

ALERTS

SEC Form PF Reporting Changes Effective Dec. 11, 2023, and June 11, 2024

June 21, 2023

The U.S. Securities and Exchange Commission (“Commission”) adopted amendments to Form PF (“Adopted Amendments”), the confidential reporting form for certain investment advisers registered with the Commission. Many advisers to large private funds will need to update their policies and systems, and create new systems, to satisfy the new obligations, which will include identifying, reviewing and analyzing more and different types of information and, in some cases, to report within 72 hours of a triggering event.

In addition to introducing major changes to how respondents must complete Form PF, the Commission and its Staff made it clear that it will use Form PF for general oversight of investment advisers, including as part of the Commission’s examination program. The Commission is expected to use certain reporting events as examination scoping and may be more likely to initiate an examination of an adviser who has experienced certain reporting events, such as an extraordinary investment loss or limited partner clawback.

The Adopted Amendments represent the first round of amendments to Form PF in 2023, and the Commission indicated in its Spring Agency Rule List that the second set of rules affecting Form PF is expected to be released by October.

Effective/Compliance Dates

The effective/compliance date for new Section 5, which addresses current reporting events for large hedge fund advisers, and new Section 6, which addresses quarterly reporting events for all private equity fund advisers, is Dec. 11, 2023. The effective/compliance date for amended Section 4, which addresses annual reporting for large private equity fund advisers, is June 11, 2024.

We have highlighted the new reporting requirements of the Adopted Amendments by respondent type. Changes made from the Amendments as proposed to the Adopted Amendments are summarized in Attachment A hereto.

I. New Section 5 – Current Reporting Requirements for Large Hedge Fund Advisers to Qualifying Hedge Funds

- Large hedge fund advisers, defined as any adviser having at least \$1.5 billion in regulatory assets under management attributable to hedge funds as of the end of any month in the prior fiscal quarter, must file a current report on Form PF Section 5 as soon as practicable upon, but *no later than 72 hours after*, the occurrence of certain “current reporting events” with respect to any of the adviser’s qualifying hedge funds (i.e., any hedge fund with a net asset value of at least \$500 million, individually or together with any feeder funds, parallel funds and/or dependent parallel managed accounts). The effective/compliance date is Dec. 11, 2023.
- *Reporting Fund Aggregate Calculated Value* – The Commission has introduced a new concept of “reporting fund aggregate calculated value” (“RFACV”), which large hedge fund advisers will need to calculate on a daily basis for purposes of tracking certain current reporting events. RFACV, which differs from a reporting fund’s most recent net asset value, is intended to represent a more recent, reasonable estimate of a reporting fund’s actual value.
- RFACV is defined 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” and may be calculated using the adviser’s own methodologies and conventions

of the adviser's service providers, provided that these are consistent with information reported internally.

- The Commission believes calculation of RFACV will be similar to typical practices used by advisers to compute daily profit and loss, by including all items at their most recent, reasonable estimate, which will be marked-to-market for all holdings that can reasonably be marked daily.
- RFACV is a signed value, meaning it can be positive or negative, and, although RFACV is designed to be calculated on a net basis and not a gross basis, RFACV does *not* require an adviser to adjust the RFACV for accrued fees or expenses.
- Position values do not need to be subjected to daily fair valuation procedures, and where one or more portfolio positions are valued less frequently than daily, an adviser can carry forward the last price used for purposes of calculating RFACV.
- *Current Reporting Events* – Current reporting events include:
 - *Extraordinary Investment Losses* – If on any business day the cumulative daily rate of return of a reporting fund over a rolling 10-business-day holding period is less than or equal to -20 percent of RFACV.
 - *Margin, Collateral or Equivalent Increase* – If the difference between (i) the total dollar value of margin, collateral or an equivalent posted by the reporting fund at the end of a rolling 10-business-day period less (ii) the total dollar value of margin, collateral or an equivalent posted by the reporting fund at the beginning of the rolling 10-business-day period is greater than or equal to 20 percent of the average daily RFACV during the period.
 - *Notice of Margin Default or Determination of Inability to Meet a Call for Margin, Collateral or Equivalents* – If the adviser either (1) receives 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 (taking into account any contractually agreed upon cure period); or (2) determines that the reporting fund is unable to meet a call for increased margin, collateral or an equivalent. Advisers will not be required to file a current report where there is a dispute regarding the

amount or appropriateness of a margin call provided that the reporting fund has sufficient assets to meet the greatest of the disputed amount.

