

## ATTORNEYS

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## PRACTICE AREAS

Lending Transactions

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

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As the turmoil in the credit markets continues, a highly-levered borrower without access to external refinancing sources may attempt to reduce its overall indebtedness by exploiting the arbitrage between the discounted market prices of different debt obligations within its own capital structures. One of the methods a borrower may attempt to use is to exchange its bond indebtedness for other debt within its capital structure. The new indebtedness may provide an improved (senior or senior secured) position within the borrower's capital structure in order to encourage existing bondholders to accept such an exchange. To create the more desirable debt necessary to induce bondholders to participate in an exchange, a company may issue senior or senior secured debt under the company's incremental or "accordion" facility contained within a credit agreement. Because this technique is arguably a fortuitous (for the borrower) and perhaps unintended use of the accordion facility, one must review several sections of the applicable credit agreement and bond indentures to determine whether the agreements permit a company to exchange its bonds for indebtedness incurred under an incremental facility. These sections are highlighted in the attached memorandum.

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