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MARKET ALERT:
IT'S BAAAAACK– ANTI-COOPERATION RETURNS TO BSL SYNDICATION

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Market Alert: It's *Baaaaack* – Anti-Cooperation Returns to BSL Syndication

The Bottom Line™:

- Anti-cooperation provisions in debt instruments designed specifically to prevent creditors from forming blocs or otherwise organizing—largely as a method by debt issuers to control liability management negotiations.
- While the provisions have historically been rejected within the broadly syndicated loan ("BSL") market, borrowers and sponsors have continued to push the language in new deals.
- Anti-cooperation has appeared again in one recently launched BSL deal. In this report we assess the language and compare it to prior formulations.

Overview

Much has been written about cooperation agreements over the past year, as they gain ever increasing prominence as a primary (some would argue *only*) creditor-side tool available against sponsor / borrower overreach during liability management transactions. Much has also been made of the debt issuers' response to such arrangements, particularly in their attempt to ram through anti-cooperation provisions in their deals (see, for example, our Market Alert: Anti-Cooperation Language Debuts in the US BSL Market).

In this report, we take a look at another such anti-cooperation provision that appeared in a recently launched BSL transaction.

(**Unfortunately, the name of the transaction must at this time remain undisclosed; as the deal is currently in market, it is subject to certain confidentiality requirements.**)

A quick history

Cooperation agreements are contracts signed by creditors to a particular company where subject parties agree to organize at some level when negotiating with a debt issuer. Such agreements can require that any deal struck with the debt issuer be on a pro rata basis for the subject parties and/or that subject parties will not "deal away" from the rest of the group. While in theory dampening "creditor-on-creditor" tendencies, such agreements can also have the opposite effect of emboldening certain parties to engage in more "rough and tumble" negotiations. This latter consequence has been evidenced by recent reports of the

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fallout of a tiered cooperation agreement in Medical Solutions[1] as well as, for the first time, a lawsuit against a cooperation block from creditors left out of the arrangement.[2]

Anti-cooperation provisions, on the other hand, are a direct response from debt issuers to limit—if not outright prohibit—cooperation arrangements from being formed. Covenant Review first became aware of such provisions in November 2024 in the Stepstone Group's cross-border financing in Europe, though this language was ultimately flexed out prior to the start of general syndication.[3] This was followed by a pair of US deals in Q1 2025 with similar provisions, though in both cases, the language was also flexed out after a vociferous rejection by the buy-side. In Q2 and Q3 2025, sponsors were reasonably quiet on this front, though anti-cooperation language did make a surprise appearance in an IG consent solicitation for Warner Brothers Discovery ("WBD") in June 2025.[4]

Since WBD, Covenant Review has seen some desultory attempts to re-introduce the concept in the BSL market, primarily at "early look" stages, but the provision has been noticeably absent in launched deals.

That is, until now.

Hello again, old friend

The provision in question appears in a marketing term sheet—as such, there are going to be some unknowns as to what the provision ultimately will look like when / if it appears in definitive documentation. That said, the language is as follows:

> "The Credit Documentation will provide that, without the prior written consent of the Borrower, each Lender shall be prohibited from entering into, or becoming subject to, or bound by, any boycott, cooperation, support, lock-up, coordination, voting or similar agreement with respect to the Loans and commitments under the Credit Documentation (a "Cooperation Agreement"). Each Lender shall confirm in writing to the Borrower at its request that it is not a party to any Cooperation Agreement and, in the absence of any written confirmation, shall be deemed to have represented and warranted to the Borrower and the Agent that it is not a party to any Cooperation Agreement. Any Lender that is a party to a Cooperation Agreement in violation of the foregoing restrictions shall, unless the Borrower otherwise elects (in its sole discretion), have no right to vote any of its Loans and/or commitments and shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders who are not party to any Cooperation Agreements.

In this iteration, lenders who enter into any "Cooperation Agreement" will be effectively disenfranchised, meaning that they will not be counted for purposes of amending, or otherwise voting on, the loan documentation (with subject lenders "deemed" to have voted in the same proportion as those lenders who are not party to a Cooperation Agreement). If enforceable, this would render the cooperation arrangement arguably pointless.

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[1] See US Special Situations: Medical Solutions minority creditors band together under coop.
[2] See US/EMEA Special Situations: Selecta lawsuit details 'disturbing' steps taken by favoured group of bondholders to gain control, and takes aim at 'collusive' co-op agreement.
[3] See US/EMEA Pipeline: Stepstone prepares to launch ~€1.9bn-equiv. euro/dollar term loan, without proposed co-op consent requirement.
[4] See Warner Bros. Discovery Exchange: The "Non-Boycott" Covenant.

Unlike previous anti-cooperation provisions, there is no specific discussion of potential borrower-side remedies—e.g., whether lenders who violate the provision are designated as "disqualified institutions" who can be yanked from the syndicate. That said, since the language indicates that there will be a flat prohibition (absent borrower consent) against Cooperation Agreements, lenders who are found in violation of this prohibition could be hit with a breach of contract claim.

Also notable here is the breadth of the "Cooperation Agreement" definition in applying to *any* "boycott, cooperation, support, lock-up, coordination, voting or similar agreement," though at least such arrangements *must* be in connection with the underlying debt and commitments being syndicated (and not other debt or equity instruments).[5] In a similar vein, the formulation above also fails to follow WBD's more narrow "cooperation" construct. In WBD, the prohibition for cooperation agreements (referred to as "Boycott Agreements") was limited to those agreements where subject persons were prohibited from "(i) purchasing for cash any newly-issued debt or securities issued by the Parent Guarantor and its Subsidiaries or (ii) making any loans in cash to the Parent Guarantor and its Subsidiaries, in the case of clauses (i) and (ii), from time to time after the date hereof."[6] In this formulation, no such restrictions apply and the "Cooperation Agreement" can cover any actions on the part of subject parties.

Conclusion

The return of anti-cooperation provisions was always a question of "when" and not "if." The formulation here is cursory at best and it remains to be seen how it will actually work in the loan documents. Indeed, it also remains to be seen whether it even survives the term sheet stage of syndication.

At best, we can only caution investors that anti-cooperation is back and to stay vigilant. Despite earlier buy-side successes, the clearance of such language in WBD likely made the return of anti-cooperation to the BSL market inevitable.

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[5] One question: Is a cooperation agreement that encompasses multiple instruments still a "Cooperation Agreement" under this formulation?
[6] See Annex A, Section 3.04 of the Warner Brothers Discovery Twenty-Third Supplemental Indenture, dated June 13, 2025 to the Indenture dated August 19, 2009, available https://www.sec.gov/Archives/edgar/data/1437107/000143710725000151/a2025-06x16ex41dclindentur.htm.

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