Have a Wonderful Thanksgiving

November 22, 2019 | Issue No. 55

We will not publish *Fund Finance Friday* next week but will be back on December 6. Enjoy the good food and football and, of course, special times with family and friends.

SEC Mulls More 'Main Street' Private Market Participation

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

Potential revisions to the private placement framework continue to percolate at the SEC. Last week, in remarks to the SEC Small Business Capital Formation Advisory Committee, SEC Chairman Jay Clayton advocated for a critical review of the existing framework of registration exemptions, with an eye towards providing “Main Street” investors with the same extent and quality of investment opportunities as institutional investors. Cadwalader partner Steven Lofchie summarized those remarks **here**.

At issue from a fund finance perspective is the potential for some relaxation of the restrictions on individual investors’ participation in private funds. The SEC initiated the discussion with the publication of its Concept Release on Harmonization of Securities Offering Exemptions, 84 FR 30460 on June 26, 2019, in which it asked for input on opening up its rules to allow smaller investors access to a broader range of private investment offerings. According to the SEC, registered offerings accounted for $1.4 trillion of new capital raised in 2018, compared to approximately $2.9 trillion raised through exempt offerings.

The vast majority of comments received in response to the concept release touched on potential changes to the accredited investor definition, according to remarks made by Jennifer Zepralka, Chief of the SEC’s Office of Small Business Policy at the meeting of the Securities and Exchange Commission Investor Advisory Committee on November 7. While interest in revising the accredited definition is high, it’s unclear whether there is any emerging consensus on balancing the interests in investor protection with expanding investor opportunities.

ILPA Reportedly Lobbied Congress on PE Regulation

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The United States House of Representatives Financial Services Committee this week took up three bills that would regulate the private equity industry: The Stop Wall Street Looting Act of 2019, the Private Fund Board of Disclosure Act of 2019 and the Investment Adviser Alignment Act. Our colleagues at the *Cadwalader Cabinet* summarized the current legislative proposals under consideration and related testimony **here**. *Institutional Investor* **covered** the hearing this week, writing that the Institutional Limited Partners Association has sent a letter to Congress offering support for the Investment Adviser Alignment Act. The article quotes ILPA executives, reports on the testimony of the live witness and provides quotes from various members of Congress on their initial view of the bills. The hearing also received coverage from *Pitchbook* **here** with the conclusion that, "Private equity is shaping political discourse like never before, with voters and policymakers alike scrambling to understand the notoriously introverted industry that commands billions."

Player Profile — Arnaud Arrecgros

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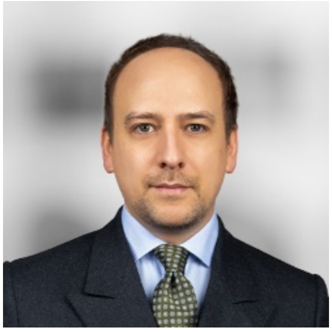
Player Profile



This week we connect with Arnaud Arrecgros, a Finance partner in Maples and Calder (Luxembourg), the Maples Group's law firm in Luxembourg. Arnaud has over 13 years of experience advising on cross-border financing and banking transactions, including fund finance deals in connection with the setting up of bridge and capital commitment facilities, corporate debt facilities, acquisition, asset and real estate financing and restructurings, and securitisations, as well as capital markets matters. He represents both borrowers (including private equity and hedge funds) and lenders on lending transactions and all types of secured transactions, advising in particular on the setting up of security packages and issues surrounding collateral in the context of debt restructuring transactions.

Prior to joining the Maples Group, he was a partner in the Banking & Finance group at AMMC Law and, prior to that, practised for several years at major law firms in Luxembourg, including independent and Magic Circle firms.

***FFF*: Arnaud, tell us a bit about how you became involved in fund finance**.

Over the past few years, becoming involved in fund finance has been quite a natural evolution for many finance lawyers in Luxembourg, myself included. While it started as a rather small and promising niche a few years ago, the increasing number of investment funds which are in Luxembourg, negotiating subscription credit lines and other types of financing arrangements, have resulted in making the fund finance practice currently one of the most dynamic, lucrative and popular fields of practice for prominent Luxembourg business law firms' finance departments.

Since joining the Maples Group in 2018, my exposure to fund finance deals and related market social activities has increased exponentially. The collegial approach shared within the Group allows us to work with many renowned specialists across the Group's 18 offices and provides the opportunity for us to develop our presence in the market further.

A number of clients and referring firms, satisfied with the level of service the Maples Group provides in its other jurisdictions, were enthusiastic when they learned of our presence in Luxembourg and were keen to continue working with us.

Today, and notwithstanding the dynamic revival of interest in structured finance and the consistent flow of work in the real estate and asset finance fields, fund financing work represents a substantial share of the Luxembourg finance team's activity, and I am confident that this will remain a prominent practice in 2020 and beyond.

***FFF*: How has 2019 shaped up so far compared with 2018?**

Compared to last year, 2019 has proven to be a very dynamic and active year, with an ever-increasing level of work distributed throughout.

