

## **SPECIAL MANDATORY REDEMPTIONS**

In recent years public debt markets have been used by corporations to pre-fund large strategic acquisitions. These financings provide significant advantages to issuers in the form of certainty of funding ahead of financial close on a proposed acquisition. The bonds issued often include a Special Mandatory Redemption (SMR) clause that is triggered in the event the proposed acquisition fails to close within a prescribed time-period. The redemption price is often set at 101% of par.

Experience has shown that this form of SMR clause can offer inadequate protection to bond investors who are subject to significant deal risk in the form of exposure to swings in yields and credit spreads. Bond holders have also been subject to terms in consent solicitations that can have a coercive effect when issuers seek to modify or extend the term of an SMR.

The CBIA believes a more balanced approach to the allocation of risks for acquisition financing will lead to a more efficient and accessible funding model for both issuers and investors. We propose the terms of the standard SMR be modified and enhanced to provide better protections to investors. Further, we are endorsing a list of best practices for bond holder consent solicitations that seek modifications to SMR provisions.

Our proposal calls for greater protection from interest rate risk by setting the redemption price at the greater of a) a price based on a predetermined percentage of the original offer spread and b) a pre-set percentage of par, such as 101%. We believe the indenture should establish a reasonable time-period for which the SMR is in force (it should not be open-ended), that the redemption provisions of the SMR take precedence over other call provisions in the bond indenture while the SMR is in force, and that consent from at least two-thirds of bond holders should be required to modify or extend the term of a SMR.

In addition, we strongly believe procedures and inducements for modifying SMR's should adhere to the CBIA's existing position on consent fees<sup>1</sup>, which advocates that all bond holders be given adequate notice of a proposed change, sufficient time to respond to a request for change, and that ALL bond holders subject to the change of terms be equally compensated for that change regardless of whether the holder provides a positive consent.

Our proposed best practices Special Mandatory Redemption language is attached to this position paper as Exhibit A.

The CBIA's best practices for Special Mandatory Redemptions include the following.

- 1) Whenever possible, consent solicitations should be structured to avoid the need for a record date that determines which holders are entitled to vote. If that is not feasible, the record date and the date it is announced should be as close as possible and ideally the same date. The purpose of this best practice is to minimize (or eliminate if no record date is needed) the period between the ex-date for the right to provide consent (and receive any associated consent fee) and investors receiving the information that the ex-date has occurred.

---

<sup>1</sup> See *CBIA Position Statement – Consent Fees*, dated October 19, 2015.

- 2) Where multiple tranches of bonds are issued related to a specific acquisition, the SMR terms should be similar and comparable across all bonds. Differences should be explicitly highlighted.

The CBIA encourages the use of public bond markets to achieve the strategic goals of corporations and provide attractive solutions that facilitate important financial transactions. We believe a better allocation of risks in such transactions will benefit both issuers and investors by fostering trust amongst all parties, increase participation in such financings and ultimately improve the efficiency of these transactions.

## Exhibit A: Proposed Special Mandatory Redemption Language

### Redemption Trigger and Related Definitions

If the [Issuer]'s acquisition of [Target company] (the "Acquisition") is not consummated on or prior to the date that is [\_\_]<sup>2</sup> calendar days from the issue date of the Notes (the "SMR Deadline") or, if prior to such date, the Merger Agreement for the Acquisition is terminated (each, a "Special Mandatory Redemption Event"), then in each case [Issuer] will be required to redeem all of the Notes at a special mandatory redemption price ("Special Mandatory Redemption Price") equal to the greater of (i) [101%] of the aggregate principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the Special Mandatory Redemption Date (as defined below) and (ii) the sum of the present values of the Remaining Scheduled Payments discounted to the Special Mandatory Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Reinvestment Rate, together with accrued interest on the principal amount of the Notes being redeemed on the Special Mandatory Redemption Date. **[Note: Definition of "Special Mandatory Redemption Event" to be conformed to structure of acquisition.]**

