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THE OFFICIAL COVENANT REVIEW PLAIN ENGLISH LEVERAGED FINANCE AND SPECIAL SITUATIONS GLOSSARY

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Introduction

The world of leveraged loans and high yield bonds has a high barrier to entry. Jargon and legalese abound, seemingly designed to trip and confuse the unwary. This glossary is designed to address this inequality of information. It is intended to cover common terms with which every market participant should have at least a passing familiarity. Note further that this glossary covers both the US and European markets as well as private credit, middle market, direct lending, and high yield terminology.

Of course, a fully comprehensive glossary is ultimately a fool's errand. The market is always changing, always evolving, and with it, the terms used by participants will change and expand in turn. Fool's errand or not, we encourage and welcome suggestions for future updates to the glossary; subscribers can reach out to crgroup.research@covenantreview.com.[1]

-- 1 --

"$1 of Ratio Debt Test" is a convention for imposing an **Incurrence-Based** test on a **Basket** by cross-referencing to **Ratio Debt**. It is usually drafted as a basket allowing some action so long as the company, after giving **Pro Forma** effect to such action, can still incur at least $1 under the ratio debt carveout. In the context of **High Yield** bonds, the term is traditionally equivalent to a 2x **Interest Coverage Ratio** or **Fixed Charge Coverage Ratio** (as this is typically the test applicable to an indenture's ratio debt carveout). It is, however, an undeniably silly way of writing a ratio-based carveout in the context of the **BSL** market, where ratio debt carveouts typically have different tests for pari passu debt, junior lien debt, and unsecured debt.

"1.5 Lien" is a colloquial reference to debt that sits between first lien and second lien debt in terms of lien priority (typically incurred after such first and second lien debt). Of course, 1.5 lien is just a naming convention. The reality is that 1.5 liens usually become the "true" second lien debt, with any existing second lien debt being pushed into third lien. Note that further layering can also result in such absurdities as "1.25 lien" or "1.75 lien" debt.

"103 Call" is an **Optional Redemption** provision commonly found in secured HY bonds that permits the issuer to redeem 10% of the bonds during a specified period at a price of 103%.

"144A" or **"Rule 144A**,**"** is an SEC rule that provides a safe harbor for HY bond issuers to offer and sell bonds without SEC registration so long as the bonds are offered only to **Qualified Institutional Buyers**. The vast majority of HY bonds are issued without registration based on this safe harbor rule.

[1] Note this glossary is an update and expansion of Plain English Translations: Frequently Used Loan Terms Glossary, originally published on March 2, 2020 and later expanded on April 25, 2024 and June 3, 2025.

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"144A-For-Life" refers to a HY bond that does not have **Registration Rights**. In other words, the bond is issued without registration under Rule **144A** and will never be SEC registered.

-- 3 --

"363 Sale." A sale of assets under Section 363 of the US Bankruptcy Code that allows a debtor to sell the assets free and clear of any claims against those assets. 363 sales are often used to sell **All or Substantially All** assets on an accelerated timeline. Secured creditors generally have the right to **Credit Bid** in a 363 sale if the assets to be sold are their collateral.

"364-Day Facility" is a form of **Revolver**, most commonly extended to **Investment Grade** borrowers, and which is typically unsecured. The revolving facility usually has a tenor of 364-days, hence the clever name here.

-- A --

"AAL." See **Agreement Among Lenders**.

"ABL" is short for **A**sset-**B**ased **L**oan. Typically, such a facility takes the form of a **Revolver** where the amount of debt extended is tied to an advance rate on a **Borrowing Base**. Like other revolvers, ABL revolving loans may be borrowed, repaid, and re-borrowed, though the borrower will be required to repay any outstanding exposure if the value assigned to the borrowing base, multiplied by the advance rate, declines below the outstanding principal amount.

"ABR" is short for **A**lternate **B**ase **R**ate (sometimes just **"Base Rate"**) and refers to an alternate benchmark interest rate available to most borrowers in the **BSL** market (i.e., the ABR is an alternative to **SOFR** or, historically, **LIBOR**). The ABR is typically defined as the greatest of (1) the federal funds rate plus 0.5%, (2) the administrative agent's "prime" lending rate, and (3) SOFR plus 1%. In the BSL market, **Margins** tied to the ABR tend to be 100 **Basis Points** *lower* than the corresponding margins tied to SOFR (or, previously, LIBOR).

"ABS" is short for **A**sset-**B**acked **S**ecuritization (or **S**ecurities). See **Receivables Financing**.

"Absolute Priority Rule." A principle that junior stakeholders (*e.g.*, equity-holders) generally cannot receive distributed value from a bankruptcy estate unless all senior classes are paid in full.

"Acceleration" is the declaration that debt is immediately due and payable (typically in the context of it being prior to the scheduled **Maturity Date**—i.e., the maturity date has been *accelerated* to the current moment). Acceleration normally requires the affirmative action of creditors (usually the majority of lenders in leveraged loans and 25% – 30% in the case of HY bonds) to occur but may be automatic in the case of insolvency or bankruptcy of the borrower or issuer.

"Accordion" has nothing to do with music and everything to do with a borrower's right to incur additional debt under a credit agreement. Also called an "incremental provision" (and, in Europe, an **Additional Facilities** provision), it provides a borrower with the ability to request additional loans (from existing or additional lenders) under the same credit agreement on essentially the same (or very similar) terms. Debt under the accordion is automatically permitted by the credit agreement but is not **Committed Financing** (i.e., no one *has* to lend under an accordion). The amount of the incremental debt is typically a function of several prongs—usually a capped basket (the **Free-and-Clear** amount), a component based on certain voluntary prepayments, and a ratio **Incurrence-Based** amount. See Covenant Primer: Explaining the Credit Agreement Accordion.

"Acquired Debt" is a term for debt that is obtained in connection with an acquisition (but was not incurred as part of, in contemplation of, or as a means of financing the acquisition). In other words, acquired debt is pre-existing debt at a target (or debt attached to target assets) that the buyer assumes. Contrast with **Acquisition Debt.**

"Acquisition Debt" or **"Acquisition Financing,"** in contrast to **Acquired Debt**, typically refers to any debt incurred for the express purpose of financing an acquisition.

"Ad Hoc Group." In the context of **Distressed Debt**, an ad hoc group ("ad hoc" being Latin meaning "for this") refers to a group of creditors that directly negotiate with the borrower or issuer in a restructuring. The group usually initially coalesces informally (hence the "ad hoc" nomenclature) but is typically dominated by certain creditors holding larger amounts of debt. As the group organizes, it is common for the members of the group to sign **Cooperation Agreements** to memorialize the formation of the group (and establish baseline rules of behavior). In the world of **Liability Management Transactions**, whether a creditor is or is not in the ad hoc group can dictate the quality of terms on offer in a debt exchange. In complex structures, there may be more than one ad hoc group vying for control of the restructuring process.

"Add-On" for loans typically means debt incurred under the **Accordion** that is added to the total amount of debt under a credit agreement. The concept may also be referred to as an "incremental" (though add-ons tend to refer to accordion debt that is intended to be **Fungible** with an existing **Tranche**). Add-ons for bonds refers to **Additional Notes**, where a series of bonds is re-opened and additional bonds are issued under the same indenture as the existing bonds. Not to be confused with an "add-on acquisition," (also known as a **Tuck-in**) which generally refers to an acquisition made by a company (often in the private equity context) to supplement its existing business, rather than any change to the borrower's debt capacity or capital structure.

"Addback" refers to an amount that is "added back" to **EBITDA** (usually after having been deducted from **CNI**). Addbacks are ostensibly designed to make EBITDA a more "accurate" metric of earnings generated by the business, though in reality, addbacks are where sponsor lawyers make good on their fees and are the site of some of the most egregious instances of overreach in the leveraged debt markets (oh, hello **Synergies and Cost Savings** and **New Contract Adjustments**). Not surprisingly, addbacks are also heavily negotiated and can encompass a truly astounding variety of payments and exceptions. Addbacks are why reported EBITDA and *covenant* EBITDA can be so very, very different (or how negative EBITDA in a model can suddenly become positive EBITDA in the company's **Compliance Certificate**).

"Additional Facility." See **Accordion**.

"Additional Notes" refers to when a series of bonds is re-opened and additional bonds are issued under the same indenture as the existing bonds.

"Additivity" means that the carveouts or baskets within a **Negative Covenant** are separate and independent from each other, and cumulative to each other. Common (but somewhat aggressive) versions of additivity provide that a borrower / issuer can use a ratio test and fixed baskets at the same time, with the actions under the fixed baskets not counting when computing the ratio (also known as **Stacking**).

"Adequate Protection." Protections granted to existing secured creditors in bankruptcy to compensate for, or protect against, a decline in the value of their collateral during the case, including where the **Automatic Stay** restricts the creditor's ability to foreclose on or otherwise access the collateral, or where priming liens are granted. Common forms of adequate protection include **Replacement Liens**, periodic cash payments, or other court-ordered relief.

"Administrative Agent" (in the United States) or **"Facility Agent"** (in Europe) is an institution (typically an investment bank) that administers the day-to-day operations of **Term Loan** and/or **Revolver** debt (e.g., keeping an up-to-date register of lenders, making sure repayments are doled out to lenders, etc.). The "agent" part of administrative agent is a bit of a misnomer, however, as there generally is no fiduciary (much less, agent-principal) relationship established between the administrative agent and the lenders.

"Affiliate" is an entity that controls, is controlled by, or is under common control with another entity (a company's subsidiaries as well as its equity-holders can both be considered "affiliates" by this common definition). Transactions with affiliates of the **Restricted Group** under a high yield bond or leveraged loan are typically regulated by an **Affiliate Transactions Covenant**.

"Affiliate Transactions Covenant" is a covenant that governs the **Restricted Group's** ability to enter into transactions with related entities (**Affiliates**). The covenant typically allows any transaction if it is on terms that are no worse than what would have been obtained "at arm's length" with a non-affiliate, but other baskets may apply as well. The covenant is unique in that it can be drafted as either an **Affirmative Covenant** or a **Negative Covenant**. See Covenant Primer: Explaining the Leveraged Loan Affiliate Transactions Covenant and Covenant Primer: Explaining the High Yield Affiliate Transactions Covenant.

"Affiliated Lender" is a lender of record in a credit agreement that is an **Affiliate** of the borrower. The term is commonly used to specifically refer to the **Sponsor** itself (if it buys **Term Loan** debt). Purchases of debt by an affiliated lender are generally governed under the assignments provision of the credit agreement and should be subject to numerous conditions and limitations, most notable of which: the affiliated lenders (1) cannot hold more than a certain percentage of term loans, (2) are closed off from some informational matters available to other lenders, and (3) are generally **Disenfranchised** from voting matters.

"Affirmative Covenants" is a section in credit agreements or indentures that tells the borrower or issuer (and the **Restricted Group**) what they must affirmatively do to comply with the agreement. Affirmative covenants tend to be more technically minded (covering such scintillating items as what insurance to maintain and environmental regulations) but will also cover things like when a borrower / issuer must deliver its financial statements (i.e., the **Reporting Covenants**) and maintenance of **Collateral** and corporate / **Debt Ratings**. Sometimes referred to as "positive undertakings" in European loans.

"Agreement Among Lenders" (or **"AAL"**) is a legal agreement most associated with **Unitranche** financings. The AAL is the document by which the unitranche lenders agree to be allocated into different classes with different relative priorities, which makes it a cousin to an **Intercreditor Agreement**, except that in an AAL, all the lenders are under a single credit agreement. Like an intercreditor agreement, an AAL will typically include a **Waterfall** (governing the relative priorities), **Turnover Provisions**, and voting rights. Unlike an intercreditor agreement, however, AALs are not typically signed by borrowers.

"Agreed Security Principles" are a set of rules governing the types of **Collateral** and other **Credit Support** typically from non-US sources, which is usually attached as a separate schedule or exhibit to a secured debt agreement or instrument—particularly in European and cross-border transactions. This is because unlike in the case of US credit support (which is broadly available and reasonably easy to provide), *non-US* credit support is frequently subject to local jurisdictional issues and other friction. In response, lenders on both sides of the Atlantic have taken to negotiating agreed security principles so that everyone understands exactly what is (or is not) included in their credit support package. The use of the word "understands" may be a bit facetious; agreed security principles are often as opaque and vaguely drafted as any other part of a debt agreement. For more information, see Plain English Translations: European Agreed Security Principles and Guarantor Coverage Tests.

"AHYDO Catch-Up Clause" (also known as an **"AHYDO Savings Clause"**) refers to a provision in some debt documents designed to avoid application of **A**pplicable **H**igh-**Y**ield **D**iscount **O**bligation rules under Section 164(e)(5) of the US Internal Revenue Code. AHYDO rules could disallow interest deductions for certain debt issued by a corporation if such debt (1) has a term of more than five years, (2) has a yield to maturity in excess of prescribed thresholds, and, most importantly, (3) has "significant" **OID** (where such accrued but unpaid OID could exceed one year's worth of yield).[2] Catch-up provisions were therefore crafted to avoid negative AHYDO treatment by allowing the obligor to make cash payment to the holder of the AHYDO debt so as to decrease the amount of accrued but unpaid OID to below the AHYDO threshold. AHYDO catch up payments are usually expressly permitted under **Junior Debt Prepayments Covenants** and **Restricted Payments Covenants**.

"All in Yield" (or, sometimes, **"Effective Yield"**) is a measurement used in debt instruments that refers to the *total* return on investment that lenders expect to receive from a borrower or issuer. This calculation necessarily goes beyond merely a reference to the **Margins** or interest rate and instead must also account for certain fees (including **Upfront Fees** or **OID**), discounts, and, if applicable, interest rate **Floors**. For loans, all in yield is often the metric (often referred to as "yield-to-yield") used to determine if an **MFN** cushion has been exceeded or whether a refinancing transaction is a **Repricing**, although some of the more aggressive deals use margin instead (and the relevant metric is often referred to as "margin-to-margin").

"All or Substantially All" (sometimes shortened to **"AOSA"**). Credit agreements and high yield bond indentures often have provisions that are triggered upon the transfer or release of "all or substantially all" assets (or **Collateral**). Unfortunately, there is no bright line test under New York law for what constitutes "substantially all" in the context of leveraged finance (at least as of the date of this writing). Instead, courts applying New York law consider multiple factors, both quantitative and qualitative. For a deeper dive on this topic, see Substantially All Assets Analysis.[3]

"Allocation" is the stage of loan **Syndication** where the **Arrangers** determine which institutions will hold the term loans and in what amounts. Allocation is not the same as funding, though the syndicate will usually start trading their commitments as soon as the allocation is completed (which sometimes results in the awkward situation of unwinding trades on debt that never closes and funds). If allocation occurs well in advance of funding, a **Ticking Fee** may be negotiated as recompense to lenders holding unfunded commitments for an extended period of time.

"Amend-to-Extend" (also **"Amend-and-Extend," "A&E,"** or **"A2E"**) is a feature in most **BSL** credit agreements which allows for all or a portion of any **Tranche** of debt to be extended (read: to push out maturities) with just the consent of lenders who wish to extend. Amend-to-extends are meant to give the company flexibility to manage maturities without risk of hold-out lenders cratering a transaction. And, at least in theory, such transactions are not intended to be punitive to non-consenting lenders, though it is typical for companies to offer a slate of lender-friendly provisions (or attractive economics) to just those lenders who agree to extend. The use of such transactions by distressed companies in the hopes of a refinancing, paydown, or restructuring at a later time is sometimes referred to as "extend-and-pretend" or "pray-and-delay" transactions. See Covenant Primer: Amend-to-Extend Provisions in US Leveraged Loans.

[2] This is of course, a massive oversimplification of the actual rules (consult your tax attorneys).
[3] We note that there is yet to be any reported English case law for what constitutes "all of substantially all" under English law governed documents. Reference is often made, but purely as guidance, from *Chartbrook Ltd v. Persimmon Homes* (2009) and the Australian case *Re. Australian Property Custodian Holdings* (2021).

"Amendment." Any legal contract must have the ability to be changed or adjusted as circumstances warrant. These are accomplished via supplemental agreements called amendments (or **Supplemental Indentures**, waivers, or joinders, depending on the specific purpose and type of instrument), which modify the terms of an original agreement. Amendments are usually subject to certain consent thresholds from existing creditors, which are set forth in a specific provision in the underlying agreement. See **Sacred Rights**.

"Amendment and Restatement" (or an **"A&R"**) is a contractual mechanism of replacing one agreement with another, usually where parties want to keep an underlying agreement but also wish to make many changes such that a simple **Amendment** would be insufficient or impractical.

"Amortization" is a fancy word for the schedule of regular principal repayments prior to maturity of a debt instrument. Debt that does not amortize, but simply matures on a date certain, is said to have a **Bullet** maturity. Debt that amortizes in very small amounts until maturity has a "balloon" maturity. **Term Loans B** tend to have balloon or bullet maturities, while **Term Loans A** are said to have more "meaningful" amortization (often with one or more step-ups in the payment amount). **Bonds** and **Revolver** loans typically do not amortize.

"Annualized Recurring Revenue" (or **"ARR"**) refers to a subset of **Middle Market** or **Private Credit** financings where the underlying credit worthiness is based on annualized recurring revenue rather than **EBITDA**. What is annualized recurring revenue? Essentially, it refers to the revenue expected to be received from certain kinds of contracts under which regular payments are due. In any event, ARR financing is often seen as an attractive alternative for start-up businesses where EBITDA is less than ideal as an economic metric (perhaps because EBITDA is negative or otherwise non-existent). ARR financing has become particularly associated with financing of SaaS (software as a service) businesses.

"Ancillary Facilities" are debt facilities typically provided on a bilateral basis as an alternative use of some or all of the **Revolver** commitment (e.g. by way of **Letter of Credit**, guarantee facility, and/or overdraft facility). Such flexibility is more common in European and cross-border financings; traditional US revolvers typically only permit **L/C** and **Swingline** sub-limits.

"Anti-Cash Hoarding" covenants or provisions are designed to prevent a company from holding on to too much cash, particularly in times of volatility and usually in the context of **Revolvers**. Such provisions are normally designed to prevent borrowers from drawing down on revolving facilities for the purpose of using the cash later, potentially to stave off bankruptcy (thereby resulting in a bankruptcy where the entirety of the revolver has been funded—to the chagrin of revolving lenders). Anti-cash hoarding provisions are often found in oil and gas deals (including in **RBLs**). See also **Clean Down.**

"Anti-Cooperation Provision" is a provision in a debt agreement designed to inhibit or hinder the formation of creditor **Cooperation Agreements**. These provisions are typically written as a prohibition against entering cooperative arrangements, usually unless the borrower otherwise consents. Consequences for violating an anti-cooperation provision can range from **Disenfranchisement**, to becoming deemed a **Disqualified Lender** (and being subject to a **Yank-a-Bank**), to the forfeiture of payments. Some formulations might include or be limited to a "reporting requirement" whereby lenders who join a co-op must notify the borrower of having done so.

"Anti-Embarrassment Provision." See **MFN**.

"Anti-Layering Provision" is a provision that prohibits the incurrence of **1.5 Lien** debt (or other debt that sits below one class of debt and above another class of debt, either in right of payment or in right of collateral). Anti-layering provisions tend to be more relevant to creditors sitting lower in the **Debt Stack**. These provisions will typically be included in **Intercreditor Agreements** (but in some cases may also be found in the underlying debt agreements). See also Covenant Primer: Explaining the Anti-Layering Provision in High Yield Indentures.

"Anti-Short-Circuit Provision" are provisions designed to prevent direct **Equity Contributions** (particularly from new equity-holders) to any entity that sits below the **Holdco**. Ostensibly, this is meant to prevent such equity contributions—which can take the form of shareholder loans—from being considered structurally senior to any holdco debt.

"AOSA." See **All or Substantially All**.

"Applicable Margin." See **Margin**.

"ARR." See **Annualized Recurring Revenue**.

"Arranger" is an institution that oversees / manages **Syndication** of a loan, usually an investment bank (or its broker-dealer arm). The terms "arranger" and "**Bookrunner**" are used interchangeably in the loan markets, and they mean essentially the same thing, regardless of what the cover page of the credit agreement says. A corresponding term for bonds is **Underwriter**. Unlike an underwriter, an arranger may or may not initially purchase the loans before offering the loans to lenders or investors. See **Fronting Lender**.

"Asset-Based Debt." Debt which is underwritten on the basis of value of specific assets. See **ABL** and **ABS**.

"Asset Sale" is not what you think. In the parlance of leveraged finance, it refers to *any* disposition or transfer of assets, including licenses, leases, **Sale-Leasebacks**, and, of course, true sales to third parties. Most loan and bond documentation will also expressly count the issuance of equity out of a **Restricted Subsidiary** as an Asset Sale. However, there are often numerous carveouts to the Asset Sale definition (particularly in bonds and bond-style loan covenants), so many sales of assets may not actually be "Asset Sales" for purposes of the debt documentation.

"Asset Sale Sweep" is a **Mandatory Prepayment** provision in credit agreements that requires a borrower to repay debt upon asset sales or dispositions. The term "asset sale sweep" is also often used generically to refer to prepayments following casualty events (e.g., with proceeds received from insurance following the destruction or damage of subject property or from the government in the case of eminent domain). Traditionally, the asset sale sweep in a loan agreement will require repayment of the loan with 100% of **Net Cash Proceeds** received from a subject sale, though this percentage may step-down based on achievement of certain **Leverage Ratios** and the company may opt to "reinvest" in itself in lieu of repayment (see **Reinvestment Right**). In bonds, net cash proceeds typically may only be used to repay certain specified debt or for reinvestments, with any remaining proceeds used to make an offer to prepay bonds at **Par** (though this requirement may also be watered down by the aforementioned step-downs).

"Asset Sales Covenant" is a negative covenant that governs the **Restricted Group's** ability to transfer assets (by sale or otherwise). Typically, the covenant will also govern the issuance of equity at a **Restricted Subsidiary** (though not from the borrower or issuer itself, which is more commonly governed by the **Change of Control** or **Fundamental Changes Covenants**). In US loans, the covenant is often similarly structured as other negative covenants (with a prohibition against asset transfers followed by enumerated baskets), while in bonds and European loans (and some US loans), most of the "baskets" are usually set forth as exclusions from the applicable **Asset Sale** definition. The covenant is also sometimes known as a **Dispositions Covenant** or **Disposals Covenant**. See Covenant Primer: Explaining the Leveraged Loan Asset Sales Covenant, Covenant Primer: Explaining the High Yield Asset Sales Covenant, and Covenant Primer: The European High Yield Asset Sales Covenant.

"Asset Sales Ratchet." A virtually extinct provision that used to appear in the **Credit Facilities Basket** in high yield bond indentures. It generally provides that the size of the basket will be reduced by the amount of repayments on the credit agreement made with proceeds of **Asset Sales**.

"Assignment" refers to the transfer of rights and (in the US) obligations of parties under a credit agreement, particularly in the context of secondary sales of loans. A party that acquires a loan by assignment becomes the lender of record going forward, with a direct claim against and relationship (in legal parlance: "privity") with the borrower (contrast with **Participations**). In European leveraged loans, the term "assignment" is sometimes used interchangeably with **Transfer** (although note assignments can only be used to transfer rights and not obligations under English law and therefore transfers are sometimes effected by a novation of contractual rights and obligations instead). See Covenant Primer: Assignment Provisions in U.S. Leveraged Loans—Keeping Certain Lenders Out and Covenant Primer: Explaining Transfer Provisions in European Leveraged Loans.

"Assumed Debt" is another term for **Acquired Debt**.

"At Home Protection." See **Double Dip Blocker**.

"Attachment" is the act of creating a **Security Interest** in an asset. The lien is enforceable by the lienholder against the debtor, but the lien is not enforceable against third parties until the lien is **Perfected**.

"Automatic Stay." An automatic injunction (i.e., a legally imposed stoppage) that arises immediately upon the filing of a bankruptcy petition and generally halts collection and enforcement actions against the debtor, preventing a creditor race to the courthouse and preserving the status quo while the bankruptcy case is ongoing.

"Availability" (sometimes **"Excess Availability"**) refers to the amount available to be borrowed under a **Revolver** (including in the form of **Swingline** borrowings or issuances of **Letters of Credit**). In standard cash-flow revolvers, availability will equal the total commitments less existing revolver exposure (i.e., already outstanding borrowings). In an **ABL**, availability is usually defined as the **Line Cap** less existing utilization of commitments.

"Available Amount." In European loans and bonds, an available amount basket is a cumulative basket for **Restricted Payments** and/or **Permitted Investments** that builds from retained cash flow, certain debt, and other sources, often including waived or retained amounts from asset disposals. These baskets may be provided in addition to a separate **Builder Basket**, giving companies not one but two cumulative baskets for restricted payments (with potential for double-counting, in some cases). See The Walkthrough: The Available Amount in European Bonds and Loans. In the United States, the term "Available Amount" is generally synonymous with the builder basket (rather than serving as a separate cumulative basket in addition to a builder).

An **"Avoidance"** action is a claim that can be asserted by a bankruptcy trustee / **Debtor-in-Possession** to "avoid" (*i.e.* claw back or unwind) certain pre-bankruptcy transfers, including the **Perfection** of a security interest or transfers of property. Examples of avoidance actions include **Fraudulent Transfers** and **Preferences**.

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"Backstop Fee," in a restructuring context, refers to a fee paid by an issuer or borrower to creditors who have committed to support, arrange, or guarantee a financing, exchange, or other **LMT**. These fees can be a key economic lever in **RSAs** and LMT negotiations and, by their very nature, are often intended to create different economics among similarly situated creditors. Backstop fees are often excluded from the "ratable treatment" requirement in many **Serta Blockers**.

"Bank Bond Financing" refers to a common structure for leveraged financing which involves some combination of a term loan and revolving debt (the "bank" component) and a **High Yield** bond offering (the "bond" component).

"Bank Book" is another term for a **Confidential Information Memorandum**.

"Base Rate." See **ABR.**

"Basis Point" (or **"BP"**; pronounced "bip") is 1% of 1% (in other words, 1 basis point = 0.01%).

"Basket" is a term for a **Negative Covenant** exception. Once upon a time, it referred only to an exception that was capped by a fixed "hard cap" (measured in US Dollars or another relevant currency, potentially with a **Grower**). Today, however, it is more broadly used to refer to any exception to the "general rule" of a negative covenant.

"Beneficial Ownership" is defined in SEC Rules 13d-3 and 13d-5. Sometimes, a person may be deemed to beneficially own securities that they are not the legal owner of—generally if the person has the right to vote or dispose of the securities. For example, if two holders have entered into a shareholders agreement, each will often be deemed to beneficially own all of the shares subject to the shareholders agreement. In leveraged finance, this is most relevant in the context of a **Change of Control** definition, which typically has a beneficial ownership trigger. Beneficial ownership information must also be disclosed to certain covered financial information pursuant to 31 C.F.R. § 1010.230 as promulgated by the Financial Crimes Enforcement Network (FinCEN) in the United States. These disclosure requirements are in addition to **KYC** rules under the Patriot Act.

"Benefitted Lender Provision" sets forth the basic rules on how "benefitted lenders" (i.e., lenders that have received payments beyond their proportional allocation) will be required to share their windfall with the other lenders (such that everyone ends up being treated ratably). The provision is largely a loan (rather than bond) construct and is typically drafted as a remedy (i.e., it assumes that there is an actual benefitted lender who has already received a payment) rather than a prescriptive measure that lenders be treated equitably (which is usually covered by a different part of the credit agreement).

"Best Efforts Financing." A type of financing where the investment banks are generally not committed to provide the underlying financing if **Syndication** to other institutional lenders or creditors fails. In other words, the banks promise to use their "best efforts" to close the deal but are not on the hook if they fail (in contrast to a **Committed Financing**). Bond deals are best efforts until the **Underwriters** or **Initial Purchasers** sign an underwriting agreement or purchase agreement. In committed **Bank Bond Financings**, the banks will usually commit to fund a **Bridge** loan if a bond deal fails.

"Best Interests Test." A **Plan of Reorganization** confirmation requirement that each impaired creditor, whether or not its class accepts the plan, must receive at least as much under the plan as it would receive in a hypothetical **Chapter 7** liquidation.

"Big Boy Disclaimer" is a typical condition for borrower or affiliate **Buybacks** in leveraged loans. If a borrower or an affiliate of the borrower wishes to acquire debt under a credit agreement, it may require the assigning lender to acknowledge the possibility that the purchasing party may possess important information that is not widely known ("material non-public information"), and that the assignor is nevertheless totally smart enough to understand the risks involved—i.e., that the assigning lender is a "big boy." If there is a more condescending term in the loan market, we haven't found it. Compare to a **No MNPI Rep**.

"Blacklist" or, more precisely, the **Disqualified Lender** list (or **"DQ List"**), is the list of potential assignees prohibited from purchasing a borrower's loans under the **Assignment** provisions of a credit agreement. A feature of US loans, but also European loans with a US dollar tranche, the blacklist has expanded from certain competitors of the borrower (and their identifiable affiliates) to include, in some cases, specific named entities. Their inclusion may be due to an unsavory reputation or track record (a refusal, for example, in other credits to work constructively with other lenders, reminiscent of a "doesn't play well with others" in kindergarten) or a difficult history with the borrower, its **Sponsor**, if any, or even the **Administrative Agent**. Not surprisingly, any list of named investors, as opposed to the more generic competitors, is typically not made public, but kept by the administrative agent (and not always shared with other lenders prior to a loan sale). In Europe, reflecting perhaps old-world manners or just plain squeamishness, rather than a blacklist, the parties typically use instead a **Whitelist** of permitted transferees for non-USD denominated loans.

