Dow Jones
Daily Bankruptcy Review

DOWJONES

Latest News | Online Search | RSS | User Preferences | Contact Us

Wednesday, January 11, 2012

MF Global Trustees, Customers Divided Over Asset Distribution

By Joseph Checkler

MF Global Holdings Ltd. bankruptcy trustee Louis J. Freeh wants the firm's commodities customers to share the pain of the company's failure with creditors, a position that puts him at odds with both the trustee unwinding MF Global's brokerage and the investors who say he is trying to get his hands on the gold and silver they stored at the firm.

And those gold and silver customers have an argument that's at odds with both trustees.

In a Monday filing with U.S. Bankruptcy Court in Manhattan, lawyers for Freeh said that statutes are unclear as to how far James W. Giddens, the trustee unwinding MF Global's brokerage, can go in terms of allocating money to customers. They added that Freeh is "concerned that an inappropriate interpretation of the relevant statutes" could lead to individual customers getting money that they never deposited and should be earmarked for unsecured creditors that aren't brokerage customers.

A series of intercompany loans made from MF Global Holdings to the brokerage, Freeh's lawyers say, "is traceable and is separate and apart from customer property. They add that no recoveries should be diverted to "a customer property pool where customers enjoy priority to the detriment of creditors" of the estate.

Freeh's filing was in response to court papers filed by Giddens in December that broke down how money would be returned to brokerage customers, which along with finding the missing money from customer accounts is one of Giddens's priorities. Giddens's December filing said a situation like MF, "where the broker did not comply with its segregation obligations," presents "the biggest problems," citing a statement from the Commodity Futures Trading Commission. Giddens, who hasn't backed off from his estimate that at least $1.2 billion is

see MF Global on page 6

Inside

Hostess Preparing To Seek Bankruptcy As Soon As This Week 2

Struggling Kodak Realigns Business Structure, Cuts Segments 3

A&P Seeks To Shutter 14 Outlets, Conduct Store Closing Sales 4

GM Close To Getting Back 1% Share From China Partner SAIC 4

Courtroom Doubleheader Wednesday For Dodgers, Fox Sports 5

Ahead In Bankruptcy

11-Jan
Wilmington: Tribune omnibus hearing

11-Jan
Wilmington: William Lyon Homes final DIP hearing

12-Jan
Manhattan: Arpeni Chapter 15 hearing

12-Jan
Wilmington: NewPage exclusivity

13-Jan
Wilmington: Hearing on Lee Enterprises backstop deal

17-Jan
Reno: Ahern Rentals final DIP loan hearing

19-Jan
Manhattan: Ambac plan confirmation hearing

19-Jan
Wilmington: Nebraska Book lease hearing

19-Jan
Wilmington: Solyndra auction

23-Jan
Wilmington: Lee Enterprises plan confirmation hearing

23-Jan
Wilmington: New Stream exclusivity hearing

23-Jan
Wilmington: Solyndra sale hearing

23-Jan
Wilmington: W.R. Grace credit-facility extension hearing

25-Jan
Wilmington: Dodgers dismissal hearing

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Hostess Preparing To Seek Bankruptcy As Soon As This Week

By Mike Spector and Julie Jargon

Hostess Brands Inc. is preparing to file for Chapter 11 bankruptcy protection as soon as this week, said people familiar with the matter, a move that would mark the second significant court restructuring for the Twinkie and Wonder Bread baker in the past several years.

The privately held Irving, Texas, company, which employs roughly 19,000 people and carries more than $860 million in debt, has been facing a cash squeeze amid high labor costs and rising prices for sugar, flour and other ingredients, according to people familiar with the matter. Those costs together have proved higher than the company's roughly $2.5 billion in annual sales, creating losses and cash shortfalls, they said.

Hostess also currently owes more than $50 million to vendors, which have been demanding payments on shortened timeframes after delivering goods because of Hostess's financial condition, one of the people said.

Hostess's filing would mark what's known as a "Chapter 22" in restructuring circles, since the company had already sought bankruptcy protection once before. Hostess, before called Interstate Bakeries Corp., slashed debt and costs during a four-year stint in bankruptcy court that began in 2004. The company has struggled since emerging from bankruptcy proceedings in February 2009.

The company's private-equity owner, Ripplewood Holdings, invested $40 million in Hostess last year to no avail. Hedge funds Monarch Alternative Capital, Silver Point Capital and others loaned the company $20 million late last year, but Hostess continues to have cash problems.

Hostess has lined up around $75 million in so-called debtor-in-possession financing to keep the company afloat during bankruptcy proceedings, the people said. Monarch, Silver Point and some other investors have agreed to extend the bankruptcy financing, with an option for other senior creditors to provide parts of the loan, the people said.

Once in bankruptcy court, Hostess will try to reduce debt and renegotiate labor contracts, many of them with the International Brotherhood of Teamsters and the Bakery, Confectionery, Tobacco Workers and Grain Millers

see Hostess on page 8

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Company To Watch

Struggling Kodak Realigns Business Structure, Cuts Segments

By Ben Fox Rubin

Eastman Kodak Co. realigned its financial reporting structure, separating the commercial printing and film businesses on which it's staking its turnaround effort from flagging consumer divisions and patents it's trying to sell.

The move raises the question of whether Kodak could be preparing to sell more of its consumer operations as it seeks much-needed cash. The Rochester, N.Y., company said in November it will need to sell a key patent portfolio or borrow money to continue funding its operations. The cash squeeze follows years of decline in Kodak's traditional film business and failed efforts to turn the company around.

Tuesday, Kodak said it will start operating its business as two segments, one focused on its offerings for businesses, such as printers and entertainment imaging products, and the other focused on consumer products such as digital cameras and consumer film.

