

CLIENT ALERT

SEC and CFTC Adopt Substantial Amendments to Form PF

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The Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC,” and together with the SEC, the “Commissions”) recently voted to jointly adopt amendments to Form PF (the “Amendments”). The Amendments significantly increase the amount of information required to be included on Form PF and limit the flexibility in responding to a number of questions on the form.¹ The Amendments represent the latest increase in the regulatory burdens placed on private fund advisers. In particular, many Form PF filers just recently implemented, on December 11, 2023, compliance with the SEC’s amendments to Form PF for large hedge fund advisers and advisers to private equity funds to promptly report certain events.²

Notably, the Amendments will (i) enhance reporting requirements of large hedge fund advisers and qualifying hedge funds, (ii) enhance reporting on basic information about advisers and the private funds they advise, (iii) require more detailed information about the investment strategies, counterparty exposures, and trading and clearing mechanisms employed by hedge funds, and (iv) generally require large hedge fund advisers to report information on a disaggregated basis for master-feeder funds and parallel funds. Certain of the changes in the Amendments overlap with disclosures currently included in

¹ See Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, Investment Advisers Act of 1940 (the “Advisers Act”) Release No. 6546 (Feb. 8, 2024) (the “Adopting Release”), *available* [here](#).

² 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, Advisers Act Release No. 6297 (May 3, 2023) (the “May Amendments”). For a discussion of the May Amendments, please see the Willkie Farr & Gallagher LLP (“Willkie”) Client Alert, *available* [here](#).

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CFTC Form CPO-PQR, such as information regarding withdrawals and redemptions, identifying sub-asset classes and portfolio exposures, counterparty exposures, and providing monthly performance information. The Amendments also will make certain timing changes that more closely align Form PF with Form CPO-PQR. While these changes may be thematically consistent with the information already provided in Form CPO-PQR, the presentation between the forms would still differ.

The Commissions proposed the Amendments in August 2022 (the “Proposed Amendments”) to address “information gaps and situations where revised information would improve” their understanding of the private fund industry and potential systemic risk within it.³ The Amendments represent a joint proposal of the Commissions, and they also reflect input from other members of the Financial Stability Oversight Council (“FSOC”), including the Department of the Treasury and the Federal Reserve Board.⁴

The Commissions note in the Proposing Release that since Form PF was initially adopted, the private fund industry has grown in size and evolved in terms of business practices, complexity of fund structures, and investment strategies and exposures. The value of private fund net assets reported on Form PF has more than doubled, growing from \$5 trillion in 2013 to \$14 trillion in through the first quarter of 2023, while the number of private funds reported on the form has increased by nearly 130 percent.⁵ Citing the increasing complexity and evolution of the private funds space, the Commissions indicated that the Amendments are designed to enhance the information private fund advisers file on Form PF and improve data quality.

In light of these developments, the Amendments are part of a broader regulatory effort to increase transparency of private funds. On August 23, 2023, the SEC adopted new rules and amendments under the Advisers Act that substantially modify existing regulatory requirements and create new compliance obligations for private fund advisers (the “Private Fund Adviser Rule”).⁶ In addition, the May Amendments, which amend the SEC-only sections of Form PF (sections 3, 4, 5, and newly adopted section 6), will, among other things, create new reporting requirements and require large hedge fund advisers and advisers to private equity funds to report certain events within 72 hours of the event. While the Amendments and the May Amendments do not directly overlap in the sections of Form PF they address, together they provide for a comprehensive overhaul in Form PF’s structure.

³ See Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers, Advisers Act Release No. 6083 (Aug. 10, 2022) (the “Proposing Release”) at 8-9, available [here](#). Please also see the Willkie Client Alert on the Proposed Amendments, *available here*.

⁴ See Statement on Form PF, Gary Gensler, SEC Chairman (Jan. 26, 2022), *available here*.

⁵ See Adopting Release at n.5.

⁶ See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Advisers Act Release No. 6383 (Aug. 23, 2023) (the “Private Fund Adviser Rule Release”). For a discussion of the new rules and amendments, please see the Willkie Client Alert, *available here*.

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Summary of the Amendments

Form PF is the confidential reporting form used by certain SEC-registered investment advisers to private funds, including those that may also be registered with the CFTC as a commodity pool operator (“CPO”) or commodity trading advisor (“CTA”). The Commissions jointly adopted Form PF in 2011 in connection with the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).⁷ It requires certain registered investment advisers to file reports with the SEC regarding private funds⁸ managed by such advisers and is intended to provide the Commissions and FSOC with information about the operations and strategies of private funds,⁹ and to provide data on private funds to FSOC in connection with its responsibility to assess systemic financial risks to the U.S. financial system. The Amendments are intended to enhance FSOC’s monitoring and assessment of systemic risk as well as bolster the Commissions’ regulatory oversight of private fund advisers and investor protection efforts.¹⁰

While a number of the changes in the Amendments target “large” hedge fund advisers and “qualifying hedge funds,”¹¹ the Amendments are not limited to large advisers and hedge funds. A number of the Amendments apply equally to all filers, regardless of size.

The Amendments focus on three primary areas of concern identified by the Commissions:

- *Amended Reporting for All Filing Advisers and Private Funds.* The Amendments make universal changes to certain identifying information regarding advisers and their private funds, regardless of size, including information regarding

⁷ See 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), [available here](#).

⁸ Private funds are pooled investment vehicles that are excluded from the definition of “investment company” under the Investment Company Act of 1940 by Section 3(c)(1) or 3(c)(7) of that act. The term “private fund” generally includes funds commonly known as hedge funds and private equity funds.

⁹ A private fund adviser is required to complete Form PF if (A) (i) it is registered or required to register with the SEC as an investment adviser; or (ii) it is registered or required to register with the CFTC as a CPO or CTA and also registered or required to register with the SEC as an investment adviser; (B) it manages one or more private funds; and (C) it and its related persons, collectively, had at least \$150 million in private fund assets under management as of the last day of its most recently completed fiscal year. The current version of Form PF is available [here](#).

