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London
Secondaries
School

First for Market Insights

Agenda

Registration and Breakfast → [8:30 a.m.](#)

Opening Remarks → [9:00 a.m.](#)

Programming Part One

Secondary Transactions:
What, Why & How

Setting the Stage: LP-Led Transactions
Fund Finance

Refreshment Break → [10:30 a.m.](#)

Programming Part Two

Definitive Documentation

State of the LP-Led Market

Closing Remarks and
Networking Lunch → [12:30 p.m.](#)

London
Secondaries
School

First for Market Insights

Proskauer's Secondaries School: LP-led Transactions

28 April 2026

Proskauer»

Event Speakers



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Agenda



Secondary Transactions: What, Why & How



Setting the Stage: LP-Led Transactions



Definitive Documentation



State of the LP-Led Market

Secondary Transactions: What



Buying and selling of investor stakes in private investment funds

No public market = no liquidity

Two basic categories: GP-led & LP-led

Secondary Transactions: Why?

Seller's Motivation

- Liquidity and/or portfolio wrap-up
- Asset class overallocation
- Portfolio rebalancing / Lock in gains early
- Regulatory restraints

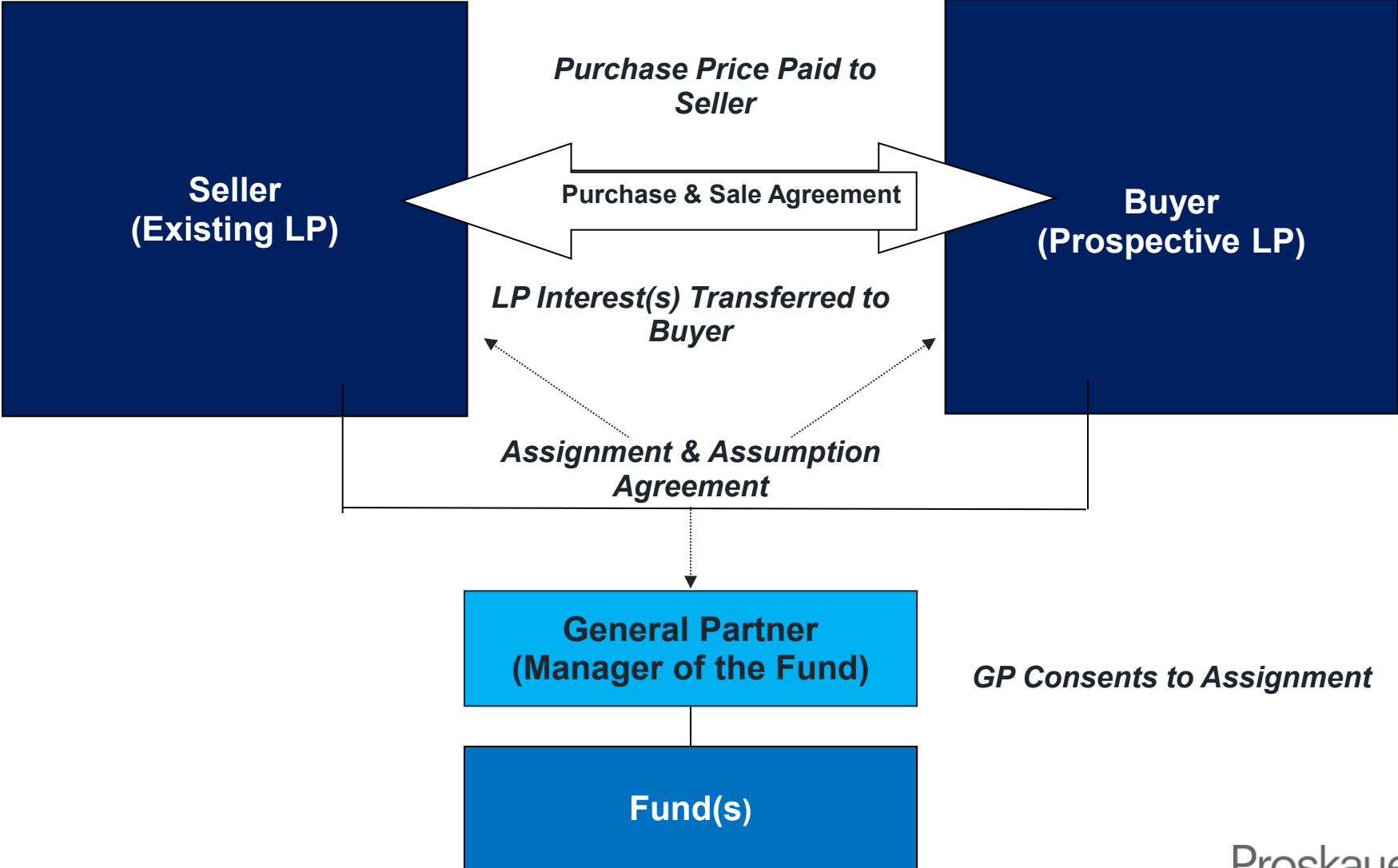
Buyer's Motivation

- Access to more mature assets
- Pricing discounts
- Portfolio diversification
- Risk-adjusted compared to primary investments

