



# DODD-FRANK ALERT

## NOVEMBER 2011

### *Reporting By Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*

On October 31, 2011, the SEC and the CFTC jointly adopted rules implementing Dodd-Frank's<sup>1</sup> systemic risk reporting requirements applicable to investment advisers to private funds, and to certain commodity pool operators and commodity trading advisors.<sup>2</sup> The rules are intended to support the efforts of the Financial Stability Oversight Council, created by Dodd-Frank, to monitor systemic risk in the U.S. financial markets. Form PF will elicit empirical data concerning private funds, and their advisers, which may disclose financial activities which pose systemic risk. Information provided on Form PF will be provided on a confidential basis, although the SEC may use such information in an enforcement action. In addition, the SEC may share the information with other federal regulators or self-regulatory organizations, in addition to the Council and the CFTC, for purposes within the scope of their jurisdiction.

Each investment adviser registered, or required to be registered, with the SEC will be required to file reports on Form PF if the adviser manages one or more private funds and has private fund assets under management of at least \$150 million as of the last day of its most recently completed fiscal year.<sup>3</sup> "Private funds" are funds which are exempt from registration under the Investment Company Act in reliance on Section 3(c)(1) or 3(c)(7) of that Act. "Private fund assets under management" are the portion of an adviser's regulatory assets under management<sup>4</sup> which are attributable to private funds managed by the adviser. An adviser may, but is not required to, report the private fund assets which it manages and the private fund assets which its related persons<sup>5</sup> manage on a single Form PF.

Form PF is divided into four sections. All investment advisers subject to the Form PF reporting rules are required to complete Section 1 of Form PF. Section 1 of Form PF requires disclosure of information regarding the adviser's identity and assets under management, information regarding the size, leverage and performance of each private fund managed by the adviser, and additional basic information<sup>6</sup> regarding each hedge fund managed by the adviser.<sup>7</sup> Investment advisers which report only on Section 1 are required to file reports on Form PF annually, with the exception of large hedge fund advisers (discussed below), which must make quarterly reports with respect to hedge fund data included in Section 1. Annual reports must be filed within 120 days from the end of each fiscal year. Quarterly reports of large hedge fund advisers must be filed within 60 days from the end of each fiscal quarter.

Certain types of large private fund advisers will be required to complete one or more additional sections of Form PF. As indicated below, large private fund advisers are defined by the asset size of the relevant assets under management.<sup>8</sup>

Large hedge fund<sup>9</sup> advisers will complete Section 2 of Form PF.<sup>10</sup> A large hedge fund adviser has at least \$1.5 billion of hedge fund assets under management as of the last day of any month in the fiscal quarter preceding its most recently completed fiscal quarter. Section 2 requires disclosure of aggregate data concerning hedge funds under

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#### **New York Office**

2 Park Avenue  
New York, New York 10016  
Phone: (212) 592-1400  
Fax: (212) 592-1500

#### **Princeton Office**

210 Carnegie Center  
Princeton, New Jersey 08540  
Phone: (609) 452-3800  
Fax: (609) 520-9095

#### **Newark Office**

One Gateway Center  
Newark, New Jersey 07102  
Phone: (973) 274-2000  
Fax: (973) 274-2500

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management, including data relating to hedge fund exposure by asset class and by geography. Individual fund disclosures are required for each hedge fund with a net asset value of more than \$500 million.<sup>11</sup> These disclosures include asset exposures and trading data, portfolio liquidity, counterparty exposure, risk metrics, financing information, and investor information.<sup>12</sup> Large hedge fund advisers are required to file quarterly reports on Form PF. Quarterly reports must be filed within 60 days of the end of each fiscal quarter.

Large liquidity fund advisers are required to complete Section 3 of Form PF. A large liquidity fund adviser manages liquidity funds<sup>13</sup> and has at least \$1 billion in combined money market and liquidity fund assets under management as of the last day of any month in the fiscal quarter preceding its most recently completed fiscal quarter. Section 3 requires identification of each liquidity fund and disclosure of fund-level information concerning fund assets, borrowings, and investor information.<sup>14</sup> Large liquidity fund advisers are required to file quarterly reports on Form PF. Quarterly reports must be filed within 15 days of the end of each fiscal quarter.

