

CADWALDER

Cadwalader Hosts 7th Annual Finance Forum

October 20, 2023

Over 700 financial industry leaders and professionals from around the country participated in Cadwalader's seventh annual Finance Forum in Charlotte yesterday. It was wonderful to meet for a collective dialogue on the foremost issues facing the industry today, with respect to fund finance, leveraged finance, commercial real estate, middle-market lending, asset-based lending and structured finance.

We are grateful to our speakers, clients and all attendees who took the time to participate in the event's many dynamic discussions, fireside chats and networking.

Next week's *FFF* will include more coverage of the Finance Forum. In the meantime, please enjoy these photos!



Life ... And Finance ... Move Pretty Fast

October 20, 2023



By **Wes Misson**
Partner | Fund Finance

Finance Forum Welcome Remarks

Good afternoon. Welcome to the Cadwalader Finance Forum. I'm Wes Misson, the Co-Chair of the Finance Group at Cadwalader.

We all know from personal experience that we're occasionally presented with life decisions that will prove defining for years to come. These moments are not confined to our personal stories: Many business leaders have set to pen their process for identifying inflection points in their business and how they navigated the change.

You're probably thinking of a book or two right now, and in reality there are many more than we can count. If I can make the first recommendation you hear at today's conference, it's this:

Get your book on facing future-defining crises and transformation in front of publishers now! The demand is insatiable, if the number of bestsellers on the topic is any indicator. But you better hurry – AI is going to take over the space!

All kidding aside: Here are some facts on how fast things are moving:

(1) The average life-span of companies listed in the S&P 500 has shortened from 61 years in 1958 to just 18 years today, according to data from McKinsey.

(2) Every year about 600,000 new businesses are launched in the U.S., half of which will fail within the first five years.

And finally, (3) many of the largest companies in existence today are kids of the nineties – Facebook, Google, Amazon, and Netflix, to name a few.

Here's where I'm going with this: Change isn't limited to those big defining moments, but is constant. That's not a new idea. An ancient Greek philosopher, Heraclitus, is credited with coining the saying, "The only constant in life is change." He's also the guy that wrote "no man ever steps in the same river twice."

What may be new today is not change itself, but the rate of change. Think about how many Zoom meetings you did in 2018, how your grandparents would understand cloud-based data, or how much you knew about natural language learning models last year.

Modern day philosopher Ferris Bueller (... Bueller?) once said "Life moves pretty fast. If you don't stop and look around once in a while, you could miss it." The fact is, things around us are changing fast, and perhaps faster than ever. That's a big part of why we're here today.

That, and the open bar at 5:30. I get it.

But as you ponder that change, it's also important to pick the signal out of the noise and prioritize the changes that will matter over time. We are a resilient and adaptive bunch... This year shows that.

So, let me cover a few of the big changes around us, some of which will naturally weave into the panels and fireside chats today, and some which may not, but are nonetheless worth thinking about:

(1) Capital formation is increasingly moving out of the regulated banking system.

Over the past five years, roughly a trillion dollars has been raised by private debt funds. The market is migrating to sourcing debt and equity capital from long-horizon draw-down vehicles. While these funds may be subject to less oversight, they rely mostly on institutional limited partner funding rather than depositors.

(2) Western economies have moved the dial far over to the "safety, or stability" setting and away from the "unimpeded financial markets" setting.

The Federal Reserve has assumed an expansive role through its reverse repo facility, standing repo facility, and by paying interest on excess bank reserves, all in addition to recently directing Treasury and mortgage-backed security yields by deploying its balance sheet.

Setting aside any value judgements, let me just note that the Fed's expanded role and possible future expansion should be viewed as the normal base case for how markets function today.

(3) The low interest rate environment marked by abundant and cheap capital has ended.

We continue to see upward pressure in prices for wages and commodities. The unwinding of globalization may also mean the unwinding of its pricing benefits we experienced over the past decade. A large Federal deficit and an active Treasury issuance outlook complicate the picture.

We're increasingly reminded to separate out real, inflation adjusted, data in evaluating markets and our business in place of simple nominal measures.

(4) We're in an age of sweeping technology transformation.

We've all thought about this, but here's a forward-looking example: U.S. Data center electric power consumption is expected to double between now and 2030 to reach 30 gigawatts, according McKinsey research.

