HEALTHCARE ON THE OTHER SIDE: REPOSITIONING FOR FINANCIAL STABILITY

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Fiduciary Duties
AGENDA

• Fiduciary Duties of Directors
• Impact of Distress on Fiduciary Duties
• Best Practices
## FIDUCIARY DUTIES GENERALLY (DELAWARE)

<table>
<thead>
<tr>
<th>Growing Law</th>
<th>Statutes and common law of the State of Delaware</th>
</tr>
</thead>
</table>
| Duty of Care | Requires that directors perform their duties in good faith and with the care that an “ordinarily prudent person” in a like position would exercise.  
| | Satisfying a director’s duty of care:  
| | • Information  
| | • Investigation  
| | • Deliberation  
| | • Directors are entitled to reasonably rely on management and outside advisors |
| Duty of Loyalty | Directors must act in good faith in the best interests of the company and all of its shareholders.  
| | • Good faith and absence of financial or other conflicts of interest |
| Other Duties | Duty of Candor  
| | Duty of Good Faith |
DUTY OF CARE (CONT’D)

• Keys to Duty of Care – Appropriate Decision-Making Process
  • Allow sufficient time for consideration and deliberation
  • Review background facts, information and circumstances before taking action
  • Requires a “proactive” approach to acquire relevant information
  • Active participation in decision-making process
  • Establish record of Board’s deliberate and informed process
DUTY OF LOYALTY

• Requires directors and officers to:
  • Act in good faith and in the honest belief that any action taken or not taken is in the best interest of the corporation
  • Be both disinterested in, and independent of, the relevant transaction
  • The best interest of the corporation and stakeholders takes precedence over any interest of the director or officer
DUTY OF LOYALTY (CONT’D)

• Plaintiffs may establish a breach of the Duty of Loyalty by establishing either the director/officer: Was interested in a transaction or not independent of someone interested in the transaction or (Quadrant Structured Prods. Co., Ltd. v. Vertin, 115 A.3d 535, 549 (Del. Ch. 2015))

• Failed to pursue the best interests of the corporation and therefore failed to act in good faith (In re Orchard Enters., Inc., 88 A.3d 1, 33 (Del. Ch. 2014))

• Lack of “good faith” is established either by showing either the director or officer Acted with intent to violate applicable law or

• Intentionally failed to act in the face of a known duty (Brehm v. Eisner (In re Walt Disney Co. Derivative Litig.), 906 A.2d 27, 67 (Del. 2006))
JUDICIAL STANDARD OF REVIEW OF BOARD ACTION

• Courts evaluate board decisions using different standards of review, depending on the circumstances of the particular case:
  • Business judgment rule
  • Entire fairness

• Courts afford deference to decisions of directors and officers under the business judgment standard unless plaintiffs establish:
  • A breach of one of the fiduciary duties or
  • Bad faith

• Upon a showing of either a breach of fiduciary duties or bad faith, the burden shifts to the director or officer to establish the action was “entirely fair”
FIDUCIARY DUTIES FOR DISTRESSED COMPANIES

For distressed companies, a Board’s fiduciary duties do not change if the company is distressed or even insolvent.

- Fiduciary duties are owed to and enforceable by the corporation and its shareholders.
- Shareholders can a corporation directly and also sue the board derivatively on behalf of the corporation (a so-called derivative action)
- Solvency is measured on a balance sheet test (liabilities exceeding assets) and on a cash flow test (ability to pay liabilities as they come due)

Following the *Gheewalla* case, Delaware law no longer recognizes special rights of stakeholders (such as debt holders) when the company is in the so-called “zone of insolvency.” Rather, when a corporation is insolvent, debt holders have a right to bring a derivative action.

In distressed and insolvent situations, many Boards of Directors take extra caution to act in the best interests of the corporation and its stakeholders, viewed broadly. The overriding issue remains whether the action or failure to take action is in the best interest of the corporation and preserves and maximizes the value of the corporate enterprise.
If a corporation becomes distressed, the risk increases that a shareholder or creditor will assert an action for breach of fiduciary duties, so ensuring directors and officers are protected to the fullest extent of the law becomes important.

**Typical Claims**
- Breach of fiduciary duty of care
- Breach of fiduciary duty of loyalty
- Illegal dividend
- Fraudulent transfer
- Preference claims

**Protections**
- D&O Insurance
- Exculpation
- Indemnification
BEST PRACTICES GENERALLY

• Evaluate future actions that come before the Board with the goal of preserving and maximizing value

  • Ask: “Assuming the corporation is now insolvent, what is the best course of action that will preserve and maximize value?”

• Anticipate that decisions made or not made will be subject to “20-20” hindsight

• Be an engaged director and evaluate all issues through the lens of fiduciary duty

  • Directors can be held liable for abrogation of duties, whether involving approval of, or failure to prevent, an inappropriate transaction

  • While a director is entitled to resign at any time, for so long as the director continues in office, he or she must take affirmative steps to fulfill fiduciary duties—absence or abstention is not sufficient
BEST PRACTICES IN A TIME OF DISTRESS

• Ensure that the Board meets regularly
• Receive timely updates on the current situation from management and the Company’s advisors
• Give careful consideration to all options
• Be vigilant in complying with all disclosure obligations
• Maintain prompt and careful minutes of Board processes, presentations and deliberations
  • The Company will keep records of all Board actions –directors need not retain copies of presentations, etc.
  • Notes taken in meetings may be discoverable
• Do not approve anything you do not understand
BEST PRACTICES IN A TIME OF DISTRESS (CONT’D)

• Be aware of conflicting interests
  • Any conflicting interests should be identified in Board’s deliberative process
• Use e-mail and text messages sparingly and wisely
  • It is neither practical nor prudent to ban the use of e-mail or text messages in director communications, however:
    – The most sensitive of issues should be communicated orally, in person or via telephone
    – Review emails/texts as if they will be quoted on the front page of The Wall Street Journal and check addresses twice before hitting "send"
    – Don't joke (or at least do so only in a separate, non-substantive message, that does not relate to the matters at issue) and treat substantive messages as formal correspondence, using clear and consistent terminology
Financing Alternative
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INTRODUCTION: CONSIDERATIONS REGARDING FINANCING OPTIONS TODAY

• In today’s challenging market, companies in need of, or interested in, financing should examine all financing options because conventional bank or bond markets may not be available when needed. In fact, our working assumption is that the regular way bank and bond markets are substantially less available to high yield, rather than investment grade companies, though there are exceptions.

• This presentation summarizes the most common forms of debt, equity and equity-linked financing options.

• Any evaluation of financing options should involve the input of the company’s finance team and investment bankers, in general, and, in particular, with respect to the degree of investor demand, cost of capital, execution complexity and the advantages and disadvantages of various alternatives.

