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Private Fund Disclosure Under the Dodd-Frank Act

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PRIVATE FUND DISCLOSURES UNDER THE DODD-FRANK ACT

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ABSTRACT

Title IV of the Dodd-Frank Act requires the Securities and Exchange Commission (SEC) to collect sensitive proprietary information from private fund advisers via Form PF. Prior studies suggest that the SEC's mandated collection of private fund data in Form PF created several core challenges for the private fund industry and for the SEC. This Article presents the results of a survey of SEC-registered investment advisers to private funds after the SEC's first mandatory collection of private fund data.

The key findings of this study indicate that the majority of private fund advisers responding to the survey incurred less than $10,000 to prepare their initial data reporting to the SEC, with the cost of subsequent annual Form PF filings at about half the initial cost. Larger private fund advisers, required to file quarterly, are faced with substantially higher compliance costs, both for their initial data reporting and for subsequent quarterly filings. The data analysis in this study affirms SEC cost estimates for smaller private fund advisers' Form PF compliance costs. The SEC appears to have overestimated Form PF compliance costs for larger private fund advisers.

While the data analysis in this study suggests that the overall effect of private fund disclosure requirements on the private fund industry is moderate, it also indicates that the data reporting requirements for private funds and the corresponding SEC forms can be further improved. The majority of SEC-registered private fund advisers identified the ambiguity of Form PF data reporting requirements in Form PF as the most pressing issue. However, the majority of respondents also considered their existing reporting systems adequate for capturing the information required by the SEC and agreed with the SEC's definitions and instructions for Form PF. Respondents predominately rated the SEC staff as sufficient or good at providing guidance.

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I. INTRODUCTION

Title IV of the Dodd-Frank Act and the SEC rules implementing the requirements under Title IV created a paradigm shift for the regulation of private funds in the United States, increasing regulatory oversight to unprecedented levels. The new regulatory framework for private funds in the United States requires private fund adviser registration and enhanced disclosure of sensitive proprietary information.[1] To facilitate appropriate data collection for assessing systemic risks, the Dodd-Frank Act authorized the SEC to promulgate rules requiring registration and enhanced disclosures for private equity and private funds managers.[2] To collect the required data, the SEC Division of Investment Management adopted a new form, Form PF.[3]

Private fund advisers have traditionally opposed enhanced transparency of the funds they manage, arguing that the mandatory private fund disclosure requirements in Form PF could inappropriately burden the private fund industry.[4] Some of the most controversial disclosure requirements in Form PF include: the reporting of risk metrics, strategies and products used by the investment adviser and its funds, counterparties and credit exposure, performance and changes in performance, financing information, percentage of assets traded using algorithms, and the percentage of fund assets held in equity and debt instruments.[5]

1. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 401–402, 124 Stat. 1376, 1570 (codified as amended at 15 U.S.C. §§ 80b-20 nt, 80b-2 (2010)).

2. *Id.* §§ 402–408.

3. SEC, OMB NO. 3235-0679, FORM PF: REPORTING FORM FOR INVESTMENT ADVISERS TO PRIVATE FUNDS AND CERTAIN COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS (2011) [hereinafter FORM PF], *available at* http://www.sec.gov/about/forms/formpf.pdf; SEC, OMB NO. 3235-0049, FORM ADV: UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT FORM BY EXEMPT REPORTING ADVISERS (2011) [hereinafter FORM ADV], *available at* http://www.sec.gov/about/forms/formadv.pdf.

4. SEC, IMPLICATIONS OF THE GROWTH OF PRIVATE FUNDS 90 (2003), *available at* http://www.sec.gov/news/studies/hedgefunds0903.pdf ("Many of those opposing required registration expressed a strong preference for leaving the private fund industry 'unregulated'."); Stephen Brown et al., *Mandatory Disclosure and Operational Risk: Evidence from Hedge Fund Registration*, 63 J. FIN. 2785, 2789 (2008) (stating that when the SEC tried to change registration rules in 2004, the changes were strongly opposed by private fund managers, "who argued that completing the 35-page form was unnecessarily costly and burdensome"); Carol J. Loomis, *Hard Times Come to the Hedge Funds*, FORTUNE, Jan. 1970, at 100 (arguing that the private fund industry viewed the threat of SEC action as a deterrent to growth, and private fund managers in the 1960s and 1970s disliked the thought of SEC regulation, dreading the "prospect of an SEC move that would prevent them from earning their compensation in the traditional way"); *Hedge Fund Operations: Hearing Before the H. Comm. on Banking & Fin. Servs.*, 105th Cong. 26 (1998) (statement of Alan Greenspan, Chairman, Federal Reserve Board) (repeating Greenspan's support for continued loose regulation of the private fund industry).

5. Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3,308 (Oct. 31, 2011), 76 Fed. Reg. 71,128 (Nov. 16, 2011), *available at* http://www.sec.gov/rules/final/2011/ia-3308.pdf; FORM ADV, *supra* note 3.

Prior studies suggest that the SEC's mandated collection of private fund data in Form PF creates several core challenges for both the private fund industry and the SEC.[6]

The SEC appears to be primarily concerned with the collection and evaluation of the private fund data as well as the clarity and understandability of the SEC's Form PF guidance. The private fund industry has identified other concerns pertaining to its attempts to comply with the data reporting obligations, including: (1) understanding the intended purpose of Form PF; (2) understanding the definitions and instructions in Form PF; (3) the ease of interpreting Form PF questions; (4) investment advisers' lack of resources (staff, time, vendor costs) for preparing Form PF; (5) the lack of, and the nature and extent of, SEC guidance and support; (6) the time spent on filling out and filing Form PF; (7) adequacy of existing internal reporting, monitoring, and tracking systems for capturing the information required in Form PF; and (8) ability to provide disclosures regarding counterparty credit exposure and collateral. Anecdotal evidence suggests that the SEC may be working with contradictory, misleading, inaccurate, and incomplete data. Investment advisers claim that the SEC is using industry terms incorrectly and inconsistently. Others allege that many of the disclosure obligations in Form PF do not pertain to their business or cannot be fulfilled other than by guessing or by providing rough estimates. If these allegations are true, the SEC's ability to evaluate and assess the data could be compromised. The use of incomplete and misleading data could lead to the development of questionable policies and regulations as applied to the private fund industry.

This Article presents the results of a survey of private fund advisers after the SEC's adoption of Form PF.[7] The survey was disseminated to 3,669 private fund advisers who registered with the SEC before the applicable deadline. The author's research team contacted the entire population via a fax questionnaire and e-mail survey. After multiple attempts to reach the entire population in over five months, respondents ([n=52]) (0.014%) answered questions in several categories designed to identify the effectiveness of Form PF. The categories included: (1) definitions and instructions in Form PF; (2) the need to interpret Form PF questions; (3) priority of problems with Form PF; (4) advisers' understanding of intended purpose of Form PF; (5) use of a service provider

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6. Wulf A. Kaal, *Hedge Fund Manager Registration Under the Dodd-Frank Act*, 50 SAN DIEGO L. REV. 243, 315–16 (2013) [hereinafter Kaal, *Hedge Fund Manager Registration*]; Wulf A. Kaal, *Hedge Funds' Systemic Risk Disclosures in Bankruptcy*, 22 AM. BANKR. INST. L. REV. 195 (2014) [hereinafter Kaal, *Hedge Funds' Systemic Risk Disclosures*]; Wulf A. Kaal, *Hedge Fund Regulation via Basel III*, 44 VAND. J. TRANSNAT'L L. 389 (2011) [hereinafter Kaal, *Basel III*]; Wulf A. Kaal, *Hedge Fund Valuation: Retailization, Regulation, and Investor Suitability*, 28 ANN. REV. BANKING & FIN. L. 581 (2009) [hereinafter Kaal, *Hedge Fund Valuation*].

7. This article predominantly considers SEC-registered investment managers to private funds and private equity advisers but less so venture capital pools.

to complete Form PF; (6) resources (staff, time, cost) allocated for filing Form PF; (7) SEC guidance and support; (8) time spent on filing out and filing Form PF; (9) adequacy of existing internal reporting, monitoring, and tracking systems for capturing the information required on Form PF; (10) disclosures regarding counterparty credit exposure and collateral difficulties in identifying counterparties; (11) investors' requests for copies of an adviser's Form PF filings; and (12) advisers substituting portions of required CFTC forms with Form PF disclosures.

The survey identifies the core issues pertaining to private fund data collection in Form PF and outlines possible solutions. The author tested all survey questions in several rounds with representatives from the private fund industry. The SEC also provided feedback on draft survey questions. Cross-comparison of the feedback from both the SEC and the private fund industry indicates that the survey questions are highly relevant and succinctly address the main concerns with Form PF. Cross-comparison of SEC and industry feedback also shows that both groups independently identified the same pertinent issues with Form PF. In addition, both groups suggested improvements for various survey questions. Accordingly, the survey addresses concerns of both the private fund industry and the SEC.

While the majority of private fund advisers identified the ambiguity of Form PF and the inefficiency of data reporting requirements as the most pressing issues pertaining to Form PF, the majority of advisers also agreed with the definitions and instructions that the SEC uses. Advisers generally appreciated SEC guidance and flexibility, assessing the quality of guidance as sufficient or good. The majority of respondents reported that they incurred additional expenditures of less than $10,000 to prepare and file their initial Form PF submission, and that the cost of subsequent annual filings was about half the initial cost. Larger investment advisers to private funds, however, incurred substantially larger compliance cost in fulfilling the quarterly filing requirements under Form PF.

Part I of this Article introduces the history of and summarizes the debate over the creation of private fund disclosure requirements. Part II describes the legal requirements and private fund managers' data collection obligation under the Dodd-Frank Act and SEC Form PF. The author provides anecdotal evidence from prior surveys suggesting that the data that private funds report on Form PF creates several challenges for the SEC and the private fund industry. Part III outlines the methodological approach of the survey, introducing the survey instrument, data sources, sampling, coding, and coding constraints. The author also evaluates possible selection bias issues. Part IV discusses the results of the survey with descriptive statistics. Part V presents the substantive results of the study in summary graphs. Part VI summarizes the key findings and examines implications for private fund policy, concluding that the data reporting requirements for private funds and the corresponding SEC forms can be further improved.

II. PRIVATE FUND TRANSPARENCY

Title IV of the Dodd-Frank Act and the SEC's rules implementing the requirements under Title IV[8] increased the level of regulatory oversight of private funds to unprecedented levels[9] by requiring registered investment advisers to file periodic reports[10] via SEC Form PF.[11] Prior to the enactment of Title IV, the private fund industry was largely exempt from regulatory oversight, provided that private fund advisers complied with safe harbor requirements under federal securities laws.[12] All registered investment advisers holding more than $150 million in assets under management (AUM) attributable to private funds at the end of their most recently completed fiscal year are required to file Form PF with the SEC.[13]

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8. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 401–416, 124 Stat. 1376, 1570–79 (2010) (incorporating the PFIARA in Title IV).

9. *Id. Accord Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and Amending Directives 2004/39/EC and 2009/…/EC*, COM (2009) 207 final (Apr. 30, 2009); *Investment Funds*, EUR. COMM'N, http://ec.europa.eu/internal_market/investment/alternative_investments_en.htm (last updated Mar. 24, 2014) (providing additional materials on AIFM).

10. Dodd-Frank Wall Street Reform and Consumer Protection Act § 404(b); 17 C.F.R. § 275.204(b)-1 (2013); Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71,128, 71,140–42 (Nov. 16, 2011) (to be codified at 17 C.F.R. pts. 275 & 279), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-28549.pdf.

11. FORM PF, *supra* note 3, at 2. *See also* 17 C.F.R. § 275.204(b)-1 (requiring private fund advisers to file Form PF with the SEC periodically); Reporting by Investment Advisers, 76 Fed. Reg. at 71,239; 17 C.F.R. § 4.27 (2013) (requiring private fund advisers to file Form PF if they are registered as commodity pool operators or commodity trading advisers).

12. SEC proposed amending Regulation D, noting that inflation might have eroded the significance of a $1 million net worth as a proxy for investor sophistication. *See* Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles, 72 Fed. Reg. 400, 404–05 (Jan. 4, 2007) (to be codified at 17 C.F.R. pt. 275) (proposing two steps for determining whether an investor would be accredited: (1) whether the individual meets the test in rule 501(a) or rule 215 and (2) whether the individual "owns at least $2.5 million in investments"). *But see* Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles, 72 Fed. Reg. 44,756, 44,756 n.2 (Aug. 9, 2007) (to be codified at 17 C.F.R. pt. 275) (deferring consideration of proposed change to definition of "accredited investor"). Before the enactment of the Dodd-Frank Act in 2010, private funds and their investment advisers were able to remain exempt from the securities laws as long as they limited the resale of their securities, limited the sale of their securities to a limited number of accredited investors, and did not advertise or otherwise hold themselves out to the public. *See* Kaal, *Basel III*, *supra* note 6, at 412–16 (summarizing private fund regulation requirements before the Dodd-Frank Act).

13. 17 C.F.R. § 275.204(b)-1; Reporting by Investment Advisers, 76 Fed. Reg. at 71,132–33 (listing three criteria for filing Form PF that represent an initial threshold for the minimal Form PF requirements and stating that most private fund advisers who meet these three criteria will only be required to file Section 1 of Form PF while "large private fund advisers" will be required to file the remaining sections of Form PF); *id.* at 71,133 (explaining that there are three types of "large private fund advisers:" (1) "[a]ny adviser having at least $1.5 billion in [Regulatory Assets Under Management (RAUM)] attributable to private funds as of the end of any month in the prior fiscal quarter;" (2) "[a]ny adviser managing a liquidity fund having at least $1 billion in combined [RAUM] attributable to liquidity funds and registered money market funds as of the end of any month in the prior fiscal quarter;" and (3) "[a]ny adviser having at least $2 billion in [RAUM]

Form PF requires investment managers to disclose information about themselves, about the funds they manage, and about their investors.[14] Important Form PF disclosure requirements include a breakdown of the net asset value (NAV) that the investment manager manages,[15] including the percentage of the reporting fund's NAV that was managed using high-frequency trading strategies.[16] Form PF requires investment advisers to disclose the five trading counterparties to which the reporting fund has the greatest net counterparty credit exposure,[17] including the dollar amount owed to each creditor.[18] Other important Form PF disclosures include the requirement that the manager identify changes in market factors and their effect on the long and short components of the portfolio as a percentage of NAV,[19] any information about the counterparties' collateral and other credit support posted to the respective reporting funds,[20] as well as trading and clearing mechanisms subject to liquidity constraints and the duration of those constraints.[21]

Form PF is also intended to improve the SEC's understanding of reporting funds' liquidity, exposure, and assets. Accordingly, Form PF requires investment advisers to disclose the time increments it would take to liquidate a certain percentage of the reporting funds' portfolio,[22] the dollar value of long and short positions in each asset class,[23] the value of turnover by asset class,[24] the types of creditors (including the market value of borrowings),[25] and the aggregate value of all derivative positions for each advised fund.[26] Finally, Form PF requires disclosure of the reporting fund's restrictions (if any) on investor withdrawals and redemptions[27] and other information pertaining to investor liquidity, such as the percentage of NAV.[28]

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attributable to private equity funds as of the last day of the adviser's most recently completed fiscal year.").

14. *See* 17 C.F.R. § 279.9 (2013) (establishing filing requirements for Form PF); FORM PF, *supra* note 3, § 1a–b.

