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PART ONE | GLOBAL PRIVATE EQUITY FUNDRAISING

the fundamentals of private equity fundraising

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PRIVATE EQUITY ADVISERS

The fundamentals of private equity fundraising

BY BY MARK WILLIAMS

Experts are predicting a big year for private equity fundraising in 2005. This optimism comes off the back of significant market revitalisation in 2004, which has enthused fund managers about the near-term prospects. It is also bolstered by the general view within the investor community that the returns GPs have generated are satisfactory – particularly compared to the rather anaemic return generated in other investment areas. Most LPs are reportedly looking to increase their private equity allocations and strike relationships with more fund managers when doing so.

The research firm Private Equity Intelligence estimates that in excess of 700 funds will be attempting to raise over $230bn in 2005, $100bn more than last year and more than three times the total for 2003. Their research also leads them to believe that more than 5000 new fund commitments will be made during 2005. This information is based on data from 2800 institutional investors with a combined target allocation of $837bn.

Helping to top up LPs' allocation funds is the rebound in capital markets. According to Kelly DePonte, a partner and Head of Research and Due Diligence at Probitas Partners, since an institutional investor's allocation to private equity is usually set in terms of a percentage allocation of its overall portfolio, sharp movements in public market values – which make up the bulk of most investors' holdings – have a large impact on the amount that an investor has to commit to private equity. "The strengthening of public stock markets in the middle of 2003 set the stage for a strong private equity fundraising market in 2004, and at current levels bodes well for 2005 fundraising as well," he says. All this means that we are likely to see a flood of capital entering the private equity space this year.

With many funds eager to expand their fund sizes and meet increased targets as soon as possible, expectations are for a competitive and frothy period of fundraising. In the US, favourable financing and buoyant activity have encouraged several funds to hit the fundraising trail with an improved look to their portfolios. While the reception has been warm, the increased activity has made for a congested fundraising market in which lesser known funds have had to work hard to attract interest and beat out the wide choice available to investors across the spectrum.

Europe is more of a mixed bag, where a number of country-specific and pan-European focused groups, mostly from the UK, are coming out at the same time and congesting certain segments of the market while other segments remain quite clear. Speculation is centreing on the likelihood of a raft of large European buyouts in 2005. By Mr DePonte's reckoning, there are 14 or 15 European-based funds each seeking €1bn or more, making an aggregate total of over €40bn – nearly 50 percent greater than ever raised in a single year for buyout funds in Europe. Some investors think this is too much money for the current size of the market and that returns will suffer, while others believe there is plenty of room for buyout funds to penetrate an expanding European M&A market. "In any case, the likely result is that 2005 will be a record year for buyout fundraising in Europe," says Mr DePonte.

In Asia, interest is rising following the region's leap from $3.3bn worth of private equity and venture capital raised in 2003 to a total of $10.6bn in 2004, according to the Asian Venture Capital Journal. Australia, Japan, China, India and Korea in particular are offering up solid opportunities and achievable exits. 2005 looks bright, considering that several billion-dollar-sized funds are yet to announce final closes. Investors – particularly US investors – have perked up their interest in Asia's potential. "We could potentially see the creation of new groups as a result of this renewed attention, whereas over the years there has been a limited number of players," says Mounir Guen, founder and CEO of MVision Private Equity Advisers. But foreign funds entering the Asian market are warned not to accelerate their investment activities without thorough preparation. It is important to establish an on-the-ground presence and tap into local knowledge in order to adjust to the unfamiliar legal, cultural and business environment. "Simply transplanting the American way of doing things overseas without adjusting to local conditions is a recipe for disaster," says Mr DePonte. Still, this is the direction that the top end of private equity community is moving – developing a global presence to execute global initiatives. The success of this process will be measured in coming years as track records become more consistent and definable.

Globally, investors are placing their money into a fairly diversified range of funds. According to sources, of the $131bn raised globally last year, $56bn went to buyouts, $28bn to venture capital, $10.5bn to funds of funds and $5.5bn to secondary funds. Most investors tend to manage portfolio programs that are around 60-80 percent buyout and perhaps 20-30 percent venture capital. For institutional investors, mega buyout funds remain popular and mid-market buyout funds are also gaining favour. On the venture capital side, early stage funds lead the way, although interest in late-stage and sector funds seems to be building.

