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Could Syndicated Loans Be Securities?

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Carlo J. DeHart | Deborah J. Enea

Deb Enea, a partner in Troutman Pepper's Finance Practice Group, and Carlo DeHart, an associate in Troutman Pepper's Corporate Practice Group, were quoted in the March 16, 2023 *TheCorporateCounsel.net* article, "Could Syndicated Loans Be Securities?"

Regulations, like those applicable to high-yield bonds, entail extra risk. Regulations also carry administrative burdens and costs arising from compliance issues. If loans were securities, investors would pass on these risks and costs to borrowers in the form of higher pricing, stricter terms, and narrower access to capital. These changes would upset the reasonable, settled expectation of market participants that loans as an asset class are not regulated securities, and would lead to inefficiencies in the market.

The Second Circuit panel seemed resistant to interfere with the syndicated loan market where the SEC and federal regulators had to date been unwilling to do so. Although the panel questioned whether the size of the market called for greater scrutiny, the panel implied that regulators could step in if they wanted to do so, and in their absence, sophisticated investors have participated in the market on the basis of this lack of regulation, without the need for Securities Act protections.

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