ICGN
International Corporate Governance Network
Inspiring good governance & stewardship

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

March 21st, 2022

Dear Secretary Countryman,

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

The International Corporate Governance Network (ICGN) appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) proposal to amend Form PF, a form used by some investment advisers registered with the Commission to report confidential information about the private funds they advise. As described by the SEC, the proposed amendment would also enhance the Financial Stability Oversight Council's (FSOC) monitoring and assessment of systemic risk.

Led by investors responsible for assets under management in excess of US$59 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 45 countries and includes companies, advisors, and other stakeholders. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org.

Throughout the narrative on the proposed amendments to Form PF, two high level themes have emerged:

1. Revising the reporting thresholds to provide more transparency and to include occurrences of events that could indicate significant stress; and

2. Addressing the systemic risks which could impact investors and providing the Financial Stability Oversight Council and the SEC with greater monitoring tools.

Both of these themes are of interest to ICGN's members. The effort to bolster the Financial Stability Oversight Council's ("FSOC") ability to monitor systemic risk, increase the SEC's regulatory reviews of private fund advisers and advance investor protection efforts are important. Investments in private equity and hedge fund advisors have grown significantly as investors have sought arrangements for assets that generate long-term, sustainable returns.

Investments into hedge funds and private equity funds have unique risks and rewards for investors, who may participate as pooled investors with the limited ability to liquidate holdings

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easily. Transparency around fees, the tenure of key fund advisors and reporting on significant events may be limited in these investment contracts and side letters. We believe your concerns on this matter link ultimately to questions of investor fiduciary duty. ICGN's Global Stewardship Principles:

> 1.1 Fiduciary duty. Investors' governance should be driven by their primary fiduciary duty to preserve and enhance value which is aligned in the interest of beneficiaries and clients. Fiduciary responsibility extends beyond the traditional duties of care and loyalty to include considerations of timeframe and systemic risks.[1]

ICGN believes there are two main reasons why it would be useful for Form PF to be amended. Firstly, the amendments would enhance the level of reporting for these types of advisory funds, which could experience economic stress factors or systemic risks. Secondly the lag time in the reporting regime could be leaving the FSOC, the SEC and investors without timely information to review and address any risks. Under the current filing requirements, advisors have between 60 to 120 calendar days to file Form PF, which could become a long time when global events can upset markets within days.

ICGN offers the following comments to several questions posed by the SEC on the amendments to current reporting on Form PF.

3. Is the proposed one business day reporting window appropriate for current reports? Should the notification be on the same day as the event? Are there challenges associated with providing these current reports within one business day? Is one business day sufficient time to eliminate or significantly reduce false positive reports? Would advisers need more than one business day to gather and confirm the required information for certain current reports? If so, should we require advisers to file a current report within two business days, three business days or some longer period? Would different time limits for different current reports, tailored to the potential seriousness of the event or the level of burden in collecting the information be more appropriate? Would different time limits for different current reports potentially cause confusion?

8. ***Would extraordinary losses raise investor protection or systemic risk concerns such that the Commission and FSOC should be notified within one business day? Should the notification be on the same day as the event? Should it be longer? For example, if the fund experiences a 20 percent loss the adviser would not report a second time until the fund had experienced a second loss of an additional 20 percent of the fund's most recent net asset value over a second rolling 10-day period to begin on or after the end date stated in the adviser's initial Item B current report. Should we require advisers to file a current report within two business days, three business days or some longer period?***

The proposed amendment would "require large hedge fund and private equity advisers to report information within *one business day* upon the occurrence of events that indicate significant stress or otherwise serve as signals of potential systemic risk implications, as well as potential areas for inquiry designed to prevent investor harm."

For investors and the SEC, an event or occurrence of events taking place within 24 hours, could be significant. Companies and investors have witnessed several events in the past few years

[1] ICGN Global Stewardship Principles, ICGN Global Stewardship Principles 2020, p. 12.

