

CADWALDER

Catching Up From the 2023 Cadwalader Finance Forum

October 27, 2023



By **Angie Batterson**
Partner | Fund Finance



By **Tim Hicks**
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By **Leah Edelboim**
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CADWALADER FINANCE FORUM

NAVer Fear: New Approaches in the NAV and Secondary Market

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Angela Batterson



John Brown



Andie Goh



Michael Vasseghi



Dadong Yan

Angie Batterson

The conference ended late on Thursday with an awesome panel on NAV led by Angie Batterson, a fund finance partner in the New York office, who was joined by Andie Goh, *Managing Director* in the Ares Credit Group, John Brown, *Managing Director* at The Carlyle Group, Michael Vasseghi, *Head of Insurance Solutions* at Morgan Stanley and Dadong Yan *Head of Alternative Investment Solutions* at MassMutual. The burning question of the day, other than did the panel want red, white or rose delivered to the speakers' table, was what exactly is NAV. The panel spent a great deal of time deliberating the question, and while reasonable minds can disagree as to the exact definition, it was clear that NAV is typically a very bespoke credit solution provided to private equity funds to meet their capital needs in ways that sub-lines cannot. The panel also concluded that many NAV transactions work to provide leverage and liquidity to funds in lieu of sales of assets in the secondaries market. Most importantly we learned that while NAV has been around for years, its recent growing popularity is here to stay and everyone on the panel sees unlimited growth in the space in the future. NAV has a long way to go to become a mature market, but for those in attendance we learned that, like wearing sparkly leopard print to a conference instead of the long accepted blue or black suit, the NAV market is uniquely positioned to find creative and bold solutions to complex capital needs in today's rapidly changing environment in ways that are far more flexible and interesting than last year's run of the mill loans. Peanut butter and Nutella anyone? Cheers!

Coming of Age: What's Next for a Maturing Fund Finance Industry?



Tim Hicks

Another highlight of last week's Finance Forum was a fireside chat between Tim Hicks and Jeff Johnston, Co-Head of Fund Finance at EverBank, N.A., to discuss what is next for the maturing fund finance industry.

The discussion kicked off covering the key indicators of the pending bank failures that many missed in 2022 and how the markets have shifted in the immediate aftermath. Jeff gave his insights on the importance of multiple touchpoints between a borrower and a banking institution to incentivize that institution's willingness to extend a subscription credit facility and the rise of non-bank lenders in the fund finance space. The discussion also pointed out that a borrower's track record of borrowing under a facility now plays a role in whether a facility will be extended for a longer tenor, and the days of large, syndicated facilities have not ended.

The general take away for the discussion was that the desire for fund finance products has not waned in the wake of the early-2023 market turmoil. The chat concluded with an optimistic outlook for 2024 and a general view that creativity in developing innovations to relieve liquidity constraints and the emergence of new lenders and sources of capital are needed to meet the growing demand for fund financings.

A New Chapter in Fund Finance



Leah Edelboim

At this year's Finance Forum, we took a different approach on some of our presentations from years past. After an unexpected year for the fund finance, we introduced fireside chats with some of the industry's most interesting and influential members. New York Fund Finance partner Leah Edelboim moderated *A New Chapter in Fund Finance* featuring Brad Boland and Charlie Owens, each of whom is a senior managing director at The Huntington National Bank.

Brad and Charlie are familiar names to many of us in the fund finance industry as two of the original players in this business. They were most recently at Signature Bank, where each was a managing director and a founding member of the bank's Fund Banking Division. In June, The Huntington National Bank announced the addition of a fund finance

banking team to support its sponsor finance business within the Commercial Bank. The 10-person team, each member of which was previously at Signature Bank, is led by Brad and is based in Charlotte and New York.

