

MEMO# 35312

May 11, 2023

SEC Adopts Amendments to Form PF

[35312]

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TO: Investment Advisers Committee

SEC Rules Committee SUBJECTS: Compliance

Disclosure

Financial Stability

Investment Advisers

Money Market Funds

Recordkeeping RE: SEC Adopts Amendments to Form PF

On May 3, 2023, the Securities and Exchange Commission (SEC or the "Commission") adopted a final rule amending Form PF, the confidential reporting form for certain registered investment advisers to private funds. Form PF provides information to the SEC and the Financial Stability Oversight Council (FSOC) about private funds and is designed to facilitate the regulatory oversight and monitoring of those funds and their advisers. The final amendments will require: (1) current reporting, as soon as practicable, by large hedge fund advisers with respect to certain events that may indicate significant stress or risk in the broader financial system; (2) quarterly event reporting for all private equity fund advisers; and (3) enhanced reporting by large private equity fund advisers to improve the ability of the Commission and FSOC assess changes in the markets and the ability of FSOC to monitor systemic risk. The final rule was adopted by a three-to-two vote, with Commissioners Peirce and Uyeda dissenting.

The amendments are intended to offer the SEC and FSOC "important information about the basic operations and strategies of private funds" and will help to establish "a baseline picture of the private fund industry for use in assessing systemic risk." The SEC staff believes that the amendments to Form PF will enhance the Commission's regulatory oversight of private fund advisers and investor protection efforts. Further, the Commission stated that experiences with recent market events have emphasized the importance of receiving current and robust information from market participants.

The final rule is largely consistent with the proposed amendments and includes many new or revised reporting questions applicable to private fund advisers.

The final rule will apply to SEC registered investment advisers who are:

- Large hedge fund advisers with 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 most recently completed fiscal quarter ("Large Hedge Fund Advisers");

- Private equity fund advisers with at least \$150 million in private equity fund assets under management as of the last day of the most recently completed fiscal year ("PE Advisers"); and
- Large private equity fund advisers with at least \$2 billion (rather than the proposed \$1.5 billion threshold) in private equity assets under management as of the last day of the most recently completed fiscal year ("Large PE Advisers").

Notably, the Commission proposed amendments that would have required large liquidity fund advisers to report substantially the same information that money market funds would be required to report on Form N-MFP under the Commission's proposal to amend that form. However, the Commission determined not to adopt those amendments at this time and is continuing to consider comments relating to the proposed large liquidity fund adviser amendments (and the proposed amendments to Form N-MFP on which they are based).

Currently, advisers to private funds file Form PF on a quarterly or annual basis, depending on the size and type of private funds they advise. The amendments to Form PF will require:

- Large Hedge Fund Advisers to file a current report as soon as practicable, but no later than 72 hours (rather than one business day, as proposed) from the occurrence of one or more trigger events (trigger events will include certain 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);
- All PE Advisers to file an event report upon the occurrence of one or more trigger events within 60 days of each fiscal quarter end (these trigger events include the removal of a general partner, certain fund termination events, and the occurrence of an adviser-led secondary transaction); and
- Large PE Advisers to report annually information pertaining to any general partner or limited partner clawback that occurred during the past year.

In a departure from the proposal, the Commission is not adopting a requirement that an adviser report a significant decline in holdings of unencumbered cash.

The final rule is available at <https://www.sec.gov/rules/final/2023/ia-6297.pdf>; the SEC Fact Sheet at <https://www.sec.gov/files/ia-6297-fact-sheet.pdf>; and the SEC press release at <https://www.sec.gov/news/press-release/2023-86>. Once published in the Federal Register, the final amendments will become effective six months after publication for current and quarterly event reporting and one year after publication for the remainder of the amendments.

SEC Chair Gary Gensler and Commissioners Peirce, Crenshaw, Uyeda and Lizárraga delivered statements on the Form PF amendments.

- Chair Gensler stated in support of the rule that "this final rule—through the greater visibility into private funds it will provide to regulators—will help protect investors and promote financial stability." The Chair's full statement is available at <https://www.sec.gov/news/statement/gensler-statement-form-pf-050323>.
- Commissioner Peirce objected to the final rule, stating that "The expansion of Form PF requirements ironically could be harmful from a systemic risk perspective. By demanding almost real-time data about some relatively commonplace events, we

send a message to the markets that the government is a back-up risk manager for funds. To the extent reporting events are triggered during real periods of stress, private fund managers should focus on managing their risks, not filling out SEC forms." Commissioner Peirce's full statement is available at

<https://www.sec.gov/news/statement/peirce-statement-form-pf-050323>.

- Commissioner Crenshaw supported the final rule. She stated that "providing the right regulators with timely and critical information in times of market stress or volatility can stem the tides on a potential crisis and help prevent investor harm; and, providing regulators with the right information before times of stress can be prophylactic." Commissioner Crenshaw's full statement is available at <https://www.sec.gov/news/statement/crenshaw-statement-form-pf-050323>.
- Commissioner Uyeda objected to the final rule, stating that the "amendments are the first step to reversing those initial, fruitful efforts at effective regulation. The amendments significantly expand the scope of the Form's reporting requirements and increase the frequency of filings for large hedge fund advisers and private equity fund advisers. Yet the Commission fails to identify any particular need for the additional information or provide a clear picture of how the information might further the Commission's investor protection mission." Commissioner Uyeda's full statement is available at <https://www.sec.gov/news/statement/uyeda-statement-form-pf-050323>.
- Commissioner Lizárraga also supported the proposal, stating that "[i]mproved visibility into certain aspects of the private fund industry will help the Commission and the FSOC better identify patterns and potential systemic risks to our capital markets." Commissioner Lizárraga's full statement is available at <https://www.sec.gov/news/statement/lizarraga-statement-form-pf-050323>.

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