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SEC Adopts Amendments to Form PF; Establishes Certain “Event Reporting” Requirements for Private Equity Advisers and Large Hedge Fund Advisers, Among Other Obligations

On May 3, 2023, the SEC adopted amendments¹ to Form PF that will establish new event-reporting requirements for “private equity fund advisers”² and “large hedge fund advisers”,³ and will require certain additional annual information with respect to “large private equity fund advisers”, as each of those quoted terms is defined for purposes of Form PF.

For private equity fund advisers, the amendments add a new Section 6, *Quarterly report for advisers to private equity funds*, that will need to be filed within 60 calendar days of quarter end if any of the following events have occurred during the prior quarter: (i) an “adviser-led secondary transaction”⁴, or (ii) fund investors (a) having removed the adviser or its affiliate as the general partner or similar control person of the reporting fund, (b) having elected to terminate the reporting fund’s investment period, or (c) having elected to terminate the reporting fund.

For large private equity fund advisers, the amendments add to Section 4, which is filed annually, three new questions, including regarding GP or certain LP clawbacks, and also amend four existing questions, generally to call for additional information.

For large hedge fund advisers, the amendments will require reporting of certain events as soon as practicable upon, but no later than 72 hours after, their occurrence.

Effective/compliance dates: the effective/compliance date for the amendments to current and quarterly event reporting is 180 days after publication of the adopting release in the Federal Register. The



effective/compliance date for the amendments to large private equity fund adviser annual reporting is 365 days after publication of the adopting release in the Federal Register.

PRIVATE EQUITY EVENT REPORTS (QUARTERLY)

Private equity fund advisers will be required to report the following events on Form PF Section 6 within 60 calendar days of the quarter in which they occurred (the January 2022 proposal would have required reporting of such events within one business day). Amended Form PF terms these reports “private equity event reports.” The adopting release states that these reports will provide information “for the Commission’s regulatory programs, including examinations, investigations, investor protection efforts, and policy relating to private fund advisers”:

- Adviser-Led Secondary Transactions (Section 6, Item B): Amended Form PF defines “adviser-led secondary transaction” as “[a]ny 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.” [emphasis added]
- Removal of General Partner, Termination of the Investment Period, or Termination of a Fund (Section 6, Items C and D): Item C will require the adviser to report when a reporting fund receives notification that fund investors have: (1) removed the adviser or an affiliate as the general partner or similar control person of a fund, (2) elected to terminate the fund’s investment period, or (3) elected to terminate the fund, in each case as contemplated by the fund documents (each a “removal event”, as described in the amended form). Item D will require reporting of the effective date of the applicable removal event and a description of such removal event. The reporting obligations will not be limited to “for cause” events.

With respect to policy rationales, the adopting release posits that both reporting events present potential conflicts of interest and may be indicative of market trends, and “that removal of a general partner or the termination of a fund’s investment period or a fund may result from a stress event at a fund”. The adopting release notes the same as the reason for which such reporting requirements are applied to all private equity fund advisers and not just large private equity fund advisers. The SEC declined to establish an exemption for such reporting events that occur in the ordinary course of an adviser’s business.

With respect to the reporting requirement for adviser-led secondary transactions, the adopting release passages in support of the requirement may be indicative reading in respect of an SEC focus on the same, particularly given the adopting release’s acknowledgment that private equity event reports may be used by the SEC and its Staff in examinations and investigations.

The SEC acknowledged that commenters noted that adviser-led secondary transactions are not historically connected to systemic risk, and that they can represent a strengthening market in certain cases.

ADDITIONAL QUESTIONS FOR LARGE PRIVATE EQUITY FUND ADVISER ANNUAL REPORTING

The amendments to Form PF include the addition of new questions to Section 4 of Form PF, which section must be completed on an annual basis by Large Private Equity Fund Advisers (*i.e.*, an adviser with \$2 billion in “private equity fund assets under management”) with respect to reporting funds, as well as amendments to three existing questions:

- General Partner or Limited Partner Clawback (Section 4, Question 82): This new question will require reporting of (i) any “general partner clawback”, or (ii) any “limited partner clawback” (or clawbacks) in excess of an aggregate amount equal to 10 percent of a fund’s aggregate capital commitments. A “general partner clawback” will be defined as “[a]ny obligation of the general partner, its related persons, or their respective owners or interest holders to restore



or otherwise return performance-based compensation to the fund pursuant to the fund's governing agreements". A "limited partner clawback" will be defined as "[a]n obligation of a fund's investors to return all or any portion of a distribution made by the fund to satisfy a liability, obligation, or expense of the fund pursuant to the fund's governing agreements." The required LP clawback reporting will be triggered when the aggregate limited partner clawbacks over the course of a reporting fund's life exceed 10 percent of such fund's aggregate capital commitments at such time.

- Investment Strategy (Section 4, Question 66): This new question will have a drop-down menu from which advisers will be required to select one or more investment strategies applicable to the reporting fund: private credit (and associated sub-strategies such as distressed debt, senior debt, special situations, etc.), private equity (and associated sub-strategies such as early stage, buyout, growth, etc.), real estate, annuity and life insurance policies, litigation finance, digital assets, general partner stakes investing, and other. In a modification from the January 2022 proposal that has been reported on in the financial press, the amended form will not define the term "digital assets."
- Additional Information re Fund-Level Borrowings (Section 4, Question 68): This new question will require advisers to report additional information on fund-level borrowing. If a reporting fund engages in fund-level borrowing, this question will require the adviser to provide (1) information on each borrowing or other cash financing available to the fund, (2) the total dollar amount available, and (3) the average amount borrowed over the reporting period. The adopting release's discussion of this question expressly and particularly noted subscription lines of credit.
- Events of Default, Bridge Financing to Controlled Portfolio Companies, and Geographic Breakdown of Investment (Section 4, Questions 74, 75, 78): Amended Form PF will revise these three questions, in general by soliciting more granular detail.

NEW EXPEDITED "CURRENT REPORTING" REQUIREMENTS FOR LARGE HEDGE FUND ADVISERS

Under the amended Form PF, large hedge fund advisers will need to file current reports for certain reporting events as soon as is practicable (but no later than 72 hours) after the occurrence of a trigger event:

- Extraordinary investment losses (Section 5, Item B): Reporting under this item will be required if on any business day the 10-business-day "holding period return" of the reporting fund is less than or equal -20% of a fund's "reporting fund aggregate calculated value" (RFACV)⁵.
- Significant Margin and Default Events (Section 5, Items C through E): These new questions will require current reporting of certain margin and default events:
 - Item C (Margin, Collateral, or Equivalent Increase) will require advisers to report in the event of increases in the reporting fund's posted margin, collateral, or an equivalent over a 10-business-day period of equal to or greater than 20% of RFACV. If there is such an event, reporting of relative counterparties and the circumstances surrounding the same is required.
 - Item D (Notice of Margin Default or Determination of Inability to Meet a Call for Margin, Collateral or Equivalents) will require advisers to report if a reporting fund receives notification that it is default on a call for margin, collateral, or an equivalent (subject to certain provisions for a contractually agreed cure period), or if the adviser determines that the reporting fund is unable to meet a call for increased margin, collateral, or an equivalent. Advisers would not be required to file a current report in situations where there is a dispute in the amount and appropriateness of a margin call, provided the reporting fund has sufficient assets to meet the greatest of the disputed amounts.



- Item E (Counterparty Default) will require advisers to report certain counterparty defaults. A report would be required if a counterparty to the reporting fund (1) does not meet a call for margin, collateral, or equivalent, or fails 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 (Section 5, Item F): Item F will require advisers to report if (i) the prime broker terminates or materially restricts the reporting fund’s relationship with a prime broker, in whole or in part, in markets where that prime broker continues to be active, or (ii) the relationship between the prime broker and the reporting fund was terminated by either the reporting fund or the prime broker in the previous 72 hours, and a termination event was activated in the prime brokerage agreement or related agreements, within the last 12 months. The amended form will specify that “[t]ermination events, as specified in the prime broker agreement or related agreements, that are isolated to the financial state, activities or other conditions solely of the prime broker should not be considered for the purposes of this question.”
- Certain Operations Events (Section 5, Item G): Item G will require the adviser to report when the adviser or reporting fund experiences 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. Critical operations means, for this purpose, operations necessary for (1) the investment, trading, valuation, reporting, and risk management of the reporting fund; as well as (2) the operation of the reporting fund in accordance with the federal securities laws and regulations.
- Withdrawals and Redemptions (Section 5, Items H, I):
 - Item H will require advisers to report if the adviser receives cumulative requests for redemption from a reporting fund exceeding 50% of the most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed).
 - Item I will require advisers to report if the reporting fund is (i) unable to pay redemption requests, or (ii) has suspended redemptions and the suspension lasts for more than 5 consecutive business days.

