



# Distressed M&A Outlook



July 2009

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In association with





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# Foreword

To gain perspective on the current distressed M&A market, **Carl Marks Advisory Group LLC** and **Pepper Hamilton LLP** have commissioned **mergermarket** to survey a diverse group of corporate executives, private equity practitioners, hedge fund investors and lawyers regarding the foremost issues facing distressed investors today.

The volume of distressed opportunities is expected to rise considerably over the course of the year, driven by a variety of factors ranging from broad economic trends to industry-specific performance. Respondents expect debt-related drivers to be especially prominent: an increase in covenant defaults is identified as a major catalyst for distressed asset sales, as is companies' inability to meet debt obligations or refinance upcoming maturities.

Such asset sales are likely to be met with keen interest from distressed investors seeking to capitalize on unusually attractive price offerings: an astounding 92% of respondents believe distressed assets will be more steeply discounted in this downturn than in previous ones.

This combination of eager sellers and opportunistic buyers will undoubtedly provide fuel for distressed activity, especially since both groups stand to gain unique benefits from distressed deals. 59% of respondents believe strategic buyers will be the most active buyers in the year ahead, with several respondents commenting that this is an ideal time for companies to improve their businesses and expand their product offerings by acquiring attractively priced distressed assets. At the same time, 52% of respondents expect private equity groups to emerge as the buyers of choice due to their extensive restructuring experience.

Of course, with these opportunities come specific challenges. 85% of respondents agree that over-leveraged companies qualify as distressed assets, and a third (67%) cite negative cash flow as a key indicator of distress. Evaluating a distressed asset, however, is hardly a straightforward process. Several respondents point out that negative cash flow could be a function of macroeconomic conditions and may not necessarily signal distress; others say gauging the health of a distressed target is particularly problematic, as current economic conditions make it difficult to forecast a target's future performance or its ability to honor debt obligations.

On top of this, distressed asset sales often face tight time constraints, which is likely why 63% of respondents expect most distressed transactions to take place outside of the bankruptcy courts, as these deals tend to take considerably less time than those handled in the court room. Indeed, 59% of respondents say the distressed M&A process can exceed four months when handled in court, compared to a two to four month time frame for transactions outside of court.

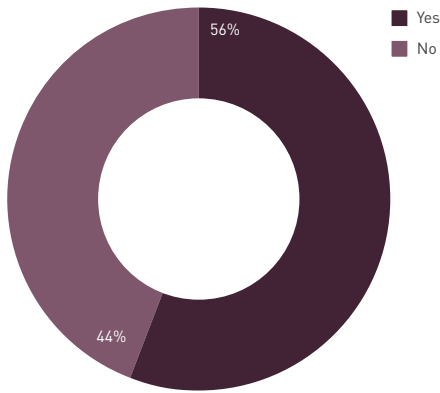
Against the backdrop of unprecedented market conditions, this report offers forward-looking analysis of the rapidly changing distressed M&A market and provides invaluable insight from those who know this market best. We hope you find this survey both useful and informative, and as always we welcome your feedback.

## Methodology

For this survey, mergermarket interviewed 75 investment bankers, private equity practitioners, hedge fund investors and lawyers regarding their outlook for distressed M&A activity over the next year. Respondents provide detailed analysis and commentary on the specific challenges and opportunities in the current market as well as a forecast for the year ahead. All results are anonymous and presented in aggregate.

# Survey findings

## Has your firm advised on/participated in the sale of a distressed asset in the past year?



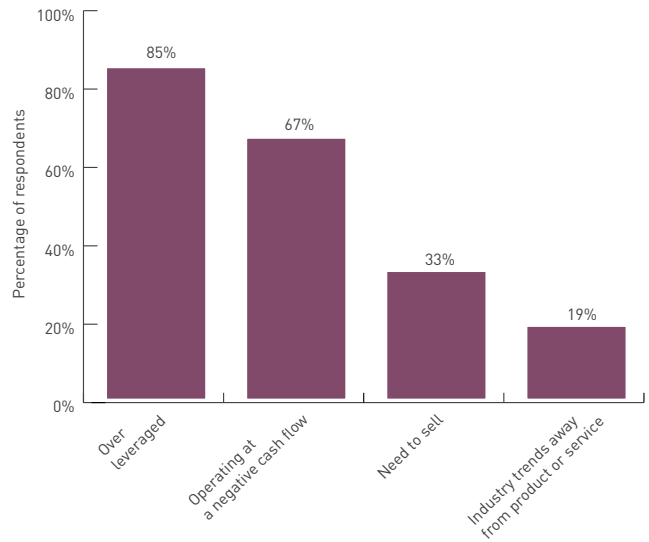
56% of respondents surveyed have been involved in a distressed asset sale in the past year. Within the remaining 44%, there are several respondents, particularly investment bankers, who expect to become increasingly involved in distressed M&A in the year ahead. These respondents cite foreclosure sales, pre-packaged bankruptcy sales and private sector transactions as examples of the types of deals they expect to participate in.



Given the nature of who we are, we have been pretty active in the distressed universe this year, but like everybody else, we expect to be even busier next year.

