

NAV Facility Valuation Challenge Rights

November 14, 2025



By **Susan Bumgardner**
Associate | Fund Finance

In the context of NAV facilities, one item that we often see heavily negotiated is the lender's right to challenge the borrower's valuations of its investment portfolio. In this article, we will explore a few key aspects of the lender's valuation challenge rights and how we typically see these points negotiated between lenders and borrowers in credit facility documentation. For purposes of this article, NAV loans refer to loans to private equity funds that are underwritten based on the value of the assets of such private equity funds.

NAV facilities typically measure risk level using the ratio of the loan principal to the value of the eligible assets supporting the borrower's loan obligations (the "LTV Ratio"). Credit facility documentation for NAV loans generally include mandatory prepayments, cash sweep requirements, financial covenants and events of default that are tied to the borrower maintaining certain LTV Ratios. Given the importance of asset valuations in these facilities, lenders are understandably focused on ensuring that reported asset valuations from borrowers are accurate and up-to-date. The valuation challenge right is one tool that lenders can use to address any concerns that may arise in connection with this reporting.

As discussed in a [previous article](#), common asset valuation approaches differ between loans to primary private equity funds ("Primary Facilities") and loans to secondary private equity funds ("Secondary Facilities"). Primary Facilities typically use the values that the borrower assigns to its private company investments on its own books and records. Lenders will diligence the borrower's valuation policies prior to closing of the facility to get comfortable with those policies and will include restrictions in the loan documents for any changes to the borrower's valuation policies. Secondary Facilities, on the other hand, commonly use the lesser of the value of the interest provided to the borrower from the underlying fund and the value that the borrower has assigned to the interest on its own books and records (which value will then be adjusted to account for the borrower's capital contributions to the underlying fund and distributions from the underlying fund to the borrower, each since the date of reporting). This "lesser of" approach is helpful to prevent the asset from being valued based on the value reported by the underlying fund where the borrower's own valuation policies require the asset to be written down, or from being valued at, e.g., cost of acquisition where the underlying fund reports a lower valuation.

Given that valuation reporting is typically provided by the borrowers on a quarterly basis, generally well beyond the end of the applicable fiscal quarter (and even longer with respect to Secondary Facilities given that the borrowers must wait to receive valuations from the underlying funds), market conditions may have changed by the time the LTV Ratio is updated to reflect the most recent valuation reporting. Additionally, market conditions generally may have changed that might bring into question whether a borrower's underlying sponsor's approach to valuation in the first place is still accurately capturing the value of the relevant investment. Valuation challenge rights can help lenders make certain that asset valuations reflect any material changes in the asset's value in these circumstances. Probably the best relatively recent example of this is the first few months of the COVID pandemic, during which there was a general industry-wide concern that asset valuations may not reflect current market conditions. Without the ability to challenge those valuations, a lender could potentially have been required to provide additional advances based on an LTV Ratio that did not reflect real-world market conditions. Lenders may also prefer to have a valuation challenge right where regular independent valuations are not required pursuant to the borrower's valuation policies (or where those policies only provide for a portion of the investment portfolio to be subject to independent valuations).

Below are a few key items that we often see negotiated in credit facility documentation for NAV loans in connection with valuation challenge rights.

Triggers and Frequency

The frequency with which a lender may challenge a borrower's reported asset valuation and what triggers may permit a lender to make an asset valuation challenge will vary from deal to deal. Lenders may negotiate to have a valuation challenge right at all times, on a periodic basis or upon the occurrence of certain triggers (or any combination thereof).

Lenders may also have periodic valuation challenge rights (for example, lenders may be permitted to challenge reported valuations once per calendar quarter, a certain number of times per year, etc.). However, lenders and

borrowers often agree to allow additional valuation challenges following a default under the credit facility. These limitations may also be disappplied to the extent that a valuation is challenged and the new valuation is found to be materially lower than the reported value or if the new valuation would result in different treatment under the credit agreement (such as a higher percentage of cash sweep) (such valuation, a “Successful Challenge Valuation”).

