TITLE: SYSTEM AND METHOD FOR MANAGING RISK ASSOCIATED WITH A TRANSACTION

Abstract: A system and method are disclosed for managing the risk associated with a wide variety of commercial transactions.
SYSTEM AND METHOD FOR MANAGING
RISK ASSOCIATED WITH A TRANSACTION

BACKGROUND OF THE INVENTION

[0001] All business transactions involve risk to at least one of the transacting parties. For example, when a lender extends a loan, it incurs the risk that the borrower may default. Similarly, when an insurer issues a policy, it incurs the risk of losses covered by the policy.

[0002] Parties seek to manage such risks differently depending on the particular transaction at issue. In the case of loan agreements, for example, perhaps the oldest and most common risk-management tool is collateral. Collateral is an asset that a borrower pledges as security for a loan. If the borrower fails to repay the loan, the lender may use or otherwise have benefit of the collateral to offset its loss. By demanding adequate collateral, a lender can thus mitigate the risk that a borrower may fail to repay all or part of a loan.

[0003] Existing risk-management tools, however, often fail to adequately protect a contracting party against risk that it incurs. Moreover, many transactions are either refused because of, or priced higher to offset, risk that cannot adequately be addressed by existing risk-management tools. There is therefore a need for a novel risk management system and method that mitigates risk associated with a variety of transactions.

SUMMARY OF THE INVENTION

[0004] A system and method are disclosed for managing the risk associated with a wide variety of commercial transactions. In a preferred embodiment, a company or other entity contingently obligates itself by contract to raise equity capital through a controlled sale of its stock if and when particular future events occur.

[0005] The counterparty or counterparties to the contract may include lenders, casualty insurers, financial guarantors, equity investors, and other entities that provide capital to the company or are otherwise at risk if the company fails or its financial state weakens. In one preferred embodiment, for example, a lender may obligate a corporate borrower to raise equity capital and use such capital in particular ways if and when the borrower falls out of compliance with one or more terms of its loan agreement or a trend is identified that indicates the borrower is likely to violate one or more of its loan terms (e.g., a trend is identified which
indicates that the borrower is likely to violate a minimum working capital requirement). In this way, the company and its counterparty or counterparties may establish a contractual framework for mitigating risk associated with future events preferably at the time of the transaction before any risk is incurred by the counterparties.

[0006] The contract between the company and its counterparty or counterparties preferably includes one or more terms specifying that if and when an obligation to raise equity capital is triggered, the capital will be raised through an existing or newly-executed stock purchase agreement between the company and a third-party purchaser. These terms may, for example, be included in a new loan agreement executed between a company and a lender or, alternatively, may be added to an existing loan agreement during renegotiation of an outstanding loan.

[0007] The stock purchase agreement preferably obligates the purchaser to purchase up to a specified dollar amount of the company’s stock from time to time upon receipt of a valid notice issued by the company or other authorized entity. In a preferred embodiment, each notice issued pursuant to the stock purchase agreement specifies a dollar amount of company stock that the purchaser is obligated to purchase but is silent as to the share price at which the purchaser will purchase the stock. In an alternative preferred embodiment, the notice may specify a number of shares of the company’s stock that the purchaser is obligated to purchase.

[0008] Upon receipt of a valid notice, or at a time thereafter, the purchaser may sell shares of the company’s stock to buyers in a securities market. In a preferred embodiment, the stock purchase agreement may include a sale plan that specifies the manner in which the purchaser may sell company stock in the market. This sale plan may, for example, be designed to minimize the effect of the purchaser’s selling activity on the company’s stock price.

[0009] In a preferred embodiment, the purchaser’s share price is determined during a specified valuation period that may, for example, commence when the notice is issued or a subsequent trading day. On a specified closing date, the company or other authorized entity delivers to the purchaser a number of shares of the company’s stock equal to the amount specified in the notice (hereafter “notice amount”) divided by the calculated share price. In consideration, the purchaser delivers to the company or other authorized entity the dollar amount specified in the notice, as described in more detail below.

[0010] In a preferred embodiment, to mitigate the purchaser’s risk that the company will fail to deliver shares of its stock on the closing date, the stock purchase agreement preferably
requires the company to deliver shares in the amount of a good-faith estimate of the number of shares that will be due at closing to a trusted third party when a notice is issued.

[0011] Alternatively, or in addition, the stock purchase agreement may require two or more closings for a given notice. Thus, for example, the stock purchase agreement may specify that a first closing occur four business days after issuance of the notice and a second closing occur ten business days after issuance of the notice. In another example, the stock purchase agreement may require a separate closing each day (or other time interval) of the valuation period.

[0012] In an alternative preferred embodiment, the stock purchase agreement may be replaced by a stock distribution agreement executed between the company and a third-party broker. Pursuant to the stock distribution agreement, the broker preferably agrees to sell up to a specified amount of the company’s stock from time to time in a securities market in response to a notice issued by the company or another authorized entity. In a preferred embodiment, the stock purchase agreement is filed with the U.S. Securities and Exchange Commission (SEC) as part of an amendment to a public shelf registration. Alternatively, the stock purchase agreement may be a private placement subsequently filed with the SEC as part of a resale shelf registration statement. During the period that such registrations remain effective, they allow a company to issue shares of its stock for trading in public equity markets in the future from time to time up to some fixed dollar amount or number of shares, and allow the purchaser to resell those shares to other buyers in those markets.

[0013] When an obligation to raise equity capital is triggered (e.g., when a corporate borrower falls out of compliance with its loan obligations), an authorized officer of the company or other authorized entity preferably issues a notice to the purchaser for some specified amount. As noted, the notice triggers an obligation on the purchaser to purchase stock of the company in the specified amount and triggers commencement of a valuation period to determine the purchaser’s share price.

[0014] Subsequent to the notice, the purchaser may sell stock of the company to buyers. On the specified closing date or dates, the purchaser’s share price is determined and an appropriate number of shares of company stock are delivered to the purchaser. In consideration, the purchaser delivers the notice amount to the company or other authorized entity. In some embodiments, the company or other recipient may be contractually obligated to
use the proceeds in a particular manner such as to pay off some or all of an outstanding loan’s principal or interest.

