

Union Calendar No. 407

111TH CONGRESS
2^D SESSION

H. R. 3818

[Report No. 111-686, Part I]

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.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2009

Mr. KANJORSKI introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 16, 2010

Reported with an amendment, and referred to the Committee on Agriculture for a period ending not later than December 17, 2010, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(a) of rule X

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 17, 2010

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 15, 2009]

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.

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 Invest-*
5 *ment Advisers Registration Act of 2009”.*

6 **SEC. 2. DEFINITIONS.**

7 *Section 202(a) of the Investment Advisers Act of 1940*
8 *(15 U.S.C. 80b-2(a)) is amended by adding at the end the*
9 *following new paragraphs:*

10 *“(29) PRIVATE FUND.—The term ‘private fund’*
11 *means an issuer that would be an investment com-*
12 *pany under section 3(a) of the Investment Company*
13 *Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception*
14 *provided from that definition by either section 3(c)(1)*
15 *or section 3(c)(7) of such Act*

16 *“(30) FOREIGN PRIVATE FUND ADVISER.—The*
17 *term ‘foreign private fund adviser’ means an invest-*
18 *ment adviser who—*

19 *“(A) has no place of business in the United*
20 *States;*

21 *“(B) during the preceding 12 months has*
22 *had—*

23 *“(i) fewer than 15 clients in the*
24 *United States; and*

1 “(i) assets under management attrib-
2 utable to clients in the United States of less
3 than \$25,000,000, or such higher amount as
4 the Commission may, by rule, deem appro-
5 priate in the public interest or for the pro-
6 tection of investors; and

7 “(C) neither holds itself out generally to the
8 public in the United States as an investment ad-
9 viser, nor acts as an investment adviser to any
10 investment company registered under the Invest-
11 ment Company Act of 1940, or a company which
12 has elected to be a business development com-
13 pany pursuant to section 54 of the Investment
14 Company Act of 1940 (15 U.S.C. 80a-53) and
15 has not withdrawn such election.”.

16 **SEC. 3. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
17 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
18 **FUND ADVISERS; LIMITED INTRASTATE EX-**
19 **EMPTION.**

20 Section 203(b) of the Investment Advisers Act of 1940
21 (15 U.S.C. 80b-3(b)) is amended—

22 (1) in paragraph (1), by inserting “, except an
23 investment adviser who acts as an investment adviser
24 to any private fund,” after “any investment adviser”;

1 (2) *by amending paragraph (3) to read as fol-*
2 *lows:*

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

5 (3) *in paragraph (5), by striking “or” at the*
6 *end;*

7 (4) *in paragraph (6)—*

8 (A) *in subparagraph (A), by striking “or”;*

9 (B) *in subparagraph (B), by striking the*
10 *period at the end and adding “; or”; and*

11 (C) *by adding at the end the following new*
12 *subparagraph:*

13 “*(C) a private fund; or*”; *and*

14 (5) *by adding at the end the following:*

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

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

19 “*(B) entities that have received from the*
20 *Small Business Administration notice to proceed*
21 *to qualify for a license, which notice or license*
22 *has not been revoked; or*

23 “*(C) applicants, related to one or more li-*
24 *censed small business investment companies cov-*
25 *ered in subparagraph (A), that have applied for*

1 *another license, which application remains pend-*
2 *ing.”.*

3 **SEC. 4. COLLECTION OF SYSTEMIC RISK DATA.**

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

6 (1) *by redesignating subsections (b) and (c) as*
7 *subsections (c) and (d), respectively; and*

8 (2) *by inserting after subsection (a) the following*
9 *new subsection:*

10 “(b) *RECORDS AND REPORTS OF PRIVATE FUNDS.—*

11 “(1) *IN GENERAL.—The Commission is author-*
12 *ized to require any investment adviser registered*
13 *under this Act to maintain such records of and file*
14 *with the Commission such reports regarding private*
15 *funds advised by the investment adviser as are nec-*
16 *essary or appropriate in the public interest and for*
17 *the protection of investors or for the assessment of sys-*
18 *temic risk as the Commission determines in consulta-*
19 *tion with the Board of Governors of the Federal Re-*
20 *serve System. The Commission is authorized to pro-*
21 *vide or make available to the Board of Governors of*
22 *the Federal Reserve System, and to any other entity*
23 *that the Commission identifies as having systemic*
24 *risk responsibility, those reports or records or the in-*
25 *formation contained therein. The records and reports*

1 of any private fund, to which any such investment
2 adviser provides investment advice, maintained or
3 filed by an investment adviser registered under this
4 Act, shall be deemed to be the records and reports of
5 the investment adviser.

6 “(2) *REQUIRED INFORMATION.*—The records and
7 reports required to be maintained or filed with the
8 Commission under this subsection shall include, for
9 each private fund advised by the investment ad-
10 viser—

11 “(A) the amount of assets under manage-
12 ment;

13 “(B) the use of leverage (including off-bal-
14 ance sheet leverage);

15 “(C) counterparty credit risk exposures;

16 “(D) trading and investment positions;

17 “(E) trading practices; and

18 “(F) such other information as the Commis-
19 sion, in consultation with the Board of Gov-
20 ernors of the Federal Reserve System, determines
21 necessary or appropriate in the public interest
22 and for the protection of investors or for the as-
23 sessment of systemic risk.

