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# Proskauer University: Private Credit Building Blocks Series

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- **Program 1**
  - Introduction to Private Credit: Deal Process, Documentation, and Structure Considerations
- **Program 2**
  - Leverage Ratios: Definitional Fundamentals and Pitfalls
- **Program 3**
  - So You Thought You Were First?
- **Program 4**
  - Leakage: Plug The Holes BEFORE The Flood
- **Program 5**
  - Structural Risks: Sneaky Shenanigans
- **Program 6**
  - Key Market Terms and Commitment Letter Basics
- **Program 7**
  - Practical Exercise: Tricks to Quickly Spot Issues in Financing Grids

# Introduction to Private Credit: Deal Process, Documentation, and Structure Considerations

Presented by:

Evan Palenschat

Szeman F. Lam

January 19, 2023



Private Credit Resources

# Introduction to Private Credit

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- A. Private Credit: An Explosive Market
- B. Deal Process and Documentation: Practical Considerations
- C. Capital Stack and Recovery Priorities
- D. Leveraged Loans and Corporate Structure

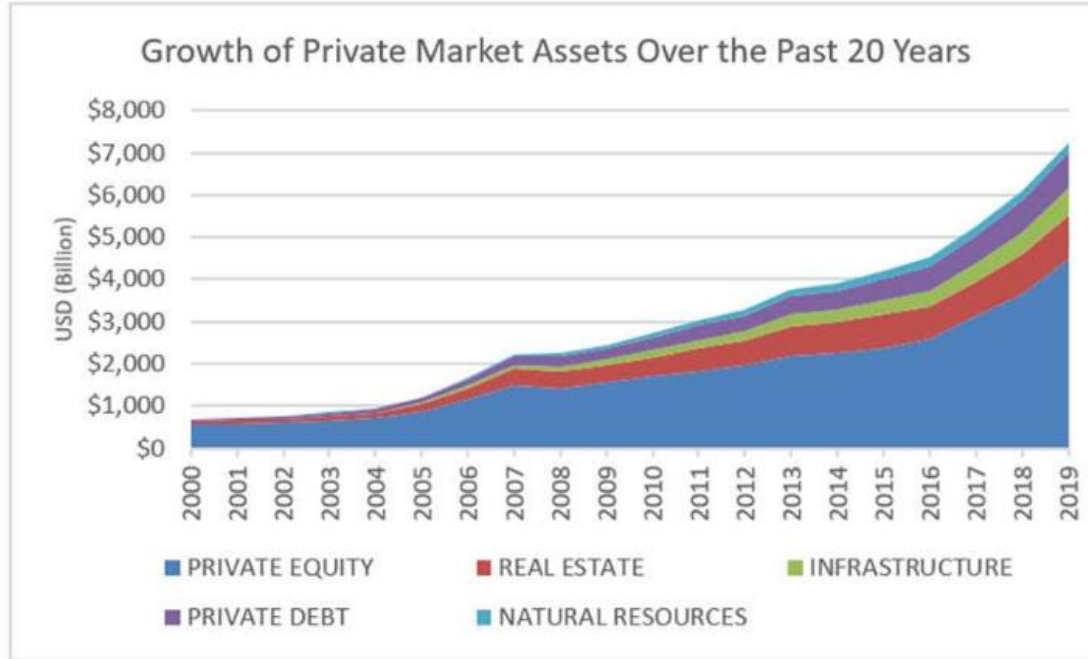
# The Private Credit Market

# The Private Credit Market

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- 2008 Great Recession
  - Collapse of Bear Stearns, Lehman Brothers and related systemic financial risks
  - Liquidity freeze
  - Dodd-Frank and other banking regulations
- Private Credit Opportunity
  - Expanded market share
  - Started in the lower middle market and/or junior capital
  - Migrated to upper middle market leveraged loan financing for acquisitions, dividend recapitalizations, refinancings and general working capital growth financing

# The Private Credit Market



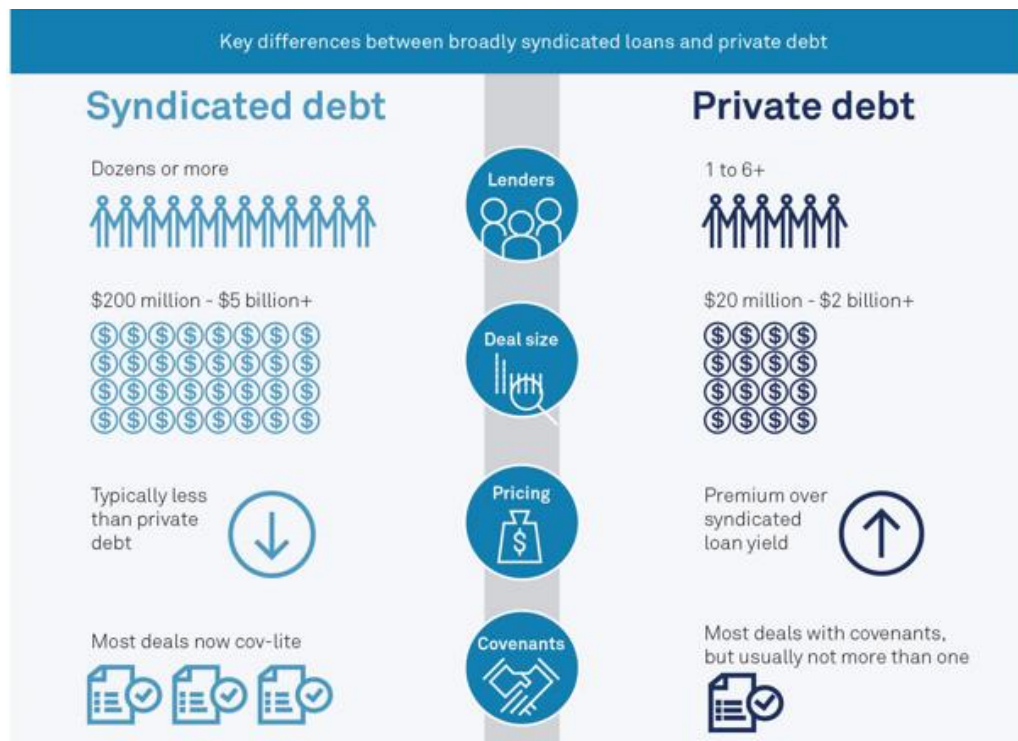
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# The Private Credit Market Today

