

June 24, 2022

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

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

Dear Secretary Countryman:

CFA Institute respectfully submits this second comment letter to the Securities and Exchange Commission (“SEC” or “Commission”) in response to its published notice of proposed rules for Private Fund Advisers¹ (the “Proposed Rules” or “Proposing Release.”) Our comments are primarily focused on the questions asked about the quarterly statements. Our decision to not respond to any specific question should not be viewed as an indication of support or opposition to such matters.

A. Quarterly Statements

1. Should we, as proposed, require advisers to private funds to prepare a quarterly statement providing standardized disclosures regarding the cost of investing in the private fund and the private fund’s performance and distribute the quarterly statement to the fund’s investors? Should we instead require advisers to provide investors with personalized information that takes into account the investors’ individual ownership stake in the fund in addition to, or in lieu of, a statement covering the private fund? If so, what information should be included in the personalized disclosure? For example, should the statement reflect specific fee arrangements, including any offsets or waivers applicable only to the investors receiving the statement?

CFA Institute Response

As we discussed in our first comment letter, we agree with requiring fund-level fee and expense information because this information will allow an investor to determine if the proper fees and expenses were charged to the fund. However, when fund-level information does not allow an investor to determine their pro-rata portion of fees and expenses, we recommend requiring advisers to also provide (or make available) investor-level fee and expense information.

With respect to performance information, fund-level performance typically does not represent any specific investor’s experience. We recommend requiring advisers to provide performance information that is appropriate for the investor.

¹ SEC, “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,” 87 FR 16886 (March 24, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-03-24/pdf/2022-03212.pdf>

2. Do advisers currently provide personalized fee, expense, and performance disclosures? If so, what other types of information do advisers or funds typically include? Do they automate such disclosures? How expensive and complex would it be for advisers to create and deliver personalized disclosures? How useful would it be for investors to receive personalized disclosures?

CFA Institute Response

Advisers of funds that would be considered illiquid funds under the Proposed Rules typically provide larger investors with personalized fee and expense information, as well as cash flow information, but not personalized performance information. However, smaller investors may not receive such information.

Advisers of funds that would be considered liquid funds under the Proposed Rules typically do not provide personalized fee, expense, and performance disclosures. They typically provide share class level information, and may also provide information for all share classes to all investors.

In terms of automation, many private equity advisers already use the Institutional Limited Partners Association (ILPA) Reporting Template². Many managers of illiquid funds upload their cash flow information into databases that are available to investors, such as the Burgiss Private i Platform.

We believe that, in many instances, advisers are already doing some of the calculations that would be required by the Proposed Rules. However, they may not be doing these calculations exactly as specified by the Proposed Rules, or within the proposed timeframes. For example, currently it is not common practice for advisers to calculate internal rates of return (IRRs) without the impact of subscription facilities. As another example, when calculating gross returns, many advisers calculate returns that are gross of investment management fees and performance-based fees, but are net of all other fund fees and expenses. Quarterly and annual reporting is not typically done with the speed that is proposed. We believe that it would be very expensive and burdensome for advisers to modify their existing procedures so they are able to create and deliver personalized information within the proposed time frame. It would be even more expensive and burdensome for those advisers that do not currently provide performance information on a quarterly basis to investors. As we stated in our first comment letter, we recommend adjusting the delivery times, to allow enough time for accurate information to be calculated, and to align more closely with current industry standards and practices. This would streamline reporting and ease the compliance burden.

We believe that larger investors are most interested in receiving personalized disclosures. We understand that smaller investors often do not require, and may not want to receive, personalized fee or expense information. These facts are what caused us to recommend, in our first comment letter, that advisers should be required to make the information available to investors, as opposed to requiring the information to be provided to investors.

3. Would investors find data regarding the private fund's fees, expenses, and performance useful given that certain investors may have different economic arrangements with the adviser, such as fee

² See <https://ilpa.org/reporting-template/>

breaks or expense caps? Should we require advisers to disclose in the quarterly statement whether investors are subject to different economic arrangements, whether documented in side letters or other written agreements or, to the extent applicable, as a result of different class terms? If so, should we require advisers to list the rates or otherwise show a range?

CFA Institute Response

When all investors in a fund do not pay the same fees and expenses, we believe that it would be helpful for advisers to disclose this fact. We believe that it would be appropriate for advisers to provide information about the range of investment management and performance fees that are available, including any fee waivers or expense caps. Disclosures about other fees and expenses should be required only when it affects other investors in the fund. For example, if fees and expenses are not allocated on a pro rata basis, and other investors could be paying more as a result of another investor's terms, a disclosure should be made. On the other hand, when an investor is receiving a rebate outside of the fund, this fact should not be required to be disclosed because it does not affect other investors.

4. The proposed rule would require an adviser to distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person. Would this provision eliminate burdens where there are multiple advisers to the same fund, while still providing the fund's investors with the benefits of the quarterly statement? Would the fund's primary adviser typically prepare and distribute the quarterly statement in these circumstances? How would advisers that do not prepare and distribute a quarterly statement in reliance on another adviser demonstrate compliance with this requirement?

CFA Institute Response

We believe that the fund's named investment advisor should be responsible for distributing the quarterly statement. We believe that the language included within the Proposed Rules, which states, "...unless such a quarterly statement is prepared and distributed by another person" is not necessary. An advisor could always arrange to have a third party, such as a fund administrator, distribute this information. Advisors often hire third parties to fulfill regulatory requirements. As an example, advisers that are required to distribute financial statements to investors may not directly distribute this information to investors and may use a fulfillment service. We believe the same approach could be taken here.

5. The proposed rule would require advisers to prepare and distribute a quarterly statement disclosing certain information regarding a private fund's fees, expenses, and performance. Are there alternative approaches we should require to improve investor protection and bring greater efficiencies to the market? For example, should we establish maximum fees that advisers may charge at the fund level? Should we prohibit certain compensation arrangements, such as the "2 and 20" model? Should we prohibit advisers from receiving compensation from portfolio investments to the extent they also receive management fees from the fund? Should we require advisers to disclose their anticipated management fee revenue and operating budget to private fund investors or an LPAC or other similar body (despite the limitations of private fund governance mechanisms, as discussed above) on an annual or more frequent basis? Should we impose

limitations on management fees (which are typically paid regardless of whether the fund generates a profit), but not impose limitations on performance-based compensation (which is typically tied to the success of the fund)? Should we prohibit management fees from being charged as a percentage of committed capital and instead only permit management fees to be based on invested capital, net asset value, and other similar types of fee bases? Should we prohibit certain expense practices or arrangements, such as expense caps provided to certain, but not all, investors?

CFA Institute Response

We believe there should not be any prohibitions on the amount of fees that can be charged, or any caps or limits placed on these compensation arrangements. Fees and expenses should remain negotiable. We also believe that advisers should not be required to disclose their anticipated management fee revenue and operating budget to private fund investors or an LPAC or other similar body.

6. Similarly, should we prohibit certain types of private fund performance information in the quarterly statement? For example, should we prohibit advisers from presenting performance with the impact of fund-level subscription facilities? Should we prohibit advisers from presenting combined performance for multiple funds, such as a main fund and a co-investment fund that pays lower or no fees?

CFA Institute Response

We do not believe that any specific type of performance information should be prohibited in the quarterly statement. Instead, we believe that all performance information should be permitted, as long as it is not false or misleading. A similar concept is included in the Global Investment Performance Standards (GIPS®), and we have found that this overarching requirement works well to address situations that are not specifically addressed within the GIPS standards. Such an approach would also be consistent with the general prohibitions included in the SEC Marketing Rule, which are intended to prohibit certain marketing practices as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts.

As we discussed in our first comment letter, we recommend requiring IRRs both with and without the impact of subscription facilities when the subscription facility is not used for shorter-term, efficiency purposes and instead is used for longer time periods. The IRR with the impact of the subscription facilities reflects the actual investor return and is typically used to calculate performance-based compensation. Requiring IRRs both with and without the impact of subscription facilities would allow investors to understand the impact of the adviser's decision to use a subscription facility.

We believe that, in many cases, aggregating fee, expense, and performance information at the fund level would not provide meaningful information to any specific investor, and may also conflict with the requirements of the Marketing Rule when there are non-fee-paying assets. It is clear from the definition of "net performance" that the intention is to require net returns that reflect the deduction of any performance-based compensation, which would include carried interest. However, if net returns are calculated using total fund assets, the re-allocation of capital from limited partners

to the general partner for the carried interest would not decrease the total fund's value and, therefore, would not be reflected in the fund's net return. As stated in our first comment letter, we recommend requiring net returns to be calculated using only fee-paying assets. This would be consistent with returns that are calculated for financial statement purposes, where only limited partner assets are used. If the Adopting Release permits an adviser to present a net return that reflects assets that are non-fee-paying, we recommend requiring the adviser to disclose when carried interest has been accrued but it is not reflected in the net return, as well as how much of the assets are non-fee-paying assets.

1. Fee and Expense Disclosure

7. Should we require advisers to disclose all compensation and fund expenses as proposed? Do commenters agree with the scope of the proposal? Why or why not?

CFA Institute Response

Fund Table

As we discussed in our first comment letter, we generally agree with the scope of the fee and expense disclosures in the Fund Table as proposed. Information at the fund level will allow investors to understand the type and amount of fees and expenses borne by the fund, and whether the fees and expenses comply with the fund's governing agreement. Providing fund-level fees and expenses will also allow investors to assess whether the amounts of the fees and expenses are reasonable, and would allow for comparison with other funds. We have one additional important suggestion. The rule text for the fund table requires, "A detailed accounting of all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its related persons by the fund..." in paragraph (b)(1). and, "A detailed accounting of all fees and expenses paid by the private fund..." in paragraph (b)(2).

The word "paid" in paragraph (b)(2) would not capture fees and expenses that have been accrued but not yet paid. This would be inconsistent with financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the performance disclosures of the Proposed Rules. Under GAAP, investment funds must reflect liabilities (e.g., compensation, fees, and expenses), on an accrual basis, not on a paid (cash) basis. The Proposed Rules require an adviser to present a Net IRR and MOIC that reflect fees and expenses "borne by the private fund." The term "borne by the private fund" would include accrued fees and expenses. The current language would result in performance that reflects fees and expenses on an accrual basis but a Fund Table that presents fees and expenses on a cash basis.

We appreciate that the language in paragraph (b)(1) needs to be slightly different. However, we recommend using consistent terminology within the rule text and definitions where possible. Specifically, we recommend using the term "borne by the private fund" in paragraph (b)(2), which is a widely used term in fund offering documents and would capture accrued fees and expenses.

Portfolio Investment Table

As we discussed in our first comment letter, we believe that portfolio investment compensation should be required only at the fund level. We do not believe that compensation information at the

portfolio investment level would be useful to investors, nor would the ownership percentage of each investment.

Disclosure of Fee and Expense Calculations

As we discussed in our first comment letter, we recommend requiring advisers to provide or offer to provide the supporting fee calculations rather than disclosing how an investor would do these calculations themselves.

8. Would the proposed content result in fund-level fee and expense disclosure that is meaningful to investors? Are there other items that advisers should be required to disclose in the fund table? Are there any proposed items that we should eliminate? Would more or less information about the fees and expenses charged to the fund be helpful for investors? Are there any revisions to the descriptions of fees that would make the proposed disclosure more useful to investors?

CFA Institute Response

As we previously stated, we believe that fund-level fee and expense information is meaningful to investors. However, we recommend requiring advisers to provide or make available investor-level information as well.

We believe that all types of fees and expenses borne by the fund do not need to be listed within the Proposed Rules. We believe that the current language suffices.

9. Instead of the proposed approach, should we prescribe a template for the fund table? Would the increased comparability of a template be useful to investors? Would a template be flexible enough to accommodate changes in the types of fees and expenses as well as the types of offsets, rebates, or waivers used by private fund advisers? Would a template necessitate repeated updating as the industry evolves?

CFA Institute Response

As we discussed in our first comment letter, we believe that the Proposed Rules strike the correct balance between flexibility and standardization by requiring expenses to be reported in a tabular format but not requiring a specific tabular format. It would be impossible to create a template that would be appropriate for all funds, given the variety of fund types and the variety of fees and expenses. While we do not believe a specific template should be mandated, we recommend including in the Adopting Release examples of how that tabular format might look at the fund level. We included sample tables in our first comment letter that could be used as examples. If the final rules require a template, we recommend using our suggested templates.

10. Should we include any additional definitions of terms or phrases for the fund table? Should we omit any definitions we have proposed for the fund table?

CFA Institute Response

We do not believe additional definitions are needed, and no definitions should be omitted.

