

CADWALDER

2022 European Market Predictions

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Looking back, 2021 started at 100 mph and the pace seemed to get faster with each passing week and month. Like many fund finance teams in the industry, the Cadwalader London Fund Finance team experienced its busiest year by every measure and grew accordingly with a promotion to special counsel (congratulations Mathan!) and several recruits of incredible talent into the team. The team advised on financings totalling in excess of €50 billion in commitments across all fund finance products, of which approximately €27 billion were new financings and €23 billion were rebookings (being tenor extensions or commitment increases on existing deals).

In 2021 we continued to see an accelerated development of fund finance products, particularly in the European NAV market, subscription facilities grew in size and number reflecting positive fund raising trends and LIBOR remediation had the market (and us!) working around the clock.

And now as we look ahead to 2022, we anticipate further development of the NAV market reflecting the increasingly complex finance structures that emerged during 2021 as more GPs realise the value they are able to unlock by tapping that part of their capital structure. We also expect to see a further uptick in subscription facilities, including some of the largest and most widely syndicated facilities the European fund finance market has seen, and increased GP/Co-invest facility attention from sponsors as they work to find liquidity solutions for their co-invest commitments.

We also look ahead two weeks to the Global Fund Finance Symposium, the first in-person industry conference since the pandemic began. To help get the conversations started, for this edition of *Fund Finance Friday* we have asked some of the major industry participants in Europe across bank and non-bank lenders, debt advisers and sponsors for their view of where the market is heading in 2022.

We have had a great response to our call for predictions again this year and are very grateful to those who are returning to offer their thoughts for a second year and those who are braving a crystal ball gaze for the first time! Thank you all for your time and insight. We look forward to thanking you in person very soon as we all emerge from our work-from-home arrangements and return to the office.

And as it's Friday, feel free to have a sip of your beverage of choice each time you read "ESG" and two sips if you read "NAV".

Shelley Morrison, abrdn: "Due to the continued growth in fund size and demand for fund finance facilities, 2022 will see increased requirement for banks to transfer/syndicate risk in order to manage counterparty limits or balance sheet constraints. We expect that most risk transfer will continue to be achieved through syndication on a deal-by-deal basis, albeit a growing number of lenders will be looking at structured portfolio solutions. As a consequence of this accelerating risk transfer, the presence of non-bank lenders in fund level transactions will become more common. In the European market, ESG or sustainability-linked finance will finally move into the mainstream in 2022 following a more general market movement towards cleaner and greener finance. We predict a material increase in the number of transactions papered where performance against a range of ESG-related KPIs impacts the loan margin or fees paid on credit facility. Norms or standards for market practice and documentation will begin to cement, which should in turn reinforce the ESG trend."

Shani Unantenne, ANZ Banking Group: "We expect the demand for fund financing to continue the growth trajectory seen over the last 12 months into 2022. The challenge for the market is going to be how to continue to support this demand. There'll be continued pressure on banks to expand teams (with resultant competition for talent) and ensure availability of balance sheet. Banks are likely to continue to review internal product/clients caps and expand teams further. This will open up greater opportunities for non-bank lenders, and we expect to see greater partnerships between banks and non-bank lenders going forward. With the sub line market increasingly well served by a larger number of banks and resultant competition for this business, we expect banks to also continue to expand and extend their product offering, which will be well received by sponsors who are also likely to make even greater use of the broader set of products available in the market. ESG will continue to be a theme across the market. Overall, expect a very buoyant and busy 2022 for everyone, particularly with (hopefully) the worst of the COVID challenges now behind us."

Eli Appelbaum, Ares Management Corporation: "The fund finance market continues to evolve as a tool utilized by both managers and investors. We expect 2022 to be another active year in the capital markets for fund finance transactions, including syndicated collateralized fund obligations. We also expect ample opportunity for investors, like Ares, to provide capital solutions that are tailored to the particular objectives of a manager or LP and more flexible than

traditional bank capital. Growth opportunities also exist as fund finance continues to expand beyond private equity into sectors such as real estate, credit and infrastructure that often demand flexible capital and specialized resources.”

Sarah Lobbardi, Avardi Partners: “The growth experienced in 2021 is continuing at the beginning of 2022, with strong fundraising activity across all asset classes boosting demand for capital call facilities in Europe. We expect to see an increased volume of NAV financing, particularly in the secondary and private equity space where managers seek enhanced returns and additional liquidity. Non-bank lenders are expected to gain market share in the fund finance market and work with traditional bank lenders to cope with the high demand from fund managers.”

Nick Armstrong, Bank of Ireland: “Discussions around bank capacity constraints for sublines will be a feature of the next 12 months; I expect to see a significant move towards wider use of institutional capital in the market towards the end of the year. The impending approach of Basel IV is going to impact European lenders in particular and how they assess the credit risk of subline transactions, and, perhaps more significantly, how much capital they are required to hold against these assets. Discussions around capital relief solutions (including the use of non-bank capital in transactions) will intensify. Expect a clash with sponsors around disclosure if one of the answers to this problem is public ratings.”

Sabih Hussain, Barings: “Following a record year for us in fund finance, we believe 2022 will be another busy year. We have found that all the lenders returned in 2021 and market terms have stabilised.”

Tom Glover, BC Partners: “If 2021 was a breakthrough year for GP acceptance of concentrated NAV financing tools, 2022 will be the year of more widespread product adoption along with continued product evolution. We see a growing group of mainstream GPs looking to employ concentrated NAV to drive value growth in their mid- and late-life funds. 2022 is likely also to be the year in which substantially more GPs embrace innovative, non-dilutive debt and preferred equity financing structures to exploit strategic opportunities and drive powerful value creation at the GP level.”

