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FINANCE · LEGAL · COMPLIANCE · OPERATIONS · TAX

PUSHING DIVERSITY

APRIL EVANS WANTS MORE WOMEN IN PRIVATE EQUITY

CYBER-RISK MANAGEMENT
How are you protecting your data?

SWEDEN SOUR
The country rules carry is taxed as income

DRIVING TECH IN PE
What you need to know about blockchain and AI

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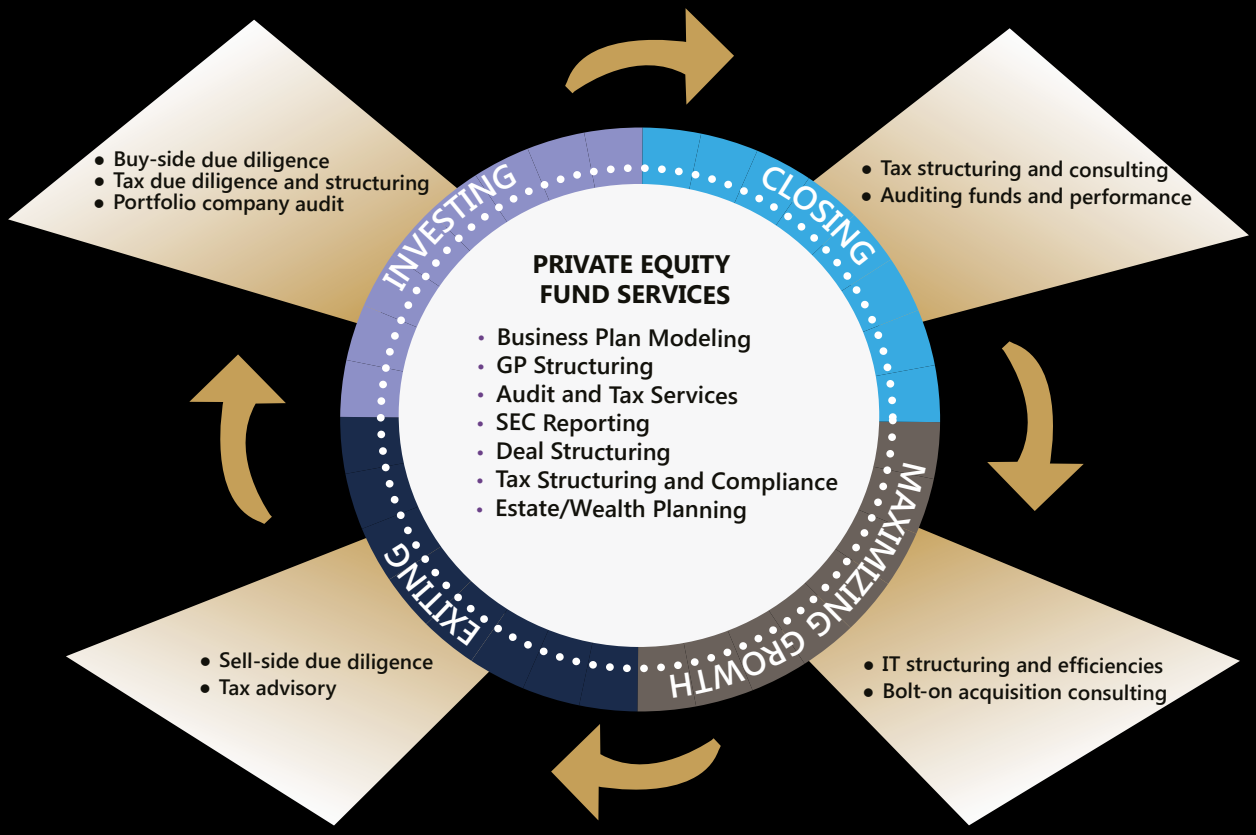

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Leading from the top

April Evans is on a mission to get more women into private equity (p. 12).

And she's being proactive about it. This month, she's taking part in the Women's Association of Venture and Equity forum in New York City to encourage women to learn from each other on how they can develop, and potentially take up senior management roles in a field that is overwhelmingly male. There is no comprehensive data set by gender on private equity in the US, but if the UK is any indication, the gender gap is wide. A report from the lobby group British Private Equity and Venture Capital Association and Level 20, a non-profit advocating for women in private equity, found only 6 percent of senior investment team roles in the UK are held by women and women comprise just 29 percent of the private equity workforce.

Some firms are addressing the situation. The Carlyle Group created the position of chief diversity officer to develop a more diverse and inclusionary workplace. The numbers are a bit better for Carlyle: in the US, women make up 23 percent of its senior positions, which include principals and partners.

As the sole senior woman in an eight-partner firm, Evans understands that change takes place from the top and is taking steps to make it happen. Our senior editor Toby Mitchenall tackles the issue, too (p. 10), and points out that diversity and inclusion are becoming a real issue for private equity firms, and rightly so. The industry will also have to open up to minorities at the top. Indeed, there are challenges, but each small step that's taken can lead to bigger change.

As chief financial officer for a mid-market firm, Evans talks about outsourcing and points to information technology as an important area, because it's "the smart thing for all of us to do when we are not large enough to command the expertise of the chief technology officer."

Data security was a key concern of our roundtable of private equity executives and service providers (p. 18). How can you stay on top of cyber-risk management? How do you thwart the stealing of data and information? Do you have an incident response plan to follow in case of an attack to your systems? Our roundtable participants discuss how preparation is important in response to an incident and how everyone within a firm top-down – from the chief executive to the lowest-level employee – needs to work together and stay informed.

Elsewhere, Sweden's top court has ruled that carried interest will be taxed as ordinary income (p. 36). Read on why it happened and whether investors are fleeing Sweden for lower tax nations.

Do you know enough to figure out how blockchain and artificial intelligence figure in private equity? An expert talks about how analyzing investor portfolios, predicting five years in the future, and recognizing trends in the market can be done with these new technologies (p. 28).

Enjoy your reading.

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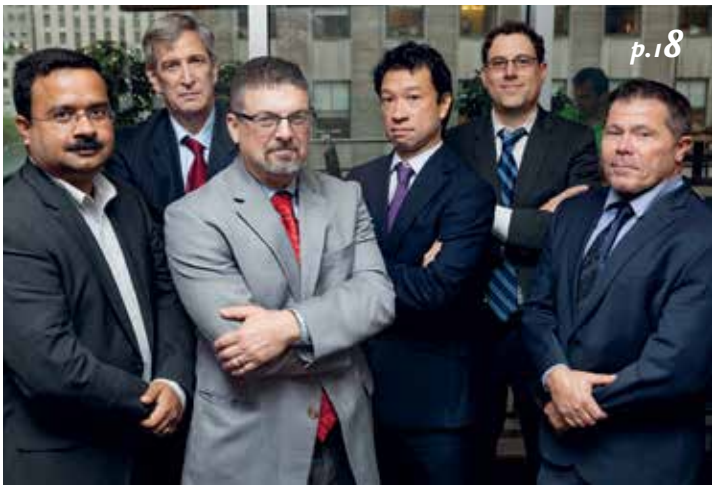
features

special report: cybersecurity



Cybersecurity: requires constant vigilance

commentary

also in this issue

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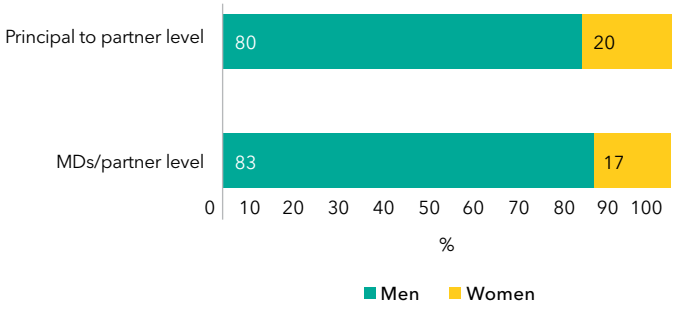
By the numbers

pfm piles up some of the month's most eye-catching metrics

Balance of power

Proportion of women in senior roles at Carlyle



Source: The Carlyle Group

$326bn
Awarded to whistleblowers

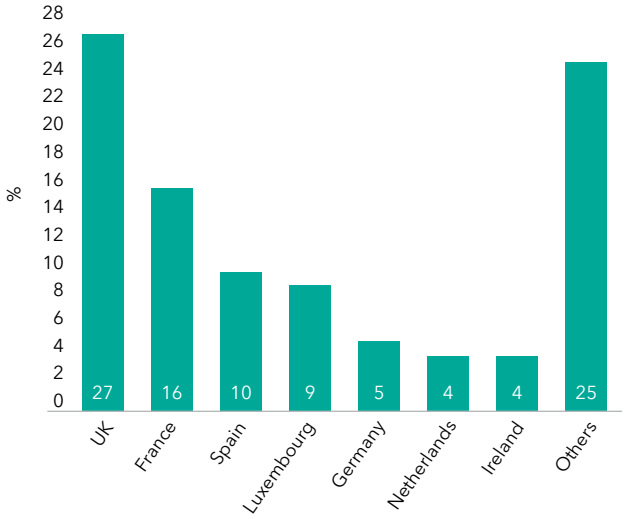
59
Whistleblower rewards

$1.7bn
In sanctions based on whistleblowers' information

Source: SEC

Brexit, what Brexit?

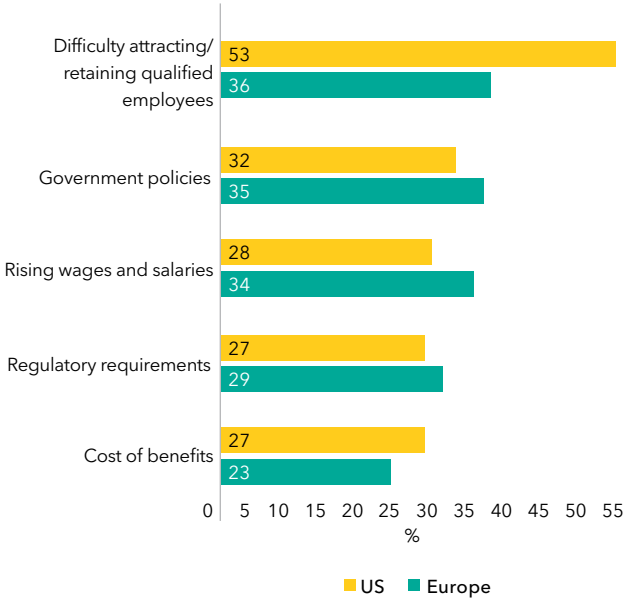
The most popular jurisdication for funds authorized under AIFMD in Q2 2018 was the UK



Source: ESMA 2018 Report on Trends, Risks and Vulnerabilities in the financial market

Staffing up

CFOs were asked whether or not an issue was a concern, and employees received the most 'yes' votes



Source: Duke University

Watching and waiting for Volcker reform

The regulator has opened up a debate on what a covered fund is

By ISOBEL MARKHAM

It's been 10 years since the darkest days of the financial crisis, which fundamentally changed the private equity industry.

A key outcome was the 2010 Dodd-Frank Act's Volcker Rule, which forces banks to limit their investments in private funds to less than 3 percent of Tier 1 capital.

As soon as Dodd-Frank was signed into law in 2010, many of the big banks began offloading their private equity assets in anticipation of its implementation, spinning out or selling their in-house direct investment arms. We have Volcker in part to thank for One Equity Partners (JPMorgan), Equistone Partners Europe (Barclays) and Graycliff Partners (HSBC). In 2014, divestments by banks accounted for a quarter of secondaries deal volume, according to Setter Capital.

Now it looks like some of those banks may have been too quick to act. The Securities and Exchange Commission sought comment on proposals to ease restrictions that prohibit banks from investing in private equity funds.

The proposal raised numerous questions as to what counts as a 'covered fund' – the definition of which is at the heart of the investment prohibitions. As it stands, it refers to both hedge and private equity funds; the SEC asks whether the agencies should separately define 'hedge fund' and 'private equity fund' or restrict the definition of a 'covered fund' to one or the other. "Would such an approach more effectively implement the statute? If so, how should the agencies define these terms and why?"

