

CADWALDER

## An Update on Our London Team

June 14, 2024



By **Wes Misson**  
Partner | Fund Finance

We're sure many of you saw the news this week about a few of our UK colleagues planning to leave Cadwalader. We wanted to update you on the story.

Our London team remains a critical component of our trans-Atlantic Fund Finance practice. We have 14 fund finance lawyers and staff in London, a number we expect to see go up in the very near future. And they are part of a full platform of more than 80 team members globally dedicated to our clients' needs in fund finance.

We're excited to share with you that our long-time London colleague, **George Pelling**, has been elected to partner, effective today. George is an experienced lawyer who oversees some of the most significant transactions in the UK fund finance market. He has earned the trust of many of our closest clients; and has fostered valued working relationships with the Cadwalader team, particularly our hard-working London associates, many of whom he had a hand in helping recruit to our firm. People from all walks of life in the fund finance world – clients, colleagues, sponsors and their counsel – speak highly of George, noting that his “default setting” is to go above and beyond for those he serves. It was no surprise to us last fall when, as special counsel, George was one of only a handful of UK fund finance lawyers at that level to be recognized by the *Legal 500*. We're looking forward to working with George in his new capacity as a partner and congratulate him on his election.

We also wanted you to know that our senior fund finance partner and colleague, **Trent Lindsay**, will be spending more time in London to work closely with George and our UK team. Trent has a global practice and represents many of our lender clients and other credit providers in subscription facilities, NAV facilities and hybrids, and structured credit and liquidity solutions transactions, including the early stages of securitized sublines. He has long served as our primary coverage interface in the U.S. with our UK team. Clients and colleagues alike consistently look to Trent for his deep experience in fund finance transactions, as well as his commercial judgment. Trent's regular Cadwalader home is in our Charlotte office, and we are very grateful for his work in London to help with our transition and plans for continued growth.

We're looking forward to sharing more updates on the enhancements we plan to make to our London team. In the meantime, as the head of our market-leading Fund Finance practice, I personally want to share some thoughts about what hasn't changed over the last few days:

- Partner departures are common in our world, just like other executive moves in finance that we all see and discuss. This news simply won't impact our business, nor does it change the fact that we are the go-to firm in fund finance.
- We are keenly aware that our position is because we have the world's best clients who trust us with their most sophisticated matters. We cherish these relationships and will always act in their best interests, with integrity and a commitment to legal excellence and exceptional service.
- We also believe we're a market leader because of the tremendous talent who choose to start their careers with us or join us after valuable experience gained at other organizations. Our guiding principles as a firm and a practice drive us to support one another with the same dedication as we do for our clients.
- More than ever, the fund finance market requires a full platform approach – and we're arguably the only firm that has it. In 2024, we are seeing growing need among lenders for capital management strategies, which brings our capital markets partners into the fund finance conversation. CRT/SRT transaction volume continues to gain momentum. In Europe, credit ratings are part of the toolkit, but on both sides of the pond, structured transactions and inclusion of non-bank lenders are real themes. All require a coordinated, broadly oriented team.
- Fund finance is a key component to a robust, multi-disciplinary London team. We have been building and nurturing our London office for nearly 30 years. We have more than 60 talented lawyers in key practices that are important to our clients and that keep us a step ahead in this evolving market, and we intend to continue expanding our presence there.

Clients trust us when it counts. We trust and support one another. This reflects our business, our culture and our commitment to you. Thank you for the opportunities to collaborate and achieve great things together, and for your

friendship.

More to come.

Wes

# Insurance Companies in NAV, CLOs and Rated Feeders: Where Are We Now

June 14, 2024



By **Angie Batterson**  
Partner | Fund Finance

If you are confused about the current state of play of insurance companies investing in CLOs, rated feeder structures and other NAV based loans, we are here to help. Let's start with the basics: the National Association of Insurance Commissioners (the "NAIC"), the entity that regulates insurance companies in the U.S., is responsible for categorizing fixed income structures and the impact that such structures may have on insurance companies' critical risk-based capital ("RBC") ratios. RBC is important to insurance companies, as it serves as a measurable risk metric across the industry. Insurance companies are required to maintain a minimum level of RBC to equity (or surplus for mutual insurers) to ensure their policy holders will have access to policy payouts when they become due. RBC ratios are based on (i) the insurance company's equity or surplus and (ii) the inherent riskiness of its financial assets and operations, as defined by the NAIC's policy and procedures manual (P&P Manual).<sup>[1]</sup> In the simplest of terms, the riskier the investment (AAA rated debt is most favorable, equity or unrated debt is least favorable), the more capital needs to be reserved. How, you may ask, does the NAIC decide what investments get which RBC treatment? Well, the past five years have yielded the most changes to how RBC's are calculated since before the 2008 crisis.

