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Meet the Legal Rising Stars

The lawyers changing the face of the private funds industry

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The future power of attorneys

Hannah Roberts
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The past couple of years have been a rollercoaster for the private funds industry. In the span of just two years, the alternative asset class went from dealing with the impact of the covid-19 pandemic on portfolios to a glut of dealmaking and fundraising that lasted into early 2022. But one thing will remain constant amid the industry's fluctuating fortunes – everyone always wants a good lawyer.

Private equity firms are once again having to shift their priorities to remain competitive in the current macroeconomic environment and navigate regulatory demands for greater transparency. Against such a backdrop, the importance of effective legal counsel cannot be understated when it comes to fully appreciating a sponsor's opportunities and limitations.

With this in mind, we are using this legal special report to showcase 20 of the best up-and-coming lawyers currently working in private funds as part of our new-look Legal Rising Stars list (see p. 30). Every lawyer on the list is under the age of 40 and exemplifies what the private funds industry will be looking for in its lawyers in the future – ability, of course, but also a determination to innovate.

"One thing will remain constant amid the industry's fluctuating fortunes – everyone always wants a good lawyer"

We also examine how greater transparency around fees and expenses contributes to a solid GP-LP relationship (p. 37) and how the march toward democratization in the private markets is no simple task to achieve, especially from a legal perspective (p. 40). To stay ahead of the curve, a good lawyer will no longer just be a nice-to-have for private funds, but a necessity.

H Roberts

Hannah Roberts

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Introducing Private Funds CFO's Legal Rising Stars class of 2023

Flying high

As the private funds industry becomes ever more complex, having a sage legal adviser in place has become crucial to remaining competitive. Navigating fluctuating regulatory changes, considering the impact of changing limited partnership agreements, and managing GP and LP relationships are all part of the remit for the modern private funds lawyer. But some in the industry today are going above and beyond for their clients – and all are only just at the start of their legal careers.

To highlight these up-and-comers who will steer the future of the private funds industry, *Private Funds CFO* decided to dust off its Legal Rising Stars list and pull together a fresh directory of today's legal powerhouses.

Earlier this year, we asked the industry to nominate their peers, colleagues and even rivals for the revamped list. The quality of the submissions highlighted the amount of talent that exists in the legal industry today, both in-house and at external law firms, but ultimately we narrowed down the list to highlight 20 leading lawyers.

The class of 2023 includes individuals who stood out for their leadership, innovation and legal expertise, as well as the caliber of their mandates and their general market reputation. All are under the age of 40 and the listees are based all over the world.

We are proud to introduce this year's powerlist of Legal Rising Stars and look forward to seeing what they achieve next.

Name	Age	Position	Firm
Clare Baker	38	Partner and head of the investor practice, London	Linklaters
Ben Briggs	39	Partner, Chicago	Kirkland & Ellis
Mimi Cheng	37	Partner, Los Angeles	Simpson Thacher & Bartlett
Ravi Chopra	37	Partner, London	Goodwin
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Seth Fishman	39	Partner, Chicago	Kirkland & Ellis
Vicky Forrester	34	Partner, New York	Paul, Weiss, Rifkind, Wharton & Garrison
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Daniel Lloyd	39	Partner, London	Simpson Thacher & Bartlett
Julia Mandich	36	Assistant general counsel, London	Barings
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Clare Baker, 38

Partner and head of the investor practice, London, Linklaters

Since Clare Baker, the head of Linklaters' investor practice in London, was elevated to the partnership in 2021, she has become the firm's managing relationship partner for Aermont Capital, the China Investment Corporation, CPP Investment Board and Alberta Investment Management Corporation. Baker stands out as an innovator in the world of fundraising technology, having driven the development of virtual investor subscription booklets to enhance efficiency and accuracy in large-scale fundraisings, as well as benchmarking tools and contract automation. Aside from her private equity mandates, she champions support for working parents at Linklaters, having spearheaded the introduction of Linklaters' 12 weeks paid parental leave policy in 2019.

Ben Briggs, 39

Partner, Chicago, Kirkland & Ellis

Real assets-focused partner Ben Briggs has advised on the formation of more than 40 real estate funds for 30 sponsors, raising more than $77 billion in total commitments over the course of his career. Described as a trailblazer in Kirkland & Ellis's open-end fund formation practice, Briggs currently represents more than a third of all such matters at the firm, with his client list including the likes of KKR, Starwood Capital Group, and Warburg Pincus. In 2022, Briggs advised GID Investment Advisers on the formation of Mainstay Fund, an open-end multi-family private real estate fund, which launched with the contribution of a $1.3 billion portfolio of multi-family assets under a tax protection agreement.

