

SEC RENEWS FOCUS ON FUND MANAGER REPORTING ANNOUNCING FORM PF SETTLEMENTS

On June 1, 2018, the U.S. Securities and Exchange Commission ("SEC") announced settlements with thirteen investment managers for failure to properly file Form PF.¹ The settlements included a \$75,000 civil penalty. These enforcement actions serve as a warning to private fund advisers and other investment managers that the SEC takes reporting obligations seriously and that it has not fully abandoned its "broken windows" enforcement strategy.

The SEC Form PF requirement was adopted in 2011 under Rule 204(b)-1 of the Investment Advisers Act of 1940 ("**Advisers Act**"). SEC Form PF is designed to elicit information about trends in the private fund industry and to assist the SEC and the Financial Stability Oversight Council in (a) identifying threats to the US financial system,² (b) monitoring the markets for the protection of investors, and (c) assessing the integrity of the markets and systemic risks.³ It requires an investment adviser to file a report on Form PF if the following three criteria are met: (i) the investment adviser is registered or required to be registered with the SEC as an investment adviser; (ii) the investment adviser manages private funds; and (iii) the investment adviser has, collectively, at least \$150 million private fund assets under management. Filing deadlines depend on the type of filer. Most advisers need to file only on an annual basis. Large hedge fund advisers (with at least \$1.5 billion in AUM) and large liquidity advisers (with at least \$1 billion in combined money market and liquidity AUM) are required to file every quarter.⁴ All other advisers must file within 120 calendar days of the end of their fiscal year.⁵ Filers are required to provide basic identifying information about themselves, and

¹ *SEC Charges 13 Private Fund Advisers for Repeated Filing Failures*, SEC Immediate Rel. No. 2018-100 (June 1, 2018), <https://www.sec.gov/news/press-release/2018-100>.

² *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, SEC Rel. No. IA-3308 (Oct. 31, 2011), p. 180, <https://www.sec.gov/rules/final/2011/ia-3308.pdf>.

³ See e.g., *Order Instituting Administrative And Cease-And-Desist Proceedings Pursuant To Sections 203(E) And 203(K) Of The Investment Advisers Act Of 1940, Making Findings, And Imposing Remedial Sanctions And A Cease-And-Desist Order*, SEC Rel. No. IA-4930 (June 1, 2018), <https://www.sec.gov/litigation/admin/2018/ia-4930.pdf>.

⁴ *Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors ("Form PF")*, p. 1, <https://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf>.

⁵ Form PF at p. 6-7.

information on the private and/or hedge funds they advise, including their assets, performance, exposure, trading, risks and borrowing, etc. Failure to file a report or an update on Form PF is a violation of SEC rules and technically could lead to revocation of the adviser's SEC registration.⁶

The thirteen settling firms are registered with the SEC and collectively managed billions of dollars. Over a multi-year period, the advisers failed to file reports on Form PF and periodic updates, resulting in violations of Advisers Act Rule 204(b)-1. The SEC's targeted enforcement effort encourages private fund industry participants to take prompt action to cure reporting omissions. Fund managers should review their compliance policies and procedures to address Form PF issues and other applicable reporting obligations. Advisers should ensure that their procedures are reasonably designed to maintain adequate documentation to support timely filings. Private fund advisers nearing the \$150 million AUM threshold by the end of their fiscal year should be sensitive to the potential triggering of a Form PF reporting requirement.

⁶ Form PF at p. 7.

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