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UPDATE

Top "Take-Aways" from the 9th Annual Global Fund Finance Symposium, Miami 2019

The 9th Annual Global Fund Finance Symposium was held at the Fontainebleau in Miami on 24 – 26 March 2019. There were over 600 registered delegates, bringing together bankers, lawyers and sponsors within the fund finance community. We are proud to have been gold sponsors for this event and wanted to share some of our top take-away points from the high quality panel discussions.

Preqin Presentation

- Private capital dry powder has now exceeded $2 trillion. A majority of Preqin survey respondents believed that the market was at the peak of its cycle, although the next largest set of responses believed the market was still in expansion phase.
- Trends show a consolidation of private capital as it flows towards a smaller number of larger-sized funds.
- Risks associated with asset pricing / valuations are front of mind for market players.

Private Credit Panel

- There has been an increase in fundraising within private credit, with increased banking regulation being a primary driver behind this. As this asset class has developed, investors are recognising the return potential and low risk against other sectors.
- Increased competition within the private credit market has impacted returns to a degree, however, a broad range of strategies and diversification in the market amongst credit funds ensures this remains competitive.
- While there are highly sophisticated teams in private credit, it is still in the early stages of development when compared to the private equity market.
- Private credit funds are not necessarily competing directly with banks, they can be complimentary with different value propositions, taking on different types of risks.
- Going forward, the primary challenges to this asset class will be regulation, recession, lower rates of return and structural risk.

Industry Panel

- From a sponsor perspective, KYC is frustrating and can make or break a deal.
- Sanctions: there are certain banks which take a 'hard line' on sanctions and so if an investor becomes subject to sanctions, the entire facility may be terminated. This can be a difficult issue for sponsors, particularly when sanctions are increasingly being used as a political tool. From a bank perspective, there is a lot of regulatory scrutiny and so sanctions must be examined on a case by case basis.
- Single managed accounts: Sponsors have seen a growth in multi-strategy investments by investors and managers are trying to structure around this. Single managed accounts exist for investors looking to have a platform for flexibility into a main fund and any co-investment opportunities. This is a key driver, so having a separate vehicle at the outset of the fund set-up enables this investor from taking advantage of this platform for co-investing. This desire to co-invest is a clear trend.

- Umbrella facilities: These facilities make it easier to drop into the financing AIVs, SMAs and parallel vehicles as co-borrowers. Sponsors would like to see improvement in efficiency of KYC being collected by banks as these vehicles are brought into the financing.
- Data security: This requires focus and is a real risk. It is an important part of operative due diligence.
- While the fund lending market is dominated by familiar names with established fund finance deal teams, some new (and regional) lenders are starting to compete directly in this space; this is true of all geographies and not just the US market.

Management company and GP financing panel

- Management company facilities are needed to finance the working capital of fund managers. GP facilities are needed to finance the GP's investment in the fund. With the average GP commitment now around 5% demand for GP facilities at the larger end of the market is rising, in part for liquidity and also to facilitate succession planning.
- Employee loan lines: some funds want to incentivise employees and encourage their investment participation in the firm. A lender will require the firm to conduct KYC on individual employees and support them in enforcing against them if necessary, particularly if the firm is backstopping the loan.
- Guaranteeing from the fund is preferred, but evaluated on a case by case basis.

Anatomy of a Subscription Default

- Disclosure of interests: Banks and investors are increasingly aware of asking for more information regarding interests managers may have in other entities during the due diligence process. Banks acknowledge that capital call facilities are structurally sound, however it is important to understand both manager and investor behaviour.
- Notice to investors: generally speaking, banks used to be more relaxed on the timing of delivery of notice to LPs in respect of a capital call facility and assignment of capital call rights; they are now more sensitive to this, and realise that immediate (or at least prompt) delivery of the notice to investors can provide remedies for the bank beyond merely concreting priority of security.
- Abraaj: The facts of Abraaj are unique. Structurally, there are no concerns on the documentation of a traditional capital call facility and there is confidence that the security can be enforced. However, fraud is always a concern.
- A key difference between US and Cayman Islands bankruptcy proceedings is that, unlike the US Bankruptcy Code, Cayman Islands law does not subject creditors to an automatic stay on proceedings.
- Judges sitting in the Southern District of New York are generally very familiar with the cross-border insolvency process involving Cayman-domiciled funds.
- Default: In a default scenario, a lender needs to decide what role they will play in an enforcement, as there are a number of avenues it may take eg. Appoint a receiver, place the debtor into liquidation, take control of the assets directly, or possibly to restructure. Where there is an incurable default, enforcement and recovery is likely to be multi-jurisdictional, and some consideration will need to be given to where any enforcement or insolvency proceedings will commence. Any receiver must be appointed in accordance with the security documents. If the security is not sufficient to settle the debt, a creditor will need to claim for the remainder along with other unsecured creditors.

For more information visit the Fund Finance Association website: http://www.fundfinanceassociation.com/

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