Association for Corporate Growth

PRIVATE CAPITAL, PUBLIC GOOD®

PRIVATE EQUITY REGULATORY & COMPLIANCE PRINCIPLES

Version 1.0

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A NOTE FROM THE ACG PERT STEERING COMMITTEE

Today more than ever, private equity professionals of middle-market private equity firms need an informed and consistent voice to engage both internally, with our firm colleagues, and externally with peers, LPs, regulators and policymakers on a variety of issues that impact our funds. Middle market private equity firms are now confronted with a dizzying array of compliance requirements and information requests from investors, advisers, and regulators — both domestic and foreign.

Complying with the myriad of regulations and navigating the regulatory land mines for registered investment advisers is an ever-increasing task. For our relatively small fund families, finance and compliance staffing has not been able to grow at a pace commensurate with the regulatory and reporting demands being placed on us and our firms. The increased burden is causing us to engage lawyers and other consultants. As many new rules have yet to be clarified, these consulting dollars often do not yield clear results.

As steering committee members of the ACG Private Equity Regulatory Task Force (PERT) and on behalf of the more than 50 member firms, we are pleased to share with public stakeholders the first iteration of the Private Equity Regulatory and Compliance Principles (PERC). The PERC Principles reflect countless hours of surveying, discussion and deliberation among midsize firm practitioners on what are equitable efforts to address growing regulation for the industry.

As background, the purpose of the PERC Principles is to develop industry consensus on regulatory and compliance principles for small and midsize private equity firms. It is our hope that these principles will serve as a resource to many firms and offer PERT and other industry participants a way to engage regulators, legislators and other industry groups on the importance of the principles. We as practitioners take on these issues as fiduciaries on behalf of our firms. The principles outlined in this document include:

Co-Investments

Cybersecurity

Disclosure of Fees & Expenses

Valuations

Through PERT, middle-market private equity now has the recognized and responsible means to push for meaningful regulations and to develop uniform, shared best practices. On behalf of the PERT Steering Committee and the 50+ members of PERT, we look forward to continued dialogue with our industry partners and stakeholders.

Sincerely,

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Saw Mill Capital

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ABOUT ACG AND PERT

Association for Corporate Growth, Inc. (ACG) serves some 90,000 investors, lenders, executives and advisers to middle-market companies, and counts representation from more than 1,000 private equity firms in its membership. With a mission of “Driving Middle Market Growth,” ACG is a global organization with 58 chapters. Learn more at www.acg.org.

ACG “Drives Middle-Market Growth.” Learn how at www.middlemarketgrowth.org.

Created in 2015, ACG’s Private Equity Regulatory Taskforce (PERT) gathers together CFOs, CCOs, COOs, and GCs of middle-market private equity firms. Together, they interpret and navigate the often complex finance, operational, compliance, and regulatory issues affecting the industry. PERT members have access to a national peer-to-peer network focused on shaping best practices for those responsible for leading the business of private equity.

PERT’s mission is to lead middle-market private equity professionals through the changing operational landscape.

PERC PRINCIPLES DISCLAIMER

The PERC Principles are provided as statements of suggested practices for regulatory compliance by middle-market private equity firms. The Principles were developed by experts in the private equity community and informed through public comment. Association for Corporate Growth, Inc., (“ACG”), for itself and its chapters, and their respective officers, directors, members, employees and agents (collectively, the “ACG Parties”), expressly disclaims any warranties or guaranties, express or implied, relating to the Principles, and the ACG Parties will not be liable for damages of any kind, in connection with the material, information or procedures set forth in the Principles or for reliance thereon by any party. The Principles, including any comments relating thereto, should not be construed as legal or financial advice, and users should seek appropriate accounting, legal or other professional advice to address specific facts or circumstances.

CO-INVESTMENTS

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The goal of the PERC Co-Investment Principles is to help ensure more consistent disclosure by private equity firms ("Firms") to a fund's limited partners ("LPs"), potential LPs and regulators about a Firm's co-investment program. It also aims to assist Firms in developing their co-investment policies and procedures, and provide a framework for best practices related to a Firm's overall co-investment program. These co-investment principles are intended to be applicable both where the co-investment is being made directly by the co-investor alongside the fund and where it is made through a vehicle controlled by the Firm.

GENERAL PRINCIPLES ON CO-INVESTMENTS

These Principles seek to alleviate market confusion and create standardization and parameters for Firm co-investments. At the same time, firms enter into a highly-negotiated Limited Partnership Agreement ("LPA") with their investors, which will generally describe the co-investment structure for that particular fund ("Fund"). Firms may also enter into highly negotiated side letters with investors. While these Principles seek to promote industry standardization, agreements regarding co-investments may differ from Firm to Firm and/or investor to investor.

The Principles assume that the Firm seeks to offer co-investment opportunities to a variety of constituents including current LPs, affiliates of the Firm and/or unaffiliated third parties, in a manner that is consistent with its fiduciary duties and as provided for in the relevant LPA, offering documents, side letters and regulatory filings.

Investors in private equity funds are generally highly sophisticated and understand the potential risks and benefits of co-investments. Terms and provisions relating to co-investments in Fund LPAs and side letters are highly negotiated and reflect the mutually-agreed upon agreement that has been made between the Firm and the individual LPs in the funds that it advises.

Co-investments frequently move very rapidly. Thus, Firms must balance their obligations of transparency and fair dealing with their efforts to ensure that the potential transaction is completed, sometimes in a very short time frame.

Firms may employ a broad range of structures and vehicles regarding co-investments. For example, some co-investments may be made through vehicles controlled by the Firm (sometimes with one or more individual co-investors) while other co-investments may be made directly. There is no one “proper” way to structure co-investments.

Each firm, as an investment adviser, owes a fiduciary duty to its private fund clients, and throughout the co-investment process a Firm should at all times act in a manner consistent with its fiduciary duties. This includes being transparent regarding the co-investment process and not making decision favorable to the Firm at the expense of the Firm’s clients.

