April 24, 2022

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

Re: File No. S7-03-22
Submitted via email

Dear Secretary Countryman:

The Board of the Oberlin 1833 Just Transition Fund (JTF), the Executive Committee of the Oberlin College Chapter of the Association of American University Professors (AAUP), the Oberlin College UAW Local 2192, and the Oberlin Student Labor Action Coalition (SLAC) welcome the opportunity to comment on the SEC's proposed new rules re: the Investment Advisor's Act of 1940 that would substantially increase transparency and disclosures for private funds. We fully support the SEC's efforts to shed much-needed light on both investment performance and fees within the private fund industry. In our experience, the current and near total climate of secrecy and obfuscation on these matters has had a substantially negative effect on governance at Oberlin College, which will be our focus in what follows.

Oberlin College is unique among private, non-profit institutions of higher education in that it is governed by the Finney Compact of 1835, adopted less than two years after the College's founding in 1833. In addition to calling for the admission of students regardless of race, the Finney Compact established the fundamental importance of faculty control over the internal affairs of the College. In recent years, however, the Compact has been jeopardized by the College's increased reliance on alternative investments such as private equity and hedge funds, which currently make up over 67% of Oberlin's endowment (now evidently valued at over $1 billion).

In what follows, we will explain how the current lack of disclosures re: private funds has directly and profoundly negatively affected both the character and governance of the College. We offer this detailed case-study in the hope that it will underscore the urgent need for greater transparency re: private funds that the SEC's proposed changes would advance.

Case Study: Oberlin College

Just before the COVID pandemic began in 2020, the Trustees of Oberlin College announced that this traditionally progressive College would be outsourcing its unionized dining and custodial workers, in evident disregard of the College's historical commitment to labor rights, in order to save over $2 million per year. Despite substantial opposition from students, faculty, staff and alums, the College fired or outsourced over 100 workers in the midst of a deadly pandemic, only agreeing to extend their health care coverage for a year under pressure from members of the college community and alumni. The alumni-run non-profit JTF was formed in response, and one of its first actions was to raise money via its alumni network for the workers who had lost their jobs, resulting in payments of at least $3,000.00 to each.

The JTF also began focusing on the College's endowment and investing strategies, resulting in a detailed account published in The American Prospect on February 12, 2021. We found that Oberlin College declared on its 990s that it had routinely paid out more in investment management fees each year than it claimed to save by firing and outsourcing union workers. However, the true amount paid out in fees is of course much higher, possibly amounting to as much as 5-6x the figure stated on the 990s. So, while "officially" the College paid out $14,872,522 in investment management fees between 2013 and 2017, the actual amount could easily be as much as or even more than $75,000,000. Faculty and alumni requests to the Trustees for the actual annual amounts paid out in fees each year have gone completely unanswered.

So too have questions about the actual annual rates of return on the College's endowment since the 2008 financial crisis. This is concerning, not least because there is a growing body of research demonstrating that returns on alternative investments are basically comparable to those of more plain-vanilla and far less expensive index funds. In 2020, Professor of Financial Economics Ludovic Phalippou of Oxford's Saïd Business School published "An Inconvenient Fact: Private Equity Returns & The Billionaire Factory", arguing that "private Equity (PE) funds have returned about the same as public equity indices since at least 2006" while at the same time observing that the private equity industry has made some people very, very rich indeed, with PE "multibillionaires" increasing from 3 in 2005 to 22 in 2020. These parallel findings certainly cast doubt on the claim made by Oberlin's Board of Trustees Chair Chris Canavan, in a 24 February 2021 meeting with faculty, that the College was justified in paying out huge, if undisclosed, fees because "you have to pay for talent."

Roughly a year after the Trustees declared their plans to fire and outsource union workers, Canavan announced that the endowment had exceeded $1 billion for the first time in the College's history. While this news might well have a favorable effect on Oberlin's position within the various college ratings schemes, it certainly puzzled those of us trying to understand the financial condition of the College. For its size, after all, Oberlin is evidently a very wealthy school. Nevertheless, the imposed austerity measures continued: first, the College effectively gutted its famed OSCA co-op system, destroying in the process the uniquely collaborative Kosher-Halal Co-op. Then, the College imposed a sub-par one-option "consumer driven" health plan on its employees beginning in 2022, which has caused some employees' monthly medical expenses to triple. Meanwhile, faculty salaries have stagnated despite a 2013 agreement on compensation, provoking demonstrations on campus and statements of solidarity from other institutions.

Despite the Finney Compact's foundational principle of faculty control over the College's internal affairs, it has become quite clear that the Trustees are continuing to act in ways that directly challenge and directly undermine faculty control over both the character and priorities of the College. One very important element of that process is the dense cloud of secrecy surrounding what, exactly, is going on with the money. Again, despite numerous queries, no one within the college and alumni communities has been able to get clear, unambiguous responses to questions about actual rates of return over time or total costs/fees of the College's endowment investments. Instead, the Trustees increasingly rule by autocratic fiat. The dynamic is clear: high allocations to highly secretive "alternative investments" have undermined faculty control over their institution and conditions of work because, given current disclosure limitations, they cannot get the information needed to assess the actual financial condition of the College. Evidently enormous sums in the form of undisclosed fees and expenses have gone into the hands of investment advisors and fund managers, instead of being used to further the mission of the College and preserve its unique and historically progressive character.

Conclusion

We fully support the SEC's efforts to improve disclosures for private funds, especially when it comes to fees/costs and actual rates of return. After all, as Phalippou's research has demonstrated, "internal rate of return" is an incredibly flawed measure and can be "dramatically misleading." Oberlin and its Trustees, in choosing to follow the so-called "Yale Model" of heavy allocations in alternative investments, may actually be *undermining* the financial stability of the College – such a possibility seems distinctly plausible in the face of continuing austerity without accompanying transparency. And basic institutional trust has also been severely undermined by that complete lack of transparency about what is happening with the money. Information about real rates of return and costs/fees are absolutely central for prudent and effective governance in the service of the public good of nonprofit higher education. Withholding them is, in effect, an assertion of prerogative and privilege that goes directly against the long-established commitment to self-governance as established by the Finney Compact.

As SEC Director William Birdthistle said recently in his remarks at the ICI Investment Management Conference (28 March 2022):

> "Indeed, it's striking to me that investors do not receive a uniform statement explicitly identifying the dollars they paid in the last year. Banks offer their customers a statement of fees; home mortgage and car lenders offer a statement of fees; credit cards offer a statement of fees. How is it that there is no comparable requirement on statements on the individualized costs for all of those trillions of dollars in life savings vouchsafed to investment companies?"

It is striking: and as with pension funds, so with endowments. We are very concerned that nonprofit institutions of higher education are being jeopardized by the influence and power of private, profit-seeking interests that are currently under no obligation to disclose either how much they have made *from* institutions such as Oberlin or how much they have earned *for* them. This state of affairs, if not remedied, threatens to undermine both the independence and integrity of our nation's institutions of higher education. We urge the SEC to do everything in its power to implement the proposed changes so that all higher-ed stakeholders may be clearly informed about the investments being made in the name of supporting their institutions.

We would be happy to discuss these issues in greater depth and answer any questions you may have. Please do not hesitate to contact: [redacted]

Thank you for your time and consideration.

Sincerely,

The 1833 Just Transition Fund Board

Executive Committee, Oberlin College Chapter of the AAUP

Oberlin College UAW Local 2192

Oberlin SLAC