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Contributing Editor:
Thomas Mellor
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Analysis and Update on the Continuing Evolution of Terms in Private Credit Transactions

Proskauer Rose LLP

Sandra Lee Montgomery

Michelle L. Iodice

Introduction

For the past 12 years, The Private Credit Group at Proskauer Rose LLP has tracked deal data for private credit transactions (our "data"). The data referred to in this chapter reflects the current trends and deal terms in private credit transactions closed by The Private Credit Group at Proskauer Rose LLP in 2022 and may not be indicative of broader market trends.

Our data demonstrates that, over the past 12 years, the middle market has experienced a continued influx of financing terms that were traditionally features of large cap financings. The year 2022 appeared to be no exception; large cap financing terms continued to appear in middle market transactions in a manner generally consistent with prior years. However, the significant economic uncertainty arising towards the end of 2022 has brought about changes in documentation that the market has not seen in recent years. In this market, lenders (e.g., lenders able to fill large capital needs at closing or as part of an ongoing growth strategy, and lenders able to invest at higher closing leverage levels) may enjoy increased negotiating leverage and in some cases have shown a willingness to walk away from, or decrease investments in, transactions with unfavourable terms. These lenders have started to demand material changes to loan documentation with a focus on obtaining more meaningful financial covenant protections, tightening debt incurrence, reducing capacity to engage in transactions (including making investments and dividends) that decrease the value of lenders' collateral, and removing borrowers' flexibility to restructure debt in a manner that decreases the position of current lenders' *vis-à-vis* other classes of creditors. Given that the large cap terms assume a profitable, durable business model and stable economic climate, this shift in lender sentiment is generally unsurprising even though it represents a significant deviation from trends in preceding years. In light of the uncertain economic outlook and highly fragmented direct lending market, we expect a continued insistence for lender protections in deals with large cap financing terms.

Although middle market lenders' appetite for certain large cap financing terms differ based on institutional biases and the nature of specific investment opportunities, the treatment of large cap financing terms in credit documents can be evaluated in light of the size of the borrower's consolidated EBITDA. As a general matter, large cap deal terms become less prevalent as the consolidated EBITDA of a borrower decreases. In addition, as the consolidated EBITDA of a borrower decreases, the inclusion of large cap terms with conditionality and/or additional lender protections intended to mitigate the inherent risks in such terms becomes more prevalent. This allows us to divide the middle market into "lower middle market", "traditional middle market" and "upper middle market" bands for purposes of this analysis and discussion.

This chapter will highlight notable current events in the private credit market as well as examine certain key financing terms and trends across the lower, traditional and upper middle market bands using Proskauer's proprietary data. The analysis will also discuss the related market drivers and trends influencing the continuing evolution of private credit deal terms.

Background

The private credit market has made headlines for some time due to its rapid expansion fuelled by a growing investor base, a surplus of capital ready to be deployed, and a compelling yield proposition that has proven capable – especially in recent times – of weathering uncertainty and economic downturn. In 2020 and 2021, the private credit market showed its exceptional durability in the post-COVID environment which bolstered further interest in the asset class. The slowdown in the number of new financing opportunities coming to market in Q1 2020 proved to be a fleeting issue for investors. The private credit market quickly rebounded and remained strong for the duration of 2020 and 2021, despite the economic uncertainty of those years (and predictions by many experts that COVID-19 would lead to one of the deepest recessions in U.S. history).

During 2020 and 2021, many industries (e.g., delivery services, online retailers, online entertainment and tech) were unaffected by or even expanded as a result of COVID-19, which helped to quell fears of an impending economic crash. In fact, our data showed that events of default in 2020 under active deals (i.e., deals closed by Proskauer that remained active in 2020) was only 4% and payment defaults accounted for only 1.4% of that total, and that events of default in 2021 under active deals decreased to only 1.04% and payment defaults accounted for only 0.12% of that total. During this time, borrowers reaped the benefits of flexible loan documentation (e.g., covenant loose and covenant lite transactions, and documentation containing features such as flexible consolidated EBITDA addbacks and borrower-favourable provisions for curing financial covenant breaches in consecutive quarters that help to lessen the impact of declining performance for a handful of quarters) and were able to avoid defaults altogether in most cases, especially in the upper-middle market. Borrowers were also able to utilise this flexibility in their loan documentation to build cash reserves in anticipation of deteriorating leverage and financial performance (e.g. drawing down on previously committed revolving facilities, which customarily have no leverage conditions to borrowing and no anti-cash-hoarding protection) which helped to keep liquidity positions strong. In the cases where borrowers' financial performance faltered, lenders generally viewed the decrease as temporary and showed a willingness to rely on out-of-court solutions for temporary relief, including offering covenant holidays and additional addbacks to bolster consolidated EBITDA

and leverage levels in the short term, in cases where credit defaults were impending or likely to occur. Lenders also showed a willingness to step in with capital infusions that helped keep defaults and bankruptcy proceedings to a minimum. The year 2022 tells a similar story – events of default in 2022 under active deals was 1.56%, with payment defaults accounting for only 17.7% of that total. Our data is consistent with year-end default rates reported by Fitch (1.5%) (as of November 29, 2022) and S&P Global Ratings (1.6%) (as of September 2022). Although the flood of new deals into the data set (as well as the lack of meaningful financial covenants and other flexibility in loan documentation discussed above) will drive down the overall default rate, we believe the low levels are an accurate portrayal of the health of the market.

During these years, the asset class continued to perform well. Lenders continued to contend with a growing investor base, a surplus of dry powder and a limited supply of attractive investment opportunities in the persistent low-yield environment. Certain non-bank lenders made headlines with new ways to deploy capital in the form of record-breaking jumbo unitranche financings. These financings provide middle market borrowers with solutions that historically could have only been found in the syndicated market, and are widely expected to continue in the years ahead. Bank lenders have also found creative ways to invest in the asset class by offering lower priced "super-priority" revolving facilities with bank product features, which allow them to be repaid first in a downside scenario and effectively de-risk the higher leverage levels found in private credit transactions. Given all of this, competition to place capital remained high in the private credit market despite significant deal flow. Data from 2021 demonstrated the significant uptick in deal flow, pulling from 317 private credit transactions (*vs.* 204 transactions in 2020). The private credit market slowed in 2022, with our 2022 data pulling from 210 private credit transactions.

As we close out 2022, the cautious predictions of economic growth and a continued expansion of the current credit cycle are starting to turn to bleaker predictions and fears of a recession for some. High inflation, decreased consumer spending, projected housing market declines, slowing job growth, falling gross domestic product and war in Ukraine (among other factors) are impacting markets and the economy and creating significant uncertainty around what is in store in 2023.

