INVESTOR DEFAULTS:
How to Protect Your Private Equity or Venture Capital Fund

MARC H. MORGENSTERN

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Marc H. Morgenstern

Marc Morgenstern is the Managing Partner of Kahn Kleinman and a nationally-known expert on securities and corporate legal matters. His observations have been quoted in national media including *The Wall Street Journal, Business 2.0, Tech Republic, Red Herring, Business Week, USA Today, Success, American Banker, Investor's Business Daily*, and the *San Jose Mercury News.* Mr. Morgenstern was the founding lawyer for national retailer OfficeMax and represents public companies and private equity and venture capital funds. He is the Secretary of Olympic Steel (ZEUS:NASDAQ) and Odd-Job Stores (ODDJ:NASDAQ). He focuses on private equity and venture capital funds, entrepreneurs and emerging growth companies, corporate governance, buying and selling businesses, and public offerings.

He has also represented and served on the Board of Advisors for numerous technology and emerging-growth companies involved with software-technology, place-based media, online private equity investments, and applied technology. Mr. Morgenstern is the author of OffRoad Capital's "Deal Dictionary" and created the corporate finance term "invendor."

He is a long-standing member of the Dean's Technology Council of Case Western Reserve University School of Medicine, the Executive Committee of the SEC's Small Business Capital Formation Conference, and serves on the Board of the Rock and Roll Hall of Fame and Museum. Mr. Morgenstern is a member of the Executive Committee of NorTech and its Early Stage Capital Task Force, and was named by *Crain's Cleveland Business* to "Who's Who in Technology". He was Special Counsel to the Ohio Attorney General (1990-1997) and a member of the Editorial Board of the *Real Estate Securities Journal.*

Mr. Morgenstern has written and lectured extensively nationally on business and legal issues. He received his B.A. from Yale University (1972) and J.D. from Boston University (1975). He is admitted to practice in Ohio and Washington, D.C.

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*By: Marc H. Morgenstern**

Capital markets have fallen dramatically in the last three years. Among the adverse consequences is that the liquidity and net worth of investors (institutional and family offices, as well as high net worth individual "angels"[1]) has sharply decreased. New investments in Funds have decreased. Many investors feel over-allocated to private equity as an investment category.

Anecdotally, the number of defaults by Limited Partner investors[2] ("Investors" or "Limited Partners") in existing private equity and venture capital and committed capital funds (collectively "Private Equity Funds" and individually "Fund"), has dramatically increased, primarily by individual investors and their family trusts and partnerships (collectively, "individual investors").[3] The committed capital model unfortunately is susceptible to buyer's remorse; an affliction perhaps striking individual investors more than institutional investors, but clearly affecting both groups in harsher economic environments. Funds need to adapt structures and strategies that will permit them to attract the widest possible investor base of institutions and individuals without disrupting the certainty of financial performance by Limited Partners that forms the basis for the committed capital model.

This article explores: (1) the historical basis for committed capital funds and cash calls, (2) current common approaches in Fund documents

[1] Individuals and families have now increased to 9% of the investor base for Private Equity Funds. National Venture Capital Association Yearbook (2002), p. 10.

[2] For ease of discussion, this article assumes that the Fund is created as a Delaware limited partnership, with an entity serving as the General Partner and Investors becoming Limited Partners. There are numerous considerations which determine whether individual Funds should be structured as limited partnerships or limited liability companies, and if so, under which state or foreign laws they are organized. The enforceability of Partnership Agreement provisions is generally governed by the state of organization. Funds usually specify Delaware law because of the rich history of corporate and investment law compared to many states. These considerations are beyond the scope of this article.

[3] A recent *Wall Street Journal* article entitled "Venture Capital Investors Look for Exit Signs," p.C1, August 7, 2002, reviews the plight of newer, smaller venture funds with numerous individual investors. According to the author "...[M]any individuals are unwilling or unable to invest more money in venture capital, and some are looking to sell their stakes and future commitments to other investors . . . The moves by individuals put the spotlight on the so-called secondary market for venture capital commitments, which has heated up since the technology boom busted."

