

January 8, 2020

The Credit Roundtable files *amicus curiae* brief in support of trustee in Neiman Marcus bondholders' fraudulent conveyance case

Today, The Credit Roundtable ("CRT") filed a brief as *amicus curiae* related to the Neiman Marcus bankruptcy. The European Leveraged Finance Association ("ELFA") joined in the filing. The brief states that the court should deny the defendants' motion to dismiss and should allow the trustee to pursue the fraudulent conveyance claims asserted by the trustee on behalf of bondholders. The filing argues that there is no ground in law or policy for the Neiman Marcus defendants' extreme proposal to strip indenture trustees - and thus creditors - of the right to bring fraudulent conveyance claims prior to an event of default.

This follows Neiman Marcus' designation of MyTheresa as an unrestricted subsidiary, and the subsequent transfer of this valuable asset outside of the restricted group at a time when Neiman Marcus was financially frail. Following this transfer, the MyTheresa asset could be used by the company's sponsor, Ares, as an inducement for bondholders to participate in a distressed exchange offer, or otherwise in a manner that could enrich its private equity owners to the detriment of creditors.

In the *amicus* brief, the CRT, represented by Patterson Belknap Webb & Tyler LLP, challenges the Neiman Marcus defendants' position that an indenture trustee may not assert a fraudulent conveyance claim in the absence of an event of default under the indenture, even if the requisite threshold of bondholders directs it to do so in order to protect their interests.

The brief goes on to explain that the defendants' interpretation of the indenture, would "preclude trustees acting pursuant to indentures based on this form from *ever* bringing a claim prior to default," an interpretation that would "subvert the expectation of corporate bondholders that they may direct the trustee to enforce their rights against fraudulent conveyance, regardless of whether an event of default has occurred."

David Knutson, Vice Chairperson of the CRT commented: "The Credit Roundtable has long worked to improve the theoretical work of the trustee to a practical, functional and active relationship that supports the rights of creditors and evens the playing field for providers of both debt and equity capital. The principle of the *amicus* brief is important to all bondholders, particularly as cycle matures."

Sabrina Fox, Executive Adviser at ELFA commented: “ELFA’s Board is very pleased to have supported CRT in this important *amicus curiae* filing. The principles underlying the brief go to the heart of bondholders’ fundamental right to be represented by the trustee in potential fraudulent conveyance claims. ELFA’s support of CRT’s filing demonstrates the importance of this issue to bondholders globally.”

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About CRT: Formed in 2007, The Credit Roundtable (“CRT”), organized in association with the Fixed Income Forum, is a group of large institutional fixed income managers including investment advisors, insurance companies, pension funds, and mutual fund firms, responsible for investing more than \$3.8 trillion of assets. The Credit Roundtable advocates for creditor rights through education and outreach and works to improve fixed income corporate actions, ineffective covenants, and the underwriting and distribution of corporate debt. Its mission is to improve risk assessment and management through education and seeks to benefit all bond market participants through increasing transparency, market efficiency, and liquidity. For more information please visit the CRT website: www.thecreditroundtable.org.

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About ELFA: ELFA (the European Leveraged Finance Association) is a trade association comprised of European leveraged finance investors from over 30 institutional fixed income managers, including investment advisors, insurance companies, and pension funds representing over €230 billion in European leveraged finance assets under management. ELFA seeks to support the growth and resilience of the leveraged finance market while acting as the voice of its investor community by promoting transparency and facilitating engagement among European leveraged finance market participants. For more information please visit the ELFA website: www.elfainvestors.com.

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