

Scott Naidech Discusses CV Transaction Risks with *Private Equity Law Report*

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Winston & Strawn partner Scott Naidech was quoted in a *Private Equity Law Report* article discussing key takeaways for sponsors to consider as they undertake continuation vehicle (CV) transactions following a complaint filed in Delaware Court of Chancery that highlights the potential risks when a fund sponsor seeks to push through a CV transaction over the objection of existing investors.

Scott noted that given the inherent conflicts in CV transactions generally, “you always need to be mindful that you’re running a fair process and abiding by your contractual and fiduciary duties to all your stakeholders.”

The responsibility to communicate equitably with all existing and prospective investors places special burdens on GPs to run a fair and transparent CV process. “For that to happen, you need to make all appropriate disclosures to your LPs and LPAC at the right times, and ensure you or your advisors are answering all their questions and keeping them informed about the process,” Scott explained. “LPAC approval is often a cornerstone to getting conflicts waived and moving forward with the deal, so it’s crucial to have consistent outreach with your LPAC, inform them about the process and ensure they’re on board,” he emphasized.

“Down the road, if an investor wants to be a squeaky wheel and complain about the price or the transaction,” then the GP can demonstrate that it ran a fair process to get the best result.” To prove the fairness of a GP’s CV process, he noted that it is helpful if they can point to a variety of steps taken along the way, including that they worked with the LPAC to get its approval; hired an independent financial advisor; obtained a fairness opinion from a third party; and solicited and vetted bids from potential investors.

Despite the complaint filed in Delaware Court of Chancery, Scott underscored that litigation in this area remains uncommon. “Complaints are rare, because GPs are usually careful to run a fair process, get their LPAC on board and get appropriate conflict waivers,” he said. “If you follow market practices, you should be able to vet problems early on and deal with them.”

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