

FUND FINANCE FRIDAY

In Case You Missed It—Recently in FFF

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We can pack some serious substance into our Friday publication—not necessarily everyone’s peak time for absorbing a nuanced discussion on complex financial products. Here’s a recap of original substantive pieces from recent issues for easy reference:

Funds with Benefits? Moving to a Balanced Lender Assignment Approach for Irish 110 Companies

The preservation of a lender’s right of assignability is often pitted against perceived tax issues of Irish 110 Companies. We take a deeper look.

Side Letters: A Round-Up of Common Issues for Lenders

We identify the considerations for lenders in reviewing side letters.

Economic Substance – Should a Lender Care? A Cayman Perspective

We give an overview of the Cayman Islands economic substance legislation as it applies to fund finance transactions.

Mexican Capital Call Facilities

While most of the per se Mexican subscription lending to date has been completed solely by local banks in Mexico, we are seeing some material crossover via the joinder of such vehicles to U.S.-based facilities. This market has the potential to make an impact on the U.S. market soon.

“Nothing to see here...move along” or “Something’s happened...let’s stop and look”

We delve into a potential inconsistency in how events of default are addressed in LMA-based fund finance facilities in Europe.

The Intersection of Overcall Limitations and the Investor Default EOD Trigger

We illustrate the link between the Cumulative Default EOD threshold and an overcall limit in the LPA, and how the overcall limit should inform the appropriate Cumulative Default EOD percentage.

Who (When) You Gonna Call?

We review change of control provisions as these relate to indirect entities, such as an investor’s holding company.

E-Signatures? E-Sign Me Up!

The enforceability of contracts executed by electronic means is largely addressed by E-SIGN and UETA. We touch on e-signature questions that arise in the fund finance context.

Cadwalader Fund Finance Market Review

Highlights the Cadwalader Fund Finance market review as published in the LSTA and GLG's International Comparative Legal Guide for Lending and Secured Finance.

April Showers Bring...Umbrella Facilities?

We refresh on umbrellas with a brief overview of a classic subscription umbrella facility, followed by some pros and cons to lenders.

Who's in Front? Structuring Letters of Credit in Europe

Subscription line lenders are increasingly hesitant to take on the role of fronting issuing bank. Although there are variations on a theme, two main methods of dealing with the letter of credit mechanics are emerging.

Show Me the (Manager) Money

Greater attention is being paid to how the management company is financed in the LP diligence process. Lenders likewise are focusing on any vehicle upon which the GP/manager/affiliated investor relies for funding.

(Over) Call Me, Maybe

We break down the numbers on the prevalence of overcall limits in fund documents based on our representations over the past two years.

Please Don't Ignore My (Over)call

An overview of overcall limitations and the implications for facility structure.

The Irish Collective Asset-Management Vehicle

A review of the ICAV, its use in capital call facilities, and dialing in on its application in an umbrella fund structure.

Political Contributions Cease Funding Rights

A look at cease funding rights tied to political contributions negotiated in side letters by state pensions and other municipal investors in the United States.

Navigating Capital Call Facilities

In the standard capital call facility, uncalled commitments are the lender's primary source of repayment. Fund performance and investor behavior, however, can become interrelated. NAV and asset coverage tests are among the contractual protections that can give comfort to lenders.

Problems with 'Promptly'

We highlight the inherent uncertainties of many terms that are frequently used to describe time periods allowed for performance and summarize guiding principles toward accuracy and certainty.

Spotlight on GP-Led Secondary Transactions

GP-led secondary transactions have become a more frequent approach to unlocking liquidity

for both GPs and investors. We review the four most popular types of GP-led transactions and related considerations.

ERISA in Fund Finance

A high-level overview of ERISA and its implications in Fund Finance.

Capital Commitments in the Form of Investor Loans in the U.S.

We review enforceability considerations for investor commitments structured as loan commitments rather than as equity capital commitments.

Joint and Several Liability

The intersection of private equity, cannabis and fund financing appears inevitable. Form credit agreements, however, so far have been limited in considering relevant use of proceeds restrictions or restrictions on qualified borrower joinders.

Waiving Goodbye to Sovereign Immunity in the European Market?

Financial institutions operating in the European fund finance market are increasingly having to familiarize themselves with sovereign or state immunity laws and how these laws interact across multiple jurisdictions. Waivers of sovereign immunity, while helpful, are not always perfect.

Divide and Conquer: New Delaware 'Division' Law Creates Potential Issues for Fund Finance Lenders

Delaware legislation permits an existing LLC to divide into two or more separate and distinct LLCs and allocate assets, rights and liabilities among the new entities. We summarize relevant considerations for loan documents.