Akerman's Private Equity Boot Camp Series

Session 3: Negotiating Debt Financings

September 22, 2021

About Akerman

Practice built with purpose

- Akerman is a client-driven enterprise, recognized by *Financial Times* as among the most forward thinking law firms in the industry
- We collaborate with the world's most successful enterprises and entrepreneurs to navigate change, seize opportunities, and overcome barriers to innovation and growth
- We are known for our results in middle market M&A and complex disputes, and for helping clients achieve their most important business objectives in the financial services, real estate, and other dynamic sectors
- We are ranked among the top 100 law firms in the United States, with a reach that extends across the Americas and globally
- Assembling a handcrafted team for every client engagement, we leverage our more than 700 lawyers and business professionals across 25 offices

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Robert Stein is Co-Chair of Akerman's Corporate Finance and Lending Practice. Robby's practice focuses primarily on acquisition and other leveraged financing transactions for private equity sponsors, their portfolio companies, and other public and private companies. Robby regularly advises borrowers and lenders in the structuring, negotiation and documentation of a wide range of complex and routine domestic and international debt financing matters, including leveraged buyouts, debt commitments, first-lien, second lien, bridge, mezzanine and high-yield financing transactions, both secured and unsecured, fund-level financings, asset-backed loans, recapitalizations, and related intercreditor matters.

Negotiating Debt Financings

Debt Financings 101: Introduction

Today, we will be referencing a mock term sheet, which we have anonymized from an actual Commitment Letter, to discuss concepts and terminology common in debt financings.

Private Equity professionals will encounter debt finance transactions in a variety of contexts, but the primary situations will be the following:

Acquisition Financing

Portfolio company or acquisition vehicle formed by sponsor incurs loans and commitments in connection with the acquisition of a target.

Refinancing of Existing Facility

Portfolio company uses the proceeds of new loans and commitments to refinance an existing facility or amends and extends such existing facility

Drivers include: decrease in pricing; increase size; increased flexibility; dividend recapitalization or distressed refinancing; pending maturity.

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Debt Financings 101: The Challenge

At the outset, it is important to highlight a challenge that colors all aspects of negotiations:

Living Document

Financing documents contain restrictions and requirements that bear upon the borrower's operations, both in and outside the ordinary course of business, for the term of the credit facility.

It is therefore crucial when negotiating such documents to anticipate and accommodate normal business operations, projected growth and future events, transactions and circumstances.

The Challenge

Borrowers: want to operate their businesses in a manner they sees fit; want flexibility to expand (both organically and strategically), engage in different operations and take advantage of evolving business opportunities.

Lenders: want to minimize their risk by limiting the borrower's operational flexibility; want borrowers to stay the course and predictably generate cash flows to service their debt.

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PROJECT BOOT CAMP
SENIOR SECURED CREDIT FACILITIES
SUMMARY OF TERMS AND CONDITIONS

Transaction Description

Holding Company LLC, a newly formed Delaware limited liability company ("***Parent***") controlled by Equity Sponsor, L.P. (together with its affiliates and funds managed or advised by it or its affiliates, the "***Sponsor***") and other co-investors, which may include members of management of Target (as defined below) and its subsidiaries (the "***Management Investors***" and, together with such other co-investors and the Sponsor, the "***Investors***"), and Acquisition Vehicle LLC, a newly-formed Delaware limited liability company and wholly-owned direct or indirect subsidiary of Parent ("***Holdings***"), at the direction of the Sponsor, intend, directly or indirectly, to acquire (the "***Acquisition***") from Selling Equity Sponsor LP, a Delaware limited partnership (the "***Selling Sponsor***"), all of the capital stock of Boot Camp Target Corp., a Delaware corporation ("***Target***"), all as set forth in the Purchase Agreement, dated as of September 30, 2020 (together with the exhibits and disclosure schedules thereto, the "***Purchase Agreement***"), by and among, inter alios, the Selling Sponsor, Holdings and Target. In connection therewith:

See Slide 3.

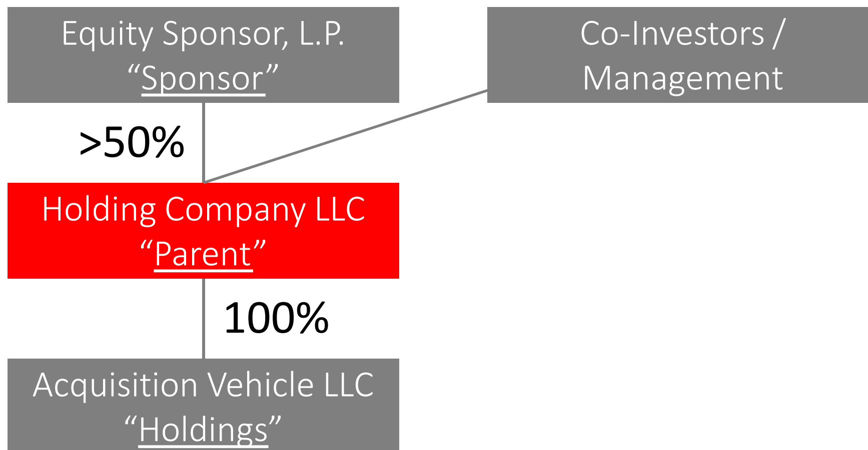
(a) the Investors will make cash (or, in the case of Management Investors, cash or non-cash) equity contributions (which shall be in the form of common equity or "qualified preferred" equity or other equity (such other equity to be on terms reasonably satisfactory to the Lead Arrangers)), directly or indirectly, to Parent, which cash equity, when combined with any equity of Management Investors that will be retained, rolled over or converted, will constitute an aggregate amount not less than 40% of the total consolidated pro forma debt and equity of the Borrower (as defined below) and its subsidiaries on the Closing Date (as defined below) after giving effect to the Transactions (as defined below) (the "***Equity Contribution***"); *provided* that immediately after giving effect to the Equity Contribution, the Sponsor shall beneficially own more than 50% of the total voting equity of Target;

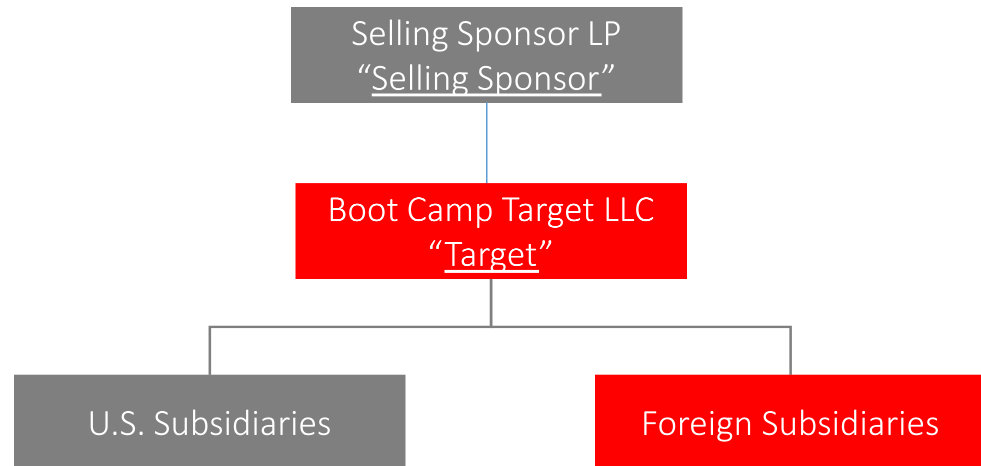
See Slides 3 and 4.

Lenders will require that cash equity + rollover equity > 30% of the pro forma total capitalization of the Target

Sponsor's cash equity investment is at least 50% of the total equity capitalization

Debt Financings 101: Typical LBO Structure (Pre-Closing)





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(b) the Borrower will obtain (i) senior secured first lien credit facilities in an aggregate amount of $166.0 million, comprising a $144.0 million term loan facility and a $20.0 million revolving credit facility (collectively, the "***First Lien Facilities***") described below, and (ii) a senior secured second lien term loan facility in an aggregate amount of $72.0 million (the "***Second Lien Facility***" and, together with the First Lien Facilities, the "***Credit Facilities***");

See Slide 4.

__Note__: This Term Sheet only includes the First Lien Term Loan Facility and the Revolving Credit Facility; the Second Lien Term Loan Facility would be included on another Exhibit (which has been removed for simplicity's sake).

(c) all existing third party debt for borrowed money of Target and its subsidiaries (collectively, the "***Target Group***") will be repaid, redeemed, defeased, discharged, refinanced or terminated (or irrevocable notice for the repayment or redemption thereof will be given to the extent accompanied by any prepayments or deposits required to defease, terminate and satisfy in full any related indentures or notes) and all commitments thereunder shall have been terminated (the "***Refinancing***") other than (i) indebtedness permitted to remain outstanding under the Purchase Agreement, (ii) indebtedness permitted to be incurred under the Purchase Agreement prior to the Closing Date, (iii) ordinary course capital leases, purchase money indebtedness, equipment financings, letters of credit, surety bonds and short-term working capital facilities and (iv) certain other indebtedness that the Borrower and the Lenders reasonably agree may remain outstanding after the Closing Date (the foregoing indebtedness, including any replacements, extensions and renewals of any of the foregoing indebtedness that matures or will be terminated on or prior to the Closing Date, collectively, the "***Permitted Surviving Debt***");

See Slide 5.

(d) the fees, premiums, expenses and other transaction costs incurred in connection with the Transactions, including to fund any OID and upfront fees (the "***Transaction Costs***") will be paid; and

(e) the proceeds of the Equity Contribution and the Credit Facilities will be used to pay the consideration and other amounts owing in connection with the Acquisition under the Purchase Agreement, to effect the Refinancing and to pay all or a portion of the Transaction Costs.

See Slides 5 and 6.

