

CLIENT ALERT

SEC and CFTC Propose Substantial Amendments to Form PF

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The Securities and Exchange Commission and the Commodity Futures Trading Commission recently voted to jointly propose amendments to Form PF, significantly increasing the amount of information required to be included on the form and limiting the flexibility in responding to a number of questions on the form.¹ If adopted, the proposed amendments would (i) enhance reporting requirements of large hedge fund advisers and qualifying hedge funds, (ii) enhance reporting on basic information about all filing advisers and the private funds they advise, and (iii) require more detailed information about the investment strategies, counterparty exposures, and trading and clearing mechanisms employed by hedge funds. Certain of the changes in the proposed amendments overlap with disclosures currently included in CFTC Form CPO-PQR, such as information regarding withdrawals and redemptions, identifying sub-asset classes and portfolio exposures, counterparty exposures, and providing monthly performance information. The proposed amendments also would make certain timing changes that more closely align Form PF with Form CPO-PQR. While these changes may be thematically consistent with the information already provided in Form CPO-PQR, the presentation between the forms would still differ. Additionally, the proposed amendments incorporate a number of new defined terms, including a definition of “digital assets,” which is notable in light of the joint nature of the proposal, and the current jurisdictional uncertainty between the SEC and CFTC with respect to digital assets.

¹ See Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers, Investment Advisers Act of 1940 (the “Advisers Act”) Release No. 6083 (Aug. 10, 2022) (the “Proposing Release”), available [here](#).

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Background

The SEC and the CFTC proposed amendments to Form PF (the “Proposed Amendments”) that would make substantial changes to Form PF. Although Form PF is a joint proposal of the Commissions, the Proposed Amendments reflect input from other members of the Financial Stability Oversight Council (“FSOC”), including the Department of the Treasury and the Federal Reserve Board.² Form PF is the confidential reporting form used by certain SEC-registered investment advisers to private funds, including those that may also be registered with the CFTC as a commodity pool operator (“CPO”) or commodity trading advisor (“CTA”). The Commissions jointly adopted Form PF in 2011 in connection with the enactment of the Dodd-Frank Act.³ It requires certain registered investment advisers to file reports with the SEC regarding private funds⁴ managed by such advisers and is intended to provide the Commissions and FSOC with information about the operations and strategies of private funds,⁵ and to provide data on private funds to FSOC in connection with its responsibility to assess systemic financial risks to the U.S. financial system. The Proposed Amendments are intended to (i) enhance FSOC’s monitoring and assessment of systemic risk and to provide additional information for FSOC’s use in determining whether and how to deploy its regulatory tools; (ii) collect additional data for use in the Commissions’ regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers;⁶ and (iii) improve the clarity and usefulness of this data.

The Commissions note in the Proposing Release that since Form PF was initially adopted, the private fund industry has grown in size and evolved in terms of business practices, complexity of fund structures, and investment strategies and exposures. The value of private fund net assets reported on Form PF has more than doubled, growing from \$5 trillion in 2013 to \$12 trillion in 2021, while the number of private funds reported on the form has increased by nearly 55 percent.⁷ Citing the increasing complexity and evolution of the private funds space, the Commissions note that certain investment

² See Statement on Form PF, Gary Gensler, SEC Chairman (Jan. 26, 2022) available [here](#).

³ See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Advisers Act Release No. 3308 (Oct. 31, 2011), available [here](#).

⁴ Private funds are pooled investment vehicles that are excluded from the definition of “investment company” under the Investment Company Act of 1940 by Section 3(c)(1) or 3(c)(7) of that act. The term “private fund” generally includes funds commonly known as hedge funds and private equity funds.

⁵ A private fund adviser is required to complete Form PF if (A) (i) it is registered or required to register with the SEC as an investment adviser; or (ii) it is registered or required to register with the CFTC as a CPO or CTA and also registered or required to register with the SEC as an investment adviser; (B) it manages one or more private funds, and (C) it and its related persons, collectively, had at least \$150 million in private fund assets under management as of the last day of its most recently completed fiscal year. The current version of Form PF is available [here](#).

⁶ Form PF filings are made pursuant to the Advisers Act and through the Investment Adviser Registration Depository, and are therefore subject to the authority and control of the SEC, but the Proposing Release notes that the Commissions engage in interagency discussions on sharing portions of Form PF data relevant to the CFTC consistent with the terms of existing interagency agreements or arrangements related to the sharing of data.

⁷ See Proposing Release at n.7.

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strategies such as credit, digital asset, litigation finance, and real estate strategies have become more common since the form was adopted.