30 gigawatts?! That's enough to power 25 flux capacitors in a time traveling DeLorean.

And today, it's not all tied to time travel... it's tied to computing power for AI and its applications like self-driving. Someone in each of our respective businesses will be first to figure out how to harness AI to automate data harvesting, storage, retrieval, interpretation, and presentation.

(5) I would change this if I could (...trust me), but we're all getting older.

According to Census data, the median age rose from 30 in 1980 to 35 in 2000 and now to 39 (as of 2020). By 2030, one in five Americans will be 65 or older, up from 13% in 2010. That's one of the key demographic trends changing our country. Another one that's obvious if you pay attention to license plates in Charlotte is the continued population migration out of the Northeast, Midwest, and Pacific coast urban centers to the South. Who does the work, where they do it, and how they do it are all in motion.

(6) Finally, and maybe a little closer to the edge of your comfort zone, we're in an unusual period of declining institutional credibility.

Time will tell whether this matters in the context of finance, but in June, Gallup reported public confidence in U.S. institutions was at or near the all-time lows, depending on the institution. Each of these themes are not just significant in their own right, but will have second order effects that will take time to tease out. Some of them will interact with each other.

As for advice, I'll point you to the ample volume of literature – only with the point that Ferris Bueller was right. Life does move pretty fast.

Making time to look up and consider the fundamental changes in our business is critical, and especially important for those of us who have some element of repetitive processes in our work, be it fundraising, loan origination, or deal issuance.

I hope you find today's discussions fruitful, and we welcome the opportunity to participate in the conversations you have flowing out of what you hear today.

Thank you for being here.

Cadwalader European Finance Forum 2023 Panel Recap: Navigating Change in Maturing Markets

October 20, 2023



By **George Pelling**
Partner | Fund Finance

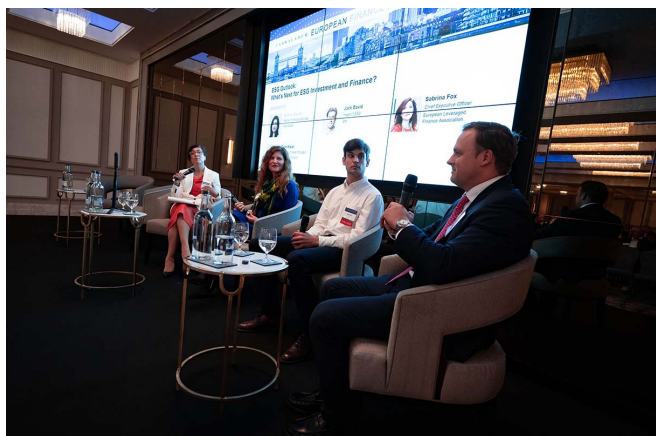


Thank you to all those who joined Cadwalader's inaugural European Finance Forum last week. It was a fantastic program, with over 300 in attendance to learn from leading professionals in private capital, debt finance and more. We are grateful to our industry expert speakers, clients and all attendees who took the time to participate in the event's dynamic discussions and networking opportunities.

Our panels focused on four key areas: current developments in ESG, liquidity challenges for private markets managers, driving private credit deal-making and trends and opportunities in the broadly syndicated and middle markets. Our panels were followed by a fireside chat with Danny Mays, BAFTA nominated actor, who gave insights into his successful career and the charities that inspire his work.

A brief recap of each of the panels:

Panel 1: ESG Outlook: What's Next for ESG Investment and Finance?



In our first panel of the day, Jack David (Head of ESG at 9fin), Sabrina Fox (CEO at the European Leveraged Finance Association) and Ryan Kiesel (Partner and Head of Sustainability at H/Advisors Maitland) discussed the latest developments in ESG and sustainability. Cadwalader Partner and Co-chair of ESG Sukhvir Basran started by looking back on what has been a choppy year for ESG and sustainability. The increase in ESG disclosure and reporting continues with the Corporate Sustainability Reporting Directive (CSRD) taking effect, the ISSB Standards being launched and, more recently, the Taskforce for Nature-related Financial Disclosures (TNFD) releasing its final recommendations. The interrelated nature of sustainability-related reporting and disclosure requirements and the extra-territorial impact of the CSRD continues to present challenges across the market, with some market participants emphasising the misalignment between reporting obligations (including for example the obligations on companies under the CSRD and those on market participants under the SFDR).

