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Proposal towards standardized disclosures of fees and expenses information by private equity funds

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Last January, the Institutional Limited Partners Association (the “ILPA”), a voluntary association promoting the interests of private equity limited partners, issued a “Fee Reporting Template” along with a guide (collectively, the “Template”) which forms part of the ILPA’s “Fee Transparency Initiative” aimed at standardizing fee reporting and compliance by fund managers throughout the private equity sector.

The Template’s two main sections are organized in a way that provides limited partners (the “LPs”) with a document setting out “their direct costs of participating in a given private equity fund (a “Fund”)” and the general partner’s (the “GP”) sources of economics regarding the Fund and the investments made by it.”[1]

The Template is divided in two levels of disclosure. While the firsttier level (“Level 1”) sets out the basic information which the ILPA recommends to disclose to LPs, the second-tier level (“Level 2”) of the Template offers more detailed information relating to some Level 1 subtotals. For example, Level 1 discloses the total amount of partnership expenses while Level 2 of the Template shows how such partnership expenses are allocated between bank, legal and audit fees, etc. While the ILPA’s goal is to encourage GPs to provide as much Level 2 information as possible, it has divided the Template in two sections to best suit the economics and complexity level of the Funds in an attempt to persuade the highest number of Funds to use it.

The ILPA recommends that the LPs be provided with this fee disclosure document on a quarterly basis and emphasizes that the Template is not intended to be used by GPs to verify their calculation of the fees, expenses and incentive allocations but rather merely as a standardizing tool for disclosures of such fees to the LPs.

The Template also establishes a “Related Parties” definition which the ILPA urges new Funds to use in order to ensure consistency throughout the private equity Fund’s disclosure of any direct and indirect fees which may be ultimately paid by LPs.

This initiative by the ILPA to offer guidance on fee disclosure to actors of the private equity sector follows an increase of actions taken by regulators from the securities field against a number of private equity firms which made misleading disclosures to LPs. These proposed guidelines are also following the general trend in the investment industry, where mutual funds have notably seen their regulatory requirements being enhanced with respect to fee disclosure in the recent years. The adoption of a standardized Template for fee disclosure could reduce regulatory intervention into the

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private equity funds business. However, the implementation of this Template as a norm by the industry could take some time.

Through this initiative, the ILPA intended to publish a white paper and an appendix to the ILPA's Private Equity Principles addressing compliance issues with Funds' limited partnership agreements. Following the publication of the Template and its guidance document, the ILPA was also to review its best practice documents which relate to a number of key elements of the Template. Those documents were all scheduled to be published on the ILPA's Website in February 2016. However, as of April 7, 2016 none of the white paper, the appendix or the revised best practices has been published.

In the meantime, Fund managers should expect that certain new investors require, in negotiating side letters, that the reporting requirements imposed to managers be further aligned to what is proposed by the ILPA in the Template and should be open to voluntarily include some of these measures in their current fee reporting documents.

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1. *Fee Reporting Template: Suggested Guidance*, Version 1.0, Institutional Limited Partners Association, January 2016, p. 3.

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