"Blank Check Company." See **SPAC**.

"Blended Redemption" refers to a bond issuer's ability to use the **Make-Whole** and another **Optional Redemption** provision at the same time in order to lower the cost to the issuer of redeeming the bonds. For example, an issuer might redeem 40% of a series of bonds using the **Equity Claw** and redeem the rest using the **Make-Whole**.

"Blue Debt." A sub-categorization of **Green Debt** that refers to debt that finances ocean and water-related matters.

"Boilerplate." Common parlance for provisions in a contract which are intended to be technical or legal in nature (and, thus, are often copied from agreement to agreement without much thought). Think: governing law, confidentiality, integration, reaffirmation, usury rules, etc. And if you don't know what some of those things are, that's pretty much the point; these are "lawyers'" provisions—and thus, rife with legalese—rather than those that govern commercial matters or the business deal. Of course, boilerplate happens to be where parties tend to "hide" actually important matters if they don't want to call attention to them, because who in their right mind is going to read it? Oh right, Covenant Review analysts.

A **"Bond"** is a debt security that, in the United States, may be offered in an SEC registered offering or under Rule **144A**. Bonds also may be offered outside the US to non-US persons in reliance on **Regulation S**.

"Bondification" is the gradual transformation of loan documentation such that they increasingly resemble bond indentures (particularly in the context of covenants). Whether you think bondification is "good" or "bad" likely depends on which side of the table you happen to be sitting on.

"Book" refers to the offering document for a **Bond**. It is the **Offering Memorandum** for a bond issued under Rule **144A** and the **Prospectus** for an SEC registered bond.

"Bookrunner." See **Arranger.**

"Borrowing Base" is a concept in **Asset-Based Debt**, such as an **ABL** or **RBL** facility. A borrowing base is tied to the value of a specified pool of assets (usually based on an advance rate; e.g., 85% of the value of inventory or receivables) and dictates how much the borrower under the facility is actually able to borrow.

"Breach." See **Default**.

"Bridge" refers to any financing with a short-term maturity date (ranging from days up to a year) meant to provide proceeds to address a particular transaction (e.g., an acquisition). The term refers to the fact that the financing is meant to "bridge" the period between when the proceeds may be needed and when the borrower / issuer is able to obtain more permanent financing. In the context of high yield bonds in a **Committed Financing**, bridge loans are usually contemplated if the high yield bond issuance is not completed in the period between the signing and closing of the transaction (though the general expectation is that no such bridge will be needed). If, however, the bridge does have to be funded, all parties will want to issue the high yield bonds to repay the bridge as soon as possible. The terms of a high yield bridge loan are designed to incentivize the borrower to do just that.

"Bringdown" generally refers to the restatement of representations and warranties (or providing of updated deliverables) at certain points during the life of debt facilities. For example, in the incurrence of **Incremental Debt**, the borrower may be required to "bring down" its representations that it previously made but now with respect to the date of such incurrence. This can play a critical role in demonstrating to creditors that the company is *currently* hale and healthy (as opposed to just being hale and healthy some years ago).

"BSL" is shorthand for **B**roadly **S**yndicated **L**oans, meaning a facility to a large cap borrower that is widely **Syndicated** to numerous lenders, including institutional investors, insurance companies, and **CLOs**, among others. BSL is often used interchangeably for the market for **Term Loan B** (though any widely held and liquid term loan debt may fall under the BSL label).

"Builder Basket" is a type of carveout in negative covenants (usually found in **Restricted Payments Covenants, Investments Covenants,** and **Junior Debt Prepayments Covenants**). The basket may include a "starter" amount (capped at a fixed amount with a **Grower**) and builds over time based on a particular growth metric (which can start "growing" around the original funding but can also be backdated to an earlier date to create even more capacity), the latter of which is designed to give the company increased flexibility under its debt documents as a reward for positive economic growth. In the US loan market, the growth metric is usually based on **Excess Cash Flow** (ECF), a percentage of **CNI**, or **EBITDA**, while in the US bond market, 50% of CNI is the typical growth metric. In Europe, the typical growth metric for high yield bonds is 50% of CNI, while builder baskets in credit agreements may be based on CNI, EBITDA, and/or so-called "permitted funding" or "acceptable funding sources." Builder baskets also grow from other components, typically including equity proceeds and return on investments. Note that builder basket capacity can sometimes also be used to incur debt or liens via **Pick Your Poison** baskets. Builder baskets go by a variety of names in credit documentation, including, most commonly, the "Basket Build," "Build-Up Basket," Available Amount," and the **"Cumulative Credit."** See, Covenant Primer: Explaining Builder Baskets in U.S. Leveraged Loans.

"Bullet." The final principal payment in an **Amortization** schedule—typically paid on the maturity date. Debt where the entirety of principal is paid at maturity is sometimes referred to as a bullet note or bullet bond.

"Business Optimization" is a term used in **EBITDA** and **CNI** addbacks (as in: please go ahead and add back any expenses associated with business optimization). If you don't understand what that means, we can assure you that neither does anyone drafting these things. As a result, "business optimization" has become shorthand for any kind of expense that a borrower or issuer wants to add back to EBITDA that it does not otherwise have an addback for.

"Buybacks" are purchases by a borrower / issuer, its **Affiliates**, and even the sponsor, of the borrower's own loans or bonds, which purchases (if not offers) are allowed to be on a non-**Pro Rata** basis. For loans, buybacks by sponsors / affiliates are limited both in amount and voting rights on a "fox in the hen house" theory (see **Affiliated Lenders** above). Purchases by the borrower itself typically require a cancellation of the term loans but are not otherwise capped. While the term **"Discounted Buyback"** is sometimes used interchangeably with "buyback," it should be noted that most buyback provisions do not require the purchases to be at a discount to the face value. Buybacks usually are limited to purchases of **Term Loan** (rather than **Revolver**) debt. For bonds, buybacks are not limited by the bond indenture, and bonds purchased by the issuer do not have to be cancelled. However, bonds held by the issuer or its affiliates will typically be deemed to not be outstanding for voting purposes. See also, Covenant Primer: A Refresher on Leveraged Loan Buybacks in Light of Current Market Conditions.

"BWIC" refers to "**B**ids **W**anted **I**n **C**ompetition" which refers to a mechanism for secondary trading of bonds, loans, and securities on the secondary market. The idea is that a single account (for example, a **CLO**) that currently holds a portfolio of debt or securities can choose to sell several **Tranches** of such interests at once and is inviting various dealers to submit bids for the various debt instruments. See **OWIC.**

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"Call Protection" generally provides that if a bond or loan is repaid or redeemed early (i.e., before maturity) at the election of the borrower / issuer ("called"), then the borrower / issuer must pay a premium to affected lenders or creditors. In the **BSL** market, call protection typically comes in two flavors: **Soft Calls** and **Hard Calls**. For bonds, call protection often includes a **Make-Whole** period, followed by a **Call Schedule**. See, Covenant Primer: Explaining Leveraged Loan Call Protection.

"Call Provisions." See **Optional Redemption**.

"Call Schedule" refers to a bond issuer's right to prepay the bond at a specified price during a specified year after the issuance. A bond is generally said to be **Non-Call** prior to entering the call schedule.

"CAM" is short for **C**ollateral **A**llocation **M**echanism and is a provision (or sometimes a separate agreement) that seeks to equalize recoveries in the case of multiple **Tranches** of debt under a single credit agreement that are not supported by the same **Collateral** pool and/or guarantor group—most commonly arising out of cross-border financings on account of **Deemed Dividend** concerns. Less frequently, this feature might be called a debt allocation mechanism (or **"DAM"**). See, Covenant Primer: Explaining Collateral Allocation Mechanisms in US Leveraged Loans.

"Canadian Wrapper" is a disclosure document attached to **Offering Memorandums** and **Prospectuses** specifically relating to Canadian regulatory rules. Originally, such disclosures were literally "wrapped" around the physical offering documentation, though such attachments are now purely digital. Canadian wrappers are only required if the issuer in question is subject to Canadian securities rules and regulations.

"Cap Table" is short for capitalization table and is usually included in a **Lender Presentation**, **Bank Book**, or **OM**. Cap tables in a bank book will show (1) "sources and uses" (i.e., how a particular transaction is going to be financed and how those financing sources will be utilized) and (2) a table showing the company's debt and equity capitalization pro forma for the transaction. Typically, cap tables will also show opening leverage or coverage ratio levels and EBITDA. In a bond OM, "sources and uses" and opening metrics are typically covered in the "Use of Proceeds" and "Summary Consolidated Financial and Other Information" of the OM, while the "Capitalization" section sets out the issuer's debt and equity capitalization as adjusted for the bond offering. Covenant Review relies on cap tables to benchmark our covenant scores, so don't forget to include one when you request research!

"Capex Covenant" is a covenant that limits the amount of capital expenditures a company can make in a given time period. The covenant is sometimes treated as a **Financial Covenant,** though it is probably better characterized as a **Negative Covenant**. This discussion is somewhat academic, however, as capex covenants are rarely found in BSL or high yield documentation.

"Capital Lease Obligation" is a type of lease (usually on a fixed asset) that is treated as debt on a company's balance sheet (in contrast to an "operating lease"). As such, the amount of capital lease obligations allowed to be outstanding will ultimately be governed by the **Debt Covenant** (and **Liens Covenant** if secured). Capital leases are also known as **Financing Leases**. See also **Sale-Leasebacks**.

"Cash Collateral" is cash (or **Cash Equivalents**) that is used as collateral to secure a liability.

"Cash Collateral Order." A court order authorizing a debtor to use **Cash Collateral**, typically cash and cash proceeds that are subject to a secured creditor's lien, during bankruptcy; because cash collateral cannot be used without the secured creditor's consent or a court order, the order usually provides **Adequate Protection** and reporting and control requirements.

"Cash Dominion" is a feature commonly found in **ABLs** whereby lenders can transfer (or sweep) cash receivables held by the company directly into lender-controlled accounts. Cash dominion is one of several "sticks" lenders use against borrowers to discourage drawing beyond a negotiated threshold.

"Cash Equivalent." A short-term debt or equity instrument that is typically highly rated and similar to cash, particularly in terms of its liquidity (examples include certificates of deposit, short term money market funds, and commercial paper). Cash and cash equivalents are generally treated equivalently in leveraged debt agreements.

"Cash-Flow Based Debt." The counterpart to **Asset-Based Debt**. Cash-flow based debt is underwritten on the basis of the amount a borrower or issuer earns (or is expected to earn over time). Typically, such debt will be based on **EBITDA**, **Consolidated Net Income**, **ARR**, or a similar metric.

"Cashless Roll" is a mechanic that simplifies refinancing or debt exchanges by avoiding the transfer of cash. If existing creditors wish to participate in the new debt, they can elect to deem or "roll" (i.e., exchange) their old debt into the new debt without having to actually be repaid in cash by the borrower or issuer (i.e., the refinancing or exchange is purely on paper and, therefore, cashless).

"Carry-over / Carry-back" (also **"Carry-forward / Carry-back,"** particularly in Europe) is a concept applicable to basket caps or thresholds that are measured on an annual basis. Carry-over means that if there is unused capacity under the particular cap or threshold at the end of a subject year, that unused amount can be "carried over" (i.e., transferred) to one or more subsequent years. One can imagine how this can quickly snowball over time. In the US (but not in Europe), carry-back is rarer. Carry-back is the inverse of carry-over as it allows capacity ostensibly earmarked for future years to be "carried back" to the current period. See Market Alert: The ABCs of Annual Basket Calculations.

"Carveout" is slang for an exception to the general prohibitions contained in **Negative Covenants**. In other words, this is a synonym for **Basket**.

"Casualty Event Sweep." See **Asset Sale Sweep**.

"CDOR" was the Canadian **LIBOR**-equivalent and stands for **C**anadian **D**ollar **O**ffered **R**ate. CDOR publication ceased on June 28, 2024, and has been largely replaced by **CORRA**.

"Centre of Main Interest." See **COMI**.

"Certain Funds" is traditionally a UK and European regulatory requirement that the bank making the takeover offer on behalf of a bidder in a public-to-private transaction must ensure that the funding is available to complete the takeover; such that the financing is almost condition free. Nowadays certain funds financings have extended to become the market norm in European M&A and LBO transactions, requiring the buyer to have certain funds commitments for a defined time period (a "Certain Funds Period"), i.e., funding is certain other than in very limited circumstances: typically, illegality, a **Change of Control**, or a major **Event of Default**. The certain funds period may well extend past the syndication of the facilities, meaning that institutional investors will also be extremely limited in their ability to refuse funding. During this period, we expect **Ticking Fees** to be payable. See **SunGard Conditionality**.

"Change of Control" (also **"Change in Control"** and often shorted to **"CoC"**) is an event in which ownership of a borrower or issuer changes in a significant manner. The concept arises from the concern on the part of creditors that different ownership or management may reflect different values, corporate attitudes, hopes and dreams, etc. than the previous owners. The change of control definition typically consists of a number of triggers, including dissolutions, sales of **All or Substantially All Assets**, a "pre-IPO" ownership trigger (tied to a required minimum ownership requirement by **Permitted Holders**), and a "post-IPO" **Beneficial Ownership** trigger (where the change of control event occurs if a third party acquires voting stock in excess of a negotiated threshold), the latter being the primary trigger in HY bonds, often tied to a 50% threshold. In the context of US leveraged loans, a change of control is an **Event of Default** triggered by a sale of the borrower, or acquisition of a significant interest in the borrower, often measured by the percentage of voting stock held by particular entities (voting stock usually meaning any equity with the right to vote on members of the board of directors). In HY bonds, the change of control is structured as a covenant that triggers a **Put Right** for the bondholders, where they can sell their bonds back to the issuer at 101%. In European loans, a change of control event typically triggers an exit event with an individual put right for lenders at par (similar to how such events are treated among HY bonds) or, in older vintage deals, an automatic **Acceleration** of the facilities. See, Covenant Primer: Explaining the High Yield Change of Control Covenant, Covenant Primer: The European High Yield Change of Control Covenant, and Covenant Primer: Successor Parent Exceptions in the European High Yield Change of Control Covenant.

"Chapter 7" is the chapter of the US Bankruptcy Code governing liquidation bankruptcy proceedings.

"Chapter 11." The relevant chapter of the US Bankruptcy Code that governs bankruptcy proceedings that seek to reorganize a corporate debtor's liabilities. Reorganization is the key word here—the company is expected to emerge in a Chapter 11 proceeding as a going concern rather than liquidating.

"Chapter 15" is the chapter of the US Bankruptcy Code governing recognition of non-US insolvency proceedings. Chapter 15 was implemented as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and is the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") in 1997. Chapter 15 filings are made by a non-US representative of a debtor in a non-US proceeding and are aimed at facilitating cooperation between non-US and US insolvency proceedings.

"Chapter 22." The somewhat mean-spirited slang for a company that files for Chapter 11 a second time (do the math). There typically will not be a Chapter 33.

"Chewy Blocker" is any term or provision designed to close the **Chewy Phantom Guarantee** loophole. In most leveraged debt transactions, such a provision will impose additional hurdles that a borrower or issuer must jump before allowing the release of a non-wholly owned subsidiary from its guarantor role, for example, by demonstrating pro forma compliance with the **Investments Covenant** or only allowing a release of a non-wholly owned subsidiary if it became non-wholly owned as a result of a bona fide business purpose. Such blockers are referred by Covenant Review as "qualified." True blockers will generally prohibit the release of any guarantor unless it ceases to constitute a subsidiary.

"Chewy Phantom Guarantee." This intriguing-sounding term, coined by Covenant Review, has a well-deserved place in our "Hall of Shame." It refers to a guarantee by a wholly-owned restricted subsidiary (see **Restricted Subsidiary** below) of a borrower or issuer that can magically (and alarmingly) vanish, simply because the subsidiary ceases to be wholly-owned. The name of this particular loophole derives from PetSmart, Inc.'s 2017 release of its then-wholly-owned subsidiary guarantor, Chewy.com Inc.; creditors were, understandably, miffed.

"CIM." See **Confidential Information Memorandum**.

"City Code on Takeovers and Mergers" is a code of practice, administered by the Panel on Takeovers and Mergers, which provides a statutory framework for the takeover of public companies in the United Kingdom.

"Clean Down" provisions require the borrower to ensure no **Revolver** borrowings are outstanding for a few days once or twice a year. Such provisions are intended to ensure the borrower is not using its working capital facility as long-term debt. Once a mainstay of **LMA**-style European loan documentation, these clauses are now rarely seen in the **BSL** market, particularly as the revolver can now typically be used for the same wide range of purposes as a **Term Loan B**.

"Clean-Up Period" is a feature (usually in European and cross-border debt agreements) which allows certain **Events of Default** that may result from a **Permitted Acquisition** or other material investment (typically those that would not cause a **Material Adverse Effect**) to be "ignored" for a specified period of time after the relevant transaction. Clean-up periods recognize the complexity of modern M&A transactions and that in some cases—yes, even with dozens of lawyers and bankers working on the deal—a major acquisition might inadvertently result in an immaterial breach under a debt agreement. Such empathy has its limits, however: the company only has a specified period to "clean up" the mess left by the acquisition before the breach becomes a *true* event of default.

"Clearstream" means Clearstream Banking S.A. Euro-denominated and sterling-denominated bonds are typically held in book-entry form through **Euroclear** and Clearstream.

"CLO" stands for **C**ollateralized **L**oan **O**bligation and is a type of financial debt instrument that pools and securitizes loan obligations. CLOs make up a major percentage of lenders in the **BSL** market.

"Close-Out Redemption" or **"Close-Out Call"** refers to a bond issuer's right to redeem the remaining bonds if a specified percentage of the bonds, usually 90%, have been purchased in a **Tender Offer**. The close-out redemption price will be equal to the tender offer price.

"Closing" refers to the consummation of a financing transaction and specifically the funding of debt. In many transactions, the date that the underlying credit agreement or indenture is executed and the date the borrower / issuer receives the funds are the same (though there is always the possibility that loan documentation becomes effective some period of time before the debt is actually borrowed).

"Club Deal" refers to any debt which is provided by a small group of lenders (in contrast to a large syndicate, as is normally the case with **Term Loans B** or the **BSL** market). Club deals are common in the **Middle Market**, **Private Credit** market, and **Term Loan A** market. Club loans may or may not be actively traded in a secondary market.

"CNI" is short for **Consolidated Net Income**.

"CoC." See **Change of Control**.

"Collateral." Assets that secure debt. In European leveraged loans, the term **Transaction Security** is more commonly utilized.

"Collateral Agent" (or **"Security Agent"** in European loans) is the institution that has responsibility over the creation and perfection of liens on collateral. Usually a bank, the collateral agent holds possessory collateral (e.g., stock certificates) and is the named secured party on relevant collateral documentation. Often, the collateral agent and **Administrative Agent** roles are combined in the loan market (such that the term collateral agent may not even be used).

"Collateral Allocation Mechanism." See **CAM**.

"Collateral Stripping." See **Lien Stripping**.

"Collective Action Clause" is a **Boilerplate** provision in most credit agreements that provides that after an event of default, only the **Administrative Agent** may, and at the request of the **Required Lenders** shall, exercise remedies against a borrower (e.g., accelerate the debt). The primary purpose of a collective action clause is to allow majority lenders to "drive the bus" regarding the exercise of remedies. This means that decisions about enforcing rights against borrowers are made collectively by majority lenders rather than by individual lenders acting alone. See **No Action Clause**.

"COMI" stands for **C**entre **O**f **M**ain **I**nterests and refers to the place where a company regularly administers its interests and that is ascertainable by third parties like creditors. The concept is used under the EU insolvency framework and the UNCITRAL Model Law on Cross-Border Insolvency, which is incorporated in the United States as **Chapter 15** of the US Bankruptcy Code. A debtor's COMI is important for determining the appropriate forum for main insolvency proceedings and whether those proceedings will be recognized by courts in other jurisdictions. In many cross-border financings, the borrower will make representations as to its COMI and may also be subject to an **Affirmative Covenant** that it will keep its COMI unchanged.

"Commercially Reasonable Efforts." A term commonly found in debt documentation (particularly in conditions precedent or affirmative covenants). In short, a requirement in an agreement that is qualified as only requiring "commercially reasonable efforts" to accomplish something means that the acting party just has to *try* to accomplish that thing, and not that it must *actually* accomplish that thing (this is a massive simplification for a term that has quite a bit of common law baggage at this point). For creditors, the point is that a requirement subject to the obligor's commercially reasonable efforts is not mandatory.

"Commitment Papers." In corporate finance, commitment papers are the agreements entered into between a borrower / issuer and investment banks that set forth a proposed financing arrangement, particularly a **Committed Financing**. Typically, these consist of a commitment letter, a fee letter, and a fee credit letter (among other potential ancillary documents). There will also usually be a term sheet setting forth key terms of the financing, usually attached to the commitment letter. During an auction process, various banks will offer their own sets of commitment papers (with each bank's team referred to as a **Tree**[4]) to the sponsor or borrower in the hope they will be selected to lead the deal.

"Committed Financing" is a financing arrangement where the arranging banks commit (i.e., promise) to provide funding (so long as certain conditions precedent are met). In a committed financing, the banks are on the hook to provide the debt regardless of whether the **Syndication** succeeds or fails. Committed financing is most commonly associated with **LBOs**, M&A, and other transactions where financing is essential to the closing of the deal.

"Compliance Certificate." Often shortened to "comp cert," a compliance certificate is an annual and/or quarterly delivery requirement under most loan documents. The certificate typically includes calculations for **EBITDA** and other relevant financial metrics (including ratio calculations).

"Commitment Fee" typically applies only to a **Revolver** or other commitments (including **Delayed Draw Term Loans**) and is a per annum fee on the unused or available (to be borrowed) portion of the revolver (or undrawn term loan). For revolving debt, it can run from 10 to 50 bps and is frequently based on a grid (see **Grid Pricing**), with the fee rising or decreasing with leverage (or some other financial test); sometimes the fee can also vary based on utilization (e.g., if the unused portion of the revolver exceeds a certain percentage of the total commitments, the commitment fee will be higher). See also **Ticking Fee**.

"Concentration Cap" is a borrower's right to block (and potentially unwind) any **Assignment** of subject debt to a specific lender if the result of such assignment is that the lender (often together with its affiliates) would end up holding more than a specified percentage of the relevant class of debt. See also **Voting Cap**.

"Conditions Precedent" are the requirements that the creditors and borrower must meet prior to the funding of debt. The list of conditions precedent can stretch pages (even more so when the financing is related to an acquisition). In contrast, conditions for subsequent borrowings under a **Revolver** are usually quite slim (often limited to the delivery of a borrowing notice, a repetition or **Bringdown** of representations and warranties, and an assertion that the company is not currently in **Default**).

"Conditions Subsequent" are requirements imposed upon an obligor that must be satisfied *after* **Closing**. Functionally, they are equivalent to an affirmative covenant. See also **Post-Closing Covenant**.

[4] Wondering why individual bank teams are referred to as *Trees* and not *Branches* is the kind of thing that keeps young finance associates up at night. That and the commitment papers themselves.

"Confidential Information Memorandum" (also known as **"CIM"** or **"Bank Book"**). A close cousin to the **Lender Presentation**, the CIM is a marketing document that provides prospective lenders with information about the transaction and the borrower in question (though CIMs tend to be more voluminous and detailed than a lender presentation). CIMs also tend to include working group lists with contact information of the various parties working on the transaction. Confidential information memorandums may also refer to a similar marketing document used in M&A transactions.

"Consent Fee" is what it sounds like—a fee paid to creditors who agree to a particular change or waiver under a debt agreement, usually a few **Basis Points** on the debt held by the consenting creditor.

"Consent Solicitation" is the process by which a bond indenture is amended. If an issuer wants to change the terms of a bond indenture, it generally requires the consent of a specified percentage of the bondholders (a majority for most amendments). The issuer will solicit (i.e., ask) holders to provide their consent by sending a consent solicitation statement to bondholders, which will describe the proposed amendment(s) and typically offer holders a fee for providing their consent.

"Consolidated Net Income" or **"CNI."** While net income normally refers to the net income that a company must report on a consolidated basis in accordance with GAAP, in the context of a debt document, CNI is net income that is usually adjusted up the wazoo (a financial term of art, look it up) by numerous addbacks, much like **EBITDA**. In fact, addbacks to CNI should be considered comprehensively with adjustments to EBITDA, as an addback to CNI usually flows through to EBITDA (since EBITDA normally starts with CNI as a baseline).

"Continuation Vehicle Transaction" or **"CVTs".** Continuation vehicle transactions or continuation funds are a financing structure in private equity whereby portfolio assets held by one fund (usually approaching the end of its lifecycle) are transferred to a new fund. Such transactions have gained popularity as traditional PE exits (including IPOs) have become less popular due to macroeconomic pressures. In some cases, it is possible that CVTs may implicate **Change of Control** provisions, depending on how they are drafted, of course.

"Continuing Directors Trigger" (also known as a **"Proxy Put"**) is a now-rare trigger in some US public company **Change of Control** provisions. This particular trigger usually occurs when a majority of the board of directors no longer consists of "continuing directors"—i.e., directors at the time of the original transaction or replacement directors approved by a majority of directors in office at the time of the original transaction—within a set window of time (usually 24 months after closing). The trigger fell out of favor in the mid-2010s following a broader move away from a variation of the proxy put known as the **"Dead Hand Proxy Put."** In this variant, non-continuing directors are deemed to include directors elected due to a threatened or actual proxy contest. In a series of Delaware court of chancery cases culminating in *Pontiac General Employees Retirement System v. Healthways, Inc.* (Del. Ch. 2014), the dead hand proxy was generally held to inappropriately entrench existing directors. While proxy puts without a "dead hand" are largely seen as non-objectionable, they are also considered effectively pointless. This is due to other cases—notably, *Gerald Kallick v. SandRidge Energy, Inc.* (Del. Ch. 2013)—which generally require outgoing directors to approve new directors if doing so prevents acceleration of debt. Thus, the trigger has mostly disappeared from the high yield and BSL markets.

"Contractual Subordination" is an incredibly vague term sometimes used both colloquially and in the actual text of debt agreements. Most often, it is interpreted as synonymous with **Payment Subordination**, which is only accomplished via a contractual agreement between the two groups of applicable creditors (though this is, of course, confusing, since **Lien Subordination** is also usually accomplished via contract—i.e., the **Intercreditor Agreement**).

"Contribution Debt" is a type of **Equity Credit** basket in the **Debt Covenant** which allows an obligor to incur debt based on the amount of equity contributions or proceeds received after closing (sometimes subject to a multiplier—e.g., allowing $2 of debt for every $1 of equity received).

"Control Agreement" is a means of **Perfecting** a **Lien** in investment property and/or financial assets, including deposit accounts at banks. Traditionally, lenders would perfect their lien on personal property by making a public filing or by taking possession (think pawn shops). As certain intangible property became increasingly valuable, it was brought within the applicable statute governing security interests, and the concept of "control" was added to the methods by which security interests could be perfected. Control agreements are three-(or more)-way agreements under which the party holding the applicable **Collateral** (a securities intermediary such as a broker or a commercial bank) agrees to take directions from the secured party (most commonly after the occurrence of an **Event of Default**) instead of the party that owns the collateral (the borrower / issuer or other guarantor). When referring to control agreements over bank accounts, parties may refer to them as **"DACAs"** (i.e., **D**eposit **A**ccount **C**ontrol **A**greements). DACAs are also often distinguished between "springing" or "shifting" (if the obligation of the depository bank to follow the directions of the secured party are subject to the delivery of a "notice of exclusive control" by the secured party following an event of default) and "blocked" (if the secured party is the only one allowed to give directions over the bank account since day one). Control agreements in respect of securities accounts may be referred to as **SACAs** (**S**ecurities **A**ccount **C**ontrol **A**greements).

"Convertible Bond." A debt instrument (usually a fixed-interest **Bond**) that has the option to convert into an **Equity** stake (and sometimes cash).

"Cooperation Agreement" or a **"Co-op"** is a contractual arrangement among lenders and other creditors that agree to act together in response to distressed borrower or issuer maneuverings. The agreements are intended to protect creditors that are party to the agreement by establishing a voting bloc (ensuring reasonably fair treatment of the members when negotiating with a company in the context of a **Liability Management Transaction**). Do not assume cooperation agreements are "fairness" agreements—creditors party to a cooperation agreement may be treated differently depending on their specific circumstances, while some co-ops may be formed to include a subset of creditors to the detriment of others.

"CORRA" stands for **C**anadian **O**vernight **R**epo **R**ate **A**verage. CORRA-based rates are the preferred benchmark interest rate for floating rate Canadian dollar-denominated term debt. CORRA replaced **CDOR**.

"Cost Savings." See **Synergies and Cost Savings**.

"Coupon" is the annual interest rate payable on a **Bond**. For most bonds in the high yield market, the coupon is a **Fixed Rate**.

"Covenant." In the context of debt documentation, covenants are requirements that tell the borrower or issuer (1) what to do (**Affirmative Covenants**), (2) what not to do (**Negative Covenants**), and (3) in some cases, what financial metrics to maintain (**Financial Covenants**). Also known as "undertakings" in the European market.

