Noetica

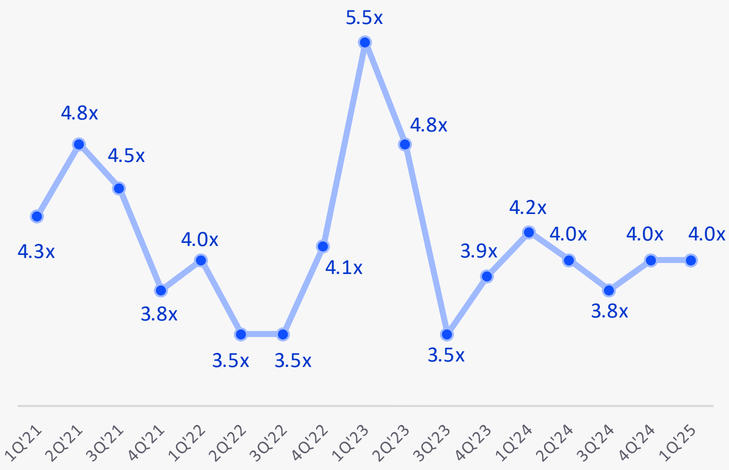
Q1 ‘25

Capital Markets Radar

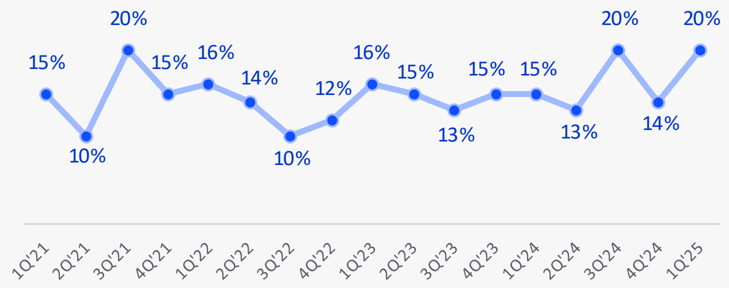
TERMS-LEVEL
BENCHMARKING ANALYSIS &
INDUSTRY TRENDS

Key Terms Trends

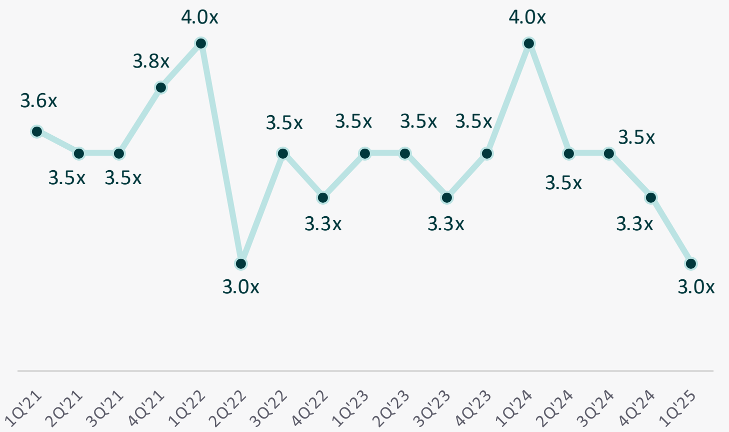
Financial Maintenance: Total Leverage Ratio