Emerging Developments in 2022

The end of LIBOR

The impending transition away from LIBOR as a benchmark rate for syndicated loans and private credit financings continues to be a significant area of focus for lenders. This transition follows the widely publicised 2012 LIBOR manipulation scandal as well as the more recent decline of an active underlying market for interbank lending, each of which raised serious doubts about the reliability and sustainability of the LIBOR benchmark.

In November of 2020, the International Exchange Benchmark Administration (the administrator of LIBOR) announced that all tenors of LIBOR would cease to be published on June 30, 2023. In addition, various agencies (the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency and the Federal Deposit Insurance Corporation) jointly required regulated banks to cease entering into new contracts using LIBOR as a reference rate by 31 December 2021. Although direct lenders in the private credit market are not generally subject to the agencies' regulations and requirements, many were forced to confront the issue in other contexts. For instance, lenders that employ the use of subscription facilities or have other financing sources provided by regulated banks have had to align their costs of capital with the interest rates achieved on their investments. Additionally, direct lenders providing a second lien or other junior tranche of debt behind a bank-lead or syndicated senior facility (and lenders participating in syndicated or club deals with bank lenders) have transitioned away from LIBOR in advance of its drop-dead date.

The Alternative Reference Rates Committee ("ARRC"), a group of private-market participants convened by the Federal Reserve Board and the New York Fed, initially put forth two alternatives addressing the transition away from LIBOR in credit agreements. The "hardwired approach" provided for the automatic transition to SOFR upon certain events or triggers. In contrast, the "amendment approach" allowed for a future agreement on the replacement benchmark rate and benchmark rate conforming changes that may be appropriate in light of the approach in the syndicated market at the time of the replacement. However, in 2021, the market coalesced around forward looking term SOFR as the best alternative to LIBOR. The Loan Syndications & Trading Association ("LSTA"), as co-chair of the ARRC Business Loans Working Group, produced form provisions to incorporate forward looking term SOFR into credit agreements, as well as further refined the provisions for the "hardwired approach" and "amendment approach" to future benchmark replacements in the case that forward looking term SOFR ever became available. Private credit lenders have widely adopted these provisions (or closely related iterations thereof) into new credit agreements and amendments of existing financings.

However, lenders continue to negotiate the "spread adjustments" that will be applied to SOFR following the transition. Spread adjustments are a basis point value calculated by taking into account the historical rate differences between tenors of SOFR and LIBOR. The adjustment is designed to ensure a lender is not economically disadvantaged following the transition away from LIBOR. The original ARRC "hardwired approach" provisions included 11, 26 and 42 basis point adjustments for one-, three- and six-month tenors of SOFR, but borrowers began to challenge this as the gap between SOFR and LIBOR showed signs of narrowing towards the end of 2021. Borrowers pressed for more conservative adjustments (e.g. 10, 15 and 25 basis point adjustments for one-, three- and six-month tenors of SOFR, or 10 basis point adjustments for all tenors) or no spread adjustment at all, and during the end of 2021 and in 2022 borrowers gained traction around the more conservative adjustments in competitive upper middle market deals. Some lenders had success in maintaining spreads of at least 10 basis point adjustments for all tenors but many deals were getting done with no spread adjustments. However, during the end of 2022, the tides began to shift and adjustments of 10, 15 and 25 basis points for one-, three- and six-month tenors of SOFR, or at least of 10 basis point adjustments for all tenors, started to become more common again. As 2023 brings about the end of LIBOR, we anticipate that spread adjustments will become moot and any additional yield will be reflected in the margin applicable to loans priced by reference to the forward looking term SOFR.

"Envision" protections

Liability management transactions – transactions that allow an issuer to refinance or restructure its outstanding obligations often without the consent of lenders – continue to be a significant focus for lenders during the current period of market volatility and uncertainty. In 2021, following controversial transactions in mid to late 2020 by borrowers in Serta Simmons, Boardriders and TriMark that subordinated lenders' loans with

only the consent of the majority holders rather than all lenders, lenders successfully pushed for the implementation of protective provisions (commonly referred to as "Serta" protections) into loan documentation requiring any amendments or other modifications that subordinated the lenders' liens or payments on the lenders' obligations to be approved by all lenders. Once Serta protections became prevalent, Borrowers pushed back and required lender consent only from those lenders who were not given the opportunity to participate on a *pro rata* basis in the transaction triggering the subordination. As a result, if a lender is given the opportunity to participate in the new transaction but refuses, such lender is deemed to have consented to such transaction. While this concern remains fresh in lenders' minds, in 2022 the borrower in Envision Healthcare highlighted the flexibility for structural subordination of loans (i.e., non-guarantor entities in a borrower's organizational structure incurring debt directly following a permitted investment by the borrower or a guarantor to such non-guarantor entity in the form of assets that were previously collateral for existing loans) with equally problematic results for existing lenders.

In Envision Healthcare, the borrower became distressed during the COVID-19 pandemic but its ambulatory surgery ("AmSurg") business remained profitable. As a means to obtain new financing that would not have been permitted under the loan documentation, Envision Healthcare designated 83% of the AmSurg business as an unrestricted subsidiary under the Credit Agreement (meaning that its activities would not be constrained by any limitations in the loan documentation and any assets of the unrestricted subsidiary would no longer constitute collateral for existing lenders). The unrestricted subsidiary then incurred a total of $2.6 billion in first and second lien senior secured financing. In connection with the debt incurrence, Envision Healthcare negotiated uptier exchange transactions with a group constituting Required Lenders, creating three priming tranches of debt, leaving a handful of existing lenders that did not participate with fourth priority debt and a bleak chance of recovery from a business stripped of profitable operations.

Following years of influx of large cap financing terms into loan documentation, the loan documentation for Envision Healthcare contained material capacity to make investments in unrestricted subsidiaries and lacked strong lender protections around the designation of profitable entities as unrestricted subsidiaries. Notably, the designation of entities as unrestricted subsidiaries was not subject to *pro forma* financial performance metrics such as *pro forma* compliance with a closing leverage level or a financial covenant level. The loan documentation also did not contain lender favourable "Chewy" protections restricting the unrestricted subsidiaries from owning equity of, or holding debt of or liens on the assets of, entities that constitute the restricted subsidiaries (including the borrower under, and the guarantors of, the existing credit facilities).

