U.S. Chamber of Commerce

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March 21, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers [Release No. IA-5950; File No. S7-01-22]; 87 FR 9106

Dear Ms. Countryman:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the rules proposed by the Securities and Exchange Commission ("the Commission") that would amend private fund reporting rules. The purpose of the proposed amendments is to "enhance the Financial Stability Oversight Council's ("FSOC") ability to monitor systemic risk as well as bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts."[1]

Form PF is a confidential reporting form that requires certain SEC-registered investment advisers to private funds to report upon the occurrence of key events. Form PF was adopted in 2011 to comply with the Dodd-Frank Act of 2010.[2] Under the rule, advisers to private funds with $150 million in assets under management file Form PF, with additional reporting obligations for hedge fund advisers with $1.5 billion in assets under management (filed on a quarterly basis) and advisers to private equity funds with $2 billion in assets under management (filed on an annual basis). The 2011 adopting release states the Commission's goal that "these reporting forms will provide FSOC and the Commissions with important information about the basic operations and strategies of private funds and help establish a baseline picture of potential systemic risk in the private fund industry."[3]

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[1] Securities and Exchange Commission, Release No. IA-5950; File No. S7-01-22 (January 26, 2022). https://www.sec.gov/rules/proposed/2022/ia-5950.pdf

[2] Securities and Exchange Commission, "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF," Release No. IA-3308; File No. S7-05-11, November 16, 2011. https://www.sec.gov/rules/final/2011/ia-3308.pdf

[3] Id. Page 8.

The amendments to Form PF (the "Proposal") would require new reporting obligations upon occurrence of additional events for large hedge fund advisers, large private equity advisers, and large liquidity fund advisers. The amendments to the Proposal would (i) require current reporting (within one business day) for large hedge fund advisers and private equity fund advisers, (ii) increase the type of information required to be reported to the Commission on Form PF, and (iii) increase the reporting threshold for large private equity advisers.

While we appreciate that the Proposal would maintain the confidential nature of Form PF data, the Chamber has significant concerns with various aspects of the Proposal to amend Form PF reporting by registered investment advisers. As explained in further detail throughout this letter, the Chamber is primarily concerned that the new reporting will not enhance systemic risk monitoring, will inappropriately expand the scope of the Commission's mission, and that certain provisions are either arbitrary or lacking in clarity, and would impose significant costs on private funds and their investors.

The Proposal inappropriately expands the Commission's role in overseeing private funds.

The Proposal, together with other private fund concepts currently under consideration by the Commission,[4] will fundamentally change the regulation of the private capital markets. After reviewing the data it has collected on the private fund industry since 2011, the Commission believes there are information gaps. The Commission is proposing requesting more detailed information about the private fund industry on an expedited basis.

The Chamber supports the FSOC's efforts to monitor systemic risk and to identify emerging threats to the stability of the U.S. financial system. However, the Chamber rejects the premise that every fund that would be subject to new mandates under the Proposal represents a potential threat to financial stability. The private capital markets are an ecosystem of thousands of funds – the vast majority of which could not be considered "large" by any standard. Several aspects of the Proposal would apply to smaller funds that happen to meet Form PF's $150 million threshold. These funds and their investors will bear many of the regulatory costs associated with the Proposal.

Indeed, the Commission has not been able to clearly articulate in the Proposal how the Form PF amendments would enhance systemic risk monitoring. The amendments proposed by the Commission are focused on gathering information on isolated stress events, based on thresholds that are sensitive given the small fund size to which they could be applied, rather than data from system-wide market events. We agree with Commissioner Peirce's dissenting comments on the Proposal that the Proposal provides "scant evidence that the amendments to Form PF would enhance FSOC's ability to monitor for systemic risk."[5] We question the necessity

[4] Securities and Exchange Commission, Release Nos. IA-5955; File No. S7-03-22 (February 9, 2022). https://www.sec.gov/rules/proposed/2022/ia-5955.pdf

