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

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What is a make-whole?

- A make-whole the different 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
- 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

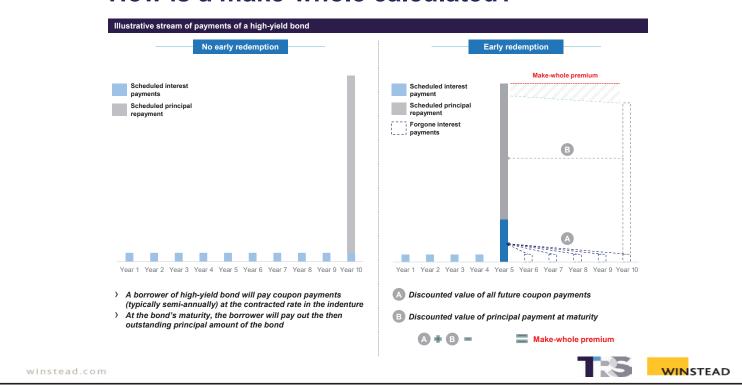
(a) the present value at such time of

- (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?



Key determinants of the make-whole calc.



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