Debt Financings 101: Financing the LBO

($ in millions)	09/30/2020	% of Capitalization	Multiple of LTM EBITDA*
Revolving Credit Facility	$0.0	--	--
First Lien Term Loan	$144.0	40.0%	3.6x
Second Lien Term Loan	$72.0	20.0%	1.8x
Total Debt	$216.0	60.0%	5.4x
Management Rollover Equity	$18.0	5.0%	--
Cash Equity	$126.0	35.0%	--
Total Equity	$144.0	40.0%	--
<u>Total Capitalization</u>	<u>$360.0</u>	<u>100.0%</u>	<u>5.4x</u>

**For purposes of this presentation, we will assume the Target's LTM EBITDA is $40 million.*

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Debt Financings 101: Financing the LBO (cont'd)

Sources		Uses	
Revolving Credit Facility	$0.0	Purchase Price for Target's Equity	$150.0
First Lien Term Loan	$144.0	Refinance Existing Debt	$200.0
Second Lien Term Loan	$72.0	Transaction Expenses	$10.0
Management Rollover Equity	$18.0		
Cash Equity	$126.0		
Total Sources	$360.0	Total Uses	$360.0

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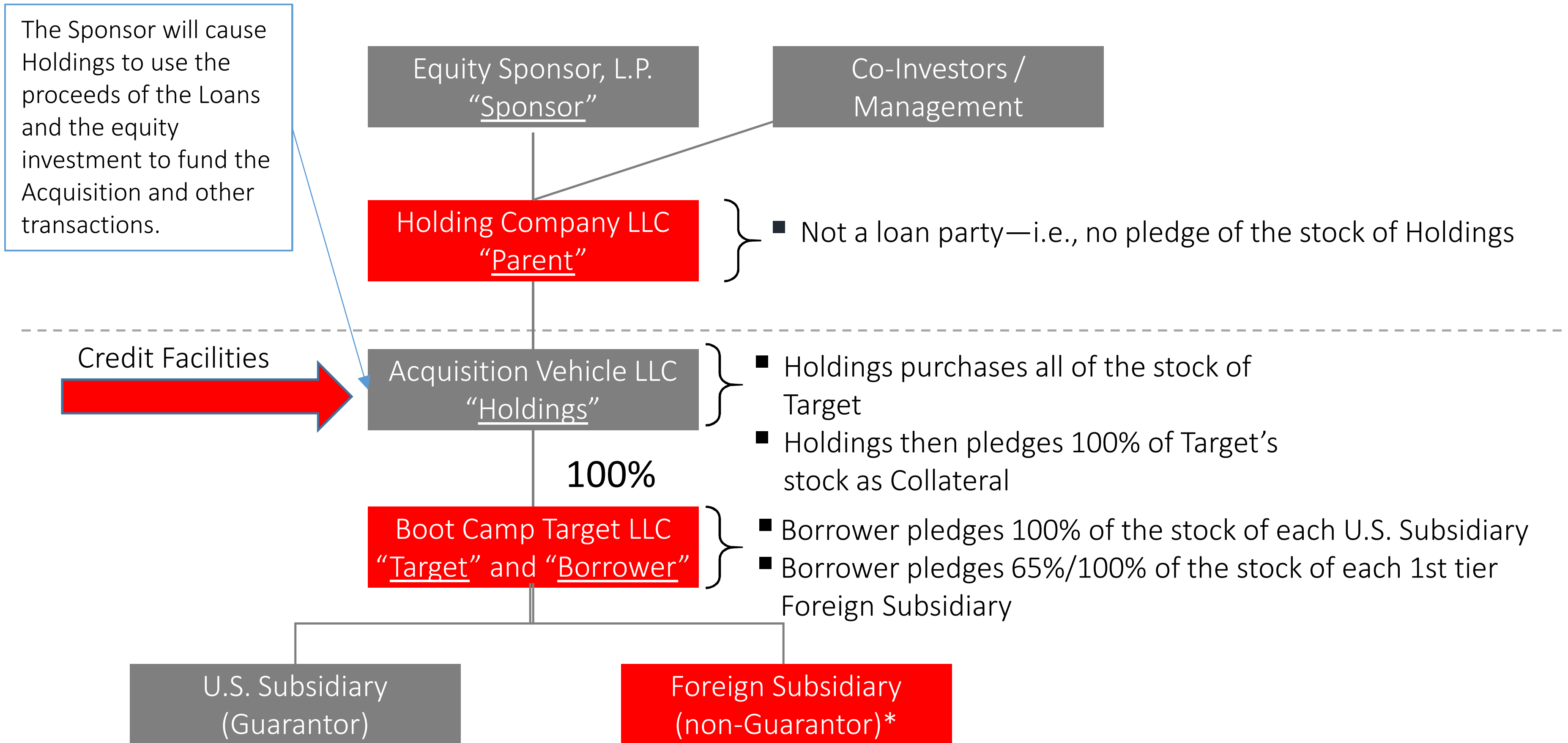
	The transactions described above are collectively referred to as the "***Transactions***". For purposes hereof, "***Closing Date***" shall mean the date of the consummation of the Acquisition and the satisfaction of the relevant conditions precedent and the initial funding of the relevant Credit Facilities.	
Borrower:	Initially, Holdings, and following the consummation of the Acquisition, Target (the "***Borrower***").	**See Slide 6**
Joint Lead Arrangers and Joint Bookrunners:	[__________], [__________] and [__________] will act as joint lead arrangers and joint bookrunners for the First Lien Facilities (in such capacity, the "***First Lien Lead Arrangers***").	**See Slide 7.** Negotiating Point: At the Term Sheet stage, the Sponsor/Borrower usually can bargain for the right to appoint other Lead Arrangers within a certain period of time.
Administrative Agent and Collateral Agent:	[__________] will act as the sole and exclusive administrative agent and collateral agent for the First Lien Lenders (in such capacities, the "***First Lien Agent***").	The Agent is typically, but not always, one of the Lead Arrangers. Usually the "lead left" Arranger.
First Lien Lenders:	A syndicate of banks, financial institutions and other entities, but excluding Disqualified Institutions, arranged by the First Lien Lead Arrangers and reasonably acceptable to the Borrower (collectively, and together with any party that becomes a lender by assignment as set forth under the heading "Assignments and Participations" below, the "***First Lien Lenders***").	**See Slide 7**.
First Lien Term Loan Facility:	A senior secured first lien term loan facility (the "***First Lien Term Loan Facility***") in an aggregate principal amount of $144.0 million (the loans under the First Lien Term Loan Facility, the "***First Lien Term Loans***"). Use of Proceeds: The proceeds of the First Lien Term Loans will be used to finance a portion of the Transactions (including working capital and/or purchase price adjustments and the payment of Transaction Costs). Availability: The full amount of First Lien Term Loans must be drawn in a single drawing on the Closing Date. Amounts repaid or prepaid under the First Lien Term Loan Facility may	**See Slide 8.** The Term Loan Facility described in this Term Sheet is a "Term Loan B". Term Loans are typically funded entirely at closing and paid back in scheduled installments. No ability to

Debt Financings 101: Typical LBO Structure (Post-Closing)



**As a result of the 2017 Tax Cuts and Jobs Act and regulations promulgated by the Treasury Department in 2018, a guaranty, grant of collateral or other credit support from a foreign subsidiary of a US borrower generally would not constitute a deemed dividend if the US borrower would be allowed to deduct an actual distribution of cash from its foreign subsidiary under the Code (as amended by the 2017 Act). As a result, we are seeing more lenders require guaranties and security from such foreign subsidiaries.*

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Debt Financings 101: Syndicated vs. Club Deals

Syndicated
vs.
Club Deals

- Syndicated deals are underwritten or arranged by traditional investment banks and then sold to various investors (i.e., the syndicate)
  - Underwriters / arrangers do not intend to hold much or any of the term loan debt but will hold often revolving facility
  - Syndicate made up of CLOs, hedge funds, some pension funds and insurance companies, among others
- Club deals provided by smaller group of lenders (e.g., “friends & family”) who intend to directly buy and hold the investment
  - Can be underwritten or best efforts

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Debt Financings 101: Term Loan Facilities

Term Loan Facilities – In General	▪ Typically funded entirely at closing and paid back in scheduled installments
	▪ No ability to reborrow once payments are made
	▪ Term Loan Facilities also typically require repayment through mandatory prepayment
	    ▪ Asset Sales
	    ▪ Casualty Insurance / Condemnation Proceeds
	    ▪ Additional Debt Issuances that are not permitted
	    ▪ “Excess Cash Flow”
	    ▪ Equity Issuances (more common in lower middle market)
	    ▪ Extraordinary Receipts (more common in the lower middle market)
	▪ Some Term Loan Facilities are structured with a committed “delayed draw” feature to fund imminent acquisitions, purchases of specified assets or repayments of debt that will occur within a short period after the initial closing (e.g., a tender offer for bonds)

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not be reborrowed.

reborrow once payments are made.

Interest Rates and Fees: As set forth on Annex I hereto.

Maturity and Amortization: The First Lien Term Loan Facility will mature on the day that is 6 years after the Closing Date and will amortize in equal quarterly installments in an aggregate annual amount equal to 1.0% of its original principal amount (subject to reduction in connection with debt prepayments and debt buy-backs), commencing with the first full fiscal quarter after the Closing Date, with the balance payable on the final maturity date.

See Slide 9.

Term Loan B facilities have nominal amortization, typically 1% per year with a "bullet" payment at maturity.

Maturity Date is typically one or two years beyond the maturity date of the Revolving Credit Facility.

Second Lien facilities would have no amortization and would mature 6 months to one year outside First Lien Facility.

Senior Secured Revolving Credit Facility:

Revolving Credit Facility: A senior secured first lien revolving credit facility in an aggregate principal amount of $20.0 million (the "***Revolving Credit Facility***") will be available to the Borrower. The Revolving Credit Facility will be available to the Borrower in US dollars, euro and other currencies to be mutually agreed.

See Slide 12.

The Revolving Credit Facility described in this Term Sheet is a "cash flow" revolving facility.

Note: If the Revolving Credit Facility is not described as an "ABL" or Asset-Based Loan", then it is most likely a "cash flow" facility.

Use of Proceeds: The proceeds of loans under the Revolving Credit Facility (the "***Revolving Loans***"; and the First Lien Lenders providing such Revolving Loans, the "***Revolving Lenders***") may be used (a) on the Closing Date, (i) to finance any amounts required to be paid as additional OID or upfront fees under the Flex Provisions, (ii) (A) to finance a portion of the Transactions (including the payment of the Transaction Costs), (B) to fund working capital and/or purchase price adjustments and (C) for working capital needs and other general corporate purposes and (b) after the Closing Date, to finance the working capital needs and other general corporate purposes of the Borrower and its subsidiaries (including for capital expenditures, acquisitions, working capital and/or purchase price adjustments, the payment of transaction fees and expenses (in each case,

Lenders usually will not permit Revolving Loans to be applied towards the purchase price. Nevertheless, this Term Sheet provides for a certain portion of the Revolving Loans to be used towards funding the Transactions on the Closing Date.

