

TRENDS AND INSIGHTS IN THE LATIN AMERICA MARKET IN LIGHT OF COVID-19

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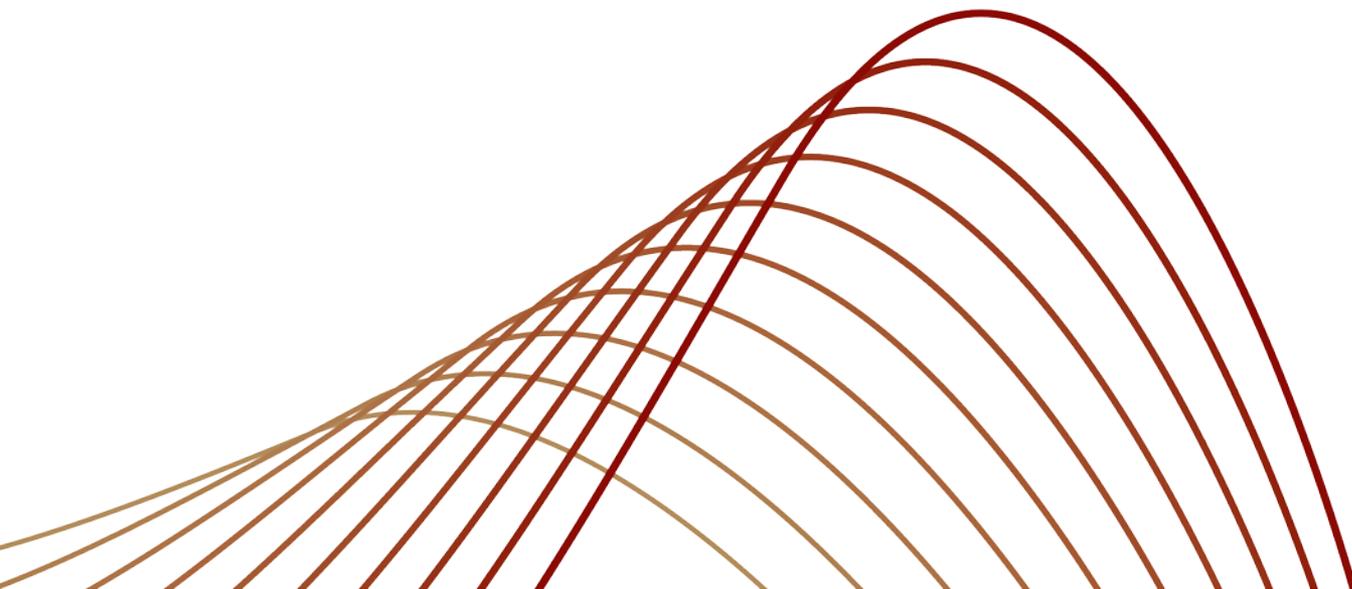
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PAUL
HASTINGS

- Introduction
- Bond buyback and “creeping tenders”
- Purchase agreement termination provision
- Impact of COVID-19 on SEC reporting obligations and public disclosure
- Due diligence
- Liability management transactions/exchange offers
- PH Global Capital Markets Team
- Current offerings



BANK FINANCE

Bob Kartheiser and Andres Mena

EMERGING MARKETS, INCLUDING LATAM, FACING “PERFECT STORM”?

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- Deep Recessions (WB: Mexico GDP to drop 6.6%, Brazil 5.3%, Colo. 2.4%)
- Public health challenges
- Shrinking export revenues
- Large investor outflows
- Currency devaluation vs USD



PAUL
HASTINGS

- New Deals: mandates/commitments for new financings:
 - Liquidity? Flight to quality (contracted revenue? “name-brand”, repeat, Sponsor? Politically stable country? Refi or new-build?)
 - Mandates vs commitments: the latter will be harder to corral (note that as arguably the virus constitutes a “MAC” for many borrowers, “outs” will be tricky)
 - Sectoral outlook: does the virus move us to a new point on existing demand curve, or *shift* the curve?
 - We see, so far, continued activity across markets for power, road, rail and air transportation assets financings (both new-build and refinancings, and across bank, private placements and 144A markets)
 - O&G is another story . . . but “gas-to-*contracted* power” can perhaps move forward



- Variety of fact-specific situations, but some commonality bubbling up:
 - FM across supply chains; FM in concessions and offtake agreements (alignment or “back to back”?)
 - Gov’t induced shut-downs/revenue-restricting policies (esp., construction, transportation-related operations particularly acute)
 - Forward-looking creditors and sponsors: when is my next debt service due, can I use my DSRA without creditor consent (if so, will I generate CFADS to make next payment)?
 - Must I engage with creditors today to achieve timely amendments/waivers? (intercreditor votes, especially if involving bond tranches, take time)
 - MAE: has one occurred? Notices, drawstops, and in some ECA or MLA deals, even an EOD trigger (note case law, and NY deal experience)



MERGERS AND ACQUISITIONS

Jon Kellner and Rob Leung

- Severe impacts on businesses in almost every global sector
- Decrease in M&A deal activity:
 - Latin America:
 - 1Q20: 113 transactions (USD 8.7B)
 - 1Q19: 158 transactions (USD 17.3B)
 - ▼28% in deal volume and ▼50% in aggregate value (YOY)
 - United States:
 - 1Q20: 1,255 transactions (USD 206B)
 - 1Q19: 1,524 transactions (USD 476B)
 - ▼18% in deal volume and ▼57% in aggregate value (YOY)
 - Globally:
 - 1Q20: 3,685 transactions, USD 563.7B (▼39% in aggregate value YOY)
 - Compare 1Q08: 3,744 transactions, USD 592.3B
 - Q2 and possibly Q3 are expected to be worse.



