Form PF Proposed Amendments

On January 26, 2022, the Securities and Exchange Commission considered proposals to amend Form PF, the reporting form for private funds designed to provide the SEC and Financial Stability Oversight Counsel (FSOC) with important, confidential information about the operations and strategies of private funds and enhance their ability to monitor systemic risk, bolster regulatory oversight of private funds and enhance investor protection. The proposed amendments would result in additional reporting by large hedge fund advisers, large liquidity fund advisers, and all private equity fund advisers, and would reduce the threshold for large private equity fund reporting. Specifically, amended Form PF would require the following:

- **Immediate Reporting** – The amendment would require immediate reporting within one business day for certain events that may present risks or material implications to fund investors or indicate systemic risks, including the following:
    - **Large Hedge Funds**
        - Extraordinary investment losses
        - Significant margin and counterparty defaults
        - Material changes in prime broker relationships
        - Changes in unencumbered cash
        - Key operations events
        - Significant withdrawals or redemptions
    - **All Private Equity Funds**
        - Execution of adviser-led secondary transactions
        - Implementation of general partner or limited partner clawbacks
        - Removal of a fund's general partner
        - Termination of a fund's investment period
        - Termination of a fund
- **Large Private Equity Fund Reporting** – The amendment would reduce the threshold for reporting as a large private equity fund adviser from $2 billion to $1.5 billion in RAUM[1] and would require such funds to report additional information, including the following:
    - Fund strategies
    - Use of leverage and portfolio company financings
    - Controlled portfolio companies and their borrowings
    - Fund investments in different levels of a portfolio company's capital structure
    - Portfolio company restructurings or recapitalizations
- **Large Liquidity Fund Reporting** – The amendment would require such funds to report additional information, consistent with reporting required by registered money market funds, including the following, among others:
    - Liquidity information
    - Valuation information
    - Net asset value information
    - Yield information
    - Subscription and redemption information
    - Portfolio securities data

[1] Regulatory assets under management ("***RAUM***") for private funds is calculated based on the **current market value (or fair value)** of the fund's assets as of the most recent quarter-end, plus the contractual amount of any uncalled commitment pursuant to which a person is obligated to acquire an interest in, or make a capital contribution to, the private fund. RAUM is reported on a gross basis without deducting any outstanding indebtedness or other accrued but unpaid liabilities as follows: Gross Assets + Uncalled Capital = RAUM.

The form would be amended to include new current reporting sections to facilitate the immediate reporting requirements, although the SEC has requested comment as to whether they should instead create a new form for current reporting.

The proposal was approved by a vote of 3-1. As Republican Commissioner Elad Roisman left the Commission last Friday, as previously announced, the Commission is now a 4-person body with three Democrats and only one remaining Republican. While Commissioner Peirce argued against the proposal, expressing concern that it extended the information required of private funds beyond what was originally intended for the form to identify systemic risks, and would instead require information that is useful and of interest to the SEC but primarily related to specific funds and not systemic risk. She also objected to the proposed one-day reporting requirement for key events during periods when private fund managers may be heavily focused on addressing the issues at hand. Notwithstanding these objections, the other Commissioners and Chairman Gensler expressed support for the amendments, citing the importance of providing prompt information to the SEC to effectively regulate private funds and address investor protection concerns. Chairman Gensler, in particular, referenced back to the highly leveraged Long-Term Capital Markets hedge fund that blew up in 1998, forcing the U.S. government to intervene to prevent unintended consequences to the financial markets, as well as more recent private fund activities and exposure in the 2008 credit crisis and 2020 market events, and the lack of sufficient information available promptly to the enable the SEC and other regulators to effectively respond to such events.

The changes will not be effective immediately but will first be published for comment with a 30-day comment period, which is substantially shorter than what historically has often been a 90-day comment period. Following is a link to the proposing release, which includes additional details regarding the proposed reporting and further questions for consideration. We will review and consider the details of the proposed amendment further, as many of the immediate reporting items appear to be normal expected events rather than extraordinary events. As Form PF is a significant reporting obligation for our private fund clients, we strongly encourage clients to review the proposal and consider whether it would be useful to submit feedback during the comment period. We expect to work with clients, service provider partners and other constituents to draft and provide thoughtful comments on the proposal. We welcome questions and will work closely with clients to better understand the proposal and potential impact for future reporting.

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SEC Proposing Release – https://www.sec.gov/rules/proposed/2022/ia-5950.pdf

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