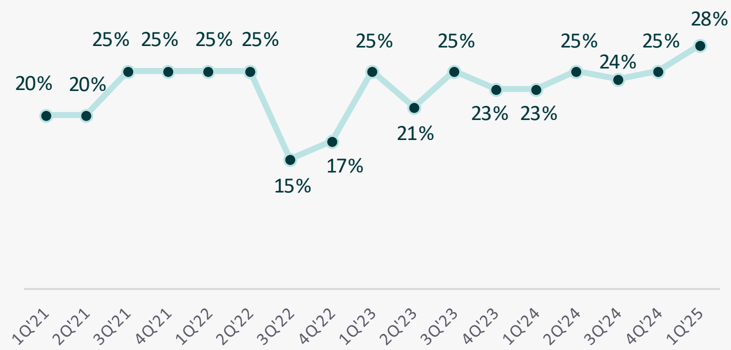
Debt: General Capacity



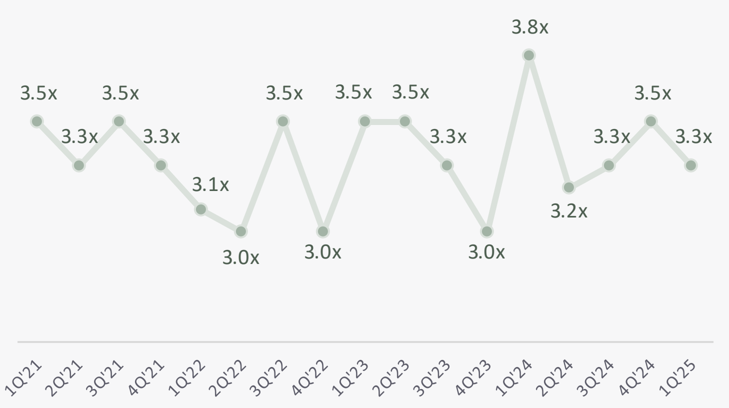
Investments: Ratio Capacity



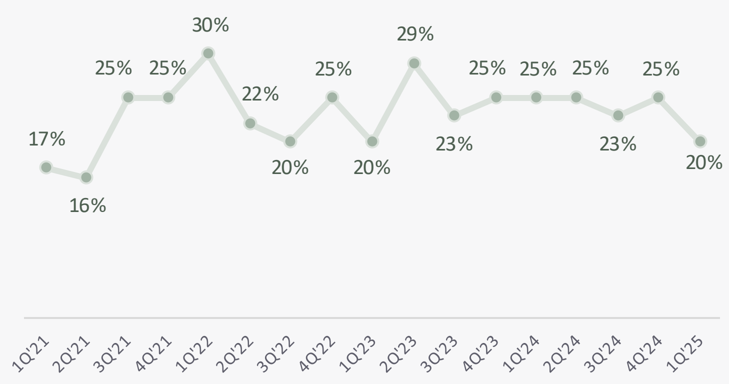
Investments: General Capacity



Restricted Payments: Ratio Capacity



Restricted Payments: General Capacity



J. Crew Blockers

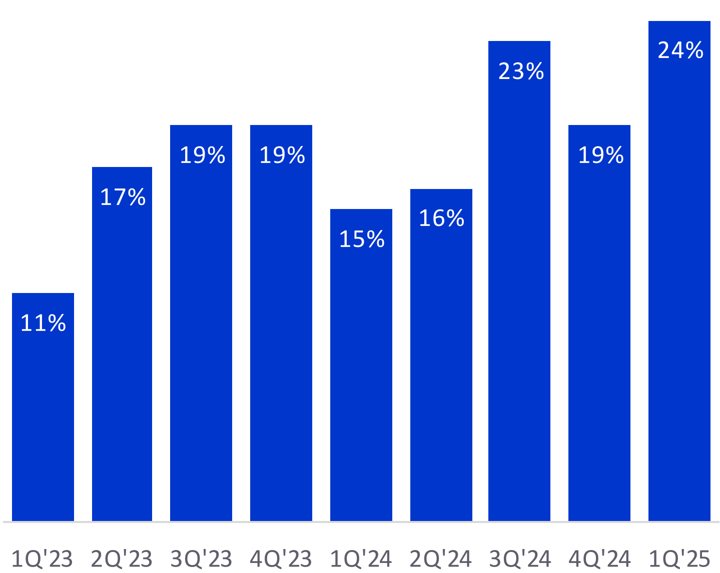
Term Definition

"J. Crew blockers" prevent companies from moving valuable assets, especially material intellectual property, out of creditors' reach. They typically prohibit transferring these assets to unrestricted subsidiaries or designating such asset-holding subsidiaries as unrestricted.

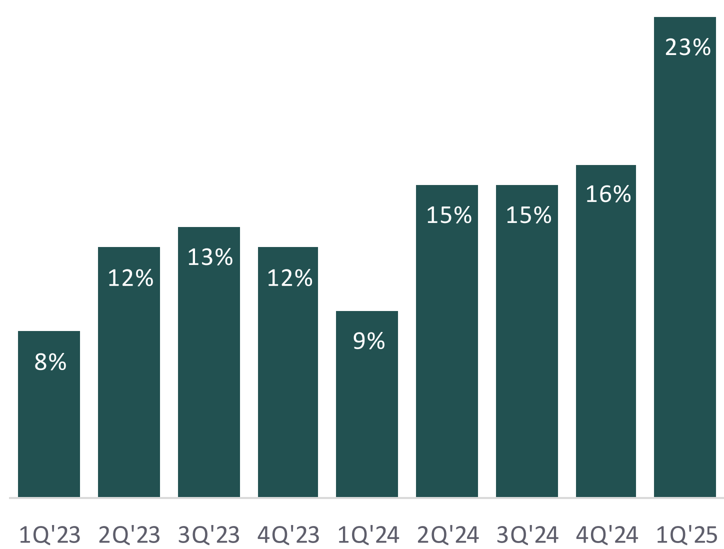
Term History

In 2016, J.Crew, facing financial trouble, utilized unrestricted subsidiary capacity to move material intellectual property (IP) (e.g., trademarks) out of the credit group, thereby releasing creditors' security interest in such IP. This maneuver, an early form of liability management transaction, allowed it to raise new financing secured by those IP assets while effectively subordinating existing creditors' claims on such assets.

