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Anti-net short provisions in syndicated credit facilities

by Todd Koretzky
Partner, New York

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Windstream Provisions: Background

A handful of recent leveraged finance transactions have ushered into the market a new suite of terms seeking to insulate borrowers from unwanted conduct by lenders that have an overall "net short" position in respect of the borrower or its debt. Such lenders, referred to as Net Short Lenders (as further described below), may have a financial incentive to become "net short debt activist" investors[1] and exhibit behavior that is generally perceived to be misaligned with the objectives of the borrower, its equityholders (including any financial sponsor) and its creditors (including other lenders). These new credit agreement terms (referred to herein as the **Windstream Provisions**)[2] first began appearing in the spring of 2019 following telecommunications company Windstream Holdings Inc.'s bankruptcy filing resulting from its defeat in a court battle with one of its bondholders over whether Windstream had defaulted under its bonds[3], and are evolving on a deal-by-deal basis. Given that the Windstream Provisions apply to certain fundamental sections of loan documentation (e.g., voting, transferability and remedial rights), it is important that all participants in the syndicated loan market are aware of their scope and impact, and are equipped to assess the nuanced issues presented by their inclusion in a credit facility.

In addition to adding a complicated set of protocols for the parties in already voluminous syndicated debt documentation, certain aspects of the Windstream Provisions represent a paradigm shift for a relatively passive-investor market by requiring lenders to actively and carefully monitor certain of their ancillary activities (and potentially such activities of their affiliated businesses), and to provide related assurances to the borrower or, in limited cases, other lenders.

This article summarizes the fundamental aspects of the Windstream Provisions, including (1) the meaning of "net short," (2) to whom the anti-net short provisions apply, (3) when and how lenders are required to

1 A "net short debt activist" refers to an investor that utilizes its position as a creditor of a company to identify and act upon historical or technical defaults (often referred to by market commentators as "manufactured defaults") for the purpose of causing distress and driving down the value of the company's loans or bonds, presumably because the investor stands to benefit from an outsized "short" position with respect to the company or its debt (achieved through a derivative instrument, an insurance product or similar means) that exceeds the value of the investor's "long" exposure.

2 We note that the emergence of the Windstream Provisions is not limited to syndicated loans, as they have also begun to appear in indentures for high-yield bonds. While we have limited our discussion in this article to loans, much of the commentary applies to bonds as well.

3 It has been widely reported that the investor in the Windstream case that asserted the default held an overall "net short" position with respect to Windstream's debt, achieved through the purchase of credit default swaps (**CDS**) or equivalent derivative instruments, and thereby stood to profit from the issuer's default and bankruptcy (each of these adverse credit events being a customary triggering event for a CDS payout).

confirm their status, (4) a rare but significant undertaking whereby borrowers can require lenders to furnish evidence of their positions, and (5) the legal and practical consequences under a credit agreement for Net Short Lenders. We refer to the foregoing subset of Windstream Provisions as the **Net Short Restrictions**. Additionally, we (6) highlight certain terms often appearing alongside the Net Short Restrictions and arising from similar motivations (which terms, together with the Net Short Restrictions, comprise the full package of Windstream Provisions) and (7) share our conclusions and observations for lenders, borrowers (and their equity holders and financial sponsors) and other market participants (including legal counsel), as the Windstream Provisions are proposed with increasing frequency in U.S. syndicated financings.

(1) Net Short: Defined

Net Short Lenders

As presented in representative credit agreements, the term **Net Short Lender** refers to any lender or participant (or prospective lender or participant) that would stand to benefit economically from (by way of a short position created by purchasing CDS or similar derivative instruments) the distress or demise of the borrower or a default in respect of its debt, including due to bankruptcy. A Net Short Lender's net short position, as of a date of determination, is the net positive position, if any, held by such lender that is remaining after deducting the aggregate amount of the "long" exposure the lender holds (i.e., positions where the lender is exposed to the credit risk of the borrower) from the aggregate amount of any "short" exposure to the borrower and its indebtedness (i.e., positions whereby the lender is protected from, or effectively insured against, the credit risk associated with its long position or that would otherwise result in a third-party payment to the lender upon a default or similar adverse credit event in respect of the borrower or its debt) held by the lender (such calculation being referred to herein as the **Net Short Determination** with respect to such lender).

