Schulte Roth & Zabel

Alert

Bankruptcy Court Approves Non-Market Cramdown Rate on Momentive Secured Creditors

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On Aug. 26, 2014, the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") issued an oral bench ruling in connection with Momentive Performance Materials Inc.'s and its affiliated debtors' (collectively, the "Debtors") request for confirmation of their joint Chapter 11 plan of reorganization.[1] While the ruling disposed of various matters relating to the proposed plan and confirmation, this *Alert* addresses the Bankruptcy Court's decision on the interest rate that must be paid on account of new debt securities to be issued to a non-accepting class of secured creditors in a "cramdown" under Section 1129(b) of the Bankruptcy Code. As discussed in this *Alert*, this ruling could potentially have far-reaching implications not only on the returns that investors in secured debt can expect but also on the availability and pricing of capital for distressed and non-distressed borrowers generally.

The Debtors' Proposed Plan and Cramdown Provisions

The cramdown issue arose from the plan's proposed treatment of the claims of the first lien and so-called "1.5 lien holders."[2] Under the plan, if the class of first and/or 1.5 lien holders voted to accept the plan, then those holders would be entitled to payment in full, in cash, of the allowed amount of their respective secured claims (including all accrued and unpaid pre- and post-petition interest, but without any make-whole premium).[3] If, on the other hand, the first and/or 1.5 lien holders voted to reject the plan, then their claims would be satisfied, not by cash, but through the issuance of replacement notes. The replacement notes would be secured and their principal amounts would be equal to the principal amount of the allowed claims (including accrued and unpaid pre- and post-petition interest and make-whole premium, if any).[4] The first lien replacement notes would mature in seven years and bear interest at a rate equal to the seven-year Treasury rate plus 1.5 percent, which, as of the date of the bench

[1] *See In re MPM Silicones LLC*, 2014 WL 4436335 (Bankr. S.D.N.Y. Sept. 9, 2014) ("*Momentive*"). Note that this *Alert* cites to the transcript as it was corrected and modified by the Bankruptcy Court (and reported) subsequent to its initial oral ruling made on Aug. 26, 2014.

[2] The 1.5 lien holders held claims secured by liens ranking below those held by the first lien holders, but above the liens of the second lien debt holders.

[3] *See Momentive* at 11. By voting to accept the plan, however, those classes would be waiving their respective claims to make-whole premiums. *Id.* Additionally, the Debtors had secured loan commitments from lenders under takeout and bridge facilities to fund this "cash-out alternative," if accepted by the first and/or 1.5 lien holder classes. *Id.* at 29. For further discussion regarding the make-whole issue, please see the SRZ *Alert* "New York Bankruptcy Judge Disallows Payment of Make-Whole Premium."

[4] Upon such rejection, the holders' respective rights to argue that they were entitled to the make-whole premiums, and therefore to include such premiums in the allowed amounts of their claims, would be preserved.

ruling, implied a coupon of approximately 3.6 percent.[5] The 1.5 lien replacement notes would mature in seven and a half years and the applicable rate would be the seven-and-a-half-year Treasury rate plus 2 percent, implying a coupon of approximately 4.1 percent as of the date of the bench ruling.[6]

The plan was resoundingly rejected by both the first lien and 1.5 lien holders: Approximately 90 percent of the first lien class and over 80 percent of the 1.5 lien class (both in amount and number in each case)[7] voted to reject the plan.[8] The Debtors argued that, notwithstanding such rejection, the plan nevertheless satisfied the cramdown requirements set forth in section 1129(b) of the Bankruptcy Code and could therefore still be confirmed by the Bankruptcy Court.

Section 1129(b) of the Bankruptcy Code sets forth the means by which a plan that is not accepted by all impaired creditors and equity holders can nonetheless be confirmed. The Bankruptcy Code provides in relevant part:

> Notwithstanding section 510(a) of [the Bankruptcy Code], if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph *if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan*.[9]

As the Debtors argued, under Section 1129(b)(1) "a Bankruptcy Court may cram down a plan over the dissenting vote of an impaired class or classes of claims or interests as long as the plan does not 'discriminate unfairly' and is 'fair and equitable' with respect to the non-accepting class."[10]

With respect to the first and 1.5 lien holders specifically, the Debtors argued that the plan was fair and equitable because it satisfied the requirements of Section 1129(b)(2)(A) of the Bankruptcy Code.[11] Section 1129(b)(2)(A) establishes the scenarios by which the fair and equitable condition with respect to a dissenting class of secured creditors can be satisfied.[12] In particular, for a plan to be fair and equitable to secured creditors, it must provide:

> (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

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[5] *See Momentive* at 24.

