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March 21, 2022

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

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

Dear Ms. Countryman:

The Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the "**Commission**" or "**SEC**") on the Commission's proposed amendments to Form PF (the "**Proposal**").[2]

The Proposal sets forth amendments to Form PF that would: (i) establish new current reporting requirements for large hedge fund advisers and advisers to private equity funds with respect to certain private funds they manage; (ii) decrease the threshold for inclusion as a "large private equity adviser;" (iii) require large private equity advisers to report new information about their activities and the investments of the funds they manage; and (iv) amend the information advisers to large liquidity funds are required to report to align with proposed amendments to information required of registered money market funds on Form N-MFP.[3]

This Proposal is 236 pages long, proposes a range of significant changes to complicated securities laws and complex financial markets, asks the public to respond to 120 questions, and provides only 51 days to respond during which we, and our members, are also working on responding to several additional new rulemakings from the Commission.[4] In light of these facts, we and all other public commenters are limited in our ability to conduct a robust analysis of the Proposal and provide fulsome feedback to the

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[1] SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

[2] Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Release No. IA-5950 (Jan. 26, 2022), *available at* https://www.sec.gov/rules/proposed/2022/ia-5950.pdf, hereinafter, Proposal.

[3] Money Market Fund Reforms, Release No. IC-34441 (Dec. 15, 2021), *available at* https://www.sec.gov/rules/proposed/2021/ic-34441.pdf.

[4] *See* U.S. Securities and Exchange Commission, Rulemaking Index, *available at* https://www.sec.gov/rules/rulemaking-index.shtml.

Commission (as is contemplated by the Administrative Procedure Act[5]), which we believe will harm the quality of the Commission's regulations and potentially lead to unintended consequences that have an adverse effect on America's capital markets.

Given this brief notice and comment period, we have had limited opportunity to meaningfully consider the potential unintended consequences of every aspect of the Proposal or to quantify the costs and burdens it would impose. Therefore, we focus our comments in this letter on our strong opposition to the current reporting requirements set forth in the Proposal. We do not believe the Commission has established sufficient regulatory need for the additional proposed reporting. Nor do we believe that the Commission has demonstrated that such reporting would provide the Commission or the Financial Stability Oversight Council ("**FSOC**") with meaningful information for their monitoring of investor protection or systemic risk concerns. The proposed current reporting would also come at enormous costs to the industry with little demonstrable benefit. Most critically, we are concerned that the one business day timing requirement could serve as a needless distraction from devoting adviser resources to the circumstances triggering a current report.

We encourage the Commission to withdraw the Proposal and consider re-proposing more targeted and incremental reporting requirements after a period of meaningful industry engagement. A re-proposal could potentially benefit from input from the FSOC's newly re-established Hedge Fund Working Group ("**HFWG**").[6] Should the Commission determine to proceed with the Proposal, however, we believe the Commission should, at a minimum:

1. ***Allow private fund managers more than one business day to complete any required filings; and***
2. ***Make certain amendments to the scope of the reporting requirements and to the information required to be provided.***

As discussed in more detail below, we believe these changes would provide the Commission and the FSOC with more useful information at a more reasonable burden and cost to private fund advisers.

I. PRIVATE FUND CURRENT REPORTING

Since its adoption in 2011, Form PF has been used for periodic confidential reporting to the SEC by certain private fund advisers.[7] Form PF requires these advisers to report information about the private fund adviser, aggregated information about private fund exposures, and, with respect to "qualifying hedge funds," information about each specific fund's investments.[8] Form PF was adopted to establish better monitoring of emerging risks using a system-wide perspective in order to promote financial stability.[9]

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[5] *See* Administrative Procedure Act, 5 U.S.C. § 533.
[6] *See* U.S. Dept. of the Treasury, *Readout of Financial Stability Oversight Council Meeting on March 31, 2021*, (March 31, 2021), *available at* https://home.treasury.gov/news/press-releases/jy0093 (noting that FSOC will reconvene the Hedge Fund Working Group, which last reported to FSOC in 2016).
[7] *See generally,* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. IA-3308 (Oct. 31, 2011), *available at* https://www.sec.gov/rules/final/2011/ia-3308.pdf, hereinafter, Form PF Adopting Release.
[8] *See* Proposal, *supra* note 2, at 10-11.
[9] *See generally* Form PF Adopting Release, *supra* note 7.

The Proposal would add two new sections to Form PF that would need to be completed and filed with the Commission within one business day of the occurrence of one of twelve enumerated events ("**Triggering Events**")[10] (the "**Current Reporting Requirements**"). All registered advisers that are deemed large hedge fund advisers and all private equity fund advisers would be subject to the Current Reporting Requirements.

A. The Proposed Current Reporting Requirements are Unjustified

The Commission explains that the amendments set forth in the Proposal are intended to "enhance [FSOC's] ability to monitor systemic risk as well as bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts."[11] The FSOC, however, did not identify a lack of current reporting with respect to private funds as a data gap or systemic vulnerability in its 2021 Annual Report (the "**2021 FSOC Report**"). [12] The 2021 FSOC Report, in which the FSOC is required to address "potential emerging threats to the financial stability of the United States,"[13] includes discussion of potential systemic risks associated with hedge funds, specifically their use of leverage and potential liquidity risks, but the FSOC did not make specific recommendations related to these observations.[14] Instead, the FSOC determined to gather more information through re-establishing the HFWG to update the FSOC's assessments of the potential systemic risks associated with hedge funds.[15] Further, while the 2021 FSOC Report included discussion specifically relating to "major gaps and deficiencies in the range and quality of data available to financial regulators,"[16] it did not cite the need for current reporting from private funds.[17] The Proposal may be premature in that additional input from the HFWG could provide valuable guidance on exactly the type of information that the FSOC would find most useful.

