

SUPPORTING STATEMENT RULE 204(B)-1 AND 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.¹ 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.² 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”).³ 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 on Form PF.

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² 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”).

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

Form PF contains a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁴ 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”).⁵ 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 provide more information than other private fund 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

⁴ 44 U.S.C. 3501-3521.

⁵ See the Adopting Release for definitions of “hedge fund,” “liquidity fund” and “private equity 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.⁶

On June 5, 2013, the Commission issued a release proposing two alternatives as part of a money market reform proposal. Under the first alternative, prime institutional money market funds would be required to float their net asset value. Under the second alternative, money market funds whose weekly liquid assets fell below 15% of total assets would be required to impose a 2% liquidity fee unless the fund's board of directors determines that such a fee would not be in the best interest of the fund, and permit the funds to suspend redemptions temporarily (*i.e.*, "gate" the fund).⁷ The proposed amendments to Form PF would affect only large liquidity fund advisers and require that large liquidity fund advisers disclose on Form PF certain additional information with respect to each portfolio security, for each month of the reporting period. The required disclosure would be virtually the same information that money market funds would report on form N-MFP (as proposed) and include, for example, security identifiers, the category of investment, maturity dates, information about demand features, guarantees, or other enhancements, and information about security valuations.

⁶ See rule 204(b)-1(f). The rule requires that the adviser provide limited information describing the nature of the hardship.

⁷ See Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (June 5, 2013).

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.⁸ 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.⁹

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 Financial Industry Regulatory Authority (“FINRA”) maintains the filing system for Form PF through the Private Fund Reporting Depository (“PFRD”), a subsystem of the Investment Adviser Registration Depository (“IARD”), through which registered advisers are already separately obligated to file annual reports on Form ADV. Form PF may be filed either through a fillable form on the PFRD website or through a batch filing process utilizing the eXtensible Markup Language (“XML”) tagged data format. 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

⁸ See section I.A of the Adopting Release.

⁹ See below section A.7 of this supporting statement.

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.

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.¹⁰

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. Advisers are, however, required to determine whether they exceed this threshold by aggregating their private fund assets under management

¹⁰ 17 CFR 275.0-7(a).

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.

As discussed above, the proposed amendments to Form PF would affect only large liquidity fund advisers, or those advisers have at least \$1 billion in combined assets under management attributable to liquidity funds and registered money market funds. With respect to the proposed amendments, pursuant to 5 U.S.C. section 605(b), the Commission certified that the proposed amendments to Form PF would not, if adopted, have a significant impact on a substantial number of small entities.

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. The frequency of collection will vary depending on the size of the adviser 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....”¹¹ In addition, if an agency proposes to collect confidential information, it

¹¹ 5 CFR 1320.5(d)(2)(vii).

must be able to “demonstrate that it has instituted procedures to protect the information’s confidentiality to the extent permitted by law.”¹²

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.¹³ 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. 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.¹⁴

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.¹⁵ 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

¹² 5 CFR 1320.5(d)(2)(viii).

¹³ See sections II.D and II.E of the Adopting Release.

¹⁴ See section 204(b) of the Advisers Act.

¹⁵ See section 204(b)(8)(B)(i) of the Advisers Act.

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.¹⁶

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.¹⁷

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 trade against an adviser is limited.¹⁸ In addition, SEC staff has designed 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.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry and through public conferences, meetings, and informal exchanges. These

¹⁶ See sections 204(b)(9) and (10) of the Advisers Act.

¹⁷ 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.

¹⁸ 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.

various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements in Form PF before it submitted this request for revision and approval to the Office of Management and Budget. We will consider all comments received on the proposed amendments.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

See section A.7 of this supporting statement.

11. Sensitive Questions

See section A.7 of this supporting statement.

12. Estimate of Hour Burden

In our most recent Paperwork Reduction Act submission for rule 204(b)-1, Commission staff estimated the annual compliance burden to comply with the collection of information requirement of rule 204(b)-1 (and Form PF) is 258,000 annual aggregate hours. In estimating this total approved burden, Commission staff estimated that the amortized average annual burden of Form PF for large liquidity fund advisers (the only group of advisers to which our proposed amendments would apply) in particular would be 290 hours per large liquidity fund adviser for each of the first three years, resulting in an aggregate amortized annual burden of 23,200 hours for large liquidity fund advisers for each of the first three years. The proposed amendments to Form PF are the same under either alternative proposal and would affect the staff's estimates of the hour burden applicable to large liquidity fund advisers described below.

