



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



ILPA
LCON

SEP 26 - 27
2023



2023 ILPA Private Equity Legal Conference

September 26-27, 2023
CLE Booklet



CLE Application Information

The workshop sessions at the 2023 Private Equity Legal Conference are applicable for CLE credits. However, ILPA is not able to issue CLE credits directly. To receive CLE credits for applicable programs, members are responsible for filing for their CLE accreditation directly with their state/provincial CLE authority. ILPA will send the presentations for the applicable workshops to all conference attendees after the event.

Please contact events@ilpa.org if you require a certificate of completion.

Each State/Province rewards CLE credit hours differently and have varying approval guidelines. Therefore, it is best to consult your jurisdiction to confirm what is required for you to submit. ILPA is pleased to provide you with any supporting documentation needed during your filing process.

[Please click here](#) to be directed to your jurisdiction's CLE governing office website.

Presentation Guide

- Market Trends in Fund Terms
- LP-Only Roundtable: Shaping the Future of Side Letters
- Get Back the LPA Terms You've Lost
- The Impact of the SEC's Sweeping Reforms on Private Markets
- Leverage and Fund Finance
- AI in Legal
- Roundtable: ESG in the Crosshairs
- Pushing Back on the Status Quo: Continuation Funds
- Fireside Chat with SEC's William Birdthistle

Agenda

Tuesday, September 26, 2023

Time	Event
12:00 - 1:30PM	Registration and Lunch
1:30 - 2:00PM	Welcome and Update from the Legal Advisory Council
2:00 - 3:15PM	Market Trends in Fund Terms <i>Moderator: Neal Prunier, Senior Director, Industry Affairs, ILPA</i> <i>Speakers: James O'Donnell, DLA Piper; Jody Shaw, Allstate; Paul O'Shea, Colmore</i> The landscape for fundraising has shifted significantly in 2023 in favor of LPs, but the question remains, has this resulted in changes to market terms and negotiation outcomes for LPs? This conversation has dominated LP discussions throughout the year with challenges in answering this pivotal question because the data in this space is rather limited and not widely shared. Join ILPA in a session designed to break through the noise and provide meaningful insight towards changes in market terms through access to unparalleled data and perspective into where the market has shifted in recent years and where LPs can push back. If you are eager for industry data that informs your individual experience, this workshop provides it!
3:15 - 3:30PM	Networking Break
3:30 - 5:00PM	LP-Only Roundtable: Shaping the Future of Side Letters <i>Moderator: Brian Hoehn, Senior Associate, ILPA</i> The side letter has increasingly become home to terms that matter to LPs, given the LPA has largely shifted toward containing more favorable terms for GPs. This LP-only roundtable discussion will allow participants to share insights on their priorities and approach during negotiations, as well as trends and challenges in the world of side letter negotiations. Participants will be split into small groups led by members of ILPA's Legal Advisory Council and other LP thought leaders to discuss and report out on the key areas of side letter negotiations, such as: <ul style="list-style-type: none">• What are the important elements of a side letter to LPs and how do those elements differ at other organizations?• What are negotiation tactics LPs use between LPA terms and side letter terms?• Where have LPs seen wins in side letter negotiations that other LPs would benefit from understanding?• What actions have LPs seen to undercut the transparency of the MFN process or the enforceability of side letters?
5:00PM	Welcome Reception

Agenda

Wednesday, September 27, 2023

ILPA
LCON
2023

Time	Event
7:30 - 8:30AM	Breakfast
8:30 - 9:30AM	Get Back the LPA Terms You've Lost <i>Moderator: Adam Lippiett, Siemens AG</i> <i>Speakers: Jonathan Koerner, Albourne; Emily Smith, Kutak Rock; Margaret Niles, K&L Gates</i> In the years following the Great Financial Crisis, the PE industry has experienced a strong performance streak with returns in PE funds. There have been equally challenging developments with the outcomes of legal negotiations. With LPs of all sizes losing grounds in LPA terms, the definition of "what is market" has shifted to the point where LP wins today are at times a step back from starting points in negotiations of years past. Join ILPA in a session targeting the biggest shifts in terms over the period with access to robust data and leading perspective to help LPs actively work to reset "what is market" in the industry today and going forward.
9:30 - 9:45AM	Networking Break
9:45 - 10:45AM	The Impact of the SEC's Sweeping Reforms on Private Markets <i>Moderator: Neal Prunier, Senior Director, Industry Affairs, ILPA</i> <i>Speakers: Christine Schleppegrell, Morgan Lewis; Heather Traeger, Teachers Retirement System of Texas; Jim Van Horn, Seyfarth Shaw LLP</i> In recent years, the SEC has carried out an aggressive agenda with a comprehensive set of rules - both introduced and pending finalization - that have the potential to change the PE landscape in the most significant way since the Dodd-Frank Act. The SEC's regulatory activity has been rapidly developing with each rule containing significant complexities and potential impact on LPs. Join ILPA in a session offering a rare, inside perspective into the work of the SEC and how the efforts underway could directly impact fund terms, negotiations and engagement between LPs and GPs in the PE industry.
10:45 - 11:00AM	Networking Break

Agenda

Wednesday, September 27, 2023

Time	Event
11:00 - 12:00PM	<p>Leverage and Finance <i>Moderator: Neal Prunier, Senior Director, Industry Affairs, ILPA</i> <i>Speakers: Darien Leung, Torys; Ed Klees, Reed Smith; Nake Grewal, Wells Fargo; Josh Underhill, Future Fund Management Agency</i></p> <p>Fund financing has become an everyday part of the LP experience, with differing views amongst the LP community on how it's deployed, especially as interest rates reach levels not seen since prior to 2008. Between the omnipresence of subscription lines and increasing use of NAV-based facilities (or hybrid facilities or GP-led CFO's), LPs need to be aware of a multitude of tools used by GPs that impact risk, leverage and liquidity. Join ILPA in a session providing an in-depth review of the fund finance space with insight into the current market environment, uses of facilities, impacts on risk, leverage and liquidity, as well as the latest relevant LPA and side letter terms.</p>
12:00 - 1:00PM	<p>Lunch</p>
1:00 - 2:00PM	<p>AI in Legal <i>Speakers: Robert McGrail, DUMAC, Inc.; Jim Wagner, Contract Networks; Noah Waisberg, Zuva AI</i></p> <p>Discussions on AI are taking place all over the investment and legal communities. Given the nascent nature of the space, there are still many questions left to be answered as LPs identify how they can (and cannot) leverage AI in their work. There are specific concerns layered on in the legal industry given cyber security, ethical, fiduciary duty, and legal considerations. Join ILPA in a session offering an in-depth review of AI in the legal industry with an opportunity to hear and ask questions from thought leaders in the space and gain a better understanding of how LPs are using AI today.</p>
2:00 - 2:15PM	<p>Networking Break</p>
2:15 - 3:15PM	<p>Roundtable: ESG in the Crosshairs <i>Moderator: Matthew Schey, Senior Director, External Affairs and Sustainable Investing, ILPA</i> <i>Speakers: Michael Littenberg, Ropes & Gray</i></p> <p>ESG has turned into a loaded word across the United States with political currents having a direct impact on the PE industry and the broader investment community. This LP-only roundtable discussion will focus on the intersection between ESG and the legal space, including discussions around the political landscape, regulations, fiduciary duty, reporting and disclosures, as well as the latest views on LPAs and side letter terms. After a subject matter expert-led opening presentation, participants will be split into small groups for peer-to-peer discussions on ESG.</p>

Agenda

Wednesday, September 27, 2023

Time	Event
3:15 - 3:30PM	Networking Break
3:30 - 4:30PM	Pushing Back on the Status Quo: Continuation Funds Moderator: Brian Hoehn, Senior Associate, ILPA Speakers: Kelley Bender, Chapman and Cutler; Josh Geller, Los Angeles City Attorney's Office; Bob Perez, Foster Garvey Continuation funds present unique challenges for LPs and have a direct impact on the alignment of interests between LPs and GPs. LPAs can range from being silent on the topic to allowing pre-clearance for the transactions to take place - and everything in-between. ILPA recently released guidance on continuation funds , which represents a meaningful step forward in conversations with GPs. However, challenges remain related to influencing existing LPAs that are not aligned with the guidance and structuring new LPAs in accordance with the guidance. Join ILPA in a session offering an in-depth review of the legal elements of continuation funds and how to engage with GPs to structure continuation funds in more LP-friendly designs.
4:30 - 4:45PM	Networking Break
4:45 - 5:30PM	Fireside Chat with SEC's William Birdthistle Moderator: Jennifer Choi, CEO, ILPA Speakers: William Birdthistle, U.S. Securities and Exchange Commission Join ILPA's CEO, Jennifer Choi and Director of the Division of Investment Management at the SEC, William Birdthistle, for a fireside chat. They will discuss his views on the work of the SEC, the dynamics of rulemaking within the PE industry, the challenges LPs face and views on the future of U.S. regulatory landscape on private markets.
5:30PM	Closing Reception

Speaker Biographies



Kelley Bender

Partner, Chapman and Cutler LLP

Kelley Bender is a partner with Chapman and Cutler LLP and is a member of the firm’s Corporate and Securities Department and its Private Funds Group and Investment Management Group. She has practiced law for over 15 years, all of which has been primarily spent representing public pension funds, insurance companies, endowments and other institutional investors in their investments in hedge funds, private equity funds, real estate funds, infrastructure funds, collective investment funds and other private investment funds. Kelley also has extensive experience in the tax issues that arise in private investment fund transactions, having begun her career at Chapman in the Tax Department. She is a frequent speaker at programs covering developments in private funds and partnership and LLC law, and she also frequently publishes articles on these topics. In addition, Kelley is active in the firm’s pro bono and charitable efforts. In particular, she has advised numerous organizations on their formation and qualification as section 501(c)(3) tax-exempt entities. She is also active in the firm's recruiting efforts for its Summer Associate Program and Finance Law Development Program, and she is a former chair of the Firm’s Employment Committee. Kelley currently serves as a member of the firm's management committee.



William Birdthistle

Director, Division of Investment Management, U.S. Security and Exchange Commission

William Birdthistle is the Director of the Securities and Exchange Commission’s Division of Investment Management. In his role as Director, Mr. Birdthistle oversees the Division’s overall operations, core functions, and mission. Prior to joining the SEC in 2021, Mr. Birdthistle was a professor of law at Chicago-Kent College of Law, where his scholarship focused on investment funds, securities regulation, and corporate governance. Mr. Birdthistle received his J.D. from Harvard Law School, where he served as managing editor of the Harvard Law Review, his M.A. in history from the University of Chicago, and a B.A. in English and psychology from Duke University.



Jennifer Choi

CEO, ILPA

As CEO for the Institutional Limited Partners Association (ILPA), Jennifer Choi directs the association’s engagement with external industry stakeholders to inform and enhance ILPA’s education, research, membership and advocacy platforms. Ms. Choi also leads the implementation of ILPA’s responses to emerging issues impacting the asset class, including efforts to establish and promote industry best practices. Prior to joining the ILPA, Ms. Choi served as Vice President of Industry and External Affairs for the Emerging Markets Private Equity Association (EMPEA), now known as the Global Private Capital Association (GPCA), where she led the association’s member and industry engagement activities, including efforts to encourage policy frameworks that support the growth of the asset class. As EMPEA’s Research Director, she built the industry’s first global database of private equity activity in the emerging markets. A frequent speaker and commentator on the industry, Ms. Choi also oversaw the association's media communications and global institutional partnerships. Previously, Ms. Choi was a consultant with Boston-based Stax Inc., leading due diligence engagements and providing advisory services for the U.S. private equity and venture capital industry. Jennifer holds a Masters in Law and Diplomacy from the Fletcher School at Tufts University and a B.A. summa cum laude in Economics and Political Science from Augustana College.

Speaker Biographies



Josh Geller

Deputy City Attorney, Public Pensions General Counsel Division

Joshua Geller has served as a Deputy City Attorney in the Public Pensions General Counsel Division of the Los Angeles City Attorney's Office since 2015. He advises the City's three pension plans on all areas of the law, with an emphasis on investments and transactions. He has overseen hundreds of alternative investment transactions during his tenure in this role. Josh previously served two terms as an elected trustee for the City's 457 plan. Before law school, he worked in the technology industry. He is also a musician, tennis player, and avid traveler.



Nake Grewal

Director, Wells Fargo

Nake Grewal is a Director and senior banker within Wells Fargo's Fund Finance banking platform, and manages all West Coast relationships on the platform out of Los Angeles. Mr. Grewal has nearly a decade of experience as a banker, structuring subscription facilities, NAV loans, and other bespoke fund financings with large alternative sponsors.



Brian Hoehn

Senior Associate, ILPA

Brian Hoehn is Senior Industry Affairs Associate at the Institutional Limited Partners Association. Brian assists the Industry Affairs team in engagement with external industry stakeholders, advocacy efforts, as well as efforts to establish and promote industry best practices. Brian holds a Bachelor of Arts in International Affairs and a minor in Business Administration from the George Washington University.

Speaker Biographies



Ed Klees
Partner, Reed Smith LLP

Ed is currently a partner in Reed Smith LLP’s Global Corporate Group. He is a leader in investment management practice and representation of endowments, foundations, pension plans, family offices and outsourced chief investment offices (OCIOs), among other institutional investors. As former chair of the American Bar Association’s (ABA) Institutional Investors Committee and a frequent author and speaker on institutional investment issues, Ed is considered a national thought leader on legal, compliance and policy issues relating to institutional investment. He was a member of the Institutional Limited Partners Association’s steering committee on the recent adoption of model limited partnership forms and a model non-disclosure agreement. His practice also includes representation of academic partners on industry/academic collaborations, consulting and start-ups. Ed has more than 25 years of experience in investment management, regulatory oversight, risk management, operations, and compliance and ethics programs for both institutional investors and investment advisors. He is a member of the securities law committee of the National Association of Pension Plan Attorneys (NAPPA). From 2012 to 2015, he was a lecturer at the University of Virginia School of Law where he co-taught a course on private equity and hedge funds. He is the author of numerous articles, including, “How Safe Are Institutional Assets in a Custodial Bank’s Insolvency?”, the leading paper on bank custody law. He also is co-author, with Nobel Prize winner H. Robert Horvitz, Ph.D., of *Connecting with Companies: A Guide to Biomedical Consulting Agreements* (2nd edition, 2014). Ed was the former general counsel of the University of Virginia Investment Management Company (UVIMCO), where he advised on a range of institutional investment topics, including securities and investment advisory laws, investment advisory contracts, bank custody, and international issues, as well as compliance and operations and board matters from 2008 to 2016. Prior to joining UVIMCO, he was associate general counsel for the Howard Hughes Medical Institute. He began his legal career as an associate at Shearman & Sterling and Paul Weiss Rifkind Wharton & Garrison.



Jonathan Koerner
Partner, Shareholder, Albourne

Jonathan Koerner is a partner and shareholder at Albourne. Jonathan developed and leads Albourne’s Legal Document Diligence (“LDD”) service – offering reviews of fund documents in reports rich with market context, peer data and negotiation recommendations. Jonathan’s prior experience includes Chief Investment Counsel at Utah Retirement Systems and adjunct professor of Venture Capital Finance at the University of Utah’s David Eccles School of Business.



Darien Lueng
Partner, Torys LLP

Darien’s broad-based practice includes extensive experience with syndicated and bilateral credit facilities, subordinated debt and mezzanine facilities, fund finance, asset-based finance, acquisition finance, mining finance and real estate finance. She also regularly advises clients on precious metal and base metal financing, including loans, leases and consignments. Darien advises financial institutions, pension funds and other alternative lenders, as well as private equity sponsors and institutional borrowers in domestic and international transactions. She frequently assists U.S. and Canadian fund sponsors in their capital raising activities through the establishment of subscription line, NAV and hybrid facilities. Darien is a member of Torys’ Diversity & Inclusion Committee, the Women in Law Affinity Group and the Asian Affinity Group.

Speaker Biographies



Adam Lippiett
Senior Legal Counsel, Siemens

Adam Lippiett is an in-house lawyer working at Siemens where he focuses on the legal aspects to private equity and venture capital fund investments. Adam previously worked for one of the top European law firms acting for GPs, before moving to Siemens in 2010 to work on the LP side.



Michael Littenberg
Partner, Ropes and Gray

Michael Littenberg is a senior partner at Ropes & Gray, based in the New York office. Michael is the global head of the firm's ESG, CSR and Business and Human Rights practice. He has more than 30 years of experience in these areas. Michael advises a significant number of leading companies, asset managers, asset owners and trade associations on ESG, CSR and business and human rights matters. He also publishes and speaks extensively on these topics and is included on numerous top practitioner lists.



Robert McGrail
Head of Legal & Compliance, DUMAC, Inc.

Mr. McGrail is the Head of Legal & Compliance at DUMAC, Inc., a professionally staffed investment organization controlled by Duke University. Before joining DUMAC, Mr. McGrail was an associate at Akin Gump and Proskauer Rose, where his practice focused on investment funds. Mr. McGrail received both his J.D. and B.A. from the University of Virginia.



Margaret Niles
Partner, K&L Gates

Margaret Niles has a domestic and international business transactions practice centering on alternative investments and joint ventures for investors. She focuses on representing public pension funds, university endowments, sovereign wealth funds and other institutional investors in private equity funds, hedge funds, and other commingled funds of all kinds. Margaret also works with bespoke investment vehicles for her clients, such as funds-of-one and separately managed accounts. With her clients, she focuses on all aspects of fiduciary duties in the investment context. Her experience includes significant work on public disclosure requirements and other regulatory matters applicable to institutional investors. Margaret is nationally ranked since 2019 in the Chambers USA publication for her work in the "Nationwide Investment Funds: Investor Representation" category, and she is recognized in the Best Lawyers in America publication for her work in private funds.

Speaker Biographies



James O'Donnell
Partner, DLA Piper

James O'Donnell is a leading funds lawyer advising investors in, and sponsors of, private, international and closed ended funds. He has extensive experience of fund related transactions, including primary, secondary, secondary direct and co-investment deals, the establishment and operation of funds and carried interest vehicles, management spin-outs, managed accounts and joint ventures. His clients include funds of funds, sovereign wealth funds, banks, development finance institutions, pension plans, insurance companies and fund managers. He is an acknowledged market leader and is ranked as a Band One leading lawyer for investor representation in Chambers & Partners 2022. He is regularly invited to speak on, and provide training in respect of, fund-related matters, including being a lead contributor to the training and documentary programme of the Institution Limited.



Paul O'Shea
Senior Vice President, Colmore

Paul is a Senior Vice President at Colmore where he runs Fee and Diligence Services. He has been part of Colmore since its launch in 2017. Initially he worked as a VP in Colmore's Insight function. In 2018 he created and launched Colmore's validation product FAIR and in 2022 extended the lines to include term-focused products. Before joining Colmore, Paul spent seven years at the fund of fund Capital Dynamics and before that he spent five years working in global markets with BNY Mellon. Paul graduated with a Bachelor's degree from the University of Leeds and holds the Chartered Alternative Investment Analyst designation.



Bob Perez
Partner, Foster Garvey

Bob has more than two decades of experience representing institutional investors in domestic and international alternative investments, including fund formation and a wide range of investment matters. Bob co-chairs the firm's Investment Management practice. His deep investment experience includes public and private investing, private equity funds, hedge funds, investment management agreements, co-investments, secondaries and disposition transactions. Bob regularly provides educational presentations to public pension funds and their boards regarding fiduciary, policy and other alternative investment matters. He is a frequent speaker at industry conferences focused on alternative investments and related matters. Additionally, Bob counsels organizations of various types and sizes - from start-ups to Fortune 500 companies to non-profit and tax-exempt entities - on general corporate, business and other legal matters on an ongoing basis, with respect to their organization, capitalization, regulatory compliance, contract negotiation, licensing, marketing, liability, investments, and mergers and acquisitions.

Speaker Biographies



Neal Prunier
Senior Director, Industry Affairs, ILPA

Neal Prunier, Senior Director, Industry Affairs at the Institutional Limited Partners Association (ILPA) is responsible for the continuing evolution and expansion of the ILPA standards to help ILPA provide impactful service for its members. Prior to ILPA, Neal spent his career at Cambridge Associates where he most recently served as Senior Director in CA's Arlington, Virginia office. In this role, he oversaw staff across Singapore, London, and Arlington as head of a global investment operations department responsible for enterprise data management for Private Investment, Hedge Fund, and Long Only investment manager/client specific data. This work focused on serving the data needs of Research, Consulting, and Performance Reporting functions, as well as clients and the broader industry. This work also included the creation of the ILPA Private Markets Benchmark reports. Neal holds a BS in Finance from Elon University and an MBA from the Duke University Fuqua School of Business.



Matthew Schey
Senior Director, External Affairs and Sustainable Investing

Matt Schey is Senior Director, External Affairs and Sustainable Investing at the Institutional Limited Partners Association (ILPA), where he leads the Association's environmental, social, and governance (ESG) efforts. He also manages ILPA's Research team. Prior to joining ILPA in 2019, Matt was a management consultant specializing in providing business transformation advisory services to clients in both public and private markets. Previously, he was a manager at Cambridge Associates, supporting the firm's institutional client consulting business and leading the daily operations of its Singapore-based performance reporting function, serving APAC, Europe, and ME&A client relationships. Matt holds a BA in International Business & Management from Dickinson College and an MBA from the University of North Carolina Kenan-Flagler Business School.



Christine Ayako Schleppegrell
Partner, Morgan Lewis

Christine Ayako Schleppegrell counsels asset managers on legal, regulatory, and compliance matters, focusing on advisers to private funds (private equity, hedge, venture capital, infrastructure, real estate, credit) and separately managed accounts. She spent several years in private practice and more recently at the US Securities and Exchange Commission (SEC), including in leadership roles in the Division of Investment Management. While at the SEC, Christine led the Private Funds Branch during a time of landmark rulemaking impacting private fund advisers—she draws on this experience to advise on current and pending regulations and to guide clients through enforcement and examination proceedings.

Speaker Biographies



Jody Shaw

Counsel, Allstate Investments, LLC

Jody Shaw is in-house counsel at Allstate Investments, where he primarily advises on the legal aspects of private equity and infrastructure funds, co-investments, and direct transactions as well related regulatory issues. He joined Allstate in February 2022 after nearly eight years as in-house investments counsel to the Maryland State Retirement and Pension System. Jody started his corporate and securities law practice at Hogan Lovells, and, before that, was a law clerk to U.S. District Judge Hardy Mays of the Western District of Tennessee. An original member of ILPA's Legal Advisory Council, Jody served as chair from 2020-2022. He holds a J.D. from Vanderbilt University Law School (Order of the Coif) and a B.S. in international affairs from the Georgia Institute of Technology (highest honors).



Emily Smith

Partner, Kutak Rock

Emily has substantial experience in a variety of highly complex transactions. Her practice focuses on alternative investments and structured finance transactions. Emily is a member of the Kutak Rock Institutional Investments Group and represents public pension plans on a daily basis in connection with domestic and offshore private equity, hedge fund, co-investment and other alternative investments covering a broad range of investment strategies. She spends most of her time reviewing, negotiating and drafting related investment documentation, including offering documents, limited partnership agreements, investment management agreements, side letters, subscription agreements, non-disclosure agreements, investment summaries, managed account agreements, derivative contracts, opinions, clawback guarantees, administration agreements and background due diligence reports. Emily is also a member of the Corporate and Real Estate Department concentrating on asset-backed securitizations, municipal finance transactions and other structured finance transactions in the primary and secondary markets.



Heather Traeger

General Counsel & CCO, Teacher Retirement System of Texas

Heather L. Traeger serves as the Chief Compliance Officer and Compliance Counsel for the Teacher Retirement System of Texas. TRS is one of the largest public pension plans in the country. Ms. Traeger has significant experience advising a variety of financial institutions. Immediately prior to joining TRS, Ms. Traeger was a partner at O'Melveny & Myers LLP, in Washington, D.C., in the Financial Services Practice. Previously, she served as an Associate Counsel at the Investment Company Institute (ICI) and in several positions at the U.S. Securities and Exchange Commission, including as the Senior Counsel to Commissioner Roel Campos, Counsel to Commissioner Issac Hunt, and Senior Counsel in the Division of Market Regulation (now Trading and Markets). She also clerked for the Texas First Court of Appeals. Ms. Traeger has written numerous articles and chapters on investment adviser and broker dealer regulatory and compliance issues. She also participates regularly in industry panels. Ms. Traeger is a faculty member for the Regulatory Compliance Association's CCO University, a member of the Board of Editors for the Investment Lawyer, and serves on the Board of the Association of Securities and Exchange Commission Alumni. She is a member of Texas Wall Street Women and participates in the National Society of Compliance Professionals, the Austin and Houston Compliance Roundtables, and the Council of Public Fund Compliance Officers. While in Washington, D.C., she was a faculty member for Operation HOPE, Banking on Our Future, as well as a member of the Women's White Collar Defense Association and Women in Housing and Finance.

Speaker Biographies



Josh Underhill
Director, Legal, Future Fund Management Agency

Josh is Director, Legal at the Future Fund - Australia's sovereign wealth fund. Josh works closely with the investment teams across all asset classes of the Fund's \$180bn assets under management, and prior to joining the Future Fund was at King & Wood Mallesons in Melbourne and Beijing.



Jim Van Horn
Senior Counsel, Seyfarth Shaw LLP

Investors and investment professionals operate and invest in increasingly complicated and volatile markets, as well as an industry subject to numerous regulations and reporting requirements. Jim helps clients understand and navigate their legal issues and find practical solutions. For nearly two decades, Jim has represented a wide range of investment market participants and corporate clients, providing counsel on corporate, investment, securities, and regulatory matters. He works with many different institutional investors, such as university endowments, public pension plans, family offices, and outsourced chief investment offices, on both internal compliance and investment policy matters. Jim has extensive experience helping clients with the legal matters of evaluating and negotiating investments in private investment funds, separately managed account agreements, co-investments, and secondary market transactions. Jim works with both domestic and foreign investment managers, helping them navigate the regulatory requirements of the SEC and FINRA, including registration requirements under the US Investment Advisers Act and Securities Exchange Act of 1934. He assists them with the legal matters of structure and formation of domestic and offshore private investment funds, including private equity, private debt, real estate, hedge, and fund-of-funds. Additionally, Jim works with numerous clients on general corporate matters that arise throughout the business life cycle, including choice of entity, governance, private capital raises, mergers and acquisitions, and various commercial transactions. Throughout his entire legal career, Jim has focused on securities and financial regulation. Widely considered a thought leader, he has published numerous articles on various regulations adopted by the SEC and FINRA, prepared comment letters to the SEC regarding proposed rules, and delivered presentations at various industry trade groups and legal forums on such matters. Jim regularly provides guest lectures at the George Washington University School of Business to undergraduate and graduate students on topics related to securities and finance regulation.



Jim Wagner
Entrepreneur, Contract Networks

Jim Wagner is a serial entrepreneur and recognized expert in the application of AI in the legaltech community. He recently co-founded The Contract Network, an AI-powered contract collaboration platform, along with Bill Murphy (former CTO of Blackstone). Previously, Jim has built multiple successful businesses in the legal sector based on the use of AI, most recently serving as President of Seal Software (sold to DocuSign in May of 2020). Jim is co-inventor for multiple patents related to the field of legal analytics and automation and is a member of the advisory board of the Duke Law Tech Lab.

Speaker Biographies



Noah Waisberg
Partner, Morgan Lewis

Christine Ayako Schleppegrell counsels asset managers on legal, regulatory, and compliance matters, focusing on advisers to private funds (private equity, hedge, venture capital, infrastructure, real estate, credit) and separately managed accounts. She spent several years in private practice and more recently at the US Securities and Exchange Commission (SEC), including in leadership roles in the Division of Investment Management. While at the SEC, Christine led the Private Funds Branch during a time of landmark rulemaking impacting private fund advisers—she draws on this experience to advise on current and pending regulations and to guide clients through enforcement and examination proceedings.





Presentations





INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023

An aerial photograph of the University of Virginia campus in Charlottesville, Virginia. The image shows the iconic Rotunda building on a hill in the background, a large green bridge spanning the River of the Swift in the foreground, and various university buildings and green spaces. A large, bright yellow circle is overlaid on the center of the image, containing the conference title.

**Welcome to the
ILPA Private Equity
Legal Conference**

Thank You, Sponsors!

PLATINUM SPONSORS

COLMORE
From PREQIN



PREQIN  **Seyfarth**

GOLD SPONSORS

CHAPMAN
Focused on Finance

K&L GATES

aumni

TREO
ASSET MANAGEMENT

Thank You, Sponsors!

SILVER SPONSORS

ALBOURNE



faegre
drinker

Foster
Garvey



KUTAKROCK



ReedSmith
Driving progress
through partnership

Reinhart

TORYS
LLP

An aerial photograph of the University of Virginia campus, featuring the central dome of the Rotunda, the Washington Center, and the Jefferson Center, with a large yellow circle overlaid in the center. The background shows a mix of green trees and stone buildings under a clear sky.