[5] Commissioner Hester M. Peirce, "Statement of Hester M. Peirce on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and

of requiring new information reporting by registered investment advisers for the purpose of systemic risk monitoring without the Commission providing stronger evidence and analysis to support the Proposal. As Commissioner Peirce noted, "Saying that an otherwise isolated problem…*could* be indicative of a more global concern just is not good enough."[6]

Instead, the Proposal has broadened the scope and purpose of Form PF beyond that of monitoring systemic risk, but to support the Commission's regulatory and enforcement programs. This expansion of Form PF is not consistent with the original motivation for developing Form PF under the Dodd-Frank Act. We are concerned that the scope of new reporting and requirement for one-business day reporting would enable the Commission to unnecessarily interfere with private fund management and make inappropriate or inaccurate inferences about isolated events affecting a private fund.

While we support the Commission's goal of protecting investors, through this Proposal the Commission seems to be conflating the standards for retail investors and sophisticated investors. Private fund investors are sophisticated investors who, as compared with retail investors, are more knowledgeable and experienced investors who can undertake higher risk investment opportunities. With this Proposal, the Commission is deviating from its 2019 interpretation regarding private fund clients that "institutional clients generally have a greater capacity and more resources than retail clients to analyze and understand complex conflicts and their ramifications."[7] Sophisticated investors understand that investments can sometimes experience losses or market downturns. The Commission has only provided limited information and has not clearly articulated the need to expand the use of Form PF information for the protection of sophisticated investors.

We believe that the Commission should strictly focus Form PF data-gathering as is required by the Dodd-Frank Act. As we explain below, we believe that certain new reporting events are either lacking clarity or are not appropriate indicators of market stress events.

Reporting by private fund advisers on a next-day basis would create significant operational challenges and costs for advisers.

Currently under Form PF rules, hedge fund advisers with at least $1.5 billion in assets under management are required to file Form PF on a quarterly basis, while private equity fund advisers are required to file Form PF on an annual basis.

Under the Proposal, if a "reporting event" occurs then a private fund adviser would be required to submit to the Commission within one business day a current report. The applicable reporting

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Large Liquidity Fund Advisers," January 26, 2022. https://www.sec.gov/news/statement/peirce-form-pf-20220122

[6] Id.

[7] Commission Interpretation Regarding Standard of Conduct for Investment Advisers, June 5, 2019, Pages 25-26. https://www.sec.gov/rules/interp/2019/ia-5248.pdf

events for hedge fund advisers and private equity advisers are different and occur when there is a significant stress on one of the following situations.

- ***Hedge fund reporting events*** include extraordinary investment losses equal to or greater than 20% of the most recent net asset value (NAV) over a rolling 10-day business period, certain margin events, counterparty defaults, material changes in prime broker relationships, changes in unencumbered cash, operations events, and certain events associated with redemptions.[8]

- ***Private equity fund reporting events*** include execution of an adviser-led secondary transaction, (2) implementation of a general partner or limited partner clawback, and (3) removal of a fund's general partner, termination of a fund's investment period, or termination of a fund.[9]

Reporting by private fund advisers on a next-day basis would create significant operational challenges and costs for advisers. In order to be prepared to report to the Commission on a next-day basis in case a stress event occurs, funds would have to track the funds on a daily basis and calculate 10-day rolling averages. Often, private equity and hedge funds invest in unique, illiquid assets including distressed debt and equity stakes of private companies for which there is no readily available market to provide pricing information. In many cases, valuation experts are required to assess the value of an asset, or advisers base the valuation on a market transaction of that asset may not occur for extended periods of time. Therefore, valuing these private assets on a frequent basis is a costly, complex, and often speculative process that may produce ambiguous data despite an adviser's best efforts. Further, the Proposal does not make clear why next-day reporting is necessary and how such a short timeframe would assist the Commission or FSOC in identifying systemic risk.

Fund advisers would need to develop complex and costly new compliance and operations systems in order to provide the requisite information within such a short timeframe. Moreover, this does not include the numerous hours it would take to report and manage this process. The development of these systems would require substantial costs that are not adequately assessed in the Proposal's economic analysis.

