

# ***A Closer Look***

## **The Dodd-Frank Wall Street Reform and Consumer Protection Act**



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Part of an ongoing series

## ***Reporting by Private Fund Advisers on Form PF***

### **SEC and CFTC Adopt Final Rules Requiring Registered Advisers to Private Funds to File New Form PF**

November 2011

In October 2011, the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) adopted final rules as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank, or the Act) to require registered advisers to report on new Form PF information concerning the private funds they advise. Focused on private funds' basic operations and strategies, the information reported on Form PF will aid the SEC, the CFTC, and the Financial Stability Oversight Council (FSOC) in their assessment of systemic risk. While the final rules on Form PF were anticipated, they are complex, and will have significant operational impact on registered advisers to private funds. This *A Closer Look* describes the final rules requiring new Form PF and their impact.

## Background

Dodd-Frank established the FSOC, a council of banking and securities regulators, to promote financial stability by monitoring and assessing risks to the US financial system. The Act authorizes the FSOC to collect information to support its functions, and amends the Investment Advisers Act of 1940 (Advisers Act) to require that the SEC establish reporting and recordkeeping requirements for advisers to private funds (many of which must also register as investment advisers under Dodd-Frank). Form PF will enable the FSOC to obtain data that will facilitate monitoring of systemic risk in US financial markets. In addition, the SEC and the CFTC are permitted to use information collected on Form PF for their own investor-protection efforts, including in connection with examinations and investigations.

In January 2011, the CFTC and SEC jointly proposed new Form PF. In October, after receiving comments on the proposal, the SEC adopted new Advisers Act Rule 204(b)-1, which requires private fund advisers to file Form PF periodically with the SEC. The CFTC also adopted its new Rule 4.27, which requires private fund advisers that are also registered as commodity pool operators or commodity trading advisers with the CFTC to satisfy certain proposed CFTC systemic risk reporting requirements (should the CFTC adopt such requirements) by filing Form PF.<sup>1</sup>

## Summary

Advisers to private funds—hedge funds, private equity funds, and liquidity funds—must file and periodically update information on Form PF. While the final rules differ from the proposed rules in some ways, they maintain a “tiered” approach: Advisers to larger funds will submit more information, more frequently, than advisers to smaller funds. In sum:

- *Minimum reporting threshold.* Advisers with \$150 million or more in private fund assets under management are required to file Form PF. Smaller registered advisers to private funds are not required to file.
- *Large private fund advisers.* The final rules require more frequent reporting by large private fund advisers, defined as hedge funds with at least \$1.5 billion in assets under management, private equity funds with at least \$2 billion in assets under management, and liquidity funds with at least \$1 billion assets under management attributable to liquidity funds and registered money market funds.
- *Frequency of filing.* Under the final rules, large private equity fund advisers will file annually (as opposed to quarterly, as originally proposed), within 120 days of year-end. Large hedge fund advisers will file quarterly, within 60 days of quarter-end (this was extended from the 15 days initially proposed). Advisers to large liquidity funds and registered money market funds must file quarterly within 15 days of quarter-end.
- *Timing.* The effective date for the new rules is March 31, 2012, with a compliance date of June 15, 2012, for some advisers and December 15, 2012, for others. For advisers whose fiscal year ends on December 31:

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<sup>1</sup> Form PF is a joint form between the SEC and CFTC only with respect to Sections 1 and 2. Sections 3 and 4 of the form are adopted solely by the SEC.

- ⇒ Advisers to hedge funds with at least \$5 billion in assets under management are required to make an initial filing by August 29, 2012 (i.e., within 60 days after the June 30, 2012, quarter end).
  - ⇒ Advisers to private equity funds with at least \$5 billion in assets under management are required to make an initial filing by April 30, 2013 (i.e., within 120 days after December 31, 2012).
  - ⇒ Advisers to liquidity funds and registered money market funds with at least \$5 billion in assets under management are required to make an initial filing by July 16, 2012 (i.e., within 15 days after June 30, 2012).
  - ⇒ All other advisers that are required to file Form PF will not be required to file until 2013.
- *No certification requirement.* The final rules do not require that the information submitted be certified as accurate under penalty of perjury (as had been proposed).
  - *Use of internal methodologies.* The final rules increase the ability of advisers to rely on their own internal methodologies when reporting on Form PF.
  - *Data required.* Depending on the size and type of private fund, data required could include: a fund's gross and net asset values; aggregate value of derivative positions; percentage of fund ownerships; gross and net performance information; financing information, including secured and unsecured borrowing; information regarding a fund's valuation and methodology; liquidity of holdings; and portfolio company information.

