March 21, 2022

VIA ELECTRONIC SUBMISSION

Ms. Vanessa A. Countryman
Secretary U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549–1090

[Submitted via email to rule-comments@sec.gov]

Re: SEC Release No. IA-5950; Securities 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 Real Estate Board of New York (REBNY) is pleased to provide comments to the Securities and Exchange Commission (SEC) on its proposal to revise Form PF. REBNY is New York City’s leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate.

Private investors and private equity owners play a critical role in New York City real estate as owners of both commercial and multifamily assets. The industry’s economic contributions to the local economy are substantial, supporting thousands of high-quality jobs and providing the largest source of revenue for the City government. REBNY is concerned that the proposed rules would hamper that investment without meaningfully addressing concerns about systemic risk and financial stability.

In particular, it is important to recognize that real estate private equity funds and private equity sponsors are different from other types of financial market participants. Specifically, those real estate funds are not meaningfully interconnected with other financial system participants and have very limited counterparty exposure. Real estate private equity sponsors and their funds do not guarantee or pledge assets to secure each other’s obligations, and portfolio companies owned by a private equity fund typically do not guarantee or pledge assets to secure each other’s obligations. Further, there is no demonstrated or meaningful financial interconnection among a private equity sponsor, its funds, or its portfolio companies. Moreover, investors in real estate private equity funds have limited or no redemption rights during the life of the fund, which is often a period of 10 years or more, making a sudden “run” on the fund highly unlikely.

At the same time, however, the burdens imposed by the proposed rule are substantial, inappropriate for real estate risk, and beyond Congressional intent. Specific burdens imposed by the proposal include:
1. Certain information required to be submitted in the proposal is not indicative of systemic risk. For instance, general partner clawbacks would be required to be reported upon clawback. However, these can occur for any number of reasons which are not related to market conditions, as a general partner clawback most commonly occurs at the end of a fund’s life on a cumulative retrospective basis and could be due to losses suffered many years before the clawback occurs.

2. The proposal would require reporting of certain transactions and events on a one-day basis. Such a requirement is inconsistent with other similar reporting requirements and would impose substantial burdens on real estate private equity funds, which for the reasons noted above do not pose significant risk of financial system wide disruptions.

3. The proposal would require private equity advisers to specify the percentage of their reporting funds’ capital that is deployed to specified investment strategy categories. Forcing private equity advisers to report on how they allocate complicated portfolios among overly broad categories will be unduly burdensome, particularly given the tenuous relationship between that information and systemic risk. Restructurings and recapitalizations of portfolio companies occur routinely in all economic environments and many fund agreements specifically contemplate such transactions.

4. The proposal would also require private equity advisers to specify the number of controlled portfolio companies that a reporting private equity fund owns, as well as the percentage of the controlled portfolio company aggregate borrowings which are at a floating rate of interest. Such a requirement imposes a significant burden, and the SEC has provided no evidence for why this information is relevant to systemic risk.

Unfortunately, the SEC has provided no adequate analysis demonstrating how the new information required by the proposal would benefit investors or reduce systemic risk. At the same time, the proposal will result in real estate private equity advisers’ compliance and operational costs increasing as they attempt to comply with these new reporting requirements.

Developing a more complete understanding of these costs and benefits will take time. For this reason, it would be prudent to extend the comment deadline to allow for the completion of more robust analysis of the proposal and its impacts as requested by the SEC.

For all the foregoing reasons, the addition of new reporting requirements, including the one business day timeframe set forth in the Proposed Amendments, presents significant compliance and operational challenges for private real estate fund sponsors, without meaningfully improving systemic risk regulation.

Thank you for the opportunity to comment on this important issue.

Sincerely,

James Whelan
President