the right to refuse to lend under such facilities. Borrowers usually have to represent that no default or event of default has occurred and is continuing at the time of borrowing. Some of the trigger events such as non-payment, breach of nancial covenants or insolvency may not yet have occurred so the principal event of default that might be relied upon is the MAC event of default which is triggered if any event

Other committed funding that borrowers will be keen to drawn upon at this di cult time will be available working liquidity facilities such as revolving credit facilities. Even for those borrowers that do not need the funds immediately, it is likely that they will look to drawdown before the situation worsens to ensure they can maintain liquidity. is raises the question of whether the pandemic would a ord lenders

(Comm) provides some helpful guidance. In that case, it was held that a MAC had not occurred but the court set out the following points of consideration: (i) lenders should always review the nancial information available to it regarding the borrower before relying on such a clause; (ii) the material change must substantially a ect the borrower's ability to repay the loan; (iii) it must <</L(en-GB)/MCID 611 >>BDC BT-21.3 (1o)-2.5lstahy t3(r)-1.9 l440.5 ( )w (e)-20.4.5 (t)(i)-16.7 (a)8(r)1.4 ((a)-12.3 (b)-2.) <<80 rg /GS0 g(c)-1

permitted that may impact the calculation. ere may be an add-back for non-recurring (or extraordinary or unusual) losses, charges or expenses. While the exact terminology will di er, it may be arguable (on a case-by-case basis) that costs related to coronavirus which are extraordinary in nature can be added back to adjust EBITDA. However, these all relate to amounts spent rather than lost revenues. In fewer deals, there is also an add-back for reductions that are covered by insurance and are actually reimbursed or that are likely to be reimbursed. is will require both a careful analysis of the exact add-back permitted, but also of any applicable insurance policy to ensure a good grounding for the determination that the applicable add-back conditions have been met.

- if the maintenance covenant is a "springing covenant", then it may only be tested when an applicable drawing threshold is met. is means that if the company can manage its cash ows, it may be able to manage the testing of the covenant.
- in relation to equity cures (a sponsor's ability to inject equity into a group to avoid/cure a breach of maintenance covenant), the ability to overcure will also be closely examined given the ongoing uncertainty of the impact of coronavirus, with sponsors' potentially wanting to provide a cushion for the upcoming year rather than having to repeatedly provide emergency funding. Whether that is permissible will vary on a case-by-case basis.

TAKING ACTION: [redacted]ES WITH INCURRENCE COVENANTS

Many leveraged loan deals in the market are in fact now "incurrence" covenant based, which is the high yield bond covenant position, tested only when certain fundamental corporate actions are

ratios, there may be incurrence-based ratios, such as a net leverage or xed charge coverage ratio debt incurrence covenant, and the ability to use each of these may be impacted as with a maintenance covenant. While the result is less severe than a default, the inability to use such ratios may impact the business (preventing, for example, the incurrence of additional debt or the payment of dividends or cash distributions to shareholders).

- e ratios, as well as certain additional tests such as "grower" baskets for various covenant restrictions, may be based on EBITDA. us, the discussion above related to EBITDA may be important.
- e rolling 12-month basis of EBITDA means that notwithstanding a near term coronavirus resolution, the virus' e ects will be felt for the 12-month period under EBITDA. is may particularly a ect any seasonal businesses that rely on a busy rst quarter (due for instance to seasonality), as they may have lost out on a boost they typically get from that quarter in their LTM (Last Twelve Months) test, which will impact them for the next year.

REPORTS, AUDITS AND INFORMATION

Frequent reporting is an important investor information right under nance documentation. is typically requires audited annual and unaudited quarterly information to be delivered under a high yield bond, as well as monthly information under certain loan agreements, in each case, within a certain ~~speci ed time period. Businesses intoov 2 (s)-6.3.9 (e54749)17 (Ali) 1.9 (o) 11..9 (e)-2 (, w)- Tc 6q~~

nancing (for which the borrower is typically a thinly capitalised special purpose vehicle with very little in the way of tangible assets) means that lenders are even more acutely focused on the successful delivery and performance of the underlying asset(s) to which the nancing relates. Accordingly, there are two overarching features that require closer attention:

Financial covenants

- Financial covenants on project nancings tend to be tighter due to the higher leverage in these transactions. Combined with the additional project related burdens (detailed further below) and the greater sensitivity to project implementation (given the borrower has no balance sheet to fall back on) there is a greater likelihood of nancial covenants being triggered in the short term.
- Default ratios are typically only measured on a backward-looking basis which means that a nancial covenant default itself is

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