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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 on behalf of the Center for Popular Democracy and our national network of community organizing groups.

The proposed rules will ensure investors have the necessary details on the fees, expenses, returns, and compliance records of private funds in which they are invested in or in which they are considering investing. The fact that this basic information is not disclosed to investors is a clear market failure. The fact that this information is at the same time available to "advisers" selling funds is an outrage.

These disclosures will provide a significant step towards giving investors the insight they need into private funds when considering investment decisions, and will bring a measure of transparency and honesty to the deceptive and extractive field of private equity, private funds and alternative investments.

Clear need for regulation, rulemaking and oversight of private funds and fund advisers

Right now even sophisticated investors in private equity can't always get complete and accurate information on:

- Any fees they are being charged and how they are being charged
- Returns on investments
- Whether fund advisers have engaged in misconduct or misrepresentation

- Whether other investors are receiving preferential treatment of any type.

We support the Commission addressing the imbalance of power that favors fund advisers by requiring quarterly disclosure to investors of:

- An accurate and complete table detailing all fees and expenses charged
- A standardized, reliable set of returns for investors to evaluate, alongside a more detailed disclosure of all assumptions used to calculate returns
- Full disclosure on special arrangements the fund may have with certain investors, often referred to as "side letters."

In addition, we support this proposal because it would also prohibit certain hidden conflicts and fees that unduly enrich fund advisers at the expense of investors and it would require annual independent audits to address the systemic compliance deficiencies and ensure investments are valued properly.

We strongly support these proposals to provide investors in private funds with the information necessary to determine if the fees, returns, and investment terms are suitable for them and ensure advisers are held accountable to their clients..

Among those clients are public pension funds responsible for the retirement savings of workers and retirees, along with other important public serving institutions, including universities and foundations. These proposals will allow these institutions to properly steward the savings of millions of Americans.

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, channeling trillions of dollars of investment in ways that are untethered from the true costs and risks of the underlying securities.

The lack of transparency which further erodes accountability has enabled a transfer of wealth from workers and retirees to Wall Street executives. This dynamic has been described by a leading academic expert as one of the "largest [wealth transfers] in the history of modern finance" from several hundred million retirees to the private equity industry.[1]

Further, this lack of transparency and conflicts of interest create misaligned incentives that increase the likelihood of extractive management practices by private equity that benefit executives and at the expense of other stakeholders, including in various ways investors, workers, and consumers/patients.

Destructive impact of unbridled financialization and extreme inequality

[1] Flood, Chris. Financial Times. Private equity barons grow rich on $230bn of performance fees. https://www.ft.com/content/803cff77-42f7-4859-aff1-afa5c149023c

The Center for Popular Democracy is particularly interested in supporting these proposed rules for several reasons.

First, our affiliates and their members have too often suffered from austerity and budget cuts in essential government services over the last decade, as wealth and power has continued to shift from working and low-income people to Wall Street fund managers and the very rich.

Governments in all fifty states and in the commonwealth of Puerto Rico have frequently justified the need for austerity budget cuts in order to shift public resources towards full funding of public pensions, which have been subjected to secretive fees and charges by private fund advisers[2] and have often suffered low[3] or negative[4] returns from private equity and hedge fund investments.

Rules that result in more transparent and accurate compilation of fees and charges will allow pension managers to steer clear of high-cost/low-return funds, leaving more money for retirees and more money for funding of essential government services.

Second, some of our affiliate members include government workers, elected officials and other working people with pension benefits or other retirement funds that may be invested in private funds utilizing fund advisers. These people have suffered directly from extractive fees and secrecy around fees, charges and rates of return. Rules that allow fund managers to responsibly manage their retirement funds ultimately mean greater transparency for beneficiaries and increase their ability to hold state and local officials accountable..

