Proskauer

Client Alert - Beyond Disclosure: Managing Conflicts of Interest in Private Markets

November 17, 2026

Recent years have seen heightened regulatory and investor scrutiny of conflicts of interest in private markets, driven by the increasing complexity and diversification of investment structures and strategies. Regulators and limited partners ("**LPs**") alike are now expecting asset managers to show how the competing interests are balanced, not simply disclose that conflicts exist.

Two recent publications set the tone of those expectations. In October, The Institutional Limited Partners Association ("**ILPA**") published updated best practices guidance on continuation vehicles. In the same week, the UK Financial Conduct Authority ("**FCA**") released the findings of its multi-firm review titled Conflicts of interest and fair customer treatment in private markets ("**Private Markets Review**"). Their messages are consistent – private markets sponsors and general partners ("**GPs**") should proactively identify and manage conflicts and be able to demonstrate what they have done to prevent harming the interests of their LPs. Disclosure and investor consent should support that process but do not replace it.

Lessons from the FCA's Private Markets Review

The Private Markets Review builds on the FCA's 2025 private market valuation practices guidance. As part of the Private Markets Review, the FCA looked at firms in the private equity, private credit, real estate, and secondaries sector. The FCA found that many firms had effective conflicts governance, but standards varied considerably. In many cases, governance and internal controls had not always kept with the pace of the firm's growth and complexity. The key lessons from this review can be summarised as follows:

- **Conflicts management must reflect the substance of the UK activities not the legal form or delegation structures**: The FCA has found that some firms scoped their UK conflicts management frameworks very narrowly, with a primary focus on personal conflicts. Such firms were operating as part of a group relying

heavily on the conflicts management arrangements operated by their overseas affiliates. This was the case even though the UK-based staff were frequently involved in significant parts of the investment cycle, which gave rise to significant conflicts. This finding sends an important message to UK firms that act as non-discretionary advisers or sub-investment managers to GPs based overseas. The FCA's expectation is that such firms must be able to demonstrate (independently of any group arrangements) that they maintain governance and controls necessary to identify and manage the risks of conflicts arising from their UK operations.

- **Governance and record-keeping are key**: As part of their governance arrangements, firms must maintain comprehensive conflict inventories. Rather than listing generic conflicts common to the industry in their conflicts registers, firms must identify and record actual conflicts promptly and document the steps or mitigating factors relevant to the assessment and management of each conflict. For example, firms with better conflicts management practices screened for conflicts before non-disclosure agreements ("**NDAs**") were signed. Better practices also included record-keeping and monitoring around conflict mitigating measures, such as meaningful GP commitments. The FCA has also emphasised that conflicts management frameworks must properly reflect the range of actual and potential conflicts. Firms must review their conflicts frameworks regularly, especially as the firm's offering expands across asset classes, fund structures, or investor groups. The Review also highlighted multi-layered conflicts governance arrangements as a good practice allowing the material conflicts to be subjected to different levels of oversight. Good practices included clearly defined channels for escalating conflicts when pre-defined thresholds or trigger events were met, including LP engagement where appropriate.
- **Firms must monitor conflicts across the investment lifecycle**: The Review focused on a number of recurring conflict types which arise throughout the investment lifecycle. The regulator expects firms to embed policies and controls throughout the investment lifecycle and be thoughtful around screening for conflicts and applying appropriate governance controls at each step from origination and deal sourcing, to allocation of investment opportunities across different investment vehicles.
- **Enhanced governance must be a feature of CVs and cross-fund transfer conflicts management:** The FCA saw recurring weaknesses and areas of concern in the context of continuation vehicles ("**CVs**") and cross-fund transfers. Weaker governance frameworks relied solely on disclosure or investor consent without independent challenge. Some firms used the same valuation marks and valuation committee for both buying and selling funds. In one case, a firm sold an asset to an internal fund at net asset value without assessing third-party sale options, and

could not explain why. Stronger frameworks separated buy-side and sell-side decision-makers, required independent valuations for each side, and engaged with limited partner advisory committees ("**LPACs**") regularly — not only when strictly required under the fund governing documents — and provided the LPACs with greater transparency.