Secondary Transactions: types and alternatives

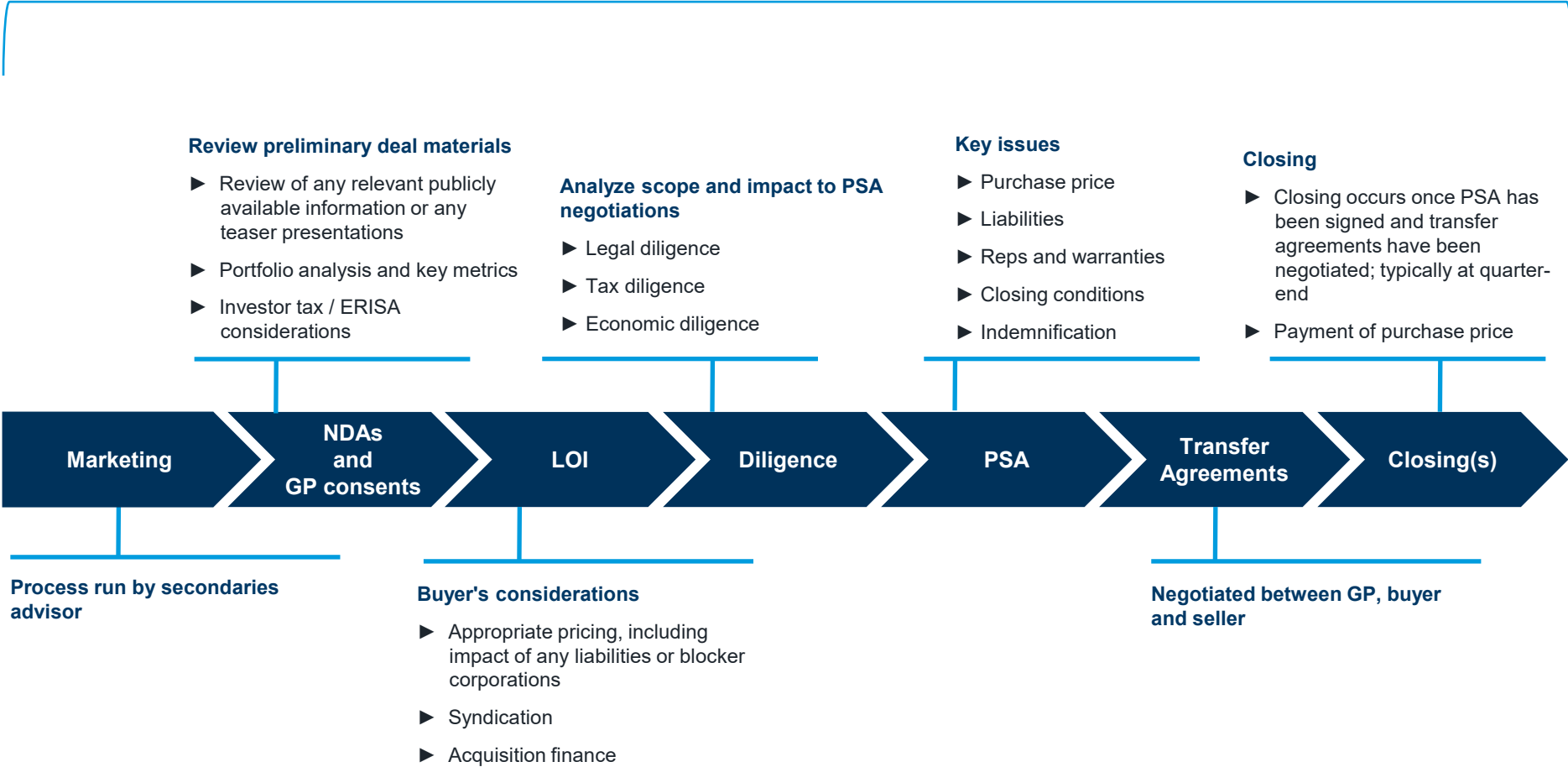
- **Single interest & portfolio**
- **Strips & carveouts**
- **Stapled secondaries**
- **Seller financed/delayed payment**
- **“Seasoned primary”**
- **Young secondaries**
- **Annex funds**
- **Listed vehicles**
- **Synthetic secondary (economic transfer/TRS)**
- **GP liquidity (purchase of GP commitments)**
- **Secondary directs**
- **Structured secondary (JV or structured cashflow)**
- **Hedge fund investors as sellers (“gated” interests)**
- **Hedge funds as sellers (side pockets/illiquid assets)**
- **Tertiary liquidity (interests in FOF or other secondary funds)**
- **Manager spinouts**
- **Large portfolio transactions**
- **Tender offers**
- **Continuation funds (single & multi-asset)**
- **NAV facilities**
- **Preferred equity**

LP-Led Transactions: Typical Structure



LP-Led Transactions: Indicative Timeline

Typically 3-6 months (for buy side)



LP-Led Transactions: Letters of Intent (“LOI”)

Engage lawyers early!