[0015] Although illustrated above and in the following Detailed Description by way of specific exemplary embodiments, it should be recognized that the present system and method provide great flexibility in mitigating risk associated with many commercial transactions. More specifically, the present system and method allow the contracting parties to control with particularity:

a. the events that will trigger an obligation to raise equity capital;

b. the amount of equity capital to be raised when such an obligation is triggered;

c. the manner in which such equity capital is raised;

d. the manner in which such equity capital is distributed; and the purposes for which such equity capital is used.

[0016] Exemplary embodiments for each of these parameters are described in more detail below.

BRIEF DESCRIPTION OF THE DRAWINGS

[0017] Fig. 1 is a block diagram illustrating the relationships between a plurality of entities in one preferred embodiment of the present system and method;

[0018] Fig. 2 illustrates one preferred embodiment for implementing a loan agreement in the present system and method;

[0019] Fig. 3 illustrates one preferred embodiment for implementing stock purchase covenants in the present system and method;

[0020] Fig. 4 is a flow diagram illustrating the operation of stock purchase agreement;

[0021] Fig. 5 is a composite block/flow diagram illustrating operation of one preferred embodiment of the present system and method;

[0022] Fig. 6 is a composite block/flow diagram illustrating operation of another preferred embodiment of the present system and method;
[0023] Fig. 7 is a composite block/flow diagram illustrating operation of yet another preferred embodiment of the present system and method;

[0024] Fig. 8 is a block diagram illustrating yet another preferred embodiment of the present system and method; and

[0025] Fig. 9 is a flow diagram illustrating operation of the preferred embodiment depicted in Fig. 8.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

[0026] One preferred embodiment of the present system and method is described in connection with Figs. 1-5. Beginning with Fig. 1, there is shown a lender 10 that executes a loan agreement 12 with a company 14. Company 14 may preferably be a publicly listed company whose shares trade on one or more exchanges throughout the world such as the New York Stock Exchange and Nasdaq. In some cases, company 14 will be referred to hereafter as the borrower.

[0027] As is further shown in Fig. 1, company 14 preferably executes a stock purchase agreement 16 with a purchaser 18. As described in more detail below, stock purchase agreement 16 provides a mechanism for raising equity capital by selling shares of the company's stock in the event of specified trigger events. In some embodiments, lender may be either a signatory to or third-party beneficiary of stock purchase agreement 16, as illustrated by the dotted line in Fig. 1.

[0028] When required by law, stock purchase agreement 16 is preferably filed with the U.S. Securities and Exchange Commission or other appropriate government authority in the United States or abroad. In addition, when required by the company's listing agreement with an exchange, any necessary approvals are obtained from the exchange to permit purchaser 18 to resell via the exchange the shares it purchases from company 14.

[0029] In one preferred embodiment the stock purchase agreement is filed as part of an amendment to a public shelf registration. Alternatively, the stock purchase agreement may be a private placement subsequently filed with the SEC as part of a resale shelf registration statement. During the period that such registrations remain effective, they allow a company to issue shares of its stock for trading in public equity markets in the future from time to time up to
some fixed dollar amount or number of shares, and allow the purchaser to resell those shares to other buyers in those markets.

[0030] A preferred embodiment for drafting loan agreement 12 is illustrated in Fig. 2. As shown in Fig. 2, loan agreement 12 preferably comprises a number of sections including description of parties 202, loan description 204, representations and warranties 206, covenants 208, and default events 210.

[0031] Description of parties 202 preferably comprises a description of both lender 10 and borrower 14 adequate to uniquely identify them. More specifically, this section preferably comprises at least a name and address for the lender and borrower.

[0032] Loan description 204 preferably includes one or more descriptive aspects of the loan including loan amount and terms such as the length of the loan and interest rate. Loan description 204, may also preferably comprise other descriptive aspects of the loan such as the repayment schedule and a description of any collateral put up by the borrower.

[0033] Representations and warranties 206 preferably comprises a series of averments by the lender and borrower concerning their authority to execute the loan agreement and the veracity of any statements made during negotiation of the loan. Thus, for example, representations and warranties 206 may comprise representations by borrower 14 that it has executed an appropriate corporate resolution to borrow money and that it has not suffered any adverse change in its operation since requesting the loan.

[0034] Covenants 208 preferably comprise one or more clauses that bind the borrower to perform certain acts (affirmative covenants) or prevent the occurrence of certain events (negative covenants). Such covenants may, for example, include a covenant to make loan payments promptly, a covenant to notify the lender of any default event 210 that occurs, a covenant not to encumber or sell any property used as collateral for the loan, and one or more covenants relating to the borrower's financial state. This last class of covenants may, for example, include a covenant to maintain some minimum quantity of working capital and one or more ratio covenants.

[0035] Ratio covenants specify a ratio between two balance sheet or income statement items that must be maintained by the borrower. For example, the borrower may covenant to maintain a specific ratio of earnings before interest and taxes (EBIT) to interest expense. This
ratio, referred to as “interest cover” or a “fixed-charge-coverage” ratio, is frequently considered a measure of a borrower’s ability to meet its interest payments.

[0036] In addition to the above, covenants 208 also preferably comprise one or more stock purchase covenants that obligate the borrower to execute a specified stock purchase agreement, or refer to an existing stock purchase agreement, and to sell company stock pursuant to that agreement upon occurrence of particular trigger events. A preferred embodiment for these covenants is described below in connection with Fig. 3.

[0037] Default events 210 preferably comprise one or more conditions or events that will constitute a default by borrower 14. These conditions or events preferably comprise failure to make a scheduled payment required under loan description 204, breach of a covenant specified in covenants 208, and a false representation made in representations and warranties 206. In a preferred embodiment, the occurrence of any default event authorizes lender 10 to foreclose, on the loan and demand immediate repayment of any remaining principal and interest or that the borrower reduce its principal or accumulated interest to meet compliance requirements, as well as payment of penalties. In practice, as known in the art, lender 10 may often choose to waive the effect of a default event or renegotiate the borrower’s loan requirements rather than place the borrower in default.

[0038] As noted, covenants 208 preferably comprise one or more stock purchase covenants that obligate the borrower to execute a specified stock purchase agreement, or refer to an existing stock purchase agreement, and to sell company stock pursuant to that agreement upon occurrence of particular trigger events. One preferred architecture for these covenants is now described in connection with Fig. 3.

