ONPOINT / A legal update from Dechert's Financial Services

SEC Current Reporting Requirements for Private Funds Become Effective in December

Authored by David P. Bartels, Mark D. Perlow, Timothy Spangler, Alejandra Freer, Rachael Minassian, and Ashley N. Rodriguez

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Dechert LLP

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Key Takeaways

- Following the SEC's adoption, earlier this year, of changes to Form PF, large hedge fund advisers will face, for the first time, a requirement to report certain events to the SEC within 72 hours.
- Private equity fund advisers will be required to report additional information on Form PF and to file a report within 60 days following any fiscal quarter in which certain events occur.
- Advisers are required to comply with the new, event-based filing requirements starting December 11, 2023. As a result, time is of the essence to build out systems and processes for this reporting.
- Together with the private fund adviser rulemaking and numerous pending proposals that will affect private fund advisers, these form changes are at the vanguard of an SEC advance deep into private fund operations and compliance.
- Similar to the SEC's use of Form N-RN and Form N-MFP, advisers should expect that the SEC staff will closely monitor filings and use them to target outreach, particularly in times of market stress.
- With additional amendments to Form PF pending final SEC action, private fund advisers (and hedge fund advisers in particular) should be prepared for further buildouts in the coming year.

Background

The SEC voted 3 to 2 on May 3, 2023, to adopt amendments to Form PF, a confidential reporting form for certain SEC-registered investment advisers to private funds.[1] The amendments will:

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1 Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers, SEC Final Rule, SEC. Rel No. IA-6297 (May 3, 2023) (Release). At times, this *OnPoint* tracks language in the Release, and quotations in this *OnPoint* refer to the Release unless otherwise noted.

A private fund adviser: (i) is an investment adviser registered or required to be registered with the SEC (including any adviser that also is registered or required to register with the CFTC as a commodity pool operator (CPO) or commodity trading advisor (CTA)); and (ii) advises an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that act (private fund). *See* Form PF: Glossary of Terms (defining private fund adviser and private fund). A private fund adviser must file a Form PF if the adviser and its "related persons" that are not separately operated have at least $150 million in private fund assets under management as of the last day of the adviser's most recently completed fiscal year. Generally, private fund advisers that must file are only required to complete section 1 of Form PF annually; however, "large private fund advisers" are required to provide additional data, and "large hedge fund advisers" and "large liquidity fund advisers" are required to file quarterly. *See* Form PF: General Instructions at Instruction 1.

- Require certain event reporting by large hedge fund advisers regarding their qualifying hedge funds and by private equity fund advisers.[2] Affected advisers will be required to comply with these new requirements beginning on December 11, 2023.

- Require additional reporting by large private equity fund advisers regarding information about the private equity funds they advise.[3] Affected advisers will be required to comply with these new requirements for reports filed on or after June 11, 2024.

As background, in the wake of the global financial crisis of 2008, the SEC adopted Form PF (as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act) to gather information on private funds for use by the Financial Stability Oversight Council (FSOC) in monitoring systemic risk, and registrants began filing in respect of their fiscal year-end or quarter-end in 2012. The Release states that the SEC now has "almost a decade of experience analyzing the information collected on Form PF" and that in light of that experience and the evolution and growth of the private fund industry, "the [SEC] and FSOC identified significant information gaps and situations where more granular and timely information would improve our understanding of the private fund industry and the potential systemic risk within it, and improve our ability to protect investors."[4] The Release also states that the SEC is adopting amendments to Form PF to enhance "the ability to monitor and assess systemic risk and to determine whether and how to deploy" the SEC's or FSOC's "regulatory tools" and to "strengthen the effectiveness of the [SEC]'s regulatory programs, including examinations, investigations, and investor protection efforts relating to private fund advisers."[5]

The requirements of Form PF regarding hedge funds and private equity funds had not been significantly amended since the Form's adoption.[6] However, these amendments, originally proposed in January 2022, should be viewed in light of unprecedented attention, including through multiple rulemakings, that the SEC has directed at the private fund industry over the last eighteen months.[7] For example, the SEC adopted rules and rule

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2 The Release explains that the term "private equity adviser" is being globally replaced in Form PF with "private equity fund adviser" for precision, but this change is not intended to result in "substantive differences." Release at 8 at n.14.

3 There are three types of "large private fund advisers" that currently complete additional information on Form PF. An adviser becomes: a "large hedge fund adviser" at $1.5 billion in regulatory assets under management attributable to hedge funds as of the end of any month in the prior fiscal quarter; a "large liquidity fund adviser" at $1.0 billion in regulatory assets under management attributable to liquidity funds and registered money market funds as of the end of any month in the prior fiscal quarter; or a "large private equity fund adviser" at $2 billion in regulatory assets under management attributable to private equity funds as of the last day of the most recently completed fiscal year. Once a private fund adviser meets the applicable threshold for "large," a large hedge fund adviser must complete section 2 of Form PF, a large liquidity fund adviser must complete section 3 of Form PF and a large private equity fund adviser must complete section 4 of Form PF. *See* Form PF: General Instructions.

4 Release at 5.

5 Release at 9. The Release also states that the SEC consulted with FSOC to "help ensure that Form PF continues to provide FSOC with information it can use to assess systemic risk."

6 Form PF was adopted in 2011 as required by the Dodd-Frank Act. Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, CFTC and SEC Joint Final Rules, SEC Rel. No. IA-3308 (Oct. 31, 2011). Form PF's section 3 was amended in 2014 in connection with certain money market reforms. Money Market Fund Reform; Amendments to Form PF, SEC Final Rule, SEC Rel. No. IA-3879 (July 23, 2014).

7 SEC Chair Gary Gensler, Prepared Remarks at the Institutional Limited Partners Association Summit, (Nov. 10, 2021); Observations from Examinations of Private Fund Advisers, SEC Division of Examinations Risk Alert (Jan. 27, 2022); Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, SEC Proposed Rule, SEC Rel. No. IA-5955 (Feb. 9, 2022); Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, CFTC and SEC Joint Proposed Rules, SEC Rel. No. IA-6083 (Aug. 10, 2022). For further information, please refer to *Dechert OnPoint*, SEC Chair Gensler Signals Increased SEC Scrutiny of Private Funds and *Dechert NewsFlash* SEC Proposes Substantial Changes to Private Fund Regulatory Regime.

amendments to enhance the regulation of private fund advisers and update existing compliance rules applying to investment advisers in August 2023.[8] Another such example is a broad set of proposed amendments to Form PF that the SEC proposed jointly with the Commodity Future Trading Commission (CFTC), which has yet to be finalized.[9]

This *OnPoint* serves to summarize the modifications from the proposed amendments and the key provisions related to the final amendments. It also discusses the effective and compliance dates.

Final Rule

New Current Reporting Requirements for Large Hedge Fund Advisers and Qualifying Hedge Funds

Form PF has different reporting requirements for large and small hedge fund advisers: small advisers must file annual reports, and large advisers must file quarterly reports. Prior to the recently adopted changes, there was no requirement for current reporting on Form PF for any private fund adviser. The adopted amendments will require large hedge fund advisers[10] to qualifying hedge funds[11] to file additional reports as soon as practicable upon, but no later than 72 hours after, the occurrence of current reporting events that the SEC and FSOC view would signal significant stress or potential investor harm or otherwise more broadly implicate potential systemic risk. The 72-hour period begins upon the occurrence of a current reporting event or when the adviser reasonably believes that such an event occurred (e.g., if the event occurs on Monday at noon, the current report should be submitted as soon as practicable but no later than Thursday before noon). Advisers are instructed to complete the form to the best of their knowledge as of the date of the report.

The adopted amendments require large hedge fund advisers to file current reports pertaining to the following events, but only with respect to the qualifying hedge funds they advise (meaning, generally, a hedge fund with at least $500 million in assets):

- **Extraordinary investment losses.** Large hedge fund advisers of qualifying hedge funds that experience a loss of 20 percent or more of a fund's "reporting fund aggregate calculated value" (RFACV)[12] over a rolling 10 business days will be required to file a report describing the extraordinary

8 Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, SEC Final Rule, SEC Rel. No. IA-6383 (Aug. 23, 2023). For further information, please refer to the *Dechert NewsFlash* SEC Finalizes Changes to Private Fund Rules. See also Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, SEC Proposed Rule, SEC Rel. No. 34-94524 (Mar. 28, 2022).

9 Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, CFTC and SEC Joint Proposed Rules, SEC Rel. No. IA-6083 (Aug. 10, 2022).

10 A large hedge fund adviser is 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".

11 Form PF defines a qualifying hedge fund as "any hedge fund that has a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter."

12 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." An adviser may calculate the RFACV using their own, or their service providers', methodologies so long as it is consistent with their internal reporting. RFACV can be "compiled on a best efforts basis from an evaluation of fair-valued assets and unaudited figures" (e.g., "all items at their most recent, reasonable estimate, which will be marked-to-market for all holdings that can be marked daily"), guided by the fund's valuation policies and procedures, calculated on a net basis, while not requiring adjustments for accrued fees or expenses, subject positions to fair valuation procedures or reflect income accruals; while income accruals are recommended by the SEC, the Release states that the approach

loss. For example, if a fund with a RFACV of $1 billion loses $20 million per business day for 10 consecutive business days or $200 million in one business day, then a current report would need to be filed. The adopted amendments require that losses be calculated based on a fund's RFACV—a new metric devised for this rulemaking—because the RFACV reflects a more current statistic that will provide the SEC with more timely information than the proposed MRNAV and that the SEC expects to be less burdensome for advisers to calculate. An adviser will be required to file: (1) the dates of the 10-day business period over which the loss occurred; (2) the holding period return (a new term defined in the Form PF glossary); and (3) the dollar amount of loss over the period. The instructions state that "[c]urrent reports should not be filed for overlapping 10-business-day periods." Accordingly, another report would not need to be filed until the fund experiences a second loss of an additional 20 percent over a second 10-business-day rolling period.

- **Certain margin events.** Large hedge fund advisers will need to report certain margin[13] events, including significant increases in margin, the fund's inability to meet a margin call and a fund's margin default.
  - Reporting for an increase in margin will be triggered if there is an increase in margin requirements that equals or exceeds 20 percent increase of the fund's average end-of-day RFACV over 10 business days. An adviser will be required to file: (1) the dates of the 10-business-day period over which the increase occurred; (2) the total dollar amount of the increase; (3) the total dollar value amount of margin posted by the reporting fund at both the beginning and the end of the measuring period (an addition from the proposed amendments; (4) the average daily RFACV of the reporting fund during the 10-business-day period (an addition from the proposed amendments); (5) the identity of the counterpart(y/ies) requiring the increase(s); and (6) the circumstances of the margin increase in check boxes. If the increases continue, another report would not need to be filed until the next 10-business-day period.
  - The adopted amendments will also require reporting of margin default by a fund or the inability for a fund to meet a call for margin, including in situations where there is a dispute with respect to the amount or appropriateness of the margin call (taking into account any contractually agreed cure period). There is no quantitative threshold to trigger the reporting of a fund's margin default, and any margin default will require filing a current report. Current reports will not be required for a dispute with respect to the amount or appropriateness of a margin call if the fund has sufficient assets to meet the highest possible amount of the disputed margin call. An adviser will be required to file a separate report for each counterparty in which the fund fails to meet a margin call or defaults and in each such report include: (1) the date the adviser determines or is notified that a reporting fund is in margin default or will be unable to meet a margin call with respect to a counterparty; (2) the dollar amount of the call for margin and the legal name and Legal Entity Identifier (LEI) of the counterparty; and (3) the applicable check boxes describing the circumstances. However, if an adviser is unable to meet the demands of multiple counterparties on the same day, the adviser will file one report with details for each counterparty.

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should be consistent over time. The use of the RFACV is a departure from the proposed amendments, which used the fund's "most recent net asset value" (MRNAV). The SEC intended the use of the RFACV to be administratively easier for advisers to calculate as it believes fund service providers already employ systems to calculate the fund's RFACV.

13 According to the Release, margin, collateral or an equivalent are collectively referred to as "margin." While the SEC declined to propose specific definitions, these terms "generally refer to assets and cash that can be claimed by a fund counterparty, lender, or clearinghouse if needed to satisfy an obligation" and include assets that were physically transferred as well as assets in the fund's account that are identified by a counterparty. The addition of "or an equivalent" is designed to provide increased flexibility.

- **Counterparty defaults.** Large hedge fund advisers will be required to report a counterparty's default with respect to margin, collateral or their equivalent. Unlike the reporting of a margin default by a fund, which does not have a threshold to trigger reporting, advisers will be required to report counterparty defaults of at least 5 percent of the fund's RFACV. This provision is intended to reduce reporting for *de minimis* defaults or defaults arising from operational error. An adviser will be required to file: (1) the date of default; (2) the dollar amount of default; and (3) the counterparty's legal name and LEI. If multiple counterparties default on the same day, a single report can be filed, but if counterparties default on different days, the adviser would need to file a separate report in respect of each day.

- **Termination or material restriction of a prime broker relationships.** Large hedge fund advisers will be required to report instances in which:

  - The prime broker terminates or "materially restricts its relationship with the fund, in whole or in part, in markets where that prime broker continues to be active." This includes substantial changes to credit limits, a significant price increase, ceasing to support an important market or asset type and significant limits to a fund's operations or ability to trade.

  - Either party terminates the relationship if the termination was preceded, in the prior 12 months, by the activation of a "termination event" in the prime brokerage agreement or related agreements.

  Large hedge fund advisers will not need to report terminations of prime broker relationships arising for ordinary business reasons or if the change arises as part of a widespread change affecting the prime broker's other clients and is isolated to the prime broker's financial state, activities or other characteristics.

- **Significant disruption or degradation to critical operations.** Large hedge fund advisers will be required to report when the adviser or reporting fund experiences a "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. Critical operations include investment, trading, valuation, reporting and risk management of the reporting fund, as well as any operations relating to compliance with federal securities laws and regulations. The adopted amendments do not assign a numeric threshold to represent a "significant" disruption or degradation (unlike the proposed amendments), but the SEC believes that if operations may be reasonably measured, a benchmark of a "20% disruption or degradation of normal volume or capacity" of operations can signify that reporting may be required. In response to comments that it would be difficult to measure or judge when a "significant disruption or degradation" has occurred, the SEC provided guidance in the Release about reliance on internal back office operations that large hedge fund advisers may find will not cover many or most scenarios. An adviser will be required to file a report that includes: (1) the date of event (or estimate thereof); (2) a description of the event's cause using check boxes; (3) whether it initiated a business continuity plan; and (4) a description of the operations that were impacted (i.e., trading, valuation, management of investment risks, compliance with applicable laws, any other operational impact).

- **Certain events associated with large withdrawals and redemptions.** Large hedge fund advisers will be required to report when a fund receives withdrawal or redemption requests of more than 50 percent of the fund's net asset value (after netting investor contributions and commitments). This reporting item is designed to capture significant redemption requests (despite pre-existing gates or other limitations) that may signal the potential for a fund to liquidate assets at potentially low prices and potentially harm non-redeeming investors. An adviser filing this report will be required to include: (1) the date upon which the net redemption requests exceeded the threshold; (2) the net value of redemptions paid between most recently reported fiscal quarter and date of current report; (3) the percentage of the fund's net asset value represented; and (4) whether investors have been notified that the fund will liquidate. Additionally, large hedge fund advisers will be required to file a report if the fund (1) is unable to satisfy redemption requests; or (2) suspends redemptions for more than five consecutive business days. An adviser filing this report will be required to include: (1) date fund became unable to meet redemption requests or suspended redemptions; (2) the percentage of redemptions requested but not yet paid; and (3) whether investors have been notified that the fund will liquidate.

The adopted amendments add a new section 5 to the Form that will require advisers to identify themselves and the reporting fund, any relevant identifying numbers (i.e., private fund identification number, National Futures Association identification number, LEI), the current reporting event, applicable reporting requirements specific to each event and an optional explanatory note.

The filing for a current reporting event is intended to be more streamlined when compared to the annual or quarterly Form PF filings. For example, the Release explains that the events incorporate objective tests, simplify materiality thresholds to binary events or use quantifiable threshold percentages that are refined to identify severe stress and minimize false positives. Several of the reporting items include check boxes that are intended to provide additional context and avoid requiring the drafting of narrative responses during a period of heightened stress. Advisers are permitted to provide further explanation in a narrative if they believe that it would provide helpful information and context for the SEC and FSOC's evaluations. If an adviser checks "other," then an adviser in certain circumstances will be required to provide an explanatory note, but otherwise responding with further explanation will generally be optional. Advisers will be able to file an amendment to correct a current report that was inaccurate at the time of filing or was filed in error. The reports will need to be filed through the Private Fund Reporting Depository (PFRD) with a filing fee yet to be determined, and filers will not be required to submit any other sections of Form PF at that time and can amend their reports if they determine a filing was not accurate when filed.

New Quarterly Private Equity Event Reports for All Private Equity Fund Advisers

Under the adopted amendments, private equity fund advisers that file Form PF will be required to report if any of the events below occurred during the past quarter for each private equity fund they advise. Presently, there is no requirement for private equity fund advisers to report on these events. In the instance of a reportable event, these "private equity event reports" under new section 6 of Form PF will be required to be filed within 60 days of the end of a fund's fiscal quarter in which a reportable event occurred. All private equity fund advisers that file Form PF will be required to report quarterly if the following reportable events occur:[14]

- **Execution of an adviser-led secondary transaction.** Private equity fund advisers will be required to report when an adviser-led secondary transaction occurs, as defined by the SEC as "any transaction initiated by the adviser or any of its related persons that offers 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." This definition of an "adviser-led secondary transaction" matches the definition used in recently adopted Rule 211(h)(2)-2 under the Investment Advisers Act of 1940 (Adviser-led Secondaries Rule).[15] Though these transactions might indicate strength in a particular investment, the SEC views such transactions as

[14] Private equity fund advisers only need to report each occurrence of a reporting event once on the section 6 filing covering the quarter in which the event occurred. Advisers need not report the same instance of a reporting event again on later section 6 filings.

[15] Private Fund Advisers; Documentation of Registered Investment Adviser Compliance, SEC Final Rule, SEC. Rel No. IA-6383 (Aug. 23, 2023).

demonstrating a deviation from the usual life cycle of a private equity investment that can significantly alter the private equity investment and/or fund's liquidity profile. Additionally, in the SEC's view, these transactions increase the risk of a conflict of interest arising, as the adviser may be on both sides of the transaction with differing economic incentives. With the Adviser-led Secondaries Rule, the SEC also adopted a requirement for private fund advisers to, among other things, obtain and distribute an independent fairness opinion or valuation opinion with respect to an adviser-led secondary transaction before the due date of the election form in respect of the transaction.

- **Investor election to remove a fund's general partner or to terminate a fund's investment period or a fund.** Private equity fund advisers will be required to report when a "fund's investors have: (1) removed the adviser or an affiliate as the general partner or similar control person of the fund; (2) elected to terminate the fund's investment period; or (3) elected to terminate the fund, in each case as contemplated by the fund documents." Upon receiving notification of an investor's election, an adviser will be required to report: (1) the effective date of the event; and (2) a description of such event. The SEC views these events as unusual, typically indicative of fund distress and giving rise to a heightened potential for conflicts of interest. Additionally, the SEC observed that an investor election to terminate a fund's investment period often effects a change in how management fees should be calculated for the remainder of the fund's life.[16]

These reports are intended to help the SEC receive timely notice of relevant events and provide information necessary for the SEC's regulatory programs, including examinations, investigations, investor protection efforts and policy pertaining to private fund advisers, and the SEC believes they could assist in assessing market trends.

The proposed amendments would have also required private equity fund advisers to report the implementation of a general partner or limited partner clawback under section 6 of Form PF, but the adopted amendments require that this event only be reported annually on section 4 of Form PF and only large private equity fund advisers are required to make such a disclosure.

In a change from the proposed amendments, new section 6 of Form PF will require reporting on a quarterly basis rather than on a current basis within one business day of such event. The SEC determined that these reporting items are likely to demonstrate "trends that emerge more slowly" than those of hedge funds (noting that private equity funds tend to hold less liquid assets longer with more limited redemption rights) and likely do not necessitate the immediate attention that would follow from more timely reporting.[17] Even so, the SEC reiterated its belief that these events include a higher potential for conflicts of interest or fund distress and may be a sign that an investor protection issue has arisen. Item D of section 6 allows advisers to provide an optional narrative response on a reporting event if the adviser believes that additional information will aid regulators in understanding the circumstances of reported events. Like the current reports, the private equity event reports will also be required to be filed through PFRD with a filing fee (yet to be determined); filers will not be required to submit any other sections of Form PF at that time and can amend their reports if they determine a filing was not accurate when filed.

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[16] Following this event, management fees generally "step down" to a percentage of invested capital, rather than a percentage of aggregate capital commitments. The SEC stated that an adviser might fail to effectively administer such a change and overcharge management fees.

[17] Quarterly reporting, the SEC believes, strikes a balance between the burden that reporting obligations impose on private equity fund advisers and the SEC's need to protect investors and FSOC's need to monitor markets for systemic risk.

Large Private Equity Fund Adviser Reporting

In addition to the new, event-based reporting requirements, the SEC also expanded reporting on the existing section 4 of Form PF, which large private equity fund advisers are required to complete with their annual filings. Advisers will be required to comply with these amendments later than the event-based reporting, starting with reports filed on or after June 11, 2024.

Large private equity fund advisers will be responsible for responding to certain new and amended existing questions to section 4 of Form PF. These questions are aimed at improving FSOC's monitoring of systemic risk, FSOC's and the SEC's assessments of material changes in market trends at reporting funds, the SEC's understanding of certain private equity fund adviser practices and the SEC's data collection. As support for this heightened disclosure, the SEC cited the growth in the number of large private equity firms, as well as increases in the number of private equity investors and median fund size of private equity funds. The SEC stated its view that these increases warrant greater risk-based monitoring and insight because private equity fund disruptions may have greater effects on investors, the private equity industry and broader financial markets than ever before.

- **New question on general and limited partner clawbacks**. Large private equity fund advisers will be required to answer new question 82 on an annual basis to disclose all general partner clawbacks[18] and certain limited partner clawbacks[19] where the aggregate over the fund's lifetime is "in excess of an aggregate amount equal to 10 percent of a fund's aggregate capital commitments." For a limited partner clawback, once the 10 percent threshold is exceeded, a filing for each additional limited partner clawback would be required, regardless of its size, for each year of the remainder of the fund's life. The adviser will be required to report: (1) the effective date; and (2) the reason for the clawback. Additionally, large private equity fund advisers will have the option to include an explanatory note to accompany their disclosures. In a change from the proposed amendments, only large private equity fund advisers will be required to complete this information and will only be required to do so annually, as the SEC acknowledged that clawbacks can build over multi-year terms; this reporting will enable the SEC and FSOC to monitor any broader systemic trends such as declining market conditions and illuminate any investor protection risks surrounding such clawbacks.

- **New question on private equity fund investment strategies**. Large private equity fund advisers will also be required to disclose their investment strategies, choosing from a list of strategies based on a good faith estimate of the percent of deployed capital, even if the categories do not exactly match the reporting fund's actual strategies.[20] Advisers that engage in multiple strategies will be required to make a good faith effort to estimate the percentage of deployed capital involved in each strategy. Such a disclosure has never before been required for private equity fund advisers, but it is already required for hedge funds and is intended to allow for FSOC and the SEC to provide oversight as strategies carry different levels of risk.

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18 The SEC defines general partner clawback as "any obligation of the general partner, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the fund pursuant to the fund's governing agreements."

19 The SEC defines limited partner clawback as "an obligation of a fund's investors to return all or any portion of a distribution made by the fund to satisfy a liability, obligation, or expense of the fund pursuant to the fund's governing agreements."

20 Private equity fund investment strategies will generally include: "private credit (and associated sub-strategies such as distressed debt, senior debt, special situations, etc.), private equity (and associated sub-strategies such as early stage, buyout, growth, etc.), real estate, annuity and life insurance policies, litigation finance, digital assets, general partner stakes investing, and others." Form PF will provide advisers with the option to choose "other" as a strategy; the reporting adviser must then explain their rationale for the selection.

- **New question on fund-level borrowings**. Large private equity fund advisers will report additional information if a fund engages in fund-level borrowing in new Question 68. An adviser will report: (1) information on each borrowing or other cash financing available to the fund; (2) total dollar amount available; and (3) average amount borrowed over the reporting period. According to the Release, the intent is to capture additional information on subscription lines of credit.

