
# Model Covenant Discussion Paper

## Proposed terms for certain covenants in investment grade indentures

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**TABLE OF CONTENTS**

A. NEGATIVE PLEDGE

There are a number of potential pitfalls and gaps in the negative pledge covenant commonly seen in investment grade bond indentures of Canadian issuers. The underlying rationale of the covenant is to restrict the amount of additional debt an Issuer may incur that is effectively senior to the bonds issued under its indenture. Common shortcomings of this covenant in existing investment grade bond indentures include the following:

1. Structural subordination – the lien covenant only applies to the holdco Issuer, and not all material opco subsidiaries and, moreover, there is no restriction on the incurrence of debt at such opco subsidiary level.

2. Ability to incur unlimited secured debt – a common formulation of this covenant allows issuers to incur unlimited secured debt as long as the bonds are "equally and ratably" secured. This may lead to unintended consequences whereby the bonds may find themselves sharing collateral with massive amounts of new debt (e.g. LBO or leveraged recapitalization scenario).

The model covenant below governs debt of all material opco subsidiaries, thus addressing the structural subordination issue noted in 1. above. This model also captures "attributable debt" resulting from sale and leaseback transactions, thereby eliminating the need for a separate sale and leaseback covenant (which is also not always properly addressed in investment grade indentures). Importantly, the proposed model eliminates the "equal and ratable" concerns described in 2. above.

I. Proposed Model Limitation on Indebtedness Covenant and Negative Pledge Language:

Limitation on Indebtedness. The Issuer shall not, and shall not permit any Restricted Subsidiary1 to, create, incur, assume or suffer to exist any Indebtedness, other than Permitted Debt.

Limitation on Liens. The Issuer shall not, and shall not permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness on any asset now owned or hereafter acquired, other than Permitted Liens.

"Permitted Debt" means:

Indebtedness of the Issuer or any Restricted Subsidiary existing as of the date of this Indenture;

Unsecured Indebtedness of the Issuer which is equal or subordinated in right of payment to the Notes and any guarantee of the Notes;

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[1] The proposed model terms set forth in this paper have been drafted to include a "Restricted Subsidiary" concept (see below under "*A. Negative Pledge; II. Proposed Model Restricted/Unrestricted Subsidiary Definitions*"). This should be an acceptable approach for bondholders provided that the definitions and other provisions relating to Restricted/Unrestricted Subsidiaries are carefully crafted to ensure that at no time will a material amount of the assets or cash flow (e.g. consolidated total assets or consolidated EBITDA) of the corporate group reside with Unrestricted Subsidiaries. The model terms set forth in this paper also limit the amount of asset and value "leakage" which is allowed from the restricted group to unrestricted subsidiaries in other ways (e.g. the "Permitted Debt" definition includes intercompany debt only between the Issuer and Restricted Subsidiaries and the "Change of Control" and "Coupon Step-Up" clauses and related definitions have been drafted to permit certain transactions between the Issuer and Restricted Subsidiaries only).

Indebtedness, which, by its terms, is Non-Recourse Debt to the Issuer or any Restricted Subsidiary;

Indebtedness of any Person acquired by, merged, amalgamated or consolidated with, or liquidated into, the Issuer or any Restricted Subsidiary after the Issue Date, provided that such Indebtedness was not incurred in anticipation of such acquisition, merger, amalgamation, consolidation or liquidation, and only to the extent such Indebtedness is an obligation of, and secured (if at all) by the assets and capital stock of, the Person (and Subsidiaries of such Person) so acquired by, merged, amalgamated or consolidated with, or liquidated into the Issuer or any Restricted Subsidiary;

Purchase Money Obligations;

Intercompany Indebtedness of the Issuer or any Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary;

Indebtedness of any Restricted Subsidiary in the form of guarantees of the Notes;

Indebtedness not otherwise permitted under clauses (i) through (vii) above, provided that the aggregate principal amount of such Indebtedness would not then exceed [5 - 10]% of Consolidated Net Tangible Assets2;

[other specified carve-outs to be agreed]3; and

any extension, renewal, alteration, refinancing, replacement, exchange or refunding (or successive extensions, renewals, alterations, refinancings, replacements, exchanges or refundings) of all or part of any Indebtedness referred to in the foregoing clauses; provided, however, that (A) such refinancing Indebtedness is only secured by Liens on some or all of the property and assets that secured the refinanced Indebtedness at the time of such extension, renewal, alteration, refinancing, replacement, exchange or refund, and (B) the principal amount (or deemed amount, in the case of Attributable Debt) of the refinancing Indebtedness is not increased from the principal amount of the refinanced Indebtedness then existing at the time of such extension, renewal, alteration, refinancing, replacement, exchange or refunding, plus an amount necessary to pay fees and expenses, including premiums, related to such extensions, renewals, alterations, refinancings, replacements, exchanges or refundings.

"Permitted Liens" means:

Liens existing as of the date of this Indenture;

Liens created, incurred or assumed to secure any Non-Recourse Debt;

Liens on the assets and capital stock of a Person (and Subsidiaries of such Person) acquired by, merged, amalgamated or consolidated with, or liquidated into, the Issuer or any Restricted Subsidiary after the

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[2] The CNTA basket has been drafted to capture any Attributable Debt or Hedging Obligations of the Issuer or any Restricted Subsidiary, senior debt of the Issuer and other Indebtedness (both secured and unsecured) not otherwise permitted under clauses (i), (iii)-(vii), (ix) or (x) at any Restricted Subsidiary.

[3] Permitted indebtedness will need to be carefully tailored for each individual transaction, and the proposed list of "Permitted Debt" is only a suggested starting place reflecting carve-outs (aside from the CNTA basket) commonly seen in indenture covenants and definitions.

