

CADWALADER

Syndicate Diligence Considerations

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Subscription credit facilities are a widely utilized product in the fund finance market, offering sponsors access to a reliable source of financing to bridge capital call and to lenders collateral backed by investors' capital commitments rather than the underlying portfolio assets of a borrower. With a borrowing base made up of creditworthy institutional investors and private wealth management clients that have a track record of meeting their obligations, the security and predictability that subscription credit facilities offer are particularly attractive to lenders.

As subscription credit facilities have become firmly established financing products in the market, and with the steady expansion of new lenders each year entering the space, an increase in multi-lender facilities seems plausible to provide lenders with more opportunities to diversify risk and enhance their visibility in the market by working with high-quality fund borrowers, sponsors, administrative agents and other lenders. You can read more in-depth coverage on the benefits and key considerations for syndications [here](#).

In this article, we will explore the complex due diligence landscape that syndicate lenders must navigate when seeking to join a new or existing credit facility. We will highlight the key areas lenders should focus on during their due diligence process to safeguard their interests and ensure they make informed decisions.

As the name suggests, a syndicated credit facility is provided by a syndicate of lenders and is administered by an agent bank ("Agent") who is frequently, but not necessarily, the lead bank in the deal. If the Agent is not assigned as the lead arranger, then it will work closely with the lead arranger(s) to originate and structure the credit facility and form the syndicate. Specifically, the Agent plays a hand in negotiating and finalizing the deal terms (e.g., loan size, pricing, repayment terms, etc.); drafting and negotiating the credit and security documents; reviewing the organizational documents of the credit parties; reviewing investor subscription agreements and side letters; conducting UCC and other searches; and coordinating the delivery of other standard closing deliverables (e.g., authority documents, incumbency certificates, responsible officer certificates, opinions from counsel, KYC diligence, beneficial ownership certificates, etc.). Once the facility is in place, the Agent will oversee the daily operations of the credit facility including, but not limited to, disbursing funds following a request for borrowing; receiving fees and payments and allocating such funds to the syndicate lenders; collecting and verifying financial statements, compliance certificates and investor reports and providing lenders with relevant updates on the borrower's performance; monitoring the borrowing base; and managing the process for approving amendments, waivers or consents.

The Agent plays the primary role in facilitating the relationship between the borrowers and the lenders from inception through maturity of the facility. Syndicate lenders entering a new or existing credit facility will rely heavily on the Agent to conduct upfront due diligence and handle administrative functions. As an example, syndicate lenders expect that, prior to closing and throughout the lifecycle of the facility, the Agent will perform a robust analysis of the collateral by vetting the creditworthiness and diversity of the investor base. Syndicate lenders will also look to the Agent to verify the enforceability of the uncalled capital commitments under the subscription agreements and identify any side letter provisions that could negatively impact an investor's obligation to fund its capital commitments. In this same vein, the syndicate lenders expect the Agent to monitor the Borrower's compliance with financial and operative covenants in the credit agreement and alert the syndicate lenders to any breaches and/or events of defaults.

While lenders benefit greatly from the centralized role of the Agent, they must still conduct a detailed review of the key loan terms to evaluate their credit exposure relative to the offered collateral package. Lender's counsel should carefully examine the term sheet, credit agreement, fee letter and collateral documents, focusing on the following aspects for their lender clients:

- Total facility amount and whether a committed or uncommitted accordion applies, including if a swingline facility is contemplated, and the obligation of all revolving credit lenders to participate in swingline loans;

- Maturity date and whether a committed or uncommitted extension option is available;
- Facility pricing terms, such as arrangement fees, upfront fees, extension fees, letter of credit fees and facility increase fees;
- Borrowing base criteria such as advance rates, investor concentration limits, the borrowing base calculation and exclusion events;
- Procedures for funding loans; repayment of interest and principal; and mandatory prepayments following an overadvance;
- Pro-rata sharing provisions (i.e., confirmation of how principal, interest and fees are allocated among syndicate lenders);
- Applicable jurisdictions, regulatory considerations, sublimits, currencies and exchange rates;
- Joinder requirements for new credit parties such as qualified borrowers, AIV or parallel fund borrowers;
- Reporting requirements such as annual and quarterly reports, borrowing base certificate, capital calls, capital return notices, notice of default and investor events;
- The process for applying payments and proceeds of collateral (the “Waterfall Structure”);
- Covenants, default triggers and remedies, including the agent’s ability to accelerate payments and enforce remedies;
- “Revlon” or “Erroneous Payments” provisions that require lenders to return erroneous payments and give the agent recourse against any lender that refuses to do so.
- Voting Rights, including required lender, lender affected thereby and unanimous or “sacred rights” and “Serta” protections to augment voting rights of lenders to prohibit subordination of their claims.