In response to the significant transactions that occurred in Envision Healthcare, some Lenders are showing a renewed interest in placing limitations around the total capacity for unrestricted subsidiaries in a borrower's organizational structure. Lenders may now push for the inclusion of a *pro forma* leverage test for the designation of entities as unrestricted subsidiaries and be more restrictive about the capacity for investments in unrestricted subsidiaries rather than permit a borrower to access general investment capacity for investments in unrestricted subsidiaries. In some deals, lenders may also seek to cap the total size of unrestricted subsidiaries (typically expressed as a percentage of the total consolidated EBITDA and assets of the restricted group) at the time any entity is designated as an unrestricted subsidiary or, in tighter deals, at all times during the life of existing loans. Finally, some lenders are showing renewed interest in including the full suite of lender favourable "Chewy" protections described above that have recently been stripped out of larger deals following their introduction in 2019. These lender protections are frequently features of the unrestricted subsidiary concept in traditional middle market financings but are starting to creep back up into the larger deals in some cases.

Overview of Proskauer Rose LLP Private Credit Transactions in 2022

The top five industries represented in middle market transactions, as shown by our data, include (a) health care and life sciences, (b) technology, (c) consumer goods and services/retail, (d) financial services, and (e) manufacturing. These primary industries comprise 61% of our deals in 2022. Health care and life sciences was the leading industry for transactions in 2022 (overtaking business services) and accounted for 20% of deals, up from 13% in 2021. First lien, second lien and senior secured transactions remained high for the year, whereas mezzanine loan transactions represented 1.4% of all deals in 2022 (generally consistent with 1% in 2021, but markedly decreased from 5% in 2018). Interest rate margins (the percentage points added to a benchmark rate for purposes of calculating a floating or variable rate) across all deal types in our data have trended lower since 2015 (with a slight increase in interest rate margins in 2020). In 2015, only 16.7% of deals had margins less than 7%. In 2022, the percentage of deals having margins less than 7% was 66.13% (in contrast to 76% in 2021). With respect to commitment fees and original issue discounts (OID), in 2022, 46% of commitment fees and OID were between 2%–2.49% of the principal amount of the loans and commitments at closing, with 40% in commitment fees and OID over 2.49% in 2022.

Closing leverage for middle market transactions in our data remained at 5.1x in 2022. A total of 48.7% of deals had a closing leverage between 4.00× and 6.99× (lower than 57% of deals in 2021, indicating that closing leverage varied more across transactions in 2022 than in previous years). Trends in closing leverage should also be considered in light of parameters relating to the calculation of consolidated EBITDA across the middle market. In transactions with EBITDA greater than $50MM, 47% of them had a cap on general non-recurring expenses as an addback to EBITDA (which is remains consistent with 44% in 2021 and still significantly more lender favourable than 25% in 2020). In transactions with EBITDA that is less than $50MM, 66% of them had a cap on general non-recurring expenses (which is somewhat consistent with 62% in 2021). Addbacks for run-rate cost savings/synergies and restructuring costs continue to be more or less ubiquitous in the middle market. Similar to the cap on addbacks for general non-recurring expenses, the cap on restructuring costs tends to fall away in larger deals (although even in larger deals, lenders have shown an appetite to push for a cap on this addback in 2022). We continue to see a negotiated cap on the addback for cost savings/synergies across the middle market. This cap applies with increasing frequency only to cost savings/synergies applicable to acquisitions and restructuring activities after the initial closing date of a financing (but not to cost savings/synergies applicable to closing date transactions) and in upper middle market deals is often expanded in scope to allow for the addback of "revenue enhancements".

Covenant lite deals, meaning deals that do not contain a typical financial maintenance covenant, increased to 17.65% (*vs.* 7% in 2021) in deals with EBITDA greater than $50MM. Respectively for this EBITDA band, our data shows covenant loose transactions comprise 70.59%. Although the financial covenant is typically limited to a total leverage ratio test (or, less frequently, to a first lien leverage ratio test), in 2022 27.12% of our deals also included a fixed charge coverage ratio test. This is up from 12%

in 2021. Of the transactions with financial covenants, 25.29% of them had five or more covenant step-downs (down from 39% in 2021). Of transactions with step-downs, 90.16% of them had EBITDA of less than $50MM. Step-downs all but fall away in transactions with EBITDA over $50MM.

The general trend towards borrowers' counsel controlling the drafting process at both the commitment papers stage and the definitive deal documentation stage continued in 2022. In most circumstances, the borrower will also select the precedent credit agreement to be used as a starting point for definitive deal documentation in a particular transaction. Frequently, the lender will not have participated in the prior transaction or the proposed precedent document will reflect a more upper market orientation than the current deal. As a result, and in light of frequently time-sensitive commitment periods and healthy competition for investment opportunities in the current market, lenders often agree to work with these proposed precedent credit agreements and accommodate terms that are more typically found in larger transactions.

Debt Incurrence

Flexibility for a borrower to incur additional debt (both as an upsize debt incurred pursuant to an existing credit agreement, and as new debt pursuant to a "side car" or other debt incurred pursuant a new credit agreement) was one of the most transformative structural changes to make an appearance in the middle market. Consistent with 2021, incremental facilities, incremental equivalent facilities, ratio debt and acquisition debt continue to be customary features of upper middle market and traditional middle market financings. However, lenders in traditional middle market financings have had some success in excluding incremental equivalent facilities from new financings (and, to a much lesser degree, other forms of ratio-based indebtedness).

Incremental facilities and incremental equivalent facilities

An incremental facility (also referred to as an "accordion") allows a borrower to incur additional term loans or revolving loan commitments under an existing credit agreement subject to certain limitations and conditions without the consent of the existing lenders. Incremental equivalent debt typically has the same features as an incremental facility except that the debt is incurred outside the existing credit documentation, either pursuant to a separate credit agreement or through the issuance of notes outside of the credit agreement (either issued in a public offering, Rule 144A or other private placement).

Additional debt facilities appearing in the middle market can be summarised as follows: (a) the upper middle market will typically accommodate both incremental facilities and incremental equivalent facilities; (b) the traditional middle market will generally accommodate incremental facilities and is increasingly accommodating incremental equivalent facilities (subject, however, to stricter conditions, as discussed below) but remains stratified with respect to incremental equivalent facilities in approach depending on the consolidated EBITDA and the leverage of the borrower and its subsidiaries; and (c) lower middle market deals sometimes include incremental facilities but generally do not provide for incremental equivalent facilities. Our data shows that 75.71% of traditional middle market deals include incremental facilities, which is up from 97% in 2021. Additionally, 62% of traditional middle market deals include both incremental facilities and incremental equivalent facilities, up from 49% in 2021.

