

## SUPPORTING STATEMENT FORM PF

### A. JUSTIFICATION

#### 1. Necessity for the Information Collection

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) established the Financial Stability Oversight Council (“FSOC”) to monitor emerging risks to U.S. financial stability.<sup>1</sup> Sections 404 and 406 of the Dodd-Frank Act direct the Securities and Exchange Commission (“SEC”) to supply FSOC with information for use in monitoring systemic risk by establishing reporting requirements for private fund advisers.<sup>2</sup> On October 26, 2011, in a joint release with the Commodity Futures Trading Commission (“CFTC”), the SEC adopted rule 204(b)-1 under the Investment Advisers Act of 1940 (“Advisers Act”).<sup>3</sup> This rule implements sections 404 and 406 of the Dodd-Frank Act by requiring private fund advisers that have at least \$150 million in private fund assets under management to report certain information regarding the private funds they advise. Such advisers will periodically file with the SEC all or part

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<sup>1</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> Section 404 of the Dodd-Frank Act provides that the required reports may include such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. A “private fund” is a company that would be an investment company, as defined in the Investment Company Act of 1940, but for exemptions in that Act allowing for certain privately offered companies to be unregistered if they have fewer than a specified number of investors or all their investors meet a minimum standard of sophistication. For purposes of this supporting statement, a “private fund adviser” is any investment adviser that (i) is registered or required to register with the SEC and (ii) advises one or more private funds. *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. IA-3308 (Oct. 31, 2011) (“Adopting Release”).

<sup>3</sup> The CFTC approved the joint rulemaking by seriatim vote on October 28, 2011.

of a new reporting form, titled Form PF, and the information will be made available to FSOC for use in monitoring systemic risk.

Form PF contains a new “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>4</sup> The title for the new collection of information is: “Form PF under the Investment Advisers Act of 1940, reporting by investment advisers to private funds.” The paperwork burden associated with rule 204(b)-1 is included in the collection of information burden associated with Form PF and, therefore, does not entail a separate collection of information.

Form PF divides respondents into two broad groups, Large Private Fund Advisers and smaller private fund advisers. “Large Private Fund Advisers” are advisers with at least \$1.5 billion in assets under management attributable to hedge funds (“large hedge fund advisers”), advisers that manage “liquidity funds” and have at least \$1 billion in combined assets under management attributable to liquidity funds and registered money market funds (“large liquidity fund advisers”), and advisers with at least \$2 billion in assets under management attributable to private equity funds (“large private equity advisers”).<sup>5</sup> All other respondents are considered smaller private fund advisers.

Smaller private fund advisers must report annually and provide only basic information regarding their operations and the private funds they advise. Large private equity advisers also must report on an annual basis but are required to provide additional information with respect to the private equity funds they manage. Finally, large hedge fund advisers and large liquidity fund advisers must report on a quarterly basis and

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<sup>4</sup> 44 U.S.C. 3501-3521.

<sup>5</sup> See the Adopting Release for definitions of “hedge fund,” “liquidity fund” and “private equity fund.”

provide more information than other private fund advisers.<sup>6</sup> The PRA analysis set forth below takes into account the difference in filing frequencies among different categories of private fund adviser. It also reflects the fact that the additional information Form PF requires large hedge fund advisers to report is more extensive than the additional information required from large liquidity fund advisers, which in turn is more extensive than that required from large private equity advisers.

In addition to periodic filings, a private fund adviser would be required to file very limited information on Form PF in three situations. First, any adviser that transitions from quarterly to annual filing because it has ceased to be a large hedge fund or large liquidity fund adviser must file a Form PF indicating that it is no longer obligated to report on a quarterly basis. Second, filers who are no longer subject to Form PF's periodic reporting requirements must file a final report indicating that fact. Finally, an adviser experiencing technical difficulties in submitting Form PF may request a temporary hardship exemption by filing portions of Form PF in paper format.<sup>7</sup>

The SEC has sought to minimize the reporting burden on private fund advisers to the extent appropriate. In particular, the SEC has taken into account an adviser's size and the types of private funds it manages in designing scaled reporting requirements. In

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<sup>6</sup> See section II.A of the Adopting Release (describing who must file Form PF), section II.B of the Adopting Release (discussing the frequency with which private fund advisers must file Form PF), section II.C.2 of the Adopting Release (describing the information that large hedge fund advisers must report on Form PF), and sections II.C.3 and II.C.4 of the Adopting Release (describing the information that large liquidity and private equity fund advisers must report on Form PF). See also Instruction 9 to Form PF (discussing the frequency with which private fund advisers must file Form PF).

<sup>7</sup> See rule 204(b)-1(f). The rule requires that the adviser provide limited information describing the nature of the hardship.

addition, where practical, the SEC has permitted advisers to rely on their existing practices and methodologies to report information on Form PF.<sup>8</sup>

## **2. Purpose of the Information Collection**

Form PF is intended to provide FSOC with information that will assist it in fulfilling its obligations under the Dodd-Frank Act relating to nonbank financial companies and systemic risk monitoring.<sup>9</sup> The SEC also may use the information in connection with its regulatory and examination programs. The respondents to Form PF will be private fund advisers, as defined above, that have \$150 million or more in assets under management attributable to private funds. Compliance with Form PF is mandatory for any such private fund adviser. Responses to the information collection will be kept confidential to the extent permitted by law.<sup>10</sup>

## **3. Role of Improved Information Technology**

Under rule 204(b)-1(b), Form PF must be filed through an electronic system designated by the SEC for this purpose. The SEC recently issued notice of its determination that the Financial Industry Regulatory Authority (“FINRA”) will develop and maintain the filing system for Form PF as an extension of the existing Investment Adviser Registration Depository (“IARD”), through which registered advisers are already separately obligated to file annual reports on Form ADV.<sup>11</sup> Because respondents to Form PF will include only registered advisers, the SEC believes there will be efficiencies

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<sup>8</sup> The SEC also believes that private fund advisers already collect or calculate some of the information required on the Form at least as often as they must file the Form. *See* the Adopting Release at note 146.

<sup>9</sup> *See* section I.A of the Adopting Release.

<sup>10</sup> *See* below section A.7 of this supporting statement.

<sup>11</sup> *See Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers*, Investment Advisers Act Release No. IA-3297 (Sept. 30, 2011), 76 FR 62,100 (October 6, 2011).

realized by expanding the existing IARD platform for this purpose, such as the interconnectivity of Form ADV filings and Form PF filings and the ease of filing with one password.

The SEC is working with FINRA to allow advisers to file Form PF either through a fillable form on the system website or through a batch filing process utilizing the eXtensible Markup Language (“XML”) tagged data format. In connection with the batch filing process, the SEC anticipates publishing a taxonomy of XML data tags in advance of the compliance date for Form PF. The SEC believes that certain advisers may prefer to report in XML format because it allows them to automate aspects of their reporting and thus minimize burdens and generate efficiencies for the adviser.

Collecting information electronically will reduce the regulatory burden upon investment advisers by providing a convenient portal for quickly transmitting reports and, for advisers that submit their reports in XML format in particular, allowing them to automate aspects of their reporting.

Commenters who addressed this aspect of the proposal supported having FINRA develop the reporting system as an extension of the IARD platform.<sup>12</sup> Commenters also supported a batch filing capability, with one specifically agreeing that “[a]utomated submission of information via the IARD or other electronic system to [utilize] the

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<sup>12</sup> See comment letter of the Alternative Investment Management Association (Apr. 12, 2011) (“AIMA General Letter”) (agreeing that using the IARD and FINRA is a “sensible solution.”); comment letter of the Managed Funds Association (Apr. 8, 2011) (“MFA Letter”). The SEC explained in the proposal that the filing system would need to be programmed with special confidentiality protections designed to ensure the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act. These commenters expressed the view that maintaining the confidentiality of Form PF data is an important consideration in developing the filing system. The SEC staff is working closely with FINRA in designing controls and systems to ensure that Form PF data is handled and used in a manner consistent with the protections established in the Dodd-Frank Act, and as noted above, we are carefully considering recommendations from commenters in designing controls and systems for the use and handling of Form PF data.

eXtensible Markup Language (XML) tagged data format or similar format is likely to be an important time saver for a large number of firms.”<sup>13</sup>

#### **4. Efforts to Identify Duplication**

The collection of information requirements of Form PF are not duplicated elsewhere.

