INVESTMENT ADVISER ASSOCIATION

March 21, 2022

Via Electronic Submission

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (SEC Rel. No. IA-5950; File No. S7-01-22)

Dear Ms. Countryman:

The Investment Adviser Association[1] (**IAA**) appreciates the opportunity to comment on the Commission's proposal to amend Form PF, the confidential reporting form for certain private fund advisers.[2] Form PF was adopted as required by the Dodd-Frank Act to provide the Commission and the Financial Stability Oversight Council (**FSOC**) with information on a confidential basis about the basic operations and strategies of private funds. According to the Proposal, over the past decade, Form PF has helped establish a baseline picture of the private fund industry for use in assessing systemic risk.[3] The Commission now seeks to update the form to require significant additional reporting by private fund advisers. In our view, however, the Proposal goes well beyond its stated goals and imposes requirements that would be highly burdensome and costly for those advisers to which it would apply,[4] and we urge the Commission

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[1] The IAA is the leading organization dedicated to advancing the interests of investment advisers. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than $35 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit https://investmentadviser.org/.

[2] *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 (Feb. 17, 2022) (**Proposal**), available at https://www.govinfo.gov/content/pkg/FR-2022-02-17/pdf/2022-01976.pdf. Investment advisers that are registered or required to be registered with the SEC and that have private fund assets under management of at least $150 million are required to file Form PF.

[3] Proposal at 9107.

[4] Over 38 percent of the approximately 14,000 SEC-registered advisers have at least one private fund client. *See IAA-NRS Investment Adviser Industry Snapshot 2021* (July 2021) (**Adviser Industry Snapshot)** (Figure 2E), available at https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/industry-snapshots/Investment_Adviser_Industry_Snapshot_2021.pdf. According to the Proposal, fewer than 10 percent of the private funds that advisers reported on Form ADV were not on Form PF in 2020. Proposal at 9127, n. 105.

to strike a better balance between its goals and the negative impacts on advisers.

I. Executive Summary

The proposed amendments would: (i) require current, one-business-day reporting upon the occurrence of key events for private equity funds and large hedge funds; (ii) decrease the reporting threshold for large private equity fund advisers; (iii) require all private equity fund advisers subject to the Form PF filing requirement to provide additional information about the private equity funds they advise; and (iv) amend reporting requirements for large liquidity fund advisers. The amendments are intended to enhance FSOC's ability to monitor systemic risk as well as bolster the Commission's regulatory oversight of private fund advisers and its investor protection efforts.[5]

The private fund landscape is diverse, with widely variant types and sizes of funds, business models, structures, and investment strategies.[6] Many IAA members manage private funds and our members and their funds reflect this diversity. We support the Commission's oversight of private fund advisers and appreciate its interest in obtaining information needed to monitor systemic risk and help FSOC and the Commission determine how to deploy their regulatory tools. We believe, however, that the proposed updates to Form PF are overly broad and are not appropriately tailored to meet the Commission's stated goals. As the Commission proceeds to consider the Proposal, we urge it to balance its need for each proposed item of information against the business, operational, and compliance costs to advisers of reporting the information, as well as the very real risk that the highly sensitive proprietary business information sought by the Commission will inadvertently be made public. We also urge the Commission to consider potentially less burdensome ways to meet its regulatory objectives.

To this end, the Commission should avoid taking a "one-size-fits-all" approach for private fund adviser reporting and consider the cumulative impact of all its regulatory requirements on advisers' ability to continue to serve their clients' interests. This is especially, but not only, important for smaller advisers, which make up the vast majority of SEC-registered advisers.[7]

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[5] Proposal at 9129.

[6] A private fund for purposes of Form PF is an issuer that would be an investment company under the Investment Company Act of 1940, but for sections 3(c)(1) or 3(c)(7) of that Act.

[7] Adviser Industry Snapshot. According to the Snapshot, 87.9 percent of SEC-registered advisers employ 50 or fewer, and 57.6 percent employ 10 or fewer, non-clerical employees. The SEC's Asset Management Advisory Committee (**AMAC**) recently recommended that the SEC periodically engage in an assessment of the cumulative impact of SEC regulations on smaller advisers. *See* Final Report and Recommendations for Small Advisers and Funds (Nov. 3, 2021) (**AMAC Report)**, available at https://www.sec.gov/files/final-recommendations-amac-sec-small-advisers-and-funds-110321.pdf. The AMAC Report notes that, given the breadth, scope, and depth of the regulatory requirements on all advisers, and considering the growing aggregate or cumulative impact of compliance costs on the balance sheet health of small advisers, economic analysis done in a vacuum has limited utility. The Report also notes that while economic analysis on a rule-by-rule basis is necessary, it is insufficient to provide the

We make several recommendations that could better balance the goal of obtaining information from private fund advisers necessary for appropriate Commission and FSOC oversight against the additional costs for advisers. We have made every effort to analyze, discuss with members, and obtain feedback on potential business, operational, and compliance consequences of the Proposal and to offer alternatives where we have identified concerns, to the extent feasible given the serious time constraints for providing feedback to the Commission.[8]

Specifically, we recommend that the Commission carefully evaluate its need for – and the urgency with which it needs – each of the proposed items. Many of the items proposed to be reported on a current basis will not in our view assist the Commission or FSOC in addressing systemic risk. We also do not believe that current reporting is necessary to meet the Commission's investor protection goals.[9] Accordingly, we recommend that the Commission:

Commission (and public commenters) the picture necessary to be fully informed in considering and commenting on rulemaking initiatives.

