

CADWALDER

NAV Finance Due Diligence: Current Themes From the European Market

November 7, 2025



By Matt Worth
Partner | Fund Finance



By Douglas Murning
Partner, Co-Head | Fund Finance

Due diligence is a key aspect of the legal structuring and execution of fund finance facilities. In the subscription line market, there are generally well established conventions for performing due diligence on, in particular, the capital call mechanisms.

By contrast, in this article, we look at due diligence considerations in NAV financing; while this segment of the market is less settled in its approach, there are emerging trends in terms of approach to due diligence. Here, we consider these issues primarily from the perspective of the European market, though many of the issues will apply generally.

In that light, here are some issues to consider, on a non-exhaustive basis:

- **Key fund document parameters:** The limited partnership agreement (LPA) for the master fund partnerships should be reviewed for provisions that would be inconsistent with the financing. Where the Borrower of the NAV facilities is the master fund itself, and ideally even where it is not, lenders will want to understand the termination date of the fund (which should not fall earlier than the maturity of the facilities) and any restrictions on borrowing and/or granting of security. It is common for LPAs to confer permission to borrow and pledge assets subject to conditions, for instance that the debt must be short term and/or for managing working capital or liquidity. This may not easily encompass the incurrence of term debt. While a “non-conflict” opinion is often obtained from the fund’s counsel, this will inevitably make substantial assumptions of fact as to the compliance of the facility with any borrowing limits. And such an opinion may not be offered at all where the fund itself is not the Borrower. But even where the borrower is a subsidiary of the fund, such as an aggregator or a “finco”, consider whether, properly construed, any borrowing limitations in the fund LPA are intended to apply to it.
- **Limited partnership borrowers:** Wherever the borrower is a limited partnership, as well as addressing usual issues of power, capacity and authority to enter into the Finance Documents, lenders and their counsel should also consider a number of issues specific to this type of entity, including:
 - whether limited partners have the right to demand redemption of their interests, and subject to what restrictions; where such provisions exist, consideration will need to be given as to how to cope with any attendant liquidity risk;
 - what consents, if any, may be required from any general partner (GP), investment manager, investment manager, depositary or other office-holder in respect of the partnership, to permit the entry into of the finance documents; and
 - whether claims of the limited partners on the partnership are effectively subordinated to the debts of the partnership, under the terms of the LPA and/or under applicable law.
- **Other indebtedness:** Where the obligors under the NAV facility also have material other indebtedness (for instance, where a fund borrower also has a subscription line facility in place), it will be necessary to establish what credit recourse (e.g. guarantees and security) benefits that indebtedness, and whether any consents are required from the other financier(s). In some cases, intercreditor or lien recognition arrangements will be prudent.
- **Investments:** In a NAV financing – particularly in deals with security over investments – it’s common for lenders to require due diligence on the investments and their holding structure. Selected issues typically addressed include:
- **Control of assets:** Lenders will typically want to consider the degree to which the interests being pledged to them confer control over the underlying investments. By way of example, pledged interests may include shareholdings in asset-specific holding companies, or shares or limited partnership interests in aggregator vehicles. Issues to consider include:

- Where the relevant holdings represent minority stakes in investments, what level of protection does the borrower, as a minority investor, enjoy in terms of protection of its economic rights, including its right to participate in any exit? So, for instance, are there any reserved matters requiring consent of the minority investor? Are there tag-along rights, or pre-emption rights?
- The pledged interest may not consist of a voting position. Quite commonly, it is a passive economic interest, such as a limited partnership interest. Such an interest will not, of itself, confer control of the pledged entity on the lenders, or any buyer in the event of enforcement. In such cases, consider what, if anything, should be done to provide assurance that the general partner of such an entity will take reasonable steps to liquidate assets in order to provide distributions to the holder. Taking security over the GP entity itself is sometimes an option. Where not, a “GP cooperation letter” may be considered, stipulating that, particularly after an event of default on the NAV loan, the GP will make appropriate efforts to realise assets. We have seen such cooperation letters on recent deals in the European market. In our view they may become more common as a lender protection.
- **Pre-closing reorganisations:** In NAV financings, it’s reasonably common for the fund to reorganise its investment holding structure before completing the financing, for instance by moving the investments under an aggregator. These reorganisations may be complex and bespoke, and are not necessarily risk free for lenders. Lenders should obtain evidence of the legal completion of any asset transfers. Is there any material risk of such transfers being unwound? Consideration should be given as to the tax impact of any such reorganisation; as ever, tax issues may be more or less complex depending on the nature of the assets, their location and the fund’s jurisdiction of domicile. In some cases, lenders may seek reliance on a tax report.
- **Issues affecting the taking and enforcement of security:** Lenders who are taking security over NAV assets will wish to be assured that the documents in the chain through which the investments are held – so, constitutional documents, investment agreements and shareholders’ agreements, among other things - do not contain provisions that would preclude or impede the taking or enforcement of the security. Lenders may also wish to consider whether there could be any regulatory impediments to a sale on enforcement. While lenders will sometimes rely on representations covering these matters, it’s still relatively common to perform due diligence. This is often in the form of a report completed by the fund’s own counsel, who will be most familiar with the documents. Examples of relevant issues include:
 - **Documentary issues:** Are any consents required (e.g. from co-investors) to take the security or transfer the pledged assets? What documentation would a transferee need to accede to, and who needs to sign it? What action (such as KYC approval) might be required by parties not under the control of the enforcing lenders or their proposed transferee? Would the taking or enforcement of the transaction security render the fund a defaulting investor under any relevant documents, and with what consequences? Are there any drag, tag or pre-emption rights that would be activated on the taking or enforcement of the security, and what are their terms?
- **Regulatory issues:** Enforcing security over private investments, whether by the lenders taking or control or by a sale to a third party, may raise regulatory issues of kinds common in private M&A. Anti-trust filings may be required, as may consents or notifications under national security and inbound investment legislation (such as the UK’s National Security and Investment Act 2021). In some cases, for instance where invested businesses operate in regulated sectors, there may be licensing conditions that need to be fulfilled by any transferee. Defining exactly what the relevant factors are, and how they would apply in any specific scenario, is complex and may be difficult, dependent as it will be on the nature of the investments, the jurisdictions in which they operate, the identity of any transferee, and possible future changes in law. In our experience, this is an area of increasing interest for lenders, who may seek practical solutions such as obtaining information at the outset as to how such issues were addressed when the borrower fund acquired the assets. Lenders may with the borrower information and assistance undertakings designed to improve the lenders’ ability to navigate such issues if they ever enforce. Where there are particular sensitivities given the nature of the portfolio, more bespoke solutions may be required.

Approaches to due diligence in practice vary widely, reflecting the complexity of fund structures and the bespoke nature of NAV financings. The range of issues to be covered, and how due diligence is performed, will always depend on the particular circumstances and on discussion between the parties. But whatever approach is taken, in a world as complex as NAV financing, there will always be a need to evaluate the structure, the documentation, where any risks lie, and how to mitigate them.

Cadwalader Contributes to Global Legal Insights – Private Credit 2026

November 7, 2025

CADWALADER

Featured in *Global Legal Insights Private Credit 2026*

**Private Credit in Fund Finance:
from Customer to Colleague**

Wes Misson
Co-Managing Partner
Charlotte

Bronwen Jones
Partner, Co-Chair of the
Finance Group
London

Jed Miller
Partner
New York

Leah Edelboim
Partner
New York

Chris van Heerden
Director of Market Research
Charlotte

Cadwalader attorneys **Wes Misson**, **Bronwen Jones**, **Jed Miller**, **Leah Edelboim** and Chris van Heerden have authored a chapter in the newly published 2026 edition of *Global Legal Insights – Private Credit*, the leading international guide to private credit markets, published by Global Legal Group.

In this inaugural edition, the comprehensive publication provides in-depth coverage of market conditions, regulations and legal developments in private credit and fund finance across key jurisdictions, accompanied by expert analysis on evolving industry trends.