A Firm should accurately disclose in the LPA, Private Placement Memorandum (PPM) and other offering materials how it intends to allocate both co-investment opportunities and co-investment expenses, in advance of the LP signing a Subscription Agreement. This may be achieved by providing potential LPs with the PPM and LPA. Should these allocations change due to negotiations with investors prior to the final close, the PPM supplement and LPA should be updated/amended to reflect these changes and be provided to existing LPs.

PRINCIPLES ON FREEDOM OF PARTIES TO CONTRACT

Assuming there has been adequate disclosure:

» Firms and investors LPs should be able to negotiate terms as they wish regarding co-investments. This includes terms relating to:
  - whether or not the Firm chooses to offer co-investments at its sole discretion or using a formulaic allocation;
  - allocation of co-investment opportunities to LPs, Firm affiliates, prospective investors and/or other third parties;
  - allocation of expenses for broken co-investment deals; and
  - allocation of costs associated with a co-investment vehicle if one is used (e.g., tax, audit, legal).

PRINCIPLES RELATING TO THE DISCLOSURE OF CO-INVESTMENT POLICIES

LIMITED PARTNER AGREEMENT DISCLOSURE

The LPA or PPM should provide a clear, accurate description of the Firm’s ability to allocate co-investment opportunities including, generally:

» To whom co-investments may be offered (i.e., LPs, Firm affiliates, prospective investors and/or other third parties); and

- The basis upon which the Firm intends to allocate co-investment opportunities (e.g., at the sole discretion of the Firm, based on capital committed to the Fund, etc.).

If the Firm offers special rights to individual LPs regarding co-investments in side letters, these special rights should generally be disclosed;

The LPA should provide in clear, unambiguous language:

- How broken deal and other transaction-related expenses and how fee income shall be allocated among the Firm, fund, co-investment vehicles and any direct co-investors;
- How ongoing expenses related to a co-investment vehicle will be shared (e.g., tax, legal, audit); and
- How offsets, if any, will be applied to the co-investment portion of any transaction-related fees or fee income.

If the intent is for the Fund to pay 100% of broken deal expenses for deals in which there is co-investment, this should be clearly and unambiguously stated in the LPA regardless of whether the co-investment is through a vehicle controlled by the GP or direct.

In all situations, the allocation must be consistent with the Firm's LPA, representations made to investors, regulatory filings (Form ADV) and its fiduciary duty to its private fund clients.

PPM DISCLOSURE

Should provide a general but complete summary of the Firm's co-investment program that makes it possible for investors to have an adequate understanding of the co-investment program of the Fund so they understand the Firm's co-investment program prior to investing;

Should reflect the practices outlined in the LPA and, if applicable, a term sheet;

May provide the Firm with significant flexibility, so long as it is accurately disclosed in the PPM, LPA and regulatory filings, and is consistent with the Firm's fiduciary duty;

All substantive changes to the co-investment policy resulting from Firm/LP/LPA negotiations during fund raising and incorporated into a revised LPA (including changes resulting from new side letters) should be included in supplemental PPM updates issued at subsequent closings; and

Any co-investment arrangement agreed to in a side letter that has a material impact on the co-investment policy previously presented in the PPM, LPA, regulatory filings or marketing materials should be communicated to existing and potential LPs. This may be achieved by, for example, incorporating such changes in the supplemental PPM and/or, if appropriate, amending the co-investment language in the LPA.

FORM ADV, PART 2 DISCLOSURE

A Firm's Form ADV Part 2 filing should provide a complete description of the Firm's co-investment program, focusing on the items included in the LPA Disclosure above. The level of disclosure should be discussed with the Firm's legal counsel.

SIDE LETTERS

Language for offering co-investment in side letters should seek to be broad in scope and non-binding with respect to the GP's obligation to offer co-investment to any particular investor. This may include:

» Language whereby the LP informs the GP that it is interested in seeing all co-investment opportunities.

There may be certain co-invest rights given to a particular LP or group of LPs either directly in the LPA or in an LP side letter that are out of the fund's MFN provisions. Firms should consider whether disclosure around any MFN carve-out should be included in the LPA, PPM and/or Form ADV.

CO-INVESTMENT POLICY

Firms should have a reasonably detailed written co-investment policy that explains the basis for determining how co-investment opportunities are determined for each deal if not formulaically calculated per the LPA.

The policy should describe the criteria by which co-investment opportunities are shown to potential co-investors. The criteria may include, among other things:

» Speed to quickly evaluate and close;

» Sophistication;

» Industry expertise;

» Size of investment; and

» Potential for co-investor to become an LP in future funds.

The policy should describe the criteria used to determine the allocation between the Fund and current LPs, affiliates of the Firm and outside parties, taking into consideration the Firm's fiduciary responsibility to the Fund.

The Firm should take careful note of potential conflicts that may arise when offering co-invest opportunities and seek to mitigate and/or disclose those conflicts, consistent with conflict provisions of the LPA and any co-investment vehicles.

The General Partner may provide the Firm's co-investment policy to a potential investor before or at the time the subscription agreement is signed. The co-investment policy should be made available to all Limited Partners upon request.

CO-INVESTMENT PROCESS AND OPPORTUNITIES

To the extent possible, co-investors should be granted a sufficient length of time to evaluate co-investment opportunities; however, the amount of time allowed for a specific opportunity will ultimately be dictated by the time constraints of the potential deal.

» If a Firm determines it is in the Fund's best interest to warehouse a portion of an investment for potential or pending co-investor(s):

- Co-investors should refer to the language in the LPA regarding reimbursement to the Fund for any costs incurred to warehouse the investment, including, potentially, reimbursement of interest expense if the Fund's credit line was used to purchase the investment;
- If the Fund provided the capital to warehouse the investment, the GP should determine the appropriate charge to the co-investor to compensate the Fund for the risk involved in warehousing the investment. If there is language in the LPA regarding this type of compensation, that language must be followed. This may be the Fund's hurdle rate or a higher risk-adjusted rate;
- GP's should consider if there are additional costs that should be charged to compensate the Fund for taking the risk that it may not be able to sell down the investment to co-investors; and
- Provisions regarding the warehousing of opportunities should be incorporated in the Fund LPA.

