



Q3 '25

Capital Markets Radar

TERMS-LEVEL
BENCHMARKING ANALYSIS &
INDUSTRY TRENDS

Q3 '25 CEO Letter

The Chickens are Coming Home to Roost



Last quarter, Noetica's AI surfaced a market shift that no one else was talking about: counterparties trading structural protections for issuer-friendly EBITDA flexibility. Our customers saw that trend early, as the first market indicators emerged, and *American Banker* broke the news to the rest of the market a few weeks later. **Real-time data isn't just informative—it's predictive, allowing firms to move before the rest of the market does.**

Here are this quarter's early signals: (1) **the trade-off isn't moderating—it's intensifying** and (2) despite deal volume increasing, **creditors are prioritizing bankruptcy protections**. With trillions in pandemic debt set to mature in 2028-2029, and a successful campaign to close liability management escape routes, creditors are finally ready for the chickens to come home.

Guardrails Are Boosting the Market

Deal volume jumped over 200%⁽¹⁾ in Q3, and both sides achieved stronger wins than they did in Q2. Protections requiring unanimous lender consent to any lien subordination surged 23 points and are now appearing in 84% of deals—one of the largest quarterly jumps we've seen in any protective term. At the same time, aggressive EBITDA addbacks jumped 17 points to 64%, now appearing in nearly two-thirds of deals.

The pattern is clear: when both sides secure their core priorities, deals close. These trade-offs create the guardrails that enable transaction flow even when economic uncertainty would otherwise freeze activity. The 200%+ volume rebound validates the model: aggressive trading on both sides produces more deals than cautious half-measures.

Controlling the Roost: Closing the Gap Between Prevention and Position

Beneath the trade-off acceleration, creditors are revealing their structural concerns through the terms they're trading for. Creditors remain focused on blocking liability management maneuvers but increasingly prioritize control over outcomes in bankruptcy.

Sacred rights requiring all lender consent to pro rata sharing amendments remain in 81% of deals, down slightly from 85% last quarter. Yet, all lender consent requirements for lien subordination, which control *capital structure position in bankruptcy*, **surged 23 percentage points** to 84% of deals. This bankruptcy protection is now one of the most prevalent protections in credit deals, second only to the near-universal erroneous payments language.

That shift is important, and the progression is logical. Over the past few years, creditors have systematically closed liability management loopholes that companies leverage to stave off bankruptcy—J. Crew blockers are now in 45% of deals, and anti-PetSmart terms are in 28% of deals—both reflecting all time highs. With those loopholes increasingly closed, creditors' attention is moving to securing the roost if bankruptcy can't be avoided. Creditors are closing a gap: you can't restructure around us, and if you fail, we control the waterfall.

Although credit funds are positioning for restructuring scenarios, deal volume is still up. The market is still "open for business"—just under tighter rules set by counterparties.

⁽¹⁾ Source: PitchBook LCD, September 2025

Issuers Get Economic Flexibility

Even as counterparties lock down protections, issuers notched their biggest economic wins yet. Cost savings EBITDA addbacks are now standard in 64% of deals, with 51% allowing addbacks above 20%—a sharp rise from 39% last quarter.

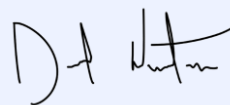
The exchange makes strategic sense for both sides. Parties with strong structural protections can afford to grant operational flexibility because they're protected if things deteriorate.

The Flight Home is Underway

The shift toward bankruptcy-focused protections bears close attention because it reveals where sophisticated credit funds believe the real risk lies. We could be seeing active distress preparation, or simply smarter protection design informed by recent liability management trends. Given the massive financing volume that occurred in late 2020 and 2021, perhaps this reaction is also a response to known maturity walls upcoming in 2028 and 2029. Either way, we are seeing a market thinking carefully about worst-case scenarios, without freezing over.

The trade-off isn't moderating—it's accelerating and evolving. Q3 showed both sides negotiating more aggressively within this framework, and the higher volume proves the model works better than tentative compromise. This is the new baseline for capital markets, and increased deal flow tells us the market is embracing it.

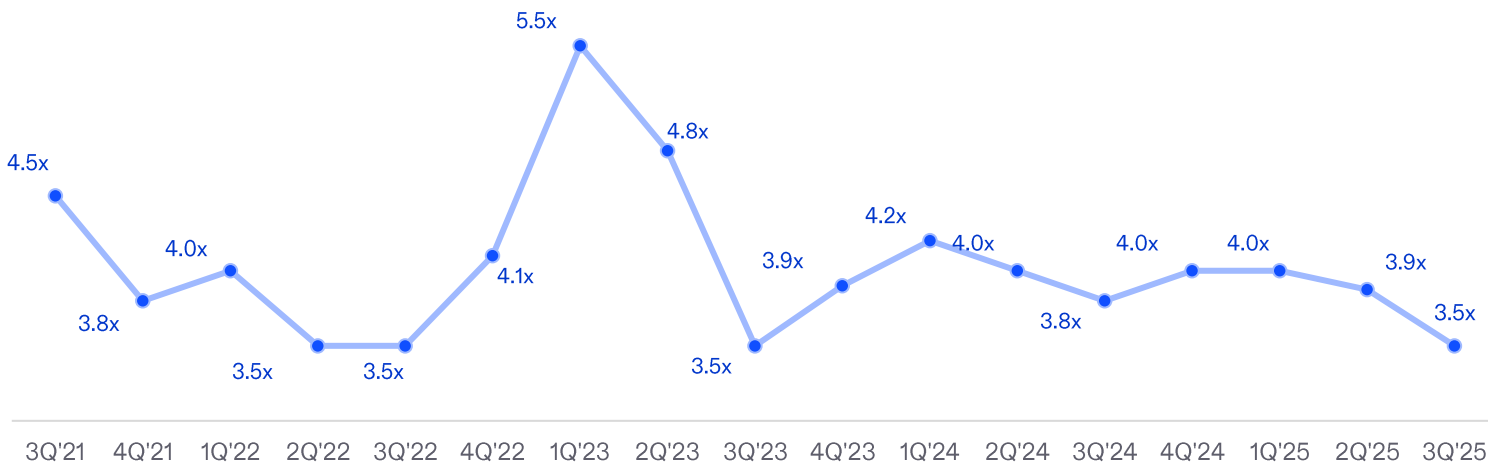
Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Wertman', with a stylized flourish at the end.