Debt Financings 101: Term Loan Facilities (cont'd)

Term Loan A Facilities	▪ Also called "amortizing term loans" because they have a uniform or progressive amortization schedule ▪ Typically have the same maturity date as Revolving Credit Facility (3 to 5 years) ▪ No call protection ▪ Same types of financial covenants as Revolving Credit Facility ▪ Syndicated on a pro rata basis with Revolving Credit Facilities because primary syndication is to commercial banks ▪ Due to popularity and decreased expense of Term Loan B Facilities, Term Loan A Facilities are not as commonly used in larger cap transactions
Term Loan B Facilities	▪ Also called "institutional term loans" because they are typically syndicated to institutions other than commercial banks (e.g., CLOs, hedge funds, some pension funds and insurance companies) ▪ Pricing is often comparable to non-ABL Revolving Credit Facilities ▪ Nominal amortization, typically 1% per year with a "bullet" payment at maturity ▪ Maturity Date is typically one or two years beyond the maturity date of the Revolving Credit Facility ▪ Call protection is typically limited to a 101 "soft call" (i.e. repaid in connection with a refinancing) for six to twelve months after closing ▪ Same types of financial covenants as Revolving Credit Facility; in a "covenant-lite" deal, the Term Loan B Facility would have no financial maintenance covenant

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Debt Financings 101: Term Loan Facilities (cont'd)

Second Lien Term Loan Facilities	
Second Lien Term Loan Facilities	▪ Customarily not payment subordinated, but are secured by second-priority liens on the collateral securing the Revolving Credit Facility and the Term Loan B Facility; rights in collateral and in insolvency proceedings subject to often complex intercreditor arrangements ▪ Pricing is higher, thereby appealing to hedge funds, distressed debt investors and high-yield accounts looking for higher return; some banks and many institutional investors in the Term Loan B market will also participate ▪ No amortization ▪ Maturity date is six months to one year beyond the maturity date of the Term Loan B Facility ▪ Call protection is typically 102 / 101 "hard call" for voluntary prepayments and mandatory prepayments from debt issuances ▪ Borrower may also have to agree to NC-1 or 103 / 102 / 101 depending on market conditions and nature of credit ▪ Same types of financial covenants as Revolving Credit Facility but are relaxed by 10-25%; in a covenant–lite deal, the Second Lien Term Loan would have no financial maintenance covenant

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Debt Financings 101: Term Loan Facilities (cont'd)

Unitranche Facilities	▪ Unitranche loans combine first and second lien facilities into a single secured loan facility ▪ Higher leverage possible under a unitranche structure than would be available to the borrower under a first lien facility alone ▪ Documented as a single loan agreement, often with a single lender ▪ Often the Revolving Credit Facility is provided under the same agreement which may rank senior to the unitranche term loans ▪ Borrower often not aware of the intercreditor arrangements governing the respective components of a unitranche loan ▪ Pricing can be a blended rate or there can separate rates applicable to the senior and junior components of the loan ▪ Call protection varies – typically "hard call" prepayment premium or "make-whole"; less typical is to have a "soft call" prepayment premium ▪ Same types of financial covenants as Revolving Credit Facility; Unitranche Facilities are not covenant-lite

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Debt Financings 101: Revolving Credit Facilities

Revolving Credit Facilities – In General	
	▪ Allows issuers to draw down, repay and re-borrow within the terms of a defined commitment ▪ Cash flow revolver ▪ ABL revolver ▪ Commitment periods for revolving credit facilities typically are five years ▪ Size varies by deal and liquidity needs of borrower; ABL revolvers tend to be larger than cash flow revolvers ▪ The proceeds of revolving facilities are used generally for working capital needs and other general corporate purposes of the Borrower and its subsidiaries (including for capital expenditures, acquisitions, working capital and/or purchase price adjustments, the payment of transaction fees and expenses, investments, restricted payments and any other purpose not prohibited by the credit documentation. ▪ Generally speaking, the proceeds of Revolving Loans are not applied towards the purchase price. ▪ Lenders that extend credit under cash flow revolving facilities lend against the expected future cash flows of the Borrower, while ABL Lenders lending primarily against the value of specific assets of the Borrower.

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Debt Financings 101: Revolving Credit Facilities (cont'd)

Revolving Credit Facilities – Asset Based (ABL)	▪ Revolving Credit Facilities tied to a lending formula limited by the lesser of the commitment amount and a "borrowing base"
	  ▪ Lower fees and interest rates
	  ▪ More pre-closing diligence than non-ABL credits—collateral appraisals and field examinations
	  ▪ More post-closing Agent monitoring than non-ABL credits
	    ▪ Borrowing base certificate – monthly (and weekly) deliverables
	    ▪ Appraisals and audits
	    ▪ Cash dominion (springing or at all times)
	    ▪ Landlord/bailee/shipper waivers
	    ▪ Lender discretion in imposing reserves ("Permitted Discretion" is a key point of negotiation)
	    ▪ Additional reporting based on "Excess Availability" triggers
	▪ Springing Financial Covenants
	▪ Incurrence covenants based on "Excess Availability" triggers – the "Payment Conditions" for debt incurrence, investments and restricted payments
	▪ Should be no mandatory prepayments other than if the amount outstanding exceeds the borrowing base

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including in connection with the Acquisition), other investments, restricted payments and any other purpose not prohibited by the First Lien Facilities Documentation (as defined below)); *provided* that the Revolving Loans borrowed on the Closing Date for the purpose set forth in clauses (a)(ii)(A) and (C) above shall not exceed $2.5 million. Additionally, Letters of Credit may be issued on the Closing Date in order to backstop or replace letters of credit outstanding on the Closing Date under facilities no longer available to the Company or its subsidiaries and for other purposes to be mutually agreed.

Availability: Revolving Loans may be borrowed, repaid and reborrowed on or after the Closing Date (without premium or penalty) and prior to the Revolving Loan Termination Date in accordance with the terms of the First Lien Facilities Documentation referred to below.

Revolving Facilities allow issuers to draw down, repay and re-borrow within the terms of a defined commitment.

Interest Rates and Fees: As set forth on Annex I hereto.

See Slide 31.

Maturity: The Revolving Credit Facility will terminate on the day that is 5 years after the Closing Date (the "***Revolving Termination Date***").

Commitment periods for revolving credit facilities typically are five years.

Letters of Credit:

A portion of the Revolving Credit Facility equal to $10.0 shall be available for the issuance of stand-by and trade letters of credit and banker guarantees, available in US dollars, euro and other currencies to be mutually agreed (together with any such existing letters of credit to be rolled into the Revolving Credit Facility, the "***Letters of Credit***") to support obligations of the Borrower and its subsidiaries. Letters of Credit will be issued by the First Lien Agent and other Revolving Lenders reasonably acceptable to the Borrower (in such capacity, each an "***Issuing Lender***").

See Slide 14.

Guarantees:

Usual and customary for deals of this nature.

Holdings plus all of the Borrower's subsidiaries provide unconditional guarantees of the Obligations.

Negotiating Point: As a result of the 2017 Tax Cuts and Jobs Act and related regulations promulgated by the Treasury Department, there may no longer be an adverse tax consequence from obtaining credit support (e.g., a

Debt Financings 101: Revolving Credit Facilities (cont'd)

Revolving Credit Facilities – Subfacilities	▪ Within a Revolving Credit Facility, there may be various "subfacilities" all subject to the overall Revolving Credit Commitment
	▪ Common subfacilities include:
	  ▪ A swingline subfacility for overnight borrowing needs, typically around 10% of the overall Revolving Credit Commitment and provided by the administrative agent; subject to weekly or other periodic "settlement" through loans provided by all revolving lenders
	  ▪ A letter of credit subfacility for issuances of letters of credit, typically, provided by the administrative agent or one of its affiliates and backed by participations of each revolving lender which can be called if the issuer does not repay draws on the letters or credit
	  ▪ A foreign borrower or foreign currency subfacility where the primary borrower or one of its foreign subsidiaries may access a portion of the facility for direct local borrowings of, or foreign currency intercompany lending by the primary issuer to, foreign subsidiaries
	  ▪ Some banks no longer provide swingline facilities but instead provide "same-day" base rate borrowings, which is effectively the same thing
	▪ Obtain **management input** on all of the above

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guaranty or grant of collateral) from a foreign subsidiary. As such, there is significant pressure from lenders to require guaranties and security from such foreign subsidiaries.

Nevertheless, there are other reasons, including cost and administrative hassle, to push back on the requirement to obtain foreign guaranties and collateral grants.

<u>Security</u>: Usual and customary for deals of this nature.

<u>Incremental Facilities</u>:

After the Closing Date, the Borrower will have the right to solicit the existing First Lien Lenders or prospective lenders determined by Borrower (subject to the consent of the First Lien Agent and solely with respect to Incremental Revolving Commitments, the Issuing Lenders, in each case such consent not to be unreasonably withheld or delayed) to provide (x) incremental commitments to the Revolving Credit Facility (an "***Incremental Revolving Facility***") and/or (y) incremental commitments consisting of one or more increases to the First Lien Term Facility and/or one or more new tranches of term loans to be made available (except as otherwise provided under clause (viii) below) under the First Lien Facilities Documentation (each, an "***Incremental First Lien Term Facility***" and together with any Incremental Revolving Facility, the "***Incremental First Lien Facilities***") in an aggregate amount not to exceed the sum of (1) an amount equal to the greater of (x) $40.0 million and (y) 100% of Consolidated EBITDA (as defined below) of the Borrower and its subsidiaries for the four consecutive fiscal quarters most recently ended for which financial statements have been delivered to the First Lien Lenders ("***LTM Consolidated EBITDA***") prior to the date of such incurrence (less any Incremental Equivalent Debt (as defined below) incurred in reliance on this clause (1)), *plus* (2) all voluntary prepayment and commitment reductions of the First Lien Facilities, *plus* (3) an unlimited additional amount such that, in the case of this clause (3) only, after giving *pro forma* effect thereto (including use of proceeds), the Consolidated First Lien Net Leverage Ratio (as defined below) is no greater than the *pro forma* Consolidated First Lien Net Leverage Ratio on the Closing Date (assuming for

See Slide 15.

Uncommitted ability to increase either the Revolving Credit Facility or the Term Loan Facility and/or establish new term loans or revolving credit facilities after the initial closing.

As highlighted here, incremental facilities typically include (i) a leverage based component up to closing date leverage level, (ii) a fixed dollar amount (typically an amount equal to 100% / 75% of LTM EBITDA), not subject to an incurrence test, that allows the Borrower to exceed closing date leverage and (iii) an ability to "reload" based on voluntary prepayments

<u>Negotiating Point</u>: in the middle market, it may not always be possible to get both a "free and clear" basket and a leverage-based basket. Whether you push for one or both in any particular deal depends on a variety of factors, including:

- The strategy (strategic vs. organic growth)
- The lending group
- Timeline

In the middle market, borrowers typically have the flexibility only to increase the commitments under the

purposes of this calculation that (i) the full committed amount of any Incremental Revolving Facility shall be treated as outstanding for such purpose and (ii) cash proceeds of any such Incremental First Lien Facilities (or Incremental Equivalent Debt incurred in lieu thereof) shall not be netted from indebtedness for purposes of calculating compliance with such Consolidated First Lien Net Leverage Ratio; *provided* that to the extent the proceeds of any such Incremental First Lien Facility or Incremental Equivalent Debt are to be used to repay indebtedness, it shall not limit the Borrower's ability to give pro forma effect to such repayment of indebtedness), in each case on terms and conditions agreed by the Borrower and the relevant lender(s) providing the respective Incremental First Lien Facility; *provided* that such Incremental First Lien Facilities will be subject to customary conditions, including:

existing Revolving Credit Facility—which is what this Term Sheet reflects. In larger deals, borrowers sometimes have the flexibility to (1) increase the commitments under the existing revolving facility or (2) create a new revolving credit facility, or any combination of the two.

