111TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPT. 111–686
Part 1

# PRIVATE FUND INVESTMENT ADVISERS REGISTRATION ACT OF 2009

DECEMBER 16, 2010.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

# R E P O R T

[To accompany H.R. 3818]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3818) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS



99–006

## AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

**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 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 issuer that 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

"(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development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) and has not withdrawn such election.".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;

(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; or"; and

(5) by adding at the end the following:

"(7) any investment adviser who solely advises—

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

"(B) entities that 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 deter-

mines 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. 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 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 12 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(l) 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 requirements 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. EFFECTIVE DATE; TRANSITION PERIOD.**

(a) 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.

(b) TRANSITION PERIOD.—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 subsection (a).

**SEC. 11. 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 $1,000 shall be rounded to the nearest multiple of $1,000.".

## PURPOSE AND SUMMARY

H.R. 3818, the Private Fund Investment Advisers Registration Act of 2009, addresses the threat of systemic and investor risks posed by private pools of capital. Specifically, the bill eliminates the existing "private adviser" exemption in the Investment Advisers Act of 1940 (IAA) commonly relied on by the advisers of private funds to avoid registering with the U.S. Securities and Exchange Commission (SEC). The legislation also expands the reporting requirements of investment advisers who advise private funds by authorizing the SEC to collect information from private fund advisers under two circumstances: first, as the SEC determines to be necessary or appropriate in the public interest and for the protection of investors; and second, as the SEC determines, in consultation with the Board of Governors of the Federal Reserve System, to be necessary for the assessment of systemic risk. The legislation further authorizes the SEC to share the reports of private fund advisers with the Federal Reserve Board and any other entity the SEC identifies as having systemic risk responsibility.

Additionally, H.R. 3818 amends the IAA to remove impediments to the SEC's obtaining information concerning the identity, investments, or affairs of the investment adviser's clients. The bill further contains a limited exemption from registration for advisers of "venture capital funds"—a term the SEC will define but subjects such advisers to information collection rules. H.R. 3818 also generally exempts from registration requirements the advisers of private funds, if each of such private funds has assets under management in the United States of less than $150 million, while maintaining reporting requirements as directed by the SEC.

Finally, H.R. 3818 clarifies the SEC's authority to make rules necessary for the exercise of the powers conferred upon the SEC by the IAA. This includes the authority to define terms such as "client" used in different sections of the bill. Advisers must comply with the bill within one year of its enactment, although the bill allows advisers to register earlier with the SEC.

## BACKGROUND AND NEED FOR LEGISLATION

The financial crisis that erupted in the fall of 2008 exposed numerous vulnerabilities in our present regulatory system for the financial services industry, including a lack of oversight of, and transparency with respect to, private pools of capital. These pools take many forms, including hedge funds, private equity funds, venture capital funds, and family offices, among others. While they offer the promise of increased market efficiency and job creation, these pools also pose potential dangers for systemic risk and investor abuse.

In 2004, the SEC noted three emerging changes in the hedge fund industry that justified greater regulation, and since then, each trend has only intensified. First, the industry has experienced rapid growth. Although asset levels are down from a mid-2008 peak of $1.9 trillion, hedge funds alone, as of June 30, 2009, manage an estimated $1.43 trillion in assets. Second, because of the "retailization" of hedge funds, ordinary investors have become exposed to the industry. Third, fraud actions brought against hedge funds have increased in recent years.

Hedge funds and other private funds currently remain subject to no continuous regulatory monitoring. Because of minimal transparency in this sector of the financial markets, government authorities have limited ability to monitor and constrain systemic risks. The fact that private funds are currently subject to federal fraud laws does not address this regulatory gap.

The IAA generally requires investment advisers to register with the SEC. Registered advisers must comply with rules designed to protect investors and provide transparency. These requirements govern areas including disclosure, conflicts of interest, duties to customers, marketing, and recordkeeping.

Currently, section 203(b)(3) of the IAA offers a "private adviser" exemption to investment advisers who: (1) have had fewer than 15 clients during the preceding 12 months; (2) do not hold themselves out generally to the public as investment advisers; and (3) do not advise registered investment companies or business development companies. This exemption has become an escape hatch for many private advisers to avoid government supervision. Although many of the largest hedge fund advisers have voluntarily registered with the SEC, others have relied on this exemption to avoid ongoing and direct regulatory oversight.

