

# Proskauer's Secondaries School: GP-leds and Continuation Funds

# Event Speakers

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# Agenda – Before the break

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**Continuation Funds: Rationale and Managing Conflicts of Interest**



**Continuation Fund Structures**



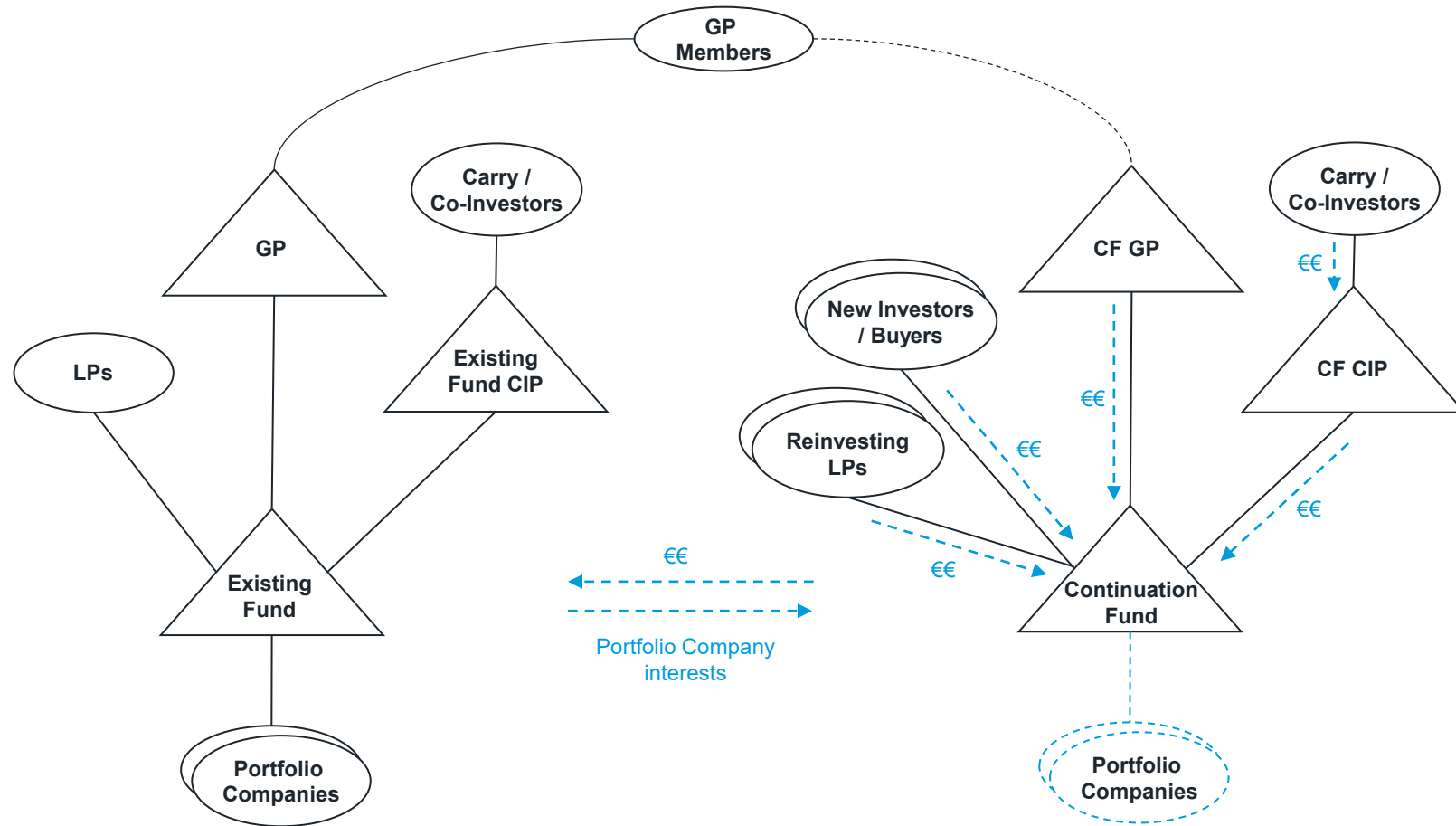
**Indicative Timeline**



**Fund Finance**

# Continuation Funds: Rationale and Managing Conflicts of Interest

# What Is a Continuation Fund?



# Continuation Funds: Rationale

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A continuation fund can provide several advantages to sponsors, existing and new investors:

- **Sponsors:** Continue to hold an asset and maximise its value, while providing liquidity to existing investors.
- **Existing investors:** Option to either “cash out” or reinvest.
- **New investors/buyers:** Gain access to known, and typically high performing, assets managed by a sponsor they often already know.

