March 21, 2022

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

Re: Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Advisers (File No. S7-01-22, RIN 3235-AM75)

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-captioned proposed rule ("Proposal" or "Release")[2] intended to improve the Form PF reporting requirements. By enhancing the quantity, quality, and timeliness of information reported by private funds that collectively manage trillions of dollars in assets and that are deeply interconnected with the financial system and the broader economy, the Proposal will improve the ability of the Securities and Exchange Commission ("SEC" or "Commission") and the Financial Stability Oversight Council ("FSOC") to appropriately monitor and respond to systemic risks and to detect fraud and other forms of investor abuse.

INTRODUCTION AND BACKGROUND

One of the consistent themes of the financial crisis was the extraordinary degree to which regulators were caught flat-footed and forced to be reactive as the crisis approached and unfolded. This was due to a serious lack of transparency into the practices that were taking place in the financial markets, and the risks those practices involved, which were suddenly blowing up the financial system. This lack of transparency was the result of deliberate de-regulatory measures that were years, if not decades, in the making. Ronald Reagan's inauguration in 1981 ushered in a bipartisan fervor for deregulation of the financial system. Led by evangelists such as Alan Greenspan, those with an almost religious devotion to unfettered free markets pushed successfully

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 87 Fed. Reg. 9106 (Feb. 17, 2022).

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to roll back existing financial regulations, and to prevent meaningful government regulation of new products and business models, such as swaps.

Thus, even as Alan Greenspan was confidently, and erroneously, explaining in 2005 that "private regulation generally has proved far better at constraining excessive risk-taking than has government regulation,"[3] significant risk was building up in the financial system out of sight of regulators. What risks the regulators did not see they could not manage, and unsurprisingly, the hidden risks eventually blew up, bringing the financial system to the brink of collapse.[4] Moreover, once the financial system started unraveling, the lack of current information exacerbated the crisis, as regulators seeking to respond to fast-moving, unprecedented events had to do so without adequate information about what was going on or where the real problems lay. The Financial Crisis Inquiry Report detailed how regulators were hamstrung and frustrated by their lack of knowledge as they tried to respond to the unfolding crisis:

> "As they now realized, regulators did not know nearly enough about over-the-counter derivatives activities at Lehman and other investment banks, which were major OTC derivatives dealers. Investment banks disclosed the total number of OTC derivative contracts they had, the total exposures of the contracts, and their estimated market value, but they did not publicly report the terms of the contracts or the counterparties. Thus, there was no way to know who would be owed how much and when payments would have to be made—information that would be critically important to analyze the possible impact of a Lehman bankruptcy on derivatives counterparties and the financial markets."[5]

A similar theme was sounded by a report analyzing hedge funds' contribution to the financial crisis and to systemic risk:

> "Concerns about the lack of information on hedge funds were raised during the financial crisis. Regulators complained about the lack of transparency in hedge fund positions, leverage, and asset valuation and were frustrated by their inability to collect data on hedge funds. The secretiveness of hedge funds regarding their strategies and positions made it difficult for regulators and their creditors to fully understand the credit and market risks they pose."[6]

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[3] Chairman Alan Greenspan, Risk Transfer and Financial Stability, Remarks To the Federal Reserve Bank of Chicago's Forty-first Annual Conference on Bank Structure, Chicago, Illinois (May 5, 2005), https://www.federalreserve.gov/boarddocs/speeches/2005/20050505/.

[4] *See* Saule T. Omarova, *From Gramm-Leach-Bliley to Dodd-Frank: The Unfulfilled Promise of Section 23a of the Federal Reserve Act*, 89 N.C. L. REV. 1683, 1717 (2011).

