Restructuring Capital Markets Debt: A Review of Legal Requirements and Structuring Options in Light of Market Opportunities

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This article reviews some of the more significant U.S. securities laws and structural matters encountered in connection with any program to purchase or restructure straight debt securities (excluding debt with equity features) outside of bankruptcy, in cases where the debt is not redeemed.

Although less marked than immediately following the 2008 financial crisis, debt capital markets continue to undergo periods of volatility due, among other factors, to ongoing troubles in the eurozone and a tepid macroeconomic environment. In addition, Standard & Poor's estimates that $43 trillion to $46 trillion of corporate borrowings will need to be financed between 2012 and 2016; this includes $30 trillion of debt refinancing and $13 trillion to $16 trillion of new money debt capital requirements. As a result, issuers will have continuing opportunities to repurchase or restructure their outstanding debt securities on favorable terms and will also be required to undertake such transactions as part of broader debt capital transactions. Conversely, investors will be obligated to evaluate programs that target the debt securities they hold.

During periods when trading prices of outstanding debt securities are well below face value, issuers may be able to retire some or all of their outstanding debt on favorable terms by repurchasing in the market. If repurchases are made using cash that is on hand or readily available, the strategies outlined in this article can be executed relatively quickly. Issuers who consider their restructuring options in advance can act more expediently when opportunities arise. Barring redemption, which is often unavailable under the terms of applicable indentures or overpriced relative to trading prices of target debt securities, one or more of the repurchase or exchange mechanisms outlined in this article will be a component of any refinancing structure. Issuers considering a refinancing transaction should consult with their legal and financial advisors to determine the structure that best accomplishes their objectives on the most favorable terms.

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Summary

Issuers typically utilize one of the following means to repurchase or restructure their outstanding debt securities that are not redeemed:

- *Cash Purchases (Privately Negotiated or Open-Market)*. Best suited to situations where ownership of the target securities is concentrated among relatively few holders or the issuer intends to repurchase a relatively small percentage of the outstanding securities. These purchases can typically be completed relatively quickly with less documentation and greater flexibility around the repurchase price compared to tender or exchange offers. Among other considerations, care must be taken to ensure that these repurchases do not constitute a tender offer under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); no purchases are made while the issuer is in possession of material non-public information; and any disclosure of information to holders of the target securities is made in accordance with Regulation FD under the Exchange Act.

- *Cash Tender Offers*. In a tender offer, the issuer will make an offer to repurchase some or all of the target securities, often at a premium to the secondary trading price, but at less than the face value of the securities. The purchase price offered for the securities is typically either a fixed dollar amount (a "fixed price" tender offer) or, in certain circumstances, the present value of the debt securities as of a designated date; determined by discounting the face value or the earliest applicable redemption price of the notes at a discount rate based on a fixed-spread over a benchmark Treasury rate (a "fixed-spread" tender offer). Dutch auction pricing mechanisms can also be used in certain tender offers. Tender offers for notes subject to substantive covenants (typically non-investment grade, non-convertible securities) may be coupled with consent solicitations for both strategic and practical reasons discussed below. As discussed below, cash tender offers are subject to the applicable tender offer rules under the Exchange Act and the general anti-fraud provisions of the Exchange Act, including Rule 10b-5.

- *Exchange Offers*. An exchange offer is usually best undertaken where the issuer has insufficient cash available to repurchase the target securities or believes there is an appetite among target holders for an exchange security with terms beneficial to the issuer. The same Exchange Act requirements applicable to cash tender offers also apply to exchange offers. In addition, an exchange offer involves an issuance of new securities. It must therefore comply with the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") unless it qualifies for exemption. As outlined below, issuers commonly avoid the registration requirements of the Securities Act by conducting exchange offers in accordance with Section 3(a)(9) of the Securities Act or as private placements of new exchange securities with accredited investors or qualified institutional buyers ("QIBs").

- *Consent Solicitations*. A solicitation of consents from holders of target securities to amend the terms of the govern-

ing indenture can also be used as a debt restructuring tool, either conducted alone or in tandem with a tender offer or exchange offer. Consent solicitations can be used to modify or eliminate covenants and events of default to permit a specific contemplated transaction or to more broadly eliminate covenants providing the issuer generally greater ongoing operating flexibility. When conducted together with a tender or exchange offer they are often referred to as "exit consents."

