

# Fund Finance Friday



## Is the Grass Greener...?

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It is no secret that in a challenging environment for fundraising and exit opportunities there has been a growing appetite for evergreen structures from investors and fund managers.

For investors, evergreen vehicles offer a more efficient and cost-effective means of allocating capital: they can avoid time-pressured due diligence processes whilst allocating capital on an ongoing basis and simultaneously avoid the fees associated with exiting investments every few years. For fund managers, evergreen funds allow them to source additional capital from individual investors at a difficult time for fundraising and provide additional flexibility to seek the right exit opportunity.

Regardless of whether an evergreen fund is structured as an open- or closed-ended fund, proper liquidity management is key to its operation and success. Debt financing solutions such as subscription line or “liquidity line” NAV facilities are therefore often integral to an evergreen strategy. Given the, often, more bespoke nature of evergreen vehicles, thorough due diligence is therefore key in the successful underwriting and legal structuring of such financings.

This article considers some common due diligence issues which a lender or borrower should be mindful of when structuring the financing of an evergreen fund and how these may be addressed through the transaction documents. The specific issues will differ depending on whether the evergreen fund is structured as an open- or closed-ended fund.

1. **Segregated tranches or commingled model** – open- and closed-ended evergreen funds commonly operate one of two structures as regards investors’ entitlement to assets. In the tranche model, investors are grouped into different tranches based on the date of their admission to the fund. Each tranche has its own investment period, segregated portfolio and fees and expenses. In the commingled model, investors are grouped into a single pool with a single commingled pool of assets and rolling investment periods, which they may enter and exit at rolling fundraising and redemption or withdrawal periods, respectively.

This distinction matters: if different series have segregated portfolio and liabilities, and their own investment periods, the assets allocable to different series (including uncalled capital commitments, assuming subscriptions are not fully funded upfront) are unlikely to be available to cross-collateralise the liabilities owed by a different series. The use of an umbrella facility structure with separate sub-facilities (for each series) which have separate borrowing bases and collateral pools, and with several liability between sub-facilities, is therefore critical to make such structures financeable.

Even in the rare cases where cross-collateralisation between different series is possible under the terms of the fund documents, an umbrella facility structure remains advisable as investors are unlikely to be supportive of backstopping the liabilities of a different series with assets in which they have no economic interest.

This issue does not arise with commingled evergreen structures, which can accordingly be financed in a manner more akin to a “traditional” fund financing to a “vanilla” closed-ended fund. However, as such structures rely on harvesting “ripe” assets to fund investor redemptions or withdrawals, a prudent fund finance lender will want to ensure the fund always has enough assets deployed to meet pending redemptions or withdrawals and other

indebtedness of the fund to ensure sufficient alignment of interests between investors, fund manager, and lender. A NAV ratio or value test covenant are common proxy measures.

- 2. Fully paid up or capital commitments** – open-ended evergreen structures (often so-called “semi-liquid structures”) also differ from closed-ended structures (with defined recurring fundraising periods) in that investors usually must pay up their subscriptions to the former in full upon admission. This means that such open-ended structures do not have uncalled capital commitments and are precluded from using subscription line facilities. Instead, liquidity can be provided through a NAV financing. Here, lenders should be particularly alive to side pocket, redemption gate and valuation suspension features.

*Side pockets* – GPs of semi-liquid evergreen structures often have discretion to side pocket investments which are illiquid, difficult to value or otherwise impaired. Side pocketed investments are subject to different valuation methodologies and economic participations in such asset are frozen. Given the uncertainty around valuations of side pocketed investments, it is often appropriate to exclude such assets from eligibility under a NAV financing.

*Redemption gates* – the fund documents of semi-liquid evergreen structures also frequently impose limitations on the amount of withdrawals or redemptions that may be processed over any one period or grant the GP discretion to impose such limits. Such “fund-level redemption gates” are a useful tool for GPs to manage liquidity and runs on the fund. As NAV financings to semi-liquid funds are often used to bridge the period between processing redemptions and realising investments, NAV lenders should ensure that the availability of the facility for such purpose aligns broadly with such redemption gates to avoid a mismatch between redemptions processed through loan proceeds and the NAV and liquidity of the assets actually available to ultimately support such redemption.

