

## Investment Funds Alert

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

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The Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) recently adopted Form PF and related rules that will require registered investment advisers to private funds with at least \$150 million in regulatory assets under management (AUM)<sup>1</sup> attributable to those private funds (“Private Fund Advisers”) to file Form PF. The deadline for filing and the content of Form PF will vary depending on the AUM of the Private Fund Adviser and the type and net asset value of the funds it advises. The form itself is 42 pages long and is broken into four sections: a section all Private Fund Advisers must file within 120 days after the end of the fiscal year and three other sections that must be filed by, respectively, large Private Fund Advisers to hedge funds (as described below) within 60 days after the end of the fiscal quarter, large Private Fund Advisers to liquidity funds within 15 days after the end of the fiscal quarter and large Private Fund Advisers to private equity funds within 120 days after the end of the fiscal year. Form PF must be filed electronically through the Investment Adviser Registration Depository.

Form PF will have a two-step phase in compliance date. Private Fund Advisers with—

- \$5 billion or more in AUM attributable to hedge funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012
- \$5 billion or more in AUM attributable to liquidity funds combined with money market funds as of the most recently completed fiscal quarter prior to June 15, 2012 or
- \$5 billion or more in AUM attributable to private equity funds as of the last day of the fiscal year ending on or after June 15, 2012

will be required to file a Form PF relating to the first fiscal period requiring reporting following June 15, 2012. All other Private Fund Advisers will be required to file for the first fiscal period requiring reporting following December 15, 2012.

Registered commodity pool operators (CPOs) and commodity trading advisors (CTAs) that are also registered investment advisers (“Dual Registrants”) and advise private funds will be deemed to have filed with the CFTC any Form PF filed with the SEC. Dual Registrants who are otherwise required to file Form PF may also submit data on Form PF regarding commodity pools that are not private funds as an alternative to compliance with certain of the CFTC reporting requirements.

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<sup>1</sup> “Regulatory Assets Under Management” is determined under Instruction 5F to Form ADV.



## Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank 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” in U.S. financial markets posed by private funds. Form PF and the related rules respond to this legislative mandate. Form PF collects a variety of qualitative and quantitative information concerning private funds (regardless of size) that the SEC and the CFTC will then share with the FSOC. In the case of large private fund managers, the required information includes 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.

## Form PF Breakdown

Form PF is broken into four separate reporting parts. All Private Fund Advisers will be required to complete Section 1 of Form PF. Private Fund Advisers with more than a specified amount of AUM attributable to a class of private fund will also be required to complete separate sections and subsections of the Form PF. A Private Fund Adviser that has AUM attributable to hedge funds<sup>2</sup> of at least \$1.5 billion as of the last day of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter (a “Large Hedge Fund Adviser”) will be required to complete Section 2. Section 2 also requires a Large Hedge Fund Adviser to complete an additional sub-section for each hedge fund with a net asset value of \$500 million or more as of the last day of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter (a “Qualifying Hedge Fund”) that it advises. A Private Fund Adviser that has AUM attributable to liquidity funds (i.e., private money market-type funds)<sup>3</sup> and money market funds of at least \$1 billion as of the last day of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter (a “Large Liquidity Fund Adviser”) will be required to complete a Section 3 for each liquidity fund that it advises. A Private Fund Adviser that has AUM attributable to private equity funds<sup>4</sup> of at least \$2 billion as of the last day of the most recently completed fiscal year (a “Large Private Equity Fund Adviser”) will be required to complete a Section 4 for each private equity fund that it advises.

## Aggregation

A Private Fund Adviser will be required to aggregate its funds with similarly managed funds and managed accounts to calculate whether a fund or an adviser has satisfied the thresholds for filing or completing additional portions of Form PF and for the information reported. For purposes of determining whether a registered investment adviser has satisfied any of the thresholds contemplated by Form PF,<sup>5</sup> it will be required to aggregate the net asset value (NAV) of the funds it advises with—

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<sup>2</sup> “Hedge funds” are defined as any private fund that: (i) has a performance fee or allocation calculated by taking into account unrealized gains (other than unrealized gains taken into account only for the purpose of reducing fees or allocations to reflect unrealized losses) that is paid to an investment adviser (or its related person); (ii) 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 (iii) may sell securities or other assets short, other than short selling that hedges currency exposure or manages duration of investments. Vehicles established for the purpose of issuing asset-backed securities are explicitly excluded from the above definition, but commodity pools are included if they are also private funds.