• A full evaluation of a company’s options also will involve the degree to which related courses of action (such as asset sales, eliminating dividends, other cost savings and operational steps) can be taken, and whether other transactions are occurring at the same time (such as an acquisition that needs financing or repurchases of debt or equity securities).
INTRODUCTION: CONSIDERATIONS REGARDING FINANCING OPTIONS TODAY

• Some of the financing options summarized in this presentation require lead time to execute and present varying degrees of execution complexity, and the financial, liquidity, rating agency, accounting and tax ramifications need to be analyzed in advance.

• A company’s financing options and the ultimate decision of whether to pursue them also implicates the exercise of fiduciary duties by the Board of Directors—as with all material decisions, Board process is important.

• This presentation is general in nature. A particular company’s situation and industry may make certain financing alternatives expensive and difficult to execute while making other options more attractive. So, the evaluation of a particular company’s financing options requires its own separate analysis, in combination with input from the company’s investment bankers, rating agencies (if relevant), accountants and tax advisors.
OVERVIEW: FINANCING ALTERNATIVES
The financing options available to a company include the following:

**Debt**
- Revolver Draw-down
- New Bank Facility
- Bond Offering
- Direct Lending

**Equity**
- Equity Follow-on
- PIPEs
- Preferred Stock

**Equity-Linked Instruments**
- Convertible Debt
- Debt + Warrants
- Convertible Preferred Stock

**Other**
- Sale/Leaseback Transaction
- Other Asset Monetization Structures
# REVOLVER DRAW-DOWN

## Description

- If a company has revolver capacity, it may be prudent for the company to draw down (in whole or in part) to meet the company’s financing needs.

## Timing

- Revolver draws can be accomplished very quickly—within a few days in most circumstances, unless an agent believes the conditions to borrowing have not been satisfied.

## Benefits

- Immediate access to liquidity
- While pricing will depend on that of existing facilities, 3 month LIBOR is relatively cheap today
- Previously committed facility with execution risk limited to conditions on draws
- If conditions to drawing can be met, lowest execution complexity

## Considerations

- Revolver draws can, at times, signal financial distress to the market, particularly if it is not messaged properly. In light of this, it is wise to anticipate SEC disclosure and IR/PR questions in advance.
- Not the cheapest form of financing, depending on pricing of current facilities
- Be prepared to address questions regarding satisfaction of draw conditions (including reps and warranties being true as of the draw date), whether MAE has occurred and other information requests.
- There is no universal “right” answer—each situation is unique and needs to take into account all relevant factors.
NEW BANK FACILITY

Description
- Enter into new bank facility, with term and revolver facilities, or add incremental term loan
- Our working assumption is that the bank market is, today, substantially more available to investment grade, rather than high yield, companies.

Timing
- A new facility can be negotiated relatively quickly – could be as short as 2-4 weeks, particularly for an incremental term loan for a higher rated company, but longer for a new client which is lower rated
- Depends on relationship with lenders complexity of corporate structure and lenders’ diligence

Benefits
- Puts in place longer term financing source and immediate draw down of term and revolver portions
- Relatively low cost of capital given 3 month LIBOR today – though pricing of a new facility or incremental term loan will be driven by existing facility
- Prepayment flexibility, but could be subject to prepayment fees
- Execution complexity is low, depending on corporate structure (for example, assuming few
NEW BANK FACILITY (CONT’D)

Considerations

- May not be available in the regular way market, except to the highest investment grade and high yield companies. Likely delayed diligence, credit approval and execution process for all but high investment grade companies today.
- May not provide sufficient liquidity, depending on needs
- In exchange for new debt, lender may require more restrictive covenants and likely collateral.
- Most lenders are currently limiting maturities of new money to 364 days.

Other

- Consider issuing warrants as part of structure, if needed (see slide 13) and other types of facilities/transactions (e.g., trade receivables facility, sale/leasebacks and financing off unencumbered collateral (see slide 18).
**BOND OFFERING**

**Description**
- Issue bonds in broadly underwritten offering.
- The market is more easily open to seasoned, investment grade issuers today.
- For high yield bonds, one should expect the need for upstream guarantees and security.
- Our working assumption is that the bond market is substantially more open to investment grade, rather than high yield, companies, though some high yield bonds are clearing market.

**Timing**
- For investment grade issuers, can be as quick as several days to a week if there is an effective shelf registration statement.
- For first time high yield issuers, can take several weeks to a few months.
- Depends on complexity of corporate structure, marketing need for guarantees and collateral and underwriters’ diligence and approval processes.

**Benefits**
- Traditionally, a cost-efficient way to term out revolver debt and finance acquisitions and other uses of cash, though incrementally more expensive than bank loans.
- Relatively low execution complexity, depending on corporate structure as noted above with New Bank Facility.

**Considerations**
- Not likely available in the regular way market, except to the highest investment grade or high yield companies, though there are some exceptions that may clear market in the future months.
- Likely a relatively expensive cost of capital today to access the market.
- Call protection, including potentially expensive redemption option given that it’s a pricing-driven term.
- Likely extensive due diligence and onerous legal terms in underwriting agreement, so underwriters minimize deal failure risk.
- Depending on corporate structure, non-US subsidiaries can add to execution complexity regarding guarantees and security interests.
## DIRECT LENDING

### Description
- Direct loan or private placement of high yield-type debt with hedge fund(s).
- To the extent this market is competitive with leveraged loans and high yield bonds, it will likely share some of the same pricing and execution risks as those other markets.

### Timing
- Due to negotiations with a single hedge fund and lack of underwriters/placement agents and marketing period, can be relatively quick – several weeks to several months
- Depends on complexity of corporate structure and internal process at funds

### Benefits
- Speed to market and closing, compared to many alternatives, since the company is essentially dealing with one lender who generally can move quickly
- Execution complexity relatively low since the negotiations are generally with one lender, though this can get mitigated by a complex corporate structure

### Considerations
- While the direct lending market rivals the leveraged loan market in size, it remains unclear whether hedge funds are putting money to work today – market remains untested.
- Likely high rate today – larger credit spread compared to other forms of debt capital
- Execution complexity driven by two things:
  - Like with other debt, substantial diligence/negotiation likely and degree of complexity of corporate structure will drive execution complexity
  - Transactions of size will likely require multiple hedge funds, each of whom will want to join the negotiations and comment process

### Other
- Consider issuing warrants with debt – which we evaluate below. See slide 13.
## EQUITY FOLLOW-ON

### Description
- Follow-on common stock offering, underwritten by banks
- Similar observation as with respect to debt instruments, except more so given that common stock deals are at the riskier end of the capital structure
- At-the-market offerings are a subset of follow-on’s

### Timing
- If the equity market is open, the quickest time to market – a few days to one week if a shelf registration statement is effective or the company is a WKSI

### Benefits
- Simplest of financing structures
- Market presumably knows the company’s story
- Execution complexity low and time to market quick, particularly if the company has an effective shelf registration effective or is a WKSI.
- ATMs have a degree of stealth in the issuance, but this is generally also associated with low volumes.

