

# Five Lessons for Form PF

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By Nabil Sabki and Nadia Sager

*Private funds are issuers that rely on the Section 3(c)(1) or 3(c)(7) exemptions from registration as investment companies under the Investment Company Act of 1940. Private fund assets under management are calculated for an investment adviser together with certain of its related persons in a manner consistent with the calculation of regulatory assets under management for Form ADV purposes.*

**M**ost registered investment advisers have now been through at least one Form PF filing cycle. Some have been through several. Form PF is required to be filed on a quarterly or annual basis by SEC-registered investment advisers (and those required to be SEC-registered) who manage any number of private funds with at least \$150 million in private fund assets under management as of the adviser's most recent fiscal-year end. The purpose of Form PF is to provide the Financial Stability Oversight Council (FSOC), created by the Dodd-Frank financial reform legislation, with data to identify systemic trends in the private fund industry and to assist in monitoring systemic risks to the U.S. financial markets.

With at least one filing cycle now behind most advisers, here are five key lessons learned.

## Lesson #1: It's Doable

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As advisers have now witnessed, Form PF requires significant data collection across funds, managed accounts and portfolio companies. Detailed information required to be reported encompasses, among other things, (i) exposure to specific financial institutions and credit counterparties, (ii) concentration of fund investments by industry and geography, and (iii) concentration of investor base. However, the information required to complete Form PF for most advisers already exists within the organization, and the Form PF reporting exercise is primarily an exercise in gathering, regrouping and recalculating. While there is undoubtedly significant work involved for many advisers in this process, completion of Form PF is ultimately doable.



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## Lesson #2: Start Early and Plan Ahead

Although Form PF completion is ultimately doable, Form PF does involve significant data collection that requires a team effort across finance and legal functions. The SEC and the CFTC estimated that the initial Form PF filing would take 100-300 hours for larger advisers to complete and 40 hours for smaller advisers to complete, and that subsequent Form PF filings would take 50-140 hours for larger advisers and 15 hours for smaller advisers. The amount of time advisers actually spent completing their Form PF filings varied widely, but most advisers found that completion of the Form indeed required significant time and resources. As a general matter, hedge fund advisers spent significantly more time and resources completing Form PF filings than did private equity fund advisers, primarily because of the more extensive data requirements applicable to hedge fund advisers. Some advisers hired third parties (such as administrators and software providers) to assist with their initial Form PF filings and generally found the assistance useful but expensive. Advisers who have been through the process generally expect that future filings will not be as difficult or time consuming as the first filing but they still expect to deploy significant resources on an ongoing basis.

In addition to the time involved in data collection, uploading information to Form PF and completing the various

entries takes time. Some questions are set up for automated completion and other questions will only allow certain answers based on the answers given elsewhere in the form. As a result, completing the form is not always intuitive. There may be differences in how an adviser has interpreted a question and what the electronic completion parameters will permit.

Work on the form can be saved along the way and the form can be completed in multiple visits, however, the IARD system, where Form PF is filed, is not available 24/7. Rather, the IARD system is available only during certain prescribed hours (generally Monday through Friday from 7:00 a.m. to 11:00 p.m. Eastern time) and it is typically not available at all on days when the securities markets are closed. Advisers should check IARD schedules against filing deadlines well in advance and schedule more time for form completion than will actually be needed.

Advisers should also allow time for funding filing fees to the system. The IARD will not accept a Form PF filing if the filing fee has not been paid, and the system requires that advisers credit their filing fees to their firm's IARD Daily Account before submitting Form PF. Form PF filing fees may take several days to hit an IARD Daily Account after funding has been dispatched.

Below is a sample timetable for use in planning ongoing Form PF compliance. The timetable assumes a December 31 fiscal year end, and filing dates shown do not take into account any extensions that may be granted for holidays.