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that have caused fundamental shifts in the global marketplace in a short period of time. ICGN recognises that investments may be held in global markets, in which a market may be 12 hours or more ahead of the main advisor's office. In these cases, a 48-hour window, over two business days, for reporting may be reasonable, given the need for some degree of accuracy in the initial reporting. It is also important to encourage amended filings as more information is known about an event or series of events. A shortened window like this would give the SEC timelier information on events that could be interpreted to signal distress or some type of financial stability risk, equaling potential investor harm.

11. Is a 20 percent loss measured against the fund's most recently reported net asset value an amount that could raise investor protection or systemic risk concerns such that the Commission and FSOC should be notified within one business day? Should the threshold amount be higher (e.g., 50 percent threshold) or lower (e.g., 10 percent threshold)? If this reporting event were to measure losses using a daily mark to market calculation for a portfolio of marketable securities, should extraordinary losses instead be measured against a percent of the value of the portfolio's marketable securities?

20. Is a 20 percent margin increase measured against the fund's most recently reported net asset value an amount that could raise investor protection or systemic risk concerns such that the Commission and FSOC should be notified within one business day? Should the threshold amount be higher (e.g., 50 percent threshold) or lower (e.g., 10 percent threshold)?

ICGN recognises that a 20 percent loss or margin increase, whether measured against the fund's most recently reported net asset value or the daily mark to market calculation for a portfolio, could be a triggering event for reporting to the SEC. Given the nature of the global markets, a one business day notification may be challenging. However, if the threshold of 20 percent is triggered, it could be indicative of a risk to investors in the fund and should be reported.

32. We request comment on the proposed current report in section 5, Item F: Are material changes to a prime brokerage relationship indicative of fund stress or potential systemic risk?

ICGN believes that any material changes should be reported, including a prime brokerage relationship, which could signal either fund stress or a change that could become a systemic risk. Many investors will conduct rigourous due diligence before investing in these funds and any changes, for example, in the prime brokerage relationship could have consequences to the fund and its investors.

36. We request comment on the proposed current report in section 5, Item G: Is a current report for a decline in unencumbered cash likely to capture changes in unencumbered cash that are indicative of fund or market stress? Is the trigger, including the daily calculation of unencumbered cash, burdensome to operationalize? Is it common for advisers to track an unencumbered cash figure on a daily basis?

37. Should we require reporting when the value of the reporting fund's unencumbered cash declines by more than 20 percent of the fund's most recent net asset value over a rolling 10-day business period as proposed? Is 20 percent too high or too low? Is a

rolling 10 business day period appropriate or should we change the length of the period? P. 33.

Unencumbered cash is one measure for the level of a fund's health. Investors would likely ask questions when a fund's unencumbered cash declines by more than 20 percent. If the fund is using previously unencumbered cash to pay costs associated with the business that were not anticipated or developed quickly, the situation could identify risk for investors. A rolling ten business day timeframe would occur over a two-week period, thereby being a reasonable trigger if the cash level declines by 20 percent or more. This could mean that the advisor is needing to utilise cash to pay unforeseen expenditures.

41. Does the definition of "operations event" provide a clear, objective trigger for reporting? Would advisers be able to assess this during an operations event? We proposed a principles-based approach for reporting of an operations event that is a "significant" disruption or degradation of the adviser's operations and for operations that are reasonably measurable, we would view a 20 percent disruption of degradation of normal volume or capacity as "significant." Are we correct that certain disruptions may not be quantifiable? Do commenters agree that a 20 percent disruption or degradation of normal volume or capacity indicates that an event is "significant?"

ICGN recommends that all investors monitor investee companies, hedge funds, private equity investments, and other vehicles in which they invest on behalf of their beneficiaries.

