

SEC Adopts Significant Amendments to Form PF

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On May 3, the U.S. Securities and Exchange Commission (SEC) adopted significant amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds.^[1] The final amendments will require (1) new “quarterly event” reporting for all private equity fund advisers (PE Fund Advisers, defined as investment advisers having at least \$150 million in private equity fund assets under management) regarding certain events; (2) expanded reporting for “large private equity fund advisers” (Large PE Fund Advisers, defined as investment advisers having at least \$2 billion in private equity fund assets under management); and (3) new “current” reporting for “large hedge fund advisers” (Large HF Advisers, defined as investment adviser having at least \$1.5 billion in hedge fund assets under management).

In a change from the proposal, the SEC did not adopt a lower \$1.5 billion reporting threshold for Large PE Fund Advisers for purposes of annual reporting. In response to commenters, the SEC conducted additional analysis on the U.S. private equity industry based on committed capital and believes that “the existing [\$2 billion] threshold strikes an appropriate balance between obtaining information on a significant portion of the private equity industry and seeking to minimize the burdens imposed on private equity fund advisers.”^[2]

Quarterly Reporting for All PE Fund Advisers. All PE Fund Advisers will be required to file an event report within 60 days of each fiscal quarter end in which any one of the following triggering events occurred:

- Adviser-led secondary transactions (defined 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); and
- Any investor election to remove a fund’s general partner or to terminate a fund’s investment period or a fund’s term.^[3]

With respect to adviser-led secondary transactions, such transactions are only reportable if initiated by a PE Fund Adviser or one of its related persons, which requires a facts and circumstances analysis.^[4]

With respect to investor elections, such report is required upon receipt by the reporting fund or its PE Fund Adviser or affiliate of notification that fund investors have removed the PE Fund Adviser or its affiliate as the general

partner or similar control person of the reporting fund, elected to terminate the reporting fund's investment period, or elected to terminate the reporting fund, in each case, as contemplated by the reporting fund's governing documents (each, a "removal event")^[5].

If a private equity event did not occur during a particular quarter, then a PE Fund Adviser would not be required to file a report for that quarter.

Expanded Reporting for Large PE Fund Advisers. Large PE Fund Advisers will be required to expand reporting in their annual filings, including:

- Information about the nature of reported events of default, such as whether it is a payment default of the private equity fund, a payment default of a controlled portfolio company (CPC), or a default relating to a failure to uphold terms under the applicable borrowing agreement (other than a failure to make regularly scheduled payments);
- The identity of the institutions providing bridge financing to the adviser's CPCs and the amount of such financing, to add additional counterparty identifying information (*i.e.*, LEI (if any), and if the counterparty is affiliated with a major financial institution, the name of the financial institution);
- The geographical breakdown of investments by private equity funds, by moving away from reporting based on a static group of regions and countries and toward identifying a private equity fund's greatest country exposures based on a percent of net asset value;
- Any general partner clawback or a limited partner clawback (or clawbacks) in excess of an aggregate amount equal to 10% of a reporting fund's aggregate capital commitments;
- Additional information on any fund-level borrowing, including information on each borrowing other cash financing available to the reporting fund, the total dollar amount available, and the average amount borrowed over the reporting period; and
- Information about private equity fund investment strategies.

In response to commenters, the SEC did not adopt the following proposed Large PE Fund Adviser questions at this time: (1) restructuring/recapitalization of a portfolio company; (2) investments in different levels of a single portfolio company's capital structure by related funds; financing of portfolio companies; (4) floating rate borrowings of CPCs; and (5) CPCs owned by private equity funds.

New Current Reporting for Large HF Advisers. For the first time, Large HF Advisers will be required to file a current report, as soon as practicable, but no later than 72 hours from the occurrence of a triggering event, with respect to certain reporting events, including: certain extraordinary investment losses,^[6] significant margin/default events, terminations of prime broker relationships, and events associated with withdrawals and redemptions.^[7] In a change from the proposed amendments, the triggering events do not include changes in unencumbered cash. Notably, in a change from the proposal (and consistent with commenter concerns), the SEC has adopted a

72-hour reporting timeline, rather than one business day, as proposed.

Filing Fees. Consistent with the proposal, the SEC will require Large HF Advisers to file current reports and PE Fund Advisers to file quarterly private equity event reports through the same nonpublic filing system they use to file the rest of Form PF, the Private Fund Reporting Depository (PFRD). The final rules require such advisers to pay to the operator of PFRD SEC-approved fees (which fees will be approved by the SEC in a separate action).

Effective and Compliance Dates. The SEC adopted two separate effective/compliance dates. The quarterly event reporting for PE Fund Advisers and current reporting for Large HF Advisers will commence six months (180 days) after publication in the *Federal Register*. The expanded reporting by Large PE Fund Advisers will go effective one year (365 days) after publication in the *Federal Register*. The SEC is requiring an earlier effective/compliance date for the quarterly event reporting requirements “because it requires reporting based on distinct event triggers, and it is important that the [SEC] and FSOC begin receiving this information as soon as practicably to improve their assessment of systemic risk.”

[1] Advisers Act Section 202(a)(29) defines the term “private fund” as an issuer that would be an investment company, as defined in Section 3 of the Investment Company Act of 1940, but for Sections 3(c)(1) or 3(c)(7) of that Act.

[2] See Adopting Release, page 72.

[3] Such report is required upon receipt by the reporting fund or its PE Fund Adviser or affiliate of notification that fund investors have removed the PE Fund Adviser or its affiliate as the general partner or similar control person of the reporting fund, elected to terminate the reporting fund’s investment period, or elected to terminate the reporting fund, in each case, as contemplated by the reporting fund’s governing documents (each, a “removal event”).

[4] In a footnote to the adopting release, the SEC stated that it generally does not view a transaction to be initiated by a PE Fund Adviser or one of its related persons to the extent the PE Fund Adviser or one of its related persons, at the unsolicited request of an investor, participates in the secondary sale of such investor’s fund interest. See Adopting Release, Footnote 164.

[5] See New Form PF, Section 6, Item C.

[6] In a change from the proposal, reporting for extraordinary investment losses would be triggered by a loss equal to or greater than 20% of a fund’s “reporting fund aggregate calculated value” over a rolling 10-business-day period.

[7] An adviser will be required to file the new current report if (1) the fund receives cumulative requests for withdrawals or redemption exceeding 50% of the most recent net asset value (after netting against subscriptions

or other contributions from investors received and contractually committed), or (2) the reporting fund (a) is unable to pay redemption requests, or (b) has suspended redemptions and the suspension lasts for more than five consecutive business days.

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