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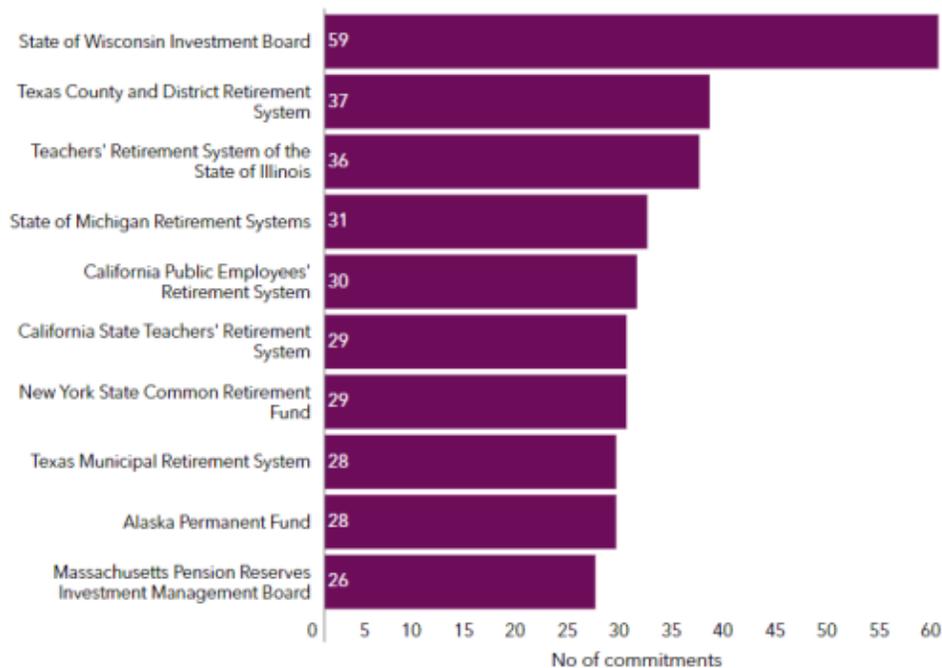
## Subscription Credit Facility Investor Pools: “The Old Familiar Faces”

By [Ellen McGinnis](#) and [Brent Shultz](#)

Private Equity International recently released their report on the busiest LPs of 2022.<sup>1</sup> Unsurprisingly, using the phrase from the English poet Charles Lamb, these are all “old familiar faces”.

### BY THE NUMBERS

The 10 most active LPs last year were all US public institutions, reflecting their predilection for disclosure relative to their private counterparts



NB: Reflects publicly disclosed fund commitments. Data as of 15 December 2022

Source: PEI



Doing business with these investors can create some “old, familiar” legal issues that require an experienced legal counsel to help navigate.

<sup>1</sup> <https://www.privateequityinternational.com/who-were-the-busiest-lps-of-2022-story-of-the-year/>

# HAYNES BOONE

Some of the investors on this list prompt sovereign immunity and ERISA concerns that need to be addressed. Many also have problematic side letter provisions but often will agree to include specific language mitigating lender concerns. As pioneers in this product and the fund finance industry, we have spearheaded innovative approaches to these various concerns.

In the case of one of these investors, there are often placement agent provisions in their side letters that allow them to cease funding if there is a placement agent violation by the fund. Our team has successfully negotiated provisions in this investor's side letter that requires them to pay their pro rata share of any subscription credit facility before exercising such rights, which protects the lenders in this situation.

Governmental entities sometimes have state constitutional or statutory restrictions preventing a lender from directly calling capital in the case of a default. As a workaround, we have negotiated pre-executed capital call notices and specific performance language in the loan documentation that would permit capital calls for investors with this type of restriction.

Our market-leading global fund finance team analyzes thousands of investor documents and borrowing bases each year and understands the issues important to investors participating in private equity funds. With over 30 years of experience, we have deep knowledge of investor requirements and credit issues, and we balance these investor issues with the financing issues among the investors, funds and lenders.

In 2022 alone, we helped lenders and funds structure many subscription credit facilities that counted these top 10 busiest LPs as part of the investor pool.

If you have any questions about an investor, whether it relates to sovereign immunity, ERISA, common side letter and subscription agreement issues, language that may mitigate risk in credit support documents, or general market treatment, please reach out to the [Haynes Boone Fund Finance team](#). We can utilize our fully-integrated platform containing investor research and information for the benefit of our clients, their fund customers and the investors investing in the funds, all with the common objective of successfully structuring subscription credit facilities.