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Submitted via Email to: rule-comments@sec.gov
Submitted via CFTC Comments Portal at http://comments.cftc.gov

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

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Adviser
(File No. S7-22-22)

Dear Ms. Countryman and Mr. Kirkpatrick:

We are writing in response to the request of the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") (together, the "Commissions") for comments to the above-captioned proposed amendments to Form PF. We recognize the time and effort invested in the proposed amendments and appreciate the opportunity to comment.

Schulte Roth & Zabel LLP is an international law firm, with offices in New York, London and Washington, D.C. Our clients include many advisers to private funds that may be affected by the proposed amendments as well as institutional investors and limited partners. We regularly advise private fund manager clients with respect to their regulatory reporting obligations including with respect to Form PF. These comments, while informed by our experience in representing these clients, represent our own views and are not intended to reflect the views of the clients or the firm.

Introduction

On August 10, 2022, the Commissions released a proposal to amend Form PF. The proposed "Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers" (the "Form PF Proposed Rules") were subsequently published in the Federal Register on September 1, 2022. The Form PF Proposed Rules would change both the timing and manner of presenting information in the form, as well as drastically increasing the amount of new data and information to be gathered, calculated and reported.

We appreciate the Commissions' efforts to bolster investor protection and enhance the Financial Stability Oversight Council's ability to assess systemic risk. In light of the complexity of the proposals, and the timing of the comment period, it is not feasible to analyze all of the proposed changes, their implications and to identify alternatives. We would welcome the opportunity to have more time to study the proposals and provide additional comments. In the meantime, below are some responses to specific questions about which the Commissions seek comment.

Trading Vehicles

> **9. Would the proposed amendments regarding trading vehicles provide a clearer picture of how private funds use trading vehicles and their market risks? Would the proposed amendments provide improved visibility into position sizes and counterparty exposure? Is there a better way to meet these objectives? For example, should Form PF require advisers to report whether a trading vehicle is ring-fenced for liability purposes?**
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> **10. Under the proposal, if an adviser reports a trading vehicle as a separate reporting fund, the adviser must report the trading vehicle as a hedge fund, qualifying hedge fund, liquidity fund, private equity fund, or other type of fund, if it meets certain requirements. Would this proposed requirement help ensure advisers could not avoid reporting the trading vehicle as a private fund that is subject to additional reporting, such as a qualifying hedge fund? Is there a better way to meet this objective? Should Form PF instead only require advisers to report trading vehicles as investments in other funds?**

Comment: Private fund sponsors frequently create separate vehicles to make investments in particular issuers for a variety of reasons including tax considerations, limiting liability, and managing expenses and reporting. Under the Proposed Rules, when more than one fund invests through a trading vehicle, the adviser must treat the vehicle as a separate fund and report it as such on Form PF. The Commissions indicate that such reporting will be useful because without it "the activities of multiple reporting funds are blended and potentially obscured." We believe it would be clearer and less burdensome for trading vehicles owned by more than one fund to be treated on Form PF as any other investment in another private fund. In the alternative, we suggest utilizing specific questions about such trading vehicles instead of requiring an entire report on each trading vehicle. In light of the number of such vehicles and the inapplicability of many of the Form PF items, a more tailored approach would be both less burdensome and clearer.

Reporting Timelines

14. Should we reduce the number of days by which filers must update Form PF to receive data sooner? How would this relieve or increase burdens? For example, should Form PF require large hedge fund advisers to update Form PF within 30 calendar days after the end of each calendar or fiscal quarter, rather than 60 calendar days?

Comment: The burden on many advisers to file Form PF within 60 days is already substantial. With large and complex portfolios, there are significant steps that must be taken to gather the information, calculate the numbers, and prepare the reporting. While service providers can be of assistance, the fund manager itself and its key personnel often must be involved in this process. To add substantial additional reporting as set forth in the Proposed Rules would be a significant additional burden; to cut the time of preparing the reports from 60 to 30 days would be extremely challenging and potentially undermine the quality of the data or require key personnel to devote less time to work necessary to serve clients.

