Overview and comparison of the broadly syndicated loan and private credit markets

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Introduction

Leveraged finance has experienced notable shifts in recent years, driven by the rapid expansion of private credit and the continued evolution of the broadly syndicated loan (BSL) market. Once clearly separate in structure, documentation, and lender base, these two markets are increasingly intersecting. Terms traditionally featured in BSL loans now appear in private credit deals as private credit lenders provide larger loans and compete to provide alternatives to BSL credits. Despite the recent convergence of terms between the two markets, each market takes a distinct approach to certain key features and terms. This chapter sets forth a market overview and highlights selected market terms and the approaches taken by private credit and BSL lenders.

Private credit market overview

The private credit market developed in earnest following the 2008 Global Financial Crisis in response to banks pulling back from middle-market lending due to tighter financial regulation like Basel III and Dodd-Frank. Non-bank lenders offered flexible structures and solutions for riskier Leveraged buyouts (LBOs) and corporate borrowers that banks were no longer willing to underwrite. Early growth was concentrated in the lower and traditional middle-market (borrowers with adjusted earnings before interest, taxes, depreciation, and amortisation (EBITDA) of less than $50 million).

Throughout the 2010s, private credit continued to grow rapidly, fuelled by investor appetite for higher yields in a persistently low-interest-rate environment. Private credit funds expanded in scale and sophistication, attracting capital from pension funds, sovereign wealth funds, and insurance companies that were seeking stable, floating-rate income. The surplus of dry powder allowed private lenders to move upmarket and finance larger deals. Post COVID-19, private credit had established itself as a mainstream source of corporate finance. The asset class proved to be durable, amid heightened market volatility, rising rates, and geopolitical uncertainty.

Deal flow in 2021 grew at an explosive rate and sources estimate that private credit assets under management (AUM) surpassed $1.5 trillion by 2022. Private equity sponsors increasingly turned to private credit solutions, especially as the BSL and other public markets faced dislocation. Sponsors enjoyed tailored loan structures, flexible terms (including delayed draw commitments and payment-in-kind (PIK) interest), higher leverage levels, and certainty of terms with no “flex” features. Notably, private credit lenders capitalised on a significant dip in the BSL market in 2022. Economic uncertainty and a perceived trend towards a bear market caused a widening of the gap between BSL paper supply and demand and drove down secondary prices to 92% in mid-2022. During this time, direct lending increased by 188% and private credit lenders stepped in to provide solutions once dominated by the BSL market. Recent jumbo unitranche deals include a $3.3 billion private credit loan to Ardonagh led by Ares in Q1 2024 and a $1.1 billion private credit loan to a social good software company led by KKR Credit in Q1 2025. In addition, Ares served as lead arranger and lender in what is currently a $2.2 billion private credit loan to Foundation Risk Partners after a series of upsizes, with the most recent in Q1 2025. A number of other significant jumbo unitranche deals have also made headlines over the last few years.

Competition to place capital in the private credit market remains intense. Allocations to the asset class in 2025 remain strong and private credit lenders have significant un-invested capital as LBO activity remains slow in the first half of the year. Private credit deals continue to offer higher yields and low default rates and a “flight to quality” option in the eyes of many investors. Fitch’s U.S. Private Credit Default Rate rating fell from 4.7% in March to 4.5% in May. Proskauer Rose LLP’s data similarly showed that events of default under active private credit transactions closed by The Private Credit Group at Proskauer Rose LLP fell from 2.42% to 1.76% between Q1 and Q2 2025.

BSL market overview

By the mid-1980s, private equity came into the spotlight. A significant number of firms were founded during these years, including many firms that remain large players in today's market (e.g., Bain Capital in 1984, Blackstone Group in 1985, and The Carlyle Group in 1987). LBO activity surged. The era was also marked by significant financial deregulation in the U.S., which made it easier to attract investment capital for riskier financial products to finance LBOs. High-yield bonds became a popular tool for financing early LBOs.

