU regulatory institution that (according to its website) contributes to safeguarding the stability of the European Union’s financial system by enhancing the protection of investors and promoting stable and orderly financial markets.

**Esperto:** the independent professional in Italy who must possess certain specific professional qualifications and may be subject to liability in case of misrepresentation or false certification. The Esperto has to (i) in the context of a Piano di Risanamento Attestato and a Concordato Preventivo, verify the feasibility of the restructuring plan and the truthfulness of the business and accounting data provided by the company and (ii) in the context of an Accordo di Ristrutturazione assess the truthfulness of the business and accounting data provided by the company and declare that the agreement is feasible and, particularly, that it ensures that the debts of the non participating creditors can be fully satisfied within a certain time frame. The Esperto is usually appointed by the company itself although, in some cases, Bankruptcy courts have decided to appoint the Esperto themselves.

**ETE Form:** a declaration form provided by the Bank of Spain that must be completed by any person — public or private resident in Spain, other than payment services providers, which includes both credit and payments entities registered on the official register of the Bank of Spain that enter into transactions with non-residents or that keep external assets or debts.

**Ethics Wall:** an information barrier used within a firm or business to separate and isolate persons who receive confidential information from disclosing such information to members of a different part of the firm or business. This is a way of avoiding conflict of interest problems. Sometimes referred to as a Chinese Wall.

**eToys:** an online retailer that specialised in the sale of toys (it was acquired by Toys “R” Us). Also a term used in US financings; eToys was the plaintiff in an important 2005 case where a US 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). European Commitment Letters also typically contain such a provision (see the LMA standard form Commitment Letter by way of example) although it doesn't have such a fun name.

**EU:** European Union.

**EU Insolvency Regulation:** Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings sets out a regime for the determination of Insolvency jurisdiction, and the recognition of the effects of an Insolvency proceeding, throughout the EU (other than Denmark). The EU Insolvency Regulation was replaced by the Regulation (EU) 848/2015 of the European Parliament and of the Council dated 20 May 2015 (the Recast EU Insolvency Regulation) which became effective as of 26 June 2015, and is applicable to Insolvency proceedings opened after 26 June 2017. The EU Insolvency Regulation remains applicable to Insolvency proceedings opened before that date.

**EURIBID:** the equivalent of LIBID for Euros.

**EURIBOR:** the Euro Interbank Offer Rate, which refers to the rate at which major financial institutions within the EU can borrow Euros from another participant bank in the EU money market. See Applicable Margin and IBOR.

**EURIBOR Floor:** a Floor for Facilities denominated in Euros and therefore using EURIBOR.

**Euro:** single European currency unit used by the Participating Member States of the EU.

**Euro Interbank Offer Rate:** the rate at which major financial institutions within the EU can borrow Euros from other participant banks in the EU money market. Also known as EURIBOR. See Applicable Margin and IBOR.

**Euro MTF:** Multilateral Trading Facility (as defined in MIFID) and the Exchange Regulated Market operated by the Luxembourg Stock Exchange for the listing of Securities.

**Eurobond:** generally used to describe a Bond issued in a currency other than the currency of the country or market of the Issuer. A Eurobond is issued pursuant to Reg S and governed by English law with few or no Covenants. Quoted Eurobond also has an additional, separate meaning in a UK tax context, as payments of Interest on a "quoted Eurobond" are not subject to UK Withholding Taxes on Interest. A quoted Eurobond for these purposes is a Security which is issued by a company, is listed on a "recognised stock exchange" and carries a right to Interest (there is no

stipulation as to currency in this context, in contrast to the alternative meaning previously described).

**Euroclear:** shorthand for Euroclear Bank S.A./N.V., one of the three primary Clearing Systems used in Europe, located in Brussels. See Clearing System.

**Euronext:** a European cross-border exchange for trading and clearing of cash products and derivatives on regulated and non-regulated markets. It merged in 2007 with NYSE Group, Inc. to form NYSE Euronext, the “first global stock exchange”.

**European Central Bank:** the central bank for the Euro, with primary responsibility to maintain the Euro's purchasing power and, therefore, price stability in the Euro area. It also sets short-term Interest Rates.

**European Commission:** the executive arm of the European Union and the body responsible for proposing European legislation and making decisions.

**European Economic Area:** the trading area currently comprising the member states of the European Union, as well as Norway, Iceland and Liechtenstein. Created in 1994.

**European Investment Bank:** the long-term lending bank of the European Union, raising funds on the Capital Markets, which it lends to projects that further EU policy.

**European Union:** an economic and political confederation of European nations sharing a common foreign and security policy and co-operating on justice and home affairs. That is the theory anyway.

**Event of Default:** if you are experiencing one of these, things are not going well. As discussed in the definition of Default, Bonds and Facility 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/Borrower has failed to cure the Default (and, in some cases, a disgruntled Bondholder or Lender — or the requisite majority thereof has provided a required notice) within a specified period of time (or Cure Period). So what happens now? See Acceleration.

**Evergreen:** a provision in a contract that allows for the automatic renewal after the initial term of the contract for successive terms of an agreed upon length so long as neither party gives advance notice of an intent not to renew. Evergreen provisions are useful because they prevent you from having to renegotiate your entire agreement each year unless one party is demanding it.

**Ex:** the opposite of Cum, and indicating that, as against the seller, the buyer e.g., of Shares is not entitled to receive declared dividends, participate in any announced rights issue, etc. Compare Cum.

**Excess Cash Flow:** a calculation of how much extra cash the Borrower has generated during a particular period of time that can or must be used in whole or in part to pay down debt early. 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 (plus any other deductions that the Borrower or Sponsor can negotiate). See Excess Cash Flow Sweep.

**Excess Cash Flow Sweep:** a provision in a Facility Agreement that requires the Borrower to prepay loans in an amount equal to a specified percentage of Excess Cash Flow (often above an agreed threshold). The Excess Cash Flow Sweep percentage is often subject to Step Downs.

**Exchange Act:** see US Exchange Act.

**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 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:** an offering by an Issuer of new Securities issued in exchange for existing Securities of that Issuer.

**Exchange Regulated Market:** a trading market that is not subject to the Prospectus Directive for purposes of its disclosure requirements and may therefore determine its own disclosure requirements. Exchange Regulated Markets include the Euro MTF in Luxembourg, PSM and AIM in London, and GEM in Ireland. Also known as an Unregulated Market although Securities regulators are not mad about that definition.

**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 of the US Securities Act, 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.

**Exploding Bridge:** a Bridge Loan that must be repaid at maturity. If not repaid, it doesn't automatically convert to a Term Loan (like most Bridge Loans would), but explodes (well, not literally, but it does mean the Borrower is in Default). Fairly unusual, as it puts a lot of pressure on the Borrower to figure out how to repay the Bridge Loan before the clock runs out.

**Extend and Pretend:** like Amend and Pretend but one of the amendments will include an extension to the maturity of the Facilities.

**Extraordinary Administration:** an Italian Insolvency procedure available to large insolvent companies and aimed at protecting the company's assets, goodwill and employees through the continuation, reactivation or conversion of business activities. During the period of Extraordinary Administration, there is a stay on actions by all creditors. The Prodi Law version is mainly a court-driven procedure which applies to companies with more than 200 employees and who are overly indebted. The Marzano's Law version applies to companies with more than 500 employees and a total indebtedness of more than €300 million and is mainly a government-driven procedure.

**Face Value:** another way to describe the Principal Amount.

**Facility:** a collective reference to the loans and commitments of the Lenders under a Facility Agreement. Examples of Facilities include: Revolving Credit Facilities, Term Loan Facilities, First Lien Facilities, Second Lien Facilities, Mezzanine Facilities and Bridge Facilities. Facilities can be Bilateral or Syndicated.

**Facility A:** a Senior Secured Facility consisting of Facility A Loans.

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

**Facility Agent:** the bank that serves as the principal Agent administering the Facilities in the Facility Agreement. The Facility 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 Facility Agreement in dealings with the Borrower. The Facility Agent is often also the same entity as the Security Agent, but wearing another hat. The Trustee performs an analogous role in Bond world.

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

**Facility Agreement:** the legal document in which at least one Lender agrees to lend money to a Borrower. The Facility Agreement not only sets forth the mechanics for the making of loans (and, if relevant, the issuance of Letters of Credit and availability of Ancillary Facilities), but also contains Representations and Warranties of the loan parties, Positive Covenants, Financial Covenants, Negative Covenants, Events of Default and the remedies of the Lenders after the occurrence of those Events of Default, and expense reimbursement, indemnity and other Boilerplate provisions.

**Facility B:** a Senior Secured Facility consisting of Facility B Loans.

**Facility B Loans:** Term Loans that are structured to appeal to institutional investors (read "CLOs and hedge funds") who are more focused on keeping their funds invested at attractive Yields than on Amortisation. Facility B Loans typically have no Amortisation, mature 12 months after the maturity of the Facility A Loans and have a higher Interest Rate than the Facility A Loans of the same Borrower.

**Facility C:** a Senior Secured Facility consisting of Facility C Loans.

**Facility C Loans:** like Facility B Loans but maturing typically 12 months after and with a higher Interest Rate.

**Facility Change:** another name for Structural Adjustments.

**Facility D:** a Second Lien Facility consisting of Facility D Loans. So called because in Europe Second Lien Facilities were often structured as Senior Secured Facilities documented in the same Facility Agreement as Facilities A, B and C (the further Facility therefore became Facility D). The Subordination of Facility D to the other Senior Secured Facilities is typically achieved in the Intercreditor Agreement.

**Facility D Loans:** another name for Second Lien Loans.

**Facility Office:** the name given to the branch office from which a Lender will fund, and otherwise perform its obligations, under a Facility Agreement.

**Fair Market Value:** the price for which property can be sold in an "arm's length" transaction, *i.e.*, between informed, unrelated and willing parties, each of which is acting rationally and in its own best interest.

**Fairness Opinion:** seen in various contexts including the Affiliate Transaction Covenant in Indentures and also in Release Clauses in High Yield deals (and now increasingly in transactions with Senior Debt and Mezzanine Financing). Essentially this is an opinion from an independent, internationally recognised investment bank (or, perhaps, one of the major accounting firms) that a particular transaction is fair from

a financial point of view. In the context of a Release Clause, a provision of this is typically one of the conditions that must be satisfied before the Senior Debt holders can exercise their rights.

**Fallen Angel:** can refer to (i) the Issuer of a Bond that was once Investment Grade but has since been reduced to Junk Bond status or (ii) a stock that has fallen substantially from its all-time highs.

**Fallimento:** an Italian bankruptcy procedure akin to English liquidation. The company will be directed by a Curatore Fallimentare who is supervised by a judge (giudice delegato) and a Creditors Committee (comitato dei creditori). There is an automatic stay on enforcement of all claims during the procedure.

**Faqih:** an Islamic finance term for an Islamic jurist specialising in the issuance of Fiqh.

**FATCA:** the US Foreign Account Tax Compliance Act, which targets tax non-compliance by US taxpayers with foreign financial accounts and offshore assets.

**Fatwa:** an Islamic finance term for a legal verdict or pronouncement based on Fiqh, given by a Shari'ah scholar or a Shari'ah board or a Mufti. Each Islamic finance transaction will have one or more Fatwas issued on closing approving of the Islamic structure of the transaction.

**FCA:** Financial Conduct Authority.

**FCA Handbook:** a publication which sets out all the rules and guidance made by the FCA.

**FCPA:** Foreign Corrupt Practices Act. This US statute prohibits individuals and companies from bribing foreign governmental officials in exchange for contracts, concessions or other benefits conferred by the foreign government. The FCPA applies to any person or company that has a certain connection to the United States.

**Fee Credit:** how companies get some of their money back under the Fee Letter if/when they end up issuing the High Yield Bonds after borrowing a 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 Conversion Fee is refunded or credited against the Placement Fee if the High Yield Bond deal occurs after the Conversion 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. Also known as a Fee Rebate.

**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 out the fees and contains the Market Flex and Securities Demand provisions. This is a separate letter that outlines certain fees to be paid in connection with the various Facilities (including the Bridge Facility) contemplated by the Commitment Letter. Note that this letter is often not shared with the vendor or the Target (among others). Always be careful to whom this letter is distributed.

**Fee Rebate:** see Fee Credit.

**Final:** a reference to the Final Offering Memorandum or Prospectus. The Final is printed after Pricing and includes all pricing terms. Compare Red and see Pricing Supplement.

**Final Terms:** the form of Final Terms for use in drawdowns under Medium Term Note Programmes. Final Terms contain the commercial terms of a Bond issue, e.g., Interest Rate, Maturity Date, Call and/or Put Options. The form of Final Terms is published by ICMA.

**Finance Subsidiary:** a company (known colloquially as “Finco”) primarily used by a parent company to raise money, usually in the context of a Notes offering. The proceeds of the Notes are advanced to the parent or to the parent’s Operating Subsidiaries.

**Financial Assistance:** broadly, rules prohibiting or restricting the grant by a company of assistance (whether in the form of a loan, a grant or a Guarantee or Security) for the acquisition or subscription of its own shares or shares of certain companies in the same corporate group. Introduced in jurisdictions throughout the European Community by the Second Council Directive of 13 December 1976 (77/91/EEC), but in varying shades depending on the applicable legal regime, and in particular whether the jurisdiction has a strong Corporate Benefit requirement. Since 1 October 2009 in England and Wales, a private company is allowed to provide Financial Assistance other than to support the purchase of shares in a public parent company, and no financial assistance may be given by public companies save for limited exceptions. Not every other European country is, however, as generous and the Financial Assistance rules should be carefully considered before committing to provide Secured Debt in European financings as these rules can severely limit (or prevent) the ability to get Collateral and Guarantees. See also Corporate Benefit and Guarantee Limitation Language.

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

**Financial Conduct Authority:** a UK regulatory body that focuses on the regulation of financial services firms (retail and wholesale). It is funded by membership fees it charges and is completely independent of the United Kingdom government. It has a crucial role in maintaining the

integrity of financial markets in the UK and the conduct of firms that supply financial services. The Financial Conduct Authority was preceded by the Financial Services Authority (FSA).

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

**Financial Statements:** the Income Statement, Balance Sheet and Cash Flow Statement of a company.

**Financial Transactions Tax:** a proposal made by the European Commission to introduce a financial transaction tax within the member states of the European Union, which has not yet been adopted. Also known as FTT.

**Financing Out:** a Condition Precedent in an SPA that makes the acquisition transaction subject to financing. The consequence of a Financing Out is that the acquirer does not have to consummate the acquisition if the loan commitments do not fund. The Financing Out 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 finance documentation. Without a Financing Out, the acquirer will insist on fewer Conditions Precedent — and it is unlikely to sign an SPA before it has signed a Facility Agreement with Certain Funds and obtained confirmation that the Conditions Precedent have been satisfied or are within its control — because the acquirer knows it is contractually obliged to consummate the purchase whether or not the financing is available on the Closing Date. Financing Outs are now not very common.

**FINRA:** 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 in the US. Underwriters must make FINRA filings in connection with IPOs and certain secondary equity offerings of newly public companies in the US.

**Fiqh:** a term in Islamic finance used to refer to the principles upon which Islamic finance transactions are structured.

**Firm Commitment Underwriting:** 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:** "first priority Lien", this Lien has Priority over other Liens, subject to a negotiated list of exceptions for other Liens permitted under the Facility Agreement and/or Indenture.

**First Lien Facilities:** these sit at the top of the Capital Structure. First Lien Facilities are Senior Secured Facilities (usually one or more Term Loan Facilities and a Revolver) that have a First Lien on the Collateral.

**Fiscal Agency Agreement:** an agreement between the Fiscal Agent, various paying and transfer agents and, if applicable, the Registrar, whereby the Issuer and any Guarantor appoints the Fiscal Agent and any other applicable agents as their agents to conduct payments, transfers, authentication etc. in connection with the Securities.

**Fiscal Agent:** a bank appointed by the Issuer and any Guarantor to carry out payments and other administrative duties in relation to the Securities. A Fiscal Agent is used where there is no Trustee and the role is identical to that performed by a Principal Paying Agent. The Fiscal Agent is the agent of the Issuer and owes no fiduciary duties to the Bondholders in the way that a Trustee would.

**Fiscal Unity:** said to be the name of an underground tax lawyers' network, though it is more commonly used as another name for Tax Consolidation, particularly in a Benelux context.

**Fitch Ratings:** a jointly owned subsidiary of Hearst Corporation and FIMALAC, S.A. Fitch for short. 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 applicable accounting rules, Fixed Assets are recorded on a company's Balance Sheet at their acquisition cost minus an accumulated charge for Depreciation.

**Fixed Charge Coverage Ratio:** in bank deals, often used as an alternative name for Cash Flow Cover. However, a Fixed Charge Coverage Ratio is technically slightly different and less frequently seen in Europe. In Bond world, the Fixed Charge Coverage Ratio is the ratio of EBITDA (or Adjusted EBITDA) to Fixed Charges. Most High Yield Bond 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. The basic idea here is that, assuming a Fixed Charge Coverage Ratio of 2:1, the Issuer can incur more debt if, after taking into account the newly incurred debt, the Issuer would have at least two Euros of cash flow (or EBITDA) on a trailing 12-month basis for each one Euro of Interest expense.

**Fixed Charges:** a more comprehensive way to define Interest expense for Covenant purposes in certain transactions. Fixed Charges would be generally defined to mean the sum of consolidated Interest expense plus certain dividends on Preference Shares. A portion of consolidated lease expense is also sometimes included. Note that some form Facility Agreements include scheduled principal payments and Capital Expenditure in the definition of Fixed Charges. This all goes to the Fixed

Charge Coverage Ratio. However, in European Facility Agreements it is more common to use Cash Flow Cover, which is similar but nevertheless different. Aside from this, Fixed Charge is also the name given to a Security Interest in the UK which attaches to the asset in question and gives the Chargee a degree of control over that asset. Contrast to Floating Charge.

**Fixed Income Security:** Bonds or Notes are usually a type of Fixed Income Security because the Interest Rates are generally fixed. By contrast, Facility Agreements generally have Interest Rates that “float”, meaning they are a certain margin above the applicable IBOR, 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 life of the debt. Compare Floating Rate.

**Flex:** another name for Market Flex.

**Float:** American soft drink with ice cream floating in it, often with whipped cream and a bright red cherry on top. In the corporate world, the name given to taking a company public, “floating” its shares on the applicable stock exchange.

**Floating Charge:** a Charge taken under English law over all the assets or a class of assets owned by a company from time to time. It “floats” over the assets and allows the Chargor to continue to deal with the assets in the ordinary course of business until Crystallisation. A Floating Charge ranks behind a Fixed Charge in the order of repayment in Insolvency.

**Floating GAAP:** GAAP in effect from time to time, rather than as fixed at the time an agreement is entered into. For contrast, see Frozen GAAP. The advantage of Floating GAAP is that Covenant compliance can be measured based on GAAP Financial Statements, even if GAAP moves (so that a company doesn’t have to keep two sets of books). The advantage of Frozen GAAP, by contrast, is that changes in GAAP won’t, on their own, cause a company to fall out of Covenant compliance.

**Floating Rate:** an Interest Rate that periodically adjusts based on a market index rate, usually an IBOR. Most Facilities are Floating Rate debt. Compare Fixed Rate.

**Floating Rate Note:** a Note with a Floating Rate. These protect investors against a rise in Interest Rates (which have an inverse relationship with Bond prices), but also carry lower yields than Fixed Rate notes of the same maturity. Often secured and used as Senior Debt (often in lieu of bank financing).

**Floor:** in the context of a Floating Rate, a provision in a Facility Agreement which provides that the applicable IBOR shall be deemed to be equal to the specified floor if the IBOR falls below such floor. Most Facility Agreements will include a zero Floor given the presence of negative IBORs. Also the walking surface of a room.

**Flotation:** see Float.

**FMV:** Fair Market Value.

**Follow-On Offering:** an offering of Common Stock / Ordinary Shares subsequent to the Initial Public Offering.

**Football Field:** last page of the OM including the names and information of the Issuer, legal counsel, auditors and related parties. Looks like two football teams lined up, although not playing 4-4-2.

**Footsie:** a slang term for the FTSE 100 index. Also inappropriate behaviour between non-married couples carried out under the dining room table.

**Forbearance:** a deal the Borrower cuts with its Lenders whereby the Lenders agree to refrain from accelerating the debt for a limited period of time while the Borrower endeavours 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.

**Forbearance Agreement:** the agreement documenting a Forbearance. Also known as a Standstill Agreement.

**Force Majeure:** the happening of events outside the control of the parties, for example, Material Adverse Changes in financial markets, suspension of trading of Securities on stock markets, and natural disasters or the outbreak of war. In Capital Markets transactions, it is usual for parties to provide in a Purchase Agreement or Underwriting Agreement that such events will enable the Initial Purchasers or Underwriters to terminate the Purchase Agreement or Underwriting Agreement.

**Foreign Exchange Risk:** the risk that the value of a particular currency will fluctuate relative to another currency. The risk arises when somebody earns revenue in one currency but has obligations payable in another. For example, Icelanders are paid their wages in local currency, the Krona. During boom times, many built new homes, taking out mortgages in Euros. On 1 January 2008, it took 92 Krona to buy a Euro. On 1 January 2009, it took 173. Ouch.

**Foreign Private Issuers:** certain Issuers of Securities in the United States (other than a foreign government) organised 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.



**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.

**Forward Start Facility:** a Facility provided by some Lenders under an existing Facility and/or new Lenders (a significant amount of time before the Maturity Date of the existing Facility) which may be used solely to Refinance the existing Facility on its Maturity Date, thereby effectively extending the maturity of the existing Facility. Often used when an amendment to the existing Maturity Date can't be obtained as that would require the approval of all of the Lenders under the existing Facility.

**F-Pages:** the pages at the end of the Offering Memorandum or Prospectus that contain the Financial Statements.

**FPI:** see Foreign Private Issuer.

**Fraudulent Transfer:** subject to jurisdictional differences but this is generally the term used to describe 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 was or became insolvent. A Fraudulent Transfer can be subject to Clawback from the company under certain Fraudulent Transfer laws.

**FRC:** Financial Reporting Council, an independent UK regulatory body responsible for promoting high quality corporate governance and reporting to foster investment.

**Free and Clear:** without Liens or other encumbrances. In certain circumstances, the debtor's assets may be sold free and clear of Liens or other interests held by third parties. Generally, the Liens or other interests are transferred to the proceeds of the sale and attach in the same manner and Priority as they did to the assets sold.

**Free Float:** another name for a Public Float.

**Free Writing Prospectus:** short-form written Prospectuses under US Securities laws that are typically used to supplement previously disclosed information. Also known as FWPs. 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.

**Free Zone:** UAE federal law permits each Emirate to set up Free Zones for general or industry-specific activities with the purpose of encouraging foreign direct investment in the UAE. Free Zones are authorised to enact their own laws and regulations in specific areas, which in some cases override federal and Emirate law on the subject matter. Free Zone entities generally are not subject to limitations on foreign ownership, are

not taxed on their profits and are not subject to restrictions on foreign exchange or repatriation of capital. The Free Zones in the UAE include the DIFC and Jafza in Dubai and Masdar City in Abu Dhabi.

**Freebie:** a pre-approved Basket for establishing an Incremental Facility, which may be incurred notwithstanding any Leverage Ratio (or other ratio) based restrictions.

**French Blacklist:** a list of so-called “non-cooperative states and territories” published each year by the French tax administration. A French resident Borrower may be required to deduct Withholding Tax from payments due to a Lender located in one of these states or territories and a French resident Borrower may not be entitled to deduct Interest paid to a Lender located there. Since the first publication of the list in 2010, it has included the Pacific islands of Niue and Nauru, for example, and Panama made a comeback onto the list in 2016, for reasons one can imagine.

**Friends & Family Offering:** another name for a Sticky Offering.

**FRN:** Floating Rate Note. Also, unhelpfully, sometimes mistakenly used to refer to a Fixed Rate Note.

**Front Running:** in loan world, the practice of an Underwriter looking to sell down its loan commitments ahead of a (more orderly) Syndication in which all Underwriters participate. Often prevented by agreement between the Arrangers in the Commitment Letter.

**Fronting Bank:** usually a reference to a bank that “fronts” a Loan for other Lenders. This may be due to practical reasons (e.g., the real Lender was unable to complete KYC in time for Closing or that all of the Lenders would have been required to be present before a notary at Closing) or legal reasons (e.g., as a result of the French Banking Monopoly restrictions or Italian regulatory requirements). Whilst in most instances the Fronting Bank arrangements will be temporary and the Fronting Bank will transfer its position to the real Lender shortly after Closing, in some instances a Fronting Bank will remain in place for the entirety of the financing, such as in an IBLOR structure. The Fronting Bank may receive a fee for its role.

**Frozen GAAP:** GAAP in effect at the time an agreement is entered into, rather than GAAP as it may be modified from time-to-time thereafter. Frozen GAAP explicitly prevents accounting changes from affecting compliance with financial covenants. The advantage of Frozen GAAP is that changes in GAAP won't, on their own, cause a company to fall out of Covenant compliance. The advantage of Floating GAAP, by contrast, is that Covenant compliance can be measured based on GAAP financials even if GAAP moves (so that a company doesn't have to keep two sets of books).

**FSFM:** the Russian Federal Service for Financial Markets.

**FSMA:** the Financial Services and Markets Act 2000 (as amended).

**FTSE 100:** the index comprising the 100 largest companies traded on the London Stock Exchange. Size here is measured by market capitalisation. Is size everything? Well, if you want to be in the FTSE 100, yes it is.

**FTT:** Financial Transactions Tax, a proposal made by the European Commission to introduce a financial transaction tax within the member states of the European Union, which has not yet been adopted.

**Fulcrum Creditors:** in a restructuring, Creditors whose claims are neither completely In the Money nor completely Out of the Money, *i.e.*, in a distribution of assets they would only get partially repaid.

