

ILPA NAV Guidance: Market Reaction and Practical Considerations

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As most Fund Finance Friday readers probably already know, over the summer, the Institutional Limited Partners Association (“ILPA”) issued guidance for Limited Partners (“LPs”) and General Partners (“GPs”) around the use of Net Asset Value (NAV)-based financing facilities by private equity funds (the “Guidance” – which can be accessed directly [here](#)). ILPA issued the Guidance to identify potential issues relevant to LPs regarding the use of NAV facilities, including (i) transparency around their use, (ii) the level of engagement by GPs with LPs to solicit LP feedback and/or consent, and (iii) how the impact of NAV-based facilities is reported. Fund Finance Friday previously summarized the Guidance when it first came out [here](#). However, now that there has been ample time to digest, we wanted to take the opportunity to recap some of the events leading up to the Guidance, to provide insight as to the market’s reaction to it, and to highlight some practical considerations for market participants to consider in implementing its recommendations.

How Did We Get Here?

Leading into 2023, most of the broader industry focus on NAV financing had been positive and focused on explaining to the market what it was and the various ways it could be used by GPs to support their investors and their portfolios. Starting around the midpoint of 2023, there was a significant increase in coverage of the development of the NAV finance market in mainstream financial news publications such as the Financial Times and Bloomberg. This coverage has been, at least in part, critical (unsurprising as nothing sells newspapers (or online subscriptions) like controversy (real or not)). Fast forwarding to the Fund Finance Association Conference in Miami this past February, a panelist representing ILPA commented during the NAV Lending to Buyout Funds panel that the “vast majority” of LPs don’t support using NAV loans and that ILPA was preparing guidance for its use by GPs (see coverage [here](#) (subscription required)). Despite some of the negative press coverage leading up to the conference, this lack of LP support seemingly caught many market participants by surprise (most of whom viewed the product favorably and with a lot of excitement about its continued growth and development. While we waited for ILPA to issue the Guidance, some of us even took the time to make the case for NAV loans to the market directly (see previous Fund Finance Friday coverage [here](#)). In the meantime, ILPA’s release of the Guidance was much anticipated.

So What Does it Say Again?

Notably, the Guidance does not (a) oppose the use of NAV facilities generally, (b) propose to limit permissible use cases, or (c) seek to impose specific leverage limitations tied to the use of NAV facilities. (We also note that the Guidance does not apply to financing for secondaries funds or private equity funds.) It instead emphasizes a push for communication and transparency by GPs in their use of NAV financing. More specifically, unless a fund’s LPA explicitly permits the use of NAV facilities or a fund’s GP has received prior consent to utilize a NAV facility, the Guidance recommends that GPs seek LPAC consent prior to implementing a NAV facility. In addition to the above, the Guidance differentiates its recommended level of engagement by GPs with LPs based on the proposed use of proceeds for a

NAV facility (i.e., whether the facility will be used to generate distributions to investors or to support the fund's investment portfolio).

Market Reaction

Overall, based on the plethora of articles published after the Guidance was issued and our own conversations with clients and colleagues, the market reaction has been . . . fairly positive (if not somewhat muted). Understandably so, as ILPA's stated goals of "improving transparency and encouraging a more productive dialogue between LPs and GPs" and "developing a shared set of expectations around the use of these facilities in the industry" are laudable and certainly difficult to challenge. Interestingly, the Guidance takes a similar approach to the guidance that ILPA issued to address investor concerns and critical coverage regarding the use of subscription credit facilities (the "Subscription Guidance" –originally in 2017, available [here](#), with additional guidance in 2020, available [here](#)). Similar to the Guidance's approach to NAV financing, the key aims of the Subscription Guidance were to enhance transparency around the use of subscription lines, ensure alignment of interest between LPs and GPs and to promote consistency around reporting (and look at how well that has turned out for the subscription market).

Practical Considerations

While at a high level the Guidance is fairly straightforward, there are still some practical issues that market participants should consider with respect to its implementation.

1. LPAC Discussions. As mentioned above, unless a fund's LPA explicitly permits the use of NAV facilities or a fund's GP has received prior consent to utilize a NAV facility, the Guidance recommends that GPs seek LPAC consent prior to implementing a NAV facility. This begs the question of when GPs that might want to use NAV financing in the future should start having conversations with their LPAC about NAV. One of the key benefits about certain NAV loan structures is the high degree of confidence that motivated parties have in their timely execution (with typical implementation timelines in the four- to six-week range). This can be in contrast to alternative products, where execution is less certain and more likely to drag or be subject to delay. As a result, NAV has been an attractive product for sponsors looking to quickly take advantage of follow-on investment opportunities or that otherwise need access to liquidity on short timelines. In order to maintain that potential benefit, it may be prudent for GPs to have conversations with their LPAC now about NAV financing, so that LPAC discussions don't become a gating item that potentially holds up a deal at a later date.
2. What is NAV. The Guidance also recommends that fund LPAs have a clear legal definition as to what is a NAV facility (alas, we can no longer rely on the infamous "I know it when I see it" approach). Notably, the Guidance does not include any proposed definition. Anyone that has been to any industry NAV-focused panels or conferences in the past can attest to the fact that it is not the easiest concept to define and people often use the term differently and to encompass a wide array of financing products. While we will often refer to "NAV" generally as fund-level debt that is underwritten, either on a secured or unsecured basis, based on the value of a fund's investments, this is a far cry from a legal definition. For example, is a subscription facility that includes a NAV covenant (e.g., a "NAV-floor") a NAV facility for purposes of the Guidance? What about certain preferred equity and back-leverage structures? While eventually funds and their counsels may come up with a standardized definition, for now the best answer as to what is NAV for purposes of the Guidance is probably whatever a GP and its LPs think it is. This again necessitates enhanced dialogue between GPs and LPs and the sooner those conversations happen, the better.
3. Lender Diligence Considerations:
 1. LPAC Engagement – Even when not specifically required in a potential Borrower's LPA, lenders should consider having early discussions with GPs to make sure that they are comfortable with the level of engagement that a GP has had with its LPAC, including requesting a copy of any specific consents for NAV facilities.
 2. Fund LPAs – The Guidance explicitly takes the view that even when a NAV facility is made to an SPV or a holdco that sits beneath the fund itself, that fund-level leverage limitations should be interpreted, from an investor perspective, to apply to these vehicles (presumably even where the fund is not providing credit support for the facility). For these SPV/holdco facilities, Lenders should consider whether it is necessary to review fund-level LPAs to evaluate fund-level leverage limitations (i.e., whether they could be interpreted to legally apply to holding vehicles) and may want to have conversations with GPs to understand their interpretation of these provisions and the extent of their conversations with LPs around the use of debt beneath the fund and whether fund-level debt restrictions are expected to apply to SPVs/holdcos (and not just at the fund-level).

3. *NAV Disclosure* – As part of the LPAC process for any NAV facility, the Guidance recommends that GPs should provide a detailed disclosure of: (i) rationale and use of proceeds for the NAV facility, including details on alternatives considered; (ii) size, structure, and controls relevant to the NAV facility (e.g., whether the facility is secured or unsecured, revolving or term credit, and any key covenants – including cash sweep and mandatory repayment requirements); (iii) key economic terms (e.g., interest rate, maturity date, PIK interest, etc.); and (iv) additional obligations of LPs imposed in connection with the NAV facility (e.g., are any distributions of loan proceeds to LPs recallable). Lenders may consider requesting these disclosures to ensure compliance with any NAV facility a lender is providing.

We are confident that when properly used, NAV facilities can help sponsors and investors generate liquidity, capitalize on investment opportunities, lower costs and facilitate tailored structural solutions. Our hope and expectation is that the Guidance, by facilitating enhanced disclosure to and dialogue with LPs, will contribute to a better understanding of NAV lending and address LP concerns around the suitability of such lending generally, facilitating growth of the market.