The SEC also suggests it's open to the idea of scrapping restrictions on banks backing private funds, asking whether there are funds included in the 'covered fund' definition that do not in fact engage in prohibited investment activities.

In a July article, lawyers from Debevoise & Plimpton explained that current regulations limit banking entities' investment in funds that make long-term investments in portfolio companies, despite the fact banking entities may invest directly on their balance sheet in portfolio companies under various authorities.

"This is an incongruous result and an example of the over-breadth of the covered fund definition," the Debevoise lawyers wrote. "To resolve this incongruity, the agencies could revise the regulations to provide banking entities flexibility to engage in permissible long-term investing, whether through a private fund structure or otherwise."

One firm surely pleased it didn't move too fast is Goldman Sachs. The bank – which had roughly $4 billion fair value of private investments as of March – secured a five-year extension on divestment obligations included in the Volcker Rule last May. On the bank's second-quarter earnings call last year, chief financial officer Martin Chavez said he was expecting a "recalibration" of the rule.

Significant changes to the Volcker Rule that would allow banks to re-enter private equity in a meaningful way would open up a huge pool of capital to general partners – that is, if those banks that paid the cost to comply with Volcker could stomach the thought of potential regulatory yo-yoing in the future.

The Debevoise lawyers note that the SEC proposal includes "few specific modifications to the covered fund provisions," instead asking "open-ended questions," suggesting the agencies are "relying on the industry to provide feedback on how to revise the implementing regulations both to reduce unnecessary complexity and to implement the underlying statue appropriately."

What happens next could shape the industry for decades. ■

Apr 1, 2014	Jul 21, 2015	Apr 20, 2017	May 8, 2017	Aug 29, 2018	Oct 17, 2018
The Volcker Rule goes into effect	Initial deadline for conforming with the rule	Deutsche Bank AG is fined $19.7 million for not complying with Volcker Rule	Goldman Sachs says it has secured a five-year extension on offloading private fund stakes	The SEC releases proposals on the Volcker Rule	Comment period on SEC proposals closes

Source: *pfm*

"We hadn't anticipated any of those issues. Good thing they had."

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Five things to expect from ILPA's restructuring guidance

The guidance will be thorough, nuanced and focused on conflicts of interest

By ADAM LE

The Institutional Limited Partners Association is a force to be reckoned with. The industry body issues guidance on various topics, including its private equity principles, to around 450 member institutions representing more than $2 trillion in private equity assets.

ILPA's upcoming guidance on general partner-led restructurings couldn't have come at a better time: such deals account for as much as 26 percent of secondaries deal volume. Here are five things we can expect from ILPA's guidelines, to be published as early as the end of the year.

1 ILPA wants to get it right

While the body is keen to issue guidance on an increasingly common and important issue, it doesn't want to rush into providing guidelines that don't make sense to industry practitioners. "With the GP-led transactions, every deal's a snowflake," ILPA's managing director of industry affairs Jennifer Choi told sister publication *Secondaries Investor*. The association is aware that different nuances in each transaction can make issuing boilerplate guidance tricky.

"The true north for us is: would a reasonable rational market participant feel like this sounds right in the context of alignment in the partnership?" Choi said.

2 Guidance will be limited to restructurings... for now

ILPA won't issue guidance on other processes, such as stapled deals or broader end-of-life fund issues, the latter of which Choi describes as "fairly specific" to each case. Still, ILPA views restructurings within the context of a fund coming to the end of its term in most cases, and it wants to help remove ambiguity over fund extensions or fees charged at the end of a vehicle's term.

$27bn
Secondaries deal volume

26%
Proportion of secondaries deals that are GP-led

Source: Greenhill

3 Reducing conflicts of interest will be key

If there's one issue secondaries-focused lawyers constantly highlight as the biggest concern when it comes to GP-led restructurings, it is reducing conflicts of interest. Expect ILPA's guidance to outline how LPs can push for better market testing for pricing on assets, the involvement of an intermediary, as well as 'full and frank' disclosure from GPs.

The guidance is also likely to recommend that fairness opinions be sought on valuations and prospective deals, though their importance may depend on the circumstances of each deal.

"How often does a fairness opinion diverge from whatever has been recommended on the deal?" Choi said. "It may be that the value of a fairness opinion really depends on the circumstances."

4 Expect to get it into the weeds

ILPA's 2017 guidance on subscription credit lines is a five-page document covering GP clawback, fees and expenses, tax considerations and legal risks, among other issues. It provides LPs with nine recommendations (including limited partner advisory committee-specific guidance) on the topic and lists 15 example questions so LPs can grill their GPs on issues ranging from terms to costs, how the fund facility will affect the fund's performance, as well as regulatory and tax concerns.

It's likely that ILPA will issue similarly thorough guidance when it comes to restructurings. GPs, and more importantly their advisors, should be prepared to answer highly specific questions from their LPs, all in the name of greater transparency and reducing potential conflicts of interest.

5 Nothing is set in stone

ILPA understands the secondaries market evolves quickly, so it is open to updating its guidance where necessary. Its recommendations on subscription credit lines call for continuous member feedback so it can reflect "new market conditions." Expect the LP body to be receptive to ongoing suggestions from all segments of the industry. ■

Tightening: lenders should ratchet up pressure on borrowers to get better terms

Why lawyers are urging lenders to get aggressive

Documentation is strongly in favor of borrowers, so financiers are being told to look for reasons to redress the balance of power

By ANDY THOMSON

The erosion of junior debt, looser covenants and less reliable cashflow projections are combining, in the view of some market sources, to produce an unholy brew of toxic ingredients confronting the leveraged loan market.

Research unveiled in August by Cambridge Associates revealed that, since the end of the credit crunch, far less junior debt is being included in deals – largely as a result of being usurped by the unitranche product, which is often seen as a more user-friendly option by borrowers.

The significance of this is that junior debt helps to cushion senior debt holders from losses in the event of a default. The less junior debt, the quicker senior debt will start absorbing losses. Cambridge estimates that, as a consequence, recovery rates on defaults on leveraged loans may decrease from an average of 60-80 percent to between 46-70 percent.

This is against a background of various pressures which could make defaults more likely. One is the tendency for deal agreements to incorporate questionable assumptions of future cashflow – perhaps based around anticipated synergies, new contracts or revenue generation from initiatives not yet launched. These might uncharitably be described as 'pie in the sky' assumptions.

The trend toward covenant-lite structures has been well documented, but certain provisions that have crept under the radar could be more damaging than those which have received more publicity. Cambridge highlights, as an example, agreements which allow the borrower to remove assets from a lender's collateral pool to generate more liquidity – leaving the lender with less collateral in the event of a default.

A route to renegotiation

Some market sources accuse lenders of having sleepwalked into the current situation. There was no 'sea change' event as such, but incremental steps have created arguably the most borrower-friendly environment in the leveraged loan market in recent memory. And that is why legal advisors are now urging lenders to wake up and smell the coffee.

What we hear is that lenders are being urged to find any route possible to renegotiate the documentation. Technical breaches by borrowers – such as late delivery of documents, tardy reporting and questionable capex items – are being used to hold borrowers' feet to the fire. Lenders are being told to focus on these breaches with alacrity and aggressiveness to try and claw back some of the creditor rights they have too readily tossed away.

Of the imbalance of power, one source told sister publication *Private Debt Investor*: "These types of situations tend to find their own solutions, and the shortcomings can be addressed in unconventional ways."

Lenders may be gradually acknowledging this. Whether they can at least partially repair the damage will be intriguing to observe. ■

Diversity is the new ESG

GPs may be reluctant to think about diversity in their own teams; at some point they will not have a choice

By TOBY MITCHENALL

What starts as a talking point can become a fundraising deal-breaker.

We saw it with ESG (environmental, social and governance issues). The idea that non-financial impact should be a considered and documented part of investment decision-making has taken a long time to take root.

"In the early days [...] investors wanted the highest rate of return and didn't put any pressure on the firms in terms of environmental issues [and] jobs offshoring," Carlyle's co-founder David Rubenstein told sister publication *Private Equity International* in 2016.

But taken root it now has. A large cohort of private equity investors (33 percent, according to the *PEI* LP *Perspectives* survey last year) always includes ESG as part of their manager due diligence processes.

Those who work in this area often refer to the private equity industry as being on a "journey" in terms of ESG. The first steps involve thought-leading institutional investors (asset owners) discussing it. Some prescient GPs join the conversation. Formalized forums and events are convened, lobbying groups and associations join the dialogue. Specialists are hired at both GPs and LPs. Guidelines are drawn up and boxes added to due diligence questionnaires.

Or to put it another way: the conversation moves from "Why should we do this?" to "How can we do this?"

And so it is set to play out with the issue of diversity and inclusion among private equity firms.

The discussion stage is well and truly underway. It is a topic that will be front-and-center at our upcoming Women In Private Equity Forum in London.

21%

Increased likelihood of above average profits if a company is in the top quartile for gender diversity rather than the bottom quartile

33%

Increased likelihood of outperformance on EBIT margin if a company is in the top quartile for ethnic and cultural diversity

Source: McKinsey

As Cambridge Associates head of private markets Andrea Auerbach reinforced to us recently, asset owners are thinking about how to bake it into their investment decision process.

Carlyle has taken the notable step of hiring a chief diversity officer from BlackRock. Carlyle co-chiefs Kewsong Lee and Glenn Youngkin described a diverse and inclusive culture as "a competitive advantage."

A deficit in workplace diversity contributed to heavyweight managers Blackstone Group and Brookfield Asset Management being passed up for a $50 million infrastructure allocation by the $10.8 billion Chicago Teachers' Pension Fund in June, sister publication *Infrastructure Investor* reported.

One blue-chip GP told me that at a recent meeting of its biggest LPs, diversity and inclusion was one of only two agenda items LPs insisted on. Unsurprisingly, that same GP is currently working on a number of steps – including training for the firm's leadership, as this represents a cultural step change – to create a more balanced and diverse team.

Now the Institutional Limited Partners Association, the body that represents more than $2 trillion in investor capital, has the issue well and truly in its sights and has expanded its due diligence questionnaire to include general partner-level diversity issues.

Diversity and inclusion is becoming a real issue for private equity firms, whether they know it or not. As with other areas of financial services, women are under-represented at senior levels. Only 17 percent of Carlyle's managing directors and partners are women. In Blackstone's UK operations, men earn 30 percent more than women on an hourly basis. Are other firms likely to be any different?

Undoubtedly there are GPs that – behind closed doors – question the value of monitoring and reporting ESG issues, yet investor demand has pushed them to do so. Expect the same to happen with diversity and inclusion. ■

April Evans is on a mission to get more women into private equity

The CFO of Monitor Clipper Partners is doing her bit to redress the industry's problem with diversity, writes *Dominic Diongson*

In a set-up that may sound familiar to many in the industry, April Evans is the only woman among eight partners at mid-market firm Monitor Clipper Partners. Aside from one Korean-American, the remainder of the firm's partners are white men.

Speaking to *pfm* from her office in Boston, she points to statistics that show women holding a tiny fraction of the top positions in private equity. There is no comprehensive data set, but in the UK, for example, the numbers are dire. A May report by lobby group British Private Equity and Venture Capital Association and Level 20, a non-profit advocating for women in private equity, found 6 percent of senior investment team roles are held by women and women comprise just 29 percent of the private equity workforce. In the US, the Carlyle Group, which recently created the role of a chief diversity officer, says that women make up 23 percent of its senior positions in the US, compared with what it says is 9 percent for the industry average.

"I think that, just because of the way I operate, I see women in the industry at all levels. The data says the numbers haven't moved very much," Evans says.

Evans sits on the board of the Women's Association of Venture and Equity, which has chapters across the country and brings women from private equity and venture capital to network with one another. The non-profit group, founded in 2003, also helps women learn from one another and encourages dialogue among members on how to develop professionally, she says. WAVE's members range from junior new hires, analysts, associates – all the way up to women who have been in the industry for many years and hold senior positions, she says.

