

## Investment Funds Alert

### SEC and CFTC Jointly Propose Confidential Reporting Requirements for Advisers to Private Funds

February 9, 2011

The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) recently proposed Form PF and related rules, which would require registered investment advisers that advise private funds<sup>1</sup> (“Private Fund RIAs”) to file reports with the SEC on confidential basis on the operations of the private funds that they advise. Registered commodity pool operators (CPOs) and commodity trading advisors (CTAs) that are also registered investment advisers (“Dual Registrants”) and advise private funds would also be required to file Form PF with the CFTC.

The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the SEC to gather information concerning private funds, including information designed to assist the newly-created Financial Stability Oversight Council (FSOC) in monitoring “systemic risk” posed by private funds. The proposed rule responds to this legislative mandate. It would collect a variety of qualitative and quantitative information concerning private funds (regardless of size), which the SEC and the CFTC would share with the FSOC. In the case of large private fund managers, the required information would include detailed and extensive quantitative data concerning such matters as fund size and performance, asset and liability composition, liquidity, borrowings and other forms of leverage, use of derivatives, specific counterparty exposures and various risk metrics.

The form itself is a 44-page document, which is broken into four separate reporting parts. All Private Fund RIAs would be required to complete Section 1 of Form PF. Private Fund RIAs that have assets under management (AUM) attributable to hedge funds, private equity funds or liquidity funds (i.e. private money market-type funds), together with their parallel funds and parallel managed accounts, of at least \$1 billion in the relevant type of fund class (a “Large Private Fund Adviser”)<sup>2</sup> would be required to complete Section 2 (for Large Private Fund Advisers to hedge funds and commodity pools), Section 3 (for Large Private Fund Advisers to liquidity funds) and/or Section 4 (for Large Private Fund Advisers to private equity funds). All filers must file electronically through the Investment Adviser Registration Depository or a website that will be specified in the final rules.

### Proposed Filing Deadlines for Filing Form PF

The filing deadlines for Form PF would vary depending on the amount of AUM. Newly registering Private Fund RIAs would be required to file their initial Form PF within 15 days following the next quarter end after registration. Already registered Private Fund RIAs would be required to file their initial Form PF 15 days after the next quarter end following the compliance date, but Private Fund RIAs other than Large Private Fund Advisers may file their initial Form PF within the 90 days after the initial compliance date.

Private Fund RIAs would also be required to amend their Form PFs on a different schedule depending on their AUM. Large Private Fund Advisers would be required to amend Form PF within 15 days after the end of each quarter. Other Private Fund Advisers would be required to amend Form PF at the same time if files its annual updating amendment for its Form ADV.

<sup>1</sup> Managers that are exempt because they only advise private funds and have less than \$150 in AUM or only advise venture capital funds would not be required to file Form PF.

<sup>2</sup> If the adviser’s principal office and place of business is outside the U.S., the adviser could exclude any private fund that during the last fiscal year was neither a U.S. person nor offered to, or beneficially owned by, any U.S. person. The adviser also would be required to exclude any assets in any account that are solely invested in other funds (i.e., internal or external fund of funds) in order to avoid duplicative reporting.



## Confidentiality

The SEC and the CFTC do not intend to make the information disclosed on Form PF publicly available, and the information in Form PF would be carved out from disclosure of the Freedom of Information Act for most purposes. The SEC stated that it would, however, use the information in enforcement proceedings.

## Dual Registrants

To prevent duplicative reporting, commodity pools that meet the definition of a private fund would be treated as hedge funds for purposes of Form PF.<sup>3</sup> Under proposed Commodity Exchange Act rule 4.27(d), Dual Registrants may satisfy their filing obligations filing Form PF with respect to these private funds, a Dual Registrant will be deemed to have satisfied certain of its filing requirements for these funds.

## Form PF Section 1 All Private Fund RIAs

All Private Fund RIAs would be required to complete Section 1 of Form PF.

Section 1a seeks identifying information about the Private Fund RIA, such as its name and the name of any of its related persons<sup>4</sup> whose information is also reported on the adviser's Form PF. Section 1a also would require reporting of basic aggregate information about the private funds managed by the adviser, such as total and net AUM, and the amount of those assets that are attributable to certain types of private funds.

Section 1b of Form PF would elicit certain identifying and other basic information about each private fund advised by the Private Fund RIA. The Private Fund RIA would need to complete a separate section 1b for each private fund it advises. Section 1b would also require reporting of each private fund's gross and net assets and the aggregate notional value of its derivative positions, basic information about the fund's borrowings, information about the level of concentration of the fund's investor base, and monthly and quarterly performance information about each fund. How would the proposed rules define a "venture capital fund?"

Section 1c would require reporting of certain information only about hedge funds (including commodity pools) managed by the Private Fund RIA, such as their investment strategies, percentage of the fund's assets managed using computer-driven trading algorithms, significant trading counterparty exposures (including identity of counterparties), and trading and clearing practices.

