

February 3, 2022

SEC Proposes Updates to Form PF

On January 26, 2022, the SEC issued a release (the “[Release](#)”) proposing amendments to Form PF (the “Proposal”). The Proposal includes: (i) new current reporting requirements for large hedge fund advisers¹ and advisers to private equity funds, obligating such advisers to report a number of specified events to the SEC within one business day of their occurrence; (ii) a lowered threshold for large private equity adviser reporting; (iii) certain revised reporting questions for private equity funds; and (iv) enhanced large liquidity fund adviser reporting.

The Proposal reflects the SEC’s experiences with recent market turmoil, including the COVID-19 crisis and the January 2021 market volatility impacting certain stocks. Among other things, the Proposal is designed to enhance FSOC’s ability to monitor systemic market risk, address significant information gaps, assist FSOC and the SEC with receiving more timely information to analyze and assess marketplace and investor risks, and bolster the SEC’s regulatory oversight of private fund advisers.

The proposed changes are not final and comments on the Release must be received by the SEC no later than 30 days from the date of publication of the release in the *Federal Register*.² We have included as an [Appendix](#) the proposed revised Form PF and also included cross references below to the applicable provisions of that Form.

New Current Reporting Requirements for Large Hedge Fund Advisers and Advisers to Private Equity Funds

The Proposal introduces a new requirement for large hedge fund advisers and advisers to private equity funds to file current reports within one business day of the occurrence of certain reporting events (for example, if an adviser determines a reporting event occurred on Monday, the current report must be filed by close of business on Tuesday). If adopted as proposed, advisers would file current reports through the existing Private Fund Reporting Depository. Current reports would be filed on Section 5 (for qualifying hedge funds) or Section 6 (for private equity funds), as applicable, and no other sections of Form PF would be filed at the time of a current report.

Reporting Events for Large Hedge Fund Advisers

If the amendments are adopted as proposed, large hedge fund advisers would be required to file Section 5 with respect to any qualifying hedge fund³ upon the occurrence of any of the following reporting events:

- *Extraordinary investment losses*, meaning aggregate losses totaling 20% or more of the most recent net asset value (“NAV”) over a rolling 10 business day period;⁴
- *Significant margin and default events*, including:
 - *A margin, collateral or equivalent increase*, meaning a cumulative increase in the total dollar value of margin, collateral or an equivalent posted by the fund of more than 20% of the fund’s most recent NAV over a rolling 10 business day period;⁵
 - *Margin default or determination of inability to meet a call for margin*, collateral or an equivalent, where the adviser has either (i) received notification of default and the fund is not able to cover or (ii) determined that the reporting fund is unable to meet a call for increased margin, collateral or an equivalent;⁶

- *Counterparty default*, where a counterparty (i) fails to either meet a call or make any other payment in the time and form contractually required and (ii) the amount exceeds 5% of the fund’s most recent NAV;⁷
- *Material change in relationship with prime broker*, including termination or material trading limits or investment restrictions on the reporting fund;⁸
- *Changes in Unencumbered Cash*, meaning a decline in the value of the reporting fund’s unencumbered cash of more than 20% of the reporting fund’s most recent NAV over a rolling 10 day trading period and the circumstances relating to such change;⁹
- *Operations events*, meaning a significant disruption or degradation¹⁰ of the reporting fund’s key operations,¹¹ which is not restricted to a fixed list of events but would include, for example:¹²
 - A cybersecurity event that disrupts the trading volume of a reporting fund by 20% of its normal capacity;
 - Events that significantly disrupt an adviser’s ability to value the fund’s assets (e.g., due to issues at a service provider); or
 - Severe weather events that significantly disrupt key operations;¹³
- *Significant withdrawals and redemptions*, meaning those that meet or exceed 50% of the reporting fund’s most recent NAV;¹⁴ and
- *Inability to satisfy redemptions or a suspension of redemptions lasting longer than 5 days.*¹⁵

For purposes of the reporting events, the SEC has proposed that the reporting fund’s “most recent NAV” refer to the NAV reported on such fund’s most recent Form PF filing. As noted above, a number of the thresholds above depend on the adviser’s ability to measure certain changes as a percentage of that NAV in real time (e.g., determining whether investment losses hit the 20% reporting threshold within a rolling period), which may be problematic for certain private equity funds that nonetheless meet the definition of qualifying hedge funds for purposes of Form PF.