The chapter, “Private Credit in Fund Finance: From Customer to Colleague,” examines the expanding role of private credit within the fund finance ecosystem. The article analyzes how private credit funds have evolved from being consumers of financing to serving as active lenders, arrangers and transaction partners, working alongside, and sometimes in competition with, traditional bank lenders. The chapter highlights:

1. The mainstream adoption and diversification of fund finance products, such as subscription facilities, NAV loans and hybrid facilities, across private equity, real estate, credit and infrastructure strategies.
2. The long-term trend of disintermediation in lending, with critical capital formation, advisory and servicing roles increasingly migrating from banks to private sponsors.
3. The emergence of private credit as a pivotal source for innovative lending structures, new risk stratification techniques and collaborative solutions, demonstrated through partnerships such as credit risk transfer (CRT) transactions.
4. The growing interplay between banks and private credit funds in offering integrated, multi-product finance solutions and the competitive pressures and opportunities this creates for both sides.

The full chapter is available now on GLI’s website [here](#).

Recent Trends in Lending to Nonbank Financial Institutions

November 7, 2025



By **Chris van Heerden**

Director of Market Research | Fund Finance

CADWALADER

Law360

Recent Trends in Lending to Nonbank Financial Institutions

Chris van Heerden, director at Cadwalader, recently authored an article, “Recent Trends in Lending to Nonbank Financial Institutions,” that appeared in *Law360*.

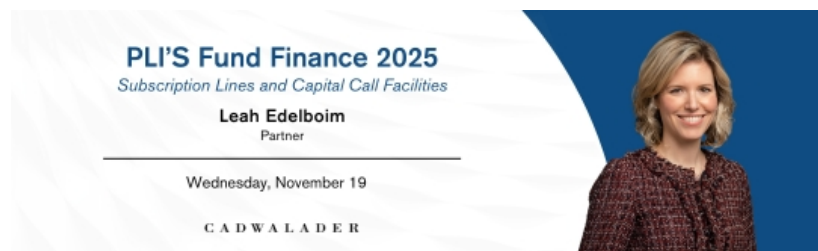
In the piece, Chris examines 2025 data on bank lending to nondepository financial institutions (NDFIs) and what it reveals about the fastest-growing, and cleanest-performing, loan category on bank balance sheets. He also discusses how the recent bankruptcies of Tricolor Holdings and First Brands Group underscore the importance of tailored diligence, structuring, and control mechanisms when lending to NDFIs.

“The ability of NDFI business units to help drive differentiated loan growth, combined with the clean credit performance of these loans to date, provides compelling reasons for continued focus on the sector,” said Chris.

Read the full article [here](#).

PLI Fund Finance 2025

November 7, 2025



Fund Finance Partner **Leah Edelboim**, along with **Flora Go** and **Brent Shultz**, will be speaking on a panel titled "Subscription Lines and Capital Call Facilities" at the upcoming PLI Fund Finance 2025.

The panel will explore the structuring and application of subscription lines and capital call facilities. After completing this session, participants will be able to:

- Discuss emerging trends in subscription lines, including the adoption of rated note structures
- Explain common transaction structures, such as cascading pledges
- Identify critical legal considerations for sponsors and lenders in this area of fund finance

Fund Finance 2025 convenes global industry leaders, finance professionals, and investors to examine the latest trends, strategies, and insights shaping the fund finance market. Now in its seventh year, this program will delve into the terms, structures, and intricacies of the market, covering single-fund NAV facilities, secondaries NAV facilities, GP financings, subscription lines, capital call facilities, private credit financings and more.

LMA Fund Finance Insights - Institutional Capital in Fund Finance: Structuring and Documentary Considerations

November 7, 2025



The Loan Market Association has published its most recent Fund Finance Insights paper, titled "Institutional Capital in Fund Finance: Structuring and Documentary Considerations."