ILPA Update

Serving LPs for Over 20 Years

- Represents 600+ member institutions who represent nearly \$3 trillion USD in PE AUM
- 7,000 LP professionals in the ILPA network
- Only global organization dedicated exclusively to advancing your interests and those of your beneficiaries
- Serving you through:
 - Education
 - Industry Expertise: Standards, best practices and guidance
 - Advocacy: Promoting alignment, transparency and governance
 - Community: Events, networking and lasting connections



ILPA Events: Connecting the Global Network

Helping you Build Relationships with Fellow Members and the PE Community

ILPA
LCON
2023



ILPA Legal Conference

September 26-27, 2023
Washington, DC, USA

Members Only

Focused on legal issues within PE. Great for legal and compliance team, or investment staff interested in legal issues

ILPA Summit New York

November 7-9, 2023
New York, USA

PE Community

ILPA's Flagship event, bringing LPs and GPs together from around the world for a series of 1:1 meetings

ILPA Summit Europe

April 29-May 1, 2024
London, UK

PE Community

The PE community comes together for LP-focused workshops, and 1:1 LP/GP meetings

Members' Conference

June 4-6, 2024
Chicago, USA

Members Only

Gain insights from your fellow LPs and thought leaders in focused workshops and roundtables

ILPA Institute: World Class Education

Designed for LPs, by LPs

ILPA
LCON
2023

ILPA Upcoming In Person Courses	Date	Location
ESG for the Limited Partner	October 4	New York
Communicating with Influence for the Limited Partner	October 10	Virtual
Real Assets for the Limited Partner	October 17	New York
Private Equity for the Limited Partner	December 4-5	Virtual
Private Credit for the Limited Partner	December 7	New York

International travel plans this fall?

The ILPA Institute will be in **Melbourne** in **October** and **Santiago** in **November**.

Leading the Industry Discourse

- Proposed U.S. policy changes impacting private markets:
 - SEC Private Fund Advisers Rule
 - U.S. Outbound Investment Program
- New guidance on continuation funds
- Increased use of NAV-based facilities
- ESG convergence & best practices
- DEI discussion & action
- Valuations
- Macro challenges: Uncertain market, inflation, geopolitical risk, etc.



Join the Conversation from Wherever You Are

- Recordings available on topics that are top-of-mind for LPs:
 - SEC Private Fund Advisers Rule
 - ILPA's Continuation Fund Guidance
 - Negotiating in Today's Fundraising Market
 - Deciphering Net-Zero
- Upcoming: U.S. Outbound Investment Program
- Plus, ILPA Institute Online Asynchronous Programming and ILPA Institute Virtual Offerings

Upcoming Virtual Classes

Communicating with Influence

Oct 10

Private Equity for
the Limited Partner

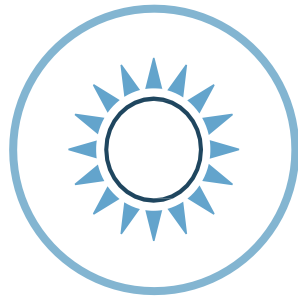
Dec 4-5

ESG Data Convergence Initiative

- Industry-led initiative that has seen a global base of GPs and LPs (300+) partner to align on a standardized set of ESG metrics and mechanism for comparative reporting
- ILPA stepped into expanded role of Secretariat in 2022
- Currently focused on a set of six categories (15 total metrics) comprising:



GHG



Renewable
energy



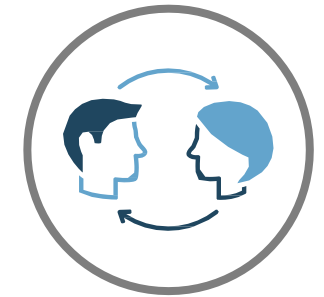
Diversity of
board members



Work-related
injuries



Net
new hires



Employee
engagement

ILPA Diversity in Action Initiative

- 275+ industry LP and GP signatories; has grown sixfold since 2020 launch
- Commitment to advancing Diversity, Equity and Inclusion (DEI) internally and in the industry through specific actions
- Community helps accelerate industry-wide institutional knowledge of best practices to promote DEI
- Visit ilpa.org/dei/ for more information



An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large yellow circle is superimposed over the center of the image, containing white text.

**An Update from
ILPA's Legal
Advisory Council**

Meet the 2023 LAC Members



Joyce Abernethy
General Counsel
New York State
Common Retirement
Fund



François Felli
Global Lead Lawyer
International Finance
Corporation



Joshua Geller
Deputy City Attorney
LA City



Sebastian Ippisch
Senior Legal Counsel
Allianz Capital
Partners



Nima Katz
Principal Counsel
University of
California



Adam Lippiett
Senior Legal Counsel
Siemens AG



Matthew Lui
Associate General
Counsel British Columbia
Investment Management
Corporation



Yasmin Lopez
Legal Manager
Sura Asset
Management S.A.



Ndu Ozor
Associate General
Counsel
University of Michigan



Jason Sass
Assistant General
Counsel
North Carolina
Department of State
Treasurer



Jody Shaw
Counsel
Allstate Investments,
LLC



Mark Singer
Deputy General
Counsel
APG Asset
Management



Elli Sistonen
Legal Counsel
Varma Mutual
Pension Insurance
Company



Heather Traeger
General Counsel &
CCO
Teacher Retirement
System of Texas



Josh Underhill
Director, Legal
Future Fund

About the LAC

- Advises ILPA on legal, regulatory and policy issues
- Engages and assists ILPA staff and board with responses to regulatory consultations/rulemakings and pending legislation
- Provides technical expertise and support to ILPA's advocacy efforts on behalf of LPs (when permitted to do so under law)
- Advises ILPA on developing best practices guidance
- Assists ILPA in developing and preparing legal content for events - e.g. LCON, webcasts, and town halls
- Interested in serving on the LAC? Reach out to nprunier@ilpa.org

An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large yellow circle is superimposed over the center of the image.

ILPA
LCON
2023

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



Market Trends in Fund Terms

James O'Donnell

Partner, DLA Piper

Jody Shaw

Counsel, Allstate

Paul O'Shea

SVP, Colmore

Neal Prunier

Senior Director, Industry Affairs, ILPA
(Moderator)



Today's Speakers



James O'Donnell
DLA Piper



Jody Shaw
Allstate



Paul O'Shea
Colmore



Neal Prunier
ILPA
(Moderator)

Live Polling

- To participate in live polling, attendees should go to sli.do
- Enter event code **LCON2023**
- Enter your responses as the questions appear

Website: sli.do

Event code: [#LCON2023](https://sli.do/#LCON2023)

Agenda

- Management Fee
 - Management fee rate discounts
 - Management fee basis
 - Expenses formerly covered by management fees
- Carry
 - Hurdles
 - Catchups
 - Clawback & escrow
- GP Components
 - GP commitments
 - GP removal
 - Key person
- Looking Back and Looking Ahead



Polling Question #1

Have you had success in pushing back on terms in 2023?

- a) Have not closed on a fund yet
- b) Have not tried yet
- c) Tried and was not successful
- d) Tried and was successful
- e) Not sure

Website: sli.do

Event code: [#LCON2023](https://sli.do/#LCON2023)



Polling Question #2

If you have been successful in pushing back on terms in 2023, what terms have you been successful with negotiating? Select **all that apply**.

- a) I have not yet been successful in pushing back on terms
- b) Fee and Expense Disclosure
- c) Fiduciary Duty / Standard of Care
- d) Strong Key Person Provisions
- e) No-Fault Removal
- f) Seat in LPAC
- g) Co-investment Rights
- h) Waterfall: preferred return hurdle (higher) or carry split (lower)
- i) Fee income offset
- j) Duration Triggers: fundraising vs. investment period and corresponding fee shifts

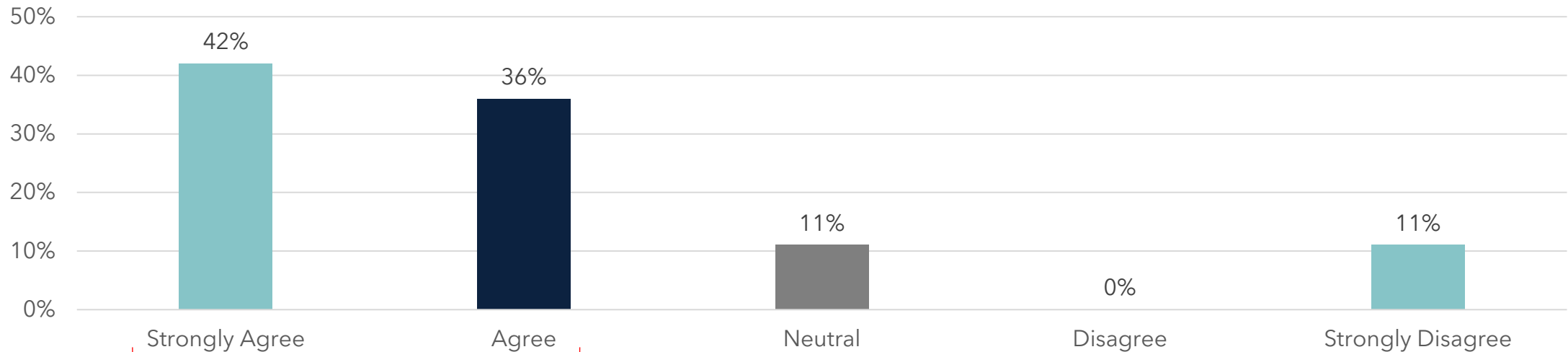
Website: sli.do

Event code: [#LCON2023](https://lcon2023.com)

LPA Negotiations

Survey from 2022 LCON – Better picture of what is “market”

How much do you agree with the following statement: Having a better picture of what is “market” would help in negotiations with managers.



Source: ILPA LCON 2022

n = 53

- ILPA’s members believe that greater transparency in the industry can only be beneficial – **78% of LP respondents identified having a better picture of what is “market” would help in negotiations with GPs.**
- ILPA recommendation for a “best-in-class” MFN process would provide LPs with greater insight into what is market and help combat some of the information asymmetry that exists between LPs and GPs and GP external counsel.

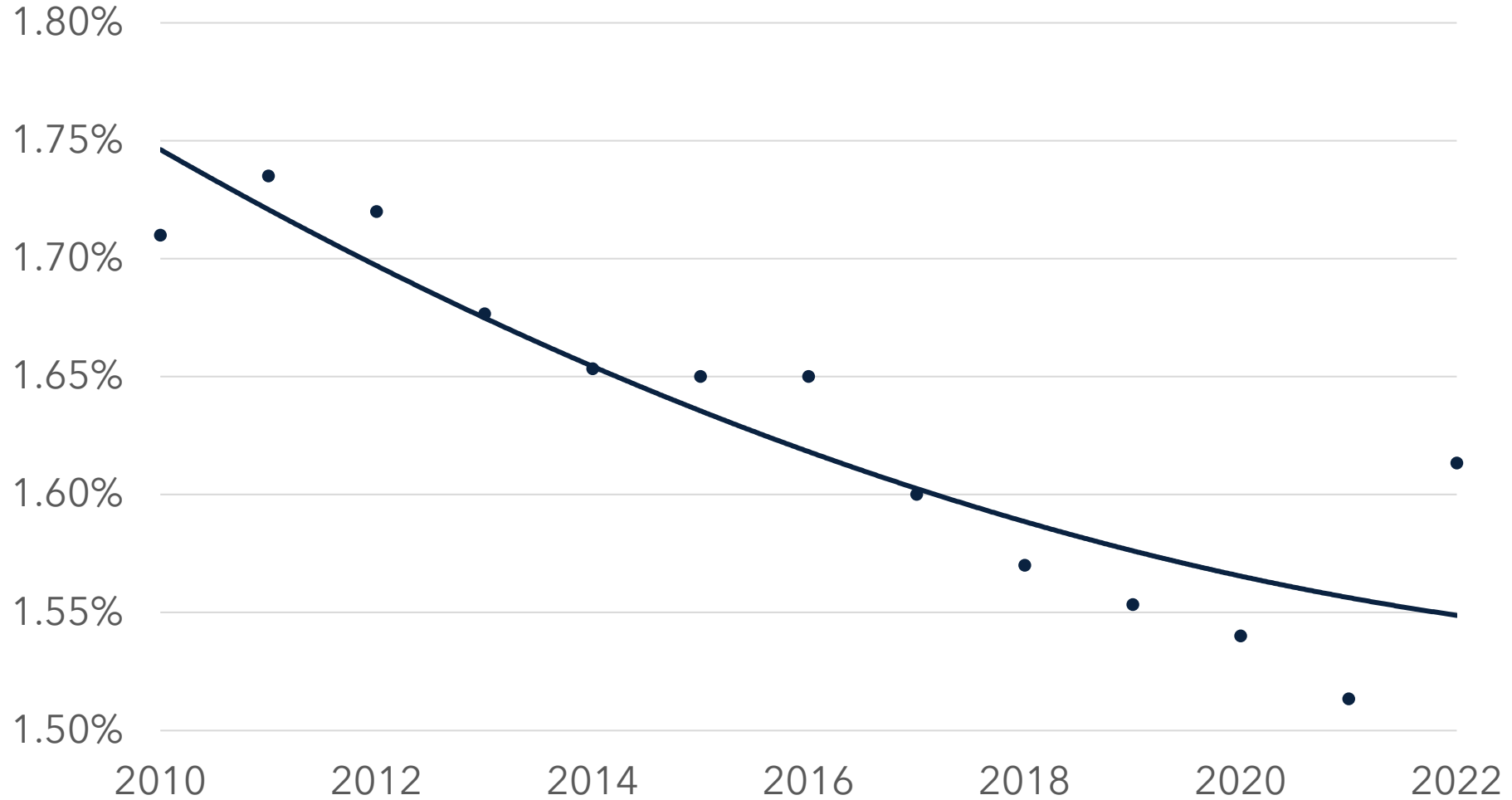
Management Fees

Trends

- How negotiable?
 - 28% of rates by commitment are below LPA headline rates
- What kind of discounts are available?
 - Commitment size
 - Early closing
 - Loyalty
- How can LPs be eligible for discounts?
 - Discounts are more common in larger funds
 - Larger discounts are found in smaller funds
- Management fee covers less
- What about bifurcated rates?
 - These generally reflect the fund's life cycle
 - Can result in a lower fee due to basis split between unfunded commitment and actively invested capital

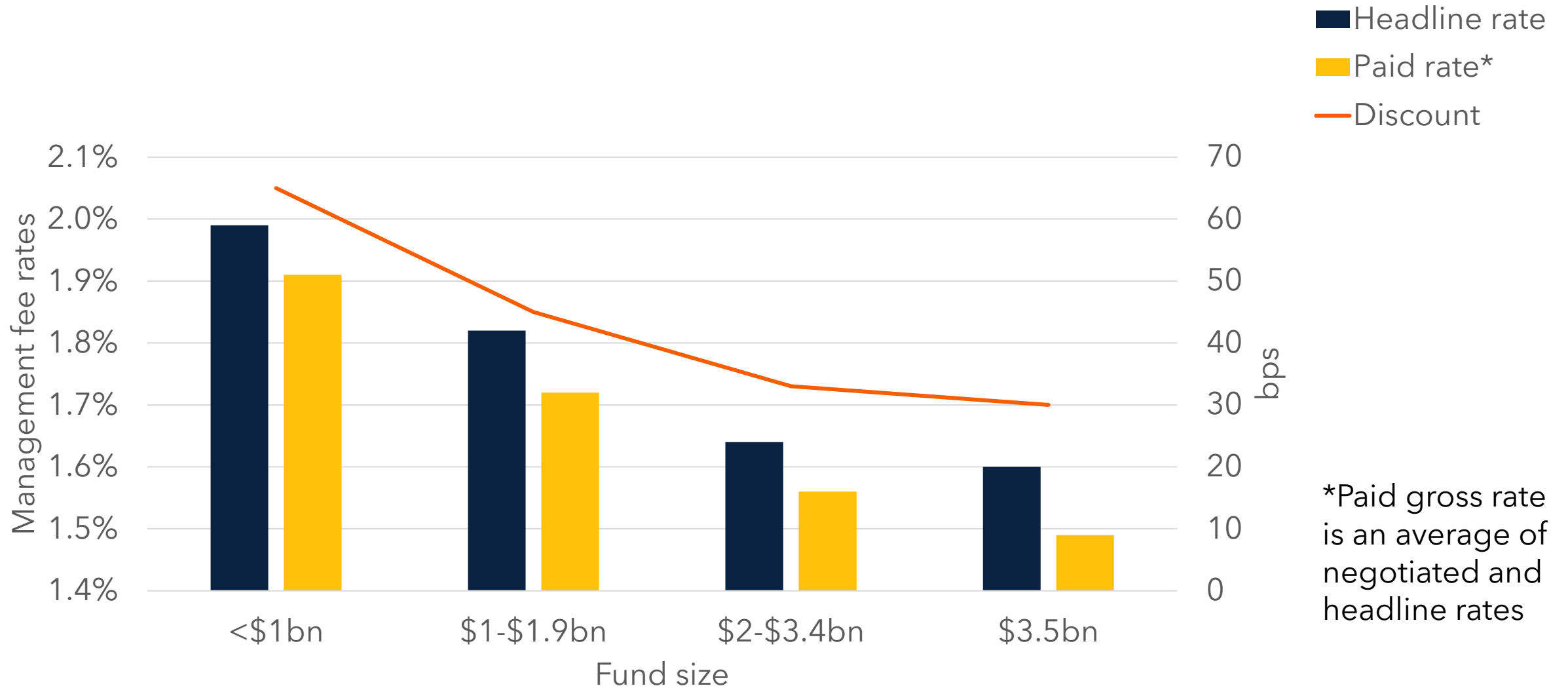
Management Fee - Headline Rates

Investment-period fee rates, combined negotiated and headline rates



Management Fee - Negotiated Rates

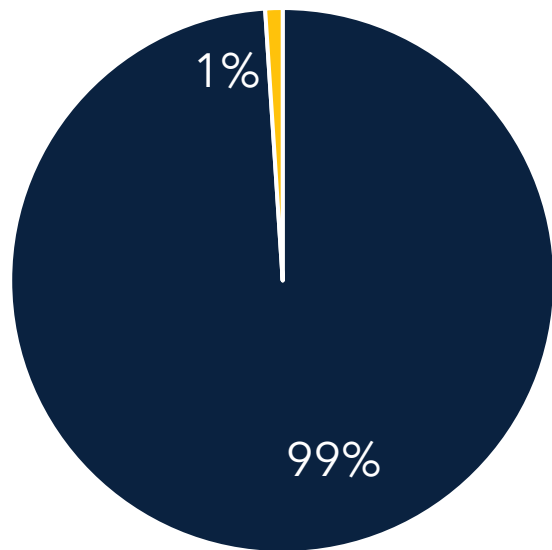
Discounts are more frequent in larger funds, but greater in smaller funds



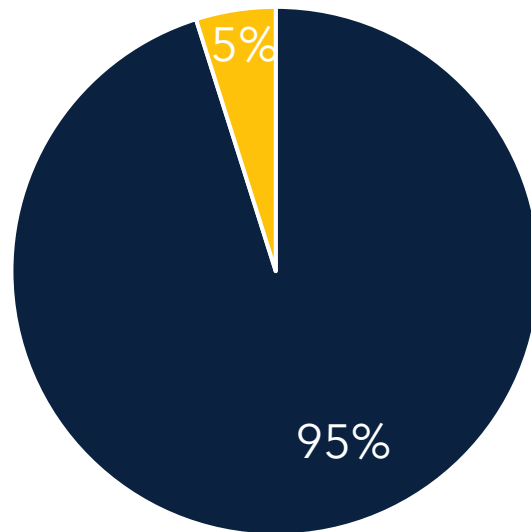
Management Fee - LP Management Fee Rate Basis

Recent vintages 2020-2023 across PE, VC and Others

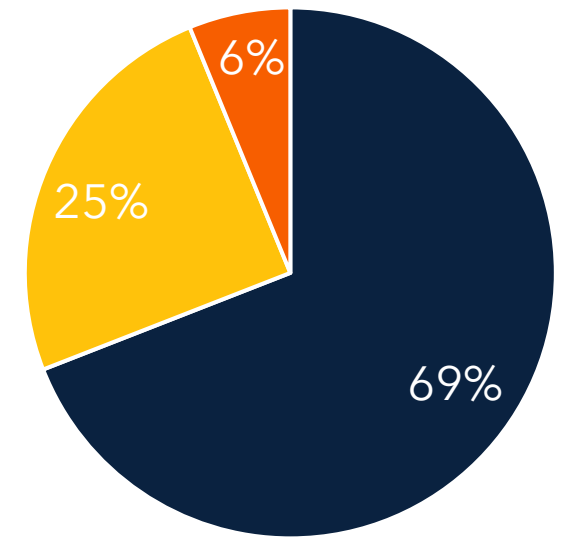
Private Equity



Venture Capital



Others



■ Initial
commitment

■ Actively invested
capital

■ Other

Management Fees - Trends Observed From Drafting

Some trends from the documents

Calculation of write offs (IRS basis)

Fees on borrowing?

Management fee terms

True "LP-by-LP" basis (from contributions and proceeds)?

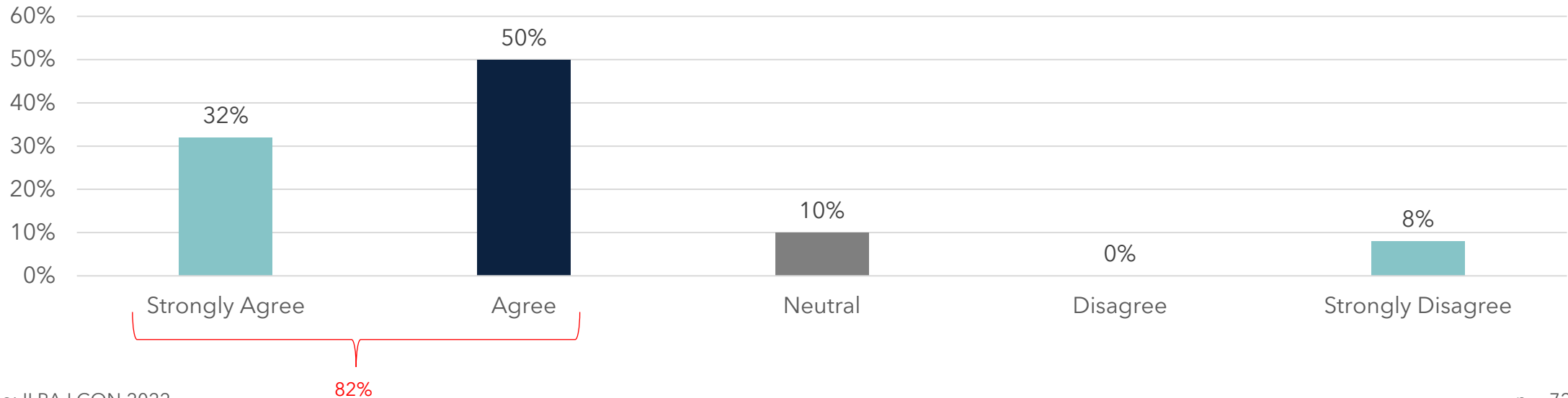
Step downs on raising successor funds?

Management fee step downs at term end (given delayed exits)

Partnership Expenses vis-à-vis Management Fees

Survey from LCON 2022 - Costs charged to the partnership outside of management fee

How much do you agree with the following statement: Overall, the increase in costs charged to the partnership outside of the Management Fee have grown at a greater rate than the decrease in costs associated with the reduced Management Fee.



Source: ILPA LCON 2022

n = 72

- While management fees may have fallen below 2% (funds over \$1B), headline management fee rates have largely held steady even as fund sizes have grown dramatically, outstripping the decrease in management fee rates as the absolute dollar amounts continue to grow meaningfully.
- **82% of LPs identified that the increase in costs charged to the partnership outside of the management fee have grown at a greater rate than the decrease in costs associated with the reduced management fee.**

Expenses

What is the impact on LPs due to GPs divergence from ILPA Principles with management fee vs. partnership expenses?

ILPA Principle

- **Third party administration** costs should only be allocated to the partnership when the GP has the approval of LPs to utilize a TPA
- **Travel** related to sourcing deals, networking, and preliminary due diligence should be paid by the manager out of the management fee
- **Third party legal expenses** incurred specifically in connection with fund matters are allocable to the partnership.
- To the extent that a **technology** implementation...or upgrade...chiefly benefits the GP...the GP should pay the associated costs



LP Impact

Nearly all third-party administration costs are paid via partnership expenses

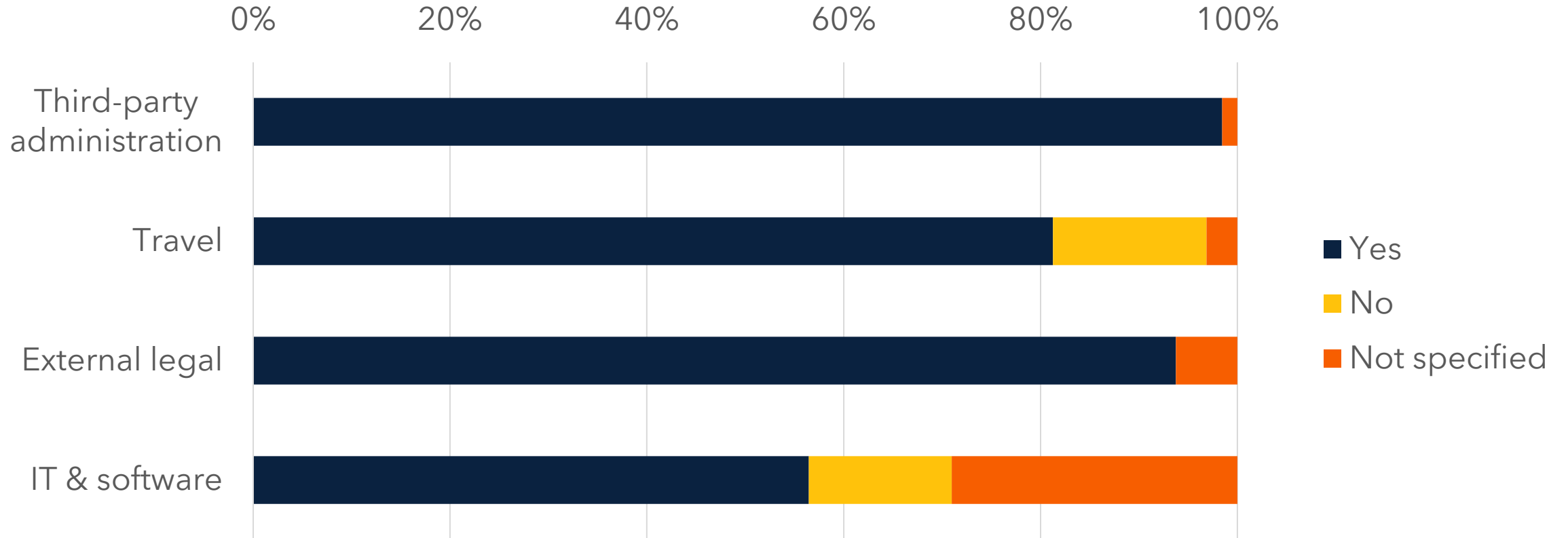
Most travel is paid via partnership expenses

External legal expenses are largely allocated to the partnership

IT and software are often paid by the partnership but is not specified in nearly one third of LPAs

Expenses

Paid in partnership expenses?





Management Fees - Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses	Registered PFAs	18-months	March 14, 2025	Yes
Restricted Activities - Regulatory, Compliance, and Examination Expenses (Disclosure-Based)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities - Investigation Expenses (Consent)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No

Quarterly Statements - Fees and Expenses

GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contain detailed accounting of (i) all compensation, fees and other amounts paid to the GP by the fund, (ii) all fees and expenses allocated to or paid by the fund with separate line items related to organizational, accounting, legal, administration, audit, tax, due diligence, and travel and (iii) the amount of any offsets or rebates carried forward. Additionally, GPs must provide LPs a detailed accounting of all portfolio investment compensation allocated or paid to the GP by the covered portfolio investment reflecting the total dollar amount, presented before and after the application of any offsets, rebates or waivers.



Polling Question #3

With the new Quarterly Statement rules within PFA, how will this impact your negotiations for fee and expense transparency from your GPs?

- a) We do not currently negotiate for additional fee and expense transparency and will continue to not negotiate
- b) We do not currently negotiate for additional fee and expense transparency, but now plan to start negotiating to get more in-depth data beyond the new required fund-level information
- c) We currently negotiate for additional fee and expense transparency, but will no longer negotiate to get more in-depth data given the new required fund-level information
- d) We currently negotiate for additional fee and expense transparency and will continue to negotiate given we need more in-depth data beyond the new required fund-level information
- e) Not sure

Website: sli.do

Event code: [#LCON2023](https://lcon2023.com)

Expenses - Trends Observed from Drafting

Some trends from the documents

LP-specific expenses

Hurdles

What is the impact on LPs due to GPs divergence from ILPA Principles with hurdle structure?