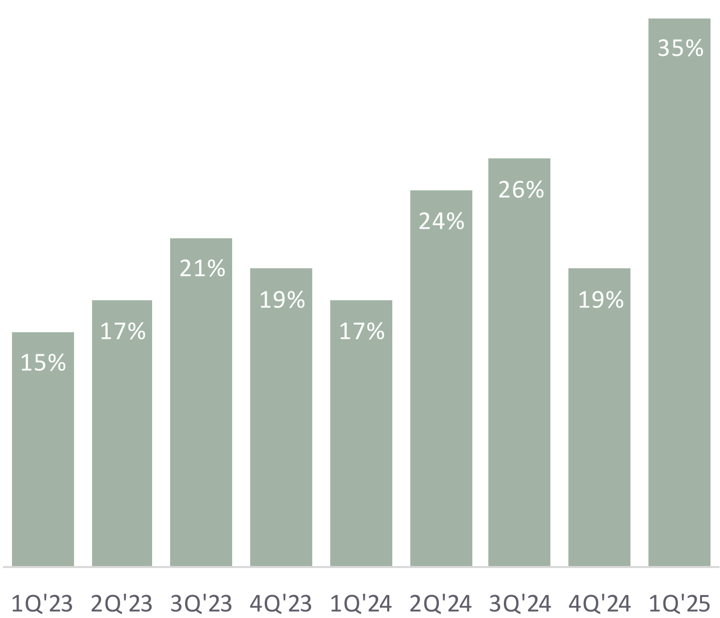
IP Transfer Prohibitions



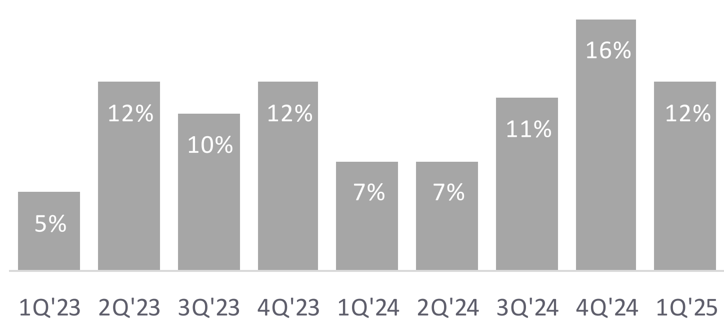
Unrestricted Subsidiary Designation Restrictions



J. Crew Language (Either or Both of Above)



J. Crew Language (Both of Above)



Note: All charts on page refer to percentage prevalence.

J. Crew Blockers (Cont'd)

Key Selected Examples

Date	Company	Primary Lender(s)	Size	Primary Advisor(s)
1/29/25	American Axle	J.P. Morgan	Revolver: $1.25B Term Loan A: ~$485M Term Loan B: ~$1.5B	A&O Shearman
10/30/24	CACI International	Bank of America	$750M	Simpson Thacher
10/15/24	Gannett Co.	Apollo	$900M	Cravath Paul, Weiss
7/26/24	Concentra Group	J.P. Morgan Bank of America Deutsche Bank	Revolver: $400M Term Loan: $850M	Dechert
3/14/24	Red Rock Resorts	Deutsche Bank Bank of America J.P. Morgan	Revolver: $1.1B Term Loan B: ~$1.6B	Cahill Gordon Latham & Watkins

Advisor Table: Highest Average in CY2024 (For IP Transfer Prohibitions)(1)

	Advisor	Term Inclusion (%)
1	Winston & Strawn	55%
2	K&L Gates	43%
3	McGuireWoods	40%
4	Gibson Dunn	38%
T-5	Cooley	36%
T-5	Sullivan & Cromwell	36%

(1) Minimum five deals on year.

Windstream Net Short

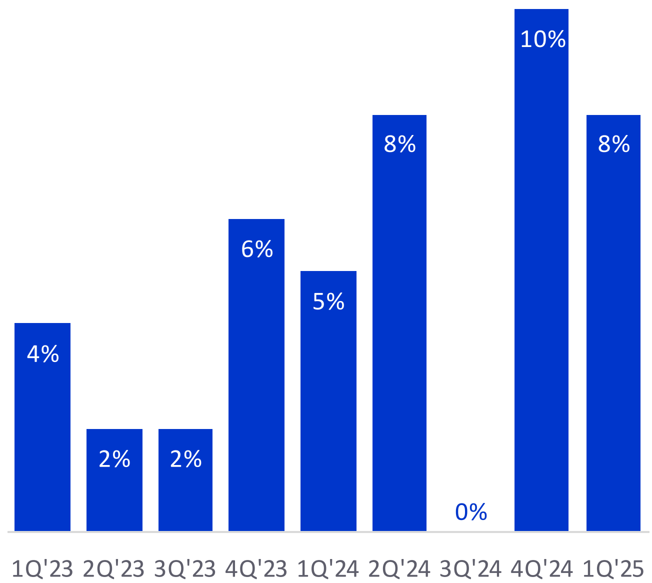
Term Definition

"Windstream net short language" refers to protective provisions in credit agreements that restrict rights of or penalize creditors who hold a "net short" position—that is, those creditors that benefit if the borrower fails. Typically, such language prevents net short holders from declaring a default or voting in certain situations.

Term History

Windstream net short language began appearing in 2019 in response to "net short debt activism", a market dynamic in which creditors were incentivized to declare borrower defaults to profit off short positions– one such famous example is Aurelius Capital Management's "net short" default with respect to Windstream. Since then, the language has become increasingly common to align creditor and borrower incentives.

