



October 11, 2022

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Washington, DC 20581

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

Re: Proposed Rule, Commodity Futures Trading Commission and Securities and Exchange Commission; Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers (87 Fed. Reg. 53,832-53,985 , September 1, 2022)

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness (“Chamber”) appreciates the opportunity to comment on the rules proposed collectively by the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) (together “the Commissions”) that would amend private fund reporting rules under Form PF (“Proposal”).¹

Form PF is a confidential reporting form that requires certain SEC-registered investment advisers to private funds, including those also registered with the CFTC as Commodity Pool Operator (CPO) or Commodity Trading Adviser (CTA), to report upon the occurrence of key events. Form PF was adopted in 2011 to comply with the Dodd-Frank Act of 2010.² The 2011 adopting release states the 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

The private funds marketplace is critical to capital formation globally and in the United States. It has evolved over time into a highly efficient and well-developed market characterized by a high degree of competitiveness and sophistication among market participants. This Proposal would unnecessarily disrupt the private funds marketplace, imposing substantial costs on fund managers and investors alike, while imparting little, if any, benefit to enhancing systemic risk monitoring – the primary objective stated by the Commissions.

¹ Securities and Exchange Commission, “Amendments to Form PF to Amend Reporting Requirements for All Filers an Large Hedge Fund Advisers,” Release No IA-6083; File No. S7-22-22, August 10, 2022. <https://www.sec.gov/rules/proposed/2022/ia-6083.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 Chamber has significant concerns with various aspects of the Proposal, as we had similarly expressed in comments to the SEC in response to its January 2022 proposal amending Form PF.⁴ The Chamber offers the following observations and recommendations regarding the Proposal:

- I. The Proposal inappropriately expands the oversight of private funds and lacks clarity in how the recommendations would enhance systemic risk monitoring and bolster oversight and investor protection efforts;
- II. Certain new reporting events are either lacking clarity or are not appropriate indicators of market stress events;
- III. The granular reporting required of private fund advisers would create significant costs and operational challenges for advisers; and
- IV. The Commissions have not provided sufficient time to comment.

The observations and recommendations are discussed further below.

- I. The Proposal inappropriately expands the oversight of private funds and lacks clarity in how the recommendations would enhance systemic risk monitoring and bolster oversight and investor protection efforts.

The Proposal, together with other private fund concepts currently under consideration by the Commission,⁵ is part of a wider effort under way at the SEC to fundamentally change the regulation of the private capital markets. In referencing unspecified “information gaps and situations,” the Commissions offer a nebulous rationale for why current regulation and reporting requirements for advisers to private funds are insufficient.

The Proposal recommends extensive changes to the current Form PF and an expansive array of new information reporting requirements, including (1) the disaggregation of reporting complex structures; (2) granular information about advisers and the private funds they advise, including but not limited to assets under management, withdrawal and redemption rights, gross and net asset values, and inflows and outflows; (3) granular information about hedge fund adviser

⁴ U.S. Chamber of Commerce, Comment Letter to the Securities and Exchange Commission regarding Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (March 21, 2022). Available at <https://www.sec.gov/comments/s7-01-22/s70122-20120670-272845.pdf>.

⁵ 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> and Securities and Exchange Commission, Release No. IA-5955; File No. S7-03-22 (February 9, 2022) <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>

investment disclosures, borrowing and counterparty exposure, currency exposure reporting, and other exposures; and (4) detailed information about hedge fund investment strategies, counterparty exposures, and trading a clearing mechanisms, among other data points.

Comments on systemic risk

The Proposal states that these wide-ranging amendments under consideration are meant to enhance the ability of the Financial Stability Oversight Council (“FSOC”) to monitor systemic risk.⁶ 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 is concerned about the expanded effort by the Commissions to regulate private funds under the guise of systemic risk monitoring.

While the Proposal frequently cites systemic risk to substantiate the various granular information requirements under consideration, the Commissions have not clearly articulated in the Proposal how the Form PF amendments would actually enhance systemic risk monitoring. We agree with Commissioner Uyeda that “Merely stating over and over that the proposed amendments will help to monitor and assess systemic risk and provide additional information does not make it so.”⁷

Instead, the amendments under the Proposal are best described as gathering information on potential, isolated market events. We are troubled by the frequency with which the explanations in the Proposal seem to conflate or confuse systemic risk and market risks that may be attributable only to a particular fund.

The effort to increase monitoring of systemic risk creates the possibility that regulators, or FSOC as a body, conflate individual market risks associated with a limited number of entities with systemic risk that threatens the stability of the financial system. The Treasury Department and FSOC have already made progress in re-focusing systemic risk monitoring on activities (rather than individual institutions); regulators should be careful not to undermine those reforms.

