

# The Guide to Distressed Debt and Turnaround Investing



# The Guide to Distressed Debt and Turnaround Investing

Making, managing and exiting investments in distressed companies and their securities

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Published by Private Equity International, London

**Published in March 2007 by  
Private Equity International  
Second Floor  
Sycamore House  
Sycamore Street  
London EC1Y 0SG  
United Kingdom**

**Telephone: +44 20 7566 5444**

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**ISBN 978-1-904696-23-0**

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# Preface

**Howard S. Marks, Chairman, Oaktree Capital Management**

**Is investing in distressed debt a good thing?** That's a trick question.

Like all other assets classes and investment strategies, buying distressed debt is a great idea when it can be done at prices that are below intrinsic value, whereas at other times it can produce lackluster results. **Like everything else in the world of investing, success with distressed debt is a matter of opportunity and execution.**

Over the eighteen years of my involvement with distressed debt, there have been two periods when it was possible to access highly outstanding returns through bargain-basement purchases. There have also been times when buying opportunities were nothing special. And yet our firm's results over the entire period have been more than acceptable (and, I think, achieved with the risks solidly under control).

**The ability to invest in distressed debt at low prices depends first on the creation of an ample supply.** Historically, that supply has come into existence when a period of lax lending has been followed by a period of both fundamental and psychological weakness.

From time to time, the capital markets will approach a cyclical high in terms of generosity and a low in terms of discernment and discipline. Confidence comes to outweigh caution. Providers of capital compete to buy securities and make loans. And the way they compete is by accepting less in terms of debt coverage and loan covenants. In other words, they settle for a skimpy margin of safety. Credit standards are

pushed to the point where many borrowers will be unable to service their debt if conditions in the environment deteriorate, as inevitably will become the case at some point.

When things in the economic and business worlds are going swimmingly and investors are in firm grasp of their compo- sure, few forced or motivated sellers crowd the exits, and thus there are few bargains. But when negatives accumulate in the environment, investors often become unable to hold on (for legal, organizational, economic or psychological reasons) and bargains can become rife. Oftentimes these influences can be seen most clearly in the market for distressed debt, as that is where the extremes of the cycles in corporate creditworthiness and investor psychology are reached.

1990 witnessed a recession, a credit crunch, the Gulf War, the melt-down of many of the prominent LBOs of the 1980s, and the government's war on junk bonds. The accumulation of these events had tangible effects on creditworthiness (for example, the default rate on high yield bonds reached 10 percent) and a very negative effect on debtholders' psyches. Investors are usually happy to hold unbesmirched assets marked at high prices, but they can become entirely unwilling to deal with them when flaws become evident and their prices are brought low. This is the process that generates opportunities for bargains – in distressed debt as elsewhere. And this is what happened in 1990.

Likewise, in 2002 we also saw a recession and credit crunch, this time along with the invasion of Afghanistan, the collapse of the telecom industry, and the disclosure of corporate

scandals beginning with Enron and eventually affecting several other companies. And again we witnessed the corrosive effects of fundamental deterioration and psychological undermining. The default rate on high yield bonds once again soared past 10 percent, and downgrades turned holders of the debt of many former high grade companies – now “fallen angels” – into highly motivated sellers. As had been the case in 1990, purchases of distressed debt made in 2002 had the potential to produce ultra-high rates of return.

So is it all wine and roses? No, because these helpful influences are not everlasting (remember, the things that are good for most investors, and most citizens, are bad for those looking for bargains in distressed debt). In 1996, for example, the economy was strong, business was good, capital markets were wide open (willing to solve overextended companies’ financial problems), and investors and creditors were fat and happy. There were no depressing influences and no forced sellers. As a result, there were few chances to buy distressed debt capable of producing the returns investors long for.

There is no silver bullet in investing – not even distressed debt. The profit opportunity is cyclical, rising and falling as described above. Potential distressed debt supply is created through the unwise extension of credit and turned into actual supply when conditions deteriorate. But at other times, usually after a round of losses has punished investors and lenders and left them chastened, discipline in credit standards reasserts itself and the supply of potential distressed debt contracts. So distressed debt investing can be highly profitable at some times, but certainly not all.

**And even when conditions are good for distressed debt investing, performance still cannot be accomplished without deft execution.** Compared to buying mainstream stocks and bonds, distressed debt investing is certainly a “skill position.” Judgments have to be made about the survivability, prospects and value of an enterprise in crisis, and about the legal and realpolitik restructuring process that will reset an overly indebted company’s balance sheet and usually turn

many creditors into owners. These judgments have to be made from the outside – there are no dog-and-pony shows, due diligence rooms or meetings with helpful corporate executives – and often at a time when financial information is in short supply and possibly of questionable validity.

As with other forms of so-called alternative investing, the range of returns among distressed debt investors at a given time is probably much wider than it is among participants in the more efficient mainstream stock and bond markets. Personal investing skill based on aptitude and experience – “alpha” – is the essential ingredient. Inefficient markets may make mispriced securities available, but they do not hold up a sign pointing the way to the best bargains. **Distressed debt investing from time to time provides investment opportunities with great potential, but the outcome will always be dependent on skillful execution. ■**

*Howard S. Marks, Chairman, Oaktree Capital Management, CFA, CIC*

*Mr. Marks was a pioneer in the management of high yield bonds and convertible securities and co-founded Oaktree Capital Management in 1995. Previously, Mr. Marks headed a department at The TCW Group, Inc. which managed investments in high yield bonds, convertible securities and distressed debt. He was also Chief Investment Officer for Domestic Fixed Income of Trust Company of the West and President of TCW Asset Management Company. Before joining TCW, Mr. Marks was with Citicorp Investment Management for 16 years where, from 1978 to 1985, he served as vice president and manager of the convertible and high yield bond portfolios. Earlier, he was an equity analyst and the bank's Director of Investment Research. Mr. Marks holds a B.S.Ec. degree cum laude from The Wharton School at the University of Pennsylvania with a major in Finance and an M.B.A. in Accounting and Marketing from the Graduate School of Business of the University of Chicago.*

# An Overview of the Private Equity Distressed Debt and Restructuring Markets

**Kelly DePonte, Probitas Partners**

Distressed debt and restructuring investing is a small but growing sector of the private equity market, one with several unique characteristics:

- In a private equity market that is becoming increasingly global, it is one where local laws and regulations still have a significant impact. For many investment strategies, local bankruptcy laws and their practical application are tremendously important – though for global companies the question of which bankruptcy law applies is not always straightforward.
- Hedge funds are a significant competitor in the sector. Recently, hedge funds have begun to compete with private equity funds for transactions on a limited basis. In the Distressed Debt sector, however, hedge funds have been significant competitors for years, especially for funds pursuing Distressed Debt Trading strategies.
- Within the sector, fund managers pursue greatly divergent investment strategies. The investment strategies used by fund managers in the sector (described in further detail in the Investment Strategy sector below) are very different and require diverse skill sets to execute successfully.
- Investment opportunities in the sector are counter-cyclical to the general economy. Established private equity sectors such as buyouts, venture capital, and mezzanine investment are not totally dependent upon general economic cycles, but their returns are generally positively correlated to economic trends; a strong economy in general helps generate strong returns and a weak economy hurts returns. The reverse is true of Distressed Debt and Restructuring Funds, as a weak economy generates in general increased investment opportunities.

These factors make the sector complex, and this chapter is meant to provide a general overview of issues that are covered in depth in a number of the other chapters.

## INVESTMENT STRATEGIES AND DEFINITIONS

Before covering how the market has developed, it would be useful to define the investment strategies that are prevalent in the market. It needs to be said that the “pure” strategies described below are useful for discussion purposes, but that many funds utilize hybrid strategies in some form of combination.

### *Distressed Debt Trading*

At its simplest, Distressed Debt Trading involves purchasing debt obligations trading at a distressed level – for example at 40 percent of par value – in anticipation of reselling those securities over a relatively short period of time at a higher level, generating a trading profit. Distressed Debt traders are looking for investment opportunities in which they believe the debt obligations are fundamentally mispriced and will rebound in value. The holding period on an individual security is usually weeks, sometimes days, and the size of a particular position is not directly relevant. This is the most liquid of these investment strategies, and in part for that reason hedge funds are major players in this sector.

