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## REGULATORY MONITOR

### SEC Update

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### SEC Adopts Amendments to Form PF to Enhance Private Fund Reporting

The Securities and Exchange Commission (SEC) recently adopted amendments (Amendments) to Form PF that will require large hedge fund advisers to report information on Form PF related to certain key events within 72 hours and advisers to private equity funds to report certain other information quarterly.<sup>1</sup> The SEC proposed the Amendments in January 2022 to “enhance the FSOC’s monitoring and assessment of systemic risk and to collect additional data for the Commission’s use in its regulatory programs.”<sup>2</sup> The SEC adopted the Amendments largely as proposed, with a few notable changes, as described below. The Amendments will significantly change the type and increase the amount of information that private fund advisers report, and how quickly they will be required to report such information. Consequently, private fund advisers will likely need to enhance internal reporting and tracking systems to ensure compliance with the amended Form PF.

#### Background on Form PF and the Amendments

Rule 204(b)-1 under the Advisers Act requires SEC-registered investment advisers advising one

or more private funds and having at least \$150 million in private fund assets under management to file Form PF with the SEC.<sup>3</sup> The information reported and the frequency of reporting depend on the size of the adviser.<sup>4</sup> The information reported on Form PF is confidential and not available publicly.

Prior to the Amendments, Form PF comprised five sections and required private fund advisers to report on either a quarterly or annual basis. Following the Amendments, Form PF will have seven sections. The quarterly and annual reporting timeline, as applicable, has been maintained for existing Sections 1 through 4, but new Section 5 requires large hedge fund advisers to report certain events as soon as practicable, but no later than 72 hours, and new Section 6 requires advisers to private equity funds to report certain events on a quarterly basis.

The amended Form PF comprises the following seven sections:

1. Section 1: All Form PF filers
2. Section 2: Large hedge fund advisers<sup>5</sup>
3. Section 3: Large liquidity fund advisers<sup>6</sup>
4. Section 4: Large private equity fund advisers<sup>7</sup> (*modified by the Amendments*)
5. Section 5: Current report for large hedge fund advisers to qualifying hedge funds (*new section required by the Amendments*)

6. Section 6: Quarterly report for advisers to private equity funds (*new section required by the Amendments*)
7. Section 7: Advisers requesting a temporary hardship exemption (*redesignated as Section 7 by the Amendments*)

As a result of the changes to Section 4 and the inclusion of new Sections 5 and 6, the Amendments affect only large hedge fund advisers and advisers to private equity funds, including large private equity fund advisers. The SEC declined to adopt as a part of the Amendments certain changes to how large liquidity fund advisers report on Form PF, although it later adopted such amendments as a part of a separate rule.<sup>8</sup> The SEC, jointly with the Commodity Futures Trading Commission (CFTC), proposed additional changes to Form PF on August 10, 2022 that are still under consideration by the Commissions.<sup>9</sup>

## The Amendments

The Amendments most notably create two new sections of Form PF: Section 5 and Section 6. A report under new Section 5—a “current report”—and new Section 6—a “private equity event report”—will each be filed as a stand-alone document, and advisers are not required to file any other part of Form PF at the time a current report or private equity event report is filed.<sup>10</sup> We discuss each of these new sections, along with the other amendments, in more detail below.

### New Section 5: Current Report for Large Hedge Fund Advisers

New Section 5 requires large hedge fund advisers to file a “current report” with respect to one or more current reporting events of a qualifying hedge fund<sup>11</sup> that they advise. Current reporting events include (1) extraordinary investment losses; (2) significant margin and default events; (3) material changes in prime brokerage relationships; (4) operations events; and (5) certain events related to redemptions.<sup>12</sup> In a

departure from the proposed amendments, the SEC did not adopt a requirement that an adviser report as a current reporting event a significant decline in holdings of unencumbered cash.<sup>13</sup> A current report under Section 5 also includes, largely as proposed, an optional explanatory notes section that permits an adviser to provide a narrative response if the adviser believes that additional information would be helpful in understanding the information reported in the current report.<sup>14</sup>

