April Showers Bring… Umbrella Facilities?

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We have noticed a recent uptick in requests for umbrella subscription credit facilities, and the topic was given some air time at the FFA conference in Miami last week. As such, and given the rainy spring weather, we thought it would be a good time to refresh on umbrellas. Below is a brief overview of a classic subscription umbrella facility, followed by some pros and cons to lenders.

An umbrella facility is effectively multiple subscription lines of credit for various funds managed by a single investment manager that are governed by a single set of deal documents. The funds can differ in asset class, vintage, strategy, investor base, etc. as each family of funds (each a "Fund Group" – typically comprised of a main fund and related parallel funds and alternative investment vehicles) is subject to a separate tranche (each a "Sub-Facility"). Other funds (such as parallel funds and alternative investment vehicles) related to a Fund Group may become part of that Fund Group under such Fund Group's Sub-Facility, while unrelated funds may become a Fund Group under a new Sub-Facility. The number of Sub-Facilities could be endless and could even have separate maturities and be amended over time. The Sub-Facilities are usually not cross-collateralized or cross-defaulted. They do not share a borrowing base. The Borrowers under each Sub-Facility are severally liable to the other Sub-Facility Borrowers and are only obligated to repay their obligations under their own Sub-Facility. Within each Sub-Facility, however, the Borrowers in a Fund Group are jointly and severally liable for the obligations under such Sub-Facility and subject to full cross-collateralization and cross-default. Each Sub-Facility has its own standalone borrowing base reflective of only the investors in the related Fund Group.

These are complex but interesting creatures. On one hand, you have a uniform set of documents that applies to completely different sets of funds. On the other hand, you maintain complete separateness for each set of funds. The representations and warranties, covenants, events of default, conditions precedent to each borrowing, sharing of fees and expenses, and other obligations set forth in the loan documentation are typically applicable to each Sub-Facility on a standalone basis. The facility provides for borrowings by each Fund Group to only be secured by the collateral specific to such Fund Group, and thus limited by the borrowing base of such Fund Group. Liabilities not related to a specific borrowing and not otherwise attributable to a specific Fund Group are generally borne by the Fund Groups pro rata based on fund size or the maximum amount that each Fund Group is able to borrow at the time such liability is incurred (or otherwise as determined in good faith by the fund manager).

Some pros of the umbrella structure:

- Efficiency – one set of documents to govern multiple facilities. Easy and speedy to add/remove Fund Groups without having to negotiate new documents. Attractive to managers as it permits them to operationally monitor and comply with one set of documents.
- Limits the cost and time (in theory) of doing multiple transactions.
- Where customization across different types of funds is not necessary, this can be a great option.
- Provides lenders the opportunity to be the one-stop shop or program administrator for financing a fund manager by housing all or many of its funds under one umbrella.
- Often booked by banks as one deal and one commitment rather than multiple deals. This may make it simpler to administer internally and easier to toggle commitments across multiple funds as and when needed in lieu of increasing/decreasing the size of separate deals.
- Provides predictability and uniformity of reps, covenants, reporting, exclusion events and defaults across all funds of a single manager.
- Best utilized for the same bank group where syndicated but flexibility to tranche different bank groups for certain Fund Groups could be accomplished without the need for a separate deal.
- Could combine committed and uncommitted facilities into one and utilize both term and revolver mechanics.

Some cons of the umbrella structure:

- One size fits all. Sometimes different funds require different structures. Umbrellas can make this challenging or at least cost prohibitive to bake in ultimate flexibility for every conceivable scenario.
- High upfront costs to negotiate and draft the master agreements. This can, however, be spread out across the Fund Groups and may well be less expensive than separate deals.
- The documents can grow stale over time as regulations or the market change, requiring either amendments to update or less than “market” documents for certain items.
- Certain events are awkwardly separate when governed by the same facility agreement. For example, lenders may have to lend to one fund group while the others are in default. Often, there is negotiation to provide limited cross-defaults at the manager and/or GP level to mitigate this concern. Also, cross-exclusion events may be used to deal with the issue on the investor level, as investor cross-over is quite common for funds managed by the same sponsor.

- Inability to adjust pricing or other common elements that differ deal-to-deal. This can be updated via amendment, reset clauses or even be governed by annexes or supplements that provide different terms per Fund Group (but adds complexity).
- May be impossible to envision all necessary and future jurisdictions. For example, what if in three years we need to add a Mauritius entity that no one saw coming?
- Different bank groups per Fund Group adds administrative complexity. Also raises voting right and confidentiality issues among other concerns.

Are these the most interesting facilities in the world? Well, that's probably a stretch even for a fund finance junkie. Try an SMA/commingled mixed umbrella on for size with a hybrid conversion feature.

We don't always see umbrella facilities, but when we do, they prefer to come in batches. Last year, Cadwalader closed 13 umbrella facilities. Thus far in 2019, we have closed or are currently working on eight umbrella facilities. Trend or coincidence?

Let us know what you are seeing.

Stay dry, my friends.