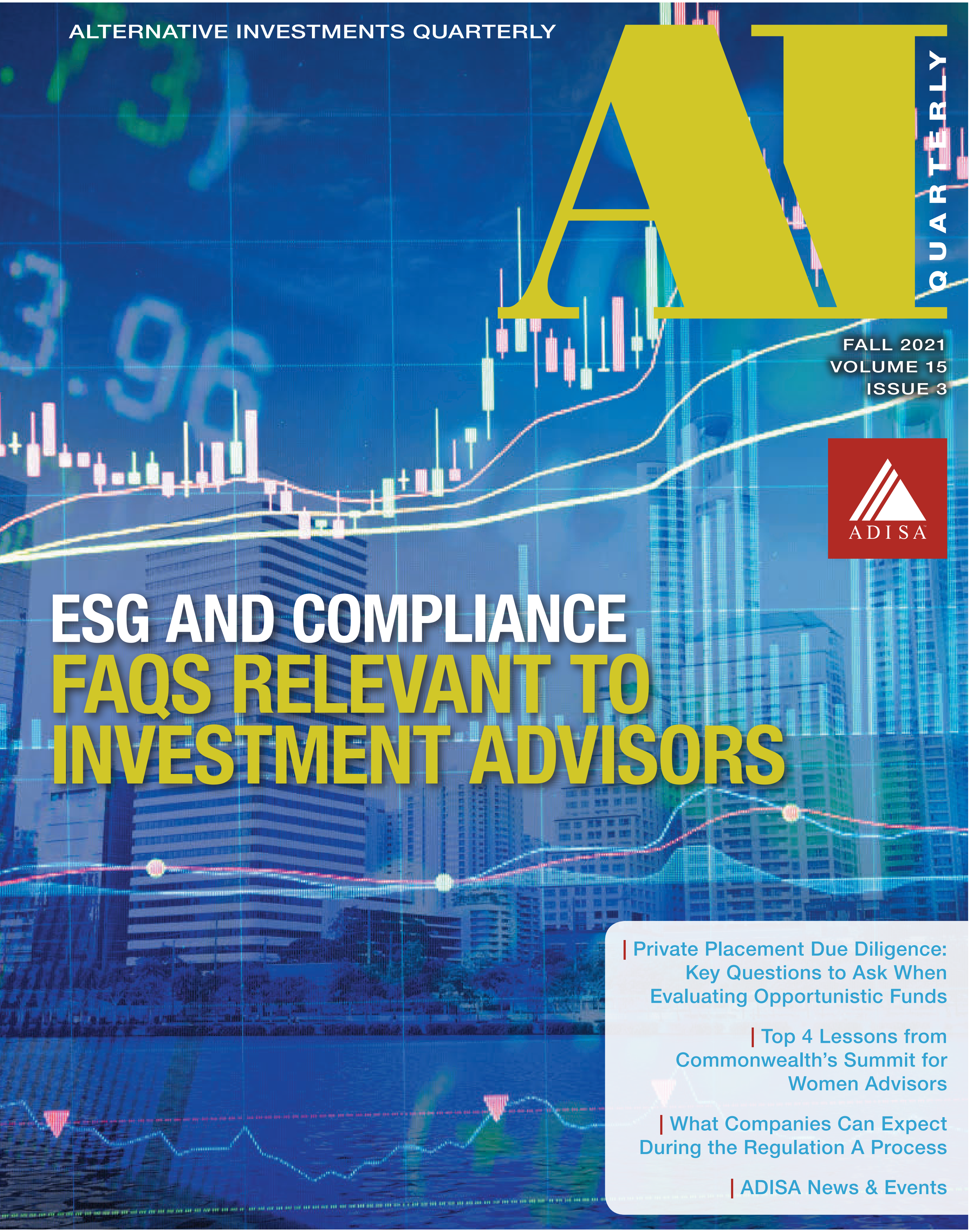

ALTERNATIVE INVESTMENTS QUARTERLY

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ADISA

ESG AND COMPLIANCE
FAQS RELEVANT TO INVESTMENT ADVISORS

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CONTACT INFORMATION

ADISA | 10401 N Meridian St., Suite 202 | Indianapolis, IN 46290

Direct: 317.663.4180 | Toll Free: 866.353.8422

Fax: 317.815.0871 | E-mail: adisa@adisa.org

John Harrison, DBA | Executive Director | 317.663.4172

Tanisha Bibbs | Director of Event Planning | 317.663.4174

Jennifer Fitzgerald | Director of Marketing | 317.663.4175

Erin Balcerzak | Membership & Data Systems Manager | 317.663.4183

adisa.org

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Group Publisher
Tamara Perry-Lunardo

