Simpson Thacher

Regulatory and Enforcement Alert

SEC Proposes Changes to Form PF That Could Prove Challenging

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In a split vote earlier today, the SEC proposed new and onerous changes to Form PF, a confidential form relating to private funds and intended to be used by the Financial Oversight Stability Counsel for systemic risk oversight purposes.[1] Following this morning's open meeting, the SEC published the full text of its proposal.

One-Business-Day Reporting Requirement

The proposal raises serious concerns for private equity sponsors. Specifically, the proposal, if adopted, would require a private fund manager to report to the SEC within **one business day** upon the occurrence of certain fund-level events, including:

- Execution of adviser-led secondary transactions;
- Implementation of a general partner or limited partner clawback;
- Removal of a fund's general partner;
- Termination of a fund's investment period; and/or
- Termination of a fund.

Our initial reaction is that we can see no reason for a one-business-day reporting requirement for such events, and we question whether many of these events have any bearing on systemic risk, which is the purpose Congress assigned to Form PF. Other proposed one-business day reporting events focus on extraordinary events, such as a significant margin and counterparty default, which arguably could have a systemic impact in certain circumstances. The events listed above do not appear to meet that criteria, and suggest that the SEC may be seeking to use Form PF for other purposes. This shift of use, alone, should be a cause of concern because the SEC could seek to use Form PF in the future to elicit other information with no relation to systemic risk.

The proposal also contains an expansion of reporting obligations for private equity sponsors at the portfolio company level. These include areas such as use of leverage and portfolio company financings, controlled portfolio companies borrowings, fund investments in different levels of a single portfolio company's capital structure, and portfolio company restructurings or recapitalizations. Again, we see no particular bearing of many of these items

[1] With respect to the proposal, the SEC re-stated that it does not intend to make public Form PF information that is identifiable to any particular adviser or private fund.

on systemic risk, and we note that private companies more generally do not have reporting obligations on these topics.

Additional proposals concern the threshold in which a private equity sponsor is considered “large” giving rise to enhanced reporting obligations, as well as new proposals impacting the hedge fund and liquidity fund industries.

Comments are due 30 days following publication of the proposed rules in the Federal Register. We will analyze the detailed proposal and will keep you posted on our thinking. However, we wanted to get the substantive provisions in front of our clients as soon as possible, given that they would (if adopted) represent a substantial departure from prior practice.

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