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# Client Alert Commentary

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# Navigating Debt Repurchases: What You Need to Know

**Key Points:**

- Market shifts often lead companies and their affiliates to consider debt repurchases.
- Important legal considerations to factor into that analysis include:
  - Potential disclosure obligations
  - The impact of tender offer rules
  - Contractual limitations or restrictions
  - Potential tax consequences for debt repurchased at a discount.

This Client Alert examines the key issues that typically arise in non-convertible bond repurchase programs,[1] before turning to the issues unique to repurchases of syndicated bank debt. It also looks at issues applicable to both bond and loan repurchases.

This discussion is intended to provide general answers that may be useful in planning a debt repurchase program. However, companies and their affiliates should consult with counsel about the facts specific to their circumstances before commencing any such program.

## Issues Particular to Repurchases of Bonds

### Disclosure Issues

The anti-fraud provisions of the US federal securities laws impose broad restrictions on the purchase or sale of securities while in possession of material non-public information. Purchasers of debt securities need to bear these restrictions in mind, such as Exchange Act Rule 10b-5's requirement to disclose material non-public information or abstain from trading (in addition to those contained in Regulation FD and the European Union and United Kingdom onshored Market Abuse Regulation(s) (referred to as EU MAR and UK MAR, respectively, and collectively as MAR[2])).

Prior to making any purchases, the issuer must analyze whether it has material non-public information, such as unreleased earnings or financial results, or an unannounced material transaction. For example, an issuer that is about to announce a merger that would trigger a change of control put right under a bond indenture generally should not be in the market purchasing those bonds at prices below par until the merger is publicly announced. Entities considering purchasing the debt securities of an affiliate face similar issues with respect to material non-public information they possess (or would be deemed to possess) about the issuer. As a result, both issuers and their affiliates should work with counsel to make appropriate materiality judgments regarding undisclosed facts and upcoming events, and to develop repurchase plans that comply with Rule 10b-5, Regulation FD, and MAR.[3]

In addition, in every bond repurchase program, the question arises whether the launch of a bond repurchase program is itself material non-public information that should be disclosed to stockholders and/or bondholders in advance of commencement of the program. If the total “float” of a particular series of bonds will not be materially reduced through issuer repurchases and retirements, it may be reasonable to conclude that disclosure prior to commencement would not be required.[4] In some cases, however, a repurchase program’s impact on the float or the trading market for the subject bonds or the impact on the issuer’s financial condition or results may be independently material, and in those cases an issuer may conclude that additional disclosure would be appropriate. Absent unusual circumstances, market participants generally take the position that the fact that an affiliate of the issuer is preparing to repurchase bonds is less likely in and of itself to be material non-public information.

With respect to the impact of an issuer repurchase program on financial condition or operating results, it may be important to consider whether the potential decline in the amount of outstanding debt and pro forma interest expense, when weighed against the reduction in the issuer’s cash, would permit a bondholder to argue credibly that it would not have sold at the agreed price if it had known that the financial position of the issuer would be so improved by the repurchase program. The materiality of any tax liability triggered by repurchasing the debt at a discount could also impact this analysis.

If the effect of the issuer repurchase program is not material either to the issuer’s financial condition or to the trading market for its bonds, as a general matter, it would be reasonable to conclude that no specific disclosure of the commencement, pendency, or conclusion of the repurchase program would be required. However, each case is unique, and each inquiry is highly fact specific. There will be some cases where a press release or updated disclosure in the issuer’s periodic reports will be warranted. Companies should also keep in mind that future financial statements will reveal the retirement of repurchased bonds.

In the event an issuer intends to implement a debt repurchase program that, due to its scope or other characteristics, should be disclosed prior to commencement, there are several ways to make the required disclosure. The most immediate way is to issue a press release announcing the launch of the debt repurchase program and, in the case of an SEC-reporting company, furnish or file a Form 8-K with the SEC as an Item 7.01 or 8.01 disclosure item. The following text is an example of a pre-commencement press release and/or 8-K.

> “We are aware that our outstanding debt securities and debt under our credit facility are currently trading at substantial discounts to their respective principal amounts. In order to reduce future cash interest payments, as well as future amounts due at maturity or upon redemption, we may, from time to time, purchase such debt for cash, in exchange for common or preferred stock or debt, or for a combination thereof, in each case in open-market purchases and/or privately negotiated transactions and upon such terms and at such prices as we may determine. We will evaluate any such transactions in light of then-existing market conditions, taking into account our current liquidity and prospects for future access to capital. The amounts involved in any such transactions, individually or in the aggregate, may be material.”