Panellists exchanged their views on how the market is responding to regulation and the demand for ESG integration with Sabrina Fox highlighting the increased organisational shift within the finance sector generally, with many firms now employing specialist ESG teams to help navigate an evolving regulatory landscape. She noted that trade associations reporting frameworks and peer-peer learning opportunities are also supporting these efforts. Together, these assist in forming a coherent market response to regulatory consultations, which are ongoing. Whilst panellists agreed that data remains a challenge, Jack David emphasised the important balancing act required between the collection of granular data for investors and stakeholders to conduct meaningful, forward-looking analysis, and overloading companies and investors with arduous reporting on factors that may not be material.

Overall however, the panellists agreed that increased transparency and standardisation has significantly improved data flow and focused attention on reducing emissions and improving the design and implementation of relevant systems and processes.

The panellists examined the anti-ESG sentiment which now seems to be a widespread feature of political debate in the UK, Europe and the US and the impact that is expected to have on sustainable finance and investment. This has left some asset managers balancing the divergent views whilst also responding to increased demands for better ESG integration and credible sustainable finance structures. Ryan Kiesel emphasised that there is heightened scrutiny of the term “ESG”, with allegations of greenwashing partly fuelling this scrutiny. The panellists agreed that this heightened scrutiny has increased the need for careful communication, a deeper understanding of relevant terms, robust and credible sustainable finance products and structures and the need for net-positive impact to form part of credit analysis.

Panellists generally agreed sustainable finance and investment, alongside ESG integration, will continue to face increased scrutiny in 2024 but suggested that, ultimately, this can be a positive thing, leading to more collaboration, industry frameworks and toolkits and better designed processes, systems and finance structures. The industry will need to provide concrete solutions to the various obstacles it faces in order to implement a “just and fair transition for everyone”. The consensus among the panel was clear: despite its many challenges, sustainable finance and investment is here to stay.

Panel 2: Liquidity Challenges for Private Markets Funds



In challenging markets, looking for ways to meet the liquidity needs of private markets funds has been a key focus for many. Our second panel of the day brought together various industry experts to discuss these challenges and potential solutions. Panellists included Steve Burton (Head of Fund Finance at ICG plc), Stephen Thomas (Head of Finance at Collier Capital), David Wilson (Co-Head of Credit at 17Capital) and Michael Hubbard (Head of European GP Solutions at Cadwalader).

The panel was moderated by Cadwalader Partner, Samantha Hutchinson, who began discussions by reflecting on the monumental growth witnessed in the fund finance market over the last 20 years: what once was regarded as relatively niche, primarily relationship-driven product, now encapsulates an industry estimated to be valued at over one trillion USD. So, has the fund finance market grown “too quickly, too soon”? And how can private markets managers ensure they have the liquidity they need?

Clearly, we are no longer living in a time of “easy money”. David Wilson explained that this means firms need to “try harder” in order to source the right type of liquidity for funds’ specific financing needs. ICG’s Steve Burton agreed and commented that where previously firms were focused on working with one or two key lenders, they are now faced with the challenge of developing and maintaining relationships with a much larger syndicate. This, the panel agreed, was reflective of a maturing market; with Stephen Thomas pointing out that a mismatch in supply and demand has forced borrowers to build long-term relationships with a range of credit providers rather than focussing solely on resolving immediate liquidity issues. The panel reflected that the shift in market dynamics has made it increasingly difficult for many sponsors to finance their ongoing operations and investment needs. Michael Hubbard explained that this could be particularly challenging for small and mid-market players that have concentrated investor bases and/or a less established manager than other firms competing for credit.

The panel considered the impact that this increased time and resource required to manage the products and relationships was having on managers and panellists agreed that it was giving rise to more expertise being brought in-house and more advisors being used on transactions.

Panellists exchanged their thoughts on the implications of current pricing levels and implications for fund finance products. It was agreed that new structures and solutions are needed to unlock existing pockets of liquidity and create valid alternatives for both GPs and lenders. There is a clear liquidity shortage – currently masked by tempered fund-raising levels – and this represents a huge opportunity for institutional solutions. Whether this can be achieved at scale remains to be seen but the panel were unanimous: whatever happens next, the world of fund finance is going to continue to evolve rapidly.