24 “(3) *OPTIONAL INFORMATION.*—The Commission
25 may require the reporting of such additional informa-

1 *tion from private fund advisers as the Commission*
2 *determines necessary. In making such determination,*
3 *the Commission, taking into account the public inter-*
4 *est and potential to contribute to systemic risk, may*
5 *set different reporting requirements for different class-*
6 *es of private fund advisers, based on the particular*
7 *types or sizes of private funds advised by such advis-*
8 *ers.*

9 *“(4) MAINTENANCE OF RECORDS.—An invest-*
10 *ment adviser registered under this Act is required to*
11 *maintain and keep such records of private funds ad-*
12 *vised by the investment adviser for such period or pe-*
13 *riods as the Commission, by rule or regulation, may*
14 *prescribe as necessary or appropriate in the public*
15 *interest and for the protection of investors or for the*
16 *assessment of systemic risk.*

17 *“(5) EXAMINATION OF RECORDS.—*

18 *“(A) PERIODIC AND SPECIAL EXAMINA-*
19 *TIONS.—All records of a private fund main-*
20 *tained by an investment adviser registered under*
21 *this Act shall be subject at any time and from*
22 *time to time to such periodic, special, and other*
23 *examinations by the Commission, or any mem-*
24 *ber or representative thereof, as the Commission*
25 *may prescribe.*

1 “(B) *AVAILABILITY OF RECORDS.*—*An in-*
2 *vestment adviser registered under this Act shall*
3 *make available to the Commission or its rep-*
4 *resentatives any copies or extracts from such*
5 *records as may be prepared without undue effort,*
6 *expense, or delay as the Commission or its rep-*
7 *resentatives may reasonably request.*

8 “(6) *INFORMATION SHARING.*—*The Commission*
9 *shall make available to the Board of Governors of the*
10 *Federal Reserve System, and to any other entity that*
11 *the Commission identifies as having systemic risk re-*
12 *sponsibility, copies of all reports, documents, records,*
13 *and information filed with or provided to the Com-*
14 *mission by an investment adviser under this sub-*
15 *section as the Board, or such other entity, may con-*
16 *sider necessary for the purpose of assessing the sys-*
17 *temic risk of a private fund. All such reports, docu-*
18 *ments, records, and information obtained by the*
19 *Board, or such other entity, from the Commission*
20 *under this subsection shall be kept confidential in a*
21 *manner consistent with confidentiality established by*
22 *the Commission pursuant to paragraph (8).*

23 “(7) *DISCLOSURES OF CERTAIN PRIVATE FUND*
24 *INFORMATION.*—*An investment adviser registered*
25 *under this Act shall provide such reports, records, and*

1 *other documents to investors, prospective investors,*
2 *counterparties, and creditors, of any private fund ad-*
3 *vised by the investment adviser as the Commission,*
4 *by rule or regulation, may prescribe as necessary or*
5 *appropriate in the public interest and for the protec-*
6 *tion of investors or for the assessment of systemic risk.*

7 “(8) *CONFIDENTIALITY OF REPORTS.*—*Notwith-*
8 *standing any other provision of law, the Commission*
9 *shall not be compelled to disclose any report or infor-*
10 *mation contained therein required to be filed with the*
11 *Commission under this subsection. Nothing in this*
12 *paragraph shall authorize the Commission to with-*
13 *hold information from the Congress or prevent the*
14 *Commission from complying with a request for infor-*
15 *mation from any other Federal department or agency*
16 *or any self-regulatory organization requesting the re-*
17 *port or information for purposes within the scope of*
18 *its jurisdiction, or complying with an order of a court*
19 *of the United States in an action brought by the*
20 *United States or the Commission. For purposes of sec-*
21 *tion 552 of title 5, United States Code, this para-*
22 *graph shall be considered a statute described in sub-*
23 *section (b)(3)(B) of such section.”.*

1 **SEC. 5. ELIMINATION OF DISCLOSURE PROVISION.**

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

4 **SEC. 6. EXEMPTION OF AND REPORTING BY VENTURE CAP-**
 5 **ITAL FUND ADVISERS.**

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

9 *“(l) EXEMPTION OF AND REPORTING BY VENTURE*
 10 *CAPITAL FUND ADVISERS.—The Commission shall identify*
 11 *and define the term ‘venture capital fund’ and shall provide*
 12 *an adviser to such a fund an exemption from the registra-*
 13 *tion requirements under this section (excluding any such*
 14 *fund whose adviser is exempt from registration pursuant*
 15 *to paragraph (7) of subsection (b)). The Commission shall*
 16 *require such advisers to maintain such records and provide*
 17 *to the Commission such annual or other reports as the Com-*
 18 *mission determines necessary or appropriate in the public*
 19 *interest or for the protection of investors.”.*

