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CONSIDERATIONS AND STRATEGIES FOR 2023'S FUNDRAISING MARKET

The current private equity fundraising market has been described as a "challenging environment," but as the authors of this article discuss, there are a number of ways for fund managers to evaluate their fundraising process and terms to keep a competitive edge. They begin their discussion with the need to adjust strategies to stay competitive. They then turn to terms in fund governing documents: the offering period; management fees; organizational expenses and the cap; co-investment; and borrowings. They conclude with the SEC's proposed series of sweeping mandates that would significantly impact the management, compliance, and reporting requirements for private funds and their GPs.

By Victoria S. Forrester, Matthew Goldstein, and Conrad van Loggerenberg *

The private equity fundraising market has been experiencing a slowdown that is likely to continue through the end of 2023. The global fundraising landscape constantly redefines the industry, shuffling the balance of bargaining power between players. By examining the evolving landscape of the fundraising process, trends in private equity fund terms, and recent regulatory proposals and changes, we hope to provide a helpful snapshot of the current state of play in the industry and the evolving dynamics between private equity sponsors ("GPs") and limited partner investors ("LPs") on key aspects of fundraising.

CURRENT FUNDRAISING ENVIRONMENT

The first quarter signaled a slow-but-sure start to 2023 for the general private equity fundraising market. GPs are still successfully raising funds, but the pace has slowed (particularly when compared to the pace of the 2020/2021 fundraising periods), although the market is still recovering from the economic downturn in the past year and GPs are grappling with a congested fundraising market, heightened macroeconomic uncertainty, and aggressive regulatory reforms. From a macroeconomic viewpoint, key players in the private equity industry view 2023 as a continuation of the challenging environment witnessed in 2022.

At present, there are a record number of private equity funds in the global market (3,851), a 5% increase from Q4 2022.[1] The surge in players results in a record number of funds in the market over the last five years. With regard to targeting commitments, aggregate capital

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[1] Paul, Weiss: PE Fundraising at a Glance: First Quarter 2023.

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targeted globally in Q1 of 2023 was also at a record high of $1.347 trillion, with eight funds currently in the market seeking north of $20 billion.[2] The crammed system leaves LPs with little breathing room in terms of capital flow, time, and bandwidth to execute new fund investments. Thus, although there is an abundance of exciting opportunities, raising money has become more challenging because funds are vying for commitments from a common pool of capital. High-quality GPs remain competitive, as LPs are still willing to participate (and, at times, even move quickly) if they have real conviction in the GP, the long-term strategy of the fund, and the opportunity set.

The near-future outlook for fundraising remains uncertain against several concerns, which include global financial sector turmoil, high inflation with soaring public debt, the on-going Russia-Ukraine conflict, and the residues of the COVID-19 pandemic. These factors continue to be important elements that GPs and LPs must consider in every investment decision. How long these conditions will last or when the market will reverse its course is impossible to predict with accuracy.

Additionally, the game-changing regulatory developments to the private fund system in the United States continue to roll out, requiring GPs and LPs to strategize, adapt, and spend time, resources, and money to address these changes. We will later discuss how these regulations, particularly the Private Funds Rules and the new Marketing Rule, have impacted the fundraising landscape to date.

GAME THEORY: STRATEGY AND PROCESS

To achieve their targets in the current environment, both GPs and LPs have been forced to adjust their strategies to stay competitive. "Game theory" has become a general framework that GPs and LPs alike must master to thrive in the private equity fundraising ecosystem. The fund investment decision-making process involves a strategic back-and-forth between GPs and LPs, and the success of any particular fundraising is largely dependent on the alignment of interests between these two parties. Inherently, private equity fund relationships often extend over multiple funds, leading to repeated interactions between GPs and LPs; however, as LPs with whom GPs have existing relationships experience the tightening of fund allocations, GPs must also look elsewhere for new sources of capital as they seek to grow the size of their funds.

One such expansion is that GPs are spending more time and resources expanding access to "high-net-worth individuals" or the "mass affluent" investor class. To target such LPs, many GPs have turned to technology to help manage the high volume of smaller commitment sizes; have worked with placement agents, banks, or private wealth managers; and are growing the size of internal teams (including investor servicing, back-office accounting, and legal and investor relations), and internal budgets to manage the higher number of investors (and high-touch needs) associated with such LPs. GPs should also consider ways to streamline the operational burdens, for example, limiting certain rights customarily negotiated for by larger LPs, streamlining voting mechanics, limiting the frequency of transfers, and managing the heightened regulatory and litigation risk that comes with this type of investor.