*Most private fund advisers, including large private equity advisers and smaller private fund advisers, are required to complete and file Form PF once per fiscal year. Large hedge fund advisers and large liquidity fund advisers must update information relating to their hedge funds or liquidity funds each fiscal quarter.*

*All advisers should take steps now to determine whether they will be required to submit new Form PF, and which filing category they fall within. This A Closer Look will aid advisers in making these threshold determinations.*

## **Who must file Form PF?**

An investment adviser must file Form PF if it:

- Is registered or required to register with the SEC;
- Advises one or more private funds (i.e., issuers that would be investment companies but for Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940); and
- Had at least \$150 million in “regulatory assets under management” attributable to private funds as of the end of its most recently completed fiscal year.

Regulatory assets under management are to be calculated in accordance with the instructions to Form ADV,<sup>2</sup> which measures an adviser's assets under management gross of outstanding indebtedness and other accrued but unpaid liabilities. An adviser must include in its calculation of regulatory assets under management the value of any private fund over

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<sup>2</sup> See generally Form ADV Part 1A, Instruction 5.

which it exercises continuous and regular supervisory or management services, regardless of the nature of the assets held by the fund.<sup>3</sup>

Under the CFTC's final rule, a commodity pool operator or a commodity trading advisor that is also registered or required to register with the SEC as an investment adviser and that satisfies the conditions listed above must file Form PF with respect to any commodity pool it manages that is a "private fund," and may file Form PF with respect to any commodity pool it manages that is not a "private fund." The rule also provides that, for registered commodity pool operators and commodity trading advisors that are dually registered with the SEC and are required to file Form PF, filing Form PF will serve as substitute compliance for certain of the CFTC's proposed systemic risk reporting requirements, should the CFTC adopt such requirements.

Most private fund advisers that are required to file Form PF will only need to complete Section 1. This section requires advisers to provide certain basic information regarding any private funds they advise in addition to information about their private fund assets under management and their funds' performance and use of leverage. Certain larger private fund advisers must complete additional sections of Form PF. The contents of Form PF are discussed in detail below.

## ***Types of funds included***

### **Hedge funds**

Form PF defines "hedge fund" to include any private fund (other than a securitized asset fund) that:

- Pays a performance fee to its adviser that takes into account market value (instead of only realized gains);
- 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
- May sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).<sup>4</sup>

Solely for the purposes of Form PF, a commodity pool that is reported or required to be reported on Form PF is treated as a hedge fund. The definition contains several revisions from the proposal. In particular, vehicles established for the purpose of issuing asset-backed securities (securitized asset funds) are excluded from the "hedge fund" definition. The final rules also clarify that the definition only includes a private fund where an adviser may be paid fees or allocations, in order to avoid classifying as hedge funds those funds that accrue or allocate these fees or allocations solely for financial reporting purposes.

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<sup>3</sup> For more detail regarding the calculation of regulatory assets under management, please see our *A Closer Look: Impact on Asset Managers*, available at [http://www.pwc.com/en\\_US/us/financial-services/regulatory-services/publications/assets/closer-look-investment-adviser-registration.pdf](http://www.pwc.com/en_US/us/financial-services/regulatory-services/publications/assets/closer-look-investment-adviser-registration.pdf).

<sup>4</sup> The SEC and CFTC state in the release that they are defining "hedge fund" in Form PF solely for the purposes of determining what information an adviser is required to report on the Form. The definition does not apply with respect to any other form or regulation of either Commission unless otherwise specified. The SEC has also adopted this same definition in amendments to Form ADV.

The SEC also noted in the adopting release that a private fund would not be a “hedge fund” just because its organizational documents do not prohibit the fund from borrowing or incurring derivative exposure in excess of defined amounts or from engaging in short selling (other than for the permitted purposes of hedging or managing duration), so long as the fund does not engage in these practices and so long as a reasonable investor would understand, based on the fund’s offering documents, that the fund will not engage in these practices.

## **Liquidity funds**

For purposes of Form PF, a “liquidity fund” is defined 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.

## **Private equity funds**

A “private equity fund” is defined as any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund, or venture capital fund and does not provide investors with redemption rights in the ordinary course.<sup>5</sup>

## ***What is a “large private fund adviser”?***

Large private fund advisers are required to submit more information on a more frequent basis than other private fund advisers. The information they will submit depends on the types of funds managed and is tailored to the type of fund, focusing on relevant areas of financial activity that have the potential to raise systemic concerns. Large private fund advisers are defined as follows:

- *Large hedge fund advisers:* An adviser having at least \$1.5 billion in regulatory assets under management attributable to hedge funds as of the end of any month in the prior fiscal quarter. These advisers must complete Form PF Section 2.
- *Large private equity advisers:* Any adviser having at least \$2 billion in regulatory assets under management as of the last day of the adviser’s most recently completed fiscal year. These advisers must complete Form PF Section 4.
- *Large liquidity fund advisers:* An adviser having at least \$1 billion in combined regulatory assets under management attributable to liquidity funds and registered