The association will hold its second annual career forum in New York City on November 6, and firms will be reaching out to students at colleges and universities who are considering a career in private equity and venture capital. The forum's sponsors include some of the biggest names in private equity.

> "[The Kauffman Fellows Program] really succeeded in providing a stream of really good, talented people who were different than most venture capital or private equity folks you were seeing and dealing with. It was an absolutely terrific foundation for that"

"Most cultural change requires buy-in at the top, because it's the top that drives the cultural values of the organization," Evans says.

Evans's start in private equity was serendipitous. In 1993, she founded her accounting firm, which did the financial statements for almost 70 funds every quarter. But as her partner fell ill, the firm was dissolved and she found herself hired by venture capital firm Advanced Technology Ventures, which was seeking a chief financial officer. After nine years, because of a cultural change at ATV she sought a new challenge in 2005. That was her move to private equity, at Monitor Clipper Partners, where the deals were more complicated, she says.

While Evans was at ATV, she became involved in the Kauffman Fellows Program, which helped provide on-the-ground experience to people who were interested in learning about or potentially working in venture capital and private equity. Half of the participants placed for one- or two-year stints in firms were women and/or minorities, she says.

7:1
Ratio of male to female partners at Monitor Clipper Partners, where Evans is CFO

$2bn
Invested by the firm since inception

45
Companies invested in since inception

"It really succeeded in providing a stream of really good talented people who were different than most venture capital or private equity folks you were seeing and dealing with. It was an absolutely terrific foundation for that, and I thoroughly loved being a part of it."

Evans epitomizes two key attributes of the modern CFO: being plugged into a network of peers, and making smart use of outsourced expertise.

On the networking side, Evans says she gets support from members of the

Association for Corporate Growth's Private Equity Regulatory Task Force (ACG PERT), where she sits on the steering committee. PERT brings together CFOs, chief compliance officers and in-house legal counsel of mid-market private equity firms across the country.

"April Evans is a great organizer in our industry because she not only has deep knowledge of the business value of finance and operations, but also a keen care for and deep understanding of her colleagues, co-workers and the stakeholders in Monitor Clippers' portfolio companies and funds. That combination makes her a sought-after addition to every campaign and a friend and mentor to many in our industry, including me," says Joshua Cherry-Seto, a fellow PERT member and CFO at Blue Wolf Capital.

Evans also serves on the board of the Business Advisory Council at Simmons School of Business She was a director in the Boston chapter of Private Equity CFO Association, a networking group.

On outsourcing, Evans says: "We live in a world where probably the greatest challenge is doing more with the same resources, doing more with the same number of people. What that means is finding efficiencies wherever you can in what you currently do, in order to be able to deploy people in a slightly different direction."

Outsourcing to fit your size

Information technology is the most substantially outsourced function, as a firm Monitor's size can't justify a chief technology officer, Evans says. Monitor obtains the technological expertise it needs by hiring an in-house IT co-ordinator who ensures that the computers, the telephone system and so on are operating properly. That co-ordinator then works with the outsourced IT service provider which, Evans says, really provides the function of CTO. The IT co-ordinator, the service provider and Evans work together to evaluate the firm's IT infrastructure.

"Where do we have weaknesses, where do we need to shore up our cybersecurity measures, which is obviously a big issue for all of us? Where are we vulnerable, and what do we need to do to address that vulnerability? How do we stay current with the latest trends and vulnerabilities? Outsourcing IT from my perspective is the smart thing for all of us to do when we are not large enough to command the expertise of the chief technology officer," she says.

That focus on outsourcing expertise extends to legal work, where Monitor has no need for an in-house general counsel. A chief legal officer in a mid-sized firm would need to be a great generalist, tackling everything from negotiating credit agreements, purchase and sale documents for transactions to fund formation matters to real estate to human resources and employee issues.

"We prefer to go to law firms in specific areas where they are best in class because, again, we wouldn't have enough work to support a full time in-house general counsel," she says.

Aside from the in-house IT co-ordinator, six people in finance, accounting and tax work directly under Evans . Two staff in Luxembourg take care of Monitor's non-US investments.

In understanding the complexities of the new US tax law, Evans turned to outside accountants for their interpretation on the reforms rather than to legal counsel. "My experience is the accounting firms were quicker and better to think about the impact of tax reform on our structuring than some of the law firms were," says Evans, who has a background in accounting. "Accountants go into building models right away. They'll build a model to get to the answer and do the evaluation." ■

Resumé

Title: Partner, CFO

Joined: 2005

Previous Posts: Partner & CFO, Advanced Technology Ventures

Founding Partner, Squillace & Evans

Falcon Partners Management

BBK

Harvard Student Agencies

PricewaterhouseCoopers

Education: Simmons University, MBA

Boston University, MTS and MSW

Duke University, BA

Board Roles: Women's Association of Venture and Equity

Financial Executives Alliance

Certifications: CPA

Texas fights to claw back terms

In a heady fundraising environment, GPs are pushing fund terms in their favor, and it's up to LPs to walk them back, Texas Municipal Retirement System's director of private equity Christopher Schelling tells *Isobel Markham*

Q Are you seeing much creativity on fund terms?

Christopher Schelling: There are some new structures being proposed. There are longer-dated funds, 15-20 years, there are some permanent capital vehicles where they're trying to structure an evergreen fund that has the optionality to hold a private equity portfolio company forever but can sell if and when it's the right time to do so, like a private holding company. Those are the rarities, but there are a few firms out there trying to think a little differently, and in those cases trying to reduce fees, trying to reduce transaction costs. But by and large, it's still a standard two-and-20, five [years] and five-plus-one-plus-one-plus-one model.

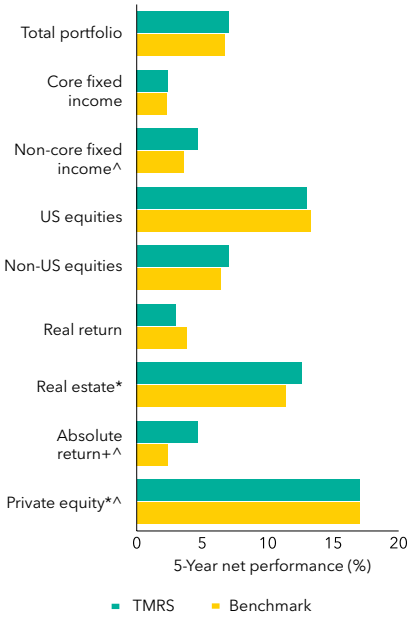
Q Has the 'pendulum of power' swung fully toward GPs?

CS: Everything is pushing the GP's way. Every re-up comes with stuff the GP has pushed their way. You can walk some of those back, and in some cases, we're not interested in investing in those funds anymore. Not only are we seeing discounts going away but premium economics in some cases, carry's going up, we're seeing hurdles going away – 8 percent pref to zero, or sometimes the pref is dropped to 4 percent. We're seeing a lot of governance stuff that's moving their way, what the limited partner advisory committee gets to actually do being eroded, fiduciary standards being eroded. We're seeing key-man clauses being eroded – for instance, if you have two partners, your last fund could say 'if either partner leaves, the key-man clause is triggered'; the next fund might say 'both have to leave for the clause to be triggered,' which then essentially means you don't have a key-man clause. We're seeing that a lot.

That's the big trend we've seen; more things are really pushing their way and we've got to fight to claw it back.

Right on target

TMRS's private equity returns since inception have met the pension plan's benchmark



* Real estate and private equity return as of prior quarter end (returns are available on a quarterly basis only)
\+ Absolute returns are as of prior month end
^ Non-core fixed income, absolute return and private equity performance are the annualized return since inception, given their performance history are less than 5 years

Source: TMRS Investment Staff Report Q2 2018

The $28 billion Texas Municipal Retirement System has a 5 percent target allocation to private equity that currently stands at 1 percent. Recent commitments made by the program include €45 million to CapVest Equity Partners IV and $50 million to TPG Opportunities Partners IV, according to PEI data.

Q Are you still seeing portfolio monitoring fees?

CS: The practice is declining – it's less prevalent than we think it used to be. If they're used, we need to have an understanding around when and where they may be used. It's definitely declining, and our preference is to never pay them. But like most other things in private equity, you don't ever get 100 percent of what you want. We're aware of when they're used, we don't have a lot of them; it would be nice to see it completely go away.

I think [accelerated monitoring fees] have pretty much gone away. The Securities and Exchange Commission has really taken a hard look at that. Certainly, for the big, publicly traded funds out there, they've all stopped.

Q How willing are you to back a fund without the traditional 8 percent preferred return hurdle?

CS: There's very different reasons why there might not be a hurdle; one we can do, one we would be very, very hesitant to do.

If you're a small fund and you've historically generated really high rates of return that have exceeded what would be a hurdle in every period, you've never had a hurdle, and you're coming back to market with the same terms, your fund size is not growing, that's one where we

Restraint: LPs must be prepared to pull back GPs

would consider that. A lot of venture funds don't have and have never had a hurdle, but they make 20 percent net every year, so the hurdle doesn't really come into play. We would consider that.

A large fund removing the hurdle that has been there in the past, that is raising a bigger fund that is going to be oversubscribed, to me the justification for removing that hurdle is not LP-favorable. It's something that is signaling either what your expected returns are going to be going forward or you just want more economics if returns aren't as good as you expect them to be. Both are a concern.

You're seeing some public pensions just in principle refuse to commit to those types of funds. For us, that would be very, very low probability to get there.

Q What is the biggest source of frustration for you at the moment?

CS: Fund to fund sales. GPs are using current funds to buy a stake in a company held by a prior fund. It is being marketed as 'business as usual,' and in some cases I can understand why it is the case, but there are still potential conflicts and risks around it that I don't love.

The general thesis is: 'We have inbound interest in the company from a number of other entities, we don't really want to sell all of it yet; the company could use some additional capital' – so it's quite common in a growth situation – 'We have very strong visibility into revenue for the next year or maybe even longer, and so as the biggest private equity fund in this company to date and having been in it for five or five years now, we know it really well.' There may be a third party who is putting a bigger chunk in, the prior fund is taking their position out and then the subsequent fund is buying in at the new mark. That seems to be happening quite a bit.

I understand the reasons why – you have a lot of capital being put to work and so private equity's increasingly buying from private equity, there is the third-party fund setting the valuation so there's not one fund technically setting the valuation and buying from the other one, but there still are conflicts of interest in the model. You essentially have liquidity going from one fund to the next. We've voted against it in a couple of instances and we've approved it in a couple of instances.

Q What's the main area of concern?

CS: Carry. In the prior fund the general partner could be realizing carry, so in those situations we've said, 'You've got to roll that carry or escrow it or reinvest it' or something, otherwise it's kind of a free option. We have voted against it and that doesn't make us a popular member of the LPAC to have to do that, but I think that's our duty, to really challenge and question some of these things. Hopefully they all work out great because we're still invested in them, but I think there are some issues that can occur.

Q Do you have the freedom to invest in funds with non-traditional terms?

CS: We would consider them. There would be an educational process internally and it would still have to go through our formal recommendation process which, as a government entity, is very robust. If we think it's the correct structure and the correct manager for those assets, we would certainly consider a perpetual vehicle, and we have, because I think it actually removes some issues. There's no transaction fees coming or going, there's no issue around valuation or who's getting liquidity or who's not. It's just good assets that you can hold a long time. Warren Buffett says 'My favorite holding period is forever,' and he's done a pretty good job, so maybe we should take cues from what he has done and see if we can replicate something similar in PE. ■

How to manage cyber-risk

Protecting data and information is a key focus for private equity firms, but how do they stay ahead of the hackers?

by DOMINIC DIONGSON

photography by LEA RUBIN

From left: Anurag Sharma, Mike Stiglianese, Noah Becker, Prom Vatanapradit, Eric Feldman, Brian Ferrara

Sponsored by: BDO, EisnerAmper and WithumSmith+Brown

Private equity firms, like any other business, are often targets of thieves and criminals who seek to steal information through phishing, malware and other means.

