

Proskauer Private Credit Academy

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Program 1

How to Navigate Any Financing Process to a Successful Closing

In this kick-off session, we will discuss the credit negotiation, documentation and closing process from initial grid to final wire and ensure you are prepared for everything that happens in between.

Jessica Shearer

Andrew Lyon

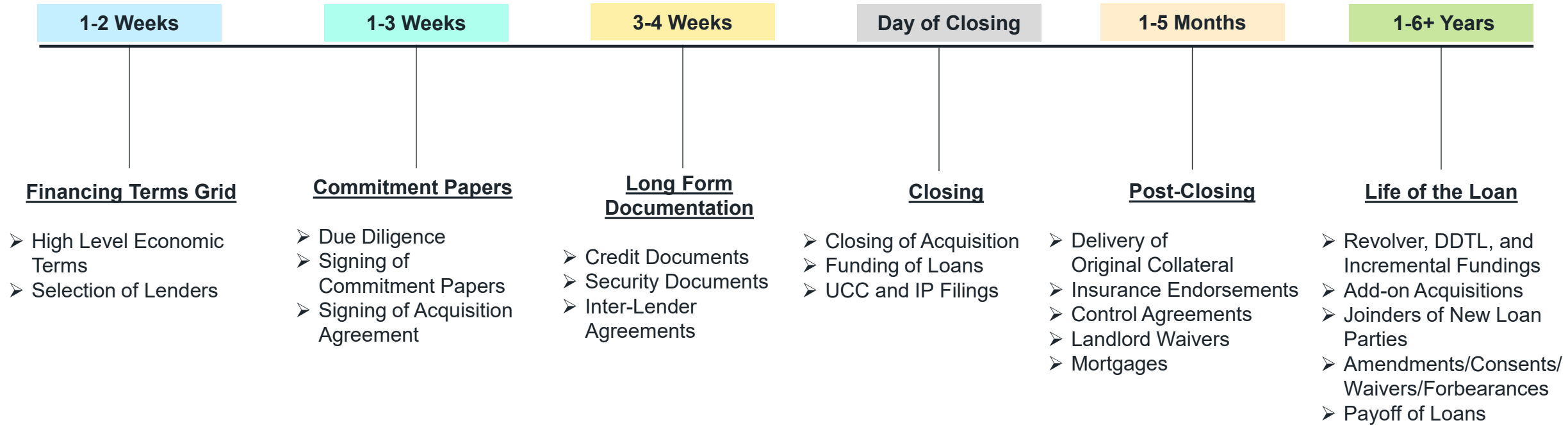
January 23, 2024

