

February 12, 2019



Brent Fields
Secretary
U.S. Securities & Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**Re: Institutional Investor Letter on Proposed Commission Interpretation
Regarding Standard of Conduct for Investment Advisers; Request for
Comment on Enhancing Investment Adviser Regulation – File No. S7-09-18**

Dear Mr. Fields:

On behalf of the Institutional Limited Partners Association (“ILPA”) and the undersigned institutional investors in private markets, we are writing to follow up on our letters of August 6, 2018¹ and November 21, 2018², subsequent letters by ILPA members³ in support of said letters, and the various meetings ILPA and our institutional investor members have held on this issue with the Chairman, Commissioners and staff of the Securities & Exchange Commission (“SEC” or “Commission”). These letters and meetings have centered on the challenge to fiduciary protections that investors are facing in the private equity market and the actions the Commission can take in terms of adjustments to staff guidance, market signals, and their recent rulemaking proposals⁴ to ensure investor confidence in the marketplace.

ILPA is the voice of institutional investors in the private equity asset class, known as Limited Partners (“LPs”). Our ~500 member institutions represent over \$2 trillion in

¹ Letter from the Institutional Limited Partners Association to the Securities & Exchange Commission regarding the “*Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation – File No. S7-09-18*”, August 6, 2018.

² Follow up letter from the Institutional Limited Partners Association to the Securities & Exchange Commission regarding the “*Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation – File No. S7-09-18*”, November 21, 2018.

³ See Letter from Gary Bruebaker, Chief Investment Officer, Washington State Investment Board to the Securities & Exchange Commission titled “*Support for the Institutional Limited Partners Association (ILPA) position regarding Standard of Conduct or Investment Advisers, Investment Advisor Reg. File No. S7-09-18*”, August 6, 2018; Letter from Jack Ehnes, Chief Executive Officer, CalSTRS to the Securities & Exchange Commission titled: “*Re: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Request for Comment on Enhancing Investment Adviser Regulation – File No. S7-09-18*”, October 11, 2018.

⁴ Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, SEC Rel. IA-4889, File No. S7-09-18 (Apr. 18, 2018). (“Proposed Interpretation”)

private equity (“PE”) assets under management and include U.S. and global 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. private equity market.⁵

Strong fiduciary duties are the foundation of the vibrant private markets in the United States. These duties of care, loyalty, and good faith foster the trust that give investors confidence to invest with fund managers, particularly in private markets, which, through their nature, have less transparency. Unfortunately, LPs have been facing significant resistance in their efforts to retain meaningful fiduciary protections while investing in the private equity market on behalf of themselves or their beneficiaries. These headwinds can be alleviated if the Commission acts on certain items, well within its authority, to signal to the market that it is important for investment advisers to act in the best interests of their investors.

Specifically, we urge the SEC to consider rescinding the Heitman Capital Management no-action letter⁶ as part of its current review of staff guidance, as it diminishes the effectiveness of the fiduciary duty standard in the Investment Advisers Act of 1940 (“Advisers Act”). We also encourage the SEC to issue a statement indicating that any settlements of an enforcement action with a private fund adviser will be conditioned upon that adviser itself assuming those costs, rather than seeking indemnification from investors. The SEC should also conduct an examination sweep of hedge clauses to ensure they are being appropriately used by private fund advisers. In addition to the above recommendations, ILPA suggests the following clarifications be adopted in the Proposed Interpretation:

- Private fund advisers should be required to explicitly and clearly disclose the standard of care under both state law and the Advisers Act owed to LPs and the fund.
- The SEC should clearly state that the standard of care owed to the clients of private fund advisers under the Advisers Act is a “negligence” standard.
- “Pre-clearance” of conflicts of interest should be limited, and specific details of each conflict must be presented to the LPs to receive true “informed consent.”