¹⁰ Form PF filings are made pursuant to the Advisers Act and through the Investment Adviser Registration Depository, and are therefore subject to the authority and control of the SEC, but the Commissions have entered into a Memorandum of Understanding (the “MOU”) related to the sharing of Form PF data. See Memorandum of Understanding between the SEC and CFTC regarding the Use of Form PF Data (Feb. 8, 2024), [available here](#). SEC Commissioner Mark T. Uyeda and CFTC Commissioner Caroline D. Pham issued a joint statement objecting to the MOU in part because the MOU could expose Form PF data to cybersecurity threats. See Joint Statement of SEC Commissioner Mark T. Uyeda and CFTC Commissioner Caroline D. Pham: Memorandum of Understanding Between the SEC and the CFTC Regarding the Use of Form PF Data (Feb. 8, 2024), [available here](#).

¹¹ The Form PF Glossary of Terms defines “large” hedge fund advisers as those, collectively with their related persons, with at least \$1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding the adviser’s most recently completed fiscal quarter. The Form PF Glossary of Terms defines qualifying hedge funds as hedge funds with a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least \$500 million as of the last day of any month in the fiscal quarter immediately preceding the adviser’s most recently completed fiscal quarter.

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assets under management, withdrawals and redemptions, inflows and outflows, creditors, beneficial ownership and fund performance. The Amendments also make changes to the way master-feeder structures, funds of funds, and parallel funds are reported on Form PF, including requiring reporting on a disaggregated basis and adopting changes to the requirements concerning when advisers must “look through” certain fund investments.

- *Amended Reporting for Hedge Funds.* The Amendments generally require more information about the investment strategies and counterparty exposures of hedge funds, as well as information regarding trading and clearing.
- *Amended Reporting by Large Hedge Fund Advisers and Qualifying Hedge Funds.* These Amendments include reporting related to portfolio exposures, counterparty exposures, and country and currency exposures. Additional changes in the Amendments require performance information to be broken out by strategy, and portfolio and liquidity disclosures. Certain changes regarding the timing of filings apply to certain large advisers as well.

Notably, in a change from the Proposed Amendments, the Commissions did not adopt a definition of “digital assets,” though the Amendments do require hedge fund advisers to report certain information about digital assets.

The Amendments

1. Amendments to the General Instructions

The Amendments to the General Instructions address the reporting of (i) master-feeder arrangements and parallel fund structures; (ii) private funds that invest in other funds; and (iii) reporting timelines.

Reporting Master-Feeder Arrangements and Parallel Fund Structures

The Amendments generally require advisers to report separately each component fund of a master-feeder arrangement and parallel fund structure, except where a feeder fund invests all of its assets in a single master fund and/or cash and cash equivalents (*i.e.*, a disregarded feeder fund).¹² In a modification from the Proposed Amendments, the Amendments specify that a feeder fund should disregard any of its holdings in the master fund’s equity for the purpose of determining its reporting threshold (*i.e.*, a feeder fund would only be considered a qualifying hedge fund if its investments, not including the feeder fund’s investment in the single master fund, meet the reporting threshold).

In addition, the Amendments no longer permit advisers to separately report any “parallel managed accounts” (which is distinguished from “parallel fund structure”), except that advisers would continue to report the total value of all parallel

¹² A “master-feeder arrangement” is an arrangement in which one or more funds (“feeder funds”) invest all or substantially all of their assets in a single private fund (“master fund”). A “parallel fund structure” is a structure in which one or more private funds (each, a “parallel fund”) pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund. See Adopting Release at n.19; Form PF Glossary of Terms.

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managed accounts related to each reporting fund.¹³ Currently, advisers may, but are not required to, report information regarding parallel managed accounts in response to certain questions, except they must report the total value of all parallel managed accounts related to each reporting fund. The Adopting Release notes that this approach to aggregation will improve the quality of data for the Commissions' analyses and reduce reporting burdens on advisers.

Reporting Private Funds that Invest in Other Funds

The Amendments amend Instruction 7 of Form PF, which addresses how advisers treat private fund investments in other private funds (e.g., "fund of funds"). Currently, advisers include the value of private fund investments in other private funds in determining whether the adviser meets the filing threshold to file Form PF. The Adopting Release notes that while this requirement is implicit in the current Form PF, the Amendments make this requirement explicit.

The amendments to Instruction 7 also change how advisers treat the value of investments in other private funds for other purposes of Form PF. Currently, an adviser can choose to include or exclude investments in other private funds for purposes of Form PF's reporting thresholds and responding to questions on Form PF, as long as it does so consistently. The Proposed Amendments would have permitted advisers to include or exclude such investments for purposes of Form PF's reporting thresholds, but required including such investments in responding to questions on the Form. In a modification from the proposal, the Amendments amend Instruction 7 to require an adviser to include the value of investments in other private funds (including internal and external private funds) when determining whether (i) the adviser is required to file Form PF, (ii) the adviser meets the thresholds for reporting as a large hedge fund adviser, large liquidity fund adviser, or large private equity fund adviser, and (iii) a hedge fund is a qualifying hedge fund.

The Amendments also remove the current Form PF's concept of "disregarded" underlying funds (other than qualifying feeder funds). Currently, Form PF permits an adviser to disregard a private fund's equity investment in other private funds. The Amendments remove the ability to disregard investments in underlying funds and require an adviser to include the value of a fund's investments in other private funds (both internal and external underlying funds) in responding to questions under Form PF unless otherwise directed by the instructions to a particular question. In a modification from the Proposed Amendments, the Amendments add an instruction that provides if an adviser cannot avoid "looking through" to the reporting fund's investments in internal private funds or external private funds in responding to a particular question, then the adviser must provide an explanation of its responses in Question 4.

The Amendments also amend the reporting instructions for trading vehicles to require an adviser to "look through" trading vehicles (i.e., separate legal entities that hold assets, incur leverage, or conduct trading or other activities as part of the private fund's investment activities) for all questions. Given this modification, the Amendments also update Instruction 8 to

¹³ "Parallel managed accounts" are defined in the current Form PF Glossary of Terms as any managed account or other pool of assets managed by the adviser that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified private fund.

