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U.S. Securities and Exchange Commission

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Commodity Futures Trading Commission

Submitted electronically via rule-comments@sec.gov

RE: Form PF Amendments to Reporting Requirements for All Filers and Large Hedge Fund Advisers

File No. S7-22-22; RIN 3038-AF01

Dear Commissioners:

This letter responds to the request for comment (Request) on the joint proposed rulemaking (Proposed Rule) by the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to amend Form PF, the confidential reporting form for certain SEC-registered advisers to private funds, including those that also register with the CFTC as a commodity pool operator or commodity trading adviser.¹

The FACT Coalition welcomes the recognition in the Proposed Rule that ownership structures and specific elements of private funds create distinct potential systemic risks that merit additional studying by the Financial Stability Oversight Council (FSOC), SEC, CFTC, and other agencies. Consistent with these recognitions, this letter encourages the SEC, and the CFTC, as applicable, to pursue additional amendments to Form PF consistent with Question 54 of the Request to require private fund advisers to conduct basic customer due diligence and to appropriately report select beneficial ownership information resulting from such due diligence on Form PF (or otherwise) enabling the U.S. government to better identify and evaluate a range of systemic risks relating to private funds.

Specifically, FACT recommends that Form PF be revised in the final rule (or in a separate rulemaking) to require investment advisers to: (a) conduct risk-based customer due diligence to ensure they know who their customers are, avoid investing illicit funds, and provide

¹ SEC, "Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers," Federal Register, 87 FR 53832 (File Number: S7-22-22, RIN: IA-6083), <https://www.federalregister.gov/documents/2022/09/01/2022-17724/form-pf-reporting-requirements-for-all-filers-and-large-hedge-fund-advisers>.

reliable information in Form PF about the private funds being advised; (b) identify on Form PF the beneficial owners of the private funds being advised, including any politically exposed persons;² and (c) disclose on Form PF, for each private fund being advised, the percentage of fund investors and fund equity from specific countries, providing the data on a country-by-country basis to facilitate risk analysis, as further detailed in our recommendations below. Doing so would help FSOC and other agencies, including the SEC and CFTC (as applicable), to better understand risks relating to specific and collective groups of private funds, as well as the intersections among risks caused by criminal, terrorist, or corrupt actors; PEPs; and other wrongdoers abusing the U.S. financial system. To illustrate the systemic risks at stake, this letter discusses recent geopolitical events relating to the Russian invasion of Ukraine and the tensions between China and Taiwan.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global financial system that limits abusive tax avoidance and curbs the harmful impacts of corrupt practices.³ In March 2022, FACT highlighted similar systemic risks in a comment letter on a related rulemaking to amend Form PF and recommended similar changes to Form PF to enable the FSOC, SEC, CFTC, and others to identify, evaluate, and mitigate systemic risks linked to private funds.⁴

I. Form PF and Systemic Risk

² The Financial Action Task Force (FATF), of which the U.S. is a member, defines a politically exposed person (PEP) as “an individual who is or has been entrusted with a prominent public function.” See FATF Guidance, Politically Exposed Persons: Recommendations 12 and 22, 3 (June 2013), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>. While the United States does not use that term in federal law, 31 U.S.C. §5318(i)(3)(B) requires financial institutions to conduct enhanced due diligence of a “senior foreign political figure, or any immediate family member or close associate,” who opens a private banking account. The term “senior foreign political figure” is further defined in 31 CFR 1010.605 to mean:

- (i) A current or former:
 - (A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);
 - (B) Senior official of a major foreign political party; or
 - (C) Senior executive of a foreign government-owned commercial enterprise;
 - (ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;
 - (iii) An immediate family member of any such individual; and
 - (iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.
- (2) For purposes of this definition:
- (i) Senior official or executive means an individual with substantial authority over policy, operations, or the use of government-owned resources; and
 - (ii) Immediate family member means spouses, parents, siblings, children and a spouse's parents and siblings.

Illicit financial flows initiated or controlled by or attributed to a PEP or senior foreign political figure disclosed via well-crafted beneficial ownership rules could provide vital information to systemic risk analyses conducted by FSOC.

³ A full list of FACT members is available at: Financial Accountability and Corporate Transparency (FACT) Coalition, “Coalition Members,” 2022, <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>.

⁴ See FACT Coalition, RE: Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, File No. S7-01-22; RIN 3235-AM75 (Mar. 21, 2022), <https://www.sec.gov/comments/s7-01-22/s70122-20135847-306729.pdf> [hereinafter, “March 2022 FACT Form PF Comment”].

Section 204(b) of the Investment Advisers Act, added by the Dodd Frank Act of 2010, authorizes requirements that investment advisers maintain records and file reports regarding “private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council [‘FSOC’].”⁵ The SEC and CFTC implemented section 204(b) by creating Form PF, which requires investment advisers that advise one or more private funds and have at least \$150 million in private fund assets under management to file an electronic, confidential form containing information about each fund being advised to “help establish a baseline picture of potential systemic risk in the private fund industry.”⁶ When creating Form PF, the SEC and the CFTC explained that its purpose was, in part, to “promote the financial stability of the United States” by “establishing better monitoring of emerging risks.”⁷

Section 210(c) of the Investment Advisers Act imposes a limitation on agency authority to require investment advisers to maintain records and file reports. It states that the SEC may not require investment advisers to disclose information about their clients’ identities except “for the purpose of the assessment of systemic risk.”⁸ Due to that limitation, section 204(b) of the Investment Advisers Act provides authority for Form PF to require investment advisers to disclose information about their clients’ identities only when needed to assess systemic risk. Given the Proposed Rule’s identification of the many systemic risks associated with private funds, however, it is clear that Form PF can require information related to a private fund’s clients and their beneficial owners while still complying with section 210(c).

II. Systemic Risks Related to Private Funds

The Request identifies multiple potential sources of systemic risk related to private funds and proposes amending Form PF to require additional information reporting to enable the FSOC and other agencies to better identify, evaluate, and mitigate those risks. The Request identifies, for example, a variety of systemic risks associated with private fund ownership structures, principally relating to non-U.S. “beneficial” ownership of private funds.⁹ It also identifies specific

⁵ 15 U.S.C. §80b-4(b)(1)(A). For these purposes records of the private fund invested by the adviser are deemed records of the adviser. 15 U.S.C. §80b-4(b)(2).