Term Prevalence Over Time



Key Selected Examples(1)

Date	Company	Lender(s)	Size	Advisor(s)
1/30/25	MultiPlan	Goldman Sachs	Revolver: $350M 1st Out TL: $325M 2nd Out TL: ~$1.1B	Gibson Dunn Kirkland & Ellis Cahill Gordon
12/20/24	iHeart	Bank of America Goldman Sachs Morgan Stanley	~$2.1B	Davis Polk
2/19/25	Townsquare Media	Bank of America	$470M	Kirkland & Ellis
5/16/24	Restaurant Brands	J.P. Morgan	$750M	Kirkland & Ellis
2/6/24	Caesars	J.P. Morgan Credit Suisse Bank of America	$2.9B	Latham & Watkins Cahill Gordon

Advisor Table: Highest Average in CY2024(2)

	Advisor	Term Inclusion (%)
1	K&L Gates	43%
2	Blank Rome	33%
3	Winston & Strawn	27%
4	Hogan Lovells	21%
T-5	Foley & Lardner	20%
T-5	A&O Shearman	20%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

Temporal Limits on Defaults

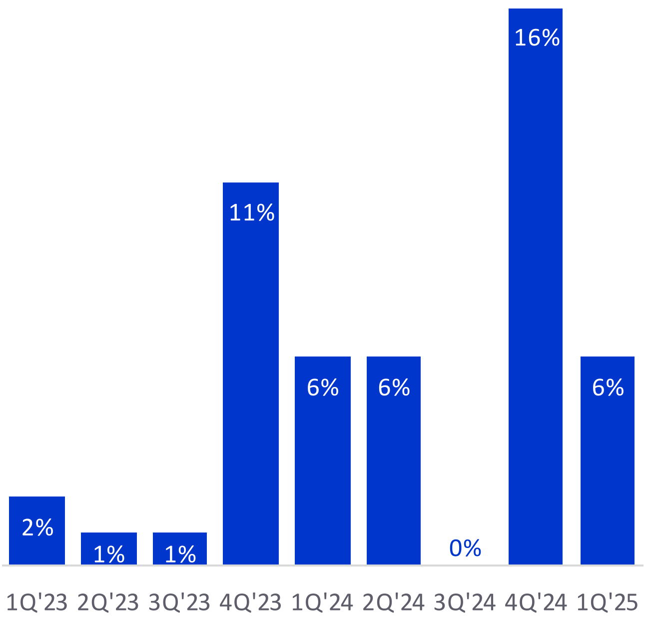
Term Definition

Limits the ability for lenders to declare an event of default to a specified time period after the default occurred. Such limits typically apply if the underlying event: (1) occurred 2+ years ago, (2) was disclosed to the lenders (often via required reporting), and (3) the lenders took no action within that time window.

Term History

These terms began showing up post-2008, especially for technical or minor covenant breaches that weren't material enough to warrant acceleration. In the mid-2010s, as covenant-lite became more normalized, the provisions started appearing more frequently, particularly in sponsored deals.

Term Prevalence Over Time



Key Selected Examples[1]

Date	Company	Lender(s)	Size	Advisor(s)
2/12/25	Primo Brands	Morgan Stanley Bank of America	~$3.1B	Latham & Watkins
2/14/25	Dayforce	J.P. Morgan Citibank Goldman Sachs	$1B	Weil, Gotshal White & Case
5/17/24	Titan Machinery	Bank of America Wells Fargo PNC	$500M	Holland & Knight
3/26/24	KUEHG	Barclays Macquarie Goldman Sachs UBS	$265M	Kirkland & Ellis Davis Polk
1/19/24	Dave & Buster's	Deutsche Bank J.P. Morgan BMO	$898M	Kirkland & Ellis White & Case

Advisor Table: Highest Average in CY2024[2]

	Advisor	Term Inclusion (%)
1	White & Case	33%
T-2	K&L Gates	29%
T-2	Fried, Frank	29%
4	Holland & Knight	28%
5	Wachtell, Lipton	26%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