Editor
Adam Turner

Project Manager
Michelle Hughes

Project Leader
Robert Shafer

Project Coordinator
Hope Swindler

Designer
Manish Dutt Sharma

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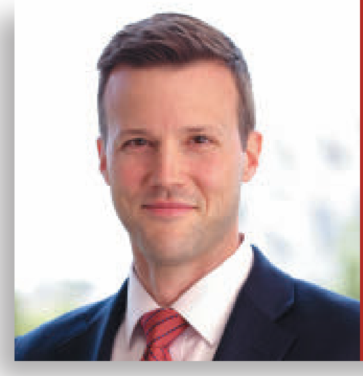

President's Letter

Staying True to Our Core Values while Looking toward the Future

By Matthew Malone
2021 ADISA President

ADISA's core values—Education, Networking and Advocacy—are the three pillars that have defined the organization over the course of nearly two decades serving our members. As I shared in my letter earlier this year, ADISA has engaged an outside firm to support its long-term strategic plan—laying the foundations for continued growth and increased value to its members. After a discovery process over the last few months that included interviews with members from a variety of firms and backgrounds, consulting with industry leaders and other market research, the Board gathered in July to lay out a long-term strategic vision. Although much has changed since the early days (remember TICA?), we remain committed to our three core values to anchor our future plans:

Education remains the backbone of ADISA's value proposition—the organization will remain focused on delivering high quality conferences with best-in-class content and speakers. Going forward, we will look to bolster our online presence and provide additional educational opportunities for our members.

Networking across industry firms, roles and asset classes is what brings the ADISA membership together. ADISA has always welcomed new members and will continue to be on the cutting edge of new investment offerings. While we support additional opportunities for digital interaction, in-person events with ample networking opportunities will remain the cornerstone of ADISA's value proposition.

Advocacy is critical to supporting our members' businesses and strengthening our brand in the market. As the voice of the alternative and direct investment industry, ADISA maintains an active presence in Washington, D.C., advocating on behalf of its members and industry relationships, building coalitions, and tirelessly seeding to educate our governmental leaders and authorities. ADISA will maintain a very targeted advocacy strategy focused on discrete issues of importance to its members while looking for ways to further engage the broader membership in our efforts.

With these values as a starting point, the Board identified several strategic growth areas for the future. We recognize the industry continues to evolve—in the ways people transact, the types of investments of interest to our members, and the regulatory outlook among other things. In addition, the strong growth of our membership continues to place additional demands on our association infrastructure. While we continue to refine our long-term plans, the Board has identified four areas of focus going forward to strengthen the organization:

- Enhancing connectivity and communications—on the heels of the launch of our new website earlier this year, we will look to leverage various digital media to enhance connectivity and communications among members throughout the year.
- Optimizing infrastructure—as the organization has grown, so has our volunteer base and demands on our staff. We will look to implement new processes and structures to (i) optimize the volunteer experience, identify and train future leaders and appropriately incentivize and (ii) align our staffing model and activities with ADISA's long-term strategic goals.

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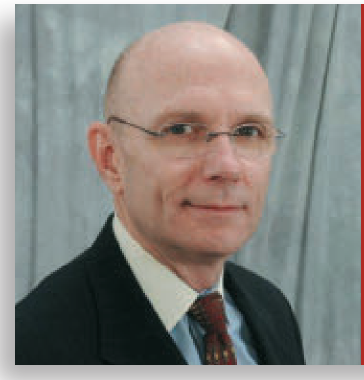

Executive Director's Letter

Reconciling Complexity with Complication

By John Harrison, DBA
ADISA Executive Director

I get asked a lot of questions about the U.S. budgeting process and particularly how that might relate to taxation, mostly under concern for the Tax Code section involving 1031 Like-kind Exchanges. First, I'll try to shed a little light on the budgeting process (little might be the key word), and then tie that in with the 1031 provision and why that provision, in my view, will live long and prosper.

Like many things in organizations, including government, a process often goes along on its own until someone takes advantage. There was only a Budget Control Act (of 1921, the same year as the tax code establishing 1031s, by the way), which basically established the OMB and charged it with drafting a budget. There was not much official "budget process" for the U.S. Government beyond that until funds appropriated by Congress were "impounded" by the Executive Branch (per Richard Nixon during his waning days before resignation). That set off a need for a more stringent process. This reminds me of the odd clause in an organization's bylaws that gets informally called the "old Joe Jones Rule," which might have been established to counteract some maneuver from old Joe Jones. Thus, we could call the budget process the old Richard Nixon Rule, but it's officially named the Congressional Budget Act of 1974. That Act outlines the current process including an expedited process called Reconciliation whereby there is a fast(er) track to reconciling a budget bill with existing law, which always needs to happen with such a bill, so why that name for the method?

