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AN OVERVIEW OF THE USE OF COOPERATION AGREEMENTS AMONG LENDERS IN THE SYNDICATED LOAN MARKET

In response to the increased frequency of majority-backed debt restructuring transactions that have significantly disadvantaged minority debtholders, lenders in the syndicated loan market have increasingly turned to cooperation agreements among themselves as a means to mitigate the risk of exclusion from such deals. While often effective, this approach has been met with hostility from the sponsor community, and may inhibit a lender's ability to freely manage and trade its loan position. In this article the author describes the elements of a typical cooperation agreement, considers some of its advantages and disadvantages, and discusses sponsors' evolving response to these arrangements.

By Robert J. Waldner *

CURRENT LOAN MARKET CONDITIONS: LIABILITY MANAGEMENT TRANSACTIONS AND "LENDER-ON-LENDER VIOLENCE"

The tale of a stressed debtor trying to persuade its creditors to extend additional credit or modify the terms of existing loans is neither a new nor a rare one. The success of these efforts hinges on a borrower's ability to convince its lenders that providing new money, postponing a repayment date, or otherwise forbearing to exercise contractual rights, will make everyone better off in the long run. Lenders hearing such a pitch need to weigh the likelihood of the borrower productively using additional time and capital against the risk of the situation deteriorating further and leaving creditors worse off than they would have been had they stuck to the terms of their original bargain.

Historically, the degree of consensus that a borrower needed to build amongst its lenders in order to effect a debt restructuring outside of bankruptcy tended to be high. However, as interest rates declined and competition for places in lending syndicates increased over the first two decades of the 21st century, restrictive covenants that had once been common in credit agreements were weakened or eliminated altogether, and those that remain can often be amended with the approval of a bare majority of the lender group.[1] Sponsors who once might have refrained from pursuing

[1] *See generally* Victoria Ivashina and Boris Vallée, *Weak Credit Covenants*, MANAGEMENT SCIENCE (forthcoming, *available at* https://doi.org/10.1287/mnsc.2023.01496); Thomas Griffin, Gregory Nini and David Carl Smith, *Losing Control? The Two-Decade Decline in Loan Covenant Violations*, JOURNAL OF FINANCE (forthcoming, *available at* SSRN: https://ssrn.com/abstract=3277570 or http://dx.doi.org/10.2139/ssrn.3277570).

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their most aggressive options out of concern for their reputation in the lending community now seem confident that such tactics will not impact their ability to finance future deals.

These more permissive credit documents, along with borrowers' increased appetite to exploit them, have fundamentally altered the dynamic of negotiating a consensual debt restructuring. Rather than feeling compelled to make its case to all of its lenders, a borrower now needs to convince only a subset of the group, and can sweeten its pitch by offering to improve the recovery of participating lenders (at the expense of the non-participating lenders) in the event that their proposed transaction fails to keep insolvency at bay.

Over the course of the last decade, borrowers have shown themselves to be increasingly willing to use this newfound flexibility to work with select groups of lenders to devise transactions which improve the positions of the participating parties, to the detriment of excluded creditors. These so-called liability management transactions ("LMTs") have been structured in various ways, with impacts on non-participating lenders ranging from relatively mild to disastrous enough to cause commentators to refer to excluded lenders as victims of "lender-on-lender violence."[2] According to one study, approximately 40% of corporate borrowers that implemented LMTs from 2019-2021 ended up defaulting or filing for bankruptcy within three years.[3] In 2024, a first-lien lender to a company that had conducted an LMT prior to bankruptcy could expect an average recovery of less than half of that realized by a first-lien lender to a company that had not done an LMT.[4]

HOW CAN A LENDER PROTECT ITSELF FROM LENDER-ON-LENDER VIOLENCE?

A lender looking to protect itself from a negative outcome on account of an LMT might consider a few different approaches. Most obviously, it could attempt to negotiate tighter credit terms at the time loans are initially extended. If lenders are losing sleep over their borrowers' ability to do things like move assets into non-restricted subsidiaries, incur significant amounts of new senior debt, or repurchase loans on a non-pro rata basis, then one might suggest that these concerns could be addressed simply by drafting credit documents that prohibited these sorts of actions without the consents of all (or at least a significant supermajority) of the lenders.

