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A legal update from Dechert's Financial Services Group

Harmony or Dissonance: A Comparison of Form PF and the Template Reporting Form Proposed in ESMA's Level II Advice on the Alternative Investment Fund Managers Directive

The U.S. Securities and Exchange Commission ("SEC") on 26 October 2011 adopted Form PF, the form to be used by SEC-registered investment advisers to provide the new Financial Stability Oversight Council, the systemic risk oversight body created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, with information necessary to help it monitor the systemic risk created by private funds, among other things.

Just days later, on 11 November 2011, the European Securities and Markets Authority ("ESMA") published its final report containing ESMA's technical advice to the European Commission (the "ESMA Advice") on possible implementing measures of the Alternative Investment Fund Managers Directive (the "Directive"). This final report contains a pro-forma "template" for reporting by alternative investment fund managers ("AIFMs") to competent authorities in compliance with Article 24 of the Directive in respect of the alternative investment funds ("AIFs") that they manage (referred to in this article as the "ESMA Form").

Both the SEC and ESMA, in accordance with their respective mandates, have taken into account the systemic risk reporting initiatives of various regulators around the world, including each other's initiatives. Both the SEC and ESMA mention the desirability of globally harmonised reporting requirements. However, despite (or perhaps because of) the common goal of harmonisation, and having advance knowledge of the requirements the other was considering, the SEC and ESMA have developed tantalisingly similar yet frustratingly different reporting forms and filing requirements.

Who Has to File and Which Funds have to be Reported On?

Form PF

Form PF must be filed by an investment adviser[1] that:

- is registered with the SEC as an investment adviser (each a "Registered Adviser");
- advises one or more "private funds" (as defined in the box below); and
- has "regulatory assets under management" (as defined in the box in "What Information Needs to be Reported?" below) attributable to private funds of at least $150 million (about €111 million at current exchange rates).

Accordingly, investment advisers relying on the "foreign private adviser" exemption, the "private fund adviser" exemption (the

1 For ease of reference, persons providing investment advice or investment management services (discretionary and non-discretionary) to clients are referred to in this article as "investment advisers."

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exemption most likely to be used by non-US investment advisers to private funds) or the "venture capital fund adviser" exemption (each an "Exempt Adviser"), as well as Registered Advisers who do not manage any private funds and Registered Advisers with less than $150 million of regulatory assets under management attributable to private funds, do not have to file Form PF.

The Form PF will have to cover all private funds advised by the Registered Adviser, subject to some limited exceptions. Registered Advisers based outside the United States will be permitted to omit any private funds that: (i) are not US-domiciled entities; (ii) were not beneficially owned by one or more US persons; and (iii) were not offered in the United States during the preceding 12 months.

Private Funds vs. AIFs

Both private funds and AIFs are collective investment vehicles that raise capital from multiple investors with a view to investing it in accordance with a defined investment policy for the benefit of the investors. Both definitions also carve out certain publicly offered funds under their own legal regimes.

Specifically, a "private fund" is any issuer relying on the exception from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "Investment Company Act"). This will include most types of funds offered on a private placement basis in the United States and excludes SEC-registered investment companies such as mutual funds and exchange traded funds ("ETFs"). Because they are not permitted to be SEC-registered investment companies, non-US funds (including UCITS, discussed below) offered in the United States will be considered "private funds" regardless of fact that they may be publicly offered elsewhere.

The definition of "AIF" specifically excludes open-ended funds available to the public and organised as Undertakings for Collective Investment in Transferable Securities ("UCITS"). However, in addition to privately offered AIFs, the definition of AIF includes non-UCITS publicly offered funds such as UK investment trusts and investment companies admitted to trading on regulated markets.

Thus, funds that are not private funds in the United States (e.g., mutual funds and ETFs) can be AIFs in the European Union (the "EU") and funds that are not AIFs in the EU (e.g., UCITS) can be private funds in the United States.

ESMA Form

The ESMA Form is intended to be the means by which AIFMs will report and provide the information required pursuant to Article 24 of the Directive in respect of each AIF which they manage.

The extent of the required reporting/information provision and its frequency varies depending on a number of factors including, *inter alia*, an AIFM's overall AIF assets under management, whether such assets under management include assets acquired by way of leverage and whether or not the relevant managed AIF invests in non-listed companies and issuers in order to acquire control (see further "What Information Needs to be Reported?" below).