Reconciliation, as you know already, is exempt from the filibuster requirement of a supermajority of 60 in the Senate, meaning a bill using Reconciliation can slide through on a simple majority of 51 (or 50 plus the VP). Cleverly though, Reconciliation has limits around it: a max of three per year, one for spending, one for revenue, and one for debt limit (and on the debt limit, there's a further Byrd Rule—you should remember old Robert Byrd of West Virginia, he was a classic—that restricts a bill from raising the deficit after 10 years or make any change to Social Security). As you might guess, the administration of a three-part rule with sub-rules can get tricky, so the Senate Parliamentarian gets to slice, dice and make judgement on what can count in Reconciliation (subject to a possible Senate vote to overrule the parliamentarian).

This brings us to the complex gamesmanship of today. And if you don't appreciate gamesmanship and complexity, then politics will be depressing (note complexity, not complication; complication just means a lot of steps to solve, whereas complexity may have no real solution). Embrace the complexity and strive for complication, and you might survive (and always cherish complex democracy over "all the other forms that have been tried…"). What we have now left in Reconciliation is a budget for FY 2022, plus the ability to amend those with revisions (the revisions though have to come out of committee and possibly hundreds of amendments on the Senate Floor, all by majority vote).

As of this writing, the Senate has passed the FY2022 budget outline and has begun to write a reconciliation bill, but an infrastructure piece has also been passed in the standard bipartisan manner, that is, not using Reconciliation. That piece is the $1 trillion package called the INVEST in America Act, which is composed about half of what would traditionally be called infrastructure. Of course, the House would need to approve that bill to move it along and will cut its summer recess short next week to either consider that or the FY2022 budget resolution first. Look for continued jockeying on whether the House should pass or delay the bipartisan bill or try to move the bigger wish list bill ($3.5 trillion) through the Reconciliation process.

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ESG and Compliance FAQs Relevant to Investment Advisors

By Wayne Davis
Chair of Tannenbaum Helpern's Investment Management Practice

Manav Chopra
Associate at Tannenbaum Helpern's Investment Management Practice

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As government organizations, regulators and end investors have become increasingly focused on the degree to which investment firms are incorporating ESG initiatives and risks into their investment analysis and selection processes. It is critical that investment advisors understand the impact of ESG on the industry and are able to identify and satisfy related obligations, including, but not limited to, with respect to their offering document disclosures. Below, we answer several common questions relevant to investment advisors on the topic of ESG implementation:

Why is ESG investing relevant?

ESG is an acronym that refers to "environmental, social and governance" as categories of issues to be considered in the context of corporate operations and governance, as well as investors' investment strategies. There are many terms used to describe various components of ESG such as "socially responsible investing," "sustainable," "green," "ethical," "impact" or "good governance."

In its April 2021 ESG Risk Alert, the SEC recently noted that investor demand for investment products and financial services that incorporate ESG principles has substantially increased in recent years. And certain studies, including the U.S. Government Accountability Office's July 2020 report on ESG, indicate institutional investors generally agree that ESG issues can have a substantial effect on a company's long-term financial performance.

As countries continue to push toward mandatory corporate responsibility disclosures and investors emphasize sustainable and responsible investing, investment advisors have increasingly looked to incorporate ESG into their investment programs and public disclosures.

What are common ESG factors to consider?

While there is not yet a universally accepted definition for what constitutes ESG, there are commonly accepted categories of topics that are considered a part of ESG. The CFA Institute published an ESG investing guide in 2015 that included a robust list of ESG categories. Below is a non-exhaustive list:

- "Environmental" issues, which include climate change and carbon emissions, air and water pollution, biodiversity, deforestation, energy efficiency, waste management, and water scarcity.

- “Social” concerns, which include customer satisfaction, data protection and privacy, diversity and inclusion, employee engagement, community relations, human rights, and labor standards.
- “Governance” considerations, which include board composition, audit committee structure, bribery and corruption, executive compensation, compensation alignment, lobbying, and political contributions.

Where do the SEC and other regulatory and quasi-regulatory bodies stand on ESG?

The SEC staff has made it clear that it will examine investment firms to evaluate whether they are accurately disclosing their ESG investment approaches and whether such firms have adopted and implemented policies, procedures and practices that align with their ESG-related disclosures. Most notably, the SEC Enforcement Division’s Examination Priorities for 2020 and 2021 have both included a focus on ESG investing.

In April 2021, the SEC provided a risk alert for investment advisors on ESG implementation, providing observations of deficiencies and internal control weaknesses based on their examinations of investment advisors and funds regarding ESG investing.