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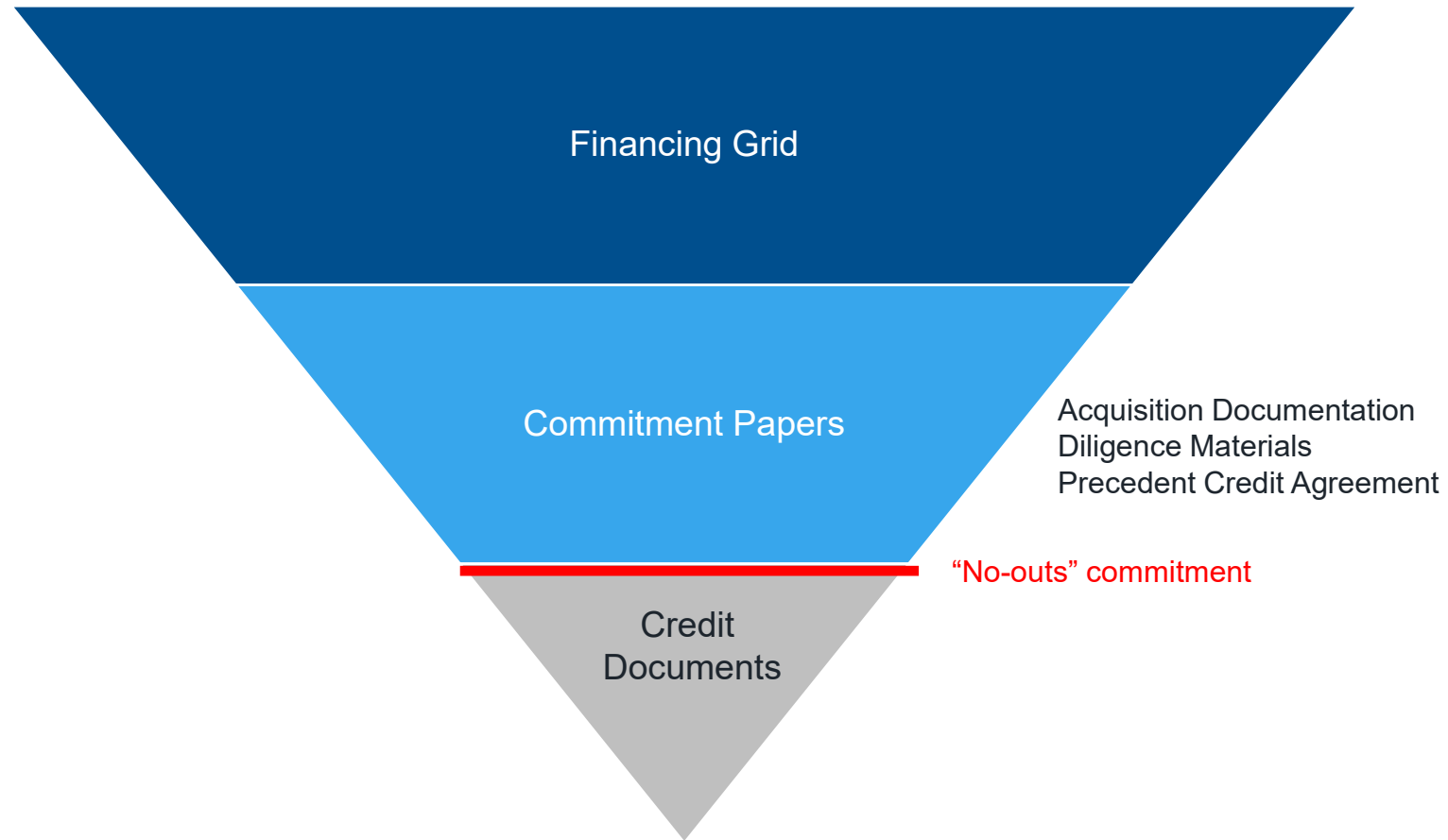
Agenda

- A. Overview of Transaction Life Cycle
- B. Introduction to Committed Financings
- C. Financing Terms Grids
- D. Commitment Papers
- E. Long-Form Credit Documentation
- F. Closing Mechanics
- G. Life of Loan & Post-Closing
- H. Non-Committed Deals (Revisited)

Deal Process – Lifecycle of a Deal



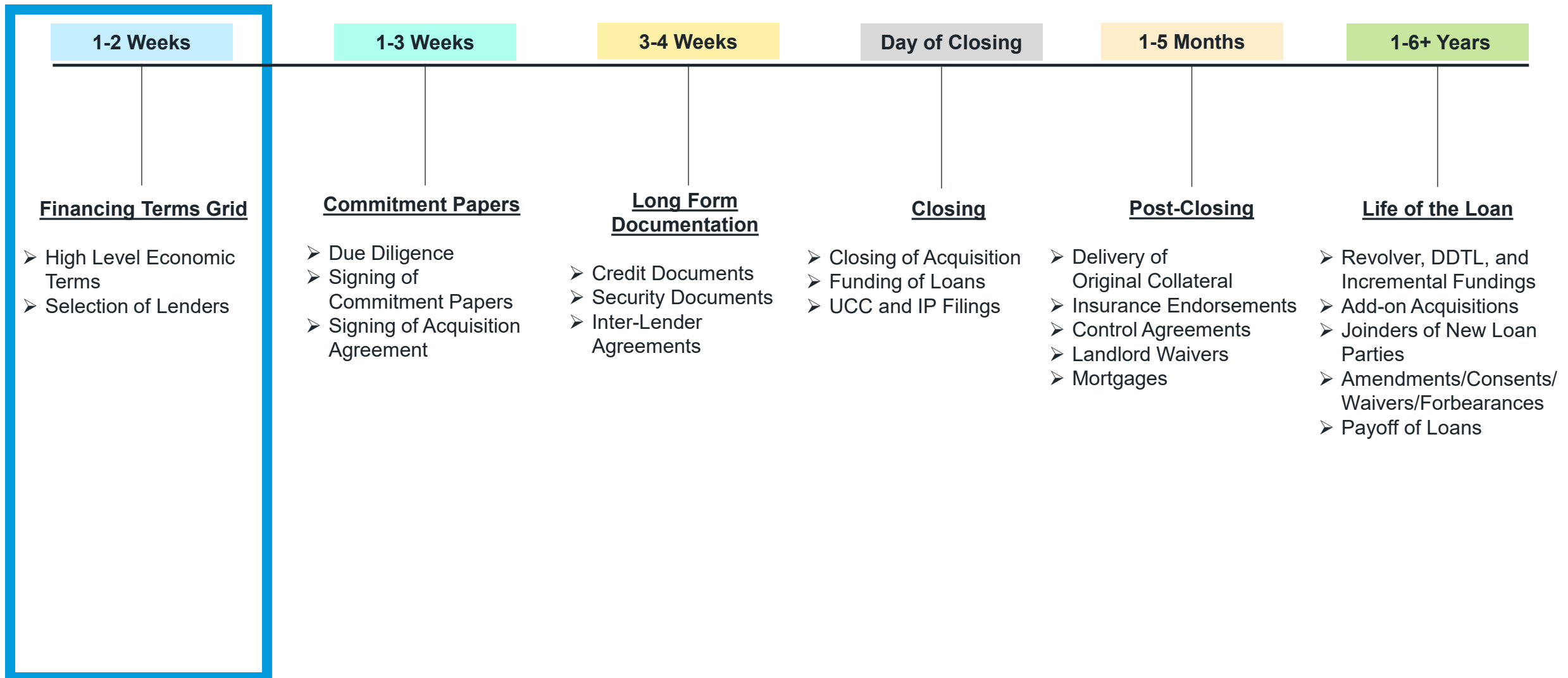
Committed Transactions: Competitive M&A/LBO Process