11. The proposed rule would require an adviser to include the compensation paid to a related person sub-adviser in its quarterly statement. For private funds that have sub-advisers that are not related persons, should we require a single quarterly statement showing all adviser compensation (at both the adviser and sub-adviser levels)? In cases where a nonrelated person sub-adviser does not prepare a quarterly account statement in reliance on the adviser's preparation and distribution of the quarterly statement to the fund's investors, how would advisers reflect the compensation paid to the sub-adviser and its related persons? Do commenters agree that such compensation would be captured as a fund expense? Should we require a separate table covering these fees and expenses, as well as a separate table showing portfolio investment compensation paid to the sub-adviser or its related person? How would advisers operationalize this requirement in these circumstances?

CFA Institute Response

We believe that the proposed approach would capture all fees for investment advisory services borne by the private fund, including sub-advisory fees, and no additional requirements specific to sub-advisors are needed.

12. Do commenters agree with the scope of the proposed definition of "performance-based compensation"? Should we specify the types of compensation that should be included in the definition? For example, should the definition specify that the term includes carried interest, incentive fees, incentive allocations, performance fees, or profit allocations?

CFA Institute Response

As we discussed in our first comment letter, we recommend modifying the definition of performance-based compensation to include the concept of income. A private fund's total return is composed of capital gains/losses and income. Performance-based fees and carried interest are usually based on a total return. It may be easier to instead modify the definition to refer to the private fund's performance or returns instead of the fund's capital gains and/or capital appreciation.

We do not believe that the term "performance-based compensation" should be modified to include examples of performance-based compensation. Instead, we recommend including these items as examples of performance-based compensation within the Adopting Release. Terms and compensation types continue to change, and this approach would make the final rule more evergreen.

13. Should we only require the table to disclose adviser compensation and fund expenses after the application of any offsets, rebates, or waivers, rather than before and after, as proposed? If so, why?

CFA Institute Response

We agree with the proposal to require advisers to disclose adviser compensation and fund expenses before and after the application of any offsets, rebates, or waivers in the Fund Table. We believe it is common practice to present management fees before and after the application of any offsets, rebates, or waivers in financial statements and in commonly used industry templates.

14. Should we define offsets, rebates, and waivers? If so, what definitions should we use and why?

CFA Institute Response

We believe it is not necessary to define offsets, rebates, and waivers because these terms are widely used and commonly understood.

15. To the extent that offsets, rebates, or waivers are available to certain, but not all, investors, are there any operational concerns with reflecting and describing those offsets, rebates, or waivers in the fund-wide numbers presented in the quarterly statement? Are there alternatives we should use?

CFA Institute Response

As we discussed in our first comment letter, fund-level information may not allow an investor to determine their pro-rata portion of fees and expenses (including any offsets, rebates, or waivers) when all investors do not have the same terms. In such cases, we recommended requiring advisers to also provide (or make available) investor-level information. In some cases, such as for liquid funds with multiple share classes, this could be accomplished by providing representative investor-level information (e.g., share class level information) that enables an investor to calculate their pro rata allocation of fees and expenses. This information is necessary for many investors who are required to report their pro rata portion of private fund fees and costs to their governing bodies.

16. Should we require advisers to disclose the amount of any offsets or rebates carried forward during the reporting period to subsequent periods to reduce future adviser compensation as proposed? Would this information be helpful for investors? Do advisers already provide this information in the fund's financial statements or otherwise?

CFA Institute Response

We believe that disclosing the amount of any offsets or rebates carried forward during the reporting period to subsequent periods would be helpful to investors.

17. Should we require advisers to provide any additional disclosures regarding fees and expenses in the quarterly statement? In particular, should we require any disclosures from an investment adviser's Form ADV Part 2A narrative brochure (if applicable) to be included in the quarterly statement, such as more details about an investment adviser's fees?

CFA Institute Response

As we discussed in our first comment letter, instead of requiring disclosure of fees and expenses, we believe that an adviser should be required to provide supporting calculations for an adviser's fees upon request. Those investors that wish to scrutinize fee and expense calculations would then have the ability to obtain the needed information. If our recommendation to require an adviser to provide supporting calculations upon request is not accepted, we recommend requiring accompanying disclosure that is sufficient to allow an investor to understand and replicate the calculations. This language would need to be more detailed than the language that is currently required to be include in Form ADV Part 2A.

18. Should we tailor the disclosure requirements based on fund type? For example, should the requirements or format for hedge funds differ from the requirements and format for private equity funds? Are there unique fees or expenses for types of funds that advisers should be required to disclose or otherwise list as a separate line item? If so, how should we define these types of funds for these purposes? For example, should we use the definitions of such terms used on Form ADV?

CFA Institute Response

We believe that disclosure requirements should not be tailored for different types of funds beyond the proposed differences based on return types (IRR for illiquid funds and time-weighted returns for liquid funds).

19. Do any of the proposed requirements impose unnecessary costs or compliance challenges? Please provide specific data. Are there any modifications to the proposal that we could make that would lower those costs or mitigate those challenges? Please provide examples.

CFA Institute Response

As we discussed in our first comment letter, we believe that requiring portfolio investment compensation at the portfolio investment level as well as ownership percentages could lead to an unnecessary burden for advisers. We recommend removing those requirements from the rule.

Many private equity investors have built processes around the ILPA Reporting Template, and real estate investors are familiar with the NCREIF PREA Reporting Standards³. To the extent that an adviser can comply with the fee and expense reporting requirements by providing information that is consistent with their current templates and reports, this would lower costs of implementation. This approach would also help investors with their compliance monitoring process.

20. The proposed quarterly statement prescribes minimum fee and expense information that must be included. What are the benefits and drawbacks of prescribing the minimum disclosure to be included in the quarterly statement and otherwise permitting advisers to include additional information? Do commenters agree that we should allow advisers to include additional information? Would the inclusion of additional information affect whether investors review the quarterly statement?

CFA Institute Response

We agree with the approach of prescribing minimum information and allowing advisers to include additional information, subject to the requirement that the additional information is not false or misleading. This is the approach followed by the GIPS standards and this approach has worked well. We do not believe that the inclusion of additional information would affect whether investors review the quarterly statement.

21. Certain advisers use management fee waivers where the amount of management fees paid by the fund to the adviser is reduced in exchange for an increased interest in fund profits.⁴ Because fund

³ See <https://www.prea.org/research/standards/>

⁴ Management fee waiver arrangements often provide certain economic benefits for the adviser, such as the possibility of reducing and/or deferring certain tax obligations

agreements often document such waivers with complex and highly technical tax provisions, should we provide guidance to assist advisers in complying with the proposed requirement to describe the manner in which they are calculated or specify a methodology for such calculations?

CFA Institute Response

We agree that fee waiver calculations are often complex and highly technical. The same is true for many performance fee calculations. Because of this complexity, in our first comment letter we recommended requiring advisers to instead provide the supporting management fee calculation. We recommend clarifying within the Adopting Release that it is expected that the management fee waiver calculation would be a component of the management fee calculation. Also, there is no one standard method for calculating management fees or related items, including management fee waivers. We, therefore, do not believe that it would be helpful to specify a methodology for such calculations.

22. Should we permit advisers to exclude expenses from the quarterly statement if they are below a certain threshold? Alternatively, should we permit advisers to group expenses into broad categories and disclose them under single line item – such as “Miscellaneous Expenses” or “Other Expenses” – if the aggregate amount is de minimis relative to the fund’s size? Why or why not?

CFA Institute Response

As we discussed in our first comment letter, we recommend allowing for an “other expenses” category, which would include any individual expense that is less than 5% of total expenses. This approach would be consistent with Rule 6-07 of Regulation S-X⁵, which requires separate disclosure of each expense exceeding five percent of total expenses.

23. The proposed rule would require the initial quarterly statement for newly formed funds to include start-up and organizational fees of the fund if they were paid during the reporting period. Instead, should the proposed rule exclude those fees and expenses?

CFA Institute Response

We believe that the quarterly statement should reflect all fees and expenses borne by the fund for the quarter. This would include start-up and organizational fees. These expenses may be capitalized and expensed over time, even if they were paid at the fund’s inception. This is a good example for why we recommend modifying the definitions to refer to expenses that are borne by the fund, versus paid.

24. Should the table provide fee and expense information for any other periods? For example, should we require advisers to disclose all adviser compensation and fund expenses since inception (in addition to adviser compensation and fund expenses allocated or paid during the applicable reporting period)? If so, should we require since inception information only for certain types of funds, such as closed-end private funds, and not for other types of funds, such as open-end private funds?

⁵ See <https://www.govinfo.gov/content/pkg/CFR-2021-title17-vol3/pdf/CFR-2021-title17-vol3-part210.pdf>, p. 313.

CFA Institute Response

We believe that fee and expense information should be provided for the quarter and for the year to date. Providing year-to-date fees and expenses would be helpful to investors as they monitor the performance of the fund, including allowing them to determine if a performance fee may crystallize (i.e., become due and payable) at year end.

25. Would the proposed rule provide portfolio investment compensation disclosure that is meaningful to investors? Should the rule require advisers to disclose additional or different information in the portfolio-investment table? Would more information about the fees and expenses charged to portfolio investments be helpful for investors?

CFA Institute Response

As we discussed in our first comment letter, we believe that portfolio investment compensation should be disclosed at the fund level rather than at the individual covered portfolio investment level. Fund agreements typically establish offset percentages based on categories of portfolio investment compensation, and we believe that this information should align with how this information is typically presented to investors. Please see our first comment letter for an excerpt from the ILPA Reporting Template.

26. Should we include any additional definitions of terms or phrases for the portfolio investment table? Should we omit any definitions we have proposed for the portfolio investment table?

CFA Institute Response

We believe no changes are needed to the definition of terms or phrases for the portfolio investment table.

27. Is the proposed definition of “portfolio investment” clear? Should we modify or revise the proposed definition? For example, should we define “portfolio investment” as any person whose securities are beneficially owned by the private fund or any person in which the private fund owns an equity or debt interest? Alternatively, should we define “portfolio investment” as any underlying company, business, platform, issuer, or other person in which the private fund has made, directly or indirectly, an investment?

CFA Institute Response

With the current definition of portfolio investment, compensation paid to the investment adviser from broken deals would not be captured since a broken deal would not be considered a portfolio investment. If the intention is to have a private fund manager report all compensation from its investment activities, then the definition for “portfolio investment” should be modified to include broken deal investments.

28. Should we permit advisers to determine, in good faith, which entity or entities constitute the portfolio investment for purposes of the quarterly statement rule? For example, a fund of funds may indirectly invest in hundreds of issuers or entities. Depending on the underlying structure, control relationship, and reporting, the fund of funds’ adviser may have limited knowledge regarding such underlying entities or issuers. Should we exclude such entities or issuers from the definition of portfolio investment for such advisers? Is there a different standard or test we should use? Should

we require such adviser to conduct a reasonable amount of diligence consistent with past practice and/or industry standards? Why or why not?

CFA Institute Response

We agree that an adviser should be able to determine, in good faith, which entity or entities constitute the portfolio investment for purposes of the quarterly statement rule. We do not believe that a fund of funds, which may indirectly invest in hundreds of issuers or entities, should have to look through to the underlying entities or issuers. However, we appreciate the concern here whereby a fund might seek to invest in a company through a “shell” entity established primarily to avoid these disclosures. We believe that this issue should be discussed in the Adopting Release, where it should be stated that such an approach is not appropriate.

29. As discussed above, to the extent a private fund enters into a negotiated instrument, such as a derivative, with a counterparty, we would not consider the private fund to have made an investment in the counterparty. Do commenters agree with this approach? Why or why not? Should we adopt a different approach for derivatives or other similar instruments generally? For purposes of determining whether the fund has made an investment in an issuer or entity, should we only include equity investments? Should we exclude derivatives? Why or why not? How should exchange-traded (i.e., not negotiated) derivatives, including swaps and options, be treated for purposes of the rule?

CFA Institute Response

We agree that an investment in a negotiated instrument should not be considered a portfolio investment. While a fund’s performance will reflect such an investment, a derivative or similar instrument is not an entity or issuer that will pay fees to the adviser, and disclosures about compensation and ownership are not appropriate for these investments.

30. The proposed rule includes non-exhaustive lists of certain types of fees. Would this information assist advisers in complying with the rule? Should we add any additional types? If so, which ones and why?

CFA Institute Response

We believe that including a non-exhaustive list is a good approach. As mentioned previously, we recommend including broken deal fees in the Fund Table, and including broken deal compensation and accelerated fee payments (if permitted under the final rules) in the portfolio investment compensation table.