# Continuation Funds: Managing Conflicts of Interest

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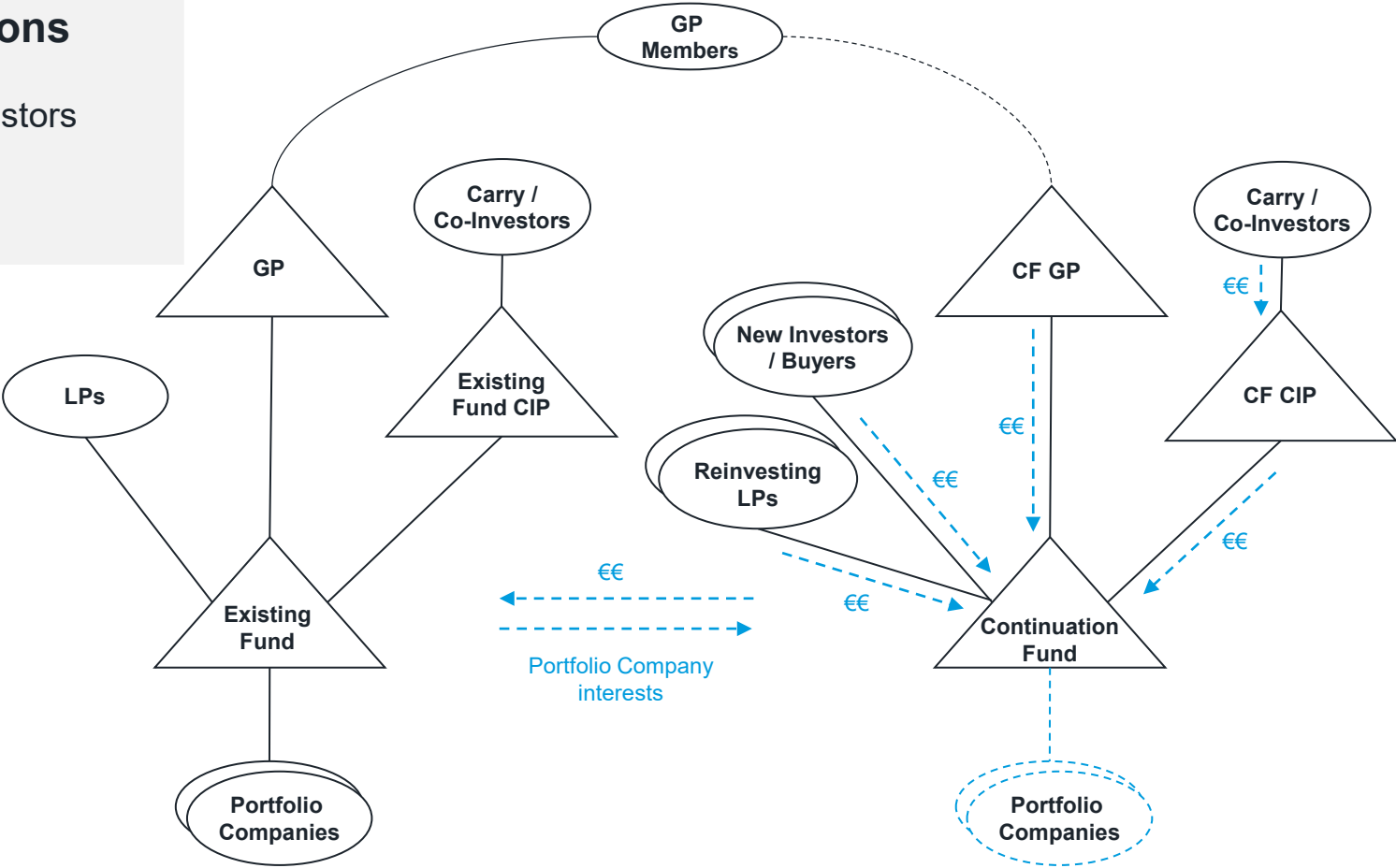
There is an inherent conflict of interest as the sponsor is on **both sides** of the transaction.

- **Conflict of interest mitigators:**
  - LPAC approval;
  - Purchase price determination;
  - Fairness opinion or third-party valuation;
  - Transparency;
  - Election process.

