

## Form PF: Final Rules Adopted by the SEC and the CFTC

*If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.*

**Heather Cruz**

New York  
212.735.2772  
heather.cruz@skadden.com

**Lawrence D. Frishman**

New York  
212.735.3513  
lawrence.frishman@skadden.com

**Anastasia T. Rockas**

New York  
212.735.2987  
anastasia.rockas@skadden.com

**Geoff Bauer**

New York  
212.735.3619  
geoff.bauer@skadden.com

**Eric Requenez**

New York  
212.735.3742  
eric.requenez@skadden.com

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Four Times Square, New York, NY 10036  
Telephone: 212.735.3000

[WWW.SKADDEN.COM](http://WWW.SKADDEN.COM)

### I. Introduction

On November 16, 2011, the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC”) published in the Federal Register final rules requiring registered advisers to private funds to report certain information on Form PF.<sup>1</sup> Form PF is required by Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>2</sup> and the final rule (the “Final Rule”) marks the culmination of a process that began in January 2011 with the issuance of proposed Form PF (the “Proposed Rule”).<sup>3</sup> Form PF seeks to collect information the Financial Stability Oversight Council (the “FSOC”) can use to monitor the activities of private funds<sup>4</sup> and their advisers and the risk they pose to the U.S. financial system. The FSOC may also use the information reported on Form PF to issue recommendations for new regulations on the financial activities of private funds and their advisers to address systemic risk. In addition, the SEC and CFTC may use the information provided on Form PF in their roles as the primary regulators of private funds and advisers, including in connection with their regulatory programs, such as examinations, investigations and investor protection efforts.<sup>5</sup>

The Dodd-Frank Act requires the FSOC to coordinate with foreign financial regulators in assessing systemic risk. Accordingly, the staffs of the SEC and CFTC consulted with the United Kingdom’s Financial Services Authority, the European Securities and Markets Authority, the International Organization of Securities Commissions and Hong Kong’s Securities and Futures Commission in order to align Form PF with the approaches of international regulators of private funds.<sup>6</sup> The FSOC will use the information collected on Form PF to assist in determining whether and how to deploy regulatory tools, such as identifying private funds requiring additional analysis and deciding whether to recommend more stringent regulation of the financial activities of the private fund industry.<sup>7</sup>

- 1 See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Act Release No. 3308 (Oct. 31, 2011) (the “Release”), available at <http://www.sec.gov/rules/final/2011/ia-3308.pdf>.
- 2 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) Sections 404 and 406.
- 3 See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Act Release No. 3145 (Jan. 26, 2011), available at <http://www.sec.gov/rules/proposed/2011/ia-3145.pdf>.
- 4 A “private fund” is defined as “[a]ny issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940[, as amended (the “Investment Company Act”)] but for Section 3(c)(1) or 3(c)(7) of that [Investment Company] Act.” See Form PF (Paper Version) Reporting Form for Investment Advisers to Private Funds and Certain Commodity Trading Advisors, available at <http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf>, Form PF: Glossary of Terms at 7.
- 5 See Release at 8, 17.
- 6 See Release at 12-14.
- 7 See Release at 15-16.

## II. Who Is Required to File Form PF?

Rule 204(b)-1 under the Investment Advisers Act of 1940, as amended (the “Advisers Act”) requires an investment adviser to file Form PF if the investment adviser (1) is registered or required to be registered with the SEC; (2) advises one or more private funds; and (3) had at least \$150 million in regulatory assets under management (“RAUM”)<sup>8</sup> attributable to private funds as of the end of its most recently completed fiscal year.<sup>9</sup> Exempt Reporting Advisers<sup>10</sup> are not required to file Form PF.<sup>11</sup>

The minimum reporting threshold of \$150 million in private fund RAUM represents a change from the Proposed Rule, which would have required any registered adviser to file Form PF regardless of the amount of its private fund RAUM.

Commodity pool operators (“CPOs”) or commodity trading advisors (“CTAs”) that are also registered or required to be registered with the SEC as an investment adviser and otherwise meet the requirements described above must file Form PF with respect to any commodity pool that is a private fund and may file Form PF with respect to any commodity pool that is not a private fund. Filing Form PF with respect to these pools will allow a CPO or CTA to satisfy certain of the CFTC’s systemic risk filing requirements.<sup>12</sup> Form PF is a joint report with the CFTC only with respect to Sections 1 and 2 of the Form.

