

Sample Material Adverse Change Clauses:

More favorable to lender:

"there not having occurred or become known to us [i.e. the lender] any material adverse condition or material adverse change in or affecting the business, operations, properties, condition (financial or otherwise) or prospects of the Target and its subsidiaries, taken as a whole, since December 31, 200X".

More favorable to borrower:

"there not having occurred and be continuing any material adverse change in the business, operations, properties or financial condition of the Target or any of its subsidiaries since December 31, 200X."

Other Variations:

Sample MAC Clause taken from underwriter's form in a Shelf/Debt - Form S-3 - Underwriting Agreement (revised March, 2000):

The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Prospectus, any supplements to the Prospectus and this Agreement and that:

....

(iii) since the date of the most recent financial statements included or incorporated by reference in the Prospectus (exclusive of any supplement thereto), there has been no material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Prospectus (exclusive of any supplement thereto)

Sample MAC clause taken from negotiated credit agreement (May, 2000):

"Material Adverse Effect" means a material adverse effect on (a) the business, property, operations or financial condition of the [credit group] taken as a whole or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Lenders hereunder or thereunder. It is understood and agreed that no Material Adverse Effect shall occur by reason of (c) general economic conditions or economic conditions affecting the [specific industry] generally or (d) the [permitted activities of guarantors]."

Sample MAC clause taken from underwriter's standard form of underwriting agreement for SEC-registered public offering of high-yield debt securities (revised January, 2000).

The Company shall have furnished to the Underwriters a certificate, dated the Closing Date, of its chief executive officer and its chief financial officer stating that . . . subsequent to the date of the most recent financial statements contained in the Registration Statement and the Prospectus, there has been no material adverse change in the financial position or results of operation of the Company or any of its subsidiaries, or any change, or any development including a prospective change, in or affecting the condition (financial or otherwise), results of operations, business or prospects of the Company and its subsidiaries taken as a whole, except as set forth in the Prospectus.

Sample MAC clause taken from a form of Merger Agreement (revised April, 2000):

Absence of Company Material Adverse Effect. [Except as disclosed in the Filed Company SEC Documents or in the Company Disclosure Letter, since the date of the most recent [audited] financial statements included in the Filed Company SEC Documents][Except as disclosed in the Company Disclosure Letter, since the date of this Agreement] there shall not have been any event, change, effect or development that, individually or in the aggregate, has had [or could reasonably be expected to have] a Company Material Adverse Effect[, other than events, changes, effects and developments [(i)] relating to the economy in general [or to the Company's industry in general] and not specifically relating to the Company or any Company Subsidiary [or (ii) relating to or arising

out of the announcement or consummation of any Transaction]].

Definition of "material adverse effect": a material adverse effect on the [business, assets, condition (financial or otherwise), prospects][financial condition] or results of operations of such party and its subsidiaries, taken as a whole.

Sample MAC clause from underwriter's form of Underwriting Agreement (revised January, 2000):

Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as one enterprise which, in the judgment of a majority in interest of the Underwriters including the Representative[s], is material and adverse and makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Offered Securities; (ii) any downgrading in the rating of any debt securities [*If appropriate, insert—or preferred stock*] of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities [*If appropriate, insert—or preferred stock*] of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating)."