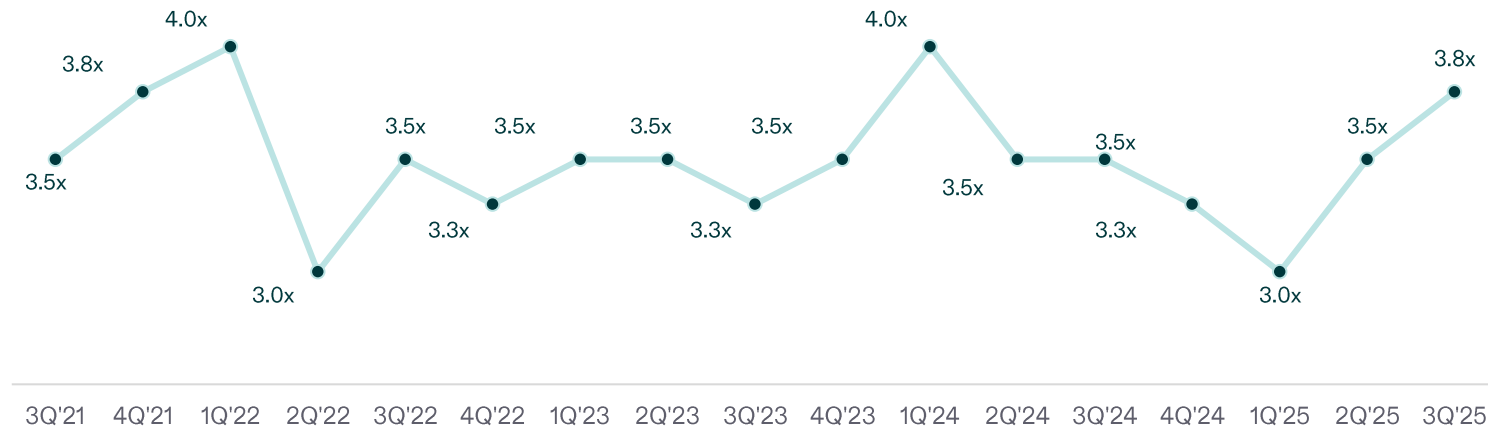
Dan Wertman, CEO

Key Terms Trends

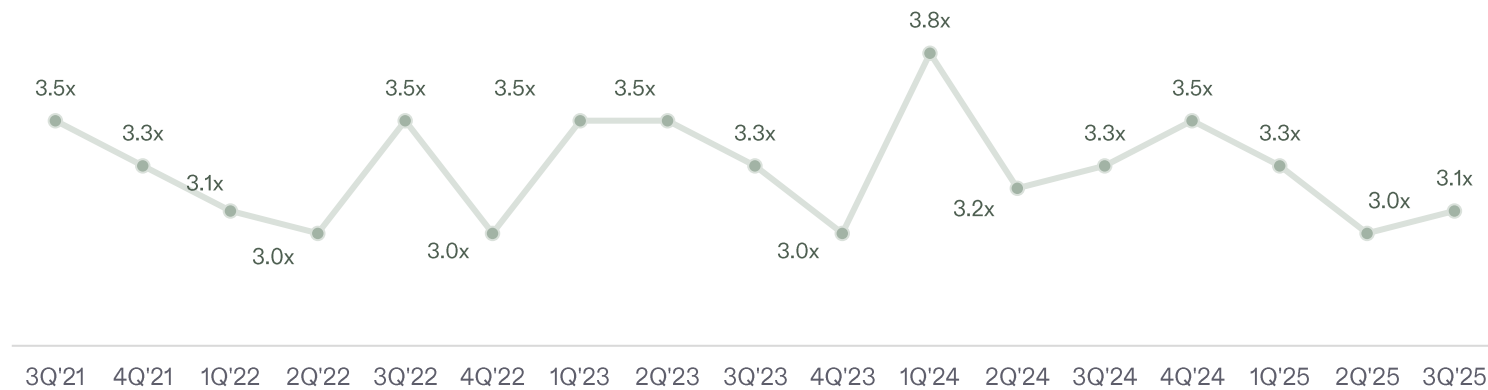
Financial Maintenance: Total Leverage Ratio