A common method of more generalized pre-commencement disclosure is to include a similar statement of intention in a regular periodic report. For example, in the “Liquidity and Capital Resources” section of the MD&A included in the company’s periodic reports on Forms 10-K and 10-Q (or similar private bondholder reports), it may be advisable to insert disclosure along the following lines (tailored, of course, to the issuer's actual situation):

> "We or our affiliates may, at any time and from time to time, seek to retire or purchase our outstanding debt through cash purchases and/or exchanges for equity or debt, in open-market purchases, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will be upon such terms and at such prices as we may determine, and will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved may be material."

Of course, this option is only available for those who plan ahead. The authors recommend that all issuers with outstanding debt securities consider this or similar disclosure in their periodic reports, which may be helpful when evaluating whether pre-commencement disclosure is required.

## Does a Bond Repurchase Implicate the Tender Offer Rules?

The SEC's tender offer rules may impose limitations that make bond repurchases less attractive.[5] Notably, although the SEC Staff has issued no-action guidance to shorten the minimum period for a debt tender offer to five business days in certain cases, tender offers that do not meet the criteria set out in that guidance — for example, third-party tenders and offers for less than all securities in a class — are required to be kept open for a minimum of 20 business days, among other requirements.[6]

So, what is a tender offer? In its clearest form, a debt tender offer is an offer broadly made to all bondholders to tender their bonds for sale at a specified price over a fixed period of time, subject to specified conditions. However, the SEC has never adopted a definition for the term "tender offer." That term instead is defined by case law, from which certain central definitional principles have emerged.

Based on the principles that have developed from case law, market participants typically conclude that accumulations of bonds solely through ordinary open-market transactions generally should not implicate the tender offer rules.[7] It is very common for an issuer (or affiliate of an issuer) to simply repurchase debt that is available in the open market through a broker-dealer in an efficient and effective manner that does not generally constitute a tender offer. However, in other circumstances, including where the repurchase program will include active solicitations or negotiations to purchase bonds, companies and their affiliates should consider the following prudential factors in designing and implementing their bond repurchase programs in order to avoid characterization as a tender offer:

- **Timing:** Make the repurchases over a reasonable period of time based on the circumstances — avoid set time periods or deadlines in connection with negotiations.

- **Number of Solicited Sellers:** Solicit only a limited number of potential sellers; the fewer the number of holders contacted, the better.

- **Variable Prices and Terms:** Make purchases from multiple sellers at individually negotiated prices and on different terms. The greater the variation in price and terms, the better.

- **Nature of Sellers:** Limit purchases to those from sellers that are sophisticated institutional investors. Market participants generally take the view that the purchase of 80% or less of a series of bonds from a limited number of sophisticated institutional investors does not constitute a tender offer.

- **Character of Offer to Purchase:** Refrain from applying pressure to potential sellers to sell their bonds, such as "take it or leave it" offers, offers conditioned on other purchases, or offers open for very short periods before being rescinded.

Undoubtedly, all facts and circumstances will be relevant in determining what constitutes a tender offer.

### What Contractual Restrictions Apply?

The issuer must also consider whether the repurchase of its outstanding debt securities is consistent with the issuer's contractual obligations. The indenture governing a particular series of bonds being repurchased is unlikely to prohibit or limit repurchases of those bonds by either the issuer or its affiliates. However, if the issuer has any outstanding bank debt, the credit agreement may prohibit repurchasing other debt, even *pari passu* unsecured debt, absent pre-negotiated baskets usable for this purpose. In certain instances, credit agreements may limit, or require *pro rata* prepayment upon, prepayment of other equally and ratably secured debt. Moreover, repurchases of subordinated debt are likely to constitute "restricted payments" under both credit agreements and bond indentures governing senior debt securities. Finally, the source of funds for such repurchase may impact an issuer's compliance with its debt agreements. All of these covenants must be carefully examined before the repurchase program is commenced.