- **Information controls are important in private markets.** The FCA's good practice expectations in the area of material non-public information controls extend beyond the risks of misuse of public markets' inside information and cover scenarios where misuse of confidential information presents a conflict of interest. The FCA highlighted that weak information controls can allow material non-public information to flow between deal teams or affiliated business, potentially influencing investment activity for separate funds or business divisions. Firms with stronger practices combined physical, organisational, and IT separation with active compliance monitoring and surveillance. Better practices included active NDA management processes and compliance chaperoning for discussions that risked crossing information barriers. Firms with weaker controls relied mainly on staff training and informal safeguards.
- **Firms should do more to monitor gifts and entertainment.** The FCA found that firms operating in private markets had weak controls over staff gifts and entertainment. Stronger controls included clear standards, robust record-keeping, and monitoring of patterns over time. Notably, private markets firms generally allow hospitality of higher value than in public markets, including air travel and high-value sporting events. The FCA expects firms to record the business rationale for each item and to monitor repeated hospitality from the same source over time.
- **Disclosure is a supplementary control and LPACs are not a complete answer.** The FCA's view is that GPs should not rely on a subset of investors as the primary mechanism for managing material conflicts. Consistent with SYSC 10, which treats disclosure as a last resort, the FCA considers that avoidance and adequate management of conflicts is a stronger control. Firms with better practices engaged investors early enough to influence outcomes, rather than relying on quarterly reporting. Disclosure of conflicts should be clear and specific enough for investors to understand the nature of the specific conflict and its risks.
- **Side letters and MFNs should be screened against the firm's investor fairness obligations:** The FCA highlighted the topic of investor fairness and alignment, including consideration of conflicts in the context of most-favoured-nation (MFN) provisions and side letters. For example, firms with stronger practices treated side letters and MFNs as part of the wider conflicts and investor-fairness frameworks and maintained structured governance around preferential rights.

ILPA’s Updated Continuation Vehicle Guidance

ILPA’s Continuation Vehicles: Advancing Alignment Through Best Practices supersedes its 2023 guidance on the same topic. In line with the FCA’s Private Markets Review, ILPA has emphasised the importance of independent challenge of the GP’s position, robust and independent valuation, early investor engagement, specific rather than generic disclosure, and alignment that is evidenced rather than asserted. Unlike the FCA’s recommendations, ILPA gives the LPAC a central role in clearing conflicts. Key points of note for GPs include:

- **No blanket waivers:** GPs should avoid blanket investor waivers and generic conflict pre-clearance provisions. Pre-clearance should be relied on only if it is specific to CVs and LPs reviewed it before investing.
- **LPAC approval:** The LPAC should vote on each conflict, with at least 10 business days’ notice unless mutually waived. Its role is to evaluate the GP’s conflict management, not to negotiate the transaction. Responsibility for a fair process remains with the GP.
- **Pricing:** The GP should show that a fair price was achieved through a competitive process or independent price validation. In some cases, a strong competitive process may negate the need for a fairness opinion. Where one is obtained, it should value all of the assets, and the valuer’s relationships and fees should be disclosed to the LPAC.
- **Elections:** LPs should generally have at least 20 clear business days from receipt of the final election pack, and should not be forced to roll. A “remain in place” option may be appropriate if it supports the investment thesis.
- **Economics and alignment:** Rolling LPs should face no overall increase in fees or carried interest, supported by comparative modelling. A significant and meaningful portion of crystallised carry (net of tax and excluding leavers) should be rolled.

Practical Takeaways for GPs

GPs should take note of the Private Markets Review and the ILPA guidance when designing or reviewing their conflicts management frameworks. GPs should pay particular attention to their conflicts disclosures both in fund documents (where disclosure is often recycled from one fund vintage to the next) and in relation to specific transactions where investor consent or transparency is required. The FCA has voiced strong views on the specificity of conflicts disclosures and investor fairness considerations. Further supervisory engagement is likely to follow from the regulator. Although disclosure and informed consent can go a long way, it does not replace effective governance and management of conflicts. Helpfully, the Private Markets Review provides a clear roadmap to the regulatory expectations of the processes and controls in this area.

In the context of CVs, LPAC clearance should be one part of a wider process that includes separate decision-making processes, independent valuation, and documented rationale. The FCA private market valuation practices review also includes specific recommendations on valuation and investor transparency. A process designed to meet both the FCA expectations and ILPA guidance is likely to be the most defensible, especially as investors are likely to use ILPA's GP Checklist as a negotiating benchmark.

If you would like to discuss how these developments may affect your conflicts framework, fund documents or continuation vehicle processes, please contact ukreg@proskauer.com .

Related Professionals

- **Anna Maleva-Otto**
  Partner
- **John Verwey**
  Partner
- **Michael Singh**
  Associate
- **Rachel E. Lowe**
  Partner
- **Sulaiman I. Malik**
  Associate