Guillaume Hartog, BNP Paribas: “2021 was another record year for the subscription finance market despite the continued challenges due to the COVID crisis; this demonstrates the robustness of this market and its quick recovery. We expect the market to continue growing in 2022, with bigger funds and larger facilities, as well as a stronger focus on ESG from larger asset managers. Pricing has now stabilised, and we expect it to remain in line with 2021. In terms of funding type, we expect the full security package to remain the norm, with greater interest in NAV facilities from PE funds (being a mature technology for Fund of Funds) and preferred equity financing. Sub lines should continue to represent the bulk of the market, with more uncertainty for hybrid facilities. We also feel more institutional investors and insurance companies will enter the market, in the secondary market in particular.”

Guillaume Ferrer, CACIB: “2021 has been another exceptional year for the private equity market both in terms of fund raising and deal activity. Naturally, the Fund Finance market followed the same trend, and there is no signs of it stopping: several megafunds are announced for this year and record amounts of capital to be deployed. Even with newcomers to the market, this situation could put some pressure on the financing offer as banks’ balance sheets are not growing as fast as funds demand. While pure subscription lines should continue to constitute the majority of new financings, we see an increased demand for more sophisticated and tailored structures. Besides, now largely widespread ESG-linked loans will continue to grow, moving from a nice-to-have to a must-have feature. CACIB Fund Financing Team believes 2022 will be an active and exciting year.”

Michael Peterson and Shiraz Allidina, Citco Capital Solutions Inc: “After a very active 2021, we continue to see strong forward demand from clients across all alternative asset classes. We expect innovation in fund finance will continue as both investment managers and fund investors continue to seek new structures to meet their evolving needs. Specifically, we expect innovation of hybrid and NAV facilities to continue at a rapid pace. Lastly, we also expect to see continued demand for bespoke secondary trades.”

George Cherry and Billal Malik, Citi: “We believe the EMEA fund finance market will continue to grow in line with the expansion of Private Market capital, and it appears likely that 2022 will prove to be a record year for European fundraising. In light of this, and the overall increase in average fund sizes, we anticipate broader syndication of facilities and increasing participation by non-bank lenders in the year ahead. ESG-linked facilities will also be a feature of many new deals, with lenders and sponsors building on several precedents closed in 2021. We also expect to see higher numbers of continuation funds being launched as sponsors and investors become increasingly comfortable with them as an alternative to end-of-fund asset divestment.”

Richard Braham, Eunice Zhou and Joel Buckett, Commonwealth Bank of Australia: “In the European subscription finance market, we have seen a large increase in the volume and structural complexity of transactions

over the past year, partially driven by increasingly complex investor needs and jurisdictional requirements. 2021 also saw record M&A activity leading to market consolidation, with some of the largest sponsors entering into a broader range of strategies and closing their largest funds to date. Given that funds are now sitting on a record US\$3trn of dry powder, 2022 could be set to top 2021 in terms of fund investment activity, and this will inevitably drive a high demand for fund financing. The increasing diversification of investors entering the market will continue to necessitate growth of known, tested fund financing structures and also more innovative fund structures, leading to a greater variation in facility types (Umbrellas and SMAs as examples). We also expect to continue to see an increase in ESG-linked facilities following the accelerated trend in 2021, and funds will continue to develop robust governance frameworks to meet their ESG requirements.”

Amit Mahajan, Crestline: “Last year was an exciting and productive year for the Crestline Fund Liquidity Solutions team. While COVID was threatening the growth trajectory of countless industries, our team was creating unique financing solutions to help companies weather one of the most severe market dislocations in recent history. As a result of our team’s deep expertise and knowledge of the NAV lending space, we were able to successfully provide companies with the liquidity they needed to combat near-term challenges and focus on the long-term success of the organization. Through our fund liquidity solutions platform, we were able to provide financing to mature funds as well as specific portfolio companies (in conjunction with a fund NAV guarantee from other portfolio companies). As our strategy continued to develop, we found that our NAV financing was particularly well received by real assets and infrastructure funds, an area we’ll be exploring more going into 2022. As we make our way through the new year, we expect to see continued demand for NAV financings stemming from the same themes in 2021. We also plan to continue expanding our financing offerings to include new target markets such as GP management companies. Overall, we do not see this momentum slowing and expect higher deal volumes in 2022 for the whole industry.”

Jamie Mehmood, Deloitte: “The two longer-term trends that we flagged at the start of 2021 continue to be as relevant today as they were then: an increase in ESG-linked lending – very much now moving to become the norm rather than the exception – and increased direct activity in fund finance from institutional liquidity. A further consideration for 2022 is the potential for broader liquidity pressures as the year progresses, given the anticipated strong fundraising pipeline and large but relatively finite liquidity supporting the market. We also expect there to be continued innovation from lenders looking to differentiate themselves, in particular around structured lending, as has increasingly been the case following the influx of innovative liquidity into this part of the fund finance market over the past 18-24 months.”

