

April 22, 2022

Via Email to rule-comments@sec.gov

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

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

Dear Ms. Countryman:

Millennium Trust Company, LLC (“Millennium Trust”) appreciates the opportunity to provide comments on proposed rules and related amendments affecting private funds under the Investment Advisers Act of 1940 (“Advisers Act”). The proposed rules are set forth in Investment Advisers Act Release No. 5955 (Feb. 9, 2022) (the “Proposing Release”).

Millennium Trust is an Illinois state-chartered trust company providing specialized custodial services to investment advisers to hedge funds, private equity funds, venture capital funds, and other private funds whose advisers are registered under the Advisers Act and are thus subject to Rule 206(4)-2 (the “Custody Rule”) under the Act. Our customized custody solutions help advisers comply with the Custody Rule, provide transparency to their investors, and make alternative investments accessible to their investors.

While we provide a broad range of custodial services to our private fund clients, we specialize in providing custody for types of assets that other, larger financial institutions are unwilling to hold, including physical certificates, electronic loans and other alternative assets. Thus, we believe we play an important role helping registered advisers satisfy the requirements of the Custody Rule.

We serve both newly created and well-established private fund advisers, with individual funds’ asset sizes ranging from startup to \$500 million. We hold in custody over \$13 billion in private fund assets.

1. Private Fund Audits

Our comments focus on proposed Rule 206(4)-10, which would require registered advisers to cause each private fund it advises to obtain an audit of its financial statements by an independent public accountant that is registered with and subject to inspection by the Public Company

Accounting Oversight Board. We urge the Commission to reconsider this rule to the extent it denies registered advisers the alternative of obtaining a surprise verification of fund assets.

Under the Custody Rule, advisers may satisfy certain requirements of the rule by either obtaining a surprise verification of the funds and securities of a private fund by an independent public accountant *or* an audit of the fund's financial statements that must be distributed to investors.¹ It is our experience that most private funds, and certainly most private funds sponsored by the larger firms, obtain an audit of fund financial statements that would comply with the proposed rule.²

However, many of the private funds that custody their assets with us obtain a surprise verification. The choice the current rule affords each adviser is important because the cost of an audit is significantly greater than the cost of a surprise verification, and the additional cost of an audit would make some small private funds economically not viable. In the case of a smaller adviser, the costs of obtaining an audit may create a barrier to entry, diminishing competition and protecting incumbents.

Under the proposed rule, a "private fund" may include a small limited partnership with just a few limited partners who may also be clients of an investment adviser. The limited partnership might be used to invest in a small business venture. There are limited custody risks and valuation risks depending on how the adviser is compensated. Yet these useful investment arrangements may be effectively ended if the Commission adopts the new rule as proposed.

Our review of the Proposing Release, including the Economic Analysis section, suggests that the Commission may not have considered these costs.³ *All of these costs*, including the cost of the audit and the opportunity cost if investment opportunities in these smaller limited partnerships are no longer available, will be borne by investors rather than the sponsors of private funds. The Commission estimates that audit fees range from \$15,000 to \$300,000 per year.⁴

The Custody Rule currently permits the investors in a private fund, who almost always wish to have the benefit of an audit (and may decline to invest without an audit requirement), to forgo an audit in circumstances when the risks of going without an audit are not worth the cost of an audit. We urge that private fund investors, who the Commission considers to be sufficiently sophisticated or wealthy to make a decision to invest in the private fund, should be entrusted to make a decision regarding the benefits of an audit versus a surprise verification.

¹ Rule 206(4)-2(b)(4).

² Thus, the statement in the Proposing Release that 90% of the private funds are audited rings true to us. Proposing Release at 256.

³ References to the costs, which we cite in the text below, is found in the "Paperwork Reduction Act" section of the Proposing Release. There is no discussion of the potential adverse impact of the proposed rule on funds and fund investors.

⁴ Proposing Release at 293.

In addition, we understand that some larger private funds that are at the end of their term and have few remaining assets will sometimes “switch” to the surprise verification method of complying with the Custody Rule for the last year or so of the term of the fund, to reduce expenses and preserve fund assets for the benefit of the remaining investors. It would be an unfortunate result if a rule proposed to protect investors operated in practice to consume their remaining assets with auditing fees.

2. Custody Rule

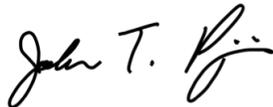
We note that, as proposed, advisers to private funds would be subject to both the Custody Rule and the proposed rule. We urge the Commission to reconcile the two rules and to clarify whether the staff interpretations that have been issued under the Custody Rule will likewise apply to the new Private Fund Audit Rule.

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In summary, we hope the Commission will consider the adverse and likely unintended effects the audit requirement may have on smaller funds and smaller advisers to private funds and on the investor community.

We appreciate your consideration of our comments and would be happy to provide any additional information that may be helpful.

Sincerely,



John Perugini
General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
William Birdthistle, Director, Division of Investment Management.