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

## How do you classify a distressed asset?



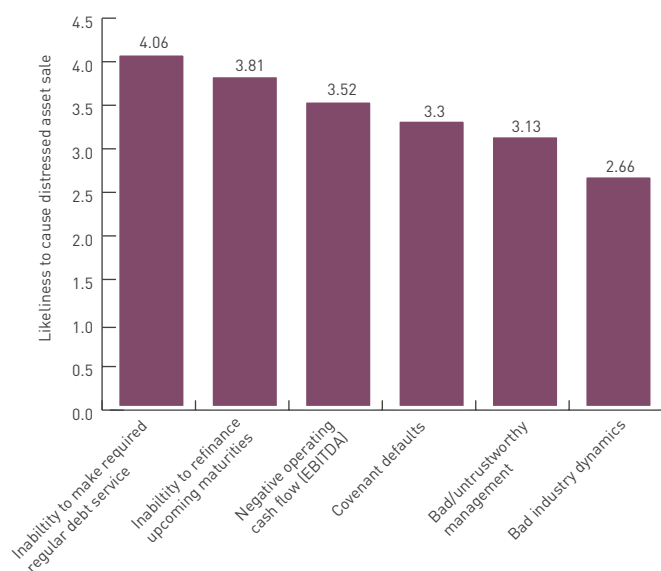
An over-leveraged balance sheet and negative cash flow are the two leading indicators of distress, according to 85% and 67% of respondents respectively. Several respondents point out, however, that macroeconomic conditions make it difficult to distinguish distressed assets from healthy assets, as many healthy businesses are seeing negative cash flow as a result of the downturn. Additionally, a third of respondents (33%) define a distressed company by its need to sell, or how much its health depends on a deal.



While we agree that not every company with cash flow problems is distressed, virtually every distressed company has significant cash flow issues. Indeed, it is generally cash flow (or, more precisely, the lack thereof), that finally forces distressed companies and their constituents to really take stock of their situation and begin to deal with it.

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**How likely is each of the following situations to trigger a distressed asset sale? (where 1=extremely unlikely and 5=extremely likely)**



Not surprisingly, debt-related issues are expected to be major catalysts for distressed M&A activity. Companies' inability to service debt is considered most likely to trigger distressed asset sales in the year ahead, as is their inability to refinance upcoming



**Investors (debt & equity) are becoming increasingly unwilling (or unable) to grant extended grace periods, with cash flow being further negatively impacted by increased rates and accelerated maturities. This increases the likelihood of a distressed asset sale.**

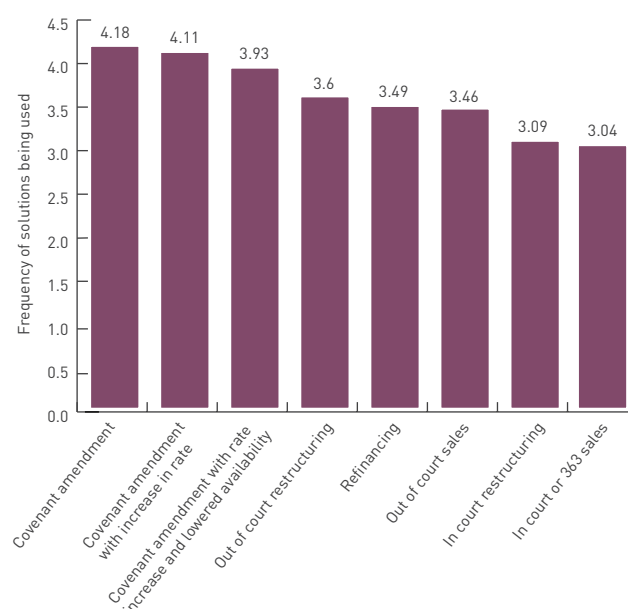
Duff Meyercord, Partner, Carl Marks Advisory Group LLC



**Not only is the market characterized by people having to do something and forced to do it on a tight timetable, there is an increased opportunity as management loses focus and interest over these orphaned businesses.**

James D. Rosener, Partner, Pepper Hamilton LLP

**On a scale of 1 to 5, how often is each of the following solutions being used by companies to deal with distress? (where 1= extremely rarely and 5= all the time)**



Companies have a variety of methods for dealing with distress, the most common of which is covenant amendments, according to respondents. Specific types of covenant amendments, such as those with rate increases and those with both rate increases and lowered availability, are also widely used solutions for handling distressed situations.

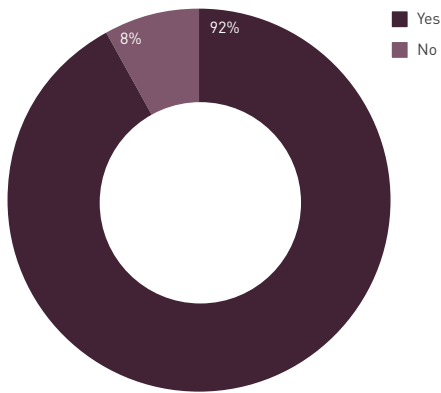
One respondent points out, however, that while amendments may be common, they may also be problematic: "There is an unprecedented level of covenant defaults at the moment, and the situation only becomes worse when banks are unwilling to negotiate."



**With the exception of refinancings (which would probably be seen as a more desirable alternative if capital was more generally available), the solutions outlined above better describe a progression of increasingly unpleasant alternatives that distressed companies employ after prior alternatives fail.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**In your experience, are distressed assets selling at a greater discount in this downturn than in previous downturns?**