Institutional investors have become a valued source of additional capital and catalyst for innovation in the fund finance market. However, their participation as lenders introduces specific considerations which impact how transactions are structured and documented. The latest Insights paper covers:

- The participation of institutional lenders in fund finance
- Practical structuring considerations, including operations, loan structure, funding timescales
- Investment entry points and diligence requirements
- The role of ratings
- Withholding tax and gross-up obligations
- Transferability provisions
- Future outlook

Thank you to authors: Shelley Morrison, Head of Fund Finance at Aberdeen and Kam Hessling, Managing Director at the LMA.

Read the report [here](#).

Fund Finance Expert Talk With Richard Braham

November 7, 2025



The new episode of the Praxio Fund Finance Expert Talk hosted by Michael Mbayi, with Richard Braham, Executive Director at the Commonwealth Bank of Australia is now available.

Tune into this episode if you want to learn about:

- Richard's career path.
- Market update.

Watch at it now [here!](#)

Welcome to Cadwalader!

November 7, 2025

**Cadwalader
Welcomes
Alexandra Puszczynski**



Please join us in welcoming **Alexandra Puszczynski** to Cadwalader!

Alexandra Puszczynski is an associate in the Fund Finance Group. Alexandra focuses her practice on fund finance, including subscription credit facilities, NAV facilities and hybrid facilities. Her prior legal experience is in cross-border transactions including real estate finance, secured and unsecured bank lending, structured finance, acquisition finance and fund financing.

Prior to joining Cadwalader, Alexandra practiced at a leading international law firm in Luxembourg. Alexandra earned her J.D. from Campbell University and her B.A. from University of North Carolina at Chapel Hill.

Fund Finance Hiring

November 7, 2025

Fund Finance Hiring

Here is who's hiring in fund finance:

State Street is looking for a Subscription Finance Surveillance Senior Associate. Located in Boston, MA, the Senior Associate will sit in the Fund Finance department on the Alternatives Lending team. The ideal candidate will have an ability to work effectively with internal stakeholders to assist in the surveillance of subscription facilities. Surveillance and monitoring of the portfolio will be a core responsibility. The Alternatives team provides subscription finance products to some of the world's leading Private Equity Sponsors and Fund of Hedge Fund Managers. Learn more [here](#).

Coller Capital is looking for a Fund Financial Analyst. The Analyst will sit within the Fund Financing and FX Strategy Team, which has responsibility for structuring, executing and monitoring credit facilities, and developing strategic approaches to currency and interest rate risk management. Learn more [here](#).

Santander is looking for a Structured Finance VP Team Lead in New York. The candidate will be responsible for managing the underwriting and portfolio management of a defined portfolio of Fund Finance transactions across NAVs, subscription, ABLs and other related facilities. The position will work closely with the product teams to present and defend business opportunities to risk. The candidate will lead credit underwriting with risk and ensure all required portfolio management tasks are completed. Please contact erika.wershoven@santander.us with your resume and subject line *FF team lead*.

Partners Group is seeking a Structured Product Lawyer to join their Structuring Solutions team out of the New York or London office to contribute to the global set of structured product offerings, including new structured product opportunities, Collateralized Fund Obligations, Collateralized Loan Obligations, Rated Feeders and other similar structures. This individual will also work very closely with the Private Credit team. Partners Group's Structuring Solutions team is responsible for developing highly innovative investment structures for institutional and private investors globally. Learn more [here](#).

U.S. Bank's Subscription Finance team is seeking highly motivated, experienced professionals to join our Portfolio Management and Underwriting team, supporting various investment fund strategies. These roles offer a unique opportunity to work directly with top-tier private equity clients and contribute to the growth of a high-performing, client-centric business.

Other opportunities include:

Subscription Finance Portfolio Management Analyst - [Read the position profile here](#).

Subscription Finance Portfolio Manager – [Read the position profile here](#).

Juniper Square is seeking Account Executives in New York, Boston, Chicago, and Miami to join the private equity sales team. This team is primarily focused on selling fund administration solutions to PE investment managers. Juniper Square is already one of the fastest-growing administrators in real estate and venture capital, and private equity is the company's next area of focus. 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.