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exclude trading vehicles from the general requirement that an adviser must not “look through” a reporting fund’s investments in funds or other entities unless the question instructs the adviser to report exposure obtained indirectly through positions in such funds or other entities. With respect to trading vehicles, the Amendments require an adviser to aggregate the trading vehicle with any reporting fund that owns the trading vehicle in whole, or in part. If the reporting fund uses a trading vehicle, the Amendments would direct advisers to (i) identify the trading vehicle in Section 1b, and report answers on an aggregated basis for the reporting fund and such trading vehicle; (ii) look through the trading vehicle’s holdings on Form PF, adjusted for the reporting fund’s percentage ownership interest of the trading vehicle, in responding to questions on Form PF for the reporting fund; (iii) specify if the reporting fund holds assets through a trading vehicle, incurs leverage through a trading vehicle, or conducts trading or other activities through a trading vehicle; and (iv) report trading vehicles on a consolidated basis, but in response to certain questions will be required to identify the positions and counterparty exposures that are held through a trading vehicle, which the Commissions state will help differentiate the reporting fund’s exposures and risks from those of its trading vehicles.¹⁴ Currently, Form PF does not require advisers to identify trading vehicles.

Reporting Timelines

The Amendments amend Form PF Instruction 9 to require large hedge fund advisers and large liquidity fund advisers¹⁵ to update Form PF generally within 60 and 15 calendar days, respectively, after the end of each calendar quarter, rather than after each fiscal quarter, as Form PF currently requires. The Commissions note that this will align the Form PF and CFTC Form CPO-PQR reports.¹⁶ All other advisers will continue to file annual updates within 120 calendar days after the end of their fiscal year. Quarterly filers who have a fiscal year ending in a non-calendar quarter month are required to transition to the new timing requirement by their first calendar quarter-end filing for the first full quarterly reporting period after the compliance date. Form PF will continue to require all advisers to use fiscal quarters and years to determine filing thresholds, consistent with calculations under Form ADV.

Additional Amendments to the General Instructions

The Amendments also amend certain reporting requirements in connection with currency exposure, currency conversions, turnover, country and industry exposure, central clearing counterparties (“clearinghouses,” or “CCPs”) exposures, risk metrics, investment performance, portfolio liquidity, and financing liquidity. Notably, the Amendments amend Instruction 15 to provide that if a question requests a monetary value for transactional data that covers a reporting period, advisers should provide the information in U.S. dollars, rounded to the nearest thousand, using foreign exchange rates as of the dates of any transactions to convert local currency values to U.S. dollars. In addition, the Amendments specify how private fund

¹⁴ See Adopting Release at pp. 26-27.

¹⁵ The Form PF Glossary of Terms defines “large liquidity fund advisers” as those, collectively with their related persons, with at least \$1 billion in combined money market and “liquidity fund” (*i.e.*, any private fund that seeks to generate income by investing in a portfolio of short-term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors) assets under management.

¹⁶ It is worth noting that this does not imply a substitute for compliance with CFTC Form CPO-PQR reports.

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advisers determine the value of investment positions and counterparty exposures. Finally, the Amendments remove the term “EEA,” which current Form PF defines as the European Economic Area, and revise the term “G10,” which Form PF defines as The Group of Ten, to (i) remove outdated country compositions; and (ii) include an instruction that if the composition of the G10 changes after the effective date of the Amendments, advisers should use the current composition as of the data reporting date. In a significant change from the Proposed Amendments, the Amendments do not include a question requiring advisers to report portfolio correlation, which the Commissions acknowledged would have been overly complex and burdensome.

2. Amended Reporting for All Filing Advisers and Private Funds

Each adviser required to file Form PF must complete all or part of Section 1. The Adopting Release indicates that the amendments to Section 1 are designed to provide greater insight into private funds’ operations and strategies, and assist in identifying trends, including those that could create systemic risk, which in turn is designed to enhance investor protection efforts and systemic risk assessment.

Amendments to Section 1a of Form PF – Identifying Information

LEI for advisers and related persons. Section 1a requires an adviser to report identifying information about the adviser and private funds it manages. The Amendments require advisers to provide additional identifying information regarding the adviser, its related persons, as well as their private fund assets under management. Legal entity identifiers (“LEIs”) help identify entities and link data from different sources that use LEIs. Form PF currently requires advisers to report the LEI for certain entities, if they have one, such as for the reporting fund and any parallel fund and, in instances where the financial institution does not have an LEI, advisers must provide the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), if the financial institution has an RSSD ID. The Amendments remove this requirement and, instead, provide that advisers must not substitute any other identifier that does not meet the definition of an LEI. Advisers, however, will use the RSSD ID, if the financial institution has one, for questions that specifically request an RSSD ID, and for questions that require advisers to report any other identifying information where the type of information is not specified. In addition, the Amendments will require advisers to provide the LEI for themselves and their related persons, if applicable.

Assets under management. In addition to changes to the LEI disclosures, the Amendments alter how advisers report and calculate assets under management attributable to certain private funds. Current Question 3 in Form PF requires advisers to provide a regulatory breakdown of assets under management and net assets under management. The Amendments amend the instructions to direct advisers to exclude the value of private funds’ investments in other internal private funds to avoid double counting of fund of funds assets. Advisers will include the value of trading vehicle assets because, under the amended instructions for reporting trading vehicle assets discussed above, advisers are required to look through the reporting fund’s investments in any trading vehicles.

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Amendments to Section 1b of Form PF – Concerning All Private Funds

Section 1b requires advisers to report certain identifying and other basic information about each private fund the adviser manages. The Amendments amend Section 1b to require advisers to report additional identifying information about the private funds they manage as well as the private funds' assets, financing, investor concentration, and performance.