ILPA Principle

- To mitigate investor risks, the carried interest calculation should ideally utilize a “hard hurdle” whereby the GP’s carried interest is based on the portion of profits that exceed the LP’s preferred return



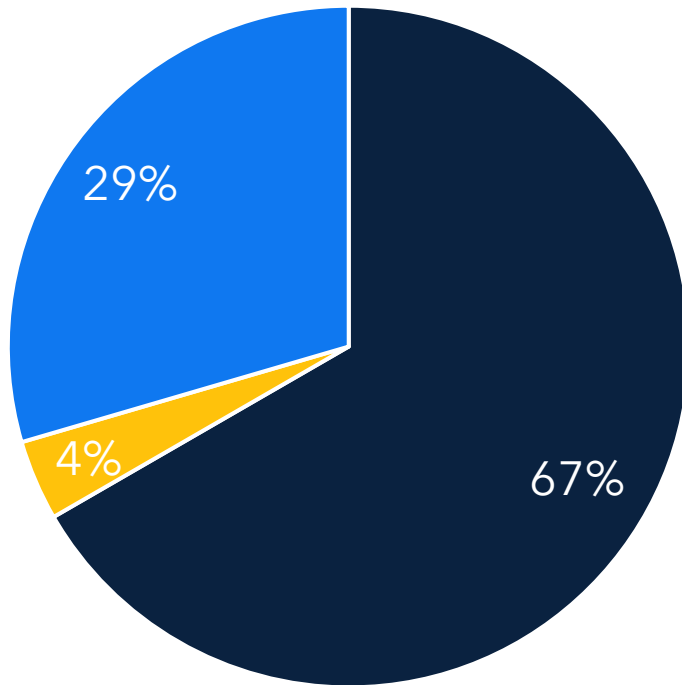
LP Impact

- Most funds have hurdle rates in the form of IRR and less commonly multiples
- In most cases, venture capital funds do not have hurdles
- Hard hurdles are rare
- 25% of funds don’t reach hurdle; what is cost of no hurdles?
- Premium hurdles are most frequently found in venture capital funds

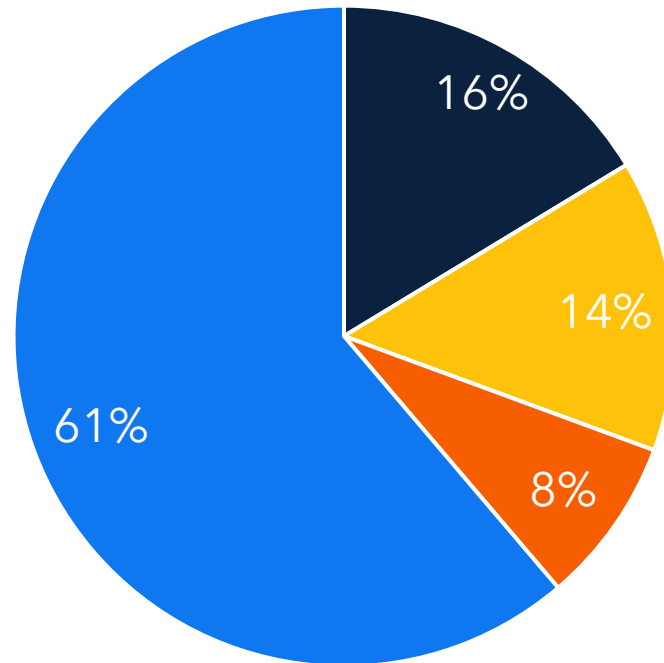
Hurdles by Strategy

Hurdles across PE, VC and Others

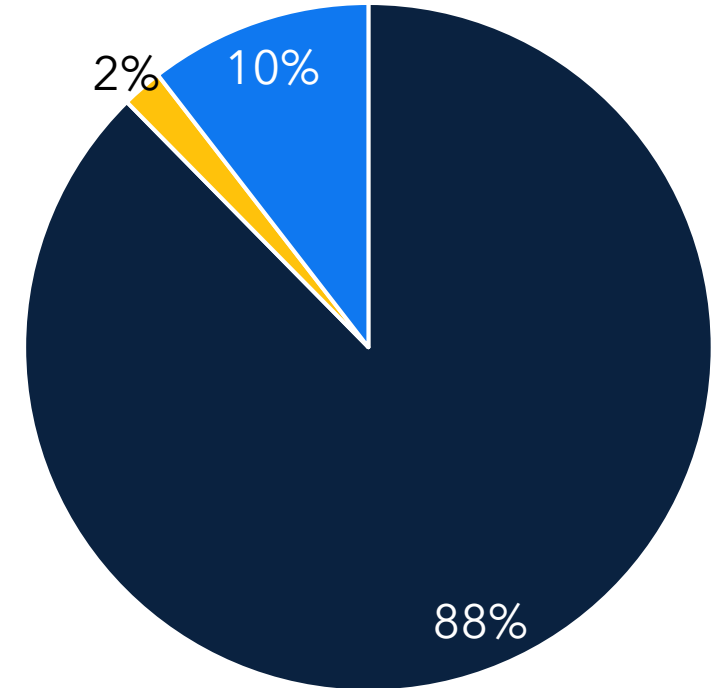
Private Equity



Venture Capital



Others



■ IRR ■ Multiple ■ Other ■ No hurdle

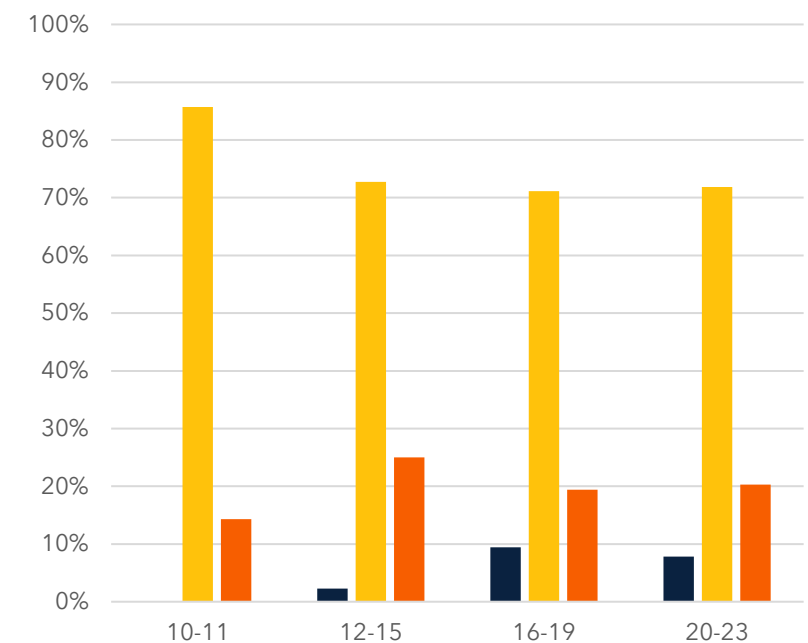
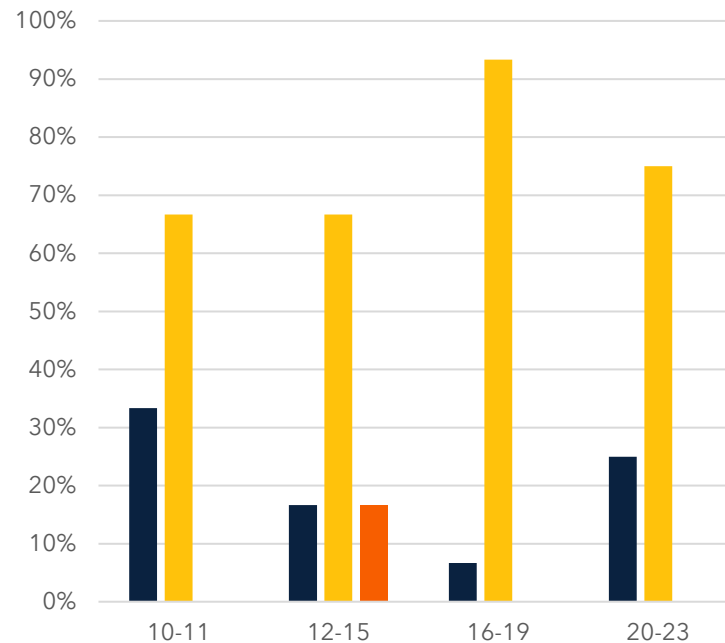
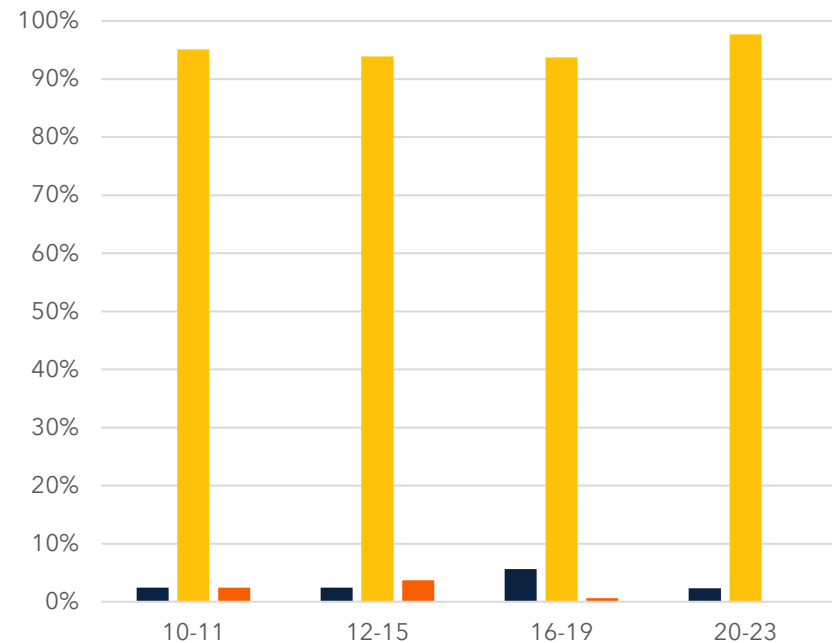
Hurdles Over Time

Hurdle Rates by vintage years across PE, VC and Others

Private Equity

Venture Capital

Others



■ <8%

■ 8%

■ >8%

Catchups

What is the impact on LPs due to GPs divergence from ILPA Principles with catchups?

ILPA Principle

- To mitigate investor risks, the carried interest calculation should ideally utilize a “hard hurdle” whereby the GP’s carried interest is based on the portion of profits that exceed the LP’s preferred return

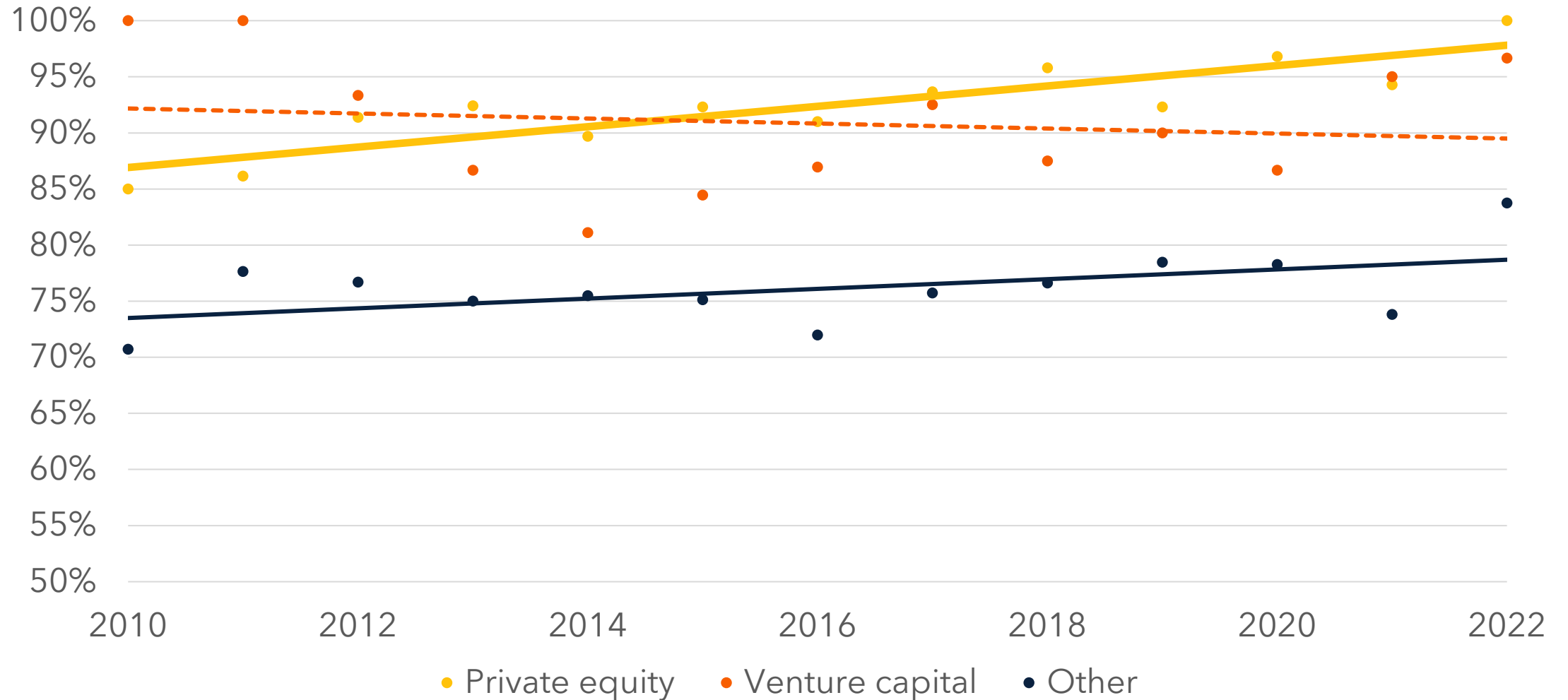


LP Impact

- Catchup rates have increased over time
- Catchups for private equity are higher than other strategies, such as real estate, real assets, private debt
- When VC has a hurdle, catchups average over 90%

Catchups by Strategy

Catchups across PE, VC and Others



Clawback

What is the impact on LPs due to GPs divergence from ILPA Principles with clawbacks?

ILPA Principle

- **Actual and potential** clawback liabilities should be determined and clearly disclosed to the LPs as of the end of every reporting period
- All clawback amounts should be **gross of taxes paid** and paid back no later than two years following the recognition of the liability



LP Impact

Only 21% of funds have interim clawback provision, typically twice before liquidation - nearly all funds have a final clawback provision

95% of funds have net of tax clawback provisions



Clawback - Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Restricted Activities - Reducing Adviser Clawbacks for Taxes (Disclosure-Based)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

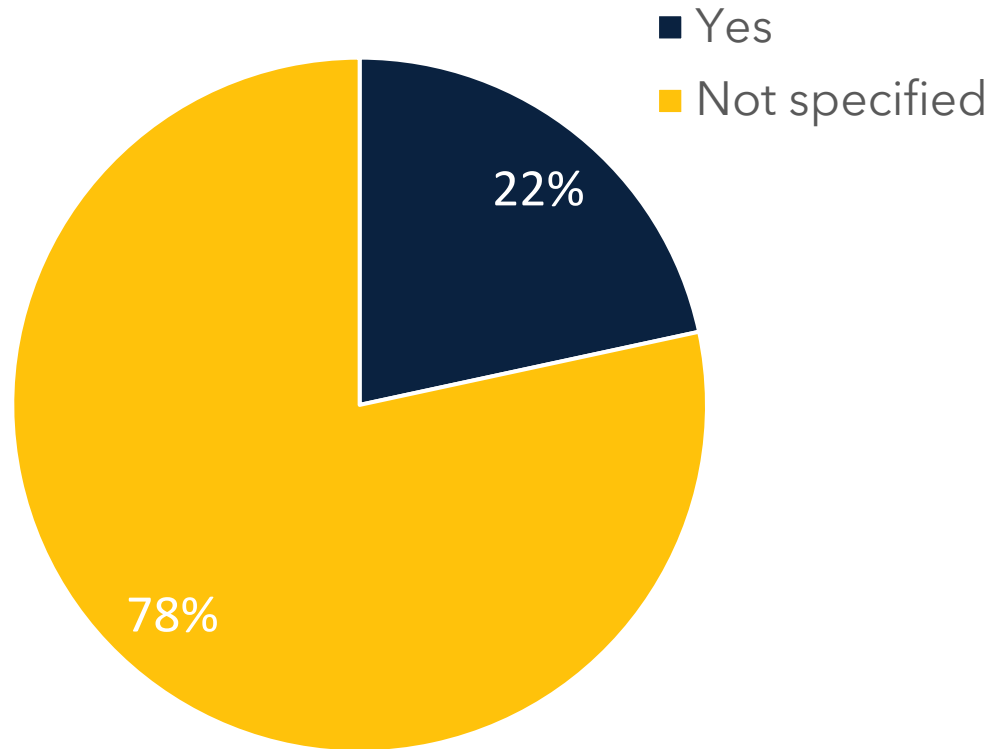
Restricted Activities - Reducing Advisers Clawbacks for Taxes (Disclosure-Based)

GP *may not* reduce the amount of their clawback obligation by actual, potential or hypothetical taxes *unless* the GP provides written notice to LPs the aggregate dollar amounts of the clawback before and after any reduction for actual, potential or hypothetical taxes within 45-days after the fiscal quarter end in which the clawback occurs.

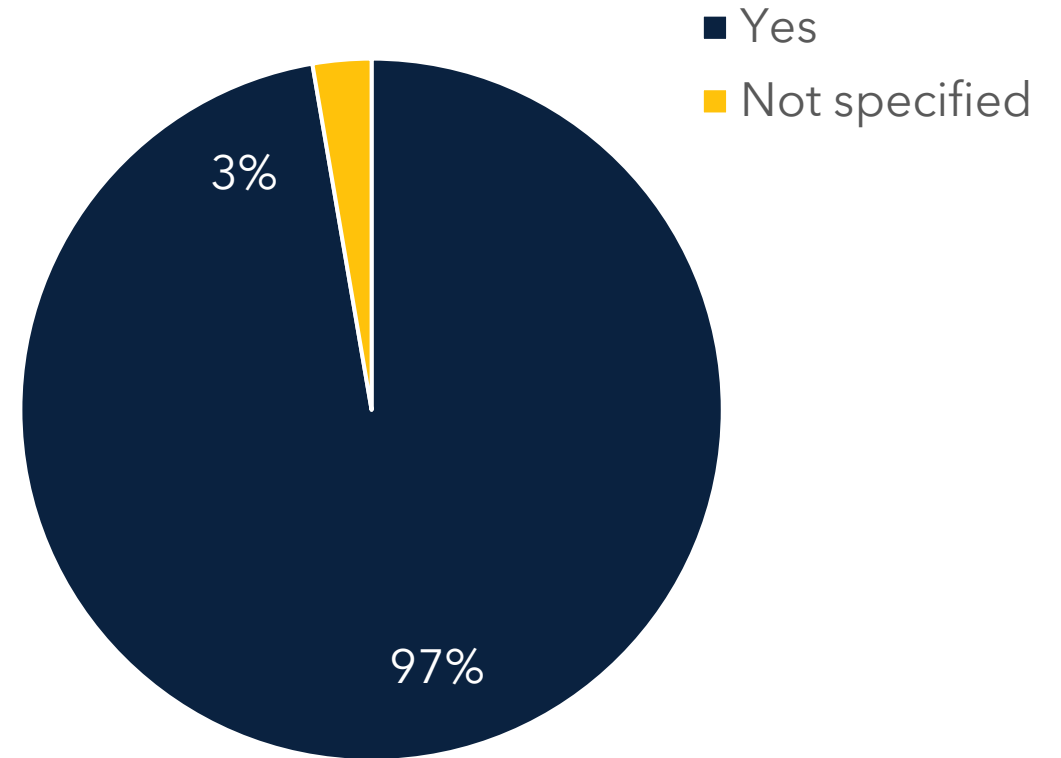
Clawback

LPA's with clawback provisions

Interim clawback



Final clawback



Escrow

What is the impact on LPs due to GPs divergence from ILPA Principles with escrow?

ILPA Principle

- An escrow account of at least 30% may provide a sufficient mechanism for the clawback guarantee
- LPs should have robust enforcement powers, including the ability to directly enforce the clawback against individual GPs

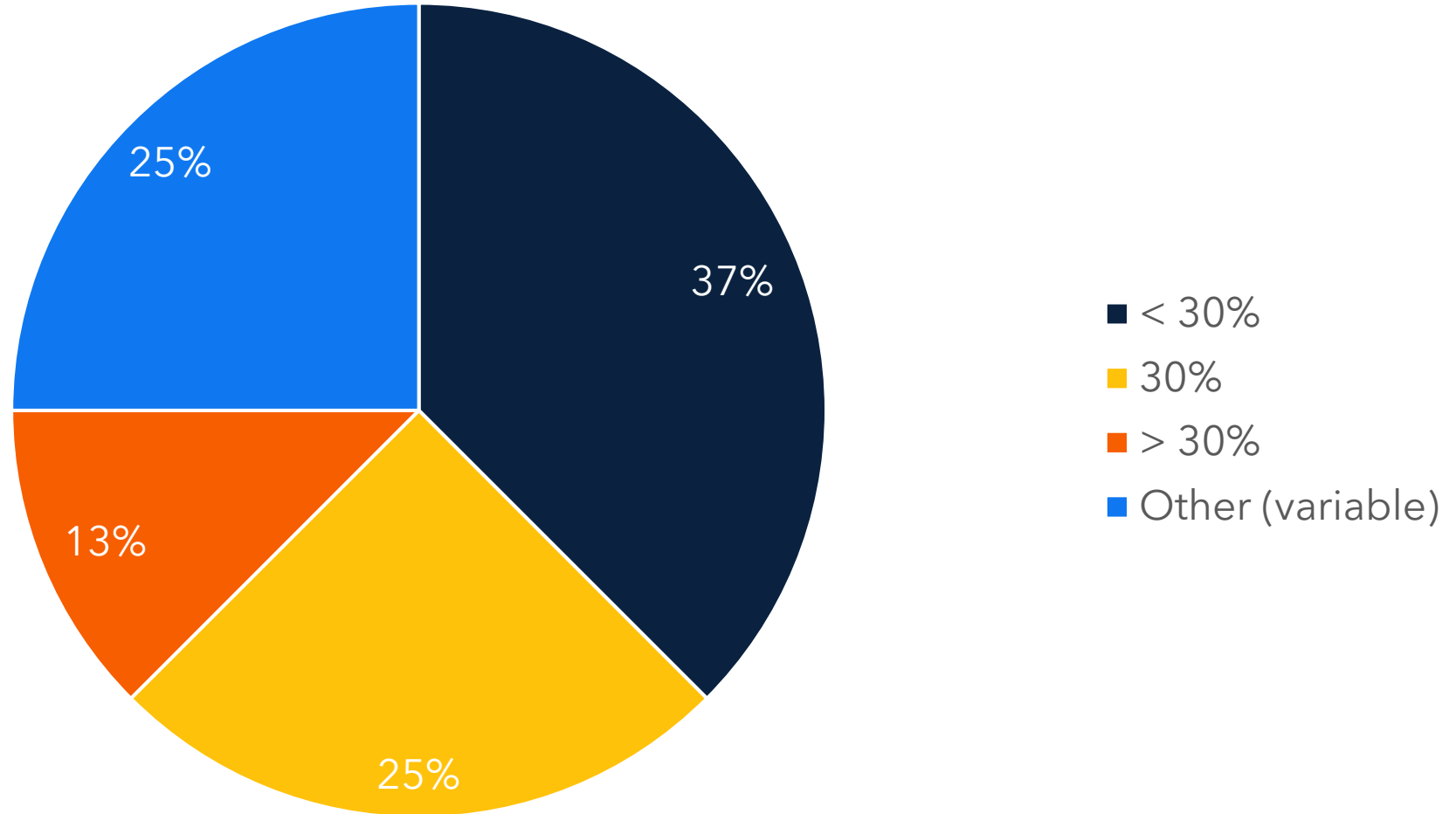


LP Impact

- 19% of funds had a carry escrow provision
- Escrow amount ranged from 15% to 60%

Escrow

Escrow percentages found in funds





Polling Question #4

On a scale of 1-5, how much do you agree with the following statement?

The new requirement from the Restricted Activities - Clawback rule within PFA that requires GPs to provide disclosures on the actual dollar amounts of the clawback before and after any reduction for actual, potential or hypothetical taxes is an improvement for LPs.

- a) Strongly disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Clawback - Trends Observed from Drafting

Some trends from the documents

Guarantee wording

Guarantor identity

Clawback timing

New private fund rules on tax

GP Commitments

What is the impact on LPs due to GPs divergence from ILPA Principles with the structure of GP commitments?

ILPA Principle

- The GP should have a substantial equity interest in the fund: 2%-5%
- The GP commitment should be contributed in cash as opposed to [via] the waiver of management fees or ... financing facilities

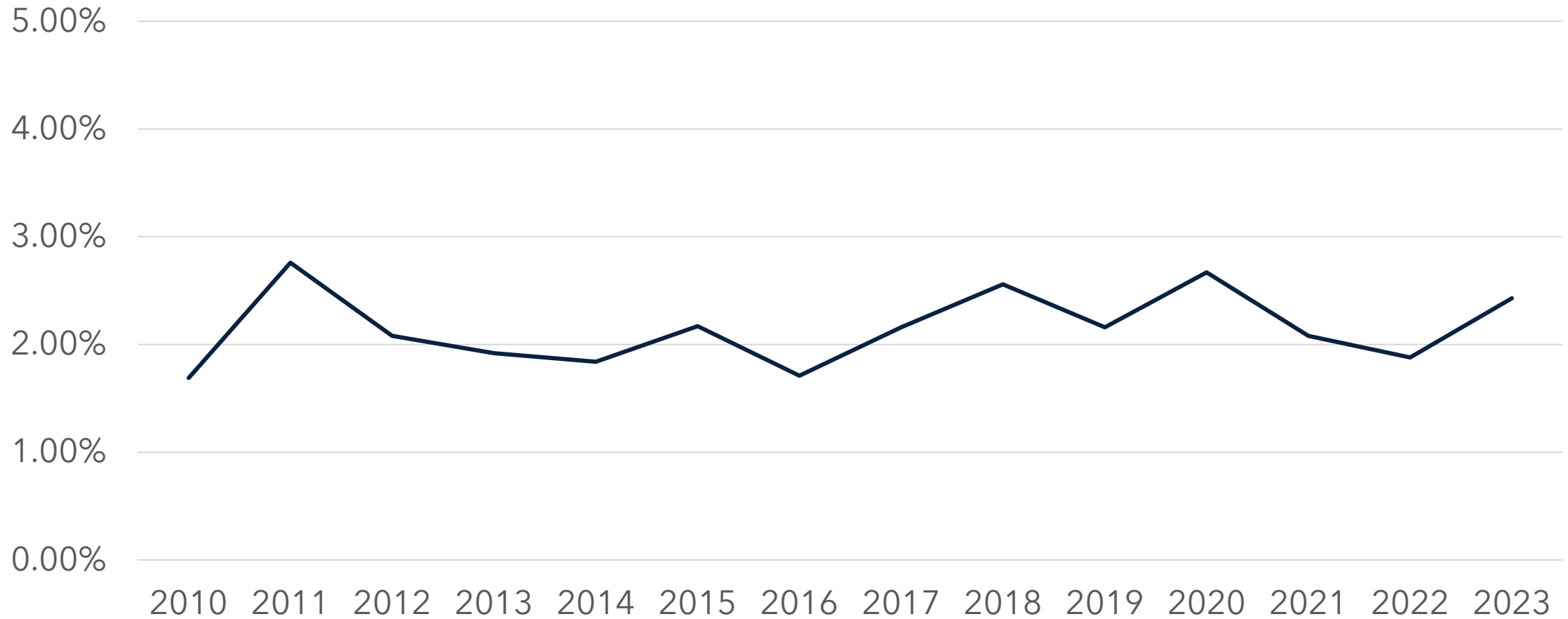


LP Impact

- 71% of funds have GP commitments, typically ranging 2%-3%
- Per LPA, mostly contributed in cash, but frequently enough, financial footnotes show management fee waivers
- Higher GP commitments are associated with larger fund sizes

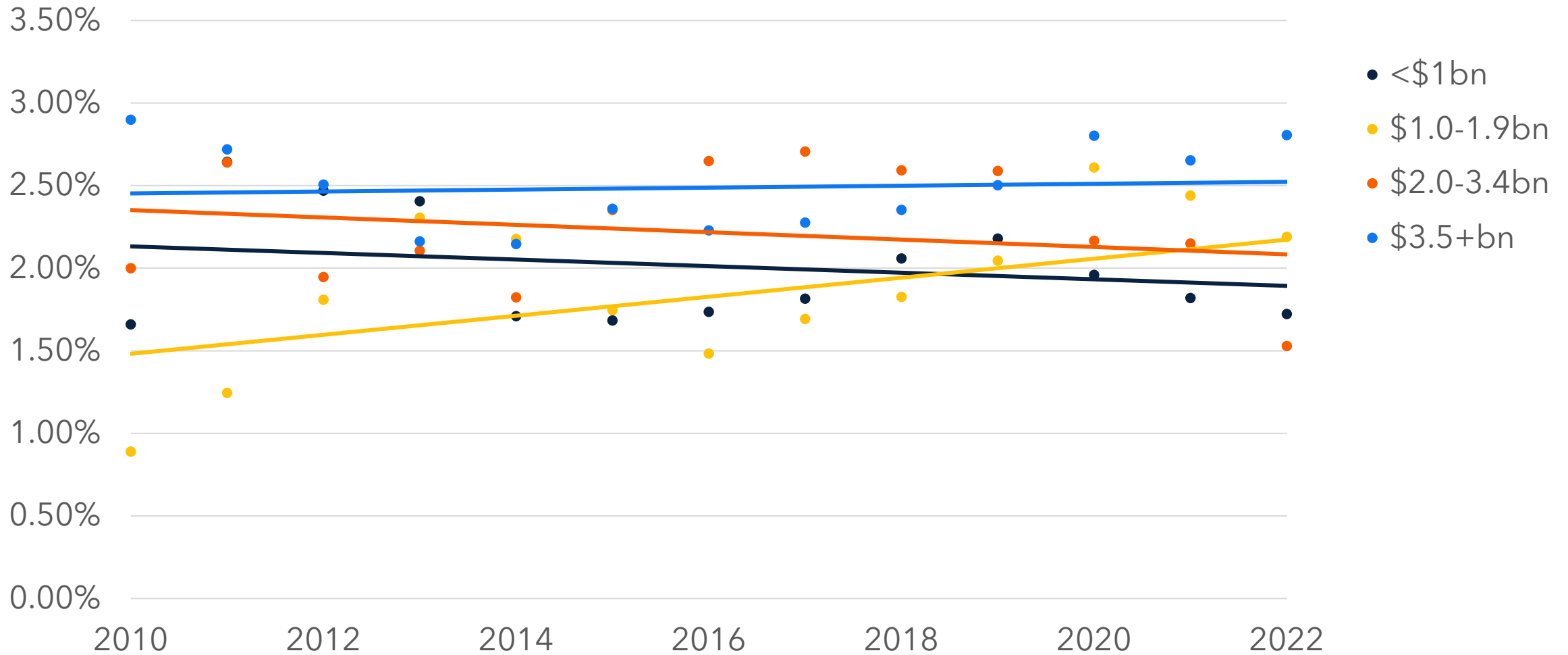
GP Commitments

Range of 1.75% to 2.75% since 2010



GP Commitments

Larger fund size, larger commitment



GP Commitment - Trends Observed from Drafting

Some trends from the documents

Who is making it and are they voting?