We had a standing-room-only crowd for this interesting and enlightening discussion. There are a lot of things that are interesting and remarkable about Brad and Charlie, but something that we highlighted in our discussion is that the two have worked together for over 18 years at four separate institutions. That is an incredible partnership. They began working together at Bank of America, where they worked on their first sublines. From there, they moved to Wells Fargo, where they built a fund finance business, along with some other very well-known industry players. Next they moved to Signature Bank, where they had the opportunity to build a fund finance business from scratch again and drive value. We touched on their experience with the FDIC receivership of Signature, which occurred in March of this year. It was particularly interesting to hear what it was to be “in the room” when those events occurred. Their leadership in those moments certainly shone through as they discussed how they managed the various constituents and put their clients and their team members first. We noted that, at the end of the day, this was a business that had no delinquencies and no losses.

We then moved on to discuss the fund finance business they are building at The Huntington National Bank. We discussed how they are taking all the lessons they learned in their past roles and using it to build out the business, the infrastructure and the deal pipeline. Significantly, we discussed the growth that we have seen in the fund finance industry and the proliferation of financing sources available. Brad and Charlie serve as models for those coming up in the industry in terms of their deep understanding of the product and how fundamentals must always be part of the equation when structuring and documenting deals. They also discussed how they are developing the next generation in the industry with many of the bright stars on their team.

We ended the panel with the two of them turning the tables on me and asking me a question. Just like Brad and Charlie to keep me on my toes!

How to Account for an Account Switch

October 27, 2023



By **Clay Talley**
Counsel | Fund Finance

With the recent downgrades issued to several banks by Moody's and S&P in August, as well as the recent banking turmoil which occurred earlier this year, and the flurry of assignment activity in the market, lenders and borrowers alike have become increasingly focused on deposit accounts.

In a typical subscription credit agreement (each, an "SCF"), the relevant fund entities (the "Sponsors") are required to deposit capital call proceeds (the "Collateral") into a collateral account (the "Collateral Account"). For banks located in the United States where such Collateral Accounts are held, perfection and the ability to foreclose on the Collateral Accounts are typically governed by a deposit account control agreement ("DACA"), which is typically between the administrative agent acting on behalf of the lenders to the relevant SCF (the "Administrative Agent"), the Sponsor and the Eligible Institution (defined below) where such Collateral Account is held (for a more fulsome breakdown of how Collateral Accounts operate in practice and on an ongoing basis, please see "[Control or Control Agreement](#)," recently written by my colleagues Chad Stackhouse and Kaitlin Clardy).

However, the Collateral Account typically cannot be held at any bank selected by the Sponsor. Most SCFs will provide a list of criteria outlining the requirements of an eligible institution (the "Eligible Institution") where such Collateral Account may be held. These requirements typically include a dollar amount threshold of capital held by such Eligible Institution, along with a short-term unsecured debt rating from Moody's, S&P or another customary rating agency (the "Eligible Institution Requirements"). These Eligible Institution Requirements are put into place in order to provide assurance to the lenders that any such Eligible Institution remains properly capitalized and to mitigate the risk that any such Eligible Institution could become bankrupt or declared insolvent, which could have an adverse effect on the Collateral held at such Eligible Institution. If such Eligible Institution's credit rating were to be downgraded or such deposits were below such Eligible Institution Requirements, the Sponsor and Administrative Agent would need to switch the Collateral Account(s) to a bank that is an Eligible Institution within a specified grace period.

If an account switch is required (or if a Sponsor is looking to switch accounts for any other reason), the Administrative Agent will need to consider how to document such account switch, with a few initial considerations noted below:

1. **Collateral Account Pledges** – New collateral account pledges ("Collateral Account Pledge") will need to be entered into in order to grant a security interest to the Administrative Agent in such Collateral Account and the proceeds thereof. The Collateral Account Pledge in most instances will specifically note the account number of the Collateral Account, as well as the Eligible Institution. As such, the prior Collateral Account Pledge should either be terminated simultaneously or be amended and restated in order to properly identify the new Collateral Account (and new Eligible Institution) that is to be pledged going forward.
2. **DACAs** – As the Collateral Accounts will be held with a new Eligible Institution, the prior DACAs will need to be terminated and new DACAs between the Sponsor, the Administrative Agent and the new Eligible Institution will need to be executed. One important point to note is that when terminating and entering into new DACAs, this should be done simultaneously so as to avoid a potential issue arising where the prior Collateral Account is terminated before the new Collateral Account is opened (and such new DACA entered into), which could result in a lapse whereby the Administrative Agent no longer has a perfected security interest over the Collateral Account and the Collateral.
3. **SCF Schedule Updates** – In some instances, the relevant SCF will provide the account information on, or granting language with regard to the Collateral Accounts. In most cases, it will be desirable and/or legally prudent to amend the SCF to update the schedules or any operative granting language to ensure continued accuracy of the representations and warranties and covenant compliance as it relates to the Collateral Accounts.
4. **Revised Security Agreements** – In some instances, security agreements entered into will include information related to the prior Collateral Account. Counsel will need to review this document (as well as the other documents which could contain such references to the Collateral Account) to ensure these agreements are updated accordingly, via omnibus amendments or otherwise, to include the proper references to the new Collateral

Account.

5. Opinions – Because new security documents are being entered into (i.e., Collateral Account Pledges, DACAs), the Administrative Agent will frequently need new security interest opinions in order to be in the same position as the original closing. It should be expected that perfection, proper security and enforceability opinions will be required. For due authorization, good standing and other such Sponsor entity-specific opinions, the Administrative Agent may take into account when delivery of such opinions was last provided to determine whether these are necessary. For example, if the Sponsor recently entered into an amendment which delivered such authority/good standing opinions shortly before an account switch, a lender may agree to waive these certain opinions based upon the remoteness of a substantive change occurring in such a short time. However, each lender will need to assess their own acceptable level of risk when waiving any requirement for new opinions.

We should highlight that this discussion only involves an account switch between accounts located in the United States. Although the above analysis would still generally apply, Luxembourg accounts (as well as other foreign accounts) require different security documents than those required in the United States. Each transaction will require its own unique analysis and will take into account its own set of circumstances to be reviewed in connection with any potential account switch. As always, CWT is happy to assist and provide any guidance in any such process.

Fund Finance Tidbits – On the Move

October 27, 2023



Sara Casey

AB Private Credit Investors

Sara Casey has joined AB Private Credit Investors, the middle market direct lending platform of AllianceBernstein as Director, NAV Lending in New York. Sara was previously a principal at Hark Capital.

Sara is the recipient of the 2023 Fund Finance Association NextGen Member of the Year Award. She was recognized for her mentorship to so many young professionals in the fund finance industry and for her leadership in the NextGen Network.

2024 Fund Finance Industry Awards Now Open

October 27, 2023



The Fund Finance Association is now accepting nominations for the annual Industry Awards!

Do you work with someone who has made countless contributions to the fund finance industry? Someone who continually shows strength in leadership? Someone dedicated to furthering diversity, equity, and inclusion efforts in the fund finance industry? Maybe they are a younger member of your team that demonstrates commitment to the industry?

The Fund Finance Association is now accepting nominations for the prestigious Industry Awards until December 15 2023.

Winners of these prestigious awards will be announced at the highly anticipated 13th Annual Global Fund Finance Symposium scheduled for February 26-29, 2024.

Nominate someone by clicking [here](#).

Thanks for Joining WFF US: Second Annual Charlotte Fall Networking Event

October 27, 2023



Thanks to all those who joined the Women in Fund Finance second annual Charlotte Fall Networking event last week!

This oversubscribed event (with a lengthy waiting list) was quite the hot ticket and had great turnout with a standing room only crowd for the event.

The panel consisted of April Frazier, Chief Financial Officer for CIB Banking at Wells Fargo; Jeff Johnson, Co-Head of Fund Finance at EverBank, Caroline Pedlow, Director at Barings, and Corey Rose, a partner at Dechert LLP, who leads the firm's bank regulatory practice. The panel was moderated by Erin Goldstein, Director at Wells Fargo and Cadwalader Fund Finance Partner Leah Edelboim.

