March 21, 2022

Chair Gary Gensler
Honorable Commissioners
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090
Via email: rule-comments@sec.gov

Re: File Number S7–01–22, Amendments to Form PF To Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers

Dear Commissioners,

On behalf of more than 500,000 members and supporters of Public Citizen, we provide the following comment regarding the Securities and Exchange Commission's (SEC, agency, commission) proposed amendments to Form PF regarding reporting requirements for large private equity advisers and large liquidity fund advisers.

Private funds, most simply understood, are organized investment vehicles that are not publicly traded stocks or bonds. They are known variously as private equity, hedge funds, and venture capital. The SEC defines a private fund as one that would otherwise be a publicly regulated security, except that its investors number less than 100, or are "qualified," meaning that they are sophisticated.

Once a boutique arena dwarfed by the stock and bond markets, private funds are now quite large. By 2008, private funds held $3.1 trillion. By 2017, that figure rose to $8.8 trillion. Some observers predict it will top $14 trillion by 2023.[1] By comparison, the value of all stocks traded on U.S. exchanges is around $50 trillion.[2]

Some of this private equity has harmed the economy, especially workers. Beginning in the 1980s with leveraged buyouts, a pattern has emerged where once stable companies are swamped with expensive "junk" bond debt by takeover practitioners. That debt load leads new management to terminate

[1] Samir Sonti, *Lifting the Curtain on Private Equity*, American Federation of Teachers (website visited March 7, 2022) https://www.aft.org/sites/default/files/private-EQUITY-report-2021.pdf
[2] *Total Market Value of U.S. Stock Market*, SIBLIS RESEARCH LTD. (website visited March 8, 2022) https://siblisresearch.com/data/us-stock-market-value/

employees, close plants, reduce research and development and curtail other operations, as explored in numerous accounts,[3] and congressional hearings.[4]

Despite public alarm and calls for legislative reforms, this sector has only grown, with problems abounding. In the last decade, private equity has led to 1.3 million job losses in the retail sector alone, through such bankruptcies as Toys R Us and at other large employers. In fact, job reduction appears to be a business model for this sector, as employment has been found to shrink 13[5] in the two years after a private equity firm takes over a public company. Other services falter as well. When private funds take over a nursing home, mortality rates jump by 10% while bills for patients also rise more than 10%.[6] Private fund investment in housing leads to rising rents, higher rates of eviction, and worse quality. Buyouts of private colleges lead to higher tuition and student debt, lower graduation rates and graduate earnings, and more law enforcement actions for fraud.[7] When lawmakers attempt to seek reform, private funds flood key lawmakers campaign coffers, according to a Public Citizen report. [8]

Despite the fact that private funds, by definition, are aimed at privileged investors, Public Citizen and our partners found that $5.3 billion in relief funds from the CARES Act meant for cash-strapped enterprises were diverted to 611 portfolio companies backed by 113 private equity funds.[9]

Because of the use of leverage, private funds represent a systemic risk to the financial system and the broader economy. Between 2015-2019, nearly two-thirds of retail companies that went into bankruptcy were owned through private funds. Bankruptcy rates among companies purchased in leveraged buyouts are 10 times higher than those in other firms.[10]

The failure of some private funds has sent tremors through the financial sector. In 2021, bad investment decisions by private fund Archegos Capital Management "left at least three banks with major damage."[11] In 2006, private fund Amaranth Advisers reported losing $6.6 billion, or half of the value of investments

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[3] See, for example, Bryan Burrough, *Barbarians at the Gate*, HARPERCOLLINS (1989) https://www.amazon.com/Barbarians-Gate-Fall-RJR-Nabisco-ebook/dp/B000FC10QG

[4] See Senate Banking Committee, *Legislative Calendar,* UNITED STATES SENATE (1987-1988) https://www.banking.senate.gov/imo/media/doc/Legislativecalendar100th.pdf

[5] Sen. Elizabeth Warren, *Private Equity: By the Numbers*, OFFICE OF SENATOR WARREN (website visited March 7, 2022) https://www.warren.senate.gov/imo/media/doc/PE%20Stats%20Final.pdf

[6] Sen. Elizabeth Warren, *Private Equity: By the Numbers*, OFFICE OF SENATOR WARREN (website visited March 7, 2022) https://www.warren.senate.gov/imo/media/doc/PE%20Stats%20Final.pdf

