



Loan Group Warns Over Creditors' Bankruptcy Rights

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The primary industry group for the corporate loan market warned that any attempt to limit the rights of secured creditors in the event of a bankruptcy could have a broader impact on companies' access to and cost of capital.

The comments by the Loan Syndications and Trading Association were aimed at the American Bankruptcy Institute, which is currently studying the 1978 bankruptcy code for areas in need of updating. Among those under consideration is the role of secured debt in bankruptcies.

The LSTA's general counsel, Elliot Ganz, said in a statement announcing the formation of a working group on the ABI's review that any attempt to limit secured creditors' rights could limit companies' access to capital both before and after bankruptcy, because lenders will feel less protected. "Without the protections secured creditors have come to rely on, the supply of credit to growing companies is likely to shrink and the price of whatever credit is available is likely to rise," he said.

Robert Keach, co-chair of the ABI commission reviewing the Chapter 11 code, said the group has so far only identified the role of secured debt in bankruptcies as an area of study and hasn't taken any position on the issue.

"The ABI commission is certainly not looking at the prevalence of secured debt that's occurred over the last 30 years as a problem to be solved," he said in an interview with CFO Journal. "We mentioned it in the mission statement because there have been changes that have occurred over time that have made the current code somewhat obsolete."

In particular, he noted that in some bankruptcy cases today, virtually all of a company's equity is claimed by secured lenders. That was rarely the case in 1978, when it was expected that there would be some equity left over to be used to secure financing during bankruptcy proceedings.

The ABI's commission is now holding hearings on the code and expects to publish a report in 2014. The industry group doesn't intend to lobby politicians for changes to the code following the release of the report, but Keach said he's "hopeful" the ABI's efforts will lead to some action.

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