31. Should we require advisers to list each type of portfolio-investment compensation as a separate line item as proposed? Would this level of detail be helpful for investors with respect to portfolio-investment reporting? Given that many funds require a management fee offset of all portfolio-investment compensation, is this level of detail necessary or useful to investors? Should we instead require advisers to provide aggregate information for each covered portfolio investment? Should the rule permit advisers to use project or deal names or other codes, and if so, what additional disclosures are necessary for an investor to understand the nature of the conflicts?

CFA Institute Response

As we discussed in our first comment letter, we agree with requiring advisers to list each type of portfolio-investment compensation as a separate line item, but we recommend doing so at the fund level, similar to the ILPA Reporting Template. We believe that the percentage offsets are usually determined based on the type of compensation. This level of detail would help investors identify any conflicts of interest, and would allow investors to ensure the adviser is applying the agreed-upon offset percentages.

32. We considered only requiring advisers to disclose the amount of portfolio investment compensation after the application of any offsets, rebates, or waivers, rather than before and after. We believe the proposed approach would be more helpful for investors because investors would have greater insight into the compensation advisers initially charge and the amount they ultimately retain at the expense of the private fund and its investors. Do commenters agree? Why or why not?

CFA Institute Response

We agree with the requirement to include gross and net management fees in the Fund Table. However, we are struggling to understand how an advisor would present portfolio investment compensation both before and after the application of any offsets, rebates, or waivers. The portfolio investment compensation itself is what is being used as the offset of the management fees. We recommend referring to the ILPA Reporting Template to see how this information is typically reported. Additional clarification on this requirement and how it would be presented would be helpful.

33. We considered requiring advisers to disclose the total portfolio-investment compensation for the reporting period as an aggregate number, rather than providing the amount of compensation allocated or paid by each covered portfolio investment as proposed. However, we believe that investment-by-investment information would provide investors with greater transparency into advisers' fee and expense practices and thus be more helpful for investors. Do commenters agree? Should we require advisers to report a consolidated "top-line" number that covers all covered portfolio investments?

CFA Institute Response

As we discussed earlier, we believe that a "top line" number that covers all covered portfolio investments would be most helpful to investors.

34. Should we define the term "ownership interest"? If so, how should we define it? For purposes of the rule, should a private fund be deemed to hold an "ownership interest" in a covered portfolio investment only to the extent the fund has made an equity investment in the covered portfolio investment? Why or why not? What types of funds may not hold an "ownership interest" in a covered portfolio investment?

CFA Institute Response

As we discussed in our first comment letter, while the private fund's ownership percentage may be interesting information, our experience tells us that, in most cases, investors would not find this information to be useful. In addition, calculating the ownership interest could be quite difficult given

the complexity of capital structures. We recommend, therefore, not requiring ownership percentage of each covered portfolio investment to be provided to investors.

35. The proposed rule would require advisers to list the fund's ownership percentage of each covered portfolio investment. Because the definition of "portfolio investment" could capture more than one entity, will advisers be able to calculate the fund's ownership percentage? Are there any changes to the proposed rule text that could mitigate this challenge? If a portfolio investment captures multiple entities, should we require advisers to list the fund's overall ownership of such entities? If so, what criteria should advisers use to determine a fund's overall ownership?

CFA Institute Response

Please see our response to the prior question.

36. Should we require advisers to disclose how they allocate or apportion portfolio investment compensation among multiple private funds invested in the same covered portfolio investment? If so, how should the portfolio investment table reflect this information?

CFA Institute Response

We recommend requiring this information to be provided to investors upon request. We believe that the majority of investors would not be interested in this information. Taking this approach would allow those investors who are interested in this information to obtain it while not requiring investors to receive information that may not be meaningful to them.

37. Certain advisers have discretion or substantial influence over whether to cause a fund's portfolio investment to compensate the adviser or its related persons. Should the requirement to disclose portfolio-investment compensation apply only to advisers that have such discretion or authority? Should such requirement apply if the adviser is entitled to appoint one or more directors to the portfolio investment's board of directors or similar governing body (if applicable)? Is there another standard we should require?

CFA Institute Response

We believe that all adviser compensation should be disclosed, regardless of the adviser's involvement in determining that compensation. Any compensation the adviser receives or its related persons receive from the private fund's portfolio investments could offset the private fund's management fee. Disclosing the compensation along with the offset percentage provides transparency and could provide insight into any conflicts of interest.

38. We recognize that certain private funds, such as quantitative and algorithmic funds and other similar funds, may have thousands of holdings and/or transactions during a quarter and that those funds typically do not receive portfolio investment compensation. While the proposed rule would not require an adviser to include any portfolio investment that⁶ did not pay or allocate portfolio-investment compensation to the adviser or its related persons during the reporting period in its

⁶ Proposed rule 211(h)(1)-1.

quarterly statement, these advisers would need to consider how to identify such portfolio investment's payments and allocations for purposes of complying with this disclosure requirement. Should the rule provide any full or partial exceptions for such funds? Should we require investment-level disclosure for quantitative, algorithmic, and other similar funds only where they own above a specified threshold percentage of the portfolio investment? For example, should such funds only be required to provide investment-level disclosure where they own 25% or more ownership of any class of voting shares? Alternatively, should we use a lower ownership threshold, such as 20%, 10%, or 5%? Should we adopt a similar approach for all private funds, rather than just quantitative, algorithmic, and other similar funds? If so, what threshold should we apply? For instance, should it be 5%? Or 10%? A higher percentage?

CFA Institute Response

We do not believe the rule needs to provide an exception for such funds. Advisers will be able to easily determine that such funds do not pay portfolio investment compensation. We do not believe that a different type of ownership percentage should apply to such funds. The offering documents for these funds will explain how the fund invests.

39. Should we exclude certain types of private funds from these disclosures? If so, which funds and how should we define them? For example, should we exclude private funds that only hold (or primarily hold) publicly traded securities, such as hedge funds?

CFA Institute Response:

Please see our response to the prior question.

40. Should we require layered disclosure for the portfolio-investment table (i.e., short summaries of certain information with references and links to other disclosures where interested investors can find more information)? Would this approach encourage investors to ask questions and seek more information about the adviser's practices? Are there modifications or alternatives we should impose to improve the utility of the information for private fund investors, such as requiring the quarterly statement to present information in a tabular format?

CFA Institute Response

We do not believe that further information is needed. As we discussed in our first comment letter, providing portfolio investment compensation by type of compensation at the fund level should be sufficient.

41. Are there particular funds that may require longer quarterly statements than other funds? Please provide data regarding the number of funds that have covered portfolio investments and, with respect to those funds, the number of covered portfolio investments per private fund. Should the Commission take into account the fact that certain funds will have more covered portfolio investments than other funds? For example, should we require funds that have more than a specific number of covered portfolio investments, such as 50 or more covered portfolio investments, to provide only portfolio-investment level reporting for a subset of their covered portfolio investments, such as a specific number of their largest holdings during the reporting period (e.g., their largest ten, fifteen, or twenty holdings)?

CFA Institute Response

Please see our comments above. We believe that portfolio-level compensation should be provided at the fund level versus the portfolio investment level and that ownership percentages should not be required for each covered portfolio investment. If this approach is taken, then the rule will not need to address when portfolio investment-level reporting is and is not required.

42. The proposed rule would require advisers to list zero percent as the ownership percentage if the fund has completely sold or completely written off its ownership interest in the covered portfolio investment during the reporting period. Instead, should we require or permit advisers to exclude any such portfolio investments from the table? Why or why not?

CFA Institute Response

Please see our comments above. We do not believe that the ownership percentage for each covered portfolio investment is useful information for investors. If this approach is taken, then guidance as to when portfolio investments can be excluded from the table would not be needed.

43. Should we allow flexibility in the words advisers use, as proposed, or should we require advisers to include prescribed wording in disclosing calculation methodology? If the latter, what prescribed wording would be helpful for investors? Does the narrative style work or are there other presentation formats that we should require?

CFA Institute Response

As we discussed in our first comment letter, performance calculations can be very complicated and difficult to replicate – especially calculations for performance-based compensation. We believe that a better approach is to require an adviser to provide these supporting calculations to investors upon request. Those investors that wish to scrutinize fee, expense, and return calculations would then have the ability to obtain the needed information.

If our recommendation to require an adviser to provide supporting calculations upon request is not accepted, we agree with allowing flexibility in the wording of the disclosure. The requirement for this disclosure should be principles-based – the disclosure should be sufficient to allow an investor to understand and replicate the calculations. Because every fee arrangement can be customized, we do not see how any prescribed wording could be applied to all calculation methodologies.

44. Should we provide additional guidance or specify additional requirements regarding what type of disclosure generally should or must be included to describe the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated? For example, should we provide sample disclosures describing various calculations? Should the rule require advisers to restate disclosures from offering memoranda (if applicable) regarding the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated in the quarterly statement? Do commenters believe that advisers would prefer to restate offering memoranda disclosures rather than drafting new disclosures to avoid conflicting interpretations of potentially complex fund terms? Should the rule only require advisers to provide a cross reference to the language in the fund's governing documents regarding this information (e.g., identifying the relevant document and page or section numbers)?

CFA Institute Response

We do not believe investors will be helped by disclosures that restate the language provided in the fund's offering documents. Often these disclosures do not enable an investor to replicate or verify the calculations. We therefore recommend requiring an adviser to provide supporting calculations upon request. If this recommendation is not accepted, we then recommend requiring advisers to provide information sufficient to allow an investor to understand and replicate the calculations. Investors would need a great level of detail to be able to do these calculations themselves. We also recommend including sample disclosures, to demonstrate the expected level of detail.

45. Would providing cross references, as proposed, to the relevant sections of the private fund's organizational and offering documents be helpful for investors? Would it permit investors to "cross check" or evaluate the adviser's calculations? Are there other alternatives that would achieve our objectives?

CFA Institute Response

As we discussed in our first comment letter, because this information will not change quarter to quarter, if ever, we recommend requiring advisers to provide this information to all investors once, when they receive their initial quarterly statement. We also recommend that if the adviser changes the information included in the quarterly statement (e.g., due to a system change or update to industry template), then the adviser should be required to provide updated cross reference information.

2. Performance Disclosure

46. Should the proposed rule require advisers to include performance information in investor quarterly statements? Why or why not?

CFA Institute Response

We agree with the requirement to include performance information in the investor quarterly statements. We believe that performance information is a critical component of investor reporting.

47. Should the proposed rule require advisers to determine whether a private fund is a liquid or illiquid fund and provide performance metrics based on that determination? Alternatively, should the rule eliminate the definitions and give advisers discretion to provide the proposed performance metrics that they believe most accurately portray the fund's returns?

CFA Institute Response

We agree with the proposed approach of using criteria very similar to the US GAAP criteria for determining whether a fund should present a time-weighted return or internal rate of return. These US GAAP requirements have been in place for numerous years and the industry is familiar with them.

48. Should we define "illiquid fund" and "liquid fund" as proposed or are there alternative definitions we should use? Are there other terms we should use for these purposes? For example, should we refer to the types of funds that would provide annual net total returns under the rule as "annual return funds" and those that would provide internal rates of return (IRR) and a multiple of invested cash (MOIC) under the rule as "IRR/MOIC funds"?

CFA Institute Response

We agree with the proposed definitions for and use of the terms “illiquid fund” and “liquid fund.”

49. Are the six factors used in the definition of “illiquid fund” sufficient to capture most funds for which an annual net total return is not an appropriate measure of performance?⁷ Are there any factors we should add? For example, should we add a factor regarding whether the fund produces irregular cash flows or whether the fund takes into account unrealized gains when calculating performance-based compensation? Should we add as a factor whether the private fund pays carried interest? Are there factors we should eliminate?

CFA Institute Response

We agree with the approach to generally align with the US GAAP criteria. We believe creating new criteria would introduce too many inconsistencies for investors and cause confusion. In the adopting release, it may be helpful to make the point that an adviser could use the returns required by US GAAP to determine which type of return it will use to meet the performance requirements of the private fund rule.

50. Should we define additional terms or phrases used within the definition of “illiquid fund,” such as “has as a predominant operating strategy the return of the proceeds from disposition of investments to investors”? Would this characteristic carve out certain funds, such as real estate funds and credit funds, for which we generally believe internal rates of return and a multiple of invested capital are the appropriate performance measures? If so, why? Should we eliminate or modify this characteristic in the definition of “illiquid fund”?

CFA Institute Response

As we discussed in our responses above, we agree with the approach to generally align with US GAAP criteria. We do not believe that this characteristic would carve out certain funds. Also, as we discussed in our first comment letter, we agree with the additional flexibility the Proposing Release allows, where it states, “some private funds may not neatly fit into the liquid or illiquid designations. For example, a hybrid fund is a type of private fund that can have characteristics of both liquid and illiquid funds, and whether the fund is treated as a liquid or illiquid fund under the rule would depend on the facts and circumstances.” We strongly urge keeping this flexibility, and we think it will address the concerns for when a fund does not neatly fit within the definition of an illiquid fund, but can classify itself as an illiquid fund if the IRR and MOIC are the more appropriate performance measures.