In light of these developments, the Commissions and FSOC identified “information gaps and situations where revised information would improve” their understanding of the private fund industry and potential systemic risk within it.⁸

The Proposed Amendments are part of a broader regulatory effort to increase transparency of private funds. On February 9, 2022, the SEC proposed new rules and amendments under the Advisers Act that would update certain reporting requirements and prohibit certain practices of private fund advisers.⁹ In addition, on January 26, 2022, the SEC voted to propose amendments to the SEC-only sections of Form PF (sections 3, 4, 5, and newly proposed section 6) that would (i) require large hedge fund advisers and advisers to private equity funds to report certain events within one business day of the event; (ii) decrease the reporting threshold for large private equity advisers and amend reporting requirements for large private equity advisers; and (iii) amend reporting requirements for large liquidity fund advisers (the “January Proposal”).¹⁰ While the Proposed Amendments and the January Proposal do not overlap in the sections of Form PF they address, together they provide for a comprehensive overhaul in Form PF’s structure. The Commissions do not state whether the January Proposal would be adopted jointly with the Proposed Amendments, but given that the Proposed Amendments are proposed jointly by the Commissions (and the January Proposal is an SEC proposal), the two would presumably be adopted separately.

Summary of the Proposed Amendments

While a number of the changes in the Proposed Amendments target “large” hedge fund advisers and “qualifying hedge funds,”¹¹ the proposed changes are not limited to large advisers and hedge funds.¹² A number of proposed changes would apply equally to all filers, regardless of size.

⁸ See Proposing Release at 8–9.

⁹ See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Advisers Act Release No. 5955 (Feb. 9, 2022). For a discussion of the proposed changes, please see the Willkie Farr & Gallagher LLP (“Willkie”) Client Alert, available [here](#).

¹⁰ Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Advisers Act Release No. 5950 (Jan. 26, 2022), available [here](#). For a discussion of the January Proposal, please see the Willkie Client Alert, available [here](#).

¹¹ The Form PF Glossary of Terms defines “large” hedge fund advisers as those, collectively with their related persons, with at least \$1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding the adviser’s most recently completed fiscal quarter. The Form PF Glossary of Terms defines qualifying hedge funds as hedge funds with a net asset value (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.

¹² The Commissions are considering changes to the definition of “hedge fund” and seek public comment on potential alternatives. Proposing Release at 178–82.

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The Proposed Amendments focus on three primary areas of concern identified by the Commissions:

- *Amended Reporting for All Filing Advisers and Private Funds.* The Proposed Amendments would make universal changes to certain identifying information regarding advisers and their private funds, regardless of size, including information regarding assets under management, withdrawals and redemptions, inflows and outflows, creditors, beneficial ownership and fund performance. The Proposed Amendments also would make changes to the way master-feeder structures, funds of funds, and parallel funds are reported on Form PF, including changes to the requirements concerning when advisers must “look through” certain fund investments.
- *Amended Reporting by Large Hedge Fund Advisers and Qualifying Hedge Funds.* These proposed changes include reporting related to portfolio exposures, counterparty exposures, and country and currency exposures. Additional changes in the Proposed Amendments would require performance information to be broken out by strategy, and portfolio and liquidity disclosures. Certain changes regarding the timing of filings would apply to certain large advisers as well.
- *Amended Reporting for Hedge Funds.* The Proposed Amendments would generally require more information about the investment strategies and counterparty exposures of hedge funds, as well as information regarding trading and clearing.

The Proposed Amendments

1. *Proposed Amendments to the General Instructions*

The Proposed Amendments to the General Instructions address the reporting of (i) master-feeder arrangements and parallel fund structures; (ii) private funds that invest in other funds; and (iii) reporting timelines.

Reporting Master-Feeder Arrangements and Parallel Fund Structures

The Proposed Amendments would generally require advisers to report separately each component fund of a master-feeder arrangement and parallel fund structure, except where a feeder fund invests *all* of its assets in a single master fund and/or cash and cash equivalents (*i.e.*, a disregarded feeder fund).¹³ An adviser would, however, continue to aggregate these structures for purposes of determining whether the adviser meets a reporting threshold.

¹³ A “master-feeder arrangement” is an arrangement in which one or more funds (“feeder funds”) invest all or substantially all of their assets in a single private fund (a “master fund”). A “parallel fund structure” is a structure in which one or more private funds (each, a “parallel fund”) pursues

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In addition, the Proposed Amendments would no longer allow advisers to report any “parallel managed accounts” (which is distinguished from “parallel fund structure”), except that advisers would continue to report the total value of all parallel managed accounts related to each reporting fund.¹⁴ Currently, advisers may, but are not required to, report information regarding parallel managed accounts in response to certain questions, except they must report the total value of all parallel managed accounts related to each reporting fund. The Proposing Release notes that this prescriptive approach to aggregation will provide for increased consistency in Form PF data and allow the Commissions to better compare advisers with such arrangements.

Reporting Private Funds that Invest in Other Funds

The Proposed Amendments would amend Instruction 7 of Form PF, which addresses how advisers treat private fund investments in other private funds (e.g., “fund of funds”) and would fundamentally alter the reporting methodology for many fund of funds. Currently, advisers include the value of private fund investments in other private funds in determining whether the adviser meets the filing threshold to file Form PF. The Proposing Release notes that while this requirement is implicit in the current Form PF, the Proposed Amendments would amend Instruction 7 to make this requirement explicit. The Proposed Amendments would also remove the current Form PF’s concept of “disregarded” underlying funds. Currently, Form PF permits an adviser to disregard a private fund’s equity investment in other private funds. The Proposed Amendments would remove the ability to disregard investments in underlying funds and require an adviser to include the value of a fund’s investments in other private funds (both internal and external underlying funds) in responding to questions under Form PF unless otherwise directed by the instructions to a particular question. In addition, the Proposed Amendments would provide 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,”¹⁵ unless the question instructs the adviser to report exposure obtained indirectly through positions in such funds or other entities.