An AIFM is a legal person whose regular business is "managing" one or more AIFs. In this context, "managing" consists of performing at least one of either portfolio management or risk management (although an AIFM may perform other functions in the course of the "collective management" of an AIF, e.g., administration and marketing).

For the purposes of the Directive, each AIF, regardless of (i) whether it is domiciled inside or outside the EU, and (ii) whether it receives services from an EU or non-EU investment adviser, will have a single AIFM. In certain circumstances, an AIF may qualify to be self-managed, making the AIF itself the AIFM.

The obligation to report/provide information under the ESMA Form pursuant to Article 24 will apply to:

- EU investment advisers in respect of all EU AIFs as to which they are treated as the AIFM;
- EU investment advisers in respect of all non-EU AIFs as to which they are treated as the AIFM, regardless of whether those AIFs are marketed in the EU;
- non-EU investment advisers in respect of all EU AIFs as to which they are treated as the AIFM; and
- non-EU investment advisers in respect of all non-EU AIFs as to which they are treated as the AIFM which are marketed in the EU.

One of the key challenges for EU and non-EU investment management groups alike will be to determine, in relation to each AIF, whether the AIF can be considered to be self-managed and, if not, which entity in the management delegation chain is the AIFM and, where the AIFM and the AIF are both outside the EU, whether a *prima facie* reporting obligation arises under Article 24 and the ESMA Form.

Future *DechertOnPoints* will explore in more detail the options for identifying the AIFM.

Challenges

For investment management groups with potential reporting exposures under Form PF and/or the ESMA Form, there are some obvious reporting challenges.

An EU-based Registered Adviser may have to report to the SEC on Form PF with respect to funds for which it is not obligated to file an ESMA Form. For example, a Registered Adviser to a UCITS, which is outside the scope of the Directive, will still have to be reported on Form PF if it is privately placed in the United States. Another example is where an Exempt Adviser serves as the AIFM for an AIF being offered in the United States and that Exempt Adviser appoints a Registered Adviser to provide portfolio management services. In such a case, the Registered Adviser would have to report on Form PF regarding the fund, even though the Registered Adviser is not the AIFM and so would not be responsible for filing the ESMA Form for that fund.

Some administrators providing administration services to UCITS, and entities providing outsourced middle/back office functions to investment advisers of UCITS, may not be attuned to supporting Registered Advisers' reporting obligations in respect of Form PF, or have processes to assist with these filings, since (i) the requirements attach solely because the investment adviser is registered with the SEC, and (ii) the UCITS will not be required to make the similar filings with ESMA under the Directive on the ESMA Form. Registered Advisers in this position will need to organise/outsource the effective collation of the necessary data in a format and at the times required for them to be able to make the applicable filings.

Where the Registered Adviser is either a sub-adviser or an investment adviser appointed by another entity acting as the fund's AIFM, the Registered Adviser may be a step further removed from the contractual process with the administrator. Such a Registered Adviser may need to make special efforts to assure the provision of the necessary information in order to make the Form PF filing.

An EU-based Registered Adviser to an SEC-registered investment company, such as a mutual fund or ETF (whether or not such fund is marketed in the EU), will have an obligation to file an ESMA Form covering such fund if there is no other AIFM appointed and regardless of where (and whether) the fund is marketed in the EU, even though there is no similar obligation to make a filing on Form PF with respect to such fund.

Similarly (and subject to implementation of the third-country provisions of the Directive), where an SEC-registered investment company being marketed in the EU has appointed a Registered Adviser based in the United States, and regardless of whether a Registered Adviser based in the EU has been appointed as a sub-adviser, the US-based Registered Adviser may be regarded as the AIFM and will be required to file the ESMA Form. In these situations, the US-based Registered Advisers (or other appointed AIFMs) will face the same types of challenges with US administrators to registered funds in respect of the ESMA Form that EU-based Registered Advisers that advise UCITS may have with the UCITS administrators regarding Form PF.

What Information Needs to be Reported?

Form PF

The SEC has split the private fund universe into several categories, which determine the type, amount and frequency of the information to be reported on Form PF.

