

Ullico Investment
Advisors, Inc.

8403 Colesville Rd.
Silver Spring, MD 20910
202.682.0900

A Ullico Inc. Company

April 22, 2022

Via E-Mail

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

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

Dear Ms. Countryman:

We are submitting this letter in response to the U.S. Securities and Exchange Commission's ("SEC") proposed new rules under the Investment Advisers Act of 1940 (the "Advisers Act") relating to private funds.¹ In particular, our comments address one new proposed rule that would require quarterly statements to be prepared and distributed to private fund investors within 45 days after each calendar quarter end. We appreciate your attention to our comments.

BACKGROUND

1. Ullico Infrastructure Taxable and Tax-Exempt Funds

The Ullico Infrastructure Taxable and Tax-Exempt Funds (collectively, the "Funds") are Delaware limited partnerships that are designed to provide institutional investors with access to private equity and/or debt investments in infrastructure assets. [Each Fund invests all of its assets in Ullico Infrastructure Master Fund, L.P]. Ullico Investment Advisors, Inc. ("UIA") is an investment adviser registered with the SEC under the Advisers Act and serves as the investment adviser of the Funds. Ullico Infrastructure Management Company, LLC ("UIMC"), acts as a sub-adviser for UIA in managing the underlying assets of each Fund. UIMC is a controlled affiliate and a relying adviser² of UIA. UIG, GP, LLC ("UIF") serves as the general partner of each of the Funds. UIF is also a controlled affiliate and relying adviser of UIA. UIMC, UIF and UIA operate a single advisory business. UIA relies upon Rule 506(c) of Regulation D under the Securities Act of 1933, as amended ("Securities Act"), for each Fund's exemption from registration of its interests with the SEC, and upon Section 3(c)(7) for its exclusion from registration as an investment company under the Investment Company Act of 1940 ("Company Act"). All limited partners are "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act, and qualified purchasers as defined in Section 2(a)(51) of the Company Act and Rule 2a51-3 thereunder.

¹ *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, Investment Advisers Act Rel. No. 5955 (Feb. 9, 2022), 87 Fed. Reg. 16886 (Mar. 24, 2022) (["Proposing Release"](#)).

² See *Form ADV and Investment Advisers Act Rules*, Investment Advisers Act Rel. No. 4509 (Aug. 25, 2016), 81 Fed. Reg. 60418, 60433 (Sept. 1, 2016).

2. The Funds' Valuation and Financial Reporting Procedures

The Funds currently maintain robust valuation and financial reporting procedures. These valuation and financial reporting procedures have been negotiated with the Fund's investors, are clearly disclosed in the Funds' private placement memoranda and include the following:

- Funds are subject to an annual audit, which is currently conducted by an independent public accountant that meets the standards of independence in Rule 2-01(b) and (c) of Regulation S-X that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board ("PCAOB") in accordance with its rules. The audited financial statements are distributed to all limited partners within 120 days following the close of the Funds' fiscal year.
- Another third party maintains the Fund financial records, produces quarterly Fund financials, and calculates the Fund unit values using industry-accepted software. The third party also maintains financial records for each limited partner.
- The majority of portfolio company investments are valued quarterly by a reputable third party valuation service within 45 days following the close of each calendar quarter.
- Certain portfolio company investments are made through a partnership, and the value of these investments is based on the partnership reports, which are generally provided within 60 days following the close of a calendar quarter.
- In accordance with the relevant provisions of each Fund's limited partnership agreement, each limited partner receives annual audited financial statements; quarterly unaudited financial statements for the first three fiscal quarters within 90 days after the end of these calendar quarters; an annual K-1; a quarterly report on the limited partner's units and investment performance within 90 days after the end of the calendar quarter; and a quarterly report containing a narrative of the portfolio's holdings and performance.
- Each Fund provides limited partners with an annual fees and expenses report within 120 days following the close of the fiscal year, which provides an annual accounting of each limited partner's pro rata share of management fees, custodian fees, transaction fees, partnership expenses and any other fee associated with the limited partner's investment in the Fund.

COMMENTS

Proposed new Rule 211(h)(1)-2 under the Advisers Act ("Quarterly Statement Rule") would require any SEC-registered investment adviser (or any adviser required to be so registered) to one or more private funds to prepare a quarterly statement that includes certain information regarding fees, expenses and performance for each private fund it advises and distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless a quarterly statement that complies with the Quarterly Statement Rule is prepared and distributed by another person.

Under the Quarterly Statement Rule, each Fund would be classified as a liquid fund, because, among other things, neither Fund has a limited life and neither Fund has as a predominant strategy the return of the proceeds to limited partners from disposition of investments. In addition, both Funds allow investors to withdraw before termination of the Funds. Consequently, under the proposed Quarterly Statement Rule, UIA would be required to disclose each Fund's:

- annual net total returns for each calendar year since inception;
- average annual net total returns over the one, five and ten calendar year periods (if available); and
- cumulative net total return for the current calendar year as of the end of the most recent calendar quarter covered by the quarterly statement.