What does buyer want to buy?

Price and how it is calculated and adjusted? Bid pricing assumptions (e.g., no blockers)?

Deal is ordinarily ‘subject to customary legal and tax due diligence, entry into of customary definitive legal documents and satisfaction of AML/KYC’.

Exclusivity period.

Expense sharing, transfer tax sharing.

Closing conditions.

Legal Diligence: Contractual & Regulatory

Engage lawyers early!

Underlying Fund Structure

- Type of fund vehicle (e.g., English limited partnership, Luxembourg SCSp).
- AIVs.

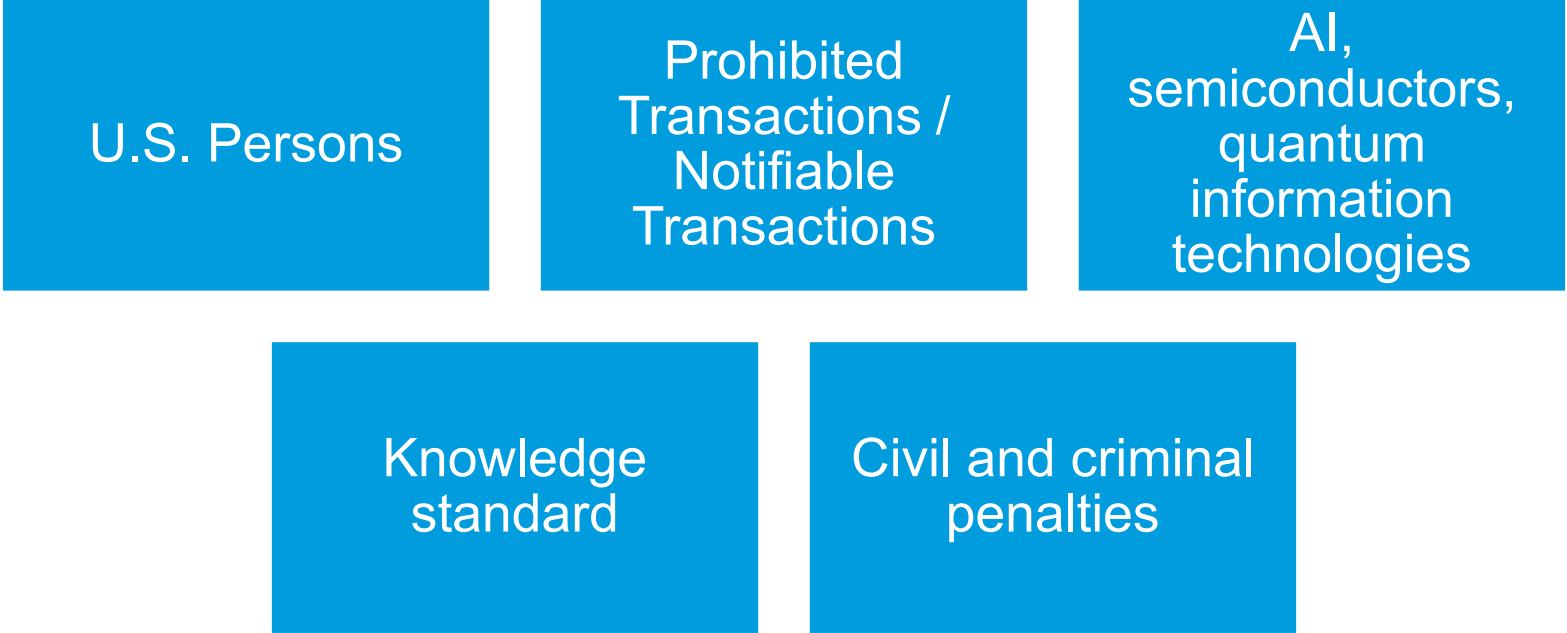
Underlying Partnership Agreement(s)

- Transfer requirements/restrictions.
- Rights of first refusal (ROFR).
- PSA disclosure points (e.g., litigation, opt-outs, AIVs, blockers).





Seller specific points

- Original purchaser?
- Excused?





Outbound Investment Security Program



Outbound Investment Security Program: Key Concepts

	<p>Requirements on U.S. persons: (i) outright prohibitions of certain transactions; (ii) notification requirement for certain other transactions; (iii) definition of U.S. person and “controlled foreign entity”.</p>
	<p>Specific categories of covered transactions: (1) acquisition of equity interest or contingent equity interest; (2) certain debt financing affording certain rights to the lender; (3) conversion of a contingent equity interest; (4) greenfield investment or other corporate expansions; (5) entrance into a joint venture; (6) certain investments as a limited partner or equivalent in a non-U.S. pooled investment fund.</p>
	<p>Coverage of foreign persons: (1) person of country of concern engaged in a covered activity related to defined sub-sets of technologies and products; (2) person with voting or equity interest, board seat, or certain powers with respect to such a person of a country of concern where more than 50% of one of several key financial metrics of the person is attributable to one or more such persons of a country of concern.</p>
	<p>Technologies and products subject to the restrictions: (1) semiconductors and microelectronics; (2) quantum information technologies; (3) certain artificial intelligence (AI) systems.</p>