[0039] As shown in Fig. 3, stock purchase covenants 300 preferably specify the type of stock purchase agreement that company 14 must execute (agreement type 302). One suitable agreement type for use in the present invention is an equity line agreement or equity line of credit agreement. These are agreements between a company and a purchaser under which the purchaser makes a commitment at signing to purchase a specified amount of the company’s stock on terms that enable the company to determine the timing and amount of securities the purchaser must purchase. As used herein, the term “amount” of stock refers generically to either a dollar amount of stock or a number of shares of stock unless otherwise indicated. In some
alternative preferred embodiments, the stock purchase agreement may be an underwriting agreement.

[0040] As described below, the stock purchase agreement in the present system and method is preferably tailored to include (or, in the case of a pre-existing agreement, preferably already includes) particular terms designed to complement and facilitate execution of stock purchase covenants 300 in loan agreement 12. A total amount term 304 preferably specifies the total dollar amount of company stock that may be issued pursuant to the stock purchase agreement.

[0041] Stock purchase covenants 300 also preferably require company 14 to take any necessary steps to render effective the sale of the shares contemplated to be sold under the stock purchase agreement (effectiveness requirements 306). More specifically, in one preferred embodiment, an effectiveness requirement may require the company to file a stock purchase agreement as part of an amendment to a public shelf registration or a resale shelf registration with the U.S. Securities and Exchange Commission (SEC) and to obtain notice from the SEC that the registration has been deemed effective. During the period that such registrations remain effective, they allow the company to sell shares of its stock to the public from time to time up to a specified dollar amount or number of shares, and allow the purchaser to resell the shares to other buyers in those markets.

[0042] As further shown in Fig. 3, stock purchase covenants 300 also preferably specify one or more events 308 that will trigger an obligation to exercise rights under the stock purchase agreement and sell shares of the company’s stock to purchaser 18. These events may include any event of interest to lender 10 such as violation of a fixed-charge-coverage ratio covenant.

[0043] Trigger events 308 may include default events (such as default events 210 described above) or anticipatory events that do not themselves constitute a default, but demonstrate a likelihood that the borrower will default in the future. It should also be noted that although the term “event” 308 is used in the singular, each trigger event 308 may itself be defined in terms of a combination or other plurality of events. Thus, for example, a single trigger event 308 may define a series of financial milestones to be met by the borrower. The trigger event term may further specify that the trigger event will be deemed to occur upon failure to
meet any one of the milestones. Alternatively, the trigger event term may specify that the trigger event will be deemed to occur upon failure to meet some combination of the milestones.

[0044] Each event 308 preferably has associated with it a plurality of parameters. In a preferred embodiment, these parameters include an amount parameter 310, an authorization parameter 312, a distribution parameter 314, and a use parameter 316.

[0045] Amount parameter 310 preferably specifies the dollar amount of company stock to be sold if the trigger event occurs. In some preferred embodiments, amount parameter 310 may be specified as a lump sum. In other preferred embodiments, amount parameter 310 may be specified as a function of one or more factors. For example, if trigger event 308 is failure to complete a loan payment, amount parameter 310 may be specified as that portion of the payment that company 14 fails to make plus any penalties and balloon payments (e.g., if the lender accelerates) authorized by the loan agreement.

[0046] Authorization parameter 312 preferably identifies one or more individuals or other entities that is or are authorized to trigger a sale of company stock to purchaser 18 if and when a trigger event 308 occurs. As described in more detail below, in a preferred embodiment, this trigger takes the form of a notice to purchaser 18.

[0047] In one preferred embodiment, the authorized individual may be an officer of company 14 such as the company’s CFO. In another preferred embodiment, the authorized individual may be an officer or other employee of the lender such as a loan officer. In yet another preferred embodiment, the authorized individual may be a neutral third party who is trusted by both parties to determine whether the trigger event has occurred. In yet another embodiment, the authorized entity may be a computer system that is adapted to automatically issue a notice when it detects or determines the occurrence of the trigger event. In another preferred embodiment, approval by some specified percentage of a committee may be required to authorize issuance of a notice. More generally, authorization parameter 312 may define any one or more rules specifying the circumstances under which a notice is issued to purchaser 18.

[0048] In some preferred embodiments, authorization parameter 312 may specify a multiple-step authorization process. For example, authorization parameter 312 may specify that, when a lender 10 wishes to exercise its right under loan agreement 12 to obligate company 14 to sell stock, lender 10 must first issue a notice to company 14 which then triggers a contractual obligation on company 14 to issue a notice to purchaser 18. This embodiment may be particularly
desirable in regulatory environments where approval cannot be obtained for lender 10 to issue a notice directly to purchaser 18.

[0049] Distribution parameter 314 preferably specifies the entity or entities to which purchaser 18 will distribute the amount specified in amount parameter 310. In one preferred embodiment, this parameter may specify that the funds are to be delivered to company 14. In another preferred embodiment, this parameter may specify that the funds are to be delivered directly to the lender. In yet another preferred embodiment, this parameter may specify that some first percentage of the funds are to be delivered to company 14 and that some second percentage of the funds are to be delivered to lender 10. In yet another preferred embodiment, this parameter may specify that the funds are to be delivered to some trusted third party such as an escrow agent. In yet another preferred embodiment, this parameter may specify that the funds are to be delivered to a lockbox, such as at lender 10. In yet another preferred embodiment, this parameter may specify that the funds are to be delivered to two or more entities in specified percentages. More generally, distribution parameter 314 may define any one or more rules specifying the manner in which funds delivered by purchaser 18 are distributed.

[0050] Use parameter 316 specifies the way in which proceeds from the sale of company stock will be used by the entity or entities that receive those proceeds. In one preferred embodiment, the use parameter, may specify that the proceeds are to be used to pay down a credit facility in full. In another preferred embodiment, the use parameter may specify that the proceeds are to be used to pay the interest on or pay down a credit facility in installments over some period of time. In yet another preferred embodiment, the use parameter may specify that the proceeds are to be kept by company 14 to strengthen its creditworthiness or balance sheet. In yet another preferred embodiment, the use parameter may specify that the proceeds are to be used to enable one or more of the company’s ratios to be placed back into compliance. In yet another preferred embodiment, the use parameter may specify that the proceeds are to be used to pay vendors. In yet another preferred embodiment, the use parameter may specify that fixed or variable percentages of the proceeds are to be used for one or more of the purposes described above. More generally, use parameter 316 may define any one or more rules specifying the use or uses to which distributed funds must be put.

