

CADWALDER

# Unlocking Liquidity With a Tranche B Facility

September 6, 2024



By **Joe Zeidner**  
Partner | Fund Finance

Liquidity solutions are a topic du jour in fund finance. With bank balance sheets somewhat restricted by macroeconomic concerns and risk-weighted asset regulations, fund finance borrowers and lenders have sought creative ways to put capital to work. One construct that may open up this optionality is the tranche B facility, a subordinated line of credit that sits within the same transaction as a senior revolver or term loan. This article explores the basic tenets and nuances that may be negotiated for constructing a tranche B facility in your deals.

## Basic Framework

In this piece we describe how a tranche B facility is set up, explore the benefits for borrowers and lenders, and detail the main provisions that may be impacted in a credit agreement. Tranche B facilities have existed in fund finance for over a decade but have been much more prominent in other areas of finance until recently. The foundation of a tranche B facility is having a lender or group of lenders provide loans that are junior to the loans offered by another lender or set of lenders. There are generally two ways this can be accomplished: lien subordination or payment subordination.

In lien subordination, separate security is granted to the tranche A lenders and the tranche B lenders in the same collateral of the fund. If the borrower defaults, the tranche A lenders have the right to enforce remedies against the collateral before the tranche B lenders may do so. For payment subordination, the tranche A lenders and tranche B lenders have equal rights in the collateral. It's just that in a default scenario, the tranche A lenders have the right to have their loans repaid before the tranche B lenders.

While either approach could work to accomplish a tranche B facility, we've seen fund finance parties generally opt for payment subordination due to its ease of execution. Both forms of subordination would be governed by an intercreditor agreement, as discussed in more detail below. Payment subordination can be drafted directly into the credit agreement with the other changes that are required to reference the tranche B facility. Lien subordination, on the other hand, requires a separate pledge of the collateral to each class of lenders, making for additional documentation and related costs.

## Primary Purposes

Before delving into the intricacies of an intercreditor agreement, let's explore why parties may desire a tranche B facility. Borrowers can benefit from a facility in two ways. It provides liquidity from a second set of lenders that may not participate in the tranche A facility. This access to extra funding could be critical for a borrower to manage working capital or make investments in a competitive bidding situation. A tranche B facility will also typically have a higher advance rate in the borrowing base. This can extend the value of the collateral for a borrower, particularly when the unfunded capital commitments of the investors have been significantly reduced later in the life of a fund or if the borrower has deployed capital quickly for investments.

There are several benefits for lenders, too. Lenders under the tranche B facility may be able to enjoy enhanced risk-weighted returns. Pricing for a tranche B facility is higher because of the increased advance rate and the tranche B lenders being junior to the tranche A lenders. With fund finance facilities historically being an incredibly safe product, this can be attractive for lenders willing to subordinate their interests. For the tranche A lenders, the benefit is providing the flexibility for the borrower to gain more access to capital. This accommodation can enhance the relationship of the tranche A lenders with the sponsor by showing a willingness to give greater flexibility and value in the trade.

## Intercreditor Arrangements

After we describe the principal provisions in an intercreditor agreement, we discuss other items that should be updated in the credit agreement when implementing a tranche B facility. Here we focus solely on an intercreditor arrangement governing payment subordination, rather than lien subordination, due to its prevalence in the tranche B facilities we've seen in the fund finance market.

As a basic principle, borrowers are generally permitted to direct the application of payments to outstanding facility obligations as they choose when there is no default. The intercreditor section may stipulate this for payments by the

borrowers in the ordinary course as between the tranche A and tranche B facilities. If there is an event of default, the intercreditor language will require that all obligations owed to the tranche A lenders will have to be paid before the tranche B lenders may be remunerated. The parties should consider what subordination applies during breaches by the borrowers, material potential defaults and mandatory prepayments. The parties may further negotiate other enhanced positions, such as (1) restricting the ability of the tranche B lenders to consent to take actions to varying degrees, (2) whether the payment subordination relates to funds from all sources or only the facility collateral, and (3) any standstill positions for when the tranche B lenders may initiate enforcement remedies through the administrative agent.

