An Exciting New Chapter for Cadwalader and the Fund Finance Industry

December 19, 2025

By **Wes Misson**
Co-Managing Partner

Hogan Lovells and Cadwalader announced yesterday their intention to combine, creating Hogan Lovells Cadwalader.

The combination will unite Hogan Lovells, a global leader in advising clients in highly regulated sectors operating across G20 markets, with Cadwalader, Wall Street's oldest law firm, with longstanding relationships with a range of blue-chip clients, including many of the world's leading financial institutions and providers of private capital.

Many are already calling this the most consequential law firm combination of all time. It brings together centuries of history in one of the world's most formidable legal platforms for our clients and people.

How did we arrive at this decision? In short, it's our commitment to clients.

Hogan Lovells Cadwalader represents our shared ambition to create a global firm with the strongest transatlantic platform anchored in the most important financial centers around the world. Yesterday, we announced we will achieve that vision for you. Each of you is at the center of this strategic decision, as this combination will enhance our ability to provide our clients with the best-in-class service at scale.

With unmatched finance, corporate, regulatory and disputes capabilities, we will span every time zone and every major jurisdiction. Our offering will include the breadth and depth of a $2 billion global finance and corporate platform. This means our top-notch practice will grow as well as our partnership with our best-in-class structured finance offering. This will continue to set us apart as the go-to fund finance platform of the future. Hogan Lovells Cadwalader will also be a market leader in tech and AI innovation, keeping us ahead of the curve for you.

The private capital sector continues to fuel significant growth across the global economy. Fund finance is the key driver – your innovation and ingenuity have helped redefine global markets. And we've been so grateful to be part of this journey with you. Since 2018, Cadwalader has advised lenders on more than $1.4 trillion in fund finance commitments across subscription, NAV, hybrid, GP, management fee, hedge fund and venture capital facilities, as well as preferred share issuances. The combined firm will be the global leader in this space, and will help drive the continued development of transformative structures going forward.

The firm's branding may change, but our dedication to your success remains the same. An evolving global fund finance market requires a dedicated full-service global approach. Cadwalader has long been a leader – and now this strategic combination will make our market-leading team even stronger. You can learn more about plans to deliver exceptional results for you at **www.oursharedambition.com**.

In the meantime, thank you for continuing to entrust us with your most sophisticated, challenging matters; and for your friendship and support.

The best is yet to come.

Wes

Is This the End . . . ?

December 19, 2025

By **Fiona Cheng**
Associate | Fund Finance

It feels like yesterday that I worked on closing my first credit facility, sitting almost in the same spot that I am now, albeit now a little higher in the sky (by one floor precisely). If there is one thing that the past few years have taught me, it is that the fund finance industry and its products are ever evolving (see, e.g., recent developments in **private credit** and **tranche B facilities**), and of course many (if not all) of these developments are focused on liquidity solutions for borrowers and lenders alike.

Today, it seems only natural as we continue to grow with our clients (and in turn, their clients) that lenders are increasingly seeing a demand for financing solutions for aging funds, including those that may exceed the expiration of their term. In this article, we delve into an overview of structuring considerations for financing end of fund term subscription credit facilities.

The End of the Commitment Period – Not the End?

Consider a credit facility for a new fund – every lender will require as part of its diligence process a thorough enquiry into the commitment period (also known as the investment period) of the fund. This is because the collateral upon which such facility is underwritten (i.e., the obligations of the limited partners to fund capital contributions) is generally tied to the investment period. The big question is what happens during a suspension or termination of the commitment period and how does this affect the ability of the lender to call capital after an event of default? To mitigate the risk that the limited partners cease funding after the expiry of the commitment period, the credit agreement will often set a maturity date that is the earlier of (a) an agreed upon tenor (typically between one to three years), and (b) some period e.g., 90 days before the end of the commitment period. However, given the increasing popularity of subscription credit facilities, most limited partnership agreements are now expertly drafted to address this concern and require, at minimum, that investors must fund capital contributions for the repayment of debt, notwithstanding any suspension or termination of the commitment period.

The End of the Fund Term – is this the End?

The next consideration, which often gets far less limelight in the context of new transactions, is the term of the fund. Given most subscription credit facilities have a tenor of one to three years, and funds typically have a minimum term of ten years, lenders may not require the implementation of any specific structural mitigations at the outset to address the end of a fund's term beyond broadly prohibiting the dissolution or termination of any credit party, and building a buffer into the maturity date such that the facility terminates well in advance of the last day on which the limited partners are obligated to fund capital for the repayment of the obligations owing under the facility. Although these mitigating provisions are commonplace in our transactions, as lenders increasingly deal with aging funds, borrowers have increasingly begun to ask for financing solutions to facilitate, amongst other things, follow-on investments and the orderly liquidation of the fund's assets after the end of its term.

Now, why not simply have the fund extend its term by obtaining the necessary consents pursuant to its constituent documents from either its general partner and/or its investor advisory committee? Of course, that is always an option and one that we see frequently employed. However, what happens when the fund cannot, for a plethora of potential reasons (including, to state the obvious, the exhaustion of all in-built extension options), extend the fund term but still has a need for liquidity?

End of Fund Term Facilities - You're Winding Me Up!

As discussed above, a lender's primary concern as it relates to any subscription credit facility is its ability to call capital from the investors to repay the obligations as and when required. You may ask, how can a lender provide financing to a fund whose term has ended? The answer is simple – there is a distinction between the end of the fund term, upon which the fund typically commences its dissolution, and the actual termination of the fund. Dissolution does not occur overnight and can be a drawn out process, depending on the fund's strategy related to the winding up of its assets and activities.