Alternatively, lenders may negotiate for valuation challenges to be triggered by events of default, breach of certain financial covenants, such as LTV Ratio breaches, or an asset’s reported value changing from its most recently reported value by an agreed percentage.

Consultation Periods

In some instances, borrowers may negotiate to include a period of time for consultation with the lenders before any formal valuation challenge process begins or any third party valuation agent is engaged. These consultation period limitations should be negotiated carefully because if the consultation period is too long, any updated valuations may only be received shortly before new valuation reporting is due from the borrowers. Borrowers may also wish to negotiate a time limit after the lenders receive required reporting within which the lenders may initiate a valuation challenge or within which a valuation challenge must be completed. These temporal limitations should also be carefully reviewed to avoid agreeing to a timeline that is too short for a valuation agent to provide its valuation report.

Scope

Typically, lenders may challenge the reported valuation for certain assets in the asset pool or the entire asset pool, and the permitted scope will be pre-agreed in the credit facility documentation (e.g., challenge rights may be limited to only assets that do not have available market pricing).

Additionally, parties may negotiate limits to what valuation methodologies may be used for purposes of the challenge (e.g., limiting to the methodology used by the borrower or underlying fund to value the assets in connection with the initially reported valuation or other certain common valuation approaches, such as discounted cash flow analysis, price-to-earnings market multiples, and/or any relevant market pricing data).

Successful Challenge Valuation Duration

When a valuation challenge has resulted in a Successful Challenge Valuation, such Successful Challenge Valuation will be used for purposes of calculating the LTV Ratio for a negotiated time period. Often, this time period will extend beyond the existing quarterly reporting period. The extended time period avoids quickly reverting to the same initial borrower valuation following the exercise of valuation challenge rights.

Who Can Challenge?

In a syndicated credit facility where there is more than one lender, each lender may have the right to dispute the reported asset valuation, but more commonly the administrative agent will have the right to challenge the valuation, or the valuation challenge right will require a certain percentage of lenders to vote for the valuation challenge.

Third Party Valuation Agents

In order to address lender concerns about lack of independent asset valuations, we commonly see agreements to appoint a third party valuation agent. Often, the lenders and borrowers pre-agree a list of approved valuation agents and the lenders can choose from this list upon exercising valuation challenge rights.

Lenders may also negotiate the ability to value positions themselves in connection with a valuation challenge. Where this approach is used, lenders may be required to provide supporting evidence of their valuation to the borrowers upon request and is more common where the lender may have significant expertise with a specific market or asset class.

Borrower Counter-Challenge Rights

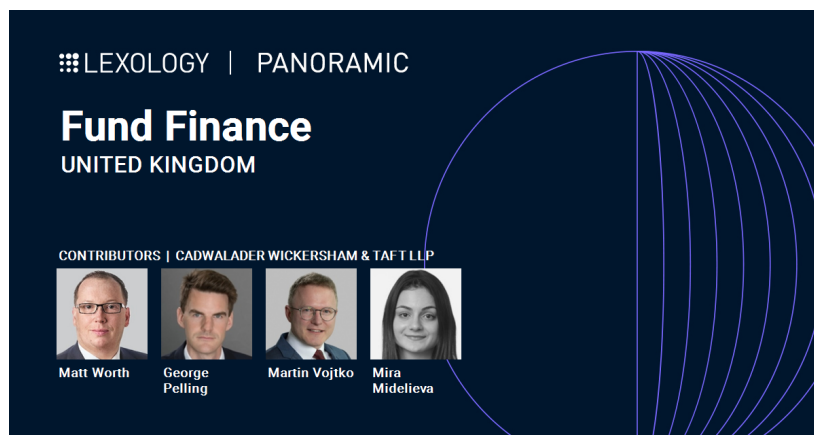
Borrowers may also wish to negotiate for the right to counter-challenge where a lender’s valuation challenge has resulted in a Successful Challenge Valuation. The lenders and borrowers will agree in the credit facility documentation which values will be used to calculate the LTV Ratio if the counter-challenge results in a different valuation than the Successful Challenge Valuation. The lenders and borrowers may agree to use the borrowers’ valuation if the difference between the two valuations exceeds a certain materiality threshold, or the lenders and borrowers may agree to use the median of the two valuations to calculate the LTV Ratio.

