

Utilizing and Interpreting Make Whole Provisions, including Practical Lessons for Deal Structure

SEAN B. DAVIS
Winstead PC
 600 Travis St.
 Suite 5200
 Houston, TX 77002

Joseph Denham
TRS Advisors, LLC
 570 Lexington Ave.
 22nd Floor
 New York, NY 10022

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What is a make-whole?

- 1 A **make-whole** is the difference between 'par' and the contractual commitment to compensate an investor for early redemption
- 2 Initially included in long term debt instruments as a mechanism to compensate investors for lost interest where the issuer repays them early - i.e. to 'make whole' an investor as though the early repayment had not occurred
- 3 It was designed to be incurred **at the Issuers option** - The cost to be released from their contractual commitment
- 4 While not (as) controversial in a standard repayment scenario, recent rulings in bankruptcy court have been heavily debating the question on whether a make-whole is payable on an event of acceleration

Why do investors sometimes have a contractual right to a 'make whole'?

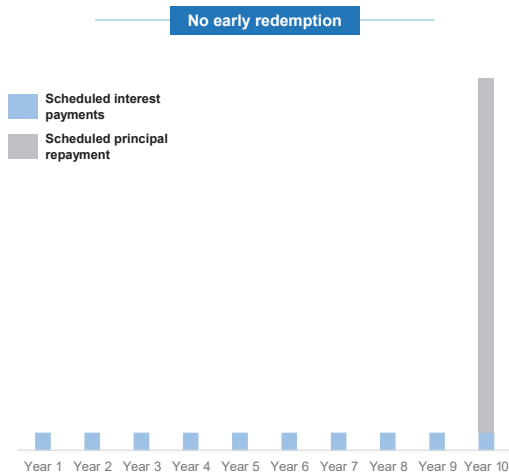
- Investors put aside their capital for the duration of the loan
- And agreed an interest rate to compensate them for that risk – their interest rate bargain
- If market conditions have changed, such that cheaper financing is now available – the investor has negotiated a contractual right to still be compensated for their bargain

Sample make-whole language

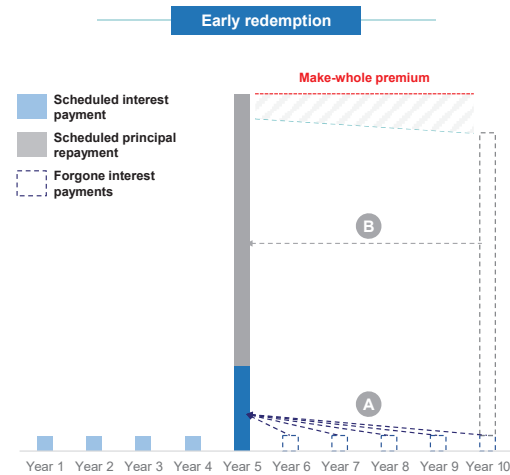
"Make-Whole Amount" means... the excess, if any, of
 (a) the present value at such time of
 (i) the redemption price... plus
 (ii) any required interest payment... computed using a discount rate equal to the Treasury Rate plus 50 basis points, discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months),
 over (b) the principal amount of such Note...

How is a make-whole calculated?

Illustrative stream of payments of a high-yield bond



- > A borrower of high-yield bond will pay coupon payments (typically semi-annually) at the contracted rate in the indenture
- > At the bond's maturity, the borrower will pay out the then outstanding principal amount of the bond



- A Discounted value of all future coupon payments
- B Discounted value of principal payment at maturity

$$A + B = \text{Make-whole premium}$$

Key determinants of the make-whole calc.

1	Debt document definitions	Definition of optional redemption and make-whole in the debt documents	<ul style="list-style-type: none"> > Defines triggering event for the make-whole provision and calculation of the make-whole premium > Sometime the definitions don't have the rigor are not designed to survive a bankruptcy...
2	Trigger of make-whole	Event of Default ("EoD") Voluntary petition of chapter 11 Repayment of debt	<ul style="list-style-type: none"> > Impacts the date to which future payment streams are discounted, and therefore impacts the ultimate value of the make-whole claim > Has a trigger even occurred? See definitions...
3	Discount rate	Treasury yield Margin	<ul style="list-style-type: none"> > Depending on the date of make-whole calculation, treasury yield of different maturities at such date will impact the discount rate > Margin to treasury yield also impacts the all-in discount rate
4	Impact of post-petition / EoD payments	Adequate protection payments Accrued interest on make-whole	<ul style="list-style-type: none"> > Contract rate vs. default rate when calculating the make-whole claim amount > What happens if you also get post petition interest payments?
5	Validity of claim	Is the make-whole claim allowed Enforcibility of make-whole claim	<ul style="list-style-type: none"> > Case law varies by jurisdictions, sometimes even across courthouses > ... too many to list here ...

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