* This article benefited from the thoughtful comments of my law colleagues, Douglas Bartman, Irv Berliner, and Howard Bobrow, as well as the wisdom and perspective of my friend, Tripp Brower. Copyright © 2002 Marc H. Morgenstern. All rights reserved.

with respect to the relative rights, remedies, and consequences to defaulting Investors and the Fund arising from an Investor default, and, finally, (3) some suggestions for effectively decreasing Investor default while simultaneously increasing the Fund's ability to collect defaulted commitments if defaults do occur.

Background of Committed Capital Funds:

As recently as the early 1980s, many venture funds were not committed capital funds. Investors frequently paid their entire commitment upon joining the Fund. Consequently, Funds had no concern about Limited Partner defaults.

To maintain Fund liquidity, unused capital was (and still is) initially invested in extremely low-risk, totally liquid, low-yield, investments such as treasury bills. Interest from these low-yield investments was distributed to the Limited Partners. This preserved the Fund's ability to ultimately make investments in portfolio companies. The corollary negative impact was that internal rates of return ("IRR") to Limited Partners were significantly diminished since their capital was effectively sitting idle for extended periods. There was a total disconnect between the overall goal of Limited Partners (to invest in high risk/high reward private equity securities) compared to the reality of the initial use of their capital (low risk/low reward investments).

Proper alignment of Fund and Investor objectives was ultimately achieved as committed capital funds became the industry norm.[4] The committed capital model benefits both General Partners and Limited Partners. By holding Investors' money only for the minimum time required to invest it, the IRR for Limited Partners increases with respect to their Fund investment. The Limited Partners also can make the highest use of their own cash pending investment. Investors didn't hire General Partners to invest in treasury bills. Similarly, General Partners benefit because their Fund performance improves since performance is universally measured

[4] Pledge funds still constitute a portion of the private equity environment. Investors in pledge funds subscribe for an aggregate commitment but generally retain the right to invest only in those investments which they approve. Because of the uncertainty and time constraints created by the ongoing approval process, pledge funds tend to be used primarily in acquisition, buyout, or mezzanine funds. These types of funds typically make a limited number of large investments compared to venture funds which generally make numerous smaller investments. The pledge fund structure is also sometimes employed by first-time funds to attract Investors who are willing to "back" a general partner on a deal-by-deal basis, but are not willing to invest in an untested fund manager on a committed capital basis.

against the Fund's IRR. An improved investment track record results, making it possible for the General Partners to raise their next Fund.

Current Standards:

Most funds now have three to five-year commitment periods (the "Commitment Period"). During this period the Fund makes initial direct investments in portfolio companies, and thereafter makes follow-on investments in portfolio companies.

Limited Partners contractually commit to promptly meet periodic cash calls throughout the Fund's lifetime on an "as needed" basis. Cash calls provide funding for portfolio company investments as well as payment of management fees and other expenses. Details about cash-call obligations, management fees, and profit-sharing allocations between the General Partner and Limited Partners are generally described in the Fund's private offering materials and contractually delineated in a Limited Partnership Agreement (the "Partnership Agreement"). Investors agree to meet cash calls quickly, frequently within ten days from notice. This rapid ability to obtain cash gives the Fund the functional equivalence of the immediate liquidity Funds had previously when Investors paid 100% of their commitment on Fund formation.

Cash calls are timed to minimize the "idle" holding period for Investor's cash, and occur throughout the life of the Fund. This "just-in-time" cash methodology permits the Fund to negotiate with prospective portfolio companies based on the certainty that the Fund has the ability to quickly provide the agreed upon capital. Likewise, prospective portfolio companies will negotiate with, and accept assurances from, a committed capital fund (including letters of intent) precisely because the portfolio company knows that the Fund can honor its cash commitments.