<sup>3</sup> “Liquidity funds” are defined as private funds that seek to generate income by investing in a portfolio of short-term obligations to maintain a stable net asset value per unit or minimize volatility.

<sup>4</sup> “Private equity funds” are funds that do not provide redemption rights in the ordinary course and are not hedge funds, liquidity funds, venture capital funds, real estate funds, securitized asset funds or venture capital funds.

<sup>5</sup> In other words, the mandatory aggregation rules are required for determining whether (i) a registered investment adviser has more than \$150 million in AUM attributable to private funds such that it must file Form PF, (ii) a hedge fund is a “Qualifying Hedge Fund” and (iii) a Private Fund Adviser is a Large Hedge Fund Adviser, Large Liquidity Fund Adviser or Large Private Equity Fund Adviser.

- “parallel managed accounts” (other than accounts that exceed the size of the hedge funds on an individual or aggregate basis) advised by the registered investment adviser that pursue substantially the same investment objective and strategy and that invest in parallel in substantially the same positions
- “parallel funds” advised by the registered investment adviser that pursue substantially the same investment objective and strategy and that invest in parallel in substantially the same positions
- parallel managed accounts and funds managed by the registered investment adviser’s related persons<sup>6</sup> unless the related person is separately operated<sup>7</sup>
- any private funds that are part of the same master-feeder arrangement.

For purposes of reporting as to an individual fund in the various sections of Form PF, a Private Fund Adviser may provide information for master-feeder arrangements or parallel fund structures either in the aggregate or individually. A Private Fund Adviser should not report information regarding related persons, unless the Private Fund Adviser is submitting a joint filing for the related person. A Private Fund Adviser need not report as to parallel managed accounts unless a question specifically requests it. A Private Fund Adviser that reports in the aggregate, however, must do so consistently throughout the Form PF it files.

For purposes of reporting and determining whether a threshold is satisfied, a Private Fund Adviser is required or permitted to disregard certain assets. First, a Private Fund Adviser that aggregates a master-feeder arrangement should disregard the investment by the feeder in the master to avoid double counting. Second, a Private Fund Adviser that is aggregating parallel managed accounts with a fund for determining whether it satisfies a reporting threshold should disregard those accounts for reporting purposes. Third, a registered investment adviser that is a sub-adviser to a fund for which the principal adviser is filing reports should not report its sub-advised funds. Fourth, investments in other private funds may be disregarded. A Private Fund Adviser that disregards investments in private funds must do so consistently, but must still include the performance of investments in private funds for the purposes of reporting its performance.

Certain funds may be completely disregarded for the purposes of the information reported in Form PF. A fund of funds that exclusively invests in private funds and otherwise holds only cash, cash equivalents or currency hedging instruments should be disregarded for reporting in Form PF other than in Section 1b described below. Also, registered investment advisers with a principal office and place of business outside of the United States may 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 for purposes of reporting and for determination of thresholds.

## Filing Deadlines for Submission of Form PF

The filing deadlines for Form PF vary depending on the amount of AUM of the filer and the type of fund that the filer advises. A Private Fund Adviser that is not a Large Hedge Fund Adviser, Large Liquidity Fund Adviser or Large Private Equity Fund Adviser must file its Form PF 120 days following the fiscal year end and must amend it on an annual basis. A Large Hedge Fund Adviser must file information relating to the hedge funds it advises within 60 days following the end of each fiscal quarter. A Large Liquidity Fund Adviser must file information relating to the liquidity funds it advises within 15 days following the end of each fiscal quarter. A Private Fund Adviser that is either a Large

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<sup>6</sup> “Related person” has the meaning set forth in Form ADV, i.e., any “advisory affiliate” and any person that is under “common control” with the investment adviser.