[*list of conditions truncated for ease of review*]

(vii) to the extent any Incremental First Lien Term Facility is incurred prior to the date that is eighteen (18) months after the Closing Date, the all-in-yield applicable to such Incremental First Lien Term Facility will be determined by the Borrower and the lenders providing such Incremental First Lien Term Facility and the all-in-yield applicable to such Incremental First Lien Term Facility will not be more than 0.50% higher than the corresponding all-in-yield (determined on the same basis) applicable to the initial First Lien Term Loan Facility unless the interest rate margin (or LIBOR/ABR floors) with respect to the initial First Lien Term Loan Facility is increased by an amount equal to the difference between the all- in-yield with respect to such Incremental First Lien Term Facility and the corresponding all-in-yield on the initial First Lien Term Loan Facility, minus, 0.50%. For the purpose of the foregoing, the all-in-yield shall be reasonably determined by the Borrower and the First Lien Agent in accordance with customary practices, (x) including interest rate margins, original issue discount (based on a four-year average life to maturity or, if less, the remaining life to maturity) and upfront fees payable by the Borrower generally to all the lenders of such indebtedness, (y) if such Incremental First Lien Term Facility includes an interest rate floor greater than the

Any incremental term loans that are *pari passu* with the initial Term Loans will be subject to an 50 bps MFN.

Negotiating Points:

1. The MFN should not be applicable to term loans that are junior to the First Lien Term Loans.

2. Because Incremental Revolving Facilities are almost always required to be on the same terms as existing Revolving Credit Facilities, there should be no MFN issue.

3. In some deals, it is possible to negotiate a sunset of the MFN or a higher MFN spread or make the MFN apply only to term loans incurred under the unlimited basket.

applicable interest rate floor under the initial First Lien Term Loan Facility, such differential between interest rate floors shall be equated to the applicable all-in-yield for purposes of determining whether an increase to the interest rate margin under the initial First Lien Term Facility shall be required, but only to the extent an increase in the interest rate floor in the initial First Lien Term Loan Facility would cause an increase in the interest rate then in effect thereunder, and in such case, the interest rate floor (but not the interest rate margin) applicable to the initial First Lien Term Loan Facility shall be increased to the extent of such differential between interest rate floors, and (z) excluding arrangement, commitment, structuring and underwriting fees and any amendment fees and other fees, in each case, not shared generally with other First Lien Lenders) (all adjustments made pursuant to this clause (vi), the "***MFN Adjustment***");

(viii) the Borrower may issue, in lieu of Incremental First Lien Facilities, one or more series of loans or notes, which may be unsecured, secured on a junior lien basis with the First Lien Facilities or secured on a *pari passu* basis with the First Lien Facilities (in an aggregate principal amount, with respect to first lien loans, not to exceed $16.0 million) in each case outside of the First Lien Facilities Documentation (such loans and notes, the "***Incremental Equivalent Debt***"), in each case, to the extent secured, subject to customary intercreditor terms to be mutually agreed between the Borrower and the First Lien Agent, which intercreditor terms shall provide, among other things, that any Incremental Equivalent Debt that is secured on a junior basis to any First Lien Facility, shall be secured on a *pari passu* or junior basis with the Second Lien Facility, and, in each case, the provisions of the preceding clauses (i) through (iv) and (vi) shall not apply (provided that (1) the final stated maturity date for such Incremental Equivalent Debt shall not be sooner than the then final stated maturity date applicable to the First Lien Term Loans, (2) the amortization requirements for such Incremental Equivalent Debt shall be determined by the Borrower and the lender(s) providing such indebtedness, so long as the average weighted life to maturity of such Incremental Equivalent Debt is no shorter than the average weighted life to maturity applicable to the then outstanding First Lien Term Loans and (3) such

Negotiating Point: some facilities allow "sidecar" facilities permitting the Borrower to obtain either *pari passu* secured, junior secured or unsecured debt – in the form of term loans, notes, "high yield" bonds or otherwise – outside of the credit agreement. In a deal where there is only a senior term loan, you may want to push for the ability to incur second lien, mezzanine or similar financing.

Usually documented outside the credit agreement and subject to the same collateral and guarantees (and often terms) as the existing Term Loan Facility or Revolving Credit Facility.

Incremental Equivalent Debt shall not be secured by any lien on any asset of the Borrower or any Guarantor that does not also secure the then outstanding First Lien Term Loan Facility or be guaranteed by any person other than the Guarantors under the then outstanding First Lien Term Loan Facility); *provided* that any Incremental Equivalent Debt that is secured on a junior basis with the First Lien Facilities or is unsecured shall, in lieu of the Consolidated First Lien Net Leverage Ratio set forth above, be subject to a Total Net Leverage Ratio not to exceed 5.40:1.00; and

(ix) in connection with any acquisition, investment or irrevocable repayment, repurchase or redemption there shall be no requirement for the Borrower to satisfy any of the conditions listed under "Conditions Precedent to each Borrowing under the Revolving Credit Facility (other than on the Closing Date)" below (including the absence of any default or event of default or the bring-down of the representations and warranties) or clause (v) above, instead the conditions may be limited to (A) absence of payment or bankruptcy (with respect to the Borrower) event of default and (B) accuracy of customary "specified representations" (in an acquisition or investment, conformed as necessary to apply only to such acquisition or investment and the acquired business), in each case, subject to the provisions set forth below in connection with Limited Condition Acquisitions, and, in the case of clause (B), as may be waived or modified in scope by the lenders providing the Incremental First Lien Facilities.

Negotiating Point: If incremental loans will be used to finance an acquisition that will have a bifurcated sign and close, it is important to include language concerning Limited Condition Acquisitions. This provision allows the Borrower to determine whether it has satisfied the conditions to incurring an incremental loan *on the date of signing the definitive agreement for such acquisition, as opposed to on the date of closing such acquisition* (except for whether a payment or BK event of default has occurred).

For example, say the Borrower signs a purchase agreement on September 22 and closes the related acquisition ten weeks later on December 1. Assume:

- Borrower is subject a 6.0x total net leverage ratio maintenance covenant, tested quarterly;
- Borrower was in compliance with its maintenance covenant on June 30, but is *out of compliance* on September 30; and
- on December 1, the resulting event of default has not been cured (but no other default then exists).

Borrower may incur the incremental loan and consummate the acquisition, despite the existence of an EoD.

Debt Financings 101: Incremental / Accordion Facilities

Incremental / Accordion Facilities — In General	

	▪ Uncommitted ability to increase either the Revolving Credit Facility or one or more of the Term Loan Facilities or revolving credit facilities after the initial closing
	▪ Documented within the same credit agreement and subject to the same collateral and / or can include "sidecar" facilities permitting the Borrower to obtain either pari passu secured, junior secured or unsecured debt – in term loan or "high yield" bond form – outside of the credit agreement
	▪ Very useful for borrowers with likely but unspecified growth / acquisition needs
	▪ Typically include (i) a leverage based component up to closing date leverage level, (ii) a fixed dollar amount (typically an amount equal to 100% / 75% of LTM EBITDA), not subject to an incurrence test, that allows the Borrower to exceed closing date leverage and (iii) an ability to "reload" based on voluntary prepayments
	    ▪ The most aggressive sponsor deals include EBITDA "grower" component in fixed dollar amount and / or ability to reclassify between fixed dollar and ratio components
	    ▪ Some documents allow simultaneous incurrence in reliance on ratio and fixed dollar components
	    ▪ Ability to lower leverage level and decrease fixed amount is always a flex item
	▪ Almost always includes "Most Favored Nation ("MFN") pricing provision (typically 50 bps) to allow closing date lenders to increase their pricing levels to match a more expensive incremental facility
	    ▪ "Sunsets" (typically between 12-30 months) depend on market and interest in deal; always the first item flexed
	    ▪ MFN should apply only to additional first lien (or second lien, as applicable) term loans

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Debt Financings 101: A Brief Overview of Commitment Letters

History	<u>Pre-2005</u> ▪ Strategic buyers, relying on cash on their balance sheets, did not require debt financing. Accordingly, their purchase agreements did not include a "financing out". ▪ By contrast, financial sponsors, using leverage to fund their transactions, typically benefited from the inclusion of a "financing out" in their purchase agreements—which gave them the right to walk-away from closing, usually without consequence, in the event debt financing was not available. <u>Post-2005</u> ▪ As the LBO market boomed (pre-2008), and the competition among buyers increased, sellers began to heavily favor bidders who agreed to proceed without a "financing out" in the purchase agreement. ▪ In addition, sellers included reverse termination fees that required the Buyer to pay a fee if it walked for no reason or failure to obtain financing. ▪ Financial buyers—who still relied on debt financing—needed a way to remain competitive in such an environment without simply agreeing to backstop the entire purchase price.
Role in Transaction	▪ The commitment letter, which requires the Lenders to fund so long as a narrow list of conditions precedent are satisfied, gave financial buyers a means to agree to deals without a "financing out" and with a reverse termination fee. ▪ One such condition precedent will always be the negotiation of a Credit Agreement on terms and conditions consistent with the Commitment Letter and Term Sheet. ▪ Because Borrowers want to foreclose any ability of the Lenders claiming that they don't have to fund because the Credit Agreement is not consistent with the Commitment Letter, Term Sheets are highly detailed, leaving little to negotiate after signing. ▪ This also provides us a road-map to what will eventually be in the Credit Agreement.

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Documentation:

The definitive documentation with respect to the First Lien Facilities (the "***First Lien Facilities Documentation***") will contain only those mandatory prepayments set forth above and representations, warranties, conditions to borrowing, affirmative, negative and financial covenants and events of default set forth below, in each case applicable to Holdings (solely in respect of Specified Representations and a passive holding company covenant), the Borrower and its restricted subsidiaries, in each case, substantially identical to that certain Credit Agreement entered into by [__________], as in effect on the date hereof (and related security, collateral and guarantee agreements executed and/or delivered in connection therewith, in each case, as in effect on the date hereof), as modified pursuant to clauses (x), (y) and (z) below, being referred to collectively as "***First Lien Sponsor Precedent***"), with changes and modifications that (x) reflect the terms of this Term Sheet and the flex provisions of the Fee Letter, (y) reflect changes in law or accounting standards or cure mistakes or defects and (z) are reasonably necessary (i) to take into account the operational requirements and strategic requirements of the Borrower and its restricted subsidiaries (after giving effect to the Transactions) in light of their industries (and risks and trends associated therewith), business and business practices, geographical locations and operations and financial reporting, (ii) in light of the Sponsor Model (as defined below) and (iii) to take into account the customary operational and agency provisions of the First Lien Agent. The First Lien Facilities Documentation shall be subject in all respects to the Certain Funds Provision.

See Slide 17.

