

 **NORTON ROSE FULBRIGHT**

Are Your Investors Happy?

**Association of Corporate Counsel Annual
In-House Symposium**

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Norton Rose Fulbright US LLP



Overview

- Why do we say no?
- Common points of negotiation
 - Expenses
 - Transparency
 - Liquidity
 - Representation
- General pointers

Why do we say no?

- Not market
- Too much ask relative to check size
- Risk of stretching internal resources too thin or not being able to comply
- Fiduciary obligations
- Violation of law
- Not consistent with prior funds/other platforms



Expenses

- First time interacting with investor
 - Know your documents and know your business
 - Where do you stack up relative to market?
- Repeat investor
 - Changes from past documents
 - Expanded disclosure to better comply with regulatory requirements?
 - New type of expense?
 - Items discussed during past investments
- In-house expenses
 - Requirements/limitations around passing through expenses
 - Where's the value-add?
 - How are in-house expenses tracked and apportioned?
 - Benchmarking

Transparency

- Know your own reporting and be prepared to discuss it
 - Lean on business or operations team to discuss specifics with investors
- Standardized reporting (e.g., ILPA)
- Investor-specific requests
 - Legal or regulatory requirement
 - Policy
 - Nuances for certain governmental or statutorily-created investors
 - Standard practice
- Confidentiality
- Changes from prior vehicles—form over substance?

Liquidity

- Closed-end funds
 - Exceptions for legal, regulatory, and similar requirements
 - Secondaries
 - Continuation vehicles
- Open-ended funds
 - Exceptions for legal, regulatory, and similar requirements
 - Exceptions for “strong” investor-specific considerations
- Operating companies
 - Reg. rights, ROFR/ROFO, tag/drag
 - Secondaries
 - Special reasons to go around ROFR/ROFO and tag terms?
 - Make sure governing documents permit exception
 - Include safety valve to limit company’s obligations (if any) and investor’s rights when fundamental transactions are under consideration or pending
 - Also include clear outs to ensure company is not at risk of violating SEC disclosure restrictions or confidentiality obligations

Representation

- When an investor seeks LPAC or board representation, how do you determine whether to say yes or no (or “kind of yes”)?
 - Check size, future/growing relationship, experience, connections
- Investor motivation
 - Oversight/protection of investment
 - Transparency
 - Relationships

General Pointers

- Understand business team's views on broader relationship with investor and related commercial considerations
- Provide (and, if applicable, ensure outside counsel provides) substantively meaningful responses (more than “respectfully decline”)
- Where future interactions are expected or desired, take note of particular needs and preferences (e.g., investor does not provide subscription materials via online platform)

Questions; contact information

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