<sup>7</sup> A related person is separately operated if the Private Fund Adviser (i) has no business dealings with the related person in connection with advisory services it provides to its clients; (ii) does not conduct shared operations with the related person; (iii) does not refer clients or business to the related person, and the related person does not refer prospective clients or business to the Private Fund Adviser; (iv) does not share supervised persons or premises with the related person; and (v) has no reason to believe that its relationship with the related person otherwise creates a conflict of interest with its clients.

Hedge Fund Adviser or a Large Liquidity Fund Adviser must still file the information in Part 1 for all funds it advises within 120 days after the end of the fiscal year, either filed early together with information for hedge funds or liquidity funds for that quarter or filed on a later date by the 120-day deadline through an amendment. A Large Private Equity Fund Adviser is required to file its Form PF 120 days after the fiscal year end. A newly registering Private Fund Adviser is required to file its initial Form PF by the same deadline as other Private Fund Advisers unless the filing would relate to a fiscal quarter or year ending prior to the date on which the newly registered Private Fund Adviser's registration was effective.

## Confidentiality

The SEC and the CFTC will not make the information disclosed on Form PF publicly available, and the information in Form PF is carved out from disclosure of the Freedom of Information Act for most purposes, but the SEC and the CFTC may use the information in enforcement proceedings. In advance of the compliance dates, the SEC will review its controls and systems in place for the use and handling of the data and may delay the compliance date if its controls and systems are not adequate to maintain confidentiality.

## Form PF Section 1 – All Private Fund Advisers

All Private Fund Advisers will be required to complete Section 1 of Form PF. Section 1 is further broken into three sections: Section 1a for all filers focusing on information relating to the Private Fund Adviser, Section 1b, which solicits information regarding all private funds managed by the Private Fund Adviser, and Section 1c, which solicits information regarding hedge funds that the Private Fund Adviser advises.

Section 1a seeks identifying information about the Private Fund Adviser, such as its name, large trader identification number (if any) and the name of any of its related persons<sup>8</sup> whose information is also reported on the adviser's Form PF. Section 1a also requires 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 elicits certain identifying and other basic information about each private fund advised by the Private Fund Adviser. The Private Fund Adviser needs to complete a separate section 1b for each private fund it advises, but may aggregate the reports for master-feeder structures and parallel funds instead of reporting each fund separately, so long as the method is consistently applied throughout Form PF. Section 1b also requires reporting of each private fund's (i) gross and net assets; (ii) aggregate notional value of its derivative positions; (iii) borrowings; (iv) assets and liabilities broken down as level 1, 2 and 3 assets under U.S. GAAP or a similar regime and on a cost basis; (v) investor base, broken down by the type of investor; (vi) portion of assets that are invested in other private funds; (vii) parallel managed accounts related to the private fund; and (viii) annual gross and net performance information (or monthly or quarterly if the private fund's performance is calculated that frequently).

Section 1c requires reporting of certain information relating to hedge funds (including commodity pools) managed by the Private Fund Adviser, such as (i) their investment strategies expressed as a percentage of the fund's net assets and capital, (ii) the percentage of the fund's assets managed using computer-driven trading algorithms, (iii) significant trading counterparty exposures (including identity of counterparties) and (iv) trading and clearing practices.

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<sup>8</sup> "Related person" is defined generally as: (i) all of the adviser's officers, partners or directors (or any person performing similar functions); (ii) all persons directly or indirectly controlling, controlled by, or under common control with, the adviser and (iii) all of the adviser's employees (other than employees performing only clerical, administrative, support or similar functions).

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

A Large Hedge Fund Adviser will be required to file Section 2 of Form PF, which is also broken into sections. Section 2a requests aggregate information relating to advised hedge funds, including the types of securities, commodities and derivatives that advised hedge funds hold on a long or short basis, the market value thereof, the value turned over during the relevant period and a geographic breakdown of the funds' investments. A Large Hedge Fund Adviser will also be required to file a separate Section 2b of Form PF for each Qualifying Hedge Fund, subject to the aggregation rules described above. Section 2b includes a fund-by-fund breakdown of the above information plus information relating to investor liquidity for the Qualifying Hedge Fund (including gating restrictions, side-pockets, the ability to suspend withdrawals and the percentage breakdown of when investors can redeem), counterparty exposures, collateral posted, risk metrics (including value at risk), risk sensitivity analyses, base currency and borrowings information.