ICGN understands that the term, "operations event", may be subject to interpretation and limit the clarity necessary for uniform reporting. We support the need to define an operations event as a "principles-based approach" for reporting a significant disruption or degradation of a fund advisor's operations. While a 20 percent threshold may be a useful framework to denote what appears to be significant, it is important for the SEC to question whether some events are not quantifiable at the initial stage. The turnover of key fund personnel, including the removal of key business operators and the reasons, therefore, may be hard to quantify. So, too, would the announcement of potential legal events or irregular volume or capacity metrics. When investors place assets with an external fund manager, they need assurance that significant events will be reported, whether to the SEC or the investor.

The ICGN Model Mandate states the need that investor clients should 'be informed promptly of any such changes, and where the changes are truly significant usually that they will be able to alter their investment in some form'.

48. For proposed Item I, our goal is to be notified when the adviser receives requests for substantial redemptions because they may result in significant transaction costs and forced selling by a fund, all of which can cause harm to investors and contribute to systemic risk. P. 41. (Proposed section 5, Item I would require an adviser to report if the adviser receives cumulative requests for redemption exceeding 50 percent of the most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed). 46 We believe that the obligation to redeem sizable redemption requests of 50 percent or more of a reporting fund's most recent net asset value, despite pre-existing gates or limitations, may present significant risks to the fund and increases the risk that it may be forced to liquidate assets (potentially at lower prices), disproportionately penalizing non-redeeming investors, and potentially impacting markets more broadly.)

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When investors enter into contractual relationships with fund managers, there is an expectation of how and when their assets can be withdrawn, usually over a longer time horizon. If an advisor receives requests for substantial redemptions, it could be a signal that external or internal events are causing investors to have a lack of confidence in the fund advisor. If the fund is not able to handle the redemptions without selling assets, other investors that are left in the fund could be seriously harmed.

According to the guidance in the ICGN Model Mandate there are three aspects to these risks which matter to the long-term owner: singular long-term risks within individual assets, risks with a combined impact across an asset owner's portfolio, and economic impacts which come to bear across the financial system as a whole or over a long-time horizon. Similarly, portfolios with longer-term investment horizons might have opportunities not available to short-term investors, where long-term factors have positive impacts.[2] The Model Mandate also stipulates that clients need to remain confident of the ongoing financial viability of the manager."[3]

53. Should we provide the option for a narrative response? Are advisers likely to use the space to provide additional context to a filed current event? (Proposed Item K would allow an adviser to provide a narrative response if it believes that additional information would be helpful in current report(s). We believe that current reports can sometimes benefit from additional context so that the Commission and FSOC can effectively evaluate them for both our investor protection mission and FSOC's monitoring of systemic risk.)

A narrative response may be a useful option for fund advisors who would like to add additional context for an event. Specific and required line items on forms are important for reporting purposes, however, an open area on the form for additional narrative could be useful. Each advisor will have its own issues or significant events to report. The narrative response will make it more bespoke and relevant.

Similar to the current reporting in proposed section 5 for large hedge fund advisers, we are also proposing to require all advisers to private equity funds to file a current report within one business day of a reporting event. The reporting events include: (1) execution of an adviserled secondary transaction, (2) implementation of a general partner or limited partner clawback, and (3) removal of a fund's general partner, termination of a fund's investment period, or termination of a fund.

64. Does the proposed reporting event based on the removal of a fund's general partner, termination of a fund's investment period, or termination of a fund raise investor protection and systemic risk concerns that merit timely monitoring?

This list of reporting events could be of concern to investors. The removal of a fund's general partner or any key partner could have serious ramifications for the stability of the fund. Other fund terminations, either of the fund's investment period or the termination of a fund, create instability in the investment. While there could be explanations for any one of these events that would provide assurance for the fund's stability, the reporting within a timely manner is important. As ICGN noted in a previous response to a question, reporting within one or two

[2] ICGN Model Mandate, [ICGN Model Mandate (2012)], p. 7.
[3] ICGN Model Mandate, [ICGN Model Mandate (2012)], p. 12.

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business days would provide the SEC with the information to determine whether there is a concern or systemic risk.

