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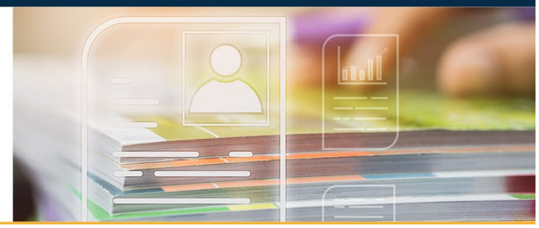
Client Alert | Investment Management



SEC Adopts Amendments to Form PF

Introduction

On May 3, 2023, the Securities and Exchange Commission (SEC) adopted amendments[1] to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds to require event reporting upon the occurrence of key events.[2] The amendments also require large private equity fund advisers to provide additional information to the SEC about the private equity funds they advise. The reporting requirements are designed to enhance the Financial Stability Oversight Council's (FSOC) ability to monitor systemic risk as well as bolster the SEC's investor protection efforts and regulatory oversight of private fund advisers. The adopted rule becomes effective on June 11, 2024, except for the amendments to Form PF Sections 5 and 6 (referenced in 17 CFR 279.9), which will go into effect sooner, on Dec. 11, 2023.

Discussion

The SEC has adopted the amendments largely as proposed, with certain modifications in response to the comments received. The amendments include new current event reporting requirements for large hedge fund advisers, new quarterly current event reporting requirements for all private equity fund advisers[3] and amendments to large private equity fund advisers'[4] annual reporting requirements. These amendments are discussed below and are summarized in Appendix A.

Current Reporting for Large Hedge Fund Advisers to Qualifying Hedge Funds

Presently, large hedge fund advisers[5] file Form PF either quarterly or annually. The SEC has noticed that data reported with this frequency often becomes stale; therefore, the SEC has adopted new current reporting requirements for large hedge fund advisers. Large hedge fund advisers will now be required to report a current event to the SEC and FSOC in real time, as opposed to waiting for the quarterly or annual reporting period. These current reporting event requirements will provide

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[1] Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, Investment Advisers Act Release No. IA-6297 (May 3, 2023).

[2] Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, 87 Fed. Reg. 9,106 (Feb. 17, 2022) (to be codified at 17 CFR Parts 215 and 279); Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, 88 Fed. Reg. 38,146 (June 12, 2023) (to be codified at 17 CFR Parts 275 and 279).

[3] Private equity fund advisers are investment advisers with at least $150 million in private equity fund assets under management.

[4] Large private equity fund advisers are private equity fund advisers with at least $2 billion in private equity fund assets under management.

[5] To qualify as a large hedge fund adviser, an adviser must have at least $1.5 billion in hedge fund assets under management.

critical, up-to-date information to the SEC and FSOC so that each entity can timely assess the causes of the event and any potential harm to investors and the financial system.

The current reporting events required to be reported to the SEC include the following: extraordinary investment losses, certain margin events, counterparty defaults, material changes in prime broker relationships, operations events and certain events associated with redemptions. The SEC has provided objective guidelines to allow advisers to determine whether to file a report during (or immediately after) a current event. For example, a large hedge fund adviser is required to report current events for extraordinary investment losses if the fund experiences a loss "equal to or greater than 20% of the fund's "reporting fund aggregate calculated value" (RFACV) – a change from a loss equal to or greater than the most recent net asset value over a rolling 10-business-day period. In a further effort to provide objective reporting guidelines, the SEC has added checkboxes on Form PF to provide additional context and avoid requiring the adviser to provide lengthy narrative responses during stress periods. The SEC has also added an explanatory notes section that will allow an adviser to provide a narrative response if it believes that additional information would be helpful.

