NEBF's Private Equity Principles

Executive Summary

4/19/23

Introduction

Investors have been made aware of numerous stories of portfolio companies owned by private equity funds that treat their workforce abusively or that refuse to respect workers' rights to fair pay, safe working conditions, and representation.[i] Treating workers badly is considered to be an acceptable business practice in the United States. That doesn't mean that every company does so, but these examples are common and happen with distressing frequency across the country in all industries.

Private equity is no more, or no less, likely to engage in such business practices, but investors have a **unique opportunity** in private equity to express their values and to engage with their General Partners. We believe that such business practices betray a profound misunderstanding about how value is created in our economy.

To advance a more responsible approach to workforce management, we offer these "private equity principles" as an initial step towards establishing fair labor standards across our investment portfolios. For any investment, NEBF's Trustees have always been equally concerned with both **investment returns** and **how the work gets done**.

Some might say that our focus on how companies treat their workforces is parochial and merely a "special interest." We have three responses:

- First, labor standards affect the quality of life of our participants and therefore promotion of effective labor standards is part of our **fiduciary duty**.
- Second, enforcement of labor standards by investors is needed because of **regulatory failure** by federal and state government.
- Third and most importantly, strong labor standards are part of **our vision of how economic value is created** by investment and good business practices.

For these reasons, we believe that requiring our investment managers to acknowledge effective labor standards and fair business practices is entirely appropriate and consistent with our duty as fiduciaries. We have adopted a set of Principles of Responsible Workforce Management in Private Equity to guide our investment programs and to inform private equity General Partners about our expectations for the businesses in which they manage on our behalf.

We have divided our document into two sections. The first states the principles and the second speaks to specific business practices. You can think of these distinctions as "policy" and "implementation".

Private Equity Principles

- First, respect for employees' rights and investment in training, skill development, safety, and employee benefits
- Second, respect for fundamental human rights as codified by the United Nations International Labor Organization's Core Conventions, including
  - The right to organize
  - Prohibition on forced labor or child labor
  - Prohibition on discrimination; and
  - Commitment to occupational safety and health
- Third, the right to employee representation in the workplace, including:
  - Employer neutrality in event of an organizing effort by a legitimate labor organization
- Fourth, compliance with all local laws and regulations
- Fifth, minimization of adverse effects on the workforce from corporate transactions or restructurings; and
- Finally, reports to investors on wages and benefits

Private Equity Business Practices

Representation:

- Right to organize and employer neutrality
- Right to collective bargaining and responsibility of employers to bargain in good faith

Wages and benefits:

- Fair wages that provide an adequate standard of living (according to local market conditions)
- Appropriate benefits: health care, retirement, sick leave

Corporate transactions and restructurings:

- Successorship clauses in asset sale contracts guaranteeing that any collective bargaining agreements will remain in effect following a change in ownership.
- Expectation that companies will prioritize accrued wages and employee benefits prior to filing for bankruptcy or reorganization.
- In the event of layoffs or terminations, severance pay appropriate to tenure and service.

Commentary

Our current perilous economic situation with inflation, service industry employment and supply chain management stems in part from companies that treated their employees primarily as a "factor input" or an expendable and easily replaceable "cost". Recovery of the economy from the COVID shutdown demonstrated that those employers who maintained a good relationship with their employees are benefiting today, while those who didn't are struggling. Clearly, fair treatment for workers is a profitable business model.

We recognize that we cannot legislate "good behavior". What matters most are the business practices of the companies and funds in which we invest. We are less interested in abstract ESG data and reporting and more interested in what is actually happening in the workplace. These Principles are most useful to bring General Partners back to the table when a problem occurs.

We encourage Limited Partners to use these Principles as they negotiate the terms of their commitments to specific PE funds. These Principles can be adapted by investors and Limited Partners to their specific situations. We recognize that LP's may be able to get their GPs to acknowledge or adopt some but not all of these Principles. The ongoing dialogue is what matters. Even if GPs refuse to adopt the principles, the document is still useful as **a statement of investors' values and expectations** for how GP's and their portfolio companies will behave.

As the discussion over ESG evolves, we want to set the **standards for labor relations** and help investors define the "S" in ESG.

What are we asking?

- For investors, we would like them to talk to their fellow trustees and consider adopting a version of the principles that are suitable for their funds.
- For consultants, we ask that they begin to include the principles in their manager's research and due diligence. It will help significantly for GPs to know that consultants will report on their responses to their clients.
- For General Partners, we ask that they consider adopting the principles and explore ways to implement them.

As a final thought, some now argue that **growing social inequality is a systematic risk** affecting the entire economy as well as specific companies. If so, investors are obliged to discuss these risks with their investment managers and to seek ways to manage these risks for the sake of their investment portfolios.

---

[i] Levenson, Michael. "$1 Million in Fines Proposed over Nitrogen Leak That Killed 6 at Poultry Plant." The New York Times, The New York Times, 23 July 2021, https://www.nytimes.com/2021/07/23/us/poultry-plant-nitrogen-leak-fines.html

“More than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds; Food Sanitation Contractor Pays $1.5m in Penalties.” DOL, https://www.dol.gov/newsroom/releases/whd/whd20230217-1.

Ansari, Talal. “Children Illegally Worked Overnight Shifts to Clean Meat-Processing Plants, Labor Department Says.” The Wall Street Journal, Dow Jones & Company, 11 Nov. 2022, https://www.wsj.com/articles/children-illegally-worked-overnight-shifts-to-clean-meat-processing-plants-labor-department-says-11668209075?mod=article_inline.

Morgenson, Gretchen, and Lisa Cavazuti. “The Hidden Scourge of Wage Theft: Stiffing Workers for Higher Profits.” NBCNews.com, NBCUniversal News Group, 6 Sept. 2021, https://www.nbcnews.com/business/business-news/hidden-scourge-wage-theft-when-higher-profits-come-out-workers-n1272238.

“Brown Presses Private Equity Firm for Answers on Portfolio Companies' Anti-Union Practices: U.S. Senator Sherrod Brown of Ohio.” Senator Sherrod Brown, 21 July 2021, https://www.brown.senate.gov/newsroom/press/release/private-equity-firm-portfolio-companies-anti-union-practices