ESG frameworks have also been recommended by, among other organizations, the Task Force on Climate-related Financial Disclosures (TCFD) (See Recommendations of the Task Force on Climate-related Financial Disclosures Final Report. June 2017 and the Sustainability Accounting Standards Board’s Conceptual Framework, 2017).

Is there a mandatory ESG reporting/disclosure framework from the SEC at this time?

There is no mandatory disclosure regime for investment firms at this time, but the SEC is currently working to provide a more global ESG reporting framework. The SEC has, however, previously provided guidance on proper disclosure with respect to climate change considerations, which should be considered when a firm is contemplating how best to make any public, ESG-related disclosures.

Do investment advisors need a special set of policies and procedures for ESG?

No—all firms need not have a separate set of policies and procedures for any investment strategy. Rather, each firm’s policies and procedures should be designed around the specific investment processes and strategies the firm employs, whatever those strategies may be. The SEC identifies as an example of a good practice at firms with “multiple ESG investing approaches” to have “separate specialized portfolio management personnel.”

What is the ultimate expectation of investment firms with respect to incorporating ESG?

The SEC understands investment firms may approach ESG investing in various ways. In making investment decisions, some advisors and funds consider ESG factors alongside many other factors, such as macroeconomic trends or company-specific factors like a price-to-earnings ratio, to seek to enhance performance and manage investment risks. Others focus on ESG practices because they believe investments with favorable ESG profiles may provide higher returns or result in better ESG-related outcomes.

The SEC has publicly stated that it will not second-guess investment decisions through any proprietary scoring system; but rather, it will attempt to understand whether investment firms are adhering to their own ESG claims. If those ESG claims include relying on proprietary or third-party scoring services, the staff will want to understand the due diligence the investment adviser has done on that scoring service, as well as the work the firm does to ensure its adherence to the framework it has chosen.

What are examples of quantitative tools and methods that can be used as part of ESG analysis?

There are a number of different approaches for incorporating ESG into investment and risk analysis, one of which includes assigning certain ESG metrics a “risk score” when evaluating companies for investment. For example, as one of a growing number of organizations moving into the space, Bloomberg’s Sustainable Finance tool provides scores from third party rating agencies and an overview of a company from an ESG perspective both historically and relative to peers, data that can be incorporated by a firm's risk or investment teams when formulating investment strategy. It evaluates companies on an annual basis, collecting public ESG information disclosed by companies through corporate social responsibility (CSR) or sustainability reports, annual reports and websites, and other public sources, as well as through company direct contact. Bloomberg offers ESG data service with 10+ years of history for more than 11,800 companies in over 100 countries, organized into 2,000 fields.

Other commonly used ESG investment strategies may utilize combinations of one or all of the following: exclusionary screening, best-in-class selection, thematic investing, active ownership and impact investing.

Can ESG analysis differ by asset class (equities, fixed income, credit, etc.)?

Yes. While most of the discourse on ESG issues has been focused on listed equities, the practice of considering ESG issues with respect to other asset classes, most notably fixed income, is growing. The CFA Institute noted that in fixed income, ESG issues are mostly about risk. ESG analysis in fixed income can include consideration of an issuer's carbon emissions rates, labor relations and history of governance-related irregularities. More specifically, as part of standard due diligence with respect to an emerging-market high-yield corporate debt issue, investors are well-advised to take into consideration the issuers' full corporate structure and governance practices.

What are some initial steps investment firms can take when implementing ESG into their review and investment processes to ensure compliance with SEC guidance?

- Principals at investment adviser firms and other investment firms should review any existing disclosures about climate change and other ESG-related policies, whether they are filed in SEC reports (i.e. 10-K, 10-Q, and 8-Ks), sustainability reports or any reports required by other existing rules. Continue to monitor regulatory updates and new frameworks as they are distributed to industry participants.
- Develop and maintain policies, procedures and practices that appeared to be reasonably designed in view of the investment firm's particular approaches to ESG investing. The SEC observed that some firms looked to incorporate detailed investment policies and procedures that addressed ESG investing, including specific documentation to be completed at various stages of the investment process (e.g., research, due diligence, selection and monitoring).
- Have compliance personnel fully integrated into the firm's ESG-related processes. Where compliance personnel were integrated into firms' ESG-related processes and more knowledgeable about firms' ESG approaches and practices, the SEC noticed that those firms were more likely to avoid materially misleading claims in their ESG-related marketing materials and other client/investor-facing documents.
- The compliance personnel should provide more meaningful reviews of firms' public disclosures and marketing materials, test the adequacy and specificity of existing ESG-related policies and procedures, and test the adequacy of documentation of ESG-related investment decisions and adherence to clients' investment preferences. ▲

STAYING TRUE TO...