Committed vs. Non-Committed Transactions

- What is committed financing?
- When is committed financing required (or not required)?
- What does that mean for your financing?

Deal Process – Lifecycle of a Deal



Financing Terms Grid

- Solicitation of high-level economic terms
- How does this feedback get used:
 - narrow down a pool of potential lenders based on their feedback to the grid
 - test the waters on potential financing structures as early as possible in order to streamline the drafting process down the road

Example of Terms

- Many of the topics that are negotiated at the grid stage will be covered in future Proskauer Academy sessions, but a few examples of common terms that include an embedded legal issue along with a high-level economic term are:

Delayed Draw Term Loans

TERMS	SPONSOR PROPOSAL	LENDER RESPONSE
(e) Delayed Draw Term Loan (DDTL)	Same terms as the Term Loan, unless otherwise stated	
(i) Amount	\$[●] million (up to [●]% of the principal amount of Term Loans)	
(ii) Tenor	7 years	
(iii) Availability	24 months	
(iv) Incurrence Test	Pro forma Initial First Lien Net Leverage Ratio (subject to LCT election)	
(v) Use of Proceeds	(x) Acquisitions and investments (including fees, costs and expenses and restricted payments, earn-outs, seller notes and holdbacks related thereto), (y) capital expenditures and other general corporate purposes and (z) to repay RCF and replenish balance sheet cash used for the forgoing	

Delayed Draw Term Loans

TERMS	SPONSOR PROPOSAL	LENDER RESPONSE
(e) Delayed Draw Term Loan (DDTL)	Same terms as the Term Loan, unless otherwise stated	OK
(i) Amount	\$[●] million (up to [●]% of the principal amount of Term Loans)	\$[___] million / 20%
(ii) Tenor	7 years	6 years
(iii) Availability	24 months	OK
(iv) Incurrence Test	Pro forma Initial First Lien Net Leverage Ratio (subject to LCT election)	OK, except Initial Total Net Leverage Ratio and subject to agreement on LCT terms
(v) Use of Proceeds	(x) Acquisitions and investments (including fees, costs and expenses and restricted payments, earn-outs, seller notes and holdbacks related thereto), (y) capital expenditures and other general corporate purposes and (z) to repay RCF and replenish balance sheet cash used for the forgoing	OK, except (i) delete clause (y) and (ii) add 90 day look-back period to clause (z) (e.g. uses must have occurred in the 90 days prior to the applicable DDTL funding date)

