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*The*  
**BOOK**  
*of*  
**JARGON<sup>®</sup>**  
**Hedge Funds**

**The Latham & Watkins Glossary of  
Hedge Fund Slang and Terminology**

First Edition

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The purpose of this publication is to assist the newest members of the hedge funds community in learning to talk the talk of hedge funds. It is intended to be a “Berlitz Course” for recent law school and business school graduates seeking initiation into the industry, and a desktop reference for not-so-recent graduates. In this book, you will find the key to the secret verbal handshakes that make up the code of the hedge fund community.

*The Book of Jargon®: Hedge Funds 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 often encountered in establishing and operating hedge funds. These terms raise complex legal issues on which specific legal advice will be required. The terms are also subject to change as applicable laws and customary practice evolve.*

*As a general matter, The Book of Jargon®: Hedge Funds is drafted from a US perspective. 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 e-mail to [hedgeboj@lw.com](mailto:hedgeboj@lw.com).*

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

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

*'40 Act*: another name for the Investment Company Act of 1940, and sometimes confused with the Investment Advisers Act of 1940.

*3(a)(2) Transaction*: an exempt issuance by banks under Section 3(a)(2) of the Securities Act. See Section 3(a)(2) of the Securities Act.

*3C1 Fund*: a Hedge Fund that is exempt from the registration provisions of the Investment Company Act of 1940 (per Section 3(c)(1)) so long as the fund is beneficially owned by not more than 100 investors and is not making a public offering of its Securities. A single investor sometimes counts as more than one beneficial owner under this rule.

*3C7 Fund*: a Hedge Fund that is exempt from the registration provisions of the Investment Company Act of 1940 (per Section 3(c)(7)) if it meets the following requirements: (1) it has only Qualified Purchasers as investors and (2) is not making a public offering of its Securities.

*100 Holder Rule*: a Hedge Fund may avoid registration as an investment company under of the Investment Company Act of 1940 per Section 3(c)(1) if it is beneficially owned by not more than 100 investors and is not making a public offering of its Securities. A single investor sometimes counts as more than one beneficial owner under this rule. See 3C1 Fund.

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

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

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

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

*ABS*: abbreviation for Asset-Backed Security.

*Accelerated Share Repurchase (ASR)*: a method used by an Issuer to buy back its own shares from the market via a dealer. Pursuant to a private agreement between Issuer and dealer, Issuer pays the Notional Amount of the repurchase price to dealer, receives an initial delivery of shares from the dealer and retires up to the notional number of shares received from dealer. Dealer "borrows" the shares delivered to Issuer from the securities lending market for the shares and later covers the borrowing with purchases of shares in the market. At maturity, the parties "true up" the difference between the repurchase price paid by the Issuer and the average share price at maturity. Also referred to as an Accelerated Share Buyback, or ASB.

*Acceleration*: the end of the line under an Indenture or Credit Agreement. The definitions of Default and Event of Default describe how Acceleration occurs. Following an Event of Default, the Bondholders

(under an Indenture) or Lenders (under a Credit Agreement) have the right to “accelerate” the due date of their debts; in other words, they have the right to declare their Notes or loans immediately due and payable. Bankruptcy and insolvency Events of Default automatically lead to Acceleration.

*Accredited Investor*: defined under SEC Rule 501 of Regulation D, this refers to people and entities that are permitted to buy Securities in a Private Placement. The term covers virtually all the types of institutions that are participants in the Private Placement market, and also includes people who meet certain income or net worth thresholds.

*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 forth in the Indenture under which the Bonds or Notes were issued.

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

*ADR*: abbreviation for American Depositary Receipt.

*ADS*: abbreviation for American Depositary Share.

*ADTV*: abbreviation for Average Daily Trading Volume.

*ADV*: see Form ADV.

*Adviser*: see Fund Manager.

*Advisers Act*: another name for the Investment Advisers Act of 1940.

*Advisory Fee*: the fee that is charged to a fund for investment advisory services. See also Management Fee.

*Affiliate*: defined slightly differently in different types of agreements, but generally refers to a subsidiary, corporation, partnership, or other person controlling, controlled by or under common control with another entity. The official Securities law definition is found in SEC Rule 144; however, the definition of “affiliate” is different under the Investment Company Act and the Investment Advisers Act.

*Affiliate Securities (Control Securities)*: Securities of an Issuer held by a person deemed an Affiliate of such Issuer under Rule 144 of the Securities Act. Such Securities are subject to the volume and manner of sale limitations of the rule.

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

**Agency Trade:** a trade facilitated by a broker involving the transfer of Securities between customers. The broker involved receives a commission. Compare Principal Trade.

**Alfred Winslow Jones:** the father of the Hedge Fund. A.W. Jones is credited for creating the basic Hedge Fund operating structure: (i) Leverage, (ii) short positions as a Hedge against Long positions and (iii) the 20 percent Performance Fee. His "hedged fund," A.W. Jones & Co., created in the late 1940s, was the most successful of its kind, and it spawned an entire industry. It is still around to today and now operates as a fund of funds.

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

**Alpha:** the amount that an investment's Average Rate of Return exceeds the Risk Free Rate, adjusted for the inherent Systematic Risk. Measures the value that an investment manager produces, by comparing the manager's performance to that of a risk-free investment.

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

**American Depositary Receipt (ADR):** a Security that is held by a depository institution representing a specified number of underlying ordinary shares of a non-US company.

**American Depositary Share (ADS):** United States dollar-denominated share of a non-US company available for purchase on a United States exchange. ADSs are issued by a depository institution in the United States under agreement with the issuing foreign company. Compare ADRs, which are not actually traded on an exchange.

**American Option:** an Option exercisable at any time prior to and including the Expiration Date. Compare European and Bermuda Options.

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

**Amortization Schedule:** the schedule of regularly timed payments of principal prior to the maturity of a loan.

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

**Annual Rate of Return:** the compounded gain or loss in a Hedge Fund's Net Asset Value during a calendar year.

**Annualized Rate of Return:** Rate of Return on an investment lasting less than or more than one year, calculated as if it were a one-year return. For example, in the case of a one month investment, the Rate of Return for one month is multiplied by 12 to obtain an Annualized Rate of Return.

**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.

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

**ASR:** abbreviation for Accelerated Share Repurchase.

**Asset-Backed Security (ABS):** a Security backed by a pool of assets selected by a banking institution or asset manager (e.g., Mortgages, credit card receivables, loans, etc.). The cash flows from these assets are used to repay the Security holders.

**Asset Manager:** see Fund Manager.

**Assets Under Management (AUM):** the market value of all the assets managed by an Investment Adviser or Fund Manager.

**Asset Swap:** a Swap involving an exchange of the flow of payments from an asset for a different set of cash flows.

**Assignment:** a transfer of its rights and obligations under an agreement to a new party. The Advisers Act also has a specific definition for "assignment" which includes any direct or indirect transfer or Hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a Security holder of the assignor.

**At Par:** see Par Value.

**At-the-Money:** an Option is At-the-Money when the price of the asset underlying the Option equals the Strike Price. Compare In-the-Money and Out-of-the-Money.

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

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

**Average Annual Return:** see Annualized Rate of Return.

**Average Daily Trading Volume:** average amount of individual Securities traded in a day.

**Average Monthly Return:** cumulative gains and losses *divided by* the number of months of the investment's life, with compounding taken into account.

**Average Rate of Return:** the sum of a fund's Rates of Return over a number of periods *divided by* the number of applicable periods.

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

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

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

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

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

**Bankruptcy Remote Vehicle:** a company that is set up within a corporate group in a way so as to prevent the insolvency of that company from

affecting any other company within the group. A Bankruptcy Remote Vehicle may also be established as an orphan outside any corporate group, which is common in the case of issuers of ABS and MBS. A Bankruptcy Remote Vehicle is often created for a limited corporate purpose. A typical example would be when a Bankruptcy Remote Vehicle is set up for the purpose of acquiring or operating a particularly risky asset or making investments. Conducting a transaction by means of forming and utilizing a Bankruptcy Remote Vehicle is a type of Off Balance Sheet Arrangement. Also known as a Special Purpose Vehicle (SPV).

**Basel (Accords):** banking regulation recommendations (Basel I, Basel II and Basel III) issued by the Basel Committee on Banking Supervision (BCBS). The most recent accord agreed upon by members of BCBS, Basel III, introduces new regulatory requirements regarding bank liquidity and Leverage, following the financial crisis of late 2000s.

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

**Basis:** in the context of Futures, the difference between the Spot Price and the Futures price. In the context of Options, the difference between a Call Option and a Put Option.

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

**Basis Risk:** the risk that offsetting investments in a hedging strategy will not experience price changes in entirely opposite directions from each other; often used in reference to the difference between the Spot Price and the Futures price.

**Basket Option:** a Derivative whose underlying value is a (weighted) sum or average of different assets.

**Bear Hug Letter:** an offer letter by an acquiror to buy a Target at a price considerably in excess of the Target's current share price. Called a Bear Hug because the high price is hard to resist.

**Bearish Trading:** trading by an investor with an expectation that a market (or Security) will fall in price. Compare Bullish Trading.

**Bear Spread:** an Option strategy that results in limited loss if price rises and a limited profit if price falls.

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

**Benchmark:** a standard that serves as a basis for comparison in a given market (a 3-month federal T-bill is a benchmark for US interest rates).

**Beneficial Owner:** Section 13(d) of the Exchange Act and the rules adopted thereunder (most notably Rule 13d-3) cover the details of this concept. 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.

**Bermuda Option:** an Option exercisable during predetermined windows, subject to certain conditions (knock-in/knock-out events), and at the Expiration Date. Compare European and American Options.

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

**Best Execution:** the obligation of an investment adviser to execute orders that provide the most favorable terms (*i.e.*, price, speed and likelihood of execution).

**Beta:** percentage change in the price of a Security for a one percent change in the market; also gauges the risk of a fund by measuring the volatility of its past returns in relation to the returns of a Benchmark.

**Bid:** the price at which a buyer is willing to buy a Security and the quantity to be purchased.

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

**Big Cap:** a Market Capitalization between US\$10 billion and US\$200 billion. See also Large Cap.

**Bips:** a conversational reference to Basis Points.

**BIV:** abbreviation for Bond Investment Value.

**Blackout Period:** in the Securities context, Blackout Period refers to a period during which certain designated individuals are prohibited from trading in a company's equity Securities. Blackout Periods are also governed by SEC Regulation BTR (Blackout Trading Restriction), which came about as a result of Sarbanes-Oxley. See Regulation BTR.

**Blackout Trading Restriction:** see Regulation BTR.

**Black Scholes:** a methodology for determining the value of Options.

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

**Bond Investment Value:** the value of a Convertible Bond determined without regard to the conversion feature.

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

**Bookrunner:** the Bookrunner in a securities offering manages the syndication efforts. See Lead Managing Underwriter. Similarly, in the finance context the Bookrunner is the arranger who determines what portion of a Credit Facility will be allocated to each potential Lender.

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

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

**Borrower:** an entity that borrows under a credit facility.

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

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

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

**Break-Up Fee:** in an M&A transaction, a fee the seller must pay to the original buyer if the seller ends up selling to a different buyer.

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

*Bridge Loan Agreement*: a Credit Agreement governing Bridge Loans.

*Bridge Loans*: short-term loans that typically (although not always) are not intended to be funded. The purpose of a Bridge Loan is to provide a bidder with committed financing in the context of an auction for a business in case the Subordinated acquisition financing cannot be consummated prior to the consummation of the acquisition (*i.e.*, to “bridge” the gap in financing). Traditionally, Bridge Loans are used by Financial Buyers (Sponsors) in auction situations, but corporate buyers also sometimes use Bridge Loans to finance acquisitions.

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

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

*Bringdowns*: shorthand for Bringdown Certificates of Good Standing.

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

*Buffer*: in the context of a structured note, a level of protection against a loss resulting from the price of the note’s underlying reference asset moving in a direction contrary to the investor’s strategy.

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

*Bullish Trading*: trading by an investor with an expectation that a market (or Security) will rise in price. Compare Bearish Trading.

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

*Butterfly*: a limited risk, non-directional Options strategy that is designed to have a large probability of earning a small limited profit when the future volatility of the underlying is expected to be different from the implied volatility. Butterfly spreads use four Option contracts with the same expiration but three different Strike Prices to create a range of prices the strategy can profit from. The payoff diagram resembles the shape of a butterfly.

*Call Option*: a financial contract between a buyer and a seller in which the buyer has the right (or option) to buy a specific quantity of a Commodity or a Security or other financial instrument from the seller at a certain time and at a certain price. Compare Put Option.

**Call Premium:** the 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. Equivalent to a prepayment premium in a Credit Agreement.

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

**Call Spread Overlay:** a Hedging transaction in which the Issuer simultaneously purchases a Call Option that mimics the Call Option embedded in a series of Convertible Bonds and then sells a Warrant on the same number of underlying shares at a higher Strike Price. The net effect is an increase in the Conversion Premium of the Convertible Bonds to the Strike Price of the Warrant. There may also be favorable tax benefits to the Issuer. Call Spread Overlays are a common companion to new Convertible Bond issuances. Also known as a “bond hedge overlay.”

