



Elliot Ganz
General Counsel

January 20, 2010

Mr. Peter G. McCabe
Secretary
Committee on Rules of Practice and Procedure of the Judicial
Conference of the United States
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Testimony of Elliot Ganz Regarding the Proposed Amendment of Federal Rule of
Bankruptcy Procedure 2019

Dear Mr. McCabe:

The Loan Syndications and Trading Association (“LSTA”) appreciates this opportunity to testify on the proposed amendment to Federal Rule of Bankruptcy Procedure 2019 (“Proposed Rule 2019”). The LSTA understands the painstaking effort your Committee has made to amend Rule 2019 to address legitimate interests and concerns. Set forth below is a summary of the testimony that I will offer on behalf of the LSTA at the hearing in New York on February 5th.

1. Following the Northwest Airlines decision that held that an ad hoc group of equity holders was a “committee” under Rule 2019 and that, therefore, each member of the group was required to disclose the price paid for its bankruptcy claims, the LSTA (together with the Securities Industry and Financial Markets Association (“SIFMA”)) argued for the repeal of existing Rule 2019. The LSTA and SIFMA were concerned that adverse parties would frequently demand the disclosure of sensitive and confidential pricing information regarding the positions held by members of ad hoc groups, giving rise to a litany of unnecessary, uneconomical and distracting litigation proceedings. The LSTA and SIFMA were, unfortunately, correct in this regard, as contested matters over Rule 2019 disclosures are now commonplace in chapter 11 cases.

Even so, many thoughtful participants in the bankruptcy process took issue with the LSTA’s and SIFMA’s proposed solution on the grounds that certain disclosures remain necessary in bankruptcy and, in certain respects, the existing rule did not go far enough.



The LSTA and SIFMA have taken these comments to heart and no longer argue for the repeal of Rule 2019. Rather, the LSTA and SIFMA respectfully request that Proposed Rule 2019 be modified to eliminate the requirement for pricing disclosures (including the requirement to disclose the dates of a purchase or sale).

2. Proposed Rule 2019 satisfies legitimate disclosure concerns by requiring each holder in a group (or, if the court so requires, a party in interest acting separately) publicly to disclose the quantum and nature of its economic interests in the debtor. The LSTA supports the amendment to the extent it would require those disclosures, which will enable the bankruptcy court, the debtor and other parties in interest to not only appreciate how large the group's collective voice looms in the restructuring process, but also to understand how "long" the committee members truly are in their holdings.
3. Proposed Rule 2019 goes beyond the practical and necessary requirements of disclosure because it would compel public disclosure of an investor's most confidential and proprietary information: the date and price at which that investor purchased (and/or sold) its bankruptcy claims.
4. It is well established that the price paid for a bankruptcy claim—whether par or pennies on the dollar—bears no legal or practical relevance to how it should be treated in the debtor's bankruptcy.
5. More importantly, if pricing disclosures required by Proposed Rule 2019 were to become the norm, then holders of bankruptcy claims would be discouraged from working together and playing active roles in chapter 11 restructurings.
6. In those highly unusual circumstances (such as one involving substantial abuse of the bankruptcy process), where pricing information might indeed be relevant to some issue in the case, routine discovery is more than sufficient to uncover the necessary information.
7. If a court itself had questions about a party's bonafides that called for reviewing pricing information, then it could order a party to provide that information under terms the court sees fit. Proposed Rule 2019 does not need a separate recognition of a court's ability to obtain disclosure, as it inherently possesses the power to make these inquires.
8. The supposed protection in Proposed Rule 2019 for pricing information—it states that the court must direct such disclosure—in reality provides no protection whatsoever. So long as one knows the date of purchase, prices can easily be determined by market professionals by reference to numerous readily available pricing sources, including TRACE quotes on Bloomberg screens for bonds and many popular loan pricing services.



- a. "TRACE" provides real time actual bond prices to virtually all bond market participants through their Bloomberg or Thomson Reuters screens.
- b. LSTA/Thomson Reuters LPC's and Markit's loan pricing services provide end-of-day mark-to-market loan prices to subscribers.
- c. The LSTA's actual trade data demonstrates that mark-to-market prices provided by LSTA/Thomson Reuters LPC loan pricing service for distressed debt is, on average, within only 160 points of actual trade prices.
- d. So, by referring to TRACE or Thomson Reuters LPC end-of-day prices, market professionals can easily determine the prices paid for bonds and loans so long as they have dates on which they traded.