Care should be taken in drafting intercreditor provisions to ensure they function as intended in all situations. Case law has found they are enforceable in bankruptcy situations to the same degree that they are enforceable in non-bankruptcy situations. Courts will generally construe the arrangement based on the language agreed to by the parties. Preparing the intercreditor agreement can be highly technical, particularly when instituting subordination, subrogation and bankruptcy-related frameworks. When crafted properly, intercreditor provisions will put the tranche A lenders in essentially the same position they'd be in without the tranche B facility. At the same time, the tranche B lenders will be in a better position as it relates to the facility collateral against outside creditors.

### **Other Prominent Points**

In addition to the intercreditor provisions and pricing points, there are several sections in the credit agreement that could use meticulous consideration when adding a tranche B facility. Take, for example, the borrowing base. With its higher advance rate, availability under the tranche B facility will be calculated separately from the tranche A facility. The tranche B facility borrowing base could be constructed using a tiered approach based on investor classifications for rated investors, non-rated investors and designated investors, but we've more commonly seen it have a flat advance rate. Importantly, the tranche B facility should take into account the availability under the tranche A facility to keep the aggregate limit under the combined facilities within the maximum amount allowed under the credit agreement and any leverage limitations in the fund constituent documents.

Because of the separate facility availability, the parties should pay keen attention to how mandatory prepayments may be triggered. Loans in excess of the available commitment under either tranche A or tranche B should lead to a mandatory prepayment under the relevant tranche. The parties can discuss related arrangements for whether one tranche must be repaid before the other, or if there are excess loans under one facility but not both, whether those excess loans could be reallocated to the second facility where there is additional capacity.

Lender voting is another critical feature to decide on. In general, the credit agreement may reflect that tranche A lenders will approve items that impact the tranche A facility while tranche B lenders consent to decisions that affect the tranche B facility. The parties should assess the provisions tied to majority lender votes and decide on any provisions for which it may be more appropriate to have either majority tranche A lenders or majority tranche B lenders vote. To ensure incentives are properly aligned, it may even be pertinent with some voting items to require the majority tranche A lenders and the majority tranche B lenders to collectively decide, rather than the lenders holding fifty percent of the combined commitments under the credit agreement. There may also be places where the tranche A lenders should have a say on changes to the tranche B facility that impact the overall facility, in order to keep the debt and credit risk profile of the total transaction in line with how it would be without the tranche B. Those could include the size of the tranche B facility and its advance rate.

### **Conclusion**

While tranche B facilities have been in our market for a long time, the recent commercial environment has made borrowers and lenders pull them out of their bag of creative liquidity solutions more frequently. With careful decision-making and precise drafting, the parties can craft an agreement that gives each side the benefits of implementing a tranche B facility.

## Subscriptions Lines – S&P in the Fund Financing Space

September 6, 2024

S&P Global  
Ratings

### Private Markets Insights



In a recent article, S&P Global Ratings outlines their criteria for rating certain facilities used by alternative investment funds called subscription lines. These facilities are secured by an alternative investment fund's limited partner capital commitments.

The criteria apply to issue credit ratings on a subscription line when:

- It benefits from a first priority perfected lien on a closed-ended AIF's LP capital commitments;
- We expect the primary source of repayment to be from calls on the LPs' undrawn capital commitments;
- The facility provider (lender) has direct access to all LP capital flows, either prior to a missed payment or after a missed payment; and
- All LP capital must flow through cash accounts over which the lender has a first priority perfected lien or cash accounts that are bankruptcy remote from the fund.

If any of these conditions does not apply, we rate the facility based on our AIF methodology. See Appendix for additional details on the scope.

Read the full article [here](#).

Register [here](#) to join S&P Global Ratings' Methodologies and Financial Services senior analysts for a live interactive webinar where they will discuss our recently released criteria for rating alternative investment fund (AIF) subscription line facilities secured by capital commitments and related changes to our AIF methodology.

# NAV Finance Criteria Exposure Draft Webinar

September 6, 2024



Fitch Ratings has **published an exposure draft** proposing new rating criteria for NAV Finance. They are inviting market participants to submit their feedback on the proposed criteria by October 3, 2024.

Join senior analysts on September 10 as they discuss the new rating criteria and answers questions.

