European Financing Structures Involving UHNWIs and Family Offices

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It is no secret that fund managers are becoming increasingly resourceful in their efficient use of leverage in the net asset value ("NAV") space of the fund finance market (see *Financial Times* **article**). What we have seen since the onset of the pandemic is an increasing number of financing solutions tailored towards family offices and ultra high net worth individuals ("UHNWI") looking to leverage against their existing limited partnership interests in private funds ("LP Interests").

Many of these deals are provided (or originated) bilaterally by the private wealth team of a financial institution familiar with fund financing products. However, we have seen a number of deals where the relevant relationship manager introduces their fund finance colleagues to the relevant team acting for the family office or UHNWI to help develop a fund financing solution to help release value from LP Interests so that the family office or UHNWI (as the case may be) has greater firepower in pursuit of their investment strategies. In almost all cases, there is a strong existing relationship between the private wealth relationship manager and the UHNWI/family office (or their representatives).

Fund Finance Friday previously published articles on considerations in NAV transactions from a U.S. perspective (**here** and **here**) and many of those considerations apply to NAV facilities to UHNWIs/family offices in the European market.

The usual structure for this type of financing follows those more commonly seen secondaries deals in that a wholly owned special purpose vehicle ("SPV") (commonly structured as a limited company or as a limited partnership itself and established in a familiar offshore jurisdiction) holds the LP Interests (and is the investor of record for the underlying fund). The SPV is then the borrower under the financing and security is given over the SPV (either as share security or, if the SPV is a limited partnership, security interests over the limited partnership interests in the SPV itself and security interests over its general partner) as well as bank account security over the accounts in which distributions and other proceeds from LP interests are paid.

Given that UHNWI/family office NAV financing is predominantly a relationship product between the relevant financial institution and the UHNWI/family office, the structures are more bespoke than usual secondary NAV financing. For example:

1. the purpose of the financing can include upstreaming the proceeds of loans to aid investment by related entities;
2. the owner of the interests (the "Parent") in the SPV is usually a guarantor;
3. as the SPV is usually established for the purposes of the financing and commonly holds just enough LP Interests to comply with financial covenants, there are creditworthiness covenants biting on the Parent;
4. in some cases, the UHNWI is required to provide a personal guarantee in favour of the lender (and they may also be subject to creditworthiness tests);
5. as the UHNWI will have a deep and wide business relationship with the lender, assets outside of LP Interests frequently contribute to the calculation of financial covenants within the financing (such as equities, securities, fixed income instruments and gold); and
6. some financings have no fixed termination date and are largely repayable through agreed cash sweeps and on demand (with a relatively generous notice period).

As the main collateral in support of this type of financing is the value of LP Interests, as mentioned in the other *Fund Finance Friday* articles referred to above, careful legal due diligence should be undertaken on the investment documents relating to the LP Interests to analyse potential hazards/restrictions in taking security over the SPV (for example, the underlying limited partnership agreement relating to an LP Interest may contain restrictions around indirect security and/or changes to ultimate beneficial owners and therefore solutions to this need to be put in place). In addition to this, ownership documents relating to the LP Interests (such as subscription agreements and side letters) should be reviewed.

As many private fund GPs extended the life of their funds during the pandemic when asset valuations were negatively affected, the need for family office/UHNWI financing significantly increased in order to bridge a liquidity gap faced by numerous investors. The recent developments in sanctions law and policy adopted globally is likely to affect a small number of these deals being established. However, given the current economic climate (especially in respect of inflation rates in Europe,) coupled with banks and European UHNWI/family offices looking for liquidity solutions as well as new entrants to the NAV secondaries fund financing market (who already have close connections to UHNWIs and family offices in other parts of that lender's business,) then we fully expect this area of fund financing to continue to grow significantly this year and next year.

Nominations Open: FFA DEI Emerging Leaders

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European nominations for FFA DEI Emerging Leaders are now open until June 3, 2022. The FFA and Diversity in Fund Finance are continuing to support and recognize individuals in the industry for outstanding contributions to further diversity, equity and inclusion efforts in the fund finance market, their workplaces, and/or the broader community. Successful nominees will receive one complimentary ticket to the FFA European Symposium in 2022! For more information, please click **here**.

DFF Event Recap – ‘Boundary Breakers’ Speaker Series: Fireside Chat with Keith Wetmore

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By **Anastasia Kaup**
Managing Director | Fund Finance Partners

Recently, I was pleased to have the opportunity to moderate a “Boundary Breakers” discussion featuring Keith Wetmore, on behalf of the Diversity in Fund Finance group.