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

**Capacity Constraint:** the maximum amount of assets that a Fund Manager is able to manage effectively.

**Capex:** shorthand for Capital Expenditures.

**Capital Account:** an accounting method used to track initial investor contributions to the capital of a fund, adjusted over time for, among other things, additional contributions, income or loss of the fund and fees and expenses of the fund.

**Capital Commitments:** the money that investors commit to invest in the Hedge Fund and that the Hedge Fund, in turn, uses to make investments.

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

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

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

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

**Capital Markets:** a broad term that refers to the market for raising money through securities offerings and the subsequent trading in those Securities in the Secondary Market.

**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, Preferred Stocks and common equity.

**Capped Call:** a Hedging transaction in which the purchaser’s Call Option exposure is “capped,” for example, when 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.

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

**Carried Interest:** the percentage of an investment’s profit that is paid to the person who generated the profit, usually as an incentive. For Hedge Funds, this is effectively the Performance Fee.

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

**Cash-and-Carry:** a term that refers to purchasing a cash instrument and holding it for a period of time.

**Cash Equivalent:** highly-rated, short-term, liquid investments that are readily convertible to cash and have short maturities such as Money Market funds.

**Cash Flow Revolver:** a Revolving Facility that provides the Borrower with a line of credit up to a fixed amount, in contrast to an asset-based loan, which is based on the value of certain categories of the Borrower's assets as of a given time. A Cash Flow Revolver typically contains more Financial Covenants than an asset-based loan, but also has fewer ongoing reporting requirements. In a Cash Flow Revolver, the Lenders will focus on a Borrower's ability to cover debt service by generating cash flow, whereas in an asset-based loan, the Lenders will focus on the value of certain categories of the Borrower's assets, 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 Settlement:** a method of settling Derivatives contracts and other instruments by payment of an intrinsic cash value (net) rather than by physical delivery of the underlying asset against payment of a specified amount.

**Cayman Fund:** an Offshore Fund that is formed in the Cayman Islands.

**CCO:** shorthand for "chief compliance officer," the CCO is the officer responsible for overseeing and managing compliance issues within a company.

**CDO:** abbreviation for Collateralized Debt Obligation.

**CDS:** abbreviation for Credit Default Swap.

**Ceiling:** the maximum level (price, interest rate, etc.) permitted in a transaction.

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

**Certain Funds:** is a requirement of the UK Takeover Panel (which regulates acquisitions of public companies in the UK) and a number of comparable European regulators that the bank making a takeover offer on behalf of a bidder must verify that the bidder has the money available to close its deal at the time the public offer is first announced. This means the financing commitments for a going private transaction need to be almost completely condition free (so the bidder can be "certain"

that it will have the funds when it needs them). Although the Certain Funds requirement only applies as a matter of regulation to acquisitions of European public companies, sellers of private companies in Europe may seek to require that the buyers have Certain Funds commitments to provide the required financing as a condition to winning the private auction of the company being sold. Although there have been some examples of Certain Funds style financing commitments in the US market, they are few and far between.

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

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

*CFTC:* abbreviation for the US Commodity Futures Trading Commission, the regulatory body established to regulate the activities of the US futures exchanges and commodity exchange members, futures commission merchants, commission-registered futures industry salespeople and associated persons, commodity trading advisers and commodity pool operators.

*Change of Control:* a material change in the ownership or control of a company (such as a material change in the makeup of its board of directors). Definitions vary. See Change of Control Covenant, Change of Control Default and Change of Control Put. For purposes of the Advisers Act, a transaction that does not result in a change of actual control or management of an Investment Adviser is not deemed an Assignment for purposes of Section 205(a)(2) of the Advisers Act.

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

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

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

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

*CIM:* abbreviation for Confidential Information Memorandum. See also Bank Book.

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

*Class:* often used in the context of company stock, which may be issued in different Classes, where each Class of stock is accompanied by different rights for its stockholder. The term is also often interchangeable with "Tranche" in the context of loans or Derivatives.

*Class Voting:* type of voting where one or more Classes vote separately (and normally the affirmative vote of a majority of each affected Class is required for an Amendment or other action to pass).

*Clawback:* the obligation to return to a fund distributions previously received from the fund. This is sometimes used to refer to the obligation of a Fund Manager to return excess Performance Fee distributions, which can occur when markets or investment outcomes are strong in the early years of the life of a fund and weak in later years. This is also used to refer to the obligation of fund investors to return distributions previously received if the fund requires those amounts to meet its expenses or liabilities. In the Bankruptcy context, if a creditor receives assets or payments from a debtor during the 90-day period (or one year period in the case of insiders) prior to the date the debtor files a Bankruptcy petition or obtains a Fraudulent Transfer from the debtor prior to the Bankruptcy petition, a Bankruptcy court can require that such creditor return those assets or payments that are determined to be preferential transfers or Fraudulent Transfers. This is known as the Bankruptcy court exercising its "clawback powers." The creditor may be able to assert a defense against a Preference, such as by demonstrating that it gave "new value" to the debtor in exchange for the assets or payments received or that the debtor made the payment in the ordinary course of business.

*Clean Price:* the price of a Security excluding any accrued Interest.

*Clearing House:* a financial institution that provides clearing and settlement services for financial and commodities Derivatives and Securities transactions which are executed on a Futures exchange,

Securities exchange or Over-the-Counter. A Clearing House stands between two clearing firms and its purpose is to reduce the risk of clearing firms defaulting on their trade obligations.

*Clearing Member*: a member firm of a Clearing House.

*CLN*: abbreviation for Credit Linked Note.

*Closed-End Fund*: a fund registered under the Investment Company Act of 1940 that is typically publicly traded on a stock exchange for the purpose of investing in Securities such as stocks, bonds, money market instruments and similar assets, but does not provide daily liquidity to investors as would a Mutual Fund.

*Closed Fund*: a Hedge Fund that has at least temporarily stopped accepting capital from investors.

*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. If the Closing goes smoothly, plan on staying up all night celebrating afterwards.

*Closing Condition*: another name for a Condition Precedent.

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

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

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

*Club Deal*: historically, a smaller loan pre-marketed to a group of relationship banks. The term Club Deal can also refer to a very large Sponsor LBO transaction where multiple Sponsors pool together in order to buy a multi-billion dollar company.

*CME*: abbreviation for CME Group Inc.

*CME Group Inc.*: owns and operates large Derivatives and Futures exchanges in Chicago and New York City, as well as online trading platforms.

*CMO*: abbreviation for Collateralized Mortgage Obligation.

*COBRA*: FINRA's Corporate Offerings Business Regulatory Analysis system, which is the website system used to make FINRA filings. Such filings are necessary for IPOs and certain secondary equity offerings of newly public companies.

*Co-Invest*: a minority investment made directly into an operating company alongside a financial sponsor or other private equity investor.

*Collar*: a form of Hedge that limits the upside and protects the downside on the particular item being hedged. With respect to Options, a Collar is created by purchasing an Out-of-the-Money Put Option while simultaneously writing an Out-of-the-Money Call Option. With respect to Interest Rate Swaps, an Interest Rate Collar on a Floating Rate Security would establish an upper and lower limit on the Floating Rate.

*Collateral*: assets of a Borrower and any guarantors or other grantors or Pledgors that secure the Borrower's and guarantor's obligations under the applicable transaction documents in a Secured Debt financing or other transaction.

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

*Collateralized Debt Obligation (CDO)*: a Security collateralized by a pool of debt obligations (bonds, loans, etc.) with multiple classes, or Tranches, where each Tranche offers a different degree of risk and return.

*Collateralized Mortgage Obligation (CMO)*: a type of Mortgage-Backed Security with multiple classes, or Tranches, where each Tranche offers a different degree of risk and return.

*Comfort Letter*: the natural enemy of both accounting firms and junior- and mid-level law firm associates. The Comfort Letter is a letter from the Issuer's auditors addressed to the Underwriters (in public offerings) or the Initial Purchasers (in 144A Offerings) that provides "comfort" that the Numbers included in the Prospectus (in public offerings) or in the Offering Memorandum (in 144A Offerings) are accurate. The prescribed form a Comfort Letter should take is spelled out in SAS 72. The Underwriters or Initial Purchasers (and sometimes the board of directors) seek such a letter in order to help establish a Due Diligence Defense. The Comfort Letter allows the Underwriters or Initial Purchasers to demonstrate reliance on experts for the audited financials and an element of a "reasonable investigation" for the unaudited financials and other unaudited financial information. The Comfort Letter is delivered at Pricing. See also Bringdown Comfort Letter, Negative Assurance and SAS 72.

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

*Commercial Paper*: an unsecured debt instrument issued by a company to finance short-term liabilities. Commercial Paper usually matures in less than 270 days, thus not falling within the securities law definition of Security and allowing the Issuer to avoid registering the paper with the SEC.

*Commission:* see Securities and Exchange Commission.

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

*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. Commodities trading is generally regulated by the CFTC. See *Trading Places* (Paramount Pictures 1983).

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

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

*Comparable Treasury:* when bankers refer to the Comparable Treasury they mean the US Treasury Bond having a remaining life to maturity that most nearly approximates the Bond in the 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.

*Compounded Monthly Return:* average monthly increase that, when compounding is taken into account, would have produced a fund's total return over any period of time.

*Conditions Precedent:* the conditions that need to be satisfied on or prior to the Closing of the relevant transaction.

*Confidential Information Memorandum (CIM):* the marketing book used to Syndicate Credit Facilities. Also refers to a marketing book used in a mergers and acquisitions or auction context. Also referred to as the Bank Book.

**Conflict of Interest:** occurs when a fund or Adviser is motivated in a manner that is not in the best interest of the investor. Conflicts of Interest with investors must be disclosed to investors.

**Consent Solicitation:** the form of relief sought by Issuers who want to amend Bond Covenants. Consent Solicitations are generally less common than bank loan Amendments. Because Bond Covenants are incurrence-based, unlike Financial Covenants (which are found in Credit Agreements), Issuers are less likely to need relief under Bond Covenants. For the same reason, Covenant-lite loan Borrowers are unlikely to seek Amendments to the applicable Credit Agreement. Bondholders are also likely to charge Issuers more for consents, in part because the longer and more punitive Call Protection Bondholders typically enjoy gives them greater Leverage. See Non-Call Period.

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

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

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

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

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

**Control:** a means of achieving Perfection under Article 9 for certain types of Collateral. For certain Collateral, such as deposit accounts, Control is the only method of Perfection. For other Collateral, such as securities accounts, certificated Securities and uncertificated Securities, Perfection can be achieved by filing a Financing Statement, although Perfection by Control has higher Priority in instances where Perfection can be achieved both ways.

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

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

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

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

**Conversion Ratio:** the ratio of the number of common shares received at the time of conversion for each convertible Security.

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

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

**Convertible Arbitrage:** a conservative, market-neutral trading strategy that aims to profit from pricing differences in the values of Convertible Bonds or Preferred Stock, the Options embedded in them and the Common Stock into which they are convertible.

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

**Convertible Hedge:** a strategy, which involves buying a convertible Security while simultaneously selling short the same company's Common Stock.

**Counterparty:** a party to an agreement.

**Counterparty Risk:** risk to a party to an agreement that the counterparty will not live up to its contractual obligations.

**Coupon:** the contractual Interest Rate stated on a Bond when the Bond is issued. Note the Coupon is not the same as the Yield.

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

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

**Covered Call:** a Call Option position coupled with an ownership of an equal amount of assets underlying the Call Option.

**Covered Short:** purchasing Securities in order to close a short position (under which the same type of Securities were sold Short).

**CPs:** abbreviation for Conditions Precedent.

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

**Credit Agreement:** the legal document in which one or more Lenders agrees to lend money to a Borrower. The Credit Agreement sets forth the mechanics for the making of loans and the issuance of Letters of Credit and contains Representations and Warranties of the loan parties, Affirmative Covenants, Financial Covenants, Negative Covenants, the remedies of the Lenders after the occurrence of an Event of Default, and expense reimbursement, indemnity and other boilerplate provisions.

**Credit Default Swap (CDS):** a Credit Derivative in the form of a Swap with payouts linked to and triggered by the occurrence of one or more agreed events evidencing or signifying deterioration in the creditworthiness of one or more reference entities or indices.

**Credit Derivative:** a contract obligating the buyer to make one or more fixed payments (upfront or on a periodic basis) in exchange for a payment to be made by the seller if, and only if, a particular predetermined Credit Event occurs with respect to the reference business or businesses. Fundamentally, a Credit Derivative is a conduit for the transfer of credit risk.

**Credit Enhancement:** the improvement of the credit quality of a company or its Securities by employing resources, financial instruments

or the credit of another entity to support such credit quality. Common methods of Credit Enhancement include guarantees, Letters of Credit, surety bonds, reserve accounts, cash collateral accounts and Monoline Bond Insurance.

*Credit Event*: a default event that occurs when an entity fails to meet its obligation in a financial transaction. In the context of Credit Derivatives, a Credit Event is a financial event related to an entity, such as a Bankruptcy, which triggers specific protection to the non-defaulting party under the transaction.

*Credit Facility*: a collective reference to the loans and commitments of the Lenders.

*Credit Intermediation*: a service provided by financial institutions that stand between non-financial parties in the Derivatives markets in order to alleviate concerns about dealing with counterparties with low credit ratings and/or limited operational capacity.

