Proskauer

Hybrid Horizons

Our *Hybrid Horizons* series is focused on analyzing the evolving hybrid capital market, including its structures, trends, and practical applications within private capital. It provides insights into how hybrid instruments are being used and the governance, covenant, tax and other considerations that participants in today's complex financing markets need to know.

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1. Hybrid Horizons: Hybrid Capital Market Trends

Hybrid Capital sits between debt and equity and is becoming an increasingly important product class for investors and companies seeking private capital. We explain why it has become a popular tool and how Hybrid Capital is being used — from liquidity enhancement to growth capital. This opening piece in our Hybrid Horizons series sets out the market drivers and how they point to staying power.

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2. Hybrid Horizons: Covenants in Today's Hybrid Capital Instruments

Covenants benefiting Hybrid Capital instruments can vary significantly from deal to deal. But certain key covenants are needed to protect against excess leverage, to maintain Hybrid Capital's place in the liquidation waterfall, and to prevent other leakage to junior capital. This second piece in our Hybrid Horizons series discusses the types of covenants to expect in Hybrid Capital transactions and the rationales behind them.

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3. Hybrid Horizons: Investor Group Issues in Hybrid Capital Transactions: Approvals, Sacred Rights and Disproportionate Treatment

This third installment in our Hybrid Horizons series addresses inter-investor group dynamics -- issues to consider regarding the internal workings of a group of unaffiliated investors who participate in a Hybrid Capital issuance.

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4. Hybrid Horizons: U.S. Tax Considerations in Hybrid Capital Instruments

The tax implications of Hybrid Capital instruments can be significant for investors and issuers. Many factors should be considered when structuring and documenting Hybrid Capital instruments, including the tax classification of the issuer and the hybrid capital instrument itself, as well as the nature and tax domicile of the investors. This article summarizes the primary tax considerations at play and highlights the importance of involving experienced tax advisers to avoid unexpected tax costs and inefficiencies.

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5. Hybrid Horizons: Hybrid Capital as a Tool in Out-of-Court Debt Workouts

Today's dynamic credit markets, along with other macroeconomic trends, have created financing and liquidity challenges for certain borrowers and issuers. Hybrid capital has emerged as a versatile tool that can be tailored to address a range of strategic objectives for both borrowers and capital providers. Whether deployed as consideration for covenant relief, used to right-size balance sheets through debt-for-equity swaps or structured to facilitate a transfer of control, these instruments offer creative, value-preserving alternatives to more disruptive outcomes. As a result, hybrid capital is playing an increasingly central role in out-of-court debt workouts and broader restructuring strategies.

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