GLOBAL LEGAL INSIGHTS

Fund Finance 2026

10th Edition

Contributing Editor:

Wes Misson

Cadwalader, Wickersham & Taft LLP

FUND FINANCE association

glg Global Legal Group

TABLE OF CONTENTS

Jurisdiction Chapters

Securitisation: subscription lines and credit NAVs

Adam Burk
Ian Luby

Travers Smith LLP

Participants in the European fund finance market continue to show growing interest in (1) fund finance products structured as securitisations, such as NAV facilities to credit funds or asset-based lending ("ABL") facilities, and (2) the securitisation of existing fund finance loan books.

These products often inescapably (and are sometimes deliberately structured to) fall within the EU and UK regulatory definition of a "securitisation". For bank and insurance investors in particular, this treatment may unlock better regulatory capital treatment. Borrowers may in turn see some of this benefit in reduced funding costs and in larger investor pools than those available to fund non-securitised products.

The structure of and underlying commercial rationale for these transactions varies enormously. NAV facilities to credit funds may be put in place to achieve internal rate of return ("IRR") benefits for long-term leverage or to originate assets. Meanwhile, a bank entering into a securitisation of its subscription line book may be seeking to raise cash, to free up capacity on a balance sheet limited by regulatory capital constraints or to reallocate or recalibrate the risk profile of that book.

Our team combines fund finance and securitisation experience to advise all categories of fund finance market participants on structuring and documenting transactions to address these and related considerations.

Whatever the structure or commercial terms of the transaction, a largely common EU and UK securitisation legislative framework applies to in-scope deals with certain European or UK nexuses. This chapter sets out that framework, including a description of the obligations of parties under in-scope transactions. We then look at securitisations of subscription line facilities, and then credit fund NAV facilities, in turn. Finally, we look at upcoming changes in the regulatory regime and at what may be next in this space.

Synthetic securitisation techniques (including to move asset risk from an originating entity via the use of credit derivatives) are widely used by banks in the European market (and are applied by banks across their loan books) but are not fund finance-specific products. They are therefore not considered in detail in this chapter. The use of securitisations designated as simple, transparent and standardised ("STS") are also outside the scope of this chapter, given that the STS classification is currently unsuited to the securitisation of fund finance assets.

The Securitisation Rules – overview of the regulatory framework

Securitisation has been subject to a progressive volume of legislation over the past 15–20 years since the global financial crisis. In its aftermath, rules specifically applicable to investors in securitisations became effective, with three regimes entering into force through European directives, applicable to banks (under the then-Capital Requirements Directive), insurers (under the Solvency II regime) and alternative fund managers (under the Alternative Investment Fund Managers Directive).

Those parallel regimes were strengthened (including so as to apply to those entering into securitisations) and replaced in the EU by the EU Securitisation Regulation on 1 January 2019. With related secondary and tertiary legislation and certain amendments since becoming effective, this regime continues to apply in the EU and is commonly referred to as the "EU Securitisation Rules".

The EU Securitisation Rules historically directly applied in the UK pre-Brexit, and were initially "on-shored" to the UK without substantive modification on Brexit completion day. The UK has, since that date, progressively developed its own regime, although the two regimes remain, for the time being, similar in structure and scope.

The UK's regulatory framework now consists of the relevant parts of the Financial Services and Markets Act 2000 (as amended for these purposes with effect from 1 November 2024), together with the Securitisation Regulations 2024, alongside the securitisation part of the Prudential Regulatory Authority Rulebook and the securitisation sourcebook of the Financial Conduct Authority Handbook. Together, this web of regulation comprises what is commonly referred to as the "UK Securitisation Rules" (together with the EU Securitisation Rules, the "Securitisation Rules").

In this chapter, because of the ongoing similarities between the EU Securitisation Rules and the UK Securitisation Rules (and because many transactions are structured so as to comply with both), we generally do not distinguish between the two.

How do the Securitisation Rules define a "securitisation"?