The second overarching goal cited in the Proposal is investor protection,[18] and the Commission does not specifically connect the proposed reporting with specific investor protection concerns. The Proposal does include conclusory notations of potential conflicts of interest associated with Triggering Events,[19] but the SEC does not explain why these conflicts are so critical as to require current reporting and near-real time SEC attention. Many of the Triggering Events are premised on investor protection concerns such as "large, sharp, and sustained losses,"[20] "potential stress on [a] fund and its ability to access cash,"[21] and the harm to investors from fund liquidations.[22] As these concerns are generally viewed as

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[10] *See* Proposal, *supra* note 2 at 13 (noting that "the reporting events include extraordinary investment losses, certain margin events, counterparty defaults, material changes in prime broker relationships, changes in unencumbered cash, operations events, and certain events associated with redemptions").
[11] *See* Proposal, *supra* note 2 at 1.
[12] *See generally* Financial Stability Oversight Council, 2021 Annual Report (December 2021), *available at* https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf, hereinafter 2021 FSOC Report. We note that the 2021 FSOC Report only includes two references to "private funds" in its 200 pages, both of which are references to data the Commission already collects.
[13] *See id.* at 157-175.
[14] *See generally id.*
[15] *See* U.S. Dept. of the Treasury, *supra* note 6.
[16] *See* 2021 FSOC Report, *supra* note 12, at 16.
[17] *See generally id.*
[18] *See* Proposal, *supra* note 2, at 1.
[19] *See, e.g.,* Proposal, *supra* note 2, at 87 (noting that "[w]hile all fund advisers are subject to fiduciary duties to their clients, private equity funds' long-term investment horizons and various relationships with affiliates and portfolio companies means that there exist opportunities for fund advisers to pursue transactions or investments despite conflicts of interest…").
[20] Proposal, *supra* note 2, at 16.
[21] Proposal, *supra* note 2, at 32.
[22] *See* Proposal, *supra* note 2, at 40.

part of the investment risks associated with any investing, we are concerned that the Commission may be reinterpreting its investor protection mission as a mission to mitigate market or investment risk, which we believe would be misguided.

Permitting investors to elect to assume market risk is essential to enable investors to seek market returns necessary to meet their investment goals. In fact, the Commission's historic role in this regard has been to protect investors by ensuring that investors receive clear, accurate and complete disclosures and, as is the case with private funds, ensuring that such funds are available only to those investors who can bear the risks associated with less regulated investments. In fact, the Proposal would expend regulatory resources to protect the most sophisticated investors – those who have already been determined to need less protection than retail investors. We also note that one of the purposes of the FSOC is "eliminating expectations on the part of shareholders, creditors and counterparties that the U.S. government will shield them from losses in the event of failure."[23] Reporting requirements premised on mitigating investment risk to investors may create implications that the Commission will be monitoring for such risks in order to provide regulatory intervention to prevent or mitigate related investment losses. Based on the above, we urge the Commission to reconsider the necessity of the Proposal, or at least delay action on the Proposal in order to receive the benefit of input from the FSOC's HFWG.

B. Reporting Focus Should be Narrowed to Provide More Meaningful Information to the Commission

We acknowledge that, under the right parameters, current reporting could be a useful tool for investor protection and for monitoring systemic risk, and it is not an unfamiliar concept under the federal securities laws. The Commission has previously adopted current reporting requirements requiring registered investment companies to report breaches of certain liquidity limitations and derivatives-related guidelines within one business day of determination of such breaches.[24] The National Futures Association ("**NFA**") requires current reporting from members upon the occurrence of certain specific events.[25] The Commission also requires public company issuers to report unscheduled material events, such as bankruptcies, material impairments, or changes in directors or certain officers, on Form 8-K within four business days of the occurrence of such events.[26]

The common thread through these existing requirements is that they strike a balance between the benefits to be gained by the reporting and the direct and indirect costs they create. The above examples are narrow in focus and target specific regulatory goals (e.g., compliance with the statutory requirement for registered investment companies to satisfy redemption requests within seven days[27] or ensuring that the investing public receives material information about public securities issuers[28]). These requirements also do not impose bespoke compliance burdens (e.g., a public company does not need to specifically monitor whether or not it has filed for bankruptcy), or they build on risk management programs that were already otherwise required under applicable rules (e.g., the requirement under new mutual fund

[23] 12 U.S.C. § 5322.
[24] *See* Investment Company Liquidity Risk Management Programs, Release Nos. 33-10233; IC-32315 (Oct. 13, 2016), *available at* https://www.sec.gov/rules/final/2016/33-10233.pdf, hereinafter, Liquidity Rule.
[25] *See* National Futures Association, Rule 2-50, CPO Notice Filing Requirements (June 30, 2021), *available at* https://www.nfa.futures.org/rulebook/rules.aspx?Section=4&RuleID=RULE%202-50.
[26] *See* Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release Nos. 33-8400; 34-49424 (Mar. 16, 2004), *available at* https://www.sec.gov/rules/final/33-8400.htm, hereinafter, Form 8-K Disclosure.
[27] *See* Liquidity Rule, *supra* note 24, at 6.
[28] *See generally* Form 8-K Disclosure, *supra* note 26.

derivatives regulation to comply with a limitation on value at risk[29]). In fact, the Commission specifically considered this balance between costs and benefits in the initial adoption of Form PF by determining to only require detailed periodic reporting from "qualifying hedge funds" whose assets under management exceed a threshold of $500 million.[30]

The narrow focus of existing current reporting requirements also yields a more manageable report universe, with less potential for false positive reports or other data "noise" that could obfuscate areas worthy of more immediate attention. False positive reporting could potentially misdirect Commission attention and resources and have a compounding effect on advisers that are on the receiving end of such attention. As discussed in more detail below, we do not believe the proposed Current Reporting Requirements correctly strike this balance and would provide the Commission with information of questionable utility, while imposing a tremendous operational and financial cost on the affected advisers and funds.