Investments: Ratio Capacity



Restricted Payments: Ratio Capacity

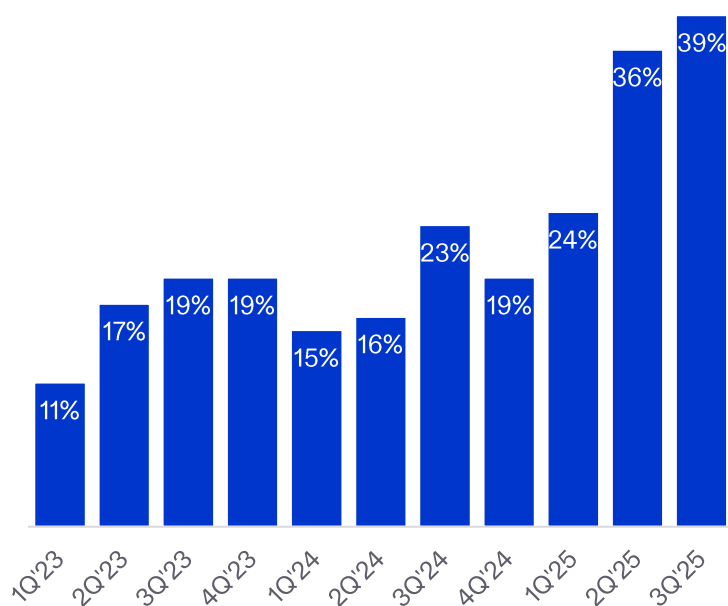


J. Crew Blockers

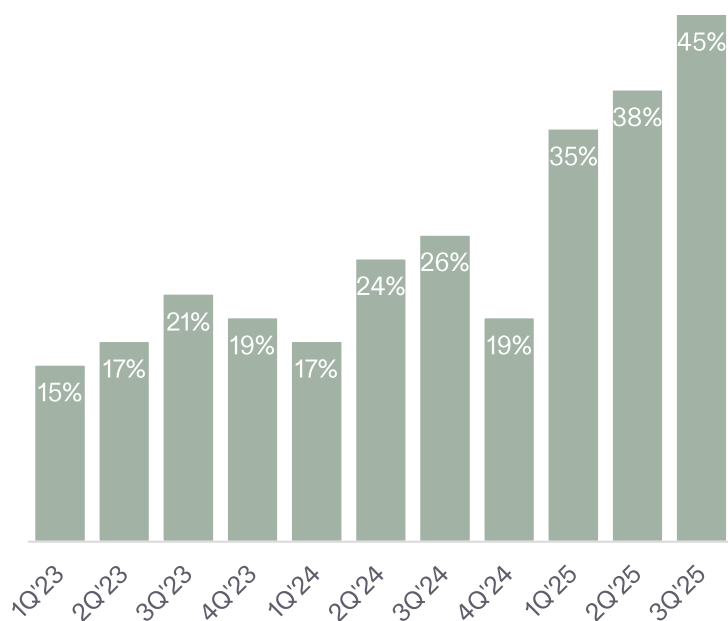
Term Definition

“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.

IP Transfer Prohibitions



J. Crew Language (Either or Both of Above)

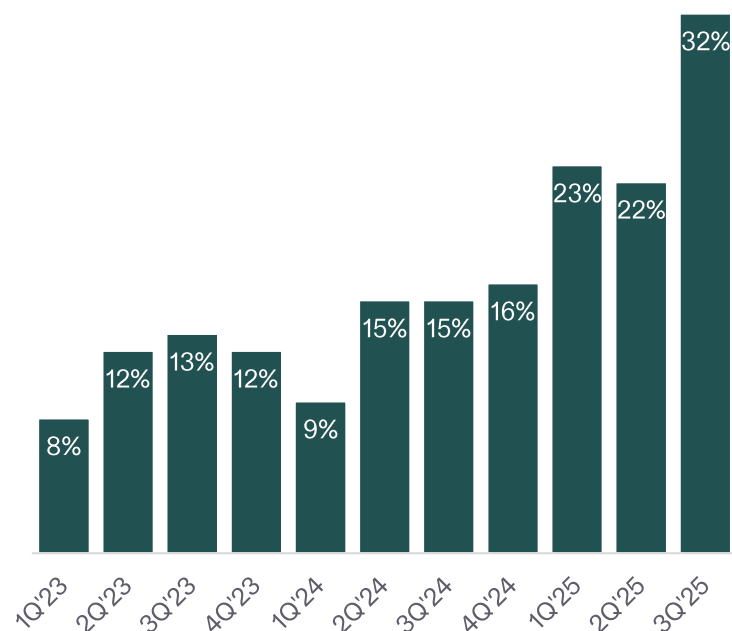


Note: All charts on page refer to percentage prevalence.

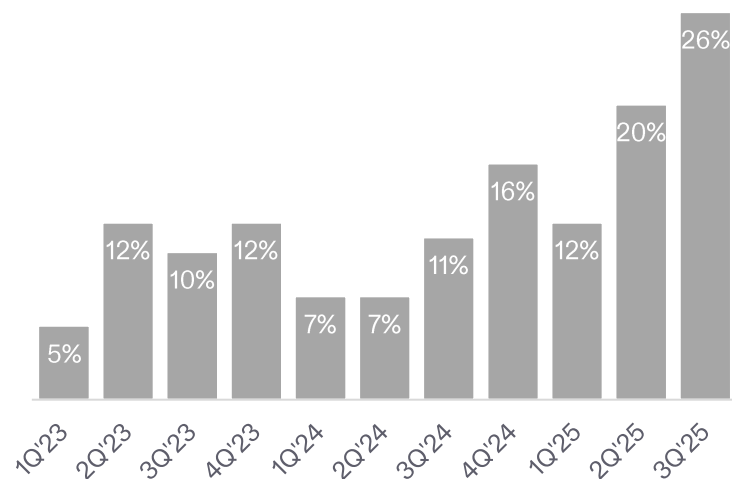
Term History

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.

