CAPITAL MARKETS

Conflicts of Interest in Continuation Funds

Part II in a Series on Ethics in Private Markets

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Research & Policy Center

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PREFACE: WHO SHOULD READ THIS REPORT

This report is the second of a three-part series on ethics in private markets. The first report, "Continuation Funds: Ethics in Private Markets, Part I" (Deane and Robinson 2025), explains what continuation funds are and concisely summarizes the key ethical issues they raise. Continuation funds are also called continuation vehicles (CVs), and we use both terms interchangeably.

This second report delves into the conflicts of interest and ethical issues in CVs. This report assumes a basic understanding of what continuation funds are and how they work. Readers wishing to gain or refresh their understanding are invited to review the first report.

The third report in the series will continue to focus on ethical issues but will expand to include other types of private market funds in addition to continuation funds.

All three reports are written for an audience of market practitioners, regulators, the financial media, and others interested in private markets. All readers may find it helpful to consider the presented practical framework for evaluating ethical risks in continuation fund transactions. The framework, chart of red flags, and recommended best practices are written as tools for use by both limited partners (LPs), who may be evaluating current or potential investments in CVs, and general partners (GPs), whether they are experienced with CVs or considering entering the CV market for the first time.

This report contributes to the understanding of ethical issues in private markets by introducing a clear framework that distinguishes among structural conflicts of interest, procedural failures, and intentional misconduct in continuation fund transactions. CFA Institute places special emphasis on ethics, and the report is informed by the CFA Institute Code of Ethics and Standards of Professional Conduct and the CFA Institute Asset Manager Code™. The work is part of our broader set of research on the structural shifts in capital markets brought about by the growth of private assets (see Preece and Wilson 2026) and forms part of our organizational ethics content agenda spanning research, education, guidance, and standards development.

While prior discussions of continuation vehicles have focused primarily on market practices or regulatory concerns, this report integrates principles from agency theory, welfare economics, legal standards of fiduciary duty, and concepts of procedural justice to provide a unified analytical approach. In doing so, it clarifies that conflicts of interest are an inherent feature of continuation funds rather than evidence of wrongdoing and that ethical outcomes depend critically on the integrity of the process through which those conflicts are managed. By linking practitioner-oriented considerations—such as disclosure, governance, and the status quo option—to broader conceptual foundations, the report offers both a practical guide for market participants and a framework that can inform policy discussions and future research.

EXECUTIVE SUMMARY

In efficient capital markets, prices are determined by arms-length transactions between buyers and sellers. But what happens when the buyer *is* the seller? That is the question posed by continuation funds, where the general partner sits on both sides of the same transaction. This dual role is not unprecedented—management buyouts offer another example[1]—but it raises heightened conflict-of-interest and ethical questions.

The GP functions as the agent of the sellers (the LPs who cash out) and will become the agent of the buyers (incoming investors) once the CV is established. The GP owns an equity stake in the legacy fund and will take an equity stake—often a larger one—in the CV. The GP has strong financial incentives yet plays a key role in the process to determine the CV transaction price. That role includes leading a competitive bidding process, selecting a lead investor, and negotiating with the latter. Finally, the GP continues to serve as manager of the legacy fund and also will manage the continuation fund.

Report Objective

This report explores these major conflicts of interest and identifies actions that would be unethical if undertaken. The report also describes best practices that have evolved to manage the conflicts. Our purpose is neither to denigrate nor to defend CVs but, instead, to offer an even-handed and fair explanation of the conflicts and ethical issues. A primary goal is to raise the awareness of practitioners and help them navigate conflicts and act ethically. Another goal is to inform regulators, the media, and other interested persons.

Judging Fairness: Outcome and Process

The CV transaction price is the outcome that matters most for all the CV participants. It is the litmus test that determines the fairness of the CV transaction. But how do we judge the fairness of the transaction price?

Incoming investors in the CV face the risk of adverse selection. Are they paying too much to buy equity in overpriced assets? (If so, that might explain why the assets cannot be sold at a price acceptable to the GP in a traditional exit.) Selling LPs, in contrast, face the risk of inadequate consideration for their interests. Are they leaving money on the table by selling the assets for less than they are worth? These questions are particularly difficult to answer because price discovery in CV transactions is neither objective nor fully independent.

[1]In a take-private transaction, managers of a public corporation seek to buy the corporation and take it private. As managers running the public corporation, they are the agents of the shareholders, who collectively own the corporation. But the managers are also the purchasers, and they will take control of the corporation after the transaction.

The contrast with public markets is instructive. Public markets offer price discovery that is continuous, observable, and objective. Private funds, in contrast, typically hold their portfolio of assets for years before disposing of them. In the meantime, the assets are illiquid. There is no trading to offer an objective and observable market price. The market price comes into view only in an eventual traditional exit, which transfers both ownership and control to a third-party buyer (or to the investors in an IPO).

Unlike a traditional exit, however, the CV allows the GP to retain control (and some equity) even after the transaction. Furthermore, the GP plays a central role in forming the CV and establishing the transaction price. To be sure, the process typically involves a sophisticated third-party lead investor who negotiates the price and other terms with the GP. In addition, the GP may obtain a fairness or valuation opinion from an independent provider. Nonetheless, the GP directs the process: It solicits bids, selects the winning bid, and negotiates with the winning bidder (i.e., the lead investor) to settle on a price and agree to the other terms of the CV. This arrangement makes the price discovery process significantly less than fully independent.

Nor is the process objective. In the absence of an observable and independently established market price, the most theoretically sound way to establish the intrinsic price of an asset is to forecast its future sale price and discount that back to present value. That approach, however, introduces subjectivity and reliance on models to estimate future value and risk. No matter how skilled and astute the GP is and no matter how scrupulous its due diligence is, its assumptions remain subjective and its predictions remain subject to error. Intrinsic value is based on the asset's future prospects and eventual sale price. But those projections cannot be tested or verified at the time of the CV transaction; only time will tell.

As a result of these challenges, we cannot simply rely on the transaction price to judge the fairness of a CV transaction. Instead, we must also rely on the fairness of the process. Did the GP vigorously and effectively solicit bids? Did it seek to drive a hard but fair bargain in its negotiations with the lead investor, faithfully discharging its duties of care and loyalty?

Although the price discovery process can never be completely independent or objective, the GP can strive to attain those objectives as closely as possible. We judge the fairness of the CV by the extent to which the process succeeds in approximating those goals.

A simple analogy drawn from the philosophy of procedural justice may be helpful. Imagine that 10 individuals want to divide a cake equally. The outcome will be fair if the cake is indeed divided into 10 equal pieces and distributed to each of the individuals. We have a clear and measurable standard by which to judge the fairness of the outcome.[2]

[2]The analogy of cutting a cake into 10 pieces comes from Rawls (1971). See Appendix 1 for more detail.

But suppose instead that we are engaged in a different activity whose outcome cannot be measured directly. We have no independent criterion or clear standard by which to judge the outcome. We can, however, design a clear and fair process to be followed. Then, we can judge the fairness of our actions by how well we follow the process, whatever the outcome. Stated another way, procedure substitutes for output as a means to judge the fairness of the activity. While not a perfect analogy,[3] it bears relevance to the challenge of judging the fairness of a CV transaction.

Conceptual Framework: Conflicts, Process, and Misconduct

To anchor the analysis that follows, it is useful to distinguish three related but conceptually distinct phenomena: structural conflicts of interest, procedural failures, and intentional misconduct.

- *Structural conflicts of interest* arise from the economic incentives and institutional arrangements inherent in continuation funds. Conflicts of interest should be avoided whenever possible, but doing so is not possible here. They are unavoidable in continuation funds, because the GP sits on both sides of the same transaction. The existence of a conflict of interest, however, does not in itself make a financial professional or entity unethical. This report explores actions for ensuring ethical conduct that adequately addresses the conflicts.
- *Procedural failures* concern how those conflicts are managed. Even where conflicts are unavoidable, they can be mitigated by a fair and well-functioning process. That process includes full and timely disclosure, adequate time for decision-making, a vigorous bidding process, and appropriate governance. Conversely, material failures in process can render a transaction unacceptable or unethical.
- *Intentional misconduct* involves actions that exploit conflicts of interest for the benefit of the GP at the expense of the legacy fund and its investors. These include concealment of material information, manipulation of valuations, and selective or misleading disclosures. Such conduct is unambiguously unethical and, in many jurisdictions, unlawful.

These distinctions are particularly relevant in settings where a single actor influences both sides of a transaction, raising concerns about self-dealing and the potential transfer of value across investor groups. This framework underpins the analysis in this report.

[3]For instance, even if there is no independent and ascertainable standard to judge the fairness of the CV transaction price, one can get some sense of its appropriateness by the amount of any discount (or premium) to net asset value.

Report Structure

Section I focuses on structural conflicts of interest in CVs. The GP has key financial incentives that can raise conflicts of interest with the LPs. Though media and practitioner attention has focused on potential misalignments between the GP and LPs, competing interests can also arise among LPs themselves, as we will discuss.

Section II examines the processes that can be used to manage conflicts of interest in forming a CV. The section emphasizes the real-world complexities of CVs, in which investors can have competing interests, differing perspectives, and disparate outcomes.

Section III examines actions that would be unambiguously unethical if undertaken by a GP. These actions often result in squeezing out legacy LPs and appropriating their profits.

Section IV describes best practices and procedures designed to enable the GP to manage conflicts of interest fairly and ethically. We base our judgments on several pillars, including industry best practices and the CFA Institute Code of Ethics and Standards of Professional Conduct and the CFA Institute Asset Manager Code.

The Conclusion elaborates on four key elements—price, other economic terms, process, and disclosures—that collectively represent hallmarks of a fair process. Practitioners can use these elements as guardrails as they seek to engage in ethical conduct and to address inherent conflicts of interest in forming a CV.

Appendix 1 situates the report's framework within relevant strands of economic, legal, and ethical scholarship. We present this framework in an appendix to preserve readability in the main body of the report for practitioners and other nonacademic readers. Appendix 2 describes our research methodology.

Before moving on to the main text, we summarize specific best practices and the hallmarks of a fair process in the Key Findings section and provide a list of recommendations for GPs, LPs, and regulators.

Key Findings

- *Conflicts of interest* should be avoided whenever possible, but they are unavoidable in continuation funds because the GP sits on both sides of the same transaction. The existence of a conflict of interest, however, does not in itself make a financial professional or entity unethical. How one addresses a conflict of interest—by adequately mitigating and disclosing it—can determine whether the action is ethical or unethical.

- *The CV transaction price* is the litmus test that determines the financial outcome for all participants. A completely objective and independent process is impossible, however, because the GP plays a central role in forming the CV and sits on both sides of the transaction. Nonetheless, a competitive and vigorous bidding process should approximate objective and independent price discovery to the extent possible.
- *The importance of process:* Absent a completely independent bidding process, we cannot judge the fairness of the CV solely on the basis of transaction price. Instead of judging fairness on the basis of outcome (i.e., transaction price), we must assess the fairness of the process in forming the CV.[4]
- *Status quo option:* Offering rolling LPs the status quo option ensures that the CV treats legacy investors fairly and ethically. LPs should not be forced to choose between selling their interests and accepting materially adverse terms. It would be a violation of the GP's duty of loyalty to the LPs to require them to accept materially adverse terms.
- *Disclosures* must be materially complete, accurate, and timely, enabling legacy LPs to make informed choices. Many unethical schemes rely on concealment, misrepresentations, manipulation of data, and selective disclosures.

