

June 22, 2022

Ms. Vanessa Countryman
Secretary U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-100

(Email submission to rule-comments@sec.gov)

Dear Ms. Countryman,

Re: Feb 9, 2022, Request for Public Input on Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews (IA-5955) (File No. S7-03-22)

As an institutional investor, we would like to take the opportunity to use the extended period for comments and submit a brief response to the U.S. Securities and Exchange Commission's (SEC) request for public input on Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews¹.

As investors, and Investor Chapter members of the Standards Board for Alternative Investments (SBAI), we are supportive of enhanced transparency on our investments. We would however like to express our concern that the nature of these proposals interferes with our freedom to negotiate contractual terms and may lead to unintended consequences that are detrimental to investors.

Below are some high-level thoughts on this topic and we would refer you to the SBAI's full response for further details².

We believe that in the years since the global financial crisis, the developing partnerships between advisers and investors through organisations such as the SBAI or through negotiations and due diligence meetings, have achieved significant improvements in the alternative investment industry relating to fund documentation, fund terms, adviser operations and more. For this reason, we believe investors and advisers should retain as much freedom to negotiate contractual and other terms to continue to achieve new best practices and better outcomes in the industry.

It is important to note that *fair* treatment of all investors does not necessarily mean *identical* treatment of all investors. Efforts to treat all investors the same may in fact end up being unfair to some investors, may limit investor choice and/or investment opportunities for investors and could cause some investors to not be able to fulfil their own fiduciary, legal or regulatory obligations which are currently satisfied through negotiated contractual arrangements with advisers.

Grandfathering of Existing Agreements:

¹ <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>

² <https://www.sbai.org/resource/sbai-response-to-sec-proposed-rules-for-private-funds---april-2022.html>

Many of the proposed rules are wide ranging and cover contractual terms that have been negotiated between investors and advisers over the years. Retrospectively applying these rules to existing agreements will have far reaching consequences for both investors and advisers.

If the SEC requires all historic agreements to be disclosed, this will mean many if not all existing side letters would need to be renegotiated or repapered to align with the rules. This would be a significant effort on behalf of investors and will increase costs as these are legal agreements that may require the involvement of law firms. It will also significantly increase the implementation time required as all private funds and investors in private funds will be trying to repaper these agreements at the same time leading to a potential shortage of legal resources and increased costs.

Applying any new rules to new agreements only is essential because prior agreements are the result of negotiations with series of compromises and trade-offs for both investors and advisers. Applying rules which address parts of those existing agreements in a piecemeal manner are unfair to both parties. If grandfathering is not adopted, then the only logical alternative would be for the parties to be afforded termination rights and that could be extremely disruptive for individual investors, advisers and markets.

We would support the inclusion of a grand-fathering clause, where the rule applies to new agreements from its effective date and not to all historic agreements.

Principles vs Rules

We believe principles-based frameworks are more appropriate to an industry that is diverse in terms of its operations, strategies, asset classes and more. The SBAI in their response have suggested several alternative principles-based rules for the SEC to consider that we are supportive of.

We would support the SEC incorporating flexibility in the proposed rules to avoid unintended consequences.

Disclosure rather than Prohibition

In general, we believe that the terms of investment are a negotiation between advisers and institutional investors. We support the SEC's view that increased transparency will help institutional investors in this negotiation, but we do not believe that the SEC should prohibit or limit elements of this negotiation. Prohibition can be a blunt tool and may result in valid processes agreed between investors and advisers no longer being allowed.

Consistent with many other SEC regulations, we would support the SEC focusing on ensuring there is disclosure of certain activities rather than prohibiting them outright.

Retail vs Institutional Investors and interference in contractual relationships

The rationale for the proposed rules at times appears to suggest that investors are being taken advantage of and to equate institutional investors with their underlying beneficiaries. Global regulations almost always distinguish between rules applicable to institutional and retail investors, as institutional investors are, correctly, considered to be more sophisticated and capable of protecting themselves. Institutional investors have differing needs and spend significant time and resources negotiating contractual elements with advisers including commercial terms and transparency based on their own differing preferences. These rules, if enacted as written, would restrict the type of arrangements, and in some cases commercial terms, that institutional

investors can negotiate. This is unlikely to achieve the outcome that is implied within the rules of greater transparency or lower fees for all investors and could in fact have the unintended consequence of lower overall transparency and higher fees and expenses. In some cases, such as the proposed rule on indemnification wording, if the rule was to be implemented as described this would result in institutional investors having more protection than retail investors in mutual funds. We believe that institutional investors are more sophisticated and complete more thorough due diligence on advisers than retail investors and as such do not require the same level of mandated terms.

Consequences of some prohibited activities:

- Non-pro rata allocation of broken deal expenses: investors may be worse off than if a new fund client were permitted to participate in the co-investment opportunity with costs and expenses not being allocated on a pro-rata basis. For example, an adviser may offer an opportunity for investors to co-invest with a fund client because it will enable the adviser to take a larger allocation of the investment opportunity. This may provide it with access to additional deals, enable it to negotiate better terms, or arrange more favourable financing with respect to a deal than if the fund client were investing alone.
- Performance disclosure: CPP Investments calculates performance metrics using cash flow and unrealized gain/loss templates that advisers fill out upon our request. If this rule results in our inability to receive these files going forward, it will negatively impact our ability to perform our standard analysis and manager assessments, and would be detrimental to our business.

High-Level Unintended Consequences:

As an investor in emerging managers, CPP Investments structures preferential terms (fees, transparency, capacity, etc.) in exchange for taking business risk. The details of early-stage investor terms being widely disclosed to all investors potentially undermines emerging manager programs more broadly, resulting in lower launch rates, limiting investors' access to talented managers, and ultimately restricting competition in the marketplace.

The proposed rules will increase the cost of compliance for advisers, and this may increase costs for Institutional Investors. Some of the costs for the changes required by the rules will be passed onto the investors by being charged to the fund. This will be in addition to a potential consequence of the preferential fee disclosure rule where advisers may no longer offer differing fee arrangements (without additional disclosure to all investors) to large institutional investors further increasing costs.

Separately Managed Accounts (SMAs) are exempt from many of these rules (which we are supportive of). If large investors cannot obtain the bespoke transparency, fees or other contractual terms they require through pooled vehicles this may increase the use of SMAs. This could result in smaller investors, who are unable to invest in sizes large enough to justify an SMA relationship, being left in smaller pooled vehicles with a potentially higher fee drag.

We encourage the Commission to continue their engagement with institutional investors and private fund advisors to better understand the likely unintended consequences of this proposal and to consider a more flexible and principle-based approach, with focus on disclosure to enable better informed investment decisions.

Priti Singh

Senior Managing Director & Global Head of Capital Markets and Factor Investing

[INVESTOR SIGN OFF]