March 21, 2022

Chair Gary Gensler
Commissioners Hester M. Peirce, Allison H. Lee, and Caroline A. Crenshaw
U.S. Securities and Exchange Commission

Submitted electronically via rule-comments@sec.gov

RE: **Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers**

File No. S7-01-22; RIN 3235-AM75

Dear Commissioners:

This letter responds to the request by the Securities and Exchange Commission (SEC) of the United States (U.S.) for comment on the proposed rulemaking to amend Form PF, the confidential reporting form for certain SEC-registered advisers to private funds.[1] This letter encourages the SEC to consider additional amendments to Form PF consistent with the proposed rulemaking to require private fund advisers to conduct basic customer due diligence and to appropriately report select information resulting from such due diligence on Form PF in light of the potential systemic risks stemming from abuse of the U.S. financial system by criminal, terrorist, or corrupt actors, politically exposed persons (PEPs), and other wrongdoers.[2]

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global financial system that limits abusive tax avoidance and curbs the harmful impacts of corrupt practices.[3]

Form PF and Systemic Risk

Section 204(b) of the Investment Advisers Act, added by the Dodd Frank Act, allows the SEC to require any investment adviser to "maintain such records of, and file with the [SEC] such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council ['FSOC']...."[4] The SEC implemented section 204(b) by creating Form PF, which requires investment advisers that advise one or more private funds

[1] SEC, "Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Federal Register, 87 FR 9106 (File Number: S7-01-22, RIN: 3235-AM75), https://www.govinfo.gov/content/pkg/FR-2022-02-17/pdf/2022-01976.pdf.
[2] For simplicity, terrorist risks will be collapsed into corruption throughout this letter, and ant-money laundering may be referred to as "AML."
[3] A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, "Coalition Members," 2022, https://thefactcoalition.org/about-us/coalition-members-and-supporters/.
[4] 15 U.S.C. §80b-4(b)(1)(A). For these purposes records of the private fund invested by the adviser are deemed records of the adviser. 15 U.S.C. §80b-4(b)(2).

and have at least $150 million in private fund assets under management to file an electronic, confidential form with the SEC containing information about each fund being advised to "help establish a baseline picture of potential systemic risk in the private fund industry."[5] When creating Form PF, the SEC explained that its purpose was, in part, to "promote the financial stability of the United States" by "establishing better monitoring of emerging risks."[6]

In his comments supporting the proposed rule, which would expand the reporting on Form PF in several key ways, SEC Chair Gensler explains that the reforms being proposed are necessary to address "significant information gaps" that, if addressed, would help FSOC and other federal regulators assess systemic risk.[7] Critically, Chair Gensler is recognizing that our understanding of systemic risk has evolved since 2010, and is continuing to evolve. This changing understanding, in turn, may require disclosure both from additional private fund advisers and of additional private fund information to better assess systemic risk.[8]

This letter calls attention to a potential source of systemic risk that is currently unfolding on the global stage in connection with Russia's invasion of Ukraine, that is presently ignored by Form PF and the U.S. financial regulatory regime generally, but that merits immediate attention. This risk is the undisclosed presence of illicit financial flows in private investment markets that may contribute to destabilizing U.S. and global financial markets, including potential risks associated with the global community imposing sanctions on particular countries, businesses, or individuals.

In order to address this systemic risk, Form PF should be revised in the final rule (or in a separate rulemaking) to require investment advisers to: (a) conduct risk-based customer due diligence to ensure they know who their customers are, avoid investing illicit funds, and provide reliable information in Form PF about the private funds being advised; (b) identify on Form PF the beneficial owners of the private funds being advised, including any politically exposed persons;[9] and (c) disclose on Form PF, for each private fund being advised, the percentage of

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[5] COMMODITY FUTURES TRADING COMMISSION, "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF," 2011, https://www.sec.gov/rules/final/2011/ia-3308.pdf.

[6] Id.

[7] Chair Gary Gensler, "Statement on Form PF," 2022, https://www.sec.gov/news/statement/gensler-form-pf-20220126.

