KEYNOTE INTERVIEW

GP-led deals gather pace and complexity



As GP-led restructurings continue to increase momentum, Fadi Samman, Daniel Quinn and Aleks Bakic, partners with Akin Gump Strauss Hauer & Feld, consider how market practice is developing in a fast-moving space

Q What do you see as the current hot topics in the secondaries market, and where do you see the most activity?

DQ: The hot topic for a while has been GP-led restructurings and innovation in deal structures in the secondaries market in general. That is continuing, and it seems like almost every manager is thinking about GP-led restructurings and how those types of deals might help them – whether it's a traditional GP led, a single asset restructuring, a preferred equity investment or something else.

AB: These new deal types are symptomatic of a market that has been evolving to offer stakeholders a range of options catering to whatever outcome they seek to achieve, whether full or partial liquidity, new capital or otherwise.

SPONSOR

AKIN GUMP

Regardless of the stage the fund is at, the assets involved or the buyer engaged, there is a type of transaction that satisfies the demands of all parties.

FS: In the US, the market is maturing, so we are seeing more creativity and the evolution of the next generation of GP-leds.

We see managers looking at restructuring groups of funds in a cohesive way, or even combining them. That brings a new level of complexity.

We are seeing GP-led deals expanding into new asset classes, having initially been principally private equity and venture capital, to now include real estate, energy and credit.

There is also an expansion of deals into emerging markets, where there is less liquidity and so exits have traditionally taken longer.

Q What effect has the ILPA guidance on GP-led deals had on market practice, if any?

FS: It's too early to say what the effect of the Institutional Limited Partners Association guidance will be but it was a good reflection of sound market practice for GP-led deals.

We don't anticipate a negative effect, and in fact the guidelines may help educate the LP market by providing a roadmap on how to approach them. They will likely prove particularly helpful for LPs that serve on advisory committees who end up in a potentially difficult role on these deals and may feel more comfortable with the additional guidance.

AB: In some way, the ILPA guidance is a codification of best practice and what many sponsors were doing already. The guidelines are not intended to be a rulebook. Instead, they provide a helpful roadmap for everyone involved, without binding them to a one-size-fits-all approach.

Q How do the LPs that you deal with feel about GP-led deals? What are their perceptions and principal areas of focus?

AB: When we first started seeing some of the newer structures in the market, a lot of LPs welcomed those as a new way of resolving the liquidity gap, but there was also a bit of scepticism and hesitation. This was probably due to a lack of familiarity with such deal types and the complexity and conflict issues involved, often exacerbated by limited timeframes within which decisions have to be made by LPs.

Our experience is that as these deals have become more common, all the major LPs have now gone through at least one and sometimes quite a few in their portfolios, and they have come to understand them.

As long as the deal is right, there is solid business rationale and it is run properly and in a transparent manner, most LPs are comfortable and some have even started alerting their GP bases where they see potential for these deals within existing portfolios.

FS: Not all LPs in any given fund are situated equally, so you may have larger LPs that have the resources to dedicate to a transaction and then a whole host of others for whom this represents one of hundreds of investments and a small proportion of their portfolio.

The complexity and time required to evaluate a transaction is a challenge. On the flipside, deal certainty and execution are important and GPs can't give LPs months to conduct their review

That's a balancing act the market hasn't quite resolved yet, which explains why some LPs still struggle with these deals.

Q What do you consider to be the features of a successful GP-led transaction? Can you point to any must-haves or keys to success?

DQ: The starting point has to be making sure there is a really good rationale for doing the deal. Do you have an asset that needs three or four more years than you anticipated when you made the investment? How close are you to the end of the fund life? Have you considered all the alternatives, and why you aren't just doing a fund extension? Making sure the story of the transaction is compelling is the most important thing.

Then, investors need to feel like they've had enough time, and information, to make a properly informed choice. Finally, you need to make sure the deal works for everyone, whether they choose to sell or stay in – a good GP-led restructuring shouldn't feel like a zero sum game.

"The Institutional Limited Partners Association guidance… was a good reflection of sound market practice in GP-led deals"

FADI SAMMAN
Akin Gump

FS: Selecting advisors who are experienced in these deals and understand the market is critical, including the lawyers. Ensuring that the team surrounding the sponsor really knows the variety of issues that can arise in a transaction is a key to success. These deals are more rife with conflicts than traditional M&A, so the robustness of the process is much more important than it would otherwise be.

Q What are the big legal issues in the secondaries market that your clients are focused on?

AB: The issue of conflicts of interest in secondaries, not just GP-led restructurings but also in stapled deals and even simple LP transfers, has been on lawyers' minds for some time and is something regulators are quite focused on.

The other thing is the position of the LP Advisory Committee on GP-leds, which can be under a lot of pressure making decisions affecting the entire investor community.

FS: The increase of tail-end funds of funds as sellers is continuing, creating an issue around the allocation of ongoing liabilities for buyers.

That has influenced the market on the allocation of liabilities between buyers and sellers more generally. Also the universe of warranty and indemnity insurers now willing to cover these deals and understand the transactions is growing.

Q Where do you see the secondaries market in two years' time, from a legal perspective? How do you think market terms and practice will move?

DQ: I think there will be some consolidation of practice on the more traditional GP-led deals and terms will begin to standardise.

At the same time, the universe of what people consider to be a "secondary transaction" will continue to expand, and there's no sign of innovation in the market slowing down

AB: What is potentially interesting is what happens in the event of a downturn. In that scenario, we might see participants revisiting past deals with greater scrutiny, whether they were sellers or not, while regulators' focus on them may be amplified as well.

FS: I would add that we are going to see increased competition in the secondaries space, plus more LP assertiveness over GP-led deals, as they get more familiar and educated on them and start to plant their own flags on best practice. ■