[8] The Proposal is one of several concurrent rule proposals that, if adopted, will have an enormous effect on investment advisers, investors, the markets, and the U.S. financial system as a whole. Each of these proposals, standing alone, is complex and potentially consequential, with the accompanying releases asking a large number of questions and seeking a large amount of data. Given the significant amendments proposed, we continue to be concerned that the very short comment period – for this and all the other proposals – is insufficient for us and other commenters to provide comprehensive and sufficiently thorough responses, including proposing thoughtful alternatives that could better achieve the Commission's stated objectives in all of the areas where we have identified concerns. As we recently expressed, we do not believe the SEC has provided sufficient time for considered public input on the Proposal; a comment period for *this* Proposal of at least 60 days from publication in the *Federal Register* would have been more appropriate. *See* IAA and Joint Trade Associations' Letter Requesting Extension of Comment Period for Private Fund, Form PF Proposals (Mar. 1, 2022), available at https://investmentadviser.org/wp-content/uploads/2022/03/Extension-Request-File-Nos.-S7-03-22-S7-01-22.pdf. Some of the other significant rule proposals concurrently out for comment are: *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, SEC Rel. No. IA-5955 (Feb. 9, 2022), available at https://www.sec.gov/rules/proposed/2022/ia-5955.pdf; *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies*, 87 Fed. Reg. 13524 (Mar. 9, 2022) (**Adviser Cybersecurity Proposal**), available at https://www.govinfo.gov/content/pkg/FR-2022-03-09/pdf/2022-03145.pdf; *Shortening the Securities Transaction Settlement Cycle*, SEC Rel. No. 34-94196 (Feb. 9, 2022), available at https://www.sec.gov/rules/proposed/2022/34-94196.pdf; *Modernization of Beneficial Ownership Reporting*, 87 Fed. Reg. 13846 (Mar. 10, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-03-10/pdf/2022-03222.pdf; *Short Position and Short Activity Reporting by Institutional Investment Managers; Notice of Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-related Data Collection*, 87 Fed. Reg. 14950 (Mar. 16, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-03-16/pdf/2022-04670.pdf; and *Money Market Fund Reforms*, 87 Fed. Reg. 7248 (Feb. 8, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-02-08/pdf/2021-27532.pdf.

[9] We are concerned that, with respect to many of the proposed items, the Commission appears to conflate investment protection with mitigation of investment risk. For example, investment losses or losses resulting from market stresses are typical investment risks inherent in this – and indeed all – types of investments. We do not believe that the Commission's investor protection mission should extend to protecting investors from fully-disclosed investment risk.

- Modify some of the proposed current reporting items in Sections 5 and 6 to better capture indications of actual systemic risk or stated policy concerns and move them from a current reporting requirement to an annual or quarterly reporting requirement. We recommend that the Commission remove other items altogether.

- Provide for a more reasonable timeframe for advisers to report, should it determine that some of the proposed items require current reporting.

- Retain the current filing threshold for large private equity fund advisers in Section 4 and modify certain proposed Section 4 questions.

- Not define "digital assets" in this Proposal.

- Not collect more highly sensitive proprietary information than it needs and ensure robust controls around maintaining Form PF confidentiality for the information it does collect.

- Reconsider the costs and burdens in the economic analysis and provide not less than an 18-month compliance period to enable advisers to make the considerable technology and personnel investment that will be necessary to comply with the Proposal.

We discuss our recommendations below.

II. Recommendations on Proposed Current Reporting in Sections 5 and 6

The Commission proposes new current reporting by large hedge fund advisers in new Section 5 and by all private equity fund advisers in new Section 6 within one day of the occurrence of specified key events. The Commission explains its view that timely notice could allow it and FSOC to monitor systemic risk and assess the need for regulatory policy. The Commission also states that this information could allow it to pursue potential outreach, examinations, or investigations in response to any harm to investors or potential risks to financial stability on an expedited basis before they worsen.[10]

We appreciate the Commission's role in monitoring for emerging risks and potential market disruptions and in obtaining information to inform its examination and investigation functions. As we discuss below, however: (i) we do not believe that reporting of all of the proposed items will serve the Commission's stated objectives, and, even if reporting of some items is warranted, that they need to be reported on an urgent basis; (ii) we do not believe that a one-day turn-around time for any of the proposed items is necessary to achieve the Commission's goals and that any marginal benefits from such quick reporting are substantially

[10] Proposal at 9130.

outweighed by the costs and exacerbated risks to investment advisers; and (ii) if current reporting is required, the Commission should modify the required items in many respects.

A. The Requirements, as Proposed, are Overbroad and Not Needed to Achieve the Commission's Goals

The Commission has not identified how each of the proposed reporting items fills an important data gap or addresses systemic risk concerns. Nor has the Commission explained how it will use all of the information to achieve its goals. Some items proposed by the Commission arise from routine events in the investment management process, or reflect investment losses that are consistent with fully-disclosed investment risk, and do not raise systemic risk concerns or signal significant stress at a fund. For example, there are instances where a 20 percent reduction in net asset value is perfectly benign. The Commission's interest in obtaining information about and potentially crafting a regulatory response to these more routine types of events is outweighed by the challenges and extreme costs for advisers to generate current reports and the potential harm to investors from having advisers' resources diverted for reporting of these items.