Unrestricted Subsidiary Designation Restrictions



J. Crew Language (Both of Above)



J. Crew Blockers (Cont'd)

Key Selected Examples in 9M 2025

Date	Company	Primary Lender(s)	Size	Primary Advisor(s)
9/26/25	Coherent	J.P. Morgan	Revolver: \$700M Term Loan: \$1.25B	Sidley Simpson Thacher
7/2/25	Sprouts Farmers Markets	J.P. Morgan Truist PNC Bank	Revolver: \$600M	Greenberg Traurig Latham & Watkins
6/2/25	Herc Holdings	Wells Fargo	Term Loan: \$750M	Simpson Thacher Latham & Watkins
5/5/25	DigitalOcean	Morgan Stanley	Revolver: \$300M Delayed Draw Term Loan: \$500M	Cooley Latham & Watkins
1/29/25	American Axle	J.P. Morgan	Revolver: \$1.25B Term Loan A: ~\$485M Term Loan B: ~\$1.5B	A&O Shearman

Lender Advisor Table: Highest Average 9M 2025 (For IP Transfer Prohibitions)⁽¹⁾

Advisor		Term Inclusion (%)
1	Gibson Dunn & Crutcher	67%
2	Akin Gump	60%
T-3	Paul Hastings	50%
T-3	Holland & Knight	50%
5	Davis Polk & Wardwell	48%

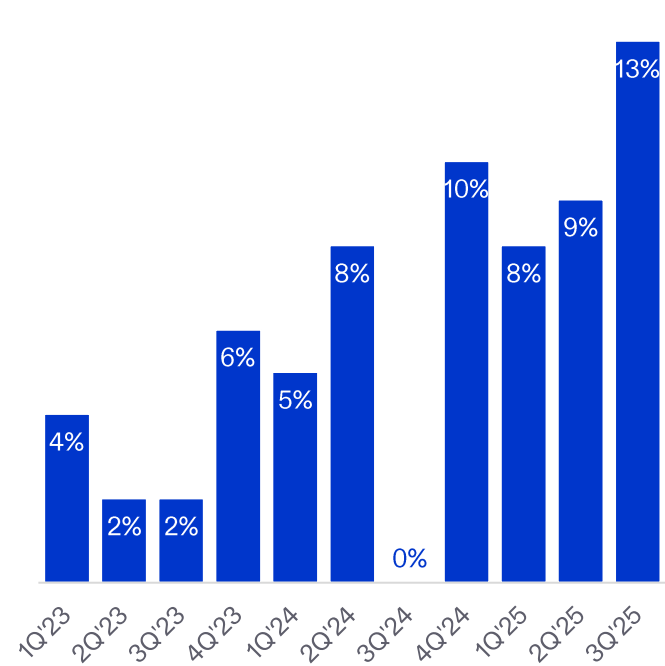
⁽¹⁾ Minimum five deals in 9 months.

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 Prevalence Over Time



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.

Key Selected Examples in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/18/25	Evergreen Holdings	Jefferies J.P Morgan KKR	Revolver: \$180M Term Loan: \$750M	Paul, Weiss
7/25/25	Upland Software	Sound Point Agency	Revolver: \$30M Term Loan: \$240M	Morrison & Foerster Paul Hastings
4/21/25	Clearwater Analytics	J.P. Morgan	Revolver: \$200M Term Loan: \$800M	Kirkland & Ellis
2/19/25	Townsquare Media	Bank of America	Revolver: \$20M Term Loan: \$470M	Kirkland & Ellis
1/30/25	MultiPlan	Goldman Sachs	Revolver: \$350M 1 st Out TL: \$325M 2 nd Out TL: ~\$1.1B	Gibson Dunn Kirkland & Ellis Cahill Gordon

Borrower Advisor Table: Highest Average in 9M 2025 (Net Short Provisions)⁽²⁾

Advisor	Term Inclusion (%)
1 Wachtell, Lipson, Rosen & Katz	63%
2 Davis Polk & Wardwell	43%
3 Simpson Thacher & Barlett	41%
4 A&O Shearman	38%
5 Ropes & Gray	33%

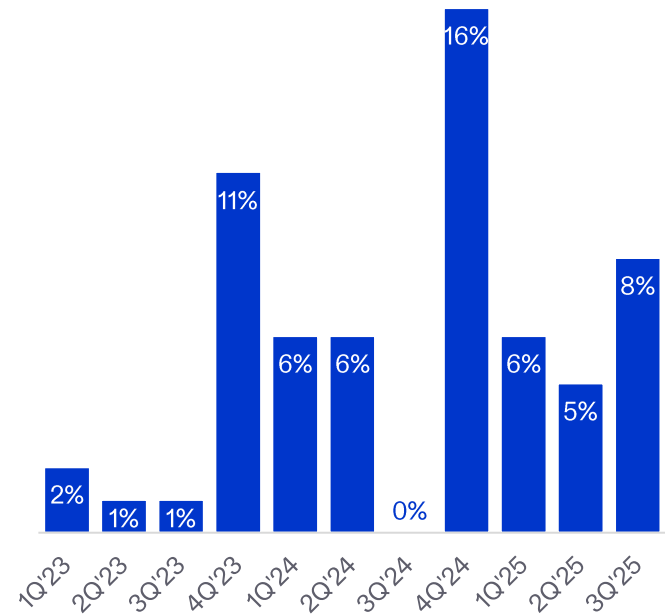
(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals in 9 months.

