

SEC Reporting Requirements for Advisers to Private Funds

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The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") establishes the Financial Stability Oversight Council ("FSOC") for the purpose of monitoring risks to the stability of the U.S. financial system. Section 404 of the Dodd-Frank Act directed the Securities and Exchange Commission ("SEC") to collect information from advisers to private funds to assist the FSOC with its monitoring responsibilities.

In the last quarter of fiscal 2011, the SEC adopted Rule 204(b)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), which requires registered investment advisers with at least \$150 million in private fund assets under management to report systemic risk information to the SEC on Form PF. A copy of the SEC's adopting release is [here](#) and the effective date of the final rules is March 30, 2012. A copy of Form PF is [here](#).

The information collected on Form PF will be used by the FSOC to gain insight in the activities of advisers, enhance its risk monitoring of the financial markets and assess systemic risk in the U.S. financial system. Form PF filings will be made on a confidential basis, and the information collected through Form PF by the SEC and used by the FSOC generally is required to be kept confidential. Information filed on Form PF will supplement the information the SEC collects from registered investment advisers on the recently revised and expanded Form ADV.

Who Must File Form PF

An investment adviser must file a Form PF if it is (i) registered or required to register with the SEC, (ii) advises one or more "private funds" and (iii) had at least \$150 million in regulatory assets under management ("AUM") attributable to private funds at the end of its most recently completed fiscal year. A "private fund" is defined as an issuer that would be an investment company but for the exceptions contained in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940. As a result, private issuers with not more than 100 investors, and private issuers owned exclusively by "qualified purchasers" (generally defined as a person or company with not less than \$5,000,000 in investments), which may not be covered by the Investment Company Act of 1940, may be treated as a private fund and investment advisers to these funds may be required to file Form PF under the final rules.

State registered advisers (generally advisers with less than \$100 million in AUM) and advisers that are exempt from registration with the SEC, including exempt reporting advisers, are not required to file Form PF. Exempt reporting advisers are advisers solely to venture capital funds or private funds that in the aggregate have less than \$150 million in AUM in the United States (pursuant to Sections 203(l) and 203(m) of the Advisers Act, respectively).

Categories of Advisers

Investment advisers that are required to file Form PF are divided into two broad groups – large private fund advisers and small private fund advisers. "Large Private Fund Advisers" are:

- "Large Hedge Fund Advisers": Advisers with at least \$1.5 billion in AUM attributable to hedge funds, which are generally defined as any private fund with one or more of (a) a performance fee based on market value instead of only realized gains, (b) high leverage, or (c) short-selling;
- "Large Liquidity Fund Advisers": Advisers with at least \$1 billion in AUM attributable to liquidity funds and registered money market funds;
- "Large Private Equity Advisers": Advisers with at least \$2 billion in AUM attributable to private equity funds, which are generally defined as any private fund that is not a hedge fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course.

All other advisers are considered "Small Private Fund Advisers." The amount of information reported and the frequency of reporting is substantially different for Large Private Fund Advisers and Small Private Fund Advisers.

The SEC anticipates that most private fund advisers will be regarded as Small Private Fund Advisers, but that the relatively limited number of Large Private Fund Advisers providing more detailed information will represent a substantial portion of industry assets under management. For example, the SEC staff estimates that 155 private equity fund advisers in the U.S. exceed the \$2 billion assets threshold, and collectively represent about 75% of the U.S. private equity fund industry's total committed capital. As a result, these thresholds will allow the FSOC to monitor a significant portion of private fund assets while reducing the reporting burden for many private fund advisers.

In determining whether an adviser meets a particular reporting threshold, the adviser will be required to calculate the value of its AUM in accordance with the instructions to Form ADV and to aggregate certain assets, in accordance with the instructions to Form PF. Advisers generally only need to test whether their private equity, liquidity, hedge fund or other assets meet the relevant \$150 million AUM reporting threshold at the end of each fiscal year. However, an adviser that may qualify as (a) a Large Hedge Fund Adviser with AUM of \$1.5 billion attributable to hedge funds or (b) a Large Liquidity Fund Adviser with AUM of \$1 billion in liquidity funds and registered money market funds, must test its AUM on a monthly basis. Among other things, to determine if it meets the \$150 million threshold, an adviser must aggregate the assets of private funds advised by any "related persons," other than related persons that are separately operated and the value of parallel managed accounts, unless the value of those accounts exceed the value of private funds which are managed.