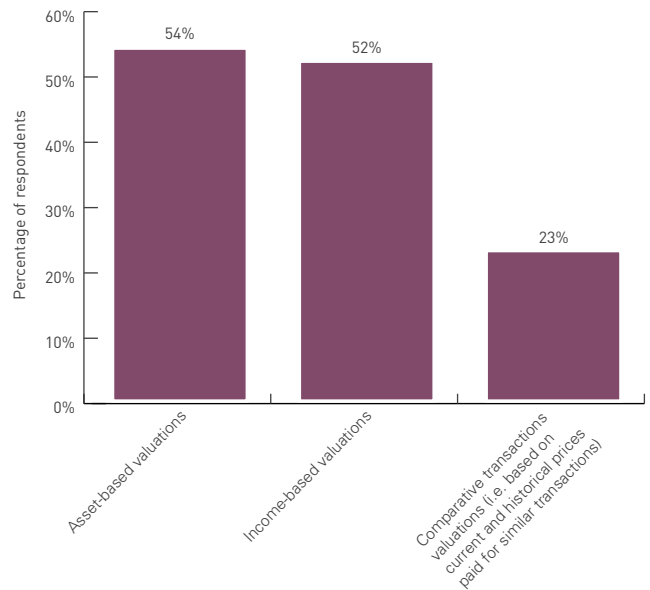
Nearly all respondents (92%) believe the current economic downturn is producing more steeply discounted distressed assets than previous downturns. This is due largely to the specific features of this crisis, many of which relate either directly or indirectly to the debt markets. For example, one investment banker expects buyers' inability to finance deals with debt to drive prices down further as buyers settle for lower prices. Another respondent with the same background believes many distressed targets will be over-leveraged companies being forced to liquidate in the face of mounting debt. Further, there is a sense that the distressed market has yet to reach its peak in terms of buying opportunities. An investment banker, for example, says he "expects the velocity to pick up in the second half of the year, as buyers are still trying to identify where the bottom of the market is."



**The overall lack of liquidity in the market and resulting compressed timeframe to implement necessary strategic alternatives or implement required operational changes are leading to lower prices for distressed assets.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**What are the primary drivers of price?**



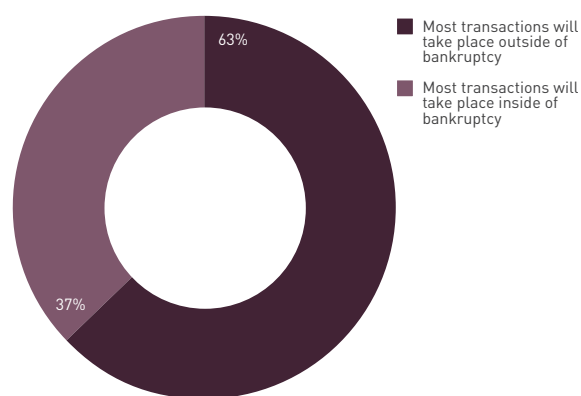
Asset-based and income-based valuations tend to be the foremost drivers of price, according to 54% and 52% of respondents respectively. Respondents also repeatedly stress the link between a target's price and its access to cash: one private equity practitioner states that "cash flow is always key", while another states that "poor cash flow and a company's desperation" can have a strong influence on its value. At the same time, however, respondents point out that valuation methods tend to vary across industries. One investment banker explains: "We work with software and IT companies, so asset values are largely intangible."



**In the short term, the ability to quickly provide needed liquidity is likely to be a primary consideration for both buyers and sellers as opposed to bidding wars driven by different views of longer term intrinsic value. In other words, cash is again king.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

## In the upcoming year, do you expect to see more distressed M&A transactions take place inside of bankruptcy or outside of bankruptcy?



63% of respondents expect most distressed M&A deals to be handled outside of bankruptcy. One hedge fund respondent believes private equity will have a hand in influencing these figures, citing private equity's "expertise and knowledge for doing deals outside of bankruptcy" as the main reason targets will opt for out of court deals with buyout groups.



**If implementable, out of court solutions are generally less expensive and disruptive; however, it is not clear to us that companies with complex capital structures will ultimately be able to obtain all of the consents necessary to use these solutions.**

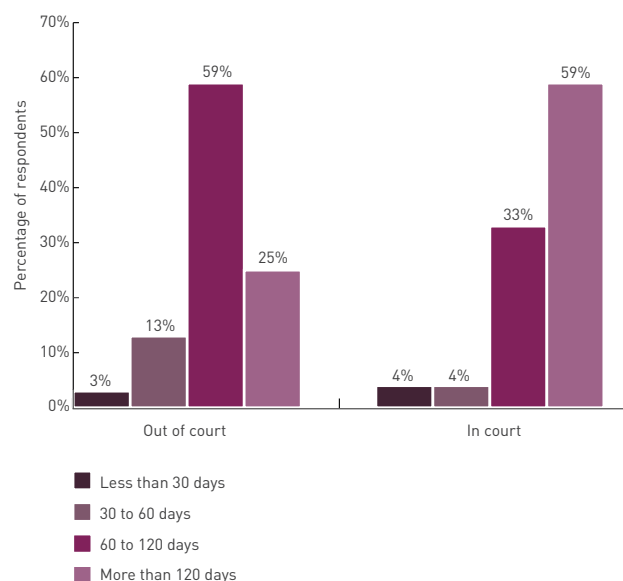
Duff Meyercord, Partner, Carl Marks Advisory Group LLC



**The lack of Debtor-In-Possession Financing continues to be a deterrent to being inside bankruptcy. Until that market comes back in a more vibrant way, expect this to continue.**

James D. Rosener, Partner, Pepper Hamilton LLP

## How long does it take to sell a distressed asset (from the announcement of the transaction to the completion)?



Time is a key feature distinguishing in court deals from out of court deals. When asked how long distressed asset sales take outside of court, 59% of respondents cite a time frame of 60 to 120 days. In court, these deals can take twice as long: an equal 59% of respondents say deals handled in court typically take more than 120 days to complete.

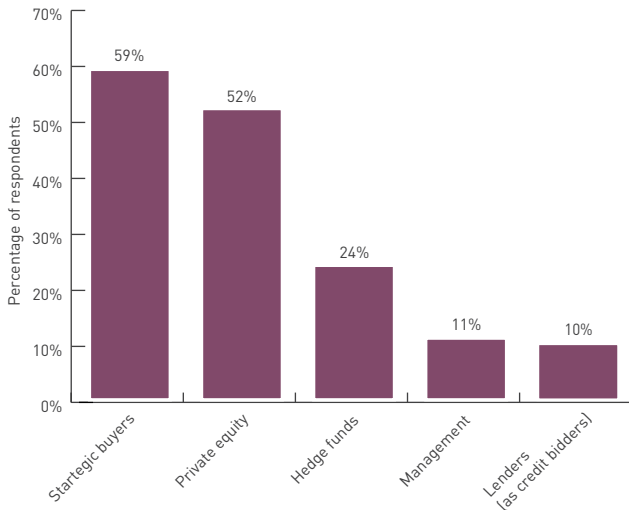
There is some disparity on this issue, however, as respondents' experience varies. Some respondents see little difference between deals inside and outside of court, like one investment banker who claims "both are long processes and the court does not add a great deal of time". Others argue that the courts lengthen the process considerably, such as one private equity respondent who maintains that distressed asset sales "can take years when the courts are involved".