Continued from page 3

- Formalizing diversity and inclusion—while ADISA has always supported members from all backgrounds, we will look to develop more formal ways of incorporating an inclusive culture in all aspects of our operations.
- Invest in member expansion—ADISA has always been a leader in bringing new investment ideas and structures to a broad marketplace of distribution partners and advisors and will look to invest more resources in expanding new offerings to its members.

On behalf of ADISA's Board of Directors, we are excited to embark on the beginning of a new chapter in ADISA's journey and look forward to seeing everyone at the upcoming conference! ▲

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Private Placement Due Diligence: Key Questions to Ask When Evaluating Opportunistic Funds

By Russell Putnam
Co-President, FactRight

Russell's work experience in the financial services industry, and as an attorney, make him uniquely qualified to provide due diligence services on alternative investments. Russell contributes as a due diligence analyst for FactRight to ensure that broker dealers have identified key risks in alternative investments. Russell works with broker dealers and product sponsors to provide clear analysis of complex strategies, governance provisions, fee structures, regulatory matters, and tax benefits and consequences.

The economic fallout and reduction in travel caused by the COVID-19 pandemic have caused significant dislocation within the hospitality sector. In doing so, this has created opportunities for investors to acquire hotel investments from distressed sellers and lenders at attractive prices. Over the last year, our team has reviewed a number of private opportunistic hospitality funds. These programs often provide the potential for attractive returns. Still, they include significant risks given the distressed nature of the targeted assets and the possibility that market conditions or asset-specific recoveries are delayed or never come to fruition.

This post will touch on some of the common themes we've seen with opportunistic funds over the last year and provide questions you should be asking when evaluating whether an opportunistic fund is appropriate for your investment platform.

Does management have experience in the hospitality sector?

One common risk we've come across with opportunistic programs is that many product sponsors are making their first foray into the hospitality sector but do not have a meaningful track record of acquiring, managing or disposing of hotel properties, let alone distressed properties and debt. In our previous post, the Top Five Attributes of a Successful Alternative Investments Sponsor, we touched on how a strong management team with significant experience in the targeted investment strategy class is imperative. Here are a couple of questions you should be zeroing in on:

- Does the sponsor have any track record of investing in hotels, or other asset classes, across different economic cycles or in challenging markets?

- If a sponsor is new to the hospitality sector, who have they hired, or who are they partnering with, that has experience with hospitality transactions and operations?
- How broad is the fund's investment strategy?

We've found that many opportunistic funds have a relatively broad investment strategy. These investments usually include equity and debt, may be located throughout the capital stack, and often include non-performing loans, rescue capital, and assets involved in bankruptcy or reorganization proceedings. Many opportunistic funds can also target development projects, including projects that have previously failed or stalled. Wide-ranging investment criteria provide management with the flexibility to pursue a variety of opportunities as they arise. Still, the focus on distressed assets also includes a number of risks, including the pace of market recoveries, unforeseen property defects, and the potential need for additional capital expenditures and maintenance. A few questions we like to ask when evaluating whether a strategy is reasonable include the following:

- What type of experience does the management team have with workouts, investing in distressed debt positions, or navigating bankruptcy and foreclosure proceedings?
- What type of experience does management have with value-add or renovation projects?
- Is the fund well positioned to deploy capital in quality assets at attractive prices?

Opportunistic funds rely on a manager's ability to source and acquire non-performing assets below their inherent values, which can be stabilized and brought to the highest value through various means, including improved market conditions, capital improvements and improved property management. We expect there to be significant competition in the market for distressed hospitality investments. This could potentially drive-up prices and cause some programs to buy lower-quality assets with a higher risk profile.

In addition, delays in deploying capital could significantly impact investor returns. Capital deployment for many opportunistic funds we've looked at has been slow. We've had a few sponsors express to us that they do not expect to see attractive investment opportunities until early 2022, as government stimulus and lender forbearances have extended a temporary lifeline to many distressed assets, causing a lack of current opportunities.

As discussed in our prior post, successful alternative investment sponsors typically have seasoned leaders who have extensive industry relationships and hold an edge in terms of sourcing and negotiating opportunities. Given these considerations, it's important to evaluate how a sponsor sources investment opportunities and what sets the management team and program apart from its competitors.

Is the distribution waterfall reasonable given the strategy?

In our previous post on evaluating alignment of interests in private placements, we discussed the importance of assessing whether investors are being compensated adequately for the risk they are taking by investing in a particular structure or strategy. Opportunistic programs that we've seen over the last year have included various waterfall structures, with preferred returns ranging anywhere from 6% to 10%. Some of these structures include escalating payments to the manager upon investors reaching various return hurdles, which are often reasonable but could also limit investor upside to some extent.

