The Real Estate Roundtable

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. 205499–1090

[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 Roundtable (Roundtable) is pleased to provide comments to the Securities and Exchange Commission (SEC) on the above-referenced proposal (Proposed Amendments) to revise Form PF under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) along with certain other related amendments.[1]

The Real Estate Roundtable and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the U.S.'s leading income-producing real property owners, managers, and investors; the elected heads of America's leading real estate trade organizations; as well as the key executives of the major financial services companies involved in financing, securitizing, or investing in income-producing properties.

Most of the approximately $16 trillion U.S. commercial and multifamily real estate market is owned by private investors and private equity. We are concerned that the proposed amendments would increase the compliance burden for private fund advisers and potentially impede capital formation for the industry, diminish the many jobs it creates and dampen the positive role the industry plays in the overall economy.

[1] Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, SEC Release No. IA-5950; File No. S7-01-22 (Jan. 26, 2022) (the "Proposing Release").

The commercial real estate industry, which includes the apartment, retirement, office, retail, industrial, hospitality, and data center and tower sectors, plays a positive role in communities across America. During the pandemic, the industry supported millions of jobs, thousands of properties and helped fund state and local budgets across the country, delivering strong returns for private investors and public pensions.

The Real Estate Roundtable supports efforts to ensure the safety and soundness of the U.S. financial system and to sustain the stability and reliability of commercial real estate capital and credit markets. We appreciate the opportunity to provide comments on potential challenges that the implementation of the Proposed Amendments would have on real estate investment advisers and especially on real estate private equity and private credit fund advisers.[2]

Our key concerns are these:

1. Given the significance of the Proposed Amendments, the comment period is significantly shorter than other recent rulemaking comment periods and does not provide sufficient time for Roundtable members to adequately understand and assess the changes included in the Proposed Amendments.[3] Importantly, the comment period is impractical for all commenters to provide economic analysis, including the potential costs and benefits of the Proposed Amendments and alternatives thereto, and whether the amendments would promote efficiency, competition, and capital formation. We request that the comment period be extended.

2. The Proposed Amendments impose new requirements to report specific events and transactions and to provide additional information about a private equity adviser's funds and fund investments that are not related to the monitoring of systemic risk and the protection of investors, and are therefore inconsistent with the primary Congressional and agency intent for which Form PF was adopted.[4] The SEC provides no support that reporting the specific events and transactions listed in the Proposed Amendments to the SEC and the Financial Stability Oversight Council ("FSOC") is consistent with the purpose of Form PF or fulfills

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[2] For purposes of this letter, we will refer to private equity and private credit fund advisers as "private equity advisers" and the funds such advisers manage as "private equity funds." We note that the Proposed Amendments include private credit funds within the private equity funds classification for purposes of Form PF.

[3] The Real Estate Roundtable, along with a number of other trade and advocacy organizations, submitted a separate letter to the SEC requesting extensions of the comment period for the Proposed Amendments and other amendments of rules under the Investment Advisers Act of 1940, as amended. See Comment Letter of Gail Bernstein, et al. (March 1, 2022) (available at https://www.sec.gov/comments/s7-01-22/s70122-20118198-271109.pdf).

[4] *See*, S. REP. NO. 111-176, at 39 (2010) ("Senate Committee Report") ("The required disclosures include information on fund size, use of leverage, counterparty credit risk exposure, trading and investment positions, valuation policies, types of assets held, and any other information that the SEC, in consultation with the Financial Stability Oversight Council, determines is necessary and appropriate to protect investors or assess systemic risk"). *See also*, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, SEC Release IA-3308; File No. S7-05-11 (October 31, 2011) ("Form PF Adopting Release") ("Form PF is primarily intended to assist FSOC in its monitoring obligations under the Dodd-Frank Act, but the Commissions may use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.").

the SEC's mission to protect investors, or that the Proposed Amendments increase the types of benefits that private equity and private credit investments historically have provided. The new reporting requirements, and in particular the requirement to report on adviser-led secondary transactions, should be eliminated.

3. A one-day reporting requirement imposed on private equity advisers for any reason is unprecedented, and a requirement to report the specific transactions and events deemed by the SEC to be systemically important wholly unsupported by the SEC.

