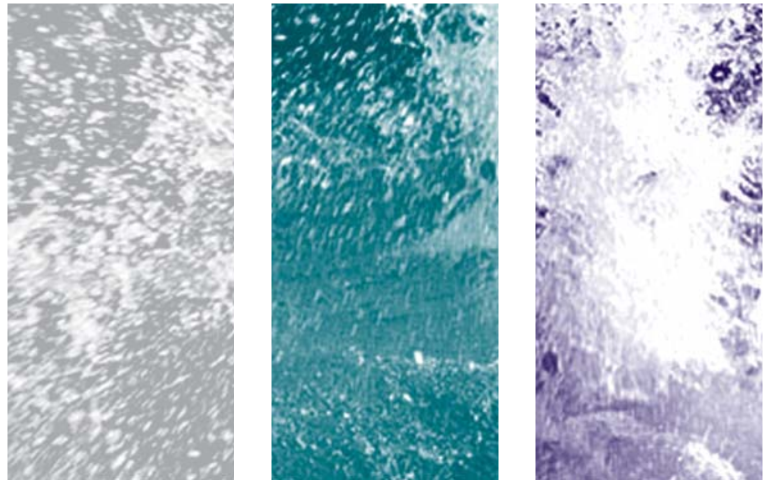
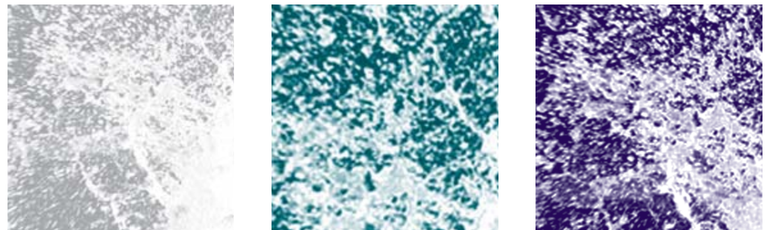
DEBTWIRE
NORTH AMERICA



DISTRESSED DEBT INVESTOR STRATEGIES

A Bracewell & Giuliani LLP Leadership Study in conjunction with Debtwire

OCTOBER 2008



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FOREWORD

US distressed investors spent the past five years stranded on the sidelines of the largest liquidity glut in financial history. But now that the capital markets roosters have come home to roost, they finally have something to crow about.

WaMu. Bear Stearns. Lehman Brothers. AIG. Morgan Stanley. Fannie Mae. Freddie Mac, Naked shorts. The uptick rule. Regulation. Bailouts. More bailouts. It has been one heckuva Q3 and Q4 undoubtedly has more fun in store! But with crisis comes opportunity, especially for the distressed investment community, including the leading investors who participated in this survey. Who knows what tomorrow will bring for certain, but this survey asks the right questions of the right investors at the right time, leading to some very interesting responses.

Not surprisingly, our distressed investor respondents believe things are once again looking good. Spiking defaults, widening systemic risk, and a credit crunch that just won't quit, have punished the fixed income markets. Despite the carnage, distressed pros still think supply will outstrip demand over the coming 12 months, meaning bargain hunting will continue to be the trend du jour.

The intensity of the upheaval in the credit markets through the first year of the credit crunch has been astonishing and borrowers are scrambling to adjust to this new – and long overdue – reality. Poll participants clearly expect over-levered issuers to increasingly tap into liability management tools such as default-avoidance exchange offers over the next 12-months.

For many corporates, that won't be enough. Almost half of respondents view the strategy as a negative since it simply delays the issuer's day of reckoning. Since only 43% of respondents in the study think the number of refinancings will increase over the next year, something will have to give.

With discounted debt now in the hands of distressed investors rather than less aggressive par buyers, problem issuers will find themselves in far more zero-sum negotiations and, most likely, more litigation. Poll participants clearly feel that investors can afford to take a more hard-nosed approach to workouts as 93% of respondents expect the decline of enterprise valuations to continue over the next 12 months as the overall economic environment worsens.

Corporates and their sponsors shouldn't expect much in the way of relief from their relationship lenders. Banks still have more than enough problems of their own. Approximately 50% of poll respondents expect the number of busted or renegotiated private equity financings to increase over the next 12 months, despite the massive amount of work by lenders over the past year to whittle down their impact to balance sheets. Clearly lenders still have much wood to chop over the coming months as 63% of respondents believe there will be further significant write-downs by bulge bracket banks. Or perhaps more accurately, by those bulge bracket banks who survive the current carnage and opportunistic/forced M&A mania.

Evan D. Flaschen
Chair, Financial Restructuring Group
Bracewell & Giuliani LLP

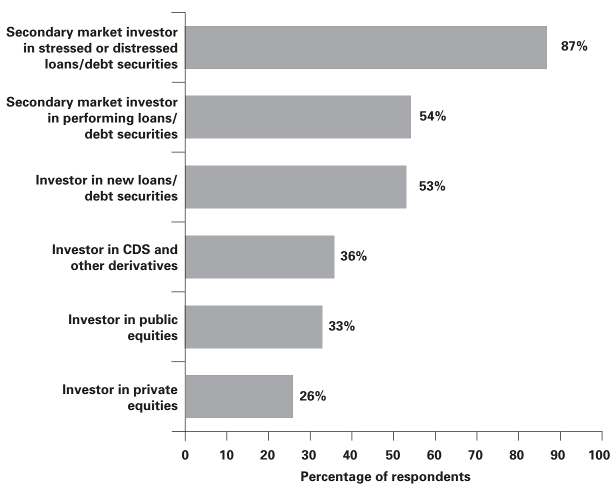
Ken Meehan
Editor- Distressed Debt
Debtwire North America

METHODOLOGY

Bracewell & Giuliani LLP commissioned Debtwire to survey a cross-section of leading participants in the distressed debt markets, including distressed debt investors, prop and trading desks, and workout personnel with par investors and commercial lenders, with regard to their investment and restructuring strategies in the distressed debt market. A total of 100 telephone interviews were conducted. Results were anonymous and are presented in aggregate.

RESPONDENT PROFILE

Which of the following best describes your position?