James Nash, Deutsche Bank: “This will be an extremely interesting year for Private Capital markets. As expected, the market took off in 2021 with records being set for numbers and values of deals executed. This was built on record levels of dry powder, pent-up demand for deals, firms adjusting to working flexibly and the continued search for yield from investors globally. There’s no sign of this momentum slipping away as we head into 2022, but there are some potential headwinds to contend with: rising inflation, proposed tax reforms in the U.S., COVID-19 outbreaks flaring up, global supply chain weaknesses, geopolitical issues and, perhaps most importantly, increased competition for a finite numbers of assets. These opportunities and threats carry across to the fund finance market as well. I expect the mega managers to continue raising record-sized funds with investors backing their abilities. To counter this, other managers may look to more innovative structures and will also be pushing to lock in opportunities early. This points to another exceptional year of volumes for the fund finance industry across both NAV and Sub Line lending. However, the push to lock in opportunities earlier and outbid multiple competitors further heightens the need for strong due diligence on the structures, documentation, LPs and, importantly, the managers themselves. Outside fund finance, I expect discussions around GP finance will continue to build across the market as managers need to finance their growing commitments, and I expect continued strong demand for LP financing, especially from HNWI individuals and family offices.”

Jack Dutton and Nick Parkhouse, Ernst & Young: “We expect to see a significant increase in the level of portfolio company exits by private equity funds, as they look to realise fund value. With this return of capital to underlying investors, we expect to see a continued wave of liquidity coming into PE funds, albeit we have seen more recent raises primarily directed towards the larger ‘mega’ funds. This may have a knock-on impact to the capital raising of UK mid-market funds. As a result, we could see ever larger capital call facilities, concentrated with the more established managers. In addition, returns may come under pressure as competition for underlying portfolio assets remains extremely high, driven by excess liquidity in the market, making asset level leverage not only more appealing but likely necessary to meet the return expectations of underlying LPs.”

Josh Bourone, Ganryu Capital: “We expect the demand for sophisticated fund finance solutions to increase in line with the launch of sophisticated investor and product solutions by managers. Lenders will invest more into their fund finance platforms to serve the future needs of their borrowers. The secular trends of private markets are an opportunity for many lenders but also a risk for others.”

Todd Hooper, Goldman Sachs: “2021 was robust from a risk perspective across all of our fund finance solutions globally. We saw a significant increase in our top-tier sponsor clients exploring and adopting NAV facilities. Along with the growth of private markets more generally, fund financing and specifically NAV facilities is an area we expect to grow exponentially this year as GPs and LPs have become more familiar with these structures and the benefits they can provide to each. As a result of COVID and general market dislocation, we initially saw GPs look to use NAV facilities as a way to support underlying portfolio companies from a liquidity perspective. More recently we have seen them primarily used to fund accretive add-ons or new investments, or to fund a distribution in order to enable recycling of capital commitments. LPs are playing more of an active role in the market with many participating alongside bank lenders. Given the increasing size of funds raised and thus larger facilities, we believe syndication will be a big focus for 2022.”

Steve Burton, ICG: “Sounding like a cracked record ... but continued growth as all Sponsors want to have and use facilities, so bigger facilities for BIG funds, many with ESG – well, we need to usefully employ all these new ESG experts on something – will be the order of the day. Get your cheque books and your pencils sharp, banks. Greater adoption of NAV facilities will be seen as such facilities become more familiar to all stakeholders. What would I like to see? More commercial and pragmatic credit departments and sensible, timely KYC – is this REALLY too much to ask? Apparently, yes. We really need to drive simpler documentation, processes and thereby reduce costs as we all should by now understand the risks in this sector. We are a maturing industry. Time to grow up.”

Ian Taylor, ING: “In the absence of any economic shocks, we see continued growth for subscription finance in the European market. Particular themes include the widespread adoption of ESG-linked structures and the expansion of club and syndicated facilities to meet the liquidity requirements of ever larger funds. NAV lending will continue to feature as more institutions consider this within their fund finance product range. As loan portfolios and product offerings expand to meet sponsor demand, lenders may face hiring challenges for experienced fund finance professionals and ambitious junior talent.”

James Rock-Perring, Intertrust: “As expected, Private Markets have shown continued growth and resilience through the difficult last 12-18 months, and 2022 looks to be a strong year for fund managers. Increasing liquidity from traditional and institutional lenders continues in the subscription line market, and in the NAV space, managers have become increasingly comfortable using leverage against NAV in their portfolios for various purposes. More demand for financing and increased liquidity has definitely fuelled the need for the ‘outsourcing’ of competitive processes to secure market terms, benchmark and seek out liquidity in an efficient and focused way. From my experiences, I have seen first-hand the positive reaction of managers to the benefits of this role and, from the lenders’ perspective, am very pleased to see how they have embraced the presence of an intermediary in a very relationship-driven and collegiate way.”

Helen Griffiths and Alan Macdonald, Investec: “Institutional capital is on everyone’s must-have list. We expect more of this liquidity option to be channelled into value accretive NAV and GP solutions, making the role of the arranger with skin in the game a competitive proposition. We expect the institutionalisation of the mid-market to allow GP stake activity to expand into the European market in 2022, opening up solutions previously reserved for large cap sponsors to fund platform expansions and enable founders to monetise their interests. Continuation fund financing for both multi- and single-asset portfolios will continue to be a growing trend and a viable alternative to more commonly seen NAV and pref structures.”

