

**Discussion Draft of the  
Private Fund Investment Advisers Registration Act of 2009  
Section-by-Section Analysis  
October 1, 2009**

**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 of “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 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 also creates a limited exemption for foreign private fund advisers.

**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 submit reports about, the private funds they advise in two instances: first, as the Securities and Exchange Commission (SEC) determines are 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 to any other entity that the SEC identifies as having systemic risk responsibility, are 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 (like the amount of assets under management, the use of leverage, and counterparty credit risk exposures, among others) and authorizes the SEC to require additional information as it deems necessary for different classes of private fund 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.

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 authorizes the SEC to require investment advisers to 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 or information contained within such report filed with the SEC, but the SEC may not withhold such information from Congress.

#### **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 creating a new exemption for venture capital fund advisers. It also authorizes the SEC to require such advisers to maintain records and provide reports as the SEC deems appropriate to protect investors or the public interest.

#### **Section 7. Clarification of rulemaking authority**

This section addresses the SEC's authority to make rules necessary for the exercise of the powers it is granted under the IAA. This rulemaking authority includes power to give different meanings to terms, including "client," used in different sections of the IAA. Additionally, the section directs the SEC and the Commodity Futures Trading Commission to jointly promulgate rules to establish the form and content of required reports for investment advisers registered dually under the IAA and the Commodity Exchange Act.