

18 October 2018

Lev Fin Spin

While each covenant package remains bespoke and in the context of some push back from investors, here is an overview of the key trends we have noticed affecting the covenant package:

Restricted payments

Carve-outs

- Calculated on a net debt basis allowing for increased Restricted Payment capacity

Leverage-based carve-out

- Does not count against the build-up basket therefore increasing the Restricted Payment capacity
- Now prevalent and ranging from 0.5x to 6x with an average of around 3.5x

Reclassification

- Flexibility to reclassify between the various baskets of the Restricted Payment covenant and Permitted Investments

Debt Covenant

Add-backs in EBITDA definition

- Cost savings (including "run-rate" cost savings) and synergies in the context of acquisitions, but also not limited to those arising from acquisitions. Extends to restructuring costs and cost savings programs
- Generally up to 15% of consolidated EBITDA but sometimes even no cap within 12 months (less so 24 months) post-acquisition/implementation of an initiative, or the relevant period for a restructuring and not limited to a time period determined in good faith by a responsible accounting or financial officer

Additional flexibility

- Extensive definition of Senior Secured Debt and ability to reclassify among various baskets

Asset Sale Covenant

- Aggressive carve-outs to the asset sales definition (de Minimis amount/specified asset list including inventory of certain significant subsidiaries)
- Flexibility to reclassify any asset sale in the Asset Sale definition and treat part of the same transaction as a mix of Asset Sale and Permitted Investment

Change of Control Provision

Portability

- Push back from investors, particularly in non-sponsor deals
- If leverage-based portability, then calculated on a net basis and sometimes tested on the date of commitment to the acquisition rather than date on which acquisition closes
- Portability based on ratings remain for BB/Cross over type issuers

Optional redemption

Equity claw back

- More frequently gives the ability to redeem up to 45% rather than 35% of the notes

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