## III. Reporting Frequency, Timing and Large Adviser Status

The Final Rule requires certain categories of “large advisers” to report additional information about the private funds they advise on Form PF. Large adviser status is determined by the adviser’s (and its related persons’) RAUM attributable to hedge funds, liquidity funds and private equity funds.<sup>13</sup> The following table summarizes the RAUM thresholds for large adviser status, as well as the frequency and timing of reporting for each type of adviser. The RAUM thresholds for liquidity fund advisers and hedge fund advisers are determined as of the end of any month in the prior fiscal quarter while the RAUM thresholds for private equity fund advisers are determined as of the last day of the adviser’s most recently completed fiscal year.<sup>14</sup>

8 “Regulatory assets under management [are] calculated in accordance with Part 1A, Instruction 5.b of Form ADV.” See Form PF: Glossary of Terms at 8.

9 See Release at 18; Rule 204(b)-1 under the Advisers Act, 17 C.F.R. § 275.204(b)-1 (2012).

10 “Exempt Reporting Advisers” are advisers that act as investment advisers solely to: (a) one or more venture capital funds; or (b) private funds if such investment advisers have RAUM in the United States of less than \$150 million. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Act Release No. 3221, at 44 n.175, *available at* <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

11 See Release at 7, n.15 and related text.

12 This memorandum does not address the reporting requirements of CPOs or CTAs. Release at 18.

13 The definitions of the types of private funds used in Form PF are the same as those used in Form ADV except that, for purposes of Form PF, all commodity pools about which an adviser is reporting are treated as hedge funds, while in Form ADV only commodity pools that are private funds are treated as hedge funds. See Release at 23, n.67.

14 See Release at 21, nn.57-59 and Form PF: General Instructions at 3.

	<b>RAUM Threshold for “Large Adviser” Status</b>	<b>Reporting Frequency</b>	<b>Reporting Timeframe</b>
<b>Large Hedge Fund Advisers</b>	\$1.5 billion	Quarterly	within 60 days of the end of each fiscal quarter
<b>Large Liquidity Fund Advisers</b>	\$1 billion	Quarterly	within 15 days of the end of each fiscal quarter
<b>Large Private Equity Fund Advisers</b>	\$2 billion	Annually	within 120 days of the end of each fiscal year
<b>All Other Advisers</b>	N/A	Annually	within 120 days of the end of each fiscal year

The above-listed thresholds were chosen by the SEC so that the number of large private fund advisers filing Form PF will be relatively small in number but represent a substantial portion of RAUM in each category.<sup>15</sup> The SEC warns in the instructions that failure to update Form PF as required is a violation of SEC and, if applicable, CFTC rules and could result in a revocation of registration.<sup>16</sup>

Even though large hedge fund advisers and large liquidity fund advisers are required to file Form PF quarterly, such advisers will only need to update information regarding other types of funds they manage on an annual basis.<sup>17</sup> The Final Rule departs from the Proposed Rule in that the Proposed Rule would have subjected large private equity fund advisers to quarterly reporting and required an adviser subject to quarterly reporting to update information with respect to all of its private funds each quarter rather than only the type of private fund that caused the adviser to cross the large adviser threshold.<sup>18</sup> An adviser may file an amended Form PF by checking the box in Section 1a regarding amendments. However, an adviser is not required to update information it believes in good faith properly responded to a question even if the information is subsequently revised for other purposes.<sup>19</sup>

See Section VI below for a discussion of the characteristics of hedge funds, liquidity funds and private equity funds.

#### **IV. Initial Filing Date**

The SEC and CFTC staggered the initial filing date of Form PF based on an adviser’s RAUM. Advisers with RAUM equal to or greater than \$5 billion attributable to one of the following categories of funds: (1) hedge funds, (2) liquidity funds or (3) private equity funds, must file their initial Form PF following the end of the adviser’s first fiscal quarter or fiscal year, as applicable, to occur on or after June 15, 2012. Consequently, the initial filers of Form PF will be large hedge fund advisers, large liquidity fund advisers and large private equity fund advisers, in each case with RAUM equal to or greater than \$5 billion attributable to one of the categories of funds listed above, which filing will be due as early as the third quarter of 2012 for large liquidity fund advisers and large hedge fund advisers.