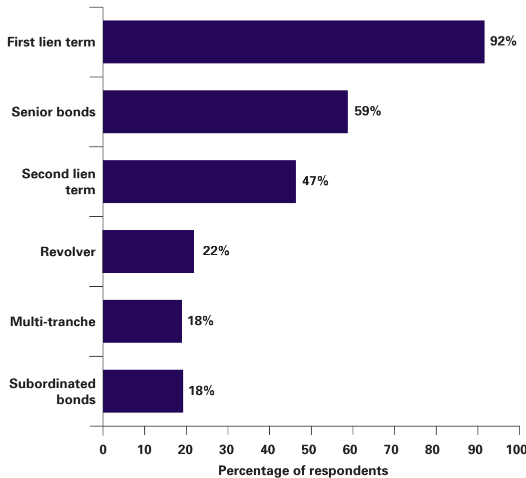


"While the outside world can sometimes perceive 'distressed debt investors' as pure-play vultures, these responses confirm that the focus is on diversification and risk-adjusted return, whether found in distressed paper, derivatives, equities or new investments. In other words, IRR über alles. This is why we focus on the investor, not the investment, because the investor will span and multi-tranche the capital structure to maximize returns."

Evan Flaschen, Financial Restructurings, Bracewell & Giuliani LLP

SURVEY FINDINGS

Where are you more comfortable allocating your capital?

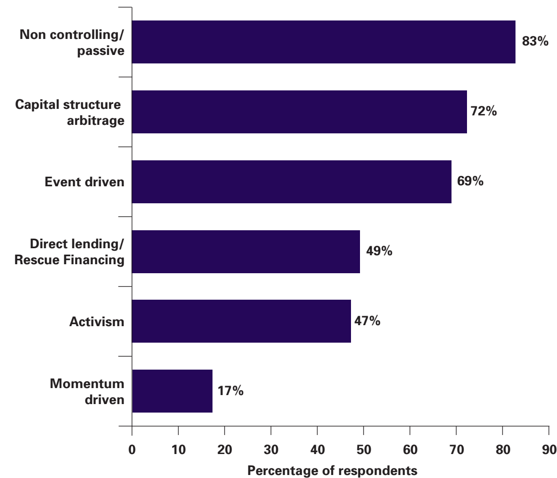


- While first lien term loans perennially make the list of the top securities distressed debt investors are comfortable allocating capital towards, 59% of respondents said they are more comfortable holding senior bonds than second lien term loan debt.
- That could be a signal that the long awaited increase in battles between first and second lien lenders over intercreditor agreements is close at hand.

"It seems like just a year ago that investors were saying that 'second liens are the new senior bonds,' but it now looks like senior bonds are the new second liens. However, whether we are advising the seconds, the bonds or the firsts, our advice focuses much more on the dynamics of the deal than on the technicalities of contracts. You need to be aware of your legal and contractual rights, to be sure, but strategy and tactics more often are the key drivers at the end of the day."

Evan Flaschen, Financial Restructurings, Bracewell & Giuliani LLP

Do you adopt any of the following distressed debt investing strategies?



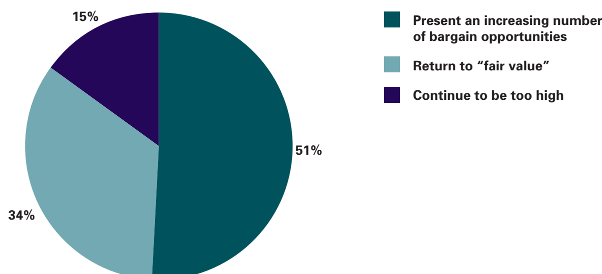
- The vast majority of those queried take minority stakes in companies they invest in, almost three-quarters employ cap-structure arbitrage and almost 70% practice event-driven investing.
- The large scale erosion of bank balance sheets in recent months has opened up the lending market to non-traditional lenders and roughly half of participants said they engage in direct lending and rescue finance.

"Distressed debt investors really have just one overarching strategy: search for situations where hidden value can be unlocked through active involvement or patient participation. What makes them different from other investors is their willingness to accept more risk and place larger bets. It is not a game for the faint of heart but it is a game where the winners can truly take all."

David Albalah, Financial Restructurings, Bracewell & Giuliani LLP

SURVEY FINDINGS

What do you expect to happen to the price of distressed debt over the next 12 months?

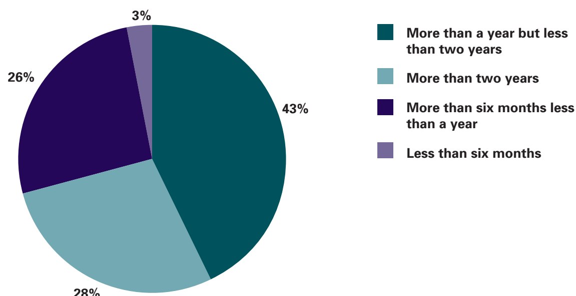


- Attention bargain shoppers. The year to come will present an increased number of opportunities, according to 51% of those asked.

"What a difference a year makes - we now have 85% of respondents projecting that distressed pricing will return to the range of reasonableness. Pack your bags, Martha, the train is leaving the station and it is time to climb on board. Also, don't forget to bring your checkbook because great values are there for those who seize them."

John Brunjes, Private Investments and Fund Formation

What is the typical holding period you target for your distressed debt investments?

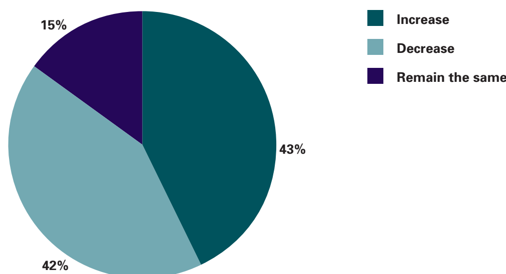


- Investing in distressed debt can be incredibly lucrative, however, the strategy has never lent itself well to fast money investors. Since the market is still in the opening stages of the latest distressed cycle, it is not surprising to see that 43% of respondents expected their typical holding period for an investment to range longer than one year but not up to two years. That time frame is consistent with the 18-month formal limit on plan exclusivity for in-court restructurings.
- A smaller 28% minority of respondents said they typically hold distressed debt investments more than two years, which could signify expectations that the issuer friendly provisions included in financings during the latest bull market run will likely elongate the full restructuring process.