Type of private fund. The Amendments aim to prevent reporting errors and help ensure the accuracy concerning the reporting fund's type by requiring advisers to identify the reporting fund by selecting one type of fund from a list: hedge fund that is not a qualifying hedge fund, qualifying hedge fund, liquidity fund, private equity fund, real estate fund, securitized asset fund, venture capital fund, or "other." If an adviser identifies the reporting fund as "other," the adviser must describe the reporting fund in Question 4,¹⁷ including why it would not qualify for any of the other options. In addition, the Amendments require an adviser to indicate whether the reporting fund is a "commodity pool," which will be categorized as a hedge fund on Form PF. Finally, the Amendments require advisers to report whether a reporting fund operates as a UCITS or AIF, or offers itself as a money market fund outside the United States, and in which countries the fund offers itself (if applicable).¹⁸ These changes are intended to avoid double counting when Form PF data is aggregated with data sets collected outside of the United States.

Master-feeder arrangements, internal private funds, external private funds, and parallel fund structures. To reflect that advisers report components of master-feeder arrangements and parallel fund structures separately, the Amendments require advisers to report identifying information about master-feeder arrangements and other private funds (e.g., funds of funds), including internal private funds and external private funds.¹⁹ Form PF currently requires advisers to report identifying information about parallel funds, and will continue to do so under the Amendments. The Amendments will also require advisers to report the value of the reporting fund's investments in other private funds (e.g., funds of funds), as current Question 10 requires, but with more detail. Advisers will have to report the value of the reporting fund's equity investments

¹⁷ The Amendments amend current Question 4, which advisers use to explain assumptions that they make in responding to questions on Form PF, by adding an instruction directing advisers to provide the question number when the assumptions relate to a particular question.

¹⁸ The Amendments define the term "UCITS" as Undertakings for Collective Investment in Transferable Securities, as defined in the UCITS Directive of the European Parliament and of the Council (No. 2009/65/EC), as amended, or as captured by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, as amended. The Amendments define "AIF" as an alternative investment fund that is not regulated under the UCITS Directive, as defined in the Directive of the European Parliament and of the Council on alternative investment fund managers (No. 2011/61/EU), as amended, or an alternative investment fund that is captured by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, as amended.

¹⁹ For master-feeder arrangements, advisers will report the name of the feeder fund, its private fund identification number, and whether the feeder fund is a separate reporting fund or a disregarded feeder fund. For internal private funds that invest in the reporting fund, advisers will report the name of the internal private fund, its LEI, if it has one, and its private fund identification number. If the reporting fund invests in external private funds, advisers will report the name of the master fund, its private fund identification number, and the master fund's LEI, if it has one. If the reporting fund invests in internal private funds, advisers would report the internal private fund's name, its private fund identification number, and its LEI, if it has one.

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in external private funds and internal private funds (including the master fund and each internal private fund), which together comprise the total investments in other private funds.

Withdrawal or redemption rights. Form PF currently requires only large hedge fund advisers to report whether each qualifying hedge fund provides investors with withdrawal or redemption rights in the ordinary course. In a modification from the Proposed Amendments, the Commissions adopted new defined terms for “open-end private fund” and “closed-end private fund” and modified Question 10 to ask whether the reporting fund is an “open-end private fund” or “closed-end private fund,” rather than whether the reporting fund provides investors with withdrawal and/or redemption rights in the ordinary course.²⁰ If the reporting fund is an open-end private fund under Question 10(a), the adviser will be required to indicate (i) how often withdrawals or redemptions are permitted by selecting from a list of categories and (ii) what percentage of the reporting fund’s net asset value may be, or is, subject to a suspension of, or material restrictions on, investor withdrawals/redemptions by an adviser or fund governing body, determined on a good faith basis by the adviser. The adviser will be required to report this information regardless of whether there are notice requirements, gates, lock-ups, or other restrictions on withdrawals or redemptions. An adviser that selects in Question 10 that the reporting fund is neither an open-end private fund nor a closed-end private fund will be required to provide a detailed explanation of these responses in Question 4.

Trading vehicles. The Amendments will require advisers to provide identifying information for any trading vehicle in which the reporting fund holds assets, incurs leverage or conducts trading or other activities. Advisers will disclose the trading vehicle’s legal name; LEI, if it has one; and any other identifying information about the trading vehicle, such as the RSSD ID, if it has one. In a change from the Proposed Amendments, an adviser will also be required to specify if the reporting fund holds assets through a trading vehicle, incurs leverage through a trading vehicle, or conducts trading or other activities through a trading vehicle.

Gross asset value and net asset value. The Amendments will change the manner in which advisers report gross asset value and net asset value. First, the Amendments will require advisers who are filing quarterly updates to report gross asset value and net asset value as of the end of each month of the reporting period, rather than only reporting the information as of the end of the reporting period, as Form PF currently requires. In a change from the Proposed Amendments, an adviser may report in response to Questions 11 and 12 a fund’s “gross reporting fund aggregate calculated value” (“GRFACV”) or

²⁰ The Amendments define a “closed-end private fund” as any private fund that only issues securities, the terms of which do not provide a holder with any right, except in extraordinary circumstances, to withdraw, redeem, or require the repurchase of such securities, but which may entitle holders to receive distributions made to all holders pro rata. The Amendments define an “open-end private fund” as a private fund that offers redemption rights to its investors in the ordinary course, which may be paid in cash or in kind, irrespective of redemption frequency or notice periods and without regard to any suspensions, gates, lock-ups, or side pockets that may be employed by the fund. See Form PF Glossary of Terms. Notably, the SEC declined to match these definitions with the newly adopted definitions of “liquid fund” and “illiquid fund” in the Private Fund Adviser Rule, which defines “illiquid fund” as a private fund that: (i) is not required to redeem interests upon an investor’s request and (ii) has limited opportunities, if any, for investors to withdraw before termination of the fund; and “liquid fund” as any private fund that is not an illiquid fund. See Private Fund Adviser Rule Release, pp. 110, 113.

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“reporting fund aggregate calculated value” (“RFACV”), rather than gross asset value or net asset value, respectively and as applicable, if its net asset value and gross asset value are not calculated on a monthly basis. The Adopting Release states that permitting an adviser to report GRFACV or RFACV will reduce the need for advisers to report the net asset value or gross asset value on a monthly basis, as proposed. Further, the Amendments also add a new Question 13 to require advisers to separately report the value of unfunded commitments included in the gross and net asset value reported in Questions 11 and 12.

