

## ATTORNEYS

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## "Equity Kickers: Extra Point for Lenders" by Jahangier Sharifi and Thao Do

January 29, 2009

Unprecedented numbers of corporate borrowers will be unable to make payments on their outstanding loans or obtain takeout financing in 2009. Consequently, lenders will have a variety of opportunities to participate in loan refinancings, restructurings and amendments. In this environment, we expect borrowers to offer equity kickers to lenders as incentives in addition to, or in lieu of, increased cash payments. The focus with respect to equity kickers should not be on downside protection, but on making sure that lenders are able to realize on their investment in an upside scenario. Lenders focused on the key terms of an equity kicker from the outset are more likely to receive the full benefit of their bargain. This memorandum identifies important issues to be considered when negotiating equity kickers, including the terms of the equity kicker, equityholder protections, exit rights, and regulatory and other legal issues.

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