#### **5. Effect on Small Entities**

Under SEC rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.<sup>14</sup>

Under section 203A of the Advisers Act, most advisers qualifying as small entities are prohibited from registering with the SEC and are instead registered with state regulators. Therefore, few small advisers will meet the registration criterion. Fewer still are likely to meet the minimum reporting threshold of \$150 million in regulatory assets under management attributable to private funds. By definition, no small entities will, on their own, meet this threshold, which the SEC did not include in the proposal but has

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<sup>13</sup> AIMA General Letter. *See also* comment letter of Kleinberg, Kaplan, Wolff & Cohen, P.C. (submitted to the SEC) (Apr. 12, 2011) (“Kleinberg General Letter”).

<sup>14</sup> 17 CFR 275.0-7(a).

added in response to commenter concerns.<sup>15</sup> Advisers are, however, required to determine whether they exceed this threshold by aggregating their private fund assets under management with those of their related persons (other than separately operated related persons), with the result that some small entities may be subject to Form PF reporting requirements.<sup>16</sup> The SEC does not have a precise count of the number of advisers that may satisfy the minimum reporting threshold based on the aggregate private fund assets that it and its related persons manage because such advisers file separate reports on Form ADV. However, because of the new minimum reporting threshold, the group of small entities subject to the rule as adopted will be a subset of the group that would have been subject to the proposed rule. In the proposal, the SEC estimated that approximately 50 small entities were registered with the SEC and advised one or more private funds. Accordingly, the SEC estimates that no more than 50 small entities are likely to become subject to Form PF reporting obligations under the final rule.

## **6. Consequences of Less Frequent Collection**

The collection of information required by the Form is intended to implement the requirements of sections 404 and 406 of the Dodd-Frank Act and is designed to provide FSOC with timely information for purposes of monitoring systemic risk in the private fund industry.<sup>17</sup> The frequency of collection will vary depending on the size of the adviser

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<sup>15</sup> See the Adopting Release at notes 56-59 and accompanying text.

<sup>16</sup> See section II.A.5 of the Adopting Release. The SEC notes that related persons are permitted to file on a single Form PF. As a result, even in the case that a larger related person causes a small entity to exceed the minimum reporting threshold, the small entity may not ultimately bear the reporting burden. See section II.A.6 of the Adopting Release. In addition, under Advisers Act rule 0-7(a)(3), an adviser with affiliates exceeding the other small entity thresholds under that rule would not be regarded as a small entity, suggesting that it may not be possible both to qualify as a small entity under that rule and to satisfy the criteria that would subject an adviser to Form PF reporting obligations.

<sup>17</sup> See section I.A. of the Adopting Release.

and the types of private funds it manages, which balances the need for (and value of) current information against the relative reporting burden for different types of advisers. In addition, if the information is either not collected or is collected less frequently, FSOC's ability to monitor systemic risk, and the SEC's ability to protect investors, may be reduced.

#### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Under applicable federal regulations, OMB generally will not approve a collection of information that includes a pledge of confidentiality unless the pledge is “supported by disclosure and data security policies that are consistent with the pledge....”<sup>18</sup> In addition, if an agency proposes to collect confidential information, it must be able to “demonstrate that it has instituted procedures to protect the information’s confidentiality to the extent permitted by law.”<sup>19</sup>

Form PF elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors. The SEC does not intend to make public Form PF information identifiable to any particular adviser or private fund, although the SEC may use Form PF information in an enforcement action.<sup>20</sup> The Dodd-Frank Act amends the Advisers Act to preclude the SEC from being compelled to reveal this information except in very limited circumstances. Similarly, the Dodd-Frank Act exempts the CFTC from being compelled under FOIA to disclose to the public any information collected through Form PF and requires that the CFTC maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 204(b) of the Advisers Act.

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<sup>18</sup> 5 CFR 1320.5(d)(2)(vii).

<sup>19</sup> 5 CFR 1320.5(d)(2)(viii).

<sup>20</sup> See sections II.D and II.E of the Adopting Release.



The SEC will make information collected through Form PF available to FSOC, as the Dodd-Frank Act requires, subject to the confidentiality provisions of the Dodd-Frank Act.<sup>21</sup>

The Dodd-Frank Act contemplates that Form PF data may also be shared with other Federal departments or agencies or with self-regulatory organizations, in addition to the CFTC and FSOC, for purposes within the scope of their jurisdiction.<sup>22</sup> In each case, any such department, agency or self-regulatory organization would be exempt from being compelled under FOIA to disclose to the public any information collected through Form PF and must maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 204(b) of the Advisers Act.<sup>23</sup> Prior to sharing any Form PF data, the SEC also intends to require that any such department, agency or self-regulatory organization represent to the SEC that it has in place controls designed to ensure the use and handling of Form PF data in a manner consistent with the protections established in the Dodd-Frank Act.<sup>24</sup>

Certain aspects of the Form PF reporting requirements also help to mitigate the potential risk of inadvertent or improper disclosure. For instance, because data on Form PF generally could not, on its own, be used to identify individual investment positions, the ability of a competitor to use Form PF data to replicate a trading strategy or

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<sup>21</sup> See section 204(b) of the Advisers Act.

<sup>22</sup> See section 204(b)(8)(B)(i) of the Advisers Act.

<sup>23</sup> See sections 204(b)(9) and (10) of the Advisers Act.

<sup>24</sup> This would be consistent with the SEC's current practice of requiring that it receive, prior to sharing nonpublic information with other regulators, "such assurances of confidentiality as the [SEC] deems appropriate." See section 24(c) of the Exchange Act and rule 24c-1 thereunder.

trade against an adviser is limited.<sup>25</sup> In addition, the deadlines for filing Form PF have, in most cases, been significantly extended from the proposal.<sup>26</sup> Some commenters supported these extensions in part because filings will, as a result, generally contain less current, and therefore less sensitive, data.<sup>27</sup>

In addition, SEC staff is working to design controls and systems for the use and handling of Form PF data in a manner that reflects the sensitivity of this data and is consistent with the confidentiality protections established in the Dodd-Frank Act. This will include programming the Form PF filing system with appropriate confidentiality protections.<sup>28</sup> For instance, SEC staff is studying whether multiple access levels can be established so that SEC employees are allowed only as much access as is reasonably needed in connection with their duties.

Several commenters confirmed that the information collected on Form PF is competitively sensitive or proprietary and emphasized the importance of controls for safekeeping.<sup>29</sup> These commenters also made several recommendations for protecting the

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<sup>25</sup> Questions 26, 30, 35 and 57 on Form PF ask about exposures of the reporting fund but require only that the adviser identify the exposure within broad asset classes, not the individual investment position. Large private equity advisers must identify any financial industry portfolio companies in which the reporting fund has a controlling interest, but these investments are likely to be in private companies whose securities are not widely traded (and, therefore, do not raise the same trading concerns) or in public companies about which information regarding significant beneficial owners is already made public under sections 13(d) and 13(g) of the Exchange Act.

<sup>26</sup> See section II.B.2 of the Adopting Release (discussing filing deadlines).

<sup>27</sup> See the Adopting Release at note 351 and accompanying text.

<sup>28</sup> See section II.E of the Adopting Release.

