WILLKIE FARR & GALLAGHER (UK) LLP

CLIENT ALERT

Navigating Disruption in the Bond Market

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As global economies emerge from the COVID-19 pandemic, bond issuers continue to face headwinds, not least arising from Russia's recent invasion of Ukraine. Given the absence of maintenance financial covenants (other than perhaps a springing leverage covenant – see below), bond issuers with upcoming maturities and/or liquidity constraints are a focus, with some downward pressure on secondary pricing. This primer summarises certain recurring issues for consideration.

Capital Structure & Priority	**Restricted vs Unrestricted Group**
(1) What is the capital structure, ranking and collateral package of the different instruments? (2) Is collateral common across all debt instruments? (3) If a super senior revolving facility (***ssRCF***) is present, is it super senior only to the proceeds of enforcement of shared security? (4) If the ssRCF contains a single leverage covenant, is it springing, and can it be relied upon beyond ssRCF lenders?	What is the breakdown between the EBITDA and assets of the restricted group vs. the unrestricted subsidiaries (***URS***)? Compare this: (a) against the level at issuance; (b) over time to analyse whether it has used up restricted payment (***RP***) capacity; and (c) against remaining RP capacity.

Credit Support. What is the guarantee and security package and is it worth anything?

(1) Single Point of Enforcement? Should sit through structural share security in a creditor-friendly jurisdiction, with most of the restricted group being guarantors of the bonds, but this should be carefully analysed.

(2) How significant are the unencumbered assets within and outside the Restricted Group? Link this to the priming lien risk (see below), to assess if it arises in bankruptcy scenarios or whether it is more broad.

(3) Different jurisdictions may limit the enforceability of guarantees. Note also the more limited set of debt incurrence and lien permissions applying to non-guarantor restricted subsidiaries (***NGRS***) to incur structurally senior indebtedness.

(4) Intercreditor Restrictions. Check constraints on enforcing the key structural security including contractual restrictions under intercreditor arrangements, including value protection requirements and release provisions.

Priming / Dilution

Capacity

(1) What is the aggregate capacity under ratio-based and other debt incurrence permissions?

(2) What is the most recent financial information on which to make the assessment?

Priming

(1) Can new debt rank in priority to the existing bonds, either through being borrowed by an URS or NGRS, on an earlier maturity basis or through use of a specific debt / lien basket?

Other sources of liquidity

(1) Can baskets be created or inflated in combination with an equity injection (***Contribution Indebtedness*** capacity)?

(2) Are sale and leaseback or receivables factoring baskets available as a source of liquidity?

(3) Are there ways in which liquidity can be raised by disposing of URS or borrowing against assets in URS?

Value Leakage

(1) What is the aggregate capacity under ratio-based and other RP permissions, including by way of investment outside of the restricted group and permitted payments to owners / other third parties?

(2) Where a Contribution Indebtedness basket is present, can the proceeds be paid back out as a permitted payment?

(3) Can the proceeds of asset sales be used to make permitted payments/investments and circumvent the asset sales waterfall?

(4) Can RP capacity, which may have built up under the Available Amount (or similar concepts), be used to increase borrowing capacity?

(5) How much of the business is held in URS and what is the ability to dispose of or otherwise deal with those URS and transfer further value into them (i.e. J-Crew)? Are J-Crew blockers etc. in place?

The Willkie Special Situations team has a depth of experience looking at these issues from both the issuer and bondholder perspective with a view to finding a long-term sustainable capital solution for all relevant stakeholders. We focus with our clients on analysing and answering the above key questions as a priority and the implications for the business and transaction dynamics, rather than simply producing a static document review. We can add value quickly and without significant upfront cost in the early assessment stages of a potential trade through to documenting the agreed outcome.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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