[0051] In a preferred embodiment, after execution of loan agreement 12, lender 10 may file an appropriate financing statement (e.g., a UCC-1) to establish a secured interest in proceeds from the sale of stock pursuant to stock purchase agreement 16.
As noted above, a stock purchase agreement with a third party represents a preferred technique in the present system and method for accessing the equity capital markets when trigger events 308 occur. Fig. 4 is a flow diagram illustrating the operation of a preferred embodiment of a stock purchase agreement in the present system and method. As shown in Fig. 4, at step 402, a company 14 and a purchaser 18 negotiate and execute the stock purchase agreement. Pursuant to the stock purchase agreement, purchaser 18 obligates itself to buy shares of the company’s stock from time to time in accordance with notice from the company.

In step 404, the company files a new registration statement with the SEC that refers to the stock purchase agreement, or amends an existing statement to refer to the stock purchase agreement. Notice from the SEC that the new or amended registration has been deemed effective, allows a company to issue shares of its stock for trading in public equity markets in the future from time to time up to some fixed dollar amount or number of shares, and allows the purchaser to resell those shares to other buyers in those markets. Also in step 404, any necessary approvals are obtained from the exchange to permit the purchaser to resell the shares via the exchange.

In step 406, the company or other authorized entity determines that it wishes or is entitled to exercise its rights under the stock purchase agreement to sell or have sold some number or dollar amount of the company’s shares and transmits a notice to this effect to purchaser 18. In a preferred embodiment, the stock purchase agreement may require a minimum number of days between issuance of such notices and may establish a maximum dollar amount or number of shares per notice. For example, the stock purchase agreement may specify that the maximum dollar amount of stock the company can compel the purchaser to buy per notice is 150% of some measure of the average dollar volume traded in the company’s stock for the 20 days prior to the date the notice is delivered. In addition, a per notice maximum dollar amount or number of shares may be set to ensure that purchaser 18 does not become obligated to file a disclosure statement with the SEC (e.g., if it were to acquire 5% or more of company 14) or become an affiliate of the company (e.g., if it were to acquire 10% or more of company 14).

In addition, in a preferred embodiment, the stock purchase agreement may further specify that company 14 may, in its sole discretion, specify a minimum threshold market price. If on any trading day during the valuation period described below, the market price of the company’s stock declines below this minimum, the valuation period preferably ends at the close of trading on such trading day and the notice is reduced on a pro rata basis, based on the
number of trading days that have elapsed since commencement of the valuation period as compared to the total number of trading days originally set for the valuation period.

[0056] More generally, it should be recognized that stock purchase agreement 16 may include a plurality of terms negotiated by the parties including terms desired by a party to protect its business interests. For example, company 14 may deem it desirable that purchaser 18 sell to the public all shares that it purchases pursuant to the stock purchase agreement, i.e., that the purchaser not acquire a position in the company as a result of stock purchased pursuant to a notice. Conversely, purchaser 18 may deem it desirable to omit such a term from the stock purchase agreement to maximize its own flexibility to trade the company’s stock. In another example, the stock purchase agreement may include warrants or options to the purchaser to purchase stock of the company at significantly above its current price (e.g., twice its current price) to provide the company comfort that the purchaser will have no motivation to see the company’s stock price decline. Each such business term is subject to negotiation between the parties.

[0057] In some embodiments, company 14 may also be required or deem it prudent to update its registration statements with the SEC to reflect issuance of the notice and obtain any necessary or prudent approvals from the exchange or exchanges on which it is listed.

[0058] Upon receiving the notice, purchaser 18 may sell shares of the company stock to buyers in a securities market either directly or through an intermediary such as an affiliated or independent broker dealer or other authorized entity (step 408). In some embodiments, the stock purchase agreement may incorporate a sale plan that specifies the manner in which the purchaser may sell company stock to the public. In other embodiments, the parties may have an understanding that the company’s stock will be sold in accordance with a sale plan. In addition, although in the preferred embodiment of Fig. 4 purchaser 18 sells stock of company 14 to open-market buyers via a public securities market, purchaser 18 may, when the regulatory environment permits, alternatively or in addition sell blocks of the company’s stock directly to one or more private buyers such as, for example, institutional investors.

[0059] A wide variety of sale plans may be proposed and negotiated by both company 14 and purchaser 18. For example, a sale plan may specify that, in response to a $10M notice, purchaser 18 is to sell some specified percentage of this total (e.g., 10%) each day for ten business days. In another example, a sale plan may specify that the purchaser may only sell stock of the company through certain brokers. In a preferred embodiment, the sale plan may be designed to
minimize the effect of the sale on the company’s stock price or to achieve one or more other strategic goals. In one example, the sale plan may specify that the purchaser cannot sell more than some specified amount of the company’s stock per day in the public equity markets. More generally, company 14 and purchaser 18 may negotiate and include in the stock purchase agreement any desired terms for controlling the sale by purchaser of the company’s stock.

[0060] In a preferred embodiment, when the stock purchase agreement is used in connection with the present system and method, the sale plan is designed to be compatible with stock purchase covenants 300 to ensure that purchaser 18 can be directed to accept notices necessary to fulfill the company’s obligations as specified in those covenants.

[0061] In step 410, the share price that the purchaser will pay for stock of the company is calculated. In a preferred embodiment, this share price is calculated based on market activity during a valuation period that concludes before the closing. In some preferred embodiments, this valuation period may be prospective, i.e., may consist of a time period (e.g., 10 days) commencing and concluding after the notice was issued. In other preferred embodiments, the valuation period may be retrospective, i.e., may consist of a time period commencing and concluding before the notice was issued. In yet other preferred embodiments, the valuation period may include both retrospective and prospective components, e.g., may consist of a time period commencing before the notice was issued and concluding after the notice was issued.

[0062] In one preferred embodiment, for example, the purchaser’s share price may be set using a volume weighted average price (VWAP) for the company’s stock during the valuation period. In an alternative preferred embodiment, the purchaser’s share price may be set to a weighted average of the actual share price received by purchaser in sales to buyers. This embodiment may be referred to as a net proceeds embodiment, because the amount of funds delivered by the purchaser at closing is equal to the amount of funds raised by the purchaser in sales to other buyers before closing, less any discount or other charges, as described below.