Issue Date, provided that such Liens were not created, incurred or assumed in anticipation of such acquisition, merger, amalgamation, consolidation or liquidation;

Liens created, incurred or assumed to secure Purchase Money Obligations;

Liens in favour of the Issuer or any Restricted Subsidiary created, incurred or assumed to secure intercompany Indebtedness of any Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary;

Liens created, incurred or assumed to secure the Notes or any guarantee of the Notes;

Liens securing Indebtedness permitted pursuant to clause (viii) of the definition of "Permitted Debt";

[other specified carve-outs to be agreed][4]; and

any extension, renewal, alteration or replacement (or successive extensions, renewals, alterations or replacements) of all or part of any Lien referred to in the foregoing clauses; provided, however, that (A) the property and assets which are subject to such Lien is limited to some or all of the property and assets which were subject to such Lien (and accretions thereto and improvements thereon) at the time of such extension, renewal, alteration or replacement, and (B) the principal amount (or deemed amount, in the case of Attributable Debt) of the Indebtedness secured by such Lien is not increased from the principal amount of the Indebtedness then existing at the time of such extension, renewal, alteration or replacement.

"Attributable Debt" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in such transaction, determined in accordance with Canadian generally accepted accounting principles) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including during any period for which such lease has been extended); provided; however, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Capital Lease Obligation" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be classified and accounted for as a capitalized lease obligation on a balance sheet in accordance with Canadian generally accepted accounting principles.

"Commodity Hedging Contracts" means any transaction, arrangement or agreement entered into between a Person (or any of its Restricted Subsidiaries) and a counterparty on a case by case basis, including any futures contract, a commodity option, a swap, a forward sale or otherwise, the purpose of which is to mitigate, manage or eliminate its exposure to fluctuations in commodity prices, transportation

[4] Permitted liens will need to be carefully tailored for each individual transaction, and the proposed list of "Permitted Liens" is only a suggested starting place reflecting carve-outs (aside from the CNTA basket) commonly seen in indenture covenants and definitions.

or basis costs or differentials or other similar financial factors including contracts settled by physical delivery of the commodity not settled within 60 days of the date of any such contract.

"Consolidated Net Tangible Assets" shall mean, at any time of determination, the total amount of assets of any Person and its Subsidiaries on a consolidated basis, after deducting therefrom (i) all current liabilities (excluding any indebtedness classified as a current liability), (ii) all goodwill, trade names, trademarks, patents, unamortized debt discounts and financing costs and all other like intangible assets and (iii) appropriate adjustments on account of minority interests of other Persons holding shares of the Subsidiaries of such Person, all as set forth in the most recent annual audited or quarterly unaudited consolidated balance sheet of such Person and its Subsidiaries and computed in accordance with Canadian generally accepted accounting principles.

"Currency Agreement" means any financial arrangement entered into between a Person (or its Restricted Subsidiaries) and a counterparty on a case by case basis in connection with a foreign exchange futures contract, currency swap agreement, currency option or currency exchange or other similar currency related transactions, the purpose of which is to mitigate or eliminate its exposure to fluctuations in exchange rates and currency values.

"Disqualified Equity Interests" means any Equity Interests that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Equity Interests), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Equity Interests, in whole or in part, on or prior to the date on which the Notes mature, and shall be deemed to have an outstanding value equal to the maximum amount that the issuer thereof may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Equity Interests, exclusive of accrued dividends.

"Equity Interests" means, with respect to any Person, all of the shares in the capital of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares in the capital of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares in the capital of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Hedging Obligations" means, with respect to any specified Person, the outstanding amount of all obligations of such Person and its Restricted Subsidiaries under all Currency Agreements, all Interest Rate Agreements and all Commodity Hedging Contracts, with the amount of such obligations being equal to the net amount payable if such obligations were terminated at that time due to default by such Person (after giving effect to any contractually permitted set-off).

"Indebtedness" means, with respect to any specified Person, whether or not contingent:

all indebtedness of such Person in respect of borrowed money;

all obligations of such Person evidenced by bonds, notes, debentures or similar instruments or letters of credit, letters of guarantee or tender cheques (or reimbursement agreements in respect thereof);

all obligations of such Person in respect of banker's acceptances;

all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

all obligations of such Person representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable;

all Hedging Obligations of such Person;

the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of Disqualified Equity Interests of such Person and the amount of the liquidation preference of any Preferred Shares of a Restricted Subsidiary; and

all conditional sale obligations of such Person and all obligations of such Person under title retention agreements, but excluding a title retention agreement to the extent it constitutes an operating lease under Canadian generally accepted accounting principles.

In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, a guarantee by the specified Person of any Indebtedness of any other Person.

"Interest Rate Agreement" means any financial arrangement entered into between a Person (or its Restricted Subsidiaries) and a counterparty on a case by case basis in connection with interest rate swap transactions, interest rate options, cap transactions, floor transactions, collar transactions and other similar interest rate protection related transactions, the purpose of which is to mitigate or eliminate its exposure to fluctuations in interest rates.

"Lien" means any mortgage, lien (statutory or otherwise), pledge, charge, security interest or encumbrance upon or with respect to any property or assets of any kind, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement.

"Non-Recourse Debt" means indebtedness:

(1) as to which neither the Issuer nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than a pledge of the Equity Interests of an Unrestricted Subsidiary, (b) is directly or indirectly liable as a guarantor or otherwise other than by virtue of a pledge of the Equity Interests of an Unrestricted Subsidiary or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit, upon notice, lapse of time or both, any holder of any other Indebtedness (other than the Notes) of the Issuer or any of its

Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity date; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Issuer or any of its Restricted Subsidiaries other than as set forth in clause (1).

"Preferred Shares" of any Person means Equity Interests of such Person of any class or classes (however designated) that ranks prior to, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to any other class of Equity Interests of such Person and shall be valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends.