*Credit Linked Note (CLN)*: a type of Credit Derivative that is structured as a Security with an embedded Credit Default Swap allowing the Issuer to transfer credit risk to the investors (since the Issuer is not obligated to repay the debt if a specified event occurs).

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

*Cross Acceleration*: an Event of Default, which occurs when other indebtedness of the Borrower or in the Borrower's group above an agreed threshold is accelerated. Contrast with Cross Default.

*Cross-Currency Swap*: see Currency Swap.

*Cross Default*: an Event of Default which occurs when other indebtedness of the Borrower or in the Borrower's 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 Credit Agreement benefit from and can rely on the occurrence of an Event of Default with respect to more stringent obligations agreed in another Credit Agreement. Contrast with Cross Acceleration.

*Cross-Trade*: when one broker executes both a buy and a sell for the same Security from one client account to another.

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

*Currency Swap*: an agreement between parties to exchange Interest payments and/or principal amounts denominated in two different currencies. Entered into by a company for the purpose of Hedging foreign currency risk associated with the company's operations. A US-based company with operations in Europe might use a Currency Swap to protect itself from fluctuations in the Euro-to-Dollar exchange rate.

**Custodian:** a specialized financial institution responsible for holding and safeguarding a customer's financial assets.

**Date Count Fraction:** the annualized number of days used in calculation of a floating amount (*i.e.*, number of days in Designated Maturity *divided* by 360 or 365).

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

**Debt Instrument:** a paper or electronic obligation that enables the issuing party to raise funds by promising to repay a Lender in accordance with terms of a contract. Usually in the form of Notes, Bonds, certificates, Mortgages or leases.

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

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

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

**Defeasance:** a way to escape the Covenants governing Bonds even during a Non-Call Period. Defeasance is a process by which an Issuer may have the Covenants under its Indenture (and even its payment

obligations in the case of Legal Defeasance) discharged if the Issuer irrevocably deposits with the trustee enough money (or US Treasury Securities) to cover all Interest and principal payments on the Notes until either maturity or the first date on which the Notes are optionally redeemable. This can be very, very expensive. Defeasance can take the form of Covenant Defeasance or Legal Defeasance. Legal Defeasance is not an available option under current law because no law firm can give the required tax opinion (*i.e.*, “this defeasance will not be a taxable event to Bondholders”). There is no tax problem with Covenant Defeasance under current law because it does not let the Issuer off the hook from its payment obligations.

*Delta*: ratio comparing the change in the value of the underlying asset for each dollar change in the value of the Derivative.

*Demand Registration Rights*: another name for Demand Rights.

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

*Depository Trust Company (DTC)*: a member of the US Federal Reserve System and an SEC clearing agency that brings efficiency to the Securities industry by retaining custody of millions of Securities issues, effectively “dematerializing” most of them so that they exist only as electronic files rather than as countless pieces of paper. What this means is a securities holder does not have to keep actual physical Securities in the safe. Instead, DTC takes custody of the Security (which is placed in DTC's vault) and then keeps an electronic record of who the real owners of the Security are.

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

*Derivative*: a financial instrument whose value is based on an underlying index, Security or another financial instrument. Derivative instruments come in four basic forms: Forward contracts, Futures contracts, Swaps and Options.

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

*Designated Maturity*: the period over which the floating amount is calculated.

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

*DFA:* abbreviation for Dodd–Frank Wall Street Reform and Consumer Protection Act.

*Diligence:* see Due Diligence.

*Dilution:* reduction in earnings per share of Common Stock that occurs as a result of the issuance of additional shares or the conversion of convertible Securities.

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

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

*Dirty Price:* the price of a Security including accrued Interest.

*Disclosure:* a document used to provide information about the fund to investors. See also Offering Memorandum.

*Discount Notes:* Notes that are issued for less than their face amount (Par Value). The important thing to remember is that although the Notes are issued below their face amount, the Issuer owes the face amount of the Notes when they mature. This means a holder of the Discount Note receives a return both off the Interest payment or Coupon (if there is one) and by having paid less than it will receive back at maturity. A Discount Note has an Accreted Value on the date it is issued equal to what was paid for it. The Accreted Value creeps up over time to equal the Par Value of the Bond. This creeping is called “accreting” and is treated as Interest expense to the Issuer and Interest income to the Bondholder. If you hold a Discount Note close to your ear, you can actually hear the accretion occurring.

*Discount Rate:* the Interest Rate that banks are charged to borrow short-term funds directly from the Federal Reserve Bank.

*Distressed Securities:* Securities of a company that are either already in default or heading toward such a condition, usually as a result of the company's inability to meet its financial obligations.

*Distressed Securities Investment:* a purchase of deeply discounted Securities that were issued by troubled or bankrupt companies. Also, short-selling the stocks of those companies.

*Dodd-Frank Act:* another term for Dodd–Frank Wall Street Reform and Consumer Protection Act.

*Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA):* a US federal statute that was signed into law on July 21, 2010, representing some of the most sweeping changes to the financial industry in decades in response to the 2008 financial crisis.

*Dollar Roll:* differs from a Repo in that the borrowing party does not have to return the same Securities, but substantially similar ones. See Repo.

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

*Drawdown:* the difference between the fund's highest Net Asset Value and its lowest Net Asset Value, quoted as a percentage.

*DTC:* abbreviation for the Depository Trust Company.

*Due Diligence:* what Fund Managers, lawyers and bankers do to learn about a company. In the M&A context, the buyer (and its lawyers and bankers) does Due Diligence so it can understand what it is buying. In Securities and Capital Markets transactions, the bankers and lawyers do Due Diligence in order to establish a Due Diligence Defense. In the bank loan market, bankers and lawyers do Due Diligence to make sure the deal makes sense. Diligence activities are broad and range from a review of relevant documents and Financial Statements to plant visits and interviews with management, outside accountants, counsel and customers and suppliers.

*Due Diligence Condition:* a Condition Precedent, generally found in the text of a merger agreement or Commitment Letter, that the commitment to consummate the transaction is subject to the satisfactory completion of Due Diligence by the buyer.

*Due Diligence Defense:* the Underwriters' principal defense in securities offerings lawsuits. The Securities laws impose liability on certain persons and entities for damages resulting from any material untrue statement contained in, or omitted from, a Registration Statement. Issuers are strictly liable for the information in the Registration Statement, but other entities (including Underwriters and the board of directors) involved in the offering can avoid liability by demonstrating a Due Diligence Defense. Specifically, Underwriters and the board of directors have an affirmative defense to Section 11 and Section 12 liability if they

have relied on experts for the Expertised Parts of the Prospectus and conducted a “reasonable investigation” for the other portions. Similar defenses are available to Rule 10b-5 claims made with respect to 144A/Regulation S offerings.

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

*Dynamic Hedging:* a periodic process of adjustment to the Initial Delta Hedge to account for changes in the value of the asset underlying the initial Hedge and other components used in Derivative pricing. Relevant only to transactions with optionality (outright option or embedded option).

*Early Exercise:* in the case of Options, exercising an Option before its Expiration.

*Earmarked Investments:* investments or contributions that are specified or set aside for a particular purpose or project.

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

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

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

*Emerging Markets:* nations with social or business activity in the process of rapid growth and industrialization, usually in Latin America, Eastern Europe, Africa and Asia.

*Emerging-Markets Investment:* investing in Emerging Markets. Such funds typically employ a short- to medium-term holding period and experience high volatility.

*Engagement Letter:* a letter that outlines the engagement of the investment bankers to sell Securities on behalf of an Issuer or advise the company in an M&A deal.

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

**Equity Amount:** in the context of an Equity Swap, the product of the Equity Notional Amount and Rate of Return.

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

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

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

**Equity Cure:** an infusion of cash from stockholders in exchange for capital stock of the Borrower in order to cure a Financial Covenant Default.

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

**Equity Notional Amount:** in the context of an Equity Swap, represents the value of the Reference Asset at the inception of the Swap.

**Equity Notional Reset:** in the context of an Equity Swap, upon an Equity Notional Reset, the parties will make/receive settlement payments as if the Swap had been terminated on such date.

**Equity Swap:** a Swap transaction relating to a single share of Common Stock, index, or other equity Security, or a basket of indices.

**ERISA:** another name for the Employee Retirement Income Security Act of 1974. ERISA is the federal law that sets minimum standards for most voluntarily established pension and health plans in private industry. ERISA requires plans to provide participants with plan information

including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control Plan Assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.

**ETF:** abbreviation for Exchange Traded Funds.

**eToys:** an online retailer specializing in the sale of toys. Also the plaintiff in an important 2005 case where the court held that the lead Underwriter in a Firm Commitment Underwriting may have a fiduciary duty to the Issuer in certain circumstances. In light of the decision, most banks now include language (known as eToys language) in their engagement 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).

**Eurex:** one of the world's largest Derivatives exchanges.

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

**Eurodollar Loans:** loans made under the Eurodollar (or LIBOR) Option for Interest Rates. See LIBOR.

**European Option:** an Option exercisable only at expiration. Compare American and Bermuda Options.

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

**Event-Driven Investment:** an approach that seeks to anticipate certain events, such as mergers or corporate restructurings. Such funds, which include risk-arbitrage vehicles and entities that buy distressed Securities, typically employ medium-term holding periods and experience moderate volatility.

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

**Evergreen:** a provision in a contract that allows for the automatic renewal after the initial term of such contract for successive terms of an agreed upon length so long as neither party gives advance notice of an intent

not to renew. As an example, the contract language will look something like this: "The term of this agreement shall commence on January 1, 2012, and continue through December 31, 2012, and shall continue from year to year thereafter unless terminated pursuant to section X." Evergreen provisions are useful because they prevent you from having to renegotiate your entire agreement each year unless one party is demanding it.

*Exchange:* often used when referring to the New York Stock Exchange. Can also refer to any other Securities exchange generically speaking.

*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.

*Exchange Act:* another name for the Securities Exchange Act of 1934.

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

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

*Exchange Traded Derivatives:* standardized and "listed" derivatives products.

*Exchange Traded Funds (ETFs):* investment vehicles formed for a particular investment strategy and traded much like stocks on an exchange.

*Exchange Traded Notes (ETNs):* a type of security that combines both the aspects of bonds and Exchange Traded Funds and traded like stocks on an exchange.

*Exempt Reporting Adviser:* a category of Investment Adviser that is not required to register with the SEC but must file disclosure information on a partial Form ADV.

*Exercise:* to require the delivery or to force the purchase of the Option's underlying asset.

*Exercise (Settlement) Price:* the price at which an Option is exercised.

*Exotic Option:* an Option with complex features, usually traded Over-the-Counter.

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

*Expiration (Maturity) Date:* the last day on which an Option holder may exercise an option. This date is stated in the contract at the time the Option is written.

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

*Family Office:* a category of Investment Advisers who advise only clients who are all within 10 generations of a common ancestor and such adviser is not required to register with the SEC under the Advisers Act.

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

*Feeder Fund:* a Hedge Fund that feeds money into a Master-Feeder Fund, which in turn makes the investments on behalf of the entire group of Feeder Funds. See Master-Feeder Fund.

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

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

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

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

**Financial Law Review:** securities offerings and listings in the US: an Overview for Non-US Issuers (2007 Update) (March 1, 2007), available at [www.lw.com](http://www.lw.com). See also Latham & Watkins publication: Financial Statement Requirements in US securities offerings: What Non-US Issuers Need to Know (May 25, 2007), available at [www.lw.com](http://www.lw.com).

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

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

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

**Firm Commitment Underwriting:** this is the type of structure we see in virtually all underwritten deals, whereby upon signing the Underwriting Agreement the Underwriters make a firm commitment to buy the Securities (rather than just agreeing to use their best efforts to find buyers for them). Note that the Underwriting Agreement is not signed until Pricing and the underwriters have a strong sense they can sell the deal.

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

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

**Fixed Charge Coverage Ratio:** the ratio of EBITDA (or Adjusted EBITDA) to Fixed Charges. Most High Yield Indentures permit Issuers to incur debt in instances where, Pro Forma for the incurrence of such debt and the use of the proceeds therefrom, the Issuer's Fixed Charge Coverage Ratio would be above a certain threshold — generally 2.00 to 1.00. The basic idea here is that the Issuer can incur more debt if, after taking into account the newly incurred debt, the Issuer would have at least two dollars of cash flow (or EBITDA) on a trailing twelve-month basis for each one dollar of Interest expense.

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

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

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

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

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

**Floating Rate Option:** in the context of a Swap (such as an Interest Rate Swap or Equity Swap), the floating per annum rate used for calculating the floating amount.

**Floor Level:** see Forward Floor Price.

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

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

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

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

**Form ADV:** a form used by Investment Advisers to register with the SEC and state securities authorities.

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

**Form PF:** a form that is required to be completed by federally registered investment advisers with detailed investment-related information to provide the US Financial Stability Oversight Council with information that it uses to assess systemic risk.

**Form SLT:** a form that is required to be filed with the US Treasury by Investment Advisers, Broker-Dealers, banks and other persons that requests information regarding ownership of US long-term securities by foreign residents and ownership of foreign long-term Securities by US residents.

