

# Clients & Friends Memo

## The SEC Approves Final Version of Form PF

October 28, 2011

The Securities and Exchange Commission (the “**SEC**”) held an open meeting on Wednesday, October 26, 2011, regarding the adoption of a rule requiring certain registered investment advisers to hedge funds and other private funds to report information on Form PF for use by the Financial Stability Oversight Council (“**FSOC**”) in monitoring systemic risk to the U.S. financial system. The new rule, Rule 204(b)-1 under the Investment Advisers Act of 1940, would implement sections 404 and 406 of the Dodd-Frank Act and was initially proposed, along with the Form PF, on January 26, 2011. See [76 Fed. Reg. 8068](#) (Feb. 11, 2011).

At the meeting on Wednesday, the SEC unanimously approved the final version of Form PF and highlighted the manner in which the final form differs from the form as proposed. This memorandum summarizes the key Form PF changes that were highlighted at the meeting. The SEC has not yet published the full text of the adopting release or the final version of the Form PF. This memorandum will be updated after those are published.

### “Tiered” Threshold for Reporting

The SEC introduced a “tiered” threshold of assets under management (“**AUM**”) approach for purposes of determining an adviser’s Form PF reporting obligations. In particular:

- The SEC excluded advisers with less than \$150 million in private fund AUM from the Rule 204(b)-1 reporting requirement.
- The AUM threshold for advisers to hedge funds with heightened reporting requirements (“**Large Hedge Fund Advisers**”) was increased from \$1 billion to \$1.5 billion. The SEC noted that for this purpose, AUM should be determined on a gross basis rather than a net basis.
- The AUM threshold for advisers to private equity fund with heightened reporting requirements (“**Large Private Equity Fund Advisers**”) was increased from \$1 billion to \$2 billion. The SEC noted that this change was made to target private equity advisers that are likely to have the most influence over the private equity market.

- The AUM threshold for advisers to liquidity funds (“**Large Liquidity Fund Advisers**”) was not increased and therefore remains at \$1 billion.

#### Calculation of AUM

The SEC staff noted two key changes to the manner in which AUM would be calculated for purposes of the reporting thresholds. For one thing, a private fund adviser would only be required to aggregate its assets with assets of its affiliates that are not separately operated. In addition, assets in separate accounts would need to be aggregated only if the separate accounts are managed alongside the private funds and do not have more assets than the private funds.

The SEC staff also noted that separate account assets need not be aggregated with private fund assets for reporting purposes. Rather, assets in separate accounts would be reported in a separate Form PF line item.

#### Timing and Frequency of Reports

The SEC also revised the timing and frequency of the Form PF filings. The timing and frequency are as follows:

- For small private fund advisers and Large Private Equity Fund Advisers, Form PF would be due 120 days (increased from 90 days) following the end of the adviser’s fiscal year. Moreover, Large Private Equity Fund Advisers will only have an annual obligation, rather than the quarterly reporting obligation originally proposed. (As was proposed, small private fund advisers also have an annual reporting obligation.)
- For Large Hedge Fund Advisers, Form PF would be due 60 days (increased from 15 days) following the end of each fiscal quarter.
- For Large Liquidity Fund Advisers, the timing and frequency of Form PF filings remains the same as proposed; *i.e.*, 15 days following the end of each fiscal quarter.

#### Due Dates for Initial Filings

The SEC also extended the due dates for the initial filings of Form PF and implemented a two-stage process for the filing deadlines.

- For private fund advisers with AUM of at least \$5 billion, the first filing of Form PF would be due following their first fiscal quarter or year, as applicable, ending on or after June 15, 2012. For most Large Hedge Fund Advisers, this means that the first Form PF would be due by August 29, 2012 (*i.e.*, 60 days following June 30, 2012).

For most Large Private Equity Fund Advisers, the first Form PF would be due by April 30, 2013 (*i.e.*, 120 days following December 31, 2012).

- For other advisers to private funds, the initial Form PF filing would be due following their first fiscal quarter or year, as applicable, ending on or after December 15, 2012. For many Large Hedge Fund Advisers with AUM ranging between \$1.5 billion and \$5 billion, the first report therefore would be due by March 1, 2013 (*i.e.*, 60 days after December 31, 2012). For most small private fund advisers with at least \$150 million in AUM, the first Form PF filing would be due by April 30, 2013 (*i.e.*, 120 days after December 31, 2012).

#### Content of Form PF

The SEC outlined the content of the Form PF, emphasizing that no position level reporting would be required. Small private fund advisers with no heightened reporting obligation would provide limited information, including private fund size, leverage, investor types and concentration, liquidity and fund performance. Small private fund advisers managing hedge fund assets also would provide information regarding fund strategy, counterparty credit risk and use of trading and clearing mechanisms.

Large Hedge Fund Advisers would be required to report aggregate exposures by asset class, geographic concentration and turnover by asset class. In respect of a Large Hedge Fund Adviser managing a hedge fund with a net asset value of at least \$500 million, additional information pertaining to that fund would be required to be reported, including exposure, leverage, risk profile and liquidity. Again, the SEC stressed that no position level reporting would be required.

For Large Private Equity Fund Advisers, the SEC reportedly revised Form PF to require substantially less information than was originally proposed. Details with respect to the information required will be available once the final version of the Form PF is published.

Also of note, a private fund adviser would be permitted to use and rely on its own methodology when responding to certain items on Form PF (as opposed to utilizing a Form PF-specified methodology).

#### Confidentiality

In response to industry concerns, the SEC stressed its understanding that the Form PF data is sensitive and proprietary and the importance of keeping that information confidential. The SEC reiterated that the Dodd-Frank Act provides strong confidentiality protection for the information filed on Form PF. It stressed that the Form PF information will remain non-public and that it is committed

to implementing controls and systems necessary to provide appropriate confidentiality measures and limit access to the information to personnel within the regulatory bodies.

Removal of Certification Requirement

The adopting release also would remove the obligation that Form PF be certified as true and correct, “under penalty of perjury.” The SEC agreed with commenters who contended that this certification was inappropriate because certain Form PF information will be based on a private fund adviser’s estimates and judgment calls.

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Please feel free to contact any of the following Cadwalader attorneys if you have any questions about this memorandum.

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