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**United States Senate**  
 COMMITTEE ON BANKING, HOUSING, AND  
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR  
 BRAD GRANITZ, REPUBLICAN STAFF DIRECTOR

August 4, 2022

The Honorable Gary Gensler  
 Chair  
 Securities and Exchange Commission  
 100 F Street NE  
 Washington, DC 20549

Dear Chair Gensler:

We write in support of the Securities and Exchange Commission's (SEC or Commission) rule proposal: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Release No. IA-5955, File No. S7-03-22 (the Proposal).<sup>1</sup>

The Proposal would provide increased, and much needed, transparency in private fund disclosures and prohibit certain abusive practices that harm investors. We urge the Commission to adopt these important reforms, which we believe would increase investor confidence.

**I. Improving regulation of private fund advisers is important given the increase in the size, scope, and nature of their activities over the past decade.**

Private funds are pools of capital that are exempt from registration with the SEC as investment companies. They are active throughout markets and the economy, managing over \$12 trillion in net assets.<sup>2</sup> Private funds invest across the global economy, in large and small businesses, and they employ long-term and short-term strategies. Private funds comprise a wide-ranging set of legal and operating structures, ranging from venture capital funds that allocate capital to small companies, private equity or buyout funds that acquire controlling positions in larger, often public, companies, private credit funds that provide loans mostly to non-public companies, real asset fund that focus on infrastructure, real estate, commodities or other resources, and hedge funds that typically invest in public equities, bonds, currencies, derivatives, and futures.<sup>3</sup>

<sup>1</sup> Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Rel. No. IA-5955, 87 FR 16886 (proposed Feb. 9, 2022) [hereinafter Proposal], <https://www.govinfo.gov/content/pkg/FR-2022-03-24/pdf/2022-03212.pdf>.

<sup>2</sup> U.S. Sec. & Exch. Comm'n, Div. of Inv. Mgmt., Private Funds Statistics, Third Calendar Quarter 2021, at 5, <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q3.pdf>.

<sup>3</sup> Sirio Aramonte & Fernando Avalos, The Rise of Private Markets, BIS Quarterly Review, Dec. 6, 2021, [https://www.bis.org/publ/qtrpdf/r\\_qt2112e.htm](https://www.bis.org/publ/qtrpdf/r_qt2112e.htm); Hugh MacArthur, Rebecca Buraack, Christophe De Vusser, & Kiki Yang, Global Private Equity Report 2022, Bain & Co., Mar. 7, 2022, <https://www.bain.com/insights/private-equity-market-in-2021-global-private-equity-report-2022/>.

As discussed further in Section II, although private funds are exempt from registration as investment companies, many private fund advisers are required to register with the SEC. Therefore, the applicable regulatory regime relies on imposing obligations on advisers to private funds rather than on private funds themselves.

Investors in private funds are primarily governmental and private pension funds, sovereign wealth funds, other financial institutions, non-profit organizations, and increasingly individuals. Recent SEC data of private fund ownership from 2019 to 2021 show government and private pensions' ownership slightly decreasing to just under 25%, and, more concerning, U.S. individuals' ownership increasing modestly from 9.8% to 10.2%.<sup>4</sup>

It is also important to acknowledge the impact of growing private funds on workers. Looking specifically at private equity, industry surveys suggest the U.S. private equity sector employed 11.7 million workers in 2020.<sup>5</sup> That contrasts with findings of substantial job losses at private and hedge fund owned retail companies, where over a 10 year period, over 597,000 people lost their jobs.<sup>6</sup> Importantly, job losses are not the only harm to workers following a private equity buyout. Other studies on the evolution of workplace safety records after private equity buyouts, analyzing establishment-level data from the Bureau of Labor Statistics' Survey of Occupational Illnesses and Injuries, have found a large, sustained decline in workplace injury rates after buyouts of publicly traded companies.<sup>7</sup> Overall, workers, entire sectors of the economy, and communities across the country have been affected by private equity's growth.