We have also come across a few programs that calculate the waterfall on an individual investment basis rather than an aggregate basis. We typically view an investment-by-investment calculation less favorably because the manager will receive distributions with respect to a particular investment even though investors have not received a return of capital or preferred return on other investments or in the aggregate. It's also possible that the individual investment calculation could incentivize the manager to take greater risks, trying to hit home runs, knowing that underperforming assets will not impact its participation in investments that do perform well.

We also want to understand the program's anticipated timeline for distributions, given they are typically targeting underperforming assets and assets that require capital improvements. For example, some programs don't intend to make distributions until most of the portfolio is stabilized. Other programs don't project making distributions until a liquidity event.

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Top 4 Lessons from Commonwealth's Summit for Women Advisors

By Scarlett Abraham Clarke
Chief Diversity and Inclusion Officer, Commonwealth Financial Network

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What You Need to Know

- Research shows that for firms that want to be innovative and transformative, diversity, equity and inclusion is mission critical.
- Firms need to build an accommodative, equitable work environment where people feel like they can have both a seat and a voice at the table.
- Diversity, equity and inclusion must be prioritized as a strategic lever.

Activist and author Verna Myers defines "diversity" as "being invited to the party" and "inclusion" as "being pulled onto the dance floor."

This analogy often comes to mind in my work as chief diversity and inclusion officer at Commonwealth Financial Network. I also expand on it by adding "belonging" as "having a say in the choice of music played."

These characterizations underpinned our 2021 Summit for Women Advisors, held virtually on June 23 and 24. The keystone event of our Women of Commonwealth initiative, the conference is aimed at promoting growth, influencing change and igniting the advancement of women in an evolving field.

This year's event centered on the overarching ideas of community and inclusion. In keeping with these themes, we offered two sessions that sparked open dialogue around the topics of diversity, equity and inclusion (DEI).

Guest speakers from Eaton Vance/Calvert joined us in a discussion on why DEI is important to corporate strength and driving change, while Commonwealth's executive leadership delved into how to lead with inclusion to create a sense of belonging, which touched on steps Commonwealth is taking to ingrain DEI into our corporate DNA.

A few key takeaways emerged from these conversations:

1. DEI starts at home.

Research shows that for firms that want to be innovative and transformative, DEI is mission critical.

Our firm has a history of being well-intentioned. But to create and sustain an environment where everyone feels fully heard and fairly treated, we need to evolve from being well-intentioned to intentional by investing in infrastructure that's sustainable.

At a high level, we're looking at behaviors that yield equitable benefits for our staff, advisors and partners, as well as the communities we serve, and we're taking action to integrate inclusive practices holistically.

2. We need to invest in women.

Many female advisors have told us that this financial career path is well-suited for women. Yet the truth is, women are still heavily underrepresented in the field, making up roughly 18% of the industry's advisors.

Women make up 20% of our advisors at Commonwealth—this is a bit above the average, but we still have a long way to go.

According to our female advisors, fostering development is a critical area where we're being more purposeful. In partnership with an organization called Spark, we've designed a new mentorship pilot program to roll out this fall that will involve our women advisors in mentorship roles.

It's an important step forward from increasing awareness to building an infrastructure that directly helps women advisors succeed.

Additionally, we're realizing that people need to recognize themselves in a community to want to be part of it. Therefore, we're tapping the tremendous network of female advisors we already have to tell their stories through our public site, social media and other channels.

3. Inclusion is deliberate.

It's crucial to create an accommodative and equitable work environment where people feel like they can bring their whole person, have both a seat and a voice at the table, and feel heard.

There are systemic barriers we need to break down to do that, and further complicating things, we need to do it through the lens of COVID-19 and displaced racism. Both of these pandemics have been sobering reminders of the ongoing disparities and have furthered the gap for women and people of color.

4. Holding ourselves accountable is critical.

DEI can't be simply "nice to have"—it must be prioritized as a strategic lever for how we do business. To that end, we've been making gradual but significant strides here. In the past year, we've:

- Increased diversity at the leadership level with key hires;
- Improved representational diversity within our internship program;
- Rolled out a digital DEI Resource Hub;
- Introduced a DEI Speaker and "Just Ask" Panel series, giving staff a safe space to share their experiences.

We also launched employee resource groups giving women, people of color, Asian American and Pacific Islanders, Hispanic and Latin American, and LGBTQIA+ staff the opportunity to both represent themselves and feel represented.

While we're still in the early stages of change, the opportunity to have meaningful—and sometimes uncomfortable—conversations during these summits and at our firm is refreshing. We have a long road ahead, but it's a journey, not a destination. ▲

PRIVATE PLACEMENT DUE...

