Vincent Pisano
203.599.1000

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Recent Lender Gains

We have written numerous reports on credit agreements in which we have highlighted not only the usual deficient provisions, but also new, off-market terms. In the past three weeks, within days of publishing our reports, we received changed pages to four of those agreements that eliminated some of the major problems we identified.

These changes:

- expanded MFN protection so that it was triggered by all incremental *pari passu* loans (albeit sometimes with an exempt dollar amount), eliminated MFN sunsets and restored the permitted spread to 50bps;
- expanded the soft-call period to 12 months;
- capped EBITDA addbacks and reduced the look-forward period from 36 to 24 months;
- eliminated the step down in asset sale proceeds required under the mandatory prepayment/reinvestment provisions, which also eliminated retained sale proceeds from RP capacity;
- reset the ratios for unlimited RPs and investments to be closer to the market expectation of at least a 1.0x and 0.50x reduction from the closing date ratio, respectively; and
- filled holes in reporting requirements.

This is not to say that lenders should feel good about things. Even after these changes, material issues in the agreements remain, including the ability to (1) invest too heavily in Unrestricted Subsidiaries, (2) dividend Unrestricted Subsidiaries at any time, (3) make unlimited investments in non-guarantor Restricted Subsidiaries, (4) add back normal business expenses to EBITDA, and (5) amend *pro rata* sharing provisions by majority consent. Nevertheless, it is gratifying to see at least some attention being paid by financial sponsors to lenders' concerns.

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