**While out of court solutions may be done quicker in theory, in our experience, buyers in many situations may be more likely to respond to accelerated timetables when deadlines are backed by a court order.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**In the upcoming year, which of the following buyers do you expect to be most active in acquiring distressed assets?**



Strategic and private equity buyers are each identified by more than half of respondents - 59% and 52% respectively - as the most active buyers of distressed assets in the year ahead.

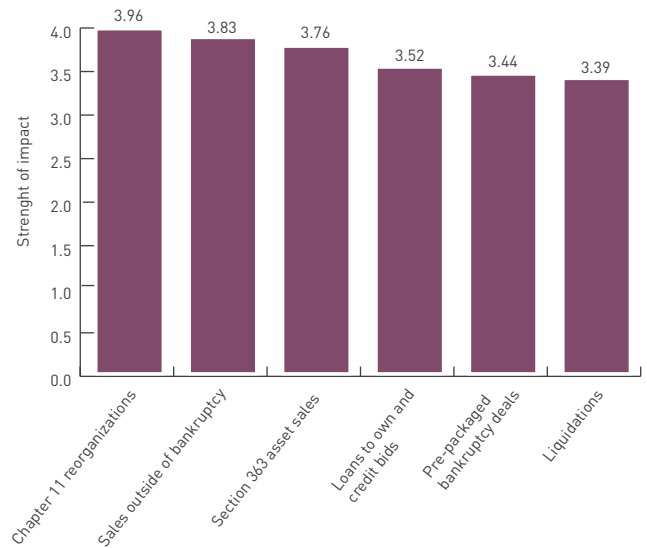
Additionally, respondents expect strategic and financial buyers to be driven by specific incentives. An investment banker, for example, believes the climate is ripe for strategic deals: "Akin to a close-out sale, many US companies are available at fire-sale prices and competitors with cash are well-positioned to benefit." At the same time, there is a sense that private funds will rise to the occasion and take advantage of distressed situations. "For sectors like Retail, private equity firms are likely going to try to capitalize on opportunities," says one private equity practitioner.



**We think private equity and hedge funds will only become active again after the financial markets more fully stabilize and those funds finish dealing with internal issues. Thus, strategic buyers will be well positioned for the foreseeable future.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**On a scale of 1 to 5, how common will each of the following transactions be in the upcoming 12 months? (where 1 = extremely rare and 5 = extremely common)**



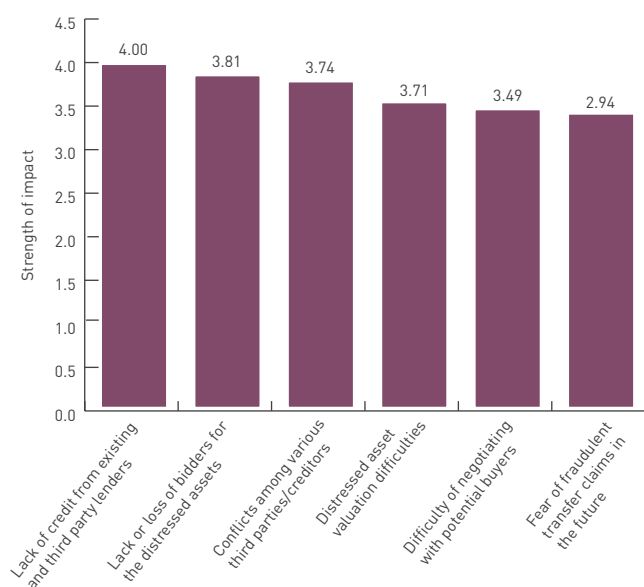
Chapter 11 reorganizations are expected to be the most common distressed situation in the year ahead, as are sales outside of bankruptcy and Section 363 asset sales. Liquidations are expected to be least common, as many respondents explain that distressed companies tend to avoid liquidations at all costs.



**Driven by the lack of overall market liquidity, we are seeing a higher than normal number of reorganizations (both in and out of court), many of which involve equitization of most or all of the junior debt tranches. However, as we move further into the cycle we believe the wide range of potential outcomes, complicated capital structures and resultant inability to easily determine who holds the fulcrum security may lead to increased use of both in-and-out of court sale solutions.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**On a scale of 1 to 5, how strong an impact do the following issues have on the progress of distressed asset sales? (where 1 = extremely weak impact and 5 = extremely strong impact)**



The progress of a distressed asset sale can be delayed for a variety of reasons, one of which being the lack of credit from existing and third party lenders. This factor is thought to have the strongest influence on the progress of a transaction, but there are other factors that can slow a transaction, including a lack of interest from potential buyers or conflicts among third parties and creditors.