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<sup>5</sup> A “securitized asset fund” is defined as a private fund whose primary purpose is to issue asset-backed securities and whose investors are primarily debt-holders. A “real estate fund” is defined as a 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 related assets. A “venture capital fund” is defined under Advisers Act Rule 203(l)-1 as one that (i) holds no more than 20% of the fund’s capital commitments in non-qualifying investments (other than short-term holdings); (ii) does not borrow or otherwise incur leverage (other than limited short-term borrowing) in excess of 15% of the venture capital fund’s capital contributions and uncalled committed capital, with non-renewable terms of no longer than 120 calendar days (excluding certain guarantees of qualifying portfolio obligations by the fund); (iii) does not offer its investors redemption or other similar liquidity rights except in extraordinary circumstances; (iv) represents itself as pursuing a venture capital strategy to its investors and prospective investors; and (v) is not registered under the Investment Company Act of 1940 and has not elected to be treated as a “business development company.”

money market funds as of the end of any month in the prior fiscal quarter. These advisers must complete Form PF Section 3.

Advisers managing liquidity funds must combine liquidity funds and registered money market funds for purposes of determining whether they meet the \$1 billion threshold for more extensive reporting regarding their liquidity funds. Because liquidity funds and registered money market funds often pursue similar strategies, invest in the same securities, and present similar risks, an adviser is only required to report information about unregistered liquidity funds on Form PF. The information will supplement data that the SEC already collects about registered money market funds on its Form N-MFP and provide the FSOC with a more complete picture of large liquidity pools and their management.

### *Frequency of calculation*

Advisers are required to determine whether their hedge fund or liquidity assets meet the relevant thresholds as of the end of each month. In addition, advisers are required to look back one quarter so that they know at the start of each reporting period whether they will be required to complete the more detailed reporting required of large hedge fund and liquidity advisers. Advisers need only determine whether their private equity fund assets met the relevant threshold at the end of each fiscal year.

The final rules differ from the proposed rules in terms of the frequency of this determination: The proposed rules would have required hedge fund and liquidity fund advisers to measure whether they had crossed these thresholds on a daily basis and private equity advisers to measure them on a quarterly basis. The SEC modified this requirement after it recognized that performing this review on a daily basis could impose a substantial burden on some advisers.

*These thresholds are designed so that the group of large private fund advisers filing Form PF will be relatively small in number but represent a substantial portion of the assets of their respective industries.*

*The SEC estimates that approximately 230 US-based advisers, each managing at least \$1.5 billion in hedge fund assets, represent over 80% of the US hedge fund industry based on assets under management. Similarly, SEC staff estimates that the approximately 155 US-based advisers each managing over \$2 billion in private equity fund assets represent approximately 75% of the US private equity fund industry based on committed capital. The SEC expects that its threshold for liquidity funds will capture approximately 80 of the most significant managers of liquidity funds.*

### **Aggregation of assets under management for determining threshold amounts**

For purposes of determining whether an adviser meets the \$150 million minimum reporting threshold or is a large private fund adviser, the adviser must aggregate:

- Private funds that are part of the same master-feeder structure;
- Private funds that pursue substantially the same investment objective and strategy, and invest side-by-side in substantially the same positions (parallel funds);
- Dependent parallel managed accounts, which are managed accounts advised by the firm that pursue substantially the same investment objective and strategy and invest

in substantially the same positions as private funds advised by the firm, and do not exceed the value of the private funds with which they are managed; and

- Private funds advised by any of the adviser's related persons<sup>6</sup> other than related persons that are separately operated.<sup>7</sup>

These aggregation requirements are designed to prevent an adviser from restructuring how it provides advice in order to avoid Form PF reporting requirements.

The aggregation requirements in the final rules differ from those in the proposed rules in several respects. An adviser may exclude parallel managed accounts if the value of those accounts is greater than the value of the private funds with which they are managed. This change recognizes that an adviser managing a relatively small amount of private fund assets could end up crossing a reporting threshold simply because it has a significant separate account business using a similar strategy. The SEC, citing concerns that advisers focusing on private funds may increasingly structure investments as separate accounts to avoid Form PF reporting requirements, will still require those advisers to include the value of the private funds managed in determining whether they meet a reporting threshold if the value of those accounts is less than the value of the private funds managed using substantially the same strategy.

In addition, an adviser may exclude the assets under management of related persons that are separately operated. The SEC recognizes that advisers may have difficulty gathering the information necessary to aggregate the assets of related persons whose operations are genuinely independent of their own, and that, with an appropriate standard of separateness, the risk of evasion is mitigated.<sup>8</sup>

For purposes of both the reporting thresholds and responding to questions on Form PF, an adviser may exclude any assets invested in the equity of other private funds.<sup>9</sup> In addition, if

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<sup>6</sup> A "related person" is defined generally as (i) an adviser's officers, partners, or directors; (ii) persons directly or indirectly controlling, controlled by, or under common control with the adviser; and (iii) all the adviser's employees (other than employees performing only clerical, administrative, or support functions).