Private and Open-Market Cash Purchases

Privately negotiated or open-market purchases can typically be commenced, and usually completed, very quickly, and they also allow for greater pricing flexibility than tender and exchange offers. Unlike a tender offer, where the same consideration is offered to all holders of the target securities, different purchase prices may be negotiated with each holder.

At the outset of any plan for privately negotiated or open-market purchases, it is important that an issuer ensure that the planned purchases are conducted in a way that does not constitute a tender offer. The Exchange Act and the applicable rules thereunder do not define what constitutes a tender offer. However, eight criteria, commonly referred to collectively as the "Wellman factors," after the court decision in which the criteria were first applied, provides guidance for determining if a transaction, or series of transactions considered together, constitute a tender offer. The eight Wellman factors are as follows:

1) active and widespread solicitation of holders;
2) solicitation made for a substantial percentage of the outstanding debt;
3) the offer to purchase is made at a premium over the prevailing market price;
4) the terms of the offer are firm rather than negotiable;
5) the offer is contingent on the tender of a fixed minimum number of securities and is often subject to a fixed maximum as well;
6) the offer is open for only a limited period of time;
7) the offeree is subject to pressure to sell his or her securities; and
8) the public announcement of a purchasing program precedes or accompanies rapid accumulation of the target's securities.

Any analysis applying the Wellman factors is largely dependent upon the specific facts and circumstances of the planned repurchases and no single factor has been found by courts to be dispositive in determining if a particular transaction or series of transactions is a tender offer. Furthermore, courts have not given the factors equal weight in their application. It is therefore important that issuers consult with counsel before undertaking any program of privately negotiated or open-market purchases. Failure to comply with the tender offer rules, if their applicability is determined during the course of such a program or after the fact, may result in an SEC enforcement action or subject the issuer to claims by investors.

Because of the above limitations on structuring private or open-market purchases so they do not constitute a tender offer, acquiring a significant amount of target securities can be difficult. In addition, an effective consent solicitation is not easily coupled with a private purchase program due partly to typical indenture limits on an issuer's ability to vote any debt securities it acquires. Furthermore, many indentures require that any consent solicitation payments must be offered equally to all holders of debt securities issued under the indenture. As a result, consent payments made only to a subset of holders whose securities are targeted for repurchase would violate these covenants.

In addition to structuring private purchases so as not to inadvertently constitute a tender offer, the most important issue in any privately negotiated or open-market purchase of debt securities is avoiding liability under the antifraud provisions of the U.S. securities laws, including Rule 10b-5. Issuers must refrain from privately negotiated or open-market purchases when in possession of material non-public information. Among other things, the issuer's intended scope of repurchases or its cash resources to fund them may constitute material non-public information, if not previously disclosed. These evaluations are of course fact driven and should be discussed with counsel.

Cash Tender Offers

Tender offers and exchange offers are most appropriate if an issuer seeks to purchase all or a substantial percentage of an outstanding issuance of debt securities or in cases where the target securities are widely held. As noted above, and addressed in more detail below, tender offers and exchange offers are often coupled with consent solicitations. These consent solicitations are intended to both facilitate accomplishment of the offer and eliminate or amend the covenants applicable to any debt securities that are not tendered and remain outstanding after completion of the offer.

The principal tender offer regulations applicable to straight debt tender offers are Regulation 14E and Rules 14e-1, 14e-2 and 14e-3 of the Exchange Act. The antifraud provisions of the Exchange Act, including Rule 10b-5, also apply to tender offer purchases so the offer documents must not contain any material misstatements or omissions. However, for reasons noted in "Liability Issues" below, dealer managers in cash tender offers typically do not receive 10b-5 negative assurance letters from counsel. While the offer to purchase and related documents usually follow a common form, unlike tender offers for equity or equity-linked securities, no specific documentation or filings with the SEC are required.

- *Tender Offer Period*: Rule 14e-1 requires that a tender offer generally be held open for at least 20 business days from the date tender offer documents are first sent to holders of the target securities, although tender offers for investment grade straight debt securities may be conducted in seven to 10 business days if the tender information is disseminated in an expedited manner.[1] Frequently, the consideration or other terms of the offer must be modified after launch due to insufficient tenders in response to the original offer. Other amendments to the offer documents may also become necessary during the offer period, often due to events occurring subsequent to, and unforeseen, at launch. In such cases, the tender offer must remain open for at least 10 business days from the date of any change in (1) the percentage of securities being sought if greater than 2% of the original amount sought, (2) the consideration offered or (3) any dealer's soliciting fee. Any other material changes to the offer, or waiver of material conditions, require that the offer remain open for at least five business days thereafter.[2] To be clear, any business days remaining on the originally scheduled tender offer period at the time of the amendment are typically counted toward these minimum periods. For example, a change in the offer's consideration when there are seven business days remaining on the tender offer would necessitate a three business day extension of the expiration date at the "back-end" of the tender offer.