⁶ CFTC and SEC, “Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,” 2011, <https://www.sec.gov/rules/final/2011/ia-3308.pdf>.

⁷ *Id.*

⁸ 15 U.S.C. §80b-10(c). Notably, Sections 15 U.S.C. §80b-3(l)(1) and -3(m)(2), governing recordkeeping and reporting for venture capital advisers and private fund advisers with less than \$150 million in assets under management, respectively, do not contain the same “systemic risk” language as section 204(b). Nonetheless, recordkeeping and reporting in the “public interest or for the protection of investors,” may provide the requisite authority to require similar recordkeeping and reporting obligations as recommended in this comment based on Alpine. Further, Section 15 U.S.C. §80b-3(n) specifically allows regulation of mid-sized funds (managing assets below the \$150 million threshold) based on “systemic risk.” This statutory authority suggests that the SEC already has general authority to establish systemic risk recordkeeping and reporting requirements for advisers to venture capital funds and funds with less than \$150 million in assets under management—as well as advisers to even smaller funds that typically do not register. Cf. Section 15 U.S.C. §80b-3(n); SEC, Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers (updated Jun. 30, 2017), <https://www.sec.gov/divisions/investment/midsizedadviserinfo.htm#:~:text=A%20%20E2%80%9Cmid%2D-sized%20adviser%20is%20an%20investment%20adviser%20that,million%20of%20assets%20under%20management.>

⁹ These risks also extend to master-feeder arrangements, internal versus external private funds, and trading vehicle identification. See Request at p. 29-40. Risks relating to master-feeder arrangements and internal versus external

private fund elements that raise systemic risk concerns relating to what this letter refers to broadly as “funding fragility risks,” such as those risks relating to withdrawal and redemption rights; challenges in funding capital commitments, including due to fund inflows or outflows; the use of non-U.S. base currencies; currency fluctuations; borrowings from U.S. versus non-U.S. creditors; portfolio illiquidity and complexity; and excessive concentration.¹⁰ Finally, the Request also identifies geopolitical and industry risks relating to private fund investments.¹¹

The CFTC and SEC are to be commended for identifying those potential systemic risks and designing mechanisms to enable better evaluation and mitigation of them through Form PF. But the proposed rule should also recognize that these sources of risk intersect and can magnify each other, intensifying the overall threat to U.S. markets and economy. For example, funding fragility risks could be magnified by geopolitical circumstances, non-U.S. beneficial ownership of funds, and the possible involvement of illicit funds. This intersection requires additional information to be reported on Form PF (or otherwise) to enable the FSOC, SEC, CFTC, and other agencies to identify potential systemic risks. In addition, the SEC and CFTC should require private fund advisers to conduct reasonable customer due diligence to verify the identity of their clients and the beneficial owners supplying investment funds to them and ensure the reliability of the information reported on Form PF.

To demonstrate the intersection of these risks, this letter highlights two recent examples regarding the Russian invasion of Ukraine and Chinese aggression towards Taiwan. Both expose demonstrable gaps in the ability of U.S. regulators to identify, evaluate and mitigate potential systemic risks relating to private fund beneficial ownership, funding fragility, and geopolitical exposure.

A. Russia’s Invasion of Ukraine and Revelations on Oligarch Capital in the West

The nature of the systemic risks discussed in the Request – and their potential intersection and ability to magnify one another – is illustrated by recent events involving Russia. On February 24, 2022, Russia illegally invaded the independent, democratic nation of Ukraine.¹² In response, the United States and other allies imposed sanctions designed to cut off the Russian Federation from the global economy and to identify, freeze, and potentially seize assets held by certain Russian oligarchs and their associates, certain Russian businesses, the Russian central bank, and Russian sovereign wealth funds.¹³ By GDP, Russia is the 11th largest economy in the world,¹⁴ and the fallout from global sanctions on Russian banks, businesses,

private fund investment may relate to different governance and control principles that could create risks based on independent decision-making principles. See *id.* Alternatively, these risks could relate to the non-U.S. beneficial ownership of external funds, for example, in a way that might compound with other risks as further discussed in this letter.

¹⁰ See *id.* at p. 29-45, 125-127.

¹¹ See *id.* at p. 125-127.

¹² Council on Foreign Relations, “Global Conflict Tracker”, 2022, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>.

¹³ Eric Levitz, “The West’s Sanctions on Russia Are Working Too Well,” Mar. 7, 2022, <https://nymag.com/intelligencer/2022/03/the-wests-sanctions-on-russia-are-working-too-well.html>.

¹⁴ Louis Jacobson, “Russia’s economy and Western sanctions: What you need to know,” Feb. 25, 2022, <https://www.politifact.com/article/2022/feb/25/russias-economy-and-western-sanctions-what-you-nee/>.

and oligarchs contributed to higher energy prices, inflation, and supply chain challenges that directly or indirectly impacted U.S. businesses and U.S. markets.¹⁵

The economic instability generated by Russia can be seen as a direct consequence of its tolerance for corruption that “depends on access to the global financial system.”¹⁶ For years, oligarchs in Russian President Putin’s inner circle have amassed wealth from Russia’s captive economy and then siphoned this wealth away to hide and grow it offshore.¹⁷ In the United States, this wealth has entered the U.S. economy on a virtually undetectable basis due to gaps in the U.S. anti-money laundering regulatory framework.¹⁸ Indeed, according to our own Treasury Secretary, the United States has become a premier destination for corrupt and criminal actors seeking to hide their ill-gotten gains from public accountability.¹⁹ This hidden wealth is then weaponized against the United States by entrenching the power of kleptocrats in Russia and throughout the West, without any true visibility into the scope of the problem.²⁰

¹⁵ Patricia Ewing and Jack Cohen, “What’s at Stake for the Global Economy as Conflict Looms in Ukraine,” Feb. 21, 2022, <https://www.nytimes.com/2022/02/21/business/economy/ukraine-russia-economy.html>. This letter focuses on systemic risks generated by illicit funds injected into the U.S. private investment industry by Russian oligarchs and associated persons and businesses. The current situation illustrates that the systemic risk identified is multipronged. Related risks might manifest in global instability, highlighted by the current conflict, and could include, for example, financial impacts caused by volatile currencies, economic sanctions, increased stock volatility, commodity or trading restrictions, supply chain disruptions, and increased defaults by sanctioned investors, businesses, or sovereign wealth funds. Again, the FSOC, CFTC, SEC, and other agencies would benefit from having access to the same types of private fund information being advocated in this letter. See, e.g., <https://www.washingtonpost.com/business/2022/03/16/russia-could-default-sovereign-debt-sanctions-cripple-its-ability-repay-investors/>.