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For more information on evaluating distribution waterfalls, check out part one and part two of our prior posts on how nuances in waterfall structure impact investor returns.

Does the anticipated hold period allow the program sufficient time to execute its investment strategy?

Ultimately, the success of an opportunistic hospitality fund will depend largely on the asset acquisition prices, recovery in travel, and related increases in occupancies and RevPAR. According to a recent article, CBRE has forecasted U.S. hotel average occupancy rates to be 65.7% in 2025, approximately 98% of pre-pandemic levels, with RevPAR projected at 99% of pre-pandemic levels by 2024 and exceeding pre-pandemic levels by 2025. As such, when evaluating an opportunistic fund's exit strategy, we want to ask whether the liquidity time frame appears reasonable based on economic forecasts for the hospitality sector and whether the fund has flexibility if the market recovery is delayed or comes under additional stress. We also want to ask whether the anticipated liquidity time period provides management with enough time to complete its operational and capital improvements and whether management has any history of achieving liquidity events on a similar time frame.

What's my next step?

Hopefully, this post has provided you with a little bit of guidance on questions you should be asking when evaluating an opportunistic fund. If you're looking for more information on opportunistic funds or private placement due diligence, please reach out to our team of analysts. In addition, you can get more information on the strengths and risks of specific opportunistic funds on the FactRight Report Center. ▲

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What Companies Can Expect During the Regulation A Process

By Clark Warthen
Kaplan Voekler Cunningham & Frank

Clark Warthen is an attorney at Kaplan Voekler Cunningham & Frank, PLC specializing in Reg A offerings and other corporate and securities matters. He began his career at Simpson Thacher & Bartlett LLP in New York City after graduating from the University of Virginia School of Law and Dartmouth College. To discuss the Reg A process and your business needs, you can reach Mr. Warthen at cwarthen@kv-legal.com or 804-823-4019.

Regulation A (Reg A) allows eligible companies to access investment capital without bearing the costs of a full public offering. Yet even in this streamlined process, companies should be prepared for substantial scrutiny from the Securities and Exchange Commission (SEC).

A key to successfully maximizing Reg A's advantages is full awareness by a company's management team that the company will face disclosure-related and other questions from SEC staff. Failing to anticipate and adequately address these questions may add weeks and months to the Reg A qualification process.

Preparation is key. Companies that successfully—and rapidly—navigate the Reg A qualification process often spend months reviewing policies and procedures and their financial models before making an initial Reg A filing. They also work with outside counsel who are intimately familiar with the Reg A process and have a keen understanding of the kinds of issues most likely to trigger questions from the SEC.

The Nuts and Bolts

Reg A has two offering tiers: Tier 1, for offerings of up to $20 million in a 12-month period; and Tier 2, for offerings of up to $75 million in a 12-month period. For offerings of up to $20 million, companies can elect to proceed under the requirements for either Tier 1 or Tier 2.

Certain basic requirements apply to both Tier 1 and Tier 2 offerings, including company eligibility requirements, bad actor disqualification provisions, disclosure requirements, and other matters. Additional requirements apply to Tier 2 offerings, including limitations on the amount a non-accredited investor may invest, requirements for audited financial statements and the filing of ongoing reports. Issuers in Tier 2 offerings are not required to register or qualify their offerings with state securities regulators.

To begin the qualification process, issuer's counsel prepares and files an initial offering statement on Form 1-A, which includes an offering circular. The offering circular serves as the primary disclosure document. Within 30 days, the SEC will respond with initial comments on the offering disclosures or notify the issuer that the SEC staff had no comments.

No comment letters do occur, but the SEC usually has some questions and comments. The questions and comments are not designed to weigh whether an offering is a strong investment. Instead, the SEC's questions and comments are aimed at to ensuring that the company has complied with the SEC's legal requirements and that the company's disclosures are accurate, complete and can be easily understood by potential investors.

The SEC will occasionally raise points about the company's eligibility to make an offering. More often, comments focus on the clarity of the disclosure, with SEC officials asking for additional information regarding assertions made in the offering circular.

Timeline

This is where companies that have not carefully planned ahead can face roadblocks in bringing their Reg A offering to market. Technically, the SEC's comment and response process could continue indefinitely if the SEC is not satisfied that a company is providing sufficient answers to its questions. In practice, companies have experienced lengthy delays and have suspended their offerings because of poor responses to SEC comments.

A carefully crafted and complete disclosure filing—one that includes critical information about the company and the security being offered—can help ensure that the process remains on track. If and when SEC questions and comments arise, the company's management team should remain focused on the process and work closely with experienced counsel to provide serious and sophisticated answers to the queries.