Incremental amount

- In large cap and upper middle market transactions, and increasingly in the traditional middle market, credit documents will permit the incurrence of an incremental facility up to (1) a fixed incurrence amount (known as a "starter basket" or "free and clear basket"), plus (2) an unlimited incurrence amount, subject to compliance with one or more leverage ratios, as further discussed below. The fixed amount will generally be no greater than 1.0× of consolidated EBITDA and will often have a "grower" component (e.g., the greater of (i) a fixed dollar amount, and (ii) the corresponding percentage of consolidated EBITDA measured as of the closing date). Our data shows that 97.22% of traditional middle markets deals with incremental facilities contain a starter basket for the incremental facility equal to or greater than 1.0× of consolidated EBITDA, compared to 51% in 2021. Depending on the structure of the original transaction (i.e. senior secured, first lien/second lien or senior/mezzanine) and what type of incremental debt is being incurred (i.e. debt *pari passu* to the senior secured, first lien or senior facility, debt that is junior to the senior secured, first lien or senior facility but *pari passu* with the second lien/mezzanine facility (if any), or unsecured debt), the type of leverage test will be different (i.e. first lien leverage test *vs.* secured leverage test *vs.* total leverage test).
- The level of the ratios will often be set at the closing date leverage multiple or, in the case of unsecured incrementals, up to 1.00× outside the closing date leverage multiple in larger deals. In larger deals, there may also be an alternative test for the incurrence of incremental facilities used to fund permitted acquisitions and other permitted investments. In such instances, the leverage ratio condition will be compliant with the leverage ratio of the borrower immediately prior to giving effect to such acquisition or investment. Additionally in larger deals, borrowers will frequently push for a fixed charge coverage ratio test (of no less than 2×) *in lieu* of the ratio-based test for unsecured incrementals. The upper middle market generally follows the larger deals in terms of how the incremental amount is capped (although the aforementioned alternative test for permitted acquisitions and permitted investments is not widely adopted and the middle market has showed a continued aversion to the use of an interest coverage test for unsecured incrementals).
- Data reveals a continuing trend in the traditional middle market to allow for both a starter basket and an unlimited amount. In many lower middle market financings, incremental facilities are still only permitted up to a fixed dollar amount (with no unlimited incurrence amount). In such cases, the incurrence of incremental debt under the fixed cap will be subject to an incurrence leverage test.
- Borrowers prefer to use different leverage tests to govern incurrence of different types of incremental debt (i.e., first lien leverage ratio for the incurrence of first lien debt, a senior secured leverage ratio for the incurrence of second lien debt and a total leverage ratio for the incurrence of unsecured debt) rather than the total leverage ratio test originally used as a leverage governor for all tranches of incremental facilities. This approach allows a borrower to incur a total amount of debt in excess of the total leverage test.
  - For example, the indebtedness included in calculating a total leverage ratio would typically include all funded indebtedness of the applicable credit parties and those subsidiaries included in the consolidated financial metrics of the credit parties. The indebtedness included in calculating a first lien leverage ratio would be limited to funded indebtedness subject to a

first lien security interest on the assets of the credit parties. As a result, a borrower could first (i) incur unsecured indebtedness up to the total leverage ratio cap, and second (ii) incur additional first lien indebtedness up to the first lien leverage ratio cap. In this example, since the incurrence of first lien incremental facilities is governed by a first lien leverage ratio (rather than a total leverage ratio), that debt incurrence would not be prevented because the first lien leverage ratio does not include the unsecured indebtedness previously incurred by the borrower. However, if the incurrence of first lien incremental facilities was governed by a total leverage ratio, second debt incurrence would exceed the total leverage ratio cap and be prohibited.

- The approach described above is accepted in the upper middle market and is becoming more commonplace in traditional middle market transactions. More conservative deals in the traditional middle market will apply a total leverage ratio test for all types of incremental loans (or will apply a total leverage ratio test in addition to the first lien leverage ratio/senior secured leverage ratio tests described above).
- In large cap, upper middle market and traditional middle market transactions, borrowers will also seek the ability to (a) elect to use the ratio-based unlimited incremental amount prior to the fixed amount, (b) reclassify (at their discretion or automatically) incremental debt which was originally incurred under the fixed amount as incurred under the ratio-based unlimited amount (thereby reloading the fixed amount capacity), and (c) in instances where an incremental loan is incurred based on both the fixed amount and the unlimited amount, not take the fixed amount into account when testing leverage under the unlimited amount. These features allow a borrower to incur debt at any time (and from time to time) in an amount that exceeds the ratio-based leverage test by the fixed amount. The traditional middle market has largely accepted these conventions as stacking and reclassification concepts move down market; however, lenders in more conservative deals may resist a borrower's ability to automatically reclassify incremental debt originally incurred under the fixed amount as incurred under the ratio-based unlimited amount or may request the borrower notify the lender of any such automatic reclassification to address the challenges around tracking incurrence capacity on an ongoing basis.
- In large cap, upper middle market and larger traditional middle market transactions, incremental capacity is also increased (over and above the fixed starter basket and ratio-based unlimited incremental amount) by an amount equal to: (a) in the case of an incremental facility that effectively replaces any existing revolving commitment terminated or term loan retired under the "yank-a-bank" provisions, an amount equal to the portion of such terminated commitments or retired loans; (b) in the case of an incremental facility that effectively replaces any term loans that were repurchased by the borrower and immediately cancelled, an amount equal to the portion of such repurchased and cancelled term loans; (c) in the case of an incremental facility that serves to effectively extend the maturity of an existing facility, an amount equal to the amount of loans and/or commitments, as applicable, under that existing facility to be replaced with such incremental facility; and (d) all voluntary prepayments of the existing term loans, previously incurred incremental term loans and incremental equivalent loans and voluntary permanent commitment reductions of the revolving facilities (except to the extent funded with the proceeds from an incurrence of long-term indebtedness (other than revolving indebtedness)) (and sometimes limited in traditional middle market transactions to such loans and commitments that are *pari passu* to the loans/commitments being prepaid or terminated). The incremental amount caps and limitations will also govern incremental equivalent facilities. The establishment of an incremental facility (or the incurrence of incremental equivalent debt) will result in a dollar-for-dollar reduction of the amount of indebtedness that may be incurred pursuant to the other facility. In this regard, the upper middle market is generally consistent with the larger deals. However, the traditional middle market will again differ in that the additional amounts that increase the incremental capacity (over and above the fixed starter basket and ratio-based unlimited incremental amount) will most frequently be limited to the amounts described in clauses (a), (b) and (d) above.