Exhibit 1 summarizes the key financial and commercial incentives that drive GP behavior in continuation fund transactions and give rise to the structural conflicts examined later.

[4]This reliance on process rather than outcome to judge fairness is analogous to the philosophical distinction between perfect justice and procedural justice. See Appendix 1 for more details.

Exhibit 1. Financial and Commercial Incentives Driving GP Behavior in Continuation Fund Transactions

Incentive Category	Illustrative Incentives and Effects
Management fees	Extend the duration of fees; increase total fees (higher valuations dominate lower fee rates).
Carried interest	Reset carry; increase carry rates or lower hurdles; crystallize carry; equitize carry; reallocate carry among team members.
Transaction pricing	Can incentivize either to maximize price (to gain higher carry) or minimize price (to gain greater future upside in the CV).
Stapled transactions	Require incoming CV LPs to commit to a separate investment in an affiliated fund.
Investor relationships	Build or strengthen relationships with preferred or strategic investors.
Liquidity and fundraising	Provide liquidity to facilitate future fundraising; time CVs to align with new fund launches.
Performance metrics and optics	Improve distributions to paid-in capital and internal rate of return; increase assets under management; enhance track record.
Exposure to high-performing assets	Increase GP ownership in assets viewed as high performing.
Transaction completion incentives	Incentivize to complete the transaction even if it is adverse to the legacy fund and its LPs.
Transaction narrative and disclosure framing	Present the transaction differently to selling and incoming LPs, emphasizing different aspects of value and risk.

RECOMMENDATIONS

For GPs

- Have a sound investment basis to form a CV, and communicate it to the legacy LPs.
- Ensure a vigorous and competitive bidding process with third-party bidders to set the CV transaction price.
- Provide full, fair, and timely disclosures to enable limited partner advisory committee (LPAC) members and LPs to make informed decisions.
- Ensure consistency of information provided to buyers and sellers, and provide both with access to the data room.
- Offer fair economic terms to legacy LPs, including a status quo option.
- Seek to avoid stapled transactions in connection with formation of the CV in order to avoid both the appearance and the reality of conflicts of interest. At a minimum, fully disclose the existence and terms of any such transactions to all LPs.
- Apply consistent and transparent valuation methodology and practices.
- On a comply-or-explain basis, consider obtaining a fairness or valuation opinion from an independent provider. If no valuation or fairness opinion is obtained, explain to LPs why not.
- If a provider is engaged, ensure it is fully independent, expertly qualified, and provided with all material information on a timely basis. In addition, disclose to the LPAC and legacy LPs a meaningful summary of any opinion obtained. The summary of a valuation opinion should include the approaches applied, key assumptions, material sensitivities, and the basis for the adviser's conclusion.

For LPs

- Understand the structural conflicts of interest that can arise between the GP and LPs, including the GP's financial incentives and its position on both sides of the CV transaction.
- Look for procedural safeguards to ensure a fair process in forming the CV.
- Insist on a competitive bidding process with third-party bidders to set the CV transaction price.
- Look for complete, accurate, and timely disclosures; consistency of information provided to buyers and sellers; and equal access to the data room.
- Look for consistency in valuation processes and satisfactory explanations for changes in methodologies. Insist on an independent valuation opinion

or a fairness opinion from an expert and independent provider or a satisfactory explanation from the GP for not obtaining one.

- Understand the limitations of the LPAC in terms of its authority and governance. Be aware of potential misalignments between individual LPAC members and other LPs arising from different strategies, time horizons, liquidity needs, capabilities, and resources. Recognize that a member may have competing interests, if not conflicts of interest, because of its investments in both the legacy fund and the CV.
- Have no expectation that an LPAC member owes a fiduciary duty to the other LPs, absent an explicit requirement in the limited partnership agreement (LPA).
- If you are an LPAC member and are investing directly or indirectly (i.e., through a secondary fund) in the CV, abstain on votes on whether to approve a conflict-of-interest waiver in connection with the CV transaction.

For Regulators

- Regulation of private markets, by definition, is significantly more limited than regulation of public markets and such participants as mutual funds, exchange-traded funds, and public corporations.
- To the extent they have authority over private market funds and their advisers, regulators should focus on risks arising from potential and actual conflicts of interest. With respect to CVs, regulators should focus on, among other things, enforcing anti-fraud statutes and examining GP compliance with the terms of the LPA. Regulators should also check for consistency in valuations and conformity to relevant financial reporting standards.
- As regulators consider expanding retail access to private markets, they should draw lessons from the conflicts of interest in CVs and ways to manage those conflicts. Applying those lessons can help regulators devise guardrails to protect retail investors in private markets.

I. STRUCTURAL CONFLICTS

Private markets draw much of their strength from an alignment of incentives among three parties: the GP who manages the fund, the LPs who have invested in it, and the executives of the fund's portfolio companies and other assets.[5] Sometimes, however, incentives can become misaligned, producing conflicts of interest. That is unsurprising given the complexities of private markets in general and continuation funds in particular.[6] In this section, we identify key financial incentives and trace how they can strengthen alignments or, instead, become misaligned. Primarily, we examine conflicts of interest between GPs and LPs, though we also touch on conflicts that arise among the LPs themselves.

Conflicts of Interest

Financial actors should avoid conflicts of interest whenever it is reasonably possible to do so. Avoiding a conflict of interest eliminates the temptation to place one's own interests ahead of clients or others whom one owes a fiduciary duty or similar obligation.

But avoidance is not always possible. That is the case here, where the fundamental conflict is endemic to the structure of the continuation fund: The GP sits on both sides of the transaction. In cases where avoidance is not reasonably possible, the financial agent (the GP in this case) must seek to mitigate the conflict of interest and disclose it.

We do not presume that the existence of a conflict of interest in itself is necessarily unethical. Instead, the ethics of the situation turns on the actions to address the conflict. The GP must effectively mitigate and disclose its conflicts of interest, enabling the LPs to give informed consent. In addition, the GP should (1) demonstrate a sound investment basis for the CV and (2) engage in an effective bidding process to obtain a fair transaction price. Such actions comport with ethical principles.

Management Fees

Establishing a continuation fund gives the GP the opportunity to extend the life of the fees, adding what can be extra years of fee income to the GP. Those fees would cease if, instead, the GP sold the assets in a traditional exit.[7] In addition, the CV gives the GP the opportunity to change the amount of fees it receives. In practice, the *rate* of fees is typically lower in the CV than in the legacy fund,

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[5]The GP owes a fiduciary duty to the LPs, not to the executives of the portfolio companies. Nonetheless, the GP typically offers financial incentives to the executives—such as managers of a portfolio company of a private equity fund—in an effort to align the executives' interests with those of the GP and the fund.

[6]We strive to unravel those complexities in the first part of our series (Deane and Robinson 2025).

[7]In addition, the GP could lose other types of fees, such as consulting and monitoring fees charged to portfolio companies or fees for managing real estate. In some cases, however, the GP would offset the other fees against the management fees charged to the legacy fund.

but the fee *base* rises when the CV acquires the asset(s) from the legacy fund.[8] For example, the fee rate could fall by half, from 2% to 1%, but the fee base could triple if the CV transaction price equals 3× the cost basis of the assets. Thus, the *total amount* of management fees often increases, even while the rate decreases.

Beyond fee income, the GP may have a commercial motive to demonstrate momentum in its fee-related income. This metric may be particularly important for fund sponsors that are publicly traded. Financial analysts sometimes attach greater weight to a firm's fee-related income than to its performance-based income: Fees are often considered more reliable and consistent, whereas performance income can fluctuate depending on fund returns. In addition, there is no guarantee that the GP will earn its performance fee.

Carried Interest

Carried interest represents one of the most important financial incentives motivating the GP to launch a CV.[9] The GP can benefit in at least three ways:

- *Resetting the carry option:* By forming a CV, the GP gains the opportunity to reset its carry option. That option is highly valuable, and it takes on even greater value when either of two conditions obtain. First, the greater the potential value of the assets transferred into the CV, the more valuable the carry option for the GP. That is worth noting given that GPs often tout the CV as a repository of high-performing or trophy assets. Second, the dimmer the GP's prospects of earning carry from the legacy fund, the more valuable the carry reset option. If the GP has little or no hope of earning carry from the legacy fund, the opportunity to reset the carry in the CV becomes all the more attractive. Beyond these benefits, the GP may also change the percentage of carry it earns on the CV. For instance, it could adopt tiered performance rates with a top end of 30% (Morgan, Lewis & Bockius 2015, p. 3).
- *Crystallizing the carry:* Since the CV transaction constitutes a purchase/sale of assets from the legacy fund to the continuation fund, it enables the GP to crystallize its carry on the event.[10]

[8]"In drawdown funds, management fees are typically charged on committed capital during the investment period, switching to being charged on invested capital thereafter (in some strategies, management fees are charged on invested capital throughout the life of the fund). Charging on invested capital means that management fees are only charged on the cost basis and decline over time as investments are harvested" (Murphy and Hadas 2024).

[9]Carry, or carried interest, is the performance fee that the GP earns, traditionally set at 20% after the fund meets its hurdle rate. The hurdle rate, often set at 8% per year, is the return that investors must receive before the GP earns its carry.

[10]When the GP crystallizes its carry, it fixes or realizes its performance fee, which is called the GP's carry or carried interest (Crossley et al. 2024; Gottlieb and Phillis 2025).

It is unobjectionable for the GP to crystallize its carry on that part of the CV transaction relating to the selling LPs because it constitutes a true sale for those LPs. Often, however, GPs also crystallize their carry on the portion relating to the rolling LPs and thus on the entire transaction; we generally oppose this practice because it allows the GP to earn a performance fee merely for transferring the interests of rolling LPs from one fund to another (Deane and Robinson 2025, p. 31). The Institutional Limited Partners Association (ILPA) also opposes this practice (ILPA 2023, p. 4).

- *Equitizing the carry:* The GP often invests the proceeds from its crystallized carry into the new CV, receiving equity in return. This process is called equitizing the carry. Doing so allows the GP to demonstrate its confidence in the CV, thus meeting market expectations to "put skin in the game." GPs also may have a financial incentive to increase their exposure to the CV assets, which they may regard as high performing.

Transaction Pricing

Although the GP clearly has a strong financial interest in the transaction price, it is impossible to say *a priori*, in all cases, whether that interest lies in selling high or buying low. That depends on the facts and circumstances of each individual case, because the GP sits on both sides of the transaction. Consider the following two alternatives.

- **Profiting from a *high* transaction price:** The higher the price, the greater the GP's carry on the CV transaction. Moreover, a higher carry will give the GP more proceeds to invest in the CV, if it wishes to do so. That could well be the case if the GP believes the CV assets are high performing. Note that this financial incentive aligns with that of the selling LPs, which typically constitute almost all of the legacy fund investor base. They want the GP to have precisely this financial incentive to sell high. In this case, there is no conflict of interest between the GP and legacy LPs.
- **Profiting from a *low* transaction price:** In other circumstances, the GP may have a net financial interest in a low transaction price because the transaction price sets the baseline from which to measure the performance of the CV. The lower the baseline, the greater the potential profit for the CV and the higher the potential carry for the GP.