Registered Advisers with aggregate regulatory assets under management attributable to private funds of at least $150 million are required to complete Sections 1a and 1b of Form PF in respect of the private funds they advise, regardless of the category of private fund.

Section 1a requires the following general information about the Registered Adviser:

- the name of the Registered Adviser and the names of its related persons; and
- the amount of regulatory assets under management and net assets under management attributable to different types of private funds.

Section 1b requires the following information about each of the private funds advised:

- name of the fund and its private fund identification number;
- the fund's gross asset value and net asset value;
- the value of the fund's investments in other funds;
- the value of the fund's borrowings, broken down by type of creditor;

- the aggregate value of the fund's outstanding derivatives positions;
- the fair value hierarchy classification of the fund's assets and liabilities (either under US GAAP or as set out in the instructions);
- the approximate percentage of the fund beneficially owned by various categories of investors (which are different than those traditionally used as categories for securities law purposes in application forms); and
- gross and net performance for each calendar month or quarter where it is calculated (but in any case at least annually).

Whether a Registered Adviser is required to file other sections of the Form PF depends on the categories of private fund advised by the Registered Adviser. The categories of funds for this purpose are:

Hedge Funds: A hedge fund is generally any private fund having: (i) a performance fee that takes into account market value gains (instead of only realised gains); (ii) the ability to borrow more than 1.5x net asset value or have gross notional exposure over 2x net asset value; or (iii) the ability to sell short (unless it is solely to hedge currency exposure or to manage duration).

Registered Advisers that advise hedge funds are required to complete Sections 1a, 1b and 1c of Form PF. A large hedge fund adviser is also required to file Section 2a about each hedge fund advised, and Section 2b about each hedge fund it advises with assets under management in excess of $500 million (about €373 million at current exchange rates), which amount must take into account certain parallel fund structures. A "large hedge fund adviser" is an adviser that had at least $1.5 billion (about €1.1 billion at current exchange rates) in regulatory assets under management attributable to hedge funds as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter.

Sections 1b, 1c, 2a and 2b are the parts of Form PF most closely analogous to the ESMA Form and they are discussed in greater detail below.

Liquidity Funds: A liquidity fund is any private fund that seeks to generate income by investing in a portfolio of short-term obligations in order to maintain a stable net asset value per unit or minimise principal volatility for investors. Essentially, liquidity funds are money market funds that are not registered with the SEC.

Registered Advisers that advise liquidity funds are required to complete Sections 1a and 1b of Form PF. Large liquidity fund advisers are also required to file Section 3 of Form PF. A "large liquidity fund adviser" is an adviser that had at least one liquidity fund and had at least $1 billion (about €745 million at current exchange rates) in combined regulatory assets under management attributable to SEC-registered money market mutual funds and liquidity funds as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter. Registered Advisers are not required to file Sections 1c, 2a, 2b or 4 with respect to any liquidity fund.

Section 3 of Form PF requires information with respect to each liquidity fund advised, including:

- use of the amortized cost method of valuation and/or penny rounding pricing;
- compliance with the provisions of Rule 2a-7 under the Investment Company Act;
- net asset value, yield and liquidity information;
- product exposures by maturity and open positions in excess of 5% of fund net asset value;
- amount of borrowing, by maturity and type of counterparty; and
- various data about the fund's investor base, gating, redemption policies and investor liquidity.

Private Equity Funds: A private equity fund is any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund, and does not provide investors with redemption rights in the ordinary course.

Registered Advisers that advise private equity funds are required to complete Sections 1a and 1b of Form PF. Large private equity fund advisers are also required to file Section 4 of Form PF. A "large private equity fund adviser" is an adviser that had at least $2 billion (about €1.5 billion at current exchange rates) in regulatory assets under management attributable to private equity funds as of the last day of its most recently completed fiscal year. Registered Advisers are not required to file Sections 1c, 2a, 2b or 3 with respect to any private equity fund.

Section 4 of Form PF requires information with respect to each private equity fund advised, including:

- borrowings, guarantees, leverage of portfolio companies, debt-to-equity ratio, identity of institutions providing financing, investments by industry and geography; and
- if the private equity fund invests in any financial industry portfolio company, information including the name of the company, debt-to-equity ratio and percentage of the company held by the fund.

