**SEC Adopts Additional Disclosure Requirements for Private Funds**

*By: Adam Glazer*

* SEC continues to push for greater visibility into hedge funds and private equity funds.
* Adopted amendments require large hedge fund advisers to disclose information regarding certain losses and other market events within 72 hours.
* Elements of the adopted amendments were pared back relative to January 2022 proposed amendments in response to comments.

**Background**

On May 3, the Securities and Exchange Commission (SEC) voted 3-2 to adopt amendments to Form PF, the form certain investment advisers use to report confidential information about the private funds they advise.

The amendments require reporting by all private equity fund advisers and large hedge fund advisers upon the occurrence of key events and large private equity fund advisers to provide additional information to the SEC about the private equity funds they advise. SEC Chair Gensler and Commissioners Crenshaw and Lizárraga voted to support the adoption, while Commissioners Peirce and Uyeda opposed it.

While the revised rules represent the agency’s continued advance into private markets, the SEC pared back the final amendments in some areas in direct response to comments it received, highlighting the importance of continued public engagement in the notice and comment process.

**Adopted Amendments to Form PF: Summary of Notable Components**

* **New Section 5 of Form PF: Current Reporting Requirements for Large Hedge Fund Advisers to Qualifying Hedge Funds:** The amendments add additional provisions to Form PF to require large hedge fund advisers (those with at least $1.5 billion in AUM) who advise qualifying hedge funds (at least $500 million in NAV) to file a new “current report” form with the SEC “as soon as practicable,” but no later than 72 hours after, the occurrence of one of the following:
  + An advised qualifying hedge fund loses 20 percent or more of a fund’s “reporting fund aggregate calculated value” (RFACV), over a rolling 10-business-day period.
  + The reporting hedge fund has a significant increase in the posted margin (based on a 20 percent threshold), is unable to meet a margin call, or is in default on a call for margin.
  + A counterparty does not meet a call for margin or has failed to make any other payment and the amount involved is greater than five percent of RFACV.
  + There is a termination or material restriction of the reporting fund’s relationship with a prime broker.
  + The adviser or reporting fund experiences a significant disruption or degradation of the reporting fund’s critical operations (as defined in the release), whether as a result of an event at the reporting fund, the adviser, or another service provider to the reporting fund.
  + The hedge fund experiences large withdrawal or redemption requests, is unable to satisfy redemptions or withdrawals or has suspended redemptions or withdrawals.
* **New Section 6 of Form PF: Quarterly Private Equity Event Reporting Requirements for Private Equity Fund Advisers** The amendments will require all private equity fund advisers with at least $150 million in private equity AUM to file reports every quarter within 60 days of the end of a quarter:
  + Upon execution of an adviser-led secondary transaction, which is a transaction initiated by the adviser that offers private fund investors the choice to sell all or a portion of their interests in the private fund or convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser.
  + Upon investor election to remove a fund’s general partner or to terminate a fund’s investment period or a fund.
* **Amended Section 4 of Form PF: Annual Large Private Equity Fund Adviser Reporting Requirements:** The amendments to Section 4 of Form PF add several new questions to which large private equity fund advisers (those with at least $2 billion in private equity AUM) respond to annually as part of their regular Form PF filing:
  + **New question on general partner or limited partner clawbacks**: New Question 82 requires reporting on the implementation of (1) any general partner clawback or (2) a limited partner clawback(s) over an aggregate amount equal to 10 percent of a fund’s aggregate capital commitments.
  + **Other Amendments to Large Private Equity Fund Adviser Reporting**.
    - The amendments to Form PF also include new questions regarding private equity fund investment strategies and fund-level borrowings.
    - Amendments to existing questions include, among other things, more granular information about the nature of reported events of default and additional counterparty information.
* **Compliance Dates:** 
  + For the new Sections 5 and 6 of Form PF, 180 days after publication in the Federal Register.
  + For the amended sections of Form PF, 365 days after publication in the Federal Register.

**Amendments to Form PF: Analysis**

**More granular reporting for advisers:** The amendments to Form PF will require a substantial amount of granular information from advisers about the private funds they advise. In particular, large hedge fund advisers will be required to report a significant amount of information following certain events in a short period of time (no more than 72 hours)—a requirement they will have to juggle while they address the underlying business issues that triggered the reporting requirements.

For example, if there is a significant disruption of the reporting fund’s critical operations, the adviser must report information regarding the operations event, including the impact of the event on normal operations of the reporting fund. Similarly, if an adviser receives notification that the reporting hedge fund is in default on a call for margin, the adviser must provide, among other things, information on its understanding of the circumstances relating to the default. The adviser must ascertain and provide this information to the SEC within 72 hours during which time the adviser should be focused on working to address the disruption or financial issues leading to the fund’s margin call default.

**Invoking “Systemic Risk” through questionable analysis:** The SEC justifies the imposition of these new requirements on the Financial Stability Oversight Council’s (“FSOC”) need to monitor systemic risk and bolster the SEC’s investor protection efforts. However, as Commissioners Peirce and Uyeda note in their dissenting statements, the SEC does not provide any examples of private fund failures that would have been prevented or mitigated by the additional Form PF disclosure requirements. A more likely explanation for this rulemaking is the SEC’s continuing quest to increase its oversight over private fund advisers by subjecting the advisers to ever more regulatory requirements and imposing requirements on private funds similar to those with which registered investment companies must comply.

**Comments affected the adopted amendments:** The SEC did not adopt the entirety of the package proposed in January 2022. For example, the SEC had originally proposed to lower the reporting threshold for large private fund equity fund advisers for purposes of Section 4 of Form PF from $2 billion to 1.5 billion but opted not to adopt this change. The SEC had also proposed to require that both large hedge fund advisers and private equity fund advisers report certain information to the SEC within one day of certain triggering events (decreased from \_\_\_ days). The adopted amendments altered this reporting time change to “as soon as practicable,” but no later than 72 hours after the occurrence of triggering events for hedge funds, and to a quarterly reporting system for private equity fund advisers. Additionally, proposed amendments applicable to large liquidity funds advisers were not adopted.

For each of these changes to the proposal, the SEC attributed its decision to comments it received on the proposed amendments to Form PF, highlighting the continued importance of submitting thoughtful comment letters on SEC proposals, particularly those that can have serious adverse effects on registrants, issuers, investors, markets, and the overall economy.

**Links**

* [Press Release](https://www.sec.gov/news/press-release/2023-86): SEC Adopts Amendments to Enhance Private Fund Reporting
* [Final rule](https://www.sec.gov/rules/final/2023/ia-6297.pdf) amending Form PF to enhance private fund reporting.
* [Fact Sheet](https://www.sec.gov/files/ia-6297-fact-sheet.pdf): Amendments to Form PF
* [January 2022 Proposed Amendments](https://www.sec.gov/news/press-release/2022-9) to Form PF
* Chair/Commissioner Statements:
  + [Gensler](https://www.sec.gov/news/statement/gensler-statement-form-pf-050323)
  + [Peirce](https://www.sec.gov/news/statement/peirce-statement-form-pf-050323)
  + [Uyeda](https://www.sec.gov/news/statement/uyeda-statement-form-pf-050323)
  + [Crenshaw](https://www.sec.gov/news/statement/crenshaw-statement-form-pf-050323)
  + [Lizárraga](https://www.sec.gov/news/statement/lizarraga-statement-form-pf-050323)