

**October 26, 2021**

**Honorable Gary Gensler  
Chair**

**U.S. Securities and Exchange Commission**

100 F Street NE  
Washington, D.C. 20549-1090

**Institutional Investors Seek SEC Rulemaking Action to Require Quarterly Fee and Expense Reporting by Private Fund Advisers**

Dear Chair Gensler,

We, as ILPA<sup>1</sup> and the Institutional Investor Members of ILPA, write to you today seeking SEC rulemaking action that would mandate the regular reporting of all direct and indirect fees and expenses charged by private fund advisers and their affiliates to investors in private funds. Quarterly reporting is necessary to ensure transparency for all investors and ensure investors can validate that the fees charged by private fund advisers conform with contractual agreements.

Since 2014<sup>2</sup>, the SEC has continually indicated that a material number of private fund advisers have continued to charge fees and expenses to their LPs that were not agreed to in the investment contract, both at the fund and portfolio company level or by the adviser and/or its affiliates. Without clear and consistent disclosure, tracking of fees and expenses charged in a private fund is not possible. Beyond the traditional management fee and carry, there are typically a number of fees and expenses charged to the portfolio companies by the private fund adviser and its affiliates, providing a number of potential fee streams to the adviser, which ultimately impacts the returns received by the investors. Adding to the complexity, LPs may have negotiated certain portfolio company fee offsets which reduce the management fees that may be charged. Without regular fee and expense reporting, LPs are unable to verify that these cash flows match the fees that were contractually agreed. While access to this reporting may be attainable through fund negotiations, this leaves basic transparency up to market forces, undermines existing investor protections, constrains capital formation, and disproportionately limits access for smaller institutional investors, including city and county pension plans, in the marketplace.

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<sup>1</sup> ILPA is the voice of the institutional investors invested in private equity, colloquially known as Limited Partners or LPs. Our 550+ member institutions represent over USD 2 trillion in private equity assets under management globally and include public and private pension funds, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all of which invest in the U.S. alternative investment market. LPs provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation, across America and around the world.

In addition to providing this critical capital for economic growth, LPs are the trusted financial stewards investing the assets of millions of Americans. Limited partner beneficiaries include teachers, first responders, students receiving university scholarships, charity recipients and insurance policyholders, among others. ILPA is headquartered in Washington, D.C. with additional offices in Toronto, Ontario. For more information on ILPA's members, please visit: <http://www.ilpa.org/members>.

<sup>2</sup> Spreading Sunshine in Private Equity., U.S. Securities & Exchange Commission (May 6, 2014), available at: <https://www.sec.gov/news/speech/2014--spch05062014ab.html>

The urgent need for fee transparency rulemaking has been magnified by specific state laws in California and Texas<sup>3</sup> requiring that public pensions in those states obtain certain private fund fee reporting, which may limit investment opportunities to those private funds from which they can negotiate this necessary level of transparency. Industry efforts, led by ILPA and its widely adopted Fee Template that was released in 2016, have helped coalesce the industry around a standard reporting framework, endorsed by over 130 private fund advisers and LPs, but many limited partners are still unable to receive this level of reporting across their portfolios.

The lengthy track record of SEC examinations and enforcement efforts on this issue, as well as the increased action at the state level, calls out for rulemaking action. **We believe the SEC should act under its existing authority in the Investment Advisers Act of 1940 to create a new rule under Section 206 requiring all private fund advisers to report all direct and indirect fees, carried interest, expenses and fee offsets charged by the adviser and its affiliates.**

The SEC should ensure this new rule is *principles based*, as opposed to creating a new SEC form or rigid template for fee reporting. This *principles-based* rule should also, at minimum, require private fund advisers to report all the fields in Level 2 of the ILPA Reporting Template<sup>4</sup> and those required under AB 2833. A *principles-based* rule provides sufficient flexibility to ensure the level of transparency can accommodate market changes in the types of fees and fee offsets charged by private fund advisers and their affiliates without the need for continual SEC rulemaking to update a form or template in coming years. Given that the private funds industry is global in nature, a *principles-based* approach will also promote more widespread adoption beyond the use of a specific SEC template. While this may create the appearance of the risk of lack of uniformity in reporting, this can easily be addressed through ongoing staff guidance from the Division of Investment Management and dispensed through Division of Examinations Risk Alerts and SEC examination activities. Ultimately, we believe the industry will be incentivized to coalesce around a common industry standard for the sake of administrative simplicity and the SEC's guidance can be targeted to ensure that the types of fees and offsets charged are clearly delineated.

Sunlight and transparency are the hallmarks of the federal securities laws. It is time for the SEC to bring these principles to the private fund industry to ensure investors, and ultimately their beneficiaries, no longer must navigate incomplete, inconsistent, and misleading financial disclosure in this industry.