"This new structure simplifies the organization, focuses it more precisely on our consumer and commercial customers, and puts the right people in place to capitalize fully on the tremendous technological capabilities of Kodak," Chief Executive Antonio Perez said in a statement.

The consumer segment also includes Kodak's intellectual property business. Kodak is seeking to sell a portfolio of digital imaging patents that some analysts have estimated could be valued at more than a billion dollars.

The new structure raises the prospect that "maybe the company's looking for a sale of one of the businesses and they wanted to more easily carve them up," said Jody Lurie, a Janney Capital Markets credit analyst.

A Kodak spokesman declined to comment on speculation that its realignment is tied to further sale or restructuring efforts.

Kodak President Philip Faraci will lead the commercial operation while Laura Quatela, who was recently promoted to co-president after serving as Kodak's general counsel, will head the consumer and intellectual property division.

see Kodak on page 5

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

A&P Seeks To Shutter 14 Outlets, Conduct Store Closing Sales

By Patrick Fitzgerald

The owner of the A&P grocery chain, which hopes to exit bankruptcy in the coming months, wants to close another 14 stores in four states in the Northeast.

In papers filed Monday in U.S. Bankruptcy Court in White Plains, N.Y. chain owner Great Atlantic & Pacific Tea Co. sought court approval to conduct going-out-of business sales at the money-losing stores scattered throughout New York, New Jersey, Connecticut and Pennsylvania.

The company's lawyers said shuttering the stores will result in "significant cash savings." The company is seeking approval to move ahead with the sales at a hearing slated for Jan. 24.

Great Atlantic, which filed for bankruptcy over a year ago, is hoping to emerge form Chapter 11 in the coming months under a plan that's now being considered by the company's creditors.

The plan rests upon $490 million in new debt and equity financing from a group led by Ron Burkle's Yucaipa Cos., along with bankruptcy-exit financing the company is still working to secure. A confirmation hearing on the plan is scheduled for next month.

To that end the company is also seeking to retain sole control of its bankruptcy case by pushing back the deadline for the company to file a Chapter 11 plan through June 12.

"If other parties were allowed to propose alternative plans at this stage in the case, the debtors' progress to date could be jeopardized," the company said. A hearing on that request is also set for Jan. 24.

Since seeking bankruptcy protection late 2010, company executives have renegotiated union contracts, shut down money-losing stores and reworked unfavorable leases. In all, A&P has proposed to shed more than 50 grocery stores and moved to break leases on those locations it had already closed. The company has also reduced its workforce to 35,000 from the nearly 40,000 it employed at the time of its bankruptcy filing.

Founded in 1859, Great Atlantic operates more than 300 stores under names such as A&P, Waldbaum's, SuperFresh, Food Emporium and Pathmark.

A&P, of Montvale, N.J., sought Chapter 11 protection on Dec. 12, 2010, listing assets of $2.5 billion and debt of $3.2 billion.

Beyond Bankruptcy

GM Close To Getting Back 1% Share From China Partner SAIC

By Sharon Terlep

General Motors Co. believes it is close to getting back the 1% share the company sold amid turmoil in 2009, a move that would restore the auto maker's 50-50 partnership with China's largest auto maker, Chief Executive Dan Akerson said Tuesday.

GM has been in talks with China's SAIC Motor Corp. for more than a year over the share transfer. As GM was sliding into bankruptcy in 2009 it sold the 1% stake for $84.5 million, giving SAIC majority control of the venture, a decision the company later regretted.

GM, now with 49% of the joint venture, holds an option to buy the 1% share.

Akerson said the SAIC board is reviewing the plan to transfer the stake. "We hope to see a resolution in coming months," he said, speaking on the sidelines of the Detroit auto show.

Both companies say their relationship is unchanged by the share transfer.

But the distinction is important for both companies. SAIC needs to show it controls the JV in order to book revenue from the partnership under new accounting rules. GM wants to ensure is has equal footing in China. GM sells more vehicles there than in the U.S. but holds stakes no greater than 50% in all its ventures there, a requirement for foreign auto makers doing business there.

GM is eager to get the deal done. "The board asks me the same question," GM's head of international operations, Tim Lee, said in response to a question about when the transfer would be complete. "We are on a timetable that is predictable," he said, declining to elaborate.

Separately, Lee said GM is in talks with Chinese government officials to change a new policy to raise duties on luxury vehicles imported by foreign automakers, including GM. GM doesn't think its Michigan-built Buick Enclave should face higher fees because the company began importing them at China's request, he said.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Courtroom Doubleheader Wednesday For Dodgers, Fox Sports

By Peg Brickley

Prospective buyers are touring Dodger Stadium in advance of a Jan. 23 deadline for bids on the Los Angeles Dodgers, while action continues in court battles over the team's future.

On Wednesday, the team and Major League Baseball will ask a bankruptcy judge to bless a settlement that ends months of enmity between owner Frank McCourt and Commissioner Bud Selig.

Thursday, the Dodgers are scheduled to go before a federal judge to defend their plan to put their future broadcast rights up for sale, along with the team and the stadium.

In both contests, the Dodgers are going up against Fox Sports, current owner of the broadcast rights and an affiliate of News Corp., which owns this newsletter.

Exactly what's troubling Fox about the Dodgers' peace pact with MLB is unknown. Fox filed its papers under seal with the U.S. Bankruptcy Court in Wilmington, Del., saying the Dodgers and MLB want information kept secret.

The action in federal court is a continuation of a running battle over when the Dodgers get to sign a broadcaster for games starting in 2014, a battle that started out in bankruptcy court.