In addition, we expect GPs to continue to employ several approaches to attract both old and new LPs towards the finish line. A GP's investor relations team should seek to demonstrate a sense of urgency around an offering period — doing so requires engaging in repeated and targeted communications with LPs to secure commitments for the GP's fund. In particular, they must be creative about polishing their brand name, highlighting specialized capabilities and a strong track record, and elevating key leaderships' biographies. GPs also seek efficiency — using technology and other ways to make it "*as easy as possible*" to subscribe to a fund — often departing from the traditional "pen-and-paper" practice by introducing e-subscription platforms to streamline the onboarding process, focusing on a better user experience for LPs. Urgency aside, the reality is that a fund's offering is taking longer, with more frequent closings (which are often smaller in size, but may be driven by one or more key LPs being "ready to close") and an often protracted negotiation on terms, many of which may not have been the subject of negotiations of the type in recent years past. We have seen many funds initially offering period extensions and, in funds going to market in 2023, we would expect a 12- to 18-month initial offering period (with flexibility to extend such period, often subject to the consent of the

[2] *Id.*

LP advisory committee (a committee of limited partners, generally representing different types of LPs in a fund, and used by private equity to periodically review certain conflicted transactions, provide certain consents on behalf of the fund, and otherwise meet on a regular basis to consider and review ongoing fund matters) or a majority-in-interest of LPs.)

On the LPs' side, the ongoing landscape offers the opportunity to seek to "level the playing field" in what may previously have been considered a "GP-favorable" balance of fundraising negotiation power. Specifically, the allocation of risk, appropriate checks and balances, information asymmetry, and bespoke LP-driven provisions (increasingly related to newer areas of focus such as ESG, legal and compliance programs, and co-investment opportunities) are terms on which LPs are seeking to push the balance. Generally, but perhaps even more so when LPs themselves face liquidity limitations and may be seeking to delay or otherwise draw out legal negotiations, there is an incentive to carefully evaluate all fund terms before agreeing to commit to a GP's fund. LPs have taken on extensive side letter negotiations to achieve better terms and conditions. For example, LPs are focusing more on enhanced transparency through implementing bespoke and detailed reporting requirements, and maintaining an active limited partner advisory board with the right to review, object to, and consent to certain actions taken by the GP. This includes, for example, consent to conflicted transactions, review continuation fund and other GP-led secondary transactions, review and/or object to valuations, and review deviations from the general subsequent closing terms (whereby later-close LPs buy in at fair market value (rather than cost), or not participate in certain earlier investments which have appreciated (or potentially been sold)). This also involves conducting thorough due diligence on previous funds' track records and a GP's policies and procedures, including legal and compliance, ESG, valuation, allocation, and similar policies.

Taken together, both parties face a choice at each step of the negotiation where they must carefully consider a cost-benefit analysis for each fund term being negotiated, prolonging the fundraising process, and increasing the legal spend associated therewith. Consequently, fundraises have become more time-intensive for both sides, and each incremental LP dollar raised requires increased effort and time compared to before.

Recent Impact on Terms in Fund Documents

Recognizing the current environment, we have examined the recent impact on the terms in funds' governing documents (generally, a limited partnership agreement that governs the terms of the fund between all LPs and the GP). In our experience, in prior years, GPs were willing to seek to improve their terms and enhance flexibility from one fund to the next and accordingly were often willing to engage in heavy negotiations with LPs. By contrast, recently, we have seen GPs become particular and deliberate about changes made to their fund's governing agreement, limiting "nice to have" changes for flexibility that may trigger questions from repeat LPs (or new LPs). Instead, to compete for LPs' commitments, GPs are only making changes that are legally or commercially necessary and reasonably justifiable. Even with the more limited scope of term updates, GPs remain committed to spending considerable time with both large and small LPs, and engage in one-on-one conversations with their counterparties related to legal, operational, and investment due diligence and responding to lengthy LP comment memos regarding a fund's governing documents. GPs are holding closings much more frequently to secure commitments as soon as possible, as opposed to single "one-and-done' fund launches during more robust markets.

Naturally, in light of recent and potential regulatory changes and proposals, GPs must also consider which changes fall into their "must have" category, despite the desire to minimize the "blackline."