"While there is certainly nothing wrong with drive-by's as part of an overall investment strategy, most distressed debt investors are more interested in parking their car for awhile and working their investments than they are in a quick distressed debt arbitrage buck. In today's era of massive quarterly write-downs and busted syndications, distressed debt investors provide critical liquidity, patient money and bottom-line discipline."

Mark Palmer, Private Investments and Restructurings, Bracewell & Giuliani LLP

What do you expect to happen to the number of refinancings over the next 12 months?

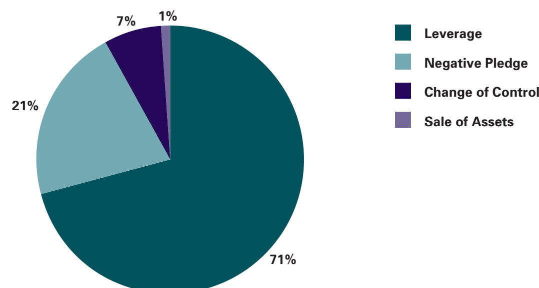


- Respondents expecting the number of refinancings to increase totaled 43%, virtually identical to the 42% forecasting a decrease.
- With the credit crunch entering its second year and defaults already outpacing 2007, the split decision likely mirrors diverging views on when the market will rebound. Refinancings have struggled of late as reluctant borrowers will do almost anything to avoid negotiating with demanding lenders and paying the price of a deal in this environment.

"Anything that breathed could be refi'd in 2006 and early 2007 but we have now returned to a market where if the bailout actually re-opens the spigots, credit quality, covenants and liquidity will be driving the bus. This split response from experienced investors highlights the continuing queasiness in the market such that whether 2009 sees a further contraction or a gradual loosening of the purse strings remains anyone's guess, particularly given the crisis in the financial markets that is occurring as we speak."

Mark Joachim, Rescue Finance and Restructurings, Bracewell & Giuliani LLP

What is the single most important covenant to you in a public or widely-syndicated transaction?



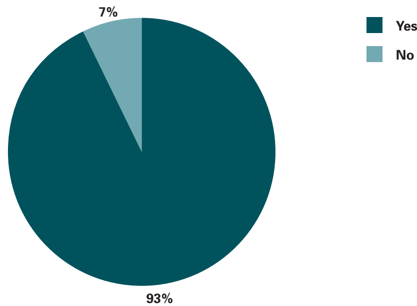
- Leverage was picked as the most important covenant in new deals by an overwhelming 71% of respondents. That is a 26% increase over the percentage of respondents that viewed the covenant as the single most important investor protection during 2007.
- The days when issuers used to be able to push around investors for provisions such as covenant-lite structures and liberal EBITDA add backs now seem quaint. The market has already weighed in with its verdict as existing covenant-lite loans trade at roughly an 8% discount to their more traditional counterparts, according to research from JPMorgan.

"It was not so long ago that issuers loaded up their balance sheets just because they could. However, the perils of over-leverage have been repeatedly exposed over the last 12-18 months and the days of 7, 8 or even 9X appear to be behind us, at least for now. But in the meantime, lenders will be paying the price for 'covenant-lite' for several years to come."

Jon Gill, Private Investments and Restructurings, Bracewell & Giuliani LLP

SURVEY FINDINGS

Do you believe average leverage levels will continue to retreat in secondary market valuations of issuer's debt?

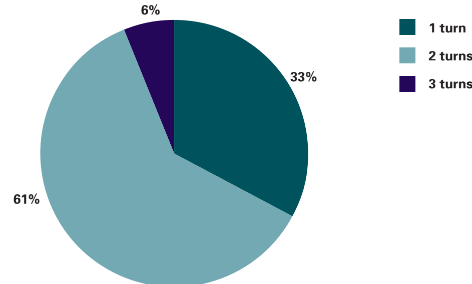


- The punchbowl of easy credit is gone and respondents fully expect the hangover to worsen as once acceptable levels of leverage are being recast lower, forcing prices in the secondary market to fall.
- With 93% of respondents expecting the phenomenon of lower enterprise valuations to continue as the overall economic environment worsens, it is clear that the amount of product for the distressed debt market will continue to balloon as the market searches for a bottom.

"On the theory that 'every cloud has a silver lining,' the financial crisis and the lower market valuations of highly-leveraged balance sheets are leading to distressed debt buying opportunities as original lenders and investors dump their exposure. One investor's problem loan is another investor's bargain opportunity."

Renée Dailey, Financial Restructurings, Bracewell & Giuliani LLP

If so, by how much?

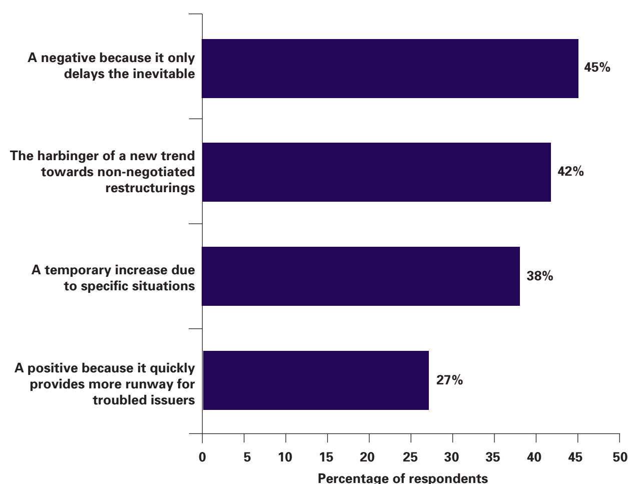


- A sobering 67% of respondents believe average leverage levels in secondary market valuations will contract by two or more full turns. While the leveraged loans and high yield markets are both underperforming during 2008, the markets could be in for even more pain as the great unwind of the massive wave of new issuance from earlier this decade continues.

"Leverage goes up and leverage goes down and the world of finance goes round and round. This cycle, too, shall pass, and the easy money will start to flow again in a few years while we restructure the billions and billions of existing over-levered deals in the meantime. It's what we call 'inventory.'"

Ilia O'Hearn, Financial Restructurings, Bracewell & Giuliani LLP

How do you view the increase in default-avoidance exchange offers?

