

Hedge Funds Luncheon Series: Capital Raising

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July 25, 2018

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Trends in Fund Documents

- Fees
 - Downward fee pressure
 - Class differences (e.g., founders class)
 - Strategy differences (e.g., equity strategies typically lower)
 - Multi-year allocation structures
 - Alternative fee structures
 - 1 or 30
 - 1% of net assets base fee, debited against 30% of profits (i.e., pay higher of 1% or 30%)
 - “Beta” (hurdle)
 - Tax consequences

Trends in Fund Documents, contd.

- Fees, contd.
 - Alternative fee structures, contd.
 - PE-style fee terms
 - Hurdle rates
 - Incentive fee/allocation on realized gains only, and/or over multiple year period
 - Effect of redemptions.
 - First-loss

Trends in Fund Documents, contd.

- Founders class
 - Dedicated capacity
 - Reduced fees
- Liquidity
 - Lock-ups
 - Matching strategy vs. capital retention
 - Rolling lock-ups with higher fees for most liquid class
 - Hard or soft - soft may have catch up fees/allocations
 - Multiple classes offered/discounts for longer lock-ups

Trends in Fund Documents, contd.

- Liquidity, contd.
 - Gates
 - Fund level vs. investor level
 - Interplay with lock-ups
 - Excess redemption
 - Redemption frequency
 - Side pockets
 - Strategy considerations
 - Liquidating SPVs
 - Slow pay

Trends in Fund Documents, contd.

- Side letters terms in fund documents
 - MFNs
 - Notice of special events
 - Key person event (departure of key personnel)
 - Regulatory events/bad acts (that could have a material adverse effect on fund or manager)
 - Large redemptions by manager and principals
 - Change of key service providers

Trends in Fund Documents, contd.

- Expenses
 - Expense shifting (i.e., outsourcing, automation, consultants)
 - Investor-focus on expenses relating to travel, regulatory and compliance, liability insurance, non-investment-related systems
- Governance
 - Independent representative or conflicts committees
 - Independent director involvement
 - Independent board for limited partnerships

Trends in Fund Documents, contd.

- Strategies
 - Long/short still prevalent but fewer funds
 - Distressed credit / direct lending
 - Global macro
 - Long-only
 - Socially responsible investing

SMA, Single Investor Vehicles and Other Customized Solutions

- Investor motivations
 - Customized portfolios (excluding certain assets; focusing on certain assets; increased leverage; etc.)
 - Ability to negotiate different terms
 - Greater control of assets/power to remove manager
 - Greater transparency regarding underlying investments
 - Insulation from possible negative effects on performance due to subscriptions and redemptions by other fund investors

SMA, Single Investor Vehicles and Other Customized Solutions, contd.

- Side Car / Excess Capacity / Best Ideas / Co-Investment Vehicles
 - Closed-end vs. open-end (with lock-up)?
 - Permit additional investors?
 - Lower fees (e.g., 0.5% + 10%), on realized gains only, sometimes subject to a hurdle
- Investor-sponsored platforms

Latest SEC Initiatives / Focus on Marketing Materials

- OCIE Risk Alert – frequent compliance issues
 - Misleading performance results
 - Misleading one-on-one presentations
 - Misleading claim of compliance with voluntary performance standards
 - Cherry-picked profitable stock selections
 - Misleading selection of recommendations
 - Compliance policies and procedures

Latest SEC Initiatives / Focus on Marketing Materials, contd.

- Touting initiative
 - Misleading use of third party rankings or awards
 - Misleading use of professional designations
 - Testimonials
- Industry advocating to loosen advertising rules
 - Past recommendations
 - Testimonials
 - Social media

Third-Party Marketing Arrangements

- Placement / Solicitation agreements
 - Trends
 - Key terms
- Platform Arrangements
 - Trends
 - Unique issues

Best Practices Relating to Political Contributions, Lobbying and Foreign Marketing Activities

- SEC Pay-to-Play Rule: Think about upcoming 2018 mid-term elections
- Potential lobbyist registration issues when soliciting state and local agencies
- FCPA: Issues that arise when soliciting foreign government entities (e.g., sovereign wealth funds, government-owned enterprises)

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