Lead Left Interview – Tess Virmani (Part 2)

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This week we continue our conversation with Tess Virmani, SVP and Associate General Counsel of the Loan Syndications and Trading Association (LSTA). Tess works with the LSTA's Primary Market Committee and Trade Practices and Forms Committee on legal projects. She also works on advocacy and regulatory matters. ***Second of two parts – View part one*****.**

The Lead Left: Does it help having one party control Congress?

Tess Virmani: It helps! But some people confuse a Republican majority as translating easily to a disapproval of the Guidance. That's not necessarily the case.

TLL: But how much would change if LLG was approved as a rule?

TV: Probably not much in that it is being applied quite strictly now. What if it was disapproved? SNC [Shared National Credit] reviews aren't going away. It might be hard to prove they aren't applying the principles underlying LLG anyway. A big source of relief if the rule is disapproved would be on the monitoring requirements side.

TLL: So monitoring regulations would go away if LLG is disapproved.

TV: One of the results of the Guidance has been that banks' "leveraged loan" books now include portions of the investment grade portfolio, because those companies are greater than 4x levered on a total basis or 3x levered on a senior basis. If banks no longer had to carry out the monitoring requirements for those loans, that would be welcome.

TLL: What about asset-based lending? I've heard that sector has gotten wrapped up in the LLG?

TV: The regulations don't distinguish as clearly as they might between cash flow and ABL lending. There is language that standalone ABL facilities are excluded, but not if part of a larger debt structure. That would not longer be an issue if the Guidance was disapproved.

TLL: So Tess, tell us about your responsibilities at LSTA? We know your other colleagues very well.

TV: The majority of my time is spent with Bridget Marsh [EVP & Deputy General Counsel] working with our two largest member committees, the Primary Market Committee and the Trade Practices and Forms Committee on issues like best practices, standard documentation, etc. I also work closely with Elliot Ganz [EVP & General Counsel] and Meredith Coffey [EVP of Research and Analysis] who head the LSTA's advocacy efforts. I also spend time on the conference circuit. We are after all a trade association so education is one of our pillars of activity. Educating our members on current issues in the loan market and presenting outside our membership on the loan market itself are core responsibilities.

TLL: What's the LSTA's focus right now?

TV: We are very excited about the second edition of *The LSTA's Complete Credit Agreement Guide* which was published last year. Bridget and I worked closely with the authors, Michael Bellucci and Jerome McCluskey of Milbank, to produce this revised edition which covers all of the post-financial crisis credit agreement developments as well as LSTA guidance which has developed since the first edition was published in 2009. Of course we are always focused on our standard documentation. Members who are active in the secondary market know our docs well and we have been building out our primary market offerings.

This year we are working on our first complete credit agreement form for investment grade revolving facilities. Our members seem happy to see that. Standardization really helps bring efficiency.

TLL: How about a leveraged template? That would be quite an exercise coming up with a standard!

TV: It certainly will! We definitely hope to do more in that arena. Currently, we have our Model Credit Agreement Provisions which are LevFin focused and have been slowly expanding. It would be great to see those become a complete credit agreement. The European market does have those forms. But Europe as you know is a very different market. It's much more bank dominated. And generally the market has a different attitude to the process.

TLL: We wrote not long ago about the issue of loan settlement. Are there other hot buttons with traders?

TV: It comes and goes. When trading issues come up, they know who to involve at the LSTA. Since the financial crisis, our market advisory activity has increased. Market participants come to us more quickly now. We will consult with the various stakeholders, including debtor's counsel if necessary, to develop an advisory which is then reviewed by our Trade Practices and Forms Committee and then published in final form a few days later. When defaults happen, we see more of these requests. Our advisories have covered many different issues, but often they center on how adequate protection payments should be handled or how payments should be distributed upon emergence. Also, restructuring support agreements often add a layer of complexity so we try to sort through any trading questions that arise.

TLL: I know that the LSTA has sued the SEC and Fed on behalf of the loan industry regarding risk retention for CLOs [link]. Any update?

TV: We had a disappointing outcome in the DC District Court last year [granting summary judgment to the federal agencies]. We are appealing that decision to the Court of Appeals, though there's likely not a ruling until next year. Oral arguments should be heard in the fall.

TLL: How would you summarize your case?

TV: There are three planks to our argument, but probably the most relevant is that we are fighting for a correct definition of credit risk. The original rules on risk retention under Dodd-Frank required CLO managers to retain 5% of the entire vehicle. We have argued that as drafted the rules require far more than 5% of credit risk. Instead of 5% of the face amount of the CLO, the LSTA had proposed 5% of the equity (plus credit risk in the subordinated fees) if the CLO meets certain "Qualified CLO" criteria.

TLL: Did the DC court give any explanation for why your proposal didn't address their concerns?

TV: No, the DC court essentially gave deference to the agencies' rulemaking. We continue to believe our argument is absolutely correct. But being right and being successful are two different things. We should find out if we are both early next year!

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