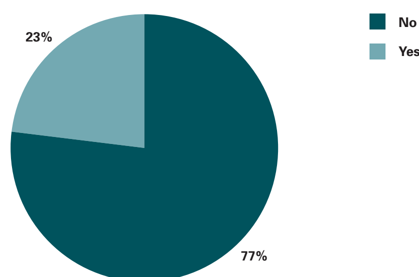


- While 45% of respondents think the strategy is similar to putting a band-aid on a broken arm, 42% view the trend of non-negotiated restructurings as being here to stay.
- Just over 25% of those questioned believe exchanges are a positive way for companies to quickly weather a storm. For example, real estate finance giant Residential Capital recently used a $14bn discounted exchange as a lifeline to address looming bond maturities.

"If there is one rule in the world of default-avoidance exchange offers, it is, 'you snooze, you lose.' Between the temptation of early-tender fees, the specter of write-downs and the compulsion of the prisoner's dilemma, the issuer holds most of the cards. Therefore, disgruntled investors need to ante up with speed, leadership and communications in order to beat the issuer at its own game."

Bob Carey, High-Yield Debt and Restructurings, Bracewell & Giuliani LLP

Is approaching issuers to swap junior debt into high coupon senior debt at a discount via reverse inquiries part of your investment approach and do you plan on increasing the practice as part of your overall portfolio strategy?



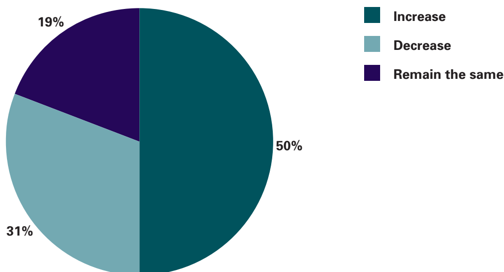
- The proliferation of reverse-inquiry exchanges as a liability management tool over the past year failed to gain much traction among participants with over three-quarters saying they don't include such deals in their strategy.

"Offering tomorrow's junk for today's junk is still a junkyard game that investors don't want to play. The market is clearly saying that problems should be addressed now, not postponed until later."

Arik Preis, Leveraged Finance and Restructurings, Bracewell & Giuliani LLP

SURVEY FINDINGS

What do you expect to happen to the number of busted or renegotiated private equity financings over the next 12 months?

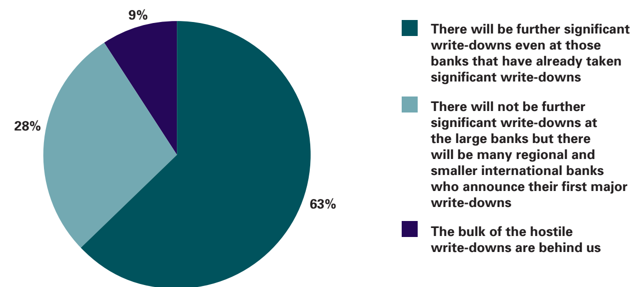


- If leveraged buyouts aren't dead, they are certainly on life support as private equity firms explore alternatives to the extinct mega deal. Over the past 12 months, top-tier private equity buyers and investment banks have taken turns trying to back out of negotiated acquisitions, re-cut pricing and financing terms and file lawsuits.
- Despite the collapse of deals to acquire United Rentals, Penn National Gaming and Cumulus Media and the contentious renegotiation of Clear Channel Communication's LBO, half of those surveyed predict there is more to come.

"Private equity certainly isn't going away - buyout funds raised more than $100 billion in the first 8 months of 2008 - but the focus is shifting back from the Masters of the Universe transactions to the bread-and-butter deals. We do these deals for a living and, we think, this is where the expertise and discipline of opportunistic PE firms and seasoned advisers can provide the greatest incremental benefits."

Mark Palmer, Private Investments and Restructurings, Bracewell & Giuliani LLP

What do you expect to happen to the level of writedowns over the next 12 months?

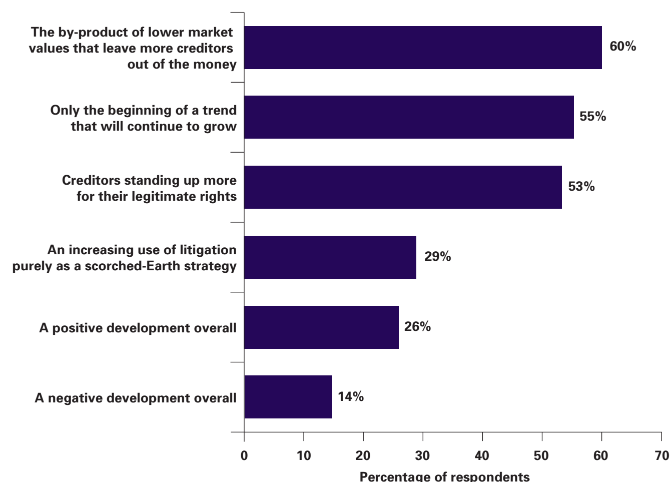


- The mega write-downs already taken by most of Wall Street's elite banks are not expected to be the end of the story. An overwhelming 63% of respondents believe there will be even more write-downs.

"If 91% of the respondents are correct that there are many more major write-downs to come, Little Orphan Annie will be proven wrong because the sun will definitely not be coming out tomorrow. Or next month. Or next year. We could be in D-Ville for quite some time - Downturn, Doldrums, Despondency, Depression and Disaster. In other words, the Dark Dominion of Distressed Debt."

Marcy Kurtz, Financial Restructurings and Litigation, Bracewell & Giuliani LLP

What do you believe has driven the increase in creditor-driven litigation over the last 12 months?