Although it may appear to be straightforward, there are a number of inherent issues presented by the Net Short Determination and likewise in the credit agreement language that sets forth the relevant definitions used for such calculation in respect of any lender. Avoiding these pitfalls will reduce the risk of unintended consequences for all parties – particularly with respect to the availability of good faith credit default hedging for lenders (which hedging, in turn, can contribute to enhanced liquidity in the secondary market for syndicated loans, provided that the countervailing risks associated with Net Short Lenders are appropriately addressed, as discussed herein) and the proper functioning of certain associated credit derivative products.

As an initial matter, the short side of the Net Short Determination equation should not include any derivative contracts that are entered into by the lender pursuant to bona fide market-making activities. Similarly, any derivative instrument in respect of an index that includes the borrower or any other member of the credit group (or any instrument issued or guaranteed by the borrower or any member of the credit group) should not count as a short position, so long as (a) such index is not created, designed, administered or requested by the relevant lender and (b) the credit group and any obligations of the credit group, collectively, represent less than a specified percentage (e.g., 5.0%) of the components of such index.

Additional considerations from a derivatives perspective include:

– ensuring the loans under the credit agreement continue to qualify as "deliverable obligations" for hedging purposes (i.e., the debt obligations that a lender, as the credit protection buyer under a CDS contract, must deliver to the credit protection seller thereunder as a condition to the latter making the default protection payments contemplated by the CDS), which may require an analysis of the "deliverable obligation characteristics" of the referenced debt that are customarily required in the CDS market; and
– providing that the value of the derivatives themselves is measured appropriately for purposes of the Net Short Determination (which, based on the current market convention, is by reference to the notional amount of the derivative contract).

Should a borrower default on its debt or enter bankruptcy, a Net Short Lender, given its overall short exposure across all its positions, would stand to benefit financially from such adverse credit event. This presents a stark contrast to the conventional expectation that a creditor's fundamental investment thesis is predicated on repayment of the borrower's debt, and that value preservation for borrowers is preferable to value destruction. In this way, the direct economic incentives of a Net Short Lender are generally divergent from, and largely in opposition to, those of the borrower, the borrower's equity investors (including any financial sponsor) and the other creditors of the borrower (including the other lenders in the same syndicate as the Net Short Lender). By way of example, this misalignment could cause major disruption in a workout negotiation, where, relative to its peer creditors, a Net Short Lender's economic incentives are inverted; thus it would likely not support or take any affirmative action (e.g., consenting to short-term waivers of defaults while longer-term solutions are pursued) to prevent further deterioration of the borrower's financial or operational condition.

We note that a lender's actual reasons or motivations for holding an overall short or long position at any point in time are subjective, not necessarily nefarious and may simply reflect a variable hedging strategy, reactions to market volatility or other independent factors. Further, even where its direct financial incentives dictate otherwise, a Net Short Lender may take into consideration other indirect factors (e.g., reputational implications, overarching client relationships, political fallout, litigation risk and social responsibility) when determining and calibrating its approach to any particular situation, including where a borrower is in financial distress. Nonetheless, the Windstream Provisions are blanket terms that do not differentiate based on the underlying rationale for any particular lender's aggregate net position or other factors that might mitigate the risk of a Net Short Lender actually becoming a net short debt activist or acting solely based on the direct, short-term economic results of its net exposure.

Lender Affiliates

A strenuous debate has emerged as to whether, for purposes of the Net Short Restrictions, a lender's net position should take into account the exposure of the lender's *affiliates* (i.e., entities that the lender controls, is controlled by or is under common control with). At first blush, there is some logic to the argument that absent inclusion of a lender's affiliates in the Net Short Determination, a lender could evade the Net Short Restrictions simply by booking a CDS (or other relevant derivative instrument) at a related entity that is not technically the lender of record under the credit agreement (and thus not itself subject to the Net Short Restrictions).

