

SEC AND CFTC ADOPT AMENDMENTS TO FORM PF

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SEC AND CFTC ADOPT AMENDMENTS TO FORM PF

On February 8, the US Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC and, together with the SEC, the Commissions) voted to adopt amendments to Form PF¹ that will impact the required reporting for SEC-registered investment advisers that file on Form PF (Form PF Amendments).

The Commissions' commentary in the release adopting the Form PF Amendments (Adopting Release)² reveals continued concern over systemic risk and protection of investor interests. Nonetheless, the SEC was split in its voting on the Form PF Amendments, with dissents issued by SEC Commissioner Hester Peirce and SEC Commissioner Mark Uyeda, as well as a joint dissent from SEC Commissioner Uyeda and CFTC Commissioner Caroline Pham with respect to the related Memorandum of Understanding (MOU) between the Commissions under which the SEC and CFTC will share information.

SEC Commissioner Peirce stated that "unbridled curiosity seems to be driving this decision rather than demonstrated need," and SEC Commissioner Uyeda questioned whether the Form PF Amendments may exceed the SEC's authority as granted by Congress.

Both commissioners, as well as CFTC Commissioner Pham, expressed concern about the risk of unauthorized disclosure of information in Form PF. Such concern stems from the fulsome information included in Form PF—a confidential form not available to the public—now being even more widely shared across governmental agencies as a result of the MOU.

The dissent focuses on the expansive information sharing that the SEC and CFTC have agreed to with respect to Form PF. Moreover, the MOU does not prohibit the CFTC from sharing Form PF information with third parties, provided that the CFTC complies with the MOU's restrictions. SEC Chairman Gary Gensler supported the Form PF Amendments, indicating that he views the Form PF Amendments as enhancing visibility into the private fund industry, which has evolved significantly since the time Form PF was first adopted.

The Form PF Amendments are the third set of changes to the form that the SEC has adopted in the last 12 months. While the SEC has amended Form PF in a piecemeal fashion, each of the three sets of changes pertain to different parts of the form.³ Sponsors should consider the interplay between the

¹ Form PF; adopted in 2011 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is a confidential regulatory filing required by the SEC for certain SEC-registered investment advisers of private funds. It requires that these private fund advisers report regulatory assets under management in order for the Financial Stability Oversight Council (FSOC) to monitor and assess systemic risk in the US financial system, as well as to bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts.

An investment adviser must complete and file a Form PF if it (1) is registered or required to register with the SEC as an investment adviser or is registered or required to register with the Commodity Futures Trading Commission, (2) manages one or more private funds, and (3) together with its related persons, had at least \$150 million in private fund assets under management as of the last day of its most recently completed fiscal year. Form PF filings are not available to the general public.

² Form PF; [Reporting Requirements for All Filers and Large Hedge Fund Advisers](#), Release No. IA-6546; File No. S7-22-23 (Feb. 8, 2024).

³ The May 2023 Amendments (1) took effect December 11, 2023, as relates to current reporting by large hedge fund advisers and private equity fund advisers, and (2) will take effect June 11, 2024, as relates to the additional reporting in their annual Form PF by large private equity fund advisers. The July 2023 amendments affecting large liquidity

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multiple Form PF amendments that have been adopted, including the enhanced and expanded reporting obligations, and the governance and disclosure obligations to which certain private fund advisers are now subject under the recently adopted new and amended rules to the US Investment Advisers Act of 1940, as amended (Advisers Act), adopted in August 2023 (Private Fund Adviser Rules). The volume of the SEC's rulemaking impacting the private funds industry has been unprecedented in recent years; the Form PF Amendments suggest this trend will continue.

By way of background, the first round of amendments was adopted in May 2023 (May 2023 Amendments) and requires (1) current reporting as soon as practicable and, in any event, within 72 hours for large hedge fund advisers of certain triggering events with respect to their qualifying hedge funds; (2) event reporting for all private equity fund advisers on a quarterly basis of certain fund- and adviser-level triggering events; and (3) certain increased and additional reporting for all large private equity fund advisers, including reporting of any clawback events.⁴

The second round of amendments, which applies only to large liquidity fund advisers, was adopted in July 2023 in order to align such advisers' reporting requirements with those of money market funds by amending required reporting for the following:

- Operational information
- Assets and portfolio information
- Additional repurchase agreement reporting
- Subscriptions and redemptions
- Financing information
- Investor information
- Disposition of portfolio securities
- Weighted average maturity and weighted average life⁵

OVERVIEW OF FORM PF AMENDMENTS

The Form PF Amendments adopted in February 2024 will affect (1) all filers of Form PF, (2) advisers to hedge funds, and (3) large hedge fund advisers to qualifying hedge funds.⁶ The compliance date will be

fund advisers (1) took effect November 23, 2023, for the current and quarterly event reporting requirement, and (2) will take effect May 23, 2024, for the remaining amendments.