The Proposed Amendments would amend Form PF’s general instructions to explain how advisers would report information if the reporting fund uses a trading vehicle. If the reporting fund uses a trading vehicle, and the reporting fund is its only equity owner, the Proposed Amendments would direct advisers to either (i) identify the trading vehicle in Section 1b, and report answers on an aggregated basis for the reporting fund and such trading vehicle; or (ii) report the trading vehicle as a separate reporting fund. An adviser would have to report the trading vehicle separately if the trading vehicle

substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund. See Proposing Release at n.16.

¹⁴ “Parallel managed accounts” are defined in the current Form PF Glossary of Terms as 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.

¹⁵ See Proposing Release at 16. The Proposed Amendments would add the defined term “trading vehicle” to the Form PF Glossary of Terms and would define a trading vehicle as a separate legal entity that hold assets, incurs leverage, or conducts trading or other activities as part of the private fund’s investment activities, but does not operate a business.

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holds assets, incurs leverage, or conducts trading or other activities on behalf of more than one reporting fund. If reporting separately, (i) advisers would report the trading vehicle as a hedge fund if a hedge fund invests through the trading vehicle; (ii) advisers would report the trading vehicle as a qualifying hedge fund if a qualifying hedge fund invests through the trading vehicle; or (iii) advisers would report the trading vehicle as a liquidity fund, private equity fund, or other type of fund based on its activities. Currently, Form PF does not require advisers to identify trading vehicles.

Reporting Timelines

The Proposed Amendments would amend Form PF Instruction 9 to require large hedge fund advisers and large liquidity fund advisers¹⁶ to update their 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 Commissions note that this would align the Form PF and CFTC Form CPO- PQR reports. All other advisers would continue to file annual updates within 120 calendar days after the end of their fiscal year. Form PF would continue to require all advisers to use fiscal quarters and years to determine filing thresholds, consistent with calculations under Form ADV.

Additional Amendments to the General Instructions

The Proposed Amendments also would amend certain reporting requirements in connection with currency exposure, currency conversions, turnover, country and industry exposure, central clearing counterparties (“clearinghouses,” or “CCPs”) exposures, risk metrics, investment performance, portfolio correlation, portfolio liquidity, and financing liquidity. Notably, the Proposed Amendments would amend Instruction 15 to provide that if a question requests a monetary value for transactional data that covers a reporting period, advisers should provide the information in U.S. dollars, rounded to the nearest thousand, using foreign exchange rates as of the dates of any transactions to convert local currency values to U.S. dollars. In addition, the Proposed Amendments would specify how private fund advisers determine the value of investment positions and counterparty exposures. Finally, the Proposed Amendments would revise the terms “EEA,” which Form PF defines as the European Economic Area, and “G10,” which Form PF defines as The Group of Ten, to (i) remove outdated country compositions; and (ii) include an instruction that if the composition of the EEA or G10 changes after the effective date of the Proposed Amendments if adopted, advisers would use the current composition as of the data reporting date.

¹⁶ The Form PF Glossary of Terms defines “large liquidity fund advisers” as those, collectively with their related persons, with at least \$1 billion in combined money market and “liquidity fund” (*i.e.*, any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors) assets under management.

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2. Amended Reporting for All Filing Advisers and Private Funds

Each adviser required to file Form PF must complete all or part of Section 1. The Proposing Release indicates that the proposed amendments to Section 1 are designed to provide greater insight into private funds' operations and strategies, and assist in identifying trends, including those that could create systemic risk, which in turn is designed to enhance investor protection efforts and systemic risk assessment.

Proposed Amendments to Section 1a of Form PF – Identifying Information

LEI for advisers and related persons. Section 1a requires an adviser to report identifying information about the adviser and private funds it manages. The Proposed Amendments would require advisers to provide additional identifying information regarding the adviser, its related persons, as well as their private fund assets under management. Legal entity identifiers (“LEIs”) help identify entities and link data from different sources that use LEIs. Form PF currently requires advisers to report the LEI for certain entities, if they have one, such as for the reporting fund and any parallel fund and, in instances where the financial institution does not have an LEI, advisers must provide the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), if the financial institution has an RSSD ID. The Proposed Amendments would remove this requirement and, instead, provide that advisers must not substitute any other identifier that does not meet the definition of an LEI. Advisers, however, would use the RSSD ID, if the financial institution has one, for questions that specifically request an RSSD ID, and for questions that require advisers to report any other identifying information where the type of information is not specified. In addition, the Proposed Amendments would require advisers to provide the LEI for themselves and their related persons, if applicable.

Assets under management. In addition to changes to the LEI disclosures, the Proposed Amendments would alter how advisers report and calculate assets under management attributable to certain private funds. Current Question 3 in Form PF requires advisers to provide a regulatory breakdown of assets under management and net assets under management. The Proposed Amendments would amend the instructions 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. Advisers would include the value of trading vehicle assets because, under the proposed definition, they would be wholly owned by one or more reporting funds.