- *Withdrawal Rights*: Withdrawal rights are not required in tender offers for straight debt securities. However, in tender offers that are made concurrently with a consent solicitation or include an early tender premium, withdrawal rights are usually granted. These rights typically expire at the same time as the rights to receive the consent or early tender consideration, typically after the first 10 business days. If a material change occurs during the tender offer or a material condition is waived after withdrawal rights have terminated, the rights are typically reinstated for holders who previously tendered their securities. The length of the reinstatement usually corresponds to the period that a tender offer is required to remain open (10 or five business days) following a change of the sort noted above.

- *Extension*: Any extension of a tender offer's duration must be made by press release or other public announcement by 9:00 a.m., Eastern Standard Time, on the business day following the previously scheduled expiration date of the tender offer. If an amendment to the offer terms or related disclosure is made prior to the expiration date, and the issuer determines that an extension is necessary so that the remaining offer period following the amendment will be at least five or 10 business days, then the announcement of the amendment and extension is usually made by 9:00 a.m. Eastern Standard Time on the next business day following the amendment. Any press release extending a tender offer must also disclose the approximate number of securities tendered to date.

- *Fixed-spread Pricing*: In addition to offering a fixed price for each target debt security purchased, issuers often choose to use fixed-spread pricing in certain tender offers. In a fixed-spread tender offer the consideration paid per target debt security is calculated as the present value of the debt security as of a designated date. This amount is determined by discounting the face value or the earliest applicable redemption price of the target security using a discount rate based on a fixed-spread over a benchmark Treasury rate. In general, this mechanism is intended to protect the issuer from interest rate risk during the tender offer period because the consideration paid will vary based on changes in the benchmark Treasury rate. The SEC staff has indicated in no-action letters that fixed-spread pricing can be used for certain types of tender offers for investment grade debt. The staff has also permitted fixed-spread pricing for non-investment grade debt but in such cases has required that issuers submit a letter to the SEC outlining the terms of the proposed tender offer and stating, among other things, that the debt is held predominantly by institutional investors, trading volume is reasonably active, the market for the debt is relatively liquid in comparison to debt issues of comparable rating, size and age, and one or more institutions currently make a market in the debt. The staff initially took the position that, for non-investment grade debt, the price determined using fixed-spread discounting had to be fixed on the tenth day after the commencement of the tender offer and announced through a press release on the next day. However, the staff has allowed fixed-spread pricing for non-investment grade debt with the price fixed two business days before expiration of the tender offer.

- *Early Tender Premium*: In tender offers for straight debt securities, issuers may also structure the offer with an "early tender premium" which is permissible because the "best price" rule applicable to tender offers for equity or equity-linked securities does not apply. In such cases, tendering holders who tender early during the tender offer, typically in the first 10 business days, are eligible to receive the "total consideration" which includes an early tender premium, commonly expressed as a specific dollar amount per $1,000 principal amount of tendered securities. Holders who tender after the early tender date would be eligible to receive a lower price equal to the total consideration less the early tender premium. In addition, as previously noted, the right to withdraw tendered notes also typically expires after 10 business days. The net result of this structure is appealing to issuers because it encourages holders to tender early and gives the issuer earlier certainty as to how many of the target notes are "in the box" (assuming no extension of withdrawal rights would be necessary due to an amendment to the offer). Any other corporate transactions, such as a financing or acquisition, can therefore be completed during the remaining period of the tender offer and closing any such transaction can be coordinated with the settlement of the tender offer.

Exchange Offers

If an issuer does not have sufficient cash on hand or available through an acceptable financing, or simply prefers to retain its cash for other purposes, an offer to exchange new debt or equity securities for the target securities (with or without a cash component) may be most advantageous.