Jill Wilson and Scott Turner, Lloyds Bank: “We see the 2022 key market themes as: (1) increased demand for ESG ‘technology’, particularly in sub-lines, as managers look to embed ESG into the debt structures to align with their house goals and LP expectations; (2) innovation around the use of fund collateral (both UCC and assets) to help drive value for investors; and (3) increasing non-bank institutional demand for the asset class, particularly around higher yielding products. We expect demand to remain strong with the best GPs continuing to raise capital for proven strategies as investors seek to lock in access to the next economic cycle across the risk spectrum. The structured segments of the market, including equity wrapped, hybrid and pure NAV structures, will continue to see increased demand as GPs explore ways to maximise the potential of collateral to augment investment returns while lowering the overall cost of capital, and we predict good growth in this part of the market as GP demand for innovation is matched by a growing number of lenders who can now deliver deals of this nature. Despite the low relative risk, lenders will need to balance innovation with risk and ensure focus is on the right deals and maintaining discipline around the risk/reward mix as competition increases. Investor flight to quality is still highly relevant as investors look to commit with the right managers with strong track records underpinned by world-class teams, access to the best deal flow, and the ability to operate diversified platforms at scale. In the same vein, lenders, both banks and non-bank, will continue to target

opportunities with the strongest managers and, as such, we believe the supply side will remain liquid for the best, most sought-after GPs.”

Steve Berry and Roger Fox, Macquarie Asset Management: “We expect to see continued strong growth in the fund finance market, driven by the largest and most successful managers a) deploying capital quickly, b) raising significantly larger funds in each vintage, and c) acquiring or developing adjacent strategies as they grow and diversify their proposition to investors. Each trend is increasing the frequency and total size of facility raises for leading managers. We expect to see significant related opportunities for lenders as managers grow and diversify their lender group, in order to ensure adequate liquidity and fill fund financing needs. This will drive a continuation of the trend of institutional investors being increasingly impactful within the sector as borrowers seek more flexible capital outside of the capacity of their existing banking relationships.”

Dadong Yan, MassMutual: “In recent years, fund finance has grown and innovated beyond even the most optimistic expectations. In the coming year, we expect its evolution will reach new heights and solidify its place as an alternative asset class. This is an increasingly competitive market. Alternative lenders have to differentiate themselves through creative structuring and a nuanced understanding for each specific underlying asset class or strategy. Forward-thinking GPs will naturally seek alternative lenders with a strong track record of providing customized holistic solutions. It's evident that the ability for one single alternative lender to lead deal structuring while simultaneously speaking for the entire transaction is the key differentiator to offering GPs a seamless bilateral experience.”

Russell Evans, Steve Elliott and Kieran Welsh, National Australia Bank: “As a team, we're expecting 2022 to set another new high-water mark in private capital fundraising which will continue to drive strong demand for fund financing solutions. We're anticipating the strongest growth in new launches from funds focused on infrastructure, renewable energy and energy transition, where the incorporation of ESG-linked KPIs will become market standard in fund finance facilities. We're also expecting an increasing number of mega funds seeking ever larger and more flexible liquidity solutions which will challenge traditional lenders and structures whilst opening up the market for alternative 'non-bank' lenders to participate. We're also expecting the lasting impact of COVID to leave some GPs holding on to assets for longer periods, which will potentially drive a step up in continuation fund launches and a potential increase in demand for NAV and hybrid solutions. Finally, we're looking forward to some long overdue face-to-face meetings, lunches and conferences whilst hopefully spending less time on Zoom.”

Amira Hajili and Hamid Aguerbal, Natixis: “We are quite optimistic about 2022 given the growth we are seeing in the private capital markets. We expect traditional subscription financing to continue the same growth trend as in 2021. Demand for larger facilities will help to develop the syndication market in Europe. We are also expecting an increase in demand for bespoke financings such as bridge loans both at an early stage of the fundraising and before the asset exits. Risk appetite on NAV financing and demand for management company financing will also continue the current positive trend. Given the importance of the ESG issues such as climate change, diversity and equality and the increase of the regulatory enforcement of ESG disclosure and compliance expected in the coming years, we expect an increase in the demand for ESG-linked loans.”

James York, NatWest Markets: “Whilst the Fund Finance market had already proven its resilience throughout the initial impact of the pandemic, this trajectory both continued and accelerated in 2021. As managers were able to demonstrate their ability to navigate and still deliver returns amidst COVID uncertainties, some of the pricing adjustments of 2020 began to revert back towards pre-pandemic levels. Looking ahead, with the exponential growth of private capital and fundraising success, we anticipate greater need for GP financing in order to support the ever-increasing co-invest requirements. Meanwhile ESG will continue to be at the forefront considerations, with a growing emergence of SLLs and Green Loans as managers become more advanced with respect to their sustainability integration. Structurally, with growing facility sizes and the potential implications of incoming capital changes under Basel IV, there will inevitably be more consideration given to the likes of dynamic uncommitted structures and the use of external ratings for more vanilla subscription line facilities. We are excited to continue supporting our clients in this regard, providing innovative solutions throughout 2022 and onwards.”

Slade Spalding and Neno Raic, No Limit Capital: “Looking forward to 2022, we expect it to be another record high fundraising year, putting more pressure on the fund financing market which is already struggling to keep up with the demand. To deal with the market growth, we expect current lenders to be more selective, with a greater focus on ancillary business. We also expect fully committed RCFs to slowly shift toward a combination of committed and uncommitted tranches. Finally, we anticipate that non-bank lenders will play a bigger role across capital call, hybrid and NAV facilities, working alongside existing banks to support the increase in the overall demand.”

Gerhard Caspar, Nordea: “2021 was a record year in terms of overall business activity. The business momentum has carried over into 2022 and we are predicting yet another record year for fund finance. Demand is seemingly outpacing supply, which we expect to translate into somewhat better terms for lenders, both with regards to economics as well as other terms. The ESG link in fund financings will become a must-have rather than a nice-to-have for any reputable sponsor. NAV financings will become mainstream as a tool to grow funds beyond their final close size. We are much looking forward to an exciting 2022 in our industry!”