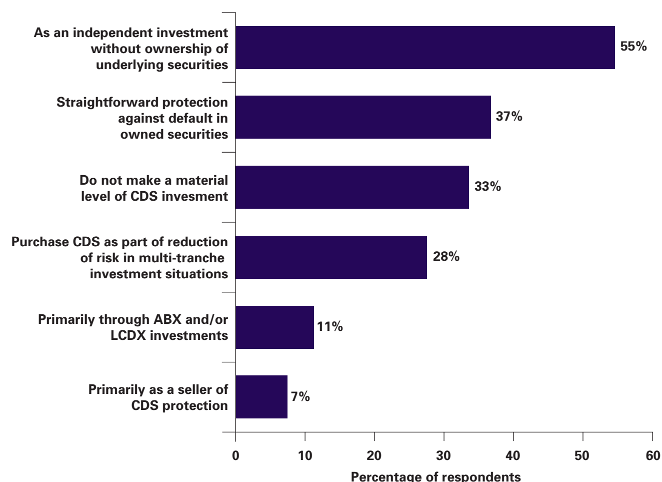


- Increased economic uncertainty generally leads to a greater amount of conflicting viewpoints on the value that should be assigned to the debt instruments in the capital structures of distressed issuers. A clear 60% majority of poll respondents attribute the increase in creditor driven litigation over the past year to disagreements over appropriate recovery valuations.
- Junior creditors run a substantial risk of taking a significant hit to their recoveries if senior creditors push for more conservative enterprise values to be applied to businesses attempting to reorganize during a recession. Almost 30% of respondents believe that litigation will become an increasingly used tactic by junior creditors attempting to maximize their recoveries.

"Litigation can be many things, often at the same time. It can be strategic, meritorious, efficient and effective. It can also be scattershot, meritless, wasteful and pointless. We believe that the best approach is for the investors and the lawyers to work closely together, constantly updating strategy as circumstances change and repeatedly challenging each other's assumptions as to what really needs to be done and as to how much it really needs to cost."

Greg Nye, Bankruptcy and Commercial Litigation, Bracewell & Giuliani LLP

What is your CDS investment strategy?



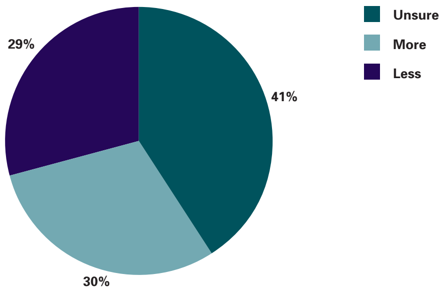
- Respondents provided a wide range of investment strategies with respect to the credit derivatives market. Just over 50% viewed it as a pure buy-and-sell investment strategy with only 37% using the swaps as hedges.

"Remember the good old days when institutional investors hedged their par purchases with CDS protection? These days, credit derivatives have become the minnow that swallowed the whale and now that the minnow has gotten food poisoning courtesy of Lehman, AIG and others, woe to us all!"

Chris Olive, Structured Finance and Derivatives, Bracewell & Giuliani LLP

SURVEY FINDINGS

Do you believe the credit-related derivatives market will become more or less liquid over the next 6-12 months?

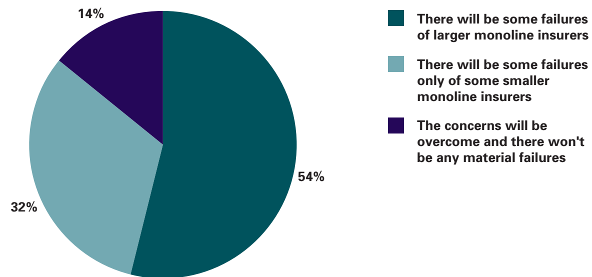


- Volatility will likely continue to dominate CDS trading according to respondents, 41% of whom said they weren't sure of whether the market will become more or less liquid. The balance was evenly split on the question.

"This is what makes the distressed world great. The CDS/LCDS market will become more liquid next year, or maybe it will become less liquid, or maybe you don't have any clue at all. So step right up and place your bets, and may the best, or smartest, or luckiest investor win."

Jennifer Feldsher, Special Situations, Bracewell & Giuliani LLP

There have been a number of concerns lately with respect to the financial stability of monoline insurers who write CDS. Over the next 12 months, do you expect:

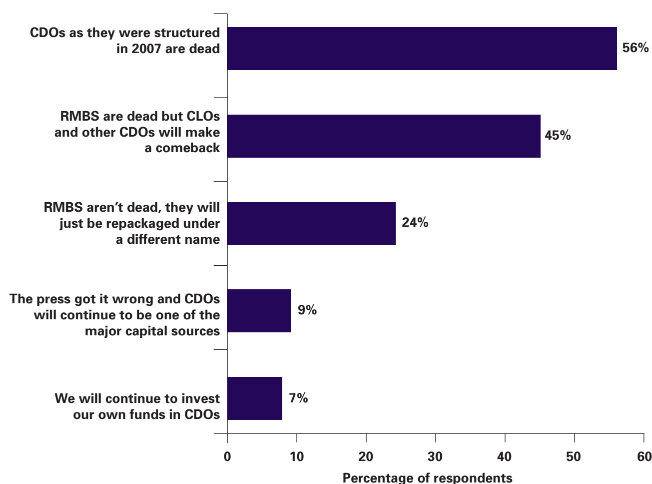


- A clear 54% majority of respondents expect some sort of calamity to befall the major monolines despite their recent round of capital raising.
- Following a pullback from the bottoms tested in the 2Q08, common shares of MBIA, Ambac, and Radian Group are still down more than an average of 80% on a trailing 12 month basis through late August.
- Clearly the market's perception of default risk is completely at odds with the rating agencies'. While Ambac's and MBIA's triple AAA equivalent ratings have been lowered, the ratings agencies continue to affirm investment grade ratings for both companies based on their assessment of capital adequacy.

"Based on our own substantially increased level of activity in the monoline arena, we certainly agree with the 86% of respondents predicting at least some monoline failures. Insurance is all about predicting future losses and, it is fair to say, almost no one predicted the extent of the current explosion in CDS credit events or the need to rescue AIG as a result of CDS exposure."

Kurt Mayr, Financial Restructurings, Bracewell & Giuliani LLP

Which of the following statements do you agree with relating to CDOs?

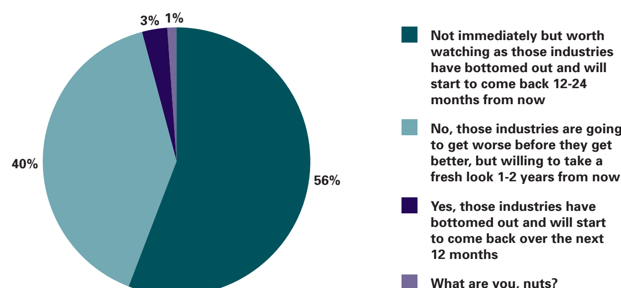


- CDOs partially collateralized by subprime loans and alt-A loans are dead according to 56% of respondents. However, 45% of those polled believe that CLOs and other CDO-related products are poised for a come back once economic conditions start to improve.