On the other hand, the Windstream Provisions have appeared initially in the Term Loan B (referred to herein as **TLB**) market, where lenders are by nature institutional investors – mutual funds, asset managers, insurance companies, hedge funds, banks, etc. – often situated within large, multi-faceted financial institutions operating numerous other businesses, each with its own mandate, investment strategy, product focus, investors and/or fiduciary duties. In this context, requiring lenders to be aware of or control the activities and positions of their affiliates may be unrealistic or, where internal information barriers exist, prohibited. In many cases, it may simply be untenable to require lenders to make Net Short Representations (further discussed below) about, and assume the associated legal risk as to, facts they could not reasonably be expected to know or are legally or regulatorily restricted from ascertaining.

We have seen the following two compromises on this issue in the market:

- The first approach provides that, where a lender's affiliates are included in the Net Short Determination, their "Screened Affiliates" are explicitly carved-out. Screened Affiliates (sometimes referred to as "Ethically Screened Affiliates") are those affiliates of a lender (a) that are managed as to day-to-day matters independently from the lender itself, (b) that have in place customary information screens (or "walls") between themselves and the lender, and (c) whose investment policies and decisions are not influenced by the lender or its investment decisions (whether directly or indirectly through another affiliate that is not a Screened Affiliate). In some formulations, lenders are required to make a good faith inquiry with their Screened Affiliates to ascertain their positions, but need not take further steps if such Screened Affiliates fail to respond (which, given the purpose of information barriers in the first place, is the likely outcome).
- More recently, credit agreements are excluding lenders' affiliates from the Net Short Determination outright, and instead may include an additional element in the Net Short Representation whereby a lender confirms that it is not knowingly and intentionally acting in concert with any of its affiliates for the express purpose of creating (and in fact creating) the same economic effect with respect to the credit group as though such lender were a Net Short Lender. In other words, lenders confirm they are abiding by not only the letter, but also the spirit, of the Net Short Restrictions.

Based on our experience, the latter formulation – excluding affiliates altogether – is more in line with the operational realities for most financial institutions, and therefore we believe is more likely to gain broader acceptance by potential lenders during primary syndication, as it is simpler, easier to manage, and more controllable for the wide range of lenders that participate in the U.S. syndicated loan market.

(2) Unrestricted Lenders

Net Short Restrictions generally apply to all credit facilities under a particular credit agreement, but are primarily aimed at the syndicated TLB tranche – where net short activist creditors (or the types of lenders that are potentially net short debt activists) would naturally reside. In contrast, borrowers and their equity holders and financial sponsors are understandably less concerned about the institutions providing the borrower's revolving credit facilities at closing, as those lenders tend to be relationship banks and/or affiliates of the arrangers for the financing. Similarly, the motivations and actions of regulated entities and their affiliates, which are generally viewed as unlikely to deploy net short debt activist strategies, rarely warrant the application of the preemptive measures reflected in the Net Short Restrictions.

Accordingly, credit agreements containing Net Short Restrictions typically carve-out a subset of **Unrestricted Lenders**, comprised of regulated entities (including registered swap dealers and commercial banks), the closing date revolving credit facility lenders, the lead arrangers and bookrunners, and all of their respective affiliates.

(3) Net Short Representations

The only realistic means for identifying Net Short Lenders in a credit facility is by way of self-identification by the lenders themselves. To this end, loan documentation containing the Windstream Provisions will require specific representations to be made by the lenders (other than Unrestricted Lenders) in favor of the borrower, and, in certain cases, in favor of other lenders. In its basic form, this **Net Short Representation** contains a confirmation by a lender that it is not Net Short Lender (i.e., that its overall economic exposure to the borrower's debt is long or, at worst, neutral). As with most contractual representations, this factual statement carries with it the potential for consequences should the borrower challenge the veracity of a lender's Net Short Representation by way of a lawsuit or pursuant to any applicable provisions of the credit agreement (including any Verification Covenant, as further discussed below).