Inflows and outflows. The Amendments will add a question requiring advisers to report information concerning the reporting fund’s activity, including contributions to the reporting fund, as well as withdrawals and redemptions, which will include all withdrawals, redemptions, or other distributions of any kind to investors. Form PF will specify that, for purposes of the question, advisers must include all new contributions from investors, but exclude contributions of committed capital that they have already included in gross asset value calculated in accordance with Form ADV instructions. Quarterly filers will provide this information for each month of the reporting period.

Borrowings and types of creditors. The Amendments will revise how advisers report the reporting fund’s borrowings by revising the term “borrowings” to (i) specify that it includes “synthetic long positions;” and (ii) provide a non-exhaustive list of types of borrowings.²¹ This reporting approach is consistent with SEC staff guidance from Form PF Frequently Asked Questions.²² Current Question 12 requires advisers to report the value of the reporting fund’s borrowings and the types of creditors. In addition, the Amendments will require advisers to indicate whether a creditor is based in the United States and whether it is a “U.S. depository institution,” rather than a “U.S. financial institution” as is currently required.

Fair value hierarchy. The Amendments will revise how advisers report fair value hierarchy in Question 14, which will be re-designated as Question 20. Specifically, the Amendments will (i) require advisers to indicate the date the categorization was performed; (ii) direct advisers to report the absolute value of all liabilities; (iii) direct advisers to provide an explanation in Question 4 if they report assets as a negative value; (iv) require advisers to separately report cash and cash equivalents; and (v) amend the definition of “cash and cash equivalents” to remove government securities from the definition of “cash and cash equivalents,” and present it as its own line item in the Form PF Glossary of Terms. In addition, the Amendments also would direct advisers to not include any digital assets when reporting cash and cash equivalents. Finally, the Amendments will add instructions directing advisers about how to report data if their financial statement audit is not yet completed when Form PF is due.

²¹ “Borrowings” include, but are not limited to, (1) cash and cash equivalents received with an obligation to repay; (2) securities lending transactions (count cash and cash equivalents and securities received by the reporting fund in the transaction, including securities borrowed by the reporting fund for short sales); (3) repo or reverse repo (count cash and cash equivalents and securities received by the reporting fund); (4) negative mark-to-market of derivative transactions from the reporting fund’s point of view; and (5) the gross notional value of “synthetic long positions.”

²² See SEC staff Form PF Frequently Asked Questions, [available here](#). Form PF Frequently Asked Question 12.1.

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Beneficial ownership of the reporting fund.²³ Current Question 16 on Form PF requires advisers to specify the approximate percentage of the reporting funds' equity that is beneficially owned by different groups of investors. The Amendments will require advisers to provide more granular information regarding certain groups of beneficial owners, including whether beneficial owners that are broker-dealers, insurance companies, nonprofits, pension plans, banking or thrift institutions are U.S. persons or non-U.S. persons; and whether beneficial owners that are private funds are either internal private funds (*i.e.*, managed by the adviser or its related persons) or external private funds. The Amendments will require advisers to update the information provided in a fund's subscription agreement (including, potentially, for existing investors) to correspond to these new types of categories. Finally, the Amendments will provide that if advisers report information in the "other" category, they must describe in Question 4 the type of investor, why it would not qualify for any of the other categories, and any other information to explain the selection of "other."

Fund performance. The Amendments will alter the fund performance reporting requirements in current Question 17, which will be re-designated as Question 23. Currently, Form PF requires all advisers to report gross and net fund performance for specified fiscal periods using a table in current Question 17. The table in current Question 17 requires advisers to provide monthly and quarterly performance results in the table only if such results are calculated for the reporting fund. In addition to this requirement, the Amendments will add instructions specifying which lines to complete depending on whether the adviser is submitting an initial filing, annual update, or quarterly update. In a modification from the Proposed Amendments, the Amendments will amend the instructions to the table to specify that gross and net performance should be reported using the fund's base currency.

The Amendments also will require an adviser to report its performance as a money-weighted internal rate of return (instead of a time-weighted return), if the reporting fund's performance is reported to investors, counterparties or otherwise as an internal rate of return since inception.²⁴ In a modification from the Proposed Amendments, the Amendments will (i) add an instruction to Questions 23(a) and 23(b) to specify that the reporting fund's performance should not be calculated using a reporting fund aggregate calculated value because this question is intended to report performance, as reported to investors, (ii) include an instruction in Question 23 that the methodology used to report performance should remain consistent over

²³ Beneficial ownership reporting has been another recent focus of the SEC. The SEC adopted rule amendments in October 2023 that will, among other things, accelerate the filing deadlines for Schedule 13D beneficial ownership reports from 10 days to five days and require that amendments be filed within two business days; generally accelerate the filing deadlines for Schedule 13G beneficial ownership reports (which differ based on the type of filer); and expand the application of Regulation 13D-G to certain derivative securities. See *Modernization of Beneficial Ownership Reporting*, Securities Exchange Act of 1934 Release No. 98704 (Oct. 10, 2023), [available here](#). For a discussion of the amendments, please see the Willkie Client Alert, [available here](#).

²⁴ For a reporting fund, the Amendments will define "rate of return" as the percentage change in the net asset value (or, when a net asset value is not available, in the reporting fund aggregate calculated value) in the reporting fund's base currency from one date to another and adjusted for subscriptions and redemptions. For a portfolio position, the rate of return is the percentage change in the position calculated value, adjusted for income earned and for changes in the quantity held resulting from activity, such as purchases, sales, or splits. "Internal rate of return" is defined as the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

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time and (iii) require advisers in responding to Question 23 to indicate whether the reported internal rate of return includes or does not include the impact of subscription facilities to allow for improved data comparability.

The Amendments also will require advisers to report additional performance-related information if an adviser calculates a market value on a daily basis for any position in the reporting fund's portfolio. The adviser would report (i) the "reporting fund aggregate value" at the end of the reporting period;²⁵ (ii) the fund's volatility of the daily rate of return for each month of the reporting period, following a prescribed methodology; and (iii) whether the fund had one or more days with a negative daily rate of return during the reporting period.²⁶

Amendments to Section 1c of Form PF – Concerning All Hedge Funds

Section 1c of Form PF requires advisers to report information about the hedge funds they advise. If adopted, the Amendments will amend the manner in which advisers disclose investment strategies, counterparty disclosures and trading and clearing mechanisms. In addition, the Amendments will remove certain questions concerning hedge funds.

