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ELFA's Transferability Series

Whitelists

ISSUE #2

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Introduction

This is the second instalment of ELFA's Transferability Series, where we aim to address key transferability issues faced by lenders in the leveraged finance market. Each quarter, we will highlight a specific issue and propose changes to improve clarity, consistency, and fairness in loan agreements and practices. By doing so, we hope to foster a more transparent, efficient, and liquid market.

By addressing these transferability issues, we aim to create a more standardised and predictable environment that benefits all stakeholders. Clear and consistent definitions and market practices will help foster a common understanding and a more efficient and fair market. This, in turn, will enhance liquidity and ensure that lenders can operate with greater confidence and certainty.

In this issue, we address the issue of 'whitelists' in transfer and assignment provisions.

Restrictions On Whitelists under Requirements for Consent: Issue in Transfer and Assignment Provisions

The European Leveraged Finance Association (ELFA) has been engaging with the market to highlight the challenges with whitelists and other such transfer restrictions since 2023. ELFA is concerned that these restrictions on requirements for consent, particularly under the whitelists, stifle market liquidity and flexibility, impact secondary prices, exclude distressed/loan-to-own investors from participating in stressed/distressed transactions and lack transparency overall. We discuss this further below.

Issues with Whitelists

Lack of limits on Whitelist Revisions: At present there are no restrictions to the number of times a whitelist can be altered, this can result in situations where the whitelist is modified significantly several times over the course of a year that it consequently restricts the pool of potential buyers.

Insufficient Visibility: Currently, lenders lack visibility on the whitelist and are only able to request a copy during negotiation.

Complete Exclusion of Distressed/Loan-to-Own Investors: While whitelists are typically employed to block distressed/loan-to-own Investors from acquiring the loans of a struggling company to prevent them from potentially taking control of the company, complete exclusion of such investors can hamper liquidity specifically in stressed/ distressed scenarios.

Proposed solutions

Annual Circulation of Whitelists: We propose that the whitelist be circulated annually as guidance to all the lenders. Furthermore, lenders should be able to request a copy at any time to ensure maximum transparency.

Restrictions on Whitelist Revisions: To avoid numerous whitelist alterations which may reduce liquidity, we propose restricting the removal of institutions to a maximum of three names and the removed names should be replaced. We suggest that this be conducted no more than once a year.

Increasing Agent Input: We recommend that the agent acting on the instructions of the majority lenders should be able to provide input and act reasonably. For example, the agent acting on the instructions of the majority lenders should be able to add additional names.

Removal of Blanket Restrictions to Distressed/Loan-to-Own Investors: To prevent the loss of liquidity by blocking distressed/loan-to-own investors from participating in the stressed/distressed transactions, we propose the removal of blanket restrictions to distressed/loan-to-own investors or limiting the restriction to pre-default.

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Next steps

We will be engaging with key stakeholders, including lenders, legal advisors, and market participants, to further discuss this proposal.

Conclusion

ELFA is proposing changes to the circulation, revision, and restrictions applied to whitelists to foster a market with better liquidity and flexibility, increased transparency and efficiency while advocating for a more resilient leveraged finance market.

About Akin:
Akin is a leading international law firm with more than 900 lawyers across 17 offices in, Europe, Asia, the Middle East and United States. Akin's top-ranked Financial Restructuring practice is widely regarded as one of the most experienced and innovative globally. The team advises creditors, sponsors, and distressed investors on some of the most high-profile and sophisticated restructurings across Europe and beyond. Akin's market-leading Capital Solutions practice brings together expertise in leveraged finance, private credit, and bespoke capital structuring, and the team is at the forefront of advising clients on creative and flexible financing strategies, including preferred equity, hybrid instruments, and NAV-based lending.

With a strong presence in London and across Europe, Akin is a trusted adviser to financial sponsors, credit funds, and institutional investors navigating today's dynamic leveraged finance landscape

About ELFA
The European Leveraged Finance Association (ELFA) is a buyside-only trade association comprised of European investors and non-bank lenders in the high-yield, leveraged loan, CLO and private debt markets. Its membership consists of more than 60 institutional fixed income managers, including investment advisors, insurance corporates and pension funds. ELFA seeks to support the growth and resilience of the leveraged finance market while acting as the voice of its lender community by promoting transparency and facilitating engagement among leveraged finance market participants.. For more information, please visit ELFA's website: www.elfainvestors.com.

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