The EU Securitisation Rules and the UK Securitisation Rules similarly define a "securitisation" as a transaction or scheme, whereby the *credit risk associated with an exposure or pool of exposures* is tranched, having all of the following characteristics:

(a) payments in the transaction or scheme are *dependent upon the performance of the exposure or pool of exposures*;

(b) the *subordination of tranches* determines the distribution of losses during the ongoing life of the transaction or scheme; and

(c) the transaction or scheme does not create exposures that possess all of the following characteristics:

 (i) the exposure is to an entity that was created specifically to finance or operate *physical assets* or is an economically comparable exposure;

 (ii) the contractual arrangements give the lender a substantial degree of control over the assets and the income they generate; and

 (iii) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise.

This is a technical definition and it is worth pausing to consider the key operative parts of it (in italics):

- A transaction involving "*credit risk associated with an exposure or pool of exposures*": the securitisation regime applies only where there is *credit* risk on the underlying assets (or "exposures" in the words of the Securitisation Rules). An ABL facility is likely to satisfy this requirement because there is credit risk in the loans securing that facility (i.e. the risk that the underlying obligors in respect of those underlying credit assets default). By contrast, a NAV facility to a private equity real estate or buyout fund is less likely to satisfy this criteria because (depending on its strategy) risk in respect of the underlying assets is more in the nature of market or management risk.

- Payments in the scheme must be "*dependent upon the performance of the exposure or pool of exposures*": securitisations depend on the performance of the credit assets they finance. In other words, in a typical securitised ABL facility, if there are defaults on the underlying credit assets, those defaults will eventually cause a principal and/or interest loss on the securitisation (after any credit enhancement features of the deal). If a transaction is instead supported by a guarantee or has recourse to substantial other assets (e.g. uncalled capital of the fund borrower), it does not depend on the assets underlying it and will not constitute a securitisation.
- There must be "*subordination of tranches*": a transaction involving a single senior loan will not be a securitisation. However, if there is, for example, (1) a senior and a mezzanine tranche, and/or (2) subordinated debt or hybrid equity/debt instruments extended by an affiliate of the borrower, this criterion will be met.

Many of the securitised fund finance products we see fall naturally within this definition. In an ABL facility, for example, credit assets are being secured. There is no recourse to the sponsor by way of a guarantee or equity commitment letter. There are invariably multiple tranches because lending is made to a special purpose vehicle that is commonly only able to fund its acquisition or origination of credit assets partly through senior debt (which may only fund 50–60% of the value of the assets it holds). It must issue subordinated debt or hybrid instruments to an affiliate (often its parent fund) to finance the remaining 40–50% of the asset value.

So, what if the transaction is a securitisation?

We have alluded above to the benefits of a transaction falling within the Securitisation Rules, including that funding may be less expensive, and investor pools may be wider, than a transaction not in scope of the Securitisation Rules.

However, in-scope transactions impose significant obligations on transaction participants, including on:

- the following sell-side parties:
  - the originator (i.e. a person directly or indirectly involved in the original creation of the asset, or a person who has acquired the asset for its own account and securitised it);
  - the sponsor (i.e. a person that establishes and manages a securitisation of assets but does not securitise its own assets); and
  - the issuer (i.e. the entity issuing to investors debt instruments backed by performance of the underlying assets), which is typically a special purpose vehicle; and
- buy-side parties such as institutional investors (including banks, occupational pension funds, insurance and reinsurance undertakings and alternative investment fund managers) who take "securitisation positions". These are most obviously lenders into securitisations, but also include hedge counterparties and liquidity facility providers.

Securitisation Rules – obligations on transaction participants

The extent to which participants have obligations under the EU Securitisation Rules and/or the UK Securitisation Rules will depend on a number of factors, including where the party is established and by what entity (if any) it is regulated.

However, the territorial scope of the Securitisation Rules is generally such that either a buy-side or sell-side party having a European or UK nexus is sufficient to engage the relevant Securitisation Rules (and often both regimes).

The Securitisation Rules set out detailed obligations applicable to both buy-side and sell-side parties. Below we summarise the three most material of those obligations.

Buy-side obligation: due diligence requirements

Due diligence requirements applicable to investors broadly require that the transaction structure, and the portfolio of securitised assets, be diligenced (alongside a requirement for investors to verify the credit-granting standards and processes of the originator under the transaction).

