

## FUND FINANCE FRIDAY

**September Fund Finance Update**

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The post-Labor Day acceleration we have come to expect over the past several years has defied COVID and stayed true to form. A terrific volume of new matters have gone under mandate in September; the final numbers look likely to double both July and August. And pipeline metrics forecast a busy closing stretch. So our market continues to be incredibly fortunate and robust. Below are some of our September observations as to transactions and the market generally.

Transaction Terms. The equilibrium remains a little bit in tilt toward the lender, although segments of the market are highly competitive. Lenders are not struggling to book assets right now if their product caps permit, which has enabled pricing to remain generally consistent with the immediate post-COVID elevated levels. Similarly, credit terms have trended marginally tighter, with some of the compromise positions seen in the beginning of the year no longer being accommodated. But as the drift down the credit continuum was measured the last few years, equally so in reverse. Some other deal observations:

- Negotiation on LIBOR successor language has started to settle just as some banks are moving to a hardwired approach or slightly updated versions. Good to see documentation progress as we approach the possible LIBOR sunset next year.
- The committed accordion seems in quarantine, not yet ready to return to the office.
- The third quarter has brought a larger concentration of single investor deals. Our total number of SMAs, which had been down, may end up being even or slightly up from 2019. Same for BDCs.
- We are still seeing bespoke structures: rated feeders for insurance company investors, capital commitments structured as loan commitments, equity commitment backed facilities, several facilities with cross-guarantees, non-pro rata LC issuances based on currency, etc.
- The CIMA deadline for registering Cayman private funds has come and gone. The market has generally settled into a position where all Cayman funds must now be registered as a

condition precedent to joining/closing, as applicable, with covenants to remain in good standing and registered under the law.

Market Dynamics. We continue to see a good number of banks that had pulled back on new lending in March start to meaningfully reenter the market. While rounding out a syndicate for a mega-fund can still be challenging, supply constraints are easing. We are also having a good number of conversations around risk transfer and loss mitigation solutions, which, if consummated, could enable further expansion. Some additional market dynamics of note:

- Lender hiring inquiries have picked up in earnest. This strikes us as a good indicator of macro lender sentiment going forward.
- We continue to see investor suspicion and a potential lack of full understanding around the use and structure of subscription lines, most recently in the September 17, 2020 *PEI* article "Future Fund: Sub lines make it crucial to assess LP creditworthiness" (available [here](#)). The article projects a narrative that, because of subscription lines, non-defaulting investors could be over-exposed to certain investments as a result of other investor defaults. While it is of course true that, if an investor defaults, a likely result is that the other investors take a greater share of the related investment (a commingled fund really could not function through a default effectively if that was not the case), this would occur regardless of whether a subscription line is in place. Fortunately, however, investor funding performance has remained excellent, and we have been consulted on zero investor capital call delinquencies since our last update.
- Some of the lenders who have historically only participated in the higher margin fund finance products are now actively considering the subscription line market to meet client requests.
- We continue to see a greater proportion of NAV-oriented facilities and product innovation in Europe compared to the United States.
- Syndication upsizes of pre-COVID transactions are very challenging with the shift in economics and transaction terms.

FFA University. I sincerely appreciate the over 300 attendees at virtual FFA University this week, quite the turnout for an all-day event. Thanks to the presenters as well, all of whom, of course, contributed pro bono. While we see many ways in which we can improve, we are hopeful the event provided solid foundational training for those new to the industry. Special thanks to the FFA's Michelle Bolingbroke, who single-handedly managed the technology platform and event logistics. I would love to see a European version of FFA U if anyone has an interest in chairing the event.

Self-Back Patting. Congrats to Danyeale Chung of the Cadwalader Fund Finance team, who was recently included in the inaugural edition of *Best Lawyers: Ones to Watch* in recognition of her work in Fund Finance law. And a big high five for Cadwalader's London fund finance team which has been shortlisted for The Lawyer Awards 2020 in the "funds team" category in recognition of its service to private markets managers globally of innovative liquidity solutions. The Lawyer Awards are presented annually to leading law firms and in-house legal teams in the City. Winners will be announced on Nov. 3.

The Fourth Quarter. Looking forward to seeing a lot of successful transactions close for our clients and friends in the 4<sup>th</sup> Quarter. Hope everyone has a great weekend.