CADWALADER

FUND FINANCE FRIDAY

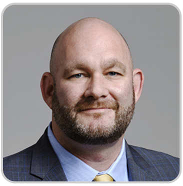
Portfolio Purchase Pointers

July 14, 2023

Table of Contents:

NAV Acquisition Finance for Secondaries Facilities

July 14, 2023



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In the private equity secondaries market, financing is often used to facilitate the purchase of portfolios of interests in private equity funds. These transactions require lenders to underwrite the value of assets that the borrower does not yet own, which gives rise to a specific set of challenges for the lenders. Below we discuss some of those challenges and the steps lenders can take to get comfortable making such loans.

Which entity is acquiring the portfolio? Financings of portfolios of interests in private equity funds are structured around the vehicle that owns the portfolios of funds (the “AssetCo”). Typically, the AssetCo acts as the borrower or as a guarantor of the financing and pledges its account to which proceeds of the fund interests are directed. The investor(s) in AssetCo pledge 100% of the equity of AssetCo as well as the equity of the general partner of AssetCo. In documenting an acquisition financing, lenders will review the details of the purchase and sale arrangement to confirm that the financing has been properly structured around the vehicle that will hold the portfolio of fund interests after consummation of the underlying purchase and sale transaction.

Conditions to closing the purchase transaction. The underlying purchase and sale transaction will be subject to specified conditions precedent that have been agreed between the purchaser and the seller. Since lenders are providing financing in advance of the closing of the purchase and sale transactions, they will want to ensure that when they fund the amount of the initial advance to the borrower, the only open condition precedent to the effectiveness of the purchase and sale transaction is payment of purchase price to the seller of the fund interests. To do this, the lender will need to check the conditions precedent listed in the purchase and sale agreement. These generally include delivery of pre-closing notices, officer’s certificates, authorizing resolutions and legal opinions, in addition to the payment of the purchase price, but may also include other transaction-specific conditions and deliverables. In order to gain sufficient comfort that all conditions precedent have been satisfied (other than payment of the purchase price), lenders can (1) review the finalized closing deliverables provided in escrow, (2) talk to purchaser’s and/or seller’s counsel prior to funding and (3) join a pre-closing call with all relevant parties to the acquisition.

Payment of the purchase price. In most cases, the amount of the loan will be insufficient to cover the entire purchase price for the portfolio fund interests, and as a result, the borrower will need an equity contribution from its investors in order to have sufficient cash on hand to meet its payment obligation. Prior to funding, lenders often want to receive evidence that sufficient equity capital has been contributed in order to top up the debt financing in an amount at least equal to the purchase price. To ensure that payment is effectively made to the seller of the portfolio fund interests, the lender may choose to advance the amount of the loan (1) directly to seller itself, (2) to a “blocked” deposit account of the borrower where the lender has to approve the subsequent payment transfer to the seller or (3) to a deposit account of the borrower subject to a standing instruction with the applicable account bank to transfer the deposited loan amount to the account of the seller by a specified time.

Conditions to transfer the underlying assets. Separate and apart from the conditions to the closing of the purchase and sale transaction as between seller and borrower, steps will need to be taken to transfer ownership of the underlying private equity fund interests from seller to borrower. Some of the more common conditions to a valid and effective transfer of a private equity fund interest are: (1) the execution of the transfer agreement by the borrower, the seller and the general partner of each underlying fund, (2) delivery of the borrower’s subscription documentation, (3) execution by the borrower and the general partner of each underlying fund of a side letter (if any), (4) the execution of any required third-party consents, such as the GP’s consent to the transfer of the ownership interest (which may be included in the executed transfer agreement or a separate side letter) and (5) an updated register of owners on file with the fund’s administrator. Although final executed copies of such documents may not be available until after the closing of the purchase and sale transaction, lenders will want to have comfort that the general partners of the underlying funds have agreed to the transfers and will process the transfers promptly following closing. Lenders may ask to review executed documents in escrow, or at least review final and agreed versions of the documents if escrowed deliverables are not otherwise available. Lenders may also seek assurances from purchaser’s counsel and/or counsel for the underlying fund general partners that documents are in final and agreed form and will be executed promptly following closing of the purchase and sale transaction. For some loans, law firm letters are issued providing assurances as to the foregoing.

