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Securities Alert

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What you need to know: Form PF amendments

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The data collected will help the SEC assess risk and shape future regulations for the industry.

What's the Impact?

- Private equity fund advisers and hedge fund advisers must submit additional reports on certain events and transactions.
- The SEC's push to collect current data on the market is likely to lead to more regulations in the hedge fund and private equity space.

On May 3, 2023, the US Securities and Exchange Commission (the SEC) adopted amendments to Form PF[1] to (1) require event reporting for large hedge fund and private equity fund advisers and

[1] Form PF applies if you (1)(a) are registered or required to register with the SEC as an investment adviser **or** (b) are registered or required to register with the CFTC as a CPO or CTA and you are also registered or required to register with the SEC as an investment adviser; (2) manage one or more private funds; and (3) your related persons, collectively, had at least $150 million in private fund assets under management as of the last day of your most recently completed fiscal year. For purposes of determining whether you meet the reporting threshold, you are not required to include the regulatory assets under management of any related person that is separately operated. If your principal office and place of business is outside the United States, for purposes of this Form PF you may disregard any private fund that, during your last fiscal year, was not a United States person, was not offered in the United States, and was not beneficially owned by any United States person.

(2) to amend reporting requirements for large private equity fund advisers (the Amendments). The goal of the Amendments is to allow the SEC to collect more data from Form PF to better assess systemic risks, market weaknesses, and potential areas for investor harm and decide whether they need to propose more regulations for the industry as it continues to grow.

The Amendments cover three main areas to enhance the transparency of the SEC's regulations on private funds:

- Quarterly private equity event reports for **ALL private equity fund advisers** (Section 6; effective December 11, 2023),[2]
- Large private equity fund adviser reporting for advisers having at least $2 billion in assets under management (AUM) (Section 4; effective June 11, 2024), and
- Current reporting for large hedge fund advisers having at least $1.5 billion in AUM that has qualifying hedge funds with a net asset value (NAV) of at least $500 million (Section 5; effective December 11, 2023).

Quarterly private equity event reports for all private equity fund advisers

In Section 6 of Form PF, the SEC adopted changes to the required quarterly reports, which now require all private equity fund[3] advisers to file the reports[4] with the SEC within 60 days after the end of their fiscal quarters upon the occurrence of the below events.

Adviser-led secondary transactions

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. The SEC argued that any adviser-led secondary transactions might reflect a deviation from the traditional life cycle of a private equity investment, which may indicate that the portfolio is struggling and needs to restructure.

Removal of general partner (GP) or election to terminate the investment period or fund

Upon an adviser receiving notification of the investors' decision to:

(1) remove the adviser or an affiliate as the GP or similar control person of a fund,

(2) terminate the fund's investment period, or

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[2] Securities and Exchange Commission, Form PF Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers Requirements (June 12, 2023).

[3] Any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund, or venture capital fund and does not provide investors with redemption rights in the ordinary course.

[4] If the two triggering events happen, the advisers need to report the closing date of the secondary transaction or the effective date of removal for the GP removal, and a description of the event.

(3) terminate the fund, in each case as contemplated by the fund documents.

The SEC believes these are uncommon but avoidable events had there been other solutions. Another aspect of concern for the SEC is that these events are likely to create conflicts of interest, which would ultimately harm the investors.

Large private equity fund adviser reporting

In Section 4 of Form PF, the SEC adopted Amendments relating to reporting by large private equity fund[5] advisers (i.e., not all advisers). These Amendments amended and added questions designed to enhance:

> (1) the Financial Stability Oversight Council's (FSOC's) ability to monitor systemic risk, and FSOC's and the SEC's ability to evaluate material changes in market trends at the reporting funds, and
>
> (2) data collection to aid the SEC's understanding of certain practices of private equity fund advisers including fund investment strategies, fund-level borrowings, default events, bridge financing to controlled portfolio companies, and geographic breakdown of investments.