Other Funds: The adopting release for Form PF also provides definitions for "real estate funds", "securitized asset funds" and "venture capital funds", but only the information in Sections 1a and 1b of Form PF is required to be filed with respect to such funds.

Most data on the Form PF will be required to be presented as of the last day of the Registered Adviser's fiscal year or fiscal quarter, as applicable, rather than as of the relevant funds' fiscal year-ends or fiscal quarter-ends.

Regulatory Assets Under Management vs. Assets Under Management

For purposes of Form PF, "regulatory assets under management" attributable to a private fund are calculated gross of outstanding indebtedness and other accrued but unpaid liabilities and including uncalled capital commitments. In determining a fund's gross assets, a Registered Adviser may use the total assets from the fund's balance sheet (i.e., off balance sheet leverage need not be included).

For the purpose of calculating the value of assets under management for the ESMA Form, each financial derivative instrument position, including derivatives embedded in transferable securities, should be converted into its equivalent position in the underlying assets of that derivative using the conversion methodologies set out in the ESMA Advice, which differ from the way the SEC expects the value of derivatives to be calculated for purposes of Form PF. The absolute value of this equivalent position should then be used for the calculation of the total assets under management. However, foreign exchange and interest rate hedging positions that, according to the investment strategy of the AIF, are not used to generate a return should not be taken into account for the calculation of the total value of assets under management. The total should also include assets acquired through leverage. Uncalled capital commitments are not automatically included.

The forms also differ in the treatment of funds of funds, and funds that invest in other funds but which are not funds of funds.

ESMA Form

AIFMs managing portfolios of AIFs whose total AIF assets under management are under certain specified thresholds, i.e.:

- do not exceed €100 million (including assets acquired by way of leverage); or
- do not exceed €500 million (where the AIF portfolios are unleveraged and have no redemption rights within five years),

will be required to report to the competent authority of the AIFM's home Member State the information required in Sections 1 and 2 of the ESMA Form (Questions 1-11) with respect to each EU AIF they manage and with respect to each AIF they market in the EU. AIFMs falling below the reporting thresholds are not required to complete the entire ESMA Form; however, they are permitted to omit certain detailed breakdowns by asset type otherwise required in Questions 4 and 5. See the comparison table below.

AIFMs managing portfolios of AIFs whose assets under management exceed the above thresholds will be required to report to the competent authority of the AIFM's home Member State the information required in Sections 1, 2 and 3 of the ESMA Form with respect to each EU AIF they manage and with respect to each AIF they market in the EU.

The ESMA Form is broken down into three sections based on the type of information required.

Section 1 of the ESMA Form requires information about the main instruments traded and individual exposures, including information about investment strategy, geographical focus, individual exposures and portfolio turnover.

Section 2 of the ESMA Form requires information regarding principal markets in which AIFM trading represents a significant proportion of daily market volume, investor concentration, portfolio concentration and controlling influence exercised by the AIF.

Section 3 of the ESMA Form asks for data regarding market risk, counterparty risk, liquidity risk, borrowing risk, exposure risk, operational risk and other risks.

As these Sections align most closely with Sections 1b, 1c, 2a and 2b of the Form PF, a more specific comparison has been provided below.

It should be noted that Article 24 also contains provisions whereby AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis (in accordance with the advice set out in Box 111 (Use of Leverage on a Substantial Basis) of the ESMA Advice, are required to make available to relevant competent authorities additional information pursuant to Article 24(4), in relation to: (i) the overall leverage employed by each AIF managed; (ii) a breakdown between leverage arising from the borrowing of cash and leverage embedded in financial derivatives; and (iii) the extent to which the AIF's assets have been re-used under leveraging arrangements. The ESMA Advice provides that such AIFM must provide this information at the same time as providing information of the kind covered in Section 3 of the ESMA Form. A future *DechertOnPoint* will comment on the reporting of leverage.

The ability of the competent authorities to require additional reporting under the Directive should also be noted. Under Article 24(5), competent authorities may require information in addition to that described in Article 24, on a periodic as well as *ad hoc* basis, where necessary for the effective monitoring of systemic risk.

