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April 21, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

Re: File Reference No. S7-03-22; Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews (SEC Release No. IA-5955)

Dear Ms. Countryman:

Deloitte & Touche LLP is pleased to respond to the request for public comment from the Securities and Exchange Commission on the proposed rule, *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews* (the “proposal”). Specifically, we have observations on potential opportunities for clarification about certain of the proposed audit, accounting, and reporting implications of the proposal.

Audit implications of the proposal

The proposal would require all registered private fund advisers to have their private fund clients undergo a financial statement audit under generally accepted auditing standards of the United States (“U.S. GAAS”). Because of the overlap between the audit requirements in the proposal and the Commission’s existing custody rule,¹ we recommend that the Commission consider whether certain options and guidance the Commission or its staff have provided related to the custody rule should also apply under the proposal.

First, we note that some advisers currently opt to undergo a surprise examination, rather than an audit, under the custody rule. The proposal appears effectively to eliminate the option for surprise examinations for private funds. In our experience, there are times when an adviser and/or its investors may find the surprise examination option beneficial from a logistical and cost perspective, particularly at the inception of the fund or near the end of the life of the fund, after disposition of most or all of its investments. In addition, there may be other fact patterns in which an investment adviser may seek an option other than a fund audit. For example, a merger or acquisition can result in the current auditor no longer being an independent accountant as defined by Rule 2-01 of Regulation S-X. While an investment adviser could seek to find another audit firm, especially if it is near the end of the audit period the fund investors or its board of directors, if applicable, may not wish to incur the cost of essentially two audits,

¹ 17 CFR 275.206(4)-2, *Custody of funds or securities of clients by investment advisers.*

especially when the current auditor has completed a significant portion of its audit procedures and is independent under standards established by the American Institute of Certified Public Accountants. Instead, the adviser may select to have the audit completed by the current auditor and seek an additional remedy that is less costly but still provides protections for the benefit of investors. The Commission therefore might consider whether it should provide an exemption or other relief in the final rule that would allow advisers, in certain circumstances, to retain the surprise examination option or another option that the adviser determines in good faith is appropriate.

We also note that the proposal does not explicitly address certain scope interpretations that exist for the custody rule, and we suggest the Commission consider if it should address similar interpretations in finalizing this proposal. For example, many registered advisers manage entities for which an audit is not required under the custody rule, including special purpose vehicles (“SPV”) (e.g., aggregator vehicles and Collateralized Loan Obligations). In guidance issued by the staff of the Division of Investment Management in 2014 related to the custody rule (“2014 Guidance”)² the staff indicated that an investment adviser could treat an investment SPV either as a separate client (in which case the adviser will have custody of the SPV’s assets) or as assets of the pooled investment vehicle of which it has custody indirectly. If the adviser takes the latter approach, which in our experience many advisers do, the 2014 Guidance provides that those assets may be considered within the scope of the pooled investment vehicles’ financial statement audit, and thus do not require a separate audit or examination. Similarly, and consistent with long-standing guidance about offshore funds, the Division of Investment Management also has opined that “offshore advisers registered with the SEC are not subject to the custody rule, with respect to offshore funds”³ and thus, they are not subject to the audit or examination requirements of that rule.

Additionally, the proposal would generally require that financial statement audits be performed in accordance with U.S. GAAS. We note that offshore funds may be audited by firms outside of the United States, and certain jurisdictions might require, currently or in the future, that local auditors perform audits under a standard different than U.S. GAAS. We suggest that the Commission consider clarifying how auditors should proceed if advisers encounter circumstances where an audit under U.S. GAAS is not permitted. For example, the Commission may wish to consider if any auditing standards, other than U.S. GAAS, may also meet the requirements of the rule.

Accounting and reporting implications of the proposal

The proposal would generally require that financial statements be prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) or, in the case of foreign private funds, substantially similar standards. We encourage the Commission to consider the current requirements in local jurisdictions that may require financial statements to be prepared under a different basis of accounting. In some instances, the requirement to prepare U.S. GAAP, or substantially similar, financial statements may require funds and their investors to incur additional costs to prepare and have audited financial statements on two different bases of accounting, especially if auditors in those jurisdictions

² 2014-07 IM Guidance Update, *Private Funds and the Application of the Custody Rule to Special Purpose Vehicles and Escrows*, available at: <https://www.sec.gov/investment/im-guidance-2014-07.pdf>.

³ See Question VI.5 at https://www.sec.gov/divisions/investment/custody_faq_030510.htm. See also, SEC Staff’s No-Action letter to the ABA Committee on Private Investment Entities (Aug. 10, 2006) available at: <https://www.sec.gov/divisions/investment/noaction/aba081006.pdf> (“under the principles laid out in prior staff guidance and letters, the substantive provisions of the Act do not apply to offshore advisers with respect to such advisers’ dealings with offshore funds and other offshore clients to the extent described in those letters and the Adopting Release.”).

conclude that including a reconciliation is not in conformity with the required basis of accounting. The Commission may wish to consider whether certain recognized bases of accounting, including, but not limited to the International Financial Reporting Standards, might be sufficient on their own without also requiring U.S. GAAP financial statements or financials with a reconciliation to U.S. GAAP.

Separately, we note that the proposal would require a fund manager to provide its investors with a statement of contributions and distributions for illiquid funds reflecting the aggregate cash inflows from investors and the aggregate cash outflows from the fund to investors, as well as various internal rate of return ("IRR") metrics. Such funds may on occasion have redemptions or transfers. If the Commission maintains this or a similar requirement in the final rule, it should consider clarifying how redemptions or other transfers out of the fund should be reflected in such a statement. The Commission should also consider clarifying whether the fund manager should reflect the effect of redemptions and transfers within the determination of the IRR in a similar manner to how they are treated under U.S. GAAP.

* * * *

We appreciate the opportunity to provide our perspectives on the proposal. We would be happy to discuss any of the points of our letter. If you have any questions or would like to discuss our views further, please contact Rajan Chari at [REDACTED] or Ryan Moore at [REDACTED].

Sincerely,

Deloitte & Touche LLP

Deloitte & Touche LLP

cc: Gary Gensler, Chair

Hester Peirce, Commissioner

Allison Herren Lee, Commissioner

Caroline Crenshaw, Commissioner

William Birdthistle, Director, Division of Investment Management

Paul Munter, Acting Chief Accountant