## Form PF Section 2 Large Private Fund Advisers to Hedge Funds and Commodity Pools

Large Private Fund Advisers with more than \$1 billion in hedge fund AUM on any day during a quarter (other than fund of funds assets) would be required to complete Part 2 of Form PF for that quarter. Proposed Form PF would define "hedge fund" as any private fund that: (1) has a performance fee or allocation calculated by taking into account unrealized gains; (2) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (3) may sell securities or other assets short. Commodity pools would be included in the above definition if they are also private funds.

Section 2 of Form PF is broken into several sections. Section 2a requests information relating to the types of securities, commodities and derivatives that the fund holds on a long or short basis, the market value thereof, the turnover period thereof and the geographic breakdown of the investments. Large Private Fund Advisers would be required to file a separate Section 2b of Form

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<sup>3</sup> See the below definition of hedge fund under Section 2 of Form PF.

<sup>4</sup> "Related person" is defined generally as: (1) all of the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; and (3) all of the adviser's employees (other than employees performing only clerical, administrative, support or similar functions).

PF would be required for each hedge fund or group of parallel funds or managed accounts<sup>5</sup> with \$500 million or more in assets as of the close of business on any day during the reporting period, which would include a fund by fund breakdown of the above information plus information relating to liquidity, counterparty exposures, collateral posted, risk metrics (including value at risk), asset sensitivity analyses, borrowings and investor information (including the percentage of investors subject to side-pocket arrangements and that may be limited in withdrawals).

## Section 3 Information Regarding Liquidity Funds

Large Private Fund Advisers with more than \$1 billion in liquidity fund AUM on any day during a quarter together with any money market funds would be required to complete a separate Section 3 of Form PF for each liquidity fund for that quarter. Proposed Form PF would define “liquidity fund” as any private fund that seeks to generate income by investing in a portfolio of short term obligations to maintain a stable net asset value.

Section 3 of Form PF would require that relevant Large Private Fund Advisers to report the type of valuation method used, compliance with the SEC’s money market rule, information regarding the net asset value of the fund’s assets, a breakdown of the fund’s investments, the maturity of the fund’s investments, financing information and investor information. Section 3 would also require information regarding the liquidity fund’s borrowing practices.

## Section 4 Information Regarding Private Equity Funds

Large Private Fund Advisers with more than \$1 billion in private equity funds AUM together with any parallel funds or parallel managed accounts as of the close of business of the calendar quarter would be required to file a separate Section 4 relating to each private equity fund that they advise for that quarter. Proposed Form PF would define a “private equity fund” as any private fund other than a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and that does not provide investors with liquidity.

Section 4 of Form PF would require that relevant Large Private Fund Advisers to report information regarding the balance of the private equity fund’s borrowings, and, if the private equity fund guarantees the obligations of its portfolio companies, the obligations of the guarantee arrangements, the weighted average debt-to-equity ratio of controlled portfolio companies, maturity information regarding controlled portfolio companies, the occurrence of events of default under any indenture or other indebtedness by the fund or its portfolio companies, information regarding controlled portfolio companies’ bridge financing, investments in financial entities and an industry and geographic breakdown of investments.

## Form CPO-PQR and CTA-PR: Reporting by Certain CPOs and CTAs

Under the CFTC’s separately proposed rules, CPOs and CTAs would be required to file proposed Form CPO-PQR (for CPOs) and proposed Form CTA-PR (for CTAs) with the National Futures Association reporting substantively identical information as Form PF requires for Private Fund RIAs to hedge funds, with appropriate modifications. Dual Registrants would be deemed to have satisfied their filing obligations for Schedules B and C of proposed Form CPO-PQR and Schedule B of proposed Form CTA-PR by providing the information in Sections 1 and 2 of Form PF. Dual Registrants would, however, still be required to file Form CTA-PR and the other parts of Form CPO-PQR, as appropriate.

The quantity and frequency of information required would, as with the Form PF, depend on the size of the CPO or CTA and that of the advised pools. The CFTC is also proposing to amend Regulation 145.5 to treat certain proprietary information collected in Forms CPO-PQR and CTA-PR as nonpublic records.

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<sup>5</sup> For purposes of determining whether a private fund is a qualifying hedge fund, the adviser would have to aggregate any parallel managed accounts, parallel funds and funds that are part of the same master-feeder arrangement, and would have to treat any private funds managed by its related person as if they were managed by the filing adviser. Hedge fund assets that are “funds of funds” would not be included for purposes of computing the \$500 million threshold.

## Conclusion

The comment period will end 60 days from the date of publication in the Federal Register. We will keep you up to date as these proposed rules move through comment process and are adopted as final rules. It is currently anticipated that the proposed rules requiring filing of Form PF would have a compliance date of December 15, 2011. If the compliance date as adopted as December 15, 2011, Large Private Fund Advisers would begin filing 15 days after the end of the fourth quarter of 2011 (*i.e.*, Large Private Fund Advisers would need to make their initial Form PF filing by January 15, 2012). The proposed rules would allow other Private Fund RIAs to file their Form PF 90 days after the end of their first fiscal year occurring on or after the compliance date of the proposed rule to file their first Form PF (with the expectation that this would result in smaller private fund advisers with a December 31 fiscal year-end filing their first Form PF by March 31, 2012).

To view the proposed Form PF, click [here](#).

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If you have any questions concerning this alert, please contact —

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