- *Counterparty Default* – 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 upon cure period), and (2) the amount involved is greater than 5 percent of the RFACV.
- *Prime Broker Relationship is Terminated or Materially Restricted* – If (1) 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 (2) 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 (e.g. a “key person” trigger).
- Advisers will need to make a subjective determination of what constitutes a “material restriction,” though the adopting release indicates this generally will include situations such as a prime broker imposing substantial changes to credit limits or significant price increases, or stating that it ceases to support the reporting fund in an important market or asset type, even if the prime broker does not terminate the relationship.
- A current report is not required for termination events that are isolated to the financial state, activities or other conditions solely of the prime broker.
- *Operations Event* – If the reporting fund or 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 adviser.
- “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.

- Examples may include: a software malfunction at the adviser disrupts trading volume of a reporting fund by 20 percent or more of its normal capacity; operational issues at a service provider significantly disrupts or degrades the adviser's ability to value the reporting fund's assets; or a severe weather event causes wide-spread power outages that significantly disrupt or degrade critical operations.
- *Withdrawals or Redemptions* – If the reporting fund receives cumulative requests for withdrawals or redemptions from the reporting fund equal to or more than 50 percent of the most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed).
- The test does not take into account any gates or other limitations on the timing of the withdrawal or redemption and instead looks at the full amount of the withdrawal or redemption requests received, regardless of when those amounts are required to be paid.
- Due to the timing of when withdrawals and redemptions are generally required to be received relative to when an adviser may receive contractually committed subscriptions, the beneficial impact of netting subscriptions against withdrawals and redemptions will likely be limited.
- *Inability to Satisfy Redemptions or Suspension of Redemptions* – If the reporting fund (1) is unable to pay redemption requests, or (2) has suspended redemptions and the suspension lasts for more than five consecutive business days.
- Section 5 also includes an “Explanatory Notes” section where respondents are able to provide any information regarding the current reporting events submitted in the current report.

II. New Section 6 – Quarterly Reporting Requirements for Advisers to Private Equity Funds

- *Private Equity Event Report* – All private equity fund advisers that are required to file Form PF will be required to file a Section 6 “private equity event report” upon the occurrence of certain “private equity reporting events” *within 60 calendar days* after the end of the fiscal quarter in

which the event occurred. The effective/compliance date is Dec. 11, 2023. Private equity reporting events include:

- *Adviser-Led Secondary Transaction* – Upon the completion of an adviser-led secondary transaction, which is defined as any transaction initiated by the adviser or any of its related persons that offers private fund investors the choice to: (1) sell all or a portion of their interests in the private fund; or (2) 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.
- *General Partner Removal; Election to Terminate Investment Period or Fund* – Upon receipt by the reporting fund or its adviser of notification that investors have elected to: (1) remove the advisor or an affiliate as GP or similar control person; (2) terminate the fund's investment period; or (3) terminate the fund, in each case as contemplated under the reporting fund's governing documents.
- Similar to Section 5, Section 6 also includes an "Explanatory Notes" section where respondents are able to provide any information regarding the event(s) submitted in the private equity event report.

III. Amended Section 4 – Annual Reporting Requirements for Large Private Equity Fund Advisers

- Large private equity fund advisers, defined as any adviser having at least \$2 billion in regulatory assets under management attributable to private equity funds as of the last day of the adviser's most recently completed fiscal year, will also be required to submit more detailed information in their annual Form PF filings as part of the newly amended Section 4. The effective/compliance date is June 11, 2024, thus, for a private equity fund adviser with a Dec. 31 fiscal year end, the changes will be relevant for the adviser's Form PF to be submitted by April 30, 2025.
- Revised Section 4 will require the following additional information:
 - *Private Equity Fund Investment Strategies* – New Question 66 has been added to require information on the reporting fund's investment strategy(ies). Respondents will choose from a list of strategies in a drop-down menu and, for any fund that employs multiple strategies,

the adviser must provide a good faith estimate of the percentage of deployed capital attributable to each strategy.