C. The Proposed Current Reporting Requirements are Overbroad and Unnecessarily Burdensome

(i) The Proposed Current Reporting Requirements are Overbroad

We believe the Proposal casts far too wide of a net to provide useful information to the Commission or the FSOC. The Proposal notes that the Commission considered varying levels of thresholds and temporal periods,[31] but it does not include the basis for the Commission's conclusion that the proposed levels and timing are appropriate or warranted. Much of the information requested appears to have a tenuous connection, if any, to systemic risk concerns. For example, the proposed Current Reporting Requirements would apply to a $500 million hedge fund investing in equity securities. This fund would be required to report to the Commission, within one business day, if it incurred losses of 20% or more of the fund's net asset value ("**NAV**") over a ten-day period. The Proposal does not explain, however, how such losses (representing $100 million) would create or be indicative of systemic risk for a financial system whose capital markets represent approximately $87.9 trillion in assets.[32] Instead of offering clarity into potential systemic risk, setting the Current Reporting Requirements at thresholds well below levels that could reasonably be expected to contribute to systemic risk would generate unnecessary reports (such as the immediately preceding example) that are not useful to the FSOC or the Commission in executing their missions. Such reports may provide the SEC an indication of market trends should it receive many reports from different funds. But, given that the SEC and the FSOC have access to other indicators of market stress available to them, it does not make sense to put this additional reporting burden on private fund advisers. In addition, there are myriad different types of private funds that pose (or do not pose) different types of risks. Even if the SEC received multiple similar reports from different advisers, the interrelation among reports would not necessarily be apparent or even exist, given the unique circumstances of each adviser and fund. Reporting requirements should be narrowly tailored to solicit information that could actually be indicative of systemic risk.

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[29] *See generally* Use of Derivatives by Registered Investment Companies and Business Development Companies, Release No. IC 34084 (Nov. 2, 2020), *available at* https://www.sec.gov/rules/final/2020/ic-34084.pdf.

[30] *See* Form PF Adopting Release, *supra* note 7 at 84 n.255. As discussed in more detail below, we do not believe that the Commission is striking the correct balance with the proposed Current Reporting Requirements.

[31] *See* Proposal, *supra* note 2, at 14.

[32] *See* SIFMA, Global Equity Markets Primer, 7 (November 2021), *available at* https://www.sifma.org/wp-content/uploads/2021/11/SIFMA-Insights-Global-Equity-Markets-Primer-FINAL-FOR-WEB.pdf.

In a number of the proposed reporting requirements the SEC provides a selection of reasons for the report being filed. This implies that the SEC appreciates that there are a multitude of reasons for each proposed Triggering Event, including, expressly, reasons that essentially represent routine fund activity. Accordingly, the Triggering Events could be narrowed to include reporting only for reasons that the SEC deems indicative of the concerns it articulates in the Proposal.

(ii) The Proposed Current Reporting Requirements are Unnecessarily Burdensome

In addition to being overly broad, the proposed Current Reporting Requirements would impose new burdens on private fund advisers who advise qualifying hedge funds and private equity funds. While we have not had sufficient time to fully assess and quantify the implementation costs of the Current Reporting Requirements, we expect the direct and indirect compliance expenses to be enormous and in excess of what the Commission estimates in the Proposal.

Advisers would first need to develop entirely new systems and processes for monitoring the data inputs that inform the proposed Triggering Events. Four of the Triggering Events applicable to large hedge fund advisers require new monitoring of information over a ten-day rolling period and measured against a prior reported NAV. This calculation has not historically been monitored for any purpose. These Triggering Events would require the creation of novel procedures to monitor and develop data which has thus far been unnecessary, and would represent a material expense related to the necessary systems and infrastructure developments. Because the proposed Current Reporting Requirements require filing after only one business day, calculations would need to be performed on a daily basis, a capability which most private funds would be required to develop. These systems would all require considerable time and expense to develop.

In addition, as discussed in more detail below, the Proposal would effectively require private fund advisers to assess fund valuations on a daily basis to determine whether a Triggering Event has occurred. This would require new processes for private funds that do not currently calculate daily NAVs and would be especially problematic for private funds that hold a significant portion of their assets in illiquid securities that required fair valuation. New procedures would require significant investment in new processes, technology and staffing.

Furthermore, any current reporting requirements impose a significantly greater burden than periodic reports, and the mere filing of a report can suggest problems where none exist. An unintended consequence of this reporting, in addition to “false positive” reporting to the SEC, is that the very filing of a report with a regulator could trigger a requirement to report to certain investors (e.g., those who have negotiated such a notice requirement in a side letter). That, in turn, could trigger fund redemptions, for something that was never an issue. Such reporting could have a larger impact on the adviser’s business by requiring the adviser to notify other clients – even those who are not a part of the affected fund – and potentially impacting answers to compliance certifications and RFPs.

<u>D. The Timing of the Proposed Current Reporting Requirements is Problematic and Potentially Harmful to Investors</u>

While we have concerns about the proposed Current Reporting Requirements in substance, we are most significantly concerned with the requirement that advisers submit these proposed reports within one business day. The Triggering Events are generally tied to events that may require a fund adviser’s attention, such as a significant redemption request, loss of investment value, or a significant operational disruption. By requiring private fund advisers to report within a single business day, the Commission is taxing the resources of private fund advisers when those resources should be focused on executing their investment and/or business continuity programs. These resources include the time required to collect, compile, and review data prior to filing a report when a Triggering Event occurs (or may have occurred).

We encourage the Commission to consider a longer period of time for advisers to effect the proposed reporting. In almost all cases, quarterly reporting of Triggering Events would be the most appropriate time period. Should the SEC pursue proximate reporting of Triggering Events, however, we suggest advisers have variable time frames to report each Triggering Event, commensurate in each case to the actual systemic or investor risk posed, but in no event less than ten business days from the identification of the occurrence of a Triggering Event.

