

## COVID-19 Coronavirus Business Impact Broadcast Series

# Waivers, Amendments and Forbearances – Short-Term Remedies for the COVID-19 Credit Abyss

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On April 3, 2020, Dechert's Private Equity group presented "Waivers, Amendments and Forbearances – Short Term Remedies for the COVID-19 Credit Abyss," an episode of the firm's COVID-19 Coronavirus Business Impact Broadcast Series. The episode was presented by the firm's leveraged finance team and hosted by Jeffrey Katz (moderator), a partner in the firm's New York office; Sarah Gelb, a partner in the firm's Philadelphia office; and Philip Butler, a partner in the firm's London office.

The presenters explored issues facing private equity sponsors and their portfolio companies under their credit and loan facilities that may have arisen due to the dramatic economic changes and dislocations caused by the COVID-19 pandemic, and suggested ways that borrowers can navigate those challenges.



### HIGHLIGHTS FROM THE EPISODE

#### Main Options Available to PE Borrowers

Many portfolio companies are facing serious issues under their credit facilities, including compliance with financial covenants, making interest payments, and delivering "unqualified" audit opinions. Private equity professionals and borrowers have three main options available to them: waivers, amendments and forbearances.

#### Waivers

Waivers are typically limited to specific events of default identified by a borrower. A waiver may be appropriate if a borrower needs relief on a limited basis. However, depending on the severity of the occurrence of any breaches of a credit facility, lenders will likely want additional covenants, undertakings and/or changes in economics to reflect the perceived higher risk of the credit. Additionally, most loan agreements will have a consent threshold pursuant to which waivers can only be agreed on a majority lender basis.

#### Amendments

Unlike waivers, which waivers give temporary relief, amendments to credit agreements typically make permanent changes to covenants to permit borrower compliance on a modified basis.

#### Forbearances

Forbearances provide for the temporary suspension of remedial actions by lenders. Unlike amendments and waivers, the underlying specified defaults and events of default remain alive and outstanding. Forbearance may be appropriate to get through the current shutdowns and work out a more tailored solution after restrictions relating to COVID-19 are lifted.

#### Economics Occasioned by Requests for Waivers and Amendments

Lenders will likely require an upfront fee before agreeing to any waiver or amendment and will also look at the interest margin, at resetting any ratchets and at reviewing any interest rate floors that were previously agreed upon.

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