Not All Funds Are Created Equal but Maybe They Should Be Treated That Way

Although ESMA does require that the type of AIF be identified as a (i) hedge fund, (ii) private equity fund, (iii) real estate fund, (iv) fund of funds, or (v) other fund, ESMA does not generally distinguish between these types of funds for purposes of the type or scope of information to be reported, relying instead on the size (and, to an extent, the leverage) of the portfolios managed by the AIFM as the differentiating factor.

In contrast, the SEC has chosen to require different types and different amounts of information based on the types of fund involved and the level of regulatory assets under management attributable to each type of fund.

Challenges

Some Registered Advisers that will not be required to file Form PF because their regulatory assets under management attributable to private funds are less than the $150 million threshold may nevertheless have to file the ESMA Form if they are acting as the AIFM to an AIF and may have to provide the full information about the AIF where the relevant assets under management exceed the relevant thresholds (depending on the prevailing exchange rate).

The ESMA Form will require significantly more data for all types of funds (other than hedge funds) than the Form PF. However, with respect to liquidity funds and private equity funds reported on the ESMA Form, the Form PF information will be a burden that is different in form and nature.

Since information on Form PF is to be reported in dollars and information on the ESMA Form is to be reported in euro, in each case regardless of the currency of denomination of the relevant fund, and because the thresholds for the reporting levels are stated in dollars and euro, fluctuations in exchange rates will need to be taken into account and monitored closely, especially if a reporting threshold is being approached.

Because the basis on which the relevant assets under management and asset values are to be calculated differs between the forms, a fund that is reported on both Form PF and the ESMA Form for the same period may show differing information for questions based on these calculations, even if the questions are otherwise identical.

Comparison of Sections 1b, 1c, 2a and 2b of Form PF against the ESMA Form

The chart below compares the hedge fund sections of Form PF against the ESMA Form, as the hedge fund sections for Form PF are the most closely analogous to the ESMA Form in its current state. For each item, the section of the form and the question number are noted for ease of reference.

Relevant Question from Form PF	Topic	Relevant Section from ESMA Form
No similar question but type would be identifiable by the other portions of the Form PF filed with respect to a particular fund.	**Predominate fund type**	S1-Q1. Choices are 'hedge fund', 'private equity fund', 'real estate fund', 'fund of funds' and 'other'.
S1c-Q19-20. For hedge funds only, but there is more breakdown of macro strategies and relative value strategies than in the ESMA Form. No similar question for any other types of funds.	**Breakdown of investment strategies**	S1-Q2. The breakdown for hedge funds is less granular for macro and relative value strategies than Form PF. There are also breakdowns for private equity strategies, real estate strategies, fund of fund strategies and other strategies.
S2a-Q28(a), but last category is 'Supranational' without a reference to 'multiple region'. Q28(b) goes on to ask for percentage of total net asset value invested in each of six specified countries: Brazil, China (including Hong Kong), India, Japan, Russia and the United States.	**Geographical focus**	S1-Q3, but last category is 'Supranational/multiple region' and there is no question about specific countries.
S2a-Q26 aggregating all hedge funds advised. S2b-Q30 for each individual hedge fund over $500 million. In each case, some of the specific data points differ from the ESMA Form. Form PF requires each data point as of the end of each month in the quarter being reported.	**Individual exposures and main categories of assets**	S1-Q4. Some data points differ from Form PF.
S1b-Q10-11.	**Value of fund's investments in other private funds and parallel managed accounts**	No similar question.
S2a-Q27, but turnover is to be reported for each month in the relevant quarter. The categories of assets differ from the ESMA Form, having only a line item for 'futures' where the ESMA Form breaks down the category of derivatives.	**Value of turnover**	S1-Q5. Measures turnover across entire reporting period, whether annual, semi-annual or quarterly. Derivatives turnover is to be reported on both a notional value and market value basis. The categories of assets differ from the Form PF. The ESMA Form requires more detail about derivatives, physical assets and other types of assets.
S1c-Q21.	**Percentage of fund net asset value managed using high frequency trading strategies**	No similar question.

