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March 21, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090
Submitted by email to rule-comments@sec.gov

RE: File Numbers S7-01-22; S7-03-22

Dear Ms. Countryman:

The Predistribution Initiative ("PDI") submits this letter in response to the request of the Securities and Exchange Commission ("Commission" or "SEC") for comment in connection with (1) Investment Advisers Act Release No. 5950 (January 26, 2022), which proposes changes to the reporting requirements for investment advisers on Form PF ("Form PF Amendments") and (2) Investment Advisers Act Release No. 5955 (February 9, 2022) which proposes new rules and amendments under the Investment Advisers Act of 1940 that would expand the regulatory framework to which private fund managers are subject ("Private Fund Proposal").

PDI is a nonprofit research organization focused on supporting investors in measuring and managing their exposure to systemic risks that can manifest as systematic risks in their portfolios. PDI team members have over 90 years of combined experience in finance, economics, and corporate law, with a significant focus on responsible investing in private equity and related private asset classes. As such, our comments in relation to these two proposals will primarily focus on private equity and related private asset class advisers, rather than hedge funds and liquidity fund advisers. Members of our team have worked for private equity investment firms, co-founded the Impact Management Project, served on working groups and committees of standard setting bodies such as the Sustainability Accounting Standards Board ("SASB") Standards Advisory Group, structured deals with environmental, social, and governance ("ESG") considerations, worked at Bear Stearns during the Global Financial Crisis, among other experiences that shape our feedback.

Our work uniquely explores the complex intersections between ESG and impact investing issues with investment structure and market structure factors. This analysis shapes our comments, in which we urge the Commission to consider these issues holistically, with sufficient time for meaningful analysis and stakeholder consultation, beyond which is currently provided. Our flagship working paper, ESG 2.0: Measuring and Managing Investor Risks Beyond the Enterprise Level serves as a reference for much of our feedback, in which we highlight how:

- Excess high risk leverage taken on by portfolio companies can inhibit their ability to offer quality jobs and/or quality and affordable goods and services, while also increasing risks of credit crises that boomerang back to investors' portfolios;

- Consolidation of capital flows among fewer large fund managers can lead to corporate consolidation,[1] squeezing out of opportunity for diverse and emerging fund managers,[2] lack of diversification for asset owners and allocators, higher valuations among larger deals, and potential asset bubbles;

- High fund manager compensation can lead to economic inequality, which manifests as a systemic risk in society and a systematic risk in investors' portfolios;

- Tax structuring of funds and investment vehicles can lead to systemic depletion of public resources, including those that support the oversight of orderly and efficient markets; and,

- Lobbying and political spend of fund managers can often conflict with these managers' stated ESG and impact investing commitments, while creating systemic risks for society and systematic risks in investors' portfolios.

A summary of our ESG 2.0 working paper was recently published by Robert G. Eccles, Tenured Harvard Business School professor, now at Oxford University, in Forbes, which may be found here.

To date, these issues, which manifest at the fund manager level versus portfolio company level, have not been captured by existing ESG and impact investing data measurement and management frameworks, such as the Global Reporting Initiative ("GRI") or SASB. These and other similar frameworks primarily evaluate portfolio company risks and impacts, rather than those of fund managers themselves. However, as our ESG 2.0 paper illustrates, activities at the fund manager level have implications that are inextricably linked to and are often root causes of portfolio company-level ESG dynamics.

[1] With related impacts of: monopsony dynamics that squeeze labor; declines in innovation; loss of opportunity for small and medium sized enterprises; and, imbalanced pricing power.

[2] Such fund manaers often have innovative strategies and deal flow.

As such, PDI is currently collaborating with several industry organizations to build out a dimension of voluntary framework tools to measure and manage these issues and linkages, including through the emerging Task Force on Inequality-related Financial Disclosures (“TIFD”) and collaboration that we started with the Impact Management Project (“IMP”) that is continuing with their partner, Impact Frontiers (you can read more on this project here). These initiatives are designed as multi-year projects with intensive consultation and engagement across diverse stakeholder groups, including asset owners and allocators, asset managers, companies, labor advocates, civil society advocates, academics, and others. We are glad to keep the Commission informed of these activities and learnings, which we hope can also contribute to ongoing improvements to policymaking and regulation.