Upon the occurrence of a reporting event, a large hedge fund adviser would file Section 5 of Form PF as a standalone filing. Section 5 requires the adviser to provide certain biographical information about the reporting fund,¹⁶ applicable information on the reporting event, and provides an opportunity for the adviser to include any explanatory notes relating to the reporting event.¹⁷

Reporting Events for Private Equity Funds

If the amendments are adopted as proposed, private equity advisers will be required to complete and file Section 6 with respect to any private equity fund¹⁸ upon the occurrence of any of the following reporting events:

- *Adviser-led secondary transactions*, meaning transactions led by the adviser or its related persons whereby private fund investors are offered the choice to sell, convert, or exchange their interests in the reporting fund;¹⁹
- *General partner or limited partner clawback*²⁰ in an aggregate amount exceeding 10% of the reporting fund’s aggregate capital commitments;²¹ and

- *General partner removal, or investment period or fund termination*, where such action is taken by fund investors.²²

Upon the occurrence of a reporting event, a private equity adviser would file Section 6 of Form PF as a standalone filing. Section 6 requires the adviser to provide certain biographical information about the reporting fund,²³ applicable information on the reporting event, and provides an opportunity for the adviser to include any explanatory notes relating to the reporting event.²⁴

Lowered Threshold for Large Private Equity Adviser Reporting

The Proposal would lower the reporting threshold for large private equity advisers from \$2 billion to \$1.5 billion in private equity fund assets under management.

Revisions to Reporting Items for Private Equity Advisers

The Proposal would add the following new questions for private equity funds to Section 4.

- *Controlled portfolio company ownership*. Question 67 would require private equity advisers to report the number of controlled portfolio companies a reporting fund owns.²⁵
- *Investment strategy reporting*. Question 68 would require private equity advisers to select each reporting fund's investment strategy from a prescribed list, including, among other options, various subtypes of private credit and private equity strategies, real estate and digital assets strategies.²⁶
- *Portfolio company restructuring or recapitalization*. Question 70 would require that private equity advisers report whether the reporting fund restructured or recapitalized a portfolio company following its investment period.²⁷
- *Investments in different levels of a portfolio company's capital structure*. Question 71 would require private equity advisers to report whether a reporting fund held an investment in one level of a portfolio company's capital structure where another fund advised by the private equity adviser or its related persons held an investment in a different level of such company's capital structure.²⁸
- *Fund-level borrowings*. Question 72 would require private equity advisers to report whether a reporting fund has the ability to borrow at the fund level as an alternative or complement to financing of portfolio companies and indicate the actual and available amount of borrowings during the reporting period.²⁹
- *Portfolio company financing*. Question 74 would require private equity advisers to report whether the adviser or its related persons provided financing or extended credit to a portfolio company of a reporting fund and disclose the total dollar amount of such financing or credit.³⁰
- *Floating rate borrowings of controlled portfolio companies*. Question 82 would require private equity advisers to report the percentage of aggregate borrowings for a controlled portfolio company that are at a floating (rather than fixed) rate.³¹

The Proposal also includes amendments to the following questions in Section 4.

- *Events of default*. Revisions to current question 74 would require private equity advisers to provide additional information about the type of reporting events of default (e.g., payment default of the fund or a controlled portfolio company).³²

- *Bridge financing and counterparties.* Amendments to current question 75 would require additional information about bridge financing providers and counterparties for controlled portfolio companies.³³
- *Geographic information.* Revisions to current question 78 would require more specific geographic information on investments by private equity funds.³⁴

Large Liquidity Fund Adviser Reporting

The proposed amendments include changes to Form PF designed to align Liquidity Fund reporting with the amendments the SEC has proposed to Form N-MFP for money market funds. These changes include: (i) additional or enhanced reporting on operational information (e.g., stable pricing and NAV calculations);³⁵ (ii) changes to how advisers report certain asset and portfolio information;³⁶ (iii) revisions to certain creditor information reporting;³⁷ (iv) refined investor and beneficial ownership reporting;³⁸ (v) additional information on disposition of portfolio securities;³⁹ and (vi) changes to the definitions of WAL (weighted average life) and WAM (weighted average maturity).⁴⁰

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If you have any questions about the Proposal or Form PF, please contact your Ropes & Gray attorney.