Outbound Investment Security Program: Key Concepts

	<p>Knowledge standard: obligations of U.S. person apply if such person has knowledge of relevant facts or circumstances related to a transaction. U.S. person has knowledge if: (i) it possesses actual knowledge that a fact or circumstance exists or is substantially certain to occur; (ii) the U.S. person possesses an awareness of a high probability of a fact or circumstance's existence or future occurrence; or (iii) the U.S. person could have possessed such information through a reasonable diligent inquiry.</p>
	<p>Excepted transactions: (1) investment in publicly traded securities; (2) certain LP investments with a threshold of \$2,000,000; (3) derivatives; (4) buyouts of country of concern ownership; (5) intracompany transactions; (6) certain pre-Final Rule binding commitments; (7) certain syndicated debt financings; (8) equity-based compensation; (9) third-country measures.</p>
	<p>Notification requirements: notification must be filed (1) no later than 30 days after relevant covered transaction is completed; or (2) when a U.S. person acquires actual knowledge after the completion date of a transaction and the transaction would have been covered if such knowledge had been possessed at the time of the transaction, no later than 30 days after the U.S. person's acquisition of such knowledge.</p>
	<p>Penalty and disclosure framework for violations: (1) penalties: civil and criminal penalties as set forth in the International Emergency Economic Powers Act (IEEPA); (2) divestment: actions to nullify, void or otherwise require divestment of any prohibited transaction, as authorized under IEEPA; (3) voluntary self-disclosure: taken into consideration during Treasury's determination of appropriate response to the self-disclosed activity.</p>

1940 Act Funds (“RICs”)

Tax

Disclosure

Custody

Co-Investment
Considerations

Voting Rights and
Waivers

1940 Act – Registered Secondaries Funds

- Registered secondaries funds tend to be structured as publicly-offered non-traded closed-end management investment companies under the 1940 Act (each, a “**RIC**”)
- Secondaries RICs operate as either **tender offer funds** or **interval funds**
- Tender offer funds offer liquidity through quarterly tender offers, typically limited to 5% of the outstanding equity of the fund
- Interval funds elect to be subject to a specific 1940 Act provision that mandates periodic liquidity (typically quarterly) at a minimum of 5% of a fund’s outstanding equity
 - Interval funds may also obtain ticker symbols, and thus can forego subscription agreements
 - In exchange for this flexibility, publicly offered interval funds must determine NAV on a daily basis, rather than quarterly or monthly as with tender offer funds
- The SEC staff recently announced that it will no longer require Secondaries RICs to be sold only to accredited investors, or to require a \$25,000 investment minimum, which should expand the scope of U.S. investors who may participate in these products

1940 Act - Custody Requirement

- Custody requirements under the 1940 Act require each investment held by a RIC to be held in an account at a qualified custodian
- For traded instruments, the securities are merely held in the name of the custodian for the benefit of the RIC
- However, illiquid and non-traded assets, such as LP interests, must also technically be held in custody if beneficially owned by a RIC
- In practice, that means that a copy of an executed document evidencing the RIC's investment must be delivered to the RIC's custodian
 - Primaries – Typically the signed subscription agreement or LPA joinder, if showing the LP interest acquired
 - Secondaries – Typically the signed transfer agreement evidencing the LP interest acquired.

1940 Act Co-Investment Considerations

- When a RIC participates in a primary or secondary transaction alongside affiliated private funds, it raises potential 1940 Act concerns with respect to the co-investment transaction itself
- Co-investment transactions involving a RIC are generally prohibited under Section 17(d) of the 1940, except
 - Pursuant to the SEC's Mass Mutual no-action letter position; or
 - If made in compliance with an applicable SEC co-investment exemptive order
- Mass Mutual generally allows a RIC to co-invest in a transaction so long as the only terms negotiated are price and amount being acquired
 - Negotiation of terms can cause Mass Mutual to no longer be available, even if those terms are ultimately not accepted by the GP
- Most RIC managers will obtain an exemptive order from the SEC that generally permits the RIC to co-invest alongside affiliated entities in the same security, at the same time and on identical terms
 - Board approval may be required if an affiliate holds a pre-existing position, or in other scenarios under the co-invest order
- The RIC must always invest directly (or through its own blocker), and not through any commingled vehicle through which other affiliates are participating

RIC-Related Voting Rights Waivers

- When a RIC, together with affiliates that are under common control with the RIC, beneficially own 5% or more of the voting securities of an underlying private fund, it can raise affiliate transaction considerations for the RIC
- Similarly, if an asset manager is deemed to control a third-party's private fund which is under common control with a third-party managed RIC, that can raise affiliate transaction considerations for that asset manager in future transactions potentially involving that RIC or portfolio companies under common control with the RIC
- Section 17 generally restricts certain transactions between a RIC and its direct affiliates (i.e., “first tier” affiliates), as well as certain affiliates of those first tier affiliates (i.e., “second tier” affiliates)
- Relevant definitions:
 - Under the 1940 Act, among other things, any person controls, is controlled by or is under common control with another person, or that holds 5% or more of the voting securities of such other person, is deemed an affiliate of that person
 - Any person that holds more than 25% of the voting securities of another person is deemed to control that other person

