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SEC And CFTC Pass Final Rule Regulating Reporting By Investment Advisers To Private Funds

November 2011

The Securities and Exchange Commission and the Commodity Futures Trading Commission on Oct. 31, 2011, released final rules relating to Form PF pursuant to authority granted by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The final rule and Form PF will enable the Financial Stability Oversight Council to obtain data that will facilitate the monitoring of systematic risk in U.S. financial markets. The frequency and content of the required filing is based on the type and size of the adviser.

The most significant aspects of the new rule are:

- Investment advisers with under \$150 million in regulatory assets under management are exempt;
- All private equity fund advisers required to file will need to file on an annual basis rather than quarterly;
- Only large hedge fund advisers (over \$1.5 billion) and only large liquidity fund advisers (over \$1 billion) must file a more detailed Form PF quarterly; and
- Only large private equity fund advisers (over \$2 billion) must file a more detailed Form PF annually.

An investment adviser must file a Form PF if it: (1) is registered or required to register with the SEC; (2) advises one or more private funds; and (3) has at least \$150 million in regulatory assets under management attributable to private funds as of the end of its most recently completed fiscal year. Reports on Form PF are generally confidential, though the SEC may use Form PF information in an enforcement action.



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Large hedge fund advisers, or hedge fund advisers with \$1.5 billion in regulatory assets under management (increased from the proposed \$1 billion), must file detailed quarterly reports within 60 days after each quarter. As proposed, large hedge fund advisers will have to disclose additional information for each hedge fund that 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. Medium hedge fund advisers, or hedge fund advisers with at least \$150 million in regulatory assets under management, must file less detailed annual reports within 120 days after each fiscal year.

Private equity fund advisers, regardless of size, are required to report annually to the SEC within 120 days after the close of each fiscal year, a less stringent requirement than the proposal that private equity fund advisers with \$1 billion in regulatory assets under management would need to provide detailed quarterly reports. However, large private equity fund advisers with at least \$2 billion in regulatory assets under management must file a more detailed report.

As proposed, managers of liquidity funds with \$1 billion in combined regulatory assets under management must report quarterly information about investments and risk profile within 15 days after the close of each quarter. An adviser managing liquidity funds must combine liquidity fund and registered money market fund assets for purposes of determining whether it meets the threshold for the more extensive reporting requirements regarding its liquidity fund, but is only required to report information about unregistered liquidity funds.

Most private fund advisers that are required to file Form PF will only need to complete section 1 of the form. However, large hedge fund advisers, large liquidity fund advisers, and large private equity fund advisers will be required to complete certain additional sections.



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Advisers must test whether their hedge fund or liquidity fund assets meet the relevant threshold as of the end of each month (as opposed to daily, as was proposed). Advisers must test whether their private equity fund assets meet the relevant threshold at the end of each fiscal year (as opposed to quarterly, as was proposed). In calculating assets under management, an adviser generally must aggregate parallel managed accounts and assets of private funds advised by any of the adviser's "related persons" other than related persons that are separately operated.

Advisers with at least \$5 billion in private fund assets must make an initial filing after the first fiscal year or quarter end, as applicable, occurring on or after June 15, 2012. All other advisers must make an initial filing after the first fiscal year or quarter end, as applicable, occurring on or after December 15, 2012.

Should you have any questions about the new rule, please contact [Stephen Cohen](#) at 212.407.4279 or [Erika Payne](#) at 212.407.4229.

Loeb & Loeb's Dodd-Frank Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas - including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance - who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

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