

# PRESS RELEASE

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## **European Leveraged Finance Association and Akin Gump: Investors in the dark on risks outside of the restricted group, with potentially serious consequences**

- **Amendment and waiver requests provide valuable opportunities for lenders to request additional information**

**London, 22 March 2022:** Amendment and waiver requests from borrowers during the pandemic highlighted the risks that current reporting obligations pose for investors, according to the European Leveraged Finance Association (ELFA) and international law firm, Akin Gump.

In the jointly authored Insights report published today, [Thinking Outside the Box: How to identify potential risks outside of the restricted group](#), ELFA and Akin Gump outline that as lenders have responded to such requests, it has become apparent that borrowers are not necessarily obliged to disclose or report all pertinent information regarding the financial and other status of the borrower group and capital structure to lenders. This is resulting in blind spots for investors, with potentially serious consequences.

Categories of information “outside the box” that can cause concerns for investors include immaterial or unrestricted subsidiaries, holding companies, supply chains, and material contractual arrangements.

The report highlights recent examples where failure to disclose information has left investors in the dark about what lies “outside of the box”.

- Excessive debt at Casino’s majority owner Rallye and its parent entities led to years of large dividend pay-outs and underinvestment in the restricted group, ultimately culminating in Rallye falling into Sauvegarde and Casino’s unsecured rating migrating from investment grade to the current Caa1/B.
- Supply chain financing at either the restricted group or a parent entity can often go undetected because any debt-like obligation will likely be hidden with working capital on the balance sheet rather than short term debt. The collapse of Shop Direct’s lender (Greensill), caused a cash need at the parent holdco that was not required to be disclosed to lenders in the restricted group.
- Agrokor, a Croatian-based Balkan food retailer and manufacturer, fell into restructuring when it faced a liquidity squeeze and couldn’t manage its debt maturities in 2017. While there were several financial issues at play (including allegations of fraud), the “trigger” event was a springing maturity in certain bank obligations that was linked to a refinancing (or lack thereof) of the holdco PIK debt.

ELFA and Akin Gump suggest questions that investors should ask to help them obtain information that could be material to an investment decision. In particular, the report highlights that amendment and waiver requests present a valuable opportunity for a lender to request additional information, including: the details of used / unused basket capacity; the identity of any unrestricted subsidiaries and indebtedness at those entities; the nature of any holding company financing arrangements; and an overall assessment of the assets of the group in order to determine whether any additional security should be taken.

**Sabrina Fox, Chief Executive Officer, European Leveraged Finance Association, said:** “Lenders have spent much of the past two years responding to amendment and waiver requests from borrowers, assessing asks for covenant resets and addressing additional capital needs considering the impact of Covid-19.

“As recent examples have demonstrated, the consequences of being left in the dark about what lies “outside of the box” can be serious. Asking the right questions and holding firm to such requests is key. A typical covenant package only requires disclosure of what’s “inside the box”, but investors should think more broadly to ensure they have all the information they need. It may well be an uphill battle to get this information at the outset of a new transaction, but investors should consider asking for additional diligence and information when responding to amendments and waivers, and covenant resets.”

**Amy Kennedy, corporate partner at Akin Gump, added:** “This report highlights the potential risks faced by investors in this context and how these may be mitigated. By focussing on recent case studies and suggesting specific questions that investors can request from a company, investors should be well placed to have all salient facts in front of them ahead of making investment decisions.”

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**About European Leveraged Finance Association (ELFA)**

ELFA is a trade association comprised of European leveraged finance investors from over 55 institutional fixed income managers, including investment advisers, insurance companies, and pension funds. ELFA seeks to support the growth and resilience of the leveraged finance market while acting as the voice of its investor community by promoting transparency and facilitating engagement among European leveraged finance market participants. For more information, please visit the ELFA website: [www.elfainvestors.com](http://www.elfainvestors.com).

**About Akin Gump**

[Akin Gump Strauss Hauer & Feld LLP](#) is a leading international law firm with more than 900 lawyers and advisors in offices throughout the United States, Europe, Asia and the Middle East.