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NEW FORM PF AMENDMENTS – KEY OPERATIONAL, COMPLIANCE AND INVESTOR CONSIDERATIONS

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In the wake of the global financial crisis of 2008, many regulators in leading economies adopted regulations to measure and monitor the contribution that private funds such as hedge funds, funds of funds and private equity (PE) funds have on the systemic risk to the financial system.

For example, regulations such as Form PF and AIFMD/Annex IV were implemented by US and European regulators. Since that time, there has been

a growing trend toward more stringent regulatory reporting requirements and enhanced oversight by regulatory bodies globally.

Most recently, in May 2023 the US Securities and Exchange Commission (SEC) adopted new amendments to Form PF that will likely pose significant operational, compliance, risk management and investor-related challenges for many asset managers of private funds. Form PF is a confidential

report submitted to the SEC by certain registered investment advisers of private funds. The most recent Form PF amendments are intended to further enhance the ability of the Financial Stability Oversight Council (FSOC) to assess systemic risk, bolster the SEC's oversight of private funds and provide better overall protection to investors.

These new Form PF amendments will apply to: (i) hedge fund advisers with at least \$1.5bn in regulatory assets under management; (ii) PE fund advisers with at least \$150m in regulatory assets under management; and (iii) large PE fund advisers with at least \$2bn in regulatory assets under management.

The May 2023 amendments are outlined below.

First, hedge fund advisers must file a report no later than 72 hours after a trigger event, including extraordinary investment losses, notable margin and default events, termination or restriction of prime brokers, disruptive operations events, and events surrounding withdrawals and redemptions.

Second, all applicable PE advisers must file an event report within 60 days of a trigger event, including certain secondary transactions, fund termination events and removal of a general partner (GP).

Lastly, large PE advisers must report annually information on strategies, borrowings, events of default, bridge financings, geography of portfolio investments, and GP and limited partner (LP) clawbacks.

In the second of what is expected to be three rounds of amendments to Form PF which occurred on 12 July 2023, the SEC adopted additional and new amendments to Form PF that only apply to large liquidity fund advisers (e.g., private fund advisers that manage at least \$1bn in combined liquidity fund and money market fund assets). These advisers are required to file Form PF on a quarterly basis.

Summary of Form PF amendments

Amended Section 3 of Form PF. The new Form PF amendments modify Section 3 of Form PF and require additional information to enhance the SEC's ability to assess short-term financing markets and facilitate oversight of those markets and their participants. The amendments to Form PF were designed to align, and remain consistent, with amendments to Form N-MFP.

The SEC adopted the amendments to Section 3 with few changes from the original proposal, with compliance required by 11 June 2024. The adopted changes cover eight major areas where reporting requirements have been enhanced and advisers must provide additional data regarding operational information, assets and portfolio information, additional repo reporting, details about subscriptions and redemptions, financing information, investor information, disposition of portfolio securities, and weighted average maturity and life metrics.



Amended Section 4 – large PE fund advisers.

As part of the newly amended Section 4 of Form PF, large PE fund advisers with at least \$2bn in regulatory assets under management attributable to PE funds as of the last day of the adviser's most recently completed fiscal year will be required to submit substantially more detailed information in their Form PF filings. The compliance date is 11 June 2024. Therefore, for a PE fund adviser with a 31 December fiscal year end, these changes need

to be accounted for in the adviser's Form PF to be submitted by 30 April 2025.

In the revised Section 4, an adviser will need to provide details about the reporting fund including: (i) investment strategies; (ii) geographic breakdown of investments; and (iii) fund level borrowings, events of default, information about bridge financings and information about clawbacks. Like Sections 5 and 6, there is another question that has been added that permits an adviser to provide an optional narrative

response for explaining responses made in Section 4.

New Section 5: large hedge fund advisers to qualifying hedge funds. The new Section 5, which applies to large hedge fund advisers to qualifying hedge funds, includes the SEC's new concept of 'reporting fund aggregate calculated value' (RFACV), which the SEC will now use as a basis for the purposes of tracking certain current reporting events. The intent behind the RFACV daily requirement is to represent a more recent, reasonable estimate of a reporting fund's actual value.