When follow-on investments are made and Fund/co-investors do not participate on a pro rata basis, unless the GP determines otherwise, the new money should be invested at the current fair market value of the investment. In this scenario, the Firm should determine if there are any conflicts of interest especially if different securities are being acquired and determine how to resolve that conflict (often via LPAC approval).

EXPENSES RELATING TO CO-INVESTMENTS

Unless prohibited by the LPA, a Firm may charge carry or management fees on co-investments.

» Some LPs may insist on language in the LPA that prohibits this practice.

» If a management fee is charged on co-invest, the Firm should consider any implications this would have on sharing of fees between the Fund and co-investment (e.g., fee sharing, return of management fees in waterfall, etc.).

As a general matter, reimbursement of costs (organization, tax, audit, filing fees, etc.) related specifically to the co-investment entity should be recovered in the following order:

1. First, paid by the portfolio company (this approach fairly shares the cost among all investors)
2. Second, paid by co-investors; and
3. Third, paid by the fund

If all broken deal and co-investment expenses are paid for by the Fund, this should be clearly disclosed to the LPs in the PPM, LPA, marketing materials and Form ADV, Part 2. In such cases, it is of particular importance that the LPA be absolutely clear that broken deal costs and co-investment costs will be charged 100% to the Fund and potential co-investors will not pay any portion of the broken deal costs.

These concepts can be adapted whether or not the co-investment is made through a vehicle or directly by the co-investors.

REPORTING

REPORTING TO CO-INVESTORS

A Firm may provide co-investors with the fair market value of their investment, consistent with the valuation of the investment by the Fund.

If fair market value is not provided, co-investors may be provided with quarterly reporting sufficient to calculate the fair market value of their investment.

Providing co-investors with the portfolio company information from the Fund's quarterly report may be sufficient for most co-investors to meet their internal reporting requirements.

Reporting to co-investors should be consistent regardless of whether the co-investment is made through a vehicle or made directly in the portfolio company.

PERFORMANCE REPORTING

Fund IRR and cash-on-cash performance should never include co-investment returns.

A Firm's overall track record may include co-investment returns, as long as it is clearly disclosed and all co-investments have been included. A Firm's decision not to include co-investment because of poor performance or for any other reason may be interpreted as cherry-picking.

CYBERSECURITY

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The goal of these PERC Principles is to help private equity firms ("Firms") address the rapidly evolving area of cybersecurity in a way that takes into account:

» Firms' responsibilities under applicable federal and state regulations, including guidance issued by the SEC;
» The fiduciary responsibility Firms owe to their clients, which are the private funds that they advise; and
» The unique nature of the private equity business model.

Because the issue of cybersecurity is relatively new and highly technical, these Principles are designed to help Firms take appropriate steps to protect themselves from cyberattack that are in line with the particular nature, business model and risk profile of the Firm. These Principles do not address international regulations a Firm may be subject to, so Firms are encouraged to work with outside counsel and advisers to determine if they are subject to international privacy regulations.

The Principles attempt to do this by identifying actions that are: (i) required under federal (Regulation S-P; Regulation S-ID; the Gramm-Leach-Bliley Act) or state laws; (ii) highly recommended based upon guidance issued by the SEC; and (iii) recommended based upon guidance issued by the SEC. **If an action is listed under the principles as "Highly Recommended" or "Recommended" rather than "Required," it does not indicate that it is "okay" for a Firm to not perform that action.**

PERC Cybersecurity Principles are not legal advice, and Firms should work closely with outside counsel to review their cybersecurity policies and implement an appropriate cybersecurity program.

GENERAL PRINCIPLES ON CYBERSECURITY

Firms should recognize the increased importance of cybersecurity to their Firm, the funds that they advise ("Funds"), the investors in their Funds ("Investors") and to their Funds' portfolio companies ("Portfolio Companies").

While there is no one-size-fits-all approach to cybersecurity, Firms should devote adequate time and resources to protect their Firm, Funds and Investors from cybersecurity attack. Firms should also consider their Portfolio Companies in their cybersecurity planning.

Firms should work closely with their outside counsel to ensure that they stay abreast of, and in compliance with, regulatory changes not only at the federal level but also at the state level. A number of states impose privacy and security requirements that may impact Firms, and therefore Firms (through their outside counsel) should be aware of applicable state law requirements. Firms that operate internationally should stay abreast of international regulations as well.

Firms should be familiar with the guidance that has been provided by the U.S. Securities and Exchange Commission (SEC) on the issue of cybersecurity, including the September 2015 Risk Alert issued by the National Exam Program ("2015 SEC Guidance").

Firms should have a comprehensive written policy that describes their cybersecurity policies and procedures, as referenced in the in the 2015 SEC Guidance. These policies and procedures should be tailored to the Firm's specific business model and business risks.

As part of their policies and procedures, Firms should:

- Include and involve senior management, the Chief Compliance Officer and the Chief Information Officer (if the Firm has one) in their cybersecurity planning;
- Regularly evaluate cybersecurity risks, and whether their controls and risk assessment processes are both tailored to their business and sufficient;
- Provide annual cybersecurity awareness training for their employees; and
- Have an incident response procedure in place that is tailored to, and appropriate for, that Firm.

Firms should assess their current cybersecurity policies, procedures and systems as they relate to the priorities listed below, which are derived from federal and state regulations and the SEC 2015 Guidance.