⁴ See also [SEC Amends Form PF to Expand Hedge Fund and Private Equity Fund Disclosure](#) for additional information.

⁵ See also [SEC Adopts Amendments to Form PF Impacting Advisers to Large Liquidity Funds](#) for additional information.

⁶ Definitions of pertinent terms include:

- A **large hedge fund adviser** is an adviser that has 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.
- A **large private equity fund adviser** is an adviser that has at least \$2 billion in regulatory assets under management attributable to private equity funds as of the last day of the adviser's most recently completed fiscal year.

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365 days after publication of the Adopting Release in the *Federal Register*.⁷ The Form PF Amendments largely adopt the substance of the proposal issued by the Commissions on August 10, 2022, which sought to enhance the information advisers file on Form PF and improve data quality (Proposal).⁸

Certain material changes from the Proposal include (1) amending instructions to require an adviser to include the value of investments in other private funds—including internal and external private funds—when determining whether the adviser is required to file Form PF, (2) shifting proposed reporting for redemption/withdrawal rights to instead require identification of a private fund as an open-end versus closed-end fund, (3) declining to define “digital assets,” and (4) adopting a “best represents” standard as applied to evaluating indirect exposure.

Updated Form PF Requirements

Drilldown on Private Fund Structures

The Form PF Amendments will require managers to look through certain types of fund structures and report information about fund structures on a disaggregated basis. For example, advisers will be required to report information about master-feeder funds, parallel funds, trading vehicles, and relationships with counterparties and relevant parties involved in a fund’s structure.

Use of Information Reported on Form PF

The SEC indicated the Form PF Amendments are intended to (1) enhance the Commissions’ and FSOC’s ability to monitor systemic risk, (2) aid in the regulatory oversight of advisers by the SEC and the CFTC—including to bolster the SEC’s examination program—and (3) support the Commissions’ investor protection efforts.

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- A **hedge fund** is broadly defined to include any private fund (other than a securitized asset fund) that has any of the following three characteristics: (1) a performance fee or allocation that takes into account unrealized gains, or (2) a high leverage (i.e., the ability to borrow more than half of its NAV (including committed capital) or have gross notational exposure in excess of twice its NAV (including committed capital)) or (3) the ability to short sell securities or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration). Non-exempt commodity pools that an investment adviser is required to report are automatically categorized as hedge funds. Vehicles established for the purpose of issuing asset backed securities are excluded from the hedge fund definition in Form PF.
 - A **qualifying hedge fund** is defined as any hedge fund that has a NAV (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 the adviser’s most recently completed fiscal quarter.
 - A **private equity fund** is a private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course. However, private funds that have the ability to borrow or short securities have to file as a hedge fund.

⁷ As of the date of this article, publication in the *Federal Register* has not yet occurred.

⁸ Form PF; [Reporting Requirements for All Filers and Large Hedge Fund Advisers](#), Advisers Act Release No. 6083 (Aug. 10, 2022) [87 FR 53832 (Sept. 1, 2022)] (“2022 Joint Form PF Proposing Release”).

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Increased Specificity and Reduced Flexibility in Reporting

Several of the Form PF Amendments include requirements for heightened specificity in the type and scope of reporting, as compared to prior flexibility to use discretion, select more generalized “catch all” categories, or follow internal methodologies in certain instances. An adviser’s policies and procedures, as well as its systems, will need to be updated in advance of the effective date to reflect the enhanced and expanded reporting requirements. In addition, in light of the increased rigidity and new requirements, an adviser will need to use particular caution in assessing whether it meets any reporting thresholds.

Reporting of Indirect Exposure

Advisers will now be required to report indirect exposures and asset classes of their private funds. In a change from the Proposal, the Commissions acknowledged that indirectly held exposure could be difficult to ascertain; as such, the Commissions adopted a “best represents” standard to balance the importance of obtaining accurate information with a reporting standard that is less burdensome.