Mimi Cheng, 37

Partner, Los Angeles, Simpson Thacher & Bartlett

Simpson Thacher & Bartlett partner Mimi Cheng has extensive experience advising high-profile investment funds on debt financings and in developing bespoke financing structures designed to facilitate and support fund investment activities. She has counseled the likes of BlackRock, Blackstone, KKR, Silver Lake Partners and Sixth Street Partners on a range of financing solutions, including advising on the financing aspects of the $20 billion fund Silver Lake Partners VI in 2021, which was reported at the time of closing to be the largest-ever technology-focused private equity fund. Cheng has dedicated considerable time to the firm's recruitment and training efforts and led the LA office's Inclusion Network, organizing initiatives aimed at achieving the firm's diversity, equity and inclusion objectives while still an associate.

Ravi Chopra, 37

Partner, London, Goodwin

Goodwin partner Ravi Chopra is noted as being a rising star within the firm not only for his investment funds and secondaries work, but also his dedication to mentoring the next generation of legal talent. Chopra recently co-led the team acting for Intermediate Capital Group on the structuring and fundraising of its eighth European Corporate fund, which closed on €8.1 billion, and advised life sciences investment firm Abingworth on over $1 billion of fundraising across two healthcare strategies: Abingworth Bioventures 8 and Abingworth Clinical Co-Development Fund 2. He co-heads the firm's UK graduate recruitment scheme and is a member of the London office's community engagement panel, where he focuses on partnering with local schools to provide mentoring and assist with interview practice, as well as improving students' exposure to the professional services industry.

Christopher Elson, 34

Partner, London, Proskauer Rose

Proskauer Rose partner Christopher Elson advises on a broad range of capital raising, from multi-billion-dollar private equity mega-funds to small European-focused venture capital funds. Fully bilingual in French and English, Elson serves as the relationship lawyer for key clients such as AXA Venture Partners and Singular Capital Partners as a "point person" in the French legal market. Elson has advised Hg on its private equity fundraisings for the past eight years, including on its latest fundraising, which raised around $11 billion for Hg's latest fund, Saturn 3, well ahead of its original $8.5 billion target and making it the largest European buyout fund to close in 2022.

Seth Fishman, 39

Partner, Chicago, Kirkland & Ellis

Since joining Kirkland & Ellis in 2010 as a summer associate, Seth Fishman has risen through the ranks to become one of the youngest partners on the firm's investment funds team. Fishman led the team representing Francisco Partners on garnering nearly $17 billion in total commitments in 2022, including the simultaneous formation and fundraising of its $13.5 billion seventh flagship fund and its $3.3 billion Francisco Partners Agility III fund. He also advised One Equity Partners on closing its eighth fund at a hard-cap of $2.75 billion. The firm says Fishman's "instinct for fresh market trends" sets him apart from peers, alongside his significant contributions to deals worth more than $30 billion over the last three years.

Vicky Forrester, 34

Partner, New York, Paul, Weiss, Rifkind, Wharton & Garrison

Paul, Weiss, Rifkind, Wharton & Garrison partner Vicky Forrester has led on mandates for the likes of Apollo Global Management, Centerbridge Partners and KKR, but also as a leader of the firm's work with emerging women-led private equity firms. In 2021, Forrester advised a Canadian investment manager on its $2.5 billion seed investment in female-led firm Brinley Partners and another $2.5 billion in follow-on investments. Earlier this year she advised MPowered Capital, a firm investing in female and underrepresented talent in the alternative investments space, on its Capital Access Fund I, which closed on $110 million. She also leads the firm's pro bono collaborations with industry programs such as 100 Women in Finance, Black Women in Asset Management, and the Black Hedge Fund Professionals Network.

Maurice Gindi, 38

Partner, New York, Cleary Gottlieb Steen & Hamilton

Cleary Gottlieb Steen & Hamilton partner Maurice Gindi represented Blackstone in the formation of its $1.6 billion Life Sciences Yield fund in 2022, the firm's first inaugural royalty and structured credit-focused life sciences fund, and also advised on the formation of Blackstone's inaugural life sciences fund, Life Sciences V, which closed in 2020 with commitments of $4.6 billion. He also advised on the formation of TPG Healthcare Partners, which, at $2.7 billion, is recognized as one of the largest pools of capital dedicated to healthcare investments in the world, and marks the firm's first fund dedicated exclusively to healthcare deals. He also took a role advising TPG on fund formation matters surrounding its sale of cable operator Astound Broadband for $8.1 billion in 2020.

