OnAir with Akin Gump

Akin Gump
STRAUSS HAUER & FELD LLP

Ep. 18: Fund Negotiations—Bridging the GP/LP Gap

August 7, 2019

Jose Garriga: Hello, and welcome to *OnAir with Akin Gump*. I'm your host, Jose Garriga.

The format of this episode is just a bit different from that of our usual conversations. Today, I'm joined by Jim Deeken, an investment funds partner in Akin Gump's Dallas office, and associate Gechi Tesic. And they'll be performing a sort of mock negotiation in which Jim plays the role of a senior partner at Deeken Capital, a hypothetical private equity firm, and Gechi plays the role of a pension fund that is considering making an investment in a successor fund.

Welcome to the podcast.

Jim and Gechi, welcome. Before we get started, I have one question for you: What makes this a compelling conversation?

Jim Deeken: Well, Jose, one of the things that we see often in our practice is that there's an ongoing tension between what fund sponsors and investors think is "market," which I tend to think is a really fact-intensive and contextual determination that can get overly simplified. Here, what we want to do is discuss a number of the key terms—a number of the key terms that are often negotiated, including management fees, expense provisions, renewal mechanics—in order to present the perspectives of both the general partner [*the fund sponsor*] and the investor, and to see how open communication and compromise and discussion can lead to some commonly used solutions to get around a lot of the topics that commonly present themselves in fund formation and negotiation.

Jose Garriga: Thank you, Jim. So, listeners, a few background facts to set the stage for the presentation you're about to hear. Sponsor Deeken Capital is seeking to raise a second fund. Peace Pension Fund is invested in Deeken Capital's first fund and has received a blackline comparing the Fund I documents to the Fund II documents. Peace Pension Fund's chief investment officer and a Deeken Capital senior partner are meeting in the sponsor's Dallas office to discuss Fund II in advance of the Peace Pension Fund investment committee's upcoming quarterly meeting.

The chief investment officer needs to be able to represent to her investment committee that she has thoroughly negotiated the terms of the investment in keeping with Peace Pension Fund's fiduciary duty to its beneficiaries.

The senior Deeken Capital partner would like to convince the Peace Pension Fund to make a $50 million capital commitment to Fund II as a second closing investor. Peace Pension Fund committed $25 million to Deeken Capital's inaugural fund and is happy with its returns.

And so, without any further ado, Jim Deeken and Gechi Tesic performing a mock negotiation between a private equity firm and a pension fund.

Jim Deeken: Gechi, thank you for allowing me to take you for lunch, I hope you're excited about everything we're doing here, excited about the team members that you have met. We've sent you some documents; they're basically the same documents from the last fund with a few updates. I assume that they're mostly fine and you know, so just very excited about the prospect of having you in again for an increased commitment, hopefully. And, yeah, just wanted to talk one on one, to make sure you're okay with everything, and you're okay with the documents and the lawyers are good so just thought we'd just talk a little bit.

Gechi Tesic: And I just wanted to thank you for the time and taking me out today and taking me around the office. It's really been a great relationship between Peace Pension Fund and Deeken Capital, and we are excited about the prospect of investing in Fund II.

However, we did run a blackline between the fund documents for Fund I and Fund II, and there are a number of issues that gave us some pause. So, I just wanted to run down the list with you, and I hope that none of this seems coming from left field. But I think that we have some pretty reasonable concerns.

Jim Deeken: That's fine, that's fine. We want your money, we want everybody to be happy, and certainly we value and we're open to whatever your views are.

Gechi Tesic: Well, I appreciate that. As may be common, I'm going to start on the economic piece because obviously that's very important to us, very important to our beneficiaries and is one of the key metrics that we use in determining whether or not to invest.

On the management fee, I notice that, in Fund II, the management fee is no longer offset by monitoring fees paid by portfolio companies to your affiliated service providers. Can you help me understand why you made that change? It seems like you might be getting double paid given the fact that we're already paying you a management fee; paying additional fees on top of that seems a bit duplicative.