15. FORM PF, *supra* note 3, § 1a, Item B.3 (including the following private fund categories: (a) hedge funds, (b) liquidity funds, (c) private equity funds, (d) real estate funds, (e) securitized asset funds, (f) venture capital funds, (g) other private funds, (h) funds and accounts other than private funds).

16. *Id.* § 1c, Item B.21.

17. *Id.* § 1c, Items B.22–23.

18. *Id.* § 2b, Item D.47.

19. *Id.* § 2b, Item C.42.

20. *Id.* § 2b, Item B.36.

21. *Id.* § 1c, Item B.24.

22. *Id.* § 2b, Item B.32.

23. *Id.* § 2a, Item B.26; *id.* § 2b, Item B.30 (pertaining to investment advisers that advise more than one private fund).

24. *Id.* § 2a, Item B.27.

25. *Id.* § 2d, Item D.43.

26. *Id.* § 2b, Item D.44.

27. *Id.* § 2b, Item E.49.

28. *Id.* § 2b, Item E.50.

In light of the highly sensitive nature of these required disclosures and the complexity of the reporting requirements, Form PF created substantial challenges for the private fund industry. For instance, Form PF requires disclosure of counterparty credit exposure, which is sensitive information that often cannot be readily determined by the individual fund managers. While prior studies have acknowledged that the SEC's mandated collection of private fund data via Form PF created several core challenges for the private fund industry, these studies do not sufficiently clarify the impact of Form PF disclosure requirements on managers.[29] Anecdotal evidence suggests that the SEC may be working with contradictory, misleading, inaccurate, and incomplete data in Form PF, which impacts the SEC's ability to evaluate and assess the data. The use of incomplete and misleading data could lead to questionable policy making and regulatory decisions for the private fund industry.

III. METHODOLOGY

The author analyzed a sampling of individual investment advisers from a population of investment advisers registered in the United States and made statistical inferences about the population using the sample. The author collected the data from electronic surveys and survey questionnaires via email and fax, respectively.[30] No respondent received a financial incentive to participate in the survey. The only incentive for private fund advisers' participation was the author's promise to share the findings of the survey.

To ensure the pertinence and accuracy of the survey instrument, the author tested and retested the survey instrument in over twenty test runs with industry experts, SEC representatives, and private fund managers.[31] After each test phase, the author integrated substantial substantive feedback from the SEC representatives, academics, and registered private fund advisers. Throughout the test phase, the author trained a team of research assistants to engage respondents and code responses. The author double-checked coding for accuracy and internal consistency.

A. DATA SOURCES AND CODING

To provide quantifiable support for specific issues with Form PF that allows further empirical investigation, the author surveyed private fund advisers in the United States who are subject to Form PF filing

29. Kaal, *Hedge Fund Manager Registration*, *supra* note 6; Kaal, *Hedge Funds' Systemic Risk Disclosures*, *supra* note 6; Kaal, *Basel III*, *supra* note 6; Kaal, *Hedge Fund Valuation*, *supra* note 6.

30. Mode effects are insignificant because each data collection method was based on the same questionnaire and the author and his team of research assistants asked respondents the same sequence of questions.

31. *See infra* app. Survey Instrument.

requirements. The SEC's Investment Adviser Registration Depository (IARD) contains data pertaining to registered investment advisers who are subject to the Form PF filing requirement.[32] To identify the relevant population, the author downloaded a dataset from the IARD website comprising investment adviser firms registered with the SEC, and applied a predefined set of filters.

First, the author filtered the data set by Form ADV item 7.B, "Are you an adviser to any *private fund*?" That filter decreased the dataset to 4,045 "Yes" responses and eleven nonresponses for a total of 4,056 firms. Thereafter, the author organized the data by "Main Office" location response, sorting by country. While the data set was arranged in order of "Main Office Country," the author also ascertained that the main office was in the United States by filtering main office phone and main office fax numbers, respectively, and removing the investment adviser firms with non-U.S. phone and fax numbers, as well as any firms with phone or fax numbers containing more than ten digits. Through process of elimination, the author identified 3,728 advisers who were located in the United States and had responded affirmatively to the SEC as advising private funds. Subsequently, the author filtered for firms that completed the latest version (October 2012) of Form ADV, identifying 3,669 firms. Thus, the filtered and final dataset of 3,669 firms includes investment adviser firms that: 1) advise private funds, 2) have U.S. contact information, and 3) completed the October 2012 version of Form ADV.

The author used several different coding methodologies, such as close-ended survey questions to quantify items. Close-ended questions were dichotomous and continuous, and the available response options for close-ended questions were mutually exclusive and exhaustive. For those questions that allowed a "Yes" and "No" response, the author used a binary code of "1" for "Yes" and "0" for "No." The author also used open-ended survey questions to assess several technically demanding Form PF issues. The author coded responses to open-ended survey questions into response clusters by assigning identification numbers to the respective response, thus combining binary and clustered responses in one coding sheet. The combined coding sheet facilitated a cross comparison of survey responses from separate categories, as well as with other Form PF and Form ADV data. The author and his research assistants approached all respondents using the same methodology. All respondents volunteered their participation, and the author had no control over the sample selection.

32. *Historical Archive of Investment Adviser Reports*, SEC, http://www.sec.gov/foia/iareports/inva-archive.htm (last modified Mar. 2, 2015). *See also Division of Investment Management: Electronic Filing for Investment Advisers on IARD*, SEC, http://www.sec.gov/divisions/investment/iard.shtml (last modified Aug. 9, 2013) (providing information on the IARD and how to register or obtain information on investment advisers).

B. SAMPLING CONSTRAINTS

Empirical researchers analyzing private funds face many limitations when conducting surveys.[33] Because of decades-old regulations that allowed the industry to remain exempt from registration and transparency requirements, and the private fund industry's particular interest in confidentiality and privacy, high quality private fund data is rather limited. One promising way to overcome this limitation involves the collection of the required data from private funds. However, private fund advisers' privacy, performance, and idiosyncratic concerns also limit the researcher's ability to collect data for an effective sample size.[34] The SEC's efforts to keep private both the e-mail contact information of filing entities and their representatives further complicated the collection of private funds data.[35]

Accordingly, data collection for this study proved difficult. The overwhelming majority of the population did not participate in the survey. In addition to the aforementioned privacy and performance-related limitations, the data collection for this study required private fund adviser respondents to recall technical details and their individual filing history on Form PF. Only in the rarest of circumstances did respondents revisit their filing history to respond to the survey questions that required such additional expertise. Several respondents voiced concern and/or uncertainty about possible SEC enforcement measures pertaining to their Form PF filings, which also may have affected the response rate of this study.

C. SELECTION BIAS

Selection bias in survey studies is the subject of a long-lasting and ongoing debate amongst commentators in the field.[36] Generally speaking, sample selection bias exists if, rather than using randomly selected cases to explain phenomena, researchers select cases because they display and share

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33. Kaal, *Hedge Fund Manager Registration*, *supra* note 6, at 278–80.

34. *Id.* at 278 ("Private fund managers have a tendency to disfavor any form of public exposure for a variety of economic, performance, privacy-related, and idiosyncratic reasons. Given the particular concern in the private fund industry regarding confidentiality and privacy, obtaining a substantial effective sample size for this study proved difficult.").

35. *Id.* at 279 ("The author and his team of researchers encountered a number of problems during the process of collecting survey responses. The identity and contact information for the chief compliance officer and chief legal officer of the firms were not publicly available. Although Form ADV requires advisers to disclose the contact information for their chief compliance officer, the dataset provided by the SEC did not list this information and did not include e-mail addresses. The filed copy of Form ADV on the IARD website also did not contain chief compliance officer information. The dataset obtained from the SEC did not include the e-mail addresses, and neither did the individual Form ADVs on the IARD website.").

36. *See* Thomas W. Hall et al., *The Effectiveness of Increasing Sample Size to Mitigate the Influence of Population Characteristics in Haphazard Sampling*, 20 AUDITING: J. PRAC. & THEORY 169, 169 (2001).

the very trait the researchers hope to explain.[37] Factors resulting in selection bias include the non-random selection of cases[38] and the drawing of inferences that are not statistically representative of the population.[39]

Despite the drawbacks of selection biases, some scholars argue that sample selection bias is merely a generic problem in social science research designs involving a non-random sample of a population of interest.[40] Selection bias is considered a generic problem because human behavior determines selection,[41] and the assumptions about how selection occurs are important for selection bias models.[42] In fact, several social science research traditions rely on empirical designs that are subject to sample selection biases.[43] There is some evidence that significant findings with substantial

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37. *See* Barbara Geddes, *How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics*, 2 POL. ANALYSIS 131, 140 (1990).

38. *See* PETER JONES, STATISTICAL SAMPLING AND RISK ANALYSIS IN AUDITING 11–12 (1999); DONALD A. LESLIE ET AL., DOLLAR-UNIT SAMPLING: A PRACTICAL GUIDE FOR AUDITORS 36–37 (1980); ARTHUR J. WILBURN, PRACTICAL STATISTICAL SAMPLING FOR AUDITORS 4–6 (1984); Herbert Arkin, *Statistical Sampling in Auditing*, 27 N.Y. CERTIFIED PUB. ACCT. 454, 457 (1957); W. Edwards Deming, *On the Contributions of Standards of Sampling to Legal Evidence and Accounting*, 19 CURRENT BUS. STUD. 14, 18–21 (1954); Thomas W. Hall et al., *The Use of and Selection Biases Associated with Nonstatistical Sampling in Auditing*, 12 BEHAV. RES. ACCT. 231, 232–33 (2000); Clive S. Lennox et al., *Selection Models in Accounting Research*, 87 ACCT. REV. 589, 611 (2012); Jennifer Wu Tucker, *Selection Bias and Econometric Remedies in Accounting and Finance Research*, 29 J. ACCT. LITERATURE 31, 32 (2010); Neal B. Hitzig, *Statistical Sampling Revisited*, CPA J., May 2004, at 30, *available at* http://www.nysscpa.org/cpajournal/2004/504/essentials/p30.htm; Thomas Hall et al., *Haphazard Selection: Is It Time to Change Audit Standards?* 1, 3–4 (Working Paper, 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687443.

39. Richard A. Berk, *An Introduction to Sample Selection Bias in Sociological Data*, 48 AM. SOC. REV. 386, 391 (1983); David Collier, *Translating Quantitative Methods for Qualitative Researchers: The Case of Selection Bias*, 89 AM. POL. SCI. REV. 461, 462 (1995).

40. *See* Christopher Winship & Robert D. Mare, *Models for Sample Selection Bias*, 18 ANN. REV. SOC. 327, 328 (1992).

41. *See generally* Reuben Gronau, *Wage Comparisons—A Selectivity Bias*, 82 J. POL. ECON. 1119 (1974); James J. Heckman & Guilherme Sedlacek, *Heterogeneity, Aggregation, and Market Wage Functions: An Empirical Model of Self-Selection in the Labor Market*, 93 J. POL. ECON. 1077 (1985); James J. Heckman & Guilherme L. Sedlacek, *Self-Selection and the Distribution of Hourly Wages*, 8 J. LAB. ECON. S329 (1990); James J. Heckman & Bo Honoré, *The Empirical Content of the Roy Model*, 58 ECONOMETRICA 1121 (1990); H. Gregg Lewis, *Comments on Selectivity Biases in Wage Comparisons*, 82 J. POL. ECON. 1145 (1974); A.D. Roy, *Some Thoughts on the Distribution of Earnings*, 3 OXFORD ECON. PAPERS 135 (1951); Robert J. Willis & Sherwin Rosen, *Education and Self-Selection*, 87 J. POL. ECON. S7 (1979).

42. *See generally* DRAWING INFERENCES FROM SELF-SELECTED SAMPLES (Howard Wainer ed., 1986); NONPARAMETRIC AND SEMIPARAMETRIC METHODS IN ECONOMETRICS AND STATISTICS: PROCEEDINGS OF THE FIFTH INTERNATIONAL SYMPOSIUM IN ECONOMIC THEORY AND ECONOMETRICS (William A. Barnett et al. eds., 1991); Arthur S. Goldberger, *Abnormal Selection Bias*, *in* STUDIES IN ECONOMETRICS, TIME SERIES, AND MULTIVARIATE STATISTICS 67 (Samuel Karlin et al. eds., 1983); Lung-Fei Lee, *Some Approaches to the Correction of Selectivity Bias*, 49 REV. ECON. STUD. 355 (1982); Abbas Arabmazar & Peter Schmidt, Note, *An Investigation of the Robustness of the Tobit Estimators to Non-Normality*, 50 ECONOMETRICA 1055, 1055 (1982).

43. *See* RICHARD L. RATLIFF ET AL., INTERNAL AUDITING: PRINCIPLES AND TECHNIQUES 628 (2d ed. 1996).

policy implications can be ignored if researchers rely exclusively on observational schemes that are free from selection bias.[44] Several studies used simulation techniques to review the effectiveness of techniques used to prevent selection bias. These studies suggest that under ordinary circumstances, many of the techniques used to prevent selection bias problems skew results, have mixed success rates, and can actually worsen rather than improve estimates.[45] Increasing the sample size neither necessarily compensates for the potential selection bias of non-statistical techniques, nor guarantees the representativeness of the sample.[46]

For purposes of this study, the author identified the population of private fund advisers who were subject to the disclosure requirements of the Dodd-Frank Act using the SEC's IARD database.[47] To ensure a representative sample, the author chose respondents who were private fund advisers and registered with the SEC as identified on the IARD database.

The author did not select the survey sample participants and did not use probabilistic randomizing aids for purposes of the sample selection. It would not have been feasible to further randomize the sample by including respondents from outside of the private fund industry or respondents other than private fund advisers because those non-adviser respondents would not have been exposed to the new disclosure requirements. Each member of the identified population of private fund advisers had a known, nonzero chance of being selected as part of the sample. All respondents were approached using the same methodology and were volunteer participants. While the author recognizes that obtaining information through voluntary responses can create an inherent bias because people with a special interest are more likely to respond, no indicia exist that respondents who did respond to the survey were different from individuals who did not respond. The dispersion of responses suggests that respondents did not have a special interest in responding. Common characteristics of respondents include experience with private fund disclosure requirements in Form PF and a willingness to share their experiences.

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44. *Id.*

45. *See* Ross M. Stolzenberg & Daniel A. Relles, *Tools for Intuition About Sample Selection Bias and Its Correction*, 62 AM. SOC. REV. 494, 494 (1997).

46. *See* DAN M. GUY ET AL., PRACTITIONER'S GUIDE TO AUDIT SAMPLING 160 (1998).

47. *Division of Investment Management: Electronic Filing for Investment Advisers on IARD*, *supra* note 32.

IV. DESCRIPTIVE STATISTICS

A. INTERNAL CONSISTENCY

To ensure the accuracy of the results and internal consistency, the author integrated several survey questions to ascertain the expertise of respondents as well as questions that could be internally verified by comparison with other survey questions that asked the same question in a different context.

