Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York | Brussels

March 16, 2023

Via Electronic Submission

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Re: Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (RIN: 3235-AM75; Release No. IA- 5950; File No. S7-01-22); Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers (RIN: 3235–AN13, RIN 3038–AF31; Release No. IA–6083; File No. S7–22–22)

Dear Ms. Countryman and Mr. Kirkpatrick:

Managed Funds Association ("**MFA**")[1] submits these comments to the Securities and Exchange Commission ("**SEC**") and the Commodity Futures Trading Commission ("**CFTC**," and together with the SEC, the "**Commissions**") to supplement our previous comments[2] on the

[1] MFA represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, Brussels, London, and Asia. www.managedfunds.org

[2] *See* Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Mar. 21, 2022) ("**March Comment Letter**"), available at: https://www.sec.gov/comments/s7-01-22/s70122-20120683-272854.pdf; *See* Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Dec. 7, 2022) ("**December Comment Letter**"), available at: https://www.sec.gov/comments/s7-22-22/s72222-20152435-320304.pdf.

SEC's February 2022 proposed amendments to Form PF and related rules ("**February Proposed Rules**")[3] and the Commissions' joint proposed amendments to Form PF ("**September Proposed Rules**").[4] As described further below, we are concerned the September Proposed Rules would make several changes to Form PF without the SEC having assessed the effects of those proposed on the February Proposed Rules. As such, there is not sufficient opportunity for public review and comment on those aspects of the September Proposed Rules that would affect the February Proposed Rules. For this reason, we believe the SEC should remedy this gap by analyzing the effects of the September Proposed Rules on the February Proposed Rules and provide an opportunity for public review and comment on that analysis before proceeding to any final rules.

However, if the SEC is determined to proceed with adopting the February Proposed Rules without assessing the effect of the September Proposed Rules on those amendments and offering the public an opportunity to comment, we believe it is critical that the SEC appreciate the ways in which the Proposals are intertwined and the significant challenges involved with implementing these two sets of amendments to Form PF. As explained further below, we do not believe the SEC should adopt the February Proposed Rules and require firms to comply with any of the new rules prior to the Commissions jointly adopting the September Proposed Rules. Instead, we believe the SEC (and together with the CFTC, as applicable) should require compliance with the Proposals at the same time, and because of the significant challenges involved with implementing these two sets of amendments to Form PF, we recommend that the Commissions provide an implementation period of 24 months from the later of the adoption of the February Proposed Rules or the September Proposed Rules.

I. Background

As explained in the comment letters we previously submitted to the SEC and the CFTC,[5] we believe the February Proposed Rules and the September Proposed Rules both raise significant issues, and therefore we recommend in both cases that the SEC reconsider the February Proposal and the Commissions the September Proposal.

Specifically, the February Proposed Rules fundamentally changes the nature of Form PF, which currently is a quarterly or annual report—depending on the size and business of a private fund adviser—to make Form PF effectively a daily report. This is because, under the February Proposal, private fund advisers will need to monitor and track a wide range of financial and operational metrics and events on a daily basis to determine whether any of the new reporting

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[3] Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, 87 Fed. Reg. 9,106 (Feb. 17, 2022) ("**February Proposal**"), available at: https://www.govinfo.gov/content/pkg/FR-2022-02-17/pdf/2022-01976.pdf.

[4] Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, 87 Fed. Reg. 53,832 (Sep. 1, 2022) ("**September Proposal,**" and together with the February Proposal, the "**Proposals**"), available at: https://www.govinfo.gov/content/pkg/FR-2022-09-01/pdf/2022-17724.pdf.