### *Distressed Debt: Active/Non-Control*

Active/Non-Control strategies are substantially different from Trading strategies in that their goal is to accumulate significant positions in companies that are likely to go through, or are in, a bankruptcy restructuring process. The goal is to gain a position of influence in that restructuring process in which the value of securities – and indeed the nature of the end securities exchanged – is negotiated in bankruptcy in order to maximize returns. This complex process necessitates a longer holding period than in Trading, as well as larger, more concentrated portfolio positions.

# The New Dynamics Of Distressed Situations: Is Everything Old “New Again”?

Henry Miller, James Doak, Franklin Harris and Carlo Lamberti, Miller Buckfire

## INTRODUCTION/SYNOPSIS

In today's leverage-friendly marketplace, a financially distressed company typically has more debt and a more complex capital structure than a distressed company 10 to 15 years ago. The capital markets that assess and price the distressed company's securities are larger and more diverse with a wider variety of sophisticated financial intermediaries than in the past. Securities holders are less patient, better informed and more familiar with the restructuring process and relevant legal codes than capital providers of the past. Whereas previously, lenders in a distressed situation could be slow to take action and desirous of maintaining a relationship post-distress, these new players, which include hedge funds and distressed debt traders, quickly notice signs of distress and are willing to exploit situations for quick profits. Options for these new players include providing additional, high-priced capital, pressing an advantageous strategic plan or waiting for prospects to rebound. Due to this dynamic environment, it is critical that management teams, financial sponsors and investors construct meaningful action plans to ensure the company's liquidity, assess all options to preserve flexibility and to pursue value-maximizing alternatives and communicate proactively with all stakeholders.

## A SIMPLE FORMULA FOR DISTRESS

The two core ingredients of distress are operating volatility and financial leverage.

Operating volatility can come from many sources, including economic cycles, employee compensation issues (including pensions, post-retiree health benefits and work rules), weather/natural disasters and (particularly for companies with operations in developing countries) political instability.

Other sources of volatility tend to vary by industry. For instance, the retail and restaurant industries are exposed to shifting consumer trends and tastes and factors such as weather and gas prices. Technology companies face product obsolescence risk. Manufacturers face increasing pressure from low-cost foreign competitors. Consumer goods manufacturers are threatened by loss of pricing power resulting from the expansion of big-box retailers. Chemical and energy companies face rising energy and commodity costs. Healthcare companies face shifts in government reimbursement policy. These industry-specific causes of volatility are usually focused principally on one or two sectors, but their impact is often felt across the economy.

To a degree, operating volatility can feed on itself – as a sector's value chains shift, weaker players drop out and suppliers and customers consolidate, prompting further evolution, pricing pressures and additional rounds of consolidation.

However, in order to become a financially “distressed” situation, an additional ingredient must be added to operating volatility – namely, significant indebtedness or other fixed obligations (e.g., leases, supply contracts, etc.). When a major portion of a company's cash flow is needed to satisfy interest payments or other contractual obligations, there is less cushion to support weak operating performance. Warren Buffet likens taking on debt to driving with a spike sticking out of your steering wheel – no problem until you hit a bump in the road. Perhaps the metaphor should be reversed – hitting a bump in the road is much more of a problem if you are driving with a spike sticking out of your steering wheel. Because of today's growing, creative and generous credit markets, that spike is larger and sharper than ever before.

# An Overview of Global Insolvency Regimes

Mark Broude, Hervé Diogo Amengual, Frank Grell, John Houghton and Jake Redway, Latham & Watkins LLP

## INTRODUCTION

The insolvency regime or regimes that may be applicable to a particular borrower will often be a pivotal issue in work-out or restructuring transactions, even where the transaction is intended to be out of court. The applicable laws will determine when, for example, the directors' duties might change from being owed to the shareholders to the general body of creditors, and will often determine the point at which insolvency practitioners can look back at the antecedent transactions in an attempt to unwind them under the applicable insolvency laws. They will also provide the backdrop for any negotiations, as the constituencies will measure any proposed recovery against the possible results from an in-court insolvency proceeding. Furthermore, as more and more cross-border financing transactions are being created, understanding the interplay between multiple insolvency regimes, and how one jurisdiction may give effect to an insolvency proceeding commenced in another jurisdiction, will become increasingly important to the negotiating dynamics in any attempt to craft an out-of-court resolution to a "stressed" or "distressed" situation.

Owing to internationalisation and the vast differences between insolvency regimes throughout jurisdictions, an overview of each of the regimes will now be provided for certain key markets throughout Europe and Asia Pacific. The US is taken as a starting point, with a detailed look at Chapter 11 and Chapter 15.

## 1. THE UNITED STATES

### CHAPTER 11 OVERVIEW

#### *Introduction to Chapter 11*

Chapter 11 of the US Bankruptcy Code was created with the intention of making the corporate reorganisation process as

equitable as possible. The main goals of Chapter 11 are to:

- 1) Rehabilitate financially viable businesses – preserving operations and saving jobs
- 2) Ensure equality of distribution of value of the insolvent company among the insolvent debtor's similarly-situated creditors
- 3) Maximise the value of assets and distributions to creditors
- 4) Provide discharge from indebtedness and a "fresh start" to the debtor
- 5) Provide the debtor with time and ability to restructure balance sheet and business

These goals point out the primary reasons why a Chapter 11 case is substantially different from a case under chapter 7. In a case under chapter 7 the debtor's pre-petition management is replaced by a chapter 7 trustee whose sole purpose is not the preservation of the debtor as a going concern but rather the liquidation of the debtor's assets for the highest price and the distribution of the proceeds of sale in strict conformity with the absolute priority rule. Chapter 7 cases generally involve businesses that have already ceased operations, and thus where there is no going concern value to preserve.

#### *Petitions and Automatic Stays*

In the US, a bankruptcy case is commenced by filing a petition, which is a form document listing estimates of the debtor's assets and liabilities and indicating its intention to reorganise (Chapter 11) or liquidate (Chapter 7). Petitions can be either voluntary or involuntary. As soon as the voluntary petition is filed, or an order for relief on an involuntary petition is entered, an automatic stay is in place.

An automatic stay in the US Bankruptcy Code is a nationwide injunction which comes into effect automatically and instantly upon the filing of the petition or entry of the order for relief, as the case may be, without regard to affected par-

# Middle Market Restructuring: Taking Equity Stakes in Stressed and Insolvent Companies

Ann Davies, KPMG in the UK

## INTRODUCTION: FROM TURNAROUND TO COMPETITIVE ADVANTAGE

The emergence of a turnaround and rescue culture over the past ten years has been fuelled in part by an economic climate of low inflation and comparatively low and stable interest rates. With relatively cheap money available, investors have realised that aiding a recovery can reap considerable financial rewards. Subsequently private equity houses in the UK have been seeking opportunities to invest in under-performing and distressed companies and there are signs that across Europe, markets such as Germany, France and Italy are beginning to follow suit. Indeed, worldwide investments in distressed securities rose by 10 percent during 2005 to \$50 billion. (Source: Mondo Hedge 2006).

When selecting a target company to buy, it is not enough to simply steady the ship; it is necessary to identify some core strengths and put together a bold plan that will create a real competitive edge to take the business forward to a successful future sale. To do this, one will have to get to grips with the root cause of the problems. The pressure to move quickly means that there's precious little time for full due diligence, and with most distressed companies often having inadequate management information, the buyer can find it hard to get a clear picture of the company's finances. This increased risk should be reflected in the purchase price, which must take into account the future cash demands of the business.

A recovery plan frequently involves changes to the management team, as they are the ones who got the company into its current predicament. And the way the deal is structured in terms of debt and equity may have an impact on how the business is presented in a future sale.

Selecting the right target company and managing the process through to purchase and beyond is a highly specialised skill, involving a higher level of risk and a bigger workload than a standard buyout.

