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ILPA Issues New Guidance on Subscription Facilities

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Last week, the Institutional Limited Partners Association ("ILPA") issued follow-on guidance on the use of subscription facilities. The new guidance (the "2020 Guidance") entitled "Enhancing Transparency Around Subscription Lines of Credit"[1] is meant to be read in conjunction with ILPA's 2017 guidelines on the use of subscription facilities and focuses on recommended quarterly and annual disclosures to be provided by fund managers to investors.

Despite speculation that fund investors would insist on the wholesale adoption of the ILPA's 2017 guidelines for new funds, this has not turned out to be the case. Rather, discussions between investors and fund managers on the use of subscription facilities have focused on a handful of key points, while the terms of the actual credit facilities have remain substantially unchanged and the use of such facilities by fund managers has continued to grow. One area where the market has responded positively to the 2017 guidelines has been increased disclosure by fund managers of the use of subscription lines and their impact on IRR calculations.[2]

Against this backdrop of increased disclosure and the growing use of subscription facilities over the last few years, the 2020 Guidance argues that, while transparency as to the use of subscription facilities has generally increased, the frequency and means for providing this transparency varies widely. This leaves investors with the task of making sense of the varying types of information provided and fund managers with the challenge of responding to additional information requests from investors. The 2020 Guidance thus recommends standardization around disclosures of the use of subscription facilities by laying out specific recommendations on what information should be disclosed by fund managers on a quarterly and annual basis[3]. In ILPA's view, the adoption of this more standardized approach to disclosure will be beneficial for both fund managers and investors.[4]

ILPA's recommended quarterly disclosure includes (either as part of the partner's capital account statement or otherwise) information regarding the size and balance of the facility, the individual LP's and the GP's unfunded commitments financed through the facility, the average number of days outstanding of each draw down on the facility and net IRR with and without use of the facility. As additional disclosure, the 2020 Guidance recommends a schedule of cash flows alongside the partner's capital account statement and schedule of investments.

ILPA's recommended annual disclosures includes (as a supplement within the annual reporting package and in addition to the quarterly disclosure described above) the following information: lead bank, facility limit, maximum allowable borrowing term (in number of days), facility expiration, renewal option, collateral base, interest rate, upfront fee rate, unused fee rate, additional fees, total paid fees and current use of proceeds from the facility, as well as a clearly defined methodology for calculating net IRRs (both with and without the use of the facility).

Although the market has shown that it is amenable to increased disclosure as to the use of subscription facilities, it remains to be seen to what extent fund managers will follow the 2020 Guidance. Many fund managers and investors have

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[1] The full text of the guidance is available here: https://ilpa.org/wp-content/uploads/2020/06/ILPA-Guidance-on-Disclosures-Related-to-Subscription-Lines-of-Credit_2020_FINAL.pdf

[2] For more detail on the market response to the 2017 guidelines, see prior Ropes & Gray article on this topic available here: https://www.globallegalinsights.com/practice-areas/fund-finance-laws-and-regulations/07investor-views-of-fund-subscription-lines

[3] The 2020 Guidance also provides suggestions for investors seeking to estimate their liability related to fund subscription facilities, based on the information provided by managers, and recommends that GPs provide investors with as much predictability as possible with respect to capital calls. The latter recommendation is not limited to capital calls in the context of subscription facilities.

[4] Although the guidance offers a template, it specifically states that the template is for illustrative purposes and the intention of the guidance is for GPs to provide the recommended disclosure rather than depicting the exact format of the disclosure.

already developed practices and preferences around such disclosures and may be reluctant to move to a more standardized approach. If the market response to the prior ILPA guidelines can serve as an indicator, fund managers are likely to consider the recommendations of the 2020 Guidance and then decide what makes the most sense for their particular funds and investor base.

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