Third, the Center for Popular Democracy works to transform our current extractive and exploitative system of racial capitalism towards true economic, social and racial justice. Our members have suffered from Wall Street looting and private equity extraction in the form of

- Rent gouging[5] and depressed homeownership[6]

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[2] Willmer, Sabrina. Private Equity's Opaque Costs Mystify the Pensions That Pay Them. Bloomberg. March 29, 2022. https://www.bloomberg.com/news/articles/2022-03-29/private-equity-firm-fees-create-headache-for-pension-plans

[3] Pew Charitable Trusts. State Public Pension Funds' Investment Practices and Performance 2016 Data Update: Substantial investment in complex and risky assets exposes funds to market volatility and high fees. September 26, 2018. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/state-public-pension-funds--investment-practices-and--performance-2016-data-update

[4] Joffe, Mark. Private Equity Returns Stumbled in 2020, Hurting Public Pension Plans. Reason Foundation. April 27, 2021. https://reason.org/commentary/private-equity-returns-stumbled-in-2020-hurting-public-pension-plans/

[5] Vogell, Heather. When Private Equity Becomes Your Landlord. ProPublica. February 7, 2022. https://www.propublica.org/article/when-private-equity-becomes-your-landlord

[6] Whoriskey, Peter, Woodman, Spencer, Gibbs, Margot. This Block Used To Be For First-Time Homebuyers. Then Global Investors Bought In. Washington Post. December 15, 2021. https://www.washingtonpost.com/business/interactive/2021/investors-rental-foreclosure/

- Exorbitantly high costs for healthcare[7]
- Exploitation of prisoners for communications and other services[8]
- Racist immigration enforcement and incarceration practices in which private-equity-owned companies are directly implicated[9]
- Rampant low-wage labor[10] and wage theft[11] enforced by financialization practices in the retail, hospitality, warehousing and food service sectors.[12]

Working to support transparency, honesty and fair dealing in the financial sector – and pointing out the secrecy, lies and extraction that currently mark the sector as a whole and fund advisers as a part – is an essential component of building support for a fairer, more just economy with broader prosperity in which all of us can thrive.

Current rules unfairly benefit private fund advisers at the expense of investors

The proposed rule is particularly crucial as the size of private funds have grown exponentially. In the last decade, these funds have grown by 383%, from $3 trillion in 2007 to around $11.5 trillion at the end of 2021.[13]

Government rules and regulations have not kept pace with this growth. Outdated rules mean that investors frequently have very little insight into current, past or potential private fund investments.[14]

A significant reason for the growth in private funds has been investments from pension funds, non-profit foundations, endowments, and insurance companies driven to seek

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[7] Gustaffson, Lovisa, Seervai, Shanoor, Blumenthal, David. The Role of Private Equity in Driving Up Health Care Prices. Harvard Business Review. October 29, 2019 https://hbr.org/2019/10/the-role-of-private-equity-in-driving-up-health-care-prices; Scheffler, Richard, Alexander, Laura, Godwin, James. Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined and Patients at Risk. May 18, 2021. https://publichealth.berkeley.edu/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL.pdf

[8] Chappell, Dale. Report Shows How Private Equity Firms Profit from Mass Incarceration. Prison Legal News. August 6, 2019. https://www.prisonlegalnews.org/news/2019/aug/6/report-shows-how-private-equity-firms-profit-mass-incarceration/

[9] Id.

[10] Goldstein, Steve. Private-equity deals depress worker wages, study finds. Market Watch. October 14, 2019. https://www.marketwatch.com/story/private-equity-deals-depress-worker-wages-study-finds-2019-10-14

[11] Ash, Jordan. Roark Capital's Booming Wage Theft Risk. Private Equity Stakeholder Project. https://pestakeholder.org/wp-content/uploads/2021/08/Roark-Capital-Wage-Theft_PESP_July2021.pdf

[12] Valladares, Mayra Rodriguez. Private Equity Firms Have Caused Painful Job Losses And More Are Coming. Forbes. October 30, 2019. https://www.forbes.com/sites/mayrarodriguezvalladares/2019/10/30/private-equity-firms-have-caused-painful-job-losses-and-more-are-coming/?sh=18885b1a7bff

[13] Pitchbook. Total private assets. Mar 31, 2021.