Finally, the committed capital model permits General Partners to plan and execute a long-term strategy. Long-term asset allocation involves: (1) analyzing Fund size and investment capacity based on aggregate Limited Partner commitments, (2) implementing a planned diversification and allocation of investments in portfolio companies, (3) calculating and maintaining appropriate reserves for "follow-on" investments, and (4) making investments in portfolio companies at a rate that is responsive to ever-changing market conditions, but consistent with each Fund's long-term strategy and goals.

Most Private Equity Funds provide at least the following remedies to the Fund on default by a Limited Partner (which are usually cumulative rather than exclusive), and permit the General Partner to choose among them:

1. payment of interest on the unmet capital call amount from the default date;

2. payment of the Fund's legal fees and "costs" incurred in collecting the defaulted capital commitment;

3. permitting (but not requiring) the Fund to purchase the defaulting Investor's ownership interest (or causing a "forced sale") for the lower of appraised value, a percentage of paid-in capital, or a percentage of net asset value ("NAV");

4. being "washed out," *i.e.*, the Investor loses its economic interest in money invested to date by the Fund and profits therefrom; or

5. eliminating the defaulting Investor's ability to vote under the Partnership Agreement, at a minimum during the period in which the Investor is in default.

These remedies may (or may not) be adequate in environments where there have generally been continuous "up markets", i.e. when Investors are plentiful, Funds' performances are continuously positive, and default rates are low. In "down markets," however, the same remedies can lack significant deterrent or enforcement value, in part because the value of portfolio companies may have already declined significantly. Consequently, there may be little or no loss to the Investor if on default such positions are purchased for a percentage of invested capital as opposed to actual market value.

To illustrate the point, the short-term (one year) returns for all venture funds for 2001 was a collective 27% negative rate of return, with seed and early-stage funds performing even worse (negative 33%).[5] A provision permitting the forced sale of an Investor's interest in a 2000 or 2001 Fund for 75% of invested capital would literally cause no harm to a defaulting Investor since the average NAV of the Limited Partner's interest would have already shrunk to 73% of paid-in capital. The intended "penalty" would have simply caused a forced sale at current market value.

Equally important, as Funds have continually lowered the initial take-down of capital payment (frequently 10% of the aggregate capital commitment), the cost to a defaulting Limited Partner of losing even its

[5] National Venture Capital Association Yearbook (2002), p. 14.

entire investment in the early years of a Fund may be acceptable compared to funding the remaining 90% commitment.

In addition to the current adverse economic climate, there continue to be changes in the private equity industry's investor base, as individual investors increase their purchases of Private Equity Funds. Entrepreneurial fortunes are frequently based on a concentration of personal assets in an individual industry or company. Additionally, many high net worth investors are comparatively inexperienced in Private Equity Fund investing, have a shorter-term investment perspective than institutional investors, and may lack certain of the political and social constraints and corporate governance processes to which institutional investors are subject. Institutional investors tend to have professionally managed portfolios that are diversified and less subject to quick and cataclysmic decline. Institutional constraints frequently limit actions that institutional investors will take when considering breaching contractual commitments. Unhappy entrepreneurs, by contrast, frequently manage their own money, make their own financial decisions, and may not be restrained by the same social limitations as institutions.

The combination of the sea change in capital marketplaces and increased percentage of individual investors in the investor base for Private Equity Funds mandates that Funds re-examine their self-imposed constraints in dealing with defaulting Investors. They must also dramatically increase the range and practicality of remedies available to them. The risk/reward ratio for an Investor default must be tilted away from the Limited Partners in favor of the Fund.

