

SEC Amends Form PF to Require Event Reporting

by David Tang and Michael Schmieder

On May 3, 2023, the Securities and Exchange Commission (the “SEC”) adopted amendments (“Amendments”) to Form PF¹ that will require: (i) current reporting by “large hedge fund advisers”² of certain events that may indicate significant stress at a reporting fund; (ii) quarterly reporting by private equity fund advisers of certain events that could raise investor protection issues; and (iii) enhanced annual reporting by “large private equity fund advisers” to improve the ability to monitor systemic risk and identify and assess changes in market trends at reporting funds.³

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 of the Adopting Release in the Federal Register for the remainder of the Amendments.

Current Reporting within 72 Hours by Large Hedge Fund Advisers

Large hedge fund advisers will be required to complete and file new Section 5 of Form PF as soon as practicable, but no later than 72 hours,⁴ upon the occurrence of one or more of the following current reporting events with respect to a “qualifying hedge fund” they advise.⁵

- **Extraordinary Investment Losses**
 - Triggered upon a 20% or greater loss of the reporting fund’s “reporting fund aggregate calculated value” (“RFACV”)⁶ over a rolling 10-business-day period.⁷
- **Margin, Collateral or Equivalent Increase**
 - Triggered upon a 20% or greater increase in the total value of margin, collateral, or an equivalent posted by the reporting fund over a rolling 10-business-day period.⁸
- **Notice of Margin Default or Determination of Inability to Meet a Call for Margin, Collateral or Equivalents**

Related People

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Related Capabilities

- Investment Funds
- Investment Management
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- Triggered upon a large hedge fund adviser's:
 - Receipt 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
 - Determination 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.
- **Counterparty Default**
 - Triggered 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 the RFACV.
- **Prime Broker Relationship Terminated or Materially Restricted**
 - Triggered if
 - 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, and a termination event was activated in the prime brokerage agreement or related agreements, within the last 12 months.
- **Operations Event**
 - Triggered if the reporting fund or large hedge fund adviser experiences a significant disruption or degradation of the reporting fund's critical operations, whether as a result of an event at a service provider to the reporting fund, the reporting fund, or the large hedge fund adviser.⁹
- **Withdrawals and Redemptions**
 - Triggered if the reporting fund receives cumulative requests for withdrawals or redemptions from the reporting fund equal to or more than 50% of the most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed).
- **Unable to Satisfy Redemptions or Suspension of Redemptions**
 - Triggered if the reporting fund (i) is unable to pay redemption requests, or (ii) has suspended redemptions and the suspension lasts for more than five consecutive business days.

Quarterly Reporting by Private Equity Fund Advisers

Private equity fund advisers will be required to complete and file new Section 6 of Form PF within 60 calendar days of the end of the adviser's fiscal quarter in which any one or more of the following reporting events occurred.

- **Adviser-Led Secondary Transactions**

- Triggered if the reporting fund closed an “adviser-led secondary transaction.”¹⁰

- **General Partner Removal, Termination of the Investment Period or Termination of Fund**

- Triggered upon receipt by the reporting fund or its adviser or affiliate of notification that fund investors have:
 - Removed the 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.

Enhanced Annual Reporting by Large Private Equity Fund Advisers

Large private equity fund advisers will be required to disclose in amended Section 4 of Form PF, on an annual basis, information pertaining to a reporting fund’s investment strategy,¹¹ geographic exposure,¹² borrowings, types of creditors, and general partner clawbacks¹³ or limited partner clawbacks¹⁴ in excess of an aggregate amount equal to 10% of a fund’s aggregate capital commitments.

Dorsey Observations

The Amendments place significant real-time burdens on private fund advisers to identify and report the newly-prescribed triggering events to the SEC. Private fund advisers should assess their ability to respond to Form PF’s new reporting requirements in a timely manner and implement new reporting processes as needed. Dorsey’s regulatory compliance services are available to assist private fund advisers with the requirements of Form PF.

¹ 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, SEC Release No. IA-6297 (May 3, 2023) (the “Adopting Release”) available at <https://www.sec.gov/rules/final/2023/ia-6297.pdf>.

² “Large hedge fund advisers” is defined by Form PF as advisers with at least \$1.5 billion in hedge fund assets under management.

³ “Large private equity fund advisers” is defined by Form PF as advisers with at least \$2 billion in private equity assets under management.

⁴ The 72 hour period begins upon the occurrence of the event or when the large hedge fund adviser reasonably believes the event occurred. The large hedge fund adviser must respond to the best of its knowledge on the date of its current report. See Form PF Section 5.

⁵ “Qualifying hedge fund” is defined by Form PF as any hedge fund that has a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least \$500 million as of the last day of any month in the fiscal quarter immediately preceding the adviser's most recently completed fiscal quarter.

⁶ RFACV is defined in part by Form PF as 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.

⁷ According to the Adopting Release: “This current reporting event will capture, for example, a situation where the fund's RFACV is \$1 billion and the fund loses \$20 million per business day for a consecutive 10 business days. It will also capture a loss of \$200 million in one business day as the rolling 10-business-day period is backward looking.” See Adopting Release at page 17.

⁸ This trigger is calculated based on “average daily reporting fund aggregate calculated value” which is defined by Form PF as the average of the daily RFACV for the end of the business day on business days one through ten of the reporting period.

⁹ “Critical operations” is defined by Form PF as 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.

¹⁰ “Adviser-led secondary transaction” is defined by Form PF as 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.

¹¹ Large private equity advisers are required to select from a drop-down menu of investment strategies that best describe the reporting fund's investment strategy by percent of deployed capital. See Form PF Section 4.B. question 66.

¹² Large private equity advisers are required to report each country to which the reporting fund's investments in portfolio companies represent exposure of 10% or more of the reporting fund's net asset value.

¹³ “General partner clawback” is defined by Form PF as any 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.

¹⁴ “Limited partner clawback” is defined by Form PF as 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.