

Convertible Bonds

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Claude DeSouza-Lawrence

Managing Director, Equity Linked Strategies
Raymond James
+1 727 567 2563
claude.desouzalawrence@raymondjames.com

Ryan Castillo

Partner
Mayer Brown LLP
+1 212 506 2645
rcastillo@mayerbrown.com

Peter Pergola

Director, Equity Linked Strategies
Raymond James
+1 727 567 2421
peter.pergola@raymondjames.com

Remmelt Reigersman

Partner
Mayer Brown LLP
+1 415 874 4259
rreigersman@mayerbrown.com



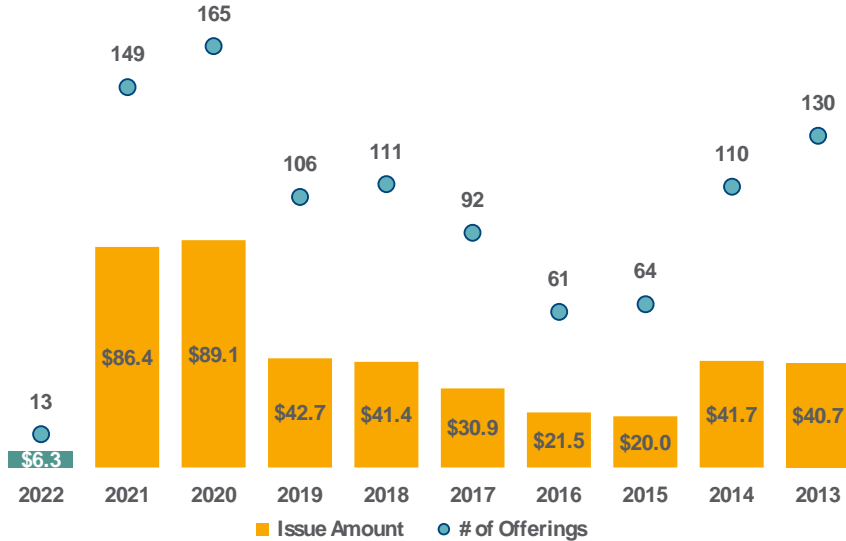
Agenda

- Understanding Convertible Bonds and the Market
- Tax Considerations
- Securities and Disclosure Considerations

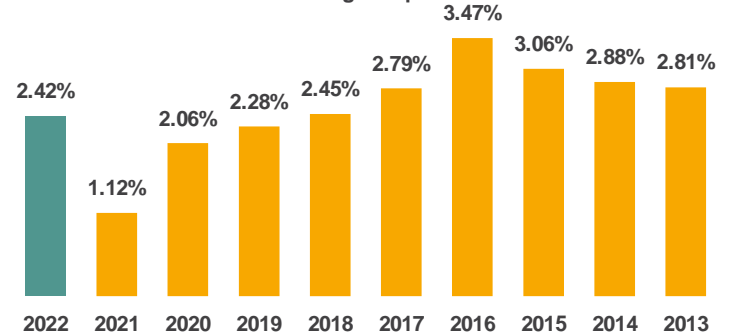
Understanding Converts

Convertible Debt Issuance in 2022 Has Slowed Dramatically

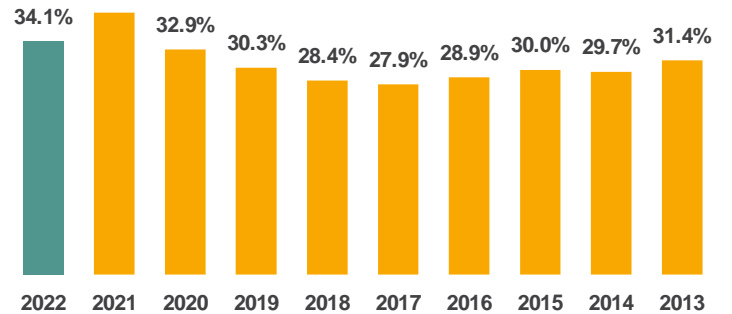
US Convertible Debt Issuance (\$ amounts in billions)