[8] Currently, certain investment advisers that are exempt from registration under the Investment Advisers Act of 1940, including those who advise solely venture capital firms and who manage private fund assets of less than $150 million, do not have to file Form PF. See 17 CFR 279.9. However, the SEC can require these advisers to keep records and provide annual or other periodic reports as "necessary or appropriate in the public interest or for the protection of investors." See 15 U.S.C. §§80b-3(l)(1); -3(m)(2). In light of an evolving understanding of systemic risk, the SEC should also consider requiring these actors to file Form PF, including per the recommendations in this comment. Cf. 17 CFR Parts 275 and 279 Release No. IA-3308; File No. S7-05-11 RIN 3235-AK92 at 49-50, https://www.sec.gov/rules/final/2011/ia-3308.pdf.

[9] The Financial Action Task Force (FATF), of which the U.S. is a member, defines a politically exposed person (PEP) as "an individual who is or has been entrusted with a prominent public function." See FATF Guidance, Politically Exposed Persons: Recommendations 12 and 22, 3 (June 2013), https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf. While the United States does not use that term in federal law, 31 U.S.C. §5318(i)(3)(B) requires financial institutions to conduct enhanced due diligence of a "senior foreign political figure, or any immediate family member or close associate," who opens a private banking account. The term "senior foreign political figure" is further defined in 31 CFR 1010.605 to mean:

(i) A current or former:

fund investors and fund equity from specific countries, providing the data on a country-by-country basis to facilitate risk analysis, as further detailed in our recommendations below.

Systemic Risk and Potential Abuse of the U.S. Financial System by Certain Private Fund Investors

On February 24, 2022, Russia illegally invaded the independent, democratic nation of Ukraine.[10] In response, the United States and other allies imposed impressively coordinated sanctions designed to cut off the Russian Federation from the global economy and to identify, freeze, and potentially seize assets held by Russian oligarchs and their associates, certain Russian businesses, the Russian central bank, and Russian sovereign wealth funds.[11] By GDP, Russia is the 11th largest economy in the world.[12] But even with a relatively small role in U.S. trade, the fallout from Russian aggression, including the global sanctions on Russian banks, businesses, and oligarchs, may contribute to inflation in the United States through higher energy prices or other supply chain challenges, directly or indirectly impact U.S. businesses, and otherwise threaten U.S. and global markets.[13]

The political and economic instability created by Russia is a direct consequence of corruption: corruption that "depends on access to the global financial system."[14] Russia has long functioned

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);
(B) Senior official of a major foreign political party; or
(C) Senior executive of a foreign government-owned commercial enterprise;
(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;
(iii) An immediate family member of any such individual; and
(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.
(2) For purposes of this definition:
(i) Senior official or executive means an individual with substantial authority over policy, operations, or the use of government-owned resources; and
(ii) Immediate family member means spouses, parents, siblings, children and a spouse's parents and siblings.

Illicit financial flows initiated or controlled by or attributed to a PEP or senior foreign political figure disclosed via well-crafted beneficial ownership rules could provide vital information to systemic risk analyses conducted by FSOC.

[10] Council on Foreign Relations, "Global Conflict Tracker", 2022, https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine.

[11] Eric Levitz, "The West's Sanctions on Russia Are Working Too Well," March 7, 2022, https://nymag.com/intelligencer/2022/03/the-wests-sanctions-on-russia-are-working-too-well.html

[12] Louis Jacobson, "Russia's economy and Western sanctions: What you need to know," February 25, 2022, https://www.politifact.com/article/2022/feb/25/russias-economy-and-western-sanctions-what-you-nee/

[13] Patricia Ewing and Jack Cohen, "What's at Stake for the Global Economy as Conflict Looms in Ukraine," Feb 21, 2022, https://www.nytimes.com/2022/02/21/business/economy/ukraine-russia-economy.html. This letter focuses on systemic risks generated by illicit funds injected into the U.S. private investment industry by Russian oligarchs and associated persons and businesses. The current situation illustrates that the systemic risk identified is multipronged. Related risks might manifest in global instability, highlighted by the current conflict, and could include, for example, financial impacts caused by a rapidly declining currency in light of economic sanctions imposed, increased stock volatility, commodity or trading restrictions, supply chain disruptions, or increased defaults by sanctioned investors, businesses, or sovereign wealth funds. In those circumstances, the FSOC, SEC, and other federal agencies would benefit from having access to the same types of private fund information being advocated in this letter. See, e.g., https://www.washingtonpost.com/business/2022/03/16/russia-could-default-sovereign-debt-sanctions-cripple-its-ability-repay-investors/.