15 See Release at 3.

16 See Form PF: General Instructions at 6-7.

17 See Release at 54, n.145 and related text.

18 See Release at 51.

19 See Form PF: General Instructions at 10.

ers. All other advisers must file their initial Form PF following the end of the adviser's first fiscal quarter or fiscal year, as applicable, to occur on or after December 15, 2012.

## V. Confidentiality

Consistent with Section 404 of the Dodd-Frank Act, the Release states that the information reported on Form PF is generally intended to remain confidential. The SEC acknowledges that Form PF collects non-public information about private funds and their trading strategies that would adversely affect the funds and their investors if it were made public.<sup>20</sup> However, the SEC and the CFTC will make available to the FSOC the information they collect on Form PF and the SEC and the CFTC may use information provided on Form PF for regulatory purposes including, in an examination, investigation or enforcement action.<sup>21</sup> In addition, information reported on Form PF may be shared with other federal departments, agencies and self-regulatory organizations.<sup>22</sup> In the event information reported on Form PF is shared with any federal department, agency or self-regulatory organization, each would be exempt from being compelled under the Freedom of Information Act to disclose to the public any information collected through Form PF and would be required to maintain the confidentiality of such information.<sup>23</sup> An adviser may also preserve anonymity of a private fund by using a code or designation for the fund rather than its name.<sup>24</sup>

## VI. Types of Funds

### A. Hedge Funds

Form PF defines a "hedge fund" as any private fund (other than a securitized asset fund<sup>25</sup>) that (1) has a performance fee or allocation calculated by taking into account unrealized gains;<sup>26</sup> (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 or enter into similar transactions.<sup>27</sup> In addition, any commodity pool that is reported or required to be reported on Form PF is categorized as a hedge fund for purposes of Form PF. Form PF requires more information about hedge funds than other types of private funds.<sup>28</sup>

The hedge fund definition is extremely broad and may capture private funds that are not conventionally considered hedge funds. In fact, the Release provides that "an adviser must conclude that a fund is not a hedge fund in order to classify it as one of the six other types of private funds defined in Form PF."<sup>29</sup>

20 See Release at 112.

21 See *id.*

22 See *id.*

23 See Release at 112-13.

24 See Form PF: General Instructions at 10.

25 Form PF defines a "securitized asset fund" as any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders. See Form PF: Glossary of Terms at 8.

26 The SEC excluded funds from the definition of "hedge fund" that take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses. The SEC also clarified that clause (1) only relates to fees or allocations that must be paid to an adviser or its related persons and that it does not capture funds that accrue or allocate such fees or allocations solely for financial reporting purposes. See Release at 25-26.

27 The SEC also excluded from clause (3) selling securities or other assets short for the purpose of hedging currency exposure or managing duration. See Release at 26.

28 See Release at 23.

29 See *id.*

In order to determine whether a fund meets one of the characteristics of a hedge fund described above, an adviser must look at whether a fund has the ability to engage in such activities, and not whether the fund actually engages in such practices. Thus, even if a fund does not employ leverage or incur derivative exposures in excess of the specified amounts, or does not engage in short selling (other than for the purpose of hedging currency exposure or managing duration), but has reserved the right to do so in its offering or governing documents, it may be classified as a hedge fund for purposes of Form PF. However, the Release acknowledges that “a private fund would not be a hedge fund for purposes of Form PF solely because its organizational documents fail to prohibit the fund from [engaging in one or more of the three activities described above] and a reasonable investor would understand, based on the fund’s offering documents that the fund will not engage in these practices.”<sup>30</sup>

## B. Liquidity Funds

Form PF defines a “liquidity fund” as 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 minimize principal volatility for investors.<sup>31</sup> The Release notes that liquidity funds can resemble registered money market funds, certain features of which may make them susceptible to runs and thus create systemic risk.<sup>32</sup>

## C. Private Equity Funds

Form PF defines a “private equity fund” as any private fund that is not a hedge fund, liquidity fund, real estate fund<sup>33</sup>, securitized asset fund or venture capital fund<sup>34</sup> and does not provide investors with redemption rights in the ordinary course.<sup>35</sup> The SEC does not define the meaning of “redemption rights in the ordinary course.” Accordingly, advisers should make an internal determination of the types of redemption rights that qualify as being in the ordinary course and apply it consistently across all funds.

