

Fund Finance Friday



Side Letter Spotlight

May 29, 2026

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Side Letter Diligence: Considerations for Subscription Lenders

May 29, 2026



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As the subscription credit market continues to mature, side letter diligence has remained a key component of both underwriting and credit agreement negotiation. Investor side letters often address matters specific to an investor's legal, regulatory, tax or policy requirements, but certain provisions can directly affect a lender's borrowing base analysis and the practical administration of the facility.

For lenders and administrative agents, the central question is whether a side letter provision could impair the fund's ability to call capital from investors to repay outstanding facility obligations. Some provisions, such as cease funding rights, raise this issue directly. Others, such as most favored nations provisions, may raise it indirectly by allowing a problematic right granted to one investor to spread. Additionally, other provisions may not eliminate an investor's funding obligation, but can affect capital call mechanics, overcall flexibility, borrowing base eligibility or enforcement strategy.

Cease Funding Rights

Cease funding rights are often among the most important side letter provisions reviewed by subscription lenders. These provisions may permit an investor to suspend or terminate its obligation to fund future capital contributions upon the occurrence of certain events, including a change in law, regulatory issue, violation of internal policy or other investor-specific trigger.

For lenders, the key analysis is whether the investor remains obligated to fund capital contributions to the extent attributable to indebtedness incurred prior to the exercise or effectiveness of such right. This savings language, which is becoming more commonplace, preserves the lender's expectation that commitments supporting existing borrowings remain available for repayment, even if the investor is excused from funding future investments or obligations.

Where this language is included, lenders are generally more comfortable analyzing the investor for borrowing base inclusion. Where an investor has a broad cease funding right without a carve-out for prior indebtedness, lenders will often require that investor to be excluded from the borrowing base. The concern is not necessarily the investor's credit quality, but the mismatch between the lender's reliance on the uncalled commitment and the investor's ability to decline future funding.

Certain investors may not be amenable to lender-friendly revisions, particularly where the provision is tied to statutory, regulatory or policy requirements. If the investor has a sizable commitment or is otherwise important to the borrowing base, lenders may consider whether the risk can be addressed through the credit documentation. Potential mitigants include clean-downs, concentration limits, exclusion events, investor-specific advance rates or other tailored borrowing base mechanics.

Most Favored Nations

Most-Favored-Nations provisions ("MFNs") are another important focal point. MFNs generally permit an investor to elect the benefit of more favorable rights granted to other investors, subject to the applicable fund documents and side letters. While common in private fund structures, MFNs can create concerns for lenders if problematic rights are capable of spreading across the investor base.

The key issue is whether a provision that may be manageable when granted to one investor becomes more significant if elected by multiple investors. For example, a cease funding right, excuse right, sovereign immunity-related provision or other investor-specific protection may be underwritten differently if it applies only to one investor with a limited commitment. If that same right is broadly available through an MFN election process, it could have a materially greater impact on the borrowing base and the lender's collateral analysis.

Lenders therefore focus on whether the MFN framework contains limitations designed to prevent investor-specific or otherwise problematic provisions from being elected by other investors. Common mitigating language may include carve-outs based on commitment size, so that only similarly situated investors with equal or greater commitments may elect certain rights. Lenders also look for exclusions covering rights specific to the type, status or jurisdiction of a

particular investor, including rights arising from regulatory requirements, tax considerations, sovereign immunity concerns, governmental status, ERISA or public pension considerations, sanctions policies or other investor-specific legal or policy constraints.

In the credit documentation, lenders may negotiate rights to review and consent over material side letter amendments, including MFN elections that could adversely affect the borrowing base, lender remedies or the enforceability of capital contribution obligations. This material amendment process gives lenders a mechanism to monitor future side letter changes and prevent problematic provisions from expanding without lender input.

Other Side Letter Provisions

Lenders and administrative agents also review a number of other provisions that may affect their credit analysis or borrowing base treatment. These provisions may not raise the same direct enforceability concerns as a broad cease funding right, but they are important considerations during the diligence process.

One common example is an overcall limitation. Overcall provisions may limit the fund's ability to call capital from an investor in excess of a specified percentage of what otherwise was called, or may prohibit overcalls for specified purposes, such as management fees. Lenders focus on whether the limitation could impair the fund's ability to cover shortfalls created by other investors that fail to fund. Overcall limitations also raise MFN-related concerns because a limitation that is acceptable for one investor becomes a different analysis if a substantial portion of the borrowing base can elect the same protection.