### Can Bond Repurchase Programs Help a Company Win a Consent Solicitation?

Issuers and affiliates should not pursue a debt repurchase program for the purpose of gaining voting control over bonds in anticipation of an upcoming consent solicitation. Virtually all indentures provide that bonds held by the issuer or its affiliates are disregarded for purposes of determining whether requisite consents have been obtained.[8] As a result, a buyback program by an issuer or affiliate will not typically affect the outcome of a consent solicitation to the issuer's advantage. In fact, by reducing the number of bonds deemed outstanding for purposes of a consent, a bond repurchase could have the undesired effect of concentrating ownership in the hands of fewer bondholders and providing them with extra leverage in a consent solicitation.

### Will Repurchases Impact Credit Ratings?

Issuers should consider whether a bond repurchase, or the announcement thereof, could trigger negative rating actions. Rating agencies may view significant repurchases as a "distressed exchange," which could result in rating downgrades. Agencies may issue a negative rating if a realistic probability of a default exists and investors receive less value than promised on the original securities as a result of the bond repurchase. Issuers of highly speculative bonds (B-/B3 or lower) are particularly likely to experience a negative rating action as a consequence of a bond repurchase below par.

### What Are Some Additional Issues for Affiliates?

In addition to the issues previously described, affiliates of bond issuers (for example, private equity owners of portfolio companies) face other hurdles when buying or selling those bonds, including:

- If the bonds are "144A-for-life" or recently issued and have not been exchanged in a registered A/B exchange offer, the affiliated purchaser may need to be able to certify that it is a Qualified Institutional Buyer (QIB) or eligible purchaser under Regulation S in order to purchase the notes. Additionally, absent an effective resale registration statement or an exemption from the registration requirements of the Securities Act (such as Rule 144A, which permits sales to QIBs), affiliates may be limited in their ability to resell the bonds they have acquired. Rule 144 provides some relief, but still imposes certain restrictions on affiliates (*e.g.*, a holding period and volume and manner-of-sale limitations). As discussed below, fungibility issues may also complicate the resale of bonds by an affiliated purchaser.

- Affiliates with positions on an issuer's board of directors should consider the extent to which contemplated repurchases should first be presented to the issuer's board of directors in order to avoid challenges under state law corporate opportunity and similar doctrines.

- Affiliates must consider any other potential impacts of the purchase of debt of one of its affiliates, including restrictions under any fund limited partnership agreements, potential inter-fund conflicts (*e.g.*, where one fund is purchasing the debt of the portfolio company of another fund), VCOC concerns, or tax implications to the affiliated issuer or other funds.

## Issues Particular to Repurchases of Bank Debt

Prior to the 2008 economic downturn, many credit agreements for bank debt did not contemplate the possibility of the borrower acquiring its own loans (in essence becoming its own lender), and the technology for doing so was not well tested in the loan market. In response, it became more common for credit agreements to allow borrowers (or their affiliates) to acquire their own loans.

Loans are generally not considered securities under current law. As a result, many of the requirements applicable to bond repurchases — including the tender offer rules and Rule 10b-5's call for full disclosure to bond sellers — are not implicated by repurchases of syndicated bank debt by borrowers or their affiliates. Instead, the key focus in the repurchase of a loan is the credit agreement and other documents governing the debt.

Although credit agreements vary, there are several methods through which bank debt can typically be repurchased:

- **Open-Market Repurchase:** Many credit agreements allow the borrower, the borrower's direct parent, or its subsidiaries to repurchase its term loans on the open market, typically resulting in the cancellation of the repurchased loans.

- **Dutch Auction:** Many credit agreements allow the borrower, the borrower's direct parent, or its subsidiaries to conduct an auction to repurchase term loans from its lenders, typically resulting in the cancellation of the repurchased loans. In this scenario, the borrower advises an agent (often the administrative agent) of its desire to repurchase term loans, the maximum total amount of loans that it is willing to buy, and, in many instances, a range of discounts to par at which it would buy the loans. Each lender then has an opportunity to respond with a price, often expressed as a discount to par, at which it would sell the loans and the total amount of loans it would be willing to sell at such price. The agent and borrower then determine the repurchase price, which, if a range is provided, is the lowest price offered by the lenders that would allow for the repurchase of the desired amount of loans, or if no such price exists, the highest price offered by the lenders within the borrower's previously specified range.

- **Affiliate Lenders:** Many credit agreements allow affiliates of the borrower (notably, a private equity sponsor) to purchase term loans from existing lenders on an open-market basis, without requiring the cancellation of the purchased loans. The purchase by such affiliates is typically subject to certain limitations, often depending on whether the purchasing affiliate is a bona fide debt fund. For affiliated purchasers that are not bona fide debt funds, such limitations typically include:

  - A cap on the amount that may be purchased by any such affiliates (typically 20%-30% of the term loan facility).

