

SIMPSON
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MEZZANINE FINANCE

SIMPSON THACHER & BARTLETT LLP



Capital Markets Team of the Year

CHAMBERS USA AWARDS FOR EXCELLENCE, JUNE 2008

MEZZANINE FINANCE PRACTICE

Simpson Thacher's corporate finance practice has long been recognized for its deep experience in advising a wide variety of clients on financing transactions at every level of the capital structure.

This experience extends to representing the issuers and the purchasers of both traditional and innovative mezzanine products and gives us a broad understanding of the market for these products.

Our comprehensive knowledge and experience distinguishes us from our peers and makes us the Firm of choice for mezzanine-related transactions.

MARKET KNOWLEDGE AND EXPERIENCE

Mezzanine capital covers a range of products and is continually evolving with market conditions. Mezzanine finance has traditionally been viewed in some markets as a buy and hold product that was not widely distributed or traded. However, in the face of the current credit market turmoil, mezzanine products are increasingly being considered as a viable and important source of financing in both the United States and Europe, and also in Asia and Latin America.

Simpson Thacher has longstanding experience advising clients regarding both traditional mezzanine financing products, as well as more innovative developments. Our experience in all aspects of an issuer's capital structure provides us a uniquely insightful perspective to our clients' financing needs. Over many decades, as mezzanine financing has been utilized to a greater or lesser extent depending on market conditions, we have worked with our clients to structure and negotiate financing products, including mezzanine products, that match their needs and the existing states of the credit and capital markets.

The preeminence of our credit and capital markets practices, including our renowned leveraged finance group, ensures that we are particularly well positioned in the mezzanine finance area. Our lawyers apply their extensive knowledge of both legal and financial issues for the benefit of our clients in transactions across the range of mezzanine financings. In addition to our vast experience and

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Banking and Finance • Capital Markets: Debt
Capital Markets: Equity • Capital Markets: High Yield
Private Equity: Buy Outs • Private Equity: Fund Formation

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understanding of financings at all levels of the capital structure, our leading position in the financing of mergers and acquisitions and our prominence in private equity transactions give us unparalleled versatility in dealing with the complex issues that arise in mezzanine financings.

OUR CLIENTS

A hallmark of our financing practice generally is the wide variety of financing parties we represent, including issuers, lenders and secondary market participants. Our mezzanine finance practice is no exception and includes the representation of both mezzanine issuers and lenders, as well as the representation of sponsors, investors and placement agents in the formation of funds investing in mezzanine products as part of their investment

strategy. Our understanding of the perspectives of a wide variety of mezzanine market participants is of tremendous benefit to our clients. As the leading firm in the fund formation area, we have represented many of the largest and best known sponsors of such funds, as well as lead investors. Our knowledge of custom and practice in the global mezzanine private funds marketplace is unsurpassed. Our leading position in fund formation provides us with insights into the investment perspectives of the investors and fund managers who will ultimately own a significant percentage of many mezzanine financings and enables us to provide legal services for the entire investment cycle – from capital-raising stages to investment exit.

RECENT REPRESENTATIVE TRANSACTIONS

Our recent involvement with transactions that utilized a mezzanine component included the mezzanine financing for United Components, financing for Mars’ acquisition of Wrigley, KKR’s acquisition of Northgate Information Solutions, KKR’s and Stefano Pessina’s acquisition of Alliance Boots, Blackstone’s acquisitions of Allied Barton and RGIS Services, Hellman & Friedman’s acquisition of Goodman Global, APAX Partners acquisition of TriZetto, SAC’s acquisition of Cosmos Bank and representing J.P. Morgan, as agent, for a mezzanine financing for Belissio and in the financing of Vestar’s acquisition of Huish. We have acted as fund counsel for many mezzanine funds, including funds formed by Bain Capital, Lehman Brothers, Citigroup, Carlyle and Blackstone.