Focus on Advisers’ Non-US Activities

The Form PF Amendments adopt several enhanced reporting categories that focus on an adviser’s non-US activities, including foreign currency and securities exposure and certain beneficial ownership that is outside the United States, as well as US versus non-US entities in the fund structure, such as non-U.S. registered investment companies and non-US pension funds.

Below, we discuss the impact of the amendments on (1) all filers of Form PF, (2) advisers to hedge funds, and (3) large hedge fund advisers to qualifying hedge funds.

ALL FORM PF FILERS

Amendments to the General Instructions

The following amendments to the general instructions impact the way that an adviser determines whether it meets the threshold to file Form PF—a filing threshold—as well as whether the adviser meets certain thresholds for reporting information on Form PF—a reporting threshold (e.g., whether the adviser is a large hedge fund or large private equity adviser).

Reporting Master-Feeder Arrangements and Parallel Fund Structures

Currently, Form PF provides advisers with flexibility when responding to questions about master-feeder arrangements⁹ and parallel fund structures¹⁰—either in the aggregate or separately—as long as they do so consistently throughout Form PF.

The Form PF Amendments will generally require advisers to separately report each component fund of a master-feeder arrangement and parallel fund structure, except where a feeder fund invests all its assets in a single master fund, US treasury bills, and/or “cash and cash equivalents” (i.e., is a disregarded feeder fund). That said, for purposes of determining whether an adviser meets any reporting threshold, the adviser will continue to aggregate these structures.

⁹ A master-feeder arrangement is an arrangement in which one or more funds (feeder funds) invest all or substantially all their assets in a single private fund (master fund); Page 11, Form PF Amendments (Feb. 8, 2024).

¹⁰ A parallel fund structure is a structure in which one or more private funds (each, a “parallel fund”) pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund; Page 11, Form PF Amendments (Feb. 8, 2024).

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In a modification from the Proposal, the Commissions adopted instructions to specify that an adviser to a feeder fund should disregard any of its holdings in the master fund's equity for the purpose of determining its reporting threshold.

Additionally, the Commissions adopted an amendment to no longer allow advisers to separately report any "parallel managed accounts,"¹¹ which is distinguished from a parallel fund structure", provided that advisers will continue to be required to report the total value of all parallel managed accounts related to each reporting fund.

Reporting Private Funds That Invest in Other Funds

Currently, Form PF permits an adviser to disregard the value of a private fund's equity investments in other private funds for purposes of both Form PF's reporting thresholds and responding to questions on Form PF, as long as the adviser does so consistently throughout Form PF, subject to certain exceptions.

The amended Form PF will now require an adviser to include the value of investments in other private funds—including internal and external private funds—when determining whether it meets the thresholds for reporting as a large hedge fund adviser, large liquidity fund adviser, or large private equity fund adviser and whether a hedge fund is a qualifying hedge fund. This is a departure from the current requirements, which allow an adviser to either include or exclude the value of investments in other private funds for the purpose of determining its reporting threshold.

An adviser will no longer have flexibility to include or exclude a reporting fund's investments in other private funds for purposes of responding to questions on Form PF. Instead, the Commissions have amended Instruction 7 to require an adviser to include the value of a reporting fund's investments in other private funds when responding to questions on Form PF, unless otherwise directed by the instructions to a particular question.

In terms of an adviser's filing threshold, the current Form PF does not explicitly state how an adviser should treat a private fund's equity investments in other private funds when determining whether an adviser has a Form PF filing obligation. To address this, the Form PF Amendments explicitly require advisers to include the value of investments in other private funds—including internal and external private funds—when determining whether the adviser is required to file Form PF.

Currently, advisers are not required to, but nonetheless have the option to, "look through" a reporting fund's investments in any other entity (including other private funds), except when Form PF directs otherwise. The Form PF Amendments amended Instruction 7 to now require that, when responding to questions, advisers must not look through a reporting fund's investments in internal private funds or external private funds—other than a trading vehicle—unless the question instructs the adviser to report exposure obtained indirectly through positions in such funds or other entities.