  - A prohibition on attending or participating in meetings or discussions among the agent and the lenders where the borrower is not present.

  - A prohibition on voting on amendments to the credit documents (other than those with a disproportionate impact on the affiliate).

  - A prohibition on voting in any bankruptcy proceeding and a grant to the administrative agent of a proxy to vote on such affiliate's behalf (other than those matters with a disproportionate impact on the affiliate).

While the above restrictions do not typically apply to bona fide debt fund affiliates, to the extent such affiliates hold a majority of the credit facilities, their voting rights are often capped at 49.9% of the aggregate voting rights such that the debt fund affiliate cannot control the credit.

Regardless of the method by which the debt is purchased, common issues arise in connection with the purchase of bank debt by borrowers or, in certain instances, their affiliates:

- **Material Non-Public Information:** Although the SEC's rules requiring disclosure of material non-public information generally do not apply to repurchases of bank debt, borrowers and their affiliates should consider whether they possess information that has not been disclosed to the lenders that could have a material effect upon the market price of the loans or that could otherwise make a repurchase inappropriate. In fact, many credit agreements will require borrowers or their affiliates to either (i) make a "no undisclosed information" representation in connection with any loan repurchase or (ii) state that they cannot make such representation. In these situations, it is common for credit agreements to require "big boy letters" to be executed by lenders transacting with the borrower or its affiliates. Additionally, as discussed below, SEC-reporting companies need to consider whether information communicated in negotiations relating to the repurchase of syndicated bank debt may necessitate prior public disclosure under Regulation FD.

- **Pro Rata Sharing Provisions:** Many credit agreements require that the repurchase of loans be made available to all lenders on a *pro rata* basis. However, when such credit agreements have express permission for open-market repurchases and Dutch Auctions, the pro rata sharing provisions would not apply.

- **Loan Cancellation:** As noted above, most credit agreements require repurchased term loans to be immediately cancelled once acquired by the borrower, the borrower's direct parent, or its subsidiaries (but not when purchased by other affiliated purchasers).

- **Other Contractual Restrictions:** Certain capital structures may implicate other contractual restrictions on a borrower's ability to repurchase its bank debt. For example, in a structure involving first lien loans and junior indebtedness, the first lien credit agreement often restricts the borrower's ability to prepay or repurchase junior lien indebtedness. Similarly, in a credit facility with both revolving loans and term loans, the credit agreement may forbid the repurchase of term loans with the proceeds of revolving loans or require the borrower to meet certain liquidity thresholds before making such purchases.

- **Defaults:** Many credit agreements will prohibit borrower repurchases if there is a current default or event of default under the credit agreement.

- **Impact on Excess Cash Flow Sweep:** Many credit agreements require the borrower to prepay loans with all, or a portion of, excess cash flow. In such cases, the amount of excess cash flow required to be applied is often reduced by the amount of any previous debt repayments. As a result, borrowers should review their credit agreements to determine whether repurchased loans are deducted (and if so, to what extent and whether fees and expenses are also deduced) from the excess cash amount required to be prepaid.

- **State Licensed Lender Law Considerations:** In a small number of states, purchasers of portfolios of loans could trigger state licensed lender requirements, depending on the nature of the activities conducted with respect to the loans acquired. Buyers of commercial loans or portfolios of such loans with a California nexus should be particularly mindful of California's licensed lender requirements, which could be implicated if (i) the buyer or seller of the loans, or any borrower under any of the loans in the portfolio, is located in California or (ii) any of the loans are secured by certain types of collateral located in California (*e.g.*, real estate). Under California's Financing Law (CFL), while acquiring loans with a California nexus in an arm's-length secondary market transaction would typically fall outside the scope of CFL regulation, if the acquiring entity subsequently makes a "material modification" to one of the loans it acquired, such modification would be considered a new extension of credit and would require the acquiring entity to obtain a CFL lenders license (absent any applicable exemption). While there is no publicly available guidance as to what constitutes a material modification, California's Department of Financial Protection and Innovation — the agency responsible for granting CFL lenders licenses — informally suggested that a material modification to a loan could include increasing or decreasing the interest rate or extending the term or maturity. Accordingly, purchasers of loans of affiliated entities should be aware of any state licensed lender regulations that may be implicated by the jurisdictional nexus of a particular loan (or buyer or seller of such loan) to a state that regulates such activities.