Jim Deeken: Well, I appreciate you raising that concern; I think some other people have passed us some questions about it. Maybe we were a little too broad when we drafted it. But, basically, the concept is: We don't make any money off the management fee. You've seen all the staff we hire, you've seen our office space—we're barely breaking even. And there are times when we have the opportunity to look at a portfolio company or to improve a portfolio company, and we need to go out and hire a consultant, maybe an operating partner to come work for our firm for a while. And we think that should be a fund expense—we're hiring them to help the fund. Our SEC lawyers have told us that if the fund documents say we can pass that through, and it doesn't offset management fees, we have an issue. So we're just trying to be transparent.

Really what we have found is a lot of times when we go out and hire these professional consulting firms, we pay a lot of money but we don't necessarily get what we need in terms of responsiveness, seniority, so sometimes it's a better deal and sometimes actually cheaper for our investors if we hire our own operating partner to do these things and treat them as fund expenses rather than go out and hire a large consulting firm and pay even more money.

So, part of it is a disclosure issue, where we're trying to disclose what we're doing and a lot of the enhanced SEC scrutiny.

Gechi Tesic: Yeah, and we do appreciate that. I really liked your point about it perhaps being a more economically efficient option to use affiliated providers. Is there any way that you could provide us with some notice of the amount of fees that are being paid to these providers, so that we can determine whether or not it is actually more efficient or at least close to the level of efficiency, given the fact that you seem to be pretty sure that you're getting better service?

Jim Deeken: Sure, why don't we do this: We'll disclose to the advisory committee every year the fees that we're paying, and what we're paying them for. So, we'll be shamed into honesty. We want to keep the advisory committee happy, and, so, people think we're going too far in one direction, they can just tell us. And by the way, I know what your next question is, I think with your extremely large commitment you're going to make…[*laughter*]

Gechi Tesic: That remains to be seen.

Jim Deeken: Assuming that you do make that large commitment, you will certainly be on the advisory committee. So you would have a stake in that directly.

Gechi Tesic: Well, I do appreciate you putting that on the table because that's one of my big points. We would really love a seat on the LPAC [*limited partner advisory committee*] this time around. We are still considering how much to invest, and part of that analysis is how well this discussion goes. So, I will have a better sense of our commitment amount after we walk through these points.

On the termination of the management fee, I notice that you've extended the management fees in this fund past the expiration of the fund's term through its liquidation. And you know, honestly, Jim, I've had some negative experiences with zombie funds in the past where we signed up for a 10-year term, and in year 12 and 13, we're still paying full management fees. So, this is something that we're really sensitive to at Peace Pension Fund, and we'd really like to see a hard stop on the management fee as soon as the fund's term ends.

Jim Deeken: Well, I know, the chances that it will become a zombie fund are so remote, but you have to plan for the possibility, of course, which I understand from your standpoint.

Gechi Tesic: Absolutely, yes.

Jim Deeken: Here's the issue that we run into: Since our investments are liquid, we might make an investment in year five, and, to be honest with you, in year eight or nine, it may go through a downturn. And, so, at the end of the life of the fund, it may not be the best time for our partners to sell it. We may want to hold onto it for a little bit past the life of the fund and try to get rid of it at the best price. It takes some time to turn it around. And you know those type of deals require the most work.

So we need people to work on them; we need people here who are incentivized to stay here. You've seen our team: It's gotten quite large, and you need money to pay those people. So we do need some flexibility to do those deals, to manage those deals. The problem is: I don't want to end up in a situation where I want to dump that at the end of the life of the fund. I want to distribute it in kind to you and give you a bunch of liquid securities, which might be one of your other issues later. That's what the concern is. I just wanted to lay that on the table.

Gechi Tesic: And I do absolutely hear you on that, and I am sympathetic to the idea that you need to be able to continue to keep the lights on and compensate people. And I know that we have pushed back on the amount of the management fee. So, I am sympathetic to that concern. I would like to see some sort of step-down though of the management fee so

that our interests are a bit more aligned. We would absolutely want you to continue managing difficult assets past the term of the fund if you thought that that was in our best interests. But we do want to hold your feet to the fire a bit and give you the impetus to get rid of those assets as soon as possible.

Would a reduction of the management fee after the term of the fund be perhaps acceptable?