Large hedge fund advisers will be required to file current reports “as soon as practicable, but no later than 72 hours” after occurrence of the reporting event.<sup>15</sup> The 72-hour period begins upon the occurrence of the reporting event, or when the adviser reasonably believes that the event occurred. The adviser must respond to the best of its knowledge on the date of the report. The SEC proposed to require large hedge fund advisers to file current reports within one business day, but amended the reporting deadline in response to public comments that argued, among other things, a one-business-day requirement would be burdensome and potentially lead to inaccurate or inadequate reporting at a time when advisers and their personnel are dealing with a potential crisis.<sup>16</sup> Prior to the Amendments, large hedge fund advisers were only required to report information quarterly, so the expedited timeline for current reports is a significant change and advisers likely will need to modify existing infrastructure to accommodate the new reporting obligation. In addition, certain of the events triggering current reports will depend on the large hedge fund adviser obtaining sufficient information from its counterparties to determine whether a reportable event has occurred, which may create additional operational challenges for advisers.

The SEC stated that the new current reporting requirements for qualifying hedge funds will provide “important, current information to the Commission and Financial Stability Oversight Council (FSOC) to facilitate timely assessment of the causes of the current reporting event, the potential impact on

investors and the financial system, and any potential regulatory responses.”<sup>17</sup> The SEC also noted that such timely notice could allow the SEC and FSOC to “assess the need for potential regulatory action, and could allow the Commission to pursue potential outreach, examinations, or investigations in response to any harm to investors or potential risks to financial stability on an expedited basis before they worsen.”<sup>18</sup>

### *Extraordinary Investment Losses*

Large hedge fund advisers will be required to file a current report if on any business day the 10-business-day holding period return of the reporting qualifying hedge fund is less than or equal to negative 20 percent of the fund’s “reporting fund aggregate calculated value” (RFACV). For example, a large hedge fund adviser would have to file a report if a qualifying hedge fund’s RFACV is \$1 billion and the fund loses either \$20 million per business day for 10 consecutive business days, or \$200 million in one business day. In a change from the proposal, extraordinary investment losses are measured by reference to RFACV, rather than the fund’s most recent net asset value.<sup>19</sup> 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” and may be calculated using the adviser’s own methodologies and conventions of the adviser’s service providers, provided that these are consistent with information reported internally.<sup>20</sup>

In the event of an extraordinary investment loss, an adviser will be required to report (1) the dates of the 10-business-day period over which the loss occurred; (2) the holding period return; and (3) the dollar amount of the loss over the 10-business-day period. If the loss continues past the initial 10-business-day period, an adviser will not be required to report a second time until the qualifying hedge fund has experienced a second loss of an additional 20 percent of the fund’s RFACV over a second rolling

10-business-day period to begin on or after the end date stated in the adviser’s initial current report.

### **Significant Margin and Default Events**

Significant margin and default events include: significant increases in margin; inability to meet a margin call or margin default; and default of a counterparty.

**Significant Increases in Margin.** Large hedge fund advisers will be required to file a current report if the total dollar value of margin, collateral, or an equivalent posted by the reporting qualifying hedge fund at the end of a rolling 10-business-day period, less the total dollar value of margin, collateral, or an equivalent posted by the reporting fund at the beginning of the rolling 10-business-day period is greater than or equal to 20 percent of the average daily RFACV during the period.

The adviser will be required to report (1) the dates of the 10-business-day period over which the increase occurred; (2) the total dollar amount of the increase; (3) the total dollar value amount of margin, collateral or an equivalent posted by the reporting fund at both the beginning and the end of the 10-business-day period during which the increase was measured; (4) the average daily RFACV of the reporting fund during the 10-business-day period during which the increase was measured; and (5) the identity of the counterparty or counterparties requiring the increase(s). In addition, advisers will have to check one or more boxes indicating the adviser’s current understanding of the circumstances relating to the margin increase, including (1) exchange or central clearing counterparty requirements or known regulatory action affecting one or more counterparties; (2) one or more counterparties independently increasing the reporting fund’s margin requirements; (3) the reporting fund establishing a new relationship or new business with one or more counterparties; (4) new investment positions, investment approach or strategy and/or portfolio turnover of the reporting fund; (5) a deteriorating position or positions in the reporting fund’s portfolio or other

credit trigger under applicable counterparty agreements; and/or (6) a reason other than those outlined above that will require advisers to provide an explanation in the explanatory notes section.

