To Our Clients and Friends

Memorandum

SEC Charges 13 Private Fund Advisers for Repeated Failures to File Form PF

On June 1, 2018, the U.S. Securities and Exchange Commission (the "SEC") announced settlements with thirteen registered investment advisers that failed to file Form PF over multi-year periods.[1] In the settlement orders, the SEC highlighted the importance of the information collected on Form PF to financial regulators, including to the SEC's examination and investigation programs and its investor protection efforts relating to private fund advisers.[2] Each registered investment adviser charged was ordered to pay a civil money penalty of $75,000.

Rule 204(b)-1 under the U.S. Investment Advisers Act of 1940 (the "Advisers Act") was adopted on October 31, 2011[3] and requires investment advisers that are registered or required to be registered under Section 203 of the Advisers Act and that manage private fund assets of at least $150 million to file and periodically update Form PF. Information required to be reported on Form PF includes information regarding the adviser's identity and assets under management and information regarding the size, leverage and performance of all private funds subject to the Form PF reporting requirements. Advisers with hedge fund, liquidity fund or private equity fund assets under management exceeding certain specified thresholds are required to report additional information regarding the hedge funds, liquidity funds or private equity funds they manage.[4]

The failure to file Form PF is a violation of the Advisers Act that the SEC is easily able to identify, and is therefore a prime target for the SEC to increase its enforcement statistics. Advisers to private funds should ensure that they are timely filing their Form PF and that the information contained in their Form PF is accurate and complete.

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1 Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges 13 Private Fund Advisers for Repeated Filing Failures (June 1, 2018), *available at* https://www.sec.gov/news/press-release/2018-100.

2 See, e.g., In the Matter of Bachrach Asset Management Inc. (Jun. 1, 2018), *available at* https://www.sec.gov/litigation/admin/2018/ia-4919.pdf.

3 Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Release No. IA-3308 (Oct. 31, 2011), *available at* https://www.sec.gov/rules/final/2011/ia-3308.pdf.

4 See Form PF, Glossary of Terms, *available at* https://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf, for the definitions of "hedge fund," "liquidity fund" and "private equity fund."

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