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# COVID-19 and other developments: Proof of concept for newer liquidity solutions for alternative asset fund managers?

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In this chapter, we assess the fund finance market and liquidity solutions available to alternative asset fund managers – from traditional subscription facilities through to net asset value (NAV)/hybrid facilities and newer alternatives such as preferred equity products, as well as broader general partner (GP)-led fund restructurings – in light of COVID-19 and other developments.

## **Introduction**

It became clear almost immediately that the impact of the COVID-19 pandemic would be severe and long-lasting. Many asset managers, nervous about the potential of their (fundamentally healthy) investments to weather the storm, were forced to seek ways to ensure they had the ability to shore up the balance sheets of their portfolio companies if this was required.

In the short term, that meant finding liquidity. Some managers found themselves considering funding sources that had previously been talked about, but not seriously explored, which were now seen as genuine and potentially critical options for providing that much-needed liquidity to support portfolios. That, in turn, has had a longer-term impact. These sources of liquidity, having been given the chance to prove concept and to demonstrate they are both structurally feasible to execute and sufficiently flexible to suit a broad range of requirements, have begun to cement themselves in the asset manager's toolkit of core financing options throughout the traditional fund life-cycle. COVID-19 will, as a result, have a permanent impact on how some asset managers structure their funds and finance their investment activity in the future.

## **An already changing market**

The fund finance market has undergone significant expansion in recent years. NAV facilities in particular, once the preserve of secondaries fund managers looking for leverage to finance their portfolio acquisitions of limited partner (LP) interests, have increasingly become standard fare across other asset classes. More recently, preferred equity structures have been used by fund managers willing to embrace more innovative solutions when evaluating optimal capital structures. COVID-19 not only accelerated the uptake of these types of solutions for fund managers that had already started using them, but also meant others started to see them as viable options.

The subscription finance arena remains a huge and thriving market that is utilised by a high percentage of fund managers. Subscription facilities constitute a relatively cheap, flexible and now (broadly) investor-accepted route to putting debt in place at the fund level.

However, subscription facilities are predicated on a fund having enough uncalled capital to borrow against to enable it to borrow at the quantum required. When COVID-19 hit, funds of a certain vintage that were fully (or mostly) invested had little or no remaining uncalled capital. That meant that a purely subscription facility-based solution was off the table.

In a volatile economic environment, cash is paramount. As the rapid and global spread of COVID-19 took hold, fund managers undertook an urgent review of their investment portfolios in order to ascertain (i) which of their portfolio companies were likely to need additional funding as result of their business being hit by the pandemic, and (ii) whether their funds had sufficient firepower to meet those requirements. The conclusion, in the case of some older vintage funds in particular (and especially those with retail and/or leisure-heavy portfolios), was that the worst-case scenario could see the short-term funding quantum required far exceed the financing currently available (whether from existing cash resources at portfolio company level; headroom on asset-level facilities; additional leverage at the asset level; or investor capital (especially if this had largely been deployed already)). Fund managers feared the value they had created during years of sourcing, investing in and developing businesses would be destroyed overnight – not due to investment decisions they had made, but due to the immense strain arising from an almost entirely unforeseeable global pandemic that threatened even the healthiest of businesses.

### **Liquidity solutions during the COVID-19 pandemic**

#### Inside the box (just about) solutions

Calling (or recalling) capital from investors will almost always be the first port of call for a fund in need of liquidity. Fund managers therefore began scrutinising their limited partner agreements (LPAs) and investor side letters to ascertain the circumstances in which, and the extent to which, capital could be called from their investors (whether for the purpose of actually calling that capital or for including such amounts in the borrowing base under their subscription facilities).

This involved an analysis of follow-on capacity – usually capped, but would this of itself provide enough capital to give the underlying businesses breathing room? If not, had the recycling provisions been correctly complied with historically? As ever, the devil was in the detail of the documentation. Some managers were able to designate amounts as recallable commitments that might not have been expressly stated to be recallable when distributed but that, under the strict terms of the LPA, were still recallable. Whilst relying on technicalities had the potential to trigger investor relations issues, often this was undertaken with the encouragement of some of the larger institutional investors who were keen to see a solution that did not involve additional leverage.

