

New Reporting Requirements for Private Fund Advisors

On January 26, 2011, the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") jointly promulgated proposed Rule 204(b)-1 (the "Rule") under the Investment Advisers Act of 1940 requiring most private fund advisors to file Form PF with the SEC. The Rule would also apply to private fund advisors who are also registered with the CFTC as commodity pool operators or commodity trading advisors.

The Rule was proposed in order to implement Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and is intended to provide information to the Financial Stability Oversight Council, established under the Dodd-Frank Act to monitor risks to the U.S. financial system.

After an extensive comment period, on October 26, 2011, the SEC adopted the Rule and Form PF, with several important changes from the proposal, including:

- (1) Only SEC-registered advisers having more than \$150 million in private fund assets under management will be required to file Form PF.
- (2) The definition of "large private fund advisers" has been revised to include:
 - (a) Advisers with at least \$1.5 billion (up from \$1 billion, as proposed) in hedge fund assets;
 - (b) Advisers to liquidity funds with at least \$1 billion in liquidity fund and money market fund assets;
 - (c) Advisers to private equity funds with \$2 billion (up from \$1 billion, as proposed) in assets.
- (3) Small private fund advisers (all private fund advisers not meeting the assets under management tests described in (2) above) must file Form PF annually, within 120 days of the end of the fiscal year (up from 90 days, as proposed).
- (4) Large private fund advisers to hedge funds and liquidity funds must file Form PF quarterly, within sixty days (up from 15, as proposed) after the end of the quarter for hedge fund managers and fifteen days following the quarter end for liquidity fund managers.
- (5) Large private equity fund advisers must file Form PF annually (not quarterly, as proposed), within 120 days of the end of the fiscal year.
- (6) Private fund advisers with assets under management in excess of \$5 billion must begin filing Form PF following the end of their first fiscal year or quarter, as applicable, ending on or after June 15, 2012. All other private fund advisers must begin filing Form PF following the end of their first fiscal year or quarter, as applicable, ending on or after December 15, 2012.
- (7) Private fund advisers filing Form PF will not be required to certify that information contained in the Form PF is "true and correct" under the penalty of perjury, as originally proposed, and they may use internal operating procedures and practices to calculate information provided in the form rather than standardized methodologies.

Please do not hesitate to contact **W. Scott McGinness, Jr.** or **Philip Meyer**, of the **Miller & Martin Investment Management Practice Group** with any questions regarding Rule 204(b)-1 or Form PF.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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