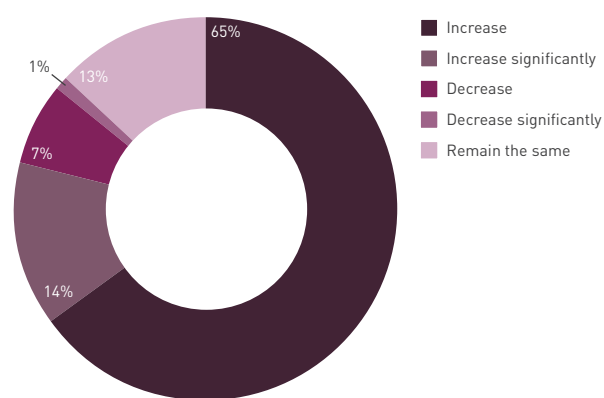
Interestingly, the current dynamics of distressed M&A can be enough to slow the progress of an auction. One lawyer explains that the gap between buyer and seller expectations has been complicating the M&A process: "I have seen buyers carry an 'I'm doing you a favor' mentality, and that can dictate valuations. In these cases, sellers need time to figure out how much of a discount they can handle or take."



**While many of these issues can usually be handled by a company and its advisors, companies always require adequate liquidity to get through a sale process successfully.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**What do you expect to happen to the level of distressed debt buy-backs among private equity firms over the next 12 months?**



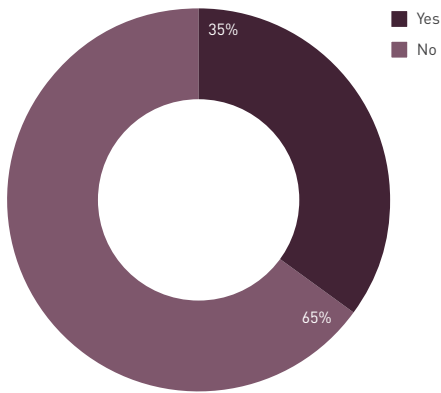
An overwhelming 79% of respondents expect to see an increase in debt buy-backs among private equity firms in the year ahead, with 14% of this majority expecting a significant increase. Only 8% of respondents expect this activity to decrease, which is likely because the incentives to buy are growing stronger, according to an investment banker: "Buying back a portfolio company's distressed debt is a quick way for a private equity group to boost its overall return."



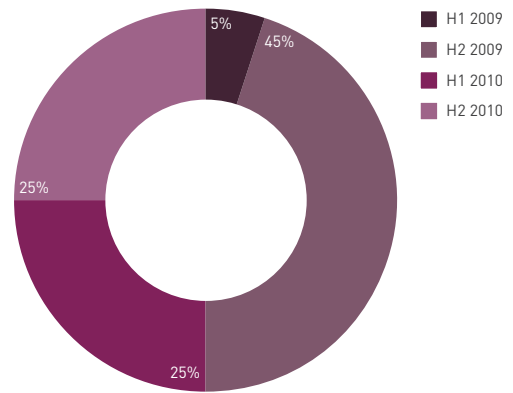
**We think overall market liquidity, more than any other factor, is likely to be the prime driver for debt buy-backs in the foreseeable future.**

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**Do you plan to exit any of your distressed investments in the upcoming year?**



**If yes, when do you expect to make this exit?**



Only 35% of respondents expect to exit a distressed investment in the year ahead, compared to a 65% majority expecting to hold onto distressed investments this year.

Not surprisingly, the unfavorable valuation climate is largely to blame for hampering exit plans. An investment banker explains that his firm will continue to hold off on its exit plans “until the price is right.”

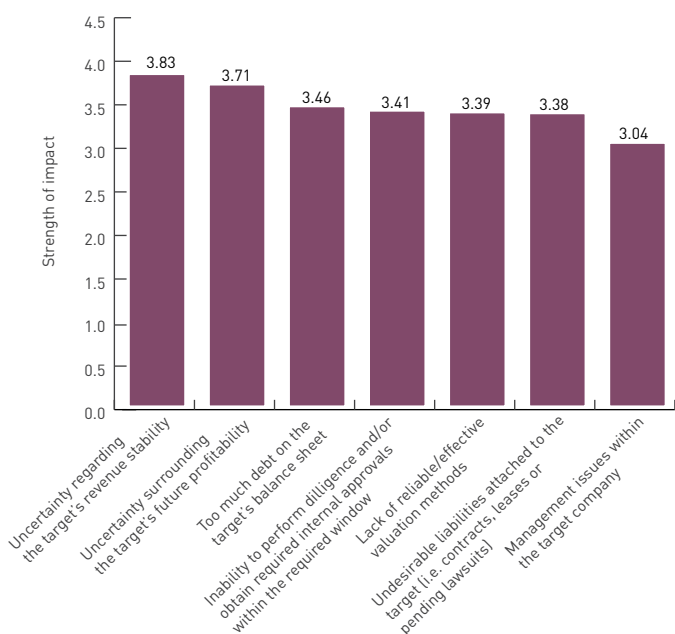
Of the 35% minority of respondents expecting to make an exit this year, the largest portion expects to do so in H2 2009. Exactly half of respondents expect to make their exits in 2010, with equal portions expecting to do so in the first and second halves of that year.



Given low current valuations, we were not surprised to see that few people are planning a near-term exit. The real question is whether their liquidity will really allow them to hunker down and ride out the storm.

Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**How likely is each of the following issues to deter potential buyers of a distressed company in the upcoming cycle? (where 1 = extremely unlikely to deter and 5 = extremely likely to deter)**



Potential buyers are most likely to be deterred by concerns over future revenue stability and future profitability. Management issues are considered least likely to deter potential buyers as management teams are often replaced or restructured after a deal is closed, according to an investment banker.

Another investment banker explains how buyers manage to work around these potential obstacles: "Rather than being dissuaded by these listed issues, buyers address them by factoring them into the low prices realized for distressed assets."