[5] Financial Crisis Inquiry Report 329 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[6] Lloyd Dixon, Noreen Clancy & Krishna B. Kumar, Hedge Funds and Systemic Risk 63-64 (2012), https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1236.pdf. This was in spite of the fact that the President's Working Group on Financial Markets had explicitly recommended greater transparency from hedge funds, a recommendation that was ignored. *Id.*

Quite clearly, regulators need access to information to perform their critical oversight functions, to protect excessive risk from building up in the financial system, and to respond in a meaningful and effective way to the sudden onset of potentially destabilizing events.

Congress, recognizing the importance of transparency to protecting markets, investors, and the economy, passed the Dodd-Frank Act, which in large part sought to "aggressively address gaps in information" related to private funds and other previously opaque financial intermediaries and instruments.[7] Included in that effort was Section 404, which allowed the SEC to require that advisers to private funds file reports with the Commission "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."[8] Pursuant to Section 404, in 2011 the SEC adopted a rule requiring certain private fund advisers to periodically report certain information to the Commission, on a confidential basis, on Form PF.[9] As the SEC has explained, the information provided on Form PF has proven significantly beneficial, not only allowing it and FSOC to better monitor ongoing risks to the financial system but also enabling the agencies to better understand trends in broader financial markets, to better understand the practices of private funds, and to better understand how those practices are evolving over time. This information in turn allows the SEC to craft better rules and efficiently focus its regulatory resources.[10]

However, the SEC only required that Form PF reports be filed quarterly (for large hedge fund advisers) or annually (for private equity fund advisers).[11] This relatively infrequent reporting was driven in large part by a desire to reduce burdens on the industry.[12] Moreover, reports for quarterly filers are not due until 60 days after the end of the relevant quarter, and reports for annual filers are not due until 120 days after the end of the relevant year.[13] So while that information is useful for identifying broad trends in the industry, including a potential build-up of risk over the medium- and longer-term horizon, the infrequency of reporting, and the months-long time lag before reports are due, mean that the information in the reports will likely be stale before the SEC receives it. This in turn means that the SEC and FSOC will not have the most current information during times of market stress, when events are fast-moving and current information is critical to crafting an appropriate response to market stress, one of the key lessons of the financial crisis. As the SEC notes, recent periods of market stress, including market turmoil caused by the onset of the COVID-19 pandemic and resulting lockdowns in March 2020, and the trading frenzy surrounding GameStop and other so-called meme stocks in January 2021, have again highlighted the importance of having up-to-date information on significant market participants, including private funds with significant interconnectedness, during periods of financial market stress.

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7 Lloyd Dixon, Noreen Clancy & Krishna B. Kumar, Rand Corp., Hedge Funds and Systemic Risk xix (2012), https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1236.pdf.

8 15 U.S.C. § 80b-4.

9 Release at 9106.

10 U.S. Securities and Exchange Commission Annual Staff Report Relating to the Use of Form PF Data 5-6 (Nov. 3, 2020), https://www.sec.gov/files/2020-pf-report-to-congress.pdf.

11 Release at 9108.

12 Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Nov. 16, 2011), 76 Fed. Reg. 71,128, 71,141.

13 Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Nov. 16, 2011), 76 Fed. Reg. 71,128, 71,141.

OVERVIEW OF PROPOSAL

The SEC proposes to bolster the usefulness of Form PF by:

- Requiring that large hedge fund advisers and private equity advisers provide current reports within one business day of significant events;
    - For large hedge fund advisers, those significant events would include extraordinary losses (20% of the fund's net asset value over the previous 10 days), significant increases in margin (a 20% increase in margin requirements over the previous 10 days) or margin defaults, significant changes to relationships with prime brokers, an extraordinary reduction in unencumbered cash, significant withdrawals or redemptions, and certain severe operational events;[14]
    - For private equity advisers, those significant events would include execution of potentially conflicted adviser-led secondary transactions, limited or general partner clawbacks, removal of a general partner, or termination of a fund or its investment period.[15]
- Reducing the threshold for large private equity adviser reporting from $2 billion in assets under management to $1.5 billion, and requiring more granular information on fund operations and strategies and its relationship and dealings with portfolio companies;[16]
- Requiring that large liquidity funds, which are largely indistinguishable from money market funds, report information similar to that required to be reported by money market funds (as that information has been proposed to be amended by the SEC in a separate rule proposal).[17]