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

**Funded Sub-Participation:** a Sub-Participation where the sub-participant places with the Lender granting the Sub-Participation a deposit which is repayable as and when payments are received from the Borrower. Contrast to Risk Sub-Participation.

**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:** a document that tells all relevant parties where the proceeds go at Closing. In more complex transactions, the memorandum is often executed or initialled 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. Also known as a Funds Flow Statement.

**Fungible:** used to describe Securities or loans which are substantially identical to other Securities or loans of the same issue but are issued at a later date and become Fungible with the original issue at some future date. Fungible Securities are regarded by the market as being of equal commercial value and trade with the same CUSIP/ISIN number in the Clearing Systems.

**Future:** similar to a Forward, except that a Future is based on a standardised set of terms (rather than being specifically negotiated between two parties) and is traded on an exchange. Futures can be used either to Hedge or to speculate on the price of the underlying asset.

**FWP:** Free Writing Prospectus.

**FY:** fiscal year or financial year. Usually the period used for the purposes of preparing annual Financial Statements, *e.g.*, FY2015/2016.

**GAAP:** generally accepted accounting principles. GAAP represents a set of authoritative standards for recording and reporting accounting information in a given jurisdiction. For example, UK GAAP refers

to GAAP in the United Kingdom and is the standard by which many UK companies report their financial statements, although IFRS is also commonly used (and required for all European public companies).

**GCC:** the Gulf Cooperation Council, which is comprised of the United Arab Emirates, Saudi Arabia, Kuwait, Bahrain, Qatar and Oman.

**GDR:** Global Depository Receipt.

**Gearing:** a ratio of net worth of a company to its total level of debt. A company that is highly geared has a high proportion of debt to Equity.

**GEM:** Global Exchange Market, the Exchange Regulated Market in Ireland.

**General Basket:** a Basket that is expressed as a fixed amount, or in some cases as a percentage of asset value or EBITDA, that is not tied to any specific use. For example, the Indebtedness Covenant may have a specific Basket for say finance leases up to a Cap but also a General Basket for any other debt up to a further Cap.

**General Corporate Purposes:** code phrase meaning generally anything the law allows. This is the loosest way to designate the Use of Proceeds (and is often the Use of Proceeds for RCFs). Note that if dividends or acquisitions 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 or acquisitions are general in nature.

**Gharar:** an Islamic finance term being a fundamental principle of Islamic finance. It refers to excess uncertainty, chance or risk, or ambiguity and uncertainty in transactions, which is Haram under Shari'ah principles.

**Gharim:** an Islamic finance term meaning a debtor that does not possess the funds with which to repay his/her debts (such as distressed debtor). You don't want to be one of these or to lend to one of these.

**Gilt-Edged Securities / Gilts:** a form of long-term government Bond issued in the United Kingdom, also known as Gilts. Gilts have a set maturity and accrue Interest at a Fixed Rate.

**Global Depository Receipts:** like American Depository Receipts but without the US connection.

**Global Note:** in Bond world, the Issuer will sign a single note (or, more typically, at least two notes) at Closing for the entire Principal amount of the Securities. These Notes will be indirectly deposited with the Clearing System. The Clearing System will then allocate Book Entry interests in this Global Note.

**Going-Concern Prognosis:** in Germany, typically relevant to remedy a situation of financial Over-Indebtedness, which otherwise — in case of a negative Going-Concern Prognosis — would result in an obligation to file for Insolvency proceedings. A Going-Concern Prognosis is also

a precondition for obtaining a Restructuring Opinion, which, under German law, Lenders typically require due to potential Lender Liability. It means a company is capable of continuing business not only in the short-term but at least until end of its next business year (which may be different from the calendar year) with reference to its ability to meet its obligations when they fall due.

**Going-Concern Value:** the value of a company, as an operating business, to the market or prospective buyer (as opposed to the value of its assets or its liquidating value). The method of valuation is crucial in restructurings to determine who is Out of the Money.

**Grace Period:** the period provided in the Terms and Conditions, Indenture or Facility 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 Cure Period. See Default, Event of Default and Acceleration.

**Green Bond:** a Bond with similar characteristics to traditional Bonds that Issuers use to implement, emphasize, and finance their environmental responsibility strategies. Green Bonds may be issued by companies whose core activity is environmentally sustainable, companies seeking financing (or re-financing for) projects that have concrete environmental benefits, companies whose product or service is integral to other environmentally responsible products or companies seeking to acquire assets or businesses meeting the above criteria. Examples of environmentally responsible activities linked to Green Bonds include projects or business that, relative to current operations, reduce carbon emissions, reduce pollution, protect biodiversity, promote sustainable water usage or preserve natural resources.

**Green Shoe:** a special type of purchase Option named in honour 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 an agreed percentage (being 15% in the US, 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% Cap does not apply to Rule 144A Offerings. See Naked Short and Refreshing the Shoe.

**Grey Market:** the market in a new issue of Securities that begins on the pricing of the issue and ends with the formal offering of the issue. During this period the Securities are said to be traded on an “if, as and when issued” basis.

**Grid Based Pricing:** when the Applicable Margin in a Facility Agreement fluctuates based upon a certain metric set forth in a grid (usually known as the Pricing Grid or Margin Ratchet) in the Facility 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 Borrower.

**Gross:** the total amount before any deductions. Compare Net.

**Gross Physical Settlement:** see Physical Settlement.

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

**Group Relief:** slightly bizarre name for the tax regime under which loss-making entities (e.g., the leveraged companies) within a group of companies under common ownership/control can, in certain circumstances, surrender those losses to profitable members of the group for offsetting against profits that might otherwise be taxable, subject to restrictions. Achieves similar results, in some circumstances, to Tax Consolidation / Fiscal Unity, although the compliance aspects are usually quite different. One for the tax people.

**Grower:** a Basket in a Covenant that is presented as the greater of a specific monetary figure, as well as a percentage of a financial metric (typically total assets but increasingly EBITDA).

**Guarantee:** 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 the Terms and Conditions / Indenture / Facility Agreement are (subject to considerations such as Corporate Benefit and Financial Assistance) frequently guaranteed by the Issuer's/Borrower's subsidiaries (see Upstream) and/or certain Holding Companies (see Downstream) and/or certain sister companies (see Cross-Stream). See Guarantors.

**Guarantee Limitation Language:** in certain jurisdictions unlimited Guarantees can be illegal or invalid, including because of Corporate Benefit or Financial Assistance prohibitions. Accordingly, Guarantee Limitation Language specific to Guarantors incorporated in each relevant jurisdiction is typically inserted into a Guarantee to limit the obligations of the Guarantors to the extent necessary to ensure that this doesn't happen.

**Guarantor:** subsidiaries, parent entities or sister companies that Guarantee the debt incurred by the Issuer/Borrower. The Senior Secured Facilities and the Mezzanine Facility / Bridge Facilities will usually have

the same Guarantors. Generally, at least in LBO financings, Facilities are Guaranteed by all Material Subsidiaries and any other subsidiaries needed to ensure compliance with any Guarantor Coverage Test.

**Guarantor Coverage Test:** a requirement of many Facilities that at least an agreed percentage (usually not lower than 80%) of the group's EBITDA, gross assets and (rarely) turnover are attributable to the Guarantors. Ensures that the Lenders have recourse to the right entities in the Borrower group. Notwithstanding the Guarantor Coverage Test, all Material Subsidiaries are also typically required to be Guarantors.

**Gun Jumping:** the impermissible offering of, or publicity for, Securities during the prefiling period.

**Hadith:** a term in Islamic finance that refers to the sayings and practices of the Prophet Mohammed. The plural is ahadith, and these form the fundamental part of the Islamic jurisprudence.

**Haircut:** banker slang for a discount.

**Hair-Trigger:** certain Defaults under a Facility Agreement that may be particularly easy to trigger. Hair-Trigger also refers to Defaults that have no Grace Period — a Borrower will strongly resist Hair-Trigger Defaults of either sort being included in a Facility Agreement as any of these Defaults may quickly become Events of Default.

**Halal:** an Islamic finance term meaning something that is permitted by the Shari'ah (and therefore the opposite of Haram).

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

**Hammer Clause:** language in the indemnity provision in a document, such as a Purchase Agreement, which allows an indemnified party to take certain actions to settle a claim that is subject to indemnification without the indemnifying party's consent in the event that the indemnifying party has not acted within a certain time period after being given appropriate notice.

**Haram:** an Islamic finance term meaning something that is prohibited by the Shari'ah (and therefore the opposite of Halal), for example, in the context of Islamic finance transactions, the prohibition on charging or receipt of Interest (Riba), the prohibition on uncertainty (Gharar), speculation (Maisir) or the exploitation of ignorance (Jahl).

**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.

**Hard Mulligan:** another name for a Mulligan Clause (contrast to Soft Mulligan).

**Hardening Period:** the period of time during which a new Security Interest or other transaction with the company is vulnerable to being set aside in Insolvency. The relevant Hardening Period differs between jurisdictions and can also depend on whether or not the beneficiary of the transaction is connected to the insolvent company or had knowledge of the Insolvency at the time it entered into the transaction. Also known as the Suspect Period or Doubtful Period.

**Hawalah:** a term in Islamic finance meaning the transfer of liability (e.g., an Assignment).

**Headroom:** with respect to any Basket, the additional amount that can currently be incurred. For example, if €20 million of a €25 million Basket has been spent, then there is a remaining €5 million of Headroom. Also the name given to the percentage above forecast EBITDA in the Base Case Model by which certain Financial Covenants are set for the purposes of the Facility Agreement.

**Heads of Terms:** another name for the Term Sheet.

**Hecho Relevante:** public announcement made by a Spanish listed company through the CNMV of information, knowledge of which may reasonably influence an investor to acquire or sell Securities or financial instruments and is, therefore, susceptible to impact their value significantly in a secondary market. Listed companies are obliged to make public and communicate such information to the CNMV.

**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 (often notional) asset, such as a Swap. For instance, many companies Hedge their foreign exchange exposure by entering into a Currency Swap and their Interest Rate exposure by entering into an Interest Rate Swap. See also Hedging Strategy Letter.

**Hedge Counterparties:** the providers of the Hedges required by the Hedging Strategy Letter. The Hedge Counterparties will typically benefit from the same Collateral and Guarantees granted to the Lenders of the First Lien Facilities on a Pari Passu basis.

**Hedging Strategy Letter:** a letter between the Borrower and the Facility Agent, usually, in the context of the Facilities setting out the required Hedging that the Borrower must implement within a set period (often up to 90 days) after the Closing Date. Whilst this might include foreign exchange Hedging, it is often limited to hedging the Floating Rate on the Facilities, with a minimum requirement of Hedging 50 or 66.6% of the exposure for two or three years. Hedging Strategy Letters often include a Right of First Refusal or a Right to Match. See also Hedge Counterparties. Will be a CP to Closing.



**Hibba:** a term in Islamic finance meaning a gift, for example at the end of a lease transaction the property may be returned to the lessee by way of Hibba.

**Hidden Contribution in Kind / Verdeckte Sacheinlage:** arrangement by which a contribution into the capital of a German company (limited liability company (GmbH) or stock corporation (AG)) which is agreed and expressed to be made in cash is, in fact, made in kind (e.g., by way of an asset purchase transaction with a shareholder where the company pays the amount of the capital increase in cash as consideration for the asset received from the relevant shareholder). The relevant shareholder is liable for the difference in value between the re-classified contribution in kind and the nominal increase of the share capital pursuant to Section 19 paragraph 4 of the German Limited Liability Companies Act (GmbHG).

**Hidden Distribution / Verdeckte Ausschüttung:** the disbursement of profits by a German company (limited liability company (GmbH) or stock corporation (AG)) to any of its shareholders which is not expressly made as such but, for example, by way of payments by the company in a business transaction with the relevant shareholder which fails the “at arm’s length” test (such as the granting of Interest-free upstream loans). For tax purposes, Hidden Distributions are treated as constructive dividends, i.e., payments made by the company to its shareholder exceeding arm’s length standards are not tax deductible for the company and any value transferred in this way to the shareholder is treated as dividend income. Hidden Distributions may also trigger other legal issues. Best call a German lawyer; Latham has lots of them.

**High Yield:** the Interest Rate (and Yield) on High Yield Bonds. Also used as shorthand to refer to the universe of High Yield Bonds and High Yield Bond offerings.

**High Yield Bonds:** Bonds rated below Investment Grade by the Ratings Agencies, but note that in emerging markets where Issuers may be rated below Investment Grade, their Bonds are often not strictly speaking High Yield Bonds in that the Covenant package and the structuring will be simpler.

**Highly Confident Letter:** letter from a bank or financial institution indicating that it is “highly confident” that it will be able to provide or arrange financing for a particular deal. Although this letter does not constitute a contractual obligation to provide financing, it is commonly understood to mean that the bank or financial institution is expressing a high level of confidence that financing can and will be secured for the subject transaction. Often issued at an early state in a transaction pending receipt of more detailed Due Diligence and other information enabling the bank or financial institution to issue a Commitment Letter.

**Hijri year:** Islamic year based on the lunar calendar and is approximately 11 days shorter than the Gregorian calendar year.

**HMT:** Her Majesty's Treasury, the UK government's economic and financial ministry.

**Hold:** another name for Target Hold.

**Hold Harmless Letter:** in connection with accounting Due Diligence, a letter sometimes requested by auditors from the investment bank releasing them from liability for potential claims.

**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 any of the Operating Companies below it. So from the Holdco Debt holders' perspective, Holdco Debt is debt. But from the lower Operating Companies' perspective, the Holdco Debt is essentially Equity — because payments on the Holdco Debt can only be paid with dividends up from the Operating Companies. The ability to incur new debt at a Holdco level depends on whether the Operating Companies' Indentures and Facility Agreements restrict Holdco Debt and permit sufficient dividends to service the 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 an Issuer/Borrower that acts as a Guarantor of the Borrower's or Issuer's debt. See also Downstream.

**Holding Company:** a company that sits on top of (or "holds" the Equity of) the Subsidiary that is below it. This concept sometimes connotes a company that does nothing else (*i.e.*, has no operations). Bidcos are often Holding Companies and financing documentation will often contain a Negative Covenant preventing Bidco and other Holding Companies from doing anything other than entering into the transaction documents and otherwise providing customary holding company services. See also Holdco Debt and Holdco Guarantor.

**Hung Bridge:** a Bridge Loan that actually has to be funded because the underlying Bond offering could not be accomplished within the Caps set out in the Commitment Letter and Fee Letter.

**Hurdle Rate:** the minimum rate of return to investors necessary for an investment firm to start collecting incentive fees.

**Hybrid Security:** specifically, Securities which combine both debt and Equity characteristics. Hybrid Securities often pay a predictable Fixed or Floating Rate of return or dividend until a certain date, at which point the holder has a number of options including converting the Securities into the underlying share. More broadly, any Security that combines two or more different financial instruments.

**IAASB:** International Auditing and Assurance Standards Board.

**IASB:** International Accounting Standards Board.

**IBLOR:** Italian Bank Lender of Record, a structure used in financings for Italian Borrowers to enable Syndication to financial institutions not authorized to lend into an Italian company. In summary, the Borrower enters into a Bilateral Facility with an Italian licensed bank who then gets credit support from the third party lenders it wishes to 'sell' the debt to, thereby spreading the risk and creating the commercial effect of Syndication. Likely to be looked at closely by the Italian tax man. The IBLOR structure (also called "fronting structure") is generally transparent from a tax perspective and the tax authorities look through to the third party lenders in applying Withholding Tax.

**IBOR:** the Interbank Offer Rate, which refers to the rate at which major financial institutions lend to and borrow from one another in specific interbank markets such as London (see LIBOR) or the European Union (see EURIBOR). Most Facilities and Floating Rate Notes have Interest Rates that are set at certain margins above the applicable IBOR. See Applicable Margin.

**ICA:** Intercreditor Agreement.

**ICMA:** International Capital Markets Association; generally pronounced "ICK-ma".

**ICSD:** International Central Securities Depository. The two European ICSDs are Euroclear and Clearstream.

**IDB:** Islamic Development Bank, a multilateral development bank headquartered in Jeddah, Saudi Arabia.

**IFA:** Interim Facility Agreement.

**IFAC:** International Federation of Accountants.

**IFRS:** International Financial Reporting Standards issued by the International Accounting Standards Board. More than 100 countries permit or require use of IFRS for preparing Financial Statements of listed companies. In the US, 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.

**IIFA:** the International Islamic Fiqh Academy. The Academy rules on issues of Shari'ah law.

**IIFM:** International Islamic Financial Market, an international standardisation body based in Bahrain focusing on the development and self-regulation of the Islamic capital and money markets. In 2010, IIFM and ISDA jointly developed the ISDA/IIFM Tahawwut (Hedging) Master

Agreement, a framework document providing a standardised structure for Islamic hedging transactions such as profit-rate and Currency Swaps and have more recently developed several trade-specific templates for certain Islamic hedging transactions (such as a profit-rate swap and FX products).

**IIRA:** Islamic International Rating Agency, a rating agency based in Bahrain that provides Shari'ah quality rating, credit rating, corporate governance rating and sovereign rating services.

**Ijab:** an Islamic finance term meaning an offer, such as the offer in a contract.

**Ijara:** an Islamic finance term meaning a lease of property, commonly combined with an Istisn'a in asset finance and project finance transactions. A developer that wishes to finance the construction of an asset will enter into an Istisn'a (*i.e.*, a procurement agreement) for the construction of an asset and an Ijara (*i.e.*, a lease) with respect to the asset constructed.

**Ijmaa:** an Islamic finance term meaning the consensus of the Shari'ah scholars.

**ILA:** Interim Loan Agreement.

**Impaired Agent:** similar to the Defaulting Lender concept but for Facility Agents (*i.e.*, a Facility Agent that fails to fund, rescinds the Facility Agreement or related documentation or becomes subject to Insolvency proceedings). The concept has become more common in Facility Agreements since Lehman Brothers, among others, went bust, as it allows the Facility Agent to be replaced without its consent or signature required (thereby removing the practical problems seen when Borrowers and Lenders wanted to replace Lehman Brothers or others as Facility Agent) and allows the Borrower and Lenders to make payments other than through the Facility Agent (which you don't want to do if it is in Insolvency).

**Imposta Sostitutiva / Substitute Tax:** financing contracts executed in Italy are generally subject to registration tax. Financing contracts executed in Italy that have a duration longer than 18 months plus one day and certain characteristics set out under the applicable Italian laws, are eligible for Imposta Sostitutiva at the option of the Borrower — when the Facility is extended by an Italian bank, by a branch of a EU bank authorised to conduct business in Italy or certain additional financial institutions. Long-term bonds are also eligible for Imposta Sostitutiva which could be applied at the option of the Issuer, subject to compliance with the requirements set out under applicable Italian law. The applied tax rate is 0.25% calculated on the amount of the financing. If Imposta Sostitutiva applies then any registration tax, Stamp Duties, mortgage duties and other government duties which would be otherwise applicable, are not required to be paid.

***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. The term is also used in restructurings to describe creditors who are not Out of the Money. In a Hedging context, a Hedging transaction is described as In the Money to a party when, on a given date, that transaction has a positive value to that party.

***Incidente Concursal:*** special procedure set out in Spanish Insolvency legislation whereby all questions and claims arising out of an Insolvency proceeding are resolved by the mercantile court. The Incidente Concursal itself will not suspend the Insolvency proceedings; nevertheless, the court, on its own motion or at a party's request, may decide to suspend claims it deems may be affected by the resolution handed down.

***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 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.

***Increased Costs Clause:*** Lenders generally expect Borrowers to pay for unexpected costs they incur after signing the Facility Agreement. Take the Increased Costs Clause as an example. This is found in all Facility Agreements and requires the Borrower to pick up the tab if, as a result of a change in law, regulation, etc. a Lender's return is reduced, it is subject to an additional cost or any amount payable to it under the Facility documents is reduced.

***Incremental Facility:*** a feature in a Facility 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 Facility Agreement. 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 additional debt within agreed parameters, including the incremental leverage. At the time a Borrower desires to add on to the existing 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 favourable 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 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. Also of material relevance to Junior Debt holders as the Incremental Facility will rank ahead of them. Also known as an Accordion Feature.

***Incumbency Certificate:*** incumbency is the state of being in office. So an Incumbency Certificate is a certificate by the company secretary that such and such persons hold such and such offices in the company. Contract counterparties then look at the board resolutions, which authorize certain officers to take actions on behalf of the company (such as sign a Facility Agreement). If the person who signs has the title stated in the Incumbency Certificate and the person of that title is authorized by the resolutions to bind the company, that closes the loop.

***Incurrence Covenants:*** generic name given to Negative Covenants (such as an Indebtedness Covenant or a Restricted Payments Covenant) that prohibit an Issuer/Borrower 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 an 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 Facility Agreement, it is generally structured as a flat prohibition on all additional debt other than specific negotiated Baskets of permitted debt.

***Indenture:*** the governing document for a series of Bonds governed by New York law. Generally drafted on a punishing timeframe after the Description of Notes is finalised, the Indenture is a contract between the Issuer and the Trustee pursuant to which Bonds are issued. Individual Bondholders hold Notes in Book Entry form through the Clearing Systems rather than actually signing the Indenture.

***Independent Contractor Provisions:*** provisions in the text of the Commitment Letter, Engagement Letter and/or Purchase Agreement stating that the Arranger or Initial Purchaser is an independent contractor and that nothing in the respective 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 individual

regulators, including the UK Corporate Governance Code, have a complex set of requirements as to who qualifies as independent. In general, you know one when you see one. Some stock exchange rules or regulators require that the full board be comprised of a majority of Independent Directors.

**Información Privilegiada:** all information which has not been made public relating, directly or indirectly, to one or more Securities or financial instruments subject to Spanish Securities regulations, or to one or more Issuers of such Securities or financial instruments and which, if made public, might have a significant effect on the price of those Securities or financial instruments (and the derivative financial instruments related to them) in a regulated market or Multilateral Trading Facility. The concept of inside information also applies to Securities or financial instruments with respect to which a request has been made for admission to trading on a regulated market or Multilateral Trading Facility.

**Information Memorandum:** see Confidential Information Memorandum.

**Initial Public Offering:** the first public offering of shares of Common Stock of a company. Following an Initial Public Offering (or IPO) in the US, a company becomes a SEC Reporting Company (if it wasn't already). IPOs in other jurisdictions likewise entail ongoing and periodic reporting and disclosure requirements. See also Transparency Directive.

**Initial Purchasers:** in a Rule 144A Offering 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 US Securities Act, permitting the investment banks that initially purchase the Securities from the Issuer in a Section 4(a)(2) offering to resell to big institutions (known as QIBs) without being deemed to be Underwriters under Section 2(a)(11) of the US Securities Act. Since we can't call them Underwriters, we call them Initial Purchasers.

**Insolvency:** the more common expression used in Europe for describing Bankruptcy (which in certain jurisdictions is more usually applied to the Insolvency only of natural persons, although the terms are colloquially often used inter-changeably). The word describes both certain formal procedures as well as the financial condition of being "insolvent", which is the inability to pay one's debts. This inability can be manifest in either balance sheet Insolvency (liabilities exceeding assets) or cash flow Insolvency (the inability to pay debts as they fall due), tests which can be expressed in different ways according to the jurisdiction (see, for example, Over-Indebtedness which is a formulation of what can be seen as balance sheet Insolvency). In some jurisdictions, such as England, both of these measures of Insolvency are in use and will determine eligibility to enter Insolvency proceedings. There is a significant amount of judicial authority on both cash-flow and balance sheet Insolvency, meaning that Insolvency is not necessarily easily proven, particularly by a creditor.

As a result, and as a general precaution, European finance documents commonly include much wider situations of potential financial distress, including for example, the commencement of any Security enforcement, which would be Events of Default.

***Insolvency Plan:*** English translation of the German Insolvenzplan. This is a plan of reorganisation and requires approval of a majority of creditors in number and by value, in a majority of the classes of creditors, and also sanction of the court. Increasingly popular in German restructurings including Herlitz, Ihr Platz, Senator Entertainment and Sinn Leffers.

***Institutional Investor:*** organisation engaged in investing its own assets and assets held for others, e.g., insurance companies and pension funds.

***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 or Bullet Maturities. See Facility B Loans and Facility C Loans.

***Instructing Group:*** a name given to the group of creditors entitled under an Intercreditor Agreement to give instructions to the Security Agent. The Instructing Group may vary from time to time depending on the classes of debt remaining in the structure.

***Insurance Proceeds Prepayment:*** a specific type of Mandatory Prepayment. This provision in a Facility Agreement requires the loans to be prepaid with the excess proceeds of certain insurance claims, beyond amounts applied to rebuild the affected asset or otherwise reinvested in the business (see Reinvestment Right).

***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.

***Intention to Float:*** refers to the announcement in which a company first publicly discloses its plans to carry out an Initial Public Offering.

***Intercreditor Agreement:*** an agreement that sets out the rules of engagement between two (or more) groups of creditors or Bondholders with respect to shared Collateral, Subordination and other intercreditor relationship matters. Think of this as a prenuptial agreement between classes of creditors. Apart from addressing the obvious point that the First Lien Lenders get paid out first and the Second Lien Lenders or Mezzanine Lenders get paid out second in First Lien / Second Lien and First Lien / Mezzanine deals, Intercreditor Agreements also lay out a number of important provisions regarding the right of each creditor group to take action with respect to the Collateral and the Issuer/Borrower generally. Intercreditor Agreements will also regulate the rights and obligations of any Hedge Counterparties and of the holders of any intra-group debt, Vendor Loans and Subordinated Shareholder Debt.



**Interest / Interest Rate:** an amount the Issuer/Borrower pays for borrowing money under the Facility/Notes, generally described as a percentage of the principal amount calculated on an annual basis.

**Interest Coverage Ratio:** often used as another name for the Fixed Charge Coverage Ratio found in most High Yield Bond Indentures. In Facility Agreements, an Interest Coverage Ratio includes only Interest in the denominator, whereas the Fixed Charge Coverage Ratio denominator includes various other elements.

