

December 7, 2021

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C.

Dear Chairman Gensler:

On behalf of our collective 8.5 million members, we congratulate you on your confirmation as Chairman of the Securities and Exchange Commission (SEC or Commission).

Members of our unions serve as trustees for the vast majority of large public pension funds throughout the country. As stewards for the retirement assets of millions of public sector workers, they look forward to your efforts to increase transparency and accountability in the capital markets.

As a result of their rapid growth in recent decades, the private markets have taken on increasing importance in our economy and in the pension funds of our members. Therefore, proper oversight of private fund advisers has also taken on increased importance. And while the Commission and its examination and enforcement program have made significant strides toward this end in recent years, the SEC's June 23, 2020 "Risk Alert" indicates that deficiencies and compliance issues remain abundant.<sup>1</sup>

Therefore, we want to echo the sentiment of the Institutional Limited Partners Association's April 21, 2021 letter.<sup>2</sup> We agree that investors would benefit from action on the three issues identified in the letter:

- **Standard of Care:** A survey conducted by the ILPA in 2020 found that "71% of LPs have seen fiduciary duties contractually modified or eliminated altogether over the last 12 months in at least 50% of the funds in which they have invested."<sup>3</sup> We find this situation unacceptable and concur that private fund advisers should not be permitted to contract to a lower standard of care than that required by the Investment Advisors Act.
- **Fee and Expense Reporting:** In 2014, the Director of the SEC's Office of Compliance Inspections and Examinations (OCIE) made the astonishing observation that his office's examinations of the handling of fees and expenses by private fund advisers found what

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<sup>1</sup> SEC Office of Compliance Inspections and Examinations, "Observations from Examination of Investment Advisers Managing Private Funds," June 23, 2020, <https://www.sec.gov/files/Private%20Fund%20Risk%20Alert.pdf>

<sup>2</sup> ILPA Welcome Letter to Chairman Gensler, April 21, 2021, <https://ilpa.org/wp-content/uploads/2021/04/2021.4.20-ILPA-Welcome-Letter-to-Chairman-Gensler-Final.pdf>

<sup>3</sup> ILPA, "Survey Highlights: 2020 ILPA Private Market Fund Terms Survey," [https://ilpa.org/wp-content/uploads/2020/06/2020-ILPA-Fund-Terms-Survey-Highlights\\_External.pdf](https://ilpa.org/wp-content/uploads/2020/06/2020-ILPA-Fund-Terms-Survey-Highlights_External.pdf)

was believed to be “violations of law or material weaknesses in controls over 50% of the time.”<sup>4</sup> And the June 23, 2020 “Risk Alert” indicated that OCIE staff continue to observe fee and expense-related deficiencies in the following areas: Allocation of fees and expenses, operating partners, valuation, and monitoring/board/deal fees and offsets. Requiring clear and consistent standardized fee and expense reporting on a quarterly basis would be a step forward for transparency and alignment of interests between investors and private fund advisers.

- **Access to Compliance Deficiencies:** Access to information on compliance issues identified by OCIE staff would present an important tool in the ongoing monitoring of the investment.

Lastly, we support two additional recommendations outlined in a July 6, 2021 letter<sup>5</sup> organized by Americans for Financial Reform:

- The Commission should consider updates to Form PF requirements in order capture more comprehensive information about the holdings, sources of credit and other practices of private fund advisers.
- The Commission should use its existing legal authority to increase enforcement actions against private fund advisers that violate existing rules.

Once again, congratulations on your confirmation and thank for your consideration of the issues we have raised here.

Sincerely,



Rebecca S. Pringle  
President  
National Education Association (NEA)

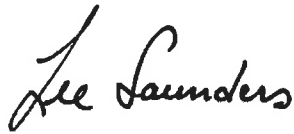


Randi Weingarten  
President  
American Federation of Teachers (AFT)

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<sup>4</sup> Bowden, Andrew, “Spreading Sunshine in Private Equity, May 6, 2014, <https://www.sec.gov/news/speech/2014--spch05062014ab.html>

<sup>5</sup> AFREF Letter to the SEC on Addressing Private Equity’s Abuses, July, 6, 2021, <https://ourfinancialsecurity.org/2021/07/letters-to-the-regulators-afref-letter-to-the-sec-on-addressing-private-equitys-abuses/>



Lee Saunders

President

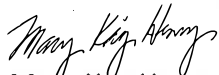
American Federation of State, County and Municipal Employees (AFSCME)



Christopher M. Shelton

President

Communication Workers of America (CWA)



Mary Kay Henry

President

Service Employees International Union (SEIU)

CC:

The Honorable Caroline Crenshaw

The Honorable Allison Herren Lee

The Honorable Hester Peirce

The Honorable Elad Roisman