Reflecting the breadth of private funds' reach and trillions of dollars under management, the Proposal seeks to address well-documented conflicts, disclosure deficiencies, and risks the SEC has observed in examinations and pursued in enforcement actions. As you stated last year, “[o]ver the last decade, we’ve learned a lot about these funds and their advisers — from Form PF and from our examinations and enforcement regimes, including the unique business models and the resulting conflicts of interest. The Division of Examinations has issued Risk Alerts highlighting compliance issues they observed in examinations of private fund advisers, such as

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<sup>4</sup> U.S. Sec. & Exch. Comm’n, Annual Staff Report Relating to the Use of Form PF Data, at 27 (2021), <https://www.sec.gov/files/2021-pf-report-to-congress.pdf> [hereinafter 2021 Form PF].

<sup>5</sup> Economic contribution of the US private equity sector in 2020, Ernst & Young LLP, May 25, 2021, <https://www.investmentcouncil.org/wp-content/uploads/ey-aic-pe-economic-contribution-report-final-05-13-2021.pdf>.

<sup>6</sup> Center for Popular Democracy, Private Equity, How Wall Street Firms are Pillaging American Retail (2019), <https://populardemocracy.org/sites/default/files/Pirate%20Equity%20How%20Wall%20Street%20Firms%20are%20Pillaging%20American%20Retail%20July%202019%20FINAL%20UPDATED%207-23-2019.pdf>. Other academic research has not drawn conclusions about overall employment in private equity, *see* Steven J. Davis, John C. Haltiwanger, Kyle Handley, Ben Lipsius, Josh Lerner & Javier Miranda, The Economic Effects of Private Equity Buyouts (July 8, 2021), [https://bfi.uchicago.edu/wp-content/uploads/BFI\\_WP\\_2019122.pdf](https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_2019122.pdf).

<sup>7</sup> Jonathan B. Cohn, Nicole Nestoriak, & Malcolm Wardlaw, Private Equity Buyouts and Workplace Safety, Review of Financial Studies (Feb. 13, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2728704](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728704).

with respect to fees and expenses.”<sup>8</sup> Accordingly, the Proposal targets those conflicts and compliance issues and would provide important safeguards for investors.

## **II. The Proposal is a proper exercise of the Commission’s authority under the Wall Street Reform Act to regulate private fund advisers.**

The Proposal works within the SEC’s existing authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act)<sup>9</sup> to regulate private fund advisers. Prior to the crucial reforms in the Wall Street Reform Act, few private fund advisers were registered with the SEC and largely operated outside the SEC’s regulatory regime. In the early 2000s, the SEC had highlighted areas of concern, including the growth of hedge funds,<sup>10</sup> and implemented regulations on compliance and ethics obligations for registered investment advisers.<sup>11</sup> But because most private fund advisers were exempt from registration with the SEC, these well-intentioned regulations did not apply. Beginning in 2008, international securities regulators began highlighting regulatory risks in the private equity industry, including conflicts of interest and limited transparency.<sup>12</sup>

The Wall Street Reform Act closed this concerning gap in our financial system by requiring most private fund advisers to register with the SEC and operate under its rulebook. The SEC’s 2011 rulemaking implementing this law finally brought private fund advisers within the reach of basic government oversight and regulation.<sup>13</sup>

The SEC’s inspections and examinations that the Wall Street Reform Act authorized began under a new program to “inform newly registered firms about their obligations” and review identified high-risk areas.<sup>14</sup> In subsequent years, SEC officials delivered speeches and published risk alerts underscoring the agency’s focus on compliance and conflicts issues for private fund advisers and targeting persistent problem areas.<sup>15</sup>

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<sup>8</sup> Gary Gensler, Chair, U.S. Sec. & Exch. Comm’n, Prepared Remarks At the Institutional Limited Partners Association Summit (Nov. 10, 2021), <https://www.sec.gov/news/speech/gensler-ilpa-20211110>.

<sup>9</sup> Pub. L. 111-203.