Contrary to guidance the SEC received in comments, in the final update to Section 4, the SEC did not lower the reporting threshold for large private equity fund advisers from $2 billion to $1.5 billion in AUM. The SEC believes that the existing $2 billion threshold captures around 73% of the US private equity industry, and lowering the threshold would have impeded the SEC's goal to capture 75% or more of such industry.[6]

The Amendments require large private equity fund advisers to report any GP or limited partner clawback with an aggregate amount equal to 10% of a fund's aggregate capital commitments. The SEC emphasized that clawbacks could indicate the fund is under stress or preparing for a material event. Widespread clawbacks could also suggest that there are systemic risks. However, notwithstanding the time-sensitive nature of such information, the SEC decided not to adopt the proposed one-business-day reporting requirement. Instead, in the final rule, the SEC only required these events be reported annually as part of the regular Form PF filing.

Current reporting for large hedge fund advisers to qualifying hedge fund

In Section 5 of Form PF, the Amendments require "large hedge fund advisers to qualifying hedge funds to report as soon as practicable upon, but no later than 72 hours after, the occurrence of

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[5] A private equity fund and its related persons that, collectively, had at least $2 billion in private equity fund assets under management as of the last day of the fund's most recently completed fiscal year.

[6] US Securities and Exchange Commission, [Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers](#) (Jun. 6, 2023), at 71.

certain events."[7] Before the amendments, large hedge fund advisers only needed to file Form PF on a quarterly basis, but the SEC worried that the data collected by Form PF was "stale."[8] In the proposed rule, the SEC pushed for a one-business-day approach that was ultimately not adopted to give filers more time to conduct analysis and file the current reports more accurately.

Because of the timeliness requirements of the reports, large hedge fund advisers will need to set up an effective system to determine if any of the trigger events (listed below) happened and to conduct sufficient analysis to review and file the current reports. To help advisers differentiate events, the SEC incorporated objective standards to the triggering events so that it is easier to determine whether a report must be filed.[9]

Trigger Events for Current Reporting:

- **Extraordinary investment losses**: A loss equal to or greater than 20% of a fund's "reporting fund aggregate calculated value" (RFACV) over a rolling ten-business-day period.
- **Significant margin and default events:**
  - *Increases in margin*: Significant increases in the reporting fund's requirements for margin, collateral, or an equivalent based on a 20% threshold
  - *Fund margin default or inability to meet margin call*: A fund's margin default or inability to meet a call for margin, collateral, or an equivalent (taking into account any contractually agreed cure period)
  - *Counterparty default*: If a counterparty to the reporting fund (1) does not meet a call for margin or has failed to make any other payment in the time and form contractually required (taking into account any contractually agreed cure period) and (2) the amount involved is greater than 5% of RFACV
- **Prime broker relationship terminated or materially restricted**:
  - When the prime broker terminates the agreement or "materially restricts its relationship with the fund, in whole or in part, in markets where that prime broker continues to be active"
  - When there is a fund termination event as well as a cessation of the relationship, whether initiated by the prime broker or the fund
- **Operations events**: The adviser or reporting fund experiences a "significant[10] disruption or degradation" of the reporting fund's "critical operations," whether because of an event at the reporting fund, the adviser, or other service provider to the reporting fund.
- **Large withdrawal and redemption requests**: If the fund receives cumulative requests for withdrawals or redemption exceeding 50% of the most recent NAV (after netting against subscriptions or other contributions from investors received and contractually committed).

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[7] Id. at 9.

[8] Id. at 10.

[9] Id. at 12.

[10] A 20 percent disruption or degradation of normal volume or capacity generally might be indicative of the types of stress for which reporting may be necessary.

- **Inability to satisfy redemptions or suspension of redemptions**: If the reporting fund
  - (i) is unable to pay redemption requests, or
  - (ii) has suspended redemptions, and the suspension lasts for more than five consecutive business days.

Looking ahead

The private fund space is growing rapidly as the SEC noted that the net assets reported on Form PF tripled from 2013 to the third quarter of 2022.[11] The SEC is pushing to collect more current data on the market and on how the advisers and investors act and interact. As the SEC closely monitors the market events and trends, there will be a push for more regulations in the space.

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[11] US Securities and Exchange Commission, Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers (Jun. 6, 2023), at 5.