Another side letter consideration is particular capital call mechanics since some investors require capital call notices to be delivered by an authorized signatory of the general partner, manager or other specified fund party, and may require evidence of incumbency. These provisions are generally administrative, but can become important in an enforcement scenario if the administrative agent is issuing capital calls on behalf of the fund. The issue is often addressed by including the administrative agent in the relevant incumbency certificate or otherwise acknowledging the lender as an authorized party in the event of an exercise of remedies.

Excuse, withdrawal and transfer-related rights are also important considerations. As the market has matured, these rights have become expected features of investor side letters. They are generally manageable, but can have borrowing base implications. If an investor may be excused from participating in certain investments or obligations, lenders will consider whether available uncalled capital may be reduced. Similarly, if an investor transfers its interest, lenders will focus on whether the replacement investor satisfies applicable eligibility criteria. These events are typically addressed in the credit documentation through borrowing base adjustments, excluded investor concepts, mandatory notices and ongoing reporting requirements.

Sovereign immunity provisions present their own unique set of issues, something [this newsletter examined on a state-by-state basis in its 13-part *Sovereign Immunity Series*](#). These provisions often arise with sovereign wealth funds, governmental entities, public pension plans and other investors connected to governmental bodies. The primary concern is whether sovereign immunity reservations could impair the enforceability of such investor's capital contribution obligations.

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One well-known example involves certain Texas governmental or public pension investors, which may raise diligence considerations due to Texas sovereign immunity principles and related limitations on contractual remedies against governmental entities. Where the concern is material, lenders may exclude the investor from the borrowing base. However, if such investor's commitment is important for the borrowing base, lenders may negotiate a hurdle investor concept into the credit documentation. Once the hurdle investor has funded a meaningful portion, it has demonstrated performance under the fund documents and has sufficient "skin in the game" to provide additional comfort.

Concluding Thoughts

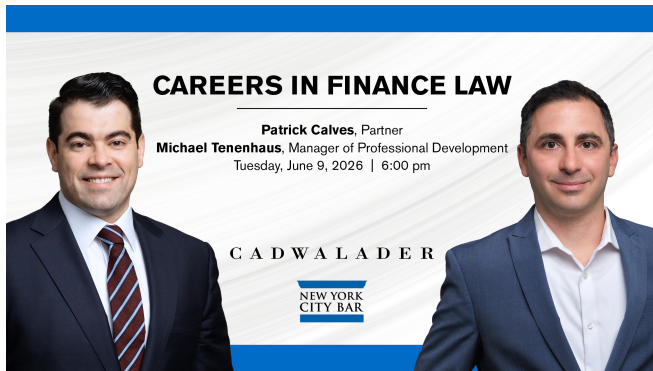
Side letter diligence is ultimately an exercise in identifying which investor-specific rights matter for facility purposes and determining how those rights should be treated within the borrowing base and credit agreement framework. Not every side letter provision presents a material lender issue, and many are expected features of modern private fund documentation. However, provisions affecting an investor's funding obligation, the fund's ability to overcall, capital call

mechanics, MFN elections or enforceability of remedies are important considerations for lenders in the subscription credit context.

The market has developed numerous tools to manage these risks, including but not limited to investor exclusions, concentration limits, hurdle requirements, investor-specific advance rates, reporting requirements, clean-down provisions and Material Amendment protections. The value of side letter diligence is identifying key issues early in the deal process so that the lenders can adequately assess risk and negotiate mechanics in the credit documentation to meet their specific needs.

Patrick Calves and Michael Tenenhaus to Participate in Careers in Finance Law Panel

May 29, 2026



Cadwalader Partner Patrick Calves and Manager of Professional Development Michael Tenenhaus will participate in the Careers in Finance Law program at the New York City Bar Association on Tuesday, June 9, from 6:00 p.m. to 8:00 p.m.

Patrick will serve on a panel that also includes Jonathan Aguedelo, Executive Director at SMBC Group, and Alison Syré, Senior Vice President at Macquarie Group, and will share insights related to fund finance, leveraged finance, and other transactional specialties. Michael will moderate the discussion.

