

MEMO# 34016

January 27, 2022

SEC Proposes Amendments to Form PF

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TO: ICI Members SUBJECTS: Compliance
Disclosure
Financial Stability
Fixed Income Securities
Investment Advisers
Money Market Funds
Recordkeeping RE: SEC Proposes Amendments to Form PF

On January 26, the SEC approved proposed amendments to Form PF in an open meeting through a three-to-one vote. Generally, Form PF is filed by investment advisers to private funds to provide confidential information to the SEC and the Financial Stability Oversight Council (FSOC) about those funds. The proposed amendments to the form are targeted to enhance FSOC's "ability to assess systemic risk as well as to bolster the Commission's oversight of private fund advisers and its investor protection efforts." The SEC notes that its experiences with recent market events including the March 2020 market turmoil and January 2021 market volatility informed its proposal.

In general, the proposal would:

- Require large hedge fund advisers to file reports within one business day of the occurrence of events including certain extraordinary investment losses, significant margin and counterparty default events, material changes in prime broker relationships, changes in unencumbered cash, operations events, and events associated with withdrawals and redemptions.
- Require advisers to private equity funds to file current reports within one business day of the occurrence of events including 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.
- Reduce the threshold for reporting as a large private equity adviser from \$2 billion to \$1.5 billion in private equity fund assets under management.
- Amend section 4 of Form PF for large private equity advisers to gather more 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.

- Require large liquidity fund advisers to report substantially the same information that money market funds would report on Form N-MFP, if the Commission's proposed amendments to that form in its December release on Money Market Funds Reforms were to be adopted. (The MMF proposal is available at www.sec.gov/rules/proposed/2021/ic-34441.pdf.) The SEC particularly notes that "Form N-MFP and Form PF are designed to provide a complete picture of the short-term financing markets."

The full proposal is available at <https://www.sec.gov/rules/proposed/2022/ia-5950.pdf>; the SEC Fact Sheet at www.sec.gov/files/ia-5950-fact-sheet.pdf; and press release at www.sec.gov/news/press-release/2022-9. Once published in the Federal Register, the proposal will be subject to a 30-day comment period.

SEC Chair Gary Gensler and Commissioners Peirce, Lee, and Crenshaw delivered statements on the Form PF proposal.

- Chair Gensler stated that the proposal follows the SEC's experience identifying "significant information gaps and situations where we would benefit from additional information. For example, we would benefit from more timely information during fast-moving market events such as the March 2020 dysfunction in the Treasury market." The Chair's full statement is available at www.sec.gov/news/statement/gensler-form-pf-20220126.
- Commissioner Peirce stated her "fundamental" objections to the proposal, stating that "Congress did not conceive of Form PF to facilitate the Commission's desire to inoculate well-heeled investors against downturns, losses, or fund failures." She cautioned "Before we seek additional information through Form PF, we must show what we have done with the information we already require and show that it is insufficient to allow FSOC to monitor for systemic risk." Commissioner Peirce's full statement is available at www.sec.gov/news/statement/peirce-form-pf-20220122.
- Commissioner Lee supported the proposal by stating that events such as "deep losses, counterparty defaults or the inability to meet margin calls ...raise not only investor protection concerns, but in some cases may also implicate systemic risks of the type that the FSOC was designed to address." Commissioner Lee's full statement is available at www.sec.gov/news/statement/lee-form-pf-20220126.
- Commissioner Crenshaw also supported the proposal. She opined that if the SEC "continuously evaluate[s] the threats that our markets and investors may face, it should help us promote market resilience and appropriate investor protections, even when destabilizing events inevitably occur." Commissioner Crenshaw's full statement is available at www.sec.gov/news/statement/crenshaw-pf-20220126.

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