Mirant Says Won't Force Pre-Packaged Plan On Banks

David Bogoslaw

Dow Jones News Service

July 17, 2003

New York (Dow Jones)

In an about-face from a statement in a government filing in early June, Mirant Corp. (MIR) said Wednesday it won't try to force a pre-packaged bankruptcy plan on its bank lenders.

The Atlanta power-generation company needed approval for the pre-packaged plan or reorganization from two-thirds of its bond and bank debt but only got 60% of its bank debt to support the plan, sources said. The plan was supported by 80% of Mirant's bondholders.

In its June 2 filing to the Securities and Exchange Commission, Mirant said it would use the "cramdown" provisions of the bankruptcy code to force the pre-packaged plan on the dissenting debt group if it received the requisite approval from the other group.

But Mirant no longer sees the cramdown measure as an option, spokesman James Peters told Dow Jones Newswires on Wednesday.

"After looking at our options and even though we received broad support for the proposed plan ... given the uncertain outcome, the company felt it best to do a comprehensive reorganization and traditional chapter 11 (bankruptcy)," he said.

Peters wouldn't speculate about whether or not a bankruptcy court judge would choose to adopt certain terms from the pre-packaged proposal.

One shareholder said he had bought Mirant shares in the past few months because the company had assured him that his equity stake would be secure under a pre-packaged plan. He said he was angry Mirant had decided not to pursue that tack.

While investors and analysts are speculating as to why Mirant isn't planning to press banks to accept a pre-packaged plan of reorganization, bankruptcy lawyer Craig Litherland at Gilbert Heinz & Randolph said equity in the company is almost certainly more secure because of it.

"It's much harder in a cramdown situation to allow equity holders to maintain any substantial interest at all," he said.

That's because pushing through a pre-packaged plan over the objections of dissenting creditors triggers the absolute priority rule, which prevents any group of creditors or shareholders that has lower priority from retaining any interest or property unless the dissenting creditors group is paid in full, he explained.

"It may be that dynamic that's making the company a little reluctant to go immediately to a cramdown," he said. "Typically, companies prefer to negotiate a consensual agreement, because it gives them flexibility in allowing shareholders of lower status to maintain value."

Although it's common for companies to use the threat of a cramdown to force creditors to support pre-packaged reorganization plans, it's rare to see it actually used, he said.

Flexibility or not, many people believe there will be little if any equity value remaining after the bankruptcy. Existing equity would surely be wiped out if the court nods to an alternative proposal put forth last week by two agent banks, Citibank and Credit Suisse First Boston. Under that proposal, Mirant's bank debt would be slashed to $1.5 billion from $4.5 billion in return for a debt-for-equity swap.

But there are other threats to equity shareholder interests, such as liquidation of the company's assets to pay off debt holders.

Mirant Says Won't Force Pre-Packaged Plan On Banks

(continued)

Standard & Poor's Ratings Service lowered Mirant's debt another rung into junk on Tuesday, saying it expected unsecured creditors to be recover roughly 51% of the value of the debt, based on an estimated value of $5 billion of Mirant's assets and international cash flow forecasts.

Spokesman Peters said he wouldn't comment on how much value debt holders may retain.

"We're in the initial stages of this. We just filed less than 48 hours ago," he said. "We have to revisit our business plan. All our contracts and projects will be re-evaluated."

After suspending trading of Mirant's common stock and 6.25% convertible preferred trust securities on Tuesday, the New York Stock Exchange said it was considering delisting the Mirant securities. Shares last traded at $2.01 on Monday.

On Wednesday, the company announced its common stock and 6.25% Convertible Trust Preferred Series A securities will be quoted on Pink Sheets - a daily listing of over-the-counter stocks not quoted on the OTC bulletin board - under stock symbols MIRKQ and MIRPQ, respectively.