On this basis, a credit facility remains feasible but a lender should only permit borrowings for purposes for which the fund itself can validly call capital from its investors. This requires careful diligence of the fund's constituent documents – including, but not limited to, the following considerations:

1. Does the partnership agreement explicitly list the type of activities the fund may engage in after the end of its term?
2. Does the partnership agreement specify the purposes for which the fund may call capital after the end of its term (and correspondingly, the purposes for which the investors are obligated to fund)?
3. Local law considerations – are there statutory protections or case law in the relevant jurisdiction with respect to enforcing against a borrower after the end of its fund term?

The appropriate structural mitigations will depend on the answers to the above questions – but lenders should consider use of proceeds restrictions that are tied to purposes for which the investors remain obligated to fund capital contributions, representations and/or certifications relating to use of proceeds as additional conditions precedent to borrowings, and negative covenants related to filing for a winding up and/or termination of the fund while obligations remain outstanding. In certain situations, it may be appropriate to automatically reduce the lender commitments upon repayment of the obligations, or to implement a cash sweep of distributions from the sale of the fund's assets.

A Happy Ending

By including the structural mitigations set forth above, similar to any run of the mill subscription line, a lender legally has recourse to the unused capital commitments of the investors (which, at the end of a fund's term, may be made up of **recallable capital**). In practice, whether a fund would actually call upon its investors after the end of its term is a matter that we must let play out on its own. Certainly, for a fund that is establishing (or continuing) a credit facility after the end of its term, it would be remiss not to have strategic conversations with its investors to forecast the potential need to drawdown to repay such facility. However, in the ordinary course a fund is not in fact obliged to call capital as its source of repayment and there are no prohibitions on it choosing to repay a facility using realizations from its investments or by accessing some other source of funds (a fact that applies throughout any life stage of a fund).

So, what if a fund never calls capital for an end of term facility? To a savvy financier this may look and smell akin to an unsecured net asset value loan, but the underwriting risk for the lender remains tied to the investors' contractual obligations to fund (which obligations, if structured correctly, remain subject to the same typical investor default remedies) and on that basis, there is certainly value in keeping this financing solution in the toolkit.

If in doubt, you know who to call.

Big Digital Apple – New York Adopts the 2022 UCC Amendments

December 19, 2025

The digital assets-focused Article 12 and other 2022 Amendments to the Uniform Commercial Code were signed into law by New York Governor Hochul on December 5, 2025, and will become effective 180 days after signing (on June 3, 2026).

New York becomes the 33rd UCC jurisdiction to enact the 2022 Amendments, and New York's enactment of the amendments completes the trifecta of key corporate and financial jurisdictions (along with Delaware and the District of Columbia) adopting them. Because of the prevalence of New York law as the chosen governing law in many types of financings—including fund finance transactions—New York's enactment of the 2022 Amendments will have a major impact.

In this memorandum, we briefly summarize the substance of the 2022 Amendments, examine certain non-uniform provisions that New York included in the NY Amendments, review transition provisions and considerations to prepare for the NY Amendments coming into effect, and finally take a brief look at the potential implications of the amendments on some emerging digital asset financing concepts.

Overview of the 2022 Amendments

The 2022 Amendments were promulgated and recommended for enactment by the Uniform Law Commission and American Law Institute in July 2022. The 2022 Amendments are intended to make modifications to the UCC to accommodate emerging technologies, including blockchain and other distributed ledger technologies.

The 2022 Amendments, including official comments, are lengthy (nearly 300 pages), and affect substantially all Articles of the UCC. The below summary highlights only certain key provisions of the 2022 Amendments in a high-level manner. For specific questions and circumstances, readers should consult with their Cadwalader counsel or contact any of the attorneys listed below.

Article 12 and CERs.

The signal change wrought by the 2022 Amendments is the addition of a new article to the UCC, Article 12, dealing with a new asset type, the controllable electronic record ("CER"). A CER is defined as "a record stored in an electronic medium that can be subjected to control under Section 12-105." The definition further excludes from the ambit of CERs several UCC asset types (controllable accounts, controllable payment intangibles, deposit accounts, electronic copies of records evidencing chattel paper, electronic documents of title, electronic money and investment property) as well as transferable records.[4] Cryptocurrencies and tokens, such as bitcoin, are the drafters' paradigm of CERs (although any particular crypto token's satisfaction of the CER definition would need to be factually verified).

CERs are thus a subset of the universe of digital assets—not all digital assets are CERs. To be a CER, a record must not only be electronic, but it must also not fall within an excluded category, and—most importantly—it must be "controllable" under a new concept of control.

Control.

Article 12 adds a new definition of control in Section 12-105. In general, for a person to have control of a CER, the electronic record, or a record attached or logically associated with the record, or the system in which the electronic record is recorded, must give the person certain powers: (a) the power to avail itself of substantially all the benefit of the electronic record, and (b) the *exclusive* power (i) to prevent others from availing themselves of substantially all the benefit from the electronic record and (ii) to transfer control of the electronic record to another person. In addition, such records or systems must enable the person to identify themselves (including by cryptographic key) as having such powers.[5]

The "exclusivity" of the second and third powers noted in the preceding sentence is given a specific set of meanings under Section 12-105. A power doesn't fail to be exclusive if the system is programmed to limit or change the electronic record's use or nature. Further, a power can be shared and still be exclusive, as long as the control person can exercise the power without the exercise by the other person of the power, and the other person neither can exercise the power without the control person, nor is the transferor to the control person of an interest in the CER (or controllable account or controllable payment intangible evidenced by it).[6] Finally, control by a person can be established through another person who acknowledges that they have control on behalf of the control person.[7]

Rights of Qualifying Purchaser: Take-Free Rights, Shelter Principle.