To the extent the Commission believes that reporting of certain of these more routine items is nonetheless necessary to achieve the purposes of the amendments, we would suggest that annual (in the case of Section 6 items)[11] or quarterly (in the case of Section 5 items)[12] reporting would strike a more appropriate balance. Accordingly, we recommend in Section C below that the Commission move several of the proposed current reporting requirements to an annual or quarterly reporting requirement and remove other items altogether.

B. If the Commission Requires Current Reporting of Any of the Items, It Should Extend the Timeframe to at Least Five Business Days

For any items that the Commission determines truly warrant current reporting, we urge the Commission to employ a more reasonable timeframe of no less than five business days and also suggest some modifications to these requirements.

As support for the one-business-day filing requirement, the Commission states that the proposed structures of Sections 5 and 6 are "relatively simple and require advisers to flag the reporting event from a menu of available options and add straightforward explanatory notes about the events, which generally should not require considerable time to complete."[13] The

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[11] Allowing for annual reporting of some of the Section 6 items would leverage existing reporting obligations for large private equity funds.

[12] Allowing for quarterly reporting of some of the Section 5 items would leverage existing reporting obligations for large hedge funds.

[13] Proposal at 9136. On the other hand, the Commission surmises that "[e]xtending the reporting time period may increase internal costs to advisers to prepare and review the required disclosure, to the extent a longer reporting time indirectly signals to advisers a need for greater detail, thoroughness, or diligence." We disagree that increasing the

proposed process is far from straightforward. Advisers understand the risk of filing incomplete, inaccurate, or misleading reports to the Commission, and they take their obligation to make regulatory filings seriously. Typically, advisers build in several layers of review before making any SEC filing to help ensure that all relevant stakeholders have been consulted and that the filing is accurate and complete. This takes some time, especially when advisers are also working to respond quickly to the situation at hand.

One business day simply does not provide advisers with sufficient time to: (i) scope and evaluate a particular event, including determining whether a triggering event has actually happened and verifying relevant facts internally, with third parties, and with fund investors as appropriate; (ii) respond appropriately to investor and business needs, including by making potentially time-sensitive investment decisions; and (iii) consolidate the information in order to prepare and file accurate and complete data in a Form PF filing. Smaller and mid-sized firms with smaller staffs, in particular, will be resource constrained as they are more likely to be multi-tasking, including working on investment compliance, implementing the compliance program, handling other urgent matters, and meeting the needs of clients and prospective clients.

It should be in everyone's interest to permit advisers reasonable time to be able to commit sufficient resources to go through the steps described above. If the triggering event is truly sufficiently urgent for the Commission to feel that it warrants a current report, then firms should not have resources diverted from responding to the situation. Allowing advisers sufficient time to assess a situation to determine whether a triggering event has occurred and to analyze, prepare, and report data with appropriate care would make it more likely that the Commission will receive information that is accurate and complete and does not include a significant number of false positive reports.

Above all, advisers are fiduciaries to their clients, and, as such, their first duty should be to manage events affecting their fund – and, for many advisers, their non-private-fund – clients, including from market disruptions, stress events, and other unforeseen circumstances. If the Commission determines that certain items warrant current reporting, a more reasonable timeframe would satisfy the Commission's and FSOC's need for timely information[14] without sacrificing investor protections or risking the filing of inaccurate, incomplete, or even misleading reports. We strongly recommend that no less than a five-business-day-reporting requirement for any items that the Commission determines necessary to report on a current basis would more

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reporting time to file a report would increase costs because advisers' obligations to file accurate information and the care they need to take to ensure that their internal processes have been met are not related to, and do not depend upon, the amount of time provided to make a filing.

[14] In particular, we question whether one-business-day reporting of private equity fund triggering events would even be helpful in managing systemic risk because generally private equity funds do not pose risk to the U.S. financial system. *See, e.g.*, Office of Financial Research (OFR) within the Financial Stability Oversight Council Annual Report to Congress (Nov. 2021), available at https://www.financialresearch.gov/annual-reports/files/OFR-Annual-Report-2021.pdf. The report mentions private equity funds once ("Some insurers are taking steps to exit product lines that are less profitable or have unpredictable liability profiles. Often, buyers of these product lines, such as private equity firms, have had to identify or hire product expertise to complete the acquisitions.").

appropriately balance the Commission's and FSOC's need for the information with providing enough time to allow advisers to do the legwork necessary to make an accurate and complete filing.