Jim Deeken: That would be fine, I understand we don't want to be in a situation where people think we might hold on to assets just to get the management fee. That would be unethical. Some managers have tried to do that, and you have to protect yourself against that, obviously. So we'll do a step-down, maybe go to half and…look, I'll even go further, I'll even say, after two years, it runs out completely. So we'll do half for two years if that helps get over the issue.

Gechi Tesic: Sure, that would be great. Thank you.

Again on expenses—and I'm sorry to keep on harping away at this—I just wanted to see if standard legal opinions are going to be provided in connection with the closing?

Jim Deeken: Oh my goodness gracious, we're working on so many fund documents, you want legal opinions too? [*laughter*]

Gechi Tesic: I'm hoping this is an easy ask, Jim, you know we got them in Fund I. So it's just something that we like to see. We're just looking for due formation; we're just looking for authorization, that's all.

Jim Deeken: Right, and I appreciate that. We gave them in Fund I. And, so, what happened is, we've done a couple of funds since then in real estate and venture capital as we've expanded into other areas, and we haven't given the opinions on our latest funds in these other areas. And the reason why is that they cost a lot of money—especially if you have an offshore entity involved, you have to hire foreign counsel, and people want different things on enforceability, and we have to get special counsel. When people started to invest in these partnerships in the '90s, they were, "Oh my gosh, it's a partnership. Does that have the same liability protection as the corporation?"

And *[since then*] I think the market has gotten generally comfortable that these things work; that you don't really need legal opinions, it costs money. The investors pay for that because [*it's a*] fund expense. So, we've seen a lot of investors move away from that. I don't know if you're open to that. I know maybe you may have specific concerns if we go outside the fairway on something?

Gechi Tesic: Yeah, I think that we could get comfortable with jurisdictions in which the law is settled: Delaware, Cayman, New York, Texas, those are entities that we're comfortable with. To the extent that you're incorporating an entity in South Carolina or Brazil, we'd be a little bit less comfortable with that, so I think perhaps a legal opinion if it's not in a jurisdiction in which you would typically incorporate an entity.

Jim Deeken: I'll tell you what, any time we go outside Delaware or Cayman Islands—maybe we'll add Ireland too, since that's a jurisdiction that's being used frequently—we'll get a legal opinion. So, if we have to put you in an AIV [*alternative investment vehicle*] that has a system of law that's not typical for a fund structure, we'll give you a legal opinion. We're willing to put that in your side letter.

Gechi Tesic: That would be great. And speaking of side letters.

Jim Deeken: Oh my God. [*laughter*]

Gechi Tesic: Speaking of side letters, that brings me to my next point. I have noticed that in Fund II, unlike in Fund I, you've carved out side letter negotiation and drafting from the

organizational expense cap. This is a bit concerning to us from a foreseeability perspective because side letters are really the bulk of the organizational expenses. Without a cap on those expenses, there's just no way of telling how much we're going to have to come out of pocket for this fund. So, we'd like to see a return to a Fund I formulation.

Jim Deeken: Well, I appreciate that. The problem that we have, though, is, for example, your side letter that we had to get for Fund I is 15 pages. Your proposed side letter for Fund II is 35 pages. These things are getting longer. Everybody wants to pick up one provision; it's more negotiation, more reading.

Gechi Tesic: Right.

Jim Deeken: We don't have a good feel as to an estimate, and the problem is, every investor has their own side letter. You go from 20 investors to 40 investors, you have twice as many side letters. A lot of the investors, unlike you, just give us their form, and we have to figure out how to customize it for our fund, even. So, it's a lot of work. I don't really have a handle on how much that is. And, so, we know how much it is to do the fund documents, but the side letters are just kind of an X factor to us.

Gechi Tesic: I see, I mean I am sympathetic to that, and I know that we are as guilty as anybody of scooping up all the provisions that we can. And that's what I've got to do from my perspective, you know? Like, you understand I've got to make sure that I'm getting the best deal for Peace Pension Fund and for its beneficiaries. But I am sympathetic to that.

To lay my cards on the table a little bit here, this is less of a cost issue than it is a foreseeability issue. We just want to have a sense of how much we would possibly have to pay. So, we'd be more comfortable, frankly, with a larger expense cap, even an expense cap that's larger than you anticipate. Just so when I go to my investment committee, I can say, “This is how much we're investing in Deeken Capital.”

