LACERA Los Angeles County Employees Retirement Association
300 N. Lake Ave., Pasadena, CA 91101 / PO Box 7060, Pasadena, CA 91109-7060 / www.lacera.com / 626/564-6000

July 28, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
via email at rule-comments@sec.gov

RE: Proposed Rules Regarding Private Fund Advisers and Documentation of Registered Investment Adviser Compliance Reviews (File No. S7-03-22)

Dear Ms. Countryman:

The Los Angeles County Employees Retirement Association (LACERA) appreciates the opportunity to submit comments in response to the Securities and Exchange Commission's (SEC or Commission) proposed rule related to private fund advisers and documentation of registered investment adviser compliance reviews under the Investment Advisers Act of 1940, as published in the Federal Register on March 24, 2022 (Proposed Rule).[1]

LACERA is the largest county pension system in the United States, with approximately $73 billion in plan assets as of May 30, 2022, including investments in private investment vehicles. LACERA's mission is "to produce, protect, and provide the promised benefits" for over 170,000 beneficiaries who serve the most populous county in the nation. We encourage public policies governing financial markets that promote sustainable value to enhance our ability to fulfill our mission.

Our comments to the Commission are guided by the investment beliefs and principles articulated in our *Investment Policy Statement* and *Corporate Governance and Stewardship Principles*[2]—such as support for strong investor rights, transparency, and alignment of interests—which we encourage in market practices and public policies to strengthen our ability to exercise our fiduciary duties, produce and protect investment returns, and fulfill our mission. We accordingly focus our comments below on several specific provisions of the Proposed Rule.

1. Transparency in Fees and Expenses

LACERA welcomes and is generally supportive of the Proposed Rule's requirements that registered investment advisers disclose all direct and indirect fees and expenses quarterly. Prudent consideration and monitoring of fees—as laid out in our investment beliefs—is an integral component of a successful long-term investment strategy. And clarity in fee reporting is crucial to our ability to exercise our fiduciary duty.

[1] United States Federal Register. P*rivate Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews Proposed Rule*. March 24, 2022. Available at: https://www.govinfo.gov/content/pkg/FR-2022-03-24/pdf/2022-03212.pdf.
[2] LACERA. *Investment Policy Statement.* August 2021. Available at; https://lacera.com/sites/default/files/assets/documents/general/IPS-111921.pdf. *Corporate Governance and Stewardship Principles.* March 2021. Available at: http://www.lacera.com/BoardResourcesWebSite/BoardOrientationPdf/policies/CorpGovPrinciples.pdf.

LACERA operates in accordance with California Assembly Bill No. 2833 (AB2833), as passed in 2016, which requires annual disclosures by California public investment funds of their share of fees, expenses, and carried interest, among other things from certain private fund investment vehicles. LACERA requires private fund investment advisers to report requisite information about fees and expenses in order to both exercise our fiduciary duties to monitor investments and to comply with the terms of AB2833. We have not found that fee transparency requirements have been detrimental to our investment program or objectives. To the contrary, greater transparency enables greater insights into the quality and performance of private fund investment advisers and strengthens our position to monitor our investments.

The Proposed Rule's requirements to enhance fee transparency are a crucial measure to level the playing field, so that all investors receive—and can act on—the same information. Greater transparency enables capital providers to scrutinize and monitor fee practices, thereby positioning investors to align fee terms and practices with our fiduciary interests.

We believe the Commission could improve the proposal by going beyond fund-level disclosures of fees and expenses and supporting LP-level fee reporting. LACERA routinely negotiates fee and expense reporting on a *pro rata* or limited partner level. This information enables us to monitor fund fees and performance, abide by internal portfolio and financial reporting, and adhere to the terms of AB2833.

We believe the Commission should facilitate elevating market practices on fee and expense reporting and avoid any provisions by which investment advisers may limit fee reporting to that required by the Commission. We therefore encourage the SEC to give consideration to mechanisms by which investment advisers continue to provide LP-level reporting of fees and expenses, when requested.

2. Investor Rights

We are opposed to the Proposed Rule's provisions that may limit investors' ability to negotiate side letters to limited partner agreements. We recognize that the Commission's aim is to enhance market transparency by prohibiting any side letters unless certain terms are met, such as disclosure to other limited partners. In practice, we believe such a provision would risk creating a chilling effect on limited partners' ability to secure side letters, thereby creating several deleterious effects.

First, any limitation to act in the sole and best interests of our plan participants and negotiate the best fees and terms on their behalf would be an obstruction to our ability to exercise our fiduciary duties. Investment advisers routinely go to market to raise capital and offer a prepacked set of terms. Our ability to assess and negotiate those terms is consistent with and compelled by our fiduciary duties. It runs counter to the Commission's mission, in our view, to impede investors' ability and right to negotiate the best terms in our fiduciary interests.

Second, as a public pension plan, we are required to procure certain provisions with private fund advisers in order to lawfully commit capital to private funds, such as the requisite reporting of LP-level fees and expenses to comply with AB2833, as noted above. We are concerned that, in an effort to *enhance* fee transparency, the Proposed Rule would promulgate provisions that *impede* investors' ability to secure greater fee transparency, as required and procured through side letters, in adherence with the terms of AB2833.

Third, side letters are a crucial means for market innovation. Investors have limited tools to advance market practices. Side letters are key—if not the most powerful—among them. For example, LACERA routinely procures side letters requiring general partners to report on talent management policies and practices pertaining to inclusion, diversity, and equity. We secure side letters prompting private fund advisers to report how they identify and integrate financially material environmental, social, and governance factors (ESG) in the investment mandate. Our side letters do not prescribe practices, but rather prompt reporting to evaluate the general partner's practices and investment process. Side letters, in effect, constructively advance reporting on evolving market practices, thereby promoting greater transparency to investors.

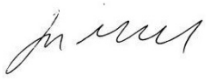
Although the Proposed Rule's intent may be to enable broader participation by limited partners in any terms contained within side letters, we caution that placing restrictions on side letters (including prohibiting side letters unless certain terms are met) risks rendering private fund advisers more reluctant to agree to separate terms *at all.* Such a chilling effect would constrain our ability to exercise fiduciary duties, abide by requisite legal terms for our participation in private markets, and advance market innovation and best practices. It is our view that any provisions that—in letter or effect—impede investors ability to negotiate side letters would be affirmatively damaging to investor interests. We encourage the Commission to support existing industry practices, such as most-favored-nation (MFN) provisions.

3. Alignment of Interests

LACERA is supportive of the Proposed Rule's provisions to require private fund advisers to be held to the same fiduciary standards as we have as investors. These provisions are important guidance to mitigate prospective conflicts of interests or sole discretion. We also support submitted comments from the Institutional Limited Partners' Association (ILPA) encouraging the Commission to clarify that any penalties or disgorgement resulting from an enforcement action that terminates in a settlement rather than a court finding is borne by the private fund adviser and not indemnifiable.[3]

We commend the Commission for soliciting market input on the Proposed Rule. Please contact the undersigned at 1 (626) 564-6000 or jgrabel@lacera.com if you would like to further discuss any of the above remarks.

Sincerely,



Jonathan Grabel
Chief Investment Officer

CC: The Honorable Gary Gensler, Chair
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Jaime Lizárraga, Commissioner
The Honorable Hester Peirce, Commissioner
The Honorable Mark T. Uyeda, Commissioner

[3] Institutional Limited Partners Association. Comment Letter to the Securities and Exchange Commission. April 25, 2022. Available at: https://www.sec.gov/comments/s7-03-22/s70322-20126586-287243.pdf.