"How are CDOs similar to nukes? In addition to the potential of both to cause massive explosions, there is a considerable spread of opinion as to whether CDOs and nuclear power are viable options going forward. However, when it comes time to invest their own assets in CDOs, 93% of the survey respondents are echoing the views of communities threatened with the building of a nuclear plant, which is to shout 'Not in My Back Yard.'"

Adam Mozel, International and Structured Finance, Bracewell & Giuliani LLP

Is this a good time to invest in homebuilding and timber?



- The prolonged slump in housing has made most of our respondents cautious about putting funds back into its ancillary industries: homebuilding and timber products.
- Both sectors are in various stages of consolidation or restructuring. Out-of-court deals for timber producers such as Tembec have been moderately successful, while the housing downturn slammed construction suppliers Ply-Gem and Masonite.
- Of our respondents, 56% see comeback in store for the industries over the next 12-24 months.

"We did not think 97% of distressed debt investors could agree on anything, but whether builders are trying to peddle residential communities in Florida or bridges in Brooklyn, the market simply isn't buying. Just when you think housing and related industries can't get worse, they do, not just in the US but anywhere a broker is trying to make a buck, a door or window is waiting to be made, or a tree is growing in the forest."

Robb Tretter, Private Investments and Distressed M&A, Bracewell & Giuliani LLP

NORTHERN EXPOSURE:

A TALE OF TWO CANADIAN RECAPITALIZATIONS WITH PRECEDENTIAL VALUE FOR FUTURE CANADIAN AND U.S. TRANSACTIONS.

On February 29, 2008, Tembec Industries, Inc. successfully completed a recapitalization involving complete conversion of its bond debt to equity and a new money facility provided by existing bondholders on a backstopped basis. On March 31, 2008, Abitibi Consolidated Inc. successfully completed a recapitalization involving an exchange offer for its maturing bond debt and three concurrent new financings.

Given the continuing difficulties in industries related to homebuilding, it is clear that Tembec and Abitibi still have many challenges ahead of them. Nevertheless, both recapitalizations provided breathing space in extraordinary circumstances and pursuant to novel business and legal strategies that may serve as important precedents for future recapitalization and restructuring transactions both in Canada and in the U.S.

TEMBEC INDUSTRIES – A NEW APPROACH TO OLD PROBLEMS

Tembec was hit with a triple whammy. First, the housing slump triggered by the subprime crisis materially reduced demand for Tembec's timber products. Second, the increasing strength of the Canadian dollar reduced the profitability of Tembec's substantial sales into the U.S. market. Third, like so many other companies today, Tembec took advantage of the pre-2007 credit markets to lever up its balance sheet to the point that there was little margin for error.

Tembec's $1.2 billion in public debt securities consisted of three separate issuances that will mature in 2009, 2011 and 2012, respectively. Anticipating that it was unlikely that Tembec could meet its 2009 maturity, a group of 2009 bondholders made a proposal to Tembec that, according to market rumors, would extend the 2009 maturity in exchange for securing the 2009 bonds.

Needless to say, Tembec's 2011 and 2012 bondholders were not enamored with the prospect of securing the 2009 bonds while leaving the 2011 and 2012 bonds outstanding on an unsecured basis. This caused a group of 2011 and 2012 bondholders to approach Tembec with the proposition that Tembec would be better served by a global deleveraging transaction than by a band-aid approach that only addressed the 2009 bonds.

Recognizing that it needed to do "something," Tembec set up a process for interested parties to make "bids" as to a recapitalization and invited both groups of bondholders, as well as Tembec's largest shareholder, to bid against each other.

In formulating their proposal, the 2011/2012 group defined a series of objectives:

- The proposal should address all of Tembec's bonds, rather than just one issue of bonds, because this would be in the best interests not only of the 2011/2012 bonds but also of Tembec itself.
- The proposal should convert 100% of the bond debt to equity in order to provide Tembec with the best opportunity for succeeding in the difficult forest products environment, while at the same time providing bondholders with an equity upside to compensate for their increased risk.
- The proposal should include a commitment for new money in order to incentivize Tembec with "one-stop shopping" convenience while properly capitalizing Tembec for the challenges ahead.
- The proposal needed to incentivize shareholders to support the proposal, both in lieu of the anticipated proposal from Tembec's largest existing shareholder and with the goal of achieving a fully consensual transaction.
- The proposal needed to be capable of consummation by February 29, 2008, which was the last day of the grace period on an interest payment and, therefore, the last day before the substantial market CDS exposure would be triggered, potentially throwing a monkey wrench into the entire process.
- The proposal needed to reward the group with extra compensation for taking the lead, but without running afoul of indenture "equal treatment" provisions.
- The proposal needed to provide incentives to all bondholders, including the 2009 bondholders, because the 2011/2012 group controlled only 20% of the overall bond debt but needed two-thirds of the bonds to consent to the recapitalization.

A tall order indeed, but it was an order that the 2011/2012 group was able to fulfill. In summary, the proposal (i) converted all bond debt to equity, but provided just enough new equity to the existing shareholders to obtain their support as well, and (ii) included a commitment to a new $300 million secured facility.

The two most important features of the proposal were the backstopped nature of the new facility and the novel utilization of a Canadian corporate recapitalization regime rather than the more typical insolvency regime.

The backstop feature provided the members of the 2011/2012 group with both a cash fee and an equity fee for backstopping the $300 million commitment. At the same time, all other bondholders were also invited to backstop the $300 million commitment in exchange for a healthy fee, but less than was payable to the group members. Also, in order to reduce the extent to which the backstops were actually called upon, the new $300 million facility was offered to all bondholders with both a market rate of interest and a substantial share of the new equity. This approach presented other bondholders with a choice. On the one hand, they could participate in the proposal and receive both a backstop fee and substantial compensation for participating in the new facility. On the other hand, they could fight the proposal and take the risk that the proposal would still obtain approval, in which case they would lose out on both the backstop fee and the extra compensation. In the end, the requisite percentage of bondholders chose to support the proposal.