**Interest Payment Date:** the date stated in the Terms and Conditions, Indenture or Facility Agreement when an Interest payment is due. See Interest Period.

**Interest Period:** the period of time under the Terms and Conditions, Indenture or Facility Agreement during which the Interest associated with a particular Interest payment accrues. For most (but not all) Bonds, there are two Interest Periods per year. In Facility Agreements, the number of Interest Periods per year can vary widely, often allowing the Borrower to choose Interest Periods of one, two, three or six months (or such other periods as the Lenders may agree).

**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.

**Interim Facility:** the Facility made available under an Interim Loan Agreement.

**Interim Facility Agreement:** Interim Loan Agreement.

**Interim Facility Letter:** Interim Loan Agreement.

**Interim Loan Agreement:** a short-form Facility Agreement used by Sponsors in LBOs and containing Certain Funds. The idea is that the Sponsor wants to submit a fully financed bid — and get to the signing of the SPA without a Financing Condition — as soon as possible. It therefore doesn't want to take the time to negotiate a full Facility Agreement, so it signs-up an Interim Loan Agreement which typically won't include any Representations and Warranties, Covenants or Defaults relating to the Target or its subsidiaries, and no Financial Covenants, hence it can be negotiated more quickly. The catch is that the Interim Facility has a final maturity date shortly after Closing (often no more than 30-90 days) so the Sponsor needs to get the full Facility documentation signed up as soon as possible. The plan, therefore, is to do this between signing of the SPA / Interim Loan Agreement and Closing (for example, when anti-trust and other conditions to Closing are being satisfied), such that the Interim Facility is never funded. Also known as an Interim Facility Agreement or Interim Facility Letter.

**International Accounting Standards Board:** the independent body that is responsible for developing and publishing IFRS and promoting the use and application of these standards.

**International Auditing and Assurance Standards Board:** section of the International Federation of Accountants which publishes the ISRE, and which is dedicated to setting ethics, education and public sector accounting standards and developing guidance for professional accountants. It also works to facilitate the convergence of international and national standards.

**International Capital Markets Association:** a self-regulatory organisation and trade association for participants in the Capital Markets; generally referred to as ICMA. It was formed in July 2005 by the merger of the International Primary Market Association and the International Securities Market Association (formerly the International Association of Bond Dealers). ICMA's stated aims are to promote high standards of market practice, appropriate regulation, trade support, education and communication. It produces standard documentation for (mainly) Reg S Only transactions, including documentation in respect of Equity and debt offerings, as well as form Comfort Letters.

**International Federation of Accountants:** the global organisation for the accountancy profession, representing more than 2.5 million accountants.

**International Standards on Auditing:** a set of professional standards for the performance of financial audits of financial information. These standards are issued by the International Federation of Accountants.

**International Standards on Review Engagements:** framework published by the International Auditing and Assurance Standards Board. ISRE provides guidance on the practitioner's professional responsibilities when a practitioner, who is not the auditor of an entity, undertakes an engagement to review Financial Statements and on the form and content of the report that the practitioner issues in connection with such a review.

**International Swaps and Derivatives Association:** the global trade association representing participants in the derivatives industry.

**Intraday Pricing:** another name for a Drive By.

**Investment Company:** generally, a company whose main business is holding Securities of other companies purely for investment purposes. As defined in the US Investment Company Act, an Investment Company is (i) engaged primarily in the business of investing, reinvesting or trading in Securities (or holds itself out as being in that business); (ii) owns "investment Securities" which constitute more than 40% of the value of its assets on an unconsolidated basis (excluding US government Securities and cash items) and (iii) is not entitled to any exemption from registration. A typical example of an Investment Company is a

mutual fund, which is an entity organised to accept money or assets from investors, pool those assets and invest the assets on behalf of the investors.

**Investment Grade:** a rating of Baa3 or better by Moody's, BBB- or better by S&P or BBB- or better by Fitch.

**Investment Grade Bonds:** Bonds with an Investment Grade rating that traditionally have few or no Covenants other than a Negative Pledge.

**IPO:** Initial Public Offering.

**IPO Clawback:** another name for the Equity Claw.

**Irrevocable Undertakings:** a binding agreement by a Target shareholder to accept a takeover offer or vote in favour of a Scheme of Arrangement. An irrevocable undertaking may be either hard (binding in all circumstances), soft (ceases to be binding if a higher offer emerges) or semi-hard (ceases to be binding if a higher offer emerges which exceeds the existing offer by an agreed amount).

**ISA:** International Standards on Auditing.

**ISDA:** International Swaps and Derivatives Association.

**ISDA Master Agreement:** a master agreement in the form published by ISDA. This is a standard form agreement used by parties that was designed by ISDA to be a balanced and easily administered agreement. The idea was to make it so palatable to all that there would be few non-standard provisions required by any market player, although for finance-linked and heavily structured transactions, more non-standard provisions are included. Parties predominantly use one of two forms; the ISDA Master Agreement published in 1992 and the ISDA Master Agreement published in 2002, with the 2002 version now being more commonly used in the market. The main benefit of an ISDA Master Agreement is that it provides for close-out netting, which means that upon the occurrence of an Event of Default (or termination event), all transactions entered into under the ISDA Master Agreement are terminated and set off against each other with a single close-out amount being payable by whichever party is In the Money.

**ISDA Schedule:** the part of an ISDA Master Agreement that includes the specific choices/elections made by the counterparties, as well as notice information and any exceptions and amendments the parties wish to make to the pre-printed form.

**ISE:** the Irish Stock Exchange.

**ISIN:** International Securities Identification Number. The ISIN is an identification number unique to each issue of Bonds with each code prefixed by the country of issue. Generally used for Securities clearing through Euroclear/Clearstream.

**Islamic Development Bank:** a multilateral development bank headquartered in Jeddah, Saudi Arabia. Also known as IDB.

**Islamic International Rating Agency:** a rating agency based in Bahrain that provides Shari'ah quality rating, credit rating, corporate governance rating and sovereign rating services. Also known as IIRA.

**ISRE:** International Standards on Review Engagements.

**ISRE 2400:** the ISRE standard that applies to review of financial information by an auditor who is not the entity's auditor.

**ISRE 2410:** the ISRE standard that applies to review of interim financial information performed by the independent auditor of the entity.

**Issue Price:** the gross price (before deduction of commissions and expenses payable to Initial Purchasers, Managers or Underwriters) that is placed on a new issue of Bonds and which is expressed as a percentage of the principal amount of the Bonds. So, for instance, a Bond with an issue price of 100% is issued "at Par", a Bond with an issue price greater than 100% is issued "at a premium", and a Bond with an issue price lower than 100% is issued "at a discount".

**Issuer:** the entity that sells (or "issues") Securities to Bondholders.

**Issuing Bank:** the bank that issues a Letter of Credit or Bank Guarantee (often the Facility Agent but wearing a different hat) under a Revolving Facility on behalf of all of the Lenders under that Facility. If the Issuing Bank is required to make a payment under the Letter of Credit or Bank Guarantee, it is entitled to be indemnified by the Lenders such that the risk is shared on a Pro Rata basis. The Issuing Bank receives an issuing fee for issuing and administering the Letter of Credit or Bank Guarantee.

**Istisn'a:** an Islamic finance term meaning the sale of an asset to be produced (*i.e.*, a procurement agreement — commonly combined with an Ijara). The procurement agent will procure the construction of the asset on behalf of the Islamic investors financing the development of the asset.

**Itemised Flex:** another name for Closed Flex.

**ITF:** intention to Float.

**I-Traxx:** series of indices of Credit Default Swaps primarily referencing loans and bonds of European and Asian Issuers.

**I-Traxx Europe:** one of the I-Traxx indices, composed of the prices of the most actively traded 125 Credit Default Swaps referencing European Investment Grade companies. The composition of the index is updated every six months (in March and September).

**Jahl:** an Islamic finance term meaning a transaction in which one party gains because of the other party's ignorance, which is Haram under Shari'ah principles.

**JLM:** Joint Lead Managers.

**JOBS Act:** the Jumpstart Our Business Startups Act, signed into US law in April 2012. The JOBS Act made significant changes to the US Securities laws. Most significantly, Title I of the JOBS Act provides for an IPO on-ramp, streamlining the IPO process for EGCs, a new category of Issuer. The other Titles of the JOBS Act introduced a number of additional changes to the Securities laws, including directing the SEC to (1) modify Regulation D under the Securities Act of 1933 to remove prohibitions on “general solicitation” in connection with Rule 506 offerings to accredited investors and (2) expressly permit general solicitation in connection with Rule 144A Offerings.

**Joint and Several Liability:** where two or more parties assume liability and each is treated as having assumed the obligation both collectively and individually for itself. A third party may proceed against any one or more of the co-obligors for the full performance of the obligation, irrespective of which of them caused the breach. Guarantors will have Joint and Several Liability. Compare with Several Liability.

**Joint Lead Managers:** two or more Lead Managers acting jointly in respect of an issue of Bonds.

**Judgment Currency:** in Bonds and Facility Agreements there are typically provisions that acknowledge that a judgment may be obtained in a currency different than the currency in which the Bonds were issued, or loans were made, and are required to be repaid. The Judgment Currency provisions exist because, although Bonds and Facility 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.

**Jumbo:** a very large Syndicated Facility.

**Junior Debt:** a general reference to a Tranche 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 in the name because those holders have agreed to be subordinated in right of payment to the Senior Notes. Compare Senior Debt.

**Junk Bond:** another name for a High Yield Bond or Non-Investment Grade Bond. “Junk Bond King” Michael Milken pioneered the use of Junk Bonds for corporate financing and M&A deals, but his novel approach to the interpretation of relevant legal regulations earned him a stint in US federal prison and a life-time ban from being involved in the Securities industry. Remember: one person’s junk is another person’s treasure.

**K-bis:** extract of the Trade and Companies Registry (Registre du Commerce et des Sociétés or RCS), the French equivalent to a certificate

of incorporation/formation. It certifies that the company exists and is duly registered with a French RCS, and provides information related to the registered office, operations, governance and solvency of the company.

**Kafalah:** an Islamic finance term meaning a Guarantee.

**Kafil:** an Islamic finance term meaning a Guarantor.

**Keep Well Agreement:** not as strong as a Guarantee but an agreement often given by a parent company to ensure that its subsidiaries are “kept well”. The extent of the obligations on the parent is a matter for negotiation.

**Keyman Policy:** life assurance policies taken out on certain key executives. May very rarely be required as a Condition Precedent to some Facilities. No doubt should be called Keyperson Policy.

**Kick-Off Meeting:** in a Securities offering, the initial meeting among the Issuer, the investment banks that are serving as Initial Purchasers, Managers or Underwriters, the auditors and the lawyers. This is where the agenda for the deal is set and the initial Due Diligence with management is performed.

**KSA:** the Kingdom of Saudi Arabia.

**KSE:** the Kuwait Stock Exchange.

**KYC:** “Know-Your-Customer”, refers to a policy implemented to conform to a customer identification programme mandated under applicable legislation. KYC policies have become increasingly important globally to prevent identity theft, fraud, money laundering and terrorist financing.

**L Plus:** “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”.

**LBO:** Leveraged Buyout.

**LBO Fund:** another name for a Sponsor.

**L/C:** 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. There can be multiple Lead Arrangers.

**Lead Left:** another name for the Lead Manager.

**Lead Manager:** in loan world, another name for the Lead Arranger. In Capital Markets, the Initial Purchaser, Manager or Underwriter designated by the Issuer as the Lead Manager will generally run the show for the Initial Purchasers, Managers or Underwriters, selecting counsel, actively participating in the drafting of the Offering Memorandum or Prospectus and serving as Bookrunner. The Lead Manager will have its

name placed on the left of the top line of the list of Initial Purchasers, Managers or Underwriters on the cover of the Offering Memorandum or Prospectus and in any Tombstone Ad. Sometimes referred to as Lead Left. See also Representative.

**League Tables:** lists kept by certain institutions and publications, such as Thomson Financial and Bloomberg, that keep track of deal volume and deal size by investment banks and law firms.

**Leakage:** term used to describe the loss of assets from the Secured Parties Collateral and Guarantee net. A transfer of assets from an Obligor to a non-Obligor within a group for less than market value and a payment of a dividend or other distribution to the shareholders of an Issuer/Borrower are both examples of Leakage.

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

**Legal Defeasance:** one of two types of Defeasance used in US-law governed Securities offerings. The other is Covenant Defeasance. In theory, Legal Defeasance allows an Issuer to get completely out of its payment obligations under a series of Notes by depositing in an escrow account enough money (or government issued Cash Equivalents in the same currency as the Notes) 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.

**Legal Reservations:** a concept often used to qualify legal Representations and Warranties and Covenants, particularly as to enforceability. The Legal Reservations are legal principles or rules which all parties accept may make such a Representation and Warranty untrue, or a Covenant incapable of being complied with, and therefore a Default should not occur if this eventuality occurs.

**Lender Liability:** an umbrella term loosely describing a wide range of potential liabilities incidental to lending, from straightforward contract claims through to Insolvency doctrines such as Equitable Subordination. In restructuring, a specific concern arises in Germany, where any Lender which makes available fresh money to a German Borrower facing imminent Insolvency in an amount that is not sufficient to ensure the turnaround, runs liability risks against other creditors of the Borrower. One of the uses of Restructuring Opinions is to mitigate these risks. In Italy, a Lender that grants a credit to a Borrower facing imminent insolvency can be liable for the offence of abusiva concessione del credito (granting credit unlawfully) or for the offence of participating in bancarotta semplice (simple Bankruptcy). We suggest that you make sure

that you understand the legal regime of Lender Liability by speaking to your favourite Latham expert.

**Lenders:** the financial institutions party to a Facility Agreement that lend the money. Also known as Lenders of Record.

**Lending Office:** another name for a Lender's Facility Office.

**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 favour of a third party as a Guarantee to that third party that it will pay out on an obligation if needed, or will fulfil 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 as indicated in the Circle-Up. 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 that 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). Facility Agreements traditionally (although not always) have Maintenance Covenants requiring a Borrower to maintain a certain Leverage Ratio (see, however, Covenant Lite and Covenant Loose). In addition, in Bond world, this ratio is used as an alternative to Fixed Charge Coverage Ratio for incurrence of Ratio Debt with companies that are highly leveraged, for example, in the media and telecommunications industry. For such companies, the Fixed Charge Ratio often would not provide sufficient borrowing capacity.

**Leveraged Buyout:** a transaction in which a Sponsor 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 (subject to considerations such as Corporate Benefit and Financial Assistance) following the Closing of the Acquisition. The transaction allows Sponsors



to finance large acquisitions while only putting up a portion of the purchase price in the form of Equity capital.

**Leveraged Buyout Firm:** another name for a Sponsor.

**Leveraged Lending Guidance:** in the US, the Federal Reserve, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corp issued updated leveraged lending guidance in 2013 for underwriting loans that they deemed could pose a systemic threat to the financial system if left unchecked.

**Lev-X:** European indices on Credit Default Swaps for loans on Leveraged Buyouts.

**Liability Management:** management of a company's liabilities often in the context of some form of debt restructuring, such as Tender Offers, Consent Solicitations and Exchange Offers.

**LIBID:** the London Interbank Bid Rate, which refers to the rate at which major financial institutions bid to take short-term deposits from each other in the London interbank market.

**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. See Applicable Margin and IBOR.

**Lien:** often used interchangeably with Security Interest; however, in the US, technically a Lien is a broader term and includes non-consensual encumbrances on property such as tax Liens or Liens in favour of warehousemen or carriers, as well as consensual Security Interests.

**Lien Subordination:** the Subordination of Tranches of debt which may be Pari Passu in terms of payments, and secured by the exact same Collateral, but one Tranche is subordinated because its beneficiaries agree that in the case of the receipt of any proceeds of sales of that Collateral (but not otherwise), the Lenders under the other Tranche will be paid prior to any payouts on their debt. In the US, this is the manner in which First Lien and Second Lien Facilities are structured; however, European practice is different (see Second Lien Facility). See generally 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 Facility Agreement are worried about). Senior Subordinated Lenders or Bondholders will want protection that prevents Security over any other Subordinated Debt. See also Negative Pledge.

**Limitation Language:** another name for Guarantee Limitation Language.

**Limitation on Restrictions on Payment of Subsidiary Dividends Covenant:** a Covenant that ensures 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. The ability to Upstream funds may however be limited by Corporate Benefit, Financial Assistance or other restrictions. Also known as the Dividend Blocker Covenant or Dividend Stopper Covenant.

**Limited Recourse Financing:** a type of financing, typical in Securitisation transactions, in which a creditor has no ability to make claims against the Issuer/Borrower, or its equityholders, in excess of the value of the Collateral if the Collateral is insufficient to repay the debt.

**Liquidation Proceedings / Liquidation Judiciaire:** French Insolvency proceedings of a company in a state of Cessation des Paiements where the company's reorganisation is not possible. The aim of such proceedings is to end the company's operations and to realise its assets as a business or individually.

**Liquidity:** the degree to which an asset can be converted into cash. While government-issued treasuries are considered highly liquid, a 49% 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.

**Listado Clasificación de Créditos:** the Spanish Insolvency Act distinguishes between claims against the debtor's estate (Créditos contra la Masa) and Insolvency claims (Créditos Concursales). As a general rule, claims against the debtor's estate are to be paid upon becoming due and in liquidation prior to the payment of any Insolvency claims. Claims against the debtor's estate cover legal costs, the receiver's fees, or claims resulting from obligations entered into by the receivers, or the debtor under the authorisation of the receivers, during the Insolvency proceeding.

**Listed Company:** the term given to any company whose shares or Securities are traded on a Regulated Market. For example, in the UK this would refer to a company admitted to the Official List and being subject to the Listing Rules.

**Listing:** an Issuer's Equity or debt Securities being officially traded on a stock exchange.

**Listing Rules:** rules published by the FCA dealing with, among other things, the requirements for admission to listing of Securities and the ongoing obligations of Listed Companies in the UK.

**LMA:** Loan Market Association. Not to be confused with the League Managers Association, the collective, representative voice for all football league managers in England.

**Loan Market Association:** the European trade association for the Syndicated loan markets. The LMA provides recommended documentation for primary and secondary Syndicated loan markets, establishes market practice and hosts education and training events throughout Europe. A number of these standard forms and related publications can be found at [www.lma.eu](http://www.lma.eu).

**Loan Participation Note:** a Bond issued by an off-shore SPV with a back-to-back loan to a Borrower (the actual credit) such that payments of Interest and principal are paid from the Borrower to the SPV and on to Bondholders. The structure is limited recourse to the SPV and Security is granted over the SPV's rights under the loan agreement with the Borrower in favour of the Trustee. Popular in Russia and some CIS countries.

**Loan To Own:** a strategy whereby a Lender purchases Distressed Debt with the aim that in a restructuring it will acquire the Equity interests in the Borrower in exchange for a full or partial write-off of its debt claims.

**Lock-Up:** required by the Underwriters in connection with IPOs and other Equity offerings, Lock-Ups "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 Lock-Up is to help stabilise the stock price following the offering by controlling supply. Also used in the context of debt restructurings or Exchange Offers, when the principal creditors and debtors or certain groups of Bondholders "lock-up" for an agreed period to allow time to implement the agreed restructuring or agree to tender their Notes (and during this time the creditors won't transfer their debt claims unless the transferee also agrees to adhere to the agreed restructuring terms).

**Lock-Up Agreements/Letters:** the Letters signed by officers, directors and other insiders (or in the restructuring context, the creditors and debtors) setting out the terms of their Lock-Ups. In the context of IPOs and other Equity offerings, these are usually negotiated in connection with the Underwriting Agreement (which is where the Issuer's Lock-Up can generally be found). In the context of a restructuring or an Exchange Offer, this is likely to be a standalone agreement.

**London Stock Exchange:** one of the largest stock exchanges in the world, the London Stock Exchange offers a choice of four primary markets: (i) the Main Market; (ii) AIM; (iii) the PSM and (iv) the Specialist Fund Market (SFM).

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

**Longstop Date:** generally, the date on which an agreement or contract will fall-away if a particular condition has not been satisfied. In the acquisition finance context, it is the date on which the commitments set forth in the Commitment Papers will terminate if the Facilities or Bridge

Loans have not funded pursuant to the terms and conditions in the Commitment Papers. Sometimes called the Drop Dead Date. Compare Countersign Deadline Date.

**LoR:** Lender of Record.

**LPN:** Loan Participation Note.

**LTM:** last twelve months. Refers to an accounting period consisting of the last 12 months. The term is usually used to refer to the most recently completed four-quarter period for which Financial Statements are available (even if that is not technically the last 12 months). Financial Covenants are often referred to as being calculated on a rolling LTM basis.

**Lucid:** shorthand for Lucid Issuer Services Limited. They often act in the various agent roles on Liability Management transactions. Not to be confused with the Isle of Wight's (self-proclaimed) number one band.

**Luxco:** a company incorporated in Luxembourg, often used in European Leveraged Buyouts for tax efficiency reasons, including Luxembourg's extensive network of Double Taxation Treaties and favourable Withholding Tax rules (attributes shared by a number of other jurisdictions in Europe), and now increasingly for Security Interest efficiency reasons under Double Luxco Structures.

**Luxembourg Stock Exchange:** the main stock exchange of Luxembourg, which specialises in the listing of international Bonds.

**M&A:** mergers and acquisitions.

**MAC:** Material Adverse Change.

**MAD:** Market Abuse Directive.

**MAE:** Material Adverse Effect.

**MAE Qualifier:** 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". Also used to qualify Covenants. For instance: "I will not drink, 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.

**MAR:** Market Abuse Regulation.

**Magic Circle:** a British organisation dedicated to promoting and advancing the art of magic.

**Main Market:** used to describe the regulated market of e.g., the London, Irish and Luxembourg Stock Exchanges.

**Maintenance Covenant:** a contractual provision in a Facility Agreement that requires a Borrower to maintain a certain state of affairs, such as

to meet or exceed various financial performance measures. Financial Covenants are one category of Maintenance Covenants. Facilities (other than Covenant Lite Facilities) generally contain Financial Covenants, while Terms and Conditions and Indentures do not. Maintenance Covenants (including Financial Covenants) are also found in Second Lien Facilities and Mezzanine Facilities and sometimes found in Bridge Loans. Contrast with Incurrence Covenant.

**Maisir:** an Islamic finance term being a fundamental principle of Islam. It literally means “getting something too easily” and constitutes a prohibition on acts that constitute gambling.

**Majority Lenders:** usually the Lenders holding more than 66.6% (not 50% as the name would suggest and as is common in the US and also in European Bridge Facilities) of the aggregate principal amount of outstanding loans and unfunded commitments under a Facility Agreement. Usually required for approval of amendments and Waivers under a Facility Agreement, although certain amendments may require Super Majority Lender approval or 100% approval. See also Class Voting, Structural Adjustment and Super Majority Voting.

**Make-Whole:** 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% 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. Also increasingly seen in Mezzanine Financings that are Non-Call.

**Management Buy-In:** an LBO where an outside management team acquires the Target, with or without a Sponsor.

**Management Buy-Out:** an LBO where the existing management team acquires the Target, with or without a Sponsor.

**Manager:** another name for an Underwriter or Initial Purchaser. Often used in English law governed Bond transactions.

**Mandataire Ad Hoc Proceedings:** flexible and confidential proceedings in France available to companies that are not in a state of Cessation des Paiements. Upon request of the company, the president of the Insolvency court appoints a Mandataire Ad Hoc to facilitate negotiations between a company and its creditors. The Mandataire Ad Hoc does not have any coercive powers.

**Mandate Letter:** another name for a Commitment Letter.

**Mandated Lead Arranger:** another name for an Arranger.

**Mandatory Bid:** a bid required to be made under Rule 9 of the Takeover Code. Broadly, whereby the bidder and any persons acting in concert acquire shares carrying 30% or more of the voting rights of a Target; or if a bidder, together with any concert parties, holding not less than 30% but not more than 50% of the voting rights increases its holding. Rule 9 requires a mandatory offer to be made in cash (or be accompanied by a cash alternative) and at the highest price paid by the bidder or any concert party for any interest in shares of the relevant class during the 12 months prior to the announcement of the offer.

**Mandatory Cost:** the costs associated with banks complying with certain regulatory funding requirements. Historically, these were set out in a schedule to the Facility Agreement, following the recommended form published by the LMA, and were included in the calculation of the Interest Rate, but this is very rarely included today.

**Mandatory Offer to Purchase:** provisions in Terms and Conditions and 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 Facility Agreement that require the prepayment of Term Loans (and, typically, then 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: Acquisition Proceeds Prepayment, Asset Sale Prepayment, Debt Sweep, Equity Prepayment, Excess Cash Flow Sweep and Insurance Proceeds Prepayment. Also seen in Bond offerings.

**Margin:** see Applicable Margin.

**Margin Call:** the requirement to deliver Collateral when the value of the existing Collateral falls below a certain agreed minimum level set out in the Margin Loan documentation.

**Margin Loan:** a loan that involves the Borrower posting shares of a publicly listed company as Collateral to secure its obligation to repay the loan. If the value of the Collateral falls below a certain agreed minimum level, the Borrower is required to post additional Collateral pursuant to a Margin Call.

**Margin Ratchet:** see Grid Based Pricing.

**Margining:** the process of delivering Collateral to a Hedge Counterparty in connection with a Hedge or to a Lender in connection with a Margin Loan to cover the risk associated with the Hedge or Margin Loan.

**Market Abuse Directive:** see Market Abuse Regulation.

**Market Abuse Regulation:** Regulation (EU) No. 596/2014 on Market Abuse, repealing Directive 2003/b/EC (the Market Abuse Directive) sets a common framework for tackling insider dealing and market manipulation in the EU and the proper disclosure of information to the market. The regulation defines and prohibits several forms of market abuse, provides for a number of appropriate systems and controls to identify inside information and to ensure its timely disclosure, as well as obligating companies and their advisers to maintain “insider lists”.