We have seen mid-sized investment funds eager to seize promising investment opportunities and rushing to set up financing arrangements. Meanwhile, large PE firms have kept us busy restructuring and expanding the existing subscription lines they often had in place in anticipation of the needs for the coming year.

Similarly, we have seen a steady appetite and dynamism on the lending front, from both large investment banks already active in the market to smaller credit institutions and alternative lenders wishing to participate to a larger degree.

It has also been exciting to see the fund financing family expanding and growing. Fund Finance Association conferences have become something that many of us look forward to, as they offer the opportunity to meet many new faces each time.

***FFF*: Taking a longer-term perspective, how has working as a Luxembourg fund finance counsel changed over the past ten years?**

I believe that the fund finance practice in Luxembourg has reached a certain level of maturity. Notwithstanding the conflicting perception that I sense many younger professionals may have on the subject, as the market, being very inclusive, remains dynamic and creative, with many new initiatives being brought by professionals and quickly shared and discussed across the jurisdictions involved.

Well-established sets of documentation have been agreed upon over the years and tend to be accepted by the majority of practitioners, who can now concentrate on negotiating key commercial and technical features. The whole process has become very straightforward and reliable, conceptual controversies being the exception. And when a difficulty arises, solutions to fix such issues are generally quickly identified and agreed upon between counterparts.

While the above is true at the level of finance lawyers, much progress has also been made on coordinating with funds' lawyers in order to anticipate the issues that were, in the recent past, often triggered when subsequently negotiating subscription credit lines. A common approach among practitioners on how to construe the critical sections of the fund documentation is now shared market-wide, so that the typical fund documentation in Luxembourg tends to satisfy and include what lenders' counsel typically require and like to see. Cases where amendments need to be made in a rush before closing financing arrangements have become scarce, except when working on documents inherited from fund structures that are a few years older.

Luxembourg is therefore – and in my view – in a good position to adapt and absorb the innovative proposals that the market will inevitably come up with over the coming years and which *Fund Finance Friday* often heralds.

***FFF*: Are there any emerging issues under Luxembourg law that might prove relevant to the fund finance market?**

I do not foresee any new or emerging issues, whether tax-driven or from a regulatory perspective, or the contemplated entry into force of any legislation that could be expected to be detrimental to fund financing arrangements in Luxembourg. We rely upon a legal and regulatory framework that has been in place for nearly two decades, has been tried and tested and which offers, in my view, all the comfort and flexibility that participants desire. I am confident that we will continue to be capable of offering practical and satisfactory solutions to technical or commercial issues that could emerge and become a concern for the industry.

From the perspective of the funds industry, Luxembourg offers a great variety of structures and funds of all types, offering the features, regimes and flexibility that the market is looking for. In particular, the introduction of the special limited partnership (the *société en commandite spéciale*) or "SLP" in 2013 and the RAIF in 2016 were great successes. Both structures are flexible enough to enable the mirroring of the features that foreign investors, investment managers and institutional lenders are accustomed to in common law jurisdictions, fostering the development of the fund finance practice, and Luxembourg has become the jurisdiction of choice for a wide variety of alternative investment funds.

The fund finance practice also relies upon the very creditor-friendly regime governing financial collateral arrangements under Luxembourg law. Established in 2005 and slightly amended in 2011 to rectify the few aspects that needed clarification, it has, since its entry into force, proven its efficiency and reliability and is now the driving force of Luxembourg transactional finance.

Many of us in Luxembourg have been eagerly looking forward to the entry into force of the EU regulation on the law applicable to the third-party effects of assignments of claims, which will supplement the rules otherwise provided for under Rome I. The European Commission published a proposal last year, and the process of collecting opinions from institutions has been in progress since then. Such regulation, aiming at the adoption of EU-wide and uniform conflict-of-law rules, would remove part of the remaining uncertainty surrounding the enforceability towards third-party creditors of investors domiciled in foreign jurisdictions, and whose claims were pledged in favour of senior creditors.

Unfortunately, while the regulation would come into force 18 months after its adoption and despite its purported universal application, the outcome of Brexit and the fact that the United Kingdom has already expressed its intention not to opt-in, as well as the fact that Ireland's decision is still pending, may very well limit the effect and the expected practical benefits of such regulation for our practice.

***FFF*: What are the must-read resources for a young professional getting underway in the sector?**

One of the biggest challenges a young professional starting a career in Luxembourg faces is the scarcity of authoritative and exhaustive analytical local sources and publications. While being true for most fields of practice, this is also the case for fund finance.

Admittedly, familiarity with the rules governing fund formation, regulation and operation is a prerequisite for lawyers who may not have had much exposure to this field in their academic background (especially those coming from civil law countries), and the dedicated legal documentation is available in Luxembourg. Additionally, the paramount importance of a solid background knowledge of the civil law principles governing contracts and sureties cannot be underestimated.

When it comes to fund finance, strictly speaking, I would recommend keeping an eye on, and absorbing all of, the publications from abroad whereby one can familiarize oneself with the hot topics, the controversial debates and key negotiation points of the practice area.

The annual manuals published by Global Legal Insights for the Fund Finance Association and dedicated to Fund Finance, as well as newsletters and articles, such as those published by *Fund Finance Friday*, are tremendously helpful and are rich sources of knowledge.