EBITDA Cost Savings Addback

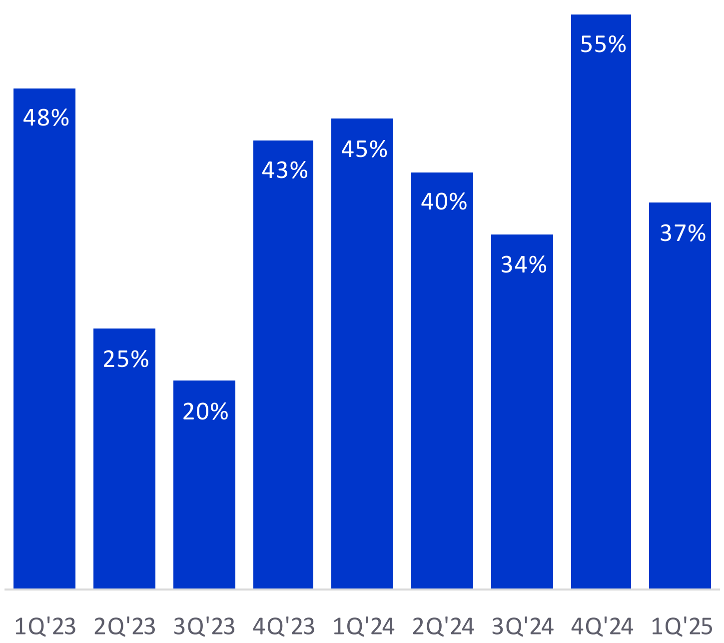
Term Definition

EBITDA cost savings addbacks are adjustments that allow a borrower to add back projected cost savings to their EBITDA calculation. These addbacks allow borrowers to report higher EBITDA, which can improve leverage ratios, covenant compliance, and borrowing capacity. Cost savings addbacks typically reflect expected reductions in operating expenses that result from actions like restructuring, cost-cutting initiatives, synergies from mergers and acquisitions, facility closures or consolidations, headcount reductions, and supply chain optimization. These are not actual savings already realized in historical financials, but anticipated savings from initiatives already taken or committed to be taken.

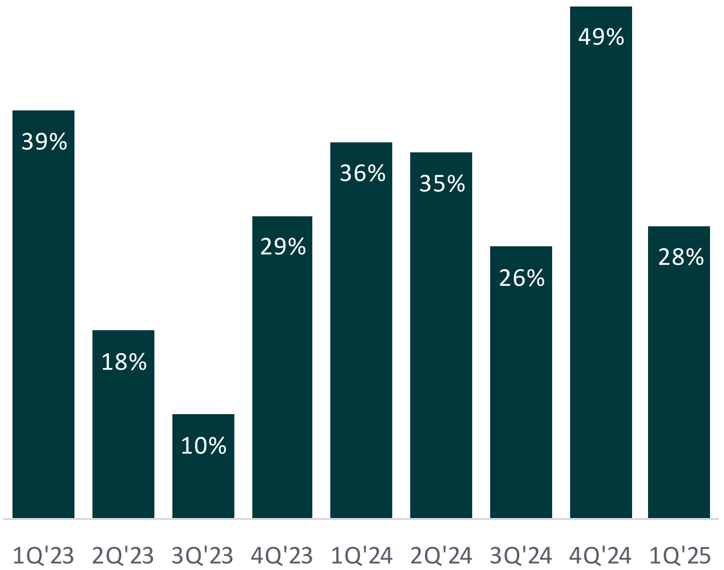
Term History

This language began appearing in the late 1990's and early 2000's. Its use became more formalized and widespread throughout the 2000's and 2010's, with limitations on look-forward periods and caps on cost savings–usually stated as a percentage of EBITDA–becoming more common during this period as well.

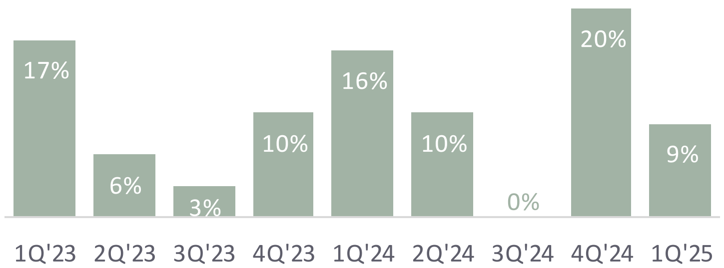
Cost Savings Addback



20%+ Cost Savings Addback



Uncapped Cost Savings Addback



Note: All charts on page refer to percentage prevalence.

EBITDA Cost Savings Addback (Cont'd)

Key Selected Examples

Date	Company	Primary Lender(s)	Size	Primary Advisor(s)
2/4/25	Michael Kors	J.P. Morgan Barclays Bank of America BNP Paribas	USD: $392M EU: €296M	Paul, Weiss
2/19/25	Townsquare Media	Bank of America	$470M	Kirkland & Ellis
10/31/24	Everus Construction Group	J.P. Morgan Bank of America US Bank Wells Fargo	Revolver: $225M Term Loan: $300M	Wachtell, Lipton
4/18/24	The Geo Group	Citizens Bank TCBI Synovus	Revolver: $310M Term Loan: $760M	Akerman
4/3/24	Las Vegas Sands Corp.	Bank of Nova Scotia Bank of America Barclays BNP Paribas	$1.5B	Skadden

Advisor Table: Highest Average in CY2024 (For Uncapped Addback)[1]

	Advisor	Term Inclusion (%)
1	Debevoise & Plimpton	83%
2	Greenberg Traurig	82%
3	Holland & Hart	80%
T-4	Simpson Thacher	73%
T-4	Winston & Strawn	73%

(1) Minimum five deals on year.

