

Mergers & Acquisitions Compliance for Debt Buyers

Panelists:

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Today's Presentation

- Introduction
- What Investors Seek in Debt Buying Companies
- Regulatory Due Diligence
- Presenting Companies to Investors – Best and Worst Practices
- Getting a Deal Done
- Audience Q & A

Introduction



Introduction



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What Investors Seek in Debt Buying Companies

- Financial performance?
- Risk Management ?
- Operating metrics?
- Management talent?
- IT Infrastructure?
- Assets?
- Ability to exit?
- Regulatory?

Debt Buying / Specialty Finance

- Evaluation criteria
 - Early stage vs. mature companies
- Orientation of business
- Core competency (passive vs. active vs. ?)
- Does the type of receivable matter?

Regulatory Due Diligence



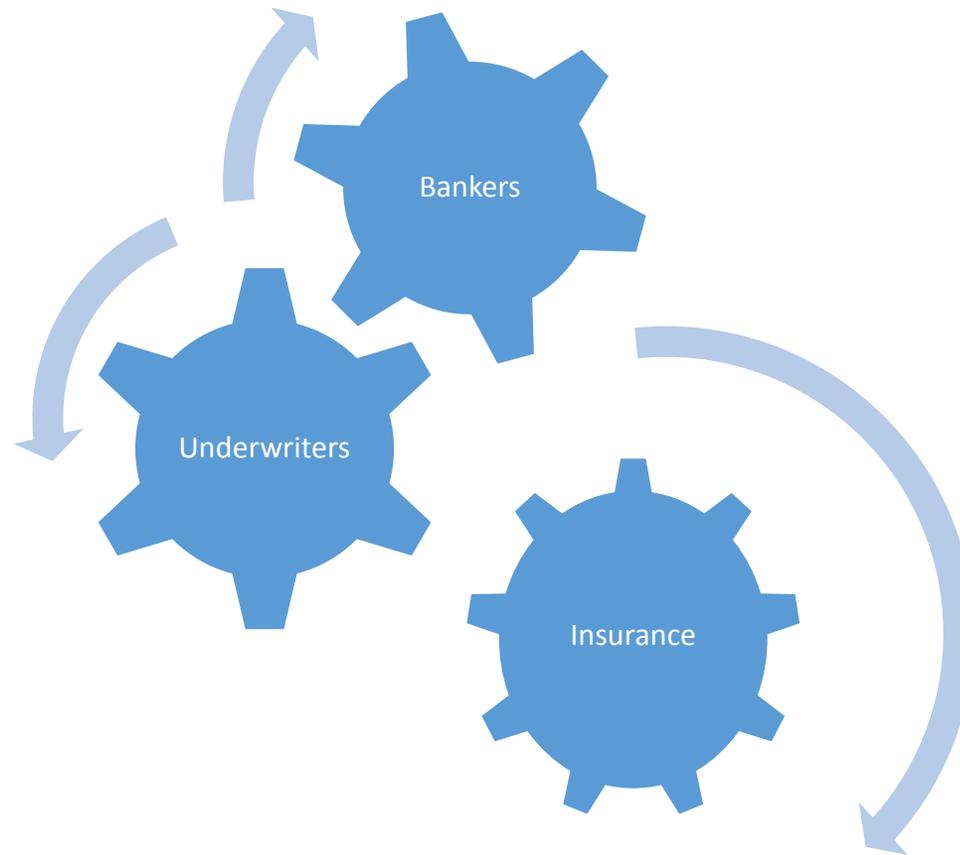
Regulatory Due Diligence

- What is Regulatory Due Diligence?
- Why is it Conducted?
- What is Material?
- Getting Organized?
- Pitfalls and Practical Advice

Why and what is regulatory due diligence?

- Performing an in-depth assessment of the regulatory compliance status of a company and/or its activities / assets.
- Potential issues / liability for the acquire or acquirer
 - Consequences:
 - Broken deal / abandonment
 - Influence financial and other terms and conditions of deal
 - Time and resources
- Breach of a rep and warranty
 - Consequences:
 - Recourse against former owners
 - Monetary damages
 - Insurance?
- Failure to obtain fair financial value (seller) or recognize future value of company (buyer)
 - Ability to ask questions
 - Understand the impact of gaps and possible remediation
 - Independent evaluation
 - Help to understand the value and inform decisions

Third Party Stakeholders



What are the key regulatory areas of likely focus?

- Fair Debt Collection Practices Act
- Fair Credit Reporting Act
- Consumer Financial Protection Act (CFPA), Federal Trade Commission Act (FTC Act), and state mini-FTC Acts (aka UDAAP)
- Electronic Fund Transfer Act (EFTA) and Regulation E
- Gramm-Leach-Bliley Act (GLBA)
- Equal Credit Opportunity Act (ECOA)
- State Debt Buyer and Debt Collection Laws
- Federal and State Lending Laws Pertaining to the Portfolios/Receivables
 - E.g., Federal Banking Laws and Regs., Student Loan/Mortgage Laws, Telephone Consumer Protection Act, Fair Credit Billing Act, State Lending and Usury Laws, “True Lender,” and Doctrine, UCC, E-Sign/UETA, contract law
 - Federal Regulatory Guidance: CFPB, FTC, OCC, etc.; State Agency Guidance
 - State Statute of Limitations, Rules of Evidence, and Court Rules
 - Bankruptcy Law

What to expect during regulatory due diligence?

- Confidential Information Memorandum (CIM)
- Document and information request list
 - corporate structure
 - litigation, consent orders, complaints, investigations, and demands
 - compliance management system
 - third party audit and certification / accreditation materials
 - FDCPA and federal consumer financial law compliance (e.g., EFTA, GLBA, FCRA, UDAAP)
 - state debt buyer and debt collection law compliance
 - creditor relations and agreements
 - portfolio reviews (asset class and file review)
 - third party vendor management and agreements
 - third party legal opinion letters
 - and more
- Independent check re federal and state regulatory compliance, litigation, public reputation
- Site Visit(s) – how do they differ from creditor diligence? Host and buyer best practices.
- Follow-up requests.....and more....

Getting Organized

- Frequent Tools:
 - Use of CIM
 - Data Room
 - Tracker(s)
- Data dump vs. tailored approach
- Value of intro and IT overview (early)

Presenting Companies to Investors – Best and Worst Practices

Best Practices / Practices to Avoid

- Best approaches –
 - Who should be the captain?
 - Who's on the team?
 - What's the strategy and important information that needs to be understood to set the table?
 - Will outside resources be used? E.g., banker, consulting firm, legal counsel (in-house vs. outside counsel, deal counsel, regulatory counsel), accountant, etc.
- What approaches do not work?
- How does a company convey it is compliant?

Getting the Deal Done



Getting the Deal Done

- Phase 1 - Pre-transaction planning
- Phase 2 - Go to market (auction, select group, etc.)
- Phase 3 – Due diligence
- Phase 4 - Memorandum of Understanding / Exclusivity (and more diligence)
- Phase 5 - Definitive Deal Agreement (representative terms)
 - Representations and Warranties
 - Negative vs. affirmative
 - Covenants
 - Conditions to Closing
 - Indemnification
 - Disclosures
 - Third Party Opinions
 - Employment Agreements
 - Noncompetition Agreements
 - Corporate Resolutions
- Phase 6 - Post Transaction Planning, Diligence, Management

Audience Q & A



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