The second alternative represents a conflict of interest because the GP's financial incentive to obtain a low transaction price runs counter to the interests of the legacy LPs. A financial column captured the nature of the conflict with the memorable headline "Buy Low, Sell to Yourself" (Levine 2025a). This conflict is illustrated in the following scenario.

Suppose the legacy fund holds a portfolio of mostly mediocre or poorly performing assets and the GP has all but given up hope of clearing the hurdle rate and earning carry from the fund. Tucked away among the portfolio holdings, however, shines a single star asset. Transferring it into the CV will free this crown jewel from the encumbrance of a mediocre portfolio.

The more the carry option on the legacy fund is out of the money,[11] the greater the GP's financial incentive to reset its carry option. Likewise, the greater the GP's financial interest in the CV—that is, the greater its exposure through carry and equity interest—the more it may benefit financially from a low transaction price.

Rolling LPs may be indifferent to the transaction price, because they are simply transferring their equity in the specified assets from the legacy fund to the CV. (If they increased or decreased their stakes in the CV, the transaction price would have a direct financial impact on them.) Selling LPs, however, will be harmed by this scenario because it fails to maximize their profit from the sale. Moreover, they will lose out on any further upside on the assets. Instead, they will remain invested in the legacy fund—now bereft of the high-performing assets. This scenario is particularly significant because a supermajority of legacy LPs (variously estimated at 83%–92%) elect to sell their interests (Heal and Gara 2025a; Jefferies 2025, p. 8).

Stapled Transactions

In a stapled transaction, an LP invests in one fund—say, a continuation fund—and simultaneously commits to invest in a second fund that is managed by the same GP or an affiliate (Clifford Chance 2019, p. 3). In this case, the lead investor or other incoming investors might make stapled commitments to invest in the CV while also agreeing to invest in a second fund managed by the GP or its affiliate. (Rolling LPs generally are not expected to make a stapled commitment merely to roll their interests into the CV.)

A stapled commitment could come in the form of a formal but confidential bilateral agreement between the GP and the LP or in the form of an informal but understood agreement. (Recently, we heard an experienced deal lawyer characterize these informal agreements as "a wink and a nod.")

William Blair (2025, p. 6) found that stapled commitments are uncommon but that, nonetheless, a majority of LPs invested in the GP's next flagship fund (even if they had no contractual obligation to do so). Specifically, in 2024, 60% of major secondary market investors surveyed by William Blair committed to a private equity firm's new flagship fund following a continuation fund. The commitment to the flagship fund averaged approximately USD15 million.

[11]By this we mean that the legacy fund has either lost value or is generating a return lower than the hurdle rate.

A stapled transaction is clearly in the interests of the GP. If the GP accepts a lower bid in return for a stapled commitment, that would place the interests of the GP ahead of those of the LPs and would be unethical.[12]

But if an investor makes a stapled commitment only *after* the CV transaction price has been set, does that neutralize the impact on other investors? Or can the stapled transaction still be adverse to their interests? The answer depends on the circumstances, and the truth is particularly difficult to ferret out. One experienced service provider argued to us that such arrangements are benign for the other LPs because the stapled investment comes after the transaction price and therefore has no effect on it.

A recent academic article, however, throws that assertion into doubt. Ivashina et al. (2025) present a scenario in which all prospective investors but one fail to recognize the true value of the CV asset and submit underpriced bids. The exception is an informed investor who recognizes the higher value of the asset. Nonetheless, this investor merely matches the highest bid instead of raising it. At the same time, this investor enters into negotiations with the GP and offers to make concessions other than the bid price. One such concession is a stapled commitment. In effect, this informed investor captures an economic rent from the low bid price and then agrees to share a portion of its buyer's rent with the GP. This arrangement comes at the expense of the selling legacy LPs, who otherwise would have received a higher price for their interests. If this scenario played out in real life, the GP's conduct would be unethical because it would violate the principle of fair dealing and because this conduct placed the GP's interests ahead of its legacy LPs.

Investor Relationships

Private fund sponsors are in the relationship business. Their network of relationships constitutes critical assets for them. A deep network can be instrumental in enabling the GP to source investment deals and to cast a wider net when it seeks to sell portfolio assets, whether through a CV or a traditional merger or acquisition. To this extent, the interests of the GP in building relationships are aligned with the interests of the fund's LPs.

Nonetheless, conflicts of interest can arise between a GP's relationship-building business objectives and its efforts to establish a CV. For example, the GP could potentially seek to use a new CV to entice one or more investors. Such relationship-building actions would be benign if they posed no harm to other investors. For instance, the GP could simply offer a coveted LP access to invest in the continuation fund at the same price and on the same terms as

[12]Academics have reported some LP suspicions that stapled transactions do indeed taint the CV negotiation process. According to Kastiel and Nili (2024, p. 50), "Interviewees on the LP side also emphasized that the process with a third-party lead investor must be examined in light of the broader interactions between the GP and that lead investor, which could extend well beyond the investment in the specific continuation fund (and could include promises by the lead investor to spread out a large investment across different funds or portfolio companies of the GP). In that case, a GP might prefer a low bid on assets that come with an offer of a stapled commitment and refrain from seeking a higher bid."

other investors. The GP's use of its discretionary allocation of interests in the CV in this manner might not pose any harm to the other LPs, depending on the circumstances.

Other relationship-building efforts, however, potentially could come at the expense of the legacy fund and its LPs. Suppose, for example, that the coveted investor offers a lower bid than others in seeking to become the lead investor in the CV. If the GP placed a higher value on building a relationship than on maximizing the CV transaction price, that would represent a conflict of interest with the legacy fund and its investors.

Note that LPs may also have an interest in building a relationship with a GP. An LP might invest in a continuation fund to "test the waters" of a relationship—that is, as a first step in determining whether to develop a long-term partnership with the GP. In addition, an LP could invest in a CV or other private fund in hopes that the GP would award current or future co-investment opportunities to the LP.

Liquidity and Fundraising

Traditional private funds rely on fundraising to secure new capital and thereby sustain the fund sponsor's business. But fundraising, in turn, depends on investor liquidity. Without it, LPs are unable or unwilling to invest in new private funds. This gives the GP an indirect but crucial interest in providing the LPs with liquidity, especially at those times when it goes to market to raise new funds. Thus, broadly speaking, LPs and GPs alike have an abiding interest in adequate liquidity.

Still, conflicts can arise, as illustrated in the following scenario: Suppose that there is no reason to establish the CV besides the liquidity that it provides. Further, suppose that only a portion of the fund's investor base needs liquidity, some more urgently than others. The other LPs have less or no need for immediate liquidity and would prefer to maintain their investment in the legacy fund in expectation of future profit. Thus, the GP's self-interest in providing liquidity (to lubricate its fundraising efforts) is aligned with the interests of certain LPs but is misaligned with the interests of others.

Performance Metrics and Optics

The GP's interest in a strong performance record can also serve as an incentive to form a CV because the CV transaction can help boost key metrics, including the legacy fund's distributions to paid-in capital and internal rate of return (Capital Dynamics 2022, pp. 6, 18).[13] These metrics are directly tied to the GP's fundraising, which depends on the performance record of the manager's funds.

[13]If the legacy fund continued to hold the asset(s), the longer time horizon in itself would lower the internal rate of return.

A GP's assets under management (AUM) constitute another important metric, particularly for GPs with a need to demonstrate growth in that metric. Publicly traded fund sponsors, for instance, may come under market pressure to show continuing momentum growth in AUM. The CV can bolster AUM by bringing in new investors and increasing asset valuations.

Finally, a fund's reputation serves as a potent incentive that aligns the interests of the GP with those of its LPs. As we have seen, sponsors of private funds are in the relationship business. A good reputation is an essential ingredient in the success of the fund sponsorship business; a tarnished reputation can destroy it. This dynamic elevates reputation to an important guardrail on GP behavior. Indeed, a remarkable reputational transformation—from a last resort of zombie funds to the home of trophy assets—has been critical in driving the growth of continuation funds (Deane and Robinson 2025, pp. 12–14).

Transaction Narrative and Disclosure Framing

The GP has a steep informational advantage over all other parties in the transaction—both legacy LPs and incoming investors in the CV.[14] The GP is in the best position to ascertain the value of the assets, their risks, their full potential, and any weaknesses or challenges that must be overcome to realize that potential.

The GP can leverage its information asymmetry in its presentation of the rationale and investment case for the proposed CV. The GP sets the narrative, albeit within the constraints noted previously regarding fiduciary duty, anti-fraud statutes, and reputational concerns. Within those constraints, however, the GP has wide latitude in what it chooses to emphasize, play down, or omit.

Yet the GP must navigate between two seemingly contradictory objectives: to persuade both buyers and sellers that each is getting a good deal. That gives the GP an incentive to play up the potential of the CV to incoming LPs while downplaying it to legacy LPs.

The dual objectives are not altogether unique to continuation fund transactions. In a traditional merger and acquisition (M&A) exit, for example, the GP seeks

[14]Information asymmetry is a characteristic of private funds. Many LPs have neither the ability nor the interest to manage a portfolio of assets; that is what they pay the GP to do. The GP values private companies, determines which to acquire, and then monitors them closely and intervenes in management where necessary. Members of the GP team typically sit on the board of the portfolio company, gaining information unavailable to outsiders. The GP designs a value-creation plan for the company and then executes it. In the process, it may encounter obstacles that need to be overcome. This gives the GP special insight into the future potential of the portfolio company and what it will take to realize that potential.

to persuade the acquirer that it is getting a good deal in buying the asset, even as the GP seeks to persuade the LPs that the fund is getting a good deal by selling it. The difference, however, is that the GP does not sit on both sides of the transaction in a traditional exit.

Similar communication challenges can also arise in M&A transactions in public markets. The board of directors of the acquirer seeks to persuade the target company that it is getting fair consideration for its sale of the company, even while the acquirer's board seeks to persuade its own shareholders to approve the acquisition (Levine 2025b). But there are also significant differences with CV transactions. The board of directors of a public company owes a fiduciary duty solely to the company and its shareholders, not to the target company. Furthermore, the acquirer must comply with substantial disclosure requirements that do not apply to the CV as a private market transaction.

The GP may also have legitimate interests in limiting disclosures for two reasons. The first would be to preserve the confidentiality of sensitive investment information. Competitors may wish to gain insights into the GP's practices, and other purported buyers may seek access to a data room, not because they intend to submit a bid to become lead investor but simply to obtain market information. Second, the GP may limit its disclosures out of deference to the wishes of certain LPs. These LPs, such as public pension funds, may wish to manage their information flows because they themselves could be subject to disclosure requirements to make public any investment information they receive.

Differences and Potential Conflicts of Interest Among LPs

Although the LPs of a private fund are invested in a common enterprise and have many interests in common, they are far from homogeneous. For example, they differ in the following attributes:

- *Type and strategy:* Traditional investors in private funds include pension funds, endowments and foundations, sovereign wealth funds, and some family offices and ultra-high-net-worth individuals. As continuation funds have grown in size and number, there has been a corresponding increase in dedicated secondary funds, a type of fund of funds that invests in private secondary offerings. The secondary fund is managed by a GP, but its investment in a continuation fund makes it an LP of that continuation fund. More recently, evergreen funds have emerged as investors in LP-led secondary offerings and, to a lesser extent, in GP-led continuation funds as well.
- *Size:* LPs come in all sizes, from relatively small family offices to very large institutional investors. The size of any one investment in a particular private fund also varies, though it is often correlated with the size of the investor.