**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 Cap Price (Threshold Level):** with respect to a non-variable obligation share forward transaction, the share price at which the investor ceases to participate in the stock price appreciation.

*Forward Floor Price (Floor Level):* with respect to a non-variable obligation share forward transaction, the minimum share price at which the investor can sell the underlying shares to the buyer, representing the downside protection level.

*Forward Price:* with respect to a non-variable obligation share forward transaction, the share price at which the investor agrees to sell the underlying shares to the buyer. This amount is protected regardless of how much the underlying share price may decline.

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

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

*Friends and Family Fund:* a fund that is open to investment only from friends and family members of the sponsor of the fund and typically used to build an investment track record for a manager with no track record of its own.

*FTSE:* short for FTSE 100 Index. FTSE is a share index of the 100 most highly capitalized UK companies listed on the London Stock Exchange.

*Fundamental Analysis Investment:* an approach that relies on valuing stocks by examining companies' financials and operations, including sales, earnings, growth potential, asset size and quality, indebtedness, management, products and competition.

*Fund Administrator:* a service provider to a fund that provides certain accounting and back office services.

*Fund Manager:* implements a Hedge Fund's investment strategy and manages its portfolio trading activities. Also referred to as Asset Manager or Investment Adviser. Most Hedge Fund Managers are now required to be registered under the Investment Advisers Act of 1940.

*Fund of Funds:* a Hedge Fund that invests solely in other Hedge Funds.

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

*FWP*: abbreviation for Free Writing Prospectus.

*FX*: short for foreign exchange.

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

*Gamma ( $\gamma$ )*: change in the Delta of an Option in response to a change in the underlying price.

*Gate*: a limitation placed on the amount of investor withdrawals from a fund during a Redemption period.

*GDR*: abbreviation for Global Depositary Receipt.

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

*General Partner*: the individual or firm that organizes and manages a Limited Partnership, such as a Hedge Fund. The General Partner has unlimited residual legal responsibility for the liabilities of a partnership.

*Global Depositary Receipt (GDR)*: a certificate issued by a bank, which represent ownership of an underlying number of shares of a foreign company (usually from Emerging Markets or developing markets).

*Global-Macro Investment*: an approach in which a Fund Manager seeks to anticipate broad trends in the worldwide economy. Based on those forecasts, the manager chooses investments from a wide variety of markets — *i.e.*, stocks, bonds, currencies & commodities. The approach typically involves a medium-term holding period and produces high volatility.

*Global Master Repurchase Agreement (GMRA)*: standard agreement published by ICMA, it governs the ongoing commercial, legal and credit relationship between counterparties to Repo transactions (additional conditions can be contained in the Annex to the agreement).

*Global Master Securities Lending Agreement*: standard agreement published by ISLA, it governs the ongoing commercial, legal and credit relationship between counterparties to Securities Lending transactions (additional conditions can be contained in the Annex to the agreement). See Stock Loan.

*GP*: short for General Partner.

**Green Bond:** a bond whose proceeds are earmarked or otherwise linked to environmental projects.

**Green Shoe:** a special type of purchase Option named in honor of the Green Shoe Company — the first Issuer to have this provision. Green Shoe is the nickname for the Over-Allotment Option granted to the Underwriters in the Underwriting Agreement. The Green Shoe is an Option, typically for up to 30 days, to allow the Underwriters to purchase up to 15 percent (a cap imposed by FINRA rules) more shares than the original number sold by the Issuer in the offering. The purchase price per share for exercising the Green Shoe is the same price as in the related offering. The Green Shoe provides protection that allows Underwriters to “over-allot,” meaning to sell more shares than the number being sold in the offering. The Underwriters can later use the Green Shoe to cover the syndicate short position created by the Over-Allotment sales if the Option price is less than the then-prevailing market price per share. Underwriters generally use the Over-Allotment Option when demand for a Security proves higher than expected and therefore it is too expensive to buy additional shares back in the open market to cover the syndicate short position. Also referred to as “the Shoe.” Note the 15 percent cap does not apply to 144A Offerings.

**Gun Jumping:** the impermissible offering of, or publicity for, Securities during the Pre-filing Period.

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

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

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

**Happy Meal:** the repurchases of stock made by an Issuer from Hedge Funds or other Convertible Bond buyers with the proceeds of a Convertible Bond offering. This transaction earned its name because of the convenience to all parties, as stock repurchases are a frequent Use of Proceeds in Convertible Bond offerings and Hedge Funds frequently Short the Issuer’s Common Stock when purchasing its Convertible Bonds. Happy Meals also generally come with a free toy.

**Hard Call:** a prepayment premium that has to be paid both for Voluntary Prepayments and Mandatory Prepayments. Even a Hard Call provision may include negotiated exceptions for certain Mandatory Prepayment provisions.

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

**Hedge Fund:** a private investment vehicle generally focused on “trading” strategies whose primary objective is often to preserve investors’ capital

by taking positions whose returns are not closely correlated to those of the broader financial markets. Such vehicles are generally more liquid than Private Equity Funds and less liquid than Mutual Funds. Hedge Funds are actively managed by a Fund Manager that typically receives its compensation in the form of a Management Fees plus an Incentive Fee. Hedge Funds, often organized as Limited Partnerships, typically invest on behalf of High Net Worth Individuals and institutions. Such vehicles may employ Leverage, Short Sales, a variety of Derivatives and other hedging techniques to reduce risk and increase returns.

*High Net Worth Individuals:* individuals who are wealthy enough to invest in private investment vehicles. At a minimum, such individuals must generally be at least Accredited Investors. For federally registered Investment Advisers, SEC's Form ADV defines a High Net Worth Individual as "an individual with at least US\$1 million managed by the reporting investment adviser, or whose net worth the investment adviser reasonably believes exceeds US\$2 million (or who is a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940)," which is the minimum wealth required for a federally registered Hedge Fund Manager to charge a High Net Worth Individual a Performance Fee.

*High-Water Mark:* a provision serving to ensure that a Fund Manager only collects Incentive Fees on the highest Net Asset Value previously attained at the end of any prior fiscal year — or gains representing actual profits for each investor.

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

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

*HNW:* abbreviation for a High Net Worth Individual.

*Hold-Back:* a percentage of the amount redeemed that is not returned to an investor until after the expiration of a certain period of time.

*Holdco:* another name for Holding Company.

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

*Holder in Due Course:* a party who purchases a Negotiable Instrument in good faith for value without notice that the instrument is defective or has been dishonored or claimed against by others. Generally, when a party sells a Negotiable Instrument with a non-apparent defect to a Holder in Due Course, that Holder in Due Course takes good title to the Negotiable

Instrument despite the competing claims of another person, subject to certain defenses such as fraud or duress (known as “real defenses”).

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

***Hostile Takeover:*** a takeover of a target company whose management is unwilling to agree to a merger or takeover. Usually, the target company’s board rejects the offer, but the bidder continues to pursue it, or the bidder makes the offer directly after having announced its firm intention to make an offer.

***Hot Issue:*** a new issuance of a Security that sells at a higher price than the original offering price. Often associated with Initial Public Offerings, where the selling price of the stock on the first day of trading rises well above the IPO price.

***Hot Issue Rule:*** nickname for the former NASD Rule 2790, which prohibits certain individuals from trading in Hot Issue IPO equity. This rule was superseded by FINRA Rule 5130, referred to as the “New Issue Rule.” See New Issue Rule.

***Hurdle Rate:*** a fund’s minimum investment return necessary for a Fund Manager to start collecting Incentive Fees. The hurdle is usually tied to a benchmark rate such as Libor or the one-year Treasury bill rate plus a spread.

***Hypothecation:*** the act of pledging collateral (without the transfer of possession or title) to the lender/creditor as security for debt.

***ICMA:*** International Capital Markets Association. ICMA develops market-standard documentation for use by and within the international capital market.

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

***Incentive Allocation:*** another name for Incentive Fee or the allocation of income related to an Incentive Fee. See Incentive Fee.

*Incentive Fee:* the charge — typically 20 percent — that a Fund Manager assesses on gains earned during a given 12-month period. See also Performance Fee.

*Inception Date:* the date on which a fund closes on its initial committed capital.

*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.

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

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

*Independent Director:* directors who do not have a material relationship with the listed company — *i.e.*, they are outsiders, and certainly not employees. Sarbanes-Oxley and the rules adopted by the stock exchanges have a complex set of requirements as to who qualifies as independent. In general, you know one when you see one. SEC rules require that the audit committee of a company be comprised entirely of Independent Directors. Stock Exchange rules require that the full board be comprised of a majority of Independent Directors. Note that a “Non-Interested” Director for purposes of the Investment Company Act is similar in concept but is not the same.

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

*Initial Delta Hedge:* the initial Hedge taken on by a party desiring to offset a long or short position. To Hedge a short position requires an Initial Delta Hedge of between zero and one, and to Hedge a long position requires an Initial Delta Hedge of between zero and negative one.

*Initial Margin:* financial collateral (*e.g.*, cash, Securities) that an investor is required to deposit in order to open a position. Compare Maintenance Margin.

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

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

**Institutional Investor:** an investor, such as an insurance company, pension plan, Hedge Fund, or Mutual Fund, that is financially sophisticated and makes large investments. Compare Retail Investor.

**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 (or inadvertently public) and Private Offering close in time.

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

**Interest:** in a debt context, this is a charge on borrowed money, typically expressed as an annual percentage rate. In an equity context, this is a reference to an equity ownership interest, such as the partnership interest of a General Partner or a Limited Partner in a Hedge Fund.

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

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

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

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

*Internal Revenue Service:* the US federal taxing authority.

*International Swaps and Derivatives Association (ISDA):* Founded in 1985, ISDA has worked to make OTC Derivatives safe and efficient. ISDA developed the ISDA Master Agreement and a wide range of related documentation materials used for documenting Derivative transactions. Its members include a broad range of OTC Derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

*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. In the case of a Call, the price of the asset underlying the Option is greater than the Strike Price; and in the case of a put, the price of the asset underlying the Option is less than the Strike Price.

*Intrinsic Value:* hypothetical payout if an Option is exercised immediately, equal to the In-the-Money amount of the Option.

*Investment Adviser:* see Fund Manager.

*Investment Advisers Act of 1940 (Advisers Act):* a United States federal law created to regulate the actions of Investment Advisers. According to the Advisers Act, unless qualified for an exemption, federally regulated advisers must register with the SEC and abide by the law as set out by the Advisers Act. Non-registered investment Advisers must comply with certain provisions of the Advisers Act.

*Investment Company Act of 1940:* a United States federal law created to regulate investment companies. Hedge Funds of all types generally fall within the definition of investment company under the act, but Hedge Funds are typically exempt from registration as an investment company pursuant to Section 3(c)(1) or Section 3(c)(7) thereof; however,

most Private Funds such as Hedge Funds and Private Equity Funds are exempt from registration under the Investment Company Act pursuant to Section 3(c)(1) or Section 3(c)(7).

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

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

*Investment Objective:* the investment result desired by a fund or client of an Investment Adviser.

*Investment Strategy:* the strategy implemented to achieve the Investment Objective

*Investment Period:* the number of years during which a fund will operate. The Investment Period of a fund can be indefinite.

*IPO:* abbreviation for Initial Public Offering.

*IRS:* abbreviation for Interest Rate Swap or Internal Revenue Service.

*ISDA:* abbreviation for the International Swaps and Derivatives Association.

*ISDA Confirmation:* an ISDA document used to document the economic terms of an OTC Derivative transaction. It can be used as a stand-alone document when in "long-form" or as a supplement to the ISDA Schedule and ISDA Master Agreement.

*ISDA Master Agreement:* standard agreement published by ISDA, it governs the ongoing commercial, legal and credit relationship between counterparties to OTC Derivative transactions. Individual OTC Derivative transactions are documented pursuant to confirmations (see ISDA Confirmation) that supplement, form a part of and are subject to the ISDA Master Agreement.

*ISDA Schedule:* an ancillary document to the ISDA Master Agreement that allows counterparties to customize and amend or supplement provisions of the ISDA Master Agreement.

*ISLA:* International Securities Lending Association.

*Issuer:* the company that is issuing and selling its Securities.

*JOBS Act:* the Jumpstart Our Business Startups Act, signed into law on April 5, 2012. The JOBS Act most notably made significant changes to the regulatory framework of Initial Public Offerings. However, it also enacted changes that liberalized the solicitation and advertising restrictions affecting many Hedge Funds and their offerings. These

changes aim to make it easier for Hedge Funds to attract investors and raise capital.

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

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

*Key Man:* a person who is deemed to be necessary for the success of a fund. Generally a term is provided in the fund documents or in a Side Letter that provides investors with the right of Redemption if a Key Man no longer works for the Fund Manager and is commonly referred to as a “Key Man Provision.”

*Knowledgeable Employee:* an employee of a 3C7 Fund that is permitted to invest in such fund. Typically an employee who is senior management of the fund or its Adviser or participates in the investment activities of the fund.

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

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

*Large Cap:* a Market Capitalization between US\$10 billion and US\$200 billion. See also Big Cap.

*Large Trader:* any person who directly or indirectly controls trades in securities that are equal to or greater than: (1) during a calendar day, either two million shares or shares with a fair market value of US\$20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of US\$200 million.