[14] Paul Massaro and Amelie Rausing, "RUSSIA'S WEAPONIZATION OF CORRUPTION (AND WESTERN COMPLICITY)", June 06, 2017,

with elements associated with kleptocracies. For years, oligarchs in Russian President Putin's inner circle have amassed wealth from Russia's captive economy and then siphoned this wealth away to hide and grow it offshore.[15] This wealth has made its way to the United States and other western economies. In the United States, this wealth has entered the economy on a virtually undetectable basis due to gaps in the U.S. anti-money laundering regulatory framework.[16] Indeed, according to our own Treasury Secretary, the United States has become a premier destination for corrupt and criminal actors seeking to hide their ill-gotten gains from public accountability.[17] This hidden wealth is then weaponized against the United States by entrenching the power of kleptocrats in Russia and throughout the West, without any true visibility into the scope of the problem.[18]

U.S. hedge funds, private equity funds, venture capital funds, and other types of private placement funds are being utilized to shield, protect and grow the wealth of Russian oligarchs and the wealth of other potential U.S. adversaries or corrupt foreign officials.[19] Revelations in the last weeks alone have been illuminating, but expected. A recent media report disclosed, for example, that Concord Management, an unregistered investment fund located in New York, secretly invests the fortunes of Russian magnates like Roman Abramovich and has been investing their funds in prominent U.S. private equity, real estate, and hedge funds for years.[20] Another example is a Silicon Valley venture capital fund called Fort Ross Ventures, which has drawn significant capital from Russia and is now grappling with how to treat its Russian

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https://www.csce.gov/international-impact/russia-s-weaponization-corruption-and-western-complicity?page=2.

[15] See Anders Aslund & Julia Friedlander, Defending the United States Against Russian Dark Money, Atlantic Council, (Nov. 17, 2020), https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf.

[16] Private funds, for example, invest substantial offshore wealth in U.S. equities and other financial investments without any affirmative obligation to know their customers or report suspicious activity. See id.; Todd C. Frankl, "The search for oligarchs' wealth in U.S. is hindered by investment loopholes," Washington Post (Mar. 16, 2022), https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/; Tedd Bunker & Laura Kreutzer, Sanctions on Russia Put Private Fund Backers Under the Microscope, WSJ (Mar. 6, 2022), https://www.wsj.com/articles/sanctions-on-russia-put-private-fund-backers-under-the-microscope-11646586001?st=4x9dkqqbzkbo9t5&reflink=desktopwebshare_permalink; U.S. Treasury Dep't, U.S. Liabilities to Foreigners from Holdings of U.S. Securities, https://home.treasury.gov/data/treasury-international-capital-tic-system/us-liabilities-to-foreigners-from-holdings-of-us-securities, Ex. 12 (showing more detailed numbers than 2021 for "fund' and "other" private equities). Private funds can be incorporated or operate in the United States or abroad. For example, the Cayman Islands, with a GDP of $5.96 billion in 2019, reportedly holds over $1 trillion in U.S. equities, but those securities are not owned by Cayman citizens or residents, but by intermediary entities with beneficial owners from a variety of nations. In many instances, such as with respect to private investment funds (discussed below), the United States has no insight into who these beneficial owners may be. See id. At 12-13 (explaining that Treasury analysis regarding foreign ownership of equities is not based on beneficial ownership).

[17] Christopher Condon, "Yellen Says U.S. May Be the Best Place to Launder Dirty Money U.S.", December 9, 2021, https://www.bloomberg.com/news/articles/2021-12-09/yellen-says-u-s-may-be-the-best-place-to-launder-dirty-money.

[18] Peter Whorisky, Russian oligarchs have donated millions to U.S. charities, museums and universities, analysis shows," March 7, 2022, https://www.washingtonpost.com/business/2022/03/07/russian-oligarchs-donate-american-charities/.

[19] Lloyd, Timothy, "FBI concerned over laundering risks in private equity, hedge funds – leaked document," Reuters, July 14, 2020, https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity/fbi-concerned-over-laundering-risks-in-private-equity-hedge-funds-leaked-document-idUSKCN24F1TP. For the size of the market, *see* Preqin, Alternatives in 2021, https://www.preqin.com/insights/research/reports/alternatives-in-2021.