## D. Fund-of-Funds

Form PF defines a “fund-of-funds” as a private fund that (1) invests substantially all of its assets in the equity of private funds that are not advised by the adviser and (2) aside from its investments in private funds, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposures.<sup>36</sup> This represents a change from the Proposed Rule which required a private fund to exclusively invest in other private funds<sup>37</sup> to qualify as a fund-of-funds. While the Final Rule permits fund-of-funds to directly hold a *de minimis* amount of cash, cash equivalents and currency hedges, the Release does not provide any guidance on the meaning of the term “*de minimis*.” As a

30 See Release at 28.

31 See Release at 29.

32 See *id.*

33 Form PF defines a “real estate fund” as any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets. See Form PF: Glossary of Terms at 8.

34 Form PF defines a “venture capital fund” as any private fund meeting the definition of venture capital fund in rule 203(l)-1 of the Advisers Act. See Form PF: Glossary of Terms at 9.

35 See Form PF: Glossary of Terms at 7.

36 See Form PF: General Instructions at 6.

37 Including for this purpose only, funds that would not otherwise be private funds because they are non-U.S. funds that are not marketed in the U.S. See Release n.129.

result, advisers should make an internal determination of the threshold for *de minimis* amounts and apply it consistently to all fund-of-funds.

Fund-of-funds trigger less reporting obligations than other private funds as the Final Rule only requires advisers to complete Section 1b for fund-of-funds; advisers may otherwise disregard fund-of-funds for purposes of reporting on Form PF.<sup>38</sup> In addition, for purposes of both the reporting thresholds and almost all of the responses to questions on Form PF, advisers may disregard any private fund's equity investments in other private funds, even if they do not qualify as a fund-of-funds. However, if an adviser disregards these investments, it must do so consistently. For example, the SEC cautions an adviser may not count these assets in determining whether the fund's borrowing exceeds half its net asset value and then disregard these assets for purposes of the reporting thresholds.<sup>39</sup>

## VII. Aggregation of RAUM

Form PF requires an adviser to aggregate the RAUM attributable to related funds and accounts differently depending on the purpose of the aggregation.<sup>40</sup> In order to determine whether an adviser meets a reporting threshold, the adviser is required to (1) aggregate parallel funds<sup>41</sup>, dependent parallel managed accounts<sup>42</sup> and master-feeder arrangements<sup>43</sup> and (2) treat any private fund or parallel managed account advised by any of the adviser's related persons as though it were advised by the adviser, unless the related person is separately operated.<sup>44</sup>

When reporting on individual funds, an adviser may provide information regarding master-feeder arrangements and parallel fund structures in the aggregate or separately, provided that it does so consistently throughout Form PF.<sup>45</sup> Advisers are not required to report information regarding parallel managed accounts other than to complete Question 11 in Section 1b of Form PF which requests certain identifying information about managed accounts.<sup>46</sup> In addition, advisers are not required to report information about private funds advised by a related person unless the adviser is filing jointly

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38 See Release at 45.

39 An adviser may not disregard any liability of a private fund even if it is incurred in connection with an investment in other private funds. See Release n.128.

40 See Form PF: General Instructions at 4.

41 Form PF defines a "parallel fund structure" as a structure in which one or more private funds (parallel funds) pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund. Advisers must aggregate any private funds that are part of the same parallel fund structure and advisers must treat any private fund or parallel managed account advised by any of its related persons as though it were advised by the adviser that is completing the Form PF. See Form PF: General Instructions at 4.

42 Form PF defines a "dependent parallel managed account" as any related parallel managed account other than a parallel managed account that individually (or together with other parallel managed accounts that pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions) has a gross asset value greater than the gross asset value of such private fund (or, if such private fund is a parallel fund, the gross asset value of the parallel fund structure of which it is a part). See Form PF: Glossary of Terms at 2.

43 Form PF defines a "master-feeder arrangement" as an arrangement in which one or more funds (feeder funds) invest all or substantially all of their assets in a single private fund (master fund). Advisers must aggregate any private funds that are part of the same master-feeder arrangement. See Form PF: General Instructions at 4.

44 A related person is separately operated if the adviser (1) has no business dealings with the related person in connection with advisory services provided to clients; (2) does not conduct shared operations with the related person; (3) does not refer clients or business to the related person, and the related person does not refer prospective clients or business to the adviser; (4) does not share supervised persons or premises with the related person; and (5) has no reason to believe that its relationship with the related person otherwise creates a conflict of interest with its clients. See Form PF: General Instructions at 4.

