

SEC and CFTC Adopt Another Round of Amendments to Form PF for Private Fund Advisers

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On February 8, 2024, the U.S. Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) (together, the Commissions) jointly adopted additional **amendments** to Form PF, the confidential form by which certain SEC-registered investment advisers (advisers) – including those that are also registered with the CFTC as commodity pool operators (CPOs) or commodity trading advisers (CTAs) – report information about the private funds they manage.¹

Background

The SEC and CFTC jointly adopted Form PF in 2011 in response to the 2008 financial crisis in order to obtain more information about private funds as part of their effort, with the Financial Stability Oversight Council (FSOC), to continuously assess risks to the broader financial system. The February 8, 2024, amendments (the amendments) represent the third significant step the SEC has taken in the past year to update Form PF. In May 2023, as discussed in an earlier **client alert**, the SEC amended Form PF to require certain advisers to hedge funds and private equity funds to provide current reporting of certain significant events and other information. The SEC amended Form PF again in July 2023 to align the reporting required of large liquidity fund advisers with reporting required in respect of money market funds.

These new amendments will further expand private fund reporting by requiring advisers to report new or additional identifying information about their private funds and their assets, the sources of financing for such funds, and fund performance. The amendments also seek substantial new or additional information about hedge funds and related trading vehicles, including with respect to investment strategies,

trading operations, and counterparty exposure. The Commissions believe these amendments will provide them and the FSOC with critical information for monitoring potential systemic risks to markets and observing how funds interconnect with the broader financial services industry. The following description of the amendments is not exhaustive.

The Amendments

Amendments to Form PF's General Instructions

The Commissions are adopting several amendments to Form PF's general instructions.

Reporting Master-Feeder Arrangements and Parallel Fund Structures

While Form PF currently allows advisers to respond to questions about master-feeder arrangements and parallel fund structures either in the aggregate (i.e., treated together as one private fund) or separately so long as they do so consistently throughout Form PF, the amendments generally require advisers to report separately each component of such arrangements and fund structures. The exception is when a feeder fund invests all of its assets in a single master fund, U.S. Treasury bills, or cash and cash equivalents (i.e., is a "disregarded feeder fund"). Advisers must identify whether the feeder fund is a disregarded feeder fund and "look through" to the fund's investors when responding to certain questions regarding investors on behalf of any applicable master fund. The feeder fund must disregard any of its holdings in the master fund's equity for purposes of determining the feeder fund's reporting threshold. Relatedly, the amendments instruct advisers not to separately report a "parallel managed account" and specify that

¹ Rule 204(b)-1 under the Investment Advisers Act of 1940, as amended, requires registered investment advisers that manage private fund assets of at least \$150 million, as of the end of their most recently completed fiscal year, to file Form PF.

a “dependent parallel managed account” must be aggregated with the largest private fund to which it relates.²

Reporting Private Funds That Invest in Other Funds

The amendments change how advisers report private fund investments in other private funds, trading vehicles, and funds that are not private funds.

- 1. Investments in other private funds.** Instruction 7 to Form PF has been amended to require the adviser to include the value of a private fund’s investments in other private funds (including internal and external private funds) when determining whether the adviser meets thresholds for reporting as a large hedge fund adviser, large liquidity fund adviser, or large private equity fund adviser and whether the reporting fund is a “qualifying hedge fund”³ (rather than permitting the adviser to decide whether to include or exclude the value of such investments). Additionally, Instruction 7 currently states that if a private fund invests “substantially all of its assets in the equity of private funds” and, aside from such private funds, holds only cash and cash equivalents and certain currency hedges, the adviser is only required to complete Section 1b of Form PF for that fund. The amended Instruction 7 replaces the “substantially all of its assets in the equity of private funds” threshold with a more objective “80% or more of its assets in the equity of private funds (including internal private funds and external private funds)” threshold. Moreover, advisers may no longer look through the reporting fund’s investments in other private funds (other than a “trading vehicle,” as explained below) when responding to questions on Form PF unless the question specifically so instructs.
- 2. Trading vehicles.** For various reasons, some private funds wholly or partially own separate legal entities that hold assets, incur leverage, or conduct trading and other activities but do not operate a business (trading vehicles). While Form PF previously did not seek information about trading vehicles, the amendments require advisers to identify any trading vehicles of the reporting fund, specify how the reporting fund uses the trading vehicle, and report certain additional information including, in response to certain questions, the position sizes and counterparty