- Investment strategies generally include: private credit (and sub-strategies such as distressed debt, senior debt, special situations, etc.); private equity (and 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.
- If a respondent selects “other” for its reporting fund’s strategy, it must provide an explanation.
- *Geographical Breakdown of Investments* – Question 67 (previously Question 78) has been amended to require more specific country-level exposure information. Rather than report based on a static group of regions and countries, the adviser will list each country for which the reporting fund’s exposure represents 10 percent or more of the reporting fund’s net asset value, and provide the level of exposure as a percentage of the reporting fund’s net asset value.
- *Fund-Level Borrowings* – New Question 68 has been added to require additional information on any fund-level borrowing or other cash financing available to the reporting fund. “Other cash financing” is meant to capture where a reporting fund has access to capital that would not be considered borrowing, such as where an adviser agrees to provide a cash infusion to the reporting fund.
- *Events of Default* – Question 77 (previously Question 74) has been amended to require more granular information about reported events of default, including whether the default stemmed from a payment default of the private equity fund or of a controlled portfolio company, or pursuant to a failure to uphold terms of the applicable borrowing agreement.
- *Bridge Financing to Controlled Portfolio Companies* – Question 78 (previously Question 75) has been amended to require additional identifying information about bridge financing providers and counterparties to controlled portfolio companies, such as the counterparty’s legal entity identifier, if any, whether the counterparty is affiliated with a major financial institution and, if so, the name of the major financial institution.

- *General Partner and Limited Partner Clawbacks* – New Question 82 has been added to require reporting of (i) any general partner clawback or (ii) a limited partner clawback or clawbacks in excess of an aggregate amount equal to 10 percent of the reporting fund's capital commitments.
- *Explanatory Information* – Similar to Sections 5 and 6, Question 83 has been added to allow an adviser to provide an optional narrative response if it believes that the additional information is helpful in explaining responses made in Section 4.

IV. Considerations for Advisers Subject to New Form PF Reporting Requirements

Given the accelerated compliance timeline, advisers subject to the new Section 5 and/or Section 6 reporting requirements should begin preparations now, particularly to identify the types of information that will need to be monitored on a regular basis. This is especially important for large hedge fund advisers that will be subject to the 72-hour reporting requirements, as having adequate procedures in place will be critical in order to detect current reporting events in a timely manner and to provide ample time to prepare responses, including any elective narrative responses for the Explanatory Notes subsection. As noted, we also expect that the Commission Staff may follow up with respect to Section 5 or Section 6 reports filed with the Commission and, in addition to focusing on the particular event that gave rise to the report, the Commission Staff may focus on an adviser's general procedures around tracking and reporting specified events. We also expect the Commission to look at procedures as part of the general examination process.

In addition to speaking with your attorney at Schulte Roth & Zabel, advisers should begin operational planning in advance of the effective/compliance dates. The following are some operational planning steps that advisers may consider:

- Draft desk procedures that appoint who is responsible for monitoring each reporting event, when and how such monitoring will be performed and, for current reporting events, who is responsible for completing and submitting a report.
- Update the adviser's systems to integrate reporting event monitoring into existing reporting to the extent possible.

- Identify the appropriate calculation of the new RFACV metric.
- Review and revise the adviser's compliance policies and procedures to account for the Adopted Amendments.
- Conduct firm-wide, department-wide and/or targeted training for reporting events that are not department- or employee-specific (e.g., operations events).
- Conduct scenario testing to ensure desk procedures and systems are working properly.
- For those advisers that believe their investment strategies and advisory business may trigger frequent reporting for one or more current reporting events, prepare draft narrative responses to include in the Explanatory Notes subsection to explain why such current reporting event occurred and is not indicative of systemic risk or investor protection issues.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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