**Inability To Meet a Margin Call or Margin Default.** Large hedge fund advisers will be required to file a current report if they either (1) receive notification that the reporting qualifying hedge fund is in default on a call for margin, collateral, or an equivalent, resulting in a deficit that the reporting fund will not be able to cover or address by adding additional funds (taking into account any contractually agreed cure period); or (2) determine that the reporting fund is unable to meet a call for increased margin, collateral, or an equivalent, including in certain situations where there is a dispute regarding the amount or appropriateness of the margin call. Advisers are not required to file a report in situations where there is a dispute in the amount and appropriateness of a margin call, provided that the reporting fund has sufficient assets to meet the greatest of the disputed amount.

Advisers will be required to report for each separate counterparty for which the event occurred: (1) the date the adviser determines or is notified that a reporting fund is in margin default or will be unable to meet a margin call with respect to a counterparty; (2) the dollar amount of the call for margin, collateral, or equivalent; and (3) the legal name and LEI (if any) of the counterparty. In addition, the adviser will be required to select any applicable check boxes that describe the adviser's current understanding of the circumstances of the adviser's default or its determination that the fund will be unable to meet a call for increased margin. These include (1) an increase in margin requirements by the counterparty; (2) losses in the value of the reporting fund's portfolio or other credit trigger under the applicable counterparty agreement; (3) a default or settlement failure of a counterparty; or (4) a reason other than those outlined for which the adviser will be required to provide further information in the explanatory notes item. If the fund is unable to meet margin or

defaulted with multiple counterparties on the same day, the adviser will file one current report with details for each counterparty.

**Default of a Counterparty.** Large hedge fund advisers will be required to file a current report if a counterparty to a reporting qualifying hedge fund (1) does not meet a call for margin, collateral, or equivalent or fails to make any other payment, in the time and form contractually required (taking into account any contractually agreed cure period), and (2) the amount involved is greater than 5 percent of the RFACV. Advisers must report (1) the date of the default; (2) the dollar amount of the default; and (3) the legal name and LEI (if any) of the counterparty. In the event that multiple counterparties to the fund default on the same day, the reporting item will allow an adviser to file a single current report broken out with details for each counterparty default. In the event that counterparties to the fund default on different days, the adviser would file a separate current report for each counterparty default that occurred.

### *Material Changes in Prime Brokerage Relationships*

Large hedge fund advisers will be required to file a current report if a prime broker terminates or materially restricts its relationship with the reporting qualifying hedge fund, in whole or in part, in markets where that prime broker continues to be active. An adviser should consider an event to be a material restriction if a prime broker changes the terms of its relationship with the reporting fund in a way that significantly limits the fund's ability to operate under the terms of the original agreement, or significantly impairs the fund's ability to trade. The SEC also stated that if a prime broker will no longer conduct certain trades on behalf of a US fund in a particular market, like a major foreign equities market, this would be deemed a material restriction.<sup>21</sup> However, if the same prime broker ceases activities in a market for all customers, the SEC noted that this should not trigger a current report for a fund affected by this action.<sup>22</sup> Moreover, the SEC stated

that a material restriction generally would include a prime broker imposing substantial changes to credit limits or significant price increases, or stating that it ceases to support the fund in an important market or asset type, even if it does not terminate the relationship.<sup>23</sup>

Large hedge fund advisers also must file a current report under this item if the relationship between the prime broker and the reporting qualifying hedge fund was terminated by either the reporting fund or the prime broker in the last 72 hours or less, and a termination event was activated in the prime brokerage agreement or related agreements within the last 12 months. Termination events, as specified in the prime broker agreement or related agreements, that are isolated to the financial state, activities, or other conditions solely of the prime broker should not be considered for purposes of this item. For example, a termination would need to be fund-specific and would not be reportable if the adviser understands that the termination was a part of a widespread change applicable to other of the prime broker's clients and isolated to the financial state, activities, or other characteristics solely of the prime broker.

