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SEC proposes amendments to bolster private fund reporting

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The SEC's proposed amendments to Form PF include new current reporting requirements for large hedge fund advisers and private equity fund advisers within one business day of certain significant events, a lowered reporting threshold for large private equity advisers and revised reporting requirements for large private equity advisers and large liquidity fund advisers.

On January 26, 2022, the Securities and Exchange Commission (SEC) voted to propose certain amendments to Form PF designed to facilitate the SEC's oversight of private fund advisers and bolster its investor protection efforts. The proposed amendments are also designed to enhance the Financial Stability Oversight Council's ability to monitor and assess systemic risks presented by the private fund industry. The proposed amendments come a little over two months after SEC Chair Gary Gensler signaled coming scrutiny for the private fund industry in a public speech. (See our discussion here.)

Primary changes to Form PF under these proposed amendments include:

- **New current reporting obligations for large hedge fund advisers and advisers to private equity funds**
  Under the current regime, advisers are required to file Form PF on either a quarterly or annual basis depending on the size and type of private funds they advise. Under the proposed amendments, large hedge fund advisers would be required to file a current report within one business day of the occurrence of one of several reporting events at a qualifying hedge fund that they advise, including extraordinary investment losses, certain margin events, counterparty defaults, material changes in prime broker relationships, changes in unencumbered cash, operations events (e.g., significant disruption or degradation of the fund's key operations) and certain events associated with redemptions (e.g., large redemption requests, suspensions of withdrawals/redemptions, material restrictions on withdrawals/redemptions or an inability to satisfy redemptions). In addition, under the proposed amendments, all private equity fund advisers would be required to file a current report within one business day of certain events pertaining to the execution of adviser-led secondary transactions, implementation of general partner or limited partner clawbacks, removal of a fund's general partner, termination of a fund's investment period, or termination of a fund. Under the proposed amendments, large hedge fund advisers and all private equity advisers would be required to file these current reports on new section 5 and new section 6 of Form PF, respectively, with the SEC. These advisers would not need to file any other sections of Form PF at the time a current report is filed with the SEC
- **Large private equity adviser reporting change**
  The proposed amendments would reduce the reporting threshold for large private equity advisers from $2 billion to $1.5 billion in private equity fund assets under management. In addition, the proposals seek to expand the information gathered from large private equity advisers by amending section 4 of Form PF to require disclosure of information regarding fund strategies, use of leverage and portfolio company financings, controlled portfolio companies (CPCs) and CPC borrowings, fund investments in different levels of a single portfolio company's capital structure, and portfolio company restructurings or recapitalizations.
- **Large liquidity fund adviser reporting change**
  Lastly, the proposed amendments would impose increased reporting obligations on large liquidity fund advisers, who would be required to report substantially the same information that money market funds would report on Form N-MFP, as recently proposed by the SEC. Further details of the SEC's proposal to amend the reporting requirements on Form

N-MFP can be found here.

The comment period will remain open for 30 days after publication in the Federal Register. This comment period is shorter than what is generally seen in connection with SEC rule proposals, meaning that private fund managers will have a more limited window during which they can engage with the SEC on the proposal. If the proposed amendments are adopted, private funds in the United States would face significant changes in both the scope and frequency of their reporting obligations on Form PF.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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