Proskauer

Proskauer Releases Buyout Fundraising Market Report

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Recent macro-economic, geopolitical events and a challenging fundraising market driving unpredictability in market

NEW YORK and LONDON, JUNE 24, 2024 – Proskauer, a leading international law firm, today releases key data that provides a comprehensive analysis of both the European and North American buyout fund market. The team analyzed 29 key LPA terms and conditions from 71 European-focused buyout funds, and 25 key LPA terms and conditions from 78 North America-focused buyout funds. All funds were raised from 2022-2023.

"This report provides valuable insights into the flexibility, adaptability, and evolving governance practices characterizing buyout fundraising today. We are excited to share the results at a time when the industry faces a number of noteworthy transitions and challenges," said Ryan Carpenter, a private funds partner based in Boston.

Key takeaways from the European data include:

- **Rising borrowing limits:** LPA borrowing limits are steadily rising, with 63% of surveyed funds able to borrow against 30% or more of LP commitments.
- **Fund Term:** The market continues to cater for longer fund lives by allowing more flexible term extensions, rather than upending the traditional initial 10-year term. Over half of surveyed funds give GPs at least one fund term extension at their discretion.
- **Carry Overpayment Protections:** Negotiated protections include an array of escrow, guarantees and clawback testing dates. In Europe, alternatives to escrow are becoming more common, in part due to transatlantic competition for talent.

Key takeaways from the North American market include:

- **Fund term extensions:** 10-year terms remain standard, with many funds allowing for at least three additional one-year extensions.

- **Fundraising period extensions:** 12-month fundraising is typical, but many funds provide for 15 or 18 months.
- **Borrowing limits:** Borrowing is typically capped in the range of 20%-30% of commitments, with increasing number of funds allowing for even greater levels of borrowing.
- **Variation in governance terms:** Governance terms vary widely, reflecting each fund's unique dynamics and investor needs.

The European Market

"We are not seeing large pendulum swings on fund terms in the European buyout market. Instead, we are seeing incremental changes year-on-year for specific terms that add material value or relieve pressure on operational matters. GPs must factor in other considerations such as size and speed of fundraising when setting and negotiating their fund terms," said Chris Elson, a private funds partner in the Firm's London office.

Over half of the funds Proskauer surveyed allow GPs at least one extension to a fund's life at their sole discretion, and funds that require some sort of LP involvement for additional extensions are increasingly likely to choose the LPAC as the appropriate body to seek such approval rather than the wider LP base.

The data also showed that borrowing limits are also on the rise across Europe, with 63% of funds able to borrow against 30% or more of LP commitments. Investor protections against carry overpayment remain varied, with escrow, guarantees and clawbacks being commonly negotiated. However, due to increasing transatlantic competition for talent, the European market continues to move towards alternatives to escrow, which would otherwise further delay carry distributions compared to U.S. waterfalls.

"Within this market, the approach a fundraising lawyer takes to negotiating fund terms is crucial for maintaining a healthy, long-term relationship between a GP and its LPs. Leveraging our comprehensive market data, our lawyers can clearly articulate nuances in GP positions on specific terms, whilst maintaining momentum throughout the fundraising process," added Chris.

The North American Market

In North America, the report found that despite recent market challenges, a 12-month fundraising period remains common, though a significant subset of funds extends this to 15 or 18 months. Borrowing limitations typically fall within the range of 20%-30% of commitments, yet higher caps are becoming more regular as managers see borrowing as a tool to optimize fund management and performance. Additionally, governance terms across funds are highly bespoke, with specific investor remedies tailored to each fund's unique dynamics and limited partners' concerns.

"We are seeing parallel trends to our European counterparts in North America. For example, our report reveals a continued strong preference for a 10-year initial term among U.S. buyout funds, with increasing flexibility for extensions, as nearly half allow unilateral GP extensions and many contemplate up to three additional one-year extensions," said Ryan.

"We continue to see a lot of headroom for buyout investing in the U.S., though there is increased selectivity among investors around the managers they commit capital to and a preference for market-standard terms unless a sponsor's model and opportunity set dictate otherwise," noted Ryan.

About Proskauer's European and U.S. Buyout Report

The European buyout funds represented approximately €258 billion in capital and ranged in size from €90 million to €25 billion, either specifically focused on Europe or had Europe as a core geography in their investment strategy. The North American data represented approximately $421 billion of capital and funds varied in size from $100 million to more than $25 billion. The funds were all either specifically focused on the United States or had North America as a core geography in their investment strategy.

The buyout funds data forms a key part of Proskauer's annual "Under the Microscope" report, providing a comprehensive analysis of both the European and North American buyout funds market and the venture capital fundraising market.

About Proskauer

The world's leading organizations and global players choose Proskauer to represent them when they need it the most. With 800+ lawyers in key financial centers around the world, we are known for our pragmatic and commercial approach. Proskauer is the place to turn when a matter is complex, innovative and game-changing. We work seamlessly across practices, industries and jurisdictions with asset managers, private equity and venture capital firms, Fortune 500 and FTSE companies, major sports leagues, entertainment industry legends and other industry-redefining companies.

Working at the intersection of private capital and the sectors in which market players invest, we advise cutting-edge clients as they navigate complex challenges and seek to capitalize on market opportunities. Proskauer offers an integrated platform that navigates clients through the full lifecycle of their business.

Proskauer offers a full suite of services for the investment management industry, with a market-leading global team dedicated solely to advising investment funds, private equity, hedge funds and other asset managers, financial institutions and institutional investors across all asset classes. The cross-border team of over 200 lawyers is based in the U.S., UK, Asia and Latin America, and includes specialists in tax, ERISA, regulation, financial services, capital markets, M&A, employment, insurance, fund finance, litigation and risk management who understand the unique technical and commercial issues relevant to investment managers.

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