[20] Matthew Goldstein, Kenneth P. Vogel, Jesse Drucker, Maureen Farrell and Mike McIntire, "How Western Firms Quietly Enabled Russian Oligarchs," New York Times (March 9, 2022), https://www.nytimes.com/2022/03/09/business/russian-oligarchs-money-concord.html.

investors, including a major investor, Sberbank, which is already under sanction.[21] Fort Ross Ventures is not alone, and it bears noting that the lack of SEC or other customer due diligence requirements means that U.S. investment firms may not know where to begin in identifying potentially sanctioned investors.[22] These examples build on prior case studies of Russian investment in private funds operating within U.S. borders, some of which became public only by accident or after an extensive law enforcement investigation.[23]

That Russian investors want access to U.S. private investment markets–the growth of which have outpaced public markets dramatically in recent years–is not shocking.[24] What is shocking is that nobody–not the funds, nor the advisers, nor any U.S. regulators–collects the information needed to understand who these investors are or the nature of their investments in order to calibrate potential systemic risks posed to U.S. markets.[25]

Simultaneously, targeted sanctions meant to punish Russian President Putin and his inner circle face stiff headwinds when both registered and unregistered investment advisers lack any legal requirement to identify the individuals behind the funds they help to invest.[26] Targeted sanctions meant to keep money controlled by U.S. adversaries out of the West cannot, alone, overcome the secrecy now built into U.S. financial systems. Freezing or seizing assets is an extremely difficult task when anonymous investments are otherwise legal.

Without meaning to imply that global cooperation and open markets are not desirable objectives, the threats posed by Russian corruption cannot be viewed in isolation. Other authoritarian and kleptocratic governments have risen dramatically in recent years.[27] At present, we can only estimate how and to what extent related money has infiltrated U.S. markets.[28]

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[21] Marina Temkin, "Exclusive: California VC firm backed by Russia navigates a global crisis," March 4, 2022, https://pitchbook.com/news/articles/fort-ross-ventures-russia-sanctions-vc.

[22] Todd Frankel, "The search for oligarchs' wealth in U.S. hindered is by investment loopholes," March 16, 2022, https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/. Fort Ross Ventures also highlights that the systemic risk discussed in this comment is borne by venture capital and small private investment funds, alike. See supra note 8 and accompanying text.

[23] For example, Russian (and Chinese) interests have sought access to sensitive U.S. technologies and innovation through private investment vehicles financing U.S. firms, and in another case, a lack of disclosure in private equity obscured the majority stake held by a Russian oligarch in a U.S. voting management firm. See Russian case studies discussed in https://thefactcoalition.org/wp-content/uploads/2021/12/TI_Private-Investments-Public-Harm-10.pdf.

[24] Commissioner Allison Herren Lee, "Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy," Oct. 12, 2021, https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12.

[25] Todd Frankel, "The search for oligarchs' wealth in U.S. hindered is by investment loopholes," March 16, 2022, https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/. While section 210(c) of the Investment Advisers Act states that the Act shall not be "construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser," it makes an exception in the case of the "assessment of potential systemic risk." See 15 U.S.C. 80b-10(c).

[26] This letter urges greater disclosure for all advisers required to file Form PF; however, it also recognizes that the SEC may want to consider reevaluating several exemptions to Form PF filings as well as Form PF filing and investment adviser registration thresholds to address the systemic risks identified by this letter. See supra note 8 and accompanying text.

[27] Sarah Repucci and Amy Slipowitz, "The Global Expansion of Authoritarian Rule", 2022, https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule.

[28] Potentially related regulatory regimes, such as disclosure rules required by CFIUS or the new beneficial ownership registry being developed under the Corporate Transparency Act (discussed below), have limited scope with respect

Using Form PF disclosures to give the FSOC (and the SEC) the tools and information necessary to conduct a more detailed, fact-based systemic risk analysis may prove critical to protecting U.S. markets today and in the future.

