

## Inside the Hedges: A Look at Recent Form D (Exempt Offering) Filings by Hedge Funds

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The [predictions of doom](#) for the hedge fund industry made in 2008 have, for the most part, not come true. In spite of [lower profits](#) industry-wide, there has also been viable growth over the past year. Form D Filings are up—way up. The total number of Form Ds filed so far in 2010 is a little more than 15,000, a 32% increase over the same period in 2009. As shown in Figure 1, a significant percentage of those filings come from hedge funds—more than 1,900 so far in 2010—which are up a little more than 10% over the same time period in 2009.

### Where are Form D companies from?

Most are from the U.S. But approximately 13% of all 2010 Form D filers and 33% of hedge fund filers are foreign (non-U.S.) companies. Not surprisingly, the overwhelming majority of the foreign hedge fund filers (approximately 84%) are registered in the regulation-friendly Cayman Islands, with the rest coming primarily from the British Virgin Islands, Bermuda, and the Bahamas, plus a few from Canada and the U.K. Since the European Union has recently passed (November 10th) [new, stricter rules](#) on hedge funds and other “alternative investment funds” requiring them to register and file regular reports starting in 2013, the Caribbean Islands may continue to be the jurisdiction home of many funds marketed in the U.S.

### Hedge Funds in Form D Filings

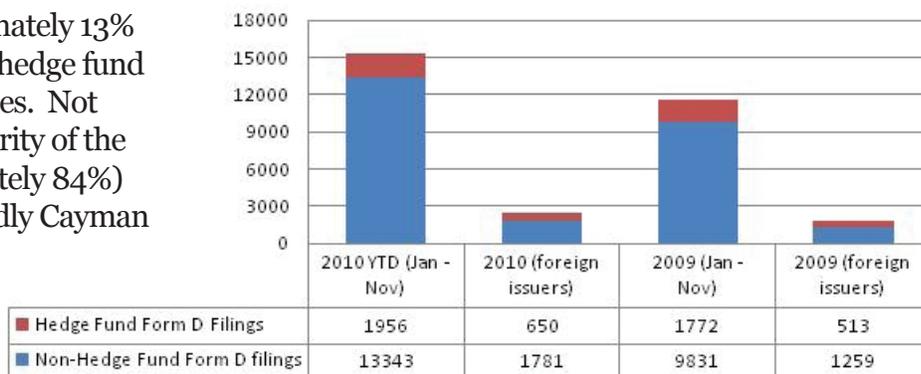


Figure 1: Comparison of the numbers of Form Ds (total and foreign) filed between January 1 and November 15, 2010 and the same period in 2009.

### Hedge Fund Reported Aggregate Net Asset Value 2010



Figure 2: 2010 Form D filings by hedge funds by reported Aggregate Net Asset Value

### What do hedge funds disclose on their Form Ds?

Currently, not as much as you’d think. Form D was revised and improved in 2008, including the addition of a somewhat more practical way to report the size of a hedge fund offering using the “Aggregate Net Asset Value.” However, the form offers an option “decline to disclose,” and the vast majority of hedge funds (approximately 89%) choose not to report their net asset value on their Form D filings (Figure 2).

It remains to be seen what changes, if any, are made to the actual Form D filing, but “declining to disclose” aggregate net asset value may soon become a thing of the past. Title IV of the Dodd-Frank Act [requires](#) hedge-fund advisers with more than \$150 million in assets to register with the SEC. Currently there are no registration requirements for such advisers. [Proposed rules](#) on registration for hedge fund managers were released by the SEC on November 19th. Those changes will take effect sometime on or before July 2011.

### Hedge Funds Reported Total Offering Amount 2010

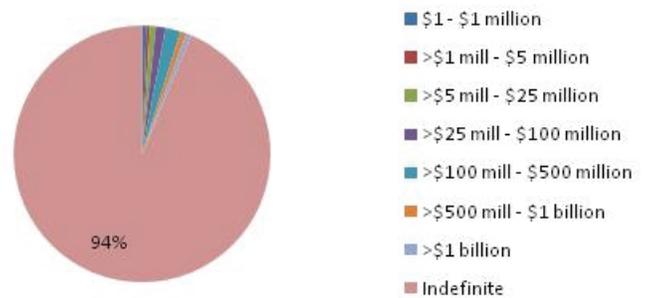


Figure 3: 2010 Form D filings by hedge funds by Total Offering Amount.

Other areas of Form D disclosure are likely to remain blurry. For example, total offering amounts, like net asset values, are often not reported in Form D filings. Instead, nearly all hedge funds (94%) list their total offering amount as “Indefinite” (Figure 3). The high number is perhaps to be expected, since at the time of a Form D filing, hedge funds would be unlikely to have settled this amount. But in that case, one wonders why the data is solicited at all.

Despite (or because of?) these disclosure loopholes—and despite lower profits, increased scrutiny, and a down economy—what is clear from the data is that hedge fund activity has been on the rise in 2010. More stringent regulation from the EU may well become problematic for an industry accustomed to laissez-faire oversight. But the measures being taken on this side of the Atlantic seem unlikely to overcome the industry’s upward momentum.

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