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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3A**

**THE INSOLVENCY SYSTEM OF THE UNITED STATES**

This is the **summative (formal) assessment** for **Module 3A** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

**The mark awarded for this assessment will determine your final mark for Module 3A**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment3A]**. An example would be something along the following lines: 202223-336.assessment3A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “student number” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.1If you selected Module 3A as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

6.2 If you selected Module 3A as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of **9 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Car Corp, incorporated and headquartered in Michigan, owes Parts Inc, incorporated and headquartered in Mexico, USD 10,000 on a past-due invoice for components used to build Car Corp vehicles. May Parts Inc file an involuntary petition to place Car Corp into chapter 11 bankruptcy proceedings?

(a) Yes, regardless of the circumstances.

(b) Yes, if Car Corp has fewer than 12 non-contingent, non-insider creditors.

(c) Yes, if other creditors owed at least USD 5,775 join in the petition.

(d) No, because Parts Inc does not know whether Car Corp is insolvent.

(e) No, because Parts Inc is not a US company.

**Question 1.2**

Answer this question with reference to the set of facts set out in question 1.1 above: Which of the following is likely to be a party in interest in the bankruptcy of Car Corp?

(a) A shareholder in Parts Inc, to which Car Corp is indebted.

(b) A journalist writing about Car Corp’s bankruptcy.

(c) A shareholder in Investment Corp, Car Corp’s parent company.

(d) A retired employee of Car Corp who receives payments from the company’s pension plan.

(e) A non-profit organization that advocates for companies like Car Corp to be held responsible for climate change

**Question 1.3**

Which of the following entities does not satisfy the minimum presence requirement to be a debtor under any chapter of the Bankruptcy Code?

(a) A foreign domiciled company that pays a US attorney a retainer.

(b) A company with several US bank accounts, but no physical presence in the United States.

(c) A company with US patents, but no physical presence in the United States.

(d) Options (a) to (c) above satisfy the minimum requirement for presence in the United States.

(e) None of the above (options (a) to (d)) satisfy the minimum requirement for presence in the United States.

**Question 1.4**

Who may serve as a foreign representative to seek recognition of a foreign proceeding under chapter 15?

(a) An officer of the debtor if it is a debtor-in-possession in the foreign proceeding.

(b) The board of directors of the debtor if it is a debtor-in-possession in the foreign proceeding.

(c) An insolvency professional appointed by the court overseeing the foreign proceeding.

(d) An insolvency professional appointed by a creditor where the foreign proceeding is an involuntary receivership.

(e) All of the above.

**Question 1.5**

Which of the following regarding executory contracts is **false**?

(a) A court will generally defer to a debtor’s business judgment regarding whether to assume or reject an executory contract.

(b) Executory contracts are clearly defined by the Bankruptcy Code.

(c) In the most common formulation, executory contracts are defined as those where both sides to a contract have material unperformed obligations.

(d) Chapter 11 debtors have greater flexibility than chapter 7 debtors on when they may assume, assign or reject an executory contract.

(e) Under the hypothetical test, a debtor cannot assume an executory contract if the debtor could not also assign the contract.

**Question 1.6**

Which of the following is not a requirement to confirm a “cramdown” plan?

1. That the plan is fair and equitable to dissenting classes of creditors.
2. Acceptance of the plan by at least one class of impaired, non-insider creditors.
3. Acceptance of the plan by all classes of secured creditors.
4. That the plan does not discriminate unfairly against dissenting classes of creditors.
5. That the dissenting creditors receive no less than they would under a liquidation scenario.

**Question 1.7**

Which of the following statements about “pre-packs” is false?

1. A pre-pack cannot be used if the debtor wishes to reject executory contracts.
2. Creditors must have sufficient information about the debtor and the plan to make an informed voting decision.
3. A pre-pack debtor may spend as little as a single day in bankruptcy.
4. The proposed plan of reorganization is submitted to the bankruptcy court together with the voluntary petition.
5. Creditors’ commitment to vote in favor of the plan may be memorialized in a restructuring support agreement.

**Question 1.8**

If a debtor rejects an executory trademark license agreement under which the debtor licenses its trademark to a manufacturer, which of the following is true:

1. The manufacturer has a claim for damages for breach of contract.
2. The manufacturer must immediately stop using the trademark.
3. The manufacturer can continue using the trademark for the remaining period of the license.
4. Both options (a) and (b).
5. Both options (a) and (c).

**Question 1.9**

Which of the following about 363 sales is false?