Jim Deeken: Why don't we increase the expense cap by 150 thousand dollars?

Gechi Tesic: Okay.

Jim Deeken: And that may not cover everything, but I'll take some risk on it.

Gechi Tesic: Okay, I appreciate that. That's very generous, thank you.

On the distribution waterfall, and this is maybe one of the biggest points for us, we notice that you have now gone to a deal-by-deal waterfall. And this is a huge concern for us, as we feel that it promotes a speculative one-and-done approach. One of the reasons that we liked the Fund I document is that a fully crossed waterfall really is a comprehensive look at the value that's actually been created for the fund.

So, I understand the desire to do “deal by deal,” but we'd really like to see this go back. And I know that there is a clawback, but a clawback at the end of the life of the fund is messy. By then, we're 10 years down the road; all of this money has been paid out in the deal-by-deal structure. And I just think that it creates unnecessary friction.

Jim Deeken: We've had this discussion with other people as well, not surprisingly. And, so, part of the problem is: The first fund is basically me and my two partners. And we just waited for the carry to the end. As we've done more deals, and we've expanded our team that you met today, we have to pay those people. And the problem is we don't pay them much because we don't make any money off the management fee. So, it's hard to tell them they have to wait 10 years at the end of the fund to get any carry. We feel like we need to pay some along the way to incentivize them. That's what our issue is; that's why we're doing it. I don't know if that helps frame the issue.

Gechi Tesic: It does, it does, I hadn't thought about it from that perspective, and, honestly, of course we want you to be able to retain a great team of people, and I understand that not everyone is in a position to wait 10 years for a bonus. What if, from time to time, a little bit more frequently, we were to claw back and settle up?

Jim Deeken: Sure, sure. So, maybe at the end of the investment period, and maybe every two years after that?

Gechi Tesic: That would be great. I hadn't thought about it from that perspective.

Jim Deeken: It actually would help me because we've never had a clawback situation. But if we did, I can chase the people for the money instead of waiting years later and trying to track them down, so that might help me too.

Gechi Tesic: Okay, that does make sense.

Jim Deeken: As I said, we're not going to have a clawback anyway, so I'm happy to give it.

Gechi Tesic: Win-win. In-kind distributions. I saw that now in the Fund II documents, there is a line saying that you may be able to distribute assets in kind. And you know at Peace Pension Fund, we just really don't have the back office, we don't have the capability to deal with an interest in some hotel in Kansas. So, I would really prefer that we only receive cash distributions.

Jim Deeken: Well, that's interesting. So, it gets to the "end of the life of the fund" issue too. And, so, what we don't want to do is we don't want to end up in a situation where we have to keep the fund in existence because we have one asset that's lingering there. The problem is, every year we keep the fund in existence, we would get management fees, although they're subject to a step-down and expiration date now. But we have to pay the auditors' expenses, we have to pay the lawyers' expenses, we have to pay expenses to keep that entity in existence. And, so, we have to pay the administrator quite a bit of money every year.

At some point, we may want to just say, "Look, it's not worth paying all these expenses to keep these laggard assets. We want to just distribute them in kind and shut down the fund."

So, I want to be careful, and, if it helps, we can maybe say that—we give this to everybody—if a partner requests that we sell the assets for them, they're deemed distributed at whatever the value is at that time. But we'll hold them in some sort of trust and agree to try to sell them for them instead of actually giving them out to the people, if that makes sense.

Gechi Tesic: That would be perfect for us. From our perspective, we're willing to wait if it means that we're receiving cash rather than an asset that we don't really have the tools to manage. So, yeah, that'd be perfect if you could add that to our side letter.

Jim Deeken: Sure.

Gechi Tesic: Now, I see for this fund, you have included the ability to use a capital call facility secured on uncalled commitments to provide short-term financing to bridge capital calls to deal closings.

So, I'm a bit worried about the use of these facilities, and, in general, we're just a bit hesitant to agree to having them in our funds because they have an unfair performance-enhancing benefit. And, effectively, they put you in the carry earlier and lower our preferred returns since we're not earning a preferred return if you haven't yet made a capital call from us. So, we would like to encourage you that if you need capital, call it from your investors.