[6] *Id.*

[7] Acceptance of a plan by a class of creditors requires acceptance by two-thirds (66.67 percent) in amount and more than one-half (50 percent) in number of the qualified creditors in that class. *See* Bankruptcy Code § 1126(c).

[8] *See Debtors' (I) Memorandum of Law in Support of Confirmation of Joint Chapter 11 Plan of Reorganization for Momentive Performance Materials Inc. and its Affiliated Debtors and (II) Omnibus Reply to Objections with Respect to Plan and Related Adversary Proceedings*, Case No. 14-22503, 8 (Bankr. S.D.N.Y.) [Docket No. 814] ("Debtors' Confirmation Brief").

[9] Bankruptcy Code § 1129(b)(1) (emphasis added).

[10] Debtors' Confirmation Brief at 56 (citing Bankruptcy Code § 1129(b)(1); other internal citations omitted).

[11] *See* Debtors' Confirmation Brief at 61; Bankruptcy Code § 1129(b)(2)(A). The Debtors also argued that the plan did not discriminate unfairly. *See* Debtors' Confirmation Brief at 57-59.

[12] *See* Debtors' Confirmation Brief at 62 (citing Bankruptcy Code § 1129(b)(2)(A)).

> (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property … .[13]

The Debtors argued that their plan as proposed satisfied these requirements of Section 1129(b)(2)(A)(i) of the Bankruptcy Code.[14] Specifically, the Debtors stated that, under the plan, the first and 1.5 lien holders would: (1) retain their respective liens on their prepetition collateral to the extent of their allowed claims; and (2) receive replacement notes with deferred payments with a present value, as of the effective date of the plan, of at least the amounts of their respective claims.[15]

The key issue before the Bankruptcy Court related to the latter point, namely, what the appropriate rate of interest — the so-called "cramdown rate" — would have to be in order to ensure that the first and 1.5 lien holders received, on a present value basis, the equivalent of the allowed amount of their respective claims.[16] The Debtors argued that, based on the 2004 decision of the United States Supreme Court in *Till v. SCS Credit Corp.*,[17] the appropriate cramdown rate was to be determined using a "formula" approach.[18] The Debtors described the *Till* formula approach as having two steps:

> [T]he first step is to choose an applicable base rate, which is selected "taking [a] cue from ordinary lending practices" reflecting the "financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relative slight risk of default." … The second step of the *Till* formula is to adjust the base rate to "account for the risk of nonpayment posed by borrowers in their financial position."[19]

This approach, the Debtors argued, justified setting the interest rates for the first and 1.5 lien replacement notes as "the Treasury Rate, a suitable base rate to reflect the long-term maturity of such notes, plus 1.50 percent and 2.0 percent, respectively, to account for certain risks."[20] As noted above, based on prevailing Treasury rates at the time, this approach yielded effective rates of approximately 3.6 percent for the first lien replacement notes and 4.1 percent for the 1.5 lien replacement notes.

The Indenture Trustees' Objections

The indenture trustees for each of the first and 1.5 lien notes objected to the cramdown rates proposed by the Debtors, arguing that those rates did not satisfy the present value test under Section

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[13] Bankruptcy Code § 1129(b)(2)(A). Section 1129(b)(2)(A) also provides for two alternative scenarios, not relevant to this discussion, by which a plan may be considered fair and equitable to secured creditors. *See* Bankruptcy Code § 1129(b)(2)(A)(ii) and (iii).

[14] *See* Debtors' Confirmation Brief at 62-63 (citing Bankruptcy Code § 1129(b)(2)(A)(i)).

