

# Statement on Proposed Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers



**Commissioner Hester M. Peirce**

**Aug. 10, 2022**

Thank you, Mr. Chair. Although I have called for changes to Form PF, neither the changes we are considering today, nor the ones we proposed on January 26th, are what I had in mind. Today's amendments—which the Commodity Futures Trading Commission ("CFTC") is joining us in proposing—would expand Form PF by adding questions of the nice to know, rather than need to know variety.<sup>[1]</sup> Why we need the new information and what we plan to do with it are questions left to the reader's imagination. Accordingly, I am unable to support the proposal.

Form PF's primary purpose is to serve the Financial Stability Oversight Council ("FSOC"), the systemic risk regulator created by Dodd-Frank. As I explained in January, when we were proposing the first round of changes, "the Commission's use of Form PF information in conducting its regulatory program is ancillary to the underlying purpose of facilitating FSOC's monitoring for systemic risk."<sup>[2]</sup>

Just as the January proposal did, today's proposal stretches a very limited data collection tool beyond its intended purpose. Many commenters on the January proposal noticed the shift in purpose.<sup>[3]</sup> As before, I find our stated reasons for today's overreach inadequate and unconvincing.

Regulatory bingo players should include "granular" on their bingo cards for this proposal. The release repeatedly reminds the reader that the SEC, the CFTC, and FSOC need more granularity to assess systemic risk and investor protection issues. For instance, the proposal would require advisers to disclose more granular strategy categories, more granular information about the value of long and short-positions, more granular information about beneficial owners, more granular insight into redemption rights,<sup>[4]</sup> more granular return information, and more granular data about inflows and outflows.

"Systemic risk" also ought to be on that bingo card. As an homage to Form PF's overriding purpose, the release frequently cites "systemic risk" to legitimize the proposed harvesting of data relating to individual fund characteristics or actions. The FSOC, however, does not need to have this kind of detailed knowledge of individual private funds' activities to fulfill its mandate to identify risks to financial stability, promote market discipline, and respond to emerging financial stability threats.

The release avoids grappling with the line between the risks an individual fund may pose to its own investors and systemic risk. As one example, the release asks for more granular information on listed equities. The release explains that "single equity positions may be more vulnerable to short squeezes."<sup>[5]</sup> True enough. The release further explains that "the level of granularity the proposal would obtain with respect to this information" would help identify "entities that may be affected during a short squeeze event."<sup>[6]</sup> While high profile short

squeezes in recent years have affected certain hedge funds, nothing in the release suggests these short squeezes created systemic risk. Nor does the release explain what proactive measures we or FSOC intend to take should we have such data. Would regulators step in to prevent funds from taking short positions or to prevent other market participants from buying the securities these funds have sold short? Neither intervention would aid financial stability. In fact, they could do the opposite. Better data around aggregate short positions might be helpful, but we are working on other ways to get those data.<sup>[7]</sup>

The regulatory implications are equally troubling if the purpose of the more granular information is to protect investors. Private fund investors—typically, institutional investors, such as insurance companies, university endowments, pension funds, and high income and net worth individuals<sup>[8]</sup>—are capable of making their own risk assessments. The SEC should not step in to protect them when their investments do not work out as hoped. As one commenter on the January proposal observed:

[T]he Commission appears to conflate investment protection with mitigation of investment risk. For example, investment losses or losses resulting from market stresses are typical investment risks inherent in this – and indeed all – types of investments. We do not believe that the Commission’s investor protection mission should extend to protecting investors from fully-disclosed investment risk.<sup>[9]</sup>

Acquiring every missing piece of data about private funds is not necessary for us to do our jobs. Mandating the provision of more detailed information, of course, would provide FSOC and the two Commissions with a more detailed picture of private funds. We do not need every detail. We should be asking consistently throughout the release whether the unreported pieces of data prevented FSOC from identifying systemic risks, and based on that experience, how these new filing requirements would materially enhance FSOC’s oversight. More basic still: what *specifically* do we intend to do with the information we are so eager to have?

Also fundamental: Will we be able to protect the data we collect? One industry trade group, concerned about cybersecurity threats, urged the Commission in a 2018 letter to substitute the use of alphanumeric identifiers for names when populating Form PF.<sup>[10]</sup> Whether or not alphanumeric identifiers are the right way to do it, we need to protect the data we collect. The more information we demand and store, the more tempting a target it becomes and the greater the obligation we have to ensure that we are keeping it safe. Stolen data could become a systemic threat.

Perhaps the blossoming of Form PF into a tool to scrape detailed information about private funds is simply part of a larger effort to ramp up regulation of the private markets. That campaign is proceeding at a pretty good clip these days. As a result, however, costs for private fund advisers—and their investors—will increase and barriers to entry will grow higher, to the detriment of potential innovation, would-be new entrants, and investor returns. Retail investors may pay a different kind of price; if SEC staff are focused on watching the private markets, retail investors, who are generally excluded from private funds, will get less SEC time and attention.

Worse yet, by making Form PF more granular, the proposal contributes to a tired narrative, yet one that is popular among our FSOC colleagues: namely that a systemic risk shadow lurks behind every hedge fund activity. The Commission should reject this narrative not to protect its regulatory prerogatives, but because the narrative is false and because any new authority exercised at the behest of the FSOC would likely look a lot like bank regulation. Increasing bank-like regulation on private funds would impair their ability to serve the broader economy and eat away at one of their most important features—their ability to fail when the investment decisions they make do not pan out.

Form PF is more than ten years old, so revisiting it in light of intervening events and our experience with the data makes sense. In isolation and with proper justification, some of today’s proposed amendments might be worthwhile. In fact, staff has recommended a number of changes to streamline and rationalize the form and reporting process, and eliminate redundancies. Although the comment period is regrettably short, I urge commenters to suggest other ways to right-size Form PF.