1. A good faith purchaser at a 363 sale may retain the property notwithstanding a subsequent reversal of court approval for the sale on appeal.
2. The debtor-in-possession must establish that the transaction is in the best interests of the estate as a whole.
3. In chapter 15 proceedings, a foreign court’s approval alone suffices for a 363 sale.
4. Debtors must carry out a robust marketing process for the sale.
5. A creditor’s lien on assets sold in a 363 sale attaches to the proceeds of the sale.

**Question 1.10**

Which of the following regarding substantive consolidation is true?

1. It respects the boundaries of corporate separateness.
2. If a creditor can show it extended credit on the basis of corporate separateness, it has a valid objection to substantive consolidation.
3. It is the treatment of two or more creditors as a single creditor to simplify the claims process.
4. Substantive consolidation is commonly used to resolve bankruptcies of corporate groups.
5. Authority for substantive consolidation comes from the Bankruptcy Code.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 (1 mark)**

What is setoff and why is it not permitted in many circumstances?

Setoff allows a creditor who simultaneously: (i) has a claim against a debtor; and (ii) owes money to the debtor, to ‘net out’ the two (or more) obligations.

Setoff is not permitted in a number of circumstances as the setoff can improve the position of the creditor compared to other unsecured creditors of the debtor. By setting off their claim, the relevant creditor’s claim is settled in the full amount owed by the debtor rather than the lesser amount that the creditor would receive as an unsecured creditor in the bankruptcy estate of the debtor.

**Question 2.2 [2 marks]**

What is a “priming lien” and what requirements must be met for such a lien to be granted to secure DIP financing?

Where the debtor is unable to secure finance on any other terms set out in §364 USC, the court can grant a priming lien that is senior to or equal to a pre-petition lien on estate property in order to secure post-petition financing.

It is a requirement for the debtor to demonstrate that the interests of the secured creditor(s) being primed are adequately protected.

Due to the risk of being primed, existing secured creditors are incentivised to provide further credit to the debtor. Existing creditors can also improve their position by ‘rolling up’ or refinancing pre-petition debt that was unsecured or undersecured.

**Question 2.3 [2 marks]**

What are two potential consequences of a violation of the automatic stay?

A violation of the automatic stay (even where this is committed by a party without notice of the filing of the petition for the stay) constitutes contempt of court and is void or voidable.

Unless the parties with an interest in the bankruptcy estate seek to lift the stay to permit or retroactively validate an act that would otherwise be a stay violation, contempt sanctions may be imposed against the party that has violated the stay. The sanctions can include payment of the debtor’s attorneys’ fees and requiring the violating party to take affirmative acts to reverse the effect of its violation of the stay.

The court can also impose a daily fine to be paid into court by the party that has violated the stay until the violation has been rectified.

**Question 2.4 [2 marks]**

In voting on a plan of reorganization, which class(es) of creditors are (i) deemed to accept the plan, (ii) deemed to reject the plan and (iii) permitted to vote on the plan? What vote is necessary for a class of creditors to accept a plan?

A class of creditors that is unimpaired by the plan (including a class whose acceleration of debt has been reversed) is deemed to accept the plan.

A class of creditors that will receive nothing under the plan is deemed to reject the plan.

A class of creditors that is impaired by the plan is permitted to vote on the plan. The relevant class will approve the plan if a simple majority of the creditors in that class, holding at least two-thirds of the value of claims in the class, vote in favour of the plan or, for equity interests, if two-thirds in amount of interests vote in favour of the plan.

**Question 2.5 [3 marks]**

Answer the following questions about preferences, actual fraudulent conveyances and constructive fraudulent conveyances:

1. Which cause of action applies only to transfers made on account of antecedent debt?
2. Which cause of action requires that the debtor be presumed or proven to have been insolvent at the time of the transfer?
3. Which cause of action requires that the debtor be proven to have intended to frustrate creditors’ recoveries?

For a successful preference claim, the transfer must have been made for or on account of an antecedent (i.e. a pre-existing) debt owed by the debtor. A delay in the perfection of a transfer may move the date of the transfer into the preference period.

A further requirement for a successful preference claim is that the transfer must have been made while the debtor was insolvent. The debtor is presumed to have been insolvent on and during the 90 days prior to the petition date for the purpose of determining the preference claim.

For a successful constructive fraudulent conveyance claim (i.e. where the debtor received less than the reasonably equivalent value in exchange for a transfer or incurrence of an obligation) one of a number of additional factors must be present. This includes the debtor being proven to be insolvent at the time of the transaction (or to have become insolvent as a result of the transaction).

For a successful actual fraudulent conveyance claim, it must be proven that the debtor made a transfer or incurred an obligation with actual intent to hinder, delay or defraud any creditor, i.e. to frustrate the recoveries of creditors.