[15] *See* Debtors' Confirmation Brief at 63. *See also Debtors' Omnibus Reply to Cramdown Objections to the Debtors' Joint Chapter 11 Plan of Reorganization*, Case No. 14-22503, 9 (Bankr. S.D.N.Y.) [Docket No. 867] (internal citations omitted).

[16] *See Momentive* at 24.

[17] 541 U.S. 465 (2004) ("*Till*"). For a more detailed discussion of *Till* and related cases, please refer to Chapter 21 of *Bankruptcy Litigation Manual* (M. Cook ed., 2013-2014). A copy may be obtained by contacting one of the authors.

[18] Debtors' Confirmation Brief at 63 (citing *Till* at 479).

[19] Debtors' Confirmation Brief at 64 (citing *Till* at 479, 471).

[20] Debtors' Confirmation Brief at 64.

1129(b)(2)(A)(i) of the Bankruptcy Code and that they should instead be higher, market-based rates.[21] The principal thrust of their objections can be summarized as follows:

- *The Supreme Court's decision in* Till *should not be applied to this case*.[22] The indenture trustees argued that the approach applied in *Till* was inapplicable here because the debtors in that case were individuals who had filed under Chapter 13 of the Bankruptcy Code (which governs debt adjustment by individual debtors) and were seeking to restructure a loan secured by a used truck. The circumstances of this case relating to business debtors and commenced under Chapter 11 of the Bankruptcy Code were clearly different from those of *Till*, and therefore, the indenture trustees argued, *Till* was not binding precedent and should not be applied to this case.
- *The* Till *decision acknowledged that if an efficient market for financing exists, then the cramdown rate should equal the market rate of interest*.[23] The indenture trustees further argued that even if *Till* were applicable, the Supreme Court in that case expressly acknowledged that in Chapter 11, it is appropriate to first determine if an efficient market for financing exists before applying the formula approach. On this point, the indenture trustees argued that applying the formula approach made sense in *Till* (a Chapter 13 case) because of the "absence of a free market for loans to chapter 13 debtors," but "where there is a free market of willing debtor-in-possession and exit lenders, [the Supreme Court expressly acknowledged that] 'it might make sense to ask what rate an efficient market would produce.'"[24] Further, they argued that an efficient market for financing did exist in this case (a Chapter 11 case), as evidenced by expert testimony and the fact that the Debtors had secured commitments for a $1-billion exit facility and a $250-million bridge facility.[25] Thus, as the 1.5 lien indenture trustee concluded, "because the Debtors [participated] in an efficient financing market and [had] commitments to refinance the 1.5 Lien Notes through a third-party bridge loan, the Supreme Court's guidance [indicated] that a *market rate* [was] the appropriate cramdown interest rate for the Replacement 1.5 Lien Notes."[26] The indenture trustees also argued that the rates reflected in the exit and bridge facilities could be used as fair proxies for the *Till* formula rates.[27]
- *Even under the* Till *formula approach, the Debtors' cramdown rates are not fair and equitable*.[28] Finally, the indenture trustees argued that even if the formula approach under *Till* were

[21] *See Momentive* at 24. *See also generally Objection of BOKF, NA, as First Lien Trustee, to the Debtors' Joint Chapter 11 Plan and Confirmation of the Plan with Respect to the Terms of the Replacement First Lien Notes*, Case No. 14-22503 (Bankr. S.D.N.Y) [Docket No. 820] ("First Lien Cramdown Objection") and *Cramdown Objection of Wilmington Trust, National Association, as Indenture Trustee, to Confirmation of Debtors' Proposed Joint Chapter 11 Plan of Reorganization*, Case No. 14-22503 (Bankr. S.D.N.Y.) [Docket No. 813] ("1.5 Lien Cramdown Objection").

[22] *See generally* First Lien Cramdown Objection at 2, 14-15 and 1.5 Lien Cramdown Objection at 15-18.

[23] *See generally* First Lien Cramdown Objection at 17-20 and 1.5 Lien Cramdown Objection at 13-15, 18-23.

[24] 1.5 Lien Cramdown Objection at 14 (citing *Till* at 476 n.14).