[0063] Alternatively, in an embodiment beneficial to the purchaser, the share price may be set by determining the closing bid for each day (or other time period) of the valuation period, and setting the share price equal to the average of the lowest N closing bids. For example, in a 10 day valuation period, the three days with the lowest closing bids may be determined and the purchaser's share price set to the average of these three lowest closing bids.
In some preferred embodiments, the purchaser's price may be discounted or otherwise reduced to account for fees or other charges by the purchaser or others. These may include discounts to account for risk undertaken by the purchaser or others in conducting the transaction. For example, when the valuation period is retrospective, the purchaser's price may be discounted to account for risk associated with price changes that may occur between the valuation period and the post-notice period during which purchaser 18 may be selling the company's stock to other buyers.

In step 412, company 14 and purchaser 18 close their transaction. In particular, company 14 delivers shares equal in number either to the notice amount divided by the calculated share price (if the notice specified a dollar amount) or the specified number of shares (if the notice specified a number of shares). In consideration, purchaser 18 delivers funds to the company equal either to the notice amount (if the notice specified a dollar amount) or the number of shares specified in the notice multiplied by the calculated share price (if the notice specified a number of shares). This step preferably occurs on a contractually-established closing date one or more days after issuance of a notice. In a preferred embodiment, the closing may be conducted via an escrow agent or other trusted third party. The escrow agent is preferably directed to (1) receive the stock from company 14 or other authorized entity, (2) receive payment for the stock from purchaser 18 or other authorized entity, (3) deliver the stock to the purchaser or other authorized entity, and (4) disburse the funds received as payment to one or more entities in accordance with distribution parameter 314 (e.g., to the company, lender, vendor, etc.).

In step 414, the transactions with buyers settle in accordance with the rules of the securities market in which the transactions occurred. In a preferred embodiment, purchaser 18 may use the shares received from company 14 to settle its transactions with the buyers.

In a preferred embodiment, stock purchase agreement 16, includes a set of terms that complements the stock purchase covenants in loan agreement 12. For example, if a distribution parameter 314 associated with a specific trigger event 308 specifies that proceeds from sale of company stock will be delivered to a trusted third party, then stock purchase agreement 16 preferably comprises a corresponding term obligating purchaser 18 to turn such proceeds over to the trusted third party. In this way, a contractual framework may be established that facilitates execution of stock purchase covenants 300 and mitigates lender risk associated with specified trigger events 308.
[0068] Figs. 5-7 illustrate three exemplary scenarios of system operation in accordance with the present invention. Those skilled in the art will recognize that these three scenarios are merely illustrative and that many other scenarios may be designed on a case-by-case basis as a function of particular circumstances and associated lender risk.

[0069] For purposes of the first scenario (described in connection with Fig. 5), it is assumed that a loan agreement 12 has been executed that includes a stock purchase covenant 300 with the following terms:

a. **trigger event**: failure of borrower 14 to maintain required minimum working capital.

b. **amount parameter**: $1M

c. **authorization parameter**: CFO of company 14 to issue notice to purchaser 18.

d. **distribution parameter**: proceeds to be distributed to company 14.

e. **use parameter**: company to hold proceeds as working capital.

[0070] Fig. 5 illustrates the effect of the specified trigger event in this first scenario. As shown in Fig. 5, at step 501, if and when the specified trigger event occurs, the CFO of company 14 issues a notice for $1M to purchaser 18. In some embodiments, company 14 may be required or deem it prudent to update its registration statements with the SEC to reflect issuance of the notice and obtain any necessary or prudent approvals from the exchange or exchanges on which it is listed.

[0071] Moreover, as noted above, loan agreement 12 may also establish a two-step authorization process in which lender 10 first issues a notice to company 14 (as demonstrated in Fig. 5 by the broken line connecting lender 10 and company 14) which would then trigger an obligation on company 14 to issue the notice to purchaser 18. In the present scenario, for example, lender 10 may track company 14’s working capital by evaluating its financial statements or by other means and, when it detects a failure by company 14 to comply with its minimum working capital requirement, issue an appropriate notice to company 14 indicating its desire to exercise its option to compel the company to sell stock pursuant to the stock purchase agreement.
[0072] In step 502, purchaser 18 proceeds to sell $1M of the company's stock to buyers 20 via securities market 22. In step 503, on the specified closing date, the purchaser's share price is determined and company 14 delivers, or causes to be delivered (e.g., by instruction to its transfer agent), to a trusted third party 50 shares of its stock equal in number to the notice amount divided by the share price. In step 504, purchaser 18 delivers the notice amount to the trusted third party.

[0073] In step 505, the trusted third party delivers the shares to purchaser 18 and, in step 506, the trusted third party delivers the notice amount to company 14. In step 507, the purchaser's transactions with buyers 20 preferably settle through market 22's associated clearing corporation 52 in accordance with the rules of securities market 22. If desired, in step 508 purchaser 18 may notify lender 10 of the transaction results. Alternatively, lender 10 may be notified by another entity such as company 14.

[0074] In this first scenario, once the notice amount is delivered to company 14, it simply holds the funds to increase its working capital, as specified by use parameter 316. By contrast, in a second scenario, the loan agreement may specify that proceeds from the sale of the company's stock must be delivered to the lender, to pay down a portion of company 14's loan or accrued interest. More specifically, for purposes of the second scenario (described in connection with Fig. 6), it is assumed that a loan agreement 12 has been executed that includes a stock purchase covenant 300 with the following terms:

a. **trigger event**: failure of corporate borrower to make loan payment.

b. **amount parameter**: amount of missed payment.

c. **authorization parameter**: loan officer to issue notice to purchaser 18.

d. **distribution parameter**: proceeds to be distributed to lender.

e. **use parameter**: proceeds to be applied against missed payment.

[0075] Fig. 6 illustrates the effect of the specified trigger event in this second scenario. As shown in Fig. 6, at step 601, if and when the specified trigger event occurs, an appropriate loan officer at lender 10 issues a notice for the amount of the missed payment to purchaser 18. Stock purchase agreement 16 is preferably drafted to include a provision directing
purchaser 18 to accept notices from an authorized loan officer. In step 602, purchaser 18 
sells the specified amount of the company's stock to buyers 20 in securities market 22.

