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FUND FINANCE FRIDAY

E-Signatures? E-Sign Me Up!

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E-Signatures? E-Sign Me Up!

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By Eric Starr
Associate | Fund Finance

In the not-too-distant past, execution of a major commercial transaction involved gathering the parties (and their lawyers) in a large conference room to sign (*with a pen!*) multiple counterparts of a suite of documents, each dutifully arranged by a junior staffer. The pomp and circumstance of the previous era's closing rooms have given way to more efficient, convenient and cost-effective methods. Today's closings are typically uneventful, digital affairs—conducted from participants' respective offices (or on-the-go via mobile devices) and made possible in part by the advent of digital and electronic signatures. The latter category (think DocuSign, as opposed to PDFs or faxes) gives rise to questions of validity and enforcement.

Around the turn of the new millennium, legislators across the country began recognizing the need to create laws governing this burgeoning technology and provide certainty to both commercial actors and consumers. As a result, federal lawmakers enacted the Electronic Signatures in Global and National Commerce Act ("ESIGN") and 47 states enacted the Uniform Electronic Transactions Act ("UETA"); the states (including New York) that did not enact UETA adopted substantially similar legislation. Under ESIGN and UETA, an e-signature is essentially any mark or symbol coupled with the signatory's intent to execute the document to which such mark or symbol is attached. Importantly, under these legal regimes, both parties must consent to conducting the transaction electronically—a requirement typically satisfied in sophisticated commercial transactions with express provisions allowing for electronic execution and transmission.

Electronic execution and contract formation is an interesting and still-developing area of modern commerce. As a result, individual firms and institutions vary widely with respect to internal policies prohibiting or allowing e-signatures and the procedures required for accepting e-signatures. While the enforceability of contacts executed by electronic means is largely addressed by ESIGN and UETA, questions still remain that both business and legal professionals should weigh carefully.

Principal among these questions is what should be required to provide assurances that e-signed documents are genuine and enforceable. Typically, a legal opinion is obtained attesting to due authorization/execution to provide this coverage. While the due authorization/execution opinions commonly include the assumption that signatures are genuine, Secretary's Certificates certifying the genuineness of officers' signatures are also customarily provided to both the relying party and the opinion giver. Finally, if commercial e-signing platforms (such as DocuSign) are employed, such products' security systems and authentication services provide significant additional comfort that an e-signature is both genuine and enforceable—comfort, in fact, that rivals or exceeds anything short of an old-school closing room.

Credit Line Debate in FundFire

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By Justin Reimer
Associate | Fund Finance

Last week, *FundFire* published an article on the current state of the conversation surrounding ILPA's 2017 guidelines. The article featured several leading voices on both the manager and lender sides highlighting the operational benefits of subscription lines and calling into question IRR boost as a motivating factor in the implementation of most subscription credit facilities. ILPA offered its observations, noting an increase in reporting to investors regarding use of subscription credit facilities since the publication of its guidelines, including the reporting of unlevered IRRs in some cases. *FundFire* reports that the debate continues as managers push back on the more rigid, broad-brush guidelines, such as specific requirements for loan-to-value and maximum days outstanding for loans. Gavin Rees of Silicon Valley Bank commented, "One size fits all is not a good policy," and Trevor Williams of Penn Mutual Asset Management remarked that investors can "vote with their feet" by investing elsewhere if they are not comfortable with the way a manager uses subscription credit facilities. Read the full article here.

Q1 Fundraising Stays on Pace

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First quarter private equity fundraising followed last year's pace with $91 billion raised across 97 funds, according to *PEI* data. Growth equity strategies are thriving, and these funds posted the best first quarter in the *PEI* data set. The recent *PEI* update again underscored a secular theme for private funds and their lenders: scale matters. The ten largest funds seek to raise $126 billion in 2019. The concentration of capital at top sponsors appears to be driving consolidation *(e.g.*, the Brookfield-Oaktree tie-up announced in March) and remains a key strategic consideration for lenders.

Mourant Recaps the Global Fund Finance Symposium

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By Eric Worthington
Staff Attorney | Fund Finance

Mourant has prepared a "Top Take-Aways" summary from the 9th Annual Global Fund Finance Symposium in Miami that discusses high points from several presentations. The summary covers industry trends, market updates and current challenges for players in the funds finance space. Mourant also highlights the growing need for Management company and General Partner facilities to either provide working capital or to finance General Partner commitments. Additionally, a discussion of Subscription Default gives insight into increasing lender demands for greater due diligence and prompt investor notice of an assignment of capital call rights, among other related issues and concerns.

On the Move—Fund Finance Tidbits

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On the Move

- Matt Glen has been promoted to Vice President in ING's Investment Fund Finance team. His primary responsibilities are originating, structuring and executing funds finance transactions for ING's European investment management clients, with a focus on subscription facilities for private funds across the alternative asset classes.

Fund Finance Hiring

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Fund Finance Hiring

Standard Chartered Bank is hiring for an Associate Director in its Fund Finance, Financial & Strategic Investors Group. The role will involve contribution to the origination, structuring, and execution of fund-level subscription financings, hybrid facilities, NAV-based financing and GP facilities. For more information, click here.

Fund Finance Calendar

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Fund Finance Calendar

Upcoming Events in Fund Finance

July 25, 2019	Women in Fund Finance Wit & Wisdom Breakfast Meeting, Allen & Overy, London
September 24, 2019	3rd Annual Asia-Pacific Fund Finance Symposium, Four Seasons Hotel, Hong Kong
October 17, 2019	Cadwalader Finance Forum, The Ritz-Carlton, Charlotte, North Carolina

If you have an event that you would like listed on the *Fund Finance Friday* calendar, please email us at fund-finance-friday@cwt.com.