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Advantages of Toggle Plans in Chapter 11

BY MACHIR STULL AND AARON LOZANO

As bankruptcy practitioners well know, the ultimate goal of any case is to maximize value for all stakeholders. Toggle plans can help on that front by providing a hedge on risk, creating leverage with key stakeholders, streamlining a debtor's bankruptcy case, and providing confidence that a confirmed plan maximizes value. With that in mind, this article will explore how a toggle plan can both maintain optionality and add greater certainty to a case.

A toggle plan typically proposes both a reorganization path (such as debt-for-

equity swap) and a sale path (such as a 363 sale), enabling the debtor to simultaneously pursue both options and ultimately take the most value-maximizing route. This approach allows a debtor the opportunity to “market test” its value while also engaging its lenders and other stakeholders in reorganization discussions.

That said, toggle plans are not limited to just a toggle between a reorganization and a sale. For example, some toggle plans have included a wind-down as an alternative path—either as a partial wind-down (In re Celsius Network) or a full-scale wind-down of all business

operations (In re SmileDirectClub). In theory, the toggle options are unlimited, although a potential sale is often the backbone.

A true toggle plan fully articulates each plan alternative in a single proposed plan, though each track is usually supported by separate feasibility findings and separate creditor treatment schemes. The plan and disclosure statement typically specify the triggers that govern which path will go effective. For example, if bids exceed a minimum sale price, the plan could contemplate that the debtor (and stakeholders) will pivot to the sale path. Properly drafted, however, toggle plans effectively contain two plans that are each confirmable on their own, by satisfying the Bankruptcy Code's confirmation requirements on classification, solicitation, feasibility, best interests, and cramdown, as applicable.

The advantages of a toggle plan can vary depending on the facts of each case. In addition to those advantages outlined above, other benefits to pursuing a toggle plan often include the following:

First, DIP lenders often require short milestones and tight covenants. A toggle plan can help debtors satisfy milestones through either a sale closing or a feasible plan of reorganization.

Second, if the plan depends on a tight valuation call or a contested cramdown of a fulcrum class, a parallel sale alternative can mitigate downside if the bankruptcy court rejects key findings.

Third, running separate sequential processes—first a plan solicitation, then pivoting to a sale after failure—adds time, professional fees, and litigation risk. A single plan that solic-

its votes on alternative treatments streamlines the path to emergence and increases the likelihood of a successful bankruptcy plan.

Debtors must carefully structure a toggle plan so as not to depress value or bidder participation in the sale process track. It is true that a toggle structure can serve to incentivize potential bidders to only make offers that will be seriously considered. Yet the mere presence of a potentially successful restructuring plan can also make interested bidders unwilling to undertake the time and expense of due diligence and bid submission if the sale process may later be abandoned in favor of a reorganization under the plan.

Debtors can combat these issues by enticing a stalking horse bidder with certain bid protections such as a break-up fee or expense reimbursement. Additionally, debtors can bake a “reserve price” into their restructuring negotiations, which can function to trigger stakeholder support for a sale process if a qualifying bid exceeds such reserve price.

As cases grow more complex and financing conditions remain unsteady, toggle plans can be an increasingly useful tool for bankruptcy practitioners. Their success depends on rigorous drafting and careful alignment of milestones. When executed well, toggles deliver exactly what Chapter 11 is meant to provide—a pragmatic framework to maximize value amid uncertainty, while offering creditors clarity about recoveries across multiple credible outcomes. **HN**

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