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1 [3 marks]**

Describe the circumstances in which a bankruptcy court may enter a final order consistent with the US Constitution, who reviews appeals from bankruptcy court orders and how orders that are not constitutionally final are reviewed.

The Bankruptcy Code 1978 (under which bankruptcy courts were established) distinguishes between ‘core’ and ‘non-core’ matters and permits bankruptcy judges to make a final determination in ‘core’ proceedings only. Bankruptcy judges can hear ‘non-core’ proceedings but cannot make a final determination. Instead, they must submit the proposed findings of fact and conclusions of law to the district court.

However, in Stern v Marshall[[1]](#footnote-1) the Supreme Court held that even in ‘core’ proceedings, a bankruptcy court cannot issue final orders that invade Article III jurisdiction. Subsequent decisions and amendments to the Bankruptcy Rules have provided more guidance. A bankruptcy court may exercise the delegated authority from a district court to enter a final order on a motion challenging the validity of the petition. Bankruptcy judges may also determine a ‘core’ proceeding over which they lack constitutional authority by issuing a report and recommendation for review by the district court (i.e. the same procedure as in ‘non-core’ proceedings) or, with the consent of the parties, the bankruptcy court may issue final orders.

The Bankruptcy Rules now require litigants to state whether they consent to the entry of final orders or judgment by the bankruptcy court. The Bankruptcy Rules also permit a district court that determines that a bankruptcy court did not have jurisdiction to enter a final order to treat such order as proposed findings of fact and conclusions of law.

Bankruptcy orders can be appealed by the litigants involved in the case and other persons who are adversely affected by the ruling and have standing to seek a review. In US non-bankruptcy law there is a distinction between final and interlocutory orders. Final orders can be appealed as of right whereas interlocutory orders may only be appealed with the leave of the appellate court. The US Supreme Court has held that a bankruptcy order resolving a discrete dispute is a final order for appeals purposes.

Generally, appeals on decisions from the bankruptcy court are heard by the relevant district court. However, in some circuits bankruptcy appeals are heard by a bankruptcy appellate panel (BAP) which is convened from the judges of bankruptcy courts within the circuit. After the district court or BAP there is the option to further appeal to the circuit court of appeals.

If the ruling was a ‘core’ proceeding where the bankruptcy court had authority to enter a final order, the district court or BAP reviews conclusions of law ‘de novo’ and reviews findings of fact for abuse of discretion.

If the ruling was a ‘non-core’ proceeding or the bankruptcy court otherwise did not have authority to enter a final order, the district court or BAP reviews all findings of fact and conclusions of law to which a party has objected.

The order of a district court or BAP is reviewed by a circuit court of appeal ‘de novo’ as to conclusions of law and for abuse of discretion for findings of fact.

A stay pending appeal may be obtained from the bankruptcy court or the appropriate appellate court where the party can establish that it has a likelihood of success on appeal, faces imminent, irreparable harm if the stay is not granted and that the equities of the situation favour granting the stay. If the stay is not granted, the appeal may become equitably moot if the parties cannot be returned to their original positions in the event of a reversal of the decision of the bankruptcy court.

**Question 3.2 [3 marks]**

What provisions of the Bankruptcy Code may not be invoked by a foreign representative in a chapter 15 proceeding? What are two ways that the foreign representative can obtain equivalent relief?

The filing of a petition by the foreign representative under chapter 15 does not automatically invoke a stay of creditor action. The stay only arises once the petition for recognition of a foreign main proceeding has been granted and this is limited to the property of the debtor within the territorial jurisdiction of the United States. However, the Bankruptcy Court may grant a stay or other assistance on an interim basis pending recognition of the foreign main proceeding or on a discretionary basis following recognition of a foreign non-main proceeding.

The foreign representative must establish that a foreign court or administrative proceeding in relation to the debtor is pending and that the foreign representative is empowered to act by the relevant proceeding. The foreign proceeding does not need to resemble a US bankruptcy case and it is defined widely in the Bankruptcy Code.

The foreign proceeding will be recognised as either a foreign main proceeding or a foreign non-main proceeding and this determines the scope of relief available to the debtor following recognition.

Foreign main proceedings are proceedings that are commenced in the debtor’s centre of main interests (COMI) which is presumed to be the debtor’s place of incorporation but this presumption is rebuttable.

Proceedings in a jurisdiction other than the debtor’s COMI will be recognised as foreign non-main proceedings if the debtor had an establishment in that jurisdiction, i.e. a place where it carried out non-transitory economic activity prior to the commencement of chapter 15 proceedings.