<sup>7</sup> For purposes of Form PF, a related person is "separately operated" if the adviser is not required to complete section 7.A. of Schedule D to Form ADV with respect to that related person.

<sup>8</sup> The standard for determining whether an adviser is separate is the same as in Form ADV. Form ADV Item 7.A. provides that "related persons" are all an adviser's "advisory affiliates" and any "person" that is under common "control" with the adviser.

<sup>9</sup> See Instruction 7 to Form PF. Generally, for purposes of Form PF, an adviser may disregard any private fund's equity investments in other private funds (e.g., a fund of funds). If the adviser disregards these investments, it must do so consistently when completing the form (e.g., not include disregarded investments in the net asset value used for determining whether the fund is a "hedge fund"). If a fund (i) invests substantially all its assets in the equity of private funds to which the adviser does not provide advisory services, and (ii) aside from such private fund investments, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposure, then the adviser is only required to complete Section 1b for that fund. For all other purposes, the adviser should disregard such fund. In addition, solely for purposes of Instruction 7, an adviser may treat as a private fund any issuer formed under laws of a jurisdiction other than the United States that has not offered or sold its securities in the United States or to United States persons but that would be a private fund if it had engaged in such offering or sale.

a private fund invests substantially all of its assets in the equity of other private funds and, aside from those investments, holds only cash, cash equivalents, and instruments intended to hedge currency risk, the adviser may complete only Section 1b with respect to that fund and otherwise disregard that fund.

### ***Affiliated and sub-advised funds***

An adviser may, but is not required to, report the private fund assets that it manages and the private fund assets that its related persons manage on a single Form PF. This is intended to provide private fund advisers with reporting flexibility and convenience, allowing affiliated entities that share reporting and risk management systems to report jointly while also permitting affiliated entities that operate separately to report separately.

With regard to sub-advised funds, in order to prevent duplicative reporting, only one adviser should report information on Form PF with respect to that fund. For reporting efficiency and to prevent duplicative reporting, if the adviser that completes information in section 7.B.1 of Schedule D to Form ADV with respect to any private fund is also required to file Form PF, the same adviser is responsible for reporting on Form PF with respect to that fund.<sup>10</sup>

If the adviser that completes information on Schedule D to Form ADV with respect to the private fund is *not* required to file Form PF (such as in the case of an exempt reporting adviser), then another adviser must report on that fund on Form PF. If none of the advisers to a fund are required to file Form PF because they are all exempt reporting advisers or do not exceed the minimum reporting threshold, Instruction 4 to Form PF would not require any adviser to file the form with respect to the fund.

### ***Exempt reporting advisers***

Advisers that are exempt from registering with the SEC because they advise solely venture capital funds or private funds that in the aggregate have less than \$150 million in assets under management in the United States are not required to file Form PF.

### ***Non-US advisers***

If an adviser's principal office and place of business is outside the United States, the adviser may exclude any private fund that, during the adviser's last fiscal year, was not a US person, was not offered in the United States, and was not beneficially owned by any US person. The SEC notes in the adopting release that this approach is designed to reduce the duplication of reporting requirements that foreign regulators may impose and to allow an adviser to report only with respect to those private funds that are more likely to implicate US regulatory interests.

*The first step is to determine under which filing category the adviser falls. This analysis requires care and advisers should undertake a process to ensure that they have accurately identified their filing status.*

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<sup>10</sup> See Instruction 4 to Form PF.

## Information required on Form PF

The following table describes information required to be reported on Form PF for each type of filing adviser.

Section	Who must complete?	What information is required?
1a	All registered investment advisers to private funds with at least \$150 million in assets under management	<p>Information about the adviser, including:</p> <ul style="list-style-type: none"> <li>• Name of the adviser and all related persons whose data is included</li> <li>• Large trader identification number, if any</li> <li>• Regulatory assets under management and net assets under management <sup>11</sup> broken out by types of funds advised, including funds and accounts other than private funds</li> </ul>
1b	All registered investment advisers to private funds with at least \$150 million in assets under management (requires separate Part 1b for each fund advised)	<p>Information about each fund, including:</p> <ul style="list-style-type: none"> <li>• Gross asset value<sup>12</sup> and net asset value<sup>13</sup></li> <li>• Indication of whether the fund is the master fund of a master-feeder arrangement and if the adviser is reporting for all the funds in the master-feeder on an aggregate basis</li> <li>• Indication of whether the fund is the largest fund in a parallel fund structure and if the adviser is reporting for all the funds in the structure on an aggregate basis</li> <li>• Value of the reporting fund's investments in the equity of other private funds</li> <li>• Value of all parallel managed accounts related to the reporting fund</li> <li>• Dollar amount of the fund's borrowing and types of all creditors, including percentages owed to specified creditors</li> <li>• Aggregate value of derivative positions</li> <li>• Assets and liabilities of each fund broken down using categories that are based on the fair value hierarchy</li> </ul>

<sup>11</sup> "Net assets under management" is defined as an adviser's regulatory assets under management minus any outstanding indebtedness or other accrued but unpaid liabilities.

