

Guidance Meets the Market: A Practical Look at ILPA's 2026 Draft Continuation Vehicle Guidance

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Earlier this year, the Institutional Limited Partners Association (ILPA) released proposed updated guidance for continuation vehicle (CV) transactions, clarifying and in some instances expanding on its 2023 guidance, including recommendations on, among other things, limited partner advisory committee (LPAC) engagement, limited partner (LP) elections, pricing, sponsor economics and transaction structure. The comment period closed August 5, 2026, and final guidance is expected to be issued soon. Updated CV guidance from ILPA makes sense for the market given its rapid development over the past few years, and much of the proposed guidance mirrors or sensibly enhances the 2023 guidance (which most sponsors seem to be following to the extent applicable). Many of the new 2026 proposals, however, depart from the prior principles-based approach, setting forth "comply or explain" rules that will be difficult to follow in practice and have the potential to negatively impact outcomes for existing funds engaging in these transactions. They also seem to be drafted through the lens of a U.S. single-asset buyout CV and do not fit other asset classes or geographies very well – so non-U.S. and/or non-equity CVs will be doing a lot of explaining rather than "complying" if adopted as proposed. Set out below are our views on certain key aspects of the draft guidance.

An Expanded Role for the LPAC and Enhanced LP Engagement

Under ILPA's proposal, the existing fund's LPAC would become more of an active "*gatekeeper*" for CV transactions. The framework also encourages general partners (GPs) to hold multiple LP town halls, give the LPAC the right to appoint independent

financial advisors, with findings shareable with all LPs (and charge the costs to the fund), and discourages selective or staggered one-on-one outreach with LPs and LPAC members.

Early LPAC engagement and clear communication are critical to successful CV processes, but in our view, requiring multiple additional meetings, town halls and appointment of separate advisors is likely to add material costs and result in delays, increase the burden on resource-constrained LPs, and potentially add to broken-deal risk. Additionally, while the sentiment behind designating the LPAC as a “*gatekeeper*” is understandable, the term itself implies a much greater oversight role than the LPAC’s traditional conflict clearance role and limited duties, which should be carefully considered. LPACs are not intended to be active management or fiduciary bodies, and the ILPA Principles 3.0 specifically state that “*LPAC members should be generally understood not to have a fiduciary duty to the fund beyond the duty to act in good faith.*” Moreover, early one-on-one background discussions can improve formal deliberations and enhance process quality, and discouraging or prohibiting GPs from talking to LPAC members one-on-one is contrary to long-standing industry practices.

30 Business Days — An Extended Election Period

ILPA proposes that the minimum election period should be at least 30 business days (approximately 6 weeks) after delivery of a complete package of disclosure and election materials, with more time given when warranted by the complexity of the transaction — for example, a multi-asset CV.

Current market convention is a 20-business day election period, which is derived from tender-offer rules under the U.S. Securities Exchange Act of 1934 (though such rules do not apply to CV transactions in most cases). GPs should, of course, provide LPs with more time to consider their options where practicable. That said, transaction complexity, investor bases and execution timelines vary considerably from deal to deal, and a blanket 30-business-day minimum could materially affect transaction execution and negatively impact net value that accrues to the selling fund. For example, it is typical that all post-reference date cashflow accrues to the CV, which means that a longer election period benefits buyers. As an alternative, where more time is warranted, GPs should consider earlier engagement with LPs ahead of the formal 20-business-day election period.

More Choices, More Complexity: Expanded LP Election Options

In addition to the traditional sell or roll/reinvest options, ILPA proposes that LPs have the ability to “*remain in place*”, under which an LP would be able to continue to hold its position through the existing fund and have the option, but not the obligation, to make a fresh dry powder commitment for follow-on investments and expenses in line with the CV investors. It also stipulates that rolling LPs should be “no worse off” than if the CV had not occurred, and recommends no mandatory top-up or stapled financing, no scaling back of elections and free choice of percentages for LPs that want to sell in part and roll in part (rather than a standard fixed percentage option).

We agree that GPs should consider a variety of structures and options for each CV transaction (including “*remain in place*” where appropriate, though it is rarely feasible for “blocked” investments, as well as non-U.S., credit, real estate and infrastructure transactions) and propose a set of election options that balance LP optionality, transaction certainty and cost, and LPACs should have the opportunity to assess the sufficiency of these options when reviewing the proposed transaction. But regardless of whether the existing fund partnership agreement provides for (or permits) non-*pro rata* ownership of investments, which is necessary for a “*remain in place*” option to be feasible, parallel exposure between the CV and the existing fund creates potential liability, expense, funding, allocation and cross-vehicle conflicts, all of which can impair pricing. Significant technical amendments to the existing fund partnership agreement will generally be necessary to address these issues (whether 1% or 30% of the LPs desire to “stay in place”). In any event, a roll option without an unfunded commitment from rolling LPs creates the potential for material valuation, dilution and alignment issues even if new investors would agree to fund a rolling LP’s share of expenses or follow-on capital.