¹⁶ Paul Massaro and Amelie Rausing, “RUSSIA’S WEAPONIZATION OF CORRUPTION (AND WESTERN COMPLICITY)”, June 6, 2017, <https://www.csce.gov/international-impact/russia-s-weaponization-corruption-and-western-complicity?page=2>.

¹⁷ See Anders Aslund & Julia Friedlander, Defending the United States Against Russian Dark Money, Atlantic Council, (Nov. 17, 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf>; Paul Krugman, “Laundered Money Could Be Putin’s Achilles’ Heel,” New York Times, (Feb. 24, 2022), <https://www.nytimes.com/2022/03/09/business/russian-oligarchs-money-concord.html>.

¹⁸ Private funds, for example, invest substantial offshore wealth in U.S. equities and other financial investments without any affirmative obligation to know their customers or report suspicious activity. See id.; Todd C. Frankl, “The search for oligarchs’ wealth in U.S. is hindered by investment loopholes,” Washington Post (Mar. 16, 2022), <https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/>; Tedd Bunker and Laura Kreuzer, Sanctions on Russia Put Private Fund Backers Under the Microscope, WSJ (Mar. 6, 2022), https://www.wsj.com/articles/sanctions-on-russia-put-private-fund-backers-under-the-microscope-11646586001?st=4x9dkqqbzkb09t5&reflink=desktopwebshare_permalink; U.S. Treasury Dep’t, U.S. Liabilities to Foreigners from Holdings of U.S. Securities, <https://home.treasury.gov/data/treasury-international-capital-tic-system/us-liabilities-to-foreigners-from-holdings-of-us-securities>, Ex. 12 (showing more detailed numbers than 2021 for “fund” and “other” private equities). Private funds can be incorporated or operate in the United States or abroad. For example, the Cayman Islands, with a GDP of \$5.96 billion in 2019, reportedly holds over \$1 trillion in U.S. equities, but those securities are not owned by Cayman citizens or residents, but by intermediary entities with beneficial owners from a variety of nations. In many instances, such as with respect to private investment funds (discussed below), the United States has no insight into who these beneficial owners are. See id., at 12-13 (explaining that Treasury analysis regarding foreign ownership of equities is not based on beneficial ownership).

¹⁹ Christopher Condon, “Yellen Says U.S. May Be the Best Place to Launder Dirty Money”, Bloomberg News, Dec. 9, 2021, <https://www.bloomberg.com/news/articles/2021-12-09/yellen-says-u-s-may-be-the-best-place-to-launder-dirty-money>.

²⁰ Peter Whorisky, “Russian oligarchs have donated millions to U.S. charities, museums and universities, analysis shows,” Washington Post, Mar. 7, 2022, <https://www.washingtonpost.com/business/2022/03/07/russian-oligarchs-donate-american-charities/>.

Consider the U.S. hedge funds, private equity funds, venture capital funds, and other types of private placement funds that, in recent years, have helped to conceal, safeguard, and grow the wealth of Russian oligarchs.²¹ Media reports earlier this year disclosed, for example, that Concord Management, an unregistered investment fund located in New York, had long secretly invested the fortunes of Russian oligarchs like Roman Abramovich in U.S. private equity, real estate, and hedge funds.²² The media indicates Concord's Russian-related investment portfolio may have involved as much as \$8 billion.²³ In addition, investment firms such as BlackRock, the Carlyle Group, and D.E. Shaw, among others, apparently worked with Concord to manage portions of the Russian oligarch funds without ever having to determine the beneficial owners of the money funneled to them through a "daisy chain" of offshore entities.²⁴ Evidence suggests that increasing the fortune of Mr. Abramovich also increased his ability to assert political influence in the West such as through his control of marquee western sports franchises and contributions to U.S. charities, museums, and universities.²⁵

Another example is a Silicon Valley venture capital fund called Fort Ross Ventures, which, for years, drew significant capital from Russia for investment in the United States – including from Sberbank, a financial institution that was sanctioned following Russia's illegal invasion of Ukraine.²⁶ U.S. sanctions immediately restricted Fort Ross' ability to distribute funds to sanctioned investors, limited its ability to call capital, and raised the risk of increased redemptions or withdrawals sought by Russian-related investors concerned about future sanctions. But the lack of any U.S. regulatory regime requiring Fort Ross to identify the natural-person beneficial owners supplying it with investment funds or at least to track those beneficial owners on a country-by-country basis left Fort Ross unequipped to readily gauge the scope of its investments from Russian-related investors, how the new sanctions affected its investor pool and investment funds, and what steps it should take to ensure sanctions compliance.²⁷

²¹ Lloyd, Timothy, "FBI concerned over laundering risks in private equity, hedge funds – leaked document," Reuters, July 14, 2020, <https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity/fbi-concerned-over-laundering-risks-in-private-equity-hedge-funds-leaked-document-idUSKCN24F1TP>. For the size of the market, see Preqin, Alternatives in 2021, <https://www.preqin.com/insights/research/reports/alternatives-in-2021>.

²² Matthew Goldstein, Kenneth P. Vogel, Jesse Drucker, Maureen Farrell and Mike McIntire, "How Western Firms Quietly Enabled Russian Oligarchs," New York Times (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/business/russian-oligarchs-money-concord.html>.

²³ *Id.*

²⁴ Matthew Goldstein and David Enrich, "Federal Authorities Investigate Firm Linked to Roman Abramovich," New York Times, Aug. 9, 2022, <https://www.nytimes.com/2022/08/09/business/abramovich-concord-sec-fbi.html>.

