



JONES DAY
COMMENTARY

SEC ADOPTS NEW RISK REPORTING REQUIREMENTS FOR CERTAIN REGISTERED INVESTMENT ADVISERS TO PRIVATE FUNDS (FORM PF)

On October 26, 2011, the U.S. Securities and Exchange Commission adopted a new rule¹ and new reporting requirements affecting certain registered advisers to hedge funds and other private funds. Under direction and authority of the Dodd-Frank Act, the SEC will now require investment advisers with at least \$150 million in private fund assets to periodically report certain information that will assist the Financial Stability Oversight Council (“FSOC”) in monitoring systemic risks to the U.S. financial system. The reporting will be done on a new SEC Form (“Form PF”), the contents of which are to be kept confidential.²

whether the investment adviser is a “large private fund adviser” or a “small private fund adviser,” as set forth in the chart below. Most filers will need to report certain “Fund Information,” including the size of the fund, leverage, the type and concentration of investors, fund strategies, counterparty credit risk, use of trading and clearing mechanisms, liquidity, and overall fund performance. For certain advisers, Form PF may require reporting of information regarding separately managed accounts and affiliated funds and entities as described further in the instructions to the Form PF.

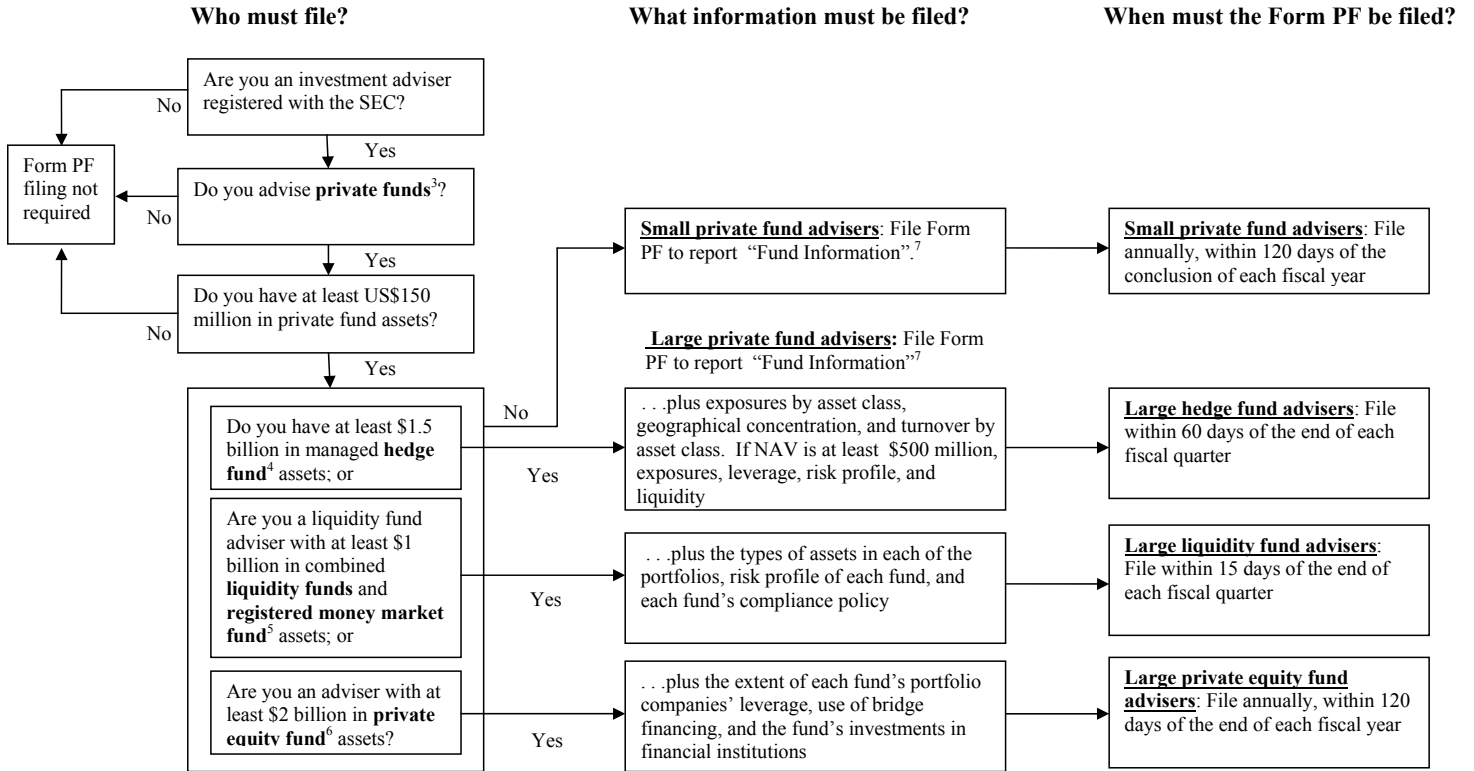
FORM PF

The amount of information and frequency of reporting required under this new rule depends upon

¹ Rule 204(b)-1 of the U.S. Investment Advisers Act of 1940.

² For additional information regarding Form PF, please refer to the SEC’s open meeting at <http://www.sec.gov/news/open-meetings.shtml> and the SEC’s press release at <http://www.sec.gov/news/press/2011/2011-226.htm>. The SEC’s proposing release is available at <http://www.sec.gov/rules/proposed/2011/ia-3145fr.pdf>. Additionally, the SEC’s adopting release is available at <http://www.sec.gov/rules/final/2011/ia-3308.pdf> and a copy of Form PF is available at <http://www.sec.gov/rules/final/2011/ia-3308-formPF.pdf>.

Form PF



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- 3 A "private fund," as defined in the Adopting Release, is "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) ("Investment Company Act"), but for section 3(c)(1) or 3(c)(7) of that Act."
 - 4 A "hedge fund," as defined in the Adopting Release, is any private fund having any one of three common characteristics of a hedge fund: (a) a performance fee that takes into account market value (instead of only realized gains); (b) high leverage; or (c) short selling.
 - 5 A "liquidity fund," as defined in the Adopting Release, is 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. For purposes of determining whether the adviser is a large liquidity fund adviser, the adviser must combine all liquidity fund and registered money market fund assets. For this purpose, an adviser would also have to treat any liquidity funds managed by any of the adviser's related persons as though they were advised by the adviser.
 - 6 A "private equity fund," as defined in the Adopting Release, is 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.
 - 7 "Fund Information" includes: size of the fund, leverage, the type and concentration of investors, fund strategies, counterparty credit risk, use of trading and clearing mechanisms, liquidity, and overall fund performance. Form PF may require reporting of information regarding separately managed accounts and affiliated funds and entities as described further in the instruction to the Form PF attached to the Adopting Release.

INITIAL FILING DEADLINES AND FEES

The Form PF will be filed through the same electronic platform used by registered advisers to file registration information. Additionally, this new filing requirement, which is expected to bear a filing fee of \$150, will be implemented in two phases. Private fund advisers with less than \$5 billion in assets under management will be required to file Form PF within the time frames noted in the table above after the first fiscal year or fiscal quarter, as applicable, ending on or after December 15, 2012. Private fund advisers with \$5 billion or more in assets under management, however, must file their initial Form PF after the fiscal year or fiscal quarter, as applicable, ending on or after June 15, 2012.

LAWYER CONTACTS

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