- *Investment objectives:* LPs may have different risk and return profiles. Some LPs may be constrained by concentration limits of different sizes, potentially preventing them from participating in a CV, especially a single-asset CV. Other LPs, such as dedicated secondary funds and retail evergreen funds, may have a compelling need to put their investors' money to work immediately and may be less concerned about the transaction price.
- *Time horizon:* Some LPs, such as pension funds, may have a long-term horizon matching their funding obligations. Other LPs, however, may face shorter time horizons. They could find continuation funds particularly attractive because such funds also generally have a shorter lifespan than primary funds.
- *Liquidity needs:* Liquidity needs are a function of many factors, including funding obligations, cash management, portfolio allocations, and market conditions—including the prevailing drought in distributions to LPs. As a result, one LP may have an urgent need for liquidity while another LP in the same fund may prefer to see its capital invested for future profit.
- *Decision-making agility:* Some LPs may have prearranged authorities and procedures in place to allow them to move quickly to make decisions on whether to cash out or roll their interests into a new CV. For others, a roll decision would first require time-consuming underwriting procedures, including performing due diligence and receiving approval from an investment committee or similar authority. Completing that process might require more time than the decision deadline would allow.
- *Resources:* Larger LPs may have the in-house capabilities to analyze and value portfolio assets and various types of deals, from continuation vehicles to co-investment opportunities.[15] Likewise, the managers of secondary funds typically have the resources to make independent valuations because these funds are set up to invest in CVs and other secondary offerings. This ability makes these secondary funds particularly attractive to LPs who focus their expertise on selecting investment managers but lack the in-house capability to analyze investments on a deal-specific basis. The ability of secondary funds to analyze deals also explains why they have become one of the main investors in CVs and other secondary offerings.

Competing or Conflicting Interests Among LPAC Members

Competing interests become particularly acute when an LPAC member sits on both sides of the same CV transaction. This situation has led one of the largest US pension funds (not named) to voice concerns in the *Financial Times* that LPACs "are becoming increasingly conflicted" (Heal 2026a).

[15]Just because a large institutional investor has the ability to analyze a CV deal does not mean it will. The investor may consider its interests in the CV too small to justify resources better deployed on far larger investments.

Such situations can arise in multiple ways. First, the LPAC member may be rolling its interests into the CV. Second, the member may have investments in a secondary fund that is investing in the CV, perhaps as lead investor. Third, the LPAC member may intend to make a co-investment in the assets in the CV. These situations may give the LPAC member a net financial interest in buying low rather than selling high in the CV transaction.[16] Even if none of these situations prevail, an LPAC member may be tempted to adjust its conduct or engage in self-censorship to preserve its overall relationship with the GP or to protect its access to a specific investment opportunity besides the CV.

But do these competing interests rise to the level of a conflict of interest between the LPAC member and other LPs in the fund? The answer depends on whether the LPAC member owes a fiduciary duty or similar obligation to the other LPs.

The LPs in a private fund generally should have no expectation that an LPAC member has a fiduciary duty to the other LPs (absent an explicit provision to the contrary in the LPA). The US Securities and Exchange Commission (SEC) stated in a 2023 rule proposal that

> the interests of one or more private fund investors may not represent the interests of, or may otherwise conflict with the interests of, other investors in the private fund. . . . Certain fund agreements state that, subject to applicable law, LPAC members owe no duties to the private fund or to any of the other investors in the private fund and are not obligated to act in the interests of the private fund or the other investors as a whole. (SEC 2023, p. 63210)[17]

We have also heard directly from a sophisticated investor serving on several LPACs who believes no fiduciary duties are owed to the other LPs in the fund. Instead, this investor recognizes a fiduciary duty to the fund and the fund's beneficiaries, thus obligating this LP to vote in the fund's best interests. An experienced lawyer in a national law firm confirmed that such views are common.

A leading law firm notes, however, that LPs may be concerned that they could become fiduciaries to other LPs by virtue of their service on an LPAC. US case law offers support for that view, according to the law firm (Morgan, Lewis & Bockius 2015, p. 2).

Even if they do not acknowledge a fiduciary duty to other LPs, some LPAC members nonetheless routinely abstain from voting to approve a CV transaction when they sit on both sides of the transaction. We endorse that position as a best practice. Specifically, we recommend that LPAC members abstain on

[16]This is analogous to empty voting on the proxies of public corporations. See Hu and Hamermesh (2025).

[17]The SEC adopted a final rule in 2023, but the following year it was vacated by an appeals court.

votes on whether to grant a conflict-of-interest waiver in connection with a CV transaction in cases where the LPAC has competing interests as both a legacy LP and an investor in the CV.

Exhibit 2 presents the framework used in this report to evaluate continuation fund transactions, integrating the structural conflicts described previously with considerations of process and misconduct.

These GP–LP conflicts are structural in nature: They arise from the incentives and roles inherent in continuation fund transactions. The ethical implications depend on how these conflicts are managed—a question we turn to next.

Exhibit 2. Framework to Evaluate Continuation Fund Transactions

Dimension	What to Evaluate	Illustrative Situations	Comment
Structural conflicts	Conflicts of interest between the GP and LPs	Certain conflicts of interest are unavoidable because the GP sits on both sides of the transaction and has financial incentives in forming the CV.	To conform to ethical standards, the GP must mitigate and disclose conflicts of interest that cannot be avoided.
		Dual incentives regarding transaction price (sell high versus buy low)	The GP sits on both sides of the transaction yet plays an active role in price determination (solicits bids, oversees bidding process, selects lead investor, and negotiates terms).
		Do new investors in the CV make stapled commitments? Are there other relationship-driven conditions in forming the CV?	This represents a potential conflict of interest. It may harm selling LPs even if the stapled commitment comes after the transaction price is determined.
	Potential misalignment between certain LPAC members and other LPs	Do individual LPAC members sit on both sides of the CV transaction (as investors in the legacy fund and the CV)? If so, does the LPAC member abstain on approving a conflict-of-interest waiver for the CV?	LPAC members who increase their investment in the CV (beyond rolling their interests) may have a net interest in a low transaction price and in ensuring the CV is actually formed even with adverse terms for them or other legacy LPs.

(continued)

Exhibit 2. Framework to Evaluate Continuation Fund Transactions (*Continued*)

Dimension	What to Evaluate	Illustrative Situations	Comment
Procedural safeguards	Price discovery through competitive bidding	Is there a robust competitive bidding process? Did the GP energetically solicit bids?	A competitive bidding process mitigates the GP's conflicts and helps establish the credibility of the CV transaction price.
	Complete and accurate disclosure to LPAC and LPs	Do the disclosures provide the investment rationale for forming the CV? Provide plans and prospects for alternatives to the CV, including an exit sale or IPO? Do disclosures cover bidding process and results in sufficient detail?	Enables informed decision-making and meaningful choice
	Timely disclosure to LPAC and LPs	Do LPAC members and LPs have adequate time to review disclosures and make informed decisions?	Necessary for due diligence, independent evaluation, and informed consent
	Economic terms and status quo option	Do legacy LPs have a status quo option if they roll interests into the CV?	A status quo option is a key safeguard to avoid harming the interests of legacy LPs.
	LPAC governance and effectiveness	Do LPAC members meet as a group (rather than bilateral meetings with the GP) in considering a conflict-of-interest waiver?	Denying the LPAC the opportunity to meet as a group heightens risks of inconsistent disclosures and impaired LPAC decision-making.
		Will the GP grant the LPAC's requests to meet *in camera* (i.e., without the presence of the GP)?	*In camera* sessions can facilitate candid LPAC discussions and informed decisions.

Note: Continuation fund transactions inherently involve structural conflicts of interest. Ethical concerns arise when those conflicts are not managed through a fair process or are exploited through intentional misconduct.

II. THE CV PROCESS: COMPETING INTERESTS AND ETHICAL CONSIDERATIONS

This section examines the processes that can be used to manage conflicts of interest in forming a CV. We emphasize the real-world complexities of CVs, in which different investors can have competing interests, differing perspectives, and disparate outcomes. We illustrate these complexities with two nuanced examples and three scenarios and consider their ethical implications. Our ethical judgments are informed by the CFA Institute Code of Ethics and Standards of Professional Conduct, the CFA Institute Asset Manager Code, and general principles of fiduciary duty and fair dealing.

Example 1. The CV Transaction as a Liquidity Event

In the first example, the GP forms a CV to provide liquidity to the LPs. This example is important for two reasons. First, it is quite common. With the drought in traditional exits, liquidity has been a primary driver of the growth in CVs (Deane and Robinson 2025, pp. 10–12). Second, ethics are not always black-and-white issues. This example illustrates the nuances and complexities in applying an ethical lens to a GP's actions in forming a CV.

Is the provision of liquidity to legacy LPs in itself an acceptable justification for the CV? The answer, we believe, depends critically on a fair process[18] and can be judged only on the basis of particular facts and circumstances. A process that provides full and timely information, meaningful choice, and equitable treatment of participants can render differing investor outcomes acceptable. Conversely, deficiencies in the process may call into question the legitimacy of the CV and could violate ethical standards. Consider the following scenarios.

Scenario 1. Fair Process: No Evidence of Unethical Actions

In our example, the fund has suffered from a slowdown in distributions and the GP has come under increasing pressure from LPs with a need for liquidity. These LPs are in the majority, and they welcome the CV as a liquidity event.

Other LPs, however, are satisfied with their cash management practices, have no pressing liquidity needs, and want to see their capital invested for future profit. They object to the CV as conferring no benefits on them or the legacy fund, and they pointedly note that the GP owes a fiduciary duty to the fund as a whole, not to individual LPs who may need liquidity.

[18]These scenarios implicate questions of procedural justice. For more information, see Appendix 1.

In this situation, is it appropriate for the GP to proceed with the continuation fund? In our view, the answer depends on the fairness of the CV process and the choices offered to the legacy LPs. Suppose that the transaction price is fair and has been determined through a rigorous and competitive bidding process, the LPAC and the LP base have been given adequate and timely information, and the LPAC has approved a conflict-of-interest waiver. Suppose further that the legacy LPs are offered a true status quo option, allowing them to roll their interests into the CV on the same economic terms as in the legacy fund.

In this case, we believe it is reasonable for the GP to argue that the CV enables it to accommodate the disparate needs of its investor base. The integrity of the process—fair pricing, full disclosure, and a genuine status quo option—provides the conditions for informed consent and meaningful choice. In sum, the process has been fair. Is it ethical? That determination could be made only on the basis of the complete set of facts and circumstances in each case. That said, however, we believe that the facts conveyed here do not in themselves justify a conclusion that forming the CV was unethical.

In economic terms, the key question is whether the CV transaction is Pareto improving—that is, does the transaction make at least some investors better off without making any worse off? Can the formation of the CV accommodate the heterogeneous liquidity needs of the legacy investor base—allowing the selling LPs to benefit by obtaining liquidity at a fair price, while permitting rolling LPs to maintain their investment exposure without being disadvantaged by the transaction? The availability of a true status quo option—allowing LPs to roll their interests into the continuation fund on the same economic terms as in the legacy fund—is therefore central. When this condition is satisfied, the CV can accommodate differing investor preferences without redistributing value among LPs.