As a side note, while not constituting a must-read resource, strictly speaking, I would like to point to the initiatives of the Fund Finance Association and, notably, the FFA University, which we deem very valuable. The feedback from the young lawyers we have sent to attend the first programme was enthusiastic, and I wish such opportunities existed back when I began my own career.

***FFF*: Who has had the most influence on your career?**

There are quite a number of people that have had a positive influence (intentionally or not) on my career, but looking back over the last 15 years, it is not too hard to narrow it down to a couple of names.

Over the last year, I have undeniably benefited from the tremendous support from the Maples Group's talented professionals and their strong skillsets within and across the many jurisdictions we operate in. I feel very fortunate to belong to a firm that values and encourages a one-group collaboration and teamwork (and it has nothing to do with luck if I just cited two of our core values).

From the Fund Finance practice, I would like to name someone who is not only a bright and knowledgeable lawyer, whom many readers may recognise, but is also a generous and always supportive leader: Tina Meigh.

Tina, who is head of our Fund Finance practice and based in the Cayman Islands, has been instrumental in helping the Luxembourg Fund Finance practice expand its network by introducing us to many of her contacts. I cannot thank her enough for her kindness and for being such a great colleague to work with!

When looking from the start of my career, one name that immediately comes to mind is Marjorie Allo, with whom I have worked for the past 10 years and who now heads our corporate practice in Luxembourg. Despite belonging to a different practice, Marjorie has been a true mentor and coach to me over the years. I have learned a lot by observing her commercial skills, the priority and focus given to her clients, and her significant knowledge and experience in M&A and corporate finance that is unmatched in Luxembourg. Her ability to find creative solutions to issues that seem intractable at first sight and her generosity in sharing her knowledge and advice have been invaluable. She has been an inspiring mentor in the way she consistently looks after and supports her teammates by always being available and supportive when the need arises.

I was a very young lawyer when Marjorie hired me to build the finance practice of the law firm we previously worked at. Yet, she gave me the right level of autonomy to build the confidence to succeed in such a competitive environment. Those early days were a very rewarding time for me.

Building a career in a law firm can be very challenging and tough during its early stages, with the constant pressure, demanding goals, long hours and the lack of empathy and management skills that the profession too often suffers from, unfortunately causing many talented and promising young professionals to give up. Having an inspiring mentor at an early stage can be hugely beneficial.

There are many other lawyers I could name who have been supportive to our team from Day One and have been working with us over the last year. I would like to thank all of them for having placed their trust in us.

***FFF*: What do you like to do outside of the office?**

I have many interests and hobbies that I cherish, including historical studies, foreign policy, collecting antiques, pictorial art, to name a few. But lately, I don't have as much free time to dedicate to those passions. My priority is to dedicate as much time as I can to my family – in particular, my loving wife, my beloved daughter and my stepson, as well as my two godsons. I shouldn't forget the very demanding furry tribe (two dogs and counting…).

***FFF*: Tell us one fun fact about yourself.**

Due to family history (a forefather of mine was instrumental in helping Walt Disney sell Snow White to an originally reluctant and conservative French entertainment market), as a student, my first employment was a part-time job as a cast member at Disneyland Resort in Paris. Appointed to the souvenir shop, I wore a full formal baby-pink three-piece suit. To my relief, I must confess that was approximately 20 years ago and, fortunately, long before the arrival of digital photography!

***FFF*: Any bold fund finance predictions for 2020?**

It is not the easiest exercise for us in Luxembourg to dabble in the bold predictions game.

This is even more so as we will soon enter the New Year and into a period of unpredictability with the U.S. presidential campaign and, hopefully, some sort of outcome to the long-awaited Brexit process, among many other factors of instability.

Having said that, I do believe we will be very busy over the coming months, and I am optimistic for 2020. I expect to see a greater variety in financing arrangement types (including NAV and hybrid facilities) and actors (notably thanks to the alternative lenders), a trend which we already had the opportunity to experience over the last few months. All in all, very positive and exciting. No chance we'll get bored!

CalPERS Charts Path to Increased PE Exposure

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Meketa Investment Group delivered its **Private Equity Program Annual Review** to CalPERS at the November 18 Investment Committee Meeting. Meketa's assessment underscored the challenges facing the largest U.S. pension plan in staying deployed in scale: Program NAV ended the 2018-2019 fiscal year down 3.0% at $26.5 billion as private equity distributions of $7.4 billion more than offset contributions of $4.6 billion. CalPERS made 18 commitments during the year, which included two commitments to new managers. Increased co-investments and an expanded manager list are among the initiatives aimed at raising CalPERS' private equity exposure in the coming year.

Fund Finance Hiring

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Fund Finance Hiring

Goldman Sachs seeks to add an Associate to its Fund Financing team in the Strategic Capital Group within the firm's Merchant Banking Division. The ideal candidate will have direct fund finance experience gained on the lender or borrower side. The Fund Financing team sources, structures, executes and manages fund-level leverage on behalf of the Merchant Banking Division's family of funds. More information about the New York-based position and the link to apply can be found **here**.