For Mike Stiglianese, a managing director at BDO who is also the consulting firm's national lead on technology and cybersecurity for the financial services industry, protecting a firm's management data system is critical. It's a responsibility that should be shared top-down – from managers to lower-level employees, he adds.

"I try very hard not to use the words 'cyber security.' In my mind this is all about cyber-risk management and putting it in perspective as a risk management discipline, especially when I'm dealing with private equity firms," he says during a recent roundtable discussion with executives at private equity firms and service providers in New York.

Cyber-risk management, Stiglianese says, is a discipline similar to financial risk or credit risk management in that resources are put in place to minimize the likelihood of an incident and to protect against it. Should a security breach occur, a firm should be able to detect it and implement the proper response, he adds.

"Management and board directors understand how to manage risk. When people use the word 'cybersecurity' they think technology, yet we don't know

> **"We don't coin it 'incident response.' We think of this as 'incident preparedness,' because it's something that is constantly changing"**
>
> Eric Feldman

what they're talking about. The reality is it's managing risk in the same way that you do anywhere else," Stiglianese says.

A collaborative effort by key members of a firm is also vital. Eric Feldman, the chief information officer at mid-market firm The Riverside Company, says their cybersecurity team comprises staff from the technology department, the compliance group and human resources who meet on a quarterly basis.

Feldman chairs the team and gets feedback from colleagues. They then work with outside counsel, which meet with the firm twice a year and offer the global regulatory perspective on recent rules – among them, the EU's General Data Protection Regulation enacted in May. This affects Riverside as it has investments in Europe. From those discussions with legal counsel, Riverside develops its own internal policies that complement its general risk program, Feldman says.

"We don't coin it 'incident response.' We think of this as 'incident preparedness' because it's something that is constantly changing," Feldman says.

Staying frosty

Preparation is important so that each member in a response team can react properly to an incident and protect the firm's data.

"What's important is really understanding your data. What data don't you want? What data do you want to protect?" asks Brian Ferrara, a senior manager specializing in process, risk and technology solutions at EisnerAmper. "You have massive amounts of data throughout your organization, so you need to figure out what's relevant, what's important and where it is located. How is that data going back and forth? And ultimately, how will you protect that data?"

Sharing data should be a firm's big concern in terms of vetting the individuals who have access to that information, he says.

"If you don't have folks who are properly trained, who understand the risk, understand what the requirements are and how it could affect downstream, you'll never really have a successful cyber-program," Ferrara says. "It reinforces training, tabletop exercises and that preparedness versus the response. We may have a great set of policy documentation procedures. 'OK, an incident happened. Which way do we go? Who's doing what?'"

And it's not simply a case of hackers who are targeting firms through ransomware or phishing, Feldman says. The

inadvertent loss of data could come from an unencrypted laptop that was stolen or has gone missing or someone emailing a document with no password protection.

Beyond checking boxes

Firms should do more than just simply go through a list of procedures and check the box when going through an incident response plan, says Anurag Sharma, a principal at WithumSmith+Brown's cybersecurity practice.

"If you're sitting there in a crisis without a planned approach not knowing who's going to do what and trying to figure things out on the fly, that is the worst situation to be in," he says.

Firms also need to record every incident, whether it be big or small, because each case is something to learn from. "Your response plan is not a static plan; it is not a static document. It needs to evolve. As the threats evolve, the plan needs to evolve. And as you go through the feedback, besides seeing what went wrong during your response, it's also important to focus on what went right," Sharma says.

At the same time, if an incident were to happen, there might be conflicting objectives in the resolution, he says.

"Do you want to recover as soon as possible, or do you want to retain enough forensic evidence to support any subsequent breach notification process?" Sharma says. "Either of those approaches would take you in a different direction. You can't have both objectives met together, and that is why it is very critical that with whatever incident response team you have in place, you have representation from the legal side and the technical side so that they can take that decision to say whether this is allowed and this is not allowed, and to determine the way to achieve it."

Not all firms will have the expertise to deal with security incidents. A firm's

AROUND THE TABLE

Noah Becker is the chief financial officer for lower mid-market firm LLR Partners, which he joined in 2012. Based in Philadelphia, LLR invests in technology and services businesses and has raised more than $3 billion across five funds.

Eric Feldman is the chief information officer at The Riverside Company, which he joined in 2011. Founded in 1988, Riverside has more than $8 billion in assets under management, with an international portfolio of more than 80 companies.

Prom Vatanapradit is a vice-president and head of technology at CCMP Capital. Since it was founded in 1984, CCMP has invested more than $16 billion in buyout and growth equity transactions. Prior to joining CCMP in 2016, Vatanapradit was a managing director and chief technology officer/head of infrastructure at Och-Ziff Capital Management.

Brian Ferrara is a senior manager at EisnerAmper, specializing in process, risk and technology solutions. He has more than 15 years of experience in the Sarbanes-Oxley Act, internal auditing, process re-engineering, risk management, compliance and IT controls.

Anurag Sharma is a principal of WithumSmith+Brown's cybersecurity practice and system and organization controls practice based out of their Princeton, New Jersey office. He has more than 19 years of experience on cybersecurity and has written of many articles dealing with cybersecurity challenges faced by small and medium businesses.

Mike Stiglianese is the lead on national technology and cybersecurity for the financial services industry at BDO. Based in New York City, he has more than 30 years of experience in IT financial and risk management, compliance and controls, shared services and expense management. Stiglianese previously worked at Citigroup, where he managed an implementation program that included driving 'check-list' compliance to a 'risk-based' compliance program.

> **Your response plan is not a static document... As the threats evolve, the plan needs to evolve. And as you go through the feedback, besides seeing what went wrong during your response, it's also important to focus on what went right**
>
> **Anurag Sharma**

general counsel, compliance officer or technology officer won't be an expert in cyber-risk, so hiring outside consultants to do the work makes sense. It may also mean taking out cyber liability insurance and having an advisory service to ensure that handling forensic evidence is done properly, according to Feldman.

One method to acquire sensitive information is phishing. Sharma says that the most common phishing campaign is someone impersonating a colleague to send an email asking for information. A simple solution is flagging external email on the server. Continuing education on phishing is important because new tactics are being used.

Feldman says that, like other private equity firms, Riverside tests its employees by phishing them, and it has been extremely effective in raising awareness. "It's just sort of baked into the overall education in keeping people on their toes, being good corporate citizens."

Lessons learned at the management level can also trickle down to portfolio companies.

> **Internally, you're assessing portfolio companies in terms of what industries they are in and what types of information they have**
>
> **Noah Becker**

At LLR Partners, a lower mid-market firm which has investments in technology businesses, it's an area that is slowly evolving. Noah Becker, the firm's chief financial officer, says that three to four years ago there would have been less consideration about cyber-risk at the portfolio level. But with each year it's becoming more of a focus for managers as the firm's roster becomes bigger and more data-intensive.

"Internally, you're assessing portfolio companies in terms of what industries they are in and what types of information they have," Becker says. "That leads

to risk profiling and then really focusing on particularly the higher-risk portfolio companies if they've got personally identifiable information [PII], payment card information and HIPAA [health data] and other types of data. You're also assessing what people are involved at the portfolio – how are they focusing on it and how are they addressing issues? I think that's going to continue to get deeper and deeper each year."

Feldman established the Riverside Information Security Office a little more than four years ago, in partnership with a number of service providers. Its aim is to help educate their portfolio companies, which currently number more than 80, about risks facing mid-market companies. Typically, within the first 100 days of acquiring a company, Feldman says, Riverside is conducting a pure risk-based analysis based on 19 categories. Examples of these categories are security organization, security strategy and documented policies and procedures. Riverside follows up with the company twice a year to evaluate changes within their risk posture.

"We really train our companies because most of them don't have an incident response plan," Feldman says. "Having incident preparedness as part of the conversation gets our companies thinking about how best to manage this risk."

Peer pressure

Staying involved with peers within the industry through trade organizations helps. For Feldman, he's part of the Private Equity CTO (PECTO) network and AITEC, a community of more than 300 members who work for buy-side alternative investment firms with combined assets under management of more than $4.2 trillion.

There was concern that portfolio companies might give some pushback to management because they might feel an intrusion into their operations. But Stiglianese says communicating with the portfolio companies on their cyber-risk management profiles is important to ensure that best practices are in place.

"There are very simple things that you can do that can give you a good idea of what the cybersecurity profile of your organization is, and I'll give you five simple things," he says. "One is if you just do nothing more than ask them to see their policies and procedures in the cyberspace. The next one will be if they had done a vulnerability test and if they have seen it. The rest is understanding what they do for patching, what they do

"When people use the word 'cybersecurity' they think technology, yet we don't know what they're talking about. The reality is it's managing risk in the same way that you do anywhere else"

Mike Stiglianese

for access control and what they do from employee training.

"None of those things are that intrusive. Just have a conversation," Stiglianese continues. "While that won't tell you how good they are, if you don't get the right answer you know how bad they are. If they have policies and procedures, that's a good thing. If they've got the vulnerability test, that's a good thing. If they don't, it's bad. Right away you'll know – at least whether they're ignoring or they're doing something."

Storing data is also a concern for mid-market private equity firms who may not have the infrastructure available to store vast amounts of information on servers at their offices. In that case, they may turn to cloud computing services like those provided by Amazon or Microsoft.

"We've got the vast majority of our data on the cloud in name providers, which you feel is more secure because Microsoft has a far better security team than we could ever imagine," Becker says. "But we do not put certain data on the cloud. For that we have a very restricted access on-site storage, which adds another layer of protection and control."

Signing up with reputable providers, which have spent billions of dollars on hiring the best in technology, also provides some benefits. Expertise and knowledge from brand-name companies trickle down to private equity clients, and that can help reduce costs for firms who might otherwise have to spend to set up similar services, according to Prom Vatanapradit, the head of technology at buyout firm CCMP Capital.

"In cloud services, the security is baked in. So once you're on it, you're automatically receiving that benefit and the tools that you're using. The cloud makes it very easy to do so compared to trying to budget your own on-premise facility in terms of your systems and then trying to budget cybersecurity and protection into that. That makes it much easier for a smaller shop to get the best of breed," he says.

Everyone's in play

Keeping up on regulation has had some surprise advantages. When CCMP had to be in compliance with GDPR to secure the privacy of data of its clients and employees, the firm used a file crawler system that found PII data in an archive of Excel files.

"Once everyone's involved in regulation, which involves the chief legal officer, that gets the eye of our CEO. Everyone's in play – going from a siloed

"In cloud services, the security is baked in. So once you're on it, you're automatically receiving that benefit and the tools that you're using"

Prom Vatanapradit

> **"You have massive amounts of data throughout your organization, so you need to figure out what's relevant, what's important and where it is located"**
>
> **Brian Ferrara**

technology person to actually having meaningful conversation with others," Vatanapradit says.

In terms of what's the next step in the evolution of cyber-risk management, blockchain and artificial intelligence come to mind. But panelists say their contribution is likely to be a way off and agree that the bigger private equity firms will have the scale and resources to take the lead.

"I feel like blockchain will eventually be impactful, but it'll probably impact higher-transaction industries first, and then when it becomes widely adopted, will move to the private equity firms themselves where there's less volume," Becker says. "And I think on the artificial intelligence side, it will be the vendors that are adopting it and incorporating it into their products and services. I think AI will impact in ways like email filter providers using AI to make sure that the emails purporting to be your CEO – and the next versions of that type of threat – are blocked."

Ferrara adds: "Building the technology is on its way – not for the smaller players in the market but for larger players in our space who have the time, the dollars and the resources to invest and try to make it work. From a security standpoint, all of the blockchain technology as I understand it is a very secure method of transacting data, but making it operational will take a little time to get there."

Stiglianese says: "My general feeling is, right now these technologies have a promise for the future. For a lot of the private equity firms, there's much more value they could get out of implementing and utilizing some of the proven tools that are out there right now rather than necessarily being on the leading edge of these new technologies. Let them play out a little bit longer. Let it get to a point where the large banks start making the investments and start seeing how they start implementing these technologies and start making it worth something that's more practical for other firms to use. So right now again it's something to watch, something promising, but you know my feeling is it's premature."