[25] Those facilities, as noted above, had been obtained to fund, among other things, the cash-out option for the first and 1.5 lien holders. *See Momentive* at 29. Further, the rates provided under those facilities were higher than those under the replacement notes. *Id*. The rate for the exit facility was LIBOR plus 4 percent (with a LIBOR floor of 1 percent), for an implied effective rate of 5 percent (and an alternative rate of 6.25 percent at the debtors' option). *Id*. The rate for the bridge facility was LIBOR plus 6 percent, increasing in increments of 50 basis points and subject to a cap. *Id*.

[26] 1.5 Lien Cramdown Objection at 23 (internal citations omitted) (emphasis added). It should be noted that both the first lien indenture trustee and 1.5 lien indenture trustee adduced evidence specifying the appropriate market rates that they argued should be applied in lieu of the debtors' chosen cramdown rates. That evidence, however, was filed under seal and is currently not publicly available.

[27] *See Momentive* at 29.

[28] *See generally* First Lien Cramdown Objection at 20-36 and 1.5 Lien Cramdown Objection at 28-33.

appropriate and applicable in these circumstances, the actual rates designated in the plan were not fair and equitable.[29] First, the indenture trustees took issue with the use of Treasury rates as the base rate, and not the prime rate, as applied in *Till*.[30] The prevailing national prime rate at the time was 3.25 percent, whereas the applicable Treasury rates were 2.14 percent and 2.20 percent (i.e., lower).[31] Thus, as the indenture trustees argued, use of the lower Treasury rates as the base rates (without any corresponding upward adjustments to the risk premiums) would effectively deprive the first and 1.5 lien holders of more than 1 percent to which they would otherwise be entitled under a proper application of *Till*.[32] Second, the indenture trustees argued that the risk premiums applied by the Debtors (i.e., 1.5 percent and 2 percent, respectively) were inadequate in that they failed to adequately adjust for the risks attendant to lending to these Debtors, including credit risk relating to the circumstances of the estates, the nature of the security, and plan feasibility and duration.[33]

The Bankruptcy Court's Ruling

The Bankruptcy Court rejected the indenture trustees' objections and agreed to enter an order confirming the plan, subject to certain adjustments to the cramdown rates as discussed below.[34]

With respect to the indenture trustees' objections, the Bankruptcy Court held that:

- *The* Till *formula approach is appropriate in chapter 11 cases*. The Bankruptcy Court found that "there [was] no sufficiently contrary basis to distinguish the chapter 13 and chapter 11 plan contexts in light of the similarity of the language of the … [analogous] provisions [under each chapter] and the underlying present value concept that *Till* recognized should be applied uniformly throughout the [Bankruptcy] Code."[35] The Bankruptcy Court also stated that it was guided by the principles enunciated by the plurality decision in *Till* as well as an earlier Second Circuit decision cited favorably in *Till*, both of which cases established key "first principles" for setting the appropriate discount rate for cramdown purposes of a secured claim.[36] Those first principles were that, first, the cramdown interest rate should *not* contain any lender profit or cost element and, second, that market-based evidence should not be considered except to determine a risk premium, all as discussed further below.[37] The Bankruptcy Court thus concluded that the *Till* approach was appropriate for this case.[38]
- *The market should not be considered in determining the cramdown rate, except in determining the risk premium (which will normally be between 1 percent and 3 percent)*. The Bankruptcy

[29] *Id.*

[30] See *Till* at 478-79 ("[T]he approach begins by looking to the national prime rate, reported daily in the press … [T]he approach then requires a bankruptcy court to adjust the *prime rate* accordingly" (emphasis added).).

[31] *See* First Lien Cramdown Objection at 24 and 1.5 Lien Cramdown Objection at 28.

[32] *Id*.

[33] *See generally* First Lien Cramdown Objection at 26-33 and 1.5 Lien Cramdown Objection at 29-33.

[34] *See Momentive* at 34.

[35] *Id.* at 24.

[36] *Id.* at 25 (referring to *Till* and *In re Valenti*, 105 F.3d 55 (2d Cir. 1997) ("*Valenti*")).

[37] *Id.* at 26.

[38] *Id.* at 29.