As straightforward as that sounds, we have not observed any recent trend toward tightening credit terms in the leveraged loan market. Sponsors and borrowers continue to prize the flexibility afforded them under the current regime and might reasonably point to the fact that a majority of LMTs have not resulted in subsequent defaults or bankruptcies to support an argument that the wide availability of such transactions is, when considered in the aggregate, value-enhancing. More practically, the market dynamics that led to the general loosening of credit terms in recent decades remain

[2] *Liability Management Transactions: Quarterly Update Through Q1 2024*, CREDITSIGHTS, INC.: COVENANT REVIEW (Apr. 19, 2024), https://know.creditsights.com/liability-management-transactions-quarterly-update-through-q1-2024/ (reporting that, among other examples, (1) the participating lenders in the Envision / AmSurg restructuring saw an approximately 85% blended recovery rate on their claims against the AmSurg subsidiary and roughly 30% on claims against the Envision entities, while non-participating "fourth-out lenders" recovered essentially nothing; (2) participating prepetition first-lien lenders to Serta Simmons enjoyed a blended recovery rate of around 79.5%, while non-participating "third-out" prepetition first-lien lenders recovered approximately 1.5%; and (3) Revlon's participating 2020 "Brandco" facility lenders recovered 52.5% on their exchanged term loans while non-participating lenders who held unexchanged term loans recovered only 20%).

[3] Matt Wirz, *Beware the Junk Debt Swap,* WALL ST. J. (May 17, 2024), https://www.wsj.com/livecoverage/stock-market-today-dow-jones-earnings-05-17-2024/card/beware-the-junk-debt-swap-p2l8QvrUtKO3SMo3vCdX.

[4] *Liability Management Transactions Drive Down U.S. Recoveries in 2024,* FITCH RATINGS, INC.: NON-RATING ACTION COMMENTARY (Dec. 9, 2024), https://www.fitchratings.com/research/corporate-finance/liability-management-transactions-drive-down-us-recoveries-in-2024-09-12-2024 ("The weighted average recovery for issuers that emerged or are expected to emerge in 2024 that conducted an LMT is 23%, compared to 53% for those who had not.").

largely unchanged today. For so long as a surplus of prospective lenders continue to vie for allocations of each new syndicated loan, any demand for stricter credit terms seems likely to result in nothing more than the replacement of the demanding lender with a more accommodating competitor.

At the other end of a loan's timeline, lenders who find themselves on the wrong end of a completed LMT can consider going to court and arguing that the transaction breached the relevant credit documents. These arguments have been raised in response to a number of high-profile LMTs, with mixed results. For example, Serta Simmons Bedding, LLC ("Serta"), as the borrower, entered into an "up-tier" transaction with its participating lenders, whereby original credit documents were amended to permit Serta to incur new senior debt and to grant priming liens on existing collateral. After the amendment, participating lenders funded new senior loans and exchanged their existing loans into the new facility via a provision in the credit agreement that permitted the borrower to purchase its own loans pursuant to "open market" transactions. When Serta subsequently went into bankruptcy, participating lenders enjoyed a blended recovery rate of approximately 79.5%, while non-participating lenders recovered only 1.5% on their claims. Unsurprisingly, the excluded lenders sued, asserting that the non-pro rata exchange did not fall under the credit agreement's "open market purchase" exception and had therefore been impermissibly done. After losing in the bankruptcy court, the excluded lenders prevailed in the Court of Appeals for the Fifth Circuit, with the appellate panel concluding that the exchange had not been conducted pursuant to "open market purchases," but rather via privately negotiated transactions.[5]

Contrast this result with the decision of a New York state court (coincidentally, published on the very same day as the *Serta* decision) concerning a transaction involving Mitel Networks, Inc., as the borrower, which blessed a similarly structured up-tier exchange by participating lenders, concluding that the credit agreement permitted the borrower to "purchase" its own loans "at any time," without an "open market" qualifier.[6]

While the *Serta* decision may have chilled transactions which relied upon specifically formulated "open market purchase" exemptions in order to effect non-pro rata up-tier exchanges, *Mitel* demonstrates how easy it is for borrowers to draft around this issue. Post-*Serta*, up-tier transactions continue to occur, along with other commonly seen types of LMTs, such as "drop-downs" (in which a borrower moves assets away from the loan parties and into an unrestricted subsidiary, which then obtains new financing secured by those assets, leaving the original loans under-secured)[7] and "double dips" (in which a borrower has a non-loan party subsidiary take new loans from the participating lenders, which are guaranteed by the loan parties and then funded to the loan parties via a first-lien intercompany loan, leaving the participating lenders with claims against the loan parties for both the intercompany loan and the guarantee).[8]

As with any complex commercial dispute, litigation arising out of an LMT tends to be expensive and time-consuming, and successful outcomes are far from assured. Excluded lenders need to weigh these risks against the losses caused by the transaction, while on the other side, borrowers and participating lenders might consider moderating their treatment of excluded groups in order to reduce incentives to litigate. It seems safe to assume that LMTs, particularly those that most aggressively shift value from excluded lenders to participating lenders, will continue to be the subject of litigation, but it is difficult to imagine that any of these cases will put an end to LMTs across the board.