## ASSESSING THE OPPORTUNITY

*Before investors consider buying a distressed company, they need to be confident that they can turn it into a strong, competitive business.*

Most under-performing or troubled firms are suffering from all or most of the following:

- Weak management that is often wedded to the existing products and services and reluctant to make changes
- Lack of investment in new products and services
- Failure to react to lost customers or markets
- Poor supply chain management
- An excessive and unsustainable cost base
- A stressed balance sheet

These problems manifest themselves in declining sales and profitability and, as the company heads towards insolvency, a chronic lack of cash. In some cases the directors may have tried to buy their way out of trouble through acquisitions that have only served to compound the distress, leading to a vicious circle where crippling interest repayments on the money borrowed to make the purchase (as well as a failure to integrate the new entity effectively) puts even greater pressure on cash flow.

Faced with such a situation, a private equity house could be forgiven for keeping well clear of troubled businesses and leaving them to the administrators; yet opportunities clearly



# Distressed Debt Trading

**A. Gary Klesch, Klesch & Company Limited**

## INTRODUCTION

In little more than 20 years, the distressed debt trading and investment market has grown from the efforts of a small group of highly specialised traders and investors in distressed sovereign debt, through the still relatively small and specialised U.S. distressed real estate fallout of the 1980s and into today's global distressed corporate debt marketplace. From U.S. beginnings, the skill sets of distressed asset valuation, trading, value investing and turnaround have been "exported" across Europe and into Russia, India, the Far East and China. Today, distressed debt trading and investment is a near global phenomenon, with the latest geographic focus centred on the potential of China, a market which, highly controversially, has been estimated to contain maybe US\$900 billion in nonperforming loans (NPLs).

### *Trading v Investing*

Before turning to the questions of how and why the distressed corporate debt market has developed, it is worth considering the differentiation, if any, between "distressed investing", as included in the title of this book, and "distressed debt trading", the title of this chapter.

Simplistically, a "distressed debt trader" suggests an entity acting as principal, utilising its own capital to take positions in specific tiers of a troubled company's capital structure; whilst the description "distressed debt investor" may more commonly be applied to a fund management entity, specialised or otherwise, which purchases distressed debts to form part of its portfolio of investments. To some commentators, the term "trading" may also imply that the holding period of a particular asset tranche will, by preference, be short; whilst "investor" could convey a longer time-frame.

Just as hedge funds were originally portrayed as the short-end of private equity, so distressed debt traders were commonly viewed as highly opportunistic investors who, as principals and as part of their investment strategy, achieved high, annualised internal rates of return (IRRs) on their own capital by holding the distressed debt product for the minimal time required, before on-selling to a distressed investor with a longer investment timeframe.

The distressed debt market can draw parallels with the roles adopted by the various participants in the investment grade markets. In the early days of distressed debt trading and investing, both in the U.S. and Europe, a small number of principal investors risked their own capital by making markets in, and trading, distressed securities. Largely research driven, these distressed debt traders would seek to identify relative values across the capital structures of troubled companies and, by providing prices and a market where these distressed securities could be freely bought and sold, they were instrumental in enabling the distressed investment market to rapidly evolve and grow.

The institutional or buy side largely consisted of, mostly American based, private equity funds, with institutional investment houses, such as insurance companies, either not allowed or unwilling to participate in anything below investment grade. Occasionally, to the extent that their multi-tiered operations included market-making, the integrated investment banks also acted as traders. Certainly they established large distress teams of analysts and salesmen in the U.S. and London. However, anecdotal evidence at the time suggested that in excess of 80 percent of the European distressed product that passed through the distressed "trading" rooms of investment banks in the 1990s was effectively purchased on behalf of private equity funds in the U.S.



# Using Distressed Debt for Control

**Frank S. Plimpton and Mark R. Patterson, MatlinPatterson Global Advisers LLC**

## BACKGROUND: THE BANKRUPTCY CODE OF 1978

The Bankruptcy Code of 1978 introduced many sweeping changes for the modern era of distressed investing. One of the central purposes of the new code was to explicitly favor reorganization over liquidation. This effectively limits the recovery of creditors to cash and the securities of a reorganized company (cash from a liquidation is now infrequent), and shifts the focus from asset valuation to going concern valuation. The specific changes most relevant to distressed investors were: (a) the introduction of the Debtor's exclusive period to propose a plan of reorganization (11 U.S.C. §1121(b)); (b) the formalization of bankruptcy committees (11 U.S.C. §1103); (c) introducing full pay for bankruptcy counsel (11 U.S.C. §330); and (d) voting rules for plans of reorganization (11 U.S.C. §1129). The net effect of these changes has been to force all constituents towards consensual plans of reorganization.

By giving the debtor 120 days to propose a plan of reorganization, the Code permits a debtor to drive the reorganization process, because creditors with an idea of how they would like the company to reorganize can make no progress until the Debtor's exclusivity period has expired. This in turn forces creditors to actively negotiate with the debtor to attempt to influence the debtors' plan. The 2005 amendment to the Code limits extensions of the debtor's exclusive period to 18 months.

By allowing for the formation of official committees, the Code also promotes negotiated reorganizations. Each class entitled to a committee (at a minimum unsecured debt, sometimes the equity, and often different classes of debt) has members chosen from among the larger creditors by the US Trustee, and the Committee may hire legal counsel and other advisors. Under the Code for the first time, counsel in bank-

ruptcy cases was permitted to charge prevailing rates (rather than discounted rates), thus attracting top bankruptcy talent to committee work. Classes of creditors that previously had no one to champion their cause, now had access, through a Committee, to experienced bankruptcy counsel, investment bankers, and forensic accountants. The Committee is the main body with whom the Debtor must negotiate a plan in addition to other key constituencies, such as secured creditors, labor, etc.

Other factors promoting consensual reorganization are the voting rules of Section 1126(c) that deem a class to have accepted a plan if it has been accepted by two thirds in amount and a majority in number of claimants. That is to say, a holder of one third of a any single class may block a plan, as can a majority in number of creditors – even if they hold a small minority of the value of the claims. Section 1129 requires that at least one impaired class accept the plan. In addition, no plan may be confirmed over the objection of a class of creditors if the plan gives them a recovery that is worse than the recovery under a liquidation. In general, confirming a plan over the objections of a class of creditors is expensive and time consuming, also promoting consensual plans.

## EVOLUTION OF DEBT FOR CONTROL

With reorganization favored over liquidation, companies undergoing reorganization must reduce debt, and the most obvious method is to convert debt into equity, diluting or eliminating the ownership of the old equity, and reducing the debt to a level that permits the reorganized company to survive. As a result, the owners of a reorganized company are generally the former creditors. Adding to the downward pressure on distressed company securities, many of the original creditors do not want (or are not permitted) to hold the

# Distressed Investing: The Asian Experience

**Motoya Kitamura, Alternative Investment Capital**

This chapter discusses the experience of distressed investments in Asia, whose approximate origins coincide with the 1997-98 East Asian currency crisis. It puts a particular focus on Japan, South Korea and China, representing three different cases in terms of the levels of entanglement with the currency crisis: (1) a country directly hit by the crisis (South Korea), (2) a country hit by the crisis only indirectly (not implying any substantial causation) but was facing its own economic problems during the period (Japan), and (3) a country unaffected by the crisis but recognized the need to reform (China).

Likewise, the three cases represent similarities: (1) distressed investing was a major way of disposing non-performing loans (NPL) of the banks, which had previously been left relatively untouched, (2) the decisions to tackle the NPL for the first time was made by the respective governments, and (3) distressed investing has played an important role in the formation of these private equity (PE) markets, which have arguably stayed sustainable even after the governments were released from the responsibilities of leading their respective nations out from this troubled period.

## OVERVIEW OF DISTRESSED INVESTING IN ASIA

### *1997-98 financial crisis*

Reflecting back on the Asian economic miracle that lasted up to mid-1990s, the East Asian currency crisis started in mid-1997 as Western investors lost confidence in the securities in East Asia, causing a domino effect in the region. Indonesia, South Korea and Thailand were most heavily hit by the crisis, while China and Japan were relatively unaffected.