If the investment is deemed to be a "bond", which the NAIC defines as a security where there is a fixed schedule of payments, it automatically qualifies to get a rating from a Nationally Recognized Statistical Ratings Organization (an "NRSRO") so long as it doesn't trip a separate specific asset test. Based on the rating, the NAIC assigns the applicable RBC; the better the rating the better the RBC. While that sounds simple enough, the devil is in the details. So, just what determines if the investment is a bond you ask?

In August of 2023, the NAIC issued a statement setting forth certain rules of the road for determining what is a bond, which rules will become effective in January of 2025. There are two sets of rules: one for "issuer credit obligations" (i.e. loans or bonds where an operating company is the borrower) and one for "asset backed securities" (our focus today). Asset backed loans are structures created for the purpose of raising capital where the direct obligor is not an operating company and the cash flows are derived from a pool of underlying non-operating company assets. The noise in the media in the last few years has centered around some rather extreme asset-backed securities and their respective treatment for RBC purposes. To be considered a bond and have the ability to get a rating from an NRSRO, the NAIC requires that these structures must have a meaningful level of cash flow generated by the underlying assets to repay the investment other than through the sale or refinancing of the underlying assets. The NAIC has created a safe harbor that allows these structures to meet the bond test even if they contain a mix of underlying assets: so long as more than 50% of the underlying assets are cash flow generating and debt service is not reliant on the sale of assets or refinancing.

So how is this framework applied to fund finance loans? Let's look at two examples of potential deal structures and give some thought to the outcome to the key question - is it a bond or not a bond?

In our first structure, an SPV is set up to hold the limited partnership interests in a private credit fund whose sole function is to make loans to underlying operating companies (the "Loan Structure"). The second structure is an SPV set up to hold limited partnership interests in private equity funds (the "Equity Structure"). In the Loan Structure, if the underlying loan assets will generate enough cash flow from regularly scheduled payments of principal and interest to service the debt, and if sized correctly, an investment in the Loan Structure should get bond treatment. In the Equity Structure, where there may be no regular payments of principal and interest and repayments will instead come from future, unscheduled distributions on the equity positions, the cash flows generated to service the debt need to be analyzed to determine if an investment in the Equity Structure meets the criteria to be a bond. To determine whether the Equity Structure should receive bond treatment, the NAIC will look to numerous factors including:

- Diversification of the underlying collateral pool;
- Characterization of the assets - is the fund in its initial stage of its life cycle where distributions are unlikely or is it a mature fund that is spinning off cash distributions regularly and with enough certainty to service the debt;
- Existence of other sources of repayment - liquidity facilities, guaranties, cash collateral, sponsor equity commitments etc.;

- Whether interest is payable currently or can be deferred; and
- The existence of meaningful loan to value covenants.

Starting in 2025, insurance companies will need to submit reporting to the NAIC at year end, which are called the “blanks” for each asset justifying the insurer’s reasoning for the structure to be considered a bond. Filling in the “blanks” will give the NAIC more visibility into the actual loan structure than just the title on the cover page of the loan agreement. They will be looking under the hood to see if the investment really looks like a creditor/debtor relationship and is not just disguised equity.

The NAIC has separately engaged in a review of all collateralized loan obligations (“CLO”), as they are assessing whether the ratings assigned to various CLO tranches are appropriate for the associated RBC charge. While CLO debt clearly meets the newly approved definition of what a “bond” is, the NAIC now requires that these structures be subject to a modeling method conducted by the NAIC’s Securities Valuation Office (“SVO”) that has been historically time consuming and uncertain for the insurer, as each debt tranche is reviewed by the SVO under rating methodologies that are not public or standardized (unlike the NRSROs, who are required by their regulator, the SEC, to publish their ratings methodology and are audited quarterly as to their adherence).

To complicate matters even further, the NAIC is considering allowing its SVO the ability to question any bond’s NRSRO rating and conduct its own internal rating instead. While this veto right has not yet been decided upon (and industry has vehemently pushed back on this requested authority), if approved it will allow structures that in the past have been characterized as a bond to become subject to the SVO’s current opaque rating process, which presently appear to have no set published methodology nor the staff or technology to efficiently and effectively administer risk ratings.