C. The Commission Should Modify Some of the Reporting Items, Move Some Items from a Current to an Annual or Quarterly Reporting Requirement, and Remove Other Items Altogether

1. Recommendations to Modify Section 5 (Large Hedge Fund Advisers)

We recommend that the Commission make the following changes to the proposed Section 5 reporting requirements:

- Exclude from the current reporting requirement certain funds that technically fall within the definition of "hedge fund" for purposes of Form PF but do not calculate NAV on a daily or monthly basis.
- Increase the trigger threshold for Item B (extraordinary investment losses) or move the item to quarterly reporting.
- Revise Items C and E (margin events) or move them to quarterly reporting.
- Remove Item F (prime broker relationship change) from required reporting or, alternatively, require quarterly reporting.
- Remove Item G (unencumbered cash) from required reporting or, alternatively, require quarterly reporting.
- Remove Item H (operations events) and require quarterly reporting only if an adviser initiated a firm-wide disaster recovery or business continuity plan.[15]

a) Exclude certain funds

We understand that the Commission may wish to receive consistent current reporting data from all funds defined as hedge funds. However, the reporting items are an ill fit for some private equity and other funds that meet the definition of "qualifying hedge funds" for purposes of Form PF but do not calculate NAV on a daily or monthly basis. The two most common reasons that these funds are "hedge funds" for Form PF purposes are because (i) their governing documents permit leverage or short sales, without regard to whether these are actually employed by the fund or (ii) they allow for infrequent redemptions (*e.g.*, annually).[16] We recommend that

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[15] We have not had sufficient time to fully assess whether we would object to Items D (margin default), I (redemptions equal to 50 percent or more of the most recent NAV), or J (inability to satisfy redemptions or suspension of redemptions) so do not address those items in this letter.

[16] For example, certain open-end real estate funds, permanent capital private equity funds, private credit funds, and other private equity funds have governing documents that may allow for derivatives or leverage, whether the funds use them or not, or may allow for redemptions on an infrequent basis (*e.g.*, annually or every few years). Other closed-end funds may be commodity pools because they hold one or more swaps but are not generally considered hedge funds.

the Commission exclude these funds from Section 5 reporting. These funds do not calculate NAV on a daily or monthly basis because their redemption rights are limited to other than quarterly (or may not allow redemptions at all). They will thus be unable to measure changes to the fund's NAV as a percentage of that NAV in real time.

The Section 5 triggering events are inapposite to these funds in other ways as well. For example, the availability of cash is part of the ordinary-course business of these funds because of capital calls or as part of their basic redemption process. Thus, changes to their unencumbered cash are routine and not a relevant indicator of systemic risk. Any reporting requirement should be more narrowly tailored to provide meaningful information. Accordingly, we recommend that the Commission exclude funds that do not calculate NAV on a daily or monthly basis from the Section 5 reporting requirement.

b) Increase the trigger threshold for Item B (extraordinary investment losses) or move the item to quarterly reporting

We recommend that the Commission raise the trigger for "extraordinary investment losses" to a 50 percent decline in NAV, because, in our view a 20 percent decline does not indicate that a hedge fund is likely to become insolvent or otherwise signal material stress and thus is not likely to provide an early warning of fund- or industry-level stress that would raise systemic risk. If the Commission declines to increase the current reporting trigger to 50 percent, we recommend that this item be moved to quarterly reporting because less than a 50 percent investment loss should not warrant current reporting.

We also request that the Commission provide guidance on how a fund that is valued only every 30 or 31 days should calculate whether it has incurred extraordinary investment losses. In addition, we ask that the Commission clarify whether an adviser would need to submit a report twice if, in a 10-day rolling period, the loss exceeds the established percentage in two consecutive 10-day look back periods.

c) Revise Items C and E (relating to margin) or move them to quarterly reporting

We also believe that, as proposed, Items C and E include ordinary course events. If the Commission determines to require current reporting for these items, it should exclude routine events. In addition, the thresholds for triggering reporting should be increased to a level that could reasonably be viewed as raising actual systemic risk concerns. If the Commission declines to modify these items as recommended, we ask that they be moved from current to quarterly reporting.

Proposed Item C would require the adviser to report significant increases in the reporting fund's requirements for margin, collateral, or an equivalent (margin). If the fund has experienced a cumulative increase in margin of more than 20 percent of the fund's most recent NAV over a rolling 10-business-day period, Item C would require the adviser to file certain information as a current report. We recommend that the Commission amend Item C to raise the threshold from 20 percent to 50 percent. A 20 percent margin increase in our view is not indicative of fund or systemic risk and more likely would simply reflect short-term volatility in the market. Regardless of the trigger threshold, we note that it would be difficult to measure the reporting fund's increase in margin over a rolling 10-business-day period.

In addition, some fund investment strategies will routinely result in the listed check box circumstances, potentially leading to a large number of reports of routine events. We thus also recommend that, except for the check box that indicates a margin increase related to a deteriorating position, it should not be necessary to respond to the other check box circumstances identified in Item C and we ask that they be removed. If the Commission retains the other check boxes, we request that it clarify several elements of Item C, including: (i) whether calculations should be based on trading days or investment days; (ii) whether this item includes a margin increase for a specific exchange/product type; and (iii) how an adviser should factor in increases as a result of a change in the portfolio strategy (*e.g.*, increased risk), market events (*e.g.*, an exchange raises requirements), or new capital activity.