Given the reality of today's private equity marketplace, while the fundamental economic terms of private equity remain mostly unchanged, we have seen temporary shifts and more emphasis on certain aspects of key private equity terms, such as the offering period, management fee rates and discounts, expenses, borrowing, conflict of interest, and transparency/reporting provisions. We will now offer an overview and the current status of certain of these key aspects.

Offering Period

During the offering period, the fund is permitted to admit LPs at one or more closings that take place within a set period of time following the initial closing. The initial closing is the first round of committed capital that enables GPs to commence investing. Following this, GPs hold subsequent closings to accept additional commitments from LPs and although these closings occur at different points in time during the offering period, generally, all LPs participate in investments and the fund as though they invested as of the initial closing, with later LPs generally paying an "interest" charge to earlier LPs who funded capital (or bearing their share of a fund's subscription line interest charges). Generally, the offering period in private equity has been a 12-month period.

The first quarter of 2023 has generally been slow, as GPs spent a well-above-average of 13.4 months on roadshows with only 144 funds reaching a final closing globally, which marks the lowest number of funds closed in any quarter over the last five years.[3] The GP may request an extension if additional time is required to secure additional LP commitments, oftentimes justified by GPs seeking to close on LPs already engaged in the offering process, but who, like GPs, need more time. Recently, we have seen funds having offering periods of 18 months or longer (versus the traditional 12), with many funds now including an initial period of 18 months in the fund's governing agreement, with the ability to extend further. GPs now seek the flexibility to unilaterally extend the initial offering period for a set period of time (often an initial six-month extension) and thereafter to have the ability to seek the LP Advisory Board's approval for any subsequent extension(s). There is sometimes also flexibility as to when the 12- or 18-month period begins, with GPs commencing such countdown from "activation" of the fund (i.e., when it begins investing) or holding multiple rounds of initial or early closings (1A, 1B, 1C (and perhaps onwards) are now terms frequently accepted in the market) and beginning the countdown only after such initial round of closings (which may span over a few weeks or months).

A question often asked of legal advisers (and more recently being raised by LPs when offering periods are on the longer side or when extensions are being sought by GPs) is whether such longer offering periods, by nature, require a change in the fundamental principle that all LPs in a private equity fund participate at cost and as though all were invested as of the initial closing. Although we seek to provide flexibility in funds' governing agreements for circumstances that warrant different treatment, for example, the ability to bring later-close LPs into one or more investments at a price other than cost (e.g., fair market value), or to exclude later-close LPs from participating in one or more investments (for example, those that have had a material change in value or those that have been disposed of) or to otherwise restructure the manner in which all LPs share in a fund's investments. However, such terms are rarely used and generally only invoked by GPs in truly extraordinary circumstances. Additionally, often the use of such flexibility may be subject to LP Advisory Committee consent. There is a fundamental tension between the interests of early-close LPs and the interests of later-close LPs in this scenario, and a GP siding with one or the other could have implications for its ability to successfully raise more capital.

One other area of interest in respect of subsequent closings and the offering period is, given the current economic interest rate environment, what the appropriate subsequent closing "interest" charge is. Generally, such amount, paid by later-close LPs in respect of earlier close LPs, is tied to the fund's preferred return (8%) or a fixed interest rate (for example, the prime rate plus 2%). GPs may consider including such amounts as a lesser of concept, instead of one or the other, in light of the current interest rate environment and longer offering periods. Waiving such interest charge is a request occasionally, but now more frequently, made by later-close LPs. Generally, since such interest is for the benefit of LPs and not the fund or the GP (except for the interest on management fees), there are very limited circumstances in which GPs are permitted or otherwise do waive such amounts.

Management Fees

Most private equity funds charge a quarterly management fee to cover the ongoing management and operating expenses of the sponsor, such as rent and base compensation for employees. The fee structure is typically expressed as a percentage of the total capital commitments made by LPs. Management fees typically range between 1.5% and 2% per annum of the committed capital, although they can vary depending on a multitude of factors, such as fund size, investment strategy, industry focus, geographic location, and the GP's track record. Large funds may charge lower management fees, while smaller or specialized funds may demand higher fees to cover their operational expenses.