Average Coupon



Average Conversion Premium

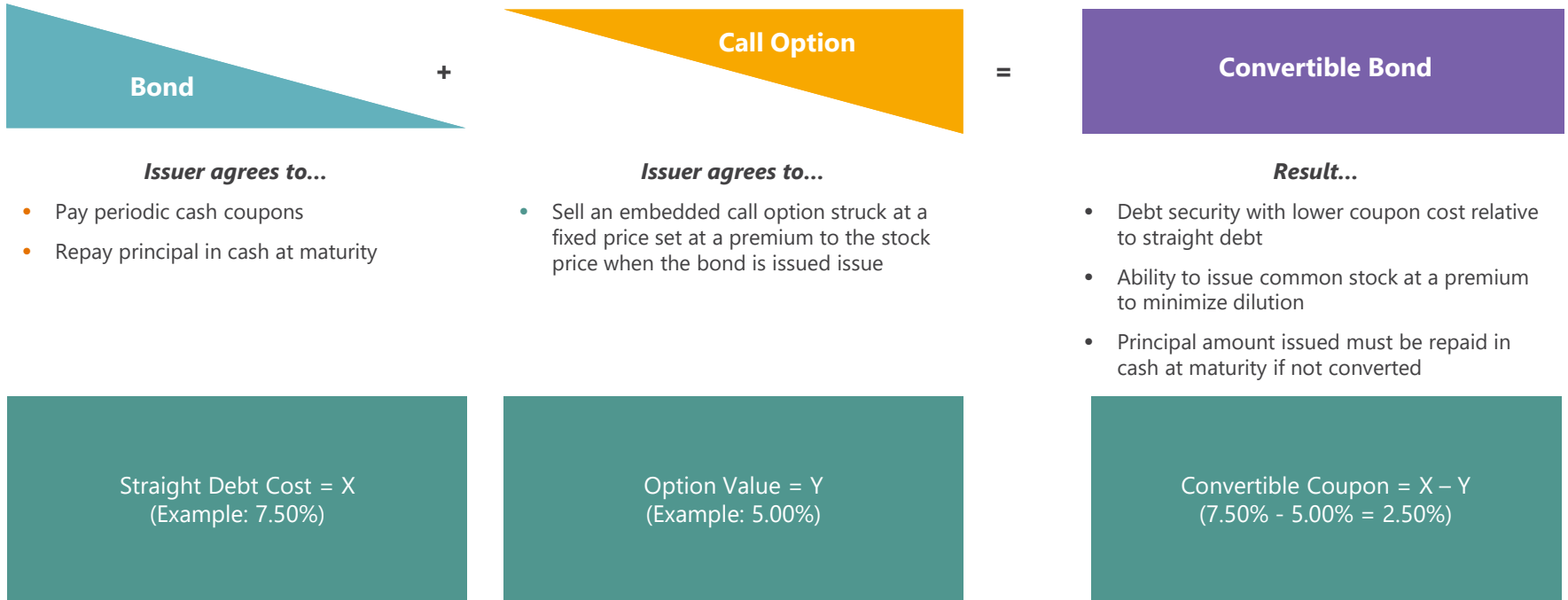


Convertible Structures Available to Companies

- While Plain Vanilla Convertible Debt is the most popular security of choice, companies may also have access to structured solutions and convertible preferred options

	Typical Characteristics
Plain Vanilla Convertible Debt	<ul style="list-style-type: none"> • Senior unsecured • No financial covenants • Cash coupon below comparable maturity non-convertible debt • Conversion price set at a premium to market (option to buy-up premium via “call spread” or “capped calls”) • 3 – 7 year maturities; 5-years most common • Flexible settlement upon conversion (cash or shares) to minimize dilution • Issued as private placement via Rule 144A and marketed publicly to Qualified Institutional Buyers (“QIBs”) only
Structured Convertibles	<ul style="list-style-type: none"> • Similar to traditional convertible debt • 3 – 5 years maturities • Likely to contain conditions and structural features that enhance investor protections
True Private Placement Convertible Debt	<ul style="list-style-type: none"> • Highly structured agented private placement • Structure and terms determined by investors through a competitive process • Typically placed with small group of investors including dedicated convertible, fixed-income cross over funds, and/or private capital providers
Plain Vanilla or Debt-backed Mandatory Preferred Securities	<ul style="list-style-type: none"> • Equity substitute • Cumulative dividends higher than convertible debt • 3 year automatic conversion into shares

