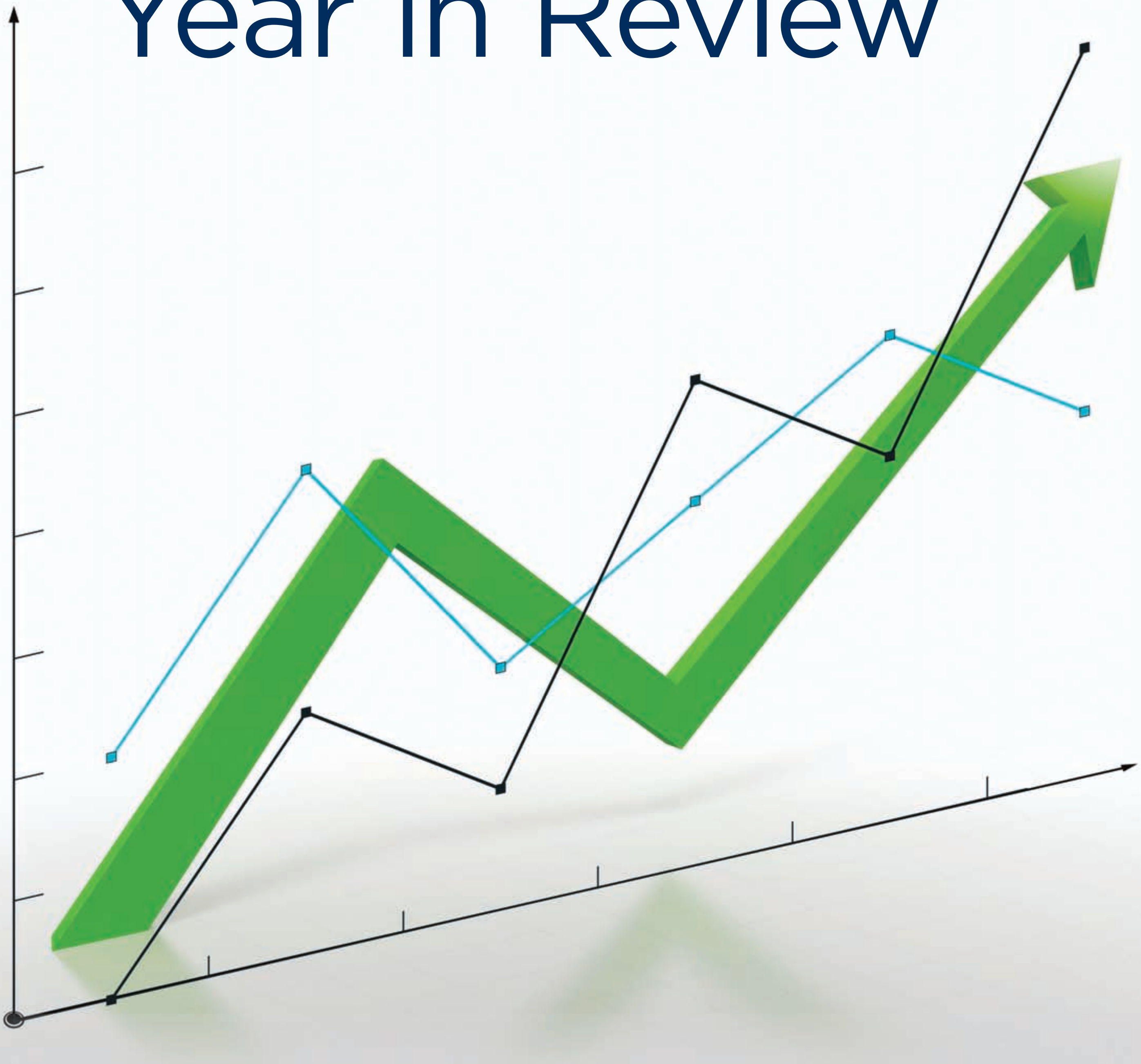
2012 Year in Review



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EXPERTS' VIEW

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Sarah is co-head of the firm's Banking Group. She has extensive experience representing lenders and borrowers in acquisition and other leveraged financings, investment grade lending, corporate restructurings and workouts and project financings.

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Sarah and Steven examine recent trends in large corporate market loan terms:

What were the key developments in large corporate loan documentation that you saw in 2012?

The evolution of greater documentation flexibility for borrowers that started in the years after the credit crisis continued in 2012 as favorable market conditions resulted in more generous terms for borrowers. In particular, covenant-lite loan structures made a big comeback, comprising close to 30% of total institutional loan volume in 2012. Incurrence-based negative covenants, typically found in high-yield bonds, gained greater acceptance in the syndicated loan market last year. These more flexible negative covenants will allow borrowers to more easily incur debt, make acquisitions and other investments and, in some cases, prepay junior debt without the need for lender consent so long as specified pro forma leverage tests are met.

Similarly, provisions allowing incurrence-based incremental facilities became more common in 2012. Incremental facilities allow borrowers to upsize their credit facilities without the need for lender consent. Traditionally, the size of these facilities was capped at a fixed amount. While many syndicated loans continue to include a fixed cap, a growing number of deals in 2012 permitted borrowers to incur an unlimited amount of new incremental loans subject only to pro forma compliance with a specified leverage ratio.

Another continuing trend was the inclusion of maturity extension mechanics in many credit agreements (amend and extend provisions). These provisions generally allow borrowers to make maturity extension offers to all lenders of a particular tranche of loans. If an extension offer is accepted, the maturity of the loans of each accepting lender is extended and the terms of such loans are modified in accordance with the extension offer, without the need for the consent of other lenders. Initially developed as a solution to address the limited ability of borrowers to refinance maturing debt during the credit crisis, maturity extension provisions have become widely accepted in the syndicated loan market.

Loan buyback provisions also continued to be incorporated into loan agreements over the last year. Prior to the financial crisis, syndicated loans generally restricted the ability of borrowers to buyback their outstanding loans. These restrictions, however, began to be lifted during the financial crisis when practically all syndicated loans were trading at a substantial discount to par in the secondary market. Many credit agreements now permit borrowers (as well as sponsors and other affiliates) to make non-pro rata loan buybacks, subject to the satisfaction of certain common conditions. While borrowers generally have been required to conduct loan buybacks through customary reverse Dutch auctions, a number of deals in 2012 permitted borrowers to make open market loan purchases from individual lenders.

What trends in large corporate loan documentation do you anticipate to see in 2013?

Given the unwavering investor demand for syndicated loans in late 2012, we expect borrower-favorable trends in loan documentation to continue in 2013. Look for the line between high-yield bond covenants and traditional bank covenants to continue to blur as lenders in the syndicated loan market accept looser and more flexible negative covenant protection, especially in light of the increasing influence of hedge funds, high-yield investors and other relative value investors who are familiar with the world of high-yield bonds.

Borrowers should continue to enjoy greater documentation flexibility to modify their capital structures without the need for lender consent. We will be watching to see if "precap" provisions (provisions that permit the sale of a borrower to a qualified purchaser without triggering a change of control defaulting event) gain traction in 2013. These provisions were included in a handful of deals in 2012 and could become more common in 2013, especially if the leverage loan market continues to lean heavily in favor of borrowers.