

[DISCUSSION DRAFT]111TH CONGRESS
1ST SESSION**H. R.** _____

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

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

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”.

1 **SEC. 2. DEFINITIONS.**

2 Section 202(a) of the Investment Advisers Act of
3 1934 (15 U.S.C. 80b-2(a)) is amended by adding at the
4 end the following new paragraphs:

5 “(29) PRIVATE FUND.—The term ‘private fund’
6 means an investment fund that—

7 “(A) would be an investment company
8 under section 3(a) of the Investment Company
9 Act of 1940 (15 U.S.C. 80a-3(a)) but for the
10 exception provided from that definition by ei-
11 ther section 3(c)(1) or section 3(c)(7) of such
12 Act; and

13 “(B) either—

14 “(i) is organized or otherwise created
15 under the laws of the United States or of
16 a State; or

17 “(ii) has 10 percent or more of its
18 outstanding securities by value owned by
19 United States persons.

20 “(30) FOREIGN PRIVATE FUND ADVISER.—The
21 term ‘foreign private fund adviser’ means an invest-
22 ment adviser who—

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

25 “(B) during the preceding 12 months has
26 had—

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

3 “(ii) assets under management attrib-
4 utable to clients in the United States of
5 less than \$25,000,000, or such higher
6 amount as the Commission may, by rule,
7 deem appropriate in the public interest or
8 for the protection of investors; and

9 “(C) neither holds itself out generally to
10 the public in the United States as an invest-
11 ment adviser, nor acts as an investment adviser
12 to any investment company registered under the
13 Investment Company Act of 1940, or a com-
14 pany which has elected to be a business devel-
15 opment company pursuant to section 54 of the
16 Investment Company Act of 1940 (15 U.S.C.
17 80a-53) and has not withdrawn such election.”.

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

22 Section 203(b) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b-3(b)) is amended—

24 (1) in paragraph (1), by inserting “, except an
25 investment adviser who acts as an investment ad-

1 viser to any private fund,” after “any investment ad-
2 viser”;

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

5 “(3) any investment adviser that is a foreign
6 private fund adviser;”; and

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

9 (4) in paragraph (6)—

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

11 (B) in subparagraph (B), by striking the
12 period at the end and adding “; or”; and

13 (C) by adding at the end the following new
14 subparagraph:

15 “(C) a private fund.”.

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

17 Section 204 of the Investment Advisers Act of 1940
18 (15 U.S.C. 80b-4) is amended—

19 (1) by redesignating subsections (b) and (c) as
20 subsections (c) and (d), respectively; and

21 (2) by inserting after subsection (a) the fol-
22 lowing new subsection:

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

24 “(1) IN GENERAL.—The Commission is author-
25 ized to require any investment adviser registered

1 under this Act to maintain such records of and file
2 with the Commission such reports regarding private
3 funds advised by the investment adviser as are nec-
4 essary or appropriate in the public interest and for
5 the protection of investors or for the assessment of
6 systemic risk as the Commission determines in con-
7 sultation with the Board of Governors of the Federal
8 Reserve System. The Commission is authorized to
9 provide or make available to the Board of Governors
10 of the Federal Reserve System, and to any other en-
11 tity that the Commission identifies as having sys-
12 temic risk responsibility, those reports or records or
13 the information contained therein. The records and
14 reports of any private fund, to which any such in-
15 vestment adviser provides investment advice, main-
16 tained or filed by an investment adviser registered
17 under this Act, shall be deemed to be the records
18 and reports of the investment adviser.

19 “(2) REQUIRED INFORMATION.—The records
20 and reports required to be maintained or filed with
21 the Commission under this subsection shall include,
22 for each private fund advised by the investment ad-
23 viser—

24 “(A) the amount of assets under manage-
25 ment;

1 “(B) the use of leverage (including off-bal-
2 ance sheet leverage);

3 “(C) counterparty credit risk exposures;

4 “(D) trading and investment positions;

5 “(E) trading practices; and

6 “(F) such other information as the Com-
7 mission, in consultation with the Board of Gov-
8 ernors of the Federal Reserve System, deter-
9 mines necessary or appropriate in the public in-
10 terest and for the protection of investors or for
11 the assessment of systemic risk.

12 “(3) OPTIONAL INFORMATION.—The Commis-
13 sion may require the reporting of such additional in-
14 formation from private fund advisers as the Com-
15 mission determines necessary. In making such deter-
16 mination, the Commission may set different report-
17 ing requirements for different classes of private fund
18 advisers, based on the particular types or sizes of
19 private funds advised by such advisers.