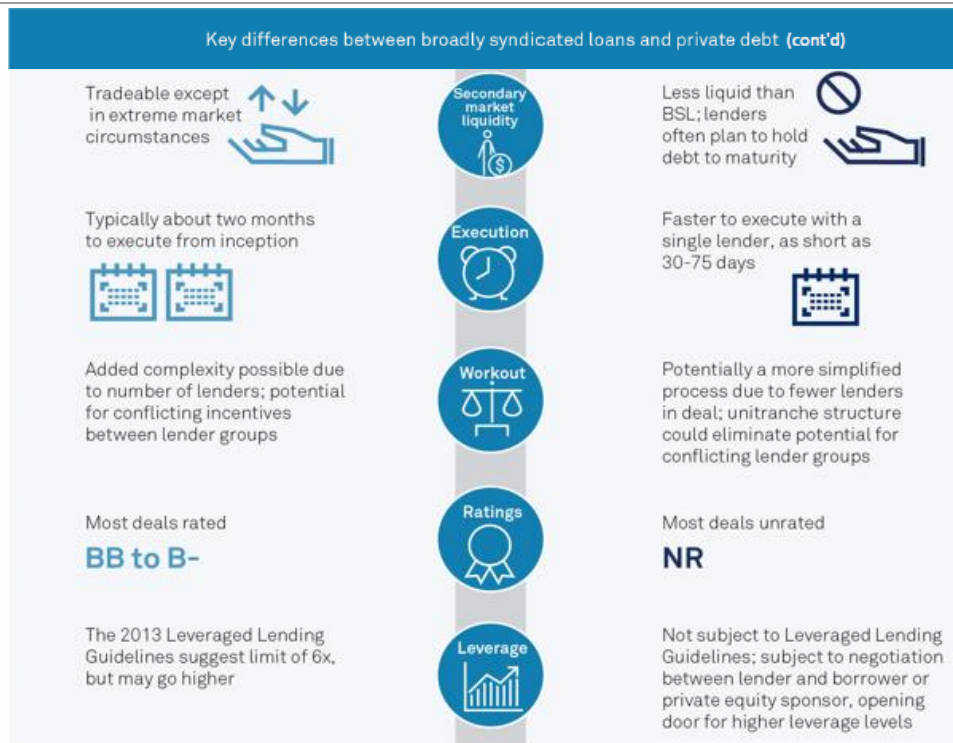
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- Private credit is currently the **third-largest** private capital asset class after private equity and real estate
- Assets under management exceed **\$1.3 trillion** (larger than bank-led syndication market) and are expected to continue growing globally
- Per Proskauer Private Credit Data, over **80%** are sponsor-backed, leveraged finance, senior secured **unitranche** transactions
- Has gone up market: Now over **50** transactions over **\$1 billion**
- Confluence of bank-intermediated syndication market and private credit lending markets
- Global expansion

# Private Credit vs. Syndicated Market: What Makes Private Credit An Attractive Alternative?



# Private Credit vs. Syndicated Market: What Makes Private Credit An Attractive Alternative?



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# Deal Process and Documentation

## Practical Considerations in Closing a Loan

# Deal Process – Committed Deals

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## Financing Grid Responses

- Solicitation of high-level economic terms

## Commitment Papers (Commitment Letter + Term Sheet + Fee Letter)

- Negotiation of substantive legal and business terms, including selection of a **binding precedent**
- Completion of business and legal due diligence
- Signing of acquisition agreement

## Credit Documentation

- Finalization of long-form documentation, including minimal negotiation
- Closing/effectiveness of acquisition

# Deal Process – Non-Committed Deals

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## Term Sheet (Optional)

- Negotiation of high-level business terms



## Credit Documentation

- Negotiation of long-form documentation
- 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

# Deal Process – Main Legal Documents

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- **Commitment Papers**
  - Commitment Letter, Term Sheet, Fee Letter
  - Acquisition Agreement and Disclosure Schedules
- **Credit Documentation**
  - Closing Checklist
  - Credit Agreement/Loan Agreement/Note Purchase Agreement with Exhibits and Schedules
  - Security Agreement, Pledge Agreement, Guaranty, and IP Security Agreements
  - UCC-1 Financing Statements
  - Corporate, Authorization, and Organizational Documents
  - Legal Opinions
  - Borrowing Notice, Closing Certificate, Solvency Certificate, and Letter of Direction
  - Intercreditor Agreement, Subordination Agreement, and/or Agreement Among Lenders
  - Payoff Letter, UCC-3 Termination Statements, and IP Releases