51. Should the proposed rule define a “liquid fund” based on certain characteristics? If so, what characteristics? For example, should we define it as a private fund that requires investors to contribute all, or substantially all, of their capital at the time of investment, and invests no more than a de minimis amount of assets in illiquid investments? If so, how should we define “illiquid

⁷ The marketing rule and its specific protections would generally not apply in the context of a quarterly statement. See Marketing Release, *supra* footnote 61, at sections II.A.2.a.iv and II.A.4. The compliance date for the Marketing Rule is November 4, 2022.

investments”? Are there other characteristics relating to redemptions, cash flows, or tax treatment that we should use to define the types of funds that should provide annual net total return metrics?

CFA Institute Response

We agree with the current definition of liquid fund. It is consistent with current financial statement reporting practices.

52. Will advisers be able to determine whether a private fund it manages is a liquid or illiquid fund? For example, how would an adviser classify certain types of hybrid funds under the proposed rule? Should the rule include a third category of funds for hybrid or other funds? If so, what definition should we use? Should we amend the proposed definitions if we adopt a third category of funds (e.g., should we revise the definition of “liquid fund” given that the proposal defines “liquid fund” as any private fund that is not an illiquid fund)? If a fund falls within the third category, should the rule require or permit the private fund to provide performance metrics that most accurately portray the fund’s returns?

CFA Institute Response

We agree with the proposed approach of classifying funds as liquid or illiquid funds. We believe that private fund advisers should be allowed to classify hybrid funds as either a liquid or illiquid fund, based on which performance measure is most appropriate for investors.

53. Are there scenarios in which an adviser might initially classify a fund as illiquid, but the fund later transitions to a liquid fund (or vice versa)? Should we provide additional flexibility in these circumstances? Should the proposed rule require advisers to revisit periodically their determination of a fund’s liquidity status? For example, should the proposed rule require advisers to revisit the liquid/illiquid determination annually, semiannually, or quarterly?

CFA Institute Response

We believe that generally an adviser should not be able to change the classification of a specific fund. US GAAP requires an adviser to determine whether an IRR is used based on “the terms of their offering documents,” which are created at the beginning of the life of a fund. This is consistent with the Proposed Rules that require an adviser to make the determination no later than when the adviser sends the initial quarterly statement. The GIPS standards also expect a fund to select a return type and to consistently present that return type. However, the GIPS standards do not prohibit changing the return type if certain conditions are met. The GIPS standards address this issue by requiring disclosure of the change of return type and the date of the change.

We know that we cannot foresee every potential scenario. We therefore recommend not prohibiting such a change. The Adopting Release could explain that changes in return type are expected to be rare but, if such a change occurs, the adviser must disclose this change. We would also recommend that if a change in return type is made, then the adviser should be required to meet all of the requirements for the return type for all periods. For example, if a fund changes from using a time-weighted return to an IRR, then the adviser should be required to provide the information that would have been provided by an illiquid fund for all periods.

54. How would an adviser to a private fund with an illiquid side pocket classify the private fund under the proposed rule's definitions for liquid and illiquid funds? For example, would the adviser treat the entire private fund as illiquid because of the side pocket? Why or why not? Should we permit or require the adviser to classify the side pocket as an illiquid fund, with the remaining portion of the private fund classified as a liquid fund?

CFA Institute Response

A side pocket does not stand alone. We believe that a side pocket should be reported along with the related fund, as is done for financial statement reporting purposes.

55. Instead of requiring advisers to show performance with equal prominence, should the proposed rule instead allow advisers to feature certain performance with greater prominence than other performance as long as all of the information is included in the quarterly statement? Why or why not?

CFA Institute Response

We agree with requiring an adviser to show the required performance information with equal prominence. If certain returns were shown with greater prominence, there is a greater chance for investors to be misled. We recommend clarifying that for illiquid funds, the equal prominence requirement applies to the performance information, and does not apply to the statement of contributions and distributions. We would expect the statement of contributions and distributions to be included as a separate schedule within the quarterly statement.

56. Should we require advisers to provide annual net total returns for liquid funds, as proposed? Would showing annual net total returns for each calendar year since a private fund's inception be overly burdensome for older funds? Would performance information that is more than 10 years old be useful to investors? Why or why not?

CFA Institute Response

As we discussed in our first comment letter, we do not believe providing such a long performance history for older funds would be meaningful. We recommend requiring advisers to present annual returns for liquid funds for the past ten years. This would be consistent with industry practice, including the periods required to be presented by the GIPS standards and the Marketing Rule.

57. Should the proposed rule define "annual net total return" or specify the format in which advisers must present the annual net total returns? Should the proposed rule specify how advisers should calculate the annual net total return, similar to Form N-1A?⁸

CFA Institute Response

We recommend defining the term "annual net total return." Because the Proposed Rule language does not mention time-weighted returns, firms could provide other types of return measures (e.g., a money-weighted return) as an annual net total return, which would not allow for comparability between funds. Please refer to our first comment letter to see our proposed definitions for gross and net total returns.

⁸ See Form N-1A, Item 26(b)

We do not believe a specific format of a performance table should be required. Also, we do not believe the rule should specify how the annual net total return should be calculated. All liquid funds may not have an NAV per share, so a standardized format, similar to Form N-1A, would not be appropriate. However, as we discussed in our first comment letter, we believe that the best approach would be to refer to the GIPS standards for guidance as to how a net total return should be calculated.

58. The proposed rule would require advisers to provide performance information for each calendar year since inception and over prescribed time periods (one-, five-, and ten-year periods). Should the proposed rule instead only require an adviser to satisfy one of these requirements (i.e., provide performance each calendar year since inception or provide performance over the prescribed time periods)? For funds that have not been in existence for one of the prescribed time periods, should the proposed rule require the adviser to show the average annual net total return since inception, instead of the prescribed time period?

CFA Institute Response

We believe that the proposed approach, which would require an adviser to provide performance each calendar year as well as performance for the one-, five-, and ten-year periods, is the correct approach. As we discussed in our first comment letter, when the private fund has not been in existence for any of the required periods (i.e., one-, five-, or ten-year) for which average annual returns must be presented, we recommend also requiring the adviser to present a since-inception average annual return. However, we have one additional comment on this point. When the fund has been in existence for less than one year, the firm should not present an average annual return. The adviser should be required to present a partial year, since-inception, non-annualized return. An annualized return for a period of less than one year is a hypothetical return.

59. The proposed rule would require advisers to provide average annual net total returns for the private fund over the one-, five-, and ten- calendar year periods. However, the proposal would not prohibit advisers from providing additional information. Should we allow advisers to provide performance information for annual periods other than calendar years?

CFA Institute Response

We agree that advisers should be able to present performance information for annual periods other than calendar years as additional information.

60. Should the proposed rule define “average annual net total return” or specify the format in which advisers must present the average annual net total returns?

CFA Institute Response

We believe that the rule does not need to define average annual net total return or specify the format in which advisers need to present the average annual net total returns. We recommend noting within the Adopting Release that an average annual return is often referred to as an annualized return. Because we have found that the industry greatly benefits when examples are provided, we recommend including in the Adopting Release an example of an average annual return calculation, so an adviser could check their calculation method. For example, you might include the

following language: “For example, assuming five annual net total returns of 7.46%, 14.87%, -5.40%, 5.76%, and 2.38%, the average annual net total return for the five-year period is 4.80%.”

61. The proposed rule would require an adviser to provide “the cumulative net total return for the current calendar year.” Instead of using the word “cumulative” net total return, should the rule use the phrase “year to date” net total return?

CFA Institute Response

As we discussed in our first comment letter, we believe that the use of the word “cumulative” within the Proposed Rule is confusing. This term is typically used to refer to the linking of returns over multiple years, e.g., a five-year cumulative return. (In the prior question, the five-year cumulative return would be 26.44%, which is calculated by linking the five annual returns.) We recommend using the term “year-to-date” instead.

62. To the extent certain liquid funds quote yields rather than returns, should such funds be required or permitted to quote yields in addition to or instead of returns?

CFA Institute Response

We believe that yields can provide helpful information to investors. We recommend permitting yield information, but only in addition to returns and not instead of returns. A yield provides very different information than a return, and would not meet the Proposed Rule’s goal of increasing transparency about a fund’s performance and the fees that investors pay.

63. Are the proposed performance metrics appropriate? Why or why not? We recognize that advisers often utilize different performance metrics for different funds. Should we add any other metrics to the proposed rule? For example, should we require a public market equivalent or variations of internal rate of return, such as a modified internal rate of return that assumes cash flows are reinvested at modest rates of return or otherwise incorporates a cost of capital concept for funds that do not draw down all, or substantially all, of investor capital at the time of investment? If so, should we prescribe a benchmark for the cost of capital and reinvestment rates?

CFA Institute Response

We believe the performance metrics as proposed for illiquid funds are appropriate. While the GIPS standards require additional metrics beyond MOIC,⁹ we believe that investors will have the information needed to derive the ratios themselves given the other information that would be required to be provided to investors in the quarterly statement.

In our first comment letter, we recommended clarifying in the Adopting Release that net IRRs should be calculated excluding any non-fee-paying assets. We also should have recommended taking the same approach when calculating the net MOIC.

⁹ The GIPS standards require the following metrics in addition to MOIC: since-inception paid-in capital, since-inception distributions, cumulative committed capital, the ratio of since-inception distributions to since-inception paid-in capital (realization multiple or DP), the ratio of since-inception paid-in capital to cumulative committed capital (PIC multiple), and the ratio of residual value to since-inception paid-in capital (unrealized multiple or RVPI).

We do not believe that a variation of IRR should be required. While we recognize that the IRR has some critics, we believe that when it is presented with the MOIC and the corresponding cash flows, the IRR provides useful information to investors. The IRR is widely used, it does not involve any assumptions, and it can be easily understood by investors. There has been much industry research done on whether the IRR is a good return measure¹⁰ and the consensus seems to be that while the IRR is a good measure of performance when the adviser controls the cash flows, an adviser's performance should not be evaluated by simply looking at IRR on its own. An investor also needs to consider the amount and timing of their contributions and distributions, and how much of their committed capital has been called.

We do not believe that a modified internal rate of return should be used because it is a hypothetical return (it uses an assumed reinvestment rate) and it does not reflect the actual return earned by any investor.

PMEs are commonly used as benchmarks for illiquid private funds. As we discussed in our first comment letter, we believe that benchmark returns are very important when evaluating private fund performance. For those private funds that have an appropriate benchmark (e.g., a PME), we recommend requiring private funds to present benchmark returns for the same periods that are presented for the private fund.

64. The proposed rule would not distinguish among different types of illiquid funds. Is our approach in this respect appropriate or should we treat certain illiquid funds differently? If so, how should we reflect that treatment?

CFA Institute Response

We agree with the proposed approach.

65. Are there additional guardrails we should add to the proposed rule to achieve the policy goal of providing investors with comparable performance information? If so, please explain. Are there practices that advisers use or assumptions that advisers make, when calculating performance that we should require, curtail, or otherwise require advisers to disclose?

CFA Institute Response

As we discussed in our first comment letter, to meet the policy goal of providing comparable performance, returns and ratios must be calculated using similar assumptions and methodologies. We recognize that it would be impossible to provide prescriptive performance calculation requirements that would be appropriate for all types of private funds in all circumstances. We recommend taking a similar approach to the GIPS standards as was done with the Marketing Rule, and stating within the Adopting Release that an adviser that calculates private fund performance consistent with the requirements of the GIPS standards would meet the performance calculation requirements of the final private fund rules.