Proposed Amendments to Section 1b of Form PF – Concerning All Private Funds

Section 1b requires advisers to report certain identifying and other basic information about each private fund the adviser manages. The Proposed Amendments would amend section 1b to require advisers to report additional identifying information about the private funds they manage as well as the private funds' assets, financing, investor concentration,

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and performance. In addition, the Proposed Amendments would require advisers to report certain information as of each month-end rather than quarter-end.

Type of private fund. The Proposed Amendments aim to prevent reporting errors and help ensure the accuracy concerning the reporting fund's type by proposing to require advisers to identify the reporting fund by selecting one type of fund from a 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, or "other." If an adviser identifies the reporting fund as "other," the adviser would describe the reporting fund in Question 4,¹⁷ including why it would not qualify for any of the other options. In addition, the Proposed Amendments would require an adviser to indicate whether the reporting fund is a "commodity pool," which would be categorized as a hedge fund on Form PF. Finally, the Proposed Amendments would require advisers to report whether a reporting fund operates as a UCITS or AIF, or markets itself as a money market fund outside the United States, and in which countries the fund operates or markets itself (if applicable).¹⁸ These proposed changes are intended to avoid double counting when Form PF data is aggregated with data sets collected outside of the United States.

Master-feeder arrangements, internal private funds, external private funds, and parallel fund structures. To reflect that advisers would report components of master-feeder arrangements and parallel fund structures separately, the Proposed Amendments would require advisers to report identifying information about master-feeder arrangements and other private funds (e.g., funds of funds), including internal private funds and external private funds.¹⁹ Form PF currently requires advisers to report identifying information about parallel funds, and would continue to do so under the Proposed Amendments. The Proposed Amendments also would require advisers to report the value of the reporting fund's investments in other private funds (e.g., funds of funds), as current Question 10 requires, but with more detail.

¹⁷ The Proposed Amendments would amend current Question 4, which advisers use to explain assumptions that they make in responding to questions on Form PF, by adding an instruction directing advisers to provide the question number when the assumptions relate to a particular question.

¹⁸ The Proposed Amendments would define 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. The Proposed Amendments would define "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.

¹⁹ For master-feeder arrangements, advisers would report the name of the feeder fund, its private fund identification number, and whether the feeder fund is a separate reporting fund or a disregarded feeder fund. For internal private funds that invest in the reporting fund, advisers would report the name of the internal private fund, its LEI, if it has one, and its private fund identification number. If the reporting fund invests in external private funds, advisers would report the name of the master fund, its private fund identification number, and the master fund's LEI, if it has one. If the reporting fund invests in internal private funds, advisers would report the internal private fund's name, its private fund identification number, and its LEI, if it has one.

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Specifically, the Proposed Amendments would 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 would comprise the total investments in other private funds.

Withdrawal or redemption rights. 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. The Proposed Amendments would require all advisers to provide this information for each reporting fund to better inform the Commissions and FSOC of reporting funds' susceptibility to stress through investor redemptions. If the reporting fund provides investors with withdrawal or redemption rights in the ordinary course, the Proposed Amendments would require advisers to indicate how often withdrawals or redemptions are permitted by selecting from a list of categories. Advisers would report this information regardless of whether there are notice requirements, gates, lock-ups, or other restrictions on withdrawals or redemptions.

Trading vehicles. The Proposed Amendments would require advisers to provide identifying information for any trading vehicle in which the reporting fund holds investments or conducts activities. Advisers would disclose the trading vehicle's legal name; LEI, if it has one; and any other identifying information about the trading vehicle, such as the RSSD ID, if it has one.

Gross asset value and net asset value. The Proposed Amendments would change the manner in which advisers report gross asset value and net asset value. First, the Proposed Amendments would require advisers who are filing quarterly updates to report gross asset value and net asset value as of the end of each month of the reporting period, rather than only reporting the information as of the end of the reporting period, as Form PF currently requires. Further, the Proposed Amendments also would add a new Question 13 to require advisers to separately report the value of unfunded commitments included in the gross and net asset value reported in proposed Questions 11 and 12.

Inflows and outflows. The Proposed Amendments would add a question requiring advisers to report information concerning the reporting fund's activity, including contributions to the reporting fund, as well as withdrawals and redemptions, which would include all withdrawals, redemptions, or other distributions of any kind to investors. Form PF would specify that, for purposes of the question, advisers must include all new contributions from investors, but exclude contributions of committed capital that they have already included in gross asset value calculated in accordance with Form ADV instructions. Quarterly filers would provide this information for each month of the reporting period.

Borrowings and types of creditors. The Proposed Amendments would revise how advisers report the reporting fund's borrowings by revising the term "borrowings" to (i) specify that it includes "synthetic long positions;" and (ii) provide a non-

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exhaustive list of types of borrowings.²⁰ This proposed approach is consistent with SEC staff guidance from Form PF Frequently Asked Questions.²¹ Current Question 12 requires advisers to report the value of the reporting fund's borrowings and the types of creditors. In addition, the Proposed Amendments would require advisers to indicate whether a creditor is based in the United States and whether it is a "U.S. depository institution," rather than a "U.S. financial institution" as is currently required.