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 Prevalence Over Time



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.

Key Selected Examples in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/29/25	Level 3	Bank of America J.P. Morgan Barclays Citibank	TL B-4: \$2.4B	Latham & Watkins Cravath
7/9/25	Hillenbrand Inc.	J.P. Morgan HSBC Bank Wells Fargo	Revolver: \$700M USD TL: \$175M Euro TL: €240M	Skadden
6/16/25	Dotdash Meredith	J.P. Morgan	Term Loan: \$700M	Wachtell Lipton Cahill Gordon
4/21/25	Clearwater Analytics	J.P. Morgan	Revolver: \$200M Term Loan: \$800M	Kirkland & Ellis
2/12/25	Primo Brands	Morgan Stanley Bank of America	Term Loan: ~\$3.1B	Latham & Watkins

Borrower Advisor Table: Highest Average in 9M 2025 (Temporal Default Limits)⁽²⁾

Advisor	Term Inclusion (%)
1 Wachtell, Lipson, Rosen & Katz	63%
T-2 Ropes & Gray	33%
T-2 Sullivan & Cromwell	33%
3 Sidley Austin	30%
4 Simpson Thacher & Barlett	24%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals in 9 months.

EBITDA Cost Savings Addback

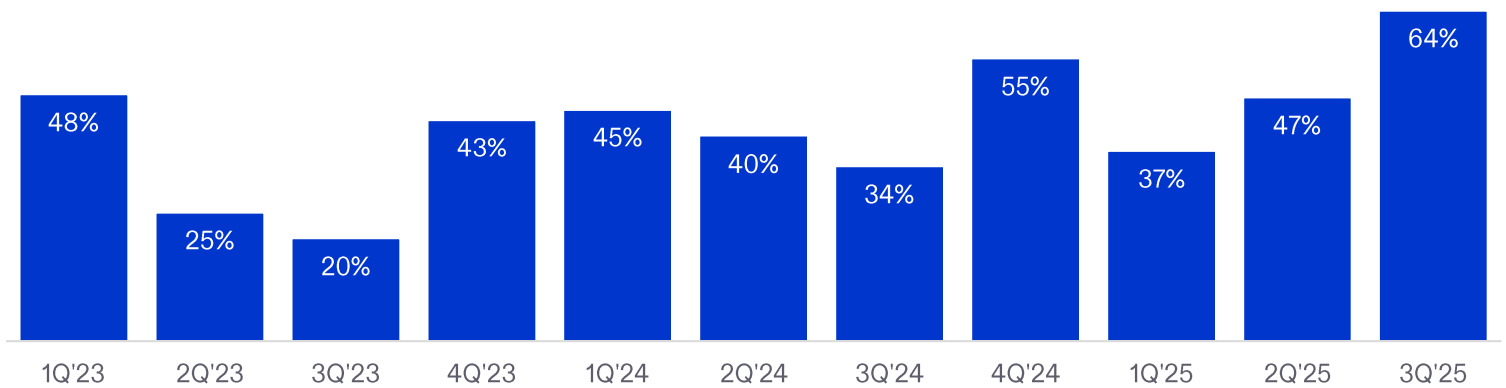
Term Definition

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.

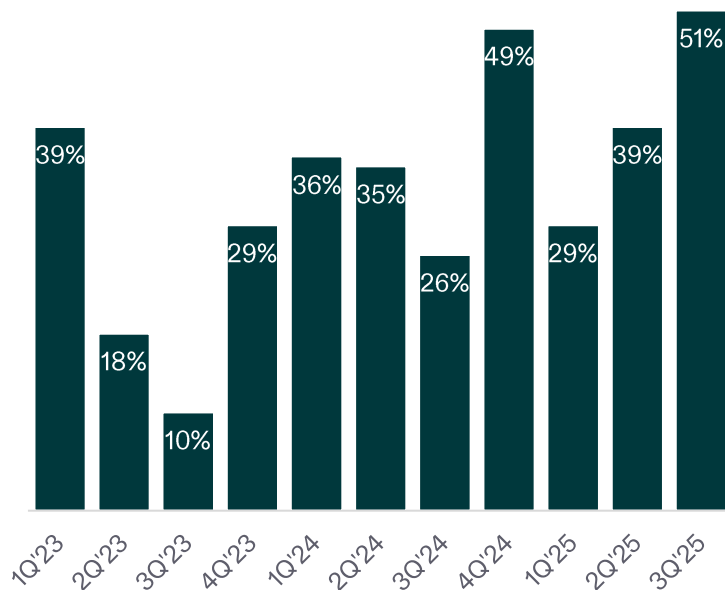
Term History

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.