As we see insurance companies presently dipping their toes back in the CLO and financing markets, we should soon learn more about how the NAIC framework will be implemented. Stay tuned!

[\[1\]](#) NAIC Risk-Based Capital reported dated January 1, 2024

## A Number of Green Shoots in the Collier Capital LP Survey

June 14, 2024



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

Collier Capital's recently released **Global Private Capital Barometer** included a few notable takeaways for fund finance lenders that suggested the fundraising market could be broadening and capital circulation improving. Here are a few specifics:

- LPs reported a growing interest in single-strategy specialists. Notably, 51% of North American survey respondents anticipated their portfolios to tilt towards specialists in coming years.
- Along the same lines, 86% of LP expected to make a first-time commitment to a new sponsor relationship over the next one to two years. Interest in new relationships was highest for private equity and private credit strategies. Allocations to single-strategy specialists, if put into action, and new sponsor relationships could signal a broadening of the fundraising sponsor landscape if put into action.
- LPs generally expect an improvement in distributions: 86% of respondents anticipated a year-over-year improvement in distributions in 2024.
- 31% of LPs expected to increase overall alternative asset allocations in the next 12 months, and 59% expected to maintain targets.
- Private credit allocations look to be moving higher: 45% of LPs in the survey expected to up target allocations to private credit in the next 12 months. Real estate fund and hedge fund allocations were most likely to be reduced.
- Continuation funds were ranked highest in terms of likely liquidity tools over the next 12-18 months.

The Collier Capital survey is a biannual endeavor and the recent edition reflected the views of 110 LPs from around the world. The survey also included a few interesting reflections of LP views toward NAV financing.

## See You at DealCatalyst's Securitization in Fund Finance Conference!

June 14, 2024

Cadwalader is proud to be a lead sponsor at [DealCatalyst's Securitization in Fund Finance Conference](#) on Monday, June 17. Be sure to catch our team speaking on the following panels:

- **Motivations and Strategies for CFO Issuance**  
11:40 AM - 12:30 PM ET  
[Michael Gonzalez](#), Special Counsel (Panelist)
- **Overview of the Spectrum of Structures in Fund Finance**  
1:30 PM - 2:20 PM ET  
[Angela Batterson](#), Partner (Moderator)

Our team will be in attendance, and we hope you will be able to stop by the exhibit area and connect with your Cadwalader contact. See you there!

## **DFF: Suits & Soju - Second Annual Summer Soiree**

**June 14, 2024**

The Diversity in Fund Finance Committee is excited to invite you to the Second Annual Summer Soiree: Suits & Soju!

Join us for an evening of networking and Korean tapas at Baro by Chefs Society where we will share the story behind owner Seolbin Park opening her popular Korean gastropub and weathering the challenges faced by many small businesses during COVID.

In recognition of Pride month, we will be holding a raffle to benefit The Trevor Project, with prizes and more! The Trevor Project is the leading suicide prevention and crisis intervention nonprofit organization for LGBTQ+ young people.

Come celebrate Korean culture and support a fantastic minority small business owner while benefiting our DFF community.

BARO means 바로 in Korean translating to “Do It Right” - so don't miss out!

Space is limited; please confirm your spot [here](#)!

### **Event Details:**

Location: Baro by Chefs Society - 23 W 31st St, New York

Date: Wednesday, June 26, 2024

Time: 6:00PM – 9:00PM EDT



## Fund Finance Hiring

June 14, 2024

Fund Finance Hiring

Here is who's hiring in Fund Finance:

**Cadwalader's** Fund Finance group is currently interviewing staff attorney candidates in our Charlotte, NC, and New York, NY, offices. These positions are great opportunities for recent law school graduates to join a growing and dynamic Fund Finance practice, and for more senior attorneys with unrelated legal experience to transition into Fund Finance. Interested candidates can apply directly [via this link](#). Please contact Sarah Breen at [sarah.breen@cwt.com](mailto:sarah.breen@cwt.com) with any questions.

**KBRA** (Kroll Bond Ratings Agency, LLC) is seeking an experienced attorney to join the Ratings Legal team, in support of the Funds and ABS units. Position can be based in New York or Chicago. Interested candidates can find more information [here](#).