

Daily Bankruptcy Review

WEDNESDAY, MAY 26, 2010

© 2010 Dow Jones & Company, Inc. All Rights Reserved.

Averting Public Securities Pitfalls During Bankruptcy

By JONATHAN CARSON AND DAVID M. SHARP

For most corporate restructuring professionals, it's no surprise that Chapter 11 presents unexpected challenges. However, even seasoned professionals may overlook or underestimate potential complications that can result when debtors do not have a strategy in place for reaching out to holders of publicly traded bonds and equities. In today's corporate restructuring arena, an increasing number of Chapter 11 cases involve complex public securities issues. Cooper-Standard, Six Flags, Lear Corporation, Idearc, General Growth Properties and Fremont General are just a few recent cases in which public-securities management has been a critical component in the execution of Chapter 11 proceedings.

The complexity of today's corporate restructuring process requires debtors and professionals to plan ahead whenever possible. Tightened credit markets, complex capital structures and the accelerated timeframes of today's bankruptcies heighten the need for a well-planned public-securities strategy to avoid mishaps in communicating with these important parties. From the onset of the case through to its conclusion, companies and their professionals should anticipate how, when and where to reach out to public-securities holders.

Public-securities holders hold securities in one of two ways - as a registered holder or in "street name." The registered holder will hold securities in its own name as shown on the books of the transfer agent for equity or with the trustee for bonds. When the security is held in "street name" it is held in the name of the bank or broker and the underlying holder remains known only to them. These holders usually remain anonymous throughout the corporate restructuring process and are reachable only through a myriad of third-party channels, such as the firms or their agents and The Depository Trust Company, the securities depository for U.S.-based securities.

Through every phase of the corporate restructuring process, debtors must maintain a chain of communication with public-securities holders through designated intermediaries. At the onset of the case, this requires identifying public securities involved in the case, which includes both U.S. and international issues, and researching known holders through various filings and listings. Upon first-day noticing and throughout the case, the debtor must provide notice to these holders of key case developments via designated channels. Prior to solicitation and balloting, the company must develop and implement effective voting procedures, treatment elections and subscription procedures, if needed. Proper planning facilitates the tabulation, reporting and certification of voting and election results for public-securities holders. Looking forward to the case's conclusion, the company must determine how best to execute plan distributions to public-securities issues, including restricted and unrestricted issues.

In the current economic environment, there are several areas where debtors may encounter pitfalls in reaching out to public-

securities holders. In particular, challenges may occur during rights offerings, plan treatment elections and when dealing with public-securities holders across international borders.

In the wake of the credit market implosion, more companies undergoing Chapter 11 bankruptcy seek rights offerings - offerings of new securities to current investors - to raise financing needed to successfully execute and emerge from Chapter 11. In situations where bonds are canceled and new equity is issued, there are complications to consider in working with the transfer agent and the trustees to ensure that any distributions to public-securities holders under Chapter 11 are handled effectively - efficient and reliable communication must be coordinated with all parties to ensure a successful outcome.

Additionally, we see an increasing number of cases in which debtors offer bondholders the option for convenience-class treatment or other treatment alternatives to those presented by the plan of reorganization. Debtors and their professionals must implement a specific action plan to ensure that public-securities holders making the election are able to receive the treatment effectively and efficiently. As part of this plan, debtors must determine if internationally held securities are involved and if so, implement the proper framework to manage them.

Across domestic and international proceedings, communication with public-securities holders takes on an added degree of complexity. Corporate debtors must be prepared to navigate the multitude of channels and approaches used to reach public-securities holders around the globe. Plan voting, treatment elections and the exercise of subscription rights must be properly executed through many layers of global ownership, which requires careful attention and awareness of local procedures. It is essential that information not only trickles down through international intermediaries, but also that votes, treatment election decisions and rights exercises make their way back up the chain and are properly effected.

As debtors and their professionals administer the challenges of reaching out to public-securities holders, their action plan should include the following steps to steer clear of potential obstacles.

1. Conduct Research to Establish Channels of Communication: Research and identify the securities issues involved at the onset of the case to open a dialogue with all parties to enhance communication and channel information to owners.
2. Keep Public-Securities Holders Informed: Distribute case notices to securities holders, including NOL Notices and Notices of Commencement, to share critical information throughout the case.
3. Customize Balloting Procedures and Corporate Actions: Develop and implement customized solicitation/voting procedures for securities holders, as well as special treatment elections and rights offering procedures.

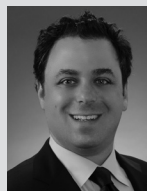
(over please)

4. Map Out Solicitation Procedures for Domestic and International Securities: Be prepared to navigate the back offices of domestic and overseas banks, brokerage firms and depositories to ensure maximum participation by public-securities holders.

5. Lay the Groundwork to Facilitate Distributions: Understand the operations and capabilities of depositories and the street when conducting plan distributions to securities holders.

The involvement of public-securities holders in bankruptcy requires restructuring professionals to enlist the necessary support and expertise to navigate key case milestones - including plan solicitation, ballot tabulation and plan distributions. Restructuring professionals who fail to consider these issues during Chapter 11 run the risk of derailing the corporate restructuring process, while those who take a proactive approach will benefit from a smoother, more efficient outcome. To be sure, Chapter 11 always presents surprises, but implementing a sound, strategic plan for managing public securities issues can give professionals some peace of mind.

Opinions expressed are those of the author,
not of Dow Jones & Company, Inc.



Jonathan Carson (top left) is managing director and co-founder and David M. Sharp (bottom left) is a director, public securities services of Kurtzman Carson Consultants, which provides administrative-support services for corporate restructuring, class action and legal document management needs. They can be reached at 310-823-9000.