exposures of the reporting fund that are attributable to the trading vehicle. In a change from the rule proposal, trading vehicles will not be reported on a disaggregated basis; instead, all trading vehicles, whether wholly owned or partially owned, must be reported on an aggregated basis. Advisers must look through the trading vehicle’s holdings when responding to specific questions on Form PF in respect of the reporting fund, adjusting for the reporting fund’s percentage ownership interest in the trading vehicle.

- 3. Investments in funds that are not private funds.** The amendments instruct advisers to not look through the reporting fund’s investments in funds and other entities that are not private funds (or trading vehicles) when determining reporting thresholds or responding to questions on Form PF unless the question specifically instructs the adviser to report exposures obtained indirectly through such entities.

Reporting Timelines

While the general instructions previously required large hedge fund advisers and large liquidity fund advisers to make periodic filings within certain prescribed times following each “fiscal quarter,” the amendments use “calendar quarters” as the new reference point. Other advisers will continue to file annual updates within 120 calendar days after the end of their fiscal year, and private equity fund advisers will continue to file any required quarterly private equity event reports (pursuant to the May 2023 Form PF amendments) on a fiscal quarter basis, as applicable.

Amendments Concerning Basic Information About Advisers and Private Funds

The Commissions are adopting several amendments to Section 1 of Form PF to provide greater insight into how advisers operate private funds.

Amendments to Section 1a – Identifying Information

Section 1a asks advisers to report identifying information about themselves, their related persons, and the private funds they manage. The amendments seek to enhance the usefulness of this information by, among other things, promoting the more consistent use of legal entity identifiers (LEIs) (and discouraging the use of substitute identifiers

² “Parallel managed accounts” are defined in Form PF as managed accounts or other asset pools that pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as a particular private fund. A “dependent parallel managed account” is a parallel managed account whose gross asset value does not exceed the gross asset value of the private fund to which it relates.

³ “Qualifying hedge funds” are hedge funds that have 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 most recently completed fiscal quarter.

previously permitted) where LEIs have been assigned and requiring advisers to indicate whether they or their related persons are registered or required to be registered as a CPO or CTA. The amendments also revise how advisers report assets under management attributable to certain private funds by directing advisers to exclude the value of private funds' investments in other internal private funds (to avoid double-counting of fund-of-fund assets) but include the value of trading vehicle assets.

Amendments to Section 1b – Concerning All Private Funds

Section 1b asks advisers to report certain information about all the private funds that advisers manage. The amendments seek a greater breadth of information on private funds by including the following additional or revised reporting topics.

- Advisers must identify the particular type of private fund by selecting a “type” from a drop-down list and indicating whether it is also a commodity pool and whether it operates as a UCITS or AIF.
- Advisers must report in more detail the value of the reporting funds' investments in other private funds (e.g., for funds-of-funds), specifically by reporting the value of the reporting fund's equity investments in internal and external private funds.
- Advisers must indicate whether the reporting fund is an open-end or closed-end private fund, and if it is an open-end fund, all advisers (rather than just advisers to qualifying hedge funds) will be required to provide specific information regarding the extent to which withdrawals and redemptions are permitted.
- Advisers must provide certain identifying information about any trading vehicle in which the reporting fund holds assets, incurs leverage, or conducts trading or other activities.
- Large hedge fund advisers and large liquidity fund advisers must report the net asset value (NAV) and gross asset value (GAV) as of the end of each month of the reporting period in the advisers' quarterly filings (rather than only reporting this information as of the end of the reporting period) and must separately report the value of unfunded commitments included in the NAV and GAV figures. If NAV and GAV are not calculated monthly, an adviser may instead report a fund's “gross reporting fund aggregate calculated value” or “reporting fund aggregate calculated value,” as applicable.
- Advisers must report certain information about contributions from investors to the reporting fund, as well as investor withdrawals and redemptions or any other distributions during the reporting period.
- Advisers must identify the base currency of

all reporting funds (currently only large hedge fund advisers must report this information about qualifying hedge funds).