<sup>29</sup> See, e.g., comment letter of the American Bar Association, Federal Regulation of Securities Committee and Private Equity and Venture Capital Committee (Apr. 11, 2011) (“ABA Committees Letter”); AIMA General Letter; comment letter of Coalition of Private Investment Companies (Mar. 31, 2011) (“CPIC Letter”); MFA Letter; comment letter of the Securities Industry and Financial Markets Association, Asset Management Group (Apr. 12, 2011) (“SIFMA Letter”).

data, including: (1) storing identifying information using a code;<sup>30</sup> (2) limiting the ability to transfer Form PF data by email or portable media;<sup>31</sup> (3) limiting access to personnel who “need to know”;<sup>32</sup> (4) extending filing deadlines so the data contains less current information;<sup>33</sup> and (5) sharing the data with other regulators only in aggregated and anonymous form.<sup>34</sup> As discussed above, the deadlines for filing Form PF have, in most cases, been significantly extended from the proposal.<sup>35</sup> SEC staff is also carefully considering the other recommendations of commenters in designing controls and systems for Form PF.

In the Adopting Release, the SEC stated that, in advance of the compliance date for Form PF, SEC staff will review the controls and systems in place for the use and handling of Form PF data.<sup>36</sup> Depending on the progress at that time toward the development and deployment of these controls and systems, the SEC explained that it will consider whether to delay the compliance date for Form PF.

## **8. Consultation Outside the Agency**

In the proposal, the SEC requested public comment on the effect of information collections under the proposed rule and form. Several commenters addressed the cost estimates included in the proposal. These commenters generally viewed these estimates as understated and, in several cases, argued that the costs of the initial report, in

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<sup>30</sup> ABA Committees Letter; Kleinberg General Letter; comment letter of Seward & Kissel, LLP (Apr. 12, 2011) (“Seward Letter”).

<sup>31</sup> ABA Committees Letter.

<sup>32</sup> *Id.*

<sup>33</sup> AIMA General Letter; Kleinberg General Letter.

<sup>34</sup> AIMA General Letter; Seward Letter.

<sup>35</sup> *See* the Adopting Release at notes 344-345 and accompanying text.

<sup>36</sup> *See* section III of the Adopting Release (discussing the compliance date for Form PF).

particular, would be greater than assumed.<sup>37</sup> These commenters offered two common explanations for the higher than estimated costs: (1) “[m]any of the requested items on Form PF are not tracked by advisory firms on the frequency, by the category or on a fund-by-fund basis in the manner requested by the proposed Form,” meaning that advisers would need to develop systems for the reporting or engage in a manual process of gathering and compiling data;<sup>38</sup> and (2) completing the Form will require gathering information from many different internal and external parties and systems.<sup>39</sup>

The SEC has carefully considered comments suggesting that the reporting requirements would be more burdensome than estimated in the proposal, and it has substantially increased its estimates of the hour burdens included in this PRA analysis, which flow through to these estimates of costs.<sup>40</sup> The SEC has, however, also taken these comments into consideration in making a number of changes from the proposal that are intended to reduce the burdens of reporting on Form PF. These include global changes to the Form, such as allowing most advisers more time to file following the end of a fiscal period (reducing the likelihood that Form PF will compete with other priorities for advisers’ resources or require employment of additional personnel), extending the compliance date, allowing large private equity advisers to report annually rather than quarterly, increasing the threshold for large private equity advisers and permitting greater reliance on advisers’ existing methodologies and recordkeeping practices. The SEC has

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<sup>37</sup> See, e.g., AIMA Letter; comment letter of the Investment Adviser Association (Apr. 12, 2011) (“IAA Letter”); Kleinberg General Letter; MFA Letter; comment letter of the Private Equity Growth Capital Council (Apr. 12, 2011) (“PEGCC Letter”); Seward Letter.

<sup>38</sup> comment letter of TCW Group, Inc. (Apr. 12, 2011) (“TCW Letter”); but see also the Adopting Release at note 146.

<sup>39</sup> See, e.g., Kleinberg General Letter; MFA Letter; PEGCC Letter.

<sup>40</sup> See the Adopting Release at notes 383, 394-395, 404 and 414 and accompanying text.

also modified specific questions in response to comments so that responding to the Form is less burdensome.<sup>41</sup> The SEC expects, on the whole, that these changes will mitigate the cost of reporting.<sup>42</sup> In addition, the SEC has added a minimum reporting threshold, which will not reduce the burden to any particular filer of reporting but will reduce the aggregate burden that Form PF imposes because fewer advisers will be required to report.

**9. Payment or Gift to Respondents**

None.

**10. Assurance of Confidentiality**

See section A.7 of this supporting statement.

**11. Sensitive Questions**

See section A.7 of this supporting statement.

**12. Estimates of Hour Burden**

**(a) Burden Estimates for Annual Reporting by Smaller Private Fund**

**Advisers**

In a recent rulemaking, the SEC estimated that there will be approximately 4,270 SEC-registered advisers managing private funds after taking into account recent changes to the Advisers Act and a year of normal growth in the population of registered advisers.<sup>43</sup> The SEC estimates that approximately 700 of these advisers will not be

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<sup>41</sup> See section II.C of the Adopting Release.

<sup>42</sup> See the Adopting Release at notes 388-389, 397-398, 407-409 and 418-420 and accompanying text. The SEC also noted that the original cost estimates, as well as the revised estimates included in the Adopting Release, include allocations for systems development among Large Private Fund Advisers (who are most likely to find automation cost effective) and assume that information would need to be gathered from many sources, both internal and external. See the Adopting Release at note 435 and accompanying text.

<sup>43</sup> Specifically, the SEC estimated that (1) 3,320 private fund advisers that are currently registered with the SEC will remain registered after certain advisers make the switch to state registration prompted by the Dodd-Frank Act's amendments to section 203A of the Advisers Act, (2) 750

required to file Form PF because they have less than \$150 million in private fund assets under management.<sup>44</sup> Accordingly, the SEC anticipates that, when advisers begin reporting on Form PF, a total of approximately 3,570 advisers will be required to file all or part of the Form.<sup>45</sup> Out of this total number, the SEC estimates that approximately 3,070 will be smaller private fund advisers, not meeting the thresholds as Large Private Fund Advisers.<sup>46</sup> Commenters did not address the SEC's estimates of the total number of respondents or the number of smaller private fund advisers.<sup>47</sup>

Smaller private fund advisers must complete all or portions of section 1 of Form PF and file on an annual basis. As discussed in greater detail above, section 1 requires basic data regarding the reporting adviser's identity and certain information about the private funds it manages, such as performance, leverage and investor data. If

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advisers to private funds will register with the Commission as a result of the Dodd-Frank Act's elimination of the private adviser exemption and (3) 200 additional advisers to private funds will register in the next year. Estimates of registered private fund advisers are based in part on the number of advisers that reported a fund in Section 7.B of Schedule D to the version of Form ADV in use prior to the date of the Adopting Release. Because these responses included funds that the adviser's related persons manage as well as those the adviser itself manages, these data may over-estimate the total number of private fund advisers.

<sup>44</sup> Based on IARD data as of October 1, 2011. *See* section II.A of the Adopting Release for a discussion of the minimum reporting threshold.

<sup>45</sup> 4,270 total private fund advisers – 700 with less than \$150 million in private fund assets under management = 3,570 advisers. The SEC noted, however, that if a private fund is advised by both an adviser and one or more subadvisers, only one of these advisers is required to complete Form PF. *See* section II.A.6 of the Adopting Release. As a result, it is likely that some portion of these advisers either will not be required to file Form PF or will be subject to a reporting burden lower than is estimated for purposes of this PRA analysis. The SEC has not attempted to adjust the burden estimates downward for this purpose because the SEC does not currently have reliable data with which to estimate the number of funds that have subadvisers.

<sup>46</sup> Based on the estimated total number of registered private fund advisers that would not meet the thresholds to be considered Large Private Fund Advisers. (3,570 estimated registered private fund advisers – 250 large hedge fund advisers – 80 large liquidity fund advisers – 170 large private equity fund advisers = 3,070 smaller private fund advisers.)