Rate and maturity

- Incremental term loans generally: (a) cannot have a final maturity date earlier than the existing term loan maturity date (and may also require a 91-day maturity setback for subordinated, junior lien and unsecured incremental loans); (b) cannot have a weighted average life to maturity shorter than the weighted average life to maturity of the existing term loans; (c) rank *pari passu* with the existing loans or junior in right of payment and security or are unsecured; (d) are not secured by any collateral other than collateral securing the existing term loans or guaranteed by any guarantors not guaranteeing the existing term loans; (e) participate *pro rata* or less than (but not greater than) *pro rata* with the existing term loans in mandatory prepayments; (f) have covenants and events of default substantially similar, or no more favourable, to the lenders providing such incremental term loans than those applicable to the existing term loans, except to the extent such terms apply only after the latest maturity date of the existing term loans or if the loan agreement is amended to add or conform to the more favourable terms for the benefit of the existing term lenders; and (g) if incremental equivalent debt is permitted, such incremental equivalent debt is subject to customary and satisfactory intercreditor arrangements to the extent it is secured. Some borrowers in the upper middle market deals (but not traditional middle market deals) have been successful in negotiating a carve-out from the maturity requirement which would allow the borrower to incur incremental term loans with earlier maturities, up to a maximum amount governed by a fixed dollar basket, often with a grower component.
- These terms have been adopted in the upper middle market. The traditional middle market does not contain significant variations but more conservative deals may also contain additional restrictions on greater than *pro rata* voluntary prepayments with the existing term loans (but not restrictions on *pro rata* or less than *pro rata* voluntary prepayments). The lower middle market may only allow for the incurrence of incremental debt that is *pari passu* with the existing loans. In some respects, allowing a borrower to incur lien subordinated or unsecured incremental facilities instead of *pari passu* incremental facilities may benefit the existing lenders since those junior and unsecured lenders would not share on a priority basis in the proceeds of collateral in an enforcement scenario. Despite this, the lower middle market often resists allowing different types of debt due to a desire to maintain a simpler capital structure (especially in credit transactions where there are no other financings).

- The interest rate provisions applicable to incremental facilities customarily provide some form of pricing protection. Typically, the protections require that the all-in yield of the credit facility extended on the original closing date is increased to match (less 50 basis points) any new incremental facility that is *pari passu* in claim and lien priority to the existing credit facility to the extent that such incremental facility has an all-in yield was greater than 50 basis points above the existing credit facility. This differential can be 75 basis points in large cap and certain upper middle market transactions. These provisions are generally referred to as the "MFN" or most favoured nations provisions. In large cap and certain upper middle market transactions, the MFN provision often contains a "sunset", meaning that the pricing protection is not applicable to any incremental facilities that are incurred following a period of time. This period ranges from 12 months to 18 months (some with sunset periods as short as six months). The sunset provision, however, may be eliminated altogether or flexed out, depending on market conditions. As the ability to designate incrementals (or incremental equivalent debt) with different payment and lien priorities has become commonplace in large cap, upper middle market and traditional middle market transactions, borrowers typically push for additional provisions that erode MFN pricing protections. These additional exceptions to the MFN provisions include (i) additional carve-outs to the calculation of all-in yield for amounts that do not clearly constitute "one-time" fees or fees payable to lenders generally (for example, OID and upfront fees), thereby making it easier to remain below the MFN trigger threshold, and (ii) excluding from the MFN provisions incrementals (or incremental equivalent debt) that (A) are incurred in reliance on the starter basket amount, (B) are utilised for specific purposes (e.g., for permitted acquisitions), (C) are structured as an issuance of notes (whether issued in a public offering, Rule 144A or other private placement) as opposed to loans, (D) mature later than the latest maturity date of any other term loans under the credit facility or which are bridge-financings, and (E) are within a certain capped amount. Of particular concern for lenders is the exclusion in (ii)(A) above. Without adding further protections, this has the potential of eliminating the MFN treatment altogether in deals where the borrower has the ability to redesignate starter basket incrementals as leveraged-based incrementals (subject to sufficient capacity to redesignate borrowings to the ratio-based unlimited incurrence amount) because borrowers are able to effectively reload the starter basket over and over.
- The traditional middle market takes a somewhat consistent approach to the upper middle market's treatment of the MFN provision. For the most part, *pari passu* debt issued in reliance upon the incremental provisions (or the incremental equivalent provisions) is subject to the MFN provisions (unless, in the case of an incremental equivalent facility, issued in the form of syndicated high yield notes). However, lenders in the traditional middle market typically push back on the multitude of carve-outs and exceptions discussed in the paragraph above. In addition, the lower middle market may also require that the impact of the MFN provisions apply to all debt outstanding under the credit facility, including incremental loans previously funded (*vs.* only the closing date borrowing). Traditional middle market lenders have historically had significant success maintaining the MFN provisions without a sunset and have recently been even more sensitive to any erosion of their pricing protections. Data for the year 2022 shows that none of the traditional middle market deals with MFN provisions include a sunset period, which is a decrease from 4% in 2021. In light of the latest activities during the end of 2022 and beginning of 2023 as a result of the changes in the economy, lenders will be further tightening the MFN provisions.

Use of proceeds

In large cap, upper middle market and traditional middle market transactions, proceeds from the incurrence of incremental and incremental equivalent debt may generally be used for any purpose not otherwise prohibited by the existing credit documentation. Our data continues to show a clear migration of the large cap and upper middle market flexibility with respect to the use of incremental/incremental equivalent proceeds filtering down to the traditional middle market and even the lower middle market in some cases. As a result, specific limitations placed on the use of proceeds for incremental/incremental equivalent loans are typically only seen in lower middle market deals. If a lower middle market financing permits all such uses of proceeds, uses like restricted payments (i.e., dividends) and payments of junior debt may be conditioned by stricter leverage tests. In the alternative, in lower middle market deals, the use of proceeds may even be restricted to permitted acquisitions and similar investments and permitted capital expenditures.

Ratio debt

In addition to the incremental and incremental equivalent facilities described above, large cap, many upper middle market, and a growing number of traditional middle market transactions include "ratio debt" provisions. These provisions, which can be traced back to the high-yield bond market, allow a borrower or any of its subsidiaries to incur additional indebtedness so long as the borrower meets the applicable leverage ratio test (and subject to a cap on ratio debt incurred by subsidiaries that are not guarantors of the existing credit facilities in almost all cases). An interest coverage ratio test may also be applied in place of a leverage ratio for unsecured ratio debt, but this test is typically only accepted in large cap and larger upper middle market financings in cases where this type of test appears for unsecured incremental facility incurrence. If the ratio debt is leverage-based, the leverage test is typically set at the same level required for incurrence of incremental and incremental equivalent debt. In upper middle market transactions, the conditions for incurrence (other than the applicable leverage or interest coverage test) may be looser than the conditions to incurrence of incremental and incremental equivalent debt. For instance, there may be no requirement that covenants and events of default be substantially similar, or no more favourable, to the lenders providing such ratio debt than those applicable to the existing loans. However, lenders in the traditional middle market have had some success in standardising the conditions across the different types of permitted debt incurrence. To the extent ratio debt provisions appear in traditional middle market transactions, the incurrence of such debt may be conditioned on such debt being subordinated in right of payment to the credit facility or being unsecured but this restriction typically only appears in the more conservative deals. Additionally, the traditional middle market will almost always require that any pricing MFN provisions applicable to incremental and incremental equivalent debt also apply to ratio debt that is *pari passu* to the credit facility obligations. As noted above, lenders have recently shown an increased sensitivity to erosion of pricing protections

and this term is notably migrating up market and appearing with increasing frequency in upper middle market financings. Our data shows that 58.73% of traditional middle market deals now permit ratio debt, compared to 65% in 2021. Lower middle market transactions generally do not provide for ratio debt.