*Large Trader Rule:* Rule 13h-1, which requires Large Traders, including Investment Advisers, to file Form 13H in order to identify themselves to the Commission, make certain disclosures, and obtain an identification number that is then used to monitor their trading activity.

*LBO:* abbreviation for Leveraged Buyout.

*LBO Fund:* another name for a Sponsor.

*L/C:* shorthand for Letter of Credit.

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

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

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

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

*Left:* see Left Placement.

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

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

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

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

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

**Letter of Credit (L/C):** essentially acts as a guarantee by an issuing bank that kicks in if the Company (the "account party") does not meet an obligation to a third party (the "beneficiary"). A Company may post a Letter of Credit in favor of a third party as a guarantee to that third party that it will pay out on an obligation if needed, or will fulfill a governmental requirement, etc. The two main types of Letters of Credit are Commercial Letters of Credit and Standby Letters of Credit.

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

**Leverage:** borrowed money or securities used by an investor to increase the potential return of an investment. See, e.g., Margin.

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

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

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

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

**LIBOR Loan:** another name for Eurodollar Loan.

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

**Liens Covenant:** a Covenant that restricts the incurrence of Liens and serves to protect the seniority position of debt by preventing more

Secured Debt from either getting ahead (this is what unsecured Senior Notes are worried about) or becoming *Pari Passu* (this is what the Lenders under a secured Credit Agreement are worried about). Senior subordinated lenders will want protection that prevents Security over any other Subordinated Debt. See also Negative Pledge.

***Lien Subordination:*** the Subordination of second lien debt to first lien debt. Here, both Tranches of debt may be *Pari Passu* in terms of payments, and secured by the exact same Collateral, but the second lien is Subordinated because its beneficiaries agree that in the case of the receipt of any proceeds of sales of that Collateral in a Bankruptcy, the first lien Lenders will be paid prior to any payouts on the second lien debt. See Subordination.

***Limited Liability Company (LLC):*** a business organization that has one or more equity holders, called members, and provides limited liability to all of its equity holders in the vast majority of United States jurisdictions. Members of an LLC can enjoy the same type of limited liability protection as Limited Partners in a Limited Partnership while also participating in the management of the LLC if that's the deal. In contrast to a Limited Partnership, no one has residual liability for a Limited Liability Company's debts and obligations unless they volunteer for it.

***Limited Partner (LP):*** a partner in a limited partnership whose liability is limited to its amounts invested in or committed to the partnership, and who generally does not participate in management of the entity. When used in reference to a fund, this term refers to its investors.

***Limited Partnership (LP):*** a business organization that has at least one general partner and at least one Limited Partner. The General Partner(s) manage the entity and have residual liability for the organization's debts and obligations. The Limited Partner(s) generally do not participate in the management of the entity and enjoy limited liability protection whereby their risk of loss is generally limited to amounts invested in or committed to the entity. Funds are often structured as Limited Partnerships and such funds' investors are Limited Partners.

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

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

***LLC:*** abbreviation for Limited Liability Company.

***Lock-up:*** period of time during which Hedge Fund investors are prohibited from redeeming their shares. In securities offerings, the period required by the Underwriters in connection with IPOs and other equity offerings.

Lockups “lock-up” the shares of officers, directors and other insiders as well as the Issuer so that no new shares will hit the market during a certain period following the Closing of the offering. The purpose of the Lockup is to help stabilize the stock price following the offering by controlling supply. See also booster shot.

*Lockup Agreements:* For Hedge Funds these agreements are found in the Partnership Agreement. In Securities parlance, these are the letters signed by officers, directors and other insiders setting forth the terms of their Lockups. These are usually negotiated in connection with the Underwriting Agreement (which is where the Issuer’s Lockup can generally be found).

*Lockup Letters:* another name for Lockup Agreements.

*Long:* the opposite of Short. You have a Long position in a particular Security or Derivative if you own it or are entitled to receive the economic equivalent of ownership, usually with an expectation of rising prices.

*Long-Biased Investment:* a strategy of investing in more Long positions than short positions.

*LP:* depending on the context, either a reference to a Limited Partner or a reference to a Limited Partnership.

*L Plus:* shorthand for “LIBOR plus,” used in stating the applicable margin in respect of a Floating Rate of Interest that is to be tied to LIBOR, such as “L+300 bps.”

*LSTA:* abbreviation for the Loan Syndication and Trading Association, a non-profit organization dedicated to promoting the development of a fair, efficient, liquid and professional trading market for corporate loans originated by commercial banks and other similar private debt. A number of standard forms and market practice documents and publications can be found at [www.lsta.org](http://www.lsta.org).

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

*M&A:* shorthand for mergers and acquisitions.

*MAC:* abbreviation for Material Adverse Change.

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

*MAE:* abbreviation for Material Adverse Effect.

*MAE Qualifier:* this is an exception to what would otherwise be an absolute assertion or representation, for example: “I have not been

drinking, except to such extent as would not be likely to have a Material Adverse Effect on my drafting." See Material Adverse Change and Material Adverse Effect.

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

*Maintenance Margin:* financial collateral (e.g., cash, Securities) that an investor or counterparty is required to deposit in order to keep a position open. It is based on the daily value of the position.

*Make-Whole:* shorthand for a "make whole call" feature, which allows the Issuer of a series of Bonds to redeem those Bonds without the consent of the Bondholders at a "make whole price" that is the sum of the present values of each remaining payment on the Bonds (until maturity or until the date on which the Bonds otherwise become redeemable at a fixed price, if applicable). These present values are calculated using a discount rate equal to the Comparable Treasury rate plus a Spread (usually 50 Basis Points). The sum of the present values of the remaining payments on a High Yield Bond can often substantially exceed the principal amount of the High Yield Bond. A "make whole price" of 120 percent of principal amount is not unheard of in the context of a make whole redemption of a High Yield Bond. This feature is generally available to Issuers during the Non-Call Period or in a Change of Control context.

*Management Fee:* the fee that a Fund Manager assesses to cover its normal operating expenses, like salaries and rent. The Management Fee is most-often charged semi-annually, quarterly or monthly. Investors are typically charged separately for costs incurred for outsourced services. Technically, the Management Fee is a combination of the Advisory Fee paid to the Fund Manager and the fee paid for the administration of the Hedge Fund by the Fund Manager, however, the term is sometimes confused with the "Advisory Fee."

*Management's Discussion and Analysis (MD&A):* shorthand for Management's Discussion and Analysis of Financial Condition and Results of Operations. This is a textual discussion in a Prospectus, Offering Memorandum or Periodic Report that provides information that the Issuer believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. The MD&A also includes a discussion of Liquidity and capital resources and segment information. The purpose of the MD&A is to provide color and

context to the Financial Statements. The MD&A is required disclosure, and the SEC has provided substantial guidance on how MD&A should be drafted.

*Managing Member:* acts for an LLC in a manner similar to a General Partner.

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

*Mandatory Prepayments:* provisions in a Credit Agreement that require the prepayment of Term Loans (and sometimes the prepayment and permanent reduction of commitments under a Revolving Facility) with certain cash of the Borrower.

*Margin:* financial collateral (e.g., cash, Securities) that an investor or counterparty has to deposit to cover credit risk.

*Margin Call:* a call to post Margin or make an additional payment because of an adverse movement in the value of a contract.

*Margin Loan:* a loan secured by investment property collateral, usually taken to finance the purchase of Securities.

*Margin Regulations:* reference to Regulation T, Regulation U and Regulation X. Regulation T governs margin loans by broker-dealers. Regulation U governs margin loans by banks. Regulation X governs Borrowers.

*Market Capitalization:* a type of valuation for a company calculated by multiplying the company's total shares outstanding by the market price of its shares.

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

*Market Maker Prospectus:* an arcane creation of a provision in Section 2(11) of the Securities Act. That section defines an Underwriter to be anyone who buys from an Issuer with a view to distribution in a public offering. It also defines Issuer (for purposes of Section 2(11) only) to include Affiliates of the Issuer. This creates a technical problem for a Broker-Dealer that wants to make a market in the Securities of one of its Affiliates. Technically, regular investors who buy from a Broker-Dealer that is Affiliated with the Issuer will be treated as Underwriters for purposes of the Securities Act. That is bad news for those regular investors and doesn't make sense. In practice, this has been solved by the Broker-Dealer delivering a Prospectus in all such market making transactions involving Securities of an Affiliate of the Broker-Dealer. That Prospectus is called a Market Maker Prospectus and must be kept up-to-date by the Issuer and its Broker-Dealer Affiliate for so long as the Broker-Dealer is making a market in the Issuer's Securities.

*Market-Neutral Investment:* an approach that aims to preserve capital through any of several methods and under any market.

*Market Risk:* see Systematic Risk.

*Market Timing:* buying or selling assets based on predictions of movements in the market.

*Markit Group Limited (Markit):* global financial information and services business providing a wide range of data, valuation and trade processing products and services across multiple asset classes.

*Mark-to-Market:* an accounting requirement to update the value of a financial instrument to its current market price (write up or write down). The way in which Derivatives are valued under currently applicable accounting rules.

*Mark-to-Model:* the way in which Derivatives are valued if no observable market exists. Counterparties will often have different models — and thus different Mark-to-Model values — for the same transaction.

*Markup:* difference between the price the Security was purchased at and the higher price the dealer charges to the investor; essentially the same as a commission but applied to a Principal Trade.

*Master-Feeder Fund:* a Hedge Fund structure that typically consists of a US-based Fund and an Offshore Fund (the feeder funds), which serve as the only investors for a third non-US fund (the master fund). Such structure allows both US and non-US investors to invest in the same investment vehicle.

*Matched Book:* a trading book or desk that arbitrages or trades repos and earns a profit by matching maturities and Securities, taking a view on the short end of the yield curve, taking a view on potential of Security going special and arbitraging margins.

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

*Material Adverse Effect:* this refers to a “material adverse effect” and is another way of expressing the concepts embedded in the phrase Material Adverse Change.

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

**MBS:** abbreviation for Mortgage-Backed Security.

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

**Medium Term Note (MTN):** a corporate note continuously offered by a company (under an MTN Program) to investors through a dealer. Maturities usually vary from nine months to 10 years.

**Mega Cap:** a Market Capitalization of at least \$200 billion. Compare Big Cap and Large Cap.

**Merger Arbitrage:** the strategy of trading stocks of companies that are involved in potential acquisition transactions.

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

**Mezz:** shorthand for Mezzanine, typically in reference to Mezzanine Financing.

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

**Mezzanine Fund:** a fund that invests in and provides Mezzanine Financing to Borrowers.

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

**MFN Pricing:** abbreviation for Most Favored Nation. See Most Favored Nation Clause.

**Micro Cap:** a Market Capitalization usually between US\$50 million and US\$250 million. Compare Big Cap, Large Cap and Mega Cap.

**Mid Cap:** a Market Capitalization between US\$2 billion and US\$10 billion. Compare Big Cap, Large Cap, Mega Cap and Micro Cap.

**Monetize:** to convert into legal tender. Often refers to exchanging Securities for currency.

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

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

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

**Mortgage:** a Security Agreement that grants a Security Interest in a real property right, whether that real property is owned in fee simple (a "fee Mortgage") or leased (a "leasehold Mortgage").

**Mortgage-Backed Security:** bonds and notes backed by a pool of Mortgages. Payments from the Mortgages are applied towards repayment of interest and principal on the bonds or notes.

**Most Favored Nation Clause:** an agreement with an investor to provide that investor with terms no less favorable than those provided to any other investors in a Hedge Fund.

**MRA:** abbreviation for Master Repo Agreement.

**MSCI EAFE:** a stock market index, calculated in US Dollars, which is designed to measure international equity performance outside of North America.

**MSLA:** abbreviation for Master Securities Lending Agreement.

**MTN:** abbreviation for Medium Term Note.

**MTN Program:** an ongoing issuance, through which various types of Medium Term Notes may be issued.

**Municipal Securities (Bonds):** tax-exempt Bonds issued by state and local governments.

**Munis:** shorthand for Municipal Securities.

**Mutual Fund:** a fund registered under the Investment Company Act of 1940 that is publicly traded for the purpose of investing in Securities such as stocks, bonds, money market instruments and similar assets and provides daily liquidity to its investors. Also known as an Open-End Fund.

**Naked Short Selling:** short selling a Security without first borrowing the Security or ensuring that the Security can be borrowed, as is required under Regulation SHO.

**Nancy Reagan Defense:** in the M&A context, the Nancy Reagan Defense refers to a potential Target of an acquisition just saying no to the proposal (or proposals) of a potential acquirer.

**Nano Cap:** a Market Capitalization under \$50 million. Compare Big Cap, Large Cap, Mega Cap, Micro Cap and Mid Cap.

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

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

**NAV:** abbreviation for Net Asset Value.

**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.

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

**Negative Assurance Letter:** a letter provided by both Issuer's and Underwriters' counsel at the Closing of a securities offering. The letter states that based on the lawyers' Diligence efforts, nothing has come to their attention indicating that the Prospectus (for registered deals) or the Offering Memorandum (for 144A deals) contains any misstatements of material facts or any material omissions. This is not an opinion, but it is sometimes incorrectly referred to as a "10b-5 opinion." Also known as a "10b-5 letter."