The 2022 Amendments imbue CERs with a key feature of negotiability: the ability of a purchaser, in certain circumstances, to acquire its rights in a CER free of a claim of a property right in the CER.[8] Further, a subsequent purchaser acquires all the rights in a CER that the transferor had or had the power to transfer—the subsequent purchaser, in other words, can "shelter" behind the rights acquired by the transferor.[9]

The special circumstances in which such take-free rights are available are when the purchaser of the CER is a qualifying purchaser ("QP"). To be a QP of a CER a person must be a "purchaser" (which term, under the UCC, includes a secured party, as well as buyer or other voluntary taker of a property interest[10]), must obtain control of the CER, and must obtain such control for value, in good faith, and without notice of a claim of a property right in the CER.[11] This take-free right chimes with the Article 3 take-free right of a holder in due course of a negotiable instrument, and the drafters intended it to.[12]

Control Perfection of CERs.

Control of a CER is not only a matter of whether a purchaser can benefit from attributes of negotiability. In their extensive revisions to Article 9, the NY Amendments also adopt the 2022 Amendments' provisions for control perfection and priority for CERs. For Article 9 purposes, a secured party has control of a CER as provided in Section 12-105.[13] A security interest in a CER may be perfected by the secured party obtaining control of the CER.[14] A security interest in a CER perfected by control has priority over a security interest in the CER not perfected by control.[15]

Before the effectiveness of the NY Amendments, an asset that would be a CER under the 2022 Amendments would be treated as a general intangible, and the only method to perfect a security interest in that asset as original collateral would be to file a financing statement. The practical effect of the new perfection and priority rules is to give secured parties an additional method of perfection of a security interest in CERs—control. This means that perfecting security interests in CERs by control gives such perfection non-temporal priority over a conflicting security interest that is perfected only by filing. For security interests on CERs, control perfection primes filing perfection.

Tethered Assets, Controllable Accounts, Controllable Payment Intangibles.

If a CER evidences rights to other assets (i.e., assets that are "tethered" to the CER), the general rule is that the take-free rights that are available to a QP of the CER do *not* extend to the tethered asset.[16] Whether a purchaser of the CER could also take the tethered asset free of competing property claims would be determined by law other than Article 12. Most tokens that represent real-world assets ("RWAs") are such tethered assets.

In the 2022 Amendments, there are two important exceptions to this limitation, however, with respect to certain payment obligations. If an "account" or "payment intangible" is evidenced by a CER and it provides that the account debtor undertakes to pay the person who has control of the CER, then that account is a controllable account ("CA"), and that payment intangible is a controllable payment intangible ("CPI"). CAs and CPIs are tethered assets, evidenced by CERs but not CERs in and of themselves. However, unlike all other tethered assets, CAs and CPIs *are* afforded the same take-free rights and shelter principle as the CERs evidencing them, and the same control perfection and non-temporal priority for security interests in them applies, as it does for the CERs evidencing them. This is a powerful exception to the general rule on tethered assets, and is intended to create a digital asset type that is the "functional equivalent of a negotiable instrument."[17]

One important case to highlight in this regard is where an Article 8 security (or security entitlement) is evidenced by a CER. The security remains a tethered asset. Control of the CER and control of the security look to different provisions of the UCC, as does the ability of a purchaser to take free of competing claims in the CER and the security.

Electronic Chattel Paper and Documents of Title, Electronic Money.

The NY Amendments include changes proposed by the 2022 Amendment to UCC provisions regarding electronic versions of chattel paper and documents of title. The key changes are in the sections defining "control" of chattel paper evidenced by electronic records and electronic documents of title.

Section 9-105 regarding control of chattel paper was amended to add a general rule as clause (a), consistent with the uniform versions of the UCC. Pre-amendment, New York's version of Section 9-105 did not include a general rule, but required electronic chattel paper systems to comply exclusively with requirements that, under the uniform UCC text, were only safe harbor provisions for compliance with the broader general rule.[18]

In addition, both Section 9-105 for chattel paper and Section 7-106 for documents of title incorporate the 2022 Amendment changes to include a new safe harbor covering systems that generate multiple authoritative copies of the electronic record. This is important for blockchain-based solutions, because blockchain systems inherently generate authoritative copies of the electronic record on each of the many nodes in the network.

The NY Amendments also incorporated the 2022 Amendments provisions regarding "electronic money." Electronic money is defined in Article 9 as "money in electronic form." However, the definition of "money" is a new one, added to Article 9 as a subset of the Article 1 definition of money. The Article 1 definition of money as a medium of exchange that is currently authorized or adopted by a domestic or foreign government has also been amended under the NY Amendments to exclude electronic media of exchange that existed before they were authorized or adopted by a government. The Article 9 version of "money" further excludes deposit accounts and money in electronic form that cannot be subjected to control under Section 9-105A. The control concept for electronic money in such Section 9-105A is substantially identical to the control of CERs under Section 12-105.

