

Private Credit & Special Situations Investing



WHAT IS IT?

Key Differences in Unitranche vs. Split-Lien Credit Facilities

| Unitranche ¹ | Issue | Split-Lien (ABL/Term Loan) |
|---|------------------------------------|---|
| Single credit agreement and security documents. | Credit Documentation | Two credit agreements and separate security documents. |
| Single collateral grant. | Collateral Grant | Two separate collateral grants, with “priority collateral” structure (i.e., ABL traditionally holds a first lien on A/R and inventory and a second lien on other collateral). |
| Governed by agreement among lenders (AAL). Typically “acknowledged” by the borrower, but borrower is not technically a party. | Intercreditor Documentation | Governed by separate intercreditor agreement to which the borrower is a party. |
| Set forth in AAL, typically 10%-20%. | Cap on Senior Debt | Set forth in intercreditor agreement, typically 10%-20%. |
| Indefinite upon the occurrence and during the continuance of a trigger event ² under AAL. | Payment Blockage | None. Each lender is entitled to retain proceeds of its respective priority collateral. |

¹ Many aspects of the intercreditor dynamic in a particular unitranche financing will depend on the overall size/split of the debt between “first out” and “last out” tranches. For example, for a small cash-flow revolver, the applicable lenders may be willing to allow the “last out” term loan to determine exercise of remedies.

² Trigger events are highly negotiated but commonly include payment default, exercise of rights/remedies, bankruptcy and, in some cases, a financial trigger (typically set wider than applicable financial covenant). A sale of substantially all assets an increasingly common trigger event as well.

Key Differences in Unitranche vs. Split-Lien Credit Facilities (cont'd)

| Unitranche ¹ | Issue | Split-Lien (ABL/Term Loan) |
|---|------------------------------------|--|
| Generally controlled by majority lenders. Ideally “first out” may only exercise upon the occurrence of a triggering event (although some AALs will permit exercise following any Event of Default). | Exercise of Remedies | Majority lenders under each credit facility can direct exercise against priority collateral. Exercise against non-priority collateral subject to applicable standstill. |
| Traditionally 5-30 days for “first out” lenders; 60-120 days for “last out” lenders. | Remedy Standstill | None with respect to priority collateral; 120-180 days with respect to non-priority collateral. |
| Except for sacred rights, generally majority lenders with certain protective class votes in favor of “first out” lenders set forth in AAL. | Lender Voting | Protective provisions set forth in intercreditor agreement (scope tends to be less expansive than under AAL since borrower required to navigate consent rights under separate credit agreement). |
| Always includes ability to purchase “first out” obligations upon the occurrence of a trigger event. Typically includes ROFO on sale of “first out” (and, sometimes, also “last out”) obligations. | Buy-Out Rights | Generally includes ability for term loan to buy-out ABL upon the occurrence of a trigger event. |
| Typically, “first out” lenders are granted first ability to provide a priming DIP and “last out” may not object unless the “first out” DIP fails to conform to specified requirements (e.g., compliance with debt cap). In some cases, “last out” may be permitted to offer priming DIP financing if no conforming “first out” DIP has been offered. | DIP Financing | Each lender group agrees that they may propose a priming DIP financing with respect to their own “priority collateral”; may not prime senior lender without consent. |
| Replicates concept of bankruptcy class voting in AAL context (neither “first out” nor “last out” may vote to accept a plan that does not have the other class’s approval by 2/3 in amount). | Other Bankruptcy Provisions | Inherent bankruptcy class voting due to separate credit agreements/liens. |