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

**Negative Pledge:** a variant on the Liens Covenant that allows the Issuer to place Liens on its assets that would not otherwise be allowed. This Covenant is typical in Investment Grade Bond deals.

**Net Asset Value (NAV):** the value of a Hedge Fund's underlying portfolio assets. The per-share NAV is calculated as follows: (i) total value of Securities in the fund's portfolio *minus* liabilities, (ii) *divided* by the number of fund shares outstanding.

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

**Net Share Settlement:** a settlement mechanic for a Derivative instrument or Security (e.g., Convertible Bonds) where the In-the-Money amount of the instrument or Security is settled in the underlying asset. For example, in the case of net-share settled Convertible Bonds, 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).

**New Issue Rule:** FINRA Rule 5131, which is geared to prohibit brokers from Spinning, or directing new issues (of an Initial Public Offering) to insiders and others in a position to refer business to the broker in exchange.

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

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

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

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

**Non-Principal Protected:** a type of issued Security that does not guarantee a return of the investor's principal investment. The investor

risks losing all or a substantial portion of their investment. Compare Principal Protected.

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

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

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

*Notional Amount:* the amount agreed upon by counterparties to a transaction that is used as a reference for calculating payments under the transaction.

*Notional Reset:* an elective event during the life of a Swap upon which the parties to the Swap make or receive settlement payments as if the Swap had been terminated. Parties to a Swap may elect to reset the Swap at certain predetermined intervals.

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

*Numerosity:* a Bankruptcy plan of reorganization is deemed accepted by a class of creditors or equityholders if that plan is accepted by (i) more than one half of the creditors/equityholders in the class who actually voted and (ii) holders of at least two-thirds in amount of the claims/equity interests in the class who actually voted. The requirement described in subsection (i) of the previous sentence is known as the Numerosity requirement.

*NYSE:* abbreviation for New York Stock Exchange.

*OC:* abbreviation for Offering Circular.

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

*Offer:* the price (and amount) at which a buyer is willing to buy.

*Offering Circular:* some investment banks call the Offering Memorandum an Offering Circular. It is the same thing.

*Offering Memorandum:* the marketing and legal disclosure document in a securities offering. Some investment banks call it an Offering Circular.

*Offshore Fund:* an investment vehicle that is domiciled outside the US, usually in a tax haven like the Cayman Islands, and generally structured to provide a more tax-efficient investment vehicle for certain investors.

*OID:* abbreviation for Original Issue Discount.

*OM:* abbreviation for Offering Memorandum.

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

*Open-End Fund:* See Mutual Fund.

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

*Operating Expense:* the ongoing and day-to-day costs incurred in operating a business. Unlike Capital Expenditures, which are Capitalized, Operating Expenses are "expensed," meaning that they are recorded as current expenses in the Income Statement as incurred.

*Operating Lease:* a lease that is not Capitalized. Compare Capitalized Lease.

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

*Opportunistic Investment:* an investment approach that seeks to gain returns by investing (usually short-term) in the most profitable products at that time.

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

*Option Value:* consists of Intrinsic Value and Time Value.

*Ordinary Share:* shares that give the stockholder the right to vote, but no right to any predetermined dividend amounts. Also called Common Stock.

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

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

**Org Meeting:** shorthand for Organizational Meeting.

**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.

**Original Issue Price:** a set price at which a Security is issued in a Primary Offering.

**OTC:** abbreviation for Over-the-Counter.

**Out-of-the-Money:** a stock Option is Out of the Money when the holder cannot exercise it for a profit. A Convertible Bond is Out of the Money when its Conversion Value is less than its Par Value. In the case of a Call, the price of the asset underlying the Option is less than the Strike Price; and in the case of a put, the price of the asset underlying the Option is more than the Strike Price.

**Over-Allotment Option:** see Green Shoe.

**Over-the-Counter (OTC):** the trading of financial instruments directly between two parties pursuant to a bilateral contract rather than on an exchange or through an intermediary. Over-the-counter Derivatives are customized, privately-negotiated agreements.

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

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

**Pairs Trading:** an investment strategy that involves matching a long position with a short position in two historically correlated stocks.

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

*Pari Passu*: equal in right of payment.

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

*Partnership Agreement*: the fundamental agreement between partners in an enterprise. A Limited Partnership Agreement is entered into between Limited Partners and the General Partner of a fund.

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

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

*Payment Blockage Provision*: a standard feature in a Subordination contract for a High Yield deal (and other types of Subordinated Debt). It provides that the Issuer of the Subordinated Debt is forbidden from making payments on the Subordinated Debt in certain circumstances (e.g., when the Senior Debt is in Default). Note that this is not the same as a Remedy Bar. If the Subordinated Debt does not get paid when it is supposed to be paid because of a Payment Blockage Provision, the Subordinated creditors can pursue all available remedies unless they are also subject to a Remedy Bar.

*Payment Date*: another name for an interest payment date.

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

*Performance Fee*: payment made to a Fund Manager for generating positive returns, calculated by reference to the increase in the Hedge Fund's Net Asset Value.

*Periodic Reports*: the annual report on Form 10-K and the quarterly reports on Form 10-Q required to be filed with the SEC by all public companies. The Securities laws specify precisely who is required to file these reports, but as a general matter they are filed by companies that

have completed an IPO, have Securities listed on an exchange, or have a class of Securities registered under the Exchange Act.

*Permitted Debt:* a concept in the High Yield version of the indebtedness covenant referring to a series of Carveouts for debt that can be incurred even where the Ratio Test cannot be satisfied.

*Physical Settlement:* refers to settlement in the actual underlying stock, commodity or any Derivative instrument or Security, as opposed to Cash Settlement, involving delivery of the underlying asset and, where applicable, payment of the stock price.

*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:* abbreviation for Pay-In-Kind.

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

*PIK Toggle:* an Interest Rate feature that gives the Issuer or Borrower the option to pay all, half or none of the Interest for any period (generally during the Non-Call Period) in kind. Typically, an Interest Rate step up (often 75 bps, but sometimes higher) will apply to any portion of Interest that is paid in kind. PIK Toggles are attractive to Issuers and Borrowers because of the ability to “toggle” out of cash Interest payments in times of a Liquidity crunch — meaning if the Borrower or Issuer is short on cash, it can stop making cash Interest payments and just let the interest PIK.

*PIK Toggle Notes:* Notes with a PIK Toggle feature.

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

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

*Plain Vanilla:* the standard or simplest form of an instrument, agreement or a transaction.

*Plan Assets:* assets that may subject a Private Fund to regulation under ERISA if such assets exceed 25 percent of the Private Fund’s total Assets Under Management.

*Pledge Agreement:* how Lenders take the shares of a Borrower or its subsidiaries as Collateral. This is an agreement that creates a Security Interest in equity interests owned by a Pledgor in favor of the applicable

Secured Parties. In many instances, the pledge of equity interests is included in the Security Agreement and a separate Pledge Agreement will not be required.

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

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

*Portfolio Company*: a company that has been purchased by a Sponsor and now sits in that Sponsor’s “portfolio.”

*Position*: net value of long and short contracts.

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

*Post-Effective Period*: in a registered securities offering, this period begins right after Pricing when the Registration Statement is declared effective by the SEC. The Underwriters then confirm orders using the Pricing Supplement, and shares begin trading the next morning. Closing generally happens three business days later. See T+ Legend.

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

*PPM*: abbreviation for Private Placement Memorandum.

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

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

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

*Preference Period*: see Clawback and Preference.

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

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

*Preliminary Prospectus*: another name for a Red.

*Premium*: in an Option, the amount a buyer pays a seller for its Option rights.

*Pre-Pack*: a "pre-packaged" Bankruptcy plan of reorganization. A Pre-Pack is a plan of reorganization that is formulated and agreed to between a company's shareholders and its creditors prior to the company's filing for Bankruptcy. In fact, votes on the plan are solicited even before the Bankruptcy case is filed. The Pre-Pack is filed with the Bankruptcy court at the time of the Bankruptcy filing and confirmation of the plan could follow a few weeks later. The purpose of a Pre-Pack is to shorten the duration of the Bankruptcy proceedings and reduce costs.

*Price Return Swap*: a Swap involving only the rate of return on the reference asset.

*Pricing*: the moment at which the Securities are priced — *i.e.*, at which the price of the shares is set in equity deals and the Coupon (Interest Rate) and any discount is set in Bond deals. In most underwritten and

144A deals, this corresponds with the time the contract for the sale of the Securities is confirmed. See Pricing Term Sheet. For a discussion of Pricing outside the range, see Latham & Watkins Client Alert No. 546, Recirculation and IPOs — Pricing Outside of the Range (October 14, 2006), available at [www.lw.com](http://www.lw.com).

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

*Pricing Term Sheet:* another name for Pricing Supplement.

*Primary Markets:* involve the issuance of new Securities, including through Private Placements and public offerings. Compare Secondary Markets.

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

*Prime Broker:* a large bank or securities firm that provides various administrative, back-office and financing services to Hedge Funds.

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

*Principal Protected:* a Security that guarantees the investor a return of at least the amount invested by such investor. Compare Non-Principal Protected.

*Principal Trade:* purchase of Securities by a broker-dealer in the Secondary Market. This is distinguished from an Agency Trade in that the broker-dealer actually takes ownership of the Securities. Trading in the fixed income markets is done on a principal basis.

*Priority:* as among two or more creditors, the ranking of their Security Interests or their rights to receive payments. Generally, unless otherwise agreed, the first Secured Party to file a financing statement or otherwise Perfect will be entitled to Priority. In a first lien/second lien transaction, the holders of second lien obligations would expressly agree in the Intercreditor Agreement that the holders of the first lien obligations are entitled to Priority upon the realization of the Collateral.

*Private Equity Fund:* a fund that invests in illiquid stakes in private companies. Similar to Hedge Funds, Private Equity Funds are investment partnerships for certain qualified investors.

*Private Fund:* a fund that is not offered to the general public for investment and is exempt from registration under the Investment Company Act, this is either a 3C1 Fund or 3C7 Fund.

*Private Fund Advisers Exemption:* an exemption from registering as an Investment Adviser for advisers of Private Funds that meet certain monetary thresholds for US assets. This exemption is beneficial to small Hedge Funds or Hedge Funds that hold most of their assets outside of the United States.

*Private Offering:* another name for Private Placement.

*Private Placement:* an offering of Securities that is exempt from registration with the SEC pursuant to Section 4(2) of the Securities Act of 1933 and/or Regulation D. Qualification under Section 4(2) is based on facts and circumstances, whereas Regulation D offers a safe harbor. Hedge Fund shares are generally offered as private placements, which are typically offered to a limited number of investors, rather than the general public. See Section 4(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.

*Profit and Loss Statement:* another name for Income Statement.

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

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

*Proprietary Trading:* a trading strategy focused on using the institution's own money, rather than the money of its customers or investors, to make a profit for itself. See the Volcker Rule.

*Prospectus:* registered or public offerings are effected through the use of a marketing document called a Prospectus that is included in the Registration Statement filed with the SEC. This document forms the

core of the sales material and the liability of the participants. Plural is “prospectuses.”

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

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

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

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

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

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

**Puttable Swap:** a Swap in which one party can terminate early.

**Put Call Parity:** the relationship that exists between the prices of European put and Call Options on the same underlying stock with the same Strike Price and Expiration Date; an Arbitrage exists to the extent these are not of equal value.

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

**Put Right:** in the leveraged finance context, an Option giving Bondholders a right to force the Issuer to buy back its Bonds at a specified amount.

High Yield and some Investment Grade Indentures generally provide Bondholders with this right upon a Change of Control of the Issuer. See Change of Control Covenant and Change of Control Put.

*QIB*: abbreviation for Qualified Institutional Buyer.

*QP*: abbreviation for Qualified Purchaser.

*QP Fund*: another name for a 3C7 Fund.

*Qualified Counterparty*: another name for a Lender Counterparty.

*Qualified Institutional Buyer*: large institutional investors that must have at least \$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*: refers to the super-wealthy, meaning either: a) an individual with five million dollars in investments; b) an institutional investor with \$25 million in investments; c) a family owned company with five million dollars in investments; d) a trust where the trustee and each person who contributes assets to the trust is a Qualified Purchaser; e) a "Qualified Institutional Buyer" under Rule 144A of the 33 Act, except that "dealers" under Rule 144 must meet the \$25 million standard of the 1940 Act, rather than the \$10 million standard of Rule 144A; or f) a company owned beneficially only by Qualified Purchasers.

*Quant Fund*: a type of Hedge Fund that uses quantitative analysis as a major — and sometimes sole — component of its investment strategy and decision making.

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

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

*Rate of Return*: annual appreciation in the value of a fund or any other type of investment, stated as a percentage of the total amount invested.

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

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

**Record Date:** a date established by the Issuer and used for determining which equityholders are entitled to receive a dividend or other distribution.

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

**Redemption:** the return of an investor's principle upon submission of the investor's interest in a fund to the Fund Manager.

**Redemption Date:** date when the face or redemption value of a Security is repaid to investors.

**Redemption Fee:** a charge, intended to discourage withdrawals that a Fund Manager levies against investors when they cash in their fund invests before a specified date.