In addition to the applicable tender offer rules, an exchange offer is an offering of securities and must either satisfy the registration requirements under the Securities Act or qualify for an exemption from the requirements. The offering documentation will therefore include disclosure that is more detailed than in a cash tender offer and more consistent with a securities offering document. Among other things, this will include a description of the offered securities and risk factors addressing the issuer's business and the offered securities. Dealer managers will generally conduct due diligence and obtain comfort letters, legal opinions and negative assurance letters in the same way as underwriters in a securities offering for cash. Similarly, the dealer manager agreement will more closely reflect an underwriting agreement for a securities offering. All of these factors typically result in exchange offers requiring significantly greater time to execute than cash tender offers.

Exemptions from Registration under the Securities Act

If an exchange offer is intended to be exempt from the registration requirements of the Securities Act, it is typically conducted in accordance with Section 3(a)(9) of the Securities Act or as a private placement under Section 4(2) of the Securities Act. It should be noted that stockholder approval may be required if the number of shares or voting power of common stock offered as exchange consideration (or underlying conversion shares in the case of equity-linked consideration) exceeds 20% of the issuer's outstanding common stock or voting power and the issue price or conversion price is less than the greater of book or market value per share of common stock.

Section 3(a)(9) Exchange Offer. The availability of the Section 3(a)(9) exemption is subject to the following conditions:

- *Same Issuer*: The original securities and the exchange securities must be issued by the same issuer.
- *Exclusively with Security Holders*: The offer must be limited exclusively to the issuer's existing holders of the target securities.
- *No Remuneration or Commissions*: An issuer may not pay, directly or indirectly, any compensation in relation to the solicitation of the exchange. In general, officers, directors and employees of the issuer may solicit holders if such persons were not hired for the purpose of soliciting holders; have other duties to which they continue to attend; and are not paid additional compensation for such activities.

It is the restriction on remuneration or commissions that often makes a 3(a)(9) exchange offer difficult to accomplish. The SEC has issued no-action letters that permit a financial advisor to undertake certain activities, including pre-launch discussions with sophisticated holders of target securities, so long as the financial advisor is not paid a success fee relating to the 3(a)(9) exchange offer. Despite this latitude, a widespread solicitation or an exchange offer with a complicated underlying business rational that must be explained to targeted holders, among other scenarios, may require more day-to-day involvement of professional dealer managers. Similarly, an issuer may determine that employee time required to execute a 3(a)(9) exchange offer is simply not an optimal allocation of human resources. Where there is a relatively limited number of holders of target securities and the rationale for the exchange and terms of the securities are easily conveyed, however, the 3(a)(9) exchange offer can be attractive to issuers as an alternative to the additional execution time and expense associated with a registered exchange offer.

Private Placement Exchange Offer. If a significant amount of the target securities is held by sophisticated investors such as QIBs or accredited investors, an issuer may elect to structure its exchange offer as a private placement exchange offer pursuant to Section 4(2) of the Securities Act. These private placements cannot include any "general solicitation" of prospective investors and must be limited to sophisticated investors. Before sending offer documents, target holders are typically pre-screened via eligibility questions or other methods, usually coordinated by the dealer managers. Since certain holders will not be eligible to participate in a private placement exchange offer, care must be taken to ensure that the structure of the exchange complies with the issuer's financing documents. For example, indentures often require that any planned consent payment be paid to all holders of the target securities. Therefore any consent payments that would be limited to only a subset of holders eligible for a private placement exchange offer would violate the terms of the indenture. Alternatively, an issuer may decide to extend the consent solicitation and/or consent payment to all holders while the exchange offer (coupled with the consent solicitation) is targeted to only qualified holders.

Registered Exchange Offers

If the limitations inherent to an exchange offer exempt from the Securities Act registration requirements are incompatible with the issuer's restructuring objectives, the issuer can conduct the exchange offer on a registered basis by filing a registration statement on Form S-4 or, in the case of foreign private issuers, on Form F-4.

Registration statements on Form S-4 or Form F-4 are not effective upon filing. The applicable registration statement must be prepared by the issuer and counsel and declared effective by the SEC prior to commencing the exchange offer unless the issuer utilizes the "early commencement" rules. In general, in order to use the early commencement rules in an exchange offer for straight debt, the issuer must provide withdrawal rights equivalent to those required in an exchange offer for equity or equity-linked securities. In addition, if the information published, sent or given to target holders must be revised to correct any material misstatement or omission, the issuer must disseminate revised materials as required in an exchange offer for equity or equity-linked securities and must hold the offer open with withdrawal rights for the minimum time periods specified in those rules. An issuer using the early commencement option in an exchange offer for straight debt will therefore lose some of its flexibility in structuring the transaction.