Ultimately, everyone from the C-suite down has to be involved to maintain best practices on cyber-risk management.

"Cyber-risk is not just the responsibility of the technology team or your outsourced service provider. It's a shared responsibility of the organization. It's got to come from the top down," Feldman says. ■

The Brexit opportunity for Luxembourg and the Channel Islands

The alternatives sector should see growth in trusted domiciles as fund managers seek continuity, argue *Graham Perry-Dew*, *Julian Carey* and *Stuart Winter* of Vistra

Brexit will undoubtedly bring considerable opportunities over the next few years, though not without risk.

The opportunities are found in questions of domicile. The expectation is that the alternatives sector will continue growing significantly in Luxembourg and other trusted domiciles such as the Channel Islands. In preparation, many service providers are increasing their levels of investment in key domiciles to accommodate the up-turn in activity.

Access to EU markets for non-EU managers is a core problem faced by a significant proportion of clients; however, they can be supported through the third party Alternative Investment Fund Manager offering. In addition, the market is seeing an increase in UK-focused investment products being established in the UK, in a direct response to Brexit.

Overall, Brexit is encouraging further development of sector expertise in appropriate jurisdictions as functions and operations are expanded in these locations. The foreseeable risks lie around the Alternative Investment Fund Managers Directive regime and passporting. The overriding complication for the sector is the impact Brexit will have on the AIFMD regime.

There is a significant risk of a period of disruption and adjustment for clients as a new model is developed and implemented for the UK. The optimum outcome for the alternatives industry would be retention of UK membership of the European Economic Area, allowing retention of passporting rights, though this seems unlikely. The next best thing would be a UK-specific arrangement that achieves the same outcome. Otherwise the UK would need to access passporting rights as a "third country".

> "Managers need to take action to ensure they can continue with their marketing strategies for prospective EU investors"

It would be reasonable to expect a pragmatic solution that gives AIFMD passporting rights to the UK, but there may be a period of disruption before this. Many people are worried about the overall impact of Brexit on investment market performance in particular and on the economy more broadly.

With continued uncertainty around Brexit, managers need to take action to ensure they can continue with their marketing strategies for prospective EU investors.

Selecting the right jurisdiction in readiness for Brexit is going to be critical, not just for start-up managers but established managers in the UK who will need to ensure continued distribution to EU investors.

There are two likely options:

1. If a fund is completely outside the EU then marketing to investors using the national private placement regime of each target member state continues to be an effective solution. A manager can establish its own standalone operation in an EU jurisdiction. This option may be expensive and operationally difficult in terms of recruitment and retention of resource.

2. A manager may re-domicile its whole operation in the EU. This option may be expensive, operationally difficult and unsettling for existing investors. A manager may choose to engage a third-party EU based administrator. Changes to delegation rules may impact on the acceptability of these situations to local regulators. In such instances, managers will need to look to the support of global providers to ease the impact of Brexit on their businesses.

View from Luxembourg

Given the uncertainty created by Brexit, some fund promoters began considering Luxembourg as a more favorable fund domicile in 2016. As the Brexit scenario has unfolded they have also begun to look at AIFM/Management Company arrangements to future-proof and ensure continuity of distribution arrangements post March 2019.

To this end, certain promoters have already decided to establish AIFMs in Luxembourg, or, driven by economies

of scale, are negotiating with third-party AIFMs to provide these services for existing and newly raised funds under a delegation model. Even post Brexit, the fund promoter will still be able to provide portfolio management from the UK or elsewhere.

From a Luxembourg perspective, when considering a soft Brexit, to a certain extent some of the impact is immediate. Promoters raising new funds already have to be sure they will be able to market their funds and operate effectively whatever the outcome. So business should continue along current lines, with Luxembourg continuing to attract new funds and grow AUM.

In the event of a hard Brexit then we envisage similar growth in fund numbers and AUM, but expect more AIFMs to be set up, and a small influx of personnel into Luxembourg, or third-party AIFMs appointed.

Parry-Dew: Luxembourg will see immediate impact

Winter: future looks bright for Channel Islands

Carey: private placement is a cost-effective solution

View from the Channel Islands

Guernsey and Jersey have always been outside the EU and their relationship is one of affiliation, via the UK, relating only to some specific trade. Financial services have been outside this relationship and hopes of being in the first round of "third country" jurisdictions able to passport into the EU via equivalence in regulation were dashed when the negotiations were abruptly terminated by the EU in response to the Brexit vote.

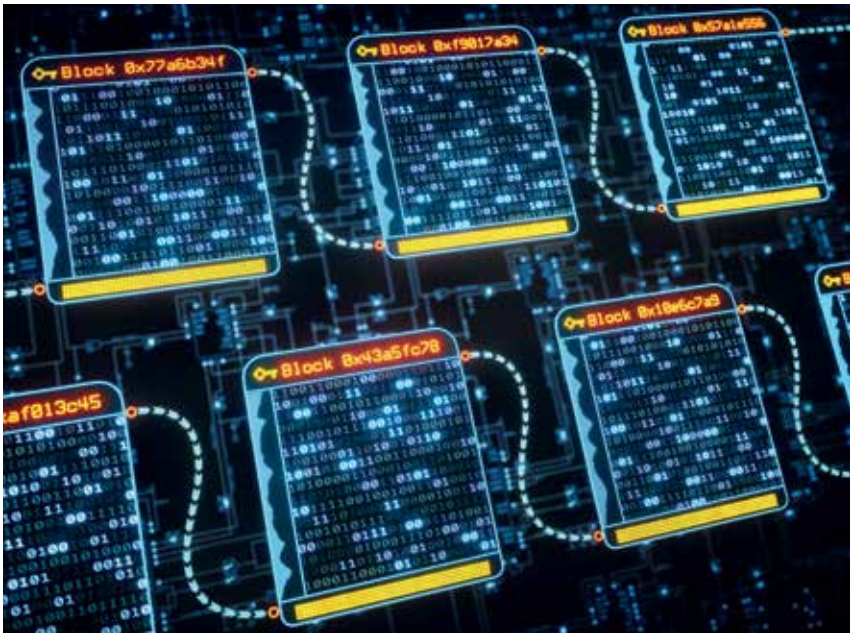
The Channel Islands, therefore, have continued to rely, and indeed thrive, on the private placement regimes of member states to market funds into these jurisdictions. Guernsey and Jersey's biggest relationship is, of course, with the UK which remains by far the most important jurisdiction for the islands. The Channel Islands, rather like the UK, are looking much further afield to the Far East and the United States. Guernsey and Jersey as well-regulated jurisdictions can provide these rapidly growing markets with substance in which to domicile funds, and an attractive alternative to other domiciles.

The mainland EU jurisdictions have traditionally looked to Luxembourg and Dublin for their UCITS and AIFMD compliant funds. Global third-party administrators can make the best of both worlds by providing AIFMD compliant management and compliance services out of Luxembourg for non-EU managers who want to market into the EU outside of the private placement regime. Other jurisdictions, such as Guernsey or Jersey, can be used for less expensive and less restrictive non-EU funds focused on raising money from the rest of the world.

Culturally and linguistically, Luxembourg will always appeal as a tax-neutral domicile for German and French investment vehicles, but the dominance of the City of London is likely to continue post-Brexit. The stated intention of not including financial services as part of the Brexit settlement, whatever the outcome of negotiations, can only serve to strengthen the long-established bonds between London and the Channel Islands. UK alternative managers for whom access to EU markets remains important are either setting up their own offices in the EU or using service providers to set up EU-domiciled feeder vehicles or parallel investment vehicles with local AIFMD-compliant manager oversight, in conjunction with their Guernsey-domiciled funds.

It remains difficult to speculate about the impact of either a 'hard' or 'soft' Brexit on Guernsey and Jersey. Neither have ever been EU member states but the Channel Islands have historically, and continue, to attract EU fund managers and funds raising capital from the EU. The private placement regime continues to be a cost-effective and practical solution for which Channel Island administrators have developed a credible track record for delivery. The future therefore looks relatively promising for both Guernsey and Jersey post-Brexit. ■

Graham Parry-Dew *is the director, global depositary, Luxembourg.* Julian Carey *is the associate director, client services, Guernsey, and* Stuart Winter *is the director, business development, funds, Jersey.*



Blockchain: allows real-time reporting

Using AI to make portfolio decisions

Advances in blockchain and artificial intelligence will drive efficiency and business decisions in private equity, writes *Vishal Shukla*, a senior director at compute acceleration start-up NVXL

Chief financial officers and other executives at private equity firms will be able to quickly assess the financial health of a business in real-time using blockchain and artificial intelligence, executed through machine learning and deep learning.

The technology is still in its infancy, but the capacity to review predictive results of companies is being developed, which will help private equity executives to make better long-term decisions on their work and on their portfolio companies.

Executives will be relying on blockchain and AI, machine learning and deep learning financial software programs to gather and analyze extensive data.

They will be using machine learning and deep learning to weigh thousands of known factors – from seasonal shifts to industry timings – based on historical data. The result will be more accurate assessments of individual companies.

Most accounting and auditing work is still manual and time-consuming; blockchain will work to enhance the double-entry bookkeeping by real-time journal entries. Among the companies with finance text analytic solutions, SAP provides blockchain-as-a-service for easy and low-risk experimenting with cloud-based distributed ledger technology.

How does it work?

Blockchain allows companies to write their transactions directly into a joint register (instead of keeping separate records), which creates an interlocking system of verifiable and enduring accounting records. These cryptographically sealed transactions cannot be falsified or destroyed, and in many ways are more secure than a notary. Executives no longer have to wait for quarterly, semi-annual and annual reporting.

Blockchain fundamentally provides a source of trust, secures the integrity of accounting records with completely traceable audit trails and creates fully automated audits. The accuracy and immediacy of the distributed ledger reduces the need for time-consuming multiple audits of companies with multiple ledgers.

In such a system with complete transparency and real-time reporting, there are no incentives to delay hiring, advertising and implementing projects to the end of the quarter. The timing can be based on what's best for the company, not the financial reporting schedule.

As far as potential hurdles, new governance will have to be determined around who gets access to the information, since maintaining transparency is part of the strengths of blockchain. There will also be "switching costs" to move financial statements into blockchain distributed ledgers in the cloud. Lastly, financial practices will have to move all transactions that previously

existed outside the ledger, into the blockchain ledger.

Beyond distributed ledgers

After distributed ledgers are fully established on the blockchain and in the cloud, investors and private equity firms can run this data via deep learning, referencing historical data and inputting thousands of other variables into the neural network. This means that over time, the accuracy of predicting the accounting direction of the company becomes more realistic.

Investors will be able to have an end-to-end view, and can look over the entire portfolio, by reviewing the growth and expenditures that have been analyzed by machine learning and deep learning. This end-to-end view will suggest what kind of company should receive investments based on its future growth potential.

Some behavioral biases can cause investors to make mistakes. Using machine learning and deep learning will potentially safeguard from these human errors, or at least call attention to a reality based on a whole new type of software that continuously learns and improves every time new data is inputted (without being explicitly programed).

The analysis of investor portfolios and predicting five years in the future, recognizing trends in the market – all become more feasible and accurate with blockchains and AI, machine learning and deep learning. Managers will be able to more easily observe portfolio risks and data drifts, giving them greater insights.

Predicting investments

Using blockchain real-time journal entries, private equity managers can statistically see the burn rate of a specific company and analyze its meaning. For example, a company may show a loss of $100,000 a month in its first quarter, indicating overspending. However, this statistical analysis may be wrong.

A truer picture comes through machine learning and deep learning technology, made possible by the increase in granular data as devices such as laptops, cell phones and tablets became household items. As a result, factors such as location, weather, demographic trends, psychographics and common industry patterns can be used for machine learning and deep learning outcomes.