# Deal Process – Main Legal Documents

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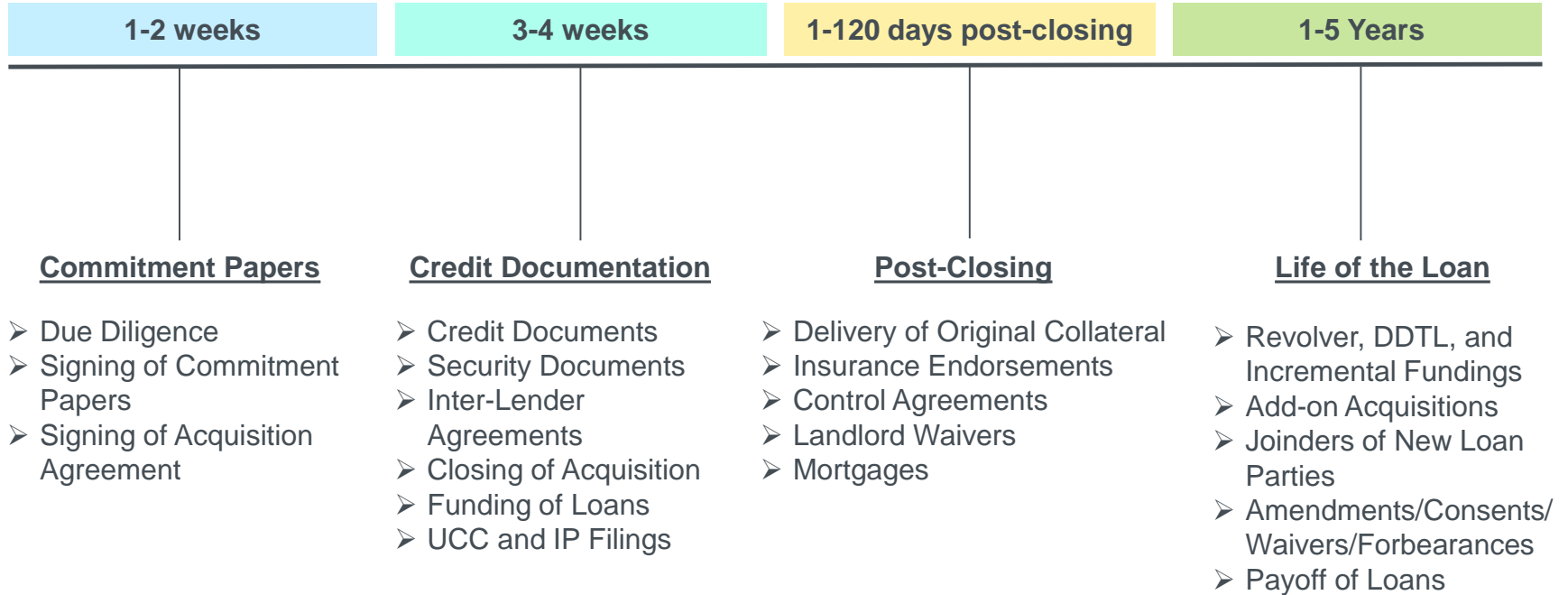
- **Post-Closing**
  - Insurance Endorsements
  - Control Agreements
  - Landlord Waivers
  - Mortgages
- **Life of the Loan**
  - Incremental Amendments
  - Add-On Acquisitions
  - Joinder of New Credit Parties
  - Amendments/Consents/Waivers to Credit Agreements
  - Payoff Documents

# Key Business Team Process Management Considerations

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- Diligence
  - Borrower/Lender KYC
- Funding
  - Mechanics
  - Borrowing Notice
  - Funding Memo
  - Letter of Direction
  - Funds Flow
  - Wiring Information
- Pre-Closing
  - Internal Protocols
  - Managing Co-Lenders
  - Lender Allocations
  - Gathering Signature Pages
- Authorization
  - Release of Signature Pages
  - Closing Call
  - CPs Email