<sup>47</sup> The SEC has updated these estimates to reflect: (1) updated data from IARD, (2) the addition of a minimum reporting threshold of \$150 million in private fund assets, which reduces the number of advisers subject to the reporting requirements, and (3) the revised estimates of large hedge fund advisers and large private equity advisers discussed in its recent rulemaking concerning amendments to Form ADV.

the reporting adviser manages any hedge funds, section 1 also requires basic information regarding those funds, including their investment strategies, counterparty exposures and trading and clearing practices.

The SEC estimates that smaller private fund advisers will require an average of approximately 40 burden hours to compile, review and electronically file the required information in section 1 of Form PF for the initial filing and an average of approximately 15 burden hours for subsequent filings.<sup>48</sup> These estimates reflect an increase compared to the proposal from 10 to 40 hours for the initial filing and from 3 to 15 hours for subsequent filings.

The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.<sup>49</sup> Commenters did not provide alternative estimates for these burdens. However, commenters addressing the large hedge fund adviser burdens did provide alternative estimates.<sup>50</sup> As discussed below, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.<sup>51</sup> In the absence of specific commenter estimates for the smaller adviser reporting burden, the SEC has,

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<sup>48</sup> These estimates are based, in part, on the SEC's understanding that much of the information in sections 1a and 1b of Form PF is currently maintained by most private fund advisers in the ordinary course of business. *See* the Adopting Release at note 146. In addition, the SEC expects the time required to determine the amount of the adviser's assets under management that relate to private funds of various types to be largely included in the approved burden associated with the SEC's Form ADV. As a result, responding to questions on Form PF that relate to assets under management and determining whether an adviser is a Large Private Fund Adviser should impose little or no additional burden on private fund advisers. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

<sup>49</sup> *See, e.g.*, AIMA General Letter; IAA Letter; SIFMA Letter.

<sup>50</sup> *See, e.g.*, MFA Letter.

<sup>51</sup> *See* section IV.B of the Adopting Release.

therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of reporting the information required in section 1. For instance, the SEC has modified the requirement to report performance by allowing advisers to report monthly and quarterly results only if such results are already calculated for the fund.<sup>52</sup> In addition, the SEC has removed from section 1b a question requiring identification of significant creditors and substantially reduced the amount of information required with respect to trading and clearing practices in section 1c.<sup>53</sup> The SEC has also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include the removal of the certification, the increased ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.<sup>54</sup> The SEC has also added four new questions in section 1b that will increase the burden of completing

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<sup>52</sup> Several commenters argued that carrying out valuations to report monthly and quarterly performance for private equity funds would result in significant cost burdens and require significantly more time than was estimated. *See, e.g.*, comment letter of Atlas Holdings (March 9, 2011) (“Atlas Letter”); PEGCC Letter. The SEC has, however, modified the reporting requirements so that advisers only need to provide monthly and quarterly performance results to the extent already calculated. *See* the Adopting Release at notes 198-202 and accompanying text. In other words, because advisers will have always already calculated the required performance data for purposes other than reporting on Form PF, the burden of reporting it on the Form is essentially one of data entry.

<sup>53</sup> One commenter suggested the question we removed would have been “very burdensome.” *See* PEGCC Letter.

<sup>54</sup> *See, e.g.*, section II.C.5 of the Adopting Release and notes 183-188 and accompanying text.



that portion of the Form, but it expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.<sup>55</sup>

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 23 hours per smaller private fund adviser for each of the first three years,<sup>56</sup> and the amortized aggregate annual burden of periodic filings for smaller private fund advisers will be 70,600 hours for each of the first three years.<sup>57</sup>

### **(b) Burden Estimates for Large Hedge Fund Advisers**

The SEC estimates that 250 advisers will be classified as large hedge fund advisers.<sup>58</sup> As discussed above, large hedge fund advisers must complete section 1 of the Form and provide additional information regarding the hedge funds they manage in section 2 of the Form. These advisers must report information regarding the hedge funds they manage on a quarterly basis.

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<sup>55</sup> See section II.C.1 of the Adopting Release. The SEC originally proposed one of the new questions on Form ADV, and it requires that advisers report the assets and liabilities of each fund broken down using categories that are based on the fair value hierarchy established under GAAP. For advisers obtaining fund audits in accordance with GAAP or a similar international accounting standard, the burden of this question is simply that of entering the data on the Form. In the Implementing the Adopting Release, the SEC estimated that approximately 3% of registered advisers have at least one private fund client that may not be audited. For this sub-group of advisers, the cost and hour burdens of determining fair values for the funds' assets have already been accounted for in connection with Form ADV because advisers are required to report regulatory assets under management in that form using the fair value of private fund assets. The question does not require advisers to determine the fair value of liabilities for which they do not already make such determination, so this sub-group of advisers would not incur an incremental cost to fair value liabilities in order to respond to this question. This sub-group of advisers may incur an additional hours burden to determine the categories applicable to the fund's assets and liabilities, and in determining to increase its average hour burden estimates for both smaller private fund advisers and Large Private Fund Advisers, the SEC has taken into account the contribution of this additional hours burden.

<sup>56</sup> The SEC estimates that a smaller private fund adviser will make 3 annual filings in three years, for an amortized average annual burden of 23 hours (1 initial filing x 40 hours + 2 subsequent filings x 15 hours = 70 hours; and 70 hours ÷ 3 years = approximately 23 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

<sup>57</sup> 23 burden hours on average per year x 3,070 smaller private fund advisers = 70,600 burden hours per year.

<sup>58</sup> See the Adopting Release at note 88.

Because large hedge fund advisers generally must report more information on Form PF than other private fund advisers, the SEC estimates that these advisers will require, on average, more hours than other Large Private Fund Advisers to configure systems and to compile, review and electronically file the required information. Accordingly, the SEC estimates that large hedge fund advisers will require an average of approximately 300 burden hours for an initial filing and 140 burden hours for each subsequent filing.<sup>59</sup>

These estimates reflect an increase compared to the proposal from 75 to 300 hours for the initial filing and from 35 to 140 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.<sup>60</sup> One industry group reported that some members attempted to complete the proposed version of Form PF for one or more funds and, “[b]ased on their experience, and recognizing that efficiencies will develop over time, [this group estimated] that large managers on average will expend 150-300 hours to submit the initial Form.”<sup>61</sup> The SEC has revised its estimates in this PRA analysis based on the top end of

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<sup>59</sup> The estimates of hour burdens and costs for large hedge fund advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on burden data that advisers provided in response to the FSA Survey and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. See the Adopting Release at note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect averages for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

<sup>60</sup> See, e.g., AIMA Letter; IAA Letter; Kleinberg General Letter; MFA Letter; TCW Letter.

