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October 2011



Dodd-Frank Act Rulemaking: SEC Approves Final Version of Form PF

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On October 26, 2011, the Securities and Exchange Commission (the "SEC") adopted a final version of Form PF and related rules implementing such form at an open meeting. Form PF implements Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requiring the collection of systemic risk data from SEC-registered investment advisers advising private funds for the Financial Stability Oversight Council. While the final version of Form PF and related rules have not yet been released at this time, pending approval by the Commodity Futures Trading Commission, set forth below is a summary of certain important items with respect to Form PF that were highlighted in the SEC's open meeting (and in a related SEC press release).

Changes to reporting thresholds

- A *de minimis* threshold has been established so that only SEC-registered investment advisers having at least \$150 million in assets under management are required to file Form PF.
- While the final rules implementing Form PF will retain the distinction between smaller advisers and "large private fund advisers" (i.e., those investment advisers required to report more detailed information relating to the private funds that they advise), the thresholds for large private fund advisers have been:
 - Raised from \$1 billion to \$1.5 billion with respect to assets under management attributable to hedge funds.
 - Doubled from \$1 billion to \$2 billion with respect to assets under management attributable to private equity funds.
 - Kept at \$1 billion with respect to assets under management attributable to liquidity funds and registered money market funds.
- In calculating an investment adviser's assets under management for the purposes of Form PF's reporting thresholds, investment advisers will not be required to aggregate assets of all affiliates, but must aggregate assets of affiliates that are not "separately operated."

Changes to filing deadlines

- Large private fund advisers advising private equity funds and all smaller private fund advisers need only file Form PF on an annual basis. The deadline for effecting these

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filings has been extended to 120 days after the end of each fiscal year.

- Large private fund advisers advising hedge funds must file Form PF on a quarterly basis. The deadline for effecting these filings has been extended to 60 days after the end of each fiscal quarter.
- Large private fund advisers advising liquidity funds must file Form PF on a quarterly basis. The deadline for effecting these filings remains 15 days after the end of each fiscal quarter.
- Investment advisers advising multiple types of private funds may effect separate Form PF filings for these funds at the respective separate deadlines, as described above.

Two-stage phase-in of initial filings

- Large private fund advisers that have at least \$5 billion in assets under management attributable to any single fund class will be required to file their initial Form PF after the first fiscal quarter or fiscal year, as applicable, ending on or after June 15, 2012. It remains unclear whether large private advisers that have at least \$5 billion in assets under management only when aggregated across all fund classes will be required to file at this early stage.
- Other private fund advisers will be required to file their initial Form PF after the first fiscal quarter or fiscal year, as applicable, ending on or after December 15, 2012.

Other changes

- The SEC indicated that Form PF has been made less burdensome by permitting the use of the private fund adviser's own methodologies where appropriate.
- In recognition of the estimates and judgments involved, certification on Form PF is no longer to be under penalty of perjury.
- Additional SEC internal controls will be implemented to ensure heightened confidentiality of the information disclosed on Form PF.
- Large private fund advisers advising hedge funds are required to report, for each managed hedge fund having a net asset value of at least \$500 million, certain information relating to that fund's exposures, leverage, risk profile, and liquidity.
- Required disclosures of large private fund advisers advising private equity funds will focus primarily on the extent of leverage incurred by their funds' portfolio companies, the use of bridge financing, and their funds' investments in financial institutions.
- In an effort to avoid circumvention of the Form PF reporting requirements by investment advisers, the SEC noted that investment advisers will be required to include on Form PF (but not required to aggregate) assets held in separately managed accounts only to the extent the accounts are managed alongside a private fund and such separate accounts do not exceed the size of the private fund.

This summary is based solely on the items highlighted by the SEC at its open meeting (and the SEC's related press release) and is subject to a more thorough analysis of the final version of Form PF and its related rules once available. Lowenstein Sandler's Investment Management Group will continue to monitor closely the developments relating to this important regulation and provide you with a detailed analysis of the rules implementing Form PF upon release of the definitive text.

Please contact any of the attorneys listed, or any other member of Lowenstein Sandler's [Investment Management Group](#), for further information on the matters discussed herein.

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