



FUND FINANCE FRIDAY

En Fuego

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What's Hot in Fund Finance?

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By Wesley Misson
Partner | Fund Finance

My colleague Leah Edelboim and I had the pleasure of presenting a webinar on “Hot Topics in Fund Finance” earlier this week. Special thanks to Mondaq for hosting us. Below is a brief summary of some of the trends and market updates we touched upon.

Market Trends:

What a difference a year makes! In early to mid-2020, we were buckling up for a deluge of pull-forward transactions as liquidity availability and terms tightened and pricing increased substantially over historical norms. Over the last 12 months since Q3 2020, however, we have seen more normalized activity, with deals tracking at a pace dictated more by fundraising and investment activity (and less by market volatility). Margins have come down quite a bit and stabilized – albeit still a good touch higher than pre-pandemic marks. New players have continued to enter the market. Bankers have moved. Those who pumped the brakes or took a timeout have re-entered the market and are closing deals. It's a frenzied pace with non-stop flow, and we should all be super pumped and proud to be a part of this industry.

Transactions are growing hair once again – the bespoke has returned! Since mid-last year the volume of SMAs, equity commitment deals, hybrids, NAVs and other types of acronym-laden fund financings has picked up by a large multiple from the non-existent early pandemic levels. As practitioners, we are happy to see the complexity creep back in and look forward to more novel structures as the market regains momentum.

In addition to all of this, we are seeing exciting new activity on the ESG front and the continued saga of LIBOR phase-out activity. Revlon also continues to be a good educational point for those unfamiliar with why the credit agreement now includes an erroneous payment clawback clause.

ESG:

We have written and presented extensively on this, but the movement continues to deserve more attention. I also refer to it as a movement, because this is something that has immense social, political and economic footing and could become relevant to almost every fund's strategy. Sustainability promotes longer term goals that help us advance core societal needs and values. It has often been referred to as “smart investing,” “socially-conscious investing” or “stakeholder preference.” I agree with each of these characterizations. The data also supports it.

According to Preqin surveys, 89% of investors think ESG will lead to better returns. Investors want it. Fund managers are listening – 69% of them have already established ESG policies or

are currently working to do so. Banks want it, too. The corporate and reputational benefits of making money while advancing the greater good is compelling.

What are the challenges and how do we get there? So far, the U.S. market has picked up steam as we are nearing double-digit transaction closings for ESG facilities and across multiple clients. These include a variety of performance and use-of-proceeds based facilities and with a near-balanced focus on social and environmental outcomes. The challenges are aplenty. To some degree, this is still the Wild West. The market continues to operate with limited published guidance on how to structure these deals. Consolidation of standards and objectivity concerns persist. We are seeing enhanced reporting and transparency to achieve greater accountability and more effectively measure progress. Be patient. We will get there. Doing nothing serves no purpose and fails to advance the ball. The facilities that are currently closing are trend-setters and will help guide the market and set precedent for years to come.

Of late, we are seeing a push for a two-way ratchet on pricing. A corresponding increase up if the borrower fails to meet its goals gives both parties skin in the game on the loan economics. This makes good sense, particularly where (and rightfully so) failure to achieve goals does not result in any other consequences such as an event of default. Also, look for deals going forward to contain more robust reporting and rights for third-party verification.

My top 10 ESG structuring considerations can be found [here](#).

Revlon:

What a beautiful topic. Well, unless you are on the wrong side of an erroneous payment. You see, historically, when facility agents made a payment in error to syndicate lenders and then asked for the money back, the money was promptly returned. In the case of the Revlon financing, the agent mistakenly wired nearly \$900 million to the lender group. A syndicate that included many non-bank lenders refused to send back more than \$500 million of the mistaken payments.

Long story short, the district court ruled these lenders could keep the money under a “discharge-for-value” doctrine because the payments represented exactly the amount of money due under the loan (the agent intended to only wire out \$7 million in total payments representing principal and interest but mistakenly paid out all the obligations. Oops – this is like a tailor-made Southwest commercial: Want to get away??).

Because of this case, our syndicated credit agreements now include a lengthy erroneous payments section that effectively requires lenders to return any erroneous payments. Failure to do so results in an automatic assignment of the loans to the agent (but not the commitment obligation of the paid-out lender).

As a result, we have seen some reflexive striking of the new language (not okay), some borrower-specific carve-outs (usually okay) and some sunset periods on the right to request a return of the money (maybe okay – but interestingly very rare in a survey of credit agreements done by the LSTA).

