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CASE STUDIES IN EXCHANGE OFFER REFINANCINGS

The authors give detailed descriptions of the efforts of three different companies to address liquidity constraints, impending debt maturities, and meet operational and strategic goals by refinancing through exchange offers. These cases, they believe, should both guide and caution companies and boards considering aggressive exchanges.

By Sandeep Qusba, Kathrine McLendon, and Randi Lynn Veenstra *

Where does a company turn when it is unable to raise capital or secure traditional financing and is facing an over-leveraged balance sheet, impending debt maturities, or is looking to distribute otherwise locked up value to its constituents? These types of situations lead boards, senior management, investors and their respective advisors to scour a company's existing debt documents to see if creative options may exist to access liquidity and create additional time for the company to address its financial difficulties. Although it may be a laudable goal to implement a creative financing solution that stretches contractual interpretation or utilizes forgotten loop holes, sometimes creativity leads to more complexity, additional losses and litigation costs, and simply postpones the inevitable.

The heightened prospect of litigation from pursuing an aggressive exchange offer refinancing poses risks that companies and their boards must consider. In particular, creditors not involved in the transaction may argue (even years later) that the board of directors is not discharging its fiduciary duties to the company and its stakeholders appropriately, particularly if the company is insolvent or in the zone of insolvency. The board will also have to analyze carefully whether the financing transaction would be vulnerable to a fraudulent conveyance or other form of challenge if the company ultimately has to seek bankruptcy relief.

Here, we explore the routes taken by three different companies to address liquidity constraints, impending debt maturities, and meet operational and strategic goals. In each case, the company and its advisors utilized creative exchange offers to raise new capital or refinance existing debt. The results were mixed.

TOYS "R" US

Toys "R" Us, Inc. ("Toys") was a retailing merchandiser in the baby, core toy, entertainment, learning, and seasonal product categories worldwide. Toys operated in two principal segments: (i) Toys "R" Us Delaware ("Toys Delaware"), which represented over 60% of total revenue and included Toys' Canadian and certain U.S. businesses, as well as a property company, Toys "R" Us PropoCo II ("PropCo II") and

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