

ENERGY FINANCE AND TRANSACTIONS

Course Proposal

Title: Commercial Finance Transactions: Understanding commercial loan agreements and key negotiation points.

Catalogue Description: This course will immerse students in practical business and legal concepts inherent in commercial financing transactions and demonstrate how those issues manifest themselves in the financing documents drafted by lawyers. Students will learn the provisions of financing documents, and, importantly, learn the legal and business issues behind the provisions. The tools and concepts taught in class lectures will be implemented by students in practice through negotiation and drafting of a commercial loan utilizing real world current forms of a syndicated credit agreement and term sheet. This course will provide the basic foundational legal and business concepts related to commercial loan agreements that practicing attorneys wish all first year attorneys were already familiar with.

The first half of the course will lay the groundwork for the principal provisions of a commercial loan based upon assigned readings from *The LSTA's Complete Credit Agreement Guide, Second Edition*, and lectures on commercial loan transactions. In the second half of the course, students will be divided into borrower and lender teams serving as the lawyer for their respective “clients” to negotiate key provisions in a Term Sheet and Credit Agreement for a commercial loan. The “clients” will be the course instructors and/or associates working with the course instructors at their respective law firms who will be acting as bankers or corporate borrowers, respectively. With input from the client, groups will negotiate and agree on the final Term Sheet and Credit Agreement. The final work product will be a Credit Agreement redlined against the form. At the end of the course, in class, each group will discuss the final “deal” that was struck and explain the principal points of contention and how they drafted compromises in the documents.

In addition, the second half of the course will cover specialty finance topics including different structures and legal issues that arise in financing different types of assets. .

Credit Hours: Two hours.

Proposed Schedule: 15 weeks, consisting of 15 two-hour classes. Sessions 1-7 will cover assigned readings from the LSTA textbook along with lectures related thereto. Sessions 8-14 will be split between in-class negotiations and additional lectures on specialty topics. Session 15 will be the final exam.

Reading Assignments: Students will be assigned portions of *The LSTA's Complete Credit Agreement Guide, Second Edition*, by Michael Bellucci and Jerome McCluskey (“LSTA”) and various supplemental readings. Lectures will follow the reading assignments and students should be prepared to discuss reading materials in class. Final exam will be based heavily on reading materials and therefore it is imperative for students to comprehend and stay on schedule with all reading materials.

Other Assignments: In between classes, students will have conference calls with their “clients” and prepare redlines of form Term Sheet and Credit Agreement for review by their opposing counsel prior to the in-class negotiation sessions.

Class Structure: The classes will include both traditional lecture and transactional negotiation. The first half of the course is intended to provide the student with a background foundation to understand basic concepts in the loan agreement structure, while the second half of the course is designed to provide an overview of specialty topics. During the second half of the course, students will be able to apply this basic foundation of loan agreements through interaction with their “clients” and negotiation of specific points in the term sheet. The instructors will serve as the “clients” for purposes of the negotiations. Students will then incorporate the agreed changes to the term sheet into the credit agreement and negotiate further the final provisions of the credit agreement. Prior to the final class, students will be required to submit versions of their negotiated term sheet and credit agreement showing the changes that were agreed between the parties. The penultimate class will be lecture and discussion with time reserved for students to present the results of their “deal”.

Prerequisites: First year contracts. The teachers are accustomed to training associates with no exposure to finance or loan documentation.

Grading: Students will be graded on class participation (10%) and are expected to attend all classes, participate in the drafting and negotiation exercises (45%), and submit their final work product and a final exam (45%). In the event of illness or other extenuating circumstances causing a student absence, the student must make arrangements with the professors and their negotiation team member to complete missing work. An open book final exam (short answer) will be administered at the final class.

Learning Outcomes: Students will learn the basic principles of loan transactions, and how those principals are embodied in loan documentation. In addition to the substantive knowledge, students will gain insight into a career path. Increasingly the corporate or transactional legal departments of major law firms are a source of employment for law students, but students have limited opportunities to experience this type of practice during law school. Students who have already chosen this career path will be better prepared, having completed part of the training of a first-year associate.