Conversely, if rolling LPs are required to accept materially adverse terms or if deficiencies in the process impair their ability to make informed decisions, the transaction ceases to be Pareto improving. Instead, it becomes redistributive, benefiting some parties at the expense of others. The action would be unethical.[19]

[19]The action would violate at least two requirements of the CFA Institute Asset Manager Code (to place client interests before their own and to have a reasonable and adequate basis for investment decisions) and, depending on facts and circumstances, might violate a third (to provide adequate disclosures and information so investors can consider whether any proposed changes in investment style or strategy meet their investment needs). Visit https://rpc.cfainstitute.org/codes-and-standards/asset-manager-code.

Scenario 2. Questionable Process: Potentially Unethical Actions

In other cases, the actions appear ambiguous. They are potentially unethical, but more information would be needed before drawing a definite conclusion. That is the case in this second scenario, which differs from Scenario 1 in two respects:

- Instead of a status quo option, LPs wishing to roll their interests into the CV must accept one or more different economic terms.
- The time given to legacy LPs to make their sell-or-roll decisions has been constrained.

More information would be needed to ascertain whether the terms of the CV were not only different from those of the legacy fund but also materially adverse to the rolling LPs. Likewise, more information would be needed to ascertain whether a tight timetable provided inadequate time to the legacy LPs and impaired their ability to make informed decisions. In such cases, we could conclude that the action in forming the CV was unethical.

Scenario 3. Self-Dealing Process: Unambiguously Unethical Actions

Finally, suppose that there is no compelling investment rationale to form the CV. It does not maximize the legacy fund's profits or represent the optimal choice compared with a traditional exit or keeping the assets in the legacy fund. The GP's sole motivation is to enhance its fundraising efforts. As the GP recognizes, the legacy fund LPs will not invest in the new flagship fund unless the legacy fund returns more of the capital they have invested already. The CV transaction removes this fundraising obstacle. Furthermore, the CV has the related advantage of enhancing the distribution metrics of the legacy fund, and so the GP times the CV to coincide with the start of its fundraising for a new flagship fund.

But forming the CV costs money, diverts the GP's attention from managing the legacy fund, and transfers assets that, but for the GP's self-dealing, would remain in the legacy fund. In short, the GP is placing its own interests ahead of those of the legacy fund and its investors. This case would be unambiguously unethical.

Example 2. Contrasting Perspectives on an Affiliated Fund's Investment in the CV

In this example, the GP demonstrates its confidence in the CV in two ways. First, the GP invests its carry in the CV. Second, the GP's sister fund makes an additional equity investment in the CV. The sister fund is the GP's recently formed flagship fund. Though the flagship fund is separate from the legacy fund and the CV, the GP manages all three.

In real life, it is possible, even likely, that this scenario will generate very different perspectives from the LPs of the three affiliated funds:

- *The CV's LPs* warmly welcome the flagship fund's investment in the CV as a signal of the GP's high confidence in the portfolio assets. The investment demonstrates the GP's conviction that the CV's portfolio assets are of sufficiently high caliber to satisfy the return demands of the flagship fund.
- *The flagship fund's LPs*, however, may object to the investment in the CV. Specifically, they may feel they are not getting their money's worth from the management fees they pay into the flagship fund. These LPs expect the GP to search for new and promising deals, not sit back and invest in a portfolio company that is already in the fund sponsor's stable of investments.
- *Certain legacy LPs* also may object to the flagship fund's investment in the CV. To these legacy LPs, the CV represents a lost opportunity for a co-investment. The CV will enable the GP to bring in fresh capital to invest in further development of the assets transferred from the legacy fund. But the LPs would have preferred that the GP keep the assets in the legacy fund and offer the LPs the opportunity to make a co-investment if those assets needed more capital investment.

This scenario illustrates the complexities of real-life situations involving CVs. The contrasting perspectives reflect competing interests among the investors in the three funds. It is possible that the same CV transaction produces different outcomes for each segment of the investor base. Nonetheless, the existence of different investor perspectives and disparate investor outcomes does not in itself demonstrate violations of ethical standards.[20]

[20]Again, one would need to ascertain all relevant facts and circumstances before reaching a definitive conclusion as to whether the action is ethical or unethical. It is possible to construct conditions that would make the action unethical. Suppose, for example, that forming the CV caused the GP to violate a preexisting commitment to offer LPs co-investment opportunities in legacy fund assets if more capital is needed. But it is also possible to imagine scenarios showing no violation of ethical standards. Suppose, for example, that the GP formed the flagship fund first and only afterward decided to establish the CV and to make a flagship fund investment in that CV. In this case, one cannot fault the GP for failing to disclose its intention either (1) to form a CV or (2) to make a flagship fund investment in that CV before deciding on each of those actions; you cannot disclose your plans before you make them.

III. INTENTIONAL MISCONDUCT

We now turn from conflicts and process to conduct. The following examples illustrate actions that go beyond structural conflicts or procedural deficiencies and instead constitute intentional misconduct.

These actions, if committed, would be unambiguously unethical. Our purpose is not to disparage continuation funds but to raise awareness to enable investment professionals and their firms to act ethically and avoid lapses. Unethical practices fall into three main categories:

- Actions to capture profits that rightfully belong to a legacy fund and its LPs
- Actions to squeeze out legacy LPs
- False, misleading, or discriminatory disclosures and nondisclosures

These categories can overlap, with a single scheme involving more than one category. **Exhibit 3** translates these categories into a set of red flags that may signal potential misconduct in continuation fund transactions.

Exhibit 3. Red Flags Indicative of Potential Misconduct in Continuation Fund Transactions (Condensed)

Category	Red Flag	Why It Matters
Inadequate investment basis	Stated rationale inconsistent with key characteristics of the transaction	Suggests potential hidden motives
Value capture	CV launched despite credible third-party exit opportunities	Possible suppression of value to capture future upside
	CV initiated ahead of a foreseeable liquidity event (e.g., IPO or sale) without disclosure	Potential timing manipulation
	Transaction price appears low relative to a reasonable valuation range	Possible underpricing to benefit GP/CV investors
LP squeeze-out risk	Compressed timelines for LPAC approval or LP buy-or-roll decisions	Undermines informed decision-making
	Late, incomplete, or unclear disclosure of key terms or risks	Undermines informed decision-making
	No true status quo option for rolling LPs	Forces legacy LPs to choose between exit or acceptance of potentially adverse terms
	Process complexity disproportionately disadvantages certain LPs	May indirectly pressure LPs to exit

(continued)

Exhibit 3. Red Flags Indicative of Potential Misconduct in Continuation Fund Transactions (Condensed) (*Continued*)

Category	Red Flag	Why It Matters
Disclosure concerns	Selective disclosure to certain investors	Unequal access to material information
	Conflicting messaging to buyers and sellers	Suggests information manipulation
	Limited or uneven access to data room or underlying information	Hampers independent evaluation and informed choices
LPAC governance and effectiveness	GP engages with individual LPAC members rather than the advisory body as a whole	Heightens risks of inconsistent disclosures and impaired LPAC decision-making
	GP resists or denies request from LPAC member(s) for LPAC *in-camera* session	May limit candid LPAC discussions needed for independent evaluation
Valuation concerns	Inconsistent valuation methodologies across audiences	Indicates possible bias in pricing
	Selective or biased use of comparables or assumptions	Suggests manipulation of inputs
	Incomplete information given to providers of valuation or fairness opinions	Undermines the accuracy of fairness or valuation opinions

Note: The presence of one or more red flags does not establish misconduct but should prompt closer scrutiny of pricing, process, and disclosures.

Violations of CFA Institute Standards

The misdeeds described in this section would violate one or more of the following requirements from the CFA Institute Code of Ethics and Standards of Professional Conduct:[21]

- Members and Candidates must . . . place the integrity of the investment profession and the interests of clients above their own personal interests.
- **Misrepresentation.** Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.
- **Misconduct.** Members and Candidates must not engage in any professional conduct involving dishonesty, fraud, or deceit or commit any act that reflects adversely on their professional reputation, integrity, or competence.

[21]Visit www.cfainstitute.org/standards/professionals/code-ethics-standards.

- **Loyalty, Prudence, and Care.** Members and Candidates have a duty of loyalty to their clients. . . . Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests.
- **Fair Dealing.** Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.
- **Avoid or Disclose Conflicts.** Members and Candidates must avoid or make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity and interfere with respective duties to their clients, prospective clients, and employer.

The CFA Institute Asset Manager Code outlines the ethical and professional responsibilities of organizations that manage assets on behalf of clients.[22] It is global and applies to organizations, not individuals. More than 1,000 organizations voluntarily claim compliance with the CFA Institute Asset Manager Code. Among other things, it requires managers to do the following:

- Place client interests before their own.
- Have a reasonable and adequate basis for investment decisions.
- Ensure that disclosures are truthful, accurate, complete, and understandable and are presented in a format that communicates the information effectively.
- Disclose . . . conflicts of interests generated by any relationships with brokers or other entities, other client accounts, fee structures, or other matters.

Hidden Motive: To Capture Profits That Belong to the Legacy Fund

While the circumstances vary, the following hypothetical scenarios revolve around a common theme: The GP attempts to capture profits that rightfully belong to the legacy fund and its investors. Such schemes are unambiguously unethical and include the following:

- *Failing to pursue a sale:* The GP has received credible expressions of interest from potential buyers to acquire a portfolio company in a primary fund. Before pursuing the leads in earnest, however, the GP hastily sets about

[22]Visit https://rpc.cfainstitute.org/codes-and-standards/asset-manager-code.

forming a single-asset CV. The GP's aim is to transfer the asset into the CV and to plow more of its own equity into the CV, anticipating the profits to come from a future M&A sale of the asset. In forming the CV, the GP keeps the expressions of interest secret. As with most CVs, a supermajority of legacy LPs chooses to cash out. In effect, the GP has squeezed out the legacy investors for its own benefit.

- *Delaying an IPO:* Alternatively, suppose that the GP has developed a concrete internal plan to pursue an IPO for one of the fund's assets in the next 12 months. Market conditions seem ripe, yet the GP holds off implementing the IPO plan. First it establishes a CV to hold the asset. The GP keeps its IPO plan secret, most legacy LPs cash out, and the GP doubles down on its equity exposure to the CV. Only then does the GP pursue the IPO it had planned all along.
- *Accepting a below-market transaction price:* The GP fails to pursue a fair price for the CV transaction and instead acquiesces in a below-market transaction price (i.e., a price lower than the reasonable valuation range). Although the GP recognizes that the assets are worth materially more, it acts out of perceived self-interest in buying low to earn even greater future profits through the CV.

Actions to Squeeze Out Legacy LPs

Merely forming the CV can be expected to change the investor base, with most legacy LPs typically opting to cash out rather than roll their interests into the new CV (as noted earlier). This is the natural process, but an unethical GP could help it along with the following misdeeds:

- Making late disclosures to the LPAC and unfairly compressing the time frame for it to determine whether to grant a conflict-of-interest waiver allowing the GP to proceed with the CV
- Making late disclosures to LPs and imposing an unfairly tight deadline to make their sell-or-roll decisions: These procedures often include conducting due diligence on the CV investment as if it were a completely new investment and then securing investment approval from an investment committee or other authority. Faced with an unduly tight deadline, some LPs have no choice but to cash out instead.
- Imposing adverse economic terms on rolling LPs rather than offering the status quo option. This would likely encourage LPs to cash out.
- Presenting false or misleading information or omitting material information to steer LPs toward a decision to cash out. We take up false and misleading disclosures in the next section.

