

A BILL

To amend the Investment Advisers Act of 1940 to require advisers of certain unregistered investment companies to register with and provide information to the Securities and Exchange Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Private Fund Investment Advisers Registration Act of 2009'.

SEC. 2. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of ~~1934~~1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraphs:

(29) PRIVATE FUND- The term 'private fund' means an investment fund issuer that--

(A) would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act; ~~and,~~

~~(B) either--~~

~~(i) is organized or otherwise created under the laws of the United States or of a State; or~~

~~(ii) has 10 percent or more of its outstanding securities by value owned by United States persons.~~

(30) FOREIGN PRIVATE FUND ADVISER- The term 'foreign private fund adviser' means an investment adviser who--

(A) has no place of business in the United States;

(B) during the preceding 12 months has had--

(i) fewer than 15 clients in the United States; and

(ii) assets under management attributable to clients in the United States of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and

(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) and has not withdrawn such election.'

SEC. 3. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE FUND ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended--

- (1) in paragraph (1), by inserting `, except an investment adviser who acts as an investment adviser to any private fund,' after `any investment adviser';
- (2) by amending paragraph (3) to read as follows:
` (3) any investment adviser that is a foreign private fund adviser;';
- (3) in paragraph (5), by striking `or' at the end; and
- (4) in paragraph (6)--
 - (A) in subparagraph (A), by striking `or';
 - (B) in subparagraph (B), by striking the period at the end and adding `; or'; and
 - (C) by adding at the end the following new subparagraph:
` (C) a private fund.'-

(5) by striking the period at the end of paragraph (6) and inserting a semicolon; and

(6) by adding at the end of the following:

“(7) any investment adviser who solely advises

“(A) small business investment companies licensed under the Small Business Investment Act of 1958;

“(B) have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or

“(C) applicants, related to one or more licensed small business investment companies covered in subparagraph (A), that have applied for another license, which application remains pending.”

SEC. 4. COLLECTION OF SYSTEMIC RISK DATA.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended--

- (1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and
- (2) by inserting after subsection (a) the following new subsection:
` (b) Records and Reports of Private Funds--
 - (1) IN GENERAL- The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and file with the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk as the Commission determines in consultation with the Board of Governors of the Federal Reserve System. The Commission is authorized to provide or make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, those reports or records or the

information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.

`(2) REQUIRED INFORMATION- The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser--

- `(A) the amount of assets under management;
- `(B) the use of leverage (including off-balance sheet leverage);
- `(C) counterparty credit risk exposures;
- `(D) trading and investment positions;
- `(E) trading practices; and
- `(F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

`(3) OPTIONAL INFORMATION- The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, [taking into account the public interest and potential to contribute to systemic risk](#), may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.

`(4) MAINTENANCE OF RECORDS- An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

`(5) EXAMINATION OF RECORDS-

`(A) PERIODIC AND SPECIAL EXAMINATIONS- All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

`(B) AVAILABILITY OF RECORDS- An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

`(6) INFORMATION SHARING- The Commission shall make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or such other entity, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection

shall be kept confidential- in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).

`(7) DISCLOSURES OF CERTAIN PRIVATE FUND INFORMATION- An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

`(8) CONFIDENTIALITY OF REPORTS- Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.'

SEC. 5. ELIMINATION OF DISCLOSURE PROVISION.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).

SEC. 6. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following new subsection:

`(l) Exemption of and Reporting by Venture Capital Fund Advisers- The Commission shall identify and define the term `venture capital fund' and shall provide an adviser to such a fund an exemption from the registration requirements under this section- (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.'

SEC. 7.

SEC. 7. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), as amended by section 6, is further amended by adding at the end of the following new subsections:

“(m) Exemption of and Reporting by Certain Private Fund Advisers. –

“(1) In General. – The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such private funds has assets under management in the United States of less than \$150,000,000

“(2) Reporting. – The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

“(n) Registration and Examination of Mid-Sized Private Fund Advisers. – In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.”

SEC. 8. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended--

(1) by amending subsection (a) to read as follows:

“(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may--

“(1) classify persons and matters within its jurisdiction based upon, but not limited to--

“(A) size;

“(B) scope;

“(C) business model;

“(D) compensation scheme; or

“(E) potential to create or increase systemic risk;

“(2) prescribe different requirements for different classes of persons or matters; and

“(3) ascribe different meanings to terms (including the term ‘client’, except the Commission shall not ascribe a meaning to the term ‘client’ that would include an investor in a private fund managed by an investment adviser where such private fund has entered into an advisory contract with such adviser) used in different sections of this title as the Commission determines necessary to effect the purposes of this title.’; and

(2) by adding at the end the following new subsection:

(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 612 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(h) and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).'

SEC. 9. GAO STUDY.

- (a) STUDY REQUIRED. – The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirement and ongoing reporting requirements under this Act and the amendments made by this Act.
- (b) REPORT TO THE CONGRESS – Not later than the end of the 2-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a).

SEC. 10. TRANSITION PERIOD AND EFFECTIVE DATE

This Act, and the amendments made by this Act, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this Act. Notwithstanding the previous sentence, an investment adviser may, at the adviser's discretion, register with the Commission before such date.

SEC. 11. TRANSITION RULE

The Securities and Exchange Commission shall prescribe rules and regulations to permit an investment adviser who will be required to register with the Securities and Exchange Commission by reason of this Act with the option of registering with the Securities and Exchange Commission before the date described under this Section.

SEC. 12. QUALIFIED CLIENT STANDARD

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following:

“With respect to any factor used by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, not later than one year after the date of the enactment of the Private Fund Investment Advisers Registration Act of 2009, and

every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$1,00 shall be rounded to the nearest multiple of \$1,000.”

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