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# EUROPEAN LIABILITY MANAGEMENT: COMPARING ANTI-LMT PROVISIONS IN EUROPEAN VERSUS U.S. MARKET HIGH YIELD BONDS

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# European Liability Management: Comparing Anti-LMT Provisions in European Versus U.S. Market High Yield Bonds

The Bottom Line™:

- We analyze anti-liability management transaction provisions that appeared in two European high yield bonds and compare them with two seen in the U.S. market.
- While the anti-LMT provisions in this report all appeared in the restructuring context, they highlight override language that could be used to reduce liability management risk in new issue bonds.
- Anti-LMT provisions restrict the issuer's opportunities to change the ranking and credit support for existing debt, or to uptier existing debt into new instruments that are contractually senior, effectively senior (whether due to lien priority, recourse to additional assets, or through a double dip or pari plus structure), temporally senior or structurally senior.
- Compared with narrowly drawn J. Crew blockers, Serta blockers, and Chewy blockers, anti-LMT provisions restrict a spectrum of liability management transactions, but so far have not aimed to block LMTs entirely.
- In the real world where liability management serves a necessary purpose, anti-LMT provisions are about developing norms for implementing out-of-court LMTs that balance competing interests, give reasonably predictable outcomes, preserve value, and can become generally accepted in the market.

## Overview

As we enter the new year, practitioners remain keenly focused on the risk of aggressive liability management transactions ("**LMTs**"), meaning that covenant techniques to reduce LMT risk are of broad interest to market participants. In this report, we highlight anti-liability management ("**Anti-LMT**") provisions seen in two European high yield bonds that went through restructurings in 2024, and compare them with two more seen in the U.S. market. These provisions are inherently interesting as they go further than the now-common but more narrowly drawn J. Crew blockers, Serta blockers, or Chewy blockers, and instead attempt to reduce overall LMT risk across a spectrum of LMT transactions. These Anti-LMT provisions also contrast with a more direct approach reducing the volatile mix of underlying covenant capacity that frequently enables LMTs – addressed in our report European Sponsor Playbook: Vulnerabilities to Aggressive Liability Management and Priming Debt Transactions in High Yield. This report complements our recent Worst, Better, Best series on European blockers – see our reports Worst, Better, Best: Understanding European Serta Protection and Worst, Better, Best: European Chewy Blockers.

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In a telling bit of context, these Anti-LMT provisions appeared in the context of restructurings implemented using LMTs. From market participants well positioned to know, these Anti-LMT provisions illustrate ways to reduce LMT risk – and involve restricting the issuer's opportunities to change the ranking and credit support for existing debt, or to uptier existing debt into any new instrument that is contractually senior in right of payment, effectively senior (whether due to lien priority, recourse to additional assets, or through a double dip or pari plus structure), temporally senior or structurally senior. It should be apparent that these concerns are perennial in leveraged finance and fundamentally Anti-LMT provisions are about contractual rules to police changes in the capital structure in situations of financial distress.

Also important for the European high yield market, we remind readers that LMT transactions for European high yield bonds can frequently result in changes in ranking that payment subordinate or lien subordinate the existing bonds – and that Amendments provisions in European high yield bonds nearly always lack sacred rights protection for these matters that is commonly present in one form or another in many U.S. market high yield bonds. Certain of the Anti-LMT provisions discussed within address this European weakness. For background, see our report Liability Management: The Distinct Lack of Anti-Subordination Protection in European High Yield.

**Anti-LMT Provisions in 2024 European High Yield Bonds**

*Pfleiderer – clampdown on priming debt, Unrestricted Subsidiaries, and Amendments provisions changed to add anti-subordination protection.*

The company completed a new money A&E in mid-2024, securing a three-year maturity extension on its existing high yield bonds, backed by a €75 million equity injection sponsor SVP and supported by wide-ranging covenant tightening – see European Restructuring Playbook: Pfleiderer Covenant Clampdown. The covenant tightening included scaling back Debt, Liens and Restricted Payments capacity which of course has the effect of reducing priming debt capacity, but also included blocker-type provisions aimed squarely at preventing liability management transactions.