II. ALTERNATIVES TO THE CURRENT REPORTING REQUIREMENTS

As noted above, we believe the proposed Current Reporting Requirements are overbroad and unduly burdensome. We suggest alternative reporting approaches below that we believe strike a more appropriate balance between the potential benefits of reporting versus the costs of implementation and compliance.

A. Intent to File Notice

As an alternative to the specific Current Reporting Requirements, the Commission should consider permitting private fund advisers to file a short-form notice with the Commission that a certain event has (or may have) occurred, with additional information to be filed in a subsequent filing (i.e., an "intent to file notice"). This reporting structure would allow private fund adviser resources to be devoted to assessing and remedying the circumstances which created the need to notify the Commission, while also providing the Commission with sufficient notice of a potential issue. If a market event impacted a number of private fund advisers, the intent to file structure would provide the Commission with an indication of the scope of the circumstances causing the need to file, while not causing an unnecessary reporting burden on those advisers while they work through the impacts of the event. A subsequent filing could be required "promptly" after the intent to file notice is filed. An intent to file reporting structure should be based on simple objective criteria, consistent with the feedback we provide throughout this letter.

B. Material Adverse Event Reporting

Another approach to accomplishing the Commission's regulatory goals is to require private fund advisers to make a confidential filing with the Commission promptly after the occurrence of a material adverse event (an "**MAE**"), rather than the Proposal's enumerated Triggering Events. We believe this approach would be a viable alternative to the Proposal, while still providing the Commission with appropriate insight into the private funds market. The Commission could require private fund advisers to adopt policies and procedures for identifying and reporting on MAEs. These policies and procedures would be subject to examination by Commission staff and could be informed by Commission and staff guidance that could evolve over time. This structure would be significantly less burdensome to advisers than the Proposal, as the policies and procedures would match the business of each adviser and be tailored to the private funds they manage. MAE reporting would also eliminate false positives and floods of reporting that would likely be generated by the prescriptiveness of the Proposal. The timing of such reporting being required "promptly" would also ensure that private fund advisers were devoting time and resources to managing client assets in times of crises, rather than responding to reporting requirements.

C. Require Open Dialog with Commission

As an alternative to the prescriptive reporting requirements in the Proposal, the SEC could take a more principles-based approach to regulatory notice. Instead of the proposed one-day-reporting framework, the SEC could require private fund advisers to informally notify SEC staff upon the occurrence of certain events. This requirement would enhance the efficiency and timing of alerting the Commission staff to a potential issue, while reducing the notification burden on advisers and providing flexibility to devote resources appropriately between (i) notifying the SEC and (ii) attending to the circumstances that triggered the notification. This approach would encourage an open dialog between the SEC staff and private fund advisers, while providing the Commission with more useful information. Once notice is received, SEC staff could then determine whether additional information is warranted concerning the reported event.

D. Require Current Reporting Based on Adviser and Fund Activities

The Commission should also consider limiting the scope of private funds subject to reporting requirements to those private funds that present the greatest potential of creating actual systemic risk issues, based on investing activities. Private funds are not homogeneous and not all private funds engage in activities that could create systemic risk. We urge the Commission to re-evaluate the thresholds that would subject a private fund to the Current Reporting Requirements and to develop thresholds and criteria that would more directly implicate the specific sources of systemic risk (e.g., specific activities) and investor protection issues the Commission seeks to address. Criteria could be based on several factors, including without limitation, total assets, amount of uncollateralized leverage, gross notional derivatives exposures, or a fund's engaging in particular investment activities that pose actual potential systemic risks. By concentrating reporting requirements in this way, the Commission and the FSOC would receive data more tailored to their regulatory goals, without the noise associated with the occurrence of Triggering Events at private funds where there is no actual potential for systemic risk.

To the extent the Commission determines to impose a size-based metric, we do not believe the threshold for "qualifying hedge funds," (i.e., funds with $500 million or more in AUM) is the correct demarcation to require current reporting. As noted above, it is extremely unlikely for a $500 million equity hedge fund to create systemic risk, and requiring current reporting at this level would likely obscure the data the Commission is seeking to collect.

Additionally, regardless of the size threshold established for hedge funds required to report under the Proposal, we urge the SEC to consider a compliance grace period for funds and advisers newly subject to reporting requirements. Pursuant to the Form PF instructions, a Large Hedge Fund Adviser may have only three months to prepare for compliance with the proposed Current Reporting Requirements. Given the operational burdens and complexities of the requirements discussed below, we encourage the

Commission to consider providing additional time for such advisers to come into compliance with the proposed Current Reporting Requirements for new qualifying hedge funds.[33]

III. REQUIRED CURRENT REPORTING TRIGGERING EVENTS SHOULD BE AMENDED

Despite our concerns with the proposed Current Reporting Requirements, we appreciate the SEC's goal of enhanced monitoring of the private funds industry. Our feedback throughout this letter aims to provide input on how the SEC can modify the Proposal to better balance the potential benefits of additional reporting with the costs presented (both operational and financial burdens) by such reporting and the associated monitoring and compliance processes. Some of the Triggering Events proposed by the SEC could provide the SEC with valuable information in a timely manner. We strongly urge the SEC, as discussed above, to modify the timing of Current Reporting Requirements. We note below that current reports on several Triggering Events could be feasible if the reporting were required in a more reasonable timeframe, as opposed to within one business day. Our feedback below assumes a modified reporting timeframe for current reporting, and we reiterate that regardless of the various challenges presented by each Triggering Event, one business day is not a reasonable timeframe for any proximate reporting framework.

A. Current Reporting – Advisers to Hedge Funds

(i) Extraordinary Investment Losses

As proposed, reporting of extraordinary investment losses would require reporting when there is a loss equal to or greater than 20% of a fund's most recent NAV over a rolling 10-business-day period.[34] This proposed reporting requirement would be extremely challenging from a compliance perspective, costly to implement and, in some cases, impossible to calculate. Additionally, a decrease in NAV could be attributable to routine cash flows or capital activity–not investment loss to a fund–which would unnecessarily generate costly, unhelpful "false positive" reports that bear no relationship to investor protection or systemic risk.