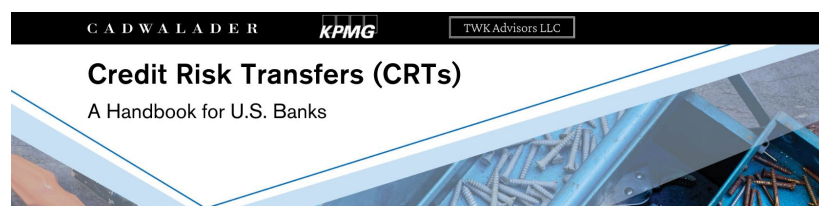
Among the various loan terms mentioned above, lender voting rights are particularly noteworthy. In most syndications, the Agent and the lead bank negotiate the deal terms with the borrowers, providing them with significant influence over key decisions concerning the facility. However, to protect the interests of the lenders and ensure collective action, any material decisions, whether implemented through amendments, waivers or consents, will require approval from the syndicate lenders under clearly defined voting requirements set forth in the credit documentation.

There are three main types of voting rights typically found in syndicated credit facilities: “required lenders,” “lenders affected thereby,” and “unanimous consent.” Required lender consent refers to majority approval, usually defined as lenders holding a pro-rata share of 50% or more of the total loan commitment. Required lender consent is typically required for any material amendments to the constituent documents of the borrowers, modifications to the Waterfall Structure after an event of default, and permitting the withdrawal of funds from the collateral account following a cash control event. Lenders affected thereby refers to the approval of only those lenders directly impacted by a proposed course of action such as modifications to such lenders’ loan commitments, postponing or delaying the payment of any principal, interest, fees or other amounts due and modifications to facility pricing, such as a reduction in principal, interest or any fees. Unanimous action refers to the approval of all syndicate lenders and applies to changes in material deal terms including modifications to the borrowing base, advance rate or concentration limits, any reductions or suspensions of the uncalled capital commitments, any release or subordination of liens in the collateral and any modification or removal of voting rights or the percentage voting requirements or the definition of “required lenders.”

It is important to mention that the foregoing analysis is not exhaustive, as different lenders may have unique concerns relevant to their specific investment objectives, risk tolerance or internal policies. Lender’s counsel must tailor their reviews accordingly to ensure they provide their lender clients with a comprehensive overview of the transaction.

Credit Risk Transfers – A Handbook for U.S. Banks

December 20, 2024



Cadwalader, KPMG, and TWK Advisors have prepared **Credit Risk Transfers – A Handbook for U.S. Banks**. This handbook offers an in-depth look at Credit Risk Transfers (“CRTs”), a regulatory capital optimization tool long used by European banks and U.S. non-bank agencies, with new applications emerging for regional and community banks.

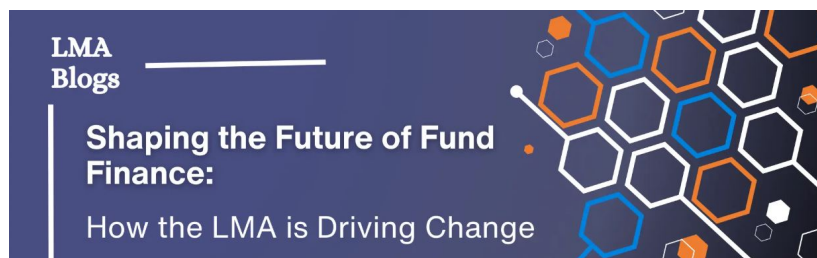
As the banking landscape grows increasingly complex, this guide provides essential insights into structuring, pricing, and implementing CRTs, making it an invaluable resource for financial institutions seeking to enhance capital and risk management strategies.

This detailed handbook demystifies the structuring, costs, and regulatory considerations of CRTs, providing a practical guide for banks of all sizes looking to optimize their regulatory capital position. Through an in-depth case study, it offers insights on how even smaller institutions can utilize this important tool.

We also wanted to bring to your attention the excellent and informative paper, “**The Economics of Synthetic Risk Transfers**,” by **Francisco Covas** and **Benjamin Gross** of the Bank Policy Institute (“BPI”). Their paper takes a close look at the compelling economics of bank risk transfer transactions, particularly where regulatory capital requirements applicable to a given loan portfolio significantly overstate the portfolio’s actual credit risk.