[0076] In step 603, on the specified closing date, the purchaser's share price is 
determined and company 14 delivers, or causes to be delivered (e.g., by instruction to its 
transfer agent), to purchaser 18 shares of its stock equal in number to the notice amount 
divided by the share price. In step 604, purchaser 18 delivers the notice amount to lender 10. 
As noted, stock purchase agreement 16 is preferably drafted to include a provision directing 
purchaser 18 to distribute proceeds from the stock sale in accordance with distribution 
covenant 314. In step 605, the purchaser's transactions with buyers 20 preferably settle 
through market 22's associated clearing corporation 52 in accordance with the rules of 
securities market 22. The lender then applies the received proceeds against the company's 
missed payment, in accordance with its obligation under the loan agreement.

[0077] In the embodiments of Figs. 5 and 6, company 14 delivers shares of its stock to 
purchaser 18 at closing. As will be recognized, this creates risk for purchaser 18 who may, 
before the closing, acquire a substantial obligation to deliver shares of the company's stock to 
open-market buyers. If the company fails to deliver its shares at closing, purchaser 18 may 
cover its obligation by buying an equal amount of the company's stock in the market. This 
may result in substantial loss if the market price for the company's stock rises after the 
closing date.

[0078] Accordingly, in a preferred embodiment, to mitigate the purchaser's risk that the 
company will fail to deliver shares of its stock on the closing date, the stock purchase 
agreement (and, if desired, loan agreement 12) preferably requires the company to deliver 
shares in the amount of a good-faith estimate of the number of shares that will be due at 
closing to a trusted third party when a notice is issued. One preferred embodiment of the 
present system and method incorporating this risk-mitigation strategy is described in 
connection with Fig. 7. For purposes of this third scenario, it is assumed that a loan 
agreement 12 has been executed that includes a stock purchase covenant 300 with the 
following terms:

a. **trigger event**: borrower encumbers loan collateral.

b. **amount parameter**: value of encumbered collateral.

c. **authorization parameter**: loan officer to issue notice to purchaser 18.
d. **distribution parameter**: proceeds to be distributed to company 14.

e. **use parameter**: company to unencumber the collateral, or hold proceeds as collateral in lieu of the original collateral.

[0079] Fig. 7 illustrates the effect of the specified trigger event in this third scenario. As shown in Fig. 7, at step 701, if and when the specified trigger event occurs, an appropriate loan officer at lender 10 issues a notice for the amount of the encumbrancee to purchaser 18. Stock purchase agreement 16 is preferably drafted to include a provision directing purchaser 18 to accept notices from an authorized loan officer.

[0080] In step 702, when an appropriate loan officer issues a notice to purchaser 18, company 14 delivers, or causes to be delivered (e.g., by instruction to its transfer agent), shares in the amount of a good-faith estimate of the number of shares that will be due at closing to a trusted third party 50. In an alternative preferred embodiment, when an escrow closing is not contemplated, the shares may be delivered directly to the purchaser to be held until closing.

[0081] In some alternative embodiments, the company may issue irrevocable instructions to the transfer agent to deliver to the trusted third party on the day of closing shares equal in number to the good-faith estimate. In other alternative embodiments, the company may issue irrevocable instructions to the transfer agent to deliver to the purchaser on the day of closing shares equal in number to the good-faith estimate, subject to payment by the purchaser. These other alternative preferred embodiments may be particularly desirable when it is not appropriate under the relevant regulatory regime to issue the company’s stock to a third party in advance of the closing or it is otherwise undesirable to do so. In step 703, purchaser 18 sells the specified amount of the company’s stock to buyers 20 in securities market 22.

[0082] In step 704, on the specified closing date, purchaser 18 delivers the notice amount to trusted third party 50. In step 705, the purchaser’s share price is calculated and the number of shares to be delivered to purchaser 18 is determined. The trusted third party delivers to the purchaser any shares of company stock in its possession up to this number of shares. Any excess shares held by the trusted third party are returned to company 14 (or its transfer agent). By contrast, any shortfall is provided by company 14 (or its transfer agent) directly to purchaser 18. In step 706, trusted third party 50 delivers the funds to the entity or entities specified by distribution parameter 314, i.e., company 14 in the present exemplary scenario.
Although the above example is described in terms of a single closing, the stock purchase agreement, as noted above, may require two or more closings for a given notice to further mitigate purchaser risk. Thus, for example, the stock purchase agreement may specify that a first closing occur four business days after issuance of the notice and a second closing occur ten business days after issuance of the notice. In another example, the stock purchase agreement may require a separate closing each day of the valuation period (or other specified time interval, e.g., 12 hours, 1 hour, 30 minutes, etc.).

In step 707, the purchaser’s transactions with buyers 20 preferably settle through market 22’s associated clearing corporation 52 in accordance with the rules of securities market 22. The company then uses the received funds to unencumber the collateral, or holds the funds as collateral as specified by user parameter 316.

An alternative preferred embodiment for implementing the present system and method is now described in connection with Fig. 8. As shown in Fig. 8, a lender 10 is preferably provided with a computer system 24 that comprises a plurality of processes including a loan monitoring process 26 adapted to monitor for borrower covenant compliance and a notice process 28 adapted to automatically issue notices to purchaser 18, as described below.

The system of Fig. 8 also preferably comprises a company 14 provided with a computer system 30 adapted to communicate with lender computer system 24. Such communication may preferably be conducted via a communication network 32 or some other communication network or means. Communication network 32 may be the Internet or other suitable data-transmission network. Company computer system 30 preferably comprises a financial statement process 34 adapted to electronically transmit financial statements of company 14 to lender computer system 24 via communication network 32. Company computer system 30 also preferably comprises a share delivery process 36 adapted to determine the number of shares to be delivered by company 14 at the conclusion of a valuation period and issue instructions to a transfer agent, as described below.

The system of Fig. 8 also preferably comprises a purchaser 18 provided with a computer system 38 adapted to communicate with lender computer system 24 or company computer system 30. Such communication may preferably be conducted via communication network 32 or an alternative communications network or means. Purchaser computer system
38 preferably comprises a notice process 40 for processing received notices and an electronic fund transfer (EFT) process 42 for communicating with an electronic fund transfer (EFT) system 44, as described in more detail below.