Investment strategies. The Amendments will require advisers to indicate which investment strategies best describe the reporting fund's strategies on the last day of the reporting period, rather than allowing advisers flexibility to report information as of the data reporting date or throughout the reporting period, as Form PF currently provides. Relatedly, in a modification from the Proposed Amendments, the Amendments also provide an instruction that specifies the methodology an adviser uses for selecting reporting strategies should be consistent over time. The Amendments also update the strategy categories advisers can select to reflect the Commissions' understanding of hedge fund strategies better, and improve data quality and comparability, based on their experience with the form. The Amendments contain changes from the Proposed Amendments, including changes in certain categories from the Proposed Amendments and the use of a drop-down menu to select investment strategies.

²⁵ The May Amendments adopted the following definition of "reporting fund aggregate calculated value": Every position in the reporting fund's portfolio, including cash and cash equivalents, short positions, and any fund-level borrowing, with the most recent price or value applied to the position for purposes of managing the investment portfolio. The reporting fund aggregate calculated value is a signed value where all position values are summed. Where one or more portfolio positions are valued less frequently than daily, the last price used should be carried forward, though a current foreign exchange rate may be applied if the position is not valued in U.S. dollars. It is not necessary to adjust the reporting fund aggregate calculated value for accrued fees or expenses. Reporting fund aggregate calculated value does not need to be subjected to fair valuation procedures. The inclusion of income accruals is recommended but not required; however, the approach should be consistent over time. The reporting fund aggregate calculated value may be calculated using the adviser's own internal methodologies and conventions of the adviser's service providers, provided that these are consistent with information reported internally.

²⁶ If so, advisers would report (i) the most recent peak-to-trough drawdown, and indicate whether the drawdown was continuing on the data reporting date; (ii) the largest peak-to-trough drawdown; (iii) the largest single-day drawdown; and (iv) the number of days with a negative daily rate of return in the reporting period. In a change from the Proposed Amendments, these figures will need to be reported as amounts as well as a percentage.

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As proposed, digital assets will be included as a reportable investment strategy. In a change from the Proposed Amendments, however, the Commissions are not adopting a defined term for “digital assets” in the Glossary of Terms.

Counterparty exposures. The Amendments will add Question 26, and revise current Questions 22 and 23, and redesignate them as Questions 27 and 28, to provide better insight into hedge funds’ borrowing and financing arrangements with counterparties, including CCPs. Question 26 will require advisers to hedge funds (other than qualifying hedge funds) to complete a new table (the “consolidated counterparty exposure table”) concerning exposures that (i) the reporting fund has to creditors and counterparties; and (ii) creditors and other counterparties have to the reporting fund.²⁷ Advisers will report the U.S. dollar value of the reporting fund’s “borrowing and collateral received (‘B/CR’),”²⁸ as well as its “lending and posted collateral (‘L/PC’),”²⁹ aggregated across all counterparties, including CCPs, as of the end of the reporting period. The form will explain what exposures to net, and advisers will be required to classify information according to type (e.g., unsecured borrowing, secured borrowing, derivatives cleared by a CCP, and uncleared derivatives) and the governing legal agreement (e.g., a prime brokerage or other brokerage agreement for cash margin and securities lending and borrowing, a global master repurchase agreement for repo/reverse repo, and ISDA master agreement for synthetic long positions, “synthetic short positions,” and derivatives).³⁰ Advisers will report transactions under a master securities loan agreement as secured borrowings and check a box if one or more prime brokerage agreements provide for cross-margining of derivatives and secured financing transactions.

The Amendments will require advisers to identify each creditor or other counterparty (including CCPs) to which the reporting fund owes a certain amount (before posted collateral) equal to or greater than either (i) five percent of net asset value as of the data reporting date; or (ii) \$1 billion. If there are more than five such counterparties, the adviser only would report the five counterparties to which the reporting fund owes the largest dollar amount, before taking into account collateral that the reporting fund posted. If there are fewer than five such counterparties, the adviser only would report the counterparties that meet the threshold. This is a change from current Question 22, which requires advisers to identify five counterparties to which the reporting fund has the greatest mark-to-market net counterparty credit exposure, regardless of the actual size of the exposure. In a modification from the Proposed Amendments, advisers also will be required to (i) provide the legal name

²⁷ Qualifying hedge funds will not complete this table because section 2, as revised, includes similar questions that require additional detail. In a change from the Proposed Amendments, an affiliated private fund will exclude any exposures that have been reported in the reporting fund’s filing.

²⁸ The Amendments define “B/CR” as the mark-to-market value, as of the data reporting date, of the following: (i) cash and cash equivalents received as borrowing, (ii) securities borrowed or received by the reporting fund (include securities borrowed in connection with short sales, securities lending and repo), (iii) collateral posted by a counterparty to the reporting fund’s account, (iv) negative market-to-market value of derivatives (from the reporting fund’s point of view), and (v) the gross notional value of synthetic long positions.

²⁹ The Amendments define “L/PC” as the mark-to-market value, as of the data reporting date, of the following: (i) cash and cash equivalents received by a counterparty from the reporting fund with the obligation to repay (exclude portfolio investments), (ii) securities borrowed or received by a counterparty in a reverse repo or securities lending transaction, (iii) collateral posted by the reporting fund to a counterparty, (iv) positive mark-to-market value of derivatives (from the reporting fund’s point of view), and (v) gross notional value of synthetic short positions.

³⁰ The Amendments define “synthetic short positions” as a total return derivative or similar contract under which (i) the reporting fund pays returns of a risky reference asset in exchange for receiving the returns of a different, riskless reference asset, or (ii) the reporting fund sells deep-in-the-money calls (e.g., those with deltas of 98% or higher) on a risky reference asset in exchange for an option premium.