[7] Sen. Elizabeth Warren, *Private Equity: By the Numbers*, OFFICE OF SENATOR WARREN (website visited March 7, 2022) https://www.warren.senate.gov/imo/media/doc/PE%20Stats%20Final.pdf

[8] Mike Tanglis, Private Equity's Investment, Public Citizen (March 11, 2020) https://www.citizen.org/article/private-equitys-investment/

[9] Miriam Li, Taylor Lincoln, Mike Tanglis, et al *Public Money for Private Equity,* PUBLIC CITIZEN, AMERICANS FOR FINANCIAL REFORM, ANTI-CORRUPTION DATA COLLECTIVE (Sept 15, 2021) https://www.citizen.org/article/public-money-for-private-equity/

[10] Sen. Elizabeth Warren, *Private Equity: By the Numbers*, OFFICE OF SENATOR WARREN (website visited March 7, 2022) https://www.warren.senate.gov/imo/media/doc/PE%20Stats%20Final.pdf

[11]Juliet Chung, *What is Archegos and How Did It Rattle the Stock Market*, WALL STREET JOURNAL (April 6, 2021) https://www.wsj.com/articles/what-is-archegos-and-how-did-it-rattle-the-stock-market-11617044982

it managed.[12] In 1998, the failure of hedge fund Long-Term Capital Management led to a bailout by more than a dozen banks.[13]

The SEC adopted Form PF following the 2008 financial crisis as part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act that sought to improve information about the status of large capital pools. It requires basic information submitted confidentially to the SEC.

Currently, most private fund advisers that are required to file Form PF must only complete one section of the form. This part simply asks advisers to identify the funds they advise, and the fund's use of debt.

Those defined as "large private fund advisers," with at least $1.5 billion under management, must disclose to the SEC additional information, including the investment strategy, counterparties, and investors. Those defined as "large private equity fund advisers," with at least US $2 billion in assets under management, must disclose information about liquidity, that is, how quickly they can sell assets.

Because they are private, little is understood about potential problems with these funds until a public event, such as a bankruptcy filing in court, brings them to light. This leaves financial regulators ill-equipped to anticipate danger. Therefore, we welcome the SEC's proposal to improve reporting by these private funds confidentially to the agency.

SEC Proposal

Through these proposed amendments to Form PF, the SEC now plans to expand the disclosure requirements for large hedge fund advisers (with more than $1.5 billion under management) and all private equity advisers with more than $150 million under management. Specifically, both of these types of advisers would be required to report certain events within one business day to the SEC.

For large hedge fund advisers, these events include extraordinary investment losses, defined as a 20 percent or more loss of its most recent net asset value over a rolling 10-business-day period; a default on debt; a change in the relationship between a hedge fund and a prime broker; a large withdrawal by a client exceeding 50 percent of a hedge fund's most recent net asset value; or a fund's inability to satisfy a redemption request.

For private equity advisers, these events include a general partner's clawback of 10 percent or more of the fund's capital; removal of the adviser as general partner; or investors' election to terminate the fund.

We support these additional disclosures. Because the scope of private funds is so large, the systemic risk they pose must be monitored with greater care. We specifically support the urgent reporting of losses. Losses of 20 percent or more may indicate stress at the fund or even the markets where the fund participates. We encourage the SEC to consider an additional metric based on the fund's size. A 20 percent loss at a fund with $2 billion in assets would be $400 million. But the same $400 million loss at a $4 billion fund would be only 10 percent. Yet the $400 million may well signal stress in a market.

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[12] Hilary Till, *The Amaranth Collapse*, EDHEC BUSINESS SCHOOL, (August 2007) http://www.premiacap.com/publications/EDHEC_Amaranth_Collapse.pdf
[13] Stephen Livinski, *Too Interconnected to Fail*, REGION FOCUS (Summer 2009) https://www.richmondfed.org/-/media/richmondfedorg/publications/research/econ_focus/2009/summer/pdf/economic_history.pdf

Therefore, we suggest that the SEC define an "event" as one that includes a 20 percent loss, or $400 million, whichever is less.

Again, we support the agency's effort to gain more material from this large and growing sector of the financial markets. This information will be valuable to the SEC as well as the Financial Stability Oversight Council. Ideally, much of this information would be public, which is outside the SEC's statutory mandate to require, allowing other researchers to supplement government overseers. Congress should provide this statutory authority to cast sunlight on this important sector.

For questions, please contact Bartlett Naylor at [redacted]

Sincerely,

Public Citizen