- The amendments change how advisers report a fund's borrowings by revising the definition of “borrowings” to include “synthetic long positions” (itself a newly defined term) and a non-exhaustive list of types of borrowings, as well as by revising the information required to be reported about the related creditors.
- The amendments change how advisers report fair value hierarchy by requiring advisers to, among other things, indicate the date on which the categorization was performed, report the absolute value of all liabilities (rather than negative values, when applicable), include an explanation if the adviser reports assets as a negative value, and report cash and cash equivalents in an entirely separate column to differentiate between holdings of cash and cash equivalents from harder-to-value assets that may be valued at cost. The amendments also revise the definition of “cash and cash equivalents” to remove “government securities” and specifically exclude digital assets. Finally, consistent with responses to existing FAQs, new instructions will be included directing advisers how to report data if their audited financial statements are not yet final when Form PF is due, allowing the adviser to utilize estimated values and requiring the adviser to include an explanatory assumption in Question 4 when utilized. The adviser may, but is not required to, update those estimated values when the audited financial statements are completed.
- Advisers must provide more granular information about the reporting fund's beneficial owners (e.g., whether certain types of beneficial owners are “U.S. persons” and whether beneficial owners that are private funds are either internal or external private funds), and the amendments clarify the descriptions of other categories.

In addition to the above, the amendments incorporate several changes with respect to the reporting of fund performance to require that advisers do the following:

- Present gross and net performance as reported by the adviser to current and prospective investors, counterparties, or otherwise for specified fiscal periods.
- Report performance as a money-weighted internal rate of return (IRR) if performance is reported to investors, counterparties or otherwise as an IRR since inception; new definitions of “rate of return” and “internal rate of return” have been incorporated, modified from the definitions in the rule proposal.
- Report performance in the reporting fund's

- base currency.
- Indicate whether the reported IRR, where applicable, includes or does not include the impact of subscription facilities.
- For those that calculate a market value on a daily basis for any position in the reporting fund's portfolio, report additional performance-related information, including the "reporting fund aggregate calculated value," volatility of the daily rate of return for each month of the reporting period, and information relating to days on which the reporting fund had a negative daily rate of return (including largest peak-to-trough drawdown and largest single-day drawdown) during the reporting period.

Amendments to Section 1c – Concerning All Hedge Funds

Section 1c asks advisers to report certain specific information about the hedge funds they manage. The amendments require the following additional reporting with respect to hedge fund investment strategies, counterparty exposure, and trading and clearing mechanisms.

- Investment strategies.** Advisers must select from a drop-down list which particular strategies best characterize the reporting fund's investment strategy on the last day of the reporting period. The list of potential strategies has been updated to reflect more granular descriptions of strategies that the Commissions believe have become increasingly common. The amendments are also intended to result in consistent reporting over time for ongoing investment strategies.
- Counterparty exposure.** Advisers to hedge funds other than qualifying hedge funds must complete a new table presenting information about certain exposures the fund (or its trading vehicle(s)) has to creditors and counterparties (and vice versa). The table provides instructions for advisers to identify creditors and counterparties to whom the fund has significant risk exposure and instructions on how to report that exposure and related information regarding collateral.
- Trading and clearing mechanisms.** The amendments change how advisers report information about trading and clearing mechanisms by requiring advisers to provide the actual dollar values of transactions in particular instruments (e.g., interest rate derivatives) across different trading and clearing mechanisms (e.g., on a regulated exchange, over-the-counter) rather than

estimate the use of the particular trading or clearing mechanism as a percentage of overall trading. The amendments also separate reporting for interest rate derivatives from reporting with respect to other types of derivatives and clarify how sponsored repos should be reported.

The amendments also remove certain questions from Form PF that require advisers to hedge funds to report whether the fund employs multiple investment strategies (as such information will be evident from other responses) and approximate the percentage of the hedge fund's NAV that is managed using high-frequency trading strategies.

Amendments Concerning Hedge Funds Advised by Large Private Fund Advisers

The Commissions are adopting various amendments to Section 2 concerning hedge funds advised by large private fund advisers.

