

Brent Shultz, Todd Cabbage and Robert Bruner in *Law360*: 'What Sanctions Mean for Funds' Subscription Credit Facilities'

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Partners [Brent Shultz](#), [Todd Cabbage](#), [Robert Bruner](#), and Associate [Stuart Slayton](#) authored an article in *Law360* titled “What Sanctions Mean for Funds’ Subscription Credit Facilities.” Read more below:

Russia's invasion of Ukraine has unleashed an unprecedented wave of sanctions against wealthy Russian oligarchs. While the seizure of mega yachts and massive villas worldwide has grabbed headlines, these oligarchs have substantial investments in hedge funds and private equity funds in the U.S. and abroad.

This article will examine the impact of an investor becoming sanctioned after its admission into a fund, with a particular focus on the impact of a sanctioned investor on a fund's subscription credit facility.

Subscription credit facilities are revolving credit facilities secured by the right to call unfunded commitments of investors in these private equity funds. Funds take advantage of subscription credit facilities to bridge capital calls, for working capital, to fund expenses or to use for quick acquisitions.

They are generally priced better than other types of acquisition or permanent financing, and in many cases can serve to bridge putting such portfolio-level financing in place. The use of subscription credit facilities by private equity funds is widespread, and these facilities universally require a fund to comply with sanctions covenants.

Private equity funds — and subscription lenders that advance money against the capital commitments of investors in private equity funds — typically perform know-your-customer, or KYC, diligence on the fund investors when they are admitted to the fund, which typically includes, among other things, running the investor's name and its beneficial owner's name through various sanctions databases.

But this approach will only work if the beneficial owner is someone who is obviously on a sanctions list. While difficult and rare, some privacy-minded investors utilize investment vehicles, such as blind trusts, where it is not clear who actually owns or controls the investor, making it extremely challenging for lenders to determine whether an investor is sanctioned.

Further, after an investor's admission into the fund, many funds and lenders have relied on ongoing investor representations made to the fund regarding the continuing accuracy of the KYC representations rather than actively conducting ongoing KYC diligence on these investors. Should this practice change?

While the Loan Syndications and Trading Association has model sanctions-related provisions in its

model credit agreement, due to the unique nature of subscription facilities, the sanctions-related credit facility provisions in these facilities go well beyond the LSTA baseline recommendations.

Excerpted from *Law360*. To read the full article, click [here](#).