**Market Disruption Clause:** found in Facility Agreements and meant to address situations where the applicable IBOR is for any reason not available or a group of Lenders holding an agreed minimum percentage of the aggregate loans (usually between 30–50%) notifies the Facility Agent that their Cost of Funds would be greater than the applicable IBOR. The Facility Agent would typically then turn to ask the Reference Banks to provide the underlying rate, and in the absence of such rate would use Cost of Funds.

**Market Flex:** a 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 or necessary to enhance the prospects of the Successful Syndication of the Facilities the Arranger has agreed to provide to the Borrower, or if it determines that a Successful Syndication cannot be achieved. The exact terms of Market Flex will be heavily negotiated and are usually limited to specified items (called Closed Flex). Market Flex is included in the Fee Letter because potential syndicate banks do not see the Fee Letter. If everyone knew Market Flex were part of the deal, of course the market would demand better terms. See also Pricing Flex, Structure Flex, Open Flex and Closed Flex.

**Market MAC:** a Condition Precedent that there shall not have been any disruption or adverse change to the financial, banking or Capital Markets generally, or the particular market (*i.e.*, the Syndicated loan or High Yield markets) in which the applicable debt is being Syndicated, specifically, sometimes limited to particular jurisdictions. Compare Business MAC.

**Marketing Period:** see Minimum Marketing Period.

**Marzano Law:** see Extraordinary Administration.

**Material Adverse Change:** just like it sounds. 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 three general contexts: either (i) as a Condition Precedent (for instance, a seller would not have to close an acquisition if there had been a Material Adverse Change to the business; see Target MAC) 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) and Covenants or (iii) as an Event of Default (although not in US Facility Agreements). However, when used as a qualifier to a Representation and Warranty / Covenants and as an Event of Default, most agreements use the term Material Adverse Effect. See MAE Qualifier.

**Material Adverse Effect:** just like it sounds. A “material adverse effect” on something is just another way of expressing the concepts embedded in the phrase Material Adverse Change.

**Material Company / Material Subsidiary:** it may be agreed that it is not appropriate for Representations and Warranties, Covenants and Defaults to apply to all subsidiaries in a group. Hence the use of this concept where entities are only caught if they meet a certain threshold (often 5% or more of the group's EBITDA, assets and/or turnover). Facility Agreements will also typically require all Material Companies to be Guarantors, particularly in Leveraged Buyouts. Sometimes referred to as a Significant Subsidiary.

**Material Non-Public Information:** “insider information” in the context of insider trading laws, which prohibit the trading of certain types of Securities on the basis of such information.

**Maturity/Maturity Date:** the date on which a Bond or amounts outstanding under a 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. See also Minimum EBITDA Condition.

**MBI:** Management Buy-In.

**MBO:** Management Buy-Out.

**MD&A:** shorthand for Management's Discussion and Analysis of Financial Condition and Results of Operations. This is a textual discussion in an Offering Memorandum or Prospectus 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 colour and context to the Financial Statements. The MD&A is required disclosure, and for US offerings the SEC has provided substantial guidance on how the MD&A should be drafted. See OFR.

**Medium Term Note Programme:** a programme for the continued issuance of notes using one umbrella offering document, Dealer Agreement, Procedures Memorandum, Paying Agency Agreement, and/or Trust Deed and/or Deed of Covenant, and a form of Subscription Agreement



and Final Terms for Drawdowns. Programmes enable quick issuance by Issuers on a Syndicated or unsyndicated basis. They are typically updated annually when it is not expected that many changes will be made other than to the disclosure section of the offering document.

**Medium Term Notes:** a debt instrument issued under an Medium Term Note Programme on terms that can be anything from fixed to floating, zero to dual currency, partly paid to instalment notes with any maturities though typically longer than one year and in any currency. In substance, a Medium Term Note has the same legal effect as a stand-alone Bond. See Medium Term Note Programme.

**Members Voluntary Liquidation:** a type of English liquidation proceeding approved by the members of a company. Applicable only if the company is solvent.

**Mercury:** used to describe the rules regarding execution of documents governed by English law arising from the decision in *Mercury v HMRC* [2008] EWHC 2721. These can have significant implications for the logistics of Closing. Like the element, Mercury is potentially poisonous.

**Merger Covenant:** a Bond Covenant that contains conditions to a merger of the Issuer and to the transfer of all or substantially all of the Issuer's Consolidated assets. The most important condition is that the merger/sale cannot take place unless the Indenture/Bonds are novated with the new entity replacing the old entity as a party (*i.e.*, ensuring the obligations under the Bonds become the obligations of the new entity).

**Mezz:** shorthand for Mezzanine Financing.

**Mezzanine Facility:** a Facility pursuant to which Lenders make Mezzanine Loans.

**Mezzanine Financing:** a very different animal in Europe compared to the US. In Europe, Mezzanine Facilities are Syndicated bank loans secured on the same assets as the Senior Secured Facilities but are provided on a fully subordinated basis. In the US, mezzanine is an unsecured debt instrument with certain Equity-like characteristics, often issued at the Holdco level. In both markets, Mezzanine Facilities may have Equity features, frequently referred to as Equity Kickers, which may take the form of Warrants that permit the holder to purchase Equity at a pre-set price, or conversion features upon certain events (such as a Change of Control). The combination of the debt Coupon (split between cash pay and Pay-In-Kind in European Mezzanine Financings) and the Equity Kicker gives Mezz investors a higher potential return than High Yield Bonds. See also Subordinated Debt.

**Mezzanine Loans:** Term Loans made available as part of a Mezzanine Financing. Mezzanine Loans typically have no Amortisation, mature 12 months after the maturity of the longest-dated Tranche of the Senior Secured Facilities and have a higher Interest Rate than the Senior Secured

Facilities of the same Borrower. The Interest is typically a combination of cash and Pay-In-Kind.

**MFA:** Mezzanine Facility Agreement, the Facility Agreement for Mezzanine Financing.

**MFN Pricing:** Most Favoured Nation Pricing.

**MIFID:** the Markets in Financial Instruments Directive provides a comprehensive regulatory framework for investment firms and Security markets in the EU which is harmonised and which provides for a single EU passport based on the regulation of the home member state (*i.e.*, usually where the firm has its registered office). The directive aims to create a single financial services rule book, covering conduct of business and other matters, sets out minimum powers for regulators and establishes means of regulator cooperation.

**MIFID II:** collective term for Directive 2014/65/EU and Markets in Financial Instruments Regulation (Regulation 600/2014) which came into force on 2 July 2014 and is expected to take effect across all EEA member states from 3 January 2018. MIFID II repeals MIFID.

**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 stabilised as an income-producing asset. Borrowers enter into Mini Perms during this phase because long-term financing is not yet available as 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.

**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. See also Maximum Leverage Ratio Condition.

**Minimum Hold:** the minimum percentage of a particular series of loans that the Arranger agrees to hold (meaning not Syndicate or otherwise sell) 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 favour of an amendment to the Bridge Facility should the need arise. Lenders don't like this and it is often highly negotiated. Contrast to Target Hold.

**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, but could be substantially less, depending on

the transaction and the anticipated length of the Roadshow) following receipt of the Offering Memorandum to place the Notes.

**Mirror Notes:** debt Securities with identical terms to another series of Bonds of the same Issuer but issued pursuant to a different Indenture such that they are not Fungible. Contrast with Tap Offering or Tack-on Offering.

**MLA:** Mandated Lead Arranger.

**MNPI:** Material Non-Public Information.

**Model Articles:** the most common form of articles for companies in the UK, as they are applied to all companies by default, unless the company chooses to adopt other articles.

**Model Code:** before MAR came into force on 3 July 2016, public companies with Premium Listings in the UK were required to ensure that their persons discharging managerial responsibilities comply with the Model Code in order to restrict their ability to deal in the listed company's shares. Upon MAR coming into effect, the Model Code was abolished. Many companies continue to have share dealing codes in place which closely mirror those of the old Model Code, adapted for MAR.

**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.

**Monte Carlo Simulation:** a way of valuing businesses by running a large number of simulations using random quantities for uncertain variables and then taking the distribution of results to infer which values are most likely. Relied upon rather unsuccessfully in the IMO Car Wash restructuring by the Mezzanine Lenders.

**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.

**Moratorium:** the legal equivalent of a "time-out", i.e., a period when a Borrower is authorised by a government or law to suspend repayment of debts owed to its creditors. Also used in restructurings to refer to the period in which creditors are not allowed to take enforcement action.

**Mortgage:** a Security Agreement that grants a particular type of ownership-based Security Interest typically used for real property interests.

**Mortgage Loan / Mutuo Fondiario:** Italian medium/long term financing secured by a First Lien on real estate. Article 39 of the Italian Banking Act exempts such financings from certain of the Italian Clawback rules.

**Most Favoured Nation Pricing:** usually a condition to funding an Incremental Facility, requiring that the existing Term Loans receive

“most favoured nation” treatment and receive the benefit of the better terms of the Incremental Facility (e.g., if the new Incremental Facility has an Interest Rate higher than, or usually more than 50 bps (or more) higher than, the existing Term Loans, then the existing Term Loans will be repriced upon the Closing of the Incremental Facility to receive an increased Interest Rate so that the provisions are complied with and the Interest Rate on the Incremental Facility is no longer higher than, or more than 50 bps (or more) higher than, the existing Term Loans).

**MTF:** Multilateral Trading Facility. Not to be confused with the Euro MTF.

**MTN Programme:** Medium Term Notes Programme. Called EMTN (Euro Medium Term Note) if Programme is Reg S only and GMTN (Global Medium Term Note) if the programme is Rule 144A or “global” in nature.

**MTNs:** Medium Term Notes.

**Mudaraba:** an Islamic finance term referring to an Islamic finance structure akin to a silent partnership or investment trust management, with the Rub ul-maal (the investors — like lending banks in a conventional financing) providing the capital of the Mudaraba. See also Mudarib.

**Mudarib:** an Islamic finance term meaning the person who provides entrepreneurship and management of a Mudaraba. See also Rub ul-maal.

**Mufti:** an Islamic finance term meaning one who passes Fatwas. Also used as slang for ordinary clothes (i.e., not uniform), principally by those educated at English private schools.

**Mulligan Clause:** similar to a mulligan in a game of social golf, this is a clause in a Facility Agreement which provides that a breach of a Financial Covenant on a particular testing date will not be treated as an Event of Default unless that Covenant is breached again on the following test date. The product of red-hot markets. Also known as a Hard Mulligan. Compare with a Soft Mulligan.

**Multilateral Trading Facility:** an electronic communication network operated by an investment firm or a market operator, which brings together multiple third-party buyers and sellers of financial instruments in a way that results in a contract in accordance with the provisions of MIFID.

**Muqawla:** an Islamic finance term referring to a contract of works.

**Murabaha:** an Islamic finance term referring to an Islamic finance structure where goods desired by a purchaser (such as a Borrower in a conventional asset financing) are sold at cost plus an agreed and stated profit by the Islamic finance institutions (such as the Lenders in a conventional asset financing).

**Musataha:** an Islamic finance term referring to a right in rem that confers upon a party the right to build on another person's land and retain such building(s) for a fixed term.

**Musawamah:** an Islamic finance term meaning a sale arrangement where the price of the sale is bargained between the parties (without any reference to the original price paid by the seller).

**Muscat Securities Market:** the only stock exchange in Oman, established by Royal Decree on 21 June 1988.

**Musharaka:** an Islamic finance term meaning a partnership or joint venture.

**MVL:** Members Voluntary Liquidation.

**Naked Short:** in the underwriting context, 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 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?

**Nasdaq:** shorthand for Nasdaq, Inc., a diversified worldwide financial technology, trading and information services provider to the Capital Markets. Among its offerings, Nasdaq owns and operates the NASDAQ Stock Market in the US; exchanges in the Nordic region: Nasdaq Stockholm, Nasdaq Copenhagen, Nasdaq Helsinki and Nasdaq Iceland; and exchanges in the Baltic region: Nasdaq Tallinn, Nasdaq Riga and Nasdaq Vilnius.

**NASDAQ Dubai:** a stock exchange located in the DIFC which lists equities, derivatives, structured products, Sukuk and conventional Bonds. Formerly known as the DIFX or the Dubai International Financial Exchange.

**NC:** Non-Call. If a Bond or loan 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 at a Call Premium of 3% in year five, 2% in year six, and 1% in year seven.

**NDA:** Non-Disclosure Agreement. See Confidentiality Agreement.

**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. See also Negative Assurance Letter.

**Negative Assurance Letter:** a letter provided by both Issuer’s and Initial Purchasers’ or Underwriters’ counsel at the Closing of a Securities offering. The letter states that based on the lawyers’ Due Diligence efforts, nothing has come to their attention indicating that the Prospectus or the Offering Memorandum 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 or Rule 10b-5 Opinion. Also known as a “10b-5 letter”.

**Negative Covenant:** a contractual provision in the Terms and Conditions, an Indenture or a Facility Agreement that prohibits the Issuer/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 can be highly structured and customised to an Issuer/Borrower’s specific condition. Compare Positive Covenant.

**Negative Pledge:** in Bond world, 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 Rateable 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 and is usually the only Covenant in a Eurobond where it may only apply to Liens over similar Securities listed or capable of being listed on a stock exchange, rather than the Issuer’s indebtedness. In loan world, this is the more usual name for the Liens Covenant.

**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:** an amount remaining after certain adjustments and deductions have been made, for example, on account of tax or costs. Compare Gross.

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

**Net Proceeds:** what is left over from the sale of an asset after subtracting the costs associated with the sale (such as taxes, marketing costs or brokerage fees). If assets sales are subject to Mandatory Prepayment, this may be the amount that needs to be prepaid subject to certain exceptions.

**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).

**Netting:** the concept of calculating net value across several transactions to come up with the overall risk associated with such transactions. The ISDA Master Agreement allows parties to net their exposure under all Hedges entered into under such ISDA Master Agreement. See ISDA Master Agreement.

**NGN:** New Global Note. This structure must be used for newly issued international bearer debt Securities to be recognised as eligible Collateral for Eurosystem monetary policy and intraday credit operations. See also CGN.

**NIF:** Número de Identificación Fiscal or Spanish tax ID number. All legal entities, both resident and non-resident, involved in transactions having tax implications in Spain are required to obtain a NIF to identify them in front of the Spanish Tax Authorities. Spanish notaries verify the existence of the NIF on all public deeds granted before them. The mere fact that a non-resident entity applies for (and obtains) a NIF alone does not lead to the conclusion that such entity should be regarded as a resident in Spain for tax purposes, nor give rise to additional compliance requirements.

**Nil Cost Option:** a share option with nominal or zero exercise price (essentially a free share) during its exercise period.

**Nil Premium Merger:** a merger where the shareholders do not receive a premium over the market value of their shares before the transaction is announced.

**No Conflicts:** a term used to describe an opinion given by a law firm that states the existing debt documents of an Issuer/Borrower do not conflict with the transaction or documents being put in place.

**No Deal / No Fee:** the principle that the Issuer/Borrower will only pay the fees due to the banks if the relevant transaction successfully completes.

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

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

**No New Information Out:** see Inconsistent Information Out.

**Nomad:** shorthand for a Nominated Adviser.

**Nominated Adviser:** an adviser for companies listed on AIM that is approved by the London Stock Exchange. AIM companies must retain a Nominated Adviser at all times. Also known as a Nomad.

**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) unless the Issuer/Borrower pays a Make-Whole. 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 at a Call Premium of 3% in year five, 2% in year six and 1% in year seven. In loan world, Non-Call Periods are rarely seen other than in some post Credit Crunch Mezzanine Financings (pre-Credit Crunch, such periods were uncommon although Mezzanine Financings did often have Prepayment Premiums for the first two years). See also Defeasance.

**Non-Deal Roadshow:** series of meetings with existing or likely investors for informational purposes only and outside of the context of a particular offering. Sometimes confused with Pre-Marketing.

**Non-Disclosure Agreement:** another name for a Confidentiality Agreement.

**Non-Distributable Reserves:** certain reserves such as a Share Premium Account and capital redemption reserve, which companies are generally prohibited or restricted in distributing to shareholders.

**Non-GAAP / Non-IFRS:** financial measures such as Adjusted EBITDA and EBITDA that are not based on GAAP or IFRS metrics.

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

**Notarisation:** an execution formality whereby a notary public witnesses the signing of the document and (if applicable) confirms the power and authorisation of the signatories to execute the document. In certain



jurisdictions (particularly civil law jurisdictions), this formality is required for certain types of documents to be valid and can require signatories to initial every page of a document and possibly even have to read out the document: beware of this before agreeing to attend a Closing meeting as you could be there for some time.

**Note d'Opération / Note d'Op:** the French term for “securities note”, which is the portion of the prospectus that describes the Securities to be offered, which is filed and registered in connection with a French IPO.

**Note Purchase Agreement:** generally refers to the purchase and sale agreement for Notes in a Private Placement. The Note Purchase Agreement in a Private Placement generally will contain not only the terms relating to the purchase and sale of the Notes, but also the Covenants that will bind the Issuer during the life of the Notes.

**Notes:** another name for Bonds. Also sometimes used as shorthand for the Description of Notes.

**Novation:** a contract, which transfers the rights and obligations of one party under an original contract to a new incoming party, in effect creating a new contract between the remaining original party and the new incoming party in substitution of the original contract or (in some civil law jurisdictions) the name given to the process by which an existing obligation is morphed into a different obligation. Contrast (in the former case) with Assignment. Novations can cause the loss of Security granted in certain European countries (if you do not phrase your Novation carefully enough) hence the use of Assignment and Assumptions in these instances.

**NSS:** New Safekeeping Structure. In order for international debt Securities issued in global registered form to be recognised as eligible collateral for Eurosystem monetary policy and intraday credit operations, they must be issued under the NSS. Registered form international debt securities issued under the NSS will have the same legal form as a standard international registered form debt security issued in CGN form except they will be safekept by an ICSD as CSK and serviced by a CSP.

**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.

**Obligor:** the collective name for Borrowers and Guarantors.

**Obligors' Agent:** the Obligors typically appoint a spokesperson for them, e.g., to agree to Amendments and Waivers on their behalf and to enter into all communications with the Facility Agent. That is the Obligors' Agent.

**Observation Period / Période d'Observation:** period after the opening of the French Sauvegarde Accélérée, Sauvegarde Financière Accélérée, Sauvegarde or Redressement Judiciaire proceedings available to adopt a reorganisation plan. The Observation Period is for a maximum of 18 months in Sauvegarde or Redressement Judiciaire proceedings. The Observation Period is limited to three months in Sauvegarde Accélérée proceedings and to two months in Sauvegarde Financière Accélérée proceedings.

**OC:** Offering Circular.

**OEIC:** Open-Ended Investment Company.

**OFAC:** the US Treasury Department's Office of Foreign Assets Control, the agency responsible for administrative enforcement of US economic sanctions. Compliance with OFAC sanctions program regulations is an important aspect of Due Diligence for Securities offerings and bank deals. Underwriting Agreements, Purchase Agreements and Facility Agreements will most typically include OFAC reps, including that none of the proceeds of the offering or loans will be received by a "Blocked Person" or "Specially Designated Nationals" under OFAC regulations.

**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 marketing and legal disclosure document in Securities offerings. Same thing as an Offering Circular or Prospectus.

**Official List:** the relevant stock exchange regulator's list of Securities that have been admitted to listing on such regulated or unregulated stock exchange market.

**Offre au Public:** French term meaning offer to the public. Includes (i) a communication to investors with sufficient information to enable them to purchase the Securities offered, or (ii) the underwriting of the Securities by an investment services provider. Exemptions exist (e.g., when the offer Targets qualified investors only or less than 150 individual investors).

**Offshore Market:** with respect to the Prospectus Directive, this refers to a market located outside the EU and therefore not subject to the PD's disclosure requirements.

**Offshore Transaction:** as defined by Regulation S, a transaction where (1) the offer to buy the Security is not made to a person in the US and (2) either (a) when the buy order is originated, the buyer is, or is reasonably

believe to be, physically located outside the US or (b) the transaction is executed on an offshore market. See Regulation S.

**OFR:** Operating and Financial Review, refers to a similar textual discussion in a Prospectus or Offering Memorandum as the MD&A. This term is used more frequently for Foreign Private Issuers since Form 20-F uses the phrase "Operating and Financial Review and Prospects" rather than the phrase "Management's Discussion and Analysis of Financial Condition and Results of Operations" that comes from Reg S-K Item 303 that is referred to by the SEC forms for domestic Issuers. See MD&A.

**OID:** Original Issue Discount.

**OM:** Offering Memorandum.

**OMR:** Open Market Repurchase.

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

**Ongoing Fees Side Letter:** a fee letter used in an LPN structure documenting out the procedures for the ongoing indemnification and remuneration by the Borrower of the Trustee, the Agents and the Issuer. See also Upfront Fees Side Letter.

**OOO:** stands for out of office email. An automatic message that would suggest the party you are emailing is on holiday and unavailable.

**Opco:** shorthand for Operating Company.

**Open-Ended Investment Company:** a company or fund that is structured to invest in other companies with the ability to adjust its fund size according to investor demand to buy or sell its shares. Broadly speaking, it is a collective investment scheme that acquires investments such as shares, stocks, Gilts, Bonds and cash with the aim of spreading investment risk and giving its investors (who hold the shares in the OEIC) the benefit of the results of the OEIC's management of those investments. The price of the OEIC's shares are based largely on the underlying assets of the fund.

**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 Due 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.

**Open Market Repurchase:** a form of liability management whereby an Issuer buys back small amounts of its bonds (just like an investor would) rather than launching a formal Tender Offer.

**Operating Company:** another name for an Operating Subsidiary.

**Operating Expense:** the ongoing and day-to-day costs incurred in operating a business. Unlike Capital Expenditures, which are Capitalised, 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.

**Opinion Letter:** a legal opinion from lawyers on a discrete matter which will be relied on by another party (either the Lenders in a loan transaction or the Initial Purchasers in a Bond transaction). A typical example of an Opinion Letter would be an opinion given as to whether a particular agreement is valid and enforceable in a particular jurisdiction or whether a particular party (typically the Issuer/Borrower) has capacity and authority to enter into certain agreements. Practice differs between the US and the different European jurisdictions, and between the Bond and loan worlds, as to whether or not Opinion Letters are provided by counsel to the Arranger/Initial Purchaser or counsel to the Issuer/Borrowers or by both.

**OPO:** Offre à Prix Ouvert, the part of a French IPO that is reserved to French retail investors, which must be at least equal to 10 per cent of the total shares issued or sold. Investors can rescind their orders until the end of the offer period.

**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”). Options can be traded. 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 greater than the current market price of the underlying asset, or when a Put Option’s strike price is lower than 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 Currency:** see Base Currency.

**Optional Prepayment:** another name for Voluntary Prepayment.

**Optional Redemption:** a feature built into Terms and Conditions or Indentures 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 finalised 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. The loan equivalent is a Voluntary Prepayment.

**Ordinary Resolution:** a resolution of a company that is passed by a simple majority, *i.e.*, more than 50%.

**Ordinary Shares:** another name for Common Stock.

**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. OID is considered a form of unstated Interest so tax issues are implicated. See Closing Fee and Discount Notes.

**Orphan Company:** a company whose shareholders do not form part of (or are not in the chain of title of) the Restricted Group and used for certain Securities offerings. Orphan Company Issuers may be owned, for instance, by a charitable trust, with the proceeds of debt offerings being on-lent to Operating Companies within the Restricted Group. This structure is sometimes used to avoid having to pay Withholding Tax on the Interest of a Bond but also to render remote the likelihood of the Issuer's Insolvency.

**OTC:** 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. The term is also used in restructurings to describe any creditors or shareholders where the Going-Concern Value of the Borrower group is less than the total amount due to creditors Ranking in priority to them — *i.e.*, they are Out of the Money.

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

**Over-Allotment Option:** see Green Shoe.

**Over-Collateralisation:** this is a contractual requirement, which may be imposed on the grantor of a Collateral, that the value of the assets provided as Collateral is higher than the amount secured by such Collateral, in order to protect the beneficiary against the potential decrease in value of such assets. In some jurisdictions, this may be limited by statutory provisions restricting the granting of Collateral disproportionate to the obligation being secured — apparently you can have too much of a good thing. Also used more generally to describe the situation where the value

of the Collateral held by a Lender is greater than the amount of its loan — *i.e.*, the Lender is said to be “Over-Collateralised”.

**Over-Indebtedness:** one of the conditions describing Insolvency in Germany and triggering the 21 Day Rule. A debtor is legally over-indebted if (i) its assets do no longer cover its liabilities (balance sheet test) and (ii) it lacks a Going-Concern Prognosis. The other condition describing Insolvency is illiquidity.

**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.

**P2P:** public to private, *i.e.*, a transaction whereby a public company is being taken private.

**P&L Statement:** Profit and Loss Statement.

**Pacte Commissaire:** a provision contained in French law governed Collateral documents allowing the Secured Party to foreclose on pre-agreed terms without the need to obtain a court order or go through a Public Auction. Illegal until March 2006; very popular since then. Not available for every type of Collateral.

**Par / Par Value:** for Equity Securities, Par Value is the value of a share as stated in the corporate charter. Par Value of a share is usually nil or very low and has very little relation to the shares’ market price. Par Value in Bond world 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. The term is also used in loan world to describe the stated principal amount of a loan.

**Parallel Debt:** certain jurisdictions in Europe do not recognise a trust concept, such that granting a Security Interest to a Security Trustee for the benefit of Secured Parties is not possible (or its validity is doubtful) and the Collateral must be held directly by those owed the debt that is being secured. To get around this and avoid having all Secured Parties as signatories to the Security Agreements (with the obvious consequential practical problems on Syndication and other transfers of the debt), parties create a Parallel Debt provision pursuant to which the Security Agent obtains a parallel claim and Security Interest against the Borrower, Issuer or Restricted Group. The parallel claim represents a primary obligation equalling the total amount of debt the Restricted Group owes to the Secured Parties. The provision will provide that the Parallel Debt is due and payable at the same time, in the same amounts, and will be discharged at the same time and to the same extent as the underlying debt.

