



SHARTSIS FRIESE LLP

One Maritime Plaza ♦ Eighteenth Floor
San Francisco, California 94111-3598

August 23, 2023

VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

Re: SEC Adopts Amendments to Expand the Scope of Form PF

On May 3, 2023, the Securities Exchange Commission (the “SEC”) [approved significant amendments to Form PF](#) (the “Amendments”), the confidential reporting form required for certain SEC-registered investment advisers that provides information about the adviser’s private funds. The Amendments increase the compliance burden of advisers to private equity funds and large hedge fund advisers with regulatory assets under management (“RAUM”) of at least \$1.5 billion (a “Large Hedge Fund Adviser”). Hedge fund advisers that are exempt reporting advisers or are not Large Hedge Fund Advisers are not affected by these Amendments.

Background. SEC-registered private fund advisers with at least \$150 million in private fund RAUM as of the last day of the most recent fiscal year must submit reports on Form PF. The amount and type of information reported and the reporting frequency depends on the funds the adviser manages and the amount of the adviser’s private fund RAUM. The Amendments add two new sections to Form PF: Section 4 regarding private equity funds, and Section 5, which requires prompt disclosure of certain material events by Large Hedge Fund Advisers. The Amendments also allow advisers to provide narrative responses to some questions to explain the circumstances surrounding the report.

Large Hedge Fund Advisers. In addition to existing quarterly Form PF filing obligations, Large Hedge Fund Advisers will be required after December 11, 2023, to report certain material events (as described below) at a “qualifying hedge fund” to the SEC as soon as practicable, but no later than 72 hours after they occur, in Form PF Section 5. A qualifying hedge fund is any hedge fund that has a net asset value (individually or in combination with any feeder funds) of at least \$500 million. The Amendments require Large Hedge Fund Advisers to promptly report if any of the following occur at a qualifying hedge fund:

1. *Extraordinary Investment Losses.* Investment losses equal to or greater than 20% of a qualifying hedge fund’s “aggregate value,” a new defined term, over a rolling 10-business-day period trigger reporting.

2. *Margin, Collateral or Equivalent Increases.* Reporting is required when there is a 20% increase in the qualifying hedge fund’s requirements for margin, collateral or an equivalent, or in the event of a qualifying hedge fund’s margin default or inability to meet a call for margin, collateral or an equivalent.

3. *Counterparty Defaults.* A counterparty of the qualifying hedge fund defaults on margin, collateral or an equivalent, or fails to make a timely payment required of such counterparty to the qualifying hedge fund, if the amount exceeds 5% of the fund's aggregate calculated value. The report must include the date and dollar value of the default as well as the counterparty's legal name and Legal Entity Identifier.

4. *Termination of or Material Changes in Prime Broker Relationship.* Reporting is required when either the prime broker terminates its agreement with the qualifying hedge fund or materially restricts its relationship with the fund, even if it does not terminate its agreement, or when there is a fund termination event. A material restriction includes scenarios where a prime broker introduces substantial changes to credit limits or price increases, ceases to support a qualifying hedge fund in an important market or otherwise significantly limits a qualifying hedge fund's ability to operate under the terms of the original prime broker agreement. Large Hedge Fund Advisers do not need to report the termination of prime broker contracts due to non-renewal or if the termination relates solely to the prime broker's financial state.

5. *Disruptions of Operations.* Large Hedge Fund Advisers must report any "significant disruption or degradation" of a qualifying hedge fund's critical operations (whether such disruption or degradation event occurs at a service provider, a Large Hedge Fund Adviser or a qualifying hedge fund). A "significant disruption or degradation" is any disruption that results in a 20% disruption or degradation of normal volume or capacity of operations, such as a cybersecurity event. A qualifying hedge fund's critical operations include operations necessary for the investment, trading, valuation, reporting and risk management of the fund or any operations required by federal securities laws and regulations.

6. *Large Withdrawal/Redemption Requests, Inability to Satisfy Redemptions or Suspension of Redemptions.* Large Hedge Fund Advisers must report withdrawals/redemptions that exceed 50% of a qualifying hedge fund's most recent net asset value. In addition, Large Hedge Fund Advisers must report if a qualifying hedge fund is unable to satisfy redemption/withdrawal requests or if it has suspended redemptions or withdrawals for more than 5 consecutive business days.

Private Equity Fund Advisers. Generally, advisers with at least \$150 million of private equity fund RAUM ("Private Equity Fund Advisers") are only required to file Form PF annually. Starting December 11, 2023, Private Equity Fund Advisers must report within 60 days of the end of any fiscal quarter in which the either of the following events occur:

1. *An Adviser-Led Secondary Transaction.* Private Equity Fund Advisers must report secondary transactions initiated by the Private Equity Fund Adviser (or its related persons) that offer private equity fund investors the choice to sell their interests in the fund, or to convert or exchange all or a portion of their interests in the private equity fund for interests in another vehicle advised by the Private Equity Fund Adviser (or its related persons). There is no exception for ordinary course of business transactions or situations where the private equity fund's investors or advisory committee have approved the transaction.

2. *Removal of the General Partner or Election to Terminate the Investment Period or Fund.* Private Equity Fund Advisers must report any private equity fund investor election to (i) remove the Private Equity Fund Adviser or its affiliate as the general partner of a private equity fund, (ii)

terminate a private equity fund (pursuant to the fund’s governing documents) or (iii) terminate a private equity fund’s investment period early. The report must include the effective date of the applicable removal or termination event and a description of the event.

Large Private Equity Advisers. The Amendments modify the reporting requirements of advisers with over \$2 billion in private equity fund RAUM (“Large Private Equity Advisers”) in Form PF Section 4. Large Private Equity Advisers must annually report whether any private equity fund has effectuated (i) a general partner clawback or (ii) a limited partner clawback in excess of an aggregate amount equal to 10% of the fund’s aggregate capital commitments and the reasoning behind such clawback. A general partner clawback is any obligation of the general partner, its related persons or their respective owners to return performance-based compensation to the reporting fund pursuant to the fund’s governing agreement. A limited partner clawback is any obligation of the investors to return all or any portion of a distribution made by the fund (in excess of 10% of the fund’s aggregate capital commitments) to satisfy a liability, obligation or expense of the fund pursuant to the fund’s governing agreement.

The Amendments add new questions for Large Private Equity Advisers regarding investment strategy and fund-level borrowing or other cash financing. The Amendments also require more granular details for certain events of default, bridge financing arrangements with portfolio companies and geographical breakdown of a private equity fund’s investments.

Compliance Deadlines. The Amendments applicable to Large Hedge Fund Advisers and the new quarterly reporting requirements applicable to all advisers to private equity funds in excess of \$150 million RAUM take effect on December 11, 2023. The Amendments applicable to Large Private Equity Advisers become effective June 11, 2024 (therefore, Large Private Equity Advisers must begin to report in 2025 when the next subsequent annual filings are due). Advisers effected by the Amendments should consider revising their policies and procedures to capture and report, as applicable, the newly required Form PF information.

Please contact one of the Shartsis Friese attorneys in the [Investment Funds & Advisers Group](#) if you have any questions about your Form PF reporting obligations pursuant to the Amendments.

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