In an attempt to fill this gap, in 2004 the SEC promulgated a rule under the IAA that would have required certain fund managers to register. In 2006, however, a federal appellate court found that the SEC had exceeded its statutory authority and vacated the rule.

On June 17, 2009, the Obama Administration released a white paper entitled *Financial Regulatory Reform: A New Foundation*, which proposes comprehensive regulatory reform for the financial

services industry. Among other things, the white paper specifically calls for amending the IAA to require the registration with the SEC of all advisers to hedge funds and other private pools of capital whose assets under management exceed some modest threshold. In making its case for the registration of private fund advisers, the Administration's white paper notes:

> At various points in the financial crisis, de-leveraging by hedge funds contributed to the strain on financial markets. Since these funds were not required to register with regulators, however, the government lacked reliable, comprehensive data with which to assess this sort of market activity. In addition to the need to gather information in order to assess potential systemic implications of the activity of hedge funds and other private pools of capital, it has also become clear that there is a compelling investor protection rationale to fill the gaps in the regulation of investment advisors and the funds that they manage.[1]

The white paper also calls for private fund advisers to report information that is sufficient to assess whether the funds they advise pose a threat to financial stability. After releasing the white paper, the Administration proposed legislative text designed to implement its proposal for the registration of private fund advisers.

On October 1, Capital Markets Subcommittee Chairman Paul E. Kanjorski released a discussion draft of the Private Fund Investment Advisers Registration Act of 2009, which he subsequently introduced on October 15 as H.R. 3818. Consistent with the Administration's request, this legislation seeks to close the current regulatory gap affecting the registration and oversight of private fund advisers while also addressing both investor protection and systemic risk as it relates to private pools of capital.

## HEARINGS

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held an oversight hearing entitled Perspectives on Hedge Fund Registration on May 7, 2009. At the hearing, the following individuals testified:

Mr. W. Todd Groome, Chairman, Alternative Investment Management Association;

The Honorable Richard H. Baker, President, Managed Funds Association;

Mr. James S. Chanos, Chairman, Coalition of Private Investment Companies;

Ms. Orice Williams, Director, Financial Markets and Community Investment Team, Government Accountability Office; and

Mr. Britt Harris, Chief Investment Officer, Teacher Retirement System of Texas.

The Financial Services Committee subsequently held a legislative hearing entitled Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office on October 6,

[1] See *Financial Regulatory Reform: A New Foundation*, p. 37, available at http://www.financialstability.gov/docs/regs/FinalReport—web.pdf.

2009. The second panel at this hearing testified about the Private Fund Investment Advisers Registration Act. The following witnesses participated on the second panel:

Mr. Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association;

Mr. Douglas Lowenstein, President, Private Equity Council;

Mr. James S. Chanos, Chairman, Coalition of Private Investment Companies; and

Mr. Terry McGuire, Co-Founder and General Partner, Polaris Venture Partners, and Chairman, National Venture Capital Association.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 27, 2009, and ordered H.R. 3818, Private Fund Investment Advisers Registration Act of 2009, as amended, favorably reported to the House by a record vote of 67 yeas and 1 nay.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 67 yeas and 1 nay (Record vote no. FC–78). The names of Members voting for and against follow:

RECORD VOTE NO. FC–78

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|---|---|---|---|---|---|---|---|
| Mr. Frank | X | | | Mr. Bachus | X | | |
| Mr. Kanjorski | X | | | Mr. Castle | X | | |
| Ms. Waters | X | | | Mr. King (NY) | X | | |
| Mrs. Maloney | X | | | Mr. Royce | X | | |
| Mr. Gutierrez | X | | | Mr. Lucas | X | | |
| Ms. Velázquez | X | | | Mr. Paul | | X | |
| Mr. Watt | X | | | Mr. Manzullo | X | | |
| Mr. Ackerman | X | | | Mr. Jones | | | |
| Mr. Sherman | X | | | Mrs. Biggert | X | | |
| Mr. Meeks | X | | | Mr. Miller (CA) | X | | |
| Mr. Moore (KS) | X | | | Mrs. Capito | X | | |
| Mr. Capuano | X | | | Mr. Hensarling | X | | |
| Mr. Hinojosa | X | | | Mr. Garrett (NJ) | X | | |
| Mr. Clay | X | | | Mr. Barrett (SC) | | | |
| Mrs. McCarthy | X | | | Mr. Gerlach | | | |
| Mr. Baca | X | | | Mr. Neugebauer | X | | |
| Mr. Lynch | X | | | Mr. Price (GA) | X | | |
| Mr. Miller (NC) | X | | | Mr. McHenry | X | | |
| Mr. Scott | X | | | Mr. Campbell | X | | |
| Mr. Green | X | | | Mr. Putnam | X | | |
| Mr. Cleaver | X | | | Mrs. Bachmann | X | | |
| Ms. Bean | X | | | Mr. Marchant | X | | |
| Ms. Moore (WI) | X | | | Mr. McCotter | X | | |
| Mr. Hodes | X | | | Mr. McCarthy | X | | |
| Mr. Ellison | X | | | Mr. Posey | X | | |
| Mr. Klein | X | | | Ms. Jenkins | X | | |
| Mr. Wilson | X | | | Mr. Lee | X | | |
| Mr. Perlmutter | X | | | Mr. Paulsen | X | | |
| Mr. Donnelly | X | | | Mr. Lance | X | | |
| Mr. Foster | X | | | | | | |
| Mr. Carson | X | | | | | | |

RECORD VOTE NO. FC–78—Continued

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|---|---|---|---|---|---|---|---|
| Ms. Speier | X | | | | | | |
| Mr. Childers | X | | | | | | |
| Mr. Minnick | X | | | | | | |
| Mr. Adler | X | | | | | | |
| Ms. Kilroy | X | | | | | | |
| Mr. Driehaus | X | | | | | | |
| Ms. Kosmas | X | | | | | | |
| Mr. Grayson | X | | | | | | |
| Mr. Himes | X | | | | | | |
| Mr. Peters | X | | | | | | |
| Mr. Maffei | X | | | | | | |

During the consideration of the bill, the following amendment was disposed of by a record vote. The names of Members voting for and against follow:

An amendment by Mr. Hensarling, no. 9, striking "systemic risk," was not agreed to by a record vote of 24 yeas and 43 nays (Record vote no. FC–77):

RECORD VOTE NO. FC–77

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|---|---|---|---|---|---|---|---|
| Mr. Frank | | X | | Mr. Bachus | X | | |
| Mr. Kanjorski | | X | | Mr. Castle | X | | |
| Ms. Waters | | X | | Mr. King (NY) | X | | |
| Mrs. Maloney | | X | | Mr. Royce | X | | |
| Mr. Gutierrez | | X | | Mr. Lucas | X | | |
| Ms. Velázquez | | X | | Mr. Paul | X | | |
| Mr. Watt | | X | | Mr. Manzullo | X | | |
| Mr. Ackerman | | X | | Mr. Jones | | | |
| Mr. Sherman | | X | | Mrs. Biggert | X | | |
| Mr. Meeks | | X | | Mr. Miller (CA) | X | | |
| Mr. Moore (KS) | | X | | Mrs. Capito | X | | |
| Mr. Capuano | | X | | Mr. Hensarling | X | | |
| Mr. Hinojosa | | X | | Mr. Garrett (NJ) | X | | |
| Mr. Clay | | X | | Mr. Barrett (SC) | | | |
| Mrs. McCarthy | | X | | Mr. Gerlach | | | |
| Mr. Baca | | X | | Mr. Neugebauer | X | | |
| Mr. Lynch | | X | | Mr. Price (GA) | | | |
| Mr. Miller (NC) | | X | | Mr. McHenry | X | | |
| Mr. Scott | | X | | Mr. Campbell | | X | |
| Mr. Green | | X | | Mr. Putnam | X | | |
| Mr. Cleaver | | X | | Mrs. Bachmann | X | | |
| Ms. Bean | | X | | Mr. Marchant | X | | |
| Ms. Moore (WI) | | X | | Mr. McCotter | X | | |
| Mr. Hodes | | X | | Mr. McCarthy | X | | |
| Mr. Ellison | | X | | Mr. Posey | X | | |
| Mr. Klein | | X | | Ms. Jenkins | X | | |
| Mr. Wilson | | X | | Mr. Lee | X | | |
| Mr. Perlmutter | | X | | Mr. Paulsen | X | | |
| Mr. Donnelly | | X | | Mr. Lance | X | | |
| Mr. Foster | | X | | | | | |
| Mr. Carson | | X | | | | | |
| Ms. Speier | | X | | | | | |
| Mr. Childers | | X | | | | | |
| Mr. Minnick | | X | | | | | |
| Mr. Adler | | X | | | | | |
| Ms. Kilroy | | X | | | | | |
| Mr. Driehaus | | X | | | | | |
| Ms. Kosmas | | X | | | | | |
| Mr. Grayson | | X | | | | | |
| Mr. Himes | | X | | | | | |
| Mr. Peters | | X | | | | | |
| Mr. Maffei | | X | | | | | |

