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CREDITOR RIGHTS COALITION SPECIAL FEATURE:

The Latest Game of Whack-a-Mole Between Sponsors & Lenders

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The Bottom Line™:

- Covenant Review and CreditSights analysts regularly contribute to the Creditor Rights Coalition's (CRC) special features and weekly newsletters concerning developments in the leveraged debt markets.
- In the October 10, 2025 edition of its Creditor Corner newsletter, the CRC included a discussion of new liability management provisions appearing in the market, in which Covenant Review's Ian Feng and other contributors discussed the rise and potential implications of anti-cooperation provisions, expanding DQ lists, and anti-counsel language.
- We are republishing the Covenant Review excerpt of this edition of Creditor Corner, with CRC's permission; a link to the full article is included in the report.

Covenant Review recently contributed to the October 10, 2024 Creditor Corner, published by the Creditor Rights Coalition ("CRC") discussing anti-cooperation provisions, expanding DQ lists, and anti-counsel language. For those unfamiliar with the organization, the CRC is an advocacy group, and its mission and goals are as follows (taken from the CRC website):

> "The CRC is a nonprofit association established to serve as the collective and leading voice representing all stakeholders with an interest in protecting creditor rights…. The [CRC] seeks to promote transparency, accountability, and equality of treatment for similarly situated creditors to ensure fair and robust stakeholder participation in bankruptcy proceedings."

We are republishing Covenant Review's excerpt from the Creditor Corner, written by Senior Covenant Analyst, Ian Feng, with permission from the CRC. For the full article, please follow the link here.

CRC Discussion Prompt

Between anti-coop provisions, expanding DQ lists, and now anti-counsel language, the game of whack-a-mole for negotiating leverage is changing faster than a Mason Miller fastball! We asked our expert contributors to break down what's happening now and what's coming next.

Ian Feng, Covenant Review

Liability management transactions (or LMTs) increasingly resemble an arms race where only borrowers are armed. Provisions that tilt the field toward borrowers are poised to determine how future LMTs unfold, particularly in the broadly syndicated loan (BSL) market. These provisions fall

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into two categories: (1) process control (e.g., anti-cooperation/ anti-counsel) and (2) syndicate and/or voting control (e.g., expansive DQ lists, voting limitations, and assignability constraints).

Process control, because it implicates enforceability and questions the good faith of the principals, is the more controversial of the two. The implications of provisions that prevent lender cooperation or engagement of counsel is—beyond the obvious shot across the bow from borrowers—largely behavioral. These provisions chill lenders' enthusiasm during LMT negotiations by injecting just enough legal uncertainty and friction to deter cooperation and engagement. Enforceability of such provisions (or indeed the practicality of monitoring compliance) is a valid question; but whether any lender will actually test it in court is another. Borrowers count on that hesitation. The symbolism of these provisions alone can reset expectations and reduce resistance in coercive scenarios.

Syndicate / voting control is more common than process control but potentially more insidious. These provisions have taken on a number of forms over the past few years, including, but not limited to: (1) absolute borrower consent rights over assignments to "distressed investors," (2) absolute consent rights over assignments that would cause a single lender (including affiliates) to exceed a negotiated cap (e.g., 20% of outstanding term loans), (3) caps on lender voting in excess of a threshold amount, (4) net short disenfranchisement (excluding lenders who hold or who have affiliates that hold a "net short" position in the CDS market relative to the loan), and (5) in rare cases, retroactive disqualification of existing lenders—enabling a forced "yank" and reassignment to more cooperative holders. These provisions give the borrower decisive influence over who holds the pen in any LMT negotiation.

Because syndicate and voting constraints often fly under the radar during fast-paced marketing processes, they are proliferating with little pushback within the BSL space. This could cause unintended consequences for the market at large. If lenders fear that they may be forced to sell their loans at a discount or be boxed out ex post, they may hesitate or even abstain from investing, reducing syndicate depth. The trajectory of syndicate control could, if unchecked, also move toward European-style limited "whitelists" for assignability.

Bottom line? Borrowers are setting the rules for LMTs well in advance of any need for such rules, shaping both the process and the player bench to minimize opposition when LMTs arise. Lenders that fail to identify and negotiate these terms upfront will face constrained options later—precisely when flexibility matters most. Greater discipline at issuance and an educated lender pool are the only practical countermeasures. The unanimous rejection of anti-cooperation language in the BSL market thus far strongly indicates that creditors have at least begun to recognize the threat.

— *Covenant Review*

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