Item E would require the adviser to report a default by a counterparty to the reporting fund if the amount involved is greater than five percent of the most recent NAV of the reporting fund. We do not believe that a five percent threshold is indicative of potential systemic risk or raises investor protection concerns and recommend that, if retained as a current reporting requirement, it should be raised to 10 or even 20 percent to lower the likelihood of reporting routine events. For example, a fund involved in de-risking and putting on a large position may increase collateral requirements to accomplish those objectives, hitting a five percent threshold without in any way implicating systemic risk or warranting a regulatory response.

d) Remove Item F (prime-broker relationship change) from required reporting or, alternatively, require quarterly reporting

We request that the Commission remove Item F from Section 5 reporting. Changes in prime-broker relationships are typically an ordinary-course part of a commercial business relationship and not indicative of fund or systemic risk. If the Commission determines to keep this item, it should be revised to capture only a material adverse event between the parties that results in a termination of the agreement, which should be reported on a quarterly rather than a current basis. We also note that it is not clear what a "material" change in a relationship means, and, if the Commission retains this item, we ask that it explain whether this is a bright-line test or a judgment call and the factors to consider that would constitute a safe harbor for a filing adviser.

e) Remove Item G (unencumbered cash) from required reporting or, alternatively, require quarterly reporting

Hedge fund advisers may voluntarily and strategically increase or decrease unencumbered cash based on a fund's investment strategy, risk appetite, market outlook, or other reason. For example, funds could use the cash to make new investments, which is a routine capital event for some closed-end funds that may meet the definition of hedge fund for purposes of Form PF. We are concerned that this item is requesting detailed information about the investment process and do not believe it would be a helpful or appropriate use of the form. Since this item is unlikely to provide relevant information about the stress of a fund, reporting is not warranted. Moreover, calculating daily unencumbered cash would require updates to many advisers' current operational procedures, resulting in increased costs that we do not believe are justified by the Commission's stated reasons for needing this information. If the Commission nevertheless determines that it needs this information, we recommend that this item be moved to quarterly reporting.

f) Remove Item H (operations events) and require quarterly reporting only if an adviser initiated a firm-wide disaster recovery or business continuity plan

We recommend that the Commission remove Item H, which would require qualifying hedge funds to file a current report on Section 5 when there is an "operations event." An operations event would mean when the fund or adviser "experiences a significant disruption or degradation of the reporting fund's key operations," from an event at a service provider, fund or adviser.[17] A "significant disruption or degradation" would include, in instances where the reporting fund's key operations are "reasonably measurable," a 20 percent "disruption or degradation of normal volume or capacity."[18] "Key operations" of the fund would include operations necessary (i) for the investment, trading, valuation, reporting, and risk management of the reporting fund, and (ii) for the operation of the reporting fund in accordance with the Federal securities laws and regulations. The release notes that this would include reporting of a cybersecurity event that disrupted the trading volume of a reporting fund by 20 percent of its normal capacity.[19] Item H would also require a report as to whether or not the adviser initiated a disaster recovery or business continuity plan relating to the operations event.

We have several concerns with this proposed item. While we appreciate the Commission's interest in being notified of an event that could affect markets more broadly, we believe that requiring a current report of this item will result in fund advisers diverting critical firm resources away from focusing on stabilizing and solving any significant issue affecting the continuity of a fund's operation. In addition, there may be details that the adviser likely will not have time to assess and report in a fulsome fashion on a current basis – and certainly if current reporting remains within one business day. We also do not understand how any of these operations events would call for immediate action by the Commission that could help resolve any issue that a fund may be facing, nor would a fund or adviser expect the Commission to resolve any of these identified events. For these reasons, we recommend that this item be removed completely from Section 5.

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[17] *See* Proposed Form PF Glossary.

[18] Funds would be permitted to file a current report "as soon as practicable" if "technical or other difficulties resulting from the operations event prevent" the adviser from timely filing.

[19] Proposal at 9114.

At the very least, we strongly urge the Commission to remove any reference or obligation to report any cyber event, given that the Commission has proposed cyber reporting requirements under a separate rulemaking.[20] We see no benefit to – and indeed, have serious concerns about – a duplicative and inconsistent obligation to report the same cyber event on multiple forms to the Commission.

The Commission asks whether, as an alternative to defining "operations event," the item should require advisers to report quarterly, if applicable, that they initiated a business continuity plan. In our view, this would be the only aspect of Item H that warrants reporting on Form PF, and only if an adviser initiated a disaster recovery or business continuity plan on a firm-wide basis.[21]

If the Commission retains other aspects of Item H, we recommend that it significantly modify the item's definitions and move the item to quarterly reporting. As proposed, the definitions in this item do not provide a clear, objective trigger for reporting. First, the definition of "operations event" is too broad and requires too much subjective judgment. The definition of "significant disruption" is also not clear, but at the same time it is too specific, with its 20 percent degradation standard threshold. The proposed definition of "degrading event" is so broad that it would require firms to devote significant resources toward determining whether such an event had occurred, especially across a firm. One size does not fit all. Firms should have flexibility to use definitions used in their business continuity plans because an event may be impactful in different ways to different firms. Further, advisers' compliance programs do not typically include benchmarks that could be used to measure a 20 percent "disruption or degradation of normal volume or capacity," and firms cannot monitor for this as proposed. If there is a significant disruption to an adviser's operations, the adviser should be permitted to focus in the immediate timeframe on preserving client capital and responding to the situation, rather than having to devote limited resources to current regulatory reporting.

2. Recommendations to Modify Section 6 (Private Equity Fund Advisers)

As an initial matter, we question whether the proposed reporting of items in Section 6 satisfies the purpose of Form PF since these items are in no way indicative of broader systemic risk. We especially do not understand why the Commission believes that it needs to obtain this information from *all* private equity fund advisers rather than only large private equity fund advisers. Even if the Commission determines that the information is helpful to its oversight program, this does not in our view warrant current reporting. The proposed Section 6 items are by their nature often routine and would not typically call for an urgent regulatory response. We urge the Commission to balance its interest in receiving this information against the substantial costs and business disruptions for advisers, including smaller advisers. We recommend that any

[20] *See* Adviser Cybersecurity Proposal (proposing to require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission on Form ADV-C).

