

Institutional Limited Partners Association
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June 14, 2016

The Honourable Jeb Hensarling
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honourable Maxine Waters
Ranking Member
House Financial Services Committee
4340 O'Neill House Office Building
Washington, DC 20515

Subject: H.R.5424, the “Investment Advisers Modernization Act of 2016”

Dear Sir/Madam

On behalf of the institutional investor membership of the Institutional Limited Partners Association (ILPA), I am writing to express our opposition to the current draft Bill H.R.5424, the “Investment Advisers Modernization Act of 2016.”

The ILPA is a global organization dedicated to the interests of institutional investors into private equity funds worldwide (known as Limited Partners). The ILPA’s membership comprises more than 3,000 investment professionals from 40 countries around the world across 365 organizations, ranging from public and private pension funds, insurance companies, foundations and endowments and family offices, collectively representing more than US\$1 trillion in private equity assets under management globally. The ILPA advocates globally in the interest of limited partners who aspire to a more aligned, transparent and well-governed private equity industry.

Private equity as an asset class is a meaningful and positive component of an institution’s investment portfolio. Over the last 20 years, private equity fund investments have generated for their investors an average of 4.97% net return above the S&P 500.¹ Between 2011 and mid-2015, private equity funds

¹ Source: ILPA Private Markets Benchmark (U.S./Canada Private Equity) in association with Cambridge Associates is a horizon calculation based on data from 1,022 U.S. and Canada private equity funds (buyout, growth equity, private equity energy and mezzanine funds), including fully liquidated partnerships, formed between 1986 and 2015. Data indicates pooled horizon return, net of fees, expenses and carried interest as of December 31, 2015. Comparison based on Cambridge Associates Modified Public Market Equivalent (mPME), which replicates private investment performance under public market conditions.

returned a surplus of \$350 billion to limited partners, with \$66 billion distributed by US funds in 2014 alone.² While private equity delivers attractive returns, the complexity and long-term nature of these relationships dictates that the asset class is open only to qualified investors. As qualified investors, the ILPA's membership have benefited from regulatory oversight into private equity made possible by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulatory efforts of the SEC have so far been seen as largely beneficial to Limited Partners' ability to govern their private equity manager relationships.

Since the enactment of Dodd-Frank, the results of the SEC's examinations of private fund advisers uncovered certain practices that resulted from the subjective interpretation of the governing document to the manager-investor relationship, the limited partnership agreement, of which limited partners may have been or remained unaware without the SEC's active oversight and attention to such issues.

Importantly, certain practices that have drawn the SEC's scrutiny occur at the level of the management company of the General Partner, rather than confined to the financial and operational management of the fund itself and would therefore fall outside the purview of any negotiated information rights or contractually agreed disclosures with respect to an investment in a fund.

To the extent that H.R.5424 would diminish the flow of information between managers and investors or reduce the transparency required in those communications, or weaken the ability of the SEC to provide oversight of private equity managers, the ILPA opposes this legislation.

While the ILPA supports the notion of reducing unnecessary burdens on advisers to private equity funds, a number of the provisions proposed by H.R.5424 are concerning. The removal of requirements for private equity to maintain and make available books and records, including marketing materials, for inspection by the SEC represents a deterioration of an important mechanism for ensuring that funds do not misstate material information or mislead investors. Similarly, the reporting of private equity fund information to regulators via form PF and form ADV has proven to be useful to Limited Partners and should not be altered unnecessarily. For instance, the proposed exemption to requirements that managers produce for investors summary information in plain English on fees and expenses and compensation, would be deleterious to limited partners' ability to ensure that fulsome disclosures are made, and that practices conform to the LPA.

In addition to changes with regard to the SEC, ILPA members have noted provisions exempting private equity from certain practices that currently promote transparency between funds and limited partners. We are particularly concerned with the exemption of the requirement to notify investors regarding transfers of minority interest. Institutional Investors view any transfer of interests, up to change of control in the partnership, as significant and impactful in their consideration of private equity funds. Outside of the primary fund vehicle, investors also appreciate and prefer the maintenance of the requirement for annual fund audits of co-investment vehicles. Without this provision, investors would face considerable

² Source: Preqin data as cited in the 2016 Bain & Company Global Private Equity Report.

difficulty in ensuring that side vehicles to the primary fund operate, if not in the best interest of investors in the core fund, at least not in conflict with them.

The ILPA believes that the changes to the Investment Advisers Act proposed in H.R.5424 as written are counterproductive to addressing the needs of institutional investor limited partners and ensuring alignment of interest between registered advisers and their investors. The removal of requirements to provide certain information to the SEC and certain notifications to investors would reduce alignment and transparency between funds and their investors.

Thank you for your consideration of our views. The ILPA welcomes inquiries regarding how to enhance the environment for private equity investment while safeguarding the needs of investors. If you have any questions please contact me at jchoi@ilpa.org or by phone at (202) 683-6018.

Kind regards,



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