



INVESTMENT FUNDS UPDATE

SEC Adopts Form PF with a Number of Industry-Friendly Changes

On Wednesday, October 26, 2011, the Securities and Exchange Commission adopted Rule 204(b)-1 under the Investment Advisers Act of 1940. The SEC proposed the rule on January 26, 2011 jointly with the Commodity Futures Trading Commission's proposed Rule 4.27(d), as mandated by Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ In adopting the rule, the SEC is establishing new confidential information reporting requirements, as set forth in new Form PF, for investment advisers registered, or required to be registered, with the SEC that advise one or more private funds.

In its related press release,² the SEC indicated that the CFTC is expected to vote on jointly adopting the new requirements within the next week. The press release further indicated that, if the CFTC also approves the new requirements, private fund advisers dually registered with the CFTC as commodity pool operators or commodity trading advisors would file Form PF regarding commodity pools that are private funds. Dually registered advisers would also be permitted to report on Form PF regarding commodity pools that are not private funds, to comply with certain reporting obligations that the CFTC may adopt in the future, allowing consolidation of certain reporting obligations for such dually registered advisers to private funds and commodity pools.

At the October 26 meeting, the SEC highlighted a number of significant changes from the proposed Form PF requirements, including postponement of the compliance deadlines (see "New Compliance Deadlines for Initial Filing of Form PF" below) and the following:

- Minimum Regulatory Assets Under Management ("RAUM") of \$150 Million
 - Advisers with less than \$150 million RAUM attributable to private funds will not be required to file Form PF. (The proposal had no minimum threshold.)
- Large Private Fund Adviser Thresholds
 - The threshold for large hedge fund advisers has been increased from \$1.0 billion to \$1.5 billion RAUM attributable to hedge funds.

¹ "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF," Investment Advisers Act Release No. 3145 (January 26, 2011), available at <http://www.sec.gov/rules/proposed/2011/ia-3145.pdf> (the "Proposing Release"). The Proposing Release was discussed in detail in our client alert, "Recently Proposed CFTC and SEC Rules Affecting Investment Funds and Managers," (February 23, 2011) available at <http://www.sidley.com/sidleyupdates/Detail.aspx?news=4734>.

² "SEC Approves Confidential Private Fund Risk Reporting," Press Release No. 2011-226 (October 26, 2011), available at <http://www.sec.gov/news/press/2011/2011-226.htm>.

- The threshold for large liquidity fund advisers is unchanged at \$1.0 billion RAUM attributable to liquidity funds and registered money market funds.
- The threshold for large private equity fund advisers has been increased from \$1.0 billion to \$2.0 billion RAUM attributable to private equity funds.
- Frequency of Reporting
 - Smaller private fund advisers and large private equity fund advisers will be required to file only annually (versus quarterly for large private equity fund advisers in the proposal), within 120 days of the end of the fiscal year (increased from 90 days in the proposal).
 - Large hedge fund advisers and large liquidity fund advisers will be required to file quarterly, within 60 days (increased from 15 days) for large hedge fund advisers and 15 days for large liquidity fund advisers (but only liquidity fund information must be updated quarterly).
- Aggregation Rules for Reporting Thresholds Modified
 - Instead of aggregating private fund assets managed by any of the adviser’s affiliates, as proposed, the adviser will only be required to aggregate private fund assets of affiliates that are not separately operated.
 - Under the rule as adopted, the adviser will only be required to aggregate assets held in separately managed accounts to the extent those assets are managed alongside a private fund and do not exceed the size of that fund.
- Removal of Requirement to Certify Form PF under Penalty of Perjury
 - The requirement that Form PF be certified as accurate under penalty of perjury has been removed.
- Use of Different Methodologies
 - The SEC indicated that advisers will have an increased ability to use their own methodologies when responding to certain items in Form PF as adopted.

| New Compliance Deadlines for Initial Filing of Form PF | |
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| <ul style="list-style-type: none"> ● Private fund advisers with \$5 billion or more RAUM attributable to hedge funds ● Private fund advisers with at least \$5 billion in combined RAUM attributable to liquidity funds and registered money market funds ● Private fund advisers with at least \$5 billion in RAUM attributable to private equity funds | Following the end of the first fiscal year or fiscal quarter, as applicable, to end on or after: June 15, 2012 |
| <ul style="list-style-type: none"> ● Private fund advisers with at least \$150 million in RAUM attributable to private funds but less than \$5 billion in RAUM attributable to hedge funds, liquidity funds and registered money market funds or private equity funds | Following the end of the first fiscal year or fiscal quarter, as applicable, to end on or after: December 15, 2012 |

Once the CFTC has acted and the Form PF adopting release is available, Sidley will publish a more detailed alert. If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

The Investment Funds Practice of Sidley Austin LLP

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