Information Reported on Form PF and Filing

Form PF has four Sections. All reporting advisers must complete Section 1 of Form PF, which is divided into three parts, which provides certain basic information about the adviser. Section 1(a) contains information regarding the adviser's identity, its gross and net assets under management and the amount of assets attributable to certain types of funds. Section 1(b) requires advisers to provide information about each private fund that it manages, including the private fund's name, whether it is part of a master-

feeder or parallel fund structure, the gross and net asset value, borrowings and leverage, investor concentration and a summary of performance. In addition, advisers that manage hedge funds must complete Section 1(c) which requires information about each hedge fund advised and includes general identifying information about the hedge fund, a description of the fund's investment strategy as a percentage of the hedge fund's net asset value, counterparty exposure, credit risk and use of trading and clearing mechanisms.

A Large Hedge Fund Adviser will be required to complete Section 2 of Form PF. Section 2 requests aggregate information relating to the advised hedge funds, including the types and market value of securities, commodities, and derivatives that advised hedge funds hold on a long or short basis, portfolio turnover and a geographic breakdown of investments. If a Large Hedge Fund Adviser manages a hedge fund with a net asset value of at least \$500 million (a "Qualifying Hedge Fund"), it is required to provide more detail concerning exposure, leverage, risk profile and liquidity relating to each Qualifying Hedge Fund. However, Large Hedge Fund Advisers are not required to report position-level information.

A Large Liquidity Fund Adviser will be required to complete Section 3 of Form PF for each liquidity fund. Section 3 of Form PF requires that a Large Liquidity Fund Adviser provide information on the type of assets in each of the liquidity fund's portfolios, its portfolio valuation method, compliance with the SEC's money market rule, net asset value of each liquidity fund's assets, information regarding the amount of assets invested in different type of instruments broken down by maturity, and investor information, including concentration of investor base, redemption policies and investor liquidity.

A Large Private Equity Adviser will be required to complete Section 4 of Form PF for each private equity fund that it advises and the portfolio investments made by each fund. This requires information about the indebtedness of each portfolio company, whether the private equity fund guarantees the obligations of any portfolio companies, the gross asset value of the controlled portfolio companies, maturity information regarding controlled portfolio companies, the identities of all persons who have provided any part of a bridge loan to a controlled portfolio company, the occurrence of an event of default under any indenture or other indebtedness by a fund or its controlled portfolio companies, and investments in financial entities and an industry and geographic breakdown of portfolio companies.

Filing Requirements and Timeframes

Advisers will be required to file Form PF electronically through the Investment Adviser Registration Depository under a process substantially similar to the current process of filing Form ADV. There is a \$150 filing fee associated with each Form PF filing, which will be used to finance the maintenance and development of the new filing system. Filings will be allowed either through a fillable form on the website or through a batch filing process utilizing the eXtensible Markup Language ("XML") tagged data format.

Large Private Equity Advisers and Small Private Fund Advisers will be required to file Form PF annually within 120 days of the end of such adviser's fiscal year end. In contrast, Large Hedge Fund Advisers and Liquidity Fund Advisers must file Form PF on a quarterly basis, and must file within 60 days and 15 days, respectively, of the end of each such adviser's fiscal quarter. Advisers are not required to file Form PF with respect to any period that ended prior to the effective date of their registrations.

Confidentiality

The SEC will not make the information disclosed in Form PF publicly available in a way that identifies particular investment advisers or private funds; although, the SEC will be permitted to use Form PF information in examinations, investigations or enforcement actions. In addition, information collected on Form PF may be shared with other federal agencies, organizations or self-regulatory bodies, although such entities would be required to represent to the SEC that they have sufficient controls in place to use and handle the information in a manner consistent with the protections established under the Dodd-Frank Act.

Initial Filing Deadlines

Implementation of Form PF will be phased-in over two stages. For private fund advisers with AUM of less than \$5 billion, the initial Form PF filing would be due following their first fiscal quarter or year, as applicable, ending on or after December 15, 2012. For Small Private Fund Advisers with a calendar year end, the first Form PF filing would be due by April 30, 2013 (i.e., 120 days after December 31, 2012).

However, private fund advisers with \$5 billion or more in AUM must file their initial Form PF after the fiscal year or fiscal quarter, as applicable, ending or after June 15, 2012. For most Large Hedge Fund Advisers, this means that the first Form PF filing would be due by August 29, 2012 (i.e., 60 days following June 30, 2012). For most Large Private Equity Fund Advisers, the first Form PF would be due by April 30, 2013 (i.e., 120 days following December 31, 2012).

For additional information about the new Form PF reporting requirements for registered investment advisers that have AUM of at least \$150 million, and other rules impacting private funds, please feel free to contact the authors of this Practice Update or your Akerman advisor.

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