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Continuation Vehicles in Private Credit: What Lenders Need to Know

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KEY POINTS

- Transfers of performing loans into a continuation vehicle may trigger assignment, change-of-control, and consent provisions in fund-level credit agreements, requiring document review before any transfer closes.
- Existing UCC perfection does not automatically carry over when assets move to a new CV debtor; lenders risk losing perfection and priority without prompt UCC-1 filings against the CV.
- LP cash-outs in a CV transaction can contract the borrowing base under subscription and NAV facilities, potentially triggering deficiency cure obligations or mandatory prepayment events.
- Because the GP sits on both sides of a CV transaction, transfer pricing presents a conflict of interest that LPAC approval and fairness opinions may not fully resolve.
- Lenders can negotiate CV-specific protections, including notice and consent rights, collateral-substitution requirements, and UCC maintenance covenants, prospectively into their credit facilities.

INTRODUCTION

CV transactions have long been a feature of private equity markets, and have recently increased sharply in private credit. For lenders holding security interests in private credit funds or their portfolio assets, these transactions present unique structural risks associated with the transfer of performing debt instruments.

To date, published guidance on CV transactions has focused almost exclusively on the GP/LP or investor perspective; this alert instead addresses the comparatively underexplored issues these transactions present for lenders.

HOW THE CV TRANSACTION WORKS IN PRIVATE CREDIT

In a private credit CV transaction, a legacy fund transfers a portfolio of performing loans into a newly formed continuation vehicle, unlike in private equity CV transactions, where equity stakes are transferred.

The GP of the fund typically maintains its role in the CV. LPs have the option to roll their interests into the new CV or cash out.

Because the transferred assets are themselves loans, the creditor relationships are more complex than in a private equity CV, requiring coordination among the CV, its lenders, and the underlying borrowers.

RESTRICTIONS ON THE FUND'S TRANSFER OF COLLATERAL

A threshold question is whether the fund's transfer of the portfolio loans into a CV is permitted under the lenders' own credit and security agreements and under the documentation governing the underlying loans. Fund-level facilities typically restrict the borrower's disposition of pledged collateral without lender consent, and the underlying loan documentation may separately limit the fund's ability to assign or transfer those loans.

Lenders should consider whether the transfer triggers consent rights, disposition restrictions, or a change-of-control provision under their facilities, including a change of control of the fund as borrower. They should also review whether the transfer is structured as an outright transfer of the loans, an economic participation, or a pledge, as each carries a distinct consent and perfection profile.

Where the portfolio loans held by the fund form part of a syndicated or club facility, lenders should also consider whether the applicable intercreditor or agency arrangements restrict transfers to affiliates or require pro rata assignment.

Older credit agreements are less likely to include explicit CV carve-outs, while newer agreements may address CV transfers in terms that either help or harm lender protections. Lenders should not assume any transfer is permissible without a thorough document review.

UCC PERFECTION CONTINUITY

When assets are transferred from the legacy fund to the CV, a lender should not assume its existing perfection automatically carries over to the new CV debtor. Although a financing statement generally remains effective following a transfer of collateral, continued perfection, and, critically, priority, can be undermined depending on how the transfer is structured, whether the CV changes its name, and whether the CV is organized in a new jurisdiction.

UCC Article 9 governs the analysis, and the outcome turns on how the transfer is structured. Where the CV is merely a transferee of the collateral and does not become bound by the original security agreement, Section 9-507(a) governs, and the original financing statement remains effective against the transferred collateral without any four-month time limit.

Where the CV instead becomes a "new debtor" bound by the original security agreement, for example, by assuming it, Section 9-508 governs, and a filing against the original debtor remains effective against the new debtor for only four months if the difference in the debtors' names makes that filing seriously misleading. Section 9-507 also addresses when a debtor name change alone renders an existing filing seriously misleading, and Section 9-316 addresses continued perfection where the CV is organized in a new jurisdiction.

The distinction also carries priority consequences. Even where a pre-existing filing remains effective under Section 9-508, Section 9-326 subordinates a security interest perfected solely by that filing to a competing security interest perfected by a filing made directly against the new debtor. A lender that relies on the four-month grace period, rather than promptly filing a new UCC-1 against the CV, therefore risks losing priority to other creditors of the CV.

A lender that fails to maintain perfection and priority against the CV as debtor risks becoming unperfected, subordinated to competing lien creditors, and exposed to avoidance in a CV bankruptcy. To protect against this, lenders should conduct UCC searches against both the legacy fund and the CV, file new UCC-1 financing statements directly against the CV as debtor promptly after the transfer, and obtain representations and warranties from the GP or CV regarding the transfer.

FUND FINANCE IMPLICATIONS

Private credit funds often secure financing through subscription facilities, NAV facilities, or both. When assets are transferred to a CV, they may split in ways that impair lender security.

If LPs cash out, the borrowing base may contract, and lenders should evaluate whether borrowing base calculations and advance rates remain accurate post-transfer given the changed fund entity and any shift in collateral composition.

Capital commitments and portfolio assets may be governed by different legal frameworks, jurisdictions, or UCC filing requirements, so fund-level lenders must assess whether their security interest will survive the transfer or must be reperfected.

As a practical matter, lenders should ask how the borrowing base and advance rates will be recalculated following a transfer to a CV, whether the transfer is a mandatory prepayment event or triggers a borrowing-base deficiency that must be cured, which entity holds the transferred assets post-closing, and whether concentration limits and eligibility criteria remain satisfied.

Prospectively, lenders can negotiate CV-specific protections into their facilities, including notice and consent rights over transfers of collateral to a CV, mandatory prepayment or collateral-substitution requirements, covenants to maintain perfection and deliver new UCC-1 filings, and representations confirming the arm's-length nature of any transfer price.

VALUATION CONFLICTS AND GP CONFLICTS OF INTEREST

Because the GP sits on both sides of a CV transaction, transfer pricing presents a conflict. CV lenders risk an inflated price that produces over-advancement relative to true NAV, while undervaluation could cause lenders to the legacy fund to lose collateral value.

Potential solutions such as Limited Partner Advisory Committee (LPAC) approval and third-party fairness opinions offer only limited comfort, since LPAC members may hold conflicting interests and fairness opinions typically focus on the fund rather than lenders.

Lenders should also ensure their documentation includes fairness opinion delivery obligations and representations covering the arm's-length nature of the transfer price.

CONCLUSION

As CV transactions become more common in private credit, lenders who build proactive review protocols will be better positioned to protect their interests. Rather than waiting until closing, lenders should engage as soon as a CV transaction is announced, review their assignment and change-of-control provisions, confirm that perfection and priority are preserved through prompt UCC filings against the CV, reassess collateral coverage, and scrutinize the GP’s conflicts and transfer-price valuations. Early, documentation-driven diligence remains the most effective protection against the structural risks these transactions present.

For questions about CVs and private credit, contact our Finance and Banking Practice Group. Our attorneys regularly advise lenders and fund sponsors on fund finance transactions, UCC perfection issues, and credit agreement structuring.

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