Staff estimates that the paperwork burdens associated with Form N-MFP (as we propose to amend it) are representative of the burdens that large liquidity fund advisers could incur as a result of our proposed amendments to Form PF because advisers would be required to file on Form PF virtually the same information money market funds would file on Form N-MFP as we propose to amend it and because virtually all of the 25 large liquidity funds advisers already manage a money market fund or have a related person that manages a money market fund. Therefore, we believe that large liquidity fund advisers—when required to compile and report for their liquidity funds generally the same information virtually all of them already report for their money market funds—likely will use the same (or comparable) staff and/or external service providers to provide portfolio holdings information on Form N-MFP and Form PF. As discussed below, staff estimates for the proposed changes to Form PF are based on the estimates for the proposed changes to Form N-MFP.

Staff estimates that the proposed amendments to Form N-MFP would result in a first year aggregate additional 49,810 burden hours¹⁹ at a total time cost of \$12.9 million²⁰ for all funds, and 35,160 burden hours²¹ at a total time cost of \$9.1 million²² for all funds each year hereafter. Amortizing these additional hourly burdens over three years results in an average annual aggregate burden of approximately 40,043 hours at a

¹⁹ This estimate is based on the following calculation: 586 funds x 85 hours = 49,810 burden hours in year 1.

²⁰ This estimate is based on the following calculation: 586 funds x \$22,045 annual cost per fund in the initial year = \$12.9 million.

²¹ This estimate is based on the following calculation: 586 funds x 60 hours per fund = 35,160 hours.

²² This estimate is based on the following calculation: 586 funds x \$15,562 annual cost per fund in subsequent years = \$9.1 million.

total time cost of \$10.4 million for all funds.²³ Staff estimates that our proposed amendments to Form N-MFP would result in a total aggregate annual collection of information burden of 85,257 hours.²⁴ Staff estimates that the average annual amortized hour burden per money market fund imposed by Form N-MFP as we propose to amend it is 145 hours.²⁵ Our staff estimates that large liquidity fund advisers would incur these burdens for each of their liquidity funds, for the reasons discussed above, and would incur a time cost of \$36,730 associated with the 145 estimated burden hours.²⁶ Because our staff estimates that there were 25 large liquidity fund advisers that collectively advised 43 liquidity funds as of February 28, 2013, this would result in increased annual burdens per large liquidity fund adviser of 290 burden hours, at a total time cost of \$73,460.²⁷ This would result in increased aggregate burden hours across all large liquidity fund advisers of 7,250 burden hours,²⁸ at a time cost of \$1,836,500.²⁹ Finally,

²³ This estimate is based on the following calculation: (49,810 hours (year 1) + 35,160 hours (year 2) + 35,160 hours (year 3)) ÷ 3 = 40,043 hours; (\$12.9 million (year 1) + \$9.1million (year 2) + \$9.1 million (year 3)) ÷ 3 = \$10.4 million in time costs.

²⁴ This estimate is based on the following calculation: current approved burden of 45,214 hours + 40,043 in additional burden hours as a result of our proposed amendments = 85,257 hours.

²⁵ This estimate is based on the following calculation: 85,257 hours (aggregate annual collection of information burden for Form N-MFP) ÷ 586 money market fund respondents = 145 hours per fund annual burden.

²⁶ This estimate is based on the following calculation: (85 hours x \$243 blended average hourly rate for a financial reporting manager (\$294 per hour) and fund senior accountant (\$192 per hour) = \$20,655 per fund) + (10 hours x \$155 per hour for an intermediate accountant = \$1,550 per fund) + (17 hours x \$314 per hour for a senior database administrator = \$5,338 per fund) + (10 hours x \$300 for a senior portfolio manager = \$3,000 per fund) + (23 hours x \$269 per hour for a compliance manager = \$6,187 per fund) = \$36,730.

²⁷ This estimate assumes for purposes of the PRA that each large liquidity fund adviser advises two large liquidity funds (43 total liquidity funds divided by 25 large liquidity fund advisers). Each large liquidity fund adviser therefore would incur the following burdens: 145 estimated burden hours per fund x 2 large liquidity funds = 290 burden hours per large liquidity fund adviser; \$36,730 estimated time cost per fund x 2 large liquidity funds = \$73,460 time cost per large liquidity fund adviser.

²⁸ This estimate is based on the following calculation: 290 estimated additional burden hours per large liquidity fund adviser x 25 large liquidity fund advisers = 7,250.

the aggregate paperwork burden for Form PF under our proposed amendments therefore would be 249,300 burden hours.³⁰

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 other external costs. In our most recent Paperwork Reduction Act submission for rule 204(b)-1, Commission staff estimated the annual cost burden to comply with the collection of information requirement of rule 204(b)-1 (and Form PF) is \$25,684,000. Staff estimated that the external cost burden would range from \$0 to \$50,000 per large private fund adviser, which resulted in aggregate estimated external costs attributable to large liquidity fund advisers of \$4,000,000. The external cost estimates also included estimates for filing fees, which were are \$150 per annual filing and \$150 per quarterly filing, resulting in annual filings costs for large liquidity fund advisers of \$48,000.³¹ The proposed amendments, under either alternative, would affect the staff's estimates of the cost burden as described below.