While GPs aim to maximize management fees to cover operational expenses, LPs seek to minimize fees to optimize their returns. To mitigate this inherent conflict, GPs may strategically use certain incentives to attract or retain LPs. By offering fee concessions, GPs can create a competitive advantage, increase investor interest, and enhance the value creation of the fund. On the other hand, emphasizing their investment size, reputation, or simply the presence of alternative opportunities, LPs could use their enhanced leverage to receive several discounts in order to lower management fees. Some of the popular mechanisms include: "early-bird" discounts, size-based discounts, transaction fee offsets, and management fee waiver programs.

Early-Bird Discounts. Early bird discounts are designed to entice quicker capital commitment from LPs

[3] Paul, Weiss: PE Fundraising at a Glance: First Quarter 2023; Buyouts Insider.

by creating a sense of urgency since the discount is only available during a specific time frame or for the initial closing. This sense of exclusivity and the psychological principles of loss aversion nudge LPs to act promptly to secure the discounted terms before the opportunity expires. In the past, this concession was only available until the first closing. However, in the current funds' environment, GPs have been more willing to extend the discount until a specified "early closing period," mitigating the risk of a sluggish capital-raising process (this period is the 1A, 1B, 1C, etc. closings referred to above).

Size-Based Discounts. Another pricing strategy is a size-based discount. Some funds offer a discount to an LP based on the size of its capital commitment. By offering this advantage, GPs incentivize LPs to increase their commitment sizes, which can result in a larger capital pool for the fund. To qualify for a higher tier of fee breaks, LPs can also aggregate through affiliated entities, such as coming under the same placement agent, common ownership, or financial consulting entity. Just as GPs are seeing increasing costs to fundraises, the role of consultants is becoming more important for LPs to utilize economies of scale, conduct due diligence, and get necessary documents through an agent who has familiarity with the process. For example, LPs may be able to benefit from a form side letter request in order to negotiate terms with the GP. GPs increasingly are being asked to, and adding the flexibility to be able to, aggregate the commitments of consultants' clients for fee discount purposes.

Organizational Expenses and the Cap

Organizational expenses refer to the initial legal and other costs incurred during the establishment, formation, and raising of a fund. These expenses are typically one-time costs that are separated from the ongoing operating expenses. They include legal fees, regulatory compliance requirements, and professional services, as well as fundraising expenses. Organizational expenses are usually borne by the fund (and therefore are allocated among the LPs as part of the fund's expenses) but only up to a capped amount, which can either be expressed as a fixed dollar amount or a percentage of the capital commitments of the fund (or a combination thereof).

Interestingly, GPs almost always bear the risk of organizational expenses exceeding the cap, while such expenses are often, at least in part, outside of the GP's control and driven by the length of the offering period and the extent of LP negotiations (which, as we have noted herein, have become increasingly extensive, particularly in respect of side letters). With ample uncertainties ahead, GPs should seek to tailor what is included in the capped amount of offering expenses and how large the cap is, particularly given that more capital-raising is seen as beneficial to the fund as a whole due to the ability to do more deals or larger deals. Consequently, GPs have integrated language, such as "the greater of a fixed dollar amount or the percentage of capital commitments," to create some margin given an uncertain fundraising environment. While LPs typically comment on the cap in their comments, some are more understanding given the environment, especially when GPs cannot reliably predict the cost of negotiating side letters.

Co-Investment

In the past decade, co-investment has continued to be a meaningful trend of the private equity fundraising market. For some sophisticated institutional investors, GPs offer such LPs the opportunity to invest, generally through a GP-controlled, single-deal vehicle, side by side with the GP's private equity fund into one or more investments. LPs' appetite for such opportunities stems from a multitude of factors, including fee-savings incentives, access to attractive deals, the need for diversification across sub-strategies, and closer relationships with GPs. Since co-investments are typically constructed on a no-fee, no-carry basis, LPs will have the ability to deploy capital on a no-fee basis, elevating expected returns. Moreover, this is also a chance for LPs to better understand a GP's sourcing capacity and operational skills, aiding their own due diligence in the main fund. For GPs, co-investment is also a highly valued route because it offers additional capital to pursue other investments and closer relationships with LPs, potentially enticing LPs to commit faster to the main fund with the promise of or hope for co-investment opportunities during the investment period of the fund.