Separately, investors had their own cash management issues to think about. Early in the crisis, some commentators speculated that there could be a raft of LP defaults due to investors receiving capital calls from a high percentage of the funds in which they were invested, way in excess of the projected drawdowns that had previously been communicated to them. Fortunately, this turned out not to be the case. Communication between managers and investors was key to mitigating this risk, with responsible managers being as open as possible with their investors as to the likely timing and quantum of future capital calls. Subscription facilities, given their fundamental purpose of bridging capital calls from investors, were also an important part of the solution – although managers did find themselves assessing with what level of certainty they could rely on their subscription facilities, particularly where those facilities were uncommitted.

### Outside the traditional liquidity box

Having exhausted all avenues in terms of investor commitments, managers then had to consider other options. For many, their ability to raise debt elsewhere was severely curtailed by restrictions in their LPAs. This meant that any debt solution would require the investors to be on board, as investor consent would be needed to amend the LPA to permit additional leverage to be introduced into the fund structure. Whilst keeping investors informed as to next steps represented good investor relations management, some were concerned about the feasibility of getting the requisite level of consent within the time available. For those who either did not need investor consent or could secure the requisite level of consent in time, options were available in the form of NAV facilities and preferred equity solutions.

These products look to tap liquidity from assets other than investor commitments, principally the fund's equity in existing investments within its portfolio, as a means to generate immediately available cash. These tools have gained increasing popularity in recent years due to the greater flexibility they afford asset managers in maximising returns from their investments. For example, a fund later in its life (and therefore with limited investor capital available to call upon) may not have funding available for follow-on investment but hold assets that would benefit from bolt-ons or additional capex. Rather than the arbitrary timing of the stage of the fund's life-cycle meaning these assets are left underfunded, NAV facilities and preferred equity products can be used to release capital for this purpose. COVID-19 meant that, for a different reason, readily available cash was a premium asset, and so unlocking value from the equity in the portfolio via a NAV facility or a preferred equity product became an obvious option to explore for a broader range of funds.

#### **NAV facilities *versus* preferred equity – the details**

In simple terms, the distinction between these products is that NAV facilities comprise fund- (or fund holdco-) level debt secured against the value of the assets in the investment portfolio (paired with, in the case of a hybrid facility, uncalled investor commitments), whereas preferred equity products comprise prior ranking third-party equity invested in the fund being provided in return for priority claims over future distributions. Managers using these products for the first time will often run dual tracks until relatively late in the process to ensure they have a full understanding of the pros and cons of each in a high level of detail before settling on the most appropriate solution for their specific needs.

NAV facilities, being a debt product, are typically cheaper. However, the lender will usually take at least some security over the assets and will require a reasonably wide-ranging suite of covenants that restrict the fund's ongoing activities. In addition, the facility will have a fixed tenor (which may be difficult to refinance at expiry) and there will be ongoing finance costs such as servicing cash-pay interest payment obligations (which may be challenging for a non-cash generative portfolio).

In contrast, a preferred equity provider will not require security or typically as much by way of behavioural controls. Equally, it is unlikely to require payments of principal or cash-pay interest on set dates (although it should be noted that, where the cost of capital becomes increasingly punitive as time passes, funds may be so heavily incentivised to realise value and return capital to the provider that these effectively are time-limited products). Instead, the provider will receive a specified percentage of future distributions from investments until it has received a pre-agreed return on the capital provided, typically set at an internal rate of return (IRR) hurdle with a minimum multiple on invested capital requirement.

Preferred equity products are by their nature very flexible and will often be bespoke, with providers marketing themselves as having the creativity to tailor solutions to suit the specific requirements of individual funds.

The principal trade-off between these two products is cost of capital (which remains a challenge for preferred equity providers to justify) *versus* loss of control over the portfolio (which is their key sell to managers *versus* a debt product). However, there are a number of other detailed considerations for fund managers when putting in place these types of products, including:

- **Investor relations considerations:** Even if investor consent is not required (or the transaction can be structured such that consent is not required), keeping investors fully apprised of the rationale for (and impact on investor returns and risk profile of) putting a product of this nature in place is of fundamental importance. In particular, managers should have regard to (i) investors' concerns around assets within the fund being cross-collateralised, and (ii) the fact that the different products can have different impacts on individual investors – for example, some investors' cost of capital will increase if a fund in which it has invested becomes leveraged for the purposes of the Alternative Investment Fund Managers Directive (AIFMD). From a commercial perspective, key messages a manager needs to be able to give to investors are that (i) the manager will retain control of the assets, even following a loan-to-value (LTV) breach, such that it can avoid a fire-sale, and (ii) the status of their investment in the fund as part of a non-leveraged, long-term investment strategy remains.
- **Fund documentation considerations:** It may be the case that the fund documentation does not envisage this type of product and so LP/Limited Partner Advisory Committee (LPAC) formal consent is required (which, depending on the consent threshold required, will impact on timing). For newer funds, a NAV facility will often not require investor consent, but leverage limitations in the fund documentation will invariably apply to a NAV facility and so managers must ensure these will be complied with. Preferred equity products typically require an amendment to the LPA waterfall, which would always require investor consent, but it may nonetheless be possible to execute such a transaction without requiring investor consent, particularly where undertaken at holdco/aggregate level.
- **Structuring considerations:** Both NAV facilities and preferred equity deals are simplest to structure where there is an aggregator vehicle in place between the fund partnership and the underlying portfolio assets. The existence of such a vehicle enables a single clean security interest to be granted over the equity in that vehicle (in the case of a NAV facility) or that vehicle to issue the preferred equity instrument (in the case of a preferred equity transaction) without the direct involvement of the fund. If there is no such existing aggregator, then ideally one would be introduced into the structure. This requires an analysis of any transfer or change of control provisions in the underlying equity or debt arrangements relating to each portfolio asset. It also requires the tax implications of doing so to be considered to ensure that dry tax charges are not inadvertently triggered. Ultimately, if it is not possible to put this structure in place, it may still be feasible to execute a NAV facility where the investment agreements in relation to the various investment holdcos do not prohibit the grant of security over the shares in that investment holdco, but the cost of this may be significant – especially if the holdcos are incorporated across multiple different jurisdictions.
- **Regulatory considerations:** It may be that putting a product of this nature in place impacts the regulatory status of the fund – for example, causing a previously non-leveraged

fund for AIFMD purposes to be leveraged for the purposes of AIFMD (which may also impact the manager itself if it was previously a manager only of non-leveraged funds). If Financial Conduct Authority (FCA) approvals are required, this will of course impact on timing, but in addition it may affect the compliance requirements applicable to the manager, reporting requirements (to regulators and investors) and (as alluded to above) the capital treatment of investors' own interests in the relevant fund.

- **Valuation considerations:** Agreeing which assets will be (and will remain) "eligible" for inclusion in the LTV covenant, and the basis on which those assets will be valued, is fundamentally important to the viability of the transaction. A manager will push for its own internal valuations to be used, but a liquidity provider is likely to require a third-party valuer's input either at the outset or (at the very least) if there is subsequently a dispute over valuation. These valuations will be used to size the funding that will be made available originally and in the financial covenants and/or drawdown conditions going forward – with the value of an asset in default or forecasting a covenant breach under its asset-level debt often excluded from these calculations. In addition, certain assets (such as credit assets) are much easier to value than others (such as buyout assets), including taking into account the process for realising that value. Providers of these products need to understand both fund structures and the underlying asset class in order to price the risk correctly. It is for this reason that such providers often combine internal expertise from their fund finance and asset-level debt teams to finalise the commercial terms of these facilities.

Whilst some clearing banks were prepared to consider providing products of this nature, it was only for their most valued and long-standing customers (and only on a NAV facility basis). For the most part, managers had to look to institutions that for some time had been specifically focusing on NAV facilities and preferred equity products – including funds dedicated to these strategies, traditional secondary players and investment banks. These institutions were in many cases far better placed to design and provide the bespoke solutions individual funds needed.

However, there were still challenges putting these facilities in place whilst the first wave of COVID-19 continued to rage. These included:

- **Valuations:** Valuing assets was far from straightforward. For real estate funds, there was the practical issue of getting a valuer out to do a site visit and all funds had to grapple with the significant volatility resulting from the COVID-19 pandemic (as evidenced by bodies such as IPEV issuing special valuation guidance to help managers). That said, the challenge of valuing assets was less problematic for these types of products than, for example, secondaries transactions – for a NAV facility or preferred equity product, it is possible for the liquidity provider to simply take a very conservative approach to valuation, which may still result in sufficient liquidity becoming available; secondaries transactions, by contrast, apply a set discount to NAV, making accurate valuations all the more important (and therefore particularly contentious between buyer and seller).
- **Eligibility criteria:** A direct impact of COVID-19 was that a number of businesses breached (or were forecast to breach) the financial covenants in their underlying debt facilities. Excluding all assets that were in default or forecasting a covenant breach – which would be the ordinary course on a pre-COVID-19 NAV facility – would have rendered many potential NAV facilities unusable. Creativity in structuring products that gave the liquidity provider sufficient protection against underperformance unrelated to COVID-19, whilst taking into account that fundamentally healthy businesses (which should not therefore be excluded) could well be breaching asset-level debt covenants, was required.