4. The Proposed Amendments to Section 4 of Form PF impose onerous new reporting requirements, thereby forcing "large private fund advisers" to report sensitive information wholly unrelated to monitoring for systemic risk that will be burdensome for regulators to review.

5. The significant added cost and timing burdens of the Proposed Amendments neither provide investors with commensurate benefits nor enhance systemic risk monitoring, and do not increase the types of benefits that private equity and private credit investments historically have provided.

6. As set out in greater detail below, the reduction of the reporting threshold for private equity advisers to $1.5 billion to capture 75% of the U.S. private equity industry based on committed capital is arbitrary because the SEC has not adequately explained why the current, large proportion of private equity advisers who already report under the current threshold is insufficient to monitor systemic risk.

I. The Related Comment Period Is Much Shorter than Comparable SEC Rulemaking Comment Periods and Does Not Provide Adequate Time for Analysis.

The SEC has set a deadline for comments on the Proposed Amendments of March 21, 2022. Given the breadth and volume of the Proposed Amendments as well as other recent, significant SEC proposals to amend rules under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), the 30-day comment period does not provide enough time for us (and others in the industry) to conduct and submit the analyses that the SEC itself has requested and properly recognizes are material to understanding the Proposed Amendments' impacts, "including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the amendments would promote efficiency, competition, and capital formation." "Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates." Meaningful stakeholder input will be crucial to inform the SEC's deliberations and judgments about whether and how to move forward with this proposal. In the past, for significant rulemakings such as this one, the SEC has provided more reasonable comment periods.

II. Real Estate Private Equity Funds and Sponsors Do Not Present Systemic Risk Concerns and the Newly Requested Information Does Not Relate to Systemic Risk Monitoring or the Protection of Investors.

Form PF is intended to assist the FSOC in its monitoring for systemic risk to the U.S. financial system.[5] Real estate private equity funds and their sponsors, however, do not present and have never presented systemic risk concerns.

Real estate private equity funds and private equity sponsors are not meaningfully interconnected with other financial system participants and have very limited counterparty exposure, and there is no demonstrated or meaningful financial interconnection among a private equity sponsor, its funds or its portfolio companies. Real estate private equity funds pursue long-term investing strategies and typically do not engage in significant asset-based leverage or portfolio gearing. 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. [6] If a portfolio company is in financial distress or fails, its distress or failure does not meaningfully impact the real estate private equity fund, its sponsor or any of the other 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. Real estate private credit funds similarly provide investors with limited redemption rights, and use much less leverage compared to the high leverage of banking institutions. These funding structures allow funds employing a private credit strategy to minimize maturity mismatches and limit the impact of a liquidity squeeze or asset "fire sale."

The Proposed Amendments impose reporting requirements for commercial events that have no reasonable relation to systemic risk activities and are not indicative of systemic risk. The Proposing Release does not offer any evidence demonstrating how any of the proposed reporting events would reasonably indicate systemic risk, and does not explain or justify how the specific information requested in current reports would be meaningful to further the FSOC's systemic risk monitoring goals. These events, in fact, are not indicative or predictive of systemic risk and are not correlated to systemic risk, and are merely transactions that occur for any number of reasons unrelated to systemic events. Exactly how the reporting of these specific events and transactions to the SEC and FSOC would further the SEC's mission to protect investors is unclear because each event, and its consequences, will be governed by a particular deal term or contract provision that will have been negotiated by and ultimately agreed to by a private equity adviser's fund investors in advance, thus satisfying the adviser's obligation to disclose and mitigate conflicts of interest. Further, the Proposing Release offers no evidence on what the SEC or the FSOC would do with the information (whether

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[5] *See*, Form PF Adopting Release ("The SEC is adopting Advisers Act rule 204(b)-1 and Form PF to enable FSOC to obtain data that will facilitate monitoring of systemic risk in U.S. financial markets…The design of Form PF is not intended to reflect a determination as to where systemic risk exists but rather to provide empirical data to FSOC with which it may make a determination about the extent to which the activities of private funds or their advisers pose such risk.")

