

Subscription Finance Loan Agreement Series — Part 4

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Continuing our series on subscription credit facility agreements, this week we focus on the suite of documents entered into in connection with a subscription financing. We also consider the fund documentation that must be reviewed by lenders and their counsel. These documents are usually set out in a facility agreement in the definitions of the terms "Finance Documents" and "Fund Documents" (or similar).

The term "Finance Documents" should include almost all documents entered into between the finance parties and the obligors and will include the facility agreement, security agreements, fee letters, obligor accession agreements, and (to the extent relevant) hedging agreements. As will be discussed later in this series, the security agreements will include, at the least, security over the fund's rights in relation to the capital commitments of its investors and security over bank accounts into which investor capital is paid. Any additional guarantees or powers of attorney granted by the obligors in favour of the finance parties should also be included as Finance Documents.

The "Fund Documents" that are relevant to a subscription credit financing will depend on the type of obligors that are entering into the financing. Most commonly, obligors will be limited partnerships, whose powers, activities and governance are set out in a detailed partnership agreement. Other types of entities will have different formation documents. Lenders and their counsel must diligence the fund structure carefully to ascertain which entities are relevant to them and what documentation must be reviewed. In addition to the formation documents of borrowers and guarantors, it is usually also necessary to review the formation documents of any general partners, GPCOs and managers to ensure that those entities also have the powers and authorities necessary to enter into the financing.

In addition to obligor formation documents, the documents under which investors commit to provide capital to a fund are central to a subscription financing. These documents (which usually include a subscription agreement or equivalent and, if there are additional terms agreed upon between individual investors and a fund, also a side letter) must be carefully reviewed by lenders' counsel and covered by the terms of the financing documentation. Finance parties must be satisfied with the terms of those documents, including, in particular, the identity of the investor, the subscription amount, any limits on an investors' commitment as a percentage of the overall fund, excuse rights, overcall limitations, dispute resolution provisions, immunity provisions, drawdown mechanics and any borrowing or security limitations.

Any offering or investment memorandum will also be relevant to a lender. Although this is not a contract which is executed by the investors, it is a central part of the marketing documentation provided to investors, and they will have invested in a fund partly on the basis of its contents. As such, it is important that finance parties are satisfied with it.

In addition to the obligors' formation and investor commitment documents, any separate documents dealing with the operation and management of the fund must also be reviewed. Frequently, day-to-day management of a fund will be delegated to a manager, and this entity may be granted powers to borrow and grant guarantees and security on behalf of a fund and, crucially from a lender's perspective, may have been delegated the power to make and enforce investor capital calls. Any management agreements must be reviewed, and the documents, and the manager itself where appropriate, will need to be covered by the Finance Documents.

Finally, if a fund has any investors of particular importance to a lender, or that have committed to provide a substantial percentage of the total capital commitments, a lender may insist that those investors enter into investor letters. Under such a letter, the investor expressly acknowledges the subscription financing and the related security.

All of the above Fund Documents must be reviewed by finance parties' counsel to ensure that the subscription financing can be entered into by the fund, that the appropriate entities enter into the finance documentation, and that robust and enforceable security is provided to the finance parties. In addition, the Finance Documents must include representations and warranties and undertakings, including: that all relevant Fund Documents have been disclosed, are in full force and effect and are binding on the obligors and investors, are true and accurate, and are being complied with. There is often a debate as to whether any offering memorandum or similar should be included as a Fund Document in the representations and warranties, given that it is a marketing document and often not in itself legally binding once the full partnership agreement or similar has been completed. Given the reliance that will be placed on it by investors, we would generally recommend that it is.

Subscription financing requires a substantial amount of documentary due diligence and that a broad range of fund documents are covered by the terms of the Finance Documents. When lending against the right of a fund to call for capital contributions from investors, it is crucial that a lender fully understands the nature of the investors' commitment. This requires knowledge of the structure of the fund, the terms on which investors commit to the fund, the relationship

between the fund and its management, and the ability of a fund to provide robust, enforceable security. All of these elements must be reflected in the Finance Documents generally and particularly in the subscription facility loan agreement.

SANNE Hosts Roundtable and Publishes Takeaways on Credit Facilities in Private Equity

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By **Eric Starr**
Special Counsel | Fund Finance

SANNE Group recently hosted a roundtable discussion in New York to discuss the use of leverage and credit facilities in the private equity space.

