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10th Annual Global Fund Finance Symposium

Key Takeaways

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On February 12-14, 2020, the Fund Finance Association held its 10th Annual Global Fund Finance Symposium at which lenders, sponsors, law firms and other market participants from across the globe gathered to discuss the latest developments in fund finance. Below is a summary of the key takeaways from the conference.

- Market Update – Private capital fundraising reached record levels in 2019, with fewer sponsors raising larger funds. On the fund finance side, new lenders have been entering the space both as arrangers and as participants in larger syndicated facilities. Subscription facilities are being put in place at an earlier stage in the fundraising process, sometimes concurrently with the initial closing. Some panelists speculated that closings will be frontloaded to the first half of 2020 given the upcoming US election.

- Investor Debt Commitments – One panel discussed a relatively new development in fundraising – investor commitments in the form of debt rather than equity. Due to potential concerns as to the enforceability of investor debt commitments in the event of a bankruptcy of the fund, subscription facility lenders may be wary of including such commitments in the borrowing base. However, with early involvement of counsel, sponsors may be able to structure their fund documentation to mitigate those concerns so that investor debt commitments can be included in the subscription facility.

- New Regulations – Borrowers, lenders and other market participants must be cognizant of several new or revised regulations, including anti-money laundering, anti-terrorism, KYC/beneficial ownership certifications, data privacy, and Regulation W, among others. These new regulations, along with the larger number of lenders participating in syndicated facilities, has led to some delays in the syndication process.

- New Products – Several new fund-related financing products are being offered in addition to traditional subscription credit facilities. These include collateralized fund obligations, which enable investors to securitize the cash flows associated with a portfolio of limited partnership interests in a diverse group of funds, and notes issued by sponsors and secured by management fees, carried interest and/or co-invest realizations.

- Hybrid Facilities – Hybrid facilities—where borrowing capacity is based on both investor capital commitments and the fund's net asset value (NAV)—are a recurring subject of discussion at the conference. Despite the theoretical appeal of such facilities, they are still relatively rare for two primary reasons. First, since lenders have very different approaches to evaluating these two potential sources of payment, it can be difficult to find lenders that have a single credit team that can lend against both types of collateral. As a result, sponsors usually have more financing options, and thus can negotiate better terms, if they opt to obtain a subscription facility at the beginning of the fund's life and a separate NAV facility towards the end of the fund's life. Second, particularly in the case of private equity funds, it can be difficult to negotiate the terms of a hybrid facility that apply to the fund's assets, such as concentration limits, before the fund has made significant investments. That said, hybrid facilities seem to be on the rise, particularly among credit funds.

- Environmental, Social and Governance (ESG) – ESG is an area of increasing focus and importance to fund sponsors, investors, lenders and regulators. One panel discussed three recent credit facilities with variable interest rates based on the borrower's compliance with certain ESG standards. The LSTA recently released an ESG Diligence Questionnaire to collect information on ESG factors relevant to the borrower's business. The

SEC has been asking fund managers about their ESG strategies and disclosures to investors. Although the consensus is that ESG investing is a positive development, there is some skepticism as to the ability to objectively measure ESG performance given the lack of uniform standards and how various business may be intertwined.

If you would like to discuss in more detail any of the topics mentioned above, please contact one of the Ropes & Gray attorneys above.