Removal of Section 2a

The amendments remove Section 2a, which requires large hedge fund advisers⁴ to report certain aggregated information about the hedge funds they manage. The Commissions reason that such aggregated adviser-level information combines funds with different strategies and activities and makes the information less meaningful.

Amendments to Section 2

The amendments redesignate existing Section 2b as Section 2 generally and make the following changes.

- Investment exposure reporting.** The amendments more specifically prescribe how to report certain investment positions by requiring reporting based on "instrument type" within sub-asset classes (to help identify how the investments' exposures are achieved) and, as proposed, requiring the adviser to calculate the "adjusted exposure" of long and short positions for each sub-asset class by netting positions with the same underlying "reference asset" across instrument types and fixed income positions within certain predefined maturity buckets, and otherwise in accordance with a prescribed calculation methodology or, under certain conditions, based on the adviser's internal methodology, with a description in Question 4 of how such methodology differs from the standard methodology. The amendments also, among other changes, require uniform interest rate risk measure reporting (based on a 10-year

⁴ "Large hedge fund advisers" are defined as private fund advisers that are required to file Section 2 of Form PF for a "qualifying hedge fund."

zero coupon bond equivalent) for sub-asset classes that have interest rate risk (eliminating the option to report duration, weighted average tenor, or a 10-year bond equivalent), update the list of reportable sub-asset classes to reflect more granular descriptions, and otherwise seek detailed information about the reference assets to which a hedge fund has certain levels of exposure (e.g., top five and top ten netted long and short positions).

2. **Borrowing and counterparty exposure.** The amendments introduce a new consolidated counterparty exposure table (similar to the new table adopted for hedge funds in Section 1c) that requires advisers to report the dollar amounts of a qualifying hedge fund's (or its trading vehicles') borrowings and other transactions with creditors and other counterparties by type of borrowing/transaction and the collateral posted or received. The table also seeks information about the fund's creditors and counterparties in relation to certain high-value borrowings (e.g., borrowings equal to the greater of 5 percent of the fund's NAV or \$1 billion) and counterparty credit exposures, as well as information relating to the sensitivity of funds to margin changes (e.g., the expected increase in collateral required if the margin increases by 1 percent of position size for each type of borrowing). Acknowledging the challenges advisers historically have had in answering current Question 38, advisers no longer will be required to report the percentage of the total amount of collateral that a fund has posted to counterparties that may be rehypothecated.
3. **Market factor effects.** The amendments require advisers to qualifying hedge funds to respond on Form PF in a way that addresses all market factors to which their portfolio is directly exposed (rather than allowing advisers to omit a response to certain market factors that the adviser does not regularly consider in its risk management testing). The amendments also add a new market factor test intended to assess hedge fund exposure to changes in the yield curve. The test is specifically intended to obtain meaningful information related to market-neutral strategies such as basis trades.

The amendments will also, among other things, revise the currency exposure reporting required by advisers to qualifying hedge funds. Such advisers will be required to report specific information about the net long value and short value of the hedge fund's currency exposure arising from foreign exchange derivatives and other assets and liabilities not denominated in the fund's base currency, identify each central clearing counterparty or other third party

holding collateral posted by the fund in respect of cleared exposures surpassing certain enumerated thresholds, and report monthly gross investment performance by strategy if the adviser indicates that the fund employs more than one investment strategy (and reports such fund performance metrics to current and prospective investors, counterparties, or otherwise).

Similarly, the amendments revise the manner in which advisers are required to report the value of turnover. Turnover will now be reported on a per-fund basis, focused on certain asset classes, and the amendments add new categories to disaggregate combined categories and better capture turnover of potentially relevant types of securities and derivatives. In the adopting release for the amendments, the Commissions specifically note that these changes to the reporting of turnover data result from their inability to use the current turnover data reported on Form PF to sufficiently analyze the impact on the U.S. Treasury market stemming from hedge fund basis and other arbitrage trades during the March 2020 COVID-19-related market turmoil.

Amendments to Enhance Data Quality

The Commissions are also adopting several amendments to Form PF's instructions to enhance the quality of data being reported. Among other changes, the amendments require that information reported on Form PF that must be expressed as a percentage be rounded to the nearest hundredth of 1 percent (rather than the nearest whole percent) and provide specific instructions with respect to determining the value of investment positions (including derivatives) and counterparty exposures and reporting long and short positions.

