



October 11, 2022

Submitted by SEC Webform (<https://www.sec.gov/cgi-bin/ruling-comments>)

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

**RE: File No. S7-22-22: Form PF; Reporting Requirements  
for All Filers and Large Hedge Fund Advisers**

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I am writing in response to U.S. Securities and Exchange Commission Release No. IA-6083, *Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers* (the “Proposal”).<sup>2</sup> NASAA supports the Proposal and encourages its adoption.

The Financial Stability Oversight Council (“FSOC”) was formed in the wake of the 2008 financial crisis in part to monitor and assess systemic risks as a means to avoid such future economic calamities.<sup>3</sup> The FSOC’s work also involves facilitating coordination among federal and state regulators and providing regulatory guidance. NASAA supports these goals and the work of FSOC member agencies, including the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) (collectively, the “Commissions”) to better protect our financial system. As explained in the Proposal, the Commissions’ proposed amendments to Form PF would collect additional information that would help the Commissions and the FSOC to monitor private fund activities and assess potential systemic risks posed by these funds.

To keep pace with the continued growth of the private fund industry and its evolving business practices, complexities, strategies and exposures, the proposed amendments to Form PF

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<sup>1</sup> Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

<sup>2</sup> The Proposal is available at <https://www.sec.gov/rules/proposed/2022/ia-6083.pdf>.

<sup>3</sup> See S. REP. NO. 111-176, at 2-3 (2010), <https://www.congress.gov/111/crpt/srpt176/CRPT-111srpt176.pdf>.

are vital to improving the accuracy and reliability of data used by the FSOC and the Commissions. Expanding Form PF to resolve the identified information gaps would allow the FSOC to better assess private fund activities and any systemic risks that may flow therefrom. We discuss three of the many positive changes contained in the Proposal below.

First, NASAA supports the Proposal's changes to increase specificity and consistency across Form PF reporting, including as to the reporting of complex investing structures. In particular, increasing Form PF disclosures regarding master-feeder arrangements and parallel fund structures would allow for increased regulatory transparency of private fund characteristics and risk profiles.<sup>4</sup> These proposed changes are appropriate given the differing reporting practices by certain fund advisers, as outlined in the Proposal.<sup>5</sup> Giving the Commissions and the FSOC a deeper look into the specific holdings within affiliated feeder funds would allow them to identify potential risks to financial stability that might otherwise not be apparent at the overall master fund level (such as positions that notionally offset one another).

Second, NASAA supports the Proposal's increased disclosure requirements for private funds' use of trading vehicles to hold assets, incur leverage, or engage in trading or other activities.<sup>6</sup> This new reporting structure would provide the Commissions and the FSOC with insights into a private fund's assets or activities that are, at present, not reportable on Form PF. As with the increased disclosures for master-feeder funds, this change would help the Commissions and the FSOC to monitor private fund activities and assess potential systemic risks. We also support the proposed requirement that collateralized debt obligations ("CDOs") and collateralized loan obligations ("CLOs") be separately disclosed in two sub-asset classes, rather than consolidated into a single sub-asset class (as they now are).<sup>7</sup> Greater specificity of disclosure here is appropriate given that CDOs and CLOs have different investment and risk characteristics and that past accumulations of these types of instruments have posed outsized systemic risks.

Third, NASAA supports the Proposal's intention to define "digital asset" and to require separate disclosure of digital asset holdings as an entirely new sub-asset class within Form PF.<sup>8</sup> NASAA's members have identified digital assets as one of the top threats facing investors.<sup>9</sup> The relative sophistication of private fund advisers does not immunize private funds from these risks.

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<sup>4</sup> See Proposal at 10-12.

<sup>5</sup> See *id.* at 10-11.

<sup>6</sup> See *id.* at 16-17.

<sup>7</sup> See *id.* at 92.

<sup>8</sup> See *id.* at 52-53.

<sup>9</sup> See *NASAA Reveals Top Investor Threats for 2022*, NASAA (Jan. 10, 2022), <https://www.nasaa.org/61477/nasaa-reveals-top-investor-threats-for-2022/#:~:text=%E2%80%9CBY%20far%2C%20NASAA's%20securities%20regulators,Borg%2C%20Alabama%20Securities%20Commission%20Director.>

The SEC should furthermore ensure that its terminology regarding digital assets remains uniform.<sup>10</sup> Beyond maintaining consistency between the SEC’s rule proposals and litigation positions,<sup>11</sup> the SEC should strive to ensure that its definition of digital assets aligns with other attempts to define this term.<sup>12</sup> NASAA supports a precise definition that would provide certainty and the Commissions should be wary of adopting a definition that names specific types of instruments, especially where such instruments, or the use of such terms in common parlance, could be subject to change.<sup>13</sup> Consequently, we request that the Commissions remove “including, but not limited to, so-called ‘virtual currencies,’ ‘coins,’ and ‘tokens’” from the proposed definition of digital assets set forth in the Proposal.<sup>14</sup> Removing these terms would define digital assets by virtue of their fundamental characteristics rather than by examples. Additionally, NASAA believes requiring advisers to report digital assets by name would be appropriate because digital assets vary widely in terms of their potential stability, particularly stablecoins.<sup>15</sup> Identifying the accumulation of a specified digital asset product or structure would enhance FSOC’s ability to conduct more targeted analyses and improve comparability.

For the reasons described above, NASAA supports the Proposal and encourages its adoption. Should you have any questions about this letter, please contact either the undersigned or NASAA’s General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,



Andrew Hartnett  
NASAA President and  
Iowa Insurance Division  
Deputy Administrator for Securities

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<sup>10</sup> See Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act Release No. 90788 (Dec. 23, 2020) [86 FR 11627 (Feb. 26, 2021)], at n.1; see also Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26, 2022), [87 FR 9106 (Feb. 17, 2022)], at nt.65.

<sup>11</sup> For instance, in *SEC v. Wahi*, the SEC’s complaint used the term “crypto asset security” when referring “to an asset that is issued and/or transferred using distributed ledger or blockchain technology – including, but not limited to, so-called ‘digital assets,’ . . . .” Complaint & Demand for Jury Trial at 2, *SEC v. Wahi et al.*, No. 2:22-cv-01009 (W.D. Wash. Jul. 21, 2022).

<sup>12</sup> See generally Exec. Order No. 14067, 87 Fed. Reg. 14,143 (Mar. 9, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-03-14/pdf/2022-05471.pdf>.

<sup>13</sup> See generally NASAA’s Position on S. 4760/H.R. 8730, the Digital Commodities Consumer Protection Act of 2022, NASAA (Sept. 9, 2022), <https://www.nasaa.org/wp-content/uploads/2022/09/NASAA-Letter-to-Committee-Leadership-Regarding-the-DCCPA-9-9-22-F.pdf>.

<sup>14</sup> See Proposal at 53. If the Commission believes illustrative examples are helpful, NASAA suggests finding a place to describe those examples elsewhere in the Form’s instructions.

<sup>15</sup> See *id* at 100.