"Covenant-Lite" or **"Cov-Lite"** generally refers to term loans that lack a maintenance **Financial Covenant** (or have a maintenance financial covenant for the benefit of the **Pro Rata Lenders** only); over time, cov-lite term loans have become more the rule than the exception, at least within the **BSL** market. See Covenant Primer: Covenant Lite Leveraged Loans.

"Covenant-Loose" or **"Cov-Loose"** is a term referring to debt facilities that benefit from a maintenance **Financial Covenant** (in contrast to **Covenant-Lite**) but where the maintenance levels are set with so much flexibility as to render it extremely unlikely that the covenant would actually ever be triggered.

"Covenant Strip" is an amendment to debt documentation that removes most (if not all) **Covenants** (as well as other provisions, like **Mandatory Prepayments** and **Events of Default**). Covenant changes do not generally implicate **Sacred Rights**, so a covenant strip can usually be accomplished with just a simple (or bare) majority of the bondholders or lenders under New York law-governed documents. By contrast, covenant strips are almost unheard of for English law-governed deals due to the *Assénagon Asset Management SA v. Irish Bank Resolution Corporation Ltd* (EWHC (Ch) 2012) case, in which the court found an exit consent to unfairly oppress minority holders.

"Covenant Suspension / Termination" or **"Covenant Fall-Away"** is a feature in some leveraged financing transactions (particularly of issuers or borrowers that are **Rising Stars** or otherwise near **Investment Grade**). Upon the occurrence of certain conditions (including the obtaining of IG ratings), these provisions state that at least certain covenants will cease to apply—often to bring the underlying agreement closer in function to other IG indebtedness.

"Cover Amendment." Many amendments to credit agreements will typically come in two parts: the actual changes to the credit agreement (usually set forth in a fully conformed "blacklined" exhibit) and a shorter document or letter to which the modified credit agreement is attached. The cover amendment is that "shorter document" and, despite its innocuous sounding name, can nevertheless include material and operative terms (so please include it when requesting research from Covenant Review).

"CP Memo." The CP memo is a short document delivered at **Closing** by the lenders' or arrangers' law firm indicating that the **Conditions Precedent** (the "CPs") to the transaction have been satisfied and that the deal is closed and the debt is funded.

"Cram-down" means the confirmation of a **Plan of Reorganization** over the objection of a dissenting junior class if statutory requirements are satisfied, allowing the court to impose plan treatment on non-consenting junior stakeholders.

"Cram-up" means the confirmation of a **Plan of Reorganization** over the objection of a dissenting senior class if statutory requirements are satisfied, allowing the court to impose plan treatment on non-consenting senior stakeholders, often by keeping their senior debt in place and allowing junior creditors or equity-holders to retain value.

"Credit Agreement" is a generic term for the main legal agreement documenting **Term Loan**, **ABL**, and/or **Revolver** debt and is the document that usually contains the covenants. The term is primarily American; in Europe and other jurisdictions outside of the United States, **"Senior Facilities Agreement"** tends to be more common. The corresponding debt agreement for bonds is an **Indenture**.

"Credit Bid." In a bankruptcy or foreclosure sale (such as **363 Sale**), a secured lender may be able to bid using the amount it is owed instead of paying cash. The lender "credits" the amount of debt it is owed against the purchase price, reducing or even eliminating the cash needed to buy the auctioned assets. Credit bidding helps protect a lender from the collateral being sold too cheaply, but it may be limited by the court in certain circumstances.

"Credit Facilities Basket" is an exception more often seen in bond indentures (though as credit agreements "borrow" more and more liberally from bond indentures, this concept is appearing in credit agreements as well). This basket of the **Debt Covenant** allows for debt under "Credit Facilities," which is a term that is not, as you might think, limited to leveraged credit facilities. In fact, the term usually includes any loans or bonds (or any other kind of debt) and therefore can be extremely broad to the point of functioning as a de facto **General Basket**. Debt under the credit facilities basket can almost always be secured (under its own dedicated **Liens Covenant** carveout).

"Credit Parties." See **Loan Parties**.

"Credit Support." An informal term for repayment protection with respect to debt (i.e., assurances that a lender will eventually be repaid principal, interest, and fees that have accrued and are otherwise due to it). The term usually refers specifically to **Collateral** and **Guarantees**. In general, the more credit support, the "safer" the investment.

"Creditor-on-Creditor Violence," or **"Lender-on-Lender Violence."** A more sensationalist term for a **Liability Management Transaction**. That said, the mere presence of battling groups of creditors is not by itself enough to define an LMT.

"Creditor Equality Provisions" (also known as **"Pro Rata Provisions"** or **"Ratable Treatment Provisions"**) are contractual mechanisms in credit agreements and indentures designed to ensure that creditors within the same class or tranche receive equal or proportionate treatment with respect to payments, recoveries, and other economic benefits. These provisions typically require that: (1) voluntary and mandatory payments (including prepayments, redemptions, and repurchases) be made **Pro Rata** across all creditors within the applicable class based on their outstanding principal amounts, (2) any **Collateral** proceeds or recoveries following enforcement or in bankruptcy be distributed ratably among creditors according to their proportionate holdings, and (3) no individual creditor or subset of creditors receive preferential treatment unless expressly permitted by the debt documentation (such as through **Buybacks**, **Open Market Purchases**, or **Dutch Auctions** conducted in accordance with specified procedures). Creditor equality provisions are foundational to the concept of **Equal and Ratable** treatment and are closely related to **Pari Passu** provisions, which address equality in payment and collateral priority. These provisions are enforced through **Collective Action Clauses**, **Benefitted Lender Provisions**, and, in some cases, **Turnover Provisions** in **Intercreditor Agreements**. However, creditor equality can be undermined or circumvented through various **Liability Management Transactions**, including selective **Tender Offers** with **Early Bird Fees**, **Vote Rigging** schemes that favor certain creditors, or transactions that create **Structural Subordination** or **Effective Subordination** for non-participating creditors. In bankruptcy contexts, creditor equality is further protected by statutory rules governing distributions and the prohibition against preferential transfers, though **Equitable Subordination** may be applied in cases of serious inequitable conduct. Creditor equality provisions are distinct from intercreditor arrangements that govern relative priorities between different classes or tranches of debt (such as **First Lien** versus **Second Lien**), which involve negotiated subordination rather than equality.

"Critical Vendor Motion." A request to pay certain prepetition vendor claims early because the vendor is considered essential to ongoing operations. Often controversial because it can shift value away from other unsecured creditors.

"Cross-Acceleration" or **"Cross-Payment Default"** is an **Event of Default** that only occurs if other material debt of the **Restricted Group** is **Accelerated** or not repaid at maturity. HY bonds typically have this kind of event of default, and not a **Cross-Default** provision.

"Cross-Collateralization" refers to a secured debt arrangement where a single pool of assets is applied to secure multiple instruments. A common example is in the case of multiple **Purchase Money** debt arrangements with a single vendor, who uses the collective pool of purchased assets as collateral for each purchase money debt instrument.[5]

"Cross-Default" is a standard **Event of Default** in leveraged loans, which is triggered if a member of the **Restricted Group** defaults under other material debt either because it failed to make a payment or due to some event that gives the holders of that other debt the option to **Accelerate** (but *not* necessarily where the debt is actually accelerated). Contrast with **Cross-Acceleration**.

"Crossing Lien" (also known as a **"Split Lien"**) is a customary security arrangement in US deals where there are term loans (or other fixed-term debt) and an **ABL**. In such situations, the pool of **Collateral** is split between "current" assets (e.g., receivables, inventory, cash, accounts, and related assets) and "fixed" assets (essentially everything else, but normally including real property, general intangibles, intellectual property, equity, and equipment). Term loan lenders take a senior lien on the fixed assets and a junior lien on the current assets, while the ABL lenders take a junior lien on the fixed assets and a senior lien on the current assets. Not coincidentally, the "current" assets usually serve as a basis for the ABL's **Borrowing Base**. The crossing lien arrangement is typically governed by an **Intercreditor Agreement**.

"CSA" stands for **C**redit **S**pread **A**djustment and is a little bit of extra interest added on to a **Risk-Free Rate** to minimize the daylight between the relevant RFR and **LIBOR**. CSAs were hotly negotiated during the final months leading up to the end of LIBOR, with various approaches being adopted by the market. With SOFR now firmly ensconced as the benchmark for most debt markets in the United States and SONIA in the UK, CSAs are rarely a consideration (except for the occasional legacy debt deal).

"Cumulative Credit." See **Builder Basket**.

"Cure Period" (also known as a **"Grace Period"**) is a pre-negotiated time period following a **Default** during which the borrower or issuer has an opportunity to "cure" (that is, fix) the problem that resulted in the default. If no fix occurs within the cure period, the default matures into an **Event of Default**. When the cure period begins is not always straightforward and can be the subject of negotiation (e.g., from the moment of the default, from knowledge by a particular officer of the company, or—in some cases—from the date on which the **Administrative Agent** or other creditors tell the company in question that a default has occurred).

"Current." In the context of describing debt, an adjective meaning the debt will mature within 12 months.

"CUSIP" is a nine-digit alpha-numeric code assigned to equity, debt, and other **Securities**, which is then used to track such financial instruments for purposes of trading and settlement. The term is an acronym for **C**ommittee on **U**niform **S**ecurity **I**dentification **P**rocedures, and the CUSIP system is owned by the American Bankers Association.

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"DAM." See **CAM**.

"Daily Simple SOFR." See **SOFR**.

[5] Note that this term is generally used with a different meaning in *fund finance*, where it indicates when the assets (usually the uncalled capital commitment) of a fund or investment vehicle are pledged to guaranty the obligations of another fund or investment vehicle.

"DDTL." See **Delayed Draw Term Loan**.

"Dead Hand Proxy Put." See **Continuing Directors Trigger**.

"Deal Away." In the context of restructuring transactions and **LMTs**, a deal away transaction refers generally to when the borrower or issuer seeks additional debt or other financing from additional parties that are not already party to the company's existing debt stack (i.e., rather than seeking a transaction with any of its existing creditors).

"Debenture" is a debt agreement most commonly associated with (very) long-term unsecured investment grade debt **Securities**. The term can also refer to an all-asset English law security agreement.

"Debt." See **Indebtedness**.

"Debt Covenant" is the negative covenant that limits the amount of **Indebtedness** that can be incurred by the **Restricted Group**. See Covenant Primer: Explaining the Leveraged Loan Debt Covenant, Covenant Primer: Explaining the High Yield Debt Covenant, and Covenant Primer: The European High Yield Debt Covenant.

"Debt for Borrowed Money" is a common term found in debt documentation, though the term is almost never formally defined. Consider it the platonic ideal of indebtedness—the borrowing of cash with an implicit or explicit promise to repay that amount (with or without interest) in the future. Loans' and bonds' status as debt for borrowed money should be considered unimpeachable. **Off-Balance Sheet Liabilities**, on the other hand, occupy the other end of the spectrum here and probably do not constitute debt for borrowed money.

"Debt Ratings" are credit ratings assigned by rating agencies (such as Moody's, S&P, or Fitch) to specific debt instruments or issuers, reflecting the agency's assessment of credit risk and likelihood of repayment. Debt ratings influence pricing, investor eligibility, and market access, and may also be embedded directly into debt documentation. In leveraged finance, debt ratings can affect covenant operation through **Grid Pricing**, **Portability** provisions, or **Covenant Suspension** mechanics tied to achieving **Investment Grade** status. Broadly syndicated loans usually also include an **Affirmative Covenant** that the Borrower utilize **Commercially Reasonable Efforts** to obtain debt ratings for the subject term loan, though normally no minimum rating is required.

"Debt Service Coverage Ratio" (often referred to as **"DSCR"**) is a financial ratio test of EBITDA (or other revenue-based metric) to "debt service" (generally speaking, payments of interest and principal on indebtedness during the applicable test period). Debt service coverage ratios are commonly used as the **Financial Covenant** in **Project Financing** deals or deals related to oil and gas or power generation.

"Debt Service Reserve Account" (often referred to as the **"DSRA"**) is a feature in **Project Financings** and is a creditor-controlled account that is meant to hold a minimum amount of cash (or other **Credit Support**) that is sufficient to pay debt service (i.e., expected principal and interest payments) on the credit agreement debt within a period of time (usually six months). The DSRA (and requisite mechanics to ensure that it remains "topped up") is usually governed by a **Depositary Agreement**.

"Debt Stack" refers to the total amount of debt issued by a particular company. Essentially, this is everything listed as debt on a balance sheet.

"Debt Sweep" is a **Mandatory Prepayment** requirement in credit agreements that arises if the **Restricted Group** incurs either non-permitted debt or other debt specifically designed to refinance the underlying credit agreement. The latter is more of a technical point (since, of course, debt designed to refinance the credit agreement should be applied to...refinance the credit agreement). The former is also not particularly relevant since the incurrence of debt that is not permitted is probably going to cause an **Event of Default** in any event (though having a standalone debt sweep may be useful to ensure that a **Hard Call** gets paid in the right circumstances).

"Debtor-in-Possession" refers to a debtor in a **Chapter 11** proceeding that continues to operate and has assets available to satisfy creditor claims.

"Deemed Cure" (or **"Auto-Cure"**) provisions are a relatively recent phenomenon in leveraged loans in which borrowers that have undergone an **Event of Default** can "self-cure" by causing the underlying circumstances giving rise to the event of default to no longer exist—think delivering financials after the deadline. This is a direct encroachment on the traditional treatment of events of default (i.e., that once they occur, only the *lenders* can agree to waive such event of default).

"Deemed Dividend." Historically, the concern over deemed dividends is the reason why most secured bonds and loans extended to US companies did not benefit from **Collateral** support or guarantees from such borrowers' or issuers' non-US subsidiaries. In basic terms, Section 956 of the US Internal Revenue Code of 1986 established that any pledge of more than 2/3 of the voting stock of a non-US subsidiary (that constituted a "Controlled Foreign Corporation" or "CFC") or a guarantee / collateral pledge from such non-US subsidiary would be deemed a *dividend* from the non-US subsidiary to the US obligor. This would have exposed the primary obligor to potentially onerous tax consequences. The underlying issue here was muddied by the overhaul to the code under the Tax Cuts and Jobs Act of 2017 (and resulting regulations promulgated thereunder), which potentially opened the door for non-US **Credit Support** on US borrower debt going forward (without the deemed dividend tax consequence). That said, whether out of inertia or an acknowledgment that the tax analysis here is perhaps not completely straightforward, most US credit facilities continue to exclude non-US credit support. In any event, the specter of the deemed dividend is today much less terrifying than it was in its heyday.

"Default" is any **Breach** or violation of debt agreements which, with the passage of time (a **Cure Period**), has the potential to ripen into an **Event of Default**. Although lenders and bondholders are generally unable to **Accelerate** debt upon the mere occurrence of a default, certain baskets or actions by the company may be prohibited if a default has occurred.

"Default Blocker." See **No Default Condition**.

"Default Interest" is additional interest that is payable following a **Default** or **Event of Default** in a debt agreement. Typically defined to mean 1% or 2% above the otherwise applicable interest rate, the application of default interest can be alarmingly narrow (for example, only being payable following an event of default associated with a failure to make a payment or the occurrence of bankruptcy, and then only in respect of overdue amounts).

"Defaulting Lender" refers to a lender that is unwilling or unable (for example, due to the lender's own bankruptcy) to comply with its obligations to extend credit to a borrower. Defaulting lenders typically are **Disenfranchised** from voting under the loan agreement, and their interests in **Letters of Credit** or **Swingline** loans may be distributed to other non-defaulting lenders on a **Pro Rata** basis. Defaulting lenders can also be removed via a **Yank-a-Bank**.

"Defeasance" is a concept in a bond **Indenture** releasing an issuer from being subject to certain obligations upon satisfaction of specified conditions, including depositing cash and/or government obligations into an irrevocable trust sufficient to cover all remaining principal and interest payments through maturity or another specified date under the bond. Defeasance takes two forms: "legal defeasance," whereby the issuer is deemed to have paid and discharged the bonds, and "covenant defeasance," whereby the issuer is released only from its obligations under certain covenants. Legal defeasance is generally understood to be currently impossible due to an inability to satisfy the typical condition related to tax consequences. But don't take our word for it. No, seriously, don't—reach out to your tax lawyers if you have questions.

"Defenestration." The act of throwing something out the window. A neat word but not really debt jargon, except in the sense that this is what most junior finance lawyers want to do with a credit agreement drafted by opposing counsel.

"Delayed Draw Term Loan" (or **"DDTL"**) is simply a term loan facility that may be borrowed for some period after the initial **Closing** (sometimes subject to certain additional **Conditions Precedent**, including leverage tests). Prior to funding, the delayed draw lenders usually receive a **Ticking Fee**. Do not confuse a delayed draw term loan with a **Revolver**, which also permits borrowings after the closing date, or the **Accordion**, which is similar in concept but represents *uncommitted* capacity. Once borrowed, a delayed draw term loan behaves just like a term loan funded at **Closing**—it amortizes and then matures on the agreed maturity date. Amounts prepaid cannot be reborrowed (unlike under a revolver).

"Depositary Agreement" is a legal agreement which documents creditors' oversight of a company's cash management, normally in the context of **Project Financings** and construction loans or bonds. The heart of a depositary agreement is a **Waterfall** provision that governs how (and in what order) cash may be withdrawn from creditor-controlled deposit accounts.

"Description of the Notes," often shortened to **"DoN,"** is the part of an **Offering Memorandum** that "summarizes" the terms of the **Indenture**. This is where the covenants for a bond offering live. Although SEC rules generally require OMs to use "plain English," covenants cannot readily be summarized, so the DoN typically includes a word-for-word copy of the covenants that will eventually be in the indenture. Importantly, the indenture, and not the DoN, is the legally controlling document.

"Designated Commitments" is a concept in some loan and bond documentation where unfunded commitments are deemed outstanding as soon as they are established or as of another date determined by the borrower / issuer (typically, **Revolver** or **Delayed Draw Term Loan** commitments). This allows the company to test compliance with the **Debt Covenant** and **Liens Covenant** on either the date the commitments are obtained or on a later date that it would be in compliance with ratio-based carveouts, even if subsequent drawdowns on such commitments would technically be prohibited by such covenants or not allowed under such ratios. See Covenant Primer: Explaining the Impact of Designated Commitments in High Yield Indentures.

"Designated Non-Cash Consideration" is a term used in the context of **General Asset Sales Baskets**, and particularly in respect of the minimum cash consideration requirement under that basket. While the basket may state that a minimum percentage of consideration must be in the form of cash, there is often a negotiated amount of *non-cash* consideration that will be *deemed* cash for purposes of testing this condition.

"Designated Preferred Stock" is a concept stemming from the HY bond market (though it is also found in bond-style credit agreements). In short, designated preferred stock refers to preferred equity (but not **Disqualified Stock**) that is affirmatively designated as such by the obligor. Within the **Restricted Payments Covenant**, the **Restricted Group** is usually permitted to issue dividends on designated preferred stock subject to certain conditions (and often a 2x interest or fixed charge coverage test) via a standalone basket.

"Dilution" is an unofficial term for when a claim against an obligor's assets is spread among additional creditors. For example, a first lien term loan lender may be "diluted" by the incurrence of additional pari passu secured debt, as the value of collateral will potentially have to be shared among a larger pool of first lien creditors.

"DIP Financing" is debt financing for a **Debtor-in-Possession** (hence, DIP). DIP financing is often provided by the DIP's existing lenders and is super-senior in priority to all prior (prepetition) debt as a matter of law.

"DIP-to-Exit" is a form of **DIP Financing** that includes a mechanic that automatically converts the DIP financing into **Exit Financing** (rather than requiring a full payoff of the DIP financing and entry into separate exit debt documentation).

"Direct Lending." A form of **Private Credit** where non-bank lenders provide credit directly to borrowers without intermediaries like banks (lenders providing such financing are **Direct Lenders**). Middle-market borrowers often use this type of financing as direct lenders can typically provide faster execution and more customization of terms than can be found in the **BSL** market.

"Discounted Buybacks." See **Buybacks**.

"Disenfranchisement" is concept where certain lenders or other creditors under a particular debt agreement are not permitted to vote (or are disregarded for voting threshold purposes) for purposes of the agreement. Disenfranchisement can be accomplished by excluding the affected lenders from both numerator and denominator of the voting calculation or by stating that affected lenders are "deemed" to have voted in the same proportion as unaffected lenders. Creditors can be disenfranchised for a number of reasons, including because the lender is an affiliate of the issuer, a **Disqualified Lender**, a **Defaulting Lender**, or is **Net Short**).

"Dispositions Covenant" (also **"Disposals Covenant"**). See **Asset Sales Covenant**.

"Disqualified Counsel" language refers to a provision in a debt agreement whereby lenders are prohibited from engaging certain law firms and/or other advisory firms to the extent such firms are named on a pre-disclosed blacklist. In some variations, the provision is not an outright prohibition but instead only withholds customary borrower-indemnification over such firms' expenses and fees. Disqualified counsel provisions (like their kissing cousin, the **Anti-Cooperation Provision**) chill lenders' enthusiasm during LMT negotiations by injecting just enough legal uncertainty and friction to deter cooperation and engagement. The concept remains (at the time of writing) quite rare, with many practitioners viewing the provision as somewhat unpalatable (if not unethical).

"Disqualified Lender," "Disqualified Institution," or **"DQ Lender"** is a creditor that is (or would be if it became) a lender that is otherwise prohibited from holding the loan in question. In other words, these are the guys on the **Blacklist**. If a disqualified lender finds itself acquiring an interest in the loan, it may be subject to a **Yank-a-Bank**.

"Disqualified Stock" is equity that has certain debt-like features (e.g., a maturity date or mandatory redemption requirement or prescribed regular "interest"-like payments) or which is convertible to debt. It is commonly treated equivalently to debt in **BSL** credit agreements and HY indentures and, accordingly, is typically subject to limitations imposed by the **Debt Covenant**. Because it is still equity, however, disqualified stock normally sits behind debt instruments in order of priority.

"Distressed Debt" is an informal term for debt that trades on the **Secondary Market** meaningfully below **Par**. How deep a discount such debt must trade before it is considered "distressed" is a matter of some debate, and the answer can differ depending on whether such debt is secured or unsecured. In any event, the issuer of distressed debt will be subject to increased financial hardship (including a lack of liquidity) and is generally seen as more likely to file for insolvency protection and/or engage in **Liability Management Transactions**.

"Distressed Debt Exchange" or **"DDE"** is a transaction whereby creditors holding one type of debt elect (often via coercion) to exchange their holdings with other debt. Think of it as a refinancing at gunpoint. The concept is often codified by rating agencies. For example, per Fitch Ratings, a DDE is an exchange of debt where there "is a material reduction in terms compared with the original contractual terms, and the exchange is conducted to avoid bankruptcy, similar insolvency or intervention proceedings, or a traditional payment default." DDEs are often associated with **LMTs**, but not every DDE is a liability management transaction (and neither is every LMT a DDE).

"Distressed Disposition" is a European debt feature and means a transfer of a company's assets (including shares) at the request of an "instructing group" of lenders, typically following the **Acceleration** of debt or in conjunction with the enforcement of transaction security. The **Security Agent** is pre-authorized to (1) release (a) security over the assets being sold and (b) liabilities owed by the entity being sold, or (2) sell or transfer the benefit of the liabilities owed by the entity to a third-party, often subject to pre-agreed conditions relating to consideration and valuation.

"Dividend Recap" or **"Div Recap"** is short for "dividend recapitalization" and generally refers to a transaction whereby existing debt is refinanced while simultaneously raising new debt to fund a dividend to equity-holders.

"Dividends Covenant." See **Restricted Payments Covenant**.

"Double Dip" is a rather unsavory sounding term for a rather unsavory type of **LMT**. Without getting too into the weeds, a double dip involves the issuance of debt at a non-guarantor subsidiary, which is guaranteed by the loan parties or existing guarantors. The non-guarantor issuer then takes the proceeds of the debt and lends it to the existing issuer / borrower and/or guarantors as an intercompany note (which is then pledged as security for the non-loan party debt that is secured on a **Pari Passu** basis with existing senior secured debt). The end result is that creditors to the non-guarantor issuer may have two claims against the same pool of assets (a direct claim against the loan parties as guarantors of the non-guarantor debt and an indirect claim via the intercompany note collateral). They have dipped...doubly. Look, we didn't come up with the name this time.

"Double Dip Blocker" (also referred to as **"At Home Protection"**) refers to a provision designed to inhibit or otherwise block **Double Dip**-type **LMTs**. A common formulation provides that *any* debt owed by the borrower or guarantor to a *non*-guarantor subsidiary (e.g., an **Unrestricted Subsidiary** or **Non-Guarantor Restricted Subsidiary**) must be subordinated or junior secured (thereby blocking the second indirect pari passu secured claim against existing collateral that is the hallmark of a double dip). Other examples might provide that debt incurrences generally cannot be designed to create multiple claims in bankruptcy arising from a single issuance. Some market participants may also refer to the traditional limitation on unrestricted subsidiaries holding debt or equity of restricted group members as a double dip blocker (though this would only be the case for a double dip using unrestricted subsidiaries and, of course, the limitation is not universally present in debt agreements).

"Downstream." See **Upstream and Downstream**.

"Drawstop" refers to any situation or set of circumstances that allow lenders to withhold funding of a borrowing request (usually in the context of a **Revolver**).

"Drive-By" refers to a debt offering that launches and prices on the same day. The concept is principally limited to the bond market, but quick syndications in the BSL market may also be tagged with the "drive-by" adjective.

"Drop Down" refers to a category of **LMT** transaction where certain assets (usually material **Collateral**) are transferred from the group providing direct **Credit Support** to entities that do not provide credit support (e.g., **Non-Guarantor Restricted Subsidiaries** or **Unrestricted Subsidiaries**).

"DSCR." See **Debt Service Coverage Ratio**.

"DSRA." See **Debt Service Reserve Account**.

"DTC" refers to the **D**epository **T**rust **C**ompany. Bonds are typically held in book-entry form through DTC.

"Dutch Auction" has nothing to do with the Netherlands. It refers, in fact, to the mechanics, often set out in mind-numbing length and detail, required of a borrower that wishes to buy back its own loans at a discount from lenders holding the loans. Dutch auctions are supposed to operate so that all applicable lenders are given an opportunity to participate on a **Pro Rata** basis. The purpose of such Dutch auction mechanics is to ensure that the borrower's decision as to which (and whose) loans it buys is made strictly on the basis of the price offered and **not** on the basis of other considerations (other relationships with that lender, creating or enhancing a favor bank, hair color, etc.). In Europe, loan buybacks are typically executed through a solicitation or open order process, which, like a Dutch auction process, is intended to ensure the ratable treatment of lenders. For more information, see Covenant Primer: Explaining Leveraged Loan Buybacks in European Loans.

-- E --

"Early Bird Fee" (also known as **"Early Consent Fee"** or **"Early Tender Premium"**) is an additional incentive payment offered to creditors who agree to participate in an **Exchange Offer**, **Tender Offer**, **Consent Solicitation**, or other Liability Management Transaction by a specified early deadline, typically well in advance of the final expiration date. The fee is designed to incentivize rapid participation and help the borrower or issuer quickly achieve a critical mass or requisite consent thresholds, thereby reducing execution risk. Early bird fees are in addition to any standard Consent Fee or exchange premium and are forfeited if a creditor misses the early deadline (even if they ultimately participate by the final deadline). Early bird fees are increasingly common in Liability Management Transactions as borrowers / issuers seek to lock in participation before market conditions change or before non-participating creditors can organize opposition.

"Early Look." In the world of **BSL** transactions, an "early look" occurs when the arrangers circulate key terms (usually by way of a term sheet) to certain prospective lenders *before* the launch of general **Syndication**. Early look stages can be used to gauge interest (perhaps in anticipation of converting the deal to **Private Credit**) or to fill out the book ahead of time thus ensuring a quick road to **Allocation**. The bond equivalent of an "early look" is a **Pink**. In European loans, the same concept is often referred to as "early bird," which I think we can all agree is the more delightful term. Deals that are in an early look process are also sometimes referred to as "pre-sounding" or "wall-crossed" / "wall-x" deals.

"EBITDA" stands for **E**arnings **B**efore **I**nterest, (income) **T**ax, **D**epreciation, and **A**mortization. EBITDA as a concept was born in the leveraged buyout boom of the 1980s and has become the Holy Grail of leveraged lending. Think of it as "core earnings" or "predictable earnings"—the income stream that creditors can count on or expect their issuer to generate, with which to service the creditors' debt. In practice, EBITDA has become an elaborately constructed and heavily negotiated term, usually based on **CNI** (itself heavily adjusted) with numerous and occasionally fanciful **Addbacks** sought by the issuer. These addbacks benefit the company, since both leverage and coverage **Financial Covenants** build on EBITDA—greater EBITDA permits higher leverage and supports higher interest and other **Fixed Charges** as well. Addbacks may include projected **Synergies and Cost Savings** for which the issuer gets immediate credit even before, and whether or not, the savings are actually realized. If the most creative work in Hollywood, as the old joke goes, is done by accountants, then the most creative work by a company's accountants appears in the EBITDA "asks."

"EBITDAC" is EBITDA plus **C**ovid-related losses or expenses. EBITDAC became quite a hot topic in 2020 **–** 2022 but is largely forgotten now (though some deals still have similar adjustments, including more broadly for *any* pandemic or natural disasters).

"EBITDAM." EBITDA plus **M**anagement fees. Commonly used in **Project Financing** or gaming deals (where such fees associated with specific projects or gaming facilities can be especially relevant).