Our conversation included a recap of Keith’s professional career, a discussion of his lived experience as an openly gay man in places around the U.S. and how that experience has changed over time, and suggestions for how allied individuals and organizations can further advance diversity, equity, and inclusion of LGBTQ+ and other diverse professionals.

Some key lessons and take-aways from the conversation included:

- Ideally, the fact that someone is diverse is the fourth or fifth most interesting thing that someone can say about them. Most diverse professionals want to be treated equally and evaluated on merit, and many would prefer that their personal diverse characteristics are a non-factor. Keith’s tenure at MoFo was remarkable for what he accomplished in terms of objective metrics (e.g., doubling revenues), not because he also happened to be an openly gay man.
- Organizations that want to improve DEI would be well served to keep in mind the broader context and all the factors, and not focus solely on numbers, which often don’t tell the full story for diverse candidates. DEI recruiting, retention, and promotion efforts should take into account historical inequities that may be disproportionately impacting diverse individuals (e.g., recognizing that a diverse law firm Partner’s client business origination numbers may not tell the full story about their business generation capabilities because of the widely reported phenomenon of some diverse Partners in some law firms not receiving full credit for such originations).
- Institutions we work in can be scary places for some, particularly diverse individuals who often feel like “others” or “outsiders”. If we each do one thing each day to make others feel welcome, equal, and included, we can make our institutions less scary, more diverse/equitable/inclusive, and better places.

For those who may have missed the live event, you can view a recording **here**.

We are so grateful to Keith for sharing his experiences and insights. If you’d like to get involved with Diversity in Fund Finance, please reach out to **me** or the **group**.

About Keith Wetmore:

Keith was the Chair and Chief Executive Partner of Morrison & Foerster LLP from 2000-2012, the longest tenure of any Chair in the modern era. Before ascending to his firm leadership positions, Keith’s law practice focused on finance. During Keith’s tenure as Chair, the firm more than doubled its revenue to over $1 billion and tripled its net income without increasing attorney headcount. Often described as the first openly gay leader of a major law firm, Keith has been active in issues relating to LGBTQ+ attorneys in the workplace and HIV/AIDS his entire legal career. Keith is now a Managing Director at Major, Lindsey & Africa, the leading global legal search firm, where he represents partners and groups in placements into top law firms across the country. He uses his deep knowledge of the legal market and his law firm management experience to guide partners and firms in making the right moves.

About Anastasia Kaup:

Anastasia Kaup is the Co-Chair of Diversity in Fund Finance and a Managing Director and Partner at Fund Finance Partners, LLC. Fund Finance Partners is an independent advisory firm, advising asset managers/fund sponsors and their portfolio companies on various debt financing solutions to achieve various objectives. Immediately prior to her current position, Anastasia was a Partner and leader of the fund finance practice at the international law firm Duane Morris LLP. Anastasia has also been involved in the LGBTQ+ community and DEI work for decades, is also openly a member of the LGBTQ+ community, and has held numerous leadership positions in national, state, and local organizations focused on improving DEI for LGBTQ+ and other diverse individuals.

The History of the FFA and 'Fund Finance 2.0'

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Wildgen has introduced a new series, "Fund Finance Expert Talks," where key industry players are invited to a one-on-one discussion with Wildgen Director, Michael Mbayi. **Tune into** the inaugural episode featuring Nick Mitra, Managing Director at Société Générale in New York. In this first episode, Mbayi and Mitra discuss the growth of the FFA, and "Fund Finance 2.0," including the growth of hybrid and NAV deals, the introduction of rated note feeders, the priority on ESG, and considerations to keep in mind with the growing complexity of fund structures.

Carey Olsen on ‘Cayman Islands fund finance update: A potential respite from Padma?’

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In this **article**, Carey Olsen provides a market update on a new decision of the courts of the Cayman Islands walking back some of the impact of last year’s decision in Padma, and outline their current recommendations to lenders in the space on how to approach the issues raised going forward.

Private Funds CFO Article on NAV Lending to Cover Hedging Obligations

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Mark Battistoni of HedgeNAV LLC authored a guest article for *Private Funds CFO* titled: “International funds consider the transition to a NAV-based liquidity alternative for currency hedging”. The article covers the use of a NAV loan to cover hedging variation margin obligation. The subscription-required piece is available **here**.

Secondaries Investor Article on NAV Lending

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Secondaries Investor published an article on NAV lending and pref equity structures coming off of 17Capital's recent successful fundraiser. To view the subscription-required article, click **here**.