**Pari Passu:** equal in right of payment or Collateral (depending on the context).

**Pari Passu Bonds:** Bonds which rank Pari Passu with the Facilities of the same entity/entities rather than being subordinated.

**Parity Trigger:** Contingent Conversion trigger based on the trading price of the Convertible Bonds.

**Participación Significativa:** ownership interest in a Spanish-listed company giving rise to voting rights reaching, exceeding or falling below various thresholds. The Shareholder, directly or indirectly, acquiring or selling stock giving rise to voting rights reaching, exceeding or falling below such thresholds is obliged to notify both the Issuer and the CNMV within a maximum period of four trading days. There are specific thresholds for certain regulated sectors such as the banking or the insurance sectors. Where the Issuer is domiciled in a tax haven the threshold is 1%.

**Participating Member State:** the member countries of the EU which have adopted the Euro as their sole legal tender. At the time of writing, there are 16 Participating Member States.

**Passport Rights:** used to describe the right (granted under an EU directive) of a financial services firm located in an EEA member state to carry out activities in another member state.

**Passporting:** the facility available to Issuers to use one Base Prospectus approved by the competent authority of its home member state for a public offer of its Securities or the admission of its Securities to trading on a Regulated Market of another member state pursuant to the Prospectus Directive.

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

**Pay If You Can:** a concept sometimes seen in Junior Debt whereby the Issuer/Borrower only has to pay Interest to the Bondholders/Lenders if it can satisfy certain tests, e.g., that the Leverage Ratio is below an agreed level, that there is no Default, that the payment will be made from Retained Cash, etc. If payment can't be made, the Interest is Capitalised.

**Pay If You Want:** used in certain jurisdictions in order to try to achieve the commercial effect of Interest being Capitalised but where this is legally prohibited. Pay If You Want allows the Borrower to decide (in its free discretion) if it wants to pay the Interest in cash or to Capitalise it, but there is no obligation to Capitalise (however, practically the amount of required cash-pay Interest can be such that Capitalising this Interest is required from a cash flow perspective). See PIK Toggle.

**Paying Agency Agreement:** an agreement between the Issuer, any Guarantor, the Principal Paying Agent, the other agents required for the issue and the Trustee that is similar in substance to a Fiscal Agency Agreement but is used where a Trustee is appointed, and which sets out the obligations of the agents appointed thereunder which are primarily of an administrative nature.

**Pay-In-Kind:** this feature allows the Issuer to pay Interest (or dividends) in the form of additional Bonds (or Preference Shares) in lieu of paying in cash.

**Payment Blockage Provision:** a standard feature in an Intercreditor Agreement for a Mezzanine Financing and a Subordinated High Yield deal (and other types of Subordinated Debt). It provides that the Issuer/Borrower of the Subordinated Debt is forbidden from making payments on the Subordinated Debt in certain circumstances (*e.g.*, when any or certain agreed Defaults have occurred with respect to the Senior Debt). Note that this is not the same as a Standstill Period. 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 Standstill Period. Subordinated creditors should expect to be subject to both.

**PD:** Prospectus Directive.

**PD-Compliant:** refers to a Prospectus or Offering that complies with the public offer disclosure provisions of the Prospectus Directive.

**PDMRs:** persons discharging managerial responsibilities.

**PEC:** Preferred Equity Certificates.

**Perfect/Perfection:** what a holder of a Security Interest (*i.e.*, the Lenders or the Security Agent on their behalf) must do to protect its interests. In certain jurisdictions, failure to Perfect a Security Interest renders it void against other creditors so Perfection is really rather important. Typically Perfection requires further acts other than simple execution of the Security Agreement, and such acts will vary between jurisdictions and depend on the nature of the asset(s) subject to the Security Interest but may include registration at relevant registries, the giving of notice to third parties and/or taking possession of the Collateral. Counsel to the Lenders will typically take responsibility for ensuring Perfection.

**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 US public companies and non-US companies that are subject to SEC ongoing reporting rules. The US 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 in the US, have Securities listed on a US exchange, or have a class of Securities registered under the US Exchange Act. In European High Yield Bond offerings, where Issuers are



not typically subject to SEC on-going reporting rules, the obligations of the Issuer to provide quarterly and annual reports, as well as information about certain material events that may arise from time-to-time, are provided for in the Description of Notes / Indenture. Although such provisions do not reference Form 10-K or Form 10-Q, they are drafted to require a level of disclosure similar to that required by such forms.

**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 or is unable to be consummated prior to Closing. Generally addressed in the Engagement Letter.

**Permitted Debt:** a concept in the High Yield Bond 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. In the loan context, may just refer to all of the Baskets in the Indebtedness Covenant.

**Permitted Liens:** in High Yield Bond Indentures and Facility Agreements, there is always a Negative Covenant prohibiting the Issuer/Borrower from incurring or suffering to exist any Liens outstanding. Thus, Permitted Liens are an exception to the Covenant. They are those types of Liens that would normally not bother a Lender, such as easements on the Issuer's/Borrower's land, mechanics' Liens while the work is still in progress, in some cases existing consensual Liens (*i.e.*, Liens in favour of other secured creditors), and other negotiated exceptions.

**Perpetual Bonds:** Bonds that do not have a scheduled maturity date but that may be redeemable under a Call Option, with Events of Default typically being very limited and linked to Insolvency procedures.

**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.

**Piano Attestato di Risanamento:** aka a Reorganisation Plan. In Italy, a rapid, confidential and almost exclusively out-of-court procedure aiming at the company's reorganisation and debt restructuring. The plan must be assessed and validated by the Esperto and can include all sorts of debt restructuring options. Requires the approval of all participating creditors. The use of this procedure, therefore, is not to Cramdown minorities, but to obtain particular relief against potential later Clawback actions.

**Piano di Risanamento Attestato:** a pre-Insolvency out-of-court procedure for company restructuring in Italy. This procedure is based on restructuring plans (Piani di Risanamento Attestati) prepared by the companies in order to restructure their indebtedness, and it must be supported by an Esperto's report which confirms the feasibility of the restructuring plan and the truthfulness of the business and accounting data provided by the company (see Esperto). Unlike in-court, pre-bankruptcy agreement proceedings and debt restructuring agreements

(accordi di ristrutturazione), Piani di Risanamento Attestati do not offer the debtor any protection against enforcement proceedings and/or precautionary actions of third-party creditors.

**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:** Pay-In-Kind.

**PIK Debt:** debt where Interest is only paid in PIK.

**PIK Loans:** loans that only pay Interest by way of PIK.

**PIK Notes:** perhaps the most common form of PIK Debt, being Notes with a PIK feature.

**PIK Toggle:** an Interest Rate feature that gives the Issuer/Borrower the option to pay all or an agreed portion of the Interest for any period (generally in the case of Bonds during the Non-Call Period) in kind. Typically, an Interest Rate Step Up will apply to any portion of Interest that is paid in kind in these circumstances. 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 Issuer/Borrower is short on cash, it can stop making cash Interest payments and just let the Interest PIK. PIK Toggles can really be seen as a product of red-hot markets only.

**PIK Toggle Notes:** Notes with a PIK Toggle feature.

**Pinching the Straw:** refers to attempts to protect the flow of cash out of the Operating Subsidiaries. See Dividend Stopper.

**Pink:** an offering document that is used in connection with Pre-Marketing prior to the launch of a Roadshow and the printing of the Red.

**PIPE:** “private investment in public Equity”. In a PIPE transaction, a public company allots Equity Securities to private investors (such as a private Equity firm or mutual fund) at a discount to the current market value per share in a Private Placement and undertakes to list the Securities on a stock exchange as soon as possible after allotment. Often used by companies to raise funds without having to resort to a full-blown Rights Issue.

**PIYC:** Pay If You Can.

**PIYW:** Pay If You Want.

**Place on Demand:** following an Event of Default, the creditors can typically exercise various rights including Acceleration. One such right

would be to Place on Demand the underlying debt, meaning that it would become immediately due and payable as soon as a further demand is made by the creditors.

**Placement Agent:** in a Private Placement, the Placement Agent is responsible for introducing the Issuer to QIBs and Accredited Investors which may purchase Securities of the Issuer on the Terms and Conditions set out in the Private Placement Memorandum and the Note Purchase Agreement.

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

**Placement Garanti:** French term describing an arrangement, in the IPO context, by which an investment service provider undertakes to provide the Issuer with subscribers and purchasers of its Securities and to guarantee the Issuer with a minimum amount of subscription by directly purchasing remaining Securities, as needed.

**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; utilise 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.

**Plain Vanilla:** either an issue of Securities or a Facility Agreement with no additional features over and above the usual Interest and redemption/repayment provisions, such as Call Options, Warrants, instalments, etc. Also a much-loved flavour of ice cream.

**Plan A / Plan B:** the colloquial name given to a restructuring plan that can be implemented coercively against some constituency of stakeholders if they do not agree to a consensual deal (that being Plan A). It is often said that "you need Plan B in order to get Plan A". A Plan B typically will involve enforcement of Collateral or some other non-agreed disposal of assets, *e.g.*, via English Administration proceedings.

**Pledgor:** another name for a Chargor.

**Plug and Play:** a feature in many Intercreditor Agreements that allows a new group of Lenders or Bondholders, pursuant to a new Facility or Indenture, to become party to an existing Intercreditor Agreement without having to execute and re-negotiate a new set of intercreditor documents.

**Poison Pill:** an action taken by a company to make its Equity less attractive to potential acquirers 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. In the UK, such actions are restricted under the City Code.

**Portability:** a feature in a High Yield Bond Indenture that allows the Issuer to not have to comply with the Change of Control Put if certain conditions are met, such as the Issuer meeting a specific Leverage Ratio or not having a ratings decrease. Sponsors love this provision as it can make it easier for them to sell the Issuer (since the new buyer is not required to make an offer to repurchase the Bonds), thus making the Issuer and its Bonds “portable”. See Change of Control Put.

**Portfolio Company:** a company that has been purchased by a Sponsor and now sits in that Sponsor’s “portfolio”.

**Positive Covenant:** requires an Issuer/Borrower to affirmatively do something. These are contractual provisions contained in the Terms and Conditions, the Indenture or the Facility Agreement that itemise certain actions the Issuer/Borrower must take to be in compliance with the applicable document. Think of these as the “thou shalt” Covenants. Positive Covenants cover such things as a promise by the Borrower to pay Interest and fees, maintain insurance, pay taxes, provide quarterly operating reports and other information, and similar style obligations and in a Facility Agreement are typically more extensive than in Terms and Conditions or an Indenture. Also called an Affirmative Covenant. Compare Negative Covenant.

**Potential Event of Default:** see Default.

**Power of Attorney:** an instrument permitting an individual to serve as the attorney or authorised agent of the grantor. In the Secondary Offering context, selling shareholders will generally grant a Power of Attorney to someone (often a company officer) authorising 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. Powers of Attorney are also typically found in Security Agreements, granted by the Chargors in favour of the Security Agent to allow the Security Agent to complete any tasks imposed on the Chargor which it has failed to complete.

**PPM:** Private Placement Memorandum.

**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 attempt to complete all the work so you can have a smooth Closing the next day. Don't plan on getting much sleep.

**Pre-emption Rights:** the rights given to existing shareholders to have first refusal on the transfer of existing shares or the issue of new shares by a company, unless such rights are specifically disappplied.

**Preference:** a generic name given to certain potentially suspect transfers usually, but not always, made during the Preference Period, often made to a creditor while the transferor was insolvent and that enables the creditor to receive more than it would have received in liquidation. Preferential transfers may be subject to Clawback, subject to any defences that are available in the applicable jurisdiction. One rationale behind Preference rules is that they discourage creditors from making a mad grab for assets when they learn that the debtor is becoming insolvent and prevent debtors from favouring some creditors over others as Insolvency nears.

**Preference Period:** see Clawback and Preference.

**Preference Shares:** Preference Shares sit in between debt and Common Stock in the Capital Structure. Preference Shares have Priority over Common Stock in a liquidation, generally pay a fixed dividend (the equivalent of the Interest paid on debt) and do not share in the upside to the same degree as Common Stock.

**Preferential Claims:** a category of debts recognised in most jurisdictions as having a preferential claim to the debtor's estate claims, typically enshrined in the Insolvency legislation. The types of claims eligible for preferential treatment and their ranking as against other claims (particularly the expenses of the procedure and secured claims) varies significantly between jurisdictions, and often reflect local cultural priorities (e.g., the treatment of employee claims).

**Preferred Equity Certificate:** hybrid instruments, usually issued by a Luxco, which are treated as debt for the issuing company and Equity for the holder with the Interest paid on PECs being treated as dividends in the hands of the holder. Can also be issued as instruments convertible into Equity — see CPECs.

**Preliminary Insolvency Proceedings:** the English name for vorläufiges Insolvenzverfahren (which, after all, is far harder to pronounce), the phase between the filing for Insolvency with a German Insolvency court and the formal opening of Insolvency proceedings. Used by the court to analyse the company's situation mainly to see if there are at least enough assets to satisfy the costs of the proceedings. The court can order certain measures to safeguard the future insolvency estate, e.g., prohibit of disposal of assets, order stay of enforcement and appoint a (preliminary) Insolvency administrator or custodian. Usually terminates within three months, with commencement of formal Insolvency proceedings.

**Preliminary Prospectus / Offering Circular / Offering Memorandum:** another name for a Red.

**Pre-Marketing:** the process of meeting with potential Security holders prior to distributing a Preliminary Offering Memorandum or Prospectus.

**Premium Listing:** companies with a Premium Listing of Equity on the London Stock Exchange must comply with standards of regulation and disclosure that are super-equivalent to the relevant EU Directives, including as to corporate governance. GDRs and debt cannot obtain a Premium Listing. See also Standard Listing.

**Prenda Catalana:** a Spanish law pledge with the following distinguishing features: (i) the ability of the Secured Party and the Pledgor to reach an agreement for the direct sale of the pledged asset without a public Auction, (ii) express inclusion of a maximum secured amount and (iii) second ranking pledges are only permitted to the extent that the second ranking pledgees are the same as the first ranking pledgees.

**Pre-pack:** generally, the term used to describe any Insolvency proceeding or arrangement in which the restructuring plan has been fully agreed to and the necessary approvals already obtained before filing for Insolvency. In England, it is more specifically used in relation to Administration proceedings, in which a sale of the company's assets has been pre-agreed by the prospective Administrator, and will be implemented immediately upon his appointment.

**Prepayment Fee:** another name for a Prepayment Premium.

**Prepayment Premium:** seen in certain Term Loan Facilities and customary in Mezzanine Financings, 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% in year one and 1% in year two. The fee may be applied to all prepayments of Term Loans / Mezzanine Loans or only those made on a Change of Control or at the discretion of the Borrower. See Call Premium, Hard Call and Soft Call.

**Prescription Period:** the period of time that must elapse before Interest and principal due under the Bonds are no longer payable by the Issuer, usually five years for Interest and 10 years for principal.

**Press Announcement:** another name for a 2.7.

**Price Talk:** near the end of the Roadshow, a couple of days before Pricing, the Lead Manager's Capital Markets desk will put out Price Talk to Accounts. This is the Lead Manager's best guess range on where the deal should price. Price Talk serves to open the discussions with Accounts and also begins the Book Building process.

**Pricing:** in loan world, usually a reference to the fees and Margins payable on a deal. In Capital Markets, 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 are 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.

**Pricing Flex:** a Flex provision that allows the Arranger to change the pricing of the Facilities, often subject to Caps. Pricing Flex refers to the changes that the Arranger may make to the Interest Rates, OID or other pricing terms if needed to facilitate (or enhance the prospects of) the Successful Syndication of the 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 advance of confirming the Accounts' orders. In addition to the price, the Pricing Supplement contains any other material information that has not already been disclosed to Accounts. Also used to describe the final terms needed in some non-PD Compliant MTN Programmes.

**Pricing Term Sheet:** another name for a Pricing Supplement.

**Primary Offering:** an offering of shares by the Issuer itself (rather than by selling shareholders).

**Principal Paying Agent:** the bank that is responsible for coordinating the other agents appointed under the Paying Agency Agreement.

**Printers:** refers to the professional financial printers who specialise in printing Offering Memoranda. Once the draft Offering Memorandum is in reasonably good shape, everyone agrees to "dump it" onto the Printer's system. Further drafting sessions are then often held at the Printer's conference rooms — essentially an excuse to hang out there, eat pizza and play video games while waiting for the next Turn of the Offering Memorandum.

**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 Perfect will be entitled to Priority.

**Prise Ferme:** French term for underwriting.

**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 US Securities Act. See Section 4(a)(2) and Regulation D.

**Private Placement Memorandum:** a document that explains the details of the Securities to be offered, and information on the Issuer, in a Private Placement.

**Private Treaty Sale:** the sale of a company or business where the seller and buyer agree on the terms of sale between themselves.

**Privilège de Conciliation:** priority of payment granted, under certain conditions, to providers of new money to companies in the context of French Conciliation Proceedings subsequently ratified by the commercial court.

**Privilegio Speciale:** an Italian Security Interest created over a company's inventory to secure medium/long term financing facilities granted by banks to companies. Perfection is subject to registration of the deed creating the Privilegio Speciale, on a special register held by the competent court at the place of the seat of the company or of the person having granted the Privilegio Speciale, if different from the debtor. It ranks senior against unsecured creditors and junior against judicial expenses and other Preferential Claims.

**Procedures Memorandum:** needed on MTN Programmes to describe the additional stature procedures applicable to the settlement of Drawdowns under the MTN Programmes. Frequently not signed by the parties, but simply made available to them, though some Arrangers prefer for all parties to at least acknowledge (or sign) this document.

**Proceeds Loan:** the inter-company loan of the proceeds of a debt offering or other capital raising. In a Bond issuance involving a Proceeds Loan, the Issuer acts as a creditor and lends the proceeds from the issuance of the Notes to an entity or entities, typically the main borrower under the Senior Facilities Agreement and the direct subsidiary of the Issuer.

**Process Agent:** if yours is ever used, you are likely to have a problem as they facilitate the commencement of legal proceedings. For example, if a Borrower is incorporated outside of England, it is harder to start legal action against it than against an English company — this can be resolved, however, if the overseas company appoints an agent in England to accept service of the relevant legal documents on its behalf: this is the Process Agent. Process Agents can be other members of the group/affiliates or third-party professional agents — just make sure that, whoever it is, it tells you very promptly if it starts to receive letters on your behalf. Also called an agent for service of process.

**Process Letter:** used in the M&A context to describe the initial letter sent out by a vendor's financial adviser to potential purchasers describing the sales process to which bidders must adhere. Typically contains a set of conditions and a timetable designed to make life tough for purchasers and their advisers but which might then be ignored in practice.

**Prodi Law:** see Extraordinary Administration.

**Professional Securities Market:** an Exchange Regulated Market operated and regulated by the London Stock Exchange. It is a listed market and PSM Securities are admitted to the Official List of the FCA, but it is not a



Regulated Market for the purposes of the Prospectus Directive.

**Profit and Loss Statement:** another name for an Income Statement.

**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?” Financial Statements. For example, a company could have €1 million of debt on its Balance Sheet as of 31 December. If that company plans to borrow another €1 million of debt in January, the company’s 31 December debt, Pro Forma for the January borrowing, would be €2 million. Sometimes referred to as “as adjusted” financial information as in it has been adjusted to account for the borrowing. See Pro Forma Financial Statements and Pro Forma Adjusted EBITDA.

**Pro Forma Adjusted EBITDA:** Adjusted EBITDA, further adjusted on a Pro Forma basis for acquisitions, disposals, and/or other initiatives such as the impact of planned (but as yet unrealised) synergies, restructurings, cost saving initiatives and the like. It could be called “Adjusted Adjusted EBITDA”, but Pro Forma Adjusted EBITDA sounds more official, right?

**Pro Forma Financial Statements:** Financial Statements or information prepared to reflect the impact of a pending acquisition, disposition or other transaction, as if such an event had occurred at an earlier point in time. If Company A is buying Company B, you might want to know what the combined group’s Financial Statements would look like. You can’t just add Company B’s financial information to Company A’s (it would require a book many times this size to explain why), but you can prepare Pro Forma Financial Statements (based on certain assumptions and judgments) to show what Company A’s Financial Statements would have looked like, had it bought Company B on the first day of its fiscal year. Also can refer to information that reflects the impact of a Capital Markets transaction, such as what a company’s leverage or Interest expense ratio will be after giving effect to such transaction.

**Pro Rata:** in proportion or prorated.

**Project Finance:** a type of 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 project company. 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. If you enjoyed reading this and want to know more about Project Finance, check out Latham's Book of Project Finance Jargon, available at [www.lw.com](http://www.lw.com).

**Property Company / Propco:** in a Restricted Group or other group of companies whose primary activity consists of holding property, this is the company in which the property assets sit.

**Prospectus:** the name used to describe the offering document prepared to comply with the Prospectus Directive either to achieve a listing on a Regulated Market or to make an offer to the public in Europe or to effect a registered or public offering in the US by including it 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". Sometimes used interchangeably with the term Offering Memorandum. In France, the prospectus may be a single document or three separate documents: a Document de Référence (or a document de base in the case of an IPO), a Note d'Opération and a Résumé. See also Base Prospectus.

**Prospectus Directive:** effectively harmonises all of the Prospectus disclosure requirements across all EEA member states, and also introduced Passporting. Also known as the PD. The PD applies if either the Securities are to be listed on a Regulated Market or if a public offer is made in a member state.

**Prospectus Rules:** the FCA rules introduced implementing the Prospectus Directive in the UK. Broadly, they require the issue of a Prospectus, unless an exemption applies, whenever there is either an offer of transferable Securities to the public in the UK or a request for the admission to trading of transferable Securities on a Regulated Market in the UK. They set out the form, content and approval requirements for Prospectuses and are contained in the Prospectus Rules sourcebook.

**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). Also used to describe a supplement to a Prospectus or Offering Memorandum for an EMTN Programme to update the disclosure.

**PSM:** the Professional Securities Market, the Exchange Regulated Market of the London Stock Exchange.

**Public:** when a trader says he's "public" it means he is trading on publicly available information and does not have, nor does he want to receive, MNPI. See Public Lender.

**Public Auction:** a method for enforcing Collateral, in particular pledges over shares, in many continental European jurisdictions. Public Auctions are mandatory in Germany, for example, for share pledge enforcement unless the Pledgor agrees (after Acceleration) to a private sale. The

public has access to the auction and any attendant can place a bid subject to certain limits. Also mandatory in Spain unless you have a Prenda Catalana or certain pledges that have cash or publicly traded Securities as Collateral. Public Auctions are disadvantageous to Secured Parties as they lose a degree of control over the sale process.

**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 by public investors.

**Public Lender:** Lenders in a 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 that Borrower or related companies. 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.

**Publicity Guidelines:** a letter and set of procedures setting out the guidelines and other requirements imposed on all of the participants in a Securities offering. The guidelines restrict communications of marketing or promotional information regarding the Issuer and the Restricted Group to the press and public. The guidelines are designed to prevent Gun Jumping in an SEC-Registered Offering, to restrict the Issuer and other parties from inadvertently making FWP's, to preserve exemptions from the registration requirements of the US Securities Act (in non SEC-Registered Offerings) and to accomplish similar goals under the provisions of the FSMA (and similar statutes in other jurisdictions).

**Purchase Accounting:** another US term, here it describes an accounting method used for all business combinations, such as mergers, consolidations and stock acquisitions, initiated after 30 June 2001. Prior to 30 June 2001, there was an alternative method of accounting called "pooling of interests", which simply added together the Balance Sheet items of the acquirer and the acquired company. Purchase Accounting treats the acquirer 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. Most European accounting principles will attack the issues in a similar manner but might not use the same term as in the US.

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

**Pushdown:** a procedure where Borrowers “push down” debt into Operating Companies to ensure a tax-efficient structure as the Operating Company can seek to deduct the Interest on the debt from its taxable profits. Also helps the ability of the Lenders to take Collateral as issues such as Corporate Benefit and Financial Assistance can be eliminated or reduced. Pushdown can occur in a variety of ways, including a direct borrowing by the Operating Companies, a transfer of debt from a Holding Company to an Operating Company or a merger of a Holding Company and Operating Company (see, for example, Section 35 LME Merger Proceeding).

**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.

**PUSU:** Put Up or Shut Up.

**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 (but not the obligation) to sell a specific quantity of a Commodity, Security or other financial instrument to the buyer at a specified time and at a specified price. Also describes the option of Bondholders to require the Issuer to redeem the Bonds on a date earlier than the Maturity Date as described in the Bonds. Compare Call Option.

**Put Right:** in the leveraged finance context, an Option giving Bondholders or Lenders a right to force the Issuer/Borrower to buy back its Bonds at a specified amount or prepay the relevant Lenders. High Yield Bonds, and some Investment Grade Bonds and Facility Agreements, generally provide Bondholders or Lenders with this right upon a Change of Control of the Issuer/Borrower. See Change of Control Covenant and Change of Control Put.

**Put Up or Shut Up:** the requirement under the Takeover Code for a potential bidder either to announce a firm intention to make an offer in accordance with Rule 2.7 of the Takeover Code, or announce that it does not intend to make an offer, by not later than 5:00pm on the 28th day following the date of the announcement in which the potential bidder is first identified, unless the Takeover Panel has consented to an extension of that deadline (Rule 2.6(a), Takeover Code).

**PV:** procès-verbal, the French term for corporate minutes.

**QE:** the Qatar Exchange, the sole securities exchange in Qatar. Its predecessor was named the Doha Securities Market. Membership is governed by the QE Rulebook.