Fair value hierarchy. The Proposed Amendments would revise how advisers report fair value hierarchy in current Question 14, which would be redesignated as proposed Question 20. If adopted, the Proposed Amendments would (i) require advisers to indicate the date the categorization was performed; (ii) direct advisers to report the absolute value of all liabilities; (iii) direct advisers to provide an explanation in Question 4 if they report assets as a negative value; (iv) require advisers to separately report cash and cash equivalents; and (v) amend the definition of "cash and cash equivalents" to remove government securities from the definition of "cash and cash equivalents," and present it as its own line item in the proposed Form PF Glossary of Terms. In addition, the Proposed Amendments also would direct advisers to not include any digital assets when reporting cash and cash equivalents.

Beneficial ownership of the reporting fund.²² Current Question 16 on Form PF requires advisers to specify the approximate percentage of the reporting funds' equity that is beneficially owned by different groups of investors. The Proposed Amendments would require advisers to provide more granular information regarding certain groups of beneficial owners, including whether beneficial owners that are broker-dealers, insurance companies, nonprofits, pension plans, banking or thrift institutions are U.S. persons or non-U.S. persons; and 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. If adopted as proposed, advisers would need to update the information provided in a fund's subscription agreement (including, potentially, for existing investors) to correspond to these new types of categories. Finally, the Proposed Amendments would provide that if advisers report information in the "other" category, they must describe in Question 4 the type of

²⁰ "Borrowings" would include, but would not be limited to, (i) cash and cash equivalents received with an obligation to repay; (ii) securities lending transactions (count cash and cash equivalents and securities received by the reporting fund in the transaction, including securities borrowed by the reporting fund for short sales); (iii) repo or reverse repo (count the cash and cash equivalents and securities received by the reporting fund); (iv) negative mark-to-market of derivative transactions from the reporting fund's point of view; and (v) the gross notional value of "synthetic long positions." The Proposed Amendments define a "synthetic long position" as a total return derivative or similar contract under which (i) the reporting fund receives returns of a risky reference asset in exchange for paying the returns of a different, riskless reference asset; or (ii) the reporting fund sells deep-in-the-money puts on a risky reference asset in exchange for an option premium.

²¹ See SEC staff Form PF Frequently Asked Questions, available [here](#). Form PF Frequently Asked Question 12.1.

²² Beneficial ownership reporting has been another recent focus of the SEC. The SEC proposed rule amendments in February 2022 that would, among other things, accelerate the filing deadlines for Schedule 13D beneficial ownership reports from 10 days to five days and require that amendments be filed within one business day; generally accelerate the filing deadlines for Schedule 13G beneficial ownership reports (which differ based on the type of filer); and expand the application of Regulation 13D-G to certain derivative securities. See Modernization of Beneficial Ownership Reporting, Securities Exchange Act of 1934 Release No. 94211 (Feb. 10, 2022), available [here](#).

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investor, why it would not qualify for any of the other categories, and any other information to explain the selection of “other.”

Fund performance. The Proposed Amendments would alter the fund performance reporting requirements in current Question 17, which would be redesignated as proposed Question 23.

Currently, Form PF requires all advisers to report gross and net fund performance for specified fiscal periods using a table in current Question 17. The table in current Question 17 requires advisers to provide monthly and quarterly performance results in the table only if such results are calculated for the reporting fund. In addition to this requirement, the Proposed Amendments would add instructions specifying which lines to complete depending on whether the adviser is submitting an initial filing, annual update, or quarterly update. The Proposed Amendments also would amend the instructions to the table to specify that if gross and net performance is reported to current and prospective investors, counterparties, or otherwise in a currency other than U.S. dollars, advisers must report the data using that currency. 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 would report its performance as an internal rate of return.

The Proposed Amendments also would require advisers to report additional performance-related information if an adviser calculates a market value on a daily basis for any position in the reporting fund's portfolio. The adviser would report (i) the “reporting fund aggregate value” at the end of the reporting period;²³ (ii) the fund's volatility of the daily rate of return for each month of the reporting period, following a prescribed methodology;²⁴ and (iii) whether the fund had one or more days with a negative daily rate of return during the reporting period.²⁵

²³ The Proposed Form PF Glossary of Terms would define “reporting fund aggregate calculated value” in the following manner: Calculated in U.S. dollars (or the reporting fund's base currency, if specified in a question). Every position in the reporting fund's portfolio, including cash and cash equivalents, with the most recent price or value applied to the position for purposes of managing the investment portfolio. Where one or more portfolio positions are valued less frequently than daily, the last price used should be carried forward, though a current foreign exchange rate may be applied if the position is not valued in U.S. dollars or the reporting fund's base currency, as required. It is not necessary to adjust the reporting fund aggregate calculated value for accrued fees or expenses. Reporting fund aggregate calculated values do not need to be subjected to fair valuation procedures. The inclusion of income accruals is recommended but not required; however, the approach should be consistent over time. The reporting fund aggregate calculated value may be calculated using the adviser's own internal methodologies and conventions of the adviser's service providers, provided that these are consistent with information reported internally.