20 “(4) MAINTENANCE OF RECORDS.—An invest-
21 ment adviser registered under this Act is required to
22 maintain and keep such records of private funds ad-
23 vised by the investment adviser for such period or
24 periods as the Commission, by rule or regulation,
25 may prescribe as necessary or appropriate in the

1 public interest and for the protection of investors or
2 for the assessment of systemic risk.

3 “(5) EXAMINATION OF RECORDS.—

4 “(A) PERIODIC AND SPECIAL EXAMINA-
5 TIONS.—All records of a private fund main-
6 tained by an investment adviser registered
7 under this Act shall be subject at any time and
8 from time to time to such periodic, special, and
9 other examinations by the Commission, or any
10 member or representative thereof, as the Com-
11 mission may prescribe.

12 “(B) AVAILABILITY OF RECORDS.—An in-
13 vestment adviser registered under this Act shall
14 make available to the Commission or its rep-
15 resentatives any copies or extracts from such
16 records as may be prepared without undue ef-
17 fort, expense, or delay as the Commission or its
18 representatives may reasonably request.

19 “(6) INFORMATION SHARING.—The Commission
20 shall make available to the Board of Governors of
21 the Federal Reserve System, and to any other entity
22 that the Commission identifies as having systemic
23 risk responsibility, copies of all reports, documents,
24 records, and information filed with or provided to
25 the Commission by an investment adviser under this

1 subsection as the Board, or such other entity, may
2 consider necessary for the purpose of assessing the
3 systemic risk of a private fund. All such reports,
4 documents, records, and information obtained by the
5 Board, or such other entity, from the Commission
6 under this subsection shall be kept confidential.

7 “(7) DISCLOSURES OF CERTAIN PRIVATE FUND
8 INFORMATION.—An investment adviser registered
9 under this Act shall provide such reports, records,
10 and other documents to investors, prospective inves-
11 tors, counterparties, and creditors, of any private
12 fund advised by the investment adviser as the Com-
13 mission, by rule or regulation, may prescribe as nec-
14 essary or appropriate in the public interest and for
15 the protection of investors or for the assessment of
16 systemic risk.

17 “(8) CONFIDENTIALITY OF REPORTS.—Not-
18 withstanding any other provision of law, the Com-
19 mission shall not be compelled to disclose any report
20 or information contained therein required to be filed
21 with the Commission under this subsection. Nothing
22 in this paragraph shall authorize the Commission to
23 withhold information from the Congress or prevent
24 the Commission from complying with a request for
25 information from any other Federal department or

1 agency or any self-regulatory organization requesting
2 the report or information for purposes within the
3 scope of its jurisdiction, or complying with an order
4 of a court of the United States in an action brought
5 by the United States or the Commission. For pur-
6 poses of section 552 of title 5, United States Code,
7 this paragraph shall be considered a statute de-
8 scribed in subsection (b)(3)(B) of such section.”.

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

10 Section 210 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b-10) is amended by striking subsection (c).

12 **SEC. 6. EXEMPTION OF AND REPORTING BY VENTURE CAP-**
13 **ITAL FUND ADVISERS.**

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

17 “(1) EXEMPTION OF AND REPORTING BY VENTURE
18 CAPITAL FUND ADVISERS.—The Commission shall iden-
19 tify and define the term ‘venture capital fund’ and shall
20 provide an adviser to such a fund an exemption from the
21 registration requirements under this section. The Commis-
22 sion shall require such advisers to maintain such records
23 and provide to the Commission such annual or other re-
24 ports as the Commission determines necessary or appro-

1 piate in the public interest or for the protection of inves-
2 tors.”.

3 **SEC. 7. CLARIFICATION OF RULEMAKING AUTHORITY.**

4 Section 211 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80b-11) is amended—

6 (1) by amending subsection (a) to read as fol-
7 lows:

8 “(a) The Commission shall have authority from time
9 to time to make, issue, amend, and rescind such rules and
10 regulations and such orders as are necessary or appro-
11 priate to the exercise of the functions and powers con-
12 ferred upon the Commission elsewhere in this title, includ-
13 ing rules and regulations defining technical, trade, and
14 other terms used in this title. For the purposes of its rules
15 and regulations, the Commission may—

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

18 “(A) size;

19 “(B) scope;

20 “(C) business model;

21 “(D) compensation scheme; or

22 “(E) potential to create or increase sys-
23 temic risk;

24 “(2) prescribe different requirements for dif-
25 ferent classes of persons or matters; and

1 “(3) ascribe different meanings to terms (in-
2 cluding the term ‘client’) used in different sections
3 of this title as the Commission determines necessary
4 to effect the purposes of this 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 6 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(i) 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
17 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange
18 Act (7 U.S.C. 1 et seq.).”.