

To:

Marcie Frost (CalPERS CEO)  
Ted Eliopoulos (CalPERS CIO)  
John Cole (CalPERS Investment Director)

Cc:

Matt Jacobs (CalPERS General Counsel)

From: Larry Sonsini

Date: January 31, 2018

Re: Private Equity Direct Investment Entity: Investment Structure Roles and Responsibilities

This memorandum summarizes, for discussion purposes, the principal Roles and Responsibilities of the major constituencies of the proposed CalPERS Private Equity Direct Investment Entity (herein the "Direct Investment Entity").

For purposes of this discussion, the major constituencies associated with the Direct Investment Entity are:

1. The Direct Investment Entity consisting of • The Advisory Board • The General Partner • The Limited Partner
2. A Private Equity Strategic Partner<sup>\*1</sup>
3. The CalPERS Board and Investment Committee
4. The CalPERS staff

<sup>\*1</sup>The concept of a Private Equity Strategic Partner for CalPERS is being evaluated and is included herein for discussion purposes only.

#### I. The Direct Investment Entity

##### 1. The Advisory Board:

The Advisory Board of the Direct Investment Entity ("Advisory Board") shall have the following primary Roles and Responsibilities:

- The Advisory Board will be "independent" from all of the other constituencies.
- Provide advice and counsel to the General Partner of the Direct Investment Entity (the "General Partner").
- Review portfolio investments made by the General Partner as to consistency with the approved Business Model of the Direct Investment Entity.

- Focus on governance policies of the General Partner consistent with CalPERS investment beliefs including ESG and sustainability.
- Establish at least annual reviews with the senior CalPERS sustainability executive as to such governance policies.
- Review risk management policies.
- Support human capital performance.

It is important to note what the Advisory Board will not do. The Advisory Board will not participate in Investment and Management decisions made by the General Partner.

## 2. The General Partner:

The General Partner shall have the following primary Roles and Responsibilities:

- Management of the Direct Investment Entity.
- Attract and retain human resources for the Direct Investment Entity
- Sole authority over Investment decisions.
- Incorporating governance policies, including ESG and sustainability, in investment analysis and investment decisions.
- Require portfolio companies to report on ESG and sustainability.
- Abide by core CalPERS investment beliefs.
- Collaborate with the Private Equity Strategic Partner, if any, on investment pipelines, asset allocation and deal transactions.
- Establish net asset valuations, including for purposes of calculation of compensation, in consultation with CalPERS staff.
- Establish and implement reporting obligations to the CalPERS staff consistent with staff's private equity guidelines.
- Report to the Advisory Board on matters within the purview of the Board.
- Provide full transparency to CalPERS as to portfolio company performance, Direct Investment Entity performance and overall investment policy guidelines consistent with regulatory requirements, CalPERS guidelines, and industry best practices.

## 3. The Limited Partner:

The Limited Partner of the Direct Investment Entity shall be CalPERS. As such, CalPERS shall have the following primary Roles and Responsibilities:

- Approve the Business Model of the Direct Investment Entity and investment policy guidelines.

- Evaluate and exercise the right to terminate the General Partner after a designated sunset period of time.
- Exercise the right to evaluate Advisory Board performance and selection of independent Advisory Board members in consultation with the General Partner.
- Receive and evaluate periodic reports from the General Partner as to overall performance of the Entity.
- Exercise the right of inspection and full access to the conduct and performance of the Direct Investment Entity.
- Exercise overall funding of the Direct Investment Entity. •  
Determination of the time horizon of the Direct Investment Entity.

## II. The Private Equity Strategic Partner

As it relates to the Direct Investment Entity, it is envisioned that the Roles and Responsibilities of the Private Equity Strategic Partner, if any, will be the following:

- To provide advice to the General Partner as to investment opportunities and deal structuring.
- Assist, when requested by the General Partner, in attracting talent for the Entity.
- Assist the General Partner in developing the brand and deal pipeline.
- Be available to the Advisory Board for consultation consistent with the Advisory Board's roles and responsibilities.
- Assist in providing qualitative and quantitative analysis of the Direct Investment Entity performance to CalPERS.

## III. The CalPERS Board and Investment Committee

The CalPERS Board and Investment Committee shall have the following primary Roles and Responsibilities:

- Oversee and exercise the power and responsibility of CalPERS as Limited Partner (e.g. establish guidelines, exercise termination rights, evaluation of the General Partner performance, etc.).
- Approve the Advisory Board slate of nominees.
- Receive information as to the performance of the General Partner and the portfolio companies of the Direct Investment Entity consistent with regulatory requirements, CalPERS guidelines and industry best practices.
- Review of the Business Model of the Direct Investment Entity, including governance policies, investment beliefs, investment guidelines, and the designation of industry sectors for investment.

IV. The CalPERS staff The primary Roles and Responsibilities of the CalPERS staff shall be:

- Monitor, receive reports, evaluate performance and coordinate with the Private Equity Strategic Partner, if any, and the General Partner on key policy issues.
- Advise the CalPERS Investment Committee on the performance of the Direct Investment Entity and its portfolio companies and report to the Investment Committee appropriate information as to the General Partner performance as well as the overall performance of the Entity and portfolio investments.
- Review of the General Partner and the Advisory Board, including the policies, results, and positioning of the investments held in the Fund.
- Review by the CalPERS senior sustainability executive as to the governance policies, including ESG and sustainability, of the Fund and its investment portfolio.

#### V. Fiduciary Duties

The imposition of a Fiduciary Duty standard (e.g. duty of care and duty of loyalty) will be considered and taken into account in balancing and formulating the foregoing Roles and Responsibilities of the various constituencies.