I have attached a PowerPoint presentation that I will use to support point 8 above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elliot Ganz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elliot Ganz

RULE 2019:

The Connection Between Trade Dates and Prices



Rule 2019: The Connection Between Trade Dates and Trade Prices

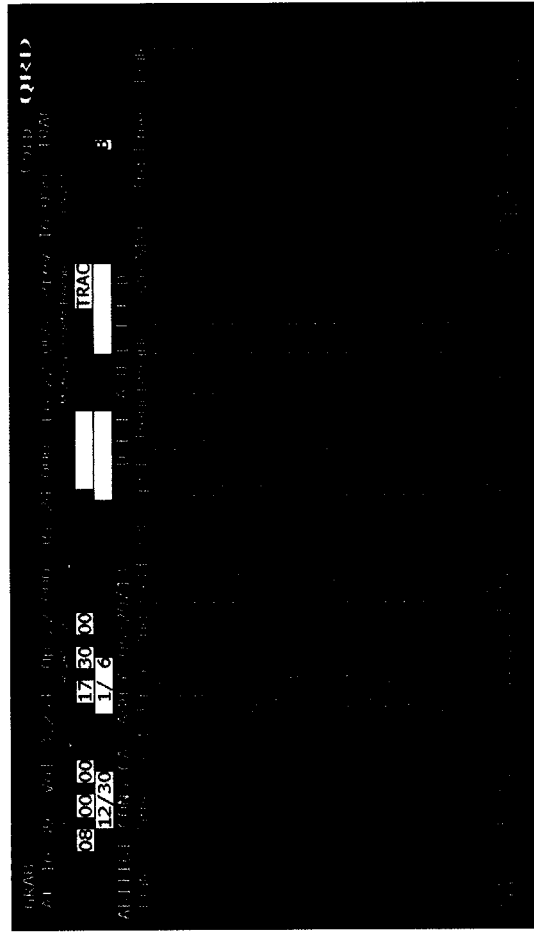
- ***By reference to widely available pricing services, market professionals can easily calculate actual distressed trade prices for bonds and loans (within a very tight range) so long as they know the trade dates.***
- ***Requiring disclosure of trade dates under Proposed Rule 2019 is tantamount to requiring disclosure of the prices themselves***

Bonds: Real Time Prices Through TRACE

Trade Reporting and Compliance Engine™ (TRACE™)

- The Trade Reporting and Compliance Engine is the FINRA developed vehicle that facilitates the mandatory reporting of over the counter secondary market transactions in eligible fixed income securities. All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE under an SEC approved set of rules
- Current Trace Reporting Time: 15 Minutes

TRACE Prices on Bloomberg



Loan Pricing

- **End of Day Mark-to-Market Prices Are Delivered to Loan Pricing Subscribers**
 - Markit
 - LSTA/Thomson Reuters LPC
 - Prices are available for over 4,750 bank loan tranches on a daily, weekly or monthly basis

Market Loan Pricing Screen

Market | Liquid Loans | Windows Internet Explorer

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Info	Loan ID	Facility Name	Bid	Offer	Depth	Mark History	Valuation	Feedback
1	LX067705	Agaba/Boise Paper 2/08 TLB	100.667	101.750	6			
2	LX111628	Aspenco Reused 6/05 TLB	101.470	102.174	2			
21	LX052932	Avco 11/06 USD BC Pro Rate	91.917	95.875	4			
22	LX052938	Avco 11/06 USD TLB	92.073	95.875	2			
23	LX050790	Avco 11/06 USD TLB	94.167	96.125	2			
24	LX052930	BE Aerospace 7/05 TLB	100.223	101.770	4			
25	LX052229	Boston Generating 10/7 Mezzanine	1.667	1.500	7			
26	LX070226	Brenntag US Armed 7/07 TLB	96.542	97.792	2			
27	LX092646	Bright Horizons 5/08 TLB	99.875	102.732	6			
28	LX112596	CF Group 10/05 Espansen Tranche A TL	102.500	103.167	2			
29	LX105106	CIP Subsidiaries 5/05 TLB	73.833	75.875	6			
30	LX049780	Casema 11/22 10/05 Bezzanone	97.167	98.167	2			
31	LX073965	Chrysler Financial 8/07 TLB	97.396	98.250	6			
32	LX058671	Cincinnati Bell 6/05 TLB	96.033	97.082	4			
33	LX068456	Citadel Broadcasting 6/07 Cov-Lte TLB	75.687	77.250	6			
34	LX046432	Coleco 5/05 TLB	90.175	91.647	2			
35	LX044090	Cracker Barrel CBL 4/05 BI TLB	94.823	95.792	6			
36	LX059101	Crucial US 5/04/05 5/07 Hybrid TL	72.167	73.167	2			
37	LX057811	Cummins Merit 10/07 TLB	84.708	86.292	6			
38	LX052910	DJO Respiratory 11/07 TLB	94.000	94.000	2			

