Welcome to Miami!

March 22, 2019 | Issue No. 19

Market participants started trickling out of the office toward Miami today for the 9th Annual Global Fund Finance Symposium at the Fontainebleau Hotel. Private events start Saturday, and the Symposium formally kicks off with a Welcome Reception sponsored by Harneys on Sunday evening at 6 p.m. on the Ocean Lawn. Cadwalader's reception is later Sunday evening at 8 p.m. If you have not already registered, we are running into space constraints, but drop by if you are able, and we will let all in that the hotel permits. The formal schedule starts Monday morning at 9 a.m., highlighted by a discussion session with Anthony Scaramucci starting at 9:30 a.m. Thanks to Nick Mitra, Managing Director at Natixis and co-leader of the Symposium's Content Committee, for submitting the below guest article on the Symposium's content and agenda. Look out for periodic updates from Fund Finance Friday during the event.

9th Annual Global Fund Finance Association Symposium

March 22, 2019 | Issue No. 19

By Nick Mitra
Managing Director | Natixis
First Vice Chairman | Fund Finance Association

The Fund Finance Association has organized an exciting lineup of content for the 9th Annual Global Fund Finance Symposium to be held at the Fontainebleau Hotel in Miami from March 24 – 26. This year's Symposium promises to be the largest-ever industry conference in Fund Finance.

The Symposium starts with an evening cocktail reception on Sunday, March 24 and ends at noon on Tuesday, March 26. The content for this year's Symposium was created by the Content Committee, which consists of industry-leading banks and law firms and is co-chaired by Dee Dee Sklar at Wells Fargo and me.

Selected topics we are especially excited about this year include:

- An intimate fireside chat with Anthony Scaramucci—focusing on The Mooch's life experiences, brief time in the White House and building his hedge fund company,
- Can we handle diversity? A candid conversation about unconscious bias, diversity as a business opportunity and how to take action by the Women in Fund Finance,
- GP Roundtable—an exclusive GP-only session led by Simpson Thacher & Bartlett focusing on the challenges confronting GPs in the fund finance landscape with reporting back to the Industry Panel,
- Industry, Institutional Limited Partners Association (ILPA) and Regulatory panels—frank discussions around investor concerns in the private capital space, new challenges in the use of fund finance and growing regulatory pressures in lending,
- A Subscription Finance Debate—a spirited discussion on fund structures, the use of umbrella facilities and the flexibility of credit facilities,
- Industry-focused dialogues on real assets and private credit, focusing on the rapid growth in these asset classes and the implications for fund finance,
- Syndication panel—the ins and outs of developing a club vs. wide syndicate for facility distribution,
- Hybrid and NAV Finance panel—fund financing when a standard subscription facility isn't enough,
- Management Company and GP Financing—a discussion on ancillary financing products GPs are using and why,
- Foreign Exchange panel—a comprehensive discussion led by Wells Fargo on the use of FX and implications for fund finance, and
- Anatomy of a Subscription Default—From Litigation to Work-Out! An exciting lineup of the leading legal and banking minds sharing their expertise on what happens when it all goes wrong.

Additionally, for the second year in a row, the FFA Julian Black Industry Award and the FFA Dee Dee Sklar Women in Fund Finance Award will be presented to two leading professionals for their dedication to the fund finance industry. To see the complete Agenda, click **here**.

The Fund Finance Association looks forward to seeing you in Miami!

Show Me the (Manager) Money

March 22, 2019 | Issue No. 19

It is no secret that LPs have been increasingly focused on conducting greater due diligence on the funds they are looking to invest in, and this trend has intensified since the collapse of Abraaj. A lot of the focus of this enhanced LP due diligence focuses, quite rightly, on fund administration and risk controls. However, greater attention is also being given to how the management company is financed, its cash flow situation and who the appointed accountants are.

In the context of subscription lines, lenders do not routinely conduct detailed analysis on the financial position of a manager (i) when assessing whether a fund is bankable for the purpose of a subscription line, or (ii) on an ongoing basis once the subscription line is in place. However, as we have seen with the collapse of Abraaj, the financial health of a manager could severely affect the creditworthiness of a fund and the behavior of the LPs in that fund in the event that a GP, manager, or indeed, an affiliated investor, is unable to meet its obligations to the fund. Nor do subscription line lenders look to the financial condition of any vehicle sitting between the GP/manager/affiliated investor and the ultimate holding company within the structure which finances these entities and allows them to comply with their commitment obligations under the fund documents. Certainly facility agreements will contain an event of default trigger if the GP or manager becomes insolvent (and trigger an exclusion event if the affiliated investor is included within the borrowing base), but what if the GP/manager/affiliated investor’s source of funding is cut off because one of its holding companies becomes subject to insolvency procedures? This wouldn’t, in and of itself, constitute an event of default or a change of control, so what option would the lender have in these circumstances? Calling an MAE may be an option, but lenders are understandably nervous about calling an event of default based on MAE alone.