**Post acquisition cash flow is, and will likely remain, the primary focus of potential buyers.**

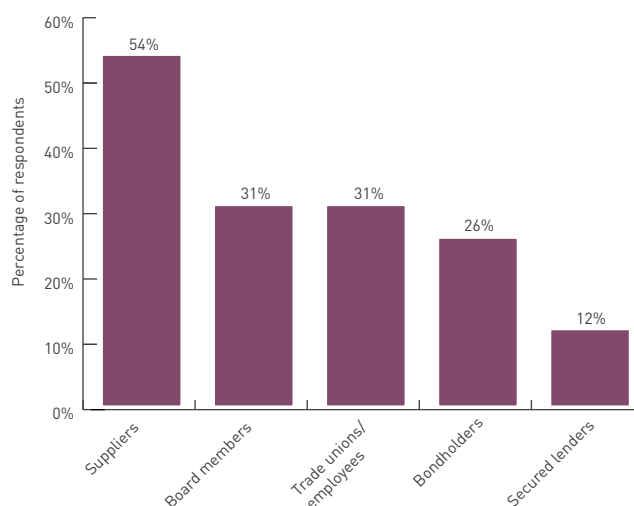
Duff Meyercord, Partner, Carl Marks Advisory Group LLC



**This is going to be a function of price, but revenue/stability will be the biggest driver.**

James D. Rosener, Partner, Pepper Hamilton LLP

**Which of the following groups related to the distressed target is most commonly overlooked by buyers during due diligence?**



54% of respondents believe suppliers to the distressed target are often overlooked by bidders during due diligence. Creditors, on the other hand, are considered least likely to be overlooked: only 26% and 12% of respondents believe bondholders and secured lenders, respectively, are disregarded during due diligence.

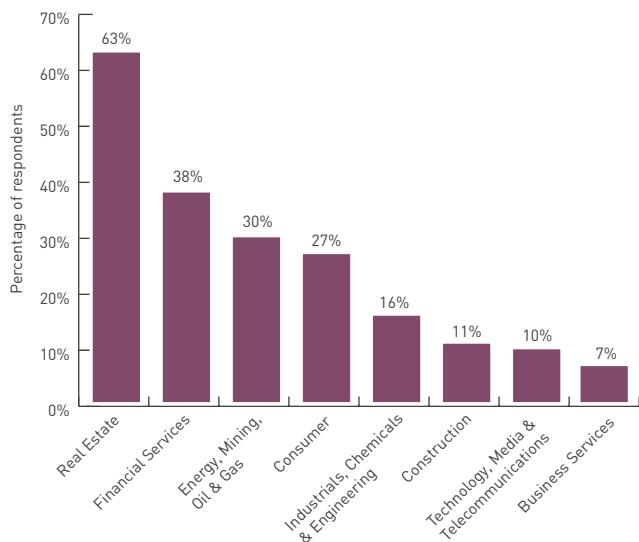
Interestingly, investment bankers are particularly keen to point out that all of these groups are considered during the due diligence process. One investment banker points out that all of these groups are "normally considered" while another explains that "all have the same level of importance" even though some may be "less of a priority in the acquirer's mind."



**Everyone is acutely aware that a company cannot survive without paying customers; however, they frequently pay only lip service to the other two constituents that are frequently threatened in distressed situations – suppliers who sell to the company the goods and services that go into the company's offerings, and the employees who assemble and sell those offerings.**

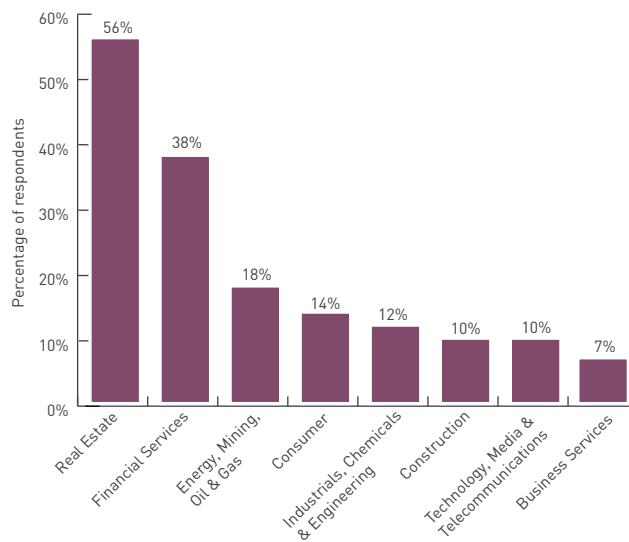
Duff Meyercord, Partner, Carl Marks Advisory Group LLC

**In which of the following sectors do you expect to see the highest volume of distressed asset sales over the next 12 months?**



Real Estate was overwhelmingly favored by 63% of respondents as the sector most likely to see the highest volume of distressed asset sales, followed by Financial Services, which was chosen by 38% of respondents. One respondent explains that low prices often make Real Estate assets particularly appealing to buyers: “We’re seeing an especially high level of activity in the commercial Real Estate sector – for profit buildings such as shopping malls, for example – where discounts are being offered to smooth over negotiations, especially if the seller is eager to unload.”

**In which of the following sectors do you expect to see the highest value of distressed asset sales over the next 12 months?**



More than half of respondents (56%) expect distressed deal values to be highest in the Real Estate sector, which is also expected to see the highest volume of deals, and 38% of respondents expect the Financial Services space to see the highest value of distressed asset sales in the year ahead. These percentages at least double the percentages assigned to all other sectors.

It is important to note that these two industries contain subsectors that are well-suited for distressed M&A. For example, just as the commercial subsector is expected to account for a significant portion of distressed Real Estate deals, the Financial Services sector contains mortgage businesses that are likely to be distressed targets in the upcoming year.

# A Case Study in Distressed M&A Opportunity

Due to the overall lack of liquidity in the markets, Carl Marks Advisory Group is seeing an increase in distressed transactions. Existing debt holders are converting their holdings, either directly or through a distressed sale, into equity to give the holders a chance to maximize their returns after the markets stabilize.