The International Monetary Fund's (IMF) support for the most-severely hit countries asked for structural adjustment package and called for banks and financial institutions to go bankrupt. This was a change in style for these countries, because

banks typically had endorsed the survival of large troubled companies. Factors enabling such behavior included (1) the protectionist financial sector policies taken by the governments and (2) the high economic growth.

The IMF's doctrine paved a way for distressed investing in the region to play its market-driven role. It had a spillover effect outside the hardest-hit nations, since many PE funds with US origins entered the region for the first time with not only prospects of buying troubled assets in countries directly under the IMF's influence, but also expectations that opportunities existed in surrounding nations such as Japan, which had already been quietly wrestling with the banks' mounting NPL. US PE firms such as Newbridge, Carlyle, Lone Star, Warburg Pincus and JP Morgan Partners were among the players that, more or less, entered the region eyeing the longer-term opportunities emerging from the currency crisis. Given the subsequent successes of these funds in post-crisis years, the distressed investments proved to be both the solution to the crisis and the trigger of the market.

### *Governmental policies*

Distressed investing in Asia is not natural-born and the region had not exactly been a market where any investors could hunt for distressed investments for future harvest. Governments had to invite risk-taking investors into these economies. They were forced to change their policies to lead these investors to invest in troubled assets.

To put it bluntly, the governments' paradigm shift has been from control to non-control. Mostly before 1997 they could maneuver the economic systems to prevent corporations from free-falling. Harmonious coexistence was made possible because the economies were enjoying linear growth.

# European Distressed Investing: The Coming Storm

**Nils R. Kuhlwein v. Rathenow and Markus Bruetsch, Roland Berger**

## LBO LEVERAGE IN EUROPE – A COMING PROBLEM

During the last 18 months, the private equity industry has redefined its own reach, both in terms of fundraising as well as targeted deal sizes. Continued de-conglomeration as well as a buoyant transaction environment let especially European markets outpace the US.

A stable economy and attractively low interest rates prepared the grounds for massive allocations to private equity capital and set the race among investment firms for attractive targets. Simultaneously, an impressive industry track record and modest default rates provided for ever-increasing liquidity in debt markets unlocking debt contributions to buyouts at 10-year highs. Facing the economics of supply and demand, the sheer volume of funds chasing a naturally limited amount of investment opportunities might raise the question whether firms are currently overpaying for their deals and thus whether current market activity can be sustainable.

***Recent industry developments indicate that the pressure is to put the huge amount of committed capital to productivity***

While funds still continue to collect fresh equity for future transactions, several developments indicate that firms are aware of their pressure to successfully invest the high volume of committed capital.

Recent deals showed that in their need for deals, firms are broadening their investment focus as ever-bigger targets in more and more different sectors are being approached. In Europe, firms have been clubbing together in splitting equity tickets on landmark deals like TDC or Vitterra, proving that deals in excess of Euro 15bn are no longer out of reach for private equity.

On the one hand, club deals enable firms to target deal sizes that would not comply with their fund allocation regulations

on a stand-alone basis, whilst also increasing the amount of capital allocated without reducing their targeted gearing. As a consequence of current market circumstances, firms are intensely looking for new investment opportunities and at size in order to reduce their transaction costs per Euro spent.

On the other hand, club deals ease upward price pressure as the number of competing firms can be reduced. Especially when looking at how deal acquisitions have changed, it becomes clear that firms must put a cap on their prices paid in order to maintain realistic chances to meet their expected returns. At the top end of the market virtually no proprietary deal flow has been seen in recent months. Sellers are mastering the art of realizing their profits, and playing investors against each other in auctions is currently the most common means of negotiation. Even in mid-markets few back-door deals have been reported recently as competition and the need for deal flow is extremely high. Employing auctions takes away substantial control of the process from firms as deals pick up momentum which contradicts their traditional time dedicated to extensive due diligence.

The fact that strategic investors have been increasingly seen re-entering the LBO arena only pushes that trend to further highs. Having access to larger financial resources, higher strategic use of targets and likely access to cheaper funds in the form of own shares has recently proved co-investing with strategic investors as acceptable as firms struggle for new deals.

***Continuous competition and high need for transactions is pushing deal financials to new frontiers***

All in all, the outcomes of these recent developments apparently culminate in entry multiples, leverage and default tendencies, surely able to raise a few eyebrows. Completing deals at significant premia supported by highly liquid debt markets naturally fosters increasing leverage in order to meet the continuously stable expected returns.

# Rating Agency Perspective – Predicting Stress, Defaults and Recoveries for Corporate Issuers

**Paul Watters, Standard & Poor's**

If dividend recapitalisations are the cocaine of the private equity market then recovery prospects are the aloe vera of the leveraged debt market.

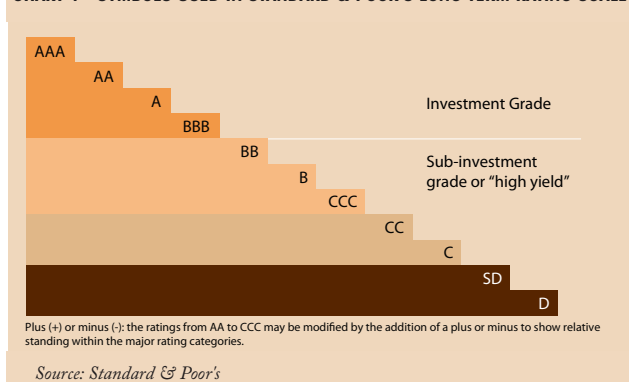
As the leveraged finance markets have grown and opened up to non-bank investors, many of whom participate through structured vehicles such as Collateralised Loan Obligations (CLOs), the publication of default ratings on the underlying borrowing entities has become a market requirement, especially in the US. This chapter reviews the analytical approach and several issues that impact the traditional Corporate Credit Ratings (CCRs) for leveraged companies. Also taken into consideration is the extensive empirical data that demonstrates that our default ratings, in aggregate, accurately reflect differences in underlying credit quality across sectors, regions and company types. It is also very timely to recall how volatile default rates can be over the course of an economic cycle and, in this context, three leading default indicators that Standard & Poor's tracks closely are profiled.

While predicting default is seen as the first element of credit, in the leveraged finance context, it becomes at least as important to assess likely recovery prospects in the hypothetical event of a default. As a result Standard & Poor's developed a companion rating framework in 2003 to provide our opinions on recovery prospects on individual secured debt issues for industrial entities. These Recovery Ratings in the US have been benchmarked off our extensive LossStats Database and similar work is in progress in Europe. However, our experience has been that analysing individual transactions is critically important, as there can be significant variations in recovery prospects for transactions even where they may be classified as senior secured.

## RATING AGENCIES OPINIONS EVOLVING BEYOND DEFAULT TO RECOVERY

Fundamentally rating agencies have evolved to provide opinions on the credit quality of different types of obligors varying from sovereign governments through to financial institutions and corporations including private equity sponsored companies that are usually highly leveraged. In essence, this measure of credit quality relates to an assessment of the degree of default risk associated with the borrower or put another way the likelihood of a borrower being unwilling or unable to repay their debt on time. These opinions are encapsulated in a letter rating on the Standard & Poor's "AAA"- "D" rating scale.

**CHART 1 SYMBOLS USED IN STANDARD & POOR'S LONG TERM RATING SCALE**



## STANDARD & POOR'S LONG TERM RATING SCALE

Over the last thirty years it has become possible to quantify what these credit ratings imply in terms of the demonstrated default experience for the universe of entities rated by Standard & Poor's.