Who Pays?

When a third party valuation agent is engaged, lenders and borrowers will negotiate how costs will be shared. While it is common for borrowers to reimburse lenders for expenses incurred in administering loans, borrowers often negotiate to put some limits on these expenses for valuation challenges. For example, the parties may agree to limit the borrower's obligation to cover these expenses to a number of valuation challenges during a specified period of time (and may only be required to pay for any additional valuation challenges following a default under the credit facility) or alternatively, borrowers may only be required to pay for any third party valuation that results in a Successful Challenge Valuation.

Fund Finance in the United Kingdom

November 14, 2025



Cadwalader partners **Matt Worth** and **George Pelling**, together with associates **Martin Vojtko** and **Mira Midelieva** offer a comprehensive look at the UK fund finance market in *Lexology Panoramic: Fund Finance 2026*.

Their contribution covers everything from fund formation and financing structures to collateral, enforcement, and the latest market trends shaping the next phase of fund finance.

What types of financing structures are common in your jurisdiction? Are other types of credit facilities available for funds? What are the purposes of each (eg, management fee facilities, general partner financings)?

The term 'fund finance' has rapidly evolved in recent years. Historically, fund finance has been associated with subscription finance: credit facilities made available to a fund and secured against the uncalled commitments of the investors in that fund, and any bank accounts into which such investors' capital contributions are to be paid. However, fund finance is now understood as encapsulating a far wider spectrum of financial products. To a large degree, this is the result of the enormous growth of net asset value financings (or 'NAV facilities'), together with the continued use of structured finance techniques.

Continue reading [here](#).

2025 Cadwalader Finance Forum - Key Takeaways

November 14, 2025



Over 800 financial industry leaders and professionals from around the country participated in Cadwalader's ninth annual Finance Forum in Charlotte on October 29.

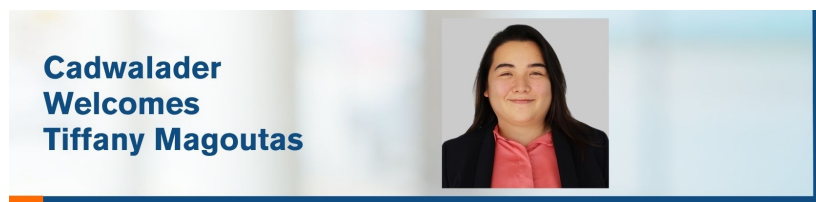
It was great to meet for a day of networking and insightful discussions on the latest market trends and opportunities across various sectors, including commercial real estate, fund finance, leveraged finance, middle market lending, private credit, securitization and structured finance.

We are grateful to our speakers, clients and all attendees who took the time to participate in the event's many dynamic discussions and networking.

See some key takeaways from our panel discussions [here](#).

Welcome to Cadwalader!

November 14, 2025



Please join us in welcoming **Tiffany Magoutas** to Cadwalader!

Tiffany Magoutas is an associate in the Finance Group. Tiffany focuses her practice on fund finance, commercial lending, and asset-based lending transactions. Her experience includes preparing UCC financing statements, credit agreement schedules and exhibits, ancillary loan documents, and amendments, as well as coordinating due diligence, closings, and negotiations with clients and opposing counsel.

Prior to joining Cadwalader, Tiffany practiced in the Finance Group of an international law firm in Dallas. She earned her J.D. from Southern Methodist University Dedman School of Law and her B.A. from the University of Central Florida.

Fund Finance Hiring

November 14, 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.