BALLANTYNE RE PLC:

A landmark restructuring of a distressed reinsurance securitisation

FTI Consulting was engaged by Ambac Assurance UK as lead advisor to the restructuring of Ballantyne Re Plc, an Irish capital markets securitisation of a closed block of US life insurance policies. This complex restructuring enabled the accelerated return of $800 million to senior noteholders and commutation of Ambac's financial guarantee liabilities.

Combining our expertise in both restructuring and the insurance sector, FTI Consulting led the development and implementation of this multi-faceted cross-jurisdictional restructuring. This involved one of the largest Regulation XXX closed book reinsurance transactions in recent years and the 'unwind' of the securitisation structure. The restructuring was implemented through an Irish Scheme of Arrangement, the first use of an Irish Scheme to restructure New York law debt.

Ballantyne Re Plc was a capital markets securitisation established in 2005 to provide reinsurance for a defined block of US level premium term life insurance policies.

At inception, the block consisted of 1.7m individual polices with a face amount of $183bn and a peak statutory reserve requirement of $2.3bn.

To meet the collateral obligations under the reinsurance agreement, Ballantyne issued $1.65bn senior notes and $270m junior notes. Proceeds were used to fund a Reinsurance Trust Account for the benefit of the counterparty to the reinsurance agreement.

The Ballantyne notes were issued under a New York law indenture and listed on the Irish Stock Exchange.

Ambac Assurance UK ("Ambac") guaranteed $900m of senior notes and was the Directing Party under the indenture. Assured Guaranty guaranteed a $500m tranche of senior notes, and a $250m tranche was issued with no financial guarantee.

Background to the restructuring

There were a number of issues at play within this situation. Nearly all of the funds raised from the senior notes were invested by a third-party investment manager in subprime securities which experienced losses of around $1bn between 2006 and 2008.

Compounding the investment losses, there were material adverse developments in Ballantyne's reinsurance liabilities.

This reflected emerging experience across the industry driven by policyholder behaviour and anti-selection at the end of the level term period.

At December 2018, the Reinsurance Trust Accounts held assets of $1.1bn, sufficient to repay approximately 45% of par value of the Ballantyne senior notes at legal final maturity in 2036.

This shortfall was projected to lead to a claim of $490m on the Ambac guarantees in 2036. Ambac's ability to address this liability was significantly limited by its own financial position – it was placed in run-off by its regulator in 2008 and had a Solvency II regulatory capital deficit of c.£240m in September 2018.

Ballantyne was deeply distressed from a noteholder and financial guarantor perspective. However, it remained in compliance with its reinsurance obligations and there was no trigger to bring together the diverse range of stakeholders required to restructure this 'bankruptcy-remote' SPV.

A multi-year engagement to deliver the restructuring

FTI Consulting, working closely with Ambac's UK, US and Irish legal counsels (Weil Gotshal & Manges and A&L Goodbody), was the lead advisor and architect of a comprehensive restructuring to unwind the securitisation structure and commute the Ambac guarantee liabilities.

Our team of experts led a multi-year engagement with key stakeholders including Ballantyne noteholders, Ambac's regulator, Security Life of Denver (Ballantyne's reinsurance counterparty), Assured Guaranty and Hannover Re (third-party administrator of the defined block) to assess and develop restructuring options.

Following a successful competitive marketing process for the defined block undertaken by FTI Consulting, the restructuring was proposed by Ambac to Ballantyne in 2018. The core elements of this complex multi-faceted transaction included:

- Novation of Ballantyne's reinsurance agreement with SLD to Swiss Re Life & Heath America ("SRLA"), with consideration of c.$320m funded from the Trust Accounts
- Accelerated return of $800m capital from the Reinsurance Trust Accounts to senior noteholders. This provided a recovery of c.52% of par and an exit at a significant premium to the historical trading prices of the notes
- Commutation payment by Ambac of 17.4% and 14.5% of par value of the two Ambac-guaranteed note tranches. The commutation payment represented c.20% of Ambac's gross assets, requiring approval by the PRA
- Creation of a Holding Period Trust to hold funds in support of reps & warranties provided to SRLA and other indemnities, and to make deferred distributions to noteholders
- Preservation of Assured's financial guarantee, despite the cancellation of the underlying securities

The restructuring was implemented using Ambac's rights as Directing Party under the indenture, together with an Irish Scheme of Arrangement with US Chapter 15 recognition. This implementation structure was required to:

- Effect the required flow of funds, including a turnover mechanism under the Scheme to enable payments not contemplated by the indenture (1.25% lock-up fee, funding the Holding Period Trust, transaction costs)
- Allow Ballantyne junior notes to be excluded from the Scheme and cancelled under the terms of the indenture
- Effect the commutation across all Ambac-guaranteed notes and the release of the Ambac guarantees
- Minimise the execution risk for the trustee, mitigating the need for significant pre-funded indemnifications
- Provide authority for Ballantyne to enter into the Restructuring Agreement and effect the release of all noteholder claims against Ballantyne
- Allow Ballantyne to be placed into solvent liquidation following completion

Both the Irish Scheme of Arrangement and the Chapter 15 recognition were challenged unsuccessfully by a minority noteholder.

The restructuring was completed successfully in June 2019.

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