"EBITDAR" is EBITDA plus **R**ent expenses. Commonly used in marketing materials, particularly in deals with a heavy real estate focus (though EBITDAR itself is not usually a metric used in "regular-way" leverage loan financing).

"EBITDAX" is EBITDA plus e**X**ploration (of fossil fuel reserves) expenses. This metric is commonly found in credit agreements or other debt instruments for oil and gas deals.

"Effective Subordination" is an informal term referring to how unsecured debt can be **Subordinated** relative to secured debt, at least in respect of the value of **Collateral** that secures such debt, even in the absence of (1) a written subordination agreement and (2) **Structural Subordination**. Senior unsecured bonds, for example, are said to be *effectively* subordinated to a secured credit agreement debt by virtue of the absence of collateral, even though the bonds and the credit agreement are otherwise considered **Pari Passu** in right of payment.[6]

"Effective Yield." See **All in Yield**.

"EMTNs," which stands for **E**uro **M**edium-**T**erm **N**otes," are flexible, unsecured debt instruments, typically issued by corporations, financial institutions, or governments in the European markets, with a medium-term maturity (originally this was less than five years but has since expanded). Unlike traditional bonds, EMTNs are issued under a program that allows multiple issues of securities over time, and in multiple currencies. The United States has been issuing MTNs since the beginning of the 1970s after introducing the debt instruments as an alternative to short-term financing in the commercial paper market and long-term borrowing in the bond market. Over the past 40 years, EMTNs have emerged as a significant funding source for U.S. and non-US companies, supranational institutions, federal agencies, and sovereign nations.

"Enterprise Transformative Events" See **Transformative**.

"Envision Blocker" refers to any provision that potentially prohibits or inhibits a transaction like Envision's "Amsurg"-related **Liability Management Transaction**. Since the Amsurg transaction utilized several loopholes (including generous **Investments Covenant** capacity and the ability to enter into **Uptiering** transactions), the platonic ideal of an Envision blocker is perhaps better described as a combination of (1) a **J. Crew Blocker**, (2) a **Serta Blocker**, and (3) relatively restrictive **Investments** capacity. The market may also use the term to refer to a provision that limits investments in unrestricted subsidiaries exclusively to a specific basket dedicated to such purpose, blocking the use of other baskets. For more information, see Envision Blockers.

"Equal and Ratable" is a term used interchangeably with **Pari Passu** (in right of collateral). To wit, creditors who are equal and ratable with one another have an equal claim against collateral assets that is determined by their proportionate hold of such debt.

"Equitable Subordination." A rarely granted bankruptcy remedy where a court, after finding serious inequitable conduct on the part of a creditor, can push a creditor's claim down the priority waterfall. Equitable subordination claims are fact-specific and typically hard to prove.

"Equity." Very simply, the value of a business after liabilities is subtracted from assets. Holders of equity are the "owners" of the business and are situated at the very bottom of the capital structure. At least within the United States, a company's directors and officers often have a fiduciary duty to act in the best interests of its equity holders (in contrast, no such duty applies to the company's debtholders). The duty is generally imposed by state law.

[6] Effective subordination is a particularly important point to consider in European financings, as collateral packages often are very limited. This is often due to practical and legal considerations in the relevant European jurisdictions, where local laws and regulations may prohibit some entities from providing security under certain circumstances or may require the value of security to be limited in amount. With limited collateral packages as the norm, the pool of non-collateral assets can be substantial and valuable, making it important to consider a company's capacity to secure debt on non-collateral assets. See Covenant Primer: Common Structuring Issues in European High Yield Bonds and Leveraged Loans.

"Equity Claw" is an **Optional Redemption** provision in a HY bond that functions as an exception to **Call Protection**, usually within the first three years of issuance. The claw commonly provides that a negotiated percentage (typically 35% or 40%) of the bonds may be redeemed with proceeds of an "equity offering" by an issuer (which often does not actually require any offering of equity), usually at a call price equal to par plus the coupon. See Covenant Primer: Explaining the High Yield Equity Claw.

"Equity Contribution" or **"Equity Check"** refers to an amount of equity financing contributed by a **Sponsor** in an **LBO** or other transaction (including as part of a restructuring of, or amendment to, existing debt financings). Said another way, an equity check is the sponsor's skin in the game.

"Equity Credit" is a term of art referring to any basket that derives capacity from new equity proceeds received by the company (via contribution, issuance, or otherwise). For example, if investors put in $100 million in exchange for common stock of the obligor, that may build "equity credit" for **Indebtedness**, **Restricted Payments**, or other types of actions on the basis of so-called "equity credit baskets." Typical examples include **Contribution Debt** baskets, baskets based on **Excluded Contributions**, and, of course, certain parts of the average **Builder Basket**. Equity credit baskets are sometimes referred to as stovepipe baskets, which refers to customary illustrated organizational charts where rectangles representing subsidiaries and parents are stacked on top of one another before being capped by a triangle representing equity-holders. Picture it in your head—the image should vaguely resemble an old-fashioned stovepipe (there is a reason that bankers went to business school and not art school).

"Equity Cure" is a means by which a borrower that has breached a **Financial Covenant** can fix or undo the default—think of it as a "second chance." Equity cures permit equity-holders to contribute an amount to the borrower that, when added to **EBITDA** (or other applicable metric), puts the borrower in compliance (retroactively) with the required financial covenant. The terms and limitations of an equity cure can be highly technical and are typically not favored by the lenders, who, in effect, lose the default trigger they otherwise would have. See Covenant Primer: Explaining Equity Cures in U.S. Leveraged Loans.

"Equity Sweep." This **Mandatory Prepayment** obligation requires a borrower to prepay debt with proceeds from equity issuances, including **IPOs**. For the most part, the **BSL** market *does not* include equity sweeps in their credit agreements. Next time you are wondering if a borrower's IPO is going to trigger a mandatory repayment event, the answer is probably "nope." That said, equity issuances by *subsidiaries* may be subject to prepayment requirements via the **Asset Sale Sweep,** since subsidiary IPOs may be considered **Asset Sales**.

"Erroneous Payment Provisions" are provisions in credit agreements that were developed in response to perhaps one of the most bizarre episodes in the US debt markets: Citibank's accidental *$900 million* payment (of its own money!) to lenders of Revlon in 2020. Unfortunately for Citibank, while accidents happen, the scale of this one, coupled with the fact that several of the lenders refused to return Citi's money, left much of the market agog. Even more surprising, a federal district court essentially said that Citi was out of luck because the lenders were within their rights to keep the payment as it represented a "discharge for value" (we're greatly simplifying the intricacies of the legal arguments at play). Citi (and the other major agent banks) were understandably distraught at the possibility that a back-office error could leave them almost a billion dollars out of the money and rushed to implement what came to be known as "erroneous payment" or "erroneous payment clawback" provisions. At their core, these provisions state that if a payment is too good to be true, then it almost certainly is, so please give the agent its money back. The drama eventually subsided when the Second Circuit determined that no, the lenders weren't justified in keeping the cash. While erroneous payment provisions are still sometimes seen in new credit agreements, they are essentially vestigial, with no real purpose beyond repeating what the Second Circuit (and, to be frank, common sense) has already stated to be the law. See Second Circuit Reverses on Citibank's $900 Million Revlon Mistake.

"Escrow" represents a kind of legal suspended animation. It comes up most often in acquisition transactions where lenders are unwilling to make loans to the borrower prior to certain events occurring; at the same time, the borrower may need to demonstrate that it has financing available. In such cases, the loans are funded into escrow—under the control of a third party that will not release the funds until those certain conditions, acceptable to both the lenders and the borrower, have been met.

"ESG" refers to **E**nvironmental, **S**ocial, and corporate **G**overnance, and is shorthand for an investment approach that puts greater emphasis on the environmental and social impacts of the company in question than in traditional investing. See **Green Loans** and **Sustainability Linked Loans**.

"EURIBOR" (short for the **Eur**o **I**nter**b**ank **O**ffered **R**ate) commonly serves as the reference rate for Euro-denominated loans and floating rate bonds.

"Eurobond" is a debt instrument (usually with long-term maturity) issued in a currency other than the currency of the issuer's home country. The name is a bit of a misnomer as there is no requirement that such bonds be issued in Euro (or even in a European jurisdiction). Adding to the confusion, such bonds are often referred to by their relevant currency after the term "Euro," as in "Eurodollar" or "Euroyen." A Eurobond is also known by the more accurate term, **External Bond**.

"Euroclear" means Euroclear Bank SA/NV. Euro-denominated and sterling-denominated bonds are typically held in book-entry form through Euroclear and **Clearstream**.

"Event of Default" is any violation (i.e., a **Default**) of debt documentation which allows the creditors to **Accelerate** the debt under the credit agreement or indenture. Some events of default occur immediately (such as payment defaults or a violation of the negative covenants) while others only occur after a **Cure Period** following the initial default has expired. See Covenant Primer: Explaining Events of Default under Leveraged Loans and Covenant Primer: Explaining Events of Default under High Yield Indentures.

"Evergreen." An adjective referring to (1) in the context of a debt agreement, a provision that does not expire during the term of the agreement, (2) in the context of debt more generally, a financing arrangement that either does not have a fixed maturity date or can be renewed or extended repeatedly or indefinitely, or (3) in the context of private credit funds, an investment vehicles with no fixed termination date, permitting regular redemption windows (unlike closed-ended funds).

"Excess Availability." See **Availability**.

"Excess Cash Flow." The definition of "Excess Cash Flow" can run for pages, alas, but is intended to quantify the borrower's consolidated net income at fiscal year-end that is available to it *after* making various other required cash payments (e.g., for debt service, taxes, and other business expenses / activities). The concept is largely non-existent for **High Yield** bonds.

"Excess Cash Flow Sweep" is the **Mandatory Prepayment** provision in credit agreements requiring that the borrower make an annual payment to the lenders to prepay term loans out of the borrower's **Excess Cash Flow**. Historically, the borrower and the lenders would split the pot 50 / 50, but now the percentage payable to the lenders has been reduced (to, say, 25% or even 0%) if the borrower can hit certain leverage targets. More conservative deals may start the sweep at 75% or higher. See Covenant Primer: Explaining the Excess Cash Flow Sweep in U.S. Leveraged Loans and Covenant Primer: Explaining the Excess Cash Flow Sweep in European Leveraged Loans.

"Excess Proceeds" is a concept primarily found in HY bonds and refers to net proceeds of an **Asset Sale** that have not been applied under the **Asset Sales Covenant's** application of proceeds provision. Excess proceeds beyond a threshold must be used to make an offer to purchase the bonds at par.

"Exchange Offer" refers to an offer by a borrower or issuer to exchange debt held by existing holders in exchange for new debt. For bonds, exchange offers may be conducted simultaneously with a **Consent Solicitation** to **Covenant Strip** existing bonds.

"**Excluded Amounts Provisions**" refers to a provision that specifies that amounts injected to help a company meet the net leverage ratio test in a **Portability** provision will not build **Restricted Payments** capacity under one or more baskets that would otherwise build from equity contributions. Such a provision is intended to reduce the risk that funds contributed by an acquirer to meet the leverage test will be "round-tripped" to the new shareholder as a dividend after the company has relied on the portability provision to avoid a **Change of Control** offer. However, while well-intentioned, excluded amounts provisions are not completely protective, as they don't prevent the company from using other sources of restricted payments capacity to refund the acquirer. See Plain English Translations: Excluded Amounts for a closer look.

"Excluded Contributions" is a form of **Equity Credit** basket, commonly found among the **Restricted Payments Covenant**, **Investments Covenant**, and **Junior Debt Prepayments Covenant**. Essentially, it refers to equity proceeds or capital contributions that are specially designated by the borrower to be utilized as a carveout under such covenants. Properly drafted, excluded contributions baskets should not be double counted with respect to any other equity credit baskets in the same covenant package.

"Excluded Subsidiaries" are subsidiaries of the borrower or issuer that are not required to become guarantors. The reasons for excluding particular subsidiaries run the gamut from legal to practical, including entities which are not wholly-owned, entities based in countries that are either subject to sanctions or have untrustworthy legal systems, regulated entities, entities which could trigger negative tax implications if they were to provide **Credit Support**, and subsidiaries where it would not be cost-effective to obtain the guaranty. See Covenant Primer: Explaining Excluded Subsidiaries in US Leveraged Loans.

"Exit Fee." Similar to **Call Protection**, an exit fee is paid when a lender or other creditor "exits" the credit (one way or another). This can occur at maturity or upon any other acceleration or repayment of the particular creditor's debt, depending on how it is drafted. Exit fees rarely appear in regular way BSL or high yield debt offerings, though they can be offered as an economic incentive in more distressed or bespoke scenarios.

"Exit Financing" is debt incurred to finance a debtor's exit from bankruptcy. Such debt is often provided by pre-petition lenders (or can be syndicated to new lenders) and may consist of a refinance or roll-up of the existing **DIP Financing**.

"Extend-and-Exchange" refers to a rather clever (some would say *too* clever) maneuver in **Liability Management Transactions** designed to bypass limitations on **Open Market Purchases** imposed by the *In re Serta Simmons* (5th Cir. 2024) decision. In short, an extend-and-exchange contemplates the extension of maturity by members of an **Ad Hoc Group** of lenders by some arbitrary amount (e.g., six months or a year). While maturity extensions are considered a **Sacred Right**, in many credit agreements, *only* the affected lenders (e.g., the ad hoc group) need to consent to extend maturity (and not both the affected lenders *and* **Required Lenders**). Once maturities are extended, the ad hoc group will be considered a separate class from the remainder of lenders, whereupon an exchange can be exercised with *just* the extended group. If the exchange is conducted on a pro rata basis, then there is no violation of **Pro Rata Sharing** rules, as the exchange *is* ratable with the extended class. It is worth noting that the extension in such instances *cannot* be conducted via traditional **Amend-and-Extend** mechanisms, as those typically have a requirement that the extension be offered to *all* lenders of the original class on a pro rata basis. The first known instance of an extend-and-exchange was Better Health's 2025 LMT, which closed mere weeks after the *Serta* decision was handed down.

"External Bond." See **Eurobond**.

"Extraordinary, Unusual, and Non-Recurring" is a label commonly applied to a specific **Addback** to **EBITDA** and/or **CNI**. For losses and expenses, "extraordinary, unusual, and non-recurring" generally is meant to capture one-off costs and, as such, should be added back because they ostensibly do not reflect the "true" performance of the business. So the theory goes, anyway. Given the vagueness of the terminology here—made worse by lawyers' apparent fondness for thesaurus-diving with respect to this addback ("infrequent," "atypical," and other synonyms might also make an appearance here)—the addback is sometimes subject to a cap.

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"Facility." See **Tranche**.

"Facility Agent." See **Administrative Agent**.

"Fair Market Value" or **"FMV"** refers to the metric used throughout leveraged debt documentation, often in the context of determining basket usage in the **Restricted Payments Covenant**, **Investments Covenant**, and **Junior Debt Prepayments Covenant**. Although not always formally defined, FMV usually is meant to capture the value of an asset by reference to a hypothetical price agreed between a willing buyer and a willing seller. Of course, FMV is almost always determined by the borrower / issuer (in good faith), so take any FMV determination with a healthy dose of salt.

"Fallen Angel" refers to a company that has historically been **Investment Grade** rated but has fallen into hard times and dropped into **Junk** territory. Fallen angels occupy a somewhat gray area when it comes to covenants, as their debt is often still IG-style (and generally lacking meaningful protections), even if their credit rating would demand something a bit more robust were they to seek refinancing in their current state.

"FCCR." See **Fixed Charge Coverage Ratio**.

"FILO Loan" is a type of term loan often issued under an **ABL** revolving structure. Borrowing its name from the accounting convention, FILO term loans are borrowed in full up front ("first in") but are only repaid *after* the revolving borrowings are repaid ("last out"). As it is payment subordinated (at least relative to revolving debt), FILO debt tends to be more expensive (and therefore is often seen in the context of **Distressed Debt** financing).

"Final OM" or **"Final Prospectus."** This is an updated version of the **Preliminary OM** or **Preliminary Prospectus** that contains all definitive, final offering information (such as pricing and offering size). The final OM / final prospectus is the binding legal document for an offering to sell **Securities**.

"Financial Covenant" is a covenant measuring or testing an obligor's financial health; typically, via certain metrics, such as a **Leverage Ratio**. Financial covenants are referred to as **"Maintenance Covenants"** if tested regularly, or **"Springing Covenants"** if tested only when certain conditions are met. Bonds and BSL term loans typically do not include financial covenants.

"Financing Lease." See **Capital Lease Obligation**.

"First Lien." See **Junior (vs. Senior) Lien.**

"First Lien / Second Lien" is a common structure in the **BSL** and leveraged finance markets, distinguished by two (or more) **Term Loans** or other debt instruments, where one is secured by a first lien and one is secured by a second lien (in each case on the same pool of **Collateral**). Historically, at least when dealing with first lien / second lien term loans, the two debt instruments could have been documented under a single agreement, but the investment bankers (or rather, their attorneys) found this approach unwieldy. Today, the common approach is to have two (mostly) identical debt agreements,[7] with lien priority governed by an **Intercreditor Agreement**. In a quirk of fate, the "single agreement governing multiple priorities" approach has achieved a renaissance of sorts in the form of **Unitranche** financing.

"First Lien Last-Out" is a priority of debt that is usually only **Payment Subordinated** (while still considered **Pari Passu** secured with other first lien debt in right of collateral). This is normally accomplished by creating a new "step" in the post-default **Waterfall**.

"First-Out." Nominally shorthand for any tranche of debt that is repaid first in a **Waterfall** (i.e., senior in payment priority) but sometimes used as shorthand for **Superpriority** or even **First Lien**.

"Fixed Charges" refers to certain types of payments that a borrower or issuer may be required to make in a given period. Typically, fixed charges start with interest expenses but will also include other items (for example, cash dividends paid on certain kinds of preferred or **Disqualified Stock**).

"Fixed Charges Coverage Ratio" (often referred to as **"FCCR"**). A frequent financial metric in leveraged loans and bonds that refers to the ratio of **EBITDA** to **Fixed Charges**.

"Fixed Rate" is an interest rate that is set at a fixed amount and does not change over time. **High Yield** bonds traditionally accrue interest on the basis of a fixed rate (also referred to as a **Coupon**). Contrast with **Floating Rate**.

[7] Though this usually is not the case where the first and second lien constitute loans and bonds, in which case the underlying agreements are often quite different.

"Flex" or **"Market Flex."** Anything the **Arrangers** need to change in a credit agreement from the marketed terms during the **Syndication** process to get the deal across the finish line. The types of changes that might be made are usually governed (at least in a **Committed Financing**) by a negotiated list of items pre-agreed between the arrangers and the borrower (typically set forth in a fee letter). The term **Reverse Flex** is also frequently bandied about and refers to *borrower*-friendly changes that are made prior to **Closing** (ostensibly in situations where a deal is oversubscribed and lenders are willing to give up protections or economics just for the opportunity to participate in the deal).

"Floating Rate." An interest rate that varies with market interest rates. In the context of debt, a floating rate refers to an interest rate that is tied to a benchmark that is determined from time to time (the benchmark is said to "float" over time). Most broadly syndicated loans, private credit loans, and some high yield bonds carry a floating rate (in the United States, typically the benchmark is set at **SOFR**, while in Europe, **EURIBOR** or **SONIA** is used depending on the currency borrowed). The opposite of a floating rate is a **Fixed Rate**.

"Floating Rate Note" or **"FRN"** is a bond that bears interest on the basis of a **Floating Rate**.

"Floor" means the minimum value assigned to the interest rate index (e.g., **SOFR**), regardless of what rates may be at the applicable time of pricing. The concept is specific to **Floating Rate** instruments.

"Forbearance" generally refers to an agreement between creditors and a borrower or issuer where the creditors agree *not* to pursue a particular action (e.g., enforcing remedies or declaring **Acceleration**). These agreements are usually temporary in nature and subject to the debtor company meeting certain conditions.

"Fraudulent Transfer" or **"Fraudulent Conveyance"** is a claim made in bankruptcy or insolvency proceedings against the bankrupt / insolvent entity (the debtor) asserting that the debtor removed property or other value within a window prior to the start of the bankruptcy / insolvency proceeding in an effort to defraud creditors. Importantly, fraudulent transfers can be **Avoided** in bankruptcy. It is also important to note that fraudulent transfer claims are statutory, not contractual (i.e., there is no covenant saying "please don't fraudulently transfer this asset"). For more on this very complicated subject, see Fraudulent Transfers: A General Primer.

"Free-and-Clear," or sometimes **"Freebie,"** refers to the **Accordion** component that is subject to a hard cap (usually with a **Grower**). The term historically has meant that such debt is available with only the most minimal of conditions attached (and, more specifically, without any requirement to comply with a financial ratio test).

"Free Fall Bankruptcy." This is an informal term for a bankruptcy filing commenced by a debtor with limited advance preparation and without a pre-negotiated restructuring plan or restructuring support agreement with key creditor constituencies. It often results in a more contested and uncertain process than a prepackaged filing. Compare with a **Prepack**.

"Free-Flow-of-Value" refers to the general idea that a company can transfer value within the **Restricted Group** broadly without limitation or cap. Originating from the HY bond market, "free-flow-of-value" concepts are now also commonly found in **Sponsor**-backed credit agreements (alas, **Bondification**) and particularly in the intercompany investments and intercompany dispositions baskets, in that any member of the restricted group may invest any amount of value in any other member of the restricted group. Unfortunately, this also means that any **Loan Party** or **Obligor** can transfer **Collateral** to any non-loan party (or non-obligor) **Restricted Subsidiary** (causing a release of such collateral) without seeking lender consent.

"Fronting Lender." In the **BSL** market, trying to get the entirety of a syndicate to fund the debt at a single moment in time is akin to herding cats. Accordingly, in most BSL financings, one or more lenders (usually **Arrangers**) will agree to "front" the debt (by extending the entire principal amount on its own). The fronting lender(s) will then assign out the debt to the institutions in the syndicate based on their allocated amounts for a period of time after **Closing**.

"Fulcrum Security" is an informal term used in **Distressed Debt** investing and bankruptcy contexts to describe the class or tranche of debt (or rarely, equity) in a company's capital structure that is expected to be "at the fulcrum" of value in a restructuring, meaning it is the most junior class of debt that will receive meaningful recovery (often through conversion to equity in the reorganized company) while more senior debt is expected to be paid in full or reinstated (see the **Absolute Priority Rule**) and more junior debt or existing equity is expected to receive little to no recovery. The fulcrum security represents the theoretical point in the **Debt Stack** where the company's enterprise value is exhausted, making it the pivotal claim that determines control of the reorganized entity. While historically the fulcrum security was often unsecured debt, it can now frequently be junior secured debt, especially in cases involving **DIP Financing**. Distressed investors and **Vulture Investors** often seek to accumulate positions in the fulcrum security as part of a **Loan-to-Own** strategy, as holders of such debt typically receive the lion's share of post-reorganization equity and, consequently, control of the company upon emergence from bankruptcy. Because fulcrum security holders often drive restructuring negotiations and outcomes, companies seeking to avoid contentious bankruptcies may seek to designate certain distressed investors known for aggressive fulcrum strategies as **Disqualified Lenders**.

"Fundamental Changes Covenant" is a common negative covenant in credit agreements and bond indentures which is meant to prevent major changes in a particular borrower or issuer. It typically restricts mergers, acquisitions, as well as any sale of **All or Substantially All Assets**. In some agreements, the covenant is combined with the **Asset Sales Covenant**. Also sometimes referred to as a **Mergers Covenant**. See Covenant Primer: Explaining the High Yield Mergers Covenant.

"Funds Flow Memorandum." What it sounds like. The funds flow memorandum is a document prepared by **Underwriters** or **Arrangers** in advance of **Closing** or funding that illustrates exactly who pays who, in what amounts, into what accounts, and in what order. This can reflect not just the borrowing of money from creditors but likely will also reflect payment of legal fees and other expenses. Guess which one comes first.

"Fungibility." In the context of leveraged loans, fungibility refers to the identical treatment of two tranches of debt. More specifically, fungibility refers to two related but distinct concepts: whether two **Tranches** of debt are treated identically with respect to treatment under tax regulations ("tax fungibility") and whether two tranches of debt are treated as essentially a single tranche (with the same economics, other than OID or upfront fees, and otherwise identical treatment under the covenants).

"Future Guarantors Covenant" is an affirmative covenant that governs which entities might have to provide guarantees of the debt after the issue or **Closing** date. For HY bonds, the future guarantors covenant will typically require guarantees from restricted subsidiaries that guarantee the credit agreement or other capital markets debt.

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"General Asset Sales Basket." A somewhat informal term that usually refers to a particular carveout of the **Asset Sales Covenant**. Specifically, in the context of the **BSL** market, the general asset sales basket refers to the ability to dispose of *any* assets or property outside of the ordinary course of business, usually on an uncapped basis and so long as (1) the consideration received is at least equal to the **Fair Market Value** of the asset sold, (2) the consideration received consists of some minimum percentage (usually between 75% or 50%) of cash (with a bevy of exceptions and limitations), and (3) the **Net Cash Proceeds** received are subject to the **Asset Sale Sweep.** For bonds, the General Asset Sales Basket and **Asset Sales Covenant** are largely coterminous. See Plain English Translations: General Asset Sales Basket.

"General Basket" is any **Basket** capped by a fixed amount (often with an accompanying **Grower**) with few (if any) other limiting conditions. General baskets can be independent or shared across multiple covenants. Such baskets are also typically "general use" (meant to capture any action that is covered by the **Negative Covenant** in question).

"General Corporate Purposes" is a generic term used by borrowers / issuers with respect to how they intend to use debt proceeds (investors: "what are you using this loan for"; borrower: "this and that, general corporate purposes"). What does the term actually mean? Essentially, anything that isn't against the law or in contravention of the terms of the debt agreement...so it means anything (or nothing). Think of it as the corporate finance equivalent of "yadda yadda yadda."

"Gerrymandering Protection." See **Vote Rigging Blocker**.

"Gifting." A restructuring concept where a senior creditor class voluntarily allocates some of its recovery to a junior class, often to secure support for a deal, rather than the junior class receiving value because it is lawfully entitled to it under the US Bankruptcy Code's priority waterfall provisions.

"Going Concern" qualifications come up most often in the context of the requirement that a borrower furnish audited financial statements at the end of each fiscal year. A "going concern" qualification, as the name suggests, is a statement from the borrower's or issuer's outside auditors that the borrower's ability to continue as a going concern is not certain for the foreseeable future. It is a warning that the company in question is in severe financial distress or may be subject to a significant event in the near future and, therefore, is a very big deal. Traditionally, "going concern" qualifications in annual auditor letters were strictly verboten; though in the **BSL** market, certain "exceptions" to this rule are allowed (for example, if the qualification arises from upcoming debt maturities or the potential inability to comply with a **Financial Covenant**, or the activities of **Unrestricted Subsidiaries**).

"Grace Period." See **Cure Period**.

"Grantor" is, in secured financings, an entity that pledges (grants) its assets (i.e., **Collateral**) to secure debt. Broadly speaking, in the BSL market, the term is synonymous with **Loan Party** in a secured credit agreement, and, in the HY market, the term generally means the issuer and the guarantors.

"Green Debt" is any loan or bond where the use of proceeds is stated to have an **ESG**-related purpose.

"Grid" or **"Sponsor Grid"** is a negotiating document used early in a deal's life cycle. The grid sets forth basic financing terms (perhaps even prior to the production of a term sheet) in a tabular format and largely without the attendant legalese and qualifiers that one would expect in a full-blown term sheet. The grid is usually negotiated between a borrower and the investment banks (and is usually not a document shared with a general syndicate).

"Grid Pricing" may apply to interest rates or fees and reflects the existence of two variables (plotted on a grid—hence the name), with interest or fees on one axis and a financial measure (frequently leverage though, on occasion, corporate ratings) on the other. In its most basic form, grid pricing rewards the borrower with a lower interest rate and/or fees as leverage reduces, although in some circumstances it can be used to punish the borrower with a higher interest rate and/or fees as leverage increases.

"Gross Leverage Ratio" is a **Leverage Ratio** calculated without netting any cash or cash equivalents from the outstanding debt amount.

"Grower" is a feature that allows a capped basket to increase over time based upon the borrower's financial performance, often pegged to total assets, net tangible assets, or—most commonly among the **BSL** and **High Yield** markets—consolidated EBITDA. With a grower, the borrower or issuer is rewarded for positive financial results. A feature of growers seen in more recent credit agreements allows for the **Highest Watermark** financial performance to set the basket level.

"Guarantee" or **"Guaranty"** is an undertaking by a person or entity to be liable for the obligations of another person or entity if that other person or entity is unable to perform the obligations. In its purest form, a guarantee obligates the guarantor to pay the obligations of the primary obligor upon such obligor's failure to pay such obligations. In the world of finance documentation, lenders require payment guarantees and not performance guarantees, which are but a shadow of a true payment guarantee. A debt instrument supported only by a performance guarantee should be viewed by the flinty-eyed as effectively unguaranteed. An entity that provides a guarantee is called a **Guarantor**.

"Guarantor Coverage Test" is a cross-border / European feature whereby **Loan Parties** (or guarantors) must account for some minimum percentage of the company taken as a whole (typically based on EBITDA and occasionally also by reference to gross assets). The test is often measured at closing and then regularly thereafter (e.g., annually or quarterly). It is often also subject to a litany of exceptions that can render it completely toothless. See Understanding European Guarantor Coverage Calculations.