Under the early commencement procedures, an exchange offer may be launched with a preliminary prospectus. The required 20 business day offering period in such case is commenced while the SEC staff is still reviewing the registration statement. However, the exchange offer may not be consummated until the registration statement has been declared effective by the SEC, which may result in the need to extend the exchange offer period. As a result, issuers often defer commencement of the exchange offer until at least the receipt of SEC comments in order to diminish the risk that the SEC will require the issuer to redistribute an offering document amended in response to SEC staff comments. As a result, a registered exchange offer utilizing the early commencement procedures will still require more time to document and complete than an unregistered exchange offer or a cash tender offer.

Consent Solicitations

In connection with cash tender offers and exchange offers, an issuer may also solicit consents to amend or waive certain covenants contained in the indentures governing the target securities. In such cases, tendering security holders are commonly required to consent to the requested amendments in order to validly tender their securities. A portion of the total consideration offered is typically characterized as a consent payment, usually paid only to security holders who tender on or prior to the consent deadline, commonly 10 business days after commencement of the offer and consent solicitation. Withdrawal rights usually terminate on the consent payment deadline.[3] As noted above with respect to early tender offer premiums, this structure is intended to encourage prompt response to a tender offer and to provide the issuer with earlier feedback regarding the likelihood of a tender offer's success. This also enables the issuer to coordinate completion of the tender offer with other corporate transactions.

As noted above, consent solicitations coupled with a tender offer are commonly referred to as "exit consents" because the holder granting consent is simultaneously exiting from ownership of the target securities via tender of the securities. Tendering holders will not be affected by the amendments or waivers since they will either receive cash or exchange securities upon the consummation of the offer, at which time the amendments or waivers are typically effective. Any non-tendering holders will of course be bound by the amended terms. Exit consents can therefore serve as a means to encourage tenders of target securities because holders risk reduced covenant protection if they do not tender but the solicitation is otherwise ultimately successful. Because exit consent solicitations are widely believed to be an effective incentive to tender, advisors may propose exit consent solicitations even in tender offers for securities with relatively limited covenant protections, such as investment grade notes. Issuers should discuss with their advisors the costs and benefits of such solicitations. Perhaps more important to the issuer's ongoing business, exit consent amendments lessen the limitations imposed by indenture covenants in the common circumstance where not all of the target securities are successfully acquired either because the offer is not sufficiently appealing to holders or holders simply fail to respond and cannot be located. Of course, this benefit is less significant where the initial covenant package governing the target securities is less restrictive.

An issuer may also seek to amend the terms of its debt instruments by conducting a stand-alone consent solicitation, often so that a planned transaction will not conflict with relevant indenture covenants. Typically the amendment or waivers sought in such circumstances are more limited than exit consents because the target holders are not tendering their securities and expect continued benefits of the covenants following the amendment or waiver. In addition, issuers commonly discover (to their dismay) that the consent payment demanded by holders of the target securities is directly proportional to the significance of the issuer's planned transaction giving rise to the consent solicitation. Free-standing consent solicitations are frequently open for a minimum period of 10 business days, although a supplemental indenture giving effect to the amendments or waivers sought may be executed and delivered as soon as the requisite consents from security holders are obtained.

An issuer that intends to solicit consents, either concurrently with a tender offer or exchange offer or as a stand-alone consent solicitation, should consult counsel to carefully analyze the provisions it desires to amend. Most indentures provide that certain provisions cannot be amended without the consent of each affected holder, whereas amendments of other covenants require only majority approval. Furthermore, if the indenture governing the target securities is amended to such a degree that there would be a significant change in the nature of an investment in the target securities, any target securities that remain outstanding may be deemed "new securities." In such an event, registration under the Securities Act or qualification for an exemption from registration would be required. While this would have great significance for an issuer, amendments of terms that could possibly lead to such a result (maturity date, interest rate, principal due) generally cannot be amended without unanimous consent and, as such, should be fairly apparent to issuers and their counsel.