Cryptocurrencies and other digital assets that do not satisfy both the Article 1 and Article 9 definitions are not "money" and therefore are also not "electronic money." An important ramification is that an obligation that is denominated in such a non-money digital asset (such as a stablecoin) would not be a "monetary obligation" for UCC purposes. And because it is not a monetary obligation, such a digital asset denominated obligation is incapable of being an account, chattel paper, payment intangible or the obligation on an instrument, and therefore is also incapable of being a CA, CPI or transferable record.[19]

New York-Specific Provisions

Although New York enacted the 2022 Amendments substantially in the form of the text promulgated by the uniform drafters, there were a handful of New York-specific variations included in New York's enacted version.

Qualifying Purchaser.

The most substantive variation is in New York Article 12's definition of "qualifying purchaser." In the NY Amendments, Section 12-102(a)(2) defines QP with the inclusion of an additional sentence not present in the official version (the additional New York language underscored below):

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record. <u>In the case of a controllable electronic record that would be a "draft" or a "note", as those terms are defined in Section 3-104, if the controllable electronic record were a signed writing, Section 3-304(7) applies to the determination of whether a purchaser obtains control of the controllable electronic record without notice of a claim of a property right in it as if the reference in that subsection to "the instrument" referred to the controllable electronic record. The preceding sentence applies even if the controllable electronic record contains a term by which an obligor or account debtor on the controllable account or controllable payment intangible evidenced by the controllable electronic record waives or agrees not to assert against an assignee of the controllable electronic record any claim or defense that the obligor or account debtor may have against the assignor.</u>

The thrust of this additional language is to extend New York's treatment of a holder in due course for tangible instruments to the analogous status of QP under Article 12. New York UCC §3-304(7) adds a New York-specific gloss to the notice of a claim or defense that might prevent a purchaser from being a holder in due course. Section 3-304(7) requires that, in all cases, the purchaser must have knowledge (meaning actual knowledge[20]) of the claim or defense, or knowledge of such facts that his action in taking the instrument amounts to bad faith. Without this provision, the concept of notice from New York UCC §1-202(a) would apply, which "notice" concept includes, in addition to actual knowledge, receipt of a notification, or reason to know based on facts and circumstances.

Note further that the NY Amendments do not change the non-uniform New York definition of "good faith" as it applies to QP status. New York's definition of QP would pull in New York's existing Article 1 definition of good faith, which is limited to the subjective standard of "honesty in fact," without the additional objective requirement of "the observance of reasonable commercial standards of fair dealing" included in the uniform UCC text.[21]

Taken together, the extension of New York Article 3's limited concept of notice, and New York's subjective standard of good faith, to the QP definition makes it easier for a New York purchaser of a CER to be a "qualifying purchaser" under Article 12 than in other states, in the same way that it is easier for a New York holder of an instrument to be a holder in due course under Article 3.

Transferable Record.

A transferable record is an asset type that, in general terms, is like an electronic note or electronic document of title. It is defined in the Uniform Electronic Transactions Act ("UETA")[22] as an electronic record that would be a "note" or "document" under the UCC if the electronic record were in writing, and that the issuer of which has expressly agreed is a transferable record. The Federal Electronic Signatures in Global and National Commerce Act ("ESIGN") similarly defines transferable record, although the ESIGN definition is limited to notes secured by real property.[23] The 2022 Amendments make reference to transferable records (as defined in either statute) to explicitly exclude transferable records from the definition of CERs.

New York, however, did not adopt the UETA, and New York's Electronic Signatures and Records Act ("ESRA")[24] does not include the concept of a transferable record. The NY Amendments, therefore, include non-uniform provisions to incorporate as "transferable records" both the ESIGN definition of transferable record, and an electronic record "governed by" the law of a state that has enacted the UETA in substantially the form of the official text.[25]

Conflict with Certain New York Statutes.

The New York Amendments specify that certain consumer statutes take precedence over Article 12 if they establish a different rule for consumers. Those specified statutes are the Consumer Protection From Deceptive Acts and Practices article of the New York General Business Law[26] and the Unfair Trade Practices Chapter of the New York City Administrative Code.[27]

In addition, the NY Amendments state that Section 307.2 of ESRA shall not impair the enforceability of a CER, or cause the CER to be governed by UCC Article 3 rather than Article 12 (except to the extent that the electronic record expressly provides otherwise, or was created prior to the Effective Date). Such Section 307.2 makes ESRA inapplicable to negotiable instruments and instruments of title unless the electronic version of the instrument is created, stored and transferred in a manner providing for only a single unique, authoritative copy. This qualification in the NY Amendments is apparently to maintain ESRA's generally applicable provisions as to the effect and validity of electronic signatures and electronic records, even if (as would be the case in many blockchain records that would constitute CERs) multiple authoritative copies of the electronic record may be produced.

Transition and Preparing for Effectiveness of the 2022 Amendments

Transition Rules.

The NY Amendments include transitional rules substantially aligned with the 2022 Amendments.

Savings Clauses. Valid transactions that were entered into before the Effective Date generally remain valid and may be enforced as if the NY Amendments had not taken effect.[28] Article 12 and Article 9, as amended by the NY Amendments, will generally apply; however, even if the transaction was entered into before the Effective Date. Pre-effectiveness transactions under Article 9 are also given continuing validity except as provided in succeeding sections.[29]

Enforceability and Perfection. Security interests that were enforceable and perfected before the Effective Date are generally protected after the Effective Date. However, if the pre-effectiveness requirements for enforceability or perfection do not satisfy the requirements after giving effect to the NY Amendments, the secured party is given until the date one year after the Effective Date (the "Adjustment Date") to satisfy the new requirements (or such shorter period as the security interest would have become unenforceable or unperfected under the pre-amendment rules).[30] Pre-Effective Date financing statements continue to be effective to perfect on the Effective Date to the extent they would satisfy the perfection rules as amended by the NY Amendments.[31]

Priority. In general, the UCC, as amended by the NY Amendments, determines priorities of conflicting claims to collateral. If the priorities were established before the Effective Date, then pre-amendment Article 9 determines priority, except that with respect to Article 12 Property (CAs, CERs, CPIs) and electronic money, the priorities are adjusted on the Adjustment Date to comport with the priorities determined by the UCC as amended by the NY Amendments.[32] Further, if the priority rules under Article 9 do not apply and the priorities with respect to Article 12 Property were established before the Effective Date, the priority of claims to such Article 12 Property is determined by law other than Article 12, but the priorities are adjusted on the Adjustment Date to comport with the NY Amendments.