> **"A company that is projected to start operating at a 10 percent loss in two years based on AI analysis [could] inform the private equity executive that it may be advisable to sell in one year"**

These machines are being trained and can predict more accurate results. So a statistically true result can now be refined, and in fact may show something completely different. For the above example, the company that was operating at a loss in the first quarter will have an enormous increase in profits in the second quarter, since their clients make their major purchases in the second quarter. AI will eventually be able to fill in the information gaps quickly, going far beyond the scope of human capability.

Managing portfolios

The complexity of predicting investments increases when looking over an entire portfolio and gauging results over five to 10 years. Using semantic analysis (identifying what decisions made by machine learning and deep learning) and comparing results over time, AI can predict events that can help private equity in business decisions. In a global scenario, for example, there are millions of variables that can impact business – these variables come from macroeconomic factors, global political conditions, global trade environment and so on. These data points are readily available on the internet today, but it is impossible for a human to factor in all the massive data and make a pattern out of it. AI can help solve such data problems.

AI can examine portfolios with a more holistic view, can review any number of companies at once and identify patterns that can advise private equity officers on their most critical decisions. For example, a company that is projected to start operating at a 10 percent loss in two years (based on AI analysis) will inform the private equity executive that it may be advisable to sell in one year. AI will also be able to alert an executive to fill in their fund portfolio with a particular type of company that is missing.

Blockchain-distributed ledgers are set to become the next version of accounting systems. Similar to how the internet became an integral part of every financial business, blockchain will have the same type of impact in terms of how transactions are recorded, reconciling information across businesses and enabling new infrastructure for financial products and services. As these tools get smarter and faster, private equity companies will gain deeper and real-time insights in their current evaluations of their portfolio, while enabling more accurate predictive decision making for their long-term value estimates. ■

A wake-up call on GP-leds

The SEC will act on fund restructurings if it believes investors haven't been given full information. By *Nathan Williams*

The Securities and Exchange Commission has taken action against a firm over a GP-led restructuring, in what's believed to be the first case of its kind.

Veronis Suhler Stevenson agreed to pay $200,000 for allegedly misleading limited partners about the value of fund stakes it had offered to buy in an effort to dissolve a $1 billion fund.

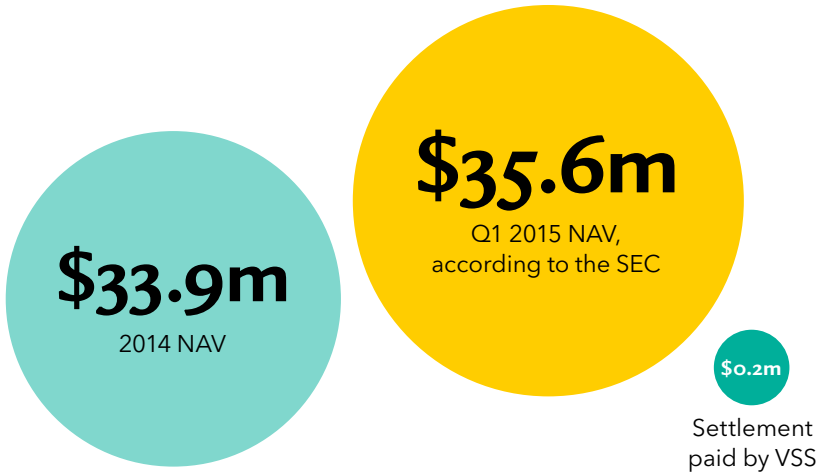
The sanction relates to stakes in the New York firm's Fund III, which was raised in 1999 and VSS was looking to dissolve in late 2014. VSS offered LPs a cash distribution-in-kind payout at a price based on 100 percent of the fund's December 2014 net asset value. The SEC says the NAV of the fund at the time was $33.9 million, and VSS used this as the basis for the offer to LPs.

However, at the beginning of May 2015, before the deal went through, VSS failed to inform limited partners that the firm had received information indicating the NAV of the fund had "increased significantly" on the amount previously stated, to the tune of approximately $1.74 million, the SEC says.

The regulator says the "omission of this information regarding the potential increase in the value of Fund III's portfolio companies resulted in certain statements in VSS's May letter being misleading. In addition, after the offer was made, VSS did not provide the remaining Fund III limited partners with the first quarter 2015 financial information, which, according to VSS's calculations, still showed an increase in Fund III's NAV." The SEC says that the offer letter made it appear that the limited partners would receive the full value for their interests.

Failure to disclose

The SEC alleges that VSS misled LPs to the tune of $1.74m



Source: SEC

> "With GP-led transactions, every deal is a snowflake"
> Jennifer Choi

"VSS is pleased to have reached a resolution with the US Securities and Exchange Commission and to put this inquiry behind us," the firm says in a statement provided to *pfm*. "VSS is committed to upholding the highest standards in all that we do and we remain dedicated to continually enhancing our practices."

A person with knowledge of the situation tells *pfm* the later valuation at the center of the SEC action was incomplete, preliminary and turned out to be incorrect. The person says a third-party appraisal of the fund's value had previously been approved by the LPs.

Conflicts of interest

VSS "lowballed its purchase offer to LPs," regulatory compliance advisor Cipperman Compliance Services said in a note on the SEC action. The compliance consultant said that it "generally advises against principal transactions with clients/investors/LPs. Purchasing private interests directly from a client is so rife with conflicts that no amount of disclosure may be sufficient."

"What is interesting about the subject proceeding is that the new finan-

Better late than never

The VSS case is a welcome intervention from the regulator, writes Secondaries Investor editor *Adam Le*

Legal practitioners have long warned the US regulator was likely to act on GP-led restructurings – and at last it has. This appears to be the first time the watchdog has censured a firm over an apparent conflict of interest related to a general partner-led deal. GPs have a fiduciary duty to act in the best interest of their limited partners, including providing them with information relevant to their interests, as outlined in most limited partnership agreements.

In the VSS case, the conflict is particularly acute because the buyer of the fund stakes was managing partner and owner of the GP itself and a member of the fund's investment committee. Such roles give access to portfolio valuation "inside information," as one legal expert familiar with the matter put it, that a third-party purchaser would not have.

One unanswered question is whether an advisor – whose compensation is typically based on the amount of NAV that trades – was involved in the process on Fund III (the SEC letter does not mention one).

At the heart of the matter is the principle of "full and frank" disclosure. But rather than dismiss VSS as simply a case of alleged Wall Street skulduggery, the industry should take this as welcome guidance from an enforcement body that has been unnervingly silent over best practice in GP-led deals. With no standardized approach as to how to treat conflicts of interest in such transactions, some parts of the industry have been left to their own devices.

Secondaries has come a long way in a short time, but remains a relatively small corner of private markets. Better that kinks are ironed out now and lessons learned early than when annual deal volume is measured in the hundreds of billions and GP-led restructurings become a regular exercise for the brand-name global GPs.

cial information which the SEC felt should have been disclosed appeared to be preliminary," says Ralph Siciliano, a partner at law firm Tannenbaum Helpern Syracuse & Hirschtritt.

"One might wonder what would have happened if the preliminary information was disclosed, and some investors decided not to sell their interests based upon it, and it later turned out that the preliminary information was incorrect. Would the investors who did not sell, and would the SEC, then claim that it was not proper to have released the information? These questions demonstrate the significant risks associated with a principal buying investors' interests."

> "Purchasing private interests directly from a client is so rife with conflicts that no amount of disclosure may be sufficient"
>
> Cipperman Compliance Services

Clear as day

Limited partners have been pushing for greater transparency from general partners, including secondaries deals such as that involving VSS.

The Institutional Limited Partners Association, which has around 450 member institutions globally representing at least $2 trillion in private equity assets under management, has been raising issues with the SEC for changes in rules that call for more disclosures from private equity firms.

In a proactive step, the trade body says it will issue an update to its private equity principles that includes guidance on GP-led restructurings as early as this year. It has been discussing the issues surrounding these deals at its events, Jennifer Choi, ILPA's managing director of industry affairs, tells sister publication *Secondaries Investor*.

"Our sense is that [GP-led restructurings are] becoming more commonplace because LPs are seeking to restructure portfolios, they're seeking liquidity solutions, GPs want to offer optionality and secondaries dry powder is tremendous," Choi says.

"Guidance now feels like something we need to do in the context of the third iteration of the principles, but also on a standalone basis with some education wrapped around it for the industry."

ILPA will engage with GPs about restructurings, she adds.

"With GP-led transactions, every deal is a snowflake." ■

The holy trinity of terms

Long-time limited partner turned consultant *Ray Maxwell* reflects on the three key economic terms at the heart of the relationship between manager and investor

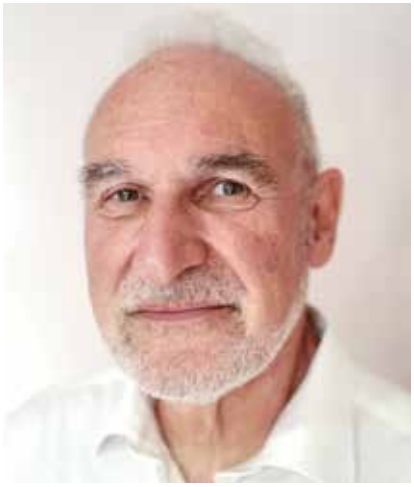
Within private equity there is a holy trinity of terms – carried interest at 20 percent, management fees at 1.5 percent to 2 percent and a preferred return of 8 percent. These terms have become a standard and are applied to virtually all private equity funds no matter their size or purpose, and this creates anomalies.

Carried interest

The accepted view is that carried interest should be 20 percent of capital gains, but there is little explanation as to why this should be so. The earliest reference is in the Bible referring to Joseph's plan to encourage grain production in ancient Egypt: "Here is seed for you, sow the land. And it will be at the in-gatherings that you will give a fifth to Pharaoh and the four parts shall be yours." (Genesis 47:23-24). In the 12th century, ship captains received a fifth of the profits on the cargo they "carried," and closer to today, it was the rate adopted by the oil and gas industry as appropriate compensation for "sweat and labor." Private equity had no hesitation in adopting the term. Investors, who may not have read all the small print, didn't protest, since the general partners of funds only have to contribute a small percentage of committed capital to be enabled to participate in the carried interest. In essence, the investors assume the risk and the GP enjoys the return as demonstrated.

Scenario A assumes a fund size of £100 million ($132 million; €112 million) and the GP contributes 1 percent of the capital. If the fund generates a 2x multiple overall, the investors enjoy a 1.8x multiple and the GP a 20x multiple.

Of course, as in Scenario B, if the GP commitment rises to 3 percent, the investors enjoy a marginally higher multiple and the GP's multiple declines but still remains substantial.



Maxwell: look again at the sacred cows

The question is the balance between risk and reward and there is an immediate contradiction in that the investors require greater risk to achieve their targeted rates of return while it is not in the best interest of the GP to assume too much risk and thereby jeopardize carried interest.

A further wrinkle is the impact of fund sizes. Over the past 25 years fund sizes have grown substantially and a typical mid-market buyout fund, which historically would have been in the order of £250 million in size, is now over £1 billion. The impact of the increase in size is that the GP can enjoy a larger quantum carried interest even if the multiple generated is lower. Scenario C below shows a £500 million fund that generates a 1.5x multiple and the GP contributes 1 percent of the capital. In this instance, the GP will enjoy a profit of £45 million and a 10x multiple.

Carried interest is the share of gains given up by investors to GPs as an incentive to produce superior returns and it should not be available for indifferent performance. Standardizing carried interest made sense when funds were approximately the same size, but now the range is immense and at the top end, relatively modest performance still allows GPs to participate in substantial carried interest pools.

