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Credit roundtable white paper

Given recent concern about mortgage-backed and asset-backed securities and SIVs, it is surprising that investors had any energy left to attack another market segment. Still, in December 2007, the Credit Roundtable issued a white paper proposing that model protective covenants should be included in investment grade securities documentation. The Credit Roundtable is comprised of fixed income investors. The provisions are intended to address issues in investment grade securities documentation. The group believes that it fails to protect investors against credit deterioration. In particular, the suggested provisions would safeguard investors in the event of buyouts, recapitalisations and other fundamental corporate deals. The provisions require change-of-control puts (including puts that would be triggered by public-to-public buyouts) and step-up coupons. They limit liens and priority debt, such as unsecured debt incurred by subsidiaries. And they improve reporting obligations, and bring in voting rights by series. Most of these covenants do not now feature in investment grade securities documentation.

Given the Round Table's view that some "plain English" descriptions of indenture provisions in offering documents have made it difficult for investors to appreciate the precise nature and extent of covenant protection, the white paper calls for "verbatim disclosure" of indenture provisions in offering documents, to reduce material misstatements and omissions. This runs counter to the SEC's plain English requirement. The white paper also includes a list of 10 questions that prospective investors should consider before deciding to invest. Issuers should familiarise themselves with the Roundtable's model provisions and questions.

So far, the investment grade debt market has not suffered as much dislocation as the high yield market. It will be interesting to see whether the credit crunch will shift the balance toward investors in negotiating more extensive and favourable covenant packages for investment grade debt.