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## Suggested Reading

# Distressed Investment Banking: To the Abyss and Back

*Written by:*
*Henry F. Owsley and Peter S. Kaufman*
*(Beard Books, 2005)*

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No senior executive or general counsel of a troubled company should take another step without reading Peter Kaufman and Henry Owsley's practical and concise primer on distressed investment banking. With *Distressed Investment Banking: To the Abyss and Back,* these senior partners from Gordian Group LLC provide overwhelmed leaders of troubled businesses with a financial road map of what to expect and how to successfully navigate waters that most executives are ill-prepared to swim in.

*Keith J. Shapiro*

Hailing from a firm known for its zero tolerance of business conflicts resulting from representing bondholders and banks, the authors provide insights into the mindsets and likely game plans of all of the constituencies in the troubled-company game. They deal head-on with issues such as how to defeat the absolute priority rule of the Bankruptcy Code in order to allow existing equity-holders to walk away with value when others ahead of them in the priority scheme may not be getting paid in full. Steering clear of big-picture theory, they get down and dirty about the real game that goes on in the chapter 11 trenches. They don't sugarcoat the solutions or the tough decisions that investment bankers must help management and boards of directors make in order to maximize shareholder value. They shed particular light on the plight of public-company shareholders who are often so widely disbursed that they cannot effectively and aggressively represent their interests. Kaufman and Owsley point out that old equity may slip in and out of the money and advocate that "old equity possesses both option value and control value, and that if advised by zealous, creative and unconflicted investment bankers, a board may achieve superior results for old equity." They also highlight the divergent interests that often exist between parties, including those that sometimes exist between management and public shareholders. For example, where management holds only out-of-the-money stock options, they may be focused solely on preserving their jobs, rather than on realizing value for existing shareholders. These are the subtleties that are often only learned too late by the players in these dramas.

Broaching uncomfortable topics, Owsley and Kaufman provide insight from experienced pros on how to address financial fraud on the part of existing management in order to maintain board control of the business and provide a fighting chance to preserve shareholder value. Regaining creditor confidence doesn't always mean handing over the keys to lenders, and the authors use real-world examples to illustrate how a sinking ship can still be saved, even in the face of management improprieties.

The authors provide a primer on the valuation battles that must occur in order to lay the foundation for the claim that value exists for equity-holders. They outline how warrants can be effectively used to deliver a material upside to otherwise wiped-out owners of distressed-company stock. Thankfully absent is a mud-thick, treatise-like explanation of how to use valuation techniques like the Black-Scholes model. Instead, Owsley and Kaufman deliver a straightforward, practical overview of how true value is captured under crisis circumstances. Espousing their mantra "few things are more dangerous in finance than a 23-year-old with a spreadsheet," the authors also voice disdain for the computer-generated output of number-crunchers in favor of beginning the process with a street-smart sense for what the right value ought to be—something the best professionals in the distressed investment banking game can be counted on to deliver. They don't suggest dispensing with outstanding finance skills, but suggest that these mechanics are only useful in the hands of those who know how to apply them effectively.

In exploring all the options for realizing value for a troubled business, the authors glide through a nice how-to on structuring bankruptcy auction sales under §363 of the Code. The process of providing appropriate bid protections for stalking-horse bidders—while attempting to lure third-party bidders into the auction—is nicely covered. Owsley and Kaufman conclude by highlighting the benefits that can sometimes be achieved by proffering an internally financed reorganization plan. They explain that these plans don't require material new financing nor the sale of substantially all of the company's assets. And they prudently detail how these plans can be used both offensively and defensively to keep third-party bidders honest in negotiating for a controlling stake or for a purchase of the company's assets.

It is rare for top performers in the lucrative market segment of distressed investment banking to take the time to create a user-friendly tell-all on how this mysterious process works. Those that enter this forum in the future will benefit from the concise book that these industry leaders have written. ■

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