

# ELFA's Transferability Series

## Portability

ISSUE #4

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### Inside this issue...

Growing Prevalence of Portability Provisions

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Proposed Solutions



# Portability

## Introduction

This is the fourth instalment of ELFA's Transferability Series, where we aim to address key transferability issues faced by lenders in the leveraged finance market. Every alternate month, 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 recent surge in portability provisions embedded in loan documentation.

## Growing Prevalence of Portability Provisions

The European Leveraged Finance Association (ELFA) has been engaging with the market to highlight the transferability challenges faced by lenders since 2023. ELFA and Akin have observed a growing trend of portability clauses in loan documentation. ELFA is concerned that it will be embedded in market practice.

According to Covenant Review, as of 30 November 2025, portability provisions were present in 17% of European leveraged loan deals in 2025, up from just 3% in 2024. In the US, portability provisions appeared in 7% of deals in 2025, compared with 6% in 2024.<sup>1</sup> These figures are presented in the annex for reference.

The lack of transparency around portability mechanics and the erosion of lender protections, such as the right to be repaid as a consequence of the operation of the change of control provisions, risk undermining the spirit of the lender-borrower relationship. ELFA believes that these tools disproportionately benefit the borrower, often PE Sponsors, at the expense of lenders and would impair credit discipline. ELFA proposes solutions to address this emerging trend. We discuss portability further below.

## Issues with Portability

- **Lack of transparency** – Portability terms often rely on broad AUM thresholds and permissive whitelists, leaving lenders unable to accurately price loans. Lenders may be locked into deals with sponsors whose strategies or credit profiles differ significantly.
- **Limited exit options and evaluation gaps** – Lenders may be forced to stay in deals that they would otherwise exit, especially in stressed conditions. Lenders are expected to finance future business strategies proposed by unknown sponsors, without any framework to assess their suitability or alignment.
- **Erosion of lender protections** – Loan documentation is increasingly complex and provides limited clarity on triggers, conditions, and interactions with other provisions. Portability can dilute call protection during Change of Control periods, creating ambiguity around lender rights and weakening core creditor safeguards.
- **Precedent over negotiation** – If portability provisions become boilerplate, it would leave little scope for meaningful negotiation and would set sponsor-driven precedents that shape future deals.

## Proposed solutions

- **Tighten sponsor eligibility criteria** – Lenders should require named sponsors, stricter AUM thresholds or sponsor track record requirements to prevent unsuitable ownership transitions, fulsome "know your client" protections, compliance with leverage requirements and minimum equity contribution requirements.
- **Reintroduce evaluative triggers** – Lenders should require a formal review of new sponsors' creditworthiness, business plans, and track record before portability provisions can be activated.
- **Limit portability to specific time windows** – Portability should be restricted to a defined post-closing period (e.g., 6 to 12 months) to avoid indefinite exposure (with the transaction being required to be completed within such time period).
- **Require borrower disclosure of exit intentions** – Sponsors should be required to disclose if the portability provision is being included in anticipation of a sale rather than to obtain flexibility to facilitate an exit if the opportunity arises.



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## Next steps

We will be engaging with key stakeholders, including lenders, legal advisers, and market participants, to further discuss this proposal and encourage adoption of best practices.

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## Conclusion

ELFA is proposing changes to the language and mechanics around portability provisions to give lenders a meaningful opportunity to counter the gradual weakening of safeguards by promoting consistent standards, improving visibility into sponsor intentions, and, in turn, supporting a more robust leveraged finance market.



## Annex

<u>Year</u>	<u>European Deals</u>		<u>US Deals</u>	
	<u># of deals with Portability</u>	<u>% of deals with Portability</u>	<u># of deals with Portability</u>	<u>% of deals with Portability</u>
<u>2019</u>	4	4%	10	2%
<u>2020</u>	2	2%	20	5%
<u>2021</u>	8	5%	31	3%
<u>2022</u>	4	6%	11	4%
<u>2023</u>	3	3%	18	5%
<u>2024</u>	7	3%	59	6%
<u>YTD 2025</u>	42	17%	47	7%

YTD 2025 is through 30 November 2025

Source: Covenant Review, A Fitch Solutions Company

### About Akin:

Akin is a leading international law firm with more than 900 lawyers across 19 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

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### About ELFA

The European Leveraged Finance Association (ELFA) is a buy-side-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 55 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](http://www.elfainvestors.com).

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