20 **SEC. 7. EXEMPTION OF AND REPORTING BY CERTAIN PRI-**
 21 **VATE FUND ADVISERS.**

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

25 *“(m) EXEMPTION OF AND REPORTING BY CERTAIN*
 26 *PRIVATE FUND ADVISERS.—*

1 “(1) *IN GENERAL.*—*The Commission shall pro-*
2 *vide an exemption from the registration requirements*
3 *under this section to any investment adviser of pri-*
4 *vate funds, if each of such private funds has assets*
5 *under management in the United States of less than*
6 *\$150,000,000.*

7 “(2) *REPORTING.*—*The Commission shall require*
8 *investment advisers exempted by reason of this sub-*
9 *section to maintain such records and provide to the*
10 *Commission such annual or other reports as the Com-*
11 *mission determines necessary or appropriate in the*
12 *public interest or for the protection of investors.*

13 “(n) *REGISTRATION AND EXAMINATION OF MID-SIZED*
14 *PRIVATE FUND ADVISERS.*—*In prescribing regulations to*
15 *carry out the requirements of this section with respect to*
16 *investment advisers acting as investment advisers to mid-*
17 *sized private funds, the Commission shall take into account*
18 *the size, governance, and investment strategy of such funds*
19 *to determine whether they pose systemic risk, and shall pro-*
20 *vide for registration and examination procedures with re-*
21 *spect to the investment advisers of such funds which reflect*
22 *the level of systemic risk posed by such funds.”.*

23 **SEC. 8. CLARIFICATION OF RULEMAKING AUTHORITY.**

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

1 (1) *by amending subsection (a) to read as fol-*
2 *lows:*

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

11 “(1) *classify persons and matters within its ju-*
12 *risdiction based upon, but not limited to—*

13 “(A) *size;*

14 “(B) *scope;*

15 “(C) *business model;*

16 “(D) *compensation scheme; or*

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

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

21 “(3) *ascribe different meanings to terms (includ-*
22 *ing the term ‘client’, except the Commission shall not*
23 *ascribe a meaning to the term ‘client’ that would in-*
24 *clude an investor in a private fund managed by an*
25 *investment adviser, where such private fund has en-*

1 *tered into an advisory contract with such adviser)*
2 *used in different sections of this title as the Commis-*
3 *sion determines necessary to effect the purposes of this*
4 *title.”; and*

5 *(2) by adding at the end the following new sub-*
6 *section:*

7 *“(e) The Commission and the Commodity Futures*
8 *Trading Commission shall, after consultation with the*
9 *Board of Governors of the Federal Reserve System, within*
10 *12 months after the date of enactment of the Private Fund*
11 *Investment Advisers Registration Act of 2009, jointly pro-*
12 *mulgate rules to establish the form and content of the re-*
13 *ports required to be filed with the Commission under sec-*
14 *tions 203(l) and 204(b) and with the Commodity Futures*
15 *Trading Commission by investment advisers that are reg-*
16 *istered both under the Investment Advisers Act of 1940 (15*
17 *U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7*
18 *U.S.C. 1 et seq.).”.*

19 **SEC. 9. GAO STUDY.**

20 *(a) STUDY REQUIRED.—The Comptroller General of*
21 *the United States shall carry out a study to assess the an-*
22 *nuual costs on industry members and their investors due to*
23 *the registration requirements and ongoing reporting re-*
24 *quirements under this Act and the amendments made by*
25 *this Act.*

1 (b) *REPORT TO THE CONGRESS.*—Not later than the
2 end of the 2-year period beginning on the date of the enact-
3 ment of this Act, the Comptroller General of the United
4 States shall submit a report to the Congress containing the
5 findings and determinations made by the Comptroller Gen-
6 eral in carrying out the study required under subsection
7 (a).

8 **SEC. 10. EFFECTIVE DATE; TRANSITION PERIOD.**

9 (a) *EFFECTIVE DATE.*—This Act, and the amendments
10 made by this Act, shall take effect with respect to investment
11 advisers after the end of the 1-year period beginning on the
12 date of the enactment of this Act.

13 (b) *TRANSITION PERIOD.*—The Securities and Ex-
14 change Commission shall prescribe rules and regulations to
15 permit an investment adviser who will be required to reg-
16 ister with the Securities and Exchange Commission by rea-
17 son of this Act with the option of registering with the Secu-
18 rities and Exchange Commission before the date described
19 under subsection (a).

20 **SEC. 11. QUALIFIED CLIENT STANDARD.**

21 Section 205(e) of the Investment Advisers Act of 1940
22 (15 U.S.C. 80b-5(e)) is amended by adding at the end the
23 following: “With respect to any factor used by the Commis-
24 sion in making a determination under this subsection, if
25 the Commission uses a dollar amount test in connection

1 *with such factor, such as a net asset threshold, the Commis-*
2 *sion shall, not later than one year after the date of the en-*
3 *actment of the Private Fund Investment Advisers Registra-*
4 *tion Act of 2009, and every 5 years thereafter, adjust for*
5 *the effects of inflation on such test. Any such adjustment*
6 *that is not a multiple of \$1,000 shall be rounded to the*
7 *nearest multiple of \$1,000.”.*

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11TH CONGRESS
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H. R. 3818

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A BILL

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