Experiential Requirement: This course will satisfy the requirements of an experiential courses under the applicable guidelines as a “simulation course”.

Syllabus:

Class 1: Introduction to Energy Finance and Transactions

1. Discuss class format and structure lecture and negotiation process.
2. Lecture and Discussion on the Elements of Commercial Loan Documentation and uses and purposes of different loan structures (term, revolver, first lien/second lien, acquisition finance, project finance, etc.).

3. Survey of Form of Term Sheet and Form of Loan Agreement

Required Reading for Class 1:

1. LSTA, Chapters 1, 2, and 3: Introduction to commercial lending, types of loans, interest and fees.
2. Print out and familiarize yourself with the Form of Term Sheet and Form of Loan Agreement. Students can obtain these documents by emailing [Ramona.rodriguez@haynesboone.com] and requesting a copy.

Class 2: Elements of Secured Loan Documentation; Understanding Borrowing Bases

1. Discussion of fundamental principles of syndicated loan documentation, payment terms and interest, legal opinions and conditions precedent.
2. Discussion of the development and evolution of ancillary documents negotiated and executed to document loan transactions including: promissory notes, mortgages, security agreements.
3. Discussion of general borrowing base mechanics and collateral valuation as it relates to loan amounts.

Required Reading for Class 2:

LSTA, Chapters 4 and 5. Repayment and Conditions Precedent provisions under Loan Agreements.

Class 3: Reps, Warranties and Covenants in Loan Agreements

Discussion of the structure and use of borrower representations and affirmative, negative and financial covenants in the loan agreement.

Required Reading for Class 3:

LSTA, Chapters 6 and 7. Representations and Covenants.

Class 4: Security and Remedies under Loan Agreements

Discussion of guarantees, security interests and other credit enhancements. Discussion of defaults and remedies against the borrower and collateral. Discuss restructuring, bankruptcy and debtor in possession financing.

Required Reading for Class 4:

LSTA, Chapters 8 and 9. Security and Remedies.

Class 5: Loan Syndications, Assignments and Participations, Hedging and Rise of Alternative Lending Sources

Discussion of standardized syndicated loan agreements, intercreditor agreements and assignment of loans.

Required reading for Class 5:

LSTA, Chapters 10 and 11. Syndication and Loan Assignments.

Class 6: Borrower Provisions; Leveraged Lending Guidelines

1. Discussion of 'boilerplate' provisions, new changes introduced by borrowers.
2. Discussion of Leveraged Lending Guidelines

Required Reading for Class 6:

LSTA, Chapters 12, 13 and 14. Boilerplate and Borrower Provisions

Class 7: Banking Crisis and Market Impacts; Kickoff Meeting for Negotiations

1. Discussion of the market impacts on the banking industry stemming from the 2007 banking crisis.
2. We will assign lender/borrower teams for the loan negotiations, client contact information, and discuss the process of interaction with client and negotiation of the term sheet and loan agreement.
3. Prior to next class, students will contact their clients to discuss business terms of proposed loan based on initial draft of term sheet and identify issues for negotiation.

Class 8: In class negotiations

1. In class, students will negotiate changes to Term Sheet based on client input and identify any 'open' business terms.
2. Prior to next class, students will contact clients with open business issues list, and get feedback on acceptable terms.

Class 9: In class negotiations

1. In class, students will negotiate final terms of Term Sheet based on client feedback.
2. Prior to next class, borrower/lender teams will have a written mark-up to the loan agreement illustrating their respective concerns.

Class 10: In class negotiations, Guest speaker on specialty topic

1. In class, students will negotiate Credit Agreement based on the discussions since the last class.

2. Prior to next class, both sides will identify their final open issues for discussion in class at an “all hands call.”
3. Guest speaker: [Topic TBD]

Class 11: In class negotiations Guest speaker on specialty topic

1. In class, students will negotiate final language for agreed terms of Credit Agreement.
2. Prior to final class, Borrower Counsel will revise and circulate to Lender Counsel red-line ‘execution’ draft. Lender Counsel to sign off on final prior to final class.
3. Guest speaker: [Topic TBD]

Class 12: Private Equity and Alternative Lenders

Discussion of the role of private equity in the alternative lending market and related issues and trends.