Acquisition indebtedness

Credit agreements generally allow the borrower to incur certain indebtedness solely to fund permitted acquisitions and permitted investments, referred to as an "acquisition debt". The terms and conditions discussed above (i.e., conditions for incurrence, etc.) with respect to ratio debt in a particular credit agreement will also typically apply to acquisition debt in that same credit agreement. Larger deals will commonly allow a borrower to incur acquisition indebtedness in an unlimited amount subject to *pro forma* compliance with a leverage test (typically the same tests applicable to ratio debt). As with ratio debt, an interest coverage ratio test may also be applied in place of a leverage ratio for unsecured ratio debt in the upper market in cases where this type of test appears for unsecured incremental facility incurrence. The upper middle market takes a similar approach to the large cap market (other than allowing an interest coverage ratio test), and the traditional middle market take a similar (but more restrictive) approach to the upper middle market. These approaches will typically be consistent with what is permitted in respect of ratio debt in a particular credit agreement. Similar to ratio debt, it is not common for this type of indebtedness to be permitted in the lower middle market. In lower middle market deals, there is still a preference for only allowing indebtedness that is assumed in connection with permitted acquisition or similar investment (rather than incurred to finance it) and only up to a fixed dollar cap. Similar to the approach for ratio debt, where the traditional middle market allows for acquisition indebtedness, it requires that any applicable MFN provisions apply to any acquisition indebtedness that is *pari passu* to the existing credit facilities on the same basis as ratio debt would. Upper middle market deals have also increasingly adopted this protection with respect to acquisition debt.

Limited Condition Transactions

One of the best-known outcomes of the loosened credit markets in 2005 was the introduction of the concept of "certain funds" or "limited conditionality" to US acquisition financings by way of the transaction commonly referred to as "SunGard" (although the certain funds concept frequently appeared prior to this in European transactions). This technology was proposed by sellers in order to ensure that potential buyers had financing locked down. "Certain funds provisions" align the funding conditions set out in financing commitment papers as closely as possible to the closing conditions in an acquisition agreement in order to minimise the risk of a lender having a right not to fund upon the desired closing of an acquisition. Specifically, certain funds provisions (or SunGard provisions) provide that, except as expressly set forth in a conditions annex to the commitment papers, there can be no other conditions precedent to the closing and funding of the credit facility in the definitive loan documentation. It also limits the representations and warranties required to be true and correct (and in some cases even made at all) at closing to certain material representations set forth in the acquisition agreement that give the buyer or its affiliates a right to terminate the transaction (the "acquisition agreement representations") and a narrow set of additional "specified representations". Further, it limits the actions required to be taken by a borrower at closing to perfect security interests in the collateral to certain essential actions, with all other actions required to be taken on a post-closing basis. This assures buyers and sellers that, so long as the conditions to closing under an acquisition agreement are met, lenders do not have an "out" beyond a narrow set of conditions in the conditions annex. This is important for both sellers and buyers because a buyer is typically still responsible for funding the purchase price of an acquisition at closing even if its lender refuses to fund.

Acquisition financings, regardless of the market, have generally adopted SunGard provisions. The most typical formulation in upper market transactions, with respect to representations and warranties, are that the only representations and warranties required to be both made and accurate at closing are "specified representations" and certain representations in the acquisition agreement as described above. The other representations and warranties in the credit agreement that are deemed to be less material are not made at closing (so even if the other representations would not have been true, the borrower would not be in default immediately post-closing). In facilities with revolving credit facilities (which require a re-making of representations and warranties in connection with borrowings), the lender is likely to receive the benefit of the full set of representations and warranties soon after closing. However, in financings without revolving credit facilities, these other representations and warranties may not ever be made and would have limited utility to a lender. The upper middle market generally follows the larger deals in this respect. In smaller or less competitive transactions, the other less material representations and warranties in the credit agreement may also be made at closing, but their truth and accuracy are not conditions to closing. Even if such representations and warranties are not true and correct, the lenders will be required to fund, but with a default immediately following the closing. The traditional middle market has started to adopt the requirement that only specified representations and acquisition agreement representations should be made at closing (but not without objection, especially in transactions without revolving credit facilities).

Certain funds are now applicable to the conditions to borrowing incremental facilities, incremental equivalent facilities, ratio debt and acquisition debt incurred to finance a limited condition acquisition or investment. These features provide a borrower comfort that financing for follow-on acquisitions and investments will be available. In larger deals, borrowers have been successful in extending this "limited condition acquisition" protection to all acquisitions and investments using such financing sources, regardless of whether there is a financing condition in the underlying acquisition documentation. The applicability of the certain funds provisions has been further broadened to include the paydown of indebtedness and the making of restricted payments with features of limited conditionality (i.e. that require irrevocable advanced notice). Within the middle market, only the lower middle market still shows resistance to the broader applicability of the certain funds provisions.

Customarily, as noted above, conditions to incremental and incremental equivalent debt, ratio debt and acquisition debt incurrence typically include the material accuracy of representations and warranties (in the case of incremental debt only), absence of default or event of default and meeting a specific leverage test, each tested at the time of incurrence of such additional debt. Limited condition acquisition provisions enable a borrower to elect the signing date (also known as the "effective date") of the acquisition agreement ("acquisition agreement test date") as the relevant date for meeting the required conditions. As a result, if the borrower made such an election, the combined conditions to accessing the additional financing and making the permitted acquisition (which may include no event of default and

a leverage test) would be then tested at the time the acquisition agreement is executed. The borrower would include the financial metrics of the target entity (i.e., EBITDA and existing debt that will remain outstanding after the acquisition) at the time of such testing even though the acquisition was not yet consummated. In traditional middle market transactions, a subsequent no payment or bankruptcy event of default test is generally also required upon the consummation of the transaction. However, the requirement for this subsequent test often falls away in larger transactions. Although the middle market has largely incorporated the limited condition acquisition protections, some lenders in lower middle market deals continue to push for a requirement that the relevant acquisition close within a period of time following the execution of the purchase agreement (usually not longer than 180 days), otherwise the limited condition acquisition protections fall away. In this case, in the event the acquisition does not close within the agreed-upon time frame, the limited conditionality is eliminated and the borrower would have to comply with all the conditions at the time of the incurrence of the additional financing and closing of the acquisition. Currently, in light of the recent changes in the economy, lenders in more traditional and upper middle market deals are pushing for the requirement that the underlying acquisition close within a time period following the execution of the purchase agreement.

