

Talking. Secondaries.

Demystifying the secondaries market

Part 2: Single fund interest/portfolio sale

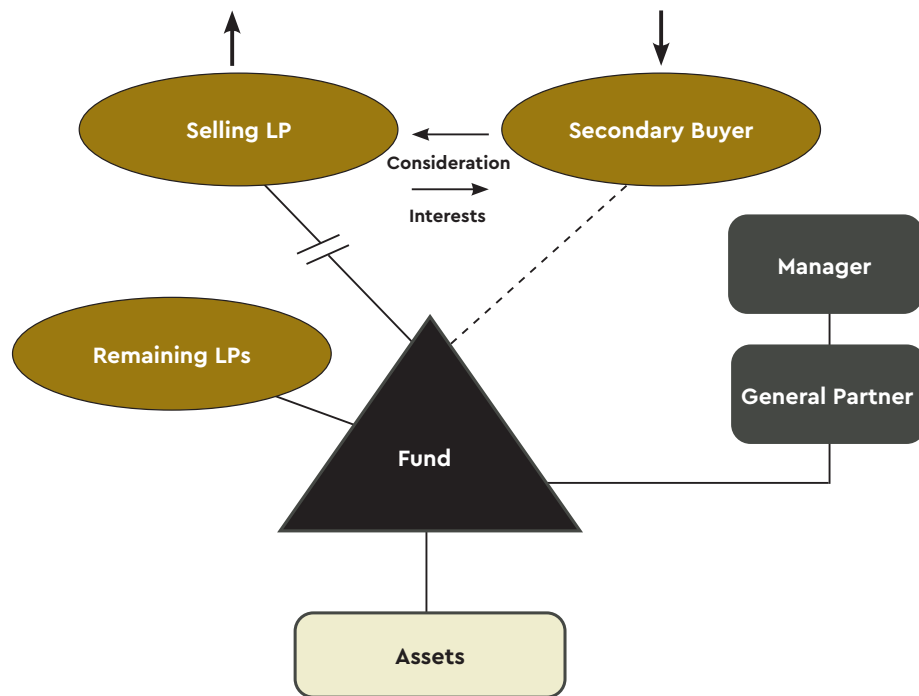


Structuring a sale of an interest or a portfolio of interests from an existing LP to a secondary buyer is typically the simplest form of secondary structuring, and remains an important feature in the secondaries market.

This can also be structured as a GP-led tender offer, i.e. where a liquidity offer is presented to all LPs to sell their interests in a fund.

Summary

- Existing LP is replaced by the secondary buyer
- Obligation to fund outstanding commitments transfers to the buyer
- Right to receive future distributions transfers to the buyer



Items to consider

What is being sold and position following sale?

- Confirm amount/number of interests to be sold and relevant fund entity, and identify governing documents.
- If it is intended that the seller is liquidated post transfer, a buyer may wish to restrict this for a certain time period and/or use W&I insurance to cover any post-winding-up residual liability.

Interaction with underlying GP

- Confidentiality, transfer, pre-emption analysis to be undertaken and transfer windows confirmed. Early engagement is key.

Purchase price adjustments?

- Interests will be priced (discount/premium to NAV) as at a specific reference date and adjusted for funded commitments and distributions. Dating of funded commitments and distributions since reference date will be required to be shared by seller to buyer.

Are your interests clean?

- Seller to identify matters which a buyer would be interested in from a risk or pricing perspective – including any litigation against the fund.

Who is the buyer?

- GP will undertake KYC/AML on potential buyer. Selecting Buyers who already hold interest(s) in the target fund(s) may make for a slightly expedited sale process.

Tax preparation

- Consider US withholding tax rules and available exemption certificates from seller or underlying GP. Collate K-1s (for the prior 3 years), if available.
- Identify any US real property interests, for FIRPTA purposes.
- Consider offshore execution to mitigate UK stamp duty.
- Engage with underlying GP on US PTP rules (and available safe harbours).
- Note secondary withholding tax obligations from 1 January 2023.

Potential advantages

- Simple structuring
- Deal execution certainty
- Limited admin for GP
- Limited conflicts
- Early liquidity in an illiquid structure
- Active portfolio management of selling LP
- Investment strategy adjustments

Potential disadvantages

- Potential discount to NAV on purchase price
- Limited scope for GP economics reset
- Limited scope for liquidity for carry holders
- No fund term extension
- Loss of future upside for seller

Our secondaries platform

Travers Smith has extensive experience in complex private markets transactions, with a focus on liquidity solutions across the private markets capital structure with exposure across all asset classes.

70+

We advise over 70 GPs across our firm.

£92bn

In transaction value during the last c.five years.

\$4tn+

Assets managed by our clients in the private capital sector.

150+

Specialists focused on private equity, infrastructure, financial sponsor and M&A transactions. 30 of these dedicated specialists are partners in the business.

\$5bn+

In 2022 we advised on the deployment of \$5.1bn+ in commitments across more than 100 primary, co-investment and fund-of-one transactions.

400+

M&A transactions acted on since 2016.



Emily Clark
Head of Asset Management



Phil Bartram
Partner



Victoria Bramall
Partner



Jeremy Elmore
Partner



Katie McMenamin
Partner



Will Normand
Partner



Aaron Stocks
Partner



James Ravden
Senior Associate

**Legal Fund Formation
Team of the Year**
The Drawdown Awards
2020, 2021 & 2022



IFLR 1000
Financial Services regulatory:
Non-contentious
Tier 1

IFLR

**Private Equity Team of
the Year**
Legal Business Awards 2022