# Investing In Distressed Real Estate Assets

Mark Grinis, Ernst & Young LLP

*Investors in distressed real estate are known for buying assets at relatively low prices when property markets are moribund. They hold, manage, rehabilitate and reposition these assets with the intention of selling when markets come back to life, and at prices that substantially exceed the costs of their investment. It is a business that promises wealth but also carries with it high risk. It requires an appreciation of economic and real estate cycles, a solid knowledge of global property markets, an eye for opportunities, and a great sense of timing.*

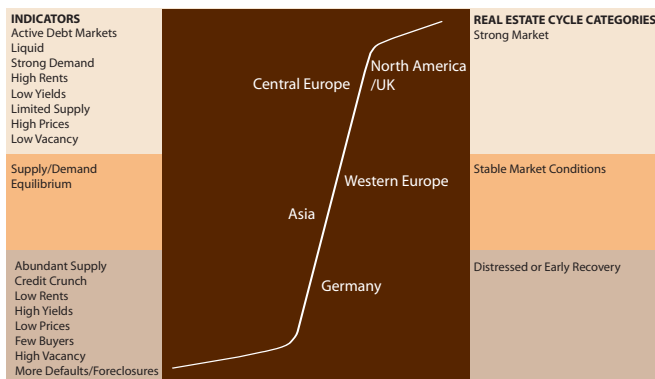
Like the economy, real estate is cyclical. In a “down” cycle, real estate tends to lag the economy. It takes time for the effects of an economic slowdown to be manifested in real estate – for example, in a downturn in new construction or in higher vacancy rates and falling rents. Likewise, the economy usually begins to recover first, followed by the real estate market. However, when construction starts to pick up, occupancy rates start to improve, and demand for office, retail or other space begins to increase, real estate then becomes a driver of the economy, pushing it to its peak.

Some of those who invest in distressed real estate assets have made fortunes by timing their acquisitions to coincide with the bottoming out of the real estate market, when many properties are in distress, property values have fallen, and sellers are under pressure to dispose of their assets but have difficulty finding buyers. These investors negotiate acquisitions on very favorable terms and then restructure, reposition, and sell these assets for substantial gains as the economy recovers and property values have rebounded. Investing in distressed real estate assets is a high risk proposition, however, and some investors have lost fortunes because of poor timing, pricing assumptions, or a lack of understanding of market fundamentals.

Opportunities to acquire large portfolios of distressed assets are infrequent. Buying opportunities have appeared at different times in different places: the U.S. in the early 1990s, in Japan or Korea in the late 1990s, and in Europe in recent years. The question on the minds of investors is: where and when will the next opportunity come along?

This chapter reviews the global market in distressed real estate: its origins and evolution, characteristics, reasons for investments, timing of investments, investment risks, and things to consider when investing in distressed assets.

CHART 1 DISTRESSED REAL ESTATE DEBT CYCLE



## ORIGINS

Today's global market for investment in distressed real estate assets has its antecedents in the creation of the U.S. Resolution Trust Corporation (RTC) by the U.S. Congress in the late 1980s. This was a watershed event, because the RTC's mission was to liquidate hundreds of failed financial institutions on a scale not seen since the depression half a century earlier. These institutions had loaned billions of dollars to real estate developers and investors during the boom

# Private Equity Distressed Debt and Restructuring Market Survey

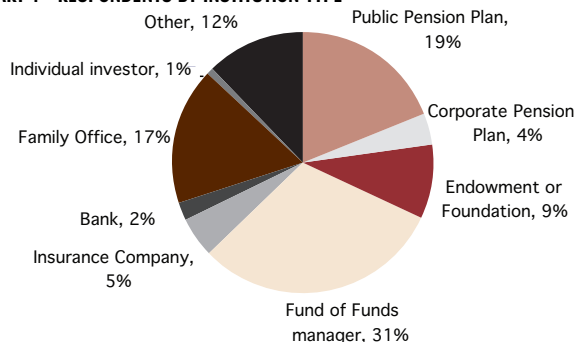
**Kelly DePonte and Simone Brands, Probitas Partners**

*Investoraccess and Probitas Partners have conducted a survey of private equity limited partners and consultants in order to understand current institutional investor attitudes toward the distressed debt and restructuring sectors of the private equity market. Distressed Debt and Restructuring funds are a niche sector in private equity, and investor attitudes are in the process of changing as more investors consider the sector.*

## RESPONDENT PROFILE

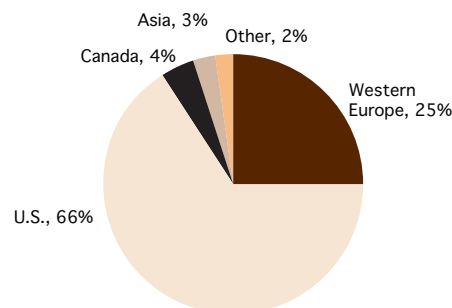
The survey was conducted in the late summer of 2006. There were 231 respondents to the survey from Insurance Companies, Banks, Family Offices, Public and Corporate Pension Plans, Endowments & Foundations, Fund of Funds Managers, and Individual Investors. Fund of Funds made up the largest group of respondents, representing 31 percent of the sample, followed by Public Pension Plans at 19 percent.

**CHART 1 RESPONDENTS BY INSTITUTION TYPE**



The geographic distribution of respondents largely matches the background of institutional investors with a slight overweighting to

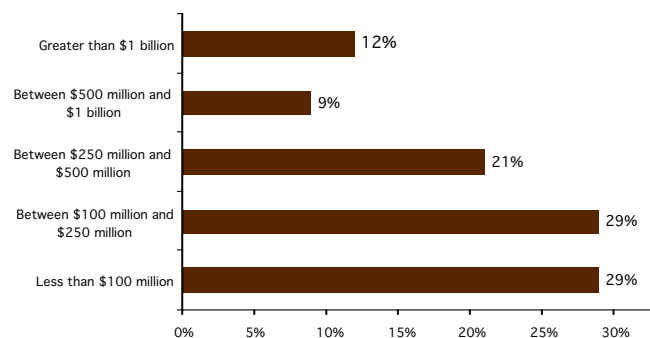
**CHART 2 RESPONDENTS BY GEOGRAPHIC LOCATION**



the U.S. As would be expected, institutional investors from North America and Western Europe predominated.

Respondents to the survey were diverse in their forecast allocations to private equity in 2006, with over 70 percent planning to invest \$100 million or more during the year, and some 12 percent of the total planning to invest more than \$1 billion.

**CHART 3 2006 ALLOCATIONS TO PRIVATE EQUITY**



# Case Study – Drax

Heather Swanston and Gavin Stoner, PricewaterhouseCoopers

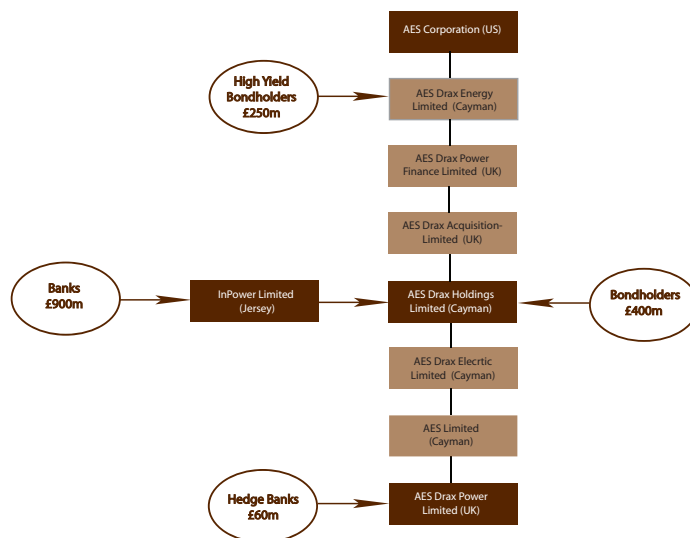
In late 2002, Drax Power owed banks and bondholders £1.55 billion. Heather Swanston and Gavin Stoner from PricewaterhouseCoopers Business Recovery Services discuss the work of the advisors and creditors in helping to stabilise the position of the power station and restructure the debt to provide a sound platform from which the company could operate going forward.

## RATIONALE

Drax Power Station's viability came under intense pressure in the fourth quarter of 2002, when the Company's key trading counterparty, TXU, entered insolvency proceedings. TXU had contracted to purchase some 60 percent of Drax's electricity output at a fixed price, giving Drax certainty regarding cash flows for the long term, and its creditors comfort over ongoing debt service. The TXU contract had been a cornerstone of AES Corporation's leveraged acquisition of Drax in 1999, funded by £0.4 billion of equity and £1.5 billion of debt. By the time of TXU's collapse, Drax owed its Banks and Bondholders some £1.3 billion, and its High Yield Bondholders a further £250 million (see Figure 1).