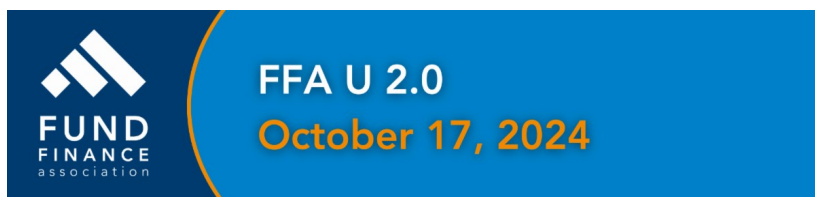
## Key considerations:

- The criteria addresses obligations backed by the NAV of funds that primarily invest in limited partnership interests of alternative investment funds. These obligations are also referred to as NAV loans to secondaries funds.
- Ratings will be anchored in modelling of portfolio cash flows and the structural features of transactions.
- Key rating drivers include the asset quality of the portfolio, additional sources of repayment and liquidity available, an assessment of the fund and manager, and the loan structure.

Register to attend the event [here](#).

## FFA U 2.0

September 6, 2024



Join the Fund Finance Association for an intensive full-day training session in-person in New York on October 17, 2024.

FFA U 2.0 is designed for mid-level bankers and lawyers transacting under U.S. law and will cover advanced issues in subscription facilities, NAV loan structures and issues, Collateralized Fund Obligations and the PE business model.

A complimentary networking reception sponsored by Cadwalader, Wickersham, & Taft LLP and KBRA will follow.

### **Event Details:**

Location: Manhattan - Whitman Ballroom, 28 Liberty Street, New York, NY 10005

Date: Thursday, October 17, 2024

Time: 9:00 AM - 5:00 PM EST

### **Networking Reception Details:**

Location: Cadwalader, Wickersham, & Taft LLP Office, 200 Liberty St, New York, NY 10281

Date: Thursday, October 17, 2024

Time: 5:30 PM - 7:00 PM EST

Register [here](#).

## Cadwalader Welcomes Rob McClean

September 6, 2024

CADWALADER



Cadwalader Adds

**Rob  
McClean**  
as Special Counsel

Please join us in welcoming Rob McClean back to the UK Fund Finance team as a Special Counsel.

Rob, who joins Cadwalader from another major global law firm, has a wealth of experience advising lenders regarding debt financings to funds of various asset classes including private equity, secondary, real estate, credit and funds of funds.

Rob's experience includes the entire range of fund finance products including capital call lines, Net Asset Value ("NAV") facilities, hybrids and GP support facilities. He was previously with Cadwalader for five years from 2018-2022 as an associate in the London office.

Rob joins **a robust UK Fund Finance team with 12 UK-based fully dedicated fund finance professionals**, led by partners George Pelling and Trent Lindsay, and supported by more than 65 fund finance professionals in our Firm's other offices.

The Cadwalader team will continue to provide best-in-class, transatlantic legal advice and deal execution capabilities.

Learn more about Rob [here](#).

# Cadwalader Finance Forum - Meet the Moderators

September 6, 2024

We're excited to introduce the stellar lineup of moderators for the Cadwalader Finance Forum 2024! Join us on October 23 in Charlotte as we bring together the brightest minds in the industry for a one-of-a-kind event. Learn more/register [here](#).

CADWALADER FINANCE FORUM

MEET YOUR MODERATORS



Patrick Quinn



Angela Batterson



Patrick Calves



Christopher Dickson



Leah Edelboim



Stuart Goldstein



Tim Hicks



Trent Lindsay



Ronald Lovelace



Ryan McNaughton



Jed Miller



Bonnie Neuman



Lisa Pauquette



Nathan Spanheimer



Chris van Heerden



Jared Zajac

October 23 | Charlotte, NC



## Cadwalader Fund Finance Team Featured in Thomson Reuters Practical Law

September 6, 2024



Cadwalader's **Christopher McDermott**, **Trent Lindsay**, **Christopher Montgomery** and **Eric Starr** authored an article, "The Effect of the 2022 UCC Amendments on Fund Finance Transactions," which appeared in the *Thomson Reuters Practical Law* guide as part of the publication's "Expert Q&A" series on August 27.