The prime broker current report will require an adviser to provide (1) the date of the termination or material restrictions; (2) the date of the termination event(s) if different; and (3) the legal name and legal entity identifier (LEI) (if any) of the prime broker involved.

### *Operations Events*

Large hedge fund advisers will be required to file a current report when the adviser or qualifying hedge fund experiences a "significant disruption or degradation" of the fund's "critical operations," whether as a result of an event at the fund, the adviser, or other service provider to the fund.<sup>24</sup> For this purpose, "critical operations" means "operations necessary for (i) the investment, trading, valuation, reporting, and risk management of the fund; or (ii) the operation of the fund in accordance with federal securities laws and regulations."<sup>25</sup> The Amendments do not define

"significant disruption or degradation," but the SEC stated that it continues to believe that in circumstances where operations are reasonably measurable, a 20 percent disruption or degradation of normal volume or capacity generally would be reportable.<sup>26</sup> For example, the SEC indicated that in most cases, operations event reporting would likely be required if a software malfunction at the adviser disrupted the trading volume of a reporting fund by 20 percent or more of its normal capacity.<sup>27</sup> An operations event may also result from a service provider outage, such as an outage of a pricing provider that values certain asset types, cybersecurity incidents, natural disasters, or force majeure events.<sup>28</sup> The lack of a specific definition for what constitutes a "significant disruption or degradation" is likely to cause challenges for advisers as they develop methods to identify when such a reportable event has occurred, particularly with respect to critical operations that are more difficult to quantify.

The operations event current report will require the adviser to provide additional information concerning its current understanding of the circumstances relating to the operations event, including whether (1) the event occurred at a service provider; (2) the event occurred at a reporting fund or reporting fund adviser or a related person; (3) the event is related to a natural disaster or other force majeure event; or (4) an unlisted other event occurred for which the adviser will be required to provide further information in the explanatory notes item. In addition, this current report will require an adviser to indicate whether it has initiated a business continuity plan relating to the operations of the adviser or reporting fund.

As proposed, the operations event current report also will require the adviser to check a box to describe its current understanding of the impact of the operations event on the normal operations of the reporting fund, including whether the event resulted in the disruption or degradation of (1) trading of portfolio assets; (2) the valuation of portfolio assets; (3) the management of the reporting fund's investment risk;

(4) the ability to comply with applicable laws, rules, and regulations; or (5) any other type of operational impact than those outlined above, which an adviser will be required to explain further in the separate explanatory notes item.

### *Certain Events Related to Redemptions*

Large hedge fund advisers will be required to file a current report regarding two events related to redemptions. First, an adviser will be required to file a current report if the reporting qualifying hedge fund receives cumulative requests for withdrawals or redemptions from the reporting fund equal to or more than 50 percent of the most recent net asset value (after netting against subscriptions and other contributions from investors received and contractually committed). Under this current report, an adviser will report (1) the date on which the net redemption requests exceeded 50 percent of the most recent net asset value; (2) the net value of redemptions paid from the reporting fund between the last data reporting date (the end of the most recently reported fiscal quarter on Form PF) and the date of the current report; (3) the percentage of the fund's net asset value that the redemption requests represent; and (4) whether the adviser has notified the investors that the reporting fund will liquidate.

Second, an adviser will be required to file a current report if the reporting fund (1) is unable to pay redemption requests; or (2) has suspended redemptions and such suspension lasts for more than five consecutive business days. Under this current report, the adviser is required to report (1) the date the reporting fund was unable to pay redemption requests or suspended redemptions; (2) the percentage of redemptions requested and not yet paid; and (3) whether the adviser has notified the investors that the reporting fund will liquidate.

