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# Private Equity Gets Pushback on Attempts to Strip Investor Protections

- Lenders claw back blockers to prevent asset-stripping moves
- KPS and Flynn Group among firms that agreed to concessions

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In 2025's go-go leveraged debt markets, everything is up for negotiation, but a trio of investor protections are proving to be lines that lenders won't cross.

The safeguards are designed to block aggressive moves now known simply by the names of the companies that first deployed them - J Crew, Serta and Chewy - and make it harder to push through debt restructurings that strip lenders of claims to assets. Attempts to secure funding without them were rebuffed recently by credit providers in at least three cases involving buyout firms.

The pushback is a marked contrast to other loans over the past few months where lenders have agreed to everything from debt-funded dividends to debt being repriced at lower rates as private equity flexes its negotiating power. Those concessions were negatives for lenders because dividend recaps weaken balance sheets, while repricings leave credit investors with a smaller cushion to carry them through any market slump.

## 'Battleground Topic'

"This is a battleground topic and we're still seeing investors successfully push back on these asks" around the three sacrosanct protections, said Jeremy Duffy, a partner at law firm White & Case LLP, who covers leveraged finance.

KPS Capital Partners, which raised €1.1 billion ($1.2 billion) for its buyout of Ineos Composites, had to write the safety clauses back into deal documents after prospective lenders baulked, according to people with knowledge of the transaction. In February, commercial roofing company Tecta America Corp. also added the covenants back when it was pursuing a refinancing and dividend recap.

Flynn Group, which operates franchises including Applebees, Taco Bell and Pizza Hut, recently had to add the trio of protections back in a refinancing deal that also funded a payout to owners including Main Post Partners.

The terms are so important to lenders that they're checking with private equity sponsors at the pre-marketing stage that the protections are definitely included, three people with knowledge of the matter said. And on their side, private equity firms which had no intention of stripping them out are making a point of telling the buyside that they're in the documents to make them feel comfortable, the people said.

For example, updated documents for a €380 million loan financing backing Triton Partners' refinancing of Trench Group made it clear that all three blockers were included in the deal from the start, they added.

A spokesperson for Triton declined to comment. KPS, Tecta, Trench and Flynn did not respond to requests for comment.

Private equity firms are emboldened to try to push through weaker covenants by a global rally that's driving rampant demand for leveraged loans. When new debt is offered in the primary market, many investors only get a fraction of the allocation they're seeking.

That puts borrowers in the driving seat given the biggest buyers of leveraged loans, investment vehicles called collateralized loan obligations, have raised so much money they're having trouble finding places to put it to work. More than 80% of dollar and euro-denominated loans issued in January were used to reprice existing debt, according to data compiled by Bloomberg.

## Huge Demand

While KPS tightened up the documents, Ineos Composites still saw demand exceed three times the size of its leveraged loan, according to three people with knowledge of the deal, and the company managed to cut pricing and upsize the transaction. That shows some sponsors don't see any downside in approaching investors with the most aggressive terms possible.

While lenders managed to wring concessions from the owners of Ineos Composites and Flynn Group, private equity firms haven't given up on efforts to push through borrower-friendly precedents.

These moves may not always be obvious. For example, the inclusion of a J Crew blocker is optional in Clayton Dubilier & Rice's €8.65 billion of financing backing its purchase of a stake in Opella, according to people with knowledge of the deal, so it will only be included if investors ask for it.

Another risk is that while investors focus their energies on fighting for blockers, they may be letting other borrower-friendly terms slide past them. Lenders often only have a few days to look at deals, and documents are hundreds of pages long.

## Other Concessions

Private equity firms, for example, have been looking to include what's known as a high-watermark Ebitda clause in recent deals. It would allow those owners to use the highest level of the company's earnings to calculate dividends or to raise further debt.

The provision is controversial because it could allow the buyout firms to lever up firms regardless of performance. The watermark clauses have been dropped recently from deals including Ineos Composites and a refinancing for IT company Questel.

Rarely-used portability clauses are also cropping up on leveraged loans, according to bankers. These allow borrowers to keep existing debt in place even in the event of a sale, removing the need for any new buyer to find financing. Investors would otherwise be repaid and then get a shot at a new deal, potentially with better terms.

The tension between the sides comes after a number of lenders were hit when borrowers turned to debt restructurings called liability management exercises after running into trouble. That often involved bringing in new financing that ranks above the existing creditors.

"As a result, lenders of course want to protect themselves with these blockers, which can thwart some of the worst LMEs depending on how they're drafted," said Sabrina Fox of Fox Legal Training, an expert on company loan documents. "When the negotiating dynamics shift, the party with the most power pushes back, and in this case it's PE sponsors wanting to preserve maximum LME flexibility."

*— With assistance from Kat Hidalgo and Gowri Gurumurthy*

Blockers and their origins

The so-called J Crew blocker is a particular lightning rod for discussions, people with knowledge of the matter said. Under different owners, the retailer dodged a default in 2017 by shuffling assets out of the reach of creditors in a move that made the firm synonymous with controversial debt deals - partly because it inspired other borrowers to try and pull similar moves.

Chewy and Serta are also named after the companies which made use of legal loopholes to give shareholders more control in bankruptcy situations. Chewy provisions aim to prevent the equity interest in a company from being stripped away from creditors, while Serta clauses look to protect some creditors from cutting in line to be paid.

"We strongly emphasize that blockers are best practice, they enhance the priority ranking of loans as labeled and marketed in primary syndication," said Ed Eyerman, Chief Executive Officer at the European Leveraged Finance Association.

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