# Deal Process – Lifecycle of a Deal



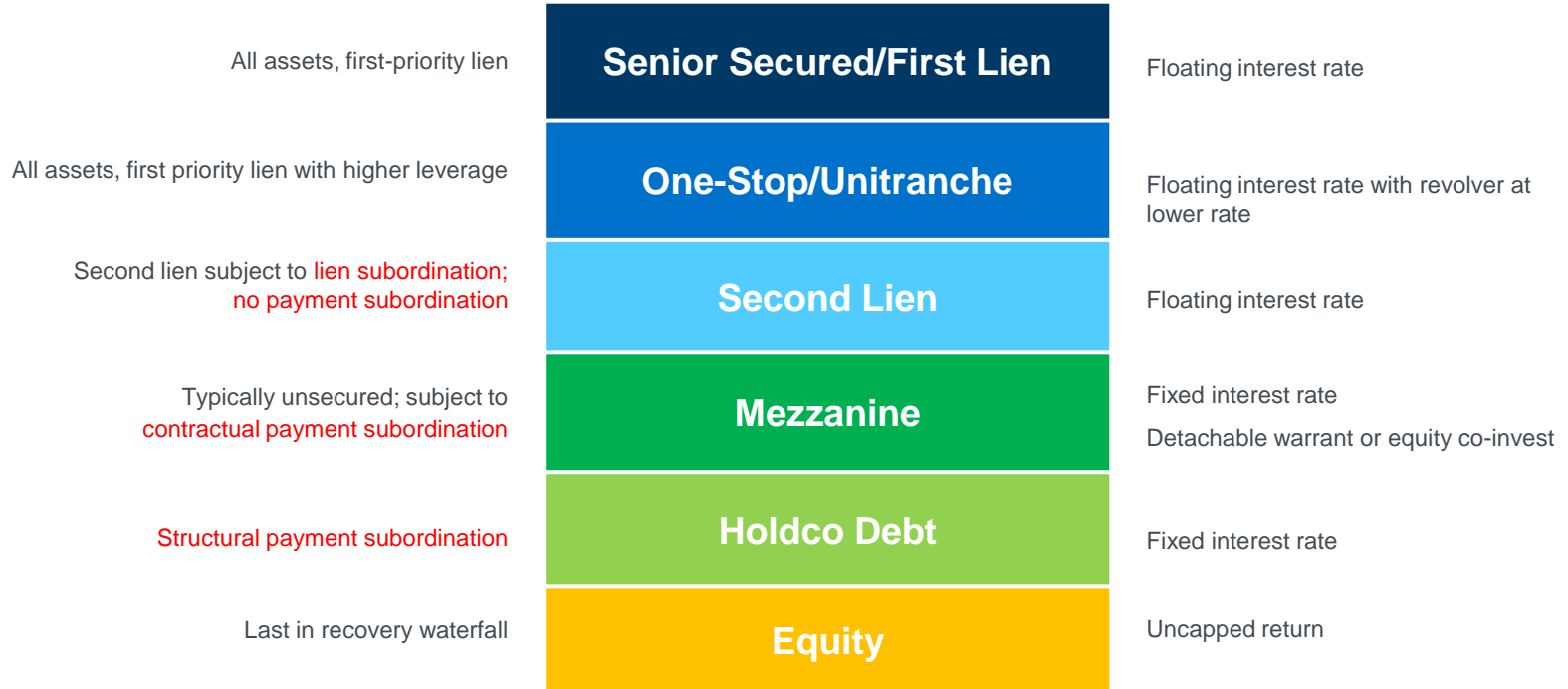
# Typical Layout of a Credit Agreement

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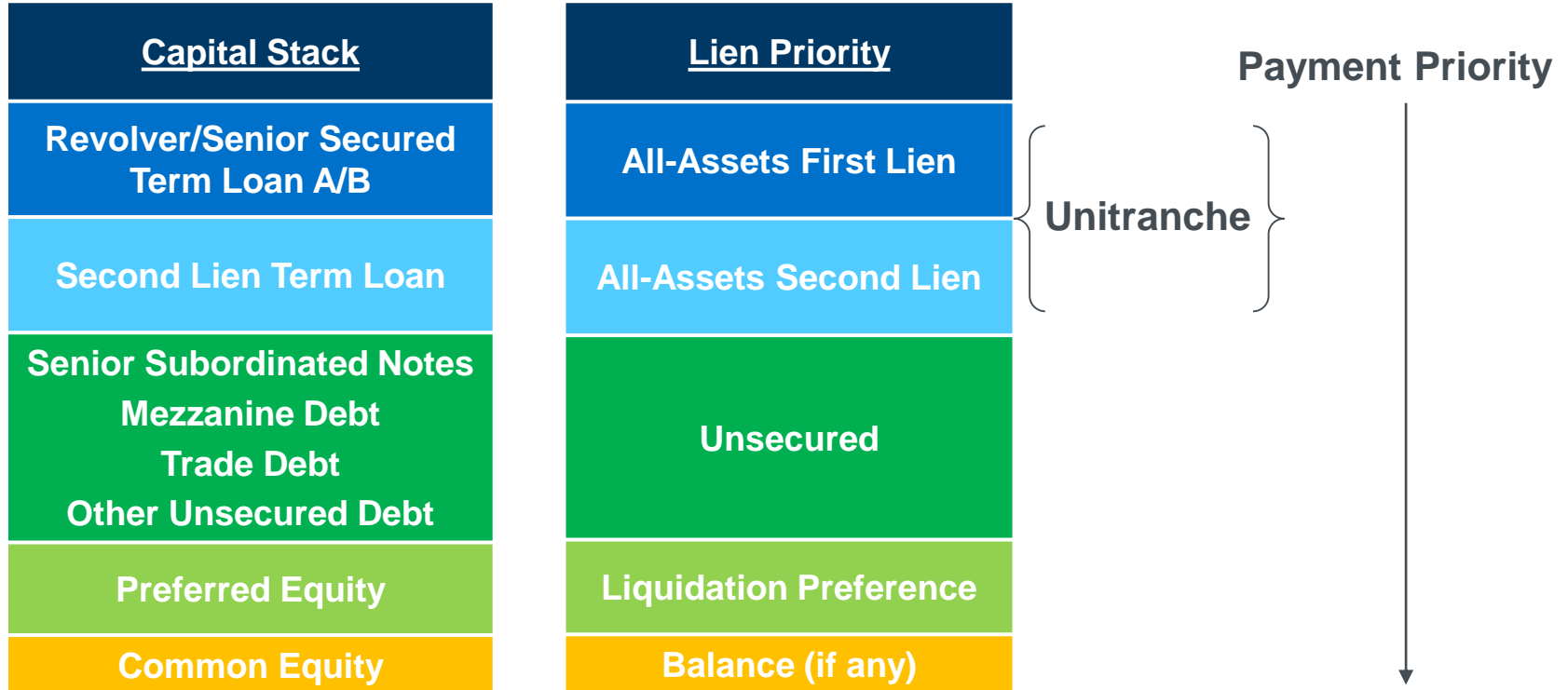
	Table of Contents
Article I	Definitions and Accounting Terms
Article II	Commitments and Credit Extensions
Article III	Taxes, Increased Costs Protection, and Illegality
Article IV	Conditions Precedent to Credit Extensions
Article V	Representations and Warranties
Article VI	Affirmative Covenants
Article VII	Negative Covenants
Article VIII	Events of Default and Remedies
Article IX	Administrative Agent
Article X	Miscellaneous

