

# Bullet Point ®

## Final Form PF Rules <sup>1</sup>

On October 31, 2011, the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) issued a joint final release enacting Rule 204(b)-1 of the Advisers Act of 1940, as amended (the “Advisers Act”) and Rule 4.27 under the Commodity Exchange Act (“CEA”). Rule 204(b)-1 and Rule 4.27, which implement Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), create new reporting requirements for certain registered investment advisers that must be completed on Form PF (“Form PF” or “the Form”).<sup>2</sup>

The final versions of Rule 204(b)-1, Rule 4.27 and Form PF enacted by the SEC and CFTC differ greatly from those originally proposed on January 26, 2011 (which we discussed in an earlier Bullet Point). Below are some of the notable differences to the revised Form PF and the final SEC and CFTC rules that will apply to certain registered investment advisers:

### General Form PF Requirements

Proposed Version	Final Version
Any registered investment adviser who advises one or more private funds must file a Form PF.	Any registered investment adviser who advises one or more private funds <i>and had at least \$150 million in regulatory assets under management (“RAUM”)</i> <sup>3</sup> attributable to private funds as of the end of its most recently completed fiscal year must file a Form PF (see “ <u>Aggregation</u> ” below).
“Smaller” private fund advisers are those with less than \$1 billion in RAUM.	“Smaller” private fund advisers are those with <i>between \$150 million and \$1.5 billion</i> in RAUM.
“Large Private Fund Advisers” are those with \$1 billion or more in RAUM attributable to <u>hedge funds</u> as of the close of business on any day during the reporting period for the required report.	“Large Private Fund Advisers” are those with <i>\$1.5 billion</i> or more in RAUM attributable to <u>hedge funds</u> <i>as of the end of any month in the prior fiscal quarter</i> .

<sup>1</sup> This memorandum provides general information on the subject matter described, should not be relied on for legal advice in any jurisdiction and may constitute attorney advertising.

<sup>2</sup> Form PF also applies to certain registered commodity pool operators (“CPOs”) and commodity trading advisers (“CTAs”). This Bullet Point will focus on Form PF’s application to registered private fund advisers.

<sup>3</sup> RAUM is calculated as per the Form ADV guidelines.

For the purposes of Form PF, a “hedge fund” is any private fund that either: (a) has a performance fee or allocation calculated by taking into account unrealized gains; (b) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) may sell securities or other assets short.	For the purposes of Form PF, a “hedge fund” is any private fund (other than a <i>securitized asset fund</i> ) having one of three common characteristics of a hedge fund: (a) a performance fee <i>that takes into account market value (instead of only realized gains)</i> , (b) <i>high leverage (borrowing in excess of one-half its net asset value, or gross notional exposure in excess of twice its net asset value (both including any committed capital))</i> ; or (c) <i>short selling (other than for hedging currency exposure or managing duration)</i> .
“Large Private Fund Advisers” also include those advisers managing a <u>liquidity fund</u> and having combined liquidity fund and registered money market fund assets of at least \$1 billion as of the close of business on any day during the reporting period for the required report.	“Large Private Fund Advisers” also include those advisers managing a <u>liquidity fund</u> and having combined liquidity fund and registered money market fund assets of at least \$1 billion as of the <i>end of any month in the prior fiscal quarter</i> .
“Large Private Fund Advisers” also include those advisers managing <u>private equity</u> funds that collectively have at least \$1 billion in assets as of the close of business on the last day of the quarterly reporting period for the required report.	“Large Private Fund Advisers” also include those advisers managing <u>private equity</u> funds that collectively have at least \$1 billion in assets as of the <i>last day of the adviser’s most recently completed fiscal year</i> .

**Aggregation**

<b>Proposed Version</b>	<b>Final Version</b>
All advisers must include in their RAUM calculation all “parallel managed accounts,” or assets of managed accounts advised by the firm that pursue substantially the same investment objective and strategy and invest in substantially the same positions as private funds advised by the adviser.	All advisers must include in their RAUM calculation all “parallel managed accounts,” <i>unless the value of those accounts exceeds the value of the private funds with which they are managed</i> .
All advisers must include in their RAUM calculation the RAUM of any “related person.”	All advisers must include in their RAUM calculation the RAUM of any “related person” <i>other than related persons that are separately operated</i> (advisers need only aggregate private fund assets with those of its related persons for which it is required to complete section 7.A of