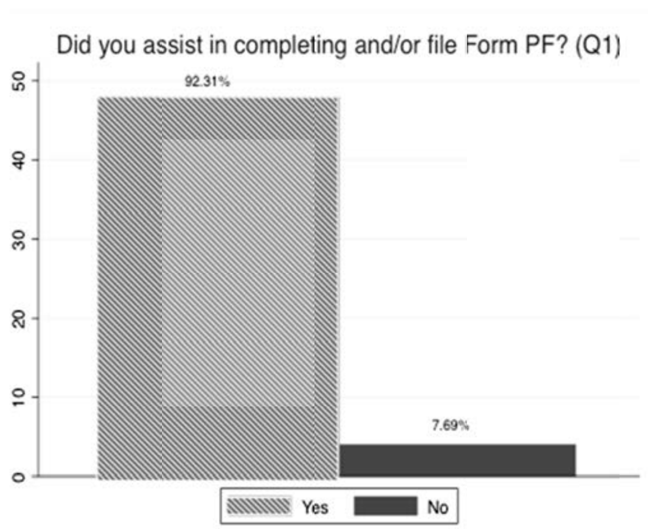


Figure 1: Respondents' Familiarity with Form PF.

Figure 1 shows the percentage value of respondents who answered the question concerning whether they assisted in preparing and/or filing Form PF. The overwhelming majority of respondents (92.31%) were involved with the preparation or filing of Form PF. Because the identities of respondents were not disclosed, the author was not able to remove responses from respondents who were not directly involved in completing and/or filing Form PF. However, responses from people who were not directly involved in preparing, completing, or filing Form PF, but were otherwise involved with Form PF (7.69%; e.g., respondents who were involved with policy decisions, lobbying efforts etc.), can also yield valuable insights into the inner-workings of Form PF, the interpretation of Form PF questions, and the preparation of the document.

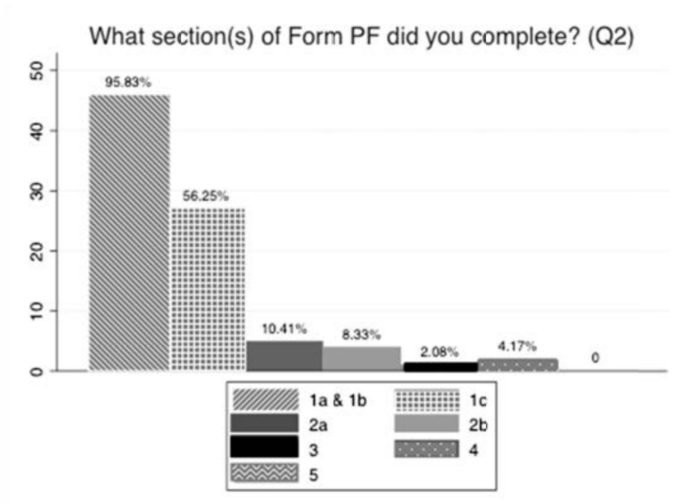


Figure 2: Sections of Form PF Completed.

Figure 2 shows the percentage of respondents in the sample who completed various sections of Form PF. Form PF requires all private fund advisers to complete Section 1a (types of private funds advised)[48] and 1b (information regarding the private funds advised).[49] Section 1c, on the other hand, requests information regarding the private funds that an investment adviser manages.[50] Sections 2a and 2b pertain to large private fund advisers;[51] Section 3 relates to the liquidity of fund advisers;[52] and Section 4 deals with large private equity funds.[53]

In this survey, out of a total of fifty-two respondents, forty-eight responded to survey question 2. A majority of respondents (46 of the 48) indicated that they completed Sections 1a and 1b (95.83%). More than half of the respondents (56.25%) also completed Section 1c, suggesting that a majority of respondents also advise private funds. Only a minority of respondents completed Sections 2a (10.41%) and 2b (8.33%) of Form PF, pertaining to large private fund advisers (defined as having "at least $1.5 billion in private fund assets under management as of the last day of any month in the fiscal quarter immediately preceding [the] most recently completed fiscal quarter."). An even smaller percentage of respondents completed Section 3 (2.08%) and Section 4 (4.17%), which pertains to large private equity fund advisers (defined as having "$2 billion in private equity

48. FORM PF, *supra* note 3, § 1a.
49. *Id.* § 1b.
50. *Id.* § 1c.
51. *Id.* § 2a–b.
52. *Id.* § 3.
53. *Id.* § 4.

fund assets under management as of the last day of [their] most recently completed fiscal year").

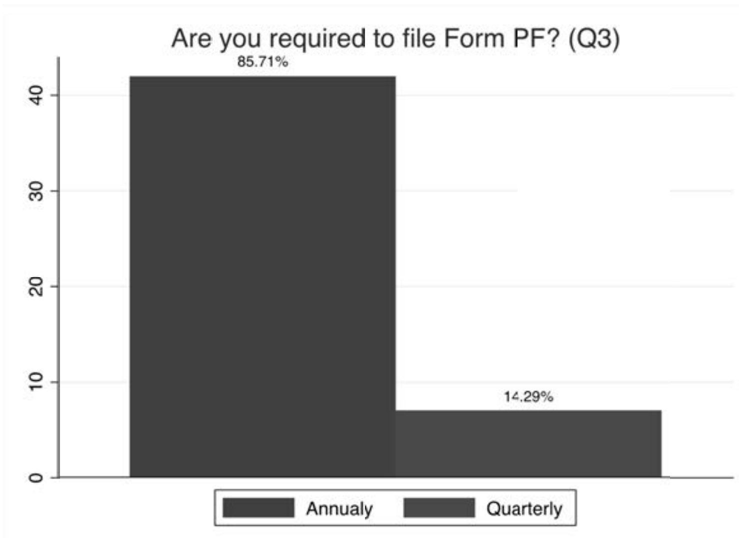


Figure 3: Annual and Quarterly Filing of Respondents.

Figure 3 identifies the percentage of respondents who file Form PF annually (suggesting these filers are smaller private fund advisers), and those who file quarterly (suggesting these respondents are larger private fund advisers who are required to complete Sections 2-5 of Form PF). Only 14.29% of respondents file quarterly and are, thus, self-identified as larger private fund advisers. The overwhelming majority of private fund advisers (85.71%) in the survey file annually and are, thus, self-identified as smaller private fund advisers.

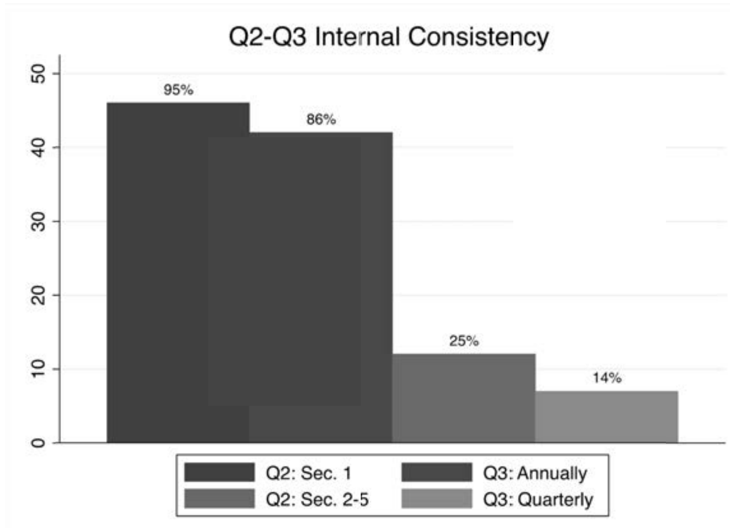


Figure 4: Internal Consistency of Questions 2 and 3.

A 2% difference in the response rate exists between Questions 2 and 3 (see Figure 6). Figure 4 compares the internal consistency of responses to Questions 2 and 3, as the "annual" responses in Question 3 near equal the Section 1a-c responses in Question 2. Similarly, respondents who checked Sections 2-5 in Question 2 are almost equal in number to those respondents checking "quarterly" in Question 3. The legal requirement that precipitates the preparation and filing of Sections 2-5 of Form PF means that respondents are required to file quarterly. Comparing Questions 2 and 3 thus illustrates that the responses to both questions are internally consistent. The internal consistency of these responses suggests that the survey responses have an above average reliability.

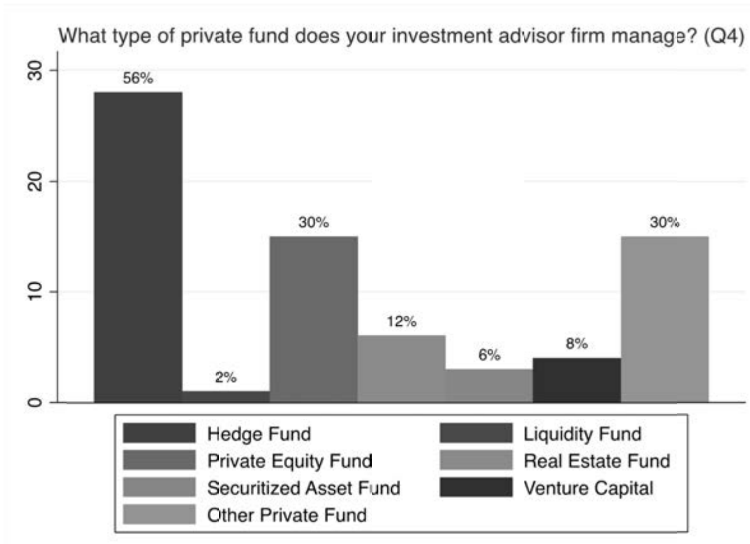


Figure 5. Type of Private Funds in Survey.

Figure 5 shows the type of private funds that the respondents advise. The majority of survey respondents advise private funds (56%), followed by private equity funds (30%). Venture capital funds, securitized asset funds, liquidity funds, and real estate funds are overall less represented in the sample. The 30% of respondents who suggested that neither of the categories applied to their investment adviser firm suggests that these respondents may take issue with the SEC's categorization of their adviser firm, a conclusion that is supported by anecdotal evidence.

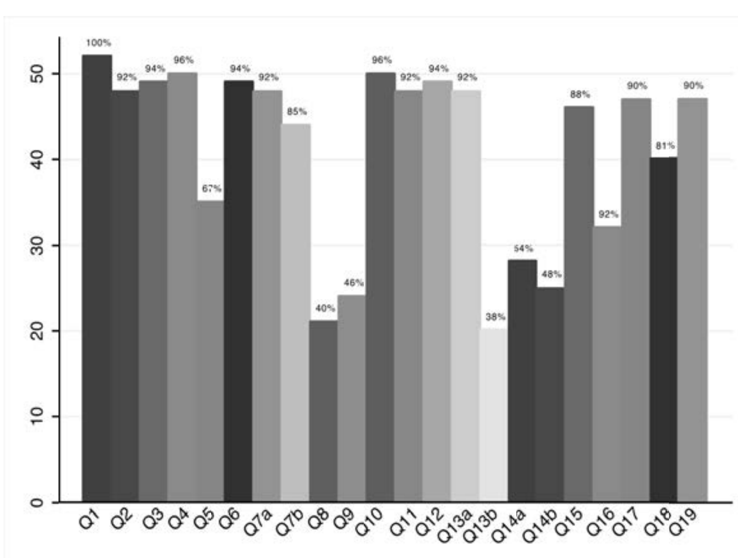


Figure 6. Response Summary for Survey Questions.

Figure 6 shows the number of responses to each question in the survey instrument. Overall, very few participants completed the entire survey. Questions 5, 8, 9, 13b, 14a, and 14b, which were open-ended survey questions that required additional analysis and/or an explanation of the collected Form PF data, show a much lower response rate (e.g., between 38% and 67%). Other factors that could potentially have influenced the lower response rate for these questions include the need to revisit some of the more complex questions in Form PF.

B. REPRESENTATIVENESS OF SAMPLE

To ensure the representativeness of the sample of private fund advisers in this survey, the author created cross-comparisons between the sample and the population of 3,669 investment adviser firms. Cross-comparisons examine differences between the sample and the population. Cross-comparisons were limited by the availability of comparable data. Figures 7 and 8 suggest that, under the examined parameters, the sample of private fund advisers who responded to this survey (n=52) is representative of the population of 3,669 investment adviser firms.[54]

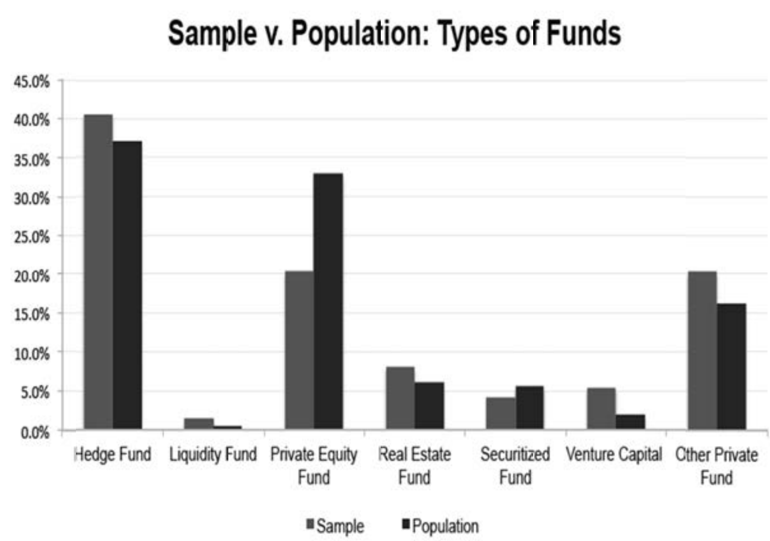


Figure 7: Sample vs. Population: Types of Funds.

Figure 7 shows another important measure to examine the representativeness of the sample. By comparing the types of funds managed in the population (via the SEC's IARD database) with the types of funds managed in the sample, the author can assess the representativeness of the

54. Because of privacy concerns, most respondents declined to disclose their identity to the author. A cross-comparison of the sample with the population of 3,669 private fund advisers was therefore only limitedly possible.

sample. Figure 7 suggests, overall, that the sample appears to be representative of the population in terms of types of funds.

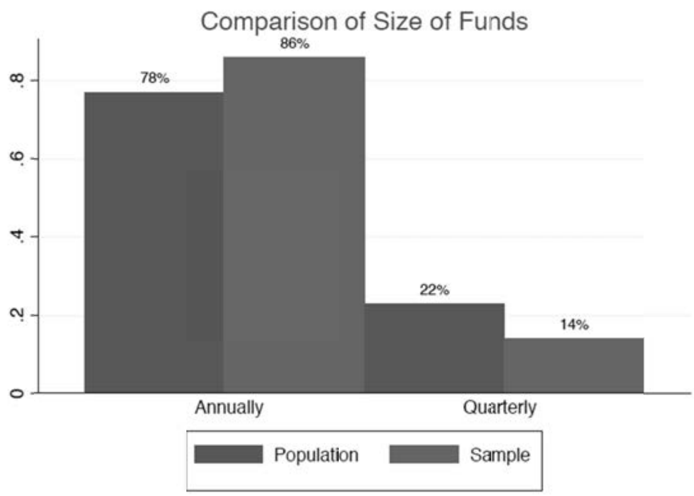


Figure 8: Comparison of Size of Funds.

Figure 8 shows a comparison of the size of funds in the population and in the sample. The sample appears to be generally representative of the population in terms of the size of funds and the corresponding annual or quarterly filing frequency.

