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Financing and refinancing alternatives in the current market

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At-the-market offerings

At-the-market (ATM) offerings

- Unlike a typical prospectus offering, does not obligate the issuer to sell any securities
- Allows the issuer to set up a program under which the issuer may, at its option, access the public equity markets on short notice
- Executed on an agency basis with a registered dealer(s)
- For cross-listed issuers, can be established in Canada, US or a combination thereof

Requirements to establish an ATM program

- Obtain an exemptive relief order from the applicable securities commissions from certain regulatory requirements
  - typically this caps sales at 25% of daily trading volume on the TSX
  - typically requires monthly disclosure of total gross proceeds, commission and net proceeds under the ATM (in addition to quarterly disclosures)
- File a base shelf prospectus that states the issuer may engage in non-fixed price offering transactions
- Once the base shelf has been cleared and receipted and the exemptive relief order has been obtained, execute and file an "equity distribution agreement" and a prospectus supplement

Requirements to maintain an ATM program

- Quarterly diligence update calls and bring-downs of comfort letters

Advantages to an ATM

- Flexibility
- Lower commissions typically paid

Disadvantages to an ATM

- Time lag in obtaining exemptive relief order
- Quarterly requirements may be onerous

High yield debt update

High yield debt update – Marketing implications

Broadly marketed vs club marketed

- Role of arranger
- Coupon: Market based vs pre-agreed
- Terms: Market based vs negotiated
- Amendments & waivers
- Reporting

- Minimum sizing
- Credit ratings
- Offering document
- Due diligence & opinions
- Road shows

High yield debt update – Recent trends

Warrant sweeteners

- Minimize debt coupon
- Common in bilateral and other club deals
- Stock exchange approval/compliance required

Term sheet for follow-on offerings (no other offering document)

- Possible where strong demand and short supply of outstanding notes
- Quick execution and reduced time and costs

High yield debt update – Recent trends (cont'd)

Senior lender considerations

- Borrowing base "grind" for subordinated debt less common
- Advance senior lender consent

Co-offered senior/subordinated debt facilities

Early repurchase/redemption

- Increased redemption rights:
  - Equity "claw": 35% of notes @ par + ½ coupon
  - Full buyback of notes at 110% of par within first year
  - 10% of notes per year (at premium)
- Conditional redemption & redemption notice

EDC Guaranteed Letters of Credit

EDC guaranteed LCs

Overview

- Issue
  - Exploration and production corporations are required to provide letters of credit in increasing size and frequency:
    - Pipeline companies
    - Environmental reclamation obligations
  - Letters of credit reduce borrowing capacity
- Several insurance, surety and guarantor entities are interested in providing solutions for this increasingly significant challenge.

EDC guaranteed LCs (cont'd)

- Export Development Canada is a Crown corporation and Canada's official export credit agency.
- EDC has a mandate to support and develop Canada's export trade markets.
- Any supported transaction must fit within this mandate for EDC to become involved.
- The interpretation of this mandate has recently broadened.

EDC guaranteed LCs (cont'd)

- EDC a "Performance Security Guarantee" that can, in many circumstances, assist entities to reduce LC issuance costs.
- LC must generally relate to activities with an international angle
  - Marketing
  - Transportation – pipelines
- Effect upon senior credit facilities

EDC guaranteed LCs (cont'd)

- Fees
  - EDC guarantee fee
  - Senior credit agreement LC fees
- Drawdowns
  - Issuing bank funds LC drawdown
  - Issuing bank can claim against borrower or EDC
- Challenges
  - Normally need senior lender agreement
  - Reimbursement obligation is a form of indebtedness
  - Security may be required

Corporate act restructurings

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Traditional insolvency statutes vs. restructuring process under corporate legislation

- Advantages to proceeding under a corporate statute
  - No corporate monitor
  - Shorter timeline
  - Less stigma
  - Flexibility
  - Availability of stays of proceedings

Traditional insolvency statutes vs. restructuring process under corporate legislation (cont'd)

- Disadvantages to proceeding under a corporate statute
  - Solvency requirement
  - Consideration of stakeholders
  - Role of the Director

Traditional insolvency statutes vs. restructuring process under corporate legislation (cont'd)

- Process for the approval of the transaction under corporate legislation
- Closing remarks

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