Successful mega buyout funds pursue broad investment programs that free them up to take advantage of the best opportunities irrespective of sector or geographic location. But niche or sector-focused funds also have their place in the private equity market. "At times, niche funds are better placed to make the argument that that they can execute a focused, value-added strategy. In the crowded middle market this often allows them to separate themselves from the pack," says Mr DePonte. The differentiation these funds can offer is attractive to investors trying to spread their portfolios. It is also an advantage in frothy fundraising years when strong demand and overallocation are an issue and investors are being turned away from their first choices. If a niche fund can demonstrate good performance, and an investor's analysis has identified certain themes or markets as having substantial potential for returns, investors may be tempted to take on the higher risk these funds normally carry in order to capture a niche market performance. They also help LPs to broaden their portfolios outside of core holdings. "Historically, investors make a number of commitments to a number of general partners across multiple funds, resulting in fairly large portfolios. Now, there is a big debate in the LP community over whether to rationalise or not, which may have an impact on niche stories in the future," says Mr Guen.

With the abundance of investor capital currently flooding the market, it is only natural that first-time fundraisers would be encouraged to dive into the fray. Those who do have an inclination to give fundraising a go are setting themselves up for disappointment. Although investors are eager to access the private equity asset class, they are not speculative enough to take long bets on unproven teams – unless this is a last resort. "A new group of people coming together cannot expect to have much success. However, a group spinning out or who have been successfully investing money not coming from the institutional market, do have a good chance, and there are several examples of this later type of 'first-time' funds," says Charles P. Jacobs, a partner and Private Equity Team Leader at Nixon Peabody LLP.

Ideally, what investors are seeking is access to a fund managed by teams who can demonstrate historical consistency, low turnover, effective retention programs for top professionals, an ability to implement proven investment strategies, a hands-on approach to adding value to their portfolio companies and an active succession plan – all of which adds up to a sound track record. Of course, the definition of what constitutes an impressive track record varies depending on the type of fund. As Mr DePonte explains, for most buyout or venture capital funds, investors are usually looking for at least a mid-20s IRR and a multiple of 2x capital returned. Investors also expect a higher level of volatility in the quality of returns from venture capital funds and a higher number of highs and lows across the portfolio. For other strategies – such as mezzanine or distressed debt investing – the quality threshold is different, says Mr DePonte, with investors looking for IRRs in the high teens and returns on capital at multiples of 1.5x or better. Mezzanine funds should have few write-downs or write-offs, while distressed debt funds should experience more unpredictability.

It is imperative for LPs to verify the performance claims of fund managers through extensive analysis. Leading institutional investors have improved and deepened this due diligence process in recent years. "LPs now thoroughly examine cash flows, references and case studies to substantiate statements that have been made by GPs. That is becoming the standard. The process is very time-consuming and a lot of GPs underestimate it. Those who raised money three or four years ago are forgetting how intensive some LPs are becoming," says Mr Guen.

But this intensive due diligence process is being challenged by the excess capital driving into the market and a broadening investor base. With GPs being given more choice about who they allow into their funds, can all but the top LPs afford to be too picky? The tables may turn in 2005. LPs, having grown accustomed to being wooed by GPs during previous fundraising cycles, may be forced to sell themselves to oversubscribed or popular funds. One issue that could counterbalance this situation is the fact that many funds have drastically increased their targets. Fund managers who raised $5bn in the last round are likely to push for $7bn or $8bn. Despite the considerable investor appetite, this still leaves massive gaps for GPs to fill – although few people expect the top performers to fall short in the current market climate. More likely will be shortfalls a little further down the chain. "In the US, funds are still looking to substantially increase the size of their assets and access larger amounts of capital. Many are looking to increase their fund size to 50-100 percent of the last – at a time when the larger fund market is going to be quite congested. It will be a complex process for some," says Mr Guen.

For those funds that have no problem reaching – and exceeding – their targets, what will be the implications of taking more and more capital? Mr DePonte says there is cause for concern here, and draws possible parallels with the tech crash. "Too much money raised by too many funds causes intense competition for deals, and bidding wars when buying companies. The higher the price paid when buying a company, the lower the level of return. This was demonstrated dramatically at the height of the internet bubble, when billion dollar early stage venture capital funds bid up the price on start-up companies to the point that it was nearly impossible to make money on a portfolio of investments," he says.