The collapse of TXU exposed Drax to the wholesale price of power. As a result of fundamental changes in the power sector, over-capacity and increased competition the wholesale price fell by as much as 40 percent by 2002, and analysts indicated no significant improvement for the foreseeable future. Drax's status as an independent generator with protection by TXU from the wholesale price meant it had not integrated its operations into the power retail sector, unlike many of its competitors. Post TXU's collapse, Drax's exposure to the wholesale market was evident, as those vertically integrated players benefited from the stronger retail price.

FIGURE 1 SIMPLIFIED GROUP STRUCTURE CHART (SOURCE: COMPANY INFORMATION)



The underlying asset, Drax Power Station, did have enterprise and strategic value. As the largest coal-fired plant in Western Europe, delivering between 7 and 8 percent of electricity demand in England and Wales, it compared favourably with other large coal and gas fired plant in terms of availability, flexibility and efficiency. The Company also had a material claim against TXU of some £340 million for damages and unpaid supplies. Nevertheless, without the TXU contract Drax was too highly leveraged to service its debt, and would default on scheduled Bank and Bondholder payments on 31 December 2002. A restructuring of its financial affairs was critical, but dependent on



# Selected Distressed Debt and Restructuring Funds

The following pages provide a listing of selected fund managers with third party private equity vehicles focused on investing in Distressed Debt or Restructuring opportunities.

The information was aggregated by Probitas Partners from various public sources as of December, 2006.



# Investors in Distressed/Turnaround Funds

The following pages list contact details of LPs that currently have an appetite for investing in Distressed / Turnaround funds and have committed to such vehicles in the past.

The information was extracted from detailed LP profiles published in the 2nd edition of *The Global Limited Partners Directory* and also from our online dynamic database of LPs [www.PrivateEquityConnect.com](http://www.PrivateEquityConnect.com)

**John S. and James L. Knight Foundation**

Wachovia Financial Center, Suite 3300  
 200 South Biscayne Blvd.  
 Miami  
 FL  
 33131-2349  
 United States of America  
 Tel: +1 305 908 2600  
 Fax: +1 305 908 2698  
[www.knightfdn.org](http://www.knightfdn.org)

**Key Contact:**

Mr. William Nichols  
 Investment Officer  
[nichols@knightfdn.org](mailto:nichols@knightfdn.org)

**GP groups committed to include:**

Oaktree Capital Management

**Kansas Public Employees Retirement System**

611 South Kansas Avenue  
 Suite 100  
 Topeka  
 KS  
 66603-3803  
 United States of America  
 Tel: +1 785 296 1018  
 Fax: +1 785 296 1489  
[www.kpers.org](http://www.kpers.org)

**Key Contact:**

Mr. Bob Schau  
 Alternative Investment Officer

**GP groups committed to include:**

M.D. Sass, Oaktree Capital Management

**Krung Thai Bank Public Co. Ltd**

35 Sukhumvit Road  
 Bangkok  
 10110  
 Thailand  
 Tel: +66 2 255 2222  
[www.ktb.co.th](http://www.ktb.co.th)

**Key Contact:**

Mr. Suwit Udomsab  
 Senior Executive Vice President

**GP groups committed to include:**

Cerberus Group

**LGT Capital Partners AG**

Churerstrasse 122  
 P.O. Box  
 Pfäeffikon  
 CH-8808  
 Switzerland  
 Tel: +41 55 415 9415  
 Fax: +41 55 415 9250  
[www.lgt-capital-partners.com](http://www.lgt-capital-partners.com)  
[lgt.cp@lgt.com](mailto:lgt.cp@lgt.com)

**Key Contact:**

Mr. Ivan Vercoutère  
 Partner  
[ivan.vercoutere@lgt.com](mailto:ivan.vercoutere@lgt.com)

**GP groups committed to include:**

Oaktree Capital Management; Orlando Management

# Contributor Biographies

## Howard S. Marks

Mr. Howard S. Marks was a pioneer in the management of high yield bonds and convertible securities and co-founded Oaktree Capital Management in 1995. Previously, Mr. Marks headed a department at The TCW Group, Inc. which managed investments in high yield bonds, convertible securities and distressed debt. He was also Chief Investment Officer for Domestic Fixed Income of Trust Company of the West and President of TCW Asset Management Company. Before joining TCW, Mr. Marks was with Citicorp Investment Management for 16 years where, from 1978 to 1985, he served as vice president and manager of the convertible and high yield bond portfolios. Earlier, he was an equity analyst and the bank's Director of Investment Research. Mr. Marks holds a B.S.Ec. degree cum laude from The Wharton School at the University of Pennsylvania with a major in Finance and an M.B.A. in Accounting and Marketing from the Graduate School of Business of the University of Chicago.

## Kelly K. Deponte

Kelly is a partner and the head of research and due diligence for Probitas Partners' alternative fund placement activities. Prior to joining Probitas Partners, Kelly was a Managing Director at Pacific Corporate Group, a leading provider of alternative investment advisory, management and consulting services to institutional clients, where he oversaw the partnership investment program. Before joining PCG, Kelly held various positions at First Interstate Bancorp in private equity, asset liability management and derivatives. He earned an MBA from The Anderson Graduate School of Management at UCLA, and a BA in Communications from Stanford University.

## Henry S. Miller

Henry S. Miller is Chairman, Managing Director and co-founder of Miller Buckfire. Over the course of his career, Mr. Miller has represented debtors, creditors and other constituents in numerous out-of-court and chapter 11 reorganizations, "rescue" financings, strategic assignments and divestitures. Among the major cases in which he has played a role are: Charter Communications, Dana Corp., Delta Air Lines, Inc., Gate Gourmet, Interstate Bakeries Corporation, Kmart, Spiegel, Pan Am, Polaroid, Sunbeam, Trans World Airlines and US Office Products. Prior to founding Miller Buckfire, Mr. Miller was Vice Chairman and a Managing Director at Dresdner Kleinwort Wasserstein, where he served as the global head of the firm's financial restructuring group. Prior to that, Mr. Miller was Managing Director and Head of Salomon Brothers' Restructuring Group. Mr. Miller joined Salomon Brothers from Prudential Securities, where he was a Managing Director, Co-Head of Investment Banking and Head of the Financial Restructuring Group, and previously Lehman Brothers, where he was a partner. Mr. Miller received his B.A. from Fordham

University College of Arts and Sciences as well as an M.B.A. from Columbia University. Mr. Miller is a former Member of the Investment Policy Advisory Committee of the United States Trade Representative, Executive Office of the President of the United States. He is also a Trustee of Save the Children, the Turnaround Management Association and The Washington Institute for Near East Policy and a member of The Board of Visitors of Fordham College at Rose Hill.

## James Doak

James Doak is a Director of Miller Buckfire. Mr. Doak is a former member of the financial restructuring groups of Wasserstein Perella and Dresdner Kleinwort Wasserstein, which became Miller Buckfire. Mr. Doak's experience includes M&A, financing and restructuring transactions in a variety of industries including telecom, information technology, automotive, textiles and power transmission. Mr. Doak has J.D., M.B.A. and A.B. degrees from Harvard University.

## Franklin Harris

Franklin Harris is a Managing Director and Head of the Financial Sponsors Group at Miller Buckfire. Prior to joining the firm in 2004, Mr. Harris worked for 10 years in the mergers and acquisitions groups of Lehman Brothers, Credit Suisse First Boston and Donaldson Lufkin & Jenrette. Mr. Harris has an M.B.A. from Harvard Business School and graduated from the Georgia Institute of Technology with a B.S. in Applied Biology and a B.S. in Management.

## Carlo Lamberti

Carlo Lamberti is a Vice President of Miller Buckfire. Prior to joining Miller Buckfire, Mr. Lamberti was a member of Houlihan Lokey Howard & Zukin's Healthcare Group where he worked on restructuring, M&A, valuation and financing transactions. He began his career as a financial analyst in Chase Manhattan's middle market banking group. Mr. Lamberti has an M.B.A. from Columbia Business School and a B.A. in Economics from Cornell University.