¹⁰ One of the most well-known and easy to understand resources on this topic is a paper by Howard Marks, "You Can't Eat IRR." <https://www.oaktreecapital.com/docs/default-source/memos/2006-07-12-you-can-t-eat-irr.pdf>

If the Commission chooses not to refer to the GIPS standards within the Adopting Release, we recommend including the following key calculation concepts within the Adopting Release:

- Returns are based on actual assets and not hypothetical assets
- Private fund values used in return calculations are fair values
- Returns are based on total returns (reflecting both income and capital gains/losses)
- Private fund values are net of leverage (except for returns that are required to be calculated without the impact of subscription facilities)
- Returns for periods of less than one year are not annualized

We recommend considering the following items and addressing expectations about each of these items within the Adopting Release:

- We have seen many advisers inappropriately use the XIRR formula in Excel when calculating performance for periods of less than one year. This formula extrapolates the return, assuming that the partial year return is earned for the rest of the year, which is a hypothetical return. When an adviser uses the XIRR formula to calculate the IRR, it needs to de-annualize this return.¹¹
- The dates of cash flows in an IRR calculation are very important. An IRR that is calculated using daily cash flows will generate a return that is very different from an IRR that is calculated using annual cash flows. The GIPS standards require cash flows to be reflected on a daily basis as of January 1, 2020, and cash flows prior to this date must be reflected on at least a quarterly basis.
- The definition of multiple of investment capital states that the denominator includes the total capital contributed to the fund by its investors. To allow for comparability of funds, we recommend clarifying how recalled distributions should be treated in the MOIC calculation. The GIPS standards require including any distributions that were subsequently recalled in total capital, and we recommend doing the same. We believe that this approach best represents an investor's experience, and reflects the fact that the adviser has reinvested the investor's money. As an example, assume an investor commits \$200 to a fund, the fund subsequently distributes \$100 to the investor, but then recalls the \$100. We believe that the MOIC should reflect the fact that the investor has now contributed \$300 to the fund, and not \$200. You could make this point by editing item (ii) within the definition to add the underlined words: (ii) Divided by the total capital contributed, including recalled distributions, to the illiquid fund by its investors.

We also recommend clarifying that the following items are expected to be included in the disclosure of the criteria used and assumptions made in calculating performance:

- Which fees and costs have been deducted from gross and net returns.
- Dates the cash flows are reflected in the IRR calculations (e.g., on the date they occur, within the month they occur)
- How callable distributions have been treated in the MOIC (unless the rule requires a certain treatment of callable distributions)

¹¹ See the [GIPS Standards Handbook](#), p. 191, for formulas that may be used to de-annualize an annualized return.

66. Although some investors receive certain annual performance information about a private fund if that fund is audited and distributes financial statements prepared in accordance with U.S. GAAP, we believe that the proposed rule's performance information would be helpful for private fund investors because it would require performance information to be reported at more frequent intervals in a standardized manner. Do commenters agree? To the extent there are differences (e.g., the requirement that performance be computed without the impact of any fund-level subscription facilities), would investors find this confusing? Would disclosure regarding these differences help to alleviate investor confusion?

CFA Institute Response

We agree that having performance reported more frequently than annually, in a standardized manner, is helpful. We believe that any differences in returns required to be disclosed in financial statements and returns required by the final rule can be addressed through disclosure of the criteria used and assumptions made in calculating the performance.

67. Would investor confusion or other concerns arise from requiring performance information in the quarterly statement as proposed?

CFA Institute Response

We believe that it may be confusing to investors if the returns required by the SEC Marketing Rule and the Private Funds Rule differ. We realize there may be some differences in the returns in the financial statements versus returns in the quarterly statements, but we believe that addressing any differences through disclosure of the criteria used and assumptions made in calculating the performance should be sufficient. Please see our first comment letter, where we discussed our concerns about differences between the Proposed Rule, the SEC Marketing Rule, and the GIPS standards with respect to gross return calculations, using total fund assets versus limited partner assets to calculate net returns, as well as our recommendation to require returns both with and without the impact of subscription facilities.

68. Are the proposed definitions appropriate and clear? If not, how should we clarify the definitions? Should we modify or eliminate any? Would additional definitions be appropriate or useful? For example, should we define any of the terms used in the definition of internal rate of return, such as "net present value" or "discount rate"? If so, what definitions should we use?

CFA Institute Response

We have recommended changes to certain proposed definitions and suggested some additional definitions. We do not believe that any of the terms used in the definition of internal rate of return should be defined.

69. Are the definitions of gross IRR, gross MOIC, net IRR, and net MOIC appropriate?

CFA Institute Response

Please see our comments on these definitions in our first comment letter and within this comment letter.

70. Should we provide further guidance or specify requirements in the proposed rule on how¹² to calculate gross performance or net performance? If so, what guidance or requirements?

CFA Institute Response

As we discussed in our first comment letter, we recommend taking a similar approach to the GIPS standards as was done with the Marketing Rule, and stating within the Adopting Release that an adviser that calculates private fund performance consistent with the requirements of the GIPS standards would meet the performance calculation requirements of the final private fund rules.

If the Commission chooses not to refer to the GIPS standards within the Adopting Release, we recommend including within the Adopting Release key concepts that should be reflected within the return calculations. Requiring certain calculation concepts would ensure that investors do not receive performance information that is false or misleading. We recommend including the following key calculation concepts within the Adopting Release:

- Returns are based on actual assets and not hypothetical assets
- Private fund values used in return calculations are fair values
- Returns are based on total returns (reflecting both income and capital gains/losses)
- Private fund values are net of leverage (except for returns that are required to be calculated without the impact of subscription facilities)
- Returns for periods of less than one year are not annualized

71. Should we require advisers to adopt policies and procedures prescribing specific methodologies for calculating gross performance and net performance? Why or why not?

CFA Institute Response

We believe that all advisers should adopt policies and procedures that support their performance calculation methodologies. This approach would be consistent with the GIPS standards, which require a firm to document its policies and procedures used in establishing and maintaining compliance with the requirements of the GIPS standards, as well as any recommendations it has chosen to adopt, and apply them consistently.

72. When calculating net performance, are there additional fees and expenses that advisers should include? Alternatively, should we expressly permit advisers to exclude certain fees and expenses when calculating net performance figures, such as taxes incurred to accommodate certain, but not all, investor preferences? Why or why not?

CFA Institute Response

We agree with requiring net performance to reflect the deduction of all fees, expenses, and performance-based compensation borne by the private fund. We do not believe that advisers should be allowed to exclude fees or expenses when calculating net performance.

In our first comment letter, we recommended requiring performance returns that are appropriate to the investor. If this approach is taken, then it would be appropriate for an adviser to tailor the calculation to the investor and exclude expenses that are not borne by that investor.

¹² See Form N-1A, Item 26(b).

73. Similarly, are the definitions of gross IRR and gross MOIC appropriate for purposes of calculating the performance metrics of the realized and unrealized portions of the illiquid fund's portfolio? Should we modify such definitions to reference specifically the realized and unrealized portions of the portfolio, rather than only referencing the illiquid fund? For example, should the definition of MOIC be revised to mean, as of the end of the applicable calendar quarter: (i) the sum of (A) the unrealized value of applicable portion of the illiquid fund's portfolio, and (b) the value of all distributions made by the illiquid fund attributable to the applicable portion of the illiquid fund's portfolio; (ii) divided by the total capital contributed to the illiquid fund by its investors attributable to the applicable portion of the illiquid fund's portfolio? Are there other variations we should impose? Why or why not?

CFA Institute Response

We do not agree with the proposed modifications to the definition of MOIC. There are no realized and unrealized "portions" of the fund's portfolio. The entire portfolio represents unrealized investments. The "unrealized portion" of the illiquid fund is the total fund's net asset value (for a net MOIC) or gross asset value (for a gross MOIC). The "realized portion" is the value of distributions to investors. It would be incorrect to modify the denominator in the calculation. The denominator in both the realized and unrealized MOIC should be the total capital contributed. We believe that what you are intending here is to present the unrealized multiple, or RVPI, for the unrealized MOIC, and the realization multiple, or DPI, for the realized MOIC. The sum of the RVPI and the DPI should equal the total MOIC. An example might be helpful.

Let's assume that a fund has \$5,000,000 in total committed capital, and the entire amount has been called. As of today, the fund has distributed \$1,000,000 to investors, and the fund's gross asset value is \$7,200,000.

The unrealized multiple (RVPI) would be calculated as: $\$7,200,000/\$5,000,000 = 1.44x$

The realization multiple (DPI) would be calculated as: $\$1,000,000/\$5,000,000 = 0.20x$

MOIC would be calculated as: $(\$7,200,000 + \$1,000,000)/\$5,000,000 = 1.64x$

We believe a better approach would be to require the RVPI and the DPI for the realized and unrealized metrics, and to define these terms. The GIPS standards include definitions of these terms that could be used. The discussion of Provision 7.A.4 in the GIPS Standards Handbook¹³ includes more information on these metrics.

We also recommend reconsidering similar language that is included in the requirement to present: "Gross IRR and gross MOIC for the realized and unrealized portions of the illiquid fund's portfolio..." One possible suggestion that modifies the language and also incorporates DPI and RVPI is as follows: "Gross IRR for the realized and unrealized investments of the illiquid fund, with the realized and unrealized IRRs shown separately, as well as the DPI and the RVPI."

¹³ See the [GIPS Standards Handbook](#), pp. 439-441.

74. The Global Investment Performance Standards (“GIPS”) are a set of voluntary standards for calculating and presenting investment performance. For purposes of calculating an illiquid fund’s performance under the proposed rule, are there any elements found in the GIPS standards that we should require? For example, should we require advisers to disclose composite cumulative committed capital,¹⁴ or should we require advisers to disclose performance with and without the impact of subscription facilities?

CFA Institute Response

As we discussed in our first comment letter, we believe that advisers should be required to disclose performance both with and without the impact of subscription facilities. We did not recommend requiring the other metrics that are required by the GIPS standards, because investors will receive cash flows information on the statement of contributions and distribution and they would be able to calculate these metrics if they wish to do so. We also discussed in our first comment letter that we believe benchmark returns are very important when evaluating private fund performance. For those private funds that have an appropriate benchmark, we recommend requiring such funds to present benchmark returns for the same periods that are presented for the private fund.

75. Are there any definitions we should revise or propose to be consistent with the definitions used in the GIPS standards? For example, the GIPS standards define “internal rate of return” as the return for a period that reflects the change in value and the timing and size of external cash flows and “multiple of invested capital” as the total value divided by since inception paid-in capital.¹⁵ If we were to adopt such definitions, do commenters believe that such definitions would result in different performance numbers for illiquid funds, as compared to the performance numbers that advisers would disclose under the proposed definitions? Why or why not? Please provide examples.

CFA Institute Response

The definitions for internal rate of return and multiple of invested capital within the Proposed Rule are generally aligned. If the proposed definitions were changed to align with the GIPS standards, we do not believe that this would result in different performance results for illiquid funds.

76. We recognize that advisers and their related persons typically invest in private funds on a “fee-free, carry-free” basis (i.e., they are not required to pay management fees or performance-based compensation). When calculating a fund’s performance, how should such interests be taken into account? Should we require advisers to exclude such interests from the calculations, especially the net performance figures?

¹⁴ The GIPS standards define “committed capital” as pledges of capital to an investment vehicle by investors (limited partners and the general partner) or the firm. The term “composite” is defined as an aggregation of one or more portfolios that are managed according to a similar investment mandate, objective, or strategy. The term cumulative is not defined in the GIPS standards. Global Investment Performance Standards (GIPS) For Firms: Glossary, CFA Institute (2020), available at <https://www.cfainstitute.org/-/media/documents/code/gips/2020-gips-standards-firms.pdf>.

¹⁵ Internal rate of return is referred to as money-weighted return in the GIPS standards, and multiple of invested capital is referred to as investment multiple.

CFA Institute Response

As we discussed in our first comment letter and within this comment letter, we recommend requiring advisers to exclude these assets when calculating net performance and net MOIC.

77. The proposed rule would require advisers to calculate the various performance measures without the impact of any fund-level subscription facilities. Do commenters agree with this approach? Should the proposed rule require advisers to provide the same performance measures with the impact of fund-level subscription facilities? Why or why not? The proposed rule does not prohibit advisers from providing the same performance measures with the impact of fund-level subscription facilities. Should we prohibit advisers from doing so?

CFA Institute Response

As we discussed in our first comment letter, we believe that advisers should be required to present performance both with and without the impact of subscription facilities. The IRR with the impact of the subscription facilities is typically used to calculate performance-based compensation, and this return also reflects the actual investor return. We believe that presenting both returns, along with clear disclosures about differences between these two returns, would provide the most meaningful information to investors.

78. Should we define the term “computed without the impact of any fund-level subscription facilities”? Should we provide additional guidance or requirements regarding how advisers generally should or must calculate such performance measures? If so, what guidance or requirements should we provide?

CFA Institute Response

We do not believe further definitions are needed. As we discussed in our first comment letter, when a subscription facility is used for very short time periods, (e.g., for bridging capital calls), returns with and without the impact of subscription facilities will be very similar. We recommend exempting from this requirement those private funds that use a subscription facility only for short term purposes, which would align with the GIPS standards. The GIPS standards do not require a firm to present returns without the impact of the subscription facility when two tests are met: the subscription facility was repaid within 120 days using committed capital that is drawn down through a capital call, and the subscription facility was not used to fund distributions. We recommend taking the same approach.