*Suspensions of valuations* – GPs of semi-liquid funds also usually have a right to suspend the valuation of some or all of the fund’s assets in certain circumstances. Often, these include “force majeure”-type events such as sudden significant political, military or economic instability or disruptions to markets or payment service providers. NAV lenders may seek to exclude assets subject to a suspension on valuations from eligibility under the NAV facility or impose a drawstop on a NAV facility for the time of such suspension. Crucially, lenders should also check that the fund will not process redemptions or utilise the facility to fund redemptions whilst such suspension on valuations is in effect.

By contrast, closed-ended evergreen structures which accept contractual capital commitments do qualify for borrowing under a subscription line as they necessarily have uncalled capital commitments and drawdown features. Frequently, capital commitments to evergreen structures will be subject to deadlines by which an investor must fund its capital commitment in full. Subscription line lenders should ensure the subscription line matures prior to such date (and it is often advisable to build in a buffer period between maturity and such longstop date).

- 3. Investor withdrawals** – evergreen funds which accept capital commitments (rather than requiring subscriptions to be fully paid upfront) may also permit investors to withdraw, and cancel their uncalled capital commitments, periodically. Usually, the exercise of such withdrawal rights will be subject to an extensive notice period.

It is critical that subscription line lenders are aware of such features as this represents potential leakage from their collateral pool. Subscription line lenders may take comfort from lock-up mechanisms but then need to ensure the tenor of the subscription line aligns with any lock-up periods. Savvy subscription line lenders may want an information undertaking which requires them to be notified in advance of any withdrawal requests and condition continuing availability of the facility on pro forma covenant compliance (i.e., the borrowing base or cover ratio is tested on a pro forma basis, as though the relevant investors had already withdrawn). Where a pro forma testing of financial covenants shows that a covenant breach may occur post-withdrawal, lenders may require prepayment of the facility pre-withdrawal in an amount sufficient to bring the facility back into covenant compliance.

- 4. Liquidity sleeves** – so-called “liquidity sleeves” may be a key liquidity management tool for GPs to manage the natural tension between the holding of investments by GPs in line with their determination as to the optimum investment horizon and any earlier redemption requests by limited partners. In other words, so that GPs are not being forced to exit an illiquid asset pre-emptively: evergreen funds may customarily invest 10 – 20% of an aggregate portfolio in highly liquid investments (such as cash, cash equivalents and/or BSL/broadly syndicated loans, or marketable bonds) to meet redemptions and/or to fund bolt-on acquisitions, without needing to exit existing investments prematurely.

The existence of liquidity sleeves is a common structuring consideration in negotiating NAV financings. The treatment of such liquidity sleeves varies from deal to deal. Sometimes, liquidity sleeves are included in the “V” (of LTV) and are secured in favour of NAV lenders or are carved out of the “V” (of LTV) and the security package granted to NAV lenders (as fund managers may require absolute freedom to manage the liquidity needs of the fund or are constrained by the terms of their fund documents). Blockers on withdrawals from the liquidity sleeves are negotiated on a deal-by-deal basis.

The extent to which liquidity sleeve assets are available as a source of redemptions may create tensions with their availability to support a NAV financing, so blockers on withdrawals from liquidity sleeves are negotiated on a case-by-case basis and also depend on the type of fund and its constituent documents. A careful review of the terms of the constituent documents is usually instructive: e.g., fund documents may require that investor redemptions are met out of liquidity sleeve assets in the first instance. Likewise, for a lender to attribute credit against these assets, notwithstanding that they may be in constant flux, it is necessary for a lender to understand the asset type and ease and timing of realising actual cash liquidity in order to apply appropriate value (or haircuts thereto) and understand how frequently they may require reporting. An example of this is to understand break periods on money market funds or the marketability of BSL/broadly syndicated loans.

### **Final thoughts:**

Whilst traditional closed-ended funds continue to dominate the fund finance landscape, as fund managers increasingly look to raise capital from individual investors, evergreen funds are sure to become increasingly common. With their more bespoke structural features, thorough due diligence and a proper understanding of such features is critical to successfully underwrite and structure their financing.