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Securities Alert

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What you need to know: Form PF amendments

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Effective dates occurred and occurring through June 2024 and beyond—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 within new shorter time periods, and more details about their operations on a quarterly and annual basis.
- This may have additional costs to implement but may have higher costs if not implemented ahead of an examination.
- Updates to internal reporting procedures are with regards to what rules and exemptions apply.
- 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[i] to (1) require **event reporting** for large hedge fund and private equity fund advisers and (2) to amend **periodic reporting** requirements for large private equity fund advisers (together, 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. Information reported on Form PF is not publicly available.[ii]

Form PF can apply if advisors (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 Commodity Futures Trading Commission (the CFTC) as a commodity pool operator (CPO) or commodity trading adviser (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.[iii] Different reporting requirements may apply depending on if you or your funds meet different definitions as described further below (e.g., private equity fund advisor, large private equity fund adviser, large hedge fund adviser).

The Amendments cover three main areas:

- Quarterly private equity event reports for large or smaller **private equity fund advisers** (as described above) (Section 6; was effective December 11, 2023),
- Annual large private equity fund adviser reporting for advisers having at least $2 billion in assets under management (AUM) (Section 4; will be effective June 11, 2024), and
- 72-hour reporting for large hedge fund advisers having at least $1.5 billion in AUM having qualifying hedge funds with a net asset value (NAV) of at least $500 million (Section 5; was effective December 11, 2023).

Table 1 — Final Form PF Requirements by Respondent[iv]

Form PF	Smaller private fund advisers	Large hedge fund advisers	Large liquidity fund advisers	Large private equity fund advisers	Effective dates
Section 4 (additional information concerning private equity funds).	No	No	No	Annually	June 11, 2024

Section 5 (current reporting concerning qualifying hedge funds).	No	As soon as practicable upon a current reporting event, but no later than 72 hours	No	No	December 11, 2023
Section 6 (event reporting for private equity fund advisers).	Within 60 days of fiscal quarter end upon a reporting event, if they advise private equity funds.	No	No	Within 60 days of fiscal quarter end upon a reporting event.	December 11, 2023

Quarterly reports for all private equity fund advisers

In Section 6 of Form PF, the SEC adopted changes to the quarterly reporting requirements, such that now all advisers to private equity fund (i.e., 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) are required to file an event-based report with the SEC within 60 days after the end of their fiscal quarters upon the occurrence of the below events. The reports will need to include the closing date of the secondary transaction or the effective date of removal for the GP removal or the termination of the investment period or fund, and a description of the event. [v] In addition, smaller private fund advisers and all private equity fund advisers file Form PF annually.

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.[vi] 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:

- remove the adviser or an affiliate as the GP or similar control person of a fund,
- terminate the fund's investment period, or
- 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 annual reporting

In Section 4 of Form PF, the SEC adopted Amendments relating to annual reporting by large private equity fund advisers (i.e., not all advisers). Large private equity funds are private equity funds and their related persons that, collectively, had at least $2 billion in private equity fund assets under management as of the last day of a given fund's most recently completed fiscal year.[vii] For purposes of determining whether you meet the reporting threshold, you are not required to include the regulatory AUM of any related person that is separately operated. If your principal office and place of business is outside the US, for purposes of the Form PF you may disregard any private fund that, during your last fiscal year, was not a US person, was not offered in the US, and was not beneficially owned by any US person.

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.[viii]

The Amendments to Section 4 of the Form PF amended and added questions designed to enhance:

- 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
- 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.

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.[ix] The SEC emphasized that clawbacks could indicate the fund is under stress, preparing for a material event, or facing new conflicts. 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.[x]

In addition, the SEC added a question to collect information about private equity fund investment strategies. Advisers will need to choose from a list of strategies by percent of deployed capital even if the categories do not precisely match the characterization of the reporting fund's strategies. The SEC noted that the data collected on investment strategies will allow them and FSOC to assess the potential market and systemic risks presented by the different strategies to both markets and investors.[xi]

72-hour 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 certain events**."[xii] 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."[xiii] 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 their annual report more accurately.