A win for the Dodgers in federal court could double the money being thrown at the team, which was placed into bankruptcy protection last year. The Wall Street Journal last fall cited estimates the team alone could fetch upwards of $1 billion. Since then, higher numbers have been floated, as the Dodgers pushed back the bid deadline due to substantial interest from potential buyers.

The right to broadcast Dodgers games past 2014 is worth at least $100 million per year, according to testimony from an expert witness during the bankruptcy fight over when and how to sell the future rights.

A bankruptcy judge allowed the Dodgers to start marketing the future broadcast rights last year, 10 months ahead of the schedule set in the Fox Sports contract. U.S. District Judge Leonard Stark called a temporary halt to the marketing, while he heard Fox's appeal.

The Dodgers say it is their duty as a company operating under Chapter 11 protection to make the most of their assets, and that means starting the process of signing up a future broadcaster now.

Being able to present potential new owners with a baseline new broadcast deal will boost the price tag on the Dodgers, the team's attorneys contend.

Fox complained it shouldn't have to negotiate with an owner on his way out over a deal that no one at the Dodgers is in a position to close. Instead of valuable advantages in the bidding on future telecast rights, Fox said it was being forced into service as a "stalking horse," forced to negotiate an offer that would only be used to get a better deal out of competitors such as Time Warner Cable Inc.

Before it was changed by the bankruptcy court, Fox Sports's contract gave it the right to bar the Dodgers from talking to other broadcasters until the fall. Fox Sports wants the terms of that contract enforced, so that it will be able to negotiate with whoever buys the Dodgers over the future broadcast rights.

In a ruling shortly before Christmas, Stark said Fox had "shown a strong likelihood of success on the merits of its appeal," a signal that the Dodgers have an uphill fight on their hands Thursday.

Kodak continued from page 3

The Wall Street Journal reported last week that the 131-year-old company is preparing to seek bankruptcy protection in the coming weeks if a last-ditch effort to raise cash by selling off some of the company's patent portfolio fails.

That Kodak is even contemplating a bankruptcy filing represents a reversal of fortune for a company that once dominated its industry, drawing engineering talent from around the country to its Rochester, N.Y., headquarters and plowing money into research that produced thousands of breakthroughs in imaging and other technologies.

Casting about for alternatives to its lucrative but shrinking film business, Kodak toyed with chemicals, bathroom cleaners and medical-testing devices in the 1980s and 1990s, before deciding to focus on consumer and commercial printers in the past half-decade under Perez.

None of the new pursuits generated the cash needed to fund the change in course and cover the company's big obligations to its retirees. A Chapter 11 filing could help Kodak shed some of those obligations, but the viability of the company's printer strategy has yet to be demonstrated, raising questions about the fate of the company's 19,000 employees.

-Ben Fox Rubin contributed to this article.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

International

KPMG To Distribute MF Global U.K. Funds In Next Few Weeks

By Marietta Cauchi

KPMG, the administrator of MF Global U.K., said Tuesday it expected to make an interim distribution of client monies in the next few weeks, in what will be the first big payout to European clients since the company's parent, U.S. futures broker MF Global Inc., collapsed last year.

The announcement follows an initial creditors' meeting Monday in which representatives of more than 800 clients and creditors voted overwhelmingly in favor of the administrator's proposals including the payment out of client monies.

"Special administrators propose to update the court in the week ending Feb. 3 and expect to make an initial interim client money distribution shortly thereafter," said KPMG's Richard Fleming, Richard Heis and Mike Pink, joint special administrators of MF Global U.K.

KPMG had recovered the majority of $100 million segregated client assets as at Jan. 9 and has now analyzed the validity of claims. KPMG expects to pay out $30 million of these assets in the next few weeks in cases where ownership is relatively clear.

So far as client monies are concerned, KPMG had recovered GBP594 million, representing 82% of the company's client money balances, as at Jan. 9. The remainder of the monies are largely held by affiliates of the U.K. company, in particular MF Global Inc.

MF Global U.K. went into special administration after MF Global Inc. and ultimate parent MF Global Holdings Ltd. filed for Chapter 11 bankruptcy protection in New York on Oct. 31 last year.

MF Global continued from page 1

missing from customer accounts, did say that creditors of the MF Global parent would be pushed aside initially.

"Determinations of most general creditor claims will likely be deferred until the extent of customer claims have been preliminarily determined and it is determined whether there will be a meaningful estate after any reallocation of assets to compensate for segregation or compliance failures affecting customer funds," Giddens's lawyers said in the December court papers.

A spokesman for Giddens didn't immediately have a comment for this article.

Meanwhile, customers who own and store physical bars of gold and silver are taking issue with another part of Giddens's December plan, which essentially puts the owners of the physical commodities in the same pool as customers with other commodities-related accounts.

One metals holder with millions in his MF Global accounts, John Cassimatis, said investors in the physical commodities shouldn't be lumped in with other customers because owning physical property puts metals investors in a different class than those of customers governed by commodities laws.

Cassimatis said in a Monday filing "that his silver is specifically identifiable property which belongs in an account class with other holders of physical property and that any loss attributed to the decline of his silver is a customer claim entitled to a distribution in this case."

Cassimatis and other investors who hold physical metals, including investment firm Greenbriar Partners LP, said their physical property isn't a part of MF Global's estate and shouldn't be sold by MF Global so that cash can be distributed among customers.

Giddens is unwinding MF Global's brokerage in accordance with the Securities Investor Protection Act and has already returned more than two-thirds of brokerage customers' money.

MF Global Holdings, the parent company, filed for Chapter 11 bankruptcy protection Oct. 31, while its main operating arm, the brokerage, was designated to be unwound by Giddens under SIPA.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

International

Kazakhstan's Central Bank Head Backs New BTA Restructuring

By Christopher Pala

The head of Kazakhstan's central bank Tuesday said he supports a second restructuring of troubled BTA Bank JSC, which has called a shareholders' meeting for Jan. 26 to vote on "urgently needed" debt relief.