# Capital Stack and Recovery Priorities

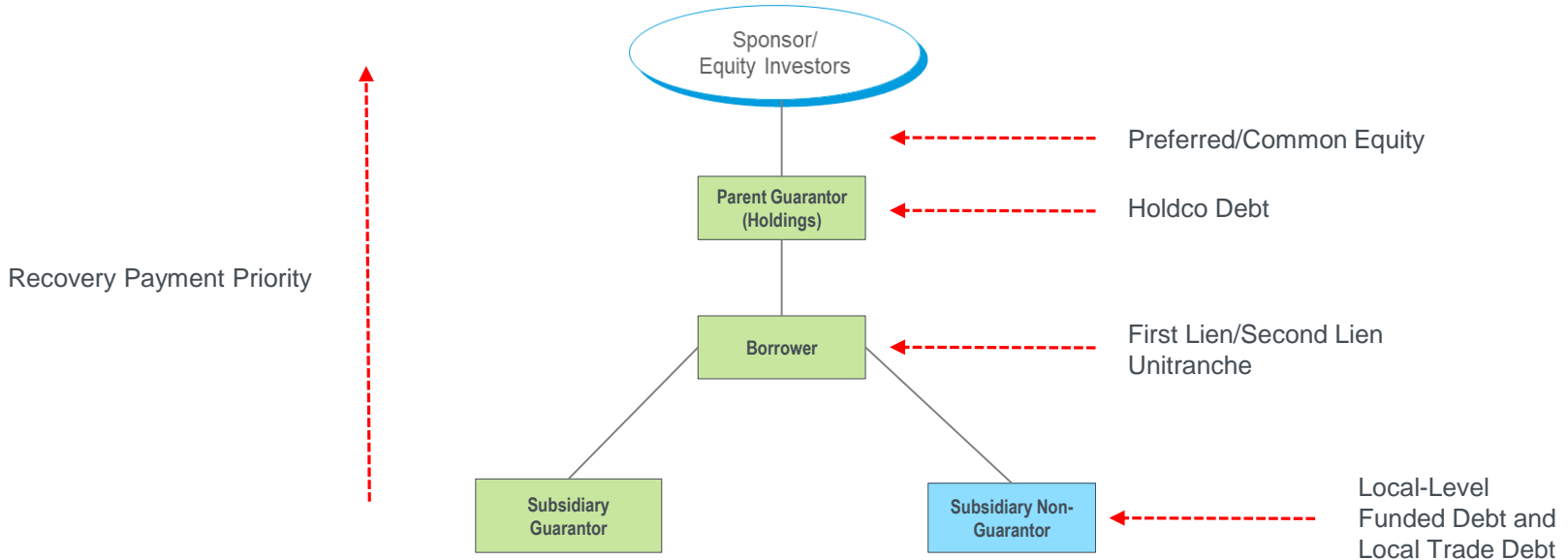
# Capital Stack



# Capital Stack – Lien and Payment Priorities



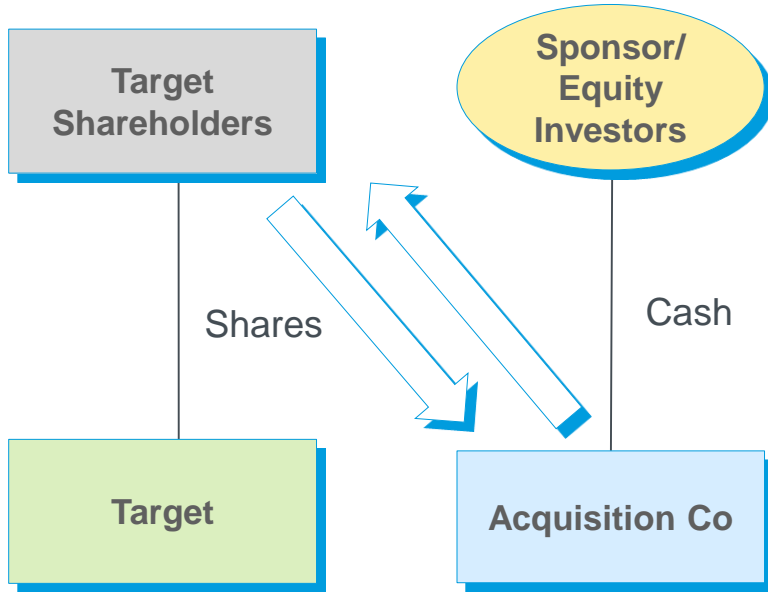
# Loan Structures and Recovery Priorities