PDI is also planning to respond to the SEC comment periods on climate risk and human capital. We urge the SEC to recognize that many ESG issues have root causes in topics and activities covered by the Form PF Amendments and Private Fund Proposal. Similarly, we have responded to other comment periods, such as those on pay versus performance, given the connection between the structure of pay and ESG issues. We encourage the Commission to, like us, take a holistic approach to these matters, considering their linkages in rulemaking. We welcome a discussion with the Commission to discuss these linkages further.

We are grateful for the opportunity to comment on these various proposals and appreciate the intent and important goals of the Commission, but these proposals cover complex matters with strong consequences and are being released at a speed which cannot be adequately considered by the public for meaningful feedback. While we have prepared preliminary comments on proposals relating to Form PF based on brief reviews and consultations with our stakeholders, we share concerns with other comment letters submitted by the New York City Bar Association and the Investment Adviser Association that (as noted by the New York City Bar Association), “...the Form PF Amendments and Private Fund Proposal, which would have a profound impact on the private fund industry, do not provide relevant stakeholders with sufficient time to analyze and provide meaningful comment to the Commission and its staff.”

We urge the SEC to consider extensions for both comment periods. However, given an extension has not yet been announced for comments on Form PF Amendments, and that the deadline for those comments is today, we are submitting the following preliminary perspectives on that particular proposal. Please note that our only comments in this letter relating to the Private Fund Proposal are to request an extension on that comment period.

Responses to SEC Questions 1 and 2:

PDI believes that the SEC and FSOC will benefit greatly from additional disclosures from hedge funds and private equity funds regarding systemic and systematic risks. We therefore generally agree with the overall approach the SEC is proposing for Form PF to include current reporting in sections 5 and 6.

However, it is important that reporting burdens are not so great that they outweigh the benefits. Unintended risks include, but are not limited to, higher costs for fund managers that are passed through to their limited partners (“LPs”), reduced opportunity for smaller and potentially more diverse fund managers, consolidation of influence and control of markets with larger fund managers (with associated implications of less capital to smaller portfolio companies and less diversification for LPs), backlash from industry players which can be used in the future to justify arguments against regulation (including a repeal of this regulation), as well as disruptions in the functioning of orderly and efficient capital markets.

In this letter, we express support for specific aspects of the proposals for Form PF where we have a more developed point of view. We also encourage the Commission to consider some adjustments to the proposed reporting amendments. We provide our alternative proposals in response to corresponding questions of the Commission where such a corresponding question exists. Additionally, we do not comment on aspects of the proposals where we have a less developed point of view.

We also have recommendations on topics for which the SEC does not proactively include questions. These include:

- Given the growth of the private credit markets, we recommend that Section 1a Item B explicitly include private credit in the list of options.

- Given the growing role of non-bank financial institutions (NBFIs) in the markets, we also recommend that Question 12 in Section 1b include whether borrowings were from banks or NBFIs. Alternatively, the SEC could at least define financial institutions to include NBFIs.

- It would also be helpful for the Commission to consider including recommendations on information relating to:
    - For individual investments, their adjusted EBITDA as reported to LPs and lenders, and total secured debt and unsecured debt per investment at the reporting period. We address risks related to adjusted EBITDA and EBITDA add backs on pages 27-28 of our ESG 2.0 working paper.
    - Metrics or criteria to help identify higher-risk forms of debt, such as thresholds for interest rates, leverage ratios, covenants, and remedies (excluding shareholder loans).
    - Employment data, including how many employees a company has at the time of acquisition, and terminations and hirings. We recommend that employees in add-on acquisitions are added to an "at the time of acquisition" total rather than appear as a new hire. We also understand these metrics may be further developed in alignment with the SEC’s proposed disclosures on human capital, and that

information regarding full-time employees versus part-time and contracted workers will be important, as well.

- Number of add-on acquisitions by portfolio companies.
- Percentage of AUM from acquired permanent sources of capital, such as insurance companies acquired by the fund manager, rather than from LPs. Recently, there have been a number of such acquisitions by general partners ("GPs") which may limit natural "checks and balances" that have been inherent in the GP/LP relationship. With new sources of permanent capital, LPs may be losing bargaining power and their ability to influence good governance at their GPs. Furthermore, GPs may face internal conflicts of interest in deciding where to invest such new sources of AUM.

