

E. ACCELERATION OF MATURITY

Recent developments in the US bond market, both high-grade and high-yield, have led the CBIA Model Covenant Working Group to carefully review acceleration of maturity clauses typically included in indentures for C\$ domestic bond financings. We have observed that most such clauses are deficient since

they do not precisely articulate that an acceleration event (whether automatic or upon declaration by the

Trustee or requisite bondholders) results in all principal, premiums (calculated as if the Notes had been

11 This parenthetical carves out stock dividends, which should not be objectionable to bondholders, and also any dividend payment that is made

by a restricted party to another restricted party.

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voluntarily redeemed by the Issuer at the time of such acceleration event) and accrued and unpaid interest becoming immediately due and payable by the Issuer.

A number of events in the US debt markets through the end of 2016 and early 2017 have caused this working group to carefully review standard acceleration clauses found in C\$, Canadian law bond indentures. In September of 2016, a New York court ruled for bondholders of Cash America in connection

with a claim brought by such bondholders against the company relating to what the court determined was an "intentional" breach by the company of its bond indenture covenants. While the specifics of the case are beyond the scope of this commentary, the key issue before the court was whether Cash America

should be required to repay at par the bondholders upon an acceleration resulting from a default or, instead, be required to pay such bondholders as if there had been a redemption of the notes (including the make-whole payable upon such a redemption). While the court ruled in favour of the bondholders in that case, it also invited future unfavourable developments by providing in its written decision that "[u]nder New York law, the parties to a loan agreement are free to include provisions directing what will happen in the event of default of the debt, supplying specific terms that supersede other provisions in the

contract if those events occur." This led to a number of new bond financings in the US market, initially

high-yield but then also extending to high-grade, through the fall of 2016 and early 2017 which included very specific language in their underlying indentures providing that there would be no premium payable on a default and acceleration. In essence, an issuer benefitting from such a provision could elect to voluntarily breach its indenture covenants and be assured that its bondholders' only recourse would be to accelerate and seek repayment at par. US investors generally rejected new issues that contained this offensive language.

A standard formulation in Canadian bond indenture acceleration clauses is that "all principal, premium (if any) and accrued and unpaid interest" becomes immediately due and payable by the Issuer on an acceleration. Given the recent developments in the US market (and irrespective of what appears to have been successful investor push back on this "no premium on default" movement), it is apparent to us that

the "premium (if any)" language commonly seen in acceleration clauses for Canadian financings is too imprecise a description of what is intended. More specifically, we believe the phrase "premium (if any)" as used in acceleration clauses should be reformulated and enhanced to make more clear that the premium payable upon an acceleration is the premium which would otherwise have been payable had the Issuer elected to voluntarily redeem all outstanding Notes on the date of such acceleration. That has long been the understanding within the bond investor community, and the more precise model acceleration clause set out below firmly captures this implicit bondholder expectation.

The following language addresses two types of default. The first paragraph addresses defaults other than

bankruptcy type events, thus resulting in an acceleration of the Notes only upon declaration by the trustee

or noteholders. The second paragraph addresses defaults arising from bankruptcy type events, resulting in an automatic acceleration of the Notes without a need for a declaration by the trustee or noteholders.

Acceleration of Maturity

If an Event of Default (other than an Event of Default specified in Sections ● or ● [NTD: this parenthetical

should capture those Events of Default relating to a bankruptcy, winding-up or insolvency event of the Issuer or material restricted group] shall have occurred and be continuing under this Indenture, the

Trustee, by written notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may, and the Trustee at the request of such Holders shall, declare the aggregate

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principal of, premium, if any, and accrued and unpaid interest, if any, on all of the Notes to be due and payable. Upon such declaration, such principal, premium and accrued and unpaid interest will be due and

payable immediately. Upon such declaration, the premium, if any, payable on the Notes then outstanding

shall be the premium which would have been payable under the terms of this Indenture upon the voluntary redemption by the Issuer of all of the outstanding Notes on the date of such declaration.

If an Event of Default specified in Sections ● or ● [NTD: this parenthetical should capture those Events of Default relating to a bankruptcy, winding-up or insolvency event of the Issuer or material restricted group]

shall have occurred and be continuing under this Indenture, then the aggregate principal of, premium, if any, and accrued and unpaid interest, if any, on all of the Notes will thereon become and be immediately

due and payable without any declaration, notice or other action on the part of the Trustee or any Holder.

Upon such immediate and automatic acceleration, the premium, if any, payable on the Notes then outstanding shall be the premium which would have been payable under the terms of this Indenture upon

the voluntary redemption by the Issuer of all of the outstanding Notes on the date of such acceleration