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Securities Law ADVISORY ■

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SEC Proposes Amendments to Enhance Private Fund Reporting

On January 26, 2022, the Securities and Exchange Commission (SEC) proposed amendments to a confidential reporting tool—Form PF—that would require greater and more frequent disclosure by private equity and large hedge fund advisers. The SEC and the Financial Stability Oversight Council (FSOC) use the information gathered by Form PF, first adopted in 2011, to monitor market activity, flag systemic risks, and inform policymaking. While the proposed amendments may better equip the SEC and FSOC to analyze and assess the market and the private fund industry through greater access to information, critics note that they will also likely impose much greater logistical burdens on private equity firms.

Current Requirements

Under the current framework, advisers required to file Form PF have months to file after the end of the fiscal year or quarter in which the reported event occurred. Exact timetables vary based on the size and type of funds that are advised. Only large private equity advisers that manage $2 billion or more in private equity fund assets are subject to Form PF reporting requirements. The SEC noted that as currently drafted, Form PF does not require current reporting of information from advisers whose funds are facing stress, which could result in investor harm and create systemic risk.

Proposed Changes

The proposed changes would primarily affect disclosure obligations for private equity advisers in three ways:

(1) Requiring new current reporting of certain events for large hedge fund advisers and advisers to private equity funds.

(2) Decreasing the reporting threshold for large private equity advisers.

(3) Revising reporting requirements for large private equity advisers and large liquidity fund advisers.

1. New current reporting for large hedge fund advisers and advisers to private equity funds

Large hedge fund advisers

The proposed amendments would require large hedge fund advisers subject to Form PF reporting requirements to submit the form within one business day of an event that indicates significant stress at the fund with the potential to harm investors or signals risk in the broader financial system. Such events include:

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- Certain extraordinary investment losses.
- Significant margin and counterparty default events.
- Material changes in prime broker relationships.
- Changes in unencumbered cash.
- Operations events.
- Events associated with withdrawals and redemptions.

Private equity fund advisers

Further, the proposed amendments would require advisers to private equity funds to submit current reports within one business day of the occurrence of reporting events related to:

- The 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.

The one-day reporting would be a significant reduction in the reporting time currently allotted to advisers, with the aim of providing the SEC and FSOC with more contemporaneous information about certain events that could signal distress at qualifying funds or market instability.

2. Large private equity adviser reporting

The proposed amendments would decrease the reporting threshold for large private equity advisers to $1.5 billion from $2 billion in private equity fund assets under management. This would cast a wider net that would subject more large private equity advisers to the reporting requirements. Notably, the SEC highlighted that the current threshold encompasses a lower proportion of the industry than it did when originally introduced. The proposed amendment aims to reset the metrics to require disclosure from the same proportion of advisers (75%) subject to reporting on Form PF as at the time of its introduction in 2011.

Additionally, the SEC is proposing amendments to Section 4 of Form PF that would result in increased disclosure obligations for these large private equity advisers for:

- Fund strategies.
- Use of leverage and portfolio company financings.
- Controlled portfolio companies (CPCs) and CPC borrowings.
- Fund investments in different levels of a single portfolio company's capital structure.
- Portfolio company restructurings or recapitalizations.

The proposed amendments seek to provide the FSOC with an enhanced ability to assess the systemic risk posed by private equity funds and their advisers, as well as to inform the SEC in its regulatory programs for the protection of investors.

3. Reporting requirements for large liquidity fund advisers

The proposed amendments would change current reporting requirements for large liquidity fund advisers to mirror those that would apply to money market funds reporting on the amended Form N-MFP proposed by the SEC on December 15, 2021. The proposed Form N-MFP adds numerous reporting requirements for money market funds, including enhanced disclosures related to a fund's shareholders and disposition of nonmaturing portfolio investments. The collective goal of the amendments

to Form N-MFP and Form PF is to obtain a more comprehensive picture of the short-term financing markets in which money market funds and liquidity funds both invest, allowing the SEC and FSOC to better assess short-term financing markets and facilitate oversight of those markets.

Discussion

The proposed amendments have triggered strong responses from private equity firms and have been the focus of discussions by legal and financial experts.

Supporters of the proposal, including SEC Chairman Gary Gensler, point to its capacity to provide the SEC and FSOC with more precise and up-to-date data from a wider range of private equity firms on a broader scope of topics. Gensler noted that "the private fund industry has grown in size to $11 trillion and evolved in terms of business practices, complexity of fund structures, and investment strategies and exposures." Gensler further highlighted that the decade-long history of using Form PF has exposed informational gaps in the data it captures. Specifically, the SEC cited recent market events, such as the COVID-19 pandemic and the January 2021 market volatility in certain stocks, as a basis for receiving more current and robust information from market participants.

Those opposed to the proposal cite the huge impending burden it would impose on private equity advisers by forcing them to disclose a greater number of events on a much tighter timeline. Although one aim of the amendments is to identify sources of systemic risk, critics say that private equity carries a relatively small threat of systemic risk and does not necessitate the potentially significant costs associated with the implementation of extra monitoring policies and procedures. Nevertheless, the proposed amendments would narrow the gap between the obligations of private-equity-backed companies and publicly traded ones.

Due to the intensity of both the proposed amendments and the response they have received, some experts predict that the rules may be softened before becoming effective, if they are implemented at all. However, Gensler has indicated the SEC's intention to propose other increases to private fund disclosure requirements.

Going Forward

The proposed amendments will be subject to a 30-day comment period, beginning upon the publication of the proposal in the *Federal Register*. To submit comments, use the SEC's internet submission form or send an email to rule-comments@sec.com with "File Number S7-01-22" in the subject line.

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