**QFC:** the Qatar Financial Centre, established in 2005 consisting of three branches: QFC Authority ("QFCA"), QFC Regulatory Authority ("QFCRA"), Civil & Commercial Court and Regulatory Tribunal. QFCA is the branch responsible for the expansion of Qatar's financial services and developing relationships with the regional and global financial community. QFCRA is the independent financial regulator of firms that operate in the QFC. The Civil & Commercial Courts and Regulatory Tribunal provide the legal infrastructure for the QFC and their role is to uphold the rule of law and ensure the transparency of QFC business transactions.

**QFMA:** the Qatar Financial Market Authority, an independent regulatory authority that supervises the Qatar Exchange and organises the activities related to securities in the Qatari capital markets.

**QIB:** Qualified Institutional Buyer. Pronounced "kwib".

**QP:** Qualified Purchaser.

**Qualified Institutional Buyer:** large Institutional Investors that must have at least US\$100 million invested in Securities or under management. Qualified Institutional Buyers are the permitted purchasers of Securities in Rule 144A Offerings. See Rule 144A.

**Qualified Purchaser:** parties the SEC has deemed to be rich and/or sophisticated enough not to need the protection of state registration when they are offered or sold Securities in an offering by an Investment Company Issuer. Section 3(c)(7) of the Investment Company Act provides an exemption from registration if all of the Security holders of the Investment Company Issuer are Qualified Purchasers. The four categories of persons who possess the minimum standards of financial sophistication to be considered a Qualified Purchaser are: (i) individuals who own US\$5 million in investments, (ii) Institutional Investors and other companies who own US\$25 million in investments, (iii) family-owned companies that own US\$5 million in investments and (iv) certain trusts in which the trustee and each settlor are Qualified Purchasers.

**Qualifying IPO:** an IPO which satisfies certain criteria under the Facility Agreement, *e.g.*, an IPO that does not trigger a Change of Control but results in a Leverage Ratio below a certain threshold. Following a Qualifying IPO, certain amendments would automatically occur under the Facility Agreement, such as a reduced Margin, reduced Collateral, more relaxed Covenants, etc.

**Qualifying Lender:** typically used in a Facility Agreement to describe a Lender which, at Closing, can be paid Interest gross, *i.e.*, without deduction of Withholding Tax. If the law changes such that Withholding

Tax becomes payable, a Qualifying Lender will typically benefit from a Tax Cross-Up.

**Quiet Period:** in EMEA Capital Markets, a measure of time during which corporate insiders are restricted from disclosing information (as opposed to being restricted from trading, see Blackout Period) relative to the performance or prospective performance of a company before that information is made public. In an SEC-Registered Offering, the pre-filing 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 Gun Jumping.

**Quotation Day:** the date upon which the Facility Agent determines the applicable IBOR for the relevant Interest Period. Typically the Quotation Day for Sterling is the first day of the Interest Period, for Euros it is two TARGET Days before the start of the Interest Period and for other currencies it is two business days beforehand.

**Rahn:** an Islamic finance term meaning a pledge of Collateral for a debt.

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

**Rappresentante Comune:** the Bondholders' representative appointed by the holders of Notes issued by an Italian company. The Rappresentante Comune is responsible for representing the interests of the Bondholders, as well as giving effect to resolutions passed at meetings of the holders of the Notes (see *Assemblea degli Obbligazionisti*). The Rappresentante Comune performs many of the same functions as a Trustee and the same entity may act in both roles. However, not all entities that provide trustee services are qualified to act as a Rappresentante Comune in Italy. If the Bonds being issued by an Italian Issuer are unsecured, it may not be necessary to appoint a Rappresentante Comune.

**Rappresentante per le Garanzie:** under Italian law, Security Interests and Guarantees securing and guaranteeing notes issued by an Italian company can be validly created in favour of a Rappresentante per le Garanzie. The Rappresentante per le Garanzie is entitled to exercise in the name and on behalf of the holders of the Notes all of their rights (including any rights before any court and in any judicial proceedings) relating to such Security Interests and Guarantees.

**Ratchet:** see Grid Based Pricing.

**Rating 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 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 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 Facilities. Note that the term Ratings Condition does not necessarily require the Issuer/Borrower to obtain a particular rating — it may just require that some/any rating be obtained. Despite the name, this may often actually be a Covenant rather than a Condition Precedent.

**Ratio Debt:** most High Yield Bond 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 or, alternatively (particularly in media and telecommunications deals) where the Leverage Ratio would be at or below a certain threshold. 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 (or Leverage Ratio) based debt incurrence test in most High Yield Indentures. See Ratio Debt.

**RCF:** revolving credit facility, another name for a Revolving Facility. See also Super Senior RCF.

**Recast EU Insolvency Regulation:** Regulation (EU) 848/2015 of the European Parliament and of the Council of 20 May 2015 on Insolvency proceedings (recast). It repeals the EU Insolvency Regulation and is intended to improve the efficiency and effectiveness of Insolvency and pre-Insolvency proceedings with a cross-border element.

**Receipt:** a bearer instrument that is attached to but detachable from a Bearer Bond and that entitles the bearer to receive instalments of principal.

**Receivership:** a process of enforcing Collateral by appointing an independent Insolvency practitioner to take possession of, and subsequently sell, an asset or business for the benefit of the Secured Parties only. Administrative Receivership in England, involving Receivership over substantially all of the company's undertaking, has mostly been repealed in order to promote greater use of Administration.

**Recognised Investment Exchange:** an investment exchange recognised by the FCA under FSMA. There are currently six RIEs in the UK designated by the FCA: EDX London Limited, the London Stock Exchange, LIFFE Administration and Management, the London Metal Exchange, ICE Futures Europe and PLUS Markets plc.

**Reconciliation:** in Capital Markets, a reconciliation of the differences between a Non-GAAP / Non-IFRS financial measure presented and the most directly comparable financial measure calculated in accordance with GAAP / IFRS. Most offering documents contain a reconciliation from EBITDA and/or Adjusted EBITDA to Net Income.

**Record Date:** Bonds 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 one calendar day prior to the related Interest Payment Date for Global Notes and 15 calendar days prior to the related Interest Payment Date for definitive registered notes.

**Red:** the Preliminary Prospectus or Preliminary 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 Roadshow, before the Pricing information is inserted.

**Red Herring:** another name for the Red because of the legend disclaimer running down the left hand side of the Preliminary Offering Memorandum.

**Redemption Price:** the price at which a Security is, in the case of mandatory redemption, or may be, in the case of Optional Redemption or a Put Option, redeemed prior to its Maturity Date. The Redemption Price is set when the Securities are issued and is usually either at Par or at some premium to Par.

**Reference Banks:** when the applicable IBOR is not available (or an agreed percentage — typically 30-50% of the Syndicate by commitments — declare that the applicable IBOR is less than their Cost of Funds), the Facility Agent or Principal Paying Agent needs to be able to determine an equivalent in order to calculate the Interest Rate. It may do so through the Reference Banks — an agreed list of financial institutions that provide a quote to the Facility Agent or Principal Paying Agent for the rate at which it could borrow funds in the relevant interbank market in the relevant currency for the relevant Interest Period. See also Market Disruption Clause.

**Refinanciación Protegida:** a Safe Harbour for certain pre-Insolvency refinancing agreements (the Acuerdo Colectivo de Refinanciación del 71. bis and the Acuerdo Bilateral de Refinanciación del 71.bis) and the Acuerdo de Homologación, which are excluded from the scope of Spanish Clawback actions provided certain conditions are met.

**Refinancing:** the repayment of existing debt with the proceeds of a new debt issuance. Any Refinancing will require a careful review of existing Terms and Conditions, Indentures and Facility Agreements (and any other relevant debt documents) 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. Terms and Conditions, Indenture and Facility Agreement debt Baskets will generally allow the Refinancing of existing debt, but subject to certain conditions that must be read carefully.

**Refinancing Fee:** a fee paid to the Lead Manager(s) in the event that a Bridge Loan is repaid other than with the proceeds of a Bond offering for which the Lead Manager(s) are the sole Bookrunner(s) and Initial Purchaser(s) and for which they are paid an agreed upon fee.

**Refreshing the Shoe / 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 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 FD:** Regulation FD.

**Reg Rights:** Registration Rights.

**Reg S:** Regulation S.

**Reg S Only:** a Securities offering that takes place solely outside the United States (and sometimes only to non-US persons) in compliance with the requirements of Regulation S.

**Registered Bonds:** a Security where ownership is recorded by the Registrar in the name of the holder or its nominee, and which can be transferred only by an entry on the register of holders maintained by the Registrar (or sometimes by the Issuer).

**Registrar:** the agent of the Issuer whose principal task is to record ownership of the Registered Bonds in the register of holders.

**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 may 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 US Exchange Act. Registration Rights have rarely been included in Securities offerings in Europe in recent years.

**Registration Statement:** the document filed with the SEC in connection with a public offering of Securities in an SEC-Registered Offering. The Registration Statement contains the Prospectus.

**Regulated Market:** an exchange recognised as such by a competent authority in the EEA member state whose disclosure requirements are subject to the provisions of the Prospectus Directive.

**Regulation D / Reg D:** spells out the rules for a valid Private Placement in the US. Under the US Securities Act, any offer to sell Securities must either be registered with the SEC or made pursuant to an exemption. Reg D provides a Safe Harbour for sales of Securities in transactions “not involving any public offering” within the meaning of Section 4(a)(2) of the US Securities Act. Reg D also contains two more widely known exemptions from the registration requirements, which allow some companies to offer and sell their Securities without having to register the Securities with the SEC. Since Regulation D was adopted back in the stone ages, the availability of the Rule 506 Safe Harbour thereunder has been subject to the condition that neither the Issuer nor anyone on its behalf will engage in any form of solicitation. The JOBS Act changed all this, and as of 23 September 2013, Rule 506(c) permits general solicitation in Regulation D Private Placements where certain conditions are met, including that the Issuer take “reasonable steps to verify” that purchasers are Accredited Investors.

**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 Non-Public 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 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 Financial Statements 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.

**Regulation M:** SEC regulation intended to preclude manipulative conduct by persons with an interest in the outcome of an offering by prohibiting such interested parties from directly or indirectly bidding for, purchasing, or inducing others to bid for or purchase covered Securities for a specified restricted period following the offering. These interested persons include the Issuer and any selling Security holder in connection with a distribution of Securities by or on their behalf, as well as their respective “affiliated purchasers”. Reg M also applies to distribution participants (including any Underwriter, prospective Underwriter, broker, dealer or any other person who has agreed to participate or is participating in a distribution) and their respective affiliated purchasers.

**Regulation S:** provides an exemption from the registration requirements of Section 5 of the US Securities Act for certain offshore transactions. Most Rule 144A Offerings also have a Regulation S component to allow for “offshore” sales (i.e., outside the US) because the exemptions relied on for Rule 144A Offerings are not mutually exclusive with those relied on for Regulations S. 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.

**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 Offerings are not technically required to comply with Regulation S-X, although they generally come very close as a matter of industry custom.

**Reinvestment Right:** sometimes included in an Acquisition Proceeds Prepayment, Asset Sale Prepayment, Insurance Proceeds Prepayment and/or Equity Prepayment provision. This right usually gives the Borrower an option, within some specified number of days, to reinvest acquisition claims proceeds, insurance proceeds or proceeds of asset sales or Equity issuances, rather than applying such proceeds to pay down loans. Such Reinvestment Rights may be general, allowing reinvestment in any assets used or useful in the business, or may be specific, for example, with

insurance proceeds just allowing the replacement of the assets which were destroyed and resulted in the relevant claim. Reinvestment Rights on asset sales sometimes also allow the cash to be spent on acquisition and/or Capex.

**Release Clause:** a clause usually found in an Intercreditor Agreement which, under certain circumstances, allows Senior Debt holders to dispose of assets or shares in a company or group of companies free of any debt, Collateral or Guarantees, without the requirement to obtain consent from the junior Lenders. See also Fairness Opinion.

**Reliance Letter:** letter that establishes that the named recipient may rely on certain provisions of an auditor's opinion, independent expert opinion or legal opinion, or an expert's Due Diligence report, as if the original opinion/report were addressed and delivered to the named recipient. Reliance Letters with respect to Due Diligence reports are typically given to original Lenders and those becoming Lenders in initial Syndication.

**Reorganisation Proceedings / Redressement Judiciaire:** French Insolvency proceedings of a company in a state of Cessation des Paiements for which reorganisation appears possible. These proceedings are very similar to a Sauvegarde (although they existed before the Sauvegarde was introduced into French law) and may also result in a Term-Out.

**Rep:** shorthand for Representation and Warranty.

**Repeating Representations:** certain Representations and Warranties are made to Lenders post-Closing and, therefore, "repeat". This often happens on Interest Payment Dates and/or when further funds are being drawn, for example, under a Revolver. The extent of the Repeating Representations is open for debate but arguably there is no need to "repeat" anything which is in any event covered by a Covenant or a Default but many Facility Agreements still do it. Don't ask us why.

**Rep Letter:** a letter from the Initial Purchasers or Managers delivered to an Issuer's auditors in connection with an unregistered Securities offering requesting delivery of a Comfort Letter covering the financial information of the Issuer to be included in the offering document.

**Repo:** a sale, transfer or other disposal by a Borrower of any assets on terms whereby they are or may be leased to or re-acquired by a member of the group.

**Report on Title:** similar to a Certificate of Title but less detailed (and, therefore, usually less expensive). The form of report will differ from firm-to-firm and can be tailored to suit a specific transaction. The form of report will need to be approved by Lenders.

**Report Proceeds Letter:** used in LBOs when Due Diligence reports are addressed to the Sponsor or other persons who are not party to the Intercreditor Agreement or to whom the Lenders don't otherwise have

recourse. As recoveries of claims against the providers of such reports could be paid to someone other than the Borrower (and, therefore, not be available for Mandatory Prepayment as required by the Facility Agreement), this letter is an agreement by the potential recipient to turnover such proceeds to be used as if received by the Borrower.

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

**Reporting Requirements:** generic term used to describe the Covenants relating to the provision of information found in the Terms and Conditions, an Indenture or a Facility Agreement.

**Representation and Warranty:** an assertion of fact and circumstance in a contract (such as an SPA, Facility Agreement, Purchase 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.

**Representative:** the Initial Purchaser or Underwriter who is typically in charge of Book Building and Billing & Delivery. See Lead Manager.

**Repricing Amendment:** an amendment to a Facility Agreement only seen in improving markets, where the Interest Rate on an existing loan is lowered. This generally requires the affirmative vote of 100% of the existing Lenders (or replacement Lenders through the use of a Yank-a-Bank provision). See also Reverse Flex.

**Repricing Event:** the repayment of loans with the proceeds of debt that have a lower Yield than the loans being repaid or the amendment of a Facility Agreement with a Repricing Amendment.

**Required Lenders:** US-speak for Majority Lenders. They also say "pants" when they mean "trousers". All very strange.

**Requisite Lenders:** another name for Majority Lenders.

**Research Guidelines:** a set of procedures setting out the guidelines and other requirements imposed on the Initial Purchasers, Managers or Underwriters in anticipation of a Securities offering when the analysts at one or more of the Initial Purchasers, Managers or Underwriters intend to publish research with respect to the Issuer prior to the offering.

**Reservation of Rights Letter:** sent by creditors to an Issuer/Borrower often promptly following an Event of Default. It states that whilst the creditors are considering their options, all of their rights to Accelerate, enforce Collateral and so on are reserved and retained.

**Reservations:** see Legal Reservations.

**Restricted:** when a trader says he is "restricted", he does not mean he is restrained (or enchained, for that matter), but rather that he is prevented from trading, likely because he is holding MNPI.

**Restricted Group:** any party restricted by the Covenants in the Indenture, Terms and Conditions or the Facility Agreement, typically including the Issuer/Borrower, the Guarantors and the Restricted Subsidiaries.

**Restricted Junior Payment / 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 Indentures and Facility Agreements contain Covenants limiting the ability of Issuers and Borrowers to make Restricted Payments. In Bonds, 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 investment Covenant in Facility Agreements.

**Restricted Securities:** Securities that have been issued on a private (unregistered) basis and are not yet eligible for public resale in the US pursuant to Rule 144.

**Restricted Subsidiary:** a defined term in Bonds that captures the Issuer's subsidiaries to which the Covenants apply. Some Facility Agreements also have a concept of Restricted Subsidiaries but this is unusual and the Covenants will apply to the whole group, unless it is a Covenant Lite Facility Agreement. Compare Unrestricted Subsidiary.

**Restructuring Loan / Sanierungskredit:** a loan in Germany to a distressed company benefiting from a Restructuring Opinion as a Safe Harbour to Lender Liability.

**Restructuring Opinion / Sanierungsgutachten:** used in German restructurings. An opinion provided usually by an accounting firm confirming that a distressed company will be likely to continue its business if a restructuring plan is implemented.

**Restructuring Privilege / Sanierungsprivileg:** a defence to Equitable Subordination in Germany. Applies to loans from shareholders who became shareholders in the context of a restructuring (e.g., through a

debt for Equity swap). To make use of this, you need — no surprise — a Restructuring Opinion.

**Résumé:** a French term meaning “summary”. One of the three documents that are part of a Prospectus. It must be presented in the official language of the country where Securities are sold. It is designed to highlight key information and to enable retail investors to make a comparison among several financial products.

**Retained Cash:** the term given to Excess Cash Flow that is retained following the Excess Cash Flow Sweep. Facility Agreements will specify what this can be used for but Lenders may permit it to increase Baskets.

**Retained Cash Flow:** another name for Retained Cash.

**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 or fails to satisfy a Condition Precedent. 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.

**Reverse Flex:** a Repricing Amendment made during Syndication as a result of there being sufficient interest from potential Lenders that the Arranger can still sell its commitments even if the Margin on the Facilities is reduced.

**Reverse Green Shoe:** another name for Brown Shoe.

**Reverse Takeover:** a takeover or acquisition where the Target is larger than the bidder with the result that the Target shareholders become majority shareholders in the bidder.

**Revolver:** shorthand for a Revolving Facility.

**Revolving Facility:** a Senior Secured 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 and Ancillary Facilities. See Borrowing Base and Cash Flow Revolver. Like a really big credit card.

**Revolving Loans:** loans under a Revolving Facility.

**Riba:** an Islamic finance term meaning Interest or usury. Interest or usury is prohibited (Haram) under Shari’ah principles and Islamic finance transactions are therefore structured to avoid Riba.

**Right:** shorthand for Right Placement.

**Right of First Offer:** an obligation by the seller of an asset to a rights holder to negotiate the sale of the asset with the holder, and attempt to reach an agreement, before offering the asset for sale to third parties. If the rights holder is not interested in purchasing the asset or cannot reach an agreement with the seller, the seller has no further obligation to the

rights holder and may sell the asset freely. This is sometimes known as "Right of First Negotiation".

**Right of First Refusal:** can be used in various contexts but in loan world would refer to a provision granting the Arranger a right to provide any required Hedging which it must refuse before the Borrower may approach other third parties. The required Hedging will be set out in the Hedging Strategy Letter. Compare Right to Match.

**Right Placement:** a managing Underwriter who has not received Lead 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 Lead Left Underwriter.

**Right to Match:** like a Right of First Refusal, but rather the Arranger has a right to match the best terms offered to the Borrower by third parties for any required Hedging. If the Arranger matches that best offer, the Borrower must enter into the Hedging with it.

**Rights Issue:** an invitation to existing shareholders to purchase additional shares in the Issuer at a reduced price in proportion to their existing holding.

**Ring-Fencing:** legal walling-off of certain assets or liabilities within a company or Restricted Group, as in a company forming a new subsidiary to protect (Ring-Fence) specific assets from certain creditors. The concept includes a number of measures that may be implemented to protect the economic viability and credit ratings of companies and their Affiliates within a Holding Company structure. In Capital Markets, the term is also used to indicate the geographical restriction on the use of Comfort Letters to either the US (SAS 72 Comfort Letter) or outside the-US (Reg S Comfort Letter).

**Risk Factors:** a section of the Offering Memorandum which summarises the risks related to the Notes (or to owning the Issuer's shares), the Issuer (including business, industry and jurisdictional risks) and the Securities offering.

**Risk Sub-Participation:** a Sub-Participation where the sub-participant doesn't fund the Lender of Record but still takes the risk of the Borrower failing to pay and must pay the Lender of Record if the Borrower fails to make any payment on its Due Date. Contrast to Funded Sub-Participation.

**RMBS:** see Asset-Backed Security.

**Roadshow:** the trip around Europe (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.



**ROFR:** Right of First Refusal.

**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. Frequently limited by Lenders in an LBO context to a maximum amount.

**Rollover Fee:** another name for 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. Also used to describe a Revolving Loan that is simultaneously being repaid and re-borrowed at the end of the Interest Period — in these circumstances, as no further “new” funds are being advanced, these loans are often subject to reduced Drawstops compared to new money loans.

**Roundtripping:** usually allowed by a Carveout to the Restricted Payments Covenant, refers to the ability of a Sponsor or parent company to contribute Equity into a company and then take it back out.

**RP Basket:** Restricted Payments Basket. Baskets that are the exceptions to the restrictions in the Restricted Payments Covenant.

**Rub ul-maal:** an Islamic finance term meaning a person (such as an Islamic finance investor, like a bank in a conventional financing) who invests in Mudaraba.

**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 Opinion / Letter:** another name for Negative Assurance Letter.

**Rule 10b-5 Representation:** see 10b-5 Rep.

**Rule 14e-1/20-Day Rule:** requires that a Tender Offer must be kept open for at least 20 business days from the date such Tender Offer is first published or sent to Security holders. However, under certain circumstances, this can be shortened to five business days for non-convertible debt Securities.

**Rule 144:** a rule under the US Securities Act creating a Safe Harbour from Underwriter status for public sales of Restricted Securities.

**Rule 144A:** provides a resale exemption from the registration requirements of the US 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 Offering for why this rule is so important.

**Rule 144A Offering:** 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 Convertible Bond deals are structured as Rule 144A Offerings. Rule 144A Offerings 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. Rule 144A Offerings are often undertaken with a simultaneous Regulation S component. See Regulations S.

**Rule 159:** Rule 159 under the US Securities Act. 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 of this information through a combination of the Red and the Pricing Supplement. Although only applicable to SEC-Registered Offerings, the general market practice in European Rule 144A for Life / Regulation S offerings has been to follow the same Rule 159 practices as if the rule applied to the offering.

**Run Rate:** the extrapolation of a company's results in one period over a certain time period to show how the company's Financial Statements would look over that period. For example, if a company has revenues of €50 million in its last quarter, a banker could say that they have an annual run rate of €200 million. Compare Pro Forma Financial Statements.

**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.

**Safeguard Proceedings:** see *Sauvegarde*.

**Safe Harbour:** a special protection for certain circumstances providing an exception from the applicability of a rule or regulation. Safe Harbours exist in many contexts. In Securities regulation, for example, there are many Safe Harbours for the registration of Securities transactions with the SEC; *e.g.*, Section 4(a)(2) of the Securities Act is the Safe Harbour exempting a Securities transaction that is not a Public Offering from the applicability of Section 5 of the US Securities Act.

**SAGIA:** Saudi Arabian General Investment Authority, responsible for administering and licensing investments by foreigners in the Kingdom of Saudi Arabia.

**Salam:** an Islamic finance term meaning a Shari'ah-compliant forward contract (*i.e.*, a forward contract structured to avoid the *Gharar* or *Maisir* in a conventional forward contract).

***Sale and Leaseback:*** a transaction where a company sells an asset (usually to a financial services company of some kind or to an SPV) 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 Bonds and Facility Agreements.

***Sale and Purchase Agreement:*** the acquisition agreement pursuant to which the acquirer is purchasing the shares of the Target. Also known as the SPA. Not to be confused with a Purchase Agreement in the Securities offering context.

***Sales Force Presentation:*** the presentation given to the Initial Purchasers, Managers or Underwriters' sales force by the management and banking teams to prepare them to sell the deal in a Securities offering. Serves as a dry run for the Roadshow.

***SAMA:*** Saudi Arabian Monetary Agency responsible for regulating the banking sector in Saudi Arabia and monitoring commercial banks.

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

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

***SAS 72:*** Statement on Auditing Standards number 72 which is used for Comfort Letters delivered in respect of the 144A portion of a Securities offering. SAS 72, governed by the US accounting profession's AU Section 634, was written by accountants for accountants and provides detailed instructions regarding the text of the Comfort Letter (but little guidance regarding Tick Mark procedures). In Rule 144A Offerings in Europe, typically two Comfort Letters will be issued: one based on SAS 72 that can be used in connection with the Rule 144A Offering and a substantially identical letter (referred to as an SAS 72 look alike Comfort Letter) that can be used in connection with the Reg S Offering. See Auditor Arrangement Letter.

***SAS 100:*** the Statement on Auditing Standards that applies to review of interim financial information, and which provides detailed instructions regarding the text of the Comfort Letter.

***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 of 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.

**Sauvegarde:** so-called “French Chapter 11”. A French Insolvency proceeding to allow solvent companies to be restructured under the Insolvency court's supervision. The company must not be in a state of Cessation des Paiements, but must face difficulties that it is not able to overcome. The aim of Sauvegarde is to facilitate the reorganisation of a company in order to allow (in order) the continuation of its business, the protection of employment and the payment of its creditors. May result in a Term-Out. Double Luxco Structures in French LBO financings were designed to avoid the risk of an abusive use (or threat of use) of the protection of Sauvegarde by Borrowers and Sponsors.

**SCA:** the Emirates Securities & Commodities Authority, which has a mandate to regulate the capital markets in the UAE and was established by federal law in 2000.