V. RESULTS

The results of this study identify and quantify core issues pertaining to the SEC's private fund data collection through Form PF. The survey presents what the private fund industry considers to be the most pressing concerns with Form PF. By identifying, clarifying, quantifying, and outlining possible remedies for open issues with mandatory private fund disclosures in Form PF, the survey also provides essential feedback for the SEC and helps it address outstanding issues with Form PF. The survey results could help create a consensus between the SEC and the private fund industry on required disclosures and thereby increase cooperation between the two parties. The results may also help identify sustainable solutions for the regulation of the private fund industry.

The results can be organized into several categories: (1) the intended purpose of Form PF; (2) understanding of definitions and instructions in Form PF; (3) the need to interpret Form PF questions; (4) investment adviser allocation of resources (staff, time, cost) for filing Form PF; (5) SEC guidance and support; (6) time spent completing and filing Form PF; (7) adequacy of existing reporting, monitoring, and tracking systems for capturing the information required on Form PF; and (8) disclosures regarding counterparty credit exposure and collateral.

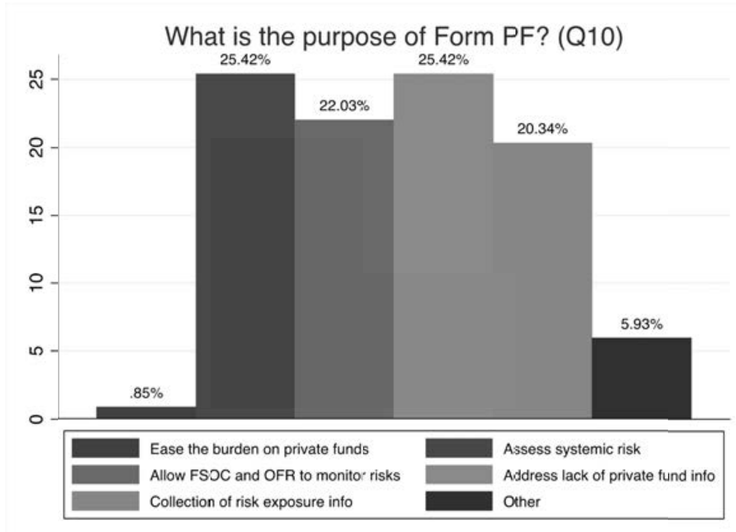


Figure 9: Purpose of Form PF.

Figure 9 illustrates, in cluster categories, advisers' responses to survey Question 10: "What is the purpose of Form PF?" Most advisers assert that the purpose of Form PF is to assess systemic risk and address the lack of information regarding private funds. Other responses highlight the importance of allowing the Financial Security Oversight Council (FSOC) and the Office of Financial Research (OFR) to monitor risk and the need to collect risk exposure information. Three commenters stated the purpose of Form PF is to provide a roadmap for advisor examinations.

A. FORM PF COMPLIANCE COST

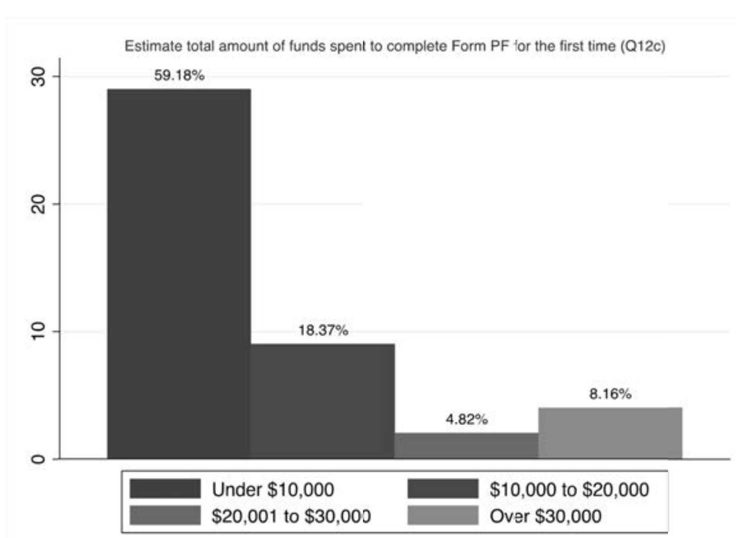


Figure 10: Estimated Amount Spent to Complete Form PF.

Figure 10 shows the estimated total amount of funds in dollars that investment advisers spent to complete Form PF for the first time. The majority of respondents (59.18%) indicated that the total estimated cost of first time Form PF completion was under \$10,000. A minority of respondents suggested their cost of first-time Form PF completion was somewhere between \$10,000 and \$20,000. Some respondents, however, stated that their costs were over \$30,000.

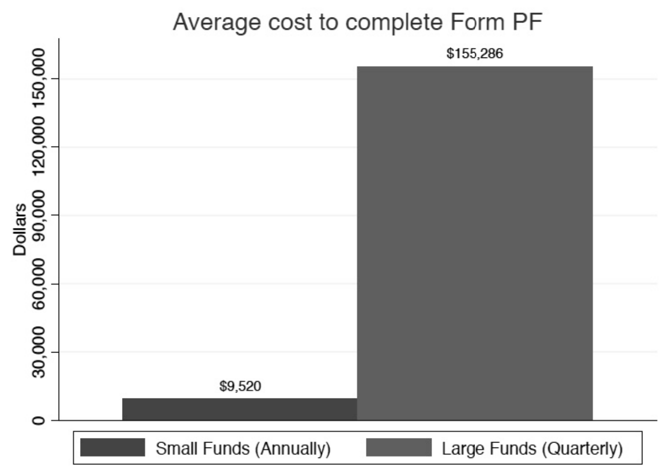


Figure 11: Estimated Amount Spent to Complete Form PF – Small vs. Large Advisers.

Figure 11 shows the estimated total amount of funds in dollars that small and large investment advisers spent to complete Form PF for the first time. Quarterly filing large fund advisers spent on average \$155,286 for the initial filing of Form PF. By contrast, smaller private fund advisers who file annually only spent on average \$9,520 for the first time filing Form PF.

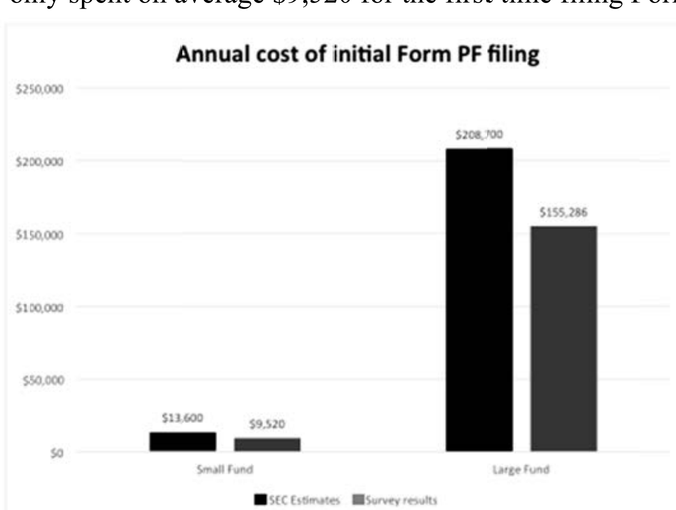


Figure 12: Cross-Comparison of Initial Form PF Filing – Kaal 2014 vs. SEC.

Figure 12 shows a cross-comparison of SEC cost estimates pertaining to the initial Form PF filing[55] and the estimates provided by this study. The cross-comparison suggests that the SEC may be marginally overestimating the cost of Form PF filings for both annually filing smaller private fund advisers and quarterly filing larger private fund advisers. However, the data for the larger fund advisers' cost of filing Form PF is based on a small sample.

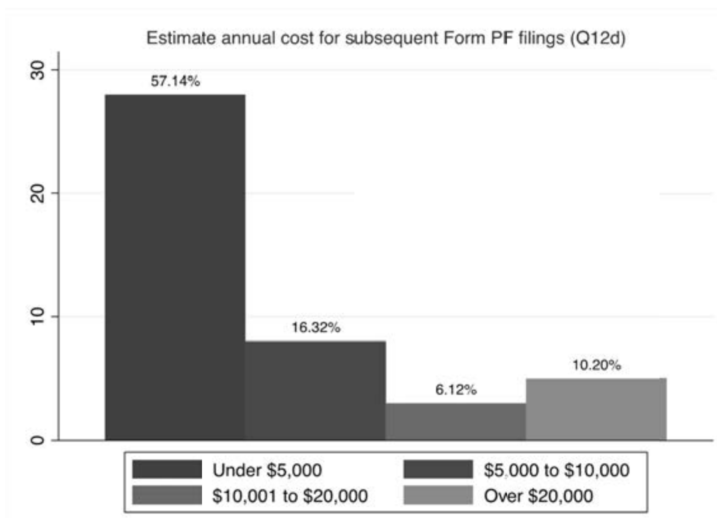


Figure 13: Estimated Annual Cost of Subsequent Form PF Filing.

Figure 13 shows the estimated annual cost of subsequent Form PF filings. The majority of respondents (57.14%) indicated that their cost for annual Form PF filings would be under $5,000. A minority of respondents opined that their cost would be between $5,000 and $10,000. Some respondents, however, indicated that their cost may be between $10,000 and $20,000, and several others maintained it would be over $20,000.

55. Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71,128 (Nov. 16, 2011) (to be codified at 17 C.F.R. pts. 275 & 279), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-28549.pdf.

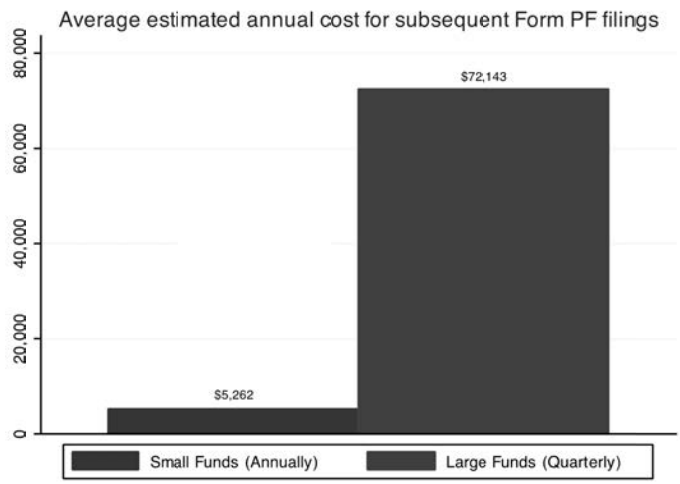
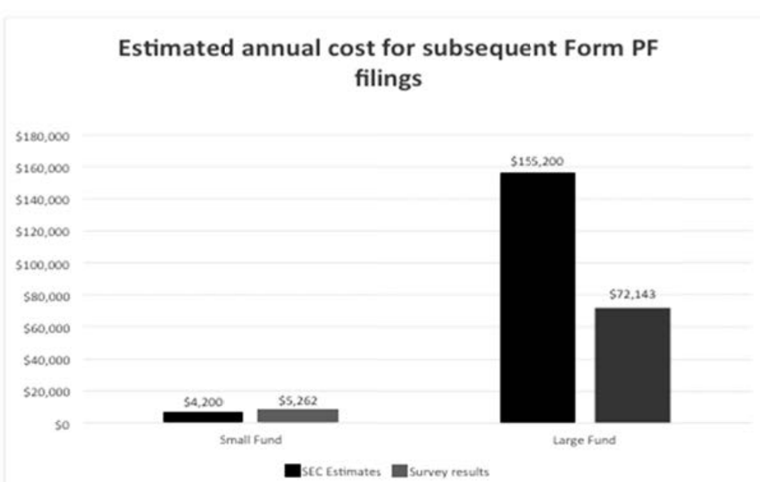


Figure 14: Estimated Annual Cost of Subsequent Form PF Filing – Small vs. Large Adviser.

Figure 14 shows the estimated annual cost of subsequent Form PF filings—broken down by smaller and larger private fund advisers. Quarterly filing large fund advisers on average pay $72,143 for subsequent Form PF filings. Smaller private fund advisers, on the other hand, spent on average $5,262 for subsequent Form PF filings.



Source for SEC estimates in Graphs: Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71128-01 (Nov. 16, 2011)

Figure 15: Cross-Comparison of Subsequent Form PF Filing – Kaal 2014 vs. SEC.

Figure 15 shows a cross-comparison of SEC cost estimates[56] pertaining to the subsequent Form PF filings and the estimates for subsequent Form PF filings as provided by this study. The cross-comparison suggests that the SEC may be marginally underestimating the cost of Form PF filings for smaller private fund advisers who file annually. With regards to quarterly filing larger private fund advisers, however, the SEC appears to be substantially overestimating the cost of subsequent Form PF filings. The cost estimates in this study for subsequent Form PF filings by larger private fund advisers are at about half the cost the SEC estimates. However, the data in this study pertaining to larger fund advisers' cost of filing Form PF is based on a small sample.

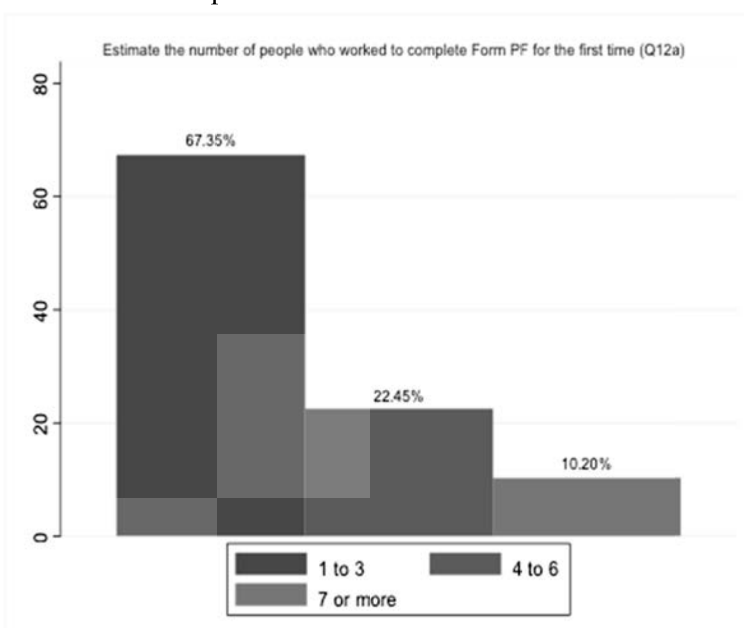


Figure 16: Number of People to Complete Form PF.

Figure 16 shows the number of people that respondents relied upon to complete Form PF. The majority of respondents (67.35%) used one to three individuals to complete Form PF. A minority of respondents (10.20%) relied on seven or more individuals to complete Form PF.

56. *Id.*

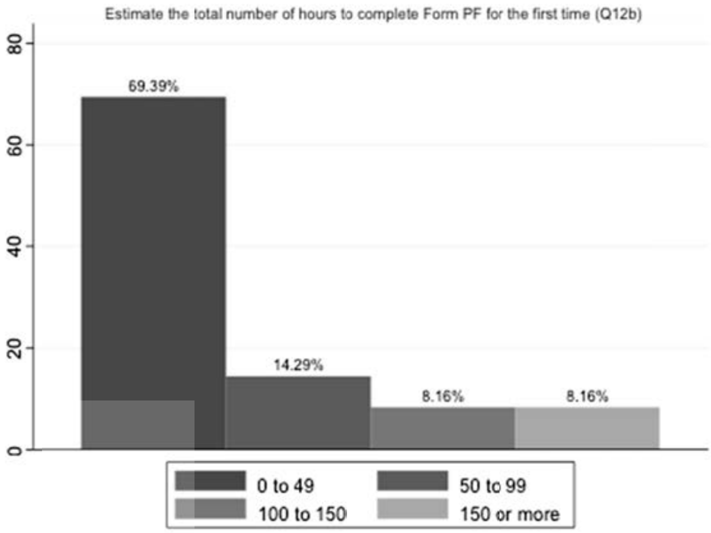


Figure 17: Estimated Hours to Complete Form PF.

