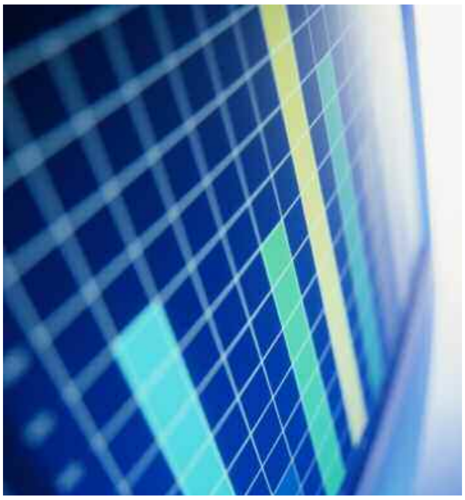
CLIFFORD CHANCE

Briefing Note
November 2011

Summary of Significant Differences between Customary Bank Facilities and Customary High Yield Note Indentures

Set forth below is a high level comparison of customary terms contained in bank loans and high yield notes. The below has been created on a generic basis with an intention of highlighting key areas of variance in these types of financing and, in particular, to illustrate some of the meaningful differences from the bank loan "maintenance" covenant approach and the high yield note "incurrence" covenant approach.



This summary is, however, not intended to be exhaustive but rather has sought only to address key, high level differences and, in particular, those that reflect the "philosophical" differences between the bank and bond markets. In particular, it is worth highlighting that –

- there may be greater or less variation on specific deals as the general terms may be subject to significant deal specific negotiation;
- the below has highlighted areas where the covenant packages have some degree of overlap; a bank loan will, however, in all likelihood have significant additional covenants which have not been listed below; and
- the market has seen a number of transactions, in the form of Super Senior RCFs, "covenant lite" or other manifestations, where the delineation between traditional bank facilities and high yield note financings have been blurred and where cross- pollination has occurred.

Should you be interested in discussing the below further or would like to explore the differences between customary bank financings and high yield note financings, please contact any of
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	Customary Bank Loans Terms	Customary High Yield Note Terms
Who is bound by the covenants?	The Borrower and, typically, substantially all subsidiaries – the Obligor Group generally covers most, if not all, of the group companies	The Issuer and its Restricted Subsidiaries (Note: Unrestricted Subsidiaries are not bound by the covenants, but are severely restricted in their ability to interact with the Restricted Group as a result of the Affiliate Transaction Covenant and their results are typically not counted for purposes of Consolidated Net Income or EBITDA, and thus impacting the Restricted Payments capacity and the debt ratio test)
Covenants	Includes both – ■ Financial covenants ■ Positive and negative covenants ■ Reporting covenants	Contains incurrence covenants only (**no financial covenants**), as well as reporting and other basic affirmative covenants
Debt incurrence covenants	Ability to incur additional indebtedness severely limited, generally only ability is to incur *de minimis* and other specifically included items of future indebtedness pursuant to listed exceptions – “Permitted Financial Indebtednesss”	Ability to incur debt is limited, but future debt can be incurred pursuant to either – ■ Incurrence test, typically based on either • a leverage ratio or • a fixed charge coverage ratio or ■ under “Permitted Indebtedness” exceptions (generally including reasonable exceptions and other baskets which are not tested against the debt ratio test) (NB, for senior deals, incurrence test may also include an additional senior leverage test)

	Customary Bank Loans Terms	Customary High Yield Note Terms
Lien/Security covenants	Typically ability to incur additional liens is highly limited and subject only to a defined list of exceptions – "Permitted Security"	Ability to incur further liens generally allowed as long as the notes are also secured equally and ratably (*e.g.* subject to a "Springing Lien" test). Also subject to a defined list of "Permitted Liens", which are generally liens incurred in the ordinary course of business and other carve-outs related to certain categories of permitted debt. (NB, if notes are secured, incurrence of liens on the security package will be more limited, subject to "Permitted Collateral Liens" only)
Investments/Dividends (Restricted Payments) covenants	Highly limited, payments and investments will be subject to specified listed exceptions which are, typically, operationally focussed – "Permitted Distributions" and "Permitted Payments"	Investments, dividends and other similar payments ("Restricted Payments") are permitted pursuant to either – ■ listed exceptions (either direct exceptions to the covenant or other listed "Permitted Investments") or ■ pursuant to the "Restricted Payments Build" based on – • 50% of net income (or less 100% of any net loss) • additional contributions of equity or subordinated shareholder debt • no defaults or events of default outstanding and • issuer has the ability to incur €/£/$1.00 of debt under the debt ratio test