Large hedge fund advisers are required to report these current events as soon as practicable but no later than 72 hours after the reporting event occurs. The 72-hour period begins when the reporting event occurs or at the time when the adviser reasonably believes that the event occurred. The amendments to Form PF require the adviser to respond to the best of their knowledge. Advisers will be able to file amendments to a previously filed current report in order to correct inaccurate information.[6]

Quarterly Private Equity Event Reports for All Private Equity Fund Advisers

The second amendment adopted to Form PF relates to quarterly event reporting for all private equity fund advisers. The amendments require advisers to report quarterly on two specific reporting events: execution of an adviser-led secondary transaction or investor election to remove a fund's general partner or to terminate a fund's investment period or a fund. These reports will be in Section 6 of Form PF and will be termed "private equity event reports." Advisers will file these reports within 60 days after the end of their fiscal quarters. If a private equity event did not occur during a particular quarter, then an adviser would not be required to file a Section 6 report for that quarter. The SEC believes quarterly reporting of these specific events is important, as they generally result from a stress event. The SEC recognizes that some adviser-led secondary transactions or removal or termination events have serious implications for investors but do not necessarily indicate urgent harm. As such, reporting these events quarterly (rather than through a current report) allows the stress event to unfold and will promote more accurate and robust adviser reports. In addition, this form of monitoring bolsters the SEC's investor protection efforts across the private equity industry.

Adviser-Led Secondary Transactions

The SEC is adopting the proposed Form PF Section 6 Item B, which will require private equity fund advisers to report any adviser-led secondary transactions on a quarterly basis (within 60 days after the end of each fiscal quarter). Item B will require advisers to report when an adviser-led secondary transaction is complete and must include the transaction closing date and a brief description of the transaction. The SEC defines an "adviser-led secondary transaction" as any transaction initiated by the adviser or any of its related persons[7] that offers private fund investors the choice to either sell all or a portion of their interests in the private fund or convert or exchange all or a portion of their interests in the private fund for interests in another vehicle

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[6] Under the current and amended Form PF, advisers will not be required to update information if they believe in good faith that they properly responded to Form PF on the date of filing, even if that information is subsequently revised for purposes of recordkeeping, risk management or investor reporting (e.g., when estimates are refined after completion of a subsequent audit). *See* Form PF Instruction 16.

[7] *See* Form PF Glossary (definition of "related person").

advised by the adviser or any of its related persons.[8] Private equity fund advisers will be required to report these events only if they are initiated by the adviser or any of its related persons.

Removal of General Partner or Election to Terminate the Investment Period or Fund
The SEC will now require all private equity fund advisers to report when a fund's investors have removed an adviser or an affiliate as the general partner or similar control person of a fund; elected to terminate the fund's investment period or elected to terminate the fund, in each case as contemplated by the fund documents. Advisers will have 60 days after the fiscal quarter-end to report these events. To properly report, advisers must report the effective date of the removal or termination and include a description of these events. The reporting is triggered once an adviser has been notified of the investors' election.

Filing Fees and Format for Reporting
Large hedge fund advisers will be required to file current reports through the same non-public filing system already used to file the rest of Form PF – the Private Fund Reporting Depository (PFRD). Large hedge fund advisers will file current reports in Section 5. Private equity advisers will be required to file quarterly private equity event reports also through the PFRD in Section 6 of Form PF. Neither large hedge fund advisers nor private fund advisers will be required to submit any other section of Form PF besides Sections 5 or 6, respectively, when filing current reports or private equity event reports.

All advisers filing reports under Sections 5 and 6 will be required to pay fees to the operator of the PFRD. The filing fees will be approved by the SEC in a separate action.

Large Private Equity Fund Adviser Reporting
The third amendment adopted by the SEC alters private equity fund adviser Form PF Section 4 reporting requirements. The amendments add to Section 4 certain questions that are designed to improve FSOC's systemic risk monitoring and data collection. In a change from the proposal, the SEC has not adopted a lower $1.5 billion in private equity fund assets under management reporting threshold for large private equity fund advisers. The existing threshold of $2 billion in private equity fund assets under management will remain.

New Question on General Partner or Limited Partner Clawbacks
The SEC will require large private equity fund advisers to report annually as part of their regular Section 4 Form PF filings information about any general partner clawback or any limited partner clawback (or clawbacks) in excess of an aggregate amount of 10% of a fund's aggregate capital commitments. Requiring reporting of clawbacks will enable the SEC and FSOC to monitor declining market conditions in the markets in which private equity invests.

The SEC defines a "general partner clawback" as any obligation of the general partner, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the fund pursuant to the fund's governing agreements.[9] For example, if the general partner of a fund is entitled to performance-based compensation that equals 20% of the fund's profits (over the life of the fund) and the fund distributes such compensation periodically based on the fund's profitability at the time of distribution, the general partner may have received distributions of performance-based compensation over the life of the fund in excess of 20% of the fund's aggregate profits. If this occurs, the fund's general partner will be required to return the excess performance-based compensation it received to the fund, and the fund will be required to report the event.