- **Amended questions on event of default, bridge financing to controlled portfolio companies and geographic breakdown of investments.** Question 74 will be amended to require that large private equity fund advisers provide more detailed information regarding the nature of reported events of default (i.e., whether a payment default is due to the fund, controlled portfolio company (CPC) or a failure to uphold terms under the applicable borrowing agreement (other than a failure to make regularly scheduled payments)). Question 75 already requires reporting on the identity of the parties providing bridge financing to the adviser's CPCs, as well as the amount of the financing, and it will now require additional counterparty identifying information (i.e., LEI, if counterparty is affiliated with a major financial institution, then its name). Question 78 already requires reporting on the geographical breakdown of investments, and it will be modified to require the geographical allocation of their investments by percent of net asset value in the countries where a reporting fund has 10 percent or more exposure, rather than by listing a static group of countries and regions as was previously the case.

The SEC proposed, but did not adopt, certain additional questions for large private equity fund advisers, including those related to: restructuring/capitalization of a portfolio company; investments in different levels of a single portfolio company's capital structure; financing of portfolio companies; floating rate borrowings of controlled portfolio companies; and controlled portfolio companies.

Compliance Dates

The new, event-based reporting will be required by large hedge fund advisers regarding their qualifying hedge funds and all private equity fund advisers for reports filed on and after December 11, 2023, as the SEC stated its view that this reporting is "based on distinct event triggers" and that it is "imperative" that the SEC and FSOC "begin receiving this information." The additional information required for large private equity fund advisers must be included in reports filed on and after June 11, 2024 (one year after publication in the Federal Register).

The amendments that were jointly proposed with CFTC "relate to different sections of Form PF" and it is the SEC's view that this separation warrants varying compliance dates, and the SEC could address any compliance date issues or concerns once that proposal is made final.

Modifications from the 2022 Proposed Amendments

The adopted amendments largely follow the contours of the proposed amendments except for proposed enhancements to reporting for large liquidity fund advisers, which were adopted as part of a separate rulemaking focused on money market funds.[21]

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21 Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, SEC Proposed Rule, SEC Rel. No. IA-5950 (Jan. 26, 2022). For further information, please refer to the *Dechert NewsFlash*, SEC Proposes Substantial Changes to Private Fund Regulatory Regime. The rules adopting amendments to enhance private fund reporting were finalized along with rules impacting money market funds in July 2023. Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A, SEC Final Rule; SEC Rel. No. IC-34959 (Jul. 12, 2023). For further information, please refer to the *Dechert OnPoint* SEC Adopts Significant Money Market Fund Reforms; Enhances Private Liquidity Fund Reporting on Form PF.

- **Current reporting requirement remains but timelines extended and triggering events reduced**. The proposed amendments introduced the concept of current reporting on Form PF for large hedge fund advisers and private equity fund advisers. The final rule largely retains this requirement but extended the one-day reporting timeline for large hedge fund advisers to as soon as practicable but no later than 72 hours after the occurrence of certain events, and for all private equity fund advisers to quarterly reporting 60 days after quarter-end. In addition, the final rule reduced the number of **events that will trigger current reporting.**[22]

- **Additional reporting for large private equity fund advisers but no change in threshold**. The final rule includes additional reporting requirements for large private equity fund advisers beyond those proposed, but the proposal to lower the reporting threshold from $2 billion to $1.5 billion for "large private equity adviser" was not adopted. Since more recent SEC models project that the $2 billion threshold will soon encompass 75 percent of the private equity industry, the SEC explained that it no longer believed that lowering the threshold was necessary to capture 75 percent of private equity fund advisers as the original reporting threshold was intended to do.

- **No changes to reporting for large liquidity fund advisers in the Release but finalized in a subsequent release**. The proposed amendments also would have required large liquidity fund advisers to report substantially the same information as money market funds would be required to report on Form N-MFP. This portion of the Release was finalized alongside money market fund reforms in July 2023.

Conclusion

The SEC acknowledges that advisers will need to review new requirements, build appropriate internal reporting and tracking systems and begin collecting related information. However, the compliance dates are aggressive. Given the timing of a technology build-out and the coordination required both internally and with any service providers to begin collecting the information requested, advisers are encouraged to get moving on a build-out even with the joint proposal looming but still outstanding.

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[22] The proposed amendments would have required large hedge fund advisers to submit current reporting on changes in unencumbered cash. The proposed amendments would have also required all private equity fund advisers to submit current reports on general partner or limited partner clawbacks, but such reporting will now be required annually according to the final rule.

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