PRINCIPLES RELATING TO CYBERSECURITY GOVERNANCE AND RISK ASSESSMENT

A governance framework is the method to be used to organize and prioritize cyber risks within the Firm and to help develop an organizational structure to manage the overarching security program. As part of their cybersecurity and/or privacy and information security policies and procedures, Firms should:

❗ REQUIRED

Adopt written policies and procedures designed to impose significant safeguards on all personally identifiable information ("PII") and other information protected under federal or state privacy law (e.g. HIPPA);

Firms should generally adopt a broad definition of what is considered PII. As discussed below, there are multiple definitions of PII or other types of protected information, including definitions from NIST[1] and under the Graham-Leech Bliley Act.[2]

At a minimum, the definition of PII should include:

» The first name OR first initial and last name of an individual in combination with one or more of the following:
  - social security number;
  - driver's license number;
  - government identification number; or
  - financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account.

» In addition, many privacy laws include one or more of the following (among others not listed):
  - personal health information (e.g., health condition, treatment, diagnosis or health care payment data);
  - health insurance information;
  - personal financial information and payment card data (e.g., credit card data, financial account information, financial transaction information, etc.);
  - biometric data (e.g., fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data; and
  - username or email address, in combination with a password or security question and answer that would permit access to an online account.

» Other information likely to be found in a subscription document, including wiring instructions.

Encrypt PII transmitted wirelessly as certain states mandate the encryption of transmitted PII.

Identify or appoint a Chief Information Security Officer, or an equivalent, who will be the individual responsible for managing the cybersecurity policies, procedures and systems.

Restrict access to records and files containing PII to those who need such information to perform their job duties.

Review the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PII.

HIGHLY RECOMMENDED

Adopt written policies and procedures designed to:

» Impose appropriate safeguards on all "Confidential Information," including information other than PII relating to:

- Investors;
- Firm employees;
- Firm vendors, contractors and consultants;
- Firm business strategies;
- Accounting and financial information for the Firm, its Funds and affiliates (i.e. manager, investment adviser, investment SPVs, etc.);
- Portfolio Company information, particularly accounting and financial information; and
- Deal-related information.

Ensure that user controls are appropriate for all of the categories of information referenced above;

» Investigate and consider the encryption of PII and certain high-risk Confidential Information "at rest" on the Firm's servers (recognizing that encryption of transmitted PII is required). This may include investigating cloud-based and other services that come naturally encrypted;

» Include and involve senior management in cybersecurity planning; and

» Conduct an appropriately-sized annual vulnerability assessment test to identify security holes or vulnerabilities in a computer, network or communications infrastructure. This test can be performed either internally or through a third party.

RECOMMENDED

Depending upon Firm resources, conduct an annual penetration test to actively test the effectiveness of the Firm's cybersecurity program.

PRINCIPLES RELATING TO ACCESS RIGHTS AND CONTROLS

The SEC has stated that Firms should, at a minimum, implement basic controls to prevent unauthorized access to systems or information. Firms will need to demonstrate that a process exists to manage access rights for users across their organization. Firms should:

REQUIRED

Adopt written policies and procedures designed to:

- » Restrict access by unauthorized persons to the Firm network resources and devices;
- » Impose appropriate user access restrictions on Firm network and devices (both Firm-issued and personal) by Firm personnel, including:
  - adopting a password policy and requiring Firm employees and others with access rights to change their password regularly; and
  - promptly updating or terminating access rights based on personnel or system changes.

Actively manage Firm employee access rights, including promptly terminating employee access rights after employees leave the Firm.

Given the high frequency and increased sophistication of phishing and other attacks, Firms should adopt robust policies and procedures related to verification of the authenticity of both internal and external requests for Confidential Information, including:

- » All requests to transfer funds;
- » The release of information relating to Investors or LPs, particularly if that information is PII; and
- » All changes to wiring instructions.

HIGHLY RECOMMENDED

Adopt written policies and procedures designed to:

- » Impose appropriate user access restrictions on Firm network and devices (both Firm-issued and personal) by Firm personnel, including:
  - establishing employee access rights, taking into account the employee's role and/or group membership in order to help ensure that Firm employees and others do not see and have access to data that is not necessary for the performance of their job; and
  - as necessary, requiring management approval for changes to access rights or control.
- » Promptly restrict access after excessive failed log-in attempts, and impose other perimeter-facing access restrictions

Actively manage Firm employee access rights, including:

- Documenting the active management of employee access rights and changes to those rights; and
- Promptly changing employee access rights to account for changes such as promotions, demotions, transfers, etc.

Identify and assess reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing PII or Confidential Information, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks.

Regularly monitor the information security program to ensure the program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of PII or Confidential Information; and upgrading information safeguards as necessary to limit risks.

RECOMMENDED

Implement multi-factor authentication for access to certain systems or applications; and

Implement of encryption and/or other protections on devices (both Firm-issued and personal) used to remotely access Firm's network and systems (recognizing that transmission of PII or PII stored on mobile devices must be encrypted).

PRINCIPLES RELATING TO DATA LOSS PREVENTION

Firms should generally identify and catalogue its data across all platforms, regardless if the data is internal or external to the organization. An application inventory and data classification strategy should be developed and technical utilities deployed to safeguard against internal and external threats. Firms should:

REQUIRED, TO THE EXTENT TECHNICALLY FEASIBLE

Secure user authentication protocols including:

- Control of user IDs and other identifiers;
- A reasonably secure method of assigning and selecting passwords;
- Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
- Restricting access to active users and active user accounts only; and
- Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system;

Secure access control measures that:

- » Restrict access to records and files containing personal information to those who need such information to perform their job duties; and
- » Assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls;

Reasonable monitoring of systems, for unauthorized use of or access to personal information;

Encryption of all transmitted records and files containing PII or Investor subscription documents that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly.

Encryption of all PII or Investor subscription documents stored on laptops or other portable devices (such as flash drives);

Use reasonably up-to-date firewall protection and operating system security patches.

Security software:

- » Reasonably up-to-date software versions and updates for system security software which must include malware protection and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.

