

February 14, 2022

SEC Proposes Amendments to Form PF

By [Madelyn Calabrese](#), [Evan Hall](#), [Timothy Piscatelli](#), and [Stuart Slayton](#)

On January 26, 2022, the U.S. Securities and Exchange Commission (“**SEC**”) published proposed amendments to Form PF (“**Form PF Proposal**”), the confidential reporting form for certain SEC-registered investment advisers to private funds.¹ The Form PF Proposal would, if adopted, materially expand the reporting obligations applicable to large hedge fund advisers, private equity fund advisers and large liquidity fund advisers. In particular, the Form PF Proposal would (i) require “large hedge fund advisers” and “private equity fund advisers” to submit current reports to the SEC within 1 business day of the occurrence of certain key triggering events; (ii) decrease the threshold for reporting as a “large private equity adviser” from \$2 billion to \$1.5 billion in regulatory assets under management attributable to private equity funds; (iii) require “large private equity advisers” to report additional information to the SEC about the private equity funds they advise; and (iv) require “large liquidity fund advisers” to report additional information about the “liquidity funds” they advise. The stated purpose of the Form PF Proposal is to enhance the Financial Stability Oversight Counsel’s (“**FSOC**”) ability to monitor systemic risk, as well as bolster the SEC’s regulatory oversight of private fund advisers and investor protection efforts.

An overview of the Form PF Proposal and the key changes proposed therein are set forth below.

Proposed Current Reports For Large Hedge Fund Advisers

The Form PF Proposal would require a large hedge fund adviser in respect of its qualifying hedge fund clients to file a report within one (1) business day of the occurrence of any of the following events:

Extraordinary Investment Losses

- The qualifying hedge fund client experiences a loss equal to or greater than 20% of the fund’s “most recent net asset value” over a rolling 10 day period. For purposes of calculating “most recent net asset value,” a fund’s losses would be compared to its net asset value as reported on the most recently updated Form PF.

Significant Margin and Default Events

- The qualifying hedge fund client experiences a cumulative increase in margin, collateral, or equivalent requirements of more than 20% of the fund’s most recent net asset value over a rolling 10 day period.
- The qualifying hedge fund client experiences a margin default or inability to meet a call for margin, collateral, or equivalent requirements (taking into account any contractually agreed cure period).

¹ Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Proposing Release, Rel. No. IA-5950, File No. S7-01-22, (January 26, 2022), <https://www.sec.gov/rules/proposed/2022/ia-5950.pdf>. The Form PF Proposal will be open to a thirty (30) day comment period following publication in the Federal Register, which has yet to occur as of the time of this Client Alert.

HAYNES BOONE

- The qualifying hedge fund client experiences a margin default by a counterparty involving an amount greater than 5% of the fund's most recent net asset value.

Material Change in Relationship with Prime Broker

- The qualifying hedge fund client experiences a material change in the relationship with its prime broker. Material changes may include changes to the fund's ability to trade or a termination of the prime brokerage agreement for default or breach.

Changes in Unencumbered Cash

- The qualifying hedge fund client experiences a decline in the value of its unencumbered cash by more than 20% of the fund's most recent net asset value over a rolling 10 day period.

Operations Events

- The qualifying hedge fund client experiences a "significant disruption or degradation" of its operations necessary for (i) investment, trading, valuation, reporting, and risk management; and (ii) operation in accordance with Federal securities laws and regulations, whether as a result of an event at the fund, the adviser, or other service provider to the fund. "Significant disruption or degradation" would be defined to mean a 20% disruption or degradation of normal volume or capacity.

Withdrawal and Redemptions

- The qualifying hedge fund client (i) receives cumulative requests for redemption exceeding 50% of the fund's most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed); or (ii) is unable to satisfy redemptions or suspends redemptions for more than 5 consecutive business days.

Proposed Current Reports For Private Equity Fund Advisers

The Form PF Proposal would require an adviser to one or more private equity funds to file a report within one business day of the occurrence of any of the following events:

Adviser-led Secondary Transactions

- The private equity fund's adviser or any of its related persons initiates a transaction that offers fund investors the choice to (i) sell all or a portion of their interests in the fund; or (ii) convert or exchange all or a portion of their interests in the fund for interests in another vehicle advised by the adviser or any of its related persons.

