Morgan Lewis

ADVANCED TOPICS IN PRIVATE FUND PRACTICES CONFERENCE

Manager and Investor Perspectives

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Private Fund Lending

Speakers

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Lending Scenarios for Private Funds

Private funds as borrowers

Private funds as lenders

Lending to Private Funds

Typical reasons private funds are borrowers:

- Credit facility in place to cover investor redemptions
- Leverage (including "back leverage")

Types of facilities:

- Prime broker facilities
- Traditional bank facilities (often secured by assets held in custodial account)
- "Back leverage" facilities
- Accessing institutional investor market

Private Fund as Lender

Private fund's decision to be a lender may be driven by <u>circumstances of a particular transaction</u>:

- Necessary to protect underlying investment
- Potential investment opportunity where either all debt or a combination of debt and equity is preferable or required

Private fund's decision to be a lender may be driven by <u>economic or other factors</u>:

- Opportunity to take advantage of tight traditional bank market
- Act as bridge lender or alternative lender with opportunity for high returns

Private Fund as Lender

One of the private fund's investment strategies may be a "debt" strategy.

Common debt strategies are investing in syndicated loans and distressed loans.

- The fund should have a basic understanding of the industry to evaluate credit risk and covenant package
- If the underlying borrower is in a regulated industry or the underlying borrower is itself regulated, the fund likely needs to perform additional diligence to be sure there are no traps
- Timing of purchase (at initial closing or secondary market) and type
- Type of asset being purchased (term loan, revolver, or some combination)? Does the underlying documentation permit a lender to hold only one type of loan?
- Assignment vs. participation

Private Fund as Lender

Issues to contemplate if private fund intends to use some or all of a loan portfolio in a back-leverage, or loan-on-loan, financing:

- Does the underlying loan agreement (where private fund is the lender) give the private fund the flexibility to use the loan asset as collateral?
- Will the loan position need to be transferred (typically to an SPV)?
- How do amendments/modifications to an underlying loan impact the asset if it is used as collateral in the private fund's back-leverage facility?
- Consider negotiating the terms of an underlying loan facility to make it more attractive to be used in a back-leverage facility