<sup>61</sup> MFA Letter. This commenter referred to “large managers” generally, but based on the context, this comment appears to relate to large hedge fund advisers specifically. This commenter went on to state that “managers with more complex strategies will expend considerably more time.” Other commenters addressing these estimates did not provide alternative estimates, though one indicated that some clients had already exceeded the proposal’s estimates in preparing to report on the

this range, which represents a conservative interpretation of this commenter’s estimate. This approach appears justified in this case based on other comments suggesting that the hours burden imposed on these advisers could be significantly higher than the SEC estimated in the proposal.<sup>62</sup>

The SEC noted, however, that this commenter’s estimates were based on the Form as proposed and it has made a number of changes from the proposal that it expects, on the whole, to mitigate significantly the reporting burden. For example, the SEC has modified a number of questions to reduce the amount of detail required or to allow advisers to rely more on their existing methodologies or recordkeeping practices, including questions regarding trading and clearing practices, interest rate sensitivities, geographical concentrations, turnover, collateral practices, CCP exposures and sensitivities to changes in specified market factors.<sup>63</sup> The SEC has also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include allowing large hedge fund advisers to report only annually on funds that are not hedge funds, the removal of the certification, expanding the ability to disregard funds of funds and allowing advisers to omit information regarding parallel managed accounts

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proposed Form and another commenter, itself one of the largest private fund advisers in the United States, argued that the estimates were understated by “orders of magnitude.” *See* comment letter of BlackRock Inc. (Apr. 12, 2011) (“BlackRock Letter”); *see also* Kleinberg General Letter. In addition, advisers that manage many funds may incur higher costs than advisers that manage fewer funds even if they manage similar amounts of assets. The SEC’s estimates are intended to reflect *average* burdens, and it recognizes that particular advisers may, based on their circumstances, incur burdens substantially greater than or less than the estimated averages. In addition, we have based our estimates in part on data that advisers provided in response to the FSA Survey regarding the time required to complete that survey. Although Form PF generally requires more information regarding hedge funds than the FSA Survey, the SEC believes, based on this data and based on the MFA comment letter, that the *average* burden of completing Form PF is very unlikely to be in the thousands or tens of thousands of hours.

<sup>62</sup> *See* the Adopting Release at note 394 and accompanying text.

<sup>63</sup> *See* section II.C.1 and II.C.2 of the Adopting Release.

from their responses to the Form.<sup>64</sup> The SEC has also added four new questions in section 1b, which will increase the burden of completing that portion of the Form.<sup>65</sup> The SEC believes, however, that the increased burden attributable to these new questions is less than the reduced burden attributable to other changes to the Form because the new questions require limited information that, in many cases, will be readily available to advisers while some of the SEC's modifications to reduce the reporting burdens are intended to address areas of the Form that commenters identified as particularly burdensome. In light of these changes, the SEC believes that the commenter estimates, which were based on the proposed Form, likely represent an upper bound of the average burden to large hedge fund advisers.

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 610 hours per large hedge fund adviser for each of the first three years.<sup>66</sup> In the aggregate, the amortized annual burden of periodic filings will then be 153,000 hours for large hedge fund advisers for each of the first three years.<sup>67</sup>

### **(c) Burden Estimates for Large Liquidity Fund Advisers**

The SEC estimates that 80 advisers will be classified as large liquidity fund advisers.<sup>68</sup> Commenters did not address this estimate. As discussed above, large liquidity fund advisers must complete section 1 of the Form and provide additional

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<sup>64</sup> See, e.g., the Adopting Release at sections II.B.1 and II.C.5 of the Adopting Release and the Adopting Release at notes 129 and 183-188 and accompanying text.

<sup>65</sup> See the Adopting Release at section II.C.1.

<sup>66</sup> The SEC estimates that a large hedge fund adviser will make 12 quarterly filings in three years, for an amortized average annual burden of 610 hours (1 initial filing x 300 hours + 11 subsequent filings x 140 hours = 1,840 hours; and 1,840 hours ÷ 3 years = approximately 610 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

<sup>67</sup> 610 burden hours on average per year x 250 large hedge fund advisers = 153,000 hours.

<sup>68</sup> See the Adopting Release at note 88.

information regarding the liquidity funds they manage in section 3 of the Form. In addition, these advisers must report information regarding the liquidity funds they manage on a quarterly basis.

Large liquidity fund advisers generally must report less information on Form PF than large hedge fund advisers but more information than large private equity advisers and smaller private fund advisers. Accordingly, the SEC estimates that large liquidity fund advisers will require, on average, fewer hours than large hedge fund advisers but more hours than other advisers to configure systems and to compile, review and electronically file the required information. Specifically, the SEC estimates these advisers will require an average of approximately 140 burden hours for an initial filing and 65 burden hours for each subsequent filing.<sup>69</sup>

These estimates reflect an increase compared to the proposal from 35 to 140 hours for the initial filing and from 16 to 65 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.<sup>70</sup> Commenters did not provide alternative estimates for these

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<sup>69</sup> The estimates of hour burdens and costs for large liquidity fund advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on a comparison to the requirements and estimated burden for large hedge fund advisers (which estimates, in turn, are based in part on burden data that advisers provided in response to the FSA Survey) and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. *See* the Adopting Release at note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

<sup>70</sup> *See, e.g.*, AIMA Letter; IAA Letter; BlackRock Letter. No commenters specifically addressed the burden estimates for liquidity fund advisers, though several commented on the burden estimates generally.

burdens. However, commenters addressing the large hedge fund adviser burdens did provide alternative estimates.<sup>71</sup> As discussed above, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.<sup>72</sup> In the absence of specific commenter estimates for the large liquidity fund adviser reporting burden, the SEC has, therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of reporting for large liquidity fund advisers. For instance, we have eliminated from section 1b a question requiring identification of significant creditors.<sup>73</sup> The SEC has also made several global changes that we anticipate will reduce the burden of reporting. These include allowing large liquidity fund advisers to report only annually on funds that are not liquidity funds, removing the certification, expanding the ability to disregard funds of funds, the increased ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.<sup>74</sup> The SEC has also added four new questions in section 1b that will increase the burden of completing that portion of the

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<sup>71</sup> See, e.g., MFA Letter.

<sup>72</sup> See section IV.B of the Adopting Release.

<sup>73</sup> See section II.C.1 of the Adopting Release. One commenter suggested the question we removed would have been “very burdensome.” See PEGCC Letter.

<sup>74</sup> See, e.g., sections II.B.1 and II.C.5 of the Adopting Release and the Adopting Release at notes 129 and **Error! Bookmark not defined.-Error! Bookmark not defined.** and accompanying text.

Form, but the SEC expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.<sup>75</sup>

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 290 hours per large liquidity fund adviser for each of the first three years.<sup>76</sup> In the aggregate, the amortized annual burden of periodic filings will then be 23,200 hours for large liquidity fund advisers for each of the first three years.<sup>77</sup>

#### **(d) Burden Estimates for Large Private Equity Advisers**

The SEC estimates that 170 advisers will be classified as large private equity advisers.<sup>78</sup> As discussed above, large private equity advisers must complete section 1 of the Form and provide additional information regarding the private equity funds they manage in section 4 of the Form. These advisers are only required to report on an annual basis.

Large private equity advisers generally must report less information on Form PF than other Large Private Fund Advisers but more information than smaller private fund advisers. Accordingly, the SEC estimates that large private equity advisers will require, on average, fewer hours than large hedge fund advisers and large liquidity fund advisers but more hours than other advisers to configure systems and to compile, review and electronically file the required information. Specifically, the SEC estimates these

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<sup>75</sup> See section II.C.1 of the Adopting Release.

<sup>76</sup> The SEC estimates that a large liquidity fund adviser will make 12 quarterly filings in three years, for an amortized average annual burden of 290 hours (1 initial filing x 140 hours + 11 subsequent filings x 65 hours = 855 hours; and 855 hours ÷ 3 years = approximately 290 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

<sup>77</sup> 290 burden hours on average per year x 80 large hedge fund advisers = 23,200 hours.

<sup>78</sup> See the Adopting Release at note 89.

advisers will require an average of approximately 100 burden hours for an initial filing and 50 burden hours for each subsequent filing.<sup>79</sup>

These estimates reflect an increase compared to the proposal from 25 to 100 hours for the initial filing and from 12 to 50 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.<sup>80</sup> Commenters did not provide alternative estimates for these burdens. However, commenters addressing the large hedge fund adviser burdens did provide alternative estimates.<sup>81</sup> As discussed above, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.<sup>82</sup> In the absence of specific commenter estimates for the large private equity adviser reporting burden, the SEC has, therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of

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<sup>79</sup> The estimates of hour burdens and costs for large private equity advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on a comparison to the requirements and estimated burden for large hedge fund advisers (which estimates, in turn, are based in part on burden data that advisers provided in response to the FSA Survey) and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. *See* the Adopting Release at note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

<sup>80</sup> *See, e.g.*, Atlas Letter; PEGCC Letter; comment letter of the United States Chamber of Commerce, Center for Capital Markets Competitiveness (Apr. 12, 2011) (“USCC Letter”).

