

June 13, 2022

**Via Electronic Mail:** rule-comments@sec.gov

Vanessa A. Countryman  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Private Fund Adviser Proposal; File No. S7-03-22**

Dear Ms. Countryman,

I first want to thank you for your attention to issues impacting institutional investors and our constituents. The Alaska Permanent Fund invests in the U.S. capital markets in order to reach our investment objectives and to serve our beneficiaries. The ability to appropriately diversify investment strategies by accessing alternative investments is critical. And so, too, is having sound investor protections which recognize the important role our institutions play on behalf of millions of Americans.

We support the Commission's efforts to improve transparency for investors regarding the full cost of investing in private funds and the performance of such private funds. However, it is important to ensure access to alternative investments, sound investor protection, and that the role of an institutional investor is well understood and differentiated from that of a retail investor. To meet the needs of institutional investors, we write to urge flexibility and caution in advancing the private fund adviser proposal in its current form. We believe the proposal has the ability to increase, rather than decrease, our fees and expenses. We also worry it will dramatically reduce our investing opportunities and limit our ability to deliver returns to our beneficiaries.

While work can be done to further improve the leverage of institutional investors when engaging with private fund managers, we generally believe prohibiting certain activities could have unintended consequences, especially in cases where enhanced disclosure would largely satisfy our needs. Any newly imposed disclosure requirements should reflect decision-useful information valued by the institutional investor community and must be weighed against the additional cost of such disclosure, which will ultimately be borne by institutional investors.

## **Comments**

### **A. Prohibitions Related to Fees and Expenses**

We appreciate the Commission's efforts to improve the quality of information provided to fund investors, allowing them to assess and compare their private fund investments better. We are concerned, however, that the proposed rule's prohibition on the ability of an

investment adviser to charge certain fees and expenses to private fund investors will potentially decrease, rather than increase, transparency regarding fees and expenses. Certain private fund advisers utilize a pass-through expense model where the private fund pays for most, if not all, expenses, including the adviser's expenses, but the adviser does not charge a management fee. The advantage of such a business model is that investors are charged only for the fees and expenses incurred by the adviser in connection with the conduct of its business rather than a flat management fee that may be in excess of the adviser's cost of running the fund. Rather than imposing prescriptive requirements that will prohibit a pass-through business model, the Commission should focus instead on improving disclosure around fees and expenses and permit advisers and investors to negotiate how such fees are going to be paid.

#### B. Prohibition on Certain Preferential Terms

Instead of prohibiting certain preferential terms, we again believe institutional investors would be better served through disclosure requirements. We often seed private investment funds or provide "anchor" capital with emerging managers. Such investments allow institutional investors to diversify investment strategies and invest in new and diverse talent. These funds also serve an important role with respect to capital raising and investment in the U.S. markets and economy. For the significantly increased risk that institutional investors bear in partnering with an adviser to start a new venture, we may expect different terms, including lower fees and more frequent information updates. Notwithstanding seed investments, investors oftentimes have different informational needs. We are concerned that the Commission's proposal may discourage early investment risk-taking by investors, as well as chill the information flow between managers and investors by increasing risk to managers in responding to an investor's information needs.

In addition, many investors—whether due to statutory or investment mandates—often need side letters to address special circumstances. We are concerned that a regulatory prohibition would chill or decrease a manager's willingness to consider granting side letters.

To preserve investor opportunities, we recommend that the Commission address preferential term concerns through disclosure requirements rather than a flat-out prohibition.

#### C. Prohibitions on Indemnifications and Limitations of Liability for Negligence

We appreciate the Commission's intentions in protecting investors by prohibiting advisers from seeking indemnifications and limiting liability. While at first blush such limitations sound beneficial, we are concerned in practice that the restrictions will negatively impact investors by limiting investment opportunities available to institutional investors and increasing investor fees. Certain investment strategies offered by private fund advisers are complex in nature and/or may bear greater litigation risks. These investment strategies

may no longer be offered through private investment fund vehicles if an adviser is concerned that a simple negligence claim could impede reimbursement of its litigation expenses on behalf of its investment funds. Separately, we are concerned that fund insurance costs will significantly increase, costs which will be passed along to investors.

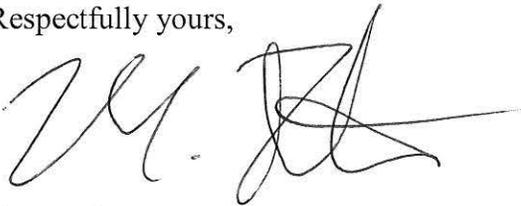
D. Compliance Costs

In balancing regulations to protect investors and costs, we urge the Commission in adopting final rules to take a principles-based approach that allows managers to scale requirements to the investment product and needs of investors. We are sensitive that increasing legal, regulatory, and compliance costs will make it more challenging for emerging managers, as well as small and mid-sized managers, to operate. We believe it is important to have a thriving investment community and are concerned that high barriers to entry and steep legal, compliance, regulatory, and operational costs could ultimately decrease fund competition to the detriment of institutional investors and our beneficiaries.

\* \* \*

We thank you for your commitment to investor protection and we look forward to working with you on policies that will serve institutional investors and our beneficiaries and not overly limit investing opportunities or increase costs.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'M. Frampton', with a long horizontal flourish extending to the right.

Marcus Frampton

Chief Investment Officer, Alaska Permanent Fund Corporation