<sup>10</sup> U.S. Sec. & Exch. Comm’n, Staff Report, Implications on the Growth of Hedge Funds (2003), <https://www.sec.gov/files/implications-growth-hedge-funds-09292003.pdf>.

<sup>11</sup> 17 C.F.R. 275.206(4)-7; 17 C.F.R. 275.204A-1.

<sup>12</sup> See Technical Committee of the International Organization of Securities Commissions, Private Equity, Final Report (May 2008), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD274.pdf>; Technical Committee of the International Organization of Securities Commissions, Private Equity Conflicts of Interest, Consultation Report (November 2009), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD309.pdf>.

<sup>13</sup> Rules Implementing Amendments to the Investment Advisers Act of 1940, Rel. No. IA-3221, 76 FR 42949 (June 22, 2011), <https://www.govinfo.gov/content/pkg/FR-2011-07-19/pdf/2011-16318.pdf>.

<sup>14</sup> U.S. Sec. & Exch. Comm’n, Ofc. Compl. Inspc. & Exam., Letter to Newly Registered Investment Advisers (Oct. 9, 2012), <https://www.sec.gov/about/offices/ocie/letter-presence-exams.pdf>.

<sup>15</sup> Andrew J. Bowden, Director of OCIE, U.S. Sec. & Exch. Comm’n, Spreading Sunshine in Private Equity (May 6, 2014) [hereinafter Sunshine Speech], <https://www.sec.gov/news/speech/2014--spch05062014ab.html>; Marc Wyatt, Acting Director of OCIE, Private Equity: A Look Back and a Glimpse Ahead (May 13, 2015), <https://www.sec.gov/news/speech/private-equity-look-back-and-glimpse-ahead.html>.

In remarks that came to be known as the “Sunshine Speech,” the SEC Director of the Office of Compliance, Investigations, and Examinations in 2014 discussed private equity regulation stating that, “the private equity adviser can instruct a portfolio company it controls to hire the adviser, or an affiliate, or a preferred third party, to provide certain services and to set the terms of the engagement, including the price to be paid for the services . . . or to instruct the company to pay certain of the adviser’s bills or to reimburse the adviser for certain expenses incurred in managing its investment in the company . . . or to instruct the company to add to its payroll all of the adviser’s employees who manage the investment.”<sup>16</sup>

Those were not hypothetical conflicts and concerns. The enforcement actions and examination deficiencies that followed the 2011 rulemaking and the 2014 Sunshine Speech have demonstrated there is an irreducible level of conflicts in the private fund structure between advisers and clients. While disclosure may be sufficient to mitigate some conflicts, the Commission has already stated—while your predecessor was at the helm—that other activity may need to be eliminated entirely or subject to clear safeguards that ensure investors are even able to provide informed consent to conflicts of interest.<sup>17</sup>

### **III. The Proposal should be finalized as proposed because it would bring sorely needed transparency, standardization, and comparability to investor disclosures.**

Despite the Wall Street Reform Act bringing private fund advisers under the SEC’s regulatory umbrella, the growth and evolution of the private funds sector over the past ten years has caused elevated concerns among Congress and regulators. Indeed, the most significant development in our capital markets since 2011 has been the growth of the private markets. For each of the past ten years, more capital has been raised in the private markets than the public markets.<sup>18</sup> The existing rulebook for private fund advisers has unfortunately allowed the industry to continue operating without many rules of conduct. Unique risks for investors have emerged.

Two elements of the Proposal would help curtail these risks: fee and expense reporting and standardized disclosure of performance information. These enhancements to the rulebook would provide needed transparency as the industry pursues stunning growth amid volatile financial markets and global uncertainty. News reports last month suggest that private equity funds are aiming to raise over \$1 trillion in fresh capital, with the largest advisers alone targeting over \$200 billion in new investments.<sup>19</sup> Accurate financial reporting by private fund advisers would ensure current and prospective investors, who may be less sophisticated than the typical private

<sup>16</sup> Sunshine Speech.