# Continuation Fund Structures

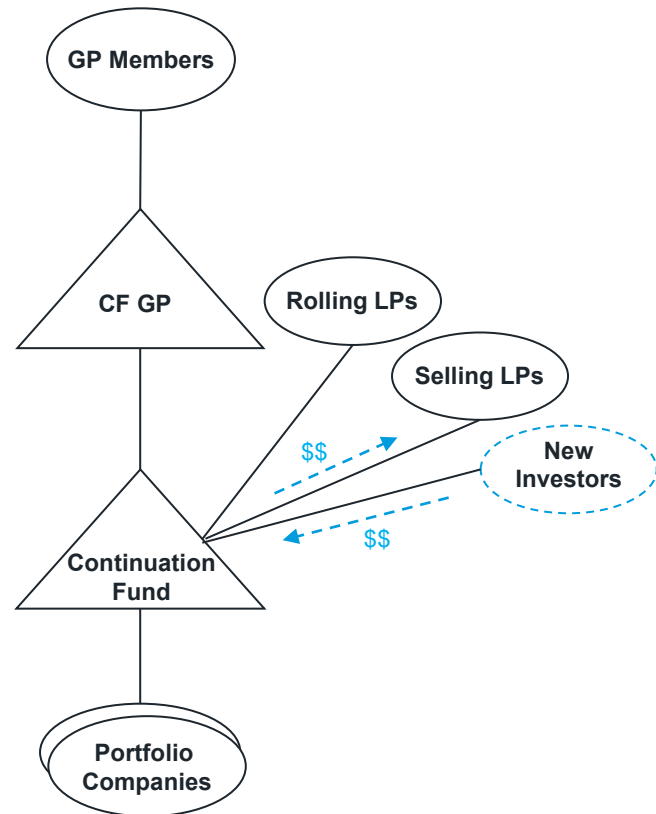
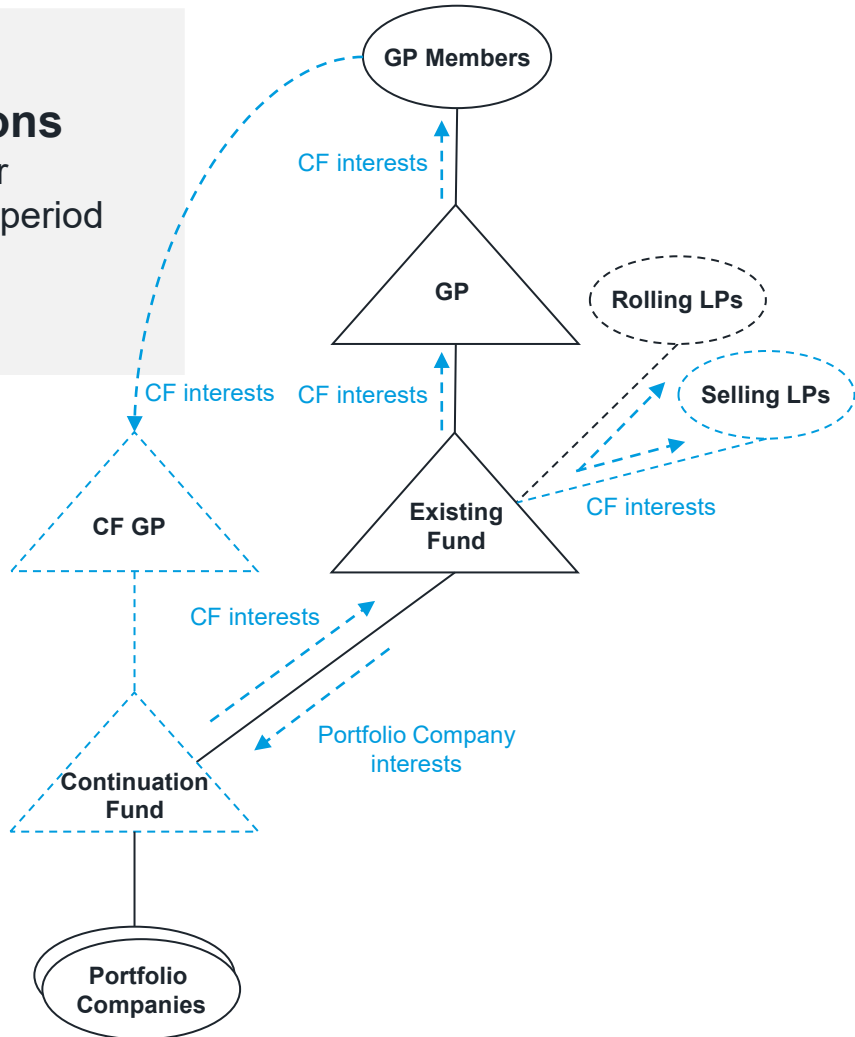
# Cash Sale Structure

