CRAVATH, SWAINE & MOORE LLP

COVID-19: Certain Financing and Restructuring Considerations

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Liquidity Position

- **In light of widespread business disruption due to COVID-19, it is likely that an increasing number of companies will face near- (and potentially long-) term declining revenues, liquidity constraints and potential challenges to servicing debt**

- **For these companies, it is imperative to consider proactive measures to bolster near-term liquidity and enhance financial flexibility, especially given the fluid and volatile nature of this situation and its potential to continue for an extended period of time**

Liquidity Position

- **Key Considerations**
  - Analyze current and projected liquidity levels, comparing them against immediate and long-term liquidity needs
    - Evaluate capital expenditure and discretionary spending
  - Preserve cash
    - Develop and execute cost reduction plan
    - Identify variable costs, addressing those that can be dealt with immediately
    - Consider necessity and costs/benefits of proceeding with certain planned transactions (*e.g.*, investments, acquisitions) at this time in light of economic uncertainty and impact on credit market
    - Track outbound and inbound payment amounts and timing
    - Recover on receivables as quickly as possible

Liquidity Position

- **Key Considerations (cont'd)**
  - Assess available sources of liquidity
    - Consider current and future ability to access available financing, including any available revolving credit facilities
      - Pay careful attention to ability to satisfy drawdown conditions, including no default and bring-down of representations and warranties (including no MAE/MAC and solvency)
      - Keep in mind other potential defaults, including if it becomes certain that it will be impossible to satisfy upcoming financial covenants
      - Consider impact of drawing on covenants (*e.g.*, leverage covenant; tripping "springing" covenants or cash dominion requirements in ABL facility)
      - Ensure compliance with notice and public reporting requirements related to draw
        - If a company decides to make a material draw of its revolving credit facility, it should consider the need to file a Form 8-K (Item 2.03)
    - Consider if non-core assets can be monetized
  - Consider obtaining new financing
    - Be flexible and consider non-traditional lender sources if necessary
    - Assess possibility/desirability of alternative financing, such as junior or second lien debt, mezzanine debt, subordinated debt, preferred stock, financing secured by unencumbered assets, etc.
    - For certain companies/industries, government funds may be or become available – keep a close watch on developments and available opportunities, recognizing that government funding may come with conditions that are more extreme (or politically motivated)
  - Parties that are currently negotiating financing arrangements will need to account for the potential impact of COVID-19 on the transaction

Executive Strategy

- **Economic unpredictability and widespread market disruption will require strategic engagement and swift leadership from a well-informed, well-prepared executive team**
  - Developing and implementing business strategies in light of the COVID-19 outbreak will require thoughtful planning and additional mechanisms that will likely look different from those employed in the typical "business as usual" scenarios

- **Key Considerations for CFO and Executive Team**
  - Accelerate exit from unprofitable business lines
  - Keep close eye on supply chain issues/interruptions
  - Plan/forecast for a "new world order", applying realistic assumptions in light of COVID-19 impact over various potential timetables
  - Assess effects on labor and employment issues
  - Take measures to ensure that business will be ready to ramp back up quickly and efficiently once disruption ends

Distressed (and Newly Distressed) Companies

- **Given the negative impact of COVID-19 to date and uncertainty as to the duration and extent of the consequences that loom ahead, companies across a variety of industries are facing severe headwinds**
  - Unlike last financial crisis, not primarily affecting financial sector
    - Rather, impact is dispersed across industries, in particular the transportation, tourism/hospitality, retail, entertainment, energy and industrials (including manufacturing) and technology sectors
  - This kind of across-the-board economic shutdown is unprecedented

- **Key Considerations for Distressed (and Newly Distressed) Companies**
  - For those companies that were distressed prior to the COVID-19 outbreak, time is of the essence now more than before
    - Critical to engage in restructuring discussions with lenders sooner rather than later
      - Timely preparation to evaluate and get buy-in for potential restructurings, refinancings, maturity extensions, standstills, covenant relief, etc.
    - Assess liability management schemes and develop strategy for negotiations
      - Private repurchases or cash tender offers to buy back debt at a discount (if trading below par)
      - Debt exchanges to extend maturities
  - For those companies that were previously healthy but suddenly find themselves in distress or forecast imminent financial downturn, it will be important to seek advice of restructuring professionals sooner rather than later
    - Seeking timely advice will be particularly critical given unpredictable market swings and uncertain state of the credit market

Chapter 11 Considerations

- **While active and timely engagement with creditors will be an important first step towards achieving a meaningful restructuring, it may be more difficult to successfully reach an agreement with creditors in the current environment**
  - Potential challenges to putting in place appropriate financing for a restructuring
  - Potential lack of creditor cooperation and concessions

- **It may be appropriate for certain companies to begin chapter 11 preparations as a "fallback" alternative, to be conducted in parallel with ongoing creditor negotiations**

Chapter 11 Considerations

- **There is usually an event – often running out of cash or other liquidity-based events – that triggers the need to seek chapter 11 protection**
  - Given current circumstances, that triggering event may come about very quickly (or at least much quicker than expected)
- **Seeking chapter 11 protection may be necessary to preserve and maximize value**
  - Preparation is key to avoid a "free fall" chapter 11 filing, which can be value-destructive
- **Filing for bankruptcy provides certain rights and protections that are otherwise not available, including ability to suspend debt payments and to reject unfavorable leases**
- **While a board's duty is to continue to maximize the value of the company as a whole, it must consider creditors' interests in an insolvency situation**
  - Take care not to adopt inappropriately high-risk strategies in an attempt to save value for shareholders
  - Try not to be distracted by the challenging and unfamiliar circumstances – continue to focus on proper process and informed decision-making

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