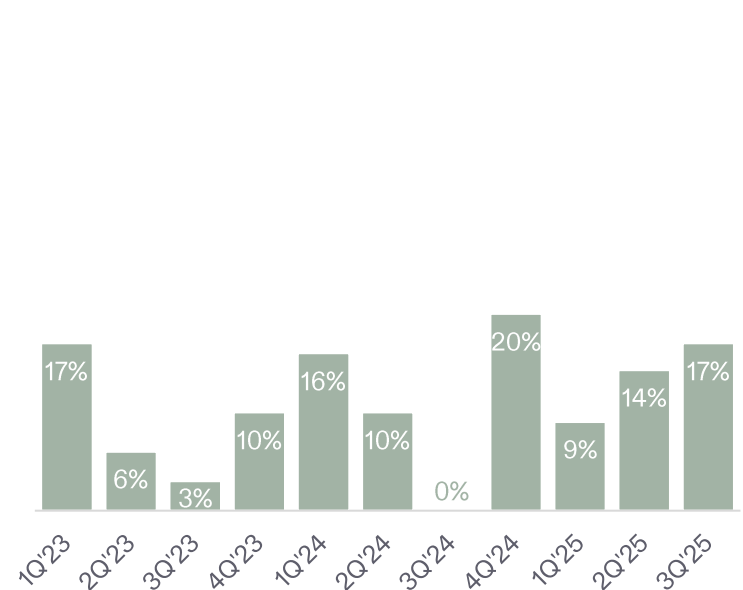
Cost Savings Addback



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 in 9M 2025

Date	Company	Primary Lender(s)	Size	Primary Advisor(s)
9/17/25	Sotera Health	Jefferies J.P. Morgan Barclays	Term Loan: \$1.4B	Cleary Latham & Watkins
8/25/25	MP Material	J.P. Morgan Goldman Sachs Morgan Stanley	Revolver: \$275M	Skadden
6/13/25	Redwire / Edge Autonomy	J.P. Morgan TCBI Securities Bank of America Truist	Term Loan: \$90M	Holland & Knight Winston & Strawn
4/21/25	Clearwater Analytics	J.P. Morgan	Revolver: \$200M Term Loan: \$800M	Kirkland & Ellis
2/4/25	Michael Kors	J.P. Morgan Barclays Bank of America BNP Paribas	USD: \$392M EU: €296M	Paul, Weiss

Borrower Advisor Table: Highest Average in 9M 2025 (For Uncapped Addback)⁽¹⁾

Advisor		Term Inclusion (%)
1	Ropes & Gray	42%
2	Simpson Thacher & Barlett	41%
3	Sidley Austin	30%
4	Clearly Gottlieb	29%
5	Davis Polk & Wardwell	26%

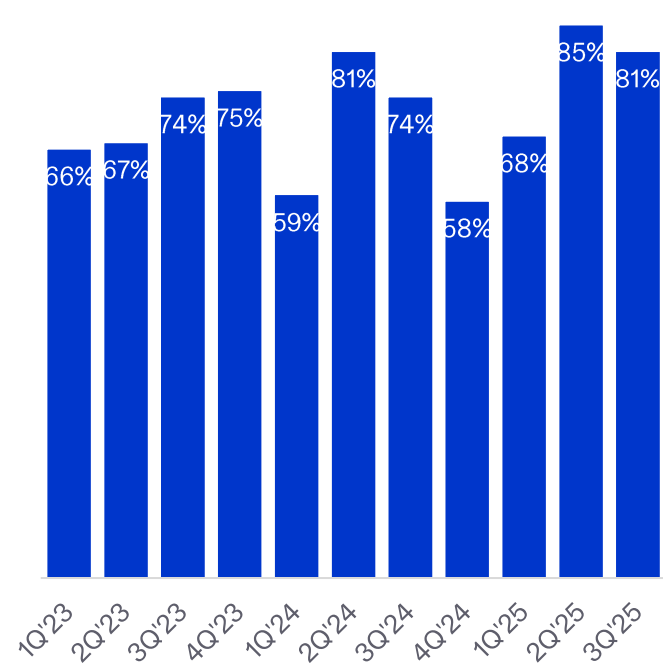
⁽¹⁾ Minimum five deals in 9 months.

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 Prevalence Over Time



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.

Key Selected Examples in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/15/25	Black Rock Coffee Holdings	J.P. Morgan	Revolver: \$25M TL: \$50M	Perkins Coie Willkie Farr
7/17/25	Teladoc Health	J.P. Morgan Citibank Wells Fargo	Revolver: \$300M	Simpson Thacher Gibson Dunn
5/6/25	Steve Madden	Citizens Bank J.P. Morgan Citibank	Revolver: \$250M Term Loan: \$300M	Foley & Lardner Norton Rose
4/1/25	Karman Holdings	Citibank RBC KKR	Revolver: \$50M Term Loan: \$300M	Stoel Rives Willkie Farr
1/17/25	Trinseo	Deutsche Bank Barclays BNP Paribas	Revolver: \$300M	Ropes & Gray

Lender Advisor Table: Highest Average in 9M 2025 (Pro Rata Sharing Provisions)⁽²⁾

Advisor	Term Inclusion (%)
T-1 Haynes & Boone	100%
T-1 Holland & Knight	100%
T-1 Gibson Dunn & Crutcher	100%
T-4 Moore & Van Allen	89%
T-4 Mayer Brown	89%

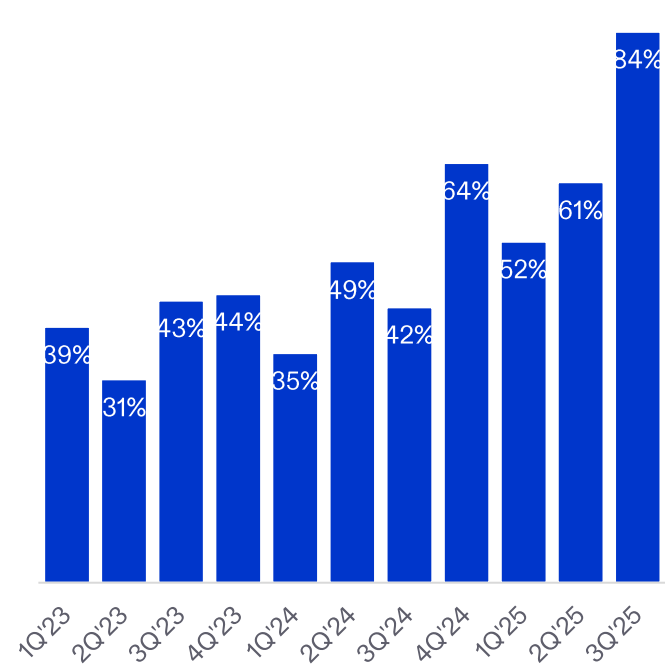
(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals in 9 months.