Withdrawal or Redemption Rights

33. Should we require all advisers to report information about withdrawal and redemption rights about all the reporting funds they advise, as proposed? Alternatively, should only certain advisers report this information for only certain reporting funds? If so, which ones and why?

Comment: The Proposed Rules would require all advisers to provide information on withdrawal or redemption rights for all reporting funds, instead of just large hedge fund advisers reporting on qualifying hedge funds. We believe this additional information will be of limited benefit for systemic risk monitoring purposes because of the smaller size of the funds at issue, and because it will not reflect gating mechanisms used by many hedge funds.

Inflows and Outflows

41. Should proposed Question 14 apply to advisers to all reporting funds, as proposed, or only certain advisers to only certain reporting funds?

Comment: The Proposed Rules would require quarterly filers to report on monthly inflows and outflows. The Commissions indicate that such data will allow them and FSOC to "for example, more accurately assess how much the private fund industry has grown from flows versus performance." We believe requiring the gathering, analysis and reporting of such information would create an additional burden with little benefit for systemic risk monitoring purposes beyond what could be achieved with a less burdensome approach, such as annual reporting of such information.

"Deemed" Hedge Funds

97-101 These questions address the definition of "hedge fund" in the context of categorization and reporting. Specifically, these question ask whether to narrow the definition of "hedge fund" so that it covers funds that not only have the ability to

incur significant leverage, but have actually done so in the past 12 months, or the ability sell short, but have actually done so in the past 12 months.

Comment: We believe the definition of hedge fund should incorporate the actual operation of the fund and not focus solely on the theoretical potential activity in the future. We believe Form PF data and reporting that reflects the actual operations will be more meaningful and useful.

Market Factor Effects

168 Should Form PF require advisers to qualifying hedge funds to respond to all market factors, as proposed? Alternatively, should Form PF allow advisers to omit a response to any market factor that it does not regularly consider in formal testing in connection with the reporting fund's risk management? Do advisers or their reporting funds regularly consider all, some, or other market factors we are proposing? If so which ones and why? Are adjustments needed for advisers that use a different stress test methodology than that required by the question as proposed?

Comment: The Proposed Rules would require advisers to qualifying hedge funds to report information with respect to market factors they do not regularly consider in formal testing in connection with the reporting fund's risk management. The justification provided for this requirement is to allow the Commissions and FSOC to better track common market factor sensitivities. We do not believe that all advisers should be required to adopt standardized testing methodologies that they have determined are not relevant or material to the portfolios they manage.

Implementation Period

The Proposed Rules do not include a proposed implementation period. We believe there needs to be sufficient time to be available to develop the systems, processes and mechanisms of the substantially expanded information in Form PF. There will be a substantial burden on the part of personnel at fund managers in the form of significant new information gathering, analysis and reporting. We believe it will take at least 24 months for firms to develop the technologies and processes necessary to satisfy the substantial new reporting/requirements imposed by the Proposed Rules. We suggest that the Commissioners take the practical challenges of implementation into consideration including the other new reporting requirements many private fund managers will need to implement to satisfy the other new rulemakings proposed this year.

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We would be pleased to respond to any inquiries you may have regarding our letter or our views on the Proposed Amendments more generally. Please direct any inquiries to Marc Elovitz at [redacted].

Respectfully submitted,

SCHULTE ROTH & ZABEL LLP

cc: SEC
The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
William Birdthistle, Director, Division of Investment Management

CFTC
The Honorable Rostin Behnam, Chair
The Honorable Kristin N. Johnson, Commissioner
The Honorable Christy Goldsmith Romero, Commissioner
The Honorable Summer K. Mersinger, Commissioner
The Honorable Caroline D. Pham, Commissioner
Amanda Olear, Director, Division of Market Participants