



FACULTY OF LAW

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May 23, 2022  
Vanessa A. Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re. S7-03-22. Comment Period for Private Fund Adviser Disclosures

I am a former regulator and arbitrator. I have taught "Securities Regulation" at the law school level continuously for 20 years. I write to convey my enthusiastic support for the above-referenced proposal, while adding specific thoughts on two of its included reforms.

In sum, all changes bringing private funds more onto the SEC's radar are to be applauded. Pop culture has long glamorized investments by hedge funds, private equity, and venture capital as somehow outpacing the retail market while avoiding a wealth of protections geared for retail investment. In reality, this maverick world has resulted in some of the most spectacular frauds in the history of stock markets, while also sharing in the mundane downturns of the credit crisis of 2008 and the GameStop debacle a generation later.

To that end, it is hereby opined that two proposals being contemplated should be furthered. First, the disclosure of "all fees and expenses paid by/to the private fund" should be expressly clarified to include a clear statement of all trading commissions to executing broker-dealers, as well as any "payment for order flow" to the fund. If the goal is transparency, then surely these items should be both prioritized and highlighted in the new, quarterly statements.

Second, concerning books and records, the SEC has a clear opportunity to affect fund practice in soliciting investments. Broker-dealers and issuers are required to document meetings while offerings are "in registration." Sadly, experience has taught us that fund solicitations warrant equal inquiry. As a judge overseeing the Madoff debacle concluded, "Entry into [Madoff's investment advisory] Business was coveted and selective, akin to membership in an elite club." It is hereby suggested that subsection 11 of SEC Rule 275.204-2 be expanded to require fund retention of a weekly journal of all investment solicitations. The subsection already requires retention of disseminated advertisements, "oral testimonials and endorsements," and "communications" with ten or more persons. Forcing advisors to document the meeting with any new investor is bound to make the pitch more conscientious.

All proposed changes will no doubt incur opposition. However, any fund or entity that would keep practices among "accredited investors" less transparent than those in the retail world has lost touch with expanding markets. Wall Street has long been adorned by the passionate graffiti of those seeking to isolate investment from overseers. The courts are filled with the parties who awoke from such folly.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Scott Colesanti". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

J. Scott Colesanti, LL.M.  
Professor of Legal Writing  
Hofstra University School of Law