[14] Greene, Sophia. Financial Times. Private equity: the definition of an opaque asset class. Jan 24, 2015. https://www.ft.com/content/7d5fda20-a182-11e4-8d19-00144feab7de

higher returns than those in the public markets in the context of record-low interest rates.[15]

These investors have increasingly turned to investing in private funds managed by hedge funds or private equity firms to try and meet return targets, but have faced a lack of transparency and basic accountability that seriously interfere with the ability to accurately determine risks and returns, and appropriately make critical allocation decisions.[16]

Public pension funds, for example, have now allocated about 9% of their portfolios to private equity investments, totaling $480 billion in 2021, compared to $300 billion in 2018.[17]

The SEC's proposal to require detailed accounting of fees will benefit fund investors and the public

We support the Commission's proposal requiring private fund managers to provide detailed quarterly reporting on Form ADV detailing all compensation, fees, and expenses paid to the adviser.

Fund advisers are not currently providing this basic level of information and have largely ignored requests from many investors to do so.[18] Requiring reporting through a federal rule will help ensure that investors know the fees and expenses they are being charged and determine whether they are appropriate.

There's no question that many private fund investors do not have the information they need to assess, account for and analyze additional fees being charged on top of the industry standard 2% management fee and 20% performance fee.[19]

For example, the Commission fined private equity firm Lightyear Capital in 2018 for charging its investors legal, compliance, and consulting expenses without disclosing that funds primarily owned by its own employees in the same investments would not be charged the same expenses.

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[15] Jeng, Leslie and Lerner, Josh. American Economic Review. Making Private Data Accessible in an Opaque Industry: The Experience of the Private Capital Research Institute. 2016. https://www.aeaweb.org/articles?id=10.1257/aer.p20161059

[16] Sonti, Samir. American Federation of Teachers. Lifting the Curtain on Private Equity: A Guide for Institutional Investors and Policymakers. March 2021. https://www.aft.org/sites/default/files/private-equity-report-2021.pdf

[17] Gillers, Heather. Wall Street Journal. Retirement Funds Bet Bigger on Private Equity. Jan 10, 2022. https://www.wsj.com/articles/retirement-funds-bet-bigger-on-private-equity-11641810604

[18] 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

[19] 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

Additionally, because they did not have adequate information about the private funds' expenses, the investors were deprived of the management fee rebates for which they were eligible. "The Limited Partners of the Flagship Funds had no way of knowing that the Flagship Funds did not receive the management fee offset," the Commission stated in its cease-and-desist order.[20]

The failure of prior administrations to require basic transparency has even enabled some private fund advisers to pass the costs of private jet flights[21] and personal expenses[22] onto fund investors.[23] As noted above, governments currently paying such outrageous expenses could and should be investing in education, higher education, housing, healthcare and climate justice instead.

Protect investors by prohibiting private funds from charging investors or portfolio companies fees related to wrongdoing or for services not provided

In conjunction with the Commission's proposal to specifically list the various fees and expenses investors are being charged on their Form ADV, we strongly support the Commission's new proposed rules to explicitly prohibit the following fees and expenses from being passed on to investors:

- Accelerated monitoring fees
- Costs related to governmental or regulatory investigations
- Compliance expenses
- Costs related to obtaining external financing

These fees and expenses are not related to services provided to investors but are "compensation schemes that are contrary to the public interest and the protection of investors" (as accurately characterized by the Commission) and should therefore be covered by the fund, not the investors.

It's remarkable that it requires federal rulemaking to stop advisors and funds from charging fees for services not provided or not related to services provided, but we're glad the Commission is taking this long overdue step now.