The following other amendments were also considered by the Committee:

An amendment by Mr. Kanjorski (and Mr. Frank), no. 1, manager's amendment, was agreed to by voice vote.

An amendment by Mr. Bachus, no. 2, regarding the definition of "client", was agreed to by voice vote.

An amendment by Mr. Peters, no. 3, regarding exemption of and reporting by certain private fund advisers, was offered and withdrawn.

An amendment by Mr. Garrett, no. 4, regarding a GAO study, was agreed to by voice vote.

An amendment by Ms. Kosmas, no. 5, regarding transition period and effective date, was agreed to by voice vote.

An amendment by Mrs. Capito (and Mr. Paulsen), no. 6, regarding small business advisory exemption, was agreed to by voice vote.

An amendment by Mr. Lucas, no. 7, regarding commodity trading advisers exemption, was offered and withdrawn.

An amendment by Mr. Hensarling, no. 8, regarding exemption of hedge fund advisers, was not agreed to by voice vote.

An amendment by Mrs. Bachmann, no. 10, regarding transition rule, was agreed to by voice vote.

An amendment by Mr. McCarthy (CA), no. 11, striking consultation with the Federal Reserve, was not agreed to by voice vote.

An amendment by Mr. Himes, no. 12, regarding qualified client standard, was agreed to by voice vote.

An amendment by Mr. Peters (and Mr. Meeks and Mr. Garrett), no. 13, regarding exemption and reporting by certain private fund advisers, was agreed to by voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3818 aims to increase the number of advisers in the securities industry who must register with the SEC under the Investment Advisers Act of 1940 in order to improve regulatory access to information about the participants in and performance of the capital markets, decrease the likelihood of systemic risk, and enhance investor protection.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 13, 2009.*

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,*
*House of Representatives, Washington DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3818, the Private Fund Investment Advisers Registration Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3818—Private Fund Investment Advisers Registration Act of 2009*

Summary: H.R. 3818 would require individuals and organizations that provide investment advice to private investment funds to register with the Securities and Exchange Commission (SEC). The bill would authorize the SEC to exempt advisers that provide services to venture capital funds from registration requirements. H.R. 3818 also would require the Government Accountability Office (GAO) to prepare a report to the Congress on the annual costs of the new registration and reporting requirements to investment advisers and their clients.

Based on information from the SEC, CBO estimates that implementing the provisions of H.R. 3818 would cost $140 million over the 2010–2014 period, assuming appropriation of the necessary amounts. CBO estimates that enacting H.R. 3818 would not affect revenues or direct spending.

H.R. 3818 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

By placing new requirements on investment advisers of private investment firms, H.R. 3818 would impose private-sector mandates, as defined in UMRA. Based on information from the SEC and industry sources, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3818 is shown in the following table. The costs

of this legislation fall within budget function 370 (commerce and housing credit).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2010–2014 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Estimated Authorization Level | 9 | 29 | 36 | 36 | 37 | 147 |
| Estimated Outlays | 7 | 26 | 35 | 36 | 36 | 140 |

Basis of estimate: Based on information from the SEC, CBO estimates that the SEC would add 150 employees by fiscal year 2011 to write regulations and undertake the additional examination and enforcement activities required by the bill (about a 4 percent increase over its 2009 staffing levels). Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3818 would cost $140 million over the 2010–2014 period. That amount would cover the cost of salaries and benefits, overhead, preparation of reports, and upgrades to information technology systems. CBO estimates that enacting H.R. 3818 would not affect revenues or direct spending.

