

By SRS Acquiom  
Loan Agency

# What to Do When Your Administrative Agent Resigns

## Introduction

Administrative agents on syndicated loan facilities periodically resign. An administrative agent may resign for a number of reasons, including because it is no longer a lender in the syndicated loan or because of a perceived or actual conflict of interest.

Administrative agents handle the routine responsibilities and duties necessary for the orderly administration of a syndicated loan. Once a syndicated loan closes, payments and communications between the borrower and lenders are made through the administrative agent. Other duties of the administrative agent include setting interest rates, maintaining the register, and processing any loan trades.

The resignation of an administrative agent can interrupt the orderly administration of a syndicated loan if not handled correctly. Fortunately, syndicated loans are flexible and the process of appointing a new administrative agent can be managed to prevent undue difficulty.

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## Why Would an Administrative Agent Resign?

**No Longer a Lender.** The most common reason an administrative agent resigns is that it has sold the debt it once held in the syndicated loan. Many lending institutions are not willing to serve as an administrative agent on loan facilities in which they are not a lender. This scenario often occurs when the administrative agent acted as the arranger of the loan, but the circumstances under which the administrative agent originally decided to make the loan have changed. Many banks will sell their position in a syndicated loan to distressed debt investors if the borrower's loan becomes distressed or otherwise becomes too risky for the bank.

**Conflict of Interest.** An administrative agent may resign because of a conflict of interest or the perception of a conflict of interest. For example, when a party acts as the administrative agent on multiple loan facilities for a borrower and the borrower is in default under one or more of the loan facilities, conflicts of interest between the creditor groups may require that the administrative agent resign on one or more of the loan facilities.

**Administrative Agent Wind Down.** Occasionally, administrative agents may need to resign for reasons not specifically related to the loan, such as when an entity that serves as administrative agent is being wound down. When Lehman Brothers filed for bankruptcy, it resigned as administrative agent on many syndicated loans. Similarly, a number of European banks have reduced their presence in the United States in recent years resulting in a substantial number of administrative agent resignations on syndicated loan facilities.

**Disagreement with Lenders.** An administrative agent may also resign if lenders direct it to take action that it is not comfortable taking. An administrative agent may not be willing to follow the direction of the lenders because of liability concerns or because the agent has a long-standing business relationship with the borrower that it is reluctant to damage. Due to its relationship with the borrower, an administrative agent may be willing to provide the borrower with more flexibility than other lenders. In this situation, by resigning, the administrative agent can acquiesce to the will of the other lenders while maintaining its relationship with the borrower.

**Removal by Lenders.** While infrequent, administrative agents may also be removed by the lenders under some credit agreements. The motivation for lenders to remove an administrative agent generally relates to a disagreement between the agent and the other lenders on a major issue. For example, if lenders direct an administrative agent to enforce remedies against the borrower and the agent does not promptly act accordingly, the lenders may decide to remove it. Credit agreements that permit the removal of the administrative agent by the lenders usually require lenders holding a majority of the outstanding loans to consent to the removal of the administrative agent for it to be effective.

### How is the Resignation Process Initiated?

The resignation process begins by an administrative agent delivering a notice of resignation to the borrower and lenders informing them of its intent to resign. Customarily, there is a thirty-day notice period, and the existing administrative agent is automatically discharged from its duties once the notice period has passed. Appointing a new administrative agent before the existing one is discharged is preferable as the existing agent will have direct lines of communication with the lenders and can assist in the collection of signature pages and other tasks related to the appointment of a new agent. While some existing administrative agents will voluntarily extend the notice period if the other parties are making progress in appointing a new agent, it is best to begin the process of appointing a new agent as soon as possible.

If a credit agreement allows for the removal of the administrative agent by the lenders, the process is substantially the same as with a voluntary resignation except that the removing lenders provide notice of the administrative agent's removal to the borrower, lenders, and administrative agent. As with the voluntary resignation provisions of a credit agreement, the removal provisions customarily provide for a thirty-day notice period before the removal is effective and the agent is discharged from its duties under the credit agreement. An administrative agent removed by the lenders is unlikely to

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cooperate more than is absolutely necessary, so it is advisable for the lenders to have selected a new agent before delivering a removal notice to the existing agent.

## What Happens if a New Administrative Agent is not Appointed?

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Credit agreements provide that once an administrative agent resigns or is removed, the responsibilities and duties of the administrative agent will be performed by the lenders until a new agent is appointed. In theory, the lenders could perform the responsibilities and duties of the administrative agent, but in practice having the administrative agent’s responsibilities performed by the lenders collectively is unduly burdensome on both the lenders and borrower. It is much more efficient to appoint a single entity to serve as the administrative agent on syndicated loan facilities. The new administrative agent could be one of the lenders or an independent third-party loan agent, such as SRS Acquiom, that is in the business of providing loan agency services.

