

NEW YORK

1285 Avenue of the Americas
New York, NY 10019-6064
+1 212 373 3000

WASHINGTON, D.C.

2001 K Street NW
Washington, DC 20006-1047
+1 202 223 7300

LONDON

Alder Castle, 10 Noble Street
London EC2V 7JU
United Kingdom
+44 20 7367 1600

TOKYO

Fukoku Seimei Building, 2nd Floor
2-2, Uchisaiwaicho 2-chome
Chiyoda-ku, Tokyo 100-0011
Japan
+81 3 3597 8101

BEIJING

Unit 3601, Fortune Plaza Office
Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
People's Republic of China
+86 10 5828 6300

HONG KONG

12th FL, Hong Kong Club Building
3A Chater Road
Central Hong Kong
+852 2536 9933

January 30, 2009

Senate Bill Would Require Private Funds to Register and Make Disclosures

On January 29, 2009, Senators Chuck Grassley and Carl Levin introduced the *Hedge Fund Transparency Act* (the "Bill"), which would require certain private funds to register with the U.S. Securities and Exchange Commission (the "SEC"), make significant public disclosures (including the identities of investors) and adopt anti-money laundering programs. If passed, the Bill would amend the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act").

Applies to All Private Funds

Although entitled the "Hedge Fund Transparency Act," the Bill captures ***all private funds*** that rely on §3(c)(1) or §3(c)(7) of the Investment Company Act to remain exempt from registration as investment companies. Private equity, venture capital and hedge funds typically rely on either §3(c)(1) (for private funds owned by not more than 100 beneficial owners) or §3(c)(7) (for private funds owned exclusively by "qualified purchasers") of the Investment Company Act to remain exempt. The Bill replaces §3(c)(1) with a new §6(a)(6) and replaces §3(c)(7) with a new §6(a)(7), and adds additional conditions with respect to the application of these exemptions to "large investment companies".

Registration and Other Conditions for Exemption from Investment Company Act

Under the Bill, if a fund otherwise satisfies §6(a)(6) (the former §3(c)(1)) or §6(a)(7) (the former §3(c)(7)) of the Investment Company Act, the fund would be exempt from regulation as an investment company. However, if the fund has assets, or assets under management, of \$50,000,000 or more, then it can remain exempt only if the fund: (1) registers with the SEC; (2) maintains such books and records as the SEC may require; (3) cooperates with any request for information or examination by the SEC; and (4) files an annual information form with the SEC. It is unclear from the draft Bill what exactly "registration" entails. Importantly, the Bill applies to a fund itself (as opposed to a fund's manager). Because the Bill's provisions are independent of the registration requirements for investment advisers under the U.S. Investment Advisers Act of 1940, as amended, some fund sponsors may be required to register both the management entity and the various funds that they form and manage.

Information Form: Required Filings and Public Disclosures

Under the Bill, a fund would also be required to file an “information form” at least annually with the SEC, which the SEC would make publicly available in an electronic, searchable format. The information form would require disclosure of the following:

1. the name and current address of: (a) each natural person who is a beneficial owner of the fund; (b) any company with an ownership interest in the fund; and (c) the fund’s primary accountant and primary broker;
2. an explanation of the structure of ownership interests in the fund;
3. information on the fund’s affiliation with any other financial institution;
4. a statement of any minimum investment commitment required of a limited partner, member or other investor;
5. the total number of any limited partners, members or other investors; and
6. the current value of the fund’s assets and assets under management.

Given the breadth of public disclosures required, it is unclear how the new requirements interact with the exemption for a “private placement” of interests in a private fund under the U.S. Securities Act of 1933, as amended.

Anti-Money Laundering Obligations

Under the Bill, a fund would also be required to establish an anti-money laundering program and report suspicious transactions. The Bill would also require each such fund to comply with the same requirements as other “financial institutions” for producing records requested by a federal regulator under the USA Patriot Act. The U.S. Treasury recently dropped proposed rules that would have imposed some of these same requirements on private funds.

* * * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum may be addressed to any of the following:

Marco V. Masotti	(212) 373-3034	Robert M. Hirsh	(212) 373-3108
Yvonne Y. F. Chan	(212) 373-3255	Mitchell Berg	(212) 373-3048
Jennifer A. Spiegel	(212) 373-3748	Stephanie McCavitt	(212) 373-3558