In a modification from the Proposal, the Commissions added an instruction that provides if an adviser cannot avoid "looking through" to the reporting fund's investments in internal private funds or external private funds in responding to a particular question, then the adviser must provide an explanation of its responses. The impact of this shift in process seems to indicate the SEC will rely on advisers providing more granular reporting through the Form PF Amendments that expand fund structure and entity reporting, while removing the flexibility for advisers to decide whether or not to look through when

¹¹ A parallel managed account is any managed account or other pool of assets managed by the adviser that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified private fund; See Form PF Glossary of Terms, page 18, Form PF Amendments (Feb. 8, 2024).

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responding to questions and thereby avoid providing certain identifying information about their other fund entities.

The adviser now must provide such information unless the adviser is able to provide an explanation where the look-through aggregation may be unavoidable. In addition, while an adviser may establish internal policies and procedures governing when it will look through, the new instruction that requires an adviser to explain when it cannot avoid looking through could expose the adviser to heightened scrutiny because the adviser will be required to reveal its methodology to a regulator.

If the reporting fund uses a trading vehicle (i.e., legal entities that hold assets, incur leverage, or conduct trading or other activities as part of the private fund's investment activities, but do not operate a business), the adviser will be required to identify the trading vehicle and report answers on an aggregated basis for the reporting fund and such trading vehicle. Advisers will be instructed to look through the trading vehicle's holdings on Form PF, adjusted for the reporting fund's percentage ownership interest of the trading vehicle, in responding to questions on Form PF for the reporting fund. An adviser will also be required to specify if the reporting fund holds assets through a trading vehicle, incurs leverage through a trading vehicle, or conducts trading or other activities through a trading vehicle.

Additionally, the Commissions adopted—with modifications from the Proposal—amendments to require advisers to provide identifying information for any trading vehicle in which the reporting fund holds assets, incurs leverage, or conducts trading or other activities.

Reporting Timelines

As was proposed, the Form PF Amendments amend Instruction 9 to require large hedge fund advisers and large liquidity fund advisers to update Form PF within a certain number of days after the end of each calendar quarter, rather than after each fiscal quarter, as Form PF currently requires. The SEC indicated in the Adopting Release that it anticipates this change will only impact a very small percentage of Form PF filers.

AMENDMENTS CONCERNING BASIC INFORMATION ABOUT THE ADVISER AND THE PRIVATE FUNDS IT ADVISES

Identifying Information

The Commissions adopted, as proposed, amendments to the definition of Legal Entity Identifier (LEI) to exclude the use of any non-LEI¹² identifier. An adviser may continue to use an RSSD ID¹³, if the financial institution has one, or another financial identifier for any question that requires an adviser to report other identifying information, where the form of identifying information is not specified. The Commissions also adopted, as proposed, an amendment to require advisers to provide LEIs for themselves and their

¹² Form PF generally defines LEI as, with respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the US Department of the Treasury's Office of Financial Research or a financial regulator; See Form PF Glossary of Terms (definition of LEI); Page 34, Form PF Amendments (Feb. 8, 2024).

¹³ The amendments add RSSD ID to the Form PF Glossary of Terms and has defined it as the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System. See Form PF Glossary of Terms; Page 35, Form PF Amendments (Feb. 8, 2024).

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“related person,” if the related person has an LEI, which is intended to help identify advisers and their related persons and link their data from other data sources.

The Commissions adopted, as proposed, amendments to Question 3 of Form PF to revise how advisers report assets under management attributable to certain private funds. Question 3 currently requires advisers to provide a breakdown of regulatory assets under management and net assets under management. The Commissions also amended the instructions to Question 3 to direct advisers to exclude the value of private funds’ investments in other internal private funds to avoid double counting of fund of funds assets.

Amendments to Section 1b: Concerning All Private Funds

Type of Fund

The Commissions adopted, as proposed, amendments to require advisers to identify the reporting fund by selecting one type of fund from the following list:

- Hedge fund that is not a qualifying hedge fund
- Qualifying hedge fund
- Liquidity fund
- Private equity fund
- Real estate fund
- Securitized asset fund
- Venture capital fund
- “Other:” If an adviser identifies the reporting fund as “other,” the adviser will be required to describe the reporting fund in Question 4, including why it would not qualify for any of the other options

In addition, the Commissions adopted, with a modification from the Proposal, amendments to require advisers to report whether a reporting fund operates as an undertaking for collective investment in transferable securities (UCITS¹⁴) or an alternative investment fund (AIF¹⁵). After considering comments, the Commissions modified the question from the Proposal to require reporting of a fund that “offers”¹⁶ rather than “markets” itself as a money market fund outside the United States.