Our Thoughts

The amendments largely track the changes set out in the Commissions' August 2022 rule proposal, but they deviate from the proposal in a few notable ways. First, the amendments change the instructions for how an adviser determines the reporting threshold of a feeder fund by specifying that assets invested in the master fund will not be included (this specification did not appear in the proposal). Moreover, while the proposal sought to permit an adviser to exclude a private fund's investments in other private funds when determining the adviser's reporting threshold, the amendments state that the adviser must include those values in those calculations. Additionally, while the proposal would have permitted advisers to report trading vehicles on a disaggregated basis, the amendments require advisers to report all trading vehicles on a consolidated basis. Finally, the Commissions did not adopt a proposed amendment that would have required advisers to calculate and provide certain portfolio correlation data (e.g., the average pairwise

three-month realized prior Pearson correlation of each portfolio position's periodic rates of return), agreeing with commenters that answering this complex question would be unduly burdensome and not particularly useful.

The amendments demonstrate an evolution in the Commissions' knowledge regarding private funds since the introduction of Form PF more than a decade ago. The updated Form PF will solicit much more granular detail regarding private fund strategies, investments, counterparty exposures, risk metrics, and performance data. The updated Form PF also reflects specific areas of continuing concern to the Commissions. For example, the adopting release specifically cites hedge fund basis trades and their potential contribution to the stresses and risk in the U.S. Treasury and repo markets during 2014, 2019, and 2020 as the rationale for soliciting certain additional information in the updated Form PF. These trading activities and the referenced periods of stress were also specifically identified and discussed in the [adopting release](#) for the SEC's recently adopted rules requiring the mandatory clearing of certain U.S. Treasury securities and related repo transactions. More generally, it will be interesting to observe whether the new and extensive data required by the updated Form PF will prove meaningful to the Commissions and FSOC in monitoring potential systemic risks that already have been identified or that might develop in the future.

Moreover, it is notable that the amendments represent a joint effort by both the SEC and the CFTC, and not the SEC alone. It is also notable that the amendments revise certain basic identification questions on Form PF to seek information about whether the adviser or any of its related persons is also registered or required to be registered as a CPO or CTA (Question 1(c)) and whether the reporting fund is also a commodity pool (Question 6). Finally, the SEC and CFTC took the significant step of entering into a memorandum of understanding by which the SEC will grant the CFTC virtually unrestricted access to data submitted by Form PF filers in an effort to "facilitate data sharing between [the two] agencies."⁵ As we discussed in our [client alert](#) regarding the SEC's May 2023 Form PF amendments, regulators are demonstrating a commitment to enhancing their information-sharing relationship with respect to monitoring private funds. Regulators could use the new Form PF data to inform additional rulemaking, prepare interpretive guidance, inform the selection of examination targets and topics, and bring enforcement actions in a more aligned manner.

Next Steps

The amendments go into effect 365 days after their publication in the Federal Register, so the compliance date will likely fall in February 2025. Additionally, large hedge fund advisers and large liquidity fund advisers currently filing on a fiscal quarter-end basis will need to transition to the calendar quarter-end filing schedule required by the amendments by their first calendar quarter-end filing for the first full quarterly reporting period after the compliance date.

Registered investment advisers to private funds should review the amendments and new reporting requirements and closely consider the impact on their information retention and reporting practices. Given the number of changes to definitions and questions in the form (certain questions are deleted, others are redesignated with new question numbers, and some are entirely new), advisers will need to carefully review the changes to the definitions and questions in the amended Form PF to update their internal processes, systems, and worksheets for collecting, aggregating, and reviewing relevant data. Advisers that utilize a third-party fund administrator for reporting on Form PF should also consult with their administrators, who will need to update their reporting templates and user interfaces to match the new format and definitions of the updated Form PF.

Please contact one of the listed authors of this client alert or your regular Lowenstein Sandler contact if you have any questions regarding these amendments.

⁵ See SEC Chair Gary Gensler Statement on Final Joint Amendments to Form PF (February 8, 2024) (available at <https://www.sec.gov/news/statement/gensler-statement-form-pf-020824>).

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