The topic for the panel discussion was the potential changes to large bank capital requirements that would implement the final components of the Basel III agreement, also known as the Basel III endgame. At the end of July of this year federal banking regulators issued proposals which, among other things, would change the capital requirements that banks must meet. These proposals, if adopted in their current form, could have a significant impact on banks in the fund finance industry and on the US banking industry as a whole. The excellent and accomplished panel made the rather dense and technical proposals – which consist of a document in excess of 1000 pages – into a lively discussion on the topic. Corey Rose provided a history of regulatory capital requirements and an overview of the proposed changes and highlighted the changes that are most impactful for fund finance transactions. April Frazier and Jeff Johnston each gave their perspective about the impacts of these changes and how institutions are already getting ready to comply with the proposed changes. Caroline Pedlow weighed in with a real estate angle. This substantial and substantive conversation made sense of this very technical topic in a way that was entertaining and educational for the audience and highlighted the expertise of the members of the panel.

Cadwalader was honored to sponsor and support this event. We were so glad to see so much excitement and support for Women in Fund Finance in the Queen City. Co-Sponsors included Barings, who provided the beautiful space for the event, Dechert, and Fitch Ratings. The planning committee consisted of Christen Cohen, Director at Bank of America; Erin Goldstein, Director at Wells Fargo; Holly Loftis, partner at Haynes Boone, Caitlin Woolford, counsel at Mayer Brown, Michele Simons, and Cadwalader Fund Finance partners Danyeale Chung and Leah Edelboim.

Comments on these proposals are due at the end of November. It is possible that the proposal could change quite a bit before it is finalized. We will be watching the process by which these proposals will be approved and implemented closely. As discussed during the panel discussion, these proposals can have serious consequences for fund finance transactions given that the amount of capital that a financial institution is required to maintain is a crucial factor in determining the profitability of a particular product.

Join FFA NextGen for Christmas Drinks

October 27, 2023



The EMEA Fund Finance Association NextGen Committee invites you to join them for 2023 Christmas Drinks, hosted by Simmons & Simmons.

This will be a great opportunity for the industry to get together and celebrate a busy 2023 over drinks and canapes, and in true Christmas spirit, the event will feature a charity raffle!

Register [here](#).

Event Details:

Date: Wednesday, 13th December

Time: 6:30pm - 11:00 pm

Location: Simmons & Simmons - 1 Ropemaker Street, London EC2Y 9SS

Join FFA NextGen for Golf Networking

October 27, 2023



Fund Finance Association NextGen invites you to join in for the last networking event of the year. Come catch up with fellow fund finance professionals over drinks, challenge your friends to a ping-pong match or work on your swings with golf pros! This event is co-sponsored by Fitch Ratings.

Register [here](#).

Event Details:

Date: Thursday, November 2nd, 2023

Time: 6:00pm - 8:00 pm

Location: Five Iron Golf - Herald Square

883 6th Ave, 3rd Floor

CWT Fund Finance Walks to End ALZ

October 27, 2023



Fund Finance and community involvement go hand in hand. This past Saturday, our Charlotte fund finance team once again led the way in participating and fundraising for the Walk to End Alzheimer's, which is hosted by the Alzheimer's Association, the leading voluntary health organization in Alzheimer's care, support and research. With a goal of \$30,000 for this year's event, the Cadwalader team has raised more than \$45,000 and counting.

Since 2012, our team has raised nearly \$450,000 in the fight against Alzheimer's. We are ranked as a top 50 team in the entire nation!

Congratulations to the group who participated in the walk, including Michael Johnson, Mike Lynch, Brian Kettmer, Caolan Ronan, Karina Velez, John Peters, Breana Ratchev and Jason Hessel; and a big thank-you to Wes Misson, who also serves as the Chairman of the Board of Directors for the local Alzheimer's Association chapter, and Charlotte managing partner Stu Goldstein for their long time leadership for the cause, and to everyone who has generously contributed their time and donations to this important effort.

Alzheimer's disease is currently the sixth leading cause of death in the United States. The Alzheimer's Association Walk to End Alzheimer's® is the world's largest event to raise awareness and funds for Alzheimer's care, support and research. Held annually in more than 600 communities nationwide, this inspiring event calls on participants of all ages and abilities to join the fight against the disease. [Learn more.](#)