¹⁴ The Commissions adopted, as proposed, a definition for the term UCITS as Undertakings for Collective Investment in Transferable Securities, as defined in the UCITS Directive of the European Parliament and of the Council (No. 2009/65/EC), as amended, or as captured by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, as amended. See Form PF Glossary of Terms, page 40, Form PF Amendments (Feb. 8, 2024).

¹⁵ The Commissions adopted, as proposed, a definition for the term AIF as an alternative investment fund that is not regulated under the UCITS Directive, as defined in the Directive of the European Parliament and of the Council on alternative investment fund managers (No. 2011/61/EU), as amended, or an alternative investment fund that is captured by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, as amended. See Form PF Glossary of Terms, page 40, Form PF Amendments (Feb. 8, 2024).

¹⁶ “Offer” is defined in the Securities Act as “every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.” 12 USC. 77b(a)(3). For purposes of this question, activity may constitute an “offer” under this definition whether or not the offering is subject to the registration requirements of the Securities Act; See Form PF Glossary of Terms, page 41, Form PF Amendments (Feb. 8, 2024).

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The Commissions believe the modification will be less burdensome on advisers than the proposed use of “marketing” by clarifying the scope of information required to be reported and requiring a more limited subset of conduct to be reported. The Commissions believe the amendments will improve the data they collect on fund operations and help them to better understand a fund’s potential exposure to beneficial owners outside the United States, and that the additional information is necessary for a more targeted analysis of risks presented in the United States due to risks presented abroad.

Master-Feeder Arrangements and Other Private Fund Structures

Consistent with the Proposal, the Form PF Amendments require advisers to report identifying information about master-feeder arrangements and other private funds (e.g., funds of funds) in which a private fund invests, including internal private funds¹⁷ and external private funds¹⁸. The amendments will require advisers to report the value of the reporting fund’s equity investments in external private funds and internal private funds—including the master fund and each internal private fund—which together make up the total investments in other private funds.

Form PF currently requires only large hedge fund advisers to report whether each qualifying hedge fund provides investors with withdrawal or redemption rights in the ordinary course.¹⁹ In a change from the Proposal, the Commissions adopted a modified Question 10, which instead requires all advisers to indicate whether the reporting fund is an open-end private fund in Question 10(a) or a closed-end private fund in Question 10(b).

The Commissions define an “open-end private fund” as a private fund that offers redemption rights to its investors in the ordinary course, which may be paid in cash or in kind, irrespective of redemption frequency or notice periods and without regard to any suspensions, gates, lock-ups, or side pockets that may be employed by the fund. The Commissions define a “closed-end private fund” as any private fund that only issues securities, the terms of which do not provide a holder with any right—except in extraordinary circumstances—to withdraw, redeem, or require the repurchase of such securities, but which may entitle holders to receive distributions made to all holders pro rata.

Asset Value and Performance Data

With regard to open-end private funds, advisers must also report (1) how often withdrawals or redemptions are permitted by selecting from a list of categories²⁰ pursuant to Question 10(c) and (2) what percentage of the reporting fund’s net asset value (NAV) may be—or is—subject to a suspension of—or material restrictions on—investor withdrawals/redemptions by an adviser or fund governing body pursuant to Question 10(d).

The Commissions adopted, with changes from the Proposal, several amendments to the level of detail advisers provide when reporting gross asset value and NAV. As proposed, the Form PF Amendments require large hedge fund advisers and large liquidity fund advisers to report NAV and gross asset value

¹⁷ An internal private fund is defined as a private fund that an adviser or any of its related persons advise. Note that this definition has not changed from the current Form PF.

¹⁸ An external private fund is defined as private funds that neither the adviser nor its related persons advise. Note that this definition has not changed from the current Form PF.

¹⁹ The Commissions had proposed adding a new Question 10(a), which would generally require all advisers to report whether a reporting fund provides investors with withdrawal and/or redemption rights in the ordinary course.

²⁰ The categories are (1) on any business day, (2) at intervals of at least two business days and up to a month, (3) at intervals longer than monthly up to quarterly, (4) at intervals longer than quarterly up to annually, and (5) at intervals of more than one year; page 48, Form PF Amendments (Feb. 8, 2024).

