



## This Week in Fund Finance

May 24, 2019 | Issue No. 30

It hasn't been boring – the first five months of 2019, that is. Financial markets are grappling with some rather unquantifiable risks as it relates to U.S.-China trade negotiations. On the private side, a couple of large public listings showed that public markets are more than willing to be more critical in setting valuations than private investors. Capital formation in the funds space maintained the prior-year pace. From our vantage, the fund finance business continues to thrive. We pause this week to summarize recent reflections on the market from the partners at Cadwalader.

- Despite uncertainty in the UK political environment, our London fund finance team is very active, with growth rates exceeding those in the U.S. (albeit the law of large numbers applies more impactfully in the U.S.). The EU market is extremely active right now.
- Tech unicorns moving into public markets haven't received an entirely warm welcome. More challenging exits may be a positive for utilization of fund finance lines as funds hold portfolio companies longer. In fact, *PitchBook* recently published data showing longer average investment holding periods and fewer exits relative to investments.
- Interest in NAV facilities and hybrids has increased materially in 2019, in both the U.S. and Europe. We are getting a very high volume of inquiries in the space and are engaged in more active matters than ever before. Also in Europe, interest in other financing avenues (e.g., GP/manager lines) continues to grow.
- We continue to see interest in risk transfer solutions to enable lenders to continue to expand their portfolio sizes. The market could definitely use some educated and engaged insurance solution providers offering coverage.
- Several of the U.S. state pensions that are prolific investors in separately managed accounts are including highly curious provisions in the fund documentation that make lending to the SMAs challenging. For example, provisions that authorize a subscription facility and the pledge of enforcement rights to the lender, but the prohibition of the lender issuing a capital call directly itself. It seems hard to square that lender enforcement is acceptable but lender issuance is not.

## **Cadwalader Set to Host London Fund Finance Review**

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Cadwalader is holding its inaugural Fund Finance Review in the UK in our London office on June 5. Partners Jeremy Cross and Samantha Hutchinson will be joined by Collier Capital's Mark Hindriks to provide a market overview and discuss best practices in fund finance following recent developments. To learn more, please reach out to your Cadwalader contact.

## Brickfield Commences Banker Compensation Study

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Brickfield Recruitment, the placement agency firm focused exclusively on the fund finance industry, has announced that it is conducting an independent canvas of sector-wide compensation, benefits and resourcing needs for fund finance banking professionals. The confidential canvas is designed to be completed by key influencers in the market place and will provide a unique lens into the fund finance compensation landscape, alongside actionable data. Once the report is complete, aggregated data such as median compensation at various levels will be shared with those who have participated. If you are interested in participating, contact Rory Smith at [Rory@brickfieldrecruitment.com](mailto:Rory@brickfieldrecruitment.com).

## Fund Finance Hiring

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### Fund Finance Hiring

- State Street has launched a search for a department head to lead the bank's Alternatives Lending group. Based in the New York area, the appointee will oversee the existing book of business, manage the origination of new fund financing solutions and provide strategic direction to the platform. More details can be found [here](#).
- The Cadwalader New York office seeks an associate to join its highly regarded Fund Finance practice for a position specializing in fund finance and derivatives. The ideal candidate will have 2–5 years of experience in a corporate transactional practice, such as mergers and acquisitions, corporate finance or secured lending. Familiarity with derivatives is helpful but not necessary. The associate would join a growing practice active in a diverse range of secured lending and derivatives transactions involving leading commercial and investment banks and top-tier hedge funds, private equity funds and registered investment companies. A successful candidate will have strong drafting and client communication skills, as well as a desire to manage client relationships and move transactions forward independently. J.D. and NY Bar admission required. If you are interested in applying for this position, please click [here](#).