Many General Partners are reluctant to enforce self-executing contractual remedies, let alone actually sue defaulting Limited Partners. To state the obvious, if General Partners lack the strength and will to enforce remedies or sue, no contract or provisions can benefit them. On a human level, General Partners are morally and legally fiduciaries to their Limited Partners. Even though litigation may help the Fund, and deter future misconduct and investor defaults, it is often emotionally difficult for fiduciaries to sue their beneficiaries. Litigation is distasteful, expensive, and an unproductive use of scarce and valuable General Partner time. Funds are management-intensive. A handful of individuals create deal flow, make investment decisions that determine whether the Fund is profitable, provide ongoing guidance and expertise to portfolio companies, and facilitate exit strategies. Time spent on defaults and litigation is subtracted from their primary functions and hurts the Fund and all of its Limited Partners. There is no way to measure the true cost of this time because there is no way to know what opportunity was not pursued or what decision was made in haste because the General Partner was intellectually and emotionally pre-occupied with litigation, preparation for litigation, or settlement.

Many General Partners also believe (rightly or wrongly) that by suing, they may inadvertently harm themselves and their Fund. They act with guilt or remorse as if the fault were theirs rather than the defaulting Investor. Their shared presumption is that the mere existence of litigation may encourage other Limited Partners to default or otherwise generate adverse publicity for the Fund. Either consequence (they fear) may make it harder for the Fund to collect remaining commitments from other Limited Partners, potentially endangering new investments in portfolio companies and perhaps hindering the General Partner's ability to raise money for its next fund. The counter-argument, of course, is that by suing defaulting Investors, the General Partner assures other Investors that their interests are being safeguarded. Demonstration of a will to sue may also be valuable as a prophylactic measure.

A final unpleasant variable is that even if the litigation is "successful," and the defaulting Limited Partner pays the commitment, many General Partners simply don't want to continue to deal with a financially unreliable or unhappy Limited Partner. They don't want to see them at Limited Partner meetings and they don't want to communicate with them between meetings. The cumulative impact of these realities puts the General Partner in a classic emotional double bind. Even if the General Partner "wins" the General Partner is also guaranteed to "lose."

Good preparation simplifies the litigation process and minimizes the probability that it will occur. Most Partnership Agreements already provide for exclusive jurisdiction in a convenient, cost minimizing location for the Fund. If the Fund needs to sue, the defaulting Limited Partner will pay for the Fund's attorneys' fees and costs of collection. The "standard" definition of fees and costs, however, is wholly inadequate because costs are defined only as the obvious, direct, out-of-pocket professional expenses that the Fund may incur rather than the largest and most important cost, *i.e.*, the lost "value" of management's time and efforts. Costs should include a specified dollar value for diverted management time and focus. The cost ascribed to management effort could be an hourly fee similar to professional fees. More appropriately, however, would be a pre-set minimum amount (*i.e.*, $25,000 per defaulting Limited Partner)[6].

[6] To be enforceable, a liquidated damages provision must fairly attempt to compensate the Fund for actual damages, rather than being "punitive." The amount should probably vary, at the least, based on the size of both the Fund and the cash call.

No hourly rate can genuinely compensate the Fund and the General Partner for loss of management time. Cash is a proxy for time; time is a proxy for opportunity. Charging for management time, however, would serve both as an additional deterrent to defaulting Limited Partners as well as providing a modest reimbursement to the Fund for the General Partners' efforts.

Other definitions and concepts of "costs" could include Fund overhead, administrative support, placement agent fees, and syndication and organization expenses. Every element of "cost" should be considered and specified in the Partnership Agreement so that the potentially defaulting Limited Partner may be deterred from defaulting after evaluating the size and penalty for default. All costs in current usage, as well as those costs recommended here, are referred to as "Total Costs."

Few Funds regard Partnership Agreements as pre-litigation documents. Reality, however, confirms that they are. Documents should be drafted to explain the "story" of the Fund to a prospective judge or jury in language that will be clear, self-sufficient, and, to a degree, self-serving. The document drafter must seize the rare opportunity to create the "facts" upon which the resolution of any dispute will be based.

As an example, the recitals to the Agreement should always explain that the Limited Partners are mutually relying on each Limited Partner's integrity and financial commitment in making their respective individual commitments. From this premise, each Limited Partner stands as a fiduciary to the other Limited Partners. Each relies on the other. Funds make portfolio company commitments premised on the ability to promptly invest the proceeds from cash calls. Among other adverse consequences, if an Investor defaults, the economic investment of the other Limited Partners has been unfairly jeopardized since Funds may not be able to meet their commitments to portfolio companies.