### **New Section 6: Quarterly Report for Advisers to Private Equity Funds**

Any private equity adviser required to report on Form PF must file a private equity event report

under new Section 6. In a significant departure from the proposed amendments, private equity event reports will be required to be filed on a quarterly basis (that is, 60 days after the end of the private equity adviser's fiscal quarter), rather than within one business day, as proposed. The SEC stated that it views the Section 6 reporting items as likely to reveal trends that emerge more slowly as compared to hedge funds because private equity funds typically invest in more illiquid assets over longer time horizons with more limited redemption rights, and for that reason modified the reporting timeline to quarterly.<sup>29</sup>

There are two main categories of events that trigger a private equity event report: (1) completion of an adviser-led secondary transaction; and (2) investor election to remove a fund's general partner, terminate a fund's investment period, or terminate a fund. Similar to Section 5, Section 6 includes an optional explanatory notes section that permits an adviser to provide a narrative response if the adviser believes that additional information would be helpful in understanding the information reported in the private equity event report.

### *Completion of an Adviser-Led Secondary*

Private equity advisers will be required to file a private equity event report if the reporting fund closed an adviser-led secondary transaction during the reporting period covered by the quarterly report. An adviser-led secondary transaction will be defined as "any transaction initiated by the adviser or any of its related persons that offers private fund investors the choice to (1) sell all or a portion of their interests in the private fund; or (2) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons."<sup>30</sup> The adviser will have to report (1) the closing date of the transaction; and (2) a description of the transaction.

### *Investor Election to Remove a Fund's General Partner, Terminate a Fund's Investment Period, or Terminate a Fund*

Private equity advisers will be required to file a private equity event report at the end of a quarter in which the reporting fund or its adviser or affiliate receives notification that fund investors have removed the adviser or its affiliate as the general partner or similar control person of the reporting fund, elected to terminate the reporting fund's investment period, or elected to terminate the reporting fund, in each case, as contemplated by the reporting fund's governing documents. The item requires reporting of the effective date of the applicable removal or termination event and a description of such removal or termination event.

### **Amendments to Current Section 4: Large Private Equity Fund Adviser Reporting**

The Amendments add certain questions to existing Section 4, which is applicable to large private equity fund advisers. Reporting under amended Section 4, as under the prior Form PF, is done on an annual basis. Section 4 also will include an optional narrative response if the adviser believes that additional information is helpful in explaining the circumstances of its responses in Section 4. The SEC proposed to lower the reporting threshold for large private equity fund advisers for purposes of Section 4 from the current \$2 billion in private equity fund assets under management to \$1.5 billion, but did not adopt the proposal.

### *New Question on General Partner or Limited Partner Clawbacks*

The SEC proposed to require all advisers to private equity funds to file a current report within one business day upon the implementation of a general partner or limited partner clawback in excess of an aggregate amount equal to 10 percent of a fund's aggregate capital commitments. As adopted, the Amendments instead will require

that the information about clawbacks be reported on an annual basis in existing Section 4 as part of the adviser's regular Form PF filing. The question will require reporting by large private equity fund advisers on the implementation of (1) any general partner clawback,<sup>31</sup> or (2) a limited partner clawback<sup>32</sup> (or clawbacks) in excess of an aggregate amount equal to 10 percent of a fund's aggregate capital commitments. Advisers will have to report the effective date of the clawback and the reason for the clawback. The SEC stated that advisers generally should file for each additional limited partner clawback, regardless of its size, over the course of the fund's remaining life once such fund's aggregate limited partner clawbacks have exceeded the 10 percent threshold.<sup>33</sup>

### *Other Amendments to Large Private Equity Fund Adviser Reporting*

As proposed, the Amendments add a question to collect information about private equity fund investment strategies. The new question will require advisers to choose from a list of strategies by percent of deployed capital. If a reporting fund engages in multiple strategies, advisers will have to provide a good faith estimate of the percentage the reporting fund's deployed capital represented by each strategy. The Amendments also add a question that requires advisers to report additional information on any fund-level borrowing. If a fund engages in fund-level borrowing, the question requires the adviser to provide (1) information on each borrowing or other cash financing available to the fund; (2) the total dollar amount available; and (3) the average amount borrowed over the reporting period.