I offer my thanks to our sister agency, the CFTC, for collaborating with us on this project. Thank you also to the staff of the Divisions of Investment Management, Economic and Risk Analysis, and Examinations, the Office of the General Counsel, and other offices throughout the Commission. Although I am unable to support today’s proposal, I appreciate all of the work and effort staff have expended. I am particularly grateful for the attempts

you made to streamline Form PF in certain areas and for your discussions with me about the proposal and about your experiences with Form PF. As always, I look forward to hearing from commenters, whose insights about which data we should collect and how we can use it will inform my thinking on both this proposal and January's proposal.

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[1] Former CFTC Commissioner Brian Quintenz's observations on the CFTC's Form CPO-PQR, which was modeled on Form PF, come to mind: "In my view, many of the questions on the existing form are more academic than pragmatic in nature – information that may be nice for the Commission to have, but data that is certainly not necessary for the Commission to effectively oversee commodity pools and the derivatives markets." Brian D. Quintenz, Former Commissioner, CFTC, Supporting Statement from Commissioner Brian D. Quintenz on Final Rule to Amend Compliance Requirements for Commodity Pool Operators on Form CPO-PQR (Oct. 6, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement100620>. .

[2] See Hester M. Peirce, Commissioner, SEC, Statement on Proposed Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers (Jan. 26, 2022), [https://www.sec.gov/news/statement/peirce-form-pf-20220122#\\_ftnref1](https://www.sec.gov/news/statement/peirce-form-pf-20220122#_ftnref1) (citing Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Advisers Act Release No. 3308 (Oct. 31, 2011), [76 FR 71128 (Nov. 16, 2011)], <https://www.sec.gov/rules/final/2011/ia-3308.pdf>., at p.17 ("Form PF is primarily intended to assist FSOC in its monitoring obligations under the Dodd-Frank Act, but the Commissions may use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.")).

[3] See, e.g., Comment letter from TIAA, March 21, 2022 ("[w]e find the Commission's proposed requirements to be overbroad, lacking in specificity, and poorly designed to balance the costs of reporting with the potential benefits to investors, regulators, and the market as a whole"), <https://www.sec.gov/comments/s7-01-22/s70122-20120745-272909.pdf>; Comment letter from New York City Bar, March 21, 2022 ("It is not clear to the Committees, however, that this enhanced reporting requirement would enhance monitoring capabilities, yet the Proposal would seem to enhance the Commission's regulatory and enforcement function. The Committees question whether more data is in fact necessary. What will the FSOC or the Commission do with the extra information, as it is unclear how it would be used to help investors?"), <https://www.sec.gov/comments/s7-01-22/s70122-20120727-272885.pdf>; Comment letter from SIFMA, March 21, 2022 ("We do not believe the Commission has established sufficient regulatory need for the additional proposed reporting. Nor do we believe that the Commission has demonstrated that such reporting would provide the Commission or the [FSOC] with meaningful information for their monitoring of investor protection or systemic risk concerns."), <https://www.sec.gov/comments/s7-01-22/s70122-20120725-272884.pdf>; Comment letter from the Real Estate Board of New York, March 21, 2022 ("Unfortunately, the SEC has provided no adequate analysis demonstrating how the new information required by the proposal would benefit investors or reduce systemic risk."), <https://www.sec.gov/comments/s7-01-22/s70122-20120678-272850.pdf>; Comment letter from U.S. Chamber of Commerce, March 21, 2022, ("This expansion of Form PF is not consistent with the original motivation for developing Form PF under the Dodd-Frank Act. We are concerned that the scope of new reporting and requirement for one-business day reporting would enable the Commission to unnecessarily interfere with private fund management and make inappropriate or inaccurate inferences about isolated events affecting a private fund."), <https://www.sec.gov/comments/s7-01-22/s70122-20120670-272845.pdf>.

[4] Currently only large hedge fund advisers are required to report whether qualifying hedge funds provide investors with withdrawal or redemption rights. We are proposing to expand this reporting obligation to all funds, for the stated reason that it will "inform the Commissions and FSOC better of all reporting funds' susceptibility to stress through investor redemptions." Proposing Release at 32.

[5] Proposing Release at 94.

[6] *Ibid*.

[7] See Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-94313, (Feb. 25, 2022) <https://www.sec.gov/rules/proposed/2022/34-94313.pdf> and Hester M. Peirce Commissioner, SEC, Statement on Proposal to Require Short Position and Short Activity Reporting by Institutional Investment Managers (Feb. 25, 2022) <https://www.sec.gov/news/statement/peirce-statement-proposal-require-short-position-022522>.

[8] See, e.g., Private Equity Funds, SEC Investor Bulletin <https://www.investor.gov/introductioninvesting/investing-basics/investment-products/private-investment-funds/private-equity> (discussing who can invest in private funds).

[9] See IAA Comment letter, Comment letter from Investment Adviser Association, March 21, 2022, <https://www.sec.gov/comments/s7-01-22/s70122-20120729-272886.pdf>.

[10] See MFA Letter to Chairman Clayton, Sept. 17, 2018, [https://www.managedfunds.org/wpcontent/uploads/2020/04/MFA.Form-PF-Recommendations.attachment.final\\_.9.17.18.pdf](https://www.managedfunds.org/wpcontent/uploads/2020/04/MFA.Form-PF-Recommendations.attachment.final_.9.17.18.pdf) (“To enhance protections for registrant data, we think the Commission should require the use of alphanumeric identifiers within Form PF to obscure the identity of the registrant and its funds to anyone who gains access to the filings without authorization.”).