The media industry is seeing more than its share of distress, and Carl Marks' experience in that sector is indicative of some of the trends in the broader market. Two years ago, one of the largest community newspaper publishers in the United States, operating within major affluent and high-growth markets, held the goal to become the pre-eminent provider of local content and advertising in its respective markets. It operated several daily papers, more than 80 weeklies and 14 niche publications. All told, the company reached more than 1.3 million people.

The company searched for continued growth through add-ons to expand existing publishing clusters and acquiring entirely new clusters. In doing so, the company looked for synergies through cross-selling and significant cost efficiencies.

Near the peak of the capital market in July of 2007, the company went public through a special purpose acquisition company mechanism (such entities are known as "SPACs"). Since that time, it began to experience rapidly declining performance and an overly levered balance sheet. It was forced to consider strategic alternatives to survive. In its first quarter financial press release, the company stated that it had begun discussions with its senior lenders because it did not expect to remain in compliance with a total debt leverage ratio covenant under its banking agreement.

By the third quarter, the company announced that it was in violation of its financial covenants. A month later, it announced that it failed to make principal payments to its lenders, which constituted default under its senior credit facility.

The company hired Carl Marks Securities LLC for financial advisory services, including negotiations with its lenders, as well as the development and execution of a financial restructuring plan.

In the months to follow, the company and Carl Marks evaluated a number of strategic options, including attracting new capital or refinancing.

After exhausting other alternatives, the company and Carl Marks negotiated with the senior lender group to become the stalking-horse buyer in a "363" sale process in Chapter 11, while also providing a \$5 million DIP to fund operations through a 40 day secondary auction period. No qualified overbids were received, and the secured creditors became the new owners of the company.

As a result of the company's and Carl Marks' efforts, a significant number of employees retained their jobs, while management and the senior lenders were given the opportunity to continue the company's turnaround efforts and maximize enterprise value after the financing and M&A markets stabilize. Perhaps most impressively, not only did the trade creditors keep a more financially stable customer going forward, they were paid approximately 50 cents on the dollar with respect to their pre-petition claims.

## Carl Marks Advisory Group LLC

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## ABOUT US



### About Carl Marks

Founded in 1925 by its namesake, Carl Marks is a multi-faceted investment and advisory services firm offering a broad range of specialized services. Synonymous with integrity, Carl Marks has long maintained its reputation for operating by the highest ethical standards. Today's skilled professionals carry on that tradition through hard work, astute judgment, integrity and a value-oriented approach to investing and advisory services.

### About Carl Marks Advisory Group

Carl Marks Advisory Group LLC (CMAG) is a corporate revitalization and investment banking firm and a division of Carl Marks. CMAG works with middle market companies to improve performance and create value. Many of CMAG's clients are successful companies that aim to further strengthen their balance sheets or secure investments and growth opportunities to enhance their bottom line. Other clients, distressed companies fighting to survive, look to CMAG to effectively turn their businesses around.

CMAG's professionals are knowledgeable advisors with a wealth of operating experience. They provide leadership and take a hands-on approach to every engagement, often serving as interim managers and guiding clients in restoring or increasing profitability, enhancing company performance, and attaining strategic business goals. Areas of expertise include bankruptcy, mergers and acquisitions, due diligence, financial restructuring, business valuation and assessment, debt and equity sourcing, and buy- and sell-side advisory.

**CARL  
MARKS**

The company serves a broad range of industries, including manufacturing, technology, software, energy, retail, media, land development, shipping, textiles, financial services, leasing, apparel, restaurant and specialty foods.



# CARL MARKS

## CORPORATE REVITALIZATION AND INVESTMENT BANKING

**When expert advice is needed  
to attain strategic business goals,  
Carl Marks Advisory Group's  
seasoned professionals are  
ready to respond.**

Since 1991, Carl Marks Advisory Group has delivered exceptional results to businesses by effectively managing change and strengthening organizations to position them for success. Experts in corporate revitalization and investment banking, Carl Marks' knowledgeable advisors can assist clients in creating value and improving performance in today's highly competitive marketplace.

# How Low Bond Trading Prices Can Turn to an Issuer's Advantage – Bond Buybacks

With crisis come opportunities and for issuers that have corporate bonds trading at significant discounts to par value, recent times may offer attractive opportunities to deleverage and/or amend restrictive covenants of their bonds. Many issuers recently have been launching repurchase programs or tender offers for their bonds in a bid to take advantage of these opportunities. For example, The Pantry, Inc., a convenience store chain in the Southeastern United States, swung to a second quarter profit this year as it benefited from buying back \$26 million in face value of outstanding bonds for an aggregate purchase price of \$19 million. Similarly, The Royal Bank of Scotland and many other banks have been buying back their bonds, which had been trading at heavy discounts, in a bid to boost their balance sheet and increase their capital cushion. Issuers of corporate bonds trading at a significant discount should consider these opportunities to deleverage, extend the maturity of the bonds or amend/eliminate the restrictive covenants of these securities as they may be able to realize significant cost savings and free themselves from covenant restrictions.

Issuers can retire or amend their corporate bonds through various methods, including:

- open-market purchases – the issuer repurchases bonds that are available for sale in the bonds trading market (including in private trading markets for qualified institutional buyers (QIBs) only)
- private purchases – the issuer purchases the bonds directly from a bondholder in a privately negotiated sale, and
- debt tender offers – the issuer launches an offer to repurchase all or a portion of the outstanding bonds at a given price. Combined with a consent solicitation, the tender offer will result in amendments of the restrictive covenants of the bonds.

## The Pros and Cons of Open Market/Private Purchases and Tender Offers

Open market or private purchases are generally quick and easy ways for an issuer to buy back significant amounts of bonds at current trading prices. Other than complying with the antifraud provisions of the federal securities laws, these transactions are not generally subject to SEC review.