Since negotiating tighter credit documents seems to have proven impractical and litigating after the occurrence of an LMT involves significant expense and risk, lenders have increasingly looked to work with each other in order to protect their interests. Such an arrangement, memorialized in an enforceable cooperation agreement that is joined by a critical mass of the lender group, comes with advantages and disadvantages that lenders should consider before signing on.

MECHANICS OF A TYPICAL COOPERATION AGREEMENT

A lender that signs a cooperation agreement typically agrees that it will not negotiate or participate in any

[5] *In re Serta Simmons Bedding, LLC*, 125 F.4th 555 (5th Cir. 2024).

[6] *Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614, 2024 WL 5248898 (N.Y. App. Div. 1st Dep't Dec. 31, 2024) [hereinafter *Mitel*].

[7] *See, e.g., How Did They Do It? J. Crew & The Original Trap Door*, KING & SPALDING LLP, https://www.kslaw.com/attachments/000/008/521/original/How_did_they_do_it_J._Crew.pdf.

[8] *See, e.g.,* Mark Maurer, *The Latest Tool to Refinance Short-Term Debt: Double-Dip Financing,* WALL ST. J. (Oct. 13, 2023).

transaction with the borrower or the other lenders in respect of the borrower's debt unless such transaction is supported by a specified portion of the cooperating lender group (often referred to as an "Approved Transaction"). Borrowers are not usually parties to cooperation agreements, nor will such agreements articulate specific terms for a proposed restructuring. A cooperating lender's goal is simply to ensure that it has a voice in future negotiations and will be given the opportunity to participate in an Approved Transaction, should it so desire. Group members typically do not obligate themselves to take part in any Approved Transaction that may eventually develop.

Cooperation agreements usually do not become effective until they are signed by lenders holding at least a majority of the relevant debt. This effectiveness trigger often mirrors the fraction of the lender group that would be required to consent to the amendments to the credit documents that would be necessary to effect an LMT (e.g., changing covenants that restrict the borrower's ability to incur additional debt or to grant additional liens, etc.), so once a cooperation agreement becomes effective, cooperating parties will be well-positioned to negotiate an LMT with the borrower (or to block an LMT that might arise away from the group).

Once lenders holding a majority of the relevant debt join a cooperating group, group members can rest assured that any deal with the borrower will require their approval. In order to preserve the group's bargaining power, cooperation agreements typically permit parties to transfer their loans only to other cooperating parties, or to buyers that agree to become cooperating parties upon consummation of their purchases. Since most trades in the loan market are intermediated by broker-dealers, cooperation agreements often also allow loans to be transferred to a "qualified market-maker" ("QMM") that is not a party to the cooperation agreement, on the condition that the QMM deliver such loans to a cooperating party within a prescribed (generally short) time frame. Transfers to parties outside of the cooperating group are generally deemed to be void *ab initio*, and the other cooperating parties are given the right to enforce the voiding of non-compliant transfers.

Cooperating lenders typically do not commit to the group for an indefinite period, so most cooperation agreements fall away after the passage of a specified amount of time. We have seen examples of outside dates ranging from three to 18 months, but these tend to vary based on the point in the borrower's maturity cycle at which the cooperation agreement arises. Cooperation agreements may also terminate prior to the outside date upon (1) the consummation of an Approved Transaction, (2) the filing of a bankruptcy petition by the borrower, or (3) the election of a specified portion of the cooperating lenders (the "Required Holders").

The definition of Required Holders is an important one under a cooperation agreement, as their consent will be required to classify a proposed deal as an Approved Transaction, or to amend, extend, or terminate the cooperation agreement. Commonly, this threshold ranges from 50% to 75% of the debt held by the cooperating group.