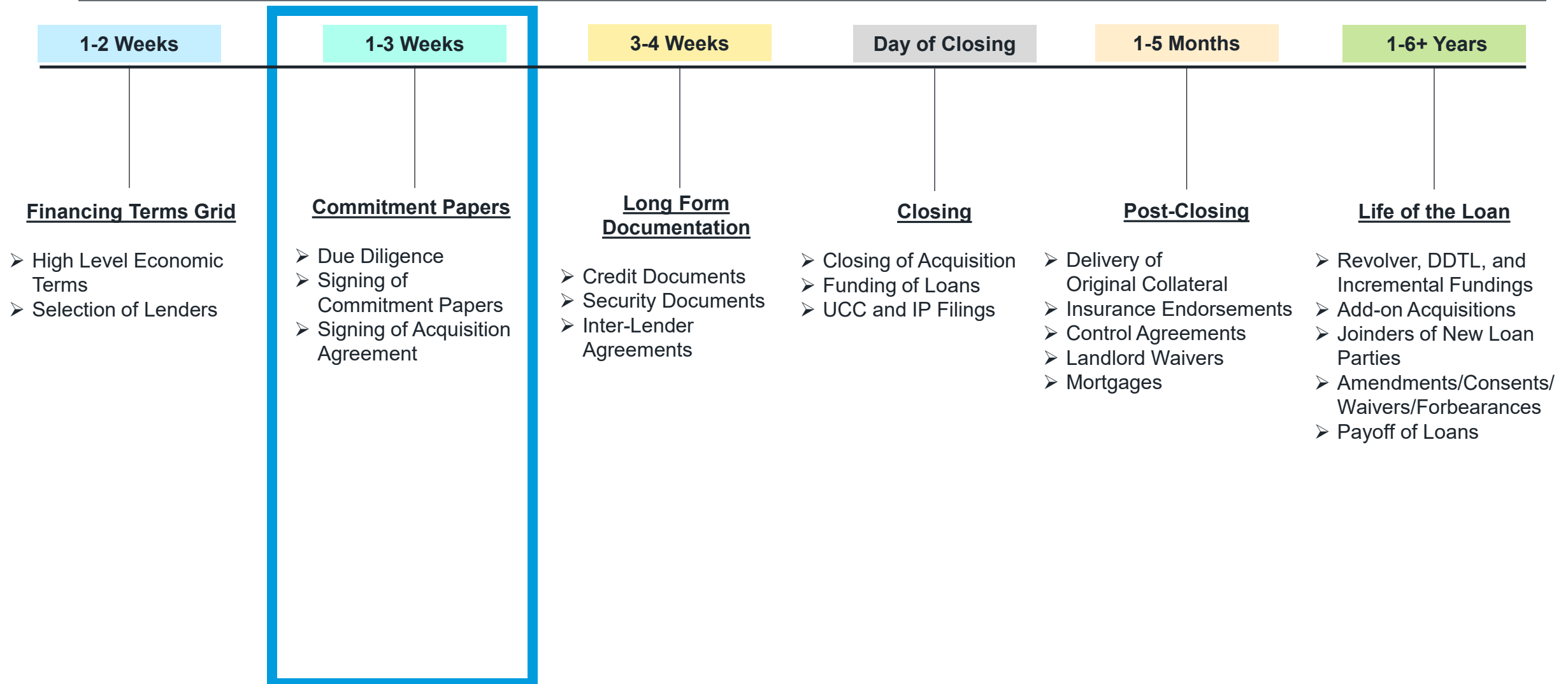
Documentation Precedent

TERMS	SPONSOR PROPOSAL	LENDER RESPONSE
Definitive Documentation		
(a) Documentation Principles	Definitive documentation will be based upon and no less favorable to the borrower than the definitive documentation for Project Turbo Jet and the existing target credit agreement, and will reflect the terms set forth in the commitment papers and additional terms and flexibility in any recent precedent credit agreement of the Sponsor for similar transactions.	
(b) Basket/Threshold Grower Component	All dollar baskets and monetary exceptions and thresholds will include “grower” components based on EBITDA	

Documentation Precedent

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(b) Basket/Threshold Grower Component	All dollar baskets and monetary exceptions and thresholds will include “grower” components based on EBITDA	OK

Deal Process – Lifecycle of a Deal



Negotiating a Commitment Letter: Key Sections and Considerations

- **Who?** Identification of commitment parties, agents and arrangers; disqualified institutions
- **How much?** Allocations; additional arrangers
- **How long?** Counter-sign date; commitment termination date

Syndication

- Syndicated transactions will often have some or all of the following:
 - Syndication Assistance Rights
 - Clear Market Protections
 - Marketing Period
 - Flex Rights

The Annexes

- Transaction Description

- Summary of acquisition structure
- Minimum Equity Contribution
- Brief description of the facilities and use of proceeds (including any other debt for borrowed money to be incurred at closing)

- Conditions Annex

- “Sungard” or “Certain Funds Provisions” that dictate the conditions relating to the that will be required at closing.
- Consummation of the Transactions (including the Minimum Equity Contribution and any refinancing)
- Delivery of financial statements in accordance with the Acquisition Agreement