²⁴ The Proposed Amendments would define “rate of return” for a reporting fund as the percentage change in the reporting fund aggregate calculated value in the reporting fund's base currency from one date to another, and adjusted for subscriptions and redemptions. For a portfolio position, the “rate of return” would be the percentage change in the “position calculated value,” adjusted for income earned.

²⁵ If so, advisers would report (i) the most recent peak to trough drawdown, and indicate whether the drawdown was continuing on the data reporting date; (ii) the largest peak-to-trough drawdown; (iii) the largest single-day drawdown; and (iv) the number of days with a negative daily rate of return in the reporting period.

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Proposed Amendments to Section 1c of Form PF – Concerning All Hedge Funds

Section 1c of Form PF requires advisers to report information about the hedge funds they advise. If adopted, the Proposed Amendments would amend the manner in which advisers disclose investment strategies, counterparty disclosures and trading and clearing mechanisms. In addition, the Proposed Amendments would remove certain questions concerning hedge funds.

Investment strategies. The Proposed Amendments would 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 Proposed Amendments also would update the strategy categories advisers can select to reflect the Commissions' understanding of hedge fund strategies better, and improve data quality and comparability, based on their experience with the form.

Notably, the Proposed Amendments would 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." The Proposing Release states that the Commissions view "digital assets" as being synonymous with the more general term "crypto assets."

Counterparty exposures. The Proposing Release would add proposed Question 26, and revise current Questions 22 and 23, and redesignate them as proposed Questions 27 and 28, to provide better insight into hedge funds' borrowing and financing arrangements with counterparties, including CCPs. Proposed Question 26 would require advisers to hedge funds (other than qualifying hedge funds) to complete a new table (the "consolidated counterparty exposure table") concerning exposures that (i) the reporting fund has to creditors and counterparties; and (ii) creditors and other counterparties have to the reporting fund.²⁶ Advisers would report the U.S. dollar value of the reporting fund's "borrowing and collateral received ('B/CR'),"²⁷ as well as its "lending and posted collateral ('L/PC'),"²⁸ aggregated across all counterparties, including CCPs, as of the end of the reporting period. The form would explain what exposures to net, and

²⁶ Qualifying hedge funds would not complete this table because section 2 would be revised to include similar questions that require additional detail.

²⁷ The Proposed Amendments would define "B/CR" as the mark-to-market value, as of the data reporting date, of the following: (i) cash and cash equivalents received as borrowing; (ii) securities borrowed or received by the reporting fund (including securities borrowed in connection with short sales, securities lending and repo); (iii) collateral posted by a counterparty to the reporting fund's account; (iv) negative mark-to-market value of derivatives (from the reporting fund's point of view); and (v) the gross notional value of synthetic long positions.

²⁸ The Proposed Amendments would define "L/PC" as the mark-to-market value, as of the data reporting date, of the following: (i) cash and cash equivalents received by a counterparty from the reporting fund with the obligation to repay (excluding portfolio investments); (ii) securities borrowed or received by a counterparty in a reverse repo or securities lending transaction; (iii) collateral posted by the reporting fund to a counterparty; (iv) positive mark-to-market value of derivatives (from the reporting fund's point of view); and (v) gross notional value of synthetic short positions.

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advisers would be required to classify information according to type (e.g., unsecured borrowing, secured borrowing, derivatives cleared by a CCP, and uncleared derivatives) and the governing legal agreement (e.g., a prime brokerage or other brokerage agreement for cash margin and securities lending and borrowing, a global master repurchase agreement for repo/reverse repo, and ISDA master agreement for synthetic long positions, “synthetic short positions,” and derivatives).²⁹ Advisers would report transactions under a master securities loan agreement as secured borrowings. Advisers would check a box if one or more prime brokerage agreements provide for cross-margining of derivatives and secured financing transactions.

The Proposed Amendments would require advisers 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 (i) five percent of net asset value as of the data reporting date; or (ii) \$1 billion. If there are more than five such counterparties, the adviser only would report the five counterparties to which the reporting fund owes the largest dollar amount, before taking into account collateral that the reporting fund posted. If there are fewer than five such counterparties, the adviser only would report the counterparties that meet the threshold. This would be a change from current Question 22, which requires advisers to identify five counterparties to which the reporting fund has the greatest mark-to-market net counterparty credit exposure, regardless of the actual size of the exposure.

The Proposed Amendments also would require advisers to provide information for counterparties to which the reporting fund has net mark-to-market counterparty credit exposure which is equal to or greater than either (i) five percent of the reporting fund’s net asset value as of the data reporting date; or (ii) \$1 billion, after taking into account collateral received or posted by the reporting fund, in each case subject to the same caveats discussed above.

In addition, the Proposed Amendments would require advisers to report the amount of collateral posted and report the counterparty’s LEI, if applicable.

Trading and clearing mechanisms. The Proposed Amendments would require advisers to report (i) the value traded; and (ii) 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 volumes, as current Form PF requires. The Proposed Amendments also would require advisers to report information about trading and clearing mechanisms for transactions in interest rate derivatives separately from other types of derivatives and would have to report such derivatives by indicating the estimated amounts that were (i) traded on a regulated exchange or swap execution facility; (ii) traded over the counter and cleared by a CCP; and (iii) traded over the counter or bilaterally transacted (and not cleared by a CCP).