Relevant Question from Form PF	Topic	Relevant Section from ESMA Form
S2a-Q26 aggregating all hedge funds advised. S2b-Q30 for each individual hedge fund over $500 million. In each case, the total long and short value of exposures to non-US currency holdings (all countries together) is requested as of the end of each month. S2b-Q31 requests base currency of the fund.	**Currency exposures**	S1-Q6. Requests total long and short value of exposures to various named currencies, but this can be omitted by AIFMs with assets under management of less than €100 million. Requests base currency of fund.
No similar requirement for any type of fund.	**Typical deal/position size**	S1-Q7. Choices are 'very small', 'lower mid market', 'upper mid market', 'large cap' and 'mega cap'.
No similar requirement for any type of fund.	**Principal markets where the AIFM's trading can represent a significant proportion of overall daily market volume**	S2-Q8. Requires AIFM to name the relevant markets.
S1b-Q15.	**Investor concentration**	S2-Q9.
S2b-Q35. Required to identify the sub-asset class of each position that represented 5% or more of net asset value and such information has to be separately provided for each month in the reported quarter.	**Portfolio concentration**	S2-Q10. Required to name the fund's top ten positions as a percentage of gross market value.
S4-Q76. Private equity funds are required to report on holdings of financial industry portfolio companies, but otherwise no similar requirement for other types of funds or for further specific information regarding holdings of the type required by the ESMA Form.	**Controlling influence**	S2-Q11. With respect to private equity funds only, report names of companies over which the AIF has a controlling influence, giving also percentage voting rights and transaction type.
No similar question.	**Expected annual investment return/IRR in normal market conditions**	S3-Q12.
S2b-Q40-42. These questions relate to VaR, other risk metrics and stress testing under various conditions.	**Net Equity Delta, Net DV01, Net CS01/Fund risk metrics**	S3-Q13-15. The ESMA Form as published includes insufficient explanations of these questions to be able to draw a comparison.
S1c-Q24-25. Same as the ESMA Form but some slight variations in requirements.	**Trading and clearing mechanisms**	S3-Q16. Same as Form PF but some slight variations in requirements.

Relevant Question from Form PF	Topic	Relevant Section from ESMA Form
S2b-Q37. Asks for same data broken down for each of the top five counterparties identified in S2a-Q23. S2b-Q36. Asks for the same information, but with respect to collateral posted to the fund by the top five counterparties identified in S2a-Q23.	**Value of collateral and other credit support that the fund has posted to counterparties**	S3-Q17. Asks for aggregate data for all counterparties.
S2b-Q38(b). Focuses on amounts that may be rehypothecated by counterparties. Sb2-Q38(a) also asks with respect to collateral posted to the fund, what percentage may be rehypothecated and what percentage has been rehypothecated.	**Percentage of value of collateral and other credit support that the fund has posted to counterparties that has been rehypothecated by counterparties**	S3-Q18. Focuses on amounts that have been rehypothecated by counterparties.
S2a-Q22-23, but Form PF also requires an indication of whether the named counterparty is affiliated with a major financial institution. With respect to counterparties with the greatest mark-to-market net counterparty exposure, Form PF asks for the measurement in dollars rather than as a percentage of fund net asset value.	**Top five counterparty exposures**	S3-Q19. With respect to counterparties with the greatest mark-to-market net counterparty exposure, the ESMA Form asks for the measurement as a percentage of fund net asset value (rather than in dollars).
S2b-Q39, but Form PF does not require the top three CCPs to be named as the ESMA Form does.	**Direct clearing through central clearing counterparties (CCPs)**	S3-Q20.
S2b-Q32. This question asks for a breakdown of the percentage of the portfolio which is capable of being liquidated within specified time ranges: 1 day or less, 2-7 days, 8-30 days, 31-90 days, 91-180 days, 181-365 days and longer than 365 days. This will allow for comparison against investor liquidity.	**Portfolio liquidity profile**	S3-Q21. Same as Form PF.
S2b-Q33.	**Value of unencumbered cash**	S3-Q22.
S2b-Q50. This question asks for a breakdown of the percentage of the NAV divided by the shortest period within which investors are entitled to withdraw (based on pre-valuation day notice periods and applying any gates) within specified time ranges: 1 day or less, 2-7 days, 8-30 days, 31-90 days, 91-180 days, 181-365 days and longer than 365 days. This will allow for comparison against portfolio liquidity.	**Investor liquidity profile**	S3-Q23. Same as Form PF.