[0088] Purchaser computer system 38 is also preferably provided with a trading process 46 that is adapted to communicate electronically with securities market 22. Purchaser trading process 46 is preferably adapted to carry out electronic buy and sell transactions in securities market 22 with a plurality of other market participants 20.

[0089] In a preferred embodiment, the system shown in Fig. 8 is programmed to operate in accordance with contract terms specified in a loan agreement 12 and a stock purchase agreement 16 previously executed by lender 10, company 12, and purchaser 14. More specifically, computer systems 24, 30, and 38 are preferably programmed to implement one or more stock purchase covenants specified in the manner described above.

[0090] For purposes of illustration, it will be assumed that appropriate loan and stock purchase agreements have been properly executed, and that such agreements provide for stock purchase in accordance with the following parameters.

i. **trigger event**: failure of borrower 14 to maintain a required fixed-charge-coverage ratio.

b. **amount parameter**: actual EBIT subtracted from minimum EBIT adequate to satisfy ratio covenant.

c. **authorization parameter**: automated notice to be issued by lender 10 to purchaser 18.

d. **distribution parameter**: transfer to company 14.

e. **use parameter**: proceeds to be distributed to company 14 and held as liquid funds for at least one financial-statement reporting cycle.

[0091] Operation of the system shown in Fig. 8 will now be described in connection with Fig. 9. As shown in Fig. 9, step 901, when company 14 issues a financial statement or statements, financial statement process 34 of company computer system 30 transmits electronic copies of such statements to lender computer system 24 via communications network 32.
In step 902, the electronic financial statements are forwarded to loan monitoring process 26 which parses them to identify reported items relevant to any financially-related loan covenants included in loan agreement 12. Illustratively, in the present example, loan monitoring process 26 identifies any items necessary to determine earnings before interest and taxes (EBIT) and interest charges. This information is then used to calculate the company’s fixed-charge-coverage ratio.

If this ratio is in compliance with the terms of the company’s stock purchase covenants, no further steps are taken by the lender (step 903). By contrast, if the ratio is out of compliance, the system proceeds to step 904 where an out-of-compliance message is transmitted by loan monitoring process 26 to notice process 28. In the present illustrative embodiment, the out-of-compliance message preferably specifies the amount defined by amount parameter 310, i.e., the company’s actual EBIT as calculated from its financial statements subtracted from the minimum EBIT that would have been adequate to satisfy the ratio covenant.

In step 905, notice process 28 formulates an electronic notice and transmits it to notice process 40 of purchaser computer system 38. In step 906, notice process 40 transmits a command to trading process 46 instructing the trading process to sell the specified amount of company 14’s stock in securities market 22.

In step 907, trading process 46 sells the specified amount of stock to buyers 20. In step 908, on the closing date, trading process 46 calculates the purchaser’s share price for shares it is to purchase from company 14 and transmits this calculated share price to share delivery process 36 of company computer system 30. In step 909, share delivery process 36 divides the notice amount by the calculated share price and issues an instruction to transfer agent 48 to issue an appropriate number of shares (physical or in electronic form) to purchaser 18.

In step 910, electronic fund transfer process 42 formulates an appropriate instruction to EFT system 44 to transfer the notice amount to an account of company 14. In step 911, funds are transferred within EFT system 44 from an account of purchaser 18 to an account of company 14. In the present illustrative example, company 14 retains the proceeds as liquid funds for at least one financial statement reporting cycle in accordance with the terms of its loan agreement.
[0097] It should be recognized that the computer processes described above are tailored to the particular stock purchase covenant of the illustrative example. One skilled in the art will be able to design suitable computer processes necessary to implement other stock purchase covenants. For example, if, in accordance with a covenant's terms, a notice is to be issued by company 14, one skilled in the art may design a suitable notice process for use in company computer system 30.

[0098] It should be further recognized that although the above-description speaks primarily in terms of a loan agreement between a lender and a borrower, aspects of the present system and method may be broadly applied to other transaction types. For example, an insurance policy between an insurer and a company may be drafted or amended to include reference to an existing or to-be-executed stock purchase agreement. The insurance policy may, for example, include terms specifying that in case of particular events, such as a disaster event, the company will access the capital markets using the stock purchase agreement to raise funds for one or more uses, such as to mitigate the effects of the disaster and financial risk to the insurer. For example, in the event of a disaster, the policy may obligate the company to raise funds in the capital markets, and use the funds in a disaster recovery effort which may, for example, include specified public relations efforts, preparation and dissemination of corporate communications, brand risk management, and retaining attorneys to defend lawsuits brought by consumers, regulatory agencies, or others.

[0099] In another example, a contract between a financial guarantor and a company may be drafted or amended to include reference to an existing or to-be-executed stock purchase agreement. The contract may, for example, include terms specifying that in case of particular events, such as events that may result in financial detriment to the financial guarantor, the company will access the capital markets using the stock purchase agreement to raise funds for one or more uses, such as to mitigate any impact on the financial guarantor or others with whom it may contract such as a lender, bondholder, equity investor, or the company.

[0100] In another example, a contract between an equity investor and a company may be drafted or amended to include reference to an existing or to-be-executed stock purchase agreement. The contract may, for example, include terms specifying that in case of particular events, such as events that may result in financial detriment to the equity investor, the company will access the capital markets using the stock purchase agreement to raise funds for one or more uses, such as to mitigate any impact on the equity investor. These uses may
include, for example, paying dividends to the equity investors and redeeming some or all of the equity investors' shares.

[0101] In another example, a contract between a bondholder and a company may be drafted or amended to include reference to an existing or to-be-executed stock purchase agreement. The contract may, for example, include terms specifying that in case of particular events, such as events that may result in financial detriment to the bondholder, the company will access the capital markets using the stock purchase agreement to raise funds for one or more uses, such as to mitigate any impact on the bondholder. These uses may include paying interest or principal, or strengthening the company's balance sheet.