Bid Sets – A Work in Progress



Term Sheet

- Grid 2.0 - more detail and more provisions
- Binding on the resulting credit agreement
- Revisiting the Documentation Precedent

Fee Letter

- Confidential summary of economic terms consisting of:
 - Closing, Upfront or Arrangement Fees
 - DDTL Funding or Termination Fees
 - Agency Fees
 - Alternate Transaction Fees
 - Other Confidential Terms

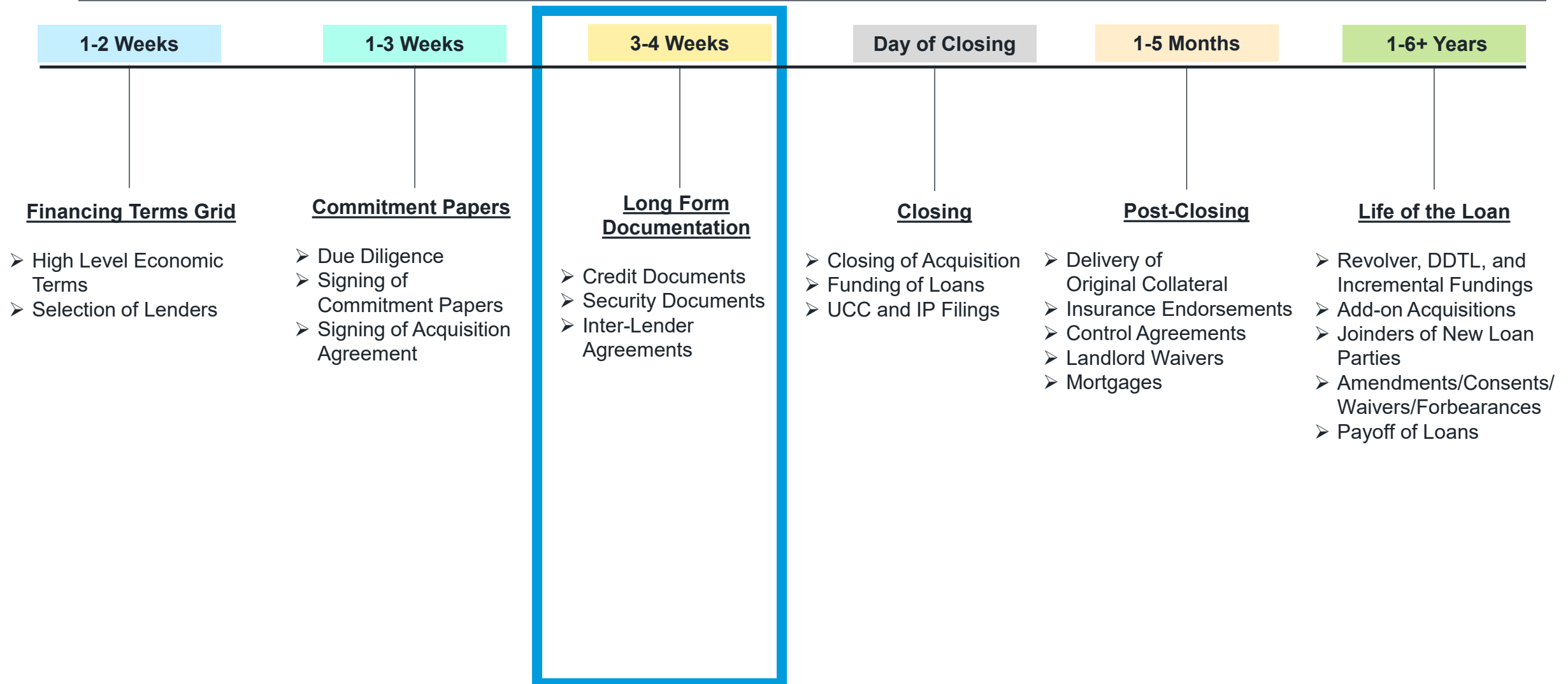
Business and Legal Due Diligence

- Non-reliance letters and leveraging Sponsor diligence
- Quality of Earnings and Model review

Signing of Acquisition Agreement

- While the Lenders do not sign the Acquisition Agreement, Lenders (and their counsel) will review the agreement and corresponding schedules.
 - Transaction Structure
 - Termination Date (including an extension mechanics)
 - Purchase Price
 - Special Indemnities or Escrows
 - Xerox