Unlike in a traditional fund, the terms of a private equity co-investment vehicle are neither uniform nor predictable. Negotiations between GPs and LPs drive the final terms of each transaction on a case-by-case basis. Especially since co-investments are mostly reserved for sophisticated institutional investors, the final fund's terms tend to reflect bespoke structures and arrangements, tailoring to sector-specific limitations or emergent sensitivities regarding particular asset classes. In the current saturated market, we have seen an increasing number of bespoke solutions and specialized vehicles to better address LPs' unique concerns and accommodate their selectivity. Generally, GPs seek to keep the ability to offer co-investment opportunities within their discretion. Usually, such opportunities are "overflow" and therefore are investment opportunities not otherwise allocable to a GP's fund(s). Many LPs seek contractual commitments or otherwise soft assurances related to the availability of such opportunities and a first right to receive them should they become available. While becoming more common, committed co-investment funds remain more rare and bespoke in nature than deal-by-deal co-invests. Also of note is that, in the past, GPs typically made co-investment opportunities available to LPs that were already committed to the fund alongside which the investment arose. However, in the current fundraising environment, GPs are typically more willing to offer co-investment opportunities to LPs with whom a GP is building a relationship prior to their investment in the fund, often as a carrot to entice the LP to make the fund commitment. GPs are considering whether such LPs should bear a nominal management fee (until such time as they are fund investors). As fundraising remains harder, and funds may not reach their target size, we expect to continue to see more co-investment arrangements offered by GPs and more demand for the same from LPs.

Borrowings

Private equity funds have the ability to use leverage or borrow money to make investments or guarantee their portfolio companies' debt. In private equity funds, it is typical for the fund's governing agreement to cap the amount of recourse borrowings that a fund may incur, which currently ranges from 20% to 30% of aggregate capital commitments. By setting borrowing limits, the terms ensure that the GP does not exceed the agreed-upon level of leverage, maintaining prudent risk management practices. Flexibility on the types of borrowings a fund may incur, the size of the cap, and the scope of borrowings that are within the cap or outside the cap is one area of particular focus in the current market. In addition, GPs seek to secure that the terms of such borrowings are as flexible as possible. Particularly as the fund finance market has become more mainstream, there are a variety of dynamic, solution-focused products allowing for a more robust and flexible operation of the fund and supporting flexibility during drawn-out and potentially subscale fundraises. Some popular fund finance solutions include subscription lines and net asset value ("NAV") facilities.

Subscription Lines. Typically, subscription lines are credit facilities secured by the uncalled capital commitment of fund LPs and the lender is pledged the right to draw down on such commitments as collateral for the borrowings. Funds have historically used a credit facility for short-term borrowings, generally to bridge the timing gap between the funding of capital calls by LPs and the deployment of capital to smooth the frequency with which capital needs to be called, creating operational efficiency and a better LP experience. The permitted uses of the proceeds of subscription line borrowings (and the period for which each borrowing may remain outstanding) have become more flexible over time and include paying fees and expenses and, to the extent the time limit for repayments is lengthy, serve as a more permanent form of financing. During the offering period, it is not uncommon for GPs to leave borrowings on a subscription line outstanding for longer periods of time to help ease the subsequent closing rebalancing process (and negate the need to draw capital from and then send capital back to LPs with each closing). Naturally, the longer offering period has put pressure on this practice. Outside of just the length-of-offering period, some GPs have also used the subscription line for more permanent forms of borrowing, as credit markets remain tight. The use of subscription line borrowings has an impact on the terms of the fund beyond just the borrowing provision: as already noted, it serves to simplify the subsequent closing process (and may reduce the "interest" later-close LPs pay as a result of delaying when capital is drawn from early-close LPs); it has an impact on the internal rate of return ("IRR") of the fund given that the timing of capital calls is delayed, although under the new Marketing Rule,[4] GPs are required to make this impact clear in marketing materials and present such information in a fair and balanced manner; it has an impact on the distribution waterfall (reducing the amount of preferred return payable); and it may have tax implications for investors sensitive to related business taxable income ("UBTI") and unrelated debt-financed income ("UDFI"). In an uncertain marketplace, flexibility here is key, although LPs generally have mixed reactions to this use of borrowings, particularly given the knock-on implication on fund terms.