*Reference: Mergermarket's "Global & Regional M&A Report 1Q20" (<https://www.mergermarket.com/info/global-and-regional-ma-report-1q20>).

Buyers and sellers will have significantly different approaches as to the effect of COVID-19 on prospective transactions.

- Seller—pandemic is known, Buyer should generally assume related risks.
- Buyer—potential impacts of COVID-19 are still unknown with respect to the target; need for greater flexibility to go forward with transaction.

In particular, buyers and sellers have different approaches to the following fundamental transaction aspects:

(i) Purchase price

- Buyer—In the face of challenges assessing value, seek more deferred or contingent consideration forms.
- Seller—Seek value certainty; assume discount is priced in.

(ii) Representations and warranties

- Buyer—Expand representations and warranties to cover altered risk profile and future developments.
- Seller—Tailor representations and warranties narrowly to avoid interim breaches; conditions are dynamic/volatile.

(iii) Interim covenants

- Buyer—Seek greater input into key interim operational decisions that may arise during the course of the pandemic.
- Seller—Ensure requisite operational flexibility to respond adequately to changing regulatory and business environment.

(iv) Closing conditions

- Buyer—Seek to retain ability to avoid closing a transaction under adverse circumstances resulting from new, unanticipated development.
- Seller—Narrowly tailor new closing COVID-19 conditions to accommodate Buyer concerns.



KEY TOPICS	BUYER	SELLER
Purchase Price and Adjustments	<ul style="list-style-type: none">▪ Consider the impact of market volatility<ul style="list-style-type: none">▪ Projections based in historical performance may not accurately reflect value▪ Consider deferred or contingent consideration forms:<ul style="list-style-type: none">▪ Deferred payments or earnouts▪ Rollover equity▪ Purchase price adjustments, net working capital adjustments and allocation of pricing risk before closing	<ul style="list-style-type: none">▪ Reduce exposure to pricing risk between signing and closing.▪ Seek price certain, floors on purchase price adjustments▪ Given buyer is pursuing a transaction, assume impact of COVID-19 can be built into price



M&A CONSIDERATIONS – REPRESENTATIONS & WARRANTIES

KEY TOPICS	BUYER	SELLER
Representations and Warranties		
<i>Compliance with Laws</i>	Address government orders limiting the extent of seller’s business operations, forcing business closure, or limiting import/export activities	Should seek materiality qualifiers with respect to the same
<i>Material Contracts</i>	Consider representations: <ul style="list-style-type: none"> ▪ Requiring target to list contracts with applicable force majeure provisions; and ▪ as to each party’s ability to perform specific contracts in light of COVID-19 	Consider availability of information or reasonable foreseeability when making or agreeing to representations in light of COVID-19, as additional representations will affect disclosures
<i>A/R, Inventory</i>	Consider representations regarding A/R collectability, supply chain disruptions, inventory condition and aging/obsolescence.	
<i>Additional Representations and Warranties</i>	Business Continuity, Emergency Protocol, Contingency Planning	Be cautious of representations that are forward-looking



KEY TOPICS	BUYER	SELLER
<p>Interim Operating Covenants</p>	<ul style="list-style-type: none"> ▪ Control: how should unforeseen operational decisions be determined? ▪ Include buyer approval/consent rights (or advance notice) if operational changes are required after signing to address COVID-19-related business impacts or material or extraordinary steps such as: <ul style="list-style-type: none"> ▪ a material workforce reduction; ▪ a material decrease in production volume; ▪ modifying or terminating material contracts; ▪ Liquidity/working capital maintenance, debt refinancing. ▪ ‘Ordinary course of business’ in an extraordinary time—consider specific exclusions from ‘ordinary course’ 	<ul style="list-style-type: none"> ▪ Consider whether any of the restrictive covenants should have exceptions related to COVID-19 (e.g., additional working capital/liquidity requirements) ▪ Consider whether seller should have specific ability to avail itself of relief programs (if eligible) without the consent of buyer ▪ Include compliance with law exception (either generically or by specific reference to compliance with COVID-19 state/federal orders and guidance) to general interim covenant to operate in the ordinary course of business ▪ Interim covenants will be affected by allocation of interim pricing risk, closing risk



