

MOORE STEPHENS

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Indebtedness Factors Related to Documentation and Information to be Prepared and Maintained in Support of Indebtedness: Sec. 385 Regulations

- I. Unconditional Obligation to Pay a Sum Certain
 - A. Written documentation
 - B. Unconditional and legally binding obligation
 - C. Fixed or determinable sum certain
 - D. On demand or at fixed dates

- II. Creditor's Rights
 - A. Creditor has right to enforce obligation
 - B. Rights include right to force default or acceleration on certain occurrences
 - C. Superior rights to shareholders
 - D. Creditor's rights contained within document or covered under local law

- III. Reasonable Expectation of Ability to Repay
 - A. Written documentation demonstrating issuer's financial position and ability to repay
 - B. Annual credit analysis may be required if more than one debt is issued during 12 month period
 - C. A material event (change) may require an updated analysis
 - D. Third party reports or analysis can be used to support repayment analysis
 - E. Acceptable Documentation:
 - 1. Cash flow projections
 - 2. Financial statements
 - 3. Business forecasts
 - 4. Asset appraisals
 - 5. Financial ratio analyses
 - 6. Source of funds
 - 7. Ability (e.g., credit lines) for further borrowings that could be used to repay original debt

- IV. Actions Evidencing Debtor-Creditor Relationship
 - A. Evidence of repayment (e.g., wire transfer record or bank statement)
 - B. Documentation of actions in event of default or similar events
 - C. Reason for non-enforcement action if action not taken