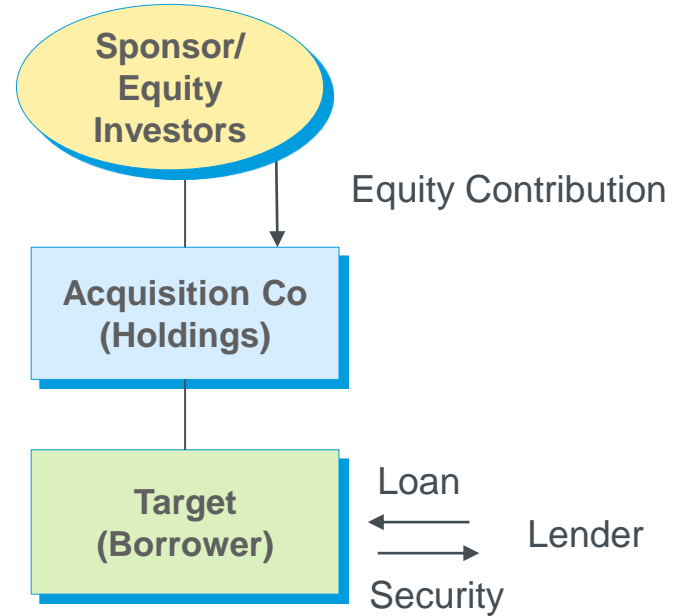
# Leveraged Loans and Corporate Structure