## Appointing a New Administrative Agent

**Required Consents.** The new administrative agent is appointed by the lenders. Generally, the appointing lenders must hold a majority of the debt outstanding in the syndicated loan facility for the appointment to be effective. The borrower, if not in default, will often also need to consent to the appointment of a new administrative agent. Issuing banks on syndicated loan facilities that include a letter of credit facility may also need to consent to the appointment of a new administrative agent.

**Successor Agent Agreement.** In order to appoint the new administrative agent, the new agent and lenders holding a majority of the debt will enter into a successor agent agreement whereby the lenders holding a majority of the debt confirm that the resignation of the existing agent is effective, appoint the new administrative agent, and have the new agent accept the appointment.

The successor agent agreement will often also deal with administrative matters such as providing the new administrative agent with the loan’s books and records, the assignment of any security interests, and the transfer of any possessory collateral. It is also common for the successor agent agreement to include minor mechanical amendments to the credit agreement such as updating the prime rate.

Preferably, the existing administrative agent and borrower will also enter into the successor agent agreement. However, if there are ongoing disputes between the parties, the existing administrative agent or borrower may refuse to be a party to the successor agent agreement. The existing administrative agent or borrower may instead be willing to enter into a side agreement with the new administrative agent to facilitate the appointment and provide, with respect to the borrower, any necessary consents.

**Effectiveness of Appointment.** The appointment of a new administrative agent is complete upon the effectiveness of a successor agent agreement executed by the lenders holding a majority of the debt, the new administrative agent, and if possible, the

existing administrative agent and the borrower. Conditions to effectiveness that are included in the successor agent agreement are generally limited to items like payment of the new administrative agent's fees and expenses.

## What if the Collateral Agent Resigns?

Administrative agents often also serve as the collateral agent on secured credit facilities, but sometimes the collateral agent and administrative agent are unrelated entities. The collateral agent holds, on behalf of the lenders, the security interests pledged by the borrower that secures the debt. A new collateral agent will need to be appointed to hold the security interests pledged for the benefit of the lenders if the existing collateral agent has delivered a resignation notice. Unlike the responsibilities and duties of an administrative agent, it is not possible for the lenders to collectively serve as collateral agent and hold the security interests pledged by the borrower. There must be a specific entity appointed to hold the collateral. The process by which a collateral agent resigns, and a new collateral agent is appointed is invariably the same as the process by which an administrative agent resigns and a new administrative agent is appointed.

## Conclusion

Syndicated loans are valued for their flexibility. With the right partners, this flexibility allows for the appointment of a new administrative agent to be relatively painless.

Whether you are a borrower or a lender that has found itself in a situation where a new administrative agent needs to be appointed, there are a few steps you can take to increase the likelihood of a smooth appointment process:

**Start Early.** Appointing a new administrative agent is much easier when there is an existing administrative agent in place. Beginning the appointment process as soon as the need for a new administrative agent is known increases the likelihood that the new agent will be appointed before the existing agent is discharged. The first step in this process is the selection by the lenders of who they wish to appoint as the new administrative agent.

**Communicate.** Borrowers and lenders are often accustomed to only communicating with the administrative agent rather than directly with each other. While this normally works well, administrative agents are usually not too concerned about the appointment of a new agent once it has given notice of its intent to resign. Borrowers and lenders can ensure that they are on the same page and prevent any duplication of effort by communicating directly with each other and the administrative agent regarding the appointment of a new agent.

**KYC.** "KYC" or "Know Your Customer" requirements are ubiquitous these days. Despite this, or perhaps because of it, many institutions drag their feet in responding to KYC requests. By responding promptly to any KYC requests, the parties can ensure that KYC does not hold up the appointment of a new administrative agent.

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**Confirm Positions.** Each of the lenders and the borrower should confirm that they agree with the existing administrative agent regarding the loan principal, accrued interest, and any fees that are outstanding. Too often it is not until the parties are ready to close on the successor agent agreement (and sometimes even later) that any loan position discrepancies are identified, potentially delaying the appointment of a new administrative agent.

The successful appointment of a new administrative agent puts the responsibility for the routine administration of the syndicated loan facility on the administrative agent, freeing the lenders to focus on lending and the borrower to focus on running its business. When selecting a new administrative agent, it is important to select one with experience working through the appointment process and stepping into the shoes of a former administrative agent.

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## About SRS Acquiom

SRS Acquiom delivers a smarter way to run deals with solutions that reduce the administrative burden throughout the entire deal lifecycle. Our services include paying and escrow agent services, online document solicitation and reporting, professional shareholder representation, and virtual data rooms. For loan and credit transactions, we provide independent administrative, collateral, and sub-agent services. Since 2007, we have helped sophisticated deal parties reduce administrative drag, enabling them to focus on building great businesses and maximizing value.

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