

**Sindell, Stuart**

---

**From:** Lee, David  
**Sent:** Thursday, June 28, 2007 2:16 PM  
**To:** Levine, Alan; Suan, Chris; Sindell, Stuart; Zwirn, Dan  
**Subject:** FW: DSAM Agreement  
**Attachments:** Zwirn Notes Term Sheet.pdf

---

**From:** Caruso, Robert [mailto: ]  
**Sent:** Thursday, June 28, 2007 2:04 PM  
**To:** Lee, David  
**Subject:** DSAM Agreement

David please find a draft term sheet regarding the DSAM capital accounts and notes. Please call me to walk you through the term sheet. Davis Polk is also preparing a document regarding the HCM/Z managed account issues and fees. I should have that shortly also. Please call to discuss. Hope all is well.

RJC

.....  
**Robert J. Caruso**  
*Managing Partner, Chief Operating Officer*  
**Highbridge Capital Management**  
 9 West 57th Street, 27th Floor  
 New York, NY 10019  
 Direct dial: [redacted]  
 Fax: [redacted]  
 email: [redacted]

<<Zwirn Notes Term Sheet.pdf>>

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information. If you are not the intended recipient you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

6/28/2007

DRAFT – FOR DISCUSSION PURPOSES ONLY

**DBZ COMPANY NOTES  
CERTAIN TERMS AND CONDITIONS**

It being the intention of the parties hereto to enter into definitive documentation reflecting the transaction described herein, the parties hereby agree on the following terms and conditions:

**TRANSACTION**

Notes Issuers<sup>1</sup>

Each of DBZ GP, LLC, (“DBZ GP”), DB Zwirn & Co., LP, (“Co LP”), DB Zwirn Partners, LLC (“Partners LLC”) and DB Zwirn Asia Partners, LLC (“Asia Partners LLC”) (each, a “DBZ Company”) will issue a note (the “DBZ GP Note”, “Co LP Note”, “Partners LLC Note” and “Asia Partners LLC Note”, respectively, and collectively, the “Notes”) with the terms set forth below, to Dubin & Swicca Asset Management, LLC (“DSAM”), which currently holds a minority equity interest in each DBZ Company.

Guarantors

Zwirn Holdings, LLC (“Zwirn Holdings”) will guarantee (the “Guarantee”) each of the Notes and provide such collateral for the Guarantee as set forth below.

Purpose

The purpose of the transaction is (i) to redeem fully DSAM’s [31%] interest in each of the DBZ Companies and to recover the balance of DSAM’s capital account at each DBZ Company (each, a “DSAM Capital Account”) (such balance determined after taking into account clause (ii) below) by issuing Notes from each DBZ Company to DSAM and (ii) to amend certain DBZ Company agreements such that no DSAM Capital Account will be adjusted or reduced by any allocations of legal, attorney, consulting or any other fee or expense incurred or accrued from and after [DATE].

**THE NOTES**

DBZ GP Note  
Co LP Note  
Partners LLC Note  
Asia Partners LLC Note

The Notes will, in aggregate, represent the total \$30.12 MM balance of the DSAM Capital Accounts.<sup>2</sup>

[\$ ]Note, due and payable pursuant to the schedule below.  
[\$ ]Note, due and payable pursuant to the schedule below.  
[\$ ]Note, due and payable pursuant to the schedule below.  
[\$ ]Note, due and payable pursuant to the schedule below.

**PAYMENTS ON THE NOTES**

Aggregate payments in respect of the Notes will be made by the DBZ Companies in the applicable proportions on the dates and in the amounts set forth below:

[ ] <sup>3</sup> , 2007	\$3.12MM
January 31, 2008	\$9.5MM
January 31, 2009	\$17.5MM
Total:	\$30.12MM

**CERTAIN PAYMENT  
PROVISIONS**

<sup>1</sup> To confirm legal name of each DBZ Company.

<sup>2</sup> To discuss the breakdown of amounts due among the four DBZ Company Notes.

<sup>3</sup> Payable on a date after the HCM/Z Amount is paid.