"We support the bank's decision to have a second restructuring," National Bank Chairman Grigori Marchenko said at a press conference in Almaty, the financial capital. "We aren't participants in this negotiation process, as we were in 2009," he said. This time, "We are the regulator. Our position for now is to be neutral."

When the creditors and the bank reach an agreement, "We'll be the ones who accept or reject this restructuring," he added.

Marchenko noted that creditors had shown their ability to find common ground during the year and a half it took to negotiate the first restructuring, signed in 2010.

He also noted that the flow of deposits into the bank from individuals had increased since the second restructuring was announced. "There's no need to panic," he said.

He declined to comment directly on a Dec. 30 letter from bondholders sent to BTA via law firm Dewey & LeBoeuf urging the bank to pay a $160 million coupon that was due on Jan. 1. BTA has until Jan. 18 to pay it before defaulting.

"We have seen a couple of such letters before," he said, mentioning the first restructuring process and the failure of Astana-Finance Bank. "It's part of the negotiating process."

BTA had become the largest Kazakhstan lender, with ambitious to be No. 1 in the former Soviet Union, when the flow of cheap credit dried up in 2008, and exposed a landscape strewn with non-performing loans. Four banks required government cash to stay afloat, none more than BTA. Bad loans, especially linked to real estate, have dogged the sector ever since.

The country's holding company for state enterprises, known as Samruk-Kazyna, acquired 81.5% of the bank two months after it defaulted on $12 billion in loans. Foreign creditors took $5 billion in losses, converting some of them into equity.

So far, Samruk-Kazyna hasn't said whether it is prepared to inject new capital into BTA.

As recently as September, BTA Chairman Anvar Saidenov told Dow Jones Newswires that the bank wouldn't need new capital for at least a year, so the announcement that a second restructuring was needed came as a shock.

Last week, the bank said creditors' representative Maarten Pronk had resigned from bank's board, which analysts suggested might indicate his opposition to a new restructuring.

On Tuesday, a bank spokeswoman declined to comment on a report in the KazTAG website that the CEO, Marat Zairov, had left the bank. Zairov, had only joined BTA in August, having been brought in from Halyk Bank, the healthiest of the country's large banks, to help shift BTA's focus from corporate to consumer lending.

Moody's: Global Default Rate Fell To 1.7% In Fourth Quarter

By Mia Lamar

The global default rate among junk-rated entities ended the fourth quarter at a slightly lower level than expected, according to Moody's Investors Service.

The firm's global speculative-default rate finished at 1.7% in the fourth quarter, just below the 1.9% rate forecast by Moody's a year earlier.

In the U.S., the speculative-grade default rate ended the period at 1.8%, down from 2% in the third quarter and 3.4% a year earlier. In Europe, however, the default rate nearly doubled from the preceding quarter to 2.7%. A year earlier, the European rate was 2.3%.

"The story of 2011 is how few defaults occurred, despite weak fundamental macroeconomics and despite credit spreads more typically associated with distress," said Albert Metz, Moody's managing director of credit policy research.

Moody's expects the global speculative-grade default rate to rise to 2.9% by the end of 2012. The firm noted that default rates continue to hover near historic lows.

Defaults hit a record high in 2009 and continued into 2010, but stronger credit markets have over the past year spurred companies to refinance or renegotiate their credit facilities, helping many to avoid missing payments.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Houlihan Hires Veteran Rothschild Dealmaker Steve Tishman

By Ryan Dezember and Mike Spector

Investment bank Houlihan Lokey has hired dealmaker Steven Tishman to head its global mergers and acquisitions group, tapping a veteran of competitor Rothschild to bolster its deals business.

Houlihan, based in Los Angeles, is consistently at or near the top of restructuring and bankruptcy advisory rankings. But the firm has traditionally been a smaller player in mergers and acquisitions, focusing on middle-market deals.

The hiring of Tishman, who most recently was co-head of U.S. M&A at Rothschild, underscores Houlihan's drive to push into the upper echelon of deal-making. Since 2009 Houlihan, has hired more than 30 senior-level bankers, including Weimin Chen, a former Lazard Ltd. banker brought on in September to head Houlihan's business in China.

Though Houlihan Lokey was credited with advising on 100 transactions in 2011, it ranked 47th globally in volume with about $21.5 billion, according to Dealogic. Rothschild, meanwhile, placed 11th with $167.3 billion to its credit.

Both firms pitch their advice as independent because they don't provide financing.

"Steve comes from an entrepreneurial investment banking background, which will help him further grow our corporate finance business," said Irwin Gold, Houlihan's co-chairman and co-head of financial restructuring. Before Rothschild, he worked at Bear Stearns Cos. and Robertson Stephens Inc.

Tishman, 54 years old, is a board member at amusement park operator Cedar Fair Entertainment Co. and formerly was a director at Nautica, Claire's Stores Inc. and Odimo Inc. A native New Yorker, he spent summers in his youth at a New Hampshire camp with Gold, whom he competed against for years in basketball.

Tishman said he hopes his M&A practice can "piggyback" on the success of Houlihan's restructuring team. Houlihan bankers in that practice have already forged bonds with decision makers at companies, he said, saying he believes deal bankers will be able maintain those relationships after clients have reorganized their businesses.

The hoards of cash on public companies' balance sheets and the large amount of money available to hedge funds and other buyout firms make Tishman optimistic that M&A is poised for a rebound in 2012 after four relatively sluggish years, he said.

