

SDNY Issues Novel Opinion Holding that Out-of-Court Restructurings May Violate Noteholder Rights Under the Trust Indenture Act

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In [*Marblegate Asset Management v. Education Management Corp. \(S.D.N.Y. 2014\)*](#), the Southern District of New York found that a proposed out-of-court debt restructuring to the detriment of non-consenting creditors likely violated provisions of the Trust Indenture Act of 1939 (TIA), a Depression-era federal statute intended to protect rights to payment under a TIA-qualified indenture, which is a feature of any U.S. public offering of debt securities. Unlike earlier TIA cases, a critical element of the proposed restructuring here was explicitly permitted by the governing indenture, and no consent was required under the indenture. Nonetheless, the Court read the TIA to give creditors a substantive right to protection against out-of-court restructurings they did not consent to on an individual basis. This far-reaching conclusion, if followed by other courts, is likely to have important implications for restructurings. Companies have long relied upon out-of-court restructurings to keep them afloat during financial difficulties. The potential for a minority creditor to call into question this ability, especially in light of provisions it knowingly agreed to at the time the debt securities were purchased, could have serious consequences.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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