Figure 17 shows the estimated total number of hours that were required to complete Form PF. The majority of respondents (69.39%) indicated that it took them between 0 to 49 hours to complete Form PF. A minority of respondents (14.29%) indicated that it took more than 50 hours to complete Form PF. Some respondents (8.16%) stated that completing and filing Form PF required over 150 hours. Figures 14 and 15 show that respondents who saw higher costs associated with completing and filing Form PF were mostly larger private fund advisers. This is consistent with Figures 18 and 19, which show that respondents who saw longer timing requirements for Form PF compliance were also mostly larger private fund advisers.

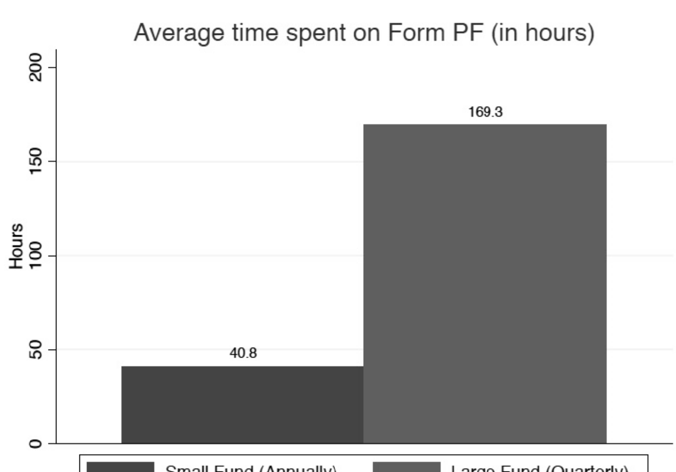


Figure 18: Estimated Hours to Complete Form PF – Small vs. Large Advisers.

Figure 18 shows the estimated total number of hours that were required to complete Form PF, broken down by smaller and larger advisers. Larger fund advisers on average spent more than four times as much time on filling Form PF as was required for smaller private fund advisers.

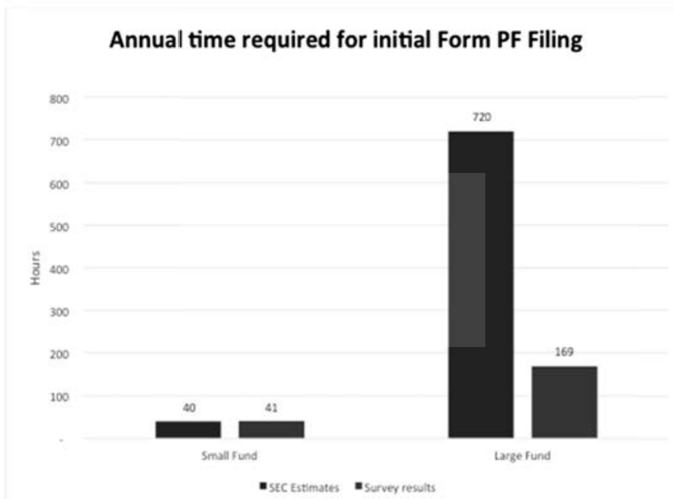


Figure 19: Estimated Hours To Complete Form PF – Kaal 2014 vs. SEC.

Figure 19 shows a cross-comparison of SEC estimates[57] pertaining to the annual time required for the initial Form PF filing. For smaller private fund advisers who file annually, the data in this study suggests that the SEC estimates are correct. However, the relatively small sample of quarterly filing larger private fund advisers in this study suggest that the SEC may be overestimating the time requirements of Form PF filings for larger private fund advisers. The SEC overestimates pertaining to time requirements are consistent with the SEC overestimates of the initial and subsequent filing costs for larger private fund advisers.[58]

57. *Id.*
58. *See supra* figs. 15 & 19.

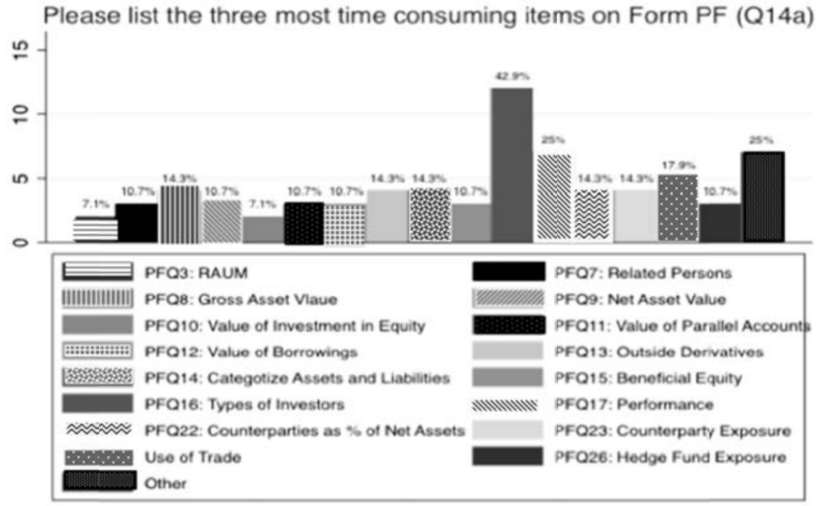


Figure 20: Most Time Consuming Form PF Items.

Figure 20 shows respondents' assessment of the most time-consuming items on Form PF. Among all Form PF questions that were identified as time-consuming, respondents indicated that Form PF Question 16 (types of investors) took the most time to answer, followed by Form PF Question 17 (performance), and Form PF Question 7 (related persons). Other Form PF questions that respondents identified as time consuming included Form PF Questions 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, and 26.

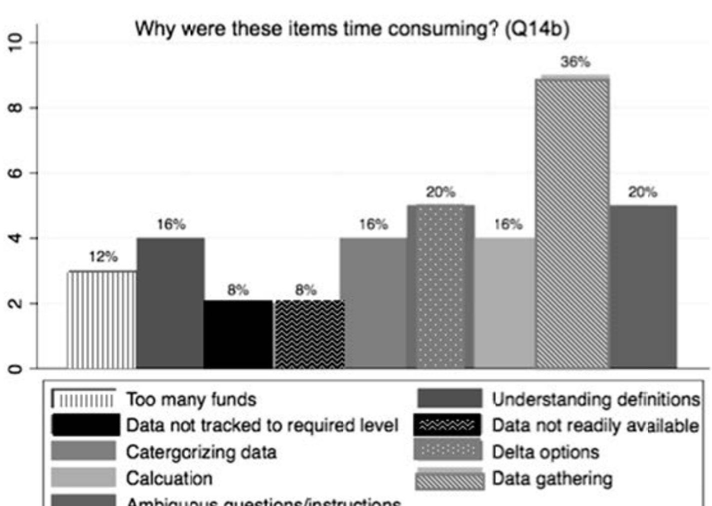


Figure 21: Reasons for Time Consumption.

Figure 21 shows respondents' answers to the open-ended question addressing why certain questions on Form PF were time-consuming. The majority of respondents (36%) identified "Data Gathering" as the task on which they spent the majority of their time, followed by references to "Delta Options" and "Ambiguous questions / unclear instructions." Several responses did not justify a cluster category but are still worth identifying. These un-clustered responses made references to the time spent taking margin costs into account, having to reach out to separately managed account managers, finding agreement on assumptions, additional reviews by internal compliance teams, breaking down of monthly and quarterly performance, factoring in derivatives and shorts to overall exposure, netting of counterparty exposure to calculate Regulatory Assets Under Management (RAUM) in accordance with Generally Accepted Accounting Principles (GAAP), and establishing the parameters for completing Form PF.

B. SHORTCOMINGS AND SEC GUIDANCE

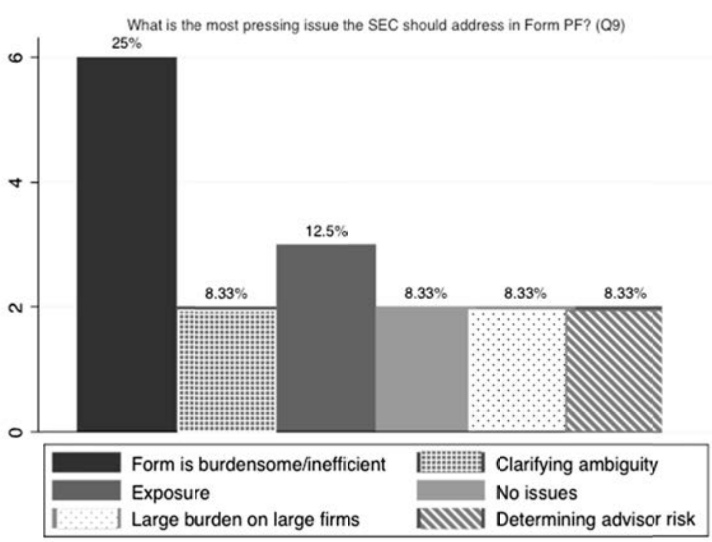


Figure 22: Most Pressing Issue With Form PF.

Figure 22 illustrates respondents' answer to Question 9, "What is the most pressing issue the SEC should address in Form PF?" Respondents identified the burdensome nature and inefficiency of Form PF as their most pressing concern, followed by the exposure that Form PF generates for them. Other issues that respondents raised include the ambiguity of Form PF, the difficulty in determining advisor risk, and the significant burden Form PF imposes on larger investment adviser firms. Interestingly, separate responses that justified a cluster category also suggested that there was no issue with Form PF.

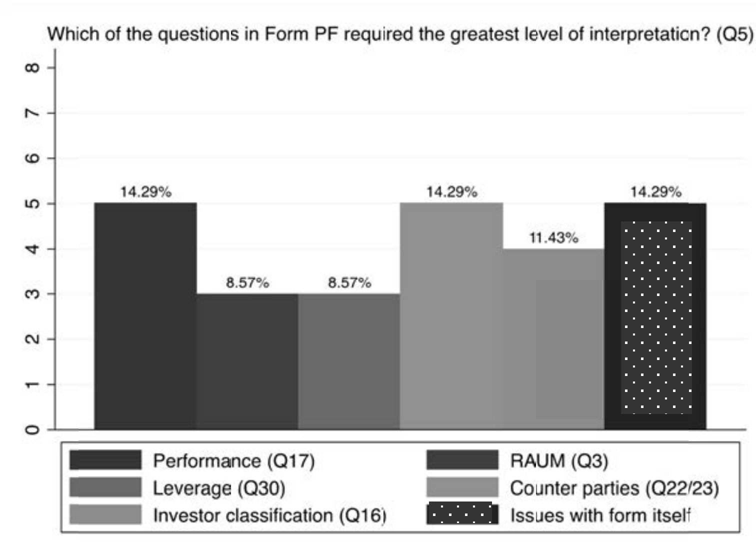


Figure 23: Form PF Interpretation Requirements.

Figure 23 shows the majority of clustered responses pertaining to the level of interpretation required when completing Form PF. Aside from concerns with Form PF itself, the level of interpretation required to answer Form PF precipitated several particular concerns pertaining to performance measures in Form PF Question 17 and counterparties and definitions of counterparties in Form PF Questions 22 and 23.

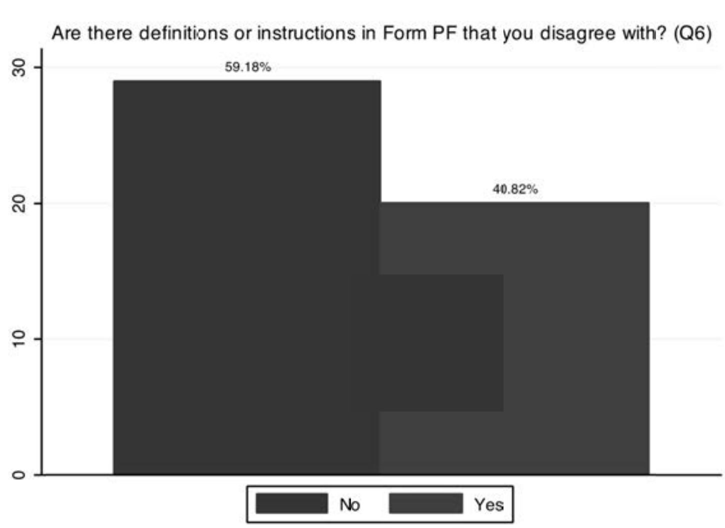


Figure 24: Assessment of Form PF Definitions and Instructions.

Figure 24 shows that a majority of respondents (59.18%) did not disagree with the definitions or instructions in Form PF. However, a significant minority of respondents (40.82%) indicated that they did in fact disagree with definitions or instructions in Form PF.

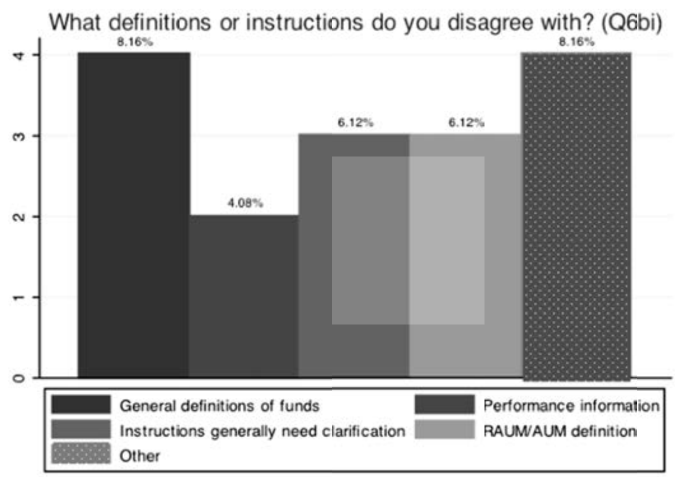


Figure 25: Disagreement with Definitions of Instructions.

Question 6b(i) was directed towards respondents who had previously indicated that they disagreed with Form PF definitions or instructions; it asked them to answer the follow-up question, "What definitions or instructions do you disagree with?" Figure 25 illustrates respondents' answers to the question. A large proportion of respondents (8.16%) indicated that they generally disagreed with the definition of funds in Form PF. Other response clusters included the need to clarify performance information, the fact that instructions generally needed clarification, and the need to improve the definitions for RAUM/AUM for purposes of completing Form PF.[59]

Another follow-up question asked, "Why do you disagree with the definition or instruction?" Several respondents suggested that the definition of leverage is inappropriately constructed and can include funds that don't use leverage or any derivative securities. Pertaining to the definition of RAUM, one response stated "the definition of RAUM does not necessarily mean anything in terms of risk." Other respondents suggested that the definitions or instructions in Form PF do "not reflect real world practice" and can be "very broad and difficult to obtain and track across a portfolio." Respondents advising private equity funds suggested that the SEC's apparent objective was to utilize information from private equity firms in

59. Other responses that did not justify a cluster included: "Form PF Question 56, Not clear that either 0 or a negative number is unacceptable until after you save the form;" "Section 1b, Item B, #8 - Gross asset value of reporting fund;" "Form PF Question 24b - calculation of volume in 2nd set of FAQs;" "Form PF Question 42 - risk metrics;" "Different meanings of "value" for different products - gross vs. delta adjusted."

the same model used for hedge fund and broker dealer audits. Other respondents stated that asking for notional value in trade volumes might not work for most respondents because trade volumes are typically based on quantity of shares and contracts or transaction counts.