Estimated impact on State, local, and tribal governments: H.R. 3818 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 3818 would impose private-sector mandates, as defined in UMRA, on individuals and firms that provide investment advice to private investment funds. Based on information from the SEC and industry sources, CBO estimates that the aggregate cost of complying with the mandates would not exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The bill would require investment advisers of hedge funds and private equity firms to register with the SEC. The advisers would be subject to existing SEC requirements for registered funds. Approximately 1,300 investment advisers would be affected by the new registration requirements. According to industry experts, the expenses for those advisers to prepare for the registration process would average less than $30,000 per firm. Advisers also would incur ongoing costs to comply with SEC requirements. Based upon information from industry sources and the SEC, CBO estimates that the cost of the mandate would be small relative to the annual threshold.

Additionally, the bill would require all investment advisers for private funds to maintain records and provide to the SEC, if requested, certain financial information related to the assets held by the firm. Industry sources and the SEC indicate that the information required under the bill is readily available to most firms. Therefore, CBO estimates this mandate would not require firms to incur significant costs.

Estimate approved by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Samuel Wice and Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

H.R. 3818 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

The section designates the title of the bill as the "Private Fund Investment Advisers Registration Act of 2009".

*Section 2. Definitions*

This section amends the Investment Advisers Act of 1940 (IAA) by adding definitions for "private fund" and "foreign private fund adviser".

*Section 3. Elimination of private adviser exemption; limited exemption for foreign private fund advisers; limited intrastate exemption*

This section eliminates the IAA's existing private adviser exemption, which exempts from registration investment advisers that have fewer than 15 clients, do not hold themselves out to the public as investment advisers, and do not act as investment advisers to registered investment companies or business development companies. This section additionally creates a limited exemption for foreign private fund advisers. Finally, the section exempts any investment adviser who only advises either licensed small business investment companies, related applicants for other licenses, or funds that have received Small Business Administration notice to proceed to qualify for a license.

As a consequence of repealing Section 203(b)(3) of the Investment Advisers Act, the bill may require a number of professionals that provide advice to members of a single family (i.e., "family offices") to register as investment advisers. The SEC, however, has previously issued a number of orders deeming family offices not to be investment advisers and thus not subject to the Investment Advisers Act, including its registration provisions. The SEC may continue to issue such orders for advisers of family offices that apply for consideration if the SEC determines that the exemption is permissible under the statute.

Although the amendments to Section 203(b)(3) are intended to expand registration requirements to a broader range of companies, the amendments are not intended to affect investment advisers that are exempt from registration under Section 203(b)(2). Thus, registration would not be required for a wholly owned subsidiary within an affiliated group of insurance companies that is established and operated for the sole purpose of providing investment advisory services to the members of the affiliated group of insurance companies, and does not hold itself out to the public as an investment adviser.

*Section 4. Collection of systemic risk data*

This section amends the IAA by authorizing the SEC to require registered investment advisers to maintain records of, and file reports about, the private funds they advise in two instances: first, as the SEC determines is necessary or appropriate in the public interest and for the protection of investors; and second, as the SEC determines, in consultation with the Federal Reserve Board and any other entity that the SEC identifies as having systemic risk responsibility, to be necessary for the assessment of systemic risk. The records and reports of any private fund are further deemed to be the records and reports of the registered investment adviser.

The section enumerates certain types of required information for the reports—for example, the amount of assets under management, the use of leverage, and counterparty credit risk exposures, among others—and authorizes the SEC to require such other information as the SEC, in consultation with the Federal Reserve Board, determines to be necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk. The section further permits the SEC to require the reporting of different information from different classes of private advisers, based on the particular types or sizes of private funds advised by such advisers. The SEC may also require the reporting of such additional information from private fund advisers as the agency determines necessary. It is intended that the SEC, when making rules, will take into consideration the risk associated with various types of funds and scale their requirements to that risk.

The section further sets forth requirements related to the maintenance of records and the periodic and special examination by the SEC of such records. Investment advisers shall also make available to the SEC or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the SEC or its representatives may reasonably request.

The section additionally requires the SEC to share these records and reports with the Federal Reserve Board and any other entity

that the SEC identifies as having a systemic risk responsibility. The confidentiality of these shared records is protected.

