



PRE-FUNDRAISING CHECKLIST: HAVE YOU OUTGROWN COUNSEL?

- Clay Deniger, Capstone Partners

As a manager prepares to launch a fresh fundraising effort, it is critical to revisit the choice of fund counsel and to plan for counsel's tight integration into the fund's marketing plan. Many sponsors rightfully value legacy legal relationships, but familiarity does not necessarily ensure a GP's historical counsel is best suited to represent a next fund offering. Additionally, once appropriate counsel is selected, they can only be most effective when integrated into the marketing planning (internal and external) to ensure seamless execution and efficiency.

Each fundraising has unique priorities, but the checklist below offers some questions to consider when selecting fund counsel:

Have you outgrown historical counsel?

Institutional knowledge and personal relationships are important benefits enjoyed when re-upping with existing fund counsel. However, a working history can mask shortcomings that are magnified as a fund manager's platform matures. To the extent a GP is stepping up in fund size, the stakes of representation change, and the criteria below should be applied to ensure that a change is not in order.

Is your counsel in the flow of current market terms?

A current market view only comes with relevant transactional volume in comparable fund closings. Sponsors should quiz their current lawyer about the firm's activity in the market and gain comfort that its perspective on terms is fresh and deep. While some terms have tightened to the LP's benefit, many others have softened and, in this heated fundraising environment, may provide successful GPs the opportunity to gain incremental terms in a new fund.

Does counsel have recent experience negotiating with LPs that are your likely targets?

Beyond maintaining a real-time perspective on market terms, recent

experience with relevant LPs is critical for anticipating potential hurdles in negotiating terms. Firsthand knowledge of recent agreements on specific terms provides a leverage point for establishing similar terms in a current raise. Armed with the fact that an LP has recently signed on to an 80/20 fee split for one client, a lawyer-to-lawyer conversation stands a much better chance of achieving the same result for a new client.

Is your counsel prepared to support a global marketing effort?

Given the regulatory complexity related to international marketing (particularly in Europe), many North American GPs have elected to avoid marketing outside their own backyard. The reluctance to incorporate international investors in North American fundraising has created a supply/demand imbalance, which creates a natural target for US fund managers that have historically focused on domestic LPs. Proactively sourcing European LPs, and even responding to inbound interest, carries substantial regulatory risk in the era of AIFMD, and it requires informed and nimble counsel to effectively navigate the process. International capabilities are also where even experienced regional law firms stand at a significant disadvantage to global fund formation practices. The potential pool of international investors can justify exploring more sophisticated representation to open new doors.

Once selected, counsel must be an active participant in a three-legged marketing stool.

Quality counsel can be most effective when paired with experienced fund marketing professionals. Whether provided by an outside placement agent or in-house capability, the marketing function can make lawyers more efficient, and highly qualified lawyers can increase a marketer's likelihood of success. Such synergy is only possible when legal counsel, marketing professionals and the sponsor are tightly coordinated.

A high-quality marketer knows his or her LP relationships and many times can identify sensitivities regarding terms before a marketing effort begins. This may drive a sequencing of LP discussions that prioritizes LPs that are the best match for the target terms early in a process. If difficult discussions on terms are required, it may benefit a sponsor to focus first on negotiations with LPs that are sympathetic to the desired outcome.

If international marketing is a priority, an effective placement agent can assist in mapping the likely universe of international LP prospects. The density of geographic demand can then be balanced with the regulatory complexity in each market. In the absence of overwhelming demand, a highly regulated, complex market may be eliminated from marketing, while demonstrable demand in a country with lower hurdles may prompt a preemptive registration.

Counsel is a critical partner in creating any momentum-driven fundraising and should be part of a re-qualification checklist to ensure that the professional support team is best in class, integrated and coordinated prior to launching a fundraising.

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