Panel 3: Private Credit: Driving Deal Making in Today’s Economy



This panel featured Joseph Buckley (Managing Director –in Barings’ Global Private Finance Group), Philip Edmans (Partner at Inflexion Private Equity), Richard Oliver (Partner at Ares Management) and Nakul Sarin (Partner at Bridgepoint Credit) and was moderated by Cadwalader Partner, Smridhi Gulati.

The panel began by discussing whether the current economic climate, and in particular the reduction in levels of deal activity since 2021, had brought about a change in approach to their origination strategies. The general consensus of the panel being “yes and no” and that a “consistent strategy with different tactics” was key. In a high rate environment, institutions will likely look more closely at who they do business with, rather than the business strategy itself. A key takeaway was that maintaining core relationships and not losing a focus on terms remained integral to these institutions (both from a lender and a sponsor perspective). The panellists also discussed whether sponsors/borrowers have recently developed a “club mentality” when it comes to structuring the debt-financing component of their investments and, in particular, whether we are seeing the resurgence of bank club deals. Comment was made that sponsors in the mid-market certainly see the rationale in building capacity and relationships among a diverse group of lenders, as opposed to looking to bring multiple lenders into a process in order to play them off against one another.

Lenders are generally viewed as rational, well-organised institutions and it is often the case that dealing with a one lender on a bilateral basis can be more efficient and result in better commercial terms.

Panellists also noted that, whilst rising interest rates meant banks were becoming more competitive on certain deals (particularly those structured using less leverage), capacity restraints would continue to make it difficult for them to compete on more highly-levered transactions or those requiring more material facilities. That said, increased competition from banks is “no bad thing” according to one panellist, who viewed it as a clear indication that Private Credit is growing up as an asset class. Given the vast amounts of dry powder in the PE industry, there are huge opportunities within the market for a wide range of participants. Touching on whether funds were subject to increased investor oversight, panellists confirmed they were seeing increased scrutiny on terms, and questions had also started arising on how lawyers were being appointed for the lenders – sponsor designation being questioned for the credit funds. Increased scrutiny looked to be welcomed by the panellists in a more competitive lending market, with panellist agreeing that their investors were sophisticated institutions. For those of the panel representing credit funds, there was a consensus that now is the time to prove yourself as a manager.

Panellists were then asked if their approach to structuring had also changed in the current environment in order to enhance value creation. The panel noted that they were actually seeing less issuances of holdco PIK and other junior debt instruments as risk appetite had tightened – on both sides of the table. The focus looked to be more of a senior debt strategy for most, with a shift in giving more flexibility around cash preservation for borrowers and keeping ahead of liquidity issues. In this respect, the ‘PIK toggle’ feature was becoming increasingly commonplace and important tool for borrowers.

The session ended with some crystal ball gazing into 2024. Generally, the mood amongst panellists was one of great optimism, with all speakers expecting a very busy credit market in the new year. Final thoughts were that “deals get deferred, they don’t go away” with the conclusion that “Q1 is the new Q4”.

Panel 4: Leveraging Loan Portfolios: Trends and Opportunities in the Broadly Syndicated and Middle Markets



The final panel of the day featured Sandeep Chana (Director, Structured Credit / CLOs at S&P Global Ratings), Marc Goldberg (Managing Director; Head of EMEA FICC Financing at Bank of America), Gavin Lau (Finance Director & Head of Operations at LGT Private Debt), Vincent Lepoutre (Managing Director, Securitised Products Group at BNP Paribas) and Rhita Sami (Head of Asset Financing at Hayfin).

Cadwalader Partner Nick Shiren set the scene as moderator, explaining that the session would focus on NAV facilities backed by an underlying pool of debt (in the form of loans, notes or bonds etc. made available in the middle market). These products can often take on hybrid characteristics, sometimes being secured against not only the underlying loans held by a borrower (typically a debt fund) but also the uncalled investor commitments in that borrower.