Large private equity advisers are required to complete Section 4 of Form PF. A large private equity adviser manages private equity funds with assets under management of at least \$2 billion as of the last day of its most recently completed fiscal year. Notably, for purposes of Section 4 reporting, “private equity funds” exclude hedge funds, liquidity funds, real estate funds, securitized asset funds and venture capital funds.<sup>15</sup> Section 4 requires fund-level disclosures of financings of and investments in portfolio companies. Large private equity advisers are required to file annual reports on Form PF. Annual reports must be filed within 120 days of the end of each fiscal year.

Form PF and the related rules become effective March 31, 2012. The rules establish June 15, 2012 as the initial compliance date for large private fund advisers with a minimum of \$5 billion of relevant assets under management (the “\$5 Billion Advisers”).<sup>16</sup> The initial compliance date for all other private fund advisers is December 15, 2012. Newly registered investment advisers are not required to file Form PF with respect to any period which ended prior to the effective date of their registrations.

*If you have any questions about this Dodd-Frank Newsletter, please contact [Irwin Latner](mailto:ilatner@herrick.com) at (212) 592-1558 or [ilatner@herrick.com](mailto:ilatner@herrick.com), [Patrick Sweeney](mailto:psweeney@herrick.com) at (212) 592-1547 or [psweeney@herrick.com](mailto:psweeney@herrick.com), or [Irwin A. Kishner](mailto:Irwin.A.Kishner@herrick.com) at (212) 592-1435 or [ikishner@herrick.com](mailto:ikishner@herrick.com)*

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<sup>1</sup>The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted July 21, 2010 with the goals of stabilizing the financial markets and preventing a recurrence of recent market turmoil.

<sup>2</sup>The CFTC rule applies to commodity pool operators and commodity trading advisors which are dually registered with the SEC, and provides that such persons may satisfy their reporting obligations to the CFTC, should the CFTC adopt such reporting rules, by filing Form PF with the SEC.

<sup>3</sup>For purposes of calculating this reporting threshold, an investment adviser is required in some circumstances to aggregate with its private fund assets its parallel managed accounts and the private funds and parallel managed accounts advised by a related person of the investment adviser.

<sup>4</sup> Regulatory assets under management, as recently defined in revised Form ADV, include all assets of a private fund, without deduction for indebtedness. The unfunded capital commitments of fund investors are also included in the calculation of regulatory assets under management.

<sup>5</sup>“Related persons” includes other investment advisers which control, are controlled by, or are under common control with, the reporting adviser.

<sup>6</sup> Basic information includes disclosures regarding investment strategies, counterparty risk, and trading activity.

<sup>7</sup> Master feeder funds and parallel fund structures may be aggregated for purposes of these reports.

<sup>8</sup> The same asset aggregation rules apply to the reporting thresholds for large private fund advisers. See footnote 3 above.

<sup>9</sup> Form PF defines a hedge fund in general as any private fund (other than a securitized asset fund) with respect to which a performance fee based upon unrealized gains may be paid, or which may be highly leveraged, or which may pursue a short sale investment strategy.

<sup>10</sup> For purposes of Form PF reports by commodity pool operators or commodity trading advisors, commodity pools are deemed to be hedge funds.

<sup>11</sup> Master feeder funds, parallel fund structures and dependent parallel managed accounts must be aggregated for purposes of determining this reporting threshold.

<sup>12</sup> Investor information required by Form PF does not include identification of the investor.

<sup>13</sup> A liquidity fund is a private fund which seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value or to minimize principal volatility.

<sup>14</sup> See footnote 12 above.

<sup>15</sup> In addition, an excluded private equity fund may not provide redemption rights to its investors in the ordinary course.

<sup>16</sup> The assets under management of the \$5 Billion hedge fund advisers and liquidity fund advisers would be measured as of the last day of the fiscal quarter most recently completed prior to June 15, 2012. The assets under management of the \$5 Billion private equity fund advisers would be measured as of the last day of its first fiscal year to end on or after June 15, 2012.