This requirement (along with other Current Reporting Requirements tied to fluctuations in a fund's NAV) effectively requires private funds to recalculate their NAV on a daily basis. For the many funds that currently calculate their NAV on a weekly or monthly basis, this would pose a new and significant operational burden. To accurately calculate a fund's NAV for the purposes of this calculation, the fund would be required to ascribe valuations to its illiquid holdings that otherwise require fair valuation. This would be especially burdensome for funds that invest a significant portion (e.g., greater than 50%) of their assets in fair valued securities. Complying with this requirement would require many hedge fund advisers to develop a completely new valuation and compliance process, solely for the purpose of monitoring for this Triggering Event.

We also note that this Triggering Event, as proposed, would capture both market events and capital events, such as shareholder redemptions. Because shareholder redemptions are already addressed by a

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[33] For example, a private fund that becomes a qualifying hedge fund on March 31 would be subject to the current Reporting Requirements on July 1. The current definition of qualifying hedge fund only contemplated the current Form PF reporting requirements, which are less burdensome than the proposed Current Reporting Requirement and would also provide such private fund adviser an additional 60 days (e.g., August 30) before such filing is due.

[34] *See* Proposal, *supra* note 2 at 15-17.

separate Triggering Event, should the Commission determine to require reporting on investment losses substantially as proposed, we request that the Commission revise the requirement to apply to an evaluation of losses with respect to NAV per share.

Additionally, the operational complexities of complying with this Triggering Event would necessitate an extended time period for reporting. Specifically, while numbers may be available for use in calculating this Triggering Event, these numbers are unaudited and unsuitable data on which to base reporting. To illustrate, the officially recognized NAV of a fund may be held at an external accounting service provider. For reporting to be based on this NAV, a one-business-day reporting requirement would be impossible, given the need to coordinate with an external third party. To the extent reporting is triggered by internal calculations, the reporting may ultimately prove to have been unnecessary once such calculations are reconciled against the official, externally-maintained NAV. Any reporting requirements should account for this operational complexity, and provide the ability to delay and/or amend reporting.

We encourage the Commission to eliminate this requirement or, as an alternative, to provide safe harbors for private fund managers to utilize stale prices with respect to their evaluation of fair-valued assets (i.e., such assets would not need to be independently valued for purposes of monitoring for this Triggering Event) and to amend reporting based on unaudited numbers if necessary.

(ii) Operations Events

The Proposal would require large hedge fund advisers to file a current report when an adviser or reporting fund experiences a "significant disruption or degradation" (a 20% disruption or degradation of normal volume or capacity) of the reporting fund's "key operations."[35] The Proposal includes a number of examples of such events, along with a catch-all "other" category of operational events that would trigger reporting.[36] We are concerned that, even within the discussion of the Proposal, the parameters of this Triggering Event are too vague to allow affected hedge fund advisers to implement reasonably designed monitoring and reporting processes in order to comply. For example, a 20% disruption of normal volume or capacity may be measurable with respect to events that disrupt trading volume, but this quantitative criteria cannot be applied in real time for other operational events. It is unclear how an adviser would measure the impact of a power outage that temporarily disrupts risk management systems against this metric. Similarly, it is unclear whether the events of March 2020, relating to COVID-19 and the associated implementation of widespread work-from-home protocols, would have necessitated a filing (or filings) under this Triggering Event, or what utility such reporting would have yielded. The ambiguity inherent in this requirement would also result in unreliable data, as private fund advisers would apply differing qualitative standards to their obligations. We strongly encourage the Commission to define specific, objective events that could be more easily monitored and consistently applied across registrants.

More importantly, significant operations events, such as those triggering business continuity policies, are generally issues requiring immediate action across an organization. We are concerned that this reporting requirement may distract key compliance personnel from addressing and remedying whatever issue or issues are causing the need to report. While we do not oppose providing the SEC with information concerning an operational disruption once such disruption has been remedied, it does not

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[35] *See id*. at 34-35.
[36] *See id*. at 36.

seem prudent to require regulatory reporting to be prioritized over managing a disruption at the time of the event. Indeed, requiring an urgent filing in advance of remediating such events could create additional risks to investors.

(iii) Redemptions in Excess of 50% of the Fund's NAV

As proposed, a current report would be required when a fund receives cumulative requests for redemptions exceeding 50% of the fund's most recent NAV reported on Form PF (after netting against subscriptions and other contributions from investors received and contractually committed).[37] We are concerned that this Triggering Event would, again, generate many false positive reports that would be of little value to the Commission. There are many circumstances under which a 50% redemption request is not indicative of systemic risk or investor risk. Redemptions may simply be indications of client preference (e.g., routinely allocating assets from one fund to another), rather than an indication of investor panic, particularly when private funds primarily consist of sophisticated investors that are often represented by third-party consultants who are not necessarily prone to short-term reactionary investment decisions. The Proposal, as currently stated, would capture even structured redemptions that do not typically create stress to a private fund. Movement of assets triggered by fund of funds' allocations and reallocations may cause a Triggering Event but more likely represent a routine matter of course, rather than a cause for alarm. Some investors regularly put in redemption requests to maintain flexibility and then subsequently withdraw a request before the redemption date. This practice alone could erroneously trigger a notice requirement. Single investor funds represent another source of data obfuscation under this Triggering Event, as the single investor could easily effect redemptions of this proportion with little potential for systemic risk and no potential to harm other investors.

The SEC should reconsider this Triggering Event and either eliminate it or narrowly tailor it to garner only information regarding redemptions that might be helpful to them in the execution of their mission. For example, the requirement could carve out redemptions due to fund-of-fund reallocations, or provide an exemption for funds below a certain size. An alternative approach could be to require the report when the redemptions actually occur, rather than when the requests are received.

