



# FUND FINANCE FRIDAY

## **An Active October**

**October 15, 2021 | Issue No. 148**

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## A Brief Primer on Cayman Security

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Many subscription facilities governed by New York law grant the lender a security interest in rights to call capital from the limited partners of exempted limited partnerships formed under the laws of the Cayman Islands. This grant is generally set forth in a security agreement governed by New York law even though the rights being pledged are created under Cayman law.

In facilities governed by English law, it is customary to enter into a separate security deed creating security over such collateral under Cayman law. However, taking such additional security under Cayman law is not common in the New York fund finance market. The difference is largely one of commercial practice rather than any difference in the way Cayman law treats New York and English transactions.

Fund finance lenders in the United States have generally agreed to forgo separate Cayman security due to the familiarity of Cayman courts and lawyers with New York security agreements and in order to be more efficient. Cayman counsel have also generally advised lenders that, provided that a security agreement creates a valid security interest under New York law (or the law of another state), a Cayman court would recognize such a security interest if such court was the forum for resolving a related dispute.

Even in the absence of a separate Cayman security deed, given that the collateral includes the right to call capital pursuant under a Cayman partnership agreement, Cayman counsel to lenders will advise that notice of the security interest be delivered to the limited partners of the Cayman partnership. Such notice has the effect of establishing priority of the subscription lender's security interest over the claims of other creditors with respect to capital call rights. Lenders should also file financing statements in applicable jurisdictions in the United States in order to be perfected under the Uniform Commercial Code.

In addition, if a borrower or a general partner of a borrower is a Cayman company (as opposed to a partnership), Cayman counsel to lenders generally recommend that the security interest be recorded in the register of mortgages and charges maintained by the company. The failure to record a security interest does not affect the validity or priority of the security interest, but it is still good practice to record the security interest as contemplated by the Companies Act of the Cayman Islands.

## DFF – National Coming Out Day Message

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Earlier this week, FFA's Diversity in Fund Finance (DFF) group shared a message in support of those in the LGBTQ+ community on National Coming Out Day.

National Coming Out Day is an annual day of awareness, observed on October 11, to support LGBTQ+ people in coming out and living openly as members of that community and to raise awareness of the challenges that openly-LGBTQ+ individuals face on a daily basis.

[Click here](#) to view the message, and please consider sharing it with your networks to help us spread the word, support our LGBTQ+ colleagues in the fund finance community, and to encourage those who have not yet come out as LGBTQ+ to do so.

DFF believes that diverse perspectives strengthen the fund finance industry and organizations within it, and enhance the ability of those in the fund finance industry to better serve their clients and colleagues by working together. For those in the fund finance community who may be struggling with coming out and living openly as LGBTQ+, please feel free to reach out to [Anastasia Kaup](#) or [diversity@fundfinanceassociation.com](mailto:diversity@fundfinanceassociation.com), or take advantage of resources that may help, including: [Family Equality Council](#), [Human Rights Campaign](#) and [Matthew Shepard Foundation](#).

## DFF – Baruch Financial Leadership Program

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Supporters of Diversity in Fund Finance (DFF) and committee members participated in a virtual session with Baruch College's [Financial Leadership Program](#) (FLP) for the fourth year. The FLP is dedicated to the professional development and advancement of high-performing sophomores and juniors interested in careers in finance. FFA members, led by Natasha Puri and George Jovanoski, presented to 20 students in the program, providing a high-level overview of the Fund Finance market and what types of career paths are available before breaking out into small networking groups. Thank you to everyone who participated to make this a great event!

Resumes are available if any of the FFA relationship firms are interested in recruiting top talent. If you are interested in being involved in events like this or joining our committee, please reach out to [diversity@fundfinanceassociation.com](mailto:diversity@fundfinanceassociation.com).

## **Strafford – Structuring and Documenting Subscription Facilities**

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Strafford will host a CLE video webinar next Thursday, October 21 from 1-2:30 p.m. EDT on “Structuring and Documenting Subscription Facilities.” The webinar, which will include interactive Q&A, will discuss the structuring of subscription credit facilities while focusing on partnership agreement provisions that provide financing flexibility. The webinar will also cover defining the borrowing base and exclusion events, loan covenants particular to subscription facilities, and lender remedies. To register for the event, [click here](#).

## New Private Markets Article on Baring ESG Facility

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Baring Private Equity Asia has closed a \$3.2 billion ESG-linked subscription facility, according to this subscription-required [article](#) from *New Private Markets*.