America's Best Corporate Law Firms - Top 10 Firm

CORPORATE BOARD MEMBER MAGAZINE, 2008

CROSS-BORDER CAPABILITY

Simpson Thacher attorneys are experienced in both the European and United States mezzanine markets, as well as Asian and Latin American markets. Mezzanine products have a long track record in Europe and the terms of European instruments are often substantially different than those seen in the United States. As more transactions involve cross-border and multi-jurisdictional financings, Simpson Thacher's market knowledge and cross-border capabilities provide a distinctive advantage to our clients.

ISSUES IN MEZZANINE FINANCING

In the current financing environment, mezzanine capital does not need to be defined by a rigid set of standard terms. The market is expanding, fluid and evolving. In most cases, mezzanine instruments are highly negotiated, yet include provisions common in other types of financings. Simpson Thacher lawyers are well versed in the wide range of issues that must be addressed in any mezzanine financing. In addition, because of our broad experience, our lawyers understand the "market" and how mezzanine financing fits into the broader financing and deal context. This depth of knowledge and understanding is critical to our ability to quickly and cost effectively address important issues on behalf of our clients. Among those issues are the following:

- **Type of Instrument and Position in the Capital Structure.** A key consideration in structuring a mezzanine financing is determining the type of instrument and its position in the issuer's capital

structure. Important issues include whether the mezzanine is fashioned as debt or preferred stock, whether it will have the characteristics of a loan or a security and the degree of subordination.

- **Covenants.** Covenant packages used in mezzanine financings can be styled to include elements of high-yield debt or bank facility covenant packages. They may include maintenance covenants, incurrence-based covenants or both.
- **Interest Rates and Fees.** Mezzanine transactions reflect a wide variety of permutations with respect to interest rates and fees depending on the needs of the target investors. Interest rates may be fixed or floating and may involve pay-in-kind and toggle elements in certain



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circumstances. In addition, there are a wide range of possible fee alternatives that must be addressed.

- **Redemption or Call Protection.** Redemption and call protection provisions vary widely in mezzanine financings. Market expectations are continually changing in this regard and it is another area where our Firm's appreciation of the prevailing views and practices in both the United States and Europe, as well as Asia and Latin America, serves our clients particularly well.
- **Intercreditor Relationships.** A key element in any mezzanine transaction is addressing the critical relationship of the mezzanine to senior and junior creditors. European transactions in particular will involve complex intercreditor arrangements, often requiring consideration of legal and other issues in multiple jurisdictions. Having counsel with an understanding of these complicated issues and the state of the market is critical to addressing the competing demands by investors at different levels of an issuer's capital structure.
- **Equity Component.** Mezzanine products often contain a co-invest option that may take a variety of forms including common equity participations and/or warrants. A range of highly-negotiated rights frequently attach to these equity components.
- **Governance and Information Rights.** The extent to which mezzanine investors have governance and/or specific information rights is another

important element in which market expectations and legal requirements applicable to certain types of investors play a key role. The experience of the Firm's sophisticated fund formation practice is key to our understanding the needs of mezzanine investors in the area of governance and information rights.

- **Syndication and Distribution.** As the sales and distribution methods for mezzanine have expanded from primarily privately negotiated transactions to encompass broader distributions, including jumbo syndicated deals, a number of business and legal issues relating to syndication and distribution have arisen, including disclosure, transfer restrictions and affiliate sales. It is extremely important to have knowledgeable counsel to address these issues.

EXCELLENCE ACROSS PRACTICE AREAS

Our mezzanine finance practice includes support from our experienced tax, executive compensation, bankruptcy, real estate and other experts who also bring knowledge gained from our broad range of experience in a wide variety of transactions. This support ensures that Simpson Thacher can offer comprehensive service to our clients with respect to their mezzanine finance needs.

For additional information about our mezzanine finance practice, or any other practice area, please contact a representative of our firm at one of our offices listed on the back cover.

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