The BSL market took root against this backdrop. As private equity firms pursued larger acquisitions, banks sought to mitigate the risk of holding significant loan exposures on their own balance sheets. They began syndicating loans to institutional investors, which allowed them to continue to underwrite large deals (and capture the associated economics) while distributing the credit risk. As compared to high-yield bonds, BSL alternatives offered more attractive pricing for borrowers, floating rates, lower duration and greater diversification *versus* equity holdings. In the 1990s and early 2000s, non-bank institutional investors entered the market and new sources of capital fuelled expansion. Collateralised Loan Obligations (CLOs), which are structured products that pool loans into investable tranches, became the dominant buyers of BSL paper. By the 2010s, the BSL market had several trillion dollars in outstanding volume globally and has continued to proliferate since that time.

In the post-COVID-19 environment of early 2020, banks pulled back on underwriting large debt packages and private equity activity slowed. By the end of 2020 and into 2021, the BSL market rebounded. Credit spreads tightened, LBOs reached record-breaking levels and BSL mega-deals (e.g., $5 billion +) returned to the market. In 2022, and in the years following, financial markets exist in a more complex reality. Mergers and acquisitions activity rebounded, but more conservatively than most had hoped. Default rates remained low overall but rates and volatility increased and banks exercised caution with underwriting large BSL deals for issuers that were not considered top quality.

Most recently, the announcement of “Liberation Day” tariffs in April resulted in a near halt in the BSL markets. Since that time, demand continues to outpace supply, but the increase in secondary prices for BSL paper (up 93bps in May to 96.7bps) indicates more alignment in the market. The BSL market is more selective than in its 2021 peak but continues to serve a crucial function in providing cost effective financing solutions for large-cap private equity sponsors and CLO investors.

Market trends

The dual track

In the upper-middle and upper markets, BSL and private credit lenders can each provide attractive financing solutions for private equity sponsors. BSL deals can trump private credit alternatives in terms of size, given the deeper and more liquid market in which BSL deals are sold into. The deals are underwritten and administered by large commercial or investment banks and then sold to a wider group of investors in the syndicated loan market. However, because of this, they can take longer to fund, given that there is a longer process due to these loans needing to be rated by rating agencies as well as marketed to the syndicated market investors. Private equity sponsors may also have less certainty around final terms, given the application of “flex terms” to achieve a successful syndication of the loans, in which investment banks will offer loans to investors on a set of terms, but may need to “flex” the terms in order to meet the market demand for the loans. BSL deals often have more borrower-favourable pricing and looser covenants than a private credit alternative. These deals traditionally have no maintenance financial covenant with respect to the term loans and/or limited protections around additional debt incurrence and the movement of collateral to entities that do not provide credit support (including unrestricted subsidiaries). BSL deal structures are also becoming more flexible, offering features like delayed-draw facilities to compete with private credit. BSL deals typically win out for the biggest deals when markets are stable and demand is outpacing the amount of supply of loans that are coming to market.

A private credit deal can be executed quickly with certainty of terms and will often offer more flexibility (varied structures, bespoke terms, delayed draw commitments, PIK interest or toggle features, and less restrictive call protection). Given that these deals are typically held by a small club of lenders, obtaining consents for future amendments is also faster. However, this same lender club dynamic means that a borrower may have less flexibility to act autonomously in a workout scenario. Private credit deal terms have historically been more lender-favourable than what borrowers can get in the BSL market. This continues to be the case despite large cap concepts becoming more common in the larger private credit deals, given private credit lenders typically insist on guardrails to these terms not found in true large cap formulations. Private credit may be a better option in a volatile market or for a complex, highly leveraged credit.

Following the convergence of the BSL and private credit markets in 2022 and 2023, private equity sponsors increasingly “dual-track” their debt financing processes by pursuing both a BSL and a private credit alternative in parallel for the same deal and then selecting a path after they have been able to gauge market reaction. Borrowers can capitalise on the strengths of each market, keep options open until the point of deal execution, and potentially secure better terms by creating competition between BSL underwriters and private lenders.