Convertible Debt Allows Companies to Minimize Interest Expense and Dilution



Reasons For and Against Issuing Converts

RATIONALE & ADVANTAGES

- Unsecured debt; no incurrence or maintenance covenants
- Lower coupon cost relative to straight (non-convertible) debt
- Ability to issue equity at a premium
- Option to “buy up” premium and minimize dilution via derivative purchase
- Maxed out on senior leverage
- Lack of rating prohibits access to the high-yield market
- “All-in” cost of capital including purchase of the derivative compares favorably to high-yield debt
- Sizing and structure provide more flexibility than other debt alternatives
- Time to market / management marketing commitment is minimal
- Fixed coupon rate eliminates interest rate risk
- Settlement flexibility and conversion premium minimizes dilution
- Typically structured with issuer call option after 3 or 4 years
- Commonly issued via Rule 144A (no prospectus filing with the SEC)
- Broadens long term investor base (long-only convertible investors, income funds, sector buyers, arbitrage investors)

CONSIDERATIONS

- Classified as long-term debt on the balance sheet
- Periodic cash interest payments
- Principal amount must be repaid in cash if not converted prior to maturity
- Potential for share dilution upon conversion
- GAAP accounting
- No increase in the public share float / liquidity prior to conversion
- No equity credit provided by credit rating agencies (mandatory convertible preferred is an exception)

When to Consider Issuing Convertibles

Criteria	Comment / Recent Examples
Company seeking to refinance debt	<ul style="list-style-type: none"> Refinancing higher cost debt is easily understood and a common use of proceeds
Company has a funding need for an acquisition	<ul style="list-style-type: none"> Company's with acquisitions that have already been announced (audited financials on the target preferred) can use convertibles to repay any bridge financing
Company with history of successfully integrating acquisitions is building a "war chest" – growth capital	<ul style="list-style-type: none"> A Company with a history of successful acquisitions can raise opportunistic capital with a "general corporate purposes" use of proceeds to "pre-fund" potential acquisitions
Company recently announced a share buyback program	<ul style="list-style-type: none"> Convertibles provide an efficient means to execute a meaningful block share repurchase at a fixed price
Company is trading near a 52-week or all-time high	<ul style="list-style-type: none"> Company's with high valuations can sell stock even higher through a convertible
Company is trading near a 52-week or all-time low	<ul style="list-style-type: none"> See share buyback comment above
Company has high-cost, floating rate, senior secured bank debt that can be prepaid	<ul style="list-style-type: none"> Locking in fixed-rate, covenant free debt with low cash costs
Company has a funding need that can't be efficiently satisfied by one (equity or high-yield) offering	<ul style="list-style-type: none"> When a Company's funding need exceeds the amount that one investor group can digest efficiently, it can combine a high-yield or equity offering with a convertible

Factors Impacting Pricing and Feasibility

- Size of offering, and therefore, liquidity, has taken on increased importance to investors given the supply of new issuance

Factor	Note
Public Equity Float	<ul style="list-style-type: none"> • A larger public equity float benefits pricing because convertible investors perceive better common stock liquidity
Registration Statement	<ul style="list-style-type: none"> • Companies with an effective shelf or with WKSJ status will get better pricing on the margin
Average Daily Trading Volume	<ul style="list-style-type: none"> • Average daily trading volume in the common stock is a measure of liquidity—which as noted above is a positive for convertible buyers. Convertible investors want to know, “how many days will it take to trade the stock underlying this convertible?”
Short Interest as a % of the Public Float	<ul style="list-style-type: none"> • Higher short interest as a percentage of the public float reduces the number of shares that can be lent to investors and increases the cost to borrow shares
Borrow Cost	<ul style="list-style-type: none"> • Higher borrow cost impacts pricing terms negatively
Common Stock Volatility	<ul style="list-style-type: none"> • Higher stock volatility increases the value of the embedded conversion option allowing issuers to get a higher conversion premium at pricing
Common Stock Dividend	<ul style="list-style-type: none"> • A higher dividend negatively impacts convertible pricing
Credit Profile	<ul style="list-style-type: none"> • A longer history as a financially sound growth company leads to better pricing • A stronger credit profile lowers the credit risk premium and leads to lower interest rate (coupon) on a convertible note
Offering Size	<ul style="list-style-type: none"> • Noticeable breakpoints exist in the convertible market as the deal size moves above \$100 million <ul style="list-style-type: none"> – \$150 million to \$200 million deal size opens the transaction to ~100% of potential investors • Smaller deals are possible, but the universe of investors is smaller and pricing terms are higher (i.e. higher coupon and lower conversion premium) <ul style="list-style-type: none"> – additional investor protections or credit enhancements may be required
Use of Proceeds	<ul style="list-style-type: none"> • For a first-time issuer with no history in the public credit markets, a clearly defined use of proceeds, such as senior debt repayment, leads to better pricing

Many Convertible Debt Issuers use Capped Calls or a “Call Spread” to Increase the Premium

