April 27, 2017

The Honorable Jeb Hensarling, Chairman
The Honorable Maxine Waters, Ranking Member
Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

I am writing to express the opposition of the Institutional Limited Partners Association (ILPA) to sections 858 and 859 of the Financial CHOICE Act of 2017, which will eliminate the requirement that investment advisers to private equity funds register and be regulated and examined by the U.S. Securities & Exchange Commission (SEC). SEC registration and examination has been critical to fostering a transparent, level playing field where private equity funds are held accountable for their reporting and compliance procedures. Private equity investors and their beneficiaries have benefitted greatly from such registration. Removing sections 858 and 859 from the bill will ensure these important protections remain.

The ILPA is the only organization exclusively representing the interests of institutional investors in private equity, otherwise known as limited partners (LPs). Our 400+ member institutions include global public pension funds, corporate pensions, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all which invest in the US private equity market. The ILPA's members provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation across America and around the world. In addition to providing this critical capital for economic growth, LPs are the trusted financial stewards investing the assets of average Americans. Limited Partner beneficiaries include retirees, teachers, first responders, universities, charitable recipients, insurance policyholders and others who rely on the sound and safe investment environment currently enjoyed by their fiduciaries due to SEC registration. These investments are essential to the sustainability of pensions, and ultimately provide for the retirement security for millions of Americans.

The ILPA's members are sophisticated investors and supporters of free market principles. However, there are proven limits to what even the most powerful investor can achieve through negotiation, particularly without strong oversight to ensure the rules of the market are followed and the contractual obligations are being met. The ability to govern these relationships was markedly improved by the requirement that private equity fund advisers

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register with the SEC under Section 404 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This oversight has greatly benefitted the average American retiree who is relying on a regulated private equity investment environment to achieve the desired return outcome to fund their retirement.

The requirement in Dodd-Frank that private equity fund advisers register with the SEC has resulted in an improved culture of transparency and compliance, a result not possible otherwise. Since its inception, SEC registration and a strong examination program have proven to be a much-needed oversight program, uncovering a variety of opaque, questionable and, in some cases, unlawful practices that effectively hurt the economics of the beneficiaries of Limited Partners. These practices include inadequate disclosure, policies and procedures around the fees and expenses charged to investors, existence of hidden fees not disclosed to investors, lack of effective compliance programs, and failure to disclose conflicts of interest.

A 2014 speech by Andrew Bowden, then the head of the SEC's Office of Compliance Inspections and Examinations (OCIE), highlighted these harmful practices, and stated that when the SEC had examined how fees and expenses were handled by private equity fund advisers, the SEC identified "violations of law or material weaknesses in controls over 50% of the time," during their examination of over 150 private equity fund advisers.[1] These lack of controls and fee disclosures, if left unmonitored, will undermine the confidence of LP investors and their governing bodies. Capital formation - both private and public - are an important bedrock of a healthy and growing economy. It is in our collective best interest to maintain and monitor disclosure standards that promote a healthy appetite for private investing.

Bowden also highlighted the challenges that even the most sophisticated investors, including the ILPA's members, have in uncovering these violations. Bowden stated that these challenges were due to the "structure of the industry, the opaqueness of the private equity model, the broadness of limited partnership agreements and the limited information rights of investors."[2] In this type of environment, Bowden stated that violations were occurring despite the best efforts of Limited Partners to monitor the investments, and that many of the violations could likely not be detected on their own due to the lack of disclosure, transparency and information.[3] Certain issues are only discoverable by virtue of the SEC's visibility into the entire operations of private equity advisers that manage multiple funds across a large platform. Where there may be impropriety or insufficient disclosure of fee or expense allocations across multiple funds or multiple groups of

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[1] Andrew Bowden, Director, Office of Compliance Inspections & Examinations, U.S. Securities & Exchange Commission, "*Spreading Sunshine in Private Equity",* Private Equity International (PEI) Private Fund Compliance Forum 2014, New York (May 6, 2014).
[2] *Id.*
[3] *Id.*

investors, knowledge of such practices would fall beyond the purview of any Limited Partner's investment in a single fund, and the negotiated information rights pertaining to that fund. Without the SEC's active oversight and attention to such issues, Limited Partners' ability to discern questionable practices would understandably be limited. As the SEC has stated, "even experienced investors can be defrauded if they lack transparency into the various fees, expenses and practices."[4]

As a result of increased SEC oversight and, in particular, through the efforts of the SEC's Private Fund Examination Unit, our members have seen increased transparency and disclosure of fees and expenses by fund managers, improved fund manager compliance with the terms in the contracted investment agreements and a significantly improved culture of compliance and voluntary disclosure from fund managers. A strong SEC enforcement regime, which could not effectively operate without registration, is evidenced by the 10 significant settlements reached with major private equity fund advisers since 2014.[5] This enforcement regime has ensured that the SEC has the power needed to ensure a level and fair playing field for all parties.

The private equity industry has continued to grow and prosper under SEC oversight and regulation, while ensuring that American companies can continue to access the capital they need to grow and create jobs. This prosperity illustrates that SEC registration requirements have resulted in no harm to capital formation, while providing significant investor protection benefits. Moreover, the average American teacher, fireman or policeman has achieved greater retirement security, because of the effective and targeted involvement of the SEC in the private equity industry.

We encourage the Committee to remove these harmful provisions in the Financial CHOICE Act, and permit the private equity industry to continue to flourish in a safe and prudent manner.

Sincerely,

Peter Freire
Chief Executive Officer
Institutional Limited Partners Association (ILPA)

[4] Andrew Ceresney, Director, Division of Enforcement, U.S. Securities & Exchange Commission, "*Private Equity Enforcement*", Securities Enforcement Forum West 2016, San Francisco, (May 12, 2016).

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