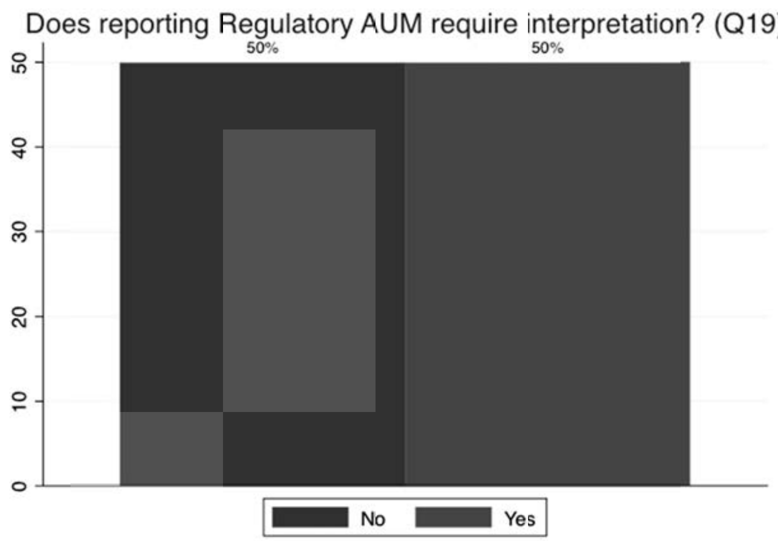


Figure 26: Interpretation for RAUM Reporting.

Figure 26 shows that respondents are equally split on whether RAUM reporting in Form PF[60] requires filers' interpretation. Follow up Survey Question 19b(i) asked, "If [RAUM reporting did require interpretation], why was this the case?" Several respondents suggested that the definition of RAUM and the SEC's interpretation of that term were narrow or unclear. More specifically, several respondents appear to have struggled with the definition of RAUM (especially contrasting RAUM with the different interpretation of AUM that is commonly used), causing some respondents to create their own definition of assets under management to account for the bulk of their advisory practice. Others struggled with the valuation of derivatives, the SEC guidance that requires RAUM to be in line with GAAP, the difference between gross asset value and RAUM and other perceived conflicts between Form ADV instructions and advisers' calculations.

Follow-up Survey Question 19b(ii) asked "If [you had to interpret the meaning of RAUM], how did you interpret the meaning of 'Regulatory AUM?'" Respondents employed different strategies to interpret the meaning of RAUM, including: (1) summarizing assumptions for

60. For purposes of this article, the term "RAUM" is used as in Form PF. *See* FORM PF, *supra* note 3.

consistency with internal and external reporting requirements; (2) applying RAUM online definitions; and (3) relying on advice of external counsel.

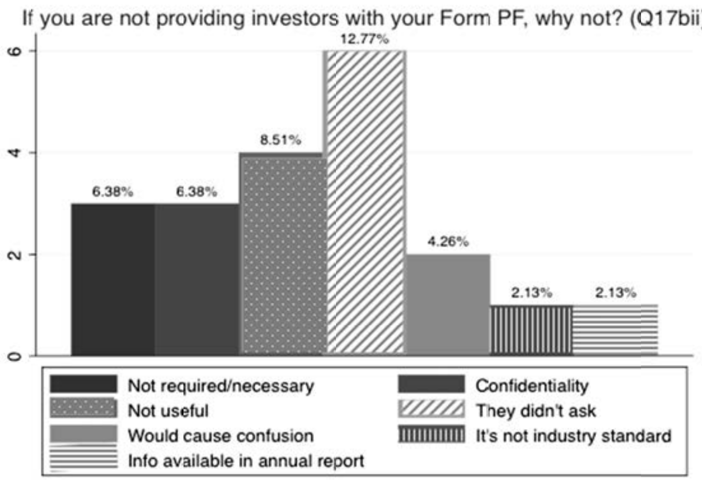


Figure 27: Quality of SEC Guidance on Form PF.

Figure 27 shows the responses to Survey Question 13 "On a scale of 1 – 5, how would you rate the best level of guidance available from the SEC staff to assist you in completing Form PF?" The majority of respondents (39.58%) suggested that the SEC guidance on Form PF was "sufficient." Twenty-five percent of respondents (25%) thought that SEC guidance was "good." However, the third largest group of respondents (22.92%) stated that SEC guidance was "insufficient."

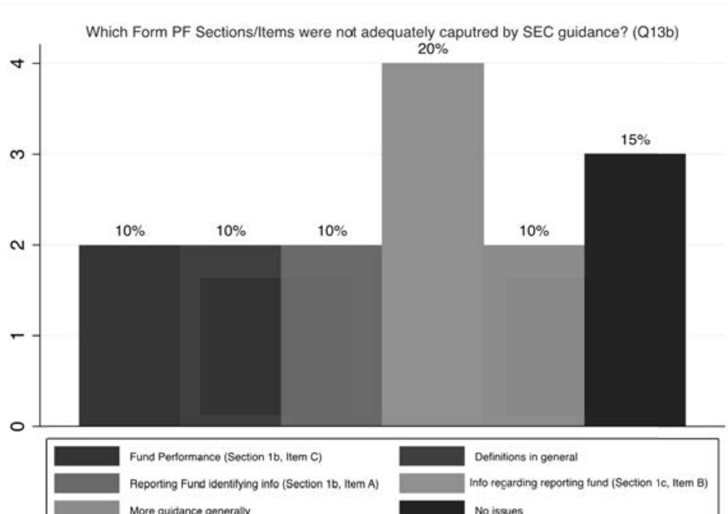


Figure 28: Form PF Sections/Items not Captured by SEC Guidance.

Figure 28 shows the number of respondents who responded to the follow-up question to Survey Question 13, Survey Question 13b: "Which Sections/Items on Form PF were not adequately captured by SEC guidance?" While the responses were widely dispersed and did not always justify a cluster category, a majority of respondents indicated that SEC guidance was insufficient with respect to reporting funds, specifically Section 1c, Item B. The next largest cluster of respondents suggested that there were no issues with Form PF itself, followed by clusters stating that SEC guidance was inadequate for Form PF Section 1b, Item C (reporting fund performance) and Form PF Section 1b, Item A (reporting fund identifying information). Other clusters of respondents made reference to the lack of guidance in Form PF generally and the lack of guidance for the definitions in Form PF. Several responses to Survey Question 13b did not justify response clusters. These responses included references to how difficult it was to find guidance on the disclosure requirements in Form PF, problems regarding technology and the ability to record negative numbers, and issues with reporting for securitized vehicles requiring reliance on assumptions.

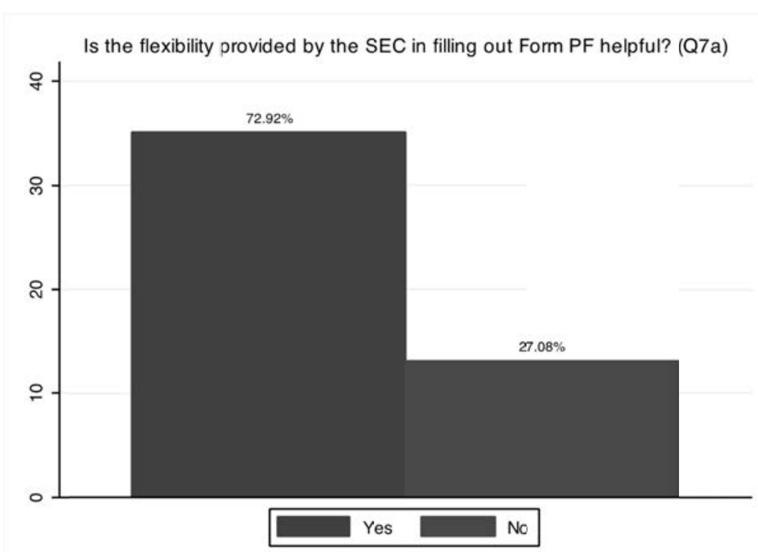


Figure 29: SEC Flexibility for Form PF Completion.

Figure 29 shows that a majority of respondents (72.92%) believe that the SEC's flexibility when it comes to answering questions in Form PF is helpful. Only a minority of respondents (27.08%) stated that the SEC was not sufficiently flexible when responding to registrants' requests for guidance.

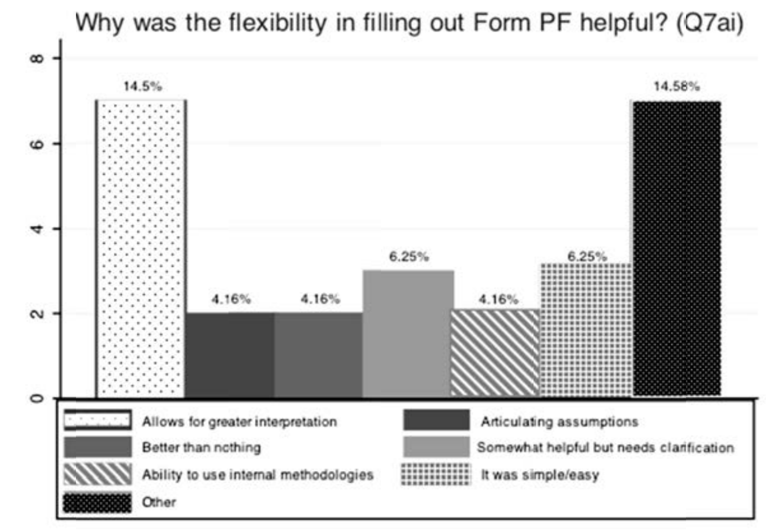


Figure 30: Benefits of SEC Flexibility for Form PF Completion.

Figure 30 illustrates the responses to the follow-up question, "Why was the flexibility in filling out Form PF helpful?" According to respondents, the most significant benefits of SEC flexibility were that respondents believed they were authorized to use their internal methodologies to interpret and respond to questions and to articulate their assumptions, and that generally, they could simplify the completion of Form PF.

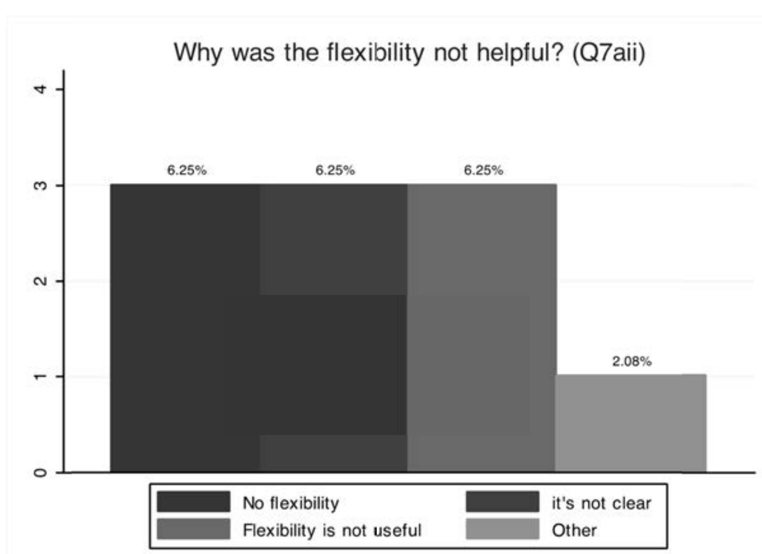


Figure 31: Negative Properties of SEC flexibility with Form PF.

Figure 31 assesses why SEC flexibility regarding Form PF is not helpful. The overall response rate to this question was low. Responses that justified a cluster included references to the SEC's lack of flexibility or the insufficient usefulness of SEC flexibility. Another category of responses indicated that the flexibility provided by the SEC is not useful because it is unclear and creates confusion.

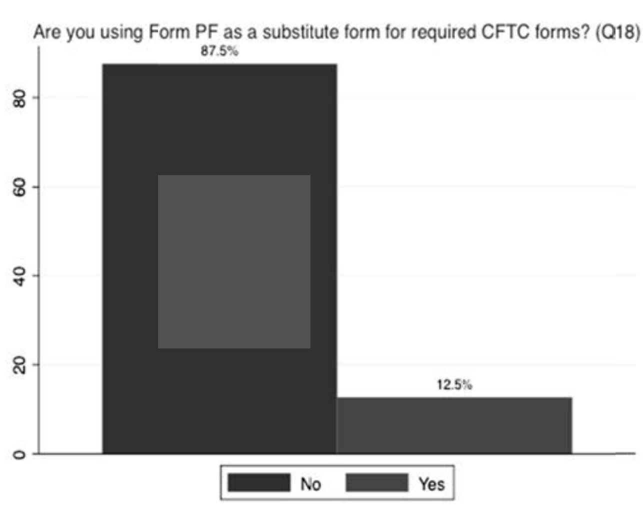


Figure 32: Form PF as Substitute for Required CFTC Forms.

Figure 32 shows that the majority of respondents (87.5%) are not using Form PF as a substitute for required forms of the Commodity Futures Trading Commission (CFTC). To promote market integrity, the CFTC requires all persons and entities under its supervision to report relevant data using required CFTC forms. Responses to follow-up Survey Question 18b(i) ("If [you are using Form PF as a substitute for required CFTC forms], why [are you doing so]?") suggest that some investment advisers are using Form PF to coordinate the myriads of forms that they are required to file. Other respondents are still not sure if they will be able to use Form PF as a substitute; if so, they may use it as a substitute.

Several additional survey questions pertained to optimizing Form PF. For instance, Survey Question 8a asked, "What question in Form PF should not have been asked and why not?" The responses were widely dispersed and did not justify clustering. Individual responses, however, may help clarify specific areas of concern for the private fund industry. Several respondents mentioned Form PF Item C, Question 17 (Reporting Fund Performance), suggesting that existing Form PF fund performance metrics are not accurate because the reporting entities employ different calculation methodologies.[61] Another respondent suggested that assessing the risk profile could have been done with significantly less detail and effort by employing the due diligence processes utilized by many institutional investors when considering whether to allocate capital to a private fund manager. The aggregation of data in Form PF Question 2a also raised concerns.[62] One respondent suggested that if a fund does not employ leverage, then the fund's manager should not have to provide further data. Other items that were marked as problematic and difficult to measure include Section 1b, Item B, #8, 7.B.(1), Form PF Questions 20, 24, and 28.

Question 8b, the follow-up question to Question 8a, asked, "What questions should have been asked instead and why?" Responses in this category were also widely dispersed and did not justify clustering. Several respondents, however, made comments in the context of limiting systemic risk via Form PF. These respondents suggested that the SEC's objective of limiting systemic risk could have been more strongly advanced by asking questions in Form PF with an emphasis on open derivatives positions,[63] total market exposure of the entity, and total underlying capital.[64] One respondent argued that Form PF Question 20, pertaining to a reporting fund's investment strategies, could have been categorized better in light of some managers having multiple strategies and sub-strategies. This respondent, emphasizing the importance of conforming Form PF to widely accepted investor reporting, suggested that the Form should provide a "breakout of assets by product type, geography, counterparty, sectors—similar to widely accepted investor reporting." Finally, one respondent

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61. More specifically, one respondent opined that "we (does he mean his firm? Him as an adviser?) don't usually calculate this information for our investors in this manner—so we had to calculate it specifically for the form," and that

> this is not an accurate indicator of anything—in fact it is entirely possible that the reporting entity is not able to provide such information as it is not useful to their investors—who are far more concerned about the performance of the Fund net any costs that under USGAAP cannot be included.