COMMENTS

If finalized as proposed, the amendments to Form PF will be the culmination of a well-considered rulemaking process. Having adopted Form PF in 2011, the SEC now has years of experience assessing its utility, how it has been useful, and where it could be improved. The form is critically important as it serves as the SEC's primary insight into an otherwise opaque industry. That the SEC is not proposing to make wholesale changes to Form PF indicates that its 2011 rule was largely well-designed; nevertheless, it is entirely appropriate for the SEC, considering its experience in the intervening years (which has included multiple instances of market stress) to revisit Form PF and address what shortcomings it may have, particularly those related to the timeliness and granularity of key information. Addressing these shortcomings may not require wholesale changes to what the Commission originally adopted in 2011, but what changes are being

[14] Release at 9111-17.
[15] Release at 9117-19.
[16] Release at 9119-23
[17] Release at 9123-26.

proposed are essential to the SEC's mission of protecting markets and investors, and to FSOC's mission of protecting the financial system. The arguments of the lone dissenting commissioner (which will surely be echoed by the industry) reflect an unduly narrow view of the SEC's mission and the nature of the private fund market. The SEC must not water down the Proposal in response to these and other misplaced attempts to persuade the SEC to scale back its efforts to protect markets, investors, and the financial system in favor of the already substantial private profits of private fund advisers.

I. PRIVATE FUNDS ARE CRITICALLY IMPORTANT TO THE FINANCIAL SYSTEM AND THE ECONOMY.

Assessing the Proposal requires an appreciation of the important yet largely hidden role of private funds in the financial system and the economy. These funds play a key role in managing the assets of savers and investors, including retirement savers. Private funds are also deeply interconnected with the financial system and the economy more broadly. Private funds are involved in the credit markets as both users and sources of credit; they invest significantly in both public and private markets; and especially in the case of private equity, they own and run operating companies.

A. Private Funds Have Trillions of Dollars in Assets Under Management Including Retirement Savings.

The value of private fund assets is enormous, and that number is only growing. In 2013, the gross value of assets under management by private funds was about $8 trillion.[18] As of the second quarter of 2021, that number had more than doubled to over $18 trillion.[19] This is a tremendous pool of capital and its deployment is obviously significant to the entire economy, and it therefore warrants meaningful oversight by the SEC. The importance to the SEC's mission is even more pronounced, however, in light of whose assets are being managed. One common misconception is that private markets and private funds are only of concern to "well-heeled investors."[20] This ignores that everyday Americans are, in fact, exposed to private funds in a number of ways, most notably through pension plans. As the SEC explained in the Release, as of the fourth quarter of 2020, "public pension plans had $1,533 billion invested in reporting private funds while private pension plans had $1,248 billion invested in reporting private funds, making up 13.3 percent and 10.9 percent of the overall beneficial ownership in the private equity industry,

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18 SEC Division of Risk Management, Private Fund Statistics: Fourth Quarter 2015 at 5 (Dec. 30, 2015), https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2014-q4-accessible.pdf.

19 SEC Division of Risk Management, Private Fund Statistics: Second Quarter 2021 at 5 (Jan. 14, 2022), https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q2-accessible..pdf.

20 Commissioner Hester M. Peirce, Statement on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (Jan. 26, 2022) ("Congress did not conceive of Form PF to facilitate the Commission's desire to inoculate well-heeled investors against downturns, losses, or fund failures."), https://www.sec.gov/news/statement/peirce-form-pf-20220122.

respectively."[21] In other words, oversight of private funds is not just oversight over the money of the richest Americans. Rather, it is oversight over billions of hard-earned dollars of everyday Americans, accumulated over a lifetime of productive work and set aside to secure their retirement.