## Hervé Diogo Amengual

Hervé Diogo Amengual advises the various French and international parties involved in business reorganizations, corporate rescue and recovery (the company, its managers or shareholders, lenders or other creditors, prospective purchasers), whether out-of-court or in bankruptcy proceedings. He is known for working on major restructurings such as Eurotunnel, KPNQwest and Infogrames. He is recognised as an expert in his practice by Chambers and IFLR 1000.

**Frank Grell**

Frank Grell specialises in advising banks, note holders, insolvency practitioners and companies on all areas of German insolvency, restructuring and distressed debt. He is known for working on such high profile restructurings as AGIV Real Estate, Callahan Kabel NRW, Deutsche Steinzeug, Kiekert, Peguform, Schefenacker, TMD Friction, Vivanco Gruppe and Walter Bau.

**John Houghton**

John Houghton specialises in advising banks, note holders, insolvency practitioners and companies on all areas of insolvency, reconstructions, corporate rescues and general corporate recovery. He is known for working on such high profile restructurings as Eurotunnel, Gate Gourmet, Jarvis and British Energy. He is recognised as an expert in his practice by Legal 500, Chambers and IFLR 1000.

**Mark Broude**

Mark Broude has extensive experience in business reorganization, creditors' rights, representation of unsecured creditors committees and bank finance working. Mr. Broude also represents bondholders and debtors, including the Trump hotels and casinos. Mr. Broude is representing the Official Committee of Unsecured Creditors in the bankruptcy cases of Delphi, Inc. He is recognized as an expert in his practice by Chambers.

**Jake Redway**

Jake Redway acted for the creditors committees in restructuring the obligations of the Republic of Colombia as well as the principal shareholders of several Indonesian banks in reaching settlements with the Indonesian Bank Restructuring Agency. Jake also acted for Holcim Ltd in the acquisition and restructuring of PT Semen Cibinong.

**Ann Davies**

Ann Davies leads Restructuring initiatives with Private Equity Houses both in the UK and across Europe. She joined KPMG in 1976 and became a partner in 1990. She has extensive experience of operational and financial restructuring work with corporate entities. She advises companies on turnarounds, cost reduction, profit improvement and cash management. Her overseas experience encompasses working in Europe, the US, Russia and Thailand. Ann is a Fellow of Institute of Chartered Accountants in England & Wales, Member of Chartered Institute of Taxation.

**A. Gary Klesch**

Mr. A. Gary Klesch, Chairman of Klesch & Company Limited, is a pioneer in the acquisition, restructuring and ensuing value enhancement of financially impaired

and undervalued corporate assets in the U.K., Continental Europe and North America. Among his many business interests, Mr. Klesch is Chairman or a director of many corporate and not for profit organisations.

**Frank S. Plimpton**

Mr. Plimpton is a partner at MatlinPatterson Global Advisers LLC, having joined its predecessor group at Credit Suisse in 1998. Mr. Plimpton has been involved in the distressed marketplace for over 25 years, the last 16 as an investment manager, and previously as an investment banker and a bankruptcy lawyer. Mr. Plimpton led MatlinPatterson's investment in NRG Energy.

**Mark R. Patterson**

Mr. Patterson is Chairman and co-founder of MatlinPatterson Global Advisers LLC which has \$3.85 billion of private equity funds under management, and is raising another \$4 billion fund, and seeks to make control investments globally in distressed situations. Mr. Patterson has over 30 years of financial markets experience at Credit Suisse (where he was a Vice Chairman of Investment Banking), Scully Brothers & Foss L.P., Salomon Brothers, Inc. and Bankers Trust Company, and serves on the Boards of a number of major corporations and charitable organizations.

**Rebecca Baker**

Rebecca Baker is a Partner and the Chief Marketing Officer of Alvarez & Marsal, where she heads up the firm's global marketing and communications efforts from New York. She brings more than two decades of marketing experience, the last 15 of which have been with leading professional services firms.

**Motoya Kitamura**

Motoya Kitamura is Vice President at Alternative Investment Capital. He is an investment professional responsible for commitments to buyout funds in Asia, Europe, and the US. Also a part-time Senior Researcher for Turnaround Management Association (TMA) in Japan. Previously a research analyst with Mitsubishi Research Institute in 1997-2004. MA in International Economics and International Relations from The Johns Hopkins University.

**Nils R. Kuhlwein von Rathenow**

Nils R. Kuhlwein von Rathenow is a Partner in the Competence Center Restructuring & Corporate Finance at Roland Berger Strategy Consultants. He looks back on ten years of experience in strategic, operational financial restructuring and numerous investment and private equity projects. Before joining Roland Berger in 1997, he worked for Siemens and KPMG. Nils studied Political Science,

*History and History of Arts and holds a degree in Business Administration from the University of Passau.*

#### **Markus Bruetsch**

*Markus Bruetsch is a Consultant in the Competence Center Restructuring & Corporate Finance at Roland Berger Strategy Consultants. He has professional experience in investment banking, structured finance and strategy consulting. Markus studied Economics at Oxford Brookes University and Business Administration at the Leipzig Graduate School of Management and the University of Chicago.*

#### **Paul Watters**

*Paul Watters is Director and Head of Standard & Poor's European Loan and Recovery Ratings. Paul joined Standard & Poor's in January 2002 and has been responsible for Standard & Poor's Industrial Recovery Ratings in Europe since launch in May 2004. Prior to 2002 Paul spent almost fifteen years working in debt capital markets in various senior trading and research roles with both Lehman Brothers and Nomura International. Paul read Economics at St Catharine's College, Cambridge and is a CFA charterholder and a Fellow of the Association of Corporate Treasurers in the UK.*

#### **Mark Grinis**

*Mark Grinis, a partner in Ernst & Young LLP's Global Real Estate Group, served as the head of Ernst & Young's Asia Pacific Financial Services practice, where he managed the regional efforts of the firm. He has significant experience with distressed assets and often contributes at global conferences and in periodicals on topics relating to distressed real estate. Prior to establishing the Asia Pacific Financial Services practice, Mark was a key contributor to the U.S. government's efforts to strengthen the financial sector following the U.S. savings and loan crisis.*

#### **Simone Brands**

*Simone Brands is an analyst and a member of the project management team for Probitas Partner's alternative fund placement activities. Prior to joining Probitas Partners, Simone worked as a Research Analyst at the Securities Industry Research Centre of Asia-Pacific (SIRCA). Simone earned a Bachelor of Science and a Bachelor of Commerce from the University of Sydney and also completed a Masters in Finance at the University of New South Wales.*

#### **Dominic McCabill**

*Dominic McCabill is a partner in the Business Finance and Restructuring*

*group in the London office of Weil, Gotshal & Manges. His practice covers all aspects of restructuring and insolvency advice with particular emphasis on cross-border cases and transactions.*

#### **David Snow**

*David Snow is Editor (Americas) of Private Equity International magazine and has been writing about the global private equity industry for eight years. He lives in New York.*

#### **Aaron Lovell**

*Aaron Lovell is a staff writer for Private Equity Real Estate. He studied history at DePaul University and has a master's degree in journalism from Northwestern University. He lives in New York City.*

#### **Mike Harris**

*Mike Harris is a partner at Rutland Partners where he has been working with the team there for seventeen years. For further information on Rutland and its deals, visit [www.rutlandpartners.com](http://www.rutlandpartners.com)*

#### **Michael Madden**

*Prior to co-founding BlackEagle Partners, Mr. Madden was a principal at Questor from February 1999 to March 2005. During his time at Questor, he played a significant role and served on the board of directors of GeoLogistics Corporation, PinnOak Resources, LLC, and Chef Solutions, Inc. Previously, he was vice chairman and a member of the board of directors and executive committee of PaineWebber Incorporated. Mr. Madden was also executive managing director of Kidder, Peabody, & Co., where he was responsible for all investment banking and capital markets activities worldwide. Prior thereto, he was the co-head of worldwide investment banking at Lehman Brothers Holdings.*