-- H --

"Hard Call" is a form of term loan **Call Protection** commonly found in second lien financings, distressed deals, and **Private Credit** market deals. In contrast to **Soft Calls**, hard calls are normally payable upon any kind of prepayment (whether mandatory or voluntary) or refinancing (regardless of whether also accompanied by a **Repricing** transaction). Hard calls usually extend for longer periods of time than soft calls and may include a "non-call" period (during which, early repayment may trigger **Make-Whole** premium).

"Hedging" interest rate risk refers to an arrangement by which a borrower or issuer with a floating interest rate (as virtually every credit agreement and some bond indentures provide) "swaps" that rate for a fixed interest rate obligation pursuant to arrangements with a third-party financial institution. So long as the borrower or issuer makes the required fixed interest rate payments under its swap, the swap counterparty is required to make the floating rate interest payments that the borrower is required to make under the credit agreement. By making such a swap, the borrower or issuer reduces the risk that increasing interest rates will stretch its ability to service the loans or bonds.

"High Yield" or **"HY."** An adjective that traditionally denotes the below-**Investment Grade** (or "speculative grade") bond market. Leveraged loans are also technically "high yield" though the term carries a strong bond connotation. High yield bonds typically offer a higher interest rate due to lower credit ratings and higher risk of default. High yield bonds may also pejoratively be referred to as **Junk** bonds.

"Highest Watermark" or **"High Watermark"** is a concept that allows **Growers** to permanently increase **Basket** sizes over time. While most capped baskets will be drafted as the greater of a fixed amount and a grower as of a specific moment in time (meaning that if the grower dips below the capped amount, the fixed amount becomes the cap), in deals with highest watermark mechanics, the highest amount by which the grower has *historically* increased beyond the fixed amount will dictate the overall basket size (even if the grower subsequently declines).

"Holdco" refers to any parent entity whose sole job is to be the parent of a subsidiary (i.e., holdcos are usually not operating companies and therefore are unlikely to have any meaningful assets or revenues of their own). If the subsidiary has actual operations, it is usually referred to as an **Opco**.

"Holdco Covenant" is a negative covenant that typically only applies to **Holdings** or other **Holdcos**. The covenant broadly prohibits holdcos from engaging in any material business outside of ownership of operating entities, although there is sometimes an exception allowing the holdco to lend money to the borrower / issuer and guarantor under specific circumstances.

"Holdco Debt" refers to debt issued by a **Holdco** that does not have guarantees from any operating subsidiaries. Holdco Debt is **Structurally Subordinated** to any debt of the **Opco**.

"Holdings" is the traditional term for the direct parent **Holdco** of a borrower / issuer in a credit agreement or indenture. Holdings is often a **Loan Party** or guarantor (and therefore provides **Credit Support**, though sometimes limited to just an equity pledge of the borrower / issuer's equity), but may not be subject to the covenants (except for a **Holdco Covenant**).

"Hollow Tranche" means a parallel debt structure commonly used as an alternative to a full **Amend and Extend** transaction in the event that "all lender consent" to a maturity extension is not achieved / achievable. Lenders may choose to roll their debt from an existing facility tranche into a later-dated "hollow tranche" (which will invariably also benefit from improved pricing terms and/or consent fees). Lenders not willing to roll into the hollow tranche retain their debt on existing terms. To be noted separately, many so-called "evergreen" **Intercreditor Agreements** are drafted to include pre-agreed hollow tranches on day-one; such hollow tranches may be exploited by borrowers to facilitate the establishment of priority debt tranches without the need for senior secured lender consent (given that the necessary placeholder in the intercreditor waterfall is already in existence).

"Hookie Dook" is a loophole in some unsecured bond indentures (historically prevalent in the oil and gas space). It is a permitted lien clause that allows any debt that meets the definition of "Credit Facilities" to be secured**.** This might mean that an unlimited amount of loans or bonds are allowed to be secured ahead of the bonds, subject to **Debt Covenant** limitations. See: The Hookie Dook: A Study in Indenture Interpretation.

"Hung Syndication" is a **Syndication** that has failed (i.e., the **Arranger** banks have failed to find sufficient investors to take part in the transaction). In a **Committed Financing**, a hung syndication results in the banks funding the debt themselves—an undesirable outcome for the banks. In a bond context, the equivalent situation typically results in the issuance of **Bridge** loans.

"Hunter Gatherer." In the context of **LMTs**, "hunter gatherer" schemes involve the coordination between an issuer and one or more specified creditors (the hunter gatherers) who go out and acquire significant holds across an issuer's debt issuances (usually junior debt or a targeted maturity) on the secondary market at a discount. The borrower or issuer then exchanges the hunter gatherers' debt for new secured debt via a bilaterally negotiated exchange agreement at some negotiated premium to the purchase price. At a more general level, these structures can be described as involving "better debt" issued to the hunter gatherers, the proceeds of which are used to acquire a targeted portion of the issuer's debt. Sometimes, delayed draw features for subsequent issuances are provided to allow for ongoing repurchases.

"Hybrid Bonds" (or just **"Hybrids"**) are bonds that share elements of both **Indebtedness** and **Equity**. They are like equity because **Coupons** can typically be deferred at issuers' option and because there are limited or no **Events of Default**. However, they are like debt because coupons are pre-determined and not tied to operational performance, they can be called at the issuers option, coupon payments are tax deductible, and they rank ahead of equity. That said, hybrids also tend to be deeply subordinated behind all other debt obligations. Our colleagues at CreditSights maintain a comprehensive primer on such instruments available here: Hybrids 101 - A Primer.

-- I --

"ICR." See **Interest Coverage Ratio**.

"Impaired Class." In the context of bankruptcy, a class of claims whose legal, contractual, or economic rights are altered under a **Plan of Reorganization**, such as reduced principal, extended maturity, or lower interest. Impairment generally triggers voting rights for that class.

"Implied Covenant of Good Faith and Fair Dealing" is a concept in New York common law that every contract includes an implicit agreement between parties to act in good faith. In short, that the parties won't do anything to actively injure each other or deny the other party the right to "receive the fruits of the contract." While this might sound like a safety net against **LMTs** or other nefarious actions against creditors by distressed obligors, claims based on this implied covenant rarely succeed as grounds for litigation in the leveraged finance context.

"Incora Language" or **"Incora Protection."** Another name for a **Vote Rigging Blocker**.

"Incremental Equivalent Debt" refers to any debt that is incurred using capacity available under the **Accordion** but as a distinct and independent instrument (i.e., outside of the confines of the applicable credit agreement). Most commonly, incremental equivalent debt can take the form of junior debt or note issuances, though depending on how it is drafted, such debt can also take the form of sidecar pari passu secured **Term Loans**. In European leveraged loans, the term **Permitted Alternative Debt** is also often used for the same concept.

"Incremental Debt" generally refers to debt incurred utilizing the **Accordion**.

"Incurrence-Based" is a term that refers to baskets or covenants where a financial ratio is tested *upon incurrence*. In contrast to **Maintenance Covenants**, incurrence-based baskets are not an overall "cap" on a company's behavior. Incremental facility capacity, additional debt, multiple exceptions to the negative covenants, and other matters are all tied to one or more leverage or coverage covenants. This makes the **EBITDA** definition even more crucial and problematic addbacks even more critical. After all, if the obligor is permitted to create additional incremental facilities and to use exceptions in the negative covenants, subject to meeting, say, a 5x leverage test, every dollar of additional EBITDA has a 5x multiplier impact.

"Indebtedness" is a defined term under most debt agreements that sets the parameters for what does and does not constitute debt for purposes of that agreement (and, most importantly, the **Negative Covenants**). This can be a trickier definition than many creditors assume and can exclude a litany of items that a typical debt investor would consider to be debt (and is sometimes further diluted by a secondary definition such as "Consolidated Total Indebtedness" that creates additional limitations on what will be considered debt for specific purposes such as **Leverage** calculations). See **Debt for Borrowed Money**.

"Indenture" is the legal agreement documenting a **High Yield** bond. See also **Credit Agreement**.

"Information Covenants." See **Reporting Covenants**.

"Initial Price Talk" (also **"Initial Price Thoughts"** or **"IPT"**) is the initial proposed pricing or **Yield** for HY bonds as circulated by **Underwriters**, usually at the start of marketing. As marketing progresses, pricing can be adjusted (i.e., "pricing guidance") before the final **Pricing** is agreed upon.

"Initial Purchaser" is any financial institution that initially purchases **Bonds** before offering those bonds to investors in a **144A** bond deal. In a registered bond offering, the financial institutions in this role are called **Underwriters**. The corresponding role in the BSL market is a **Fronting Lender**.

"Inside Maturity Basket" is a feature found primarily in loan documentation that allows certain types of debt (say, under the **Accordion**), usually capped by a fixed amount (often with an accompanying **Grower**), to be incurred with a maturity date *earlier* than (or a **Weighted Average Life to Maturity** shorter than) the underlying credit agreement debt. This is a direct encroachment on traditional protections which used to prohibit such shenanigans. In essence, such debt allows the incurrence of debt with **Temporal Priority**.

"Inside Out" refers to a **LMT** structure whereby certain new lenders refinance existing credit facilities (on a pro rata basis) through a traditional refinancing or exchange mechanism thereby resulting in the new lenders becoming **Required Lenders** under the credit agreement. Perhaps a better name for this would be outside in.

"Intercompany Debt" refers to debt owed between or among members of the same company (e.g., debt between subsidiaries or between a subsidiary and parent). Though usually thought of as not material, particularly if the parties to such debt are generally treated equivalently under the applicable debt instrument (e.g., debt owed between **Loan Parties** or debt between non-guarantor subsidiaries), intercompany debt owed by guarantors or direct obligors to entities outside of the direct credit can be problematic for creditors. Indeed, debt owed by guarantors to non-guarantor subsidiaries that is pari passu secured with existing debt is the pillar upholding the very concept of a **Double Dip**.

"Intercreditor Agreement" (often referred in short as **"ICA"**[8]) is exactly what the name suggests, an agreement among two or more creditors (or groups of creditors) outside the credit agreement. It is typically required when creditors have or would have competing security interests in **Collateral** and wish to agree, as among themselves, what their priorities will be in such collateral, notwithstanding what the statutory rules might otherwise provide. For example, as is customary when there is an asset-based revolving credit facility, one group of creditors may, by agreement, have a **Senior Lien** in one class of collateral and a junior lien in other collateral, with a second group of creditors having a counter ranking in respect of the two classes of collateral. Intercreditors can also include **Turnover Provisions** and **Standstill Provisions** and typically impose parameters around: (1) enforcement against shared collateral, (2) rules dictating amendments of the different loan documents, (3) lenders' relative rights in bankruptcy, and (4) what payments can be made and when. In **First Lien / Second Lien** intercreditor agreements, there is typically a right for second lien holders to purchase first lien obligations after certain triggering events. In Europe, where there are multiple insolvency regimes and a variety of laws relating to enforcement of collateral, bond and loan investors rely on intercreditor agreements to provide a framework for restructurings, using a contract to address matters that would be addressed by operation of law in a US bankruptcy.

"Interest Coverage Ratio" (often referred to as **"ICR"**) is a ratio of **EBITDA** to interest expenses (sometimes limited only to those interest expenses that are payable in cash). See also, **Fixed Charges Coverage Ratio**.

"Interest Period," for loans, is the period of time for which a specified index rate (e.g., SOFR) is calculated. For term **SOFR** loans, typical interest periods are one, three, and six months (though 12 months may be available subject to lender and/or agent consent). For bonds, the interest period is the increment of time for which interest is paid. The interest period is typically six months for fixed rate bonds.

"Interest Rate Hedging Covenant" is an affirmative covenant for **Floating Rate** debt instruments that obligates a borrower to **Hedge** a portion of its floating rate debt. The amount required to be hedged and the period (1) before such hedges are required to be in place and (2) which the hedges are meant to apply to are matters of negotiation. Such covenants are largely extinct in the **BSL** market, though you will occasionally find one among **Project Finance** deals or among more distressed credits.

"Interim Loan Agreement" is a short form loan agreement, often appended to a commitment letter in order to provide **Certain Funds** in European financings. The document is not typically heavily negotiated on the basis that it is (almost) never entered into. Sometimes a draft long-form loan agreement is appended to commitment papers instead.

"Interim Order vs. Final Order" In many **Chapter 11** cases, the court grants an interim order (interim relief) early in the case to authorize urgent relief on a temporary basis, such as **DIP Financing**, use of cash collateral, paying critical vendors, or maintaining bank accounts, often after expedited notice and a "first day" hearing. The interim order typically provides limited authority and may include provisional protections, with amounts, milestones, or other terms capped pending further review. The court then considers a final order after fuller notice to parties in interest and a more developed hearing record, often at a "second day" hearing, at which point the relief may be continued, modified, or denied, and the final terms become binding for the remainder of the case.

"Investment Grade" or **"IG"** refers to debt instruments and is generally defined as a debt credit rating of Baa3 or higher (from Moody's), BBB- or higher (from S&P), and BBB- or higher (from Fitch). Debt with credit ratings below these levels is referred to as **High Yield**, "leveraged," or speculative grade (or, less charitably, **Junk**).

[8] Not to be confused with the acronym for the Investment Company Act of 1940.

"Investment Grade Covenants." An oxymoron. **Investment Grade** debt typically has extremely limited negative covenant protections, often only including some combination of **Liens Covenant**, **Sale-Leasebacks** covenant, **Mergers Covenant**, and **Change of Control**. If there is a **Debt Covenant**, it's often limited only to debt of subsidiaries (and not the issuer itself).

"Investments" is a rather expansive concept and can be summed up as almost any transfer of value (and not necessarily just those transfers where a profit motive can be ascribed). Typical definitions of "Investments" will include (1) loans or advances, (2) capital contributions (including the transfer of assets), (3) guarantees and other **Credit Support**, and (4) **Permitted Acquisitions**.

"Investments Covenant" is a negative covenant in a loan that limits the **Restricted Group**'s ability to make **Investments**. See Covenant Primer: Explaining the Leveraged Loan Investments Covenant. In high yield bonds, the concept of an investments covenant is largely subsumed under the **Restricted Payments Covenant**.

"IPO" is an **I**nitial **P**ublic **O**ffering (i.e., the first offering of a company's shares to the public on a stock exchange). In credit agreements and indentures, however, the more important concept is frequently whether the IPO in question is a "Qualified IPO," which is often drafted much more expansively and can capture transactions such as a **SPAC** merger or an acquisition by another public company (both of which effectively result in the equity of the borrower or issuer—or a relevant parent entity—being listed on a securities exchange).

"IPT." See **Initial Price Talk**.

"Issuer" is the usual name for the entity that issues debt (and is the primary obligor) under a **Bond** or other **Security** (versus a borrower—the usual name for the primary obligor under a loan).

-- J --

"J. Crew Blocker" is a provision that purports to block the transfer of specific types of assets to unrestricted subsidiaries (or sometimes other non-guarantor subsidiaries). Perhaps confusingly, the J. Crew blocker is not merely the opposite of a **J. Crew Trapdoor** but instead is an attempt at prohibiting **Drop Downs** on a broader scale. In most **BSL** and HY bond deals, the blocker only prohibits transfers of material intellectual property (a direct response to the original J. Crew **LMT**), though one can argue that it should be more carefully tailored to the deal at hand. Unfortunately, J. Crew blockers are frequently flawed, so a careful review of the terms is warranted. See also **Pluralsight Blocker**.

"J. Crew Transaction." Another name for a **Drop Down**.

"J. Crew Trapdoor." This term conjures up images of daring escapes of modestly well-dressed middle managers—not far off the actual case. The "trapdoor" in this case permits a company to transfer assets from **Loan Parties** or guarantors to an **Unrestricted Subsidiary**, in a two-step transaction in which the assets flow through a **Non-Guarantor Restricted Subsidiary** into an unrestricted subsidiary. Bear in mind that moving valuable assets out of a guarantor and into the NGRS is bad enough—at least restricted subsidiaries are subject to the covenants. But unrestricted subsidiaries are not so subject, and thus the transferred assets end up beyond the reach of creditors. In the case of J. Crew (the borrower memorialized by this term), an unrestricted subsidiary received valuable intellectual property, which secured separate debt borrowed by such subsidiary, and which J. Crew licensed back for a fee. J. Crew's lenders were unsurprisingly quite angry, eventually filing suit against the company (though the case was ultimately settled; sorry, no judicial rebuke of **Drop Downs** out of this one).

"Joint and Several" is a legal concept governing liabilities or obligations across multiple parties where the obligation is treated as a whole relative to all obligors. In the context of a debt obligation, "joint and several" obligations means that creditors can pursue claims against either a single obligor (e.g., the borrower) *or* any *other* obligor (e.g., any of the guarantors) individually or together. Each obligor is liable to pay back the full amount. In contrast, lenders' obligations to fund debt to a borrower are considered several, but not joint—i.e., if some lenders fail to fund, the borrower cannot seek the shortfall from another lender.

"Joint Venture" or **"JV"** refers to a business established by at least two separate parties often (though not necessarily) on a 50-50 ownership basis. From the perspective of covenants, JVs may not be considered subsidiaries of a borrower if they are not exclusively controlled by the borrower (and if they are not otherwise majority owned). Accordingly, JVs can sometimes act outside of the covenant restrictions, meaning that creditors tend to take additional care considering potential **Leakage** to such entities.

"Jumbo Unitranche" is an informal term for a **Unitranche** financing in excess of $1 billion.

"Junior (vs. Senior) Lien" reflects priority in **Collateral**. Creditors generally seek a first priority lien position in collateral (commonly shorted to just **"First Lien"**), which they typically obtain by **Perfecting** their lien first. This is nominally governed by a "first in time" rule (i.e., if two creditors seek a lien on a single asset, then the creditor who perfects first benefits from the more senior lien). But lenders can also get a first lien, or a "priming" lien, by contract, usually through an **Intercreditor Agreement**. Assuming a senior lien is a first priority lien, junior liens can be second priority, third priority, and so on down. The benefit of having a senior lien is nominally that in a foreclosure, senior lien holders are paid from collateral proceeds in full before junior lien holders get a dime. In reality, it means that in the event of a bankruptcy filing, the senior lien holders will be treated as the "first in line" lenders by the bankruptcy court (at least as it pertains to assets that are part of the collateral). Lien priority is not the same as payment priority (see **Lien Subordination** and **Payment Subordination**).

"Junior Debt Prepayments Covenant." This negative covenant governs the **Restricted Group's** ability to prepay debt that is junior in the capital stack. For the **BSL** market in the US, the covenant is largely vestigial since it often only restricts prepayments of debt that is **Payment Subordinated** but does not prohibit prepayments of **Lien Subordinated** debt or **Senior Unsecured** debt (leaving the company's ability to prepay junior lien or senior unsecured debt undiminished). For **High Yield** bonds and most European loans, the covenant is subsumed into the **Restricted Payments Covenant**. See Covenant Primer: Explaining the Leveraged Loan Junior Debt Prepayments Covenant.

"Junk" is a colloquial term referring to debt that is rated below **Investment Grade.** A bit harsh if you ask us…but maybe fair.

-- K --

"KYC." Short for **K**now **Y**our **C**ustomer, KYC generally refers to certain procedural requirements imposed upon banks and other lenders whereby such institutions must identify who the ultimate obligor will be (along with relevant parent or controlling entities) before those institutions can extend credit. KYC policies are closely tied to AML ("anti-money laundering") / anti-terrorism regulatory regimes. In the United States, KYC is mandated by the USA PATRIOT Act (among other legislation), while in the UK, it is promulgated under the Money Laundering Regulations 2017. Satisfaction of KYC requirements is typically a **Condition Precedent** to funding of debt.

-- L --

"LBO." See **Leveraged Buyout**.

"LCT." See **Limited Condition Transaction**.

"Lead-Left" refers to the managing **Underwriter** or syndicate **Arranger** in a syndicated loan transaction, so-called as its name is listed first in the marketing materials and is the most important arranger or bookrunner in any transaction. In many **Committed Financings**, various investment banks compete for the lead-left position in an auction process.

"Leakage" (or **"Value Leakage"**) is the general concept of "value" (assets or EBITDA) held by subsidiary guarantors or other **Credit Support** being transferred to entities that do not support the debt. Value leakage is a principal worry of creditors in **Drop-Down** scenarios as well as in other **LMTs** as it represents a serious degradation of the credit to which the lenders had originally invested.

"Legal Opinion" is a document delivered in connection with most leveraged finance transactions whereby the law firm representing the borrower or issuer (in US transactions) or the facility / collateral agents (in UK transactions) provides an opinion stating that the underlying debt documentation is enforceable, properly executed, and properly secured and perfected (in the case of secured financings), among other items. Although the opinion is delivered and signed by only one law firm, it is actually negotiated by both sides as with any other debt document. Legal opinions are heavily (and we do mean *heavily*) qualified with exceptions and caveats.

"Lender-on-Lender Violence." See **Creditor-on-Creditor Violence**.

"Lender Presentation" is a marketing document usually consisting of a collection of slides shared with prospective lenders by **Arrangers** which provides information regarding a loan transaction (including with respect to the borrower, sponsor, sector, and other background materials). Lender presentations will almost always include a **Cap Table**.

"Letter of Credit" or **"L/C"** is a type of debt instrument which is issued by a bank (the "issuer"), on behalf of a company (the "applicant" or "account party"), and in favor of a third party (the "beneficiary"). The letter of credit functions as a guarantee of an obligation of the account party by the issuer. In the world of leveraged finance, letters of credit can often be issued under the purview of a **Revolver** (with some or all revolving lenders acting as the issuers) and with the face amount of the L/C reducing availability under the Revolver by a corresponding amount. Once a beneficiary demands (and receives) payment under a letter of credit, the issuer can usually turn around and seek reimbursement from the account party (with such reimbursement obligation sometimes being deemed a revolver borrowing). Letters of credit are often issued in commercial context in the ordinary course of business (a "commercial L/C" or "trade L/C") or as a backstop in the event of a default under another obligation (a "standby L/C") with some banks only being able to issue one type of L/C but not the other.

"Leverage Ratio" is a general term that refers to the ratio of debt to **EBITDA**. In a typical **BSL** credit agreement or **High Yield** indenture, the numerator may cover secured debt (a secured leverage ratio), first lien debt (a first lien leverage ratio), or "all" debt (a total leverage ratio). Of course, in reality, the scope of the ratio may be quite a bit narrower than its name suggests, as frequently specific types of debt (such as capital leases, purchase money debt, securitization financings, and sometimes even revolver draws for working capital) are excluded (see **Indebtedness**). Leverage ratios may also be measured on a net basis (with the numerator reduced by certain available cash) (see **Net Leverage Ratio**) or gross (no such cash netting) basis (see **Gross Leverage Ratio**). See **Netting** below.

"Leveraged Buyout" (or **"LBO"**) refers to an M&A transaction where the buyer finances the purchase of a company at least partially by incurring debt at the target (and, if financed with secured debt, secured by the assets of the target). This is the economic engine that drives private equity.

"Liability Management Transaction" or **"LMT"** (or, often, the even more bowdlerized **"LME"** or **"Liability Management Exercise"**) is the delightful euphemism for a transaction by a distressed borrower or issuer which utilizes existing or amended contract terms to manage long-term corporate debt liabilities with creative out-of-court solutions. The term has taken on a bit of infamy as late, as LMTs often require the manipulation of relative priorities (which invariably results in some lenders being worse off *after* the LMT than they were before) and are often done either without existing creditor consent or with consent of only a subset of the existing creditors. It is worth noting that there is no formal definition of what an LMT actually is.

"LIBOR" technically stood for **L**ondon **I**nterbank **O**ffered **R**ate and was historically the rate at which major banks lent dollar (or other currency) deposits to other major banks in London at approximately 11:00 a.m. local time for certain agreed interest periods. But this goes back practically to horse and buggy days. It eventually came to mean the rate(s) quoted on a Reuters screen within certain parameters. LIBOR served for several decades as the index for interest rates in large credit facilities, regardless of whether there is any nexus to London and wherever a loan is funded. All 35 LIBOR settings had ceased publication by September 30, 2024. It has been replaced by **SOFR** in the **BSL** (and most other debt) markets in the United States, and by **SONIA** amongst sterling-denominated loans.

"Lien" is generally used to mean any non-ownership (or non-possessory) interest in property. For creditors, liens are most relevant in the context of an interest in the **Collateral** that secures debt, and the term **"Security Interest"** is therefore sometimes used interchangeably with lien, particularly in Europe. That said, a "lien" can really encompass any encumbrance, including rights of way, leases, and licenses.

"Lien Stripping" (also **"Collateral Stripping"**) is a **Liability Management Transaction** technique (often used in **Priming** transactions and **Uptiering**) in which a borrower or issuer (often with the consent of a subset of creditors) restructures its debt in a manner that effectively removes or eliminates the lien rights of non-participating creditors on collateral, while preserving or enhancing the lien position of participating creditors. Mechanisms to accomplish this include transferring collateral to an **Unrestricted Subsidiary** (thereby releasing it from the security package), refinancing secured debt with unsecured debt (for non-participants), or creating new debt structures where non-participating creditors' liens are released or subordinated. The result is that creditors who were previously secured find themselves unsecured or holding a junior lien position, while participating creditors maintain or improve their secured status. Such transactions are often executed using loopholes in existing credit documentation, including the **Chewy Phantom Guarantee** structure.

"Lien Subordination" refers to subordination in right of collateral. In contrast to **Payment Subordination** (where the relative ranking is in respect of any company assets), the relative ranking in lien subordination is only in respect of shared collateral assets. Thus, for lien subordinated debt, collateral proceeds will be applied *first* to repay senior lien debt and then, only after the senior lien debt is repaid, to the junior lien holders. However, for proceeds of *non*-collateral assets, junior lien holders and senior lien holders could conceivably be repaid on an equal basis (if the junior lien holders are not also payment subordinated). **First Lien / Second Lien** financings in the United States and Europe usually see the second lien component as being subordinated only in right of collateral but not in right of payment.

"Liens Covenant" is a negative covenant that limits the **Restricted Group's** ability to incur **Liens**. This covenant dictates how much *debt* a company can *secure* (and as such is a critical element in assessing covenant strength as a whole). See Covenant Primer: Explaining the Leveraged Loan Liens Covenant and Covenant Primer: Explaining the High Yield Liens Covenant.

"Limited Condition Transaction" (or **"LCT"**) is a feature in many leveraged debt agreements that allows the testing of whether a particular transaction is permitted under the covenants on a date other than when the transaction is consummated (for example, on the date on which the definitive documentation for such transaction was entered into). Historically, such flexibility only applied in the case of an acquisition where third-party financing was *not* a condition (meaning the likelihood of the acquisition closing was relatively high), though in the current market, it can apply with respect to any acquisition, or even any **Restricted Payment** or prepayment of debt. See Plain English Translations: Limited Condition Transactions.

"Limited Recourse." See **Non-Recourse**.

"Line Cap" refers to the maximum amount available to be borrowed under an **ABL** at any given time and is usually defined as the lesser of the total commitments provided by lenders and the **Borrowing Base**.

"Liquidity Covenant" is a **Financial Covenant** that typically requires a borrower to maintain a minimum amount of "liquidity" (typically defined as cash on hand, or **Unrestricted Cash**, plus **Availability** under short-term debt such as **Revolver** and/or **Receivables Financing**). Liquidity covenants are most commonly found among more distressed credits or in the **Private Credit** market.

"LMA" stands for **L**oan **M**arket **A**ssociation, which acts as the voice of the syndicated loan market in EMEA. Among other things, the LMA was responsible for developing a standard form loan agreement which formed the basis for European leveraged finance. Continuing convergence with the US market has seen European covenant packages following the New York law-governed high-yield bond format, and with borrower (rather than lender) counsel holding the pen on documentation, LMA-style documentation is of decreasing relevance to the BSL market. The equivalent organization in the United States is the **LSTA**.

"LME." See **Liability Management Transaction**.

"Loan Parties" (also known as **"Credit Parties"** or **"Obligors"**) is shorthand in US leveraged loans for the borrower, any co-borrower, and other entities (such as subsidiaries of the borrower and any parent, direct or indirect) that provide a guarantee of the debt or are otherwise liable by contract in respect of the credit agreement loans and related amounts (interest, fees, etc.). Not all subsidiaries are required to become loan parties however; see **Excluded Subsidiaries**.

"Loan-to-Own" is a strategy by certain investors in **Distressed Debt** where investors extend credit (i.e., debt) to a borrower or investor with an eye towards eventually taking over the business via a restructuring. Investors with a history or reputation of "loan-to-own" strategies may find themselves on a **Blacklist** before long.

"Loan-to-Value Ratio" is a financial metric seen in more esoteric financings with a heavy-asset focus such as aircraft financing and **REITs**. The metric measures the principal amount of outstanding debt over the value of any relevant assets.

"LQA" stands for **L**ast **Q**uarter **A**nnualized. In the context of financial calculations, LQA takes the financial metrics of the most recently ended fiscal quarter and then multiplies it by four to obtain an annual amount. LQA calculations tend to over-emphasize the quarter being tested (for better or worse).

"LTM" stands for **L**ast **T**welve **M**onths. In the context of financial calculations, LTM calculations are determined on the basis of the most recently ended 12-month period. Sometimes referred to as **TTM** (for **T**railing **T**welve **M**onth).

