



SALT Alert!



SALT Alert! 2016-21: Newly Signed California Legislation Requires Alternative Investment Vehicles to Make Certain Disclosures

On September 14, 2016, Governor Jerry Brown signed legislation ([Assembly Bill 2833](#)) to increase the transparency of fees paid by public investment funds to alternative investment vehicles. A “public investment fund” is defined as any fund of any public pension or retirement system, including that of the University of California. An “alternative investment” is an investment in a private equity fund, venture fund, hedge fund, or absolute return fund. An “alternative investment vehicle” is the legal structure (LP, LLC, etc.) through which a public investment fund invests in the alternative investment. The new disclosure requirements are effective for all new contracts a public investment fund enters into on or after January 1, 2017, and to all existing contracts in which the fund makes a new capital commitment on or after January 1, 2017.

Information the Alternative Investment Vehicle Must Disclose

Under Assembly Bill 2833, public investment funds must require that each alternative investment vehicle in which it invests make the following disclosures at least annually.

1. All fees and expenses the public investment fund pays directly to the alternative investment vehicle, the fund manager, or related parties (as defined).
2. The public investment fund's pro rata share of fees and expenses (not included above) paid from the alternative investment fund to the fund manager or to related parties. This information may be calculated by the public investment fund based on information contractually required to be provided to it by the alternative investment vehicle. If the public investment fund independently calculates this information, then the alternative investment vehicle is not be required to provide this information.
3. The public investment fund's pro rata share of the carried interest distributed to the fund manager or related parties.
4. The public investment fund's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.
5. Any additional information described in Cal. Gov. Code § 6254.26(b), which essentially captures information on alternative investments already required to be disclosed under the California Public Records Act.

Under Assembly Bill 2833, a “related party” is defined as:

1. A related person, which is any current or former employee, manager, or partner of any related entity that is involved in the investment activities or accounting and valuation functions of the relevant entity or any of their respective family members.
2. An operational person, any operational partner, senior advisor, or other consultant or employee whose primary activity for a relevant entity is to provide operational or back office support to any portfolio company of any alternative investment vehicle, account, or fund managed by a related person.
3. Any entity more than 10 percent of the ownership of which is held directly or indirectly, whether through other entities or trusts, by a related person or operational person regardless if the related person or operational person participates in the carried interest received by the general partner or the special limited partner.
4. Any consulting, legal, or other service provider regularly engaged by portfolio companies of an alternative investment vehicle, account, or fund managed by a related person and that also provides advice or services to any related person or relevant entity.

Public Investment Fund Disclosure of Information

A public investment fund is required to disclose the information provided to it by the alternative investment vehicle at least once annually in a report presented at a meeting open to the public. The report must also include the gross and net rate of return of each alternative investment vehicle, since its inception, in which the public investment fund participates. The public investment fund may report the gross and net rate of return and information based on its own calculations or based on calculations provided by the alternative investment vehicle.

Reasonable Efforts required for Pre-2017 Contracts

As mentioned above, these requirements are effective for all new contracts a public investment fund enters into on or after January 1, 2017, and to all existing contracts to which the fund makes a new capital commitment on or after January 1, 2017.

However, Assembly Bill 2833 also states that, with respect to existing contracts not specifically subject to the disclosure rules, the public investment fund must make “reasonable efforts” to obtain the information required and comply with the disclosure requirements. It is not clear what it means to make reasonable efforts or how this provision will be enforced.

Next steps

Alternative Investment entities need to be aware of these new requirements and prepare to provide this information. For more information, contact [Scot Grierson](#) at 949-885-5643, [Abner Chong](#) at 213-593-6618, [Amanda Sterling](#) at 213-593-6345, or [Gina Rodriquez](#) at 916-551-3132 with questions.