Reg A, in its present form, was created by Congress in 2012. Early on, we advised clients to expect a process of 120 to 180 days. We now tell clients to budget 90 days for the Reg A process. This includes preparation of the initial offering circular, as well as the 60-day comment and response period. In some cases, we have seen deals move through the commission in as little as 45 days, depending on SEC workload and timing.

Why Experience Matters

This accelerated pace is occurring because the SEC is more familiar with the issues that may trigger concerns in a Reg A filing. Attorneys who specialize in securities law and Reg A offerings are now better able to anticipate comments and prepare clients in advance.

In addition, Reg A offerings may include more complex financial structures that require specialized legal knowledge. For instance, Reg A bond offerings require additional governance features, controls and an indenture that must meet certain substantive requirements under federal law. This requires counsel to have knowledge of securities law, the provisions of the Trust Indenture Act of 1939, as well as the Reg A process.

Reg A also has unique logistical requirements that may not be readily apparent to counsel and companies new to the process. For instance, transfer agents or bond trustees are required, as are financial printers with expertise in the SEC's EDGAR system. Establishing relationships with providers in these areas can be difficult. An experienced Reg A law firm can assist in locating service providers in these areas and in negotiating agreements with them.

Reg A can provide a fast and efficient means for raising investment capital. To maximize its benefits, a company must carefully prepare and select knowledgeable counsel who can ensure that an offering is moving in a highly efficient manner. To learn more about the Reg A process, contact us for a consultation. ▲

RECONCILING COMPLEXITY WITH...

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As usual, the spending in the $1 trillion infrastructure bill that passed the Senate has some tax offsets to try to help pay for the spending ("pay-fors"). Those offsets do not include any change to the 1031 Like-kind Exchange provision of the Tax Code. The proposed budget resolution does have that and other major tax increases. You have read the math in last issue's *AIQ* column about what an insignificant pay-for any curtailment of the 1031 would be compared to its contribution to the economy (basically, a $2 bn pay-for that would cost $55 bn and endanger 500k jobs). And, to drive the point home, the Senate approved via voice vote a non-binding budget amendment (from Sen. John Kennedy, Republican from Louisiana) to leave 1031s alone entirely. This though, because of where we are in the middle of the process, is an expression of sentiment since it does not yet have the force of law.

So, what's playing out now, and will likely play out through most of this autumn is the struggle in the House over which spending bill to be considered first, and then possibly send it back to the Senate with changes which could involve Reconciliation. There is no doubt there will be further tax changes—read increases, but it is unlikely they would involve anything to do with 1031s; the math is not complicated enough to help the complexity. ▲

ADISA CONTINUES FIGHT TO PRESERVE SECTION 1031 EXCHANGES

Over the course of the summer, ADISA staff and leadership has met with Congressional staff, continuing our outreach on the importance of 1031 Like-Kind Exchanges. Meetings included: Sen. Mark Kelly (D-AZ), Sen. Alex Padilla (D-CA), Sen. Jon Ossoff (D-GA), Rep. Frank Mrvan (D-IN-1), Rep. Carolyn Bourdeaux (D-GA-7), Rep. Teresa Leger Fernandez (D-NM-3), Rep. Deborah Ross (D-NC-2), Sen. John Hickenlooper's (D-CO), with more to come this fall.

ADISA's Executive Director John Harrison said, "It is imperative we visit freshmen senators particularly. Most have staff who are not familiar with 1031s and explaining the importance of this tax treatment of real estate and how it fuels our whole system is key. We also give them data and a look at their own states to help them understand this element of good tax policy and its beneficial effect on all occupations and communities."

Furthermore, John Harrison has been published in *GlobeSt.com National* Alert (Q&A: John Harrison on the Future of 1031 Exchanges) and again in *The DI Wire* (1031 Exchanges—A Major Generator of Tax Revenues).

In other advocacy news, ADISA's president Matt Malone signed a letter on behalf of ADISA's membership to the U.S. Senate Committee on Health, Education, Labor & Pensions expressing strong concerns with H.R. 842, The Protecting the Right to Organize (PRO) Act, which seeks to change the definition of "independent contractor" as applied to the many financial professionals who act as independent contractors for their financial services firms.

ADISA also has an official Policy Statement on Protecting the Right to Organize Act. You can view it on ADISA's website: https://www.adisa.org/news-advocacy/article/adisa's-policy-statement-protecting-the-right-to-organize-(pro)-act.

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Register your exhibit at https://www.adisa.org/events/2021-exhibit-registration.

2022 ADISA EVENTS: SAVE THE DATES

2022 Spring Conference

Dates & Location TBD

2022 AI Research & Due Diligence Forum

July 19-20

New York Hilton Midtown

2022 Annual Conference & Trade Show

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