

the letter of credit by reason of the termination can be paid prior to the borrower's loan and other obligations becoming due.

2.1.2.4 Limitations on Amount

Box 2.6

A Letter of Credit shall be issued, amended, renewed, or extended only if (and upon issuance, amendment, renewal, or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal, or extension (i) the aggregate Letter of Credit Exposure shall not exceed \$____ and (ii) the sum of the Revolving Credit Loans, Competitive Loans, and Letter of Credit Exposures shall not exceed the total Revolving Credit Commitments.

Bank regulations require that letters of credit include an amount limit. A letter of credit (at least if issued by a bank) may not, as an example, support a borrower's obligation to compensate a municipality for whatever damages (without limit) might occur to streets during the installation of underground fiber-optic cables. A letter of credit could support this type of liability only if it covered damages "... up to \$____." so that there is a specified maximum limit beyond which the issuer is not obligated. Inserting a ceiling into a letter of credit allows the lenders to control their exposure to the borrower. As noted earlier in this chapter, where revolving credit commitments are available for loans and letters of credit, the maximum amount of both will not be permitted to exceed the total revolving credit commitments; often the letter of credit exposure is further subject to a sublimit within the revolving credit commitments.

2.1.2.5 Examination of Documents

Box 2.7

The Issuing Lender shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Lender shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of

CHAPTER 2**Commitments, Loans,
and Letters of Credit****2.1 CREDIT VARIANTS****2.1.1 Loans****Box 2.1**

(a) Revolving Credit Loans. Subject to the terms and conditions set forth herein, each Revolving Credit Lender agrees to make Revolving Credit Loans from time to time during the Revolving Credit Availability Period in an aggregate principal amount up to but not exceeding its Revolving Credit Commitment; provided that the aggregate outstanding principal amount of the Revolving Credit Loans plus the aggregate outstanding principal amount of Competitive Loans shall not at any time exceed the total Revolving Credit Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay, and reborrow Revolving Credit Loans.

(b) Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Term Lender agrees to make one or more Tranche A Term Loans to the Borrower during the Term Loan Availability Period in an aggregate principal amount not exceeding its Tranche A Term Loan Commitment. Amounts prepaid or repaid in respect of Tranche A Term Loans may not be reborrowed.

(c) Tranche B Term Loans. Subject to the terms and conditions set forth herein, each Tranche B Term Lender agrees to make one or more Tranche B Term Loans to the Borrower on the Effective Date in an aggregate principal amount not exceeding its Tranche B Term Loan Commitment. Amounts prepaid or repaid in respect of Tranche B Term Loans may not be reborrowed.

(d) Competitive Bid Loans. Subject to the terms and conditions set forth herein, from time to time during the Revolving Credit

revolving credit loans generally also make a ratable portion of the A loans; B loans are referred to as the *B tranche*. Herein, the latter term is used to refer collectively to all tranches that fit within a B loan repayment schedule like the one described earlier. Thus, even though a credit agreement may have multiple series of B loans (Series B, Series C, Series D, and so forth), any tranche that is in the mold of a B tranche is referred to as a B tranche, notwithstanding that the name assigned to that tranche uses another letter of the alphabet. This, of course, can lead to confusion if an agreement has a revolving credit commitment and two B tranches identified as Series A and Series B, but the point to remember is that a B tranche need not be labeled as such.

2.1.1.3 Competitive Bid Loans

As is discussed in greater detail in Section 3.1, a credit agreement may also provide for so-called competitive bid or competitive access facilities. Facilities of this kind are most often offered to borrowers with high credit quality and are tied to revolving credit facilities. Lenders do not commit to make competitive bid loans; rather, these loans may be offered by the lenders at their individual options within the aggregate limits of the revolving credit commitments of all revolving credit lenders. A single lender can lend *more* than the amount of its own revolving credit commitment, so long as the aggregate of all revolving credit loans and all competitive bid loans does not exceed the aggregate of the revolving credit commitments of all the lenders. The purpose of competitive bid loans is to allow the lenders (if they choose) to provide loans to a borrower at rates lower than those otherwise available under the agreed pricing set out in the credit agreement.

The normal mechanism in a competitive bid facility is for the borrower to request its revolving credit lenders to submit offers to make loans for specified periods (usually corresponding to the permitted durations of interest periods) at specified interest rates or at specified margins over the London interbank offered rate (LIBOR). The lenders then compete to provide loans by making the best offers they can. The borrower has the option to accept (or reject) the offers made, although the credit agreement will stipulate that, if the borrower wishes to accept any offers, it will do so in ascending order by agreeing to offers for the lowest rates first. Whether a lender submits an offer is within its sole discretion.

prohibit voluntary repayments and conversions of LIBOR loans in the middle of interest periods. Virtually all credit agreements prohibit repayments of competitive bid loans prior to their maturity. Similarly, borrowers are sometimes prohibited from selecting interest periods that extend beyond the final maturity of the credit agreement or that straddle scheduled amortization dates if the amortization could force a repayment of LIBOR loans in the middle of an interest period.

At the end of each interest period for a LIBOR loan, the borrower is required to elect whether that loan will be converted into a base rate loan or be continued (or "rolled over") as a LIBOR loan (and, if the latter, to specify the new interest period). If the borrower fails to do so, the credit agreement normally provides for one of two fail-safes: either the LIBOR loan is automatically converted into a base rate loan or the LIBOR loan is automatically rolled over into another LIBOR loan with an interest period of one month. There are advantages to each fail-safe. The advantage to the borrower of an automatic conversion into a base rate loan is that its oversight may be corrected immediately without breakfunding, rather than waiting until the end of a one-month interest period. The advantage to the borrower of continuing the loan as a one-month LIBOR loan is that LIBOR, at least based upon historical experience, is likely to be lower than the base rate and will therefore result in lower interest charges. Breakfunding is never an issue for base rate loans, since base rate loans do not have interest periods; it is assumed that repayment of a base rate loan should not result in unanticipated costs to the lender since there are no matching deposits.

At least in U.S.-law credit agreements, when a base rate loan is converted into a LIBOR loan, or when a LIBOR loan is rolled over or converted into a base rate loan, it is normally *not* considered a new borrowing that requires the satisfaction of conditions precedent. It is treated merely as the resetting of interest on an outstanding loan, similar to the resetting of the interest rate from time to time on an adjustable-rate home mortgage loan.

Many credit agreements provide that whenever an event of default exists, LIBOR loans are no longer available or, if available, are available only for one-month periods. Sometimes this limitation becomes effective only if the administrative agent or required lenders so elect. The purpose is to minimize the lenders' breakfunding costs in the event the loans are accelerated and paid during the middle of an interest period.