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A Stapled Exchange: A Useful Tool for Companies Seeking to Refinance or Restructure Retail Bonds

*By Sunny Singh, Gary Holtzer and Alexandra Langmo**

In this article, the authors discuss how a “stapled exchange” can be an effective tool for U.S. public companies that may need to address certain portions of their capital structure without the burdens and cost of a more extensive in-court process, such as chapter 11.

Restructuring retail bonds issued by public companies presents unique challenges as the holders of these bonds frequently include a wide universe of difficult to identify and engage individual investors. Individual investors historically do not participate in exchange offers. At the same time, these parties cannot be compelled to exchange their debt—even on favorable terms—for a new instrument absent a court process like chapter 11. As a result, non responsiveness may be a real hurdle to achieving target levels of participation in any exchange offering and closing out of court. In this situation, Fossil Group, Inc. (Fossil) recently deployed a strategy to exchange its retail bonds and bind non-participating individual investors without a chapter 11 process. Instead, Fossil pursued an exchange offer with a stapled UK restructuring plan to be implemented if an insufficient number of noteholders opted into the exchange (a Stapled Exchange). A Stapled Exchange may be a useful tool for other companies looking to refinance or restructure retail bonds.

BACKGROUND

Fossil is a publicly traded retail company that operates and distributes its products across the world. In 2021, Fossil issued \$150 million of senior unsecured notes due November 2026 (the 2026 Notes). The 2026 Notes were registered with the Securities and Exchange Commission, issued in small denominations, and therefore were widely dispersed. Approximately 30% of the 2026 Notes were held by over 1,500 individual holders in \$25 increments.

Fossil faced challenges refinancing the notes in the capital markets. Therefore, Fossil engaged with certain noteholders who owned more than a majority of the 2026 Notes and ultimately agreed to a restructuring of the 2026 Notes (the Consenting Noteholders). But, it was not feasible for Fossil to only

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exchange the portion of the 2026 Notes held by the Consenting Noteholders while leaving the portion of the 2026 Notes held by retail holders outstanding. Fossil did not need a chapter 11 proceeding, however. The business was on an upward trajectory, the Company just refinanced its asset-based loan, and the Company had sufficient liquidity to operate its business in the ordinary course.

In August 2025, Fossil announced a plan that surgically addressed the restructuring of the 2026 Notes while avoiding a costly and unnecessary chapter 11 process (including the negative impacts of an automatic delisting of its public equity). Specifically, Fossil commenced an exchange offer for all noteholders that was backstopped by a UK restructuring proceeding—a Stapled Exchange. As a result, any noteholders who did not voluntarily tender in the exchange were bound to exchange on the same terms and conditions.

PROCESS

Fossil's Stapled Exchange is described in the following steps.

Step 1. Enter into Transaction Support Agreement with Consenting Noteholders

On August 12, 2025, Fossil completed Step 1 of its plan for restructuring the 2026 Notes by executing a Transaction Support Agreement with two major holders of the 2026 Notes, holding fifty-nine percent in the aggregate of the 2026 Notes (the TSA Parties). As part of agreement, the TSA Parties agreed to provide up to \$32.5 million in new money financing and support Fossil's restructuring process.

The Transaction Support Agreement also provided that, as a preliminary step to launching the restructuring plan, one of Fossil's newly incorporated UK subsidiaries (Fossil UK) would: (i) become a guarantor under the terms of the 2026 Notes through entry into a supplemental indenture, and (ii) amend the governing law and jurisdiction provisions of the 2026 Notes to change the governing law from New York law to English law and to submit to the jurisdiction of the courts of England and Wales. To effect the governing law change, Fossil solicited consents from the noteholders through a public consent solicitation.

Step 2. Commence public exchange offer with respect to the remaining outstanding notes

On September 9, 2025, Fossil commenced a public exchange offer for the tender of the remaining 2026 Notes. The offer provided the opportunity for noteholders to participate in the new money investment of Fossil in exchange for their consent to (i) support the transaction, including the restructuring process with respect to the 2026 Notes, and (ii) exchange their 2026 Notes for

new 9.5% first priority senior secured notes due 2029. Any noteholders that did not elect to invest additional capital in Fossil were provided with the opportunity to tender their 2026 Notes in exchange for new 7.5% second priority senior secured notes due 2029.

If noteholders representing 90% or more of the outstanding principal amount of the 2026 Notes tendered their respective 2026 Notes by a date certain, the exchange offer would have closed and the transaction would have been implemented without the need for a court restructuring process. The remaining 2026 Notes would have remained outstanding until their maturity in 2026. However, if less than 90% of the principal amount of the 2026 Notes were tendered, then Fossil planned to proceed to Step 3, i.e., a UK-court restructuring process.

Step 3. Commence UK proceeding to restructure notes through a restructuring plan if necessary

The 90% threshold was not met. As a result, on September 23, 2025, Fossil UK commenced a UK proceeding and proposed a restructuring plan under Part 26A of the UK Companies Act 2006 to implement the restructuring of the 2026 Notes and bind the holdout creditors that did not participate in the exchange offer. An English scheme of arrangement under Part 26 of the UK Companies Act and a restructuring plan under Part 26A of the UK Companies Act 2006 are tools that can be used to bind creditors without unanimous consent and, absent the use of the cram down provisions under section 901G of the UK Companies Act, both procedures require approval by at least 75% in value of each class of creditors (or in this case, the one class of creditors) present and voting. A restructuring plan was selected in this instance as, unlike a scheme of arrangement, it does not also require a majority in number of those present and voting in the class to vote in favor.

The restructuring plan was sanctioned by the UK court on November 10, 2025 and was implemented on November 13, 2025 following the entry of a chapter 15 recognition order. As a result, none of the 2026 Notes remain outstanding. In addition, Fossil's existing issuer received a third-party release that mirrors the treatment provided to Fossil UK.

BENEFITS

The Stapled Exchange is a creative tool to accomplish a restructuring and provides the benefits of a binding court-approved exchange without the costs of an extensive in-court process. More specifically, the Stapled Exchange provided the following benefits to Fossil:

- The ability to bind minority holders who did not vote on the restructuring plan, or who voted against it, to the terms of the

transaction;

- Avoided the need to restrict the Company's business operations, since a UK proceeding is not an operational proceeding as compared to a chapter 11;
- Significant savings as a bespoke UK process was less costly than a more fulsome chapter 11 process; and
- Equity remained outstanding (and even listed) throughout and after the UK process because UK law does not incorporate the absolute priority rule.

CONCLUSION

A Stapled Exchange can be an effective tool for U.S. public companies like Fossil that may need to address certain portions of their capital structure without the burdens and cost of a more extensive in-court process like chapter 11.