As discussed above, staff estimates that the paperwork burdens associated with Form N-MFP (as we propose to amend it) are representative of the burdens that large liquidity fund advisers could incur as a result of our proposed amendments to Form PF.

²⁹ This estimate is based on the following calculation: \$73,460 estimated time cost per large liquidity fund adviser x 25 large liquidity fund advisers = \$1,836,500.

³⁰ Form PF's current approved burden includes 23,200 aggregate burden hours associated with large liquidity fund advisers, based on 80 large liquidity fund advisers and an estimated 290 burden hours per large liquidity fund adviser. Our amendments to Form PF would increase the estimated 290 burden hours per large liquidity fund adviser by 290 hours, as discussed above, resulting in a total of 580 burden hours per large liquidity fund adviser. Multiplying 580 by the current estimated number of 25 large liquidity fund advisers results in 14,500 burden hours attributable to large liquidity fund advisers, a 8,700 reduction from the approved burden hours attributable to large liquidity fund advisers. This therefore results in 249,300 total burden hours for all of Form PF (current approved 258,000 burden hours – 8,700 reduction = 249,300).

³¹ This estimate is based on the following calculation: (\$150 quarterly filing fee x 4 quarters) x 80 large liquidity fund advisers) = \$48,000.

Accordingly, staff believes that large liquidity fund advisers likely will use the same external service providers to provide portfolio holdings information on Form N-MFP and Form PF.

As discussed in the PRA analysis for our amendments to Form N-MFP, our staff estimates that the average annual amortized external cost burden per money market fund imposed by Form N-MFP as we propose to amend is \$8,187.³² Because staff estimates that there were 25 large liquidity fund advisers that collectively advised 43 liquidity funds as of February 28, 2013 as discussed above, this would result in an increased annual external cost burden per large liquidity fund adviser of \$16,374 in external costs.³³ This would result in increased aggregate external costs across all large liquidity fund advisers of \$409,350.³⁴ The aggregate paperwork burden for Form PF under our proposed amendments therefore would be \$23,310,350 in external costs.³⁵

³² As discussed in the PRA analysis for Form N-MFP, our staff estimates that Form N-MFP, as we propose to amend it, would result in an aggregate external cost burden of \$4,798,160. Based on the staff's estimated 586 money market fund respondents, this results in a per fund annual external cost burden of approximately \$8,187.

³³ This estimate assumes for purposes of the PRA that each large liquidity fund adviser advises two large liquidity funds (43 total liquidity funds divided by 25 large liquidity fund advisers). Each large liquidity fund adviser therefore would incur the following external cost burden: \$8,187 estimated external costs per fund x 2 large liquidity funds = \$16,374 external costs per large liquidity fund adviser.

³⁴ This estimate is based on the following calculation: \$16,374 estimated external costs per large liquidity fund adviser x 25 large liquidity fund advisers = \$409,350.

³⁵ Form PF's current approved burden includes \$25,684,000 in external costs, which includes \$4,000,000 attributable to large liquidity fund advisers for certain costs (\$50,000 per adviser), and \$48,000 (or \$600 per adviser) for filing fees, in both cases assuming 80 large liquidity fund adviser respondents. Form PF's approved burden therefore includes a total of \$4,048,000 in external costs attributable to large liquidity fund advisers. Reducing these estimates to reflect our staff's current estimate of 25 large liquidity fund adviser respondents results in costs of \$1,250,000 (25 large liquidity fund advisers x \$50,000 per adviser) and \$15,000 (25 large liquidity fund advisers x \$600), respectively, for an aggregate cost of \$1,265,000. These costs, plus the additional external costs associated with our proposed amendments to Form PF (\$409,350 as estimated above), result in total external costs attributable to large liquidity fund advisers of \$1,674,350, a reduction of \$2,373,650 from the currently approved external costs attributable to large liquidity fund advisers. This therefore results in total external cost for all of Form PF of

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

The total annual hour burden of 249,300 hours represents a decrease of 8,700 hours over the previous burden hour estimate of 258,000 hours. In addition, the annual external cost burden of \$23,310,350 represents a decrease of \$2,373,650 over the previous annual external cost burden estimate of \$25,684,000. The changes in burden hours and external cost burdens are due to the staff's estimates of the time costs and external costs that would result from our proposed amendments.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

\$23,310,350 (current approved external cost burden of \$25,684,000 - \$2,373,650 reduction = \$23,310,350).