- **Considerations**
  - Simplicity
  - Taxable to investors

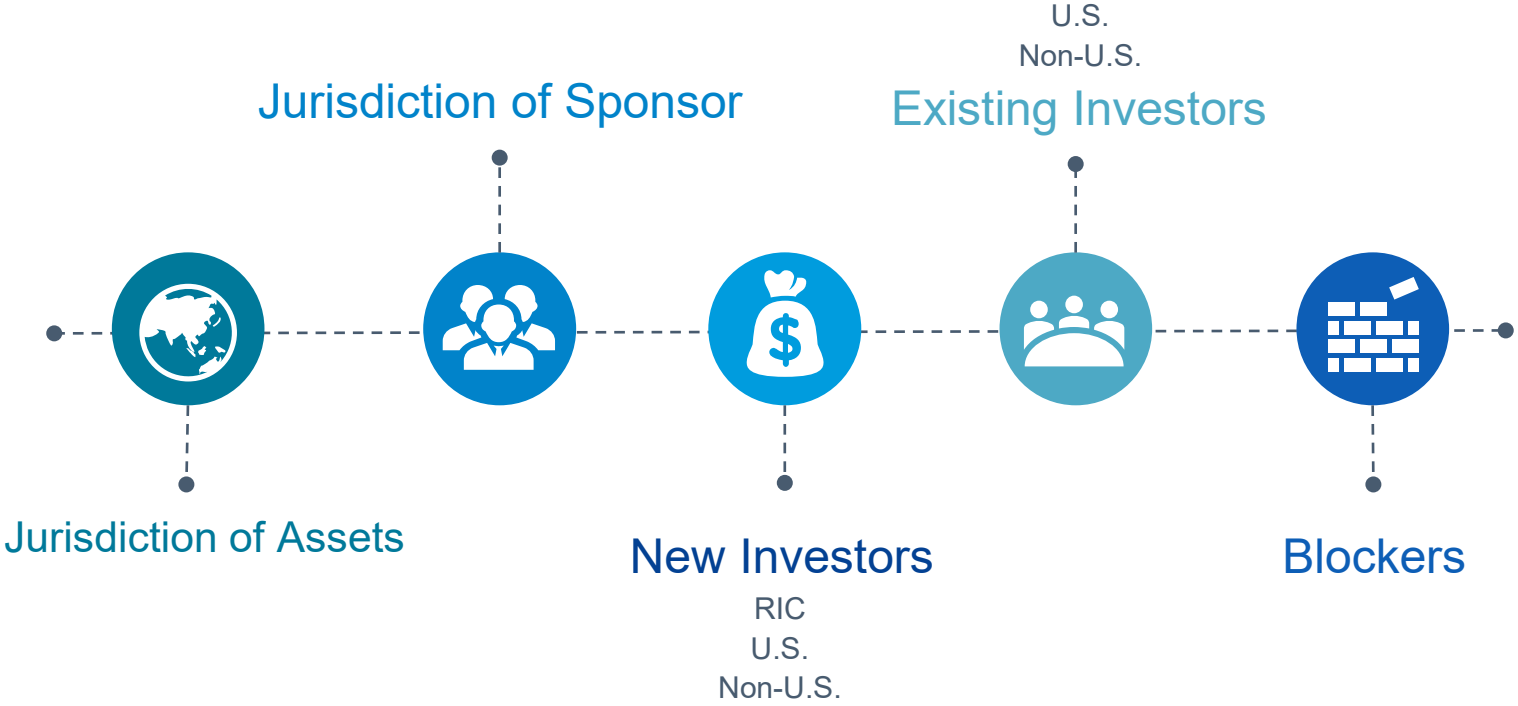


# U.S Tax-Free Rollover

- **Considerations**
  - Tax-free rollover
  - Tacked holding period
  - Complexity
  - Withholding tax