Leah has really set herself apart on navigating these issues. If you need help or even a simple tutorial, please reach out.

LIBOR Remediation:

They should make a sequel to the movie *Groundhog Day* with Bill Murray, but instead of being a weather man in Punxsutawney, Pennsylvania, he should play a BigLaw finance attorney working on LIBOR remediation amendments. The sheer volume. The technical nature. The regulatory pressure. Can't stop. Won't stop.

Mike wrote a fantastic article in last week's *FFF* with practical tips on how to communicate and address the difficulties of this issue – you can find it [here](#). This really says it all.

Good luck the remainder of the year as we head into the home stretch.

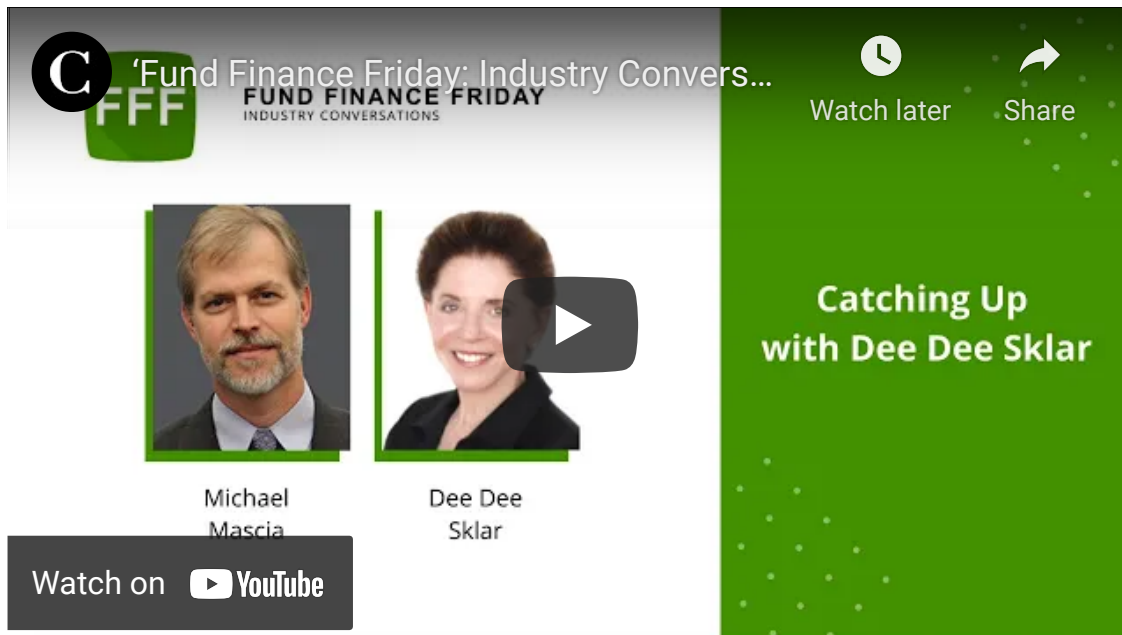
To view the on-demand recording on the Mondaq site, visit [here](#) and log into your account (or create one for free) to access the “View Webinar On Demand” option.

'Fund Finance Friday: Industry Conversations' — Catching Up with Dee Dee Sklar

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In this week's *FFF: Industry Conversations*, Mike Mascia sits down with Dee Dee Sklar. Dee Dee updates Mike on the various projects and Board initiatives that have kept her busy since she first announced her retirement nearly two years ago. Mike and Dee Dee also discuss the importance of the FFA's Women in Fund Finance group.

If you cannot access the video below, please [click here](#) to listen to this episode.



The image shows a YouTube video player interface. At the top left, there is a circular logo with the letter 'C' and the 'FFF' logo. The video title is "'Fund Finance Friday: Industry Conversations...". Below the title, there are two portrait photos: Michael Mascia on the left and Dee Dee Sklar on the right. A play button icon is overlaid on the photos. To the right of the photos, there are two buttons: "Watch later" and "Share". Below the photos, the names "Michael Mascia" and "Dee Dee Sklar" are listed. At the bottom left, there is a "Watch on YouTube" button. The right side of the video player has a green background with the text "Catching Up with Dee Dee Sklar".

Fund Solutions Continued...

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Following the panel hosted by Samantha Hutchinson in July and due to popular demand, Women in Fund Finance is hosting a second panel discussion on alternative liquidity solutions. Join Sam and industry experts as they discuss the latest trends and how private managers are using alternative liquidity to manage their portfolios. Registration is available [here](#).

