



AFT New Mexico
AFL • CIO
A Union of Professionals

An affiliate of the
American Federation
of Teachers, AFL-CIO

Higher Education
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Teachers

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April 25, 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,

On behalf of the 25,000 members represented by AFT New Mexico, we write to express our support for the proposed new rules and amendments under the Investment Advisers Act of 1940 to enhance the regulation of private fund advisers. The proposed rules would provide investors with necessary details on the fees, expenses, returns, and compliance records of private funds they are invested in or are considering investing in, and we believe these disclosures provide a significant step towards investors having improved visibility into private funds.

Members of our union participate in the New Mexico Educational Retirement Board, where a significant portion of their retirement savings is allocated to private funds.¹ As stewards of the retirement assets of thousands of public sector workers, we feel strongly that they deserve transparency and accountability from their private fund managers.

Current rules have created an imbalance of information between private funds and their investors. Whereas fund advisors know exactly how much they are charging in fees, how these fees are charged, and how returns are calculated, public pension fund investors typically do not have access to this information; moreover, private fund advisors generally ignore pension fund requests for this information. This asymmetry of information is a clear market failure and has even allowed some advisors to pass the private jet flights² and other personal expenses³ onto investors.⁴

When private funds are not transparent with pension investors with respect to fees and performance, pension fund trustees, participants and other stakeholders cannot properly evaluate these investments. With this proposal, the Commission addresses the imbalance of power that favors the fund advisers, by requiring the advisers to provide investors on a quarterly basis: a table detailing all the different fees and expenses charged; a standardized, reliable set of returns for investors to evaluate alongside more detailed assumptions used to calculate returns; and disclosures on special arrangements it may have with certain investors, often referred to as “side letters.”

¹ New Mexico Educational Retirement Board Annual Comprehensive Financial Report, Fiscal Year Ended June 30, 2021.
<https://www.nmerb.org/wp-content/uploads/2021/12/2021-Annual-Comprehensive-Financial-Report.pdf>

² Flood, Chris. Financial Times. Investors take aim at private equity’s use of private jets. Nov 8, 2021.
<https://www.ft.com/content/1212b266-8760-4766-a03e-9e7db203b5d2>

³ Indap, Sujeet and Vandeveld, Mark. Financial Times. Apollo rebuked in trial over bogus expenses. Dec 4, 2020.
<https://www.ft.com/content/f2b79a28-889c-4ff1-86cf-53dc96454d76>

⁴ Fross, Stuart et al. Foley & Lardner LLP. SESC Enforcement Actions Impacting Private Fund Advisers for Fiscal Year 2020.
<https://www.foley.com/en/insights/publications/2020/11/sec-actions-private-fund-advisers-fy-20>



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The pension funds in which our members participate have been historically underfunded. While much of this underfunding is due to sponsors' failure to make required contributions, research demonstrates that fees charged by private funds are also a significant contributor to pension shortfalls.⁵ Thus having a full accounting of fees is crucial for pension investors to determine whether these investments are eroding pension assets by charging fees that are misaligned with risk-adjusted returns.

While the additional detail surrounding fees, expenses, and returns provided to private fund investors will be useful for investors in private funds, we also urge the Commission to share information in appropriately aggregated and anonymized formats with researchers, policy makers, and the public. These public disclosures would add another layer of accountability for all actors in the system and would also provide private fund investors with additional insights into what they are being charged relative to others' and into the performance of PE investments.

The proposed new rules and amendments under the Investment Advisers Act of 1940 will provide pension funds that AFT New Mexico's members contribute to from each paycheck with increased visibility into the true costs of private fund investment and protect public employee retirement savings from some of the harmful aspects of private fund investing. We fully support its implementation, and thank you thank you again for the opportunity to comment.

Sincerely,

Whitney Holland, President
American Federation of Teachers New Mexico

⁵ https://www.aft.org/sites/default/files/bigsqueeze_may2017.pdf