The guest panel included: Oliver Morris, Director, Product Development - Private Equity, SANNE; Debra Abramovitz, Executive Director, Morgan Stanley Investment Management; Kevin Robinson, Partner and General Counsel, GreenOak Real Estate; and Andrew Day, Partner, Kirkland & Ellis LLP.

Following the live event, SANNE published a collection of brief thought pieces drawing on the topics that were explored and the remarks that were made during the roundtable. Seasoned fund finance professionals will recognize several familiar views (positive, negative and neutral) concerning the utility and efficacy of subscription credit lines – punctuated by anecdotal evidence and experiences from industry insiders. The collection of articles is a quick read and provides some interesting tidbits and soundbites.

The full publication is available [here](#).

SANNE Group is an industry service provider that offers administration services to a variety of alternative asset managers, financial institutions and corporate entities.

On the Move — Fund Finance Tidbits

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On the Move

Jonathan Sammarco has joined People's United Bank as Senior Vice President of its Fund Banking division, based in its Boston office. People's United Bank is a subsidiary of People's United Financial Inc., which is a diversified financial services company with \$51 billion in assets. The Fund Banking group provides credit facilities against the investor capital and assets of private fund vehicles and against the fee income and equity of management companies and general partnerships. Jonathan was most recently First Vice President at East West Bank, where he managed the East Coast Private Equity lending portfolio.

First Republic Bank Article on Fund Finance

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Scott Aleali of First Republic Bank published a thought leadership piece on LinkedIn earlier this week, titled "Fund Finance: Beyond the Subscription Line."

The article covers other financing options available to fund CFOs to optimize their investment structures and balance sheets. Guaranteed portfolio company loans, letters-of-credit security, management company facilities, and financing partner and fund employee capital commitment obligations are all detailed. The article also provides four "can't miss" picks for your fantasy football draft (egregiously leaving out Carolina Panther Christian McCaffrey). The article is available [here](#).

FFA Next Generation in Fund Finance London Event

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The European chapter of the FFA's Next Generation in Fund Finance ("NGFF") is pleased to host its fourth event in London – an exclusive Charity Problem-Solving and Networking Event – on September 5 from 8:30 a.m. to 12 noon.

The event will be an opportunity for NGFF members to give back to the local community by solving a problem that the charity Career Ready is facing. The attendees will work in teams to come up with solutions and will present their ideas to the charity and a panel of senior fund finance professionals. **Career Ready** is a UK-wide charity that links employers with schools to open up the world of work to young people.

Location details are below:

Citi (3rd Floor)
5-7 Carlton Gardens
St. James's (off Pall Mall)
London

For more information or to register, please click [here](#).

FFA University is Sold Out

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The Fund Finance Association's inaugural FFA University, scheduled for September 17-18 in New York, is now sold out. To join the waitlist, email the FFA at info@fundfinanceassociation.com. If you are registered but your plans change, please email the FFA so they can let someone in from the waitlist. Registering for the waitlist is very helpful for the FFA to size the space requirements for future events.

Fund Finance Hiring

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Fund Finance Hiring

Standard Chartered Bank is currently seeking a Credit Analyst to join its growing private equity team with a focus on fund financing. For more information or to apply, please click [here](#).

Save the Date: Finance Forum 2019

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It's time to mark your calendars for our fourth annual Finance Forum at The Ritz-Carlton in Charlotte, North Carolina, on October 17.

We had a record number of more than 400 attendees last year – all leaders in the financial services, investment management, private equity and legal communities. We are still finalizing the agenda, but we plan to provide updates on some of the key topics from last year, as well as a number of new areas of focus. You can expect comprehensive coverage of fund finance, the loan market, commercial real estate and other timely and important topics, including industry diversity. Speakers will include Cadwalader partners and leading practitioners from across the country.

This is a half-day program, beginning with a welcome and keynote address at 12:30 p.m. and ending at 5:45 p.m., with a rollicking networking cocktail hour to follow.

There is no charge to attend the Finance Forum, and Cadwalader has arranged for very favorable hotel rates for Forum participants attending from out of town.

Click [here](#) to register for the Finance Forum.

Contact [Cori Niemann](#) for general information and hotel reservation information.

Looking forward to seeing you there!

Fund Finance Calendar

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