While a company's decision to repurchase its bank debt may raise some or all of these issues, the relevant provisions of each credit agreement and related considerations may differ widely. Companies should consult counsel before repurchasing loans to avoid unpleasant surprises.

## Additional Issues to Consider for Any Debt Repurchase

### Tax Consequences

A repurchase and retirement by a company of its debt at a discount will generally result in taxable income to the company in the form of cancellation of indebtedness income (CODI). The amount of this taxable income is typically the difference between the principal amount of the debt repurchased (or its accreted value, if applicable) and the repurchase price. The incurrence of CODI will create a cash tax liability which may be payable if the company does not otherwise have losses or other deductions that can be used to offset this income.

A company also incurs CODI if a person "related" to the company purchases the debt at a discount. Generally, a corporation is related to a stockholder that holds more than 50% of its stock. Similar rules apply in the case of debt issued by a partnership. However, the rules governing relatedness are complex and include stock ownership attribution rules as well as rules governing entities under common control.

In the case of a related-party purchase, the purchased debt is generally treated as having been acquired by the company for the price paid by the related party and reissued to the related party for the same amount. The deemed reissuance of the debt at a discount results in the "new" debt being issued with original issue discount (OID).

While a company will incur additional interest deductions over time on the "new" debt (and the holder will generally recognize taxable income in a corresponding amount), a company may not be able to deduct the additional interest fully given the limitations in Section 163 of the Internal Revenue Code of 1986, as amended (the Code). For example, Section 163(j) of the Code generally limits business interest deductions to 30% of "adjusted taxable income" and for taxable years beginning on or after January 1, 2022, "adjusted taxable income" is determined *after* taking into account deductions for depreciation, amortization, or depletion. In addition to the limitation in Section 163(j) of the Code, other limitations will apply if the "new" debt is deemed to be an applicable high yield discount obligation (AHYDO) under Section 163(i) of the Code. As a result of these limitations, a company that is highly leveraged is unlikely to be able to recoup the CODI over time through additional interest deductions. Moreover, with limited exceptions, once a bond or loan is acquired at a discount by a related person and deemed reissued as new debt with OID, it will no longer be fungible with the other bonds or loans that remain outstanding, and therefore it cannot be traded as freely as the "old" debt.

## Regulation FD

If the company (or its direct or indirect parent) is an SEC-reporting company,[9] it should consider its obligations under Regulation FD in connection with any repurchase of debt. Regulation FD broadly prohibits selective disclosure of material non-public information about SEC-reporting companies to certain types of persons (including individual debt investors). In some circumstances, the selective disclosure that a company is seeking to repurchase its outstanding bonds or loans itself may be deemed material non-public information and hence trigger obligations under Regulation FD.

## MAR

If the issuer of the debt has any equity or debt securities trading or tradeable on a trading venue in the European Union and/or the United Kingdom,[10] it will need to consider the impact of MAR (and, in particular, whether one or both of EU MAR and/or UK MAR applies). The authors believe that open-market repurchases of bonds on a "no names" basis, followed by an announcement that the company has retired the debt (*e.g.*, in the next public or bondholder report), or that the sponsors hold the debt, will generally ensure the fair treatment of bondholders, since the buyback is being executed at the most efficient price, and will not trigger MAR concerns.

MAR impact will need to be considered if the issuer has any bilateral conversations with market counterparties (including individual debt investors). This could arise if a company chooses to repurchase bonds through active solicitations or negotiations with bondholders (rather than ordinary course transactions on the open market). In such circumstances, the company should consider a range of options, including announcing the transaction publicly and following a form of wall crossing that complies with the MAR market sounding procedures. In particular, if the information being discussed is price sensitive to the securities trading or tradeable on a trading venue in the European Union and/or the United Kingdom, such steps are intended to avoid unlawfully disclosing inside information. In this context and depending on the specific situation, companies may take the view that the repurchase is not price sensitive in the context of any security trading or tradeable on such a trading venue in the European Union or United Kingdom after taking into account the amount of the outstanding issue being repurchased, the impact of the repurchase on the issuer's liquidity, or the nexus between the debt repurchase and other securities trading on such exchange.

