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FINANCIAL INDUSTRY UPDATE

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European investors seek to change the high yield market

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The International Financial Law Review has published a leaked letter which was sent by the 'European Leveraged Finance Buyside Forum' (the "Buyside Forum") to all major underwriters working in high yield. The Buyside Forum represents the 30 biggest investors in Europe and the letter has the potential to significantly change Europe's high yield market. The most notable suggestions are within paragraphs one (Disclosure) and two (Procedural Enforcement Rights). Paragraph A-1 suggests that for Senior Secured Bonds, issuers should disclose the senior facility agreement ("SFA"), a proposal that has reportedly been met with hostility by the banks who feel there is no reason to share the content of the credit facility unless it impacts the bondholders. Paragraph A-2 suggests that SFA lenders and senior secured bond trustees would vote as a single instructing class with respect to the enforcement of security. This has also been met with some hostility from the banks, who in response purportedly argue that a standardised approach is unrealistic as voting rights on enforcement are negotiation points specific to each deal.

Whilst the banks may believe they are well founded in their negative response to this letter, there is precedent for such letters changing the high yield market. In 2002, a similar letter threatened an investor boycott and made other demands of the banks who resultantly began to consider alternative structures to provide additional protection to high yield bond investors. As this letter has never been published, the official response of the Banks and the ramifications of the letter itself remain to be seen, but while influential investors continue to maintain that if the provisions aren't implemented, they could pull out of future investments, it seems unlikely that the banks will be able to dismiss these proposals as irrelevant or impractical for much longer.