Pro Rata Sharing: All Lender Consent

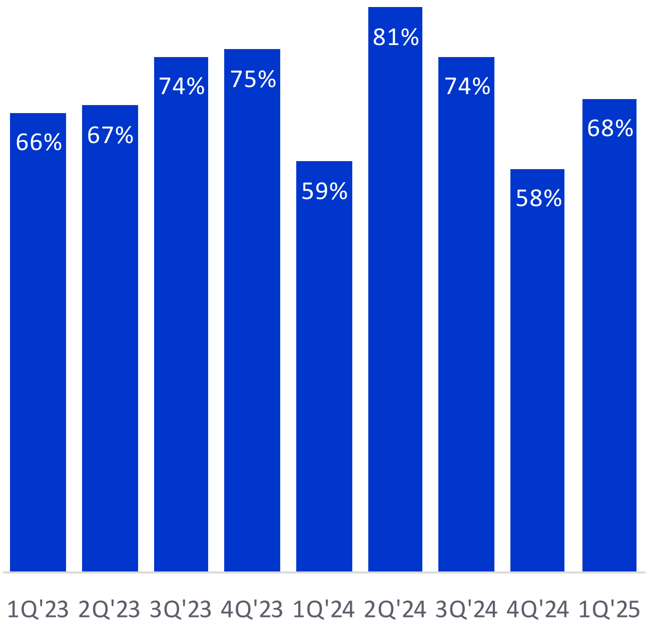
Term Definition

Sacred rights terms that require all lenders to consent to amendments related to pro rata sharing are often included to ensure that the interests of all parties are protected and treated fairly, particularly when it comes to adjustments or changes in the economic terms of the credit agreement.

Term History

These provisions have become standard practice in many syndicated loans, particularly in large, high-value credit facilities where multiple institutions are involved. Recently–especially in complex or structured financing deals–there is a trend toward requiring unanimous or near-unanimous consent for any changes to critical payment distribution mechanisms, including pro rata sharing.

Term Prevalence Over Time



Key Selected Examples(1)

Date	Company	Lender(s)	Size	Advisor(s)
1/13/25	Exact Sciences	J.P. Morgan Bank of America PNC	$500M	K&L Gates
1/17/25	Trinseo	Deutsche Bank Barclays BNP Paribas	$300M	Ropes & Gray
11/7/24	DraftKings	Morgan Stanley Bank of America Citibank Citizens Bank	$500M	Sullivan & Cromwell
4/26/24	KFC Holding	J.P. Morgan Bank of America Citigroup	Revolver: $1.5B Term Loan: $500M	Mayer Brown Davis Polk
3/22/24	Lumen Tech.	Wilmington Trust Bank of America	$2.4B	Wachtell, Lipton Davis Polk

Advisor Table: Highest Average in CY2024(2)

	Advisor	Term Inclusion (%)
1	Winston & Strawn	91%
2	White & Case	89%
3	DLA Piper	88%
4	Dechert	84%
T-5	Debevoise & Plimpton	83%
T-5	Alston & Bird	83%
T-5	Haynes Boone	83%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

Lien Subordination: All Lender Consent

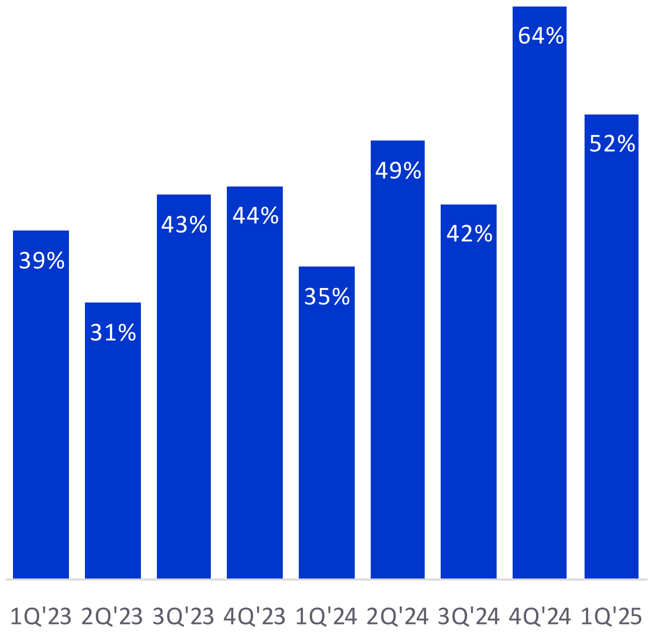
Term Definition

Sacred rights terms that require all lenders consent to any subordination of liens (i.e., no lender's security interest in the collateral can be subordinated to a new or existing lien without the unanimous approval of all lenders). These terms are often included in credit deals to prevent certain types of liability management transactions that may favor certain lenders over other lenders.

Term History

Lenders in high-yield markets have become sensitive to any changes that could undermine their security position–especially new debt issued in connection with a buyback, exchange, or refinancing that could subordinate their claims. With the erosion of protections in syndicated loan markets over the last decade, focus has shifted toward ensuring protections are clearly defined and that no changes to the priority of claims occur without the agreement of all parties.