²⁹ The Proposed Amendments would define “synthetic short positions” as a total return derivative or similar contract under which (i) the reporting fund pays returns of a risky reference asset in exchange for receiving the returns of a different, riskless reference asset; or (ii) the reporting fund sells deep-in-the-money calls on a risky reference asset in exchange for an option premium.

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The Proposed Amendments would explain that “repo” means “securities in” transactions and “reverse repo” means “securities out” transaction. In addition, the Proposed Amendments would provide a separate line item for sponsored repos and would clarify that advisers must report reverse repos with repos.

Removing certain questions concerning hedge funds. The Proposed Amendments would remove certain questions that would become duplicative as a result of the added information provided in the proposed questions contemplated by the Proposed Amendments.

3. Amended Reporting by Large Hedge Fund Advisers and Qualifying Hedge Funds

Consistent with current Form PF, a private fund adviser must complete Section 2 of Form PF if it has at least \$1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding the adviser’s most recently completed fiscal quarter. This section requires additional information regarding the hedge funds these advisers manage, which is tailored to focus on relevant areas of financial activity that have the potential to raise systemic concerns. If adopted as proposed, the Proposed Amendments would, among other things, remove aggregate reporting in Section 2a and enhance the reporting requirements on a per fund basis in Section 2b.

Proposed Amendments to Section 2a

Removal of aggregate reporting. The Proposed Amendments would eliminate the requirement for large hedge fund advisers to report certain aggregated information about the hedge funds they manage. The Proposed Amendments would remove Section 2a and redesignate Section 2b as Section 2. The Proposing Release notes that aggregation can mask directional exposures of individual funds (e.g., positions held by one reporting fund may appear to be offset by positions held in a different fund), and there can be inconsistencies between data reported in the aggregate in Section 2a and on a per fund basis in Section 2b (e.g., instances where the sum of fund exposures that advisers report in current Question 30 on a per fund basis exceeds the aggregate figure reported in Question 26).

Proposed Amendments to Section 2b

Current Section 2b requires a large hedge fund adviser to report certain additional information about any hedge fund it advises that is a qualifying hedge fund. If adopted as proposed, the Proposed Amendments would amend (i) investment exposure reporting; (ii) open and large position reporting; (iii) borrowing and counterparty exposure reporting; and (iv) market factor effects reporting. In addition, the Proposed Amendments would make certain other changes designed to streamline and enhance the value of data collected on qualifying hedge funds by (i) adding reporting on currency exposure, turnover, country and industry exposure; (ii) adding new reporting CCPs; (iii) amending risk metric reporting and collecting new information on investment performance by strategy and portfolio correlation; and (iv) enhancing

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portfolio and financing liquidity reporting by requiring advisers to include cash and cash equivalents when reporting portfolio liquidity, rather than excluding them, as the question currently provides.

Investment exposure reporting. The Proposed Amendments would replace the existing complex table in current Question 30 with reporting instructions that would use a series of “drop-down” menu selections for each sub-asset class and the applicable information required for each sub-asset class. In addition, advisers would have to report the absolute value of short positions, include positions held in side pockets as positions of the reporting fund, and include any closed-out and OTC forward positions that have not yet expired or matured. The Proposed Amendments also would require advisers to choose the sub-asset class that describes the position with the highest degree of precision, which the Commissions indicate would result in more accurate classification of positions and therefore better data, rather than simply noting that any particular position should only be included in a single sub-asset class. Further, the Proposed Amendments also would require advisers to provide additional explanatory information in situations where a qualifying hedge fund reports long or short dollar value exposure to “catch-all” sub-asset class categories equal to or exceeding either (i) five percent of a fund’s net asset value; or (ii) \$1 billion.

The Proposed Amendments would require advisers to report the dollar value of a qualifying hedge fund’s long positions and the dollar value of the fund’s short positions in certain sub-asset classes by “instrument type” (*i.e.*, cash/physical instruments, futures, forwards, swaps, listed options, unlisted options, and other derivative products, ETFs, exchange traded product, U.S. registered investment companies (excluding ETFs and money market funds), non-U.S. registered investment companies, internal private fund or external private fund, commodity pool, or other company, fund or entity). For each month of the reporting period, advisers would be required to report separately long and short positions in these sub-asset classes held physically, synthetically or through derivatives, and indirectly through certain entities, in order to provide the Commissions and FSOC sufficient information to understand, monitor, and assess qualifying hedge funds’ exposures to certain types of assets and investment products. The current instructions require advisers to combine exposures held physically, synthetically, or through derivatives when reporting certain fixed-income and other sub-asset classes.