"Purchase Money Obligation" means any indebtedness or monetary obligation incurred, created or assumed as, or incurred, created or assumed to provide funds to pay, all or part of (a) the purchase price (which shall be deemed to include any costs of construction or installation or lease payments, as the case may be) of any property acquired (including by way of lease) after the date of this Trust Indenture or (b) the cost of improvements made after the date of this Trust Indenture to any property, provided that the principal amount of such indebtedness or monetary obligation does not, at the time incurred, created or assumed, exceed the purchase price of the property when originally acquired, or the cost of improvements, as the case may be, and is incurred, created or assumed not later than 180 days after such purchase or the completion of such acquisition, construction, installation or improvement, as the case may be, and includes any extension, renewal, refunding or refinancing thereof so long as the principal amount outstanding immediately prior to the date of such extension, renewal, refunding or refinancing is not increased.

"Sale/Leaseback Transaction" means an arrangement relating to property owned by the Issuer or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Issuer or a Restricted Subsidiary whereby the Issuer or a Restricted Subsidiary transfers such property to a Person and the Issuer or a Restricted Subsidiary leases it from such Person.

II. Proposed Model Restricted/Unrestricted Subsidiary Definitions:

"Restricted Subsidiary" means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary.

"Unrestricted Subsidiary" means (a) any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer as an Unrestricted Subsidiary in the manner provided below and (b) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Issuer may designate any Subsidiary of the Issuer to be an Unrestricted Subsidiary subject to the following terms, conditions, limitations and restrictions:

such Subsidiary has no Indebtedness other than Non-Recourse Debt;

such Subsidiary is not party to any agreement, contract, arrangement or understanding with the Issuer or any of its Restricted Subsidiaries unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer;

such Subsidiary is a Person with respect to which neither the Issuer nor any of its Restricted Subsidiaries has any direct or indirect obligation (i) to subscribe for additional Equity Interests or (ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results;

such designation would not cause a Default or Event of Default; and

after giving pro forma effect to such designation, (i) the sum, without duplication, of the EBITDA of the Issuer's Unrestricted Subsidiaries, would not be greater than [5 – 10]% of the EBITDA of the Issuer and its Subsidiaries, on a consolidated basis, and (ii) the sum, without duplication, of the total assets of the Issuer's Unrestricted Subsidiaries, would not be greater than [5 – 10]% of the total assets of the Issuer and its Subsidiaries, on a consolidated basis, all as shown on the most recent internal income statement and balance sheet of the Issuer.5

The Board of Directors of the Issuer may designate any Unrestricted Subsidiary as a "Restricted Subsidiary", provided that such designation shall be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary in an amount equal to the outstanding Indebtedness of such Unrestricted Subsidiary and such designation shall only be permitted if (a) such Indebtedness is Permitted Debt, calculated on a pro forma basis; and (b) no Default or Event of Default would be in existence following such designation.

Any designation of a Restricted Subsidiary as an Unrestricted Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors of the Issuer giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions. If, at any time, any Unrestricted Subsidiary would fail to meet the definition of an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Unrestricted Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness is not Permitted Debt, the Issuer shall be in default of [the Limitation on Indebtedness covenant].

B. MERGERS/ASSET SALES ("ALL OR SUBSTANTIALLY ALL…")

The merger/asset sale covenant is intended to ensure that the successor entity to the Issuer resulting from a significant asset disposition (whether by way of a merger, consolidation, amalgamation, sale or otherwise) steps into the indenture obligations of the Issuer. The implicit rationale is that bondholders should be indifferent to such a transaction if the successor fully assumes the obligations of the Issuer.

A typical form of this covenant would be as set forth below:

Restrictions on Amalgamation, Merger and Sale of Assets. So long as any Notes issued under the Trust Indenture remain outstanding, the Issuer and any Restricted Subsidiary will not enter into any transaction in which all or substantially all of the aggregate property and assets of the Issuer and the Restricted Subsidiaries, considered as a whole, would become the property of any other Person (any such Person

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[5] The metrics tested in clause (5) of this definition (EBITDA and total assets) are used to ensure the Unrestricted Subsidiary group do not generate cash flow or hold assets which represent a material portion of the consolidated cash flows or consolidated total assets, respectively, of the Issuer. It is beyond the scope of this paper to propose a standardized EBITDA definition, as this concept will inevitably need customization in each transaction.

being referred to herein as a "Successor"), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise, unless:

(a) either (i) the Issuer shall be the Successor; or (ii) the Successor formed by the reorganization, consolidation, amalgamation, or arrangement or into which the Issuer or the Restricted Subsidiary, as the case may be, is merged or that acquires by disposition all or substantially all of the property and assets of the Issuer and the Restricted Subsidiaries, considered as a whole, is a Person that is organized and validly existing under the federal laws of Canada or any of its provinces or territories and expressly assumes, by a supplemental indenture executed and delivered to the Trustee, all of the obligations under the Trust Indenture of the Issuer or the Restricted Subsidiary, as the case may be; and

(b) immediately before and after giving effect to the transaction contemplated in (a) above, (i) no Event of Default or event that with the passing of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, and (ii) the rights of the Trustee and holders of the Notes under the Trust Indenture would not be materially adversely affected by such transaction; and

Upon satisfaction of the foregoing, the Trustee shall facilitate the same in all respects, and may give such consents and sign, execute or join in such documents and do such acts as in its discretion may be thought advisable in order that such reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or other similar transaction may be carried out, and thereupon the Issuer or a Restricted Subsidiary or Restricted Subsidiaries, as the case may be, may be released and discharged from liability under this Indenture and the Trustee may execute any document or documents which it may be advised is or are necessary or advisable for effecting or evidencing such release and discharge and the opinion of counsel as hereinafter mentioned shall be full warrant and authority to the Trustee for so doing. As a condition precedent to any reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or other similar transaction proposed to be carried out pursuant to this Section, the Issuer shall furnish to the Trustee an opinion of counsel, in form and substance satisfactory to the Trustee, as to the legality of any action proposed to be taken under applicable law, and as to the validity of any action taken pursuant to the provisions contained in this Section, and the Trustee shall incur no liability by reason of reliance thereon.