[21] *See* Proposal at 9115 (request for comment number 46).

reporting of these items, instead of being required as part of a new Section 6 of Form PF, be required as part of Section 4 large private equity fund adviser reporting.

With respect to the proposed Section 6 items, we recommend that the Commission:

- Remove Item B (adviser-led secondary transactions) from required reporting or, alternatively, require annual reporting.
- Clarify Item C (GP or LP clawbacks) and move it to annual reporting.
- Remove Item D (GP removal, termination of investment period or fund) from required reporting or, alternatively, require annual reporting.

a) Remove Item B (adviser-led secondary transactions) from required reporting or, alternatively, require annual reporting

Proposed Item B would require advisers to report adviser-led secondary transactions. We do not believe these transactions should be reported. Secondary transactions are part of routine private-equity-fund business, designed to provide liquidity, and do not merit urgent regulatory monitoring. These transactions will have already occurred and in our view subsequent reporting will not serve the Commission's stated policy goals. If the Commission decides that information about these transactions would be helpful, it could require it in the annual Section 4 information. However, if the Commission determines to retain this item as a current report, it should clarify the timeframe for reporting, *e.g.*, within five business days of completion of the transaction. We also ask that it narrow the definition of "transaction" for purposes of this item so that it does not capture unintended transactions. For example, the Commission should clarify if "transaction" only includes those with an option to roll into the fund and/or offers for all fund investors or just one investor.

b) Clarify Item C (GP or LP clawbacks) and move it to annual reporting

Item C would require current reporting of general partner or limited partner clawbacks in excess of an aggregate amount equal to 10 percent of a fund's aggregate capital commitments. We do not believe that the Commission needs to know of these transactions on an emergency basis and recommend that it move the item to annual Section 4 reporting for larger private equity fund advisers. In addition, we ask that the Commission clarify whether advisers' retention or recycling of distributions is included in this item.

c) Remove Item D (GP removal, termination of investment period or fund) from required reporting or, alternatively, require annual reporting

Item D would require current reporting of removal of the general partner or termination of the investment period or the fund. We do not believe this item raises investor protection or systemic risk concerns that merit current reporting. Because investors consent to termination of an investment period and there are many reasons for removal of a general partner, we do not see the utility of including this item in Form PF at all. At a minimum, the Commission should move this item to annual Section 4 reporting for larger private equity fund advisers.

d) If the Commission determines that annual reporting is not sufficient, it could require quarterly reporting

If the Commission determines that it needs the information in proposed Item 6 more frequently than annually, it could require quarterly reporting, but only of larger private equity fund advisers. We reiterate that we do not believe that current reporting strikes an appropriate balance between FSOC's and the Commission's need for this information and the costs and burdens to private fund advisers of all sizes of reporting it on a current basis.

III. Proposed Modifications to Section 4

A. The Commission Should Retain the Current Filing Threshold for Large Private Equity Fund Advisers

Currently, large private equity fund advisers are required to file Section 4 of Form PF. The Commission proposes to reduce the threshold for this filing from $2 billion to $1.5 billion in private equity fund assets under management. The Commission cites growth in the number of strategies and the number of private equity fund advisers to support the lowering of this threshold, stating that it is necessary because it would enable the Commission and FSOC to receive reporting from a similar proportion of the U.S. private equity industry based on committed capital as it did when Form PF was initially adopted.[22] However, this change would cause more, and smaller, private equity fund advisers to file Section 4, which we do not believe is justified.[23]

We do not find the Commission's rationale persuasive. Section 4 is designed to address systemic risk by obtaining information from large private equity fund advisers. Maintaining reporting of the same percentage of the total industry, irrespective of the size of the private equity fund adviser, does not serve that purpose and would result in significant burdens on smaller and mid-sized advisers. The simple fact that there are fewer larger private equity fund advisers in 2022 than in 2011 does not justify capturing smaller private equity funds that have a smaller presence in the market and would inarguably face more burdens. We urge the Commission not to lower the current reporting threshold of $2 billion.

B. The Commission Should Modify Specific Section 4 Questions

The Commission proposes to add new questions and amend other questions in Section 4 for large private equity fund advisers. We question whether some of this information is needed

[22] Proposal at 9108.

[23] The Commission estimates that 163 additional private equity fund advisers will be required to file Section 4 as a result of lowering the threshold. Proposal at 9154, Table 12.

by the Commission. For example, restructuring and recapitalization of a portfolio company (Question 70) is a routine event for a private equity fund and the information will not be informative for the Commission and FSOC about the current market environment, nor would it help FSOC to monitor these activities for systemic risk analysis. The Commission could certainly ask about this information during an examination if it decides it is helpful with respect to a particular fund.