<sup>17</sup> Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Rel. No. IA-5248, 84 FR 33669, 33677 (July 12, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf> [hereinafter *Fiduciary Duty Release*] (“In all of these cases where an investment adviser cannot fully and fairly disclose a conflict of interest to a client such that the client can provide informed consent, the adviser should either *eliminate* the conflict or adequately *mitigate* (*i.e.*, modify practices to reduce) the conflict such that full and fair disclosure and informed consent are possible”).

<sup>18</sup> Allison Herren Lee, Commissioner, U.S. Sec. & Exch. Comm’n, *Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy* (Oct. 12, 2021), <https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12>.

fund investor of 2011, receive information material to making an investment decision in today's market. These concerns are discussed in more detail in Section V.

#### *A. Quarterly account statements*

The Proposal would address these concerns by mandating an adviser routinely provide investors with information necessary to evaluate a private fund's returns in a standardized fashion, enabling comparisons against other funds. As noted in the Proposal, although private fund advisers may provide account statements to fund investors, current rules do not currently require such reporting.<sup>20</sup> Under the Proposal, quarterly statements would provide fund investors with details about the fund's performance, fees, and expenses. Importantly, private fund advisers would be required to disclose the methodology used to calculate fees, payments, and expenses, and cross-reference the fund documentation that sets forth the relevant calculations and methodology.<sup>21</sup>

Quarterly statement reporting would serve to improve investors' understanding of how fees and expenses were determined and allocated, increase comparability, and reduce the potential for misvaluation of fund assets and for related overcharging. These improvements address violations and misconduct the SEC has observed since beginning its private fund examination and inspection program.

#### *B. Performance information disclosure*

In recent years, reporting and valuation errors have been a focus of private fund adviser enforcement actions, demonstrating the need to ensure private fund advisers adhere to the terms and requirements in fund documentation and the applicable securities laws and regulations. The SEC's 2022 Examination Priorities correctly prioritizes the allocation of fees and expenses and the calculation of fees by private fund advisers.<sup>22</sup> The Commission has settled enforcement actions where private fund advisers overcharged fund investors due to the failure to correctly calculate management fees to reflect reduced valuation of fund investments<sup>23</sup> and the failure to follow existing valuation policies (or even to adopt appropriate policies at all).<sup>24</sup>

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<sup>19</sup> Miriam Gottfried & Laura Cooper, Buyout Firms Seek \$1 Trillion in New Funding Even as Markets Drop and Deal-Making Dries Up, *The Wall Street Journal*, July 18, 2022, [https://www.wsj.com/articles/buyout-firms-seek-1-trillion-of-new-funding-even-as-markets-drop-and-deal-making-dries-up-11658136602?st=7tmm51prbdrf17k&reflink=desktopwebshare\\_permalink](https://www.wsj.com/articles/buyout-firms-seek-1-trillion-of-new-funding-even-as-markets-drop-and-deal-making-dries-up-11658136602?st=7tmm51prbdrf17k&reflink=desktopwebshare_permalink).

<sup>20</sup> Proposal at 16890.

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Sec. & Exch. Comm'n, Div. of Enforcement, 2022 Examination Priorities, at 12, <https://www.sec.gov/files/2022-exam-priorities.pdf>.

<sup>23</sup> EDG Management Company, LLC, Investment Advisers Act of 1940 Rel. No. 5617, Administrative Proceeding File No. 3-20133 (Oct. 22, 2020), <https://www.sec.gov/litigation/admin/2020/ia-5617.pdf>.

<sup>24</sup> Deer Park Road Management Company, LP and Scott E. Burg, Investment Advisers Act of 1940 Rel. No. 5245, Administrative Proceeding File No. 3-19190 (June 4, 2019), <https://www.sec.gov/litigation/admin/2019/ia-5245.pdf>.