In addition, advisers will now need to monitor and report the following major categories of 'current events' to the SEC in 72 hours: (i) extraordinary investment losses; (ii) margin, collateral or equivalent increase; (iii) notice of margin default or inability to meet a call for margin, collateral or equivalents; (iii) counterparty default; (iv) prime brokerage termination or restrictions; (v) critical operations events; (vi) material withdrawals or redemptions; and (vii) inability to satisfy redemptions or suspension of redemptions

New Section 6 – advisers to PE funds. All PE fund advisers are now required to file a 'private equity event report' in the new Section 6 of Form PF. Specifically, the reporting fund must report upon

the occurrence of certain 'private equity reporting events' within 60 calendar days after the end of the fiscal quarter in which the event occurred.

PE reporting events include an adviser-led secondary transaction, GP removal and the election to terminate investment period or fund. Like Sections 4 and 5, there is also an 'explanatory notes'

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section where respondents can provide information regarding the events submitted in the PE event report from Section 6 of Form PF. The effective compliance date for this new requirement is 11 December 2023.

Key operational, compliance and investor-related considerations for advisers

The new Form PF amendments should not simply be viewed as more data and reporting work to do. There are several significant operational, compliance,

risk management and investor-related challenges and major considerations that should be taken into account and addressed by advisers. We strongly recommend that consideration be given to the items outlined below.

Key operational considerations. Unfortunately, too many advisers and reporting funds continue to aggregate their data, calculate metrics and perform their Form PF reporting in a haphazard manner with several internal groups such as accounting, finance, middle and back office and risk management needing to touch data and do work manually in multiple spreadsheets or a shared spreadsheet. We believe that a manually oriented process for Form PF reporting and monitoring carries with it substantial operational and compliance risks. We recommend that advisers and reporting funds consider using an experienced and qualified service provider that can provide a complete software as a service (SaaS) based solution to perform the required data aggregation, calculate risk management statistics and create the necessary reporting upload file for the SEC. The advantages of a SaaS-based solution to aggregate and curate data and do the Form PF reporting is that it will significantly streamline workflows because there should be no technology build or buy and reduce costs because it is a legitimate fund expense for most alternative asset managers for regulatory reporting.

Major compliance considerations. Large hedge fund advisers that are subject to the 72 hour reporting requirement must be fully prepared to have proper procedures and concomitant processes in place to ensure they can detect and report in a timely manner the SEC's 'current reporting events', as well as prepare responses, including any narrative responses for the 'explanatory notes' sections 4, 5 and 6 of Form PF. The SEC has made it clear that Form PF will be used for enhanced oversight of investment advisers, including as part of the SEC's examination programme. The SEC is expected to use certain reporting events as examination scoping and may be more likely to initiate an examination of an adviser that has experienced certain reporting events, such as an extraordinary investment loss or an LP clawback.

Key investor and LP considerations. In the aftermath of the global financial crisis of 2007-08, investors and LPs in private funds have become much savvier about not only the regulations that govern private funds but also the additional data and information that they can ask for as part of their due diligence process and oversight for the funds that they have invested in. We believe it is likely that larger institutional investors and LPs such as pensions and endowments may ask for some or all of the new information that is required in the new Form PF amendments. Therefore, the effective audience for the additional data and information in

the new Form PF amendments may likely include not only the SEC but also investors.

Conclusion

Given the aggressive compliance timelines that come with the new Form PF amendments, we believe advisers should begin work immediately to develop new policies and procedures for monitoring and reporting 'current events' and should conduct appropriate training for staff to ensure that the processes for fulfilling these new requirements is sound and well-functioning.

More importantly, we recommend advisers use these new amendments as a 'turning point' and an opportunity to finally cease using manual and

spreadsheet-based processes for aggregating reporting data and doing regulatory reporting. By taking advantage of a SaaS-based solution from the right vendor, an adviser can not only significantly improve its workflows for regulatory reporting and monitoring but also, at the same time, materially reduce costs and operational and regulatory risks.

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