If, however, the Commission determines to include Question 70, we recommend that the question require reporting only with respect to controlled portfolio companies, as is required for other new questions in this Section, rather than any portfolio company where the information is even less relevant for the stated goals. The Commission should also tailor the scope of the question to cover only (i) restructuring or recapitalizations of large, private controlled portfolio companies (*e.g.*, those with valuations in excess of $5 billion), since restructuring or recapitalizations of smaller portfolio companies such as earlier-stage venture-backed portfolio companies should not be relevant for purposes of Form PF, and (ii) situations where a restructuring results in more than 20 percent of the equity interests held by third parties that are not affiliated with the portfolio company becoming worthless. In addition, the Commission should also define "restructure" and "recapitalize" to clarify which transactions are in scope.

We also do not believe that information about investments by the adviser or its related persons in different levels of a single portfolio company's capital structure (Question 71) is necessary to achieve the Commission's objectives. Nor is it practicable since, typically, larger advisers will have information barriers between different divisions that may be investing in the same issuer. Moreover, advisers would not have this information about their related persons' investments in portfolio companies. In addition, we do not believe that the Commission should expand proposed Question 71 to capture all funds of the same adviser or related persons (including those not reported on Form PF) or separately managed accounts or other clients that hold investments in different levels of a single portfolio company's capital structure. Even if an adviser had access to all this information, it would be extremely burdensome to report and in our view not indicative of any systemic risk or investor protection concern. To the extent that investments by an adviser in the same issuer on behalf of multiple clients raise concerns around allocation of investment opportunities, these are addressed in the adviser's allocation policies and procedures.[24]

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[24] *See, e.g.*, *Compliance Programs of Investment Companies and Investment Advisers*, 68 Fed. Reg. 74714, 74716 (Dec. 24, 2003), available at https://www.govinfo.gov/content/pkg/FR-2003-12-24/pdf/03-31544.pdf (under Advisers Act Rule 206(4)-7, advisers' policies and procedures should address portfolio management processes, including allocation of investment opportunities among clients); *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, 84 FR 33669 (July 12, 2019), available at https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf (noting that when allocating investment opportunities among eligible clients, an adviser that faces conflicts of interest either between its own interests and those of a client or among different clients must eliminate or at least expose through full and fair disclosure the conflicts associated with its allocation policies, including how the adviser will allocate investment opportunities, such that a client can provide informed consent). In any event, SEC examiners could request information from any adviser that they determine to be relevant in an exam.

We recommend that fund-level borrowings (Question 72) be excluded because we doubt that this information will provide insight helpful to FSOC into how private equity funds obtain leverage because private equity funds are inherently not systematically risky. We do not believe that this information will show likelihood of multiple investor defaults. If the Commission retains this question, however, we recommend that it clarify what is meant by borrowing or having the ability to borrow at the fund level as an alternative or complement to the financing of portfolio companies.

IV. Other Recommendations

A. The Commission Should Not Define "Digital Assets" in this Proposal

For the first time, and without much explanation, the Commission seeks to define "digital assets" for purposes of the securities laws. The term would be defined as it relates to private equity fund advisers' reports in Section 4 where their investments include "digital assets."[25] The Proposal would define "digital asset" extremely broadly, to mean "an asset that is issued and/or transferred using distributed ledger or blockchain technology ('distributed ledger technology'), including, but not limited to, so-called 'virtual currencies,' 'coins,' and 'tokens.'"[26] The Commission asks if it should define "digital assets" as proposed.

We strongly believe that the Commission should not define digital assets in this Proposal. Any definition adopted by the Commission will have far-reaching implications not just for the securities laws but across the U.S. financial system.[27] The definition of digital assets is not yet settled and should not be adopted without a robust discussion and debate among stakeholders and coordination with other regulatory agencies with an interest in overseeing these new assets.

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[25] Proposed amendments to Section 4, Question 68.

[26] Proposed Form PF Glossary. The Commission has used the same or similar definitions in SEC staff statements. *See* SEC staff Risk Alert, The Division of Examinations' Continued Focus on Digital Asset Securities (Feb. 26, 2021) at n.1, available at https://www.sec.gov/files/digital-assets-risk-alert.pdf (adding that, "A particular digital asset may or may not meet the definition of 'security' under the federal securities laws."); SEC staff statement, *Framework for "Investment Contract" Analysis of Digital Assets* (Apr. 3, 2019), available at https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets#_ednref2.

[27] There is no statutory definition of digital assets and there is not yet regulatory consensus on how to move forward with this nascent asset class. *See, e.g., Congressional Research Service, Digital Assets and SEC Regulation* (June 23, 2021), available at https://crsreports.congress.gov/product/pdf/R/R46208; *Testimony of [CFTC] Chairman Rostin Behnam Regarding "Examining Digital Assets: Risks, Regulation, and Innovation," U.S. Senate Committee on Agriculture, Nutrition, and Forestry* (Feb. 9, 2022), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam20 ("The digital asset industry in the U.S. does not fall under a single comprehensive regulatory regime."); and IRS guidance on virtual currencies (digital assets), available at https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies. President Biden recently issued an Executive Order directing a coordinated interagency response to digital assets and including a different definition of digital assets. *White House Executive Order on Ensuring Responsible Development of Digital Assets* (Mar. 9, 2022), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/.

The definition in the Proposal will almost certainly not receive the broad attention it requires, not only because it appears in a proposal that in many respects has a relatively narrow target audience (private fund advisers), but also because the Commission has set an exceedingly short deadline for comment.[28] At the very least, the Commission should coordinate with other agencies and issue a separate request for public input on this definition and provide an opportunity for all interested parties to weigh in.[29] In the meantime, the Commission should permit firms to use their own definitions as used in their investment strategies for purposes of Form PF.