### Equitable Subordination

Affiliates considering purchasing the bonds or bank debt of related companies should consider whether they are putting themselves at risk of being equitably subordinated to other creditors in the event the related company becomes insolvent. Equitable subordination is a bankruptcy law principle that allows a court to subordinate a claim (in this case, the bonds or loans acquired by the related person) to other allowed claims and/or to release liens securing the claims of the related person.[11] In evaluating the remedy of equitable subordination of the related person's claims, most courts focus on whether the related person used its influence over, or control of, the borrower to obtain an inequitable benefit or advantage at the expense of the borrower's unaffiliated creditors. A related person is susceptible to failing that test based on a variety of theories, including fraud, illegality, breach of fiduciary duties, undercapitalization, and use of the related company as a mere instrumentality or alter ego.[12] While equitable subordination is an unusual remedy that has been employed sparingly, the consequences can severely impact recovery rates on the debt owned by the affiliate that is equitably subordinated.

## Conclusion

Companies should carefully consider the issues discussed in this Client Alert before launching a debt repurchase program. Whether a company is considering repurchasing its own bonds or loans or those of an affiliate, there are a number of important issues to take into account, and advance planning and proper structuring will help to avoid unexpected consequences and enhance the execution of a repurchase.

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**Endnotes**

1 This Client Alert does not address repurchases of convertible debt securities. Additional rules apply to repurchases of convertible bonds since they are treated as equity securities under the federal securities laws.

2 While for present purposes EU MAR and UK MAR are ostensibly aligned, there is the potential for divergence over time such that companies should keep in mind the need to distinguish between the scope of each of EU and UK MAR and the rules under each moving forward.

3 For example, Rule 10b5-1 trading plans may provide additional protection for open-market purchases taking place over an extended period of time, although in the authors' experience entrance into such plans for purchases of debt securities is not common practice.

4 The percentage reduction in the float of any given bond issue that is material will need to be considered in light of all prevailing facts and circumstances. An issuer who purchases bonds "at the market" in small amounts over time may never be telegraphing its intention to substantially reduce the overall float to any individual seller and therefore avoid triggering any Regulation FD obligation. In general, a bondholder who sells its bonds will not be concerned about the size of the float after the sale and will therefore not have a claim under Rule 10b-5 that it would not have sold at the agreed price had it known of the pending float reduction.

5 Section 14(e) of the Exchange Act and Rule 14e-1 promulgated thereunder are the primary laws governing non-convertible debt tender offers.

6 *See* SEC No-Action Letter, *Abbreviated Tender on Exchange Offers for Non-Convertible Debt Securities* (Jan. 23, 2015), https://www.sec.gov/divisions/corpfin/cf-noaction/2015/abbreviated-offers-debt-securities012315-sec14.pdf.

[7] A hiatus should be taken between bond repurchases on the open market and the launch of a conventional tender offer to avoid integrating the debt repurchase program and the subsequent tender offer as well as to avoid potential claims that the open-market repurchases were part of a "creeping" tender offer.

[8] A consent obtained in connection with a tender offer, or an "exit consent," is distinguished on the grounds that it is given by the tendering holder prior to the consummation of the tender, and is not a consent given by the issuer (or its affiliate) as the holder of the bonds. Therefore, properly structured exit consents generally are effective to achieve a desired consent.

[9] Although 144A-for-life issuers are not technically subject to Regulation FD, they typically perform a similar analysis, particularly when they are engaging in the purchase or sale of their own securities.

[10] "Trading venue" is broadly defined but will include both voluntary listings on regulated markets (i.e., stock exchanges) and involuntary listings on secondary trading venues such as organized trading facilities (OTFs) and multilateral trading facilities (MTFs). A public register of relevant instruments tradeable on a trading venue in the European Union is maintained by the European Securities and Markets Authority (ESMA) and an equivalent register of instruments tradeable on a trading venue in the United Kingdom is maintained by the Financial Conduct Authority (FCA). For access to the public register maintained by ESMA as of the date of this Client Alert, see: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds#. For access to the register maintained by the FCA as of the date of this Client Alert, see: https://data.fca.org.uk/#/viewdata.

[11] *See* 11 U.S.C. § 510(c).

[12] *See*, *e.g.*, *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692 (5th Cir. 1977); *In re Clark Pipe & Supply Co.*, 893 F.2d 693 (5th Cir. 1990).