PDI does not have a strong view on whether section 6 should be a separate section of Form PF or its own form.

Responses to SEC Questions 3, 8 and 5:

While we understand the value of hedge funds reporting in one day given the liquidity dynamics of public markets and potential for rapid change, we do not believe the same sense of urgency is required in private markets. Five to ten business days seem appropriate for private asset classes. We suggest that a business day should be defined as any day that the markets are open.

Responses to SEC Question 7 and additional related Questions 72-74:

PDI has had an opportunity in this limited comment period to consult with several of our peers in private capital markets about the pros and cons of decreasing the reporting requirement threshold to funds with under US$1.5 billion assets under management ("AUM"). We believe that as capital has accumulated to some of the largest fund managers in the markets, some of these fund managers can pose systemic risks. While we understand that individually, most private equity firms under US$1.5 billion AUM do not pose systemic risks, these smaller firms do have the potential to either make higher risk loans or take on higher risk borrowing. If many smaller firms across markets are making high risk loans, there could be potential for systematic risk, and as such, it may be prudent for the SEC and FSOC to monitor this segment of the market for such activity. As such, we are supportive of lowering the AUM reporting threshold.

Responses to SEC Questions 75-79 on Large Private Equity Fund Investment Strategies:

Yes. Form PF should require large private equity advisers to report investment strategies for the private equity, private debt, and other related funds they advise as proposed and for the reasons proposed.

We believe an appropriate threshold cutoff for such reporting would be lower than US$1.5 billion, but would prefer more time for further consultation to suggest an appropriate threshold. We agree that the main response to proposed question 68 in Form PF should be mutually exclusive with space to explain any overlapping strategies.

Regarding questions 78 and 79, the SEC proposes modeling question 68 after question 20 for hedge funds, but the types of strategies will be different for private equity funds (e.g., buyout, growth, venture, credit, distressed, infrastructure, real estate, secondaries, etc). Adjustments should be made accordingly. Additionally, we encourage the SEC to require disclosure of industries included in each strategy. In line with the SEC's growing interest in ESG factors, it will be important for the SEC to understand financial vulnerabilities in sectors that offer essential goods and services to the public and/or that are widely considered to be human rights. Examples of such sectors include, but are not limited to, healthcare, housing, and infrastructure such as water. We highlight these sectors due to growing stakeholder concerns about growing private equity ownership of such businesses and whether weaker capital structures that are overburdened with leverage may be inhibiting their ability to adequately operate. More information on vulnerabilities in these sectors and their ability to trigger systematic risks in markets and investors' portfolios is documented in our ESG 2.0 working paper. Public private partnerships should also be monitored.

Finally, this information may help the SEC and FSOC understand which segments of the market may be taking in too much versus too little capital, dynamics which can lead to asset bubbles and potential credit crises.

Responses to SEC Questions 80 and 81 on Large Private Equity Fund Investment Strategies:

Private credit should be broken down into subcategories. If part of the goal of this reporting is to understand systemic risk, understanding which portion of debt is senior, subordinated, or mezzanine will be important. Mid-market and large corporations should be broken out, but understanding some characteristics of typical debt burdens and equity valuations may be helpful too. "Other" should be a category, although we have not yet formed a strong view on additional comments to make on that. We recommend further consultation with GPs and LPs to determine what the appropriate category names should be.

Responses to SEC Questions 83-86 on Large Private Equity Fund Restructuring/recapitalization of a Portfolio Company:

Requiring advisers to report on restructuring or recapitalizations of a portfolio company would be helpful to understand systemic risk, particularly as it relates to leverage and risks of credit crises. The name of the company and date of restructuring are important, but so are key terms of the restructuring. We do understand that this may increase the reporting burden for GPs so suggest that more time be allowed for the appropriate metrics to be developed.

Responses to SEC Questions 87-89 on Large Private Equity Fund Investments in Different Levels of a Single Portfolio Company's Capital Structure by Related Funds:

Yes, Form PF should require advisers to report on investments in a different class, series, or type of securities of a single portfolio company capital structure. We believe that the conflicts of interest risks the SEC has identified are valid concerns.
It would likely be prudent to cover all funds of the same adviser, related persons, separately managed accounts, or other clients, but again, it isn't clear what the reporting burden would be, and if there is one, what the workaround should be. This would need to be discussed further with compliance professionals of GPs to better understand their limitations. We suggest that sub-funds of a particular fund should be able to report as a single entity.