²⁵ Anna Kaplan, "Russian Billionaire Roman Abramovich To Sell Chelsea FC—Donate Proceeds To Help Victims In Ukraine," Forbes (Mar. 3, 2022), <https://www.forbes.com/sites/annakaplan/2022/03/02/russian-billionaire-roman-abramovich-to-sell-chelsea-fcdonate-proceeds-to-help-victims-in-ukraine/?sh=3e48564c44a0>; Peter Whorisky, "Russian oligarchs have donated millions to U.S. charities, museums and universities, analysis shows," Washington Post, Mar. 7, 2022, <https://www.washingtonpost.com/business/2022/03/07/russian-oligarchs-donate-american-charities/> ("contributions [from Russian Oligarchs] to charity and cultural institutions are done in hopes that Western society will look past questions about where their money comes from"). For a more detailed accounting regarding the national security risks regarding Russian investment and influence, see Anders Aslund & Julia Friedlander, Defending the United States Against Russian Dark Money, Atlantic Council, (Nov. 17, 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf>.

²⁶ Marina Temkin, "Exclusive: California VC firm backed by Russia navigates a global crisis," Mar. 4, 2022, Pitchbook, <https://pitchbook.com/news/articles/fort-ross-ventures-russia-sanctions-vc>.

²⁷ See *id.*

Concord Management and Fort Ross are just two of the U.S.-based private funds that have accepted Russian investment funds, some of which have become public only by accident or after an extensive law enforcement investigation.²⁸ It also bears noting that the lack of federal customer due diligence requirements for investment companies or investment advisers means that U.S. private firms may not have the necessary data or know where to begin to identify potentially sanctioned investors.²⁹ The same concerns apply to determining whether they are holding or investing funds on behalf of Russian PEPs, criminals, or corrupt actors.

That Russian investors want access to U.S. private investment markets – the growth of which have outpaced public markets dramatically in recent years – is not shocking.³⁰ What is shocking is that nobody—not the private funds, nor the investment advisers, nor any U.S. regulator—collects the information needed to understand who these investors are or the source of their investment funds in order to calibrate potential systemic risks posed to U.S. markets.³¹

In addition, targeted sanctions meant to punish Russian President Putin and his inner circle face stiff headwinds when many registered and unregistered investment advisers lack any legal requirement to identify the individuals behind the funds they help to invest.³² Targeted sanctions meant to keep money controlled by U.S. adversaries out of U.S. markets cannot, alone, overcome the secrecy now built into U.S. financial systems. Freezing or seizing assets is an extremely difficult task when anonymous investments are otherwise legal.

B. China's Aggression Toward Taiwan Could Threaten U.S. Markets and Economy

The systemic risks to U.S. markets that unfolded after sanctions were imposed on Russian-related individuals and entities after the invasion of Ukraine should not be viewed in isolation or as a once-in-a-generation problem. Consider a second example involving China's recent increased aggression toward Taiwan.³³

China is the second largest economy in the world. Its largest banks have a significant U.S. presence, and U.S. and Chinese equity markets are acutely intertwined.³⁴ According to one estimate, China has used its sovereign wealth funds and state-owned enterprises to invest more

²⁸ See, e.g., Russian case studies in Private Investments, Public Harm, FACT Coalition (Dec. 2021), https://thefactcoalition.org/wp-content/uploads/2021/12/TI_Private-Investments-Public-Harm-10.pdf.

²⁹ Todd Frankel, "The search for oligarchs' wealth in U.S. is hindered by investment loopholes," *Washington Post*, Mar. 16, 2022, <https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/>. See also *supra* note 27.

³⁰ Commissioner Allison Herren Lee, "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>.

³¹ Todd Frankel, "The search for oligarchs' wealth in U.S. hindered by investment loopholes," *Washington Post*, Mar. 16, 2022, <https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/>. While section 210(c) of the Investment Advisers Act states that the Act shall not be "construed to require, or to authorize the [SEC] to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser," it makes an exception in the case of information needed for the "assessment of potential systemic risk." See 15 U.S.C. 80b-10(c).

³² This letter urges greater disclosure for all advisers required to file Form PF; however, it also recognizes that the SEC may want to consider reevaluating Form ADV.

³³ See, e.g., Jack Detsch, "Taiwan's New Status Quo," *Foreign Policy* (Sept. 8, 2022), <https://foreignpolicy.com/2022/09/08/taiwan-china-military-pressure-exercises-tensions/>.

³⁴ <https://www.atlanticcouncil.org/blogs/econographics/trading-geopolitics-the-us-chinese-capital-markets/>

than \$140 billion in U.S. assets since 2002.³⁵ At the same time, Taiwan is the dominant producer of complex computer chips essential to the U.S. economy.³⁶ Recent U.S. efforts to rebuild its own chip manufacturing capacity will take years to bear fruit, meaning the United States will remain reliant for the foreseeable future on Taiwanese chip technology and exports.³⁷ Due to escalating tensions, some media reports assert that the Biden Administration and some of its allies may be considering imposing sanctions on China to deter or punish any attack on Taiwan.³⁸ Those media reports do not, to date, describe the nature of the possible sanctions, but they may emulate those imposed on Russia after its invasion of Ukraine.

Right now, the United States has extremely limited information about how potential sanctions on specific Chinese individuals, entities, banks, or sovereign wealth funds might impact the U.S. private investment funds and, through them, the U.S. economy. A report by conservative nonprofit Foundation for Defense of Democracies estimates that Chinese government entities, funds, private individuals, and corporations have invested “at least \$4 billion into U.S. venture firms since 2010, with at least another \$3.5 billion going to U.S. private-equity firms.”³⁹ The report describes those investments as widespread, observing that “Chinese capital is found in large global funds, including those affiliated with Sequoia Capital and Lightspeed Venture Partners, and smaller Silicon Valley firms including Playground Global, GSR Ventures, Foothill Ventures and 11.2 Capital.”⁴⁰ The Foundation also warns that its totals are likely understated due to the secrecy that often masks Chinese investments in U.S. private funds; as the *Wall Street Journal* describes in its coverage of the Foundation’s report:

“Tracking Chinese investment in the U.S. is challenging because the limited partners who fund venture-capital firms often don’t make public disclosures, sometimes use labyrinthine structures to shroud investments and frequently ask firms in which they have invested to keep their identities secret.”⁴¹

The problem is not only that U.S. private funds may not know the extent to which their clients, their clients’ beneficial owners, and related investment funds may originate from China,

³⁵ See, e.g., Public Citizen, “Chinese Investment in the United States: A Comprehensive Database of Transactions,” (tracking Chinese investments of at least \$50 million in U.S. assets from 2002 to 2017), <https://www.citizen.org/article/chinese-investment-in-the-united-states-a-comprehensive-database-of-transactions/>.