Liability management exercises (LMEs)

LMEs are strategic measures taken by companies to restructure their debt obligations in order to avoid loan defaults and increase liquidity. They involve a range of techniques, including debt exchanges, tender offers, transferring assets to secure new financing, and other modifications to existing debt agreements. These may or may not be done with existing lender consent but will almost always disadvantage lenders with minority positions. LMEs, which initially garnered attention in the 1980s and 1990s during periods of financial instability and increased high-yield bond activity, have become mainstream over the last five years. Historically, LMEs have been much more common and more aggressive in BSL deals. BSL deals have looser terms and a large lender base that may not be able to coordinate or operate with a unified set of legal or business objectives. These transactions can be more challenging to effectuate in private credit deals, due to having tighter loan documentation and a small, more aligned club of lenders. However, LMEs are likely to occur (or at least be contemplated among potential workout strategies) with increasing frequency in the private credit market as terms loosen and deal sizes and lender syndicates increase. Selected LMEs and the approaches to protections taken in the private credit and BSL markets are described below.

J.Crew

In 2017, J.Crew (owned by TPG Inc. and Leonard Green) used existing basket capacity and "trap door" provisions in its credit agreement to move the J.Crew trademark and brand value to an unrestricted subsidiary in order to raise additional debt. This new debt was exchanged for debt of existing junior bondholders, effectively diluting the existing senior creditors and moving the junior creditors to a senior position secured by the business's most valuable asset. J.Crew protection prevents the movement of material intellectual property (IP) to unrestricted subsidiaries. Lenders may use this term to also encompass "Chewy" protections, given similar drop-down manoeuvres used in this deal. In 2018, PetSmart (owned by BC Partners) executed a drop-down transaction using its "available amount basket" to (1) distribute 20% of the common stock of [Chewy.com]() (a profitable subsidiary) to a parent entity outside of the borrower/guarantor group, and (2) invest 16.5% of the common stock of [Chewy.com]() to a newly formed unrestricted subsidiary, triggering an automatic requirement that the lenders release the now non-wholly owned subsidiary from its guarantee requirements. Chewy protections prevent unrestricted subsidiaries from holding debt, equity, and liens of restricted subsidiaries and prevent the automatic release of guarantors that become non-wholly owned as a result of transactions with affiliates of the borrower.

In the private credit market, almost all deals will have J.Crew and Chewy protections. In the traditional middle market, unrestricted subsidiaries are never permitted to hold IP that is material to the borrower/guarantors or their restricted subsidiaries. In larger and competitive deals, the formulation is more typically that no borrower/guarantor or restricted subsidiary can transfer material IP to an unrestricted subsidiary (leaving room for an unrestricted subsidiary to otherwise acquire, or develop, material IP). Additionally, almost all deals in the private credit market will have some form of Chewy protections. It is typical for unrestricted subsidiaries to be prevented from holding debt, equity and liens of restricted subsidiaries (although some larger or more competitive deals may focus on secured debt and equity only). The conditions to automatic release of guarantors becoming non-wholly owned following an affiliated transaction vary across the middle market. A typical formulation includes requirements that it was a *bona fide* transaction not designed to evade the guarantee obligations and the fair market value of the deemed investment in the subsidiary is permitted under the credit agreement. Tighter formulations may also require there to be no event of default under the credit agreement or a requirement that the transaction be a true joint venture (not simply a disposition or transfer of a nominal amount of equity).

In BSL deals, J.Crew and Chewy protections are either non-existent or are not as robust as seen in the private credit market deals. In BSL deals in which J.Crew and Chewy protections are included (which would generally be through flex terms), they are traditionally: (i) with respect to J.Crew, the formulation that no borrower, guarantor or restricted subsidiary can transfer material IP to an unrestricted subsidiary (leaving room for an unrestricted subsidiary to otherwise acquire, or develop, material IP); and (ii) with respect to Chewy, requirements that in order to release a non-wholly owned subsidiary, that this subsidiary is created by a *bona fide* transaction not designed to evade the guarantee obligations under the credit agreement (which would be in the borrower's determination, offering weak protection).

