Global Fund Finance Symposium 2020 ? Hot Takes from 'Fund Finance in U.S., Europe and Asia Panel'

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On February 13, 2020, Albert Tan, Co-Head of Haynes Boone's Fund Finance Group, led a panel on "A Contrast of the Fund Finance Markets in U.S., Europe & Asia" at the Fund Finance Association Global Symposium 2020 in Miami. We wanted to share with you some hot takes from the distinguished panel of lenders, sponsors, and lawyers, including Elizabeth Bradley of Maples Group, Jeffery Frank of Angelo Gordon, Michael Furman of SMBC, Wesley Misson of Cadwalader, Wickersham & Taft LLP, and Raghav Wadhawan of Standard Chartered Bank, resulting in a lively and interesting discussion.

Regional versus Global. One of the more pronounced trends examined by the panel is the influx of regional banks and even non-bank lenders in the fund finance industry. Increasingly, indigenous lenders in each of the three geographical regions are chasing fund finance deals with very competitive pricing and terms, sometimes premised on other cross-selling opportunities for the regional lender. Sponsors are looking at these regional lenders to create ties with additional capital sources and in the communities in which they operate but balancing this against the cash management, letter of credit, and currency needs of often-times globally focused funds. As sponsors become more sophisticated in their use of fund finance products and investors require more transparency with respect to such uses, weighing of the costs and benefits of regional versus global lenders is becoming increasingly important.

How does each region approach fund finance differently? European markets are more likely to include all investors with a 66% flat advance rate (subject only to legal exclusion events) in borrowing bases, whereas the U.S. and Asian markets are more likely to underwrite individual investors on traditional 90%/65% advance rates in borrowing bases but certain lenders in the U.S. and Asia are also adopting more all-investor flat advance rates in borrowing bases. NAV facilities are more popular in Europe. Generally speaking, for commingled funds, each region (particularly in the U.S., followed by Europe then Asia) has largely migrated to having so-called "bankable provisions" in fund constituent documents in lieu of investor letters. The U.S. market generally has the most robust and consistent "bankable provisions" approach, followed by Europe then Asia. On the other hand, for separate managed account (SMA) subscription facilities, lenders in each region have consistently required an investor letter and evidence of authority from the applicable investor. As fund sponsors continue to ignore national borders, each region influences the others. For instance, over the last three years, Asia and Europe are catching up in terms of the number of indigenous funds employing the "bankable provisions" approach.

Differences across the three regions have not changed fundamental legal structures. Despite differences in approaches between the U.S., Europe and Asia, the fundamental legal structure of the fund finance products is, at its core, remarkably consistent across all regions. In fact, many jurisdictions, like most recently Ireland, are changing their laws to facilitate and attract fund formation and lending to funds by adopting legal structures that have become global orthodoxy.

Asia provides growing opportunity. The panel and the audience seemed to be in agreement that the Asian market – because of its growing wealth, new formation of regional indigenous private equity funds, and increased allocations by regional sovereign wealth funds, family offices, HNW investors, insurance companies and public pension funds to alternative investments - is a growing opportunity that is just now being tapped and expect that development of fund finance products in the region will continue to grow at a healthy pace.

Leveraged finance tactics creeping into fund finance. Certain fund sponsors are employing in the fund finance space the leveraged finance tactics that work for them at the portfolio level. For instance, although still limited to a small percentage of top-tier sponsors, lenders are seeing certain sponsors present term sheets and even loan documents to lenders and requiring lenders to accept sponsors' proposed terms to procure the mandates.

Growth of NAV facilities. As the fund finance markets continue to grow, NAV facilities in particular are emerging as the most likely candidate to see the most growth as both new regional and global players look to make their mark in the industry. As previously mentioned, Europe is ahead of the curve in this respect but growth in the U.S. and Asian markets is to be expected. While subscription facilities are likely to continue to dominate as the primary product in global fund finance markets, in terms of percentage growth, NAV facilities are poised to see the biggest gains.

Are hybrid facilities still a thing? For years at FFA Global Symposiums there has been much buzz around hybrid subscription/NAV facilities, but this year interest in the topic markedly waned. The panel provided great insight into the usefulness of both subscription facilities and NAV facilities to funds but also the structural and practical challenges that hybrid facilities pose. The predictions were that traditional subscription facilities and NAV facilities will incorporate elements of the other, but market participants are likely to be more cautious before structuring facilities as true hybrids.

Asia lags in regulatory compliance programs. One issue holding back growth in Asian markets is a lack of regulatory compliance programs by funds. The percentage of Asia-based funds with well-defined regulatory compliance programs is far smaller than their U.S. or European counterparts. This makes it harder for global and super-regional lenders to approve deals and creates an advantage for regional lenders that have the luxury of being more flexible.

Optimism abounds. A non-scientific survey of the audience attending the panel showed that most folks believe: (i) the global fund finance market is in the U.S. $500 billion to U.S. $600 billion range which would be significant growth from where the market was believed to have been just one year ago; (ii) North America has the most favorable lenders' market, followed by Europe then Asia; and (iii) more new lenders are entering the global fund finance market and increasing the liquidity supply. In summary, everyone on the panel generally agreed that the growth of fund finance is real, the growth is continuing, and there is plenty of room for even more.

There were many other perspectives and aspects to the fund finance markets of Asia, U.S. and Europe discussed during the panel. Please contact any of the authors referenced above if you are interested in exploring further the fund financing transactions in these three regions.