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(or, if such values are not calculated monthly, the reporting fund aggregate calculated value and the gross reporting fund aggregate calculated value, respectively) as of the end of each month of the reporting period in their quarterly filings, rather than only reporting the information as of the end of the quarterly reporting period, as Form PF currently requires.

In a change from the Proposal, an adviser may report in response to Questions 11 and 12 a fund's "gross reporting fund aggregate calculated value" (GRFACV) or "reporting fund aggregate calculated value" (RFACV), rather than gross asset value or NAV—respectively and as applicable—if its NAV and gross asset value are not calculated on a monthly basis. The May 2023 Amendments included a new definition for "reporting fund aggregate calculated value." 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.

After considering comments, the Commissions added the new GRFACV defined term and are also modifying the definition of RFACV to clarify that it is a signed (i.e., positive or negative) value where all positions are summed. GRFACV, which is used solely in Question 11 is calculated in the same manner as RFACV, except that instead of summing each position's signed value, GRFACV converts each position's value to an absolute value prior to summing these absolute values.²¹ As proposed, the Form PF Amendments also require advisers to report information on a fund's inflows/outflows, and the Commissions have refined the definition of "borrowings" in the glossary.²²

The Commissions also adopted amendments to the definition of "cash and cash equivalents." The current definition includes "government securities." The Form PF Amendments remove government securities from the definition of "cash and cash equivalents" and "present government securities" as its own line item in the Form PF Glossary of Terms. Further, the Commissions adopted, as proposed, an amendment to the term cash and cash equivalents that directs advisers to exclude digital assets.

Form PF currently requires advisers to specify the approximate percentage of the reporting fund's equity that is beneficially owned by different groups of investors. Advisers will now be required to indicate whether certain types of institutional beneficial owners are US persons or non-U.S. persons. Advisers will also be required to indicate whether beneficial owners that are private funds are either internal private funds (i.e., managed by the adviser or its related persons) or external private funds.

The Form PF Amendments will require all advisers to provide gross and net fund performance as reported to current and prospective investors, counterparties, or otherwise for specified fiscal periods. The Form PF Amendments will also require an adviser to report its performance as a money-weighted internal rate of return (instead of a time-weighted return) if the reporting fund's performance is reported to investors, counterparties, or otherwise as an internal rate of return since inception.

The Commissions adopted, as proposed, amendments to create an alternative to the gross and net performance tabular reporting. If the reporting fund's performance is reported to current and prospective investors, counterparties, or otherwise as an internal rate of return since inception, the adviser will be required to report its performance as an internal rate of return. As proposed, "internal rate of return" is defined as the discount rate that causes the net present value of all cash flows throughout the life of the

²¹ RFACV and GRFACV may be calculated using the adviser's own methodologies or those of its service providers, provided that the methodologies used to calculate RFACV and GRFACV are consistent with information reported internally. Advisers will be required to indicate whether the reported data represents RFACV or GRFACV, rather than a NAV or gross asset value, as applicable, to maintain data comparability.

²² The Commissions are revising the term "borrowings" to (1) specify that it includes "synthetic long positions," which is defined in the Glossary of Terms, and (2) provide a non-exhaustive list of types of borrowings.

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fund to be equal to zero.²³ The Form PF Amendments also require advisers to report additional performance-related information if the adviser calculates a market value on a daily basis for any position in the reporting fund's portfolio.

In such a case, the adviser will be required to report several items:

- The RFACV at the end of the reporting period
- The reporting fund's volatility of the natural log of the daily rate of return for each month of the reporting period, following a prescribed methodology
- Whether the reporting fund had one or more days with a negative daily rate of return during the reporting period; if so, advisers will report additional information

ALL HEDGE FUNDS

Amendments to Section 1c: Concerning All Hedge Funds

The Commissions adopted, as proposed, amendments to require advisers to indicate which investment strategies best describe the reporting fund's strategies on the last day of the reporting period, rather than allowing advisers flexibility to report information as of the data reporting date or throughout the reporting period, as Form PF currently provides. The Commissions also adopted, as proposed, updates to the investment strategy categories that advisers must select from, including more granular sub-categories in certain instances.