There are two shortcomings in this common merger/asset sale covenant, as described below. The proposals set forth in the remainder of this paper are intended, collectively, to introduce or reinforce protections included in investment grade indentures which address, in part, these shortcomings.

1. Pro Forma Financial Condition of the Successor

The rationale that bondholders will be unaffected by a transaction captured by this covenant so long as the successor assumes all obligations of the Issuer should be premised on the credit quality of the successor, and the successor corporate group as a whole, being at least materially equal, on a pro forma basis, to that of the consolidated Issuer group pre-transaction. This may be tested by using various metrics (for example, pro forma leverage, interest coverage or fixed charge coverage ratios). While not unusual in high-yield style indentures, most investment grade bond indentures fail to include such financial tests in the merger/asset sale covenant. However, to the extent that (a) the indenture includes a "Change of

Control"[6] provision, (b) Change of Control is defined to include a disposition of all of substantially all of the Issuer's assets, and (c) a "Rating Trigger" concept forms part of the change of control put provision, bondholders will implicitly have an investment grade rating protection on their investment (at least in connection with any Change of Control transaction). Specifically, the "Rating Trigger" will ensure that any transaction resulting in a disposition of all or substantially all of the Issuer's consolidated assets which results in a loss of an investment grade rating for the bonds triggers an optional put right for the bondholders, thus allowing them to opt out of their investment at 101% of par. See the discussion below under "C. Change of Control" for a more detailed description of the rating trigger provision, timing considerations and related definitions. See also the commentary below under "D. Coupon Step-Up Clause" for additional proposed bondholder protections in connection with other significant Issuer board/management actions and decisions which do not otherwise constitute a Change of Control but which may result in a sub-investment grade rating.

2. What does "All or Substantially All" Mean?

While the "all or substantially all" language commonly included in the merger/asset sale covenant has been considered by Canadian courts, it remains a fairly ambiguous standard. Canadian case law suggests there is both a quantitative and qualitative element to determining if any transaction or series of transactions meet the "all or substantially all" threshold. Importantly, Canadian courts have more recently placed greater emphasis on the qualitative test in making this determination than any quantitative assessment. Unfortunately, despite its shortcomings, this is a standard which is deeply entrenched in debt agreements of all kinds, from indentures to bank loan agreements. Addressing its deficiencies in a way that may gain market acceptance is best done indirectly, through the change of control and coupon step-up provisions described below.

C. CHANGE OF CONTROL

The change of control "put" option allows bondholders to reconsider their investment decision if the Issuer is acquired by a new owner. Its purpose and rationale is obvious. However, there are many Canadian investment grade bond indentures which do not include such a put right. Additionally, those indentures which do include this mechanic do not always adequately define "Change of Control" to capture all possible scenarios where the Issuer is effectively acquired by a new owner. The model Change of Control definition set forth below includes the five key scenarios which should, in each instance, result in bondholders having a put right in connection with their notes. Very generally, those five scenarios are:

1. Merger, consolidation or amalgamation of the Issuer with another person (i.e. a public company stock-for-stock M&A, provided that any such public M&A where the Issuer's stockholders end up holding more than 50% of the surviving co. should be excluded);

2. Acquisition (i.e. more than 50% of voting stock) of the Issuer by another person or group of persons (i.e. a "going private" transaction);

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[6] See the *"C. Change of Control"* below for a more detailed description of the rating trigger provision, timing considerations and related definitions.

3. Sale of all or substantially all of the Issuer's consolidated assets (this is in addition to the "Restriction on Amalgamation, Merger and Sale of Assets" covenant);

4. Liquidation or dissolution of the Issuer; and

5. Directors representing a majority of the Issuer's board on the issue date or at the beginning of any 12 consecutive month period, no longer represent, together with directors they approved, a majority of the board.

An additional deficiency common in change of control provisions relates to the "ratings trigger" concept. Investment grade indentures often have a "double-trigger" before bondholders are able to exercise their put rights in connection with a change of control. Typically, there must be both a "Change of Control" (as defined in the indenture) as well as a temporal ratings downgrade of the notes. This second trigger relating to the ratings event is sometimes drafted in a way that is less than optimal from a bondholder perspective. Deficiencies include (a) requiring that the rating agencies publicly state that the downgrade was caused by the change of control transaction (which rating agencies are not always willing to declare), (b) failing to capture the timing of the ratings downgrade, thereby not triggering the bondholder put right on change of control transactions which severely compromise the credit quality of the Issuer, and (c) failing to address the possibility that one or more rating agencies may cease to rate the notes of a particular Issuer.

The model language below includes a suggested "Change of Control" definition and "Rating Event" definition (as well as corresponding defined terms). The remaining language generally included in indenture Change of Control mechanics is quite standardized and is therefore not included in full in this memo. By way of helpful context, a fairly typical Change of Control provision will often include initial language similar to the below, including the 101% put right described in clause (a) below. However, unlike a typical Change of Control provision, the below proposal includes in clause (b) a second branch in the calculation of the put amount. Under this suggested model language, a bondholder exercising its put option upon a change of control would be entitled to receive the greater of 101% of the principal amount of its notes and the trailing 30-day average market price of the notes on the date of announcement or public notice of such change of control. This second branch in the calculation of the put amount ensures that the put mechanic preserves for bondholders the benefit of any increase in the market price of the notes arising prior to the announcement of a change of control event.