³⁶ Maria Ryan, “Taiwan dominates the world’s supply of computer chips – no wonder the US is worried,” the Conversation, (Aug. 4, 2022), <https://theconversation.com/taiwan-dominates-the-worlds-supply-of-computer-chips-no-wonder-the-us-is-worried-188242>.

³⁷ Susan Caminiti, “After the CHIPS Act: U.S. still has a long road ahead to rival Asia in semiconductor manufacturing,” CNBC, (Aug. 2, 2022), <https://www.cnbc.com/2022/08/02/after-chips-act-us-has-long-road-to-rival-asia-in-semiconductors.html>.

³⁸ Michael Martina and David Brunnstrom, “EXCLUSIVE Taiwan hosts dozens of foreign lawmakers in Washington to push China sanctions,” Reuters (Sept. 14, 2022), <https://www.reuters.com/world/asia-pacific/exclusive-taiwan-hosts-dozens-foreign-lawmakers-washington-push-china-sanctions-2022-09-14/>.

³⁹ Heather Somerville, “Chinese Investment Flows to Silicon Valley Venture Funds,” *Wall Street Journal* (Sept. 15, 2022), <https://www.wsj.com/articles/chinese-investment-flows-to-silicon-valley-venture-funds-11663234202>; Foundation for Defense of Democracies, “The Weaponization of Capital: Strategic Implications of China’s Private Equity/Venture Capital Playbook,” (Sept. 15, 2022), <https://www.fdd.org/analysis/2022/09/15/the-weaponization-of-capital-chinas-private-equity-venture-capital/>.

⁴⁰ Heather Somerville, “Chinese Investment Flows to Silicon Valley Venture Funds” *Wall Street Journal* (Sept. 15, 2022), <https://www.wsj.com/articles/chinese-investment-flows-to-silicon-valley-venture-funds-11663234202>.

⁴¹ See id.

but also that they may not know if any of those investors are PEPs; may have supplied illicit funds; or may have engaged in crimes or other wrongdoing that makes them more susceptible to sanctions, asset freezes, or sudden withdrawals or funding outflows.

There's a related problem: if the United States or other countries were to impose sanctions on specific Chinese individuals, entities, banks, or sovereign wealth funds, many U.S. private firms would likely be ill-equipped to comply with those sanctions. That is because, right now, U.S. private firms are not required to conduct customer due diligence on their clients, identify the beneficial owners who supply them with investment funds, or track those beneficial owners or funds on a country-by-country basis. Instead, current U.S. rules require private funds to do no more than identify what percentage of their beneficial owners are from the United States and what percentage are from a non-U.S. country (if identifiable at all through intermediary entities).

As with Russian investors, it is no surprise that Chinese investors have entered U.S. private investment markets, given that those private markets have outpaced public markets in recent years.⁴² What is surprising, again, is that no private fund, investment adviser, or U.S. regulator collects the information needed to understand who those Chinese investors are or the source or volume of their investments in order to calibrate potential systemic risks that may threaten U.S. markets and the U.S. economy.⁴³

C. The Confluence of Potential Systemic Risks and the Current FSOC, SEC and CFTC Blindspots

The Russian and Chinese examples not only illustrate the troubling gaps in U.S. data needed to assess potential systemic risks affecting private funds, they also demonstrate how the various types of risk intersect and can magnify each other.⁴⁴

In the case of Russia, the facts show how multiple systemic risks can compound each other. The Russian invasion of Ukraine sparked a geopolitical crisis resulting in global sanctions led by the United States. The effects of this geopolitical crisis on U.S. regulated private fund advisers are not limited simply to Russian portfolio company performances. Instead, this event sparked questions regarding the number of Russian beneficial owners and the source and volume of their U.S. investments in specific private funds. Additional questions were whether and to what extent the investors in a specific fund were subject to U.S. sanctions or were worried about new sanctions and as a result might demand a sudden withdrawal of funds. Also unclear was whether the devaluation of the ruble might render some investors unable to meet their capital commitments. Still, another question was whether sudden capital outflows might

⁴² Commissioner Allison Herren Lee, "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>.

⁴³ Again, while section 210(c) of the Investment Advisers Act states that the Act shall not be "construed to require, or to authorize the [SEC] to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser," it makes an exception in the case of information needed for the "assessment of potential systemic risk." See 15 U.S.C. 80b-10(c).

⁴⁴ See Request at pp. 29-39, 44, 125-127

endanger a particular private fund as a going concern and whether “financial institution contagion” might become a factor requiring analysis.

For example, sanctions would have not only potentially interfered with Fort Ross’s ability to distribute funds to sanctioned individuals, but also threatened its ability to adequately call capital and raised the risk of increased redemptions or withdrawals sought by investors that might be subject to future sanctions. For funds advised by reporting advisers, those risks can contribute to funding fragility, compromising liquidity levels necessary to maintain current investments or to comply with related financing arrangements. In turn, as the SEC identifies in the Request with respect to funding fragility, this type of development might create risks not just for the funds, but also for the financial institutions lending to portfolio companies or to the funds themselves. In aggregate, in a worst-case scenario, these risks might even compromise the integrity of the U.S. financial system.⁴⁵

On top of those risks, both the Russian and Chinese examples illustrate how geopolitical instability—including military actions, popular unrest, and government demands—might cause private fund investors to flee their homelands, increase their fund withdrawals, and contribute to currency pressures. The Russian and Chinese examples also illustrate how industry-specific factors—oil and gas in Russia and semiconductor chips in Taiwan—can further intensify problems through commodity price fluctuations, supply chain disruptions, and inflation. Surely, FSOC and other U.S. agencies should have access to concrete private fund data to better gauge overall systemic risks, evaluate proposed policies, and design effective mitigating actions.

The Proposed Rule, as currently designed, would fail to produce important data to gauge those systemic risks and would not address the intersection of systemic risks created by fund beneficial ownership, funding fragility, and geopolitical events. The failure to address their potential combined impact is troubling even though the Request identifies each of these factors, individually, as potential sources of systemic risk.