RIC-Related Voting Rights Waivers

- While not dispositive, the existence of “no fault” GP removal rights will typically make an instrument into a “voting security” for 1940 Act purposes
- As a result of the concern around affiliations – and the expansive scope of extending to second tier affiliates – RICs will often waive voting rights if they, together with their affiliates, will hold 5% or more of the LP interests in a private fund
- Affiliates may also waive any “no fault” GP removal rights to avoid indirect or “second tier” affiliations for the RIC
- Waivers will often be included in either a side letter or transfer agreement, depending upon deal structure
- Control may also be deemed to exist in certain situations if a RIC, together with its affiliates, hold 50% or more of the equity interests in a private fund, even if deemed non-voting.

Economic Diligence: Carried Interest Waivers/Deferrals



GP may waive carry allocations and then recover waived amount from later profits from investments held for more than three years



Can distort the economic deal between Buyers and Sellers



Buyers should consider including as an “excluded obligation”



Potential purchase price adjustment?

Economic Diligence: Management Fee Waivers/Deferrals



GP may waive management fees to fund commitment instead of funding with after-tax dollars



Can distort the economic deal between Buyers and Sellers



Buyers should consider including as an “excluded obligation”



Potential purchase price adjustment?


Tax Diligence: Assets



Blockers



Publicly Traded
Partnerships
("PTP")



Transfer
Taxes

Tax Diligence: U.S. Withholding

U.S. Sellers:

- No U.S. withholding required
- U.S. seller will provide a Form W-9

Non-U.S. Sellers:

ECI Withholding

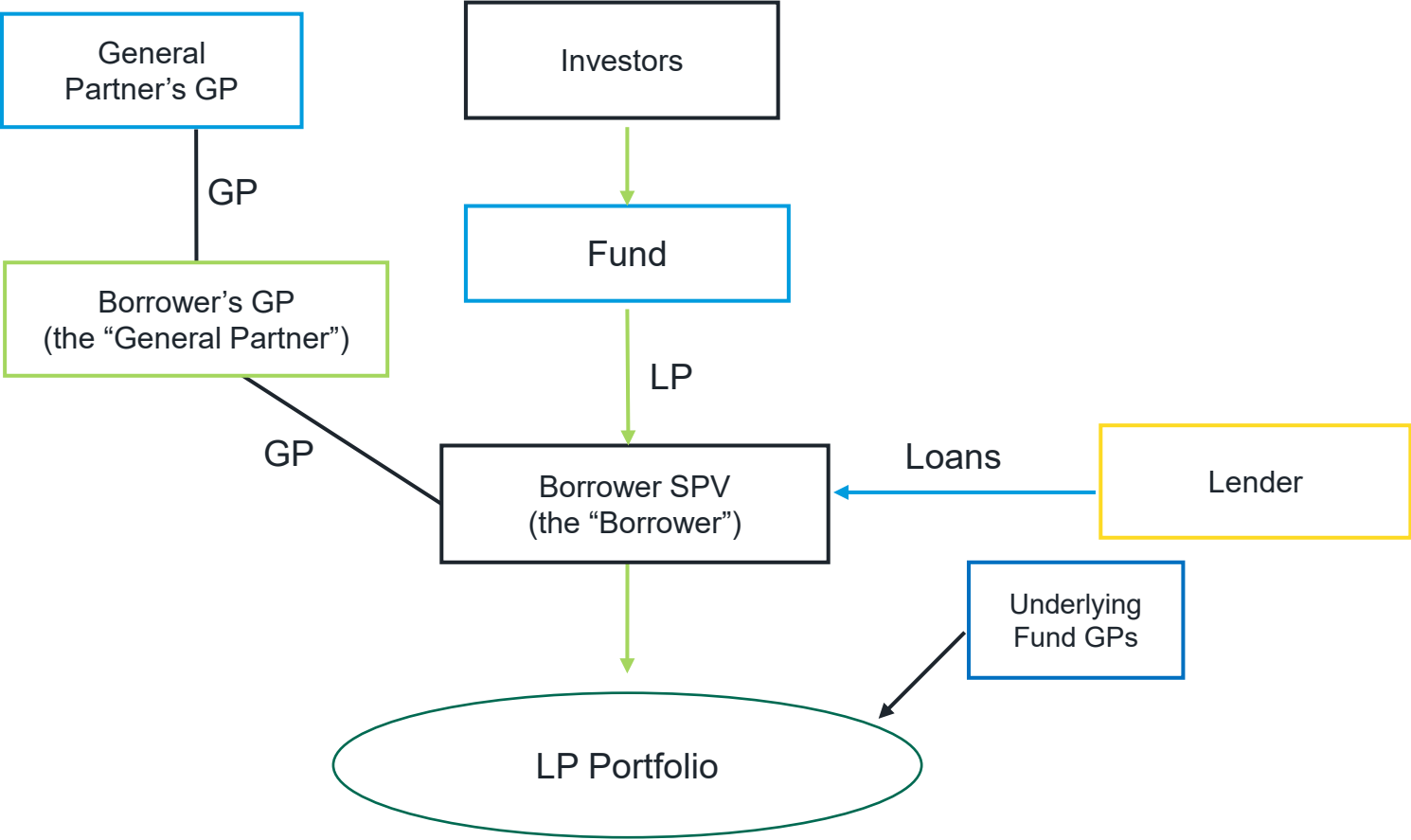
- Gain from the sale of an interest in a partnership that is engaged in U.S. trade or business may be subject to withholding
 - Buyer may be required to withhold 10% of the “amount realized”, up to 100% of the consideration paid
 - Portfolio fund secondarily liable if Buyer fails to withhold the required amount
 - Buyer should obtain a certificate from Seller or GP to avoid risk of liability for withholding taxes
 - PSA should provide for indemnification
 - GPs may require certain documentation

