

Feds Fish in Form PF

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Annual reports that the SEC must submit to Congress provide insight into how the agency is exploiting the wealth of information that private fund advisers are required to file with it on Form PF. The SEC developed Form PF over the past few years in response to requirements in the Dodd-Frank Act and other perceived regulatory imperatives.

The following are some uses, as described in the SEC's August 2015 report, that may have the most direct impact on private fund advisers:

- Prior to examining a private fund adviser, SEC staff generally review the adviser's Form PF for any inconsistencies with other documents relating to the adviser, such as due diligence reports, pitch books, offering documents, operating agreements, books and records, the adviser's Form ADV and related brochure, and other information provided to investors, "particularly with respect to holdings, leverage, liquidity, derivatives, and counterparties."
- Such discrepancies can result in further staff inquiries or deficiency letters, or enforcement actions.
- The staff also uses a database containing certain information from Form PF to identify advisers engaging in activities implicating particular areas of examination focus, such as risk exposures, valuations, and high-frequency trading.
- SEC enforcement personnel also have accessed Form PF data to assist their ongoing program to identify hedge fund advisers whose investment returns are aberrational relative to certain benchmarks and thus perhaps indicate improper conduct.
- As part of its monitoring of risks in the money market fund industry, the staff is also monitoring Form PF data reported for private money market ("liquidity") funds.

Multiple divisions, offices, and groups at the SEC are finding more ways to mine Form PF data to enhance the staff's ability to identify legal violations. Private fund advisers must be mindful, therefore, that they live in a regulatory fishbowl that is growing more transparent all the time.