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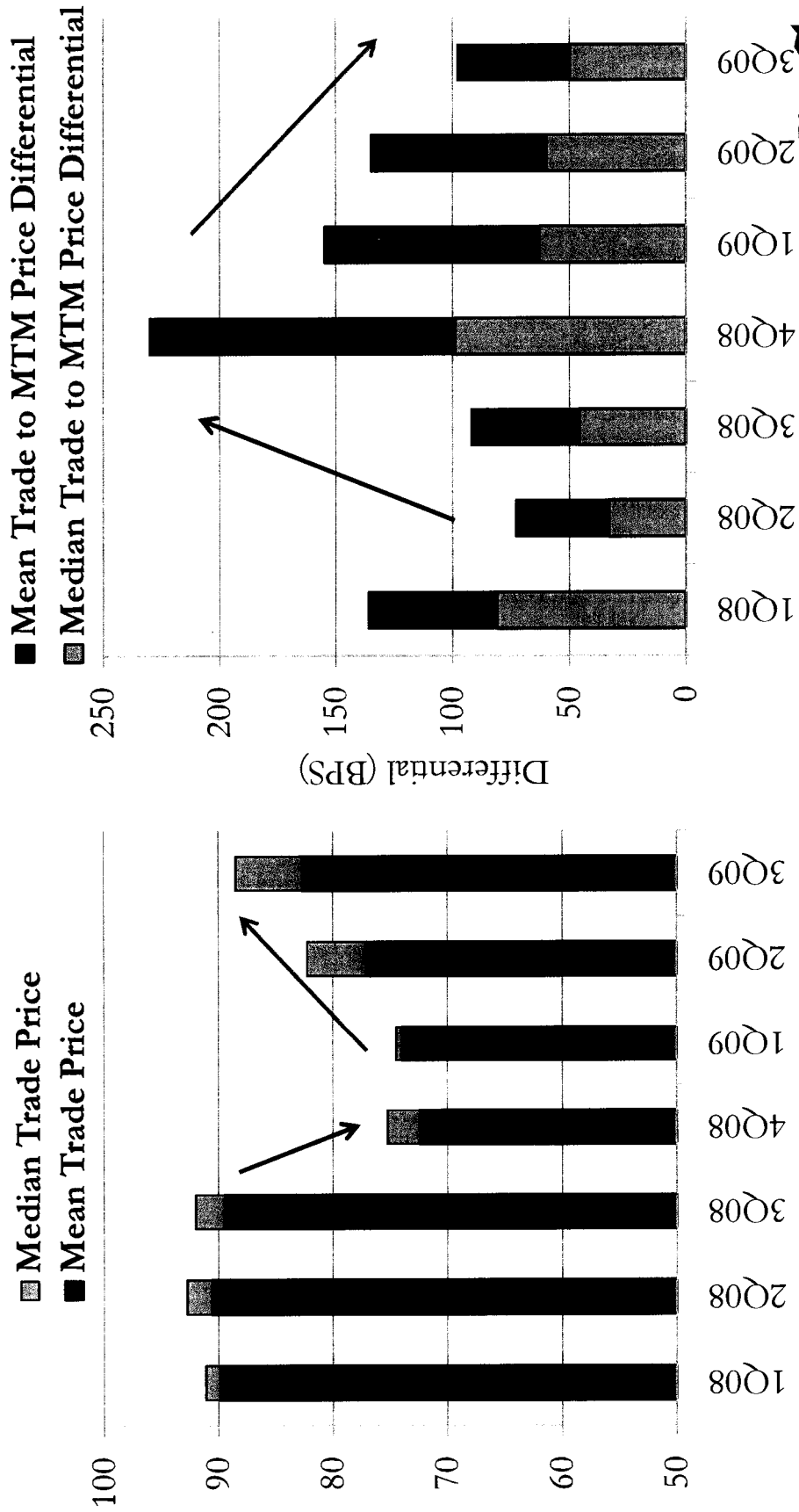
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Ready

LSTA Trade Data Study

▪ **The LSTA analyzes actual trade data from over 30 dealers to measure the accuracy of the MTM prices**

