INSTITUTIONAL LIMITED PARTNERS ASSOCIATION

2024

PART 3:

Recommendations for Improved Transparency and LP Engagement

Excerpt from ILPA's *NAV-Based Facilities: Guidance for Limited Partners and General Partners*

Recommendations for Improved Transparency and LP Engagement

Transparency is vitally important for LPs to assess the risks associated with NAV facilities. This section provides guidance on how GPs should engage the LPAC and LPs more broadly when considering a NAV facility.

More information about what type of information should be disclosed to LPs can be found in Part 5.

Current State

Currently, reporting and LP engagement around NAV facilities varies widely. The resulting gap in transparency is in large part because older LPAs do not contain provisions that explicitly consider or contemplate NAV facilities. In some cases, GPs have sought approval, or otherwise consulted, the LPAC which has resulted in transparency for at least LPs who have LPAC representation.[4] In other cases, GPs have not been proactive in reporting the use of NAV facilities to LPACs, much less to their LPs as a whole. In these cases, even LPs who sit on LPACs have discovered that their GPs are using NAV facilities only after the fact, often through financial reporting. LPs need transparency around the use of NAV facilities regardless of whether the proceeds are used to make a distribution or used to support the portfolio.

Recommended Engagement of the LPAC in Advance of Implementing a Facility

Unless explicitly permitted by the LPA, or unless the GP has received prior consent to utilize a NAV facility, ILPA recommends that GPs seek LPAC consent prior to implementing a NAV facility, regardless of the use of proceeds. This engagement should encompass:

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- **Rationale and use of proceeds:** A detailed disclosure of the use of proceeds, e.g., distributions to LPs, repayments of other borrowings or contributions to portfolio companies. This should include the rationale for the NAV facility as well as details on any alternatives considered, e.g., company-level financing, portfolio company realizations, continuation funds
- **Size, structure, and controls:** An overview of the facility size including amounts drawn at closing and any undrawn amounts available to be borrowed. This should also include a discussion of the use of SPVs; subordination; cross-collateralization; repayment requirements (including cashflow sweep or mandatory repayments); key covenants; and if the facility is secured or unsecured
- **Key economic terms:** To the extent permitted under lender restrictions, disclosure including cost of capital (including whether the interest rate is fixed or floating and cash interest or PIK interest); the maturity date of the facility, any repayment requirements as well as key covenants[5]
- **LP Obligations:** Any additional obligations imposed on LPs, including whether any distributions received are recallable

[4] More information about conflict waivers can be found in Part 4

[5] More information about what terms should be disclosed can be found in Part 5

LP/LPAC Engagement: Specific Use Cases

Regardless of whether the LPA explicitly addresses NAV-based facilities, ILPA recommends that any conflicts of interest associated with a NAV facility be brought to the LPAC. Additionally, ILPA recommends that GPs take specific approaches to LPAC and LP engagement, depending on the intended use of proceeds:

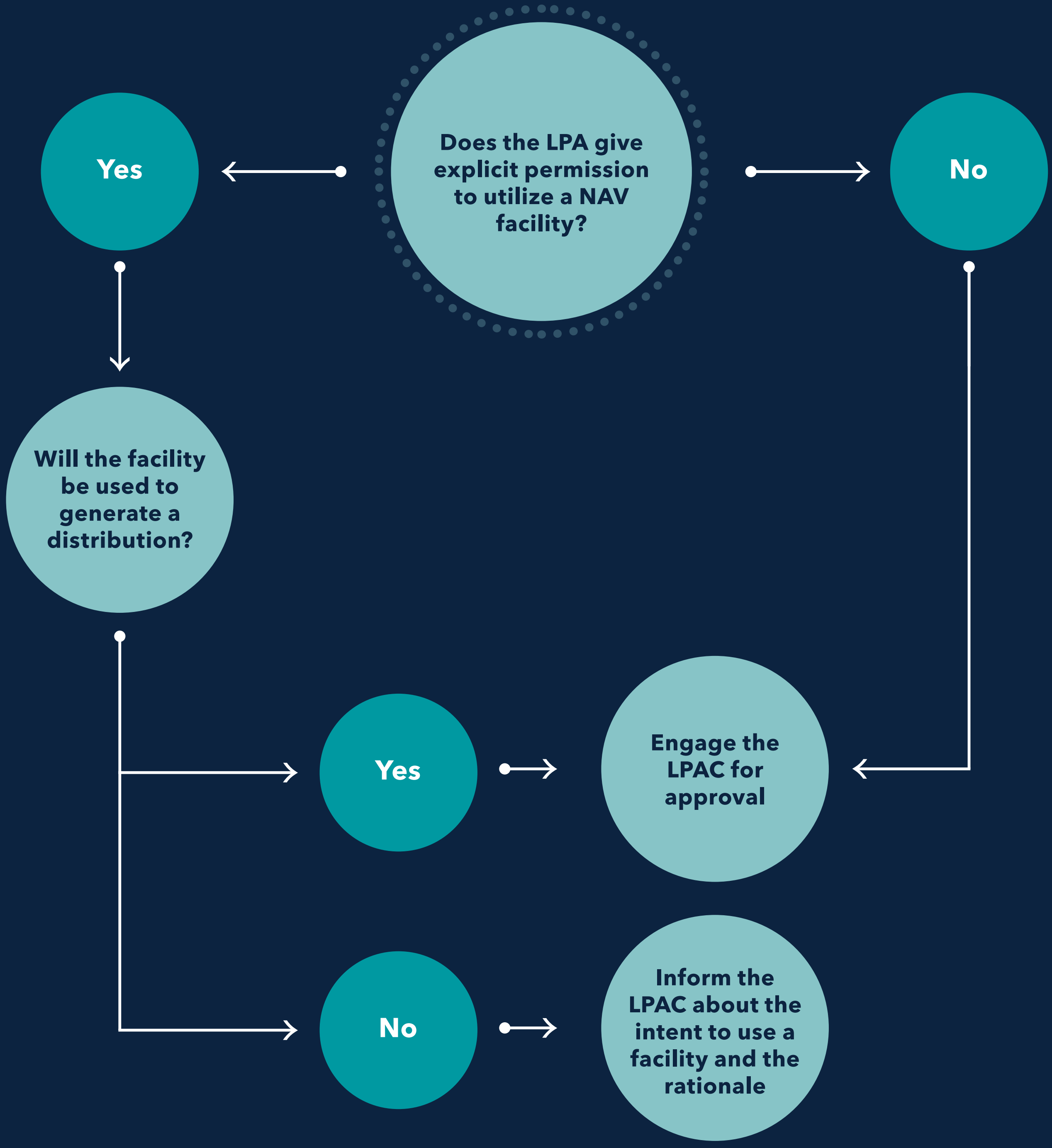
- **To Generate Early Distributions:** Prior to a NAV facility being put in place, GPs should seek LPAC approval if they intend to use any of the proceeds to generate a distribution. The GP should provide a rationale as to why a NAV facility is the best way to generate distribution proceeds, and how this facility will maximize returns for LPs while not incurring risks that exceed LPs' expectations. If the rationale for a facility is that a majority of the fund's LPs want an early distribution, there should be no issue receiving LPAC consent for such a transaction.

- **To Support the Portfolio:** Assuming that the GP has received prior consent to use a NAV facility (whether in the LPA or through prior LPAC approval), GPs should not be required to return to the LPAC for consent to use a NAV facility to support the portfolio. In these cases, this facility should be treated like more traditional leverage. LPs expect that it is the responsibility of the GP to manage the risks and expenses associated with leverage in the fund, and to comply with any fund-level leverage restrictions in the LPA.

Regardless of the above, the GP should disclose to all LPs that it is implementing a NAV facility to support the portfolio. The GP should disclose the rationale behind the facility, why a NAV solution is better than other options available and the intended use of proceeds.[6]

[6] More information about what terms should be disclosed can be found in Part 5

When to Engage the LPAC around Implementation of a NAV Facility



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