Statement

Statement on Proposed Amendments to Form PF

Commissioner Caroline A. Crenshaw

Aug. 10, 2022

Today's Form PF proposal would provide the SEC, CFTC, and Financial Stability Oversight Council ("FSOC") with important information to keep apace with the myriad changes in the private funds space.

Our mandate in this area is clear. In enacting Dodd-Frank, Congress authorized the Commission to require advisers to private funds to file reports regarding those funds "as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council."[1] In so passing, Congress clearly and pointedly recognized the need for data on the parts of both FSOC, to assess and protect against risks to the stability of our financial systems, and the SEC to protect investors. It did not relegate or subjugate the SEC's mission of protecting investors.[2]

And today's proposed rule serves those purposes. If adopted, it would improve the quality and consistency of data collected from private fund advisers. And, in doing so, it would improve FSOC's ability to gauge systemic risk in the financial industry, and the SEC's ability to appropriately plan and resource our regulatory examination and investigative programs, and overall to better protect investors. As noted in connection with the Form PF amendments earlier this year, the private fund industry has changed dramatically in the decade since Form PF was first proposed. Since the SEC began analyzing Form PF data, the value of net assets reported has more than doubled.[3] And private fund advisers are concentrating in different spaces than they did a decade ago – such as digital assets, litigation finance, and credit, among others. In other words, more investor funds are flowing into these new or emerging spaces where our observability is significantly more limited than in the public markets. Making sure that we collect the right data to assess risk and protect our financial markets and investors is therefore paramount.[4]

The proposal sharpens our pencils. It reflects nearly a decade of learning from the data collected – to see what information has been helpful, what questions have led to inconsistent reporting, and what gaps continue to exist. It focuses on improving the quality of the data that we are collecting, which will hopefully lead to better analysis and preparedness on both a macro-scale as well as at firm-specific levels.

For example, the proposal would require all private fund advisers to provide information for each reporting fund on withdrawal and redemption rights, which would provide the Commissions and FSOC more information on funds' susceptibility to stress through redemptions. The proposal would also update the reporting of gross and net asset values, fund performance, as well as reporting on specific information relating to fund inflows and withdrawals, redemptions and distributions. These data must be accurate to assess industry trends, identify areas of market stress or fragility, compare volatility across different fund types and sectors, and verify information provided in investor disclosures. The proposal also would revise how advisers report assets and liabilities using the fair value hierarchy established under U.S. GAAP, which is a key indicator of liquidity and the complexity of a fund's portfolio. It would require the reporting of more comprehensive and comparable information on borrowings and creditors, counterparty exposure, exposure to certain classes of assets, and counterparty credit risk, which would strengthen the ability to identify areas of programmatic weakness. And, it would require further standardization of basic identifying information through Legal Entity Identifiers, or LEIs.[5] These are among other important areas where we are proposing to hone our data.

At the same time, the proposal recognizes that some information collected on Form PF has not been helpful to the Commissions or FSOC and, based on that assessment, proposes to stop requiring such information from advisers.[6]

Data collection and analysis may not be flashy, but it is foundational. I think we can all agree that, where we collect these data, it should the right data; this is the cause that we serve here today. Our effective use of data help us manage risk, preserve the integrity of the markets, and ultimately, protect investors and their lifetime savings. There is no substitute for preparedness in these areas. So, I am happy to support this proposed rule.

As always, I want to extend my gratitude to our talented staff in the Division of Investment Management, DERA and the general counsel's office. This proposal is technical and precisely drafted, and it reflects craftsmanship and expertise. Thank you for your dedication and your hard work on this. I also want to thank the Chair and his staff for their guidance in this area. And I want to thank our partners at the CFTC and FSOC, as well as the Department of Treasury and the Federal Reserve Board for working with us on this proposal. Our government works best, and provides the most effective safeguards for investors, when sister agencies and departments work together, and this proposed rulemaking is yet another example of that effective collaboration.

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[1] 15 U.S.C. 80b-4(b); *see also* 15 U.S.C. 80b-11(e).

[2] There have been suggestions that, for purposes of Form PF, the SEC's collection of data for its regulatory program is ancillary to the collection of data for FSOC. *See, e.g.,* SEC Proposes Amendments to Form PF to Increase Oversight of Private Fund, The National Law Review, Vol. XII No. 40 at n.4 (Feb. 9, 2022). The congressional text, however, undermines this argument.

[3] Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers ("Proposed Release") Rel. No. IA-6083 at 8, n.7 (comparing net assets reported from 2013 to Q3 2021).

[4] *See* Financial Stability Oversight Council Statement on Nonbank Financial Intermediation (February 4, 2022) ("The Hedge Fund Working Group also ascertained that gaps exist in the availability of data related to hedge funds, and Council member agencies are taking steps to address these gaps.").

[5] Proposed Release at 22-24; *see also* FSOC 2021 Annual Report at 170-171 ("Broader adoption of the LEI by financial market participants continues to be a Council priority.").

[6] *E.g.*, Proposed Release at 12 (removing certain requirements to report parallel managed accounts, which may reduce the quality of data while imposing additional burdens on advisers); *id.* at 74-77 (eliminating the requirement for large hedge fund advisers to report certain aggregated information about the hedge funds they manage under current Section 2a relating to hedge funds advised by large private fund advisers).