Hostess continued from page 2

International Union, the people said. Hostess plans to file court papers soon threatening to reject or modify labor contracts under applicable bankruptcy rules, the people said. Such moves provide troubled companies a bargaining chip to try and get concessions from unionized workers.

A Teamsters spokesman declined to comment. A spokeswoman for Hostess's other main union didn't immediately respond to a request for comment.

Despite Hostess's financial struggles, sales of its signature Twinkies have been strong, outpacing flat results for rival bakery snacks. Nearly 21 million packages of Twinkies were sold in the year ending Oct. 30, up 4% from a year earlier, according to data from a Chicago-based market research firm. The data captures sales from supermarkets, drugstores and mass market retailers, but excludes sales from Wal-Mart Stores Inc., club stores and convenience stores.

Even so, Hostess has had trouble attracting consumers who have migrated away from white bread to whole grains and other healthier foods. Hostess released a whole-grain bread called Nature's Pride, but it hasn't sold well amid a small presence on shelves.

In addition, Hostess kept prices relatively high, making it harder to charge even more as costs for ingredients and fuel rose.

Hostess's bankruptcy filing would join the ranks of other companies forced to seek bankruptcy protection a second time in recent years. Between 2007 and 2011, more than 50 companies commenced "Chapter 22" bankruptcy cases, according to the most-recent data compiled by Edward Altman, a New York University finance professor.

One of Hostess's challenges will be to avoid liquidation, the fate of some other companies seeking bankruptcy protection a second time. In the past several years, for instance, Hollywood Video chain owner Movie Gallery Inc. and Polaroid Corp. have gone out of business after seeking bankruptcy protection a second time.

Others have survived multiple bankruptcies, including auto supplier Hayez Lemmerz International and Pliant Corp., a packaging company acquired after its second reorganization.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

International

Tepco, Banks Begin Talks On New Loans As Part Of Rescue Plan

By Mitsuru Obe

Facing the prospect of bankruptcy or a government takeover, Tokyo Electric Power Co., the utility at the center of Japan's worst-ever nuclear accident, has entered negotiations with creditor banks in the hopes of persuading them to lend it more money, government officials familiar with the matter said Monday.

The negotiations could be fraught with difficulties, as the banks have told Tepco it must meet three preconditions for fresh loans: a capital injection from the government, a 10% hike in electricity rates, and the restart of a nuclear plant next year, the officials said.

All of this must be worked out by the government-imposed deadline for the company to submit a long-term survival plan by March.

The banks insist on these conditions so Tepco will have enough of a buffer to ensure any new loans won't go bad, the officials said. Tepco may be looking for as much as Y1 trillion in new loans on top of the Y2 trillion it already owes, they said.

Japan's largest utility faces government takeover or potential bankruptcy as it struggles to pay compensation to those affected by the Fukushima Daiichi nuclear plant accident, and sharply higher fuel costs due to an increased reliance on fossil fuels.

The banks insist that outstanding loans be classified as "performing loans," and that Tepco doesn't request any debt forgiveness or changes to the repayment terms—a condition Tepco is expected to accept, the officials said.

New loans to Tepco "are conditional upon there being no request for debt forgiveness, as we have to uphold the interests of depositors and shareholders," said Koichi Miyata, president of Sumitomo Mitsui Financial Group Inc. in a recent interview. As long as this condition is met, "we would like to actively support Tepco," Miyata said.

The negotiations between Tepco and the banks are likely to be especially complex, as any new public fund injection would almost certainly result in the government taking a majority stake in Tepco, which is lobbying fiercely to keep management independence.

Last week, trade and industry minister Yukio Edano reiterated that temporary state control is an option.

"Trade minister Edano isn't considering any capital injection that doesn't involve the government gaining some control over the company's management," one official said. Any public fund injection would likely involve government acquisition of Tepco's common shares, according to the officials.

Edano stressed, however, that any state control of Tepco would be temporary, indicating that the government doesn't want to run the utility.

Tepco's finances have deteriorated sharply since the March 11 disaster caused by the magnitude-9 earthquake and massive tsunami. Concerns have grown about nuclear safety at other plants, preventing the restart of other Tepco reactors following regular maintenance.

This has led to a drop in the nuclear share of Tepco's power supply to about 5% from 30%. The company has made up the difference by using more thermal power, which has pushed up costs.

Tepco also faces a hefty bill for closing the Fukushima Daiichi plant and cleaning up large areas contaminated by radiation—neither of which Tepco could undertake without a massive capital infusion from the government.

Dow Jones Daily Bankruptcy Review Small Cap

Spot Small Bankruptcies Brimming With Opportunity
with complete coverage of insolvencies worth up to $500M

Get the full story:
Morning newsletters | Afternoon updates | Expanded Archive | Enhanced Search

Try DBR Small-Cap Free for 2 Weeks >>

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

SEC Asks For Sovereign Debt Disclosure From U.S. Banks

By Andrew Ackerman and Liz Moyer

In the latest sign of unease about how hard Europe's sovereign-debt crisis might hit U.S. financial firms, securities regulators prodded banks to take a more rigorous approach to disclosing their European exposure.

The Securities and Exchange Commission warned that disclosures made by publicly traded financial institutions have been "inconsistent in both substance and presentation," according to guidance the agency released on Friday, a week before large banks are due to begin reporting fourth-quarter earnings and as they start to prepare annual financial reports.

The SEC guidance asks banks to consider providing a breakdown of their exposures in each country, divided by their gross sovereign, financial-institution and nonfinancial-corporate debt exposures.

Regulators also are seeking information on how gross exposures are hedged through instruments such as credit-default swaps, as well as a discussion of "the circumstances under which losses may not be covered by purchased credit protection."

