Notes From the Global Fund Finance Symposium

March 26, 2018—Last week saw the 8th annual Global Fund Finance Symposium take place at the Grand Hyatt in New York. The event brought together key market participants to discuss the latest trends in a sector which has gathered significant pace in recent months.

Debevoise & Plimpton

Debevoise was a sponsor of the Symposium this year, with the team attending in force, and New York counsel Margaret O'Neill moderated one of the panel discussions.

Below, we summarize some of the key points of discussion.

- **Use of sub-lines:** The benefits of subscription lines are well versed—cash management, managing fund closes, FX benefits, moving quickly for investments. But funds are now increasingly looking to use the line to bridge co-investments and subsequently sell down investments to co-investors.

- **Globalization:** The increase in European, Asian and Latin American investment has led to more complex structures in more jurisdictions. When setting up these structures, it's important to make sure, in the context of the law of the applicable jurisdiction, that the fund documents are set up to enable lenders to take security and expressly address matters such as investor set-off rights and sovereign immunity. It's also important to be aware of any restrictions under applicable law on, *e.g.*, cross-collateralization.

- **ILPA Guidelines:** Investors don't seem to be spooked by ILPA's alarmist reaction to subscription lines. Although managers have seen an uptick in questions about subscription lines from investors, most agree that the ILPA guidelines have not impacted facility terms. Investor attention seems to be focused on (1) disclosure—understanding when and how facilities are being used by the fund, and (2) the length of time between the date of borrowing under the facility to fund an investment and the date on which capital is called, which impacts IRR and calculation of the preferred return.

- **Hybrid facilities in the U.S.:** The key challenge faced by U.S. funds looking for hybrid facilities continues to be a lack of lenders willing to underwrite both capital calls and NAV in a single facility. While hybrid facilities are quite common in Europe, U.S.-based lenders tend to view subscription facilities and NAV facilities as different products. Hybrid facilities are beneficial for funds because they provide longer-term solutions that allow the sponsor to address the fund's life-cycle liquidity needs within the four corners of a single facility (*e.g.*, to bridge investments, to advance distributions to investors, and to lever underlying investments).

- **Secondaries on the up:** There is an ongoing "explosion" of the secondaries market. Investors are seeing opportunities to invest in mature and diversified assets, where their cash will be distributed earlier than if they made a primary investment. GPs increasingly see secondaries as a tool to offer liquidity.

- **Secondaries financing boom:** Secondaries funds are increasingly levering initial investments, using leverage at fund level to effect dividend recaps, and putting NAV facilities in place at the end of their investment period to replace expiring subscription lines. Our experience is the same—we have recently acted on an increasing number of secondaries financings globally.

- **Funds of one:** There is an increase in subscription lines for funds of one, and similar funds with two to three investors. However, there is little consensus from the banks on an underwriting approach to, and terms for, these types of facilities. Funds and banks are developing flexible underwriting criteria, as well as tailored conditions and covenant packages for these facilities.

- **LPA terms—debt caps and clean-down obligations:** There is some investor pressure to include debt caps and clean-down obligations in the fund documents, but investor success in obtaining such provisions is largely affected by the level of investor interest in the fund. Sponsors of over-subscribed funds won't need to succumb to the pressure.

- **KYC:** Banks are ramping up KYC on investors, with little consensus on approach or requirements. This challenges the credit process and pace of executing a deal, particularly those with foreign investors.

- **Side letters:** There continues to be a focus on side letter provisions due to their increasing length and complexity. Particular areas of concern are requirements around calling capital and MFN provisions.

- **Third-party service providers:** For funds using a delegation structure with third-party service providers (which is becoming more common), lenders are considering, to the extent possible, asking for service providers with the ability to intervene in the capital call process to sign security documents and be regulated by the facility covenants. If the intent is for the service providers to have a purely administrative function, the fund documents should be clear that capital call rights are not delegated so as to avoid the need to involve them in the credit facility.
- **HNW Investors:** Some lenders are increasingly willing to include high net worth investors in the borrowing base at an appropriate advance rate, although other lenders continue to exclude them completely.

Debevoise has extensive experience in all aspects of fund-level financing transactions for different types of investment funds and their managers. The practice is global in nature, with strong teams in the U.S., Europe and Asia advising an international client base. If you are interested in discussing any of the above, please let us know.

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