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and the LEI, if any, of the entity that has the exposure and (ii) report the reporting fund's counterparty exposure without netting any trading vehicle exposures if the reporting fund does not guarantee and is not contractually obligated to fulfill those counterparty obligations.

The Amendments also will require advisers to provide information for counterparties to which the reporting fund has net mark-to-market counterparty credit exposure which is equal to or greater than either (i) five percent of the reporting fund's net asset value as of the data reporting date; or (ii) \$1 billion, after taking into account collateral received or posted by the reporting fund, in each case subject to the same caveats discussed above.

Additionally, advisers will be required to report the amount of collateral posted and report the counterparty's LEI, if applicable.

Trading and clearing mechanisms. The Amendments will require advisers to report (i) the value traded; and (ii) the value of positions at the end of the reporting period, rather than requiring advisers to report information as a percentage in terms of value and volumes, as current Form PF requires. The Amendments also will require advisers to report information about trading and clearing mechanisms for transactions in interest rate derivatives separately from other types of derivatives, and advisers will have to report such derivatives by indicating the estimated amounts that were (i) traded on a regulated exchange or swap execution facility; (ii) traded over the counter and cleared by a CCP; and (iii) traded over the counter or bilaterally transacted (and not cleared by a CCP).³¹

The Amendments also explain that "repo" means "securities in" transactions and "reverse repo" means "securities out" transaction. In addition, the Amendments provide a separate line item for sponsored repos and clarify that advisers must report reverse repos with repos.

Removing certain questions concerning hedge funds. The Amendments will remove certain questions that would become duplicative as a result of the added information provided in the new and amended questions in the Amendments.

3. Amended Reporting by Large Hedge Fund Advisers and Qualifying Hedge Funds

Consistent with current Form PF, a private fund adviser must complete Section 2 of Form PF if it has at least \$1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding the adviser's most recently completed fiscal quarter. This section requires additional information regarding the hedge funds these advisers manage, which is tailored to focus on relevant areas of financial activity that have the potential to raise

³¹ The Amendments also will require advisers to report the 10-year bond equivalent for all sub-asset classes with interest rate risk (by instrument type if applicable), including interest rate derivatives. The Amendments define "10-year bond equivalent" as "the equivalent position in a 10-year zero coupon bond, expressed in U.S. dollars," rather than the fund's base currency. See Form PF Glossary of Terms (emphasis added).

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systemic concerns. The Amendments will, among other things, remove aggregate reporting in Section 2a and enhance the reporting requirements on a per fund basis in Section 2b.

Amendments to Section 2a

Removal of aggregate reporting. The Amendments will eliminate the requirement for large hedge fund advisers to report certain aggregated information about the hedge funds they manage. Specifically, the Amendments will remove Section 2a and re-designate Section 2b as Section 2. The Adopting Release notes that aggregation can mask directional exposures of individual funds (e.g., positions held by one reporting fund may appear to be offset by positions held in a different fund), and there can be inconsistencies between data reported in the aggregate in Section 2a and on a per fund basis in Section 2b (e.g., instances where the sum of fund exposures that advisers report in current Question 30 on a per fund basis exceeds the aggregate figure reported in Question 26).

Amendments to Section 2b

Current Section 2b requires a large hedge fund adviser to report certain additional information about any hedge fund it advises that is a qualifying hedge fund. The Amendments will re-designate Section 2b as Section 2 and amend (i) investment exposure reporting; (ii) open and large position reporting; (iii) borrowing and counterparty exposure reporting; and (iv) market factor effects reporting. In addition, the Amendments will make certain other changes designed to streamline and enhance the value of data collected on qualifying hedge funds by (i) adding reporting on currency exposure, turnover, country and industry exposure;³² (ii) adding new reporting CCPs; (iii) amending risk metric reporting and collecting new information on investment performance by strategy;³³ and (iv) amending portfolio and financing liquidity reporting.

Investment exposure reporting. The Amendments will replace the existing table in current Question 30, which the Amendments will re-designate as Question 32, with reporting instructions that will use a series of “drop-down” menu selections for each sub-asset class and the applicable information required for each sub-asset class. In addition, advisers will have to report the absolute value of short positions, include positions held in side pockets as positions of the reporting fund, and include any closed-out and OTC forward positions that have not yet expired or matured. The Amendments also will require advisers to choose the sub-asset class that describes the position with the highest degree of precision, which the Commissions indicate will result in more accurate classification of positions and therefore better data, rather than simply noting that any particular position should only be included in a single sub-asset class. Further, the Amendments also will require advisers to provide additional explanatory information in situations where a qualifying hedge fund reports long or

³² In a change from the Proposed Amendments, an adviser can report country and industry exposure based on reasonable estimates that are consistent with an adviser’s internal methodologies and reporting and investor reporting.

³³ In a change from the Proposed Amendments, an adviser will only be required to provide investment performance by strategy if the adviser actually reports that performance information to third parties.

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short dollar value exposure to “catch-all” sub-asset class categories equal to or exceeding either (i) five percent of a fund’s net asset value; or (ii) \$1 billion.

Advisers will be required to report the dollar value of a qualifying hedge fund’s long positions and the dollar value of the fund’s short positions in certain sub-asset classes by “instrument type” (*i.e.*, cash/physical instruments, futures, forwards, swaps, listed options, unlisted options, and other derivative products, ETFs, exchange traded products, U.S. registered investment companies (excluding ETFs and money market funds), non-U.S. registered investment companies, internal private fund or external private fund, commodity pool, or other company, fund or entity). For each month of the reporting period, advisers will be required to report separately long and short positions in these sub-asset classes held physically, synthetically or through derivatives, and indirectly through certain entities, in order to provide the Commissions and FSOC sufficient information to understand, monitor, and assess qualifying hedge funds’ exposures to certain types of assets and investment products. The current instructions require advisers to combine exposures held physically, synthetically, or through derivatives when reporting certain fixed-income and other sub-asset classes. In determining the reporting fund’s exposure to sub-asset classes for positions held indirectly through entities, advisers are permitted to allocate the position among sub-asset classes and instrument types using reasonable estimates consistent with their internal methodologies and conventions of service providers. In a modification from the Proposed Amendments, advisers also are permitted to report an entirely indirectly held entity position in one sub-asset class and instrument type that best represents the sub-asset class exposure of the indirectly held entity, unless the adviser would allocate the exposure of the indirectly held entity more granularly under its own internal methodologies and conventions of its service providers.