Sample Form PF Timetable for December 31 Fiscal Year End					
Type of Adviser	Filing Date		Begin Form PF Data Collection	Fund Filing Fees to IARD Daily Account	Begin IARD Upload
<b>Large Hedge Fund Adviser Reporting for Hedge Fund*</b>	Quarterly within 60 days after the end of each fiscal quarter	Q1: May 30 Q2: August 29 Q3: November 29 Q4: March 1	Q1: April 1 Q2: July 1 Q3: October 1 Q4: January 1	Q1: May 1 Q2: August 1 Q3: November 1 Q4: February 1	Q1: May 15 Q2: August 15 Q3: November 15 Q4: February 15
<b>Large Liquidity Fund Adviser Reporting for Liquidity Fund</b>	Quarterly within 15 days after the end of each fiscal quarter	Q1: April 15 Q2: July 15 Q3: October 15 Q4: January 15	Q1: April 1 Q2: July 1 Q3: October 1 Q4: January 1	Q1: March 20 Q2: June 20 Q3: September 20 Q4: December 20	Q1: April 7 Q2: July 7 Q3: October 7 Q4: January 7
<b>All Others</b>	Annually within 120 days after the end of each fiscal year of the adviser as to each private fund not picked up by one of the other deadlines	April 30	February 15	April 1	April 15

\* Where an adviser advises more than one type of fund, such as a large hedge fund and a large private equity fund, the adviser is required to update (i) in its quarterly filings only the information relating to its large hedge fund and (ii) in its annual filings the information relating to its large private equity fund. An adviser updating only a portion of its Form PF in a quarterly filing is not treated as having affirmed its prior responses for a fund with an annual filing requirement simply because the annual information was not updated in the quarterly filing.

### Lesson #3: Use Assumptions Liberally

Although Form PF is not an investor disclosure form like Form ADV, advisers are nevertheless required to make accurate and forthright disclosures. In completing Form PF, advisers discovered some internal inconsistencies within Form PF's questions and instructions, and other inconsistencies as between terminology imported to Form PF from Form ADV. Proper interpretation of some Form PF questions is not always evident, though certain answers are available in the SEC's Form PF Frequently Asked Questions publication available at <http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml> or in the joint CFTC/SEC Form PF adopting release (Release No. IA-3308). Where doubt persists, advisers should liberally disclose assumptions made in responding to these questions.

#### *As advisers have now witnessed, Form PF requires significant data collection across funds, managed accounts and portfolio companies.*

Many advisers disclosed assumptions made in reporting performance information. Form PF permits advisers to report using methodologies consistent with the information the adviser uses for internal and investor reporting purposes as long as the information supplied on Form PF is consistent with Form PF instructions. Among other things, advisers must report gross and net fund performance information that is consistent with the performance results reported to investors, or consistent with that used internally if not reported to investors (and where audited information is available at the time an adviser files Form PF, the adviser is expected to report consistent with that audited information). However, certain of the Form PF questions are inconsistent with these principles and are therefore best addressed with disclosure of methodologies and assumptions on which an adviser's calculations are based.

Both the SEC and the CFTC are permitted to use an adviser's Form PF filings in their examinations, investigations, investor protection efforts and enforcement programs. Under the Investment Advisers Act, any willful misstatement or omission of a material fact in any report filed with the SEC pursuant to the Investment Advisers Act is unlawful. Similarly, the CFTC has taken the position that any false or

misleading statement of a material fact or material omission by a commodity pool operator or commodity trading advisor in Section 1 or Section 2 of Form PF will constitute a violation of the Commodity Exchange Act. Accordingly, advisers should apply the same level of diligence and candor in the completion of Form PF as they devote to the completion of Form ADV and the making of other securities law disclosures.

### Lesson #4: Supplement Investor Forms Now

Gather supplemental information from investors now. Question 16 of Form PF Section 1(b) calls for advisers to specify the percentage of each private fund beneficially owned by certain enumerated categories of investors. Some of the categories are different than those typically used by advisers when classifying investors for fundraising purposes, and accordingly proper classification of investors may require solicitation of the relevant information from them. Advisers are not required to collect separate data from investors that held their interests prior to March 31, 2012, and so for these

investors advisers may respond using good faith estimates derived from data otherwise available to them (which many advisers found that they did have to do). However, for any other investors, precise answers are required. Advisers should therefore update their investor questionnaire materials, if they have not already done so, to include questions such as those provided in the Supplemental Form PF Questionnaire shown on page 38. These updates should be made not only to investor subscription materials, but also to investor transfer materials. In addition, advisers should separately solicit this information from any existing investors that acquired their interests on or after March 31, 2012.

### Lesson #5: Keep Good Records

Registered investment advisers are required to keep certain books and records and maintain those books and records under the Investment Advisers Act for a prescribed period of time, typically five years. In an SEC examination, the SEC staff closely examines these books and records and it can be expected that the staff will compare the adviser's internal books and records with the information reported on Form PF. Advisers should therefore have internal policies and

### FORM PF INVESTOR QUESTIONNAIRE

You represent and warrant that you have checked the boxes below that apply to you with respect to each of the following questions.

(1)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you an individual that is a "United States person" or a trust established by an individual that is a "United States person"? For purposes of this question, a "United States person" means: (i) any person that is a "U.S. person" as defined in Attachment A hereto or (ii) any natural person that is resident in the United States.
(2)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a broker-dealer?
(3)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you an insurance company?
(4)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you an investment company registered with the United States Securities and Exchange Commission?
(5)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you an issuer that would be an investment company as defined in Section 3 of the Investment Company Act of 1940 but for Section 3(c)(1) or 3(c)(7) of such Act?
(6)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a non-profit entity?
(7)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a pension plan other than a governmental pension plan?
(8)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a banking or thrift institution (proprietary)?
(9)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a state or municipal "government entity" other than a governmental pension plan? For purposes of this definition, a "government entity" means any state or political subdivision of a state (other than a governmental pension plan), including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets controlled by the state or political subdivision or any agency, authority, or instrumentality thereof; and (iii) any officer, agent, or employee of the state or political subdivision or any agency, authority, or instrumentality thereof, acting in their official capacity.
(10)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a state or municipal governmental pension plan?
(11)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are you a sovereign wealth fund or a foreign official institution?

As used in this questionnaire, "U.S. person" means:

- (i) Any natural person resident in the United States;
- (ii) Any partnership or corporation organized or incorporated under the laws of the United States;
- (iii) Any estate of which any executor or administrator is a U.S. person;
- (iv) Any trust of which any trustee is a U.S. person;
- (v) Any agency or branch of a foreign entity located in the United States;
- (vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
- (vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and
- (viii) Any partnership or corporation if:
  - (A) Organized or incorporated under the laws of any foreign jurisdiction; and
  - (B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

The following are not "U.S. persons":

- (i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;
- (ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

- (A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and
- (B) The estate is governed by foreign law;
- (iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;
- (iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;
- (v) Any agency or branch of a U.S. person located outside the United States if:
  - (A) The agency or branch operates for valid business reasons; and
  - (B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and
- (vi) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans.

"United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

procedures reasonably designed to ensure that the required books and records are kept properly and in an organized fashion that will facilitate reporting on Form PF. When gathering information and data for reporting purposes, advisers should be vigilant in confirming that the information and data reported is consistent with the adviser's books and

***Form PF does involve significant data collection that requires a team effort across finance and legal functions.***

records and that assumptions are provided in the Form PF filing to explain any differences. Because both the SEC and the CFTC are permitted to use an adviser's Form PF filings in their examinations, investigations, investor protection efforts and enforcement programs, advisers should expect them to do so. Unexplained inconsistencies will likely lead to increased scrutiny and in some cases could result in more severe regulatory consequences.

Proper recordkeeping is also important in substantiating the classification of a private fund as a hedge fund or a private equity fund. Certain funds that the industry views as private equity funds could inadvertently be classified as hedge funds for Form PF purposes without proper supporting documentation and recordkeeping. A private fund is generally treated as a hedge fund if, among other things, it can borrow more than half of its net asset value (including committed capital) or is permitted to sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging

currency exposure or managing duration). Pursuant to the Form PF adopting release, if the organizational documents of a fund that would otherwise be a private equity fund do not prohibit such transactions (i.e., the documents are silent), the fund is not necessarily classified as a hedge fund; but if the organizational documents of such a fund expressly allow these transactions, even if the fund does not actually engage in these transactions, then the fund is required to report as a hedge fund on Form PF. In many cases, private equity funds that would otherwise become inadvertent hedge funds took a remedial approach and adopted documentation that would support their Form PF filing status as private equity funds.

Finally, data provided on Form PF is not intended to be the exclusive source of information available to FSOC for systemic risk analysis in respect of the private fund industry, but instead is intended to set a baseline for ongoing financial stability analysis of the industry. FSOC and the Office of Financial Research (OFR) may conduct an in-depth review of specific firms identified through their review of Form PF and other data. In certain cases, FSOC or OFR may collect additional, targeted information from specific investment advisers. Accordingly, certain advisers may receive future inquiries from FSOC and OFR and should be prepared to respond to such inquiries with additional information. Good recordkeeping practices with respect to Form PF will assist the efficient delivery of additional information for advisers receiving these inquiries from FSOC or OFR.

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