Shaping the Future of Fund Finance: How the LMA is Driving Change

December 20, 2024



The foundations for the Loan Market Association's ("LMA") fund finance work plans are now in place. Over the last months, LMA has thoroughly studied the market, listened to the voices of members and key stakeholders, and analysed market developments to build a solid foundation.

Now, we are here! LMA is committed to amplifying the voice of the community. Together, they aim to enhance market efficiency, liquidity and transparency, driving meaningful progress in the market.

Why now?

With fund finance being the biggest asset class you have never heard of, we are often asked why the LMA has now chosen to focus on this area. As a member-driven organisation, we are built by our members, for our members. This once niche market has grown into its own – subscription finance volumes alone grew 90% between 2017 and 2022 (source: [Fitch](#)). With this growth comes fresh opportunities, but also has increased attention and scrutiny, often leading to misconceptions.

As the trusted voice of the loan market, coupled with the breadth of our membership, the market sees the LMA as uniquely positioned to address any challenges and provide vital support as this market continues to expand.

From ideas to actions: What working parties have been established?

We began by listening. The LMA worked with an initial think tank comprised of lenders, GPs, LPs, investors and advisers, which identified key areas where the LMA's involvement could make a difference. The long list of asks was distilled into focused actions designed to deliver the most value, with the most impact on efficiency, liquidity and transparency across the EMEA loan markets.

In November, we established and met with dedicated working parties focused on the following areas:

1. Documentation and guidance
2. Education and communications
3. Regulation and industry consultations

With task forces in place, we have hit the ground running with a clear plan of action.

Increasing efficiency: guiding the market forward

The LMA has a key role to play in increasing efficiency by creating frameworks, guidance and best practices in the market. This includes work on:

- **Negotiated definitions:** Our first focus is on a rider and guidance for “exclusion events” and related terms.
- **LPA due diligence checklists:** Starting with sublines before expanding to NAV financing, these tools will streamline processes and set clear expectations.

By addressing these technical aspects, we are laying the groundwork for a more efficient market.

Education: turning mirrors into windows

It was John F. Kennedy who said that the goal of education is the advancement of knowledge and the dissemination of truth. With fund finance being thrust into the public eye, the intense scrutiny and media focus on narrow segments of the market and a perpetuation of misconceptions needs to be tackled. This asset class has a long, positive history of

innovation and low default rates. The LMA is working with the education and communications working party to draw out the facts to inform and educate – to turn mirrors into windows.

First is creating a glossary of terms. To start, we have to explain what the market is and what it is not and establish a taxonomy of language. Level setting and mitigating instances of talking at cross purposes will increase efficiency in the market. The second step is to explain the evolution and history of fund finance, including how financing is used throughout the fund lifecycle and the performance of the asset class. Keep an eye out for an upcoming blog on this.

Further communications are planned around NAV and other topics – giving the market a trusted voice. We also look forward to seeing many of you at the DealCatalyst event in partnership with the LMA on **The Future of Fund Finance – Europe** on 28 January in London.

Navigating regulation together

With regulators naturally increasingly focused on private markets, collaboration and education are essential to navigating this landscape. Our regulation and industry consultations working party will give the market a collective voice.

We are working together to tackle the impact on liquidity of upcoming and existing regulations. The market has shown innovation in developing new structures, but support is needed to work through the challenges and foster a proactive dialogue with the regulatory community. This will help to ensure capital can be deployed to where it is needed.

What about other associations: partnering across the market

The LMA is not an island and is actively collaborating with the market. We are in discussions with key associations, including the FFA and ILPA, as well as our sister organisations (the APLMA and LSTA) to ensure alignment. The industry has spoken and sees the LMA as having a key role to play in line with its mission – we are proud to take on that role and work with the market and other associations. We appreciate the collaboration thus far which we look forward to expanding in 2025.

Looking ahead

As we move forward, we will meet with a senior executive committee established to oversee our strategy in fund finance and ensure we are delivering real value to the market. As mentioned in previous blogs, the LMA is also working with members to shine a light on the size, subsets and stakeholders in the market – stay tuned for updates. We would like to take this opportunity to thank all market participants who have engaged with the LMA on these workstreams. We look forward to working with you to deliver positive impact for the market.

If you are interested in learning more about the working parties, please contact Kam Hessling at kam.hessling@lma.eu.com.

Read the blog [here](#).

Ryan Reynolds Is a Keynote Speaker for 14th Annual Global Fund Finance Symposium

December 20, 2024



The Fund Finance Association is excited to Announce Ryan Reynolds as a Keynote Speaker for the 14th Annual Global Fund Finance Symposium!