45 See Release at 109-110.

46 See Release at 110.



Form PF with its related person.<sup>47</sup> An adviser also may exclude parallel managed accounts if the value of these accounts is greater than the value of the private funds with which they are managed.<sup>48</sup> Advisers with a principal office or place of business outside the U.S. may exclude any non-U.S. fund not offered in the U.S. and not beneficially owned by any U.S. person.<sup>49</sup>

### **VIII. Reporting for Affiliated and Sub-Advised Funds**

An adviser may file a single Form PF for the private funds it and its related persons manage.<sup>50</sup> With respect to sub-advised funds, only the adviser that completes Section 7.B.1. of Schedule D to Form ADV with respect to such fund should report that fund on Form PF.<sup>51</sup>

### **IX. Section 1 of Form PF**

Section 1 is applicable to all advisers who file Form PF. This section is divided into three parts: (1) Section 1a requires reporting of general information about the adviser and its RAUM; (2) Section 1b requires reporting of information about each private fund managed by the adviser; and (3) Section 1c requires reporting of additional information about the hedge funds managed by the adviser.

#### **A. Section 1a – Information About the Adviser and Its Related Persons**

Section 1a asks for general identifying information about the adviser and the types of private funds that it advises.<sup>52</sup> For example, Item A of Section 1a seeks identifying information about the adviser, such as its name and the name of any of its related persons whose information is also reported on the adviser's Form PF.<sup>53</sup> In addition, Section 1a requires basic aggregate information about the private funds managed by the adviser, such as the portion of gross and net RAUM attributable to certain types of private funds.<sup>54</sup>

Section 1a also requires the signature of an authorized person on behalf of the adviser and its related persons (as applicable).<sup>55</sup> In a change from the Proposed Rule, the final Form PF does not require a certification by the signatory that all statements made in the form are “true and correct” under penalty of perjury. In response to commenters, the SEC acknowledged that such a standard was unnecessary in light of the nature of the information required on Form PF and, in particular, that the information includes estimates and requires the exercise of significant judgment.<sup>56</sup> Instead, the SEC modified the signature requirement to a simple confirmation that the form is filed with the proper authority. Despite this change, the SEC cautions that a willful misstatement or omission of a material fact is a violation of the Advisers Act.<sup>57</sup>

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47 See Form PF: General Instructions at 4.

48 See Release at 42-43.

49 See Release at 47-48.

50 See Release at 48.

51 See *id.*

52 See Form PF: General Instructions at 2.

53 See Release at 63-64.

54 See Release at 64.

55 See Form PF: General Instructions at 2.

56 See Release at 61.

57 See Release at 62, n.185.

Section 1a also provides a “Miscellaneous” section to allow the adviser to state any assumptions that it makes in responding to any question in Form PF.<sup>58</sup> Given the lack of clarity surrounding many of the questions on Form PF, we expect advisers to liberally make use of the “Miscellaneous” section to state any assumptions they make in responding to questions or definitions in the form. In addition, new Instruction 15 allows an adviser to use its own internal methodologies in its responses to Form PF’s questions as long as the methodologies are consistent (1) with information the adviser reports internally and to current and prospective investors and (2) with any instructions or other guidance on Form PF.

## **B. Section 1b – Information About the Private Funds Advised by the Adviser**

Section 1b asks for certain information regarding each private fund advised by the adviser, including information regarding the size, leverage and performance of each private fund.<sup>59</sup> An adviser must complete a separate Section 1b for each private fund that it advises except that the adviser is only required to complete one form for private funds that are reported in the aggregate as part of a master-feeder arrangement or a parallel fund structure, in which case the adviser would report either the master fund in the master-feeder arrangement or the largest fund in the parallel fund structure.<sup>60</sup> This section includes information such as the private fund’s gross and net asset value, gross and net performance (annually and also monthly and quarterly but only if the monthly and quarterly performance is otherwise calculated for the fund), derivative positions and borrowings (including information about the fund’s creditors). In addition, Section 1b requires a summary of the fund’s assets and liabilities, with each asset broken down by its fair value hierarchy under GAAP,<sup>61</sup> as well as information about the concentration of the fund’s investor base and types of investors.<sup>62</sup> An adviser must include information about the value of the fund’s investments in private funds and parallel accounts managed alongside the fund.<sup>63</sup>

Section 1b of the Final Rule allows more discretion in its responses than it did in the Proposed Rule. For example, in response to commenters, the final Form PF allows advisers to report gross and net performance based on the fund’s existing procedures for calculating and reporting performance to investors.<sup>64</sup>