Defaults by GP

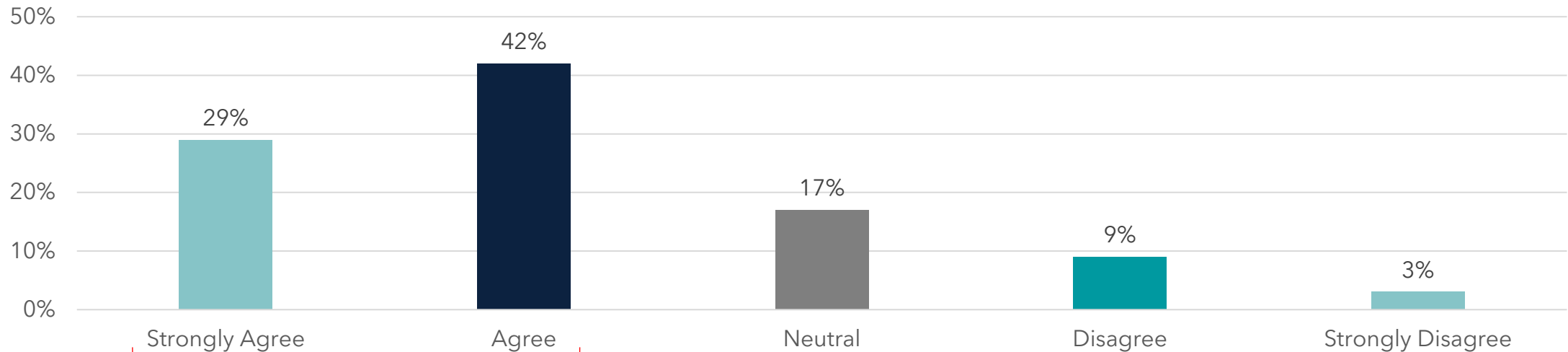
Fee Waivers in US - not deeming percentage until after closing

Delayed timing for GP commitments - delayed after final closing

GP Removal

Survey from 2022 LCON - Importance of Strengthening GP Removal

How much do you agree with the following statement: Strengthening the GP Removal terms is an important element of our legal negotiations.



Source: ILPA LCON 2022

71%

n = 76

- ILPA's members believe that stronger GP Removal terms can only be beneficial - **71% of LP respondents identified having strong GP Removal terms is an important element of legal negotiations.**

GP Removal

What is the impact on LPs due to GPs divergence from ILPA Principles with the structure of GP removal?

ILPA Principle

- When a **cause event** occurs...a simple majority in interest vote of LPs should be sufficient for the removal of the GP
- A super majority [or 2/3 in interest] should be sufficient for the **no fault removal** of the GP



LP Impact

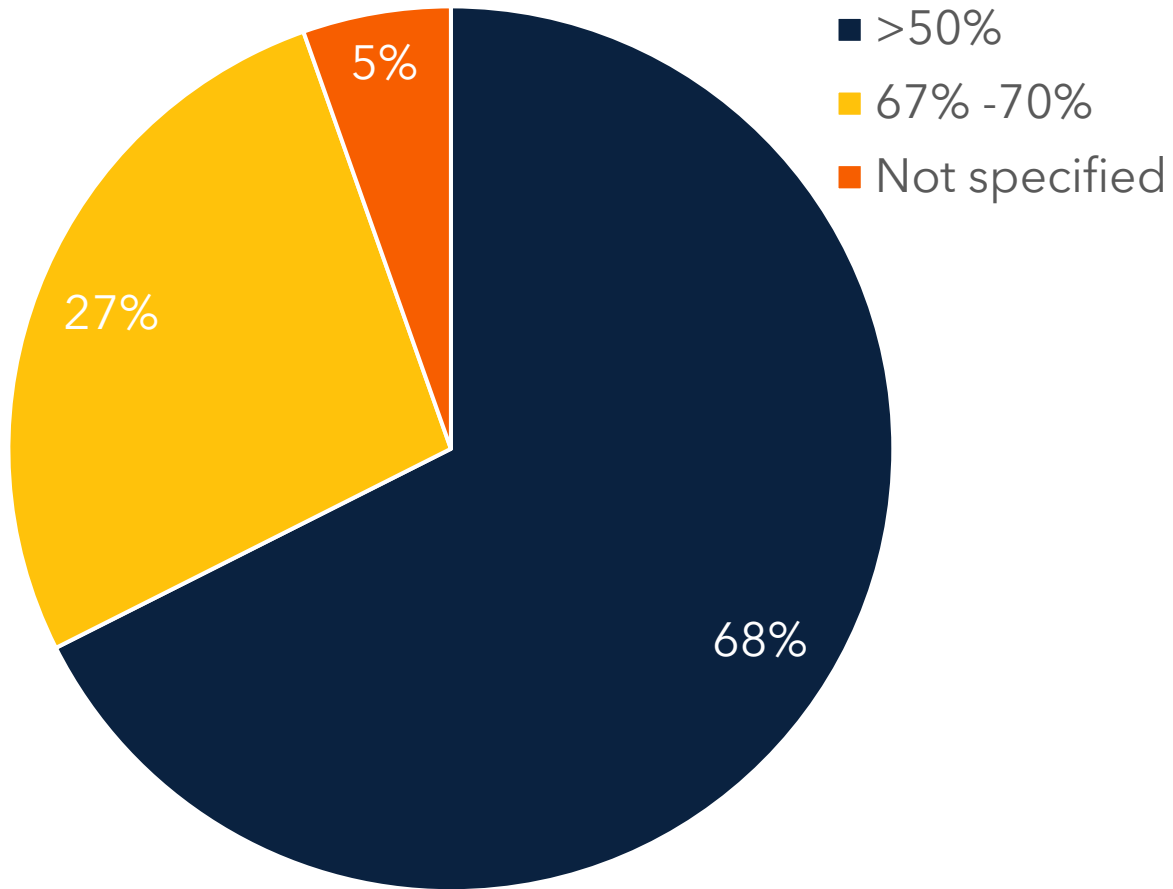
For cause: Nearly one third require more than a simple majority.

No fault: 8% require a significantly higher threshold. Nearly 50% of LPAs have no language on no-fault removal.

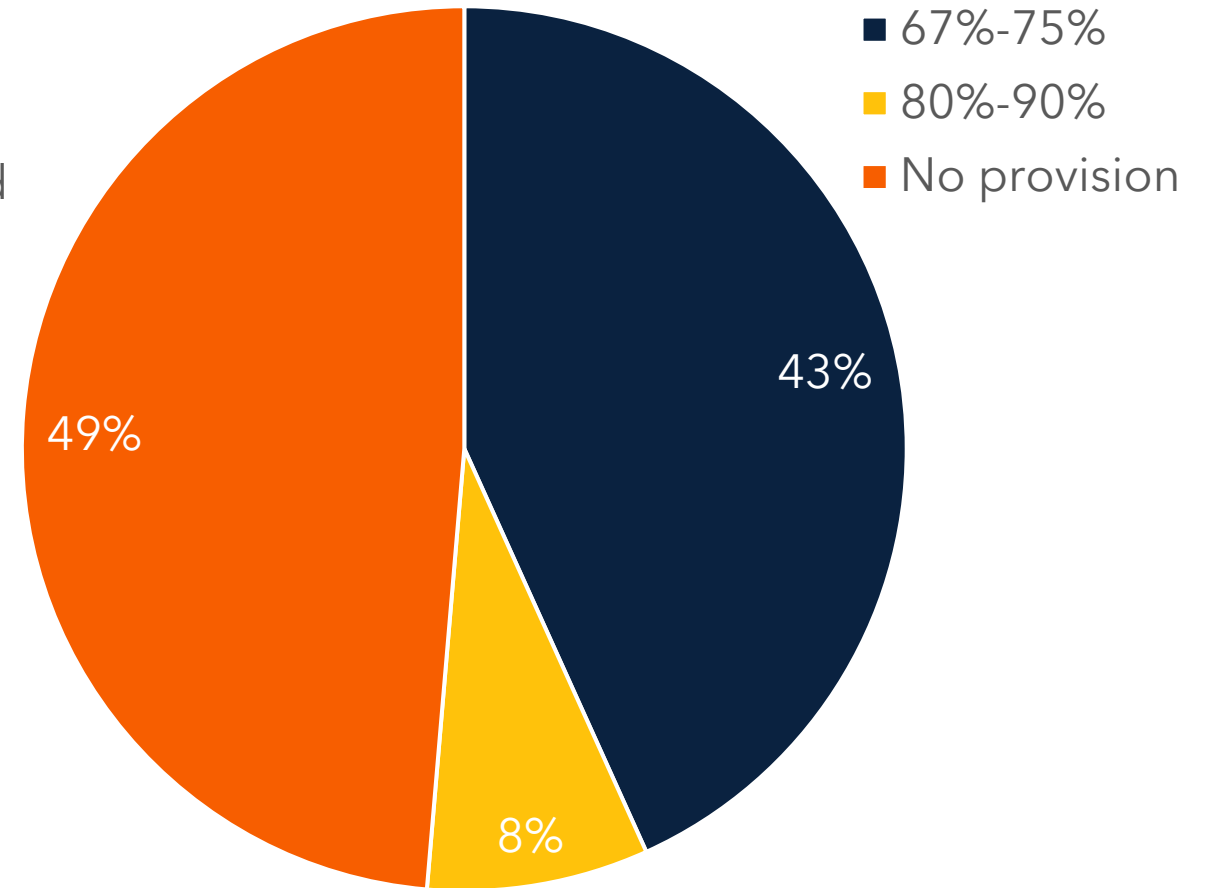
GP Removal

LP interests required for removal

For cause removal



No fault removal



GP Removal - Trends Observed from Drafting

Some trends from the documents

Applying "removal standard" to
"standard of care"

Valuations

Mechanism details

Key Person

What is the impact on LPs due to GPs divergence from ILPA Principles related to a key person or for cause event?

ILPA Principle

A 'key person' or 'for cause' event....should result in an **automatic suspension of the investment period**...



LP Impact

In 75% of LPAs, a key person event results in a suspension of the investment period

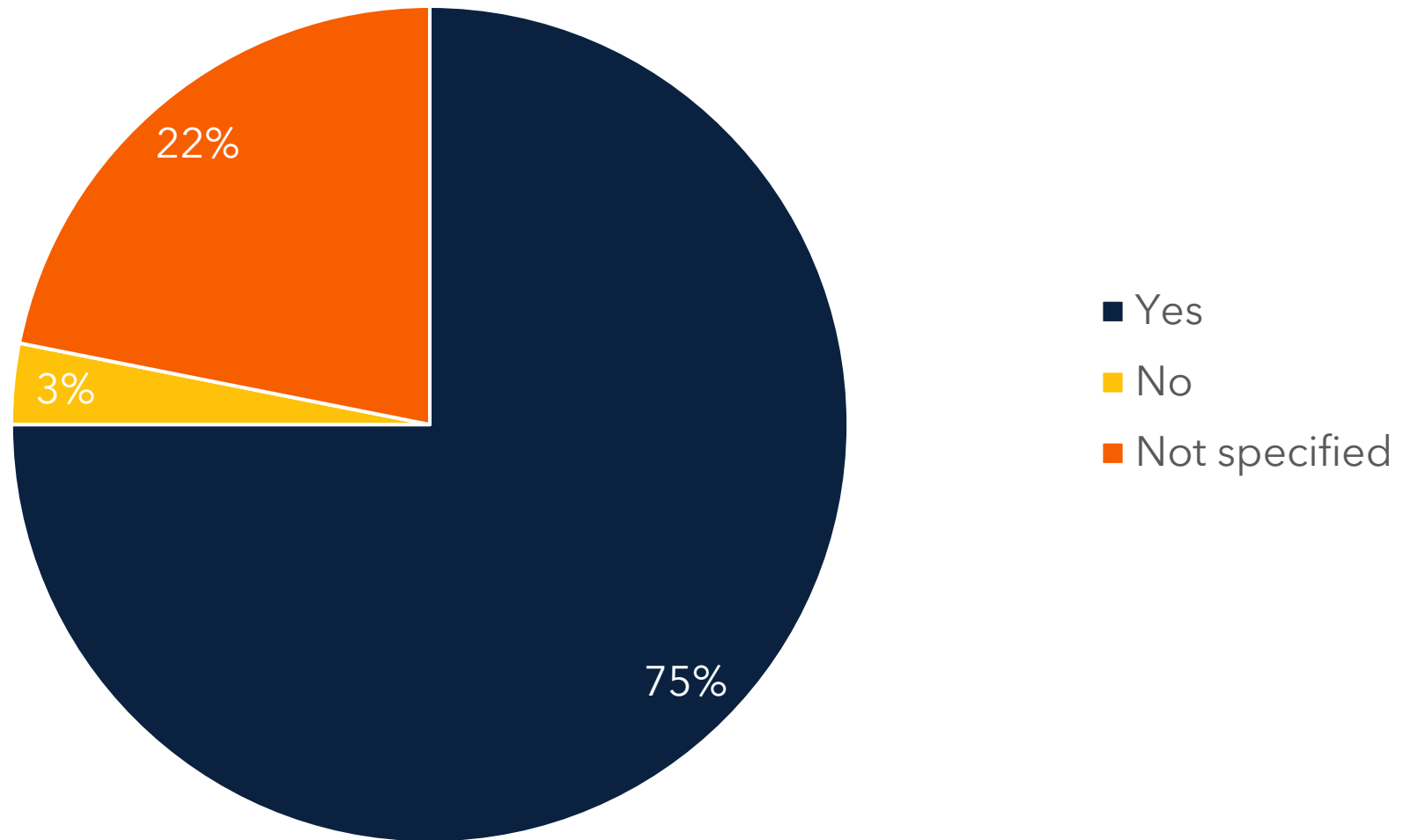
On the occurrence of a key person event, an **interim clawback** test should be performed and satisfied if there is a deficiency



Fewer than a quarter of LPAs have interim clawbacks

Key Person

Event leads to suspension of investment period?



Key Person - Trends Observed from Drafting

Some trends from the documents

**Is there appetite to push this
beyond the investment period?**

Focus more on change of control?

Other Trends - Observed from Drafting

Some trends from the documents

MFN Process

Benefits of new PFA rules?

New perspectives on old terms in light of fundraising dynamics

- Timeline for fundraising (12, 15, 18, 24 months?)
- Who determines extensions (LPs or LPAC?)
- How are investment guidelines (tied to benchmark commitments) implemented during fundraising? Should benchmark for guidelines be lower to avoid overconcentration in the event of a failed or down fundraise?

New/revised terms in LPAs

- NAV-based borrowing
- Continuation funds
- Extensions of Investment Period by LPAC
- Initial extensions of term without LPAC/LP consent
- GP tax treatment related flexibility on dissolution, successors, amendments, etc.



Side Letters and MFN- Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Preferential Treatment - Prohibited Preferential Transparency	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

Preferential Treatment - Prohibited Preferential Transparency

GPs **may not** grant preferential rights related to **portfolio holdings and/or exposure information** if they reasonably expect the preferred rights would have a **material, negative effect** on the other LPs in the **fund** or **similar pool of assets** **unless** the **GP offers such information to all other existing LPs at the same time or substantially the same time.**

Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment

GPs **may not** grant other preferential treatment to LPs in the fund **unless** the GP (i) provides **advanced written notice prior to the LP's close** that includes specific information related to any **material economic terms** provided to other LPs and (ii) provides **written disclosure of all preferential treatment provided to other LPs as soon as reasonably practicable following the fundraising period.**

Panel Predictions

2024 and beyond

- Macro climate
- LP-GP negotiations
- SEC / regulatory impact
- Other themes

Comparison to 2022 predictions?

- Has pendulum swung to LP side?

An aerial photograph of the University of Illinois at Urbana-Champaign campus. The image shows the central dome of the Old Capitol building, various university buildings, a large green lawn, and a multi-lane highway bridge crossing the Rookery River. A large, bright yellow circle is superimposed over the center of the image, containing white text.

**ILPA
LCON
2023**

Questions?



Contact Us

James O'Donnell

james.odonnell@dlapiper.com

Jody Shaw

jody.shaw@allstate.com

Paul O'Shea

poshea@colmore.com

Neal Prunier (Moderator)

nprunier@ilpa.org



An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large yellow circle is superimposed over the center of the image.

**ILPA
LCON
2023**

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



LP-Only Roundtable: Shaping the Future of Side Letters

Brian Hoehn

Senior Associate, ILPA (Moderator)



Agenda

- Introduction - 5 mins
- Breakout Sessions - 55 mins
- Report Back - 30 mins

Breakout Questions

1. Has negotiating side letters changed in the new fundraising environment?
 - a) Are you having more success negotiating for terms?
 - b) Are you pushing for new terms in this environment that you may have not in the past?

2. What negotiation tactics have been repeatedly successful for your organization?
 - a) What are new tactics that GP counsel are employing? How can they be countered?
 - b) Are there tactics that can be developed now that LPs have more negotiating power?

3. Have you added any new language in your side letter to protect against any new market trends, i.e., continuation funds, NAV facilities, etc.?

Breakout Questions

4. What terms in your side letter does GP counsel push back against the hardest? (What terms do you negotiate for that is the most difficult to get included)?
 - a) Do you have any high priority terms in your side letters (outside of legal and regulatory policies) that GPs are pushing back against?
 - b) Are you pushing for new terms in this environment that you may have not in the past?

5. How will the new Private Fund Advisers rules change the way side letters are utilized and negotiated?
 - a) How do you think the industry will define the 'material-economic terms' that need to be disclosed prior to a LP's commitment to a fund?
 - b) How will GPs respond to this rule? Do you think this rule will make it easier or more difficult to achieve terms in the side letter?
 - c) How will your organization utilize the information that is being disclosed?

An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large, bright yellow circle is superimposed over the center of the image, containing white text.

ILPA
LCON
2023

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



Get Back the LPA Terms You've Lost

Jonathan Koerner

Partner, Albourne

Margaret Niles

Partner, K&L Gates

Emily Smith

Principal, Kutak Rock

Adam Lippiett

Senior Counsel, Siemens (Moderator)



Today's Speakers



Jonathan Koerner
Albourne



Emily Smith
Kutak Rock



Margaret Niles
K&L Gates

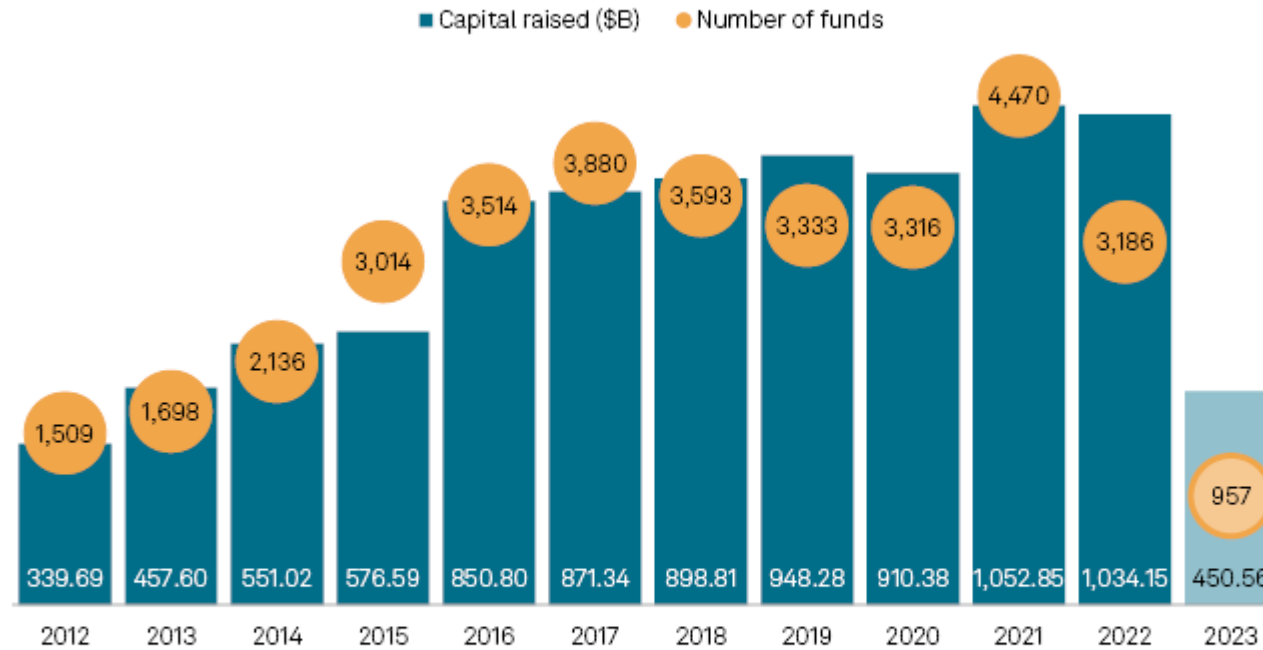


Adam Lippiett
Siemens
(Moderator)

Getting Back the Terms You've Lost

Market Environment

Fundraising trend of private equity, 2012-2023



Data compiled July 13, 2023.

* Year to date through July 13, 2023.

Analysis includes capital raised and number of funds by global private equity covering all strategies.

Private market trends data provided by Preqin.

Source: S&P Global Market Intelligence.

© 2023 S&P Global.

Getting Back the Terms You've Lost

Market Environment

- From 2008 to 2012, LPs made inroads on fund terms
- In the past 10 years LPs allocated more capital into private equity
- GPs raised larger funds in quicker fund cycles
- The GP law firm market has consolidated considerably to the point where it's dominated by major players
- From 2012 to 2022, the starting point of LPAs has moved towards the GPs' favor
 - Economic terms
 - Side letter terms
 - Risk and governance terms

Economic Terms

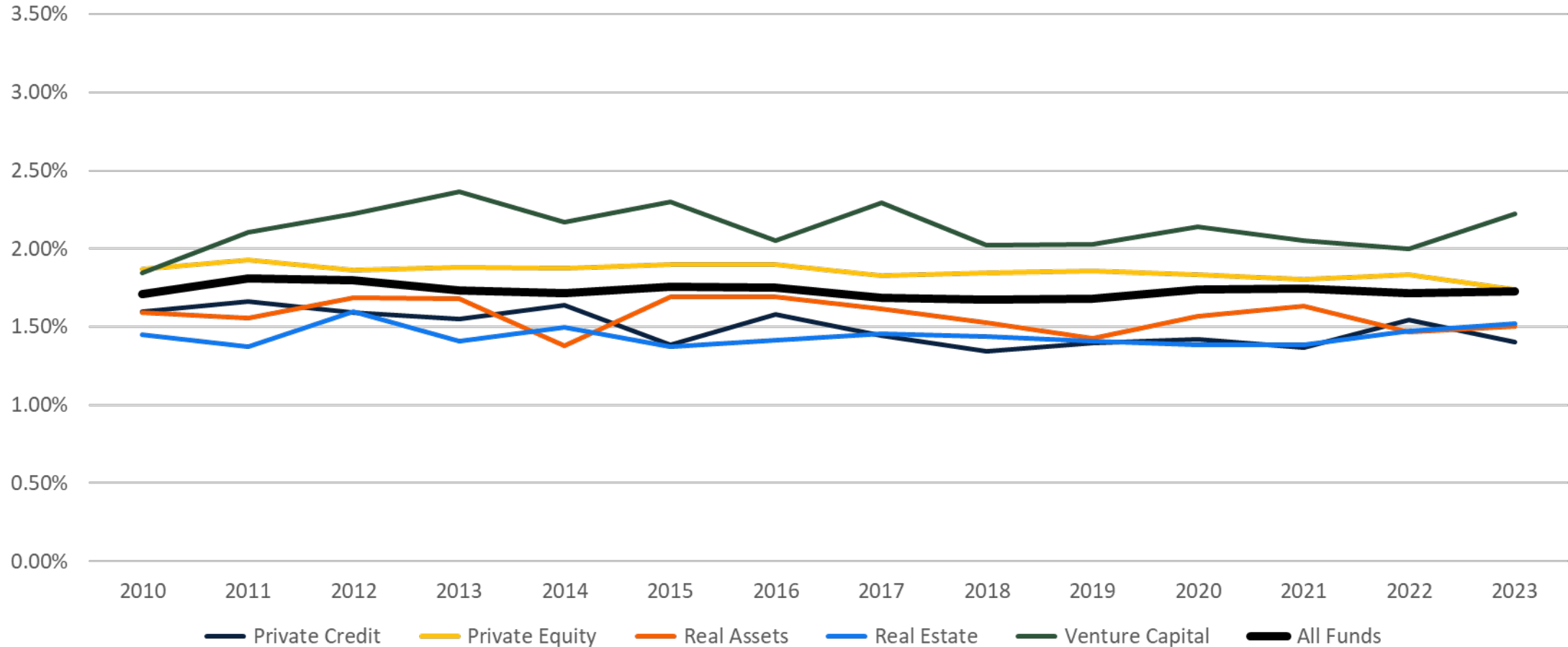
Management Fees and Fund Expenses

- Management fees have stayed around 2% while fund sizes have grown exponentially
- Increase in fees GPs and affiliates receive in connection with the fund but not offset
- GPs charging more fees as partnership expenses as opposed to allocating them to the management fee