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1. Form PF defines a large hedge fund adviser to mean an adviser that, collectively with its related persons, has at least \$1.5 billion in hedge fund assets under management. Form PF Instruction 3 (p. 2).
 2. As of the date of this Alert, the Release has not been published in the *Federal Register*.
 3. Section 5 (p. 46).
 4. Item B of Section 5 (p. 47). The Release notes that, for example, this reporting event would capture the following scenarios (assuming a most recent NAV of \$1 billion): (i) losses of \$20 million per business day for 10 consecutive business days; or (ii) a loss of \$200 million in a single business day.
 5. Item C of Section 5 (p. 47).
 6. Item D of Section 5 (p. 48).
 7. Item E of Section 5 (p. 49).
 8. Item F of Section 5 (p. 49).
 9. Item G of Section 5 (p. 50).
 10. The Proposal defines a “significant disruption or degradation” to mean, in instances where the reporting fund’s key operations are reasonably measurable, a 20% disruption or degradation of normal volume or capacity. The Proposal does not specify what would constitute a significant disruption or degradation where key operations are not measurable. Form PF Glossary of Terms (p. 12).

11. The Proposal defines “key operations” to mean operations necessary for (i) the investment, trading, valuation, reporting, and risk management of the reporting fund; and (ii) the operation of the reporting fund in accordance with the federal securities laws and regulations. Form PF Glossary of Terms (p. 6).
12. Item H of Section 5 (p. 50).
13. While the Release sets out these examples, the Proposal does not otherwise specify what types of events would constitute an operations event, nor does it provide any clarification regarding what might constitute a “significant disruption or degradation” would mean where the fund’s key operation
14. Item I of Section 5 (p. 51).
15. Item J of Section 5 (p. 52).
16. Item A of Section 5 (p. 46).
17. Item K of Section 5 (p. 52).
18. Section 6 (p. 53).
19. Item B of Section 6 (p.54)
20. The Proposal defines a “general partner clawback” to mean any obligation under the reporting fund’s governing documents for a general partner, its related persons or their ultimate owners to return performance-based compensation. Form PF Glossary of Terms (p. 4). The Proposal defines a “limited partner clawback” to mean any obligation under the reporting fund’s governing documents for an investor to return any portion of a fund distribution to satisfy a fund liability, obligation or expense. Form PF Glossary of Terms (p. 7).
21. Item C of Section 6 (p.54)
22. Item D of Section 6 (p.54)
23. Item A of Section 6 (p. 53).
24. Item E of Section 6 (p. 54).
25. Section 4, Item B, Question 67 (p. 40)
26. Section 4, Item B, Question 68 (p. 40).
27. Section 4, Item B, Question 70 (p. 41).
28. Section 4, Item B, Question 71 (p. 42).
29. Section 4, Item B, Question 72 (p. 42).
30. Section 4, Item B, Question 74 (p. 42).
31. Section 4, Item B, Question 82 (p. 43).
32. Section 4, Item B, Question 83 (p. 43).
33. Section 4, Item B, Question 84 (p. 44).
34. Section 4, Item B, Question 69 (p. 41).
35. Section 3, Item B, Questions 52-53 (p.32).
36. Section 3, Item B, Questions 53 (p. 32) and 63 (p.36).
37. Section 3, Item C, Question 55 (p. 33).
38. Section 3, Item D, Questions 58 and 59 (p. 34).
39. Section 3, Item F (p.39).
40. Form PF Glossary of Terms (p. 14).