SUMMARY OF CERTAIN KEY ASPECTS AND NEXT STEPS

These amendments to Form PF create an obligation for real estate and private equity fund advisers that are Form PF reporters to report, on a quarterly basis, adviser-led secondary transactions and determinations by investors to remove the GP, terminate investment period, or terminate a reporting fund. This reporting, and the adopting release discussion of the same, may herald increased SEC scrutiny over the same in examinations and investigations. These obligations will go effective in fairly short order—180 days after publication of the adopting release in the Federal Register.

Large hedge fund advisers will be subject under the amended Form PF to current event reporting for various events described above in Part III, the reporting deadline in respect of which is as soon as is practicable (but no later than 72 hours) after the occurrence of the trigger event. These obligations will also go effective 180 days after publication of the release in the Federal Register.

Form PF reporters should review internal processes to ensure the same are responsive to these additional reporting obligations. The King & Spalding team is available to assist as helpful or to address any questions.



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¹ SEC Release IA-6297, *Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers*, available at <https://www.sec.gov/rules/final/2023/ia-6297.pdf>. In addition to the amendments adopted on May 3, 2023, the SEC and CFTC in August 2022 proposed other amendments to Form PF, in a proposed rulemaking titled *Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers* (SEC Release No. IA-6083, available at <https://www.sec.gov/rules/proposed/2022/ia-6083.pdf>) (the "August 2022 Proposed Amendments"). The August 2022 Proposed Amendments would, among other changes, (i) amend Form PF reporting requirements in respect of certain fund structures, including master-feeder structures, parallel managed accounts, and certain SPVs, and, (ii) require additional reporting and more detailed information, particularly for large hedge fund advisers. The proposed rulemaking is noted on the SEC's [Spring 2022 Regulatory Agenda](#) as slated for final action in April 2023.

² An adviser is a "large private equity fund adviser" for Form PF if it and its related persons, collectively, had at least \$2 billion in "private equity fund assets under management" as of the last day of your most recently completed fiscal year. A "private equity fund" is defined for purposes of Form PF as "[a]ny private fund that is 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." All italicized terms are themselves defined for purposes of Form PF; glossary available at <https://www.sec.gov/files/formpf.pdf> at p. 55 et seq.

³ An adviser is a "large hedge fund adviser" if it or its related persons, collectively, had at least \$1.5 billion in "hedge fund assets under management" as of the last day of any month in the fiscal quarter immediately preceding the adviser's most recently completed fiscal quarter. A "hedge fund" is defined for purposes of Form PF as "[a]ny private fund (other than a securitized asset fund): (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration)."

⁴ An adviser-led secondary transaction is defined for purposes of Form PF as "[a]ny transaction initiated by the adviser or any of its related persons that offers private fund investors the choice to: (i) sell all or a portion of their interests in the private fund; or (ii) 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."

⁵ RFACV is defined as "[e]very 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. The reporting fund aggregate calculated value is a signed value calculated on a net basis and not on a gross basis. Where one or more portfolio positions are valued less frequently than daily, the last price used should be carried forward, though a current foreign exchange rate may be applied if the position is not valued in U.S. dollars. It is not necessary to adjust the *reporting fund aggregate calculated value* for accrued fees or expenses. *Reporting fund aggregate calculated value* does not need to be subjected to fair valuation procedures. The inclusion of income accruals is recommended but not required; however, the approach should be consistent over time. The *reporting fund aggregate calculated value* may be calculated using the adviser's own internal methodologies and conventions of the adviser's service providers, provided that these are consistent with information reported internally."