FIRPTA Withholding

- Certain gain from the sale of a “USRPI” (including a “USRPHC”) may be treated as FIRPTA
 - Buyer may be required to withhold 15% of the “amount realized”, up to 100% of the consideration paid
 - No secondary liability
 - PSA should provide for indemnification

Engage lawyers and begin withholding diligence early!

Fund Finance: Structure



Fund Finance: Terms



Term: 3 – 5 years



Type: Fully drawn or delay draw construct



Borrowing Base: Advance Rate, Eligibility Criteria, Concentration Limits



Collateral: (1) Pledge over SPV Borrower; (2) Pledge over Distribution Accounts; (3) (if applicable) Pledge from GP of SPV Borrower; and (4) (if applicable) Pledge over GP of SPV Borrower

Fund Finance: Pledge Restrictions

- Underlying fund LPAs will typically include **direct and/or indirect pledge restrictions** that restrict the LPs from pledging such LPs' interest in the fund.
- Nearly all fund LPAs have **direct pledge restrictions**, and many have indirect pledge restrictions.
- Due to the direct pledge restrictions, the SPV generally does not pledge the underlying fund interests as collateral.
 - *However, the limited partnership interests in the SPV is part of the collateral, so if there is an **indirect pledge restriction** in an underlying fund LPA, consent to the indirect pledge from the relevant GP must be obtained before entry into the facility.*
- Diligence on the underlying fund LPAs is done by the borrower's corporate counsel and by the lender's counsel.

Coffee Break

Purchase and Sale Agreements (“PSA”)



What it is and what it’s not



What’s included



Key PSA terms and issues

PSA: Purchase Price

Each interest priced based on “Cut-Off Date” capital account

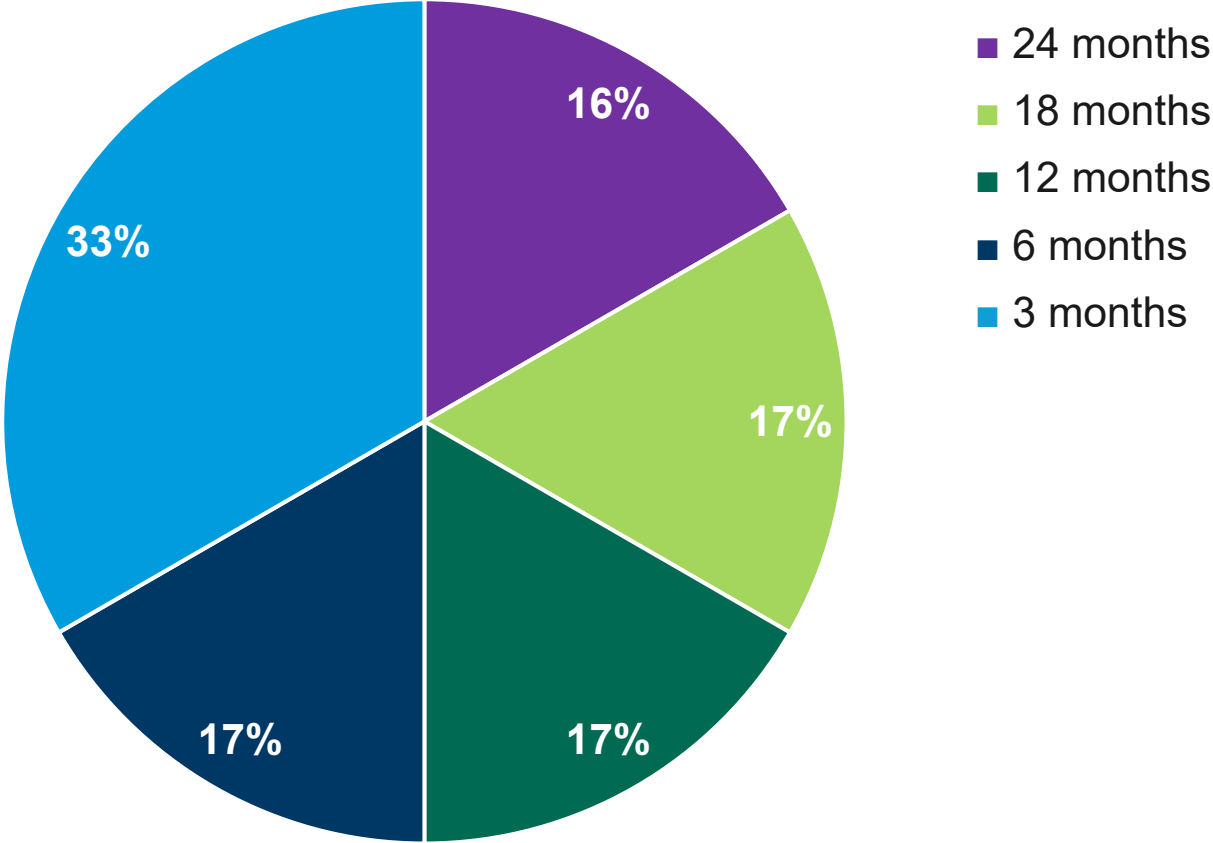
Purchase price adjustment for interim cashflows

