Twelve questions to put to any securities-backed lender

Use this before any listed shares move. Ask every provider the same twelve questions, in writing, and compare the written answers. A lender that will not answer in writing has answered.

THE LENDER

1. Are you the principal lender or an intermediary? Good answer: the lending entity is named, it is the entity on the facility agreement, and the capital is its own. Poor answer: "partners", "funding sources", a "network", or an entity that "makes offers" on someone else's behalf.

2. Who are you, and with whom can I verify it? Good answer: the registered entity and number, the counsel acting for the lender, the executing broker-dealer, and people with names.

THE CAPITAL

3. Is the capital in place before my shares move, and can I see it? Good answer: evidence before transfer, in an account you can look at. Poor answer: funding that follows the shares, or capital that depends on someone else's investors.

4. Are any fees payable before funding? Good answer: none. Any origination, processing, legal or diligence fee requested before capital is evidenced is the most common warning sign in this market.

THE STRUCTURE

5. Is the facility non-recourse? Show me the clause, and everything that undoes it. Read the provision limiting the lender's remedy to the collateral, then the rest: personal guarantees, cross-defaults, top-up obligations.

6. Term, advance, pricing and exit: in one document, together? Terms quoted piecemeal, or before the lender has looked at the specific shares, are not terms.

7. What triggers a collateral event, and what happens then? Defined in advance, consistent with the non-recourse clause, in the same document.

8. What happens at maturity? Repayment, refinancing or return of the shares; early repayment and its terms; all in the same document.

THE SHARES

9. Who holds my shares, under what agreement, and what must you return to me? Good answer: a licensed broker-dealer or custodian; an account the borrower opens; a control agreement that says what the lender may do with the shares and when; and a written obligation to redeliver the same number of shares after repayment. Poor answer: a custodian the lender will not name, or "we hold them" with no return mechanics in writing.

10. What may you do with my shares during the term, and where is it written? Good answer: one clause that states it plainly, and the obligations that do not move whatever the lender does: the return in question 9, dividends made good, no voting unless default, no recourse beyond the collateral. Poor answer: "never", unwritten; or "never" in one clause and permission in another. The honest answer is rarely "never". The professional answer is written down, in one place.

11. Who receives dividends and votes during the term? Specific to the transaction, in the documents.

YOUR OWN POSITION

12. What disclosures might my pledge trigger, and will you work to my counsel's timetable? Those questions are for your counsel and company secretary; a serious lender expects that review and waits for it.

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