The rules surrounding priorities generally give a secured party a grace period until the Adjustment Date to comply with the new procedures under the NY Amendments. However, the interplay of rules regarding priorities established before

the Effective Date and priorities established after the Effective Date creates a potential pitfall. Because the NY Amendments add new methods to perfect—i.e., control of CERs, CAs and CPIs—it could be that the security interest of a secured party first obtaining control of CERs after the Effective Date can *immediately* (rather than at the Adjustment Date) have priority over the security interests of a secured party perfected by pre-Effective Date filing. The reason for this result is that, because control perfection in CERs wasn't a method of perfection before the Effective Date, the secured party's perfecting by control post-Effective Date causes the priorities between the security interests to be established anew after the Effective Date, with the new rules of the NY Amendments determining the outcome.[33]

Preparation for Effectiveness.

The NY Amendments are extensive, and there is no uniform checklist to prepare for the Effective Date appropriate for all parties in all situations. However, we list a few general items below for parties to consider:

- Review transaction documents to assess whether representations, covenants and further assurances provisions should be updated to take account of CERs, Article 12 concepts and other NY Amendment changes.
- Review transaction structures to determine if electronic assets are present, which might be CERs, CAs, CPIs or electronic money. If so, consider further due diligence. Controllability under Article 12 is a factual issue that is largely driven by technological structure, and CERs are not necessarily limited to "tokenized" structures.
- If CERs, CAs, CPIs or electronic money might be present in a transaction structure, examine whether Article 12 control is necessary or advisable, and determine the adequacy of control mechanisms under Article 12 and whether other persons may have or obtain control.
- If electronic chattel paper or electronic documents of title are present in a transaction structure, consider the applicability of the amended definitions of control introduced by the NY Amendments (including with respect to systems producing multiple authoritative copies of the electronic record).
- Parties should track both the Effective Date and Adjustment Date of the NY Amendments, and understand the impact of those dates on their transactions.
- Finally, parties should consider if and how transaction structures might be optimized to take advantage of Article 12's novel features.

Effects on Emerging Financing Structures

The landscape of digital asset finance is changing rapidly, with new integrations of traditional finance with decentralized finance seeming to occur daily. The pace of such change is matched by the proliferating variety of innovations in digital asset transactions. Article 12 and the other changes to the New York UCC made by the NY Amendments should provide clarity and create new opportunities to deploy novel assets and transactions. While it is not possible to anticipate all of the issues that parties might encounter as they begin using the amended New York UCC, a few such issues might be:

- How to engineer tokenized receivables so that they can be characterized as CAs or CPIs, while employing stablecoins or tokenized bank deposits as settlement assets?
- How to engineer transactions involving smart contracts, such as automated market makers, or assets held by AI agents engaging in autonomous transactions, where neither smart contracts nor AI agents in themselves constitute persons under the UCC and therefore cannot be purchasers, secured parties or buyers, or obtain control, under UCC provisions?
- How to manage transactions involving both assets enjoying Article 12 negotiability—CERs, CAs and CPIs—and tethered assets that do not, such that (for example) a crypto wallet adequately provides for different types of UCC control for different asset types?
- How to manage Section 12-105 exclusivity issues in structuring control over digital asset wallets, whether multi-sig wallets used by custodians, or wallets seeking to mimic traditional account control agreements in commercial lending transactions?

Parties will need to work closely with their counsel in analyzing the impacts of the NY Amendments on such issues, and crafting appropriate solutions to take advantage of the new tools the amended New York UCC affords.

1 Assembly Bill 3307-A/Senate Bill S1840A, **https://nyassembly.gov/leg/?bn=A3307&term=2025**, **https://www.nysenate.gov/legislation/bills/2025/S1840/amendment/A**. *See* **https://www.cadv**

friends-memos/digital-assets-focused-ucc-amendments-pass-new-york-legislature.

2 Uniform Law Commission, American Law Institute, UNIFORM COMMERCIAL CODE AMENDMENTS (2022) (available **https://www.uniformlaws.org/viewdocument/final-act-164?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments**).

3 In this memo, the official version promulgated by the Uniform Laws Commission and American Law Institute is referred to as the "2022 Amendments." The version enacted by New York is referred to as the "NY Amendments."

4 NY UCC §12-102(a)(1).

5 NY UCC §12-105(a).

6 NY UCC §12-105(b), (c).

7 NY UCC §12-105(e).

8 NY UCC §12-104(e).

9 NY UCC §12-104(d).

10 NY UCC §1-201(b)(29), (30).

11 NY UCC §12-102(a)(2).

12 *See* UCC §12-104, official comment 10.

13 NY UCC §9-107A.

14 NY UCC §9-314(a).

15 NY UCC §9-326A.

16 NY UCC §12-104(f); *see* 2022 Amendments 12-104 official comment 9.

17 *See* 2022 Amendments §12-104 official comment 10. Note that there are important differences between CAs, CPIs and Article 3 negotiable instruments, in particular with respect to the ability of the purchaser to take free of certain defenses and claims in recoupment.