Mohith Sondhi and Fabien Bonavia, OakNorth Bank: “We expect the fund market to further evolve during the course of 2022. A wave of NAV fund facilities were expected in 2021 which never materialised. We have already seen in Q1 2022 a material level of interest in NAV facilities and expect this to further accelerate through 2022. Interestingly, we think funds of all sizes, types and vintages will seek to bolster their liquidity or access to liquidity through the year. COVID has shown to the wider market that liquidity is key and whether this is used for defensive purposes (bolstering existing investments) or offensive purposes (to accelerate M&A activity at the investment portfolio company level), and one of the key learnings from the disruption that COVID has caused is that liquidity is critical and the funds market has evolved to offer multiple solutions and will continue to do so. From an LP’s perspective, we thoroughly expect ESG considerations to play an even more pivotal role in their investment decisions and expect this to play a prominent part in also their choice of funding partner in the future. It will also be interesting to see how credit funds react to the Central Banks’ tightening of monetary policy, including the dropping of stimulus measures and any increases in interest rates. This may present an opportunity for private credit to compete with banks. However, higher debt costs will also present a challenge to funds who themselves need access to bank debt for their own financing needs.”

Diana van Lieshout, Rabobank: “The Fund Finance market will continue its rapid growth in lockstep with the steep progression in private capital raising – in particular for the expanding population of mega-funds which are deploying capital so rapidly that fund-raising cycles are contracting to as little as two years. Lenders will be asked to sign up more speedily, with facilities in place at or before fund-closing and for (ever) larger tickets. Given the breadth of choice available to investors together with their own capacity constraints, we expect that LPs will become even more discerning so that it will become more difficult for new players to enter the market, and smaller and/or mid-cap funds may face a slowdown in investor appetite if the flight to established, more sizeable names come to pass: *i.e.*, the ‘IBM’ syndrome. ESG-linked facilities will become the new normal across the private capital financing spectrum. We also foresee a continuation of more innovative facilities such as NAV and GP-led solutions.”

Adam Heaysman, Raiffeisen Bank: “We are continuing to see the growth of fund level facilities across the CEE region and expect this to continue in 2022. Across our wider European client base, we are seeing strong demand for ESG-linked sublines. The growth in alternatives continues across the CEE region, and the managers of these funds are increasingly interested in fund level facilities and the benefits they bring. CEE-based investors are increasingly receptive to the benefits of fund level financing. More generally we expect the increased demand for NAV/Asset backed facilities, as a source of liquidity, to continue throughout 2022.”

Spencer Goss, RBSI: “The Funds Banking team at RBS International are expecting another year of significant growth across our book of subscription lines, NAV based facilities and GP financing. Supporting managers who are increasingly ‘purpose led’ in their investment strategies and incorporating quantitative KPIs to reflect those behaviours will become ever more BAU over the coming 12 months. It’s increasingly clear that institutional money is becoming a complementary source of additional funding for funds and, for as long as interest rates remain low, we expect this to continue. We expect appetite for NAV-based financings to continue and for borrowers to increasingly turn to the growing market of debt advisors to help manage the search for liquidity.”

Emad Shahin, 17Capital: “NAV Finance is fast becoming part of all leading managers’ financial toolbox for value creation and portfolio management purposes. There are several factors driving the increased use of NAV Finance, but to highlight a few: awareness and understanding has increased significantly, the sheer scale of unrealised value held in private equity assets (over \$5tn globally), adoption by top-tier managers acts as a catalyst across the market and strong investment pace has meant that NAV transactions are happening earlier on in the fund lifecycle. For 17Capital, those factors resulted in record deployment of \$2.8bn across 14 deals in 2021 – the overwhelming majority was with the top 100 private equity managers globally.”

Stuart McIntosh, SMBC: “2021 was another busy and challenging year for all with strong origination volumes, LIBOR transition and ongoing CV19 restrictions stretching both buy-side and sell-side teams. I predict (and very much hope!) that 2022 will be an energising year in the market as we return to in-person interactions with clients, partners and colleagues. Strong fundraising continues which will drive ongoing demand for subscription facilities, with NAV lending also seeing increasing demand. I think the trend for many banks will be a continued focus on existing (and target) clients where there is the ability to build long-term multi-product relationships.”

Raghav Wadhawan, Standard Chartered Bank: “We see there being continued innovation in the market, in particular around hybrid/NAV and the growth in ESG-linked facilities. 2021 was a record year for us with a significant number of ESG deals completed and numerous different approaches used. On NAVs, we continue to be active and are seeing more broad use of these facilities across the sectors. Overall expectation is for strong capital raising for the top-tier GPs at pace or higher than 2021, which will mean large facilities are going to continue to grow in volume.”

Thomas Rapp, Wells Fargo: “We anticipate continued strong growth of the Fund Finance market in 2022, still dominated in volume by Subscription Lines which grow in size with Fund raising targets and require ever larger syndicates. NAV lines and hybrids will become more commonplace and will also help to attract institutional capital into the Fund Finance market. ESG-linked facilities with well-balanced performance targets should become a typical feature of Fund Finance facilities. In view of the quantitative and qualitative growth ahead, in the Fund Finance Segment it will remain key to attract and invest in talent pools.”

List'en Up – Cayman and the EU AML List – A Lender Update

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As avid LinkedIn users will no doubt be aware, the EU's focus on lists of various types continues and the Cayman Islands looks set to be added to the EU's list of "high risk countries" for anti-money laundering at the end of February (the "EU AML List").