In a modification from the Proposal, the Commissions adopted the following additional strategy categories:

- Private credit (and associated sub-strategies such as direct lending/mid-market lending, distressed debt, junior/subordinate debt, mezzanine financing, senior debt, senior subordinated debt, special situations, venture debt, and other)
- Private equity (and associated sub-strategies such as early stage, expansion/late stage, buyout, distressed, growth, private investment in private equity, secondaries, and turnaround)
- Annuity and life insurance policies
- Litigation finance
- General partner stakes investing; advisers will need to consider whether any of these additional categorizations apply to their funds

As proposed, digital assets will be included as a reportable investment strategy. However, in a change from the Proposal, the Commissions did not adopt a defined term for "digital assets,"²⁴ noting that they will continue to consider the issues raised by comments. The Commissions believe that certain strategies could be categorized as either a digital asset strategy or another listed strategy, and in such instances, the digital asset strategy is duplicative. Accordingly, if a particular strategy could be classified as both a

²³ This is consistent with the definition of "internal rate of return" in the recent Private Fund Adviser Rules; See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Advisers Act Release No. 6383 (Aug. 23, 2023) [88 FR 63206 (Sept. 14, 2023)] ("SEC Private Fund Advisers Adopting Release").

²⁴ In the Proposal, the Commissions proposed to define the term "digital asset" as an asset that is issued and/or transferred using distributed ledger or blockchain technology (distributed ledger technology), including, but not limited to, so-called "virtual currencies," "coins," and "tokens."

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digital asset strategy and another strategy, an adviser should report the strategy as the non-digital asset strategy.

The Commissions adopted, as proposed, amendments to require additional disclosure regarding a hedge fund's borrowing and financing arrangements with counterparties, including central clearing counterparties (CCPs). Advisers to hedge funds (other than qualifying hedge funds) will be required to complete a new table (consolidated counterparty exposure table) concerning exposures that (1) the reporting fund has to creditors and counterparties, and (2) creditors and other counterparties have to the reporting fund.

Advisers will also be required to identify each creditor or other counterparty (including CCPs) to which the reporting fund owes a certain amount (before posted collateral) equal to or greater than either (1) 5% of NAV as of the data reporting date or (2) \$1 billion. The Form PF Amendments require advisers to report (1) the value traded and (2) the value of positions at the end of the reporting period, rather than requiring advisers to report information as a percentage in terms of value and trade volumes, as Form PF currently requires.

HEDGE FUNDS ADVISED BY LARGE PRIVATE FUND ADVISERS

In relation to large private fund advisers of hedge funds, the Form PF Amendments include changes to the following:

- Removing certain reporting, particularly certain aggregated reporting and related reporting data points.
- Revising the formatting of investment exposure reporting from a table format to a narrative format with clarifying instructions, including (1) how to classify positions that could be accurately classified in multiple sub-asset classes, and (2) requiring advisers to provide additional explanatory information when their reporting to a catch all sub-asset class category equals or exceeds either (a) 5% of the fund's NAV or (b) \$1 billion. In addition, investment exposure reporting will require
 - Reporting for each month based on "instrument type" within sub-asset classes to identify whether the fund's investment exposure is achieved through cash or physical investment exposure, through derivatives or other synthetic positions, or indirectly (e.g., through a pooled vehicle such as an ETF, private fund, or investment company);
 - The calculation of "adjusted exposure" for each sub-asset class in which a fund has a reportable position;
 - Uniform interest rate risk measure reporting for sub-asset classes that have interest rate risk (and removal of certain reporting options); and
 - Reporting of enhanced information for certain asset types, such as reporting on US versus non-US currency holdings.
- Reporting for borrowing and counterparty exposure, which will require completion of a new consolidated counterparty exposure table designed to improve data quality and enhance the ability to assess activities at hedge funds.
- Reporting of market factors, including
 - Reporting of all listed market factors to which an adviser's portfolio is directly exposed (rather than the current Form PF's approach, which permits omission if the adviser does not regularly consider such factor in formal testing in

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connection with the reporting fund's risk management), including adopted changes to the reporting of stress thresholds; and