79. We recognize that a fund-level subscription facility has the potential to have a greater impact on a fund’s internal rate of return as compared to its multiple of invested capital. Should advisers only be required to provide “unlevered” internal rates of return and not “unlevered” multiples of invested capital? If the fund realizes an investment prior to calling any capital from investors in respect of such investment, how would an adviser calculate a multiple for such investment?

CFA Institute Response

MOIC provides investors with a multiple that indicates how many more times their invested capital is worth compared with their original invested capital. The denominator in the calculation is the amount of capital that has been called from investors. If the fund realizes an investment prior to calling any capital from investors, the denominator would be \$0, and no MOIC would be calculated.

We believe that this is appropriate because MOIC is a measure of the value of investors' invested capital, and no capital would have been contributed to the fund by investors. We therefore recommend not requiring MOIC until capital has been called from investors.

We recommend not requiring "unlevered" multiples of invested capital. An "unlevered" MOIC does not represent any investor's actual experience in a fund.

80. The proposed rule would require advisers to prepare the statement of contributions and distributions without the impact of any fund-level subscription facilities. Would this information be helpful for investors? Would advisers be able to prepare such a statement without making arbitrary assumptions? Why or why not? For example, would advisers need to make assumptions in calculating the preferred return (if applicable)?

CFA Institute Response

As we discussed in our first comment letter, we struggle to understand how it would be helpful to exclude fees and expenses associated with the subscription facility when preparing the statement of contributions and distributions. This approach also seems to contradict the definition of the statement of contributions and distributions, which is defined to include all capital inflows and outflows to and from investors. We believe that the statement of contributions and distributions should reflect the actual investor cash flow activity.

If advisers are required to prepare the statement of contributions and distributions without the impact of a subscription facilities, we believe that advisers would need to make assumptions about the cash flows, particularly for historical periods. Advisers may not have identified the reason for each capital call from investors. For example, assume a fund made a capital call for \$1,000,000, to pay for investments, expenses, and interest expense. If interest expense is \$100,000, the statement of contributions and distributions would reflect a contribution of \$900,000, even though investors contributed \$1,000,000. We believe that the statement of contributions and withdrawals should reflect actual investor cash flow activity.

81. The proposed rule would require only gross performance measures for the realized and unrealized portion of the illiquid fund's portfolio. Should the proposed rule require net performance information as well? Would net performance measures be beneficial for investors despite the drawbacks discussed above? What assumptions should we require in calculating net information? What limitations, if any, would advisers face in providing net performance measures?

CFA Institute Response

We agree with the proposal to require only gross performance measures for the realized and unrealized portions of the illiquid fund's portfolio, and do not believe net performance measures should be required. (Please see our prior recommendation to change the word "portions" to "investments.") However, as we discussed in our first comment letter, any potential conflicts with the Marketing Rule would need to be addressed. We believe that it is reasonable to expect that the quarterly statement would sometimes be included in materials that would fall under the scope of the Marketing Rule.

82. Should we define the phrases “unrealized portion of the illiquid fund’s portfolio” and “realized portion of the illiquid fund’s portfolio”? For example, should we define the realized portion to include not only completely realized investments but also substantially realized investments to the extent the fund’s remaining interest is de minimis? Why or why not?

CFA Institute Response

As we stated in a prior comment, we do not believe that it is appropriate to refer to a “portion of the illiquid fund’s portfolio” in the rule text or any definition. The fund’s entire portfolio represents “unrealized” positions. Investments that have been sold and whose proceeds have been distributed to investors are not a “portion” of the fund’s portfolio. We therefore recommend modifying the language within the rule to not use the term “portion of the illiquid fund’s portfolio.” We also recommend requiring DPI and RVPI instead of requiring the gross MOIC for the realized and unrealized portions of the fund. As stated previously, one possible suggestion is as follows: “Gross IRR for the realized and unrealized investments of the illiquid fund, with the realized and unrealized IRRs shown separately, as well as the DPI and the RVPI.”

We believe that it would be helpful to provide guidance for these terms. Assuming the suggested language is used, the best approach may be to provide an explanation in the Adopting Release as to what is meant by “realized investments” and “unrealized investments.” As we discussed in our first comment letter, advisers may treat partially realized investments differently within these calculations. Some investment advisers classify partially realized investments as unrealized investments, while other advisers create a third category for partially realized investments (i.e., the investment adviser would have three IRRs - realized, unrealized, and partially realized). Advisers may also take different approaches for determining when an investment is realized, e.g., based on the sale date to a third party, or based on the date when the proceeds were distributed to investors. We recommend allowing flexibility here but recommend requiring advisers to disclose their assumptions and maintain records to support these assumptions.

83. Should we require advisers to disclose the dollar amounts of the realized and unrealized portions of the portfolio? Should we also require advisers to disclose such amounts as percentages? For example, if the value of the realized portion of the portfolio is \$250 million and the value of the unrealized portion is \$750 million, should we require advisers to disclose those amounts, both as dollar values and percentages (i.e., 25% (\$250 million) of the illiquid fund’s portfolio is realized, and 75% (\$750 million) remains unrealized)?

CFA Institute Response

We believe that these items should not be required. As we previously commented, there are no realized and unrealized portions of a portfolio. At any point in time, 100% of the fund is unrealized. The realized portion is the sum of the distributions since the inception of the fund.

84. The proposed rule would require advisers to provide cumulative performance reporting since inception of the illiquid fund each quarter. Is this the right approach? Should the proposed rule require performance since inception for each quarter or on an annual basis? Should the proposed rule remove the “since inception” requirement for quarterly reports and instead require performance for each quarter of the current year, and cumulative performance for the current year? If so, why or why not?

CFA Institute Response

We agree with requiring advisers to present a since-inception IRR as of the end of the quarter covered by the quarterly statement. A since-inception IRR is the most meaningful return for an investor in an illiquid fund because any performance-based fee will be calculated relative to the since-inception IRR. We believe that the other suggested returns would not be meaningful to investors.

85. Should we prescribe specific periods for illiquid fund performance reporting? For example, should we prescribe one-, five-, and/or ten-year time periods? Instead, should we require that advisers always present performance since inception as proposed? Are there other periods for which we should require the presentation of performance results? Are there any specific compliance issues that an adviser would face in generating and presenting performance results for the required period? For example, would advisers have the requisite information to generate or support performance figures for older funds from the proposed recordkeeping requirements and/or performance presentation requirements? If not, should we provide an exemption for advisers that lack such information?

CFA Institute Response

We do not believe that performance for additional periods should be required for illiquid funds. The since inception IRR appropriately captures the timing and size of cash flows.

As we discussed in our first comment letter, advisers may have difficulty calculating historical returns without the impact of subscription facilities. We recommend, therefore, exempting from this specific calculation requirement those funds that used a subscription facility prior to the final rule's effective date.

We previously discussed the importance of the timing of cash flows in an IRR calculation and recommended clarifying that an adviser should disclose the cash flow timing assumptions. This is particularly important when dealing with legacy cash flow streams because the adviser may not have the exact dates of cash flows. It is common for older systems to assume that all cash flows that occurred in a quarter (or month) occurred on the last day of the quarter (or month), rather than the actual date of the cash flow. For example, if a fund had cash flows that occurred on 17 January 2012, 10 February 2012, and 7 March 2012, the adviser might have assumed that all of these cash flows occurred on the last business day of the quarter (30 March 2012). The Proposed Rule is flexible enough to allow a variety of cash flow assumptions because it does not specify the specific dates needed for the IRR calculation. However, the Proposed Rule states that the statement of contributions and distributions must include the "date of each inflow and outflow." We believe that the final rule should provide some flexibility on these dates, for periods prior to the final rule's effective date, because it used to be common industry practice to assume all cash flows took place at month end or quarter end.

86. Liquid funds often have longer terms than illiquid funds. To the extent an illiquid fund has been in existence for an extended period of time, such as more than ten years, should the rule prescribe specific periods for performance reporting for such funds (e.g., one-, five-, and/or ten-year time periods)?

CFA Institute Response

We do not believe the rule should prescribe additional periods for performance reporting for illiquid funds. As described above, the since inception IRR appropriately shows the effect of the timing and size of cash flows.

87. Should we require that advisers provide performance results current through the end of the quarter covered by the quarterly statement as proposed? In circumstances where quarter-end numbers are not available at the time of distribution of the quarterly statement, should we require an adviser to include performance measures through the most recent practicable date as proposed? Should we define, or provide additional guidance about, the term “most recent practicable date”? If so, what definition or additional guidance should we provide?

CFA Institute Response

As we discussed in our first comment letter, we agree with requiring advisers to provide performance results that are current through the end of the quarter covered by the quarterly statement as proposed. We do not believe that the rule should require an adviser to include performance measures through the most recent practicable date. We believe that it would be confusing, and possibly misleading, to have performance calculated through a date that is different from the date of other information included in the quarterly statement, including fees and costs. We believe that a better approach is to establish staggered reporting deadlines based on the type of fund.¹⁶ Such an approach would alleviate the need to provide for an exception when underlying fund information is not available within the 45-day deadline that is proposed for all private funds. If a staggered approach is allowed, then we believe it would be appropriate to require advisers to provide performance that reflects fair value as of the date of the quarterly statement. Fair values would not need to be based on third-party valuations and could be based on an internal review process.

88. Should the proposed rule require advisers to make certain, standard disclosures tailored to each of the performance metrics mandated in the proposed rule? For example, should we require advisers to illiquid funds that are required to display internal rate of return to disclose prominently that the returns do not represent returns on the investor’s capital commitment and instead only reflect returns on the investor’s contributed capital? Should we require advisers to disclose that an investor’s actual return on its capital commitment will depend on how the investor invests its uncalled commitments?

CFA Institute Response

We believe that investors in private funds have a good understanding of how the IRR is calculated, and how it needs to be evaluated in the context of other information, such as MOIC and investor cash flows. We do not believe that these proposed standardized disclosures would be helpful. We instead recommend including language within the Adopting Release that reminds advisers of the requirement to include prominent disclosure of the criteria used and assumptions made in

¹⁶ In our first comment letter, we recommended the non-fiscal year-end quarterly reporting deadlines of 60 days for a fund that does not invest in underlying funds, 120 days for a fund-of-funds (FOFs), and 180 days for a fund-of-fund-of-funds (FOFOFs). For any quarter that is the fund’s fiscal year end we recommended deadlines of 120 days for a fund that does not invest in underlying funds, 180 days for FOFs, and 260 days for FOFOFs.

calculating the performance. These proposed disclosures could be included in the Adopting Release as examples of disclosures that may be appropriate when presenting an IRR.

89. As noted above, we would generally interpret the phrase computed without the impact of fund-level subscription facilities to require advisers to exclude fees and expenses associated with the subscription facility, such as the interest expense, when calculating net performance figures and preparing the statement of contributions and distributions. Do commenters agree with this approach? Should we require advisers to include such amounts instead? Are there other assumptions advisers would need to make in calculating performance information that the rule should address?

CFA Institute Response

As we discussed in our first comment letter, we believe that advisers should not be required to exclude fees and expenses associated with subscription facilities, such as the interest expense, when calculating net returns without the impact of subscription facilities. When creating the 2020 edition of the GIPS standards, we debated this specific point at length. We concluded that while interest fees and expenses could be significant, the greatest impact for using subscription facilities typically comes from the shortened time period over which the IRR is measured.

Backing these expenses out can be quite challenging. It is not as simple as eliminating the cash flow from investors that is attributable to these fees and expenses. A fund could make a capital call from investors that includes costs for interest expense, but it keeps the cash and makes the payment to the bank several weeks later. Or the fund could pay the interest expense to the bank from investment proceeds, or pay a portion from the capital call or investment proceeds. Any accrued fees and expenses related to subscription facilities at period end would also need to be backed out. We also previously recommended not requiring MOIC until the fund has made its first capital call from investors.

In terms of the statement of contributions and distributions, as we discussed in our first comment letter, the language in the Proposing Release regarding the exclusion of fees and expenses associated with the subscription facility seems to conflict with the definition of the statement of contributions and distributions, which is defined based on investor activity. Please see our prior comment recommending that the statement of contributions and distributions should include actual investor cash flows.

90. The proposed rule would require the statement of contributions and distributions to reflect the private fund's net asset value as of the end of the applicable quarter. Should we require advisers to provide additional detail regarding the unrealized value of the private fund? For example, should we require advisers to reflect the portion of such net asset value that would be required to be paid to the adviser as performance-based compensation assuming a hypothetical liquidation of the fund?