We have set out below the background to this and some high-level thoughts on its effects but, if you are sitting at your desk this Friday simply counting the days to Miami and wondering if this matters to you, the short answer is that it should not have any material impact on the fund finance sector (either on a lender's ability to accept Cayman entities as credit parties in deal structures or on the ability of sponsors to utilize Cayman vehicles).

I recall something about a listing two years ago – is this the same as the last one?

In February 2020 (right about the time many readers were on the terrace at the Fontainebleau living life like it was 2019!), the EU included the Cayman Islands on its Annex 1 list of "non-cooperative jurisdictions for tax purposes" – the so-called "EU Tax black list." On that occasion, the listing was due to a number of technical points and timing delays in the introduction of new legislation in the Cayman Islands and, while the listing had no effect on "real world" transactions, it was of course a welcome development when the Cayman Islands was removed from the EU Tax black list on 6 October 2020. This remains the position, and the Cayman Islands is considered by the EU to be a fully cooperative jurisdiction for tax purposes.

So what's different here? What does this list concern?

In February 2021 the Financial Action Task Force ("FATF") added Cayman to their increased monitoring or "Grey" list (this time because 3 of 63 actions on a list of recommendations by FATF were not yet complete). Despite the fact that in October 2021 the Cayman Islands was deemed by FATF to be compliant or largely compliant with all of the 40 FATF Recommendations to prevent money laundering and terrorist financing, the Cayman Islands currently remains on this "Grey" list whilst it addresses the remaining action points and, due to the timing in the FATF process to review the "Grey" list, we understand the earliest opportunity for Cayman's removal will be October 2022.

Once a jurisdiction has been added to the FATF "Grey" list, it has historically been automatically added to the EU AML List. Although it's not expected that the Cayman Islands will remain on the FATF "Grey" list for much longer, the EU has decided to follow its precedent and proceed to add Cayman to the EU AML List as a formality given its "Grey" listing by FATF. Unless the European Parliament or the EU Counsel objects to the proposals, it is anticipated that the addition of the Cayman Islands to the EU AML List will come into force in late February or early March. If there are delays or an eleventh hour reprieve we'll be sure to send everyone another update!

Does this EU AML List have any impact on fund finance deals?

In short: no. It will have no material impact for either lenders or borrowers and, despite some predictable negative press coverage directed at the Cayman Islands in the coming weeks, the issue will be irrelevant on a day-to-day basis for market participants in the fund finance sector. We do not anticipate any required changes to transaction documents to address the point.

One point of note for Lenders which are subject to EU AML regimes is that they would, once the listing is in effect, be required to apply enhanced due diligence to Cayman Islands counter-parties. Our understanding, however, is that this level of diligence would not materially differ from what they already would apply to Cayman vehicles as a result of Cayman being on the FATF "Grey" list, or that in fact a number of lenders have always required this level of diligence in respect of Cayman vehicles. On the sponsor side, our understanding is that the addition of Cayman to the EU AML List does not at present trigger any issues for the ability of EU investors to invest in Cayman Islands funds.

Conclusion: So it's all okay and I can go back to day-dreaming about the Miami weather?

Yes – or wondering if Tom Brady may come out of retirement and play for the Panthers next year! As with the last EU “listing,” the addition of Cayman to the EU AML List originates from technical issues that the Cayman Islands Government is already addressing (or has already addressed). We do not anticipate that Cayman’s inclusion on the EU AML List will continue for a material period of time, and, in the interim, fund finance transactions will be able to continue unaffected by this point.

FFF Travels to the Channel Islands: An Introduction to Jersey and Guernsey

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Cadwalader has recently seen a growth in the number of funds formed in Jersey and Guernsey that are party to subscription and NAV facilities. Trent Lindsay and Cassandra Best spoke with [Julia Keppe](#), Senior Counsel at Walkers in Jersey, and [Zoë Hallam](#), a Group Partner at Walkers in Guernsey, to learn more about the fund finance market in the Channel Islands.



Julia Keppe and Zoë Hallam

FFF: Julia and Zoë, thank you again for speaking with us and for the crash course on Jersey and Guernsey funds. To kick things off, what are recent trends in fund formation and the fund finance market in Jersey and Guernsey?

JK: Thank you so much for inviting us! Delighted to be talking with you. In terms of trends, in the Channel Islands we are of course local counsel, and so the trends we see tend to track what is going on onshore. So I'm sure a lot of this will be very familiar to your readers.

ZH: Recently, and as you've mentioned, there has been a real uptick in our deals coming out of the U.S. We regularly work with European clients and instructing counsel; however, it has been great to increasingly see Jersey and Guernsey vehicles alongside U.S. vehicles on U.S.-originated deals. I spent eight years in Walkers' Cayman fund finance team before relocating to the Guernsey office in 2019, and it's good to be back working more frequently with my U.S. network.

JK: Yes, agreed. More generally, the number of funds and amount of capital committed in both jurisdictions is increasing. Jersey Finance reported that the value of the total funds business booked in Jersey grew by 15% over the first half of 2021, with the total value of fund assets reaching a new record level of £436.3 billion at the mid-year point. This was driven by private equity, growing by 24% over the same period.

ZH: The Guernsey Financial Services Commission has published Q3 stats for 2021. Net asset value of Guernsey funds increased 6.4% in the quarter and sat at £290bn at the end of it. Of that, £238bn sits in closed ended funds, which shows the importance of closed ended funds to the industry as a whole. To briefly touch on the fund finance space, the main trend we are seeing is a rise in the number of NAV facilities. We heard a lot of talk about NAVs in 2020 but didn't see them materialise until 2021. There is no doubt now they are a strong feature of the landscape, alongside traditional sub lines.