(iv) Changes in Unencumbered Cash

The Proposal includes a requirement to file a current report when the value of a reporting fund's unencumbered cash declines by more than 20% of the reporting fund's most recent NAV over a rolling 10-business-day period.[38] As proposed, this requirement is overly broad and would generate needless reporting. For example, a new fund in its ramping-up period may be required to file a report frequently within its first year. Similarly, a fund liquidating positions to meet routine, planned redemptions could be required to file a report of limited, if any, value to the Commission or to the FSOC. If the intent of this Triggering Event is to provide information to the Commission regarding stresses on funds resulting from liquidity challenges, this information, to the extent material, would be provided by other Triggering Events (e.g., inability to satisfy redemptions or margin defaults).

This Triggering Event requires the reporting party to provide a reason for the change, including whether the change was attributable to redemption activity in the fund or to new investment positions. It is

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[37] *See id*. at 39-40.
[38] *See id*. at 31-33.

unclear how either of these circumstances would be indicative of systemic risk or investor protection concerns, or what value the SEC would realize from receiving a report with this information.

We recommend the Commission eliminate this Triggering Event or, at a minimum, narrow its focus to exempt private funds in their first year of operations, and exempt circumstances when the reduction in unencumbered cash is the result of routine investment operations.

(v) Margin Increases

The Proposal includes a requirement to file a current report when there is a cumulative increase in margin of more than 20% of a reporting fund's most recent NAV over a rolling 10-business-day period.[39] We submit that the Commission should consider obtaining this information from broker-dealers or future-commission merchants rather than private fund advisers. These entities are in the best position to provide such reporting – they have the information and do not need to react in real time to a margin increase in the same way as would an impacted fund.

As proposed, this Triggering Event has the potential to generate false positive reports that would not be useful to the SEC for its stated purposes. For example, where an exchange or clearing facility increases margin requirements applicable to all trades and/or all market participants, the Commission would be inundated with current reports under this Triggering Event. Further, as noted above with respect to changes in unencumbered cash, to the extent this Triggering Event is indicative of a true liquidity challenge, the Commission would receive relevant reporting under the Proposal with respect to other Triggering Events (e.g., inability to satisfy redemptions or margin defaults).

We request that the Commission eliminate this Triggering Event, or, alternatively, narrow the application of the Triggering Event to margin increases resulting from deteriorating positions in the reporting fund's portfolio or other credit triggers under applicable counterparty agreements.

(vi) Counterparty Defaults

The Proposal requires a current report to be filed if a counterparty to a reporting fund (i) does not meet a call for margin or has failed to make any other payment in the time and form contractually required (taking into account any contractually agreed cure period); and (ii) the amount involved is greater than 5% of the most recent NAV of the reporting fund.[40] It is not clear how the default of a single counterparty representing 5% of a private fund's exposure would serve either of the indicated goals of the Commission. Therefore, we suggest this Triggering Event be modified to change the 5% requirement to be a more subjective materiality threshold, and to place the reporting burden solely on the defaulting counterparty. This would narrow the scope of when a report would be required, and provide the SEC with more meaningful reporting on counterparty defaults. Additionally, we suggest reporting based on this Triggering Event be required quarterly, at maximum.

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[39] *See id*. at 21-23.
[40] *See id*. at 24-26.

(vii) Material Changes in Prime Broker Relationships

The Proposal includes a requirement to file a current report when there are material changes to a fund's ability to trade, or an outright termination of a prime brokerage relationship for default or breach of the prime brokerage agreement.[41] Trading limits can be subjective and are set by prime brokers, so this Triggering Event may not be indicative of liquidity or other issues at the fund, much less systemic risk. Additionally, to the extent funds have multiple prime brokerage relationships, this reporting may not be meaningful at all. To the extent that such reporting is required, it should be limited to instances where the reporting fund's ability to operate is materially impeded as a result of the change.

B. Current Reporting – Advisers to Private Equity Funds

The Proposal includes three new Triggering Events that would require current reporting relating to private equity funds. As a threshold matter, we do not necessarily object to the provision of this information to the Commission. In fact, we recognize that these transactions may present heightened potential for abuses that the Commission has an interest in monitoring. That said, we strongly object to the method in which the Commission is seeking this data (i.e., on a current reporting basis). We believe the Commission can equally achieve its regulatory goals through less burdensome, periodic reporting of summary information regarding each of the below reporting items, and we encourage the Commission to consider revising the Proposal accordingly.

(i) Scope – Size Threshold

The proposed Current Reporting Requirements would require all advisers to private equity funds to file a report on new Section 6 of Form PF within one business day of one of three new Triggering Events. This stands in contrast to the application of the Current Reporting Requirements with respect to hedge funds, which apply only to "large hedge fund advisers" (i.e., advisers who have at least $1.5 billion in regulatory assets under management attributable to hedge funds) who advise "qualifying hedge funds" (i.e., generally, hedge funds with NAVs of at least $500 million).

The Proposal provides no discussion as to the Commission's reasoning for failing to include similar size thresholds for the application of the Current Reporting Requirements. We note that the burdens discussed herein will have a disproportionate impact on smaller advisers, and we urge the Commission to institute a similar size-based threshold to the application of the Current Reporting Requirements to smaller private equity funds. Such a threshold would both increase the quality of reporting to the Commission (ensuring that the Commission gets only information most relevant to systemic risk matters and investor protection issues), while also mitigating the impact to the industry at large.