Blake Halperin, 35

Associate, Boca Raton, Proskauer Rose

Since joining Proskauer Rose in late 2020, secondaries-focused lawyer Blake Halperin has led on more than 200 transactions worth over $45 billion for clients such as Apollo S3, Blackstone Strategic Partners, CPP Investment Board, GIC, and Lexington Partners, to name a few. His work with Blackstone Strategic Partners over the last few years includes advising on its role as a lead investor in the purchase of $5 billion in fund interests from Kaiser Permanente and on its purchase of a $1 billion portfolio of infrastructure fund interests from Alaska Permanent Fund. Proskauer lauds the associate's "tireless dedication to client service and his unparalleled secondaries industry insight."

Justin Kliger, 38

Partner, Boston, Ropes & Gray

Justin Kliger has directed fund launches totaling more than $22 billion in the past year. The Ropes & Gray partner's client list including the likes of Asia Alternatives, Bain Capital, Crosspoint Capital Partners, Hamilton Lane and HarbourVest Partners. In recent months, Kliger has led for Bain on more than half a dozen mandates, including Bain Capital Special Situations Asia II, which closed at its cap of $2 billion in 2022. He also led Asia Alternatives through to the final close of its sixth fund, which closed on $2 billion, and advised Hamilton Lane on the $3.9 billion fundraising of its fifth secondaries-focused fund. Kliger is credited with navigating clients through high-stakes management company events, including generational transitions and key departures.

Daniel Lloyd, 39

Partner, London, Simpson Thacher & Bartlett

Simpson Thacher & Bartlett's Daniel Lloyd has had a busy few years, having advised on global fundraisings totaling more than €30 billion since his elevation to the firm's partnership in 2020. The London-based lawyer – who is described by the firm as being "a critical member" of the firm's private funds practice – advised CVC Capital Partners on raising two of its central funds in 2020, including the firm's €21.25 billion eighth fund and its Asia V fund, which raised $4.5 billion. Bridgepoint turned to Lloyd for advice on the funds aspects of its 2021 initial public offering - the first listing of a private equity firm on the London Stock Exchange since 1994. Lloyd also advised Astorg on a GP-led secondaries process for investor services group IQ-EQ for €1.3 billion, including follow-on capital, and guided the firm on the formation of its inaugural mid-cap fund, Astorg Mid-Cap, which raised more than €1.25 billion at its close in 2022.

Julia Mandich, 36

Assistant general counsel, London, Barings

Described invariably by peers as "a brilliant role model" and "a key issue spotter and quick problem solver," Barings' assistant general counsel Julia Mandich has a stellar market reputation as an advocate for creditors. Since joining Barings in 2020, Mandich has become "a go-to presence" within the firm, according to a colleague. She has taken responsibility across several aspects of the business including navigating regulatory and jurisdictional changes, managing external counsel relationships and developing working groups for new market initiatives, such as sustainability-linked loans. She is credited by peers as promoting the cause for increased diversity in private markets alongside her extensive mentoring work, having launched an industry group for networking among in-house counsel at private credit institutions.

Jessica Marlin, 39

Partner, New York, Ropes & Gray

Ropes & Gray partner Jessica Marlin is described by the firm as a rising star for "her ability to tackle complex subjects and unique products, as well as her unwavering dedication to clients" across a range of credit funds, hedge funds, private equity funds and secondaries transactions. Her recent highlights include guiding Audax Private Debt on raising its second direct lending fund, Audax Direct Lending Solutions Fund II, which closed on $3 billion in capital commitments in early 2023 ahead of its $2.25 billion target. Marlin also represented Partners Group in 2022 as lead investor on the firm's $200 million commitment to a project recapitalizing certain renewable and hybrid energy assets.

Eve Mrozek, 35

Partner, New York, Gibson Dunn & Crutcher

Gibson Dunn & Crutcher's Eve Mrozek advises private fund managers on structuring and forming private equity and real estate funds, as well as capital-raising matters. Her recent mandates include advising Oak Street Real Estate Capital in the formation and operation of its first open-end fund, and its closed-end fifth flagship triple-net-lease fund, which held its final close in 2021 on around $2.5 billion of commitments. She also advised real estate private equity firm EQT Exeter on the formation of three funds: EQT Exeter Industrial Value Fund VI, which raised around $4.76 billion; EQT Exeter Industrial Core-Plus Fund IV, which closed on commitments of $3 billion; and EQT Office Value Fund II, which raised approximately $700 million.

Mathan Navaratnam, 38

Partner, London, Cadwalader, Wickersham & Taft

Recently promoted to the Cadwalader, Wickersham & Taft partnership, Mathan Navaratnam's experience spans the range of fund finance products, including capital call lines, NAV facilities, hybrid facilities, GP and executive support facilities, and secondary leverage products. He recently advised a syndicate of lenders on implementing a multi-billion, multi-tranched, ESG-linked €4 billion revolving credit facility for a global private equity firm, and is considered a go-to fund finance lawyer for clients including StepStone Group, Shanghai Pudong Development Bank, UBS, Deutsche Bank Wealth and JP Morgan Wealth, who are understood to have specifically requested that he leads on their transactions. Navaratnam is also credited with "putting diversity at the heart" of Cadwalader's fund finance practice in London.

