

CADWALADER

## Permitted Indebtedness

June 20, 2025



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Before a subscription lender can enter into a subscription credit facility with a fund, the subscription lender will need to review the limited partnership agreement (“LPA”) of such fund to confirm the LPA allows for incurrence of indebtedness. Any “bankable” LPA will specifically provide for and allow such fund to incur indebtedness under a subscription credit facility.

Once a subscription lender has determined the LPA is “bankable”, in addition to numerous other considerations, the subscription lender will want to focus on the LPA provisions which discuss any other permitted debt or debt limitations under the LPA. A significant amount of LPAs will allow for additional indebtedness outside of a subscription credit facility to be incurred, such as whether the fund is allowed to enter into derivatives, provide guarantees, whether subsidiaries are permitted to incur debts and other certain types of indebtedness. Alternatively, some LPAs will also include certain debt limitations, which can include limitations that debt cannot be incurred in excess of a certain specific dollar amount, debt not to be in excess of a certain percentage of capital commitments and/or unfunded capital commitments and a host of other limitations depending on the size and type of the fund. The subscription lenders will want to focus on these items in order to determine how to structure the subscription credit agreement, to underwrite and account for any other permitted debt and debt limitations included in the LPA.

Typically, to address subscription lender concerns regarding debt, a subscription credit agreement will include a covenant that the credit parties or the partnership (the “Borrower”) will not incur any borrowings or other indebtedness that is not in compliance with its LPA (the “Standard Debt Covenant”). In many instances, the Standard Debt Covenant may be enough to satisfy the underwriting requirements of the subscription lenders. However, the subscription lenders may also want to consider if further debt limitations should be put in place in the instance the LPA allows for certain incurrences of debt that could be problematic for the subscription lenders. Further, although the credit agreement will already covenant that the subscription lenders have a first priority lien over the uncalled capital commitments of the limited partners (the “Collateral”), by including additional debt limitations beyond the Standard Debt Covenant, the subscription lenders can try to account for and prevent a scenario where lenders outside of the subscription credit facility may look to enforce their rights against the Borrower (or the assets of the Borrower) if the Borrower were to default. Such enforcement could result in potential events of default under the subscription credit agreement depending on how such agreement is structured, or could cause the Borrower to drag the subscription lenders into other potential problems.

For instance, if the LPA allows for subsidiaries of the Borrower to incur indebtedness, then the Standard Debt Covenant would not prevent subsidiaries owned by the Borrower from incurring debt against their assets and/or prevent the Borrower using its equity interests in its subsidiaries as collateral to take on additional debt. In other examples, the Borrower could also provide a guaranty for its subsidiaries or take unsecured additional debt if allowed under the LPA. As noted above, this would not impact the first lien priority over the Collateral, but could create a scenario where Borrower assets are pledged to lenders outside of the subscription facility and thus limit the subscription facility lenders’ ability to collect against assets outside of the Collateral in a default scenario under the subscription credit facility.

Further, even if the Standard Debt Covenant is included and the LPA provides for sufficient debt limitations as originally drafted for purposes of the underwriting requirements of the subscription lenders, a potential issue could occur when the LPA allows for any committee of the Borrower (the “Management Committee”) to change the debt limitations of the LPA without the need for an amendment to the LPA (noting in such instance, the typical covenant in the subscription credit agreement that any material amendment to the LPA requires the Administrative Agent and/or some type of subscription lender consent may not apply in such scenario). If the LPA allows for such modification by the Management Committee, this creates a potential scenario where the original LPA debt limitations can be changed without the need for any Administrative Agent or subscription lender consent.

One way to prevent this potential issue from occurring would be to bake any debt limitations directly into the debt covenant specifically, rather than only including the Standard Debt Covenant (i.e., if the LPA provides for a debt limitation of 25% of the uncalled capital commitments of the limited partners, the covenant should specifically include this limitation). This way, even if the Management Committee were to change the debt limitations included in the LPA,

the debt covenant would still prevent the limited partnership from incurring debt in an amount that was not originally underwritten for pursuant to the original LPA debt limitations.

As always, subscription facility lenders will need to review the LPAs to determine the type of debt that is allowed to be incurred under such agreements and tailor the relevant debt covenants accordingly to ensure the subscription credit agreement addresses any subscription lender concerns relating to indebtedness. Although any subscription credit agreement will almost certainly have covenants and restrictions which would prevent incurring indebtedness against any of the Collateral, subscription lenders will still want to be aware and consider the impact of other types of indebtedness incurred by the Borrower(s) (or its subsidiaries), as such indebtedness could restrict the ability of the subscription lenders from collecting on the other assets and/or investments of the Borrower outside of the Collateral in any enforcement scenario.

This is a very broad overview on the concept of how debt limitations can be handled in a subscription credit agreement. There are numerous variations on the covenants lenders might include for any debt limitations. As always, if there are any issues or questions that arise in connection with debt limitations or any other concepts discussed herein, we here at CWT are always happy to assist to provide any such guidance.