<sup>12</sup> "Gross asset value" is defined as the value of gross assets calculated in Part 1A, Instruction 6.e(3) of Form ADV, which states gross asset value is the value of a private fund's gross assets included in calculating regulatory assets under management.

<sup>13</sup> Net asset value means gross assets minus any outstanding indebtedness or other accrued but unpaid liabilities.

		<p>established under US generally accepted accounting principles (GAAP)<sup>14</sup></p> <ul style="list-style-type: none"> <li>• Percentage of the fund owned by the five largest beneficial owners</li> <li>• Approximate percentage of fund ownerships by certain groups of investors, such as US persons, non-US persons, broker-dealers, private funds, banking or thrift institutions (proprietary), and municipal entities<sup>15</sup></li> <li>• Gross and net performance information, as reported to current and prospective investors (or, if calculated for other purposes but not reported to investors, as so calculated)</li> </ul>
1c	Registered investment advisers that advise hedge funds	<p>For each hedge fund:</p> <ul style="list-style-type: none"> <li>• Investment strategies</li> <li>• Percentage of the fund's net asset value managed using high-frequency trading strategies</li> <li>• Identification of significant trading counterparties and the exposure thereto</li> <li>• Trading and clearing practices with regard to securities, derivatives, and repo trades (including whether exchange-traded or over-the-counter, and for derivatives whether centrally cleared or bilaterally transacted)</li> </ul>
2a	Large private hedge fund advisers	<p>Aggregate information about the funds advised, including:</p> <ul style="list-style-type: none"> <li>• Market value of assets invested (on a long and short basis) in different types of securities and commodities (e.g., different types of equities, fixed income securities, derivatives, and structured products)</li> <li>• Duration, weighted average tenor, or ten-year bond equivalent of fixed-income portfolio holdings<sup>16</sup></li> </ul>

<sup>14</sup> See Question 14. This question is one of two new questions that the SEC originally proposed as part of the amendments to Form ADV.

<sup>15</sup> See Question 16. The SEC recognizes that advisers managing funds with securities outstanding prior to the adoption of Form PF would have to take additional steps to obtain this information because the investor diligence process will already have been completed. Thus, with respect to beneficial interests outstanding prior to March 31, 2012, that have not been transferred on or after that date, advisers may use good-faith estimates based on data available to them without making additional inquiries of investors.

<sup>16</sup> This differs from the proposed rules, which would have required all advisers to report duration. The SEC expects this revised approach will reduce the burden of reporting because advisers will generally be able to rely on their existing practices when providing this information.

		<ul style="list-style-type: none"> <li>• Monthly value of portfolio turnover by asset class<sup>17</sup></li> <li>• Geographic breakdown of investments held by the funds</li> </ul>
2b	Registered investment advisers that are large private fund advisers and advise at least one “qualifying hedge fund” <sup>18</sup>	<p>For each qualifying hedge fund:</p> <ul style="list-style-type: none"> <li>• Fund exposures (both long and short positions) as of the last day in each month of the reporting period, by sub-asset class</li> <li>• Portfolio liquidity</li> <li>• Holdings of unencumbered cash</li> <li>• Concentration of positions<sup>19</sup></li> <li>• Identification of the fund’s base currency</li> <li>• Collateral practices with significant counterparties<sup>20</sup></li> <li>• Whether the fund has cleared any trades directly through a central clearing counterparty</li> <li>• Certain risk metrics (if used regularly during the reporting period)</li> <li>• Impact on the fund’s portfolio from specified changes to certain identified market factors, if regularly considered in formal testing in the fund’s risk management, broken down by the long and short components of the fund’s portfolio</li> <li>• Financing information, including a monthly breakdown of secured and unsecured borrowing, value of collateral and letters of credit posted in respect of secured borrowing, and types of creditors</li> <li>• Total notional derivatives exposures (as well as net mark-to-market value of its uncleared derivatives positions)</li> </ul>

<sup>17</sup> The SEC believes that monthly exposure and turnover values will be important to allow the FSOC to track trends in the industry and to discourage “window dressing.”

<sup>18</sup> Form PF defines a “qualifying hedge fund” as one that has a net asset value (individually or in combination with any feeder funds, parallel funds, and/or dependent parallel managed accounts) of at least \$500 million as of the last day of any month in the fiscal quarter immediately preceding the adviser’s most recently completed fiscal quarter.