The article discusses the potential impact of the 2022 amendments to the Uniform Commercial Code (UCC) on fund finance transactions. The 2022 UCC amendments include a new UCC Article 12 that creates a new UCC asset type (controllable electronic record (CER)) and new types of payment obligations (controllable accounts and controllable payment intangibles).

Read it [here](#).

## Leah Edelboim Featured in Law.com's How I Made Partner Series

September 6, 2024



Leah Edelboim was recently featured in *Law.com*'s How I Made Partner series. The Q&A highlights her path to success in the competitive field of Fund Finance. With a strong focus on setting clear goals, proactive leadership, and the importance of mentorship, Leah's story offers valuable insights into what it takes to advance in a top-tier law firm.

Leah's path to partnership at Cadwalader, Wickersham & Taft is a testament to the power of ambition, mentorship, and authenticity. In the Q&A, Leah shares how she navigated her career by being clear about her goals and consistently delivering excellence: "It's not realistic to think that you will do great work, and someone will notice and promote you; you have to make your goals known."

Leah highlights the impact of key mentors in her journey, including Mike Mascia and Wes Misson, who played pivotal roles in her career development. Reflecting on the importance of staying true to herself, Leah advises aspiring partners, "While the people doing the job I want to do may not look or act like me, I can still be me and achieve that position."

Leah's story also delves into the challenges she faced, from transitioning to a new role at Cadwalader to balancing a high-risk pregnancy with her career aspirations. Her journey underscores the value of grit, determination, and a supportive network in achieving success. She is not only a leader in her field but also a champion for others, actively participating in Cadwalader's Sponsorship Program and leading the fund finance team's mentorship program. She emphasizes the importance of supporting diverse talent and creating opportunities for the next generation of lawyers.

From her proactive approach to career advancement to her dedication to mentorship and diversity, Leah's insights are invaluable for anyone looking to grow in their legal career.

Read the full interview [here](#) to learn more about her journey, her advice for aspiring partners and her vision for the future of law.

## WFF APAC: From Burnout to Balance

September 6, 2024



Women in Fund Finance APAC is excited to invite you to the upcoming wellness workshop on September 11, where they are co-hosting with Moody's in Hong Kong.

With the presence of a wellness coach, the event seeks to enhance wellbeing, productivity, and overall quality of life, by enabling participants to better manage stress and avoid the pitfalls of burnout.

The workshop will include:

- A short overview of resilience versus burnout using a five-pillar model of how stress affects us
- A brief sharing of the trainer's, Brian Henderson, personal experience of burnout
- Practical learning experiences - as many of the following as time allows:
  1. Relaxing movement – chair or standing yoga
  2. Breath work to find balance and calm
  3. Mindfulness of thoughts with visualization
  4. Reframing negative thoughts – small group discussion
  5. Gratitude practice – small group discussion

### Event Details

Date: Wednesday, September 11th, 2024

Time: 12:15 PM - 1:30 PM

Location: Singapore & Sydney room, Moody's Ratings, 24/F, One Pacific Place, 88 Queensway, Admiralty, Hong Kong