Jim Deeken: Well, okay, I'll explain how we intend to use the subscription lines, and maybe we can come to a solution on something that will work. So, the problem that we've had is when we do have a lot of capital calls, we don't want to bother our partners with multiple capital calls—the administrator charges us more money the more we do. So, our intended use of the subscription line is really to bridge capital calls. They're primarily short-term borrowing, so we have to do one capital call every quarter or maybe every six months.

The other way we might use the capital call would be if there's some sort of banking crisis, and we need short-term capital for 90 days. We had an issue with our real estate fund during the financial meltdown, where we couldn't get a bank loan. We sub lined to do some repairs on a building that otherwise would have fallen into disarray.

So, now, I know some managers out there are doing more aggressive things where they're using the subscription line as a permanent form of leverage. That's not what we do—maybe our language in the partnership agreement was a little too broad, but we're not trying to do it for those purposes.

Gechi Tesic: If we could have a clause that requires a 90-day repayment period, that would make us a lot more comfortable. Just so we can be sure that, to the extent that you can make capital calls, you are making them and paying a preferred return. But I am sympathetic to that, and that is interesting context to know. I hadn't really thought about it from the perspective of needing to get capital very quickly. So, that's helpful context, and I'll take that back.

Jim Deeken: If we agree 90 days, we would just end up doing the capital calls on a quarterly basis. That should be fine.

Gechi Tesic: Okay, perfect.

I also noticed, and this is more important for us this time around as a second closing investor, because we won't be able to make the first close, unfortunately.

Jim Deeken: Oh really?

Gechi Tesic: Yeah, I pushed, but our investment committee meeting is not until the end of the month, and I know that your first close is coming up sooner than that. So, we are going to be a little bit delayed, although I'm hoping that it won't be too far behind, and we'll be able to make it for the second close absolutely.

But we notice that there is a ticker for subsequent closers, and I think that it's a little bit high. I think you know, given the low-interest-rate environment, 8 percent is a bit aggressive, and I think that it should be lowered to something closer to the cost of borrowing.

Jim Deeken: Well, let me just explain what the problem I have is. We're trying to encourage people to put their commitments in, and a lot of the times the first close investors, they don't like the subsequent close investors because they say they get a free look at the investments. There may be some appreciation, and they worry that they're not being compensated for it. So, 8 percent is high, I agree it's high, but I have to make the first close investors happy, so I've got to balance it. I have to make the second close investors happy; I have to make the first close investors happy.

Gechi Tesic: The ticker gets paid to the existing investors, not to the fund?

Jim Deeken: Exactly. It goes back to them to compensate them for having their money in there earlier. Now, I think, in your situation, what we could do is…actually, the closing is probably going to be a little delayed anyway, just the way things go. A lot of side letters to negotiate and stuff like that.

And it sounds like you're probably going to come in within the first month, with the delay and your process. I think your interest is going to be pretty minimal. And, so, this may actually benefit you as later investors come in. The balancing act makes sense there is what we're trying to get at.

Gechi Tesic: I do hear you. I guess I didn't appreciate that the interest was going to be paid to earlier closers rather than to the fund itself or to the investment manager, so that does make me feel a little bit more comfortable.

Jim Deeken: And I'll get on my people to give you your diligence that you need too so you can make that investment.

Gechi Tesic: I appreciate it.

Jim Deeken: I know they've been a little slow.

Gechi Tesic: I'm glad that I don't have to bring that up, and I very much appreciate that, Jim.

So, moving away from all the money stuff.

Jim Deeken: Good. No, I'm just kidding. [*laughter*]

Gechi Tesic: I know—that's the hardest part of the conversation.

Moving away from that to the governance, I'd like for you to consider adding a no-fault GP removal provision. And I'm suggesting this because, under the current terms, the LPs can only remove the GP after a final nonappealable judgment that a cause event has occurred. And I think, by the time we find a cause event, are able to get a first ruling in our case, and then on appeal, by the time we've gotten a final nonappealable judgment, the fund is done, you know? This could very easily be a 10-year process.

We don't really feel that those removal provisions are a good check on the GP's discretion. So, we'd like for you to consider a no-fault termination or no-fault removal.