62. One respondent suggested that "2a requires that the information be aggregated, and later the information is required to be provided separately for certain funds. Why not just require the information to be provided by fund, and then the SEC can aggregate the data as they deem necessary."

63. One respondent stated that

> the first question that should have been asked is #13 on Section 1(b), Does the fund have open derivatives positions? If they answer is no [sic], Form PF should not have to be completed. Without derivative positions, I don't see how the SEC can link firms to a systemic collapse.

64. One respondent opined that "the Form should have simply approached the ultimate question in a different way. If the goal was to determine exposure/leverage in the market and thus systemic risk associated with these entities, simply ask the total market exposure of the entity and the total underlying capital."

suggested that the SEC should have emphasized investment manager qualifications.

C. REPORTING SYSTEMS AND SERVICE PROVIDERS

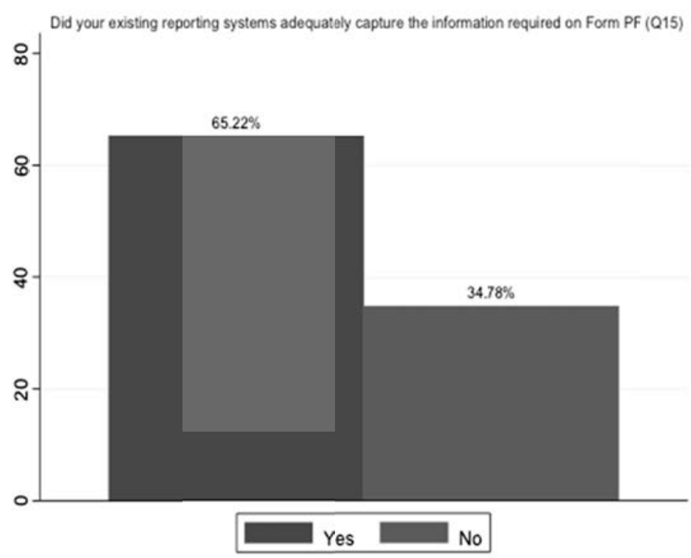

Figure 33: Adequacy of Existing Reporting Systems.

Figure 33 shows respondents' assessment of the adequacy of their existing reporting systems to capture the information required on Form PF. The majority of respondents (65.27%) believe that their existing internal reporting systems adequately capture the information required on Form PF. However, a significant minority of respondents (34.78%) thought that their existing internal reporting systems are not adequately capturing the information required on Form PF.

Several follow-up questions to Survey Question 15 investigated respondents' reasoning as to why their existing reporting systems do not adequately capture required information. Survey Question 15b asked "If no, why not?" Responses to this follow-up question did not justify cluster categories but they merit further discussion. For example, several respondents suggested that extracting information that is relevant for Form PF from existing datasets required further analysis and calculation. This seems to suggest that existing fund information had to be recalculated for purposes of completing Form PF. For some, trade information was not easily available. Others used different definitions and captured the data in categories different from the ones used by the SEC, or they maintained the data in different operating areas where no one place or system supplied the required data. For smaller investment fund advisers, the work had to be completed mostly manually. Some advisers suggested that their existing internal reporting systems did not require the same level of detail as Form PF.

Follow up Survey Question 15c asked "If your existing reporting systems did not adequately capture the information required on Form PF, how did you obtain the information necessary to report the data to the SEC?" Several respondents suggested that they concluded a manual review and analysis, and manual calculations to obtain the information necessary to complete Form PF. Respondents also reported that they worked with their custodian or administrator to obtain and compile the data, polled investors for more details on their identity, and purchased new add-ons to their reporting tools and/or used multiple systems to calculate data.

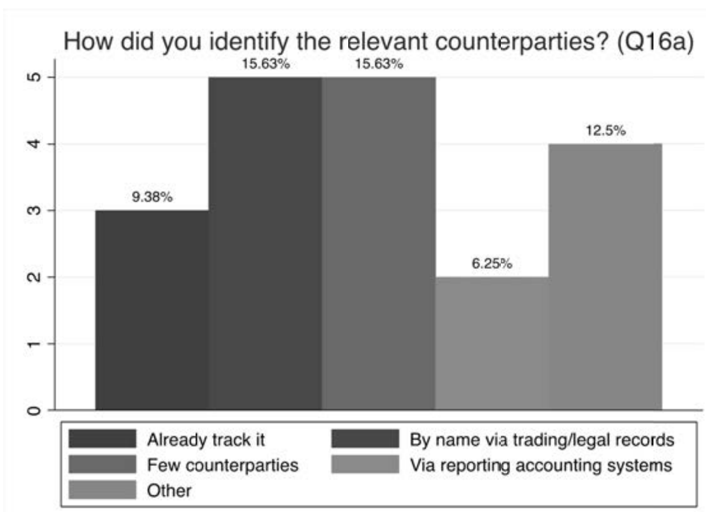

Figure 34: Identification of Counterparties.

Form PF Questions 22 and 23 ask about reporting funds' counterparty credit exposures. Figure 34 shows how respondents identified relevant counterparties. While many respondents (15.63%) had very few counterparties and thus did not encounter issues with the identification of counterparties, other respondents (15.63%) identified counterparties by name via their trading and/or legal records. Some respondents already tracked counterparty credit exposure (9.38%) or identified counterparties via their existing internal reporting or accounting systems (6.25%).

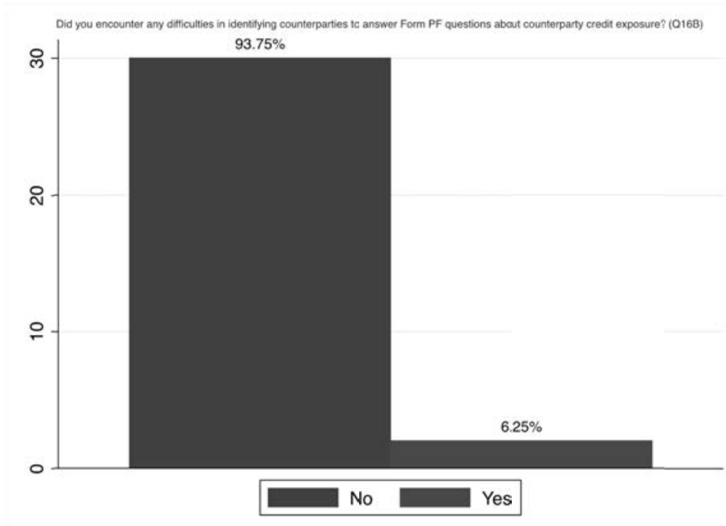

Figure 35: Issues with the Identification of Counterparties.

Figure 35 shows that the overwhelming majority of respondents (93.75%) did not encounter difficulties in identifying counterparties to answer Form PF questions about counterparty credit exposure.

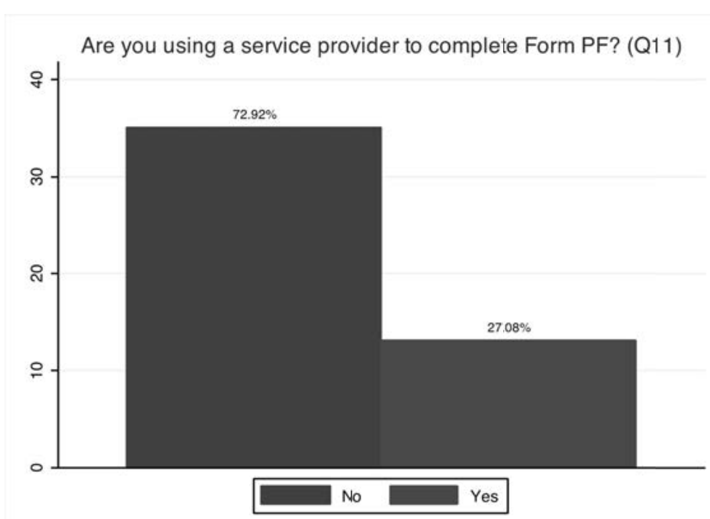

Figure 36: Use of Service Provider to Complete Form PF.

Figure 36 illustrates that a majority of respondents (72.92%) did not use a service-provider to complete Form PF. However, 27.08% of respondents who answered this question used service providers. This seems to suggest that concerns over service providers (over)interpreting required Form PF data on behalf of filers, among other concerns over service providers' completing Form PF, may not be justified.

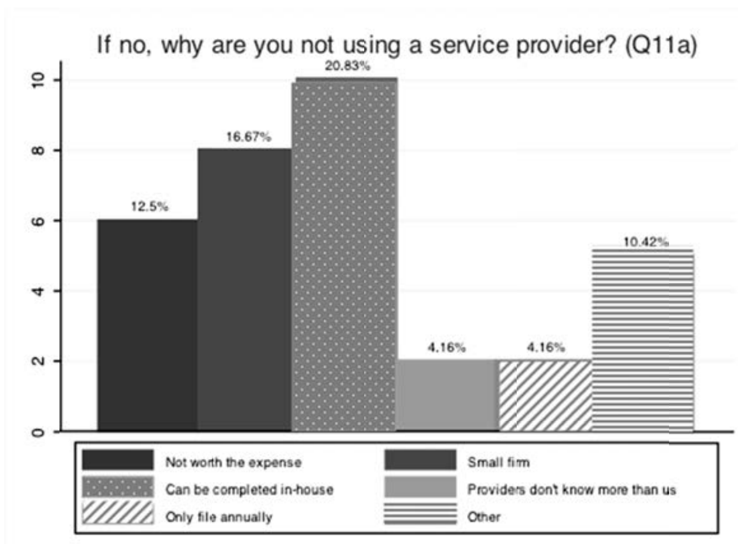

Figure 37: Reasons for Not Using Service Provider.

Figure 37 shows that in responding to the follow-up question to Survey Question 11, Question 11a ("If no, why are you not using a service provider?"), the majority of respondents (20.83%) suggested that Form PF could be completed in-house. Others respondents (16.67%) mentioned "small firm," suggesting that smaller firms may not use service providers and will try to complete Form PF themselves. Another significant category of responses (12.5%) suggested that completing Form PF would not justify the expense of hiring a service provider.

Cluster responses of less significance indicate that the respondents did not use a service provider because they filed only annually and the service-providers did not have more experience and/or expertise with Form PF than the filer. Several commenters made reference to a desire to understand the form (presumably because the filing will be required in future years and costs savings may be possible if in-house counsel is completing the form). Finally, some respondents opined that it would be difficult for a single service provider to harvest the appropriate data.

Contrasting with Survey Question 11a, Survey Question 11b(i) asked, "If yes, why are you using a service provider?" The responses to this question did not justify clustering but several respondents commented on (i) the difficulty of aggregating the data and entering it directly without having a system to assist in the process, (ii) the service-providers' knowledge and its insights into answer methodology, (iii) a desire to ensure consistency in preparation, and (iv) the comparatively long time it would take to complete Form PF in-house. Some commenters believed that service providers were able to fill the information gaps with information they track more consistently than the filer, and service-providers performed about 80% of the relevant tasks pertaining to Form PF completion, which the filer later internally verified. Smaller firms seemed to utilize service-providers more than large firms because they lack experience. Many respondents also mentioned the need to standardize Form PF to simplify the completion process.

Respondents who addressed follow-up Survey Question 11b(ii) ("If you are using a service provider to complete Form PF, are there any issues with using a service provider?") indicated that challenges included developing a process for interacting with a service provider to transfer relevant data, the amount of work required to provide service-providers with the necessary information, and the very high comparative cost for smaller firms.

D. INVESTOR RELATIONS

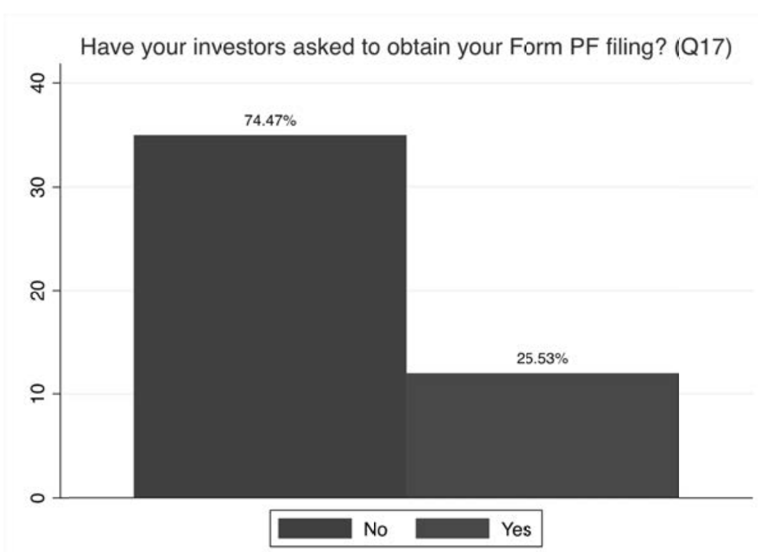

Figure 38: Investor Demands for Form PF Filings.

Figure 38 shows that a majority of respondents (74.47%) in the sample have not been asked by their investors to provide a copy of their Form PF filing. However, more than 25% of respondents reported that they received requests from investors to provide a copy of the investment advisers' Form PF filings.

Responses to follow-up Survey Question 17b ("If [investors asked for your Form PF filing], are you providing your Form PF filing to investors?") suggest that some investment advisers allow investors to review their Form PF filings in-house, while others limit the number of investor requests with regards to Form PF filings. Similarly, responses to Survey Question 17b(i) ("If [investors asked for your Form PF filing and you are providing your form PF filing to investors]—why are you providing investors with your Form PF filings?") suggest that many investment advisers provide their Form PF filings to investors because they consider equal and full disclosure to all parties important. Investment advisers who are raising capital for a new fund seem to have a particular incentive to provide existing investors with Form PF.

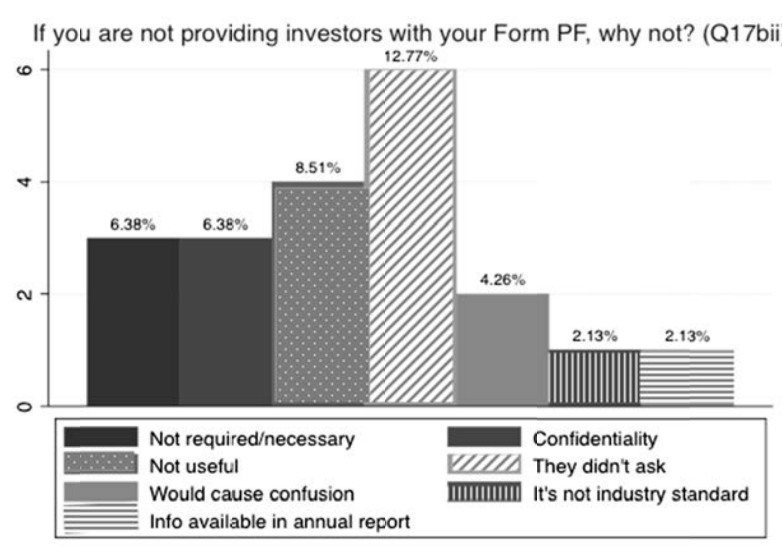

Figure 39: Reasons for not Sharing Form PF Filing with Investors.

