

EXCHANGE OFFERS

Recent examples of exchange offers

To increase regulatory capital: CIT Group, GMAC

De-leveraging and extending weighted average maturity of outstanding debt: ResCap, Harrah's, Realogy, Tyco

Possible pricing methods

Fix a price in advance or use a Dutch auction

Debt-for-debt offers can have priority tiering among different classes of notes, cutbacks in event of oversubscription, etc.

May offer a mix of consideration including cash, common, preferred, secured, senior or subordinated notes

Inducement payments for early tender

Typically for those that tender within the first 10 days after commencement of a tender offer

But, generally, in advance of a specified timeline

Typically prohibits the withdrawal of securities after the expiry of the early delivery period

In addition, issuers pay soliciting dealers fees based on the face value of bonds that are exchanged

Consent solicitations

An "exit consent" solicitation to remove covenants in conjunction with an exchange offer can help the deal succeed

Holder who do not tender will continue to hold securities that may be effectively subordinated or with diminished protections

All provisions, other than interest, principal and maturity, can be amended with the voting requirements per the indenture

Recent examples: IAC/Interactive Corp., Tyco, DR Horton, Thornburg Mortgage, NRG Energy

Tax considerations

An exchange of notes or stock for existing notes may result in taxable cancellation of indebtedness income

Also in gain/loss to the holder

Debt-for-debt and debt-for-equity exchanges can be structured to be tax-free for participating holders

If the existing notes and the new notes are "securities" for federal income tax purposes

An exchange offer could have tax implications for holdouts if terms are significantly modified