SEC Authority

Ample precedent exists for the SEC to require the investment community to conduct basic customer due diligence to know who they are doing business with and detect, prevent, and report money-laundering, terrorist financing, and other illicit financial flow threats, including corruption-based investments. For example, in **SEC v. Alpine Securities Corporation**, the Second Circuit recently affirmed the authority of the SEC to require broker-dealers to implement strong anti-money laundering safeguards.[29] The court held that, under section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), the SEC–on its own or in coordination with other agencies–may require broker-dealers to conduct customer due diligence and file suspicious activity reports, consistent with regulations separately promulgated under the Bank Secrecy Act.[30]

Section 17(a) of the Exchange Act, which grants rulemaking authority to the SEC to require broker-dealers "to make and keep for prescribed periods such records ... as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter," is nearly identical in substance to section 204(b) of the Investment Advisers Act.[31] In addition, section 204(b) of the Investment Advisers Act explicitly authorizes the SEC to require certain investment advisers to keep records and report information needed for the assessment of "systemic risk." That record-keeping and reporting objective dovetails exactly with and overcomes the limitation in section 210(c) of the Investment Advisers Act, which states that the SEC may not require investment advisers to disclose information about their clients' identities except "for the purpose of the assessment of systemic risk."[32] In other words, section 204(b) of the Investment Advisers Act authorizes the SEC to require investment

to private investment, and may be further curtailed by beneficial ownership due diligence limitations. See 31 CFR 800-801.

[29] *See* SEC v. Alpine Sec. Corp., 982 F.3d 68 (2d Cir. 2020), *cert. denied (Nov. 8, 2021*).

[30] *See* SEC v. Alpine Sec. Corp., 308 F. Supp. 3d. 775 (S.D.N.Y. 2018), aff'd, 982 F.3d 68 (2d Circuit 2020).

[31] Compare 15 U.S.C. §78q(a)(1) with 15 U.S.C. §80b-4(b)(1)(A).

[32] 15 U.S.C. §80b-10(c). Notably, Sections 15 U.S.C. §80b-3(l)(1) and -3(m)(2), governing recordkeeping and reporting for venture capital advisers and private fund advisers with less than $150 million in assets under management, respectively, do not contain the same "systemic risk" language as section 204(b). Nonetheless, recordkeeping and reporting in the "public interest or for the protection of investors," may provide the requisite authority to require similar recordkeeping and reporting obligations as recommended in this comment based on Alpine. Further, Section 15 U.S.C. §80b-3(n) specifically allows regulation of mid-sized funds (managing assets below the $150 million threshold) based on "systemic risk." This statutory authority suggests that the SEC already has general authority to establish systemic risk recordkeeping and reporting requirements for advisers to venture capital funds and funds with less than $150 million in assets under management–as well as advisers to even smaller funds that typically do not register. Cf. Section 15 U.S.C. §80b-3(n); SEC, Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers (updated Jun. 30, 2017), https://www.sec.gov/divisions/investment/midsizedadviserinfo.htm#:~:text=A%20%E2%80%9Cmid%2Dsized%20adviser%E2%80%9D%20is%20an%20investment%20adviser%20that,million%20of%20assets%20under%20management.

advisers to disclose client information, including beneficial ownership information, when needed to assess systemic risk.

As discussed above, recent global events have made clear that the FSOC should assess potential systemic risks created by inflows into U.S. private investment markets stemming from potential corruption or other illicit funds. Without a better understanding of what types of financial instruments and investments are infused with or dependent upon Russian funds, it is nearly impossible to determine what impacts may result from Ukraine-related sanctions. The same concerns apply to funding inflows from any U.S. adversary or other source of corrupt or illicit financial flows.

Right now, U.S. regulators are operating without sufficient information to gauge the risks confronting U.S. securities markets and without the transparency requirements needed to evaluate risks pertaining to, and stemming from, private investment funds. It is also clear based on recent precedent that the SEC already has the authority to require investment advisers to implement customer due diligence programs and well-tailored reporting regimes consistent with protecting the public, protecting investors in U.S. financial markets, and assessing systemic risk. The SEC's pending revision of Form PF offers a well-timed opportunity to exercise that authority.

