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RELATED PRACTICES

Corporate and Business Transactions
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Lending Transactions

Increasingly in the financial markets, investment banks, hedge funds, private equity firms and other non-bank institutions are providing funding and market liquidity that was once the preserve of large commercial banks. RK&O is a regular advisor to these market participants in respect of both the legal loan documentation and the innovative financing techniques increasingly used to promote liquidity through tradable, tax-efficient structures.

In addition to representing clients in the loan origination and syndication process, RK&O represents lenders, particularly in connection with mid-cap companies, advising on cash flow-based lending, asset-based lending, leveraged buyout financing, acquisition financing, recaps, debtor-in-possession (DIP) financing, exit financing for Chapter 11 and other reorganizations, and other secured (including multi-lien and unitranche facilities) and unsecured financings. Our lawyers routinely advise clients on the structure, documentation and negotiation of all aspects of the financing transaction, from the initial commitment or engagement to the closing of the transaction and perfection of security interests.

Our many years of experience give us a deep understanding of the complex business issues involved in negotiating loan documentation. In addition to addressing legal issues, we frequently help our clients analyze the commercial and credit risks involved in senior secured, first lien, second lien, mezzanine, PIK and DIP loan transactions. We often represent participating or potential lenders in the review, analysis and revision of draft credit facilities by identifying the material covenant exceptions and other core issues that may exist in the loan documentation. We also represent investors in second lien and other subordinated loans and have strong experience in negotiating and seeking to improve the creditor rights available to a junior creditor. Our attorneys work closely with our restructuring and bankruptcy practice by providing the lending support in connection with out-of-court restructurings, DIP loan transactions and Chapter 11 exit financings.

In addition to its established European and U.S. presence, RK&O routinely advises clients in connection with cross-border and emerging market transactions in Eastern Europe, Africa and the Middle East. Our lending lawyers are experienced in working with local counsel to help our clients apply proven investment techniques in a variety of jurisdictions. This experience also allows us to assist our clients in understanding and addressing the heightened political, legal and commercial risks often associated with emerging markets.

EXPERIENCE

Our lawyers routinely advise lenders on the structure, documentation and negotiation of all aspects of the financing transaction. Recent representations include:

- Represented a major investment bank's middle-market lending division in connection with \$48 million of senior secured credit facilities to fund a leveraged buy-out of a media/publishing company;

LENDING TRANSACTIONS (Cont.)

- Represented a prominent middle-market hedge fund in an \$80 million loan to a hospitality company;
- Represented a major investment bank's middle-market lending division in connection with \$60 million of first lien financing provided to a publishing company;
- Represented a prominent hedge fund in connection with a \$45 million second lien credit facility provided to an office imaging distributor;
- Represented a prominent hedge fund in connection with a \$20 million second lien credit facility provided to an on-line shoe distribution company;
- Represented a major investment bank in connection with a \$30 million debtor-in-possession financing provided to a power generating facility;
- Represented a major investment bank in connection with a \$25 million syndicated second lien credit facility provided to a manufacturer of vacuums and small appliances;
- Represented a major investment bank in connection with \$82 million of senior secured syndicated credit facilities provided to the investment bank in connection with the investment bank's leveraged buy-out of a Mexican cinema company;
- Represented a prominent hedge fund in connection with a \$20 million debtor-in-possession financing provided to an energy company;
- Represented a prominent hedge fund in connection with a \$20 million delayed draw term loan to a gaming company; and
- Represented a major investment bank in connection with a \$90 million credit facility provided to an entertainment company.

EXPERIENCE

Our lawyers routinely advise lenders on the structure, documentation and negotiation of all aspects of the financing transaction. Recent representations include:

- Represented a major investment bank's middle-market lending division in connection with \$48 million of senior secured credit facilities to fund a leveraged buy-out of a media/publishing company;
- Represented a major investment bank's middle-market lending division in connection with \$60 million of first lien financing provided to a publishing company;
- Represented a prominent hedge fund in connection with a \$45 million second lien credit facility provided to an office imaging distributor;
- Represented a prominent hedge fund in connection with a \$20 million second lien credit facility provided to an on-line shoe distribution company;
- Represented a major investment bank in connection with a \$30 million debtor-in-possession financing provided to a power generating facility;
- Represented a major investment bank in connection with a \$25 million syndicated second lien credit facility provided to a manufacturer of vacuums and small appliances;
- Represented a major investment bank in connection with \$82 million of senior secured syndicated credit facilities provided to the investment bank in connection with the investment bank's leveraged buy-out of a Mexican cinema company;
- Represented a prominent hedge fund in connection with a \$20 million debtor-in-possession financing provided to an energy company;

LENDING TRANSACTIONS (Cont.)