In addition, this new reporting would distract advisers from their most important job, which is managing the fund and their investors' interests. For example, if a fund manager happens to be in the midst of a situation in which there has been a loss of more than 20% of the most recent NAV over the last ten days, that manager should be focused on the time-sensitive issue of preserving the investor's interests, not filling out Form PF on a next-day basis.

The Chamber recommends the continuation of the current reporting timeframes.

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[8] Release No. IA-5950; File No. S7-01-22, Page 13.
[9] Id. Page 43.

The decrease in the reporting threshold for private equity funds is arbitrary.

Currently, a private equity fund adviser is required to file Form PF if it has at least $2 billion in assets under management at the end of its fiscal year. According to the 2011 Form PF adopting release, this threshold was established with the aim of including a relatively small number of private equity advisers while representing a substantial portion of the assets under management.[10] Although a decade has passed, under the current parameters, the Commission still gathers data on 67% of the private equity market.[11] We believe this is percentage of reporting remains a substantial amount.

Under the Proposal, however, the reporting threshold for large private equity advisers would be reduced from $2 billion to $1.5 billion so that the Commission could gather data on 75% of the private equity industry. Requiring 75% of private equity fund reporting is arbitrary and is not rooted in the Form PF adopting release or the Dodd-Frank Act. In addition, the Commission has not adequately based the proposed threshold change on a thorough quantitative analysis that demonstrates why decreasing the threshold would lead to improved monitoring of systemic risk.

Decreasing the reporting threshold would increase the regulatory burden on additional private equity advisers who were not previously required to report Form PF to the Commission. Such regulatory burden will be especially costly for smaller private fund advisers, who will have to build new compliance processes and system processes. In order to comply with the Proposal, these smaller private equity firms may need to make trade-offs in their time and resources that detract from supporting investor interests.

We believe that the reporting threshold for private equity funds should remain at $2 billion in assets under management.

Certain provisions within the Proposal are either lacking clarity or are not indicative of market stress.

As discussed, the Proposal outlines new reporting events for hedge fund advisers and private equity advisers. Several of these provisions either require greater clarity or should be deleted from a final rule since they are not indicative of system-wide market stress.

- ***Material change in relationship with a prime broker:*** A hedge fund would be required to report if there is a material change between the reporting fund and a prime broker.[12] The Commission has not adequately defined what it considers a "material change." Some funds can experience some sort of change every day that *could* be considered

[10] Release No. IA-3308; File No. S7-05-11, Page 31.
[11] Release No. IA-5950; File No. S7-01-22, Page 54.
[12] Id. Page 29.

material, depending on how it is defined, especially in the case where there is an adviser managing a variety of different funds and prime brokers. Because of the lack of clarity in how the Commission has defined "material change," there could be confusion by advisers over whether they need to file Form PF or the Commission may receive an abundance of information that has no correlation with systemic risk monitoring. We recommend that the Commission provide clarity on the definition of "material change" such that it ensures that the materiality is tied to the statutory purpose of Form PF to assist in monitoring of systemic risk.

- ***Operations events:*** A hedge fund adviser would be required to report if there is a 20% "disruption or degradation" the normal capacity of the fund's key operations.[13] We are again concerned that the Commission has not provided sufficient evidence to substantiate the need for this new reporting on operations events. We are also concerned about the inherently subjective and arbitrary nature of using a percentage threshold in determining a "disruption or degradation." To paraphrase Commissioner Peirce, that such events *could* be an indicator of a market-wide problem does not justify additional reporting. In addition, the Proposal notes that the Commission is also considering proposed "rules to enhance fund and investment adviser disclosures and governance relating to cybersecurity risks."[14] However the Proposal does not consider how such potentially overlapping rules would work in practice. We recommend that the Commission does not include operations events as a reportable event.

- ***Adviser-led secondary transactions:*** A private equity fund adviser would be required to report if an adviser-led secondary transaction is completed. The Commission mischaracterizes secondary transactions as a sign of market stress. We do not agree with the Commission's premise that secondary transactions are an early warning "about deteriorating market conditions that may prevent private equity managers from utilizing more traditional ways to exit their portfolio companies and realize gain."[15] Instead, a general partner-led secondary transaction is often a positive reflection of a growing secondary market where limited partners and investors can support their liquidity needs by accessing a secondary transaction.