- A separate, over-the-counter derivative transaction that synthetically increases the conversion price of a convertible security
- The Issuer’s pays for the derivative at issuance; the net cost is treated as an immediate reduction to shareholders’ equity and is not periodically marked-to-market
- The derivative is worthless at maturity if the common stock is not trading above the conversion price
- Sale of the derivative is commonly conducted via a competitive auction

	Bond Hedge + Warrant (“Call Spread”)	Capped Calls
# of Contracts	<ul style="list-style-type: none"> • 2 (purchased call option, sold warrant) 	<ul style="list-style-type: none"> • 1
Cost	<ul style="list-style-type: none"> • Cheaper than Capped Calls due to longer-dated expiration of warrants 	<ul style="list-style-type: none"> • More expensive than “Call Spread” because entire contract expires at the same time
Tax Deductibility	<ul style="list-style-type: none"> • <u>Entire</u> cost of the purchased calls (“Bond Hedge”) is treated as Original Issue Discount (“OID”) for tax purposes and deductible over the life of the security 	<ul style="list-style-type: none"> • <u>Net</u> cost of the Capped Calls (“Bond Hedge”) may be treated as Original Issue Discount (“OID”) for tax purposes and deductible over the life of the security
GAAP Dilution during Reporting Periods Prior to Conversion	<ul style="list-style-type: none"> • Dilution benefit is ignored for the calculation of GAAP diluted shares • Additional dilution above the warrant strike price calculated using the Treasury Stock method 	<ul style="list-style-type: none"> • Dilution benefit is ignored for the calculation of GAAP diluted shares • No additional dilution above the “Cap Price”

Mid and Large Cap Companies Have Been the Most Active Issuers this Year

Convertible Debt Issuance (in millions)

	Total			Average							
	# Deals	Amount Raised	# Deals with Hedge	Market Cap	Stock Impact (%)	Deal Size	Maturity	Coupon (%)	Premium (%)	Premium with Hedge	
2022	13	\$ 6,250	4	\$ 8,930	(5.94)	\$ 481	5.5 Years	2.42	34.11	112.50	
Market Cap Range:											
Greater than \$10 B	2	\$ 2,250	2	\$ 36,327	3.28	\$ 1,125	6.0 Years	0.19	42.50	137.50	
\$5 B - \$10 B	4	2,134	-	7,135	(2.14)	534	5.6 Years	2.69	35.62	N.A.	
\$2.5 B - \$5 B	2	625	1	3,119	(13.38)	313	4.1 Years	2.88	30.00	100.00	
\$1 B - \$2.5 B	5	1,241	1	1,731	(10.64)	248	5.8 Years	2.93	31.20	75.00	
\$500 MM - \$1 B	-	-	-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
\$250 MM - \$500 MM	-	-	-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Sub \$250 MM	-	-	-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Offering Size Range:											
Greater than \$1 B	1	\$ 1,500	1	\$ 61,009	(0.84)	\$ 1,500	6.1 Years	0.13	50.00	150.00	
\$500 MM - \$1 B	3	2,111	1	8,477	1.57	704	6.1 Years	1.00	36.67	125.00	
\$250 MM - \$500 MM	7	2,383	2	3,449	(9.61)	340	5.6 Years	2.73	32.14	87.50	
\$175MM - \$250 MM	1	200	-	3,649	(7.84)	200	3.1 Years	3.25	32.50	N.A.	
\$100MM - \$175 MM	-	-	-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
\$75 MM - \$100 MM	-	-	-	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
\$50 MM - \$75 MM	1	57	-	1,850	N.A.	57	5.0 Years	6.00	25.99	N.A.	

Technology and Health Care Companies are the Most Active Issuers in 2022

(\$ amounts in millions)