Sometimes, cooperation agreements distinguish between the first group of lenders to sign onto the agreement ("Initial Parties"), on the one hand, and those that subsequently join the group ("Subsequent Parties"), on the other. In addition to being assured of pro rata treatment of their existing debt, Initial Parties will typically also have the right to participate in new money financings or backstop arrangements, and to collect any related premiums or fees, while these opportunities may not be offered to Subsequent Parties. In order to encourage lenders to join cooperating groups as quickly as possible, agreements will often require joining within a short period of time (sometimes, just a few business days) following the effective date in order to be treated as an Initial Party.

Since the economics of an Approved Transaction can materially favor Initial Parties over Subsequent Parties, it is crucial for joining lenders to clearly understand their position. This issue becomes even more salient when loans are transferred from one lender to another. If, for example, an Initial Party acquires loans from a Subsequent Party (or a non-party), will those newly acquired loans be entitled to preferential treatment in the hands of the Initial Party? Alternatively, if an Initial Party sells its debt to a Subsequent Party, will those loans continue to benefit from Initial Party treatment in the hands of the buyer?

The answers to these questions vary from agreement to agreement. Under one common formulation, any debt that is subsequently acquired by an Initial Party automatically receives the benefit of Initial Party treatment, but only for so long as such debt remains in the hands of an Initial Party (i.e., if such debt were to be transferred to a Subsequent Party, it would lose its Initial Party status in the hands of the transferee). Other cooperation agreements allow Initial Party rights to travel freely to any assignee. Still others vary in the opposite direction, providing that only debt that is subject to the agreement as of the effective date will be entitled to the agreement's benefits (i.e., if a cooperating lender subsequently acquires loans from a non-party,

such loans will receive no benefit from the cooperation agreement).

Due to these complexities, it may well be possible for a cooperating lender to hold both Initial Party debt and Subsequent Party debt, so accurate tracking is essential, particularly if that lender is considering any further trading.

Cooperating lenders will usually agree to keep the terms of their agreement confidential, with a few important exceptions. In order to further the group's goals of attracting additional members and opening a dialogue with the borrower, advisors to the cooperating group typically are permitted to disclose the existence of the cooperation agreement and the aggregate amount of debt subject thereto (but often subject to the caveat that the identities of individual parties and their holdings remain confidential). Also, in light of the fact that debt subject to the agreement may only be sold to a non-cooperating party if the buyer agrees to join the cooperating group, parties are usually allowed to disclose the terms of the agreement (again, without identifying other parties or their holdings) to prospective purchasers of their debt.

WHO CAN JOIN A COOPERATION AGREEMENT (AND WHAT HOLDINGS CAN THEY INCLUDE)?

A cooperation agreement will almost always require that each joining party (1) specify the amount of debt that will become subject to the agreement and (2) represent that it is the sole beneficial owner of such specified debt, and/or that it has the power to act, vote, and consent with respect to all matters in connection therewith. This representation is usually straightforward enough to make in respect of loans where the cooperating party appears on the administrative agent's register as the lender of record, but becomes more complicated when unsettled purchases and participation interests are taken into account.

This complexity is a byproduct of the process for settling loan trades, as laid out in the market-standard loan trading documents promulgated by the Loan Syndications and Trading Association Inc. ("LSTA"). Typically, credit documents provide that loans may only be assigned with the consents of the borrower and the administrative agent. If these consents are denied, parties trading under the LSTA regime are required to attempt to settle via participation, whereby the seller retains record, legal ownership of the loan but grants a beneficial ownership interest therein to the buyer. If neither an assignment nor a participation can be completed, the LSTA standard terms oblige buyer and seller to come up with a mutually agreeable alternative settlement structure that affords each of them the economic equivalent of the agreed-upon trade.[9]

Obtaining the consents required for an assignment might take several business days, while settlement via participation requires the preparation and negotiation of additional documents, which trading parties typically will not even begin until they learn that the consents needed for an assignment have been denied. Alternative settlement structures, such as swaps or other derivatives, can be expected to take even more time to devise and implement. It is unsurprising, then, to find that average settlement times for loan trades tend to be significantly longer than those for trades of other types of financial instruments.[10] The LSTA aspirationally targets a trade settlement window of seven business days for par/near par loan trades, increasing to 20 business days in the event that the traded loan is considered "distressed." In practice, it is not unusual to see loan trades that remain unsettled for weeks or months after the trade date.

In these situations, despite the fact that the binding nature of the trade shifts the economic risk of the loans from the seller to the buyer from the trade date on, the LSTA's standard terms do not require a seller to follow its buyer's directions with respect to any vote under the credit agreement that arises prior to the settlement of the trade.[11] Therefore, a lender entering into a cooperation agreement that might be keen to include all of the loans that it has committed to purchase might find itself unable to accurately represent that it has the voting power needed to do so.