⁵ As an illustration of the members we represent, the ILPA Board of Directors includes representatives from: Guardian Life Insurance Company, Teacher Retirement System of Texas, Oregon State Treasury, Washington State Investment Board, California State Teachers Retirement System (CalSTRS), Tufts University Investment Office, and the Alaska Permanent Fund Corporation, among others: <https://ilpa.org/who-we-are/board-of-directors/>

⁶ Heitman Capital Management, LLC, SEC Staff No-Action Letter (February 12, 2007).

- The SEC should indicate that for private fund advisers, having a Limited Partner Advisory Committee (LPAC) is best practice, and all perceived conflicts should be presented to the committee for resolution.
- The SEC should provide more clarity surrounding hedge clauses, including the limits of their scope, and the facts and circumstances in which they can be used.

For additional information on these suggested clarifications, please refer to the recent follow-up letter sent by ILPA on November 21, 2018.

We look forward to continuing our dialogue with the Commission to ensure that investors and private fund advisers are aware of their rights and fiduciary obligations under the Advisers Act.

Sincerely,

Steve Nelson
Chief Executive Officer
Institutional Limited Partners Association

Angela Rodell
Chief Executive Officer
Alaska Permanent Fund Corporation

David H. Nelsen
Chief Executive Officer
Alameda County Employees' Retirement
Association

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

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

Charles A. Burbridge
Executive Director
Chicago Teachers' Pension Fund (CTPF)

Ron Baker
Executive Director
Colorado Public Employees' Retirement
Association (PERA)

Dan Slack
Executive Director
Fire and Police Pension Association of
Colorado

Sheila Morgan-Johnson
Executive Director
District of Columbia Retirement Board

Ash Williams
Executive Director & CIO
State Board of Administration of Florida

Ms. Dhvani Shah, CFA
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Illinois Municipal Retirement Fund

Karl C. Koch, CFA
Chief Investment Officer
Iowa Public Employees' Retirement System

Tim Recker
Chief Investment Officer & Treasurer
The James Irvine Foundation

Jonathan Grabel
Chief Investment Officer
Los Angeles County Employees Retirement
Association (LACERA)

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Brian Collett
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Missouri Local Government Employees
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State Investment Officer
Nebraska Investment Council

Dominic Garcia
Chief Investment Officer
Public Employees Retirement Association of
New Mexico

ALEX DOÑÉ
Deputy Comptroller-Asset Management &
Chief Investment Officer
Office of New York City Comptroller

On behalf of:
New York City Employees' Retirement
System
Teachers' Retirement System of New
York
New York City Police Pension Fund
New York City Fire Pension Fund
New York City Board of Education
Retirement System

Anastasia Titarchuk
Interim Chief Investment Officer
New York State Common Retirement Fund

Tom Lee
Executive Director & Chief Investment
Officer
New York State Teachers' Retirement
System

Glenn R. Grell
Executive Director

James H. Grossman, Jr. CPA, CFA
Chief Investment Officer

Pennsylvania Public School Employees'
Retirement System (PSERS)

Charles Van Vleet
Chief Investment Officer of Pension
Investments
Textron, Inc.
Providence, RI

Bruce H. Cundick
Chief Investment Officer
Utah Retirement System

Gary Bruebaker
Chief Investment Officer
Washington State Investment Board

s/ Sam Masoudi
Sam Masoudi, CFA, CAIA
Chief Investment Officer
Wyoming Retirement System

Jerry Albright
Chief Investment Officer
Teacher Retirement System of Texas

Rich Hall
Deputy Chief Investment Officer
University of Texas /Texas A&M
Investment Management Co. (UTIMCO)

Mary Morris
Chief Executive Officer
Virginia529

Craig Slaughter, JD, CFA
Executive Director & CIO
West Virginia Investment Management
Board

cc. The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman

Dalia Blass, Director, Division of Investment Management
Paul Cellupica, Chief Counsel, Division of Investment Management
Sara Cortes, Assistant Director, Investment Adviser Rulemaking Office