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SEC Adopts Updates to Private Fund Reporting on Form PF

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On May 3, 2023, the SEC approved amendments to Form PF[1] reporting requirements for private fund managers.[2] Most significantly, the updates introduce new event reporting obligations for SEC-registered private fund advisers, which the SEC believes are signals of significant stress or potentially contribute to systemic risks.

The reporting events and timing obligations differ depending on whether an adviser is a private equity fund adviser (which also includes real estate and private credit fund advisers) or hedge fund adviser (see below). The Form PF amendments are among several pending rule proposals the SEC is expected to finalize over the coming months, as part of its continued focus on tightening regulation and oversight of private funds and their advisers.[3]

New Quarterly Event Reporting Obligations for Private Equity Advisers

All private equity fund advisers will be required to file an event report detailing the event date and a brief description of the event within 60 days after the end of a quarter in which the following events occur:

- an adviser-led secondary transaction[4] is completed; or
- a fund's investors elect to remove the fund's general partner, or to terminate either the fund or its investment period.

Enhanced Annual Reporting for Large Private Equity Advisers

Large private equity advisers (>$2 billion in private equity fund assets under management) also will be required to provide additional information in their annual Form PF filing, including:

- new disclosure of any (i) general partner clawback of performance based compensation and (ii) limited partner clawback (or clawbacks) that are in excess of 10% of a fund's aggregate capital commitments, including, in each case, the effective date and the reason for the clawback;
- new information regarding each private equity fund's investment strategy, or strategies;
- additional data regarding fund-level borrowings, including the average amount borrowed over the reporting period;

- more granular information regarding an event of default, including the nature of the default;
- additional counterparty information on bridge financings to controlled portfolio companies, including whether the counterparty is affiliated with a major financial institution and, if so, the name of the financial institution; and
- all countries (by ISO country code) to which a reporting fund has exposure of 10% or more of its net asset value.

New Current Reporting for Large Hedge Fund Advisers

Large hedge fund advisers (>$1.5 billion in hedge fund assets under management) will be required to file an event report "as soon as practicable" (and no later than 72 hours after) following certain events, including:

- "extraordinary investment losses" equal to or greater than 20% of a hedge fund's "reporting fund aggregate calculated value" or "RFACV"[5] over a rolling 10 business day period;
- certain significant margin and default events;[6]
- termination or material restriction of prime broker relationship;
- a "significant disruption or degradation" of the reporting fund's "critical operations," whether as a result of an event at the reporting fund, the adviser, or other service provider to the reporting fund; and
- "large" withdrawal and redemption requests,[7] inability to satisfy redemptions or withdrawals, and suspensions of redemptions or withdrawals.

Effective Dates

These rules go into effect:

- 180 days after final publication for event reporting obligations;
- 365 days after final publication for enhanced annual reporting for large private equity advisers.

Questions

Please reach out to the authors listed herein or any other member of Paul Hastings' Investment Funds and Private Capital Group with any questions.

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1 Form PF is a non-public filing and is filed with the SEC on an annual basis for private equity fund managers, and on a quarterly basis for hedge fund managers. Form PF was adopted in 2011 in connection with the Dodd-Frank Act as a data collection tool to enable the Financial Stability Oversight Council to monitor systemic risks to the financial markets, and to support the SEC's regulatory oversight of private fund managers. In 2022, the SEC proposed two sets of updates to Form PF—one in Q1 and a separate proposal, together with the CFTC, in Q3. The SEC's approval relates only to the Q1 proposal; the Q3 proposal remains outstanding and subject to pending SEC approval.

2 The adopting release can be found at https://www.sec.gov/rules/final/2023/ia-6297.pdf.

3 Other recent SEC rule proposals can be found at: https://www.sec.gov/rules/proposed/2022/ia-5955.pdf (Advisers Act private fund rule proposals); https://www.sec.gov/rules/proposed/2023/ia-6240.pdf (custody rule updates); https://www.sec.gov/rules/proposed/2022/33-11028.pdf (cybersecurity); https://www.sec.gov/rules/proposed/2022/ia-6176.pdf (outsourced service provider oversight).

4 An adviser-led secondary transaction includes transactions initiated by an adviser that offer private fund investors the choice to (a) sell all or a portion of their interests in the private fund, or (b) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or its related persons.

5 RFACV 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" and 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.

6 These events include (a) significant increases in a hedge fund's requirements for margin, collateral, or an equivalent (collectively referred to as "margin") based on 20 percent of a hedge fund's RFACV; (b) a fund's margin default or inability to meet a call for margin (taking into account any contractually agreed cure period), and (c) margin-related counterparty defaults in excess of 5 percent of a hedge fund's RFACV.

7 The adopting release defines "large" as withdrawals or redemption exceeding 50 percent of the most recent net asset value (after netting against subscriptions or other contributions from investors received and contractually committed).