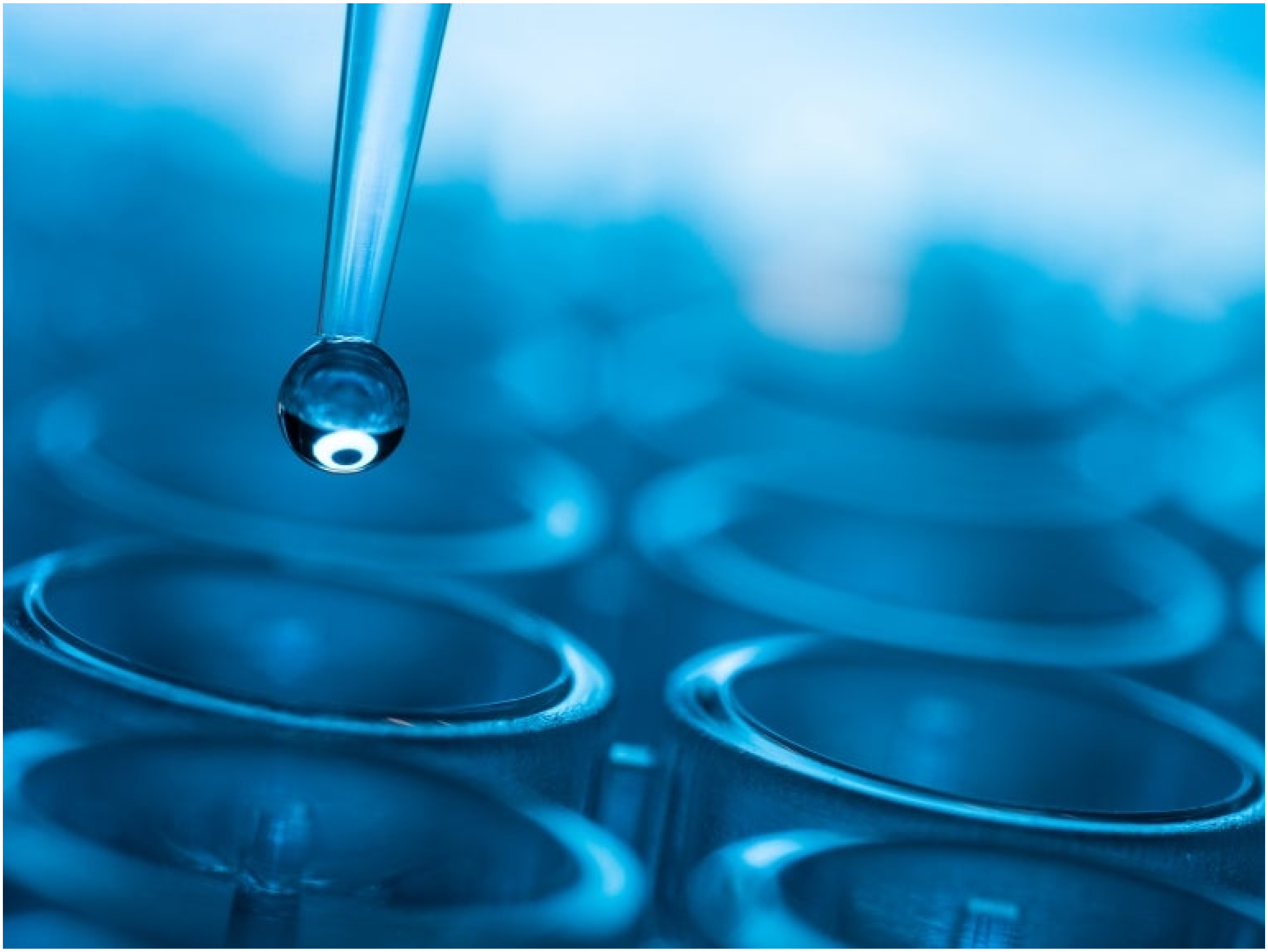

Companies across all industries are preparing to face the widespread economic effects of the coronavirus (COVID-19) pandemic.