While the Amendments will continue to require advisers to report “gross” long and short exposure (*i.e.*, the dollar value of a qualifying hedge fund’s long positions and dollar value of the fund’s short positions for various sub-asset classes (and by instrument type for certain sub-asset classes as explained above)), the Amendments also will require advisers to report the “adjusted exposure” of long and short positions for each sub-asset class in which a fund has a reportable position. The Commissions note that gross exposure reporting, while useful because the information indicates fund size on a comparable basis among funds, may inflate some qualifying hedge funds’ reported long and short exposures in a way that does not properly represent the economic exposure and market risk of a reporting fund’s portfolio.³⁴

The Amendments will require advisers to calculate and report adjusted exposure of long and short positions for each sub-asset class by netting (i) positions that have the same underlying “reference asset” across “instrument type” (*i.e.*, cash/physical instruments, futures, forwards, swaps, listed options, unlisted options, other derivative products, and positions held indirectly through another entity such as ETFs, other exchange traded products, U.S. registered investment companies (excluding ETFs and money market funds), investments in non-U.S. registered investment companies, other private funds, commodity pools, or other companies, funds or entities), and (ii) fixed-income positions that fall within certain predefined

³⁴ See Adopting Release at 107.

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maturity buckets. For purposes of determining adjusted exposure, the Amendments will permit cross counterparty netting consistent with information reported by a fund internally and to current and prospective investors.

If a fund does not net across all instrument types in monitoring the economic exposure of the fund's investment positions for purposes of internal reporting and reporting to investors, the Amendments will require (in addition to adjusted exposure determined as specified above) the adviser to report adjusted exposure based on an adviser's internal methodologies and describe in Question 4 how the adviser's internal methodology differs from the standard approach in Question 32.

Amended list of sub-asset classes. The Amendments will revise the list of reportable sub-asset classes in two ways. First, some sub-asset classes will be consolidated and tailored to reflect the reporting of the dollar value of long and short positions by instrument type (e.g., sub-asset classes for listed and unlisted equity derivatives are combined with sub-asset classes for listed and unlisted equities). Second, the Amendments will (i) add new sub-asset classes for listed equity securities (including new sub-asset classes for other single name listed equities and indices on listed equities), and American depository receipts ("ADRs"); (ii) add additional sub-asset classes for reporting "repo" and "reverse repo" positions, based on term; (iii) add additional sub-asset classes for asset-backed securities ("ABS") and other structured products; (iv) add new sub-asset classes and revise existing sub-asset classes that capture certain derivatives, including certain credit derivatives and volatility and variance derivatives; (v) specify sub-asset classes pertaining to investments in cash and cash equivalents and commodities; and (vi) add a new sub-asset class for digital assets.

Borrowing and Counterparty Exposure

Counterparty exposure. The Amendments will include a new consolidated counterparty exposure table similar to the new counterparty exposure table for hedge funds discussed above. This table will replace the information currently required by Questions 43, 44, 45 and 47, each of which will be deleted under the Amendments. Advisers, for each of their qualifying hedge funds, will have to disclose their counterparty exposure in the same manner discussed in the amendments to Section 2b, *supra*. The Adopting Release notes that the purpose of this counterparty exposure disclosure requirement is to enhance the Commissions' ability to understand the impact of a particular counterparty failure like those that occurred during the 2008 financial crisis and in the period since.³⁵

Market Factor Effects

The Amendments will require advisers to qualifying hedge funds to respond to all market factors to which their portfolio is directly exposed, rather than allowing advisers to omit a response to any market factor that they do not regularly consider in formal testing in connection with the reporting fund's risk management, as Form PF currently provides. The Amendments, however, will change the stress testing thresholds to (i) require advisers to report one threshold for each market factor, rather than two as is currently required; and (ii) propose different thresholds for certain market factors to capture stress

³⁵ See Adopting Release at 137.

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scenarios that are plausible but still infrequent market moves. The Adopting Release notes that information resulting from stress testing at thresholds in the current form (one low and one high) is not useful because the thresholds are either too frequent (for the lower threshold) or too extreme and may not result in accurate estimates (for the higher threshold).³⁶

The Amendments also will add a market factor test concerning nonparallel risk-free interest rate movements. The market factor test will test hedge fund exposure to changes in the slope of the yield curve, which is currently untested. In a modification from the Proposed Amendments, the Amendments remove the risk-free interest rates market factor reporting and instead add an instruction to specify that, with respect to the market factor concerning non-parallel risk-free interest rate movements, the sum of all reported non-parallel risk-free interest rate sensitivities for a given rate movement should total the portfolio's sensitivity to a parallel risk-free interest rate movement of that magnitude to reduce burdens.

The Amendments also revise the instructions to require advisers to report the long component and short component consistently with market convention, rather than opposite from market convention, as Form PF currently provides, in order to reduce inadvertent mistakes in completing the form.

Conclusion

The Amendments highlight the SEC's continued focus on the private funds industry, and the Commissions' desire to improve data utility to be used both for regulatory purposes, as well as to assess potential systemic risk in the industry. The Amendments will expand the scope of reporting that private fund advisers will be required to provide with respect to themselves, the funds they advise, and relevant counterparties, will potentially limit some of the flexibility advisers currently have in responding to questions, require private fund advisers to modify how they respond to certain questions, and appear to be an attempt, in part, to align Form PF with certain of the reporting already required by CFTC Form CPO-PQR. While many of the more detailed and granular reporting changes will apply to large hedge fund advisers, a number of changes will apply to filing advisers of all sizes.

The effective date and compliance date are each one year from the date of publication of the Amendments in the Federal Register.³⁷

³⁶ See Adopting Release at 140.

³⁷ As of the date of this Client Alert, publication in the Federal Register has not yet occurred.

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