Require standardized, accurate metrics and data on returns and disclosure of assumptions for calculating returns to ensure that investors can calculate actual returns on investment

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[20] Securities and Exchange Commission. Order Instituting Cease-and-Desist Proceedings Pursuant to 203(k) of the Investment Advisers Act of 1940. Dec 26, 2018. https://www.sec.gov/litigation/admin/2018/ia-5096.pdf

[21] 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

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

[23] 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

We support the Commission's proposal to require private equity funds that would be considered "illiquid funds" to include the assumptions and calculations that go into return figures, which the industry currently provides using the so-called Internal Rate of Return (IRR).

Given the historical unreliability of IRR, we also strongly support the proposal to require that advisers provide investors with return figures that show how many multiples of capital have actually been returned to investors.

Investors in what the Commission defines as "illiquid funds" currently have very little insight into how returns from fund investments are calculated, which in turn means they have little information about the accuracy of the return figures provided by advisors, or about what better, more accurate or comparably presented returns actually are.

Since these private investments have no publicly available market price, investors have no independent way to verify that returns are being calculated accurately. Investors pay performance fees based on returns, and consider making investments based on prior performance figures; this information is crucially important.

One return metric very frequently used by PE firms, the Internal Rate of Return (IRR), has been found repeatedly to be an unreliable measure of performance,[24] especially given that borrowed money can be used to further inflate the IRR.[25]

Plainly put, IRR metrics just aren't a real measure of actual returns. Investors need the truth.

IRR calculations are heavily distorted by a fund's early returns, as evidenced by how consistent IRR tends to stay over most of the life of a fund.[26] A look into Yale University's endowment investments into a KKR fund for example shows a since-inception IRR of around 26% in every SEC filing since 2006 while the same goes for its investments in Apollo's private equity funds where the since-inception IRR stayed around 39%.[27]

Assuming those figures were accurate total returns, $100 million invested in one Apollo fund in 1990 and growing annually at that rate would be worth over $2.3 trillion today, a mathematical absurdity given that the entire private fund industry itself is estimated to manage around $11.5 trillion.

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[24] Phalippou, Ludovic. Oxford Said Business School. The Hazards of Using IRR to Measure Performance. Sep 29, 2009. https://ssrn.com/abstract=1111796

[25] Albertus, James and Denes, Matthew. Carnegie Mellon Tepper School of Business. Distorting Private Equity Performance: The Rise of Fund Debt. June 2019. https://uncipc.org/wp-content/uploads/2019/07/DistortingPrivateEquityPerformance_07192019.pdf

[26] Phalippou, Ludovic. Oxford Said Business School. The Hazards of Using IRR to Measure Performance. Sep 29, 2009. https://ssrn.com/abstract=1111796

[27] Phalippou, Ludovic. Oxford Said Business School. An Inconvenient Fact: Private Equity Returns & The Billionaire Factory. December 2020. https://doi.org/10.3905/joi.2020.1.153

Workers and retirees are harmed when inflated return calculations aren't actually real.

A 2013 investigation into six private equity funds by the Florida State Board of Administration found that funds it had invested in collectively gained $351.5 million from 1988 to 2011. However, if those same funds had instead been invested in the Russell 3000 index of small cap stocks, those investments would have yielded $1.38 billion.

Florida retirees were deprived of $1 billion in returns as a result of this investment choice.[28]

Large-scale investors forced to rely on Inaccurate return figures clearly distort the capital markets. Pension managers are currently making big investments without getting clear, accurate and complete information on both returns and fees – the SEC is right to take strong action in this area.

We therefore strongly support the Commission's proposal to require private fund advisers to disclose on their Form ADV the criteria and assumptions used to determine their performance calculations, and to require additional performance figures based on multiples of capital committed to show how much cash has actually been distributed back to investors.[29] Such additions would greatly help investors compare the returns of funds to each other, and to lower-fee alternatives in the public market.

Require mandatory annual audits of every private fund

We also support the SEC proposal to require that every private fund be audited annually by an independent public accounting firm registered with the Public Company Accounting Oversight Board (PCAOB).

