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SEC Approves Form PF for Reporting by Private Fund Advisers

On October 28, 2011, the Securities and Exchange Commission ("SEC") voted unanimously to adopt a new rule requiring certain advisers to hedge funds and other private funds to report information for use by the Financial Stability Oversight Council (FSOC) in monitoring risks to the U.S. financial system.

The rule, which implements Sections 404 and 406 of the Dodd-Frank Act, requires SEC-registered private fund advisers with at least $150 million in private fund assets under management ("AUM") to periodically file new Form PF. Such private fund advisers are divided by size into two broad groups – "large private fund advisers," which includes hedge fund advisers with at least $1.5 billion in AUM, liquidity fund advisers with at least $1 billion in AUM, and private equity advisers with at least $2 billion in AUM, and "smaller advisers," which are all other private fund advisers who meet the AUM threshold. Private fund advisers with less than $150 million in AUM will not be required to file Form PF.

Large private fund advisers will be required to provide more detailed information than smaller advisers.

- Large hedge fund advisers must file Form PF to update information regarding the hedge funds they manage within 60 days of the end of each fiscal quarter (instead of 15 days in the rule proposal). These advisers must report on an aggregated basis information regarding exposures by asset class, geographical concentration, and turnover by asset class. In addition, for each managed hedge fund having a net asset value of at least $500 million, these advisers are required to report certain information relating to that fund's exposures, leverage, risk profile, and liquidity. Large hedge fund advisers are not required to report position-level information.

- Large liquidity fund advisers must file Form PF to update information regarding the liquidity funds they manage within 15 days of the end of each fiscal quarter. 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 of 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.

Information reported on Form PF will remain confidential.

There will be a two-stage phase-in period for compliance with Form PF filing requirements. 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. Private fund advisers with $5 billion or more in hedge fund assets or in private equity fund assets 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, as must liquidity fund advisers with at least $5 billion in combined AUM attributable to liquidity funds and registered money market funds.

Form PF is a joint effort of the SEC and the Commodity Futures Trading Commission ("CFTC"). The CFTC is expected to vote on the rule this week. If the CFTC approves the joint reporting, private fund advisers required to file Form PF and also registered with the CFTC as commodity pool operators or commodity trading advisors would file Form PF to comply with certain reporting obligations that the CFTC may adopt in the future. In addition, such advisers would be permitted to report on Form PF regarding commodity pools that are not "private funds" to comply with certain reporting obligations that the CFTC may adopt in the future, allowing these advisers to consolidate certain of their reporting regarding private funds and non-private fund commodity pools.

For more information, please feel free to contact your Butzel Long attorney, the authors listed below or other attorneys of our Investment Management Practice Group.

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