D. Taking a Step Back and Reevaluating the Request’s Relevant Proposed Revisions to Form PF in Light of the Intersection of Potential Systemic Risk

For the reasons set forth above, the SEC and the CFTC (to the extent applicable) should show leadership now in addressing illicit finance risks threatening the U.S. private investment industry by revising Form PF to provide greater transparency. In relevant part, the Request currently proposes requiring private fund advisers to report additional information regarding whether certain “beneficial owners” are non-U.S. entities, serve as sources of potential funding fragility for private funds, and/or create geopolitical exposure. The Request also proposes requiring further information regarding whether specific beneficial owners are broker-dealers, insurance companies, non-profits, pension plans, or banking or thrift institutions and whether they are U.S. or non-U.S. persons.⁴⁶ The Request states that additional information regarding

⁴⁵ Cf. Request at p. 36.

⁴⁶ See request at p. 44. Notably, “beneficial ownership” is defined for Form PF under Investment Company Act rules which allow a legal entity to be the “beneficial owner” of an issuer, unless the entity owns greater than 10% of the issuer, in which case the beneficial owners of the issuer are the owners of the legal entity owner. See SEC and

whether a private fund’s investors are “non-U.S.” investors will allow FSOC to conduct “more targeted analysis about risks presented in the United States from risks presented abroad.”⁴⁷ While these proposed changes would gather more useful information than the existing Form PF, they do not go far enough.

Notably, the Form PF asks whether individual beneficial owners are U.S. persons or non-U.S. persons, but it also allows investors to be identified as non-United States persons about which “beneficial ownership information is not known and cannot be reasonably obtained because the beneficial interest is held through a chain involving one more third-party intermediaries.”⁴⁸ Allowing private fund advisers to claim it is too hard to get more detailed information about non-U.S. beneficial owners hiding behind a chain of entities would, effectively, throw in the towel on systemic risk analysis and continue allowing U.S. private funds to invest funds on behalf of unknown persons – even terrorists, criminals, or sanctioned persons. That proposed provision in Form PF should be deleted.

The Request also proposes expanding the class of funds with respect to which withdrawal and redemption rights are provided to require all advisers to provide, for each fund, information regarding whether withdrawal and redemption rights are provided in the ordinary course “regardless of notice requirements, gates, lock-ups, or other restrictions on withdrawals or redemptions.”⁴⁹ By reporting this information, FSOC will be able to better identify systemic risks associated with “withdrawals during certain market events, or vulnera[bilities due to] investor redemptions.”⁵⁰ Similarly, the Request proposes requiring reporting regarding fund activity relating to contributions, withdrawals, and distributions of any kind on a monthly basis in quarterly Form PF filings. The SEC identifies that – in addition to allowing a better understanding of the relationship between fund flows and performance, changes to net and gross asset value, and other trends – this information may specifically identify fund fragility risks, “which can have systemic risk implications.” However, the Request ignores whether funding fragility risks may present as a result of the geographic location of fund beneficial ownership.

To support FSOC analyses of potential sources of systemic risk, Form PF information on whether beneficial owners are U.S. or non-U.S. persons is much less useful than providing information about the beneficial owners and the source of their funds on a country-by-country basis. In fact, Form PF information regarding potential funding fragility would be *incomplete* without a clearer understanding of the composition of fund beneficial ownership based on a country-by-country basis. As fallout from Russia’s aggression makes clear, the origin of funds and the origin of beneficial owners are factors that can contribute to evaluation of multiple risks

CFTC, “Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisers on Form PF,” n. 196 (2011), <https://www.sec.gov/rules/final/2011/ia-3308.pdf>; 15 U.S.C. 80a-3(c)(1) or (7). This approach contrasts with traditional notions of “beneficial ownership” which require the identification of one or more natural persons and do not permit legal entities to be identified as the “beneficial owners” of another entity. See, e.g., 31 U.S.C. 5336(a)(3) (defining beneficial owners for purposes of the Corporate Transparency Act, a landmark anti-money laundering bill, as the natural persons who own or control a legal entity).

⁴⁷ Request at p. 45.

⁴⁸ See Form PF at Question 16 (a), (b), & (m).

⁴⁹ See Request at p. 31.

⁵⁰ See *id.* The SEC also notes that these disclosures may be illustrative with respect to other fund reporting details, such as the way that fund returns are reported. See *id.*

such as funding fragility, withdrawal and redemption rates, currency fluctuations, geopolitical instability, and industry-specific problems – all of which may spread like a virus to other sectors or to U.S. financial institutions that are inextricably married to the private fund industry.

Evaluating these risks depends not simply on whether an investor is a non-U.S. person. Rather, it relies on knowing the specific country of origin for the investors and the funds they supplied. For example, recent sanctions targeted funds originating in Russia, Russian oligarchs who might qualify as PEPs, and sovereign wealth funds and financial institutions based in Russia. Form PF data on “non-U.S. persons” would have been of little if any use in helping FSOC and other agencies analyze the systemic risks associated with those private funds.

It is also plain that to provide reliable data on Form PF, private fund advisers must conduct reasonable customer due diligence to ensure the accuracy of the information they report. Without reliable information, sanctions enforcement is compromised and potential risks – pertaining to funding fragility, withdrawals, currency fluctuations, geopolitical instability, and more – may remain immune to FSOC analysis. **Accordingly, FACT recommends that Form PF be revised to require that (1) beneficial owners be identified on a country-by-country basis (along with any PEP beneficial owners), (2) the origin of investment funds be identified on a country-by-country basis, and (3) applicable advisers be required to conduct appropriate customer due diligence to verify this information.**

In contrast with the minimal information collected on beneficial ownership, the Request proposes requiring advisers to report all countries to which a reporting fund has exposure equal to exceeding either (1) five percent of its net asset value or (2) \$1 billion, and to report the dollar value of this exposure (both in long and short dollars).⁵¹ The Request notes that this information is appropriate because it can detail “risk relating to individual countries and geographic regions....if, for example, there are currency fluctuations or geopolitical instability.”⁵² Understanding concentration of investment in geographic regions would further help the SEC understand the potential impact of market events on relevant geographic segments, according to the Request.⁵³ Without this information, according to the Request, the FSOC may be unable to fully understand the potential impact of trends affecting a particular geography.⁵⁴

Critically, the exposure referenced by the Request relates to fund investments, not sources of funding.⁵⁵ However, as the examples in this letter demonstrate, private fund exposure to geographic markets relates not simply to investments made by the private funds but also to sources of capital for the funds.

From these key portions of the Request, FACT understands that the CFTC and SEC have identified as potential separate sources of systemic risk: (a) whether or not a beneficial owner is a U.S. or non-U.S. person; (b) funding fragility stemming from redemption, withdrawal

⁵¹ See id. at p. 125.