Jim Deeken: Well, that causes us some heartburn because, as you know, we talked about the management fee is not really a profit center for us, and the only way we really make money off of this is off the carry. So, if we get removed without cause, we have to worry about what happens to our carry, and that's what we're working for. On the removal for cause, we understand that it says "final nonappealable" right now. We've gotten a lot of pushback on that, and that's one of the things that's delaying our closing is we're trying to negotiate this and some other provisions.

So, some of the other things we're thinking about are whether we use binding arbitration, whether the removal can be based on an initial determination, but the carry is not forfeited or reduced until there's a final determination. I may be coming up with some initial judgment. We're working to address that issue. I don't know which one we're going to go with yet, but I think some arrangement of those solutions might work. I don't know if that helps get around the issue.

Gechi Tesic: I do hear you, I do hear you, and I am sympathetic to the fact that having a no-fault removal would really place you at great risk. I get that. Any of those options would be better for us than what's currently in the documents. Our concern here is just the timing and the ability to actually provide a check on the GP. So, I think that we could get comfortable with any of the options that you mentioned. Just let us know which direction you decide [*to go in*].

Jim Deeken: We have a wide degree of latitude there to make everybody happy. Because as you know, we're not going to commit a cause event anyway [*laughter*]

Gechi Tesic: Of course not. [*laughter*]

Jim Deeken: These are all easy things for us to give.

Gechi Tesic: I appreciate that, I appreciate that.

I noticed that in the conflicts provisions in the LPA [*limited partnership agreement*], on investment allocations, there's some really broad language, and I'm aware that, in addition to Fund I, you obviously manage some other managed accounts that pursue a similar strategy to that of Fund II. But the amount of discretion here seems to allow you to allocate investment opportunities amongst your clients so long as it's done on an "overall equitable basis." And you know, that language is so broad, and it doesn't really give me any clarity or comfort that there won't be cherrypicking amongst Fund II and your managed accounts. So, can we tighten this language a bit? Can we provide some sort of mechanism where there's a more distinct criteria for the allocation?

Jim Deeken: Well, it's a good point. We've done a bad job of explaining why it's there. So I'll just explain why it's there.

When we did our first fund, we just did private equity, so it's very clear: Everything went to this fund. But now I have this real estate fund, and I have this venture capital fund—sometimes there's a deal, and it's not necessarily clear whether it's private equity or it's real estate or it's venture capital. And that's part of the evolution of our firm. The other thing is the SEC has gotten a lot tighter on how people allocate investment opportunities. And they worry that, unless you have the language that gives you some wiggle room, we're going to be caught doing something where somebody's going to come in and second-guess what we did.

We don't intend to do any funny business; we're just trying to have the language flexible enough so we can just cover ourselves on how we do things. Now, we can come up with some better guidelines on what goes in what bucket, for example, and maybe we can think of some reporting.

Gechi Tesic: Maybe it would just be helpful if we knew what was going where because, given the language here, we won't even know if an investment that could have fit in Fund II is allocated to another account or why. Is there any way that you could just tell us?

Jim Deeken: Since you'll be on the advisory committee [*laughter*], maybe we'll just do annual reporting to the advisory committee, so we'll basically shame [*ourselves*] into honesty. And if people have concerns about the way we're doing things, we can change it.

Gechi Tesic: That's perfect.

Jim Deeken: Well, thank you.

Gechi Tesic: That would work for us.

Co-investments. Obviously, you know that Peace Pension Fund is very interested in co-investments and the ability to do them alongside the fund. Given that we are considering a larger commitment this time around, I was wondering if we could get just a straight pro rata share in all co-investment opportunities on a fee-free basis.

Jim Deeken: Well, okay, so, a couple things there. One, on the allocations, what we've run into is sometimes we have a strategic investor that may bring us the deal, maybe a rollover investor. So, we need some capability carve-out for that.

The second thing that we've run into is a lot of the investors are subject to some regulatory restrictions based on their jurisdictions. So, for example, if they're based in the EU, we have to comply with some—this doesn't apply to you, but it applies to other people who are in the EU—we have to comply with something called AIFMD [*Alternative Investment Fund Managers Directive*], so that would require us to do a full 100-page offering document for every co-investment, which we can't do. It's just too expensive. So,

I think we could say in your side letter that you will get your pro rata share after we give any that we need to to strategics.