Following the recognition of a foreign main proceeding, certain provisions of the Bankruptcy Code (such as automatic stay, operation of the debtor’s business in the ordinary course by the foreign representative and the sale, transfer or use of property outside of the ordinary course) apply to the debtor’s property within the territorial jurisdiction of the US.

Following the recognition of a foreign non-main proceeding, the relief available in relation to foreign-main proceedings can be granted by the court on a discretionary basis.

Additional relief may also be granted on a discretionary basis in the case of both foreign main proceedings and foreign non-main proceedings.

Where discretionary relief is sought under a foreign non-main proceeding, the bankruptcy court must be satisfied that it is appropriate under US law for the relevant assets to be administered in the foreign non-main proceeding. The bankruptcy court can also impose conditions in relation to the relief to ensure sufficient protection of interested parties and may elect to discontinue discretionary relief on the application of an interested party.

**Question 3.3 [4 marks]**

What rules should one review when preparing a filing for a bankruptcy court?

Bankruptcy proceedings are governed by the Federal Rules of Bankruptcy Procedure (known as the Bankruptcy Rules) which incorporate by reference the Federal Rules of Civil Procedure, particularly in relation to litigation of disputed issues in contested cases.

Forms for common bankruptcy filings should be used where they apply. Additionally, each bankruptcy court has local rules of procedure and each judge issues personal practices. These local rules and practices contain preferred working procedures of the judges and can modify deadlines for filing and responding to pleadings.

As a result, when preparing a filing for a bankruptcy court, one should review: (i) the Bankruptcy Rules; (ii) the Federal Rules of Civil Procedure; (iii) the local rules of the bankruptcy court and (iv) the personal practices of Judges.

**Question 3.4 [5 marks]**

What fiduciary duties do directors of Delaware corporations owe and to whom are the duties owed in the ordinary course of business? To whom are duties owed when the corporation is potentially or actually insolvent?

In general US director liability is more limited than director liability in other jurisdictions. Directors in Delaware owe a fiduciary duty of loyalty to the best interests of the corporation and a duty of care in educated decision making. However, directors are protected from liability for errors of judgment by the business judgment rule.

Under the business judgment rule, the board of directors are presumed to have acted in good faith on the basis of reasonable information. This presumption can be rebutted by demonstrating that a majority of the board were in fact not reasonably informed, did not honestly believe that their decision was in the best interests of the corporation or were not acting in good faith.

Unless the presumption is rebutted and save in cases of gross negligence, the directors will not be liable. The corporation’s certificate of incorporation can also relieve directors from liability for breach of the duty of care (but not for breach of the duty of loyalty).

The business judgment rule does not apply where a transaction is approved by a majority of the board that is not disinterested and independent or where a controlling shareholder is on both sides of the transaction. In these circumstances, the transaction will be void unless the entire fairness standard is satisfied.

The duties of directors are owed to the corporation and its shareholders, not to creditors – even where the corporation is potentially insolvent and where the shareholders stand to receive little or nothing in the bankruptcy of the corporation. This has been confirmed by the Delaware Supreme Court in North Am Catholic Educational Programming Foundation, Inc v Gheewalla.[[2]](#footnote-2) There is therefore no equivalent under US law for the concepts of wrongful trading or deepening insolvency.

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

**Question 4.1 [5 marks]**

iWork Ltd leases office space from office building owners and sublets the space to small businesses. Due to the increases in the numbers of businesses operating remotely, iWork Ltd has suffered a decline in revenues. As a result, it has failed to pay rent on some of its office space leases. What protections does the Bankruptcy Code provide to lessors of office space to iWork Ltd?

In the event iWork Ltd enters bankruptcy and benefits from the automatic stay, the lessors can apply for relief from the stay on the grounds of lack of adequate protection on the basis that the value of the properties and leases may decline during the course of proceedings and result in the lessors making less than a full recovery for their respective claims for unpaid rent.

Assessing the value of the properties and leases is essential to this relief and the valuation may be litigated in order to determine whether or not the lessors are adequately protected. The other element of the analysis is the value of the lessors’ claim which is determined by applicable non-bankruptcy law – i.e. the law of the relevant leases.

If adequate protection is found to be lacking for the lessors, iWork Ltd can prevent the stay from being lifted if it provides value of the ‘indubitable equivalent’ of the value that is lost for the lessors, i.e. through periodic cash payments or the grant of replacement security on unencumbered property. If the court ordered adequate protection does not prove sufficient, the shortfall owed to the lessors would be given administrative expense priority in the bankruptcy of iWork Ltd.