As discussed above, the limited conditionality provision permits a borrower to elect the effective date of the acquisition agreement (or the date of the agreement documenting the relevant investment, paydown of indebtedness or restricted payment) (instead of the closing date) as the date of determination for purposes of calculating leverage ratios in order to test ratio-based additional debt capacity (as well as other incurrence tests described below). Testing the leverage ratio at signing eliminates the risk of a decline in consolidated EBITDA of the borrower and the target between signing and closing (the period between execution of the acquisition agreement and closing date referred to as the "Intervening Period"), when the ratio would otherwise be tested. This risk is of special concern in deals involving a lengthy delay between signing and closing due to regulatory approvals.

Since the leverage test is intended to include the financials of the acquisition target on a *pro forma* basis, borrowers have further requested that any other incurrence-based leverage test (required in connection with any other investment, incurrence of debt, restricted payment, etc.) that is tested during the Intervening Period include the financials of the acquisition target on a *pro forma* basis. Generally, the markets have responded to this request in three different ways:

- *Most Borrower Favourable*: In large deals, any leverage test (including any financial maintenance covenant) required during the Intervening Period will be tested after giving *pro forma* effect to the acquisition. In the event the acquisition does not close, any leverage test applied during the Intervening Period will be deemed to be valid regardless of whether the borrower would have failed to meet the leverage test without giving effect to the acquisition target's EBITDA. The upper middle market has not yet fully embraced this approach, although we are seeing this construct more frequently.
- *Most Lender Favourable*: Any leverage test required during the Intervening Period will be tested on a stand-alone basis. An alternate formulation would be to test all incurrence leverage tests on both a *pro forma* and stand-alone basis. The lower middle market will generally take one of these approaches.
- *Compromise*: The financial maintenance covenant and any incurrence leverage test pertaining to the payment of restricted payments and junior debt payments are tested on a stand-alone basis, but the remaining incurrence leverage tests are tested giving *pro forma* effect to the acquisition. This application of the leverage test is often seen in the traditional middle market and upper middle market (but less frequently). A more borrower favourable version of the compromise position that is common in the upper middle market and with certain larger traditional middle market financings is to test the financial maintenance covenant on a stand-alone basis but test all incurrence leverage tests on a stand-alone basis.

Available Amount Basket

Once the leveraged financing markets revived following the downturn of the financial markets in 2008–2009, the high-yield bond concept of the "available amount basket" became increasingly prevalent in the middle market. The lower middle market has not fully embraced the inclusion of available amount basket; however, it does appear with a conservative formulation in many lower middle market deals. An available amount basket (also referred to as the "cumulative amount") automatically increases a borrower's ability to take actions under negative covenants that generally restrict cash outflow (i.e., investments, dividends and payment of junior indebtedness) to the extent a borrower has built up capacity of the available amount by increasing in profitability and taking other actions that are considered accretive to the business. In some upper market deals, the available amount also creates capacity for debt incurrence.

Lenders are willing to permit this as an attempt to recognise and reward the borrower for increased profitability and for taking such accretive actions. In some cases, lenders require that a borrower de-leverage before it can access the available amount. Our data shows that 89.74% of traditional middle market deals include the available amount basket concept, compared to 85% in 2021 and 77% in 2020, suggesting that any hesitancy to incorporate this historically upper market concept into credit document in view of the uncertain economic climate and certain headline-making cases highlighting the inherent risks of the available amount (discussed below) continues to disappear again. Most famously, in the PetSmart/Chewy case, PetSmart accessed the available amount basket to (i) distribute 20% of the common stock of its new subsidiary, Chewy.com, to a parent entity outside of the borrower/guarantor group, and (ii) invest 16.5% of the common stock of Chewy.com to a newly formed unrestricted subsidiary. Lenders were then required to release their liens on Chewy.com, as it was no longer a wholly owned subsidiary of the borrower, and the borrower used the asset to secure new priority debt incurred in exchange for existing debt that was previously subordinated to such lenders.

The available amount basket will be generally constructed to be the sum of the following:

- *Starter Basket Amount*: a starting amount (commonly referred to as a "starter" or "starter basket") generally determined on a case-by-case basis (which amount may be further increased by a grower basket in the larger deals). Although not necessarily based on a percentage of the borrower's EBITDA, the starter basket amount is often 25%–40% of the borrower's EBITDA, although it may be higher in larger transactions. The available amount basket in upper and traditional middle market transactions (but less frequently in the lower middle market) will often include this starter basket amount. Our data shows that 100% of traditional middle market deals with the available amount basket include a starter basket amount, compared to 93% in 2021.