B. Private Funds Have Deep Interconnectedness With the Financial System and the Broader Economy.

Beyond the amount of money they manage, and whose money it is, private funds are also deeply interconnected with the rest of the financial system, as well as the broader economy. These interconnections can pose significant risks. For example, hedge funds, as significant sources of speculative investment, can fuel speculative bubbles; during the runup to the financial crisis many hedge funds were heavily invested in the housing market, which contributed to the dramatic expansion of the housing bubble.[22] Hedge funds are also exposed to other important financial institutions through their prime brokerage relationships, which means that distress at a hedge fund can be transmitted to large banks and other systemically important institutions.[23] Private funds in stress may also be forced to engage in fire sales of assets in an attempt to survive. This can pose systemic risk, especially in times of market stress, because these fire sales can depress asset prices further, impacting other firms and creating a spiral of falling prices.

And obviously, each type of fund can have a direct and significant impact on the real economy. Hedge funds hold significant positions in the securities of operating companies; private equity funds directly own and operate operating companies, often to the detriment of other stakeholders, including employees and customers; liquidity funds, like money market funds, invest in short-term debt such as commercial paper that is critical to the ongoing operations of many companies. Ultimately, distress at private funds will not be limited to the funds themselves but will have an impact on the financial system and the broader economy.

II. THE PROPOSED KEY-EVENT REPORTING REQUIREMENTS WILL HELP THE SEC AND FSOC MONITOR AND RESPOND TO ISSUES IN THE MARKETPLACE.

As noted above, the Proposal is an appropriate response to the SEC's experience with Form PF, including its current effectiveness and its limitations. In particular, the SEC has recognized that the utility of Form PF, in certain scenarios, could be hampered by the staleness of its data. One appropriate regulatory response to the lack of current information conveyed in Form PF would have been simply to require more frequent reporting, perhaps monthly or even weekly, an option that is clearly authorized by Section 404 of the Dodd-Frank Act. However, for the time being at least, the SEC has chosen to take a more measured approach. The SEC did not opt to increase the frequency of standard Form PF reports, as it could have, which would have imposed further

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[21] Release at 9129.

[22] Lloyd Dixon, Noreen Clancy & Krishna B. Kumar, Rand Corp., Hedge Funds and Systemic Risk xix (2012), https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1236.pdf.

[23] Hossein Nabilou & Alessio M. Pacces, *The Hedge Fund Regulation Dilemma: Direct vs. Indirect Regulation*, 6 Wm. & Mary Bus. L. Rev. 183, 211 (2015) ("The top prime brokers are almost all LCFIs that have exposure to hedge funds and to each other. This interconnectedness makes them a key channel of systemic risk contagion stemming from hedge funds.").

obligations on reporting entities. Instead, to address its primary concern, the SEC proposed the more targeted measure of requiring that private funds provide a current report upon the occurrence of certain **extraordinary events**. This is amply justified. For example, a 20% reduction in net asset value over a ten-day period would be a significant event, to say the least, for any hedge fund. It would render a hedge fund that is levered 5:1 insolvent.[24] Even if a hedge fund were not levered to that degree, a 20% loss in value over such a short term would certainly rattle investors, spook markets, and necessitate an urgent and hard look by regulators into a variety of issues related to the fund to protect markets and investors. The rest of the triggering events are similarly important but also infrequent and unpredictable.[25]

In short, the SEC continues to be satisfied that data from relatively infrequent reporting from private funds will allow it to effectively oversee private fund advisers, but that in extraordinary and likely rare scenarios, it needs much more current information to perform those functions. This is not a "fundamental shift of Form PF's scope and purpose,"[26] as some have claimed. Rather, these modest and appropriate changes will help the SEC and FSOC better monitor systemic risk and protect investors, which both Congress and the SEC originally identified as the core purposes of Form PF.