[6] Some private equity funds may enter into a NAV financing facility where they effectively pledge to the lender the right to receive portfolio company distributions, or pledge the common stock of an entity owned by the fund that in turn holds the fund's portfolio companies.

reported on Form PF or another Form) or how the SEC would apply it to advance its mission to protect investors or the FSOC would apply it to advance its purpose to monitor systemic risk.

The Proposing Release does not demonstrate specifically how the newly requested information would aid in systemic risk monitoring; rather, it only asserts generally that more information can potentially be a useful tool for identifying systemic risk trends, and thus is inconsistent with Congressional intent in adopting Form PF. The Proposing Release does not indicate how the current Form PF reporting regime has been systematically deficient or insufficient (or helpful or effective) for FSOC to carry out its statutory purpose, and the SEC made no attempt to revisit or improve Form PF's current requirements. Additional information that is merely potentially useful to the SEC as a compliance monitoring tool in administering its examination and enforcement programs is not an appropriate justification for significantly expanding reporting on Form PF and is inconsistent with the primary purpose of Form PF and the intent of Congress and the SEC under the Dodd-Frank Act.[7]

The Proposing Release also does not demonstrate why the newly requested information is needed immediately in order to monitor systemic risk. Certain information would not even be indicative of current systemic risk, if at all. For example, a general partner clawback, which is most commonly done at the end of life of a fund on a cumulative retrospective basis, could be due to losses suffered many years before the clawback occurs. General partner clawbacks occur for any number of reasons which are not related to market conditions. Some of this information is already subject to monitoring. For example, registered investment advisers are regularly subject to examination and are thus already subject to checks regarding general partner clawbacks.

III. A One-Day Reporting Requirement Imposed on Private Equity Advisers for Any Reason Is Unprecedented, and a Requirement to Report the Specific Transactions and Events Deemed by the SEC to Be Systemically Important Is Wholly Unsupported.

None of the federal securities laws applicable to private equity advisers require reporting of any kind on a one-day basis, and the SEC has not provided adequate support for such a requirement and has not demonstrated how reporting on individual fund events is an effective way to monitor systemic risk or provide additional protections to investors. Even material changes to a private equity adviser's Form ADV are not required with such immediacy.[8]

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[7] *See*, Senate Committee Report, *supra* note 5; *see also,* Commissioner Hester M. Peirce, Statement on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (Jan. 26, 2022), https://www.sec.gov/news/statement/peirce-form-pf-20220122.

[8] Compare this to money market funds registered under the Investment Company Act of 1940, as amended (the "1940 Act"), which are required to report on Form N-CR certain events within one business day of their occurrence. The reportable events include portfolio company defaults and insolvency, fund net asset value declines of more than one quarter of one percent from its intended stable price of $1.00, and a fund's receipt of financial support from its sponsor or an affiliate. Money market funds, unlike private equity funds, are required by the 1940 Act to offer daily redeemability, maintain a stable net asset value, and invest generally in highly liquid securities, and are generally recognized as being more susceptible to significant redemptions that could have a systemic effect.

Even if the SEC concludes that private equity advisers should be required to file additional reporting items in Form PF pursuant to the Proposed Amendments, the AIC respectfully requests that private equity advisers be permitted to file Form PF current reports on an annual basis consistent with the current Form PF filing requirements so as to take into account the significant burdens on private fund sponsors in light of the lack of a reasonable connection to systemic risk monitoring or investor protection.

IV. The Proposed Amendments to Section 4 of Form PF Impose Onerous New Reporting Requirements That Force "Large Private Fund Advisers" to Report Sensitive Information That Is Unrelated to Monitoring for Systemic Risk and Will Be Burdensome for Regulators to Review.

We discuss below the limitations of requiring reporting of such information to the SEC and FSOC, as such information has little or no relevance to monitoring systemic risk, and the information is largely already reported (or at least available) through contractual arrangements negotiated by sophisticated and well-represented fund investors for those fund investors to review and assess.

- *New Question 68 – Strategies, New Question 70 – Portfolio Company Restructuring, and New Question 71 – Investments in Multiple Tiers of Capital Structure*

The Proposed Amendments require private equity advisers to specify the percentage of their reporting funds that deployed capital to specified investment strategy categories. The SEC has provided no evidence for why this information is relevant to systemic risk and has not provided any cost-benefit analysis to support this requirement.