Relevant Question from Form PF	Topic	Relevant Section from ESMA Form
S2b-Q49(a). Form PF does not ask about the frequency of investor redemptions or for notice periods or lock up periods in periods of days. Form PF does ask for the percentage of net asset value that may be subject to a suspension or a gate.	**Investor redemptions**	S3-Q24. The ESMA Form asks for frequency of investor redemptions, giving 'daily', 'weekly', 'fortnightly', 'monthly', 'quarterly', 'semi annual', 'annual' and 'other' as the options. The ESMA Form also asks for the weighted average redemption notice period in days and the weighted average lock up period in days.
S2b-Q48(a). Form PF also asks in S2b-Q48(b) about whether additional assets have been placed in a side pocket during the reporting period.	**Percentage of fund in a side pocket**	S3-Q25(a).
S2b-Q49(e).	**Percentage of fund that is subject to a gate or another arrangement for managing illiquid assets**	S3-Q25(a).
S2b-Q49(d).	**Percentage of fund that is subject to a suspension**	S3-Q25(a).
No similar question.	**Percentage of fund assets subject to "special arrangements" arising from their illiquid nature**	S3-Q25(b).
No similar question.	**Side letters for preferential treatment**	S3-Q25(c)-(d).
S1b-Q16, but the categories are not exactly the same as the ESMA Form.	**Breakdown of ownership of units in the fund by investor group**	S3-Q26, but the categories are not exactly the same as Form PF.
S2b-Q46.	**Financing liquidity**	S3-Q27.
S2b-Q43, but Form PF requires additional details regarding the collateral breakdown.	**Value of borrowings of cash and securities**	S3-Q28.
S1b-Q12. Requires the total amount of borrowings and the percentage borrowed from various categories of creditors.	**Information regarding the value of the fund's borrowings and types of creditors**	No similar question.
S2b-Q47. Requires identity of creditors in respect of borrowings equal to or greater than 5% of fund net asset value and the dollar amount owed to each such creditor.	**Amounts owed to certain creditors in respect of borrowings**	No similar question.

Relevant Question from Form PF	Topic	Relevant Section from ESMA Form
S2b-Q44-45, but Form PF requires more detail and data with respect to each month in the reporting period. S1b-Q13 also asks whether the fund has any outstanding derivatives positions. The adviser is not required to answer this question with respect to any fund with respect to which it is answering S2b-Q44.	**Value of borrowing embedded in financial instruments**	S3-Q29.
No similar question.	**Value of securities borrowed for short positions**	S3-Q30.
No similar question.	**Gross exposure of financial and/or legal structures controlled by the fund**	S3-Q31.
No similar question.	**Leverage of the fund**	S3-Q32.
S2b-Q34.	**Total number of open positions**	S3-Q33.
S1b-Q17.	**Historical risk profile: gross and net performance**	S3-Q34(a)-(b).
S1b-Q8.	**Gross asset value of the fund**	No similar question.
S1b-Q9 requires reporting of net asset value at end of the reporting period but does not require reporting of change month-to-month.	**Historical risk profile: change in net asset value over the reporting period**	S3-Q34(c). The ESMA From requires month-to-month changes in net asset value for each month in the reporting period.
No similar questions	**Historical risk profile: subscriptions and redemptions over the reporting period**	S3-Q34(d)-(e). The ESMA Form requires detail of the amount of subscriptions and amount of redemptions during each month of the reporting period.
S1b-Q14. Form PF requires the adviser to break out each fund's assets and liabilities into the fair value categories imposed by US GAAP, or according to the instructions for funds not otherwise using US GAAP.	**Fair value categorisation of assets and liabilities**	No similar question.

Challenges

Administrators who are willing to provide the data required to populate Form PF and the ESMA Form will have to program to address the similar yet slightly different data required by the two reporting regimes.

Where a fund is not currently collecting the data from investors required to answer the relevant questions, changes to subscription documents may be needed.

Since the ESMA Form does not generally distinguish between types of funds, much of the data requested will not be the type of information that certain types of funds (e.g., private equity funds) are collecting or monitoring currently in the regular course.

How Frequently Are Reports Required?

Form PF

Sections 1a and 1b are required to be filed/updated annually, within 120 days after the adviser's fiscal year-end. Section 1c is also required to be filed/updated annually, within 120 days after the adviser's fiscal year-end.