# Stock Acquisition Steps (Simplified)

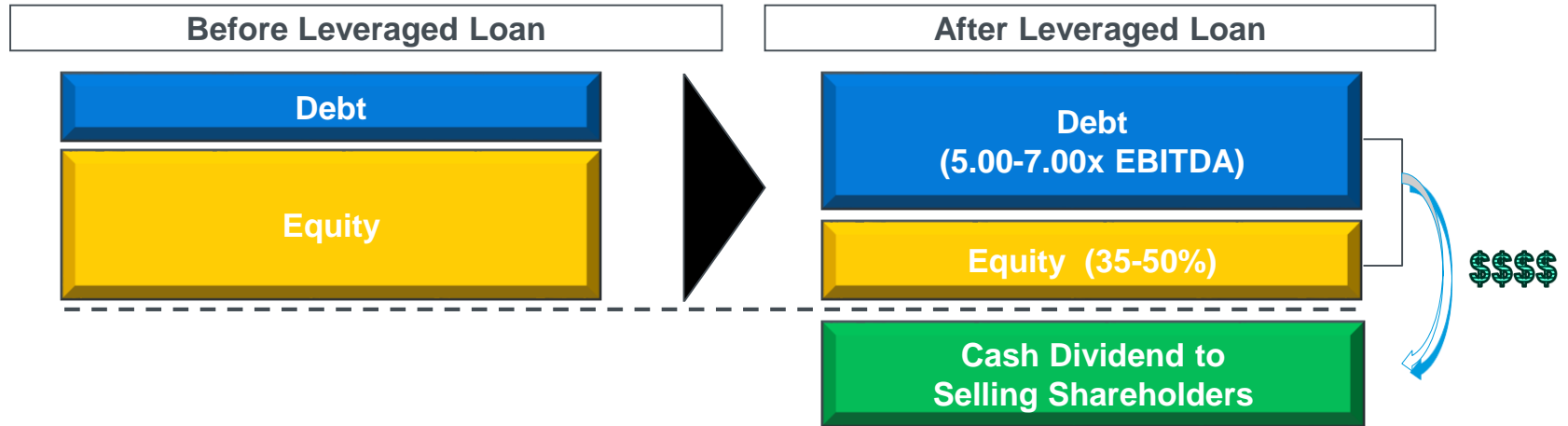
## Pre-Sale



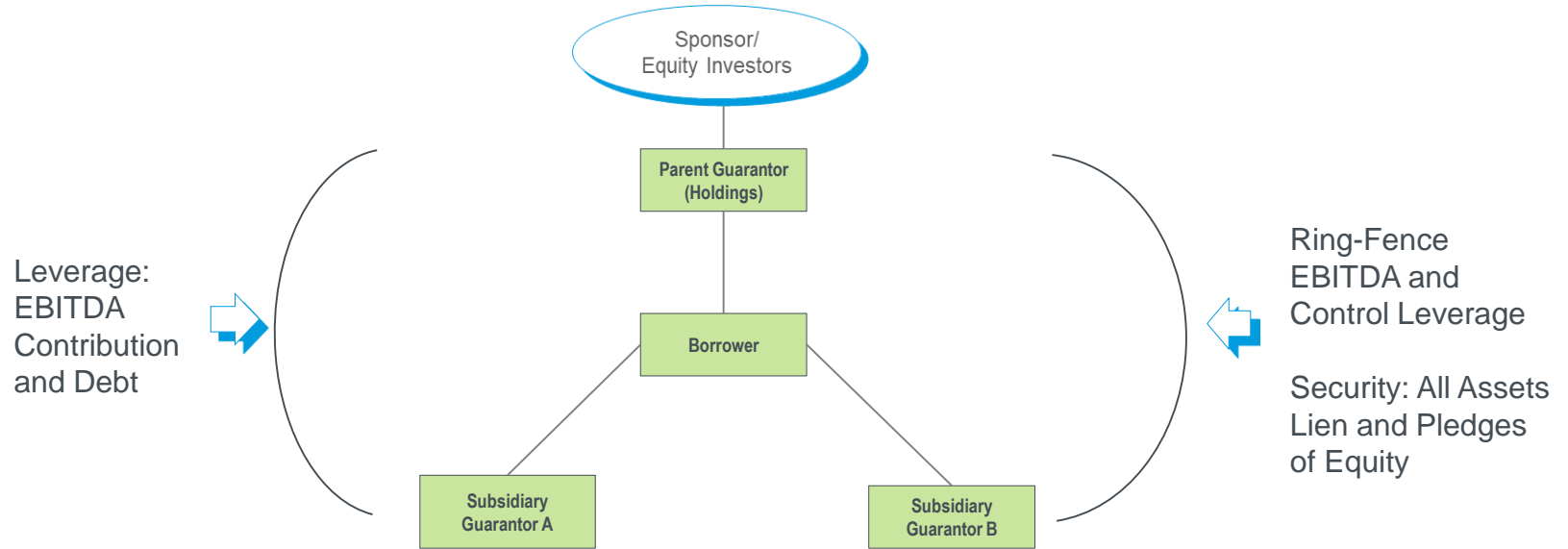
## Post-Sale



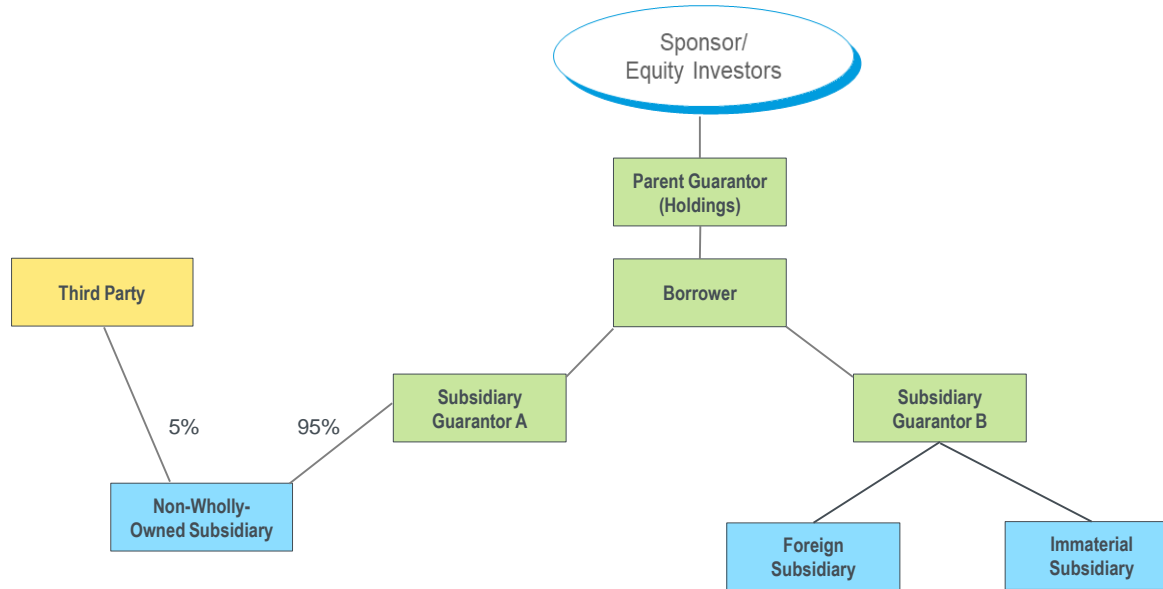
# Leveraged Loan Structure (Generally)