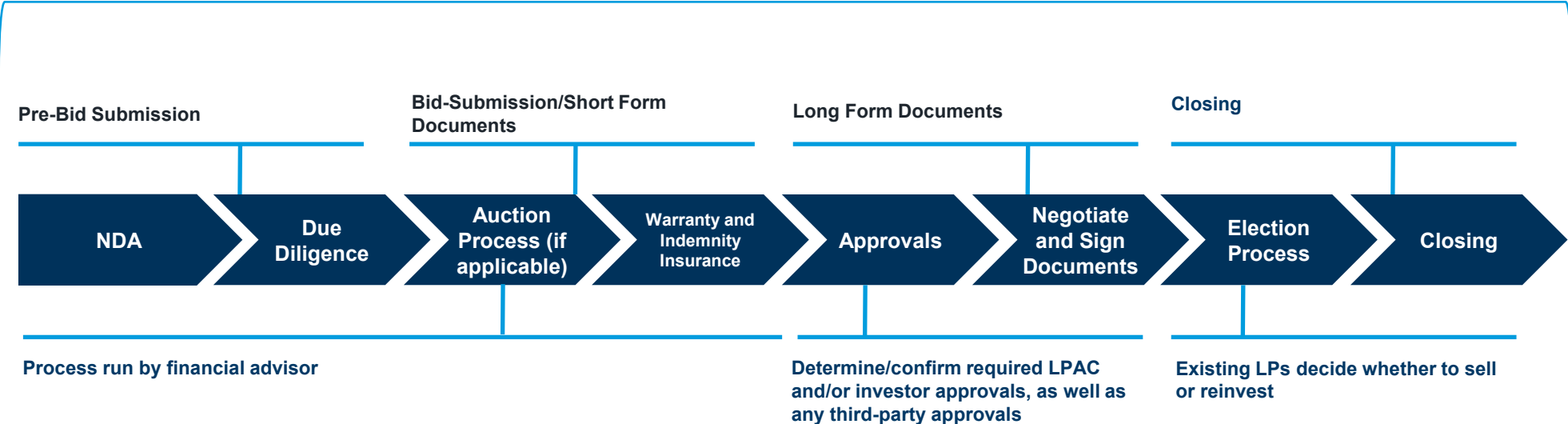
# Structuring – Tax Considerations



# Indicative Timeline

# Indicative Timeline: Continuation Fund

Typically 3-6 months (for buy side) – can be shorter these days

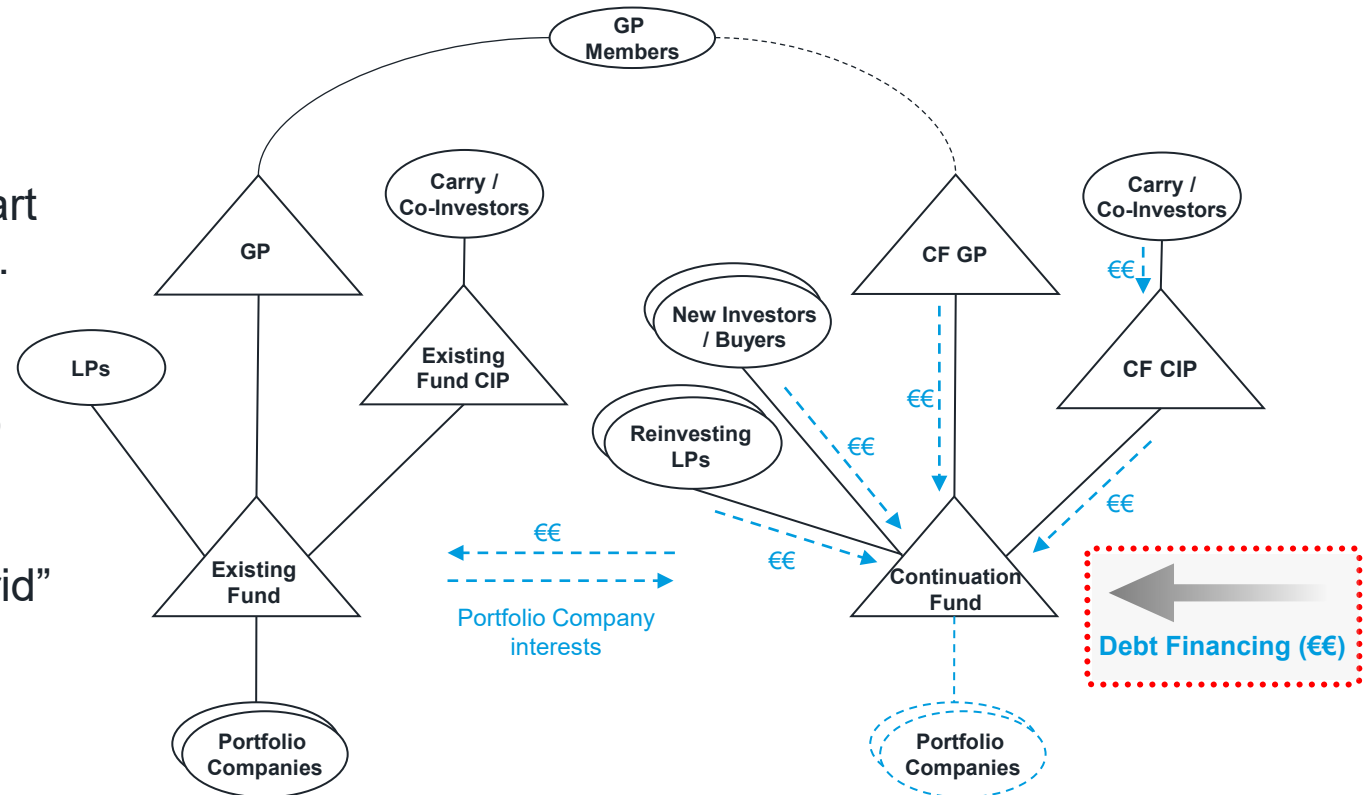


# Fund Finance

# Continuation Fund Financing

## • Debt Financing

- Debt provided to continuation vehicle.
- Purpose: to satisfy part of the purchase price.
- Bridge to funding acquisition / bridge to closing CV.
- “Up”, “down” or “Hybrid” financing.



# Structure Of Financing

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- Lender's credit focus dictates type of facility.
- Subscription facility “upward” focused.
- NAV “down” focused.
- Hybrid.

# Security

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- Lender's credit focus dictates type of facility.
- Security over investors' uncalled capital commitments.
- Security over accounts.
- Security over assets.
- Investor letters / investor information.

# Diligence

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- Distribution leakage.
- Single asset / multi-asset.
- Transfer / pledge restrictions and consents.

# Facility terms

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- Term loans / RCFs.
- Borrowing base – NAV of the portfolio / uncalled capital commitments.
- Cash sweep.
- Reporting and valuations.
- Customary representations, undertakings and events of default.

# Key Fund Terms

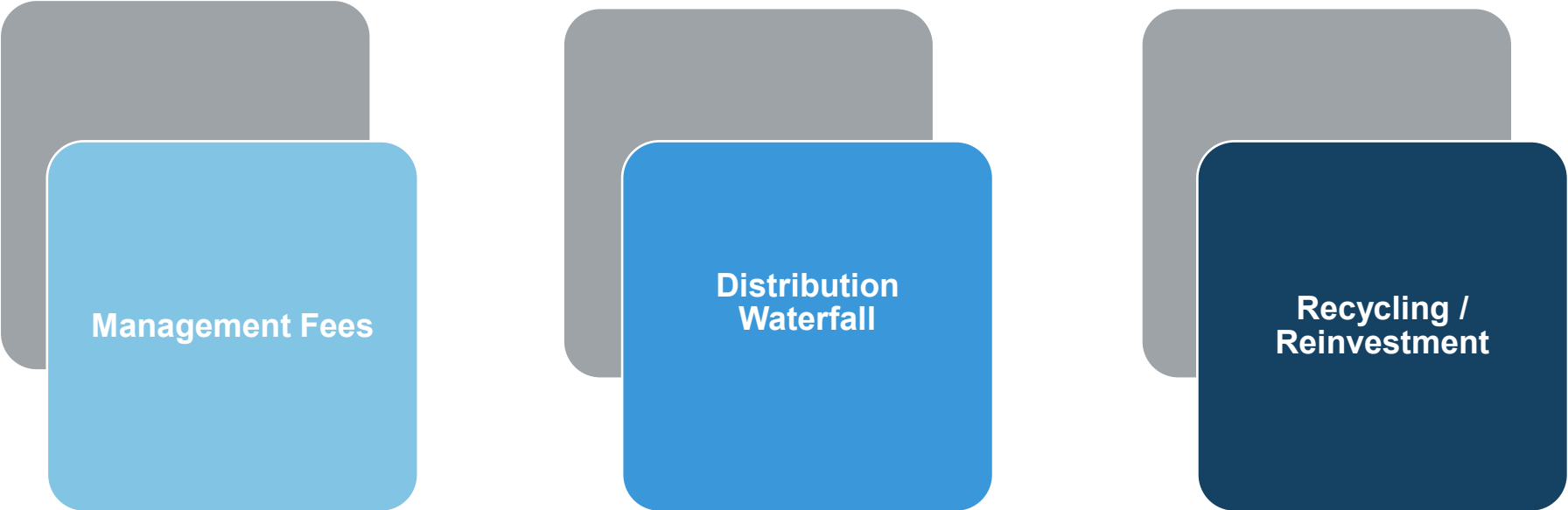
# Key Fund Terms – Term, Commitments and Organisational Expenses

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# Key Fund Terms – Economics and Recycling

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# Continuation Funds – Governance

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# Key Transaction Terms

# Key Transaction Terms: Economics

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## CONSIDERATION

## COMMENTS

### Purchase Price

- “Locked Box” purchase price adjustment.
  - Fixed with reference to NAV at a historic valuation date, *less* distributions *plus* contributions between that date and closing.
- Some European CV deals have a European buyout-style adjustment for “leakage” instead.
  - Subject to limited carve-outs, or “permitted leakage”.
- Deferral of purchase price.
- Earn outs (less common).