### Considerations
- Likely unavailable today or exorbitantly expensive given current market conditions, and thus highly dilutive
- May signal distress/desperation to approach the market today
- ATMs can be dilutive if not managed properly, cause downward pressure on stock price and require ongoing quarterly diligence
PIPE

Description

• Private Investment in Public Equity: solicit capital from targeted investors that commit to purchase equity in essentially a private placement process where the resale of the stock is registered immediately or within a short period to give investors access to liquidity
• Historically, common stock was used but can use convertible preferred, preferred plus warrants, debt plus warrants or convertible debt. See Comparison Chart #3 for a summary of these alternatives.
• Similar market observations as above, substantially greater structuring flexibility for a PIPE offering rather than the regular way bank and bond deals
• Registered directs are a variation: investors are solicited privately, then press release announces transaction and the sales occur off the company’s shelf registration statement

Timing

• For better credits, simple structures and with a market following, the process can be quick - with an accelerated timetable of one to several weeks
• For more complex credits and structures, timing will take longer - several weeks to months
• Direct investments, without an underwriter or placement agent, can also be accelerated, all else being equal
Benefits

• Potentially substantial capital raise through a single transaction
• Generally positive market signal
• Private equity firms have become a substantial part of the investor base, which can be positive/supportive shareholders of a company’s strategic plan
• Potential “Halo” effect of smart money validating the company – raises generally PR/IR need to message the transaction
• Activism defense use by bringing in a friendly/supportive investor

Considerations

• Generally expensive form of capital and thus dilutive to shareholders since price is at a discount to market, plus investors get anti-dilution protection
• Some investors (like financial sponsors) may require governance rights (such as board seats or observer rights), drag and tag rights and may exert governance influence.
• While most PIPEs get equity credit at the rating agencies and with investors, PIPE investors may seek downside covenant protections, which bring in high yield/leveraged loan features. So while the bilateral nature of deal negotiations has appeal, it can lead to more onerous pricing and terms compared to going to the public market.
• Execution complexity can be high depending on terms and potentially adds complexity to capital structure.
• Restrictions on investors’ selling and converting can result in more expensive economic terms.
• There are limits imposed by stock exchange’s 20% rule, for which there are solutions (19.9% blocker, shareholder vote, other), and the SEC’s extreme convertible’s doctrine (generally limiting issuance to 1/3 of float), though waivers are possible for each.
## CONVERTIBLE BOND OFFERING

### Description
- Conventional version is underwritten offering, convertible into listed common stock, using Rule 144A, without registration rights.
- Because a convertible bond has both debt and equity features, has greater possibility of financial engineering than other debt instruments and many investors are willing to entertain novel structures, this market may be open to some companies today, though at a potentially high cost and dilution.
- Variations: convertible into preferred stock or convertible preferred offering.

### Timing
- Same as Bond Offering.

### Benefits
- Low coupon achieved in exchange for conversion option – cheapest form of debt.
- Historically, in periods of high volatility in the company’s stock, convert investors attributed more value to the conversion option, making this market incrementally more open compared to others at attractive prices. That may not be able to counted on today – TBD.
- Possible to manage refinancing risk by including a provisional call feature: after non-call period, callable at par if the stock trades at/above 130% of strike price, but this may increase coupon by 25-50 basis points. Other call rights can be incorporated, which require more detailed analysis of impact on pricing and marketability.
- Historically, long-term maturities potentially available.

### Considerations
- Same considerations today regarding access to market except for higher rated issuers.
- Potentially dilutive to shareholders, but see Annex A for a summary of settlement options with varying effects on dilution. Also, a call spread overlay can be structured to manage dilution risk, among other things.
- In today’s market, consideration may need to be given to adding high yield-type covenants, guarantees and even collateral.
- Same considerations of bond offerings apply here regarding diligence, risk of execution complexity from corporate structure and underwriters’ delayed diligence and approval processes.
DEBT PLUS WARRANTS

Description
- Company issues debt instrument together with detachable warrants to purchase shares of common stock.
- Similar market observations as with bank and bond debt

Timing
- Same as other debt instruments

Benefits
- Typically less dilutive than comparable convertible debt instruments
- Inclusion of detachable warrants may enhance marketability of offering by attracting broader investor base and providing purchasers access to downside protection and liquidity through sale of warrants in secondary market.
- Greater ability to structure offering and tailor a financial solution to investor/company roadblocks
- Long-term maturities potentially available

Considerations
- Same considerations today regarding access to market except for higher rated issuers
- Will not receive equity treatment from ratings agencies
- Potentially requires protective covenants, guarantees and even collateral
PREFERRED STOCK

Description

• Preferred stock can be underwritten or sold via a private placement to PE and hedge funds.
• Historic categories of preferred: (1) non-voting, perpetual preferred with few protective provisions, widely marketed; and (2) highly tailored privately placed preferred, with many protective provisions and governance rights, mainly for development stage companies.
• Wide range of terms possible to tailor to company’s needs and to enhance marketability, such as by offering equity upside and downside covenant protection for investors. However, investors still need to believe in the fundamental equity story of the company to make this viable, structuring options notwithstanding.

Timing

• Similar to other private placements with potential for incrementally longer period depending on complexity.

Benefits

• PE firms have increasingly focused on this asset class, which can bring several benefits.
• Highly tailor able instrument with a range of provisions that can be added to widen marketability.
• Offers investors a superior position in the capital structure compared to common stock while potentially getting some equity treatment by rating agencies.
• Innovative structures possible, as in Deleveraging Exchangeable Convertible Secured Preferred Stock.

Considerations

• More expensive than comparable high yield instrument and dividend not deductible for tax purposes.
• Will subordinate common equity holders. If conversion option included, likely highly dilutive.
• In today’s market, investors may seek downside protections in the form of high yield-type covenants.
• PE/hedge fund investors may expect governance rights, tag, drag and registration rights and may seek to exert influence.
• Rating agency treatment will vary depending on degree to which it has debt-like features, such as put rights and covenants.
# OTHER ASSET MONETIZATIONS

## Description
- Depending on the company’s business and assets, a variety of alternative asset monetization transactions could be considered, such as a receivables financing, sale/leaseback transaction or a joint venture financing.
- A more complete evaluation of these alternatives is necessarily company and industry-specific.

