Worth Reading

Distressed Investment Banking – To the Abyss and Back

Author: Henry F. Owsley and Peter S. Kaufman
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The authors head the firm the Gordian Group. That name was chosen to imply that, like Alexander the Great cutting through the Gordian knot of myth, their consulting group cuts through the problems facing distressed companies. Owsley and Kaufman accomplish this by contacting the various stakeholders and investigating all relevant factors of the problems facing a distressed company. With this broad-ranging approach, Owsley and Kaufman identify and isolate crucial problems and provide experienced, practicable guidance for resolving them. Or as the authors put it, "We seek not merely to unravel thorny financial knots...we seek to slice through them."

In this case, the name of the group is not just an inspired marketing image. As the text of the book and examples from the firm's work with clients evidence, they have developed an approach that deals with the knottiest of problems facing distressed companies and do so to the satisfaction of a range of stakeholders. The premise of this approach is that "conflicts of interest are intolerable, and that large investment banks cannot help but have conflicts of interest when working in the distressed patch."

As anyone familiar with this field knows, buying and selling a distressed company commonly leaves big winners and big losers. Certain groups, often top executives and the investment group purchasing a distressed company, profit from the sale. Other groups, often stockholders and employees, lose out. Of course, avoiding or absolving conflicts of interest in the interest of fairness to stakeholders at all levels and in all quarters is not only desirable to allow a pending sale of a distressed company to progress smoothly, but is also required by law. However, as the lopsided results of many sales demonstrate, equitable results do not happen often. The object of this book is to provide advice and lessons to ensure that equitable results do happen more often than not.

Owsley and Kaufman realize that, when it comes to resolving problems with distressed companies, there is "no silver bullet solution [to be] found that makes everyone wealthy and happy and whole." The situations of distressed companies have, in most cases, been years in the making, often exacerbated by a corporate culture that is "more likely to fiddle while a lot of other people's money burns." The key to increasing and insuring fairer outcomes of distressed situations is communication with all stakeholders. This communication not only gets the varied stakeholders involved in the process of dealing with the distressed situation, but also brings their respective concerns, ideas, resources, expectations, and hopes into the open so that no one group such as top executives or an investment group can take over the process for its exclusive ends.

What is unique about this book is that it moves the crux of considerations and related activities regarding distressed corporations from the technicalities of financial issues to the rightful interests of a network of stakeholders. This does not mean that resolving disagreements will be any different than they might be otherwise; nor will the amount of cash involved in a distressed situation be different. However, the authors do offer invaluable advice on how to abet the process by recognizing the necessity of an equitable distribution of the sacrifices in distressed situations. ¤

Founding partner and managing director, respectively, for New York-based investment bank Gordian Group, Owsley and Kaufman are experts at overcoming the complex financial challenges that befall distressed companies.

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misleading appraisals that grossly inflated the true value of NJAH properties.

Under these programs, a variety of fraudulent documents were submitted to lenders, such as false mortgage applications, false sales contracts, false employment verification data, false investor statements, and false HUD-1 Settlement Statements. Puff also obstructed justice by submitting false information to the new Jersey Bureau of Securities.

Ultimately, Bederson's two-year-long analysis of NJAH showed that, as a direct and proximate result of Puff's actions, NJAH suffered losses of not less than $67.7 million, and its business model could never generate a profit because it required the continual infusion of new investor money to pay prior obligations.

According to Hartstein, Puff and his co-conspirators were able to perpetrate the fraud by limiting employees' knowledge of what was going on. "There was a clear separation of duties such that each area of operations was given only enough information to prepare the paperwork it needed to send the money from one place to another," she explains. "Most employees had no real understanding of what the money coming in was for or where it was supposed to go."

On April 9, 2009, Puff pleaded guilty to conspiracy to commit wire fraud. U.S. District Judge Jose L. Linares sentenced him to 18 years in federal prison and ordered him, upon the completion of his prison term, to pay approximately $101.1 million in restitution and serve three years of supervised release.

Meanwhile, 10 of Puff's associates have admitted their roles in the conspiracy and pleaded guilty. All are serving jail time, says Schwartz.

NJAH's trustee took possession of all the company's properties and sold them for the benefit of investors, but it is unclear how much defrauded investors will receive at this time because other bankruptcy issues are currently being resolved, says Schwartz.

The lesson learned, says Schwartz, is that a restructuring isn't always possible. "When the receiver looked at the business, he realized it was a fraudulent financial enterprise, and had to be shut down," he says. "There wasn't going to be a restructuring." ¤