Oliver Prakash-Jenkins, 35

Partner, New York, Latham & Watkins

New York-based partner Oliver Prakash-Jenkins serves as the go-to funds lawyer for Searchlight Capital Partners, having been a lead associate on the Latham & Watkins team advising Searchlight on raising its $3.4 billion third fund, which took place prior to his elevation to the partnership earlier this year. Prakash-Jenkins has advised Partners Group on over 35 transactions in the last two years spanning primary investments, co-investments, GP-led continuation funds, traditional secondaries offerings and stapled tender offers, representing total deal values and commitments of more than $15 billion, according to the firm. He also advised infrastruture investor American Triple I on fundraising matters relating to its connection with JFK Millennium Partners' $4.2 billion deal to develop the new terminal six at JFK International Airport in New York.

John Rife, 39

Partner, London, Debevoise & Plimpton

John Rife advises some of Debevoise & Plimpton's largest funds clients, including Credit Suisse, LGT Capital Partners, Pantheon Ventures, LeapFrog Investments, Tishman Speyer and HarbourVest Partners. He has maintained an advisory relationship with Exponent Private Equity and Glendower Capital for nearly his entire career, and is described as having cultivated long-term loyalty in major clients. "We truly believe there's no lawyer in the market like John," says one client of his expertise, which spans the breadth of fundraising, GP-led transactions, preferred equity deals, and anchor investor arrangements. Another client adds: "John is truly one of the best deal lawyers anywhere – experienced, intelligent and extremely adept with handling complex matters."

Nathalie Sadler, 35

Partner, London, Dechert

Nathalie Sadler has swiftly risen through the ranks at Dechert, having developed strong relationships with firms such as Barings and Pemberton Capital Advisors. She has developed a niche for advising on global employee co-investment funds, which requires an understanding of the regulatory and tax position of employees investing all over the world. She recently advised a leading real estate investment manager on its ESG-focused global fund, as well as its employee investment program. The fund will invest in real estate with the aim of setting each asset on a net-zero carbon pathway with ancillary private equity and carbon credit investments, while the employee co-investment program now has over 50 investing classes.

Sophie Smith, 34

Counsel, London, Cleary Gottlieb Steen & Hamilton

Since joining Cleary Gottlieb Steen & Hamilton from Kirkland & Ellis in January 2022, Sophie Smith is credited with having "sparked a transformation of the London office's private investment funds practice." She has helped the team win new sponsor clients, including Ares Management, Vedra Partners and two other large investors. According to the firm, Smith has also been pivotal in expanding the firm's relationships with its existing funds clients, with an increasing number of clients using the London office for their European work. The firm describes Smith as "energetic, inspirational and always positive," adding that she is recognized as "a born leader" by both clients and colleagues, with Smith also having taken on additional mentoring responsibilities for younger peers.

Conrad van Loggerenberg, 39

Partner, New York, Paul, Weiss, Rifkind, Wharton & Garrison

Conrad van Loggerenberg counts General Atlantic, Oak Hill Advisors, Blackstone, Silver Point, Fortress, and Värde Partners among his key clients. A partner in the New York office of Paul, Weiss, Rifkind, Wharton & Garrison, he has raised tens of billions of dollars for some of the largest firms in the marketplace. In 2022, van Loggerenberg led the formation and fundraising for General Atlantic's inaugural BeyondNetZero fund, a $4 billion private equity platform focused on investments in climate solutions. A graduate of South Africa's Nelson Mandela University, Conrad serves on the fundraising committee of Ubuntu Pathways, a South African organization providing healthcare and education to impoverished communities.

KEYNOTE INTERVIEW

Stepping up on granularity

Taking a proactive and detailed approach to fees and expenses is becoming increasingly important as LPs ramp up scrutiny, say Troutman Pepper partners Julia Corelli, Stephanie Costantino and Paul Steffens

SPONSOR
TROUTMAN PEPPER

Q What types of fees are currently being charged by private funds, and how do those vary across asset classes?

Stephanie Costantino: The types of fees that are charged by investment vehicles and private funds depend in part on the sector the fund is focused on. There are certain base fees that are charged, like a management fee, that are sector-agnostic for the most part, as are some types of incentive fee like carried interest. You might also see monitoring fees or fees related to operating partners, where relevant.

Julia Corelli: We still see funds charging closing fees or transaction fees to the portfolio company, particularly on the private equity side, but those frequently offset the management fee in full. We also see administrative services fees if there is a third-party administrator, and custodian fees being charged in addition to management fees.