Management Fee Rates

Management fee rates have held steady for all strategies

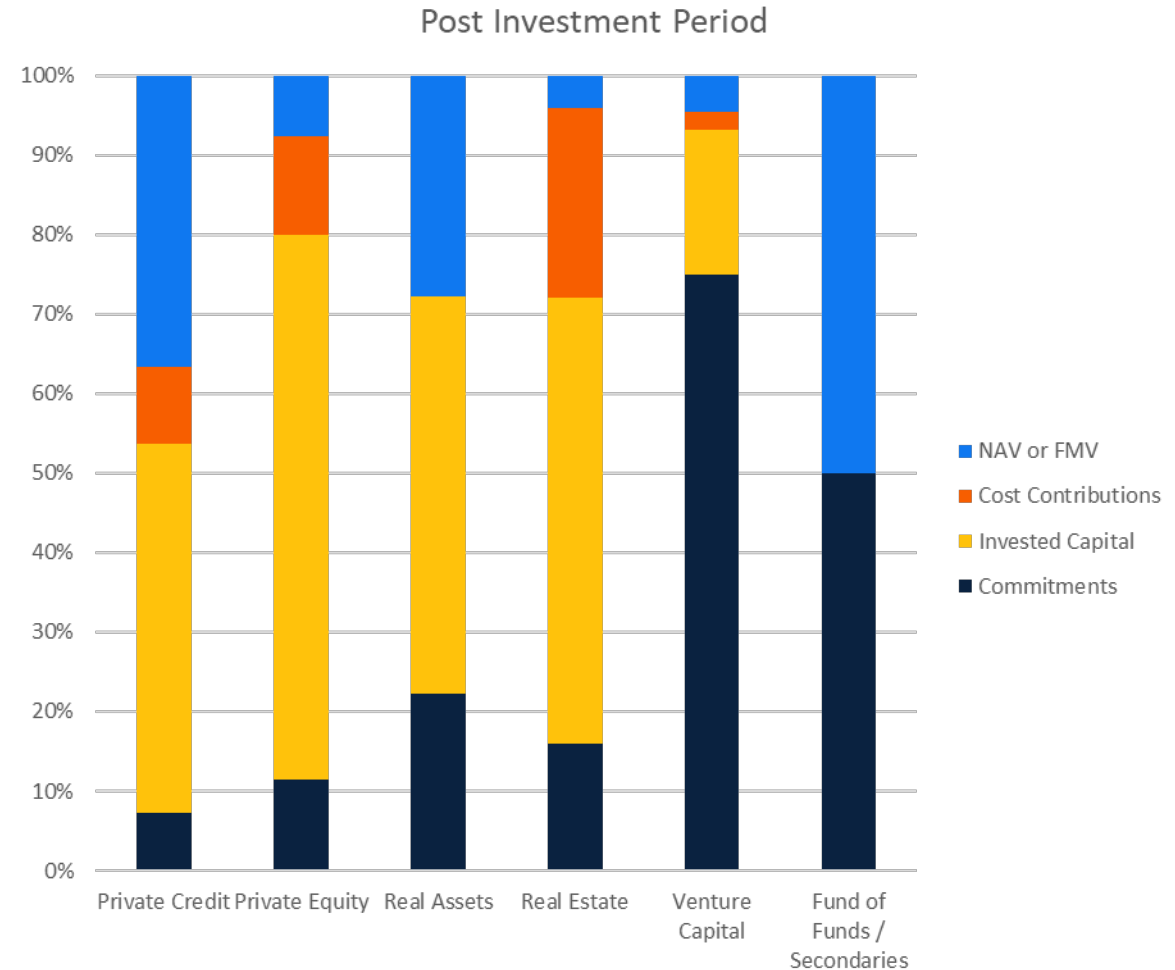
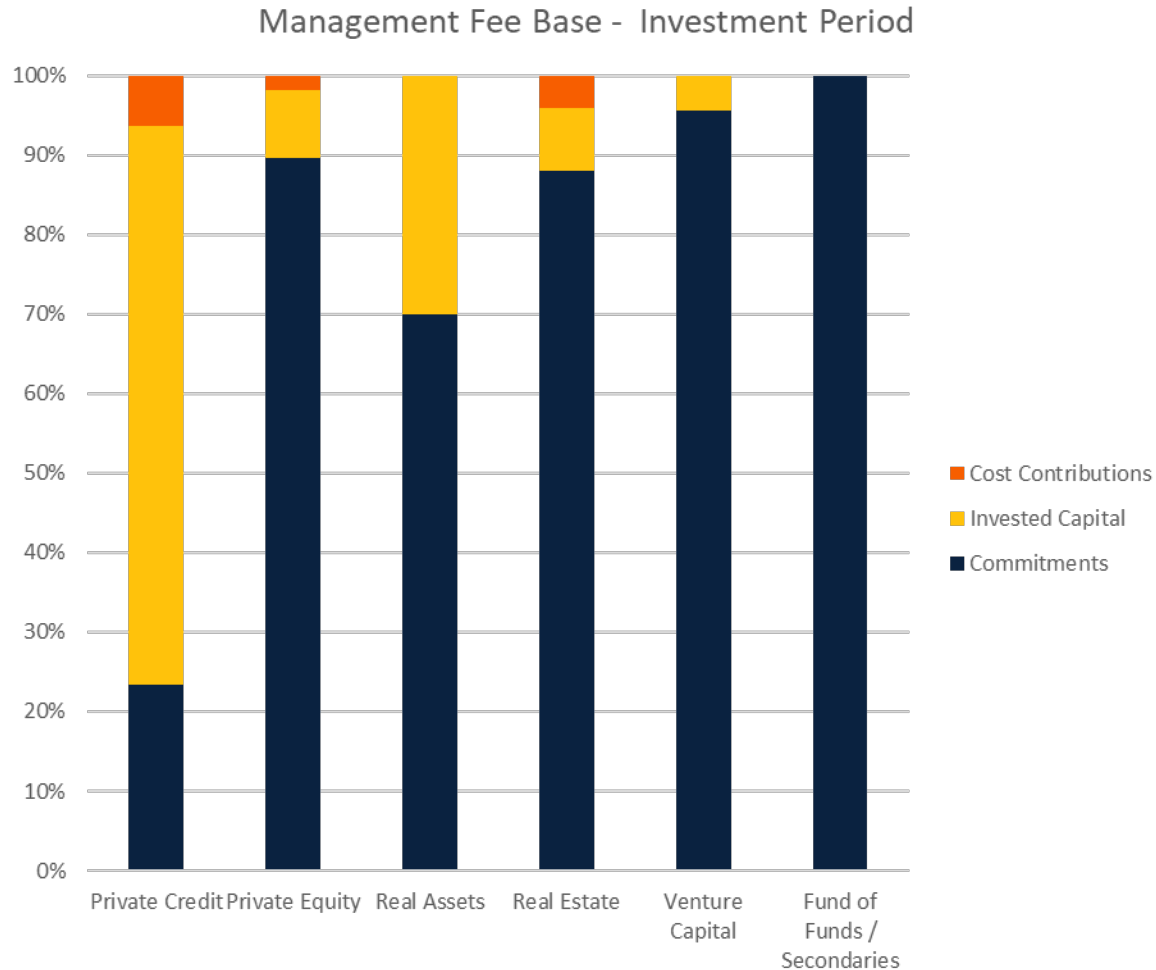
Management Fee Rates Over Time



Source: Albourne ODD, n = 795

Management Fee Base

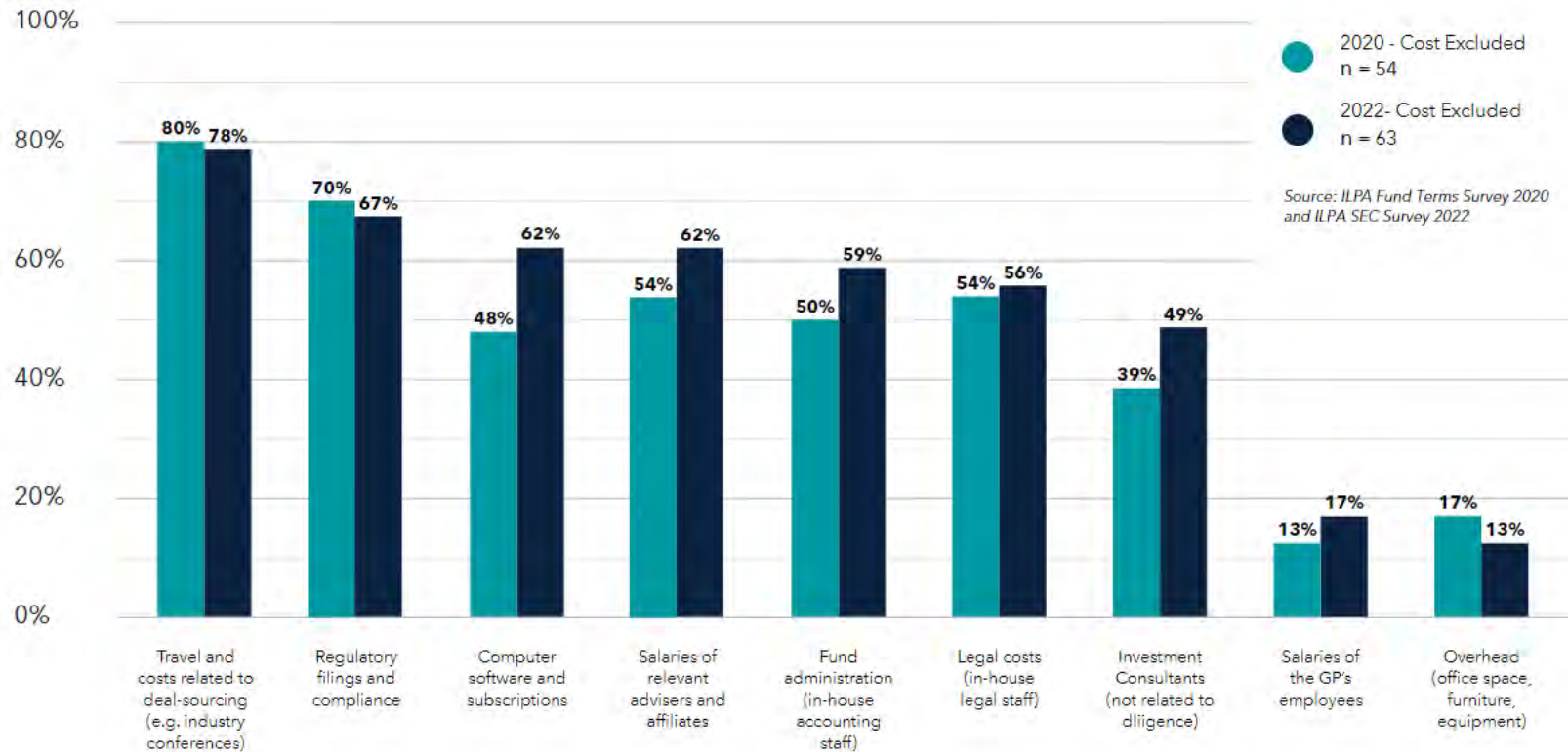
The leverage is in the detail (Invested Capital)



Source: Albourne LDD, n = 251

Economic Terms

Costs Excluded from the Management Fee Over the Last 12 Months





Polling Question #1

On a scale of 1-5, how much do you agree with the following statement?

The new standard Fund-level reporting from the Quarterly Statement rule within PFA is worth LPs being charged by the Fund for complying with the rule for all active Funds (including those VY2013 or earlier)?

- a) Strongly disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Economic Terms

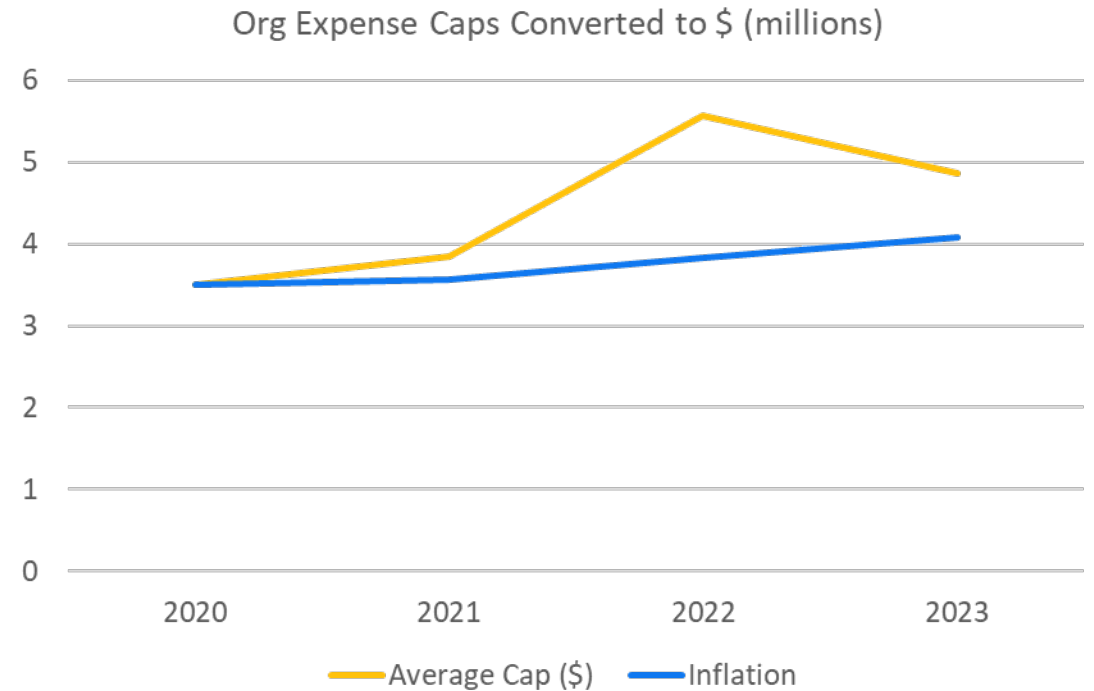
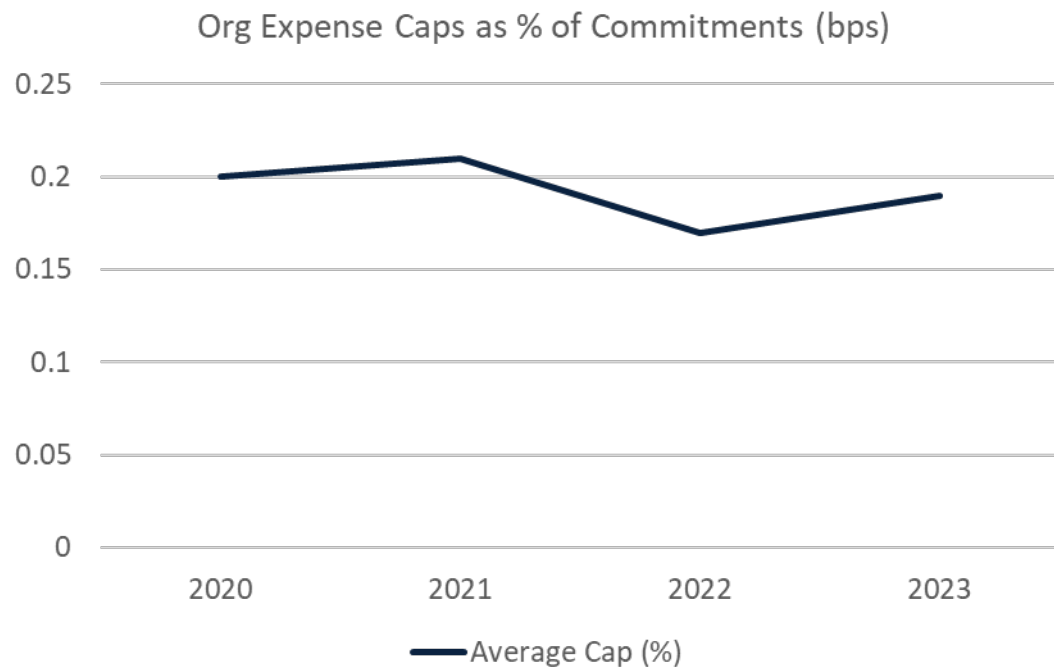
Organizational Expenses

- Org expense caps have grown in tandem with fund sizes
- Costs associated with negotiating side letters and complying with MFN clauses have been carved out of org caps

Organizational Expense Caps

Organizational expense charges are outpacing inflation

- Little to no change in caps as a percentage of target commitments
- But larger fund raises is increasing the total dollars spent

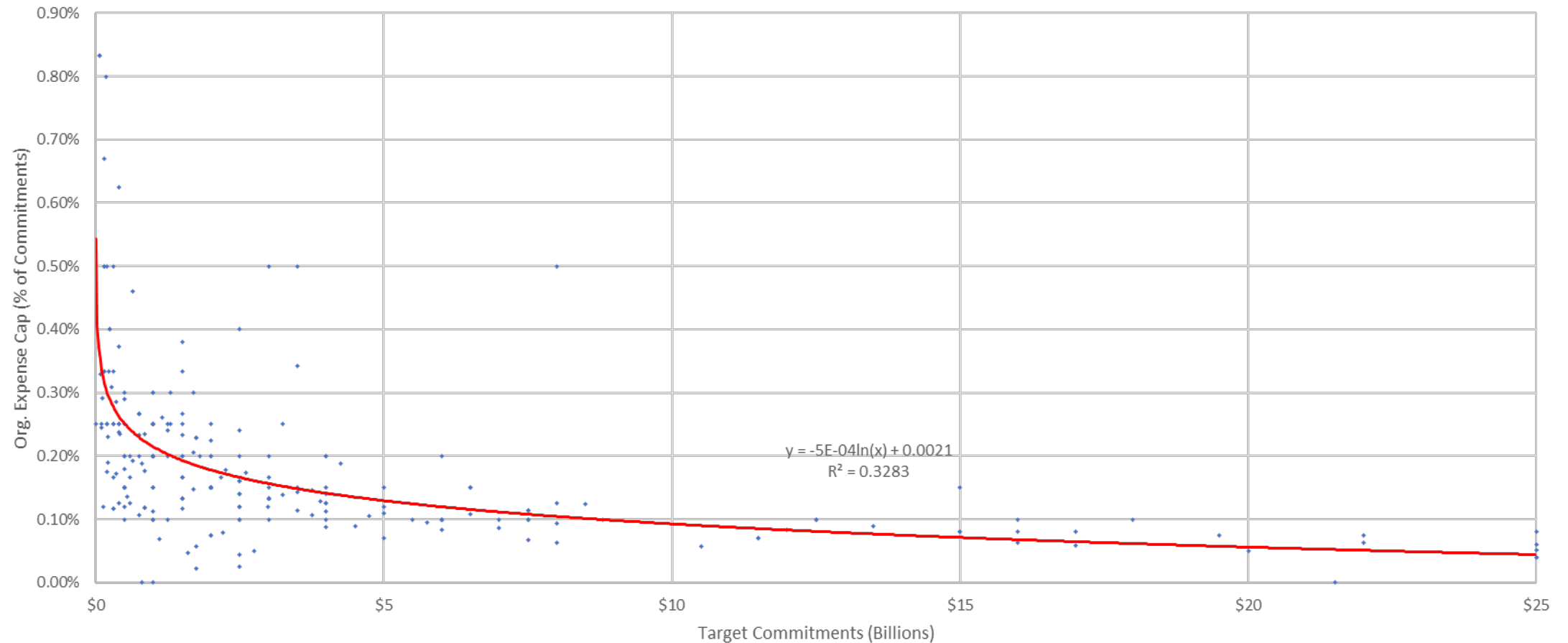


Source: Albourne LDD, n = 180
Inflation data: BLS.gov CPI Inflation Calculator

Organizational Expenses

Correlation between fund size and organizational expense caps

Organizational expense cap vs target commitments



Source: Albourne LDD, n = 237

Economic Terms

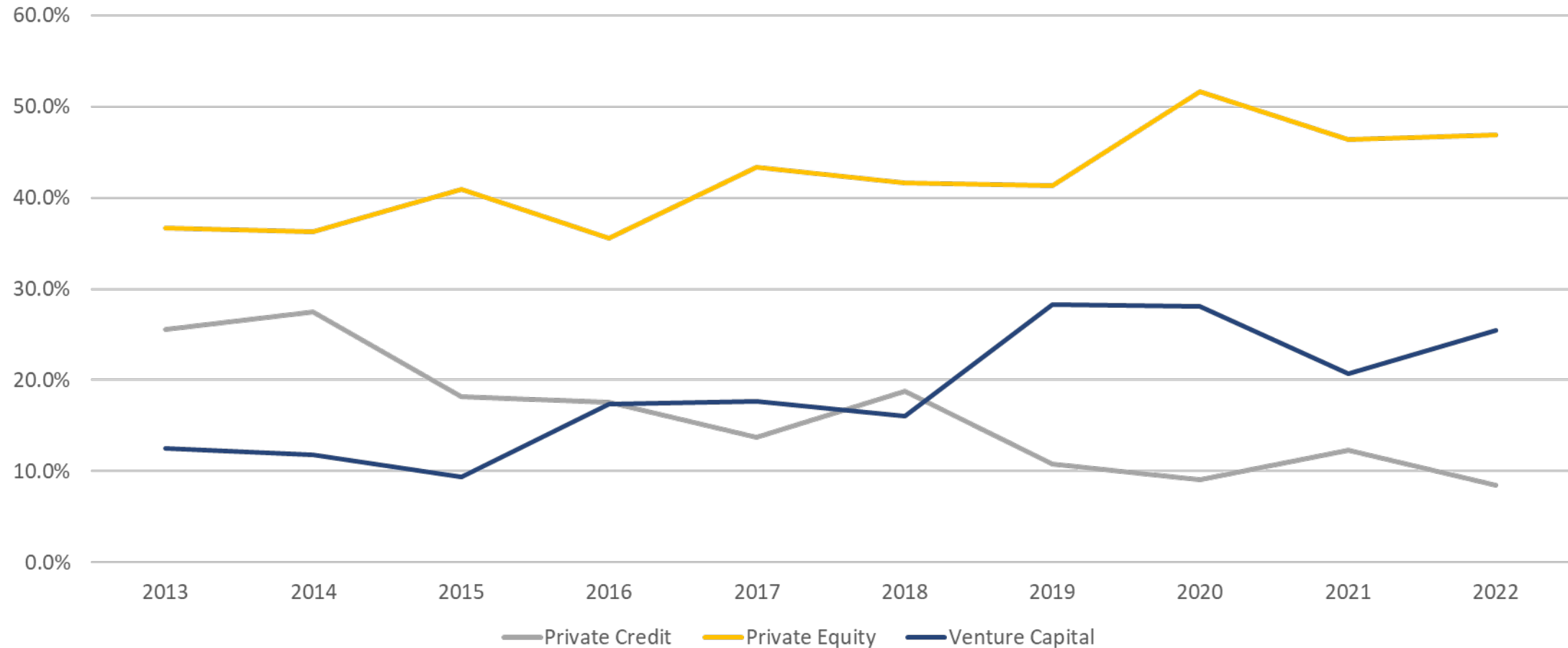
Carried Interest and Waterfalls

- Less frequent use of interim clawbacks
- Net of tax clawbacks at the highest assumed tax rate have become market standard
- Seeing less escrows used for accrued carry
 - Where escrows are used, average is 30-50%

Trends in Deal-by-Deal Waterfalls

Gradual increase for Private Equity and Venture Capital

Deal-by-Deal Waterfalls by Strategy



Source: Albourne ODD, n = 1209

Side Letters

Most-Favored Nation Clauses and Transparency

- Substantial increases in carve-outs from MFN clauses
- Excessive GP use of anti-MFN language
- Difficulty getting the right to review side letter language, regardless of eligibility to elect terms
- Increased use of side agreements that are not treated as side letters



Side Letters and MFN- Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Preferential Treatment - Prohibited Preferential Transparency	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

Preferential Treatment - Prohibited Preferential Transparency

GPs **may not** grant preferential rights related to **portfolio holdings and/or exposure information** if they reasonably expect the preferred rights would have a **material, negative effect** on the other LPs in the **fund** or **similar pool of assets** **unless** the **GP offers such information to all other existing LPs at the same time or substantially the same time.**

Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment

GPs **may not** grant other preferential treatment to LPs in the fund **unless** the GP (i) provides **advanced written notice prior to the LP's close** that includes specific information related to any **material economic terms** provided to other LPs and (ii) provides **written disclosure of all preferential treatment provided to other LPs as soon as reasonably practicable following the fundraising period.**

Risk and Governance

Fiduciary Duty and Conflicts of Interest

- GPs increasingly diluting fiduciary responsibilities from fund to fund
- Terms allowing GPs to use their 'sole discretion' and take its own interests into account over those of the fund
 - Terminating investment periods
 - Allocating co-investments and transfers of interest
 - Continuation funds and other conflicted transactions

Over the last 12 months, when Fiduciary Duties were eroded or eliminated in your funds' LPAs, how often were you able to restore or improve those duties?





Fiduciary Duty - Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

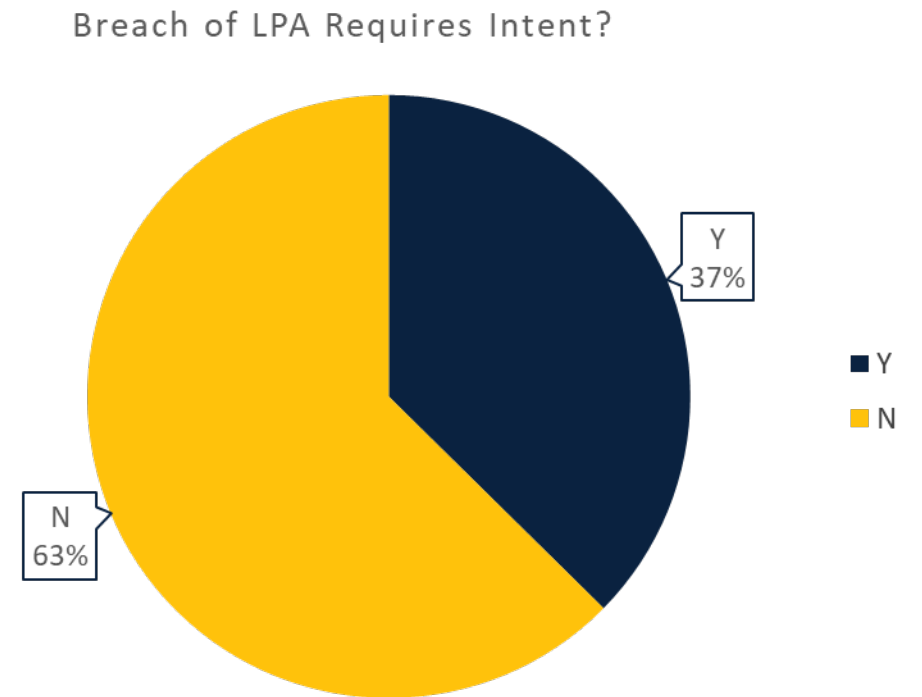
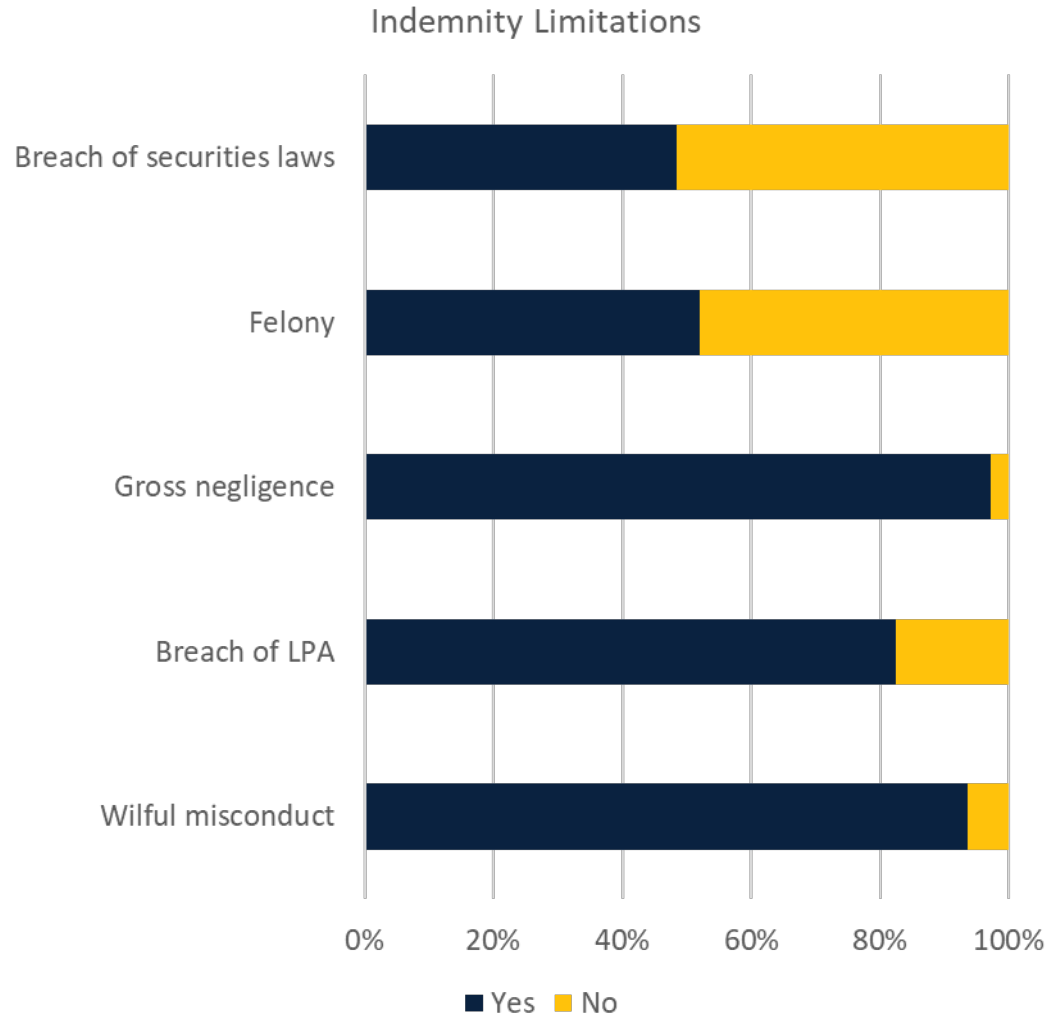
Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs	Existing	Live	Yes*

