Client Alert.

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SEC Publishes Responses to Frequently Asked Questions about Reporting by Advisers to Private Funds

By Jay G. Baris

The SEC's Division of Investment Management published responses to "Frequently Asked Questions" ("FAQ") about reporting by investment advisers to private funds.

The FAQ interpret Rule 204(b)-1 and Form PF, which implement amendments to the Investment Advisers Act of 1940 added by the Dodd-Frank Act. Registered investment advisers that manage $150 or more in "regulatory assets under management" attributable to private funds must file Form PF with the SEC.

The FAQ provides interpretive guidance relating to hedge funds, liquidity funds, private equity funds, aggregation, and fund of funds.

HEDGE FUNDS

Advisers 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 of the Commodity Futures Trading Commission's rules. A private fund may be recharacterized as a hedge fund between reporting periods when it takes on hedge fund characteristics (e.g., ability to engage in short selling, charge a performance fee and use leverage, regardless of whether or not it actually engages in those activities).

LIQUIDITY FUNDS

Private funds may meet the definitions of both a liquidity fund and a hedge fund, and must report accordingly.

PRIVATE EQUITY FUNDS

A Private equity fund that allows the potential for leverage or shorting assets will be characterized as a hedge fund, even if it does not intend to use those techniques.

AGGREGATION

The FAQ clarifies how to aggregate parallel managed accounts for reporting purposes.

FUND OF FUNDS

The FAQ clarifies reporting obligations by an adviser of a fund of funds that invests its assets in the equity of private funds for which the filer is the adviser.

FORM PF FREQUENTLY ASKED QUESTIONS (JUNE 8, 2012)

Available at http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml

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