Net Short Representations are required to be made (or deemed made) by lenders (other than Unrestricted Lenders) at predetermined times, typically in connection with remedial actions or transactions where the borrower's loans (or associated rights) change hands or the borrower and its assets are particularly vulnerable to the lenders' exercise of remedies under the loan documentation. It is at these moments when the borrower (and presumably other lenders) is most acutely concerned about the net exposure and motivations of Net Short Lenders.

Net Short Representations are most commonly required to be made in connection with:

- assignments to new lenders (where the assignee is required to make a Net Short Representation in the assignment and assumption instrument);
- sales of participation interests (where the participant is required (or, more precisely, the lender is obligated to require the participant) to make a Net Short Representation in the participation agreement);

- amendments and waivers (where each voting lender (but not, for the avoidance of doubt, any abstaining lender) is required to make a Net Short Representation at the time of its response to any proposed amendment, waiver or other modification to the credit documentation);
- notices of default from a lender to the administrative agent or the borrower (where the notifying lender is required to make a Net Short Representation at the time of delivery of such notice); and
- lender instructions to the administrative agent to accelerate the debt and/or exercise remedies (referred to herein as a **Lender Direction**) (where each instructing lender is required to make a Net Short Representation at the time of delivery of such Lender Direction).

It is important to note that in connection with some or all of the above actions, lenders are *deemed* to make a Net Short Representation, irrespective of whether they deliver the same in writing. In this sense, it is critical that debt investors are keenly aware of the contents and triggers of the Net Short Representation in any credit agreement under which they are a lender or participant. Lenders in the TLB market may also need to put in place systems for monitoring their (and, depending on the scope of the Net Short Determination (as discussed above), their affiliates') derivative positions with respect to the relevant borrower and indebtedness.

In most of the recent credit agreements containing the Net Short Restrictions, any lender's Net Short Representation is made as of a moment in time, with reference to the facts and circumstances at such time. Any language to the effect that a Net Short Representation continues, or is deemed repeated daily until the underlying triggering event ceases to exist (e.g., until the default giving rise to the relevant default notice or Lender Direction is waived or cured, or until the Lender Direction is rescinded), warrants close critical attention from lenders and their counsel, as such treatment effectively converts the Net Short Representation into an ongoing restrictive covenant imposed on such lenders.

(4) Verification Covenant

Although it has not yet appeared in any market-clearing syndicated loans, in a small minority of transactions an undertaking (which has been included in a few high yield bond indentures) has been proposed whereby lenders, in connection with any Net Short Representation (or only those Net Short Representations made at the time of a Lender Direction, depending on the formulation presented), agree to furnish to the borrower such information as the borrower reasonably requests in order to verify the accuracy of such lender's Net Short Representation. If, following any such request, either (x) the lender fails to timely comply with this so-called **Verification Covenant** or (y) the borrower initiates legal proceedings challenging the veracity of the Net Short Representation, the associated terms dictate that any Lender Direction provided by such lender (and the remedial action contemplated by that Lender Direction) will be stayed (i.e., its effect will be paused) until the lender complies with the Verification Covenant or a court of competent jurisdiction makes a final determination as to the borrower's legal claim.

Whether this stay applies only to the individual Lender Direction at issue (or, where the Lender Direction is delivered by multiple lenders, the collective Lender Direction) is a point worthy of focus when negotiating and drafting credit documentation – in particular where the inclusion or exclusion of an individual lender's Lender Direction would have no bearing on the efficacy of the collective Lender

Direction (i.e., in instances where, even after excluding the individual lender’s loans and commitments, the Lender Direction had the support of lenders holding the requisite amount of loans or commitments for the Lender Direction to be effective).

