

ACIC CLE Presentation

Adapting the Model Form – The Evolution of Private Placement Documentation in the Global Marketplace

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Course Outline

I. Core Principles of Private Placement Documentation

- a) Parity to Obligor Group (“Matching Guarantee”)
- b) Parity to Core Covenants
- c) Priority Debt
- d) Anti-Cookson
- e) Make-Whole
- f) Free Transferability of Notes

II. Issuance Themes Driving the Evolution of Documentation

- a) Growth in European Private Market Activity
- b) What’s Driving Issuance in Europe?
- c) The Push for Alternative Documentation Growing Globally
- d) Prevalent Alternative Forms of Documents
 - i) Common Terms Platforms
 - ii) LMA Private Placement Forms

III. Resulting Legal Trade-Offs and Considerations vs. Traditional Model Form and PP Principles

- a) US Specific Provisions Need to be Negotiated
- b) Prepayments
 - i) Change of Control
 - ii) Swap Protection
 - iii) Make-Whole Calculation
 - iv) Certain Prepayments at Par (Equity Cures, Lock-Up Amounts)
- c) “Reasonable Endeavors” to Maintain a Rating

- d) Priority Debt Concepts
- e) Limitations on:
 - i) Visitation Rights
 - ii) Request for Other Information
 - iii) Receiving Information Sent to Other Principle Creditors
 - iv) Application of Fair Value Treatment under IAS 39
- f) Maintenance of Subsidiary Guarantees and Anti-Cookson
- g) Apprehension Regarding Sharing Material Financing Agreements
- h) Amendment and Waiver Fees for Non-Consenting Lenders
- i) Governing Law
- j) Loan Notes versus Security
- k) Transfer Restrictions
- l) Voting Rights
 - i) Snooze-You-Lose
 - ii) Drag-Along Voting
 - iii) Discretion of Security Agent
 - iv) Affected Holder Voting v. Super-Majority Voting
 - v) Ability of Issuer and Affiliates to Hold and Vote Debt
- m) Enforcement/Acceleration
 - i) No Right for Individual Acceleration/Enforcement upon Payment Default
 - ii) Standstill Periods on Enforcement
 - iii) Subordination of Make-Whole and Swap Breakage in Waterfall

IV. "Globalizing" the Model Form to Take the Lead in Driving Standardization?

- a) Global Sanctions
- b) LMA Style Tax Indemnity and Tax Gross-Up
- c) Thoughts from the Audience?