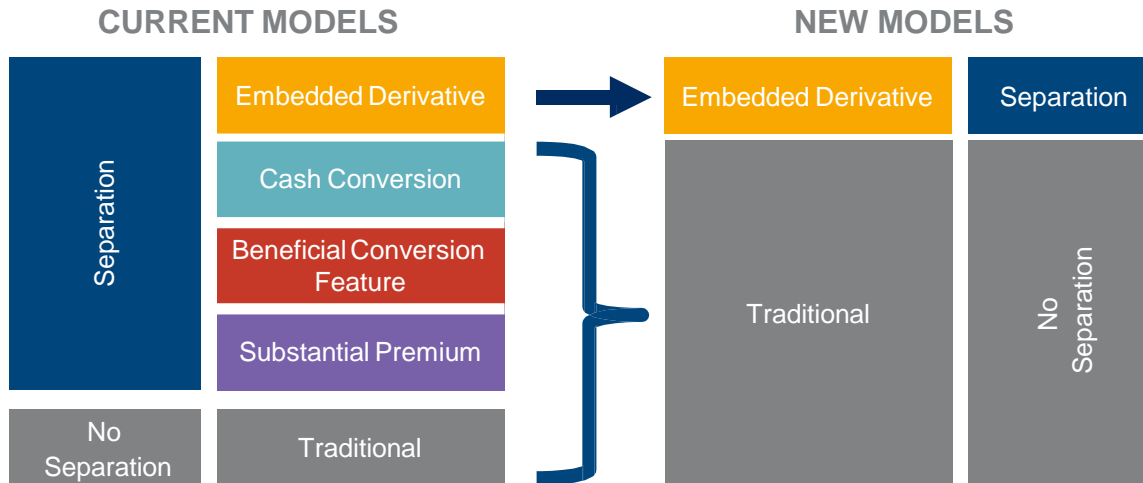
Sector	Total				Average						
	# of Deals	Deals with Hedge	Amount Raised	% of 2022 Issuance	Deal Size	Market Cap	Coupon (%)	Premium (%)	Hedge (%)	Maturity (Years)	
Information Technology	2	1	\$ 1,611	25.5%	\$ 806	\$ 9,393	0.38	33.75	125.00	6.16	
Communication Services	1	1	1,500	23.7%	1,500	61,009	0.13	50.00	150.00	6.06	
Health Care	4	1	1,209	19.1%	302	2,837	3.16	34.62	75.00	6.01	
Consumer Discretionary	2	-	761	12.0%	380	5,695	1.75	40.00	-	5.01	
Financials	2	-	500	7.9%	250	4,484	4.38	23.75	-	4.02	
Industrials	1	1	425	6.7%	425	2,588	2.50	27.50	100.00	5.05	
Energy	1	-	320	5.1%	320	2,001	3.25	32.50	-	6.02	
Total	13	4	\$ 6,325	100.0%	\$ 487	\$ 8,930	2.42	34.11	112.50	5.50	

Refinancing “Busted Convertibles”

	Least Common	More Common		Most Common
	Registered Exchange	Privately 4(a)(2) Exchange	Privately 3(a)(9) Exchange	“Modified” Amend and Extend
Description	<ul style="list-style-type: none"> Publicly announced exchange offering that allows the Issuer to exchange new registered convertible (and/or common stock or non-convertible) securities for existing convertibles <ul style="list-style-type: none"> Registration statement filed on form S4 Exchange offer is made to investors by prospectus Offer is kept open for 20 days after it is announced publicly 	<ul style="list-style-type: none"> Confidentially negotiated and marketed transaction that allows the Issuer to exchange new unregistered convertible securities for outstanding convertibles held by a small group of existing investors. 	<ul style="list-style-type: none"> A transaction direct between the issuer and existing security holders that allows the Issuer to exchange outstanding securities for new securities without registration requirements <p>Requirements</p> <ul style="list-style-type: none"> New and old securities are issued by the same issuer Holder cannot be asked to give anything of value other than outstanding securities Exchange must be done with existing holders only No commission can be paid for soliciting the exchange Exchange must be done in good faith 	<ul style="list-style-type: none"> Confidentially or publicly negotiated and marketed transaction that allows the issuer to repurchase outstanding convertibles while simultaneously issuing new registered or unregistered securities
Benefits	<ul style="list-style-type: none"> Targets all current Note holders Potential to maximize the amount of debt refinanced Ability to incentivize investors to participate in the exchange 	<ul style="list-style-type: none"> Stock price not impacted during confidential marketing and negotiations Transaction can be terminated without public disclosure Minimal disclosure and documentation required given private placement 	<ul style="list-style-type: none"> No registration requirements Stock price not impacted during confidential marketing and investor negotiations Low transaction fees and expenses Potential to price on an overnight basis 	<ul style="list-style-type: none"> Potential to increase size of offering and repurchase after public announcement
Considerations	<ul style="list-style-type: none"> Common stock price is exposed to impact of exchange announcement Must be kept open for minimum of 20 days, exposing stock price to market risk No guarantee that investors will participate in the exchange S4 filing subject to SEC review 	<ul style="list-style-type: none"> Cannot target the entire class of investors given tender offer rules No broad marketing effort Investors may need to buy/sell stock to adjust existing hedges Some holders may not agree to negotiated “over the wall” 	<ul style="list-style-type: none"> Cannot target the entire class of investors given tender offer rules Investors may need to buy/sell stock to adjust hedges Issuer negotiates terms and conditions directly with investors 	<ul style="list-style-type: none"> Cannot target the entire class of investors given tender offer rules Repurchase price and amount Some investors may need to buy/sell stock to adjust hedges Some investors may not agree to NDAs

