



GEORGETOWN UNIVERSITY LAW CENTER

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The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20002

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Harry Reid
Minority Leader
U.S. Senate
Washington, D.C. 20002

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Members:

We are legal scholars of corporate finance. We write because we are concerned by a proposed omnibus appropriations rider that would amend the Trust Indenture Act of 1939 without any legislative hearings or opportunity for public comment on the proposed amendment.

As you may know, the Trust Indenture Act is one of the pillars of American securities regulation. Congress passed the Trust Indenture Act in the wake of the Great Depression to protect bondholders in restructurings. Among other things, the Trust Indenture Act provides that no bondholder's right to payment or to institute suit for nonpayment may be impaired or affected without that individual bondholder's consent. These provisions are intended to protect bond investors by requiring any restructuring of bonds to occur subject to the transparency of a court supervised bankruptcy process, absent bondholder consent to a debt restructuring.

Recently, several Members of Congress have been lobbied to amend this longstanding law, first through a rider to the highway bill and now through a rider to the omnibus appropriations legislation. The proposed amendment would narrowly define impairment of the right to payment and the right to institute suit for nonpayment. The proposed amendment would also be retroactive and apply to litigation that is presently on appeal before the Second Circuit Court of Appeals.

As corporate finance law experts who teach and write about the Trust Indenture Act, we have differing opinions about whether the Trust Indenture Act should be amended, and if so, how. Several of us believe that the Trust Indenture Act should be amended, but not in the way proposed. We agree, however, that any amendment of the Trust Indenture Act should take place only after legislative hearings and opportunity for public comment. The proposed amendment has not been subjected to the customary vetting through public hearings and other mechanisms that are critical to improving the public confidence in Congress' ability to govern. There have been no hearings on the matter, no opportunity to hear from a diverse group of experts or the public, and no attempt to establish a legislative record.

The amendment of federal securities laws is not something that should be undertaken lightly. A hasty amendment of the Trust Indenture Act could have broad negative unintended consequences in the securities markets. Accordingly, we urge you to postpone any amendment of the Trust Indenture Act until after legislative hearings that enable more deliberate and careful consideration.

Sincerely,

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