<sup>19</sup> The method of valuing portfolio liquidity, holdings of unencumbered cash, and concentration of positions has been modified to allow advisers to rely more on their own methodologies in responding and to align more closely with the European Securities and Markets Authority’s proposed reporting template.

<sup>20</sup> See Questions 36–38. These questions have been significantly modified from the proposed rules in order to reduce the amount of detail required, including by removing the breakdown of collateral into initial and variation margin.

		<ul style="list-style-type: none"> <li>• Breakdown of the fund's available financing and identity of, and amount owed to, each creditor to which the fund owed an amount equal to or greater than 5% of the fund's net asset value as of the reporting date</li> <li>• Investor liquidity, including side pocket, gating arrangements, and lock-ups</li> </ul>
3	Large liquidity fund advisers	<p>For each liquidity fund:</p> <ul style="list-style-type: none"> <li>• Information regarding the fund's portfolio valuation and its methodology, as well as the liquidity of the fund's holdings</li> <li>• Method of calculating net asset value per share</li> <li>• Confirmation of whether the fund adheres to certain provisions of the rules applicable to money market funds</li> <li>• Portfolio data</li> <li>• Value of selected product exposures divided by maturity</li> <li>• Identification of and information regarding open positions that represent 5% or more of the fund's net asset value</li> <li>• Secured and unsecured borrowing broken down by creditor type and maturity profile</li> <li>• Data regarding investor base, gating and redemption policies, and investor liquidity</li> <li>• Good-faith estimate of percentage of the fund's outstanding equity purchased using securities lending collateral</li> </ul>

4	Large private equity fund advisers	<p>For each private equity fund:</p> <ul style="list-style-type: none"> <li>• Amount of guarantees that the adviser, the fund, or any other related person of the adviser issues in respect of a portfolio company's obligations</li> <li>• Weighted average debt-to-equity ratio of controlled portfolio companies, the range of that debt-to-equity ratio among these portfolio companies, and the aggregate gross asset value of these portfolio companies</li> <li>• Information about portfolio company borrowings categorized as current liabilities and as long-term liabilities on the most recent balance sheets of the fund's controlled portfolio companies, and any defaults</li> <li>• Identity of institutions providing bridge financing and amount thereof</li> <li>• Identification of and more detailed information concerning financial industry portfolio companies</li> <li>• Whether related persons co-invest in portfolio companies</li> <li>• Breakdown of portfolio companies by industry and geography</li> </ul>
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### **Aggregation of master-feeder arrangements, parallel fund structures, and parallel managed accounts for purposes of reporting information**

For purposes of reporting information on Form PF, 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 the Form. For example, an adviser may complete either a single Section 1b for all of the funds in a master-feeder arrangement or a separate Section 1b for each fund in the arrangement. An adviser choosing to aggregate funds in the reporting must provide the additional information required with respect to the other funds in the parallel fund structure. Advisers are not required to report information regarding parallel managed accounts other than to Question 11 in Section 1b of the Form.

The aggregation requirements have been modified from the proposed rules, which would have required advisers to report aggregated information regarding master-feeder arrangements and parallel managed accounts but separate information regarding parallel funds. The SEC indicated that requiring advisers to aggregate or disaggregate funds in a manner inconsistent with their internal recordkeeping and reporting could impose additional burdens, and so determined that it need not prescribe this approach to aggregation so long as advisers adequately disclose the structure of those arrangements.

Advisers are not required to aggregate parallel managed accounts with their private funds for reporting purposes. A question has, however, been added to the form requiring advisers

to report the total amount of parallel managed accounts related to each reporting fund.<sup>21</sup> This will allow the FSOC to take into account the greater amount of assets an adviser may be managing using a given strategy for purposes of analyzing the data reported on Form PF.

*The information required in Form PF is voluminous. Many private fund advisers will find that they do not now collect or maintain all of the information required, that information is located in disparate places within the firm, and that significant effort will be required to obtain or create the information. Thus, preparing for these new filing obligations will be time-consuming, involve many different units within and possibly outside the firm, require analysis of where the data resides, and require determination of how best to capture it, compile it, and assure its accuracy.*

### **Frequency of filing**

Registered advisers to private funds will be required to file quarterly or annual updates to Form PF as applicable, according to the following schedule:

<b>Entity</b>	<b>Frequency of filing</b>
Large hedge fund advisers	Quarterly, within 60 days of the adviser's fiscal quarter-end
Large liquidity fund advisers	Quarterly, within 15 days of the adviser's fiscal quarter-end
Large private equity advisers and small private advisers	Annually, within 120 days of the adviser's fiscal year-end

Most private fund advisers, including large private equity advisers and smaller private fund advisers, are required to complete and file Form PF once per fiscal year. Large hedge fund advisers and large liquidity fund advisers must update information relating to their hedge funds or liquidity funds, respectively, each fiscal quarter. These advisers, however, need only update information regarding other types of funds they manage on an annual basis. For example, a large hedge fund adviser that also manages a small amount of liquidity fund and private equity fund assets must update information relating to its hedge funds each quarter but only needs to update information related to its liquidity funds and private equity funds when it submits its fourth-quarter filing. An adviser that is both a large hedge fund adviser and a large liquidity fund adviser must file quarterly updates regarding both its liquidity funds and hedge funds.

