April 21, 2022

Vanessa A. Countryman
Securities and Exchange Commission
100 F St NE
Washington, DC 20549

Re: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews (File No: S7-03-22)

Secretary Countryman,

I greatly appreciate the opportunity to comment on the Securities and Exchange Commission's ("the Commission") proposed rules (File No: S7-03-22) that would provide investors with needed details on the fees, expenses, returns and compliance records of the private equity funds in which they are either invested or considering investing.

In my long media industry career – both public and private – I have formed and managed six private equity funds and recently two SPACs, and I know firsthand that basic information is today not being disclosed to investors. These omissions represent a profound market failure.

However, with the rules it is proposing the Commission has the power both to increase competition in the private equity fund marketplace to the benefit of investors and to make capital information more informed and more transparent. And with the information in hand which the Commission proposes be disclosed, there will be immediate action by major pension funds and other institutional investors to materially reduce fees.

Currently, even the most sophisticated investors in private equity funds most often do not have insight into:

- The total fees they are being charged and how these fees are being charged
- Accurate information on returns on investment
- If the fund adviser has ever engaged in misconduct
- Whether other fund investors are receiving preferential treatment.

The Commission's proposal addresses the great imbalance of information which currently favors fund advisers by requiring advisers to provide investors on a quarterly basis with:

- A table detailing all the different fees and expenses being charged
- A standardized, reliable set of returns for investors to evaluate alongside more detailed assumptions used to calculate returns
- Disclosures on special arrangements they may have with certain investors, often referred to as "side letters"

The Commission's proposal will further ensure that private fund investors are better able to steward the savings of millions of Americans. These investors include public pension funds responsible for the retirement savings of workers and retirees and other important public serving institutions, including universities and foundations.

The current lack of transparency erodes accountability and it has enabled a massive, unprecedented transfer of wealth from workers and retirees to Wall Street executives and their private equity firms. This dynamic has been described by a leading academic expert as one of the "largest [wealth transfers] in the history of modern finance" from several hundred million retirees to the private equity industry.[1]

Current rules unfairly benefit private fund advisers at the expense of investors

At this time, the Commission's proposal is particularly crucial since the aggregate size of private equity funds have grown exponentially. In the last decade, these funds have grown by 383%, from $3 trillion in 2007 to around $11.5 trillion at the end of 2021.[2] However, the governance rules have not kept pace with this growth or its nuances. Outdated and missing disclosure rules mean that investors have too little insight into their private equity fund investments.[3] This lack of transparency and basic accountability seriously impedes investors' abilities to accurately determine risks, identify true returns and make critical allocation decisions.[4]

The SEC's proposal to require detailed accounting of fees and expenses would greatly benefit fund investors

I especially strongly support the Commission's proposal requiring private equity fund advisers to provide detailed reporting on a quarterly basis on Form ADV, breaking down all the compensation, fees and expenses paid to the adviser. Fund advisers are not currently providing this baseline level of information and they have largely ignored investors requests to do so.[5] Most private fund investors do not have the information they need to have insight into all the fees they are being charged.[6]

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[1] Flood, Chris. Financial Times. Private equity barons grow rich on $230bn of performance fees. https://www.ft.com/content/803cff77-42f7-4859-aff1-afa5c149023c

[2] Pitchbook. Total private assets. Mar 31, 2021.

[3] Greene, Sophia. Financial Times. Private equity: the definition of an opaque asset class. Jan 24, 2015. https://www.ft.com/content/7d5fda20-a182-11e4-8d19-00144feab7de

[4] Sonti, Samir. American Federation of Teachers. Lifting the Curtain on Private Equity: A Guide for Institutional Investors and Policymakers. March 2021. https://www.aft.org/sites/default/files/private-equity-report-2021.pdf

[5] Cumming, Chris. Wall Street Journal. New Rules Aim to Prevent Private-Equity Firms From Passing Legal Costs to Investors. Mar 9, 2022. https://www.wsj.com/articles/new-rules-aim-to-prevent-private-equity-firms-from-passing-legal-costs-to-investors-11646823601

[6] Simon, Emma. Morningstar. Why are Fund Fees So Confusing? Mar 17, 2021. https://www.morningstar.co.uk/uk/news/210529/why-are-fund-fees-so-confusing.aspx

The SEC's proposal would prohibit private equity funds from charging investors or their portfolio companies fees for services not provided

Fees related to wrongdoing and for services not actually provided, which the Commission correctly characterizes as "compensation schemes that are contrary to the public interest and the protection of investors", should be borne by the fund advisers and not by the investors.