- Represented a prominent hedge fund in connection with a \$20 million delayed draw term loan to a gaming company; and
- Represented a major investment bank in connection with a \$90 million credit facility provided to an entertainment company.

PUBLICATIONS

"The Latest Innovation in Middle-Market Lending" by Nicholas Whitney published by *Law360*

"Unitranche Facility & Middle Market Lending" by Nicholas Whitney published in *peHUB*

"The Latest Innovation in Middle Market Lending: The Unitranche Facility" by Nicholas A. Whitney

"The imperfect hedge: bail-in risk and CDS contracts" by Julia Lu and John Clark published in *Butterworths Journal of International Banking and Financial Law*

"A Loan Trader's Guide to Commercial Real Estate Loans" by Jon Kibbe, Paul B. Haskel, Michael Friedman and Kenneth Werner

"Lehman Strikes Again: European Loan Participations and Preference Risks" by Carl Winkworth and Joon P. Hong published in *International Corporate Rescue* magazine

"The Secured Lender Review: Seven Cautionary Rules" by Keith Sambur

"Material Non-Public Information in the Secondary Loan Market after Dodd-Frank" by Jon Kibbe and Michael Mann published in the *LSTA 2011 Loan Market Chronicle*

"Secured Lender Review: Seven Cautionary Rules" by Keith Sambur published by *Law360*

"2nd-Lien Lenders Get Louder" by Keith Sambur published by *Law360*

"Denial of Consents to Secondary Loan Assignments on the Rise" by Paul B. Haskel and Neil Binder

"The Continuing Evolution of Bankruptcy Rule 2019" by Jon Kibbe and Michael Friedman

"Acquiring Companies in Bankruptcy" co-authored by Michael Friedman published in *Executive Counsel* magazine

"Unanimous Lender Consent Provisions: Protection?" by Nicholas Whitney and Keith Sambur appears on *Law360*

"Unanimous Lender Consent Provisions May Not Provide the Protection Expected" by Nicholas Whitney and Keith Sambur

"UPDATE: Using Incremental Facilities to Exchange Bond Indebtedness - The Realogy Decision" by Nicholas Whitney

"Using Incremental Facilities to Exchange Bond Indebtedness" by Nicholas Whitney

"The Defaulting Lender in Today's Loan Market" by Nicholas Whitney

"Purchases of Bank Loans by a Borrower or its Sponsor" by Nicholas Whitney

"Incremental Loan Facilities: Key Provisions" by Nicholas Whitney

PRESENTATIONS

Paul B. Haskel speaks at the 2011 American Bar Association Annual Meeting

LENDING TRANSACTIONS (Cont.)

RK&O partners participate in the panel discussion "Receiving Information, Managing Risk, and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Financial Services General Counsel Luncheon in San Francisco

RK&O partners present "Receiving Information, Managing Risk and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Alternative Asset Management General Counsel Luncheon in New York City

Jon Kibbe speaks at the 15th Annual Conference of The Loan Syndications and Trading Association

Michael Friedman presents "Bankruptcy's New Wave – Preparing for the Perfect Storm: Which Sectors Will Take a Direct Hit?" at the American Bankruptcy Institute Annual Winter Leadership Conference

Joon Hong and Nicholas Whitney speak at "The 3rd Global Distressed Debt Investor Forum"

RK&O partners speak at the "Distressed & Turnaround Investment" conference

NEWS & ANNOUNCEMENTS

Nicholas Whitney quoted in *Reuters'* article "Certainty, ease of execution drive demand for unitranche debt financing"

Jon Kibbe and Michael Friedman quoted in *The Distressed Debt Report* article "Attorneys Applaud Bankruptcy Rule 2019 Amendments"

Richards Kibbe & Orbe LLP names Jeffrey Lehtman a partner and Catherine Turgeon and Ryan Jackson counsel

Michael Friedman quoted in the *Bloomberg* article "Bankruptcy Turnarounds Menaced by Investor Valuation Fights, Lifland Says"