## Timing
- Varies by strategy

## Benefits
- May leverage and unlock value in assets not sufficiently valued by the market, if there is sufficient investor interest

## Considerations
- Likely a complex structure and complexity is generally not favored in moments of financial market crises
- May be low volume
- High execution complexity
## FINANCING ALTERNATIVES COMPARISONS

### COMPARISON CHART #1: DEBT OPTIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>Revolver Draw</th>
<th>New Bank Facility</th>
<th>Bond Offering</th>
<th>Direct Lending</th>
<th>Convertible Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description</strong></td>
<td>Company draws on existing revolver (if available) for immediate liquidity</td>
<td>Company enters into new bank facility with term and revolver facilities or adds incremental term loan</td>
<td>Company issues bonds in broadly underwritten offering</td>
<td>Company takes direct loan or makes a private placement of high yield-type debt with hedge fund(s)</td>
<td>Company issues convertible debt securities, typically in Rule 144A offering without registration rights</td>
</tr>
<tr>
<td><strong>Timing</strong></td>
<td>Can be accomplished in a few days, unless an agent believes that the conditions to borrowing have not been satisfied.</td>
<td>Depending on relationship with lending bank and borrower’s structure, facility can be negotiated relatively quickly but delays possible due to diligence and credit underwriting process</td>
<td>For investment grade issuers, can be as quick as several days to a week if there is an effective shelf registration statement. For first time high yield issuers, can take several weeks to several months.</td>
<td>Due to negotiations with a single hedge fund and lack of marketing period – several weeks to several months, but underwriting process may be longer than traditional bank facility</td>
<td>For investment grade issuers, potentially several days to a week (if effective registration statement). For first time high yield issuers, several weeks to several months.</td>
</tr>
</tbody>
</table>
| **Benefits and Considerations**                                            | + Immediate access to liquidity  
- Relatively low cost given current rate environment  
- Lowest execution complexity  
- Could signal financial challenges (suggest anticipating IR/PR questions in advance)  
- Cheaper alternatives may be available  
- Will need to address questions regarding satisfaction of draw conditions (including certifying reps and warranties on draw date and absence of MAE)  | + Longer term financing source, with immediate liquidity via term loan/revolver  
+ Relatively low cost given current rate environment  
+ Prepayment flexibility  
+ Low execution complexity (depending on borrower structure)  
+ Leverages existing bank relationships  
- Likely delayed execution process (unless investment grade)  
- May not provide sufficient liquidity  
- May require tight covenant package if borrower viewed as distressed.  | + Cost-efficient capital raise method, though incrementally more expensive than bank loans.  
+ Relatively low execution complexity (depending on issuer structure)  
+ Limited availability if not highest investment grade or high yield issuer Call protection (including redemption option)  
- Likely extensive due diligence and onerous legal terms in underwriting agreement  | + Faster execution timeline relative to traditional bank loan  
+ Relatively low execution complexity (one lender usually)  
- Willingness of direct lenders to deploy capital in current market remains untested  
- Likely higher borrowing rate than traditional bank loan  
- Potentially significant diligence/underwriting process  
- Larger deals will require participation of multiple hedge funds and increase negotiating complexity  | + Cheapest form of debt  
+ Historically convertible market more accessible (but potentially limited access today)  
- Mange refinancing risk through provisional call feature  
- Potential long-term maturities  
- Potentially dilutive to shareholders and may require high-yield type covenants/guarantees/collateral  
- Potential extensive diligence/underwriting  
- Likely extensive due diligence and onerous legal terms in underwriting agreement |
## FINANCING ALTERNATIVES COMPARISON
### COMPARISON CHART #2: EQUITY AND EQUITY-LINKED FINANCINGS

<table>
<thead>
<tr>
<th>Description</th>
<th>Equity follow-on</th>
<th>PIPE</th>
<th>Convertible Bond</th>
<th>Debt + Warrants</th>
<th>Preferred Stock</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company makes follow-on common stock offering, underwritten by banks. Includes at-the-market offerings.</td>
<td>Company solicits capital from targeted investors that commit to purchase equity in private placement.</td>
<td>Company issues convertible debt securities, typically in Rule 144A offering without registration rights.</td>
<td>Company issues debt instrument with specified maturity together with detachable warrants to purchase shares of common stock</td>
<td>Company issues preferred stock, either through underwritten offering or a private placement to PE and hedge funds</td>
<td></td>
</tr>
</tbody>
</table>

### Timing

<table>
<thead>
<tr>
<th>Description</th>
<th>Equity follow-on</th>
<th>PIPE</th>
<th>Convertible Bond</th>
<th>Debt + Warrants</th>
<th>Preferred Stock</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the equity market is open, the quickest time to market – a few days to one week if a shelf registration statement is effective or the company is a WKSI.</td>
<td>Depending on credit, structure and market following, could be one to several weeks on accelerated timeline or several weeks to months.</td>
<td>For investment grade issuers, potentially several days to a week (if effective registration statement). For first time high yield issuers, several weeks to several months.</td>
<td>Several weeks – months depends on complexity of corporate structure and underwriters’ diligence and approval process</td>
<td>Similar to other private placements with potential for incrementally longer period depending on complexity</td>
<td></td>
</tr>
</tbody>
</table>