Requiring that the reporting of returns be standardized and that there be full disclosure of the assumptions and metrics used in calculating returns would help investors verify that they are getting accurate return information

I also strongly support the Commission's proposal to require private equity funds which would be considered "illiquid funds" to include all of the assumptions and calculations which go into their return figures, which the industry currently show using Internal Rate of Return (IRR). Given the historical unreliability of IRR, I also strongly support the Commission's proposal to require advisers to provide investors with return figures that show how many multiples of capital have been returned to investors.

Investors in what the Commission defines as "illiquid funds" currently have very little insight into how returns are calculated, which in turn means they have little information about the accuracy of the return figures they are presented with. This despite the fact that the return metric used by almost every private equity fund – the Internal Rate of Return (IRR) – has been found repeatedly to be an unreliable measure of performance,[7] especially given that borrowed money can be used to further inflate the IRR.[8]

Workers and retirees are gravely harmed when inflated proforma returns do not come to fruition. A 2013 investigation into six private equity funds which the Florida State Board of Administration invested in found that the funds collectively gained $351.5 million from 1988 to 2011. However, if the same investments had instead been invested in the Russell 3000 index of small cap stocks they would have yielded $1.38 billion, meaning that Florida retirees were effectively deprived of $1 billion in returns as a result of these investment choices.[9]

I therefore strongly support the Commission's proposal to also require private equity fund advisers to disclose on their Form ADV (i) the criteria and assumptions used to determine performance calculations and (ii) how much cash has been distributed back to investors as

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[7] Phalippou, Ludovic. Oxford Said Business School. The Hazards of Using IRR to Measure Performance. Sep 29, 2009. https://ssrn.com/abstract=1111796

[8] Albertus, James and Denes, Matthew. Carnegie Mellon Tepper School of Business. Distorting Private Equity Performance: The Rise of Fund Debt. June 2019. https://uncipc.org/wp-content/uploads/2019/07/DistortingPrivateEquityPerformance_07192019.pdf

[9] Edwards, Gina. Watchdog City. Opting for risky and secretive private equity investments cost Florida pension fund an estimated $1 billion on six deals. Apr 2, 2013. http://www.watchdogcity.com/storyinfo/216-Opting-for-risky-and-secretive-private-equity-investments-cost-Florida-Pension-fund-an-estimated-1-billion-on-six-deals-.htm

multiples of committed capital.[10] Such additional information would greatly help investors compare fund returns and identify lower-fee and better-performing alternatives.

Annual audits of every private equity fund should be mandatory

I also support the Commission's proposal to require every private fund be audited annually by an independent public accounting firm registered with the Public Company Accounting Oversight Board (PCAOB). Such independent audits would (i) provide scrutiny over whether a fund adviser's estimated valuations on its illiquid investments are consistent with Generally Accepted Accounting Principles (GAAP) and not inflated and (ii) identify compliance breaches.

All side letters should be disclosed to all investors

I support the Commission's proposal to require that all special arrangements or terms offered to a certain set of fund investors, often referred to as "side letters," be disclosed to all other investors in the fund to ensure there are no violations of the fund's fiduciary duties to other investors.[11] Side letters with the greatest potential to harm other fund investors are those that include the ability to redeem holdings first and leave remaining investors invested in a materially different portfolio that may be far riskier and/or less liquid.[12]

Additional reporting requirements are not an unfair burden

Contrary to the arguments which are being made about additional costs associated with the Commission's proposed reporting requirements, it is worth noting that there will be no material additional costs to the private equity funds since all the information which the Commission addressing is already available. The Commission is simply proposing to mandate that this information by made available to investors.

Thank you for this opportunity to comment on the Commission's commendable proposal.

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[10] Robertson, Gary. Callan. Private Equity Performance Measurement Requires Unique Calculations. Oct 22, 2019. https://www.callan.com/blog-archive/pe-measurement/

[11] Dechert LLP. Private fund side letters: common terms, themes, and practical considerations. Oct 28, 2018. https://www.dechert.com/knowledge/onpoint/2018/9/private-fund-side-letters--common-terms--themes-and-practical-co.html

[12] Davie, Alexander. Strictly Business. Using Side Letters in Private Funds. Nov 29, 2017. https://www.strictlybusinesslawblog.com/2017/11/29/using-side-letters-in-private-funds/