**Private Placement Investors Association**

**Best Practices Recommendation for Amendments and Waivers**

Preamble

* The Private Placement Investors Association (PPIA) is pleased to recommend best practices for issuers and investors regarding amendments or waivers of existing Note Purchase Agreements. It is designed to make the process efficient and effective for all concerned, with the goal being prompt communication, discussion, and decision making regarding amendments and waivers. The PPIA hopes this suggested guide will enhance and facilitate the overall process.

Investors and Issuer Contact Information

* Upon the closing of a new transaction, Investor’s counsel will create a schedule in the form of Appendix 1 to this draft and provide it to all parties for informational purposes. The schedule will list a contact person for each investor and will also indicate which investor(s) are the lead lender(s). The issuer will also provide their contact information on the schedule. This schedule may be built into the Note Purchase Agreement, if feasible.

Investor Best Practices

* Provide updated contact information to the issuer when the individual monitoring the credit changes.
* Commit the internal resources necessary to process the amendment in a timely manner. The amendment request should be a priority for the person handling it.
* Ensure that the individual handling the amendment request has the authority to approve the amendment, or is in close contact with the persons having such authority.
* If approval of an amendment will require a potentially lengthy or unique internal approval process, make sure that the other parties involved are aware of this.
* The investor group should approach the amendment process in a manner that is consistent with the amendment request and should negotiate changes to the agreement in a fair and reasonable manner. The investor group will attempt to reach a consensus among all investors, taking into account all current views and prior amendment negotiations. The group position and response to the issuer will be predicated on the consent of the required holders as defined in the Note Purchase Agreement. This means that at times an amendment will go forward despite objections from non-consenting holders.
* Investors should follow the Amendment Process Recommendations as detailed in this document.

Issuer Best Practices

* Maintain a current list of investors and contact persons. An initial list, which indicates the lead lender(s) and the other original purchasers, will be provided at closing.
* Offer investors periodic conference calls or meetings to provide updates on the business. This is particularly important if material changes to the business occur or are contemplated. The amendment process will be more difficult if the only communication with the investors after the closing is an amendment request.
* Expect that the amendment process, like any other commercial transaction, may involve some negotiation. Provide sufficient lead time for investors to review the request and its impact on the investment.
* Commit internal and external resources necessary to process the amendment in a timely manner.
* Follow the Amendment Process Recommendations as detailed in this document.

Investment Banker Best Practices

* An Investment Banker may be involved in this process at the request of the issuer if the issuer feels it would be appropriate.
* The Investment Banker should facilitate, but not replace, direct communication between the issuer and the investor group. The Banker may advise and expedite the initial written communication (to include business update and details on amendment request) from the issuer to the investor group and work with the lead lender(s), as necessary, to identify and organize the investor group.
* Manage expectations by informing issuer of the range of possible outcomes.
* Work with amendment team to set a realistic timeline.
* The Investment Banker should reinforce with the issuer the concept of periodic communication with the investor group.

Amendment Process Recommendations

* The issuer should prepare a detailed amendment request which outlines the need for the modification and specific changes being requested.
* The issuer should include financial information relevant to the request.
  1. In the case of changes to financial covenants, pro-forma calculations of existing and proposed covenants should be provided.
  2. In the case of more material changes to the business, financial projections or other relevant information should be provided.
* The issuer should include information about changes being made to or requested on other agreements, especially bank facilities and other financial obligations.
* The issuer should prepare a list of noteholders with name and contact information by tranche and dollar amounts outstanding, to enable the noteholders to select an Amendment Team if required. Prior to the selection of an Amendment Team, the lead lender(s) should be available to advise the issuer on process questions.
* The issuer should submit the amendment request to all investors simultaneously and then schedule a conference call for all investors during which the issuer can present the request and answer initial questions from the investors.
* Subsequent to the initial call, the lead lender(s) should schedule a separate investor only call. In selected situations at the lead lender(s) discretion, the lead lender(s) may contact outside counsel prior to this call and have counsel join this discussion, as outside counsel may be the most effective party to organize calls. Each investor should have analyzed the request and have their views formulated to share with the group on the subsequent call. The call will have the following objectives:

1. If the modification is simple in nature, arrange for a vote on the amendment. If approved, the lead lender will communicate with the issuer and coordinate drafting of the amendment.
2. If the modification is complicated, the investor group will designate an Amendment Team (see criteria set forth below) to work on the modification, following the suggested steps outlined below. The group should also discuss the need to hire outside counsel to the extent not already determined. As part of the process, the Amendment Team should solicit opinions from all lenders and will coordinate communication among the appropriate parties.