Private Investment Markets: AML and Illicit Finance Vulnerabilities

For the reasons set forth above, the SEC should show leadership now in addressing illicit finance risks threatening the U.S. private investment industry by revising Form PF to provide greater transparency. Form PF currently requires only certain advisers to report any client-related information, and that information is generally limited to reporting the overall percentage of non-U.S. investors.[33] There is no requirement to identify specific investors or related beneficial owners, disclose the country of origin of either the investors or their funds, evaluate the risk that a specific investor may be providing illicit funds, or even disclose whether the funds are attributable to a PEP or senior foreign political figure. This dearth of basic information requirements is troubling but also capable of being remedied.

Notably, neither investment companies as a whole nor their advisers are currently required to maintain an AML program or file suspicious activity reports (SARs) under the Bank Secrecy Act.[34] In contrast, banks, broker-dealers, and mutual funds (one category of regulated investment companies) must do both.[35] Investment companies were statutorily required to

[33] See, e.g., Form PF Section 4, Item B, 78(b). Current rules allow private fund advisors to report a single figure for all non-U.S. investors rather than provide country-by-country data, making it impossible to determine, for example, the percentage of investors from Russia.
[34] It should also be noted that banks, broker/dealers, and mutual funds are generally required to identify and verify beneficial owners of legal entity customers and to include related procedures in their AML compliance programs under the Bank Secrecy Act. See 31 CFR §1010.230(a). However, the private investment vehicles that are the subject of this comment are not considered legal entity customers pursuant to those rules, and no beneficial ownership due diligence is legally required with respect to these customers pursuant to the Bank Secrecy Act creating another gap in the AML regulatory framework for this opaque sector. See id. at §1010.230(e)(2)(iv), (v), (xi).
[35] See supra note [24] and accompanying text.

establish AML programs and file SARs when the Patriot Act was enacted in 2001,[36] but the Treasury Department granted them a "temporary exemption" from those requirements in 2002,[37] and has yet to implement the law twenty years later for most investment companies. While strengthening Form PF's disclosure requirements is no substitute for full implementation of the Patriot Act's AML program requirements, greater transparency via a revised Form PF would help bring the United States into better alignment with global AML standards.[38]

Strengthening Form PF would also help resolve another problematic gap in U.S. financial transparency. In 2021, Congress passed the Corporate Transparency Act to combat the money laundering, terrorist financing, corruption, and other risks posed to U.S. markets made possible by anonymous legal entities. The Corporate Transparency Act requires certain corporations, limited liability companies, and similar entities to disclose their beneficial owners in a registry to be administered by the Financial Crimes Enforcement Network (FinCEN) within the Treasury Department.[39] Implementing rules are now being drafted.[40]

On its face, the Corporate Transparency Act applies to a broad cross-section of legal entities, but the law also contains 23 exemptions.[41] Exempt entities generally fall into one of three categories: (1) highly regulated entities that already disclose their beneficial owners to the government; (2) entities that have a direct, extensive U.S. presence, such that the U.S. government already has access to the level of information necessary for U.S. law enforcement to identify their beneficial owners; or (3) entities that are engaged in de minimis activities.

One of the exemptions, for certain "pooled investment vehicles," illustrates again why the SEC should revise Form PF. The Corporate Transparency Act exempts pooled investment vehicles which are: (1) operated or advised by a bank, federal credit union, broker, dealer, registered investment company, registered investment adviser, or unregistered venture capital investment adviser who has filed a Form ADV;[42] and (2) identified by their legal name "by the applicable investment adviser in its Form ADV (or successor form)" filed with the SEC.[43]

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[36] Patriot Act of 2001, Section 352, P.L. 107-56.
[37] 31 CFR §103.170 (2002).
[38] In 2016, FATF cited the United States for its failure to require private investment funds to maintain AML programs and file suspicious activity reports as called for in FATF's 40 Recommendations to combat money laundering and terrorist financing. Anti-Money Laundering and Counter-Terrorist Financing Measures: United States Mutual Evaluation Report, FATF (December 2016), http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.
[39] See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 117th Cong. H.R. 6395, Title LXIV, Sec. 6401 et. seq. (2021).
[40] U.S. House Cmte. on Fin. Serv., Waters, Brown, Maloney Urge Treasury to Take Swift Action to Implement Law Cracking Down on Shell Companies (Nov. 4, 2021), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408642.
[41] 31 U.S.C. §5336(a)(11)(B).
[42] 31 U.S.C. §5336(a)(11)(B)(xviii).
[43] 31 U.S.C. §5336(a)(10). Form ADV requires disclosures about the investment adviser itself and very limited information about its clients, but as currently configured, does not provide the beneficial ownership information needed to support systemic risk analyses performed by the FSOC. See Form ADV. It, too, might be revised, including with respect to advisers to venture capital funds and advisers with less than $150 million in aggregate assets under management.