Negotiating Point: Although term sheets can be highly detailed, they cannot capture all of the terms found in typical loan documents. Instead, to the extent a term is not set forth in the term sheet, it will have to be agreed by the applicable borrower and lenders/arrangers in the loan documents themselves. And, if the loan documents are drafted from scratch, all such terms would need to be negotiated one-by-one. By contrast, if the parties agree to use the documents from an earlier transaction as the basis for the documents governing the current transaction, any such term that is not covered by the term sheet would just default to the term in the precedent. Not only does using a precedent therefore save considerable time, energy and expense, it has the potential of resolving a significant number of terms, conditions, baskets, carve-outs, exceptions, exclusions, etc., in favor of the borrower.

HAVING THE ABILITY TO NAME THE PRECEDENT DOCUMENT IS ARGUABLY THE SINGLE-MOST IMPORTANT POINT YOU COULD PUSH FOR. SO DON'T GLAZE OVER IT LIGHTLY.

Voluntary Prepayments:

Voluntary prepayments of borrowings under the First Lien Term Loan Facility and the Revolving Credit Facility will be permitted at any time, in minimum principal amounts to be mutually agreed upon, without premium or penalty (except the Prepayment Premium referred to below), subject to reimbursement of the First Lien Lenders' redeployment costs (other than lost profits) in the case of a prepayment of Adjusted LIBOR loans prior to the last day of the relevant interest period. Voluntary prepayments of the First Lien Term Loans shall be applied to installments thereof as directed by the Borrower (and

See Slide 18.

Negotiating Point: Credit Agreements will typically permit the Borrower to direct how it wants voluntary prepayments to be applied. It is important that the Agreement further provides that, in the absence of such direction, such prepayments shall be applied in direct order of maturity.

absent such direction, in direct order of maturity).

Prepayment Premium	Any (a) voluntary prepayment of the initial First Lien Term Loans using proceeds of a substantially concurrent incurrence of secured term loans the primary purpose of which is to reduce the interest rate margins thereon (calculated in a manner consistent with the MFN Adjustment) applicable to the initial First Lien Term Loans (and such interest rate margin is reduced) or (b) mandatory prepayment (including any mandatory assignment in connection therewith) with the proceeds of indebtedness which results in a lower interest rate margin (calculated in a manner consistent with the MFN Adjustment) (or downward repricing amendments of the initial First Lien Term Loans) (each, a "***Repricing Transaction***"), prior to the date that is six months after the Closing Date shall in each case be accompanied by a prepayment fee (the "***Prepayment Premium***") equal to 1.00% of the aggregate principal amount of such principal prepayment; *provided* that such premium shall not apply if such refinancing or amendment is in connection with a "change of control" transaction, acquisition or other transaction not otherwise permitted under the First Lien Facilities Documentation.	First Lien Term Loans are usually subject to a "soft call", which applies only if (1) Term Loans are prepaid, repaid, refinanced, substituted or replaced with term loans having an all-in yield lower than the all-in yield applicable to the Term Loans so prepaid, repaid, refinanced, substituted or replaced or (2) the Borrower effects any amendment, waiver or other modification to the credit agreement that would have the effect of reducing the all-in yield the Term Loans. Soft-call premiums are less common in unitranche or senior-only credit agreements. Instead, such agreements are often subject to "hard calls", which would be payable upon any voluntary prepayment and certain mandatory prepayments. Negotiating Point: Consider negotiating carve outs if you anticipate prepaying the loans early in the term of the agreement. For example, if you expect to sell the business within a year or two of closing the loan; or perhaps it is possible that the growth of the business after one or more business combinations will mean that the credit agreement would no longer provide adequate flexibility for the continuation or expansion of the combined operations following the consummation of such acquisition(s).

Anatomy of a Credit Agreement: Overview

Section	Description
Recitals	Describe and contextualize the transaction
Definitions	Define the terms used in the document; financial definitions particularly important
Terms of Commitments and Loans	Types of facilities, amount, borrowing mechanics, interest rates, fees, voluntary and involuntary payment requirements
Conditions to Lending	What the Borrower must do to get the money at the initial closing as well as each subsequent advance of funds
Representations and Warranties	A series of statements by the Borrower with respect to its subsidiaries and its own financial and operational position; the statements reflect the basis for the Lenders' original credit decision
Affirmative Covenants	What the Borrower **must do** during the term of the loan
Negative Covenants	What the Borrower **must not do** during the term of the loan
Events of Default	Events which block the ability to borrow and give rise to the ability to exercise creditor's rights
Agent Terms	Defines scope of Agent's rights and responsibilities, as the administrator of the credit facilities
Miscellaneous	Everything else – e.g. voting rights, amendments, assignments, participations, notices, choice of law, etc.

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Anatomy of a Credit Agreement: Voluntary Prepayments and Commitment Reductions

Voluntary Prepayments	▪ The Borrower is usually given the right to prepay the Loans at any time, usually without premium or penalty (except as described above)
Voluntary Reductions of Commitments	▪ The Borrower usually has the right, at any time, to reduce the amount of the Revolving Commitments (at all times the Revolving Commitment is equal to or exceed the aggregate outstanding Revolving Loans) ▪ Any reduction of the Commitments is permanent other than as provided in the Incremental Loans section

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Mandatory Prepayments:

The First Lien Term Loans shall be prepaid with:

See Slide 19.

(a) 100% of the net cash proceeds from issuances of debt by the Borrower or any of its restricted subsidiaries (with appropriate exceptions, including for all permitted indebtedness and the Incremental First Lien Facilities);

(b) for each fiscal year of the Borrower (beginning with the first full fiscal year after the Closing Date), 50% (with step-downs to 25% and 0% if the Consolidated First Lien Net Leverage Ratio is less than 0.50x less than the Consolidated First Lien Net Leverage Ratio as of the Closing Date and 1.00x less than the Consolidated First Lien Net Leverage Ratio as of the Closing Date, respectively, of the Borrower's annual excess cash flow (to be defined consistent with First Lien Sponsor Precedent (such definition to provide for a deduction from excess cash flow, without duplication among periods, of, among other items, operating cash used (or committed to be used within a period to be mutually agreed) to finance permitted acquisitions, other investments and capital expenditures (to the extent the amounts are to be used for permitted acquisitions, other investments and capital expenditures (including any of the foregoing for which a binding agreement (or binding commitment) then exists), for certain restricted payments, capitalized intellectual property development, for retention, recruiting, relocation, severance, signing bonuses and expenses, tax distributions, prepayments of certain other indebtedness, and to include a dollar-for-dollar credit for (x) voluntary prepayments of the First Lien Term Loan Facility, any Incremental First Lien Term Loan Facility and Incremental Revolving Facility (to the extent accompanied by a permanent reduction of the relevant commitment), and (y) voluntary prepayments of the Second Lien Facility, any Incremental Second Lien Facility; and

Negotiating Point: The determination of the ECF "sweep" should allow the Borrower to take a dollar-for-dollar credit for voluntary prepayments.

For example, if Excess Cash Flow is $100 and Borrower has not made a voluntary prepayment, the Borrower would be required to make a $50 ECF sweep (50% of 100).

Say the Borrower makes a $10 voluntary prepayment of Term Loans:

- If the prepayment was applied to reduce Excess Cash Flow (from $100 to $90), then the Borrower would have to make an ECF Sweep of $45 (50% of $90); meaning that the Borrower would have prepaid a total of $55 ($10 prepayment + $45 ECF Sweep)
- If, however, the Borrower gets dollar-for-dollar credit, the Borrower would first determine the ECF sweep assuming no prepayment occurred--$50, as above. Then, the Borrower would subtract $10 to arrive at an ECF sweep of $40. This way the total sweep would be $50.

(c) 100% of the net cash proceeds of all non-ordinary course asset sales or other dispositions of property by the

Borrower or any of its restricted subsidiaries (including casualty insurance and condemnation proceeds), in excess of an amount to be mutually agreed and only in respect of amounts in excess thereof and subject to exceptions to be mutually agreed upon and a 100% reinvestment right if reinvested (or committed to be reinvested) within 12 months of such sale or disposition (or 18 months in the event a binding Letter of Intent is entered into within such 12-month period).

Mandatory prepayments of the First Lien Term Loans shall be applied to scheduled installments thereof (*pro rata* to outstanding First Lien Term Loans and Incremental First Lien Term Loans (unless otherwise agreed)) in direct order of maturity (without premium or penalty, except, in the case of clause (a) above, subject to the Prepayment Premium referred to on Annex I hereto); *provided* that the First Lien Facilities Documentation shall provide that in the case of mandatory prepayments in respect of any asset sale of Collateral or loss event, a ratable portion of the net proceeds thereof may be applied to prepay or offer to purchase any Incremental First Lien Notes or permitted ratio debt if required under the terms of the applicable first lien secured notes documents. After repayment of the First Lien Term Facilities, mandatory prepayments may be allocated to the Second Lien Facility to the extent required by the terms therein.

Negotiating Point: Be aware that mandatory prepayments are often required to be applied in "inverse" or "reverse" order of maturity or *pro* rata to the remaining installments. In a Term Loan B Facility, this means that all or most of the prepayment would go towards the bullet.

Lenders sometimes agree that the proceeds of mandatory prepayments can be applied to a certain number of installments (e.g., the next four installments) before being applied *pro rata* or in inverse order.

In addition, if at any time the outstandings pursuant to the Revolving Credit Facility (including Letters of Credit outstandings) exceed the aggregate commitments with respect thereto, prepayments of Revolving Loans (and/or the cash collateralization of Letters of Credit) shall be required in an amount equal to such excess within one Business Day of written notice.

Negotiating Point: Unless in a cash dominion deal, there should be no mandatory prepayment or commitment reductions of Revolving Credit Facilities (unless the outstanding loans exceed the total commitment).

Anatomy of a Credit Agreement: Mandatory Prepayments and Commitment Reductions

Mandatory Prepayments	▪ Excess Cash Flow – A "sweep" of excess operating cash flow following delivery of annual audited financials
	  ▪ Typically 50% of the "excess" cash generated is applied to reduce debt as not needed in the operations of the business, subject to step-downs as de-levering occurs
	  ▪ The first Excess Cash Flow sweep typically commences at the end of the first full fiscal year after the Closing Date and is usually due within 5-10 days after delivery of the audited financials
	▪ Asset Sales – the Net Cash Proceeds of an Asset Sale (gross cash proceeds after reduction for taxes and expenses) are applied as a prepayment; exceptions allow the Borrower to (1) retain a certain threshold amount on an annual or aggregate basis and (2) retain proceeds that are reinvested (or contracted to be reinvested) in assets used or useful in the business including the replacement of the assets sold
	▪ Insurance Proceeds – Designed to capture insurance proceeds received by Borrower as compensation for assets that the Lender relied upon for part of its credit approval, on the assumption that without the same, the Commitment amounts would have been less; not intended to pick-up proceeds that are needed in the business such as liability and business interruption insurance payments; and also subject to the above referenced exclusions under Asset Sales

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Conditions Precedent to Initial Borrowing:	The availability of the First Lien Term Loan Facility and the Revolving Credit Facility on the Closing Date will be subject solely to the applicable conditions precedent set forth in the Conditions Annex. The First Lien Facilities Documentation shall not contain (a) any conditions precedent other than the conditions precedent expressly set forth herein or in the Conditions Annex or (b) any representation or warranty, affirmative or negative covenant or event of default not set forth herein or the Conditions Annex, the accuracy, compliance or absence, respectively, of or with which would be a condition to the borrowing under the First Lien Facilities.	**See Slide 20.**
Conditions Precedent to each Borrowing under the Revolving Credit Facility (other than on the Closing Date):	The making of each extension of credit under the Revolving Credit Facility after the Closing Date, shall be conditioned upon (a) the accuracy in all material respects of the representations and warranties (b) the absence of defaults or events of default at the time of, or immediately after giving effect to the making of, such extension of credit and (c) delivery of a customary borrowing notice.	**See Slide 21.** Note on applicability of conditions precedent to COVID-19 Pandemic.