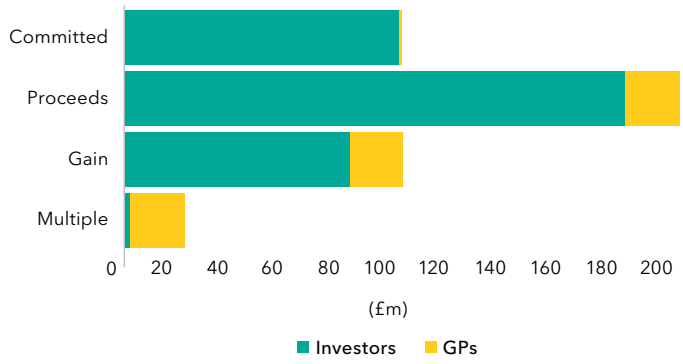
An alternative model, which has some considerable merit, would be to drop the notion of a fixed rate of 20 percent and create a progressive carried interest step function that delivers higher rates of carried interest as additional proceeds are delivered. Scenarios D and E illustrate the concept based on a £500 million fund with increments set at £100 million. D shows that if the fund produces £500 million of gains, the GP would receive £75 million of carried interest, which is equivalent to a rate of 15 percent. E shows that if the GP was able to deliver £1 billion of gains, the quantum of carried interest would have increased to £212.5 million – equivalent to a carried interest of 21.25 percent.

This model aligns the interests of both GPs and investors with the incentive to deliver high cash-on-cash returns. To make sure there is not a tilt in favor of the GP, the maximum marginal carried interest rate should be 50 percent, and if the GP has reached that point then the investors should be in a state of delirium.

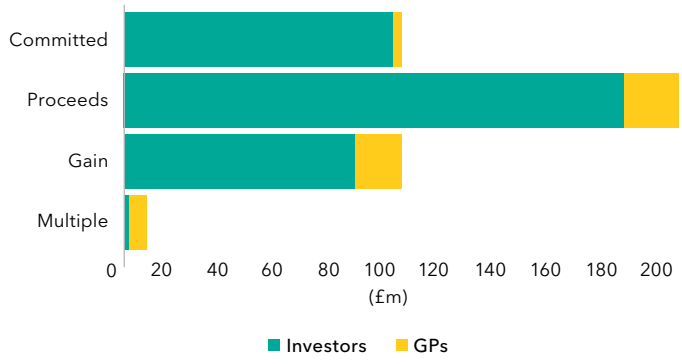
There is an argument that this model ignores the impact of time and that GPs

Enjoying the return

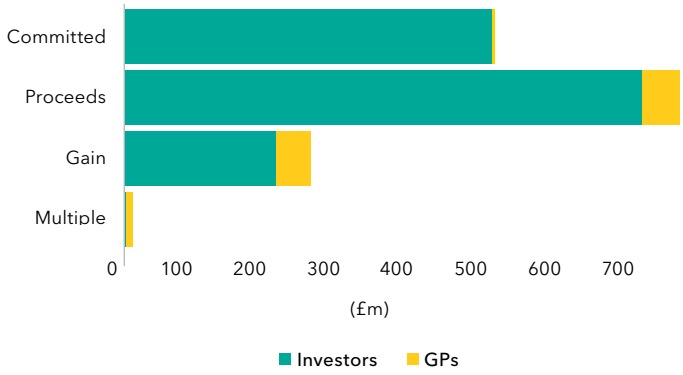
Scenarios A shows a GP commitment of 1% to a £100m fund which earns a multiple of 2x



Scenarios B shows a GP commitment of 3% to a £100m fund which earns a multiple of 2x



Scenario C shows a £500m fund with a GP commitment of 1% and a multiple of 1.5x



Source: Ray Maxwell

will hold on to investments for as long as possible to maximize the cash-on-cash multiples. This is unlikely because the opportunity to sell investments is infrequent and moreover, general partners are constantly in the market to raise new funds and they will need to demonstrate performance to their investor base.

Management fees

In its infancy, private equity adopted the fee structure found in oil and gas funds, and the general rate was set at 2 percent of funds raised. Most funds were in the range of $50 million to $200 million and therefore the fees generated were just sufficient to hire decent staff and make, manage and exit investments.

Over the past 25 years there has been a transformation in the private equity industry. Fund sizes have grown, new funds are being raised every three to four years and there has been the emergence of the multi-asset manager encompassing the whole gamut of alternatives from private equity through to private debt, infrastructure and real estate, with each segment generating substantial fees. The result is that management fees have become a significant component of private equity managers' earning, diminishing the exclusive focus on maximizing carried interest.

Most private equity funds have a life of 10 years with a further two or three years added to allow for an orderly disposal of residual assets. The management fee is usually charged on committed capital less the cost of investments realized or written off. This creates a long tail of fees and every three to four years a new fund is raised (usually the same size or larger than the previous fund) resulting in the stacking of fees. It is unlikely that the increase in marginal revenue is matched by an increase in marginal costs, as a new fund does not require the recruitment of an additional team.

To add insult to injury, the management fee is charged on capital committed and not invested capital. As an illustration, a £100 million fund with a management fee of 2 percent draws down 10 percent of its capital in year one, which means that it will invest £10 million and charge a management fee of £2 million – equivalent to an actual rate of 20 percent. This creates "fee drag," meaning that the management fees in the early years of a fund's life have a highly corrosive effect on investors' net returns.

But management fees are hardly the only source of fees for private equity groups. There are other corporate finance fees, such as transactions fees, that can be levied, albeit they are now shared with the investor as an offset against the management fee and to pay for any abort costs. However, the question is whether the private equity group should enjoy any of these fees at all because, without the investors' capital, they would not be in a position to make any investments.

The problem is that fees are charged per fund without any recognition of the overall size of the group and its fee generating capabilities. While it was acceptable in the past – when private equity AUM were low – to charge per fund, it is less acceptable now as AUMs are now running into the billions. Private equity groups need to become more transparent about their revenues and profitability as businesses and fees should be more reflective of marginal costs.

Private equity cannot have it both ways – either significant carried interest or high fees – but not both. As in most corporate finance situations it is acceptable to pay a modest retainer and a huge success fee.

Preferred return

The third part of the trinity is the preferred return, which first saw the light of day in the late 1980s as a mechanism to provide investors with some relatively early liquidity and create a modest benchmark against which private equity performance could be measured.

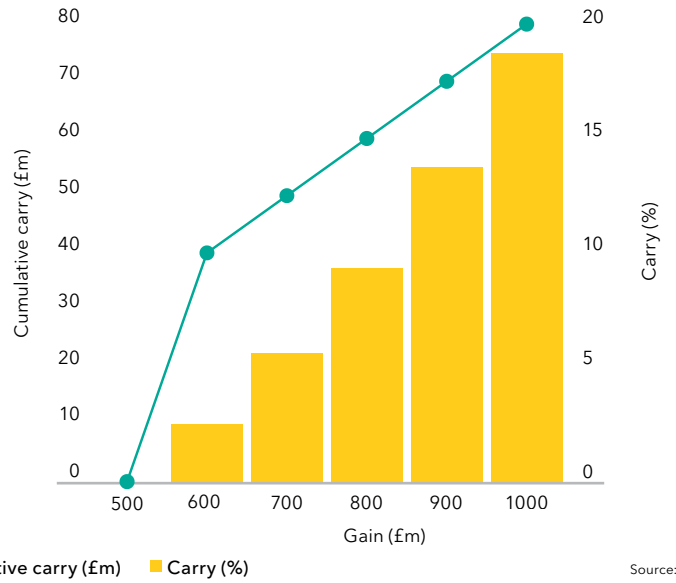
Unlike conventional equities, private equity is illiquid and that creates significant issues when measuring private equity performance on a time-weighted rate of return basis. It takes time for allocations to be converted into commitments to private equity funds and usually upward of three to four years before those commitments are fully invested. Moreover, investments may take six to seven years before they are realized, and in the intervening time those investments are valued on a prudent basis. The result is that private equity appears to be underperforming relative to quoted benchmarks due to a combination of duration and a money rate of return being applied to unspent allocations.

The introduction of a preferred return was aimed to provide investors with some relatively early liquidity and the rate chosen was the "risk-free" rate pertaining at the time. The rate was deemed to be the yield on a gilt with similar maturity to the weighted average life of a private equity partnership, which was estimated to be around six to seven years, and in the late 1980s, that rate was around 8 percent. This figure has become a standard feature even though the yield on a 10-year gilt today is only 1.42 percent and equity returns today would struggle to exceed 8 percent.

A consequence of the introduction of the preferred return was that it made general partners aware that time is an exacting mistress and that any delay in achieving exits would make it more difficult to reach the promised land – breaking into the carried interest. Of course, having returned capital and the preferred return to investors, the quid pro quo has been that general partners have been granted a "catch-up" and can claim fur-

Step by step

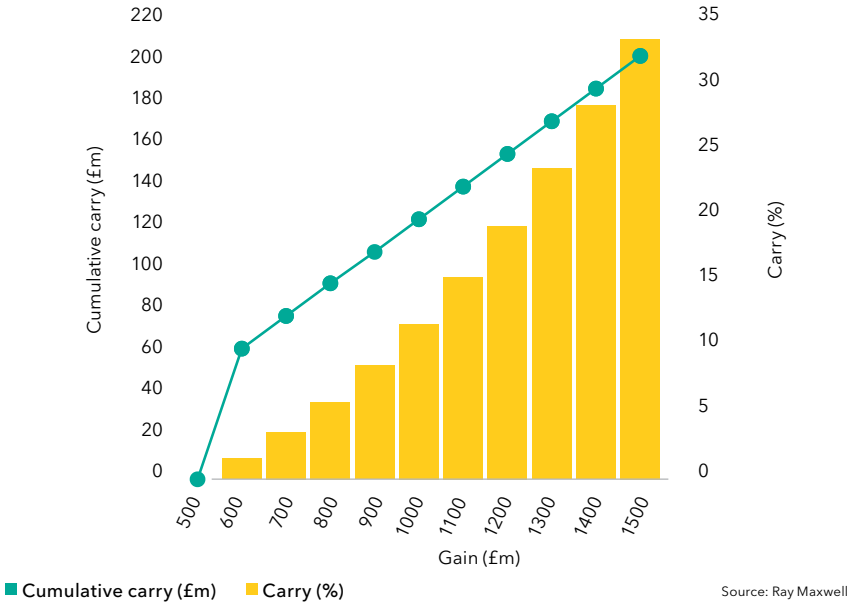
Scenario D shows a progressive carried interest step function if the fund produces £500m of gains



Source: Ray Maxwell

Smooth progression

Scenario E shows a progressive carried interest step function if the fund produces £1bn of gains



Source: Ray Maxwell

ther proceeds until 25 percent of the preferred return is recovered equivalent to a carried interest of 20 percent. This means that investors are in an "out of the money" position for an indeterminate period of time until the catch-up is achieved.

There are, however, a number of other issues with the preferred return.

The rate that has been adopted as standard bears no relationship to current risk-free rates, or indeed, equity rates.

Should general partners be subject to such time pressure? General partners cannot predict with any certainty when exits will be achieved, and indeed, holding periods have increased from four years in the 1990s to over six years now.

It leads to sub-optimal investment decisions at the beginning of the life of a fund because the objective (stated or not) is to eliminate the preferred return accrual as quickly as possible because of the burden of compounding.

It back-end loads carried interest and for younger members of the team, with the immediate expense of growing families, the thought of enjoying carried interest in the distant future is not a great incentive.

What happens if the hurdle rate cannot be achieved? In essence, the general partners are running the investments for fee and not capital gain. It could be argued that they have to do their best to be in a position to raise another fund, but since so many investors rely on track record, the general partners may feel that there is little merit in trying to "bust a gut."

A preferred return works well for "one stop" investment, but makes little sense for venture capital where there are several rounds of funding which may be drawn down in tranches depending on hitting milestones.

The question has to be whether the preferred return has served any useful purpose. Certainly it gives investors a priority claim to distributions, but the trade-off is the unknown amount of time it takes the general partner to catch up – it could be six months or six years, and as mentioned, during this period investors are literally "out of the money."

An argument has been put forward that there should not be a catch-up at all, since the preferred return compensates investors for the loss in the time value of their commitment over a fund's life. Certainly this would be sensible if the preferred return was set at the current low long-term risk-free rate.

The carried interest structure proposed in part one ignores the internal rate of return as the principle measure of performance, but focuses on the money multiples primarily because private equity is an absolute return class where its objective is to maximize the multiple. And therein lies a paradox in that the point of maximum IRR is reached well before the point where the money multiple can be maximized due to the laws of diminishing marginal returns. The objective is to take time out of the equation since general partners have limited control over the timing of an exit, particularly if the market moves against them.