[0102] While the invention has been described in conjunction with specific embodiments, it is evident that numerous alternatives, modifications, and variations will be apparent to those skilled in the art in light of the foregoing description.
CLAIMS

1. An agreement comprising one or more stock purchase terms comprising:
   one or more provisions requiring a borrower in a lending transaction covering at least
   the borrower and a lender to be a party to a stock purchase transaction; and
   one or more provisions specifying one or more notice issuing entities, wherein a notice
   issuing entity is authorized to issue a notice to a purchaser, for purchase of a specified
   amount of stock from the borrower, in response to at least one trigger event selected
   from (i) the borrower failing to maintain a required minimum working capital, (ii) the
   borrower failing to make one or more loan payments to the lender, (iii) the borrower
   encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-
   charge-coverage ratio.

2. The agreement of claim 1, further comprising one or more provisions specifying at least
   one proceeds receiving entity to which proceeds from the purchase of the stock are to be
   delivered.

3. The agreement of claim 1, wherein the specified amount of stock is specified as one or
   more of a dollar amount and a number of shares of stock.

4. The agreement of claim 1, wherein the notice issuing entity is selected from the borrower,
   the lender, and a third party.

5. The agreement of claim 2, wherein the at least one proceeds receiving entity is selected
   from the borrower, the lender, and a third party.

6. The agreement of claim 1, further comprising a term in accordance with which the
   purchaser is permitted to sell at least a portion of the specified amount of stock to the
   public.

7. The agreement of claim 1, wherein the notice requires the borrower to deliver to a third
   party the specified amount of stock.

8. A method for managing risk in a lending transaction, the method comprising: executing,
   by a borrower, covered by the lending transaction, at least one stock purchase agreement
   with a purchaser, the stock purchase agreement requiring the purchaser to buy a specified
   amount of stock from the borrower in response to at least one trigger event selected from
   (i) the borrower failing to maintain a required minimum working capital, (ii) the borrower
failing to make one or more loan payments to the lender, (iii) the borrower encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-charge-coverage ratio.

9. The method of claim 8 further comprising the step of delivering the proceeds from a sale of the specified amount of stock to at least one proceeds receiving entity.

10. The method of claim 9, wherein the at least one proceeds receiving entity is selected from the borrower, the lender, and a specified third party.

11. The method of claim 8 further comprising the step of disclosing the at least one stock purchase agreement to a regulatory body selected from a Securities and Exchange Commission, a state agency, and a federal body that oversees security-related transactions.

12. The method of claim 8, wherein the specified amount of stock is specified as one or more of a dollar amount and a number of shares of stock.

13. (new) A method for managing risk in a lending transaction, the method comprising:

executing, by a lender, covered by the lending transaction, at least one stock purchase agreement with a purchaser, the stock purchase agreement requiring the purchaser to buy a specified amount of stock from a borrower, covered by the lending transaction, in response to at least one trigger event selected from (i) the borrower failing to maintain a required minimum working capital, (ii) the borrower failing to make one or more loan payments to the lender, (iii) the borrower encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-charge-coverage ratio.

14. The method of claim 13 further comprising the step of issuing a notice to the purchaser in response to the at least one trigger event, the notice requiring purchase of a specified amount of stock from the borrower and delivery of the proceeds from the sale of the stock to a specified third party.

15. A method for managing risk in a lending transaction, the method comprising:

executing, by a purchaser, at least one stock purchase agreement with at least one of a borrower and a lender, the stock purchase agreement requiring the purchaser to buy a specified amount of stock from the borrower in response to at least one trigger event selected from (i) the borrower failing to maintain a required minimum working capital, (ii) the borrower failing to make one or more loan payments to the lender, (iii) the
borrower encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-charge-coverage ratio; and

purchasing the specified amount of stock from the borrower in response to the at least one trigger event.

16. The method of claim 15 further comprising the step of delivering the proceeds from the sale of the specified amount of stock to one or more proceeds receiving entities.

17. The method of claim 16, wherein the at least one proceeds receiving entity is selected from the borrower, the lender, and a third party.

18. The method of claim 15 further comprising the step of disclosing the at least one stock purchase agreement to a regulatory body selected from a Securities and Exchange Commission, a state agency, and a federal body that oversees security-related transactions.

19. A system for managing risk in a lending transaction between a lender and a borrower, the system comprising:

a loan monitoring means adapted to monitor for at least one trigger event selected from (i) the borrower failing to maintain a required minimum working capital, (ii) the borrower failing to make one or more loan payments to the lender, (iii) the borrower encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-charge-coverage ratio;

a notice means adapted to automatically issue one or more notices to a purchaser, for purchase of a specified amount of stock from the borrower, in response to the at least one trigger event;

a stock delivery means adapted to deliver to the purchaser the purchased stock; and

a proceeds delivery means adapted to deliver to a third party proceeds from the sale of the stock.

20. A method for managing risk in a lending transaction, the method comprising at least one of the following steps:

being a party to an agreement with at least one of a purchaser, a borrower and a lender, wherein the agreement requires the purchaser to buy a specified amount of stock from the borrower in response to at least one trigger event;
issuing a notice to the purchaser in response to the at least one trigger event;

receiving proceeds from the sale of the specified amount of by the borrower in response to at least one trigger event;

holding a specified amount of stock received from the borrower in response to one or more trigger events;

applying to a specific purpose proceeds from the sale of the specified amount of stock by the borrower to the purchaser in response to at least one trigger event; and

disclosing a change in the status to a regulatory body selected from a Securities and Exchange Commission, a state agency, and a federal body that oversees security-related transactions with respect to receiving the specified amount of stock from the borrower in response to the at least one trigger event;

wherein the at least one trigger event is selected from (i) the borrower failing to maintain a required minimum working capital, (ii) the borrower failing to make one or more loan payments to the lender, (iii) the borrower encumbering loan collateral, and (iv) the borrower failing to maintain a required fixed-charge-coverage ratio.
FIG. 2
STOCK PURCHASE COVENANTS 300

AGREEMENT TYPE ~ 302

TOTAL AMOUNT ~ 304

EFFECTIVENESS REQUIREMENTS ~ 306

TRIGGER EVENT 1 ~ 308

AMOUNT ~ 310

AUTHORITY ~ 312

DISTRIBUTION ~ 314

USE ~ 316

TRIGGER EVENT 2 ~ 308

AMOUNT ~ 310

AUTHORITY ~ 312

DISTRIBUTION ~ 314

USE ~ 316

TRIGGER EVENT N ~ 308

AMOUNT ~ 310

AUTHORITY ~ 312

DISTRIBUTION ~ 314

USE ~ 316

FIG. 3