Gechi Tesic: We'd be fine with that.

Jim Deeken: We'd also put in there the exclusion for regulatory reasons, even though it doesn't apply to you. The reason that we didn't have it in there is there are people that fit into the language, and, so, it needs to apply to them.

On the fee thing, go back to: I'm trying to manage my budget, and I have all these people. We'll say this, see if this works, we'll give you the best fee deal on a co-investment that we give to anybody else.

Gechi Tesic: Okay. So like a most favored…

Jim Deeken: It won't even be sized, I won't even size it. Except it will say whatever deal we give to another co-investor in the fund, we give to you on fees.

Gechi Tesic: Okay, that would be great. I mean, obviously we'd prefer fee-free, and I think there were a couple of co-investments that we did on a fee-free basis in Fund I, but I am sympathetic to the cost of running the business, and, obviously, we want you to manage co-investments just as well as any other types of investments. So, I think we could get comfortable as long as we know that no one's getting a better deal than us.

Jim Deeken: Right, and people want them to be free, so we're trying to keep our investors happy. I just don't know over the 10-year life of the fund, I just don't know if I could financially commit to that. But we'll commit to giving you the best deal.

Gechi Tesic: Alright, I'll take that back.

And I think this is my last point: side letters. We understand that we'll only be able to MFN [*most favored nations clause*] into provisions that are given to investors that are as big or have committed as much or less than our commitment. But we also understand that provisions may be given to larger investors that indirectly impact our investment. And unlike the LPA or the PPM [*private placement memorandum*], we don't get to see the terms of those side letters. So, for us, there's a real need for transparency in terms of what other folks are getting.

Is there any way that you could update the MFN to allow all side letters to be disclosed to everyone although we'll only be able to elect on a size-based basis?

Jim Deeken: Well, here's the issue: Everybody's going to MFN into your thing, so then I need to give it to everybody. And the problem with our compendiums is: On this venture capital fund we did, our compendiums are 200 pages long because these side letters are so long. So, you have 45-page side letters, and you have 40 of them, and it's just voluminous stuff, and it confuses people, and then they see a bunch of stuff they can't elect in to, and they ask a bunch of questions about it, and it's just overwhelming. And we spent I don't know how much on legal fees for our last compendium process just dealing with it, putting it together, and, so, it just confuses people.

I'll be very honest with you, very transparent with you as we've been during this visit. I don't want to put it in your side letter because then I've got to do it for everybody. But I'll tell you what, the next time you're in the office, let's redact them, and I'll just show you all the side letters. Does that work?

Gechi Tesic: Yeah, that would work actually.

Jim Deeken: We'll work it out.

Gechi Tesic: Yeah, we do understand the tension here with the growing side letters, so, as long as there is a way that I can just be aware of what else is happening in the fund, that would be very helpful from my perspective.

Jim Deeken: Well, great. Seems like we've worked through everything, hopefully?

Gechi Tesic: Yeah, I think that that's the end of the list, and thank you for being so accommodating on so many of the pieces. It was really great to hear your perspective.

I am happy to tell you that I'll be recommending a $50 million investment.

Jim Deeken: Wow.

Gechi Tesic: I think it's twice our investment [*in Fund I*].

Jim Deeken: Yeah, more than twice. Goodness gracious.

Gechi Tesic: We're really excited to continue partnering with you. We've had a great experience with Deeken Capital, this conversation included, and we look forward to working together.

Jim Deeken: Well, we look forward to trying to make you even more money, so it will be good.

That concludes our presentation.

Gechi Tesic: Thanks to all of you listeners. If you would like us to do an in-office presentation on this subject or a related topic, please feel free to reach out to either Jim Deeken or me, Gechi Tesic. Thanks.

Jose Garriga: Thank you. Listeners, you've been listening to Akin Gump investment funds partner Jim Deeken and associate Gechi Tesic. Thank you both for offering this new and really memorable presentation on today's show.

And thank you, listeners, as always, for your time and attention. Please make sure to subscribe to *OnAir with Akin Gump* at your favorite podcast provider to ensure you do not miss an episode. We're on, among others, iTunes, YouTube, SoundCloud and Spotify.

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Until next time.

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