First, a bespoke "priming debt" covenant was added, imposing an EBITDA grower cap on structurally senior debt at non-guarantors and effectively senior debt secured on non-collateral assets, incurred as Ratio debt, or under the Credit Facilities basket, the CLO/PMO basket, the equity credit debt basket, the general basket, the local lines basket, and (for non-guarantors only) the non-guarantor and guarantees of JV debt basket. The cap was relatively tight, at the greater of €50 million and [ ]% of LTM EBITDA. Provision was also made that priming debt could not be owed to the sponsors or any parent entity.

Second, the covenant governing Designation of Unrestricted Subsidiaries was changed to stipulate that Unrestricted Subsidiary designations must be "made for *bona fide* business reasons and not made as part of a liability management transaction," as determined by the issuer in good faith. We note that no attempt was made to define "liability management transaction" – this can be a recipe for trouble when disputes arise later, leaving the courts with the task to supply an interpretation and block or approve a particular transaction in question. On the other hand, a specific (and possibly elaborate) definition can have the perverse effect of inviting hair-splitting workarounds invented by creative lawyers who are always sharpening their swords.

Third, changes were made to sacred rights protection in the Amendments provisions, adding anti-subordination protections and tightening up provisions for releases of guarantees and security. The amended Pfleiderer bonds require consent from holders representing 90% of the bonds to:

- payment subordinate the Notes or subordinate the liens on the collateral securing the bonds to any other debt, unless noteholders are first made an offer to provide their pro rata share on the same terms;
- change the application of proceeds from enforcement of collateral securing the bonds;
- increase the amount or change the type of debt that can be secured on a super senior basis, where the debt would be incurred for the purposes of conducting a liability management transaction; or
- make any other changes to restrictive covenants in the indenture or corresponding definitions "for purpose of conducting a liability management transaction";
- release guarantees representing more than 25% of LTM EBITDA or total assets - changed from a 75% consent to release all/substantially all the guarantors;
- release 25% or more of the value of the security interests in the collateral securing the bonds - changed from a 90% consent to release all or substantially all the security.

As mentioned above, anti-subordination protection remains very uncommon in European high yield bonds, making the elevated 90% consent required to payment subordinate or lien subordinate the extended Pfleiderer bonds especially noteworthy. While the protection is partially undercut by the carveout allowing subordination where holders are first offered an opportunity to provide their pro rata share of new debt, this formulation can be said to reflect a commercial balance, and does at least prevent exclusion of the minority holders in a preferential exchange by ensuring that all noteholders must be offered the chance to participate before this provision can be used.

The provision requiring 90% consent to increase super senior debt capacity for purposes of a liability management transaction is noteworthy, given the prevalence of super senior debt baskets in European bonds. Without the additional protection in Pfleiderer, a super senior debt basket and corresponding Liens covenant provision allowing the super-senior security can be amended with a simple majority consent, meaning it is an obvious loophole for creation of a priming tranche (as super senior debt recovers first from proceeds of an enforcement of the collateral) – we have previously seen Swissport and Matalan seek amendments to indentures for super senior debt with majority consent. We commonly point out the vulnerability to increases in super senior debt, but the protection offered in Pfleiderer remains very uncommon in European high yield.

Finally, the catch-all blocker requiring a 90% consent to make other changes to covenants and definitions "for purpose of conducting a liability management transaction" is noteworthy for its broad and purposive approach. While in case of a dispute a court's interpretation will likely be required, the provision does have the benefit of inclusivity rather than being limited to ruling out specific enumerated transactions or trying to shut down specific covenant provisions in the game of "whack-a-mole" that so often seems to prove futile, when yet another loophole is found.