**Scambio di Corrispondenza:** an exchange of correspondence pursuant to Italian law. It is a procedure for the execution of a contract or agreement, similar to the execution by counterparts, pursuant to which one of the parties to the relevant agreement proposes the text of the agreement by means of a letter of proposal addressed to the other party that, in order to perfect the agreement, must send back the entire text of the duly executed agreement to the proposing party in the form of a letter of acceptance. This execution method can generally be used to the extent the document does not need to be executed in notarial form under applicable Italian laws and is generally used in order to avoid possible tax costs that may arise in Italy in case the relevant agreement is executed in Italy by all parties on the same physical document.

**Scheme of Arrangement:** an English statutory procedure involving a compromise or arrangement between a company and a class of its creditors or members, with the sanction of a court. Approval requires 75% by value of votes cast and a majority by number of votes cast. A helpful tool in restructuring, allowing a Cramdown to be implemented on creditors within the same class (e.g., among Secured Parties) without the company having to commence full scale Insolvency proceedings such as Administration. Can also be used in order to effect a P2P/ takeover in the UK by the transfer of all existing shares to the Bidco (a “transfer scheme”).

**Screen Rate:** used to determine the applicable IBOR. The Facility Agent generally gets the relevant rates from the appropriate pages on Reuters screens.

**SDLT:** Stamp Duty Land Tax.

**SDN List:** List of Specially Designated Nationals and Blocked Persons. As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific.

**SDRT:** the Stamp Duty Reserve Tax.

**SEC:** the US Securities and Exchange Commission.

**SEC-Registered Offering:** just what it sounds like — a Securities offering that is registered with the SEC.

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

**Second Lien Facility:** means different things in different markets. In the US, it is a Senior Secured Facility that has a second Priority Lien on the assets that secure the First Lien Facilities. In Europe, it is also a Senior Secured Facility (often under the same Facility Agreement as the other Senior Secured Facilities) but is typically subordinated in all respects to the First Lien Facilities through the Intercreditor Agreement, matures six months after the longest dated of the First Lien Facilities and carries a higher Interest Rate. See also Facility D.

**Second Lien Loans:** like Facility C Loans but reflecting the features of a Second Lien Facility. Also known as Facility D Loans.

**Secondary Buyout:** an LBO of an LBO.

**Secondary Offering:** an offering of shares in a registered transaction by selling shareholders. Compare Primary Offering.

**Section 35 LME Merger Proceeding:** special merger proceeding in Spain which applies when any of the companies that are the subject of the merger have incurred debt in the three preceding years in order to acquire control of the other company or to acquire assets of that company which are essential for business activity or significant because of their value. This proceeding is used to effect a Pushdown in Spain.

**Section 4(a)(2):** exempts from Section 5 of the US 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 Harbour 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 Issuer/Borrower as of a given date to EBITDA of the Issuer/Borrower for the last four quarters. This is a Leverage Ratio that counts only the Secured Debt of the Issuer/Borrower in the numerator.

**Secured Parties / Secured Creditors:** those who hold or take the benefit of a given Security Interest. Generally defined to include the Lenders, the Facility Agent, the Security Agent, the L/C Issuing Bank, the Arrangers and the Hedge Counterparties, this group will incorporate all parties in favour of whom a grant of Security over assets has been made.

**Securities Act:** see US Securities Act.

**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, in order to repay the Bridge Loan. The terms of the Securities Demand are documented in the 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. Also known as a Put Bond Holiday.

**Securitisation:** a structured finance transaction in which a party owning a pool of cash-flow producing financial assets (the “originator”) sells the assets to a Special Purpose Entity (the “Issuer”) that then issues Bonds to investors that are secured by those assets. In a Securitisation 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 becomes Bankrupt, the assets of the Issuer will not be distributed to the originator’s creditors.

**Security:** definition depends upon the context. In Capital Markets, Security can refer to an investment instrument issued by a corporation, government or other organisation which offers evidence of debt or Equity. In loan world, Security is a reference to the granting of a Lien on assets to secure a debt obligation, however, in order to avoid confusion, we have used the equivalent US term Collateral throughout — don’t worry though, we won’t be saying trunk (boot), sidewalk (pavement) or pants (trousers) on this side of the Atlantic any time soon. See Secured Debt, Security Interest and Collateral.

**Security Agent:** in a Secured Debt financing, the Agent to whom, on behalf of all the Secured Parties, all Security Interests in Collateral will be granted (save for certain European Security Interests which need to be granted directly to the Secured Parties). See also Parallel Debt and Security Trustee.

**Security Agreement:** a contract that creates a Security Interest in favour of the applicable Secured Parties.

**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 Facility 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 indebtedness. It also significantly improves the Secured Parties' rights in an Insolvency. In short, if things go wrong, it is likely to be better to be secured than unsecured!

**Security Package:** a reference to the full "Collateral" package securing a particular Facility or series of Notes.

**Security Trustee:** same as Security Agent, but used in countries, such as the UK, which recognise the trust concept (the Security Trustee holding the relevant Security Interests on trust for all the Secured Parties).

**SEDAR:** the Canadian equivalent of EDGAR. The website ([www.sedar.com](http://www.sedar.com)) provides access to documents filed with the Canadian Securities Administrators.

**Selecteds:** a reference to the selected financial information section of the Offering Memorandum. This section is generally identical to the financial information included in the Summary, but excludes Pro Forma financial information and, in the US, includes additional years of financial information (five years as opposed to three).

**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.

**Senior Debt:** a level of Ranking. This is not a specific type of debt, but rather a general reference to a Tranche 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 favour of the Secured Debt. Compare Junior Debt.

**Senior Facilities Agreement:** see SFA.

**Senior Headroom:** found in Intercreditor Agreements. Refers to the amount by which the debt under the Senior Facilities Agreement can be increased without needing the consent of the Mezz Lenders. Typically set at 10% of the amount of the Term Loans made available at Closing (subject to adjustments).

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

**Senior Secured Facilities:** loans generally secured by the assets of the Borrower and its subsidiaries. See First Lien Facilities and Second Lien Facility. Mezzanine Facilities are also loans that share the same Collateral but are subordinated.

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

**Set-Off:** can be a statutory right whereby banks have to take money from the account of a depositor if the depositor is also a Borrower from that bank and is in default on the loan. It also arises in the scenario where a customer has two accounts with the bank, one of which is in credit and one which is in debt. In the Insolvency context, in accordance with mandatory rules, where a creditor proves in an Insolvency proceeding, account must be taken of the dealings between the creditor and the company in Administration or liquidation, including any future and contingent claims, such that sums due from one party must be set off against those due from the other. It can also be a contractual right agreed by the parties to allow a party which owes money to the other party under the contract to subtract anything the other party owes it first, before making payment.

**Settle:** see Clear.

**Several Liability:** the alternative to Joint and Several Liability and results in each party taking responsibility only for their own specified obligations and no one else's. If a party is unable to satisfy its obligation, the responsibility does not pass to the other parties. Multiple Arrangers and Lenders will require Several Liability as they will not commercially agree to be on the hook for the obligations of other unrelated financial institutions. It is important to ensure that each party's specific obligations are clearly defined and agreed. Compare Joint and Several Liability.

**SFA:** Senior Facilities Agreement, the Facility Agreement for First Lien Facilities.

**SG&A:** Selling, General and Administrative Expense.



**Share Premium Account:** the portion of the shareholders' funds which represents the premium paid for new shares above their nominal value. It forms part of a company's Non-Distributable Reserves.

**Shari'ah:** term in Islamic financing (meaning literally, the way to the water). This is the principle from the Quran and Sunnah to guide Muslims in the good conduct of their lives and for the good of the community as a whole — the principles upon which Islamic finance transactions are based.

**Shelf Company:** name given to a company which is acquired "off the shelf" having no assets or liabilities at that time. Not necessarily available in every European jurisdiction so this may need to be factored into the timetable when thinking about deadlines.

**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 also Shelf Takedown.

**Shelf Registration Statement:** used for a Shelf Takedown. 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 in which an Issuer issues Securities that were previously registered in a Shelf Registration. See Shelf Registration.

**Shoe:** shorthand for 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.

**Side-Car:** a facility which the Borrower incurs in lieu of, but in accordance with the restrictions contained in the Incremental Facility but which is documented outside of the Facility Agreement.

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

**Significant Subsidiary:** another name for Material Company / Material Subsidiary.

**Skim:** the difference between what a Sponsor has agreed to pay an Arranger as an Arrangement Fee and what the Arranger agrees to pass along to the other Lenders during Syndication. Skim is usually attributable to the Arranger having invested considerably more time and energy into a transaction than the other Lenders or to some set of Lenders having also acted as an Underwriter.

**Slug:** any land or aquatic gastropod mollusk without a shell. Universally detested by gardeners as an obnoxious and highly destructive pest. Think of a snail without a shell. In leveraged finance, people speak of a Slug of debt generally when they mean a Tranche of debt, or sometimes a large quantity of debt.

**Snooze-you-lose:** the colloquial name given to a clause in a Facility Agreement which gives the Borrower (and, indeed, sometimes the other Lenders actively engaged in the management of the transaction and in finding solutions) protection against Lenders failing to respond in a reasonable time frame to a request for an amendment or Waiver. If a Lender does not respond to such a request within a specified time frame (often between 10 and 15 business days), that Lender's vote is not taken into account when calculating whether Lenders holding the requisite percentage of the Facilities have approved the amendment or Waiver (or in certain limited cases the Lender is deemed to have consented). Also known as Use It or Lose It.

**Soft Call:** generally, a Prepayment Premium payable only if a Repricing Event has occurred. What is covered by a Soft Call varies from deal to deal. Compare Hard Call.

**Soft Mulligan:** a clause in a Facility Agreement which provides that a breach of a Financial Covenant is deemed cured if the Borrower re-establishes compliance with that Financial Covenant at a future test date. Also known as a Deemed Cure. Not as good for a Borrower as a Hard Mulligan but, therefore, more acceptable to Lenders.

**Solicitation Agent:** in the context of a Consent Solicitation, an Issuer may appoint an investment bank or other institution to serve as an intermediary to solicit consents from Bondholders to the proposed changes or Waivers to specified provisions of the Indenture. See also Dealer Manager Agreement.

**Sovereign Wealth Fund:** an investment fund owned by a country.

**SOX:** Sarbanes-Oxley.

**SPA:** Sale and Purchase Agreement.

**SPAC:** Special Purpose Acquisition Company.

**Spanish Ley Concursal:** refers to the Spanish Insolvency Act, Ley 22/2003, 9th July, Ley Concursal.

**SPE:** Special Purpose Entity.

**Special Purpose Acquisition Company:** a company that raises money in order to pursue the acquisition of an existing company. Special Purpose Acquisition Companies are Shelf Companies that have no operations but are formed and raise capital with the intention of merging with or acquiring a company with the proceeds of the SPAC's Securities offering.

**Special Purpose Entity / Special Purpose Vehicle:** can be used in a number of different contexts. For example, a Special Purpose Entity can be a company that is set up within a corporate group in such a way so as to prevent the Insolvency of that company from affecting any other company within the group, often for a limited corporate purpose. A typical example here would be when a Special Purpose Entity is set up for the purpose of acquiring or operating a particularly risky asset or making investments. Special Purpose Entities are also used for the purposes of issuing Asset-Backed Securities, being structured to be "bankruptcy remote" from the risks of the corporate entities that transfer assets to the entity. Special Purpose Entities are often used to accomplish Off Balance Sheet Arrangements.

**Special Resolution:** a resolution of a company passed by a majority of not less than 75%.

**Specified Representations Language / Specified Reqs:** a provision found in the text of the Commitment Letter, it is the equivalent of Certain Funds but for US deals. 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 or decline to close 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; organisational 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; OFAC; FCPA; USA PATRIOT Act; the Investment Company Act; status of the senior Facilities as First Lien Senior Debt; and Perfection of Security Interests. Also sometimes called SunGard Language.

**Spin-Off:** see Demerger.

**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 Issuer/Borrower. 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 at current market prices 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.

**Spot Price:** the price paid to the seller of a Commodity in a Spot Market, which price may fluctuate hourly or even minute-to-minute, depending on the structure of the Spot Market.

**Spread:** another name for the Underwriting Discount.

**Springing Covenant:** in the context of a Covenant Lite Facility Agreement, a Financial Covenant which is granted for the benefit of the Lenders under the Revolving Facility only and which is only tested if the Revolving Facility is drawn by a specified amount.

**SPV:** Special Purpose Vehicle.

**Squeeze-Out:** the right of the bidder in a P2P/takeover to require minority shareholders to sell their shares to the bidder once the bid has reached a certain level of acceptances. In the UK, this level is set at 90% of the shares which the takeover relates but in other jurisdictions the threshold can be higher.

**SSI List:** Sectoral Sanctions Identification List. As part of its enforcement efforts, OFAC publishes a list to identify persons operating in sectors of the Russian economy that have been identified by the Secretary of the Treasury (the head of the US Department of the Treasury) pursuant to Executive Order 13662.

**SSN:** senior secured note.

**Stabilisation:** the process by which a Lead Manager supports the immediate secondary market performance of a new issue of Securities. This can be done either by over-allotting Securities, or going “short”, for the account of the syndicate where the shortfall is covered through secondary market purchases by the Lead Manager, or “going long” for the account of the syndicate, where the long position is subsequently either distributed to the syndicate or sold in the secondary market for the account of the syndicate.

**Stakebuilding:** the building up of a holding of shares in a Target company by a potential offeror.

**Stale/Staleness:** refers to the dates on which Financial Statements can no longer be included in an SEC filing (and the SEC will no longer declare the Issuer's Registration Statement effective) or used in connection with an unregistered Offering — meaning the Issuer has to wait until the Financial Statements for the next quarter are completed in order to file a

Registration Statement or launch an unregistered Offering. See Latham & Watkins Desktop Staleness Calendar, available at [www.lw.com](http://www.lw.com). See 135 Day Rule.

**Stamp Duty:** a tax charged on certain written documents (can be a fixed or ad valorem charge). The term is a UK tax law term, but other jurisdictions also impose similar taxes (sometimes generically referred to, among with SDLT and SDRT and their equivalents in other jurisdictions, as Transfer Taxes). Stamp Duty is typically chargeable in respect of transfers of shares, other marketable Securities and certain transactions involving partnerships. In the UK, transfers of qualifying loans/bonds are typically exempt from Stamp Duty. See also SDLT, SDRT and Capital Duty.

**Stamp Duty Land Tax:** a UK tax charged in respect of transfers of real estate. Other jurisdictions impose similar real estate transfer taxes. See also Stamp Duty.

**Stamp Duty Reserve Tax:** a UK tax charged in respect of certain agreements to transfer shares and other types of Security (introduced as an anti-avoidance measure in response to attempts to avoid Stamp Duty by not formally documenting certain transfers of interests). See also Stamp Duty.

**Standard & Poor's:** see S&P.

**Standard Listing:** a listing that is not a Premium Listing and, therefore, subject to disclosure and ongoing requirements that are based on minimum EU directive standards rather than super-equivalent standards. GDRs can only obtain a Standard Listing. See also Premium Listing.

**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 Agreement:** in a UK takeover offer, it is an agreement between a company and a shareholder which restricts the shareholder's ability to acquire further shares in the company.

**Standstill Period:** a Subordination provision typically found in an Intercreditor Agreement which prevents the holders of the Subordinated Debt 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 by itself does not prevent the junior creditors from pursuing remedies (including putting the Borrower into Insolvency) if there is an Event of Default. Subordinated Debt holders can, however, expect to be subjected to both Payment Blockage Provisions and Standstill Periods. Note that Standstill Periods are not permitted for SEC-registered bond deals.

**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 (including the Commitment Papers and sometimes the Offering Memorandum) is "stapled" to the bid materials that are sent out to potential buyers.

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

**State of Insolvency / State of Distress:** in Italy, the State of Insolvency refers to a particular situation where an economic entity is unable to perform its obligations regularly. State of Distress is broader in that it can be temporary and reversible. The State of Insolvency is a prerequisite for the applicability of the Fallimento procedure and Extraordinary Administration, while the State of Distress is a prerequisite for the Piano di Risanamento Attestato, Concordato Preventivo and Accordo di Ristrutturazione.

**Statement of Financial Position:** another name for the Balance Sheet.

**Statement of Revenue and Expense:** another name for the Income Statement.

**Steering Committee:** another name for the Coordinating Committee.

**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. Also used in Bonds and Facility Agreements to describe the decrease in the Interest Rate that applies following a particular event, such as an upgrade in the ratings of the Issuer by one or more of the Ratings Agencies, following the Non-Call Period, or a decrease in the Leverage Ratio. See Margin Ratchet.

**Step Up:** the increase in Interest Rates on a Bridge Loan that occurs if the loan is still outstanding after certain increments of time. Also used in Bonds and Facility Agreements to describe the increase in the Interest Rate that applies following a particular event, such as a downgrade in the ratings of the Issuer by one or more of the Ratings Agencies or an increase in the Leverage Ratio. See Margin Ratchet.

**Sticky Offering:** when a Bond offering is undersubscribed and one or more of the Initial Purchasers, Managers or Underwriters in the Syndicate holds a portion of the unsold Securities. Sticky Offerings can present disclosure and other issues and should be highlighted to the lawyers as soon as possible. Also known as a Friends & Family Offering.

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

**Strategic Buyer:** a corporate acquirer 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.

**Strawman:** an outline proposal or paper. Often used to describe a preliminary summary version of the Structure Memorandum.

**Structural Adjustment:** certain amendments in Facility Agreements have traditionally required consent from all of the Lenders which can be difficult to achieve in a large Syndicate. A Structural Adjustment provision allows certain amendments, such as the insertion of additional debt, extensions of maturity or Availability, re-denomination and reductions of amounts payable, to be made with the consent only of each affected Lender (e.g., who is providing the additional debt) and the Majority Lenders.

**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 Issuer/Borrower 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 an Insolvency before anything is divided 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 Restricted Group) of the Facilities provided for in the Commitment Letter if needed to facilitate (or enhance the prospects of) the Successful Syndication of the Facilities. Holdco Flex is a type of Structure Flex.

**Structure Memorandum:** a memorandum prepared by the tax advisors/counsel to the bidder in an LBO which describes the transaction structure and the tax consequences thereof. Typically provided to the Lenders (or at least those becoming Lenders in Syndication) with a Reliance Letter.

**Subordinated Debt:** sits in between Senior Debt and Equity in the Capital Structure. Generally raised by selling Subordinated High Yield Bonds or through a Mezzanine Financing. Subordinated High Yield Bonds generally have looser Covenants than the Senior Debt. However, whilst Mezzanine Financings have Financial Covenants set with a percentage of Headroom over those for the senior Facilities, all other Covenants typically remain the same. Subordinated Debt is compensated for with a higher Interest Rate to reflect its subordinated status.

**Subordinated Shareholder Loan:** a loan granted to the company by one of its shareholders or by a person who controls one of its shareholders which is subordinated to all other debts. Terms and Conditions, Indentures and Facility Agreements often will provide a Carveout to the Indebtedness

Covenant or equivalent that allows incurrence of Subordinated Shareholder Loans provided that such loans have a maturity which extends beyond the maturity over the Notes/loans and that such loans are deeply subordinated. For tax reasons in European LBOs, the Equity Contribution is often made by way of a Subordinated Shareholder Loan.

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

**Sub-Participation:** can be Funded Sub-Participations or Risk Sub-Participations. Both are, in essence, transactions whereby the Lender of Record sells the commercial risk of a Facility to a third party ("the sub-participant") without entering into an Assignment, Assignment and Assumption or Novation. Can therefore be implemented without the knowledge of the Facility Agent, the Borrower or other Lenders as the Lender of Record does not change. Also useful (if properly structured) to avoid Banking Monopoly restrictions.

**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.

**Subscription Agreement:** another term for Purchase Agreement or Underwriting Agreement, typically used in English law governed Bonds.

**Subsidiary Guarantor:** subsidiary of the Issuer/Borrower that acts as a Guarantor. See also Corporate Benefit, Financial Assistance and Guarantee Limitation Language.

**Successful Syndication:** in Commitment Paper land, a number of things happen once the Arranger has achieved a Successful Syndication. For example, Flex rights terminate and Interest Periods are no longer set for short periods of time. Successful Syndication refers to the level of remaining commitment held by the Arranger. For example, if the original commitment is €500 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 million.

**Sukuk:** Islamic finance term for an Islamic Bond, similar to a conventional Bond in many respects but the Bond certificate represents an undivided ownership of one or more assets forming part of the Sukuk structure — such as the assets forming part of the Islamic lease (Ijara) in a Sukuk Al-Ijara.



**Summary / Summary Box:** the summary section of the Offering Memorandum. It usually includes a short description of the Issuer, its strengths and strategy, a summary of the terms of the Securities and the offering and certain summary financial information. See also Box.

**SUN:** senior unsecured note. This can also refer to Senior Subordinated Notes.

**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 (subject to certain exceptions) will not be a Condition Precedent to Closing a financing unless the Borrower does not use some specified level of effort to Perfect.

**Sunnah:** term in Islamic finance meaning the practices and sayings of the Prophet Mohammed, as documented in Hadith, being the fundamental part of Islamic jurisprudence upon which Islamic finance transactions are structured.

**Sunset:** the period of time for which the protections afforded by the Most Favoured Nation Pricing provisions apply.

**Super Majority Lenders:** Lenders needed for Super Majority Voting.

**Super Majority Voting:** situation where a percentage of the Lenders under a Facility Agreement greater than the Majority Lenders (usually at least 80% or 85%) is required for certain material amendments, such as releases of Collateral.

**Super Senior RCF:** in Bond-only financings there may still be a need for a Revolving Facility to provide the Issuer with access to more flexible loan financing and Ancillary Facilities for its ordinary corporate activities. RCFs in these structures will share in the Collateral given to the Bonds but will often rank senior on recovery following enforcement, so both the Bonds and the RCF are "senior" in the sense of ranking *Pari Passu* in right of payment and being secured, but the RCF is "super senior" to the Bonds in the Waterfall.

**Supplemental Indenture:** a document that contains amendments to an Indenture that is considered to make up part of the Indenture when executed by the Issuer, Guarantors (as required) and the Trustee on behalf of the Bondholders.

**Suretyship:** the undertaking by a party (the "surety") to be liable for the debts or other obligations of another party. This is distinct from a Guarantee, technically speaking, as 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 defence” is a defence 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, currency fluctuations and prices of Commodities.

**Sweet Equity:** stock issued in an LBO often to key management/employees at a discounted or nominal price. How sweet is that.

**Swing Line Loans:** a little 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. These are typically not seen in European deals where Borrowers can use Ancillary Facilities for the same purpose.

**SWX Swiss Exchange / SWX:** the SWX Swiss Exchange (SWX) operates the main stock exchange in Switzerland, based in Zurich. Because it is outside the EU, it is considered an Offshore Market for Prospectus Directive purposes.

**Syndicate:** as a verb, the process whereby an Arranger of a 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. 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 Convertible Bond 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:** a title granted to a Lender during the Syndication process that carries no responsibilities (similar to a Documentation Agent). Essentially, it is a means for a Lender to get its name on the cover of a Facility 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. See Front Running.

**Syndication Date:** the date upon which Syndication closes.

**Synergies:** the cost savings and other efficiencies that are projected to materialise when two companies in the same industry are merged. Examples include reduced SG&A, increased purchasing power, more efficient utilisation of factories, warehouses and distribution centres, and headcount reduction in the sales force. See Strategic Buyer. Whether or not Synergies can be taken into account in the calculation of Financial Covenants is often hotly debated, and in particular whether or not any Synergies need to be verified by someone other than the Borrower. This debate arises most frequently in two situations: (i) when an acquisition has been made during a Financial Covenant testing period — in these circumstances the question is whether or not one should assume for calculation purposes that such acquisition was made at the start of the testing period and, if so, should the Borrower get the benefit of Synergies estimated to be, but not yet, realised; and (ii) when a Carveout to a restriction on acquisitions allows an acquisition if certain tests are met including Pro Forma historic and/or future Financial Covenant compliance — again, the question here is whether the Borrower should get the benefit of anticipated Synergies in these calculations.

**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+:** the number inserted after “T+” refers to the number of business days between Pricing and Closing.

**T+ Legend:** under Rule 15c6-1 of the US 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. Not relevant for Eurobonds which occasionally can close either immediately after signing or at some much later date.

**Ts & Cs:** Terms and Conditions.

**Tack-On Offering:** an issuance of Bonds with terms that are identical to a previously issued series of Bonds, under the same Indenture, such that the additional Bonds are (or will soon become) Fungible with the initial Bonds and hence, share a single CUSIP/ISIN number. With a single CUSIP/ISIN number, the additional Bonds issued in the Tack-On Offering can trade interchangeably with the previously issued Bonds, which improves the pricing of the Tack-On Offering due to increased liquidity in the aftermarket. However, in order to ensure Fungibility, investors in the additional Bonds issued in the Tack-On Offering must buy them with accrued Interest in an amount equal to the amount of Interest that has accrued on the initial Bonds as of the date of purchase of the additional Bonds. Also referred to as a Tap Offering or Tap Issue.

**Tadawul:** Saudi Stock Exchange.

**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.

**Tail Fee:** typically set forth in the Engagement Letter, the Tail Fee is an agreed amount to be paid to an Underwriter or Initial Purchaser when the offering contemplated by the Engagement Letter is not completed, the Engagement Letter is terminated and the Issuer subsequently consummates the offering within a specified period of time after the termination. See also Alternative Transaction Language.

**Tail Period:** the survival period in the Engagement Letter, often used to refer to the period of time the Issuer is on the hook to pay certain fees after the termination of the Engagement Letter.

**Takaful:** an Islamic finance term which means Islamic insurance based on the idea of mutual assistance (Takaful insurance is structured to avoid the Shari'ah prohibitions against Interest and gambling which are ordinarily violated by conventional insurance arrangements).

**Take and Hold:** the basis on which a Lender acquires loans and/or commitments without the intention to on sell. Contrast to Syndication.