Women in Fund Finance NYC Hosts Networking Event

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By Cassandra Best
Associate | Fund Finance

Women in Fund Finance and Morgan Stanley Private Wealth Management hosted a spectacular networking event at The National Arts Club in New York City yesterday evening. Dozens of Fund Finance professionals gathered in-person for the first time in well over 18 months to network, mingle and view some of Andy Warhol's iconic works as well as some of his rarely-seen prints.

For those unfamiliar with Andy Warhol and his "pop art," he acquired worldwide fame during the 1960s through his work in many media, including painting, sculpture, filmmaking, publishing and printmaking, with the latter being a central part of his art and his way of viewing the world. Through prints, Warhol explored the aesthetics and mechanics of mass-produced images and popular culture.

While the works on display were definitely worth the visit, it was the community and conversations that took place that were most impactful. We are grateful to Women in Fund Finance, Morgan Stanley Private Wealth Management and The National Arts Club for hosting such a wonderful event and look forward to future gatherings.

Brickfield Recruitment Mid-Year Fund Finance Report

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Brickfield Recruitment's new mid-year report on the global fund finance recruitment market is now available for download [here](#) at Brickfield's website. The report discusses the uptick in demand for new talent across banks and law firms in the last six months and predicts that the post-COVID recovery will fuel continued growth into 2022.

If you are interested in further specialist insight into the fund finance recruitment market as it relates to you or your organisation, email [Rory Smith](#) at Brickfield Recruitment or call +44 7800 963 594.

'We Talk Banking & Finance' — Podcast Episode 1 from Walkers

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In the inaugural episode of *We Talk Banking & Finance*, Walkers' Group Partner Zoë Hallam and Senior Counsel Julia Keppe interview Mohith Sondhi, Senior Director of Debt Finance at OakNorth Bank. Mohith discusses trends in the Fund Finance market and the impact of the global pandemic. To listen, click [here](#).

ICYMI, in last week's *FFF*, Cadwalader's Nathan Parker [interviewed](#) Zoë and Julia about this new podcast series.

On the Move – Fund Finance Tidbits

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On the Move



Catharina von Finckenhagen

Tommy Tuohy

Caleb Holder

Ogier has announced the following promotions to managing associate within its CAYLUX fund finance team: Catharina von Finckenhagen, Tommy Tuohy and Caleb Holder.

Catharina von Finckenhagen. Catharina is a banking and finance lawyer based in the Cayman Islands and specialises in advising lenders on Cayman Islands law and Luxembourg law as part of the Ogier CAYLUX fund finance team. Catharina is a highly regarded lawyer in the fund finance industry, particularly in respect of her dual jurisdictional expertise. Catharina has lived in the Cayman Islands for more than 6 years and previously worked as a lawyer at another offshore law firm in Singapore and at a leading international law firm in London, Hong Kong and the Kingdom of Bahrain. She speaks six languages and is an adventure seeker who recently completed motorcycle tours in France and in her native Norway.

Tommy Tuohy. Tommy is an experienced transactional lawyer based in the Cayman Islands who specialises in fund finance, with particular experience in advising on subscription and capital call financings and fund-of-fund facilities. Tommy is a key member of the Ogier fund finance team and regularly advises lenders on a wide variety of fund financing matters. Tommy has been part of Ogier's banking and finance team for over five years, having previously practiced in Dublin and Sydney.

Caleb Holder. Caleb is a banking and finance lawyer based in Luxembourg who focuses predominantly on fund finance and debt capital markets. Caleb is a key member of the Ogier CAYLUX fund finance team, working closely with colleagues in Ogier's Cayman office, typically advising lenders in the fund finance space. Caleb has been with Ogier for over 5 years, initially joining the Ogier Guernsey office before relocating to Luxembourg. Prior to joining Ogier, Caleb qualified as a lawyer in Australia, gaining substantial experience in capital markets.

Fund Finance Hiring

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Fund Finance Hiring

Partners Group is looking to hire a fund financing professional in its Colorado office, ideally someone with around 7 years of relevant experience at a bank, asset management firm or law firm. This is an opportunity to contribute to Partners Group's growing fund financing platform by negotiating and implementing subscription lines, NAV-backed facilities and SPV-level financings for Partners Group funds. If interested, please reach out to [Justin Skidmore](#).

The State Street Fund Finance EMEA team is looking for a Credit Analyst to help manage a portfolio of Fund Finance transactions. For more information, please visit [here](#) or contact [Kevin Andrews](#).