<sup>81</sup> *See, e.g.*, MFA Letter.

<sup>82</sup> *See* section IV.B of the Adopting Release.



reporting for large private equity advisers. For instance, the SEC has modified the requirement to report performance by allowing advisers to report monthly and quarterly results only if such results are already calculated for the fund.<sup>83</sup> In addition, the SEC has eliminated from section 1b a question requiring identification of significant creditors and have revised questions in section 4 requiring information regarding portfolio company leverage to align the information required more closely with information available on the balance sheets of those companies.<sup>84</sup> The SEC has also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include requiring only annual (rather than quarterly) reporting, removing the certification, expanding the ability to disregard funds of funds, increasing the ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.<sup>85</sup> The SEC has also added four new questions in section 1b that will increase the burden of completing that portion of the Form, but the SEC expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.<sup>86</sup>

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 67 hours per large private equity adviser for each of the

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<sup>83</sup> See the Adopting Release at note 386.

<sup>84</sup> See sections II.C.1 and II.C.4 of the Adopting Release. One commenter suggested the question we removed would have been “very burdensome.” See PEGCC Letter.

<sup>85</sup> See, e.g., sections II.B.1 and II.C.5 of the Adopting Release and the Adopting Release at notes 129 and 183-188 and accompanying text.

<sup>86</sup> See section II.C.1 of the Adopting Release.

first three years.<sup>87</sup> In the aggregate, the amortized annual burden of periodic filings will then be 11,400 hours for large private equity advisers for each of the first three years.<sup>88</sup>

**(e) Burden Estimates for Transition Filings, Final Filings and Temporary Hardship Exemption Requests**

In addition to periodic filings, a private fund adviser must file very limited information on Form PF in three situations.

First, any adviser that transitions from quarterly to annual filing because it has ceased to be a large hedge fund or large liquidity fund adviser must file a Form PF indicating that it is no longer obligated to report on a quarterly basis. The SEC estimates that approximately 9 percent of quarterly filers will need to make a transition filing each year with a burden of 0.25 hours, or a total of 7 burden hours per year for all private fund advisers.<sup>89</sup> No commenters addressed these estimates. The SEC has not changed its estimates of the rate of transition filings and the burden hours per filing from the proposal, but it has reduced its estimate of the total burden hours per year because fewer filers will be required to report on a quarterly basis.<sup>90</sup>

Second, filers who are no longer subject to Form PF's periodic reporting requirements must file a final report indicating that fact. The SEC estimates that approximately 8 percent of the advisers required to file Form PF will have to file such a

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<sup>87</sup> The SEC estimates that a large private equity adviser will make 3 annual filings in three years, for an amortized average annual burden of 67 hours (1 initial filing x 100 hours + 2 subsequent filings x 50 hours = 200 hours; and 200 hours ÷ 3 years = approximately 67 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

<sup>88</sup> 67 burden hours on average per year x 170 large private equity advisers = 11,400 hours.

<sup>89</sup> This estimate is based on IARD data on the frequency of advisers to one or more private funds ceasing to have assets under management sufficient to cause them to be large hedge fund or large liquidity fund advisers. ((80 large liquidity fund advisers + 250 large hedge fund advisers) x 0.09 x 0.25 hours = 7 hours.)

<sup>90</sup> Under the proposal, large private equity advisers would also have been required to file on a quarterly basis. See section II.B.1 of the Adopting Release.

report each year with a burden of 0.25 of an hour, or a total of 71 burden hours per year for all private fund advisers.<sup>91</sup> No commenters addressed these estimates. The SEC has not changed its estimates of the rate of final filings and the burden hours per filing from the proposal, but it has reduced its estimate of the total burden hours per year because the addition of a minimum reporting threshold will result in fewer filers reporting on Form PF.<sup>92</sup>

Finally, an adviser experiencing technical difficulties in submitting Form PF may request a temporary hardship exemption by filing portions of Form PF in paper format.<sup>93</sup> The information that must be filed is comparable to the information that Form ADV filers provide on Form ADV-H when requesting a temporary hardship exemption relating to that form. In the case of Form ADV-H, the SEC has estimated that the average burden of filing is 1 hour and that approximately 1 in every 1,000 advisers will file annually. Assuming that Form PF filers request hardship exemptions at the same rate and that the applications impose the same burden per filing, the SEC expects approximately 4 filers to request a temporary hardship exemption each year<sup>94</sup> for a total of 4 burden hours.<sup>95</sup> No commenters addressed these estimates, and they remain unchanged from the proposal.

#### **(f) Aggregate Hour Burden Estimates**

Based on the foregoing, the SEC estimates that Form PF would result in an aggregate of 258,000 burden hours per year for all private fund advisers for each of the

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<sup>91</sup> Estimate is based on IARD data on the frequency of advisers to one or more private funds withdrawing from SEC registration. (3,570 private fund advisers x 0.08 x 0.25 hours = 71 hours.)

<sup>92</sup> See section II.A of the Adopting Release.

<sup>93</sup> See Advisers Act rule 204(b)-1(f). The rule requires that the adviser complete and file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that the filing is a request for a temporary hardship exemption.

<sup>94</sup> 3,570 private fund advisers x 1 request per 1,000 advisers = approximately 4 advisers.

<sup>95</sup> 4 advisers x 1 hour per response = 4 hours.

first three years, or 72 burden hours per year on average for each private fund adviser over the same period.<sup>96</sup>

**(g) Monetized Total Hour Burden**

The SEC expects that the costs Form PF imposes will be most significant for the first report that a private fund adviser is required to file because the adviser will need to familiarize itself with the new reporting form and may need to configure its systems in order to efficiently gather the required information. The SEC also anticipates that the initial report will require more attention from senior personnel, including compliance managers and senior risk management specialists, than will subsequent reports. In addition, the SEC expects that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings.

After filing their initial reports, the SEC anticipates that advisers will incur significantly lower costs because much of the work involved in the initial report is non-recurring and because of efficiencies realized from system configuration and reporting automation efforts accounted for in the initial reporting period. In addition, the SEC estimates that senior personnel will bear less of the reporting burden in subsequent reporting periods, reducing costs though not necessarily reducing the burden hours.

One commenter agreed that efficiencies will be realized over time,<sup>97</sup> but another stated that, at least for private real estate funds, they would not.<sup>98</sup> Having considered

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<sup>96</sup> 70,600 hours for periodic filings by smaller advisers + 153,000 hours for periodic filings by large hedge fund advisers + 23,200 hours for periodic filings by large liquidity fund advisers + 11,400 hours for periodic filings by large private equity fund advisers + 7 hours per year for transition filings + 71 hours per year for final filings + 4 hours per year for temporary hardship requests = approximately 258,000 hours per year. 258,000 hours per year ÷ 3,570 total advisers = 72 hours per year on average.

these comments, the SEC continues to believe that, for the average adviser (and particularly for those with more liquid portfolios and greater systems capabilities), efficiencies will be realized over time. The SEC has, however, also increased the cost estimates for subsequent filings in recognition of concerns regarding the overall burden of the reporting and the possibility that efficiencies are not the same for all types of private fund adviser.

Based on the foregoing, the SEC estimates<sup>99</sup> that the periodic filing requirements under Form PF (including configuring systems and compiling, automating, reviewing and electronically filing the report) will impose:

(1) 40 burden hours at a cost of \$13,600<sup>100</sup> per smaller private fund adviser for the initial annual report;

(2) 15 burden hours at a cost of \$4,200<sup>101</sup> per smaller private fund adviser for each subsequent annual report;

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<sup>97</sup> See MFA Letter.