Convertible Accounting Getting Simpler

- The FASB voted unanimously to proceed with a simplified model for convertible debt accounting and has provided a final Accounting Standards Update (Debt—Debt with Conversion and Other Options (Subtopic 470-20) to formalize the change
- The effective date was for filers with fiscal years beginning after December 15, 2021



Other Import Accounting Treatment Changes

	Current Accounting	New Accounting
Net Share Settlement -		
Issuer agrees to settle the principal amount in cash; premium over par can be settled in cash or shares at the issuer's option		
Balance Sheet	Bifurcated into debt and equity	Not bifurcated
EPS	Treasury stock method	Treasury stock method
May become a current liability if conversion conditions met	Yes	Yes
"Instrument X" -		
Conversions can be settled in cash, shares or any combination; Issuer does not specify how conversions will be settled		
Balance Sheet	Bifurcated into debt and equity	Not bifurcated
EPS	Treasury stock method	If-converted method
May become a current liability if conversion conditions met	Yes	No
"Plain Vanilla" - Conversions settled entirely in shares		
Balance Sheet	Not bifurcated	Not bifurcated
EPS	If-converted method	If-converted method
May become a current liability if conversion conditions met	NA	NA

Definitions of “provisional call” and “fundamental change”

Provisional Call

- Feature that allows an issuer to redeem convertible notes for par (\$1,000) prior to maturity after two conditions are satisfied:
 1. Passage of time - typically 3-years (Non-Call Period) for a bond that matures in 5-years; and
 2. Stock price trades at or above a predefined price (the “Provisional Call Trigger Price”)
 - Typically set at a 30% premium to the conversion price
- At the Provisional Call Trigger Price, intrinsic (equity) value of the notes is substantially above par value (\$1,000)
- If/When the issuer exercises its call option, all rationale holders will elect to convert to receive maximum value
- Since calling the bonds prior to maturity results in early termination of the conversion option, investors are entitled to a make-whole payment (in cash or shares) to compensate for lost option value

Fundamental Change

- Events that qualify as a fundamental change include (1) a person or group acquiring 50% of the issuer’s voting common stock, (2) a consolidation or merger that results in the issuer’s stock being converted into cash, (3) liquidation or dissolution of the issuer, or (4) a delisting of the issuer’s stock from the major US exchanges
- When a fundamental change occurs prior to maturity, it results in early termination of the conversion option, entitling investors to a make-whole payment (in cash or shares) to compensate for lost option value
- Lost option value at different stock prices and points in time is estimated using an option pricing model and set out in a table (the “Make-whole Table”) when the notes are issued
 - The exact number of additional shares is determined by reference to the Make-whole Table and depends on the date of the fundamental change and the then-current stock price
 - If the stock price is below the stock price when the convertible notes were issued, holders have the right to require the issuer to repurchase the notes at par value

Make-whole example

Assumptions

Issue Size	\$ 100,000,000
Reference Stock Price	\$ 10.00
Conversion Premium	30.00%
Conversion Price	\$ 13.00
Call Trigger Price	\$ 14.95

- If there is a fundamental change or the issuer exercises its provisional call option, convertible note holders are entitled to a make-whole as compensation for the remaining option value that is lost because of the early extinguishment of the security
- The value of the make-whole declines as time advances and as the stock price increases
- The maximum value of the make-whole occurs if a fundamental change occurs immediately after pricing of the convertible notes at a stock price that is equal to the conversion price
 - This maximum make-whole amount is the equivalent of the issuer selling shares at the reference stock price

Additional Value Owed to Convertible Holders by Virtue of the Make-Whole Table *(in millions)*

Stock Price

Year	\$10.00	\$13.00	\$14.95	\$15.00	\$20.00	\$25.00	\$30.00	\$40.00	\$50.00	\$75.00
0	\$ -	\$ 17.2	\$ 14.7	\$ 14.6	\$ 10.8	\$ 8.8	\$ 7.5	\$ 5.9	\$ 4.7	\$ 2.5
1	-	15.8	13.1	13.0	9.1	7.2	6.2	4.9	3.9	2.0
2	-	14.5	11.4	11.3	7.3	5.6	4.8	3.9	3.1	1.6
3	-	12.5	9.0	8.9	5.0	3.8	3.3	2.7	2.2	1.2
4	-	9.4	5.5	5.4	2.4	1.9	1.7	1.4	1.2	0.6
5	-	-	-	0.0	-	-	0.0	-	-	-

