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CLIENT ALERT

SEC Adopts Amendments to Form PF that Affect Large Hedge Fund Advisers, Private Equity Fund Advisers, and Large Private Equity Fund Advisers

MAY 10, 2023

On May 3, 2023, the Securities and Exchange Commission (SEC) adopted certain amendments (the Amendments) to Form PF.[1] Form PF is a confidential reporting form that certain registered investment advisers advising private funds file with the SEC. The SEC and the Financial Stability Oversight Council use the information provided in Form PF to, among other things, assess systemic risks within the private fund industry and the wider financial markets as a whole.

The Amendments will increase the reporting burdens (in some instances, significantly) for (i) large hedge fund advisers (i.e., SEC-registered investment advisers managing at least $1.5 billion in hedge fund assets); (ii) private equity fund advisers (i.e., SEC-registered investment advisers managing at least $150 million in private equity fund assets); and (iii) large private equity fund advisers (i.e., SEC-registered investment advisers managing at least $2 billion in private equity assets under management).[2]

Large Hedge Fund Advisers

The Amendments require large hedge fund advisers to file a current report as soon as practicable, but no later than 72 hours after, the occurrence of certain events that the SEC believes could signal significant stress or other signals of systemic risk.[3] These events include the following:

- certain extraordinary investment losses (20% of a fund's "reporting fund aggregate calculated value") that occur over a rolling 10-business-day period;[4]
- significant increases in margin requirements;
- margin defaults or similar events;
- certain counterparty default events;
- terminations or other material changes in prime broker relationships;
- certain operations events (a significant disruption or degradation of the reporting fund's critical operations), and

- certain events relating to significant withdrawals and redemptions, including an inability to satisfy withdrawal or redemption requests, and suspensions of withdrawals or redemptions.

Private Equity Fund Advisers

The Amendments require all private equity fund advisers to file a report within 60 days after the end of any fiscal quarter where one or more of the following events have occurred:

- a general partner removal;
- investor elections to terminate a private fund or terminate a private fund's investment period; and
- adviser-led secondary transactions.[5]

Large Private Equity Fund Advisers

In a departure from the SEC's proposed amendments to Form PF, the Amendments will require large private equity fund advisers to report on an annual basis (rather than on a current basis) when general partner or limited partner clawbacks in excess of 10 percent of a fund's aggregate capital commitments have occurred (including the effective date thereof, and the reason for any such clawback).

The Amendments also amend existing Section 4 of Form PF for large private equity fund advisers, which contains certain informational reporting requirements. Specifically, the Amendments add a new question 66 to Section 4 of Form PF, which will require large private equity fund advisers to provide information on the strategies pursued by their advised private equity funds. Such strategies include "private credit (and associated sub-strategies such as distressed debt, senior debt, special situations, etc.), private equity (and associated sub-strategies such as early stage, buyout, growth, etc.), real estate, annuity and life insurance policies, litigation finance, digital assets, general partner stakes investing, and others."[6]

The Amendments also amend existing Section 4 of Form PF for large private equity fund advisers by adding a new question 68 to require reporting relating to fund-level borrowings, including the value thereof that is available, the categories of creditors used by the adviser, and the amounts actually borrowed over the reporting period.

Finally, the Amendments amend existing questions 74, 75, and 78 in Section 4 to require large private equity advisers to report more detailed information relating to events of default, more detailed information relating to institutions providing bridge financing to advisers' controlled portfolio companies, and information relating to advisers' greatest country exposures (which will be based on a percentage of net asset value), respectively.

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The Amendments will become effective (i) six months after publication of the adopting release in the *Federal Register* for the new Form PF sections that require current and quarterly event reporting, and (ii) one year after publication in the *Federal Register* for the remainder of the amendments, which were made to the existing sections of Form PF.

It is important for investment advisers to comply with the new Form PF rule and file the necessary reports on a timely basis. Failure to comply with the reporting requirements can result in penalties and other enforcement actions by the SEC.

If you have any questions or concerns about the Amendments or Form PF generally, please do not hesitate to contact us.

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[1] The Amendments are available at https://www.sec.gov/rules/final/2023/ia-6297.pdf.

[2] In a departure from the SEC's proposed amendments to Form PF, which were released in January 2022, the Amendments are retaining the existing $2 billion threshold for large private equity fund adviser reporting (the proposed amendments had considered lowering such threshold to $1.5 billion). The SEC's proposed amendments to Form PF are available at https://www.sec.gov/rules/proposed/2022/ia-5950.pdf.

[3] Large hedge fund advisers currently file Form PF on a quarterly basis.

[4] Reporting fund aggregate calculated value is defined as "every position in the reporting fund's portfolio, including cash and cash equivalents, short positions, and any fund-level borrowing, with the most recent price or value applied to the position for purposes of managing the investment portfolio." This metric "may be calculated using the adviser's own methodologies and conventions of the adviser's service providers, provided that these are consistent with information reported internally."

[5] The Amendments define an "adviser-led secondary transaction" as "any transaction initiated by the adviser or any of its related persons that offers private fund investors the choice to: (1) sell all or a portion of their interests in the private fund; or (2) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons."

[6] The Amendments note that the SEC will add a definition for "general partner stakes investing" to the Form PF Glossary of Terms. Interestingly, the Amendments note that while the SEC had considered also adding a definition of "digital assets" to the Form PF Glossary of Terms, the SEC has chosen not to do so at this time, but will continue to consider adding a definition in the future.

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