There have been instances where the GP has compressed the deadline to a mere 10 days (ILPA 2023, p. 3). ILPA (2023, p. 4) recommends a minimum of 30 calendar days or 20 business days, but even that can be too tight a time frame for those LPs who need more time to complete the procedures required to make a decision. Therefore, we recommend a two-pronged approach: a quantitative deadline of no less than 30 calendar days and a nonprescriptive, principle-based standard that LPs be given adequate time to make informed decisions. The decision deadline should comply with both elements of this approach. In some cases, that could require a time frame of more than 20 business days.

Why would a GP have an interest in squeezing out LPs and displacing its investor base with respect to the CV?[23] Several of the financial incentives outlined previously could provide a motive. The selling LPs provide a pool of interests that the GP may wish to acquire for itself or make available to preferred investors.

All these unethical schemes highlight the importance of full and fair disclosures, a theme we take up next.

Disclosures

Two disclosure-related examples of intentional misconduct are hiding material information and providing discriminatory or selective disclosures.

Hiding Material Information

As the previous examples illustrate, hiding information is often fundamental to unethical schemes. For example, the GP must hide its deliberate failure to pursue an exit sale or an IPO if it expects to secure LPAC approval to form a CV.

Our research turned up a real-life example in which a relatively small institutional investor strongly suspected that it had been the victim of just such a scenario: It cashed out in a CV transaction, only to see the CV sell its asset for a handsome profit the following year. But our research also uncovered reasons to exercise caution before jumping to conclusions. One experienced practitioner insisted to us that GPs have no crystal ball and in certain instances have been as surprised as anyone at the sudden appearance of a buyer within a year of forming a CV.

Discriminatory or Selective Disclosures

Just as it would be unethical to omit material information in disclosures to legacy fund or CV investors, so too would it be unethical to provide such information on a selective or discriminatory basis. That is, it would be unethical for the GP to disclose material information solely to preferred investors, whether incoming or legacy LPs, while keeping that information from the other investors. LPs need full access to the data room for the CV to make their sell-or-roll decisions.

[23]The selling LPs remain invested in the legacy fund.

LPAC Governance and Engagement

It would be improper for the GP to insist on negotiating with each LPAC member individually in lieu of meeting with the LPAC as a whole when requesting a conflict-of-interest waiver for the CV. Such a practice could give rise to perceptions of a "divide-and-conquer" strategy to win LPAC approval of the CV. Limiting engagement to one-on-one meetings also raises the risk that LPAC members might receive different and perhaps contradictory disclosures. We recommend that GPs engage with the LPAC as a whole and present the same information to all LPAC members.

One or more members of the LPAC may request that the group be allowed to meet *in camera* to discuss the proposed CV. ILPA recommends that LPs ask whether "an *in camera* session was requested/offered to LPAC members and if the LPAC held an *in camera* session" (ILPA 2026, p. 2; italics in the original). As a best practice, we recommend that GPs honor all reasonable requests from LPAC members to meet *in camera* to facilitate candid conversation and independent decision-making.

Contradictory Information

It would be unethical for a GP to provide contradictory information to various parties to the same CV transaction. For example, it would be unethical to present contrary valuations of the same asset to incoming investors and legacy LPs. (We discuss manipulating data for valuations next.) Similarly, it would be unethical to present detailed plans for a near-term IPO in upbeat presentations to potential lead investors while omitting that information and downplaying IPO prospects in presentations to legacy investors.

That said, some differences in tone may be inevitable in communications to incoming and legacy LPs. Indeed, legacy investors might well suspect the GP of failing to do its job if it did not talk up the CV assets to potential incoming investors.

Manipulating Data to Skew Valuations

The success of the CV transaction will likely be judged according to the valuation of portfolio assets and projections of future profits. But it would be unethical for the GP to engage in the following:

- Manipulating valuations to skew them upward or downward depending on the presentation—upward for presentations to potential CV investors and downward for presentations to the LPAC and legacy investors. Specifically, it would be unethical for the GP to manipulate the selection of companies for inclusion in a comparison peer group—choosing an inappropriately larger, more profitable company to obtain a higher valuation, while including an inappropriately smaller, less profitable company for a lower valuation.

- Presenting misleading information to or withholding material information from independent third-party experts commissioned to produce a fairness opinion or valuation opinion. Suppose, for example, that the CV buyers are allowed to delay payment until a year or 18 months after the closing of the CV transaction. The GP withholds that fact from the valuation provider, and as a result, the provider produces an inflated range of valuations. Rather than disclosing that the valuations are inaccurate, however, the GP touts them as a vindication of the CV transaction price.

Prevalence

How prevalent or rare are the unethical actions described in this section? It is difficult to say, in large part because any disputes between LPs and their GP are typically settled in confidential arbitration rather than in the public spotlight of court litigation. (Furthermore, a disgruntled LP could choose to cease any further investments with the GP as an alternative to litigation.) In a rare case that emerged into public view, however, one of the world's largest sovereign wealth funds filed suit in December 2025 to delay formation of a private equity CV. The suit alleged a variety of the types of misdeeds discussed in this section.[24]

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[24]Specifically, the Abu Dhabi Investment Council (ADIC) filed suit in the Delaware Court of Chancery against the US private equity fund Energy & Minerals Group (EMG), its general partner, and its affiliates. The fund was founded in 2014. The fund agreement required confidential arbitration to settle disputes, but ADIC asked the court for injunctive relief barring the defendants from moving forward with the CV transaction to allow time to complete the arbitration complaint it also had submitted. Soon after, EMG agreed to delay the CV transaction to allow time for independent arbitration.

Among other things, the suit alleged the following:

- *Compressed time frame:* The GP undertook "an inexplicably rushed campaign to push through a sale" to the CV.
- *Worse terms for legacy LPs:* The CV gave "all limited partners the Hobson's choice between accepting the grossly unfair cash price or rolling over into the continuation vehicle under materially worse terms than the status quo."
- *Disclosure failures:* The GP "was deliberately using information asymmetry and misinformation to obtain Advisory Board approval." The GP presented different assessments to the Advisory Board members and prospective CV investors.
    - *Divide-and-conquer strategy toward the LPAC:* "EMG then pivoted to a divide-and-conquer strategy, having one-off communications and sharing different information with different individual Advisory Board members to try to convince (or coerce) them to support the CV Transaction."
    - *Failure to pursue alternatives:* The suit alleged a "failure to meaningfully explore alternative liquidity options," despite internal IPO plans and recent discussions about a sale to a third party.
    - *Attempt to squeeze out legacy LPs:* The failure to pursue exit possibilities suggests that the GP "and other major investors are seeking to squeeze out other investors in Ascent [the asset] before expropriating an IPO or merger opportunity for primarily their own benefit" (Abu Dhabi Inv. Council Co. et al. v. Energy & Minerals Grp. LP et al., No. 2025-1389-NAC [Del. Ch. Dec. 3, 2025] [verified complaint for preliminary injunction in aid of arbitration], www.documentcloud.org/documents/26341087-adic-vs-emg/).

See also Gara (2025); Benitez et al. (2025); Davis Polk (2025); Deal Lawyers (2026).

IV. BEST PRACTICES FOR MANAGING CONFLICTS AND ENSURING A FAIR PROCESS

Given the potential for both procedural failures and intentional misconduct, this section outlines best practices designed to ensure that conflicts of interest are managed in a fair and ethical manner. These procedural safeguards are especially important in transactions where the GP sits on both sides, because they serve as functional substitutes for arm's-length bargaining in contexts with the potential for self-dealing.

The best practices in **Exhibit 4** are designed to address the risks highlighted in Exhibit 3 and to support a fair and well-functioning process in continuation fund transactions.

These proposed best practices are intended to add to a rich ecosystem of principles and standards of conduct. As described next, this ecosystem includes industry best practices specifically designed for CVs, more general industry standards and codes of conduct, and broader principles that underpin legal and regulatory requirements.

CV-Specific Best Practices

Price Discovery Through Competitive Bidding

The GP's strong financial interests, combined with its position on both sides of the CV transaction, make objective price discovery challenging. That challenge is best addressed through a rigorous and competitive bidding process. The GP should engage in a vigorous and diligent effort to solicit multiple bids; select the winning bid on the basis of sound economic reasons that serve the interests of legacy LPs; and engage in rigorous negotiations with the winning bidder, who will become the lead investor in the CV. These efforts, together with the presence of a third-party lead investor, help establish the fairness of the transaction price (and reassure the legacy LPs regarding the fairness of both price and process).

Independent Valuation and Enhanced Transparency

GPS should consider obtaining a fairness or valuation opinion from an independent provider. If a GP chooses not to obtain a fairness or valuation opinion, it should explain the decision to the LPAC and the legacy fund LPs.

An independent fairness or valuation opinion serves several purposes:

- It provides an independent expert assessment of the CV transaction price.
- It provides a strong governance instrument in a price determination process that is critical for investors yet is subject to conflicts of interest.

- It simulates a market price in the absence of an observable market price.
- A favorable opinion can bolster the credibility of the transaction price and the GP.

If a provider is engaged, due diligence in the selection process is critical. The GP should ensure that the provider is fully independent, expertly qualified, and given all material information on a timely basis. The provider should possess recognized expertise in valuing private market assets and be demonstrably

Exhibit 4. Best Practices for a Fair and Ethical Continuation Fund Process

Best Practice	Key Risk or Conflict Addressed	Why It Matters
Use competitive bidding to set CV transaction price.	Underpricing of CV transaction shortchanges selling LPs. Overpricing presents adverse selection risk to incoming LPs.	In lieu of truly market-based price discovery, competitive bidding with third-party investors helps establish the credibility of the transaction price.
Provide full, fair, and timely disclosures.	Disclosure concerns, including selective disclosure, incomplete information, or contradictory messaging	Enables LPAC members and LPs to make informed decisions and reduces the risk of misleading or uneven disclosures
Offer a true status quo option.	LP squeeze-out risk: risk of forcing legacy LPs to choose between selling or accepting potentially adverse terms	Allows legacy LPs to maintain their investment on existing terms, avoiding coercive trade-offs or redistribution of value
Allow adequate time for LPAC approval and LP decisions.	LP squeeze-out risk; compressed timelines for LPAC approval or LP buy-or-roll decisions	Sufficient time supports due diligence, independent evaluation, and informed choices.
Ensure robust governance and LPAC oversight.	LPAC governance and process risks, including fragmented engagement or limitations on independent discussion	Engaging with the LPAC as a whole and supporting independent discussion promotes consistent information sharing and effective oversight.
Ensure consistent and equitable access to information.	Disclosure concerns, including unequal access to data room or underlying information	Avoids discriminatory or conflicting disclosures and supports fair treatment for all investors
Apply consistent and transparent valuation practices.	Valuation concerns, including inconsistent methodologies and biased use of comparables and assumptions	Reduces risk of distorted pricing and strengthens credibility of CV transaction price
Provide complete and accurate information to providers of valuation or fairness opinions.	Incomplete information undermines independence and accuracy of fairness or valuation opinions.	Ensures independence and accuracy of fairness or valuation opinions
Adhere to fiduciary and professional standards.	Risk of intentional misconduct, including misleading disclosures and manipulation of valuations	Upholding duties of loyalty, care, and fair dealing supports ethical conduct and protects investor interests.

independent of the GP and affiliated funds. The provider's work should be subject to clear professional standards and, where applicable, accountability under governing law or professional regulation.