Across the market, there is a focus on making sure fees are a known quantity for the LP. Investors almost don't care whether it is offset or not, or if there is a lower management fee and an additional fee elsewhere. They just want to know their total expense burden, that it is within an acceptable range, and that there is a rationale for each charge.

Q What fees and expenses does the market expect the GP to absorb?

SC: GPs and LPs like to keep things separate. They want the GP to pay for itself and the fund to pay for itself to the extent they can delineate. Where it becomes more difficult is where you have services that benefit both parties and where there are questions around how you allocate cost-sharing.

JC: There is a whole world of expenses to consider and everyone wants them to be segmented, but by definition in an LPA it almost always comes down to named things being the GP's or manager's expense, including overhead and compensation, and everything else is the fund's. That is because the manager has a finite revenue stream. The vast majority of expenses will be fund expenses. The LPs typically push back where they can and look for fund expenses to be as specifically articulated as possible.

Paul Steffens: When I started doing this 20 years ago, the partnership expenses provision in the LPA was three-quarters of a page, and now in some funds it runs to several pages. Negotiations can get really granular into who pays for travel expenses, dead deal costs, everything. It used to be that the fund sponsors were not heavily regulated, but now a lot of them are registered with the US Securities and Exchange Commission and there are all types of additional costs related to that.

Q What fees should offset a management fee?

JC: The LP will utilize the offset to control their overall expense burden. Typically, fees subject to offset are monitoring fees paid by portfolio companies, director fees paid to any of the fund manager's personnel on portfolio company boards, and any financing or other transaction-related fees. The LPs feel the manager is getting compensated for those already by receiving the management fee, so those are typically 100 percent offset.

PS: In real estate there is more discussion on this. A lot of fees are those that would be charged by a third party at the asset level if the affiliate of the fund sponsor were not providing the services, so those are not offset. An example of a fee that might be offset, however, includes where a fund sponsor charges an asset management fee to a JV that the fund entered into with an LP to acquire an asset, as it relates to the fund's investment in the JV.

Q What are the problems associated with different kinds of fees?

SC: The primary problems are the calculation of the fees and whether the disclosure provided by the GP or the manager lines up with that. There are a lot of things that go into management fees – write-downs, for example, were included for many years, but the timing and amount of write-downs have been questioned by regulators and investors. Now many GPs try and quantify those differently and remove them from the fee, which is not necessarily an LP-friendly result. It does, however, highlight the issue of calculating the fee in a way that is transparent and understandable for multiple parties.

JC: Another problem is timing, with the classic example being broken deal expenses and termination fee proceeds which typically offset each other in the LPA, with the net accruing in favor of the LPs. The fund usually bears broken deal costs and will be entitled to any termination fee. However, the LPs that

Q What enforcement trends are you seeing regarding expenses?

Stephanie Costantino: Enforcement has been very active in this space, analyzing expenses across private equity, venture capital, growth equity and real estate funds to understand the fees and disclosures and whether or not investors appreciate the totality of the burden they are bearing, and the totality of remuneration the manager is receiving.

Paul Steffens: There is an educational aspect for regulators. Historically, they were used to regulating registered advisers that were investing in public securities and everyone understood what those fees and expenses looked like. When private equity fund managers were swept in, they had a whole bunch of folks not used to looking at those fees and expenses who had to get up to speed.

> *"There is a focus on making sure fees are a known quantity for the LP"*
>
> **JULIA CORELLI**

originally bore broken deal costs may have left the fund and new investors who came in will end up receiving the recovery fee instead. In such cases, fund LPAs usually do not try to pair up the cost with the recovery.

PS: In evergreen vehicles, management fees are often based on net asset value rather than committed or contributed capital. Usually the manager determines the NAV that has a direct bearing on its fee, which creates a conflict. In closed-end funds, where an affiliate provides services, there is potential conflict over how to determine the market rate for those. There is a degree of transparency required and a lot of funds will employ third parties to verify valuations or fees.

Q Are you witnessing any LP pushback on expenses in the market today?

SC: We are seeing more focus on compliance costs. LPs want to make sure that compliance costs belonging to the manager are treated as such.

There is also increased LP sensitivity around allocation of certain other costs, like travel costs, diligence costs and marketing costs.

Q What is current market practice in relation to granularity of disclosures around expenses?

SC: There is a very fulsome litany of expenses and, in many respects, regulation has created a transparent, manager-heavy disclosure regime. GPs err on the side of disclosure because if something is not disclosed, there is always the chance someone will allege it is not permitted. There is now a tremendous amount of line-item disclosure in expense provisions, which has been a consistent trend.

Q How are decreases in transaction volume and market volatility impacting fee discussions?