## A shout-out to GP-led restructurings

Those funds employing the most sophisticated financing structures have for some time been using NAV facilities and preferred equity products not just to protect value, but more proactively to create, release and extend value. For example, by generating cash for distributions to investors earlier in the fund's life-cycle than would otherwise be available because exits from investments are not envisaged in the imminent future, this can be used to aid IRRs or release capital to investors at an opportune moment when fundraising for a successor fund. In these respects, these types of products are in line with (and can also be used as an alternative to) secondaries transactions, which are used to generate liquidity for investors as well as potentially the funds themselves.

Trading in LP interests on the secondaries market has become a mainstream method for new entrants on the investor side to gain exposure to alternative assets without having blind pool investment risk, as well as for investors with large portfolios of LP interests to manage their cashflows by realising value in advance of receiving distributions. The emergence of GP-led fund restructurings, whereby a continuation vehicle managed by the same GP and funded by new investors and/or investors in the existing fund that choose to roll their position into the new vehicle, is testament again to the increasing proactivity that managers are showing in finding different liquidity solutions, both for themselves and their investors. These are involved and complex transactions, requiring delicate structuring (for example, to ensure any rollover structured as tax-free genuinely does avoid any tax obligations being crystallised – noting that the position may be different for individual investors).

GP-led restructurings have the significant benefit of allowing managers to offer their investors a liquidity option (but not a requirement) – roll into the new structure, thereby maintaining their exposure to the portfolio, or realise value and cash-out now. In that respect, they differ from NAV facilities and preferred equity products in that they can give rise to different outcomes for the existing investor base. They also enable fund managers to hold on to assets for longer where they see additional value-creation opportunities, rather than being forced to exit because the fund is reaching the end of its life-cycle.

Another key difference is in relation to valuations. Secondaries transactions necessarily must land on a fixed value for the NAV of the fund, with the purchase price typically being a set discount to that NAV. These transactions therefore require greater conflict management, with increasingly sophisticated investors expecting robust, market-tested pricing and potentially fairness opinions to ensure they are not being prejudiced – whether they are an existing investor exercising the option to take liquidity out, an existing investor rolling into the new structure or a new investor providing liquidity to capitalise the continuation vehicle. When COVID-19 struck, the difficulty in valuing assets made execution of secondaries transactions challenging.

However, in our view, the trend towards increasing volumes of secondaries transactions (with GP-led solutions forming an ever larger part of that) will continue, as investors look to more actively manage their investment portfolios and the denominator effect is felt from proportionate allocations to alternative assets increasing as public markets continue to fall. In complete contrast, and to demonstrate the complexity of what underpins market participants' engagement with these types of products, where a NAV facility or preferred equity product is being put in place, some investors are actively seeking to participate as providers of these, further blurring the boundaries between investors, traditional lenders and providers of capital throughout the fund structure.

## Conclusion

For the most part, the potential liquidity issues envisaged by funds arising from COVID-19 have not come to pass and fears of them doing so have – for now at least – abated. Whether they re-emerge as economies across the globe emerge from life-support, and the unprecedented levels of government support are withdrawn, remains to be seen.

Either way, whilst it may have been contingency planning that brought these products into the consciousness of managers that had not previously considered using them, they are here to stay. This is, however, only an acceleration of an already established trend. Fund managers across asset classes have for some time sought an array of funding solutions provided on a fund-wide basis that are more flexible than the traditional pairing of a subscription facility at fund level (used to bridge capital calls) and asset-level debt packages (put in place for each investment individually).

The market is also reacting to the increasing prevalence of whole portfolio financing structures. At a purely documentation level, LPAs are increasingly providing for much greater clarity and flexibility in what liquidity solutions the fund may put in place. At the other end of the spectrum, there are questions as to whether funds using these types of structures as a matter of course (with leverage throughout the capital structure of the fund rather than just at asset level) have a different risk profile to that traditionally associated with such funds.

There has also been much talk at a macroeconomic level of a green recovery from the COVID-19 lockdown, and the fund finance market is likely to be no different. Sustainable finance initiatives have been gathering pace for some time, and in particular ESG-linked fund-level facilities are now beginning to be executed, which is another trend that we envisage will be accelerated further by the pandemic.

Expect these products to become ever more commonplace and, given the range of institutions that provide them and their innovative approaches in doing so, to continue developing to adapt to fund managers' increasingly sophisticated requirements.

\* \* \*

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