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What Plan Fiduciaries Should Know About SEC's Final Form PF Amendments

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On May 3, 2023, the Securities & Exchange Commission (“SEC”) adopted amendments to Form PF (the “[Final Amendments](#)”). Plan fiduciaries that utilize private equity funds, and regulated entities that serve these plan sponsors, should take note of these changes, as some have the potential to materially alter and increase reporting costs. We highlight some of the more consequential points regarding the Final Amendments and related regulatory developments below.

Background

The Form PF functions as the confidential reporting form for many advisers to these private funds. On January 26, 2022, the SEC proposed amendments to Form PF (the “[Proposed Amendments](#)”), and the Proposed Amendments specifically contemplated plan sponsors. The preamble to the Proposed Amendments specifically mentioned “governmental and private pension fund” investors as an example of the “important role in both private and public capital markets” that private funds and their advisers play, and the importance of increased governmental oversight into the economic activity of private funds. Likewise, the preamble to the Final Amendments explains the rationale for these more stringent reporting requirements being implemented as partially motivated by “the increasing number of investors in private equity funds and the increasing exposure of public pension plans to private equity.” The SEC also highlighted the efforts of private fund advisers “to be included in individual investors’ retirement plans, including their 401(k)s.” Although fiduciaries to pension plans often currently employ comprehensive legal and operational due diligence before adding such investments, the SEC’s comments in the preamble reflect a concern for individual and real estate investors given a perceived lack of transparency and increased complexity in the private fund space when compared to other asset classes such as publicly traded equities.

The Final Amendments apply to large advisers, including advisers with at least \$1.5 billion in hedge fund Assets Under Management (“AUM”), investment advisers with at least \$150 million in private equity fund AUM, and advisers with at least \$2 billion in private equity AUM. The amendments to Form PF are likely to increase the

reporting obligations for these covered advisors to retirement plans as described below.

Major Changes

a. Current Reporting for Large Hedge Fund Advisors

Advisors to qualifying hedge funds must now complete Section 5 of Form PF for any “current reporting event” within 72 hours from the occurrence of this event. A sample of potential trigger events that are required to be reported on within 72 hours include:

- 20% or greater loss in the reporting fund aggregate calculated value (“RFACV”) over 10 business days. Section 5 Item B.
- Prime broker terminates or materially restricts its relationship with the fund. Section 5 Item F.
- Redemption failure, where the fund is unable to pay redemption requests. Section 5 Item I.
- Suspension of redemption for more than 5 consecutive business days. Section 5 Item I.

b. Quarterly Reporting for Private Equity Fund Advisors

Private equity fund advisors must complete Section 6 of Form PF which must now be filed quarterly if one of several trigger events occur. An example of potential trigger events that would require filing within 60 days of the fiscal quarter end include:

- Closing of an Adviser-led Secondary Transaction. Section 6 Item B.
- General Partner Removal. Section 6 Item C.
- Termination of the Investment Period or Termination of Fund. Section 6 Item C.

c. Revised Reporting Requirements

The revisions to Form PF to provide more detailed information on events that could significantly impact markets and the reporting funds themselves. For example, the updated reporting form requires more detailed reporting on the nature of any default events by the reporting fund and any of its controlled portfolio companies. Section 4 Item 77a. In the realm of increased specificity regarding reporting on events that could impact the fund, large private equity fund advisors will now be required to report annually information pertaining to any general partner or limited partner clawback that occurred during the past year. Section 4 Item 82. The information required in this situation is the effective date of the clawback, whether the clawback is a limited partner clawback or general partner clawback as defined by Form PF, and the reason for the clawback. Additionally, the revised Form PF Section 4 provides an opportunity to provide additional information that the filer believes would be helpful in understanding the information reported in response to any question in Section 4.

d. Outlook

Whether the data gathered as part of the reporting can be repurposed for easier due diligence for ongoing monitoring by benefit plan investors in these funds remains to be seen. We recommend that plan fiduciaries continue to pay attention to these developments and to consider how to leverage these reporting activities for the plan’s investing activities.