

## FUND FINANCE FRIDAY

## Roller Coaster Ride

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Another wild week: we saw massive swings on the stock market, political drama over aid packages, and many settling into a work-from-home routine that includes challenges such as home schooling and the need for at least one-third of the world's population to comply with government-mandated stay-at-home orders. All of this in the midst of the greatest public health crisis the world has seen since 1918. Just two weeks ago, many of us were going about our daily lives – traveling, going to shows and sporting events, eating and drinking at our favorite restaurants and bars, and routinely convening face-to-face with colleagues and clients. This seems like two decades ago. Now we can't even find eggs or milk in the grocery store. We have traded suits for sweatpants. Every day is Groundhog Day. My kids ask me each morning if they can go back to school. While I love the enthusiasm (and would certainly welcome the break!), it's difficult to tell them that they will not be seeing their friends or teachers for the foreseeable future (and, in some cases, maybe never again). My daughter's kindergarten teacher made the decision to retire this week. Today, we are doing a Zoom meeting so Parker can say goodbye.

As saddening as this is, our world is overflowing with hope. Kindness and generosity are once again at the forefront. We have banded together to beat our newest challenge as a society and to come out the other end stronger. The light at the end of the tunnel is growing brighter. There are now 2.2 trillion reasons for hope in the U.S. economy. And there is plenty of opportunity in fund finance.

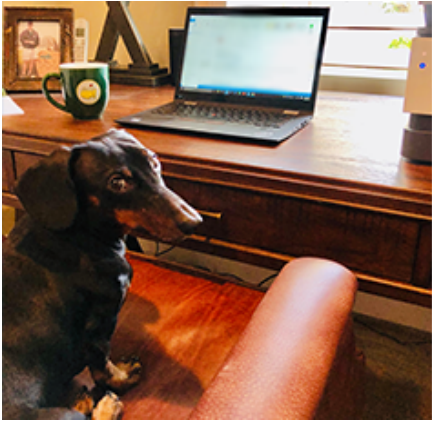
What has this week's hiatus meant for fund finance? A few updates and my observations below:

- The Fund Finance Association has rescheduled the 6<sup>th</sup> Annual European Fund Finance Symposium from July 8, 2020 to October 22, 2020. For more details, see [here](#).
- The Executive Order issued this week by New York Governor Andrew Cuomo does not apply the 90-day forbearance for “any person or business who has a financial hardship as a result of the COVID-19 pandemic” to subscription line borrowers. See our Clients &

Friends memo authored by my partners Scott Cammarn and Mark Chorazak [here](#) that discusses the order and guidance from the New York State Department of Financial Services in greater detail.

- The Fed window is open but, given its short-term nature, is it a viable solution for subscription finance lenders? We think certain domestic subscription loans would qualify as eligible collateral to be pledged. See full criteria [here](#).
- E-signatures are becoming the norm (at least for now). Parties are increasingly relying upon relevant state and national e-signature laws to accept non “wet-ink” signatures during this crisis as a necessity to move transactions forward. Language is also routinely being included in operative agreements regarding the acceptance and validity of such signatures for purposes of binding the parties to the agreement. Some lenders have a preference over certain e-signature formats or platforms. Others are requiring the ability to request verification either via a callback or email if elected. On the whole, however, the market has been extremely receptive and flexible in accommodating signatories during this time of need. My colleague Joe Zeidner touched on e-signature law last week and how this is being papered. You can read it [here](#).
- Many state filing offices are closed for business. This has obviously raised a number of challenges in terms of how and when we can file things such as UCCs. In many cases, e-filing is an option but has required some nimble pivots by parties on the date of closing to adjust to the new system. For instance, many e-filing systems only permit one-page filings. As a result, collateral descriptions are being reduced (without losing substance) to fit within the tiny block on the cover sheet of a UCC filing. Fortunately, everyone has been accommodating, and this has led to no disruption in terms of closings and opinion coverage.
- Some funds are calling capital to have cash on hand and/or be prepared to move quickly on investments as valuations become more attractive, with the intent of redistributing to investors as recallable capital later when things settle. In a few cases, this is triggering potential borrowing base paydowns or significant reductions on borrowing availability in the interim. Other funds, instead of calling capital, are drawing down on their subscription lines for the same purpose or are requesting immediate temporary or long-term line increases in the line size. We are also seeing the exercise or request of a great number of early facility extensions.
- Parties are more focused on execution as market dislocation has led to pricing increases, LIBOR and prime rate floors well above zero and other terms that would have seemed unthinkable just a few weeks ago. Many borrowers have received the memo and are pushing deals forward at lightning speed. In the last two weeks alone, we have closed 9 deals. Nearly 4x that number of deals are extending or increasing during the same period.
- Many borrowers with uncommitted lines are seeking to convert to committed facilities to ensure that liquidity will be there when they need it. These amendments are becoming frequent.
- Many sponsors are adding Qualified Borrowers, with guarantees from the primary funds, to new or existing facilities as a way to provide additional liquidity to underlying portfolio companies. This is likely to be a continuing trend for the foreseeable future.

- Deposit account control agreements, already a rigid and often delay-filled process, are seeing enhanced execution delays, given WFH and related disruptions that are lengthening onboarding, account opening and agreement processing times. Many deals are pushing through and finding workarounds in the event that the account bank is unable to get there by closing.
- Much like the rush to get in-progress deals closed, fundraising is pushing forward with lightning speed to close in new capital for near-term opportunities during the crisis period and to provide additional collateral to support facility increases. It remains to be seen if new (not already in-progress funds) will see a dramatic drop-off in fundraising over the next quarter. New facility origination will likely start to slow some once the current pipeline of deals close, and that will especially be likely if fundraising slows in parallel. That said, we have opened 11 new matters in the last week and are still receiving a modestly healthy level of LPA reviews for new funds.
- There are potentially massive opportunities on the horizon for distressed and “vulture” funds. This may help offset some reduction in new origination.
- The volume of portfolio work is exponentially picking up – facility amendments, waiver, joinders and maintenance are peaking and may soon reach an all-time high for us in the coming weeks. This activity will help offset some lower origination numbers for many and will likely start new trends on deal terms as players adjust to new dynamics in the market.
- Please forgive my typos: now more than ever, I am seeing duplicate language or minor typos being inserted into drafts. I think that this is a side effect of so many of us working from home and editing/reviewing documents on-screen. The ability to print thousands of pages of documents are no longer a luxury for many. We should, of course, catch these, but be forgiving to our colleagues during this time. None are fatal.
- If there is a plus to WFH, it has definitely been getting to know my colleagues on a more personal level. We now see or hear each other’s kids playing in the background, dogs barking, and, oh, the outfits! Before last week, I had never done a Webex or Zoom meeting. My count is now approaching 30.
- We are all extremely fortunate to have the careers that we have, and current events should be a reminder of the role we need to play to helping out the less fortunate. Many are struggling to have even basic needs met. Please consider giving to a local charity that will help those most in need get through this time.
- This is now just an average Friday in the Misson household. I have a new-found appreciation for teachers. I have never been happier that I am marrying one later this year.



Stay blessed, healthy and safe, my friends.