The Amendments amend three existing questions in Section 4 as follows:

- Question 74: amended to require advisers to provide more granular information about the nature of reported events of default, such as whether it is a payment default of the private

equity fund, a payment default of a controlled portfolio company (CPC), or a default relating to a failure to uphold terms under the applicable borrowing agreement (other than a failure to make regularly scheduled payments).

- Question 75: amended to require reporting on the identity of the institutions providing bridge financing to the adviser's CPCs and the amount of such financing.
- Question 78: amended to require reporting on the geographical breakdown of investments by private equity funds. The amendments will require advisers to report all countries (by ISO country code) to which a reporting fund has exposure of 10 percent or more of its net asset value.

The SEC did not adopt the following proposed large private equity fund adviser questions: (1) restructuring/recapitalization of a portfolio company; (2) investment in different levels of a single portfolio company's capital structure by related funds; (3) financing of portfolio companies; (4) floating rate borrowings of CPCs; and (5) CPCs owned by private equity funds.

## Effective and Compliance Dates; Filing Fees

There are two effective and compliance dates for different sections of Form PF, and the effective dates for the Amendments are the same as the compliance dates. The effective/compliance date for new Sections 5 and 6 (current reporting for large hedge fund advisers and quarterly reporting for private equity advisers) is December 11, 2023. The effective/compliance date for the amended Section 4 is June 11, 2024. Accordingly, beginning on December 11, 2023, any adviser that is required to file Section 5 or Section 6 of Form PF must do so. Starting June 11, 2024, any adviser that is required to file Form PF must complete the fully amended form.

Advisers will file current reports and private equity event reports through the same nonpublic

filing system they use to file the rest of Form PF, known as the Private Fund Reporting Depository. There will be filing fees associated with both sections that the SEC will approve in a separate action.

## Conclusion

The Amendments underscore the SEC's continued focus on private funds and private fund advisers, and may present challenges to private fund advisers as they develop the necessary infrastructure to track and report the events required by new Sections 5 and 6. Private fund advisers should carefully consider how they plan to comply within the relatively short effective/compliance dates, and begin working to update or build internal reporting and tracking systems to ensure compliance with the amended Form PF.