Anatomy of a Credit Agreement: Conditions of Initial Loans

Loan Documents (incl. Security Documents)	▪ Subject to customary Sungard provisions
Company Documents	▪ The documents evidencing the Credit Parties' ability and authority to enter into the Loan Documents and the transactions contemplated thereby
Legal Opinions	▪ Company counsel, a party familiar with the Borrower, opines to Lenders that all applicable legal and contractual requirements have been complied with, and all conflicts settled, prior to the closing of the transactions
No MAE	▪ Since the date of the Borrower's most recent audited financial statements, no Material Adverse Effect has occurred ▪ If a committed facility for an acquisition financing, this will match the condition precedent in the acquisition agreement (definition and look-back date)
Reps and Warranties	▪ All representations and warranties contained in the Credit Agreement are true, correct and complete in all material respects as of the Closing Date
Other	▪ Payment of fees, completion of proceedings, related documents, etc.

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Anatomy of a Credit Agreement: Conditions of All Loans

Notice of Borrowing	▪ Customary notice, typically included as an exhibit to the credit agreement
Funding Date Conditions	▪ Bringdown of Reps and Warranties (limited to specified reps in a committed financing) ▪ No Event of Default (not applicable in a committed financing)

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Representations and Warranties:	Consistent with First Lien Sponsor Precedent and limited to the following (to be applicable to Holdings (solely in respect of Specified Representations), the Borrower and its restricted subsidiaries): accuracy of historical financial statements; no Material Adverse Effect (as defined below) after the Closing Date; corporate existence; compliance with laws (which shall encompass anti-terrorism laws, FCPA, OFAC and the Patriot Act); corporate power and authority; due authorization, execution and delivery, enforceability of the First Lien Facilities Documentation; no violation of or conflict with law, organizational documents or material debt agreements; no material litigation; ownership of material property; intellectual property; taxes; subsidiaries; use of proceeds; Federal Reserve regulations; ERISA; Investment Company Act; environmental matters; labor matters; solvency on the Closing Date; accuracy of written disclosure; creation, perfection and validity of security interests (subject to permitted liens and other exceptions to perfection to be mutually agreed and consistent with First Lien Sponsor Precedent); and status of the First Lien Facilities as senior debt.	**See Slide 22.** Negotiating Point: Market convention provides that the following reps & warranties should be subject to MAE qualifiers: • Compliance with laws; no violation of or conflict with law or material debt agreements; no material litigation; ownership of material property; intellectual property; taxes; ERISA; Environmental matters; labor matters; accuracy of written disclosure. • The term "**Material Adverse Effect**" should be limited to "a material and adverse effect on (a) the business, assets, results of operations or financial condition of the Borrower and its restricted subsidiaries, taken as a whole, (b) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party or (c) remedies of the First Lien Agent and the Lenders under the First Lien Facilities Documentation.

Anatomy of a Credit Agreement: Representations and Warranties

Ability to Repay Loan	▪ Almost all of the Reps and Warranties are statements that have a bearing on the ability of the Borrower to repay the Loans and otherwise perform its obligations
Allocation of Risk	▪ The purpose of the Reps and Warranties is to place the risk that any of these statements are untrue on the Borrower, not the Lender ▪ The Lender is in effect stating that it is assuming all of these statements are true as a condition to making the Loan, and that if any of them prove to be untrue, then the Borrower will be in default
Conditions to Funding	▪ Each of the Reps and Warranties must be "brought down" and confirmed prior to each credit advance (limited to the "Specified Reps" for the first borrowing in a committed financing ▪ Thus the ability of Borrower to bring down the Reps affects its ability to draw under the Revolver
Schedules	▪ To the extent the Reps need to be qualified, reference to Schedules prepared by the Borrower and attached to the Credit Agreement is often made ▪ This avoids redrafting the Reps wholesale and the Schedules constitute a convenient disclosure statement for the Lenders to quickly focus on significant exceptions

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Affirmative Covenants:	Consistent with First Lien Sponsor Precedent (to be applicable to the Borrower and its restricted subsidiaries) and limited to the following: delivery of consolidated annual audited (within 120 days of the end of each fiscal year without any going concern qualification, exception or explanatory paragraph (except to the extent such exception or explanatory paragraph or emphasis of the matter paragraph is a result of a current maturity of the First Lien Facilities or any potential default pursuant to the Financial Covenant (as defined below)) and quarterly (within 60 days of the first two fiscal quarters after the Closing Date, and 45 days thereafter) unaudited (for each of the first three fiscal quarters of any fiscal year) financial statements (accompanied by customary management discussion and analysis), annual budget, quarterly compliance certificates and other information reasonably requested by the First Lien Lenders through the First Lien Agent (other than information subject to confidentiality obligations or attorney-client privilege); payment of material taxes; maintenance of existence; compliance with laws; maintenance of property (subject to casualty, condemnation and normal wear and tear) and adequate insurance; maintenance of books and records; designation of unrestricted subsidiaries in accordance with the terms set forth below under "Unrestricted Subsidiaries"; right of the First Lien Agent to inspect property and books and records (subject to frequency and cost reimbursement limitations consistent with First Lien Sponsor Precedent and other than information subject to confidentiality obligations or attorney-client privilege); notices of default (*provided* that the delivery of a notice of default at any time will cure any event of default arising from the failure to timely deliver such notice of default) and material litigation; ERISA events and post-closing material adverse changes; use of proceeds; further assurances with respect to the Collateral and Guarantees; changes in lines of business; commercially reasonable efforts to maintain ratings (but not to maintain a specific rating); and lender calls to the extent required by any holders of the Borrower's Securities (the Lenders may participate in such calls); in each case, all with customary materiality qualifiers, exceptions and limitations to be agreed upon and consistent with First Lien Sponsor Precedent; *provided* that no environmental reports shall be required under	**See Slide 23.**

Anatomy of a Credit Agreement: Affirmative Covenants

Contrast with Negative Covenants	There is a substantive difference between Affirmative Covenants (what a Borrower must do) and Negative Covenants (what a Borrower must not do) – the violation of an Affirmative Covenant usually has a grace period or notice requirement before it constitutes an Event of Default, whereas a violation of a Negative Covenant is an instant Event of Default This is because, in general, the affirmative covenant provisions are either events which are out of the control of the Borrower (implying an unintentional breach) or lend themselves to cure, while the negative covenant provisions are either directly controlled by the Borrower (implying intentional breach) or are so important that a grace period may lead to a deterioration of the Lender's rights

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the First Lien Facilities Documentation.

Negative Covenants:

Consistent with First Lien Sponsor Precedent (to be applicable to the Borrower, Holdings (solely with respect to the limitations set forth in clause 12 below) and limited to the following (which shall be subject to customary materiality qualifiers, exceptions and limitations to be mutually agreed upon and shall be consistent with First Lien Sponsor Precedent):

See Slides 24 and 25.

1. Limitation on incurrence of indebtedness.

Important Carve-outs:

- Acquisition-debt (not incremental)
- Capital Leases
- Accounts receivables securitization facilities

Negotiating Point: Be careful how leases are treated. Upon the effectiveness of FASB ASC 842, except in limited circumstances, all leases are required to be capitalized. But, the term "operating leases" still exists under GAAP. Such leases need to be excluded from the definition of Indebtedness or appropriate modifications need to be made.

2. Limitation on liens.

3. Limitation on investments

Important Carve-outs:

- Permitted Acquisitions
- Investments made with the Available Amount Basket

4. Limitations on dividends, stock repurchases and redemptions

Important Carve-outs:

- Redemptions of equity or options issued by Borrower or any direct or indirect parent company of thereof to directors, officers, employees, and

consultants in an annual amount to be mutually agreed (with unused amounts carried forward to subsequent years)

- Dividends, repurchases, redemptions or distributions under the Available Amount Basket
- Tax distributions
- Customary exceptions for distributions necessary to pay Sponsor advisory, refinancing, subsequent transaction and exit fees and other overhead expenses

5. Limitation on transactions with affiliates above an agreed upon threshold.

6. Limitation on asset sales.

Important Carve-out:

- An unlimited amount for fair market value so long as (x) no event of default has occurred and is continuing or would result from such sale or disposition and (y) at least 75% of the consideration for asset sales in excess of an amount to be mutually agreed consists of cash (subject to customary exceptions to the cash consideration requirement to be set forth in the First Lien Facilities Documentation, including a basket in an amount to be mutually agreed for non-cash consideration that may be designated as cash consideration) and the proceeds thereof are applied in accordance with the mandatory prepayment provisions of the First Lien Facilities

7. Limitation on mergers, liquidations, dissolutions and other fundamental changes.

8. Limitations on restrictions on distributions from subsidiaries and granting of negative pledge clauses.

9. Limitations on prepayments, redemptions and repurchases of material subordinated debt.

Important Carve-out: Prepayments, redemptions and repurchases made with the Available Amount Basket

10. Limitations on amendments to organizational documents and material subordinated debt documents in a manner materially adverse to the First Lien Lenders.

11. Change in fiscal year end (other than with the consent of the First Lien Agent).

12. Limitation on activities of Holdings.

Unless an event of default has occurred and is continuing or would result therefrom (at the time of execution of a binding agreement in respect thereof), the Borrower and its restricted subsidiaries may make acquisitions (each, a "***Permitted Acquisition***"), subject solely to the following terms and conditions:

Negotiating Point: The list of conditions precedent to a "Permitted Acquisition" in the middle market will often be longer than this. However, because this is the market-standard in syndicated deals, this minimal set of conditions should be used as the touchstone for negotiating any other set of conditions.

(i) after giving effect thereto, the Borrower is in compliance with the permitted lines of business covenant;

(ii) indebtedness incurred by the Loan Parties to finance a Permitted Acquisition by any non-Loan Party subsidiary will be subject to certain limitations to be mutually agreed; and

(iii) if the Borrower or any of its restricted subsidiaries acquires the majority of the equity interests of any person in connection with such acquisition (*provided*, for the avoidance of doubt, that there shall be a sublimit on minority investments to be agreed) such person will become a restricted subsidiary and, solely to the extent required by, and subject to the limitations set forth in, "Guarantees" and "Security" above, the acquired company and its subsidiaries will become Guarantors and pledge their Collateral to the First Lien Agent.