**Reference Asset:** the underlying asset in a Credit Default Swap transaction.

**Reference Entity:** an entity to which a Credit Derivative transaction relates. If a Credit Event occurs with respect to the Reference Entity or specified obligations of the Reference Entity, the purchaser of credit protection in a Credit Derivative receives a payment from the protection seller.

**Reference Obligation:** the specific underlying debt upon which a Credit Derivative is based.

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

**Reg D:** short for Regulation D.

**Registration:** in the context of a fund, registration under the Investment Company Act, and in the context of an investment adviser, registration under the Investment Advisers Act.

**Registration Rights:** rights of a Security holder to force an Issuer to register its Securities with the SEC. These rights enhance the Liquidity of the Securities because registered Securities are freely tradable. Registration Rights (or Reg Rights) can take several forms. Holders of equity Securities

obtained in a Private Placement often have rights to demand that the Issuer register their Securities or to piggyback onto an offering in which the Issuer is already engaging. See Piggy Back Registration Rights and Demand Registration Rights. In Private Offerings of High Yield and convertible debt Securities, Issuers customarily provide purchasers with Registration Rights to enhance the post-Closing Liquidity of the Securities sold in the offering and, in the case of private company Issuers, agree to become Reporting Companies under the Exchange Act.

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

*Reg Rights:* shorthand for Registration Rights.

*Reg S:* shorthand for Regulation S.

*Regulation BTR:* an SEC regulation that prohibits directors and executive officers of public companies from trading that company's equity Securities during a Blackout Period under the company's pension or 401(k) plans. The regulation came about after several highly publicized cases in which senior executives of soon-to-fail companies sold shares at the same time their employees' plans prohibited the employees from doing so.

*Regulation 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. Regulation D provides a safe harbor for sales of Securities in transactions "not involving any public offering" within the meaning of Section 4(2) of the US Securities Act. Regulation D also contains two more widely known exemptions from the registration requirements, which allow some smaller companies to offer and sell their Securities without having to register the Securities with the SEC. The primary requirements of Regulation D are (i) no general solicitation and (ii) only offering and selling to investors who are either Accredited Investors or sophisticated investors.

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

*Regulation G:* requires specific disclosure and analysis around any non-GAAP financial measure contained in any public disclosure by an Issuer. Reg G says that non-GAAP Numbers generally must be reconciled to the

most directly comparable GAAP financial measure. In other words, Reg G says it is okay to disclose your financial information in a non-GAAP sort of way as long as you explain (through numerical reconciliation) how what you disclosed differs from GAAP. Note that EBITDA is a non-GAAP measure.

*Regulation M:* governs the activities of underwriters, issuers, selling Security holders, and others in connection with offerings of Securities. Regulation M is intended to prevent manipulative conduct by persons with an interest in the outcome of an offering, and prohibits activities and conduct that could artificially influence the market for an offered Security.

*Regulation S:* provides an exemption from the registration requirements of Section 5 of the Securities Act for certain offshore transactions (*i.e.*, transactions where sales are made outside the US to non-US persons). Many Rule 144A Financings also have a Regulation S component to allow for offshore sales. Rule 144A/Regulation S offerings 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 SHO:* a regulation enacted by the SEC to prevent Naked Short Sales by reducing the failure to deliver Securities (the “locate” requirement) and by limiting the time in which a broker can permit failures to deliver (the “close-out” requirement).

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

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

*Regulation T:* issued by the Board of Governors of the Federal Reserve System pursuant to the Exchange Act. Its principal purpose is to regulate extensions of credit by brokers and dealers to their customers; it also covers related transactions within the Board’s authority under the Act. Regulation T imposes, among other obligations, initial margin requirements and payment rules on certain Securities transactions.

**Regulation U:** issued by the Board of Governors of the Federal Reserve System pursuant to the Exchange Act. It imposes credit restrictions upon persons other than brokers or dealers who extend credit for the purpose of buying or carrying Margin stock if the credit is secured directly or indirectly by Margin stock.

**Rehypothecation:** when banks and broker-dealers use, for their own purposes, collateral that has been posted by their clients.

**Reinvestment Right:** a right that usually gives a Borrower an option, within some specified number of days, to reinvest insurance proceeds or proceeds of asset sales or equity issuances into assets used or useful in the business, rather than applying such proceeds to pay down Term Loans.

**Relative Value:** determining the value of a Security or asset by taking into account the value of a similar Security or asset.

**Relative-Value Investment:** an investment approach that considers risk, liquidity and return to identify attractive investments (compared to similar investments).

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

**Rep:** shorthand for Representation and Warranty.

**Repo:** abbreviation for Repurchase Agreement.

**Repo Rate:** fee in a Repurchase Agreement represented by a market rate based on maturity and collateral.

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

**Representation and Warranty:** an assertion of fact in a contract (such as a Subscription Agreement, merger agreement, Credit Agreement or Underwriting Agreement). Representations and Warranties are the means by which one party to a contract tells the other party that something is true as of a particular date.

**Repurchase Agreement:** agreement between two parties whereby the owner of one or more specified assets (usually Securities) sells the assets for cash at an agreed date and price while simultaneously agreeing to buy the assets back at an agreed future date and price, returning the cash plus any repo rates. A Repurchase Agreement is economically equivalent to a secured loan.

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

*Reset Dates:* in the context of an Equity Swap, dates as of which Equity Amounts and floating amounts are paid and the Equity Notional Amount is reset. Parties may also reset the Floating Rate Option on a Reset Date.

*Restricted Payments Covenant:* a Covenant that protects Bondholders' and Lenders' access to value by limiting undesirable restricted payments. Virtually all High Yield Indentures and Credit Agreements contain Covenants limiting the ability of Issuers and Borrowers to make Restricted Payments. In Indentures, certain investments in entities that are not restricted subsidiaries are included in the definition of Restricted Payments, whereas these investments are usually the subject of a separate investments Covenant in Credit Agreements.

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

*Retail Investor:* an individual investor who buys and sells Securities for personal accounts and often in smaller quantities than Institutional Investors. Compare Institutional Investor.

*Reverse Repo:* opposite of a Repo position. For the party buying the Security and agreeing to sell back in a Repurchase Agreement, it is a Reverse position.

*Reverse Repurchase Agreement:* see Reverse Repo.

*Revolver:* shorthand for a Revolving Facility.

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

*Revolving Loans:* loans under a Revolving Facility.

*Rho ( $\rho$ ):* Change in value of an Option for a given change in the rate used to discount Cash Flows.

*Risk Arbitrage Investment:* an investment strategy that involves purchasing stocks of companies that are likely takeover targets, while assuming short positions in the would-be acquiring companies.

*Risk Free Rate:* theoretical return on a risk-free investment, usually a US treasury Security.

*Riskless Principal Trade:* two offsetting Principal Trades occurring at the same price that are reported only once as an Agency Trade.

*Road Show:* the trip around the country (or around the world) 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.

*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.

*R-squared:* a measure of how a Hedge Fund's returns are correlated compared to the broader market. Zero (0) indicates no correlation; one (1) indicates perfect correlation; minus-1 indicates a perfect inverse correlation.

*Rule 10b-5:* the SEC rule prohibiting the employment of manipulative or deceptive practices in connection with the purchase or sale of any Security. This is one of the most important SEC rules. It prohibits any act that would operate as fraud or deceit in connection with the purchase or sale of any Security, including insider trading, and contains the infamous prohibition on making "any untrue statement of a material fact or [omitting] to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

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

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

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

*Rule 144A Financing:* a transaction where an investment bank buys Securities from an Issuer pursuant to a Private Placement and immediately resells the Securities to QIBs in reliance on Rule 144A. Virtually all High Yield Bond deals and many Convert Deals are structured as Rule 144A Financings. Rule 144A Financings are attractive to Issuers because these

transactions can be consummated without SEC registration, allowing greater speed to market. In a 144A for Life Offering, there is an added bonus — there are no post-Closing Reg Rights, so the Issuer is never required to become a Reporting Company. See 144A for Life Offering and Registration Rights.

**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.

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

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

**SEC:** abbreviation for the US Securities and Exchange Commission.

**Secondary Markets:** involve the trading of already issued Securities. Compare Primary Markets.

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

**Section 3(a)(2) of the Securities Act:** exempts from registration domestic branches of foreign banks that are subject to regulation substantially equivalent to that of federally- or state-chartered domestic banks doing business within the same jurisdiction.

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

**Section 5:** of the Securities Act requires all transactions involving the offer or sale of Securities to be registered unless otherwise exempt.

**Section 13d:** of the Exchange Act requires reporting (on either Schedules 13D or 13G) of beneficial ownership once a person acquires certain specified percentages of ownership of a public company.

**Section 16:** of the Exchange Act contains the Short-Swing Profit Rule and requires reporting of Securities transactions by insiders of public companies.

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

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

**Secured Parties:** those who hold a given Security Interest. In the context of a Credit Agreement, generally defined to include the Lenders, the administrative agent, the Collateral Agent, the L/C issuing bank and the Lender Counterparties, this group will incorporate all parties in favor of whom a grant of Security over assets has been made.

**Securities Act:** another name for the Securities Act of 1933.

**Securities Act of 1933:** an act that governs the issuance and registration of Securities.

**Securities Exchange Act of 1934:** an act that governs the continuing and reporting obligations of companies with registered Securities.

**Securities Lending:** the owner of Securities lends the Securities, which loan is often secured by collateral (which may be cash or non-cash collateral) at an agreed date, for a specified timeframe and price. The stock borrower supplies the collateral and pays a fee or interest on the stock being lent, often pursuant to a Securities Lending Agreement.

**Securities Lending Agreement:** the main document governing a Securities Lending transaction.

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

**Security:** definition depends upon the context. In Bond and equity land, a Security is a thing that is regulated by the Securities laws. The Supreme Court justices know it when they see it. See *Reves v. Ernst & Young*, 494 U.S. 56 (1990). In bank parlance, Security is a reference to the granting of a Lien on assets to secure a debt obligation. See Secured Debt and Security Interest.

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

**Security Interest:** a Lien created by a Security Agreement over certain assets (*i.e.*, the Collateral) to secure the payment or performance of obligations under a Credit Agreement, Indenture or other debt documents. A Security Interest gives the beneficiary of the Security Interest (*i.e.*, the Secured Parties) the right to foreclose upon the Collateral and use the proceeds thereof to repay its loan. It also significantly improves the Secured Parties' rights in a Bankruptcy. For example, only Secured

Parties are entitled to post-petition interest in a Bankruptcy. In short, it is better to be secured than unsecured.

*SEDAR*: the Canadian equivalent of EDGAR. The Web site ([www.sedar.com](http://www.sedar.com)) provides access to documents filed with the Canadian Securities Administrators. This should not be confused with "seder," which is the traditional dinner held on the first and second nights of Passover.

*Selective Disclosure*: see Regulation FD.

*Sell/Buy Back*: the outright sale of a Security on the value date with an outright repurchase of that Security on some future date at a forward price.

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

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

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

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

*Senior Secured Credit Facilities*: Syndicated bank loans generally secured by the assets of the Borrower and its subsidiaries.

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

*Separately Managed Account (SMA)*: a contractual investment arrangement whereby an investor deposits certain assets into a separate investment account and gives an investment manager discretion to invest those assets in a certain manner. An SMA investor owns the invested assets directly in its own name, in contrast to the indirect ownership of assets that results from investment through a Hedge Fund or Mutual Fund.

**Series:** different classes or categories of stock in a Company. Also used to refer to different classes of a securities offering. A Limited Partnership or a Limited Liability Company can also have different Series of Securities. Under Delaware law, if certain formalities are observed, a Limited Partnership or a Limited Liability Company may have different Series that have separate assets and separate liabilities as if they were separate entities.

**Settlement Date:** the date a Security is transferred and payment is made.

**SG&A:** abbreviation for Selling, General & Administrative Expense.

**Sharpe Ratio:** a measure of a Hedge Fund's risk compensation. It is calculated as follows: (i) the Hedge Fund's annualized average return *minus* the risk-free rate (ii) *divided by* its annualized Standard Deviation. A higher ratio indicates greater risk compensation.

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

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

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

**Shoe:** another name for the Green Shoe.

**Short:** someone who is Short a Security, or has a short position in a Derivative, and makes money if the value of that Security/Derivative goes down. It is the opposite of being Long — which, in the most basic sense, means you own a Security, or have a Long position in a Derivative, and you benefit if its value goes up. An investor can take a short position in a Security by selling a Security she does not own.

**Short Against the Box:** a Short Sale of Securities the investor already owns. Similar to buying a put on the Securities, and generally done for tax reasons.

**Short Sale:** the sale of a Security that must be borrowed to make delivery.

**Short-Swing Profit Rule:** a rule under Section 16 of the '34 Act that requires officers, directors and shareholders owning more than 10 percent of outstanding shares of a company to return any profits made from the purchase and sale of the company's shares within a given six month period. Enacted to restrict company insiders from making short-term profits at the firm's expense.

**Side Letter:** an agreement between a fund investor and a Fund Manager that provides for terms that are different from the agreement entered into by most other fund investors and the Fund Manager or the governing agreements of the fund.

**Side Pockets:** segregated Hedge Fund accounts that are typically intended to separate illiquid investments from liquid ones.