[5] *See* note 2 *supra*.

events has occurred and thereby triggered the one-business day filing requirement. This would impose significant new operational burdens on private fund advisers because they would have to build or modify systems to gather the information required by the new reporting regime and monitor it daily. While we understand that the SEC is trying to get pre-notification of potential hedge fund distress, there are unintended consequences of the February Proposed Rules that must be considered, which are discussed in our comment letter on this proposal (*e.g.*, the potential to exacerbate hedge fund stress and, therefore, market stress).[6]

The September Proposed Rules fundamentally revise Form PF in ways that will lead to the Commissions' collecting less meaningful information for the intended purpose of assessing potential systemic risk, while significantly increasing the burdens on reporting advisers.[7] The September Proposed Rules also have significant implications for the February Proposed Rules. The following is a description of the most significant of these changes:

1. Definition of "Cash Equivalent"

In the February Proposed Rules, the SEC proposed to add a new Section 5 to Form PF requiring that Large Hedge Fund Advisers[8] file current reports with the SEC in the event of certain reporting events. One of the triggers proposed by the SEC is a decline in unencumbered cash. Specifically, Large Hedge Fund Advisers would be required to file a report with the SEC if a fund experiences a decline in unencumbered cash by more than 20% of the fund's most recent net asset value ("**NAV**") over a rolling 10 business day period. Such advisers would need to calculate a daily unencumbered cash figure using the same methodology they use to calculate question 33 on Form PF.

The September Proposed Rules would change the definition of "cash equivalents" by excluding U.S. Treasury securities from this definition (although it would include U.S. Treasury securities in the definition of "unencumbered cash"). As we previously noted, this is inconsistent with how financial markets generally and our members treat short-term Treasury securities for risk management and cash management purposes.[9] Until the Commissions adopt the September Proposed Rules, advisers will not know how to calculate "cash equivalent" for purposes of the reporting trigger for unencumbered cash in the February Proposed Rules.

2. Look-Through Provision—Indirect Exposure

Several of the proposed questions in the September Proposed Rules would require funds to "look through" their investments to determine securities and other assets to which a fund has

[6] *See* March Comment Letter.

[7] *See* December Comment Letter.

[8] "**Large Hedge Fund Adviser**" is defined as any private fund adviser that had at least $1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter.

[9] *See* December Comment Letter at 12.

indirect exposure and then report detailed information about those underlying securities. For example, funds would need to look through their investments to determine exposure to U.S. Treasury securities. It is unclear whether funds would need to look through their investors to determine exposure to U.S. Treasury securities for purposes of the unencumbered cash test. Accordingly, until the Commissions adopt the September Proposed Rules and determine the definition of "cash equivalent," the SEC should not adopt the February Proposed Rules and require compliance with those rules.

3. Look-Through Provision—Scope of Current Reporting Requirements in February Proposal

The triggering events for Large Hedge Fund Advisers in the February Proposed Rules apply solely with respect to "Qualifying Hedge Funds," defined as "any hedge fund that has a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter." Thus, the definition of Qualifying Hedge Fund operates on an aggregated basis, requiring funds to combine net asset value of any feeder funds, parallel funds, etc. The September Proposed Rules, by contrast, requires reporting on a disaggregated basis for many master-feeder structures and trading vehicles. It is unclear how the disaggregated approach in the September Proposal will affect the February Proposal, if at all. It is incumbent upon the SEC to clarify the relationship between the two Proposals before Adopting the February Proposal and requiring compliance with its provisions.

4. Definition of Hedge Fund

The September Proposed Rules sought comment on a potential alternative definition of "hedge fund" to remove the default treatment of a commodity pool as a hedge fund to permit advisers to report information on Form PF in a manner that they believe best represents the type of fund and the type of reporting that is most relevant to the fund. Until the Commissions adopt the September Proposed Rules, it will be unclear whether certain funds would be required to create a reporting system for the hedge fund triggers (in proposed new Section 5) or the private equity fund triggers (in proposed new Section 6) in the February Proposed Rules. Accordingly, the SEC must adopt the definition of hedge fund, or determine to leave it unchanged, prior to adopting the February Proposed Rules and requiring implementation.

Each of these changes potentially impacts how firms will implement the February Proposed Rules. Therefore, until the Commissions adopt the September Proposed Rules, we believe it is important that the SEC not adopt and require advisers to comply with the February Proposed Rules.

II. Operational and Implementation Challenges

The foregoing conclusion is supported by a consideration of the operational challenges of complying with the Proposals. The implementation of both Proposed Rules will require a significant amount of time because they will require significant changes to advisers' systems as well as service providers' systems that help many advisers prepare their Form PF filings. The need to develop, build, and test those systems will require significant time, especially because the Proposed Rules significantly change and expand the scope of information required to be reported on Form PF.