Acquisitions of persons that do not become Guarantors or in assets that are not acquired by the Borrower or a Guarantor (and made with internally generated cash) will be subject to a cap not to exceed the greater of (x) a dollar amount and (y) a percentage

of total assets to be mutually agreed.

Unless an event of default has occurred and is continuing, the Borrower will also be permitted to utilize an "***Available Amount Basket***" in an amount equal to (a) an amount to be mutually agreed, plus (b) retained excess cash flow, *provided* that, the amounts in clause (b) shall only be available when the Available Amount Basket is used for restricted payments and junior lien and subordinated debt prepayments, redemptions or repurchases when the Consolidated First Lien Net Leverage Ratio is less than or equal to a level to be mutually agreed, plus (c) the proceeds of new public or private qualified equity issuances and capital contributions issued by or contributed to, the Borrower after the Closing Date (other than Specified Equity Contributions), plus (d) debt and disqualified stock which have been exchanged or converted into qualified equity of the Borrower (or any direct or indirect parent company thereof) after the Closing Date, plus (e) the proceeds of sales of investments made under the Available Amount Basket, plus (f) returns, profits, distributions and similar amounts received on investments made under the Available Amount Basket (up to the amount of the original investment), plus (g) the investments of the Borrower and its restricted subsidiaries in any unrestricted subsidiary that has been re-designated as a restricted subsidiary or that has been merged or consolidated into the Borrower or any of its restricted subsidiaries or the fair market value of the assets of any unrestricted subsidiary that have been transferred to the Borrower or any of its restricted subsidiaries, plus (h) the amount of Retained Declined Proceeds (subject to the proviso to clause 3(b) set forth above in this "Negative Covenants" section), plus (i) certain other items to be mutually agreed, in the case of each of the foregoing clauses (a) through (i), to the extent not otherwise applied to make investments or other restricted payments (including junior debt prepayments, redemptions or repurchases).

In summary, the Available Amount Basket is a basket comprising:

- A starter basket; *plus*
- Retained excess cash flow.

Negotiating Point: In the middle market, this concept may not be included or it may not have a starter basket. Whether to push for it turns on the likelihood of having excess cash with which the Borrower will wish to make Investments, Restricted Payments and Prepayments of Junior Debt when no other basket is available.

Often a "nice to have", but a "need to have" in smaller deals.

Anatomy of a Credit Agreement: Negative Covenants

Indebtedness	▪ Restricts the nature and the amount of other Indebtedness that the Borrower and its Subsidiaries may incur ▪ The principle is to minimize the competing claims for the Borrower's cash both on an ongoing basis and in a workout scenario
Liens	▪ Designed to protect the priority and status of the Lenders both in restricting liens and certain contractual arrangements that may impair the collectability of the Obligations
Investments	▪ Investments are restricted because (other than with respect to investments in Credit Parties, which are generally unlimited) they take money out of the restricted group and place it in another entity whose credit risk the Lenders have not assumed and from which the Lenders have no credit support
Restricted Junior Payments	▪ Restricts payments to holders of "junior" interests such as equity holders and subordinated creditors
Transactions with Affiliates	▪ Requires that transactions with Affiliates be conducted on an arms-length basis with terms at least as favorable to the Borrower as it could obtain from third parties, so as to prevent "sweetheart" deals with insiders

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Anatomy of a Credit Agreement: Negative Covenants (cont'd)

Fundamental Changes; Asset Sales	▪ Restricts certain acts and organizational changes that have the potential of changing the fundamental nature of the Borrower ▪ The purpose is to ensure that the person the Lenders agreed to extend credit to remains substantially the same during the course of the deal
Conduct of Business	▪ Requires that the Borrower stay in the same relative lines of business that it was engaged in as of the Closing Date
Amendments to Subordinated Indebtedness	▪ Restricts the Borrower from amending or modifying the material terms of any Subordinated Indebtedness
Fiscal Year	▪ Prohibits the Borrower from changing its fiscal year end after the Closing Date ▪ Prevents gaming the financial covenants, which are keyed off of the Borrower's fiscal periods
Financial Covenants	▪ Measures the Borrower's financial performance and fiscal health ▪ The covenants levels are usually set by the Agent (in consultation with the Borrower) on the basis of the Borrower's projections, at a cushion to the model, and are tested on the last day of each fiscal quarter

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Financial Covenant:

First Lien Term Loan Facility: None.

See Slide 26

Revolving Credit Facility: A maximum Consolidated First Lien Net Leverage Ratio (as defined below) (the "***Financial Covenant***"), which covenant will be tested on a trailing four quarter basis only if, as of the last day of any fiscal quarter of the Borrower (commencing with the second full fiscal quarter of the Borrower following the Closing Date), Revolving Loans (including Swingline Loans, but excluding Letters of Credit to the extent undrawn) are outstanding in an aggregate amount greater than 30% of the total commitments in respect of the Revolving Credit Facility at such time.

This Term Sheet reflects a springing covenant applicable only to the Revolving Lenders (aka cov-lite).

In the middle market, the covenant will likely be applicable at all times and to the Term Loan Facility and the Revolving Credit Facility.

The Consolidated First Lien Net Leverage Ratio covenant levels shall provide a 30% non-cumulative cushion to the Consolidated EBITDA set forth in the sponsor model delivered to the Lead Arrangers on September 30, 2020 (the "***Sponsor Model***"). If any "market flex" is actually exercised whether before or after the Closing Date (pursuant to the provisions set forth in the Fee Letter), the covenant levels for the Financial Covenant shall be adjusted in the First Lien Facilities Documentation (or pursuant to an amendment thereto) to implement the exercise of such "market flex" provisions in order to maintain the cushions described above (before giving effect to such First Lien Facilities Documentation adjustment or amendment, as applicable).

Negotiating Point:

Important to understand whether financial covenant levels are set taking into account projected cash balance.

Borrowers push for financial covenant levels to be set on a gross basis and compliance to be tested on a net basis

"***Consolidated First Lien Net Leverage Ratio***" shall mean the ratio of (i) senior secured first lien consolidated funded indebtedness of the Borrower and its restricted subsidiaries consisting of indebtedness for borrowed money, finance leases and purchase money debt, but excluding any such indebtedness to the extent secured on a junior basis to the First Lien Facilities less all unrestricted cash and cash equivalents over (ii) LTM Consolidated EBITDA.

"***Consolidated EBITDA***" to be defined in a manner to be mutually agreed, at least as favorable to the Borrower as the First Lien Sponsor Precedent, but in any event to include, without

The goals of adjustments are to:

- Calculate cash flow from ordinary operations

duplication, (i) add-backs for

(A) extraordinary, unusual or non-recurring charges, expenses or losses,

(B) other non-cash charges, expenses or losses, including, without limitation, any non-cash asset retirement costs, non-cash compensation, non-cash translation (gain) loss and non-cash expense relating to the vesting of warrants,

(C) restructuring costs, integration costs, business optimization expenses or costs, retention, recruiting, relocation and signing bonuses and expenses, store closing costs, stock option and other equity-based compensation expenses, severance costs, transaction fees and expenses and management fees and expenses, including, without limitation, any one time expense relating to enhanced accounting function or other transaction costs, including those associated with becoming a standalone entity or a public company,

(D) LTM pro forma results for acquisitions (including the commencement of activities constituting such business) and dispositions (including the termination or discontinuance of activities constituting such business) of business entities or properties or assets, constituting a division or line of business of any business entity, division or line of business that is the subject of any such acquisition or disposition, and for closed stores, operational changes and operational initiatives (including, to the extent applicable, from the Transactions), including any synergies, operating expense reductions and improvements and cost savings determined in good faith by the Borrower to be reasonably anticipated to be realizable or a plan for realization shall have been established within 18 months following any such acquisition, disposition, store closing or operational change or operational initiative (*provided* that to the extent that any such operational changes are not associated with a transaction, such changes shall be limited to those for which all steps have been taken for realizing such savings and are factually supportable and reasonably identifiable),

- Eliminate non-ordinary course and non-recurring items
- Make pro forma adjustments for operational changes such as acquisitions, dispositions and restructurings

Lenders want to base financial covenant calculations on actual consolidated EBITDA, or realized cost-savings, and true extraordinary non-recurring expenses.

Borrowers, by contrast, will try to make adjustments to reflect certain cost savings that are prospective in nature and added back to consolidated EBITDA on a "pro forma" basis as cost has been stripped, not part of the Borrower's operations going forward.

Events giving rise to cost savings:

- Acquisitions (or commencement of a business initiative)
- Dispositions of a business, lines of business, restricted subsidiaries or operations
- Restructurings
- Operational improvements and / or initiatives

(E) other accruals, payments and expenses (including rationalization, legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, dividends, restricted payments, dispositions or issuances of debt or equity permitted under the First Lien Facilities Documentation,

(F) proceeds of business interruption insurance,

(G) changes, losses or expenses to the extent paid for, reimbursed, indemnified or insured by a third party (to the extent actually so paid to the Borrower within 365 days),

(H) costs related to implementation of operational and reporting systems and technology initiatives and

(I) letter of credit fees.

For purposes of determining compliance with the Financial Covenant, any cash equity contribution (other than in respect of disqualified equity) made to the Borrower after the beginning of the relevant fiscal quarter and on or prior to the day that is the date that is fifteen (15) days after the date on which financial statements are required to be delivered for such fiscal quarter (the "***Cure Period***") will, at the request of the Borrower, be included in the calculation of Consolidated EBITDA for the purposes of determining compliance with the Financial Covenant at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a "***Specified Equity Contribution***"); *provided* that (a) in each four consecutive fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Specified Equity Contribution is made, (b) no more than five Specified Equity Contributions may be made during the term of the Revolving Credit Facility, (c) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Borrower to be in compliance with the Financial Covenant, (d) Specified Equity Contributions may not be relied on for any purpose other than increasing Consolidated EBITDA

Equity Cure

- Allows the Sponsor to contribute cash common equity (and "qualified" preferred) to Borrower that will be deemed to constitute consolidated EBITDA for purposes of determining compliance with financial covenants
- "Equity Cure" rights are generally limited to no more than four or five during the term of the credit facility, no more than two in any consecutive four quarter period, and no more than the amount necessary to cure the default

Anatomy of a Credit Agreement: Financial Covenants

Overview	▪ The covenant levels are usually negotiated and determined by reference to a bank model based on the Borrower's past performance and projections (usually 20-35%)
	▪ It is important that covenant levels are based on "financing EBITDA" and set consistently with how they are presented in the model
	    ▪ Borrowers typically try to limit to a leverage ratio, but may have to include an interest coverage in middle market financings
	    ▪ An ABL typically has a "springing" fixed charge coverage ratio when availability falls below a given threshold

Definition	▪ A leverage ratio is a ratio of indebtedness to consolidated EBITDA ▪ Leverage ratios may differ in how they are calculated and may focus on first lien, senior secured or total indebtedness ▪ Try to limit to funded indebtedness (together with capital leases)

Calculation	▪ Leverage ratios may be calculated gross or net of cash
	    ▪ Cash netting allows the Borrower to get credit for cash on the balance sheet to the extent test levels are set without taking into consideration budgeted cash level
	    ▪ Less likely to achieve unlimited cash netting in middle market deals and cash will likely need to be subject a control agreement

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Anatomy of a Credit Agreement: Accounting Terms

Frozen GAAP Standard

- GAAP is a developing concept, but for the purposes of calculating financial performance covenants under the Credit Agreement, it is "frozen" as of the Closing Date
- The financial covenants measure the Borrower's financial performance and ability to cover its financial obligations during the term of the Credit Agreement and are based on the GAAP standards as in effect on the Closing Date
- A change in GAAP may affect the calculations and make them either too loose or tight
- "Frozen" GAAP provision requires that Borrower and the Lenders must negotiate in good faith to restore the relative positions of each party as to the covenant levels and their calculation
- While these negotiations are being conducted, the company continues to report under this "Frozen" GAAP
- Brief discussion of FASB ASC 842
  - Already effective for publicly traded companies
  - Takes effect end of this year for all other companies
  - All leases are required to be capitalized on the balance sheet
  - Capital Leases called "finance leases"
  - Operating leases still called "operating leases"

indebtedness of unrestricted subsidiaries will not be taken into account for purposes of calculating any financial ratios or baskets contained in the First Lien Facilities Documentation.