Bert Ely, a bank consultant based in Alexandria, Va., called it "really significant," even though the guidance is nonbinding.

The guidance comes just two months after MF Global Holdings Ltd. collapsed because of investor concerns about its exposure to European sovereign debt, and as other firms, such as Morgan Stanley, have seen their stock prices weighed down by questions about their potential exposures. SEC officials said the guidance was in the works long before MF Global's Oct. 31 bankruptcy filing.

"Our staff has been working with banks to improve their disclosure about sovereign-debt exposure for several months," SEC Chairman Mary Schapiro said in a written statement released Monday. "Even so, I understand this is an area of focus and uncertainty that could really benefit from further transparency and consistency, particularly as we head into annual reporting season. I think the staff's guidance should help achieve that goal."

The SEC staff believes investors are concerned with the potential risks even in cases where a firm's exposure is not large.

Though top firms like J.P. Morgan Chase & Co., Goldman Sachs Group Inc. and Morgan Stanley took steps in third-quarter regulatory filings to detail their exposures to troubled euro-zone countries like Portugal, Ireland, Italy, Greece and Spain, the SEC characterized the disclosures merely as "incremental improvements."

Goldman Sachs and J.P. Morgan declined to comment on the SEC guidance. Two industry groups, the Securities Industry and Financial Markets Association and the American Bankers Association, also declined to comment.

The SEC doesn't say which countries' debt should be subject to the guidance, though firms should focus on those experiencing "significant" economic, fiscal or political strains.

Before the third quarter, many big U.S. banks made only limited disclosures about their lending and other exposures in Greece, Ireland, Italy, Portugal and Spain.

Because potential losses in these countries generally fell well below the level at which banks are legally obliged to disclose their positions, many financial companies offered only summary information on their net exposure to the region.

Some said their exposures weren't material, thanks in part due to hedges such as credit-default swaps, bilateral agreements that are supposed to insulate companies against debt defaults.

But questions about those claims came up after Morgan Stanley's shares tumbled in the late summer of 2011 amid market rumors about the firm's exposure to French banks. Following that episode and an agreement that called into question the value of credit-default swaps on European sovereign debt, many firms began disclosing detailed information about their exposure to individual European countries, as well as their use of hedges and holdings of collateral.

Among those coming under investor scrutiny was Jefferies Group Inc., which later said it cut its gross holdings of some European sovereign securities by roughly 75% during November. In a letter posted on its website on Nov. 21, Jefferies said it was making the disclosure to address "rumors and falsehoods" that were being spread in the market.

Ely cautioned that it may be "tricky" for large financial institutions to comply, because it is difficult to pull financial information in a consistent fashion from all of the different countries in which they operate.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Viewpoint

One of a series of opinion columns by bankruptcy professionals

No-Shop Provisions Unenforceable In Bankruptcy, Or Are They?

By George Klidonas

"No-shop provisions will be held unenforceable against an entity in bankruptcy." This was the decision of Judge Kevin Gross in the U.S. Bankruptcy Court for the District of Delaware in the *In re Los Angeles Dodgers* case. 2011 WL 6257336 (Bankr. D. Del. Dec. 15, 2011). Generally, a no-shop provision is a covenant in a purchase or merger agreement that restricts the seller from soliciting competing bids, providing information to competing bidders or encouraging or negotiating a competing transaction. The parties involved in this dispute are the Dodgers (the debtors) and Fox Sports Net West 2 LLC (Fox). In the case, the Dodgers sought the sale of the team under a reorganization plan on or before April 30, in addition to Fox's telecast rights, which Fox presently owns. The bankruptcy court concluded that the no-shop provision in the parties' telecast rights agreement will not be upheld in the bankruptcy case.

By way of background, Fox Entertainment Group (Fox Group) purchased the Dodgers in 1998 and entered into a telecast rights agreement with the Dodgers. Fox Group later sold the team to the present owner, Frank W. McCourt. As part of the sale, the telecast rights agreement was amended to include the following "back-end" rights: (1) the term of the rights amendment was extended to the last day of the last game of the 2013 season; (2) Fox received an exclusive renegotiation right for an additional five years to take place from Oct. 15, 2012, through Nov. 30, 2012; and (3) Fox received a right of first refusal. The second item is the disputed no-shop provision.

The Dodgers sought approval of a marketing process whereby Fox's telecast rights may be sold with the sale of the team. To do so, the Dodgers proposed to accelerate the timing of the "back-end" rights by suggesting advancement of the exclusive renegotiation period to the same 45 days, but instead beginning on Nov. 30, 2011, and ending on Jan. 15, 2012.

The Dodgers' motivation for the mentioned marketing process was to maximize the Dodgers' value, provide the debtors with flexibility, and assist the Dodgers' emergence from bankruptcy. According to the Dodgers' expert, Timothy R. Coleman of the Blackstone Group, if the amendments to the rights agreement remained unchanged and the no-shop provision were to be enforced, it would remain uncertain that creditors would be paid in full.

On the other hand, Fox's experts, Edwin S. Desser and Bob Thompson, explained that the "back-end" terms were negotiated carefully and were designed to "perpetuate the marriage" among the parties. They explained that the Dodgers are now trying to make Fox a mere "stalking-horse." In addition, according to Fox's experts, the loss of the broadcast rights would make it more difficult for Fox to negotiate with cable providers because they will not have the Dodgers to include with their cable package.

The bankruptcy court held that the no-shop provision is unenforceable against a bankrupt entity. The court analogized its conclusion with Delaware law, which prohibits no-shop clauses where the provision would prevent the exercise of the fiduciary duty to maximize value. Coleman's testimony, according to the court, was clear; a sale of both the team and the telecast rights will result in full creditor recovery, while a sale of *just* the team may not. Any damages that Fox may incur, the Dodgers argued, may result in money damages against the solvent estate. The debtors' obligation, however, is to maximize the value of the entire estate.