Serta

In 2020, Serta Simmons (owned by Advent International) engineered an "up-tier" transaction with the support of a majority of its existing first-lien lenders. These participating lenders provided ~$200 million of new money in the form of a super-priority tranche and exchanged ~$875 million of their existing first-lien loans for a higher-priority tranche sitting behind the new money. Non-participating lenders that did not accept the deal were left subordinated to the new and up-tier tranches. This exchange was done through the "open market repurchase" provisions of the credit agreement, which was extensively litigated. A 2024 ruling by the Fifth Circuit Bankruptcy Court provided that an open market purchase is a purchase of corporate debt that occurs on the secondary market for syndicated loans and not a privately negotiated buyback or exchange, even if such a transaction was part of a competitive process. Although non-binding on bankruptcy courts outside of the Fifth Circuit or New York State or Federal Courts, this ruling is expected to limit the use of "open market purchases" for similar transactions. Rather, borrowers in competitive transactions will insist on drafting enhancements that will permit the re-purchase of loans at any time on a non-*pro rata* basis. This transaction is generally considered together with Not Your Daughters Jeans (2017), which demonstrated the importance of protection against majority lenders amending or eliminating provisions in loan documentation that provide for *pro rata* sharing of loan payments and *pro rata* application of payments and collateral proceeds in the post-event of a default payment waterfall. Serta protection prevents the payment or lien subordination of a lender's debt without its consent.

Serta protections are ubiquitous in the middle market but the strength of these protections will erode as deals become larger and more competitive. In the lower and traditional parts of middle market, it is more common to see a full prohibition on payment and lien subordination (including re-tranching the post-event of a default payment waterfall) without a lender's consent. These deals increasingly contain a carve out to this protection if the lender was offered a *bona fide* opportunity to provide its *pro rata* share of any priming debt on the same economic and other terms. There may also be a further carve out to this "*pro rata* offer" concept for customary backstop and arranger fees, which minority lenders often seek to remove or tighten in response to instances of majority lenders taking significant backstop/arranger fees to enhance their own deal. As deals get larger and more competitive, additional carve outs to the *pro rata* offer concept will appear (e.g., debtor-in-possession facilities, asset-based loan facilities, and debt permitted to be senior to the loans on the closing date, such as cap leases, purchase money debt, and letters of credit).

In the BSL market, Serta protections have become an increased focus given the recent LME activity in the market. However, the protections are traditionally not as strong as seen in the direct lender market and may only be obtained through flex terms in competitive deals and deals with top-tier sponsors. Serta protections in the BSL market contain all the carve outs noted above with respect to larger private credit deals, and have similar *bona fide* opportunity language.

Envision

In 2022, Envision Healthcare (owned by Kohlberg Kravis Roberts & Co. (KKR & Co.)) designated a large portion of its highly profitable ambulatory surgery business (AmSurg) as an unrestricted subsidiary by using existing basket capacity in its credit agreement. This was done to facilitate the incurrence of an aggregate $2.6 billion in new first and second lien loans using AmSurg as collateral. The existing majority lenders simultaneously entered into an up-tier transaction, leaving the non-participating lenders in a fourth lien position secured by a significantly stripped-down collateral package. Envision protection limits the total capacity for investments in, and designations of, unrestricted subsidiaries in a borrower's structure.

In smaller private credit deals, Envision protections may take the form of a cap on total asset and EBITDA size of unrestricted subsidiaries (e.g., 10–25% of assets and EBITDA). This will effectively cap investments into unrestricted subsidiaries as well as require a borrower to re-designate subsidiaries as restricted subsidiaries (and potentially as guarantors) if they become valuable enough. The more typical formulation in the traditional middle and upper market deals will be to limit investments to, and designations of, unrestricted subsidiaries to a specific basket for investments in unrestricted subsidiaries (e.g., sized at 25–35% of EBITDA). In the larger and competitive deals, the basket size will increase and additional baskets can be stacked to create more aggregate capacity. Lenders will try to resist stacking the unlimited ratio-based basket and the available amount basket to create capacity for investments in unrestricted subsidiaries, given the significant capacity of those baskets.

The majority of BSL deals do not contain Envision protection. When BSL deals do include Envision protection, it takes the form of a larger cap with respect to investments in unrestricted subsidiaries (e.g., sized at 50–100% of EBITDA).

Pluralsight

In 2024, Pluralsight (owned by Vista Equity Partners) used existing basket capacity in its credit agreement to move material IP into a new non-guarantor subsidiary in order to secure additional debt financing from Vista Equity Partners. The new financing was used for liquidity to pay existing loan obligations. This avoided a loan default but weakened recovery prospects for existing lenders. Pluralsight protection prevents the movement of material IP from borrower/guarantor entities to non-guarantor restricted subsidiaries.