Tax Considerations

Convertible Debt

- Interest deduction for issuer, holder includes interest income
- Conversion is not a taxable event. [Rev. Rul. 72-265](#)
- The right to convert into the stock of the issuer (or an affiliate) is not a “contingency” within the meaning of [Reg. Section 1.1275-4](#). [Reg. Section 1.1275-4\(a\)\(4\)](#). So, not a contingent payment debt instrument.
- The holder does not allocate any of its purchase price to the conversion feature. [Reg. Section 1.1273-2\(j\)](#).
- Issuer does not recognize gain or loss when stock is issued upon conversion. [Section 1032](#).
- Issuer cannot deduct repurchase premium to the extent it exceeds adjusted issue price plus a normal call premium. [Section 249](#).

Section 163(I)

- No deduction for interest on disqualified debt
- Disqualified debt
 - Payable in equity of issuer, related party or equity held by issuer (or related party)
- Payable in equity?
 - Substantial amount of principal or interest required
 - To be paid or converted, or at issuer's option is payable or convertible in such equity
 - To be determined, or at issuer's option is determined by reference to value in such equity
 - Part of an arrangement reasonably expected to result in foregoing
- Holder option?
 - Is there "substantial certainty" option will be exercised?
 - Answer: No, if "traditional" convertible bond

Convertible Bond Call Spread

- Integration Election: [Reg. Section 1.1275-6](#) – The convertible bond and only the purchased call are integrated
 - Hedge identification requirement
- Creates a synthetic debt comprised of the convertible bond and the purchased call
 - Face: \$125 mm
 - Cost of the call option: \$25 mm
 - Issue Price for tax purposes: \$100 mm
 - OID: \$25 mm
 - Warrant price: \$10 mm
- The written warrant is not integrated with the convertible bond or the purchased call
 - Warrant price
 - Section 1032
- AM 2007-014

Convertible Bond Capped Call

- Integration Election: [Reg. Section 1.1275-6](#) – The convertible bond and the capped call are integrated
- Creates a synthetic debt comprised of the convertible bond and the capped call
 - Face: \$125 mm
 - Cost of the capped call option: \$15 mm
 - Issue Price for tax purposes: \$110 mm
 - OID: \$15 mm

Securities and Disclosure Considerations for Issuers

Offering Methodology

- Convertible bonds can be issued:
 - In a traditional Rule 144A offering – issuer sells notes to initial purchasers in a Section 4(a)(2) private placement, who then resell to QIBs pursuant to Rule 144A
 - In certain instances, for example, in the event the issuer is offering the convert to finance an acquisition, it may not be possible to structure the transaction as a traditional Rule 144A offering. The investment bank may act as placement agent and introduce issuer to QIBs that will purchase directly from issuer in a Section 4(a)(2) private placement; however, the transaction will be a Rule 144A-qualifying transaction. Notes will settle through DTC and bear a Rule 144A CUSIP. Placement agent may act as settlement agent to facilitate closing.
 - In an SEC-registered offering

Offering Methodology *(cont'd)*

- More often than not, convertible notes will be issued in a Rule 144A offering
 - Of course, for Rule 144A, the convert must have a conversion premium (to avoid fungibility issues)
 - The repurchase strategies can be executed without Regulation M concerns arising
 - Registration rights generally are not required; issuer will covenant to provide “current information” and the indenture will provide for the Rule 144A restricted CUSIP to be moved to an “unrestricted” CUSIP on the one-year anniversary of issuance
 - Failure by issuer to perform such covenants would result in payment by issuer of additional interest under the convertible notes indenture: “Additional Interest;” “Special Interest” for “Reporting Event of Default”

Conversion Price, Conversion Rate and Conversion Rate Adjustments

- Conversion Price = dollar amount needed to receive one common share upon conversion; effective dollar price paid per underlying common share
- Conversion Rate = number of shares into which each \$1,000 principal amount of notes is convertible
- Example:
 - Reference price: \$20 per share
 - Initial Conversion Price at *e.g.*, 25% premium over reference = \$25 per share
 - Initial Conversion Rate = \$1,000 principal amount of notes divided by conversion price
 - = \$1,000 divided by \$25 per share = 40 shares per \$1,000 principal amount of notes

