March 21, 2022

By Email:

Vanessa A. Countryman
Secretary
U.S. Securities & Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File No. 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 Ms. Countryman,

The Institutional Limited Partners Association (ILPA)[1] appreciates the opportunity to comment on proposed rule S7-01-22[2] regarding proposed amendments to Form PF. ILPA serves over 580 institutional investors (LPs) representing more than US$2 trillion in private fund assets.

I. Expanded Disclosures Would Most Directly Benefit Investors if the SEC Required Private Fund Advisers to Share Information within Form PF with their Investors

As we have indicated in our prior comments to the Commission regarding Form PF[3], we believe the Form is an important component in a robust SEC examination program. The information in Form PF helps inform SEC examinations by identifying specific risks and evolving patterns of practice in the private funds industry worthy of closer monitoring and potentially further investigation. This enhanced supervisory capability afforded by Form PF information in turn improves investor protections for ILPA's members.

Investors today may request but very seldom receive Form PF from the advisers to the private funds in which they invest. This is despite no prohibition under the adopting release[4], or the Dodd Frank Act[5] itself on private fund advisers sharing the Form with their investors. While there are limitations on the SEC itself directly sharing this information in Section 204(b) of the Investment Advisers Act and in the adopting

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[1] ILPA is the voice of the institutional investors invested in private equity, colloquially known as Limited Partners or LPs. Our 580+ member institutions represent over USD 2 trillion in private equity assets under management globally and include public and private pension funds, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all of which invest in the U.S. alternative investment market. LPs provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation, across America and around the world.

[2] U.S. Securities & Exchange Commission, *Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers*, 87 Fed. Reg. 9106 (February 17, 2022).

[3] ILPA Letter to U.S. Securities & Exchange Commission, *Form PF: SEC File No. 270-636* (April 30, 2018), *available at:* https://ilpa.org/wp-content/uploads/2018/04/ILPA-Comment-Letter-on-Form-PF-Collection-Request-SEC-File-No.-270-636-4.30.18.pdf; ILPA Letter to U.S. Securities & Exchange Commission Chair Jay Clayton, *Strengthening the Private Equity Market Through Balanced Oversight* (April 30, 2018), *available at:* https://ilpa.org/wp-content/uploads/2018/04/ILPA-Letter-to-Chairman-Clayton-on-PE-Regulation-4.30.18.pdf.

[4] U.S. Securities & Exchange Commission, *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, 76 FR 71128 (Nov. 16, 2011).

[5] *See* 15 U.S. Code § 80b–4(b).

release, there is *no prohibition* on requiring private fund advisers to provide the information contained within Form PF to their existing investors.

The Commission has the authority to propagate disclosure rules under section 211(h)(1) of the Investment Advisers Act, which states the Commission shall "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers…"[6] We believe a requirement that private equity fund advisers share the same or similar information as within Form PF with their investors would be in line with Commission authority without breaching the confidentiality provisions of Section 204, provided that the information shared aligned with the specific fund products in which the receiving LPs were invested. We understand that information within Form PF is in the aggregate across multiple funds and that, consequently, certain information related to specific underlying portfolio companies may be privileged, due to confidentiality provisions within fund-specific LPAs or agreements with those portfolio companies.

ILPA is supportive of enhanced disclosures to the SEC in Section 4 and the addition of Section 6 under the proposed rule, particularly if the SEC required advisers to share information within the Form with their LPs, subject to confidentiality provisions within fund documents. Information within Form PF would sharpen investors' ongoing monitoring of their private funds as well as their due diligence of prospective fund investments with those managers, by providing insight into shifts in fund strategies, current and historical patterns in the use of leverage and subscription financing, as well as other important fund activities.

LPs have long operated under restrictions imposed by the fund documents that require the confidential treatment of fund strategy and other commercially sensitive information. Most of the data, particularly in Section 4, is not related to public markets nor is the information current, given the annual filing requirement, therefore the information within the Form presents low risk of negatively harming other investors in the fund. There is little competitive advantage or trade secret risk presented by requiring information within this Form be shared with existing investors in the fund.

Even though LPs seldom if ever receive Form PF, in most cases they currently bear the cost of completing the Form as a fund expense. ILPA is supportive of the recent rulemaking proposal regarding private fund advisers[7] that would prohibit advisers from passing the costs of completing form PF on to their LPs. This is a welcome change and should not have any impact on LPs ability to receive information within the Form PF, whether in its current form or with the addition of the new elements indicated in proposed rule S7-01-22.

Further, should the SEC issue a new disclosure rule mandating that advisers provide LPs with the same or similar information as within Form PF, subject to any confidentiality provisions within LPAs, this should in no way impact existing reporting and disclosures provided by advisers to their LPs.

II. ILPA Supports the New Section 6 but Recommends a More Practicable Reporting Window

The new Section 6 proposed within the rule provides SEC staff with meaningful information to inform SEC exam program priorities, particularly regarding adviser-led secondaries transactions and fund events that may signal that a private fund adviser is under stress. Sharpened SEC scrutiny, channeled through risk assessments and examinations, will promote better practices by private fund advisers when engaging in potentially conflicted transactions such as adviser-led secondaries. The disclosures required under the

[6] *See* 15 U.S. Code § 80b–11(h)(1).

[7] Proposed Rule regarding Private Fund Advisers: Documentation of Registered Investment Adviser Compliance Reviews; SEC Rel. IA-5955, File No. 03-22, specifically proposed rules 211(h)(2)-1(a)(2) and (3) (Feb. 9, 2022).

newly proposed Section 6 will also enable the SEC to target distressed advisers more effectively for examination and enforcement efforts.

To further strengthen Section 6, ILPA recommends the SEC include an additional Reporting Event requiring disclosure in the event of instances where the adviser has indemnified themselves from covering any penalties and/or legal costs. This proposed reporting would include the effective date of any payments made, the cost and how paid, e.g., under an existing insurance policy, and a brief description of the events surrounding the indemnification.

ILPA's members support the inclusion of the new section 6 but believe a one-day reporting period is unreasonably short and suggest instead a more practicable reporting timeline, e.g., one that aligns with public company 8-K filings or four business days, or 10-20 business days in certain cases, depending on circumstances. The SEC may determine that required notification ranges should vary based on the nature of the specific Reporting Event. This more practicable timeline will ensure private fund advisers can meet their obligations and minimize compliance risk, while still providing sufficiently timely notification to the SEC of a specific event that should factor into the Commission's broader risk monitoring and oversight activities.

We look forward to continuing the dialogue to ensure that the SEC has a fulsome and decision-useful view of emerging industry practices and potential areas of risk to inform the Commission's investor protections mandate.

In case of questions or to request additional information, please contact ILPA's Managing Director, Industry Affairs, Jennifer Choi, at [redacted].

Sincerely,

Steve Nelson
Chief Executive Officer
Institutional Limited Partners Association (ILPA)

Cc: The Honorable Gary Gensler
The Honorable Caroline Crenshaw
The Honorable Allison Herren Lee
The Honorable Hester Peirce