Further, the draft’s “no worse off” standard for rolling LPs is both too absolute and too vague: it rests on an unverifiable foundation – what would have happened if the CV had not occurred. Fair treatment of the existing fund (and the LPs) in light of market dynamics and the related-party transaction, disclosure of alternatives considered and LPAC review of the conflicts provide a more workable standard.

Price Discovery: Process Design Over Prescription

In addition to fairness opinions and valuation reports as standard deliverables, supplemented by comparable valuations, models and projections for both the LPAC and LPs, ILPA recommends that GPs run targeted processes across broad buyer sets with sufficient competitive tension.

The principle is generally sound, but bidder pools are not always broad, and engaging in a competitive process may result in trade-offs or not be feasible in some cases given the asset, industry or market. There are many situations where a motivated buyer making a binding offer based on fully diligenced terms produces the best outcome for investors through speed and lower execution risk. There are also valid alternative reference points, such as the pricing of a recent sale to a third-party minority investor, rather than a fully competitive secondary bid process. GPs should use reasonable price discovery directed at a fair, executable outcome in light of their fiduciary duties and the particular circumstances of the transaction and should explain this to the LPAC so that LPAC members can consider process sufficiency in connection with their consent. ILPA's guidance, therefore, should preserve flexibility for a targeted or abbreviated process.

Same Economics, New Vehicle? Sponsor Alignment and Scope

For rolling LPs, ILPA proposes no overall carried-interest increase, a clear explanation of threshold changes, disclosure of GP de-risking, and reinvestment of all crystallized carry and sponsor-commitment returns relating to transferred assets.

Broadly speaking, preserving existing economics for rolling LPs is a fair principle, but departures may be necessary for asset class, geography, tax, liquidity and waterfall reasons. Similarly, third-party financing of GP commitments to CVs is not necessarily de-risking: sponsors commonly finance blind-pool commitments, and collateral and terms may differ. Less-than-100% GP rollovers may reflect departed employees, taxes or legacy holdings that do not impact the alignment proposition of the GP's active team. And, in any case, GP alignment and rollovers are a primary focus for buyers who typically negotiate this point strongly and commonly require reinvestment of all, or a significant portion, of crystallized carry and sponsor-commitment returns.

There are also unique considerations related to preservation of existing economics for non-U.S. CVs and certain asset classes in the U.S., such as credit and real estate. For example, European whole-fund waterfalls and tax-neutral carry rollovers that are difficult or impossible to structure can make status-quo economics impossible,

blocked investors may be unable to roll tax-deferred, and taxable deals may produce more attractive investor economics. Moreover, the guidance appears calibrated to single-asset U.S. buyout CVs. Multi-asset CVs are standard in credit, infrastructure and real estate, where blockers, levered/unlevered or currency sleeves, regulatory rules and non-U.S. tax mechanics alter valuation, elections, waterfalls and reinvestment. We encourage ILPA to adopt a principles-based approach that guides GPs to preserve existing economics for rollers where possible but recognizes latitude for GPs and LPACs to balance LP demand against the cost of tailoring options.

Looking Ahead

We support ILPA's objective of promoting fair, transparent, and well-governed CV processes, which will benefit all participants in these transactions, but many of the proposed recommendations, if adopted as drafted, would impose significant procedural and structural requirements that may not reflect the diversity of CV transactions across asset classes, geographies and deal structures. If the proposals are viewed as rules or minimum standards, rather than principles-based guidelines, this may add significant costs and delays to CV transactions – including a materially increased risk of failed process and broken-deal expense burdens for existing fund investors. ILPA's final guidance should have regard to conventional market best practices and set clear principles while preserving flexibility across transaction structures, jurisdictions and asset classes.

For further information on ILPA's proposed continuation vehicle guidance or to discuss how these developments may affect your fund or transaction, please contact any of the authors listed below or your regular Kirkland contact.

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Suggested Reading

- 21 May 2026 Kirkland Alert SEC Proposes Sweeping Offering Reform – Significant Implications for Registered Closed-End Funds, BDCs and Other Private Wealth Products
- 06 May 2026 Kirkland Alert SEC Staff Expands Co-Investment Relief to Registered Open-End Funds
- 07 April 2026 Kirkland Alert Proposed DOL Regulation Aims to Expand Access to Alternative Assets for 401(k) Plan Participants

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