<sup>98</sup> See comment letter of The National Association of Real Estate Investment Managers (Mar. 24, 2011).

<sup>99</sup> We understand that some advisers may outsource all or a portion of their Form PF reporting responsibilities to software consultants, vendors, filing agents or other third-party service providers. We have based our estimates on the use of internal resources, for which some cost data is available, because we believe that an adviser would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, reviewing and filing the Form PF. The hourly wage data used in this Economic Analysis section of the Release is based on the Securities Industry and Financial Markets Association's *Report on Management & Professional Earnings in the Securities Industry 2010* and *Office Salaries in the Securities Industry 2010* ("SIFMA Earnings Reports"). This data has been modified to account for an 1,800-hour work-year and multiplied by 5.35 for management and professional employees and by 2.93 for general and compliance clerks to account for bonuses, firm size, employee benefits and overhead.

<sup>100</sup> We expect that for the initial report these activities will most likely be performed equally by a compliance manager at a cost of \$273 per hour and a senior risk management specialist at a cost of \$409 per hour and that, because of the limited scope of information required from smaller private fund advisers, these advisers generally would not realize significant benefits from or incur significant costs for system configuration or automation.  $(\$273/\text{hour} \times 0.5 + \$409/\text{hour} \times 0.5) \times 40 \text{ hours} = \text{approximately } \$13,600.$

(3) 100 burden hours at a cost of \$31,000<sup>102</sup> per large private equity fund adviser for the initial annual report;

(4) 50 burden hours at a cost of \$13,900<sup>103</sup> per large private equity fund adviser for each subsequent annual report;

(5) 300 burden hours at a cost of \$93,100<sup>104</sup> per large hedge fund adviser for the initial quarterly report;

(6) 140 burden hours at a cost of \$38,800<sup>105</sup> per large hedge fund adviser for each subsequent quarterly report;

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<sup>101</sup> We expect that for subsequent reports senior personnel will bear less of the reporting burden. As a result, we estimate that these activities will most likely be performed equally by a compliance manager at a cost of \$273 per hour, a senior compliance examiner at a cost of \$235 per hour, a senior risk management specialist at a cost of \$409 per hour and a risk management specialist at a cost of \$192 per hour.  $(\$273/\text{hour} \times 0.25 + \$235/\text{hour} \times 0.25 + \$409/\text{hour} \times 0.25 + \$192/\text{hour} \times 0.25) \times 15 \text{ hours} = \text{approximately } \$4,200.$

<sup>102</sup> The SEC expects that for the initial report, of a total estimated burden of 100 hours, approximately 60 hours will most likely be performed by compliance professionals and 40 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of \$273 per hour and a senior risk management specialist at a cost of \$409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of \$304 per hour and a programmer analyst at a cost of \$224 per hour.  $(\$273/\text{hour} \times 0.5 + \$409/\text{hour} \times 0.5) \times 60 \text{ hours} + (\$304/\text{hour} \times 0.5 + \$224/\text{hour} \times 0.5) \times 40 \text{ hours} = \text{approximately } \$31,000.$

<sup>103</sup> The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of \$273 per hour, a senior compliance examiner at a cost of \$235 per hour, a senior risk management specialist at a cost of \$409 per hour and a risk management specialist at a cost of \$192 per hour.  $(\$273/\text{hour} \times 0.25 + \$235/\text{hour} \times 0.25 + \$409/\text{hour} \times 0.25 + \$192/\text{hour} \times 0.25) \times 50 \text{ hours} = \text{approximately } \$13,900.$

<sup>104</sup> We expect that for the initial report, of a total estimated burden of 300 hours, approximately 180 hours will most likely be performed by compliance professionals and 120 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, we anticipate that it will be performed equally by a compliance manager at a cost of \$273 per hour and a senior risk management specialist at a cost of \$409 per hour. Of the work performed by programmers, we anticipate that it will be performed equally by a senior programmer at a cost of \$304 per hour and a programmer analyst at a cost of \$224 per hour.  $(\$273/\text{hour} \times 0.5 + \$409/\text{hour} \times 0.5) \times 180 \text{ hours} + (\$304/\text{hour} \times 0.5 + \$224/\text{hour} \times 0.5) \times 120 \text{ hours} = \text{approximately } \$93,100.$

<sup>105</sup> We expect that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a

(7) 140 burden hours at a cost of \$43,500<sup>106</sup> per large liquidity fund adviser for the initial quarterly report; and

(8) 65 burden hours at a cost of \$18,000<sup>107</sup> per large liquidity fund adviser for each subsequent quarterly report.

Assuming that there are 3,070 smaller private fund advisers, 250 large hedge fund advisers, 80 large liquidity fund advisers, and 170 large private equity fund advisers, the foregoing estimates suggest an annual cost of \$107,000,000<sup>108</sup> for all private fund advisers in the first year of reporting and an annual cost of \$59,800,000 in subsequent years.<sup>109</sup>

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result, we estimate that these activities will most likely be performed equally by a compliance manager at a cost of \$273 per hour, a senior compliance examiner at a cost of \$235 per hour, a senior risk management specialist at a cost of \$409 per hour and a risk management specialist at a cost of \$192 per hour.  $(\$273/\text{hour} \times 0.25 + \$235/\text{hour} \times 0.25 + \$409/\text{hour} \times 0.25 + \$192/\text{hour} \times 0.25) \times 140 \text{ hours} = \text{approximately } \$38,800.$

<sup>106</sup> The SEC expects that for the initial report, of a total estimated burden of 140 hours, approximately 85 hours will most likely be performed by compliance professionals and 55 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of \$273 per hour and a senior risk management specialist at a cost of \$409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of \$304 per hour and a programmer analyst at a cost of \$224 per hour.  $(\$273/\text{hour} \times 0.5 + \$409/\text{hour} \times 0.5) \times 85 \text{ hours} + (\$304/\text{hour} \times 0.5 + \$224/\text{hour} \times 0.5) \times 55 \text{ hours} = \text{approximately } \$43,500.$

<sup>107</sup> The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of \$273 per hour, a senior compliance examiner at a cost of \$235 per hour, a senior risk management specialist at a cost of \$409 per hour and a risk management specialist at a cost of \$192 per hour.  $(\$273/\text{hour} \times 0.25 + \$235/\text{hour} \times 0.25 + \$409/\text{hour} \times 0.25 + \$192/\text{hour} \times 0.25) \times 65 \text{ hours} = \text{approximately } \$18,000.$

<sup>108</sup>  $(3,070 \text{ smaller private fund advisers} \times \$13,600 \text{ per initial annual report}) + (170 \text{ large private equity fund advisers} \times \$31,000 \text{ per initial annual report}) + (250 \text{ large hedge fund advisers} \times \$93,100 \text{ per initial quarterly report}) + (250 \text{ large hedge fund advisers} \times 3 \text{ quarterly reports} \times \$38,800 \text{ per subsequent quarterly report}) + (80 \text{ large liquidity fund advisers} \times \$43,500 \text{ per initial quarterly report}) + (80 \text{ large liquidity fund advisers} \times 3 \text{ quarterly reports} \times \$18,000 \text{ per subsequent quarterly report}) = \text{approximately } \$107,000,000.$

<sup>109</sup>  $(3,070 \text{ smaller private fund advisers} \times \$4,200 \text{ per subsequent annual report}) + (170 \text{ large private equity fund advisers} \times \$13,900 \text{ per subsequent annual report}) + (250 \text{ large hedge fund advisers} \times 4 \text{ quarterly reports} \times \$38,800 \text{ per subsequent quarterly report}) + (80 \text{ large liquidity fund advisers} \times 4 \text{ quarterly reports} \times \$18,000 \text{ per subsequent quarterly report}) = \text{approximately } \$59,800,000.$

The cost estimates above assume that risk and compliance personnel (and, in the case of Large Private Fund Advisers filing an initial report, programmers) will carry out the work of reporting on Form PF. Some commenters suggested that employees in portfolio management as well as legal, controller and other back office functions may also be involved in compiling, reviewing and filing Form PF.<sup>110</sup> These commenters did not provide estimates for how the reporting burdens would be allocated among these groups of employees, and we believe the allocation is likely to vary significantly among advisers depending on the size and complexity of their operations. Based on available wage data, the SEC does not believe that variations in the allocation of these responsibilities among the functions that it and commenters identified would result in significantly different aggregate cost estimates.<sup>111</sup>

In addition, as discussed above, a private fund adviser must file very limited information on Form PF if it needs to transition from quarterly to annual filing, if it is no longer subject to the reporting requirements of Form PF or if it requires a temporary hardship exemption under rule 204(b)-1(f). The SEC estimates that transition and final filings will, collectively, cost private fund advisers as a whole approximately \$5,200 per

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<sup>110</sup> See, e.g., Kleinberg General Letter; MFA Letter.

