

Alerts & Publications

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SEC Staff Updates Guidance Regarding Form PF

July 23, 2012

On July 19, 2012, the staff of the Securities and Exchange Commission's (the "**SEC**") Division of Investment Management (the "**Staff**") issued updates to its **Frequently Asked Questions** regarding Form PF. Under the new reporting rules adopted by the SEC on October 31, 2011[1], registered private fund advisers with at least \$150 million in private fund assets under management are required to file certain periodic reports on Form PF [2].

The new FAQs address a range of topics, including:

Definition of "Borrowings" (Questions 12 and 43 of Form PF): A fund's borrowings include secured, unsecured, and synthetic borrowings. A non-exhaustive list of borrowings includes short sales, securities lending transactions, reverse repurchase agreements, transactions involving synthetic borrowings, and transactions in which a variation margin is owed but has not yet been paid.

Counterparty Credit Exposure (Questions 22, 23, 36, and 37):

Counterparty credit exposure must be reported only in relation to over-the-counter derivatives positions, loans, and loan commitments. A fund adviser need not report assets held by a custodian or prime broker nor futures positions or excess margin held at a futures commission merchant.

The Staff provided guidance on the method of counterparty reporting for six types of transactions: securities lending, short transactions, reverse repurchase agreements, repurchase agreements, non-cleared derivatives transactions with an unrealized gain, and non-cleared derivatives transactions with an unrealized loss. The Staff also noted that while the

counterparty reporting requirements of Questions 22 and 23 do not call for including amounts attributable to either initial margin or variation margin, large hedge fund advisers are required to include initial margin and variation margin when responding to Questions 36 and 37.

Stress Testing for Market Factors (Question 42): An adviser is required to report the effect that specific changes in market factors would have on a fund's portfolio if the fund regularly considers the specific market factor in formal testing for risk management purposes. Even where a fund does not currently test for a market factor, its adviser must report the factor if it believes it is relevant to the fund portfolio and it has the ability to test changes in that market factor.

Other Topics: The updated FAQs provide guidance on a number of other topics.

- Not deducting deferred compensation-related liabilities from the calculation of a fund's net asset value (Question G.1).
- Using market value instead of gross notional value for derivatives when calculating the value of a parallel managed account (Question 11.1).
- Calculating the value of short sales when reporting borrowings (Question 12.2).
- Determining the aggregate value of derivatives positions (Question 44.1).

Compliance Obligations for Private Fund Advisers Required to File Form PF:

As a reminder, Form PF compliance dates differ based on the size and type of private fund under management. For advisers whose fiscal year ends December 31:

- **July 16, 2012** – Advisers to liquidity funds and registered money market funds with at least \$5 billion in assets under management.
- **August 29, 2012** – Advisers to hedge funds with at least \$5 billion in assets under management.
- **April 30, 2013** – All other advisers.

The updated FAQs could impact filings prepared in compliance for July 16 and August 29 submission deadlines. The Staff addressed the obligation to square the information contained in these submissions with the updated FAQs.

July 16: The Staff will not object if a filing made in compliance with the July 16, 2012 deadline is not amended to comply with the updated FAQs as long as: (1) the next filing lists the assumptions relied upon in that submission that were inconsistent with Staff guidance, and (2) future required reports reflect the Staff guidance.

August 29: Qualifying advisers (those with more than \$5 billion in assets managed by a hedge fund) are still required to file an initial Form PF by August 29, 2012. However, the Staff will not recommend enforcement action under section 207 of the Investment Advisers Act ("Advisers Act") if

an adviser is unable to incorporate the new guidance, provided that: (1) the adviser's assumptions in completing the initial report were reasonable at the time the reporting system was developed, (2) the assumptions or approaches taken by the adviser that are inconsistent with the updated FAQs are identified in Question 4, and (3) future required reports reflect the Staff guidance.

O'Melveny & Myers LLP is available to assist registered investment advisers with filing Form PF as well as to assist registered CPOs and CTAs with filing CFTC Forms CPO-PQR and CTA-PR. If you have questions, please contact the attorneys listed above or any other O'Melveny & Myers LLP attorneys with whom you ordinarily work on related matters.

[1] In October 2011, the Commodity Futures Trading Commission (the "**CFTC**") adopted a requirement that commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") registered with the CFTC file Form PF with the SEC if they are dually registered with the SEC as an investment adviser and required to file Form PF under the Advisers Act.

[2] To see the O'Melveny & Myers LLP client alert on the adoption of the new rules, please [click here](#). To see the client alert on past FAQs issued regarding Form PF, please [click here](#).

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