

# Fund Finance Friday



## “Promptly” in Subscription Credit Facilities: You Better Be Quick About It

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Efficiency, flexibility and speed are core features of subscription credit facilities. Because subscription credit facilities operate on a fast-paced timeline, notice periods are intentionally short and precise. This structure obligates both lenders and borrowers to act on an expedited basis and clarifies when performance is expected. Notice periods for borrowings are often as short as what is operationally feasible for lenders and the same applies to notice periods for reporting and compliance by borrowers as it relates to investor developments that impact the borrowing base. Negotiations on such notice periods are usually limited to account for the practical performance ability of the lender and the borrower, rather than arbitrary periods of time. Performance is often expected to be prompt.

As such, subscription credit facility lenders, borrowers and their counsels are intricately familiar with the use of phrases such as “immediately”, “promptly”, and “without undue delay”. These are used to provide a time-frame within which each party expects performance by the other. At first glance, one could colloquially attribute immediately with “instantly”, promptly with “not as quick as immediately” and without undue delay with “get it done as soon as possible”. However, in subscription facility credit agreements, is this a distinction without a difference?

What does “promptly” mean? The Second Circuit, in the Revlon litigation ([see our discussion here](#)), conveniently provided guidance on the meaning of “promptly”, stating that “... *that term is well understood to mean “without delay,” “immediately,” or “at once.”* and providing that “[o]f course, how much delay the term “promptly” can accommodate can vary in different circumstances.”\*\*[1] This, along with guidance from other courts, which essentially provides that “promptly” should be construed as within a reasonable time in view of all the facts and circumstances, provides us with a spectrum against which the urgency of “promptly” in subscription facility credit agreements can be considered.

Against this backdrop, where subscription facility credit agreements require notices to be delivered promptly (by both lenders and borrowers), one could expect that such action should receive immediate attention and be actioned quickly - essentially immediately and you better be quick about it. Now, how quickly can you do something immediately? That is where the specific facts and circumstances become relevant. Given the very nature of subscription credit facilities, it would not be unreasonable to expect a party to make it a top priority to deliver the required notice or to perform the required obligation.

To avoid any ambiguity or uncertainty as to when a party can expect to promptly receive a notice or take other action, it is good practice to include an outside date, so that parties have certainty as to when they should expect performance e.g. “*promptly, and in any event, within two (2) Business Days after...*”. Could this mean that promptly could be construed as a two-business-day period? Possibly, but including an outside date does not eliminate the expectation of urgency embedded within the term “promptly”. Rather, it establishes a clear boundary for performance while preserving the expectation that the relevant action will be taken as soon as practicable. In this respect, the outside date functions less as a safe harbor and more as a mechanism for managing expectations and reducing ambiguity.

This approach also reflects the relationship-driven nature of subscription finance. Lenders strive to provide responsive service in support of a fund’s investment activity, while borrowers seek to demonstrate operational reliability and transparency. Clearly defined notice mechanics support both objectives by balancing commercial urgency with practical execution realities.

In practice, where a subscription facility credit agreement requires action “promptly”, without an outside date, it likely means that you need to get your ducks in a row and perform your obligation on the quicker side of immediately and where “promptly” does include an outside date, the same expectation of urgency remains, albeit with an expressly negotiated cushion that accounts for the totality of the circumstances i.e. the reality and practical ability to deliver the required notice or perform the obligation quickly.

**[1]** [https://app.octus.com/pdf/4036900\\_1](https://app.octus.com/pdf/4036900_1)