Banks, federal credit unions, brokers, dealers, and registered investment companies (like mutual funds) must establish AML programs and make, keep, and report records that identify money-laundering and illicit financial flow risks, including under the Bank Secrecy Act. In contrast, certain registered investment companies and all registered and unregistered investment advisers currently have no legal obligation to establish an AML program. In addition, they currently have no legal obligation to make, keep, or report records relating to the identity of their clients, the source of client funds, or any evidence of suspicious activities.[44] This lack of disclosure is even more troubling given the Corporate Transparency Act exemption which excuses certain pooled investment vehicles from the beneficial ownership disclosure requirements that would otherwise apply to them.

The weak disclosure requirements in Form PF seem to contradict the plain intent of the Corporate Transparency Act and the Investment Advisers Act to protect the public, investors, and U.S. markets from systemic risk. Revising Form PF to strengthen disclosure requirements for private investment funds would increase the transparency of the investments made in U.S. private funds and would help the FSOC and the SEC conduct the systemic risk analyses called for in federal securities laws.

Recommended Form PF Revisions

We recommend making the following additional revisions to Form PF in either this or a separate rulemaking.

1. Require investment advisers to conduct risk-based customer due diligence to ensure they know who their customers are, understand the source of the customers' capital investments, and can provide reliable information on Form PF about the private funds they are advising. Requiring risk-based customer due diligence would be consistent with current Form PF requirements that direct investment advisers to gather and disclose certain limited information about the private funds they advise.
2. Require investment advisers to report on Form PF beneficial ownership information for each investor in each private fund they advise and identify any foreign "politically exposed person" (PEP) or "senior foreign political figure" under 31 U.S.C. 5318(i)(3)(B). These disclosures would be consistent with current reporting requirements regarding foreign beneficial ownership, value of investments, and deployment of fund investments.[45] The disclosure requirements should generally require determining the natural persons who directly or indirectly own or control an entity client.[46]
3. Require investment advisers to report on Form PF – on a country-by-country basis – the country of origin of each investor in a private fund and the source of that investor's funds

[44] *See* Form ADV; *cf.* §5336(a)(11)(B)(x), (xi), and (xviii).
[45] See Form PF Section 4, Item B, 78(b).
[46] The SEC should give careful consideration as to whether it should use its existing rules for identifying beneficial owners or the definition of beneficial owners used in the Corporate Transparency Act. In the private investment context for the systemic risk identified in this comment, the SEC may find it more useful to employ thresholds under its current beneficial ownership rules, modified in a manner that reflects various investment possibilities within the sector. See, e.g., Form PF, Section 3, Item D.58(b) (requesting detail around beneficial owners of greater than 5% of the reporting fund); 17 CFR § 240.13d-3.

as well as provide a range indicating the total amount of funds invested by each such investor in each such fund using U.S. dollars.

This data would enable investment advisers, the SEC, and the FSOC to better understand who is supplying what volume of funds to the U.S. private investment industry, what countries are involved, the risks that those funds may be illicit and subject to sanction or contribute to other geopolitical market risk, and the nature and contours of any related systemic risks to the U.S. financial system. The crisis in Ukraine and worldwide sanctions imposed on Russia demonstrate that the threats posed by illicit finance are real and merit careful analysis to minimize economic disruptions flowing from U.S. investments made by U.S. adversaries and other kleptocratic regimes. The SEC's actions to revise Form PF to obtain better empirical data to aid FSOC analysis of emerging systemic risks provide a newfound opportunity to better protect investors and the public interest.

Thank you for the opportunity to comment on the proposed rule to strengthen Form PF. Should you have any questions, please feel free to contact Erica Hanichak at [redacted] or Ryan Gurule at [redacted].

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

Ryan Gurule
Policy Director