CFA Institute Response

We believe that advisers should not be required to provide detail regarding amounts payable to the investment adviser. The information required in the proposed Fund Table would include amounts allocated or paid, i.e., borne by the fund, for these fees and expenses. The fund's net asset value will have been reduced by these accrued amounts, including fees that have been accrued and not yet paid, so there would be no decrease to the value of the fund if the fund were to liquidate.

91. The statement of contributions and distributions generally reflects aggregate, fund-level numbers. Should we also require a statement of contributions and distributions for each underlying investment? Would a statement of each investment's cash flows be useful to investors? Why or why not? Would such a requirement be too burdensome for certain advisers, especially advisers to private funds that have a significant number of investments? Should this requirement only apply to certain types of funds, such as private equity, venture capital, or other similar funds that may invest in operating companies?

CFA Institute Response

We believe that cash flow information for each underlying investment should not be required for any fund. This level of detail would not be of interest, or use, to most investors.

92. Should we provide further guidance or specify requirements on how advisers generally should or must present performance? For example, should we require advisers to present the various performance metrics with equal prominence as proposed? Should we require advisers to present performance information in a format designed to facilitate comparison?

CFA Institute Response

We believe that further guidance or specific requirements on how advisers generally should or must present performance is not required. We believe that requiring advisers to present the various performance metrics with equal prominence suffices, with one exception.

We recommend not including the statement of contributions and distributions within the list of items that must be presented with equal prominence. This statement could be quite lengthy, and we do not know how a firm could present a number of returns and MOIC metrics with the same prominence as a multi-page list of cash flows.

93. Should we provide additional guidance or requirements regarding how an adviser should or must calculate the proposed performance metrics? Is there additional information that we should require advisers to disclose when presenting performance?

CFA Institute Response

We believe that additional guidance or requirements regarding how an adviser should or must calculate the proposed performance metrics is not needed, except for the recommendations that we have made within this comment letter or our first comment letter regarding how performance metrics should be calculated.

94. Should we provide further guidance or specify requirements in the rule on how advisers generally should or must treat taxes for purposes of calculating performance? For example, should the rule state that advisers may exclude taxes paid or withheld with respect to a particular investor or by a blocker corporation (but not the illiquid fund as a whole)?

CFA Institute Response

We believe that further guidance for how advisers should treat taxes is not necessary.

95. Should we require advisers to disclose the criteria used and assumptions made in calculating the performance as part of the quarterly statement as proposed? Is this approach too flexible? Should we instead prescribe required disclosures?

CFA Institute Response

We fully support requiring advisers to disclose the criteria used and assumptions made in calculating the performance as part of the quarterly statement. We believe that this flexible approach is appropriate because it would be impossible to prescribe specific disclosures that would cover all information that is presented in all quarterly statements. We believe that it is appropriate to let each adviser determine which disclosures are necessary, given the specific facts and circumstances.

96. Should we require advisers to provide these disclosures prominently as proposed? Is there another disclosure standard we should use for these purposes?

CFA Institute Response

We agree with requiring advisers to provide these disclosures prominently as proposed. We do not believe that there is another disclosure standard you should use for these purposes.

97. Because we propose to require an adviser to provide these disclosures as part of each quarterly statement, investors would receive these disclosures quarterly. Would providing these disclosures every quarter reduce their salience? Should we require these disclosures only as part of the first quarterly statement that an adviser sends to an investor with amendments if the criteria used or assumptions made in calculating performance change? Should we permit hyperlinking to these disclosures after the initial quarterly statement?

CFA Institute Response

While we recommended requiring advisers to provide the cross references to the sections of the private fund's organizational and offering documents only one time, we believe that disclosure of the criteria used, and assumptions made in calculating the performance, should be made in each quarterly statement. We believe it is not possible to properly interpret performance information when there are no accompanying disclosures. For example, if an investor obtains a performance report and the only item on the page is a fund return of 4.3%, the investor will have no basis for understanding the return. We believe that an adviser should not be able to distribute performance without accompanying disclosure.

We believe that the disclosures should accompany the performance information and should not be made available via a hyperlink.

3. Preparation and Distribution of Quarterly Statements

98. Should we require advisers to prepare and distribute statements to clients at least quarterly, or should we prescribe a different frequency? For example, should we require monthly, semi-annual, or annual statements? Should we mandate the same delivery frequency for all proposed statements under the rule? How would each of these approaches affect comparability and effectiveness of the information in those statements? Would a quarterly reporting obligation require advisers to value the fund's investments more frequently than advisers currently do?

CFA Institute Response

We agree with the quarterly reporting frequency, and strongly discourage a more frequent requirement. If the reporting requirement was on a less frequent, semi-annual basis, pension funds that have a fiscal year end of March 31st or September 30th would not receive this information for the periods that align with their annual reporting periods. The same issue would occur if there was

an annual reporting requirement. While less frequent reporting would decrease the compliance burden, we believe that quarterly reporting is the best option for providing meaningful information to private fund investors.

We agree with requiring the same delivery frequency for all of the proposed statements under the rule, for comparability.

A quarterly reporting obligation will require some advisers to value the fund's investments more frequently than they currently do, specifically for smaller real estate funds. However, given that there are no requirements specifying how funds should be valued, advisers would be able to meet the quarterly requirement using internal valuations.

99. We understand that advisers may use a fund administrator or another person to distribute the quarterly statement. Is the proposed definition of "distribute" broad enough to capture a fund administrator or another person acting under the direction and control of the adviser sending the quarterly statement on the adviser's behalf? If not, should we broaden the definition? Instead of changing the definition of "distribute," should we require the adviser to distribute the quarterly statement, unless it has reason to believe that another person has distributed a required statement (and has a copy of each such statement distributed by such other person)?

CFA Institute Response

As we discussed previously, we believe that the fund's named investment adviser should be responsible for distributing the quarterly statement. We believe that it is not necessary to define "distribute" to capture another entity that distributes the information on the adviser's behalf.

100. The proposed rule would require advisers to distribute the quarterly statement within 45 days of a calendar quarter end. Is this period too long or too short for an adviser to prepare the quarterly statement while also ensuring timely delivery to investors? Should we instead adopt a flexible delivery standard, such as a requirement that the adviser distribute the quarterly statement "promptly"? Why or why not? If we were to adopt a prompt delivery standard, should we define "promptly"? If so, how? If we should not define "promptly," should we instead interpret that term to mean as soon as reasonably practicable?

CFA Institute Response

As we discussed in our first comment letter, it is common industry practice for private fund advisers of illiquid funds to provide quarterly financial reporting within 60 days of quarter end. Given this industry standard, we recommend using the same deadline of 60 days for all private funds. However, we also recommend that funds-of-funds (FOFs) and funds-of-funds-of-funds (FOFOFs) should have a longer time to report because these funds need to receive information from the underlying funds to confirm data and finalize their information. (Please see the next comment for our recommended quarterly reporting deadlines.)

We believe that a flexible delivery standard would not be appropriate for two reasons. First, if a FOF is waiting for a quarterly statement from an underlying fund, their definition of "promptly" will be dependent on how the underlying fund managers define "promptly," which would lead to inconsistent practices across the industry. Second, many pension funds and other asset owners need to report performance, fees, and expense information to their oversight bodies and beneficiaries,

and they may not be able to do so within their required timeframe if they are dependent on underlying fund managers that have defined “promptly” differently.

101. We understand that preparing quarterly statements may require coordination with, and reliance on, third parties. This may be the case, for example, when a private fund itself invests in other private funds or portfolio companies. Should the rule allow different distribution timelines for different types of private funds (e.g., fund of funds, master feeder funds)? If so, why (e.g., do certain types of funds value assets more frequently than other types)? Should the proposed rule allow different distribution deadlines for underlying funds, depending on whether or not the underlying funds have the same adviser or an adviser that is a related person of the adviser distributing the quarterly statements?

CFA Institute Response

As we discussed in our first comment letter, we recommend that funds-of-funds (FOFs) and funds-of-funds-of-funds (FOFOFs) should have a longer time to distribute quarterly statements because these funds need to receive information from the underlying funds to confirm data and finalize their information. We recommended taking a staggered approach, using the following quarterly reporting deadlines:

- 60 days for a fund that does not invest in underlying funds,
- 120 days for FOFs, and
- 180 days for FOFOFs.

A staggered approach would allow all private fund advisers to provide information that is more likely to be finalized and would be more useful to investors.

We recommend using a different deadline for any quarter that is the fund’s fiscal year end. We also recommend aligning this requirement with the deadlines for delivering annual audited financial statements if relying on the “audit exception” to Rule 206(4)-2 requirements relating to reporting and surprise custody examinations.¹⁷ These financial statement delivery deadlines are:

- 120 days for a fund that does not invest in underlying funds,
- 180 days for FOFs, and
- 260 days for FOFOFs.

Investors are already accustomed to these financial statement reporting deadlines, and we believe it is appropriate to use a guideline that is already in place rather than creating a new deadline, particularly given that these timelines are practical. Aligning a fund’s fiscal year end quarterly statement deadline with the financial statement reporting deadline will ensure investors receive information within the quarterly statement that is finalized and consistent with audited information within the financial statements.

102. Should the proposed rule bifurcate the timing of when certain information in the quarterly statement is required? For example, should the proposed rule require fee and expense information

¹⁷ See Staff Responses to Questions About the Custody Rule, Question VI.9:

https://www.sec.gov/divisions/investment/custody_faq_030510.htm

starting at the fund's inception and then require performance information beginning later? If so, when should we require an adviser to start showing performance?

CFA Institute Response

We believe the rule should not bifurcate the information. Fee, expense, and performance information can be provided starting after two full quarters (including any initial stub period) after the fund's inception, as proposed.

Also, as we discussed in our first comment letter, to ensure that investors receive complete historical information about new funds on a timely basis, we recommend clarifying in the Adopting Release that a private fund is considered to be formed or incepted once it commences any operations, including charging fees or undertaking any subscription facility activity. This would be the inception date to determine when the first quarterly statement needs to be produced.

103. Should the proposed rule treat liquid and illiquid funds differently with regard to fee and expense versus performance reporting? For example, should the proposed rule require liquid funds to start distributing quarterly statements with performance reporting sooner than illiquid funds? If so, why and how much sooner?

CFA Institute Response

We believe that liquid and illiquid funds should not be treated differently. Although some liquid funds are able to distribute performance information sooner than illiquid funds, we recommend using the same deadline for all private funds. We believe it would complicate the rule and would also complicate fund oversight for investors. Additionally, it may create incentives for advisers to classify a hybrid fund as an illiquid fund when a liquid fund classification would be more appropriate.

104. As proposed, the rule would use "operating results" as the trigger for quarterly statement distribution. Should we instead rely on another trigger to indicate when an adviser must start distributing quarterly statements to investors? For example, should the proposed rule instead require an adviser to start distributing quarterly statements when the private fund has financial statements that report operating results? If so, why? Should we define "operating results" or clarify what it means?

CFA Institute Response

We agree with using "operating results" as the trigger, which aligns with our recommendation in our first comment letter that the private fund should be considered formed or incepted once it commences any operations. We believe that it would be helpful to include language in the Adopting Release that explains what is meant by operating results. Based on our experience, some advisers do not consider a fund to be incepted until the first capital call is made, even though the fund has charged fees or made investments using funds from a subscription facility. We believe that charging fees or undertaking any subscription facility activity would be considered commencing operations (i.e., having operating results).

105. Should the proposed rule require an adviser to prepare and distribute an initial quarterly statement sooner than after the first two full calendar quarters of operating results? For example, should we require an adviser to prepare and distribute a quarterly statement after the first calendar quarter of the fund's operations? Why or why not? If we required an adviser to prepare and

distribute a quarterly statement earlier in the fund's life, would this information be useful to investors?

CFA Institute Response

We agree with requiring an adviser to prepare and distribute an initial quarterly statement after the first two full calendar quarters of operating results as proposed. We believe that performance for a shorter period would not be as useful to investors. A two-quarter requirement seems to strike the right balance between the goals of providing timely information for a new fund and providing useful information to investors.

106. The proposed rule would require advisers to prepare and distribute a quarterly statement after the private fund has two full calendar quarters of operating results and continuously each calendar quarter thereafter. An adviser would be required to provide information for any stub periods that precede its first two full calendar quarters of operating results (i.e., from the date of the fund's inception to the beginning of the first calendar quarter during which the fund begins to produce operating results). Should the proposed rule explicitly address how advisers should handle stub periods? If so, how?

CFA Institute Response

We believe that it would promote comparability and consistency if the Adopting Release addressed how advisers should handle stub periods.