Pluralsight protections will not appear in all private credit transactions. While more common in the smaller and mid-sized deals, larger or competitive deals may not have these provisions or have versions of the protections with a number of carve outs that limit efficacy. Carve outs may include: (i) transfers of material IP for tax planning purposes; (ii) granting of exclusive licences to non-guarantor restricted subsidiaries, so long as it does not materially interfere with the business of the borrower/guarantors; or (iii) any transfer so long as the IP will not be used to secure new debt for borrowed money. Pluralsight protection is not included in BSL deals.

Portability features

Provisions permitting a borrower's debt to travel with the company in a change of control transaction are becoming increasingly common in the larger private credit deals. These provisions are almost non-existent in the lower and traditional middle market deals. Portability can help a borrower avoid a costly refinancing (or hold onto a better than market loan) in connection with a sale and even facilitate a more certain sale process for a private equity sponsor. Lenders will require guardrails in order to preserve their economics and ensure the new private equity sponsor is of equivalent size and providing a similar level of support for the business. Conditions generally include: (i) a time limit and cap (e.g., the port is typically required to occur within two years of the initial closing and can only occur on one occasion); (ii) a minimum equity investment at least equivalent to the closing date equity contribution; (iii) that the new private equity sponsor is required to have a minimum AUM; (iv) no event of default at the time; (v) a leverage ratio not greater than the closing date leverage ratio; and (vi) prior notice and an opportunity for the administrative agent and lenders to conduct know-your-customer checks on the new sponsor. Lenders will also typically require a reset of call protection and the available amount basket capacity upon any portability transaction.

In the BSL market, portability features have been met with more resistance. Investment banks are resistant to allow for portability as it leads to missing an opportunity to sell new debt into the syndicated market. When portability is offered in the BSL market, it includes all of the conditions noted above for larger private credit deals.

Cov-Lite structures

In the private credit market, almost all deals will have a financial covenant. In the lower and traditional middle market, this will typically take the form of a static total net leverage ratio covenant. The covenant level may step down after closing, but this feature falls away as deals become larger and more competitive. Less competitive upper-middle market deals may include a total leverage ratio covenant with no step-downs but the financial covenant in an upper-middle market deal is more commonly based on a first lien leverage ratio. Approximately 40% of upper-middle market private credit deals closed by Proskauer Rose LLP were Cov-Lite in 2024, according to our proprietary data. A Cov-Lite covenant for a private credit deal is typically formulated as a springing first lien net leverage ratio covenant, with no step-downs, in favour of the revolving credit facility tranche (but not the term loan tranches), which is only tested when a specified percentage (often 35–40%) of the revolving credit facility commitments are drawn. This test will exclude an agreed amount of undrawn letters of credit and revolver draws to fund the closing date acquisition for the first four quarters post-closing. The most aggressive formulation, which is only available to top-tier private equity sponsors in extremely competitive credits, will assume the revolver is mostly drawn (e.g., 80% drawn) when setting the covenant level and only tested when the revolver is drawn at the greater of a dollar amount equal to (i) a much higher percentage of closing date revolving commitments (e.g., 80%), and (ii) a corresponding percentage (e.g., 80%) of the current revolving commitments.

In contrast, sources report that over 90% of BSL deals are Cov-Lite and this number continues to grow. Financial covenants are often only seen on revolving facilities, with the traditional formulation being that the financial covenant is only tested when the revolver is drawn at the greater of a dollar amount equal to (i) a high percentage of closing date revolving commitments (e.g., 40%), and (ii) a corresponding percentage (e.g., 40%) of the current revolving commitments.

Looking ahead

The lines between the BSL and private credit markets will continue to blur. While each market retains its unique characteristics, increased competition, evolving borrower demands, and shifting risk appetites have led to, and will continue to lead to, increased alignment in key deal terms, such as covenants, portability, and lender protections. Going forward, we expect a continued convergence of deal terms across both platforms. Private credit lenders will need to accept the looser terms historically associated with syndicated loans, and BSL lenders will need to adapt and offer more flexible deal structures as they seek to compete to place capital in large, sponsor-backed deals.

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