"LSTA" stands for **L**oan **S**yndications and **T**rading **A**ssociation. The LSTA is the primary industry trade organization for the loan market in the United States. Per its mission statement, the LSTA seeks to promote "a fair, orderly, efficient & growing corporate loan market that provides leadership in advancing and balancing the interests of all market participants." The LSTA will often opine on or provide model contract language, particularly for **Boilerplate** or procedural provisions. The EMEA equivalent of the LSTA is the **LMA**.

-- M --

"Maintenance Covenant." See **Financial Covenant.**

"Make-Whole" is an **Optional Redemption** provision that derives from the HY bond market where it refers to the call price an issuer has to pay if it redeems its bonds prior to the first date of the **Call Schedule**. This meaning largely holds true in loans (though it is quite a bit rarer there than in bond land). In effect, the make-whole is a premium that some issuers must pay (usually in the context of a **Hard Call**), which is equal to the excess over par of the present value of interest, principal, and premium payments through and including the first call date. Make-wholes are intended to pay the creditor the face amount of their debt, plus the present value of the remaining interest payments through the first call date and the call price on the first call date under the call schedule. As a proxy for present value, a discount rate is applied to the remaining interest payments and first call price, traditionally equal to a treasury rate plus 50 basis points ("bps"). The math of make-wholes can be very complicated, and (most) lawyers are not particularly good at math, so double check definitions at every opportunity. See also Make-Wholes in Bankruptcy: A Primer (2026 Edition).

"Management Fee" is a payment usually made by a borrower or issuer to a **Sponsor**, ostensibly as compensation for management advice provided under a specified management agreement. In reality, management fees can be viewed as functionally equivalent to a **Restricted Payment** or dividend, although they are not always limited by this covenant (and may instead be governed via the **Affiliate Transactions Covenant**). In most high yield and BSL debt agreements, amounts paid as management fees can also be added back to **EBITDA**.

"Mandatory Prepayments" are provisions governing when debt is *required* to be prepaid (rather than prepaid voluntarily). For **Revolvers**, mandatory prepayments usually only apply if the borrowings exceed total commitments. For Term Loans, the borrower is normally obligated to prepay debt out of certain pools of proceeds. There are typically three such pools: **Excess Cash Flow**, **Net Cash Proceeds** from an **Asset Sale** (including casualty event proceeds), and debt proceeds (from the incurrence of new debt – see **Debt Sweep**). See Covenant Primer: Explaining Mandatory Prepayments in Leveraged Loans.

"Mandatory Redemption" refers to the obligation of an issuer to prepay the debt early at a specified price, usually upon the occurrence or non-occurrence of a specified event (such as if an acquisition that the debt was meant to finance does not a occur by a certain date). Unlike **Optional Redemption**, which permits redemption at the issuer's discretion, a mandatory redemption provision requires the issuer to redeem the bonds.

"Margin" (also **"Applicable Margin"**) is the amount, expressed as an additional percentage or in basis points, added to the index rate (e.g., **SOFR** or an **ABR**) to determine the interest rate applicable to a **Facility**. The margin is negotiated by the borrower and the lenders (though, in fact, by the **Arrangers** nominally on behalf of the lenders) and often takes the form of **Grid Pricing**.

"Material Adverse Effect" or **"MAE"** (or sometimes **"Material Adverse Change"** or **"MAC"**) is a term found throughout debt and other corporate finance agreements. In the context of leveraged finance, the term is generally used to soften the effect of **Affirmative Covenants** and representations and warranties by establishing a relevant benchmark of when an action or event is "important" enough for creditors to take notice. In rare occasions, the MAE (or absence thereof) may also serve as a **Condition Precedent** for funding. For example, a representation that the company is not currently being sued may be qualified by "MAE"—i.e., the representation is really saying that the company is not currently being sued in a matter that—if they lose such lawsuit—may result in an MAE. The term typically includes prongs for when creditors' rights and remedies are seriously impaired or when the company is no longer able to perform certain obligations under the debt documents. In the context of M&A transactions, the MAE or MAC definition is often significantly more expansive and heavily negotiated and can function as an "out" for the parties to abandon the transaction. In the latter instance, there are usually separate MAE concepts for the general economic market (a "Market MAE") or for the company specifically (a "Company MAE").

"Maturity Date" is the date on which debt becomes due (or when it "matures"). Failure to repay debt at the maturity date is almost always an automatic **Event of Default**.

"Maturity Wall" is a clustering of significant maturities in a short period (e.g., multiple tranches coming due within 12–24 months). Often used to describe the refinancing risk profile that precipitates an **LMT**, bankruptcy, or other restructuring. The term is used both in the context of a single issuer (with multiple tranches due) and at a broader market level with respect to a large number of issuers, all with similarly situated maturities.

"Mergers Covenant" is a common negative covenant in HY bond indentures which is designed to ensure that the debt stays with the assets of the issuer and the guarantors. It will generally prohibit mergers and sales of substantially all assets unless the survivor or transferee person assumes the bonds, and often requires the **$1 of Ratio Debt Test** to be met **Pro Forma**. See also **Fundamental Changes Covenant.**

"Mezzanine" or **"Mezz"** financing is a type of financing that sits between senior debt and equity (and is typically structured as payment subordinated indebtedness but can also take the form of preferred equity, convertible debt, or any other structured instruments that sit between traditional debt and equity offerings).

"MFN" has nothing to do with **M**ost-**F**avored **N**ation status among trading partners (though that's what the letters stand for). It instead refers to the right of existing lenders under one or more facilities to "piggyback" on the higher pricing that incremental lenders (under an **Accordion** or some other forms of debt, such as **Incremental Equivalent Debt**) may negotiate with the borrower. Even with the most generous MFN provisions, however, existing lenders typically are limited to a bump in their pricing that does not exceed an amount that still has them earning 50 bps or 75 bps (in the US) or 100 bps (in Europe) less than the higher pricing negotiated by the incremental lenders. Moreover, there may be a temporal limit as well. In those cases, the right of the existing lenders to say to the borrower, in effect, "more, please" typically runs between 6 to 24 months after closing.[9] This is known, not-at-all affectionately, as a **Sunset**. But wait, there's more, as many modern MFN provisions include numerous other exceptions and limitations (including tied to the maturity of the incremental debt, the currency incurred, the purpose of such incurrence, etc.). The devil is very much in the details when evaluating existing lender rights under an accordion. MFN provisions are sometimes referred to as anti-embarrassment provisions. See Covenant Primer: Explaining Most Favored Nation Clauses.

"Middle Market." Lenders sort of know what a middle market borrower is; they just don't always agree with other lenders. Covenant Review applies the term to borrowers with up to $75mm of EBITDA. "Lower Middle Market" means under $25mm, "Traditional Middle Market" means between $25mm and $50mm, and "Upper Middle Market" means between $50mm and $75mm.

"Mirror Notes" are similar to **Add-On** notes but are not **Fungible** with an existing series of bonds. They are bonds that are issued with the same terms as a bond that was previously issued, but under a different indenture and trading with a different **CUSIP**.

"MLP" stands for **M**aster **L**imited **P**artnerships, a form of publicly traded partnership commonly found among midstream oil and gas companies (and which do not pay Federal income taxes). The hallmark of an MLP is a requirement to distribute "all available cash" to unitholders (typically as required by an underlying partnership agreement). Financing of MLPs must be specifically tailored to address MLP issues (including allowing more **Restricted Payment** flexibility and an absence of **Excess Cash Flow Sweeps**).

"MOIC" stands for **M**ultiple **O**n **I**nvested **C**apital. The term measures the current value of an investment as compared to an initial capital investment. This is typically calculated as a ratio or percentage obtained by dividing the total value of the return on investment received (amount out) over the amount originally invested (amount in). Some **Private Credit** debt transactions include MOIC structures targeting a minimum lender return in lieu of traditional **Call Protection** mechanisms, ensuring an agreed upon rate of return for lenders (which MOIC may vary subject to agreed time periods).

[9] Six-month MFN sunsets are the market norm in Europe and are reasonably common in the US market.

-- N --

"Naked Pledge" is an informal term used to describe a pledge of equity or assets that does not come with a corresponding guarantee of the underlying secured debt. In other words, the **Grantor** is pledging collateral but isn't acting as a **Guarantor**[10]—hence the pledge is "naked," standing out there on its own with no extra credit support. Although not the norm, naked pledges do appear in certain investment-grade transactions, structured finance arrangements, or situations where tax, regulatory, or jurisdictional constraints make a full guarantee structure impractical (or downright impossible). Think of it as the deal equivalent of "business casual"—not the full suit-and-tie, but certainly better than showing up *naked* (pun very much intended).

"NCAA" is an initialism standing for "**N**o **C**oupon **A**t **A**ll." Something of a badge of dishonor for bond issuers, the term refers to when a bond issuance fails to make even a single interest payment (a **Coupon**) on schedule.

"Negative Covenants" is a section in debt agreements that tells the borrower / issuer (and the **Restricted Group**) what they may *not* do. Most such covenants are structured as a general rule (e.g., "do not incur debt") that is followed by a litany of exceptions, **Baskets**, and **Carveouts**.

"Negative Pledge" is a variation on the **Liens Covenant** that prevents a borrower from pledging its assets to another lender, thereby affecting the original lender's security position.[11]

"Net Cash Proceeds" in a credit agreement, indenture, or other debt instrument usually refers to the cash (or cash equivalents) received from a particular transaction (e.g., an **Asset Sale** or equity issuance) but *net* (deducting) of certain customary amounts. These include any necessary tax payments or amounts required to be reserved, amounts paid to advisors or counsel (like investment banks or lawyers), and amounts that are required to pay down other specified debt. **Mandatory Prepayments** are commonly tied to the amount of net cash proceeds received (rather than the total amount of consideration).

"Net Leverage Ratio" is a **Leverage Ratio** calculated **Netting** certain cash or cash equivalents (sometimes subject to a hard cap) from the outstanding debt amount.

[10] We recommend exercising caution when negotiating a credit agreement that includes a naked pledge. Because the relevant pledgor naturally falls outside the definition of "Guarantor" (and potentially outside "Loan Party" status altogether), it is important to assess carefully which covenants—if any—are intended to apply to that pledgor.

[11] In the US, the "negative pledge" is commonly used in unsecured bond indentures in lieu of "true" liens covenants. Where the "true" liens covenant prohibits the incurrence of liens (other than under baskets), a negative pledge generally provides that an issuer may incur any lien if an equal and ratable lien is provided to the bonds (although there are still numerous exceptions). The negative pledge in such circumstances is designed not to prevent liens, but to preserve the relative ranking of the bonds. In the context of US loans and secured bonds, negative pledges are usually narrower in scope and typically apply only to non-collateral assets (either prohibiting liens on a specific type of asset or requiring a similar springing lien on any non-collateral assets that ultimately are pledged to third parties).

"Net Short." refers to the state of a lender whereby a lender's position in the credit default swap (CDS) market exceeds its position as a lender or creditor of record. Without going into pain-inducing detail, a credit default swap is a bet that the subject debt will decline in value. In modern credit documentation, lenders or creditors who are net short are frequently **Disenfranchised**. The theory is that a creditor holding a debt of a particular borrower or issuer may actually benefit from that company's bankruptcy, if the decline in value of the debt would be exceeded by the payments it stands to receive under its credit default swap. In such a case and because of the obvious conflict, that creditor will lose its right to vote on certain matters. This is, in its way, a cousin to the typical voting restrictions on a sponsor that is holding the debt of a borrower / issuer it controls. One difference, of course, is that the sponsor is more likely to oppose aggressive action by its fellow creditors, whereas a creditor holding a credit default swap is more likely to be the aggressor vis-à-vis the other creditors. See "Net Short" Lender Disenfranchisement: A Response to Windstream.

"Netting" is a reference to the customary allowance a borrower or issuer gets for unrestricted balance sheet cash and cash equivalents when calculating a **Leverage Ratio** (ratios where no netting is permitted are usually referred to as "gross" ratios). Rather than measuring leverage solely by the amount of debt on the balance sheet, the obligor usually requests (and is too often granted) a credit for cash on hand (or more commonly, **Unrestricted Cash**), on the dubious theory that the obligor could always use that cash to reduce its outstanding debt; so why not factor it into the ratio? The answer to this predictable appeal should be that there is no assurance the obligor would, in fact, use the cash for this hypothetical purpose—in fact, there are all kinds of incentives for a troubled obligor to hoard cash, and virtually no way to compel an obligor to use cash on hand to prepay debt. At a minimum, creditors should condition netting on the obligor keeping the cash pot of gold within the control of the creditors—a pledge and control, for example. Needless to say, this rarely flies.

"New Contract Adjustment" is an **Addback** to **EBITDA** designed to include in EBITDA (i.e., bring forward) anticipated but as yet unrealized contract revenues for any contract that is signed (or amended) during the applicable measurement period assuming that the contract (or amendment to the contract) was in effect on the *first day* of the test period. In other words, the company gets to pretend that revenue it has not yet received is counted for EBITDA purposes. Like **Synergies and Cost Savings**, of which it is a natural outgrowth, the addback may be subject to a cap.

"No Action Clause" is a provision that in credit agreements affirmatively prohibit individual lenders from exercising remedies against the borrower (be it **Acceleration**, foreclosing on collateral, etc.) without the consent of other lenders or an agent. A "no action" clause in a bond indenture (which may appear in a section captioned something like "Limitation on Suits") is usually differently worded and generally prohibits bondholders from pursuing remedies unless holders of at least 25% (or 30%) of the outstanding bonds request the **Trustee** to pursue the remedy after an **Event of Default**.

"No Default Condition" (also known as a **"Default Blocker"**) is any condition in an agreement stating that for the provision to be effective, the company must not be in **Default** (or does not end up in default as a result of the actions taken under the applicable provision)—or, in more borrower-friendly formulations, there must not be an **Event of Default**. For example, a basket may include a no default condition which prohibits the borrower or issuer from utilizing the basket if it is in default.

"No MNPI Rep" is a condition applied in the context of borrower or affiliate **Buybacks** of debt in a **Credit Agreement**. In short, for the buyback to occur, the borrower and/or the purchasing affiliate must represent (that is, formally state) that it does not hold any "material non-public information" that would impact the assigning lenders decision to sell the term loan. Such "no MNPI" reps have largely been discarded in favor of **Big Boy Letters** in the **BSL** market.

"No Premium on Default" is a highly aggressive provision that has been soundly rejected by the bond market (thanks to Covenant Review). It generally provides that bondholders can recover only **Par** upon a covenant breach, instead of the applicable premium per the **Call Schedule**.

"No Worse Optionality" is a feature found within **Incurrence-Based** debt baskets (including under the **Accordion**, **Incremental Equivalent Debt**, and/or **Ratio Debt**). Rather than prohibiting incurrence if the obligor fails to comply with the applicable ratio, "no worse" optionality gives the obligor the option to nevertheless incur such debt so long as the ratio does not "get worse" **Pro Forma** for the incurrence (i.e., an increase for **Leverage Ratios** and a decrease for coverage ratios). Traditionally, the option is only available if the debt is being incurred to finance an acquisition or investment, but more aggressive deals may allow for "no worse" optionality in any type of debt raise or in any other ratio test.

"Non-Call" refers to the period of time before a borrower or issuer can prepay or redeem their debt (in a HY bond, before entering the **Call Schedule**). Also referred to as the **Make-Whole** period, "non-call" is something of a misnomer since the issuer or borrower *does* have the right to call the bond (or prepay the loan), but only at the **Make-Whole** price. In the context of loans, this is typically shorthanded as NC followed by the length of applicable time expressed in years (e.g., "NC2" would mean the debt is subject to a two-year non-call period).

A **"Non-Guarantor Restricted Subsidiary"** or **"NGRS"** is a subsidiary that does not guarantee a bond or loan but is subject to the bond or loan covenants – i.e., it is a member of the **Restricted Group**. Understanding the amount of debt non-guarantor restricted subsidiaries can incur is key to understanding the risk of **Structural Subordination**.

"Non-Recourse," in the context of debt, refers to whether the creditors have recourse (i.e., a claim) against the value of specific entities or assets. Debt of a subsidiary may be "non-recourse" to a parent if the creditors cannot appeal to the parent for **Credit Support** or repayment. Similarly, creditors may have recourse only to the **Collateral** assets of the business in secured debt, but not other assets or personal assets of individuals. The term **Limited Recourse** may also be used here.

A **"Note"** can be any kind of debt instrument but is commonly a colloquial term for a **High Yield** bond. Not to be confused with a 'promissory note' (also often referred to, in short, as "note"), which is the short-form instrument sometimes delivered to a lender as evidence of the debt under a credit agreement.

-- O --

"Obligors." See **Loan Parties**.

"Offering Memorandum" or **"OM"** (or, sometimes the **"Offering Circular"** or, informally, the **"Book"**) is the document under which bonds to be issued under Rule **144A** are offered to investors. The OM (at least in theory) provides all material information relevant to an investor's decision on whether to invest in the bonds. Although the form of an OM is not dictated by SEC rules (as opposed to the **Prospectus** filed with the SEC for registered bonds), the gold standard is to include all information that would be required in a registration statement on Form S-1. OMs will also include a **Description of the Notes**.

"Off-Balance Sheet Liabilities" refer to obligations, indebtedness, or other liabilities that are not required to be listed on a company's balance sheet due to accounting rules and principles (e.g., GAAP or IFRS). Such liabilities may nevertheless be disclosed via footnote in the financial statements. Common examples include **Guarantees**, **Receivables Financings**, and other forms of **ABS** arrangements. Though they may not appear on the balance sheet itself, off-balance sheet liabilities are nevertheless *still liabilities* and can push a company into bankruptcy just as easily as **Debt for Borrowed Money** (in the right circumstances).

"Omnibus Blocker" or **"Omniblocker"** is a provision designed to broadly inhibit all future **Liability Management Transactions**. Omnibus blockers are typically drafted as a standalone covenant and remain unusual in the context of new issue credit agreements and indentures. They instead tend to appear in already distressed financings or in post-LMT debt agreements (at which point, one could argue, lenders have only managed to close the barn door after the horses have escaped). Omnibus blockers are sometimes (but less commonly) referred to as "LME blockers" or more rarely "RR Donnelley" protection (ostensibly named after the first known issuer with such a provision).

"On-Lend" or **"On-Lending"** refers to when proceeds of a debt issuance are immediately loaned or extended to another entity (commonly a feature in certain **Intercompany Debt** arrangements, including **Double Dips**).

"Open Market Purchase" is a type of **Buyback** which, until recently in loans, largely defied definition (since market participants and lawyers rarely took the time to actually define what it was supposed to mean). In broad strokes, an open market purchase of loans was previously interpreted to mean any buyback that *wasn't* a **Dutch Auction** (and generally was not required to be offered on a **Pro Rata** basis). This understanding was thrown out the window with the Fifth Circuit's decision in *In re Serta Simmons Bedding, L.L.C.* (5th Cir. 2024), where the court held that the term "Open Market Purchase" necessarily requires an "open market" (for Serta, this meant the secondary market for the syndicated loan market). More importantly, this meant that the term did not justify non-pro rata exchanges negotiated on a private basis, potentially creating a hurdle for **Uptiering** LMTs, which used to rely on the older interpretation of the term. See Serta: Implications of the Fifth Circuit's "Open Market Purchase" Holding in *In re Serta*.

"Opco." An abbreviation for an "operating company." The opco is usually the "company" in the way that laypersons conceptualize it—it's the entity that actually *does* something (building widgets, providing services, etc.). Contrast with **Holdco**.

"Opco / Propco" is a financing structure that splits the **Opco** (which conducts the day-to-day business) from the business of owning the buildings, land, and other **Real Property** required for the business (i.e., the "propco"). The propco and opco can then be separately financed, as they represent independent **Silos**, if not entirely different companies, each with differing credit profiles.

"Optional Redemption" (or **"Call Provisions"**) refers to the right of an issuer to prepay the debt early at a specified price, either at a specified time or following a specified event. Examples of such provisions in HY bonds include **Make-Whole** redemption, the **Equity Claw**, the **103 Call**, and the **Call Schedule**.

"Ordinary Course" or **"Ordinary Course of Business"** is a common qualifier found in legal agreements which is meant to denote actions that are part of the day-to-day operations of a particular business. In other words, ordinary course means activities that are normal or routine. The exact interpretation of "ordinary course of business" can generate significant spillage of ink among legal scholars depending on the context it is being used, so it is best to refer to a trusted lawyer if the term is being questioned.

"Original Issue Discount" (or **"OID"**) is, in the context of leveraged loans, a financial incentive to lenders to participate in a **Syndication** (or any other debt arrangement for that matter). Essentially, OID is an **Upfront Fee** which is structured as a discount to the principal amount. A "96 OID," for example, means that the amount of debt actually funded is 96% of the amount deemed outstanding. So, for a $100 loan with a 96 OID, only $96 is being extended to the obligor (who nevertheless pays interest and **Amortization** as if $100 was borrowed). The reasoning behind whether a closing fee is structured as OID or an upfront fee in a credit agreement is largely driven by tax considerations. **Additional Notes** may also be issued with OID in order to align the economics with where the outstanding bonds are trading at the time of issuance of the additional notes.

"OWIC" stands for **O**ffers **W**anted **I**n **C**ompetition and is the opposite of a **BWIC**. In an OWIC, a single account requests to purchase multiple **Tranches** of debt on the **Secondary Market**.

-- P --

"Panel on Takeovers and Mergers" refers to the independent body, whose main functions are to issue and administer **the City Code on Takeovers and Mergers,** and to supervise and regulate takeovers in the United Kingdom. The Panel's statutory functions are set out in and under Chapter 1 of Part 28 of the Companies Act 2006.

"Par." In the context of debt, par refers to the face or principal value of the instrument (versus the trading or market value of the debt on a **Secondary Market**).

"Par Offer" means a **Tender Offer** for bonds where the tender price is equal to the face amount of the bonds.

"Parallel Debt" is a concept often used in cross-border transactions to accommodate the fact that English law security trusts (where security over charged property is held by a security trustee on trust for lenders) are not recognized by many other legal systems. It is a contractual mechanism under which security providers, rather than agreeing to pay secured lenders under a security trust, instead assume a separate covenant to pay the security agent as a creditor in its own right for amounts equal to the obligations secured under the relevant finance documents. This provides the security agent with an independent right to demand any relevant payment from a security provider.

"Pari Passu," a Latin expression meaning "on an equal step" (lawyers *love* Latin), refers to the relative position of competing obligations. It comes up most often in covenants permitting additional debt outside the credit agreement; truly pari passu debt, vis-à-vis the lenders' loans under a credit agreement, is debt that is neither senior nor **Subordinated** in payment priority to the loans, and, if the loans are secured, debt that is secured on the same collateral priority basis, with neither a **Priming** lien nor a **Junior Lien**.

"Pari Plus" is a variant on **Double Dip LMT** transactions, where the non-**Loan Party** subsidiary issuer also secures its debt with assets that do not secure the parent debt (e.g., assets that are transferred to the subsidiary issuer from the parent via a **Drop Down,** or assets that were not part of the collateral at the parent debt from the beginning).

"Participation" (or, in Europe, **"Sub-Participations"**) represents the sale, by a lender, of an interest in its loans, but one which confers on the buyer (the "participant") *no* direct claim against the borrower (in contrast to an **Assignment**). The lender selling the participation continues to act as the lender of record under the credit agreement. Moreover, the continuing presence in this love triangle of the lender that sold the participation may put the participant's interest in the borrower at risk if such lender becomes insolvent.

"Parting Kiss" is a term used to describe amendments made to debt documentation, where the consenting creditors are expected to immediately (if not simultaneously) exit the instrument in question. A common example is a **Covenant Strip** accompanying an **Uptiering**. So, this particular kiss is probably more Fredo than friendly.

"Payment Conditions Carveouts" refers to baskets usually found in **ABL** facilities. Such carveouts often allow unlimited **Restricted Payments** (or investments and junior debt prepayments) so long as certain "Payment Conditions" are satisfied, which are usually defined as the borrower not utilizing the ABL above a certain threshold. In other words, so long as the borrower does not draw more than a specified amount of debt under the credit agreement, the lenders will be fine with it doing whatever it wants in the context of restricted payments.

"Payment Subordination" refers to **Subordination** in right of payment (see also **Contractual Subordination**). This usually means that debt that is subordinated will not be repaid until the entirety of senior debt has been fully repaid (regardless of whether the proceeds are from **Collateral** or not). In traditional subordinated debt instruments, there may also be "payment blocks" embedded in the documentation, which broadly stops payments on the subordinated debt while the senior debt is outstanding or following an **Event of Default** (except in certain negotiated circumstances). Payment subordination and **Lien Subordination** are not mutually exclusive; debt can be **Pari Passu** or subordinated in right of collateral and pari passu, or subordinated in right of payment in any combination.

"Payments for Consent Covenant" is a provision in some debt documents that generally prohibits the obligor from providing an incentive to only *some* creditors to solicit their consent for an amendment or other change (any such incentive or **Consent Fee** must instead be offered to all creditors of the applicable **Tranche** of debt). Payments for consent covenants are largely a high yield bond feature and are rarely found in leveraged loans.

"Perfection." In the law of secured obligations, perfection refers to the act of making a **Lien** "good against the world." In other words, a lien that is perfected is enforceable not only against the party providing such lien, but against any third parties claiming otherwise. In most jurisdictions, this is achieved by making a filing with the relevant authority (in the United States, a "UCC-1" filed with an applicable state's secretary of state) or otherwise delivering a notice to the appropriate counterparty. Other examples of perfection include mortgages in respect of **Real Property**, **Control Agreements** for bank accounts, and possession of the relevant stock certificate in respect of equity.

"Permitted Acquisition" is common terminology in most credit agreements and indentures, referring to an acquisition of business units, subsidiaries, or other major entities (i.e., not just a purchase of some office supplies). Typically, permitted acquisitions will also be subject to a slate of negotiated terms and parameters (including "no default" stoppers, ratio conditions, and **Subcaps**, if the acquisition is of an entity that ends up not providing **Credit Support** for the credit facilities). Permitted acquisitions usually are permitted by a standalone **Basket** in the **Investments Covenant** or in a **Permitted Investments** definition.

"Permitted Alternative Debt." See **Incremental Equivalent Debt**.

"Permitted Change of Control" is another name for a **Portability** provision.

"Permitted Collateral Liens" is a catch all term for carveouts to the **Liens Covenant** which permits certain debt to be secured on the **Collateral** (typically on a pari passu or super senior basis). The formalized distinction between "Permitted Collateral Liens" and **Permitted Liens** is more commonly seen in the European market than in the US market.

"Permitted Holder" is a term most often used in the context of a **Change of Control** definition. These generally refer to those persons or entities who either (1) are required to hold some minimal percentage of the company (lest a change of control event occur) or (2) are allowed to acquire or hold a significant portion of the company (without triggering a change of control event). Permitted holders are mostly found in sponsored credit agreements and indentures (with the **Sponsor** itself, along with its affiliates, usually being considered such a permitted holder).

"Permitted Investments" is a term found in bond indentures and bond-style US loan agreements where most investment-related baskets are typically located. In such agreements, permitted investments are excluded from the definition of **Restricted Payments** within a **Restricted Payments Covenant**. In some agreements, the term "Permitted Investments" is reserved for **Cash Equivalents**.

"Permitted Liens" is a catch all term for carveouts to the **Liens Covenant**. In European loans that follow an **LMA** form of credit agreement, a **Negative Pledge** will feature instead of a **Liens Covenant**.

"Permitted Refinancing" is a concept in many debt agreements which allows existing permitted debt to be refinanced or exchanged into other classes of debt mostly on a "like for like" basis. Thus, permitted refinancing of existing debt normally needs to have (1) the same obligors, (2) the same or later maturity, (3) the same or lower relative ranking, among other terms and conditions.

"Phantom Guarantee." See **Chewy Phantom Guarantee**.

"Phony Ratio" is a provision that excludes from ratio calculations any concurrent transactions under fixed **Baskets** (i.e., **Stacking**). Aggressive formulations will work across covenants, so, for an example, the provision could allow a company to use a leverage ratio basket to make **Restricted Payments**, even if the debt incurred to finance the RP would push true pro forma leverage above the test level, so long as the debt is incurred under a fixed amount basket.

"Pick Your Poison." Another colorful shorthand referring to a family of **Baskets** that permit a borrower or issuer to incur debt in the amount of available capacity under specified baskets in one or more other (non-debt) covenants (for example, the **Restricted Payments Covenant** or **Investments Covenant**), which in turn would reduce capacity under such baskets for other purposes. The title of the term reflects a somewhat mordant view of the obligors' options—would you prefer that the company spend cash on a dividend to the sponsor, or would you prefer to be diluted (or even primed) by additional secured debt? Often, there is also a corresponding **Liens Covenant** carveout permitting "pick your poison" debt to be secured. Think of a tightrope walker choosing either to raise the wire or get rid of the balance pole; in either case, the acrobat is assuming more risk. Sometimes referred to as the "Available RP Basket" or a "Dividend-to-Debt Toggle."

"PIK," short for "**P**ayment **I**n **K**ind," refers to a form of interest, which, instead of being paid in cash, is added (or "capitalized") to the amount of principal that remains outstanding. In other words, interest is paid in the form of additional debt ("in kind").

"PIK Toggle." A feature whereby the option to pay interest "in kind" or in cash is at the option of the issuer (which may also be subject to certain pre-conditions being met).

