

Court Rules Debt-for-Debt Exchange Offer Limited to Institutional Investors Does Not Violate Trust Indenture Act

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An issuer of high yield bonds won dismissal of claims brought by retail noteholders who claimed that a debt swap of new secured notes for unsecured notes, made available only to institutional investors to ensure compliance with the federal securities laws, violated their rights under the indenture and Section 316(b) of the Trust Indenture Act of 1939 (TIA). Recent decisions in the U.S. District Court for the Southern District of New York (SDNY) in *Marblegate* and *Caesars* (see our previous [client memorandum](#)) had suggested that arguments could be made that exchange offers could violate the TIA because they could have the effect of “impairing” the holders’ right to principal and interest. The December 6 *Cliffs Natural Resources* decision by Judge Sweet of the SDNY applied a reading of the earlier decisions that was narrower than some have feared, and held that an exchange offer, in the absence of any majority action through consent and in the absence of any asset stripping or guarantee releases, would not fit within the earlier decisions or implicate the TIA. *Marblegate* has been appealed to the U.S. Court of Appeals for the Second Circuit, but in the meantime, the *Cliffs Natural Resources* decision, if followed by other courts, should provide additional comfort to market participants that certain standard market transactions do not violate the TIA, in particular those that do not involve a solicitation of consent to amend the indenture through majority action.

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