The event be held in hybrid format: attendees can join in person at the New York City Bar Association's building at 42 W 44th Street or access the event via Zoom.

Careers in Finance is part of the City Bar's annual Summer Series, where lawyers and law students can learn about critical and practice areas for that year.

For additional information and to register, visit [here](#).

George Pelling to Serve as Panelist at 10th Annual European Fund Finance Symposium

May 29, 2026

10TH ANNUAL



EUROPEAN FUND FINANCE SYMPOSIUM

JUNE 24, 2026 | OLD BILLINGSGATE | LONDON

Cadwalader Fund Finance Partner George Pelling will be a panelist at the 10th Annual European Fund Finance Symposium, taking place in London on Wednesday, June 24.

The full event agenda is available [here](#).

Location

1 Old Billingsgate Walk
Riverside, 16 Lower Thames St,
London EC3R 6DX

Individual passes for the 2026 European Symposium are £2,000.

You can register now [here](#).

Congratulations to New FFA Board Members

May 29, 2026

We'd like to extend our congratulations to the five newly appointed members of the FFA Board, named yesterday. As the FFA Board noted in its announcement, the appointments "reflect the continued growth and evolution of the fund finance market across jurisdictions and bring additional representation across the lender, legal and investment management communities."

The new members are:

- Tom Kirby – Managing Director at Bank of China
- Sabih Hussain – Head of Capital Markets at Corinthia Global Management
- Stuart McIntosh – Head of Subscription Finance, EMEA at SMBC
- Mike Henry – Managing Director and Head of U.S. Bank's Subscription Finance Group at U.S. Bank
- Julia Kohen – Partner at Simpson Thacher

You can read the announcement [here](#).

Fund Finance Hiring

May 29, 2026

Fund Finance Hiring

Here is who's hiring in fund finance.

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 email Margaret Cart](#).

SouthState Bank is seeking candidates to fill two positions, including:

A **Private Capital Solutions Relationship Manager** who will be responsible for supporting the new client development and relationship management activities for the Fund Finance group. The role will include client portfolio management, sales support for new client opportunities, risk management and underwriting of new and existing client opportunities and cross-functional support for new client onboarding. This is a remote role and candidates must have a minimum two years of commercial banking, financial services or PE/Venture fund experience. Learn more [here](#).

A **Fund Finance Portfolio and Sales Associate** who will be responsible for supporting new business activity and ongoing portfolio management for Fund Finance relationships. The role will include client onboarding and diligence coordination, portfolio and credit support, and treasury and deposit support, among others. The individual can be based in Raleigh, Durham, Atlanta, or Richmond. Candidates must have one to three years of experience in commercial banking, credit support, portfolio management, fund administration, or a related financial services role. Learn more [here](#).

Moody's Ratings is seeking two Vice Presidents-Senior Analysts (Fund Finance). The individuals' responsibilities will include leading the analysis for assigning new ratings to fund finance transactions, contributing to methodology and technology development projects, building and maintaining strong relationships with fund sponsors, lenders, and arrangers, and presenting at industry events, conferences, and webinars. Candidates must have at least eight years of credit or risk assessment experience with deep sector knowledge and excellent communication skills. Learn more [here](#). Contact Jimmy Smith at Jimmy.Smith@moodys.com if you have any questions.

Stifel is seeking a Director/Managing Director of Fund Banking (Fund Finance). This individual will be the lead business development position for New York City and surrounding northeast geographies and will be focused on building new Fund Banking/Fund Finance business with VC/PE firms and being the senior relationship manager to those firms. Learn more [here](#).

Redding Ridge Asset Management, which was established and seeded by Apollo Global Management, is seeking an Associate, CLO Structuring to join the firm's dynamic Structuring & Advisory team, supporting both its market-leading global CLO issuance business and other platforms within the Apollo ecosystem utilizing securitization technology. Learn more [here](#).

Goldman Sachs is seeking a Vice President on the Capital Call Financing (CCF) team in New York. This role sits at the intersection of origination, underwriting, and relationship management, supporting private equity and alternative investment sponsors with bespoke subscription finance solutions. The individual will be responsible for sourcing opportunities, structuring facilities, and ensuring disciplined credit execution in partnership with Credit Risk Management and broader Private Bank stakeholders. Learn more [here](#).