In discussing their default, few Investors willingly acknowledge what is generally true, i.e. there are no problems with the Fund or the General Partner and no justification for the Limited Partner's failure to pay. The defaulting Investor simply doesn't want to meet the cash call either because it has changed its mind or its financial circumstances have altered. Instead, defaulting Limited Partners usually raise "smoke screen" issues to mask their own perfidy, frequently focusing on management fees, and suggesting that the fees are inappropriate or excessive.

To prevent this "justification" for Investor default, the recitals to the Partnership Agreement should explain the concept of a committed capital fund and the reasons, basis, and mutual benefit of the "just-in-time" capital call philosophy. Explanatory language should clearly address the reality that management fees are necessarily disproportionately large in the early years of a committed capital fund compared to paid-in capital. Funds invest primarily over the Commitment Period and fees are based on aggregate committed capital rather than invested capital. The fee doesn't vary whether the Fund takes two years or six years to fully invest. The recitals should explain that the management fee also doesn't vary depending upon interim or final results. While the industry knows these facts, and so do long-time institutional investors, the explanation may be invaluable for an inexperienced Investor (or their counsel), judge, or jury. Anticipating (and negating) emotionally persuasive (but analytically unsound) issues commonly raised by Limited Partners will minimize disputes.

Most General Partners and their counsel believe their organizational documents are clear and easily understood. A major fallacy is the assumption that the reader is a member of a limited and sophisticated group, *i.e.*, institutional investors and their counsel. If documents become the subject of litigation, they will be reviewed and interpreted by judges and juries. It's unreasonable and unrealistic to expect them to know the comparatively arcane economic norms of the private equity world. Make it easy. Articulate the parties mutual expectations and industry practice.

It is also helpful to have documents reviewed by litigators. For better or worse, trial lawyers see the world (and read agreements) through a well-honed prism that finds ambiguity and uncertainty everywhere. Litigators will have the ultimate responsibility for enforcing the documents. It is beneficial to have their perspective incorporated in the documents that they must ultimately defend. If language doesn't survive their scrutiny, if ambiguity is possible, then change the language. Make key concepts redundant, and include examples so that subsequent interpretation is simplified.

Some Additional Suggestions:

The world has changed. Marketplaces have changed. The players and social constraints have changed. As the Jefferson Airplane sagely noted, "Life is change; how it differs from the rocks."[7] The industry needs to aggressively change. Funds have an imperative to protect themselves, their prospective and current portfolio company investments, and most importantly their non-defaulting Limited Partners from the adverse

[7] *Crown of Creation*, words and music by Paul Kanter, recorded May 27, 1968. Icebag Corp. BMI (1968)

consequences of Investor default. The private equity industry needs to re-think Partnership Agreements, contractual remedies, and most importantly their willingness to enforce remedies.

Some suggestions in this article are easy and inexpensive to implement, are intuitively obvious, and cause little investor reluctance or discomfort. Some are controversial, confrontational, and not necessarily "bullet-proof" if litigated.

Many lawyers and clients are aware that the common law of many states provides that penalties and forfeiture provisions are unenforceable, or may be limited by concepts of "conscionability" or "excessiveness." An ancient legal maxim is that "the law abhors a forfeiture." As a consequence, lawyers shy away from aggressive remedies with respect to the pricing of a forced sale or redemption, among others. State statutes, however, may negate common law and provide significant comfort. As an example, the Delaware statute for limited partnerships (6 Del. Code, Ann. § 17-502(c)) provides that:

> A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating the partnership interest to that of nondefaulting partners, a forced sale of his or her partnership interest, forfeiture of that partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of that partnership interest by appraisal or by formula and redemption or sale of the partnership interest at such value, or other penalty or consequence. [Emphases added]

The Delaware provisions create enormous opportunities to expand current standard practice simply by tracking the statute's specifically authorized remedies. Further, the statute invites additional remedies by authorizing "penalty[ies] or consequence[s]" other than those outlined in the statute, provided that they have been "specified" in the Partnership Agreement.