## **In Case You Missed It—Recently in FFF**

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We can pack some serious substance into our Friday publication—not necessarily everyone’s peak time for absorbing a nuanced discussion on complex financial products. Here’s a recap of original substantive pieces from recent issues for easy reference:

### **Funds with Benefits? Moving to a Balanced Lender Assignment Approach for Irish 110 Companies**

*The preservation of a lender’s right of assignability is often pitted against perceived tax issues of Irish 110 Companies. We take a deeper look.*

### **Side Letters: A Round-Up of Common Issues for Lenders**

*We identify the considerations for lenders in reviewing side letters.*

### **Economic Substance – Should a Lender Care? A Cayman Perspective**

*We give an overview of the Cayman Islands economic substance legislation as it applies to fund finance transactions.*

### **Mexican Capital Call Facilities**

*While most of the per se Mexican subscription lending to date has been completed solely by local banks in Mexico, we are seeing some material crossover via the joinder of such vehicles to U.S.-based facilities. This market has the potential to make an impact on the U.S. market soon.*

### **“Nothing to see here...move along” or “Something’s happened...let’s stop and look”**

*We delve into a potential inconsistency in how events of default are addressed in LMA-based fund finance facilities in Europe.*

### **The Intersection of Overcall Limitations and the Investor Default EOD Trigger**

*We illustrate the link between the Cumulative Default EOD threshold and an overcall limit in the LPA, and how the overcall limit should inform the appropriate Cumulative Default EOD percentage.*

### **Who (When) You Gonna Call?**

*We review change of control provisions as these relate to indirect entities, such as an investor’s holding company.*

### **E-Signatures? E-Sign Me Up!**

*The enforceability of contacts executed by electronic means is largely addressed by E-SIGN and UETA. We touch on e-signature questions that arise in the fund finance context.*

### **Cadwalader Fund Finance Market Review**

*Highlights the Cadwalader Fund Finance market review as published in the LSTA and GLG’s International Comparative Legal Guide for Lending and Secured Finance.*

### **April Showers Bring...Umbrella Facilities?**

*We refresh on umbrellas with a brief overview of a classic subscription umbrella facility, followed by some pros and cons to lenders.*

### **Who’s in Front? Structuring Letters of Credit in Europe**

*Subscription line lenders are increasingly hesitant to take on the role of fronting issuing bank. Although there are variations on a theme, two main methods of dealing with the letter of credit mechanics are emerging.*

### **Show Me the (Manager) Money**

*Greater attention is being paid to how the management company is financed in the LP diligence process. Lenders likewise are focusing on any vehicle upon which the GP/manager/affiliated investor relies for funding.*

### **(Over) Call Me, Maybe**

*We break down the numbers on the prevalence of overcall limits in fund documents based on our representations over the past two years.*

### **Please Don’t Ignore My (Over)call**

*An overview of overcall limitations and the implications for facility structure.*

### **The Irish Collective Asset-Management Vehicle**

*A review of the ICAV, its use in capital call facilities, and dialing in on its application in an umbrella fund structure.*

## **Political Contributions Cease Funding Rights**

*A look at cease funding rights tied to political contributions negotiated in side letters by state pensions and other municipal investors in the United States.*

## **Navigating Capital Call Facilities**

*In the standard capital call facility, uncalled commitments are the lender's primary source of repayment. Fund performance and investor behavior, however, can become interrelated. NAV and asset coverage tests are among the contractual protections that can give comfort to lenders.*

## **Problems with 'Promptly'**

*We highlight the inherent uncertainties of many terms that are frequently used to describe time periods allowed for performance and summarize guiding principles toward accuracy and certainty.*

## **Spotlight on GP-Led Secondary Transactions**

*GP-led secondary transactions have become a more frequent approach to unlocking liquidity for both GPs and investors. We review the four most popular types of GP-led transactions and related considerations.*

## **ERISA in Fund Finance**

*A high-level overview of ERISA and its implications in Fund Finance.*

## **Capital Commitments in the Form of Investor Loans in the U.S.**

*We review enforceability considerations for investor commitments structured as loan commitments rather than as equity capital commitments.*

## **Joint and Several Liability**

*The intersection of private equity, cannabis and fund financing appears inevitable. Form credit agreements, however, so far have been limited in considering relevant use of proceeds restrictions or restrictions on qualified borrower joinders.*

## **Waiving Goodbye to Sovereign Immunity in the European Market?**

*Financial institutions operating in the European fund finance market are increasingly having to familiarize themselves with sovereign or state immunity laws and how these laws interact across multiple jurisdictions. Waivers of sovereign immunity, while helpful, are not always perfect.*

## **Divide and Conquer: New Delaware 'Division' Law Creates Potential Issues for Fund Finance Lenders**

*Delaware legislation permits an existing LLC to divide into two or more separate and distinct LLCs and allocate assets, rights and liabilities among the new entities. We summarize relevant considerations for loan documents.*