Such independent audits provide an additional level of scrutiny on self-interested estimated valuations on illiquid investments with few public price points, and are consistent with Generally Accepted Accounting Principles (GAAP).

Given the Commission's findings that 10% of private funds are still not being audited, mandatory audits should be required for all private funds so that investors are provided with necessary safeguards against inflated fund valuations and other compliance breaches.

Collect and share appropriately aggregated and anonymized information about fees and returns with researchers, policy makers, and the public

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[28] Edwards, Gina. Watchdog City. Opting for risky and secretive private equity investments cost Florida pension fund an estimated $1 billion on six deals. Apr 2, 2013. http://www.watchdogcity.com/storyinfo/216-Opting-for-risky-and-secretive-private-equity-investments-cost-Florida-Pension-fund-an-estimated-1-billion-on-six-deals-.htm

[29] Robertson, Gary. Callan. Private Equity Performance Measurement Requires Unique Calculations. Oct 22, 2019. https://www.callan.com/blog-archive/pe-measurement/

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.

Disclose all "side letters" to all other investors and ban side letters that put any investors at a material disadvantage

We support the Commission's proposal to require that all special arrangements or terms offered to a certain set of fund investors, often referred to as "side letters," be disclosed to all other investors in the fund to ensure there are no violations of fiduciary duties to other investors.[30]

Investors must be able to see any side agreements that funds have executed with other investors, to ensure that each investor is not being unduly harmed by secret agreements. Currently, private fund advisers can actively discriminate between different classes of investors with such secret letters.

The side letters with the greatest potential to harm other fund investors are those that include the ability to redeem their holdings first, which leaves remaining investors invested in a materially different portfolio that may be far riskier and/or less liquid.[31]

We therefore support the Commission's proposal to prohibit preferential terms regarding redemption.

Prohibit preferential information sharing in private markets that would be illegal in public markets

We support the Commission's proposal to prohibit the selective disclosure of information to chosen investors.

In the public markets, under Regulation FD, it is illegal for a public company to disclose information to a certain set of investors, but not others. [32] Yet, private funds have been engaging in the practice of providing only certain investors (often large funds who

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[30] Dechert LLP. Private fund side letters: common terms, themes, and practical considerations. Oct 28, 2018. https://www.dechert.com/knowledge/onpoint/2018/9/private-fund-side-letters--common-terms--themes-and-practical-co.html

[31] Davie, Alexander. Strictly Business. Using Side Letters in Private Funds. Nov 29, 2017. https://www.strictlybusinesslawblog.com/2017/11/29/using-side-letters-in-private-funds/

[32] Morrison & Foster. Frequently Asked Questions About Regulation FD. Oct 2, 2017. https://media2.mofo.com/documents/faqs-regulation-fd.pdf

actively invest with the manager or initial seed investors) with additional material details into portfolio investments.

Such selective disclosures to certain investors may also be a violation of the private funds fiduciary duty to its other investors who may be negatively harmed as a result.

The Commission should ban any side arrangements that allow the selective sharing of material, non-public information – period.

Additional reporting requirements are not an unfair burden on smaller funds

All the information the Commission is proposing to require be provided to investors is already available to the funds themselves – it is simply not being disclosed. Any properly operated private fund is already tracking all this information in the ordinary course of daily business. The Commission is simply proposing to mandate that this information be made available to investors.

Thank you for your consideration of these comments – we and our staff are available at your discretion for consultation or to provide more information regarding these comments.

DaMareo Cooper & Analilia Mejia

About the CPD Action

The CPD Action works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda. CPD builds the power of communities to ensure the country embodies our vision of an inclusive, equitable society -- where people of color, immigrants, working families, women, and LGBTQ communities thrive together, supported by a resilient economy and political institutions that reflect our priorities.

We work with a remarkably strong cohort of 58 affiliates and partners in 131 cities across 34 states, Puerto Rico, and Washington, DC.