May 11, 2023 | Business, Corporate & Securities, Insights

Changes to Form PF: What You Need to Know

By: Diana Alsabe

On May 3, 2023, the Securities and Exchange Commission (SEC) adopted, upon a 3-2 vote, significant amendments to Form PF, the form on which SEC-registered investment advisers to private funds confidentially report information to the SEC. The proposed rule was issued on August 10, 2022, jointly by the SEC and Commodity Futures Trading Commission (CFTC), and comments were accepted until October 11, 2022. The final rule is expected to go into effect on two separate dates based on different segments of the rule, between six months and one year from the May 3, 2023 publication of the final rule.

Form PF is a reporting requirement for private fund advisers to report regulatory assets under management to the Financial Stability Oversight Council (FSOC), in order to monitor risks to the US financial system. In proposing and ultimately adopting amendments to Form PF, the SEC intends to enhance the ability to monitor systemic risk, bolster the SEC's regulatory oversight of private fund advisers, and increase investor protection efforts, in light of the rapid growth of private funds in the last decade.

The changes to Form PF affect reporting obligations for all private equity fund advisers and large hedge fund advisers. The below will address changes specific to each individual group of affected advisers.

I'm a large hedge fund adviser, what does the new Form PF mean for me?

Large hedge fund advisers will be required to file current reports upon the occurrence of certain triggering reporting events that may indicate significant stress in the fund. Such triggering events include:

- Extraordinary investment losses equal to or greater than 20% of a hedge fund's aggregated calculated value ("RFACV");

Related Services

Business, Corporate & Securities
Investment Management & Private Funds
Real Estate Development

Related Attorneys

Diana Alsabe
Thomas H. Bilodeau, III
Scott A. Stokes

- Increases in the dollar value of the margin, provided certain circumstances, are equal to or exceed 20% of the hedge fund's average daily RFACV during a ten-day window;
- Receipt of notification that the hedge fund is in default on a call for margin that the hedge fund cannot cover;
- The determination that a hedge fund cannot meet a call for increased margin;
- A counterparty's inability to meet a call for margin or otherwise fail to make timely payment such that the total amount involved exceeds 5% of RFACV;
- Termination of a prime broker relationship;
- Material restrictions on a prime broker relationship;
- Significant disruption or degradation of a hedge fund's critical operations necessary for investment, trading, valuation, reporting, risk management, or the operation of the hedge fund in accordance with the federal securities laws; and
- Certain events regarding withdrawal or redemption requests including:
  - Redemption requests at or exceeding 50% of the hedge fund's NAV;
  - Requests where the hedge fund is unable to pay; or
  - A suspension of redemption lasting over five business days.

While the SEC provides that large hedge fund advisers should file such current reports "as soon as practicable," advisers to large hedge funds must file the report no later than 72 hours after the occurrence of the triggering event.

I'm a private equity fund adviser, what does the new Form PF mean for me?

Like their hedge fund counterparts, private equity fund advisers must also file current reports upon triggering events, although such triggering events may differ from those of hedge fund advisers. These include, but are not limited to:

- Removal of a general partner;
- Termination of the fund's investment period or termination of the private equity; and

- The occurrence of an adviser-led secondary transaction that provides the investors of the fund with the option to sell all or part of their interests in the fund, or convert/exchange those interests in another vehicle advised by that same adviser.

Private fund advisers must report on a quarterly basis, within sixty calendar days upon conclusion of the adviser's fiscal quarter where any of the applicable triggering events took place.

For large private equity fund advisers, additional questions will be added to the amended annual Form PF, pertaining to reporting of investment strategies, identifying countries where substantial investments are represented in the portfolio, reporting any fund-level borrowing activity, disclosing any pertinent default events, and reporting any general or limited partner clawback in excess of 10% in the aggregate.

When do I need to start complying with the new Form PF?

For hedge fund advisers preparing for contemporaneous reporting to the SEC within the 72-hour window, or private equity fund advisers gearing up for the new quarterly reporting requirements, the amendments become effective six months from the May 3, 2023 final rule publication date.

For amendments to existing annual reports for private equity funds, the effective date of the rule is slightly further out. While the rules take effect one year from the final rule's publication date, they will not impact the filing process until the April 2025 deadline.

While none of these changes are effective immediately, it is critical for private fund advisers and large hedge fund advisers to consider the ways in which these changes will impact reporting obligations, and to adjust information-collecting processes to ensure a seamless transition to the updated form. For tailored information on the ways the amendments to Form PF may impact your reporting obligations, please feel free to contact us.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Thomas Bilodeau III, Scott Stokes, David Glod, or Diana Alsabe.