"Pink" is a draft **Offering Memorandum** that is shared with selected investors on a pre-marketing basis ahead of a wider launch. The name is a play off the **Red**, and the document itself is festooned with a pink "legend" making clear that it is in draft form.

"Plan of Reorganization" or **"POR."** The **Chapter 11** plan document that sets out how claims and equity interests will be treated, who receives what and in what form, and the post-emergence governance and capital structure of the reorganized company. The POR is voted on by impaired creditor classes and must be "confirmed" by the bankruptcy court.

"Pluralsight Blocker." An arguably unnecessary term that describes what is, in effect, a **J. Crew Blocker**, except that it applies to value transfers from guarantors to **Non-Guarantor Restricted Subsidiaries**. See US Market Commentary: Is Pluralsight the Proverbial "Canary in the Mine" of Liability Management Exercises ("LMEs") in Private Credit? - Covenant Review.

"Portability." Creditors generally agree to lend on the implicit promise that the borrower or issuer won't be sold out from under them. Portability provisions effectively gut this promise by allowing an obligor to be purchased in certain circumstances (and so long as certain conditions are met) without triggering a **Change of Control**. See Covenant Primer: Explaining Portability in US Leveraged Loans and Covenant Primer: Portability in European Leveraged Loans.

"Post-Closing Covenant" is an affirmative covenant requiring that an obligor take certain actions or provide certain deliverables within a window of time after **Closing**. These often cover items that would typically be treated as a **Condition Precedent** but which are considered difficult to achieve before closing for one reason or another (e.g., requirements that are dependent on the cooperation of third parties). A breach of a post-closing covenant is often treated as an immediate **Event of Default**.

"Post-IPO Dividends Basket" is a basket commonly found in the **Restricted Payments Covenant** that allows annual dividends after a borrower or issuer completes an **IPO**. Traditionally, the basket was capped at 6% of the net proceeds received from an IPO, though the basket has evolved and often includes a market capitalization component (either on top of or in lieu of the traditional IPO proceeds), with both prongs set at ever higher percentages.

"Precap." Another term for **Portability.**

"Preference" refers to a type of **Avoidance** action seeking to unwind a transfer of property to or for the benefit of a creditor that is made on account of antecedent debt, while the debtor was insolvent, within 90 days of the bankruptcy filing (or one year if made to an insider) that would enable the creditor to receive more than the creditor would have in a **Chapter 7** case. The **Perfection** of a security interest can constitute a preference. Preference actions are generally governed by Section 547 of the US Bankruptcy Code.

"Preliminary OM" or **"Preliminary Prospectus."** Often referred to as the **Red**. This is the offering document used to market a bond deal before it prices. It has a prominent red script on the cover stating that the document is not complete and is not an offering to sell any **Securities**.

"Prepackaged Bankruptcy" or **"Prepack."** This is an informal term referring to a bankruptcy filing in which the restructuring agreement between the debtor and its creditors is completed, or largely completed, before the company files. It is common in these kinds of cases for a debtor to solicit and obtain the necessary creditor votes on the plan before the filing. By design, prepacks can speed the bankruptcy process by resolving key disagreements before the initial filing.

"Prepaid Letter of Credit Facility." See **Synthetic Letter of Credit Facility**.

"Pricing" refers to the assigning of an interest rate (including **Margins**) and **Original Issue Discount**, if relevant, to a debt instrument. In the case of loans, this typically marks the end of the marketing process along with **Allocation**.

"Priming." A generic term for the act of one class of debt moving ahead of another class of debt in priority (in right of payment, collateral, other assets, in time, or otherwise).

"Private Credit." Like **Middle Market**, what constitutes the private credit market is very much in the eye of the beholder. Covenant Review's private credit offering covers loans that are not in the **BSL** market, which includes **Direct Lending**, **Unitranche**, **Club** deals, and/or private syndication (though largely exclusive of debt traditionally provided by banks, e.g., standalone **Revolvers** and **Term Loans A**). See Private Credit Primer: Part I - Private Credit 101, Private Credit: Part II - Fund & Deal Structures, and Private Credit: Part III - Future of the Market.

"Private Placement." Any debt, equity, or other **Securities** offer that is extended to a select number of investors (rather than broadly marketed to multiple investors). In the context of HY bond issuances in the United States, a private placement is permitted via Rule 506(b) of Regulation D promulgated under the Securities Act.

"Prospectus" is the document under which bonds to be issued in an SEC registered offering are offered to investors. The prospectus is a part of an SEC registration statement and (at least in theory) provides all material information relevant to an investor's decision on whether to invest in the bonds. The prospectus will also include a **Description of the Notes**. The prospectus is sometimes informally referred to as the **Book**.

"Pro Forma," another Latin expression, this one meaning "for the sake of form," is a snooty way of saying "giving effect to." Many calculations are required on a pro forma basis, meaning that events or transactions are given effect, *as though they had occurred*, so the parties can fairly measure their impact. If, for example, a borrower wishes to incur additional debt that is permitted only to the extent the borrower would not be in violation of a **Leverage Ratio**, the debt to be incurred would be included on a pro forma basis in calculating the leverage ratio.

"Professionals' Fees Carve-Out." A negotiated reserve from secured collateral that ensures certain bankruptcy estate professionals (e.g., debtor and committee counsel) get paid, even if secured creditors would otherwise receive all collateral proceeds. This is a key leverage point in **DIP Financing** / cash collateral negotiations.

"Pro Rata" is banker / lawyer speak for "proportional." How one calculates that proportion is a matter of context and sometimes negotiation (i.e., what is included in the denominator versus the numerator).

"Pro Rata Lenders" is slang for the investment bank lenders under a **Term Loan A** and/or **Revolver**.

"Pro Rata Sharing" is a basic concept underlying most leveraged loans—that lenders are treated fairly and equally (i.e., on a **Pro Rata** basis) based on each lender's relative holdings. This refers generally to the percentage of total commitments or loans held by the relevant lender relative to a particular whole (which can be of a specific **Tranche** or perhaps of the entire debt under a credit agreement, depending on the circumstances). Thus, a repayment based on pro rata shares will be distributed pursuant to those applicable percentages (for example a $100 repayment to two lenders—one holding 25% of the loan and the other holding 75% of the loan—will be distributed as a $25 and $75 payment to the respective lenders). See Covenant Primer: Pro Rata Sharing in US Leveraged Loans (Part 1) and Covenant Primer: Pro Rata Sharing in US Leveraged Loans (Part 2).

"Project Financing," in its broadest terms, refers to financing associated with the construction and/or development of large-scale projects—for example, power plants, pipelines, and hotels. Such financings are traditionally underwritten on a limited / non-recourse basis only to the assets / revenue of such projects (i.e., without recourse to any sponsoring entity). Further, creditors will traditionally extend credit on the basis of the specified project and its revenue generating capabilities, which contrasts with regular-way corporate financing (traditionally underwritten based upon enterprise value of an operating company) or other asset-backed financing. See Covenant Primer: Project Finance-Style Covenants in US Leveraged Loans.

"Protective Advances" are discretionary loans extended to borrowers in order to protect lenders' interests. The concept appears often in **ABL** financing where such advances are explicitly designed to preserve or protect **Collateral** (e.g., repairing damaged assets or adding assets to a **Borrowing Base**) or to otherwise ensure repayment in the future (e.g., keep the business running).

"Proxy Put." See **Continuing Directors Trigger**.

"Public Company Exception" is a feature found in both bond and—to a lesser extent—loan **Change of Control** definitions, which allows the underlying business to be acquired by a widely-held publicly traded company. In practice, this functions like a somewhat more narrowly tailored **Portability** provision.

"Purchase Money" debt / liens is a fancy way of describing debt (and the liens securing that debt) that is incurred for the express purpose of acquiring specific assets (with any lien securing that debt limited to the acquired assets). Lenders tend to impose fewer restrictions on such debt because they regard the underlying transaction as essentially a wash; the borrower's balance sheet expands on both sides of the ledger by a roughly equal amount. Purchase money debt is commonly included in **Leverage Ratios** and typically benefits from its own **Basket** in the **Debt Covenant** (usually shared with **Capital Lease Obligations**).

"Put Right" refers to a creditor's right to sell their debt back to the issuer at a specified price, usually upon a specified event, such as a **Change of Control**.

-- Q --

"Qualified Institutional Buyer" or **"QIB"** is defined in Rule **144A**. It is meant to include institutional investors deemed financially sophisticated. It generally includes certain institutions that own and invest at least $100 million in securities of unaffiliated issuers.

"Qualified IPO." See **IPO**.

"Quality of Earnings Report" (or **"QoE Report"**) is a financial report typically prepared by an accounting firm in connection with due diligence undertaken during an M&A transaction. The report is generally intended to assess the financial health and viability of a business after accounting for a particular transaction (e.g., an **LBO**). QoE reports are normally provided to arrangers or underwriters as part of a marketing process and, in some cases, can form the basis of future **EBITDA** addbacks.

-- R --

"Ratings Reaffirmation" is a condition that requires one or more of the big three rating agencies (Moody's, S&P, and Fitch) to deliver a statement indicating that a specified transaction will not result in a ratings downgrade by such agency on the particular company and/or debt instrument.

"Ratio Debt" is a typical basket in both loans and bonds that permits a company to incur any amount of debt subject to compliance with **Incurrence-Based** ratio tests on a **Pro Forma** basis (i.e., after incurring such debt, whether the company is within the parameters set by the applicable ratio). Bond and bond-style loan deals usually allow debt subject to a 2x **Fixed Charge Coverage Ratio** or total **Leverage Ratio**, while more recent loans (and EU bonds) may follow a **Wedding Cake** approach (whereby different priorities of debt are governed by distinct ratios). Ratio debt is traditionally subject to maturity limitations and/or **Subcaps** if incurred by non-guarantors, though the quality of these protections varies significantly from deal to deal. There is often a corresponding ratio liens basket as well.

"RBL" is short for **R**eserve-**B**ased **L**oan. This is a variation on **ABL** financings where the **Borrowing Base** is primarily tied to oil and gas reserves rather than current assets.

"Real Property" in its most basic form refers to ownership interests in land and buildings. Real property is typically either owned (in the US, often referred to as "fee-owned") or leased (sometimes referred to as a "leasehold"). A **Lien** on real property is normally **Perfected** via the filing of a mortgage agreement with local (we mean really local: county-level in the United States) authorities.

"Receivables Financing" is a form of **Securitization Financing** which is backed by accounts receivable or other revenue streams. Receivables financings are often structured as debt at a special purpose entity (a "receivables subsidiary") that is non-recourse to the rest of the **Restricted Group**. A side effect of this kind of structure is that a receivables financing is usually structurally senior to the senior debt at the borrower or issuer (i.e., the senior debt is **Structurally Subordinated** by the receivables financings).

"Reclassification" is a concept allowing a borrower or issuer to empty the fixed cap **Baskets** within a given negative covenant (or the **Accordion**) using any of the **Incurrence-Based** carveouts whenever the applicable ratio can be satisfied. For example, if the borrower or issuer wishes to finance an acquisition pursuant to an **Acquisition Debt** exception up to the maximum amount permitted, it may, at some later point, allocate that debt to, say, the **Ratio Debt** basket, which may not earlier have been available to it. In so doing, the obligor will have resurrected the acquisition debt exception to the extent of the debt so reclassified.

"Recurring Revenue." See **Annualized Recurring Revenue**.

"Red." Another name for a **Preliminary OM** or **Preliminary Prospectus**.

"Redemption" means the prepayment of bonds at a price specified in the indenture, either at a specified time or upon the occurrence or non-occurrence of a specified event. See **Optional Redemption** and **Mandatory Redemption**.

"Registration Rights" refers to an agreement entered into by a bond issuer to register the bonds subsequent to issuance. Bonds with registration rights that are issued without registration under Rule **144A** initially, can be exchanged for new bonds with identical terms that have been SEC registered**.** Registration rights have become uncommon, with the majority of bonds being **144A-For-Life**.

"Regulation S" provides a safe harbor from Securities Act registration requirements for **Securities** offered and sold outside the United States.

"Regulation S-X" (or **"Reg S-X"**) is the SEC's rules on financial disclosure under the Exchange Act. In the context of leveraged financing, Reg S-X most commonly comes up in **EBITDA**, which sometimes includes an addback that allows any **Pro Forma** adjustment to EBITDA so long as that adjustment would otherwise be "compliant" with a Reg-S-X disclosure relating to an acquisition or disposition. Most relevantly, the current iteration of Reg S-X (since January 1, 2021) allows for disclosures based on "Management Adjustments"—i.e., disclosures regarding "synergies and dis-synergies of the acquisitions and dispositions for which pro forma effect is being given."

"Reinvestment Right" is a common feature of **Asset Sale Sweeps** for **Term Loan B** facilities (and also in high yield indentures). The reinvestment right broadly provides that a borrower or issuer may take **Net Cash Proceeds** otherwise earmarked for the prepayment of **Term Loans** and/or other secured debt and instead reinvest such proceeds back into the company. Exactly what constitutes an appropriate "reinvestment" is a matter of negotiation (though none of the typical market formulations are particularly clear, often deferring to generic references to allowing investments in assets "used or useful" in the business). The period during which the company can exercise its reinvestment right is also negotiated and can run from a year to two years (often with an option to extend so long as the company enters a binding commitment to reinvest in that period). In recent years, obligors have also gained the ability to retroactively "deem" prior cash outlays as an appropriate reinvestment (meaning any net cash proceeds that comes in from an asset sale can instead be kept by the company for its own purposes).

"REIT" stands for **R**eal **E**state **I**nvestment **T**rust and is a company that primarily owns income-producing **Real Property** (or real property-related assets) and benefits from certain favorable tax treatment (e.g., paying less corporation tax). In the US, a REIT must also pay a significant portion (90%) of its taxable income to equity-holders. In the context of REIT financing, covenants will need to be drafted around the requirements to maintain REIT status (e.g., there may be no ECF sweep in the case of a term loan and the **Restricted Payments Covenant** generally must allow for the 90% distribution noted above).

"Replacement Liens" refers to a form of **Adequate Protection** in **Chapter 11** bankruptcy proceedings. The term means the granting of "replacement liens" on additional assets to compensate for a decline in collateral value when a bankruptcy court lets a debtor use or sell a collateral asset (such as cash collateral). These new liens are meant to preserve the lender's position by substituting new collateral for what was used up.

"Reporting Covenants" (also known as **"Information Covenants"**) generally refer to one or more **Affirmative Covenants** dictating when and how often the obligor is required to deliver financial or other information about itself to creditors (e.g., audited annual financial statements, unaudited quarterly or monthly financial statements, projected budgets, collateral information, etc.).

"Repricing" is a transaction whereby the interest rate (or, more specifically, the **Applicable Margin**) is reduced. This is typically accomplished via amendment to the margin itself or by a refinancing of the debt (usually by an efficient **Cashless Roll** where existing lenders simply agree that the loans they previously held are now magically converted into *different* loans with a lower interest rate). In the **BSL** market, repricings are usually the only means of triggering a **Soft Call**.

"Required Lenders" usually refers to the percentage of lenders necessary to enact changes or waivers under a credit agreement. In practice, this refers to lenders who represent more than 50% (i.e., a majority) of all outstanding loans and unused commitments.

"Restricted Group" is a shorthand term for the borrower or issuer and any **Restricted Subsidiaries**—that is, the parties generally subject to the affirmative and negative covenants. In some cases, if a parent company is subject to the affirmative and negative covenants, it will also be included in the restricted group.

"Restricted Payment." In loan land, restricted payments usually refer to dividends or distributions to equity-holders, stock buybacks, and, occasionally, certain other payments to a **Sponsor**. For high yield bonds and some loans, however, the term also encompasses investments that are not **Permitted Investments** and prepayments of some kinds of junior debt. It is important to always clarify whether you are a citizen of loan land or bond land when asking about "Restricted Payment" capacity (but don't worry, you never need a visa to visit CovenantReviewopolis).

"Restricted Payments Covenant" is a negative covenant that limits the **Restricted Group's** ability to make **Restricted Payments**. In bonds and European BSL credit agreements with HY bond-style covenants, the restricted payments covenant usually encompasses the **Junior Debt Prepayments Covenant** and **Investments Covenant** (as one SUPER covenant), though in more traditional LMA-style loans, these three covenants are usually separated as they would be in traditional US loans. Thus, for loans, the restricted payments covenant is also sometimes referred to as a **Dividends Covenant**. See Covenant Primer: Explaining the Leveraged Loan Restricted Payments Covenant.

"Restricted Subsidiaries" are subsidiaries whose assets and earning capacity are included in various calculations relating to what the borrower / issuer and its subsidiaries can do under the debt agreement (for example, including it for purposes of calculating EBITDA—the good news for the company) and which are subject to various terms in the credit agreement, especially the covenants (the bad news). Restricted subsidiaries typically include **Loan Parties** or guarantors but the terms are *not* synonymous (i.e., there may be restricted subsidiaries that are not loan parties).

"Reverse Flex." See **Flex**.

"Revolver" (or more formally, a **"Revolving Credit Facility"** or **"RCF"**) is a facility typically used by the borrower to meet working capital obligations, and thereby permits borrowings, repayments, subsequent borrowings, subsequent repayments, and so on, all within a commitment amount that is not affected by the borrower's usage of the revolver. The crucial distinction between a revolver and a term loan is that prepayments of a term loan cannot be automatically re-borrowed. Note that a revolver tends to be provided by one or more commercial banks, and not by non-bank institutional lenders / investors, whose back office would have operational problems dealing with frequent borrowings and prepayments.

"*Reves* Test" refers to a test proffered by the Supreme Court of the United States in *Reves v. Ernst & Young* (U.S. 1990), which is held as the common law basis for why broadly syndicated loans are not considered **Securities** in the United States (and why loans are not subject to the more onerous disclosure requirements imposed by the Securities Act and Exchange Act). In short, the test measures (1) motivation of the parties, (2) plan of distribution, (3) reasonable expectation of investors, and (4) other factors that render the application of securities laws unnecessary. The *Reves* test was most recently put to the test (no pun intended) in *Kirschner v. JP Morgan Chase Bank, N.A.* (U.S. 2023) which broadly reaffirmed *Reves'* primary holding: that term loans are (for the time being) not securities.

"Ringfence" or **"Ringfencing"** is the act of segregating a group of assets within a company (e.g., a subsidiary or group of subsidiaries) from the rest of the business. This can be for any business purposes but in the context of leveraged loans, it is most commonly considered in respect of whether creditors have recourse against such assets. Ringfencing can be accomplished via covenants (by limiting the flexibility to transfer assets across a corporate structure, for example) or via more legalistic maneuvers (e.g., by establishing assets within an off-shore holdco, etc.).

"Risk-Free Rate" or **"RFR"** is a rate of interest used as a benchmark in financial transactions that is designed to exclude counterparty credit risk and account solely for economic factors. RFRs are considered more robust and less susceptible to manipulation than interbank offered rates (IBORs), such as **LIBOR**. Examples of RFRs include **SOFR**, administered by the Federal Reserve Bank of New York, and **SONIA**, administered by the Bank of England.

"Rising Star" is a company or debt instrument currently rated below **Investment Grade**, but which is close to or has the potential to be rated investment grade in the near term.

"Road Show." The allotted marketing period for a high yield bond. The road show generally consists of a series of meetings held by the **Underwriters** and potential investors. In the long long ago, in the before times, roadshows were actually taken *on the road*, with bankers holding physical meetings across various cities. Unsurprisingly, these days, meetings are just as likely to be online.

"Roll-Up" in bankruptcy typically refers to a **DIP Financing** feature in which a lender provides new-money DIP financing and, in conjunction with that new money, some or all of the lender's prepetition debt is refinanced, repaid, or converted into DIP obligations, effectively "rolling" the prepetition exposure into the post-petition facility and elevating it to the DIP loan's priority and protections

"Restructuring Support Agreement" or **"RSA"** is a contract under which key stakeholders (typically the debtor and one or more creditor groups, and sometimes equity holders) agree to support a specified restructuring transaction and an agreed process and timeline. An RSA can be executed prepetition—i.e., before filing of bankruptcy—to pre-negotiate and facilitate a faster, more predictable **Chapter 11** process, including **Prepacks**.

"Rule 144A." See **144A**.

"Rule 2.7 Announcement" is a formal notification under the **City Code on Takeovers and Mergers** that a company intends to make a takeover offer. The announcement of a firm intention to make a bid should only be made when an offeror "has every reason to believe that it can and will continue to be able to implement" it. Responsibility for compliance rests not only on the offeror, but also on its financial adviser, who is required to confirm in the bid announcement that sufficient resources are available to the offeror to satisfy full acceptance of any cash component of the bid. This is known as a cash confirmation.

"Run Rate." Loans and bonds typically permit "run rate" adjustments to **EBITDA** for expected **Synergies and Cost Savings**, expense reductions, contract revenues, etc. Run rate calculations permit a company to treat anticipated future synergies, savings, and/or revenues as if they had been achieved on the first day of the current test period. This can inflate the company's EBITDA, increasing its present-day **Basket** capacity based purely on the possibility of savings and synergies to come. See also Plain English Translations: Pro Forma "Run Rate" Adjustments.

-- S --

"Sacred Rights." In the context of amending a credit agreement, indentures, or other debt documents, the sacred rights are changes that require heightened consent thresholds from creditors beyond mere **Required Lender** or majority consent (usually they relate to the core economic and structural terms of the debt).

"Sale-Leaseback" is a type of financing transaction where company A sells an asset to company B, before immediately leasing the asset back for its own use. The resulting arrangement very much mirrors that of a traditional loan (the "lease" payments essentially being equivalent to regular interest payments / amortization). Sale-leasebacks may implicate the **Debt Covenant**, **Liens Covenant**, **Asset Sales Covenant**, and **Affiliate Transactions Covenant**, among others. In some debt agreements, there may also be a standalone sale-leaseback covenant.

"Scheme of Arrangement." A scheme of arrangement is a flexible and long-established procedure under the Companies Act in the United Kingdom, which can be used to vary the rights of some or all of a company's creditors and/or shareholders. As long as a scheme receives the support of the statutory majorities of each class of creditor and/or shareholder whose rights are affected by it, and the court sanctions it, the scheme will be binding on all creditors and/or shareholders, including those within each class voting against the scheme. These characteristics make schemes a useful strategic device in a wide range of circumstances including takeovers and mergers.

"Second Lien" refers to any secured debt that sits second in priority in respect of collateral. See **Liens Subordination** and **Junior (vs. Senior) Lien**.

"Secondary Market" means the act of (or platforms for) trading debt instruments between or among creditors after the initial transaction has closed or funded.

"Secured" debt is debt that benefits from a **Lien** granted by the borrower / issuer and other obligors (including guarantors) to creditors. Secured creditors may, under certain circumstances, satisfy obligations owing to them by foreclosing on (i.e. enforcing) the collateral securing those obligations. As a practical matter, many companies respond to foreclosure action(s) by filing for bankruptcy, which has the effect of "staying" the secured creditors. In a bankruptcy, however, secured creditors enjoy significant statutory advantages over unsecured creditors. Much leveraged lending under credit agreements in today's credit markets is done on a secured basis. It is no exaggeration to say that secured versus unsecured lending is truly like the difference between night and day. And anything that permits the release of collateral, including by the sale of an entity which owns collateral, is by definition problematic. Assets subject to a lien that are transferred may be automatically released (or may require some additional release documentation), but in either case, creditors should always take a jaundiced view of transactions potentially involving their collateral.

"Securitization Financing" is a financial instrument where a pool of cash-generating assets is bundled together and then sold as interest-bearing securities. In the context of leveraged loans, securitization financings (and their related cousin, **Receivables Financings**) are most relevant as (1) a basket in the negative covenants (e.g., in most **BSL** credit agreements, transactions constituting securitization financings are broadly permitted, usually without cap) and (2) a potential inclusion in **Leverage Ratios** (in the numerator).

"Security." The term "security" has two primary meanings when it comes to leveraged finance. The first is a synonym for **Collateral**. The other is for a specific kind of debt or equity instrument which is governed by securities laws (e.g., in the US, the Securities Act of 1933 and the Securities and Exchange Act of 1934), such as bonds and equities. In the United States, what constitutes a "security" is generally governed by the ***Reves* Test**.

"Security Agent." See **Collateral Agent**.

"Security Interest." See **Lien**.

"Seller Debt" or **"Seller Note"** is debt that finances an acquisition that is owed to the seller. For example, to cut the cash purchase price, a borrower may offer to issue a note to the seller to be repaid over time. The amount paid to the seller (referred to as "consideration") therefore becomes a combination of cash and debt (the seller note).

"Senior" means higher in relative ranking or priority of a debt instrument.

"Senior Facilities Agreement." See **Credit Agreement**.

"Serta Blocker" generally refers to a requirement for a heightened consent level (more than a mere majority) by lenders before allowing debt under the credit agreement or indenture to be **Subordinated** (in right of collateral and/or in right of payment). In other words, a Serta blocker treats subordination as a **Sacred Right**.

"Serta Loophole" (or, sometimes, just **"Serta"**—like "just Cher" or "just Prince") refers to a feature in credit agreements (or other debt instruments) which allows the debt in question to be **Subordinated** (either in right of payment or in right of collateral) with only the consent of a subset of creditors (e.g., **Required Lenders** under a credit agreement or a majority of outstanding principal amount under an indenture). Although named after the Serta LMT from 2020, this loophole was a staple of the BSL market for years beforehand. Serta just happened to be when lenders first took notice of this particular problem.

"Shadow Calendar" refers to the pipeline of potential financing transactions that are in the offing (because, for example, a particular M&A financing or LBO has been announced, but where formal **Syndication** or marketing of debt has yet to be launched).

"Shadow Default" refers to a situation where an issuer is in a de facto default, but no formal **Event of Default** has occurred. Common examples include when a company is effectively in violation of a **Financial Covenant**, but the occurrence of the breach (on the last day of the test period) has not yet occurred, or where the company is being artificially sustained by a **Sponsor** or other equity-holders (such as through **Equity Cures**).

"Sidecar." Another term for **Incremental Equivalent Debt**. Also, those cool little things on the side of motorcycles in Indiana Jones movies.

"Silent Second" is an underlying principle of widely syndicated **First Lien / Second Lien** financings. In short, it refers to an implicit agreement by creditors in the junior tranche to waive or give up certain rights they might hold as creditors in an **Event of Default** context (including bankruptcy). The second lien creditors are *silent* because they have essentially taken the position that any collateral enforcement will be the purview of first lien lenders. This implicit agreement is borne out in a number of key features in such financings including, but not limited to: (1) the traditional "sizing up" of baskets in second lien documentation relative to first lien baskets (to ensure that the borrower will not trigger an event of default under the second lien facility *alone*, but will, instead, almost certainly have triggered an event of default under the first lien facility *first*), (2) the **Standstill Provision** and **Turnover Provision** in the **Intercreditor Agreement**, (3) waivers of certain rights in bankruptcy (e.g., the ability to object to **DIP Financings**), and (4) agreements by second lien creditors not to object to the enforceability of first lien creditors' claims.

"Silo" commonly refers to a group of subsidiaries of a business that essentially operate as an independent operation. A silo may therefore have its own capital structure that is **Ringfenced** from the rest of the business. In a company with multiple silos, creditors are often particularly concerned with **Leakage** between or amongst various silos (via **Investment**, **Restricted Payment**, **Asset Sale**, or otherwise).

"Single Point of Enforcement" is a principal of secured financing arrangements which dictate that creditors should be able to directly gain control of an issuer via a single entity in the event of an insolvency or other exercise of remedies (rather than enforcing against multiple and disparate subsidiary entities). In many jurisdictions, this is typically accomplished via a **Holdco** pledge, where the holding company pledges the equity of a parent **Opco** (with all material assets held by the primary obligor and its subsidiaries). By taking control of the pledged equity, the creditors effectively take control of the entire business. Whether a single point of enforcement is viable will require a careful analysis of relevant jurisdictional law.

"SLL." See **Sustainability-Linked Loan**.

"Snooze-Drag" is a recent phenomenon arising primarily in the European loan market, specifically in the context of **Amend-to-Extend** transactions. Essentially, the provision provides that if lenders do not affirmatively agree to an extension offer, then they will be deemed to have agreed (and will be dragged along with the extending lenders). The snooze-drag is designed to allow **CLOs** to silently roll into the extended debt and is meant to solve for any restrictions or limitations under CLO indentures. See also Snooze Drag in European Leveraged Loans: Variations in Amendment Provisions Allowing Lenders to Silently Roll into Maturity Extensions.

"Snooze-Lose" refers to any provision—usually in the context of amendments—which takes effect so long as the lenders do not affirmatively object in a set window. So, you snooze (don't act), you lose (the right to object).

"SOFR" (pronounced "so-fer") is an acronym for **S**ecured **O**vernight **F**inancing **R**ate, which the New York Fed generally describes as "a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities." SOFR has largely replaced **LIBOR** as the benchmark for USD floating rate debt in the United States, specifically in its forward-looking incarnation (term SOFR), which comes in standard **Interest Periods** (just like good ol' LIBOR used to).

"Soft Call" is the more common of the two variations of **Call Protection** usually found in the BSL market. Soft calls usually extend for six- or 12-months following **Closing** and only apply upon certain **Repricing** events, often with explicit carveouts for material transactions, including transformative events, **Change of Control** events, or **IPOs**. Of late, soft call protection in credit agreements may not apply unless the refinancing is for the "primary purpose" of refinancing at a lower yield.