Planning to Avoid Default; Sharply Change the Risk/Reward Ratio of Defaults in Favor of the Fund:

At the most extreme position, all Investors would provide irrevocable, unconditional letters of credit ("LCs") in favor of the Fund in the amount of their unpaid commitment. The LCs would decline as capital calls were met. The only pre-condition to the Fund's right to draw on the LC would be evidence that the Fund had not received payment after sending a cash-call notice in accordance with the Partnership Agreement. Cost of the LCs could be borne by the Fund (or Investor). This would completely eliminate the issue of defaulting Investors.

Alternatives include requiring an LC only from a class of Investors specified by the Fund (perhaps only individual investors), or requiring that only a portion of any Investor's unpaid commitment be secured by LCs. Funds could also exempt from such requirements designated Investors based on liquid net worth. The LCs could serve as partial payment for cash calls or as liquidated damages in the event of Investor default.

Investors could also execute promissory notes[8] for the full amount of their unpaid capital. As a practical matter, it may be easier to sue[9] to enforce a defaulted note than to enforce a contractual commitment. Judges and juries may more easily understand the provisions of a note rather than the extensive terms of a lengthy, complicated Partnership Agreement, many of which have nothing to do with the Investor's obligation to meet a cash call.

At the practical level, Funds should also review the frequency and amount of cash calls. A few, large cash calls minimize the chances for, and probability of, default. A large initial take-down increases the magnitude of even existing remedies (*i.e.*, more paid-in capital is subject to forfeiture). Unfortunately, this approach will modestly reduce the IRR to Investors. Funds, however, should carefully examine the actual impact to IRR. The negative reduction in IRR may be outweighed by the increased safety to the Fund of preventing defaults. With fewer cash calls, there are fewer opportunities for default.

[8] In a perfect world, all notes would have a cognovit provision, permitted in some states (including Ohio) but not allowed in the majority of jurisdictions. The cognovit feature is also sometimes referred to as a confession of judgment clause and tremendously simplifies the litigation process.

[9] While there are those who would encourage binding arbitration clauses, the legal issues on a cash call are clear. Although arbitration may maintain privacy, arbitrators frequently seek a compromise solution that in Solomonic fashion "splits the baby." On a default, there is no baby to split, nor compromise that is sensible for the Fund.

Self-Executing Remedies:

Because of the time, cost, and inconvenience of litigation, the paramount goal of any Partnership Agreement is to create sufficient self-help remedies to deter Investor default; i.e. remedies that can be unilaterally implemented by the General Partner. This power may well deter Limited Partners from breaching. If there is a breach, then the remedies can be implemented by the General Partner and immediately penalize the defaulting Investor for their misconduct without waiting for litigation.

Current industry standards provide insufficient deterrence and unnecessarily restricted remedies. The industry should consider harsher (even Draconian) measures that better reflect the actual disruptive cost to Fund profitability occasioned by defaulting Investors. Remedies would change the Limited Partner's ongoing obligations, reduce the profitability of the Investor's position, and increase the cost to the Limited Partner of being a partner. The Partnership Agreement would appropriately treat the defaulting Investor as a social and economic pariah whose actions jeopardize all other Investors and the Fund. At the same time, by contractually reducing the value of the defaulting Investors economic position, it becomes easier for the Fund to cause a "forced sale" of the position to a new Investor or a redemption by the General Partner or the Fund.

An effective alternative would be to dramatically increase management fees charged to defaulting Limited Partners. Annual fees could increase from the date of default by 1 or 2% of committed capital. If the fee isn't paid, then the fee could be deducted from the Investors capital account. Justification is obvious. Defaulting Limited Partners create a tremendous diversion of management's time and represent a significant cost to the Fund. Such an Investor should pay a higher fee than other Investors because they consume more management time and for wholly-unproductive purposes.

