April 25, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090
Submitted via email to rule-comments@sec.gov

RE: Institutional Investor Comment on Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, S7-03-22

Dear Ms. Countryman,

On behalf of [Institution Name], we write to share our views regarding the Commission's proposed rules concerning Private Fund Advisers. We support these proposals and believe they will serve to further improve transparency in the private markets and enhance our ability as fiduciaries to meet our obligations to beneficiaries.

[Institution Name] is a [institution type] that acts as a fiduciary for [number of beneficiaries]. [Institution Name] has [total AUM] in assets under management. We currently deploy [total PE AUM] to private market investments managed by fund advisers, representing [percentage] of our total investment allocation. [Institution Name] recognizes the value that private market investments provide to sophisticated institutional investors, who invest in a diversified portfolio and prudently weigh the risks and expected returns presented by each investment. [Institution Name] is supportive of targeted reforms that seek to improve transparency, limit select conflicts of interest, and strengthen alignment in the asset class, such as those in the proposed rules.

[Institution Name] is a member of the Institutional Limited Partners Association (ILPA). We commend the Commission for acknowledging the persistent challenges raised by ILPA's members over the years and for taking decisive action to enhance investor protections through its rulemaking powers.

Quarterly Reporting

Specifically, [Institution Name] is supportive of the proposed rule to require registered investment advisers to disclose all direct and indirect fees and expenses quarterly. We agree with Chair Gensler's assessment that the proposal would "increase transparency and would provide comparability to fund investors."[1] We further believe that the Commission could improve the proposal by preserving LP-level disclosures where the adviser has agreed to provide them and requiring managers to provide such reporting at the request of the investor.

[1] Chair Gary Gensler, Statement on Private Fund Advisers Proposal, US Securities and Exchange Commission (February 9, 2022)

Across multiple statements and risk alerts, the SEC has noted issues with calculations and/or disclosures of fees and expenses, due to practices that did not conform to procedures as agreed in the investment contract.[2] Without clear and consistent disclosures, the tracking of fees and expenses charged in a private fund is exceedingly challenging. As regular reporting on costs is not currently a regulatory requirement, individual investors must engage in bilateral negotiations with fund managers to secure access to this information, typically agreed through side letter agreements rather than within the Limited Partnership Agreement (LPA), which outlines information granted to all investors in the fund.[3] Investor access to basic transparency is therefore the product of market dynamics, disproportionately limiting smaller investors' access to this information.

As proposed, the rule would require the disclosure of fees and expenses at the fund level. However, many institutional investors have successfully negotiated for fee and expense reporting provided at the *pro rata* individual investor or limited partner (LP) level. This information is essential for ILPA member institutions who are required to provide an annual accounting of all investment costs to their own beneficiaries or governing bodies, often on a fiscal year cadence that does not align with annual reporting by the manager.[4] The SEC rule should not erode what has become market practice among many institutional investors and their managers by erecting a maximum compliance threshold rather than a minimum standard.[5] We therefore respectfully request the Commission consider improving the final rule by requiring private fund advisers to provide fee and expense reporting at the *pro rata* investor level, upon request by the investor.

We believe with this proposal, the Commission is creating the conditions for market-wide adoption of established standards such as the ILPA Reporting Template, which was expressly designed to capture cost information for private equity funds.[6]

Preferential Treatment

[Institution Name] is supportive of greater transparency in the industry. However, we are concerned that the rule concerning preferential treatment as proposed could have unintended consequences.

As a fiduciary, [Institution Name] considers side letters essential to our ability to invest in private funds, as a means of securing critical governance, statutory, or regulatory protections that otherwise may not be included in Limited Partnership Agreements. Side letters allow for

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[2]Spreading Sunshine in Private Equity., U.S. Securities & Exchange Commission (May 6, 2014), https://www.sec.gov/news/speech/2014--spch05062014ab.html; Div. of Exams, Risk Alert: Observations from Examinations of Private Fund Advisers (Jan. 27, 2022), https://www.sec.gov/files/private-fund-risk-alert-pt-2.pdf; Div. of Exams, Risk Alert: Observations from Examinations of Investment Advisers Managing Private Funds (June 23, 2020), https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf).

[3] In 2020, only 8% of LPs indicated that a commitment to provide the ILPA Reporting Template was included in the LPA for all investors' benefit; 75% indicated the commitment was typically either made through the side letter or informally and not reflected in fund documents at all, https://ilpa.org/wp-content/uploads/2020/06/ILPA-Industry-Intelligence_Private-Market-Fund-Terms-Survey_2020.pdf

[4] In certain jurisdictions, public pensions are required to produce such disclosures annually, e.g., California Assembly Bill 2833 (2016); Texas Senate Bill 322 (2019).

[5] In 2021, 59% of LPs reported receiving the ILPA Fee Template at least 50% of the time: *see* https://ilpa.org/wp-content/uploads/2021/10/Key-Findings-Industry-Intelligence-Report-Fund-Terms.pdf

[6] ILPA Reporting Template, *available at*: https://ilpa.org/reporting-template/. The ILPA Template was expressly designed to reflect direct and indirect fees, offsets, partnership expenses and carried interest charged by private equity advisers and their affiliates.

provisions that accrue critical benefits to individual investors without negatively harming or otherwise impacting other investors in the fund. Without these provisions, [Institution Name] would not be able to invest in private markets, the returns from which are necessary to our ability to meet [Institution Name]'s investment objectives and obligations. For example, [Institution Name] requires [insert examples, such as ERISA plans redemption requirements, statutory disclosures or attestations, excuse rights] for every private fund in which we invest.

[Institution Name] is concerned that the proposal's facts and circumstances standard for determining material, negative impacts for preferential redemption rights or transparency may impede LPs' ability to negotiate for side letters. We urge the Commission to provide greater specificity as to the nature of terms deemed to have a material, negative impact on other investors in the same fund. Further, we request that the SEC clarify that this rule does not prohibit investors from entering into bespoke arrangements with private fund advisers to secure essential institution-specific requirements.

As proposed, the requirement to provide written notice of preferential terms to prospective investors would be procedurally misaligned with the MFN process that runs after the fund has closed. We encourage the Commission to consider existing industry best practices around disclosure, such as a best-in-class MFN process, that could be elevated as the minimum standard rather than advance or annualized notices yielding less timely or less actionable information.

Fiduciary Duty

[Institution Name] is supportive of the Commission's actions to restore fiduciary duty by requiring fund advisers to be held to the same fiduciary standards as are investors, who themselves invest in private funds as fiduciaries on their beneficiaries' behalf. [Institution Name] has observed the widespread use of sole discretion language and expansive indemnification and exculpation provisions. Taken together with the growing complexity of the private funds industry, the erosion of fiduciary duties has magnified these risks, as evidenced by the SEC's comments on persistent inadequacies in the disclosure of conflicts.

Additionally, [Institution Name] encourages the SEC to clarify that any penalties or disgorgement resulting from an enforcement action that terminates in a settlement rather than court finding will be borne by the GP and not indemnifiable.

Closing

Finally, [Institution Name] recognizes the profound impact these rules pose for LP and GP fund negotiations for the foreseeable future. [Institution Name] encourages the Commission to consider applying certain of these rules solely to new funds formed after a specific point in time, so as to avoid the necessity of renegotiating existing fund agreements and other documents, the cost and uncertainty of which would be borne by LPs.

Given the increasing importance that private market investments play in institutional investors' portfolios, [Institution Name] supports the Commission's efforts to meaningfully improve both investor protections and the disclosures that inform our investment decisions.

Thank you for your consideration.

Sincerely,

[Signature]