In addition to applying to traditional categories of lender investors in transactions falling under the scope of the Securitisation Rules (such as banks and credit funds), the due diligence requirements under the Securitisation Rules also expressly apply to insurance and reinsurance undertakings, and to trustees or managers of certain occupational pension schemes, in each case by virtue of such entities being defined as "institutional investors" under the applicable Securitisation Rules.

(Primarily) sell-side obligation: risk retention requirements

The originator, sponsor or original lender in a securitisation is required to retain at least 5% of the net economic interest in the transaction (the "risk retention requirement").

In fund finance transactions, this is often achieved by providing a subordinated loan or note to the relevant special purpose vehicle. In an ABL context, this might involve a parent fund entity ensuring that the convertible loan notes and/or subordinated debt it holds in the relevant securitisation special purpose vehicle exceed(s) the 5% threshold. The Securitisation Rules also, however, permit satisfaction of the risk retention obligation via other methods, including retention of a vertical slice of exposures or by maintaining exposure to a random selection of assets.

Compliance with risk retention rules is not only a direct obligation on the originator, sponsor or original lender, but also a due diligence requirement on institutional investors, i.e. these persons must ensure, prior to taking a securitisation position, that risk retention arrangements comply with the Securitisation Rules.

(Primarily) sell-side obligation: transparency requirements

Ongoing transparency requirements also apply under the Securitisation Rules, whereby the originator or issuer (or servicer on its behalf) is required to make, among other notifications, regular (usually quarterly) reporting on specified templates in respect of asset-level and transaction-level data.

These requirements apply in addition to any asset-level reporting requirements that an investor may contractually require under the facility. They are onerous in requiring asset-by-asset reporting on templates including dozens of individual data fields, resulting in reports comprising thousands of data points. Many originators, particularly in the ABL space, increasingly outsource compliance with these requirements to third-party providers to reduce operational burdens.

Although proposals to simplify the reporting process under the EU Securitisation Rules and the UK Securitisation Rules are ongoing (particularly in respect of private securitisations), market participants should be aware of the cost and administrative burden of compliance with the Securitisation Rules' transparency requirements.

Again, these requirements apply directly to originators, but also form part of the upfront due diligence required to be undertaken by institutional investors in securitisations.

Use case: securitisation of subscription line facility books

Fund finance market participants' interest in Europe has recently focused, in particular, on the securitisation of subscription line (or "capital call") facilities.

Due to their typical nature as revolving credit facilities, subscription line facilities were traditionally the preserve of banks, with sizeable books held by those institutions. Subscription line facilities have, for many years, been an attractive product for these banks to offer (in particular due to their extremely low risk due to historically negligible default rates).

While subscription line facilities did not necessarily generate high returns for financing banks, they have been considered (as is the case with many corporate revolving credit facilities) to be a useful relationship offering to the largest fund managers.

However, evolving capital requirements under Basel 3.1 (requiring banks to set aside capital relative to their assets) have constrained balance sheets and made it more difficult for certain lenders to justify maintaining exposure to these assets at the expense of other (more profitable) lending.

Securitisation has offered a partial solution here in allowing banks to move these assets off their balance sheet (assisting with their regulatory capital positions) and in some cases to raise cash funding. Most publicly available examples involve banks partnering with private credit funds, but banks have also (outside of Europe) raised securitisation debt of the type more along the lines of "traditional" securitisation debt extended to mortgage, credit card and unsecured consumer lenders.

For example, in December 2024, HSBC and ICG established a $240 million subscription line funding facility structured as a securitisation, with ICG citing the use of securitisation technology in this respect as a key product in accessing liquidity and providing cost benefits to ICG funds.

Other facilities involve more traditional techniques such as forward flow, where a seller bank transfers title to loans to a credit fund, which may then go on to securitise those loans. This may require cooperation-style undertakings from the originating bank, for example, to continue to service the loans and provide required reporting (see *(Primarily) sell-side obligation: transparency requirements* above).