Class 13: Energy Finance

Discussion of key topics in energy finance, including reserve based lending concepts, commodities hedging issues, conveyance-based financing structures and renewable energy and tax credit structures.

Class 14: Final Presentations

Students will present, by teams, the key business issues identified by clients, and how they negotiated and reached compromise on final language. Students will also discuss their assessment of the negotiation process, lessons learned on how to negotiate, talk with clients, and draft credit agreement terms consistent with negotiated issues.

Class 15 – Final Exam

Short Answer exam based on the readings and lectures.

Instructors: Todd Ransom and Jeff Nichols (Bios on following pages). Various guest speakers will also be included as per the syllabus.

PRACTICE AREAS

- Asset-Based Lending
- Derivatives
- Energy Project Finance
- Financial Services
- Mezzanine Finance & Private Equity
- Real Estate Finance
- Securities & Capital Markets
- Syndicated Lending

EDUCATION

- B.A., State University of New York at Plattsburgh
- J.D., University of Houston Law Center, cum laude
- Blockchain for Business Certificate, Cornell University, 2019

BAR & COURT ADMISSIONS

- Pennsylvania, 2017
- New York, 2010
- Texas, 2004
- *Licensed in New York, Texas & Pennsylvania. Practicing in North Carolina pursuant to Rule 5.5(e) of North Carolina Rules of Professional Conduct.

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During his career, Todd Ransom has served as counsel for banks, investment banks, hedge funds, private equity funds, insurance companies and other financial institutions in connection with syndicated, club and single lender financing transactions in various industries, including, leveraged finance, acquisition finance, mezzanine and second lien transactions, asset based lending, margin loans, hedge fund share loans, financing transactions for registered investment companies, prime brokerage and derivatives matters, receivables financing and supply chain finance, equipment finance, and various other structured lending transactions. Todd has also served as counsel for energy companies and financial institutions in connection with syndicated, club and single lender oil and gas reserve based financing transactions, financing transactions secured by midstream pipeline assets and other energy lending and acquisition/divestiture transactions.

Todd's strong mix of regulatory knowledge and transactional experience allows him to provide great value to his clients, many of which are highly regulated entities and require a sound regulatory understanding of various legal regimes. In addition to the transactions described above, Todd has advised clients in connection with margin regulations, broker-dealer regulations, the Investment Company Act of 1940, Rule 144, Section 13, Section 16 and other provisions of the Securities Exchange Act of 1934.

The value Todd is able to provide to his clients is also a result of his understanding of the day to day concerns and sensitivities of his clients given his time spent as an assistant general counsel at one of the world's largest financial institutions.

In addition to the work done for his clients, Todd also regularly speaks and publishes on various topics, including recent presentations on margin regulations, pre-foreclosure rights with respect to equity collateral, key issues in equities financing, and forbearance agreement fundamentals.



Education

- J.D., Southern Methodist University
Dedman School of Law, 1996
- M.B.A., Southern Methodist
University Cox School of Business,
1996
- B.A., University of Michigan, 1992

Bar Admissions

- Texas
- New York

Jeff Nichols

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Licensed in Texas and New York, Jeff has more than 20 years of experience representing a variety of clients in the energy and finance industries with secured and unsecured credit facilities, project finance and other structured energy transactions. As the co-chair of the Energy Practice Group, Jeff has broad experience in all facets of the energy business with a focus in the merchant energy industry particularly on working with ISDA, NAESB, EEI and other industry form agreements.

Jeff is on the Finance Advisory Board of Practical Law, as division of West Publishing Corporation, assisting with the publishing of materials on Oil and Gas Finance, and regularly teaches classes on Oil and Gas Finance for the Loan Syndications and Trading Association, Inc., a not-for-profit organization which promulgates document standards for syndicated credit agreements.