The statutory feature focused on the Canada Business Corporations Act (CBCA). Pursuant to the CBCA, a solvent Canadian corporation can restructure certain financial debt obligations pursuant to a creditor vote that binds hold-out creditors subject to shareholder approval and to court approval for general fairness. The CBCA is not an "insolvency" statute and, in fact, is not available to insolvent companies. For insolvent companies, the typical approach would be to use the Companies' Creditors Arrangement Act (CCAA), but CCAA proceedings take longer, are more court intensive, are more expensive and implicate more contractual rights. For example, a CCAA filing triggers "bankruptcy defaults" under a company's contracts with major vendors. However, by proceeding under the CBCA, Tembec was able to equitize 100% of its bond debt without disrupting key trade relationships and governmental licenses (particularly critical in the highly-regulated forest products industry). The disadvantages, as alluded to above, were that shareholder approval was needed and that the process was open to dissenting creditors to assert that Tembec was insolvent and, therefore, not eligible for a CBCA transaction. However, the built-in incentives of the Tembec recapitalization proposal paved the way for a quick and smooth process that did not meet with material opposition at the end of the day.

Before the Tembec recapitalization, the CBCA had not been used to implement a financial restructuring of a company of Tembec's magnitude. After Tembec, one should expect to see more use of the CBCA for pre-negotiated deleveraging transactions, particularly when the transaction appropriately incentivizes other bondholders, lenders and shareholders to support the transaction.

ABITIBI CONSOLIDATED – OVERCOMING THE ODDS

In late 2007, Abitibi Consolidated merged with Bowater to form AbitibiBowater, one of the world's largest news print and timber products companies. Both Abitibi and Bowater brought substantial debt to the merger, making it almost inevitable that Abitibi would need to recapitalize its balance sheet prior to its 2008 and 2009 bond maturities. Unfortunately, there were substantial delays in obtaining audited financials for the merged companies, thus effectively precluding Abitibi from accessing the capital markets on a timely basis. This problem was compounded by the same factors that affected Tembec – weakening demand for timber, unfavorable exchange rate movements, very high leverage and a concurrent crisis in the credit markets.

Unable to wait any longer for its audited financials and in light of the weakening credit markets, Abitibi announced in early March 2008 a proposed recapitalization that would involve a new short-term bank facility, a substantial issue of new high-yield senior secured notes, a major convertible note placement, and an exchange of the 2008 and 2009 bonds for cash and longer-maturity unsecured bonds. The bond exchange offer was clearly well below par, resulting in a group of 2008 and 2009 bondholders forming to discuss their options.

All of this needed to be consummated prior to the April 1 maturity of a substantial portion of the 2008 bonds, otherwise all $5 billion of Abitibi's bonds, regardless of maturity date, could have cross-accelerated, not to mention the substantial turmoil that would have been caused as a result of the multiple billions of CDS exposure written on Abitibi's bonds. And all aspects of the transaction needed to be consummated in the context of the continuing credit crunch, compounded by the Bear Stearns melt-down in the middle of the capital raising efforts.

The bondholder group was thus faced with several major challenges. First, they needed to persuade Abitibi to amend the exchange offer to provide appropriate consideration. As challenging as such a negotiation is in a bilateral context, the challenges were compounded by the need for Abitibi to raise the bank, secured note and convertible financing, all of which were dependent on approval of the terms of any amended exchange offer.

Second, the bondholder group needed to deliver 90% of the 2008 bonds and 75% of the 2009 bonds into the offer in order to minimize the risk of "free riders." This presented the logistical problem of identifying the holders of the widely-held public bonds, as well as ensuring that bonds on loan were recalled so that they could be tendered in time.

Third, they needed the other components of the recapitalization transaction to fall into place prior to the April 1 bond maturity.

As reflected in the low trading price of the bonds, the market bet heavily against the likelihood that all of this could be achieved within three weeks. Nevertheless, the bond group proceeded with its efforts to negotiate an improved exchange offer, on the theory that slim odds were better than no odds at all. At the same time, the group privately engaged in substantial contingency planning, including the possibility of providing interim funding in order to refinance the near-term maturities so that Abitibi would have a breathing space in which to raise the financing for a longer-term recapitalization.

The good news was that the bondholder group was able to negotiate a substantially improved exchange offer – $550 in cash and $550 in new 15.5% notes for each $1000 of the April maturity bonds – and Abitibi obtained its audited financials and was able to raise the new bond, note and convertible financing, all in compliance with Canadian and U.S. legal requirements and all consummated within the space of three weeks from the date of Abitibi's original proposal. In addition, the new bonds received the benefit of enhanced guarantees and the same tight high-yield covenant package provided for the new senior secured notes.

While it was a highly-praised result from the perspective of the 2008 and 2009 bonds, it remains to be seen whether this "good news" has provided Abitibi with a sufficient runway to address its larger problems on both the Abitibi and Bowater sides of the corporate group. However, Abitibi was not ready in April 2008 to focus on its medium and long-term capital structure, so under all the circumstances this was a very good result indeed for the shorter-term maturities.

Bracewell & Giuliani LLP was pleased to represent both the Tembec bondholders and the Abitibi bondholders in the above transactions. These were the latest in a series of Canadian restructurings led by members of the Bracewell team, including AT&T Canada, Loewen Group International, Singer Canada, Teleglobe and Consumers Packaging. Bracewell also currently represents a substantial group of term lenders to Masonite, Inc. and it appears likely that additional major Canadian restructurings are just around the corner.

We get it.
We get it done.

ABOUT BRACEWELL

Overview

Bracewell & Giuliani LLP is among the world's most prominent law firms. With more than 450 lawyers in New York, Washington DC, Texas, Connecticut, London, Dubai and Kazakhstan, we are well positioned to serve clients concentrated in the restructuring, investment, financial services and energy sectors around the globe.

Our Financial Restructuring Practice

Described by leading international surveys as "involved in numerous high-profile restructurings in both the US and worldwide," "brimming with connections in the industry" and "savvy, smart and solutions-oriented," we represent private investment and hedge funds, institutional investors, first and second lien lender groups, public and private noteholder groups and chapter 11 committees. Our cross-disciplinary team regularly advises on special situations investments and acquisitions, lending and financing activities, and in-court as well as out-of-court restructurings in Africa, Asia, Australia, the Caspian Region, Europe, the Middle East, and North, Central and South America.

