

Cadwalader Fund Finance Market Review

April 12, 2019 | Issue No. 24

Each spring Cadwalader writes a state of the Fund Finance market review. Intended to be both succinct and readable, the review covers not only legal updates but also industry trends such as market growth, facility pricing, structural evolution and hiring updates. This year we published the update in the LSTA and GLG's *International Comparative Legal Guide for Lending and Secured Finance*. To read our market review, click [here](#).

ILPA Issues Guidelines for GP-Led Secondary Restructurings

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GP-led fund restructurings have grown in prevalence as more funds turn to such transactions to unlock liquidity for LPs, to optimize asset value through term extensions or a capital injection, or to crystalize gains. In fact, GP-led restructurings grew to make up roughly 40% of the \$70 billion in secondaries activity in 2018. In light of this growth, the trade association for institutional limited partners, Institutional Limited Partners Association (ILPA), this week published ***GP-Led Fund Restructurings: Considerations for Limited and General Partners***. The report serves as a set of principles and best practices.

The acceleration in GP-led transactions isn't news to astute *Fund Finance Friday* readers. Our colleague, Amrita Maini, drew attention to the trend in her Feb. 1 ***Spotlight on GP-Led Secondary Transactions***. Along with reviewing the types of transactions and their motivations, she also forecasted continued growth for the market along with an expansion in related debt finance. Amrita also touched on the compressed timeframe and the potential for conflicts of interest in these transactions. These are among the concerns targeted by the ILPA guidelines.

The ILPA report addresses the time constraints, complexity, alignment of interests and transparency concerns raised in GP-led restructurings with suggested best practices. Lenders reviewing the ILPA report will find their interests generally aligning well with those of LPs.

Will Congress Clear the Haze on Cannabis Finance in 2019?

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Bank lenders have, to some extent, been shielded from asking the difficult questions about cannabis finance because federal money laundering statutes have so far answered those questions for them. In a December [article](#) in *Fund Finance Friday*, we posited that federal and state law may be heading towards reconciliation and may someday leave lenders to calibrate their involvement in this segment of narcotics-related finance as a matter of franchise policy rather than federal fiat. Two bills moving through Congress could hasten such a day. Cadwalader attorneys summarize these two pieces of proposed legislation in "[Cannabis Finance—SAFE in the STATES and Maybe Beyond?](#)" Has your fund finance business worked through policies on cannabis-related funds, portfolio companies or real estate in the portfolio?

Tom Glover of Investec–Q&A with Private Funds Management

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Tom Glover gives insight into Investec's U.S. fund finance strategy in an [April 5 Q&A session](#) with *Private Funds Management*. While participating in the subscription finance market, Investec is focusing particularly on financing solutions later in the fund life-cycle when assets become more prominent as collateral relative to undrawn commitments. Tom also touches on GP stakes transactions and GP-led secondaries deals as growth opportunities.

Women in Fund Finance Event—Professional Development Coaching

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The Women in Fund Finance presented a panel discussion and networking event in New York City earlier this week focusing on professional development and coaching. The event had a great turnout and was well received by those in attendance.

The panel, moderated by Lisa Chaney of Paul Hastings LLP, featured three career and executive coaches – Farida Khan, Michelle Friedman and Neal Eisenstein – who provided attendees with insight into career advancement and professional development. They emphasized that engaging an executive coach at various inflection points in one's career can truly help an individual make the most out of her career.

Panelists agreed that career development begins with an element of curiosity about how to become a better version of one's self and the importance of conducting a full-360 review process whereby supervisors, peers and subordinates all have the opportunity to provide both positive and constructive feedback. This review process forces us out of our comfort zones and allows for growth and development, they said. One panelist highlighted that there is “power in vulnerability.”

Key takeaways from the panel include:

- Executive coaches are not the only ones who can provide us with guidance – our existing mentors and others in our professional and personal lives can also provide informal coaching and serve as a personal “board of directors.”
- It's up to each of us to provide coaching and mentorship to the next generation to ensure we all have the opportunity to succeed.

Thank you to Paul Hastings LLP for hosting such a great event.

Harneys Opens in Luxembourg

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Harneys has opened in Luxembourg following its acquisition of M Partners, a Luxembourg law firm, which has been renamed Harneys Luxembourg. The well-established team in Luxembourg provides corporate, funds, banking and finance, regulatory, tax and private wealth services. Partners Vanessa Molloy and Chiara Deceglie are the key contacts in the funds and fund finance teams, complementing the Harneys funds and fund finance teams in Asia, Cayman and the BVI.

Intertrust Group Launches Fund Finance Advisory

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Intertrust Group has launched a fund finance advisory group in London. James Rock-Perring, Director of Fund Finance Advisory, is leading the initiative. They are partnering with GPs to help them navigate fund finance options, from subscription facilities to fund leverage. A press release summarizing product offerings is available [here](#).