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 Prevalence Over Time



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.

Key Selected Examples in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
8/21/25	Dream Finders Homes	Western Alliance Citizens Bank	Revolver: \$1.475B	Holland & Knight Haynes and Boone
7/29/25	FormFactor	Wells Fargo	Revolver: \$150M	Freshfields
6/23/25	OneSpan	MUFG	Revolver: \$100M	Kirkland & Ellis
5/5/25	Tetra Tech	Bank of America Wells Fargo PNC	Revolver: \$600M Term Loans: \$500M	Hogan Lovells
1/13/25	Carnival	J.P. Morgan Barclays BNP Paribas Bank of America	Term Loan: \$700M	Paul, Weiss

Lender Advisor Table: Highest Average in 9M 2025 (Lien Subordination Consent Rights)⁽²⁾

Advisor	Term Inclusion (%)
1 Gibson Dunn & Crutcher	100%
2 Mayer Brown	89%
T-3 Blank Rome	86%
T-3 Alston & Bird	86%
5 Paul Hastings	85%

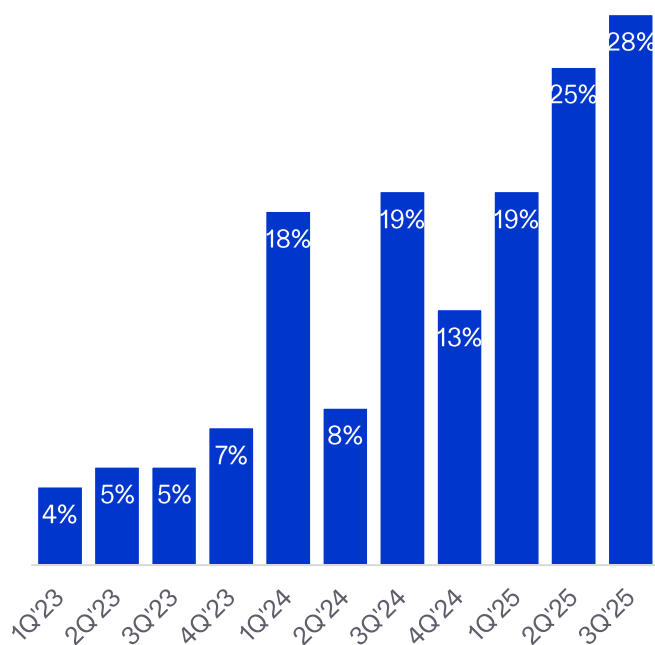
(1) Table reflects primary lenders and primary advisors; non-exhaustive.
(2) Minimum five deals in 9 months.

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 Prevalence Over Time



Term History

In June 2018, PetSmart transferred portions of its equity ownership in Chewy to an investor holding company and a newly created unrestricted subsidiary; because Chewy was no longer a wholly-owned subsidiary, it was released from its. In response, lenders began introducing “anti-PetSmart” language to prevent such transactions. The language became increasingly prevalent in 2020 and 2021, and has become more popular recently, with its frequency greatly increasing over the last twelve months.

Key Selected Examples in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/26/25	WBI Operating	Truist Bank	Revolver: \$500M	Vinson & Elkins Gibson Dunn
7/31/25	Bioventus	Wells Fargo DNB Markets J.P. Morgan Truist	Revolver: \$100M TL: \$300M	Latham & Watkins
5/15/25	Light & Wonder	J.P. Morgan Bank of America Wells Fargo	Term Loan: \$800M	Brownstein Hyatt Cahill Gordon Latham & Watkins
5/2/25	VSE Corp.	Citizens Bank Bank of America	Revolver: \$400M Term Loan: \$300M	Jones Day Cadwalader
1/30/25	Seagate	Bank of Nova Scotia Bank of America Morgan Stanley	Revolver: \$1.3B	Kirkland & Ellis

Lender Advisor Table: Highest Average in 9M 2025 (Anti-PetSmart Terms)⁽²⁾

Advisor	Term Inclusion (%)
1 Gibson Dunn & Crutcher	83%
2 Cahill Gordon & Reindel	49%
3 Simpson Thacher & Barlett	46%
4 White & Case	43%
5 Paul Hastings	40%

(1) Table reflects primary lenders and primary advisors; non-exhaustive.