We get it and we get it done. We get it because we have the sophisticated restructuring background to protect investor interests. Attorneys with Bracewell have been involved in cross-border restructurings from the first UK/US cross-border parallel proceedings in the famous Maxwell Communications case of the early 90's to the ongoing Australian workouts of Centro Properties and Sons of Gwalia. We also have significant experience in homebuilding and related industries, having represented creditor groups or PE investors in recent engagements such as TOUSA, Standard Pacific, Masonite, Tembec, Abitibi and Scotia Pacific, and in the auto parts sector, including recent creditor group representations such as DURA Automotive, BHM Technologies, Remy International, INTERMET and JL French. And we get it done because we have the appropriate blend of aggressive and delicate negotiation skills, and the litigation skills to back them up, required to meet the unique needs of the distressed investor.

Our industry experience is broad and deep, including homebuilding, forest products, construction, real estate, publishing, automotive, energy and natural resources, monolines, electricity generation and transmission, mining and chemicals, telecommunications, entertainment, transportation, gaming, hospitality, subprime lending, retail, grocery, manufacturing and healthcare.

OUR RESTRUCTURING TEAM

Our lawyers have been repeatedly recognized and honored in industry and peer surveys, including:

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Euromoney's Top 25 "Best of the Best" Insolvency Lawyers in the World Turnaround & Workouts' Top 12 "Outstanding Bankruptcy Attorneys"

AsiaLaw Leading Lawyers

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Attorneys

Adam M. Adler
David C. Albalah
Glenn A. Ballard, Jr.
David R. Beran
Tom Bingman, III
John Brunjes
Daynor M. Carman
Robert T. Carey
Jason G. Cohen
John A. Couch
Renée M. Dailey
William de la Mare
Mark Dendinger
Jennifer Feldsher
Evan D. Flaschen
Marcus Friedman
Jonathan P. Gill
Charles A. Guerin
Bill Gutermuth
Christopher D. Heard
Martin J. Hunt
Mark B. Joachim
Alexander W. Jones
Marcy E. Kurtz
David L. Lawton
Katherine Lindsay
Kurt A. Mayr
Robin J. Miles
Adam Mozel
Nelli Nikova
Gregory W. Nye
Ilia M. O'Hearn
Chris Olive
Catherine Ozdogan
Mark E. Palmer
Arik Y. Preis
Andrew K. Rafalaf
Andrew Schoulder
Dale D. Smith
Sam Stricklin
Christopher S. Tillmanns
Tim Toy
Robb L. Tretter
Trey Wood III
Greg Vojack
Jonathan D. Wry

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SAMPLE RESTRUCTURING TRANSACTIONS

Company	Country	Client
Abitibi	US/Canada/UK/Korea	Bondholder Group
Anchor Glass	US/Mexico	Chapter 11 Creditors Committee
Asia Global Crossing*	US/Bermuda/Asia	Chapter 11 Creditors Committee
AT&T Canada*	Canada	Bondholders Group
Berkline/Benchcraft	US	Lender Group
BHM Technologies	US	Second Lien Lenders
BMCA	US	Fraudulent Transfer Defendants
Centro Properties	Australia	Noteholder Group
CheckSmart	US	First Lien Lenders
DURA Automotive	US/Europe	Second Lien Lenders
EnviroSolutions	US	Term Lenders
Henry Walker Eltin	Australia	Private Placement Noteholders
INTERMET*	US	Second Lien Lenders
Interstate Bakeries	US	Distressed Debt Investors
JL French	US	Second Lien Lenders
Kaiser Aluminum	US	Bondholder Group
Liberty Electric*	US	Tranche B Lenders
Masonite	US/Canada/Europe	First Lien Lenders
MCI/Worldcom	US	PE Investor
Monolines	US	Monoline Insurers
NRG Energy*	US/Europe/Australia	Chapter 11 Creditors Committee
Ormet Aluminum	US	PE Investor
Parmalat*	Italy/US	Bondholder Group
Pasminco*	Australia	Bondholder Group
Piccadilly Cafeterias	US	Chapter 11 Creditors Committee
Pioneer Companies	US	Chapter 11 Creditors Committee
Pliant Corporation	US	Bondholder Group
Remington Arms	US	Bondholder Group
Remy International	US	Second Lien Lenders
Rubicon REIT	US/Australia	Bondholder Group
Satmex	Mexico	Bondholder Group
Scotia Pacific	US	Timber Collateralized Noteholders
Sons of Gwalia	Australia	Private Placement Noteholders
Standard Pacific	US	PE Investor
Telex Chile*	Chile	Private Placement Noteholders
Tembec Industries	Canada	Bondholder Group
TOUSA, Inc.	US/Greece	Second Lien Lenders
Varig	Brazil	PE Investors
WaMu Bank	US	Bondholder Group

* Matters led by Bracewell partners while at a prior firm.

CONTACTS

Debtwire

Matt Wirz
Editor, North America
212.686.5316
matt.wirz@debtwire.com

Richard Hall
Managing Director, Debtwire
212.686.5340
richard.hall@debtwire.com

Remark

Erik Wickman
Head of North American Sales, Remark
212.686.3329
erik.wickman@mergermarket.com

Bracewell & Giuliani LLP

Evan Flaschen
Chair, Financial Restructuring Group
860.256.8537
evan.flaschen@bgllp.com

David Albalah
212.508.6120
david.albalah@bgllp.com

Robert Carey
212.508.6109
robert.carey@bgllp.com

Renée Dailey
860.256.8531
renee.dailey@bgllp.com

Mark Joachim
212.508.6155
mark.joachim@bgllp.com

Marcy Kurtz
713.221.1206
marcy.kurtz@bgllp.com

Kurt Mayr
860.256.8534
kurt.mayr@bgllp.com

Adam Mozel (London)
+44.20.3159.4226
adam.mozel@bgllp.com

Gregory Nye
860.256.8533
gregory.nye@bgllp.com

Mark Palmer
212.508.6116
mark.palmer@bgllp.com

Sam Stricklin
214.758.1095
sam.stricklin@bgllp.com

Greg Vojack (Kazakhstan)
+7.3272.597.930
greg.vojack@bgllp.com

William "Trey" Wood
713.221.1166
trey.wood@bgllp.com

© Debtwire

895 Broadway #4
New York
NY 10003
Tel. 212.686.5374

info@debtwire.com

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