

## Distressed Investing

Schulte Roth & Zabel's Distressed Investment Group, which consists of over twenty partners, melds business reorganization, finance, business transactions and tax expertise to provide focused advice on every phase of distressed investing. Combining this interdisciplinary approach with our preeminent knowledge of investment funds, we are uniquely positioned to advise you in the specialized world of distressed investing, whether on trading issues, "loan-to-own" strategies, out-of-court restructurings, bankruptcy situations or acquisitions of control. Our practice focuses on advising investors. Our knowledge gained from developing the structures and products that must be analyzed by a distressed investor enables us to provide an insider's perspective and understanding of these opportunities.



### Analysis of Capital Structure

Our advice with respect to a distressed investment opportunity typically begins with a comprehensive, interdisciplinary review of the target's capital structure, which may have a complex array of outstanding debt and equity securities. We analyze the relative rights of the various interest holders and help you identify the fulcrum security. Our analysis typically includes a review of debt covenants and anti-layering restrictions, intercreditor and inter-lender provisions, governance provisions and provisions with respect to transferability and voting rights. Our attorneys have experience with a broad array of industries, from traditional brick and mortar concerns to technology and other new economy firms. Recognizing the global nature of commerce, we are also equipped to address cross-border tax, collateral and insolvency issues.

### Trading

Effective and timely implementation of your investment strategy must include taking ownership of the underlying loans or securities and being able to exercise the attendant rights and remedies, including the right to vote and give direction to the agent or trustee. We have the expertise to assist you in negotiating and documenting your distressed or par trades informed with our knowledge of applicable law (including the ability to rely on so-called "big boy" letters). Given the complexity and size of the financing transactions completed over the last several years and now undergoing restructurings, you may need to work with one or more like-minded holders in order to achieve your investment objective. We can assist in defining those working relationships, as an informal ad hoc committee or otherwise, and also advise you in how to navigate the Section 13D issues, as well as those arising under Bankruptcy Rule 2019, in the wake of the Bankruptcy Court's decision in *Northwest Airlines*.

### Out-of-Court Restructurings

In some cases, a distressed investment strategy may be best handled by an out-of-court restructuring. While bankruptcy may be the best means for restructuring a company that has significant labor, pension or environmental concerns, or requires significant contractual concessions or terminations, in other cases an out-of-court restructuring may be a less expensive, lower risk and less public alternative. Based upon our analysis of the capital structure and existing inter-creditor and inter-lender relationships, we can assist you in determining whether an out-of-court restructuring is feasible. If it is, we can advise you in all aspects of the restructuring process, including corporate governance and securities law issues, amendments, consent solicitations or exchange offers (including strategies to deal with potential hold-outs), and the related tax implications.

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## Bankruptcy

Given the absence of liquidity to fund lengthy and expensive cases, and the demands of lenders that debtors identify and implement near term exit strategies, there is a real emphasis on speed and efficiency in successfully navigating through a bankruptcy case. Investors who are not adequately prepared to address the issues may well find themselves on the wrong side of a valuation fight or a plan designed to “cram down” or “cram up” their claims or interests. Therefore, early participation in negotiations with the debtor is critical. In order to minimize the duration of a case, reduce costs and expenses, and satisfy the demands of senior lenders, the use of a “prepackaged” or “pre-negotiated” bankruptcy may be desirable, as well as the use of plan support and lock-up agreements—particularly where the debtor is prepared to turn over control to the holder of the fulcrum security. We have assisted clients in successfully negotiating these transactions and implementing them through a Chapter 11 process. For those debtors that file without any such arrangements in place, debtor-in-possession financing and identifying an exit strategy is materially more complicated. In this environment, we have successfully represented investors in preserving value in restructurings and acquisitions, including through the use of (among other alternatives) credit bids and rights offerings.

## M&A in Bankruptcy

We have represented many sophisticated private equity, hedge fund and other institutional investors in all aspects of their distressed M&A activities, including 363 sales, whether as a “stalking horse bidder”, as an auction participant, or by way of sponsored or stand-alone reorganization plans. In the current environment, where liquidity is scarce, we have guided investors in crafting and implementing alternative investment and financing approaches, including credit bid strategies and the utilization of existing debt securities to confirm a plan. We provide practical solutions to the complicated corporate governance issues resulting from an increasingly diverse post-transaction shareholder base, and also provide creative tax structures seeking to minimize a target’s cancellation of indebtedness income and to preserve net operating losses. Our interdisciplinary approach enables us to offer a team of experienced professionals to assist you in formulating and executing a focused and effective plan for dealing with the unique structuring, diligence and documentation issues that arise in distressed M&A transactions.

**For more information, please contact one of the following group leaders of the Distressed Investment Group or any partner in the practice groups:**

**(Click on practice group for a list of partners)**

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