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Client Alert Commentary

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SEC Proposes Changes to Form PF for Private Equity and Large Hedge Fund Advisers

Upon publication of the proposed rule in the Federal Register, stakeholders will have a 30-day period in which to comment.

On January 26, 2022, the Securities and Exchange Commission (SEC) published a proposed rule that, if adopted, would modify reporting requirements and thresholds under Form PF for certain registered investment advisers of private equity funds, hedge funds, and liquidity funds (collectively, private funds). The proposed rule would:

- Require private equity fund and large hedge fund advisers to submit reports (current reports) to the SEC within one business day of the occurrence of certain triggering events
- Lower the reporting threshold for "large private equity fund advisers" from $2 billion to $1.5 billion in private equity fund assets under management (AUM)
- Expand the information that large private equity fund advisers must report in Form PF
- Require liquidity fund managers to report information similar to the information that money market funds report on Form N-MFP

Private Equity Fund Advisers

Reporting Threshold

Form PF is a required filing for registered investment advisers that manage one or more private funds accounting for at least $150 million in AUM. Form PF imposes a number of additional reporting requirements for certain large private fund advisers, including large private equity fund advisers. Currently, a large private equity fund adviser is any adviser that manages private equity funds accounting for at least $2 billion of such adviser's AUM. In its proposal, the SEC would reduce this threshold to $1.5 billion, thus expanding the pool of private equity fund managers that would be subject to additional reporting obligations under Form PF as large private equity fund advisers.

Current Reports

In addition to expanding the group of private equity fund managers subject to additional reporting requirements as large private equity fund advisers, the proposed rule would increase and enhance the reporting requirements for private equity fund advisers. One such proposed amendment would require all private equity fund advisers that are required to file Form PF to file survey-style reports with the SEC within **one business day** of the occurrence of one or more events, including:

- Adviser-led secondary transactions
- General partner or limited partner clawbacks
- Removal of a fund's general partner
- Termination of the investment period of a fund
- Termination of a fund

Additional Disclosures

The SEC's proposed rule would also increase the additional information large private equity fund advisers are required to provide in Form PF. Proposed amendments would add prongs for each private equity fund advised by the manager relating to:

- The fund's investment strategies, including an estimate of the percentage of investment capital deployed for each such strategy
- Restructuring or recapitalization of portfolio companies subsequent to the completion of the fund's investment period
- Investments in portfolio companies in which another fund advised by the manager or such manager's related persons invested in a different class of securities
- Use of leverage at the fund-level
- Financing of or extension of credit to portfolio companies by the manager or the manager's related persons
- The fund's controlled portfolio companies (CPCs) and the borrowings and liabilities of such CPCs

Large Hedge Fund Advisers

Current Reports

The SEC's proposed rule would also impose current reporting requirements on large hedge fund advisers, requiring such managers to file current reports with the SEC within **one business day** of the occurrence of events relating to one of the following:

- Extraordinary investment losses over a rolling 10-business-day period
- Significant increases in the total dollar value of margin, collateral, or an equivalent over a rolling 10-business-day period
- Receipt of a notice of default by the fund on a call for margin, collateral, or an equivalent, resulting in a deficit that the fund will not be able to cover or address by adding additional funds

- A determination by the manager that a fund is unable to meet a call for margin, collateral, or an equivalent
- Default by a fund's counterparty on call for margin, collateral, or an equivalent or other payment
- A material change in the relationship between a fund and one or more of its prime brokers
- Significant decline in unencumbered cash over a rolling 10-business-day period
- Significant disruption or degradation of a fund's key operations
- Various events concerning withdrawals and redemptions

Large Liquidity Fund Advisers

Modified Reporting

In addition to the proposed enhanced reporting requirements for large private equity and hedge fund advisers, the SEC's proposed rule would modify current reporting requirements for large liquidity fund advisers to substantially track the information filed by registered money market funds with the SEC, in particular the information captured in Form N-MFP.

Conclusion

If implemented, the proposed rule could significantly increase the reporting burden under Form PF for private fund managers by expanding the group of advisers with additional reporting requirements, imposing immediate reporting requirements on all private equity fund managers and all large hedge fund managers required to file Form PF upon the occurrence of various triggering events, and increasing the volume of information large private fund managers must provide in the form.

The proposed rule will be open for comment for a 30-day period upon publication in the Federal Register.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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