

Bond Case Briefs

Municipal Finance Law Since 1971

Mintz Levin: Court Rules on Applicability of Make-Whole Premiums Upon Debt Acceleration.

The linked [Mintz Levin client advisory](#), which discusses a recent bankruptcy court ruling regarding the applicability of a make-whole premium upon a refinancing of corporate debt following such debt's automatic acceleration upon bankruptcy under the terms of the governing documents, may also be of interest to holders of municipal bonds with call protection and/or early redemption premiums.

In the context of make-whole premiums, court decisions suggest that the applicability of the premium upon a refinancing in bankruptcy will be governed by the wording of the debt documents, and that if an automatic acceleration is triggered by the documents and the documents do not expressly provide for a prepayment premium in such circumstances, no prepayment premium will be payable by the issuer.

Municipal bonds typically feature fixed percentage optional redemption premiums rather than make-whole premiums, but courts may also be inclined to apply to municipal bonds the principle that such early redemption premiums are inapplicable upon an acceleration absent express contract language applying the premium in that context (or, as some courts have suggested, absent evidence that the issuer deliberately defaulted for the purpose of circumventing the call protection provisions.)

Len Weiser-Varon | Mintz Levin

9/19/2014