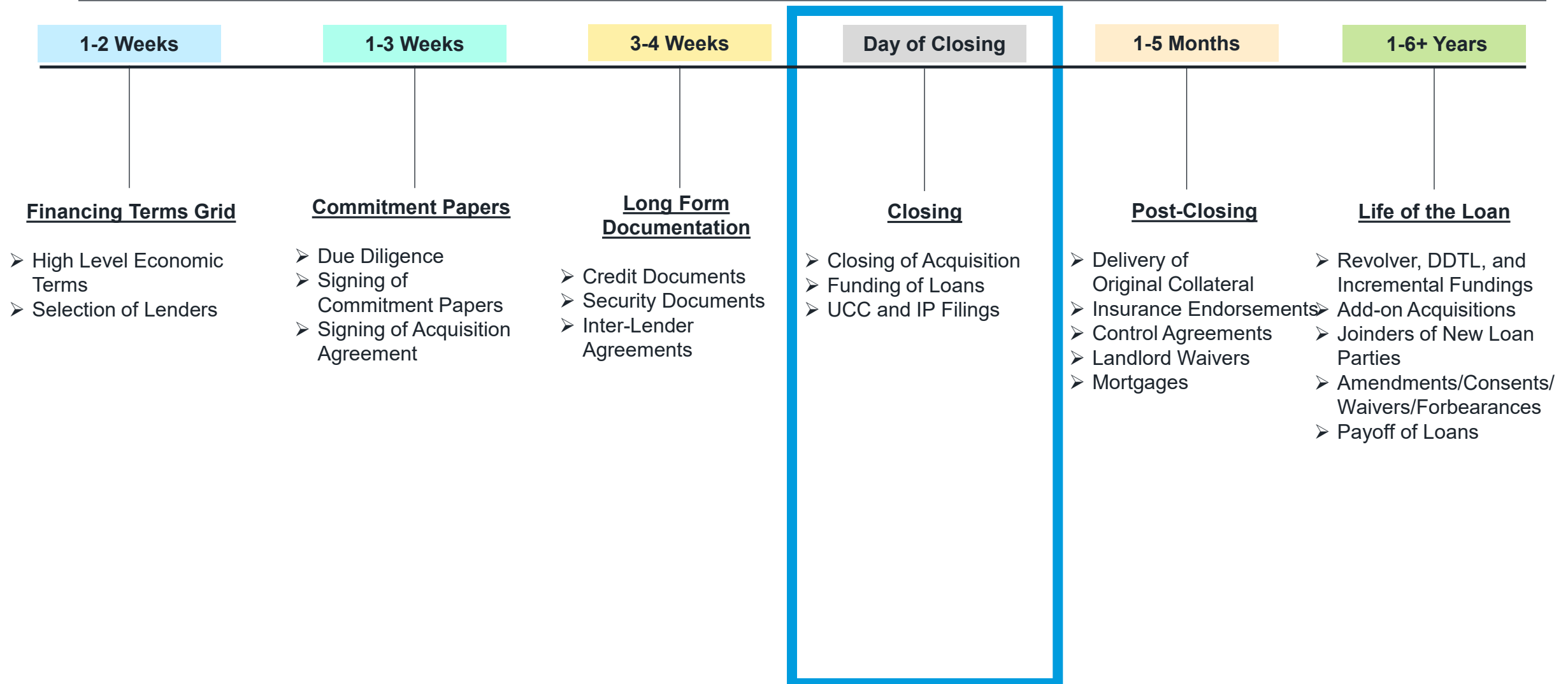
Deal Process – Lifecycle of a Deal



Negotiation of Long-Form Credit Documentation

- Credit Agreement - Often in a committed financing there will be very little left to negotiate because everything will have been addressed at the Commitment Letter stage, but generally will include:
 - Loan administration mechanics
 - Any items “to be agreed” from the term sheet
 - Any other requested deviations from the agreed precedent
- Everything else - Security, Corporate and Ancillary Documents, Opinions, Intercreditor Agreements.

