



April 25, 2022

Lee Saunders
President

Elissa McBride
Secretary-Treasurer

Vice Presidents

Jody Barr
New Britain, CT

Denise Berkley
Albany, NY

Mark Bernard
Boston, MA

Ron Briggs
Latham, NY

Stacy Chamberlain
Portland, OR

Connie Derr
Albuquerque, NM

Daniel DiClemente
North Chili, NY

Shannon S. Douvier
St. Cloud, MN

Denise Duncan
San Dimas, CA

David R. Fillman
Harrisburg, PA

Craig A. Ford
Newark, NJ

Henry A. Garrido
New York, NY

R. Sean Grayson
Worthington, OH

Vicki Hall
Tallahassee, FL

J. David Henderson
Franklin, PA

Johanna Puno Hester
San Diego, CA

Danny J. Homan
Des Moines, IA

Kathryn Lybarger
Oakland, CA

Roberta Lynch
Chicago, IL

Christopher Mabe
Westerville, OH

Glenard S. Middleton Sr.
Baltimore, MD

Douglas Moore Jr.
San Diego, CA

Michael Newman
Chicago, IL

Debbie Parks
Hamilton, NJ

Randy Perreira
Honolulu, HI

Steven Quick Sr.
Indianapolis, IN

Jose Ramirez
San Juan, PR

Lawrence A. Roehrig
Lansing, MI

Joseph P. Rugola
Columbus, OH

Alan F. Shanahan
Los Angeles, CA

Paul Spink
Milwaukee, WI

Mary E. Sullivan
Albany, NY

Anthony Wells
New York, NY

Mike Yestramski
Olympia, WA

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews (File No: S7-03-22)

Dear Secretary Countryman:

On behalf of the American Federation of State, County and Municipal Employees (“AFSCME”), I am writing to provide comments on the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) proposed rulemaking entitled “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews” (File Number S7-03-22) (the “Proposed Rule”).

AFSCME’s 1.4 million members provide the vital services that make America happen. With members in communities across the nation, serving in hundreds of different occupations—from nurses to corrections officers, child care providers to sanitation workers—AFSCME advocates for fairness in the workplace, excellence in public services and freedom and opportunity for all working families. AFSCME members participate in the capital markets as participants in over 150 public pension funds, through additional employee benefit plans and as individual investors. AFSCME members also serve as trustees for many public pension funds throughout the country, the majority of which have significant investments in private funds. As stewards of the retirement assets of millions of public sector workers, the quality of disclosure for private funds in which our members’ retirement savings are invested is critical.

We strongly support the Proposed Rule to provide investors with necessary details on the fees, expenses, returns and compliance records of private funds they are invested in. Public pension plans are the largest customers of private equity managers, collectively committing the greatest amount to private equity compared to any other groups of investors, with \$480 billion and approximately 8.9% of plan holdings invested in private equity.¹ With billions of dollars invested and at risk

¹ “Retirement Funds Bet Bigger on Private Equity,” Wall Street Journal, Jan. 10, 2022, available at: <https://www.wsj.com/articles/retirement-funds-bet-bigger-on-private-equity-11641810604#:~:text=U.S.%20pension%20funds%20private%2Dequity.about%20%24300%20billion%20in%202018.>

and after SEC examinations uncovered illegal fees and compliance shortcomings at more than half of the firms examined in 2014,² we believe it is imperative and overdue that the SEC implement the Proposed Rule to inform and enable investors to better monitor and directly address these risks.

Quarterly Statements

We support the Proposed Rule requiring private fund managers to provide investors detailed reporting on a quarterly basis on Form ADV, breaking down all the compensation, fees and expenses going to fund advisors. Asymmetric information and a lack of transparency are major problems for investors.³ Even large investors have been unable to identify and track their associated fees and expenses from their private fund investments. The Proposed Rule's uniform requirements to disclose a table detailing all the different fees and expenses charged, with a standardized report comparing returns to other benchmarks, disclosure of special arrangements with certain investors and a prohibition of certain conflicts are necessary reforms that will level the playing field for investors.

Annual Audits

We agree every private fund should be subject to an annual audit by an independent accountant registered with the Public Company Accounting Oversight Board in accordance with its rules. The results of these audits would be required to be shared with investors promptly upon completion. The annual audits will be an important check providing investors a picture of how private fund advisors are estimating valuations of complicated property that may be illiquid at the time. Annual audits will provide investors more accurate valuations, which also often serve as the basis for calculation of fees.

Adviser-Led Secondaries

We support the Proposed Rule's requirement that private fund advisers obtain an independent fairness opinion when offering fund investors the option to sell or exchange their interest in a private fund or interests in another vehicle being offered by the adviser. The Proposed Rule also requires a summary of any material relationships between the adviser or any of its related persons and the opinion provider within the past two years. There can be conflicts in the form of fees, as well as the potential for secondary buyouts to lag the returns of primary buyouts.⁴ Requiring an impartial fairness opinion will lessen risks for investors, while curbing conflicts of interest for fund advisers.

² In 2014, the Director of the SEC's Office of Compliance Inspections and Examinations (OCIE) made the astonishing observation that his office's examinations of the handling of fees and expenses by private fund advisers found what was believed to be "violations of law or material weaknesses in controls over 50% of the time." Bowden, Andrew, "Spreading Sunshine in Private Equity," May 6, 2014, available at: <https://www.sec.gov/news/speech/2014--spch05062014ab.html>.

³ SEC Office of Compliance Inspections and Examinations, "Observations from Examination of Investment Advisers Managing Private Funds," June 23, 2020, available at <https://www.sec.gov/files/Private%20Fund%20Risk%20Alert.pdf>.

⁴ DeGeorge, Francois and Martin, Jens and Phalippou, Ludovic, "On Secondary Buyouts," *Journal of Financial Economics*, June 16, 2015, available at SSRN: <https://ssrn.com/abstract=2329202>.

Prohibited Activities

The Proposed Rule's prohibited activities are welcomed and will curtail practices that fund advisers have employed to the detriment of private fund investors. Private fund advisers would be prohibited from charging certain fees and expenses to a private fund or portfolio investment, including accelerated monitoring fees, costs related to government investigations, compliance costs and borrowing costs. These prohibited activities will stop private fund investors from being charged fees and expenses for services that were not actually provided. An outright prohibition is the proper course to take, as fund advisers should not be allowed to charge for unperformed services.

Preferential Treatment

We support the Proposed Rule's prohibition of preferential treatment for one set of investors over others. The Proposed would also prohibit private fund advisers "from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors in a private fund regarding all preferential treatment the adviser or its related persons are providing investors in the same fund." Currently, certain investors have received better terms and conditions than other investors, without all investors being aware of these arrangements. Here, side letters need to be disclosed to all other investors in the fund. We agree preferential information sharing should be prohibited. In public markets, a public company is not allowed to provide information to a subset of investors under Regulation FD. This same principle needs to apply to private markets.

Conclusion

As a result of their rapid growth in recent decades, the private markets have taken on increasing importance in our economy and in the pension funds of our members. Therefore, proper oversight of private fund advisers has also taken on increased importance. We also favor the SEC making this data publicly available, so that stakeholders can have better insight into the costs of private fund investments. The Proposed Rule will provide private fund investors with necessary transparency for the true costs of their investments while prohibiting activities that harm investors.

We strongly support the implementation of the Proposed Rule, which will protect our members' retirement from harmful practices by private funds. We appreciate the opportunity to share our comments.

Sincerely,

/s/ Dalia R. Thornton

Dalia R. Thornton
Director
Research and Collective Bargaining
Services