Still, there is a level of confidence throughout the industry that the majority of GPs will be able to inflate their funds and still move cash and meet investors' expectations by outperforming their relative benchmarks. No matter where capital commitments take the fundraising market, aligning the interests

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of GPs and LPs will remain an important part of ensuring that the fund – whatever its value – performs at a premium. To achieve this, GPs are looking to work with investors who have long-term horizons and informed expectations about the way the industry operates and the kind of returns that can be expected. "Certain investors – such as public pension plans, foundations and endowments – are natural long term investors whose investment time horizon matches the long term nature of private equity. Other investors – such as commercial banks and corporate investors – have over time been in or out of the market, with private equity during times of stress becoming non-core and subject to sell off," says Mr DePonte.

As Mr Guen points out, when GPs are able to choose their relationships, what they are look for is a consistent supporter. This support seems to be just as important as continued access to capital – although for bigger funds the capital requirements tend to win out if there is a choice to be made between the two. There is also a tendency for managers of larger funds to try to diversify, so they may assess the current funding base to identify the benefits of access to differentiated pools of capital. Smaller funds, which are generally comprised of fewer investors, are more focused on building personal relationships. But this may come at a price. "To leave yourself completely captive to a certain cluster of investors is a very high risk strategy," notes Mr Guen.

The challenge of matching the right LPs with the right GPs has made the role of external placement agents more important in recent years. Many of the top bracket fund managers still require a mass communication approach to raising funds, in which call centres place thousands of calls to prospective LPs in the hope of accessing as much capital as possible. However, further down the chain the placement process has become more comprehensive and refined. "For smaller funds or emerging managers, placement agents provide a complete package of services, assisting in drawing up the Offering Memorandum and marketing materials, drawing up investor target lists and arranging roadshows, and assisting in negotiating with investors," says Mr DePonte. A central aspect of this change is the return to providing a service based on experience, relationships and speciality. "Certain placement agents are looking to bring on board clients that they can solidly advise with strong views that help them make better decisions. The placing business has evolved to offer detailed targeting, selectivity and pro-active preparation," says Mr Guen.

Once GPs have sourced their investors of choice, the next step towards alignment is structuring practical terms and conditions between the parties. Several key points come into this equation, and striking the optimum balance is a case-by-case process. "Negotiations in the current market cover key man provisions (triggers and automatic versus affirmative vote), the definition of profits (distributions over invested capital or distributions over all capital contributions) and the size of management fees and offsets," says Mr Jacobs. Again, whereas in the past the GPs were calling the shots, today LPs expect to have more of a say in negotiations and are unlikely to bend on the issues important to them. Of course, not all investors have equal bargaining power but sophisticated market leaders are often able to have a material impact on terms and conditions, and this can have a knock-on effect through the market. Ultimately, it is in the interests of both parties to structure terms so that GPs are committed to the fund without being rewarded for underperformance, and LPs understand that they should adequately reward GPs for exceeding expectations.

Since fundraising across the globe is generally on the ascension, industry professionals are wondering whether we might see the closing of the first $10bn fund in the year ahead. One theory is that investors will be happy to see top performers increase their fund sizes. Some LPs are uncomfortable with the advent and acceleration of syndicated deals, arguing that they choose to back certain fund managers for their skills and expertise, and that club deals dilute a GP's ability to impose their resources on acquired companies. This potentially limits value-add strategies and ultimately returns. Better, then, to supply the fund managers of choice with sufficient capital to purchase big ticket companies without the need to form a syndicate. Of course, there are investors who argue that that bigger transactions may not necessarily be best way to generate large returns, so it will come down to market dynamics to decide. "Though no one is likely to set a $10bn target on the cover of an Offering Memorandum, it is possible that a target number of $7bn or $8bn would be allowed in the fundraising process to grow to whatever the market would bear. During 2005, a few players are coming to market – such as Blackstone and Thomas Lee – that might test the $10bn fund size," speculates Mr DePonte.

If that happens, it won't be long before the market is hypothesizing about how high we can expect buyout transaction values to soar. ■

UK FREEDOM OF INFORMATION ACT

ROUNDTABLE

The UK Freedom of Information Act and its anticipated effect on private equity fundraising

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Can you explain – from a regulatory point of view – the basic objectives of the UK Freedom of Information Act?

Hamill: The Freedom of Information Act 2000 is intended to promote a culture of openness and accountability amongst public authorities that exercise public functions – such as central government departments, local government, the police, the health service, the education service and their related offices and agencies – by providing people with rights of access to the information held by them. It is anticipated that those rights will facilitate better public understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money.