Where a Verification Covenant is proposed in any particular transaction, lenders should consider requiring certain limitations on their disclosure obligations – for example, with respect to information that is subject to third-party confidentiality arrangements. Similarly, lenders may wish to limit their obligations to divulge commercially sensitive or proprietary information or information that is protected by attorney-client privilege and in instances where disclosure may be prohibited or restricted by applicable law, regulation or judicial or other legal process.

(5) Credit Agreement Implications

Consequences and Constraints

It is imperative in the first instance for all parties to a financing to grasp the new and nuanced definitions used in the Net Short Restrictions and the identifying characteristics of Net Short Lenders, as well as the mechanics by which lenders are required to confirm and verify their status as non-Net Short Lenders. Once these fundamental terms are established, the parties’ attention should turn to ascertaining the specific consequences and constraints imposed on Net Short Lenders under the relevant credit documentation.

Characterization

As an initial matter, syndicated credit agreements containing Net Short Restrictions will often treat Net Short Lenders in a manner similar to “Disqualified Lenders” and/or “Defaulting Lenders.” In this way, Net Short Lenders may be subject to a number of adverse effects spanning ineligibility as a lender or participant, limitations on access to information regarding the borrower, voting restrictions and forced divestment, among others. However, the intricate and evolving nature of the Net Short Restrictions do not align precisely or entirely with either the Disqualified Lender or the Defaulting Lender provisions, and as a result all parties should pay careful attention to the detailed features of the Net Short Restrictions (and the Windstream Provisions as a whole) in any particular transaction.

Disqualification

Most syndicated credit facilities (and virtually all sizeable TLBs) in the U.S. market contain “Disqualified Lender” provisions that prohibit the assignment of loans and disclosure of confidential information to a defined universe of entities, usually comprised of those financial institutions and competitors identified by the borrower (or financial sponsor) on a disqualified lender list and their respective identifiable affiliates.

Recently, in some credit agreements containing Net Short Restrictions, such Disqualified Lender definitions have been expanded to explicitly include Net Short Lenders, thereby barring Net Short Lenders (or, more aptly, any prospective lender or participant that *would be* a Net Short Lender immediately upon settlement of the proposed trade or participation) from buying into the credit facility. As noted above, credit documentation for such financings are likewise beginning to require that all assignees and participants make Net Short Representations in, or in conjunction with, the assignment and assumption or participation agreements pursuant to which such parties would become lenders or assignees, respectively. In this context, from an existing lender's perspective, it is important that the credit documentation expressly entitle the selling lender to rely conclusively on its counterparty's Net Short Representation without inquiry.

Vote Stripping

Disenfranchisement is one of the most prevalent Net Short Restrictions in the market. Conceptually, disenfranchisement of Net Short Lenders results in Net Short Lenders being stripped of their right to approve or disapprove any amendment, waiver or consent in respect of the loan documentation, and the disregarding of their votes for purposes of any determination as to whether the requisite lenders have approved a proposed amendment, waiver or consent. Practically, this is achieved through Net Short Lenders being deemed to have voted their interests in the same proportion as the non-Net Short Lenders voting on any proposal. Moreover, all lenders (other than Unrestricted Lenders) that approve or actively disapprove of any amendment, waiver or consent under the credit agreement are required to concurrently deliver (or in the absence of any written Net Short Representation will be deemed to have delivered) to the borrower a Net Short Representation, a feature that further discourages Net Short Lenders from voting on any particular proposal.

Silencing

Taking this limitation one step further, any Lender Direction or default notice given by a Net Short Lender is to be disregarded. Net Short Lenders are effectively stripped of their rights to, and furthermore are required to covenant and agree not to, instruct the administrative agent in writing in respect of the exercise of remedies with respect to the credit facilities.