Court also rejected the indenture trustees' argument that market evidence should be considered in determining the cramdown rate, other than, possibly, to set the appropriate risk premium in the second step of the *Till* formula approach: "[t]he cramdown rate analysis … should focus on a rate that does not take market factors into account … [M]arket-based evidence should not be considered, except, arguably and, if so secondarily, when setting a proper risk premium in the formula approach."[39] The Bankruptcy Court reiterated that under the formula approach, the proper cramdown rate "begins with a risk-free base rate, such as the prime rate used in *Till*, or the Treasury rate used in *Valenti*, which is then adjusted by a percentage reflecting a risk factor based on the circumstances of the debtor's estate, the nature of the collateral security and the terms of the cramdown note itself and the duration and feasibility of the plan."[40] The Bankruptcy Court noted that both the Supreme Court and Second Circuit had held that the risk adjustment should generally be between 1 percent and 3 percent.[41]

The Bankruptcy Court also held that the objective of the cramdown provisions of the Bankruptcy Code with respect to secured creditors is to "put the creditor in the same economic position it would have been in had it received the value of its allowed claim immediately," and *not* to account for any profit or costs of the creditor.[42] On this point, the Bankruptcy Court quoted the Second Circuit in *Valenti*, stating: "The purpose [of the secured creditor cramdown provision] is *not* to put the creditor in the same position that it would have been in had it arranged a 'new' loan (Emphasis in the original)," … and adding, "[m]oreover … the value of a creditor's allowed claim does not include any degree of profit. There is no reason, therefore, that the interest rate should account for profit."[43]

Thus, the Bankruptcy Court concluded that the cramdown interest rate "should not contain any profit or cost element, which were rejected by *Till* and the Second Circuit in *Valenti* as inconsistent with the present-value approach for cramdown purposes."[44] Rather, according to the Bankruptcy Court, the proper approach is to "[take] the profit out, [take] the fees out, and [compensate] the creditor under a formula starting with a base rate that is essentially riskless, plus up to a 1 to 3 percent additional risk premium, if any, at least as against the prime rate, for the debtor's own unique risks in completing its plan payments coming out of bankruptcy."[45] On that basis, the Bankruptcy Court also rejected the use of the rates provided in the committed exit and bridge facilities, holding that those rates had a built-in profit element, which could not

[39] *Id.* at 25, 26.

[40] *Id.* at 26 (citing *Till* at 479 and *Valenti* at 64).

[41] *Id.*

[42] *Id.* at 25 (citing *Valenti* at 63-64).

[43] *Id.*

[44] *Id.* at 26.

[45] *Id.* at 28. It should be noted that the Bankruptcy Court appears to have also adopted the Supreme Court's rejection of certain other market-based approaches, each of which, in the Supreme Court's words, are "complicated, imposes significant evidentiary costs, and aims to make each individual creditor whole rather than to ensure the debtor's payments have the required present value …." *Id.* at 25 (citing *Till* at 477).

readily be backed out, and therefore were inconsistent with the principles espoused in *Till* and *Valenti*.[46]

Finally, the Bankruptcy Court rejected the indenture trustees' suggestion that it should first consider whether an efficient market for exit financing exists, and then apply the formula approach only if such a market does not exist.[47] The Bankruptcy Court held that such a process generally "misinterprets" *Till* and *Valenti*, as well as the purpose of Section 1129(b)(2)(A)(i)(II) of the Bankruptcy Code and that would almost invariably lead to a "dead end,"[48] given that the secured creditor should merely be put into the same position it would have been in had it received the value of its claim immediately. The Bankruptcy Court reasoned:

> [T]he vast majority of cases have ultimately applied a *Till* prime-plus approach or base rate-plus approach to the chapter 11 cramdown rate, either having spent considerable time determining that there is no efficient market or simply by moving to the base-rate-plus formula in the first instance … *This should not be surprising because it is highly unlikely that there will ever be an efficient market that does not include a profit element, fees and costs, thereby violating Till and Valenti's first principles, since capturing profit, fees and costs is the marketplace lender's reason for being. That is … market lenders need to be rewarded, or … receive a profit*.[49]