"If a Change of Control Triggering Event occurs, unless the Issuer has exercised its right to redeem all of the Notes pursuant to Section [●] of this Indenture, the Issuer will be required to make an offer to repurchase all or, at the Holder's option, any part (equal to Cdn.$1,000 or an integral multiple thereof) of each Holder's Notes on the terms set forth in this Section (the "Change of Control Offer"). In the Change of Control Offer, the Issuer shall be required to offer payment in cash equal to the greater of: (a) 101% of the aggregate outstanding principal amount of Notes, and (b) the Average COC Market Price of the Notes, together in each case with accrued and unpaid interest thereon, if any, to the date of purchase."

"Average COC Market Price" means the price for Notes, calculated and confirmed jointly by two Reference Dealers as the arithmetic average of the Thirty-Day Average COC Market Price of the Notes which has been determined independently by each such Reference Dealer.

"Change of Control" means the occurrence of any of the following events:

(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation, arrangement or amalgamation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole, to any Person or group or Persons acting jointly or in concert for purposes of such transaction, other than any such sale, lease, transfer, conveyance or other disposition among the Issuer and its Restricted Subsidiaries;

(2) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, arrangement or amalgamation), the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly, or indirectly, of voting shares of the Issuer or any Restricted Subsidiary representing more than 50% of the aggregate voting power of the voting shares of the Issuer or such Restricted Subsidiary;

(3) the merger, consolidation, arrangement or amalgamation of the Issuer with or into another Person or the merger, consolidation, arrangement or amalgamation of another Person with or into the Issuer or the merger, consolidation, amalgamation or arrangement of any Person with or into a Subsidiary of the Issuer, unless the holders of more than 50% of the aggregate voting power of the voting shares of the Issuer, immediately prior to such transaction, hold securities of the surviving or transferee Person that represent, immediately after such transaction, more than 50% of the aggregate voting power of the voting shares of the surviving or transferee Person;

(4) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of the Issuer (together with any new directors who were nominated for election or elected to such board of directors with the approval of a majority of the directors then still in office who were either directors at the start of such period or whose election or nomination for election was previously so approved), cease for any reason to constitute a majority of such Board of Directors of the Issuer then in office; or

(5) the adoption of a plan relating to the liquidation or dissolution of the Issuer.

"Change of Control Announcement Event" means the earliest to occur of (a) the occurrence of a Change of Control and (b) public notice of the Issuer's intention or agreement to effect a Change of Control.

"Change of Control Triggering Event" means the occurrence of both a Change of Control and a Rating Event.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's, BBB- (or the equivalent) by S&P or BBB (low) (or the equivalent) by DBRS, or the equivalent investment grade rating from any other Specified Rating Agency.

"Rating Date" means the date which is 90 days prior to the earlier of (i) a Change in Control and (ii) public notice of the occurrence of a Change of Control or of the Issuer's intention or agreement to effect a Change of Control.

"Rating Event" means (a) where the Notes are rated by three Specified Rating Agencies on the Rating Date:

(i) in the event the Notes are assigned an Investment Grade Rating by at least two of the three Specified Rating Agencies on such Rating Date, the rating of the Notes by at least two of the Specified Rating Agencies being below an Investment Grade Rating, or

(ii) in the event the Notes are not assigned an Investment Grade Rating by at least two of the three Specified Rating Agencies on such Rating Date, the rating of the Notes by at least two of the three Specified Rating Agencies being decreased by one or more gradations (including gradations within rating categories as well as between rating categories);

and (b) where the Notes are rated by less than three Specified Rating Agencies on the Rating Date:

(i) in the event the Notes are assigned an Investment Grade Rating by all of the Specified Rating Agencies which rate the Notes on such Rating Date, the rating of the Notes by each such Specified Rating Agency being below an Investment Grade Rating, or

(ii) in the event the Notes are not assigned an Investment Grade Rating by all of the Specified Rating Agencies which rate the Notes on such Rating Date, the rating of the Notes by each such Specified Rating Agency being decreased by one or more gradations (including gradations within rating categories as well as between rating categories),

in each case on any date within the 90-day period (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any of the Rating Agencies) after the earlier of (a) the occurrence of a Change of Control and (b) public notice of the occurrence of a Change of Control or of the Issuer's intention or agreement to effect a Change of Control.

"Reference Dealer" means any nationally recognized Canadian investment dealer selected by the Issuer, provided such investment dealer shall have undertaken to the Issuer:

to determine the Thirty-Day Average COC Market Price of the Notes;

to participate with one other Reference Dealer selected by the Issuer in confirming the Average COC Market Price of the Notes; and

to deliver to the Issuer and the Trustee, within five (5) business days of being selected, a written report prepared and jointly signed with such other Reference Dealer setting forth the Average COC Market Price so calculated.

"Specified Rating Agency" means each of Moody's, S&P and DBRS as long as, in each case, it has not ceased to rate the Notes or failed to make a rating of the Notes publicly available for reasons outside of the Issuer's control; provided that if one or more of Moody's, S&P or DBRS ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Issuer's control, the Issuer may select any other "designated rating organization" within the meaning of National Instrument 25-101 of the Canadian Securities Administrators as a replacement agency for such one or more of them, as the case may be, and provided further that the Issuer shall maintain a rating with at least one Specified Rating Agency at all times.

"Thirty-Day Average COC Market Price" means the price calculated, independently by each of two Reference Dealers selected by the Issuer, as the arithmetic average of the closing price of the Notes on

each of the thirty consecutive business days ending on the business day immediately prior to the date of the Change of Control Announcement Event.

