

## Statement

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# Statement on Final 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



**Commissioner Mark T. Uyeda**

**May 3, 2023**

Thank you, Chair Gensler. Today, we are voting on the recommendation to finalize the first of two outstanding proposals to amend Form PF. When Form PF was first adopted in 2011, then-Commissioner Paredes stated that “[t]he final rule fulfills Dodd-Frank’s statutory directive to the Commission to collect information on behalf of [the Financial Stability Oversight Council (“FSOC”)], and does so in a way that reduces the compliance burden on advisers in important respects as compared to the rule the Commission initially proposed.”<sup>[1]</sup> Today’s amendments are the first step to reversing those initial, fruitful efforts at effective regulation. The amendments significantly expand the scope of the Form’s reporting requirements and increase the frequency of filings for large hedge fund advisers and private equity fund advisers. Yet the Commission fails to identify any particular need for the additional information or provide a clear picture of how the information might further the Commission’s investor protection mission.

To collect information on Form PF, the Commission relies on amendments to the Investment Advisers Act of 1940 (“Advisers Act”) made by Title IV of the Dodd-Frank Act.<sup>[2]</sup> Title IV authorizes the Commission to require private fund advisers to file reports if “necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by [FSOC].”<sup>[3]</sup> Today’s amendments invoke the need to “enhance [FSOC’s] ability to monitor systemic risk as well as bolster the SEC’s regulatory oversight of private fund advisers and investor protection efforts.”<sup>[4]</sup> However, the Commission’s low threshold for imposing additional reporting requirements on private fund advisers is merely that particular events “*could* have systemic risk implications or negatively impact investors.”<sup>[5]</sup>

In contrast to the theoretical systemic risk and investor protection concerns that these amendments are intended to address, the Adopting Release acknowledges that the amendments “will” impose additional costs, which are “most

likely to be borne by private funds, and therefore by private funds' investors.”<sup>[6]</sup> So what has changed that compels the Commission to impose new costs on fund investors? According to the Adopting Release, after a decade of analyzing Form PF data, “the Commission and FSOC identified significant information gaps and situations where more granular and timely information would improve [their] understanding of the private fund industry and the potential systemic risk within it, and improve [their] ability to protect investors.”<sup>[7]</sup> The Adopting Release fails to explain how the Commission and FSOC identified these so-called “information gaps,” how receiving more information more frequently is appropriate in light of the known costs, or how receiving this information will specifically protect investors. After all, the Commission does not have any ability to bail out these funds, and the information reported on Form PF is reported to the Commission on a confidential basis, and therefore is not useful to investors for purposes of assessing a private fund’s risk-return profile.

Though not cited in the Adopting Release, FSOC appears to base its need for more information on an analysis conducted by FSOC’s Hedge Fund Working Group in 2021,<sup>[8]</sup> which “identified gaps in the availability of data related to hedge funds.”<sup>[9]</sup> According to the minutes of the February 2022 meeting of FSOC, the working group “identified two potential financial stability risks from hedge funds: market disruptions from forced liquidations of leveraged positions, and transmission of stress to large or highly interconnected counterparties.”<sup>[10]</sup> Rather than spelling out the specific information that might address these concerns, the minutes of that meeting merely state that council members “had a discussion regarding gaps in member agencies’ data regarding hedge funds and private funds, and potential approaches to address those data gaps.”<sup>[11]</sup>

Perhaps this is why the Adopting Release for today’s amendments makes broad and sweeping references to “systemic risk” and “investor protection” without providing any specific examples of private fund failures that would have been prevented or mitigated by the additional burdens the Commission seeks to impose. Instead, the undefined terms “systemic risk” and “investor protection” are used as shields to defend a kitchen-sink data collection effort with no discernable practical purpose. Balanced against the known costs of these burdens – which the Commission expressly states will be borne by investors – the recommendation that we are considering today may be characterized as arbitrary and capricious.