"SONIA." The **S**terling **O**ver**n**ight **I**ndex **A**verage, or SONIA, is the preferred reference rate for sterling-denominated loans to replace **LIBOR**.

"SPAC" stands for **S**pecial **P**urpose **A**cquisition **C**ompany" (also known as a **"Blank Check Company"**) and is essentially a public shell company that is formed for the express purpose of acquiring (or merging with) a private company (the resulting combined company being publicly traded). Thus, for private companies, a SPAC merger is an alternative to the potentially expensive and lengthy IPO process. For a brief and shining moment in 2020-2021, SPAC transactions were the hottest thing on Wall Street. Though that shine has long since worn off (SPAC formulation dropped precipitously in 2022 amid greater regulatory scrutiny), many credit agreements and indentures continue to treat SPAC mergers as equivalent to an **IPO**, which can have material consequences on determining whether a **Change of Control** has occurred or whether a **Soft Call** is payable. See also SPAC Considerations in Term B Loan Credit Agreements.

"Specified Reps." See **SunGard Conditionality**.

"Spin-Off" (sometimes, just **"Spin"**) is a transaction where equity of a subsidiary is transferred to a parent entity (or other equity-holders). Spin-offs are, at their heart, a distribution of assets and are therefore primarily governed by the **Restricted Payments Covenant** (though depending on the specifics, other covenants can also be implicated). Confusingly, the term is sometimes used more generically to refer to any transfer of a business, including via a sale.

"Split Lien." See **Crossing Lien**.

"Sponsor" is typically a major financial player, often a private equity firm or investment banking group, a "deal shop," or some other investor which owns or is acquiring equity in various businesses. Sponsors that are active in leveraged lending transactions often work with the same agents and underwriters, have their own counsel, loan documentation forms, and so on.

"Sponsor-Designated Counsel." A rather curious development in the leveraged debt markets where a **Sponsor** determines (and ultimately pays for) the law firms that represent the investment banks acting as **Underwriters** or **Arrangers** on a particular transaction. Such law firms are referred to as sponsor-designated or borrower / issuer-designated counsel.

"Sponsor Grid." See **Grid**.

"Sponsor Model" is a financial model provided by a Sponsor to **Arrangers** or **Underwriters** for a borrower or issuer, which the banks use to structure the deal. Calculations of **EBITDA** in the debt agreements can sometimes be increased based on information in the model.

"Springing Covenant" is a type of **Financial Covenant** that is only tested if certain conditions are met (usually on a specific date). In the context of a **Revolver**, springing financial covenants are commonly tied to the borrower incurring debt under the revolver that exceeds a minimum percentage of revolver commitments.

"Springing Maturity" is a mechanism that allows a scheduled maturity date to advance forward to an earlier date. Most commonly, springing maturities are tied to maturity of earlier maturing debt (to wit, if some amount of earlier maturing debt is still outstanding on a specified date, the later maturing debt will "spring" to that earlier date). Note that springing maturities are typically built-in to the maturity date definition and are not considered the same as **Acceleration.**

"Stacking" rules in debt agreements generally govern how a borrower or issuer is allowed to calculate basket usage. In most modern credit documentation, for any concurrent usage of capped baskets (i.e., those subject to a fixed amount cap or **Grower**) and an **Incurrence-Based** basket, the borrower is permitted to calculate ratio compliance *without* accounting for any such fixed basket usage (the result being that the leverage ratio in question will often end up higher than the prescribed cap). Stacking can increase the **Additivity** of baskets.

"Stalking Horse Bid" An initial bid in a bankruptcy sale that sets the floor price and key terms for the auction, which is often accompanied by bid protections such as a break-up fee and expense reimbursement to compensate the bidder for setting the market and taking early deal risk.

"Standstill Provision" is a feature in **Intercreditor Agreements** whereby the junior lien holders agree not to pursue remedies (e.g., by foreclosing on collateral until after a set period of time has elapsed after the declaration of an **Event of Default.** The purpose of a standstill period is to ensure that senior lien holders have the "first crack" at exercising remedies.

"Staple/Stapled Financing." A financing package offered to bidders in an auction of a target company. The financing is typically offered and provided by the investment bank that is advising the seller and managing the auction. Named a "staple" because the proposed commitment papers for the financing are "stapled" to (accompanying) materials about the auction that are sent out to potential bidders.

"Stock-in-a-Box" is a provision found in post-**LMT** / post-restructuring credit facilities designed to hand one or more creditors equity in the debtor on the basis of certain milestones. Such equity may be held in escrow (the titular "box") pending the occurrence of certain trigger events, whereupon the equity is granted to the creditors. Stock-in-a-box features essentially hand creditors the keys to the business and may serve as an alternative path to **Chapter 11** filings for post-LMT credits that failed to turn around their fortunes.

"Stovepipe Basket." See **Equity Credit**.

"Strategic Default" refers to a deliberate decision by a borrower or issuer to default on its debt obligations (or to allow an **Event of Default** to occur) despite having the financial capacity to remain current, typically as part of a broader restructuring strategy or to gain negotiating leverage with creditors. Unlike a traditional payment default driven by liquidity constraints or insolvency, a strategic default is a calculated business decision (often made in consultation with restructuring advisors and **Distressed Debt** specialists) designed to force creditors to the negotiating table, facilitate a **Distressed Debt Exchange**, enable more favorable terms in an out-of-court restructuring, or position the company for a **Prepack** bankruptcy filing. Strategic defaults may involve selectively defaulting on certain tranches of debt (such as unsecured bonds) while continuing to service other obligations (such as first lien loans) or may involve triggering technical defaults (such as **Cross-Default** provisions) to create leverage in **Liability Management Transaction** negotiations. The practice is controversial and can trigger accusations of bad faith or violations of the **Implied Covenant of Good Faith and Fair Dealing**, though such claims rarely succeed in leveraged finance litigation. Creditors facing a strategic default may organize into **Ad Hoc Groups** to coordinate their response. The term should be distinguished from ordinary payment defaults driven by genuine financial distress or liquidity crises.

"Structural Subordination" is a form of **Subordination** that arises when parent debt is considered junior to subsidiary debt. Consider this simple scenario: a creditor to a parent entity (with subsidiaries that do not guarantee the parent debt, that is) is, in effect, subordinated to the creditors of those subsidiaries with respect to the assets of those subsidiaries, even without a formal subordination agreement (i.e., the subordination arises from the corporate structure rather than from a contract). This reflects the fact that the parent's interest in its subsidiaries is an equity interest (assuming the parent is not, in addition, a guarantor in respect of its subsidiaries). The parent's ownership interest in its subsidiary has value only to the extent that the subsidiary's assets exceed its liabilities; the claims of a subsidiary's creditors must be satisfied before the equity has any value, and it is only the equity in the subsidiary that will ultimately be available to the parent (and, therefore, the parent's creditors). The parent's debt is therefore structurally subordinated to the subsidiary debt (which is considered structurally *senior*).[12]

"Sub-Participations." See **Participations**.

"Subcap" is a secondary limitation in a basket that applies in certain circumstances. For example, a **Ratio Debt** basket may allow any amount of debt subject to a leverage ratio but debt incurred by a non-**Loan Party** under such basket may be subject to a subcap up to a specific cap.

[12] Like effective subordination, structural subordination is a particularly important issue in European financings, where legal restrictions on guarantees in a number of European jurisdictions mean that a surprisingly large proportion of the restricted group could be non-guarantors. See Covenant Primer: Common Structuring Issues in European High Yield Bonds and Leveraged Loans.

"Subordination." There may be no area of leveraged finance that is subject to more misunderstandings and misconceptions than the concept and meaning of subordination (which isn't helped by the fact that bankers and even lawyers tend to use terminology...rather inconsistently if we're being charitable). To clarify, subordination generally refers to the *relative* rankings of two classes of debt (i.e., one class of debt is considered senior while the other class is considered subordinated), which in turn is broadly a statement as to which class of debt is repaid *first* (particularly in an insolvency scenario). When used generically, the term "subordination" (full stop), usually means **Payment Subordination** (as distinct from **Lien Subordination**). Subordination (again, without further clarification) also tends to mean **Contractual Subordination**—that is, subordination where the lender or lenders agree to be subordinated in an express writing. This is as distinct from **Structural Subordination** or **Effective Subordination**, where subordination is typically accomplished by the form of debt incurred rather than by agreement.

"SunGard Conditionality" (sometimes referred to as "certain funds" provisions—though, strictly speaking, **Certain Funds** has a distinct meaning in European leveraged loans) refers to provisions implemented in an **Acquisition Financing** which "softens" certain **Conditions Precedent** to the closing date. Most commonly, SunGard limits the scope of the **Bringdown** of representations and warranties to only certain specified items (called **Specified Reps)** and only requires **Perfection** of certain types of collateral (usually possessory collateral, UCC-1 filings, and IP filings). The idea of SunGard is therefore similar to UK-style certain funds in that it seeks to add certainty that the debt will be available at a specific moment in time (when the acquisition is consummated), the weakened conditionality being with respect to those items that might be difficult to achieve in the constrained timeframe of a committed financing.

"Sunset." Technically, any provision that ceases to have effect after a set period of time can be said to "sunset," though the term is most associated with **MFNs**. The opposite of a sunset would be an **Evergreen** provision.

"Super Senior" (or **"Superpriority"**) debt refers to any debt that sits above debt otherwise considered "first lien." A typical example: lenders under a super senior **Revolver** will receive collateral enforcement proceeds ahead of lenders under other first lien debt —a fairly common construct in European capital structures. Priming debt in Serta-style **Uptiering** transactions also is often referred to as super senior debt (as it comes ahead of what was previously considered first lien debt).

"Supermajority" in the context of amending credit agreements or indentures usually refers to creditors holding more than a majority but less than all / affected creditors (e.g., 66 2/3%). Supermajority voting is relatively unusual in the BSL market in the United States but is standard in secured US high yield bonds, where 66 2/3% is typically required to release all or substantially all **Collateral** or change lien priorities, in European bonds, where changes to fundamental terms typically have a 90% consent threshold, and in the European BSL market, where the threshold is typically set at either 66 2/3% or 80%, and is often used in the context of a release of all or substantially all of the collateral and/or guarantees or a change in their nature or scope.

"Supplemental Indenture" is a document that supplements an existing indenture. Among other things, it may change the contractual terms, provide for the issuance of **Additional Notes**, or provide for additional guarantors.

"Sustainability-Linked" debt is a type of **ESG** debt where pricing can be adjusted based on certain ESG-related metrics. Such debt usually allows the **Margins** to be decreased (and, rarely, increased) as dictated by whether the borrower / issuer can achieve certain negotiated ESG benchmarks.

"Sweep" is a colloquial term referring to either a **Mandatory Prepayment** provision or a provision allowing for the transfer of funds from one account to another.

"Swingline" is a type of revolving borrowing in which the request, funding, and repayment of loans borrowed occurs within a relatively short period of time (from one to just a few days). For most **Revolvers**, there is usually a sublimit dedicated to swingline capacity. In the US, swingline borrowings usually accrue interest on the basis of **ABR** margins.

"Syndication" refers to the marketing and selling of debt (particularly loans) to institutional investors. The syndication process is managed by **Arrangers**. The institutions that end up providing such debt are referred to as the syndicate. Syndication is also how you watched Star Trek: The Next Generation after school in the '90s.

"Synergies and Cost Savings" is a generic reference to what is perhaps the most important **Addback** in a negotiated **EBITDA** definition. The addback is a forward looking (**Run Rate**) adjustment that allows EBITDA to be increased for *expected* gains in the future—commonly arising from a major transaction (acquisition, disposition, etc.) though sometimes from any initiative the company may take. For example, synergies and cost savings can take the form of expected reductions in operational expenses as two merged companies combine resources (or, less rosily, the addback can encompass expected decreases to payrolls as superfluous employees are laid off). Synergies and cost savings from a major M&A transaction or LBO can drive EBITDA value, at least for a time. The addback isn't all cupcakes and lollipops for an issuer, however, as the adjustments usually do have to be "reasonably identifiable" and "factually supportable." The addback is unsurprisingly heavily negotiated and constantly evolving, most commonly in respect of whether or not it should be capped and how far ahead such projected adjustments can be taken (also known as the "look-forward" period).

"Synthetic Letter of Credit Facility" (also known as a **"Prepaid Letter of Credit Facility"**) refers to a debt facility allowing for the issuance of **Letters of Credit** which have been "pre-funded" by a term loan into a lender-controlled account (i.e., lenders have extended credit to the borrower with proceeds effectively **Cash Collateralizing** future letter of credit issuances). Accordingly, synthetic L/Cs are usually viewed as a less risky alternative to traditional letters of credit since there is lower risk to the issuing bank that it will not be repaid following an L/C drawing.

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"Take-Back Debt" refers to debt issued by a restructured debtor or issuer to its pre-restructuring creditors, typically on an exchange basis.

"Tangible" assets are assets that would not be classified as intangible under GAAP, such as goodwill and certain intellectual property. Lenders tend to look with disfavor on intangible assets because their **Fair Market Value** can be difficult to determine (or even illusory, as in the case of goodwill) and any value represented by such assets may be hard to realize in a sale.

"Tap Issue" or **"Tap Notes"** refers to an issuance of **Additional Notes**.

"Temporal Priority" means priority in terms of when debt matures. For example, debt instrument A that matures one year prior to debt instrument B is said to have temporal priority over debt instrument B.

A **"Tender Offer"** for bonds is a process whereby an issuer invites bondholders to sell back their bonds to the issuer at a specified price and time**.**

"Tenor" refers to the term of the debt (i.e., the length of time that such debt is expected to remain outstanding, measured from closing). **Term Loans B** usually have a six- or seven-year tenor (eight-years for second lien term loans), while **Term Loans A** and **Revolvers** usually have a five-year tenor.

"Term Loan" is a form of debt (that isn't a **Bond** or other **Security**; see ***Reves* Test**) for borrowed money that, once repaid, is not capable of being reborrowed. Compare with **Revolver.**

"Term Loan A" (or **"Term A Loan"** or "**TLA**") refers to a term loan with significant amortization payments (in percentage terms—say 20% a year payable quarterly) and a relatively short maturity date—three to five years. These are often funded by commercial banks (as opposed to other institutional lenders) and may also be referred to as "pro rata loans."

"Term Loan B" (or **"Term B Loan"** or "**TLB**") refers to the most common term loan type in the leveraged loan market. In the United States, Term Loans B **Amortize** at just 1% each year (0.25% each quarter) until final maturity, typically seven years (European term B loans, in contrast, typically do not amortize). This balloon maturity feature reflects the general preferences of leveraged loan lenders, many of which are not commercial banks and tend to favor a more bond-like maturity schedule. These may also be referred to as "institutional term loans."

"Term Out." The process of converting revolving debt into term debt (generally by modifying the terms so that borrowed debt cannot be reborrowed once repaid).

"Term SOFR." See **SOFR**.

"Third-Party Release." A **Chapter 11** plan provision releases or extinguishes certain claims held by creditors and other stakeholders against non-debtors such as sponsors, officers and directors, lenders, or advisors. The release is typically offered in exchange for consideration that is viewed as necessary to the restructuring, such as new money, debt forgiveness, backstopping a rights offering, or other value that supports the plan. Availability has become more limited, as SCOTUS has curtailed nonconsensual third-party releases. See U.S. Supreme Court Rejects Third-Party Releases.

"Ticking Fee," its explosive name notwithstanding, has a banal meaning; it typically applies to any debt commitments which are expected to be held for an extended period without funding (e.g., delayed draw term loans or committed financing where the period to closing might go for several months). Ticking fees may be structured similarly to **Commitment Fees** (with a per annum fee on the undrawn amount of commitments) or as a portion of the **Applicable Margin** (usually with a step-up over time). The amount of ticking fees, when they are set to begin accruing, and when they are required to be paid are matters of negotiation.

"Tranche" (meaning something like "slice" in French) is synonymous with the now-more-common term "facility" (i.e., debt that shares certain economic terms and is treated the same across the relevant loan documentation).

"Transaction Security." See **Collateral**.

"Transfer." Sometimes used interchangeably with **Assignment**, the term is more specifically used in European loan agreements to cover novation of contractual rights and obligations, as opposed to a mere assignment of rights (since under English law you cannot assign obligations). However, the term is commonly used as a generic term for the process by which a lender replaces another lender under the "Changes to the Lenders" provision in a European loan agreement, whether by assignment, novation, sub-participation or sub-contract.

"Transformative." In the context of **Soft Call** protection, "transformative" transactions (acquisitions, dispositions, etc.) are exceptions to the premium (i.e., events that do not trigger the call protection) and generally refer to transactions that (1) are not otherwise permitted by the debt documents, (2) do not otherwise leave the company with adequate flexibility to continue to comply with the requirements of the debt agreement, and/or (3) in some cases, exceed a particular materiality threshold. In short, a "transformative" transaction or event is one that would require an amendment to the debt covenant to be consummated. Sometimes referred to as **Enterprise Transformative Events**.

"Tree." See **Commitment Papers**.

"Triple Dip" is a theoretical variant on the **Double Dip** structure where a third claim is brought to bear with respect to newco creditors. A potential triple dip scenario notably arose in the Spirit Airlines bankruptcy in 2024 where, in addition to standard double dip claims, a claim was proposed to arise from the damages stemming from the termination of the brand IP licensing agreement. This was ultimately a bespoke situation with complex structures specific to Spirit itself. That said, "triple dips" may be yet another option for at least a subset of distressed borrowers.

"Trust Indenture Act" or **"TIA"** refers to the Trust Indenture Act of 1939. It is a securities law that applies to SEC registered bonds (the indentures for registered bonds are said to be "TIA qualified"). The TIA set some requirements for registered bond offerings, including requiring a **Trustee** and setting some minimum requirements for disclosure and enforcement mechanics. It has become largely irrelevant in high yield, as most high yield bond deals are **144A-for-life**.

"Trustee," in the context of high yield bonds, is the counterparty to a bond indenture. Playing largely an administerial role, the trustee acts either at the direction of the issuer (such as signing a **Supplemental Indenture** following a **Consent Solicitation** or to authorize the issuance of **Additional Notes**) or on behalf of the bondholders (particularly where creditors are seeking to enforce the terms of the indenture).

"TTM." See **LTM**.

"Tuck-in." An acquisition financed by additional debt issued under an existing debt arrangement (e.g., **Incremental Debt** or **Add-on Notes**). Typically, the term is only used where the acquired entity is materially smaller than the acquiring entity.

A **"Turn"** is equal to 100% of **EBITDA**.

"Turnover Provision" is a feature found in most **Intercreditor Agreements**, which states that any **Collateral** proceeds received by a second lien or junior priority holder is required to be turned over to the first lien agent.

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"UCC may refer to the **Uniform Commercial Code** or, in the context of US bankruptcy practice, the Official Committee of Unsecured Creditors (sometimes called the Unsecured Creditors Committee). The UCC is a group of unsecured creditors selected by the United States Trustee to represent the interests of all unsecured creditors in a **Chapter 11** case. The committee's duties include, among other things, consulting with the debtor, investigating the conduct and financial condition of the debtor, and helping to formulate a Chapter 11 plan.

"Underwriter." Any financial institution that oversees / manages an SEC registered bond offering and initially purchases those bonds before offering them to investors. In a **144A** bond, the financial institutions in this role are called **Initial Purchasers**. The corresponding role in leveraged loans with respect to overseeing or managing a syndication is an **Arranger**, and with respect to making initial purchases of loans, a **Fronting Lender**.

"Uniform Commercial Code" (or **"UCC"**) is a model statute (first published in the 1950s) that is intended to provide harmony and uniformity across different states (and the District of Columbia) with respect to commercial transactions in the United States. That said, each state's adoption of the UCC can result in slightly different applications of the original form. For leveraged loans and other secured debt, the most relevant parts of the UCC are Article 8 (which governs investment securities) and Article 9 (which governs secured transactions). Note that the UCC generally does not govern security interests in **Real Property**. Note that the term UCC can also refer to the **Unsecured Creditors Committee** in the context of US bankruptcy practice.

"Unimpaired Class." A class of claims treated as "unimpaired" under a **Plan of Reorganization**, meaning the holders' legal, equitable, and contractual rights are left unchanged, often through payment in full, in cash or reinstatement. Unimpaired classes are conclusively presumed to accept the plan and generally do not vote.

"Unitranche" is a form of debt financing where the borrower incurs a single "loan" from a group of lenders. So far, sounds like any other term loan, but behind the scenes, the lenders to the unitranche loan have entered into an **Agreement Among Lenders** where they are grouped into various classes with different relative priorities (with a first-out group, a second-out group, and so on and so forth). Unitranches are a popular option for borrowers because of a (purportedly) simpler negotiation and documentation process.

"Universal Pick Your Poison" is an egregious variant of **Pick Your Poison** flexibility that often allows available covenant capacity under *any* covenant to be redeployed to increase covenant capacity under *any other* covenant (i.e. not only debt or liens covenant). This mind-boggling flexibility has featured in more than a handful of recent broadly syndicated European leveraged loan transactions.

"Unrestricted Cash," in the context of **Leverage** calculations, refers to the cash that is allowed to be deducted from the numerator (i.e., the debt calculation). The "unrestricted" part usually means that only cash that is not counted as "restricted" on a balance sheet in accordance with GAAP (or other accounting principles) can be deducted, though in debt agreements, the concept of "unrestricted" or "restricted" cash can be more bespoke (with cash subject only to certain liens being considered "restricted" and usually counting cash that is pledged in favor of certain types of debt as "unrestricted"). Unrestricted cash can also play a role in determining "Liquidity" for purposes of a **Liquidity Covenant** or other liquidity-based conditions in debt agreements.

"Unrestricted Subsidiary." In essence, the opposite of a **Restricted Subsidiary**. Where restricted subsidiaries' metrics are included in calculating financial metrics, unrestricted subsidiaries are not. Where restricted subsidiaries are beholden to the covenants, unrestricted subsidiaries are not. This latter feature has become a primary driver as to why unrestricted subsidiaries have become a preferred vehicle for **LMTs**. Typically, any restricted subsidiary can be designated as unrestricted so long as the borrower or issuer jumps through certain hoops (including, most notably, requiring that sufficient **Investments** capacity exists).

"Unsecured" debt refers to debt obligations that are not supported by **Collateral** and, accordingly, do not benefit from a **Lien** on the borrower's assets. In a bankruptcy or restructuring, unsecured debt sits behind secured debt in the **Waterfall** with respect to collateral proceeds and is repaid only from any remaining unencumbered assets or enterprise value. Although unsecured debt may be **Pari Passu** in right of payment with other unsecured or secured obligations, it is often **Effectively Subordinated** to secured debt due to the latter's priority claim on collateral. As a result, unsecured creditors tend to have lower expected recoveries, particularly in highly leveraged capital structures.

"Upfront Fee" is a financial incentive to lenders or other creditors that is paid at the closing and funding of debt. The fee can be structured as a cash payment (normally netted out from the debt being extended) or it can be structured as an **Original Issue Discount**. Also called a **Closing Fee**.

"Upstream and Downstream." A "downstream" guarantee (or comparable undertaking such as the grant of **Collateral**) is one made by the parent of a subsidiary for the benefit of such subsidiary's creditors. An "upstream" guarantee is one made by a subsidiary for the benefit of its parent's creditors. To generalize, but always subject to the actual facts in a particular financing, a "downstream" guarantee poses limited legal risk to the intended beneficiary of such guarantee, typically the lenders to such subsidiary. An "upstream" guarantee, subject to the same qualification as to the particular facts, may raise serious, potentially fatal, legal risks to creditors of the parent who are the intended beneficiaries of such guarantee. "Downstream good, upstream bad" is a useful rule of thumb, subject, as always, to the actual fact pattern.

"Uptiering" is a generic term for taking debt or equity of a particular ranking and replacing it (via refinancing, exchange, or other more esoteric transactions) with capital at a higher ranking. Common examples are an exchange of unsecured bonds for junior lien debt or a transaction whereby consenting lenders agree to exchange into new priming debt.

-- V --

"Vote Rigging" is another tool in the **LMT** arsenal. The term generally refers to the act of incurring new debt under the applicable debt documentation, usually from sympathetic or allied institutions, for the purpose of being able to make other changes in the debt documentation (where counting the new debt will allow the company to meet a requisite consent threshold). See also Vote Rigging with New Debt.

"Vote Rigging Blocker" (also referred to as **"Gerrymandering Protection," "Wesco/Incora Blocker," "Incora Language,"** or **"Incora Protection"**) is a provision designed to prohibit or inhibit **Vote Rigging**.

"Voting Cap" is a concept first introduced in the HY market which seeks to limit the voting rights of larger holders of debt. The cap is implemented by ignoring a creditor's holdings in excess of a specific threshold (e.g., 20%) when determining creditor actions. The concept is less common in the leveraged loan market, though does appear as well. See **Concentration Cap**.

"Vulture Investor" or **"Vulture Fund"** is an informal term for an investor or investment fund that specializes in acquiring **Distressed Debt** or other securities at steep discounts, often during or in anticipation of bankruptcy or other financial distress, with the intent of realizing significant returns through a subsequent restructuring or enforcement action. Vulture investors may pursue aggressive strategies including: (1) pursuing **Loan-to-Own** strategies where they seek to convert debt to equity and take control of the reorganized company, (2) demanding payment in full or pursuing foreclosure remedies, (3) blocking or influencing the terms of a **Plan of Reorganization** to maximize their own recovery, or (4) organizing **Ad Hoc Groups** to negotiate favorable treatment in **Liability Management Transactions** or bankruptcy proceedings. While the term carries negative connotations suggesting opportunism at the expense of other stakeholders, proponents argue that vulture investors provide essential liquidity to distressed markets, facilitate price discovery, and help drive necessary corporate restructurings that might otherwise be delayed or mismanaged. Companies or Sponsors seeking to avoid vulture investors may include such investors on a **Blacklist** or designate them as **Disqualified Lenders**.

-- W --

"Wall Cross." See **Early Look**.

"Waterfall" is the somewhat lyrical term for any provision that governs the application of proceeds provision (e.g., following the enumerated events of default or with respect to cash withdrawn from a specific account). When used generically, it typically refers to the application of proceeds after the enforcement against **Collateral**. In a plain vanilla credit agreement, with a single facility, a typical "post-default" waterfall invariably follows the rule of costs and expenses first, then interest and fees, then principal. But a waterfall really comes into its own when there are multiple facilities under a single credit agreement and, especially, where there are multiple debt instruments, in which case there will be a truly overarching waterfall in, say, an **Intercreditor Agreement** applicable to the various groups of creditors. In such cases, the priorities among creditor constituencies may reflect things such as their interests in specific collateral, the circumstances under which the various facilities were created, underlying business concerns, etc.

"Wedding Cake" refers to a feature in many **Accordions** and **Ratio Debt** baskets whereby different types of debt can be incurred in reliance on different financial ratios (e.g., first lien leverage for first lien debt, secured leverage for junior secured debt, and total leverage for unsecured debt). Technically, such formulations could allow a borrower or issuer to stack different priorities of debt one on top of the other (like a cake!).

"Weighted Life to Maturity" is a measurement of the average number of years of each principal payment under a debt instrument as weighted based on individual repayment amounts and dates. Mathematically, the calculation is usually defined as the number of years obtained by dividing (1) the outstanding principal of the debt in question into (2) the product of (a) the amount of each remaining payment multiplied by (b) the number of years between the date of calculation and the date on which such payment is required.

"Whitelist." The opposite of a **Blacklist** which refers to a list of pre-approved entities to whom lenders are permitted to transfer (assign) their loans without seeking the company's consent (commonly used in the European **BSL** market and, rarely, in the US).

-- Y --

"Yank-a-Bank" is the colorful term for the ability of a borrower to boot from the syndicate a lender that has refused to consent to an amendment or waiver requiring unanimous consent, or demanded the payment of certain additional amounts, or for certain other enumerated reasons. In such cases, the borrower often has the option to designate one or more cooperative lenders to buy out the bad apple or simply pay off the recalcitrant lender. The ability to boot all lenders with respect to one or more tranches of debt may be referred to as a **"Yank-a-Tranche."** See Covenant Primer: Explaining the Yank-A-Bank in US Leveraged Loans and Covenant Primer: Explaining Snooze-You-Lose and Yank-The-Bank Provisions In European Leveraged Loans.

"Yankee Bond" or **"Yankee Loan"** is a colloquialism for a US-dollar denominated loan or bond extended to a non-US borrower (potentially with limited to no actual operations in the United States), which is governed by a New York-law governed credit agreement, indenture, or other agreement. It's the agreement that is key here, not the denomination of the loan. Thus, a USD tranche under a non-US-law governed instrument (say, an English-law governed senior facilities agreement) would not be considered a Yankee loan. See also **Eurobond**.

-- Z --

"Zero Coupon Bond" is a **Bond** that does not bear interest (and accordingly has no **Coupon**).

"Zero Floor." An interest rate **Floor** set at 0%. The term may also be used to mean that the **Consolidated Net Income** component of a **Builder Basket** cannot be less than zero. Traditionally, capacity under the basket was reduced by 100% of any deficit in CNI, but a zero floor provision means that capacity under the other components of the basket (such as returns on investments or capacity from equity contributions) will not be offset by a deficit in CNI. See Plain English Translations: Zero Floor Provisions in the Consolidated Net Income Limb of the Restricted Payments Build-Up Basket and Quarterly Zero Floors: The Upwards Only Build-up Basket Ratchet.

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