Education and training of employees on the proper use of the computer security system and the importance of personal information security.

HIGHLY RECOMMENDED

To the extent practicable, have an application inventory (e.g., spreadsheet) that identifies:

- » All applications by name;
- » What information is being stored on the application; and
- » Which Firm employee is responsible for managing the information on the application.

Identify all Confidential Information in the possession of the Firm, including:

- » Investors, particularly PII;
- » Firm employees;
- » Firm vendors, contractors and consultants;
- » Firm business strategies;
- » Portfolio Company information, particularly accounting and financial information;
- » Deal-related information.

Understanding the systems, utilities and tools the Firm uses to prevent, detect and monitor data loss involving Confidential Information (particularly PII);

Adopt written policies and procedures that:

» Describe the application inventory process described above, with an emphasis on Investor PII and other Confidential Information;

» Classify the types of data in the possession of the Firm, including:

  - the risk level (e.g., low, medium or high) associated with each data classification;
  - factors considered when classifying data; and
  - the factors and risks considered when the firm makes data classification determinations

» To the extent practicable, monitor the exfiltration and unauthorized distribution of sensitive information outside of the firm.

Have a system in place to detect external intrusions and the internal improper movement of information.

PRINCIPLES RELATING TO VENDOR MANAGEMENT

Firm vendors may pose an indirect threat to Firms, their Funds and Investors. Therefore, Firms should have the ability to screen and monitor each vendor's cybersecurity controls and policies prior to establishing an engagement and perform ongoing vendor reviews at least annually. Firms should:

! REQUIRED

Take reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect PII consistent with the law.

Carefully review and be aware of the provisions in each vendor contract in order to ensure that vendor contracts include provisions:

» Requiring the third-party service providers, by contract, to implement and maintain appropriate security measures for PII and Confidential Information;

» Requiring third-party service provides to provide prompt notification of a security incident or breach of PII or Confidential Information; and

» If the Firm contracts with the federal government, be aware of all federal rules and regulations regarding cybersecurity and data protection.

HIGHLY RECOMMENDED

Adopt written policies and procedures designed to ensure that the Firm:

- Adequately supervises, monitors and tracks access controls provided to vendors, particularly vendors with access to PII and other confidential information;

Ensure that vendor contracts include provisions:

- Addressing contingency plans concerning conflicts of interest, bankruptcy or other issues that might put the vendor out of business or in financial difficulty; and
- Requiring notification prior to any material changes to the vendors' systems, components or services that could potentially have security impacts to the Firm and the Firm's data containing PII.

Obtain annual certification from vendors regarding their cybersecurity programs.

PRINCIPLES RELATING TO TRAINING

Firms should develop an appropriate cyber educational awareness program for all staff which highlights the Firm's commitment to cybersecurity. Firms should:

REQUIRED

Train all employees on information security and cybersecurity risks (at least annual training is highly recommended).

HIGHLY RECOMMENDED

Compile and maintain accurate records of the training provided, including:

- Training method (e.g., in person, computer-based learning or email alerts);
- Dates;
- Topics and groups of participating employees (or third-party vendors); and
- Any written guidance or materials provided..

PRINCIPLES RELATING TO INCIDENT RESPONSE

All employees at the firm should know how to respond to data breaches or threats. The primary objective of the incident response plan is to timely and effectively manage a cybersecurity event or incident. Firms should:

REQUIRED

Have a written incident response plan in place that describes in sufficient detail what the Firm and its personnel will do in the event of a cybersecurity incident.

Document responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of personal information.

HIGHLY RECOMMENDED

Ensure the written incident response plan addresses mitigation of the effects of a cybersecurity incident and/or recovery from such an incident. The incident response plan should include the CCO, CIO and/or other senior persons and should address, at a minimum:

» Allocation of decision-making responsibilities;

» Contact information (email and phone numbers) for all relevant parties;

» Considerations for potential communications with Investors and other stakeholders;

» The involvement of outside counsel.

Compile and maintain information regarding incidents of unauthorized internal or external distributions of PII and/or Confidential Information and the amount of actual Firm, Fund, Investor and/or Portfolio Company losses associated with cyber incidents.

RECOMMENDED

Periodically conduct tests or exercises of its incident response plan.

1 NIST Special Publication 800-122 defines PII as "any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information."

2 15 U.S. Code § 6809(4) of the GLBA defines "nonpublic personal information" as personally identifiable financial information (i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution. The term does not include publicly available information, but does include a list, description, or grouping of consumers derived using any nonpublic personal information other than publicly available information.

FEE & EXPENSES

Association for Corporate Growth

PERC PRINCIPLES

PRIVATE CAPITAL, PUBLIC GOOD®

The goal of these PERC Fee and Expenses Principles is to help ensure adequate and consistent disclosure by private equity firms to limited partners of Manager and Related Party fees and expenses borne directly or indirectly by private equity funds (the "Fund") and their portfolio companies ("Portfolio Companies"). These Principles are intended to help provide limited partners with a consistent and reasonable description of:

» Investment adviser and/or manager including any closely affiliated entities (collectively, "Manager") Fees from the Fund and its Portfolio Companies ("Manager Fees");

» The expenses associated directly with the Manager in the provision of investment management that are reimbursed by the Fund and Portfolio Companies and not reimbursements of direct Fund or Portfolio Company expenses funded by the Manager as a cash management convenience ("Manager Reimbursements");

» A description of the fees and expenses of Related Parties such as operating partners, which are not Manager Fees or Reimbursements, unless mutually agreed to otherwise in the Fund LPA, in order to disclose potential conflicts of interest for non-investment management services;

» Disclosure of Shared Service Expenses which are allocated across entities, such as legal services, IT services, procurement or executive off-sites; and

» Provide a consistent framework for calculation of Manager compensation and distinguishing this from the Fund LP Portion of Fund and Manager related expenses.