A. The Proposed Reporting Requirements Will Improve the Ability of the SEC and FSOC to Monitor Systemic Risks and Respond to Potentially Significant Events.

Currently, at most, hedge funds report information on Form PF quarterly, and in that event nearly two months after the end of the quarter. That frequency of reporting may give the SEC and FSOC insight into slower-moving, longer-term trends and more gradual build-up of risk in the system. But market conditions can go from ordinary to stressed in much less time than one quarter plus 60 days. When 2020 began, few people outside of the medical profession knew what a "coronavirus" was, and the term "COVID-19" would have been meaningless to almost the entire global population.[27] Yet by the end of that first quarter of 2020, COVID-19 lockdowns were in place across America and the world, and in response, markets were in significant turmoil. [28] In other words, in a span of less than three months, markets were in turmoil as a result of a risk no

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24 Ezra Klein, Exploring Financial Regulation: Leverage and Capital Requirements (Apr. 19, 2010), http://voices.washingtonpost.com/ezra-klein/2010/04/explaining_financial_regulatio.html.

25 Release at 9135.

26 The SEC's approach is a far cry from what some critics have claimed as they accuse the SEC of acting out of an "insatiable desire for data," driven by its own "curiosity" and unbounded by a "limiting principle." *See* Commissioner Hester M. Peirce, Statement on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (Jan. 26, 2022), https://www.sec.gov/news/statement/peirce-form-pf-20220122. As explained in the text above, the SEC has been restrained in its approach while ensuring that it will have the quantum of data it needs to understand the risks that private funds may pose to financial stability and to investors.

27 *Cf.* AJMC, A Timeline of COVID-19 Developments in 2020 (noting that as of January 9, 2020, "the World Health Organization (WHO) still has doubts about the roots of what would become the COVID-19 pandemic, noting that the spate of pneumonia-like cases in Wuhan could have stemmed from a new coronavirus.").

28 Sean Collins, ICI, Market Turmoil and Liquidity Crunch Rooted in the COVID-19 Pandemic (Oct. 14, 2020), https://www.ici.org/system/files/attachments/pdf/20_view_covidrpt1_print.pdf.

one would have even been able to name at the beginning of the quarter. As the SEC indicates in the Release, the fast-moving market upheaval caused by COVID-19 highlighted the need for more current information on private funds in times of market stress, as blind spots during periods of rapidly evolving stress can prevent regulators from understanding what is going on and where the markets are most fragile. That in turn can lead to a suboptimal response capable of turning a period of stress to blossom into a crisis.[29]

Importantly, the proposed key-event reporting will not only help the SEC and FSOC see emerging risks on a shorter time horizon than is currently possible with only quarterly or annual reporting, but also better equip the SEC and FSOC, if necessary, to respond appropriately when a significant issue at one or more private funds threatens to spiral into a crisis **immediately**. First, the new reporting requirements will allow regulators to better determine whether an issue at a private fund potentially signals deteriorating market conditions that could blow up into a crisis, or whether an issue at a private fund is itself indicative of a **crisis already underway.** Second, if the SEC or FSOC determines that a crisis is underway, current reporting that details the nature of a fund's assets, its exposures, and its counterparties, will give the SEC and FSOC crucial information about where the crisis may spread so that they can appropriately focus their responses.

B. The Key-Event Reporting Requirements Will Appropriately Allow the SEC to Monitor the Private Fund Adviser Market for Investor Protection Concerns.

Several of the key-event reporting requirements, especially those applicable to private equity advisers, have a clear investor protection component.[30] Some critics of the Proposal have claimed that this focus on investor protection represents a "fundamental shift" in the purpose of Form PF from market oversight to "the Commission's desire to inoculate well-heeled investors against downturns, losses, or fund failures," which is, according to this view, not what Congress or the SEC originally intended.[31] This criticism misses the mark for at least two reasons.