Certain Adviser Misconduct - Limiting or Eliminating Liability

Original proposed rule is **not being adopted in any form** - instead, the SEC is **reaffirming** its position outlined in the [2019 IA Fiduciary Duty Interpretation](#) with the view that **GPs must adhere to federal fiduciary duty requirements** and **may not seek reimbursement, indemnification, or exculpation for breaching federal fiduciary duty** as that would operate effectively as a waiver, which is not allowed under the Advisers Act

Indemnity

Intent is less common for indemnity than for "Cause" trigger

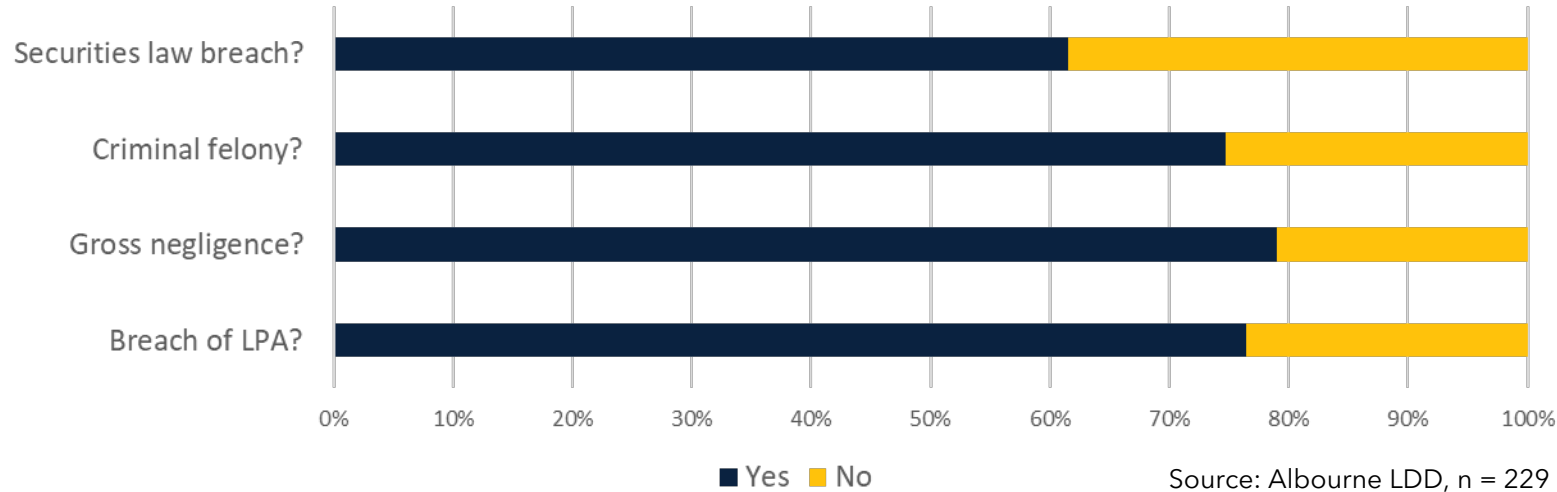


Source: Albourne LDD, n = 247

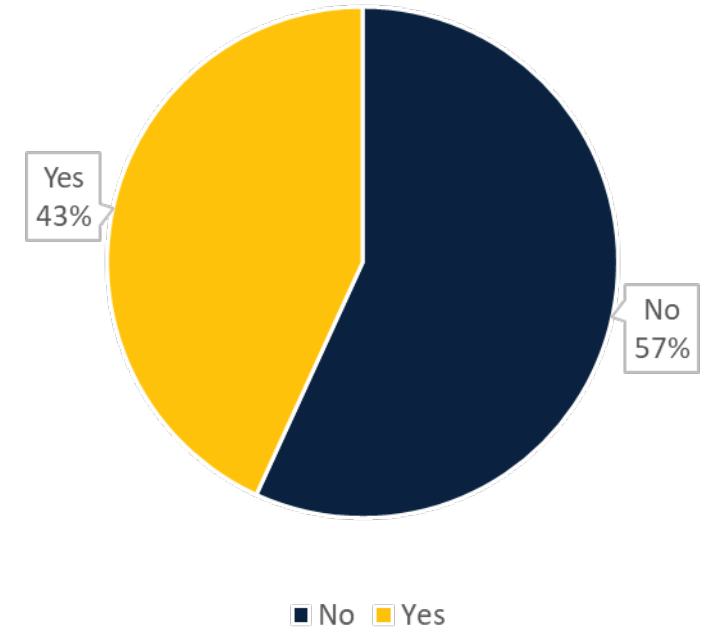
Cause Event Triggers

Intent is increasingly required for breach of LPA under "Cause"

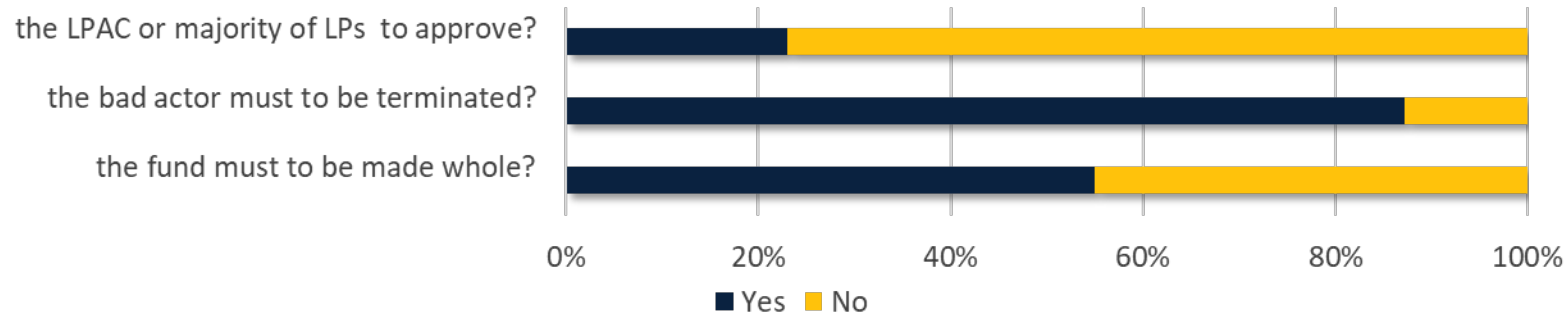
Cause Elements



Breach of LPA Requires Intent



Requirements for Cure



Risk and Governance

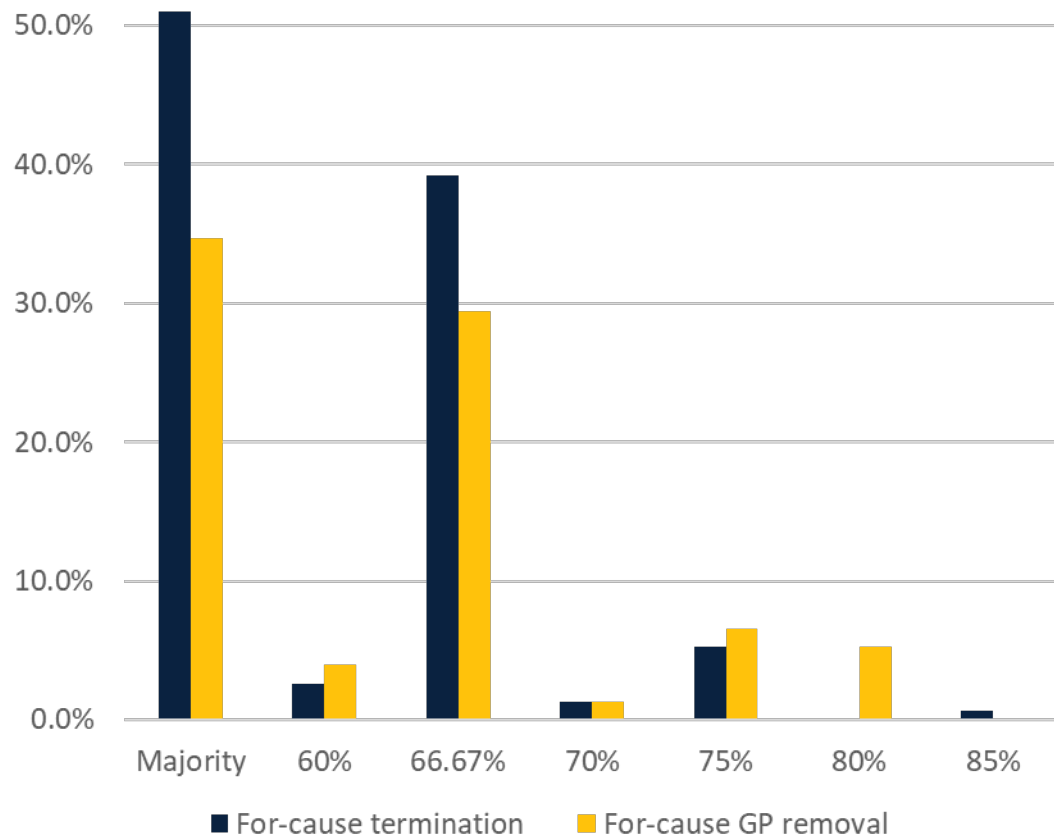
GP Removal

- Gross negligence excluded from the definition of for-cause removal and the dissolution from the fund
- Where gross negligence is included in the definition, the bar is extremely high
 - Removal requiring a vote of 75% in interest of the fund
 - Finding from a court in a 'final and non-appealable' judgement

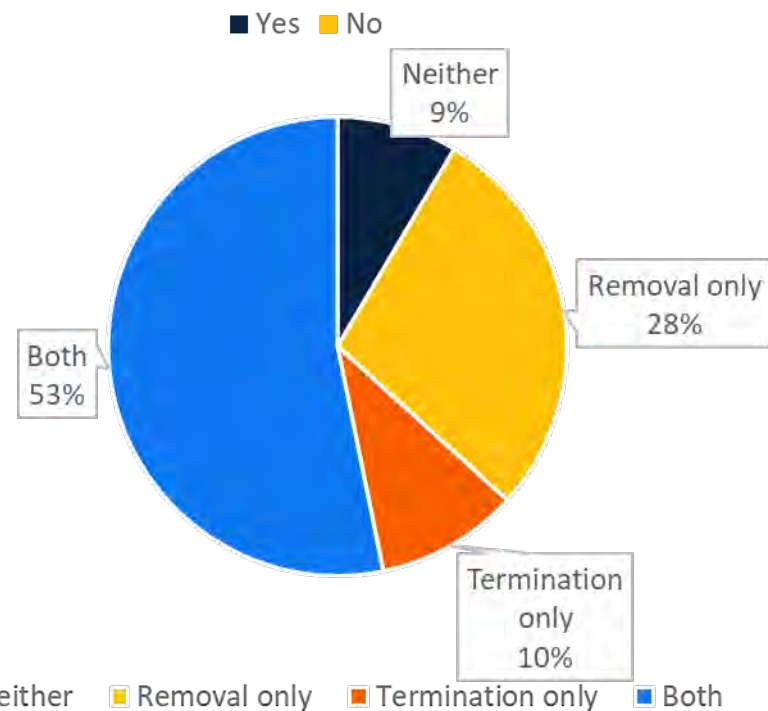
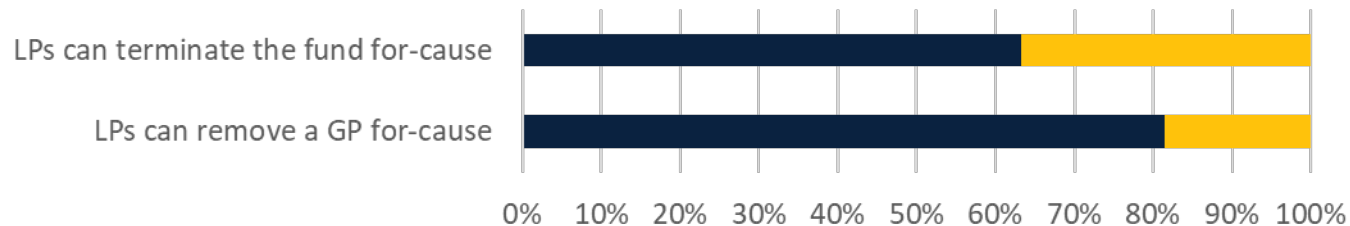
For-Cause Removal and Termination

For-cause rights remain nearly universal

Voting Thresholds



Prevalence of Removal and Termination Rights

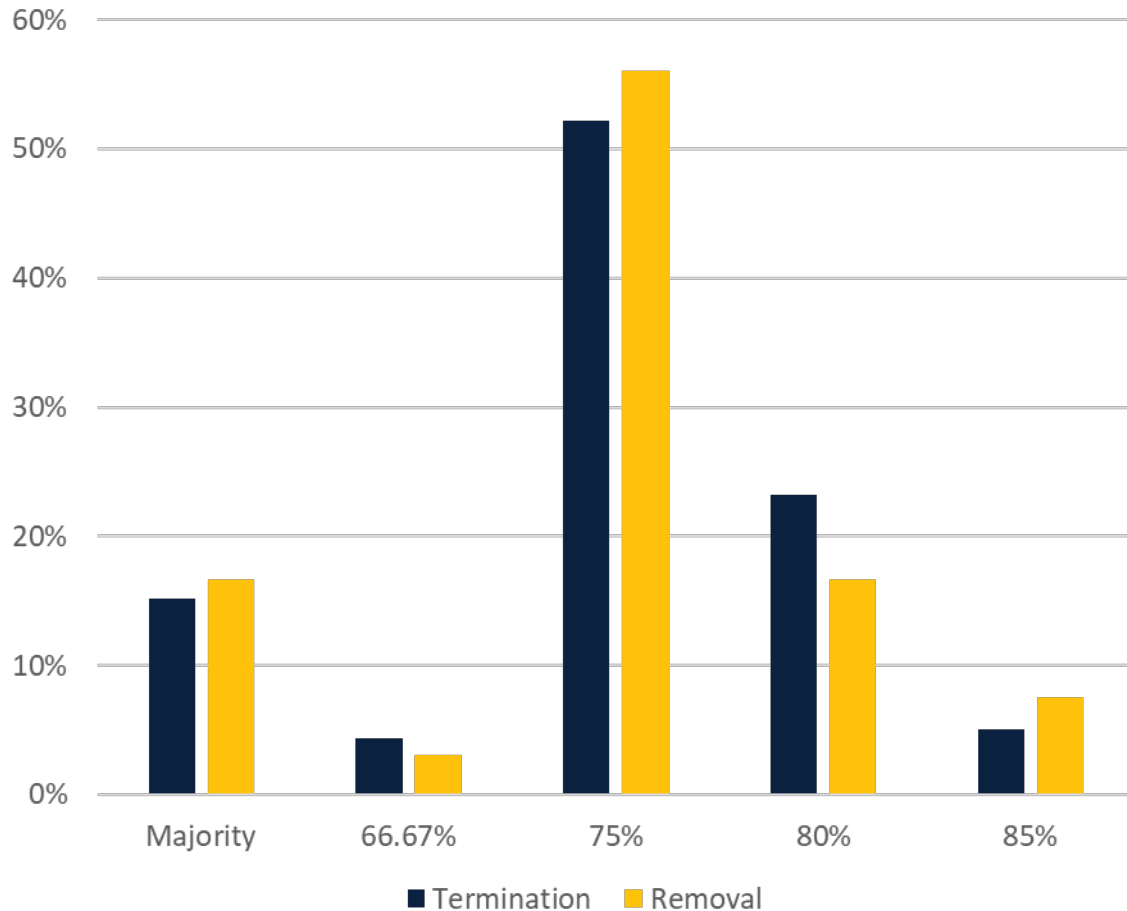


Source: Albourne LDD, n = 188

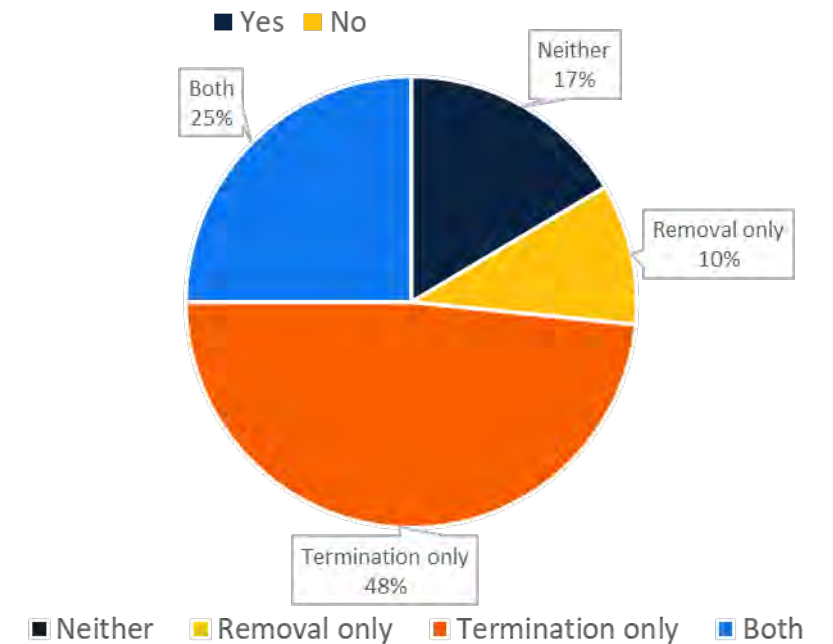
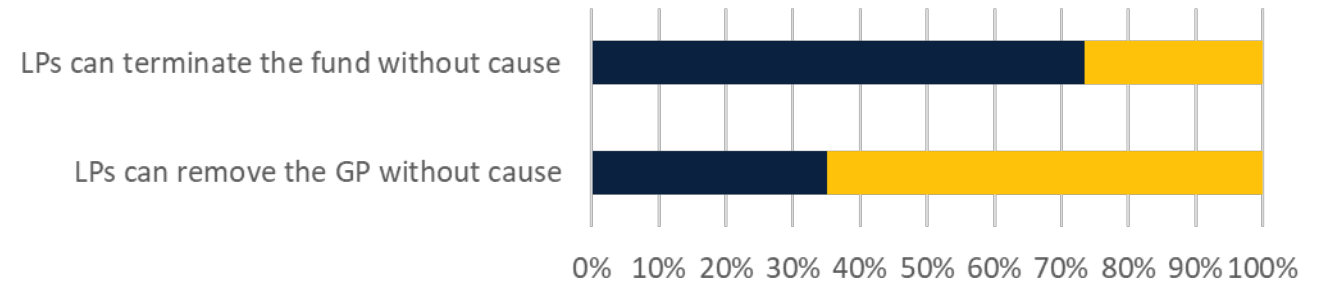
No-Fault Removal and Termination

No-fault removal has become less common

Voting Thresholds



Prevalence of No-Fault Rights



Source: Albourne LDD, n = 188

New Market Environment

Lessons Learned

- Fundraising and market dynamics are putting LPs in a more favorable negotiating position
 - LPAs generally did not shift in GPs favor in 2023
- LPs can learn lessons from the previous cycle to help advance LP interests and codify terms
 - **Use market power:** With managers struggling to fundraise, the threat of walking away is more pronounced
 - Make it clear to managers that alignment of interest and terms is a key point during re-up decisions
 - **Coordinate with investment teams:** Internal alignment on priorities is key to achieve gains during fundraising process
 - **Stay vigilant:** Terms that look like wins can be rolled back if LPs aren't paying attention (i.e., 100% fee offsets)



Polling Question #2

What are the most important terms for you to push back on? Select up to **three**.

- a) I have not yet been successful in pushing back on terms
- b) Fee and Expense Disclosure
- c) Fiduciary Duty / Standard of Care
- d) Strong Key Person Provisions
- e) No-Fault Removal
- f) Seat in LPAC
- g) Co-investment Rights
- h) Waterfall: preferred return hurdle (higher) or carry split (lower)
- i) Fee income offset
- j) Duration Triggers: fundraising vs. investment period and corresponding fee shifts

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #3

What is the single most important term for you to push back on? Select **one**.

- a) I have not yet been successful in pushing back on terms
- b) Fee and Expense Disclosure
- c) Fiduciary Duty / Standard of Care
- d) Strong Key Person Provisions
- e) No-Fault Removal
- f) Seat in LPAC
- g) Co-investment Rights
- h) Waterfall: preferred return hurdle (higher) or carry split (lower)
- i) Fee income offset
- j) Duration Triggers: fundraising vs. investment period and corresponding fee shifts

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

New Market Environment

Priority Terms

- LPA terms agreed to in the past 10 years may be increasingly important in this new environment:
 - Key person clauses
 - Role of the LPAC
 - Effect of interest rates on preferred return

An aerial photograph of the University of Illinois campus, featuring the Old Capitol building and the Lincoln-Douglas Memorial. A large yellow circle is superimposed over the center of the image, containing the event title and the word 'Questions?'.

**ILPA
LCON
2023**

Questions?



Contact Us

Jonathan Koerner
j.koerner@albourne.com

Margaret Niles
margaret.niles@klgates.com

Emily Smith
emily.smith@kutakrock.com

Adam Lippiett (Moderator)
adam.lippiett@siemens.com



An aerial photograph of the University of Illinois campus, featuring the Old Capitol building, a large bridge over the Sangamon River, and various university buildings. A large yellow circle is superimposed over the center of the image.

**ILPA
LCON
2023**

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



The Impact of the SEC's Sweeping Reforms on Private Markets

Christine Ayako Schleppegrell

Partner, Morgan Lewis

Heather Traeger

General Counsel & CCO, Teacher Retirement System of Texas

Jim Van Horn

Senior Counsel, Seyfarth Shaw LLP

Neal Prunier

Senior Director, ILPA (Moderator)



Live Polling

- To participate in live polling, attendees should go to sli.do
- Enter event code **LCON2023**
- Enter your responses as the questions appear

Website: sli.do

Event code: [#LCON2023](https://sli.do/#LCON2023)

Today's Speakers



**Christine Ayako
Schleppegrell**
Morgan Lewis



Heather Traeger
Teacher Retirement
System of Texas



Jim Van Horn
Seyfarth Shaw LLP



Neal Prunier
ILPA
(Moderator)

Agenda

- Rule Release Overview
 - Rule Release Notes
 - Overview on GP Lawsuit
 - Key Facts Overview
- Rule-by-Rule Breakdown
- Private Fund Advisers Themes and Connections
- Questions
- Appendix

Rule Release Overview

SEC Private Fund Advisers Rule

- Proposed February 9, 2022 - with over 375 comments received and over 120 meetings taken (including 12 with ILPA)
- SEC voted to pass Private Fund Advisers rule 3-2 on August 23, 2023
- Final rule filed with the Federal Register on September 14, 2023 - clock is ticking!!
 - 12-months - September 16, 2024
 - 18-months - March 14, 2025
- Still much to be determined as we head forward:
 - SEC is very limited in what they can discuss / additional clarity to provide given pending litigation
 - Large components of impact will be seen on how GP decides to implement rules
 - Concerns about GPs to take overly conservative view wherever possible
 - Opportunity for ILPA to work directly with GPs to avoid unintended consequences - conversations set to kick off in October
- Lawsuit...

Overview of GP Lawsuit

How This Unfolds

GPs Lawsuit (Filing)

Preparation

- Shortly after February 2022, formed a nonprofit in Texas called the *National Association of Private Fund Managers*
- Done entirely because Fifth Circuit is best possible place for GPs to file lawsuit

Filing

- Filed by Eugene Scalia of Gibson, Dunn
 - Son of former Supreme Court Justice Antonin Scalia
 - Former U.S. Secretary of Labor
 - Leading the suit against NYC plans for their divestment from fossil fuels
- GP groups connected:
 - Managed Fund Association (MFA)
 - *National Association of Private Fund Managers (NAPFM)*
 - National Venture Capital Association (NVCA)
 - American Investment Council (AIC)
 - Alternative Investment Management Association (AIMA)
 - Loan Syndications & Trading Association (LSTA)

Grounds

- Rules are violation of requirements for SEC rulemaking under the Advisers Act, particularly:
 - The Administrative Procedure Act (APA)
 - “the Commission’s heightened obligation to consider its rules’ effects on ‘efficiency, competition, and capital formation”
- PFA in particular: “were adopted without compliance with notice-and-comment requirements, and are otherwise arbitrary, capricious, and abuse of discretion, and contrary to law”
- SEC efforts in Private Funds: “exceed the Commission’s statutory authority”
 - “The Commission’s claimed discovery of a sweeping new power over private funds—in either a general anti-fraud provision (section 206(4) of the Advisers Act) or a statutory section that does not mention private funds, and that is focused on retail investors (section 913 of the Dodd-Frank Act)—is not plausible.”

Seeking

- The Court to “hold unlawful, vacate, and set aside the rules” - meaning in essence, to strike it down
- Not currently seeking an injunctive measure for a stay

Overview of GP Lawsuit

How This Unfolds

Fifth Circuit Court of Appeals

About

- Best possible place for GPs to file lawsuit
- Known for “*penchant for reining in regulatory authority*”
- Impact of Government shutdown not fully known - court has funding for “weeks” of operations post shutdown

Review Petition

- Will review the petition to determine whether or not to take the case (seems inevitable)

Taking the Case

- Expected “later this fall”
- Will be briefing and likely oral argument
- Will then issue a decision

Outcomes

- Does not take the case - the rule proceeds as outlined by the SEC
- Rules in favor of GPs - the rule is vacated (can only be appealed to Supreme Court)
- Rules in favor of SEC - the rule proceeds as outlined by the SEC (can only be appealed to Supreme Court)

Supreme Court

About

- GOP led with 6-3 split
- Recent trend of reining in regulatory authority and challenging previous precedence

Review Petition

- Will review the petition to determine whether or not to take the case

Taking the Case

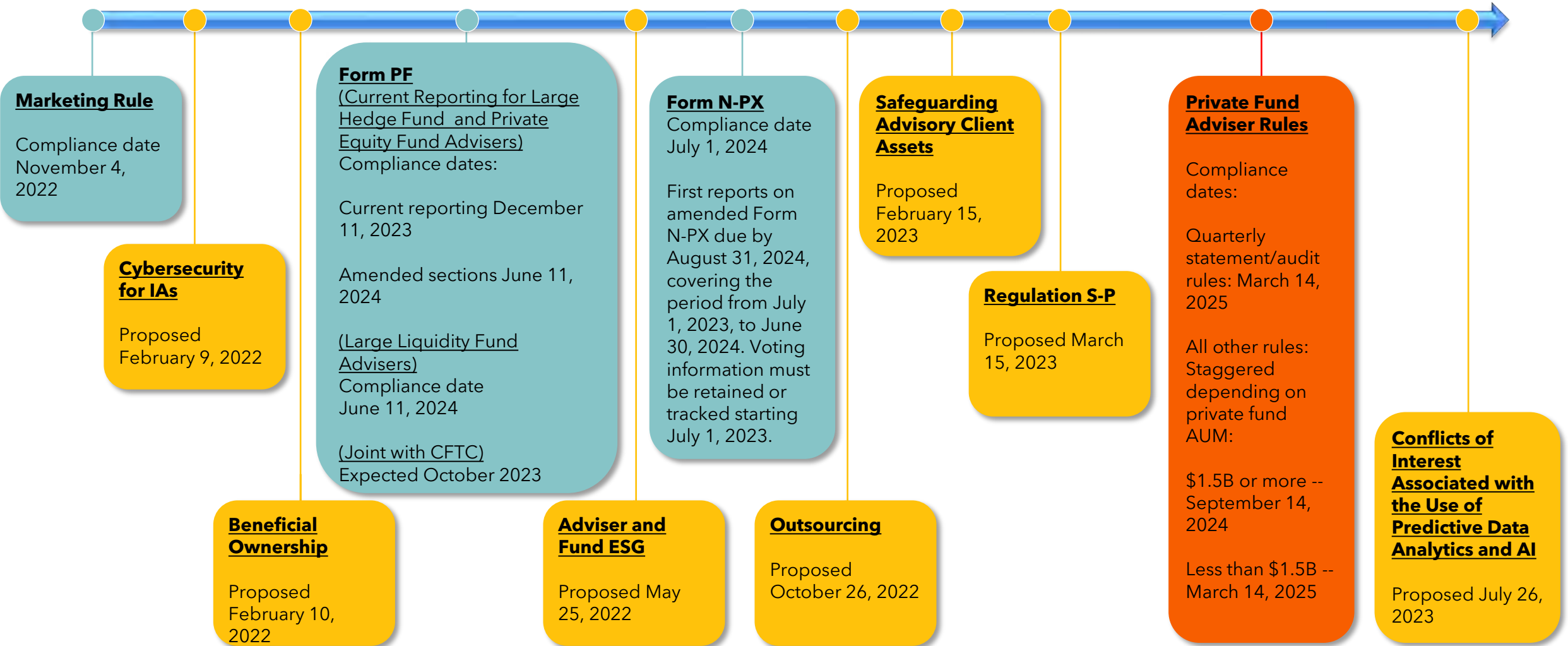
- Next terms begins first Monday in October
- Will be briefing and likely oral argument
- Will then issue a decision

Outcomes

- Does not take the case - the rule proceeds as outlined by the Fifth Circuit
- Rules in favor of GPs - the rule is vacated
- Rules in favor of SEC - the rule proceeds as outlined by the SEC

Rule Release Overview

SEC Rulemaking Impacting PE Industry



Key Facts Overview

PFA Rules

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements	Registered PFAs	18-months	March 14, 2025	Yes
Private Fund Adviser Audits	Registered PFAs	18-months	March 14, 2025	Yes
Adviser-Led Secondaries	Registered PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities (<i>Disclosure-Based</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities (<i>Consent</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Certain Adviser Misconduct - Fees for Unperformed Services	All PFAs	Existing	Live	Yes*
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs	Existing	Live	Yes*
Preferential Treatment - Prohibited Preferential Redemptions	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Prohibited Preferential Transparency	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes



Polling Question #1

Of the following rules (or reaffirmations), which one do you think is the **biggest win** for LPs?