Because of the timeliness requirements of the reports, large hedge fund advisers will need to set up an effective system to identity the occurrence of any of the trigger events (listed below) and conduct sufficient analysis to review and file their annual report. 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.[xiv]

Hedge fund advisers with between $150 million and $2 billion in AUM file Form PF annually. Large hedge fund advisers with at least $1.5 billion in AUM attributable to hedge funds file Form PF quarterly, in which they provide data about each hedge fund they managed during the reporting period.

Note that the SEC updated "reporting event" to "current reporting event" in the Form PF Glossary to highlight that these are current events. Notwithstanding this change, the timing of the reporting will be 72 hours as described above. [xv]

TRIGGER EVENTS FOR 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); and
- *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 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. A 20% disruption or degradation of normal volume or capacity generally might be indicative of the types of stress for which reporting may be necessary.

/ **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).

/ **Inability to satisfy redemptions or suspension of redemptions**: If the reporting fund

- is unable to pay redemption requests, or
- has suspended redemptions, and the suspension lasts for more than five consecutive business days.

Recent updates

On February 8, 2024, to enhance SEC and FSOC's ability to regulate the private fund industry and monitor and assess the systemic risk, the SEC and the CFTC jointly adopted new amendments[xvi] to Form PF to:

/ Enhance reporting by large hedge fund advisers regarding qualifying hedge funds to provide better insight into the operations and strategies of these funds and their advisers and to improve data quality and comparability;

/ Report additional information about advisers and their private funds, including identifying information, assets under management, withdrawal and redemption rights, gross asset value and net asset value, inflows and outflows, base currency, borrowings and types of creditors, fair value hierarchy, beneficial ownership, and fund performance.

/ Enhance reporting of hedge funds to provide greater insight into hedge funds' operations and strategies, counterparty exposures, and trading and clearing mechanisms employed by hedge funds;

- Amend how advisers report complex structures to improve the ability of FSOC to monitor and assess systemic risk and to provide greater visibility for both FSOC and the SEC into these arrangements, including separate reporting for each component fund of a master-feeder arrangement and parallel fund structure to provide better insight into the risks and exposures of these arrangements;
- Modify how funds of funds determine whether the thresholds for reporting are met by including the value of investments in other internal or external private funds; and
- Remove aggregate reporting for large hedge fund advisers to lessen the burden on advisers and to focus Form PF reporting on more valuable information for systemic risk assessment purposes.

These amendments will become effective one year after publication in the *Federal Register*. The compliance date for the amendments is the same as the effective date.

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.[xvii] 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.

In addition, SEC enforcement priorities are focused on compliance with new rules and regulations such as this one. It is likely that SEC examinations will include questions related to compliance with these updates to Form PF.

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

[ii] Amendments of Form PF at 26.

[iii] *Id*. (Registered investment advisers with less than $150 million in private funds assets under management, exempt reporting advisers, and state-registered advisers report general private fund data on Form ADV, but do not file Form PF.)

[iv] *Id*. at 46.

[v] *Id*. at 16-17.

[vi] *Id*.

[vii] *Id*. at 20.

[viii] *Id*.

[ix] *Id*. at 21.

[x] *Id*.

[xi] *Id*. at 22.

[xii] *Id*. at 3.

[xiii] *Id*.

[xiv] *Id*. at 4.

[xv] *Id*. at 3. (In a change from the proposal, we are replacing ''reporting event'' with ''current reporting event'' in the Form PF Glossary to highlight that these events are current events occurring at funds specific to section 5 reporting. ''Current reporting events'' includes any event that triggers the requirement to complete and file a current report pursuant to the items in section 5. We are defining ''current report'' to include a report provided pursuant to the items in section 5.)

[xvi] Commodity Futures Trading Commission and Securities and Exchange Commission, Form PF Reporting Requirements for All Filers and Large Hedge Fund Advisers (February 8, 2024).

[xvii] Amendments of Form PF at 5.