Schulte Roth & Zabel

Alert

Private Fund Systemic Risk Reporting

October 27, 2011

The Securities and Exchange Commission (the "SEC") voted yesterday to adopt Rule 204(b)-1 requiring investment advisers to report information about their private funds on Form PF to the SEC. Initial reports on Form PF will be required in two stages. Private fund advisers with at least $5 billion in assets under management ("AUM") must file Form PF for the first fiscal quarter (or fiscal year) ending after June 15, 2012. Accordingly, the first filing for hedge fund advisers with at least $5 billion in AUM generally will be required to be made for the quarter ending June 30, 2012 and will be due 60 days thereafter.

All other advisers (other than those that are below the $150 million threshold described below) must file for the first fiscal quarter (or fiscal year) ending after Dec. 15, 2012. Large hedge fund advisers (those with $1.5 billion or more in AUM) that do not meet the $5 billion AUM threshold will be required to make their first filing 60 days after the end of 2012. Smaller hedge fund advisers (those with less than $1.5 billion in AUM) and private equity advisers will be required to make their first filing 120 days after the end of 2012.

The SEC and the Commodity Futures Trading Commission (the "CFTC") are required to jointly approve the final version of the rule. The CFTC is expected to meet soon to vote on the rule, and the final rule (and its adopting release) will be released after the CFTC approves the rule. We expect that the final rule will contain detail on the calculation of the $5 billion threshold and other reporting mechanics for Form PF.

The final rule eased the requirements for reporting on Form PF from the initial proposal, which was summarized in an earlier *Alert*. Some of the key changes highlighted at the SEC's open meeting include:

1) Extending the filing deadlines for
    a) Smaller advisers and large private equity fund advisers to 120 days after fiscal year end, and
    b) Large hedge fund advisers to 60 days after quarter end;
2) Introducing a minimum reporting threshold of $150 million of assets within a certain asset class (hedge fund, private equity or liquidity fund);[1]
3) Increasing the large private fund adviser thresholds for hedge fund and private equity fund managers to $1.5 billion and $2 billion, respectively;
4) Excluding assets of separately operated affiliates and certain separate managed accounts when calculating and/or reporting assets under management for purposes of Form PF;
5) Modifying the reporting method for assets of separate managed accounts;

[1] Form PF was initially proposed as a requirement for all registered advisers.

6) Removing the requirement that the accuracy of the provided data be certified under penalty of perjury; and
7) Allowing advisers to use their own methodologies when reporting certain data.

We will provide an analysis of the final rule after it is released.

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