KEY TOPICS	BUYER	SELLER
<p>Closing Conditions</p>	<ul style="list-style-type: none"> ▪ <u>MAEs</u>: Publicly filed merger agreements in the U.S. increasingly are carving out “pandemics” or “COVID” from an MAE. Additionally, given case law limitations on MAEs, relying solely on a generic MAE clause to address COVID-19 is not ideal—consider instead including specific representations, closing conditions ▪ Consider additional closing conditions related to COVID-19, such as: <ul style="list-style-type: none"> ▪ stay-at-home/shelter-in-place orders being lifted; ▪ business open; and ▪ at least X% of the workforce has returned 	<ul style="list-style-type: none"> ▪ Exclude as an event not constituting a MAE: pandemics, epidemics, or disease outbreaks (including COVID-19), public health emergencies (as declared by applicable governmental authorities) or quarantine restrictions implemented by applicable governmental authorities) ▪ If buyer is successful in negotiating for a general inclusion of impacts of COVID-19, pandemics, epidemics and/or public health emergencies, etc. from MAE, limit such inclusion to “disproportionate effects” ▪ Adjust interim covenants, termination rights, closing conditions for adequate closing assurance.

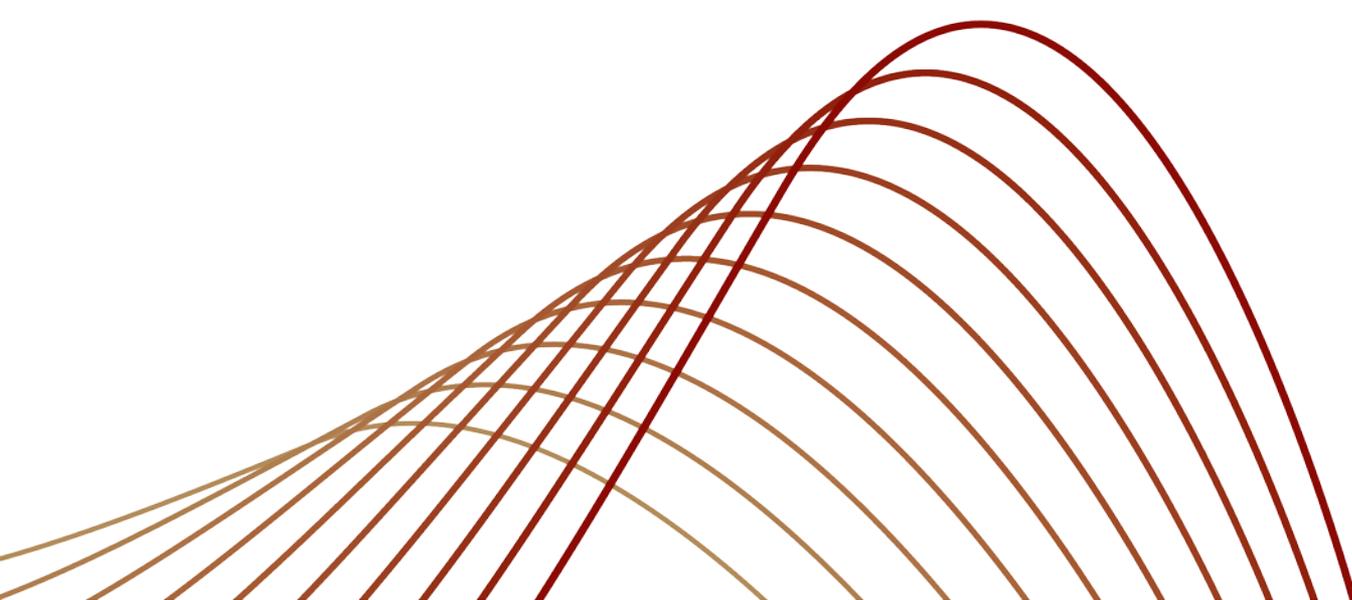


- **Due Diligence**—Consider whether additional time will be required to perform due diligence on target. In-person meetings with management may be difficult. Financial information may be delayed.
- **Outside Dates**—Consider that the key dates, including the outside date, may need adjustments or qualifiers for an additional number of days.
- **Transaction Financing**—Adjust timing for possible challenges in securing financing.
- **Notice and Counterparts**—Confirm that (i) notice provision permits electronic delivery and appropriate notice time periods with respect to physical mailings, and (ii) agreement allows for electronic signature and multiple counterparts for execution.
- **Ability to File Transaction Documents**—Confirm filing availability of applicable state or federal documents.
- **Antitrust Matters**—Review regulatory aspects (i) availability of early termination, (ii) whether review periods will be protracted, (iii) possibility to file on an expedited basis (based on LOIs and MOUs)



RESTRUCTURING AND DISTRESSED

Joy Gallup and Pedro Jimenez



- Broad Range of Issues as a Result of the COVID-19 Situation
- Types of Clients that are Impacted
 - Lenders
 - Borrowers
 - Contract Counterparties
 - Investors
- Variety of Solutions
 - Out of Court Negotiated Restructurings/Amendments and Waivers
 - Capital Markets Transactions/Liability Management
 - Bankruptcy Proceedings/Litigation
- Deep Global Restructuring Bench



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