

Challenges in fundraising

The myriad fund launches expected for this year will need to demonstrate cohesion, distinction, LP-friendly terms and structures in line with new regulations. [Mark Mifsud](#), of Kirkland & Ellis, examines the strategic decisions that will be required by GPs

As general partners and their counsel peer into 2011 and beyond, there is no doubt that the landscape for fundraising has changed. Once plentiful, capital is now scarce and the environment is more inhospitable and difficult for both general partners and investors.

GPs coming to market are concerned about being squeezed out in the drive for available capital. This is because of difficult market conditions, as well as an expected uptick in demand:

\$297bn was raised in 2009, falling to \$237.5bn in 2010, and it is now estimated that GPs will be looking to raise around \$350bn in 2011. So how can GPs optimise their fundraising potential?

They should look inwards: how have they coped with the crisis? Are they a cohesive team? Have they filled vacancies caused by departures or the evolution of investment strategy?

Recent experience has made investors keen to eliminate surprises in the future composition of the team. As a result, succession planning or, at the very least, nurturing of the new generation of managers, will be well received. However, succession planning may be in opposition to the investors' requirement for keyman comfort that they attach to senior team members, and GPs should openly address this issue. Some conduct investor perception surveys, often conducted by niche consultancies.

Differentiation from peers

The next concern is how to successfully distinguish oneself from others in the market. Investors are increasingly concerned with strategy drift and want to ensure GPs focus on core strengths. So GPs should conduct a review of track record and adherence to strategy over the life of their predecessor funds. Has the investment strategy evolved and was this successful? Have investors in current funds been returned adequate cash?

Placement agents or appropriate consultants can be helpful in analysing the past and laying the tracks for the new fund — its investment strategy, geographic scope and target returns. In particular, they can assist with presentation of track record, which is crucial to securing capital.



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The next task is to consider terms in light of market expectations. GPs should take account of the ILPA terms (a new ILPA 2.0 was released in January).

Even though investors do not rigidly adhere to the guidelines, they are a useful barometer for investor concerns, and provide less experienced capital providers with a benchmark for comment. GPs should review their current terms and formulate the terms of the next fund with ILPA and market in mind. The

services of experienced fund counsel and placement agents are advised.

Regulatory concerns

Other issues are more macro and regulatory in nature. In Europe, the AIFM Directive will create a bifurcation between onshore and offshore funds. Houses

which straddle both structures may need to decide which to embrace. This concern is compounded by the fact that the detail of the regulatory provisions has yet to be fleshed out, and thus it may be hard to assess likely implications at the time of fundraising. There is no doubt that a number of European investors will prefer (and in some cases be required) to invest in AIFM- and/or OECD-compliant structures.

The US regulatory changes are also to be considered, particularly whether registration in the US will be required for European managers. Again, the details of the rules have yet to be finalised.

This changing regulatory framework requires assessment of the adequacy of current structures — obviously there is an element of crystal ball gazing, but consideration of current and new investors is relevant. Flexibility and optionality are vital — can the structure adequately deal with the desires of myriad investors, including the growth of new sophisticated investor types, such as sovereign or quasi-sovereign wealth funds? Advance planning is key. The ability to provide potential LPs with suitable flexibility as to the entry point into the new fund (eg separate accounts) will also be an important component for success.

2011/2012 is anticipated to be busy for fund launches as a number of GPs need to come to market. Forward planning, analysis and presentation, along with a willingness to innovate, will be integral to a successful fundraising. ■