### Allocation of CV Commitments

- Typically heavily negotiated between GPs and Lead Investors.
- Lead Investors often seek to guarantee a minimum commitment size.

### Expenses

- Sell-side costs.
- Buy-side costs.
- Transaction costs.

# Key Transaction Terms: Warranties and Excluded Obligations; Recourse

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| CONSIDERATION                            | COMMENTS  |
|--|---|
| <b>Scope of Warranty Coverage</b>        | <ul style="list-style-type: none"><li>• Fundamental Warranties.</li><li>• Non-Fundamental Warranties.</li><li>• Disclosure.</li></ul>   |
| <b>Definition of “Knowledge Parties”</b> | <ul style="list-style-type: none"><li>• Identity of Individuals.</li></ul>  |
| <b>Excluded Obligations</b>              | <ul style="list-style-type: none"><li>• Excluded Obligations.</li><li>• Excluded Tax Liabilities.</li></ul>   |
| <b>Source of Recovery</b>                | <ul style="list-style-type: none"><li>• Warranty &amp; Indemnity (“W&amp;I”) Insurance.<ul style="list-style-type: none"><li>○ Interaction of limitations on liability between FWA/PSA and W&amp;I policy.</li></ul></li><li>• LP Clawback Provisions.</li><li>• Holdbacks.</li></ul> |

# Key Transaction Terms: Alignment; Mitigation of Conflicts

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| CONSIDERATION                           | COMMENTS   |
|---|--|
| <b>GP Participation</b>                 | <ul style="list-style-type: none"><li>• Currently, 100% carry rollover + pro rata portion of incremental unfunded (if any) in majority of deals.<ul style="list-style-type: none"><li>○ Sponsors may put in “buy-side” cash on top of market rollover.</li><li>○ Quantum of GP commitment a key point of negotiation for lead investors and rolling LPs where GP is not yet in carry.</li></ul></li><li>• Investment by GP’s latest flagship fund.</li></ul> |
| <b>Pre-Closing Deal Protections</b>     | <ul style="list-style-type: none"><li>• Lead investor consent rights on material pre-closing company actions?</li><li>• Policing closing conditions.</li></ul>   |
| <b>Continuation Fund actions</b>        | <ul style="list-style-type: none"><li>• Enforcement of Continuation Fund’s rights.<ul style="list-style-type: none"><li>○ Step in rights for Lead Investor?</li><li>○ Covenant on GP to enforce LP clawback?</li></ul></li><li>• Other Continuation Fund actions / waivers typically subject to Lead Investor consent.</li></ul>   |
| <b>Lead Investor Information Rights</b> | <ul style="list-style-type: none"><li>• Material portfolio company-level developments.</li><li>• LP election process results.</li></ul>  |

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# Key Transaction Terms: Closing Conditions

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## CONSIDERATION

### Customary Closing Conditions

## COMMENTS

- **Customary Examples of Closing Conditions:**
  - Expiry of election period and receipt of required level of financial commitment.
  - Receipt of all anti-trust/regulatory approvals.
  - Approval of limited partners.
  - No laws prohibiting the transaction.
  - Fundamental warranties being true as at signing and closing and no material breach of non-fundamental warranties.
  - Required level of financial commitment by sponsor.

# W&I Insurance

# Benefits of W&I Insurance

Sell-side / GP

- Ability to distribute more cash proceeds to Selling Fund LPs at Closing (subject to any deferred payment arrangement)
- Eliminates the need for escrow and holdback arrangements
- Clean break for Selling Fund by capping its liability under the PSA at \$1
- Reduces execution risk.