Panellists discussed the importance of these products and how they represent a vital part of a fund’s financial toolkit. It was noted that such financings allow GPs to employ leverage throughout the lifecycle of the fund but stressed that those looking to take advantage of these facilities need to consider a range of factors, even before launching the fund. This is particularly the case where they are looking for strong commercial terms as part of a competitive lender process. The panel discussed that funds should ensure that they have a well defined leverage strategy that allows them to put such financings in place without the need for additional investor consents. Borrowers should also be mindful of the kind of “eligibility criteria” to which the underlying loans will be subject under these facilities. A focus on diversity of underlying obligors in terms of sector and geography will assist all borrowers in obtaining credit against

their loan portfolios. Moreover, minimum EBITDA and concentration limits are also key factors in determining whether the underlying loans can be counted for borrowing base purposes.

Vincent Lepoutre and Marc Goldberg provided insight from the perspective of a lender in these kinds of transactions. Echoing the sentiments of the rest of the panel, they commented that it is not the role of the lender to influence or dictate the investment strategy or leverage policy of the fund but rather to play a constructive role in assisting funds with their liquidity needs. In order to do this, lenders need experience in this asset class and a deep understanding of the market. One issue that is typically debated in these types of facilities is the way in which the underlying assets are valued. As one panellist pointed out, lenders generally need to be able to get comfortable with a sponsor's valuation methodology so that they are aligned with investors in the fund. That notwithstanding, lenders will often want the right to appoint a third party valuer following certain "credit trigger events".

Panellists then turned their attention to the size of the market. They discussed that the proliferation of these products has been accelerated in recent years, most notably as a result of the inability of companies to refinance using the public markets, which has led many sponsors to seek alternative forms of finance in the private markets. We are also seeing increased demand within the European funds market as managers continue to attract investors more accustomed to a leveraged strategy. Moreover, notwithstanding the current inflationary environment, there has not been a dramatic increase in the relative cost of these products. Panellists varied in their views but estimated the total market size of these facilities as being in the region 10-20 billion euros.

Nick closed discussions by asking panellists if they expect to see a mid-market CLO issued in the next year. Sandeep outlined the various challenges in launching these kinds of products, most notably as a result of a lack of diversity, FX risk and increased concentration risk within the mid-market. However, despite these challenges, he anticipates that at least one European CLO will be issued in the next 12-18 months. Watch this space.

Final Thoughts

We were delighted to be able to host such a topical, insightful event covering some of the most important issues and opportunities facing the clients of our European Finance and we're already looking forward to next year!

Cadwalader Recognized in Chambers UK

October 20, 2023

Cadwalader Practices, Lawyers Recognized in Chambers UK 2024

Cadwalader has been recognized across a range of practice areas in the 2024 edition of *Chambers UK*.

Congratulations to our UK team for being ranked in Band 1 of Banking and Finance: Fund Finance. Samantha Hutchinson, Nathan Parker and James Hoggett are all ranked in Banking and Finance: Fund Finance in Bands 1, 2 and Up and Coming, respectively.

You can see the full rankings [here](#).

Fund Finance Hiring

October 20, 2023

Fund Finance Hiring

M&T Bank is hiring a Relationship Manager for Fund Finance to be based in Boston. Candidates should contact **Michael Sinclair** for additional information.

FFA Diversity in Fund Finance

October 20, 2023



Last week, the FFA's Diversity in Fund Finance group ("DFF") hosted its annual teach-in event for Baruch College undergraduates in New York. Bankers and lawyers from the fund finance industry attended the event with full arms of company swag goodies that the students loved. Kyrstin Streeter of Reed Smith and Natasha Puri of Lloyds Bank led a high-level presentation on the ABC's of fund finance, followed by an opportunity for the students to ask questions and interact with the industry attendees.

The students are part of Baruch's **Financial Leadership Program**, which is targeted to diverse high-performing students interested in careers in finance. Students must apply for acceptance to the program and take this on in addition to their coursework in order to gain pre-professional training on technical, leadership, and professional skills. They have partnered with top firms that present on a wide array of topics ranging from financial modeling to mock interviews to presentation skills.

This is the 6th year that DFF has had the privilege to work with these bright students. The event is always enjoyable, and the students appreciate the opportunity to interact with professionals in our market and learn about our industry and the different career paths available – in prior years their feedback has included that the DFF event was the “greatest presentation of the semester”.

If your organization may be interested in recruiting from this program please get in touch to learn more, as DFF can also share the resume books of these students. DFF is always looking for more volunteers to be involved in our mission, if you'd like to join our events or have any ideas to share please reach out to **Natasha Puri**.