> *"In many respects, regulation has created a transparent, manager-heavy disclosure regime"*
>
> **STEPHANIE COSTANTINO**

> *"I'm not seeing any of the fee reductions, suspensions or waivers that we saw during the global financial crisis"*
>
> **PAUL STEFFENS**

PS: More illiquid markets make it more difficult if you are managing an open-end fund that bases its fees off of NAV. It was already difficult to determine NAV and it is now even more challenging, which may drive arguments on fees. We are starting to see transaction volumes pick up, but if the slowdown goes on for an extended period, that will cause issues for the way fees are calculated for asset-based valuations.

Q Are we seeing any fee reductions or suspensions in connection to a decrease in fund transaction volume?

SC: We are seeing discussions between LPs and GPs with respect to reductions and suspensions of fees by GPs that may not have done so previously. I think it is fair to say that when the market was incredibly tight, certain GPs would not entertain such discussions. This does not mean that such discussions ultimately lead to a fee concession, but it may lead to other concessions for the requesting LP.

PS: I'm not seeing any of the fee reductions, suspensions or waivers that we saw during the global financial crisis. A lot of the fees are based on capital commitments, not deployed capital, which is why LPs might complain during times of slow transaction volumes, but so far this environment has not lasted long enough to justify that.

JC: Even during the covid-19 pandemic people entertained reductions, but managers still had to pay their people and no one wanted to let people go. Most LPs would rather keep the team together than require managers to forego the management fee during a hiatus or slowdown. No doubt, this is in part recognition that the foregone fee would be small over a 10-year investment term and a 30-year relationship.

Q Finally, what are the latest themes emerging from *Private Funds CFO's Fees and Expenses Survey*, and how have those evolved in recent years?

JC: The surveys have given people the comfort of commonality. There wasn't much in the market 10 years ago about what managers were paying but now there is a greater ability to market test, as well as greater transparency. As a result, the granularity and detail in those conversations has increased. We see investors looking for even more specificity and seeking greater predictability so that they can estimate their returns and better manage their own business's – and their investors' – expectations in challenging times. ■

Finding a path to democratization

As more sponsors look to attract attention from retail investors, the legal structures around widening access to the private markets are changing, writes Claire Coe Smith

In the past two years, a number of trailblazers including KKR, Blackstone and EQT have been at the vanguard of developing semi-liquid funds to tap the mass affluent investor base in Europe.

EQT's first strategy for individual investors, EQT Nexus, launched in May as part of its growing efforts in private wealth, and lawyers have been working hard to help clients develop structures across Europe that replicate the opportunities for broader access to private funds available in the US.

Barriers to entry for individual investors into private funds have included significant investment thresholds, long lock-up periods and complex investment terms. "An LPA that says you sign up on day one, we will draw down your money over a period of time and you're in this for 10 years, is becoming increasingly difficult for high-net-worth individuals," says Christopher Elson, a partner in the funds practice at Proskauer Rose. "Sponsors are having to find solutions."

John Mahon, another partner in the funds group at Proskauer, adds: "In the US, the biggest recent development impacting retail-focused non-traded regulated funds has been an increasing focus on the regularity and predictability of liquidity for investors, particularly among individual state securities administrators."

As a result, Mahon says that regulators at both the state and federal level are also likely to continue looking into the liquidity aspects around such products in the near future.

But regulators across the globe are increasingly cognizant of the demand from retail investors for greater access to the alternatives industry, as well as the appetite from sponsors to bring them into the fold.

Owen Lysak is a partner in the private funds team at law firm Simpson Thacher & Bartlett who advised on EQT Nexus. "In the US we see this big, registered fund market, with a well-established process and vehicles for accessing retail, by which we mean the mass affluent," he says. "Historically, we have not had the same in Europe, but Europe has really been trying to develop that and a lot of sponsors are looking at how to take what they have done in the US and replicate it here."

Developing such products requires a significant commitment from fund managers, with many just now looking at their options for retail.

"When sponsors are thinking about raising these products, the distribution channels are really different to their usual closed-end offerings," says James Board, another partner in the funds team at Simpson Thacher. "The focus is about working with distributors and wealth platforms and the relationships you build with those intermediaries, rather than going out there and distributing to the underlying investors directly.

"While we have been doing a lot of these dedicated semi-liquid products, they obviously do require focus and investment by the sponsors in question, and so we also see a wider spectrum of routes being used to bring high-net-worths and mass affluent capital into alternatives strategies."

Short and sharp

For managers who are keen on increasing their engagement with retail investors, Board says that such a process can appeal to time-short, investment-sensitive sponsors. "There are still a lot of sponsors out there going down the same route with a dedicated feeder vehicle coming into an existing closed-end fund, as has been the practice for many years now, and those sponsors accept that while this approach may raise less capital, it requires less time and investment."