On the other hand, many articles in the press recently have referred to indebtedness at the manager or GP level to be "red flags" which is in itself not correct. A manager or general partner may take on debt for a variety of legitimate and necessary reasons. Manager liquidity lines and GP commitment financing lines are very common and serve a necessary purpose for many GPs and managers in the market. What is key is to identify how and to what extent the GP/manager is using this financing.

Going forward, we expect to see lenders in tandem with LPs looking for increased due diligence on funds and looking to capture within the facility documentation triggers in respect of insolvency-type proceedings affecting any vehicle on which the GP/manager/affiliated investor relies upon for funding. To what extent lenders will push for (and GPs/managers will agree to provide) detailed information in relation to the financial position of the GP and management vehicles or their affiliates remains to be seen. Clearly, there needs to be a balance achieved between events which could be materially adverse to the position of the subscription line lenders while recognizing that liquidity/commitment financing lines at the GP/manager level are common and necessary tools used by GPs and managers in the market.

(Over) Call Me, Maybe

March 22, 2019 | Issue No. 19

By Michael Mascia
FFA Board Member

By **Chris van Heerden**
Director | Fund Finance

Last week, our colleague Amrita Maini published a succinct primer on overcall limitations (available **here**). Judging by the number of lender inquiries, we thought some data on their prevalence might be of interest. Based on the 252 fund finance facilities Cadwalader closed in the United States in 2017 and 2018, here's a survey of overcall provisions by the numbers.

First, a note on how we compiled the data. We analyzed overcall provisions by broadly dividing them into three categories: (1) restrictions that limit the use of overcalls to pay management fees, (2) limits applied to overcalls based on a percentage of the prior overcall (*i.e.*, "*the General Partner is authorized to make a subsequent capital call on the non-defaulting limited partners to make up the shortfall, provided that no limited partner shall be required to fund an amount in excess of 50% of the amount originally called*"), and (3) concentration-linked overcall limits that tie the overcall to an asset diversification provision (*i.e.*, "*the General Partner is authorized to make a subsequent capital call on the non-defaulting limited partners to make up the shortfall, provided that no limited partner shall be required to fund an amount in excess of the Fund's per investment diversification limits in Section X of this Agreement if such diversification limits were applied on a partner-by-partner basis*").

Following this approach, we found:

- 38% of funds had some form of overcall limitation in the fund's partnership agreement,
- 21% of funds imposed a management-fee overcall prohibition,
- About a two-thirds of overcall limits were percentage-of-prior-call type restrictions and one third were concentration linked limits, and
- Overcall limits were slightly more common in 2018, increasing in prevalence by 2% from 2017. It may be too early to call this a trend.

Two counterintuitive points emerge from the data: First, the larger facilities to the top tier sponsors were far *more* likely to include some form of overcall limit. That is, the sponsors with the greatest negotiation leverage are more likely to give overcall limitations to investors than smaller sponsors. This begs the question as to whether investors actually value overcall limitations and are insisting on them or if, instead, overcall limits just repeat in certain new funds because of repetition of historical precedent.

Second, for as much heartburn as overcall limitations cause lender credit committees, their presence does not seem to result in risk-adjusted pricing. Rather, our average facility with some form of overcall limitation priced 13 basis points *inside* average pricing for facilities without any limitation. Facility size and sponsor assets under management size had a far higher correlation on spreads than overcall limitations.

What we did not look at, and what would be interesting to validate, is whether facilities with overcall limitations tend to include tighter structural mitigants, such as, for example, tighter covenant packages, shorter cleandown periods, fair market value to cost triggers or tighter aggregate investor delinquency triggers. The product of such further study, we suspect, would be to reinforce our view that first principles—sponsor quality and the investor credit mix—still come first when it comes to pricing, even if it doesn't always feel that way in the credit process.

Fund Finance Hiring

March 22, 2019 | Issue No. 19

Fund Finance Hiring

- Morgan Stanley is seeking an analyst or associate in its Firm Risk Management Group to support its Wealth Management New Products Group. The role will focus on credit analysis and underwriting covering capital call subscription facilities and other illiquid lending product types. Further information about the opportunity is available **here**.
- First Republic Bank's Private Equity Finance team in New York, led by Managing Directors Jeff Maier and Scott Aleali, is expanding and has multiple available opportunities. The team is looking for both analyst- and associate-level candidates for client-facing roles. There is also an opening in a cash management function. Strong performers with exceptional client services skills are encouraged to apply. For more information, click **here**.
- If you have an opportunity you would like posted on Fund Finance Friday, email us at **fund-finance-friday@cwt.com**.

Ogier Article on Subscription Finance

March 22, 2019 | Issue No. 19

Ogier this week published a thought leadership piece titled “Subscription Finance Cayman Islands – Luxembourg Analysis.” The article does a terrific job of summarizing the key issues, particularly with regards to taking security, in both jurisdictions. A copy of the article is available **here**.