Dealing with failed transfers of underlying fund interests. Given the inherent risk to the lenders in advancing funds to an entity that does not yet own any of the portfolio fund interests that will ultimately support the loan obligations, the credit agreement will include a repayment mechanic and other protective measures if for any reason some or all of the fund interests do not effectively transfer to the purchaser promptly after such loan amounts have been advanced. In the event that any portion of the fund interests failed to transfer over to the borrower, those assets would then be excluded from the borrowing base. If the aggregate value of the fund interests that did transfer over is insufficient to support the outstanding loan obligations, a mandatory prepayment of a portion of the loan amount will be required. Until such mandatory prepayment is made, additional protective measures may be implemented – the borrower will be restricted from using any cash on hand for other purposes, including distributions to equity holders and payment of management fees, and the accounts pledged to the lenders may also be subjected to lender control.

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While the specific risks and requirements for loans used to finance acquisitions of secondaries interests vary on a deal-by-deal basis, this article highlights the importance of the investment diligence process and proper structuring of the loan documentation to align with the terms of the underlying purchase and sale transaction.

ESG in Fund Finance: Spotlight on Sustainability-Linked Loans

July 14, 2023

Cadwalader partner **Sukhvir Basran** and special counsel **Katie McShane** will lead a Strafford CLE video webinar this Tuesday on ESG in fund finance, with a specific focus on how to structure and draft Sustainability-Linked Loans ("SLLs") in order to help achieve ESG-related objectives.

Sukhvir and Katie will discuss the LSTA and LMA Sustainability-Linked Loan Principles and related guidance (SLLP Guidance), and the recently published LSTA and LMA SLL drafting guidance. In addition, the webinar will examine the challenges faced in selecting key performance indicators (KPIs), setting of sustainability performance targets (SPTs), agreeing on sustainability-related reporting obligations, the role of the sustainability agent, consequences of sustainability-related breaches, and how to identify and prevent greenwashing.

SLLs are any type of loan instruments that incentivize the borrower's achievement of ambitious, predetermined sustainability performance objectives. SLLs therefore encourage borrowers to contribute to sustainability. For such a role to be played and for the market to thrive, integrity is of the utmost importance.

The webinar outline includes:

- Why funds and lenders are increasingly including ESG criteria in commercial loans
- Use of proceeds loans and sustainability-linked loans
- The core components of the SLLP
- SLL Model Provisions – best practice
- Challenges in structuring SLLs
- Mitigating the risk of greenwashing
- What's next for SLLs?

In addition, the webinar will review these and other relevant issues, including:

- What are the benefits to borrowers and lenders in addressing ESG considerations in a loan transaction?
- What are the LSTA and LMA Sustainability Linked Loan Principles and the guidance that has been published with respect thereto, and what are the key differences?

- What is the LSTA and LMA guidance on drafting SLL-related provisions for U.S.- and UK-style credit agreements?
- How to structure ESG in Fund Finance. For example, what are some sample ESG targets used in Fund Finance, and how do these vary depending on the type of facility?
- The role of the sustainability agent.
- Determining reporting requirements.
- How can the failure to meet performance targets be addressed in the loan documents?
- What is greenwashing and how can it be prevented and mitigated against?

You can register **here** for Tuesday's program, which will be held from 1:00-2:30 p.m. EDT.

PLI Webinar: A Field Guide to Fund Finance

July 14, 2023

PLI will be hosting a webinar titled "**A Field Guide to Fund Finance**" on Wednesday, July 19 at 1 p.m. EDT. This program will serve as a comprehensive introduction to fund finance and a gateway to the advanced topics covered in PLI's flagship Fund Finance 2023 conference to be held in October.

Participants will gain insights into various types of fund financing, including subscription line facilities, secondaries financing, NAV and preferred equity financings, as well as insurance-related fund raising strategies such as collateralized fund obligations and rated feeder structures.

Matt Kerfoot from Proskauer will moderate and will be joined by panelists Akhil Bansal from Carlyle, Andie Goh from Ares, Dee Dee Sklar from Women in Fund Finance and Ramya Tiller from Debevoise.

Fewer Private Equity Funds Closed in the First Half

July 14, 2023

No one will be surprised to hear that the initial read on first half fundraising is pointing lower for 2023.

Pitchbook reports U.S. private equity fundraising of $153 billion through June, which annualizes to a down 19% from the prior year. The challenging environment is more apparent in fund count, with a year-to-date total of 160, down from 645 for full-year 2022. We expect that the fund count number may inch higher as the dataset is rounded out but likely not enough to change the trend. While public equity markets have rebounded nicely since March, private deal value and exits remain soft, pointing to further fundraising challenges in the rest of the year.