	Schedule D to Form ADV).
Advisers must report aggregated information regarding master-feeder arrangements and parallel managed accounts, but can separately report information regarding parallel funds.	Advisers may provide information regarding master-feeder arrangements and parallel fund structures <i>in the aggregate or separately (provided it does so consistently throughout the Form).</i>

### **Frequency of Reporting**

<b>Proposed Version</b>	<b>Final Version</b>
“Large Private Fund Advisers” that manage <u>hedge funds</u> must report within fifteen (15) days of the end of each fiscal quarter.	“Large Private Fund Advisers” that manage <u>hedge funds</u> must report within <i>sixty (60)</i> days of the end of each fiscal quarter.
“Large Private Fund Advisers” that manage <u>private equity funds</u> must report within fifteen (15) days of the end of each fiscal quarter.	“Large Private Fund Advisers” that manage <u>private equity funds</u> must report within <i>one hundred and twenty (120)</i> days of the end of <i>each fiscal year</i> .
“Smaller” private fund advisers must report within ninety (90) days of the end of each fiscal year.	“Smaller” private fund advisers must report within <i>one hundred and twenty (120)</i> days of the end of each fiscal year.
Once an adviser becomes subject to Form PF filings on a quarterly basis, it must update information with respect to all of its private funds each quarter.	Once an adviser becomes subject to Form PF filings on a quarterly basis, it must <i>only</i> update information with respect to the <i>type of funds that caused it to exceed the large adviser threshold</i> .

### **Form PF Required Information**

<b>Proposed Version</b>	<b>Final Version</b>
An authorized individual must affirm “under penalty of perjury” that the statements made in Form PF are “true and correct.”	Certification is unnecessary. A signature confirm that Form PF is filed with proper authority is sufficient. However, even without a certification, any willful misstatement or omission of a material fact is unlawful.
	Advisers may increasingly rely on their own internal methodologies in response to several questions on the Form.  For example, reporting of monthly and quarterly performance is mandatory only for those funds for which advisers are already calculating

	performance results with that frequency.
	<p>Some other revisions to the information required in Form PF:</p> <ul style="list-style-type: none"> <li>• Advisers must report their large trader identification number (if applicable).</li> <li>• Advisers must report assets and liabilities of each fund broken down using categories based on fair value hierarchy established under Generally Accepted Accounting Principles (“GAAP”).</li> <li>• Advisers must provide approximate percentage of each fund beneficially owned by certain types of investors.</li> <li>• Advisers must answer questions regarding non-US investors about which the adviser does not have and cannot reasonably obtain beneficial ownership information.</li> <li>• The Form contains less-refined categories regarding each hedge fund’s trading and clearing practices.</li> <li>• The final version of the Form removes the breakdown of collateral information into initial and variation margin.</li> </ul>

**Confidentiality**

As proposed, the SEC will keep all information collected in Form PF confidential, but will make this information available to the Financial Stability Oversight Council (“FSOC”). This information may also be shared with other Federal departments, agencies or with self-regulatory organizations (“SROs”) for purposes within the scope of their jurisdiction. In each case, any department, agency or SRO would be exempt from being compelled under the Freedom of Information Act (“FOIA”) to disclose this information and must maintain the confidential nature of the information.

**Effective and Compliance Dates**

Under the final rules, the effective date for Advisers Act Rule 204(b)-1 and for Form PF is March 31, 2012. The proposed initial compliance date for Form PF was December 15, 2011, but this deadline has been extended. The following advisers must comply with Form PF by June 15, 2012:

- Any adviser with at least \$5 billion in RAUM attributable to hedge funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012.

- Any adviser managing a liquidity fund with at least \$5 billion in RAUM attributable to both liquidity funds and registered money market funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012.
- Any adviser with at least \$5 billion in RAUM attributable to private equity funds as of the last day of its first fiscal year to end on or after June 15, 2012.

All other advisers must begin to comply with Form PF by December 15, 2012 and must file their initial Form PF based on information as of December 31, 2012.

\* \* \* \* \*

Should you have any questions regarding these new Form PF requirements, please feel free to contact Michael G. Tannenbaum ((212) 508-6701) or Ricardo W. Davidovich ((212) 508-6710).

Tannenbaum Helpern Syracuse & Hirschtritt LLP  
[www.thshlaw.com](http://www.thshlaw.com)