*La Financière Atalian – clampdown on priming debt, Unrestricted Subsdiaries, and Amendments provisions changed to add anti-subordination protection.*

Cleaning and facility management provider and high yield issuer La Financière Atalian implemented a restructuring in 2024 that reduced debt and cash interest costs, in a distressed exchange to address 2024 and 2025 maturities with the issuance of new secured notes due in 2028. Like Pfleiderer there was again a raft of covenant tightening, detailed in our report European Restructuring Playbook: Covenant Clampdown In Atalian's Distressed Exchange Highlights Safety Features for Investors. Covenant tightening reduced the risk of priming transactions under the new bonds, including scaling back Debt (particularly structurally senior non-guarantor debt), Liens, and especially Restricted Payments capacity – with no ability to designate Unrestricted Subsidiaries and the elimination of the build-up basket leverage carveout and Restricted Payments build-up basket. With all subsidiaries being Restricted Subsidiaries, eliminating the ability to designate Unrestricted Subsidiaries rules out that type of dropdown.

However, of greatest interest for this report, certain additional blocker-type provisions also curtailed the potential for liability management transactions, including anti-subordination protection and tightening up provisions for releases of guarantees and security. Atalian's new bonds require a 90% consent to:

- make any amendment that would subordinate the payment or lien priority of any holder of the *bonds* ***relative to other holders of these bonds***, including pro rata sharing or waterfall provisions in the indenture, intercreditor agreement, or security documents;
- make any amendment that would (or would have the effect of) "establishing Lien priority" of any holder of the Notes ***relative to holders of other debt*** of the issuer, its subsidiaries and affiliates, including pro rata sharing or waterfall provisions in the indenture, intercreditor agreement, or security documents;
- release any collateral securing the bonds;
- release any guarantee of the bonds.

The protection provided in the first bullet is interesting in that it covers payment and lien priority of the new bonds, but only as it relates to holders of the new bonds *relative to each other*. So, this provision protects the pro rata treatment of holders amongst themselves, by requiring a 90% consent to change the payment or lien priority of the bonds to favor a particular subset of holders. Put differently, this element relates to the prevention of creditor-on-creditor violence, absent a high level of consent among the noteholders – 90%.

By contrast, the protection provided in the second bullet requires a 90% consent for amendments that establish lien priority of any holder of the bonds *relative to holders of other debt*. The omission of payment subordination is immediately apparent and must have been deliberate – one would hope the relative weakness was well understood and there were commercial reasons driving the disparity, but it's impossible to know without being privy to the negotiations for the restructuring.

Another more positive element is the care taken in these two anti-subordination provisions to broaden their protective reach to cover pro rata sharing, waterfall provisions whether contained in the indenture, the intercreditor or security documents, which (presumably) aims to cover all the relevant documentation related to application of enforcement proceeds. This helps address the "whack-a-mole" phenomenon, where one-dimensional sacred rights protection for one area or provision may leave holders vulnerable to changes elsewhere. Unfortunately, it's a common theme in blocker provisions for the scope of protection to be too narrow.

## Two Anti-LMT Blockers Seen Recently in U.S. Market High Yield Bonds

For comparison, we also highlight two further Anti-LMT blockers seen in U.S. market high yield bonds, also appearing in the context of restructuring transactions like the examples above. Unlike the European provisions that have focused on consent rights included in the Amendments provision, U.S. market precedents explored below appear as standalone covenants.

*Commscope*

Network solutions provider Commscope closed a distressed refi transaction in December 2024 through agreements with first lien lenders including Apollo and Monarch Alternative Capital – a new term loan maturing in 2029 and $1 billion in new first lien bonds due 2031 allowed Commscope to address impending loan and bond maturities. As detailed in a report by our U.S. colleagues, covenants in the new Senior Secured Notes due 2031 included an "Anti-Liability Management" covenant appearing as a standalone covenant, rather than as an enhancement to the Amendments provision as provided in European examples above. For convenient reference, the full text of the covenant is provided in **Appendix A** at the end of this report.