**SIFMA:** Securities Industry and Financial Markets Association (SIFMA) is a leading Securities industry trade group representing Securities firms, banks, and asset management companies in the US.

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

**SMA:** abbreviation for Separately Managed Account.

**Small Cap:** a Market Capitalization usually between \$250 million and two billion dollars. Compare Big Cap, Large Cap, Mega Cap, Micro Cap, Mid Cap and Nano Cap.

**Soft Dollars:** the value of complimentary research and other services provided by brokers in exchange for a client's business.

**Sortino Ratio:** used to determine the amount by which a fund's investment portfolio's value may increase based on expected pricing fluctuations.

**SOX:** shorthand for Sarbanes-Oxley.

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

**SPACs:** abbreviation for Special Purpose Acquisition Company.

**SPE:** abbreviation for Special Purpose Entity.

**Special Purpose Acquisition Company (SPAC):** a shell company whose main purpose is to merge with or acquire another company (often private). Such transaction is financed with the proceeds of the SPAC's public offering.

**Special Purpose Entity (SPE):** see Special Purpose Vehicle.

**Special Purpose Vehicle (SPV):** an entity created for a specific purpose, as opposed to a general operating entity. Can be (but isn't always) a Bankruptcy Remote Vehicle, used for acquiring specific assets.

**Special Situations Investment:** an investment approach whereby investors based their decision to invest in a product on a special event (as opposed to any other investment factor) in an attempt to profit from such special situation.

**Spinning:** selling shares in what are expected to be Hot Issues to favored clients of a broker-dealer. Spinning is prohibited by FINRA Rule 5131.

**Sponsor:** another name for Financial Buyer.

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

**Spot Price:** price of a Security for spot delivery; cash or current price.

**Spread:** difference between two prices or rates, such as the Bid and Offer in the market for a Security; another name for the Underwriting Discount. In the case of Derivatives, Spread is the profit/discount factor of the interest rate for calculating the floating amount, expressed as a fixed percentage of the Notional Amount.

**Spread Trading:** the purchase of one Security while simultaneously selling another Security such that the trade is structured not for directional moves but for changing shape of the yield curve or the basis.

**SPV:** abbreviation for Special Purpose Vehicle.

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

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

**Standard Deviation:** expression of an investment's volatility by measuring the variation of historical data. Standard Deviation is applied to the ARV of an investment to measure the investment's volatility.

**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.

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

*Staple Papers:* commitment papers being used in a Staple Financing.

*Statistical Arbitrage Investment:* an investment strategy of looking to mathematical-based models in an attempt to exploit any pricing inefficiencies.

*Stock Index Arbitrage:* an investment strategy that aims to profit from the difference between the actual and theoretical prices of the same stock index by simultaneously buying a stock index Future while selling the stocks in that index (or vice versa).

*Stock Loan:* see Securities Lending (with regard to Common Stock).

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

*STOXX Ltd.:* an index provider that covers world markets and all asset classes.

*Straddle:* an Options strategy with which the investor has both a Call Option and a Put Option on the same underlying Security with the same Strike Price and expiration date.

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

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

*Strike Price:* the price at which the buyer of an Option can sell (in the case of a put) or buy (in the case of a call) an asset. The Strike Price is generally set at the time the Option is written.

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

*Structured Note:* a Security assembled using Derivatives that have non-standard features (e.g., payments are linked to a commodity price). The payouts on Structured Notes are linked to the performance of an underlying reference asset (e.g., commodity).

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

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

**Subscription Agreement:** an agreement pursuant to which an investor attests that it is qualified to invest in a fund and pursuant to which it purchases its interest in that fund. Also known as Subscriptions Documents or Sub Docs.

**Substantive Consolidation:** the pooling of the assets and liabilities of separate legal entities in a Bankruptcy. Creditors of substantively consolidated entities will have a claim against the single pool of assets and guaranty claims. The notion that a Bankruptcy court can order the Substantive Consolidation of the assets and liabilities of multiple Affiliate debtors dates back many years. The remedy of Substantive Consolidation is "equitable," not statutory, and is not the same thing as piercing the corporate veil. Whether it will be ordered in a particular case will turn on how the court chooses among and applies standards that have developed as judge made law, rather than through analysis of a statute. Historically, Substantive Consolidation has been reserved for cases where (i) the financial affairs among Affiliates are so entangled — whether by design or sloppy business practices — that an accurate assessment of which entity is obligated to a particular creditor or group of creditors cannot be determined or could only be determined at undue cost or (ii) where creditors generally had dealt with the enterprise as a single consolidated entity (rather than separate legal entities). Courts routinely state that Substantive Consolidation is to be granted "rarely," though courts routinely permit Substantive Consolidation when it is consensual. Over time, a variety of standards or "tests" for when Substantive Consolidation should be ordered over an objection have been articulated. See *In re Owens Corning*, 316 B.R. 168 (Bankr. D. Del. 2004), reversed by 419 F.3d 195 (3d Cir. 2005).

**Succession Event:** with respect to Credit Derivatives, any event that results in one entity succeeding to the debt obligations of another (e.g., merger, consolidation, transfer of assets or liabilities, spin-off, etc.). ISDA Determinations Committees consider and make any determinations of Succession Events.

**Superholdco:** a Holding Company that is the parent (or the parent's parent, etc.) of another Holding Company. A Superholdco is generally not a guarantor under any Credit Agreement or Indenture for debt incurred or issued at any of its subsidiaries. See Holding Company.

**Supermajority Voting:** where more than a simple majority (usually 65 percent to 80 percent) is required for certain organizational actions.

**Swap:** an OTC transaction in which the parties agree to make payments to each other on specified future dates over an agreed term, where the payments each party makes are calculated on a different basis, such as the 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).

**Swap Option:** see Swaption.

**Swaption:** an Option with the right but not the obligation to enter into an underlying Swap, usually an Interest Rate Swap. Also known as Swap Option.

**Syndicate:** as a verb, the process whereby an arranger of a Credit Facility assigns (sells) the loans and commitments to other banks and funds. As a noun, the group of banks and funds that have become the Lenders under a Credit Facility or the group of Underwriters and selling group members in a securities offering.

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

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

**Systematic Risk:** the risk inherent in the broad market. Also referred to as Undiversifiable Risk or Market Risk.

**Systemic Risk:** the risk that a failure of one or more entities, components or groups can result in a catastrophic failure of that entire system.

**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.

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

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

**Tax Gross-Up:** a provision that increases the amount of any payment so that, after payment of applicable withholding taxes, the payment

recipient receives what it would have received if no withholding taxes had been imposed.

*T-bill*: treasury bill.

*Tear-Up Price*: the price at which counterparties to a Derivatives transaction agree to unwind the transaction prior to the end of its stated term.

*Technical Analysis Investment*: an approach to investment that relies on forecasting the direction of Security prices through the study of past market data. Compare Fundamental Analysis Investment.

*Tender Offer*: an offer by a prospective acquiror to shareholders of a company to purchase some or all of their shares at a specified price during a specified time, subject to receipt of a minimum and maximum number of shares.

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

*Theta ( $\tau$ )*: change in the value of an Option as it approaches expiration.

*Third-Party Administrator*: see Fund Administrator.

*Threshold Level*: see Forward Cap Price.

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

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

*Tiger Cub*: a Hedge Fund run by an alumnus of Julian Robertson's famous Tiger Management Corp.; (2) a baby tiger.

*Time Value*: the amount by which an Option's current (market) value exceeds its Intrinsic Value.

*T+ Legend*: under Rule 15c6-1 of the Exchange Act, trades in the secondary market are required to settle (i.e., you are supposed to close) three business days after trade date or 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.

**TOPIX:** a stock market index calculated and published by Tokyo Stock Exchange (TSE) in Japan, which tracks performance of numerous domestic companies.

**Total Return Swap (TRS):** a Swap where the payments on one leg of the Swap are based on a pre-set rate and the payments on the other leg are based on the return (income and capital gains) of an underlying asset.

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

**Tranche:** this term, which means “slice” in French, refers to an individual class or series of Bonds within an offering (which may have different ratings) or to individual Credit Facilities within the same Credit Agreement.

**Traynor Ratio:** the difference between a portfolio's return and the risk-free rate of return over the same period, divided by the unit of risk.

**Treasury Bill:** short-term negotiable debt Security issued and fully backed by a government.

**Treasury Bond:** long-term negotiable debt Security issued and fully backed by a government.

**Tree:** 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.

**TRS:** abbreviation for Total Return Swap.

**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.

**Turn:** (i) banker slang for a unit of measurement equal to the LTMEBITDA of a Borrower, often used with reference to Leverage (e.g., a banker may ask you to draft a Closing Condition that Leverage not exceed “three

Turns"). If the Borrower's LTM EBITDA was \$100 million, that condition would be that total Leverage not exceed \$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?"

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

*Underlying*: a reference asset or assets with respect to a Derivative or another instrument that must either be delivered (Physical Settlement) or referenced with regard to the cash value of the Derivative instrument (Cash Settlement) upon expiration of a Derivatives contract.

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

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

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

*Undiversifiable Risk*: See Systematic Risk.

*Unwind*: closing out an investment position.

*US Commodity Futures Trading Commission*: an agency created by Congress with the mandate to regulate commodity Futures, Swaps and Option markets in the United States.

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

*US Securities and Exchange Commission*: a federal agency that holds primary responsibility for enforcing the federal Securities laws and regulating Securities exchanges, Securities brokers and dealers, Investment Advisers, and Mutual Funds.

**Value at Risk (VaR):** measure of the risk of loss on a specific portfolio of financial assets based on the statistical analysis of historical price trends and volatilities.

**Value Investment:** purchasing stock that is priced below its Intrinsic Values, yet which appear to be good investments otherwise.

**Vanilla Swap:** the most standard or simplest form of a type of Swap transaction.

**VAR:** abbreviation for Value at Risk.

**Variable Obligation:** a feature that allows the settlement amount delivered by the investor at maturity of a Derivative transaction to vary subject to a cap and a floor.

**Variable Prepaid Forward (VPF):** a Derivative instrument, prepaid variable share/price delivery Forward contract, under which the investor receives an upfront cash advance equal to the present value of the floor price of the reference assets, and commits to deliver a variable number/amount of assets or equivalent amount of cash at settlement depending on price. The investor generally achieves monetization while hedging a share position's downside and retaining some upside.

**Variation Margin:** cash paid or received during the life of a Derivative contract to reflect the changing value of the contract.

**Vega:** change in Option value from a change in Volatility.

**Venture Capital:** financial capital provided to early stage companies by investors who see high potential.

**VIX:** the ticker symbol for the Chicago Board Options Exchange Market Volatility Index, a measure of the implied volatility of S&P 500 index options. It represents one measure of the market's expectation of stock market volatility out 30 days.

**Volatility:** degree of fluctuation in the price or return of a financial instrument or index over time. Historical Volatility is the "backward-looking" estimate of average fluctuation of prices around the average, similar to the standard deviation of a price or index level. Implied Volatility is the market's "forward-looking" estimate of average fluctuation as reflected in the price of Options on an underlying share or index.

**Volcker Rule:** the eponymous Dodd-Frank rule proposed by former Chairman of the Federal Reserve, Paul Volcker. The intent of the rule is to heavily restrict Proprietary Trading by banks. Possible limited exceptions include market making activities and hedging activity that mitigates risk.

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

**VWAP:** volume-weighted average price.

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

**Waiver:** a waiver of a Default or an obligation under an agreement. A Waiver generally applies to a one-time Default or obligation and may last only for a limited period of time.

**Warrant:** Derivative Security setting forth a time period within which the holders may buy Securities from the Issuer at a given price (the “strike” or “exercise” price) essentially, an Option with a longer term, generally issued by a company on its own shares; sometimes a feature of Mezzanine Financing that provides a higher return to Mezzanine investors.

**Waterfall:** sometimes called a “payment waterfall,” generally refers to the order of application of funds or proceeds. Think of the funds in question as water running down a flight of stairs with a bucket placed on each step — the water (money) flows to the top step first and fills that bucket before the overflow continues on to the second step, and fills that bucket before proceeding to the third step, etc. So, if your deal is that you get paid before someone else, your proverbial bucket will be placed higher in the waterfall. The guy most likely to be left with an empty bucket (or in practice, an unpaid obligation) is of course whoever is at the bottom of the waterfall. Similar to choosing a seat on the water rides at Six Flags, the goal of negotiating your position in a waterfall is not to come out dry.

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

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

**WGL:** abbreviation for Working Group List.

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

**WKSI:** abbreviation for Well Known Seasoned Issuer.

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

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

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

**Wrapper:** a disclosure document attached to a US Offering Memorandum or Prospectus for issuances outside the United States, which addresses specific foreign Securities law requirements. Most popular is the Canadian Wrapper.

**Yield:** the total rate of return to an investor on a fixed income investment (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.

**Yield Curve:** a graph showing the yield against time to maturity.

**Zero Coupon Bond:** a Bond that is issued with substantial OID and calls for no Interest payments or coupons, only a principal payment at maturity. Investors earn interest from the difference between the discounted price of the bond and its par (or redemption) value (e.g., US Treasury bills, US savings bonds). See also Discount Notes.

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

## **Hedge Funds Contact at Latham & Watkins**

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

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