Term Prevalence Over Time



Key Selected Examples[1]

Date	Company	Lender(s)	Size	Advisor(s)
1/13/25	Carnival	J.P. Morgan Barclays BNP Paribas Bank of America	$701M	Paul, Weiss,
11/15/24	Barings Capital Investment	ING Capital	$825M	Dechert Fried, Frank
7/26/24	GBT US III	Morgan Stanley Barclays Citibank Goldman Sachs	Revolver: $360M Term Loan: $1.4B	Skadden
5/16/24	Restaurant Brands	J.P. Morgan	$750M	Kirkland & Ellis
3/22/24	Lumen Tech.	Wilmington Trust Bank of America	$2.4B	Wachtell, Lipton Davis Polk

Advisor Table: Highest Average in CY2024[2]

	Advisor	Term Inclusion (%)
1	Haynes & Boone	83%
T-2	McGuireWoods	80%
T-2	A&O Shearman	80%
4	Blank Rome	78%
5	Skadden	67%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

Anti-PetSmart

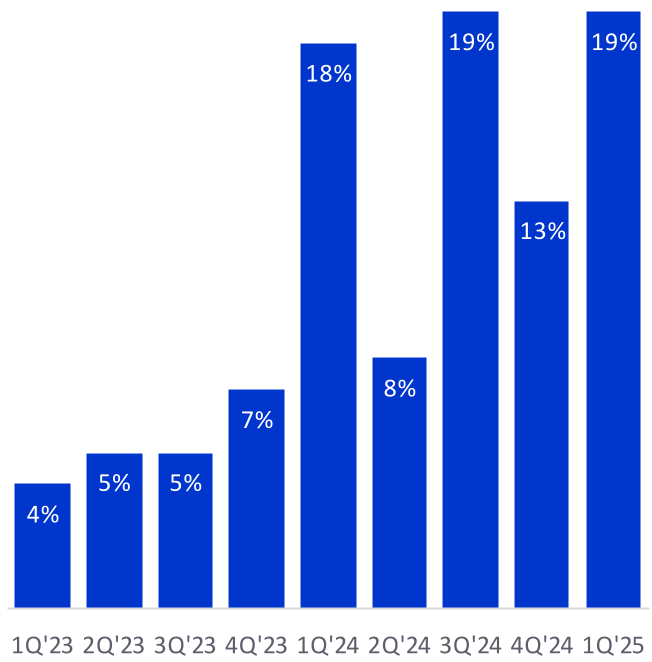
Term Definition

"Anti-PetSmart" terms refer to protections for lenders to prohibit a guarantor being released from its guarantees if it ceases to be a wholly-owned subsidiary. Anti-PetSmart terms often prohibit such a release when guarantors become non-wholly-owned as a result of the purchase of equity by an affiliate or as a result of transactions not for bona fide business purposes.

Term History

Lenders in high-yield markets have become sensitive to any changes that could undermine their security position–especially new debt issued in connection with a buyback, exchange, or refinancing that could subordinate their claims. With the erosion of protections in syndicated loan markets over the last decade, focus has shifted toward ensuring protections are clearly defined and that no changes to the priority of claims occur without the agreement of all parties.

Term Prevalence Over Time



Key Selected Examples[1]

Date	Company	Lender(s)	Size	Advisor(s)
1/30/25	Seagate	Bank of Nova Scotia Bank of America Morgan Stanley	$1.3B	Kirkland & Ellis
12/20/24	Ladder Capital	J.P. Morgan Wells Fargo Bank of America	$725M	Kirkland & Ellis
10/15/24	Gannett	Apollo	$900M	Cravath Paul, Weiss
8/4/24	Lucid Group	Ayar Third Investment	$750M	Skadden
6/27/24	Viking Cruises	Wells Fargo J.P. Morgan Bank of America	$375M	Skadden Latham & Watkins

Advisor Table: Highest Average in CY2024[2]

	Advisor	Term Inclusion (%)
1	K&L Gates	57%
2	Skadden	38%
3	Wachtell, Lipton	37%
4	Winston & Strawn	36%
5	Debevoise & Plimpton	33%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

Erroneous Payments

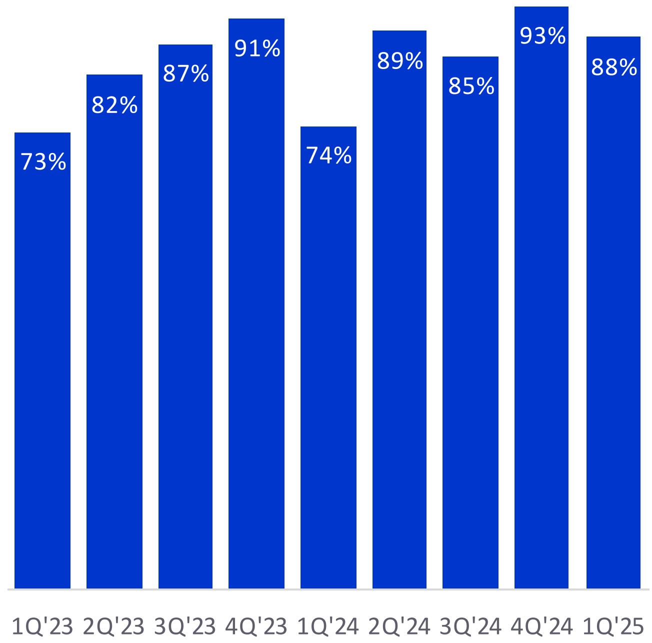
Term Definition

Erroneous payments terms prescribe what happens if a borrower, lender, agent, or administrative party accidentally sends money to another party to the facility by mistake — typically due to a clerical, operational, or system error. Typically, such terms require the return of funds regardless of perceived entitlement, protecting administrative agents and borrowers from the losses.