The full report is available **here**.

Inaugural WFF Golf Outing

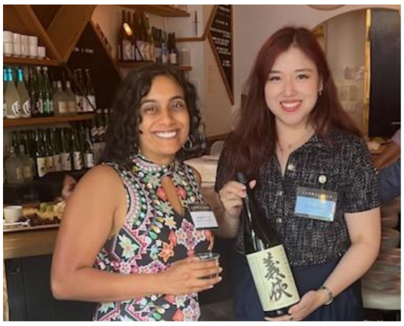
July 14, 2023

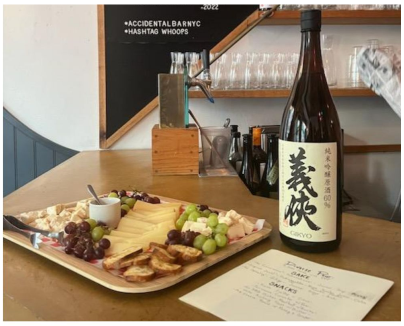
As one of the lead sponsors of the inaugural WFF US: Tee Time Golf Outing on Thursday, July 20, we are looking forward to seeing many of our friends at the Dyker Beach Golf Course in Brooklyn. The event will take place from 11 a.m. – 5 p.m. Other lead sponsors are Assured Guaranty and TriState Capital.

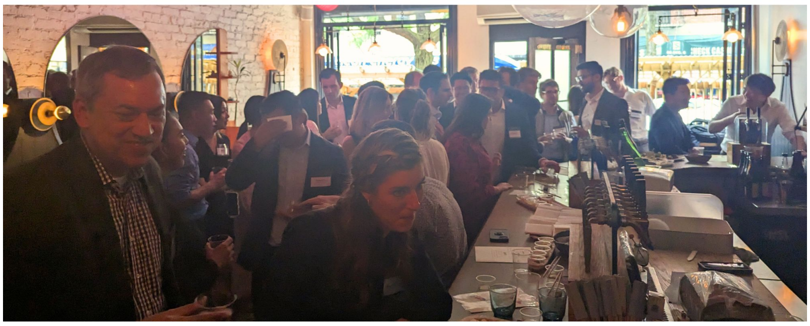
There may still be slots available. Please reach out to **info@womeninfundfinance.com**.

Diverse Pour: An Evening of Networking and Sake with DFF

July 14, 2023







Diversity in Fund Finance ("DFF") hosted an evening of networking and sake tasting at **Accidental Bar** in the East Village last month.

Natasha Puri (Director, Lloyds and Global Chair of DFF) and Fiona Cheng (Associate, Cadwalader and Committee Member of DFF) opened the event by introducing the DFF mission, which is focused, among other things, on providing an opportunity for diverse fund finance professionals to network and build connections, as well as an open, inclusive and respectful space to connect based on shared perspectives and experiences.

Austin Power, sake sommelier and owner of Accidental Bar, led an introduction on the three sakes on tasting before mingling with the attendees to provide tailored insight into the world of sake.

The event was the first in-person DFF event for the 2023 calendar year and saw enthusiastic attendance and participation by industry members from a range of firms and other institutions.

For more information about DFF, please click **here**.

FFA to Host European Cocktail Reception

July 14, 2023

The FFA will host the 2023 European FFA Cocktail Reception, a premier networking event bringing together industry professionals from across Europe, on September 14 from 7:00-11:30 p.m. at the De Vere Grand Connaught Rooms in London. Tickets are £125.00.

You can register **here**.

Save the Date: FFA Fall Soiree in New York

July 14, 2023

Be sure to save the date – Thursday, November 16 – for the FFA Fall Soiree in New York – an opportunity to come together in a relaxed and vibrant setting. The event will be held at City Winery NYC, beginning at 6 p.m.

Stay tuned for the official invitation with detailed information, including RSVP instructions.

Fund Finance Hiring

July 14, 2023

Fund Finance Hiring

Fitch Ratings is seeing strong demand for subscription finance ratings following publication of its **new rating methodology**, and so the company is adding staff to support this initiative. Fitch just posted five new positions in New York and London:

NY - **Analyst/Senior Analyst**
NY - **Associate Director**
London - **Analyst/Senior Analyst**
London - **Associate Director**
London - **Director/Senior Director**