First, it ignores the plain fact that both Congress and the SEC envisioned that Form PF would be useful for investor protection. [32] Section 404 of the Dodd-Frank Act explicitly provides that the SEC can require private funds to "file with the Commission such 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."[33] Likewise, in the

29 *See* Release at 9107.

30 *See, e.g.*, Release at 9117 (explaining that adviser-led secondary transactions "have become increasingly common in the private equity space and may present conflicts of interest that merit timely reporting and monitoring given that these conflicts, particularly those that arise because the adviser (or its related person) is on both sides of the transaction in an adviser-led secondary transaction with potentially different economic incentives, have the potential to negatively impact investors.").

31 Commissioner Hester M. Peirce, Statement on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (Jan. 26, 2022), https://www.sec.gov/news/statement/peirce-form-pf-20220122.

32 There is no question that investor protection is the paramount mission of the SEC ("The mission of the SEC is **to protect investors**; maintain fair, orderly, and efficient markets; and facilitate capital formation.) (emphasis added) (last accessed Mar. 16, 2022), https://www.sec.gov/about.shtml.

33 15 U.S.C. § 80b-4(b)(1)(A) (emphasis added).

adopting release for Form PF in 2011, the SEC made crystal clear that investor protection was one of its principal purposes and expected benefits:

> "We believe that Form PF will create two principal classes of benefits. First, the information collected will facilitate FSOC's understanding and monitoring of systemic risk in the private fund industry and assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. Second, we expect this information to enhance the Commissions' ability to evaluate and develop regulatory policies and **improve the efficiency and effectiveness of our efforts to protect investors** and maintain fair, orderly and efficient markets."[34]

Thus, while market oversight was a core purpose of Form PF as originally promulgated, investor protection has also always been an important goal of the form.[35] In other words, the proposed key-event reporting requirements that focus on investor protection are neither a subversion of Congressional intent nor a fundamental departure from the SEC's original purpose for the form. Instead, by improving the utility of the form as one of the SEC's investor protection tools, the proposed current reporting requirements will ensure that the form better serves one of the purposes that it was always intended to serve.

Second, critics also miss the mark in accusing the SEC of simply seeking to protect "well-heeled investors" with the investor protection portions of the rule. As a threshold point, the SEC has a duty to protect all investors who participate in the capital markets, regardless of how well-heeled they may be. More to the point, this view represents a fundamental misunderstanding about who is actually exposed to private funds. In fact, as explained above, these private funds manage billions of dollars of retirement savings through public and private pension plans, as well as other vehicles. This is one of the reasons both Congress and the SEC have always intended Form PF to promote investor protection because both have understood that it is not just "well-heeled investors" who are exposed to private funds: In fact, it is the money that Americans are depending on for retirement security after a lifetime of productive work.[36] That is worth protecting.

And it is clear that the proposed key-event reporting requirements will improve the SEC's ability to monitor and address investor protection concerns arising in private funds. In particular, one of the triggers for a private equity adviser to file a current report on Form PF would be the consummation of an adviser-led secondary transaction "that offers private fund investors the choice to: (1) sell all or a portion of their interests in the private fund; or (2) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons."[37] As the SEC explains, these transactions, increasingly prevalent, involve potential conflicts of interest, particularly where "the adviser (or its related person) is on both sides of the transaction in an adviser-led secondary transaction with potentially

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[34] Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Nov. 16, 2011), 76 Fed. Reg. 71,128, 71,132.
[35] Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Nov. 16, 2011), 76 Fed. Reg. 71,128, 71,164.
[36] Release at 9129.
[37] Release at 9117.

different economic incentives."[38] Ultimately, the current reporting requirements will help the SEC fulfill its investor protection role.

III. THE CHANGES TO THE PRIVATE FUND EQUITY ADVISER REPORTING REQUIREMENTS WILL ENSURE THAT FORM PF INCLUDES USEFUL AND REPRESENTATIVE MARKET DATA.