D. COUPON STEP-UP CLAUSE

While a sub-investment grade rating event resulting from a qualifying change of control transaction has gained considerable acceptance in investment grade bond indentures (see above), there are other events and actions which may be initiated by an Issuer's Board of Directors or management which may also have direct negative consequences on the ratings assigned to such Issuer's bonds. Such events or actions may not give rise to the same magnitude of fundamental change as a Change of Control (e.g. the Issuer remains the same legal person, with no material board level changes and there has not necessarily been a fundamental change in the asset profile of the Issuer as would be the case in an "all or substantially all" transaction). However, the events and actions described below may nonetheless cause a material deterioration in the credit rating of an Issuer's bonds. The underlying philosophy to the coupon step-up feature described below is therefore similar to that for the change of control put right – bond investors must have some protections for corporate actions which negatively impact their investment. While a 101% put right has gained good acceptance as the proper form of protection in investment grade bond indentures for a change of control event, the step-up provision described below imposes a less onerous remedy on an Issuer for certain prescribed management initiated events, while still offering real protections to bondholders. Significantly, the below proposal does not attempt to address rating deterioration resulting from general economic or global events, or from the on-going business and financial results of an Issuer. It should also be noted that the below proposal does not contemplate a coupon step-up for bondholders in circumstances where the applicable bonds already had a sub-investment grade rating (as a result of "normal course" credit deterioration) prior to the occurrence of the coupon step-up transaction.

Very generally, the proposed coupon step-up model is intended to provide bondholders with an increased coupon upon the occurrence of the following events, together with a temporal sub-investment grade rating event:

1. Material asset sales by the Issuer or a Restricted Subsidiary;

2. Acquisition of material assets or shares of another person by the Issuer or a Restricted Subsidiary;

3. Any merger, consolidation, arrangement or amalgamation involving the Issuer or any of its Subsidiaries; and

4. The making of any "extraordinary distribution" (which would include certain special dividends, share buy-backs, and investments in another person by way of loans, advances and capital contributions) by the Issuer or any Restricted Subsidiary.

Importantly, the proposed definitions expressly carve-out from the basket of coupon step-up transactions any event which would otherwise constitute a "Change of Control". If a particular event may be interpreted as being both a Change of Control and a coupon step-up event, bondholders will have the benefit of such event being deemed to be a Change of Control with the consequential 101% put right.

The model language below includes suggested "Coupon Step-Up Transaction" and "Coupon Step-Up Rating Event" definitions (as well as other corresponding defined terms). The remaining language which may need to be included in an indenture coupon step-up clause will need to be tailored to properly work with the balance of the applicable indenture or indenture supplement, as the case may be.[7] However, the concepts described below accurately capture the intention of this clause. For context, the Coupon Step-Up provision may include language similar to the below:

"If a Coupon Step-Up Triggering Event occurs, the interest rate on the Notes will increase from the [Original Coupon] by [1.00 – 2.00]%[8]. If at any time the interest rate on the Notes has been adjusted upward and a Ratings Upgrade Event occurs, the interest rate on the Notes will be decreased to the [Original Coupon]. Any interest rate increase or decrease described above will take effect from the first day of the interest period during which a rating change requires an adjustment in the interest rate. If the interest rate payable on the Notes is increased as described above, the term "interest", as used with respect to the Notes, will be deemed to include any such additional interest unless the context otherwise requires."

"Coupon Rating Date" means the date which is 90 days prior to the earlier of (i) a Coupon Step-Up Transaction and (ii) public notice of the occurrence of a Coupon Step-Up Transaction or of the Issuer's or a Restricted Subsidiary's intention or agreement to effect a Coupon Step-Up Transaction.

"Coupon Step-Up Rating Event" means (a) where the Notes are rated by three Specified Rating Agencies on the Rating Date and the Notes are assigned an Investment Grade Rating by at least two of the three Specified Rating Agencies on such Rating Date, the rating of the Notes by at least two of the Specified Rating Agencies being below an Investment Grade Rating, or (b) where the Notes are rated by less than three Specified Rating Agencies on the Rating Date and the Notes are assigned an Investment Grade Rating by all of the Specified Rating Agencies which rate the Notes on such Rating Date, the rating of the Notes by each such Specified Rating Agency being below an Investment Grade Rating, in each case on any date within the 90-day period (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any of the Rating Agencies) after the earlier of (a) the occurrence of a Coupon Step-Up Transaction and (b) public notice of the occurrence of a Coupon Step-Up Transaction or of the Issuer's or a Restricted Subsidiary's intention or agreement to effect a Coupon Step-Up Transaction.

"Coupon Step-Up Transaction" means the occurrence of any of the following events:

(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation, arrangement or amalgamation), in one or a series of related transactions, of [material][9] properties or assets of the Issuer and its Subsidiaries, taken as a whole, to any

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[7] Note the intentional overlap and similarity between defined terms used in the Change of Control put provision and the coupon step-up clause.

[8] The step-up rate will need to be carefully considered on a deal-by-deal basis. The above proposed range for the step-up amount reflects the differentials between investment grade (BBB) credit spreads and sub-investment grade (BB) credit spreads which have generally been observed in the recent past.

[9] The Step-Up Coupon model terms use intentionally subjective standards like "material" and "substantial" (see "Restricted Payment" definition) in a handful of instances. The intent is to avoid having fixed thresholds which may both unduly burden an Issuer (e.g. be too low a threshold in due course) and, at the same time, protect bondholders from transactions that may dramatically impact the credit worthiness of their notes

Person or group or Persons acting jointly or in concert for purposes of such transaction, other than any such sale, lease, transfer, conveyance or other disposition among the Issuer and its Restricted Subsidiaries;

(2) the consummation of any transaction or series of transactions (other than by way of merger, consolidation, arrangement or amalgamation), the result of which is that the Issuer or any Restricted Subsidiary acquires [Equity Interests or material assets] of any Person, other than any such transaction or series of transactions resulting in a Restricted Subsidiary acquiring the Equity Interests or assets of any other Restricted Subsidiary;

(3) any merger, consolidation, arrangement or amalgamation of the Issuer or any Subsidiary of the Issuer with or into another Person or the merger, consolidation, arrangement or amalgamation of another Person with or into the Issuer or a Subsidiary of the Issuer; or

(4) the making, directly or indirectly, by the Issuer or any Restricted Subsidiary of any Extraordinary Distribution;

provided, that (i) this definition shall not limit or restrict in any way what constitutes a Change of Control and (ii) to the extent any transaction, action, decision or event of any kind may be interpreted as either, or both, a Change of Control and/or a Coupon Step-Up Transaction, it shall be deemed and treated for all purposes to be a Change of Control.