Ryan Reynolds, actor, writer and producer will take the stage to inspire and entertain as keynote speaker. Known for his unparalleled versatility, Ryan has captivated audiences across genres, from drama and action to comedy, building a career that's as dynamic as it is impressive.

Beyond his on-screen success, Ryan is a trailblazer in the business world. He's the star and producer behind the billion-dollar Deadpool franchise and an award-winning marketer whose innovative campaigns for Deadpool, Aviation Gin, Mint Mobile, and Match.com have redefined industry standards.

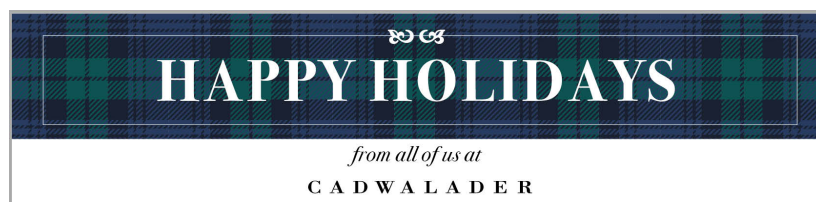
Ryan's entrepreneurial ventures include co-ownership of Aviation Gin, Mint Mobile, and Wrexham Football Club. He also serves as Chief Creative Officer of MNTN and co-founder of Maximum Effort Productions, further solidifying his reputation as one of the most creative minds in business. Recognized by Fast Company, The Hollywood Reporter, The Wall Street Journal, and AdWeek, Ryan brings his unique perspective on storytelling, brand building, and innovation.

The Fund Finance Association is looking forward to having you join them for Ryan's Keynote address as he discusses his remarkable career journey, his groundbreaking business ventures, and how he seamlessly bridges creativity and strategy in the entertainment industry and beyond.

See the [agenda](#) and register [here](#).

Happy Holidays From Cadwalader

December 20, 2024



Dear *Fund Finance Friday* readers, as the holiday season approaches, we want to extend our heartfelt gratitude for your continued support and engagement throughout the year.

To celebrate this special time and prepare for an exciting year ahead, we'll be taking a brief pause. *Fund Finance Friday* will return in January, refreshed and ready to bring you more insights and updates.

We wish you a joyous and peaceful holiday season surrounded by warmth, happiness, and cheer and we look forward to reconnecting in 2025!

Fund Finance Hiring

December 20, 2024

Fund Finance Hiring

Here is who's hiring in Fund Finance:

Goldman Sachs is seeking a Vice President for an origination role. This individual will play a key role in sourcing and managing new business opportunities, fostering client relationships, and driving strategic initiatives within the team. Learn more [here](#).

Goldman Sachs is hiring Analysts and Associates for underwriting roles. These individuals will focus on evaluating, structuring, and managing credit transactions, collaborating with cross-functional teams to deliver tailored financing solutions. Learn more [here](#).

East West Bank is currently seeking a SVP - Relationship Manager for our Private Equity business in the Eastern U.S. This individual will work with the Managing Director and other relationship team members in sourcing new business, structuring and underwriting loans, and managing relationships with a variety of private capital firms. Learn more [here](#).

Cadwalader, Wickersham & Taft LLP is seeking a Private Fund/Debt Financing Associate Attorney with at least three years of experience working on transactions that provide debt financing solutions for fund sponsors and fund investors, including collateralized fund obligations, rated note feeders and NAV facilities. This position will work across all three of Cadwalader's US offices, and candidates can sit in Charlotte, NC, New York, NY, or Washington, DC. Learn more [here](#).

Cadwalader, Wickersham & Taft LLP is seeking a Securitization/Structured Finance Associate with a minimum of three years of substantial experience in securitization, structured finance, structured products, corporate and/or real estate. CLO, CMBS, Repo and other ABL finance experience is also a plus, but not required. Candidates must have excellent academic credentials and solid law firm work experience. Learn more [here](#).

MUFG Bank is seeking an Vice President to join its EMEA Fund Financing Credit team in London, United Kingdom. The VP will play a crucial role in managing credit risk across a diverse portfolio of fund finance transactions, including Subscription Finance, NAV Finance, Hybrid facilities, and Fund FX. Learn more [here](#).

East West Bank is seeking an SVP - Relationship Manager. This individual will work with the Managing Director and other relationship team members in sourcing new business, structuring and underwriting loans, and managing relationships with a variety of private capital firms. Learn more and apply [here](#).