- a) Quarterly Statements
- b) Preferential Treatment - Prohibited Preferential Transparency
- c) Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment
- d) Certain Adviser Misconduct - Limiting or Eliminating Liability?
- e) Restricted Activities - Disclosure-Based Exception - Certain Non-Pro Rata Fee and Expense Allocations
- f) Restricted Activities - Disclosure-Based Exception - Regulatory, Compliance, and Examination Expenses
- g) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #2

Of the following rules (or reaffirmations), which one gives you the **greatest concern** over the impact on LPs?

- a) Quarterly Statements
- b) Preferential Treatment - Prohibited Preferential Transparency
- c) Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment
- d) Certain Adviser Misconduct - Limiting or Eliminating Liability?
- e) Restricted Activities - Disclosure-Based Exception - Certain Non-Pro Rata Fee and Expense Allocations
- f) Restricted Activities - Disclosure-Based Exception - Regulatory, Compliance, and Examination Expenses
- g) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #3

On a scale of 1-5, how much do you agree with the following statement?

An (unintended) outcome resulting from the PFA will be opening up existing funds to renegotiations?

- a) Strongly disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #4

On a scale of 1-5, how much do you agree with the following statement?

Going forward, there will be no reduction in the terms my organization is accustomed to receiving through side letter negotiations.

- a) Strongly disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Rule-by-Rule Breakdown

Quarterly Statements – Fee and Expense Disclosure

Key Points:		Rule Overview:
Final vs. Proposed:	Minor Changes	<p>GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contain detailed accounting of (i) all compensation, fees and other amounts paid to the GP by the fund, (ii) all fees and expenses allocated to or paid by the fund with separate line items related to organizational, accounting, legal, administration, audit, tax, due diligence, and travel and (iii) the amount of any offsets or rebates carried forward. Additionally, GPs must provide LPs a detailed accounting of all portfolio investment compensation allocated or paid to the GP by the covered portfolio investment reflecting the total dollar amount, presented before and after the application of any offsets, rebates or waivers.</p>
Applies To:	Registered Private Fund Advisers	
Compliance Date:	18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	Yes	
Discussion Points:	<ul style="list-style-type: none"> - Impact of fund level vs. LP-level – SEC’s intention was not to impact LP’s ability to receive LP-level reporting, but still to be seen how it will play out. - Connection to Prohibited Preferential Transparency (Is it considered portfolio holdings and/or exposure? Does it have a material, negative effect on other LPs?) - Implications with Legacy Status and receiving reporting (and charged for reporting) for all existing funds - Connection with Marketing Rule requirements 	
ILPA Efforts:	<ul style="list-style-type: none"> - Review existing ILPA templates to identify overlap and opportunities to work with industry for enhancement to create better alignment with SEC rules 	

Rule-by-Rule Breakdown

Quarterly Statements – Performance Disclosure

Key Points:		Rule Overview:
Final vs. Proposed:	Minor Changes	<p>GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contains performance measures show since inception through the latest quarter-end computed with and without the impact of any fund-level subscription facilities, that includes (i) Gross IRR and Gross MOIC, (ii) Net IRR and Net MOIC, (iii) Gross IRR and Gross MOIC for the realized and unrealized portions of the fund’s portfolio (shown separately) and (iv) statement of contributions and distributions.</p>
Applies To:	Registered Private Fund Advisers	
Compliance Date:	18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	Yes	
Discussion Points:	<ul style="list-style-type: none"> - Impact of fund level vs. LP-level – SEC’s intention was not to impact LP’s ability to receive LP-level reporting, but still to be seen how it will play out. - Connection to Prohibited Preferential Transparency (Is it considered portfolio holdings and/or exposure? Does it have a material, negative effect on other LPs?) - Implications with Legacy Status and receiving reporting (and charged for reporting) for all existing funds - Connection with Marketing Rule requirements 	
ILPA Efforts:	<ul style="list-style-type: none"> - Review existing ILPA templates to identify overlap and opportunities to work with industry for enhancement to create better alignment with SEC rules 	

Rule-by-Rule Breakdown

Preferential Treatment – Prohibited Preferential Transparency



Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	<p>GPs may not grant preferential rights related to portfolio holdings and/or exposure information if they reasonably expect the preferred rights would have a material, negative effect on the other LPs in the fund or similar pool of assets unless the GP offers such information to all other existing LPs at the same time or substantially the same time.</p>
Applies To:	All Private Fund Advisers	
Compliance Date:	<p>>\$1.5b AUM - 12-months (Sept 16, 2024)</p> <p><\$1.5b AUM - 18-months (March 14, 2025)</p>	
Applies to Existing Contractual Agreements	No	
Quote from SEC Release:	<p>“We agree that is easier to trigger the material, negative effect provision in a scenario where certain investors receive preferential information and an ability to redeem their interests because those investors can exit the fund sooner than others, potentially harming remaining investors. As a result, the ability to redeem is an important part of determining whether providing information would have a material, negative effect on other investors and thus whether an adviser triggers the preferential information prohibition. We would generally not view preferential information rights provided to one or more investors in an illiquid private fund as having a material, negative effect on other investors.”</p>	
Discussion Points:	<ul style="list-style-type: none"> - Impact for PE given SEC language - View that GPs will take conservative view and don't want to provide information to all LPs - Connections to - Quarterly Statement rule, LPAC, ESG data - Impact on LPAC and co-investments 	

Rule-by-Rule Breakdown

Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment

Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	GPs may not grant other preferential treatment to LPs in the fund unless the GP (i) provides advanced written notice prior to the LP's close that includes specific information related to any material economic terms provided to other LPs and (ii) provides written disclosure of all preferential treatment provided to other LPs as soon as reasonably practicable following the fundraising period.
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months <i>(Sept 16, 2024)</i> <\$1.5b AUM - 18-months <i>(March 14, 2025)</i>	
Applies to Existing Contractual Agreements	Yes	
Quote from SEC Release:	"We are not applying legacy status to the disclosure portions of the preferential treatment rule because we believe that transparency of these terms is important and will not harm investors in the private fund. As a result, information in side letters that existed before the compliance date will be disclosed to other investors that invest in the fund post compliance date."	
Discussion Points:	<ul style="list-style-type: none"> - Consistent view on Legacy Status and what will apply retroactively (word "invest") - Impact on Side Letter negotiations and terms LPs are accustomed to receiving - Impact on negotiations between now and implementation date - Impact on LPAC and co-investments 	

Rule-by-Rule Breakdown

Certain Adviser Misconduct – Limiting or Eliminating Liability

Key Points:		Rule Overview:
Final vs. Proposed:	Removed and Reaffirmed	Original proposed rule is not being adopted in any form – instead, the SEC is reaffirming its position outlined in the 2019 IA Fiduciary Duty Interpretation with the view that GPs must adhere to federal fiduciary duty requirements and may not seek reimbursement, indemnification, or exculpation for breaching federal fiduciary duty as that would operate effectively as a waiver, which is not allowed under the Advisers Act.
Applies To:	All Private Fund Advisers	
Compliance Date:	Existing	
Applies to Existing Contractual Agreements	Yes (<i>SEC views this was already prohibited</i>)	
Discussion Points:	<ul style="list-style-type: none">- Benefits of having more clear language on Federal Fiduciary Duty – still brings up questions related to State level fiduciary duty- Implications with negotiations and what LPs still need to push for to receive given historical top “must-have” in negotiations- Connections to Other Preferential Treatment and Disclosures of Preferential Treatment	

Rule-by-Rule Breakdown

Restricted Activities – Disclosure-Based Exception – Certain Non-Pro Rata Fee and Expense Allocations

Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	<p>GPs <i>may not</i> allocate fees and expenses related to a portfolio investment on a non-pro rata basis <i>unless</i> (i) the allocation approach is fair and equitable, and (ii) prior to charging or allocating such fees or expenses, the GP provides written notice to each LP of the non-pro rata charge or allocation and a description of how it is fair and equitable.</p>
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months <i>(Sept 16, 2024)</i> <\$1.5b AUM - 18-months <i>(March 14, 2025)</i>	
Applies to Existing Contractual Agreements	Yes	
Discussion Point:	- Implications for co-investments	

Rule-by-Rule Breakdown

Restricted Activities – Disclosure-Based Exception – Regulatory, Compliance, and Examination Expenses

Key Points:		Rule Overview:
Final vs. Proposed:	New	<p>GP <i>may not</i> charge the fund for fees or expenses associated with an examination of the GP or for compliance fees and expenses <i>unless</i> the GP provides quarterly written notice to LPs of any such fees or expenses, and the dollar amount thereof.</p>
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months <i>(Sept 16, 2024)</i> <\$1.5b AUM - 18-months <i>(March 14, 2025)</i>	
Applies to Existing Contractual Agreements	Yes	
Discussion Point:	- What is going to be considered a compliance fee? Are updates required for PFA considered compliance fee?	

Private Fund Advisers Themes and Connections

Themes Connected To and Across Rules

1 Transparency

- Floor vs. Ceiling
 - Fund-level vs. LP-level
- Definition of “material negative effect”
 - ESG data?
 - Data provided to LPACs?
- View on retroactive nature
 - Any exceptions? Who is paying for it?
 - Quarterly Statements same as Audit Rule?
- Connection to Marketing Rule and Form PF

2 Terms provided in Side Letters

- Terms provided previously, but not going forward?
- Definition of “material economic terms”
- View on retroactive nature
 - Does new “MFN” process actually apply retroactively? What does that look like? Who is paying for it?

Private Fund Advisers Themes and Connections

Themes Connected To and Across Rules

3 Fiduciary Duty

- Win...but how big?
 - Clarity on Federal Fiduciary Duty
 - Limited on State level
- View on retroactive nature
 - Does this apply to LPAs/Side Letters since 2019? Pre 2019? Only post Aug 23, 2023?
- Sticks even with rule vacated

4 LPACs

- What is the future of LPACs?
 - Will LPs want to be on LPACs?
- What is the future of consent?
 - Negative consent?
- Timing of disclosures and consent

5 Co-Investments

- Implications with “similar pool of assets”
- Definition of “fair and equitable”
 - Are fees charged to co-investments considered “fair and equitable”? Or does transparency and rationale on all fees related to co-investments?

6 Unintended Consequences

- Implications with GPs taking overly conservative view with implementation
- Implications with GPs being the ones in position to make decision about investor protections

Private Fund Advisers Themes and Connections

PFA Connection to Other SEC Rules

- Marketing Rule
 - Certain parts of an adviser's quarterly statement could also be subject to the marketing rule
 - The quarterly statement rule requires advisers to disclose performance to current investors and includes detailed definitions of IRR and MOIC
 - Adopting release warns that a quarterly statement could be an advertisement under the marketing rule if it includes information in addition to what is required by the quarterly statement rule or if it offers new or additional investment advisory services with regard to securities
 - "related portfolio" v. "similar pool of assets" - definitions do not match
- Form PF
 - The definitions of "adviser-led secondary transaction" and "performance-based compensation" are substantively the same as those in the recent Form PF amendments



Polling Question #5

On a scale of 1-5, how much do you agree with the following statement?

The PFA's impact on LP's will be a net benefit.

- a) Strongly disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

An aerial photograph of the University of Illinois campus, featuring the Old Capitol building and the Lincoln-Dwight Memorial Bridge over the Sangamon River. A large yellow circle is superimposed over the center of the image.

**ILPA
LCON
2023**

Questions?



Contact Us

Christine Ayako Schleppegrell

christine.schleppegrell@morganlewis.com

Heather Traeger

heather.traeger@trs.texas.gov

Jim Van Horn

jvanhorn@seyfarth.com

Neal Prunier (Moderator)

nprunier@ilpa.org



An aerial photograph of the University of Illinois campus, featuring the Old Capitol building and the Lincoln-Douglas Memorial. A large yellow circle is superimposed over the center of the image, containing the event title and a thank you message.

**ILPA
LCON
2023**

Thank You

An aerial photograph of the University of Illinois at Urbana-Champaign campus. The image shows the iconic Old Capitol building with its dome, surrounded by green trees and other campus buildings. In the foreground, a multi-lane highway bridge crosses the Rookery Creek. A large, bright yellow circle is superimposed over the center of the image, containing white text.

ILPA
LCON
2023

Appendix

Key Facts Overview

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses	Registered PFAs	18-months	March 14, 2025	Yes
Quarterly Statements - Performance	Registered PFAs	18-months	March 14, 2025	Yes
Private Fund Adviser Audits	Registered PFAs	18-months	March 14, 2025	Yes
Adviser-Led Secondaries	Registered PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities - Regulatory, Compliance, and Examination Expenses (<i>Disclosure-Based</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities - Reducing Adviser Clawbacks for Taxes (<i>Disclosure-Based</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities - Certain Non-Pro Rata Fee and Expense Allocations (<i>Disclosure-Based</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities - Investigation Expenses (<i>Consent</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Restricted Activities - Borrowing (<i>Consent</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Certain Adviser Misconduct - Fees for Unperformed Services	All PFAs	Existing	Live	Yes*
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs	Existing	Live	Yes*
Preferential Treatment - Prohibited Preferential Redemptions	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Prohibited Preferential Transparency	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

Key Facts Overview

Applies To

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses	Registered PFAs			
Private Fund Adviser Audits	Registered PFAs			
Adviser-Led Secondaries	Registered PFAs			
Restricted Activities (<i>Disclosure-Based</i>)	All PFAs			
Restricted Activities (<i>Consent</i>)	All PFAs			
Certain Adviser Misconduct - Fees for Unperformed Services	All PFAs			
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs			
Preferential Treatment - Prohibited Preferential Redemptions	All PFAs			
Preferential Treatment - Prohibited Preferential Transparency	All PFAs			
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs			

Key Facts Overview

Applies To

Key Definitions:

ILPA
LCON
2023

Registered Private Fund Advisers - An adviser who oversees a private fund (PE funds, VC funds, hedge funds) and is registered with the SEC.

A private fund adviser may not be registered with the SEC due to qualifying for exemption. Reasons for exemption include:

- a) Private Fund Adviser Exemption - An adviser solely to private funds that have less than \$150m AUM in the US or;
- b) Venture Capital Adviser Exemption - An adviser solely to venture capital funds

The Foreign Private Adviser Exemption is a narrow exemption; it is only available to a non-U.S. adviser which:

- (i) Has no place of business in the U.S.;
- (ii) Has, in total, fewer than 15 "clients" in the U.S. and "investors" in the U.S. in private funds advised by the investment adviser;
- (iii) Does not exceed \$25 million of aggregate AUM attributable to such U.S. clients and investors; and
- (iv) Does not hold itself out generally to the public in the U.S. as an investment adviser.

All Private Fund Advisers - All private fund advisers, whether registered or not (see *Registered Private Fund Advisers*)

However - the PFA rules **do not apply** to SEC-registered Offshore Advisers with a fund domiciled outside of the U.S. (i.e., Caymans) or to Unregistered Offshore Advisers with a fund domiciled outside of the U.S. (i.e., Caymans)

Key Facts Overview

Applies To

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses	Registered PFAs	VC not included		
Private Fund Adviser Audits	Registered PFAs			
Adviser-Led Secondaries	Registered PFAs			
Restricted Activities (<i>Disclosure-Based</i>)	All PFAs	VC included		
Restricted Activities (<i>Consent</i>)	All PFAs			
Certain Adviser Misconduct - Fees for Unperformed Services	All PFAs			
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs			
Preferential Treatment - Prohibited Preferential Redemptions	All PFAs			
Preferential Treatment - Prohibited Preferential Transparency	All PFAs			
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs			

Key Facts Overview

Compliance Date

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses		18-months	March 14, 2025	
Private Fund Adviser Audits		18-months	March 14, 2025	
Adviser-Led Secondaries		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	
Restricted Activities (<i>Disclosure-Based</i>)		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	
Restricted Activities (<i>Consent</i>)		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	
Certain Adviser Misconduct - Fees for Unperformed Services		Existing	Live	
Certain Adviser Misconduct - Limiting or Eliminating Liability		Existing	Live	
Preferential Treatment - Prohibited Preferential Redemptions		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	
Preferential Treatment - Prohibited Preferential Transparency		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment		>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	

Key Facts Overview

Compliance Date

Certain Adviser Misconduct - Fees for Unperformed Services

Certain Adviser Misconduct - Limiting or Eliminating Liability

All

<\$1.5b
AUM

Quarterly Statements

Private Fund Adviser Audits

Adviser-Led Secondaries

Restricted Activities (Disclosure-Based)

Restricted Activities (Consent)

Pref. Treatment - Prohibited Pref. Redemptions

Pref. Treatment - Prohibited Pref. Transparency

Pref. Treatment - Other Pref. Treatment and Disclosure of Pref. Treatment

Today -
Aug 23, 2023

18-months -
Mar 14, 2025

12-months -
Sept 16, 2024

>\$1.5b
AUM

Adviser-Led Secondaries

Restricted Activities (Disclosure-Based)

Restricted Activities (Consent)

Preferential Treatment - Prohibited Pref. Redemptions

Preferential Treatment - Prohibited Pref. Transparency

Preferential Treatment - Other Pref. Treatment and Disclosure of Pref. Treatment

Key Facts Overview

Applies to Existing Contractual Agreements

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses				Yes
Private Fund Adviser Audits				Yes
Adviser-Led Secondaries				Yes
Restricted Activities (<i>Disclosure-Based</i>)				Yes
Restricted Activities (<i>Consent</i>)				No
Certain Adviser Misconduct - Fees for Unperformed Services				Yes*
Certain Adviser Misconduct - Limiting or Eliminating Liability				Yes*
Preferential Treatment - Prohibited Preferential Redemptions				No
Preferential Treatment - Prohibited Preferential Transparency				No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment				Yes

Key Facts Overview

Applies to Existing Contractual Agreements

Key Definitions:

Providing Legacy Status - means the final rules do not apply to existing funds and their contractual agreements

Not Providing Legacy Status - means the final rules do apply to existing funds and their contractual agreements

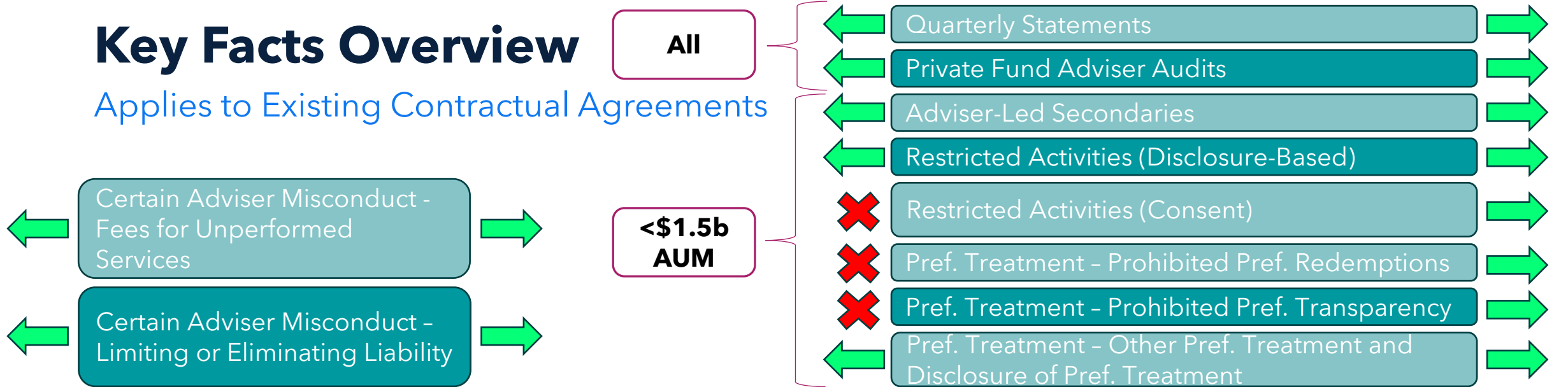
To avoid confusion, we have shifted away from saying “Providing Legacy Status” / “Not Providing Legacy Status” and instead capture this with - **Applies to Existing Contractual Agreements:**

Yes - means the final rules do apply to existing funds and their contractual agreements (i.e., they apply retroactively; or “Not Providing Legacy Status”)

No - means the final rules do not apply to existing funds and their contractual agreements (i.e., they do not apply retroactively; or “Providing Legacy Status”)

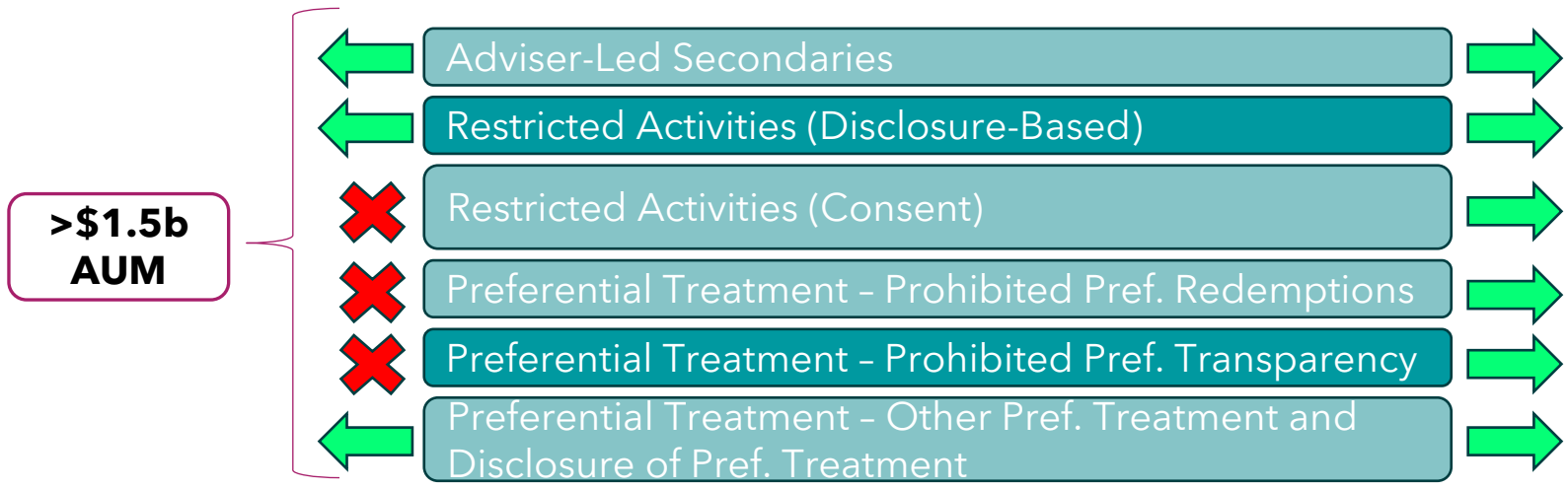
Key Facts Overview

Applies to Existing Contractual Agreements



Today - Aug 23, 2023 18-months - Mar 14, 2025

12-months - Sept 16, 2024



Key Facts Overview

PFA Rules

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Fees and Expenses	Registered PFAs	18-months	March 14, 2025	Yes
Private Fund Adviser Audits	Registered PFAs	18-months	March 14, 2025	Yes
Adviser-Led Secondaries	Registered PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities (<i>Disclosure-Based</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes
Restricted Activities (<i>Consent</i>)	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Certain Adviser Misconduct - Fees for Unperformed Services	All PFAs	Existing	Live	Yes*
Certain Adviser Misconduct - Limiting or Eliminating Liability	All PFAs	Existing	Live	Yes*
Preferential Treatment - Prohibited Preferential Redemptions	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Prohibited Preferential Transparency	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	No
Preferential Treatment - Other Preferential Treatment and Disclosure of Preferential Treatment	All PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

Rule-by-Rule Breakdown

Restricted Activities – Disclosure-Based Exception – Reducing Adviser Clawback for Taxes

Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	GP <i>may not</i> reduce the amount of their clawback obligation by actual, potential or hypothetical taxes <i>unless</i> the GP provides written notice to LPs the aggregate dollar amounts of the clawback before and after any reduction for actual, potential or hypothetical taxes within 45-days after the fiscal quarter-end in which the clawback occurs .
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months (Sept 16, 2024) <\$1.5b AUM - 18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	Yes	

Rule-by-Rule Breakdown

Restricted Activities – Consent Exception – Investigation Expenses

Key Points:		Rule Overview:
Final vs. Proposed:	New	GP <i>may not</i> charge the fund for fees or expenses associated with an investigation of the adviser <u>unless</u> the GP requests and obtains consent of a majority in interest of investors . GP <i>may not</i> charge investigation expenses in any event if the GP is subject to a sanction for violating the Advisers Act .
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months (Sept 16, 2024) <\$1.5b AUM - 18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	No	

Rule-by-Rule Breakdown

Restricted Activities – Consent Exception – Borrowing

Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	GP <i>may not</i> borrow money, securities or other fund assets, or receive an extension of credit, from the fund <i>unless</i> the GP (i) provides written notice to each LP the material terms of such transactions and (ii) obtains advance consent from at least a majority in interest of investors .
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months (Sept 16, 2024) <\$1.5b AUM - 18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	No	

Rule-by-Rule Breakdown

Preferential Treatment – Prohibited Preferential Redemptions

Key Points:		Rule Overview:
Final vs. Proposed:	Significant Changes	GPs may not grant preferential redemption rights if they reasonably expect the preferred rights would have a material, negative effect on the other LPs in the fund or similar pool of assets unless (i) redemptions are required by applicable law, rule, regulation, or order of certain governmental authorities or (ii) the GP has offered the same redemption ability to all existing LPs and will continue to do so to all future LPs.
Applies To:	All Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months (Sept 16, 2024) <\$1.5b AUM - 18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	No	

Rule-by-Rule Breakdown

Certain Adviser Misconduct – Fees for Unperformed Services

Key Points:		Rule Overview:
Final vs. Proposed:	Removed and Reaffirmed	Original proposed rule is not being adopted in any form – instead, the SEC is reiterating its position that charging fees for unperformed services is inconsistent with GP’s fiduciary duty and may also violate anti-fraud provisions .
Applies To:	All Private Fund Advisers	
Compliance Date:	Existing	
Applies to Existing Contractual Agreements	Yes (<i>SEC views this was already prohibited</i>)	

Rule-by-Rule Breakdown

Adviser-Led Secondaries

Key Points:		Rule Overview:
Final vs. Proposed:	Minor Changes	GPs conducting adviser-led secondary transactions must, prior to the due date of the election form from LPs (i) obtain and distribute to LPs a fairness opinion or a valuation opinion from an independent opinion provider and (ii) prepare and distribute to LPs a summary of any material business relationships among the GP and the independent opinion provider for the two-year period prior to the issuance of the opinion.
Applies To:	Registered Private Fund Advisers	
Compliance Date:	>\$1.5b AUM - 12-months (Sept 16, 2024) <\$1.5b AUM - 18-months (March 14, 2025)	
Applies to Existing Contractual Agreements	Yes	
ILPA Efforts:	- Review existing ILPA Continuation Funds Guidance to identify overlap and areas where LPs need to work directly with GPs for adherence	

Rule-by-Rule Breakdown

Private Fund Adviser Audits

Key Points:		Rule Overview:
Final vs. Proposed:	No Real Changes	GPs must conduct and deliver annual financial statement audits that meet the requirements of the audit provision of the Custody Rule.
Applies To:	Registered Private Fund Advisers	
Compliance Date:	18-months <i>(March 14, 2025)</i>	
Applies to Existing Contractual Agreements	Yes	



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



Leverage and Fund Finance

Darien Leung

Partner, Torys LLP

Ed Klees

Partner, Reed Smith LLP

Nake Grewal

Director, Wells Fargo

Josh Underhill

Director, Legal, Future Fund (Moderator)



Live Polling

- To participate in live polling, attendees should go to sli.do
- Enter event code **LCON2023**
- Enter your responses as the questions appear

Website: sli.do

Event code: [#LCON2023](https://sli.do/#LCON2023)

Today's Speakers



Darien Leung
Torys LLP

Ed Klees
Reed Smith LLP

Nake Grewal
Wells Fargo

Josh Underhill
Future Fund
(Moderator)

Agenda

- Subscription Lines of Credit
 - Overview
 - View on Market
 - Practical Considerations
 - View from Lender
- NAV-Based Facilities
 - Overview
 - View on Market
 - Practical Considerations
 - View from Lender
- Questions

Subscription Lines of Credit

Overview

Borrower	Funds
Relevant Asset Base	LP Capital Commitments
Key Objectives	<p>Access to cash to acquire new investments or pay fees/expenses</p> <p>Provides operational smoothing</p> <p>Opportunity to provide advance notice of capital calls</p> <p>Lessens need for LP “true ups” during fundraising</p>
Key Points	<p>Least expensive form of fund finance</p> <p>Biggest in early years of fund, recently seeing caps of 12-months</p> <p>Impact of ratings on costs/fees (ratings range from BBB to AA-)</p>
Alternative To	Capital Calls, NAV-based Facilities

Subscription Lines of Credit

[View on Market](#)

Rough, back of envelope calculations of Fund Finance book (likely not just sublines) based on 2022 10-Ks



~\$70 B



~\$30.5 B



~\$55 B

Important to Note:

- This money is not at risk of default
- More question about if new owner will be as active in market going forward
- Slow down in fundraising is muting some of the supply + demand challenges
- New sources of Fund Finance to emerge:
 - Insurance Companies, Pension Funds, SWFs
 - Private Credit
 - Banks (increasing book or getting involved)



Polling Question #1

What are the tenor limits you have seen on borrowing in LPAs in last 12-months?
Select **all that apply**.