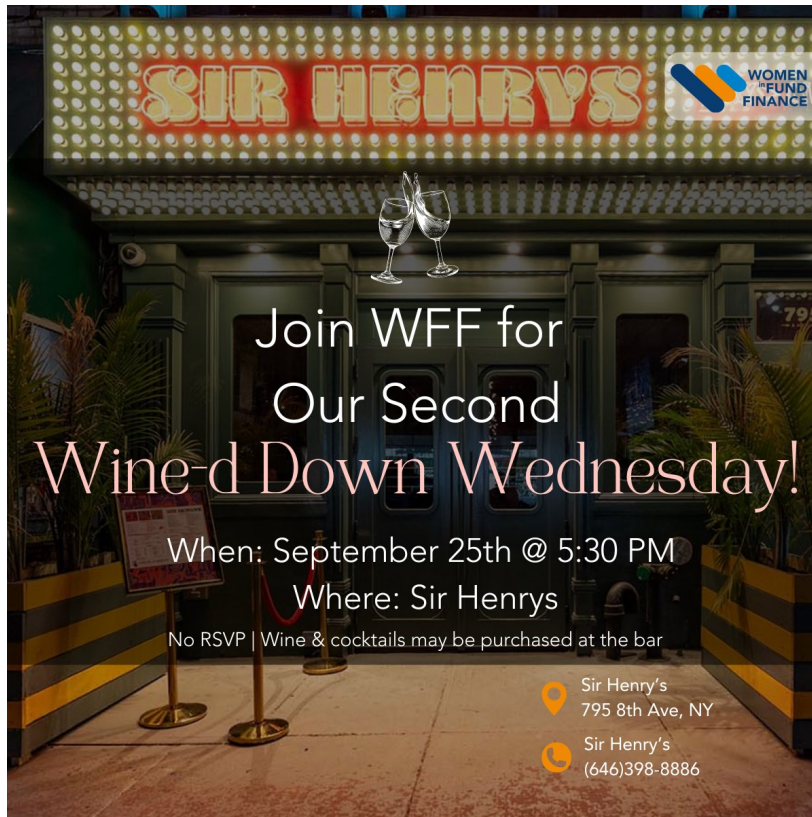
Light lunch and tea will be provided.

As we explore gentle poses during our wellness event, we recommend wearing comfortable clothes and shoes for easy movement. Please note, registration is open on a first-come, first-served basis.

Register [here](#).

## WFF America: 2nd Wine-d Down Wednesday

September 6, 2024



Join WFF for Wine-d Down Wednesday at Sir Henry's, over an evening of networking, nibbles and cocktails.

No RSVP required. Wine & cocktails may be purchased directly from the bartender.

### Event Details

Date: Wednesday, September 25th

Time: 5:30 PM

Location: Sir Henry's | 795 8th Ave, New York, NY 10019

Mark your calendar today, we hope to see you there!

Contact [info@womeninfundfinance.com](mailto:info@womeninfundfinance.com) if you have any questions.

## Women in Fund Finance Americas: LA Fireside Chat

September 6, 2024



Join Women in Fund Finance for their second event in Los Angeles! They are thrilled to welcome Polina and Filipp Chebotareva, Managing Partners from Cambridge Company SPG, as guest speakers. As siblings who co-founded Cambridge Companies SPG, Polina and Filipp will share insights into How Once Upon a Farm started and Cambridge Company's involvement in its growth.

### Event Details

Date: Thursday, October 17th, 2024

Time: 5:30pm - 8:00pm PT (Check-in starts at 5:00)

Location: Katten Muchin Rosenman LLP | 2121 Avenue of the Stars, Los Angeles, California 90067

Register [here](#).

Please note, registration is open on a first-come, first-served basis. If this event becomes oversubscribed, Women in Fund Finance reserves the right to limit each firm's number of attendees, in order to allow for participation from all of our sponsor firms.



## EMEA Annual Networking Drinks Reception

September 6, 2024



Women in Fund Finance EMEA is excited to invite you to an evening of networking over drinks and canapés, at Frameless, immersing ourselves in multi-sensory art experience.

We are excited to gather and celebrate the successes and collaboration amongst the Women in Fund Finance community before the year-end sprint! This event is open to both men and women.

Drinks and canapés will be provided. Please note, registration is open on a first-come, first-served basis.

### Event Details

Date: Wednesday, October 23rd, 2024

Time: 6:00 PM - 10:30 PM

Location: Frameless | 6 Marble Arch, London W1H 7AP

Register [here](#).

## Alzheimer's Impact Hits Home for Waxhaw Resident, Wes Misson

September 6, 2024



Cadwalader partner and Fund Finance head **Wes Misson** was profiled in the September 2024 edition of *Waxhaw & Martin Living* magazine in an article, "Alzheimer's Impact Hits Home for Waxhaw Resident, Wes Misson."

The article discussed Wes' role as the Chair of the Board of Directors of the Alzheimer's Association – Western Carolina Chapter, sharing his own story of how he became a passionate advocate for Alzheimer's awareness and research after his mother, Judy, was diagnosed with the disease.