DEFINITIONS

Because the issue of fees and expenses is highly technical, it is important to clearly define certain key concepts. For purposes of these Principles:

"**Affiliates**" will have the meaning in the Fund's LPA and other governing legal documents. However, it is generally intended to include entities that are closely affiliated with and/or engaged by the Manager (i.e., for all intents and purposes a direct extension of the Manager such as separate legal entities that serve similar manager roles for different Portfolio Companies or captive service providers which perform services usually provided directly by a Manager). It is not intended to include unaffiliated third parties who provide the Fund or Portfolio Companies ancillary non-Fund management professional services which could be engaged by the Fund or Portfolio Company directly and may include services provided by Operating Partners.

"**Carried Interest**" means the profits interest paid to the General Partner under the Fund's LPA.

"**Fee Income**" means actual fees paid to the Manager by a Fund or Portfolio Company, as permitted by the Fund's LPA.

Fee Income includes management fees paid by the Fund to the Manager and Portfolio Company Fees. Fee Income is the gross amount[3] received by the Manager or its Affiliates and generally includes Portfolio Company Fees.

Fee Income does not include cash reimbursements received by the Manager from a Fund or Portfolio Company for expenses, vendor costs or other amounts that are advanced by the Manager on behalf of the Fund and its Portfolio Companies in the ordinary course of cash management which would otherwise have been billed to and paid by the Fund or Portfolio Companies directly.

“**Fee Offsets**” is the portion of Fee Income which is credited to reduce the Fund’s management fee per the Fund’s LPA and generally includes, but is not limited, to transaction related-fees, monitoring fees and directors’ fees paid to the Manager or its Affiliates by Portfolio Companies.

“**Fund LP Portion**” excludes the portion of Fee Income and Manager Reimbursements (a) borne by non-Fund equity holders of Portfolio Companies and (b) attributable to the GP as a limited partner.

“**Manager Reimbursements**” means the amount reimbursed to the Manager or its Affiliates by the Fund and its Portfolio Companies, as permitted by the Fund’s LPA, for expenses incurred by the Manager for providing investment management services.[4] These will generally be, but are not limited to, third-party costs incurred in attending Portfolio Company board meetings, industry conferences, pursing add-on acquisitions and other activities for the benefit of the Fund or its Portfolio Companies. Manager Reimbursements are not considered Fee Income.

“**Non-Fund LP Portion**” is the portion of Fee Income and Manager Reimbursements (a) borne by non-Fund equity holders of Portfolio Companies and (b) attributable to the GP as a limited partner.

“**Operating Partners**” means (a) third party consultants who may have a contractual relationship with the either the Manager or a Portfolio Company (“External Operating Partners”) and (b) Manager employees who provide similar non-investment management direct services to Portfolio Companies (“Internal Operating Partners”). Operating Partners may be presented on the Manager’s website or in other offering materials. Portfolio Companies either pay these individuals directly or reimburse the Manager for the services of the Internal or External Operating Partner, but in both instances this is a direct expense borne by the Portfolio Company. For the avoidance of doubt, these expenses are not included in Manager Fees or Manager Reimbursements. If services are provided to the Manager by an Operating Partner, they are borne by the Manager. Although the term “Operating Partner” is used, the role played by such individuals can be operational, financial, legal, etc., but in virtually all cases is never a transactional role.

“**Portfolio Company**” means an entity in which a Fund has an investment and the Manager has a contractual relationship to provide investment and other advisory services. In most cases, the Fund will have contractual rights to Board seats and usually at a minimum, will have Board observation rights. A Portfolio Company may be majority or minority owned by the Manager.

“**Portfolio Company Fee Income**” includes, but is not limited to, transaction related fees, monitoring fees and directors’ fees paid to the Manager or its Affiliates by Portfolio Companies.

“**Related Parties**” means individuals and entities that have some relationship with the Manager, but are not owned or controlled by the Manager. Related Parties may include former Affiliates of the Manager, Internal and External Operating Partners, non-Employee members of the general partner, and any person that has a compensation arrangement with the Manager. Related Parties also include those who have a pre-existing relationship with the Manager (e.g., paid a retainer by the Manager, are included in Manager Indemnifications, are granted a carry, appear on the Manager's website or in marketing materials, etc.). The services provided by Related Parties to the Portfolio Companies are services which the Fund or Portfolio Company could engage directly with other unrelated third party providers.

"**Shared Service Expenses**" are expenses for programs or services arranged by the Manager which are allocated in whole or in part to the Fund or Portfolio Companies.

GENERAL PRINCIPLES ON FEES AND EXPENSES

As investment advisers, Managers owe a fiduciary duty to their private fund clients which includes an obligation of transparency and accurate disclosure where conflicts of interest are involved.

Investors in private equity funds are generally highly sophisticated. Terms relating to disclosures and reporting in Fund LPAs and side letters are highly negotiated, and reflect the mutually-agreed upon terms between the Manager and the Limited Partners.

Managers and Limited Partners should negotiate terms regarding the types of disclosures the Limited Partners will receive, although Managers may always exceed the negotiated disclosures.

The Manager should generally disclose Fund expenses, as defined and permitted in the Fund's LPA and other governing documents, breaking out and defining material categories in the Fund financial statements or elsewhere.

As a general principle, consistent with its fiduciary duty, the Manager should disclose to the Limited Partners all Fee Income paid to the Manager and its Affiliates from the Fund and its Portfolio Companies.

Any payments by the Fund and Portfolio Companies to Related Parties including Operating Partners or reimbursements to the Manager for payments made by the Manager to Related Parties or Operating Partners should be consistent with language in the LPA and disclosures made in offering documents, marketing materials, regulatory filings, websites, etc.

Manager Reimbursements as a best practice should be reportable at least upon request, on a prospective basis and should indicate the source of reimbursement (e.g., the Fund or Portfolio Companies).