  Benefits of a secondary transaction include giving limited partners an ability to withdraw their liquidity if they choose to exit the market early and allowing general partners to continue to create value in a fund beyond the normal timeline, often a 10 to 12-year lifespan for private equity funds. In fact, according to a recent report by Jeffries Financial Group, in 2021 such secondary funds accounted for "84% of GP-led transactions, which totaled $68 billion."[16] With such activity dispersed among thousands of funds, we question the Commission's contention that they might be a sign of market

[13] Release No. IA-5950; File No. S7-01-22, Page 34.
[14] Id. Page 35.
[15] Id. Page 99.
[16] PitchBook, "Continuation funds drive GP-led secondaries wave," February 1, 2022. https://pitchbook.com/news/articles/continuation-funds-GPs-secondaries-private-equity

stress. Moreover, with so many funds available to sophisticated investors, secondary transactions allow those investors greater efficiency and choice in the deployment of their capital. Since these actions are not a sign of market deterioration or systemic risk, we recommend that the Commission does not include adviser-led secondary transactions as a reportable event.

- ***General partner or limited partner clawback:*** A private equity fund adviser would be required to report if there occurs a general partner clawback related to the fund.[17] The Commission incorrectly views the occurrence of a clawback as a sign of a distressed market. In the Proposal, the Commission states that "widespread implementation" of clawbacks could be indicative of a deteriorating market," but in the next sentence states that clawbacks are rare.[18] The fact that a clawback occurs does not signal that a fund is under stress and merits reporting. Clawbacks follow the terms of the limited partnership agreement that is agreed to in advance by the investment adviser and investor. Clawbacks occur only rarely, and they only signal that the adviser has not met a targeted return rate. For example, a typical preferred rate of return is 8%.[19] At the end of a fund's 10-year life, if a fund's rate of return is 6% instead of 8%, then the investor would be entitled to a clawback. While the fund may not have met its preferred rate, we question the Commission's assertion that a clawback under such a scenario would be a sign of a "distressed" market. We recommend that the Commission does not include clawbacks as a reportable event.

The SEC is increasingly allowing insufficient time for the public to comment on substantive changes in regulation. In addition, we encourage the Commission to consider how to stage compliance across the many new regulations to minimize inefficiencies for market participants.

Through several comment letters, CCMC has expressed its deep concern with the Commission's shortened and concurrent timeframes to respond to the wide array of new and complex proposals, most of which are recommending substantial technical changes to the reporting environment. We reiterate our concern with the Commission's inadequate comment periods, especially if it is genuinely seeking meaningful feedback from stakeholders. We hope that the Commission will slow down its agenda in favor of getting the regulations right, keeping in mind they are not only protecting investors, but regulations should maintain fair, orderly, and efficient markets and facilitate capital formation.

In addition, given the Commission's very lengthy and fastmoving agenda, we are concerned about the extensive compliance changes that our member firms will have to make to implement the universe of new rules that are part of the Commission's agenda. The various

[17] Id. Page 47.
[18] Id. Page 48.
[19] HarbourVest, How Do Private Market Fund Fees Work? http://pages.harbourvest.com/rs/509-TRI-465/images/HV_Fundamentals_Fees.pdf

rules under consideration will require layers of new systems, processes, and operations updates. Has the Commission considered these updates collectively, specifically by conducting a thorough cost-benefit analysis of the cumulative impact of the Commission's various proposals? Moreover, has the Commission considered whether they could phase in new regulations and compliance requirements in a way that, considering the universe of proposals under consideration, is efficient for market participants to adopt? We hope the Commission will work in good faith to consider and develop implementation timetables that minimize the extensive burdens that will be placed on businesses as they comply with these many new regulations.

Conclusion

The Chamber welcomes this opportunity to comment on the Proposal. In its current form, the proposal is unworkable for many private fund advisers. We stand ready to assist and be a resource for the Commission and staff.

Sincerely,

Kristen Malinconico
Director
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce