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Legal Developments in Securities Law

Dodd-Frank Update: New Private Fund Rules Released
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Recently, the Securities and Exchange Commission ("SEC") adopted final rules concerning the registration of advisers to private funds. Some of these rules varied greatly from the initial proposed rules. In the Release by the SEC and the Commodity Futures Trading Commission ("CFTC"), it was clear that many changes addressed commenters' concerns with the proposed rules and their viability or effectiveness at achieving the rule's purpose. Many commenters expressed concerns with certain fund advisers' ability to provide reliably accurate data within a short deadline.

A number of these provisions are important to private fund advisers. To begin with, private fund advisers are divided into two general groups – a large private fund adviser or a smaller private fund adviser. Large private fund advisers are divided as follows:

- *Large Hedge Fund Advisers* - $1.5 billion in hedge fund assets under management,
- *Large Liquidity Fund Advisers* - $1 billion in combined liquidity fund and registered money market fund assets under management, and
- *Large Private Equity Fund Advisers* - $2 billion in private equity fund assets under management.

Smaller private fund advisers are all other advisers, but note that not all smaller private fund advisers may be required to file the Form PF, if they have less than $150 million in private fund assets under management. Depending on the fund adviser's classification, the deadlines to file the Form PF and the portions of the Form that must be completed will vary. The Form PF is a new reporting form developed to provide regulators with private fund information; notably, this Form will receive confidential treatment by the SEC and CFTC, although its contents may be disclosed to other Federal departments, agencies or self-regulatory organizations, in addition to the CFTC and FSOC. The Form PF is divided as follows:

- Section 1: Information regarding the adviser's identity and assets under management; limited information regarding the size, leverage and performance of all private funds subject to the reporting requirements, and; requires additional basic information regarding hedge funds.
- Section 2: Aggregate information about the hedge funds the adviser manages; additional information about any hedge fund it advises that has a net asset value of at least $500 million as of the end of any month in the prior fiscal quarter.
- Section 3: Information regarding the fund's portfolio valuation and its valuation methodology, as well as the liquidity of the fund's holdings; information regarding whether the fund, as a matter of policy, is managed in

compliance with certain provisions of rule 2a-7 under the Investment Company Act.

- Section 4: Information regarding the activities of private equity funds, certain of their portfolio companies and the creditors involved in financing private equity transactions.

Of course, the requirements and questions within each section are more detailed than the overview provided above, but private fund advisers should prepare themselves for the type of information that will be requested of them.

The deadlines to submit Form PFs to the SEC are categorized as follows:

- Smaller Private Fund Advisers: Within 120 days after the end of the fiscal year. Reporting occurs on an annual basis. The previous proposed deadline provided 90 days.
- Large Private Equity Advisers: Within 120 days after the end of the fiscal year. Reporting occurs on an annual basis. The previous proposed deadline provided only 15 days.
- Large Hedge Fund Advisers: Within 60 days from the end of each fiscal quarter. Reporting occurs on a quarterly basis. The previous proposed deadline provided only 15 days.
- Large Liquidity Fund Advisers: Within 15 days from the end of each fiscal quarter. Reporting occurs on a quarterly basis.

In addition to the new deadlines, the rules also made clear which portions of the Form PF each type of private fund adviser must complete, as follows:

- Smaller Private Fund Advisers: Must provide only basic information regarding their operations and the private funds they advise, including their performance, leverage and investor data (all or portions of Section 1 of Form PF).

- Private Equity Advisers: Must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large private equity advisers are required to provide additional information in section 4 of the Form.
- Hedge Fund Advisers: Must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large hedge fund advisers are required to provide additional information in section 2 of the Form.
    - Under the rules, to be classified as a hedge fund, the private fund must have one of the following three characteristics:
        - (a) a performance fee that takes into account market value (instead of only realized gains)
        - (b) high leverage; or
        - (c) short selling.
- Liquidity Fund Advisers: Must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large liquidity fund advisers are required to provide additional information in section 3 of the Form.

Obviously, the above summary is provided as an indication of the requirements private fund advisers will face in the near future (as early as June 15, 2012 for some advisers). Private fund advisers should prepare for compiling, reviewing and filing the Form PF, and contact an experienced attorney if you have any questions.