

Is SunGard coming to a Canadian deal near you?

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“SunGard” or “certain funds” provisions are common in commitment letters for large and middle-market U.S. acquisition financings and limit the representations and warranties made by the borrower to certain “specified representations” that must be accurate and, in secured financings, the delivery of certain types of collateral required by the lenders on the closing of the transaction. By limiting the conditions to funding under the credit agreement, these provisions increase deal certainty by ensuring that funding conditions under the credit agreement for the acquisition financing are consistent, to the extent possible, with that of the closing conditions contained in the acquisition or purchase agreement.

In the Canadian market, SunGard provisions have become more prevalent in commitment letters for large Canadian acquisition financings in the last few years. In today’s deal environment, Canadian, U.S. and other foreign sponsors are introducing the requirement for the inclusion of SunGard provisions in commitment letters for Canadian middle-market deals. By including SunGard provisions in the commitment letter for a Canadian middle-market acquisition, Canadian, U.S. and other foreign sponsors are trying to ensure their bid is competitive by limiting the conditions to funding under the credit agreement. Given the increased activity of U.S. sponsors in the Canadian market, it is likely the SunGard provisions will become more common in Canadian deals.

If you have any questions about this Update, please contact [Joyce Bernasek](#), [Kevin Whittam](#) or another member of our [Financial Services Practice Group](#).