When private equity was in its infancy 30 years ago, more attention was paid to the structure of funds and there was an appreciation that terms and conditions should vary depending on fund size. Today the range of fund sizes is enormous but terms and conditions have become standardized, which favors the behemoths since they do not have to perform well to enjoy substantial carried interest as well as enormous fee income.

The holy trinity has to be revisited to determine the terms and conditions that are appropriate for a maturing industry rather than religiously sticking to the terms that were relevant when private equity first saw the light of day in the late 20th century. ■

Coining it: the Swedish exchequer stands to benefit from a Supreme Administrative Court ruling

The chill around Sweden's tax decision

Funds are considering their future in the country after the nation's top court ruled carry should be taxed as income, not capital. By *Nathan Williams*

In the decade-long battle between Nordic private equity firms and Sweden's tax authority over how carried interest should be treated, the tax authority finally came out on top. In June, Sweden's top court – the Supreme Administrative Court – passed its final judgment.

The judgment against firms such as Altor, EQT and Nordic Capital in determining a significant portion of carried interest paid to general partners should be taxed as income, not capital. While this was the most highly publicized case of Sweden's tax authority acting against private equity, it was not the only one. The result, according to a person with knowledge of the situation, is "a complete loss of confidence" in Sweden's tax and court system.

That person says it is "a fact" that funds based onshore are now considering whether to go offshore. While there is no direct link between Sweden's decision to change how carry is taxed and a decision on where to domicile, the person adds there is an indirect link "insofar that the general feeling among practitioners and tax advisors is that the tax authority has not pursued things in a balanced manner."

Loss of faith

The aggressiveness of the tax authorities and the administrative court's views on the laws "has made its mark," the person says.

"People have completely lost confidence in the tax authorities, and more importantly, have lost faith in the courts and the court system. This loss of faith will affect future decisions about whether to go on or offshore."

The tax move is roughly in line with the country's overall push to reduce economic disparities. The government's redistribution reform policies give investing in programs such as employment and education precedence over tax cuts.

Individuals who take on carry, instead of paying 25 percent, will now be subject to a tax rate closer to 60 percent, plus social security contributions. Taxes collected from income, profits and capital gains contributed 36 percent of the SKr1.93 trillion ($212 billion; €182 billion) in total tax revenue collected in 2016, according to data compiled by OECD.

"It is correct that the Swedish Supreme Administrative Court has ruled in favor of the tax agency in a number of cases on carried interest," a spokesman for the Finance Ministry told *pfm*. "However, the main issues have not been where these funds have been located, but rather how the carried interest has been declared."

He pointed to other rules, such as the recently revised controlled foreign corporation rules, as a signal of the government's combative stance, saying that "step by step this government is making sure it's more difficult to run away from your tax obligations."

But rather than chasing Swedish firms away, one leading tax lawyer says the more aggressive posture taken by the tax authorities has influenced funds' decision to base onshore. "If you're onshore you don't have the echo system of people in a tax haven advising real humans at the general partner. If you bring everything onshore it means there is no 'advisor to the fund' situation and it does make you less vulnerable to tax authorities. It's less provocative. I don't want to say structuring a fund offshore, where the GP isn't, is provocative. But, well…"

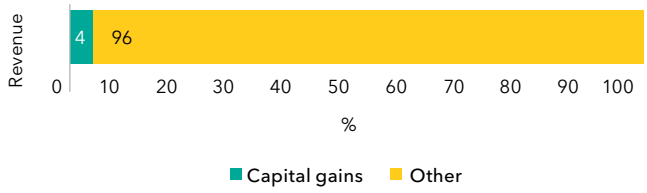
Sweden: the deal

Dividends for private equity are taxed at the same rates as local grocery stores or other small businesses

Source: Swedish tax authority

Gaining on the capital

Capital gains make up 4% of Swedish tax receipts



Source: OECD

On shore, on side?

One fund that decided to base itself onshore from inception was Adelis Equity, the mid-market investor co-founded by Gustav Bard, the former chief executive of 3i Nordic.

"When we set up in 2012, there was a lot of uncertainty about where the tax interpretation by the authorities would end up for Jersey and Guernsey structures," says Adalbjörn Stefansson, head of investor relations at Adelis.

"As we were starting fresh with no legacy structures, we decided to give [Sweden] a try. Obviously as a mid-market investor in Swedish companies, we also saw there might be some market goodwill for having a Swedish structure."

Stefansson believes Adelis was the first firm explicitly targeting non-Swedish investors to be onshore. He says "it took some time for the tax people to get around it" but after Altor decided to base its fourth fund – a €2 billion vehicle – there in 2014, it "solved the issue." The model was proven.

Regarding the taxation of carry, Stefansson says the rules are complex and there are some exceptions. The first €500,000 or so in dividends in any given year is taxed as income, at a marginal tax rate of 50-55 percent, and anything above that is taxed as capital gains at 30 percent, he says.

This is the same rate, Stefansson adds, as the local law firm, grocery shop owner or small business.

Others, however, question whether there is any goodwill resulting from a Sweden base, with one observer pointing to Valedo Partners, which was founded by former employees of EQT.

"There might be this idea that 'Let's go onshore and alleviate some of that pressure and get more favorable treatment,'" says one advisor. "It doesn't work. Look at Valedo. They have always been onshore and the tax authority went after them to get them to pay corporate income taxes on management fees." He adds it was unprecedented for the authorities to try to tax a fund entity in this way.

The decision by the authorities to sue Valedo may have had a ripple effect. At the time of the announcement, Nordic Capital was considering whether to base its ninth fund in Sweden or Jersey.

"They were putting serious resources into the case for going onshore [to Sweden]," says one Scandinavian GP. "They'd spent hundreds of thousands. Midway through mapping out how it might work if they went onshore, the Valedo verdict came in. And this was one of the reasons they decided against it." ■

'NO-DEAL' PREPARATION REQUIRED: PROSKAUER

Fault line: managers should prepare for no-deal Brexit

Funds should be acting now and making contingency plans to cover all potential Brexit outcomes, including a worst-case no-deal Brexit scenario, says law firm Proskauer Rose.

The firm said in a recent note that the proposed transitional arrangement between the EU and UK, which would see EU laws – including the Alternative Investment Fund Managers Directive regime – stay in place until the end of 2020 cannot be relied upon: "There is no certainty at this time that the transitional arrangement will come into effect."

As a result, Proskauer says fund managers utilizing the cross-border passport should put contingency plans in place now and should also consider their longer-term plans "on the basis that the passport would not be available after 2020."

With the UK expected to become a third country (a non-European Economic Area country), the firm says that alternative fund managers would not have access to the various passport regimes for private funds and could only market their funds in the EU under national private placement regimes.

However, Proskauer warns that it is "not always feasible to obtain NPPR approval for marketing in certain member states" and cited Italy, where domestic law does not allow for NPPR notifications. The only way of marketing in this jurisdiction would be via the AIFMD marketing passport, which would not be available.

Private equity firms that are domiciled in the UK and seek to do business in Europe would need to set up jurisdictions before March 29, when the UK plans to secede from the EU.

JERSEY FAST TRACKS FUND APPROVAL

Recent changes to the Jersey private funds regime could usher in instant online approval of funds on the island. The regime for authorizing funds has been adapted to make it possible to submit applications online and the Jersey Financial Services Commission has launched an online application tool for funds to fast-track their products. The JFSC anticipates all applications and notifications will be paper-free by early 2019.

The Jersey Funds Association says the changes and new technology will significantly speed up the authorization process and have the potential to "revolutionize" the sector.

Jersey recently moved to allay fears that funds based in the UK crown dependency wouldn't be able to do business with the rest of Europe following statements by ministers that a 'no-deal' Brexit was the likely outcome of UK-EU separation talks.

Point and click: Jersey has streamlined fund approvals

EMPLOYEES ARE A TOP CONCERN FOR CFOS

Revolving door: CFOs in Europe are worried about retaining talent

Hiring and retaining employees is at the top of concerns for chief financial officers in the US, according to a survey by Duke University. Of the CFOs from 241 public and private companies surveyed in the latest *Duke CFO Global Outlook*, 53 percent expressed "difficulty attracting/retaining qualified employees" as a concern in the three months to mid-September. That response was the highest since the second quarter of 2008, when the survey first released results on that topic.

Compared with other regions, CFOs in Europe also put hiring and retaining employees at the top of their concerns, with 36 percent responding. That number was lower in Asia, at 34 percent; in Latin America, at 16 percent; and in Africa, at 13 percent. Respondents in the survey said that they have used higher salaries and bonuses as incentives to attract and retain employees.

The survey is comparable to views held by CFOs at private equity firms, who say that retaining talent remains a challenge. At an Invest Europe forum in Lisbon in June, CFOs said good pay and engagement were among the ways they retained members of their finance team. A recent EY survey showed that while 18 percent said it was difficult to retain talent, but a higher proportion, at 35 percent, said it was more difficult to attract talent. ■

GENERAL PARTNERS

Antoine Rouland joined Agilitas Private Equity in September as investment director. Prior to Agilitas, Rouland worked for Ciclad, a French private equity fund, as an investment professional for seven years. Before working at Ciclad, Rouland was a project manager for global management consulting firm Booz. Prior to joining the private sector, he spent four years in the French army.

Anne-Claire de Pompignan also joined Agilitas, in August, as the new head of investor relations. De Pompignan previously worked at Lyceum Capital where she focused on investor relations and capital markets.

Before her time at Lyceum Capital she was an investment director at European Capital, where her focus was on investing private debt in pan-European mid-market buyouts. De Pompignan is taking over for Charles Lemon, who left last year.

SERVICE PROVIDERS

Matt Dunn was hired by Arthur Cox, an Irish law firm based in Dublin, as a partner and head of the project and infrastructure group. He will focus on working closely with the firm's infrastructure, construction and utilities group on financings in the infrastructure and utilities sectors, including PFI and PPP financings.

Dunn was previously a partner in Clifford Chance's finance department. He has experience in advising borrowers and lenders on leveraged finance deals, event-driven corporate financings, infrastructure/secured debt platform financings, and emerging markets project financings. Dunn has also advised the Loan Market Association.

Dan Shribman has joined B Riley Financial, a diversified financial services company, as president of the investments division. In this newly established role based in New York, Shribman will help manage and oversee B Riley Principal Investments' portfolio of companies. The firm's Principal Investments subsidiary invests in or acquires undervalued businesses and assets, and typically acts on investment ideas that are sourced and originated from within the B Riley platform.

Shribman joins from Anchorage Capital Group, where he worked in close collaboration with management teams and corporate boards to maximize shareholder value in the form of both operational turnarounds, capital markets financings and communication and capital deployment initiatives.

REGULATORS

Christopher Hetner will step down from his position as senior advisor for cybersecurity policy to Securities and Exchange Commission chairman Jay Clayton, but he will continue in his role until a replacement is found.

Hetner was important in the agency's effort to better co-ordinate cybersecurity policies by working with other federal financial regulators and helping the agency manage cyber-related market risks. He also focused on working across the SEC's divisions and offices to strengthen cyber incident response planning and threat intelligence capabilities. He also worked as a senior advisor for cybersecurity policy to former chair Mary Jo White and former acting chairman Michael Piwowar.

Hetner previously served as the cybersecurity leader for the technology control program in the Office of Compliance Inspections and Examinations.

Pamela Dyson stepped down as the SEC's chief information officer after eight years to join the Federal Reserve Bank of New York as executive vice president, head of the technology group and CIO.

During her time with the SEC, she helped deliver the agency's 2018-20 IT Strategic Plan and created the IT Strategy and Innovation program to lead the SEC's digital transformation efforts. Dyson began her SEC career as assistant director for enterprise operations, where she managed day-to-day operations including IT infrastructure and all enterprise operations for the SEC's headquarters and its 11 regional offices. Charles Riddle, the SEC's chief technology officer, took over for Dyson as acting chief information offer. ■

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