### Benefits and Considerations

<table>
<thead>
<tr>
<th>Description</th>
<th>Equity follow-on</th>
<th>PIPE</th>
<th>Convertible Bond</th>
<th>Debt + Warrants</th>
<th>Preferred Stock</th>
</tr>
</thead>
<tbody>
<tr>
<td>+ Simplest financing structure</td>
<td>+ Potentially substantial capital</td>
<td>+ Cheapest form of debt</td>
<td>+ Typically less dilutive than convertible debt</td>
<td>+ Highly tailorable instrument—innovative structures possible</td>
<td></td>
</tr>
<tr>
<td>+ Issuer known to market</td>
<td>+ Generally positive market signal</td>
<td>+ Historically convertible market more accessible (but potentially limited access today)</td>
<td>+ Detachable warrants may enhance marketability of offering</td>
<td>+ May receive equity treatment</td>
<td></td>
</tr>
<tr>
<td>+ Low execution complexity/time to market</td>
<td>+ Activism defense applications</td>
<td>+ Mange refinancing risk through provisional call feature</td>
<td>+ Increased structuring flexibility</td>
<td>+ More expensive than comparable high yield instrument</td>
<td></td>
</tr>
<tr>
<td>- Likely unavailable or extremely expensive (dilutive) in current market</td>
<td>+ Generally expensive (dilutive)</td>
<td>+ Potential long-term maturities</td>
<td>+ Long-term maturities potentially available</td>
<td>+ Dividend not deductible</td>
<td></td>
</tr>
<tr>
<td>- May signal distress</td>
<td>- Potential governance rights/covenant protection for PIPE investor</td>
<td>- Potentially dilutive to shareholders and may require high-yield type covenants/guarantees/collateral</td>
<td>- Limited access to market except for higher rated issuers</td>
<td>- Subordinates common equity holders and potentially highly dilutive upon conversion</td>
<td></td>
</tr>
<tr>
<td>- ATMs possibly dilutive/caus downward pressure on stock price</td>
<td>- High execution complexity</td>
<td>- Potential extensive diligence/underwriting</td>
<td>- Diligence and execution complexity (depending on issuer structure)</td>
<td>- Potential high yield-type covenants and governance rights for investor</td>
<td></td>
</tr>
</tbody>
</table>
## FINANCING ALTERNATIVES COMPARISON
### COMPARISON CHART #3: PIPE OPTIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>Convertible Preferred</th>
<th>Perpetual Preferred + Warrants</th>
<th>Debt + Warrants</th>
<th>Convertible Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company issues preferred stock which is convertible at the option of the investor into common stock</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Senior or subordinated debt of Company that is convertible into common stock (or cash + common)</strong></td>
</tr>
<tr>
<td><strong>Conversion price may be struck at a premium to current market price</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>5 – 10 year maturity typical</strong></td>
</tr>
<tr>
<td><strong>Access investor base seeking equity upside and increased yields</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Generally senior or subordinated unsecured</strong></td>
</tr>
<tr>
<td><strong>Can get equity credit for rating agency purposes, if structured appropriately</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Conversion price at a premium to current market</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rationale</th>
<th>Convertible Preferred</th>
<th>Perpetual Preferred + Warrants</th>
<th>Debt + Warrants</th>
<th>Convertible Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Potentially set conversion premium above today’s price</strong></td>
<td><strong>Lower dilution while desiring issuing equity ranking security</strong></td>
<td><strong>Issue common equity at a premium to today’s price via detachable warrants</strong></td>
<td><strong>Coupon below that of equivalent straight debt rate</strong></td>
<td><strong>Priority of claim on company’s assets and ability to force bankruptcy</strong></td>
</tr>
<tr>
<td><strong>Access investor base seeking equity upside and increased yields</strong></td>
<td><strong>Increased flexibility to tailor desired structure/profile</strong></td>
<td><strong>Increased flexibility to tailor desired structure/profile</strong></td>
<td><strong>Cheapest form of PIPE structures</strong></td>
<td><strong>No equity credit</strong></td>
</tr>
<tr>
<td><strong>Can get equity credit for rating agency purposes, if structured appropriately</strong></td>
<td></td>
<td></td>
<td><strong>Access investor base seeking equity upside and increased yields</strong></td>
<td><strong>No equity credit</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Potential Issues</th>
<th>Convertible Preferred</th>
<th>Perpetual Preferred + Warrants</th>
<th>Debt + Warrants</th>
<th>Convertible Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Not tax deductible</strong></td>
<td><strong>Company pays increased yield above common stock dividend</strong></td>
<td><strong>Priority of claim on company’s assets and ability to force bankruptcy</strong></td>
<td><strong>Priority of claim on company’s assets and ability to force bankruptcy</strong></td>
<td><strong>Priority of claim on company’s assets and ability to force bankruptcy</strong></td>
</tr>
<tr>
<td><strong>Issuer pays increased yield above common stock dividend</strong></td>
<td><strong>Further subordinates equity investors</strong></td>
<td><strong>Same structural complexity as convertible preferred</strong></td>
<td></td>
<td><strong>No equity credit</strong></td>
</tr>
<tr>
<td><strong>Further subordinates equity investors</strong></td>
<td><strong>Governance rights are typically required</strong></td>
<td><strong>Governance rights are typically required</strong></td>
<td></td>
<td><strong>No equity credit</strong></td>
</tr>
<tr>
<td><strong>Governance rights are typically required</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Anticipated Rating Agency Equity Treatment</th>
<th>Convertible Preferred</th>
<th>Perpetual Preferred + Warrants</th>
<th>Debt + Warrants</th>
<th>Convertible Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 50% (if structured appropriately)</td>
<td>Up to 50% (if structured appropriately)</td>
<td>0%</td>
<td>0%</td>
<td></td>
</tr>
</tbody>
</table>
# ANNEX A
## CONVERTIBLE SETTLEMENT ALTERNATIVES

<table>
<thead>
<tr>
<th>Description</th>
<th>Physical Settlement</th>
<th>Net Share Settlement</th>
<th>Flexible Settlement (Instrument X)</th>
<th>Cash Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>100% Stock</td>
<td>Cash for par / Shares for ITM Value</td>
<td>Cash, Shares or Any Combination</td>
<td>100% Cash</td>
</tr>
<tr>
<td>Cash</td>
<td>ITM Amount</td>
<td>ITM Amount</td>
<td>ITM and Principal Amount</td>
<td>ITM and Principle Amount</td>
</tr>
<tr>
<td></td>
<td>Principal Amount</td>
<td>Principle Amount</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EPS Impact</td>
<td>More dilutive of:</td>
<td>Straight debt interest expense PLUS</td>
<td>Straight debt interest expense PLUS</td>
<td>Straight debt interest expense PLUS</td>
</tr>
<tr>
<td></td>
<td>• Coupon through income expense OR • Shares added to shares outstanding</td>
<td>ITM Shares added to shares outstanding</td>
<td>ITM Shares added to shares outstanding</td>
<td>ITM shares on the upper call spread strike</td>
</tr>
<tr>
<td>Benefits</td>
<td>+ No liquidity event upon conversion</td>
<td>Ability to retire underlying shares upon conversion without a capital markets transaction</td>
<td>Most flexibility</td>
<td>Ability to retire underlying shares upon conversion without a capital markets transaction</td>
</tr>
<tr>
<td></td>
<td>+ Ability to retire underlying shares upon conversion without a capital markets transaction</td>
<td>+ Ability to retire underlying shares upon conversion without a capital markets transaction</td>
<td>+ Most flexibility</td>
<td>+ No share dilution until stock price is above upper strike on call spread</td>
</tr>
<tr>
<td>Considerations</td>
<td>- Repurchasing underlying shares requires a capital markets transaction - Potential difference between value of stock issued and repurchase price</td>
<td>- Liquidity event upon conversion Potential for debt to fall into current portion of long-term debt on balance sheet</td>
<td>- Risk of bifurcated if-converted accounting</td>
<td>- Potential for income statement volatility from marked-to-market accounting on bond and lower strike of call spread</td>
</tr>
<tr>
<td></td>
<td>- Liquidity event upon conversion Potential for debt to fall into current portion of long-term debt on balance sheet</td>
<td></td>
<td></td>
<td>- Significant resources needed for ongoing accounting</td>
</tr>
</tbody>
</table>
Liability Management
CURRENT SITUATION

• The impact of the COVID-19 crisis on the general economy is widespread, but the length and scope of its impact remain uncertain.

• Although hospitals have prepared to care for a huge number of patients, that demand is not expected to translate to more dollars for healthcare systems based upon current expectations and ultimately will result in increased expenses.

• Because hospitals have postponed more profitable elective surgeries, in anticipation of treating these more costly, higher-acuity patients, they are experiencing significant loss of revenue as well as reduction in work force, with related severance and other costs.

• As a result, many hospitals and health systems are having to consider the impact of the above confluence of events in light of the following:
  • Cost cutting and other operational measures;
  • Impact on covenants in debt agreements, including financial covenants;
  • Ongoing access to credit for operations;
  • Refinancing options for debt coming due; and
  • Impact on reserves, borrowing base redeterminations and what that means for financing options and solvency analysis.
This presentation outlines two categories of options a health system may wish to consider in light of its current situation, projected business and financial condition and the challenging state of the financial markets today:

- Capital raising alternatives
- Liability management transactions

Any evaluation of these options should involve the input of the company’s management and finance teams as well as its other advisors with respect to cost of capital, relative value, timing, execution complexity and the advantages and disadvantages of various alternatives as well as the degree to which related courses of action (such as asset sales or other cost savings and operational steps) can be taken.

