WHITE & CASE

Insight: Bank Finance

October 2014

2014 – The times they are a-changin'

While some of us are old enough to remember the heady days of straight forward senior / mezzanine deals (sometimes with a PIK thrown in for good measure), it is clear that in the current market you can no longer predict what type of deal will next hit your desk. The past few years have seen intense variability in terms of debt structure, regulatory requirements, market liquidity and the ever competing interests between different classes of debt holders.

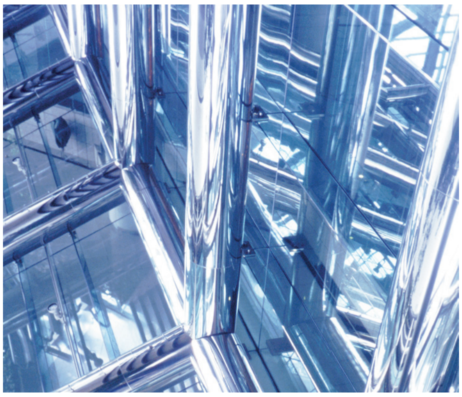
While European borrowers have continued to look to the US for liquidity through yankee loans, 2014 has seen an increasing number of European covenant-loose and **covenant-lite** structures being accepted by the European market. In connection with this, high yield remains a key piece of the European leveraged finance markets. Overall, the breadth of knowledge we have built on in the last few years has been invaluable and the transactions White & Case has acted on in recent months illustrate that the variability has continued in the first three quarters of 2014.

The below forms a snapshot of some of the varied and innovative deals on which White & Case has acted in 2014, across its London and New York bank finance and high yield teams.

New York law

The depth and liquidity of the US investor base provides an attractive alternative for European borrowers in the leveraged finance market and has, over the past few years, been a key source of refinancing and, more recently, acquisition finance liquidity. White & Case lawyers in London and New York have been in the forefront of developing innovative financing solutions – and closing big ticket deals, such as the recent acquisition financings of Mallinckrodt International and Endo Health Solutions – that allow European leveraged credits to access US institutional term loan and high yield markets directly through the use of New York-law governed documentation. Yankee loan financings have benefited European borrowers by allowing them to tap into more readily available sources of liquidity, obtain more favourable deal economics and negotiate greater covenant flexibility.

Case in point is a recent LBO which was initially earmarked as a European financing on announcement of the deal. However, with more attractive terms on offer in the US market the debt structure was reworked prior to deal close as a yankee loan financing.



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White & Case was well placed to represent the arrangers in this deal, offering the knowledge and experience required across both the London and New York leveraged finance sphere to seamlessly accommodate the change in structure.

English law

Tracking the terms of European leveraged loans over the last three quarters, it is clear that European loan terms are in a state of rapid transition, moving with increased speed in recent months to align with terms which have for some time been common place in US financings. In terms of financial covenants, we have seen a drastic shift from loan agreements containing a "full suite" of maintenance covenants, still market standard at end of 2013, to covenant-loose loan structures (one or two maintenance financial covenants) in Q1 and Q2 2014 to, most recently, covenant-lite structures (no maintenance financial covenants for term loans, with a springing leverage covenant for revolving credit facilities). Likewise, grower baskets are starting to become a common ask by borrowers in bank financings. Grower baskets, which have long been a feature of high yield bonds and US term loan Bs, initially started to appear in English law governed documents in connection with the debt incurrence covenant. We are now seeing grower baskets commonly appearing in relation to other covenants, such as restricted payments, permitted acquisitions and permitted disposals. With syndication processes of the English-law governed first and second lien financing of Advent's acquisition of **Corialis** and the English-law governed refinancing of the existing debt of **Delachaux**, both closing last week, we are reminded that, although European investors are still maintaining an element of caution, looser terms have become more widely accepted. As a further example, Delachoux allocated successfully as a covenant-lite deal.

Bank / Bond

While yankee loans and covenant-loose / covenant-lite loans have been dominating the headlines in 2014, we continue to see high yield issuances being made by borrower groups across the Continent. With a number of high profile European bank / bond financings under its belt in 2014, including **Innovia**, **Play**, **Cabot Financial** and **Fives**, White & Case's network of European offices and experienced teams of bank finance and high yield lawyers allow it to provide an unrivalled and integrated service to its clients seeking bank / bond debt structures.

Another important market development has been, as the geographic and product reach of international high yield continues to expand, to include high yield covenants into more traditional UK law Eurobond structures, as evidenced by the recent **Helios Towers** high yield bond transaction in Nigeria. In the transaction, which we believe is the first international bond issue for a Nigerian corporate (non-financial institution), the high yield covenants were added as a credit enhancement to improve marketing and pricing of the offering, a trend which we expect to continue as Eurobond investors become more sensitive to deal structures.

Conclusion

European and US capital markets currently appear to be in good shape with debt structures continuing to adapt to sources of liquidity, as evidenced by European borrowers' ability to obtain covenant-lite deals in the European market. It also seems clear that high yield bonds will continue as a common feature of leveraged finance capital structures, notwithstanding the prospect of rising interest rates. Commentators are predicting a continued uptick in corporate M&A into 2015, with European borrower groups actively looking at opportunities. This should in turn have a positive impact on loan and bond volumes. One thing that does seem certain is that a great variety of transactions will continue throughout the rest of 2014 and beyond.