B. The Commission Should Ensure Robust Controls Around Maintaining Form PF Confidentiality

We are concerned about the risk of compromising the confidential information in Form PF. The more competitively sensitive information Form PF requires about private funds and their strategies, the greater the risk to private funds, private fund advisers, and investors. The inadvertent public disclosure of this information would result in immediate and irreversible damage to the competitive position of a fund and its investors. As we noted when the Commission proposed the Form in 2011, the statutory confidentiality protections around Form PF data are critical to protect this proprietary information and we continue to urge the Commission to use and maintain robust measures to implement adequate protections to ensure that Form PF information is not inadvertently disclosed.[30] The additional extensive and granular data that the Commission seeks in this Proposal highlights our continued concern about public disclosure of this extremely sensitive proprietary business information.

C. The Commission Should Reconsider the Costs and Burdens in its Economic Analysis and Provide a Minimum of an 18-Month Compliance Period

We also note that the Commission has significantly underestimated the time and cost burdens for implementing the proposed reporting requirements. For example, the Proposal states in the economic analysis that "the time to prepare and file a current report would range from 4 hours to 8.5 hours, depending on the reporting event."[31] As we discuss above, advisers take tremendous care when preparing and making regulatory filings, cognizant of the risk of filing incomplete, inaccurate, or even misleading information with the Commission. Preparing a

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[28] *Supra* n. 8.

[29] Preliminarily, and in response to the Proposal, we note our view that the definition could be considered too broad or underinclusive. It is also technology-specific, may not be universally used, and may not remain evergreen as the market evolves.

[30] *See* IAA Letter to the Commission on Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; SEC Rel. IA-3145; File No. S7-05-11 (Apr. 12, 2011), available at https://www.sec.gov/comments/s7-05-11/s70511-30.pdf.

[31] Proposal at 9144, n. 4 (Table 4: Annual Hour Burden Estimates for Current Reporting).

current (or quarterly or annual) report will take significantly longer than the time provided in the Proposal. Advisers will need to review and analyze fund and other documentation and data upon occurrence of an event and coordinate within and outside of the firm among compliance, legal, operations, trading, portfolio management, investor relations, counterparties, administrators, etc., to assess the complexity of the event, determine whether a reporting trigger has been met, ensure the data and information to be reported are complete and accurate, and complete the filing. Further, given the number of proposed potential triggering events, the Commission's estimates are severely deficient.

The Commission also mistakenly assumes that few costs will be incurred by advisers to implement new systems to identify and analyze events and support the robust reporting that is proposed. For example, the Proposal states that, "large hedge fund advisers may incur a one-time cost to modify existing systems or deploy new systems to support section 5 current reporting, acquire or use hardware to perform computations, or otherwise process data to identify reporting events set forth in section 5, because such reporting events are quantitative. We estimate that such costs would not apply to advisers subject to current reporting requirements in proposed section 6, because the reporting events are more qualitative."[32]

We disagree with the Commission's assessments for several reasons. First, the triggering events for both large hedge fund advisers and private equity fund advisers are not necessarily currently monitored and tracked according to the Proposal's requirements, and advisers will need to onboard and integrate new technology and systems to capture and monitor the triggering events. They will also need to adopt and implement new policies and procedures for identifying, capturing, collecting, assessing, and producing the data requested. These implementation efforts will be time-consuming and costly. These costs will also include significant additional person-power, which will either call for new hires or involve the opportunity cost of a person's time being allocated to this effort rather than other critical compliance, business, and investor needs. None of these costs have been sufficiently taken into account in the Proposal. We also note that there will be additional ongoing costs and updating of systems when new service providers are engaged and new funds are launched.

Moreover, we disagree with the characterization that proposed Section 6 items, while perhaps more qualitative than quantitative, will not impose substantial costs. Private equity fund advisers will likewise need to implement similar systems and controls to track, analyze, and report on triggering events.

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[32] Proposal at 9153, n. 1 (Table 11: Annual External Cost Burden for Current Reporting). We also recommend that the Commission consider amending Advisers Act Rule 0-7 to update the definition of small entity, which currently includes advisers with AUM of less than $25 million. By definition, no small entity on its own would meet Advisers Act Rule 204(b)-1 and Form PF's minimum reporting threshold of $150 million in regulatory assets under management attributable to private funds, making consideration of the impact of regulatory proposals on smaller advisers meaningless. Proposal at 9155. *See* IAA Letter regarding Recommendations of SEC Asset Management Advisory Committee on Small Advisers (Nov. 23, 2021), available at https://investmentadviser.org/resources/recommendations-of-sec-asset-management-advisory-committee-on-small-advisers/.

Additionally, given the significant investments that advisers will need to make to implement the proposed reporting requirements, as discussed above, we request that the Commission provide an appropriate compliance implementation period of at least 18 months from the effective date of any final amendments to Form PF.

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We appreciate the Commission's consideration of our comments on this important Proposal and would be happy to provide any additional information that may be helpful. Please contact the undersigned or IAA Associate General Counsel Monique Botkin at [redacted] if we can be of further assistance.

Respectfully Submitted,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
William Birdthistle, Director, Division of Investment Management