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Just who is your Debt Restructuring Information Agent?

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Streamlining trustee and agency roles with a Corporate Trust provider

For most companies and sovereign nations, a corporate action or debt restructuring is a high-profile event that may prove crucial to its financial future. So it is essential that the process is handled with the best available expertise and due care.

The trend in recent years has been for small information agents to assume a much larger role in debt restructurings. Buyers of their services, in the same way as they assess counterparty risk, should apply an equally rigorous scrutiny of their strength and transparency. In addition, issuers should not overlook the efficiency benefits of streamlining agency and trustee roles with a single, global Trust provider. By doing so, they can achieve higher levels of transparency, thereby improving corporate governance for all parties involved.

Agency - a crucial role in all restructurings

Debt restructurings, the three principal forms of which are highlighted on the next page, may occur for a number of reasons, but at their heart lies the need for certainty. Information must be readily available to investors and creditors, and effective methods must exist for these parties, as well as the issuers themselves, to communicate their intentions.

Trust providers bring transparency and security

The primary role of the information agent is, by definition, to disseminate the information to all parties to the transaction. At its simplest, this usually involves direct mailing and running what is essentially a call centre to field queries.

In recent years, however, information agents have extended their remit, taking on additional roles that Trust providers traditionally performed as fiduciaries – but without assuming the associated fiduciary responsibilities. There are points in some transactions where the information agent now holds all of the funds involved, determines the distribution amounts and makes the payments.

Given the level of scrutiny that issuers apply in their responsibilities to counterparties and investors in ensuring they “Know Your Client”, it seems equally prudent to pay the same close attention when hiring what is essentially a vendor service – more often than not provided by small, thinly capitalized, unrated, unregulated entities. By comparison, using an established, global Trust provider can afford a reassuring level of transparency and security in unstable times.

- **Debt exchange offer:**

This occurs when a company asks its investors to exchange their existing securities for replacement ones, sometimes involving a cash element. A company may pursue a debt exchange in order to re-finance debt in advance of its maturity, or to improve on the terms of existing bonds.

- **Debt tender offer:**

A tender offer occurs when a company seeks to buy back its bonds from investors in cash. This often happens when a company seeks to reduce its debt, or perhaps to improve its tax position, or when it has excess cash on its balance sheet.

- **Consent solicitation:**

This is an offer by the issuer of a security to change the terms of the original security offering, and can only be done with bondholder approval. Given the nature of the global marketplace, a debt restructuring may occur across multiple jurisdictions, through various exchanges and time zones. Choosing the right party to act as an information agent, with the necessary (global) capabilities, is therefore fundamental to the success of any restructuring, particularly those more complex restructurings.

Attractions of information agents can mask risks

The growth in information agents’ roles is not traditional market practice, given the definition and scope of their business. Reasons for this growth include the arrival of many start-ups, and some lower fees, which can lead “price sensitive” issuers to overlook the many risks involved.

Some information agents also offer specialist services, such as bondholder identification, which have obvious attractions. However, the potential conflicts of interest in providing these services are often overlooked. Furthermore, a Trust provider in some regions might already have a separate relationship with the investors, or have acted as agent or trustee on the original debt, so may be able to provide the same information more comprehensively and faster, (subject to the appropriate conflict checks).

There are obviously heightened risks from working with a small information agent as a tender/exchange agent. Issuers need to ask:

If a small information agent, acting as tender agent, holds all the funds during a transaction, is the company fully aware of its counterparty risk?

Does a small agent have the specific expertise for every different and complex multi-jurisdictional, multi-currency transaction?

Put simply, while the tender and exchange services offered by information agents can appear attractive, issuers can be distracted from the very substantial risks they may be undertaking.

Vital qualities for a successful restructuring

Given that an issuer’s debt restructuring is often very high profile, a successful debt tender or exchange transaction needs to be handled by experts for whom this is an established core business and who have:

Global reach

With cross-border debt portfolios increasingly commonplace, it is important that a company chooses an agent with a presence in the local markets, able to provide on-the-ground support to local security holders. If the transaction crosses time zones, the agent must be able to provide that support 24 hours a day.

When restructuring bonds which trade in international markets, the agent must also have effective links with the DTC, Euroclear and Clearstream.

These clearing links are crucial for many debt restructurings in order to hold repurchased securities or perhaps cancel securities. The benefits of effective clearing links become even more obvious in the receipt of the secure notifications from investors and creditors. Only a formal paying agent can receive the secure SWIFT notification via the clearing system.

Strength, expertise and stability

In an investor-driven market, counterparties' financial strength is important. When selecting an agent, therefore, it is vital to look at its credentials, and to choose one with a long track record of successful restructurings. The more expertise the agent has, the more solutions it can offer. Highly rated Trust providers such as BNY Mellon offer a level of financial standing and expertise that advisors and third parties should not only seek but demand.

A "one-stop shop" to ensure a successful result

A leading Trust provider can also offer a breadth of service across all the key stages of a debt exchange / tender transaction, which small players cannot match. These include bespoke systems and processes to help manage the many facets of an issue, including:

1. Strategy, planning and implementation
2. Management of investor queries; dedicated helplines
3. Establishing information portals (regionally managed, when required)
4. Secure electronic election/consent methods; communication links
5. Data integrity
6. Tabulation of consents and elections
7. Security and payment distribution
8. Clearing services
9. Notice publication

Using the expert services of a Trust provider as the "single source" solution on debt tender / exchange offers enables clients to focus exclusively on their own core businesses.

Conclusion – good governance and risk mitigation for issuers

While there are undoubtedly some very effective information agents in the marketplace, they cannot match the levels of expertise and broad range of services offered by a global Trust provider.

We think that streamlining debt trustee and agency roles with a dedicated corporate Trust provider is the safe and sensible option. Not only does it draw on established core competencies, but it can reduce the risk in using a more regulated and highly rated Trust provider.

Centralizing all services with a well-established, financially strong Trust provider can provide an issuer with the best possible footing from which to launch a restructuring. They can be confident that the transaction is being managed in the most efficient and timely manner, in order to meet the needs of all interested parties. Most importantly, the issuer can take comfort in knowing exactly who they are doing business with, thereby guaranteeing robust governance and strong mitigation principles from the outset.

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