If the Fund incurs a portion of Shared Service Expenses (e.g., insurance, legal, purchasing or technology services), the allocation methodology should be disclosed.

Related Party expenses not reimbursed to the Manager should be disclosed along with the nature of the Related Party's relationship to the Manager. This could include services provided (a) to the Fund or Portfolio Companies by third parties with a prior relationship to the Manager, where there is a contractual agreement between the Related Party and the Manager, and/or where the Related Party has a financial interest in the Fund or Fund's general partner.

"Dead" or "broken" deal expenses borne by the Fund, to the extent permitted by the LPA, should be disclosed. The level of disclosure (e.g., employee travel costs, legal, accounting and tax diligence, market research, etc.) should be determined at the discretion of the Manager subject to any contractual obligations negotiated with Limited Partners in Side Letters or otherwise.

Although not recommended for ongoing or general disclosure, there are certain topics of interest to the SEC and potential investors which are requested during diligence or ad-hoc during the life of a Fund. Firms should put in place sufficient policies and procedures to track and be able to report on these topics of interest, which include:

» Charter/private air travel and

» Multi-leg travel.

MANAGER FEE INCOME

Generally, Fee Income and Carried Interest should be disclosed at least annually.

FEE INCOME

Management Fee disclosure should include:

» A calculation of the Fee Income stating the basis of the calculation, and timing and conditions, if applicable when the calculation would change.

» A calculation of net Fee Income which represents the portion of the management fee actually paid for by the Fund ("Management Fee Expense") and expensed on the Fund's books, clearly showing Fee Offsets, deemed contribution offsets and any other fee waivers.

» Disclosure of the amount, if any, of any fee offset unapplied balance.

Portfolio Company Fee Income paid to the Manager should be disclosed.

Any Fee Income paid to the Manager from co-investments should be disclosed.

CARRIED INTEREST

Carried Interest is the disproportionate allocation of a profits interest as defined in the Fund's LPA. Carried Interest is not a Manager expense borne by the Fund. It should be noted and understood that the higher the carried interest paid to the Manager, the greater the return for the Limited Partners.

Carried Interest is an important component of Manager compensation, and should be disclosed clearly in Fund offering and marketing materials.

Carried Interest disclosure should be made at least annually for the period and life to date and should include:

» Carried Interest earned by the General Partner at the Fund;
» Carried Interest paid to the General Partner;
» Carried Interest held as a reserve at the Fund or General Partner;
» Unrealized Carried Interest based on a hypothetical liquidation of the Fund at the most recent valuation; and
» Any Carried Interest clawback owed to the Limited Partners.

Any Carried Interest from co-investment should also be disclosed along similar lines above as appropriate.

OPERATING PARTNERS AND OTHER RELATED PARTIES

Descriptive disclosures for Operating Partners and Related Parties should be provided to address any potential conflicts of interest (which may or may not be explicitly described in the Fund LPA).

Since these non-investment management services could be and often are provided by unrelated third-party executives and consultants in the normal course of the Fund or Portfolio Company operations, these are not Manager Fees or Reimbursements even when a reimbursement is made to the Manager for an Internal Operating Partner, unless otherwise mutually agreed to in the Fund's LPA. Disclosure by the Manager should, at a minimum, include:

» The Operating Partner and Related Party relationships when services are provided to the Fund or its Portfolio Companies;
» The role being performed by such party (e.g., interim CEO or CFO, professional service being provided, or management of a Portfolio Company project); and
» Support that such engagement is arm's length and not in the provision of a service for which the Fund LPA includes as a Management service for which the Fund Management Fee is paid (e.g., consulting agreement on file for each portfolio company engagement and support that rates charged are appropriate for comparable arm's length agreements).

TERMS AND EXPENSES RELATING TO NON-RELATED THIRD PARTIES NEED NOT BE DISCLOSED

Persons or resources with no contractual relationship with the Manager, but who are marketed to investors as an operating resource (such as part of the Manager's resource toolkit) are not intended to require substantial disclosure as these costs are service provider costs and not a component of Manager compensation.

MANAGER REIMBURSEMENTS

Manager Reimbursements, as strictly defined, though not a Manager Fee item, should be identified and disclosed at least upon request.

- The direct Fund Manager Reimbursements are included in Fund expenses and may not be historically easily separated from other third-party reimbursements, but it is suggested on a prospective basis to be able to disclose these amounts;
- The indirect Manager reimbursements borne by Portfolio Companies historically may also not be easily separated from other third-party expenses, but it is suggested on a prospective basis to be able to disclose these amounts;
- Disclosure may be only the Fund LP Portion of such expenses rather than gross reimbursed amounts as these amounts are a potential disclosure of Manager investment related expenses and to be equivalent to other Fund expenses should only include the portion theoretically billed to the Fund which is the portion borne by the Limited Partners and not the portion that would have been billed to other equity owners of Portfolio Companies.

SHARED SERVICES (INSURANCE, IT, TRAINING, CEO CONFERENCE, ETC.)

Managers should generally disclose to Limited Partners details PERCaining to shared services arranged by and/or allocated at least in part to the Fund or its Portfolio Companies. The disclosures should present the reasonableness of the expenses, including that they are at market rates (arm's length negotiation) and have been allocated in accordance with the Manager's policies. This includes:

- Shared expenses arranged by the Manager (programmatic items);
- How shared expenses are allocated, including the portion of such shared expenses allocated to the Manager, if some of the service is to the benefit of the Manager;
- Any discounts or ancillary benefits received by the Manager from vendors who perform shared services for the Manager, Funds and/or Portfolio Companies (e.g., discounts to IT services provided for the Manager's internal operations); and
- A best practice (and often included in the LPA) is that reimbursements not exceed the actual costs incurred by the Manager as reimbursements in excess of actual costs incurred may be deemed to be fee income, potentially subject to sharing and/or offset, pursuant to a Fund's LPA.

