

Introduction to Corporate Restructuring

Corporate Restructuring 101: Out of Court Restructurings and Distressed Exchange Offers

- Historical performance of exchange offers
 - Factors driving increased out of court exchanges – *[Anecdotes regarding Increase in CLOs and loan only capital structures]*
 - Post exchange Recovery
 - Post exchange defaults
 - Post exchange BK filings
- Creditor and Issuer Strategies
 - Ad hoc groups and negotiations *[Anecdotes regarding organizing of creditors in distressed situations]*
 - 13-D considerations /acting as a group
 - Creditor and stakeholder Constituencies
 - Secured/bank debt *[McLaren anecdote, Bloomberg Article Highlighting Distress, McLaren Proposal and Secured Creditors push back]*
 - Unsecured Financial Debt *[Anecdote if it's a capital structure issue involving bonds/loans easier to out of court, operational changes or impairing other creditors is difficult to gain consent]*
 - Trade Creditors *[need to maintain relations with trade creditors]*
 - Landlords, unions, employees *[difficulty to get agreements out of court]*
 - Equity holders *[difficult to accept significant dilution and >50.1% may have tax consequences]*
 - BoD/mgmt (Fiduciary duties)
 - Factors driving exchanges
 - Debt reduction
 - Liquidity
 - Maturity extensions
 - Example of distressed capital structure *[Revlon pre 2020 exchange, discuss trading prices and exchange incentives]*
 - Key thresholds in Exchange offers
 - 25% - acceleration
 - 33% negative control
 - 51% amending and waiving non money terms
 - 67% Cramdown in Ch 11
 - 100% key money terms interest, principal, maturity
 - Secured vs Unsecured
 - Coercive exchanges – Asset Transfers and Uptiering *[J Crew/Serta anecdotes]*
 - Priming debt –*[Sandridge \$1.25bn 8.75% 2L primes unsecured debt show graphic]*
 - Equity securities (13-d, Sec 12 Exchange act) OTC vs listed securities, reg rights, tag and drag rights
 - CoC Issues
 - CODI issues/NOL issues
 - Indenture stripping (Anecdote TIA/Marblegate)
 - Exit Consents
 - Covenant Issues/limitations
 - Consent Solicitations/Amendments *{McLaren secured holders refused initial sale lease back and sale of heritage cars went to court, new consent solicitation alongside unsecured debt raised from largest shareholder}*
 - Issuance of secured debt/ permitted liens/debt capacity baskets *[remark importance of understanding covenants/debt capacity]*
 - Restrictions on affiliate transactions/arms-length
 - transferring value to unrestricted subsidiaries, J Crew, Claire's, PetSmart, Revlon etc
 - PI/RP Capacity
- Legal Frameworks
 - Public vs Private

- Private 3(a)(9), 4(a)2 – Exchanging into 144A securities from registered securities (implications)
- Registered Exchange offers legal requirements
 - Disclosure and compliance requirements
 - Tender offer rules
 - Regulation 14E 13e-4, 13 13e-3
 - Reg FD, Exchange Act requirements
- Dual Track Out of Court and Pre Packaged Ch 11 Solicitations
- Required documentation
- Opinion letters, solvency
- Financial Analysis of exchange value
 - Post exchange trading prices, liquidity
 - Valuing package mix of debt/equity/other
- Case Study – (Can be done as Excel follow Along]
 - Utilize public announcement of exchange offer terms to fill in and complete an excel template
 - Properly allocate value among constituencies
 - Recovery sensitivity
 - Measure in dollar value and bond points of original security
- Excel Exercises – Compendium to the Webinar
 - Fill in Yield to Maturity
 - Fill in Capital Structure Table calculate various leverage levels
 - Calculate covenant compliance
 - Calculate incurrence capacity
 - Calculate recovery estimates in a waterfall
 - Calculate recovery including subrogation between Senior and Subordinated Note issues