**Takedown Fee:** another name for the Funding Fee.

**Takeover Code:** the set of general principles and statutory rules in relation to all offers and other transactions to which the Takeover Code applies (including, for example, P2P transactions). The Takeover Code rules and general principles regulate the conduct of UK public takeovers, as well as certain takeovers where there is a shared jurisdiction between the UK and other EEA countries. Also known as the City Code and the Blue Book.

**Takeover Panel:** the UK regulatory body that issues and enforces the Takeover Code and supervises/regulates takeovers and other matters to which the Takeover Code applies.

**Talon:** a bearer instrument that is attached to but detachable from a Bearer Bond and which entitles the bearer to receive a further sheet of Coupons and, in some cases if the Bearer Bond is very long-dated, another Talon.

**Tap / Tap Issue / Tap Offering:** another name for Tack-on Offering.

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

**TARGET2:** the Trans-European Automated Real-Time Gross Settlement Express Transfer payment system which replaced the initial TARGET system in November 2007. TARGET2 is the payment system for the settlement of Euro transactions.

**TARGET Day:** a day on which TARGET2 is open for settlement of payments. It ignores most national bank holidays. Another illustration of the adage that money never sleeps, as if Gordon Gekko hadn't taught you that already.

**Target Hold:** the principal amount of a Facility that a Lender wants to sell down to during Syndication. If all of the Lenders sell down to their Target Hold, it is a Successful Syndication. Contrast to Minimum Hold.

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

**Tawarruq:** an Islamic finance term for the purchase of an asset (commonly a commodity) on a deferred payment basis (like a Murabaha structure) with the intent to immediately sell to a third party for cash. A Tawarruq is commonly used for working capital or revolving Islamic finance facilities.

**Tax Consolidation:** a tax regime available in a number of countries which a group of wholly owned or majority-owned companies located in the same jurisdiction can opt for, so that the group is treated as a single entity for income tax (and sometimes VAT) purposes — usually the head entity of a tax consolidated group is responsible for the group's income tax (and sometimes VAT) obligations. This typically enables a non-income producing but leveraged entity within the group to set off its financial Interest expenses against the income of other Opcos within the same tax group. Best to speak to a tax expert. See also Group Relief.

**Tax Gross-Up:** a provision in a Facility 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. See also Qualifying Lender. Indentures / Terms and Conditions have a similar provision that requires the Issuer to pay "additional amounts" to gross up for Withholding Taxes in respect of payments on the Notes. See also Tax Redemption.

**Tax Redemption:** under an Indenture or the Terms and Conditions, if the Issuer (and any Guarantor) is required to pay Withholding Taxes on payments on the Notes (or a Guarantee) as a result of future changes in applicable tax laws, the Issuer may redeem all but not part of the Notes at Par. In loan world, this is covered by the Yank-a-Bank.

**Tax Treaty:** cunning abbreviation of Double Taxation Treaty.

**T-bills:** Treasury Bills, Securities offered by the US Treasury.

**Technical Amendment:** an amendment that is necessary for technical reasons, perhaps because a Facility 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 Majority Lender vote) of the Facility Agreement but occasionally you will see documentation which allows the Facility Agent and the Borrower to correct manifest errors without needing the consent of the Lenders.

**TEFRA:** the US Tax Equity and Fiscal Responsibility Act 1982 which is intended to limit tax evasion by US residents through the holding of Bearer Bonds. Because of TEFRA, Bearer Bonds are not used if an issue of Securities is placed into the US or with US investors.

**TEG:** Taux Effectif Global, meaning "all-inclusive interest rate", which is the overall, actual cost of the loan to the Borrower expressed as an annual interest rate, including all expenses, fees and any costs of any nature related to the loan and which are (or should be) known to the Lender at the time of the calculation, borne by the Borrower and amortised over the actual (or supposed) duration of the financing. This French legal requirement applies to loans granted to French Borrowers and the calculation must be included in the agreement evidencing the loan (*i.e.* it must be provided for the first time at Signing and not at Closing). The calculation is horrendously complicated and failure to provide an accurate calculation of the applicable TEG to the Borrower at the right time makes the interest rate provision void. You have been warned. Fortunately, the obligation to provide the TEG does not apply to a Bond financing. See TEG Letter.

**TEG Letter:** the letter provided under French law by the Lender to the Borrower setting out the TEG applicable to the loan.

**Tender Drag:** another name for Clean-Up Call.

**Tender Offer:** an offer by tender by an Issuer to purchase its own Securities typically for cash or sometimes for other Securities or a combination of

cash and Securities. Sometimes combined with a Consent Solicitation. See also Consent Solicitation and Exchange Offer.

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

**Termination Date:** another name for Maturity Date.

**Term Loan:** a loan for a specific amount that the Borrower borrows on day one and then pays back according to either a predetermined Amortisation Schedule or a Bullet Maturity. Term Loans are generally in the form of a Facility A Loan, Facility B Loan, Facility C Loan or a Facility D Loan. In Commitment Papers, there are generally two types of Term Loans: (i) the Term Loan component of the Senior Secured 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 Facility:** a Senior Secured Facility consisting of Term Loans, which are generally borrowed in their entirety at Closing and repaid according to an Amortisation Schedule or a Bullet Maturity. See, however, Delayed Draw Term Facility.

**Term-Out:** "nuclear dissuasion" in French Insolvency proceedings and not to be confused with a Term-Out Option. This is an English term coined by Insolvency practitioners to describe the power of the French Bankruptcy court in French Sauvegarde or Redressement Judiciaire, failing adoption of a restructuring plan by the Creditors Committees, to impose a rescheduling of the creditors' claims (full face value and, with respect to all loans granted for an initial term greater than one year, accrued Interest) over a maximum time period of 10 years. Funnily enough, there is no equivalent French term.

**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 schedules, exhibits and annexes attached to a Commitment Letter that detail the terms of the Senior Secured Facilities and the Bridge Facility. This term can also generally refer to any document that provides the main terms of a financing. Sometimes called Heads of Terms.

**Terms and Conditions:** in an English law governed Bond offering, these are the detailed terms, conditions and sometimes Covenants that are contained in the Offering Memorandum or Prospectus. They are also scheduled to the Trust Deed or Fiscal Agency Agreement.

**Testing the Waters:** technically, in the context of a registered Securities offering by an EGC, the process of making oral or written offers to Qualified Institutional Buyers and institutional accredited investors before or after the initial filing of a Registration Statement. See JOBS Act. The term is also used more broadly in the context of public and

private offers to refer to meetings with investors prior to the distribution of a Red.

**Thin Capitalisation:** a company is thinly capitalised when its capital is made up of a much greater proportion of debt than Equity, meaning its Gearing is too high. Many European tax regimes have rules to ensure that companies have a fair proportion of Equity capital so that they cannot minimise taxable profits in this way. These rules typically work by restricting tax deductions in respect of the "excess" debt capital.

**Third Party Beneficiary:** an entity that is entitled to the benefits of some or all of the terms of a contract without actually being a party thereto. If you want there to be a Third Party Beneficiary, the contract should say so, in which case you have an "express third party beneficiary" (and if you are the Third Party Beneficiary, that's the type you want to be). If you don't want any Third Party Beneficiaries, the contract should also say that.

**Third Party Rights:** the ability to allow non-signatories to a document to enjoy the benefit of its terms in ways which differ according to the jurisdiction. Enacted in the UK through the Contracts (Rights of Third Parties) Act 1999.

**Tick Marks:** refer to the letters (e.g., "A", "B", "C") or symbols 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 Financial Statements 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 reviewing the financial data in the Offering Memorandum in order to provide Tick Marks in a Comfort Letter.

**Ticking Fee:** a fee associated with a long-term commitment to provide a Bridge Loan or other 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 (or when the Facilities documents are signed, at which point the Commitment Fee starts accruing). The Ticking Fee is set out in the Fee Letter.

**Toggle Facility:** a Facility that contains a PIK Toggle.

**Tombstone:** a gift (often made of Lucite) handed out to senior deal participants after the Closing to commiserate and thank them for all of the hard work of their more junior colleagues on the deal. It makes a nice decoration for your office. Will not biodegrade. Sometimes called a Deal Toy.



**Tombstone Ad:** a written advertisement for publicity purposes placed by Underwriters after Closing of a Security offering. The Tombstone Ad provides the basic details about the issue and, in order of importance, the Underwriters involved in the deal. This advertisement gets its name from its black border and heavy black print.

**Topco:** shorthand for top company. This refers to the ultimate parent in a Restricted Group or other group of companies.

**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:** means "slice" in French. Refers to an individual class or series of Bonds within an offering (which may have different ratings) or to individual Facilities within the same Facility Agreement (e.g., a single First Lien Facility Agreement may have a Facility A Loan, a Facility B Loan, a Facility C Loan, a Facility D Loan, a Delayed Draw Term Facility and a Revolving Facility, each of which is a separate loan Tranche). "Tranching" is also a way of describing classes or series of Bonds in the same offering that are senior or subordinated to each other.

**Transfer Agent:** an agent of the Issuer who takes care of transferring Securities and other administrative tasks as agent of the Issuer.

**Transfer Tax:** see Stamp Duty.

**Transparency Directive:** an EU directive which requires EEA member states to establish rules for the disclosure of periodic and ongoing financial and informational reports for companies whose Securities are admitted to trade on a Regulated Market.

**Trapped Cash:** cash which is "trapped" in a subsidiary of the Borrower and for Corporate Benefit, Financial Assistance, tax or other reasons can't be transferred to the Borrower for debt service purposes.

**Treaty Country:** a country that is a party to a Double Taxation Treaty.

**Treaty Passport:** an expedited process available in the UK that enables non-UK Lenders to a UK Borrower to obtain Withholding Tax protection under Double Taxation Treaties. Non-UK Lenders register their details with respect to their entitlement to protection under a particular treaty and they notify the UK tax authorities of particular loans/Borrowers as these arise. There is a publicly accessible register of Treaty Passport holders.

**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.

**Treuhand:** when used in a restructuring context, this term refers to a trust arrangement under German law (also frequently structured as and called “doppelnützige Treuhand”) relating to company shares where the shares in the relevant company (usually at the very top of the group) are held by an independent Trustee for the benefit of the original shareholders (usually the Sponsor) and the financing banks at the same time. Typically, the Trustee will be obliged to sell the shares if certain trigger events (e.g., Events of Default) occur or certain enterprise value thresholds are met. This structure is used mainly in restructurings to disenfranchise the Sponsors while the restructuring is going on and to avoid certain disadvantages of the enforcement of a German law share pledge (see Public Auction). Needs to be structured carefully to avoid Equitable Subordination.

**Triple Hook:** refers to receiving a CCC rating from the Ratings Agencies.

**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.

**Trust Deed:** the contract between the Issuer and the Trustee that constitutes and governs the Bonds. Trust Deeds are governed by English law, whereas Indentures are governed by New York law.

**Trustee:** performs as the Bond equivalent of a Facility Agreement Facility Agent under a Facility Agreement. The Trustee has certain assigned duties and rights under the Trust Deed or Indenture that become particularly important following Defaults or Events of Default, and acts in a fiduciary capacity in the best interests of the Bondholders. Unlike an Administrative Agent, a Trustee will rarely own any of the underlying Securities and will not take any action unless it is provided with specific direction and indemnification from the Bondholders.

**TTF:** Taxe sur les Transactions Financières. a French tax introduced in 2012 and levied on capital markets transactions. The TTF is collected for, among other things, transactions on the equity securities of listed companies with a market value over a billion euros.

**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 increase a debt Basket by “three Turns” of

EBITDA. If the Borrower's LTM EBITDA was €100 million, that Basket should be increased by €300 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?”

**Turnover:** the provisions in an Intercreditor Agreement which require Junior Debt holders to hand over cash received in circumstances where those senior to them had not been repaid in full.

**Tying/Anti-Tying:** US restrictions that generally prohibit banks from conditioning the availability or price of one product (like a Bridge Loan) on a customer also obtaining another product from the bank (like services in connection with a Bond offering), subject to a variety of exceptions.

**UCC:** the United States Uniform Commercial Code. The UCC is one of a number of uniform acts that have been promulgated in conjunction with efforts to harmonise the law of sales and other commercial transactions in all 50 US 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.

**UK Corporate Governance Code:** the key source of corporate governance recommendations for companies with a Premium Listing, consisting of good governance, leadership, effectiveness, accountability, remuneration and relations with shareholders.

**UKLA:** the United Kingdom Listing Authority, the competent authority for listing on the London Stock Exchange. Part of the FCA.

**UNCITRAL:** the United Nations Commission on International Trade Law.

**UNCITRAL Model Law:** the model law adopted by UNCITRAL in 1997 designed to (among other things) create a framework for mutual recognition of Insolvency proceedings. Although not many countries have adopted it, those that have include Canada, Great Britain, Greece, Japan and the US.

**Underwriters:** in Capital Markets, 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 US 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. In loan world, the investment banks or other financial institutions that agree to be the initial Lenders pending Syndication. Typically the same entities as the Arrangers. See also Initial Purchasers.

**Underwriting Agreement:** the contract pursuant to which Underwriters agree to purchase Securities from an Issuer. In Rule 144A Offerings and Regulation S offerings, the Underwriting Agreement typically is referred to as a Purchase Agreement.

**Underwriting Discount:** the money the Underwriters make from an Equity 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.

**Underwriting Fee:** another name for an Arrangement Fee.

**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.

**Unitranche:** a type of debt that combines Senior Debt and Subordinated Debt into one instrument in order to simplify the debt structure and accelerate the acquisition process. The Borrower would typically pay a blended Interest Rate falling between the rates which would have been applicable for Senior Debt and Subordinated Debt.

**Unregulated Market:** see Exchange Regulated Market.

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

**Upfront Fee:** see Arrangement Fee.

**Upfront Fees Side Letter:** a fee letter used in an LPN structure documenting the upfront remuneration payable to the Borrower, the Lender, the Trustee and the Lead Manager. See also Ongoing Fees Side Letter.

**Upsize:** in Bond world, refers to a situation where the principal amount of Bonds issued is larger than the amount indicated in the Red, usually due to a desire to meet greater than anticipated investor demand. An Upsize often requires additional or amended disclosure in the Pricing Supplement to account for the increase. The lawyers typically find out about this on the day of Pricing, which also upsizes the amount of stress experienced. In loan world, refers to a situation where the principal amount of the Facilities are either larger than the amount indicated in the Commitment Papers or are subsequently increased after signing the Facilities.

**Upstream:** from a subsidiary to a direct or indirect parent company, for example, a Guarantee granted by a subsidiary to support the debt of the parent is an Upstream Guarantee. See also Cross-Stream and Downstream.

**US Exchange Act:** the US Securities Exchange Act of 1934, as amended, which governs the continuing and reporting obligations of companies with registered Securities in the US.

**US Investment Company Act:** the US Investment Company Act of 1940, as amended, a regulatory measure for the Investment Companies industry, which the SEC believed to require more than the disclosure treatments of the '33 and '34 Acts. The framework includes examination, supervision and audit by the SEC and a highly inflexible US federal substantive law of corporations with which almost no operating company can comply, including significant restrictions on affiliate transactions, extensive reporting requirements, regulations regarding capital structure and requirements for issuance of debt or Equity, shareholder approval of certain agreements, rules relating to custody of company assets and rules on the composition and role of the board of directors. The US Investment Company Act contains a number of exemptions and gives the SEC broad authority to exempt any person, Security or transaction from all provisions of the US Investment Company Act.

**US Securities Act:** the US Securities Act of 1933, as amended, which governs the registration of Securities in the US.

**Use It or Lose It:** see Snooze-you-lose.

**Use of Proceeds:** the specification in the financing documentation or Offering Memorandum of what the proceeds of the financing will be used for, and potentially a Rep and Covenant that this is in fact where proceeds will go.

**Usury Laws:** refers to the charging of an Interest Rate on a loan which is so high that it is illegal (and in certain jurisdictions criminal), irrespective of whether, for example, the Borrower was prepared to agree to it because it is a sophisticated Borrower which understands that this is the Interest Rate that is necessary to pay in the international financial markets in view of the subordinated, PIK nature of the loan, or because its thumbs are being crushed in a vice at the time. By way of example, French law disappplied usury rate limitations in 2003 for most types of loans to most French corporate entities, although the requirement formally to advise the Borrower in writing of the TEG of its loan remains; however, in contrast, Italian law restricts the Interest Rate to 150% of the average Interest Rate applicable to specific credit transaction categories laid down by law and updated quarterly by the Treasury Ministry.

**Value Added Tax:** a tax on supplies of goods and services. Typically, finance transactions and transactions relating to the granting of credit are often exempt from VAT, such that VAT is not charged in respect of

such supplies. As a consequence, the supplier is restricted in its ability to reclaim VAT which it has itself incurred on supplies made to it.

**VAT:** Value Added Tax.

**VC:** Britain's highest award for gallantry introduced by Queen Victoria in the Crimean War awarded to very brave people in HM's armed forces for valour "in the face of the enemy". Eleven VCs were awarded in a single action at Rorke's Drift (think Zulu starring Michael Caine) in 1879. Also an acronym for Venture Capitalists, who display a completely different type of bravery (if, indeed, that is the right word) when investing their money in start-ups.

**VCOC:** Venture Capital Operating Company, a type of operating company satisfy requirements under the ERISA plan asset regulations.

**VCOC Rights:** certain Mezz Lenders are funds which have significant US pension plan investors. In order to avoid issues under ERISA for these investors, the Mezz Financing needs to qualify for an exemption from ERISA; the most commonly used exemption in these situations is to structure the Mezz Financing as an investment in a VCOC. This is achieved by giving VCOC Rights to these Mezz Lenders in a VCOC Side Letter. What are these rights? Well, they are direct contractual rights between the Mezz Lender and the Borrower / Operating Company that provide the Mezz Lender with enhanced "management rights" providing the Mezz Lender with a right to participate substantially in or to influence substantially the management of the Borrower / Operating Company. In practice, this typically requires the Mezz Lender to obtain the following three rights: (i) Board Observer Rights, (ii) the right to receive more information than is required by the terms of the Facility Agreement and (iii) the right to consult with management.

**VCOC Side Letter:** a letter signed by (i) a Mezz Lender that is a VCOC fund and (ii) the Borrower / Portfolio Company granting the Mezz Lender VCOC Rights. Satisfies the requirement that VCOC Rights be direct contractual rights between the Mezz Lender and the Borrower / Operating Company.

**VDR:** Virtual Data Room.

**VDD / Vendor Due Diligence:** Due Diligence performed by a vendor on behalf of all potential purchasers and on which the ultimate buyer will be entitled to rely. Prevents each purchaser from having to do its own Due Diligence and, therefore, (it is claimed) ensures a smoother sales process.

**Vendor Loan:** name given to a subordinated loan made by the seller of a Target to the Bidco, which bridges the gap between the funds available to the Bidco and the required purchase price, *i.e.*, effectively a partial reinvestment of the sales proceeds by the vendor but as debt rather than Equity thereby having Priority over the equityholders.

**Venture Capitalist:** a person or investment firm that provides early stage funding to a company in return for an Equity interest. Often Venture Capitalists will bring technical or other expertise to the company. Irreverently sometimes referred to as vulture capitalists on the basis VCs may take a large Equity position for a relatively low price.

**Virtual Data Room:** a secured website used for storing and distributing information and documents. Often used for the Due Diligence process.

**Visa:** in France, refers to the AMF's indication of approval of a submission. The Visa indicates that the AMF has verified that the document is complete, comprehensible and coherent, but does not mean that the AMF has verified the accounting and financial information presented therein.

**VIX:** a trademarked ticker symbol for the CBOE Volatility Index, which represents one measure of the market's expectation of stock market volatility over the next 30-day period. Often referred to as the fear index or the fear gauge.

**Volcker Rule:** refers to Section 619 of the Dodd-Frank Act, and it, generally speaking, prohibits any banking entity from: (i) engaging in proprietary trading or (ii) acquiring or retaining an ownership interest in or sponsoring a Covered Fund, except as specifically permitted. See also Covered Fund.

**Voluntary Prepayment:** prepayment of a Term Loan made at the Borrower's option that is not required pursuant to the Amortisation Schedule. Compare Mandatory Prepayments.

**Waiver:** a waiver of a Default under a Facility Agreement, the Terms and Conditions or Indenture. In contrast to an amendment that actually amends the text of a Facility Agreement, the Terms and Conditions or Indenture going forward, a Waiver generally applies to a one-time Default and may last only for a limited period of time.

**Wakala:** an Islamic finance term for an agency relationship, similar to a conventional agency relationship.

**Wakala al Mutlaqa:** an Islamic finance term for an absolute power of attorney.

**Wakil:** an Islamic finance term for an agent (similar to an agent in a conventional financing) under an agency (Wakala) arrangement.

**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 person 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.

**Weighted Average Life:** “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 Amortisation requirements — it is simply the time remaining until the Maturity Date of the Bonds. Also known just as the Average Life.

**Well Known Seasoned Issuer:** WKSIs are large-scale, seasoned Issuers that benefit from special treatment in public Securities offerings under SEC regulations. 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.

**WGL:** 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.

**White Paper:** in general, refers to an authoritative report on a certain topic. In the Capital Markets context, this usually refers to a 2005 paper issued by the American Institute of Certified Public Accountants, which discouraged auditors from providing comfort on information for a completed fiscal year before the auditors had completed their review procedures for the audit of that fiscal year. Therefore, if an Issuer is contemplating an offering of Securities after its fiscal year-end but before the issuance of its annual audited Financial Statements, it may run into White Paper comfort issues as accountants may be unable to provide negative assurance or comfort relating to certain financial information that is subject to its audit.

**White Squire:** in a hostile takeover situation, a person who acquires a significant stake in a company either by purchasing existing shares or subscribing for new shares, gaining a stake large enough to block a hostile takeover bid.

**Whitelist:** a list, put together by the Borrower or the Sponsor, of Lenders to whom a certain loan may be assigned. A Whitelist can be more restrictive than a Blacklist, because it is inclusive rather than exclusive — meaning only Lenders included on the Whitelist can receive Assignments.



**Whitewash:** the procedure set out in the City Code by which the requirement for a Mandatory Bid is waived by approval by Target shareholders.

**Whitewash Procedure:** in Italy, a specific corporate procedure which allows an Italian company, in certain circumstances and in compliance with specific requirements set out under the Italian Civil Code, to give lawful Financial Assistance. The decision to carry out a Whitewash Procedure is reserved to the competent corporate bodies who evaluate, inter alia, the Corporate Benefit of the relevant company. Whitewash Procedure requirements include, inter alia, (i) the approval of the transaction by the board of directors and by an extraordinary shareholders' meeting of the company and (ii) the aggregate amount of all loans/Guarantees/Securities may not exceed the aggregate amount of distributable profits and reserves set forth in the latest duly approved company's Financial Statements.

**Winding Up:** the process of liquidating a company involving the appointment of an independent Insolvency practitioner (the liquidator) who realises the assets of a company in order to make a distribution to the creditors of that company.

**Withholding Tax:** tax levied frequently, but not exclusively, in respect of recurring payments, collected by requiring the payer to make a deduction on account of income tax before making the payment. It frequently applies to payments of dividends (although not those paid by UK companies, for example), Interest and royalties. This liability is often reduced or eliminated under a Double Taxation Treaty. Essentially a method of tax collection, rather than a different tax, as such.

**WKSI:** Well Known Seasoned Issuer. Pronounced "wik-see".

**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.

**Xerox Language:** language in an acquisition agreement that protects the interests of the Lenders committed to financing the deal, particularly with respect to liability if the deal fails because the expected financing is unavailable. Xerox Language typically includes an agreement by the Target and the seller that (i) the sole and exclusive remedy with respect to the commitment parties is the payment of a specified reverse break-up fee; (ii) any action or proceeding involving any commitment party arising out of or relating to the acquisition, the committed facilities or the performance of any services thereunder is subject to the exclusive jurisdiction/venue of a US federal or state court sitting in the County of New York; (iii) the Target will not bring or support anyone else in bringing any claim, action or proceeding in any other court; (iv) the Target waives any right to trial by jury in respect of any such claim, suit, action or proceeding and (v) the commitment parties are express

third-party beneficiaries of the provisions in the acquisition agreement reflecting the foregoing.

**Yank-a-Bank:** a Facility Agreement provision that allows the Borrower to throw a Lender out of a Facility if it won't agree to an amendment. Certain Facility Agreement amendments (including amendments affecting pricing of the loans) cannot be achieved without approval of all Lenders, or all affected Lenders. Yank-a-Bank provisions enable the Borrower to squeeze out dissenting Lenders in a 100% vote situation so long as the Majority Lenders (or a higher threshold of the Lenders) have 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. The concept has over time been further expanded in certain transactions to allow repayment of Lenders rather than replacement and/or to apply to Super Majority Lender decisions. "Yanking" can also happen to Defaulting Lenders, Lenders who make claims under Increased Cost Clauses and Lenders claiming Gross-Up.

**Yankee Bond:** an Investment Grade US dollar denominated Bond that is issued by a non-US company and marketed at US investors.

**Yield:** the total rate of return to a Bond investor or Lender under a Facility Agreement (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.

**YieldCo:** a public vehicle created for the purpose of holding and acquiring assets with a predictable cash flow stream in order to fund a regular and increasing dividend to public investors. YieldCos are typically created by publicly traded energy companies or private investment funds to hold conventional and renewable power projects that are not eligible for MLP treatment under the US tax code, but that have long-term contracts with creditworthy counterparties that produce a reliable cash flow stream. Some YieldCos use a tax-advantaged "Up-C" structure that borrows heavily from the structure used in UPREITs and some have incentive distribution rights, or "IDRs", which is a concept borrowed from the wonderful world of MLPs.

**YTD:** year-to-date.

**Zero Coupon Bond:** a Bond that is issued with substantial Original Issue Discount 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 in certain jurisdictions (including the US and UK) have held that the board of directors' fiduciary duties morph to include (or in certain circumstances are owed exclusively to) the Borrower's creditors. Prior to entering the Zone of Insolvency, Borrowers do not owe their creditors any fiduciary duties.



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