XTP
Implementation Services

April 25, 2022

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Countryman:

We are writing on behalf of XTP Implementation Services, Inc. ("XTP"). XTP works with institutional investors, helping to obtain transparency into the full economic cost of investment products, including private funds. The firm is among the world's leading experts regarding private fund disclosure and reporting issues. We would like to offer our strong support for "Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews" [Release Nos. IA-5955; File No. S7-03-22].

We believe that transparency should be understood as a holistic concept and encourage the SEC to construct new reporting mandates so that they enhance understanding of advisers' other, ongoing reporting and record generation. It is our experience working on behalf of investors that some of the most important insights about private funds occur when disparate disclosures can be combined in sometimes unforeseen ways. However, for such data combination to occur, a degree of underlying data compatibility needs to be maintained. It is our hope that the SEC's reporting initiative with respect to private funds can promote data compatibility in two important ways.

First, all private fund reporting, including annual financial statements and the SEC's proposed quarterly reporting ("SEC Quarterly Reports"), should generally be presented on the same basis in terms of consolidation/disaggregation of vehicles. The usefulness of SEC Quarterly Reports, for example, would be severely undermined if an adviser were to provide it only for the fund vehicle to which an investor subscribed, while following the very common practice of issuing fund financial statements on a consolidated basis encompassing multiple vehicles. With such inconsistency regarding the vehicles included in different reports, an investor would be unable to reconcile cost items in fund financial statements with the same cost items in the SEC Quarterly Reports.

Similarly, because of the U.S. GAAP requirement to capitalize transaction costs, financial statement presentations of investment cost are generally irreconcilable with records showing what was paid to a seller or received from a buyer. We urge the SEC to fix this problem by mandating transaction cost disclosure as part of its private fund transparency initiative. Such disclosure would greatly enhance the reconcilability of capital calls, distribution notices, and financial statements. It would also, in instances where sale prices are publicly reported (in SEC filings or in property transaction records), enable reconciliation with external data sources. Also, given the central role that investment cost plays in the management fee formula for most private funds, information about how exactly that cost is derived is of critical importance in ensuring that investors pay the correct management fee.

Moreover, excessive transaction costs can be a clue to potential self-dealing by a fund adviser. For example, the SEC in the recent past has taken enforcement action in situations where advisers allowed private funds to be charged above-market legal fees for transactions, which would be disclosable in the regime we propose, and which were effectively subsidizing undisclosed billing discounts received by the fund advisers from the same law firms.

We would also like to offer the following additional comments:

1. The proposed SEC Quarterly Reports would require disclosure of "The amounts of any offsets or rebates carried forward during the *reporting period* to subsequent periods to reduce future payments or allocations to the adviser or its *related persons*." While XTP is very supportive of additional transparency into management fee offsets, we believe that, in addition, any rules should require disclosure of the specific vehicles to which such management fees and offsets are allocated.

   Many private fund advisers allocate management fees and management fee offsets separately to each of a fund complex's vehicles, including AIV "sub-funds" containing only a single asset. Often, the only indication of this allocation with respect to an AIV is the issuance to investors of K-1s showing management fees allocated to the AIV from the main fund, and no disclosure typically occurs regarding AIV offsets applied against the AIV management fee. This significantly reduces transparency of offset mechanisms, as an AIV may cease operation with an unapplied offset still on its books that an LPA typically does not require to be aggregated with the main fund or other AIVs.

   We therefore urge the SEC to ensure that management fee offsets are reported at the same level of disaggregation at which management fees are computed.

2. We urge the SEC to take a very broad perspective regarding who should be considered related parties for purposes of reporting. We have observed service providers that receive most or all their compensation from a single fund adviser's portfolio investments. In some of these instances, an affiliate of the fund adviser has the contractual right to receive a majority or even 100 percent of the service providers' profits, despite owning only a minority interest in the service provider, thereby skirting the LPA definition of "affiliate." We believe that when a majority of an entity's earnings are payable to an adviser pursuant to contract, the arrangement should be disclosed to fund investors, irrespective of the adviser's equity interest in the entity.

3. The SEC rule-making package only refers in a single instance to expense reimbursements (which occurs in the commentary and nowhere in the actual regulations), even though reimbursements comprise one of the most common forms of related party transactions between advisers and investments. We urge that the definition of "*Portfolio Investment Compensation*" be expanded to explicitly identify reimbursements as a form of payment covered by the definition.

4. The definition of "*Portfolio Investment Compensation*" should also be expanded to include not just amounts already paid or allocated but also amounts unpaid but obligated to be paid. Such a broader definition would encompass a situation where payment is deferred, which could reduce or eliminate the associated management fee offset. For example, if a

payment obligation is deferred until after the expiration of investors' obligation to pay an ongoing management fee, its satisfaction would produce zero offset.

Respectfully submitted,

William Conlin
Executive Chairman

Michael Flaherman
Senior Advisor