For additional questions regarding this issue, please contact ILPA's Senior Policy Counsel, Chris Hayes, at [chayes@ilpa.org](mailto:chayes@ilpa.org).

Sincerely,

**Steve Nelson**

Chief Executive Officer

**Institutional Limited Partners Association (ILPA)**

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<sup>3</sup> California Assembly Bill 2833 (2016); Texas Senate Bill 322 (2019).

<sup>4</sup> ILPA Reporting Template, available at: <https://ilpa.org/reporting-template/>

### **ILPA Member Signatories:**

David H. Nelsen, Chief Executive Officer, **Alameda County Employees' Retirement Association (ACERA)**

Angela Rodell, Chief Executive Officer, **Alaska Permanent Fund Corporation (APFC)**

Michael Viteri, Chief Investment Officer, **Arizona State Retirement System (ASRS)**

Marcie Frost, Chief Executive Officer, **California Public Employees' Retirement System (CalPERS)**

Christopher Ailman, Chief Investment Officer, **California State Teachers' Retirement System (CalSTRS)**

Carlton W. Lenior Sr., Executive Director & Interim Chief Investment Officer, **Public School Teachers' Pension and Retirement Fund of Chicago (CTPF)**

### **City of Fresno Retirement Systems**

Scott M. Stringer, Comptroller, **Office of the Comptroller of the City of New York**

Amy McGarrity, Chief Investment Officer, **Colorado Public Employees' Retirement Association (PERA)**

J.P. Balestrieri, Executive Director, **District of Columbia Retirement Board (DCRB)**

J. Scott Simon, Chief Investment Officer, **Fire and Police Pension Association of Colorado**

E. Lamar Taylor, Interim Executive Director & CIO, **State Board of Administration of Florida (SBA)**

Jonathan Abshagen, President & COO, **GF Private Equity Group, LLC**

Angela Miller-May, Chief Investment Officer, **Illinois Municipal Retirement Fund (IMRF)**

Michael W. Frerichs, **Illinois State Treasurer**

Scott Davis, Chief Investment Officer, **Indiana Public Retirement System (INPRS)**

Karl Koch, Chief Investment Officer, **Iowa Public Employees' Retirement System (IPERS)**

Rod June, Chief Investment Officer, **Los Angeles City Employee Retirement System (LACERS)**

Jonathan Grabel, Chief Investment Officer, **Los Angeles County Employee Retirement Association (LACERA)**

Ray Joseph, Chief Investment Officer, **Los Angeles Fire and Police Pensions (LAFPP)**

Mansco Perry, Executive Director & Chief Investment Officer, **Minnesota State Board of Investment (SBI)**

Steven K. Moise, State Investment Officer, **State of New Mexico State Investment Council (SIC)**

Matthew Worley, Deputy Executive Director – Investments & Chief Investment Officer, **State Teachers Retirement System of Ohio (STRS Ohio)**

Kirk Stebbins, Chief Investment Officer, **Teachers' Retirement System of Oklahoma**

Rex Kim, Chief Investment Officer, **Oregon State Treasury**

James H. Grossman Jr., Chief Investment Officer, **Commonwealth of Pennsylvania, Public School Employees' Retirement System (PSERS)**

Andrew Junkin, Chief Investment Officer, **Employees' Retirement System of the State of Rhode Island (ERSRI)**

Jay Huish, Executive Director, **San Francisco City and County Employees' Retirement System**

Prabhu Palani, Chief Investment Officer, **San Jose Federated City Employees' Retirement System & San Jose Police and Fire Department Retirement Plan**

Jeff Davis, Executive Director, **Seattle City Employee Retirement System (SCERS)**

Michael Hitchcock, Chief Executive Officer, **South Carolina Retirement System Investment Commission (RSIC)**

Jagdeep Singh Bachher, Chief Investment Officer & Vice President of Investments, **UC Investments (The Regents of the University of California)**

**Utah Retirement Systems (URS)**

Dan Gallagher, Chief Investment Officer, **Ventura County Employees' Retirement Association**

Ronald Schmitz, Chief Investment Officer, **Virginia Retirement System (VRS)**

Allyson Tucker, Chief Investment Officer, **Washington State Investment Board (WSIB)**

Craig Slaughter, Chief Investment Officer, **West Virginia Investment Management Board (WVIMB)**

Edwin Denson, Executive Director & Chief Investment Officer, **State of Wisconsin Investment Board (SWIB)**

Sam Masoudi, Chief Investment Officer, **Wyoming Retirement System**

cc:

Commissioner Caroline A. Crenshaw

Commissioner Allison Herren Lee

Commissioner Hester M. Peirce

Commissioner Elad L. Roisman

Acting Division Director, Division of Investment Management, Sarah ten Siethoff