(ii) Adviser-led Secondary Transactions

The proposed Current Reporting Requirements would require reporting within one business day of the completion of an "adviser-led secondary." The SEC proposes to define an adviser-led secondary transaction as any transaction initiated by the adviser or any of its related persons that offers private fund investors the choice to (i) sell all or a portion of their interests in the private fund; or (ii) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by

[41] *See id*. at 29-30.

the adviser or any of its related persons.[42] Triggered by secondary transactions initiated by a private equity fund's adviser or a related person of the adviser, the report would require a description of the transaction and the transaction completion date.[43]

The Proposal speculates that adviser-led secondaries "could be a leading indicator of a declining market … that merits timely monitoring" and that the Commission is requesting this information to "assess market trends better" and "assess potential market impacts as well as potential conflicts of interests associated with these transactions."[44] We understand the Commission's desire to assess market trends, but we reject the notion that adviser-led secondary transactions are a leading indicator of a declining market any more than any other type of selling activity. In fact, adviser-led secondaries could just as likely be a leading indicator of a rising market. Adviser-led secondaries are generally beneficial to investors and offered where advisers believe they can provide investors with early access to liquidity at prices that may be better than what the investor could receive by holding the fund to its ultimate liquidation (i.e., in periods of increased market demand).

We also note that the potential for adviser-led secondaries to contribute to systemic risk to the financial system is vanishingly small. In 2020, the total market volume of adviser-led secondary transactions for the year was only $35 billion, growing to $68 billion for the year in 2021.[45] To provide context, the total volume of trading on the New York Stock Exchange alone for one day in 2022 was in excess of the two-year volume of adviser-led secondaries.[46] In addition, we note that there are individual private funds, mutual funds, money market funds and institutional investors whose assets alone exceed the aggregate volume of adviser-led secondary transactions for the prior two years. Thus, in the context of the overall markets, the size of the adviser-led secondary market is unlikely to contribute to systemic risk.

We also are unclear as to why the Commission has determined to focus on these particular transactions for investor protection purposes. While adviser-led secondaries may pose conflicts of interest, these conflicts are not significantly different in kind or manner than the myriad other conflicts of interest present in connection with the provision of investment advisory services. The Commission has successfully overseen the management of conflicts of interest in the past through a reasoned and considered disclosure and consent regulatory framework. Beyond noting the existence of conflicts, the Commission does not establish why these transactions warrant specific reporting to the Commission. Additionally, because the reporting under the Proposal would occur after a transaction is complete, the Commission would not have the opportunity to review and assess any potential regulatory issues associated with the transaction.

Finally, we note that as with all of the Current Reporting Requirements, advisers making such filings will have reasonable concerns that the filings will trigger unnecessary and expensive regulatory scrutiny from the Commission staff (e.g., examinations, investigations, etc.), which might serve as a deterrent. Private equity funds may be less willing to engage in adviser-led secondaries, which, as noted above, are generally beneficial to private fund investors.

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[42] *See id*. at 45.
[43] *See id*. at 45.
[44] *See id.* at 45-46.
[45] *See* Madeline Shi, *Continuation funds drive GP-led secondaries wave*, PitchBook (Feb. 1, 2022), *available at* https://pitchbook.com/news/articles/continuation-funds-GPs-secondaries-private-equity.
[46] *See* Cboe, U.S. Equities Market Volume Summary, *available at* https://www.cboe.com/us/equities/market_share/.

(iii) Implementation of a General Partner or Limited Partner Clawback

The Proposal includes a requirement for advisers to private equity funds to provide current reporting with respect to general partner or limited partner clawbacks. As defined in the Proposal, a general partner clawback is any obligation of the general partner, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the fund pursuant to the fund's governing agreements,[47] and a limited partner clawback would be defined as an obligation of a fund's investors to return all of any portion of a distribution made by the fund to satisfy a liability, obligation, or expense of the fund pursuant to the fund's governing agreements.[48] The Proposal would require reporting within one business day of the effectuation of any general partner clawback and limited partner clawbacks in excess of an aggregate amount equal to 10% of a fund's aggregate capital commitments.[49]

The Proposal suggests that "widespread implementation of general partner clawbacks may be a sign of a declining market environment, which may have systemic risk implications."[50] While we agree that a general partner clawback is indicative that a fund did not meet its targeted performance returns, the Proposal does not clearly connect such a performance disconnect to "declining market environments" or systemic risk. Presumably, the Commission assumes that, because clawbacks are dependent on funds achieving certain performance metrics, their failure to do so could indicate a market decline. While this may be true from a mathematical perspective, the Commission does not explain how current reporting relating to clawbacks will provide information distinct from other sources of information the Commission has to inform it of deteriorating market environments. In other words, we do not believe reporting on clawbacks would provide the Commission with any new information.

We also agree with the Commission that general partner clawbacks are typically rare.[51] We understand from members that clawbacks in the private equity fund context are typically calculated at the end of private equity fund's life, which is typically a ten-year period. Thus, the clawback calculation (and resulting payment obligation, if any), is more an indication of the scheduled termination of private equity funds, rather than any market of fund stresses. In fact, the existence of a general partner clawback in this scenario is just as likely to be a sign of the quality of the private equity fund's investment strategy and selection as it is to represent a "declining market environment." Further, given the fact that clawback calculations are generally performed at the end of a private equity fund's life, there is little utility to requiring this reporting on a current basis.

Finally, as noted above, attaching a Current Reporting Requirement to general partner clawbacks could serve to dissuade private equity fund advisers from incorporating these provisions in their fund organizations, even though these clawbacks generally ensure that the interests of private equity fund investors are aligned with their advisers.

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[47] *See* Proposal, *supra* note 2, at 47.
[48] *See id*. at 48.
[49] *See id*. at 47-48.
[50] *See id.* at 48.
[51] *See id.* at 48.

Based on the above, we urge the Commission to reconsider requiring current reporting with respect to clawbacks, at a minimum engaging with industry to understand how, when, why, and how frequently clawbacks occur.

IV. FEEDBACK ON LARGE PRIVATE EQUITY ADVISERS REPORTING AMENDMENTS

In addition to the Current Reporting Requirements, the Proposal would amend Section 4 of Form PF to add seven new questions and amend three existing questions. We question whether the information sought by these proposed amendments is sufficiently connected to the monitoring of systemic risks and/or investor protection. For example, the addition of new Question 74, requiring an adviser to report whether it or its related persons provided financing or otherwise extended credit to a portfolio company, is intended to provide the Commission with "an early indicator of a market downturn."[52] The Proposal does not, however, indicate why such an indicator is relevant to the Commission's regulation of private funds, nor does the Proposal discuss whether there are other effective methods by which the Commission could get such an indicator.