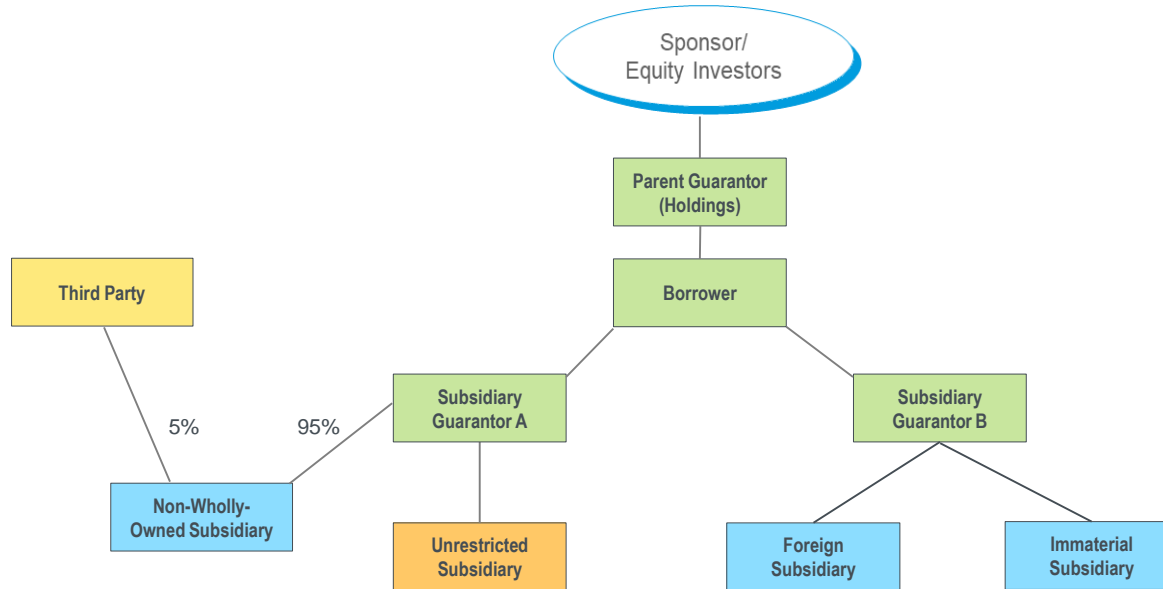
# Corporate Structure – Loan Parties



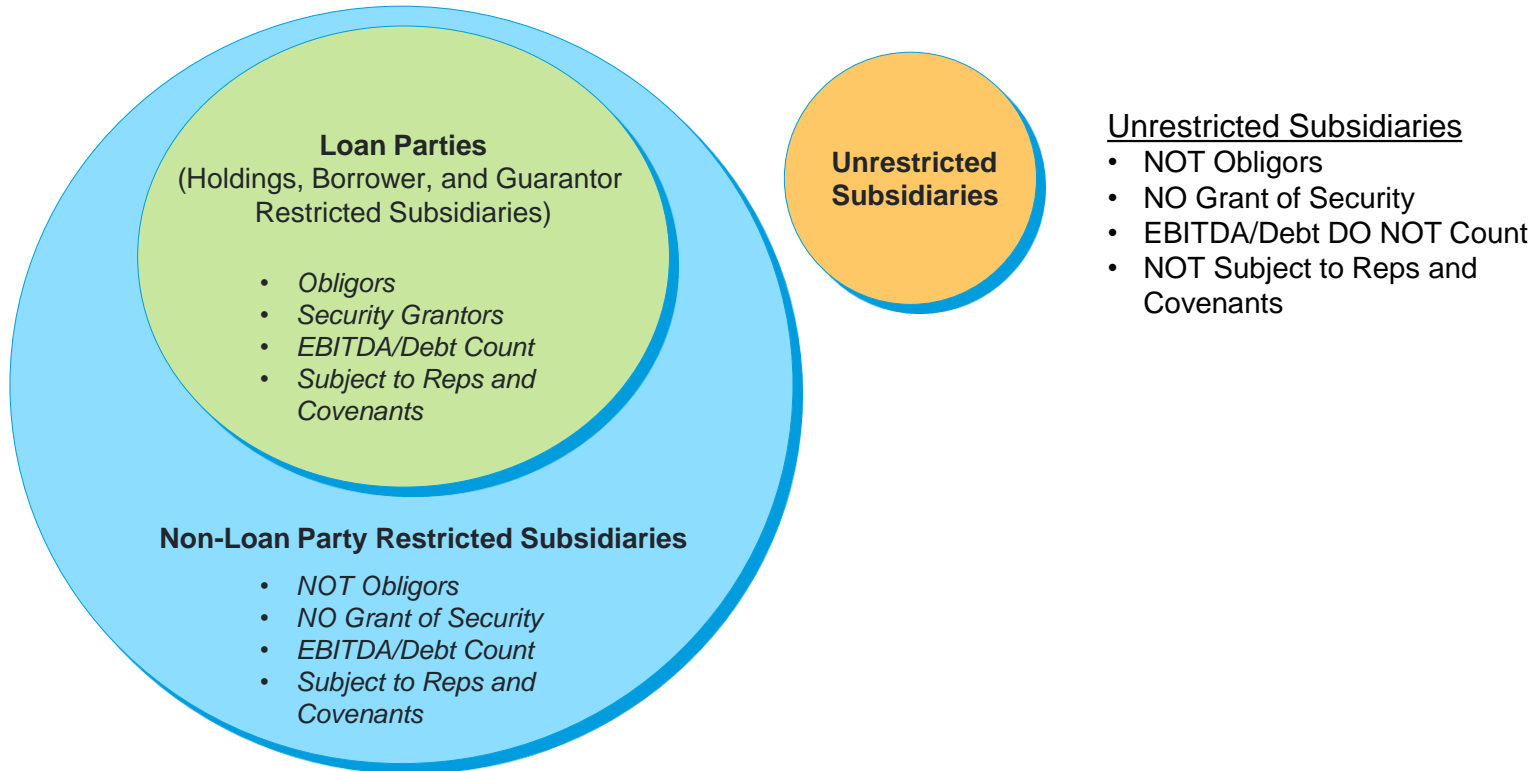
# Corporate Structure – Restricted Subsidiaries



# Corporate Structure – Unrestricted Subsidiaries



# Corporate Structure – Loan Parties vs. Restricted Subsidiaries vs. Unrestricted Subsidiaries



# Presenters

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Evan Palenschat advises clients on private credit and special situations investing, with a particular focus on debt financings and specifically in the area of leveraged finance.

Evan has extensive experience advising private credit funds, financial institutions, private equity funds, hedge funds and public and private companies/borrowers/issuers, as well as alternative lending institutions. His practice involves all aspects of corporate transactional work and he also assists his clients in work-outs and other downside scenarios. Evan has represented his clients on countless transactions that include senior, second lien and subordinated financings, asset-based loans, work-outs, restructurings and bridge and mezzanine financings. Evan received his J.D. from Columbia University School of Law and also received an M.B.A. from the University of Illinois.



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Szeman Lam is an associate in the Corporate Department and a member of The Private Credit Group.

Szeman represents private credit providers in financing transactions, including private debt funds, business development companies, specialty finance companies, insurance companies, and sovereign wealth funds. She has experience in unitranche, first and second lien, secured and unsecured mezzanine, split collateral, holdco, and other deal structures in connection with acquisition financings, leveraged buyouts, refinancings, dividend recapitalizations, cross-border financings, restructurings, forbearances, and debtor-in-possession financings, across a wide range of industries.

Szeman is co-chair of the Associate Council and is on the Firm's Boston Hiring Committee. She also serves on the board of Boston Explorers, a nonprofit organization dedicated to providing a unique summer camp experience for urban youth that combines hands-on activities with spontaneous adventures and explorations across the city.

Szeman earned her law degree from the University of Virginia School of Law and graduated magna cum laude from Duke University. During law school, she was an editor of the Virginia Law Review and advised startup companies on general corporate and financing matters through the Entrepreneurial Law Clinic.

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