- a) 90-days
- b) 6-months
- c) 12-months
- d) Over 1 year
- e) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #2

What tenor limit have you seen most frequently on borrowing in LPAs in last 12-months? Select **one**.

- a) 90-days
- b) 6-months
- c) 12-months
- d) Over 1 year
- e) Not sure

Website: sli.do

Event code: [#LCON2023](https://lcon2023.com)

Subscription Lines of Credit

Practical Considerations

- Notional limits in LPA
 - Loan maturity
 - Joint and several liability
- Negotiating the Investor Letter
 - Obligation to provide information
 - Consent or acknowledge
 - Unconditional obligation to fund: waiver of defense, counterclaim and offset
 - No payments to lenders
- Comfort letters
- Clock starting for purposes of carry calculations
- GP using borrowing to fund their commitment or pay the management fee



Polling Question #3

On a scale of 1-5, how much do you agree with the following statement?

In this high interest rate environment, the benefits of a GP using a subline outweigh the drawback.

- a) Strongly Disagree
- b) Disagree
- c) Neutral
- d) Agree
- e) Strongly agree

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Subscription Lines of Credit

Practical Considerations

- Notional limits in LPA
 - Loan maturity
 - Joint and several liability
- Negotiating the Investor Letter
 - Obligation to provide information
 - Consent or acknowledge
 - Unconditional obligation to fund: waiver of defense, counterclaim and offset
 - No payments to lenders
- Comfort letters
- Clock starting for purposes of carry calculations
- GP using borrowing to fund their commitment or pay the management fee

Discussion Question

When do rates become too high?

Subscription Lines of Credit

Views From Lender

Borrower	Funds
Relevant Asset Base	LP Capital Commitments
Key Objectives	<p>Access to cash to acquire new investments or pay fees/expenses</p> <p>Provides operational smoothing</p> <p>Opportunity to provide advance notice of capital calls</p> <p>Lessens need for LP "true ups" during fundraising</p>
Key Points	<p>Least expensive form of fund finance</p> <p>Biggest in early years of fund, recently seeing caps of 12-months</p> <p>Impact of ratings on costs/fees (ratings range from BBB to AA-)</p>
Alternative To	Capital Calls, NAV-based Facilities

View From Lender

- Underwriting process
- Investor Documents (Comfort letter, Investor Letter, Side Letter)
- LPA Diligence / Significant points
- Accommodations during fundraising period
- Information received from GPs (during underwriting and on-going)
- Banks relationship with GP impact on facilities



Sublines Performance - Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Quarterly Statements - Performance Disclosures	Registered PFAs	18-months	March 2025	Yes

Quarterly Statements - Performance Disclosures

GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contain performance measures shown since inception through the latest quarter-end computed **with and without the impact of any fund-level subscription facilities**, that includes (i) Gross IRR and Gross MOIC, (ii) Net IRR and Net MOIC, (iii) Gross IRR and Gross MOIC for the realized and unrealized portions of the fund's portfolio (shown separately) and (iv) statement of contributions and distributions.

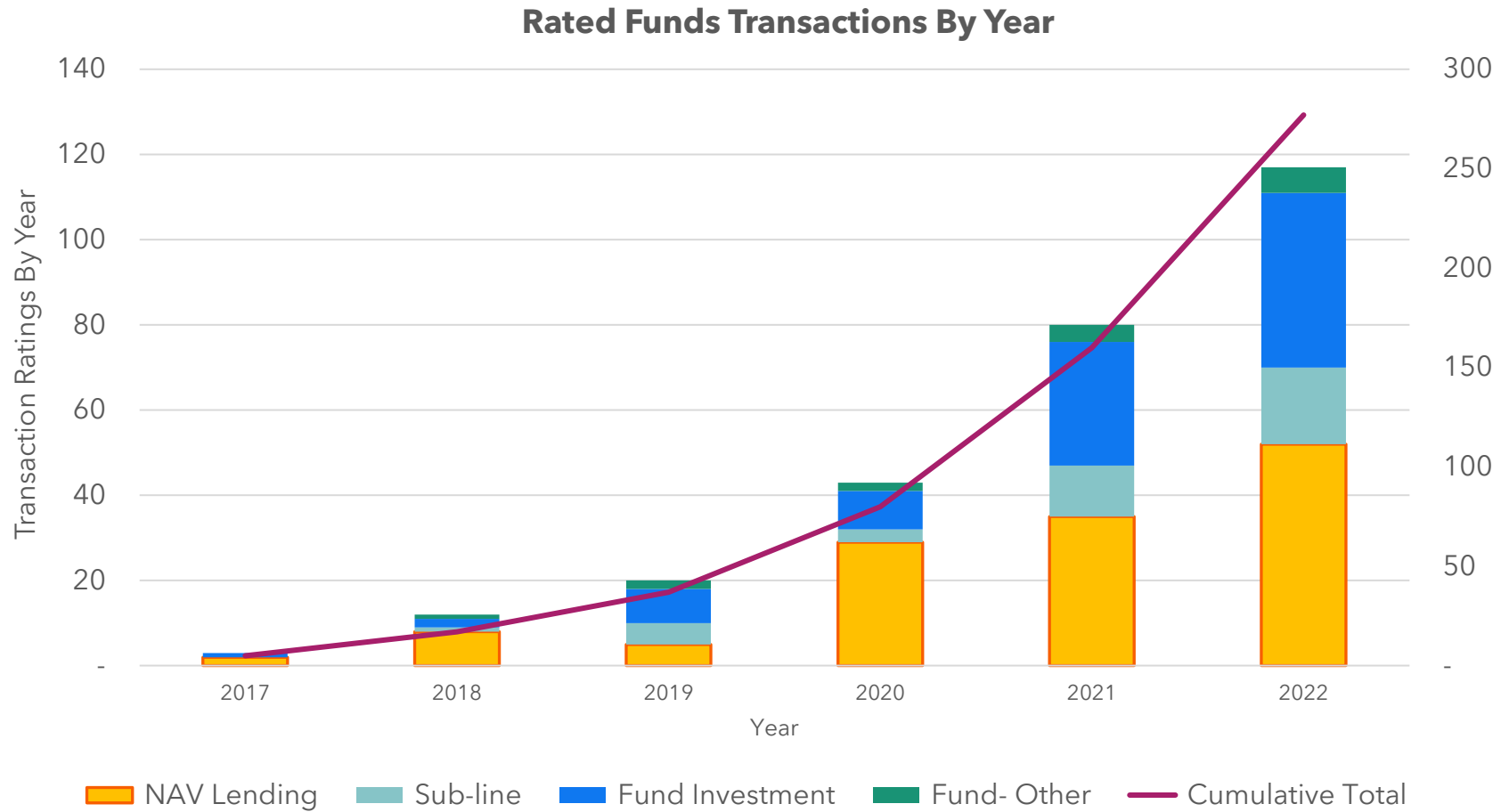
NAV-Based Facilities

Overview

Borrower	Funds
Relevant Asset Base	Portfolio companies
Key Objectives	<ul style="list-style-type: none"> Additional capital to grow assets Intermediate liquidity to investors Managing portfolio indebtedness Retain future upside
Key Points	<ul style="list-style-type: none"> More expensive than sublines LTV is critical component, typically fixed tenor of 2-4 years and during or after investment period Impact of ratings on costs/fees (ratings range from BB to A+) Can be backed by single fund with 6-20+ holdings, can also have umbrella facilities across multiple funds
Alternative To	Single company recaps, M&A, IPO, trade sales

NAV-Based Facilities

View on Market



Source: KBRA Fund Debt Ratings (As of 12/2022)



Polling Question #4

How frequently are you seeing LPAs seeking to pre-clear use of NAV-based facilities?

- a) Never
- b) Between 1%-25% of funds
- c) Between 26%-50% of funds
- d) Between 51-75% of funds
- e) Between 76%-99% of funds
- f) Always
- g) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #5

How frequently are you seeing LPAs that are silent regarding the use of NAV-based facilities?

- a) Never
- b) Between 1%-25% of funds
- c) Between 26%-50% of funds
- d) Between 51-75% of funds
- e) Between 76%-99% of funds
- f) Always
- g) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

NAV-Based Facilities

Practical Considerations

- Limits on leverage
 - Notional amount
 - Scope of collateral
 - Does it accommodate structuring (i.e., SPV borrower)?
- Prohibited uses
- Recourse
- LP credit support
- GP dynamics
 - Importance of relationship between LPs and GPs
 - Skill of GP to manage leverage is only getting more important

NAV-Based Facilities

Views From Lender

Borrower	Funds
Relevant Asset Base	Portfolio companies
Key Objectives	<p>Additional capital to grow assets</p> <p>Intermediate liquidity to investors</p> <p>Managing portfolio indebtedness</p> <p>Retain future upside</p>
Key Points	<p>More expensive than sublines</p> <p>LTV is critical component, typically fixed tenor of 2-4 years and during or after investment period</p> <p>Impact of ratings on costs/fees (ratings range from BB to A+)</p> <p>Can be backed by single fund with 6-20+ holdings, can also have umbrella facilities across multiple funds</p>
Alternative To	Single company recaps, M&A, IPO, trade sales

View From Lender

Underwriting process

LPA Diligence (ensuring NAV debt is permitted and necessary LP approvals are obtained)

General risk appetite from bank lenders

Lender view on collateral structure in a NAV facility, balanced against LTV

Communication and information sharing with GPs

Lenders view on repayment/remedies

An aerial photograph of the University of Illinois at Urbana-Champaign campus. The image shows the iconic Old Capitol building with its dome, surrounded by green trees and other campus buildings. In the foreground, a multi-lane highway bridge crosses the Roubidoux River. A large, bright yellow circle is superimposed over the center of the image, containing white text.

**ILPA
LCON
2023**

Questions?



Contact Us

Darien Leung

dleung@torys.com

Ed Klees

Eklees@reedsmith.com

Nake Grewal

Nake.Grewal@wellsfargo.com

Josh Underhill (Moderator)

josh.underhill@futurefund.gov.au



An aerial photograph of the University of Illinois at Urbana-Champaign campus. The image shows the iconic Old Capitol building with its dome, surrounded by other university buildings, green spaces, and a bridge over the Rookery River. A large, bright yellow circle is superimposed over the center of the image, containing white text.

**ILPA
LCON
2023**

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



Artificial Intelligence in Legal

Robert McGrail

Head of Legal and Compliance, DUMAC

Jim Wagner

Entrepreneur, Contract Network

Noah Waisberg

Co-Founder & CEO



Today's Speakers



Noah Waisberg
Zuva AI



Jim Wagner
Contract Networks



Robert McGrail
DUMAC, Inc.

Agenda

- Overview of AI
- Use Cases
- Getting to Implementation
- Q+A Session

What is Artificial Intelligence

- **Artificial Intelligence:** Computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition and decision-making
- **Machine Learning:** Computer systems that are able to learn and adapt without following explicit instructions, by analyzing and drawing inferences from data
- **Generative AI:** AI capable of generating text, images or other media through learning the patterns and structure of their input training data
- **Natural Language Processing:** Computer programs that translate text from one language to another, respond to spoken commands, or summarize large volumes of text rapidly
- **Language Model:** AI algorithm that uses deep learning techniques and large data sets to understand, summarize, generate and predict new content

A Quick Primer on AI

- “Find similar...” - unsupervised learning
- “Find my [change of control] clauses” - supervised learning
- “Search for...” filters, keywords and semantics
- “Summarize/compare/revise” - the world of LLMs and GPT

Use Cases

- Legal
 - Searchable legal standards based on historical documents
 - Generative
- Operational
 - Operationalizing data
 - Reviewing calls and taking notes

Names to be familiar with
(*not exhaustive or endorsement*):

- Macro (formerly Co-Parse)
- Aumni
- Robin AI
- The Contract Network
- Spellbook
- Zuva AI
- Casetext
- Ontra

Many LP law firms are also developing their own AI technology or integrating existing platforms into their offering for clients

Getting to Implementation

- Ethics and risk considerations
- Working with stakeholders
- Understanding vendors

An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building on the left, a large multi-lane bridge crossing the Sangamon River in the foreground, and various university buildings and green spaces. A large, bright yellow circle is superimposed over the center of the image, containing white text.

ILPA
LCON
2023

Q&A



Contact Us

Robert McGrail

rmcgrail@dumac.duke.edu

Jim Wagner

jim.wagner@leanlawlabs.com

Noah Waisberg

noah@zuva.ai



An aerial photograph of the University of Illinois at Urbana-Champaign campus. The image shows the central dome of the Old State Capitol building, various university buildings, a large green lawn, and a multi-lane highway bridge crossing the Rood Branch of the Sangamon River. A large, bright yellow circle is superimposed over the center of the image, containing white text.

**ILPA
LCON
2023**

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



LP- Only Roundtable: ESG in the Crosshairs

Michael Littenberg

Partner, Ropes & Gray LLP

Matthew Schey

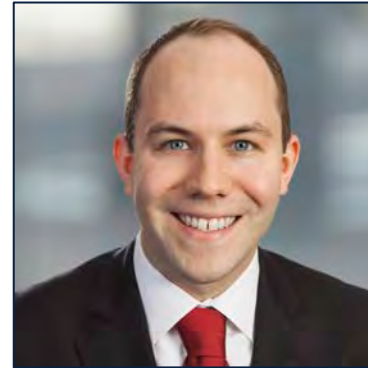
Sr. Director, External Affairs & Sustainable Investing
ILPA (Moderator)



Today's Speakers



Michael Littenberg
Ropes & Gray



Matthew Schey
ILPA
(Moderator)

Agenda

- Fireside Chat - 25 mins
- Breakout Sessions - 20 mins
- Report Back - 15 mins

Breakout Questions

- 1) Has your firm had to adapt to navigate to the recent politicization of ESG and complex regulatory environment? How?
- 2) How has ESG evolved from a legal/compliance perspective in your organization?
- 3) What ESG terms are you pursuing/negotiating in side letters? What terms are getting agreed to - and where have you seen push back?

An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large yellow circle is superimposed over the center of the image.

**ILPA
LCON
2023**

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



ILPA
LCON

SEP 26 - 27
2023



Pushing Back on the Status Quo: Continuation Funds

Kelley Bender

Chief Operating Partner, Chapman and Cutler

Josh Geller

Deputy City Attorney, Los Angeles City Attorney's Office

Bob Perez

Partner, Foster Garvey

Brian Hoehn

Senior Associate, ILPA (Moderator)



Today's Speakers



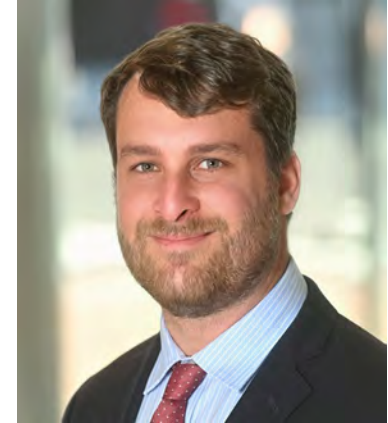
Kelley Bender
Chapman and Cutler



Josh Geller
Los Angeles City
Attorney's Office



Bob Perez
Foster Garvey



Brian Hoehn
ILPA
(Moderator)

Agenda

- Market Update
- ILPA Guidance
- LPA Considerations
- Deal Specific Considerations
- Preparing for Continuation Funds

Live Polling

- To participate in live polling, attendees should go to sli.do
- Enter event code **LCON2023**
- Enter your responses as the questions appear

Website: sli.do

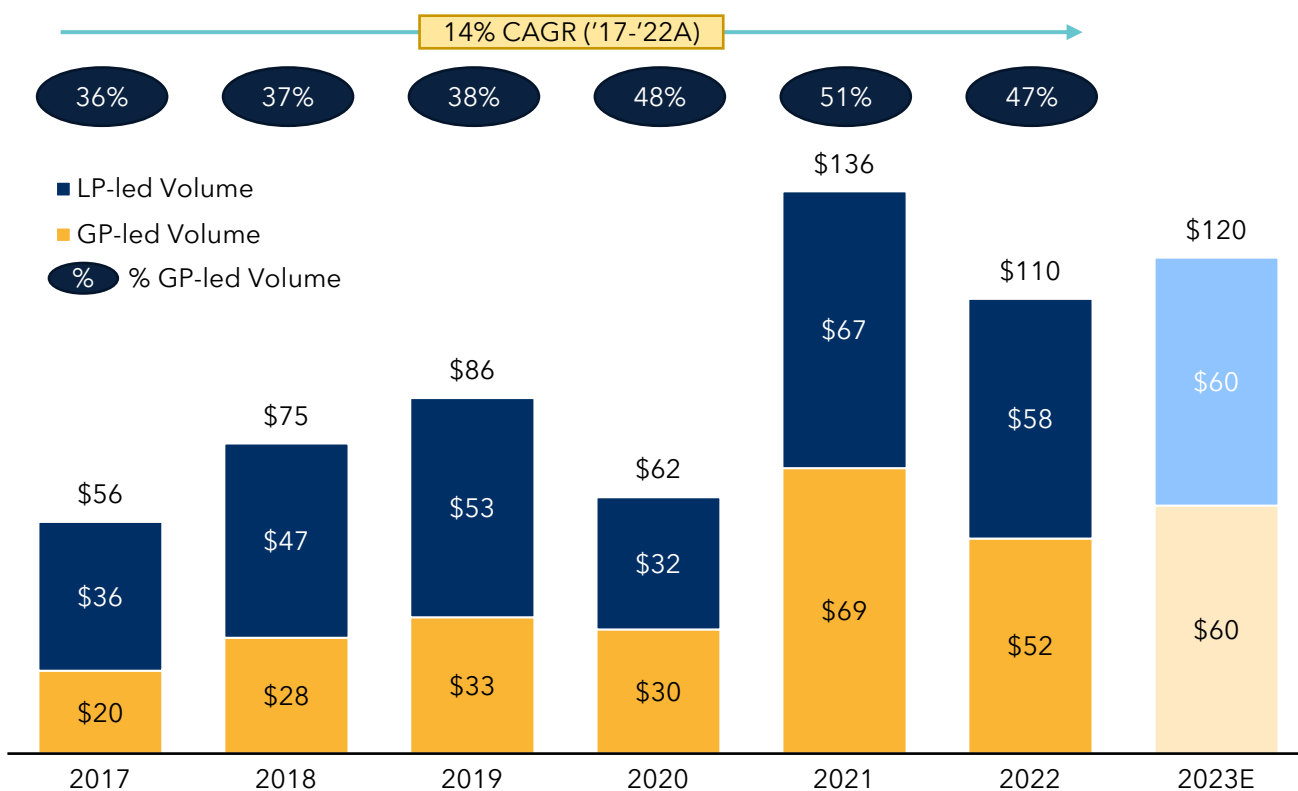
Event code: [#LCON2023](https://sli.do/#LCON2023)

Continuation Funds

Market Update

Secondary Market Growth (2017 - 2023E)

\$ in billions



Source: UBS survey, publicly available data and UBS internal estimates

Key Commentary & 2023 Outlook

- 1** Average buyout pricing has been in the **85-90% range over the last 6-12 months**, though pricing has more recently begun approaching **90% on average for high-quality buyout assets**
- 2** Investors have expressed a clear **preference for diversification**, suggesting there will be a heightened **focus on multi-asset GP-led transactions and LP portfolios** over the balance of the year
- 3** Continued **oversupply of single asset transactions** following a period of significant single asset activity; investors are dedicating time and resources to diversified **multi-asset GP-led transactions** where they generally face **less competition around pricing** versus traditional LP portfolio processes
- 4** Overall, we expect **market volume to be flat or slightly up in 2023** relative to 2022 levels, with average **pricing continuing to improve** as the macroeconomic backdrop stabilizes

Continuation Funds

ILPA Guidance

- ILPA released new Guidance on continuation funds in May 2023
- General principles of Guidance:
 - CV transactions should maximize value for existing investors
 - Rolling LPs should be no worse off than if a transaction had not occurred
- ILPA has heard positive feedback on Guidance
 - ILPA encourages LPs to share the Guidance with their Managers
- Expect continuation fund transactions to continue to gain traction in 2024 and beyond
- Many considerations for LPs even with Guidance
 - Things to consider in LPAs
 - Things to consider when deal is presented
 - Things to consider when preparing internally

LPA Considerations

Guardrails and Approvals

- Balance between using the LPA to set guard rails vs. need to negotiate each unique transaction
 - *ILPA Guidance*: LPAs may include high-level anticipatory language around the process (i.e., notice periods, disclosures, conflict approvals protocols, etc.)
 - *ILPA Guidance*: It is recommended that such provisions provide clarity for all parties without undue restrictions
- LPs seeing more language looking to preclear conflicts of interest
 - *ILPA Guidance*: GPs and LPs alike should avoid LPA terms that preclear conflicts of interest
 - *ILPA Guidance*: The LPAC should vote to waive conflicts of interest associated with the transaction, whether or not precleared by the LPA



Polling Question #1

Have you seen GPs look to add provisions to LPAs that preclear conflicts associated with continuation funds?

- a) Yes, and we were unsuccessful in pushing back against them
- b) Yes, but we were successful in pushing back against them
- c) Not yet
- d) Not sure

Website: sli.do

Event code: [#LCON2023](#)

LPA Considerations

Expenses

- LPs should focus on expense allocations during LPA negotiations
- Look to narrow LPA language that gives GPs broad discretion on how to allocate expenses
 - Limit expenses associated with the new vehicle for selling LPs
- *ILPA Guidance*: Allocation of fees and expenses between the acquirer, selling LPs, rolling LPs and the GP should be clearly disclosed and allocated according to which parties benefit from the transaction
- *ILPA Guidance*: Broken deal expenses should conform to relevant portions within the LPA

LPA Considerations

Other Terms

- Clawbacks
- Notice periods and disclosures
- Time to elect

Deal Specific Considerations

Price Validation

- *SEC Private Fund Adviser Rule*: GPs are required to get a fairness opinion or a valuation opinion in connection with a GP-led secondary transaction
- Third-party price validation
 - *ILPA Guidance*: A fairness opinion, a partial disposition to a third-party or an arms-lengths transaction for a minority stake may be helpful to assess whether a fair price was obtained



Adviser-Led Secondaries - Overview of Impact of PFA

High Level Overview

ILPA
LCON
2023

Rule	Applies To	Compliance Date	Date	Applies to Existing Contractual Agreements
Adviser-Led Secondaries	Registered PFAs	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	Sept 16, 2024 March 14, 2025	Yes

Adviser-Led Secondaries

GPs conducting adviser-led secondary transactions must, **prior to the due date of the election form** from LPs (i) obtain and distribute to LPs a **fairness opinion or a valuation opinion from an independent opinion provider** and (ii) prepare and distribute to LPs a **summary of any material business relationships among the GP and the independent opinion provider for the two-year period prior to the issuance of the opinion.**



Polling Question #2

Do you require third-party price validation in continuation fund transactions?

- a) Yes, and we push for it to be required as an LPA term/side letter provision
- b) Yes, we expect it to be part of a transaction but don't push for it as a legal term
- c) Not yet
- d) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Deal Specific Considerations

Minority Protections

- A large majority of LPs sell when presented with a CV transaction
 - Carry interest roll and economic incentives of the new CV
 - Key person provisions
 - Time and attention provisions
- Dilution protections
- Election terms that waive conflicts of interest by making an election

Preparing for Continuation Funds

Interacting with stakeholders

- Timing is a major challenge
 - *ILPA Guidance*: LPs should be afforded no less than 30 calendar days or 20 business days to make roll sell decisions
 - *ILPA Guidance*: Where possible, GPs should strive to provide more than 30 calendar days/20 business days
- Worst place to be is on the fence
 - Quick sell decision vs. a more in-depth review

Preparing for Continuation Funds

Roll vs. Sell Decision

- Understand investment processes and delegation authority
- LPs will never be as familiar with the portfolio company as the GP
- Key documents to review:
 - LPA and side letter of existing fund
 - Purchase sale agreement and transaction related disclosures
 - Portfolio company disclosures
 - New LPA and fund terms
- *ILPA Guidance*: LPs must be provided a “true status quo” option
 - No increase in the management fee rate
 - No change in the management fee base
 - No increase to the carried interest rate, preferred return hurdle
 - No crystallization of carried interest for rolling investors
 - Side letters apply to the new vehicle



Polling Question 3

What is your organization's approach when presented with a continuation fund transaction?

- a) We take it on a case-by-case basis, and will roll under certain circumstances
- b) We are allowed to participate, but our default is to sell
- c) Our policies/procedures do not allow us to participate
- d) I have not seen a continuation fund transaction/not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)



Polling Question #4

In general, how often are you provided with a status quo option?

- a) Never
- b) Between 1%-25% of funds
- c) Between 26%-50% of funds
- d) Between 51-75% of funds
- e) Between 76%-99% of funds
- f) Always
- g) Not sure

Website: sli.do

Event code: [#LCON2023](https://twitter.com/LCON2023)

Preparing for Continuation Funds

Investment and Performance Monitoring

- Consider how to allocate and track roll investment decisions
- Consider how GPs are presenting performance regarding continuation funds
- Consider implementing continuation fund questions into standard due diligence processes
- Review ILPA's Continuation Fund Guidance and share it with your GPs



Contact Us

Kelley Bender

bender@chapman.com

Josh Geller

Joshua.geller@lacity.org

Bob Perez

Bob.perez@foster.com

Brian Hoehn (Moderator)

bhoehn@ilpa.org



An aerial photograph of the University of Illinois campus, featuring the Old Capitol building and the Lincoln Memorial. A large yellow circle is overlaid on the image, containing the text 'ILPA LCON 2023' and 'Thank You'.

ILPA
LCON
2023

Thank You



INSTITUTIONAL
LIMITED PARTNERS
ASSOCIATION



**ILPA
LCON**

SEP 26 - 27
2023



Fireside Chat with SEC's William Birdthistle

William Birdthistle

Director, Division of Investment Management,
U.S. Security and Exchange Commission

Jennifer Choi

CEO, ILPA



Today's Speakers



William Birdthistle
U.S. Securities and
Exchange
Commission



Jen Choi
ILPA

An aerial photograph of the University of Illinois campus, featuring the Old State Capitol building in the background, a large bridge over the Sangamon River in the foreground, and various university buildings and green spaces. A large yellow circle is superimposed over the center of the image.

**ILPA
LCON
2023**

Thank You