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RECENT DISTRESSED FINANCINGS: TRENDS AND LESSONS LEARNED

In this article, the author discusses recent distressed financings in the retail sector that illustrate the rising popularity of "unrestricted subsidiaries" in restructuring transactions, issuers emboldened to restructure out-of-court using exchange offers, and the availability of excess capital that has eased DIP financing terms. He closes by noting sectors facing potential restructurings that may be affected by the Trump Administration.

By Van C. Durrer, II *

This past year has been chock full of surprises — the installation of the Trump administration, a steady stream of drama flowing from inside the Washington, D.C. beltway and elsewhere, the British government's invocation of Article 50 of the Treaty on the European Union, setting the United Kingdom on course to leave the European Union in 2019, and not one or two, but three,[1] hikes in the Federal Reserve's target for short-term interest rates. Yet, even in the face of geopolitical uncertainty, leveraged finance markets have continued to experience sustained growth. High-yield and leverage loan issuance continued its trajectory above last year's pace, with the proportion of loan volume from new loans peaking in the third quarter of 2017. Overall, refinancing of existing credit facilities has been the driving force behind record leveraged loan issuance for the year to date.[2] Despite continued setbacks in the form of downgrades, increased defaults, and the "Amazon effect,"[3] the retail sector has led the pack.

[1] As of December 2017, the Federal Open Market Committee (FOMC) voted to raise the target range to 1.25% – 1.50%, effective December 14, 2017. Press Release, The Federal Reserve, The Federal Reserve Issues FOMC Statement (Dec. 13, 2017), http://www.federalreserve.gov/newsevents/pressreleases/monetary20171213a.htm.

[2] Press Release, Fitch Ratings, US Leveraged New-Money Volume Expands in 3Q, http://www.fitchratings.com/site/pr/1031622 (noting that the primary driver of U.S. leveraged loan issuance during 2017 has been refinancing of existing facilities and that through September 2017, "the share of new-money leveraged loan volume was 34% compared to 51% for the same nine-month period of last year.").

[3] *See* Steven Dennis, *Assessing The Damage of 'The Amazon Effect'*, Forbes.com (Jun. 19, 2017, 11:39 a.m.), https://www.forbes.com/sites/stevendennis/2017/06/19/should-we-care-whether-amazon-is-systematically-destroying-retail/#199ec3366b1f.

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