⁵² See id.

⁵³ See id.

⁵⁴ See id. at p. 127.

⁵⁵ See id. at proposed Form PF Question 35.

or distribution risks; and (c) global geopolitical events, including geopolitical instability, that may impact results of operations of fund investments. The Request currently fails to connect the dots among these potential sources of systemic risk, however. That is, the Request fails to seek information that may address combined systemic risks, such as funding fragility due to geopolitical events that impact particular beneficial owners, for example, which can be better understood on a country-by-country basis. Similarly, the Request fails to identify how the source of funds in U.S. markets may, in fact, further geopolitical instability in foreign countries in a way that then results in systemic risks otherwise identified in the Request, such as relating to portfolio investments or funding fragility. Recent global events relating to the Russian invasion of Ukraine and tensions between China and Taiwan highlight the connected nature of these risks, and Form PF should be revised accordingly.

It is also important to note that Russia and China are far from alone. Other authoritarian and kleptocratic governments have risen dramatically in recent years.⁵⁶ At present, FSOC and the U.S. government can only estimate how and to what extent related money has infiltrated U.S. markets.⁵⁷ Using Form PF disclosures to give the FSOC and others the tools and information necessary to conduct a more detailed, fact-based systemic risk analysis may prove critical to protecting U.S. markets today and in the future.

III. SEC and CFTC Authority

In FACT's March 2022 comment regarding proposed revisions by the SEC to Form PF, FACT detailed SEC authority for requesting more detailed information with respect to the beneficial ownership of applicable funds, as well as supporting customer due diligence requirements for filing advisers.⁵⁸ As explained earlier, Form PF currently requires only certain advisers to report any client-related information, and that information is generally limited to reporting the overall percentage of non-U.S. investors.⁵⁹ There is no requirement to identify specific investors or related beneficial owners, disclose the country of origin of either the investors or their funds, evaluate the risk that a specific investor may be providing illicit funds, or

⁵⁶ Sarah Repucci and Amy Slipowitz, "The Global Expansion of Authoritarian Rule", 2022, <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule>.

⁵⁷ Potentially related regulatory regimes, such as disclosure rules required by CFIUS or the new beneficial ownership registry being developed under the Corporate Transparency Act, have limited scope with respect to private investment funds, and may be further curtailed by beneficial ownership due diligence limitations. See 31 CFR 800-801. For example, reviews conducted by the Committee on Foreign Investment in the United States (CFIUS) focus on national security concerns arising from specific investments. They are not meant to understand systemic financial ties between the United States and other countries, including potentially corrupt regimes with overlapping markets. Further, CFIUS has a more limited reach, containing a narrower lens with respect to private investment funds, in particular. Additionally, CFIUS is not concerned with U.S. advised funds that may both have a foreign investor base and that may rely on U.S. financing relationships—potentially implicating systemic risk concerns—but that nonetheless invest outside the United States and in a manner otherwise unrelated to U.S. national security. For those reasons, Form PF remains an appropriate vehicle to gather additional country and industry-specific information enabling U.S. evaluation of potential systemic risks to the U.S. financial system.

⁵⁸ See March 2022 FACT Form PF Comment *supra* note 4.

⁵⁹ See, e.g., Form PF Section 4, Item B, 78(b). Current rules allow private fund advisers to report a single figure for all non-U.S. investors rather than provide country-by-country data, making it impossible to determine, for example, the percentage of investors from Russia.

even disclose whether the funds are attributable to a PEP or senior foreign political figure. This dearth of basic information requirements is troubling but also capable of being remedied.

Notably, neither private funds as a whole nor their advisers are currently required to maintain an AML program or file suspicious activity reports (SARs) under the Bank Secrecy Act.⁶⁰ In contrast, banks, broker-dealers, mutual funds (one category of regulated investment companies), and commodity brokers must do both.⁶¹ While strengthening Form PF's disclosure requirements is no substitute for full implementation of the Patriot Act's AML program requirements, greater transparency via a revised Form PF would help bring the United States into better alignment with global AML standards.⁶²

The weak disclosure requirements in Form PF seem to contradict the plain intent of the Investment Advisers Act to protect the public, investors, and U.S. markets from systemic risk. Revising Form PF to strengthen disclosure requirements for private investment funds would increase the transparency of the investments made in U.S. private funds and would help the FSO, CFTC, and SEC conduct the systemic risk analyses called for in federal laws.

In addition, ample precedent exists for the SEC to require the investment community to conduct basic customer due diligence to know who they are doing business with and detect, prevent, and report money-laundering, terrorist financing, and other illicit financial flow threats, including corruption-based investments. For example, in **SEC v. Alpine Securities Corporation**, the Second Circuit affirmed the authority of the SEC to require broker-dealers to implement strong anti-money laundering safeguards.⁶³ The court held that, under section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), the SEC – on its own or in coordination with other agencies – may require broker-dealers to conduct customer due diligence and file suspicious activity reports consistent with regulations separately promulgated under the Bank Secrecy Act.⁶⁴

Section 17(a) of the Exchange Act, which grants rulemaking authority to the SEC to require broker-dealers "to make and keep for prescribed periods such records ... as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter," is nearly identical in substance to section 204(b) of the Investment Advisers Act.⁶⁵ In addition, section 204(b) of the Investment Advisers Act explicitly authorizes the SEC to require certain investment advisers to keep records and report information needed

⁶⁰ Although "investment bankers and investment companies" have been required by law to develop AML programs since 2001, see 31 USC 5312(a)(2)(I) and 5318(g) and (h)(1), Treasury granted them a "temporary exemption" in 2002, which remains in effect today 20 years later.

⁶¹ 31 CFR §1010.230(a).

⁶² In 2016, FATF cited the United States for its failure to require private investment funds to maintain AML programs and file suspicious activity reports as called for in FATF's 40 Recommendations to combat money laundering and terrorist financing. Anti-Money Laundering and Counter-Terrorist Financing Measures: United States Mutual Evaluation Report, FATF (December 2016), <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>.

⁶³ See SEC v. Alpine Sec. Corp., 982 F.3d 68 (2d Cir. 2020), cert. denied (Nov. 8, 2021).

⁶⁴ See SEC v. Alpine Sec. Corp., 308 F. Supp. 3d. 775 (S.D.N.Y. 2018), aff'd, 982 F.3d 68 (2d Circuit 2020).

