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Fast Cash: Swingline Loans in Fund Finance

September 3, 2021 | Issue No. 142

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In recent months, we have seen several requests to include a swingline facility in the capital call loan documentation for syndicated facilities. Swingline loans are normally made available as a component of a revolving credit facility by one of the lenders designated as the "swingline lender." Swingline loans are designed to give the borrower more rapid access to funds than would otherwise be permitted by the notice periods prescribed in the credit agreement, which typically require at least three business days notice for eurocurrency loans and one business day notice for base rate loans. In addition to affording same-day funding, swingline facilities also grant a borrower greater flexibility by permitting swingline loans to be requested at a later time on the date of funding. Swingline loans can be funded with shorter notice because they are being advanced by only one lender, which is often the lender serving as the administrative agent.

Because a swingline facility is often funded by a single lender, there is often greater flexibility in the size of the borrowing that can be requested. A swingline facility often gives the borrower access to loans of lower minimum amounts than would otherwise be required for a syndicated borrowing from all the lenders participating in the credit facility.

Swingline facilities have several key features. First, the swingline lender is customarily obligated to make swingline loans only within the limit of its revolving credit commitment and is not required to make revolving credit loans and swingline loans in excess of that commitment. Stated another way, the swingline facility is part of, and not in addition to, the overall commitment of the bank serving as the swingline lender. If the revolving credit facility is fully funded, the swingline facility would not be available to be drawn until a portion of the facility is repaid. Second, the maximum amount of swingline loans is almost always specified as a sublimit within the total revolving credit commitments. The sublimit could be equal to the commitment of the bank or banks serving as the swingline lender, but an amount set as a percentage of such commitment is very common given that an outstanding borrowing would not allow the swingline lender's commitment to be entirely available for a swingline loan. Third, swingline loans are intended only as a short-term stopgap until a revolving credit borrowing from the full syndicate can be made. As such, swingline loans are normally required to be repaid by the earlier of (i) two to five business days from date of funding and (ii) the date of next regular borrowing under the credit agreement. Finally, if for any reason the borrower does not repay the swingline loans within their prescribed maturity (including by reason of an intervening event of default or bankruptcy), the other revolving credit lenders will be unconditionally obligated on a several basis to purchase participations in the swingline loans so that the risk of the swingline loans is shared ratably among all revolving credit lenders.

Another key component is that swingline borrowings almost always bear interest at the base rate and, in the U.S., are almost always limited to loans denominated in dollars. Furthermore, the swingline facility is not intended to allow a same-day borrowing and repayment to avoid incurring interest. We almost always see the swingline facility drafted so as to mandate that a swingline borrowing requires payment of interest at the base rate for a minimum of one day.

A common syndication strategy is to establish a credit facility with the goal of a future syndication. In these instances, the documentation may include the swingline facility mechanics, but the functionality of such provisions does not apply until at least one lender other than the swingline lender joins the facility.

Lastly, the conditions precedent to making a swingline loan mirror those of a standard revolving credit borrowing. Swingline facilities are not intended to be a means to avoid the joinder requirements applicable to a new borrower, particularly any know-your-customer requirements. In other words, if the swingline lender has received all necessary know-your-customer approvals but one or more other members of the syndicate have not, the swingline facility is not intended to be a means to give the new, joining borrower access to funds on a short-term basis until full know-your-customer checks are complete for all members of the syndicate. The swingline facility is only available to those borrowers that are fully joined to the credit facility and have fully satisfied the loan documentation requirements as applied to all lenders in the syndicate.