MTM Prices are Very Accurate, Even Through the Credit Crunch



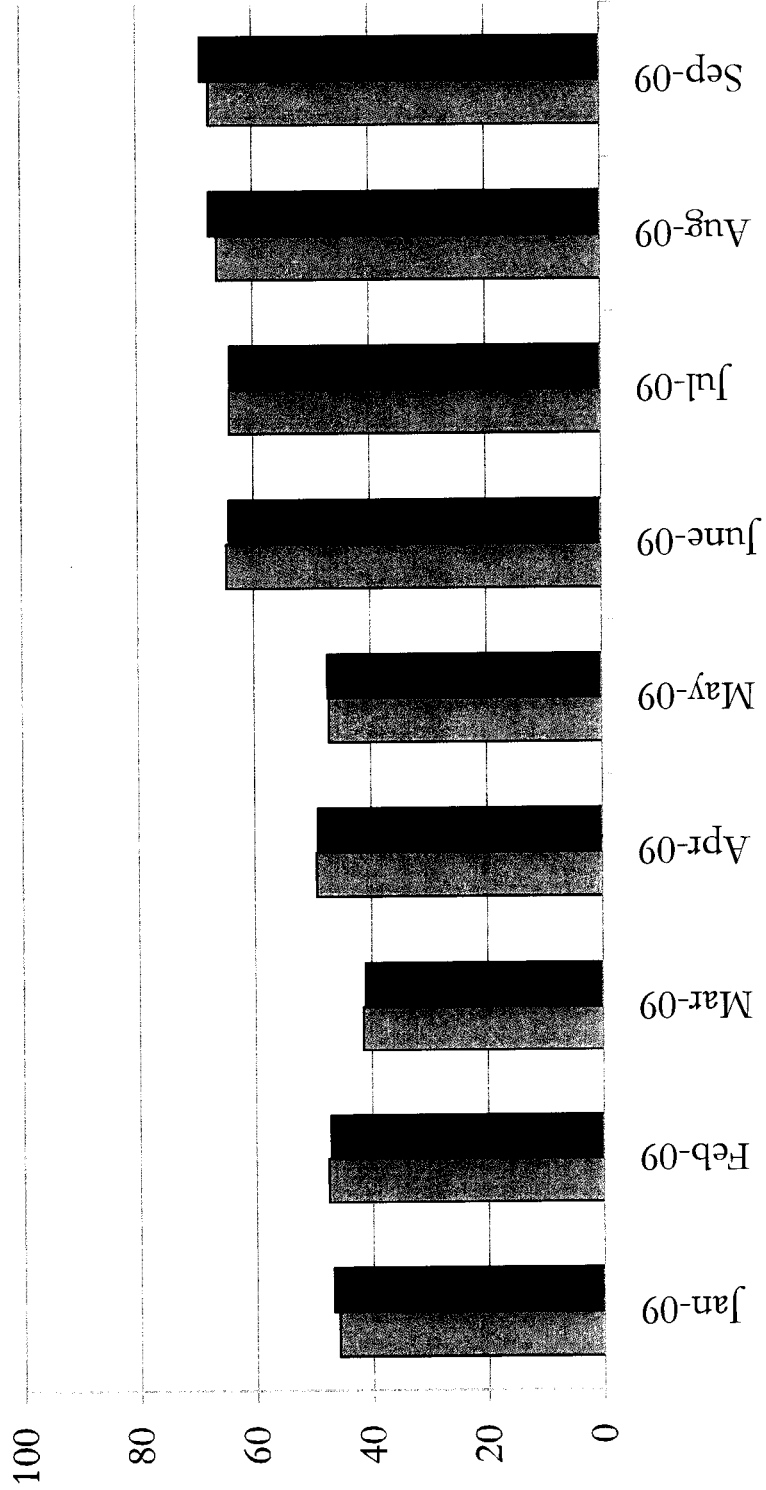
Source: LSTA Trade Data Study

2009 LSTA Test Case for Distressed Trading

- In an analysis of almost 3,500 distressed trades completed in 2009, with a volume of over \$3.5 Billion, and including 250 loan facilities (including first and second lien loans), the LSTA found that the “mean absolute differential” between MTM prices and actual prices was only 160 basis points (1.6 percentage points).
- This signifies that, on average, distressed loans traded within 160 bps (1.6 percentage points) of their MTM price on trade date

Distressed MTM Prices are Very Accurate When Compared to Trade Prices

■ Avg Distressed MTM Price ■ Avg Distressed Trade Price



Source: LSTA/LPC MTM Pricing and LSTA Trade Data Study



The Bottom Line...

- ***Requiring disclosure of trade dates under Proposed Rule 2019 is tantamount to requiring disclosure of the prices themselves***