Term History

In 2020, Citibank, acting as the agent for a group of lenders to Revlon, mistakenly wired $900M to lenders—the full principal amount owed—rather than just an interest payment. Some lenders refused to return the funds, arguing that such payment was a de facto prepayment of the entire loan. A U.S. District Court initially sided with the lenders, citing a rule that under certain conditions, mistaken payments don't need to be returned. This was later reversed on appeal in 2022.

Term Prevalence Over Time



Key Selected Examples[1]

Date	Company	Lender(s)	Size	Advisor(s)
1/29/25	American Axle	J.P. Morgan	Revolver: $1.25B TL A: ~$485M TL B: ~$1.5B	AO Shearman
10/28/24	Rayonier A.M. Products	Oaktree Capital	$700M	Holland & Knight Wachtell, Lipton
8/8/24	Qualcomm	Goldman Sachs J.P. Morgan Barclays Morgan Stanley	$5B	Cravath
5/1/24	UFC Holdings	Goldman Sachs	$205M	Cahill Gordon Paul, Weiss Simpson Thacher
2/9/24	MGM Resorts	Bank of America Barclays BNP Paribas	$685M	Milbank

Advisor Table: Highest Average in CY2024[2]

	Advisor	Term Inclusion (%)
T-1	Blank Rome	100%
T-1	Arnold & Porter	100%
T-1	DLA Piper	100%
T-1	K&L Gates	100%
T-1	Debevoise & Plimpton	100%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

Market Capitalization Dividends

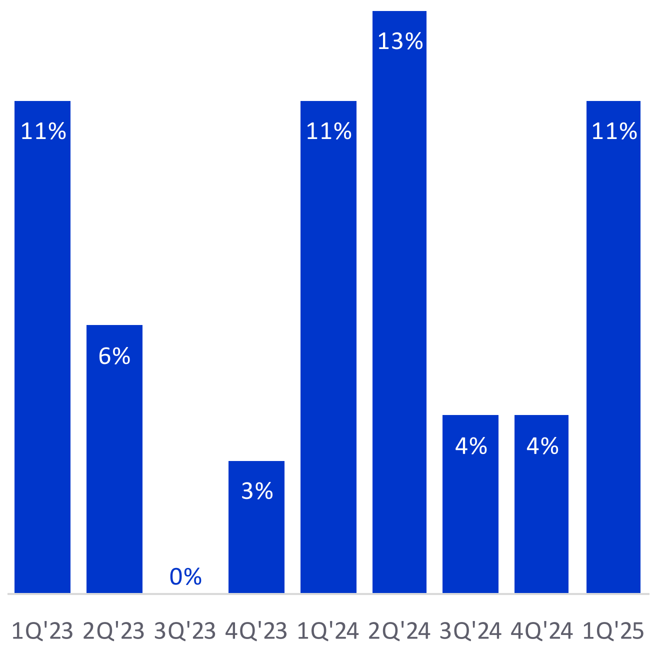
Term Definition

Borrower-friendly market cap-based dividend terms allow borrowers to pay dividends, do buybacks, or sometimes make other restricted payments without triggering a default, up to an amount (typically based on a percentage of the company's market capitalization).

Term History

The term was rarely used during the early and mid-2010s, with increased prevalence in the late 2010s as an erosion of protective terms in credit facilities became more common. Although there was a pullback during COVID, recently market cap-based dividends have been resurging.

Term Prevalence Over Time



Key Selected Examples[1]

Date	Company	Lender(s)	Size	Advisor(s)
1/13/25	Exact Sciences	J.P. Morgan Bank of America PNC	$500M	K&L Gates
10/8/24	Ultra Clean Holdings	Barclays HSBC Sumitomo Mitsui	$494M	Davis Polk Holland & Knight
8/12/24	Double-Verify	J.P. Morgan Bank of America Capital One Goldman Sachs	$200M	Debevoise
4/2/24	Avantor Funding	Goldman Sachs	$772M	Cahill Gordon Simpson Thacher
3/8/24	LivaNova	Goldman Sachs Bank of America Barclays	$250M	Cleary Gottlieb Milbank

Advisor Table: Highest Average in CY2024[2]

	Advisor	Term Inclusion (%)
1	Greenberg Traurig	36%
2	Debevoise & Plimpton	33%
3	K&L Gates	29%
4	Winston & Strawn	27%
T-5	Cleary Gottlieb	25%
T-5	Kirkland & Ellis	25%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals on year.

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