We agree with the Commission’s view that the Proposal’s performance reporting requirements would bring much needed transparency and standardization. As the Commission noted, such reporting would allow for “apples to apples” comparisons.<sup>25</sup> Liquid funds would be required to show performance based on net total returns over specified time periods, while illiquid funds would be required to show performance based on internal rate of return (IRR) and multiple of invested capital (MOIC). The current rules provide wide latitude to advisers to present whatever performance metrics they choose, so long as the assumptions are sufficiently disclosed.

The new performance reporting details are essential to curtailing practices that the Commission has found to be associated with securities fraud. For example, the Proposal’s requirement to present illiquid fund performance information without reflecting fund-level subscription facilities is consistent with private fund investors’ long-standing concern that the use of these facilities can artificially inflate the internal rates of return reported to fund investors.<sup>26</sup> Because a private fund adviser’s compensation may be linked to IRR or MOIC, the incentive to overstate those performance metrics presents a conflict of interest that may not be properly addressed by the existing, general disclosure framework. The specific disclosures mandated by the Proposal would go a long way towards mitigating these conflicts.

Even private fund managers acknowledge the potential for misleading performance reporting under the current rules. In 2017, a long-time private fund manager noted in a publicly-available memo to clients, “no single metric is sufficient to tell us how good a job a [private fund adviser] did. We have to consider multiple metrics, and sometimes they will give conflicting answers.”<sup>27</sup> That manager went further, explaining that one fund with a higher IRR—the preferred performance metric for the industry—may not have made its investors as much money as one that reported a lower IRR.<sup>28</sup>

New performance disclosure requirements would serve the principal goals of the Proposal: providing decision-useful information and allowing greater comparability between funds. In particular, by requiring illiquid funds to prepare and present multiple return metrics, investors would be able to evaluate performance without having to rely on cherry-picked results that do not fully reflect how the fund performed.

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<sup>25</sup> Proposal at 16888.

<sup>26</sup> Institutional Limited Partners Association, *Enhancing Transparency Around Subscription Lines of Credit: Recommended Disclosures Regarding Exposure, Capital Calls and Performance Impacts*, June 2020, [https://ilpa.org/wp-content/uploads/2020/06/ILPA-Guidance-on-Disclosures-Related-to-Subscription-Lines-of-Credit\\_2020\\_FINAL.pdf](https://ilpa.org/wp-content/uploads/2020/06/ILPA-Guidance-on-Disclosures-Related-to-Subscription-Lines-of-Credit_2020_FINAL.pdf).

<sup>27</sup> Howard Marks, *Lines in the Sand*, (Apr. 18, 2017), [https://www.oaktreecapital.com/docs/default-source/memos/lines-in-the-sand.pdf?sfvrsn=bf5dfa65\\_2](https://www.oaktreecapital.com/docs/default-source/memos/lines-in-the-sand.pdf?sfvrsn=bf5dfa65_2).

<sup>28</sup> *Id.*

**IV. The Proposal should be finalized as proposed because it would prohibit a set of practices that the Commission and institutional investors have determined are abusive and inconsistent with an adviser’s fiduciary duty.**

In addition to the specific disclosure requirements, the Proposal would prohibit certain activities that place a private fund adviser’s interests ahead of its clients’. Because the conflicts of interest created by these activities are so substantial, the SEC has appropriately reasoned that these practices are contrary to the public interest and the protection of investors.<sup>29</sup> We support these prohibitions because they would curtail activities that harm investors and have been central to SEC enforcement actions and risk alerts.

The conflicts inherent in the prohibited activities—fees for unperformed services, including accelerated monitoring fees, shifting the costs of the private fund adviser related to compliance, examinations, and investigations to fund investors, indemnification from fund investors for breaches of fiduciary duties and other misconduct—reveal the myriad ways fund investors can be disadvantaged by typical fund arrangements. No amount of disclosure should be enough to enable an investor to provide informed consent to these practices.