The lessors are also entitled to file a claim in the bankruptcy of iWork Ltd for the pre-petition rent owed by iWork Ltd.

**Question 4.2 [5 marks]**

Skin Luxe is incorporated and has a principal place of business in France where it develops and manufactures high end skincare products. Skin Luxe sells its skin care products through its own boutiques in many international cities, including Paris, Las Vegas, London and Hong Kong. Skin Luxe’s English law-governed bonds are due to mature in one year, but it is unable to repay or refinance them. Skin Luxe is considering using an English scheme of arrangement to restructure the bonds.

Discuss whether the English scheme of arrangement could be granted recognition under US chapter 15 as a foreign main or foreign non-main proceeding.

The centre of main interests (COMI) of Skin Luxe is presumed to be in France as the place of its incorporation, however this presumption is rebuttable. In determining whether the COMI of Skin Luxe is actually in France, the court can consider a number of factors including the location of its headquarters, the location of its management and the jurisdiction whose law will apply to most disputes.

In this case, English law is the governing law of the bonds which are due to mature (and Skin Luxe is unable to repay them). The bonds are therefore likely to be the main dispute which makes English law and England a prominent factor in the COMI analysis.

In any event, Skin Luxe has at least an establishment (being a place where it carries out non-transitory economic activity) in England due to the fact that Skin Luxe operates a boutique in London.

The requirements of recognition are minimal. The foreign representative from the English scheme of arrangement must establish that the scheme is pending in relation to Skin Luxe and that the representative is empowered to act by the scheme. The definition of foreign proceeding in the Bankruptcy Code is wide and can be interpreted to include a scheme.

The COMI analysis will determine whether the scheme is deemed to be a foreign main proceeding or a foreign non-main proceeding.

If the Scheme is recognised as a foreign main proceeding, certain provisions of the Bankruptcy Code (such as automatic stay, operation of the debtor’s business in the ordinary course by the foreign representative and the sale, transfer or use of property outside of the ordinary course) would apply to the property of Skin Luxe within the territorial jurisdiction of the US.

If the Scheme is recognised as a foreign non-main proceeding, the relief available in relation to foreign-main proceedings can be granted by the court on a discretionary basis.

Additional relief may also be granted on a discretionary basis where the scheme is recognised as either a foreign main proceeding or a foreign non-main proceeding.

**Question 4.3 [5 marks]**

Speculation Inc is engaged in day-trading stocks from leased office space with two employees. It funds its trading through a margin loan from its broker, where the shares it purchases are held as collateral. For a while, Speculation Inc was very successful in trading, and the US Department of Justice (DOJ) has announced an investigation into whether its success was due to illegally trading on insider information. More recently, Speculation Inc has had serious trading losses, causing its broker to declare a default on the margin loan. It also has fallen behind on its rent, and has been sued in civil suit by a former employee alleging she was fired due to due to gender bias.

What would be the effect of a chapter 11 petition being filed by Speculation Inc on each of (i) the DOJ investigation, (ii) margin loan default; (iii) the delinquent lease and (iv) the employment discrimination lawsuit?

Upon the chapter 11 petition being filed by Speculation Inc, a worldwide automatic stay would immediately come into effect. The automatic stay is extremely broad and applies to any interference with the property of the estate of Speculation Inc anywhere in the world including: (i) litigation on pre-petition claims; (ii) enforcement of a lien against property of the estate; and (iii) any attempt to collect on pre-petition claims.

However, the automatic stay is subject to certain statutory exceptions including criminal proceedings and regulatory investigations. The automatic stay would therefore not restrict the DOJ investigation.

If the lease has expired, the lessor would not be prevented from taking action against the debtor by the automatic stay. If the lease has not expired, the automatic stay will apply however the lessor could apply for relief from the stay on the grounds of lack of adequate protection on the basis that the value of the property and the lease may decline during the course of proceedings and result in the lessor making less than a full recovery. Speculation Inc could offer to provide consideration in equivalent value to the rent arrears (i.e. periodic payments or security over an unencumbered asset) and any shortfall owed to the lessor would rank benefit from priority as an administrative expense in the bankruptcy estate of Speculation Inc.

The margin loan default and the employment discrimination lawsuit would be subject to the automatic stay and the broker and the employee would be required to submit claims in the bankruptcy estate of Speculation Inc in respect of their respective pre-petition claims.

**\* End of Assessment \***

1. 564 US 462 (2011) [↑](#footnote-ref-1)
2. 930 A.2d 92, 103 (Del 2007) [↑](#footnote-ref-2)