A lender who holds loans via participation may have similar concerns, notwithstanding its beneficial ownership interest. Under most credit agreements, the ability to vote is limited to lenders of record who appear on the administrative agent's register, so a participant will generally have to depend on the grantor of its participation to vote participated loans on its behalf.

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[9] Loan Syndications and Trading Association, *Standard Terms and Conditions for Par/Near Par Trade Confirmations*, §1 (Aug. 15, 2025) [hereinafter *LSTA Standard Terms for Par Trade Confirmations*].

[10] *See, e.g.,* James Irwin and Sarah Wagner, *Loan Settlement: 2023 Year in Review,* S&P GLOBAL (Feb. 8, 2024), https://www.spglobal.com/market-intelligence/en/news-insights/research/loan-settlement-2023-year-in-review (reporting a market average settlement time of 19.5 days for LSTA loan trades in 2023).

[11] *LSTA Standard Terms for Par Trade Confirmations*, *supra* note 9, §13.

While participation agreements often provide participants with the power to direct grantors' votes, this power is typically constrained by the grantor's obligation to follow the instructions given by the majority of its participants, rather than those given by each (or any individual) participant, as well as by the grantor's ability to disregard instructions that would, in its reasonable judgment, either prejudice its relationship with any regulatory authority or damage its reputation.[12] Without a bespoke participation agreement that provides the buyer with unqualified voting rights, it could be difficult for a participant to represent that it has the voting power required to join a typical cooperation agreement.[13]

Some cooperation agreements explicitly address the treatment of unsettled trades and participations, but to the extent that a cooperation agreement requires each cooperating party to flatly represent that it has full voting and dispositive power with respect to all loans subject thereto, a joining lender may find itself unable to include all of the loans in which it has an economic interest.

TRANSFER RESTRICTIONS AND THEIR IMPACT ON LOAN TRADING

In July 2024, the LSTA published a market advisory in which it strongly urged sellers of loans that are subject to cooperation agreements to disclose that fact to their counterparties at the time of the trade, in order to avoid any potential disputes around a buyer's unwillingness to join a cooperating group.[14]

Buyers should also clearly articulate their expectations at the time of trade (e.g., if their intention is to purchase loans entitled to "Initial Party" treatment rather than "Subsequent Party" treatment, they should make that an explicit term of their transactions).

A dealer intermediating a sale of loans from a cooperating lender to a prospective new lender in reliance on a cooperation agreement's "qualified-market-maker" exception should pay close attention to any timing requirements and should prepare for the possibility that a borrower may decline to consent to an assignment to the ultimate buyer. In such a scenario, it pays to understand whether a participant with typical (i.e., limited) voting rights would be able to make the representations required of cooperating lenders. If not, the dealer will need to work with its counterparties in order to devise an alternative settlement structure that allows the trade to settle without breaching the terms of the cooperation agreement (e.g., arranging for a participation to be granted by the original seller directly to the ultimate buyer rather than by the dealer, or finding another cooperating lender of record that would be willing to grant such a participation). Such irregular settlement structures will always proceed more smoothly if they are considered and discussed early in the lifecycle of a trade.[15]

BORROWER / SPONSOR PUSHBACK

Given the extent to which they prize the flexibility afforded them under many currently used forms of credit documents, it is not surprising to find sponsors and their representatives expressing hostility toward cooperating lender groups. Until recently, their opposition has been mostly indirect. For example, some have suggested that cooperation among lenders could raise concerns from an antitrust perspective, but, to date, those arguments remain untested.[16] Borrowers have also used "Disqualified lender" lists to exclude prospective debt purchasers whom they perceive to be aggressive or difficult, but these provisions do not explicitly prohibit cooperation.[17]

Over the past few months, however, we have seen sponsors taking more tangible steps toward contractually limiting lenders' ability to form cooperating groups. For example, Warner Bros Discovery, Inc.'s indenture from June 2025 included a so-called "anti-boycott" provision

[12] Loan Syndications and Trading Association, *Participation Agreement for Par/Near Par Trades, LSTA Standard Terms and Conditions*, §§ 11(a) and 12.2(viii) (Aug. 15, 2025).

[13] *See generally* Robert J. Waldner, *Considerations for Cooperation Contracts in Loan Trades*, LAW360 (June 18, 2024), https://www.law360.com/articles/1842140/considerations-for-cooperation-contracts-in-loan-trades.