- Adjustments for withholding taxes and blocker taxes?
- Are liquidated interests transferred?
- Negative purchase price

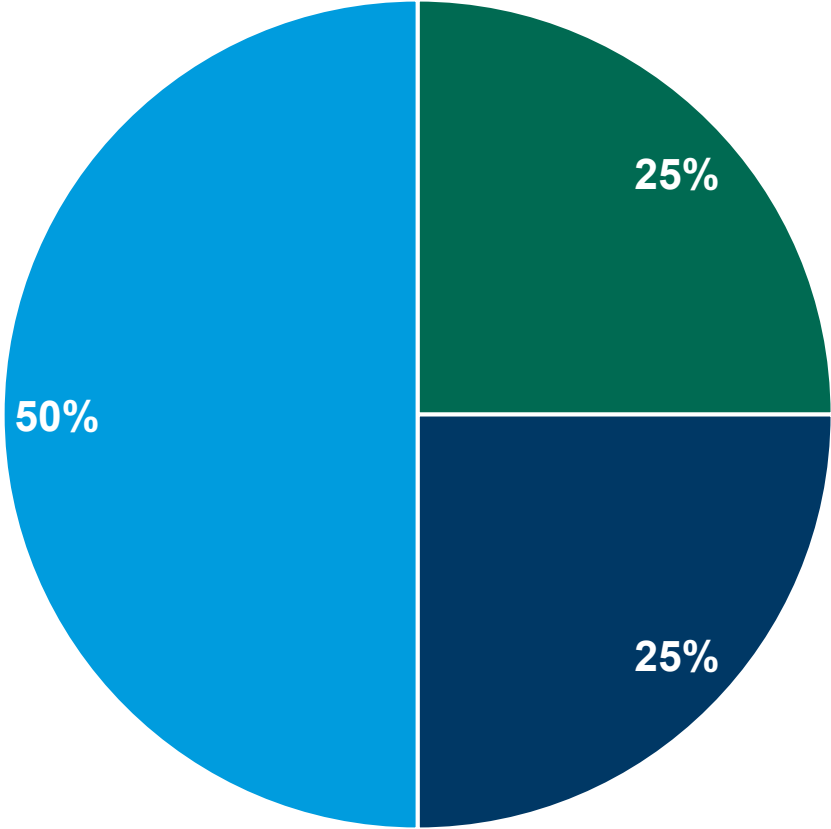
Currency conversion issues

Payment Deferrals

Deferral by the Numbers – Time Period



Deferral by the Numbers – Amount



- 100% of purchase price
- 75% of purchase price
- 50% of purchase price

Deferral by the Numbers – Buyer Assurances

Payment Assurances	Prevalence in Deals
Parent Guaranty	60%
Restrictive Covenants	60%
Reversion Right	20%
Cash Sweep	20%

PSA: Liabilities

Buyer assumes all obligations except “Excluded Obligations” – key concept – economic ownership

Excluded Obligations

- Losses due to seller’s breach of fund documents
- Losses due to seller’s act or omissions
- LP giveback liabilities / realisation events (pre-cut off date)
- Excluded interests
- Waived/deferred management fees and carried interest
- Withholding taxes and pre-closing taxes

Reps and Warranties

PSA: Seller Reps and Warranties

Authorization/title/good standing

Delivery of “portfolio property agreements”
and other docs and communications

No default, breach or opt-out

No pending LP clawback

No blocker elections

No elections with respect to GP-led
transactions

No litigation

“Big boy” reps

Brokers

Scheduling of capital accounts,
distributions, contributions

Tax reps

Compliance with law

Source of funds/AML/OFAC

Solvency

PSA: Buyer Reps and Warranties

Authorization/duly formed/power

Securities law reps

No litigation

Brokers

Source of funds/AML/OFAC

Solvency

“Big boy” reps

PSA: Pre-closing Covenants (Sign-then-Close Transaction)