The SEC proposes to lower the reporting threshold for large private equity advisers from $2 billion in assets under management to $1.5 billion. As it reasonably explains in the Release, this change is due to the continued growth of the private equity industry. When the threshold was originally established in 2011, it covered approximately 75% of the industry, whereas currently only 67% of the industry is covered.[39] Reducing the threshold would mean that about 75% of the industry is covered again, which will ensure "that Form PF continues to capture and provide robust data on a sizable portion of the private equity industry."[40]

This is a reasonable and appropriate response to changing market conditions that, absent the proposed reduction, would negatively impair the quantity and quality of data available to the SEC. Beyond ensuring that current data is sufficiently representative to accurately capture the current state of the industry, the reduction to the reporting threshold will also ensure that data is comparable across time periods, which will assist the SEC and FSOC in monitoring trends over time. It is of little consequence that the SEC originally intended the threshold to cover a relatively small number of advisers while capturing a more significant portion of assets under management.[41] The SEC has been analyzing Form PF for years, and this experience has led it to conclude that reducing the reporting threshold for the large private equity advisers will strike the right balance between limiting burdens on smaller private equity advisers while collecting a robust, usable, and comparable data set.[42]

Similarly, the SEC proposes to add questions to Form PF for large private equity advisers relating to their operations, including, among other things, investment strategies, portfolio company capital structure, borrowing activity for the fund, defaults, and bridge financing for portfolio companies.[43] Again, reflecting the SEC's experience with Form PF, the addition of these questions will enable the SEC and FSOC to better monitor where risks might be building up in the industry as a whole, in particular funds, at fund investors, and in the portfolio companies of private equity funds.

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[38] Release at 9117.
[39] Release at 9120.
[40] Release at 9120.
[41] Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Nov. 16, 2011), 76 Fed. Reg. 71,128, 71,135.
[42] Release at 9120.
[43] Release at 9121-22.

IV. THE LARGE LIQUIDITY FUND ADVISER REPORTING CHANGES ARE CRITICAL TO PROTECTING THE FINANCIAL SYSTEM

The SEC also proposes to amend the questions related to large liquidity fund advisers so that they are consistent with what money market funds will be required to report on Form N-MFP, as it is proposed to be amended.[44] These are important changes. As noted in the Release, liquidity funds seek to maintain a stable net asset value for investors, and do so "by investing in high-quality, short-term debt securities, such as Treasury bills, repurchase agreements, or commercial paper."[45] In other words, they have a substantially similar business model and engage in substantially similar investment strategies, like money market funds, but they are unregistered.[46]

U.S. taxpayers have had to rescue money market funds twice in recent history, first in 2008 during the financial crisis, and again in 2020 as a result of the COVID-19 induced market turmoil. These interventions were necessary because of the significant run risk money market funds present coupled with their importance to short-term funding markets for commercial enterprises.[47] Unregistered liquidity funds pose the same risk, and while the SEC acknowledges they are currently a "relatively small category of private funds," there is every reason to believe that they, like money market funds, are capable of posing a substantial risk to the financial system. It is therefore eminently reasonable to require the large liquidity fund advisers to provide comprehensive reports to the SEC on their operations and financial condition. Moreover, if there is a significant difference between the requirements applicable to money market funds on the one hand and liquidity funds on the other hand, investors may leave relatively costly registered money market funds for relatively inexpensive unregistered liquidity funds, which could allow for a buildup of significant but hidden risk.

CONCLUSION

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,

Stephen W. Hall

44 Release at 9108.
45 Release at 9119.
46 Release at 9108.
47 Paul Kiernan, et al., *Why the Fed Had to Backstop Money Market Funds, Again*, Wall St. J. (Mar. 21, 2020), https://www.wsj.com/articles/why-the-fed-had-to-backstop-money-market-funds-again-11584788401.

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