We recommend that when presenting fees and expenses in the Fund Table, the stub period prior to the initial full quarter should be treated as its own period and should be clearly labeled with the time-period covered. For performance of illiquid funds, the stub period should be required to be included in the performance metrics and the statement of contributions and distributions, because this information includes activity from inception. For annual performance of liquid funds, the stub period would be included in the first annual time period, which could be a partial year if the private fund's inception date is other than on the first day of a calendar year. For the average annual and year-to-date returns, the initial stub period would be included in those returns, if the inception date falls within the required time period.

107. The proposed rule would require fee and expense reporting based on a fund's calendar quarter and performance reporting based on a liquid fund's calendar year. Should we instead use "fiscal quarter" and "fiscal year"? Why or why not?

CFA Institute Response

We agree with requiring reporting based on the calendar year. This approach promotes consistency and comparability among funds. Investors, such as pension funds, will incorporate these figures into their reporting based on their own fiscal year, not the individual investment's fiscal year.

108. Are there certain types of advisers or funds that should be exempt from distributing the quarterly statement to investors? If so, which ones and why? Are there certain types of advisers or funds that should be required to distribute quarterly statements to investors? If so, which ones and why?

CFA Institute Response

We recommend exempting the following fund types:

- Private funds for which all investors are either employees of the adviser or are friends and family. Such investors would have the ability to obtain information that they wish to receive from the adviser.
- Private funds with less than \$10 million in committed capital. We believe that subjecting very small private funds to the Proposed Rules could have a chilling effect on the industry and would deter advisers from entering this market.

109. Instead of requiring advisers to distribute the quarterly statement to investors, should we require advisers to only distribute or make the quarterly statement available to investors upon request? Despite the limitations of private fund governance mechanisms, as discussed above, should we require advisers to distribute the quarterly statement to independent members of the fund's LPAC, board, or other similar governance body?

CFA Institute Response

As we discussed in our first comment letter and in our responses above, we recommend allowing private fund managers to meet the quarterly statement distribution requirement by either providing quarterly statements to investors or making the quarterly statements available to investors.

We believe that advisers should not be required to distribute the quarterly statement to independent members of the fund's LPAC, board, or other similar governance body. The Proposed Rules address the needs of investors, and we believe the final rule should focus solely on investors.

110. Rule 206(4)-2 under the Advisers Act (the "custody rule") allows a client to designate an independent representative to receive on its behalf account statements and notices that are required by that rule. Under the custody rule, an "independent representative" is defined as someone who does not control, is not controlled by, and is not under common control with the adviser, among other requirements. Should we adopt a similar provision in the quarterly statement rule? Are there specific types of investors that need, or at present commonly designate, independent representatives to receive quarterly statements on their behalf?

CFA Institute Response

We believe that it is not necessary to adopt procedures similar to the custody rule with respect to receiving quarterly statements. Even without language addressing this point, an adviser would be free to designate who should receive quarterly statements on its behalf.

111. Should we revise the definition of "distribute" expressly to include distribution by granting investors access to a virtual data room containing the quarterly statement? Why or why not?

CFA Institute Response

We agree with this proposal. It is in line with our recommendation in our first comment letter to allow private fund managers to meet the quarterly statement distribution requirement by either providing quarterly statements to investors or making the quarterly statements available to investors.

112. We considered requiring the proposed quarterly statement disclosures to be submitted using a structured, machine-readable data language. Such format may facilitate comparisons of quarterly

statement disclosures across advisers and periods. Should we require advisers to provide quarterly statements in a machine-readable data language, such as Inline eXtensible Business Reporting Language (“Inline XBRL”)? Why or why not? Would such a requirement make the quarterly statements, and the information included therein, easier for investors to analyze? For example, would it be useful for investors to download quarterly statement information directly into spreadsheets, particularly for institutional investors that may have a significant number of private fund investments? Would a machine-readable data language impose undue additional costs and burdens on advisers? Please provide support for your response, including, where available, cost data.

CFA Institute Response

We believe that advisers should not be required to submit the proposed quarterly statement disclosures to be submitted using a structured, machine-readable data language. We agree with the language within the Proposing Release that states that advisers will be encouraged to use a structured, machine-readable format if advisers believe this format would be useful to the investors in the fund.

4. Consolidated Reporting for Certain Fund Structures

113. Do commenters agree that the proposed rule should require advisers to consolidate reporting to cover related funds to the extent doing so would provide more meaningful information to investors and would not be misleading? Alternatively, should we prohibit advisers from consolidating information for multiple funds? Why or why not? Should the rule permit, rather than require, consolidated reporting?

CFA Institute Response:

We agree with the proposed rule that would require consolidated reporting when doing so would provide more meaningful information to investors. We also agree that private fund structures can be very complex, and a principles-based approach is the correct approach. Similar to our recommendation with respect to classifying funds as liquid or illiquid, we recommend requiring advisers to maintain records to support their determination as to whether private funds should or should not be consolidated.

114. Should we require advisers to provide a consolidated quarterly statement for funds that are part of the same strategy, such as parallel funds, feeder funds, and master funds? Alternatively, should these types of funds have separate reporting? For example, should feeder fund investors receive a quarterly statement covering the feeder fund and a separate quarterly statement covering the main fund or master fund? How should the rule address the fact that certain funds may have different expenses (e.g., an offshore fund may have director expenses while an onshore fund may not)? Should we require advisers to provide investors with a summary of any fund-specific expenses and the corresponding dollar amount(s)? Should such a requirement be triggered only if the fund-specific expense exceeds a certain threshold, such as a percentage of the fund size (e.g., .01%, .05%, or .10% of the fund’s size) or a specific dollar amount (e.g., \$15,000, \$30,000, or \$50,000)?

CFA Institute Response

As we stated above, we agree with the proposed rule that would require consolidated reporting when doing so would provide more meaningful information to investors. Given the complexity of

private fund structures, we believe that this principles-based approach suffices and we would not recommend imposing additional requirements as proposed here.

115. As noted above, the proposal would require advisers to provide feeder fund investors with a consolidated quarterly statement covering the applicable feeder fund and the feeder fund's proportionate interest in the master fund, to the extent doing so would provide more meaningful information to investors and would not be misleading. Do commenters agree with this approach? Alternatively, should we require advisers to provide consolidated reporting covering all feeder funds (and not just the applicable feeder fund) and the master fund? Why or why not?

CFA Institute Response

As we stated above, we agree with the Proposed Rule that would require consolidated reporting when doing so would provide more meaningful information to investors. Given the complexity of private fund structures, we believe that this principles-based approach suffices and we would not recommend imposing additional requirements as proposed here.

116. We also recognize that certain private funds have multiple classes (or other groupings such as series or tranches) of interests or shares. The proposed rule would require the quarterly statement to present fund-wide information. Would advisers face challenges in calculating fee, expense, and performance information if there are differences in fees, allocations, and/or expenses between or among classes, series, or tranches? Should we require disclosure of class-specific fees and expenses, or of the differences among classes? Why or why not? Should we instead permit or require quarterly statements for multi-class private funds to present the proposed fee and expense and performance information on a class-by-class basis, particularly if each class (or series or tranche) is considered a distinct private fund or separate legal entity (with segregated assets and liabilities) under applicable law? Would such an approach provide more meaningful information for investors in each of those classes, given the potential for different fee, allocation, and expense structures? Should we require quarterly statements for multiclass (or multi-series or multi-tranche) private funds to present class-by-class (or series-by-series or tranche-by-tranche) information to the extent each class (or series or tranche) holds different investments?

CFA Institute Response

As we discussed in our first comment letter, when funds contain multiple share classes that have different fee arrangements or different investments, aggregating fee, expense, and performance information at only the fund level would not provide meaningful information to any specific investor. It would also not allow an investor to understand their full cost of investing in a private fund, nor would it allow an investor to check the fee, expense, or performance calculations. We therefore recommended providing fund level information only when all investors in a private fund share ratably in the same investments and pay the same fees. If there are different share classes with different fees or expenses, we recommend requiring advisers to also provide (or make available) investor-level information or representative investor-level (e.g., share class) information. In terms of performance, we recommend requiring advisers to provide returns that are appropriate for the investor. In cases when there are different share classes with different fees or investments, this would be share class level performance.

117. Should advisers only be required to distribute a class' quarterly statement to interest holders of such class, or should all fund investors be entitled to receive such statement regardless of whether they are interest holders of the relevant class if the rule permits or requires class-specific quarterly statements for multi-class private funds?

CFA Institute Response

We believe that the adviser should be required to distribute only the class' quarterly statement to interest holders of such class. However, because many advisers already provide information about all share classes to all investors, advisers should not be prohibited from continuing to do so.

118. Certain advisers provide combined financial statements covering multiple funds. Should we require or permit advisers to provide consolidated quarterly statements for funds that have combined financial statements? Why or why not?

CFA Institute Response

As we stated above, we agree with the Proposed Rule that would require consolidated reporting when doing so would provide more meaningful information to investors. Given the complexity of private fund structures, we believe that this principles-based approach suffices and we do not recommend imposing additional requirements as proposed here. We believe that requirements relating to financial statement preparation could be a factor when an adviser determines if funds should be consolidated. However, an adviser should be able to make a different decision with respect to quarterly statements if it has a good rationale for doing so.

5. Format and Content Requirements

119. Should the proposed quarterly statement rule include a provision on formatting and content? Why or why not?

CFA Institute Response

We agree with the proposed provision on formatting and content. We believe that this principles-based approach will help advisers in determining how to present information and will prevent advisers from providing information in an inconsistent format that could confuse investors.

120. Do commenters agree with the flexibility of the proposed format and content requirements, or should we prescribe wording? For example, should we require a cover page with prescribed wording? If so, what prescribed wording should we require?

CFA Institute Response

We agree with the flexibility of the proposed format and content requirements and believe that wording should not be prescribed.

121. To meet the rule's formatting requirements, any information that an adviser chooses to include in a quarterly statement, but that is not required by the rule, would be required to be presented in a manner that is no more prominent than the required information. Should the rule, instead, require that advisers more prominently present information that is required by the proposed quarterly statement rule (as opposed to supplemental information that is merely permitted)? If an adviser chooses to include supplemental information, should we require that adviser to disclose what information in the quarterly statement is required versus that which is voluntary?

CFA Institute Response

We agree with the proposed rule's formatting requirements. We do not agree with adding requirements that address how information that is not required by the quarterly statement must be presented or identified, beyond not being more prominent than the required information. We believe that advisers should determine how best to present the information within a quarterly statement. However, we appreciate the concern that advisers could include other information that obscures the required information or misleads investors. To address this concern, the format and content provision could be modified to include the underlined language:

(g) *Format and content.* The quarterly statement must use clear, concise, plain English, be presented in a format that facilitates review from one quarterly statement to the next, and must not include information that is misleading or is intended to mislead investors.

6. Recordkeeping for Quarterly Statements

122. Should we require advisers to maintain the proposed records or would these requirements be overly burdensome for advisers? Are there alternative or additional recordkeeping requirements we should impose?

CFA Institute Response

We agree with the proposed recordkeeping requirements. If the final rule allows advisers to make the quarterly statement available instead of distributing it, then private fund advisers that follow this option would need to establish policies and procedures that allow them to demonstrate to the Commission that quarterly statements were made available to investors in accordance with the reporting deadline.

123. Should we require advisers to retain a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s) for each quarterly statement, as proposed? Should we instead eliminate this requirement because of the potential burdens?

CFA Institute Response

We recommend an alternative approach, where advisers are required to maintain records that allow them to demonstrate how they met the quarterly statement distribution requirement. If the final rule allows an adviser to instead make the quarterly statement available to investors, then advisers could be required to maintain records that allow them to demonstrate how they met the quarterly statement distribution requirement or how they made quarterly statements available to investors. This approach would make the Proposed Rule more evergreen.

124. Should we provide more specific requirements regarding the records an adviser must maintain to substantiate its determination that a private fund is a liquid fund or an illiquid fund? Alternatively, should we leave the proposed rule as is and allow advisers flexibility in how they document this determination?

CFA Institute Response

As we discussed in our first comment letter, we recommend requiring advisers to maintain records to support their determination as to whether a private fund is classified as liquid or illiquid. We believe that it is appropriate to be flexible in terms of how an adviser documents its determination.

CFA Institute Supplemental Comment Letter

Re: File No. S7-03-22

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Thank you for your consideration of our views and perspectives. We welcome the opportunity to meet with you to answer any questions or provide more detail about our supplemental comment letter.

Sincerely,

/s/ Karyn Vincent

/s/ Krista Harvey

Karyn D. Vincent, CFA, CIPM
Senior Head, Global Industry Standards
CFA Institute
434-249-7452
karyn.vincent@cfainstitute.org

Krista Harvey, CFA, CIPM
Director, Global Industry Standards
CFA Institute
434-414-6583
krista.harvey@cfainstitute.org