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**The SEC's New Form PF Current
Reporting Rules: What You Need
to Know**

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Presenters



Christine Lombardo
Partner
Philadelphia/New York



John O'Brien
Partner
Philadelphia



Christine Ayako Schleppegrell
Partner
Washington, DC



Joseph Zargari
Partner
New York



Audrey Jeung
Of Counsel
San Francisco

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Overview of Form PF Amendments

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Form PF Amendments

- To whom do the amendments and their required time frames for reporting apply?
 - Large hedge fund advisers
 - Private equity fund advisers
 - Large private equity fund advisers
- What do the amendments require?
 - Current reporting for large hedge fund advisers as soon as practicable (at least within 72 hours)
 - Event reporting for all private equity fund advisers on a quarterly basis of certain fund- and adviser-level triggering events
 - Certain increased and additional reporting for large private equity fund advisers, including reporting of any clawback events

Form PF Amendments (continued)

- The Form PF Amendments will become effective six months after publication of the adopting release in the *Federal Register* for current and quarterly event reporting and one year after publication in the *Federal Register* for the remainder of the amendments.
- The amendments largely adopt the substance of the SEC proposal issued on January 26, 2022 (the Proposal)
- Material changes from the Proposal:
 - adopting a longer time frame for current reporting
 - not requiring the reporting of unencumbered cash
 - incorporating the proposed reporting of clawback events into a *large* private equity fund adviser's *annual* filing

Form PF Amendments (continued)

- Additionally, the amendments do not adopt the lower \$1.5 billion reporting threshold for large private equity fund advisers
- The existing threshold of \$2 billion in private equity fund assets under management remains in place in order to be considered a large private equity fund adviser

New Reporting

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The New Reporting Process

- The current version of Form PF requires annual filing, not event-driven reporting. With the amendments, upon the occurrence of certain triggering events:
 - large hedge fund advisers must report to the SEC as soon as practicable and no later than 72 hours after such occurrence; and
 - all private equity fund advisers must report on a quarterly basis within 60 days of each fiscal quarter-end.

Implications for Advisers

- Operational difficulties with new reporting time frames – increased compliance burden, particularly for large hedge fund advisers
- Factors for advisers to consider:
 - “as soon as practicable” – uncertain how the SEC will interpret this standard in the context of the triggering event, and whether it will expect certain types of reports to have a more expedited timeline than 72 hours
 - “no later than 72 hours” – the hours-based standard for large hedge fund advisers is a first for the SEC. A key factor for advisers to monitor will be when the clock has started for the required reporting window
 - “service providers and counterparty oversight” – the implication of the need for additional oversight in order to ensure timely reporting could reshape the terms and conditions contained in third-party agreements and impact the relationships among an adviser, its funds, and the third parties providing services to them

Other Factors for Advisers to Consider

- “Fund-of-one advisers” – the amendments may lead to more frequent and burdensome reporting obligations for funds-of-one due to the various terminations and suspensions that could be triggered by the single investor
- “Operational updates” – adviser systems will need to be updated to reflect current reporting requirements, and with limited time after a triggering event, compliance with reporting requirements may strain resources
- “Investor protection role” – in order to protect fund investors, SEC scrutiny may ensue to the extent that a private fund adviser makes a current report. Private fund advisers are required to submit Form PF only to the SEC, but investors may inquire about it during due diligence processes

Triggering Events

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Triggering Events for Large Hedge Fund Advisers

- Extraordinary investment losses
- Margin increases
- Margin defaults
- Counterparty defaults
- Termination or material restriction in prime broker relationships
- Operations events
- Redemptions in excess of 50% of the fund's net asset value
- Inability to satisfy redemptions

Triggering Events for All Private Equity Fund Advisers

- Execution of an adviser-led secondary transaction
- Removal of a fund's general partner, termination of a fund's investment period, or termination of a fund

Expanded Reporting for Large Private Equity Fund Advisers

- Implementation of fund clawbacks
 - In the amendments, reporting of clawback events is only required of large private equity fund advisers rather than all private equity fund advisers
- Large private equity fund advisers will also be required to provide additional information in their annual filings, including:
 - reporting on a private equity fund's investment strategies
 - information on fund-level borrowing
 - details about events of default, information about bridge financing to controlled portfolio companies, and a geographical breakdown of investments by private equity funds as a percent of net asset value

Next Steps

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What's Next?