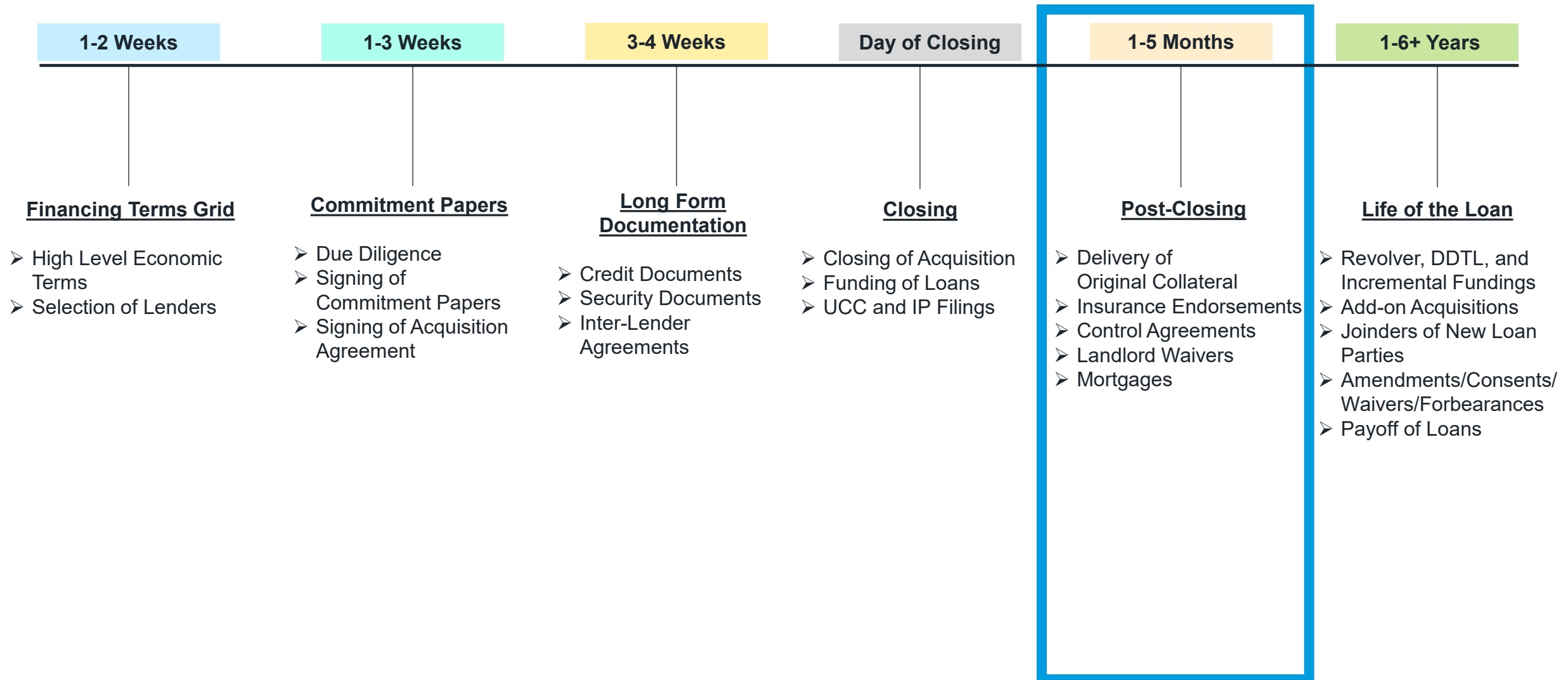
Deal Process – Lifecycle of a Deal



Closing Process

- The **how** of the financing, including:
 - Fund Level Allocations
 - Funds Flow
 - Borrowing Notices/Funding Memos
 - Prefunding Agreement (if applicable)
 - Closing Call