Fox, not satisfied with the bankruptcy court's decision, appealed to the U.S. District Court for the District of Delaware and requested a stay pending appeal. District Court Judge Leonard P. Stark granted Fox's appeal and granted its request for a stay. *See In re Los Angeles Dodgers LLC*, 2011 WL 6749081 (D. Del. Dec. 23, 2011). Of great import is Stark's opinion on Fox's likelihood of success on appeal. *See In re Los Angeles Dodgers LLC*, 2011 WL 6778564 (D. Del. Dec. 27, 2011).

The district court explained that Fox has demonstrated a strong likelihood that the court will disagree with the bankruptcy court's conclusion that the "no-shop" provision is unenforceable. *First*, the bankruptcy court relied on only *one* nonbinding case, *In re Big Rivers Elec. Corp.*, 233 B.R. 739 (W.D. Ky. 1998), to support its holding. *Second*, the In re Big Rivers case does not stand for the proposition that a no-shop provision is *per se* unenforceable against a bankruptcy entity; that case stated that in the specific factual context of that case the

continued on next page

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Viewpoint

One of a series of opinion columns by bankruptcy professionals

continued from page 11

no-shop provision was invalid as a matter of public policy. *Finally*, the district court was of the opinion that the "exclusive negotiation" right is not even a no-shop provision because it was not executed as part of the debtors' efforts to merge with another entity, nor did it concern the sale of all of the debtors' assets. Instead, it was merely an ordinary contractual limitation on an entity's future freedom, *i.e.*, it bound the Dodgers only by requiring, for 45 days, that if they are to negotiate the sale of future telecast rights, they do so initially with Fox only.

The district court's decision granting the appeal, however, is not the final result on the applicability of the no-shop provision in the Dodger-Fox telecast rights agreement dispute. The decision merely allowed Fox to appeal the bankruptcy court's decision. It remains to be seen whether the district court will agree with Fox as to whether the no-shop provision should be upheld, or whether the Dodgers' argument that their fiduciary obligation to maximize the estate requires that the no-shop provision be unenforced. Stay tuned for updates on this important bankruptcy issue.

Opinions expressed are those of the author, not of Dow Jones & Company, Inc.

George Klidonas is an associate in Baker Hostetler's New York office, focusing on bankruptcy, corporate restructuring and creditors' rights. He also serves as a coordinating editor for the *ABI Journal*. He can be reached at gklidonas@bakerlaw.com.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Active Bonds

Active bankrupt bond price indications

Issuer	Coupon	Maturity	Most Recent Price	Previous Trade Price	Previous Trade Date	Change
AMERICAN AIRLINES INC	8.625	10/15/21	105.625	105.5	1/9/12	0.125
AMERICAN AIRLINES INC	5.25	7/31/22	95.5	94.5	1/4/12	1
AMERICAN AIRLINES INC	10.375	7/2/19	108.375	108.5	1/9/12	-0.125
AMR CORP	9.8	10/1/21	17.55	20	1/9/12	-2.45
AMR CORP	9	9/15/16	20	17.9375	1/9/12	2.0625
AMR CORP	10.2	3/15/20	17.5	18.688	1/6/12	-1.188
AMR CORP	9.75	8/15/21	20	18	1/6/12	2
DYNEGY HOLDINGS LLC	0	5/1/16	65.538	66	1/9/12	-0.462
DYNEGY HOLDINGS LLC	7.625	10/15/26	68	66.5	1/5/12	1.5
DYNEGY HOLDINGS LLC	7.5	6/1/15	66.5	65	1/6/12	1.5
GREAT ATLANTIC & PACIFIC TEA CO	6.75	12/15/12	1.125	1.05	1/9/12	0.075
LEHMAN BROTHERS HOLDINGS INC	5.55	3/9/29	25.4	25.5	1/5/12	-0.1
LEHMAN BROTHERS HOLDINGS INC	5.6	2/25/30	25.4	24	1/3/12	1.4
LEHMAN BROTHERS HOLDINGS INC	5.5	3/14/23	25.4	25.51	1/9/12	-0.11
LEHMAN BROTHERS HOLDINGS INC	5.9	2/7/31	25.4	24	1/3/12	1.4
LEHMAN BROTHERS HOLDINGS INC	5.4	3/30/29	25.4	24	1/3/12	1.4
MF GLOBAL HOLDINGS LTD	6.25	8/8/16	36.4	36	1/6/12	0.4
MF GLOBAL HOLDINGS LTD	3.375	8/1/18	36.05	34	1/6/12	2.05
MF GLOBAL HOLDINGS LTD	1.875	2/1/16	35.5	33.375	1/9/12	2.125
NEWPAGE CORP	11.375	12/31/14	65.75	66	1/9/12	-0.25
NORTEL NETWORKS CAPITAL CORP	7.875	6/15/26	103	100	1/4/12	3
NORTEL NETWORKS LTD	10.75	7/15/16	110.75	110.75	1/9/12	0
TRIBUNE CO	4.875	8/15/51	42.1	39.65	1/9/12	2.45
TRIBUNE CO	5.25	8/15/15	35	40	1/6/12	-5

Source: MarketAxess, marketaxess.com

Composite high yield bond price indications are compiled from various market sources, some of which may make a market in or have financial interest in the issues for which prices are provided. PRICES ARE INDICATIVE ONLY. The information contained herein does not represent a solicitation to sell or buy the underlying issues. Dow Jones shall not be held liable for any reason for any errors or omissions, delays or inaccuracies in the indications or any decision made in reliance upon the indications. Dow Jones shall not be liable to any person for any loss of business revenues or lost profits or for any indirect, special, consequential or exemplary damages whatsoever, whether in contract, tort or otherwise, arising in connection with the indications, even if Dow Jones has been advised of the possibility of such damages. Dow Jones makes no warranty whatsoever, express or implied, including specifically any warranty of merchantability or fitness for a particular purpose with respect to the indications and specifically disclaims any such warranty.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.