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## NOTES

- <sup>1</sup> See *Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers*, Advisers Act Rel. No. 6297 (May 3, 2023) (Adopting Release), available at <https://www.sec.gov/files/rules/final/2023/ia-6297.pdf>.
- <sup>2</sup> See Adopting Release at 5. See also, *Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers*, Advisers Act Rel. No. 5950 (Jan. 26, 2022) (Proposing Release), available at <https://www.sec.gov/files/rules/proposed/2022/ia-5950.pdf>.
- <sup>3</sup> See 17 C.F.R. 275.204(b)-1.
- <sup>4</sup> See, e.g., Form PF General Instruction 3. "Form PF" as used herein refers to Form PF as amended by the Amendments.
- <sup>5</sup> A "large hedge fund adviser" is an investment adviser, collectively with its related persons, that had 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 its most recently completed fiscal quarter. Form PF Glossary of Terms.
- <sup>6</sup> A “large liquidity fund adviser” is an investment adviser that (i) advises one or more liquidity funds and (ii) as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter, the adviser and its related persons, collectively, had at least \$1 billion in “combined money market and liquidity fund assets under management.” *Id.*
- <sup>7</sup> A “large private equity fund adviser” is an investment adviser, collectively with its related persons, that had at least \$2 billion in “private equity fund assets under management” as of the last day of its most recently completed fiscal year. *Id.*
- <sup>8</sup> See Adopting Release at 8–9; *Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A*, Advisers Act Rel. No. 6344 (July 12, 2023), available at <https://www.sec.gov/files/rules/final/2023/33-11211.pdf>.
- <sup>9</sup> See Form PF; *Reporting Requirements for All Filers and Large Hedge Fund Advisers*, Advisers Act Rel. No. 6083 (Aug. 10, 2022), available at <https://www.sec.gov/files/rules/proposed/2022/ia-6083.pdf>. Please also see the Willkie Farr & Gallagher LLP Client Alert on the proposal, available at <https://www.willkie.com/-/media/files/publications/2022/secandcftcpropose-substantialamendmentstoformpf.pdf>. Advisers that file Form PF may also be registered or required to be registered with the CFTC as a commodity pool operator (CPO).
- <sup>10</sup> Adopting Release at 68.
- <sup>11</sup> A “qualifying hedge fund” is any hedge fund that has 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. Form PF Glossary of Terms.
- <sup>12</sup> Investment advisers that are dually registered as CPOs are also subject to NFA Compliance Rule 2-50. NFA Compliance Rule 2-50 requires that a CPO experiencing any of several “reportable events” must notify the NFA by 5:00 p.m. (US) Central Time on the following business day. The reportable events required to be reported under NFA Compliance Rule 2-50 overlap, generally, with some of the events required to be reported under the Amendments. Investment advisers dually registered as CPOs therefore may have two separate reporting obligations upon the occurrence of a single event. Please see the Willkie Farr & Gallagher LLP Client Alert on Rule 2-50 for more information, available at <https://www.willkie.com/-/media/files/publications/2021/07/nfaadoptscreportingrequirementfordistressevents.pdf>.
- <sup>13</sup> Adopting Release at 40.
- <sup>14</sup> Current question 4 in Form PF permits advisers to explain any assumptions that they made in responding to any question in Form PF. The explanatory notes section, on the other hand, is designed specifically for advisers to explain the circumstances of the current reporting event.
- <sup>15</sup> Form PF section 5.
- <sup>16</sup> Adopting Release at 14. In contrast, investment advisers dually registered as CPOs must report several “reportable events” within one business day. See *supra* n.12.
- <sup>17</sup> Adopting Release at 10.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.* at 17. The SEC stated that the Amendments use RFACV instead of “most recent net asset value” (MRNAV) in response to commenters’ concerns that MRNAV was “too dated a statistic and could result in false positives.” *Id.* at 20. The SEC stated that it believes using RFACV instead of MRNAV will be “both more timely and less burdensome” than a requirement to calculate a daily net asset value because it will “rely on systems that many large hedge fund advisers already employ, while not requiring the adviser to adjust for accrued fees or expenses, subject position values to fair valuation procedures, or include income accruals.” *Id.* at 21.

<sup>20</sup> *Id.* at 20; Form PF Glossary of Terms.

<sup>21</sup> Adopting Release at 36.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Form PF section 5, Item G.

<sup>25</sup> Form PF Glossary of Terms.

<sup>26</sup> Adopting Release at 47.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 44–45, 47.

<sup>29</sup> *Id.* at 58.

<sup>30</sup> These changes were adopted largely as proposed in response to the SEC's concern that adviser-led secondary transactions have become increasingly common and may present conflicts of interest that merit timely reporting and monitoring. *See* Proposing Release at 45. Although the SEC acknowledged in the Adopting Release that an adviser-led secondary transaction can indicate strength in a particular investment in certain cases, the SEC also noted that, in addition to creating conflicts of interest, adviser-led secondary transactions typically reflect a deviation from the traditional life cycle of a private equity investment and can have a meaningful impact on the liquidity profile of a private equity investment.

Adopting Release at 62. Reporting of adviser-led secondary transactions reflects the SEC's continued focus on these events, which are briefly described in the SEC's 2023 examination priorities. *See* 2023 Examination Priorities, Division of Examinations (Feb. 7, 2023), available at <https://www.sec.gov/files/2023-exam-priorities.pdf>. Please also see the Willkie Farr & Gallagher LLP Client Alert on the 2023 examination priorities, available at <https://www.willkie.com/-/media/files/publications/2023/secdivisionofexaminationsreleasesits2023examination.pdf>.

<sup>31</sup> A “general partner clawback” will be defined as “any obligation of the general partner, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the fund pursuant to the fund’s governing agreements.” Form PF Glossary of Terms.

<sup>32</sup> A “limited partner clawback” will be defined as “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.” *Id.*

<sup>33</sup> Adopting Release at 77.

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