18 NY UCC §9-105(a).

19 2022 Amendments §9-102 official comment 12A.

20 NY UCC §1-202(b).

21 NY UCC §1-201(b)(20).

22 National Conference of Commissioners on Uniform State Laws, UNIFORM ELECTRONIC TRANSACTIONS ACT (1999) **https://www.uniformlaws.org/viewdocument/final-act-21?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments**, Section 16(a).

23 ESIGN Section 201(a)(1), 15 U.S.C. Section 7021(a)(1), as amended.

24 Electronic Signatures and Records Act, State Technology Law, Chapter 57-A, Article 3. **https://www.nysenate.gov/legislation/laws/STT/A3**

25 NY UCC §12-102(a)(3). Presumably the reference to an electronic record being "governed by" the law of a state that has enacted UETA would include a record to which the law of that state would apply, whether or not it includes a specific governing law provision. The NY Amendments did, however, adopt (in non-uniform placement) the provision of the 2022 Amendments that permits instruments to include governing law and forum clauses without being rendered non-negotiable. *See* NY UCC §3-112(h), (i).

26 New York General Business Law, Article 22-A **https://www.nysenate.gov/legislation/laws/GBS/A22-A**

27 NYC Administrative Code, Tit. 20, Ch. 5 **https://nycadmincode.readthedocs.io/t20/c05/**

28 NY UCC §12-A-201.

29 NY UCC §12-A-301(a), (b).

30 NY UCC §12-A-302.

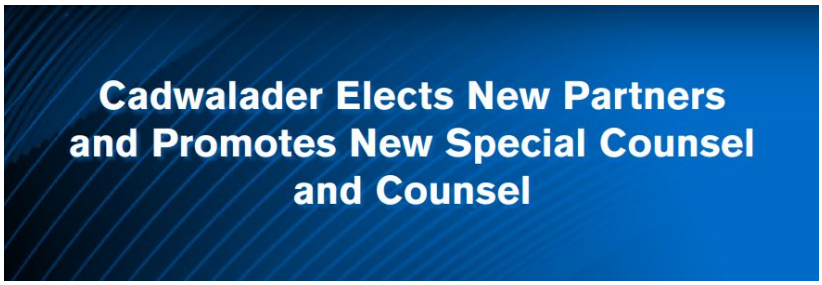
31 NY UCC §12-A-304(b).

32 NY UCC §12-A-305(b), (c).

33 *See* 2022 Amendments §A-305 official comment 2, Example 3.

Cadwalader Elects New Partners and Promotes New Special Counsel and Counsel

December 19, 2025



Cadwalader has elevated 24 lawyers to partner, special counsel and counsel, effective January 1, 2026.

Special congratulations to the fund finance lawyers promoted in this class: **Katie McShane** (Partner, New York), **Jordan Ballard** (Counsel, Charlotte), **Jonny Byrne-Leitch** (Counsel, Charlotte), **Brian Kettmer** (Counsel, Charlotte), **Brian Kurpis** (Special Counsel, New York), **Olivia Stewart** (Special Counsel, Charlotte) and **Clay Talley** (Special Counsel, Charlotte).

“We’re thrilled to share this news,” said Pat Quinn, Cadwalader’s Co-Managing Partner. “The past year has been one of the most successful in our firm’s storied 233-year history. Our strong performance is thanks to the extraordinary talent that Cadwalader has long been known for. Our new partners, special counsel and counsel will carry forward this legacy.”

Co-Managing Partner Wes Misson added, “Cadwalader remains the premier destination for elite lawyers to thrive and achieve winning results for clients who trust us to handle their most important and complex matters. These 24 new senior lawyers, coupled with the over 95 new attorneys who have joined our firm in 2025, underscores that we are a people business, and people are and will always be Cadwalader’s greatest asset.”

Our new partners include:

Peter Bariso, Corporate (New York) – Pete’s practice covers a broad range of transactional matters. He represents both public and private companies, financial sponsors and investment managers in mergers, acquisitions, divestitures, carve-outs, securities offerings, spinoffs, joint ventures, investments, financings, restructurings and other complex transactions. In addition, Pete advises companies and boards of directors in an array of governance, shareholder engagement, securities laws and commercial matters.

Jack Kelly, Funds (London) – Jack’s practice involves advising sponsors and asset managers on the structuring, formation and promotion of real estate funds (including REITs), credit funds, private equity funds, infrastructure funds and funds established to invest in emerging markets (including blended finance funds). Jack has over a decade of experience advising on complex multi-jurisdictional fund structures and has expertise in both private funds and publicly listed investment companies.

David Kiernan, Capital Markets (London) – David focuses on a wide range of capital markets and financing transactions, with an emphasis on structured finance and securitization. He has experience advising financial institutions and asset managers in connection with international finance transactions across a variety of traditional and esoteric asset classes, CLOs, middle-market facilities, back leverage facilities and other loan warehouse facilities.

Ryan Leverone, Corporate and Commercial Finance (New York) – Ryan represents lenders and borrowers in a wide variety of domestic and cross-border financing transactions, including working capital financings, NAV facilities, asset-based loans, acquisition financings, note purchases, workouts, repurchase financings and other complex transactions. He also represents financial institutions in the purchase and sale of debt on the secondary loan trading markets, including bespoke participation arrangements. Ryan also focuses on emerging technologies impacting financing transactions.