Finally, it should be noted briefly that in a recent case concerning an exit consent solicitation regarding notes that were subject to an English-law governed indenture, the English court determined that under applicable English contract law the solicitation was an unlawfully coercive action of the majority bondholdrs (92.03 percent of whom voted in favor of the solication) against the minority.[4] The vast majority of indentures governing non-investment grade notes, for which an exit consent solicitation can be an especially helpful tool due to the indentures' more restrictive covenants, are governed by New York law and the legal parameters of exit consent solicitation under New York contract law are well established. The case was in fact one of first impression under English law, likely due in part to the prevalence of New York law. the facts of the case also indicate that the solicitation timetable and the consideration offered to consenting and non-consenting bondholders, respectively, may be distinguishable from typical solicitation practice regarding English law governed notes. Pending appeal, perhaps the most important point of reemphasis for issuers is that they should consult closely with counsel to best balance the practical utility of a consent solicitation against the specific amendments sought and the solicitation process to be followed within the requirements of applicable contract law.

Liability Issues

As noted above, the general antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder apply to the purchase and sale of any security. This includes any privately negotiated or open-market purchases, tender offers and exchange offers. An issuer and its directors, officers, employees or agents may therefore be liable for disseminating false or misleading material information or withholding or omitting material information in connection with any such purchase. In addition, registered exchange offers will be subject to Securities Act liability, in addition to Exchange Act liability. Therefore, in addition to liability under Section 10(b) and Rule 10b-5 of the Exchange Act, liability under Section 11 (relating to registration statements) and Section 12 (relating to prospectuses and oral communications) of the Securities Act must also be considered. As in any securities transaction it is imperative that issuers evaluate disclosure obligations with counsel.

As mentioned above, it is also important for issuers to note that dealer managers in cash tender offers are not exposed to the statutory liability of "underwriters" under the federal securities laws. Dealer managers will typically ask for certain legal opinions regarding the tender offer's compliance with applicable Exchange Act provisions and regulations. However, the due diligence, comfort letters, legal opinions and negative assurance letters common for an underwritten securities offering are not typically undertaken or provided in a cash tender offer. Dealer managers in an exchange offer do have potential underwriter liability and the procedures and deliverables in these transactions more closely reflect an underwritten securities offering.

Restructuring transactions also frequently require consideration of issues arising from the application of Regulation FD. In this context, it is often necessary or desirable to consult or negotiate with certain holders of the target securities before formally commencing the transaction. Often, this is done to assess the market receptivity to an offer or determine the consideration that should be offered to achieve the issuer's objective. Depending on the information to be conveyed, an issuer may want to bind the security holders by some form of confidentiality agreement in order to ensure Regulation FD compliance. As noted above, at commencement of the offer, consideration must be given so that all material information is disclosed in the offer documents. An 8-K or other disclosure may also be required to comply with Regulation FD if only a portion of the issuer's security holders will receive the offer documents.

Conclusion

In periods of volatility in the debt capital markets, issuers will have opportunities to repurchase or exchange debt securities on favorable terms and investors will be the target of various debt restructuring programs. Ongoing debt capital requirements also require the restructuring and refinancing of existing debt. This article reviewed the most common restructuring alternatives used with respect to debt securities and some of the significant U.S. securities law issues relating to each. In addition to those discussed herein, a wide variety and combination of less common restructuring alternatives may be available, depending on an issuer's capital structure, liquidity position and restructuring goals. These restructuring alternatives involve a complex variety of regulations and issues requiring legal analysis and, as always, advance planning by issuers together with counsel is recommended. Through advance planning, issuers can best capitalize on market opportunities when they arise. Holders of target debt securities, when faced with a restructuring proposal, will also benefit from understanding the applicable legal requirements when determining whether to accept an issuer's offer.

NOTES:

[1]Salomon Brothers Inc., SEC No-Action Letter, WSB File No. 031786015 (Mar. 12, 1986) and Goldman, Sachs & Co., SEC No-Action Letter, WSB File No. 033186024 (Mar. 26, 1986).

[2]*See* Regulation of Takeovers and Security Holder Communications, Exchange Act Release No. 34-42055 (Oct. 22, 1999), available at http://www.sec.gov/rules/final/33-7760.htm. *See also* "Exchange Offers" below.

[3]Holders of the target securities in an exchange offer for straight debt that is commenced early must have withdrawal rights until the expiration date.

[4]*Assénagon Asset Management S.A. v. Irish Bank Resolution Corporation Limited* (formerly Irish Bank Corporation Limited) [2012] EWHC 2090 Ch.