Large hedge fund advisers are required to file/update Section 2 quarterly, within 60 days after the end of each of the adviser's four fiscal quarters.

Large liquidity fund advisers are required to file/update Section 3 quarterly, within 15 days after the end of each of the adviser's four fiscal quarters.

Large private equity fund advisers are required to file/update Section 4 annually, within 120 days after the adviser's fiscal year-end.

ESMA Form

AIFMs managing portfolios of AIFs whose assets under management do not exceed €100 million (about $134 million at current exchange rates) will be required to make their reports annually, as soon as possible and no later than one month (or one month plus 15 days in the case of funds of funds) following the end of the period.

AIFMs managing portfolios of AIFs whose assets under management exceed €100 million but do not exceed €1.5 billion (about $2 billion at current exchange rates) will be required to make their reports semi-annually, as soon as possible and no later than one month (or one month plus 15 days in the case of funds of funds) following the end of the period. If any such managed or marketed AIF represents assets under management (including any assets acquired through the use of leverage) in excess of €500 million (about $670 million at current exchange rates), the reports will be required to be made quarterly, as soon as possible and no later than one month (or one month plus 15 days in the case of funds of funds) following the end of the period.

AIFMs managing portfolios of AIFs whose assets under management exceed €1.5 billion will be required to make reports annually, as soon as possible and no later than one month (or one month plus 15 days in the case of funds of funds) following the end of the period.

The above requirements are subject to relaxation in relation to certain unleveraged private equity-type AIFs. Where the core investment policy of an AIF is to invest in non-listed companies and issuers in order to acquire control and the AIF is unleveraged, the reporting need only be on an annual basis.

However, as an exception to each of the above categories, any competent authority of a home Member State could choose to require all or any part of the information to be reported on a more frequent basis and/or could choose to require additional information. Where a competent authority of a home Member State chooses to require additional information or more frequent reporting, such competent authority would not be obligated to require that the additional information or more frequent reporting be submitted on the ESMA Form – it could choose a different format.

For a non-EU AIFM, the relevant competent authority is the competent authority of the Member State where the AIF is marketed.

Challenges

When a Registered Adviser is involved, information about a particular AIF may need to be filed with a regulator (US or EU) with respect to as many as eight different points in time. Moreover, this filing obligation could be increased if the competent authority of the relevant home Member State chooses to impose more frequent reporting obligations.

Due to exchange rates and different reporting thresholds, it is much more likely than not that information regarding AIFs subject to reporting on both Form PF and the ESMA Form will be required to be reported, somewhere, at least quarterly.

How, Where and in What Form Are Reports to be Made?

Form PF

Form PF must be filed electronically via the Investment Adviser Registration Depositary ("IARD"), the system used for SEC registration as an investment adviser. Registered Advisers will have the option of using a fillable form or uploading it through a batch filing process using the eXtensible Markup Language ("XML"). It is anticipated that the XML data tags will be released in advance of the 15 June 2012 compliance date. A filing fee will be charged.

ESMA Form

To date there do not appear to be plans to have a uniform electronic filing system, or even necessarily a uniform form used by the competent authorities of each Member State, since they are allowed to require additional information and/or information in different formats. The ESMA Advice does encourage competent authorities to require the data in electronic format where possible, but does not suggest a format.

Challenges

A non-EU AIFM will have to provide reports to the competent authorities in each Member State where the AIFs it manages are marketed. If the non-EU AIFM manages multiple AIFs marketed in various jurisdictions, and/or, in the case of any particular AIF, marketed in more than one jurisdiction, and the filing requirements end up being different in substance and form across each Member State, the costs associated with preparing the required filings could quickly outweigh the benefits of marketing in multiple Member States.

Developing systems to be able to deliver information to meet differing information requirements in multiple formats will be costly for administrators and these information technology development costs may well be passed along to funds. Due to the extended period of time between the first filings on Form PF and the transposition of the Directive into national law of each Member State, the IT challenge will be ongoing.

But on the Bright Side...

Although the differences between the reporting forms will create challenges for investment advisers and funds, those same differences present opportunities for administrators who are seeking to differentiate their service offering or increase their market share. Those administrators who are able to provide easy full service solutions to assist with these filings should be able to leverage this opportunity to grow their businesses.

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