[8] *See* Form PF Glossary (definition of "adviser-led secondary transaction").

[9] *See* Form PF Glossary (definition of "general partner clawback").

The SEC defines a "limited partner clawback" (or a giveback) as an obligation of a fund's investors to return all or any portion of a distribution made by the fund to satisfy a liability, obligation or expense of the fund pursuant to the fund's governing agreements.[10] This required reporting will be triggered when the aggregate limited partner clawbacks over the course of a fund's life exceed 10% of the fund's aggregate capital commitments at such time. Advisers generally should file for each additional limited partner clawback, regardless of its size, over the course of such fund's remaining life once such fund's aggregate limited partner clawbacks have exceeded this 10% threshold.

Other Amendments to Large Private Equity Fund Adviser Reporting
Private Equity Fund Investment Strategies – The SEC is adding Question 66 to Form PF Section 4. Question 66 will require advisers to choose from a list of strategies by the percentage of deployed capital (even if the categories do not precisely match the characterization of the reporting fund's strategies). Filers will choose from a drop-down menu that includes all investment strategy categories for Form PF. If a reporting fund engages in multiple strategies, the adviser must provide a good faith estimate of the percentage of the reporting fund's deployed capital represented by each strategy. The question will also have an "other" category advisers may select when a reporting fund's strategy is not listed. If the adviser selects "other," the adviser will be required to explain the strategy.

Fund-Level Borrowings – The SEC is also adding Question 68 to Section 4; this question will require advisers to report additional information on any fund-level borrowing. If a fund engages in fund-level borrowing, the adviser must provide information on each borrowing or other cash financing available to the fund;[11] the total dollar amount available and the average amount borrowed over the reporting period. Private equity fund advisers required to report on Question 68 in Section 4 may skip Question 12 in Section 1b of Form PF.

Events of Default, Bridge Financing to Controlled Portfolio Companies and Geographic Breakdown of Investments – Lastly, the SEC is amending three existing questions in Form PF Section 4. First, there is a change to Question 74 that will require advisers to provide detailed information about the nature of reported events of default, including whether it is a payment default of the private equity fund, a payment default of a controlled portfolio company (CPC) or a default relating to a failure to uphold terms under the applicable borrowing agreement (other than a failure to make regularly scheduled payments).

Second, the SEC is adding a requirement to Question 75, which currently requires reporting on the identity of the institutions providing bridge financing to the adviser's CPCs and the amount of such financing. Advisers now will be required to also report additional counterparty identifying information (i.e., Legal Entity Identifier (LEI), if any) and, if the counterparty is affiliated with a major financial institution, the name of the financial institution.

Third, the SEC is adding a requirement to Question 78, which currently requires advisers to report on the geographical breakdown of investments by private equity funds. The amended Question 78 will move away from asking for reporting based on a static group of regions and countries and toward identifying a private equity fund's greatest country exposures based on a percentage of net asset value.

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[10] *See* Form PF Glossary (definition of "limited partner clawback").

[11] This also includes other cash financing available to the fund as part of this question to capture instances in which a fund has access to capital that would not be considered borrowing.

Conclusion

The SEC believes increased reporting will improve its ability to proactively assess emerging risk events, protect investors and minimize market disruptions. As monitoring and reporting increases, advisers will bear increased costs. Those specific costs are currently unknown. Private fund advisers should begin to draft revised reporting policies and procedures to comply with the Form PF amendments as soon as they take effect.