The vast amount of granular information requested, including such information as private fund strategies, would impose significant costs and compliance burdens on fund managers. The collection of such data is more likely to support the Commissions’ oversight and enforcement priorities instead of providing meaningful data to support systemic risk monitoring. We further agree with Commissioner Peirce that the FSOC “does not need to have this kind of detailed knowledge of individual private funds’ activities to fulfill its mandate to identify risks to

⁶ Proposal, Page 1.

⁷ Commissioner Mark T. Uyeda, “Statement on Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers,” August 10, 2022. <https://www.sec.gov/news/statement/uyeda-statement-amendments-form-pf-081022>

financial stability, promote market discipline, and respond to emerging financial stability threats.”⁸

The amendments under consideration represent a significant rewrite of Form PF and would require funds to provide extensive new streams of data unrelated to systemic risk. These costs will be imposed upon investors in these funds, often pension plans or other institutions, and the workers and retirees who depend on such funds. We question the necessity 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.

Comments on regulatory oversight and investor protection

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 agree with Commissioner Peirce that like the January proposal, the current Proposal “stretches a very limited data collection tool beyond its intended purpose.”

As we described in our March 2022 letter, “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.”

The SEC explains that in addition to gathering additional information to aid its oversight efforts, it also seeks to bolster investor protection efforts. As we explained in our March 2022 letter to the SEC, while we support the Commission’s goal of protecting 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.”⁹ Sophisticated investors understand that investments can sometimes experience losses or market downturns. The SEC has again not clearly articulated the need to expand the use of Form PF information for the protection of sophisticated investors.

⁸ Commissioner Hester M. Peirce, “Statement on Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers,” August 10, 2022. <https://www.sec.gov/news/statement/peirce-statement-proposed-amendments-form-pf-081022>

⁹ 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>

II. Certain new reporting events are either lacking clarity or are not appropriate indicators of market stress events.

The Proposal outlines extensive new reporting events for private funds, stretching “a very limited data collection tool beyond its intended purpose.”¹⁰ 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.

- *“Look Through” Requirements:* Several of the proposed recommendations would require funds to “look through” their investments to determine securities and other assets to which a fund has exposure. Information regarding indirect holdings may be difficult (if not impossible) to obtain, such as the underlying holdings of private fund in which a private fund invests. This information could also be extremely costly and burdensome to analyze. For example, an exchange traded fund may independently own thousands of securities or investments that an investment adviser with no direct exposure to these instruments would be required to report under the Proposal. Given that these exposures are indirect, we question the utility of the information to FSOC or the Commissions for purposes of monitoring systemic risks.
- *Overly Granular Exposure Calculations:* The Proposal requires reporting of investment exposure, currency exposure, country exposure, industry exposure, net position reporting, and gross position reporting. The requirements to report on currency, turnover, country, and industry exposure would be particularly challenging for a private fund. Moreover, such information would provide limited value to any assessment of systemic risk. As an example, private fund advisers would have to rely on third-party valuation to comply with a data reporting requirement on currency exposure.
- *Daily Fund Performance:* Valuing private assets on a daily basis is costly, complex, and often a speculative process, particularly for illiquid positions, that may produce ambiguous data despite an adviser’s best efforts. The information will also be stale by the time it is reported, and, in light of the January 2022 proposal, the Commissions could seek real-time information about very specific events that demonstrate a high degree of risk that has the potential for a systemic impact on the financial sector.
- *Market Factor Effects:* Currently, advisers are allowed to omit a response to any market factor they do not regularly consider in formal testing in connection with reporting funds’ risk management. We are concerned that the Proposal would now require funds to report all market factors, and remind the Commissions that they rejected such a requirement in the 2011 adopting release while acknowledging the burdens of requiring funds to engage in stress tests that are irrelevant or immaterial to specific funds.¹¹

¹⁰ Commissioner Peirce Statement.

¹¹ Form PF Adopting Release at 89. <https://www.sec.gov/rules/final/2011/ia-3308.pdf>

- *Borrowings:* The Proposal is lacking clarity in how advisers should report cross collateralized agreements.
- *Cash and Cash Equivalents:* The Proposal is lacking clarity around the new category for “cash and cash equivalents.” Funds oftentimes already maintain a balance of cash and cash equivalents to manage redemptions and as part of a broader investment strategy to have sufficient liquidity to allocate to new investment opportunities.
- *Withdrawal or Redemption Rights:* The Proposal is lacking clarity in how a fund would report on a fund with multiple types of redemption rights.
- *Digital Asset:* The Proposal is lacking clarity in the definition of digital asset, and it overlaps with other categories of assets.

III. The granular reporting required of private fund advisers would create significant costs and operational challenges for advisers.

The changes to Form PF are extensive and include dozens of new data reporting requirements. Such changes will be expensive and time-consuming to implement among a fund’s internal teams and third-party technology providers. Many of our member firms view collective amendments to Form PF as creating an altogether new form. While they could draw upon some existing data fields, funds recognize that implementing all of the changes outlined in the Proposal would ultimately require them to develop complex and costly new compliance and operations systems.

