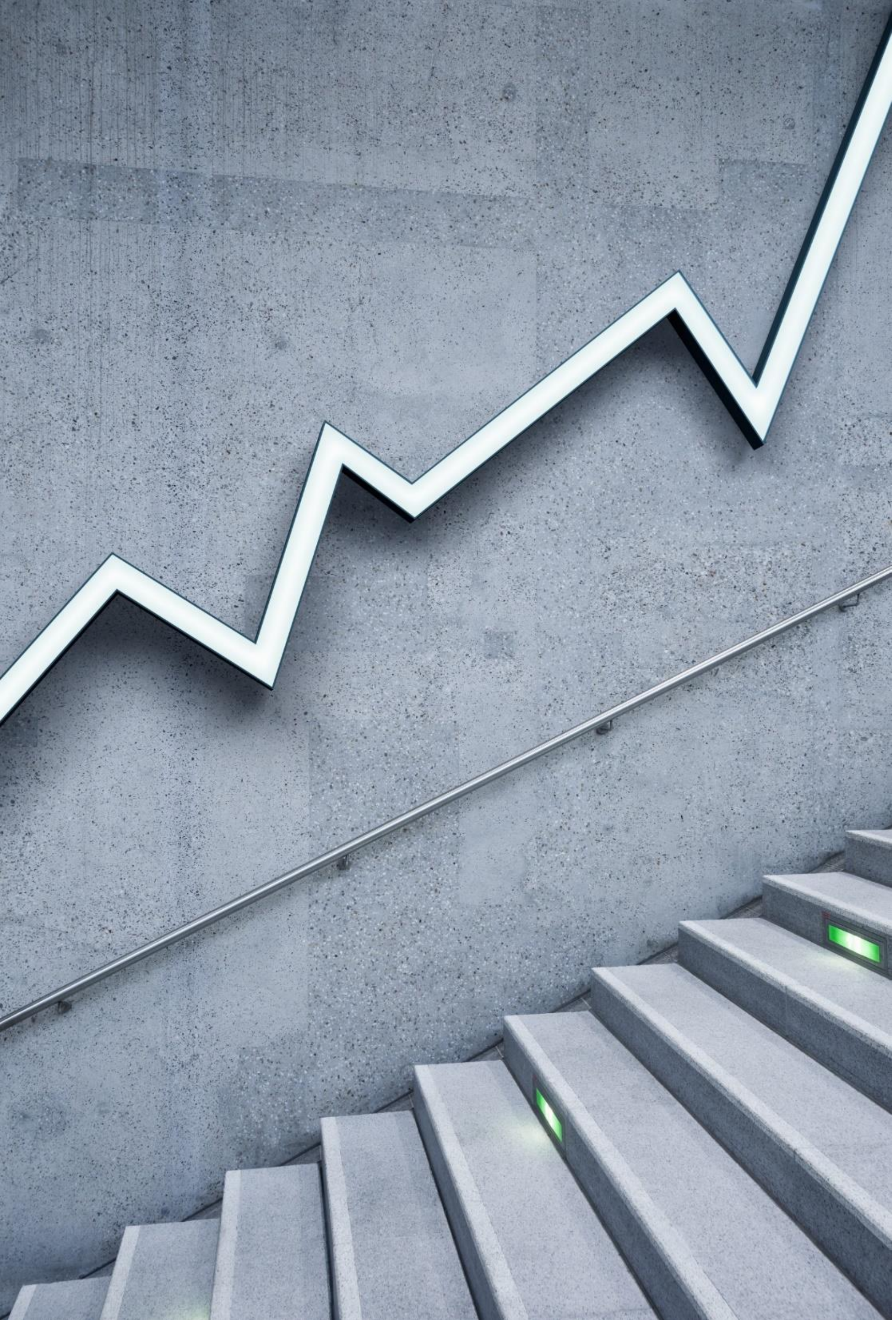

The Use of Market Evidence to Refute or Establish Insolvency in Fraudulent Transf Cases

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Why Do You Need to Value a Company in a Fraudulent Transfer Dispute?

The Bankruptcy Code's avoidance actions require valuation:

<u>Section 548(a)(1)(B) requires proof of insolvency before the trustee can recover a constructively fraudulent tr</u>

- A trustee can recover any transfer of the debtor's property (or the incurrence of an obligation) made within 2 years before the debtor's petit
  - the debtor received less than reasonably equivalent value in exchange for the transfer or obligation; and
  - the debtor
    - was insolvent at the time of the transfer or rendered insolvent by the result of the transfer;
    - was inadequately capitalized for its business activities;
    - intended to incur debts beyond the debtor's ability to service; or
    - made these transfers to an insider outside the ordinary course of business.

Why Do You Need to Value a Company in a Fraudulent Transfer Dispute?

State Law avoidance requires valuation:

Section 5(a) of the Uniform Voidable Transfer Act requires proof of insolvency before the trustee can recover a constructively voidable transfer:

- A transfer made or obligation incurred by a debtor is voidable as to a preexisting creditor if:
  - the debtor made the transfer for incurred the obligation without receiving reasonably equivalent value; and
  - **the debtor was insolvent at the time of the transfer or the transfer rendered the debtor insolvent.**