



June 13, 2022

Sent Via Electronic Submission

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

**Re: Private Fund Advisers; Documentation of Registered Investment Adviser
Compliance Reviews (SEC Release No. IA-5955; File No. S7-03-22)**

Dear Ms. Countryman,

Pathway Capital Management, LP (“Pathway”) appreciates the opportunity to submit this comment letter on the Securities and Exchange Commission’s proposed rules enumerated in Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews (SEC Release No. IA-5955; File No. S7-03-22 (February 9, 2022)) (“Proposed Rules”).

Pathway, founded in 1991, provides private market portfolio solutions for institutional investors worldwide. Pathway manages capital, either as the investment manager to fund-of-funds formed and advised by Pathway or one of its wholly owned subsidiaries or as an adviser to client separate accounts, on behalf of corporate and public pension plans, government entities, endowments, foundations, and financial institutions around the globe. Since our formation, the firm has committed more than \$100 billion to more than 1,000 private market investments across primaries, secondaries, co-investments, and direct credit investments.

Pathway supports the stated intention of the SEC’s Proposed Rules to provide transparency to investors regarding the full cost of investing in and the performance of private funds, as well as to prohibit certain conduct that is contrary to the public interest and the protection of investors. Further, Pathway generally agrees with the direction of the Proposed Rules as supplemented with the commentary in this letter below.

Pathway is supportive of the proposed rule that private funds must disclose all side letters providing preferential treatment to an investor to all the other investors and prospective investors. Given the negotiation process relating to these side letters, Pathway recommends that private fund advisers make these disclosures as early as possible, but no later than during the MFN process. We also strongly encourage the SEC to clarify that the proposed rules do not prohibit private funds from entering into side letters with investors, as side letters are a critical part of the legal documentation process for many institutional investors.

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Given the extensive scope of the Proposed Rules and what will be the resulting necessity for private funds to modify existing legal agreements, Pathway recommends that the Proposed Rules apply only to private funds formed after the implementation date. This would avoid the industry having to renegotiate thousands of existing legal agreements, which in some cases are already more than 10 years old. The time, cost, and effort for investors to devote business and legal resources to evaluate these changes to existing private fund documentation is likely to far exceed the potential benefit of the Proposed Rules.

With respect to adviser-led secondaries, Pathway supports requiring an independent fairness opinion, except when there is a valuation derived from a recent competitive process (i.e., process involving multiple potential buyers) resulting in a sale to a third party on an arms-length basis. Such valuation from a competitive third-party sale is often a better barometer on pricing than a fairness opinion.

Pathway generally supports the annual audit requirement; however, we have observed that there are certain instances when it may be appropriate for an annual audit to be excused (e.g., if there are limited assets in a private fund). Therefore, we suggest the SEC permit exemptions from the annual audit requirement if approved by an investor advisory committee or a majority of investors, provided that an audit must be required in the year of the final liquidating distribution.

Pathway generally supports the SEC's efforts to restore the fiduciary duties that a private fund should owe its investors. However, imposing an ordinary negligence standard on private fund advisers with respect to their investment activities may lead to negative consequences (e.g., higher insurance premiums borne by the investors, frivolous litigation claims). Therefore, Pathway recommends that an ordinary negligence standard be used for a breach of a side letter term or a material breach of the limited partnership, and that a gross negligence standard apply to all other duties.

With respect to the mandatory time periods for the quarterly statements, fund-of-funds managers must wait for the reports from the underlying private funds before its reports can be completed. As a result, Pathway recommends that the Proposed Rules allow for additional time for fund-of-funds to complete their respective reports for their investors.

Pathway supports the SEC's continued focus of more transparency, including all the fee, expense, and performance disclosures required by the Proposed Rules.

Thank you and please feel free to contact Ashok Tripathi, General Counsel, at [REDACTED] if you have any questions or need additional information.

Sincerely,

Pathway Capital Management, LP