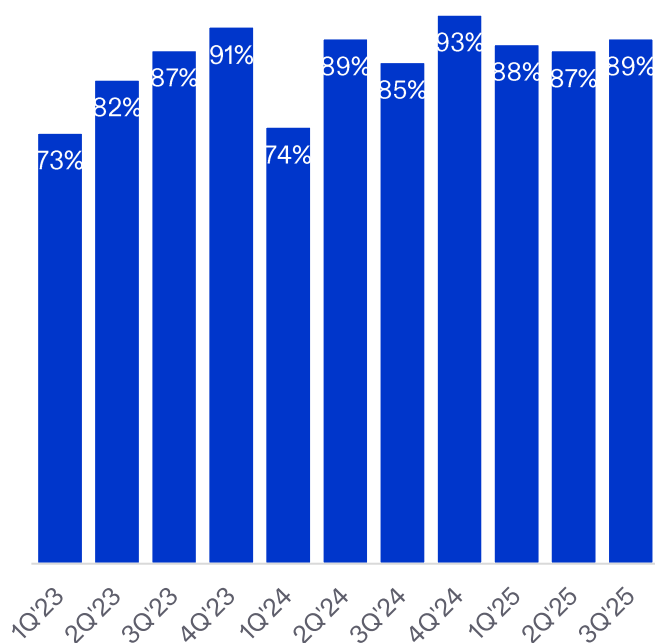
(2) Minimum five deals in 9 months.

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 Prevalence Over Time⁽¹⁾



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.

Key Selected Examples in 9M 2025⁽²⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/10/25	Accel Entertainment	CIBC Bank Fifth Third J.P. Morgan	Revolver: \$300M TL: \$600M	Jones Day
8/27/25	Bluelinx	Bank of America Citizens Bank Truist	ABL: \$350M	King & Spalding Cahill Gordon
6/16/25	Fidelity Private Credit	Truist ING Capital Sumitomo	Revolver: \$300M	Dechert Mayer Brown
5/15/25	Light & Wonder	J.P. Morgan Bank of America Wells Fargo	Term Loan: \$800M	Brownstein Hyatt Cahill Gordon Latham & Watkins
4/15/25	Boise Cascade	J.P. Morgan Bank of America Wells Fargo	Revolver: \$450M	Perkins Coie

Borrower Advisor Table: Highest Average in 9M 2025 (Erroneous Payment Protection Terms)⁽³⁾

Advisor	Term Inclusion (%)
T-1 Dechert	100%
T-1 Gibson Dunn & Crutcher	100%
T-1 Hunton Andrews Kurth	100%
T-1 Hogan Lovells	100%
T-1 Wilson Sonsini Goodrich & Rosati	100%
T-1 A&O Shearman	100%
T-1 Clearly Gottlieb	100%
T-1 Sullivan & Cromwell	100%
T-1 King & Spalding	100%
T-1 Fried, Frank, Harris, Shriver & Jacobson	100%
T-1 Cravath, Swaine & Moore	100%

(1) Median impacted by number of firms with few high-yield deals, but high percentages of term inclusion.

(2) Table reflects primary lenders and primary advisors; non-exhaustive.

(3) Minimum five deals in 9 months.

Market Capitalization Dividends

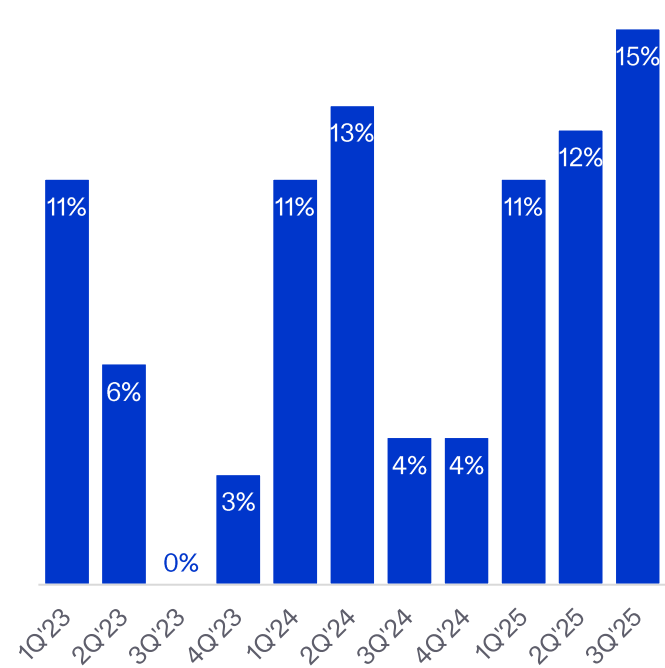
Term Definition

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 in 9M 2025⁽¹⁾

Date	Company	Lender(s)	Size	Advisor(s)
9/9/25	Dropbox	Blackstone Wells Fargo	DDTL: \$700M	Wilson Sonsini Paul Hastings
8/4/25	Acuren	Jefferies Citigroup UBS	Revolver: \$125M TL: \$875M	Greenberg Traurig Latham & Watkins
6/2/25	Herc Holdings	Wells Fargo Crédit Agricole J.P. Morgan	Term Loan: \$750M	Latham & Watkins Simpson Thacher
4/29/25	QXO Building Products	Goldman Sachs Morgan Stanley Citigroup	Term Loan: \$2.25B	Davis Polk Paul, Weiss
1/13/25	Exact Sciences	J.P. Morgan Bank of America PNC	Revolver: \$500M	K&L Gates

Borrower Advisor Table: Highest Average in 9M 2025 (Market Cap-Based Dividend Terms)⁽²⁾

Advisor	Term Inclusion (%)
1 Cravath, Swaine & Moore	60%
2 Simpson Thacher & Barlett	47%
T-3 Davis Polk & Wardwell	43%
T-3 Greenberg Traurig	43%
5 Willkie Farr & Gallagher	42%

⁽¹⁾ Table reflects primary lenders and primary advisors; non-exhaustive.
⁽²⁾ Minimum five deals in 9 months.



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