[14] *Cooperation Agreements, TSAs, RSAs and other Ad Hoc Group Agreements,* LOAN SYNDICATIONS AND TRADING ASSOCIATION: MARKET ADVISORY (July 1, 2024).

[15] *See generally* Waldner, *supra* note 13.

[16] *See, e.g.,* Eliza Ronalds-Hannon and Reshmi Basu, *Kirkland Debt Architect Sees Creditor Pacts as 'Anticompetitive',* BLOOMBERG LAW (June 11, 2025), https://news.bloombergtax.com/bankruptcy-law/kirkland-debt-architect-sees-creditor-pacts-as-anticompetitive (statement of David Nemecek of Kirkland & Ellis LLP) ("People who enter into cooperation agreements should be careful. There are serious legal considerations that they should be aware of, including the potential for antitrust claims.").

[17] *See generally* Robert J. Waldner and Paul B. Haskel, *Personae Non Gratae in the Loan Market: Trading Considerations for Disqualified Institutions*, 142 BANKING L. J. 287, 287 (2025).

which prohibits noteholders from entering into agreements that limit their ability to provide new money to the issuer.[18] According to the issuer's investor deck, this provision was not meant to restrict "customary" cooperation agreements "for self-defense" in exchanges or purchases of existing debt,[19] but it is clearly a step in that direction. Based on our observations, this language has not yet become common in syndicated loan agreements, but lenders should remain aware of that possibility.

On a related note, we have seen reporting about the inclusion of "disqualified counsel" language in a recent unnamed U.S. private credit agreement. This language is said to allow the borrower to designate one law firm that no lender may retain in connection with any matter arising out of or related to the credit facilities.[20] Sponsors have long enjoyed the privilege of designating counsel for the arranging banks at the loan-origination stage,[21] but limiting lenders' ability to engage lawyers of their choice to advise on post-closing matters constitutes a significant expansion of sponsors' influence on the course of potential restructuring discussions. While the exclusion of only one law firm might not materially impact lenders' ability to form a cooperating group, the obvious concern is that this precedent, once established, could expand to allow for disqualification of multiple firms. Since a relatively small number of law firms specialize in representing cooperating lender groups, even a slight expansion could have a chilling effect on the formation and effectiveness of such groups.

CONCLUSION

An observer of the syndicated loan market could be forgiven for expressing confusion over its current state. Lenders who purport to fear and loath LMTs continue to extend loans under documentation that does little to curb sponsors' ability to effect such transactions. A creditor who loudly laments the unfairness of an LMT from which they were excluded might find itself in the awkward position of defending a comparable transaction in which they meted out similar treatment to others. Private equity firms who advocate for sponsor-friendly terms in their own deals may be frustrated when they encounter similar provisions in situations in which they are looking to lend.

It seems reasonable to assume that lenders operating in such a landscape will continue to seek to cooperate with one another in order to ensure that they have a voice in any negotiations with borrowers and to position themselves for the best possible recovery if insolvency follows an LMT. That said, a lender considering entering into a cooperation agreement needs to weigh these benefits against drawbacks such as the loss of flexibility to independently engage with the borrower or non-cooperating lenders, and reduced liquidity of loans subject to the agreement.

Those who are active in the loan trading market should pay close attention to a cooperation agreement's transfer restrictions and communicate their expectations to counterparties as clearly as possible at the time a trade is executed.

Finally, lenders should continue to monitor developments in credit documentation that would inhibit their ability to join cooperating groups or otherwise affect the process of negotiating LMTs with borrowers. If "anti-boycott" and "disqualified counsel" provisions become more prevalent in syndicated loan agreements, creditors may need to consider new approaches to safeguard their interests. ■

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[18] Warner Bros Discovery, Inc., Current Report (Form 8-K) (June 16, 2025).

[19] Warner Bros Discovery, Inc., Current Report (Form 8-K) (June 11, 2025).

[20] Michael Haley, *Lawyer-on-Lawyer Violence: 'Disqualified Counsel' Provisions Emerge in US Deal Documentation,* OCTUS (Aug. 11, 2025), https://octus.com/resources/articles/disqualified-counsel-borrowers-veto-lender-legal-representation/.

[21] Andrew Ross Sorkin, *A Growing Conflict in Wall St. Buyouts*, N.Y. TIMES, Jan. 5, 2016, http://www.nytimes.com/2016/01/05/business/dealbook/a-growing-conflict-in-wall-st-buyouts.html?ref=dealbook.