The House of Lords Select Committee on the draft Freedom of Information Bill identified three fundamental principles which ought to be met by any freedom of information law. First, it should permit access to information as a "general right for all people" rather than on a "need to know" basis. Secondly, the right of access should be subject to a "limited number of exemptions which permit refusal to disclose information if disclosure would cause harm of a specified kind." Thirdly, there should be a "right of appeal to an impartial arbiter who decides whether the exemption applies to particular information, and who has the power to rule that information should be disclosed." In many ways, the Act meets these points. It does provide a general *right* of access to information. It does subject that right to a finite (though perhaps not a "limited") number of exceptions. It does establish, in the form of the Information Commissioner and the Information Tribunal, impartial bodies that usually have power to rule on the application of the Act and whether disclosure is required.

In the US, a number of fund managers have excluded public LPs from their funds as a direct result of the risks posed by Freedom of Information requests and the associated court rulings in some states. Have the regulators behind the Freedom of Information Act 2000 dealt adequately with the concerns of the GPs and public investors who value their exposure to private equity funds?

DePonte: The Freedom of Information Acts were never really targeted at private equity or investments specifically, but were broadly drawn to ensure general accountability by government entities. The various laws (each US State and the Federal Government have slightly different versions) have been around for a long time. They are not a regulatory tool at all. Rather, they are a tool available generally to the public to gain access to information held by government entities. In the US, three different types of persons have been using the act to gain information. The first group is journalists writing stories either on the private equity industry in general or targeting politicians serving on pension plan boards. In the later instance, they are usually looking for evidence of conflict of interest. The second group is labour unions having disputes with pension plans or endowments, again looking for perceived conflicts of interest. The third group is firms collecting data on the private equity industry for resale, such as Private Equity Intelligence.

Guen: The issue with private equity is not necessarily who you are invested with or how much money you have given them. A lot of the portfolio performance numbers that we see only reflects the early days of a fund. Some funds invest a little slower and catch up later. So the numbers – really until the end of the fund's life – can vacillate a fair amount. How much money you put in and how much you got back can be shown as a number at any given time, but it may not accurately indicate the fund's position.

DePonte: One of the problems with FOIA in the US is that there is no central authority balancing the "right of the public to know" with the rights of GPs, LPs and portfolio companies. Each case brought is decided by a judge on the specific merits of the case, and because many of these, suits are brought under State law. Almost every case is slightly different; a ruling in California, for example, doesn't necessarily set precedent in any other State.

There are some useful exemptions from the rules that create a significant difference between the Freedom of Information Act in the UK compared to the US version. How extensive are these exemptions and do they provide sufficient comfort to worried GPs?

Hamill: The first thing to note is that there are two distinct rights created by the Act. The first is to be informed whether or not information of a particular description is held by the public authority. The second is the right to have information held by that authority communicated to the person requesting the information. The first duty is referred to as the "duty to confirm or deny". For present purposes, we will focus on the second duty – to communicate information to the person requesting that information.

There are numerous exemptions, which fall into two categories. The first category of exemptions does not require any balancing of the public interest in disclosure against the public interest in maintaining concealment. These are known as "absolute exemptions."

The second category of exemptions requires a balancing exercise to be carried out to decide whether "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information". The exemption, in respect of information which, if disclosed, would constitute an actionable breach of confidence, is an absolute exemption (s41 of the Act). But in respect of trade secrets and information prejudicial to commercial interests, the exemption is qualified and even if it otherwise applies, it requires that the public interest in disclosure be balanced against the public interest in concealment (s43 of the Act). However, for practical purposes, this distinction may not have substance because in the law of confidence there is an exception which permits the disclosure of information where it is in the public interest to do so. Where such a disclosure takes place there is no actionable breach of confidence. It *may* be, however, that the courts will adopt a higher threshold for establishing "public interest in disclosure" as a defence to breach of confidence proceedings than will be the case where a s43 exemption is relied on and there is a balancing test to be carried out in accordance with the provisions of the Act.

In applying that text, there is a presumption running through the Act that openness is in itself to be regarded as something which is in the public interest.

DePonte: From my limited knowledge of the UK law, there are still grey areas – such as the definition of what a public authority actually is. And as long as there are grey areas, there could be lawsuits seeking information asking the courts to decide how the law should be interpreted. On the other hand, since I believe this is a nationwide law, the UK should not encounter the same problems seen in the US, where there are multiple laws, multiple jurisdictions and multiple legal interpretations.