*The final rule's filing requirements differ from those in the proposed rules in two main respects. First, the proposed rules would have required large private equity advisers to report on a quarterly rather than annual basis. Second, under the proposal, once an adviser became subject to quarterly reporting, it would have been required to update information quarterly with respect to all of its private funds, not just the types of private funds that caused it to exceed the large adviser threshold.*

<sup>21</sup> See Question 12.

*The requirements, while adding complexity, take a tiered approach intended to reflect the relative risks of each type of fund. In the SEC's view, more frequent, quarterly reporting for large hedge fund and large liquidity fund advisers is needed in order to provide the FSOC with timely data to identify emerging trends in systemic risk. Annual reporting was deemed adequate for large private equity funds since, due to the generally illiquid nature of their portfolios, risk trends for these funds tend to emerge more slowly.*

## **Initial Form PF filings**

For advisers whose fiscal year ends on December 31:

- Advisers to hedge funds with at least \$5 billion in assets under management are required to make an initial filing by August 29, 2012 (i.e., within 60 days after June 30, 2012).
- Advisers to private equity funds with at least \$5 billion in assets under management are required to make an initial filing by April 30, 2013 (i.e., within 120 days after December 31, 2012).
- Advisers to liquidity funds and registered money market funds with at least \$5 billion in aggregate assets under management are required to make an initial filing by July 16, 2012 (i.e., within 15 days after June 30, 2012).
- All other advisers that are required to file Form PF will not be required to file until 2013.

### *Applicability to newly registered advisers*

Newly registered private fund advisers are subject to the same Form PF reporting deadlines as currently registered advisers. Advisers are not, however, required to file Form PF with respect to any period that ended prior to the effective date of their registration.

For example, large hedge fund advisers that register for the first time in March 2012 will have to file their first Form PF in August 2012, and small hedge fund advisers registering for the first time in March 2012 will have to file their first Form PF in April 2013.

### *Transition and final filings*

If an adviser transitions from quarterly to annual filing because it no longer is a large hedge fund adviser or a large liquidity fund adviser, then the adviser must complete and file Section 1a indicating that it is making its final quarterly filing. The transition filing must be made no later than the last day on which the adviser's next quarterly update would be timely.

If an adviser is no longer required to file Form PF (i.e., it no longer has more than \$150 million in regulatory assets under management attributable to private funds),

the adviser would complete Section 1a and file no later than the last day on which the adviser's next Form PF would be timely.<sup>22</sup>

## ***Method of filing***

Advisers must file Form PF electronically through the Form PF filing system on the Financial Industry Regulatory Authority's (FINRA's) Investment Adviser Registration Depository website ([www.iard.com](http://www.iard.com)), which contains detailed filing instructions and filing fee schedules.

## ***Confidentiality***

The SEC notes in the adopting release that it does not intend to make public any Form PF information identifiable to any particular adviser or private fund, although the SEC may use such Form PF information in an enforcement action. Dodd-Frank amended the Advisers Act to preclude the SEC from being compelled to reveal this information except in very limited circumstances.

Similarly, Dodd-Frank exempts the CFTC from being compelled under the Freedom of Information Act (FOIA) to disclose to the public any information collected through Form PF and requires that the CFTC maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in Section 204(b) of the Advisers Act. The SEC and CFTC state they will make information collected through Form PF available to the FSOC subject to the confidentiality provisions of Dodd-Frank.

However, Dodd-Frank contemplates that Form PF information may also be shared with other federal departments or agencies or with self-regulatory organizations for purposes within the scope of their jurisdiction. In each case, any such department, agency, or self-regulatory organization would be exempt from being compelled under FOIA to produce the information and must maintain the confidentiality of that information consistent with the level of confidentiality established in Section 204(b) of the Advisers Act. Prior to sharing any Form PF information, the SEC also intends to require that any such department, agency, or self-regulatory organization represent that it has in place controls designed to ensure the confidential use and handling of Form PF data.

In addition, the SEC indicated that its staff is working to design controls and systems for the use and handling of Form PF information in a manner that reflects the sensitivity of the data and is consistent with the confidentiality protections established in Dodd-Frank. Finally, the SEC stated that in advance of the compliance date for Form PF, SEC staff will review the controls and systems it has in place for the use and handling of Form PF information. Depending on the progress at that time toward the development and deployment of these controls and systems, the SEC will consider whether to delay the compliance date for Form PF.