Buy-side / Lead LP/CV

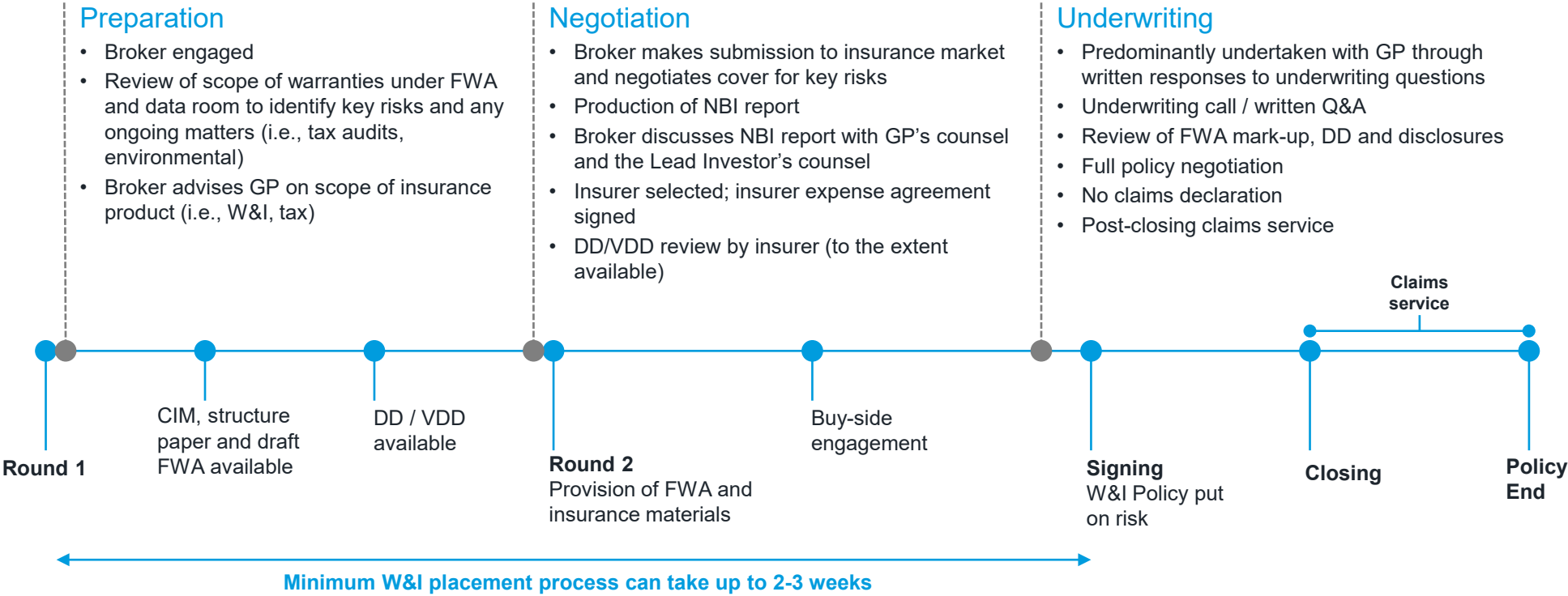
- Potentially better liability coverage v non-insured deal
  - Selling Fund often more willing to give broader suite of warranties (but subject to scope of VDD)
  - Longer survival periods
- Preserves relationship with GP as recourse is against insurers with A+ balance sheets instead of the GP
- Increase competitiveness of bid in auction processes.

Conflict mitigation + deal facilitation

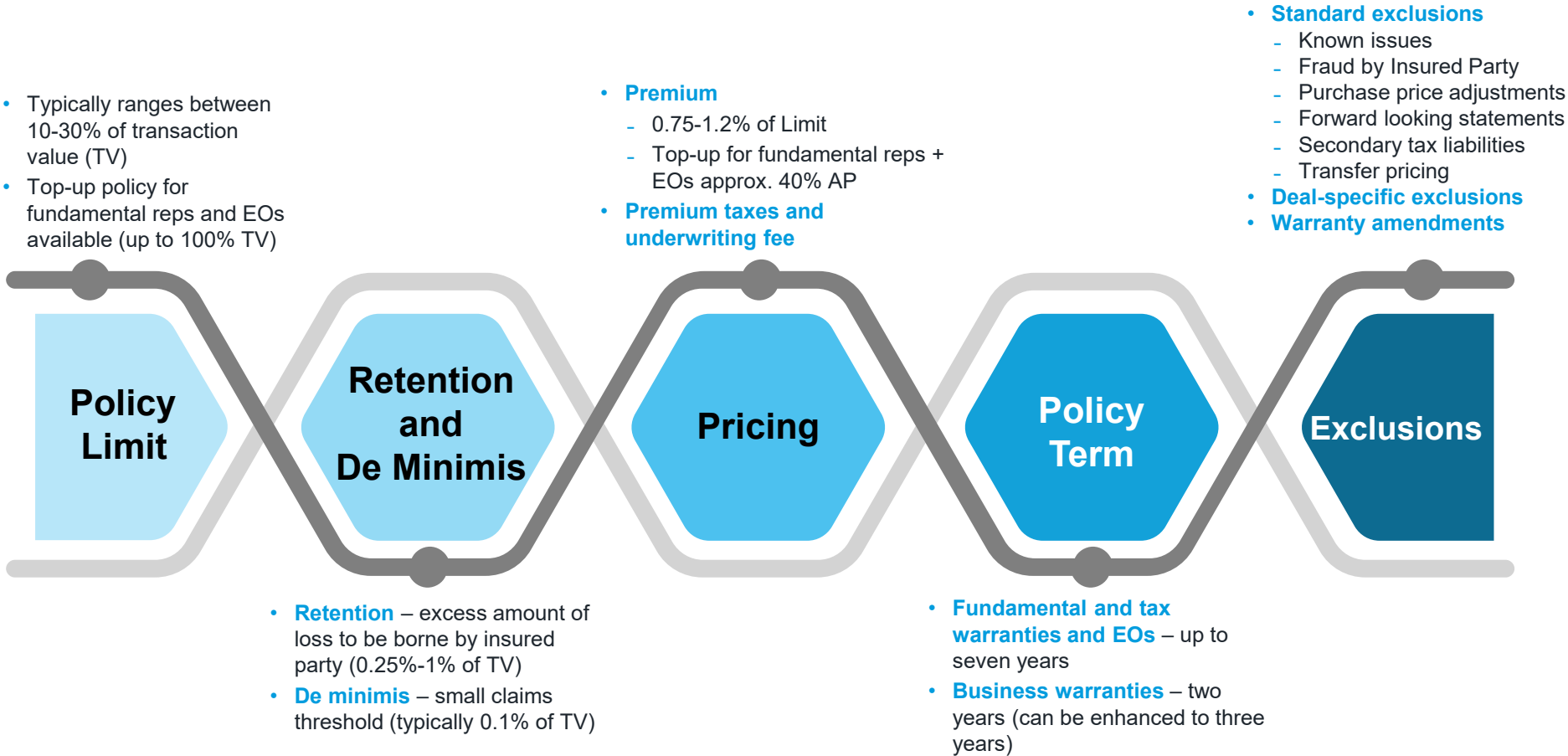
- Conflict mitigation**
- Inherent conflict of interest in GP-led deals as the GP controls both the Selling Fund and the Continuation Fund
  - W&I insurance helps manage this conflict as the Continuation Fund's recourse is directly against the insurer rather than the Selling Fund
- Deal facilitation**
- Helps streamline negotiations between GP and Lead Investor
  - W&I insurance provides innovative solutions to potential roadblocks (e.g., synthetic cover, contingent risks, etc.).