Private funds and their investors will bear many of the regulatory costs associated with the Proposal. We are further concerned that the Commissions have not fully considered the cumulative costs of the widespread changes under consideration, including those changes to Form PF proposed by the SEC in January 2022 and the February 2022 SEC proposal that would impose additional requirements on private fund advisers.

Since the Commissions have not clearly articulated in the Proposal how the Form PF amendments would actually enhance systemic risk monitoring, we must assume that the extensive and burdensome costs associated with the amendments are being made to support oversight activities. We agree with CFTC Commissioner Pham that the amendments “impose overly broad obligations that would be unnecessarily burdensome and would present potentially significant operational challenges and costs without persuasive cost-benefit analysis under the Commodity Exchange Act.”¹²

Furthermore, the disaggregation of information on Form PF will increase reporting costs and obfuscate an adviser’s risks through the reporting of investment vehicles and strategies in

¹² Commissioner Caroline D. Pham, “Dissenting Statement Regarding the Proposed Amendments to Form PF,” August 10, 2022. <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement081022>

isolation, rather than as part of the overall fund or investment program they correspond to. Disaggregation creates another important concern for private advisers. Form PF contains highly confidential information, but in its current format, fund managers are allowed to aggregate data, which creates an important layer of protection from the inadvertent exposure of sensitive information. Disaggregating data adds a new risk to fund managers that confidential trading strategies could be exposed, either through malicious actors or even as employees of the Commissions move into other roles where the data they previously accessed can become useful in other private sector roles.

The substantial costs associated with this rulemaking may also serve as a deterrent to smaller private fund managers who will see such costs as a barrier to entry. The private fund industry benefits from the innovation that comes with the entry of new funds and their ideas. Many smaller private funds who are attempting to grow or new funds seeking to gain entry may be unable to afford the costs associated with the proposed amended Form PF.

Finally, the Proposal recognizes that certain costs of implementing the recommended changes to Form PF could be passed on to the funds and fund investors. We do not believe the Commissions have adequately considered unintended consequences impacting certain cost-sensitive investors may be unable to afford to invest in private funds going forward.

IV. The Commissions have not provided sufficient time to comment.

The Chamber and many other organizations have consistently communicated our concerns over the unusually short comment periods the SEC, in particular, has allowed to respond to the wide array of new and complex proposals. Most of these proposals are hundreds of pages in length and collectively ask thousands of questions on highly technical and complex matters.

The Proposal was published in the Federal Register on September 1, 2022, meaning that interested parties received less than 60 days to comment on a Proposal that represents a large-scale rewrite of the current Form PF. Given the highly technical nature of the proposed changes to Form PF, the Commissions did not provide stakeholders with sufficient time to fully assess the many amendments to the form. A letter submitted to the Commissions on September 14, 2022 accurately reflects the array of challenges faced by the entities who would be affected by the Proposal:

“The Form PF Proposed Rules require significant technical expertise to assess the new requests, the physical and practical challenges in gathering and/or calculating the information requested on a routine basis, and responding to the Commissions’ questions and developing recommendations to best achieve the objective of regulators. Given the extensive and technical rewrite of Form PF, registrants and commenters will need to synergize among key firm executives and departments including the Chief Operating Officer, Chief Legal Officer, Chief Financial Officer, Chief Technology Officer, Chief

Compliance Officer, and others to assess how to gather and calculate the information required by the sweeping changes to Form PF.¹³

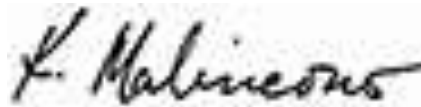
We urge the Commissions to provide the public with at least an additional 60 days to analyze and comment on this Proposal.

As we have commented in other letters to the SEC, many of its proposals are interconnected. This particular Proposal is in fact highly interconnected with the January 26, 2022 proposal to amend Form PF reporting requirements for large private equity advisers and large liquidity fund advisers. If finalized, that earlier proposal would decrease the reporting threshold for certain private funds. As a result, additional reporting entities would be subject to this new Proposal's provisions. Private fund advisers would also bear substantial reporting costs under the SEC's February 2022 proposal. The rules should not be considered as unique proposals, especially when considering significant compliance burdens that face private funds in implementing multiple rules, which could conceivably be implemented in a disjointed fashion without some assurance from the SEC.

Conclusion

As explained throughout this letter, the Chamber is concerned that the Commissions have not properly justified or considered the wide-ranging consequences of its expansive new proposed mandates for funds. If the primary goal is to enhance the ability of FSOC to monitor systemic risk, then we encourage the Commissions to rethink this Proposal in its entirety. 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 Commissions and their staff.

Sincerely,



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U.S. Chamber of Commerce

¹³ <https://www.sec.gov/comments/s7-22-22/s72222-20142861-308745.pdf>