The GP should disclose to the LPAC and legacy LPs a meaningful summary of the valuation process if a valuation is obtained. The summary should include the approaches applied, key assumptions, material sensitivities, and the basis for the adviser's conclusion. Such transparency enables investors to understand and evaluate the reasoning underlying the transaction price and reinforces confidence in the integrity of the process.

Disclosures to and Approval from the LPAC

The terms of most legacy funds require the GP to obtain a conflict-of-interest waiver from the limited partner advisory committee as a prerequisite to forming the CV.[25] In some cases, the GP also must obtain approval from the entire LP base (Dische et al. 2022).

To obtain the LPAC's approval, the GP must disclose key elements of the deal. Best practices call for full, fair, and timely disclosures, including the number of bids received, the spread of bid prices, and the final price agreed upon with the lead investor. Timing also matters. The GP should give the LPAC sufficient time to review and evaluate the information before voting whether to approve a waiver.

Much is riding on the LPAC waiver, which typically comes near the end of the process to form a CV. By then, the GP already has concluded negotiations with the lead investor and can present the transaction price. Without LPAC approval, all the GP's work to establish the continuation fund will be for naught. This gives the GP a strong incentive to conduct a competitive bidding process in a fair manner and to demonstrate the fairness of the process through robust disclosures to the LPAC.

That said, the LPAC approval process is not perfect. As noted in Section I: Structural Conflicts, LPAC members may have competing interests because they sit on both sides of the CV transaction. In such cases, we recommend that LPAC members abstain from voting on whether to approve or grant a conflict-of-interest waiver for the CV transaction.

Status Quo Option

The status quo option allows legacy LPs to roll their interests into the CV on the same economic terms they enjoy in the legacy fund. Specifically, the total amount of management fees, the rate of carried interest, and the preferred hurdle rate all stay the same for rolling LPs. Furthermore, the GP generally

[25]The LPAC is an advisory board to a private fund consisting of select LPs, typically large and sophisticated investors. For more on the LPAC process, see Deane and Robinson (2025, pp. 24–25).

should not crystallize its carry on the portion of the CV transaction attributable to the rolling LPs. The status quo option applies only to the rolling LPs; new LPs may come into the CV on different economic terms.

Both CFA Institute and ILPA call for the status quo option as a best practice in all CVs (Deane and Robinson 2025, p. 23; ILPA 2023, p. 11). Without the status quo option, legacy LPs will face a Hobson's choice of either cashing out—thus relinquishing an investment interest they may wish to continue—or accepting inferior economic terms merely to maintain their investment.

To require rolling LPs to accept materially adverse terms would be a violation of the CFA Institute Code of Ethics and Standards of Professional Conduct. Specifically, we would regard it as a violation of the GP's duty of loyalty to its LPs.

Laws and Regulations

An established framework of laws and regulations provides the context for the best practices described above.

Fiduciary Duty

Under the laws and regulations in many jurisdictions, the GP owes a fiduciary duty, including obligations of care and loyalty, to the legacy fund and its LPs.[26] Similarly, the CFA Institute Asset Manager Code requires loyalty to clients, and the CFA Institute Standards of Professional Conduct require three key elements of fiduciary duty: loyalty, prudence, and care. Principles-based rather than prescriptive, the standard of fiduciary duty is sufficiently flexible to cover actions in connection with the formation of a CV.[27]

Violations of fiduciary duty are subject to enforcement action by regulators and potential civil litigation by aggrieved LPs. The latter include many institutional investors that are sophisticated, well resourced, and amply motivated to defend their interests.

Yet fiduciary duty cannot be reduced to a compliance obligation. Many investment professionals and their firms have internalized a sense of the duty of care and loyalty to their clients. These professionals want to do the right thing, and fiduciary duty offers them a set of overarching principles to guide their conduct.

[26]In the United States, GPs are generally registered investment advisers (RIAs) to the private funds they manage. For more on the fiduciary duty of RIAs, see SEC (2019).

[27]In securities regulation, principle-based standards establish broad disclosure or conduct objectives and rely on the judgment of the responsible party—such as a corporate manager, a board of directors, or an investment adviser—to apply those objectives to specific circumstances. Prescriptive standards, in contrast, impose specific, detailed requirements or line-item rules (Hinman 2019).

Anti-Fraud Statutes

A second crucial legal constraint consists of the anti-fraud provisions of the securities laws and regulations in many jurisdictions. These laws generally make it illegal to engage in fraud in connection with the purchase and sale of any security, whether public or private.[28] The anti-fraud provisions generally prohibit materially misleading statements or omissions of fact.

Marketing Rules Applicable to Investment Advisers

In the United States, the SEC adopted specific rules in 2020 to regulate investment advisers' marketing communications. These rules prohibit advertising practices that would be untrue, misleading, unsubstantiated, or unfair and unbalanced.[29] Similar rules apply in other jurisdictions, such as the requirements for clear, fair, and not misleading marketing and client communications enshrined in the European Union's Markets in Financial Instruments Directive (MiFID) and the UK Financial Conduct Authority Handbook Principles for Businesses (PRIN 2.1).

The Principle of "Entire Fairness"

A seminal 1983 Delaware Supreme Court case established fairness principles that bear striking relevance to continuation funds, even though the court case involved a merger and predated continuation funds by decades.

The key issues in the court case included the following:

- Certain conflicted directors sat on both sides of the transaction.
- There was no attempt to structure the transaction on an arm's-length basis.
- The purchase price was challenged as inadequate.
- Highly material information was not disclosed to the target company's board and shareholders.
- The fairness opinion was rushed and flawed.

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[28]SEC Rule 10b-5 under Section 10(b) of the Securities Exchange Act of 1934 states that "it shall be unlawful for any person . . . (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact, . . . or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security" (see the Legal Information Institute's Rule 10b-5 webpage: www.law.cornell.edu/wex/rule_10b-5#:~:text=Rule%20 10b%2D5%20is%20a%20Securities%20and%20Exchange,to%20omit%20to%20state%20a%20material%20fact).

[29]The Market Rule (Advisers Act Rule 206[4]-1) prohibits the following:

- Untrue statements or omissions of material fact
- Unsubstantiated material facts for which the adviser lacks a reasonable basis for belief
- Information likely to cause untrue or misleading implications about a material fact
- Discussion of potential benefits without fair and balanced treatment of associated risks
- Reference to specific investment advice in a way that is not fair and balanced
- Performance results or time periods that are not fair and balanced
- Any other materially misleading information

The court decision became a seminal ruling because it established the principle of “entire fairness,” which the court defined as including having two basic aspects: fair dealing and fair price. Fair price relates to the economic and financial considerations of the proposed merger. Fair dealing includes such considerations as

- the timing of the transaction,
- how the deal was initiated, structured, and negotiated,
- how it was disclosed to the directors, and
- how the approvals of the directors and the stockholders were obtained.

For more information, see Appendix 1.

Industry Codes, Standards, and Principles

CFA Institute is one of several industry and professional associations that have articulated codes, standards, and principles relevant to the formation of CVs. As noted previously, these include the CFA Institute Code of Ethics and Standards of Professional Conduct and the CFA Institute Asset Manager Code.[30]

ILPA has published principles for LPs and GPs (ILPA 2023), including the call for a status quo option, which it followed up with a disclosure template (ILPA 2026). The disclosure template is intended to “summarize and standardize the high-level information . . . LPs typically receive during continuation fund transaction processes” (ILPA 2026, p. 1). It consists of a series of questions for LPs to ask GPs in four categories: Asset(s) Information, Transaction Process, Continuation Fund Return Profile, and Terms of the Continuation Fund. Truthful responses to these questions would expose most or all of the unethical actions described in Section III: Intentional Misconduct.

The Standards Board for Alternative Investments (SBAI) is a global standard-setting body for the alternative investment industry. Managers become signatories to the Alternative Investment Standards, displaying a public commitment to transparency and disclosure to their investors. The SBAI standards are particularly relevant in the context of conflicts of interest arising in continuation funds and other GP-led transactions. Compliance is on a comply-or-explain basis.

SBAI updated the Alternative Investment Standards in April 2026 to strengthen expectations on governance, independence, and transparency in valuation processes (SBAI 2026). A central feature of the new standards is to require managers to commission an independent valuation or fairness opinion in manager-led secondaries, crossed investments, or related-party transactions.

[30] CFA Institute also has developed the Ethical Decision-Making Framework, a tool for analyzing and evaluating ethical scenarios in the investment profession. For more information, visit https://interactive.cfainstitute.org/Global/FileLib/CPM/Ethical_Decision-Making_Framework.pdf.

The accompanying guidance supports implementation of and compliance with the standards and provides managers with practical advice. The guidance accompanying the independent valuation requirement for GP-led secondary and continuation fund transactions covers several of the key considerations related to investor access to information, service provider access, and engagement and governance protocols for review and approval. Managers also must ensure that valuation processes, decisions, and outcomes are free from actual or perceived conflicts of interest. The standards require robust disclosure of conflicts of interest, including how such conflicts are identified, managed, and communicated to investors. The framework also emphasizes segregation of duties, particularly where managers retain influence over valuation outcomes, and requires clear disclosure where independent valuations are overridden or adjusted.

CONCLUSION

Continuation funds have become an increasingly important part of private markets, as the following trends show:

- Continuation funds represent an estimated 20% of all exits in the private equity market, according to industry and media sources (Heal and Gara 2025b).
- Nearly 80% of the top 100 sponsors based on AUM had conducted a CV by 2025 (Jefferies 2026, p. 4).
- GP-led secondary volume reached a record level of USD115 billion in 2025, a 53% increase from the previous year. CVs accounted for most (89%) of the GP-led secondary volume (Jefferies 2026, p. 4).

The need for liquidity is a primary driver of that growth. In lieu of traditional exits, the continuation fund transaction provides selling LPs with much-needed liquidity. The need for liquidity is reflected in record-low distribution levels and a record-high exit overhang in global private equity buyout firms. According to Bain Capital, distributions as a percentage of net asset value have been less than 15% for four years. Bain estimates that as of the end of 2025, global buyout funds held about 32,000 unsold companies representing USD3.8 trillion in unrealized value. With an exit overhang of that size, continuation funds can only be expected to grow (Bain & Company 2026, p. 5).

Yet continuation funds remain controversial because their structure gives rise to conflicts of interest and ethical issues. Some LPs have become more outspoken in voicing their concerns about conflicts of interest, not only on the part of GPs but also of certain LPs who are LPAC members. *Financial Times* articles have reported on those concerns under such headlines as "Private Equity Backers Raise New Conflict Concerns over Sweetheart Deals" (Heal 2026a; see also Heal 2026b).

This report has sought to elucidate the conflicts and ethical considerations. The report provides LPs and GPs with best practices, red flags to look for, and other material to assist in managing those conflicts while charting a course that complies with ethical standards.