To date, public securitisations of subscription line facilities (i.e. those involving the issuance of bonds to a wider investor base, rather than bilateral or club deals) have yet to become common in the European market. However, European funds, their investors and advisers have continued to observe with interest developments in this space in the US market, in particular the Goldman Sachs-sponsored Capital Street Master Trust 2024-1 public securitisation, established in late 2024 and backed by subscription line facilities. Master trust-style facilities are currently common in the European securitisation market for credit cards and other revolving assets, and it will be interesting to see whether this technology will be adapted in the coming months to publicly securitise loans.

Use case: credit fund NAV facilities or ABL facilities

In recent years, the scope and purpose of NAV facilities entered into by our clients in the European market have expanded to focus increasingly on credit strategies.

We have seen sponsors deploy these facilities for a number of reasons. However, unlike NAV facilities in respect of certain other assets (particularly certain private equity NAVs that can be used to fund distributions to investors where M&A or fundraising conditions are restricted), credit fund NAVs are more likely to be deployed as long-term leverage to support the acquisition of additional assets and increase investors' IRR.

Credit fund NAVs are unique among NAV products in that they are more likely than other NAVs (including private equity, real estate and structured NAV facilities) to fall within the definition of "securitisation" under the Securitisation Rules.

Commercially, we see these differing from other NAV products in a number of ways.

Pre-lend matters

The differences between credit fund NAVs and other NAVs start early in the lifecycle of these loans. Please see the table below, outlining differences in the purpose of these arrangements and the due diligence lenders conduct:

	Other NAVs	Credit Fund NAVs
Purpose: Why do sponsors enter into these NAV facilities?	May include funding follow-on acquisitions, recapitalisations, restructurings or (most controversially) distributions to the fund's investors (e.g. where M&A or fundraising conditions are difficult and sponsors wish to return value to investors ahead of exits).	The nature of credit assets means that many of the purposes in the left column are not applicable. For example, credit assets are: (i) unlikely to require restructuring expenditure by the sponsor; and (ii) likely to generate consistent returns through interest and amortisation, so sponsors are not reliant on proceeds on exit; credit fund NAVs are unlikely to fund distributions. Credit fund NAVs are more likely to be deployed as long-term leverage to support the acquisition of additional assets and increase IRR. Multi-currency facilities may also provide sponsors with a form of cross-currency hedging where the underlying credit assets are denominated in different currencies.
Diligence on individual fund assets: To what extent do lenders look at individual assets securing the NAV facility in their pre-lend due diligence?	Portfolios in private equity, infrastructure and real estate NAVs typically comprise 15 assets or fewer. This limited number of assets makes diligence on individual investments both practical and important. This diligence can be extensive and usually both commercial (e.g. often involving calls with management) and legal (e.g. on the holding structure between the fund and the asset, any asset-level debt and any joint ownership arrangements).	Extensive diligence on individual assets is less practical. Portfolios are more granular and may include dozens or hundreds of assets. Legal due diligence is often more straightforward as: (i) ownership structures are often simpler (in many credit fund NAVs, all assets are held by a single vehicle); and (ii) particularly in larger pools, diligence on individual assets (to the extent undertaken at all) is likely to be limited to transfer restrictions under the underlying debt instruments, which may impact on the grant of the proposed security package and/or enforcement.
Wider diligence: Beyond individual assets, what is the focus of lenders' due diligence?	Fund strategy, management and historic realisations.	As left, with additional focus on the fund's credit, underwriting and collections policies.

LTV calculations, eligibility criteria and concentration limits

Once a NAV facility is in place, the loan-to-value ("LTV") ratio is a key metric. However, in practice, in NAV facilities of all descriptions, not all assets are counted in full in calculating LTV. Some assets are excluded entirely or partially, either initially or during the life of the NAV facility. Again, the approach varies between credit fund NAVs and other NAVs:

	Other NAVs	Credit Fund NAVs
Day 1 exclusions: How common is it for assets to be excluded from LTV calculations from the start?	Common and often driven by issues identified in due diligence. For example, an asset may be excluded if the NAV facility's security (or enforcement of that security) would be prohibited by or conditional upon regulatory or co-investor consents.	These issues are less applicable in credit fund NAVs. For instance, assets are not typically regulated or co-owned under joint venture arrangements. The starting point is commonly that all assets are eligible, with assets typically excluded (in whole or in part) only through eligibility criteria or concentration limits focused on asset characteristics. For example, all second-lien loans in a credit fund NAV may be excluded, or concentration limits may provide that no more than, for example, 20% of the NAV may comprise these second-lien loans.
Eligibility criteria and concentration limits: Eligibility criteria may provide that certain assets are not eligible to be counted towards LTV at all, while concentration limits may restrict the number or weighting of certain assets credited to LTV. These are present in all NAV facilities, but the approach differs.	Tend to be shorter form (often five to 10 criteria in total) and focused on: (i) high-level parameters on assets, e.g. for real estate NAVs, "commercial property in the UK (excluding property under construction)"; and (ii) material investment events disqualifying assets from counting towards the LTV, e.g. insolvency events affecting that asset. The addition of new assets to the eligible pool may or may not require lender consent.	As left, but criteria and limits are typically more extensive and detailed. In return, new assets satisfying these criteria are more likely to be automatically eligible without lender consent. Generally, homogenous pools (i.e. where all assets are originated under a single underwriting strategy) typically require less extensive concentration limits; diverse pools may require concentration limits, e.g. to address jurisdiction risk or to place limits on certain categories of debt (e.g. second-lien loans).
Calculation of LTV and maximum drawable amount.	Typically straightforward. Calculating LTV and working out the maximum amount that may be drawn typically involves applying the (reasonably straightforward) concentration limits and eligibility criteria set out above to the fund's investments.	More complex, in that even eligible assets compliant with concentration limits are often subject to an advance rate mechanism (which, in practice, limits the amount of LTV credit given to that asset). For example, if credit assets that are high-yield bonds are assigned an advance rate of 25–40%, even if a high-yield bond is an eligible asset that complies with concentration limits, only 25–40% of its outstanding balance will be eligible to be counted towards LTV calculations and drawn against.

Maximum LTV thresholds and security

Focusing on downside scenarios and protections for lenders, there are significant differences between credit fund NAVs and other NAVs in respect of maximum LTV thresholds and the security package available to lenders upon a borrower default:

	Other NAVs	Credit Fund NAVs
LTV thresholds: What are the maximum permitted LTVs and consequences of breach?	Maximum ranges are typically in the region of 20–40%, with progressively severe consequences in this range as LTV increases. At the bottom of this range, "softer" consequences apply (rather than a "hard" event of default), including cash sweeps and controlled sales of assets to deleverage and reduce LTV on extended timeframes.	Maximum permitted LTVs tend to be higher, with maximum LTVs in the range of 60%+ sometimes seen. In part, this reflects that (unlike other NAVs) there is unlikely to be any leverage at asset level. However, "soft" consequences on breaching these limits are less common than in the case of other NAVs; immediate deleveraging may be required, with a "hard" event of default if this is not achieved.
Security: Where the NAV facility is secured, what does the package typically look like?	Complex asset holding structures and issues identified in diligence may mean that security packages are bespoke, structured and may not extend to all fund assets (including those counted towards LTV). Multiple security documents and layers of security may be required to achieve a lender's secured claim over assets.	Security tends to be more straightforward. For instance, if all credit assets are held in a single vehicle, security may be as simple as a single security instrument granted by that vehicle.

NAV facilities of all asset classes are increasingly popular and, within asset classes, increasingly standardised as market practices develop. However, we expect the important differences above between credit fund NAVs and other NAVs to remain. Credit fund NAVs therefore remain in an (asset) class of their own.

Looking forward: changes to the EU Securitisation Rules and UK Securitisation Rules

In a fund finance context, it remains crucial for transaction participants to understand the roles played by fund parties and investors in transactions subject to the applicable Securitisation Rules, and the obligations imposed by the legislative frameworks on these parties (including with respect to due diligence, transparency and risk retention obligations).