Removal

Another means by which the Windstream Provisions may affect Net Short Lenders is through forced divestment, a feature commonly known as the "yank-a-bank." When exercised, it allows the borrower to force the subject lender to assign its loans and associated rights to another eligible lender willing to acquire the offending lender's position. Historically, these lender replacement provisions have applied to any manner of "undesirable" lenders, such as Defaulting Lenders (essentially lenders that breach their funding obligations or are, directly or indirectly, subject to insolvency proceedings), Disqualified Lenders (in more recent vintage credit agreements), lenders requesting yield protection and non-consenting lenders in the context of certain requested amendments approved by a minimum proportion of all other lenders. So, while yank-a-bank provisions themselves are not new to the syndicated loan market, their expansion to cover Net Short Lenders is a noteworthy development.

Prepayment

In addition to forced replacement, some credit agreements go further and allow the borrower to repay Net Short Lenders on a non-pro rata basis, as another means of removing them from the credit facility. While this solves the desire of borrowers to prevent potential net short debt activists from tainting their lending syndicate, it also raises at least two thorny issues:

First, the other lenders in the same tranche of debt may find this early repayment of Net Short Lenders objectionable. In a distress scenario in particular, which is precisely when a borrower is most concerned about the behavior of net short activist lenders, the loans are likely to be trading below par, and repayment of Net Short Lenders might result in a *more favorable* outcome for Net Short Lenders than the other lenders in the same credit facility by virtue of the former's full recovery of the principal of their loan (subject to the immediately following paragraph). Moreover this one-off repayment reduces the much needed cash available to an already distressed credit group, which from the remaining lenders' perspective further diminishes the likelihood of par recovery on their loans.

Second, recent deals have set the "price" at which the borrower repays a Net Short Lender as the lesser of (x) the face principal amount of the loans being repaid and (y) the amount that such Net Short Lender paid to acquire such loans, in each case, with all accrued interest deferred until the next regularly scheduled interest payment date. As a result of this formulation, only the borrower stands to benefit, as it retires a portion of its debt at a discount (or, at worst, at par), whereas the lender is subject to risk of loss if it originally purchased the loan at a premium to par or at a price below the loan's current trading price. Incidentally, although the original purchase price paid by such Net Short Lender would likely be confidential as between such Net Short Lender and its counterparty at the time, credit agreements now contain language requiring both the Net Short Lender and the selling lender (whether or not it remains a party to the credit agreement) to disclose such purchase price to the borrower.

Paradigm Shift

Finally, it is worth noting that inclusion of the Windstream Provisions, and most notably the Net Short Representation, presents a new area of potential legal liability for lenders. Particularly for TLB investors, who historically were subject to very few affirmative obligations under credit agreements, the risk of misrepresentation, coupled with the need to carefully track their (and, in some cases, their affiliates') overall net exposure to the credit group, presents a paradigm shift for the market. As a result, potential lenders and other market participants (including borrowers, equity investors and financial sponsors) and observers are likely to keep a close eye on any new deals containing the Windstream Provisions in order to carefully monitor their scope, details and potential consequences.

(6) Additional Windstream Provisions

As mentioned above, the Windstream Provisions are a bundle of terms, including but not limited to the Net Short Restrictions, all aimed at insulating the borrower from the divergent motivations and potential unwelcome actions of Net Short Lenders. In any particular deal, the borrower (or their equity investors or financial sponsor) may seek to include some or all of the Windstream Provisions – and, in each case, there are likely to be bespoke, negotiated adjustments made throughout.

Statute of Limitations

One of the Windstream Provisions that is often proposed, but seldom accepted, is the imposition of a "sunset," or an expiration date, on the lenders' ability to take remedial steps with respect to certain historical events that gave rise to a default. Actions such as exercising remedies, cancelling unused commitments and accelerating the maturity of the debt, if not previously initiated by the lenders, are barred with respect to any default relating to an action (or inaction) taken by the borrower and reported publicly or directly to the administrative agent or the lenders more than a specified period of time prior to the delivery of a default notice or a Lender Direction. In effect, a contractual "statute of limitations" is created under the credit agreement for these types of defaults. While the most commonly cited period of time is two years, no prevailing market standard has emerged to date (and in fact, the inclusion of this provision in any form remains unsettled).

