C A D W A L A D E R

Syndication Synopsis: Overview and Considerations for Achieving a Successful Syndication

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As the fund finance market continues to mature, subscription credit facilities remain a cornerstone for providing essential liquidity to funds, allowing managers to efficiently bridge the gap between capital calls and investment opportunities. With the landscape shifting toward larger lender commitments, often exceeding $1 billion for marquee sponsors, syndicated facilities are increasingly in the spotlight, offering a way to meet borrower demand and manage risk. For lenders, syndication reduces exposure to a single facility while offering fee income; for borrowers, it mitigates the risk of an individual lender's ability to fund. The battle to secure Agent roles has heated up considerably, as clinching such a position not only brings agency fees but also paves the way for repeat engagements. An Agent from a prior vintage can point to established precedents as a compelling edge in bidding for the sponsor's next facility, setting mutual expectations and confining negotiations mostly to economic essentials like pricing and fees.

This article will cover the fundamentals of syndication in fund finance, the critical choice between bilateral and syndicated approaches at initial closing, key factors to weigh when starting bilaterally with syndication in mind, the mechanics of the amendment process post-closing, and practical steps to ensure a seamless syndication. While bilateral facilities still account for over 80% of the market by deal count, syndicated facilities represent roughly half of total lender commitments. As we attempt to look forward, emerging trends such as the integration of term loan lenders and NAV hybrids could further shape how syndications unfold.

Initial Closing: Bilateral or Syndication?

Once an Agent and sponsor agree on a deal mandate, the next step is figuring out the best path forward given the size and scope of the fund's liquidity needs. Syndication at the initial closing of the credit agreement often works well when timelines aren't as tight and the borrower has a good sense of the investors likely to commit to the fund and their commitment amounts. This gets all lenders involved early, allowing them to shape key terms from the start and finalize the agreement in one cohesive effort.

However, we've seen a shift in recent years toward closing bilaterally first, with syndication planned for a later date. This approach allows borrowers quicker access to capital should they have an immediate funding need, facilitates a streamlined negotiating process, and avoids the risk of issues that could delay closing. The decision often boils down to borrower requirements for immediate liquidity, fundraising timelines, and the established course of business between Agent and borrower.

Important Considerations for Initially Closing Bilaterally:

While there are speed and efficiency advantages to closing bilaterally at the onset, there are many factors that the Agent and borrowers must consider during the negotiation process.

The Agent should try to negotiate terms that benefit the future syndicate generally as this will make the deal more marketable and allow for an efficient syndication process. Important deal points for syndicate lenders include voting rights with respect to exclusion events, re-inclusion of excluded investors, and material LPA amendments. Lately, there's been heightened sensitivity to confidentiality clauses as well as lender assignment and participation provisions. While the borrower may prefer all consent rights to reside with the Agent for efficiency and would also prefer having a consent right to all lender assignments, adjusting these terms to be more syndicate-friendly at the bilateral stage will lead to a more marketable deal, which in turn facilitates quicker access to the entire anticipated line of credit.

It's wise for the Agent to map out targeted syndicate lenders in advance, anticipating comments tied to jurisdictions and internal policies. The syndicate's overall makeup matters when setting funding schedules and addressing legal hurdles such as sanctions and KYC which often prove non-negotiable for participants. Beyond specific institutions, gauging the number of lenders required and their projected commitment levels is key. If fewer lenders are needed to hit the anticipated maximum commitment amount, expect smoother sailing with reduced feedback simply because there are fewer voices in the mix.

When the credit agreement is drafted with prospective syndicate lenders sufficiently in mind, there is less need for significant amendments upon syndication. If no updates to the credit agreement are required, then the facility upsize and lender joinder can be accomplished in a streamlined manner via a facility increase request and lender joinder agreement which process is typically laid out in the credit agreement. This saves on legal costs for the borrower and provides quicker access to the entire facility amount. However, this becomes less likely as the number of lenders required to syndicate increases.

Syndicating After a Bilateral Closing – The Amendment Process:

When the streamlined approach mentioned above is not feasible, an amendment becomes necessary to onboard syndicate lenders and integrate any necessary comments into the credit agreement. After identifying the lender pool, the Agent shares the executed bilateral documents with lenders or their counsel for review, requesting feedback for compilation into a first draft for the borrower.

Prior to sending a revised credit agreement to the borrower, the Agent and counsel will review the compiled list of comments. Generally, all lender comments are proposed by the Agent but there are certain exceptions. These exceptions are typically limited to points that were already negotiated either at the bilateral closing or in prior vintages or points that are critical to the borrower. During this review process, it is also important for the Agent to flag any comments that also appear in similar syndicated facilities involving the same parties. These comments will likely be less controversial and can give the borrower comfort. Similarly, if the lender has gotten comfortable forgoing a particular comment in a recently syndicated facility and has communicated that the comment is not essential, then the Agent can trade it away to secure more important concessions elsewhere.

Occasionally, a borrower resists a comment vital to a specific lender, leading to an impasse. In these situations, it is often best practice for the Agent to put the affected lender in touch with the borrower directly to discuss the point. This ensures concerns are accurately conveyed without the dilution of multiple intermediaries. As with any game of telephone, sometimes the importance of the particular comment and the message of precisely how it affects the lender can be diluted due to passing through so many points of contact.

Facilitating a Smooth Syndication:

Syndication timelines can stem from various pressures, such as a borrower's pressing investment requirements, and larger lender groups naturally amplify the hurdles in meeting those deadlines. Yet with proactive planning and coordination, any potential delays can be avoided. One effective tactic Agents employ is imposing a firm deadline for lender comments, urging lenders to submit early (or at least on time) to ensure their needs can be given proper consideration and are sufficiently addressed.

There are cases where a lender's comment isn't included, not because it was particularly objectionable to the borrower or the Agent but because it was delivered late and making changes risks derailing the close, as any tweaks must circulate for full syndicate approval. This challenge intensifies in larger syndicates, where coordinating with over 20 lenders for sign-off in a couple of business days strains approval workflows, though it's more manageable with just a handful of lenders.

Legal logistics also play a role in facilitating a seamless syndication process. Counsel should secure promissory notes and reliance letters for incoming lenders well ahead of closing, as these are largely based on form agreements with minimal negotiation. Above all, maintaining open communication with clients and opposing counsel throughout the syndication process helps anticipate issues and resolves them proactively.

Conclusion:

In fund finance, syndication strikes a fine balance between risk management and opportunity, with bilateral closings offering agility and syndicated ones delivering capacity. By foreseeing syndicate requirements, drawing on precedents, and emphasizing clear dialogue, all parties can navigate to effective results. As competition for the Agent’s role in syndicated deals ramps up, an Agent's ability to deliver on borrower timelines emerges as a key differentiator, while streamlined closings benefit all parties involved and bolster prospects for ongoing business relationships.