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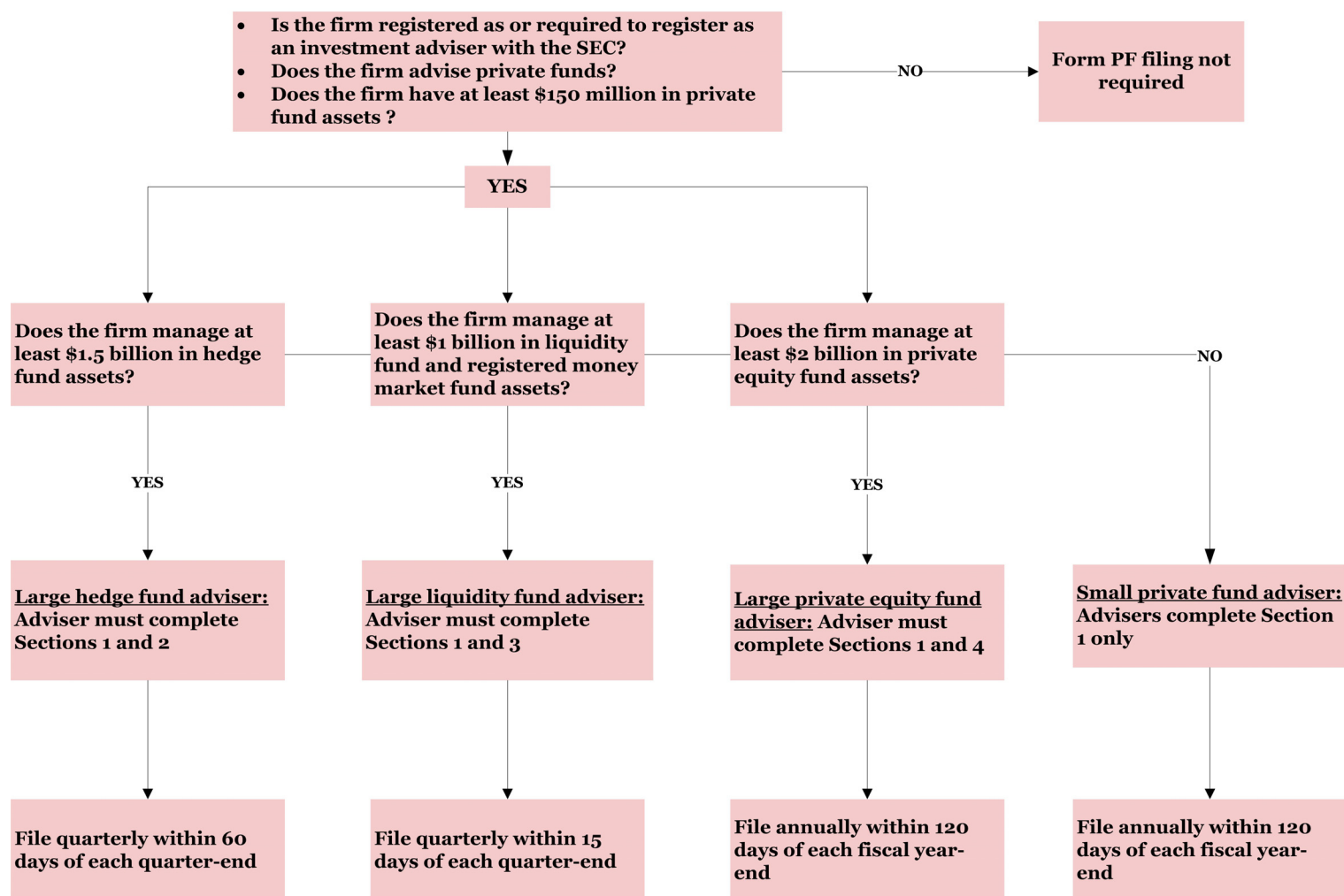
<sup>22</sup> Advisers may also avail themselves of a temporary hardship exemption in a similar manner as with other SEC filings if they are unable to file Form PF electronically in a timely manner due to unanticipated technical difficulties.

*These new Form PF rules impose significant new obligations on advisers to private funds. Preparation for these new obligations is critical. Advisers should:*

- *Assess their filing obligations;*
- *Determine the data elements required for the firm;*
- *Determine the current location of each data point within or outside the firm;*
- *Determine the means by which the firm can capture the data;*
- *Create a process for compiling the data; and*
- *Assess and assure the data's accuracy.*

*Given the volume of information required and the short time frame before the initial filing deadlines, firms should begin organizing and initiating this process immediately. In many instances, advisers will benefit from bringing aboard an outside consultant or adviser to assist with the process.*

### ***Determining whether to file Form PF***



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## ***Additional information***

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