Flattening the COVID-19 Private Equity Curve (Updated April 9, 2020)

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Categories:

Blogs
Coronavirus Response Team
Private Equity Industry Blog

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Private Equity encompasses far more aspects of business than many realize, including securities, investments, debt financing, acquisitions and dispositions, the supply chain, and more — all industry-agnostic. Frost Brown Todd's Coronavirus Response Team continues to closely monitor the impacts on Private Equity. Meaningful Federal, State and Local legislation, orders and regulations update and evolve on a daily basis. One of the highest priorities this week has been access to, and eligibility for, SBA loans, but additional sources of debt are available. Below is a snapshot of critical issues for the private equity industry that has been updated and linked to current materials since the original publication of this article. These changes will be important even after overall economic activity rebounds.

Deal Flow

Buyers and sellers have reported closings continue to be delayed due to market uncertainty, valuation changes, workforce availability, restrictions on labor organizing activity, market disruptions, tax issues, SparkSpread reports that financing pricing has increased even in light of Fed and market-rate action, travel restrictions, investor communication interruptions, inability to make "bring down" representations and warranties (including MAE), closing complications, protection of the brand, and the ultimate power of dry powder (e.g. According to the Financial Times, EQT Partners is in exclusive talks to purchase hand sanitizer business, Schulke.).

Fund Management

Securities filings and registrations are in flux, while market appetites are changing from growth to bargain hunting. Management will face the need for increased responses to diligence inquiries, address operating agreement inflexibility, solicit follow-on investment after existing portfolio companies are impacted by current crisis,

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consider if existing risk factors are sufficient, credit agreement covenants, and analyze existing portfolio company distress. Plan for infusions of unprogrammed capital, company valuation redeterminations, impact on those changes to compensation and ownership interest payout. New research may locate new unplanned target opportunities. Do sponsor debt guarantees, reinvestment standards, adjusted closing periods, fund term extensions, existing side letter review, use of co-investments to supplement fund buying power, and integration of strip sales and secondary transactions for continuation vehicles allow for growth or signal value reduction for investors?

Portfolio Company Operations

Business continuity plans need to be evaluated and potentially re-worked. Business interruption and other insurance coverage issues may arise due to force majeure suspensions and restrictions on essential business that vary by local and state governments. Employment considerations and concerns are high priority as appropriate staffing is paramount while employee issues like compensation levels and benefit plans arise. Keeping business operations moving requires an analysis of available financing options. Firms are also focused on available and appropriate communication methods, while there is a heightened scrutiny of data privacy and cybersecurity issues and the use of remote communications tools adds to those risks. Management teams need to upgrade the pace of secure communications to stakeholders, assessment of supply chain, review of logistics planning and availability, new production opportunities, impact of government intervention in markets, tax and financial reporting delays, liquidity testing, analysis of possible restructuring of competitors, valuation changes creating strategic roll up and asset acquisition opportunities, and tax relief opportunities. The Wall Street Journal reports that the FASB has proposed delaying new accounting rules. Insurance policy sufficiency review is also needed.

Our Coronavirus Response Team is Ready to Help

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Frost Brown Todd has been helping clients across the country respond to the business paradigm-shifting pandemic to sustain critical business operations that America needs. Whether you need help determining whether your company is permitted to remain open or just want to discuss your own communications with your employees and stakeholders in this fast-changing time, we can help. We are in this fight with you.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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