JK: Agreed again, and they seem to be becoming more complicated as well. Definitely not complaining, as it's great to be working on the complex fund finance solutions coming into the market.

ZH: And the market across both islands continues to be innovative – we are seeing crypto funds being set up over here, which is keeping the regulators busy! And the cannabinoid healthcare market has been an area of focus since the establishment of the first fund in Guernsey in 2020.

FFF: What are the advantages or disadvantages to forming Jersey and Guernsey funds from the perspective of a sponsor or a lender to funds?

ZH: The advantages of the Channel Islands are very similar to the advantages of some of the more traditional U.S.-facing offshore markets, such as the Cayman Islands. Broadly speaking, it is tax neutrality, a stable legal environment, and the presence of all the necessary professional advisors. More specifically, there is a light touch regulatory regime in both jurisdictions, where funds can be approved within 2 days in Jersey and 24 hours in Guernsey (not that it's a

competition)! Marketing Channel Islands funds in the UK and Europe under AIFMD is also a well-trodden path, and can be much cheaper and quicker than some onshore jurisdictions.

JK: Interestingly, the finance bodies in Guernsey and Jersey are reporting an increased capital flow from the U.S. into Channel Islands funds, and back into the U.S. Perhaps unsurprisingly, more than two-thirds of the inwards investment in Guernsey is in private equity. While our timezone is convenient for European managers, investors and assets, I suppose for U.S. deals, the time difference can be a disadvantage in terms of liaising with administrators and directors, but certainly not insurmountable. The professional services industry is global in its outlook and used to dealing with all timezones.

ZH: In terms of lenders, in addition to Julia's previous points, there is certainty and stability in using the Channel Islands around security and contractual rights. In particular, there is a wide body of case law for disputes and enforcement, with ultimate recourse to the Privy Counsel (should it ever be required...).

FFF: Are there any material differences in the way capital call security is granted and perfected with respect to subscription facilities in Jersey and Guernsey, respectively? Is it possible to rely on New York law-governed security documents or is it necessary for local law documents to be executed, or both?

JK: In both Jersey and Guernsey, we would require local law-governed security over capital calls and bank accounts (assuming, of course, the accounts are located here). While there is no issue with also providing New York law-governed security, on enforcement, we would rely on the local security which will have complied with the local legislation on creation and perfection.

ZH: Yes, the base position of local law security is common to both islands, although there are differences between the two jurisdictions in creation and perfection. The main conversations we have with our lead counsel on this point revolve around notices to investors. In Guernsey, the position is clear: notices are required to create security; therefore, they are sent simultaneously with the entry into the capital call security agreement. However, in Jersey, notices are not required for the creation, perfection or priority of the security, so it becomes a commercial decision.

JK: Correct, and market practice does vary, though we do tend to see notices being sent, with more discussions around timings. I'm sure most people will be very familiar with that conversation! In addition, it is worth mentioning that Jersey (unlike Guernsey) has a public security interests register, so any Jersey law-governed security, regardless of the jurisdiction of the grantor, is registered here.

FFF: What about perfecting security with respect to collateral accounts based in Jersey and Guernsey? Do you have a concept similar to account control agreements?

ZH: We don't tend to use control agreements in either jurisdiction. We have the concept of 'blocked' and 'unblocked' accounts. In subscription line facilities, the account is unblocked, until an event of default. Following this, the security agent can 'block' the account so that the borrower is no longer permitted to make withdrawals or give instructions to the account bank. In terms of what is signed on a closing, for priority purposes, the grantor and secured party will send a notice to the account bank, which is usually acknowledged the same day. This is always in the relevant account bank's standard form, and is a very well established process on both islands.

FFF: Are there any aspects of Jersey and Guernsey law that lenders taking security under an NAV facility over equity and debt interests held by funds should consider?

JK: Not really. Jersey and Guernsey law is fairly similar to English law when it comes to taking security over equity and debt. Share certificates, stock transfer forms and annotated registers of members are required for perfection and priority purposes. Most often, issues arise where the constitutional documents of the underlying investments don't permit (or impose consent requirements on) the granting of security – but those issues are not unique to the Channel Islands!

ZH: Perhaps one thing to flag is the inability in Guernsey to take all asset security under Guernsey law (akin to a U.S. security agreement or an English debenture). So we need to identify each relevant underlying Guernsey situs asset and take specific security over that asset. Jersey is a little more flexible in that regard.

JK: Indeed, we do have the ability to take security over all intangible moveable property located in Jersey, though generally we tend to see asset specific security (usually, shares, contract rights or bank accounts).

FFF: Are there any significant differences between Jersey and Guernsey law that affect the fund finance market?

ZH: Again, not really. As noted, both laws have a lot in common with English law, and English case law would be persuasive in our courts. While there are still differences with English law and also between the two jurisdictions, none that are really significant or would necessarily steer a sponsor towards one jurisdiction or the other. It's great to be able to say that both islands offer such a stable environment for funds and fund finance.

FFF: What do you think the year ahead will bring?

JK: Hopefully a continual expansion of the fund finance market which has been, as is well reported, so resilient over the past few COVID-affected years. We expect ongoing innovation of the products on offer, particularly in the NAV space. Sadly, travelling to Miami is not possible for myself or Zoë this year, but fingers crossed the summer FFA symposium in London will go ahead and we will be able to cross the Atlantic again next year. We are very much looking forward to that.

