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Building in Flexibility in Credit Facilities

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As more subline lenders are beginning to cover asset based lending, banks are keen to create streamlined template documentation with the flexibility to accommodate the borrowing needs of their clients throughout a fund’s lifecycle, as the collateral available for the borrowing base shifts from capital commitments to the underlying investments of the fund. Building flexibility into the standard documentation allows lenders to readily meet a borrowers financing needs during its lifecycle without having to amend the facility agreement and other loan documents. It also allows fund managers to pre-agree template documentation which can be used across multiple affiliated borrowers and multiple asset classes. This approach only works for similarly situated borrowers with straightforward fund structures and would not be appropriate for highly bespoke fund structures or transactions.

Master Agreement Type Approach

Increasingly, lenders are looking to create template terms and conditions that can be pre-agreed for a family of funds. The terms and conditions contain all of the terms of the loan (borrowing requirements, prepayments, repayments, interest payments), representations, covenants and events of default with pre-agreed language for all affiliated borrowers. A supplemental terms schedule contains borrower specific provisions (spread, advance rate, regulatory representations and covenants specific to the type of borrower (40 Act, ERISA, reporting requirements, etc.)), collateral specific provisions (NAV, subscription line or hybrid) and can contain structure specific provisions (cash sweep, mandatory prepayment events, financial covenants, NAV triggers, etc.) if any of those terms are expected to differ amongst affiliated borrowers. The terms and conditions and supplemental terms schedule are read together as a single credit and security agreement. Having pre-agreed collateral schedules, with standardized definitions for included investors, eligible investment funds and exclusion events, also gives borrowers and lenders the certainty that collateral eligibility criteria are consistent across a family of borrowers.

Accordion Features

An accordion feature gives borrowers and lenders the flexibility to right size a facility during the lifecycle of a fund borrower. Building in commitment increases and decreases, subject to the consent of the lender, are a great way to accommodate a borrower’s borrowing needs, whether it’s the ability to deploy capital to purchase investments or to meet capital call requirements rapidly. Often a newly formed borrower will anticipate the need to increase or decrease the commitment depending on the success of its fundraising activities. Borrowers can send in an increase or decrease request which, if countersigned by the lender, automatically increase or decrease the commitment without having to amend the facility documents (although there may still be deliverables requirements, depending on the circumstances), allowing borrowers to right size the facility over the lifespan of the loan.

Extension Mechanisms

Building in the ability to extend the scheduled maturity of a facility upon request and acceptance by the lender is another great way for lenders to continue to service a borrower’s financing needs without having to reopen the facility documents. An extension request is sent by the borrower and, if countersigned by the lender, automatically extends the facility without having to amend the documentation (although there may still be deliverables requirements, depending on the circumstances). An uncommitted extension option allows lenders the flexibility to reanalyze the structure, lending environment, collateral and credit of the borrower. It pre-wires mechanics to extend the scheduled maturity date into the facility agreement but ultimately leaves the decision to accept the borrower’s request to extend the scheduled maturity to the lender, in its sole discretion.

Reallocation

Borrowers with affiliate facility agreements can easily pre-agree to reallocate commitments amongst affiliated funds by sending lenders a reallocation request to upsize one affiliated facility and downsize another with the overall commitment remaining the same, usually subject to sub-limits for each fund based upon its size and available collateral. Lenders can get credit approval for the overall commitment so there is no need to go back for credit approval for a particular borrower's increased commitment.

Adding Credit Support

Using the Loan Parties definition and joinder mechanics is another way to allow borrowers to add additional pledgors or guarantors over the lifecycle of the facility, increasing the borrowing base without having to amend the documentation. Due diligence should be performed for each new credit support party and lenders will require the usual deliverables (officer's certificates, opinions, certificates of good standing, etc.) but are able to increase the credit support and borrowing base without having to fully reopen the loan documentation.

Borrowing Base Definition

Building in a flexible borrowing base definition in the terms and conditions allows borrowers to add different types of collateral without having to amend the base documentation. The borrowing base can be both NAV based and subscription line based depending on the supplemental terms for a particular borrower. The borrowing base definition can also include both NAV and subscription line features, allowing for reallocation of the borrowing base from a subscription line based transaction to a NAV based transaction, meeting a borrower's financing needs throughout a fund's lifecycle.