NAV Facilities. Net asset value facilities are financing arrangements used by funds to access liquidity with the underlying assets of the fund serving as collateral for the borrowings. These facilities allow funds to borrow against the net value asset of their portfolio companies minus any liabilities. The terms of NAV facilities can vary depending on the specific agreement between the fund and the lender. The loan may be structured as a revolving credit facility, allowing the fund to draw funds as needed, or as a term loan with fixed repayment periods. Similar to subscription lines, this mechanism allows the fund to cover ongoing costs, provide

[4] The SEC adopted amendments to the Investment Advisers Act of 1940 (along with corresponding amendments to the books and records rules and Form ADV). Taking full effect as of November 4, 2022, the rule regulates an investment adviser's marketing communications.

additional liquidity, make distributions to LPs, or pursue other strategic initiatives. NAV facilities have become increasingly popular given the fundraising difficulties currently being experienced. Hybrid facilities (that look to both commitments and assets) are increasingly more popular among GPs and banks alike.

While 2022 saw a surge of credit NAV facilities in fundraises, this trend may dial down in 2023, as banks have cut lending and interest rates have climbed in the first quarter. The recent failure of banking institutions, many of which had significant subscription line lending businesses, further exacerbated the lack of availability of these types of credit arrangements. The turmoil among regional banks has thus reduced the supply, raising prices of utilizing subscription lines for fundraising. This background risk may explain why LPs are pushing to have a cap on the amount of borrowing that GPs can do. On the other hand, GPs will still want to retain the flexibility to use leverage if borrowing becomes cheap again or they need funding, especially when exits do not easily come by as they have been. An argument GPs can make to LPs is that using borrowing may also accelerate distribution, freeing up cash flow for investors to commit to a related fund.

SEC'S PRIVATE FUND REFORMS AND OTHER RULEMAKING; IMPACT ON TERMS

Private equity continues to be in the spotlight for regulators as it gains momentum from the public. In 2022 and 2023, the Securities and Exchange Commission proposed a series of sweeping mandates that significantly impact the management, compliance, and reporting requirements for private funds and their GPs. While a majority of the new rulings are still under active comment period or otherwise not yet adopted in final form, we expect some will be officially adopted and aggressively enforced this year. The rules will certainly shift the traditional framework and further influence the playing field between GPs and LPs — so much so that some have expressed that there is now a third player on the field, the SEC.

Of all the proposals and adopted new rules, the proposed Private Fund Rules[5] include a series of proposed amendments to the Advisers Act.[6] These reforms are said to have been originally designed to protect LPs by increasing their visibility into certain practices that are "contrary to the public interest." If adopted, these rules will prohibit certain activities related to private funds and significantly increase the reporting, disclosure, and compliance requirements. Although there remains much uncertainty as to when, in what form, and to what extent the proposed Private Funds Rules will be adopted, the impact on fund terms of the existence of the proposals warrants exploring. LPs, and their counsel, are more frequently using certain of the proposals in their comments, to seek to preemptively legislate for their inclusion in fund governing agreements. Despite this pressure and the shifted leverage, we have not seen a large-scale shift in fund terms as a result thereof. For example, the rules propose a standard of care other than gross negligence,and we have seen no shift in the standard adopted by GPs and agreed to by LPs in fund governing documents. Furthermore, if adopted, the proposed rules will prohibit managers from granting preferential terms to an LP when the adviser reasonably expects those terms would have a material, negative effect on other LPs in the fund without disclosure to such other LPs. This change in ruling will significantly impact side letter negotiations, co-investment opportunities, and fundraising practices as a whole. To date, we have not seen LPs willing to reduce the preferential terms they seek to be granted via side letter arrangements, which conversely are increasingly more bespoke and complex.

Each regulatory change will invariably impose additional cost and time for the private equity advisers, further constraining the already limited capital at work. This stems from several factors, including the need to implement information systems to monitor reporting triggers on a timely basis and retrain personnel to get familiarized with new materials. Thus, it is highly advisable that GPs take into account the impact of these headwinds in their daily practice to transition smoothly.

CONCLUSION

Despite the difficult jumpstart, as the effects of recent developments take their courses, both GPs and LPs are now more amenable to the "new normal." We believe 2023 is another test of the resilience of the private market. While the current environment will challenge GPs to find new ways to create value and underwrite risks, the long-term outlook for private equity remains fundamentally sound. We hope this article has provided some helpful insights into the current practice, aiding parties to navigate through today's market of process and fund terms. ■

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[5] On February 9, 2022, the SEC proposed a series of sweeping amendments and new rules under the Advisers Act.

[6] "SEC Proposes Series of Rules Affecting Private Fund Advisers" by Paul, Weiss (https://www.paulweiss.com/practices/transactional/investment-management/publications/sec-proposes-series-of-rules-affecting-private-fund-advisers?id=42369).