UIA believes that the Quarterly Statement Rule's proposed requirement that statements be distributed to the private fund's investors within 45 days after each calendar quarter end is too rigid and fails to account for the challenges that advisers such as UIA face in obtaining the information necessary to prepare quarterly statements, including all of the data elements that the SEC proposes to require in a 45 day time frame. As noted above, while the majority of each Fund's portfolio company investments are valued quarterly by a reputable third party valuation service within 45 days following the close of each calendar quarter, the value of investments made through a partnership is based on the partnership reports, which are generally provided within 60 days following the close of a calendar quarter. Even if the Quarterly Statement Rule were to apply to those partnerships, a Fund would not be able to compute those values, and, in turn, compute its performance until it receives those statements. Therefore, even if the partnerships met their 45 day deadlines, the Funds would not necessarily be able to meet their own 45 day deadlines.³

We note that the SEC specifically solicited comment on the following issue:

The proposed rule would require advisers to distribute the quarterly statement within 45 days of a calendar quarter end. Is this period too long or too short for an adviser to prepare the quarterly statement while also ensuring timely delivery to investors? Should we instead adopt a flexible delivery standard, such as a requirement that the adviser distribute the quarterly statement "promptly"? Why or why not? If we were to adopt a prompt delivery standard, should we define "promptly"? If so, how? If we should not define "promptly," should we instead interpret that term to mean as soon as reasonably practicable?⁴

We urge the SEC to adopt a flexible standard, and specifically recommend that the SEC require that an adviser deliver the quarterly statement "promptly." We would define "promptly" as "as soon as reasonably practicable, but in no event after any deadline set forth in the private fund's organizational documents or private offering memorandum." We believe that this will provide private fund advisers with sufficient flexibility to send to investors quarterly statements in a time frame that best conforms to the amount of time needed to collect and process the data necessary to send such quarterly statements, while maintaining a standard that, as technology and communications improve, will

³ For example, if a partnership provided quarterly statements to a Fund on day 45, it is highly unlikely that the Fund would be able to incorporate the information provided by the partnership into its own quarterly statement and transmit that quarterly statement to Fund investors on a same-day basis.

⁴ Proposing Release, *supra* note 1, 87 Fed. Reg. at 16909.

effectively require more timely delivery of quarterly statements without the need to amend the text of the rule.

In this regard, in another specific solicitation of comment the SEC noted that “preparing quarterly statements may require coordination with, and reliance on, third parties . . . for example, when a private fund itself invests in other private funds or portfolio companies.”⁵ We concur with the SEC’s observation and note that a corollary to this observation is that it may take private funds that invest in other private funds or portfolio companies significantly longer to produce and distribute quarterly statements than those that do not. It would be inappropriate to impose a rigid time period that applied to all private funds, given the significant variance in the operational resources required to collect, synthesize and distribute the data proposed to be required for different private funds, which largely depends on a fund’s investment strategy, the types of investments purchased (e.g., market traded securities vs. portfolio companies, domestic vs. foreign investments etc.), the markets for such investments (Level 1 vs. Level 3 securities, for instance), the historical frequency with which the value of portfolio investments has been restated, the markets in which the investments are traded (regardless of whether the investments are valued using Level 1, Level 2 or Level 3 inputs) and other factors.

There is a tension between providing investors with timely information as soon as possible and providing investors with information that is sufficiently reliable such that the need to send investors updated and restated information for the same time periods is significantly diminished. We urge the SEC to adopt a standard that favors accuracy and reliability over speed. The Proposing Release states that “quarterly statements would provide fund investors with timely and regular statements that contain meaningful and comprehensive information.”⁶ We share the SEC’s goal of providing private fund investors with quarterly statements that contain meaningful and comprehensive information. However, we believe that imposing a 45 day deadline on all private fund advisers, regardless of the complexity associated with producing and distributing quarterly statements, is not the best method to assure that the greatest number of private fund investors possible receive quarterly statements that contain meaningful and comprehensive information.

CONCLUSION

UIA and UIMC appreciate the opportunity to provide these comments on the Proposed Rule. Please do not hesitate to contact Richard F. LaRocque, Vice President, Deputy Chief Compliance Officer and Associate General Counsel, [REDACTED], with any questions or to discuss this comment letter.

⁵ *Id.*

⁶ *Id.*, 87 Fed. Reg. at 16908.

Vanessa A. Countryman
April 22, 2022
Page 5 of 5

Respectfully submitted,

Ullico Investment Advisors, Inc.



BY: _____
Joseph R. Linehan
President

Ullico Infrastructure Management Company, LLC



BY: _____
Jeffery Murphy
Managing Director