

111TH CONGRESS
1ST SESSION

S. 1276

To require investment advisers to private funds, including hedge funds, private equity funds, venture capital funds, and others to register with the Securities and Exchange Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2009

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require investment advisers to private funds, including hedge funds, private equity funds, venture capital funds, and others to register with the Securities and Exchange Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Fund Trans-
5 parency Act of 2009”.

1 **SEC. 2. DEFINITION OF FOREIGN PRIVATE ADVISERS.**

2 Section 202(a) of the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
4 end the following:

5 “(29) The term ‘foreign private adviser’ means
6 any investment adviser who—

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

9 “(B) during the preceding 12 months has
10 had—

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

13 “(ii) assets under management attrib-
14 utable to clients in the United States of
15 less than \$25,000,000, or such higher
16 amount as the Commission may, by rule,
17 deem appropriate in accordance with the
18 purposes of this title; and

19 “(C) neither holds itself out generally to
20 the public in the United States as an invest-
21 ment adviser, nor acts as an investment adviser
22 to any investment company registered under the
23 Investment Company Act of 1940, or a com-
24 pany which has elected to be a business devel-
25 opment company pursuant to section 54 of the

1 Investment Company Act of 1940, and has not
 2 withdrawn its election.”.

3 **SEC. 3. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
 4 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
 5 **ADVISERS.**

6 Section 203(b)(3) of the Investment Advisers Act of
 7 1940 (15 U.S.C. 80b–3(b)(3)) is amended to read as fol-
 8 lows:

9 “(3) any investment adviser that is a foreign
 10 private adviser;”.

11 **SEC. 4. COLLECTION OF SYSTEMIC RISK DATA; ANNUAL**
 12 **AND OTHER REPORTS.**

13 Section 204 of the Investment Advisers Act of 1940
 14 (15 U.S.C. 80b–4) is amended—

15 (1) in subsection (a), by adding at the end the
 16 following: “The Commission is authorized to require
 17 any investment adviser registered under this title to
 18 maintain such records and submit such reports as
 19 are necessary or appropriate in the public interest
 20 for the supervision of systemic risk by any Federal
 21 department or agency, and to provide or make avail-
 22 able to such department or agency those reports or
 23 records or the information contained therein. The
 24 records of any company that, but for section 3(c)(1)
 25 or 3(c)(7) of the Investment Company Act of 1940,

1 would be an investment company, to which any such
2 investment adviser provides investment advice, shall
3 be deemed to be the records of the investment ad-
4 viser if such company is sponsored by the investment
5 adviser or any affiliated person of the investment ad-
6 viser or the investment adviser or any affiliated per-
7 son of the investment adviser acts as underwriter,
8 distributor, placement agent, finder, or in a similar
9 capacity for such company.”; and

10 (2) adding at the end the following:

11 “(d) CONFIDENTIALITY OF REPORTS.—Notwith-
12 standing any other provision of law, the Commission shall
13 not be compelled to disclose any supervisory report or in-
14 formation contained therein required to be filed with the
15 Commission under subsection (a). Nothing in this sub-
16 section shall authorize the Commission to withhold infor-
17 mation from Congress or prevent the Commission from
18 complying with a request for information from any other
19 Federal department or agency or any self-regulatory orga-
20 nization requesting the report or information for purposes
21 within the scope of its jurisdiction, or complying with an
22 order of a court of the United States in an action brought
23 by the United States or the Commission. For purposes of
24 section 552 of title 5, United States Code, this subsection

1 shall be considered a statute described in subsection
 2 (b)(3)(B) of such section 552.”.

3 **SEC. 5. ELIMINATION OF PROVISION.**

4 Section 210 of the Investment Advisers Act of 1940
 5 (15 U.S.C. 80b–10) is amended by striking subsection (c).

6 **SEC. 6. CLARIFICATION OF RULEMAKING AUTHORITY.**

7 Section 211(a) of the Investment Advisers Act of
 8 1940 (15 U.S.C. 80b–11) is amended—

9 (1) by striking the second sentence; and

10 (2) by striking the period at the end of the first
 11 sentence and inserting the following: “, including
 12 rules and regulations defining technical, trade, and
 13 other terms used in this title. For the purposes of
 14 its rules and regulations, the Commission may—

15 “(1) classify persons and matters within its ju-
 16 risdiction and prescribe different requirements for
 17 different classes of persons or matters; and

18 “(2) ascribe different meanings to terms (in-
 19 cluding the term ‘client’) used in different sections
 20 of this title as the Commission determines necessary
 21 to effect the purposes of this title.”.

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