Private Equity International: A Special Report on Fund Finance

February 4, 2022 | Issue No. 161

The February 2022 edition of *Private Equity International* contained a 15-page special report on Fund Finance. Report topics include the leap to fund finance 2.0, transparency and ESG-linked loans, preferred equity's rise during COVID, fund financing versus portfolio company financing, and interviews with multiple players in the fund finance field. To access the February 2022 issue, click [here](#).

Wildgen Fund Finance Webinar Series: 2022 Market Perspectives

February 4, 2022 | Issue No. 161

A new year means new perspectives for the fund finance sector. Last week, Michael Mbayi of Wildgen hosted a panel – featuring industry leaders Jeremy Cross of Addleshaw Goddard; Sarah Lobbardi, Founder of Avardi Partners; Ram Rao of Macquarie; Leon Stephenson of Reed Smith; and Alice Wight of Walkers – that examined fund finance activity during 2021 and the panelists' perspectives on what to expect for 2022. For more information and a link to the webinar recording, click [here](#).

Fund Finance Partners Article in PEI

February 4, 2022 | Issue No. 161

Private Equity International this week published an article by Anastasia Kaup, a partner at Fund Finance Partners, titled “Fund financing vs. portfolio company financing.” The article summarizes the differences between subscription credit facilities, net asset value (NAV) or asset-based loan credit facilities, hybrid credit facilities and how fund sponsors pursue a particular fund financing solution. Click [here](#) for the article.

Super Bowl Edition of Fund Fanatics

February 4, 2022 | Issue No. 161

With the Super Bowl just around the corner, tune in for this week's special Super Bowl edition of Fund Fanatics. Jeff Maier and Scott Aleali are joined by former Super Bowl champion and now Private Equity Partner & Head of Business Development at Adams Street Partners, Gary Fencik. In this [segment](#), Fencik discusses his role on the Super Bowl champion 1985 Chicago Bears team, the cross section between sports and Private Equity and the importance of establishing the right culture.

Brickfield Interviews Robin Smith of Carey Olsen

February 4, 2022 | Issue No. 161

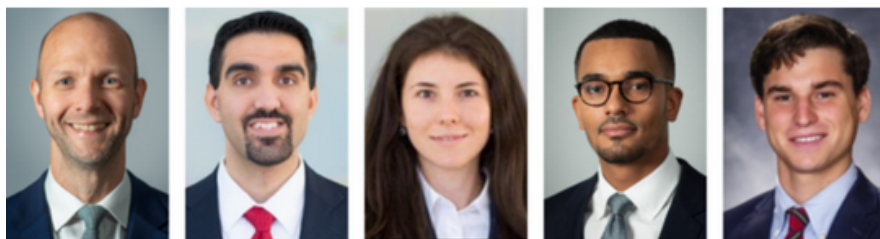
Brickfield Fund Finance Recruitment has published its first **Fund Finance Voices** feature of 2022, featuring **Robin Smith** of Carey Olsen, who talks about his career and working offshore, as well as giving his views on the future of the fund finance industry. The article is available [here](#).

Readers looking to receive regular updates on talent acquisition trends in fund finance can follow Brickfield on [LinkedIn](#). Law firms, funds, alternative lenders, banks and candidates with specific enquiries should contact **Rory Smith** by [email](#) or by telephone on +44 7800 963 594.

On the Move – Fund Finance Tidbits

February 4, 2022 | Issue No. 161

On the Move



From left to right: Dirk Kaiser, Nake Grewal, Cristina Savu, Jaspa Douse and Ben Echols

Wells Fargo's Subscription Finance Group has made some recent promotions, including: Dirk Kaiser was promoted to Managing Director; Nake Grewal was promoted to Director; Cristina Savu was promoted to Director; Jaspa Douse was promoted to Vice President; and Ben Echols was promoted to Vice President. Congrats to Dirk, Nake, Cristina, Jaspa and Ben!

Michael Hubbard Joins Cadwalader's Fund Finance Group

February 4, 2022 | Issue No. 161



WELCOME

Michael Hubbard
Fund Finance, London

C A D W A L A D E R

Cadwalader's Fund Finance team is excited to announce that Michael Hubbard has joined the practice in our London office. Mike arrives from Lloyds Bank, where he was a director in the Loan Markets team focusing on origination and distribution of fund finance products. Over his 17 years of industry experience, Mike has been responsible for originating, structuring and syndicating some of the largest fund financings in the European industry, including capital call facilities, GP financings and NAV facilities across all asset classes. We are thrilled to welcome Mike as the latest addition to our transatlantic team. Please visit [here](#) for the full press release.

Eric Starr Rejoins Cadwalader Fund Finance

February 4, 2022 | Issue No. 161



Eric Starr rejoined Cadwalader's Fund Finance team as a Special Counsel this week. Eric is based in our Charlotte office and represents lenders on subscription facilities, capital call lines of credit, GP financings and NAV loans.

Fund Finance Hiring

February 4, 2022 | Issue No. 161

Fund Finance Hiring

Commonwealth Bank of Australia is looking for an associate director to join its Non-Bank Financial Institutions team in New York. More information is available [here](#).

Pacific Western Bank is hiring a VP-level Client Manager to join its Fund Finance Group. The position will be preferably based in either Denver or New York City. If interested, please visit [here](#).

People's United Bank is looking for a Portfolio Manager for its Fund Banking group. For more information, email [Michael Sinclair](#), Head of Fund Banking.

State Street is looking for a credit analyst officer to join its Subscription Finance team in Boston. Candidates will have around two or more years of experience in credit analysis or related finance experience. For more information, please visit [here](#).