Many of the conflicts addressed by the prohibitions should not be controversial. The Commission has already generally stated that an investment adviser “cannot place its own interests ahead of the interests of its client.”<sup>30</sup> To take a specific example, fund investors should not be on the hook for a private fund adviser’s own misconduct in managing a fund. The Proposal would accomplish this by seeking to prohibit an adviser from seeking indemnification for breaching its fiduciary duty or reimbursement for its willful malfeasance.

Similarly, private fund investors should not unfairly bear the regulatory expenses of operating the private fund adviser, which may run contrary to the investors’ interests.<sup>31</sup> As the Commission notes in the Proposal, these expenses are harmful to investors “even where fully disclosed.”<sup>32</sup> Accordingly, the SEC has brought enforcement actions where private fund assets were used to pay costs associated with a fund adviser’s regulatory obligations without full and fair disclosure of the arrangement and in violation of terms in the funds’ governing documents.<sup>33</sup> The Proposal would accomplish this by simply prohibiting an adviser from charging investors for fees and expenses in connection with an examination or an investigation of the adviser by the government.

Because of the SEC’s long-standing focus on these practices, the details of illustrative enforcement actions show us how a private fund adviser’s failure to fully or adequately disclose

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<sup>29</sup> Proposal at 16920.

<sup>30</sup> Fiduciary Duty Release at 33671.

<sup>31</sup> Proposal at 16922.

<sup>32</sup> *Id.*

<sup>33</sup> Potomac Asset Management Co, Inc. and Goodloe E. Byron, Jr., Investment Advisers Act of 1940 Rel. No. 4766, Administrative Proceeding File No. 3-18168 (Sept. 11, 2017), <https://www.sec.gov/litigation/admin/2017/ia-4766.pdf>.

costs borne by fund investors for services performed by employees of the fund adviser has resulted in penalties and reimbursement for investors.<sup>34</sup> In short, private fund advisers can easily make financial decisions that disfavor fund investors, in violation of the fund terms, and without the understanding of fund investors.<sup>35</sup>

**V. Strong rules that raise the bar on disclosure and eliminate abusive practices are important because private fund advisers do not solely focus on sophisticated institutional investors and are increasingly targeting individual investors.**

It is critical for the SEC to implement the reforms in the Proposal and to maintain a comprehensive private fund examination and enforcement program because it is no secret that private funds are increasingly seeking to expand the pool of prospective investors by targeting non-high-net-worth individuals.<sup>36</sup> Summarizing the evolution in private funds, a Wall Street private fund executive offered, “what we see from some of the very large public alternative investors out there is that they’re expecting to raise 20 to 30 percent of their next round of funds from the individual investor. That is a huge change from the [historical] 5 to 8 percent.”<sup>37</sup> Even though the securities laws require that those investors satisfy income or net worth thresholds, the information and negotiating disparity favors private fund advisers.

Private funds are looking to broaden their investor base in part because large institutional investors have reached their limits in such funds.<sup>38</sup> To find fresh sources of capital, private funds “are now looking at another opportunity that is potentially even bigger involving the so-called mass affluent.”<sup>39</sup> In recent months, private equity firms “are competing fiercely for talent as they attempt to build out their capacity to raise money from wealthy individuals.”<sup>40</sup>

<sup>34</sup> Fortress Investment Management, LLC and William M. Malloy, III, Rel. No. 5452, Administrative Proceeding File No. 3-19715 (Feb. 27, 2020), <https://www.sec.gov/litigation/admin/2020/ia-5452.pdf>; Monomoy Capital Management, L.P., Rel. No. 40-5485, Administrative Proceeding File No. 3-19764 (Apr. 22, 2020), <https://www.sec.gov/litigation/admin/2020/ia-5485.pdf>.