It needs to be pointed out that there are two broad types of information that have been sought in the past: fund level performance and specific portfolio company information. I believe that the battle on fund level performance is in effect over. Since large US LPs have invested widely in the past, the amount of information on fund level returns that is available in the market is significant, and it is hard to see how the release of that data has damaged Fund Managers in the institutional market. I do believe that the broader market is somewhat confused by what has been released, and I don't believe that there is wide understanding of such concepts as "the J-Curve" and "Vintage Year comparisons".

On the other hand, the real fight in the US is over the potential release of portfolio company data. Many of the situations where LPs have been excluded from funds have really been driven by ▸▸

the fact that it is difficult for public sector LPs to warrant that they will not be forced to disclose portfolio company information in the future. It is of course this area where the confidentiality provisions have much more teeth as a legal defence, as the public's "right to know" is effectively counterbalanced by potential damage at the company level.

For those players preparing to raise funds in 2005, how important will it be to tighten procedures and confidentiality restrictions within fund documents?

Hamill: It is not possible to contract out of the Act but it will be important to tighten procedures in one substantive and one procedural respect. On the substantive side, it is important to designate information as being provided in confidence and/or specifying this information as a trade secret and/or the disclosure of which would or would be likely to prejudice the commercial interests of any person may assist in resisting a request for disclosure. On the procedural side, it is possible to contract to require the public authority to consult the provider of that information before taking a decision whether or not to disclose the information sought under the Act. The inclusion of such a provision will give the opportunity to influence any decision and hopefully will prevent unconsidered and ill considered decisions to disclose. In this context, the public authority can be asked to demonstrate that it has robust procedures for giving proper consideration to FOI Act requests.

DePonte: No matter how interpretations of the law evolve, if you don't take these steps now you are less likely to prevail in the future. The simple fact of marking data "Trade Secret and Confidential" goes immediately toward establishing intent.

Guen: The concern over disclosure is on a portfolio basis. GPs to date have had different types of investors in their funds, including investors that have third party capital. Those investors have reporting and investment guidelines to satisfy with their clients and as a result they do very deep due diligence. The 'most favoured nation' clause means that if I am going to disclose the full details on the portfolio companies to you, I will effectively disclose it to all investors who are in my fund. What information regulation does is bias one form of investor, because you cannot trigger the most favoured nation clause as it may compromise a portfolio company. Don't forget, private equity firms own completely private, partially public and sometimes fully public companies. The information that investors in these funds have access to is very sensitive. Investors can and will ask what a GP is thinking, how it is thinking, who they like in the management team, where the numbers are going, what the business plan is, what the next acquisition is – all very probing questions. That type of information in the public hands is a disaster. It compromises return and it is a lose-lose all round.

How concerning is the retrospective provision of the Act? Is it possible that information from earlier funds may be exposed?

Hamill: This is a concern and the more so because the information will likely have been provided on the assumption that it would remain confidential but without any contractual provision to that effect. In addition, in some circumstances it may be more difficult to sustain an argument for withholding information if some time has elapsed since that information was provided to the public authority – if the transaction in connection with which the information was provided has been completed, for example.

DePonte: The issue is a concern. I don't know if previous partnership agreements can be amended (with consent of the investors, of course) to include confidentiality provisions in those instances, but it is well worth consideration.

LPs that are not entirely familiar with disclosure requirements and obligations may run the risk of inadvertently disclosing sensitive information and breaching their obligations of confidentiality. How essential is it to establish effective communication between GPs and LPs? Can this reduce the risk inadvertent disclosure?

Guen: The premise that assets for public-oriented capital should not be hidden is fair. But the dynamic of what the disclosure entails is new to the UK private equity community. The British Venture Capital Association has stepped forward and encouraged GPs to contact those investors that fall under the guidelines and to open dialogue with them so that GPs understand the LP's position, and LPs understand the GP's position. Both parties need to work together to understand what is involved, because the biggest risk here is that an innocent mistake will be made.

It is impressive to see the industry stepping up in so many folds, whether it is having discussions with the government for clarification, whether it's working with investors so they are aware of their position, or whether it is working with GPs to encourage them and give them ideas. The BVCA has almost created a helpline for the industry.