Figure 39 shows the clustered responses from respondents who answered Survey Question 17b(ii) ("If [investors asked for your Form PF filing but you did not disclose your Form PF Filing]—why not?"). The majority of respondents (12.77%) did not provide the form to current prospective investors because investors did not ask for the document. Other respondents did not share their Form PF filings with investors because such respondents deemed it not useful. Some commenters did not provide the form to investors because it was not required or necessary, or cited concerns over confidentiality as a reason. Some investment advisers did not make Form PF information independently available because their Form PF filing was attached to their annual report.

VI. DISCUSSION AND CONCLUSION

The SEC's mandatory initial collection of private fund data raised many concerns for the private fund industry. This Article presents the results of a survey with private fund advisers intended to ascertain the effects of the mandated private fund disclosures.

A. SUMMARY OF KEY FINDINGS

The key findings of this study quantify, evaluate, and clarify many core open issues with respect to the SEC's efforts to collect private fund data through Form PF, including in relation to: (1) the required resources for completing Form PF, (2) the shortcomings of and SEC guidance on Form PF, (3) the adequacy of filers' reporting systems and service providers, and (4) the issues associated with investor relations.

1. Purpose and Required Resources

Respondents identified the SEC's objective of assessing systemic risk and the historical lack of private fund information provided by the industry to the SEC as the primary purposes of Form PF disclosure requirements. Commenters also argued that FSOC and OFR monitoring of risk, investment adviser examinations, and the collection of risk exposure information were important purposes in the enactment of Form PF.

The completion and filing of Form PF requires the commitment of resources from, and expenditures by, the private fund industry. A majority of respondents (59.18%) stated that the additional expenditures required to complete and file Form PF for the first time were under $10,000. A majority of commenters (57.14%) identified the cost of subsequent annual Form PF filings at about half of the first-time filing cost, i.e., around $5,000. A breakdown of respondents by assets under management suggests that larger private fund advisers, required to file quarterly, are faced with substantially higher compliance costs, both for their initial data reporting and for subsequent quarterly filings. The data does not identify the long-term costs for the private fund industry of having to complete and file Form PF on an annual or quarterly basis.

The overall expenses necessary to complete and file Form PF correspond with resource requirements, such as the staff required to file Form PF and the total number of hours it took to complete Form PF. A majority of respondents (67.35%) used only one to three individuals to complete Form PF. Similarly, a majority of respondents (69.39%) indicated that it took staff less than 50 hours to complete Form PF.

Quoting data-gathering efforts as well as the data options and the ambiguity of the respective Form PF questions, respondents identified several Questions on Form PF as particularly time-consuming, including, Form PF Questions 7 (related persons), 16 (types of investors), and 17 (performance).

2. Shortcomings and SEC Guidance

This survey may help policy-makers optimize Form PF and the relevancy of the guidance they provide, as the survey identifies shortcomings in the design, definitions, and guidance of Form PF. Respondents identified the burdensome nature and the ambiguity of Form PF as the most pressing issues. While a majority of respondents (59.18%) agreed with the definitions or instructions in Form PF, respondents nevertheless argued that performance measures in Form PF Question 17, as well as counterparties and definitions of counterparties in Form PF Questions 22 and 23, required a level of interpretation. The minority of respondents (40.82%) who disagreed with the definitions or instructions in Form PF generally disagreed with the definition of the term "funds" in Form PF. Commenters were equally split on whether Form PF questions pertaining to calculating RAUM required filers to interpret RAUM for purposes of completing Form PF.

Most respondents appreciated both SEC guidance and SEC flexibility in responding to questions regarding Form PF. A majority of respondents rated SEC guidance in the context of their Form PF completion as sufficient or good. The majority of the commenters who believed that SEC guidance was inadequate indicated that SEC guidance was particularly unclear with respect to Form PF Section 1c, Item B (regarding Reporting Funds). This is consistent with the responses that disagreed with the definition of funds in Form PF. Most respondents (72.92%) agreed that the SEC's flexibility in answering questions with respect to Form PF was helpful. Commenters stated that SEC flexibility was valuable because it enabled respondents to interpret Form PF, it increased respondents' ability to use their own internal methodologies, it helped them articulate their own assumptions, it clarified a lot of questions, and it simplified the completion of Form PF. Nevertheless, the results shows that improvements to Form PF are necessary to overcome its ambiguities.

3. Reporting Systems and Service Providers

This survey also identifies the adequacy of private funds' existing reporting systems utilized to capture the information required in Form PF. A majority of respondents (65.22%) stated that their existing internal reporting systems adequately capture the information required by Form PF. More specifically, the majority of respondents did not encounter difficulties in identifying data responsive to questions about counterparty credit exposure, by using counterparties' names on trading and/or legal records. Several respondents (34.78%) opined that their existing internal reporting systems were insufficient to respond to questions on Form PF because they require further analysis and calculations.

Respondents not only predominantly believed that their existing internal reporting systems sufficed to complete Form PF, they also largely (72.92%) abstained from employing a service-provider to complete Form PF. Firms' ability to use existing internal reporting systems to complete Form PF is consistent with firms' preference for completing Form PF in-house. A majority of respondents actually suggested that Form PF can be completed in-house. Others opined that completing Form PF would not justify the expense of hiring a service-provider. Commenters identified several challenges of working with a service-provider, including the investment of time and expenses to develop processes, as well as the burden of providing service-providers with the required information. The minority of respondents who hired a service-provider stated they did so because of (1) the difficulties in aggregating the data and entering it directly without having an internal system in place to assist in the process; (2) the service providers' knowledge and their industry insight into answer methodology; (3) a desire to ensure consistency in preparation; and (4) the burden of how long it would take to complete Form PF in-house.

4. Investor Relations

For a variety of reasons, investors in private funds may ask for a copy of the investment adviser's Form PF filings. The majority of respondents (74.47%) in the sample had not been asked to provide a copy of their Form PF filing to their investors. While investment advisers may not volunteer the information, the survey results indicate that they tend to allow investors to review their Form PF filings in-house.

B. POLICY IMPLICATIONS AND FUTURE RESEARCH

The primary limitations for this study were (1) the availability of data and (2) the somewhat narrower timeframe to complete the study after the introduction of private fund reporting requirements. The author collected the data during a six month time period after the effective date of the initial filing requirement applicable to private funds. Further research may be needed to determine if the long-term impact of private fund adviser disclosure obligations is as moderate as this study suggests. More specifically, while the cost implications for some advisers in preparing Form PF seem reasonable at under $10,000 (for most smaller advisers but not for larger private fund advisers) and with the cost for those smaller advisers of subsequent annual Form PF filings at less than $5,000, the data do not identify the long-term cost of Form PF filings for the private fund industry.

The findings of this study suggest that the overall effect of Form PF data reporting requirements on the private fund industry may be less severe than widely expected. In light of the cost data provided by this study (for both smaller and larger private fund advisers),[65] the industry's concerns that mandatory private fund adviser registration and disclosure requirements could inappropriately burden investment advisers[66] seem to be mostly unfounded. The results of this study complement findings in earlier studies that suggest "the private fund industry [is] adjusting well, and the impact of the registration and disclosure rules appears to be much less intense than the industry initially anticipated."[67]

Nevertheless, the data analysis and the findings of this study indicate that there are several areas of concern with existing Form PF questions and requirements. Important issues include the ambiguity of several key questions in Form PF; the time constraints required to answer certain questions, such as Questions 7 (related persons), 16 (types of investors), and 17 (performance); respondents' disagreement with the definition of funds; and the lack of adequate SEC guidance for Section 1c, Item B (information regarding reporting fund). Other issues identified in this study pertain to the insufficiency of existing reporting systems for some firms; difficulties in aggregating the required Form PF data and entering it directly without the availability of a system to assist in the process; and challenges in working with a service-provider, such as process development and the burden of providing service-providers with the required information.

By examining these shortcomings in the existing framework for private fund advisers' data reporting, policymakers may be able to identify possible policy improvements. Most of the problems may be addressed over time as the SEC provides additional and improved guidance on Form PF or revises core questions and/or the definitions pertaining to core questions that have been identified as problematic. A possible remedy to the shortcomings that advisers identified would be to standardize private fund adviser reporting obligations. Standardization may help address the ambiguities and inefficiencies that currently exist in the reporting requirements and may help simplify and streamline the disclosure requirements for the private fund industry. In any attempt at standardization of Form PF, policy-makers should evaluate the competing needs of different types of private fund advisers.

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65. *See supra* figs. 10–13.
66. *See supra* note 4 and accompanying text.
67. Kaal, *Hedge Fund Manager Registration*, *supra* note 6, at 316.

VII. APPENDIX: SURVEY INSTRUMENT

To: Chief Legal / Compliance Officer
To Whom It May Concern

Private fund

July 15, 2013
RE: Participant Understanding of Participation in the Survey

Dear Sir or Madame,

The purpose of this survey is for Professor Wulf A. Kaal at the University of St. Thomas School of Law in Minneapolis to learn more about your experiences in dealing with recent private fund registration and disclosure requirements under the Dodd-Frank Act and in particular your experiences in providing the SEC with required information under Form PF.

As you may know, the Dodd-Frank Act authorized the SEC to promulgate rules requiring registration and enhanced disclosure for private fund managers. As part of the new rules, the SEC introduced a reporting obligation under Form PF. The effects of private fund registration and disclosure requirements in the United States are unclear and this survey study hopes to evaluate and clarify possible effects.

To ensure that we reduce any risks in your participation, we will not in any form identify you or your firm in any of our reports. Responses to this survey will be used by Professor Kaal in several academic publications, which will be made available to academics, industry experts (including survey respondents), and regulators as well as to the general public at the time of publication. Respondents' identities will not be disclosed and particular responses to this survey will not be linked to particular respondents.

We would be happy to share the survey results with you, as they may prove to be informative in the administrative management of your fund(s). The collected cost data in the aggregate form will allow respondents to compare costs. If deemed desirable and only with your consent, we would also be happy to share the results of this survey with your investors.

Answering the survey questions below will take approximately ten to fifteen minutes. We do very much appreciate your support. Please do not hesitate to get in touch with any questions.

With best regards,

Wulf A. Kaal
Associate Professor of Law

1. Did you assist in completing and/or file Form PF on behalf of the investment adviser firm with the Securities and Exchange Commission (SEC)?
   a. Yes ___
   b. No ___

2. Please check which section(s) of Form PF you completed:
   a. 1a & 1b – All *private fund* advisers ____
   b. 1c – All *private fund* advisers that advise private funds ____
   c. 2a – Large *private fund* advisers (>$1.5 bil. AUM) ____
   d. 2b – Large *private fund* advisers (>$1.5 bil. AUM) ____
   e. 3 – Large *liquidity fund* advisers (>$1 bil. AUM) ____
   f. 4 – Large *private equity* advisers (>$2 bil. AUM) ____
   g. 5 – Temporary hardship exemption ____

3. Are you required to file Form PF?:
   a. Annually ____
   b. Quarterly ____

4. Please check all of the types of private funds that your investment adviser firm manages (please only check those that apply best to you):
   a. Private fund ____
   b. Liquidity Fund ____
   c. Private Equity Fund ____
   d. Real Estate Fund ____
   e. Securitized Asset Fund ____
   f. Venture Capital ____
   g. Other Private Fund ____

5. Which, if any, of the questions in Form PF required the greatest level of interpretation?

____

6. Are there definitions or instructions in Form PF that you disagree with?
   a. No ____
   b. Yes ____
   i. If yes – What definitions or instructions do you disagree with? ____
   ii. Why do you disagree with the definition or instruction? ____

7. Please comment on the SEC guidance pertaining to Form PF:
   a. Is the flexibility provided by the SEC in filling out Form PF helpful?

i. Yes ____If Yes – why? ___________________________________
ii. No ____If No – why not? __________________________________

b. When the SEC is prescriptive in its Form PF guidance do you agree with the stance the SEC is taking?
i. Yes ____
ii. No ____If No – why not? __________________________________

8. Please comment on specific questions in Form PF:
a. What question in Form PF should not have been asked and why not? ____
b. What questions should have been asked instead and why?
____

9. What is the most pressing issue the SEC should address in the context of Form PF?
____

10. In your opinion, what is the purpose of Form PF? Please check all that apply and/or provide additional comments:
a. Ease the burden on private fund managers to produce data ___
b. Assess systemic risk posed by the private fund industry ___
c. Allow the Financial Stability Oversight Council (FSOC) and the Office of Financial Research (OFR) to monitor risks to the U.S. Financial System ___
d. Address the lack of private fund information available to regulators ___
e. Collection of risk exposure information of individual private fund advisers ___
f. Other
____

11. Are you using a service provider to complete Form PF (Y/N)? _________________
a. If No – why not? _______________________________________
b. If Yes ___
i. Why are you using a service provider? _____________________
ii. Are there any issues with using service providers? Please explain:
____

12. Please estimate the following pertaining to your investment adviser firm:
a. Total number of people who worked to complete Form PF for the first time (including external consultants) __________________

b. Total number of hours to complete Form PF for the first time ____________________

c. Total amount of funds spent to complete Form PF for the first time $____________________

d. Please estimate the annual cost for subsequent Form PF filings (after the first time filing) $___________________

13. SEC guidance and support:

a. On a scale of 1 – 5, how would you rate the best level of guidance available from the SEC staff to assist you in completing Form PF?

i. Excellent ____
ii. Good ____
iii. Sufficient ____
iv. Insufficient ____
v. No Guidance ____

b. Which Sections / Items on Form PF were not adequately captured by SEC guidance? Please list all relevant Sections / Items:

____

14. Which question(s) on Form PF were most time consuming to answer?

a. Please list the three most time consuming items on Form PF:

i. ____
ii. ____
iii. ____

b. Please state shortly why these items proved time consuming (in order of priority):

i. ____
ii. ____
iii. ____

15. Did your existing reporting, monitoring, and tracking systems adequately capture the information required on Form PF?

a. Yes ____
b. No ____ If No – why not? ________________________________

c. If your existing reporting systems did not adequately capture the information required on Form PF, how did you obtain the information necessary to report the data to the SEC? ____

16. Form PF requires disclosures regarding counterparty credit exposure and collateral [(Section 1(b) Item B, Numbers 22, 23, and Section 2(a) Numbers 36, 37, and 38)].

a. How did you identify the relevant counterparties? ____

b. Did you encounter any difficulties in identifying counterparties?
i. No ____
ii. Yes ____ If Yes – what difficulties did you encounter?
____

17. Have your investors asked to obtain your Form PF filing?
a. No ____
b. Yes ____ If Yes – are you providing your Form PF filing to investors?
i. Yes ____ If Yes – why are you providing investors with your Form PF filings? ____
ii. No ____ If No – why not?___________________________________

18. To the extent permissible, are you using Form PF as a substitute form for required CFTC forms?
a. No ____
b. Yes ____ If Yes – why? ___________________________________

19. Did reporting "Regulatory AUM" as required in Form PF require a level of interpretation from you?
a. No ____
b. Yes ____
i. If Yes – why? ____
ii. If Yes – how? ____