Interest Rate and Payment

Each Note shall bear interest at a rate per annum equal to [the ABR plus the Applicable Margin]<sup>4</sup>.

"ABR" means the highest of (i) the rate of interest publicly announced by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City (the "Prime Rate"), (ii) the secondary market rate for three-month certificates of deposit (adjusted for statutory reserve requirements) plus 1% and (iii) the federal funds effective rate from time to time plus 0.5%.

"Applicable Margin" means [X%].

Interest accrued by each Note shall be payable on January 31, 2009, in addition to the amount set forth in the schedule above.

[Optional Prepayments and Reductions]

Each Note may be prepaid in full or in part by any DBZ Company in minimum amounts to be agreed upon.

SECURITY

Zwirn Holding's obligations under its Guarantee will be secured by perfected liens on all assets of Zwirn Holdings, including, but not limited to, receivables, inventory, equipment, real estate, leases, licenses, patents, brand names, trademarks, contracts, securities and stock of subsidiaries.

ADDITIONAL PROVISIONS:

(a) It is the parties' understanding and expectation that the approximately \$48MM amount payable to HCM/Z Special Opportunities LLC (the "HCM/Z Amount") from one or more of the other funds or managed accounts managed by DB Zwirn & Co., L.P. (together, the "Other Zwirn Funds") will take place prior to [ ], 2007. For the avoidance of doubt, the HCM/Z Amount owed by the Other Zwirn Funds will be due and payable prior to the first payment due and payable by the Zwirn Companies in respect of the Notes.

(b) In no event will Zwirn Holdings receive any amounts in respect of its equity interest in any of the DBZ Companies before amounts payable by the DBZ Companies in respect of the Notes are paid in full.

(c) The parties hereto agree to use their best efforts to structure the transactions described herein in a manner that is tax efficient to DSAM and its owners.

CERTAIN CONDITIONS

The issuance of each Note shall be conditioned upon satisfaction of, among other things, the following conditions precedent on or before [ ], 2007 (the "Closing Date"):

(a) Each DBZ Company shall have executed and delivered satisfactory definitive financing documentation with respect to its respective Note, as determined by DSAM in its discretion.

(b) Creation and perfection of security arrangements for each DBZ Company and the Guarantors, all in form and substance satisfactory to DSAM.

(c) All governmental and third party approvals necessary or, in the discretion of

<sup>4</sup> To discuss interest rate. Also consider a fixed rate instead for administrative convenience.

the DSAM, advisable in connection with the financing contemplated hereby and the continuing operations of each DBZ Company shall have been obtained and be in full force and effect.

(d) DSAM shall have received a solvency opinion, in form and substance satisfactory to DSAM, from a firm satisfactory to DSAM.

(e) DSAM shall have received such legal opinions, documents and other instruments as are customary for transactions of this type or as they may request from time to time.

**CERTAIN DOCUMENTATION MATTERS**

The Notes shall contain customary representations, warranties, events of default and indemnities and other terms deemed appropriate by DSAM.

**COVENANTS**

The Notes shall contain customary affirmative covenants, including, without limitation, affirmative covenants regarding (i) maintenance of corporate existence and rights; (ii) delivery of financial statements and other information; (iii) delivery of notices of default, litigation, ERISA events and material adverse change; (iv) maintenance of satisfactory insurance; (v) compliance with laws; (vi) inspection of books and properties; and (vii) further assurances.

The Notes shall contain customary negative covenants, including, without limitation, negative covenants on (i) liens; (ii) debt (other than the Notes or indebtedness existing prior to the execution of the Notes); (iii) mergers and consolidations; (iv) sales, transfers and other dispositions of property and assets; (v) loans, acquisitions, joint ventures and other investments; (vi) dividends and other distributions to, and redemptions and repurchases from, equity holders; (vii) creating new subsidiaries; (viii) becoming a general partner in any partnership; (ix) prepaying, redeeming or repurchasing debt; (x) transactions with affiliates; (xi) granting negative pledges; (xii) changes in the nature of business conducted by Borrowers and the Guarantors and (xiii) amending organizational documents, or amending or otherwise modifying certain material agreements.