⁶⁵ Compare 15 U.S.C. §78q(a)(1) with 15 U.S.C. §80b-4(b)(1)(A).

for the assessment of “systemic risk.” That record-keeping and reporting objective dovetails exactly with and overcomes the limitation in section 210(c) of the Investment Advisers Act, which states that the SEC may not require investment advisers to disclose information about their clients’ identities except “for the purpose of the assessment of systemic risk.”⁶⁶ In other words, section 204(b) of the Investment Advisers Act authorizes the SEC to require investment advisers to disclose client information, including beneficial ownership information, when needed to assess systemic risk.

As discussed above, recent global events have made clear that the FSOC should assess potential systemic risks created by inflows into U.S. private investment markets stemming from potential corruption or other illicit funds. Without a better understanding of what types of financial instruments and investments are infused with or dependent upon Russian funds, for example, it is nearly impossible to determine what impacts may result from sanctions related to Russia’s invasion of Ukraine. The same concerns apply to funding inflows from any U.S. adversary or other source of corrupt or illicit financial flows.

Right now, U.S. regulators are operating without sufficient information to gauge the risks confronting U.S. securities markets and without the transparency requirements needed to evaluate risks pertaining to, and stemming from, private investment funds. It is also clear based on recent precedent that the SEC already has the authority to require investment advisers to implement customer due diligence programs and well-tailored reporting regimes consistent with protecting the public, protecting investors in U.S. financial markets, and assessing systemic risk. The Request’s proposed revision of Form PF offers a well-timed opportunity to exercise that authority.

IV. FACT Recommendations

We recommend making the following additional revisions to Form PF in either this or a separate rulemaking.

1. **Customer Due Diligence.** Require investment advisers to conduct risk-based customer due diligence to ensure they know who their customers are, understand the source of

⁶⁶ 15 U.S.C. §80b-10(c). Notably, Sections 15 U.S.C. §80b-3(l)(1) and -3(m)(2), governing recordkeeping and reporting for venture capital advisers and private fund advisers with less than \$150 million in assets under management, respectively, do not contain the same “systemic risk” language as section 204(b). Nonetheless, recordkeeping and reporting in the “public interest or for the protection of investors,” may provide the requisite authority to require similar recordkeeping and reporting obligations as recommended in this comment based on Alpine. Further, Section 15 U.S.C. §80b-3(n) specifically allows regulation of mid-sized funds (managing assets below the \$150 million threshold) based on “systemic risk.” This statutory authority suggests that the SEC already has general authority to establish systemic risk recordkeeping and reporting requirements for advisers to venture capital funds and funds with less than \$150 million in assets under management—as well as advisers to even smaller funds that typically do not register. Cf. Section 15 U.S.C. §80b-3(n); SEC, Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers (updated Jun. 30, 2017), <https://www.sec.gov/divisions/investment/midsizedadviserinfo.htm#:~:text=A%20%E2%80%9Cmid%2D-sized%20adviser%E2%80%9D%20is%20an%20investment%20adviser%20that,million%20of%20assets%20under%20management.>

the customers' capital investments, and can provide reliable information on Form PF about the private funds they are advising. Requiring risk-based customer due diligence would be consistent with current Form PF requirements that direct investment advisers to gather and disclose certain limited information about the private funds they advise.

2. **Beneficial Owners and PEPs.** Require investment advisers to report on Form PF beneficial ownership information for each investor in each private fund they advise and identify any foreign "politically exposed person" (PEP) or "senior foreign political figure" under 31 U.S.C. 5318(i)(3)(B). These disclosures would be consistent with current reporting requirements regarding foreign beneficial ownership, value of investments, and deployment of fund investments.⁶⁷ The disclosure requirements should generally require determining the natural persons who directly or indirectly own or control an entity client.⁶⁸
3. **Country-by-Country Data.** Require investment advisers to report on Form PF – on a country-by-country basis – the country of origin of each investor in a private fund and the source of that investor's funds as well as provide a range indicating the total amount of funds invested by each such investor in each such fund using U.S. dollars. Consider another rulemaking amending Form ADV to make public the aggregate, country-based beneficial ownership information on a per-fund basis.⁶⁹

This data would enable investment advisers as well as the FSOC, SEC, and CFTC to better understand who is supplying what volume of funds to the U.S. private investment industry and the risks that those funds may be illicit, subject to sanction, or contribute to other geopolitical market risk. In turn, this data may reveal the potential intersection among these factors and funding fragility risks that could extend to other U.S. financial institutions based on capital shortfalls at the portfolio-company or private fund level, and the nature and contours of any related systemic risks to U.S. markets and the U.S. economy.

The crisis in Ukraine and worldwide sanctions imposed on Russia demonstrate that the threats posed by illicit finance are real and merit careful analysis to minimize economic disruptions flowing from U.S. investments made by U.S. adversaries and other kleptocratic regimes. China's aggressions toward Taiwan demonstrate that the same Form PF data requirements are needed to better analyze other country-specific beneficial ownership systemic risks posed by U.S. private fund investments. Actions taken by the SEC and CFTC to revise

⁶⁷ See Form PF Section 4, Item B, 78(b).

⁶⁸ The SEC should give careful consideration as to whether it should use its existing rules for identifying beneficial owners or the definition of beneficial owners used in the Corporate Transparency Act. In the private investment context for the systemic risk identified in this comment, the SEC may find it more useful to employ thresholds under its current beneficial ownership rules, modified in a manner that reflects various investment possibilities within the sector. See, e.g., Form PF, Section 3, Item D.58(b) (requesting detail around beneficial owners of greater than 5% of the reporting fund); 17 CFR § 240.13d-3.

⁶⁹ In connection with collection, this information should also be published in aggregate in the quarterly Private Fund Statistics report, consistent with the current public disclosure of other information characterizing the nature of the beneficial ownership of U.S. private funds for the benefit of policy makers and other users of this information.

Form PF to obtain better empirical data to aid FSOC analysis of emerging systemic risks provide a newfound opportunity to better protect investors and the public interest.

Thank you for the opportunity to comment on the proposed rule to strengthen Form PF. Should you have any questions, please feel free to contact Erica Hanichak at [REDACTED] or Ryan Gurule at [REDACTED].

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

Ryan Gurule
Policy Director