"I didn't realize the widespread impact of Alzheimer's until it hit my family," Wes said. "Almost everyone will be touched by it at some point, whether through a friend or family member. Being involved with the Alzheimer's Association – Western Carolina Chapter has given me a way to contribute to finding a cure."

The article noted that, in North Carolina alone, there are over 210,000 people with Alzheimer's and 373,000 caregivers. The Alzheimer's Association is the leading voluntary health organization in Alzheimer's care, support and research. Under the leadership of Wes and fellow partner (and former Western Carolina Chapter Chair) Stu Goldstein, Cadwalader has raised nearly \$450,000 in the fight against Alzheimer's in annual fundraising events since 2012.

## Fund Finance Tidbits – On the Move

September 6, 2024

### CADWALADER FUND FINANCE 'ON THE MOVE'

The following individuals are on the move in the fund finance industry:



**Rich Cocozza**

**Rich Cocozza** has joined the Alternative Markets Group at Goldman Sachs in New York where he will focus on origination and structuring of fund finance and asset financing deals. Rich was previously the Chief Risk Officer at Avenue Capital Group where he focused on, among other things, fund finance and asset finance.



**Fazillah Durante**

**Fazillah Durante** has joined TD Securities as the Head of Fund Finance Origination based in New York. In her new role, Fazillah will collaborate closely with the Financial Sponsors Group, Financial Institutions Group, and Global Markets teams to develop cross-product solutions and strategies for Private Capital clients at the Fund, Manager, and Asset level.

Prior to joining TD, Fazillah was Managing Director of Financial Sponsors & Fund Finance at Scotiabank where she held progressively senior roles across Global Markets and Corporate & Investment Banking over the past 21 years.

Fazillah is also actively involved in industry leadership as the Co-Chair of Women in Fund Finance Americas



**Flora Go**

**Flora Go** has joined Paul, Weiss, Rifkind, Wharton & Garrison LLP as the Head of Fund Finance and as a partner in the Finance Group within the Corporate Department in New York. Flora brings extensive experience representing asset managers and investment funds in complex fund-level leverage transactions.



Flora advises asset managers and their investment funds on a wide range of fund-level financings, including for private equity, senior credit, mezzanine credit, special situations, real estate, infrastructure and other strategies. She has particular expertise advising funds with complex tax and regulatory structures on financings collateralized or supported by underlying fund investments. Flora also has broad experience in subscription-based facilities, hybrid facilities and in other types of investment fund leverage.

She was previously a fund finance partner at a major law firm in New York.



**Desi Perez Mayo**

**Desi Perez Mayo** has joined CBA Americas as Executive Director – Head of Fund Finance in New York.

He joins from SMBC where he was an Executive Director and Head of Strategy and Execution and before that was Head of Fund Finance Syndications there.



**Stephen Prostor**

**Stephen Prostor** has joined Axos Bank as SVP/Managing Director and Head, Portfolio Management, Fund Finance, Commercial Banking. Steve brings over 25 years of sponsor coverage and fund finance lending experience with private equity firms and partners including serving as Director, Senior Credit Officer and Head of Sponsor Finance, North America at Citibank.

## Fund Finance Hiring

September 6, 2024

Fund Finance Hiring

Here is who's hiring in Fund Finance:

**Bridge Bank** is seeking a Portfolio Manager, AVP, in Boston, MA or San Jose, CA. This role would be responsible for an assigned portfolio of loan and/or deposit relationships. Learn more and apply [here](#).

**Wells Fargo & Company** is seeking a Fund Finance Analyst in London who will collaborate within integrated deal teams to drive the origination, structuring, and execution of fund finance transactions for top-tier financial sponsors and asset managers worldwide. If interested, you can apply [here](#).

**Société Générale** is seeking an Analyst who will be for supporting the origination and execution of Capital Call Financings and work with the portfolio manager to ensure efficient and timely management of annual credit reviews, monitoring of credit performance and industry trends. If interested, you can apply [here](#) or reach out to Laurie Lawler at [Laurie.Lawler@sgcib.com](mailto:Laurie.Lawler@sgcib.com).

**M&T Bank** is seeking a Commercial Relationship Manager in Boston, MA. This role would be responsible for an assigned portfolio of loan and/or deposit relationships with major businesses in the community. Learn more and apply [here](#).