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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:

We appreciate this opportunity to comment on the Securities and Exchange Commission's ("the Commission") proposed rules that 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. We support these proposals as these disclosures provide a significant step towards investors having the insight they need into private funds. Such information will allow investors make more informed decisions with regard to the potential impacts of their investments on the millions of United States workers employed by private fund-owned companies.

NELP is a nonprofit, non-partisan research and advocacy organization specializing in employment policy. For 50 years, NELP has sought to ensure that America upholds, for all workers, the promise of opportunity and economic security through work. NELP fights for policies to create good jobs, expand access to work, and strengthen protections and support for workers, including unemployed workers. We publish research that illuminates workers' issues; promote policies that improve workers' lives; lend deep legal and policy expertise to important cases and campaigns; and partner with allies to advance crucial reforms. NELP has collaborated with federal, state, and local lawmakers on a wide range of workforce issues including access to unemployment insurance, minimum wage enforcement, and health and safety protections.

We strongly support these proposals which will provide investors in private funds with the information necessary to determine if the fees, returns, and investment terms are suitable for them and make it easier to make sure their advisers are acting in their best interest. The absence of clear standards for basic information, and of protections against dangerous conflicts of interest, puts both these investors and the integrity of capital markets at serious risk.

The lack of transparency creates misaligned incentives that increase the likelihood of extractive management practices by private equity that benefit executives and at the expense of other stakeholders, including investors, workers, and consumers.



Lack of transparency about fees and returns puts workers at fund-owned portfolio companies at risk.

Investors need the access to information to be able to make informed decisions about the potential impacts of their investment. Fund advisers are not currently providing a baseline level of information and have largely ignored investors requests to do so.¹ Many private fund investors do not have the information they need to evaluate the additional fees they are being charged on top of a standard 2% management fee and 20% performance fee.² This rule will help ensure that investors know what fees and expenses they are being charged and determine whether they are appropriate.

NELP is particularly concerned with the lack of information accessible to investors when private fund managers strip resources from portfolio companies putting workers' jobs and livelihoods at risk, as has happened at companies like Toys R Us, Pet Smart and Art Van Furniture.

For example, Toys R Us went into bankruptcy while owned by private funds including Bain Capital and KKR, which extracted hundreds of millions of dollars in fees and interest as the company floundered. Fund investors had little accurate and timely information about fees and returns, making it more difficult for them to intervene.³

A similar situation occurred at Art Van, a longstanding family-owned furniture chain with 117 stores and 3,500 employees in the Midwest. Thomas H. Lee Partners, a private fund, purchased it in 2017. The fund saddled the company with unsustainable debt, sold the firm's real estate and forced Art Van to lease those same locations back at a much higher cost. In only three years, Thomas H. Lee bankrupted a 61-year-old company, leading to the layoff of its entire workforce.⁴

Pet retailers PetSmart and Chewy are two other companies that are currently facing challenges after being purchased by a private fund. BC Partners, a private fund, saddled PetSmart with risky debt when they bought it in 2015 and again when they purchased the online pet retailer Chewy in 2017. Although sales and revenue are growing, BC Partners' fund managers have diverted company resources away from operations, staffing and worker compensation, while collecting fees for themselves. Workers have called attention to poor job quality, understaffing and chronic dysfunction at the business. While

¹ 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>

² 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>

³ Covert, Bryce. The Atlantic. The Demise of Toys 'R' Us Is a Warning. July/August 2018. <https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/>

⁴ Coleman-Lochner, Lauren and Ronalds-Hannon, Eliza. Bloomberg. Bankruptcy Claimed Their Jobs, and Now They're Out for Payback. February 10, 2021. <https://www.bloomberg.com/news/features/2021-02-10/private-equity-art-van-workers-fight-for-severance-insurance-after-bankruptcy>

operational problems at the company mount, fund investors do not have access to potentially relevant information about the fees and returns collected by BC Partners and its fund managers.⁵

For these reasons, we strongly support the Commission's proposal requiring private fund managers to use Form ADV to provide detailed quarterly reporting on compensation, fees, and expenses paid to fund advisers.

The SEC should publish aggregate and anonymous information about private fund fees and 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.

Importantly, such information would allow researchers and advocates at organizations like NELP to investigate and direct public attention to any potential abuses. NELP's mission includes publishing research on the barriers to economic security and opportunity for US workers. We aim to show how the actions of private fund managers affect millions of our nation's workers—who toil in low-wage, economically insecure jobs and are disproportionately women and people of color. Because information on fees and returns is not currently disclosed by funds, reproducing it independently would be impossible.

Thank you for the opportunity to comment on this proposed rule. Please don't hesitate to contact us if you have any questions or concerns.

Sincerely,

Irene Tung
Senior Researcher and Policy Analyst

⁵ Sainato, Michael. The Guardian. Pet adoption booming amid pandemic – but workers accuse retailers of abuses. November 20, 2020. <https://www.theguardian.com/business/2020/nov/19/pet-adoption-booming-pandemic-workers-accuse-petsmart-petco-abuses>