Cooperation to verify schedules and obtain consents

Notice to buyer of fund-related developments/communications (e.g., amendments, elections)

GP-leds

No solicitation

No rescinding authorization

Delivery of fund reporting

PSA: Closing Conditions

Reps and warranties remain true and accurate as of each closing date

All PSA obligations performed

No new legal proceedings

Delivery of closing/rep-bring down certs

Delivery of tax certificates

Approvals have been obtained

Delivery of purchase price, title, and all assignment agreements

Transaction specific conditions, e.g., satisfaction of first closing threshold

PSA: Survival of Reps

Non-fundamental reps: typically 12-18 months

Fundamental reps: SOL or until liquidation of fund

Anti-sandbagging

PSA: Indemnification

Typically the sole source of protection/recourse for breach in **US-style** PSAs, which are most common.

In **UK-style** PSAs, however, we often see only claims relating to the Excluded Obligations and Assumed Obligations being on an indemnity basis, with all other claims that may arise under a PSA being subject to your standard contractual claim for damages.

Thresholds

Caps

Exclusions

PSA: Post-closing Covenants

Seller forward erroneous distributions and communications

Buyer forwards certain tax refunds

Cooperation on any applicable tax filings

Covenants related to purchase price deferral

PSA: Other provisions



EXPENSES



TRANSFER
TAXES



BROKER
FEES



NOTICES



ASSIGNMENT
OF PSA



CONFIDENTIALITY



GOVERNING
LAW



TERMINATION

Transfer Agreements and Closing Process: Introduction



Broker outreach

Request transfer agreements
Diligence inquiries
Commence ROFO/ROFR



Transfer agreement negotiations

Typically handled by buyer/seller counsel and fund counsel
GP has leverage



Typical GP requirements

Timing – generally quarter end
PTP restrictions
Deadline to finalize transfer documentation
Payment of legal expenses
1446(f) withholding documentation
Buyer subscriptions/IQS
AML/KYC clearance

Transfer Agreement: Material Terms

Commitment Amounts

Consent to Direct Transfer

GP Confirmation of AIVs

Waiver of Legal Opinion

Effective Date

Confirmation of the Satisfaction
of Transfer Conditions

Joint and Several Indemnification

Release (*Seller only*)

Transfer Costs

PSA Controls

ROFR Waiver (needed only for
ROFR funds)

Transferor and Transferee
Representations

PTP Reps

Transfer to Affiliates (*Buyer only*)

Closing Process



Buyer subscription process and KYC/AML clearance



Transfer documentation finalized



Signatures released after documentation is agreed and purchase price is received

Questions?

Closing Remarks

Upcoming Events

London	Paris	New York
<ul style="list-style-type: none">• Secondaries Pulse Check London – 7th October 2026.	<ul style="list-style-type: none">• Secondaries Pulse Check Paris – 17th November 2026.	<ul style="list-style-type: none">• Secondaries Pulse Check New York – October 2026.



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Appendix

Carried Interest / Management Fee Waivers: Examples

Carried Interest Waivers – Example

Example with no Carry Waiver:

Cut Off Date

Call for Investment		Realize 50 of Gain		Distribution		Realize 40 of Gain		Distribution		Buyer Proceeds	Buyer Profits	
Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance			
LP	100	100	40	140	(40)	100	32	132	(32)	100	132	32
GP	0	0	10	10	(10)	0	8	8	(8)	0		

Example with Carry Waiver:

Cut Off Date

Call for Investment		Realize 50 of Gain		Distribution		Realize 40 of Gain		Distribution		Buyer Proceeds	Buyer Profits	
Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance			
LP	100	100	40 50	140 150	(40) (50)	100	32 22	132 122	(32) (22)	100	132 122	32 22
GP	0	0	10 0	10 0	(10) 0	0	8 18	8 18	(8) (18)	0		

Assume Buyer pays 100% of GAAP Capital Account and there is no Management Fee or GP Commitment

Management Fee Waivers – Example

		Scenario 1 Cut Off Date				Scenario 2 Cut Off Date						
Example with no Fee Waiver:		Call for Management Fee		Pay Fee		Call for Investment		Gain on Investments = 200		Scenario 1	Scenario 2	
	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Buyer Profit	Buyer Profit
LP	100	100	10	110	(10)	100	50	150	196	346	196	196
GP	2	2	0	2	0	2	1	3	4	7		

		Scenario 1 Cut Off Date				Scenario 2 Cut Off Date						
Example with Fee Waiver:		Call for Management Fee		Pay Fee		Call for Investment		Gain on Investments = 200		Scenario 1	Scenario 2	
	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Amount	GAAP Balance	Buyer Profit	Buyer Profit
LP	100	100	10 9	110 109	(10) (9)	100	50 51	150 151	196 195	346	196 195	196 195
GP	2	2	0	2	0	2	1 0	3 2	4 5	7		

In all scenarios, Buyer pays 100% of GAAP Balance Capital Account

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