Proposed question 71 would provide additional insight into these investments, since the current question 79 only covers the amount and not where in the capital structure such financing sits.

Responses to SEC Questions 90-92 on Large Private Equity Fund Fund-level Borrowings:

In addition to the information proposed (information on each borrowing or other cash financing available to the fund, the total dollar amount available, and the average amount borrowed over the reporting period), we support disclosure of the identity and type of lender, rate, term, covenants and default conditions, remedies, and whether the financing is a subscription line of credit or NAV facility. It isn't clear what categories for the type of financing are being proposed. We prefer to engage in further consultations before additional comments.

Response to SEC Question 93 on Large Private Equity Fund Financing of Portfolio Companies:

We believe the recommended reporting requirement would be useful for the purposes of improved identification of conflicts of interest and systemic risk for the reasons stated by the SEC.

Response to SEC Question 94 on Large Private Equity Fund Floating Rate Borrowings of Controlled Portfolio Companies (CPCs):

Particularly when the Federal Reserve is considering raising interest rates, a strong understanding of outstanding floating rate debt by CPCs will be important. It may also be useful to have data on fixed rate borrowings for completeness of information and context.

Response to SEC Question 95 on Large Private Equity Fund CPCs:

We believe that collecting the number of a fund's CPCs would be helpful to provide insight into a fund's strategy and to understand how portfolio companies behave under private equity fund control. This information may or may also be useful for understanding a firm's concentration risk.

Responses to SEC Questions 96-99 on Large Private Equity Fund Events of Default, Bridge Financing to CPCs, and Geographic Breakdown of Investments:

We generally agree with the recommended additional disclosures for the reasons stated by SEC staff.

Responses to SEC Questions 57-59 on Adviser-led Secondary Transactions:

Adviser-led secondaries do merit reporting. However, the receipt of this information does not need to be so urgent. It would be helpful to have clarity on what is being proposed as mandated reporting. Information to consider may include valuation, parties involved, sector, LP Advisory Committee ("LPAC") and other LP disclosures and approval prior to the transaction, and fees and carried interest applicable post-transaction. It would also be good to clarify that the definition of adviser-led secondary transaction includes continuation funds and fund term extensions.

We would not recommend excluding transactions initiated by some or all of the adviser's related persons. Transaction may be helpful to define, but also seems clear.

To conclude, we are broadly supportive of the SEC's proposals to amend Form PF requirements. In addition to enhanced information on systemic (and systematic) risks, we agree that "the proposed current reporting requirements for private equity advisers might incentivize some managers to enhance internal risk controls and reporting."

While some LPs may be concerned that they will bear the cost of additional reporting, high-level information can be aggregated, anonymized, and shared with the public regarding identified trends. This will enable market participants and their stakeholders to better understand risks and manage around them to the best of their ability if appropriate intervention has not yet been taken by public authorities. LPs can use such information in their asset allocation decisions across asset classes relative to systemic risks. For instance, they may be able to better determine when areas of the market are too risky or crowded (e.g. large leveraged buyout strategies or collateralized loan obligations). The emergence of new questions on Form PF may also inspire LPs to ask additional questions of their fund managers through due diligence questionnaires and other forms of engagement regarding systemic and systematic risks.

We also agree it makes sense to harmonize reporting requirements by size across hedge funds and private equity advisors. And while there are some costs to smaller funds of additional reporting, there are also benefits. Conflicts of interest can be present regardless of fund size. Data may be beneficial for smaller funds to demonstrate less systemic risk when anonymized aggregated data is published.

At the same time, we highly recommend a significant extension of the comment period for both Form PF Amendments and the Private Fund Proposal before any changes to rules are made.

We hope our comments are helpful. At PDI, we will continue to consult with both GPs and LPs to better understand their needs and limitations through our projects and welcome ongoing dialogue with the SEC to inform improved policy making and regulation.

Kind regards,

Delilah R. Rothenberg
Co-Founder & Executive Director, Predistribution Initiative