DePonte: The concept of non-disclosure agreements and confidentiality of data is well established in the investment industry. It would seem to me that the risk of inadvertent disclosure is minimal with institutional investors but actually a higher risk with certain unsophisticated High Net Worth individuals investing small amounts who don't understand the rules of the game.

Hamill: It is essential to establish effective communication between public authorities and those who provide information to public authorities. Effective communication can reduce the risk of inadvertent disclosure.

What steps – including legal measures – can GPs take to avoid or counteract embarrassment and commercial disadvantage that might arise through the release of sensitive information by their investors? ▸▸

Hamill: The answer is to incorporate contractual provisions by establishing effective communication with public authorities. In addition, the argument for confidentiality will be strengthened if private law actions for breach of confidence are brought and succeed. One or two well-publicised cases of a public authority being required to pay compensation for wrongful disclosure will act as a deterrent to others.

DePonte: Counteracting situations after disclosure has occurred – given the spread and persistence of modern communications – is a lost cause. As far as avoiding the issue goes, a consistent position with LPs and with documentation is the best defense.

Guen: Some GPs opt for a more practical route and eliminate investors that carry disclosure risk. Those who already have those investors in their funds either try to have them removed through secondaries, which we've seen in the US, or they sit down with them and try to establish some guidelines. The process needs to be clearly managed. If it is topline information in question, most GPs are comfortable for that to be released. But if the information could compromise the GP, most GPs will prefer not to include the profile investor, at which point that LP doesn't have access to the diversification or quality it is seeking, which impacts its returns. GPs are unlikely to compromise on this point. Whether fundraising is difficult or not, if an LP is likely to compromise the performance of a portfolio, the GP will probably not permit them access to the fund.

How can institutional investors from whom information is requested ensure that they are not in breach of FOI obligations while staying active investors in the private equity funds of their choice?

Hamill: Public authorities should have in place robust procedures to achieve compliance with the Act and they should train relevant staff to give careful consideration to requests for disclosure before responding to such requests. Public authorities should be encouraged to take legal advice where necessary.

Guen: Most investors are sophisticated; that's part of being an accredited investor. If journalists write incorrect information for release in the general market, investors may start outwardly discrediting particular publications. Although I don't envisage the same type of intensity in the UK that we've seen in the US, I guess it is theoretically possible that one of the UK tabloids may venture down the same road as elements of the US press. The issue at hand is what the disclosure might entail and whether a fund is comfortable having an investor within it open up information to the public. This is private equity; if it was public equity, we'd all be public fund managers.

DePonte: In the US, investors have basically resisted many requests through the courts until clear precedent was established. One of the goals of this tactic – even when cases have been lost – has been to demonstrate to GPs that they understand their concerns and are only reluctantly providing data. At the end of the day, however, those GPs with the market clout to avoid public money and with strong concerns over disclosure have decided simply to forgo all public money, no matter how the LP has conducted itself.

Is the legislation likely to strain the relationship between institutional investors and fund managers? If so, to what extent will this impact UK fundraising in the future?

DePonte: It's possible that the legislation could strain relationships depending upon how the situation plays out. However, the way things have played out in the US is also a reflection of a specific environment.

In general, the release of portfolio company information is a much bigger issue for venture capital GPs than it is for buyout GPs, given the level of development of their companies. To date, only one buyout fund has decided to ban public sector GPs, though many more VCs have done so. And the VCs that have done so have basically been high profile firms that have been shrinking their latest funds dramatically in size after the burst of the internet bubble and were already having difficulty making allocations to investors for what was very limited room in their new funds. Since all of these funds were dramatically oversubscribed, there was no real impact on overall fundraising for private equity. The real impact was on the ability of public sector investors to access certain funds. And if there is any trend toward disclosure of portfolio company data in the UK, public sector investors (however that term is finally defined) may have even more problems accessing US venture capital funds.

Guen: The two principles in private equity are alignment of interest and most favoured nation. These types of Information Acts, if not properly managed, compromise those two pillars. The industry will have to protect those pillars at all costs. That is not to say that some visibility is impossible. But alignment and most favoured nation are very important points, because GPs need to be able to execute their work and generate the best performance possible without that process being open to the public. Keep in mind that the work of GPs is monitored by their investors, so there are contracts and guidelines that are set. Also, the investors are all treated equally, so they each carry weight when ensuring that there is discipline in the process. That discipline is respected on both sides, by the GP and the LP. So the Information Act in itself does not bother me, but its potential effects on the surrounding issues is a concern. ■