Early Warning

Another term that has been proposed in conjunction with other Windstream Provisions is a requirement for the administrative agent to provide the borrower with longer than usual advance notice prior to acting on a default (unless the default arises due to bankruptcy of a member of the credit group). Ostensibly, this notice period (of anywhere from one to three business days) is intended to give the borrower time to evaluate whether to challenge the permissibility of the Lender Direction or default notice on the basis of the applicable Net Short Restrictions, or to attempt to assess the veracity of the Net Short Representations (and, if included in the credit agreement, to activate the Verification Covenant). However, it also reflects a meaningful degradation of the lenders' position in terms of their ability to act quickly and decisively to exercise contractual or legal remedies against a defaulted borrower.

(7) Conclusion

As described in this article, the nascent Windstream Provisions, including the Net Short Restrictions, continue to develop on a deal-by-deal basis. Various iterations of the terms have appeared in market-clearing financings, but it will be some time before any consensus emerges as to which (if any) will be widely accepted by market participants.

Accordingly, we expect these intricate terms to continue to draw heavy scrutiny from all parties – and the buy-side in particular – during both primary syndication and in secondary trading. Underwriters and arrangers of new deals will likewise want to navigate this new terrain prudently, including by ensuring that sufficient detail is provided in market-facing term sheets and retaining flexibility to adjust or remove the Windstream Provisions in the event of market resistance. Borrowers, equity investors and financial sponsors will likewise need to decide how aggressively to approach the Windstream Provisions in the context of any particular transaction and the overall package of terms sought for the financing.

Given the technical nature of the CDS product and of other terms used or referenced in the definition of "net short" in credit agreements, and the potential impact of the Windstream Provisions on CDS positions held by lenders or other creditors, the advice of derivatives counsel may prove invaluable during the documentation phase of any new transaction that includes these provisions.

Finally, entities acting as administrative agent for syndicated credit facilities containing Windstream Provisions are well advised to ensure exculpatory terms included in credit agreements are sufficiently broad to cover matters related to Net Short Provisions and the other Windstream Provisions. Administrative agents may also require language entitling them to rely conclusively on any Net Short Representation made or deemed made by any party and clear stipulations that the agents have no duty to inquire as to, investigate the accuracy of or otherwise make any calculations, investigations or determinations with respect to, any derivative instruments or net short positions of any lender.

As the debt markets are constantly evolving and the prevailing terms are never static, conscientious market participants and observers should closely monitor and evaluate whether, to what extent and in what form the Windstream Provisions persist in U.S. syndicated credit facilities through the remainder of this year and beyond.

Your Allen & Overy contacts

Judah Frogel

Partner – Leveraged Finance

Tel +1 212 610 6367
judah.frogel@allenovery.com

Rajani Gupta

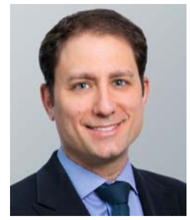
Partner – Leveraged Finance

Tel +1 212 610 6376
rajani.gupta@allenovery.com

Jin Hee Kim

Partner – Leveraged Finance

Tel +1 212 610 6455
jinhee.kim@allenovery.com



Todd Koretzky

Partner – Leveraged Finance

Tel +1 212 610 6332
todd.koretzky@allenovery.com

Elizabeth Leckie

Partner – Leveraged Finance

Tel +1 212 610 6317
elizabeth.leckie@AllenOvery.com

Karen Buzard

Senior Counsel – U.S. Know How

Tel + 1 212 756 1115
karen.buzard@allenovery.com

David Lucking

Partner – Derivatives and Structured Finance

Tel +1 212 756 1157
david.lucking@allenovery.com

Vinod Aravind

Associate – Derivatives and Structured Finance

Tel +1 212 610 6498
vinod.aravind@allenovery.com

New York

1221 Avenue of the Americas
New York
NY 10020
United States

Tel +1 212 610 6300
Fax +1 212 610 6399

Washington, DC

1101 New York Avenue, NW
Washington, DC
20005
United States

Tel +1 202 683 3800
Fax +1 202 683 3999

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