A company’s financing options and the ultimate decision of whether to pursue them also implicates the exercise of fiduciary duties by the Board of Directors—as with all material decisions, Board process is important.

While this presentation is general in nature, the evaluation of a particular company’s financing options requires individual analysis, in combination with input from the company’s investment bankers, rating agencies (if relevant), accountants and tax advisors.
CAPITAL RAISING ALTERNATIVES
FRESH CAPITAL RAISE

- Depending on the situation, many companies that need liquidity or are considering accessing the capital markets to preserve financial flexibility to navigate the crisis, will have to consider alternative financing options. These options may include the following:
  - Drawing down on existing revolving credit and term loan facilities;
  - New bank facility;
  - New bond offering (both tax-exempt and taxable);
  - Direct lending structures or private placement of debt;
    - Joint venture / SPV entities can be structured to accommodate direct debt investment into tax exempt structures
  - Federal government funding facilities;
    - Medicare Advanced Accelerated Payments
    - Main Street Expanded / New Loan Facilities (for profit only); a separate approach is currently being considered for NFPs
    - Municipal Liquidity Facility
    - FEMA
FRESH CAPITAL RAISE (CONTINUED)

- State funding facilities (PA HELP, NH Emergency Healthcare System Relief Fund, etc.);
- Transactions associated with non-core assets, such as acquisitions, divestitures, joint ventures with investors, or other new delivery models (e.g. ACO, revenue cycle, home health/hospice); or
- Off-balance sheet monetization of certain income concessions (parking, energy, etc.).
- Each of these options should be understood along a continuum, with potentially different timing, advantages and disadvantages.
### FINANCING ALTERNATIVES

**Comparison of Some Debt Options**

<table>
<thead>
<tr>
<th>Description</th>
<th>Timing</th>
<th>Draw-Down</th>
<th>New Bank Facility</th>
<th>Bond Offering</th>
<th>Direct Lending</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description</strong></td>
<td></td>
<td>Company draws on existing revolver or multi-draw term loan (if available) for immediate liquidity</td>
<td>Company enters into new bank facility with term and revolver facilities or adds incremental term loan</td>
<td>Company issues bonds (taxable or tax-exempt) through state or local authority in broadly marketed offering or private placement to finance capital projects or refinance existing debt</td>
<td>Company takes direct loan with direct lender(s)</td>
</tr>
<tr>
<td><strong>Timing</strong></td>
<td></td>
<td>Can be accomplished in a few days, unless an agent believes that the conditions to borrowing have not been satisfied</td>
<td>Depending on relationship with lending bank and borrower's structure, facility can be negotiated relatively quickly but delays possible due to diligence and credit underwriting process</td>
<td>Even for borrowers with investment grade ratings, sufficient debt capacity and an established state or local finance authority, it can take several weeks to several months</td>
<td>Due to negotiations with single lender and lack of marketing period – several weeks to several months, but underwriting process may be longer than traditional bank facility</td>
</tr>
</tbody>
</table>

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*FINANCING ALTERNATIVES*
## FINANCING ALTERNATIVES

<table>
<thead>
<tr>
<th>Benefits and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Draw-Down</strong></td>
</tr>
<tr>
<td>+ Immediate access to liquidity</td>
</tr>
<tr>
<td>+ Relatively low cost given current rate environment</td>
</tr>
<tr>
<td>+ Lowest execution complexity</td>
</tr>
<tr>
<td>- Could signal financial challenges (suggest anticipating IR/PR questions in advance)</td>
</tr>
<tr>
<td>- Cheaper alternatives may be available</td>
</tr>
<tr>
<td>- Will need to address questions regarding satisfaction of draw conditions (including certifying reps and warranties on draw date and absence of MAE) and assess impact on bond covenants</td>
</tr>
<tr>
<td>- May trigger disclosure obligations in connection with outstanding bonds</td>
</tr>
<tr>
<td><strong>New Bank Facility</strong></td>
</tr>
<tr>
<td>+ Longer term financing source, with immediate liquidity via term loan/revolver</td>
</tr>
<tr>
<td>+ Relatively low cost given current rate environment</td>
</tr>
<tr>
<td>+ Prepayment flexibility</td>
</tr>
<tr>
<td>+ Low execution complexity (depending on borrower structure)</td>
</tr>
<tr>
<td>+ Leverages existing bank relationships</td>
</tr>
<tr>
<td>- Likely delayed execution process (unless investment grade)</td>
</tr>
<tr>
<td>- May not provide sufficient liquidity</td>
</tr>
<tr>
<td>- Principal amount and available collateral may be limited by existing bond covenants</td>
</tr>
<tr>
<td>- May require more restrictive covenant package if borrower viewed as distressed</td>
</tr>
<tr>
<td><strong>Bond Offering</strong></td>
</tr>
<tr>
<td>+ Cost-efficient capital raise method, although incrementally more expensive than bank loans</td>
</tr>
<tr>
<td>+ Relatively low execution complexity (depending on issuer and borrower/obligated group/credit group structure)</td>
</tr>
<tr>
<td>- Limited availability if not highest investment grade, insured, or high yield bonds</td>
</tr>
<tr>
<td>- Call protection (including redemption option)</td>
</tr>
<tr>
<td>- Likely extensive due diligence and onerous legal terms in underwriting agreement</td>
</tr>
<tr>
<td>- Limited to primarily capital projects or refunding and refinancing existing debt, potentially with taxable bonds</td>
</tr>
<tr>
<td><strong>Direct Lending</strong></td>
</tr>
<tr>
<td>+ Faster execution timeline relative to traditional bank loan</td>
</tr>
<tr>
<td>+ Relatively low execution complexity (one lender usually)</td>
</tr>
<tr>
<td>- Willingness of direct lenders to deploy capital in current market remains untested</td>
</tr>
<tr>
<td>- Likely higher borrowing rate than traditional bank loan</td>
</tr>
<tr>
<td>- Potentially significant diligence/underwriting process</td>
</tr>
<tr>
<td>- Larger deals will require participation of multiple capital providers and increase negotiating complexity</td>
</tr>
</tbody>
</table>
LIABILITY MANAGEMENT
LIABILITY MANAGEMENT

• Liability management refers to a range of options designed to allow a company to effectively extend its debt maturity, modify restrictive covenants, waive outstanding defaults, and otherwise manage outstanding liabilities.

• Primary objectives of liability management are to:
  • Address debt maturities that cannot be repaid or readily refinanced in the marketplace;
  • Enhance financial flexibility by extending maturities, relaxing covenants and restrictions on use of resources and seeking other amendments;
  • Increase liquidity (cash, borrowing availability);
  • Pursue alternative financing sources, including payor advances; and
  • Avoid more drastic financial alternatives if a consensual transaction or recapitalization/restructuring cannot be achieved with the company’s debt holders, such as bankruptcy.

• Assure that the Board and senior leadership of the organization have been informed and considered the impact of COVID-19 on all of its stakeholders, including exploring alternatives to address the organization’s financial needs.

