

From: "Walker, John L" <jwalker@stblaw.com> 07/18/2006 05:40 PM

Subject: Anti-Tying Restrictions

Dear All,

As a follow-up to the message below, the following statements in the July 10 and July 3 editions of *Credit Investment News* caught my attention:

July 10 edition --

"**GE Commercial Finance** has named Randy Hicks as senior managing director of the Northeast region of its Commercial Finance Corporate Lending division...."

"Deutsche Bank, **Bear Stearns** and Bank of America increased pricing by 50 basis points to LIBOR plus 6% on the seven-year, \$430 million second lien."

"**Merrill Lynch** and **Morgan Stanley** have launched syndication of a \$300 million senior secured credit facility for Herbalife International to refinance existing debt."

"**Merrill Lynch** is in the market with a new \$275 million senior secured credit facility for The Hillman Group." "Hillman's last credit facility was led by JPMorgan in 2004."

"**Goldman Sachs** has hired Kevin Lockhart from **Morgan Stanley** as a managing director in leveraged finance."

July 3 edition --

"BNP Paribas and **Bear Stearns** last week launched syndication of a \$260 million credit for Triumph Healthcare."

"**Goldman Sachs** and Credit Suisse have had to sweeten terms and restructure a \$1.17 billion term loan 'B' meant to finance American National Power's planned acquisition of the Coletto Creek generation facility in Goliad County, Texas." "Drawing a comparison, one banker noted that a smaller loan funding the construction of the generation facility Plum Point in Osceola, Ark. led by **Merrill Lynch**, Credit Suisse and **Goldman** closed at LIBOR plus 3 1/4%."

"**Lehman Brothers** and **Morgan Stanley** are in the market with a \$235 million senior secured credit facility for Iridium Satellite."

"**Morgan Stanley** last week launched syndication of a \$102 million senior secured credit backing the buyout of IPS Corp. by Fremont Partners and management."

"**Bear Stearns** is leading an approximately \$1.85 billion credit facility for Cedar Fair."

I don't make this stuff up.

Best regards.

John

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From: Walker, John L
Sent: Wednesday, June 21, 2006 10:54 AM
To:

Cc:
Subject: Section 106

Dear All,

This morning I read the attached pages from this week's *Credit Investment News* . The following headlines and statements, each with respect to a syndicated loan transaction, caught my attention:

Merrill, CS Launch Complex Rexnord Deal / **Lehman Brothers** and **Bear Stearns** are non-lead arranger book runners.

UBS, GE Market ILC Recap

Goldman Sachs Spins Select Funding

Two-Part Smurfit Loan Launched by **JPMorgan, Lehman Brothers**

Citigroup Venture Capital turned to **UBS** and **Merrill Lynch** to provide financing to back its purchase of Western Dental Services.

You may not be surprised that my thoughts turned to the following statements in the Antitrust Division's comment letter on the Board's proposed interpretation of section 106:

"The Division is also concerned that, as interpreted by the [proposed interpretation], section 106 prohibits a bank from meeting competition from non-bank providers of the same service or product. Section 106 has the potential to put banks at a disadvantage when competing with non-banks, because the section's restrictions apply only to banks and not to the other institutions with which the banks may be competing. Any restrictions on banks that are not also imposed on non-banks can inhibit competition in areas where

the two intersect."

"We see no evidence that . . . syndicated loan borrowers need additional assistance beyond the antitrust laws to protect themselves from anti-competitive tying. Such firms are much less likely to be victims of anti-competitive ties than small business customers or individual consumers, and were not the customers that were intended to be protected by section 106."

Viewing section 106 from the perspective of both competitors and customers, in my humble opinion the time has come to interpret section 106 in a manner that is pro-competitive.

Best regards.

John

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