

FUND FINANCE FRIDAY

A Standstill Period or Lender Handcuffs?

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Since virtually the first subscription facility, borrowers have wanted the right to issue the first capital call to investors in an event of default. Lenders have historically been accommodative of this request, believing an initial capital call issued by the fund itself would be less alarming to investors and not negatively impactful to the ultimate recovery to the lenders. Thus, so called “standstill periods” are frequently found in the event of default remedy sections of credit agreements.

However, we continue to see credit agreements where the standstill periods are not articulated consistently with our understanding of lenders’ expectations. We believe lenders are comfortable foregoing their immediate right to issue a capital call themselves directly to investors upon an event of default so long as the fund issues a capital call within five business days or so of the event of default. Then, the lenders are willing to wait an additional fifteen or so business days for the capital contributions to come in before they themselves issue a capital call to the investors. However, many credit agreements state that the lenders “will not exercise remedies” during the standstill period. This broad language could arguably be interpreted to mean the lenders cannot exercise *any* remedies, including, for example, their rights to terminate their lending commitments and to accelerate the repayment of the principal obligations. We do not believe lenders intend to forfeit these rights; rather, they only intend to “stand still” as to their right to issue a capital call themselves directly to investors. Care should be taken with standstill periods to ensure they document an intended meeting of the minds.