Exactly what burdens does the Commission seek to impose today? First, large hedge fund advisers will need to file new current reports with respect to certain triggering events at a qualifying hedge fund. The reports must be filed as soon as practicable, but no later than 72 hours after the occurrence of the reporting event. This timeframe arguably is even shorter than the proposed timeframe of one business day, since “as soon as practicable” might be shorter than one business day. In addition, commenters stressed that the low thresholds that trigger the current reporting requirements would cause advisers to file “false positive” reports that are not indicative of systemic risk. Instead of addressing these concerns, the Adopting Release touts that the amended Form will include “check boxes” providing additional context. Apparently, these check boxes will “allow the Commission and FSOC to review and analyze the current reports and screen false positives.”<sup>[12]</sup> A careful approach to regulation crafts a reporting regime that eliminates or minimizes false positives in the first place.

These amendments also will require all private equity fund advisers to provide new information on a quarterly basis upon: (1) the execution of an adviser-led secondary transaction, or (2) an investor election to remove a fund’s general partner or to terminate a fund’s investment period or a fund itself. In addition, Section 4 of Form PF will be amended to require large private equity fund advisers to annually report on the implementation of a general partner or limited partner clawback. As with the large hedge fund reporting items, the Adopting Release struggles to provide concrete examples of how the information obtained in response to these new reporting items will be used to address systemic risk or investor protection concerns. Indeed, the Adopting Release acknowledges that certain events, such as adviser-led secondary transactions, can “indicate strength in a particular investment in certain cases.”<sup>[13]</sup>

Perhaps most glaring is the statement in the Adopting Release that adviser-led secondary transactions “may present conflicts of interest that merit timely reporting.”<sup>[14]</sup> This justification ignores the fact that the Commission separately has proposed rules that would address perceived conflicts of interest with respect to adviser-led

secondary transactions.<sup>[15]</sup> Those amendments would require an adviser to obtain a fairness opinion in connection with certain adviser-led secondary transactions, which, according to that proposing release “would provide an important check against an adviser’s conflicts of interest.”<sup>[16]</sup> This serves as yet another example of the Commission’s failure to assess the cumulative impact of its numerous and overlapping proposed rules. The potential for a conflict of interest is used to justify a new reporting requirement on Form PF, while a separate rule proposal purports to mitigate that very conflict. Accordingly, the economic analysis underlying the amendments is incomplete due to the failure to account for changes that might be made by parallel rulemaking proposals.

Using the Dodd-Frank Act’s mandate regarding systemic risk and investor protection, the Commission now seeks to expand Form PF to serve as a fishing expedition on private funds, the costs of which will be passed on to fund investors. If anything, today’s amendments will serve merely as a trigger to initiate enforcement actions or targeted examinations against private funds. In the absence of any articulated need or use for this information, I am unable to support today’s amendments. I thank the staff in the Divisions of Investment Management and Economic and Risk Analysis, as well as the Office of the General Counsel, for their efforts.

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[1] See Commissioner Troy A. Paredes, Statement at Open Meeting to Adopt Form PF (Oct. 26, 2011), available at <https://www.sec.gov/news/speech/2011/spch102611tap.htm>.

[2] See 15 U.S.C. 80b–4(b).

[3] *Id.*

[4] See Amendments to Form PF to Require Current Reporting for Large Hedge Fund Advisers and Amend Reporting Requirements for Large Private Equity Fund Advisers, Advisers Act Release No. 6297 (May 3, 2023) (“Adopting Release”), at 1, available at <https://www.sec.gov/rules/final/2023/ia-6297.pdf>.

[5] *Id.*, at 10. (Emphasis added.)

[6] *Id.*, at 132. The Adopting Release notes that “some portion of these costs may be borne by advisers.” *Id.*

[7] *Id.*, at 5.

[8] See Financial Stability Oversight Council (FSOC), 2022 Annual Report (2022), at 44, available at <https://home.treasury.gov/system/files/261/FSOC2022AnnualReport.pdf>.

[9] *Id.*

[10] See Minutes of the Financial Stability Oversight Council (Feb. 4, 2022), at 4, available at <https://home.treasury.gov/system/files/261/February-4-2022-FSOC-Meeting-Minutes.pdf>.

[11] *Id.*, at 5.

[12] Adopting Release, *supra* note 4, at 13.

[13] *Id.*, at 62.

[14] *Id.*, at 63.

[15] See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Advisers Act Release No. 5955 (Feb. 9, 2022) [87 FR 16886 (Mar. 24, 2022)], available at <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>.

[16] *Id.*