“Coupon Step-Up Triggering Event” means the occurrence of both a Coupon Step-Up Transaction and a Coupon Step-Up Rating Event.

"Disqualified Equity Interests" means any Equity Interests that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Equity Interests), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Equity Interests, in whole or in part, on or prior to the date on which the Notes mature, and shall be deemed to have an outstanding value equal to the maximum amount that the issuer thereof may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Equity Interests, exclusive of accrued dividends.

"Extraordinary Distribution" means[10]:

the declaration or payment of any special dividend or distribution (a) on account of the Issuer's or any Restricted Subsidiaries' Equity Interests or (b) to the direct or indirect holders of the Issuer's or any Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions

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despite meeting a pre-determined, arbitrary threshold. These standards should be interpreted from the objective perspective of a reasonable, commercially sophisticated hypothetical investor.

[10] This definition is intended to only capture discrete, specific events initiated and controlled by the Board/management of the Issuer and its Restricted Subsidiaries. Unlike the corresponding "restricted payment" concept commonly found in high yield issues, the "Extraordinary Distribution" definition and related concepts above are not intended to capture and govern all possible scenarios by which value and assets may leak out of the "restricted" group to, for example, unrestricted subsidiaries.

payable in Qualifying Equity Interests and dividends or distributions payable to the Issuer or any Restricted Subsidiary)11, in each case in an amount which is substantially greater than, on a per annum basis, the annual aggregate dividend or distribution payments made by the Issuer or such Restricted Subsidiary at any time during the 5-year period prior to the date of determination;

the purchase, redemption or other acquisition or retirement for value of any Equity Interests of the Issuer or a Restricted Subsidiary, to the extent that amounts payable upon such purchase, redemption or other acquisition or retirement for value is paid to any Person other than the Issuer; and

any non-ordinary course loan, advance, capital contribution, or purchase or other acquisitions for consideration of Indebtedness made by the Issuer or any Subsidiary of the Issuer, other than between or among the Issuer and its Restricted Subsidiaries.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's, BBB- (or the equivalent) by S&P or BBB (low) (or the equivalent) by DBRS, or the equivalent investment grade rating from any other Specified Rating Agency.

"Qualifying Equity Interests" means Equity Interests of the Issuer other than Disqualified Equity Interests.

"Ratings Upgrade Event" means, at any time following the occurrence of a Coupon Step-Up Rating Event, the date on which the Notes are assigned an Investment Grade Rating (a) by at least two of the three Specified Rating Agencies, in the event the Notes are rated by each Specified Rating Agency on such date, and (b) by all of the Specified Rating Agencies which rate the Notes on such date, in the event the Notes are rated by less than three Specified Rating Agencies on such date.

"Specified Rating Agency" means each of Moody's, S&P and DBRS as long as, in each case, it has not ceased to rate the Notes or failed to make a rating of the Notes publicly available for reasons outside of the Issuer's control; provided that if one or more of Moody's, S&P or DBRS ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Issuer's control, the Issuer may select any other "designated rating organization" within the meaning of National Instrument 25-101 of the Canadian Securities Administrators as a replacement agency for such one or more of them, as the case may be, and provided further that the Issuer shall maintain a rating with at least one Specified Rating Agency at all times.

E. ACCELERATION OF MATURITY

Recent developments in the US bond market, both high-grade and high-yield, have led the CBIA Model Covenant Working Group to carefully review acceleration of maturity clauses typically included in indentures for C$ domestic bond financings. We have observed that most such clauses are deficient since they do not precisely articulate that an acceleration event (whether automatic or upon declaration by the Trustee or requisite bondholders) results in all principal, premiums (calculated as if the Notes had been

[11] This parenthetical carves out stock dividends, which should not be objectionable to bondholders, and also any dividend payment that is made by a restricted party to another restricted party.

voluntarily redeemed by the Issuer at the time of such acceleration event) and accrued and unpaid interest becoming immediately due and payable by the Issuer.

A number of events in the US debt markets through the end of 2016 and early 2017 have caused this working group to carefully review standard acceleration clauses found in C$, Canadian law bond indentures. In September of 2016, a New York court ruled for bondholders of Cash America in connection with a claim brought by such bondholders against the company relating to what the court determined was an "intentional" breach by the company of its bond indenture covenants. While the specifics of the case are beyond the scope of this commentary, the key issue before the court was whether Cash America should be required to repay at par the bondholders upon an acceleration resulting from a default or, instead, be required to pay such bondholders as if there had been a redemption of the notes (including the make-whole payable upon such a redemption). While the court ruled in favour of the bondholders in that case, it also invited future unfavourable developments by providing in its written decision that "[u]nder New York law, the parties to a loan agreement are free to include provisions directing what will happen in the event of default of the debt, supplying specific terms that supersede other provisions in the contract if those events occur." This led to a number of new bond financings in the US market, initially high-yield but then also extending to high-grade, through the fall of 2016 and early 2017 which included very specific language in their underlying indentures providing that there would be no premium payable on a default and acceleration. In essence, an issuer benefitting from such a provision could elect to voluntarily breach its indenture covenants and be assured that its bondholders' only recourse would be to accelerate and seek repayment at par. US investors generally rejected new issues that contained this offensive language.