## **Form PF Section 3 – Liquidity Funds**

A Large Liquidity Fund Adviser will be required to complete a separate Section 3 of Form PF for each liquidity fund. Section 3 of Form PF requires that the Large Liquidity Fund Adviser report the type of valuation method used, whether the liquidity fund complies with the SEC's money market rule, the net asset value of the liquidity fund's assets, a breakdown of the fund's investments and their maturity, a breakdown of the types and maturity of financing arrangements investor liquidity and other investor information.

## **Form PF Section 4 – Private Equity Funds**

A Large Private Equity Adviser will be required to file a separate Section 4 of Form PF for each private equity fund that it advises and the portfolio investments made by the fund. Section 4 requires that the Large Private Equity Adviser report information regarding (i) whether the private equity fund guarantees the obligations of its portfolio companies and the balance thereof; (ii) the average debt-to-equity ratio of controlled portfolio companies of the relevant private equity fund, reported for the highest and lowest debt-to-equity ratio and on a weighted-average basis; (iii) the gross asset value of the controlled portfolio companies; (iv) current, long-term and payment-in-kind borrowings relating to those controlled portfolio companies; (v) maturity information regarding controlled portfolio companies; (vi) the occurrence of events of default under any indenture or other indebtedness by the fund or its controlled portfolio companies; (vii) controlled portfolio companies' bridge financing, investments and the creditor or counterparty; and (viii) investments in financial entities and an industry and geographic breakdown of portfolio companies.

## **Dual Registrants**

Under the CFTC's separate 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, which would report substantively similar information as Form PF requires for Private Fund Advisers to hedge funds, with appropriate modifications. A Dual Registrant would be deemed to have satisfied its 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 if the CFTC adopts the amended reports. A Dual Registrant would, however, still be required to file Form CTA-PR and the other parts of Form CPO-PQR, as appropriate.

## **Conclusion**

While the initial required filing deadline for Form PF was extended in the final version, registered investment advisers to private funds and advisers to private funds that plan to register due to the Dodd-Frank Act should review their

current data collection practices to develop a plan to efficiently gather data from their existing operating units in order to be able to respond to the questions in Form PF. Advisers should also develop data structures to aggregate data as contemplated by Form PF, formulate the data as required and monitor whether a private fund or an adviser has crossed a special reporting threshold of Form PF.

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

## Quick Form PF Summary

	Deadline for Filing	Subpart Thresholds for Fund-Level Information	Phase-In (Others must File for Fiscal Period Ending After December 15, 2012)
All registered investment advisers (RIAs) to private funds with \$150 million or more in regulatory AUM	120 days after the end of the fiscal year	All reporters must file subparts 1a and 1b; subpart 1c requires reporting relating to advised hedge funds	N/A
RIAs that have \$1.5 billion or more in regulatory AUM attributable to <b>hedge funds</b> (including private fund commodity pools) as of the end of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter	60 days after the end of the fiscal quarter	Must complete separate 2b for each fund with more than \$500 million in NAV as of last day of the month of the fiscal quarter immediately preceding the most recently completed fiscal quarter	RIAs with \$5 billion or more in regulatory AUM attributable to <b>hedge funds</b> (including private fund commodity pools) as of the last day of the fiscal quarter most recently completed prior to June 15, 2012
RIAs that have \$1 billion or more in combined regulatory AUM attributable to <b>liquidity funds</b> or money market funds as of the end of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter	15 days after the end of the quarter	Must file separate Section 3 for each liquidity fund	RIAs with \$5 billion or more in combined regulatory AUM attributable to <b>liquidity funds</b> or money market funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012
RIAs that have \$2 billion or more in regulatory AUM attributable to <b>private equity funds</b> as of the last day of the most recent fiscal year	120 days after the end of the fiscal year	Must file separate Section 4 for each fund	RIAs with \$5 billion or more in regulatory AUM attributable to <b>private equity funds</b> as of the last day of the fiscal year ending after June 15, 2012

The monetary value of the above thresholds must be calculated in accordance with the aggregation rules in Form PF, described above.

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