Conversion Rate Adjustments *(cont'd)*

Initial Conversion Rate is adjusted (and hence conversion price too) as a result of specified corporate events during life of notes. Indenture will have formulas for:

- Anti-dilution adjustments
 - *E.g.*, Stock splits, stock dividends, stock combination
- Adjustments to compensate noteholders for distributions of value to others
 - Adjustments for cash dividends, spin-offs
 - Adjustments for the issuance of rights, warrants
 - Adjustments for other in-kind distributions
 - Adjustments for issuer self-tenders
- Make-whole adjustments

Fundamental Change and Make-Whole Fundamental Change

- Converts have “fundamental change” and “make-whole fundamental change” provisions
 - *E.g.* Fundamental Change: (1) a person or group acquires more than 50% of issuer’s voting common stock, (2) sale of all or substantially all of issuer’s assets to any person, (3) consolidation, merger or transaction resulting in all of issuer’s stock being exchanged or converted into securities, cash or other property and there is a change of control, (4) issuer liquidation or dissolution, or (5) delisting of issuer’s stock from US exchanges
 - Exception: for 1 and 2, if at least 90% consideration received by shareholders is in the form of common stock listed on US major exchange
- The occurrence of a fundamental change gives noteholders a put right
 - Holders can require issuer to repurchase their notes for cash at 100% principal amount, plus accrued and unpaid interest up to the repurchase date

Fundamental Change and Make-Whole Fundamental Change *(cont'd)*

- Almost always, a “fundamental change” is also a “make-whole fundamental change” that entitles a noteholder to convert the notes at a higher adjusted conversion rate based on the make-whole table in indenture
 - “Make-Whole Fundamental Change” is generally defined to include a “fundamental change”
 - In a number of indentures, the sending by issuer of an optional redemption notice for the notes will also be considered a “make-whole fundamental change”
- So the noteholder has the option either to (1) exercise the put (and require issuer to pay cash at the principal amount of notes), or alternatively, (2) convert the notes at the make-whole fundamental change adjusted conversion rate
 - Issuer may in turn, elect the method of conversion settlement: physical, cash or combination settlement

Redemption Features

- Redemption enables issuer to shorten life of bonds directly (repurchasing notes on specified redemption date) or indirectly (forcing early conversion by holders)
 - Holders can usually convert up until the close of business of the day immediately preceding the redemption date
 - Redemption cuts interest payment stream, reduces time value in embedded option
- Redemption may or may not be subject to conditions or triggers, which will all be factored in for the pricing of the bond. Examples:
 - Can redeem, without any make-whole, after a certain no-call period or during specified, limited defined windows
 - More common: a non-call period of time, coupled with provisional call trigger price
 - Can constitute a make-whole fundamental change, leads to higher conversion rate

Securities Exchange Listing Rules

- Both NYSE and Nasdaq listing rules require shareholder approvals with respect to certain transactions
- Generally, the initial issuance will not require shareholder approval given that the convert will be issued at a premium (assuming, in the case of a Nasdaq issuer, it is not offered and sold in connection with an acquisition)
- The NYSE also has exemptions for (1) “any public offering for cash,” and (2) non-public offering issuances so long as the issuance is made for cash and at least at the Minimum Price
 - “Minimum Price” is defined as the lower of: (i) the official closing price of issuer’s common stock immediately before the execution of the transaction agreement and (ii) the average official closing price of issuer’s common stock during the five days immediately preceding the transaction agreement.
- Both exchanges consider as well the potential, in the case of exchangeable securities, for shares to be issued in excess of the 20% threshold. As such, a blocker provision may be required to be included in connection with certain conversion adjustments

Offsetting Anti-Dilutive Transaction

- The call overlay/call-warrant structures will be documented with standard ISDA style confirmation documents; often, frequent issuers will have a preferred starting point and dealers also have their preferred forms
- It will be useful for the issuer to understand how a dealer will approach its own hedging (in connection with any of the offsetting transactions, as discussed), as it affects the documentation and has potential to affect the issuer's stock
 - As is the case with the convert offering itself, the issuer will have to take care to consider disclosure matters, including potential material nonpublic information. The dealer counterparty will expect representations from the issuer regarding no material non-public information ("MNPI")
 - Depending on the repurchase alternative that the issuer is considering undertaking, there may be additional requirements to take into account. For example, if the issuer chooses to undertake open market repurchases, it will need to consider Rule 10b-18 conditions.

Additional Resources

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