A standard formulation in Canadian bond indenture acceleration clauses is that "all principal, premium (if any) and accrued and unpaid interest" becomes immediately due and payable by the Issuer on an acceleration. Given the recent developments in the US market (and irrespective of what appears to have been successful investor push back on this "no premium on default" movement), it is apparent to us that the "premium (if any)" language commonly seen in acceleration clauses for Canadian financings is too imprecise a description of what is intended. More specifically, we believe the phrase "premium (if any)" as used in acceleration clauses should be reformulated and enhanced to make more clear that the premium payable upon an acceleration is the premium which would otherwise have been payable had the Issuer elected to voluntarily redeem all outstanding Notes on the date of such acceleration. That has long been the understanding within the bond investor community, and the more precise model acceleration clause set out below firmly captures this implicit bondholder expectation.

The following language addresses two types of default. The first paragraph addresses defaults other than bankruptcy type events, thus resulting in an acceleration of the Notes only upon declaration by the trustee or noteholders. The second paragraph addresses defaults arising from bankruptcy type events, resulting in an automatic acceleration of the Notes without a need for a declaration by the trustee or noteholders.

Acceleration of Maturity

If an Event of Default (other than an Event of Default specified in Sections ● or ● [NTD: this parenthetical should capture those Events of Default relating to a bankruptcy, winding-up or insolvency event of the Issuer or material restricted group] shall have occurred and be continuing under this Indenture, the Trustee, by written notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may, and the Trustee at the request of such Holders shall, declare the aggregate

principal of, premium, if any, and accrued and unpaid interest, if any, on all of the Notes to be due and payable. Upon such declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. Upon such declaration, the premium, if any, payable on the Notes then outstanding shall be the premium which would have been payable under the terms of this Indenture upon the voluntary redemption by the Issuer of all of the outstanding Notes on the date of such declaration.

If an Event of Default specified in Sections ● or ● [NTD: this parenthetical should capture those Events of Default relating to a bankruptcy, winding-up or insolvency event of the Issuer or material restricted group] shall have occurred and be continuing under this Indenture, then the aggregate principal of, premium, if any, and accrued and unpaid interest, if any, on all of the Notes will thereon become and be immediately due and payable without any declaration, notice or other action on the part of the Trustee or any Holder. Upon such immediate and automatic acceleration, the premium, if any, payable on the Notes then outstanding shall be the premium which would have been payable under the terms of this Indenture upon the voluntary redemption by the Issuer of all of the outstanding Notes on the date of such acceleration.

F. CONSENT FEES

This section addresses best practices with respect to compensation offered to bond holders in conjunction with amendment proposals and waiver requests, as well as the process related to such requests.

The two key principles underlying this policy are: the CBIA believes that all bondholders should be treated fairly and equally with respect to any change in the credit profile of an issuer or security; and, that all bondholders should have an equal opportunity to participate in consent related compensation and fees. In addition, this policy addresses certain practices in the fixed income market, such as positive consent and early consent fees, which the CBIA believes are inconsistent with these principles.

The CBIA is firmly opposed to:

(a) "positive consent fee" arrangements, which are fees that are offered only to bond holders that vote in favour of a proposed amendment or waiver. The CBIA views such fees as coercive and totally inappropriate; and

(b) "early consent fee" arrangements, which are fees that are offered only to bond holders that indicate their support of a proposed amendment or waiver either prior to or shortly after a public consent solicitation is made to the full bond holder group, without the full bond holder group being afforded sufficient time and information to evaluate and respond to such request.

When crafting an amendment or waiver request, the CBIA recommends that issuers and their advisors consider two main factors in relation to compensation offered to bond holders:

(a) how much work may reasonably be required for the bond holders to consider the request and to obtain the necessary internal approval. This will be the primary basis for determining whether an amendment review fee is appropriate and how large that "amendment review fee" should be; and

(b) whether the amendment or requested changes result or are in response to a change in the credit quality of the bonds or issuer. This will be the primary basis for determining whether some type of "credit degradation compensation" is appropriate.

The CBIA recognizes that some requests are very straight-forward and require very little effort to evaluate by bond holders. In these cases, either no amendment review fee is required or a minimal amendment review fee would suffice. In other cases, substantial effort is required from bond holders and a more meaningful amendment review fee is appropriate. The CBIA also notes that issuers are reluctant to pay an amendment review fee to all bond holders (including those that do not respond to the request) and that an amendment review fee may therefore be viewed as an inducement to bond holders to evaluate the issuer's request and to formally respond. Therefore, the CBIA considers it appropriate for amendment review fees to be paid only to bond holders that formally respond to an amendment or waiver request (but not dependent on whether the bond holder votes in favour) where such request has been made to the full bond holder group and in respect of which all bond holders have been provided sufficient time to evaluate and respond; and that such fee be paid only if the request is approved by the requisite number of bond holders (even if modified from the issuer's original request).

Regarding "credit degradation compensation", the CBIA notes that such compensation may consist of some combination of an up-front fee and/or a change in the economic or other terms of the bond (e.g. increase in interest rate; addition of interest rate step-up provision; partial paydown; additional security; or other changes in terms). The CBIA firmly believes that if the issuer's request is approved/passed, such compensation or other improved terms must be given to all holders of the affected bonds.

From a best practices perspective, the CBIA recommends that issuers requesting amendments or waivers: (a) provide sufficient time (example 30 days written notice) for all bond holders to evaluate and respond; (b) ensure that appropriate information is made readily available to all bond holders (e.g. copies of indentures and supplemental indentures; black-lined versions of such documents to reflect proposed amendments; power point presentations; etc.) concurrently with such written request; and (c) make themselves and/or their advisors available to answer questions and take feedback from the bond holders.