- *Under the* Till *approach, the use of Treasury rates, plus a 1.5 percent and 2 percent risk premium is appropriate here, but the risk premium should be increased by an additional 0.5 percent and 0.75 percent, respectively*. After reviewing the evidence produced by the Debtors, the Bankruptcy Court concluded that the risk analysis conducted by the Debtors' experts was appropriate, and that the indenture trustees had not carried their burden to show why the Debtors' risk premiums were too low.[50]

  The Bankruptcy Court also held that it was appropriate for the Debtors to use Treasury rates instead of the prime rate as base rates given the tenor of the replacement notes (seven and seven and a half years, respectively), and the fact that those rates were truly riskless because the U.S. government is the obligor.[51] However, because the Treasury rates reflected lower risk than the prime rate used in *Till*, the Bankruptcy Court increased the risk premium by 0.5 percent for the first lien replacement notes and 0.75 percent for the 1.5 lien replacement notes and suggested that the plan be amended to reflected these adjustments:

  > I question whether the 1 to 3 percent risk premium spread over prime used in Till would be the same if instead, as here, a base rate equal to the Treasury were used. I say this in particular under the present circumstances where the prime rate for short-term loans is materially higher than the Treasury rate for long-term loans, a somewhat anomalous

[46] *See id.* at 29.

[47] *See id.* at 28.

[48] *Id.* (internal citations omitted).

[49] *Id.* (emphasis added).

[50] *See id.* at 30, 31.

[51] *See id.* at 31. Conversely, according to the Bankruptcy Court, the prime rate contains an inherent element of risk given that it correlates to the rate banks charge each other on overnight interbank loans and thus may reflect risks in the banks' financial strength. *Id.*

> result. It seems to me, then, that although the general risk factor analysis conducted by [the Debtors' witness] was appropriate, there should be an additional amount added to the risk premium in light of the fact that the debtors used Treasury rates as the base rate. *The additional increment, I believe, should be another .5 percent for the first lien replacement notes, and an additional .75 percent for the 1.5 lien replacement notes. I believe that these adjustments adequately take into account risks inherent in the debtors' performance of the replacement notes above the essentially risk-free Treasury note base rates.*[52]

The resulting effective rates, as adjusted, were 4.1 percent for the first lien replacement notes and 4.85 percent for the 1.5 lien replacement notes.[53] Notably, the Bankruptcy Court did not explain its methodology for arriving at the 0.5 percent and 0.75 percent adjustments nor how it had determined that such adjustments accounted for the risk spread between Treasury and prime rates.

Implications

The practical effect of the Bankruptcy Court's decision was the involuntary transfer of value from the senior secured lenders to more junior classes who arguably received value not bargained for pre-bankruptcy and which transfer would not have otherwise occurred in a consensual lending market. The ruling has been appealed by the indenture trustees for both the first and the 1.5 lien holders. If upheld or endorsed by other courts, the decision could have far-reaching implications for distressed and non-distressed borrowers and other market participants as lenders seek to protect themselves against the prospect of Chapter 11 cramdown of this type.

Secured lenders, believing that they might be compelled under a Chapter 11 plan to accept takeback paper at below-market rates or at rates that otherwise yield lower-than-expected returns, or believing that they have lost the leverage that they have historically enjoyed in Chapter 11 negotiations over plan terms or proposed exit strategies, could charge higher fees or impose other costs on borrowers to compensate for those increased risks. They could also try to negotiate concessions from junior creditors in intercreditor arrangements, such as enhanced turnover provisions. In addition, distressed borrowers may have more difficulty attracting new financing in light of lender concerns that regardless of the terms that are negotiated pre-bankruptcy, those terms could be substantially modified (as to maturity, interest rate and other terms) without their consent under the cramdown provisions of the Bankruptcy Code. Further, other market participants (principally competitors) will likely argue that the decision artificially subsidizes debtors emerging from bankruptcy by allowing them to obtain financing at rates not otherwise available in the market.

Finally, this ruling could also impact the trading market for distressed debt. If upheld, the ruling could have an adverse impact on the market value of distressed secured debt as purchasers seek to discount price based on the increased risk associated with possible cramdown.

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[52] *Id.* at 32 (emphasis added).

[53] *Id.*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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