The Anti-Liability Management covenant imposes restrictions on (1) certain "Senior Financings" and (2) certain other related transactions, unless bondholders are offered the opportunity to provide their pro rata share on the same economic terms received by the bondholders (or their affiliates) providing the Senior Financing.  So, the Anti-Liability Management covenant is not a prohibition – it *permits liability management transactions* where a pro rata matching right is provided to affected holders of the Commscope bonds (recalling the pro rata offer exception Pfleiderer included that is discussed above).[1]

The definition of "**Senior Financing**" sets out the first tranche of restricted transactions, and provides that (subject to the matching right escape clause) Commscope and its subsidiaries may not incur any debt, capital stock or lien that is:

- contractually, structurally, or otherwise senior in right of payment and/or lien priority to the Notes, *or*
- that has the effect of materially and adversely affecting the right to receive the proceeds of any mandatory redemption.

Payment subordination, lien subordination, and structurally senior priming instruments are clearly captured in the definition of "Senior Financing". While there is no express provision that temporally senior instruments would be captured (i.e. instruments which would mature earlier than the bonds), one can imagine an argument whether this aspect would be captured by the catch-all restriction on issuances "otherwise senior in right of payment" to the bonds.  Note the attention paid to changes to mandatory redemption payments – good protection to have!

In addition, the Anti-Liability Management covenant provides that Commscope and its subsidiaries cannot engage in certain other transactions (again subject to the matching right carveout described above), specifically to:

- issue capital stock;
- create liens on their property;
- make or hold investments or make Restricted Payments to any other person;
- enter any merger, consolidation or amalgamation, or liquidate or wind up;
- dispose assets;
- "otherwise engage in any other activity",

[1] As the matching right appears to relate specifically to providing a pro rata share on the same economic terms received *by other holders of the Commscope bonds*, it seems the matching right would be proportionally reduced where a third-party provides a portion of the Senior Financing, as the pro rata share of affected holders relative to other holders would be reduced. This begs the question whether a third party could provide 99% of a Senior Financing, and holders only 1% of a Senior Financing, and still meet the requirements of the matching right and thereby permit the Senior Financing. However, if a third party provided 100% of a Senior Financing, arguably the carveout would not work – the "get out of jail free" card would not operate because it does not contemplate holders matching and providing their share of a third party Senior Financing.

*in each case*, "undertaken with the intent to" permit incurrence of a Senior Financing *or* to materially and adversely affect the guarantees and collateral for the bonds *or* to strip "the covenants set forth herein."[2] To reiterate, these actions are also subject to the pro rata matching right carveout described above.

One effect of this portion of the Anti-LMT covenant is to illustrate the types of transactions that are prohibited when undertaken with intent to permit a Senior Financing, materially impact credit support, *or* to strip the covenants. Another effect is to broaden the reach of the Anti-Liability Management covenant, through its catch-all reference to engaging in "any other activity" with intent to permit a Senior Financing, materially impact credit support, *or* to strip the covenants. While the breadth may be helpful, one can imagine proving the requisite intent could be difficult.

Given the anti-LMT provisions appeared as a standalone covenant, consulting the Amendments provision is also important to see how the Anti-LMT covenant might be modified with various levels of consent. As is customary in high yield bonds, covenants may be amended with simple majority consent, absent provision for an elevated consent right – none is provided for the Anti-Liability Management covenant. However, the Commscope bonds follow most U.S. market high yield bonds by providing some anti-subordination protection that is usually absent in European high yield bonds. Specifically, (1) affected holder consent would be required to payment subordinate the bonds and (2) 66 2/3 % consent is required to release all or substantially all the collateral or to change the priority of the security in the collateral, make any change in the security documents, intercreditor agreements dealing with application of proceeds of collateral that adversely affect the bondholders, or to change provisions of the indenture, intercreditor agreements, or security documents dealing with collateral that are adverse to holders.

Like the European examples, Commscope had other provisions reducing LMT risk–notably the lack of any Unrestricted Subsidiary concept (which removes the ability of the company to move assets outside the credit group to provide credit support to priming debt –remember, Atalian added this into its new bonds). Also noteworthy, the uncapped basket for foreign subsidiary debt stipulated it must not be used with intent to circumvent the Anti-Liability Management covenant.