Katie McShane, Fund Finance (New York) – Katie represents major banks and other financial institutions in the structuring, negotiation and documentation of subscription credit facilities, as well as NAV-based, hybrid and other nontraditional fund finance transactions to a broad range of private equity funds. She has experience representing investment banks and private equity groups in their role as issuer, underwriter and mortgage loan seller in both public and private securities offerings. Katie has also represented clients in other asset-backed finance and corporate transactions and has practiced in both London and Dublin.

Matthew Peters, Real Estate (London) – Matt focuses on corporate real estate and real estate private equity, including corporate and investment property acquisitions and disposals, joint ventures, and corporate restructurings and reorganizations, particularly with regard to hospitality and leisure, residential, student accommodation, data centers and logistics sites, with a focus on developments. He has experience advising both UK and international clients operating across a variety of jurisdictions throughout EMEA.

Jodie Valler-Feltham, Corporate (London) – Jodie advises domestic and international clients on a broad range of complex corporate transactions across a wide variety of sectors, including life sciences, technology and financial services. He specializes in mergers and acquisitions (both public and private), co-investments, joint ventures, equity fundraisings, reorganizations and equity capital markets matters.

Our new special counsel and counsel include:

Michael Altman, Special Counsel, Capital Markets (New York) – Mike's practice focuses on representing issuers, underwriters and mortgage loan sellers in both public and private commercial mortgage-backed securitization transactions. He also has experience handling Exchange Act filings, including public registration statements for new and repeat issuers.

Jordan Ballard, Counsel, Fund Finance (Charlotte) – Jordan represents banks and financial institutions in negotiating subscription based finance transactions, including hybrid facilities, umbrella facilities, syndicated facilities, term loan facilities, subordinated tranche facilities and various other types of fund financing transactions. Jordan has represented clients in some of the largest facilities in the market.

Jonny Byrne-Leitch, Counsel, Fund Finance (Charlotte) – Jonny represents bank and non-bank lenders across subscription-line finance transactions, hybrid facilities, umbrella facilities and other types of bespoke fund financing transactions. Jonny regularly acts as lead counsel for Cadwalader clients and is responsible for negotiating complex agreements and overseeing deals from inception to completion.

Michael Ena, Special Counsel, Financial Services (New York) – Michael's practice focuses on derivatives, structured financial products and financing transactions. Michael has represented financial institutions and corporate clients in connection with a broad range of equity derivatives, cryptocurrency and other digital asset derivatives, debt total return swaps, credit default swaps, repurchase and reverse repurchase transactions, interest rate and foreign exchange derivatives, financing arrangements, capital relief trades and matters involving convertible, exchangeable and equity-linked securities.

Michelle Gellman, Special Counsel, Financial Services (New York) – Michelle's practice focuses on complex structured finance and derivatives matters. She advises clients on a wide range of OTC derivatives products, structured finance products, municipal finance products and other structured transactions that combine securitization techniques and derivatives.

Michael Glenn, Special Counsel, Global Litigation (New York) – Michael has substantial experience representing plaintiffs and defendants in a wide range of litigation and crisis management matters involving complex legal issues. He has advised a wide range of clients at all stages of litigation, including pre-suit factual development and legal research, fact and expert discovery, dispositive motion practice, trial and appellate proceedings.

Eunji Jo, Special Counsel, Real Estate (Charlotte) – Eunji's practice focuses on the origination of complex real estate loans of all balance sizes and exit strategies, including those intended to be held for investment and those intended to be syndicated or securitized. She advises financial institutions on a broad range of real estate finance matters, including the acquisition, financing and disposition of all types of properties, including office, retail, hotel, industrial, data centers, self-storage, multifamily and mixed-use properties.

Aaron Kennedy, Special Counsel, Capital Markets (Charlotte) – Aaron's practice focuses on commercial mortgage-backed and CRE CLO securitization transactions, warehouse lending and the workout and restructuring of securitized and other financial assets. Aaron represents investment banks and financial institutions in their roles as issuers, underwriters, placement agents and mortgage loan sellers in both public and private offerings of commercial mortgage-backed securities and other structured finance products and in their role as repo buyers in the context of warehouse lending.

Brian Kettmer, Counsel, Fund Finance (Charlotte) – Brian represents banks and financial institutions in negotiating subscription-based finance transactions, including NAV-based facilities, hybrid facilities, umbrella facilities,

subordinated tranche facilities, term loan facilities and various other types of fund financing transactions. Brian has represented clients in some of the largest facilities in the market.

Lindsey Kister, Counsel, Corporate (New York) – Lindsey's practice is concentrated in the area of corporate law, with an emphasis on mergers and acquisitions, securities law, corporate finance and corporate governance. She represents clients in transactions such as public and private mergers, acquisitions, securities offerings, restructurings and joint ventures.

Brian Kurpis, Special Counsel, Fund Finance (New York) – Brian focuses on fund finance and represents lenders, financial institutions, insurance companies, private credit firms and investment funds in structuring, negotiating and documenting bilateral and syndicated financing structures, including primary and secondary NAV loan facilities, subscription credit facilities, hybrid transactions, margin loans, GP financings, collateralized fund obligations, rated note feeders and continuation funds.

John Lambillion, Special Counsel, Financial Restructuring (London) – John's practice focuses on advising creditors in restructuring and special situations transactions, with a particular focus on complex cross-border restructurings, liability management exercises and financings. John represents banks, private credit funds, CLOs and alternative investment funds with exposures across the credit spectrum, and works closely with our Global Litigation and Leveraged Finance and Private Credit teams.

