

June 12, 2012

Form PF Frequently Asked Questions Posted by the SEC Staff

The staff of the U.S. Securities and Exchange (SEC) recently posted [responses to frequently asked questions \(FAQs\)](#) regarding the implementation of Rule 204(b)-1 (Rule) and new Form PF (Form) under the Investment Advisers Act of 1940, as amended (Advisers Act). The Form must be completed by SEC registered investment advisers that manage \$150 million or more in regulatory assets under management attributable to private funds. The FAQs cover issues relating to the categorization of hedge funds, liquidity funds and private equity funds under the Rule, as well as aggregation of assets principles and fund of funds reporting issues.

Hedge Funds

An adviser should not categorize a private fund as a commodity pool for reporting purposes if the private fund's commodity interest positions satisfy either of the *de minimis* tests in Regulation 4.13(a)(3)(ii) issued by the Commodity Futures Trading Commission. "Hedge fund" is defined to include any commodity pool, so this relief means that private funds falling within the *de minimis* exemption will not automatically be considered hedge funds for reporting purposes. The categorization of a private fund as a hedge fund may change from reporting period to reporting period. With respect to any fiscal quarter, a private fund should be categorized as a hedge fund if it met the definition of a hedge fund as of the last day of any month in the fiscal quarter immediately preceding an adviser's most recently completed fiscal quarter. The FAQs provide an example of the timing of such categorization.

Liquidity Funds

The categorization of a liquidity fund and a hedge fund are not mutually exclusive and, therefore, a private fund meeting both definitions would be required to be treated as both for reporting purposes. The FAQs clarify how an adviser to such a private fund should report on Form PF.

Private Equity Funds

A private fund that is authorized by its fund documents to either employ large amounts of leverage or sell assets short should be categorized as a hedge fund despite the fact that such fund does not currently, and does not intend to, employ leverage or sell assets short.

Aggregation of Assets

The FAQs seek to clarify how to properly aggregate assets for reporting threshold purposes, as required by Instruction 5 of the Form. The FAQs include examples of how to apply these aggregation principles.

Fund of Funds

The FAQs provide relief permitting an adviser to a fund that invests in other funds managed by the adviser to treat the investing fund as a "fund of funds" for purposes of Instruction 7 of the Form. Under Instruction 7, a manager must complete Section 1.b with respect to a fund of funds but is permitted to

disregard the fund of funds for all other reporting purposes under the Form. Previously, fund of funds reporting was available only when the underlying funds were managed by other investment advisers.

For More Information

If you have questions regarding the information in this update, please contact one of the lawyers listed or any Dechert lawyer with whom you regularly work. Visit us at www.dechert.com/financial_services.

Michael Sherman

Washington, D.C.

+1 202 261 3449

michael.sherman@dechert.com

David Vaughan

Washington, D.C.

+1 202 261 3355

david.vaughan@dechert.com

Kenneth Rasamny*

Orange County

+1 949 442 6040

kenneth.rasamny@dechert.com

* Admitted in New York only

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香港中環皇后大道中5號衛怡大廈27樓，電話：+852 3518 4700 傳真：+852 3518 4777