In addition, the allocation of carried interest could be changed. The relatively standard 80/20 sharing ratio of profits between Limited Partners and the General Partner could become 70/30, 60/40 or, for that matter, 10/90 with respect to defaulting Limited Partners.

Under some agreements, penalties are temporary, and are imposed only for the periods during which an individual is in default. The better course would be for changes in fees and allocations, or loss of voting rights, to be permanent.

No Fund should have to deal with a Limited Partner who defaults once, let alone twice. Accordingly, whatever remedies are available to the

Fund for a first default should be significantly increased on a second default. If no LC or note was delivered or executed initially, then the defaulting Investor must now deliver them in the full amount of the remaining unpaid capital commitment to regain full standing as an Investor and to cure the default. An anonymous proverb reminds us that "Fool me once, shame on you. Fool me twice, shame on me."

Another practical approach, conceptually based on thinking about the unpaid commitment as a note, would be a contractual provision providing for the immediate acceleration of all unpaid amounts upon a default. With an acceleration clause, all of the unpaid capital becomes due immediately. Litigation can, therefore, resolve all remaining commitments. This way the Fund will not have to endure serial litigation occasioned by repeating defaults.

Additionally, upon default, Total Costs (as newly defined) may be automatically deducted from the Limited Partner's capital account, reducing the defaulting Limited Partner's share of distributions. Because Total Costs can be unilaterally "recovered," the General Partner has greater power to immediately rebuke defaulting Limited Partners without suing them.

Finally, although some remedies may (or may not) be enforceable, the goal should be to include them and put the burden on the defaulting Investor to establish that they are not enforceable. Many Funds voluntarily operate from a position of weakness. Their documents only include limited remedies that have been previously upheld in litigation. Harsher remedies cannot be upheld by courts until they're actually tested. In the meantime, most negotiators or litigators will agree that the Fund is in a stronger position starting with more weapons rather than fewer. Although litigation has its risks, the risks run in both directions. Be bold. Let the defaulting Investor complain to the court and justify why a contractual remedy to which the Investor voluntarily agreed should not be enforced.

Conclusion:

Even if a Fund adopts every recommendation in this article, and selects their Investors with impeccable due diligence, the human condition isn't perfect and defaults will occur. It is doubtful that any individual Fund will incorporate all of the suggestions in this article. Every General Partner, however, should consider all of them in the context of their specific investor base and approach to raising capital. If implemented, some suggestions may modestly impact the ability to raise money for a Fund. This is clearly a legitimate concern. By the same token, securing commitments that may not be honored is the definition of a Pyrrhic victory. The more extreme suggestions, such as letters of credit for the entire unpaid commitment, would fully protect the Fund but are unlikely to be universally adopted. Most of the suggestions, however, will reduce defaults because the "penalty" to the Limited Partner is markedly increased and the penalties will deter "frivolous" defaults.

A word of caution and guidance remains. The ultimate reality is that Funds do not benefit from forcing unhappy Investors to remain in the flock, no matter what the terms or circumstances.

All remedies (whether increasing management fees, altering profit sharing allocations, or eliminating voting) should be available at the discretion of the General Partner but should not be mandatory. Defaults occur for many reasons, some benign and some malicious. The General Partner should have the freedom to fashion a specific remedy appropriate for each Investor, consistent with the nature and basis for default. The General Partner should not be contractually bound to enforce mandatory penalties which would restrict negotiating flexibility, and perversely enough, potentially increase the chances of litigation. The cumulative impact of numerous permissive remedies should leave the General Partner in a strong position for litigation, but simultaneously create enormous leverage in a negotiation. From the long-term perspective of the Fund, the best outcome is generally for the defaulting Investor to be replaced; either through a "forced sale" to a third party or through a redemption by the Fund or its General Partner.