- The Form PF Amendments represent a significant overhaul of the private fund industry's regulatory regime introducing new, burdensome compliance monitoring and reporting obligations
- Private fund advisers should consider reviewing their policies and procedures for any updates needed to address the new reporting requirements, including any necessary changes to meet the SEC's required time frames
- Large hedge fund advisers should be aware of the monitoring and reporting requirements to ensure their systems are able to identify triggering events upon occurrence

SEC Proposals That Remain Outstanding

- An additional proposal of February 9, 2022 that would, among other things, cause advisers to rethink how they charge funds for certain fees and expenses and how they report to investors
- A combined joint proposed rule of August 10, 2022, issued by the SEC and the CFTC, that, with respect to Form PF, would further amend required reporting for all advisers

Christine M. Lombardo



Philadelphia/New York

+1.215.963.5012

+1.212.309.6629

christine.lombardo@morganlewis.com

Christine advises investment managers and broker-dealers on financial regulatory matters. She concentrates her practice on securities regulation for a broad range of financial firms including retail asset managers, private fund managers, family offices, broker-dealers, other professional traders, and high-net-worth individuals. Christine also counsels legal, compliance, and business personnel on the structure, operation, and distribution of advisory programs, including digital advisory offerings, and investment products, including hedge funds, private equity funds, venture capital funds, real estate funds, and other alternative investment products.

John J. “Jack” O’Brien



Philadelphia

+1.215.963.4969

john.obrien@morganlewis.com

John counsels registered and private funds and fund managers in connection with organizational, offering, transactional, and compliance matters. He regularly works with a variety of different fund structures, including open-end and closed-end funds, exchange-traded funds, and hedge funds. He also counsels investment adviser and broker-dealer clients on various matters, particularly with respect to registration and disclosure, marketing regulations, pay-to-play issues, and transactions in exchange-traded funds.

Christine Ayako Schleppegrell



Washington, DC

+1.202.739.5259

christine.schleppegrell@morganlewis.com

Christine counsels asset managers on legal, regulatory, and compliance matters, focusing on advisers to private funds (private equity, hedge, venture capital, infrastructure, real estate, credit) and separately managed accounts. She spent several years in private practice and more recently at the US Securities and Exchange Commission (SEC), including in leadership roles in the Division of Investment Management. While at the SEC, Christine led the Private Funds Branch during a time of landmark rulemaking impacting private fund advisers—she draws on this experience to advise on current and pending regulations and to guide clients through enforcement and examination proceedings.

Joseph D. Zargari



New York

+1.212.309.7020

joseph.zargari@morganlewis.com

Joe focuses on the private investment fund industry, including the structuring, formation, governance, and regulation of and investment in US and non-US hedge funds, private equity funds, venture capital funds, managed accounts, and other products. In addition, Joe has a significant practice representing buyers, sellers, and general partners in secondary transactions (including portfolio sales of fund interests and GP-led transactions). He also provides legal, regulatory, and transactional advice for investment managers and institutional investors. Joe is the practice group leader for the New York office investment management practice.

Audrey A. Jeung



San Francisco

+1.415.442.1758

audrey.jeung@morganlewis.com

Audrey focuses her practice on the structuring, formation, and governance of, and investment in, US domestic and international private investment funds. She also advises fund sponsors and investment managers in other aspects of their business, including ongoing operations and other legal and transactional matters. In addition, Audrey's practice includes representing buyers and sellers of private fund interests in the secondary market. Audrey began her career in the firm's New York office and, prior to returning to Morgan Lewis, practiced in-house at AIG and in the private funds group of a major international law firm.

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