

SAMPLE DUE DILIGENCE LANGUAGE

Typical full Due Diligence Out contained in a commitment letter:

"[Lender's] commitment hereunder is subject to . . . [lender's] completion of, and satisfaction in all respects with, the results of its ongoing due diligence investigation of the business, assets, operations, properties, financial condition, contingent liabilities, prospects and material agreements of [Holdco and Acquisition Co.] and relating to [Target's] assets."

More limited Due Diligence Out contained in a commitment letter:

"the commitments of [lender] are subject to the [lender's] completion of limited confirmatory due diligence investigation of the [borrower] and such [lender's] not becoming aware after the date hereof of any information or other matter (including any matter relating to financial models and underlying assumptions relating to the [projections]) affecting the [borrower] that in such [lender's] judgment is inconsistent in a material and adverse manner with any such information or other matter disclosed to the [lender] prior to the date hereof (it being understood that the [lender] is satisfied with its due diligence investigation of the extent performed through the date hereof)."

Sample Due Diligence Out from underwriter's form of High Yield Commitment Letter (revised November, 1999):

"[the underwriter's obligations are conditioned on] the completion of, and satisfaction in all respects with the results of, [underwriter's] due diligence investigation of the business, operations, property, condition (financial or otherwise) and prospects of the Acquiror and the Company and its subsidiaries (it being understood that [underwriter] will promptly notify the Acquiror upon satisfaction of this condition)[, provided, however, that, subject to being given timely access to such information as it may reasonably request, [underwriter] shall use [its best][commercially reasonable] efforts to complete such [confirmatory] due diligence as soon as practicable, but in any event prior to the distribution of a preliminary offering circular with

respect to the Notes (it being understood that [underwriter] will promptly notify the Acquiror upon satisfaction of this condition) OR [underwriter's performance of limited confirmatory due diligence and underwriter not discovering or otherwise becoming aware of any information not previously disclosed to it that it believes to be materially inconsistent with its understanding, based on the information provided to it before date hereof, of the business, assets, operations, properties, condition (financial or otherwise), contingent liabilities, prospects and material agreements of the Acquiror and the Company]"