

CLIENT ALERT

ILPA Issues Guidance on GP-led Secondary Fund Restructurings

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The Institutional Limited Partners Association (“ILPA”) has issued its first series of recommendations for Limited Partners and General Partners to consider when participating in a GP-led secondary fund restructuring.

GP-led secondary fund restructurings accounted for approximately \$22 billion of transaction volume in 2018 and deal activity has increased more than threefold since 2016.¹ As a result of this increase, ILPA, which represents approximately 450 member institutions with more than USD \$2 trillion of private equity assets under management, has identified the following priorities for market participants when evaluating a GP-led secondary fund restructuring:

- *Transparency & Disclosure:* GPs should engage their investor advisory committees (and wider investor body) as early in a transaction as possible, in order to consider alternative structuring solutions and ensure independent asset pricing.
- *Conflicts of Interest:* Due to the potential for conflicts of interest relating to the GP’s involvement in any new fund structure established to acquire assets, investor advisory committees should receive sufficient information, and the support of independent professional advisors, if necessary, to assess and approve conflicts.

¹ Lazard Freres & Co. Financial Sponsor Secondary Market 2018 Year-End Review.

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- *Transaction Terms:* Investors should be granted access to portfolio asset due diligence materials provided to potential purchasers and given sufficient time (not less than 20 business days) to review and assess the terms of a new fund vehicle in the event that they are offered the opportunity to roll their existing investment into a new fund structure.
- *Expenses:* Allocation of transaction expenses should be disclosed in full and allocated according to which parties will benefit from the proposed transaction, including the GP where it clearly benefits from the proposed transaction, either as a result of additional fee revenue or an increase in capital available for deployment.

ILPA further recommends that Limited Partners establish their own internal protocols to be followed when asked to participate in a transaction of this type, including review of existing fund documentation and side letter arrangements, and are advised to seek information from GPs in order to fully assess the rationale of any proposed transaction.

ILPA's guidance is set out in full here: <https://ilpa.org/gp-led-restructurings/>

If you have any questions concerning the recommendations issued by ILPA or generally concerning GP-led secondary transactions, Willkie attorneys are available to discuss these matters and we look forward to continuing to advise clients on their participation in secondary transactions.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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