

# Regulatory Alert

Regulatory Insights for Financial Services

May 2023

## Form PF and Share Repurchase Disclosures: Final Rules

### *KPMG Regulatory Insight:*

- The SEC states Investment Advisers' Form PF reporting has shown that the private fund industry is rapidly evolving in terms of business practices, complexity of fund structures, and investment strategies and exposures.
- Amendments to Form PF are intended to fill "information gaps" that may help the SEC and FSOC better understand and identify financial stability and systemic risks.
- Additional changes to Form PF may yet be forthcoming based on a joint SEC/CFTC proposal that looks to further expand reporting requirements, especially for large hedge fund advisers, in key areas such as investment exposures (including cryptocurrencies), open and large positions, and borrowing and financing arrangements. (See KPMG Regulatory Alert, [here](#).)
- Final share repurchase disclosures follow the December 2022 release of the SEC's final insider trading rule (see KPMG Regulatory Alert, [here](#)). Enhanced scrutiny of insider trading and broader conflicts of interest compliance risk programs, controls, and governance should be anticipated.

The SEC finalizes:

- Amendments to [Form PF](#), the confidential reporting form for investment advisers to private funds.
- Amendments to [Share Repurchase Disclosure](#) rules.

Highlights of both final rules are outlined below. For information on the SEC's original proposed amendments, see KPMG's Regulatory Alerts [here](#) and [here](#).

### Private Fund Reporting (Form PF)

The SEC states the final amendments to Form PF are designed to enhance the FSOC's ability to monitor systemic risk, as well as to support the SEC's oversight of private fund advisers and its investor protection efforts. The changes to Form PF, which are "largely as proposed", include requirements for:

- A new "current" reporting by large hedge fund advisers regarding certain "trigger" events, as defined and described below.

- Quarterly reporting for all private equity fund advisers regarding "trigger" events, also described below.
- "Enhanced" reporting by large private equity fund advisers to improve FSOC's ability to monitor systemic risk and both FSOC and SEC's ability to identify and assess changes in market trends.

### Application

The final amendments to Form PF apply to the following types of funds:

- *Large hedge fund advisers* with  $\geq$  \$1.5 billion in hedge fund assets under management.
- *Private equity fund advisers* with  $\geq$  \$150 million in private equity fund assets under management.
- *Large private equity fund advisers* with  $\geq$  \$2 billion in private equity assets under management (the proposed

reduction in this threshold to \$1.5 billion was not adopted).

#### “Current Event” Reporting for Large Hedge Fund Advisers

Large hedge fund advisers (defined above) must file a “current” report as soon as practicable, but no later than 72 hours from the occurrence of one or more of the following events:

- Extraordinary investment losses ( $\geq 20$  percent of a fund’s “reporting fund aggregate calculated value” (as defined in the rule) over a rolling 10-business day period.
- Significant margin and default events (e.g., increases in margin requirements above 20 percent threshold, margin defaults or inability to meet margin calls, counterparty defaults, etc.).
- Terminations or material restrictions of prime broker relationships.
- Operations events, or when a fund experiences a “significant disruption or degradation” of the reporting fund’s “critical operations,” whether as a result of an event at the reporting fund, the adviser, or other service provider to the reporting fund.
- Events associated with withdrawals and redemptions (e.g., cumulative requests for withdrawals and redemptions exceed 50 percent of the fund’s most recent net asset value (NAV), inability to satisfy withdrawals or redemptions, or suspension of withdrawals or redemptions).

*NOTE: SEC did not include the proposed trigger event of “changes to unencumbered cash” in the final amendments, citing the potential for “false positives”.*

#### Quarterly Private Equity Event Reporting

All private equity fund advisers (defined above) must file a “current” report within sixty (60) days of each fiscal quarter end upon the occurrence of one or more of the following events:

- Execution of an adviser-led secondary transaction.
- Investor election to remove a fund’s general partner, to terminate a fund’s investment period or to terminate a fund.

*NOTE: In a change from the proposal, SEC moved the implementation of a general or limited partner clawback event to Section 4, where it will be reported on an annual basis with the other large private equity fund adviser (also as defined above) reporting. See below.*

#### “Enhanced” Reporting for Large Private Equity Fund Advisers

Questions added to the annual reporting by large private equity fund advisers (defined above) are intended to provide useful information to FSOC to better assess potential systemic risks and inform the SEC’s regulatory programs for the protection of investors. SEC adopted the following questions in Section 4 for large private equity fund advisers:

<b>New Question 66</b>	Information about private equity fund investment strategies.
<b>New Question 68</b>	Additional information on any fund-level borrowing, including: <ul style="list-style-type: none"> <li>— Information on each borrowing or other cash financing available to the fund.</li> <li>— Total dollar amount available.</li> <li>— Average amount borrowed over the reporting period.</li> </ul>
<b>Amendments to Questions 74, 75, and 78</b>	Amended to provide clarifying information on events of default, bridge financing to controlled portfolio companies, and geographic breakdown of investments, respectively
<b>New Question 82</b>	Implementation of: <ul style="list-style-type: none"> <li>— Any general partner clawback, or</li> <li>— Limited partner clawback(s) in excess of an aggregate amount equal to 10 percent of a fund’s aggregate capital commitments, and</li> <li>— Effective date(s) and reason(s) for the clawback(s).</li> </ul>

#### Compliance Dates

- The effective and compliance dates applicable to the Current and Quarterly Event Reporting (Sections 5 and 6) will be 180 days following publication of the final amendments in the Federal Register.
- The effective and compliance dates for the remaining amendments (including Section 4) will be 365 days following publication in the Federal Register.

## Share Repurchase Disclosures

The SEC also adopted final amendments to require disclosures around repurchases of issuer's securities that are registered under Section 12 of the Securities Exchange Act of 1934, also referred to as "buybacks".

The amendments apply to both open market and private transactions, and will require issuers, listed closed-end funds, and foreign private issuers (FPIs) to disclose in their periodic reports (Forms 10-Q and 10-K, N-CSR, and F-SR, as appropriate):

- Daily repurchase data on a quarterly or semiannual basis.
- Whether any directors and officers traded shares or other units of the issuer's equity securities within four (4) business days before or after the issuer's announcement of a repurchase plan or program.

- Information on the objective, rationale, and other details for each repurchase plan or program and process or criteria used to determine the amount of repurchases.
- The policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions.
- Certain other information.

The rule will become effective 60 days after publication in the Federal Register. Compliance dates vary by issuer type and form.

For more information, please contact [Mike Sullivan](#), [Larry Godin](#), or [Mark McKeever](#).

## Contact the author:



**Amy Matsuo**  
**Principal and National  
Leader**  
Regulatory Insights  
[amatsuo@kpmg.com](mailto:amatsuo@kpmg.com)

[kpmg.com/socialmedia](https://kpmg.com/socialmedia)



accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.  
The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

**Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.**

All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is

accurate and timely information, there can be no guarantee that such information is accurate and timely information, there can be no guarantee that such information is

accurate and timely information, there can be no guarantee that such information is