Debevoise & Plimpton

The Debrief

SEC Adopts Significant Amendments to Form PF: What You Need to Know Now

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BACKGROUND

On May 3, 2023, in the first of what may be a number of rule adoptions that will reshape the regulatory regime applicable to private fund advisers, the Securities and Exchange Commission (the "SEC") by a 3-2 vote adopted a final rule amending Form PF (the "Form PF Amendments"). Form PF is the mandatory non-public reporting form used by certain SEC-registered investment advisers to private funds to report fund information to the SEC and the Financial Stability Oversight Council. The Form PF Amendments will significantly change how and what large hedge fund advisers and private equity fund advisers must report on Form PF.

Set out below is a summary of some of the important themes and key takeaways from the Form PF Amendments.

EVENT REPORTING

The Form PF Amendments require Form PF filers to report the occurrence of several new types of reporting events to the SEC after they occur. These new questions are in Section 5 (for large hedge fund advisers) and Section 6 (for advisers to private equity funds) of Form PF. The types of events that are reportable and when they must be reported vary based on the type of adviser completing Form PF.

- **Quarterly Event Reporting for Private Equity Fund Advisers:** All private equity fund advisers reporting on Form PF will now need to report the occurrence of any of the following events within ***sixty days*** of the relevant fiscal quarter-end: (i) the execution of an adviser-led secondary transaction; (ii) the removal of a fund's general partner; and (iii) an investor election to terminate a fund or an investment period.

The SEC had originally proposed a one-day reporting requirement, but, in a reversal, the Form PF Amendments only require private equity fund advisers to report these events within sixty days of quarter end.

- **Current Reporting for Large Hedge Fund Advisers to Qualifying Hedge Funds:** Large hedge fund advisers (those with greater than $1.5 billion in hedge fund assets under management) will now need to report five new reportable events on Form PF ***as soon as practicable***, but no later than ***72 hours*** after the occurrence of the reportable event:

  - extraordinary investment losses (losses equal to or greater than 20% of a fund's aggregate calculated value);
  - significant margin and default events;
  - the termination or material restriction of a prime broker relationship;
  - any significant disruption or degradation of the reporting fund's critical operations, whether as a result of an event at the reporting fund, the adviser or other service provider to the reporting fund; and
  - large withdrawal and redemption requests as well as the inability to satisfy redemptions or suspensions of redemptions.

  The SEC had originally proposed a one-day reporting requirement for these events. While the new "as soon as practicable" standard provides relief, it is unclear if the SEC will accept reporting in 72 hours in all cases. It will also be important to assess when to start the clock on the reporting period given that some of these events can occur over a period of several days.

MORE ANNUAL REPORTING FOR LARGE PRIVATE EQUITY FUND ADVISERS

Form PF will now include in Section 4 of Form PF additional questions for large private equity fund advisers (i.e., advisers to funds with $2 billion or more in fund assets under management) to answer as part of their annual Form PF filings. The Form PF amendments require that large private equity fund advisers now report several types of events including:

- general partner or limited partner clawbacks;

- fund-level borrowing;
- events of default;
- fund strategy by percentage of deployed capital; and
- bridge financing to controlled portfolio companies.

  The SEC had originally proposed a one-day reporting requirement, but, in a reversal, the Form PF Amendments only require large private equity fund advisers to report these events annually.

NO LOWERING OF LARGE PRIVATE EQUITY FUND ADVISER THRESHOLD

The SEC's proposal amendments originally would have captured more private equity firms by lowering the threshold for large private equity fund adviser status from the current $2 billion to $1.5 billion in assets under management. The Form PF Amendments, however, do not lower the reporting threshold.

COMPLIANCE DATES

- ***Event reporting*** (quarterly for all private equity fund advisers and currently for large hedge fund advisers) will come into effect ***six months*** after publication of the final rule in the Federal Register. This means an estimated compliance timing of fourth quarter 2023 or first quarter of 2024.
- ***Annual reporting*** for large private equity fund advisers will come into effect ***one year*** after publication of the final rule in the Federal Register. This means an estimated compliance date of April 2025 (for firms with a fiscal year end of December 31).

ADDITIONAL FORM PF AMENDMENTS

In August 2022 the SEC proposed additional Form PF amendments in coordination with the Commodity Futures Trading Commission (the "Joint PF Amendments") relating to, among other things, technical changes to reporting master-feeder and parallel fund structures and specific changes to hedge fund reporting of investment and counterparty exposure. However, the Form PF Amendments the SEC adopted last week are unrelated to the Joint PF Amendments.

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