## **C. Section 1c – Information About the Hedge Funds Advised by the Adviser**

All private fund advisers that are required to file Form PF and advise one or more hedge funds must complete Section 1c, which requests certain information about the adviser’s hedge funds.<sup>65</sup> Section 1c requires information about the percentage of the fund’s net asset value allocated to different investment strategies and the percentage attributable to high-frequency trading strategies.<sup>66</sup> Advisers are asked to list the top five counterparties of the fund by name as well as the fund’s exposure to each, and to provide information regarding trading and clearing practices of the fund.<sup>67</sup>

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58 See Form PF: General Instructions at 3.

59 *Id.*

60 See Release at 65, n.193.

61 Form PF does not require funds to adopt GAAP or to audit their valuations and instead allows an adviser to use the valuation procedures provided in its fund’s governing documents. See Release at 70-71.

62 See Release at 67-69; Form PF: General Instructions at 5-6.

63 See Release at 66.

64 See Release at 67.

65 See Release at 74.

66 See Form PF: General Instructions at 9.

67 See Form PF: General Instructions at 9-11.



The SEC expects that the information included in Section 1c will allow the FSOC to monitor systemic risk through counterparty and clearing exposure, which the SEC believes may be important for the FSOC's ability to designate a nonbank financial company for supervision by the Federal Reserve Board under the Dodd-Frank Act.<sup>68</sup>

## **X. Section 2 – Large Hedge Fund Advisers**

### **A. Section 2a – Aggregated Information About Hedge Funds Advised by the Adviser**

Large Hedge Fund Advisers<sup>69</sup> are required to complete Section 2a, which consists of aggregated information about the adviser's hedge funds. Section 2a requires disclosure of the adviser's aggregate hedge fund exposures to, and turnover of, various asset classes, including sub-classes of equities, bonds, derivatives, structured products, commodities, real estate, cash and other pooled investment vehicles.<sup>70</sup> Section 2a also requires reporting of aggregate information about the geographical breakdown of the investments held by hedge funds advised by the adviser.<sup>71</sup> Many of the questions in Section 2a have been modified from the Proposed Rule. These modifications generally alter the questions to request less detail from advisers than in the Proposed Rule, in an effort to lower the reporting burden on advisers while still obtaining risk information the SEC deems necessary.<sup>72</sup> The SEC believes the information in Section 2a will assist the FSOC in monitoring asset classes in which hedge funds are important investors and trends in hedge fund exposures, including in evaluating hedge funds as a source of liquidity in different asset classes.<sup>73</sup>

### **B. Section 2b – Information About Qualifying Hedge Funds Advised by the Adviser**

Section 2b requires a Large Hedge Fund Adviser to report additional information about any hedge fund it advises that has a net asset value of at least \$500 million as of the end of any month in the prior fiscal quarter (each, a "Qualifying Hedge Fund").<sup>74</sup> Many of the questions in Section 2b have been modified from the Proposed Rule to allow advisers to rely on their internal methodologies when responding to questions, consistent with the changes elsewhere in Form PF.<sup>75</sup>

As with Section 2a, Section 2b requires detailed reporting of the Qualifying Hedge Fund's exposures to different assets classes and sub-classes, as well as information regarding the Qualifying Hedge Fund's exposure to counterparties and clearing procedures.<sup>76</sup> In addition, Section 2b asks for information not reported in the aggregate, such as the liquidation timeframes of the Qualifying Hedge Fund's portfolio and the value of the Qualifying Hedge Fund's unencumbered cash and position concentration.<sup>77</sup>

68 See Release at 76.

69 A "Large Hedge Fund Adviser" is a private fund adviser that, together with the adviser's related persons, has at least \$1.5 billion in hedge fund RAUM as of the last day of any month in the fiscal quarter immediately preceding the most recent fiscal quarter. The RAUM management calculation may exclude the RAUM of any related person that is separately operated. See Form PF: General Instructions at 2; also see Section III of this memorandum.

