



- post-bankruptcy, post 60-day period

In compliance with the transactional document<sup>3</sup>

The amendments also provide helpful provisions (i) specifying that the protected equipment includes its related records and documents that, under the transactional documents, are required to be surrendered upon surrender of the equipment (Section 1110(a)(3)(B)); (ii) clarifying that, if a proper Section 1110 agreement and cure are not timely made, the financier has not only the right of repossession but also the right to enforce its contractual remedies to sell, lease, dispose of, or retain the equipment, which remedies are “not limited or otherwise affected by any other provision of the [Bankruptcy Code] or by any power of the court” (Section 1110(a)(1)); and (iii) clarifying that, if the financier is entitled to repossession, the lease (and the security agreement or conditional sale, if they are executory contracts) is deemed rejected and the bankruptcy trustee is required to immediately surrender and return the equipment (Section 1110(c)).

In response to these amendments Standard & Poor’s has eliminated their interim criteria, adopted in March 1998, which, among other things, required counsel to address legal issues raised by the *Westpac* ruling.

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If you have any questions regarding the impact of these amendments on Section 1110 or 1168 generally, please contact any of our partners listed below.

MARTIN JACOBSON	(212-455-7023)	<a href="mailto:M_JACOBSON@STBLAW.COM">M_JACOBSON@STBLAW.COM</a>
STEVE FEDER	(212-455-7405)	<a href="mailto:S_FEDER@STBLAW.COM">S_FEDER@STBLAW.COM</a>
MIKE SIGAL	(212-455-7140)	<a href="mailto:M_SIGAL@STBLAW.COM">M_SIGAL@STBLAW.COM</a>

SIMPSON THACHER & BARTLETT LLP

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3. The amendments continue the rule that the “ipso facto” defaults specified in Section 365(b)(2) do not have to be cured, but provide that, except for those, a cure is permitted under Section 1110 only if a cure is permitted under the transactional documents.