Diala Minott, co-chair of the investment funds and private capital practice at Paul Hastings, says that the current macroeconomic environment is also playing into discussions around democratization of the private markets.

"Because market conditions are quite difficult for bringing in further capital right now, especially from institutional investors, sponsors are in a rush to tap into these new pools of capital in order to take advantage of opportunities on the investment side.

"Private wealth investors typically have small amounts of capital, but aggregators are pooling those and bringing them into feeder funds or private wealth platforms. We see a lot of fund documents being amended right now to allow either for new share classes or for platforms to bring those investors into funds."

Minott adds that such a market is contributing to a wider change in attitude among sponsors, who she says are "being a little more open-minded about where their money is coming from. There is now appetite to pay a manager to bring those pools of high-net-worths together, carry out all the necessary checks and get them into the funds."

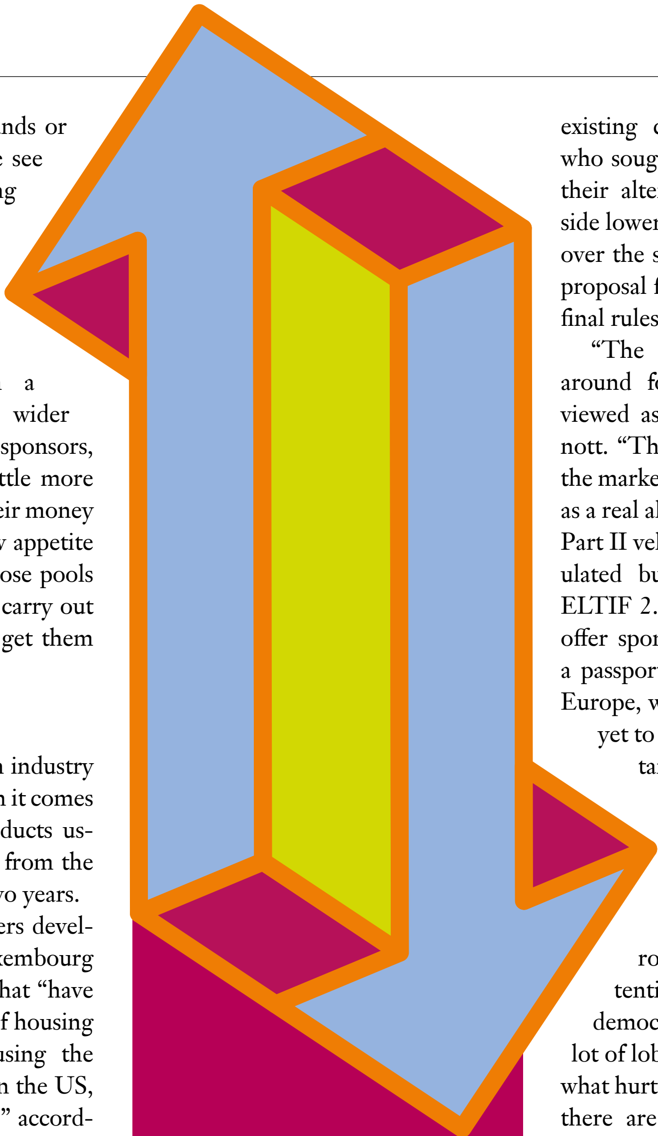
Crossing borders

Lysak adds that the European industry has been gaining ground when it comes to designing semi-liquid products using technology and expertise from the US, especially over the last two years.

With a number of managers developing products using the Luxembourg Part II structure – products that "have the most flexibility in terms of housing different strategies and housing the types of terms we have seen in the US, like redemption mechanisms," according to Lysak – there is now a blueprint that can be applied to these funds in Europe. At the same time, 2024 will see the launch of the European Union's updated European Long-Term Investment Funds regulation, dubbed ELTIF 2.0, designed to be a framework for fund managers wishing to bring in retail investment.

"It does feel like by the end of this year we will move into the second innings for the European market, because a lot more sponsors will see what the major US houses and others have done, and we also have the launch of the new ELTIF regime from January 2024," says Lysak. "We are really at a pivotal point moving into European democratization of private funds."

The revamped ELTIF regime is expected to help to address some of the



"Private wealth feeders and private wealth share classes are going to become the norm for offerings"

DIALA MINOTT
Paul Hastings

existing concerns of retail investors who sought a more liquid solution for their alternatives investments, alongside lower leverage caps, greater clarity over the scope of eligible assets, and a proposal for a semi-liquid option, with final rules expected later this year.

