NEW REPORTING REQUIREMENTS FOR SEC-REGISTERED INVESTMENT ADVISERS TO CERTAIN PRIVATE FUNDS

The Securities and Exchange Commission ("SEC") has adopted new reporting requirements for SEC-registered investment advisers to certain private funds. This reporting is intended to help regulators assess systemic risk of the financial system as contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The new reports will be available only to the regulators, not to the public.

The SEC, in cooperation with the Commodity Futures Trading Commission, has developed a new form, Form PF, which will be used by the Financial Stability Oversight Council, established under Dodd-Frank, to monitor the stability of the national financial system. Advisers with at least \$150 million in private fund assets under management must file a Form PF. The new rule divides these advisers into two broad groups by size - large advisers and smaller advisers. The reporting requirements differ depending on whether the funds involved are hedge funds, liquidity funds, or private equity funds, as defined by the rule.

The rule defines large private fund advisers as:

- Advisers with at least \$1.5 billion in assets under management attributable to hedge funds.
- Liquidity fund advisers with at least \$1 billion in combined assets under management attributable to liquidity funds and registered money market funds.
- Advisers with at least \$2 billion in assets under management attributable to private equity funds.

Large advisers represent a substantial majority of industry assets under management. The more stringent reporting requirements for these advisers are intended to allow the regulators to monitor a significant portion of private fund assets in more detail while reducing the reporting burden for most private fund advisers, who will fall into the smaller fund adviser category.

SMALLER PRIVATE FUND ADVISERS

Smaller private fund advisers must file Form PF once a year within 120 days after the end of the fiscal year, and report basic information regarding the private funds they advise. This information includes limited facts regarding size, leverage, investor types and concentration, liquidity, and fund performance. Smaller advisers managing hedge funds (as distinct from private equity funds or liquidity funds) must also report information about fund strategy, counterparty credit risk, and use of trading and clearing mechanisms.

LARGE PRIVATE FUND ADVISERS

Large private fund advisers must provide more detailed information than smaller advisers. The focus and frequency of the reporting depends on the type of private funds the adviser manages.

- Large hedge fund advisers must file Form PF to update information regarding the hedge funds they manage within 60 days after the end of each fiscal quarter. These advisers must report, on an aggregated basis, information regarding exposures by asset class, geographical concentration, and turnover by asset class. In addition, advisers are required to report certain information relating to a fund's exposures, leverage, risk profile, and liquidity for each managed hedge fund having a net asset value of at least $500 million. Large hedge fund advisers are not required to report position-level information.
- Within 15 days after the end of each fiscal quarter, large liquidity fund advisers must file Form PF to update information regarding the liquidity funds they manage. These advisers must provide information on the types of assets in each of their liquidity fund's portfolios, certain information relevant to the risk profile of the fund, and the extent to which the fund has a policy of complying with all or aspects of the Investment Company Act's principal rule concerning registered money market funds (Rule 2a-7).
- Large private equity fund advisers must file Form PF annually within 120 days after the end of the fiscal year. They must respond to questions focusing primarily on the extent of leverage incurred by their funds' portfolio companies, the use of bridge financing, and their funds' investments in financial institutions.

RELATIONSHIP TO RECENT AMENDMENTS TO FORM ADV

In June, the SEC adopted amendments to Form ADV that, among other things, expand the information collected regarding private funds. This Form ADV information is designed to help identify practices that may harm investors, deter advisers' fraud and facilitate earlier discovery of potential misconduct. The information complements the information collected on Form PF. Unlike information reported on Form PF, the information reported on Form ADV will be available to the public.

Using Form ADV, private fund advisers will report basic organizational and operational information about each fund they manage, general information about the size and ownership of the fund and the identity of five categories of "gatekeepers" that perform critical roles for advisers and the private funds they manage (such as auditors, prime brokers, custodians, administrators and marketers).

COMPLIANCE DATES

A two-stage phase-in period for compliance with Form PF filing requirements will occur. Most private fund advisers will be required to begin filing Form PF following the end of their first fiscal year or fiscal quarter, as applicable, to end on or after December 15, 2012.

The following advisers must begin filing Form PF following the end of their first fiscal year or fiscal quarter, as applicable, to end on or after June 15, 2012:

- Advisers with at least $5 billion in assets under management attributable to hedge funds.

- Liquidity fund advisers with at least $5 billion in combined assets under management attributable to liquidity funds and registered money market funds.
- Advisers with at least $5 billion in assets under management attributable to private equity funds.

ADDITIONAL INFORMATION

This Client Alert has been prepared based on the summary released by the SEC before the availability of the full text of the new rules. For more information regarding the new rules, please get in touch with your Tucker Ellis & West LLP contact or one of the following attorneys.

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