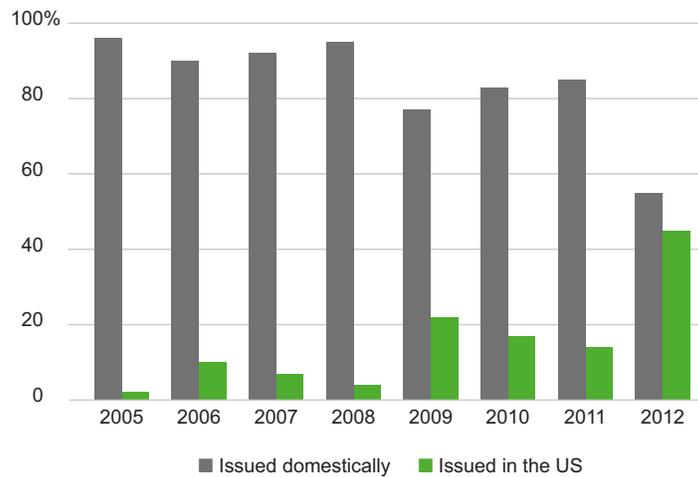


Alert

Banking & Finance

Accessing US Market Liquidity – Executing ‘Yankee Borrower’ Financings in Europe

Share of Loan Volume from European Issuers, Domestic vs. US



Source: S&P Capital IQ Leveraged Commentary & Data

Introduction

In recent months European leveraged credits with little US presence have looked to access the US loan markets directly using New York-law-governed credit agreements to obtain benefits including more favorable economics and “covenant lite” structures.

While the differences between US and European market terms are well understood, these “Yankee borrower” financings pose a number of challenges in terms of pure deal execution.

We summarize below the main execution drivers that we recommend be considered upfront when managing differing transatlantic expectations. Approaches in relation to each of these drivers have evolved as more of these financings have been documented.

Observations

The move towards US financings has been driven by commercial terms including pricing, leverage, and covenants. While these terms are generally negotiated at the start of any deal, it is equally important to consider at that time the management and solution for differing execution expectations between the two markets, including the following:

Precedent documentation and syndication management

Where a European sponsor is tapping the US loan market for the first time, existing European loan precedents will be of limited use, and as such, often there will be no precedent documentation from which to base negotiations. Furthermore, there is no US market equivalent to the European LMA-recommended form agreement. This may lead to longer negotiations and should be factored into term sheet discussions.

Similarly, syndication management can vary between the European and US markets and it is advisable to carefully consider strategy and timing from the outset including, in particular, where this variance has a knock-on effect on documentation, for example the European “white list” versus the US “disqualified lender” approach, alongside any restrictions on industry competitors.

Certain funds

While the US market relies on the “SunGard” protections within the commitment papers, typically European sellers go further and at the bid stage require the delivery of an executed loan agreement together with satisfaction of all conditions precedent to funding. Recent “Yankee borrower” financings have solved for this requirement in various ways, including by adopting European practice through the signing of a New York-law-governed interim facility agreement, which was previously exceptionally rare in the US market. In connection with European-style certain funds, the list of

required conditions precedent should also be agreed to and approved upfront. In particular, unlike the European market, in the US, it is uncommon for banks to expect to receive reliance on due diligence reports, although copies of such reports may be available to the banks without reliance to streamline the diligence process.

Sale and Purchase Agreement (SPA) requirements

From a European bank perspective, the main SPA concerns relate to mechanics and timing for closing, as well as assignability by way of security. US banks will be focused additionally on MAC closing conditions (rare in European deals), reverse-break fee, lender-protective provisions (the so-called Xerox provisions), and language around syndication cooperation. This may impact the scope of comments and discussions with bank counsel on the SPA.

Currency considerations

The US business footprint required for a “Yankee borrower” financing has reduced in recent months. Given these financings are typically raised in dollars, there is often a mismatch with the currencies of the underlying business (i.e., that based outside the US). As such, currency hedging and the associated collateral securing such hedging need to be considered early on and factored into funding costs (as applicable).

In relation to each of these points, early stage discussions between European bidders, US banks, and their respective counsel is essential.

Recent Representations

Walgreens  Q3 2012	CVC Cunningham Lindsey Q4 2012	Dubai International Capital  Q1 2013	Advent  Q2 2013	Charterhouse Capital Partners  Q2 2013	Certain Bidders  Q2 2013	Advent  Q2 2013
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