**DBZ COMPANY AGREEMENTS**

Each applicable DBZ Company agreement shall be amended to reflect that no DSAM Capital Account will be adjusted or reduced by any allocations of legal, attorney, consulting or any other fee or expense incurred or accrued from and after [DATE].

**BEST EFFORTS**

The parties hereto shall use reasonable best efforts to enter into definitive agreements in a timely manner reflecting the terms set forth herein (the "Definitive Agreements").

**BINDING AGREEMENT**

The execution of this Certain Terms and Conditions by the parties hereto shall constitute a binding agreement among all such parties.

**CONFIDENTIALITY**

The parties hereto shall keep confidential all matters relating to the terms set forth herein, except as otherwise required by law. This confidentiality provision shall remain in full force and effect and shall survive the termination of this Certain Terms and Conditions.

**TERMINATION**

The obligations of each party hereto set forth herein shall be terminated upon the completion and execution of the Definitive Agreements, except with respect to the matter described under "Confidentiality" above, which will survive the termination of this agreement.

GOVERNING LAW

State of New York

COUNSEL TO DSAM

Davis Polk & Wardwell

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Upon the execution hereof, this Certain Terms and Conditions shall constitute a binding agreement among the undersigned.

**Dubin & Swieca Asset Management, LLC**

By: \_\_\_\_\_  
Name:  
Title:

Agreed to and Accepted this [ ] day of [ ], 2007

**DBZ GP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DB Zwirn & Co., LP**

By: \_\_\_\_\_  
Name:  
Title:

**DB Zwirn Partners, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DB Zwirn Asia Partners, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Zwirn Holdings, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Sindell, Stuart**

---

**From:** Lee, David  
**Sent:** Wednesday, June 27, 2007 3:19 PM  
**To:** 'Cullum, Janet'; Levine, Alan  
**Cc:** Sindell, Stuart; Cutler, Lawrence D.  
**Subject:** RE:

REDACTED

---

**From:** Cullum, Janet [mailto: ]  
**Sent:** Wednesday, June 27, 2007 3:06 PM  
**To:** Lee, David; Levine, Alan  
**Cc:** Sindell, Stuart  
**Subject:** RE:

REDACTED

---

**From:** Lee, David [mailto: ]  
**Sent:** Wednesday, June 27, 2007 3:03 PM  
**To:** Cullum, Janet; Levine, Alan  
**Cc:** Sindell, Stuart  
**Subject:** RE:

REDACTED

---

**From:** Cullum, Janet [ ]  
**Sent:** Wednesday, June 27, 2007 3:02 PM  
**To:** Lee, David; Levine, Alan  
**Cc:** Sindell, Stuart  
**Subject:** RE:

REDACTED

---

**From:** Lee, David [mailto: ]  
**Sent:** Tuesday, June 26, 2007 8:26 PM  
**To:** Levine, Alan; Cullum, Janet  
**Subject:** FW:

6/27/2007

---

**From:** Rubin, Carolyn [mailto: [REDACTED]]  
**Sent:** Tuesday, June 26, 2007 7:13 PM  
**To:** Cutler, Lawrence D.; Lee, David  
**Cc:** Caruso, Robert  
**Subject:** FW:

Fyi. As a courtesy, please find the attached letter that we are sending to the CFTC tomorrow. Carolyn

Carolyn Rubin  
Highbridge Capital Management  
9 West 57th Street  
New York, New York 10019  
Tel: [REDACTED]

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information. If you are not the intended recipient you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. D.B. Zwirn & Co., L.P. reserves the right to archive and monitor all e-mail communications through its networks. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

This email message is for the sole use of the intended recipient(s) and may contain IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. D.B. Zwirn & Co., L.P. reserves the right to archive and monitor all e-mail communications through its networks. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

This email message is for the sole use of the intended recipient(s) and may contain IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the

6/27/2007

Confidential Treatment Requested  
by Fried Frank Harris Shriver & Jacobson LLP

DBZ 0037957

EFTA01097617