MANAGER COMPENSATION DUE TO MANAGEMENT OF THE FUND

It is acknowledged that Limited Partners are interested in identifying the total compensation a Manager earns related to the Manager's provision of investment management of the Fund. As a best practice, a Manager can provide a calculated disclosure of this amount including:

» (+) Net Fund Management Fee;

» (+) Placement fees paid by the Fund;

» (+) Deemed contributions made by Limited Partners on behalf of the GP5; and

» (+) Portfolio Company Fee income including Fees from co-investments.

Although Carried Interest and Manger Reimbursements are important items to disclose, as described above, neither of these are components of Manager expenses and should not be included in any calculation of Manager expenses.

Further, Manager compensation for managing a Fund is not borne solely by LPs. Therefore, investors seeking to extrapolate Manger compensation to determine their share of investment management costs should use the Fund LP percentage of manager compensation. This will reduce the LP shared investment management by:

» The portion borne by the General Partner as a Fund Limited Partner; and

» The portion of Portfolio Company related fees and expenses borne by co-investors or non-LP equity holders in the related Portfolio Companies.

1 Fee Income is the gross amount received by the Manager and is not reduced by (a) any deemed contributions (e.g., management fee offsets) which may revert to LPs' equity interest if related performance hurdles are not met; (b) the portion of Fee Offsets shared with LPs; and (c) the Non-Fund LP Portion related to such Fee Income.

2 These amounts are not reduced by the Non-Fund LP Portion related to such expenses.

3 Noting deemed contributions made by Limited Partners on behalf of the GP are to the benefit of Limited Partners until certain conditions are met and may also be also be subject to clawback, but generally are reported when charged rather than when earned.

VALUATIONS

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The goal of these PERC Valuations Principles is to help ensure that private equity firms ("Firms") have adequate and consistent policies and procedures regarding the valuation of their portfolio companies ("Portfolio Companies"), subject to the provisions of their Limited Partnership Agreements and other applicable documents.

GENERAL PRINCIPLES ON VALUATIONS

Firms enter into a highly-negotiated Limited Partnership Agreement ("LPA") with their investors, which may describe the valuation process to be used for that particular Fund ("Valuation Policy"). Because LPAs are heavily negotiated between investors and the Firm, in all instances, criteria detailed in the LPA and/or its prescribed Valuation Policy should take precedence over policies described in these Principles.

A Firm's valuation policies and practices should be consistent with the terms of the applicable LPA, any valuation policy presented to potential investors in the Firm's marketing materials and the Firm's regulatory filings.

These Principles intentionally take no position regarding:

» The use of valuation software, tools and/or outside service providers by a Firm. A Firm may choose to use or not use any of these as it sees fit, based upon the needs of that particular Firm; and

» The source for precedent comparatives.

FREQUENCY OF VALUATIONS

Firms should generally conduct valuations on a quarterly basis.

The level of detail for each quarterly valuation should be based upon applicable LPA terms as reflected in the final LPA, if relevant, and/or the Valuation Policy presented to investors at the time of their investment commitments, or as revised over the Fund's life to reflect required accounting methodology changes. There is no one "right" level of detail for quarterly valuations.

In the event that the Valuation Policy is approved post-closing, it should be distributed to all investors once approved, and the quarterly valuation should follow this approval policy.

VALUATION PROCESS

The Firm's internal Valuations Committee should review and approve Portfolio Company valuations.

The composition of the internal Valuations Committee should include, but need not be limited to:

» Senior member(s) of the firm who understand the valuation process and policy;
» Members of the Firm's Investment Committee; and
» The Firm CFO and/or CCO, whether or not on the Investment Committee.

The Firm should maintain documentation of the final agreed-to valuations and approvals thereof.

The role of the Limited Partner Advisory Committee (or similar committee) ("LPAC") with respect to valuations should generally follow the provisions of the LPA, which may include:

» The frequency of the LPAC's involvement;
» Whether the LPAC approves the Valuation Policy;
» Whether the LPAC receives and/or reviews Portfolio Company valuations; and
» The LPAC's specific role beyond receiving and/or reviewing Portfolio Company valuations.

VALUATION METHODOLOGIES

Generally, valuations should follow the Firm's articulated Valuation Policy and be performed according to Generally Accepted Accounting Principles ("GAAP").

Any number of methodologies may be used to value Firm Portfolio Companies, including but not limited to:

» Public comps;
» Precedent transactions; and/or
» Discounted Cash Flows ("DCFs").

The Firm should select the valuation methodology that is most relevant for each particular Portfolio Company, given the industry it is in.

Portfolio Company financial data used in valuation should be the most recently available TTM, based upon the Fund's reporting requirements as described in the applicable LPA.

Changes in valuation methodology should be disclosed to investors.

Forward-looking data can be considered, if relevant to a particular Portfolio Company (e.g., if a large contract is signed or terminated which will result in a meaningful change to financial performance).

If addbacks are used, their use should be consistent from period to period and company to company. Addbacks should be documented in the valuation analysis. Generally, addbacks should reflect adjustments that would be accounted for in a sale process.

- Examples of typical addbacks may include:
- Non-recurring items; and/or
- Items that would be eliminated in the event of a sale of the company.

USE OF COMPARATIVES

While exact comps may be difficult to find and the number of comps may vary from Firm to Firm and company to company, the comps used to value the Portfolio Company should provide sufficient data to make a relevant valuation decision.

The comps used should be relevant to the Portfolio Company being valued.

- The comp set should be re-evaluated with some frequency, including a determination of whether the comps remain relevant.
- Comps may no longer be relevant for a variety of reasons including, among others: date of transactions (stale data), shifts in the portfolio company's product mix/end market, and shifts in the comparable company's product mix/end market.
- When changing the comp set (i.e., adding or removing a comp), a rationale for the change should be documented in the valuation analysis.

FUNDRAISING PERIODS

A Firm's valuation practices should not change solely because a Firm is engaging, or is about to engage, in fundraising.

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