

CADWALDER

## Welcome to Fund Finance Friday

October 26, 2018 | Issue No. 1



By Michael Mascia  
FFA Board Member

Welcome to the first edition of Fund Finance Friday by Cadwalader. We at Cadwalader have for some time believed that the fund finance market has needed a weekly market intelligence and update source. As the business media doesn't regularly examine fund finance issues and developments in detail, we have decided to take this on as a service to our clients and friends. Each Friday, we will publish a series of short articles providing both legal updates and market intel, including links to articles and information of interest. The entirety of each weekly edition can be read in under ten minutes. Our hope is to provide a quick but comprehensive update to keep you current. We welcome your feedback on how we can make Fund Finance Friday a productive part of your weekly routine.

## Further Details Emerge on Abraaj

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By **Wes Misson**  
Partner | Fund Finance



By **Chris van Heerden**  
Director | Fund Finance

The scope of issues at the Abraaj Group continues to grow as new information comes to light, a point recently highlighted on the cover of the *Wall Street Journal*. Key details added by the *Journal* on Oct. 16 underscored the scale of commingling between funds and the parent—at least \$660 million in capital reportedly moved out of the funds to Abraaj Holdings, \$200 million of which may have ended up in the hands of the company's founder and people close to him.

By way of background, the Abraaj Group is a Dubai-based private equity firm that rapidly gained prominence over the past two decades by combining social impact investment with emerging market returns. After using multiple layers of leverage to cover operating cash losses, the firm became subject to Cayman Islands insolvency proceedings in June.

For the subscription facility market, the more pertinent update appeared in *Private Equity International* on Oct. 17, reporting that LPs in the APEF VI fund are challenging a capital call to cure a June 25 default under the fund's subscription facility, while LPs in another fund met capital calls that may have paid off that facility.

The ultimate impact of Abraaj on the subscription facility market is simply very difficult to gauge at this point. The firm's finances are murky and the likelihood of investor losses unclear. The audit lapses at the Dubai firm appear rather idiosyncratic. All the same, this will be a high-profile test case that will play out in the headlines in coming months.

[WSJ Update on Abraaj](#)

## A Standstill Period or Lender Handcuffs?

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Since virtually the first subscription facility, borrowers have wanted the right to issue the first capital call to investors in an event of default. Lenders have historically been accommodative of this request, believing an initial capital call issued by the fund itself would be less alarming to investors and not negatively impactful to the ultimate recovery to the lenders. Thus, so called “standstill periods” are frequently found in the event of default remedy sections of credit agreements.

However, we continue to see credit agreements where the standstill periods are not articulated consistently with our understanding of lenders’ expectations. We believe lenders are comfortable foregoing their immediate right to issue a capital call themselves directly to investors upon an event of default so long as the fund issues a capital call within five business days or so of the event of default. Then, the lenders are willing to wait an additional fifteen or so business days for the capital contributions to come in before they themselves issue a capital call to the investors. However, many credit agreements state that the lenders “will not exercise remedies” during the standstill period. This broad language could arguably be interpreted to mean the lenders cannot exercise *any* remedies, including, for example, their rights to terminate their lending commitments and to accelerate the repayment of the principal obligations. We do not believe lenders intend to forfeit these rights; rather, they only intend to “stand still” as to their right to issue a capital call themselves directly to investors. Care should be taken with standstill periods to ensure they document an intended meeting of the minds.

## **Continued Growth in 2019? An Update from the Cadwalader Finance Forum**

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Cadwalader hosted the third annual Finance Forum in Charlotte, North Carolina, earlier this month. As with prior years, a fund finance breakout panel was on the agenda and was well-attended by industry participants. Interestingly, all three of the bank-side panelists forecasted continued extensive growth for the subscription facility market in 2019. With all the talk in the market around lenders hitting product and per-sponsor exposure caps, we were pleasantly surprised by the optimistic forecasts. Prior to the panel, we had been forecasting far more moderate industry growth for 2019. Growth for the past five years has been driven in part by growth in private equity fundraising but also in large part as a result of penetration into new fund families which had not historically used facilities. Now, with near market saturation, we believe growth via new sponsor penetration has largely run its course. We also think lenders will be somewhat preoccupied internally managing the increased loan volumes they have added in recent years – hiring, credit box adjustments, interfacing with regulators, etc. While the Finance Forum panelists recognized these challenges, their view was that market forces will easily push outstandings forward in a double digit sort of way. Cheers to that!

## **Signature Bank Launches Fund Banking Division**

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Yahoo! Finance reported on Signature Bank's launching of its Fund Banking Division. The group, headed by Tom Byrne in New York, has hired a number of well-known fund finance bankers.

[Read Article](#)

## Fund Finance Hiring

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Silicon Valley Bank had a post on LinkedIn for an [Associate 1](#). Veteran bankers Charles Inkeles and Konstyantyn Shcherkakov announced accepting leadership positions in fund finance at Santander. Long-time fund finance lawyer Thomas Draper started as Partner and Co-Chair of the Debt Finance Practice at Foley Hoag LLP.

[See Job Post](#)