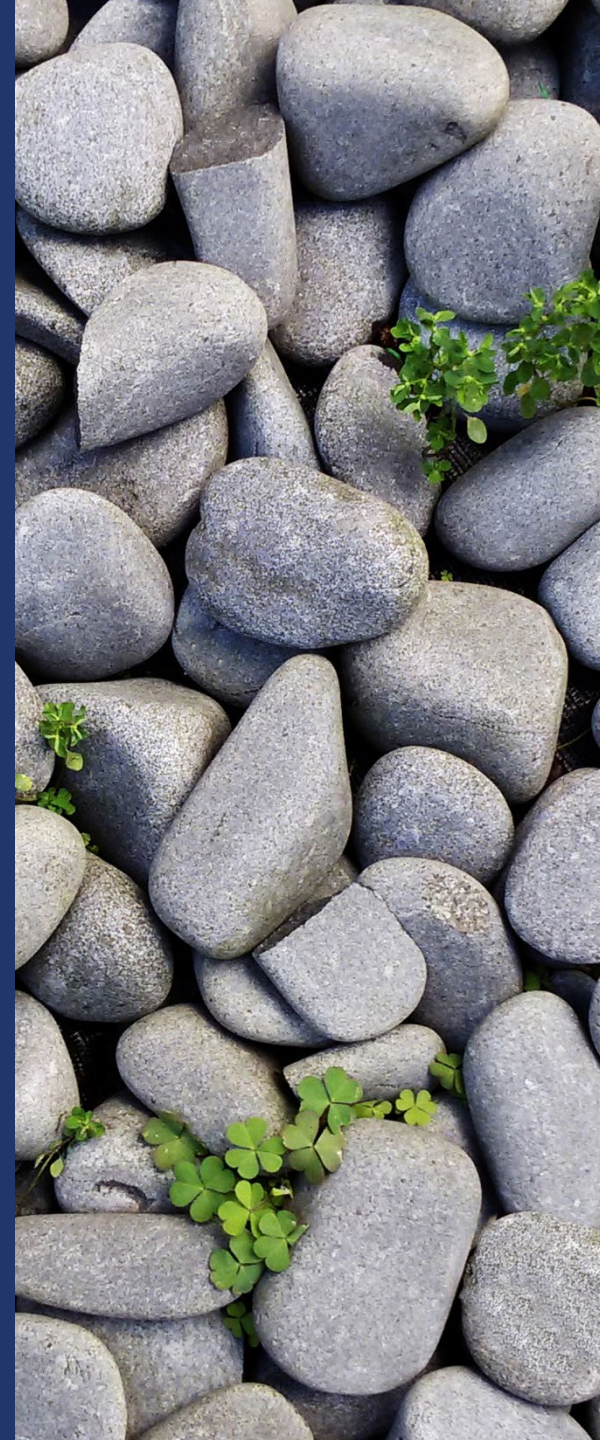


# Risk Management and Bankruptcy Exposure: Strategies in the Era of Covid-19

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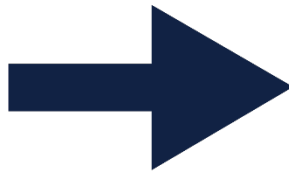
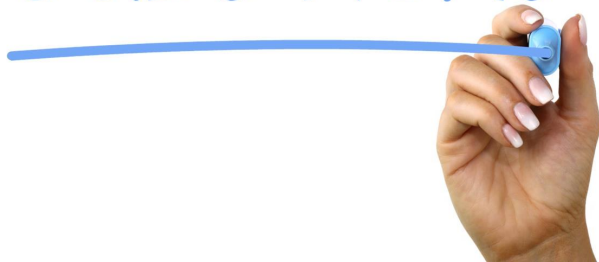


# Program Outline

- I. Strategies to Address Credit Risk Pre-Bankruptcy
  - Due diligence is key to assess the playing field early
  - Look for signs of a borrower's financial distress
    - Events of default (EODs) under the loan documents
    - Other red flags
  - Assess potential actions to protect the bank
- II. Strategies to Mitigate Risk and Maximize Recovery after Borrower (or Guarantor) Files for Bankruptcy
  - Introduction to bankruptcy and important concepts
  - Lender strategies in Chapter 11

Q&A

QUESTIONS



# Strategies to Address Credit Risk Pre-Bankruptcy

- Lender's due diligence should include—
  - Borrower
    - Corporate existence
    - State of borrower's market
  - Loan documents
    - Guaranties, LOCs, intercreditor agreements
  - Collateral
    - Validity and priority of liens
    - Location, condition, encumbrances
    - Books and records
  - Borrower's other creditors

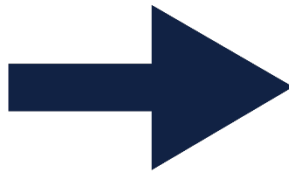
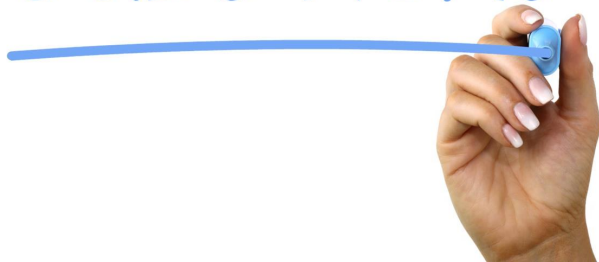
# Potential signs of a borrower's financial distress

- Events of Default (EODs) —
  - Payment defaults
  - Covenant defaults
    - Affirmative, negative and financial covenants
- Other indicators —
  - Shortage of cash
  - Falling margins
  - Difficulty in raising capital
  - Changes in key personnel

# Take action to protect the bank

- Consider whether to declare a notice of default
  - Nature of default should inform remedy
  - Strategy for NOD
  - NOD could trigger a bankruptcy
- Strategize about potential negotiated resolutions
  - Waiver of EODs
  - Forbearance agreements
  - Loan modifications
- Workout strategies and considerations

QUESTIONS



# Strategies to Mitigate Risk and Maximize Recovery in Bankruptcy – Intro to Bankruptcy

- Types of bankruptcies
  - Chapter 7: Liquidation
  - Chapter 13: Individual Reorganization
  - Chapter 11: Business Reorganization (New Subchapter V)
- Types of Chapter 11 cases
  - Traditional filings
  - “Prepack” filings
  - Prearranged filings



# Important bankruptcy concepts

- Property of the bankruptcy estate
- The automatic stay
  - Relief from the automatic stay
  - Grounds for relief
    - Lender strategies to keep in mind
- Adequate protection – different kinds:
  - Cash payments
  - Additional or replacement liens
  - “Indubitable equivalent”

# Important bankruptcy concepts (contd.)

- Lender options for cash collateral
  - Refuse to consent to use
  - Consent and negotiate a cash collateral stipulation
    - Lender strategies to keep in mind
- 363 sales of assets & credit bidding
- Plan considerations for lenders
  - Chapter 11 v. Subchapter V (SBRA) plans
  - Section 1111(b) election
- Preferential transfers and changes by the CARES Act

# THANK YOU!



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