<sup>111</sup> For example, our estimates assume that the work is performed by compliance managers at \$273 per hour, senior compliance examiners at \$235 per hour, senior risk management specialists at \$409 per hour, risk management specialists at \$192 per hour and, in the case of Large Private Fund Advisers filing an initial report, programmers ranging from \$304 to \$224 per hour. Based on the SIFMA Earnings Reports, indicative costs in the other functions that commenters identified are: \$287 per hour for a senior portfolio manager; \$211 per hour for an intermediate portfolio manager; \$430 per hour for an assistant general counsel; \$165 per hour for a fund senior accountant; \$194 per hour for an intermediate business analyst; and \$154 per hour for an operations specialist. An adviser's chief compliance officer (at a cost of \$423 per hour) or controller (at a cost of \$433 per hour) may also review the filing, though the SEC would expect that in most cases their involvement would be more limited than that of more junior employees.



year.<sup>112</sup> The SEC further estimates that hardship exemption requests will cost private fund advisers as a whole approximately \$760 per year.<sup>113</sup> No commenters addressed these estimates. The estimate with respect to hardship exemptions is unchanged from the proposal. The estimate with respect to transition and final filings have been reduced because fewer filers will be required to report on a quarterly basis and the addition of a minimum reporting threshold means that fewer advisers will report in total.<sup>114</sup>

### **13. Estimate of Total Annual Cost Burden**

In addition to the hour burdens identified above, advisers subject to the Form PF reporting requirements will incur cost burdens. Firms required to file Form PF must also pay filing fees. In a separate order, the SEC has established filing fees for the Form PF filing system of \$150 per annual filing and \$150 per quarterly filing.<sup>115</sup> The SEC estimates that this will result in advisers paying aggregate filing fees of approximately \$684,000 per year.<sup>116</sup>

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<sup>112</sup> The SEC estimates that, for the purposes of the PRA, transition filings will impose 7 burden hours per year on private fund advisers in the aggregate and that final filings will impose 71 burden hours per year on private fund advisers in the aggregate. The SEC anticipates that this work will most likely be performed by a compliance clerk at a cost of \$67 per hour.  $(7 \text{ burden hours} + 71 \text{ burden hours}) \times \$67/\text{hour} = \text{approximately } \$5,200.$

<sup>113</sup> The SEC estimates that, for the purposes of the PRA, requests for temporary hardship exemptions will impose 4 burden hours per year on private fund advisers in the aggregate. The SEC anticipates that five-eighths of this work will most likely be performed by a compliance manager at a cost of \$273 per hour and that three-eighths of this work will most likely be performed by a general clerk at a cost of \$50 per hour.  $((\$273 \text{ per hour} \times 5/8 \text{ of an hour}) + (\$50 \text{ per hour} \times 3/8 \text{ of an hour})) \times 4 \text{ hours} = \text{approximately } \$760.$

<sup>114</sup> See the Adopting Release at note 424.

<sup>115</sup> See section II.E of the Adopting Release.

<sup>116</sup>  $((3,070 \text{ smaller private fund advisers} + 170 \text{ large private equity advisers}) \times \$150 \text{ per annual filing}) + ((250 \text{ large hedge fund advisers} + 80 \text{ large private equity advisers}) \times \$150 \text{ per quarterly filing} \times 4 \text{ quarterly filings per year}) = \$684,000 \text{ per year.}$

Several commenters suggested that advisers would also need to modify existing systems or deploy new systems to support Form PF reporting.<sup>117</sup> As discussed in the proposal and below, the SEC acknowledges that advisers may incur costs to develop systems and expects that Large Private Fund Advisers, in particular, may find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. The SEC has assumed that some of the hours that it estimates advisers will spend on preparing their initial filings on Form PF will be attributable to programmers preparing systems for the reporting.<sup>118</sup> The SEC understands that some advisers may outsource all or a portion of these systems requirements to software consultants, vendors, filing agents or other third-party service providers and believes that the emergence of such service providers may serve to make filing on Form PF more efficient than is reflected in its estimates.<sup>119</sup>

Advisers may also incur costs associated with the acquisition or use of hardware needed to perform computations or otherwise process the data required on Form PF.<sup>120</sup> Smaller private fund advisers are unlikely to bear these costs because the information they are required to provide is limited and will, in many cases, already be maintained in the ordinary course of business.<sup>121</sup> Even among Large Private Fund Advisers, these costs are likely to vary significantly. For instance, the cost to any Large Private Fund Adviser

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<sup>117</sup> See, e.g., BlackRock Letter; IAA Letter; Kleinberg General Letter; PEGCC Letter; SIFMA Letter.

<sup>118</sup> See the Adopting Release at notes 511, 513 and 515.

<sup>119</sup> The SEC has based its estimates on the use of internal resources, for which some cost data is available, because it believes that an adviser would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, reviewing and filing the Form PF. As a result, the SEC's estimates of hour and cost burdens in this PRA analysis, and of costs in section V.B of the Adopting Release, may overstate the actual burdens and costs that will be incurred once third-party services become available.

<sup>120</sup> See the Adopting Release at note 272.

<sup>121</sup> See the Adopting Release at note 382.

may depend on how many funds or the types of funds it manages, the state of its existing systems and the complexity of its business. In addition, large hedge fund and large liquidity fund advisers must file Form PF more frequently, on shorter deadlines and generally with more information than large private equity advisers, increasing the likelihood that filings will compete with other demands for computing resources and that additional resources will be required.

Commenters did not provide estimates for the costs of acquiring or using hardware for purposes of Form PF. SEC staff contacted several organizations, including self-regulatory organizations, prime brokers and fund service providers, to help develop an estimate for these costs. Although these organizations generally were not able to provide such estimates, some expressed the view that the hardware costs would be small relative to the human capital costs and, for Large Private Fund Advisers, software development costs that Form PF imposes.<sup>122</sup> The SEC estimates, based in part on these conversations and the factors discussed above, that these costs will fall across a broad range for Large Private Fund Advisers. Those who are required to file less information, less frequently and on longer deadlines, who have excess capacity in their existing systems or whose business is relatively simple, may incur no incremental hardware costs. On the other hand, some Large Private Fund Advisers may need to acquire (or obtain the use of) computing resources equivalent to an additional server, which the SEC estimates would cost approximately \$50,000 fully deployed. This suggests an aggregate

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<sup>122</sup> See the Adopting Release at notes 435-436 and accompanying text.

incremental cost in the first year of reporting between \$0 and \$25,000,000, though the actual cost is likely to fall in between these two end-points.<sup>123</sup>

**14. Estimate of Cost to the Federal Government**

There are no costs to the government directly attributable to Form PF.

**15. Explanation of Changes in Burden**

Form PF is a new collection of information.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to not Display Expiration Date**

Not applicable.

**18. Exceptions to Certification Statement**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

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<sup>123</sup> \$50,000 x 500 Large Private Fund Advisers = \$25,000,000.