Events of Default

Consistent with First Lien Sponsor Precedent and limited to the following (with grace periods, baskets and materiality to be mutually agreed upon and consistent with First Lien Sponsor Precedent): nonpayment of principal; nonpayment of interest after 5 business days; nonpayment of fees or other amounts after 10 business days; on the Closing Date, any Specified Representation proving to have been materially incorrect when made and on any date thereafter, any other representation or warranty proving to have been materially incorrect when made or deemed made; failure to perform or observe covenants set forth in the First Lien Facilities Documentation within a specified period of time where appropriate (subject, in the case of affirmative covenants and clause 7 above of the negative covenants, to a grace period of 30 days following written notice from the First Lien Agent (other than in respect of maintenance of the Borrower's existence and notices of an event of default)); *provided* that the Borrower's failure to perform or observe the Financial Covenant itself shall not constitute an Event of Default for purposes of any First Lien Term Loan unless and until the Lenders under the Revolving Credit Facility have actually declared all such obligations to be immediately due and payable in accordance with the First Lien Facilities Documentation and such declaration has not been rescinded on or before such date and only the Required Revolving Lenders (as defined below) may prior to it constituting an Event of Default for purposes of the First Lien Term Loans exercise rights and remedies in respect of such breach; cross-default and cross-acceleration to debt in excess of an amount to be mutually agreed; bankruptcy and insolvency defaults (with a 60 day grace period for involuntary proceedings); unsatisfied monetary judgment defaults to the extent not covered by indemnities or insurance above an amount to be mutually agreed; customary ERISA events that would result in a Material Adverse Effect; invalidity of material guarantees or impairment of security of a material portion of the Collateral; and change of control (to be defined in a manner consistent with First Lien Sponsor Precedent and to

See Slide 28.

Anatomy of a Credit Agreement: Events of Default

Payment	▪ Usually payment defaults arising from failure to make principal payments do not have any grace periods, because they are serious defaults within the Borrower's control ▪ Borrowers often negotiate for some grace period for the failure to pay interest, fees and other charges
Breach of Certain Covenants	▪ Creates an immediate Event of Default upon the breach of certain affirmative covenants (e.g., corporate existence) and any negative covenant ▪ Typically a 30-day grace period for a breach of any other provision under the Credit Agreement or any other Loan Document
Breach of Reps and Warranties	▪ An Event of Default occurs immediately if any warranty or statement made by the Borrower in writing proves to have been false in any material respect when made or deemed made
Default under Other Documents	▪ Cross-default provision, which refers to any payment default or other material default giving rise to acceleration under other material indebtedness

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Anatomy of a Credit Agreement: Events of Default (cont'd)

Invalidity of Loan Documents	▪ Immediate Event of Default if any Loan Document is deemed invalid or is terminated, except in accordance with its express terms
Bankruptcy	▪ Involuntary: a hostile action taken by unsecured creditors of the Borrower, usually subject to a 60-day grace period ▪ Voluntary: if Borrower is seeking or consenting to an insolvency proceeding, an immediate Event of Default will result
ERISA	▪ If ERISA liabilities reach a certain threshold, then an immediate Event of Default will result
Judgment Defaults	▪ An Event of Default arises if Borrower does not satisfy certain material monetary judgments (including by way of insurance or indemnification) within a certain period of time
Change of Control	▪ Deals with situations where the entity controlling the Borrower has changed; Sponsor usually required to maintain ownership, directly or indirectly, of at least a majority of the voting capital stock of the Borrower

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Anatomy of a Credit Agreement: Events of Default (cont'd)

Remedies	▪ Following an Event of Default, the Lenders will have a number of remedies available to them (such as set-off or, to the extent the deal is secured, the rights of secured creditors to collateral under applicable law); the most effective remedy the Lenders have, however, is the power of acceleration ▪ A Credit Agreement usually provides that following an Event of Default, Requisite Lenders may vote to (i) terminate the Commitments and (ii) declare all principal, interest and other Obligations to be immediately due and payable (regardless of originally scheduled amortization and maturity dates) ▪ Acceleration usually occurs automatically, without any action on the part of the Agent or the Lenders, if an Event of Default arises under the bankruptcy-related defaults

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Interest Rates: The interest rates under the First Lien Facilities will be as follows: **See Slide 31.**

(a) With respect to the First Lien Term Loan Facility, at the option of the Borrower, Adjusted LIBOR, plus [__]% or ABR, plus [__]%; and

(b) With respect to the Revolving Credit Facility, (i) at the option of the Borrower, Adjusted LIBOR, plus [__]% or ABR, plus [__]%; *provided* that, following delivery of financial statements for the first full fiscal quarter of the Borrower completed after the Closing Date, interest rate spreads with respect to the Revolving Credit Facility will be subject to step-downs as determined by reference to a grid based on the Consolidated First Lien Net Leverage Ratio to be mutually agreed.

As used herein:

"***Adjusted LIBOR***" means the greater of (i) London interbank offered rate, adjusted for statutory reserve requirements and (ii) with respect to the First Lien Term Loans only, 1.00% (and each Loan designated as such, an "***Adjusted LIBOR Loan***").

"***ABR***" means the higher of (i) the rate the First Lien Agent announces from time to time as its prime rate and (ii) the Federal Funds Effective Rate, plus 1/2 of 1% (but, in respect of the First Lien Term Loans only, in no event less than 2.00% per annum) (and each Loan designated as such, an "***ABR Loan***").

Adjusted LIBOR borrowings may be made for interest periods of 1, 2, 3 or 6 months and, if available to all relevant Lenders, a period shorter than one month or 12 months, as selected by the Borrower.

Interest on loans and all fees will be payable in arrears on the basis of a 360-day year (calculated on the basis of actual number of days elapsed); *provided* that, interest on ABR loans will be payable in arrears on the basis of a 365-day year (or a 366-day year in a leap year) calculated on the basis of the actual number of days elapsed. Interest will be payable on Adjusted LIBOR Loans on the last day of the applicable interest period (or at the end of each three months, in the case of interest periods longer than three months) and upon

Anatomy of a Credit Agreement: Interest

Rate of Interest	▪ Adds the appropriate "spread" or "margin" to each reference rate (Base, Eurodollar) of interest
Interest Periods	▪ The Interest Period options usually offered for Eurodollar Rate Loans are one, two, three or six months
Interest Payments	▪ Interest is usually payable, in the case of Base Rate Loans, quarterly or monthly, or in the case of Eurodollar Rate Loans, at the end of each quarterly interval within an Interest Period and the expiration date of the Interest Period, and upon prepayment and at final maturity
Conversion or Continuation	▪ Provides the mechanics for continuing outstanding Loans at their stated rate or converting an outstanding Loan from one rate to another
Default Interest	▪ Provides for an increase in the applicable rate of interest, as well as an increased charge on fees and other amounts, when there is an event of default (or sometimes upon a payment or bankruptcy event of default only); customary spread is an additional 2%

prepayment, and on ABR Loans quarterly and upon prepayment.

Default Rate: Upon any payment event of default, the interest rate will be, with respect to overdue principal, the applicable interest rate, plus 2.00% per annum and, with respect to any other overdue amount, the interest rate applicable to ABR Loans, plus 2.00% per annum (other than to Defaulting First Lien Lenders). Interest on such overdue amounts will be payable upon written demand.

Letter of Credit Fees: A per annum fee equal to the applicable spread over Adjusted LIBOR under the Revolving Credit Facility in effect from time to time will accrue on the aggregate face amount of outstanding Letters of Credit under the Revolving Credit Facility, payable in arrears at the end of each quarter after the Closing Date and upon termination of the Revolving Credit Facility. Such fees shall be distributed to the Revolving Lenders (other than to Defaulting First Lien Lenders) *pro rata* in accordance with their commitments under the Revolving Credit Facility. In addition, the Borrower shall pay to each Issuing Bank, for its own account, (a) a fronting fee of 0.125% on the aggregate face amount of outstanding Letters of Credit, payable in arrears at the end of each quarter after the Closing Date and upon termination of the Revolving Credit Facility and (b) the Issuing Bank's customary and reasonable issuance and administration fees.

See Slide 32.

Commitment Fees: The Borrower shall pay to the Revolving Lenders (other than Defaulting Lenders) a commitment fee of 0.50% per annum on the undrawn portion (for this purpose, disregarding Swingline Loans as a utilization of the Revolving Credit Facility) of the commitments in respect of the Revolving Credit Facility (subject to stepdowns to 0.375% and 0.25% following delivery of financial statements for the first full fiscal quarter of the Borrower completed after the Closing Date, based on meeting Consolidated First Lien Net Leverage Ratios to be mutually agreed). All commitment fees shall be payable quarterly in arrears after the Closing Date and upon the termination of the commitments, calculated based on the number of days elapsed in a 360-day year.

See Slide 32.

Anatomy of a Credit Agreement: Fees

Commitment Fees	▪ Charged against the amount of the "unused" or unborrowed amount of a revolving facility ▪ Usually 50 bps multiplied by the daily average amount of the unused line ▪ At times subject to a step-down to 375 bps upon a deleveraging event
Closing Fees	▪ One-time fees payable at the closing as a set percentage of the amount of the credit facility provided
Administrative Fees	▪ Annual fees paid to the Agent (either in advance or arrears) as compensation for the administration of the Credit Agreement
Other Fees	▪ Sometimes fees are paid to the Agent or other Lenders pursuant to side arrangements that are not detailed in the Credit Agreement due to concerns over confidentiality (i.e. underwriting fees)

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About Akerman

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