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FUND FINANCE FRIDAY

Player Profile – Holly Loftis

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Player Profile

This week we break with convention and interview our own Holly Loftis in the latest installment in our Player Profile series featuring leaders in the fund finance industry. While we've from time to time highlighted our counterparts at law firms elsewhere, we decided it's high time to add a U.S. lawyer's perspective to the discussion. Holly is a Counsel in Cadwalader's Fund Finance practice.

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

In May of 2008, I had just completed my second year of law school and was a summer associate at a law firm in Charlotte, NC. As part of the internship, I did an informal rotation through most of the practice groups that the Charlotte office had to offer. The work that I found to be most interesting involved representing banks and other financial institutions lending to closed-end private equity funds and securing the obligations related to the loans via the fund's unfunded capital commitments and related assets. As the financial crisis developed and things began to take a turn for the worse towards the end of summer, I was appreciative that the firm extended an offer to me for full-time employment upon graduation from law school in 2009. As things continued to deteriorate that fall when I was in my last year of law school, the firm requested that the incoming class of first-year associates "stagger in" over the course of the year. It was a decent-size class as compared to the overall size of the office and would be easier to absorb us slowly. This was really music to my ears – especially since several of my classmates had their law firm offers rescinded that fall. I decided to use the extra time to do something valuable and moved to Boston to obtain an LLM in Banking and Financial Law. After I graduated from the program in May of 2010, I headed back to Charlotte as a first-year associate and picked up right where I had left off in the summer of 2008, working on subscription lines of credit. And the rest is history, as they say.

***FFF*: What do you see as the three most negotiated points in fund facilities these days?**

Sanction, sanctions ... and sanctions.

***FFF*: The number of active lenders continues to grow. Do lenders tend to be more accommodative to win a deal in 2019?**

For a top sponsor, I would say yes.

***FFF*: Does it help the process to involve counsel in drafting the term sheet?**

It does. As an example, I've been in a situation where one of my clients negotiated a term sheet for an SMA without consulting internal or external counsel. The client and the fund both agreed that the "investor" would provide a signed investor consent in favor of the bank. However, there was never a true meeting of the minds between the bank and the fund because the bank did not realize that the actual investor was investing through an SPV. The fund intended that the SPV would sign the consent, and the bank intended that the parent would sign. We got there in the end, but it likely could have been avoided if we had been roped in earlier. The lawyers are going to be very focused on the structure from the outset. There are other structural and jurisdictional considerations we've seen get missed or potentially problematic LPA provisions fail to get mitigated in some way by not pulling in counsel. We understand that involving counsel in the term sheet drives up legal fees for the fund in the beginning, but banks can be specific regarding what type of review they are looking for (*i.e.*, "please just let us know if you think we've missed something," etc.) and, on balance, it may not cost the fund any more than it will when the issue inevitably comes up later.

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

It used to be that funds wanted subscription lines but didn't have sufficient language in their governing agreements or, as lender's counsel, we spent a long time negotiating the substance of security agreements or other protections that the bank may want. That phase, for the most part, seems to have passed, as there is "settled precedent" existing between most counterparties or even law firms involved on both sides of the transaction, both with respect to governing agreements and loan documents. Because the industry has become so relationship-driven, I've noticed that negotiating and closing transactions has become less adversarial in nature and more procedural and goal-oriented. Banks can spend more of their time understanding the fund's business and what their specific needs are rather than sitting on lengthy all-hands calls or trying to understand how Article 9 of the UCC works.

I will also add that there has been a shift over the ten years that I have been doing this with respect to formation of offshore vehicles from the Cayman Islands to Luxembourg. This has caused me to be more involved on the offshore aspects, since Luxembourg doesn't have the 10-year sort-of "settled precedent" that now exists in the U.S. and Cayman markets.

I will also add that as a result of the increased players in this space, if you're a lawyer, it is crucial to understand where your client falls on that spectrum of "I understand everything about how these funds and facilities work" to "this is the first time we've led a deal." I've been told everything from "we understand; move on" to "wait, please slow down since I'm not understanding how the enforcement process works," etc. Ten years ago the spectrum wasn't at broad.

***FFF*: How does the toolkit for success as a fund finance lawyer differ from other finance and capital markets practices?**

In my opinion, it’s somewhat related to the above, because there are times that zealous advocacy means dropping a point that you may otherwise fight for if the transaction didn’t involve parties with a pre-existing relationship. It is difficult to understand this as a junior lawyer because you are trained to fight tooth and nail to get the best deal possible for your client.

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

On the legal side, I still refer people to The LSTA’s Complete Credit Agreement Guide (the latest version). While it is not specific to fund finance, it does an excellent job explaining why each provision is contained in a Credit Agreement. If you are right out of college or new to lending relationships, you may not understand what “match funding” or breakage is. You cannot effectively negotiate or make decisions on comments to a loan agreement without a minimum level of understanding. It is also something that could be read to cover to cover in your “spare time” or simply used as a reference.

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

Travel would be at the top of the list, but, in reality, I mostly spend time with my three tiny tornadoes (they are humans, not dogs). I like to attend and watch a variety of sporting events. My husband and I have gotten into biking as a means of exploring cities that we have traveled to (Pittsburgh, as an example, is actually a really cool place to bike in).

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

I am related to U.S. President Dwight D. Eisenhower via my mother’s side of the family.

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

Can it be a wish? My wish is that in 2020 we have our first SOFR-Credit Agreement subscription line close. The sooner these things start happening, the sooner we can all rest assured that December of 2021 won’t be a complete nightmare.