*Sinclair Broadcasting*

In January 2025, broadcaster Sinclair entered a transaction support agreement with certain secured creditors, in a complex recapitalization transaction to extend maturities out to 2029-2033, though loan and bond exchanges creating multi-layered tranches of first and second-out first lien debt, and second lien debt. The full text of the transaction support agreement is available here. Notably included among certain enhanced covenant protections for the new debt was an anti-LMT covenant, titled "*Limitations on Priming Financings and other Liability Management Transactions*." For convenient reference, the full text of the blocker is provided in **Appendix A** at the end of this report.

This anti-LMT covenant includes a general prohibition on Sinclair or its subsidiaries entering into any defined "**Priming Financing/Liability Management Transaction**" and on making any investment, sale, transfer or disposition of assets or Restricted Payment in connection with such transactions, *subject to certain carveouts for certain ordinary course and other permitted transactions* (considered below).

The definition of "**Priming Financing/Liability Management Transaction**" sets out the transactions that are restricted, including:

[2] There is some ambiguity whether the reference to "stripping the Holders of the covenants set forth herein" refers only to the Anti-Liability Management covenant (Section 3.20) or to the covenants of the bonds as an entirety. See Annex A to consult the provision in full.

- any exchange, refinancing, amendment or extension (or a transaction specifically designed to circumvent the anti-LMT restrictions) of any existing debt of the Borrower or any of its Restricted Subsidiaries with any other debt or preferred equity of the Borrower, its Affiliates, or any other person,
  - in a transaction designed to directly or indirectly "uptier" or with the effect of "uptiering" holders of existing debt into debt or preferred equity that is:
    - contractually senior,
    - effectively senior (including by lien priority or recourse to additional assets or through a "double dip" or "pari plus" structure)
    - temporally senior (inside-maturity debt),
    - structurally senior (debt of non-obligors)
      - (each of the above, "**Priming Debt**"); <u>or</u>
- issuance of any Priming Debt, other than certain exceptions, including:
  - acquisition debt (as otherwise permitted under the covenants),
  - refinancing ordinary course capital leases and finance leases, or other debt secured by non-collateral assets, with permitted debt;
  - certain defined "**Permitted LM Transactions**" (discussed below).

The scope of the Priming Financing / Liability Management Transaction is reasonably comprehensive, with its attention to contractually senior, effectively senior, structurally senior and temporally senior replacement instruments. Also noteworthy, the specific attention to double dip and pari plus transactions which have been topical of late. One positive addition relative to Commscope is the restriction on inside-maturity debt. High yield bonds typically do not restrict incurrence of debt that matures inside the maturity of the bonds (other than refinancing debt restrictions that frequently only apply to contractually subordinated debt).

Aside from the restrictions on Priming Debt, it's apparent that a key architectural difference in the Sinclair approach was to pre-negotiate certain types of acceptable liability management transactions – these are the "Permitted LM Transactions" (the full text of which is reproduced in Appendix A), which are a laundry list of issuer- and deal-specific permitted transactions. It's not necessary to explore the nature of these permitted transactions in detail, given their deal-specific nature, but from a high level, these exceptions relate to "clean-up" exchanges for non-extended term loans, non-extended secured bonds, and non-extended senior notes not participating in the currently pending liability management transactions and exchange offers. This approach defines the parameters and priority of acceptable debt that Sinclair can offer in exchange for their non-extended debt. Generalizing, this "acceptable transactions" approach could represent another development model for anti-LMT covenants.

## Conclusion

We began noting that the Anti-LMT provisions seen in this report were about policing changes to the capital structure at times of financial distress. Fundamentally, Anti-LMT provisions are about setting "constitutional" norms that embody to a greater or lesser degree commercial expectations as to fair and expedient rules for liability management transactions at times of financial distress. None of the methods taken to reduce the various dimensions of LMT risk seen in this report are themselves novel – what is uncommon is use of Anti-LMT provisions to legislate a new set of norms to shape the rules of the road and reduce the risk of a spectrum of LMT transactions. It's also noteworthy that each of the provisions discussed in this report arguably express contractually a view as to what is "appropriate" in the context of the particular transaction, rather than seeking to block all LMTs whatsoever.