HAYNES BOONE

General Partner or Limited Partner Clawback

- There is a “general partner clawback.” A “general partner clawback” means any obligation of the general partner, its related persons, or their respective owners or interests holders to restore or otherwise return performance-based compensation to the fund pursuant to the fund’s governing agreements.
- There is a “limited partner clawback.” A “limited partner clawback” is defined to mean an obligation of a fund’s investors to return all or any portion of a distribution made by the fund to satisfy a liability, obligation, or expense of the fund pursuant to the fund’s governing agreements.

Removal of General Partner, Termination of the Investment Period or Termination of a Fund

- The fund receives notification that fund investors have, in each case as contemplated by the fund documents: (i) removed the adviser or an affiliate as general partner or similar control person of the fund; (ii) elected to terminate the fund’s investment period; or (iii) elected to terminate the fund.

Proposed Changes to Large Private Equity Adviser Reporting

In addition to lowering the threshold for reporting by a large private equity adviser from \$2 billion to \$1.5 billion in private equity fund assets under management, the Form PF Proposal would require a large private equity adviser to complete amended Section 4 of Form PF in respect of its private equity fund clients. Amended Section 4 of Form PF would require additional information to be reported regarding private equity funds advised by large private equity advisers, including:

- Information about the fund’s investment strategy;
- Whether a portfolio company was restructured or recapitalized following the fund’s investment period, and if so, the name of the portfolio company and the effective date of the restructuring;
- Whether the fund held an investment in one class, series or type of securities (e.g. debt, equity, etc.) of a portfolio company while another fund advised by the adviser or its related persons concurrently held an investment in a different class, series, or type of securities of the same portfolio company, and if so, the name of the portfolio company and a description of the class, series, or type of securities held;
- Whether the fund borrows or has the ability to borrow at the fund-level as an alternative or complement to the financing of portfolio companies. If the fund engages in fund-level borrowing, the adviser would be required to provide (i) information on each borrowing or other cash financing available to the fund; (ii) the total dollar amount available; and (iii) the average amount borrowed over the reporting period;
- Whether the adviser or any of its related persons provide financing or otherwise extend credit to any portfolio company in which the fund invests, and if so, the value of such financing or other extension of credit;
- What percentage of the aggregate borrowings of the fund’s controlled portfolio companies (“**CPCs**”) is at a floating rate rather than a fixed rate;
- The number of CPCs that the fund owns;

HAYNES BOONE

- The nature of reported events of default, such as whether it is a payment default of the fund, a payment default of a CPC, or a default relating to a failure to uphold terms under the applicable borrowing agreement (other than a failure to make a regularly scheduled payments);
- Additional counterparty information regarding bridge financings to CPCs; and
- The fund's greatest country exposures based on percent of net asset value.

Large Liquidity Fund Adviser Reporting

The Form PF Proposal would require a large liquidity fund adviser to report additional information in Section 3 of Form PF. Such additional information would include (i) operational information, (ii) assets and portfolio information; (iii) financing information; (iv) investor information; (v) information related to the disposition of portfolio securities; and (vi) information related to weighted average maturity and weighted average life.

Conclusion

If adopted, the Form PF Proposal would significantly expand and increase the Form PF reporting obligations and burdens of certain private fund advisers, as outlined above. Upon publication of the Form PF Proposal in the Federal Register, which is expected to occur soon, interested persons will have thirty (30) days within which to submit comments and feedback to the SEC regarding such proposal. Please note that the Form PF Proposal has not yet been formally adopted by the SEC, and it is likely that the SEC will make at least some changes or revisions to the Form PF Proposal based upon public comments and feedback.

* * * * *

For more information or if you have any questions, please contact one of the following Haynes and Boone lawyers:

[Kellie Bobo](#), [Robert Bruner](#), [Madelyn Calabrese](#), [Ricardo Davidovich](#), [Daren Domina](#), [Evan Hall](#), [Shelley Rosensweig](#), [Vicki Odette](#) or [Taylor Wilson](#).