MAY 16, 2023

SEC Adopts Amendments to Form PF for Private Equity and Hedge Fund Advisers

Executive Summary

On May 3, 2023, the SEC adopted amendments to Form PF (available here) (the "Amendments")[1] that require:

- quarterly event reporting by all private equity fund advisers regarding certain triggering events including the removal of a general partner ("GP"), certain fund termination events and the occurrence of an adviser-led secondary transaction;
- additional annual reporting by large private equity fund advisers (i.e., private equity fund advisers with at least $2 billion in private equity assets under management) including reporting on the occurrence of any GP clawback or LP clawback, as well more detailed information on fund investment strategies, fund-level borrowings, events of default, bridge financings to controlled portfolio companies ("CPCs") and geographic breakdowns of investments; and
- current reporting by large hedge fund advisers (i.e., hedge fund advisers with at least $1.5 billion in hedge fund assets under management) within 72 hours of certain triggering events including extraordinary investment losses, significant margin and default events, terminations or material restrictions of prime broker relationships, operations events and events associated with withdrawals and redemptions.

The Amendments are designed to enhance the Financial Stability Oversight Council's ability to monitor systemic risk as well as bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts.

Quarterly Private Equity Event Reporting for All Private Equity Fund Advisers

In new Section 6 of Form PF, a private equity fund adviser is required to file a "private equity event report" within 60 days of each fiscal quarter end upon the occurrence of any of the following regarding a private equity fund that it advises:

- completion (i.e., closing) of an "adviser-led secondary transaction," [2] including the closing date and a description of the transaction (note that transactions are only subject to reporting if they are *initiated* by a private equity fund's adviser or a related person of the adviser); or
- receipt by the reporting fund or its adviser or affiliate of notification that LPs have removed the adviser or its affiliate as the GP or similar control person of the fund, elected to terminate the fund's investment period or elected to terminate the fund, in each case, as contemplated by the fund's governing documents, including the effective date of the applicable removal or termination event and a description of such event.

An adviser may provide any explanatory notes that it believes would be helpful in understanding the reported information.[3]

Additional Annual Reporting Requirements for Large Private Equity Fund Advisers

In amended Section 4 of Form PF, a large private equity fund adviser is required to report annually on Form PF the following additional information regarding a private equity fund that it advises:

- implementation by a reporting fund of any GP clawback[4] or LP clawback(s)[5] in excess of an aggregate amount equal to 10% of a fund's aggregate capital commitments, including the effective date and the reason for the clawback(s);
- the reporting fund's investment strategy by percent of deployed capital (i.e., 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, GP stakes investing and others);
- whether a reporting fund borrows or has the ability to borrow at the fund level as an alternative or complement to the financing of portfolio companies, including (i) information on each borrowing or other cash financing available to the fund, (ii) the total dollar amount available and (iii) the average amount borrowed over the reporting period;
- additional information about the nature of reported events of default, such as whether it is a payment default of the reporting fund, a payment default of a controlled portfolio company or a default relating to a failure to uphold terms under the applicable borrowing agreement;
- the identity of the institutions providing bridge financing to the adviser's CPCs and the amount of such financing, and 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); and
- each country to which the reporting fund's investments in portfolio companies represent exposure of 10% or more of the reporting fund's NAV.

Current Reporting for Large Hedge Fund Advisers

In new Section 5 of Form PF, a large hedge fund adviser is required to file a "current report" as soon as practicable, but no later than 72 hours, from the occurrence of any of the following regarding a "qualifying hedge fund" (i.e., a hedge fund with a net asset value of at least $500 million) that it advises:

- a cumulative loss by the reporting fund equal to or greater than 20% of a fund's "reporting fund aggregate calculated value"[6] ("RFACV") over a rolling 10-business-day period;
- significant margin and counterparty default events:
    - a cumulative increase in the total dollar value of margin, collateral or an equivalent posted by the reporting fund greater than or equal to 20% of the fund's average daily RFACV over a rolling 10-business-day period;
    - receipt by the adviser of notification that the reporting fund is in default on a call for margin, collateral or an equivalent, resulting in a deficit that the reporting fund will not be able to cover or address by adding additional funds, or the adviser determines that the reporting fund is unable to meet a call for increased margin, collateral or an equivalent, including in situations where there is a dispute regarding the amount or appropriateness of the margin call;
    - a counterparty to the reporting fund 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 the amount involved is greater than 5% of the fund's RFACV;

- a prime broker terminates or materially restricts its relationship with the reporting fund, in whole or in part, in markets where that prime broker continues to be active; or the relationship between the prime broker and the reporting fund was terminated by either the reporting fund or the prime broker in the last 72 hours or less in accordance with the Section 5 current reporting period, and a termination event was activated in the prime brokerage agreement, or related agreements, within the last 12 months;

- the reporting fund or adviser experiences a significant disruption or degradation of the reporting fund's critical operations;[7]

- receipt of cumulative requests for withdrawals or redemption from the reporting fund equal to or more than 50% of the most recent NAV (after netting against subscriptions and other contributions from investors received and contractually committed); or

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

Additional information is required regarding each of the above occurrences, and an adviser may provide any explanatory notes that it believes would be helpful in understanding the reported information.

Compliance Dates

The Amendments will become effective six months after publication of the Adopting Release in the Federal Register for current and quarterly event reporting and one year after publication in the Federal Register for the remainder of the Amendments. Current reports and quarterly private equity event reports will be filed through the Private Fund Reporting Depository, the same non-public filing system used to file the rest of Form PF.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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1 Amendments to Form PF were proposed in two separate releases that were published in January and August of 2022. The adopting release published May 3, 2023 tracks the January 2022 proposal. The SEC did not indicate when the August 2022 proposal will be acted upon.

2 "Adviser-led secondary transaction" means any 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.

3 In the absence of a triggering event, there is no obligation to file a quarterly private equity event report.

4 "GP clawback" means any obligation of the GP, 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.

5 "LP clawback" means an 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.

6 "Reporting fund aggregate calculated value" means every 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.

7 For this purpose, "critical operations" means operations necessary for (i) the investment, trading, valuation, reporting and risk management of the reporting fund; or (ii) the operation of the reporting fund in accordance with the Federal securities laws and regulations.