70 See Form PF: General Instructions at 14-15.

71 See Form PF: General Instructions at 16.

72 See Release at 83.

73 See Release at 82.

74 See Release at 83.

75 See Release at 85.

76 See Form PF: General Instructions at 17-22.

77 See Form PF: General Instructions at 21.

Large Hedge Fund Advisers must report detailed risk metrics on Section 2b, including value at risk (if calculated by the adviser). Section 2b also requires advisers to determine and report the effects of specified changes on the Qualifying Hedge Fund's portfolio, to the extent the adviser considers such factors relevant and formally tests for them. The changes specified in Form PF include changes in equity prices, risk-free interest rates, credit spreads, currency and commodity prices, implied volatilities and default rates.<sup>78</sup> Section 2b also requires reporting of detailed financing information regarding the Qualifying Hedge Fund, including borrowings, derivative positions, financing liquidity and creditor/counterparty exposure.<sup>79</sup> Lastly, Section 2b requires investor information, such as side pocket arrangements, redemption/withdrawal rights and investor liquidity rights.<sup>80</sup>

### **XI. Section 3 – Large Liquidity Fund Advisers**

A Large Liquidity Fund Adviser<sup>81</sup> is required to complete Section 3 of Form PF for each liquidity fund it manages. Section 3 requires information regarding the liquidity fund's net asset value, valuation methodology, and portfolio liquidity.<sup>82</sup> Section 3 also includes questions about the liquidity fund's position exposure by maturity, position-level information for positions that represent greater than five percent of the fund's net asset value and financing information.<sup>83</sup> Finally, Section 3 asks for investor information, such as investor concentration information, redemption/withdrawal limitations and investor liquidity rights.<sup>84</sup> Section 3 of Form PF has been adopted substantially as proposed.<sup>85</sup>

### **XII. Section 4 – Large Private Equity Fund Advisers**

Section 4 must be completed by a Large Private Equity Fund Adviser with respect to each private equity fund that it manages.<sup>86</sup> Section 4 asks for information predominantly regarding controlled portfolio companies of the private equity fund. The information required to be reported includes financing and investment information, information about guarantees of portfolio company obligations, debt-to-equity ratios and creditor/counterparty exposure.<sup>87</sup> This section also requires a geographical breakdown of the reporting fund's investments by region and by country.<sup>88</sup>

Following the release of the Proposed Rule, certain commenters argued that private equity funds and their advisers do not have the potential to pose systemic risk due to the characteristics of private equity funds. These characteristics include limitations on investor redemption rights, an absence of

78 See Form PF: General Instructions at 24-25.

79 See Form PF: General Instructions at 26-29.

80 See Form PF: General Instructions at 29-31.

81 A "Large Liquidity Fund Adviser" is a private fund adviser that advises one or more liquidity funds and, together with the adviser's related persons, has at least \$1 billion in combined money market fund and liquidity fund RAUM as of the last day of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter. The RAUM calculation may exclude the RAUM of any related person that is separately operated. See Form PF: General Instructions at 2-3; also see Section III of this memorandum.

82 See Form PF: General Instructions at 32-33.

83 See Form PF: General Instructions at 33-35.

84 See Form PF: General Instructions at 36-37.

85 See Release at 99.

86 A "Large Private Equity Fund Adviser" is a private fund adviser that advises one or more private equity funds and, together with the adviser's related persons, has at least \$2 billion in private equity fund RAUM as of the last day the most recently completed fiscal year. The AUM calculation may exclude the RAUM of any related person that is separately operated. See Form PF: General Instructions at 3.

87 See Form PF: General Instructions at 38-39.

88 See Form PF: General Instructions at 40.

significant leverage at the private equity fund level, a focus on long-term investments and a general lack of interconnectedness among private equity fund investments.<sup>89</sup> In the Release, the SEC acknowledged these factors but retained the private equity fund reporting on the theory that Form PF is not designed to reflect a determination about where systemic risk lies but instead to gather data to allow the FSOC to make an informed determination.<sup>90</sup> However, the SEC's acknowledgement that private equity funds and their advisers have less potential to cause systemic risk is evident in the shorter nature of Section 4 as compared to Sections 2 and 3, and the fact that private equity fund advisers are only required to report annually, regardless of size, while Large Hedge Fund Advisers and Large Liquidity Fund Advisers are required to report quarterly.

### **XIII. Conclusion**

While the final Form PF incorporates a number of revisions intended to ease the reporting burden on advisers, it requires advisers to report an unprecedented amount of information about the private funds they advise and will be a significant undertaking for many advisers. We recommend that advisers subject to Form PF reporting begin familiarizing themselves with Form PF as soon as possible in order to implement procedures and programs necessary to properly complete and submit a Form PF.

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89 See Release at 100, n.306 and related text.

90 See Release at 101.