<sup>35</sup> Potomac Asset Management Co, Inc. and Goodloe E. Byron, Jr., Investment Advisers Act of 1940 Rel. No. 4766, Administrative Proceeding File No. 3-18168 (Sept. 11, 2017), <https://www.sec.gov/litigation/admin/2017/ia-4766.pdf>; Energy Capital Partners Management, LP, Investment Advisers Act of 1940 Rel. No. 6049, Administrative Proceeding File No. 3-20900 (June 14, 2022), <https://www.sec.gov/litigation/admin/2022/ia-6049.pdf>; Rialto Capital Management, LLC, Investment Advisers Act of 1940 Rel. No. 5558, Administrative Proceeding File No. 3-19906 (Aug. 7, 2020), <https://www.sec.gov/litigation/admin/2020/ia-5558.pdf>.

<sup>36</sup> Miriam Gottfried, Blackstone, Other Large Private-Equity Firms Turn Attention to Vast Retail Market, *The Wall Street Journal*, June 7, 2022, [https://www.wsj.com/articles/blackstone-other-large-private-equity-firms-turn-attention-to-vast-retail-market-11654603201?st=me15a7br46cxrfy&reflink=desktopwebshare\\_permalink](https://www.wsj.com/articles/blackstone-other-large-private-equity-firms-turn-attention-to-vast-retail-market-11654603201?st=me15a7br46cxrfy&reflink=desktopwebshare_permalink).

<sup>37</sup> *Exchanges at Goldman Sachs, The ‘Seismic’ Shifts in Private Markets*, Michael Koester, co-president of Alternatives, Goldman Sachs Asset Management (May 31, 2022), <https://www.goldmansachs.com/insights/podcasts/episodes/06-07-22-mike-koester-f/transcript.pdf>.

<sup>38</sup> Preeti Singh, Investors Seek Options to Reduce Overexposure to Private Equity, *The Wall Street Journal*, June 21, 2022, [https://www.wsj.com/articles/investors-seek-options-to-reduce-overexposure-to-private-equity-11655805601?mod=article\\_inline](https://www.wsj.com/articles/investors-seek-options-to-reduce-overexposure-to-private-equity-11655805601?mod=article_inline).

<sup>39</sup> Miriam Gottfried, Blackstone, Other Large Private-Equity Firms Turn Attention to Vast Retail Market, *The Wall Street Journal*, June 7, 2022, [https://www.wsj.com/articles/blackstone-other-large-private-equity-firms-turn-attention-to-vast-retail-market-11654603201?st=me15a7br46cxrfy&reflink=desktopwebshare\\_permalink](https://www.wsj.com/articles/blackstone-other-large-private-equity-firms-turn-attention-to-vast-retail-market-11654603201?st=me15a7br46cxrfy&reflink=desktopwebshare_permalink).

<sup>40</sup> Chris Cumming, Private-Equity Firms Poach Talent to Chase Wealthy Investors, *The Wall Street Journal*, July 5, 2022, <https://www.wsj.com/articles/private-equity-firms-poach-talent-to-chase-wealthy-investors-11657017002?>

When Wall Street and private funds target individual investors, history is not on investors' side. In 2005, individuals were solicited to invest in the Bear Stearns mortgage securities funds with enticements promoting the funds that previously had been available only to institutions. By announcing temporarily lowered investment minimums and "stellar performance", the fund adviser drew in individuals just as the mortgage market was imploding.<sup>41</sup> Today, private funds may not be facing a repeat of the mortgage meltdown, but the potential for significant informational disparities only highlights the need for structural investor protections and clear disclosures—especially as their investor bases have slowly started to bear a closer resemblance to those of registered funds that are subject to a far more extensive and prescriptive regulatory regime.

In conclusion, the Proposal would bring necessarily and important transparency to the private fund market and prohibit troubling practices that have time and again produced conflicts between private fund advisers and fund investors. The Commission should finalize the Proposal and further its work protecting small and large investors in private funds.

Sincerely,



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Sherrod Brown  
United States Senator



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Jack Reed  
United States Senator

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<sup>41</sup> Gretchen Morgenson, Hedge Funds and the Little People, *The New York Times*, Sept. 2, 2007, <https://www.nytimes.com/2007/09/02/business/yourmoney/02gret.html>.