Given that so many controversial LMT transactions seem to involve upended expectations about the rules of the road for out-of-court restructurings, Anti-LMT provisions could be a fertile ground for development in covenant terms. In the real world, distressed workouts will continue to serve a necessary purpose and inherently involve a contest between competing commercial interests – between equity and debt – and frequently between different classes of creditors. If anti-LMT provisions continue to develop, they shouldn't really be about preventing LMTs. Rather, the challenge is to design norms of contract that become generally accepted in the market and give a predicable framework for rational (and hopefully value preserving) outcomes, balancing the interests of the various stakeholders.

— *Covenant Review*

## Appendix A – Full Text of Anti-LMT Provisions

### Commscope

Section 3.20. Anti-Liability Management. Neither Holdings nor the Issuer will, and the Issuer will not permit any of its Subsidiaries to (a) directly or indirectly Incur any Indebtedness, Capital Stock or Lien that is contractually, structurally or otherwise senior in right of payment and/or Lien priority to the Obligations or that has the effect of materially and adversely affecting any Holder's rights to receive the proceeds of any mandatory redemption of the Initial Notes hereunder (except (x) as otherwise permitted under this Indenture as in effect on the Issue Date (or, subject to the requirements set forth in Article IX, as amended, restated, amended and restated, supplemented or otherwise modified after the Issue Date) or (y) in connection with a "debtor in possession" financing (or any similar financing arrangement in an insolvency proceeding in a non-U.S. jurisdiction) that is consented to by at least a majority in aggregate principal amount of the Notes then outstanding) (such Indebtedness, "Senior Financing") or (b) (i) issue any Capital Stock, (ii) create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, (iii) make or own any Investment in, or make any Restricted Payment to, any other Person, (iv) enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any disposition of assets or (v) otherwise engage in any other activity, in each case of this clause (b), that is undertaken with the intent to (A) permit the Incurrence by the Issuer, any Guarantor (including Holdings) or any Subsidiary of any Senior Financing or (B) materially and adversely affect the Collateral or Guarantees or stripping the Holders of the covenants set forth herein, in each case of this Section 3.20, unless each materially and adversely affected Holder has been (or will be) offered an opportunity to fund or otherwise provide or acquire its *pro rata* share of such Senior Financing on the same economic terms received by the Holders (or their Affiliates) providing such Senior Financing; *provided* that such economic terms shall not include *bona fide* backstop and similar fees (including fees paid to Holders as compensation for backstopping debt or equity rights offering) incurred, and the reimbursement of counsel fees and other expenses incurred, in connection with such Senior Financing or the negotiation of the transactions in connection with which the Senior Financing is to be (or was) incurred.

### Sinclair

Limitations on Priming Financings and other Liability Management Transactions
The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any Priming Financing/Liability Management Transaction or make any Investment, sale, transfer or disposition of assets or Restricted Payment in connection therewith.

"**Priming Financing/Liability Management Transaction**" means (i) any exchange, refinancing, amendment or extension transaction (or any transaction specifically designed to circumvent the restrictions on Priming Financing/Liability Management Transactions) of any existing Indebtedness of the Borrower or any of its Restricted Subsidiaries (the "**Existing LMT Debt**") with any other Indebtedness or preferred equity (including that of the Borrower or any of its Affiliates or of any other Person) (the "**New LMT Debt**") in a transaction that is designed to directly or indirectly "uptier", or has the effect of, "uptiering", holders of such Existing LMT Debt into contractually, effectively (including as to lien priority or recourse to additional assets or through a "double dip" or "pari plus" structure), temporally (i.e., inside maturity) or structurally senior New LMT Debt ("**Priming Debt**") or (ii) the issuance of any Priming Debt, in each case, other than certain ordinary course exceptions (of the kind listed below):

- Permitted LM Transactions (as defined herein).
- The incurrence of indebtedness to finance an acquisition secured by the acquired assets and/or guaranteed by an acquired entity, so long as such indebtedness and the acquisition are permitted under the covenants and any acquired assets that constitute Collateral are pledged to the lenders and holders of the Company's other indebtedness and any acquired restricted subsidiary grants a guarantee of such other indebtedness, in each case to the extent required (and within the periods required) under the applicable credit agreements and indentures.
- The refinancing of ordinary course capital leases or finance leases or of other Indebtedness secured by assets not constituting Collateral with other indebtedness permitted under the debt and lien covenants.