Making sure companies have access to liquidity during this time will be a key strategy in addressing the challenges posed by the pandemic, particularly as COVID-19 continues to disrupt financial markets and thrust economic conditions into greater uncertainty. For many companies, committed credit facilities represent not only the most likely source for additional liquidity, but also the fastest. The following is a list of factors for companies to keep in mind when evaluating whether and when to borrow on an existing line of credit.

Understand the Loan Documents

When updating a company's financial forecasts and models in the coming weeks and months, it is important to understand the loan documents governing the line of credit and the impact changes to a company's financial outlook may have on its line of credit. It is critical to complete a detailed review of the loan documents (and particularly any financial covenants that govern drawing on or maintaining the loan) so that potential breaches of financial covenants can be identified early on that, if unaddressed, could impair the company's ability to satisfy the conditions required to access the line.

The loan documents governing the line of credit are often complex and cumbersome agreements, particularly with respect to lines of credit that are funded by a lender syndicate or asset-based loans. In order to accurately and efficiently review the loan documents, consider working with the company's treasury department, legal counsel, and other relevant advisors to develop a checklist detailing the mechanics of financial covenants and borrowing requirements to monitor compliance with the terms of the line of credit.

Communicate With Lenders

Now more than ever, it is critical that companies maintain a strong relationship and open communication with their lender. Being able to identify potential issues early and work with lenders to develop collaborative solutions will allow a company to maintain its access to capital. Particularly if covenant breaches or other defaults are anticipated, it is important to be communicative and transparent with lenders in order to develop a plan to address these issues before they become impediments to borrowing (such as through requesting waivers or extensions, or for more significant or multiple breaches, requesting modifications to key covenants and loan terms).

Assess Conditions to Borrow

Committed credit facilities almost universally contain conditions precedent, which the company must satisfy in order to contractually obligate the lender(s) to fund a requested advance on the line of credit. Therefore, it is critical for companies to understand these funding conditions to ensure that the company will be able to satisfy them in order to borrow on the line and manage key timing considerations. For example, it may become clear through new financial information that the company will not be able to satisfy a certain condition in the near future, which could necessitate the company needing to borrow earlier rather than later before a default may result in restricted access to the line.

Customary conditions precedent include (1) the absence of defaults, including compliance with affirmative and negative covenants, and (2) the accuracy of the representations and warranties contained in the loan documents, including representations as to the continued solvency of the company, and the absence of events, conditions (financial or otherwise), or changes that have had or could reasonably be expected to have a material adverse effect on the company. The determination of a material adverse effect is very fact specific analysis, so the elements of this defined term in the loan documents should be carefully reviewed. For companies that are borrowing under an asset-based loan, there are often additional conditions precedents, covenants, and lender requirements that will need to be met in order to receive an advance.

Additional Considerations

As market uncertainty surrounding COVID-19 continues, it may be increasingly crucial for companies to be able to borrow funds quickly. For many lines of credit, borrowings under the customary "alternative base rate" option will be available quicker (typically within one business day) than borrowings under the LIBOR rate option, which typically requires up to three business days' prior notice. While borrowing under the "alternative base rate" will very likely be more expensive than borrowing at the LIBOR rate, companies may find that the benefit of quicker access to capital outweighs these costs (it is also the case under most lines of credit that an "alternative base rate" borrowing can be subsequently converted into a LIBOR rate loan).

Lastly, when drawing on the line of credit, public companies should give consideration as to whether the filing of an 8-K is required or prudent. Filing an 8-K may be advised when the company plans to draw all or a material portion of the line, when the company has not routinely drawn on the line, or in light of the intended use of the proceeds. Additional facts and circumstances may be relevant to this determination, so the company should consult the appropriate advisors when making this assessment.

Authors

James D. Gradel

Partner
JGradel@perkinscoie.com 206.359.8401

Nickolas Kajca

Partner
NKajca@perkinscoie.com 206.359.3550

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