"The ELTIF regime has been around for a while but was so far viewed as fairly restrictive," says Minott. "The regulators have listened to the market and ELTIF 2.0 should work as a real alternative to the Luxembourg Part II vehicles. Those are heavily regulated but well-established, whereas ELTIF 2.0 will be brand new but will offer sponsors the opportunity to get a passport and market to everyone in Europe, which is quite helpful. We are yet to see the final rules but we certainly see sponsors showing a lot of interest in the opportunities there."

The defining issue

Lysak says the focus in Europe is on clarifying, and potentially changing, definitions of democratization. "There has been a lot of lobbying in the EU [to say] that what hurts the European market is that there are really only two regulatory definitions of investors, professional or retail, and most high-net-worth capital ends up falling into retail.

"There is nothing akin to the US-accredited investor definition, and so people have been pushing for reform to develop a semi-professional investor category. That hasn't landed at all, and the proposed changes to the professional investor test are really limited and quite disappointing."

While conversations at the top end of the market continue to focus on developments around semi-liquid structures, Minott says that, in the meantime, "private wealth feeders and private wealth share classes are going to become the norm for offerings and will maybe bridge the gap as sponsors look to raise capital and bring those new investors in." ■

Forward thinking

We asked some of this year's Legal Rising Stars to give their thoughts on the future of the private funds industry

What are going to be the most significant market trends over the next 12 months in your practice area?

The next 12 months will be a story of which firms are most successful in unlocking a gridlocked fundraising market. With the slowed pace of exits and denominator effect impacting investors, firms will need to be creative both with liquidity solutions and with developing innovative products that attract new capital in an increasingly competitive landscape.

Justin Kliger, Ropes & Gray

The widening universe of investor types in private funds. This will require us as lawyers to ensure we are creating structures and setting fund terms that are flexible enough to accommodate a growing class of investors outside of the core institutional LPs.

Christopher Elson, Proskauer Rose

ESG will continue to dominate the terms we are seeing in the market, the demands from investors and the regulation that sponsors need to grapple with. It's incredible to think how much change we've seen in the last couple of years and how it is impacting the way private funds invest and interact with their investor base.

Clare Baker, Linklaters

It'll continue to be a tough fundraising environment, but what is more interesting is how funds are going to deploy the capital they've already raised. I suspect private credit will continue to flourish, as it fills in the void left by the banking crisis – with small banks unable or unwilling to lend at all.

Jessica Marlin, Ropes & Gray

In my opinion, the wave of M&A activity in our industry has not begun to crest, and the asset management landscape will continue to be reshaped by consolidation over the next 12 months.

Ben Briggs, Kirkland & Ellis

What is the best career advice you've ever been given, and why was it so helpful?

Often the difference between people who are successful and people who are not is that the successful people just kept trying. You may not have got into your university course or your preferred law firm or job on your first try, but your ability to pick yourself up and keep trying despite setbacks and rejection is what will set you apart.

Clare Baker, Linklaters

Early in my career a mentor said: "There is always a first time for everything, so why not this time?" One cannot shy away from work just because something is different. Embrace new challenges because no two projects are ever the same. Merely providing repeated, routine advice will never give you the opportunity to become a trusted adviser to clients.

Justin Kliger, Ropes & Gray

Get to really know the business of your client. It is far too easy for transactional lawyers to simply focus on documents (rather than the dynamics of a deal). Understanding your client, what their business is, what relationship they are trying to build and how your client operates is crucial for providing well-received advice and solutions.

Mathan Navaratnam, Cadwalader, Wickersham & Taft

You must understand your client's business, not just how to set up a fund. You cannot provide effective fund counsel if you don't know what a cap rate is, how your client finances and closes deals, or you can't give a 60-second pitch on your client's strategy and how it's differentiated in the market.

Ben Briggs, Kirkland & Ellis

A career-long mentor told me to primarily focus on doing great work for my current clients because that's the key to keeping the work you have and growing new work. So I always center myself and my days around that primary goal, even when pitches, knowledge management and other promotion-type things are trying to take over.

Jessica Marlin, Ropes & Gray

I was advised as an associate by a partner I respected to try to tackle every matter with a consistent level of attention and enthusiasm, even when it is discrete, quirky or small, and especially when it is difficult; my platform has benefited from this over the long term through recurring instructions, referrals and expertise-building.

Oliver Prakash-Jenkins, Latham & Watkins

Join us at our upcoming events

Private Funds CFO Network — West Coast Forum

Connecting you with private equity and venture capital peers on the West Coast to identify opportunities for your firm in a challenging macro environment.

Private Funds CFO Network — Europe Forum

Identify opportunities and understand best practices for private market firms operating in Europe at the region's premier event.

Private Funds CFO Network — New York Forum

The industry's flagship event will ensure you and your team are prepared for all innovations, regulations, market conditions, and more.

Learn more:
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