Appendix A

Reporting Event or Topic	Large Hedge Fund Advisers	Private Equity Fund Advisers	Large Private Equity Fund Advisers
Extraordinary Investment Losses: 10-business day holding period return of reporting fund is less than or equal to 20% of reporting fund's aggregate calculated value.	File report within 72 hours (72 hours period begins when the event occurs or when the adviser reasonably believes the event occurred)	N/A	N/A
Margin, Collateral or Equivalent Increase: Total value of margin, collateral or equivalent posted by the reporting fund at the end of a rolling 10-business day period is greater than or equal to 20% of the reporting fund's average aggregate calculated value during the same period.	File report within 72 hours	N/A	N/A
Notice of Margin Default or Determination of Inability to Meet a Call for Margin, Collateral or Equivalents: Reporting fund is in default on a call for margin, collateral or an equivalent that it cannot cover, including within a contractually agreed upon cure period, or the adviser determines that the fund will not be able to meet such call.	File report within 72 hours	N/A	N/A
Counterparty Default: A counterparty to a reporting fund does not meet a call for margin, collateral or equivalent or fails to make any other payment on time and in the form contractually required and the amount involved is greater than 5% of the reporting fund's aggregate calculated value.	File report within 72 hours	N/A	N/A
Prime Broker Relationship Terminated or Materially Restricted: If a prime broker terminated or materially restricts its relationship with the reporting fund, in whole or in part, in markets where that prime broker continues to be active, or the relationship between the prime broker and the reporting fund was terminated by either the reporting fund or the prime broker and a termination event was activated in the prime brokerage agreement or related agreements, within the last 12 months.	File report within 72 hours	N/A	N/A

Reporting Event or Topic	Large Hedge Fund Advisers	Private Equity Fund Advisers	Large Private Equity Fund Advisers
Operations Event: Reporting fund or private fund adviser experiences a significant disruption or degradation of the reporting fund's critical operations, as a result of an event at either a service provider to the reporting fund, the reporting fund itself or the adviser.	File report within 72 hours	N/A	N/A
Withdrawals and Redemptions: Reporting fund receives cumulative requests for withdrawals or redemptions from the reporting fund equal to or more than 50% of the most recent net asset value.	File report within 72 hours	N/A	N/A
Unable to Satisfy Redemptions or Suspension of Redemptions: Reporting fund is unable to pay redemption requests or has suspended redemptions, and the suspension lasts for more than five consecutive business days.	File report within 72 hours	N/A	N/A
Adviser-Led Secondary Transaction: The investment adviser instigates a secondary transaction.	N/A	File report within 60 days after the fiscal quarter-end	File report within 60 days after the fiscal quarter-end
General Partner Removal: Investors elect to remove the general partner (with or without cause).	N/A	File report within 60 days after the fiscal quarter-end	File report within 60 days after the fiscal quarter-end
Termination of the Fund: Investors elect to terminate the fund (for any reason).	N/A	File report within 60 days after the fiscal quarter-end	File report within 60 days after the fiscal quarter-end
Termination of the Investment Period: Investors elect to terminate the investment period (for any reason).	N/A	File report within 60 days after the fiscal quarter-end	File report within 60 days after the fiscal quarter-end
General Partner or Limited Partner Clawbacks: Reporting fund effectuates any general partner clawback or a limited partner clawback in excess of an aggregate amount equal to 10% of a fund's aggregate capital commitments.	N/A	N/A	File report annually as part of regular Section 4 Form PF filing
Private Equity Fund Investment Strategies: Selection from a list of strategies based on a percentage of deployed capital.	N/A	N/A	File report annually as part of regular Section 4 Form PF filing

Reporting Event or Topic	Large Hedge Fund Advisers	Private Equity Fund Advisers	Large Private Equity Fund Advisers
Fund-Level Borrowings: Report information on each borrowing or cash financing available to the fund, the total dollar amount available and the average amount borrowed over the reporting period.	N/A	N/A	File report annually as part of regular Section 4 Form PF filing
Default Events: Report additional information about the nature of a reported event of default (e.g., whether it is a payment default of the private equity fund, a payment default of a CPC or a default relating to a failure to uphold terms under the applicable borrowing agreement).	N/A	N/A	File report annually as part of regular Section 4 Form PF filing
Financial Institutions: Report additional information regarding institutions that provide financing to the adviser's CPCs.	N/A	N/A	File report annually as part of regular Section 4 Form PF filing
Geographical Breakdowns: Report all countries in which a reporting fund has exposure of 10% or more of its net asset value.	N/A	N/A	File report annually as part of regular Section 4 Form PF filing

For more information, contact:

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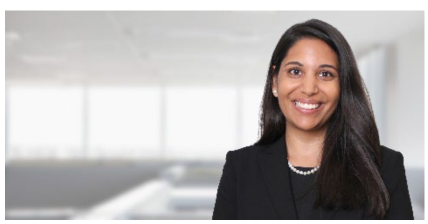

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