The ICGN Model Mandate identifies fund managers and personnel as significant parts of the due diligence decision whether to proceed with the contract. In 1.5., Long-termism and alignment, it says:

> Clients decide to hire fund managers on the basis of the circumstances at the time of appointment. There can subsequently be certain significant changes (of personnel, ownership or investment process, including the approach to responsible investment) which may affect the assessment of whether maintaining the relationship at the existing level (or at all) is appropriate. Ensuring proper alignment of interests requires that clients be informed promptly of any such changes, and where the changes are truly significant usually that they will be able to alter their investment in some form. Clients also need to remain confident of the ongoing financial viability of the manager.[4]

72. Should the Commission reduce the reporting threshold for large private equity advisers as proposed? Why or why not? If not, should the reporting threshold be kept constant, increased, or decreased further? If the threshold should be changed, what do you believe is the appropriate threshold and why? (We also propose to amend section 4 of Form PF, which requires reporting by large private equity advisers to: (1) lower the reporting threshold from $2 billion to $1.5 billion in private equity fund assets under management, and (2) add new questions designed to enhance our understanding of certain practices of private equity advisers and amend certain existing questions to improve data collection.)

ICGN understands that lowering the threshold would enable the SEC and FSOC to receive reporting in the same proportion of private equity funds, based on committed capital, when Form PF was initially created. If the reduction to $1.5 billion could provide the SEC and FSOC with comparable information that is necessary to maintain effective oversight (and identify systemic risks) of this significant investment arena, the ICGN would be supportive.

90. Should Form PF require advisers to report on private equity fund borrowings as proposed? Why or why not? Do you believe that this question as proposed would be useful in identifying and monitoring potential systemic risk associated with private equity fund leverage? Why or why not? If not, how would you modify this question or what alternatives would you suggest?

ICGN believes that the proposed amendment would assist the SEC and FSOC with gathering information from PE advisors on fund-level borrowing and specific fund strategies, how they obtain leverage and financing for capital. It also could provide greater details on the restructuring and recapitalizations of their portfolio companies, another area of potential risk for investors. Investors may be involved in several funds, particularly if their investment strategy includes alternative investments in private equity and hedge funds. A default in one fund could impact a large number of investors.

ICGN's Guidance on Fiduciary Duties states:

[4] ICGN Model Mandate, ICGN Model Mandate (2012) p. 12.

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Mitigating any potential effects from systemic risk may be considered part of fiduciary duty. The investor fiduciary should attempt to reconcile considerations of systemic economic, social, and financial stability across the total fund with risk and return objectives and input from various stakeholders' points of view.[5]

99. Do you agree with the proposed reporting threshold in amended current Question 78 (i.e., country exposure of 10 percent or more of net asset value) for reporting on the geographical breakdown of investments? Should the threshold be higher or lower?

Based on the experience of our members located in over 45 countries, ICGN would recommend that country exposure be based upon a geographical breakdown of investments, which would provide the SEC with information needed to evaluate systemic risks in certain countries. It may be important to consider a lower reporting threshold, for example 5 percent, for exposure in countries with known governance and similar risk flags.

101. Would the proposed amendments provide a better picture of the reporting fund's operations, assets, portfolio, financing, and investor information? Is there alternative or additional information we should require? Is there a less burdensome way to obtain the information?

ICGN would add that turnover of holdings can be a significant indicator whether fund manager processes are fully aligned with the identified strategy and interests of investor clients.

Thank you for the opportunity to provide our perspective on the proposed amendments to Form PF, which could provide the SEC, FSOC and investors more timely information on systemic risks. ICGN's members and their beneficiaries benefit from efficient capital markets. If you would like to follow up with us with questions or comments, please contact me or ICGN's Policy Director George Dallas by email at: [redacted]

Yours faithfully,

Kerrie Waring

Chief Executive Officer, ICGN

CC: George Dallas, ICGN Policy Director

Catherine McCall, Chair, ICGN Global Stewardship Committee: [redacted]

[5] ICGN Guidance on Fiduciary Duties, ICGN Guidance on Investor Fiduciary Duties . p. 12.