* The Amendment Team should have the following responsibilities:

1. Select outside counsel if deemed appropriate and not already done.

2. Analyze the amendment request within the context of thoughts and suggestions voiced on the investor group conference call.

3. Formulate a recommended response to the amendment, consulting with outside counsel as necessary, and circulate recommendation to the group.

4. Present the recommendation to all investors via a subsequent conference call (with external counsel on the call) and vote on the recommendation.

5. Revisit the proposal if the required percentage does not approve.

6. Communicate with the issuer, explain the response of the investors, and negotiate changes as required. In most cases, a business person or persons on the Amendment Team should contact the issuer directly, rather than (for instance) asking outside lenders’ counsel to contact the issuer’s counsel.

7. Communicate status of the negotiation to all investors via conference call or email and repeat steps 4-6 as necessary.

8. Coordinate drafting/review of the amendment with outside counsel (though all lenders should be responsive with any comments to the documentation).

Recommended Composition of Amendment Team

* The size of the Amendment Team may vary according to the number of participants in the transaction. In general, the Amendment Team should be composed of at least three investors, account for at least 30% of the total outstanding amount of Notes, and include at least one holder of the issue with the longest dated maturity. The ultimate composition of the Amendment Team may vary depending upon familiarity with the credit, availability, and desire to be part of the process.

Other Points to Convey to Issuer

* Participation by an investor in a new issuance should not be directly or indirectly conditioned on the investor’s agreement to waive or amend an existing note issue; the amendment or waiver should be negotiated on its own merits. The combination or linking of an amendment with a simultaneous new issue may create conflicting legal issues for investors regarding communications and negotiations among themselves and with the issuer, and may make it more difficult to respond to either situation in a timely and efficient manner. If an issuer requires simultaneous consideration and decision making regarding the amendment and new issue, investors should, to the extent practicable, pursue separate communications and negotiations on each transaction.
* Amendment or consent fees or other compensation may be required based on the time required for analysis and negotiation, the fact that compensation is paid to other lenders and/or a change in the issuer’s credit quality.
* In most situations, Lenders’ Counsel will be required to draft and review modifications to the legal documents. In addition, outside counsel may be the most effective party to organize calls and arrange meetings. Issuer will be expected to pay these expenses per the terms of the existing agreements.
* In the event an issuer has multiple private placement securities issued, the initial communication of the requested amendment may be jointly communicated to all investors with the investors subsequently deciding how the negotiation process is to be most efficiently constructed.
* An amendment request in the context of a material change in the issuer’s business may require material changes in the document. The issuer should be prepared for a more detailed negotiation process.
* If other financial agreements are being amended at the same time as the private placement (i.e. bank agreement), the issuer should endeavor to contact all parties simultaneously. Consent by the bank group to an amendment is not indicative of consent by the private placement group.
* Legal opinions are likely to be required for amendments that affect economic structure or if new credit support will be put in place (such as guaranties or collateral) and may be required in other circumstances as well.
* These “Best Practices “recommendations will only apply where a material adverse change in the credit quality of the issuer or a default or event of default has not occurred. If such a change has occurred, then it may be necessary for the investors to fully evaluate the issuer’s entire business and credit quality, as well as the position of other creditors, before agreeing to any requests for amendments and waivers. This situation is beyond the scope of this document.
* Each investor reserves / controls its investment discretion and therefore the right to vote its interest.

**Appendix I:**

Please refer to the excel file: “amendment schedule\_draft\_5” for the sample schedule to be provided at closing.