#### **John DiDonato**

*John DiDonato is President of Glass & Associates, Inc and an acknowledged expert in complex international restructuring.*

#### **Alan Tilley**

*Alan Tilley is Managing Director of Glass Europe with extensive experience in European cross border restructuring. Glass & Associates, Inc is a leading turnaround firm with six offices in USA and offices in London and Frankfurt.*

**Heather Swanston**

*Heather Swanston – a partner in PricewaterhouseCoopers' Business Recovery Services Group, specialises in the recovery and restructuring of large, complex multi-stakeholder and often cross-border businesses. Heather has experience in the retail, leisure and consumer products arena and also led the financial advisory team for Drax Power and its senior banks during 2002 and 2003. She also spent 18 months in Seoul, South Korea during the Asian economic crisis of the late 1990s.*

**Gavin Stoner**

*Gavin Stoner – a senior manager in PricewaterhouseCoopers' Business Recovery Services Group, advises companies, their lenders and other stakeholders on recovery and restructuring, where a business faces financial under-performance or crisis. Gavin was heavily involved in the financial restructuring of Drax Power during 2002 and 2003, and spent some 15 months on secondment at a London bank working on other power sector restructurings.*

## Appendix 4: Private Equity International - Products

**Private Equity International** has the following publications and products:

**Private Equity International:** the global magazine for private equity. One of the most widely read and recognised monthly magazine on private equity and venture capital. Written by one of the most highly regarded editorial teams with over thirty years combined experience of the industry. PEI delivers fresh news and insight on how the asset class is developing worldwide.

**PrivateEquityOnline.com:** probably the best known website dedicated to private equity and venture capital. Launched in April 2000, its daily news coverage from around the world is now read by professionals all over the world. Journalists in London, New York and Singapore are posting stories on PEO throughout each day on the people, the deals and the firms shaping the industry. Extended and updated in September 2005, PEO is acknowledged to be the online source for global private equity news.

**Private Equity Manager:** the first monthly journal written for those involved in running the modern private equity firm: CFOs, COOs, Heads of IR, Human Resources – as well as the managing partners. Launched in June 2004, PEM delivers substantive commentary and guidance on all aspects of operational best practice for the private equity and venture firm.

**Private Equity Real Estate:** the only monthly magazine dedicated to private equity-style investing in real estate, PERE tracks the investors, managers and deals that are helping make this one of the most dynamic parts of the global real estate investment industry. The magazine is the first to combine in-depth features on strategy and markets with granular news coverage and proprietary data.

**PEI Asia:** the new monthly magazine dedicated to the private equity and venture capital industries across all of Asia, Australia and the Middle East. The magazine has been launched to give readers a substantive and insightful source of news and analysis covering the deals, the funds, the firms and the people that are helping extend the reach and importance of the asset class across the whole of the region - from Dubai to Jakarta, Mumbai to Shanghai and from Tokyo to Sydney.

**IP Investor:** the brand new magazine dedicated to the world of commercializing intellectual property. It examines IP as a distinct alternative asset class focussing on IP monetization, deals, people and investment vehicles.

**Private Equity International Conferences:** in order to provide private equity professionals with a number of focused events that make full use of the company's knowledge of the private equity industry, PEI now hosts a series of

conferences in Europe, North America and elsewhere. Our Private Equity COO & CFO meetings in both London and New York, for example, have already established themselves as the annual meetings for this community; likewise our annual Middle East Private Equity Forum is acknowledged to be the premier event for the region's top practitioners.

**Private Equity International Research Products:** Our expanding range of in-depth market reports, research guides, directories and online databases cover the issues and trends shaping the asset class on a global basis. They offer private equity professionals, investors, advisors and others involved in private equity the quality research, in-depth analysis and insightful comment they need.

### Directories

These practically orientated, comprehensive and detailed publications profile investors in the asset class as well as advisors, service providers and private equity firms:

#### *Global Limited Partners Directory – 2nd Edition*

Containing the profiles of more than 1400 sources of capital, this comprehensive directory is an indispensable research tool and an essential purchase for anyone involved in private equity and venture capital fund raising and marketing.

#### *Global Directory of Investors in Private Real Estate Funds*

Containing the profiles of more than 500 sources of capital, this outstanding directory is the most comprehensive, extensive and user-friendly guide to current and active limited partners investing in the asset class available today.

### Online Databases – PEI Data

A growing series of online database products to add to our existing suite of directories. Wholly web-based, PEI Data gives access to our unique online databases of institutions investing in alternative assets, and is fully searchable and constantly updated.

### Private Equity Connect (PE.Connect)

This online database tracks investors in private equity and venture capital funds globally. Everyday our researchers are gathering detailed information from all over the world about who is investing how much in which kinds of funds. The database is designed to let you undertake precise and detailed searches across its entire content and lets you also export the information you want as both a PDF and to Excel. You can also consult investor specific news coverage, see who is committing to which funds and be alerted about personnel changes amongst the institutions covered.

**PERE Connect (PERE.Connect)**

Similar in functionality and platform to PE.Connect, this specialised online database tracks investors in private equity real estate funds globally.

The breadth and depth of the content of the databases, the freshness of the information and the functionality provided makes these the definitive global fundraising and investor-monitoring tools.

**Market Reports**

These highly specialised and targeted reports cover technical issues or particular areas of the private equity industry in an incisive manner, providing readers with a valuable primer:

*A Guide to Private Equity Fund of Funds Managers*

This outstanding publication is the most complete guide to the global private equity fund of funds market available today. It contains a comprehensive directory of fund of funds managers together with in-depth editorial from leading fund of funds managers, placement agents and advisors, as well as the results of a survey into the dynamics and future of the fund of funds market.

*A Guide to Private Equity Fund Placement Specialists – 2nd Edition*

This newly updated and expanded version of the best-selling first edition is the definitive guide to private equity placement agents, offering insight as to how they work, who they are and how the rest of the private equity community regards them.

*The UK LBO Manual*

This outstanding report is the definitive practical guide to structuring private equity-backed buy-outs in the United Kingdom. It provides a clear, concise and user-friendly guide to the main legal, regulatory, tax and commercial issues when structuring and completing a UK LBO.

*The French LBO Manual*

This indispensable manual delivers the most detailed picture available of how to execute a buy-out successfully in France. It provides clear, concise and user-friendly information about the main legal, regulatory, tax and commercial issues when executing an LBO in France.

*The German LBO Manual*

This market report provides detailed, practical information on the realities of structuring and completing an LBO in Germany and provides clear, concise and user-friendly information about the main legal, regulatory, tax and commercial issues when executing an LBO in Germany.

**Research Guides**

Consisting of in-depth analysis and comment, along with the results of surveys into the attitudes and opinions of private equity professionals and investors, these research-rich, multi-contributor studies provide readers with some of the most authoritative and substantive comment on private equity available today:

*Human Capital in Private Equity*

This in-depth market report is a major study of what arguably is the key asset within private equity: its people. Combining in-depth articles from seasoned professionals with proprietary data and analysis, this book is an essential read for anyone interested in the human capital aspects of working in private equity, both from a general partner and portfolio company perspective.

*Routes to Liquidity*

This multi-faceted study provides readers with a substantive and up-to-date guide to the alternatives now open to investors for achieving liquidity in private equity and for proactively managing their allocations to the asset class. It combines expert commentary from some of the most seasoned practitioners in the private equity market, along with the results of a unique survey into the attitudes of buyers, sellers and GPs towards the secondary market.

*The Guide to Private Equity Fund Investment Due Diligence*

This outstanding publication combines in-depth editorial with a global directory of consultants providing specialised private equity advice to institutions, along with the results of a survey of over 300 institutional investors about their attitudes towards fund investment due diligence.

*The Guide to Private Equity Fundraising*

This detailed and in-depth research guide combines expert editorial from leading market practitioners with the results of two surveys of limited partners on the topics of fund terms and conditions and investor relations, alongside a number of unique case studies of actual recent fundraisings.

If you have any queries about Private Equity International's current and forthcoming research guides, reports, directories or online databases please contact:

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