The conflicts of interest and ethical issues are also relevant to regulators, especially as they consider expanding retail access to private markets. Quite simply, if continuation funds present daunting challenges to large and sophisticated institutional investors, how will retail investors fare in private markets? Regulators seeking to expand retail access face the challenge of designing guardrails to protect retail investors. Continuation funds offer lessons that can inform regulators' efforts to meet that challenge.

In conclusion, we reiterate four elements of a fair process to manage conflicts when establishing a continuation fund:

- *Fair price:* The CV transaction price is a litmus test for a fair process, and it is here that major conflicts of interest can emerge. The GP sits on both sides of the same transaction yet leads the price discovery process and negotiates economic terms with the lead investor and other investors. The GP has strong financial incentives at stake in the transaction. Those incentives are often aligned with those of the legacy fund and its investors, but there is potential for the incentives to become misaligned.

  The incentive to obtain the highest price possible fully aligns with the interests of the legacy fund and its LPs and reinforces the GP's obligations to them. In certain situations, however, it is possible for the GP to perceive a financial incentive to accept a lower transaction price than it could obtain. This situation could occur, for instance, if the GP has no real hope of earning a carry in the legacy fund and seeks instead to start the CV from a low base with more potential for future profit. That would represent a major conflict of interest with the legacy fund and its LPs, and it is especially important to the legacy fund investor base because the overwhelming majority of them typically sell their interests in the CV transaction.

- *Fair terms:* Offering rolling LPs the status quo option is the best way to ensure that the CV treats legacy investors fairly and ethically. Presenting legacy LPs with a Hobson's choice, in which they are forced to accept adverse terms in order to transfer their interests into the CV, is neither fair nor ethical. Nor would it be ethical to deny the legacy fund LPAC and its investors honest, complete, and timely information on the deal.
- *Fair process:* A fair process requires a dedicated and diligent price discovery process, which includes solicitation of competitive bids, appropriate selection of the winning bidder (who will become the lead investor in the CV), and negotiations with the lead investor to agree on final terms governing the CV. The process also depends on full, complete, and timely disclosures to the legacy fund LPAC and LPs.
- *Complete, accurate, and timely disclosures:* To conform to ethical standards, disclosures must satisfy at least three requirements. First, the content should be complete, accurate, and honest in all material respects. Second, the presentation should deliver key information prominently and in language that communicates information effectively rather than obscuring it. Third, the timing of disclosures and the deadline for decisions of the LPAC and LP base—approving a conflict-of-interest waiver and making the sell-or-roll decision, respectively—should allow for adequate time to make informed decisions, including providing sufficient time for LPs to conduct due diligence and other internal decision-making processes necessary for any investment decision. Unethical schemes, in contrast, generally rely on hidden motives, misleading statements, and omission of material information.

> The CFA Institute Code of Ethics and Standards of Professional Conduct emphasizes the need for clear and complete disclosures of conflicts of interest. The CFA Institute *Standards of Practice Handbook* elaborates with the following guidance: "Best practice is to avoid actual conflicts of interest and the appearance of them. When it is not reasonable for members and candidates to avoid a conflict, clear and complete disclosure of the conflict is necessary (CFA Institute 2024, p. 157)."

The objective of these practices is to ensure that continuation fund transactions are Pareto improving—that they enhance outcomes for at least some investors while avoiding harm to the others. That goal should serve as a guidepost for GPs seeking to comply with the fiduciary duties of loyalty and care and with ethical standards.

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Some of the individuals we spoke with gave permission to list them by name, while others wished to preserve their anonymity. Please see Deane and Robinson (2025) for a list of those we can acknowledge by name. In addition, we thank the following:

- The CFA Institute Capital Markets Policy Council (CMPC), a global group of experts who advise CFA Institute on current and emerging policy issues in global capital markets.[31] At a meeting in London in October 2025, the CMPC devoted a session to retail access to private markets (see Deane and Chan 2026). Though that was tangential to the specific issue of continuation funds, it nonetheless helped inform our views on private markets.
- Jennifer Stevens, Cofounder, and Jason Puchmeyer, Vice President of Partner Engagement, Alliance Global Advisors

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- Conrad Yan, CFA, Select GP Advisor and Chair, CMPC

[31] www.cfainstitute.org/about/governance/committees/capital-markets-policy-council.

APPENDIX 1. CONCEPTUAL AND ACADEMIC FOUNDATIONS

This report is written primarily for practitioners and is intended to present a clear and practical framework for analyzing conflicts of interest and ethical issues in continuation funds. To preserve readability, references to academic literature are kept to a minimum in the main text. This appendix situates the report's framework within relevant strands of economic, legal, and ethical scholarship.

Agency Theory and Structural Conflicts

The report's treatment of structural conflicts of interest is grounded in the economics of agency relationships, which emphasizes that incentive misalignments are a natural feature of delegated investment management. In this framework, agents may have incentives that diverge from those of principals, giving rise to agency costs and conflicts of interest.

Key reference:

- Jensen, M. C., and W. H. Meckling. 1976. "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure." *Journal of Financial Economics* 3 (4): 305–60.

While this literature does not distinguish among structural conflicts, procedural failures, and misconduct in the terms used in this report, it provides the underlying economic rationale for why such conflicts arise.

Self-Dealing and Controlled Transactions

Continuation funds present a setting in which a single actor—the GP—can influence both sides of a transaction. This raises concerns analogous to those studied in the literature on self-dealing, tunneling, and controlled transactions, in which insiders may transfer value across affiliated parties through pricing, timing, or disclosure.

Key references:

- Johnson, S., R. La Porta, F. Lopez-de-Silanes, and A. Shleifer. 2000. "Tunneling." *American Economic Review Papers & Proceedings* 90 (2): 22–27.
- Djankov, S., R. La Porta, F. Lopez-de-Silanes, and A. Shleifer. 2008. "The Law and Economics of Self-Dealing." *Journal of Financial Economics* 88 (3): 430–65.

These works analyze mechanisms through which controlling parties may extract value at the expense of minority investors and highlight the importance of disclosure, approval, and governance mechanisms in mitigating such risks.

Fairness, Process, and Fiduciary Duty

The report emphasizes that the ethical evaluation of conflicts depends critically on process. This perspective aligns with both legal and philosophical treatments of fairness in settings where conflicts of interest are unavoidable.

In US corporate law, conflicted transactions are evaluated under the standard of "entire fairness," which requires both fair pricing and fair process. A leading articulation of this standard appears in *Weinberger v. UOP, Inc.*, which emphasizes the importance of procedural safeguards—including disclosure, negotiation, and independent review—in transactions involving potential self-dealing.

The Supreme Court of Delaware issued its opinion in *Weinberger v. UOP, Inc.* on 1 February 1983. The case involved an appeal of a class action lawsuit challenging a merger between the Signal Companies, Inc., a diversified company, and UOP, a diversified industrial company formerly known as Universal Oil Products Co. Signal was the majority owner of UOP, and the all-cash merger enabled it to acquire the remaining outstanding stock, eliminating the minority shareholders.

Certain directors sat on the boards of both companies, and the court found that no attempt was made to establish an arm's-length negotiating process.[32] The court emphasized the significance of the conflicts of interest:

> When directors of a Delaware corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and the most scrupulous inherent fairness of the bargain. The requirement of fairness is unflinching in its demand that where one stands on both sides of a transaction, he has the burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the courts.

A fairness opinion for the merger was obtained, and the merger was approved by both company boards. The court found, however, that material information was not disclosed and the process failed to measure up to the principles of fair dealing.

The decision became a seminal ruling because it established the principle of "entire fairness." Entire fairness comprises two elements—fair dealing and fair price—which the court defined as follows:

> The concept of fairness has two basic aspects: fair dealing and fair price. The former embraces questions of when the

[32] "Although perfection is not possible or expected, the result here could have been entirely different if UOP had appointed an independent negotiating committee of its outside directors to deal with Signal at arm's length," the court stated in its ruling.

> transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained. The latter aspect of fairness relates to the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock. . . . All aspects of the issue must be examined as a whole since the question is one of entire fairness.

This legal perspective complements the economic concept of Pareto efficiency discussed in the report. Where it is not possible to ensure that all parties are made no worse off, fairness must be assessed through the integrity of the process and the reasonableness of the outcome.

In philosophy, theories of procedural justice similarly emphasize that fair outcomes depend on the fairness of the decision-making process, including informed consent and meaningful choice.

Conceptual references:

- *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983).
- Rawls, J. 1971. *A Theory of Justice*. Harvard University Press.

These perspectives support the report's emphasis on disclosure, governance, and the availability of a status quo option as key elements of a fair process.

Rawls (1971) is a classic work, though dense and not for the faint of heart. (Your local library may be more likely to have books explaining Rawls rather than the original work itself.) Nonetheless, Rawls's explanation of pure procedural justice and comparison with perfect and imperfect procedural justice seem strikingly relevant in the context of the fairness of the CV process and transaction price. As Rawls (1971, p. 75) explains, "[P]ure procedural justice obtains when there is no independent criterion for the right result: Instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed."

Welfare Analysis and Heterogeneous Investors

The discussion of LP heterogeneity can be framed in terms of welfare economics. A continuation fund transaction may be considered Pareto improving if it allows some investors to benefit (e.g., by obtaining liquidity) without making others worse off. In practice, this requires that investors who remain in the fund are not disadvantaged relative to their prior position.

Where this condition is not satisfied, the transaction may be redistributive, benefiting some investors at the expense of others. In such cases, the ethical assessment of the transaction depends not only on outcomes but also on whether the process was fair and consistent with fiduciary obligations.

Conceptual reference:

- Bolton, P., and M. Dewatripont. 2005. *Contract Theory*. MIT Press.

Fraud, Disclosure, and Misconduct

The report's taxonomy of unethical actions—including concealment, misleading disclosures, and manipulation of valuations—is consistent with patterns identified in the empirical literature on corporate fraud. This literature documents how insiders may exploit informational advantages and control over processes to mislead investors or extract value.

Relevant references:

- Karpoff, J. M., D. S. Lee, and G. S. Martin. 2008. "The Consequences to Managers for Financial Misrepresentation." *Journal of Financial Economics* 88 (2): 193–215.
- Dyck, A., A. Morse, and L. Zingales. 2010. "Who Blows the Whistle on Corporate Fraud?" *Journal of Finance* 65 (6): 2213–53.

These works focus primarily on the detection and consequences of fraud rather than on the specific mechanisms examined in this report, but they provide broader empirical context for the types of misconduct described.

Gatekeepers and Professional Responsibility

The report's discussion of disclosures, governance, and professional conduct is also consistent with the literature on gatekeepers and reputational intermediaries, which examines how professionals and institutions can mitigate—or fail to mitigate—conflicts of interest.

Key reference:

- Coffee, J. C. 2006. *Gatekeepers: The Professions and Corporate Governance*. Oxford University Press.

Taken together, these strands of literature provide a conceptual foundation for the report's central distinction among structural conflicts, procedural failures, and intentional misconduct, as well as for its emphasis on fair process, disclosure, and fiduciary responsibility.

APPENDIX 2. METHODOLOGY

For both this report and the preceding one (Deane and Robinson 2025), we engaged in research from May 2024 to April 2026. The primary research method involved a series of interviews with more than 30 senior-level industry professionals in hour-long, one-on-one video calls. For this report, we continued conversations with several interlocutors whom we had interviewed for Part I. The methodology section of that report is incorporated herein by reference. Please see that report for further details.

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