"Government of Canada Yield" means, on any date, the bid yield to maturity on such date compounded semi-annually that a non-callable non-amortizing Government of Canada nominal bond would be expected to carry if issued, in Canadian dollars in Canada, at 100% of its principal amount on such date with a term to maturity that most closely approximates the remaining term to [the maturity date of the Notes] on such date, as determined by the [Issuer] based on a linear interpolation of the yields represented by the arithmetic average of bids observed in the market place at or about [11:00 a.m.] ([Toronto time]) on the relevant date for each of the two outstanding non-callable non-amortizing Government of Canada nominal bonds that have the terms to maturity that most closely span the remaining term to [the maturity date of the Notes] on such date, where such arithmetic average is based in each case on the bids quoted to an independent investment dealer acting as agent of [Issuer] by two independent registered members of the Investment Industry Regulatory Organization of Canada selected by [Issuer] (and acceptable to the [Trustee]), calculated in accordance with standard practice in the industry. **[Note: If the Notes have an earlier par call date, references to the maturity date of the Notes to be replaced with references to such earlier date.]**

"New Issue Offer Spread" means, the difference in basis points, as of the pricing date of the Notes, between (i) the yield [to maturity] of the Notes and (ii) the Government of Canada Yield as of the pricing date of the Notes.

"Reinvestment Rate" means, [90.0%] of the New Issue Offer Spread plus the Government of Canada Yield as of the date that is three business days before the Special Mandatory Redemption Date.

"Remaining Scheduled Payments" means, the remaining scheduled payments of the principal of and interest on the Notes that would be due after the related redemption date[, up to and including the maturity date of the Notes,] but for such redemption; provided, however, that if such redemption date is not an interest payment date, the amount of the next succeeding scheduled

---

<sup>2</sup> To provide a reasonable period to complete the proposed acquisition. In most cases, we expect this period will be no more than 180 calendar days.

*interest payment on the Notes will be reduced by the amount of interest accrued thereon to such redemption date.*

*Upon the occurrence of a Special Mandatory Redemption Event, [Issuer] will promptly (but in no event later than (5) business days following such Special Mandatory Redemption Event) notify the trustee in writing of such event, and will, no later than 5 business days following such notice to the trustee, mail a notice of redemption to the registered address of each holder of Notes (such date of notification to the holders, the "Redemption Notice Date"), that the Notes will be redeemed on the 30th business day following the Redemption Notice Date (such date, the "Special Mandatory Redemption Date"), in each case in accordance with the applicable provisions of the indenture. [Issuer] will notify each holder in accordance with the applicable provisions of the indenture that all of the outstanding Notes shall be redeemed at the Special Mandatory Redemption Price on the Special Mandatory Redemption Date automatically and without any further action by the holders of Notes. At or prior to [12:00 p.m.] ([Toronto time]) on the business day immediately preceding the Special Mandatory Redemption Date, the Company shall deposit with the trustee funds sufficient to pay the Special Mandatory Redemption Price for the Notes. If such deposit is made as provided above, all of the Notes to be redeemed will cease to bear interest on and after the Special Mandatory Redemption Date.*

*For purposes of the Notes, a business day means a business day in [The City of Toronto].*

#### *Amendment of Special Mandatory Redemption Provisions*

*Without the consent of Holders of at least [two-thirds] of the aggregate principal amount of the then outstanding Notes, an amendment, supplement or waiver may not, with respect to any Notes held by a nonconsenting [Holder]:*

*... reduce the redemption price payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as set forth under the headings ["Special Mandatory Redemption" and "[\_]"]. **[Note: To reference the redemption provisions of the indenture, including the special mandatory redemption provision.]***

#### *Optional Redemption Provisions*

***[Note: Optional redemption provisions to provide that if the applicable optional redemption price would be lower than the Special Mandatory Redemption Price then the optional redemption price shall instead be equal to the Special Mandatory Redemption Price until the first day following the latest date on which a Special Mandatory Redemption Date could occur.]***