Olivia Stewart, Special Counsel, Fund Finance (Charlotte) – Olivia represents banks and financial institutions in structuring, negotiating and documenting subscription credit facilities, NAV-based facilities, hybrid facilities, umbrella facilities, subordinated tranche facilities, term loan facilities and various other types of fund financing transactions for private equity funds. Her experience extends beyond deal work, and clients frequently engage her to assist in developing form documents and policy.

Alexander Strom, Counsel, Financial Restructuring (New York) – Alex's practice is concentrated in the area of financial restructuring with a focus on structured finance and securitizations. He represents lenders in connection with bankruptcy-remote commercial mortgage loan originations, commercial mortgage-backed securitizations and asset-backed securitizations. Alex has significant experience in developing structures designed to protect lenders in these complex securitization and lending transactions.

Clay Talley, Special Counsel, Fund Finance (Charlotte) – Clay represents administrative agents, lead arrangers and lenders across subscription-based lending finance transactions, including NAV-based facilities, hybrid facilities, umbrella facilities and various other types of fund financing facilities. He assists in negotiating complex agreements for some of the most sophisticated lenders in the fund financing space.

Iram Tariq, Special Counsel, Leveraged Finance and Private Credit (London) – Iram's practice focuses on advising credit funds, borrowers and sponsors on UK and cross-border leveraged financing transactions, including private equity backed buyouts, management buyouts, and refinancing and restructuring of leveraged assets and special situations. She has substantial experience in structuring complex debt arrangements, negotiating loan documentation and addressing cross-jurisdictional issues.

Jessica Zeichner, Special Counsel, Capital Markets (New York) – Jess focuses her practice on representing issuers, underwriters and mortgage loan sellers in both public and private commercial mortgage-backed securitization transactions. She also prepares registration statements for new and repeat public issuers, and has experience working on municipal bond refinancings.

Announcing the Agenda for the 15th Annual Global Fund Finance Symposium!

December 19, 2025

The Fund Finance Association is delighted to announce the agenda is now live for the 15th Annual Global Fund Finance Symposium, taking place February 2-4, 2026 at the Fontainebleau Miami Beach.

Cadwalader's own **Angie Batterson** will be speaking on a panel titled "Insurance in Fund Finance."

Get ready for a standout event this year, with thought-provoking speakers, insightful panel discussions, and plenty of chances to connect with new faces and reconnect with familiar ones. No matter your level of experience, you'll find conversations and sessions that capture your interest.

Highlights include Keynotes from tennis superstar, investor and entrepreneur, Serena Williams; and Rob Lewin, Chief Financial Officer at KKR; plus an Economic Update from Mark Zandi, Chief Economist at Moody's Ratings!

Review the full agenda **here** and **register** today!

Sponsorships are open until January 7th, 2026.

When

February 2 - February 4, 2026

Where

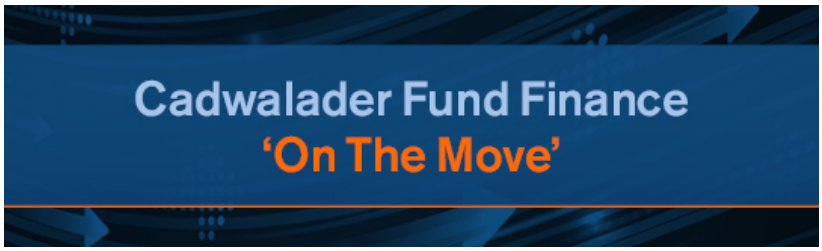
Fontainebleau Miami Beach

4441 Collins Ave.

Miami Beach, FL 33140

Fund Finance Tidbits – On the Move

December 19, 2025



Here is who's on the move in the fund finance industry:

Congratulations to **Jan Sysel** who has recently joined A&O Shearman. Jan has over 20 years of experience in fund finance products and his arrival at the firm marks a major milestone in the strategic expansion of A&O Shearman's global fund finance business, furthering complementing the firm's rapidly growing team in London, Continental Europe, the Middle East, and Asia Pacific. Read more **here**.

Fund Finance Hiring

December 19, 2025

Fund Finance Hiring

Here is who's hiring in fund finance:

Harneys (Luxembourg) is seeking associates with three to six years of relevant experience for its Fund Finance, Investment Funds and Corporate practices in Luxembourg. Qualified candidates will have experience in one of subscription finance, NAV financings, leverage finance, fund formation, securitization, or general corporate and commercial matters (including mergers, acquisitions and restructuring). Applications of interest should be sent to Cyrielle Nicolas **cyrielle.nicolas@harneys.com**

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*.

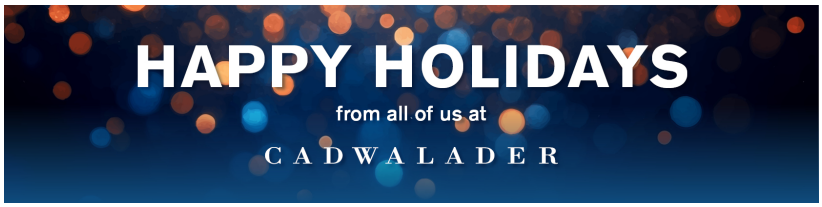
Partners Group is seeking a Structured Product Lawyer to join their Structuring Solutions team out of the New York or London office to contribute to the global set of structured product offerings, including new structured product opportunities, Collateralized Fund Obligations, Collateralized Loan Obligations, 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**.

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**.

Happy Holidays From Cadwalader

December 19, 2025



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 2026!