While the Proposed Amendments would continue to require advisers to report “gross” long and short exposure (*i.e.*, the dollar value of a qualifying hedge fund’s long positions and dollar value of the fund’s short positions for various sub-asset classes (and by instrument type for certain sub-asset classes as explained above)), the Proposed Amendments also would require advisers to report the “adjusted exposure” of long and short positions for each sub-asset class in which a fund has a reportable position. The Commissions note that gross exposure reporting, while useful because the information indicates fund size on a comparable basis among funds, may inflate some qualifying hedge funds’ reported

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long and short exposures in a way that does not properly represent the economic exposure and market risk of a reporting fund's portfolio.³⁰

The Proposed Amendments would require advisers to calculate and report adjusted exposure of long and short positions for each sub-asset class by netting (i) positions that have the same underlying "reference asset" across "instrument type" (*i.e.*, cash/physical instruments, futures, forwards, swaps, listed options, unlisted options, other derivative products, and positions held indirectly through another entity such as ETFs, other exchange traded products, U.S. registered investment companies (excluding ETFs and money market funds), investments in non-U.S. registered investment companies, other private funds, commodity pools, or other companies, funds or entities), and (ii) fixed-income positions that fall within certain predefined maturity buckets. For purposes of determining adjusted exposure, the Proposed Amendments would permit cross counterparty netting consistent with information reported by a fund internally and to current and prospective investors.

If a fund does not net across all instrument types in monitoring the economic exposure of the fund's investment positions for purposes of internal reporting and reporting to investors, the Proposed Amendments would require (in addition to adjusted exposure determined as specified above) the adviser to report adjusted exposure based on an adviser's internal methodologies and describe in Question 4 how the adviser's internal methodology differs from the standard approach in proposed Question 32.

Amended list of sub-asset classes. The Proposed Amendments would revise the list of reportable sub-asset classes in two ways. First, some sub-asset classes would be consolidated and tailored to reflect the proposed reporting of the dollar value of long and short positions by instrument type (*e.g.*, sub-asset classes for listed and unlisted equity derivatives are combined with sub-asset classes for listed and unlisted equities). Second, the proposal would (i) add new sub-asset classes for listed equity securities (including new sub-asset classes for other single name listed equities and indices on listed equities), and American depository receipts (ADRs); (ii) add additional sub-asset classes for reporting "repo" and "reverse repo" positions, based on term; (iii) add additional sub-asset classes for asset backed securities (ABS) and other structured products; (iv) add new sub-asset classes and revise existing sub-asset classes that capture certain derivatives, including certain credit derivatives and volatility and variance derivatives; (v) specify sub-asset classes pertaining to investments in cash and cash equivalents and commodities; and (vi) add a new sub-asset class for digital assets.

Borrowing and Counterparty Exposure

Counterparty exposure. The Proposed Amendments would include a new consolidated counterparty exposure table similar to the new counterparty exposure table for hedge funds discussed above. This table would replace the information currently required by Questions 43, 44, 45 and 47, each of which would be deleted under the Proposed Amendments.

³⁰ See Proposing Release at 84–85.

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Advisers, for each of their qualifying hedge funds, would have to disclose their counterparty exposure in the same manner discussed in the amendments to Section 2b, *supra*. The Proposing Release notes that the purpose of this counterparty exposure disclosure requirement is to enhance the Commissions' ability to understand the impact of a particular counterparty failure like those that occurred during the 2008 financial crisis and in the period since.³¹

Market Factor Effects

The Proposed Amendments would require advisers to qualifying hedge funds to respond to all market factors to which their portfolio is directly exposed, rather than allowing advisers to omit a response to any market factor that they do not regularly consider in formal testing in connection with the reporting fund's risk management, as Form PF currently provides. The Proposed Amendments, however, would change the stress testing thresholds to (i) require advisers to report one threshold for each market factor, rather than two as is currently required; and (ii) propose different thresholds for certain market factors to capture stress scenarios that are plausible but still infrequent market moves. The Proposing Release notes that information resulting from stress testing at thresholds in the current form (one low and one high) is not useful because the thresholds are either too frequent (for the lower threshold) or too extreme and may not result in accurate estimates (for the higher threshold).³²

The Proposed Amendments also would add a market factor test concerning nonparallel risk-free interest rate movements. It would test hedge fund exposure to changes in the slope of the yield curve, which is currently untested. In addition, the Proposed Amendments would revise the instructions so advisers would report the long component and short component consistently with market convention, rather than opposite from market convention, as Form PF currently provides in order to reduce inadvertent mistakes in completing the form.

Conclusion

The Proposed Amendments highlight the SEC's continued focus on the private funds industry, and the Commissions' desire to improve data utility to be used both for regulatory purposes, as well as to assess potential systemic risk in the industry. The changes in the Proposed Amendments to Form PF would expand the scope of reporting that private fund advisers will be required to provide with respect to themselves, the funds they advise, and relevant counterparties, would potentially limit some of the flexibility advisers currently have in responding to questions, and appear to be an attempt, in part, to align Form PF with certain of the reporting already required by CFTC Form CPO-PQR. While many of the more detailed and granular reporting changes would apply to large hedge fund advisers, a number of changes would apply to filing advisers of all sizes. As the Commissions have expressly asked for public comments on the Proposed

³¹ See Proposing Release at 117.

³² See Proposing Release at 121.

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Amendments, we would expect the private fund industry to engage both the SEC and the CFTC throughout the prescribed comment period prior to any final approval and adoption of the changes.

The public comment period will remain open for 60 days after the date of issuance and publication on SEC.gov or 30 days after publication in the Federal Register, whichever period is longer.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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