PE HUB Wire Email on Subscription Facilities

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Last Friday *PE HUB Wire* sent an email to its readership about subscription facilities, reporting on a GP that is offering LPs an option to opt out of participating in a vehicle with a subscription facility. The article asks for leads about GPs structuring this type of offering. The article also gives a purported example of a 500 basis point IRR enhancement driven by facility use, an amount far in excess of what we have seen in prior data analytics around the issue. A copy of the email is available [here](#).

In Case You Missed It—Recently in FFF

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We can pack some serious substance into our Friday publication—not necessarily everyone’s peak time for absorbing a nuanced discussion on complex financial products. Here’s a recap of original substantive pieces from recent issues for easy reference:

Funds with Benefits? Moving to a Balanced Lender Assignment Approach for Irish 110 Companies

The preservation of a lender’s right of assignability is often pitted against perceived tax issues of Irish 110 Companies. We take a deeper look.

Side Letters: A Round-Up of Common Issues for Lenders

We identify the considerations for lenders in reviewing side letters.

Economic Substance – Should a Lender Care? A Cayman Perspective

We give an overview of the Cayman Islands economic substance legislation as it applies to fund finance transactions.

Mexican Capital Call Facilities

While most of the per se Mexican subscription lending to date has been completed solely by local banks in Mexico, we are seeing some material crossover via the joinder of such vehicles to U.S.-based facilities. This market has the potential to make an impact on the U.S. market soon.

“Nothing to see here...move along” or “Something’s happened...let’s stop and look”

We delve into a potential inconsistency in how events of default are addressed in LMA-based fund finance facilities in Europe.

The Intersection of Overcall Limitations and the Investor Default EOD Trigger

We illustrate the link between the Cumulative Default EOD threshold and an overcall limit in the LPA, and how the overcall limit should inform the appropriate Cumulative Default EOD percentage.

Who (When) You Gonna Call?

We review change of control provisions as these relate to indirect entities, such as an investor’s holding company.

E-Signatures? E-Sign Me Up!

The enforceability of contacts executed by electronic means is largely addressed by E-SIGN and UETA. We touch on e-signature questions that arise in the fund finance context.

Cadwalader Fund Finance Market Review

Highlights the Cadwalader Fund Finance market review as published in the LSTA and GLG’s International Comparative Legal Guide for Lending and Secured Finance.

April Showers Bring...Umbrella Facilities?

We refresh on umbrellas with a brief overview of a classic subscription umbrella facility, followed by some pros and cons to lenders.

Who’s in Front? Structuring Letters of Credit in Europe

Subscription line lenders are increasingly hesitant to take on the role of fronting issuing bank. Although there are variations on a theme, two main methods of dealing with the letter of credit mechanics are emerging.

Show Me the (Manager) Money

Greater attention is being paid to how the management company is financed in the LP diligence process. Lenders likewise are focusing on any vehicle upon which the GP/manager/affiliated investor relies for funding.

(Over) Call Me, Maybe

We break down the numbers on the prevalence of overcall limits in fund documents based on our representations over the past two years.

Please Don’t Ignore My (Over)call

An overview of overcall limitations and the implications for facility structure.

The Irish Collective Asset-Management Vehicle

A review of the ICAV, its use in capital call facilities, and dialing in on its application in an umbrella fund structure.

Political Contributions Cease Funding Rights

A look at cease funding rights tied to political contributions negotiated in side letters by state pensions and other municipal investors in the United States.

Navigating Capital Call Facilities

In the standard capital call facility, uncalled commitments are the lender's primary source of repayment. Fund performance and investor behavior, however, can become interrelated. NAV and asset coverage tests are among the contractual protections that can give comfort to lenders.

Problems with 'Promptly'

We highlight the inherent uncertainties of many terms that are frequently used to describe time periods allowed for performance and summarize guiding principles toward accuracy and certainty.

Spotlight on GP-Led Secondary Transactions

GP-led secondary transactions have become a more frequent approach to unlocking liquidity for both GPs and investors. We review the four most popular types of GP-led transactions and related considerations.

ERISA in Fund Finance

A high-level overview of ERISA and its implications in Fund Finance.

Capital Commitments in the Form of Investor Loans in the U.S.

We review enforceability considerations for investor commitments structured as loan commitments rather than as equity capital commitments.

Joint and Several Liability

The intersection of private equity, cannabis and fund financing appears inevitable. Form credit agreements, however, so far have been limited in considering relevant use of proceeds restrictions or restrictions on qualified borrower joinders.

Waiving Goodbye to Sovereign Immunity in the European Market?

Financial institutions operating in the European fund finance market are increasingly having to familiarize themselves with sovereign or state immunity laws and how these laws interact across multiple jurisdictions. Waivers of sovereign immunity, while helpful, are not always perfect.

Divide and Conquer: New Delaware 'Division' Law Creates Potential Issues for Fund Finance Lenders

Delaware legislation permits an existing LLC to divide into two or more separate and distinct LLCs and allocate assets, rights and liabilities among the new entities. We summarize relevant considerations for loan documents.