	Customary Bank Loans Terms	Customary High Yield Note Terms
Merger/Consolidation covenant	"Permitted Reorganization" allowed subject to limitations including – ■ must be with a group company (and thereby limited to specified jurisdictions) ■ must be done on a solvent basis ■ Lenders interest must not be adversely impacted (e.g. no impact on security interests, etc.)	Allowed at issuer level provided that ■ New entity is formed under a list of acceptable jurisdictions (typically pre-expansion EU and US) ■ New entity fully assumes all obligations under the indenture ■ issuer has the ability to incur €/£/$1.00 of debt under the debt ratio test
Asset Sale covenants	Sale of assets limited to specified "Permitted Disposals" which are generally operationally based. Asset sales that do not benefit from such exceptions are subject to mandatory pre-payment provisions (subject to limited exceptions and *de minimis* carve-outs)	Asset sale permitted subject to the following – ■ Fair value received on sale ■ 75% of proceeds are in cash (or securities converted into cash in an agreed period of time) or assets to be used in the business Issuer is allowed to use proceeds of from the asset sale to – ■ reinvest in assets for the business or ■ repay senior or bank debt If asset sale proceeds are not so used within 360 days (in some cases the issuer is allowed to enter into contractual arrangements to re-invest the proceeds within 360 days, provided that they so reinvest within a further 180 days), then the proceeds must be used to offer to repay the notes (subject to a *de minimus* threshold) (NB, this is an offer only, not a mandatory repayment)

	Customary Bank Loans Terms	Customary High Yield Note Terms
Affiliate Transaction covenants	Transactions required to be on an arm's length basis. Certain test may be applied to confirm arm's length nature.	Transactions with affiliates allowed provided that – ■ terms are on an arm's length basis ■ fairness of terms are certified by • a resolution of the issuer's board of directors and • for larger transaction (threshold to be agreed), a fairness opinion of an independent financial advisor ■ payments that are permitted pursuant to other covenants (i.e., Restricted Payment covenant) are permitted under the Affiliate Transaction covenant
Reporting	Required information typically includes – ■ annual financial statements ■ quarterly financial statements ■ monthly financial statements ■ annual business plans ■ annual budgets ■ management presentations ■ other miscellaneous information	Required reports typically limited to – ■ annual financial statements ■ quarterly financial statements ■ current information reports (subject to negotiation which events must be disclosed)

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Change of Control	Definition typically requires affirmative control of defined Sponsors or other parties (*e.g.*, Permitted Holders must own 50.1%), but may have exceptions for IPOs (often subject to maintenance of certain elements of "control") A Change of Control is an automatic repayment event	Definition typically only requires that no one else other then defined sponsors control company (*e.g.*, no party other than the Permitted Holders owns more than 50%) Change of Control requires a offer to noteholders repurchase notes at 101% of their par value (but it is not an automatic repayment event)
Events of Default	Many of the Events of Default are similar, but trigger levels are typically lower than in bond indentures, but - ■ Includes cross defaults to other debt ■ Requires majority lenders (*i.e.* 66⅔%) of lenders to declare a default and accelerate	Many of the Events of Default are similar, but trigger levels are typically higher than bank facilities, but - ■ Cross accelerations only ■ Requires 25% of noteholders to declare a default
Amendments - Majority Lenders/Noteholders	Majority Lenders - typically 66⅔% Some decisions require all lender consent of Super majority Lender (*e.g.* 85%) consent	Majority Lenders - 50.1% Some decisions require all noteholders consent (but recent deals have reduced this to a 90% threshold)
Maturity/Amortization	Ranges – ■ 4 to 7 year tenors (will be based on overall transaction structure) ■ Some tranches may amortize or have periodic payments ■ Some tranches may have bullet only payments	Typically – ■ 7 to 10 year tenors ■ Bullet payments (no amortization)

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Representation and Warranties	In substance, relatively similar; but repeated on a periodic basis (*e.g.* each utilization date, the first date of each interest period, etc.)	In substance, relatively similar; but only made at the time of issuance
Prepayment	Generally pre-payable at any time Subject to numerous mandatory pre-payments – Change of Control, Asset Sale, at maturity, upon acceleration, etc.	Subject to pre-payment limitations ■ Non-callable for half the tenor of the notes (or subject to a make-whole) ■ Once callable, callable at a price equal to par plus half the coupon, with the premium being reducing ratably to par one year prior to maturity ■ Prior to non-call date, issuer can redeem up to 35% of notes with proceeds for certain types of public equity offerings (at par plus the coupon) subject to certain conditions. (NB, floating rate notes typically have more flexible call provisions) Generally only mandatory pre-payment at maturity or upon acceleration, but subject to several requirements to offer to repay notes (but decision as to whether to accept pre-payment is at the discretion of the noteholders), for example – ■ Change of Control (offer at 101%) ■ Asset Sales Proceeds

	Customary Bank Loans Terms	Customary High Yield Note Terms
Syndication/Initial Sales	Syndicated to other banks and other lenders, syndication done utilizing information memorandum/bank book with disclosure on the borrower (subject to confidentiality provisions). Typically no significant liability for the arrangers.	Notes are securities and sold through a formal securities issuance utilizing a full (typically 144A compliant) offering memorandum which is generally publically available (and will be once notes are listed). Initial purchasers have potential securities law liability. In addition, notes are customarily rated by the rating agencies, often both S&P and Moody's.
Transferability	May be contractually limited depending on terms of the loan, typically – ■ Pre-event of default, notification or consent requirement and ■ Post-event of default (while continuing) no limitation	Listed security, unlimited transferability (subject to securities laws limitations)