# Typical Placement Process

Insurance broker conducts extensive negotiations with insurers and works closely with the GP’s counsel and the Lead Investor’s counsel to secure cover for the key risks



# Policy Coverage: Key Terms



# Policy Coverage: Enhancements

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| ENHANCEMENTS   | COMMENTS   |
|--|--|
| <b>Excluded Obligations</b>                                    | <ul style="list-style-type: none"><li>• Market standard scope of Excluded Obligations will be covered.<ul style="list-style-type: none"><li>○ AP 5-10%.</li><li>○ Some insurers willing to provide market standard Excluded Obligations on a synthetic basis.</li></ul></li></ul>  |
| <b>Synthetic cover</b>   | <ul style="list-style-type: none"><li>• As well as Excluded Obligations, certain warranties can be given on a “synthetic” basis in the policy, which enables Insured Party to claim against insurer as if such warranties were being given by the Seller.</li><li>• Insurers can also offer cover for tax covenants on a synthetic basis (but less common in secondaries).</li></ul> |
| <b>Tax / contingent liabilities</b>                            | <ul style="list-style-type: none"><li>• Insures loss arising from known tax risks (e.g., ECI) and/or contingent risks (e.g., litigation, environmental).</li></ul>   |
| <b>Extended Business Warranty coverage</b>                     | <ul style="list-style-type: none"><li>• Increases standard policy term from two years to three years.</li></ul>  |
| <b>Nil de minimis and retention for Fundamental Warranties</b> | <ul style="list-style-type: none"><li>• Disapplication of the de minimis threshold and retention for Fundamental Warranties and Excluded Obligations.</li></ul>  |
| <b>Tipping to Nil</b>  | <ul style="list-style-type: none"><li>• Insurer reimburses all losses once the retention threshold has been exceeded and not merely the excess (i.e., converts retention from a true deductible into a “tipping basket”).</li></ul>  |
| <b>Knowledge scrape</b>  | <ul style="list-style-type: none"><li>• Disregards knowledge qualifications in the Seller warranties.</li></ul>  |
| <b>Materiality scrape</b>                                      | <ul style="list-style-type: none"><li>• Disregards materiality qualifications in the Seller warranties.</li></ul>  |

# W&I Policy: Considerations

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| TOPIC   | COMMENTS   |
|---|--|
| <b>Insured Party under the W&amp;I policy</b>     | <ul style="list-style-type: none"><li>• Typically the Continuation Fund (and/or Bidco) but sometimes lead investor named instead.<ul style="list-style-type: none"><li>○ Payment of W&amp;I proceeds should be limited to only new money investors if rolling LPs are not sharing the cost of the W&amp;I policy.</li></ul></li></ul>  |
| <b>Policy Limit</b>                               | <ul style="list-style-type: none"><li>• Base policy limit.</li><li>• Selling Fund indemnification v top-up policy for excess losses?</li></ul>   |
| <b>Policy coverage</b>                            | <ul style="list-style-type: none"><li>• Risk allocation for “gaps” in policy coverage (i.e., for exclusions and wording amendments) .</li><li>• Consider if synthetic cover is needed (e.g., for Excluded Obligations).</li><li>• Consider whether additional cover is needed for any tax risks (e.g. ECI) and/or contingent liabilities identified (e.g., material litigation or environmental risk).</li></ul> |
| <b>Scope of GP-commissioned DD</b>                | <ul style="list-style-type: none"><li>• Is the scope of VDD and related disclosures sufficient for obtaining full policy coverage?<ul style="list-style-type: none"><li>○ E.g., where EOs include PortCo-level tax liabilities, insurer will require appropriate tax VDD to provide cover.</li></ul></li></ul>   |
| <b>W&amp;I costs and expenses</b>                 | <ul style="list-style-type: none"><li>• Often borne 50:50 between the Selling Fund and the Continuation Fund, but negotiable.</li></ul>  |
| <b>Enforceability / Claiming under the Policy</b> | <ul style="list-style-type: none"><li>• To help mitigate the inherent conflict of interest in a GP-led deal, the Lead Investor often granted the right to claim on behalf of the Continuation Fund under the W&amp;I policy.</li></ul>   |

# Closing Remarks

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## Upcoming Events

| London  | Paris   | New York  |
|---|---|---|
| <ul style="list-style-type: none"><li>• <b>Secondaries School – LP-Led Session</b> – Wednesday July 2<sup>nd</sup>.</li></ul> | <ul style="list-style-type: none"><li>• <b>Secondaries Pulse Check Paris</b> – Tuesday November 4<sup>th</sup>.</li></ul> | <ul style="list-style-type: none"><li>• <b>Secondaries School, LP-Led Session</b> – Tuesday July 15<sup>th</sup>.</li></ul> |
| <ul style="list-style-type: none"><li>• <b>Secondaries Pulse Check London</b> – October 2025.</li></ul>                       |   |   |



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# Secondaries School

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