

Rollover Transactions – Syndication to Existing CLO Lenders

CLO reinvestment periods are expiring but demand for finance in the leveraged loan market continues. Can innovative structuring bridge the gap?

Those familiar with the European leveraged loan market have long been aware that a large proportion of collateralised loan obligation (CLO) vehicles have reached or are approaching the end of their reinvestment periods. Over the course of 2015, over €23 billion of leveraged loans held by CLOs will reach maturity and will require refinancing.

This presents a difficulty but also an opportunity for the arrangers of any secondary leveraged buyout of a company where the target group has existing syndicated facilities in which CLOs are lenders. The difficulty is that CLOs that are existing lenders may be unable to participate in a new financing for the secondary buyout because their reinvestment period has ended. However an opportunity arises if the transaction can be structured in such a way as to enable such CLOs to remain lenders, making them an attractive market for syndication. Assuming such CLOs wish to remain invested but are unable to do so because of the terms of their fund constitutional documents, they represent an obvious body of lenders to participate in syndication of the new transaction.

'Amend and extend' structures

These considerations have led to several recent (and on-going)

secondary leveraged buyouts being structured as 'amend and extend' transactions rather than as 'new' transactions. Whereas the conventional structure for the debt financing of a leveraged buyout is to put in place an entirely new facilities agreement and related finance documents to which only the purchaser's SPV companies and the lenders will initially be party, where there is an existing financing in place an alternative is to amend the existing financing instead.

Many CLOs have been able to remain as lenders in transactions structured in this way. The ability of any particular CLO to do so is governed by its own fund constitutional documents. While this means that not every CLO will be able to invest in every amend and extend structure, experience in recent transactions suggests that a large number of CLOs are likely to be able to participate in, at least, transactions structured in the way set out below.

The key amendments are generally:-

- Amendment and restatement of the existing facilities agreement so that its legal terms are consistent with the commercial position agreed between the sponsor and the banks arranging the new debt financing.
- The introduction of additional debt financing in an amount

Key issues

- CLOs are reaching the end of their reinvestment periods
- Many potential secondary buyout targets have existing lender groups that include CLOs
- Amend and extend structures may allow CLOs to continue to lend to such companies

equal to the total debt financing for the new transaction less the amount of debt being rolled over.

- The accession as an additional borrower of the sponsor SPV which is acquiring the target group.
- The amendment of the terms of the debt being rolled over so that they are the same as the terms of the new debt (in all respects and in particular as to margin and tenor).
- The release of all existing security and the granting of new security at and after closing.

These amendments are typically implemented in an amendment and restatement agreement which becomes effective on the closing date for the acquisition. The conditions precedent to the amendment and restatement agreement becoming effective generally include the

conditions that would ordinarily have been conditions to utilisation of new acquisition facilities and also the repayment of the existing lenders who are not rolling over into the new deal.

Implementation

How easy or difficult it is to implement such a structure depends largely on the content of the existing facilities agreement and the existing capital structure. The key provision of the existing facilities agreement is the 'amendments and waivers' provision. Because the amendments are very likely to entail a change in margin and a change of tenor, unanimous lender consent will likely be required. If so, the existence and terms of 'snooze and lose' and 'yank the bank' provisions will be important.

Another practical issue on implementation is co-ordination between the existing and new facility agents. The documentation effecting the rollover and the consent of the existing lenders to it will have to be satisfactory to both agents (existing and new) and co-ordination of lender lists, administrative details and so forth will be required. Additionally, timing is key to implementation. The process for triggering the

effectiveness of the amendment transaction - particularly satisfaction of the condition precedent in relation to repayment of the existing lenders who are not rolling over into the new deal and the associated release of the existing security – is likely to be the issue that both the existing and new facility agents focus most closely on.

Alternative structures

In certain situations, a 'cashless roll' of loans made by existing lenders is all that is required. This would be the case where lenders are unable to physically advance new funds but are able to participate in an exchange transaction. In that situation, a rollover could be structured as a simple exchange of loans in the existing facility for loans in the new facility and documented by way of an exchange contract. However the reason for structuring the transaction as an amendment to the existing financing documents is that the fund constitutional documents of certain CLOs prohibit the making of new loans after the end of their investment period, even if the new loan is acquired by way of exchange.

Other considerations

An amend and extend structure adds complexity to an acquisition financing and may result in additional issues arising. These issues may include:-

- Whether lenders rolling into the new facilities can or should be scaled back in the event that the syndication of the new facilities is oversubscribed. If so, the documents signed by the rollover lenders should be sufficiently flexible to accommodate this.
- Whether rolling over some lenders could result in non *pro rata* lending by lenders within the same facility to different borrowers and whether this is acceptable.
- Whether the borrowers in respect of the rollover lenders will have to change (for tax planning purposes or otherwise).

Conclusion

Following the success of recent high profile rollover transactions such as Springer Science + Business Media, it seems likely that arrangers of future transactions will see value in using amend and extend structures. Clifford Chance are working on some such deals which are already in progress.

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