- *Retained Excess Cash Flow or a Percentage of Consolidated Net Income*: typically in upper and middle market deals, the available amount basket will include a percentage of consolidated net income or retained excess cash flow, at the borrower's election. The consolidated net income option is preferable for a borrower because it will have immediate access to amount (while excess cash flow often will not be recognised until after the first full fiscal year following the closing date; provided that the gap on this point is closing and upper middle market credit agreements may provide for quarterly excess cash flow calculations for the sole purpose of increasing the available amount). The difference between using consolidated net income or retained excess cash flow is especially relevant in those transactions that close in the first half of a fiscal year since the borrower will not be able to build retained excess cash flow until the end of the first full fiscal year following the closing date. In contrast, traditional middle market deals will generally only include retained excess cash flow. Recently, however, lenders are removing the borrowers' ability to choose between a percentage of consolidated net income or retained excess cash flow and requiring that retained excess cash flow be included instead.
- *Contributed Equity*: if the available amount basket is included in the financing, having it increased by the amount of equity contributions that are not otherwise applied under the credit agreement will be common regardless of the size of the deal. It is also commonly accepted that equity contributions made in connection with an equity cure of the financial maintenance covenant will be excluded from the available amount basket.
- *ROI on Investments Made with the Available Amount Basket*: larger deals and upper middle market deals will commonly permit an increase in the available amount basket by the amount of returns in cash, cash equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) or investments. Traditional middle market deals generally include such returns only to the extent they are in cash or cash equivalents, or limit this prong to returns on investments made using the available amount basket.
- *Declined Proceeds*: declined proceeds from mandatory prepayments required to be made by the borrower will commonly be included in the calculation of the available amount basket regardless of the size of the deal.
- *Debt Exchanged for Equity*: in larger deals, to the extent that any debt owed by the borrower is converted into equity, such amount will be included in the available amount basket. The upper middle market and the traditional middle market have generally accepted the addition of debt exchanged for equity in the calculation of the available amount basket.
- *Redesignation or Sale of Unrestricted Subsidiaries*: in upper middle market and traditional middle market transactions, in the event an unrestricted subsidiary is (i) redesignated as a restricted subsidiary, or (ii) the subject of a disposition, the fair market value (generally determined in good faith by the borrower) of the investments in such unrestricted subsidiary at the time of such redesignation (in the case of clause (i)) or the net proceeds of such sale actually received by a restricted subsidiary or the borrower in excess of the original investment in such unrestricted subsidiary (in the case of clause (ii)), will increase the available amount basket so long as such investments were originally made using the available amount basket.
- *Other Builder Components in Upper Middle Market Financings*: in upper middle market transactions, borrowers may also push to include increases to the available amount basket for (i) the fair market value of any secured debt that has been contributed to the borrower or any of its restricted subsidiaries, and (ii) in cases where less than 100% of asset sale proceeds are required to be applied as a mandatory prepayment of the existing loans, the portion of such asset sale proceeds that are permitted to be retained by the borrower and its restricted subsidiaries. The upper middle market has not fully accepted these available amount basket components and lenders will frequently push back.

The conditions around the usage of the available amount basket vary greatly and the traditional middle market takes a very different approach than the upper middle market. As noted, the purpose of the available amount basket was to increase the baskets pertaining to cash leakage such as investments, dividends and junior debt payments. The upper middle market deals often place few conditions around the usage of the available amount basket. Such conditions may be further distinguished as follows.

In most upper middle market transactions and larger traditional middle market transactions, conditions for accessing the available amount basket will usually apply with respect to a dividend or junior debt payment (but not investments). The conditions may include no payment or bankruptcy events of default as well as a specific leverage test set within the closing date leverage level (or at the closing date leverage level in larger deals). In most cases, the leverage test will apply only to the retained excess cash flow or percentage of consolidated net income component of the available amount basket (and sometimes, but much less frequently, to the starter basket amount as well). In smaller traditional middle market deals, the approach will typically be to place conditions for the usage of the available amount basket for all investments, dividends and junior debt payments irrespective of which component of the available amount basket is being accessed. For the most part, these conditions include a no event of default condition and (other than for investments) *pro forma* compliance with a leverage ratio test (which can be inside the closing date leverage by as much as 0.5× to 1.0×, and even up to 1.5× in more conservative transactions).

Looking Ahead

The Private Credit Group data continues to show that, with each passing year, terms relating to debt incurrence, limited condition transactions and available amount baskets become more prevalent in the middle market as lenders adapt to the inclusion of what were once considered large cap terms. In 2022, our data generally demonstrated a continued adoption of large cap terms consistent with 2021 but with some restraint in light of the changes in the global economy. This may be intuitive in light of the continued increase in competition to place capital in the private credit market. However, despite the continued competition in the private credit market, the latter part of 2022 showed signs of significant shifts spurred by fears of a recession. As a result, lenders are likely to remain cautious and continue to be selective with respect to investment opportunities and, to a greater extent, legal documentation. This is expected to continue to occur to varying degrees based on the dividing lines of the lower middle market, traditional middle market and upper middle market. Lenders are also likely to see the negative effects of the flexibility given to their borrowers in prior deals as investments in their existing portfolios begin to face greater risks as a result of the current economy. There are significant signs that 2023 may see less transactions in the private credit space but it is also very likely that the lenders shall remain engaged as they manage restructurings for their existing portfolio investments.

Sandra Lee Montgomery is a partner in Proskauer's Private Credit and Finance Groups, a member of the Executive Committee and prior co-Chair of the New Business Committee. She is a recognized leader in banking & finance, having closed multiple billions of dollars in transactions for first- and second-lien senior lenders, mezzanine investors and equity sponsors across the United States. She advises on senior debt, mezzanine and private equity financing arrangements, particularly those involving private sources of capital. Her areas of focus include acquisitions, recapitalisations and other leveraged financings, cash flow- and asset-based financings, debtor-in-possession and exit financings, cross-border financings, unitranche and mezzanine financings, restructurings and other innovative, first-in-kind transactions. Sandra has deep experience in a wide range of businesses and has extensive knowledge of Article 9 of the Uniform Commercial Code and other laws that relate to secured transactions. She has also handled numerous cross-border transactions involving Australia, Barbados, Brazil, Canada, the Cayman Islands, England, Hong Kong, Malaysia, Mexico, the Netherlands, Puerto Rico, Scotland and Singapore.

Proskauer Rose LLP
2029 Century Park East
Suite 2400
Los Angeles, CA 90067-3010
USA

Tel: +1 310 284 4573
Fax: +1 310 557 2193
Email: smontgomery@proskauer.com
URL: www.proskauer.com

Michelle L. Iodice is an associate in the Corporate Department and a member of The Private Credit Group. Michelle concentrates her practice on middle-market financing transactions, including senior, first and second-lien, secured and unsecured mezzanine, holdco, unitranche and other forms of private credit in connection with leveraged buyouts, acquisition financings, recapitalisations and refinancings, among other purposes. She has experience representing a diverse group of lenders in transactions across a wide range of industries.

Proskauer Rose LLP
One International Place
Boston
MA 02110-2600
USA

Tel: +1 617 526 9703
Fax: +1 617 526 9899
Email: miodice@proskauer.com
URL: www.proskauer.com

Proskauer is a leading international law firm focused on creating value. Our roots go back to 1875, when we were founded in New York City. With 800+ lawyers active in virtually every major market worldwide, we are recognized not only for our legal excellence, but also our dedication to client service.

The Private Credit Group at Proskauer is a unique finance practice with a breadth and diversity that is unmatched in the industry. We have consistently closed more than 200 deals a year, which provides us with a keen insight into market trends regarding deals of all sizes, structures and sectors. Our technical strength, combined with our expansive experience, makes us the firm of choice for first-in-kind transactions. We have developed innovative structures such as upside-down unitranches and synthetic mezzanine and have migrated the bifurcated unitranche into the European market. For more than 20 years, we have been active in the market and participated in the evolution of a number of credit products, including senior-stretch loans, unitranche loans, second lien loans and secured mezzanine.

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