This section also gives the SEC the authority to prescribe, by rule or regulation, that investment advisers shall provide reports, records and other documents to the investors, prospective investors, creditors, and counterparties of the private funds they advise. Finally, the section provides that the SEC shall not be compelled to disclose any report that advisers provide to the SEC under this section, or any information contained within such report; but the SEC may neither withhold such information from Congress nor decline requests for information from any Federal department or agency or any self-regulatory organization when acting in its jurisdiction.

*Section 5. Elimination of disclosure provision*

This section amends the IAA to remove a provision that generally bars the SEC from requiring investment advisers to disclose the identity, investments, or affairs of their clients.

*Section 6. Exemption of and reporting by venture capital fund advisers*

This section amends the IAA by authorizing the SEC to define "venture capital fund" and provides a new exemption for the advisers of venture capital funds. The section also authorizes the SEC to require the advisers to venture capital funds to maintain records and provide reports as the SEC deems appropriate to protect investors or in the public interest.

*Section 7. Exemption of and reporting by certain private fund advisers*

This section requires the SEC to exempt from registration an investment adviser of private funds, if each of such funds has assets under management in the United States of less than $150 million. Nevertheless, these investment advisers must maintain records and provide to the SEC such annual or other reports as the SEC deems necessary or appropriate in the public interest or for investor protection. The SEC is also authorized to take into account the size, governance, and investment strategy of a fund to determine if the fund poses a systemic risk. The SEC can provide registration and examination procedures based on this finding.

*Section 8. Clarification of rulemaking authority*

This section addresses the authority to make rules necessary for the exercise of the SEC's powers under the IAA. This rulemaking power includes the ability to give different meanings to terms, including "client", used in different sections of the IAA. The definition of "client" will not include the investor in a private fund managed by an investment adviser, where the private fund has entered into an advisory contract with such adviser. Additionally, the section directs the SEC and the Commodity Futures Trading Commission to jointly issue rules to establish the form and content of required reports for investment advisers dually registered under the IAA and the Commodity Exchange Act.

*Section 9. GAO study*

This section authorizes a study by the Comptroller General of the United States to assess the annual cost of registration requirements and ongoing reporting requirements under the legislation. Study findings must be reported to Congress no later than 2 years from the enactment of the bill.

*Section 10. Effective date; transition period*

This section outlines the timeline for compliance with this bill. Covered investment advisers must register with the SEC within one year of the bill's enactment, but the SEC through rulemaking can give investment advisers the option to register earlier.

*Section 11. Qualified client standard*

This section states that the SEC must adjust for the effects of inflation on any dollar amount used in making determinations (for example, net asset threshold) under subsection 205(e) of the Investment Advisers Act. This adjustment must be made no later than one year after enactment and every five years thereafter.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## INVESTMENT ADVISERS ACT OF 1940

### TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

* * * * * * *

*(29) PRIVATE FUND.—The term "private fund" means an issuer that 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.*

*(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.*

* * * * * * *

REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) * * *

(b) The provisions of subsection (a) shall not apply to—

(1) any investment adviser*, except an investment adviser who acts as an investment adviser to any private fund,* all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

* * * * * * *

**[**(3) any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act, or a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this title, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner;**]**

*(3) any investment adviser that is a foreign private fund adviser;*

* * * * * * *

(5) any plan described in section 414(e) of the Internal Revenue Code of 1986, any person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; **[**or**]**

(6) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to—

(A) an investment company registered under title I of this Act; [or]

(B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election[.]*; or*

*(C) a private fund; or*

*(7) any investment adviser who solely advises—*

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

*(B) entities that 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.*

* * * * * * *

*(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.*

*(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.*

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ANNUAL AND OTHER REPORTS

SEC. 204. (a) * * *

*(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.*

**[**(b)**]** *(c)* FILING DEPOSITORIES.—The Commission may, by rule, require an investment adviser—

(1) * * *

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**[**(c)**]** *(d)* ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

(1) * * *

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INVESTMENT ADVISORY CONTRACTS

SEC. 205. (a) * * *

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(e) The Commission, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from subsection (a)(1), if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protections of subsection (a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with this section. *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 $1,000 shall be rounded to the nearest multiple of $1,000.*

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PUBLICITY

SEC. 210. (a) * * *

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**[**(c) No provision of this title shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this title.**]**

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RULES, REGULATIONS, AND ORDERS

SEC. 211. **[**(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. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.**]** *(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.*

* * * * * * *

*(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 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(l) 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.).*

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