Dow Jones
Daily Bankruptcy Review

Published by Dow Jones & Company, Inc.

Editorial
Nicholas Elliott, Managing Editor
nick.elliott@dowjones.com
212.416.2029

Marie Beaudette, Assistant Managing Editor
marie.beaudette@dowjones.com

Patrick Fitzgerald, Assistant News Editor
patrick.fitzgerald@dowjones.com

Melanie Cohen, Copy Editor
melanie.cohen@dowjones.com

Peg Brickley, Reporter
peg.brickley@dowjones.com

Joseph Checkler, Reporter
joseph.checkler@dowjones.com

Rachel Feintzeig, Reporter
rachel.feintzeig@dowjones.com

Stephanie Gleason, Reporter
stephanie.gleason@dowjones.com

Mara Lemos Stein, Reporter
mara.lemos-stein@dowjones.com

Jacqueline Palank, Reporter
jacqueline.palank@dowjones.com

Katy Stech, Reporter
katherine.stech@dowjones.com

Sales & Advertising
Carlos Mesa, Sales Manager
carlos.mesa@dowjones.com
202.862.7147

Administrative
Robert Passarella, Managing Director
robert.passerella@dowjones.com

Nicole Salemi, Product Director
nicole.salemi@dowjones.com

Customer Service
866.291.1800, fishelp@dowjones.com

Dow Jones Reprints
800.843.0008

Copyright © Dow Jones & Company, Inc. All rights reserved. Copying and redistribution prohibited without permission of the publisher. *Dow Jones Daily Bankruptcy Review* is designed to provide factual information with respect to the subject matter covered, but its accuracy cannot be guaranteed. Dow Jones is not a registered investment adviser, and under no circumstances shall any of the information provided herein be construed as a buy or sell recommendation, or investment advice of any kind.

Dow Jones is a News Corp. company.

https://fis.dowjones.com

From The Tape

News from around the country

Sources Says Disney Family To Bid On Dodgers

The Disney name graced the last World Series champion in Southern California. The Disney name could grace the next World Series champion in town too, if Stanley Gold succeeds in his bid to buy the Los Angeles Dodgers. According to the *Los Angeles Times*, the family of the late Roy Disney has partnered with Gold, entrusting the man who runs the family investment firm to lead the charge for the Dodgers and try to restore prominent local ownership to the team. The partnership was disclosed Saturday by a person familiar with the bid but not authorized to discuss it. Neither Gold nor any member of Roy Disney's family would comment Saturday, spokesman Terry Fahn said. Gold is in discussions with potential investors, according to two people familiar with the talks. Roy Disney, the nephew of Walt Disney, had a net worth of $1.4 billion in 2007, according to *Forbes*, before his divorce. The current net worth of the Roy Disney family is unclear. The Walt Disney Co. owned the Angels when they won the World Series in 2002, then sold the team the next year. The Disney family would hold the Dodgers as a private investment.

Farmers Sue MF Global Workers For Violations

Montana farmers trapped in the $1.2 billion collapse of brokerage giant MF Global are suing its officers and its business partners for trade violations, the *Gazette* reported. The lawsuit filed Monday targets not only former MF Global Chief Executive Jon Corzine, who also was a Democratic governor and U.S. senator, but also auditor Pricewaterhouse-Coopers and banker J.P. Morgan Chase & Co. for enabling MF trading practices that last October led to a $41 billion bankruptcy. Federal officials have been unable to find an estimated $1.2 billion in missing customer money, and MF Global is accused of dipping into segregated customer accounts, which were supposed to be off-limits. Marty Klinker, a Fairfield farmer who had $600,000 frozen in the MF Global bankruptcy, and other plaintiffs contend that auditor PricewaterhouseCoopers kept giving MF Global clean bills of financial health, even as customer accounts were raided. Had the auditor reported the activity, regulators for the Chicago Mercantile Exchange and the U.S. Commodities Futures Trade Commission might have been alerted. A spokeswoman for PricewaterhouseCoopers said Monday that the company doesn't comment on litigation. Representing the farmers, attorney Matt Edling said PricewaterhouseCoopers should have scrutinized MF Global's segregated accounts.

Visteon Contributes $70 Million To Pension Plans

Auto-parts maker Visteon Corp. said on Tuesday that it has contributed $70 million worth of its stock to its two largest U.S. pension plans to shore up their financing, the Associated Press reported. The contribution of more than 1.4 million shares follows a $15.1 million cash contribution to one of the plans on Dec. 27 after funds previously held by the Pension Benefit Guaranty Corp. were returned. Visteon said the contribution would offset the plan's funding needs after June 2013. The company, which was spun off by Ford in 2000, said the stock contribution will strengthen its pension plans will conserving cash and increasing the company's financial flexibility. Visteon emerged from Chapter 11 protection last fall under a restructuring plan that cuts its debt by more than $2 billion, about a month after the U.S. Bankruptcy Court in Wilmington, Del., had confirmed its Chapter 11 restructuring plan. Visteon, based in Van Buren Township, Mich., filed for bankruptcy on May 28, 2009, a victim of the downturn of the U.S. auto industry.

Copyright © Dow Jones & Company, Inc.
All Rights Reserved.