At many advisers, the individuals responsible for current Form PF filings will be responsible for implementing two distinct sets of fundamental changes to Form PF, creating new and additional implementation challenges relative to the adoption of the initial Form PF. In many cases, the adviser will likely need to renegotiate service contracts with administrators and other third-party service providers that assist with Form PF preparation and filing. This is a process that will be time consuming, partially beyond the control of reporting advisers, and costly. This will prove particularly costly to smaller and emerging managers, who have less resources to devote to compliance with the Proposals.

More generally, as noted above, the Commissions are requiring a fundamental revision of Form PF in the September Proposed Rules and the SEC is proposing to add new reporting sections to Form PF in the February Proposed Rules. Given the complexity of these changes and the need for the same persons at a firm to design and test the new systems, it is far more efficient and costs-effective if advisers are able to implement all of the changes to Form PF at the same time when they can consider the effects of the changes together rather than having to update their Form PF reporting system only to fundamentally rebuild it again later. In this regard, it should be noted that firms will need to design, implement, and test this new reporting system at the same time they are complying with current Form PF reporting requirements.

It is furthermore important to note that, in addition to implementing the changes required by any final rules adopting the February Proposed Rules and the September Proposed Rules, advisers will need to build and implement systems and policies and procedures in response to the numerous other rules that the SEC (and other regulators) has proposed in the year and a half.[10] If adopted, each of these rules will require a significant compliance build on the part of advisers, including the hiring of new compliance personal and technology specialists.

III. Conclusion

If the SEC is determined to proceed with adopting the February Proposed Rules, we believe it is critical that the SEC appreciate the ways in which the February Proposal and the September Proposal are intertwined and pose significant implementation challenges. For the

[10] *See* Appendix.

reasons set forth in this letter, we believe the SEC should not adopt the February Proposed Rules and require firms to comply with the new rules prior to the Commissions jointly adopting the September Proposed Rules. In this regard, we recommend that the SEC (and together with the CFTC, as applicable) provide an implementation period of 24 months from the later of the adoption of the February Proposed Rules or the September Proposed Rules to give firms adequate time to design, implement, and test the new reporting systems, which they will need to do while simultaneously complying with the current Form PF reporting requirements.

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MFA appreciates the opportunity to provide comments to the Commissions on the sequencing of adoption of the Proposals. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact Matthew Daigler, Vice President & Senior Counsel, or the undersigned, at (202) 730-2600, with any questions that you may have regarding this letter.

Very truly yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: The Hon. Gary Gensler, SEC Chairman
The Hon. Hester M. Peirce, SEC Commissioner
The Hon. Allison Herren Lee, SEC Commissioner
The Hon. Caroline A. Crenshaw, SEC Commissioner
The Hon. Mark T. Uyeda, SEC Commissioner
Mr. William Birdthistle, Director, Division of Investment Management

The Hon. Rostin Benham, CFTC Chairman
The Hon. Kristin N. Johnson, CFTC Commissioner
The Hon. Christy Goldsmith Romero, CFTC Commissioner
The Hon. Summer K. Mersinger, CFTC Commissioner
The Hon. Caroline D. Pham, CFTC Commissioner

Appendix

The following is a list of the primary proposals issued by the SEC since December 2021 that affect investment advisers:

1. Safeguarding Advisory Client Assets
2. Prohibition Against Conflicts of Interest in Certain Securitizations
3. Regulation Best Execution
4. Order Competition Rule
5. Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders
6. Disclosure of Order Execution Information
7. Outsourcing by Investment Advisers
8. Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities Fund Advisers
9. Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers
10. Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies
11. Special Purpose Acquisition Companies, Shell Companies, and Projections
12. Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer
13. Short Position and Short Activity Reporting by Institutional Investment Managers
14. Modernization of Beneficial Ownership Reporting;
15. Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies
16. Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews
17. Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers
18. Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange”; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities
19. Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions