

# Fund Finance Friday



## Representing New Entrants in Syndicated Fund Finance Facilities

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As the fund finance industry continues to grow in numbers, it may seem challenging initially for banks and financial institutions outside of this space to jump in with confidence as new lenders. Joining an existing fund finance credit facility as a syndicate lender is an effective way for lenders to make their initial leap into the industry without the responsibility of actively managing facilities in an administrative agent capacity. Cadwalader remains ready to assist new entrants navigate the space. Last year, we represented over 100 banks and financial institutions party to fund finance facilities. We are always willing to put our relationships to good use by connecting newer lenders with our contacts at experienced deal and syndications teams who are well-versed in managing syndicated facilities.

Here are some of the ways we can help when representing new syndicate lenders joining existing fund finance credit facilities.

### Diligence and Enforceability:

A new lender joining an existing fund finance credit facility will want to ensure that legal documents between and among the lenders and the borrowers are in order, enforceable and not off market to a syndicate lender's detriment. Depending on what level of detail a new lender desires, we will tailor our involvement and analysis of an existing credit facility as needed. Experienced lenders may prefer that outside counsel efficiently review a credit facility for glaring issues. Alternatively, a financial institution new to fund finance may prefer a more thorough and educational breakdown. In that case, our review could extend to the borrower partnership agreements, investor side letters and other fund documents that experienced syndicate lenders often utilize, on a non-reliance basis, summaries and checklists previously prepared by counsel to the administrative agent.

### Fees:

Another important focus for new lenders joining existing fund finance credit facilities are the fees that the lender should expect to earn. Understanding the anticipated fees will affect a lender's profitability projections and allocation of capital. We will review and verify the fee rates in a facility, such as applicable margins, upfront fees, commitment increase or extension fees, unused commitment fees and default rates. Beyond negotiating language to ensure a new lender's fees are appropriately documented, our deal volume and experience enables us to provide insights regarding market fee rates and recent pricing trends. If a joining lender's upfront fees appear unusually low, we could note this for new client entrants.

Outside counsel legal fees may be of focus for new lenders. For existing fund finance credit facilities in which Cadwalader already represents the administrative agent, a sponsor may be more inclined to cover the legal fees of a separate, walled off Cadwalader team to facilitate a new lender joining the facility. That setup is mutually beneficial for (1) sponsors obtaining additional borrowing capacity for planned investments without involving additional lender-side law firms and (2) joining lenders who otherwise would cover their outside counsel fees directly.

### Syndicate Lender Rights and Focal Points:

It is paramount to understand what powers a syndicate lender retains in a fund finance facility, and what actions an administrative agent may decide unilaterally. We will review voting-related and other key items for new syndicate

lenders and offer our perspective and expertise on the same. Without providing an exhaustive list here, this often includes (1) how the credit facility's borrowing base is determined, (2) the required lender thresholds for actions that necessitate lender votes and (3) timing requirements and mechanics for lenders funding their share of the borrowings.

Similarly, we will analyze whether the administrative agent may take any important actions without lender consent. In some instances, this could include (1) releasing credit parties or collateral, (2) altering the credit facility's pricing or fees owed by the borrowers or (3) adding new investor capital commitments, eligible investments in NAV facilities or other forms of collateral to a borrowing base. We will utilize our team's robust experience to flag anything unusual or off market and will negotiate updated language for your benefit.

Conclusion:

While entering the fund finance industry as a new lender could appear difficult, financial institutions should consider joining existing credit facilities as a first step. These are some of the ways we can add value and our perspective to benefit new fund finance lenders. After building comfort and experience as a syndicate lender, if a new entrant wants to lead facilities as the administrative agent or sole lender, we are here to partner with you in taking those next steps. If you are considering joining an existing fund finance credit facility or want us to facilitate new business relationships with other financial institutions, we welcome the opportunity to help you through the process.