
DOWJONES | Daily Bankruptcy Review**Rolling Out of Chapter 11***David M. Sharp**April 30, 2013*

Increasingly, roll-up transactions have been used as a financial strategy during a Chapter 11 proceeding, both to raise additional funds for the debtor, as well as to reduce the amount of outstanding debt prior to determining the terms of a plan of reorganization. They require methodical and thorough planning not only to ensure a smooth and successful offer, but to avoid unnecessary complications during the plan solicitation period and the plan distribution period, all of which could result in setbacks and delays. Debtors and their advisers must heed caution in mapping out every stage of these transactions to ensure that no detail is overlooked and the most efficient administrative strategy is employed for the needs of the case.

Transactions frequently seen playing a role in the Chapter 11 process often include the ability to participate in a new financing element in conjunction with a reduction in current bond debt. This occurs via an exchange offer in which distressed investors are given the opportunity to acquire a financing stake in the company while debtors are able to restructure their balance sheets by reducing bond debt and secure additional funding for emergence from bankruptcy.

While the process might seem straightforward, there are several elements to consider when setting up the mechanics of both the financing transaction as well as the roll-up transaction. It is critical that these elements are addressed from the outset and included in the solicitation materials in order to avoid problems later on in the reorganization process. Debtors must consider, among other things: 1) the method of ensuring that only actual holders of the current bonds participate; 2) what proration methodology is to be followed if the offer is oversubscribed; 3) the mechanism for canceling any securities that are accepted in the exchange; and 4) participation of the nominees in the process.

Ensuring that only actual holders of the bonds are participating is crucial, as it is likely that the securities will continue to actively trade on the open market. There are two common ways of accomplishing this: Either require that interested bondholders "tender" (surrender their bonds into a segregated account at the depository in which trading is prohibited) their positions in order to participate, or have participation based on a record date, with tendering of the accepted bonds to follow. If it is expected that there will be a substantial period of time between the expression of interest in the offer and the consummation of it, the record date method may be preferred by holders so that their bonds are not prevented from trading for too long, but both methods provide the needed ownership assurance. When using a record date, it is common to set it as the offer deadline, as this will allow the maximum amount of time for trading during the offer period.

If an oversubscription element is incorporated into an offer, determining a proration methodology in the event of oversubscription is important, so that this information can be clearly presented in the offering documents. This will not only prevent interested parties from being surprised by any reduction in their participation, but will allow for more rapid calculation of the participation after the deadline for expressing interest.

Making sure that proper procedures are in place to cancel out the participating bonds is essential. Although the offering documents may consider the bonds accepted into the offer to be canceled, the mechanics to actually accomplish this must be in place with the nominees, depositories and the indenture trustee. This will prevent issues from arising during solicitation, such as having bonds that have technically been canceled still available to participate in the voting process, and during the plan distribution process, when holders that have already accepted the terms of the exchange must not be in the pool of remaining creditors.

Finally, the involvement of the nominees is critical. Throughout this process debtors must plan ahead to ensure the efficient flow of information to and from eligible holders. Working closely with the nominee, the banks and brokers holding securities on behalf of the actual beneficial owners, to ensure they are informed on all actions, will allow the transaction to be completed in a timely manner. The nominees must be the parties that tender the participating bonds and also facilitate the funding on behalf of their clients, so it is important to maintain their constant involvement throughout the process.

Roll-up transactions are a strategic vehicle for both a debtor and its investors. With the proper administrative framework and mechanics in place, debtors and their professionals can steer the process efficiently and in a timely manner for all parties involved. Debtors can complete a roll-up transaction successfully in a shortened timeframe due to a well-planned administrative strategy. In the end, the company can achieve both a new money commitment and a new treatment for bondholders in its plan of reorganization.



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