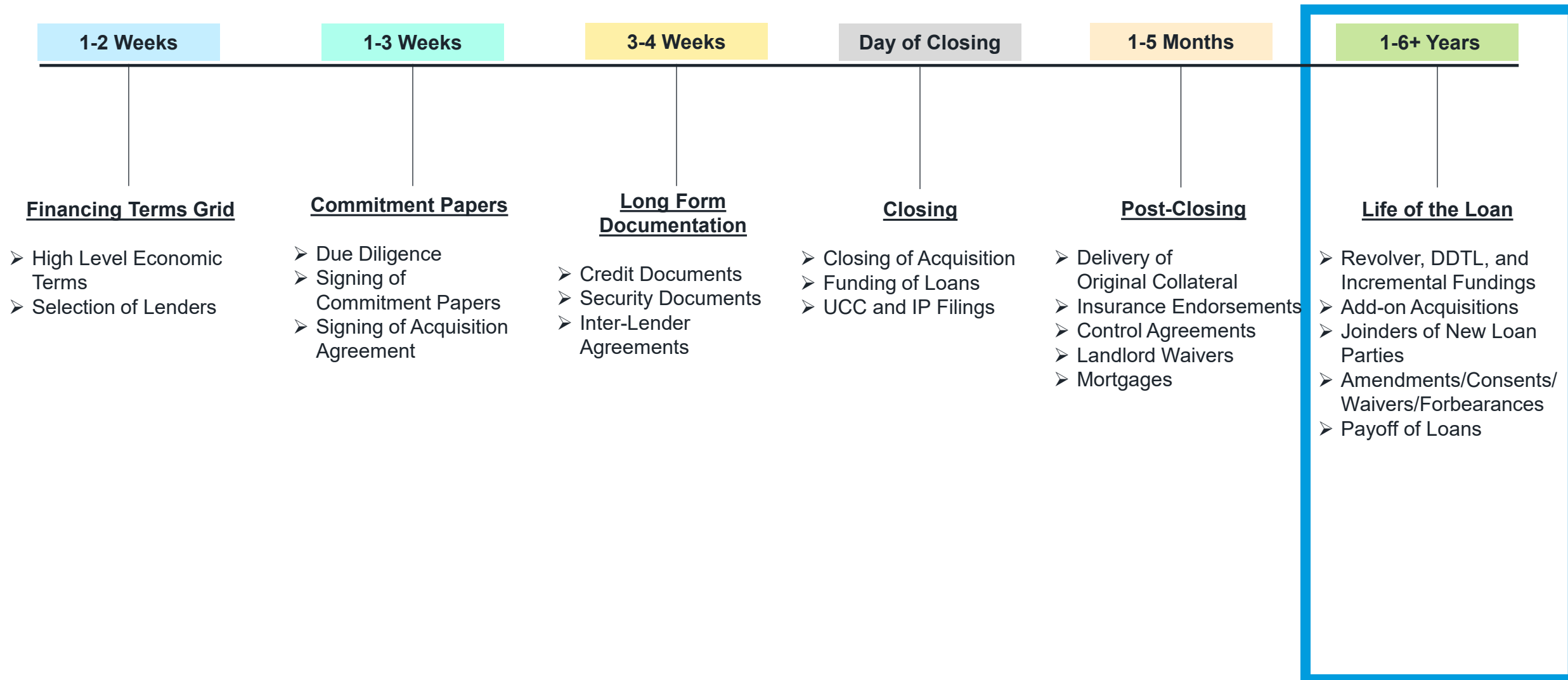
Deal Process – Lifecycle of a Deal



After the Wires (Post-Closing)

- Immediately After Closing:
 - Delivery of Original Collateral
 - Post-Closing Deliverables
- Life of Loan:
 - Exhibits
 - Amendments

Deal Process – Lifecycle of a Deal



A Parting Note On Non-Committed Transactions

- Terms of Engagement
- Credit Documentation
 - Negotiation of long-form documentation typically occurs at the same time as the completion of business and legal due diligence.
 - If in connection with an acquisition, simultaneous signing of credit documentation and acquisition agreement and closing of acquisition.

Post-Post-Closing

Questions?

Jessica G. Shearer



Partner

Boston

+1-617-526-9676

jshearer@proskauer.com

Education

Brown University, B.A., 2009

magna cum laude

Harvard Law School, J.D., 2013

cum laude

Admissions & Qualifications

Massachusetts State Bar, 2013

Jessica Shearer is a partner in the Corporate Department and a member of The Private Credit Group.

Jessica focuses her practice on representing private credit providers, including senior lenders, business development companies, mezzanine funds, small business investment company funds, insurance companies and sovereign wealth funds, in connection with acquisition financing, refinancing and restructuring transactions across the middle market.

She has experience in a wide range of financing types, including unitranche, first lien, second lien, secured and unsecured mezzanine, holdco, recurring revenue, preferred equity and debtor-in-possession, across a variety of industries.

Andrew H. E. Lyon



Associate

New York

+1-212-969-3175

alyon@proskauer.com

Education

Cornell University, B.A.

Emory University School of Law,
J.D.

Admissions & Qualifications

New York State Bar, 2016

Andrew H. E. Lyon is an associate in the Corporate Department and a member of the Private Credit Group.

Andrew represents private credit providers on all varieties of financing transactions, including first and second-lien, secured and unsecured unitranche, first out/last out and senior/super-priority structures and other private credit transaction structures in connection with leveraged buyouts, acquisition financings, dividend recapitalizations and refinancings, among other purposes. He has experience representing a diverse group of lenders in transactions across a wide range of industries.

Andrew earned his law degree with Honors from the Emory University School of Law where he was an editor of the Emory International Law Review, and graduated from Cornell University.

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