"**Permitted LM Transactions**" include:

- To permit refinancings (including exchanges) of non-extended Third Lien Term Loan (i) with second lien or unsecured debt which (1) matures outside of the non-extended Third Lien Term Loan, (2) is not provided by an affiliate, (3) bears interest at then-prevailing market rates and (4) has covenants which are not, taken as a whole, materially more restrictive to the Company than the terms of the then outstanding TLB-5, TLB-6 and TLB-7, or (ii) with second out first lien debt (which, for the avoidance of doubt ranks pari passu in all contractual, effective and lien priority respects with the then outstanding TLB-6 and TLB-7 and has covenants which are not, taken as a whole, materially more restrictive to the Company than the terms of the then outstanding TLB-5, TLB-6 and TLB-7) if incurred within 15 months of the applicable final maturity of the applicable Third Lien Term Loan and pro forma first lien net leverage would be 4.0x or less (the "**Inside 4x Basket**").
- If the Existing Secured Notes Exchange is completed or early settled on or prior to the Closing Date, any non-extended Unsecured Notes may be refinanced into junior lien (to first lien) or unsecured debt, provided that the temporal (i.e., inside maturity), structural and contractual priority of the refinancing debt cannot be superior to that of the refinanced debt and the terms of the refinancing are not materially more restrictive (taken as a whole) to the Company as compared with the then outstanding TLB-5, TLB-6 and TLB-7.
- If the Existing Secured Notes Exchange is not completed or early settled on or prior to the Closing Date, (x) up to the amount of outstanding Existing Secured Notes (after giving effect to the consummation of the Transactions, not including the Existing Secured Notes Exchange) shall be permitted to be exchanged into Second Out First Lien Notes after the Closing Date pursuant to the Existing Secured Notes Exchange and (y) any non-extended Unsecured Notes may be refinanced into junior lien (to first lien) or unsecured debt, provided that the temporal (i.e., inside maturity), structural and contractual priority of the refinancing debt cannot be superior to that of the refinanced debt and the terms of the refinancing are not materially more restrictive (taken as a whole) to the Company as compared with the then outstanding TLB-5, TLB-6 and TLB-7 and the maturity date shall be no earlier than the relevant Unsecured Notes being refinanced.
- To permit permitted refinancings (including via exchanges) of non-extended Third Lien Term Loans (or other outstanding junior lien debt, including Third Lien RF) and of Existing Secured Notes including as specified under "Refinancing Indebtedness / Exchanges" above.
- Exchanges or refinancings of junior (i.e., 2nd lien or lower) debt into junior debt permitted, provided that the maturity of such exchange or refinancing debt cannot be inside the maturity of the

exchanged or refinanced debt, cannot improve the structural or contractual priority of the exchange or refinancing debt as compared with the exchanged or refinanced debt, and the terms of the exchange or refinancing debt are not materially more restrictive (taken as a whole) as compared with the then outstanding TLB-5, TLB-6 and TLB-7.

- Up to $100 million of non-extended Third Lien Term Loan may be repurchased for cash at a repurchase price lower than the prevailing trading prices of both the TLB-6 and TLB-7 at the time of such repurchase (the "**Non-Extended TL RDP Basket**").
- To permit up to $125 million of repurchases of unsecured debt and/or junior lien (second lien or lower) debt (other than Third Lien Term Loans) at a discount to par (the "**Unsecured/Junior Lien RDP Basket**").

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