Aspects of the EU Securitisation Rules and the UK Securitisation Rules continue to develop and to diverge from each other, but regulators and legislators under both frameworks have continued to publish consultations and proposals to create cost and operational efficiency for sell-side parties and investors under in-scope transactions (thereby broadening the scope of liquidity available for investment in securitisations of fund finance products in the European market), while ensuring that the main financial stability safeguards established following the 2008 financial crisis and codified under the UK and EU securitisation frameworks (including the risk retention requirement, the ban on re-securitisation and the requirement for robust credit-granting standards) will continue to apply.

EU securitisation framework

On 17 June 2025, following its call for responses from market participants to its Q4 2024 consultation on the functioning of the EU securitisation framework, the European Commission adopted measures to make the EU securitisation framework simpler and more fit for purpose. These measures relate largely to proposed amendments to the EU Securitisation Rules, including removing the requirement for investors to comply with the verification requirements in Article 5(1) and Article 5(3)(c) where the sell-side party is established and supervised in the EU, thereby allowing for simplified due diligence for certain (particularly senior) tranches in securitisation transactions and reducing the scope of mandatory data fields required for reporting. The European Commission's statement also proposed amendments to the Capital Requirements Regulation (including in relation to determination of institutions' liquidity cover ratio and the net stable funding ratio in the context of securitisation positions), which specifies, among other things, the capital requirements applicable to banks in order to hold their securitisation exposures.

The European Commission's proposed amendments have been submitted to the European Parliament and Council of the EU; however, no formal deadline has been established for their implementation.

UK securitisation framework

Similarly to the efforts of the European Commission in response to market participants' feedback, the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA") have established a principles-based approach to reform of the UK Securitisation Rules. The FCA published a statement on 15 July 2025, pledging to review the UK Securitisation Rules during Q4 2025 to "simplify and remove barriers to issuing and investing", in advance of finalising changes in H2 2026.

Looking forward: what's next more generally?

Market participants' use of securitisation technology in the European fund finance market continues to grow at pace, and sell-side parties and investors alike have responded with interest to recent examples of private securitisations of fund finance assets and the potential to use securitisation technology to unlock access to a broad investor base with deep pockets of capital ready to be deployed. Developments by rating agencies of rating methodology for fund finance investments have also allowed investors to better understand key risk factors in relation to credit fund NAV and securitised subscription line facilities.

We expect to see increasing use of securitisation techniques in respect of subscription line facilities in the European market, as well as increased awareness of the impact of the Securitisation Rules on credit fund NAV facilities. Transaction parties considering the use of securitisation technology in the context of fund finance assets will, however, need to continue to carefully consider fund structures and the roles and obligations likely to be imposed on fund entities and investors in in-scope transactions (as well as the cost and operational implications of complying with the EU Securitisation Rules and/or the UK Securitisation Rules), including ongoing reporting obligations.

Adam Burk

Tel: +44 20 7295 3934 / Email: adam.burk@traverssmith.com

Adam is a partner in the Finance Group at Travers Smith where he advises funds, financial institutions and corporates on a range of financing matters, with a particular focus on structured debt and equity. Adam has extensive experience in fund finance, where he advises borrowers and lenders on a range of NAV, preferred equity, hybrid and GP/management fee facilities.

Ian Luby

Tel: +44 20 7295 3211 / Email: ian.luby@traverssmith.com

Ian is a senior counsel in the Finance Group at Travers Smith. Ian has extensive experience advising private equity and credit funds, financial institutions and corporates on a range of fund finance, structured finance (including public and private securitisations in the credit card, auto loan and real estate sectors) and leveraged finance transactions.

Travers Smith LLP

10 Snow Hill, London EC1A 2AL, United Kingdom

Tel: +44 20 7295 3000 / URL: www.traverssmith.com

Global Legal Insights – Fund Finance provides in-depth analysis, insight and intelligence across one industry viewpoint, 31 expert analysis chapters and 19 jurisdictions, covering key industry trends and developments including:

- Fund formation and finance
- Net asset value facilities
- Hybrid facilities
- Subscription lines
- Enforcement
- Secondaries
- Ratings
- Collateralised fund obligations

Written by leading industry participants from across the industry, this is the definitive legal guide for the global fund finance industry in 2026.