We are concerned that the Commission is adopting an approach under which it could justify collecting any information from registrants or imposing any burden on the industry merely by noting that the activity may create systemic risk. We urge the Commission to expand upon the basis for each of these requests, including a discussion of the potential magnitude and frequency of market risks the Commission expects to observe. We also request the Commission to consider alternative, and less burdensome methods by which it can obtain information on "current market environments" and include that discussion under its economic analysis.[53]

We offer comments and observations on certain specific aspects of several proposed new questions below.

A. New Question 70 – Restructured or Recapitalized Portfolio Companies

Proposed new question 70 asks whether any of a fund's portfolio companies was restructured or recapitalized following the fund's investment period. The Commission notes that this information would be useful to "tell the Commission and FSOC more about the current market environment and would allow FSOC to monitor these activities for systemic risk."[54] The Proposal, however, offers no explanation of, or connection to, how these activities would create systemic risk.

While we believe this new question should be removed, if the Commission nonetheless determines to add it, we recommend the scope of the reporting obligation be narrowed. The reporting obligation should be limited to only apply to a reporting fund's *controlled* portfolio companies ("**CPCs**"), similar to certain other new questions included in the Proposal. A large private equity adviser to a reporting fund that holds a non-controlling position in a portfolio company would not likely have sufficient influence over a portfolio company's restructuring or recapitalization that could present material conflicts and be relevant to the Commission. Further, limiting the reporting obligation to only CPC

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[52] *Id*. at 63.
[53] *Id*. at 120-121. We note that the economic analysis of these new Sections 3 and 4 reporting requirements summarily concludes that "amendments as proposed maximize data quality and enhance usefulness of reported data," but there is no discussion of alternative sources of information that could equally achieve the Commission's goals discussed in the Proposal.
[54] *See id.* at 59.

investments will reduce unnecessary duplication of reporting from minority investors in the portfolio company.

The reporting obligation should also be limited to restructuring or recapitalizations of large, private portfolio companies (e.g., private portfolio companies with valuations in excess of $5 billion). Restructuring or recapitalizations of smaller portfolio companies (e.g., earlier stage venture-backed portfolio companies) would not be helpful information for the SEC to receive through Form PF reporting. Additionally, restructurings and recapitalizations that have a limited impact on the portfolio company and its third-party investors should be excluded from this proposed reporting requirement (e.g., the reporting obligation should apply only to a restructuring of the portfolio company's debt or equity resulting in greater than 20% of equity interests held by unaffiliated third-parties becoming worthless).

Finally, should the SEC proceed with proposed new question 70, the term "restructuring or recapitalization" should be clearly defined. As proposed, it is not clear what transactions would be within the scope of this reporting obligation.

B. New Question 71 – Related Fund Ownership of Multiple Levels of a Company's Class Structure

Proposed new question 71 would require a fund to report whether the fund held an investment in one class, series, or type of securities of a CPC while another fund advised by the adviser or its related persons simultaneously held an investment in a different class, series, or type of securities of the same CPC.[55] While we recognize the potential conflicts the Commission is seeking to monitor, we note that this proposed requirement would create a significant burden for large advisers, and may, in some cases, be impossible to report. Large investment managers with separate divisions may invest different clients in different levels of a company's class structure (e.g., debt, senior debt and equity). In order to mitigate conflicts of interest or to manage the potential receipt of material, non-public information, these organizations may place information barriers between their investment groups, such as a public investment group and a private investment group. These information barriers may make it difficult, if not impossible, to provide a complex-wide view into such investments. We urge the Commission to reconsider including this question, or to revise it to account for the circumstances described above.

C. New Question 82 – Aggregate Borrowings of Controlled Portfolio Companies

Proposed new question 82 asks for the percentage of aggregate borrowings of a fund's CPCs that are at a floating, rather than fixed, rate.[56] With this question, the Commission intends to gather "additional information on the risk profiles of CPCs … as elevated CPC leverage could signal default risk."[57] As a threshold matter, we do not believe SEC monitoring of the default risk of individual private equity fund investments is warranted from either a systemic risk or investor protection perspective. Further, interest rate risk and exposure are often hedged or offset through other risk management tools. This proposed reporting element imposes a significant burden on fund managers because the fund manager will not have this data in-house. Instead, the fund manager will be required to request this information from CPCs, which can be a challenging task, especially for those managers who do not have a direct

[55] *See id.* at 59-60.
[56] *See id*. at 63.
[57] *See id.*

relationship with a CPC (e.g., where a private fund manager works with a credit sponsor who is involved with the fund's CPC). Given the limited connection with investor protection and systemic risk concerns and that the data may not provide useful information, we request the Commission eliminate this proposed new question.

V. CONCLUSION

SIFMA AMG appreciates the opportunity to provide these comments, and sincerely appreciates your consideration of our feedback. We would be pleased to further engage on the comments contained in this letter, or on the Proposal generally. Please do not hesitate to contact Lindsey Keljo at 202-962-7312 (lkeljo@sifma.org), or our outside counsel, Morgan, Lewis & Bockius LLP, at 617-341-7727 (lance.dial@morganlewis.com) or 617-341-7810 (amy.mcdonald@morganlewis.com), with any questions.

Sincerely,

Lindsey Weber Keljo, Esq.
Head – Asset Management Group
Securities Industry and Financial Markets Association

cc: Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission
Honorable Caroline A. Crenshaw, Commissioner, U.S. Securities and Exchange Commission
Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission
Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Mr. William Birdthistle, Director, Division of Investment Management, U.S. Securities and Exchange Commission