- Additional instructions for "look through" reporting of exposures to changes in market factors for *indirect* positions, under which advisers may use reasonable estimates that "best represent" the exposure, consistent with the adviser's internal methodologies and conventions of services providers.
- Monthly currency exposure reports, in US dollars, which will include *indirect* currency exposure, of (1) net long value and short value of a fund's currency exposure arising from foreign exchange derivatives and all other assets and liabilities denominated in currencies other than a fund's base currency, and (2) each currency to which the fund has long dollar value or short dollar value exposure equal to or exceeding either (a) 5% of a fund's NAV or (b) \$1 billion.
- Reporting, on a per fund basis, the value of turnover in certain asset classes (no longer on an aggregated basis), with new categories for turnover reporting.
- Reporting for country and industry exposure, which will require reporting if a reporting fund has exposure, including exposure through *indirect* investments, equal to or exceeding either (1) 5% of its NAV or (2) \$1 billion, with respect to (a) all countries to which such fund has exposure and (b) all industries (reported using North American Industry Classification System code) to which such fund has exposure.
- Reporting of identifying information for each CCP or other third-party holding collateral posted by a qualifying hedge fund in respect of cleared exposures equal to or exceeding either (1) 5% of a reporting fund's NAV or (2) \$1 billion.
- Reporting of risk metrics, where advisers will be required to provide additional information about a reporting fund's portfolio risk profile, investment performance by strategy, and volatility of returns and drawdowns.
- Reporting of available financing and investor liquidity, under which advisers will report the dollar amount of financing that is available to the reporting fund, including financing that is available—but not used—of these types:
 - Unsecured borrowing
 - Secured borrowing via prime brokerage
 - Secured borrowing via reverse repo
 - Other secured borrowings

ADDITIONAL ITEMS OF NOTE

The Commissions also adopted several amendments to the instructions to Form PF to enhance data quality and make other updates to the filing process. These include but are not limited to

- requiring percentages be rounded to the nearest one hundredth of one percent, rather than being rounded to the nearest whole percent as in the current Form PF; and
- an amendment to Instruction 14 to allow advisers to request a temporary hardship exemption electronically to make it easier to submit such request (including adopting an amendment to Rule 204(b)-1(f) under the Advisers Act, that for purposes of determining the date on which a temporary hardship exemption is filed, under which "filed" means the earlier of the date the request is postmarked or the date it is received by the SEC).

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As indicated in the Proposal, the Commissions considered amending the definition of hedge fund, and the Commissions requested comment and feedback on this potential change. Commenters proposed multiple possible edits including, for example, carveouts related to certain uses of leverage, as well as a change to the definition to scope out deemed hedge funds.

A “deemed hedge fund” is a private fund that reports as a hedge fund on Form PF because the fund’s governing documents permit the fund to engage in borrowing or short selling. Such deemed hedge funds report as hedge funds on Form PF even if the funds do not engage in such activity.

Although the Commissions considered such changes, none were adopted. The Adopting Release explains that adopting carveouts could cause mismatches in data and may have the unintended effect of giving advisers discretion over whether or not to report data that should be required of hedge fund advisers.

NEXT STEPS

Collectively, the Form PF amendments adopted over the past 12 months represent an overhaul of the form since its adoption in 2011 and introduce additional compliance monitoring and reporting obligations for the private fund industry. The effective date of Form PF Amendments will be 365 days after publication in the *Federal Register*. The compliance date will be the same day as the effective date. Accordingly, private fund managers should consider themselves to have one year to plan to be in full compliance with this latest round of substantive amendments.

In advance of the effective date and in light of the expansive scope of information that will be reported, Form PF filers should consider establishing working groups and coordinating with necessary vendors. In response to the lack of flexibility afforded by the Form PF Amendments, advisers may need to assess their policies and procedures, internal processes, and the internal methodologies they have historically used to report on the form.

The impact of the collective Form PF amendments will require engagement and collaboration across an adviser’s multiple divisions, including compliance and operations. It may also be useful for internal teams to conduct a gap analysis between the current and amended Form PF requirements, and then a second analysis that compares those results with the adviser’s current data sets and reporting capabilities.

Private fund advisers should also take note of when their regulatory assets under management exceed the threshold for a large hedge fund adviser, since they will, at that time, be subject to heightened reporting requirements. In planning for the implementation of the Form PF Amendments and given the tenor of the SEC’s recent rulemaking, advisers should not anticipate any compliance extensions or the issuance of any interpretive guidance over the next year.

Finally, the private fund industry should consider the examination and enforcement implications of these advanced reporting requirements, which are designed to provide the SEC and CFTC jointly with a fuller, more connected picture of the financial markets, allowing them to more aggressively regulate areas of perceived risk.

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CONTACTS

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