• Paramount goal – minimize risk of default and alleviate pressure to refinance so management can focus on operational and strategic initiatives and opportunities presented by the crisis.
## LIABILITY MANAGEMENT – SIGNS OF DISTRESS

<table>
<thead>
<tr>
<th>Financial</th>
<th>Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trading levels of debt at distressed levels</td>
<td>Significant increase in uninsured patients</td>
</tr>
<tr>
<td>Credit downgrade</td>
<td>Vendor/supplier difficulties</td>
</tr>
<tr>
<td>Debt document defaults or financial covenants that are too restrictive</td>
<td>Requests for adequate assurance</td>
</tr>
<tr>
<td>Reporting/technical issue</td>
<td>Material litigation or government enforcement actions</td>
</tr>
<tr>
<td>High leverage or low interest coverage</td>
<td>Significant negative survey findings including Immediate Jeopardy</td>
</tr>
<tr>
<td>Upcoming maturities</td>
<td>Announced divestitures</td>
</tr>
<tr>
<td>Pension funding/ERISA liability</td>
<td>Industry downturn</td>
</tr>
<tr>
<td>Accounting issues/restatement</td>
<td>Expiration of CBAs</td>
</tr>
<tr>
<td>Tightened/tightening margins</td>
<td>Significant terminations / furloughs</td>
</tr>
<tr>
<td>Borrowing base redetermination</td>
<td></td>
</tr>
<tr>
<td>Days cash on hand</td>
<td></td>
</tr>
<tr>
<td>Net days in accounts receivable</td>
<td></td>
</tr>
</tbody>
</table>
COMMON LIABILITY MANAGEMENT TRANSACTIONS

• Purchases of Bonds, particularly if the debt is trading at a significant discount to par, by one of two techniques:
  
  • Tender Offer:
    
      – A tender offer is a more formal process by which the company announces and solicits the purchase of debt with all debt holders, using an Offer to Purchase document.

      – The most effective method to canvas the widest audience of debt holders, but the company’s offer becomes subject to potential group holdouts and price negotiations.

      – Purchase price can be determined using one of several methodologies, including fixed price, a discount of interest payments to the first call date and others.

      – SEC requirements include keeping the offer open for 20 business days, among other things.
• Private or Open Market Purchases:
  – Involves one-off negotiations with individual debt holders, with individual price negotiations.
  – A conduit 501(c)(3) borrower can buy its own bonds (both variable rate qualified tender bonds and fixed rate bonds) without causing an extinguishment of the bonds. Recently many borrowers have been doing just this with respect to variable rate bonds in the secondary market because of failed remarketings or very high variable rates.
  – However, any potential amendment to the terms of the bonds requires a careful fact-specific analysis to avoid triggering a reissue of the bonds and any subsequent tax consequences to the bond holder.
  – Depending on the circumstances, a restructuring is also possible:
    – If the bonds are callable, the borrower could restructure the bonds with a new tax-exempt current refunding bond issue.
    – If they are not callable, the borrower could restructure the bonds with a taxable advance refunding bond issue.
  – The quickest, most targeted way to purchase debt, but with limits on the amount of debt that can be solicited and purchased under the SEC’s Creeping Tender Doctrine.
COMMON LIABILITY MANAGEMENT TRANSACTIONS (CONTINUED)

• Amendments & Consent Solicitations
  • Involves amendment of bank credit agreements or indentures (done by a consent solicitation). Any such amendment should be carefully analyzed regarding triggering a reissue of the bonds and resulting tax consequences to the bond holder.
  • For bonds, the consent solicitation can be added to a tender or exchange offer as a way to incentivize participation, since holders of the outstanding bond that do not participate in the transaction will be left holding a less liquid, amended bond.

• In thinking about the value of liability management options, analysis is required to figure out what to solve for, which involves an understanding of the company’s operations and capital structure (and how the two are aligned), projections, cash levels and access to liquidity, identity, mindset and objectives of creditors, to name a few.
LIABILITY MANAGEMENT – EXPANDED VIEW

- Liability management principles can also be used to proactively manage contingent liabilities or other off-balance sheet liabilities that, if left unchecked, could result in disabling future liabilities.

- Examples of such liabilities include the following:
  - Significant contracts including long-term midstream supply agreements with fixed payment obligations;
  - Union contracts;
  - Pension obligations;
  - Retiree medical obligations; and
  - Tort liabilities including wrongful death actions associated with SNFs and other LTC facilities.

- Consider “Ring Fencing” potential contingent / off balance sheet liabilities to create a virtual barrier to separate a struggling business segment and its assets and liabilities from the rest of the company.

  - Special consideration should be given to skilled nursing facilities given the potential exposure associated with COVID-19.

  - Jones Day can assist with the implementation of this strategy and assess and help mitigate any related potential risks.
FORMS OF SALE/JOINT VENTURE OF COMMUNITY HOSPITAL/HEALTH SYSTEM

• Asset sale transaction
• Lease transaction
• Substitution of member transaction
• Co-member transaction
• Asset consolidation to effect a new single provider
• Joint operating arrangement maintaining separate asset structures
• Health System/AMC would acquire the operating assets of Community Hospital/Health System’s hospital facility pursuant to an asset purchase agreement.

• In exchange for its assets, Community Hospital/Health System would receive fair market value consideration and no/limited reserved powers over the operation of its former hospital facility.
• Health System/AMC would acquire the operating assets of Community Hospital/Health System’s hospital facility pursuant to a 30 year lease agreement.

• In exchange for its assets, Community Hospital/Health System would receive fair market value rental consideration and no/limited reserved powers over the operation of its former hospital facility.
LEASE OF COMMUNITY HOSPITAL/HEALTH SYSTEM ASSETS

• Health System/AMC would enter into a lease and management services agreement with Community Hospital/Health System, under which Health System/AMC would take over the responsibility to manage and operate Community Hospital/Health System

• The lease would be structured as a 30 year capital lease, with a purchase option for a pre-negotiated nominal price at the end of the term. The lease payment would be determined by an investment banker or valuation firm, valuing Community Hospital/Health System as if it were being sold, and then converting that value into a 30-year lease payment stream using an agreed-upon discount rate

• Community Hospital/Health System would transfer its hospital license and Medicare provider number to Health System/AMC without separate consideration

• Health System/AMC would purchase the existing A/R and the existing inventory at the inception of the lease for cash

• Health System/AMC would offer employment to the existing employees of Community Hospital/Health System immediately prior to the inception of the lease
HEALTH SYSTEM/AMC BECOMING SOLE MEMBER OF COMMUNITY HOSPITAL/HEALTH SYSTEM

- Health System/AMC would become the sole member of Community Hospital/Health System.