## Save the Date - FFA U 1.0 & 2.0 US

June 20, 2025



The Fund Finance Association is excited to announce the upcoming sessions for FFA U 1.0 and 2.0 in the US region! These full-day training sessions will provide a comprehensive look at the Fund Finance industry.

Registration will open soon.

### **FFA U 1.0 US: Virtual**

Whether you are just getting started in your Fund Finance career or looking to deepen your understanding, this virtual training will be led by many of the industry's leading senior practitioners. This program is designed for both bankers and lawyers transacting under U.S. law.

Date: November 19, 2025

Time: 9:00 AM - 5:00 PM

Location: Virtual

Learn more [here](#).

### **FFA U 2.0 US: New York City & Charlotte**

The full-day training session will take place in person in New York City, and this year, we've added a session in Charlotte! The program is designed for mid-level bankers and lawyers transacting under U.S. law and will cover advanced topics in the Fund Finance space. A networking reception will follow each training.

#### **New York City**

Date: September 9, 2025

Time: 9:00 AM - 7:00 PM

Location: New York Marriott Marquis, 1535 Broadway, New York, NY 10036

Learn more [here](#).

#### **Charlotte**

Date: October 28, 2025

Time: 9:00 AM - 7:00 PM

Location: The Revelry North End, 701 Keswick Ave #110, Charlotte, NC 28206

Learn more [here](#).

## One Week Away - DFF Presents: Seoulful Connections

June 20, 2025



**CADWALADER** | **FUND FINANCE association** | **LLOYDS**

**Diversity in Fund Finance  
Invites You to Seoulful  
Connections: Our Third  
Annual Summer Soirée**

-  **Thursday,  
June 26, 2025**
-  **6:00 PM – 9:00 PM**
-  **NOFLEX**  
286 5th Avenue  
New York, NY

Join Cadwalader next week as we sponsor the Diversity in Fund Finance Committee's Third Annual Summer Soirée: Seoulful Connections!

Join DFF for an evening of networking and Korean tapas as they look to invite everyone to make "seoulful" connections within the community.

In recognition of Pride month, they will be holding a fundraiser for The Trevor Project and a raffle with great prizes and more.

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

### Event Details:

Location: NOFLEX - 286 5th Ave, New York NY

Date: Thursday, June 26th, 2025

Time: 6:00-9:00PM EDT

## WFF EMEA: Annual Networking Drinks Reception Sponsored by Cadwalader

June 20, 2025



Cadwalader is proud to sponsor the Women in Fund Finance EMEA's Annual Networking Drinks Reception. Please join us on June 24th at Middle Temple Hall in London. We are excited to gather and celebrate the successes and collaboration amongst the Women in Fund Finance community after a busy year! We hope to see you there!

For more info, please visit: <https://fundfinanceassociation.com/events/emea/06-24-2025-wff-emea-annual-networking-drinks-reception/>

## Fund Finance Hiring

June 20, 2025

Fund Finance Hiring

Here is who's hiring in Fund Finance:

**Barings** is seeking an Senior Associate to join its Portfolio Finance team out of Boston. The role will support the underwriting, execution and oversight of investment-grade, senior secured loans to asset managers and the investment vehicles across a range of asset classes, including private equity, private credit, and real estate debt. The Senior Associate will support the Portfolio Finance platform, working closely with Portfolio Managers, Directors, Structuring Leads and external partners. Learn more [here](#).

**ATLAS SP** is seeking an experienced Associate to join its growing Fund Finance business. The candidate will also have the opportunity to expand generalist background across other ABS asset classes. The ATLAS Fund Finance team provides financing to private equity funds and other asset managers through structured credit facilities, including subscription credit facilities, NAV lending, and GP/LP financing. The Fund Finance team is looking for a motivated and experienced Associate to help support the origination, structuring and execution of new Fund Finance credit facilities, as well as surveillance and maintenance of existing Fund Finance credit facilities. Learn more [here](#).

**Apollo's AASP Risk team** is seeking an Associate or Director (depending on experience) to report to the Head of Counterparty & Fund Finance and act as one of the primary risk managers for the Private Credit Finance business ("PCF") and Fund Finance transactions. This will include supporting the buildout of the PCF portfolio by partnering closely with the PCF team on all stages of the investment and ongoing portfolio monitoring process, building out second-line risk management reporting and monitoring, and forming credit recommendations on new and existing opportunities. This unique role requires a credit investor mindset as the team evaluates transactions. Learn more [here](#).

**Cadwalader, Wickersham & Taft LLP** is seeking associates with three to six years of relevant experience for its Fund Finance practice in New York, Charlotte or London. Qualified candidates will have experience in syndicated lending, commercial lending, leverage finance, fund formation, CLOs, asset-based lending, NAV financings or acquisition financings. Candidates must possess excellent academic credentials and solid legal experience. Selected candidates will get extensive interaction with preeminent bank, asset manager and lending clients. If interested, please reach out to Margaret Cart at [Margaret.Cart@cwt.com](mailto:Margaret.Cart@cwt.com).