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Kirkland AIM

SEC Proposes Significant Amendments to Private Fund Manager Reporting on Form PF

31 January 2022

On January 26, 2022, the SEC voted to propose significant amendments to Form PF. Form PF, which was adopted in 2011 in connection with the Dodd-Frank Act, requires large registered investment advisers to file reports with the SEC regarding private funds managed by such advisers and to allow the Financial Stability Oversight Council to assess systemic financial risk to the U.S. financial system. Currently, reports on Form PF for large private equity fund managers (usually including real estate and private credit within this category) are filed annually and for hedge funds quarterly. Unlike many other SEC filings, Form PF filings are not public.

The SEC proposed amendments include:

- new current reporting (i.e., within one (1) business day) requirement for certain significant events involving large private equity fund advisers and hedge fund advisers;
- lowering AUM reporting thresholds for large private equity fund advisers from $2.0 billion to $1.5 billion; and
- the addition of new categories of information collected from large private equity fund advisers on fund strategies, leverage, controlled portfolio companies and portfolio company restructurings and recapitalizations.

A short 30-day public comment period will open after the date of formal publication of the proposed amendments in the Federal Register, which can often occur well after the SEC announcement of the proposal.

New Current Reporting Requirements

The proposed amendments would require current (i.e., within one (1) business day) reporting of the following events relating to private equity funds[1], which the SEC believes are indicators that the private funds are facing stress or could result in investor harm or potentially create systemic risk:

- **adviser-led secondary transactions**: current reporting would be required upon completion of any transaction initiated by the adviser or its related persons that offers investors a choice to either sell interests in the private fund or convert or exchange interests in the fund for interests in another vehicle advised by the adviser or its related persons. Reporting would include the adviser-led secondary transaction completion date and a brief description of the transaction;
- **general partner ("GP") or limited partner ("LP") clawbacks**: current reporting would be required upon implementation of any GP or LP clawback. The proposal defines (1) a GP clawback as an obligation of the GP or its related persons to return performance-based compensation to a fund, as required by the fund's governing documents and (2) an LP clawback as an obligation of a fund's investors to return a distribution made by the fund to satisfy a liability, obligation or expense of the fund, as required by the fund's governing documents, that is in excess of 10% of a fund's aggregate capital commitments. Reporting would include the effective date of and a brief description of the reason for the clawback; and
- **removal of a fund's GP, termination of a fund's investment period or termination of a fund**: current reporting would be required if investors take formal action to remove the adviser as GP, elect to terminate the fund's investment period or elect to terminate the fund. Reporting would include the effective date and description of the termination event.

Lower Reporting Threshold

The proposed amendments would lower the reporting threshold for large private equity advisers from $2 billion to $1.5 billion in private equity fund assets under management.

Additional Information Required in Form PF for Private Equity Fund Advisers

The proposal adds new questions to Form PF to collect information from large private equity advisers on fund investment strategies, restructurings or recapitalizations of portfolio companies, investments in different levels of a single portfolio company's capital structure (by a reporting fund and other funds managed by the adviser), fund-level borrowings, financing of or extension of credit to portfolio companies, and controlled portfolio companies and borrowings of controlled portfolio companies.

Please contact the Kirkland regulatory attorneys with whom you regularly work if you have questions regarding these proposals.

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1. New current reporting requirements for large hedge fund managers would include: (1) losses of over 20% of NAV; (2) significant margin and counterparty events of default; (3) material changes in prime broker relationships; (4) changes in unencumbered cash; (5) significant disruptions in key operations; and (6) significant redemption events. Under the proposals, large liquidity fund advisers would also face enhanced reporting requirements. ↩

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Suggested Reading

- 22 December 2021 Kirkland AIM 2022 Private Fund Manager U.S. SEC/CFTC Filing Deadlines and Key Dates
- 18 November 2021 Kirkland AIM SEC Chairman Gensler Seeking to Bring “More Sunshine and Competition” to Private Funds; Division of Examinations Issues Observations on Fee Calculations
- 19 April 2021 Kirkland AIM SEC’s Examination Division Issues Priorities for 2021