The amount of bonds that can be purchased in open market transactions and private transactions can be significant but issuers should be wary of the tender offer trap discussed below if they proceed with very large purchases of bonds through these transactions.

Open market and private purchases generally will not, however, permit an issuer to amend the restrictive covenants of the bonds because bonds held by the issuer or its affiliates usually are not entitled to vote or count for the purpose of giving consents under the indenture.

Issuers interested in purchasing all of their outstanding bonds or larger amounts of bonds than they otherwise could on the open market or in privately negotiated transactions should consider launching a tender offer for the bonds.

Prices in tender offers tend to be higher than in open market or private transactions and typically include a premium over the current trading price of the bonds. Debt tender offers generally are structured on a fixed-price basis or a fixed-spread basis (available for non-convertible investment-grade debt securities and high-yield debt securities only). In a fixed-price offer, the price is generally fixed as a percentage of the par amount of the bonds, plus accrued and unpaid interest to the repurchase date. In a fixed-spread tender offer, the price generally is equal to the par value of the bonds plus a make-whole premium based on a rate equal to the yield on comparable maturity treasury securities, plus a fixed spread (e.g., 25-100 points). The price may be set for each day of the tender offer, or a few days before the expiration of the tender offer (typically two business days).

Debt tender offers also can be conducted as 'Dutch auctions' where the issuer specifies a price range within which the bonds will ultimately be purchased and the bondholders are invited to tender their bonds, if they so desire, at any price within the stated range. The purchase price is the lowest price that allows the issuer to buy the number of bonds sought in the offer, and the issuer pays that price to all bondholders who tendered at or below that price. This may result in substantial savings for the issuer.

When combined with a consent solicitation, tender offers permit the issuer to amend the restrictive covenants of the bonds. A debt tender offer combined with a consent solicitation to amend the indenture also can be a very effective tool to encourage higher participation in the tender offer.

Tender offers, however, involve greater regulation by the Securities and Exchange Commission (SEC).

## What to Watch Out For

Issuers contemplating open market or private purchases of bonds or debt tender offers should first review all their contractual arrangements to ensure they do not restrict the repurchase of the bonds. For example, credit agreements usually restrict the ability of the borrower to retire other debt prior to the repayment of the debt under the credit agreement. The indenture for the bonds itself also could restrict the issuer from retiring the bonds or soliciting consents to amend them (although such restrictions tend to be more unusual).

Issuers also should consult with their accountants and tax advisors about the accounting and tax consequences of the bond repurchases and related debt cancellations prior to engaging them. In particular, under the recently enacted American Recovery and Reinvestment Act, if the bonds are discharged or reduced in 2009 or 2010, which would create cancellation of indebtedness income, rather than having the income included in the year of the transaction, the issuer can elect to be taxed on the cancellation of indebtedness income ratably over a period of years. For a more detailed discussion on the tax implications of bond buybacks, see our recent article titled *Stimulus Package: Buy Back Debt Today, Pay Tax Later* at [http://www.pepperlaw.com/publications\\_update.aspx?ArticleKey=1396](http://www.pepperlaw.com/publications_update.aspx?ArticleKey=1396).

For more information about what to specifically look out for with open market and privately negotiated debt purchases and debt tender offers, see our full article on bond buybacks at [http://www.pepperlaw.com/publications\\_update.aspx?ArticleKey=1495](http://www.pepperlaw.com/publications_update.aspx?ArticleKey=1495).

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## Private Equity Investments

Pepper Hamilton LLP represents private equity clients in the full range of investments and dispositions encountered in the life cycle of an investment fund, including structured equity and leveraged buyouts, PIPEs, roll-ups and exits such as refinancings, recapitalizations, mergers, public offerings, and stock or asset sales.

Our lawyers have represented fund clients and recipient companies in investments at all stages, including control and minority investments and investments in publicly traded companies (e.g., PIPEs). Our representations include all types of structured debt and equity investments (common, preferred, pseudo-preferred and debt), leveraged buyouts, recapitalizations and follow-on equity or debt-funded acquisitions, as well as counseling on best practices regarding portfolio company governance and operations. We also assist clients with buy-side auction bids and sell-side processes.

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## Hedge Funds

We counsel managers on the formation and operation of private investment partnerships investing in public securities, commonly known as hedge funds. Increased investor attention has attracted increased regulatory oversight. Our lawyers have worked for all

types of hedge funds, from global micro and macro long-short funds that use the traditional broad investment charters and invest globally in virtually any financial asset that can be readily traded, to specialty niche funds with narrowly defined investment strategies. We also have advised fund managers on the convergence of the private equity and hedge fund markets for products spanning both markets.

## Corporate Restructuring and Bankruptcy

Pepper Hamilton's Corporate Restructuring and Bankruptcy Group is an integrated national network of more than 35 professionals and paraprofessionals who focus on all aspects of reorganizations, bankruptcies, restructurings, workouts and buyouts. Pepper is one of the few national law firms that undertake insolvency and restructuring work on behalf of all of the affected constituents. Our clients include debtors, official and unofficial creditors' committees, individual creditors, financial institutions, officers and directors of financially distressed companies, administrators, liquidators, receivers, trustees, examiners, taxing and regulatory authorities, bondholders and equity security holders in an effort to restructure and rehabilitate distressed businesses or liquidate assets in a manner that preserves and maximizes their value. We frequently represent entities interested in acquiring troubled companies or their assets. Our firm has grown from a two-person law office formed in 1890 in Philadelphia to a sophisticated, large law firm with a national and international practice. While much about Pepper Hamilton is new and different from its beginnings, we retain traditional values passed down through the decades: respect for the rule of law, pride in an excellent work product and commitment to the client's cause. Today, Pepper Hamilton is a diverse firm of men and women from a broad spectrum of backgrounds, united in these values.

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