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 the information and systemic risk. The Proposed Amendments' requirement to report restructurings or recapitalizations of portfolio companies is misplaced as a systemic risk monitoring tool. Such transactions routinely occur in all economic environments, and many fund agreements specifically contemplate such transactions.

Finally, information about investing in multiple tiers of a company's capital structure, while having a bearing on potential conflicts of interest, has no relation to systemic risk concerns. If this question is included in any final amendments, it should be clarified to avoid inadvertently bringing in scope a variety of ordinary course investment structures that are likely not meant to be captured. In particular, it is very common for private equity funds to invest in portfolio companies indirectly through one or more special purpose vehicles, aggregators, blocker vehicles or other holding entities for tax, regulatory, administrative or other reasons. Read broadly, this question could require disclosure of investments in the same exact class of underlying securities through separate investment entities. This would likely distort the data and entirely miss the spirit of this requirement if those types of common structural elements were inadvertently included in the scope of this question.

- *New Questions 67 and 82 – Controlled Portfolio Companies*

These new questions 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. The SEC

has provided no evidence for why this information is relevant to systemic risk, and has not provided any cost-benefit analysis to support this requirement.

These new requirements will generate substantially more information for regulators to analyze (that is unrelated to systemic risk) and may obscure information on Form PF which may actually be relevant to systemic risk. Moreover, SEC resources would need to be expended this exercise instead of more meaningful investor protection initiatives, including those focusing on retail investors.

V. The Significant Added Cost and Timing Burdens of the Proposed Amendments Are Unreasonable and Do Not Provide Investors with Commensurate Benefits or Protections or Enhance Systemic Risk Monitoring.

The SEC has provided no adequate cost-benefit analysis as to how the new information required by the Proposed Amendments benefits investors commensurately. Real estate private equity advisers' compliance and operational costs will increase as they attempt to implement these new reporting requirements, and investors are likely to bear those added costs, an outcome that is particularly unjust given that Form PF is not intended as an investor protection form (investors do not receive Form PF).

VI. The Reduced Threshold for Reporting Private Equity Advisers Is Arbitrary.

The SEC's rationale for choosing 75% of committed capital as a meaningful threshold for purposes of FSOC's systemic risk-monitoring function is unclear. Moreover, the Proposing Release does not make it clear why (or whether) the significant proportion of private equity advisers that are reporting under the current $2 billion threshold has become insufficient to monitor systemic risk. The initial $2 billion threshold was established so as to include a relatively small number of private equity advisers while representing a substantial portion of assets under management.[9]

The SEC currently collects information on 67% of the private equity market using the $2 billion threshold, yet has not provided adequate support why a 75% threshold is appropriate or, why information on 67% of the private equity fund industry is inadequate, particularly in the absence of any evidence that private equity funds pose systemic risk. Indeed, the threshold should be increased, not decreased, in recognition of the very low systemic risk concerns that private funds and private fund sponsors present, as the AIC has indicated to the SEC on numerous, previous occasions.

The Real Estate Roundtable appreciates the SEC's wish to continue enhancing the monitoring of systemic risk. However, 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, with no added benefit to investors and no relation to the intent of Form PF in monitoring systemic risk. As a result, the Proposed Amendments are not required and should not be adopted. At the very least, the SEC must provide adequate evidence that the Proposed Amendments bear some reasonable resemblance to systemic risk and provide meaningful cost-benefit analyses to support the increased burdens inherent in adopting the compliance infrastructure necessary for such reporting.

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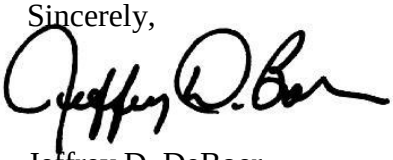
[9] *See,* "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF," Release No. IA-3308; File No. S7-05-11 (November 16, 2011).

We trust that the Commission will find our comments helpful. Should you have questions or require additional information, please contact Clifton E. Rodgers, Jr., by telephone at [redacted] or by email at [redacted].

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

Sincerely,



Jeffrey D. DeBoer
President and Chief Executive Officer