

SEC Releases Additional Frequently Asked Questions Regarding Form PF

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Anastasia T. Rockas

New York
212.735.2987
anastasia.rockas@skadden.com

Geoff Bauer

New York
212.735.3619
geoff.bauer@skadden.com

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The Securities and Exchange Commission (the “SEC”) has released several rounds of additional Frequently Asked Questions (“FAQs”)¹ regarding Form PF,² the private fund systemic risk reporting form promulgated by the SEC and the Commodity Futures Trading Commission (the “CFTC”).³

These additional FAQs were released in advance of the first filings for advisers with less than \$5 billion in assets under management attributable to hedge funds or liquidity funds, and most private equity fund advisers. The initial filings for these advisers are due 120 days after their fiscal year end, which is **April 30, 2013** for advisers with a fiscal year that coincides with the calendar year. The additional FAQs also provide further clarity for large hedge fund and large liquidity fund advisers, who have been reporting on Form PF since the summer of 2012.

The SEC has requested that any further questions on Form PF be emailed to FormPF@sec.gov for potential inclusion in future updates to the FAQ. The latest round of FAQs released by the SEC include answers on the following points, among others:

I. General Filing Information

The SEC clarified that Form PF permits, but does not require, related persons to report on a single Form PF with respect to the private funds they advise as a matter of convenience for advisers. (Question A.5)

II. Fund of Funds

The additional FAQs confirm that advisers should not disregard investments in other private funds for purposes of questions that request information on a private fund’s beneficial owners, such as Questions 15 and 16. (Question F.4)

III. Definitions

The SEC clarified how advisers should treat short positions, derivatives, repurchase agreements, total return swaps and other similar financial instruments for purposes of the regulatory assets under management definition and the gross asset value definition. These instruments may be calculated in accordance with the private fund’s balance sheet or applicable accounting standards. (Question G.2)

- 1 The full text of the SEC’s FAQs is available at <http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml>.
- 2 See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3308 (Oct. 31, 2011), available at <http://www.sec.gov/rules/final/2011/ia-3308.pdf>.
- 3 For a summary of Form PF, see our prior mailing entitled “Form PF: Final Rules Adopted by the SEC and the CFTC,” (Apr. 27, 2012), available at http://www.skadden.com/newsletters/Form_PF_Final_Rules_Adopted_by_the_SEC_and_the_CFTC.pdf.

IV. Feeder Arrangements

An adviser should report its master-feeder arrangements consistent with the way such funds are reported on Form ADV. If a master-feeder arrangement is aggregated for purposes of Form ADV, it should be aggregated on Form PF. In order to report separately on Form PF for a fund that was previously aggregated on Form ADV, the adviser should first file an other-than-annual amendment to its Form ADV to reflect such change.⁴ (Question H.1)

If an adviser reports a master-feeder arrangement on an aggregate basis, it should collapse the master-feeder structure and aggregate all investors for purposes of the Form PF questions regarding investors in the funds, such as Questions 15, 16 and 50. (Question H.2)

V. Question-Specific FAQs

The SEC clarified that, for purposes of Questions 13(b) and 44, advisers should not report a negative number but should instead report the absolute value of outstanding derivatives positions. (Question 44.2)

When reporting the percentage of a reporting fund's net asset value that may be subjected, or is subject, to material restrictions on investor withdrawal/redemption, the SEC clarified that advisers should make a good-faith determination of discretionary withdrawal/redemption provisions that would likely be triggered during times of significant market stress. For these questions, advisers should not include baseline liquidity restrictions, such as lock-ups or gates that apply regardless of market conditions. (Question 49.1)

Related to the above, the SEC clarified that assets subject to a side-pocket arrangement should not be included in Questions 49(c) and 49(e) and Questions 63(b) and 63(d). However, advisers should report the percentage of the reporting fund's net asset value that is actually in a side pocket in Question 48(a). (Question 49.2)

Questions 50 and 64 ask for the breakdown of the percentage of the private fund's net asset value that is locked in for different periods of time. The SEC confirmed that advisers should take into account the liquidity terms associated with each different investor (such as lock-up periods or side-letter terms) and calculate the percentage of net asset value associated with each time period identified in the questions. (Question 50.1)

⁴ Inconsistencies between Form ADV and Form PF generally should be addressed in this manner.