- In exchange for allowing Health System/AMC to become the sole member of Community Hospital/Health System, Parent of Community Hospital/Health System would receive fair market value for its assets and no/limited governance rights.
HEALTH SYSTEM/AMC BECOMES CO-MEMBER OF COMMUNITY HOSPITAL/HEALTH SYSTEM

- Health System/AMC and Parent of Community Hospital/Health System would become co-members of Community Hospital/Health System.
- Health System/AMC would pay fair market value consideration for its interest in Community Hospital/Health System.
- Health System/AMC would exercise majority control over Community Hospital/Health System.
- Parent of Community Hospital/Health System would receive limited reserved powers.
- Health System/AMC and Parent of Community Hospital/Health System would participate in the earnings of Community Hospital/Health System based on negotiated economic interests.
CONSOLIDATED HOSPITAL FACILITIES JOINT VENTURE (JOINT VENTURE WITH OPERATING DIVISIONS)

Health System/AMC

Joint Venture Company

Parent of Community Hospital/Health System

Foundation, Other Operations

Operating Division

Health System/AMC Hospital Operations

Hospital 3

Community Hospital/HS Hospital

Operating Division

Hospital 1

Operating Division

Hospital 2

Operating Division

Hospital 4

Other Operations

At least 51% Member Interest

No greater than 49% Member Interest
SUMMARY OF CONSOLIDATION OPTION

- Health System/AMC Hospital 3 and Community Hospital/Health System would be merged together to create the joint venture company. The joint venture company would then operate the campuses of each hospital as a separate division.

- Health System/AMC would exercise majority control over the governance of the joint venture company. Parent of Community Hospital/Health System would appoint an agreed upon number of trustees to the governing board of the joint venture company.

- The joint venture company would exercise all material decision-making authority for each of its divisions, including approval of the operating and capital budgets, strategic planning, managed care contracting and the hiring/firing of all senior management.

- Health System/AMC and Parent of Community Hospital/Health System would share in the net income from the operation of the joint venture company in accordance with economic interests to be determined.

- The joint venture company would own all assets previously held by each hospital and would assume each hospital’s liabilities.

- The joint venture company could operate each division with a separate license, provider number and medical staff. Alternatively, the joint venture company could consolidate one or more divisions for licensure, provider number and medical staff purposes.
JOINT OPERATING COMPANY

Health System/AMC

Joint Operating Company

Health System/AMC Hospital Operations

Operating Division

Hospital 1

Hospital 2

Hospital 3

Hospital 4

Parent of Community Hospital? Health System

At least 51% Member Interest

No greater than 49% Member Interest

Joint Operating Agreement

Foundation, Other Operations

General Membership Interest

Limited Membership Interest/Contractual Rights

Community Hospital/HS Hospital

Operating Division

Other Operations

Limited Membership Interest/Contractual Rights

Operating Division
SUMMARY OF OPTION

• Health System/AMC and Parent of Community Hospital/Health System establish a joint operating company that could be given a limited membership interest in Health System/AMC Hospital 3 and Community Hospital/Health System, respectively, to enforce its respective rights under the joint operating agreement.

• Health System/AMC would exercise majority control over the governance of the joint operating company. Parent of Community Hospital/Health System would appoint an agreed upon number of trustees to the governing board of the joint operating company.

• The JOC would exercise all material decision-making authority for the hospitals, including approval of the operating and capital budgets, strategic planning, managed care contracting and the hiring/firing of all senior management.

• Health System/AMC and Community Hospital/Health System would share in the net income (and share responsibility for any net losses) from the operation of the hospitals in accordance with economic interests to be determined.

• Each hospital would continue to own all of its assets and would retain its liabilities.

• The members of each hospital entity would elect the board of the hospital.
FORMS OF POTENTIAL JOINT VENTURES WITH COMMUNITY HOSPITAL/HEALTH SYSTEM AND HEALTH SYSTEM/AMC

- Community Hospital/Health System provider-based joint venture for discrete service lines
- Service line revenue merger involving Community Hospital/Health System and one or more Health System/AMC hospitals
SERVICE LINE REVENUE MERGER JOINT VENTURE

Health System/AMC Hospital(s)

Community Hospital/Health System

Joint Operating Company

Specialty Service Line

Specialty Service Line

Equity/Governance Interests TBD

Payors

Payor Contract for Health System/AMC Hospital

Must be located on main campus of Health System/AMC Hospital

Payor Contract for CH Site

Must be located on main campus of Community Hospital/HS Hospital

Payor Contract for Health System/AMC Hospital Site
SERVICE LINE REVENUE MERGER JOINT VENTURE

- Health System/AMC, through one or more of its affiliate hospitals, would enter into a joint operating agreement with one or more Community Hospital/Health Systems hospitals ("CH/HS hospital") to create a joint operating company ("JOC") that will jointly operate and share the results of operations of a common inpatient or outpatient service of Health System/AMC Hospital and CH/HS hospital that is located on the main campuses of Health System/AMC Hospital and CH/HS hospital.

- The parties relative profits, governance and management interests in the JOC would be set forth in the joint operating agreement. Potential mechanism for Health System/AMC to provide CH/HS hospital with needed capital.

- JOC becomes limited rights member of the participating hospitals for the sole purpose of exercising authority over the subject service line (development of operating and capital budgets, strategic planning, etc.).

- Net income/loss from each of the participating hospital’s subject service line are combined and re-allocated based on the parties’ respective profits interests.

- No change in ownership of assets, W-2 employer, provider of care or payor contracts.

- The joint ventured service must continue to be operated by CH/HS hospital and Health System/AMC Hospital, respectively, so that the service continues to meet the CMS requirements for being provider-based to CH/HS hospital or Health System/AMC Hospital.

- Health System/AMC could provide management services to the JOC and CH/HS hospital service line as an integrated component of Health System/AMC.
COMMUNITY HOSPITAL/HEALTH SYSTEM PROVIDER-BASED JOINT VENTURE

Health System/AMC

Community Hospital/Health System

Community Hospital/HS Hospital Inpatient/Outpatient Department (Provider-Based to Community Hospital/HS Hospital)

Payors

Equity/Governance Interests TBD

Community Hospital/Health System contracts with Payors

Must be located on main campus of Community Hospital/HS Hospital

Health System/AMC Physicians

Health System/AMC Hospital
COMMUNITY HOSPITAL/HEALTH SYSTEM PROVIDER-BASED JOINT VENTURE

• Health System/AMC, through one of its affiliate hospitals, would enter into a joint venture agreement with Community Hospital/Health System (“CH/HS”) to jointly operate and share the results of operations of an inpatient or outpatient service of CH/HS Hospital that is located on the main campus of CH/HS Hospital.

• The parties relative profits, governance and management interests would be set forth in the joint venture agreement. Potential mechanism for Health System/AMC to provide CH/HS with needed capital.

• No change in ownership of assets, W-2 employer, provider of care or payor contracts

• Health System/AMC could provide management services to the joint venture

• Health System/AMC physicians could enter into a Professional Services Agreement to staff the ventured service on an exclusive basis. This could include specialized care teams, such as cardiovascular open heart teams. Services could be billed on a separate or combined bill basis.

• All hospital services would be billed under CH/HS Hospital’s provider number.

• The joint ventured service must be operated so that it continues to meet the CMS requirements for being provider-based to CH/HS Hospital
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