

TITLE IV—~~REGISTRATON~~REGULATION OF ADVISERS TO
~~PRIVATE~~HEDGE FUNDS

AND OTHERS

SEC. 401. SHORT TITLE.

This ~~Act~~title may be cited as the ““Private Fund Investment Advisers Registration Act of 2009””.

SEC. 402. 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:

““(29) The term ‘private fund’ means an investment fund that—

“(A) would be an investment company (as defined in section 3 of the Investment Company

Act of 1940 (15 U.S.C. 80a-~~3~~)), but for section 3(c)(1) or 3(c)(7) of ~~the Investment Company Act of 1940 (15 U.S.C. 80a-3(e)(1) or 80a-3(e)(7))~~that Act; and

“(B) either—

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

“(ii) has 10 percent or more of its outstanding securities owned by ~~U.S.~~United States persons.

“(30) The term ‘foreign private adviser’ means any investment adviser who—

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

“(B) ~~during the preceding 12 months has had—~~“(i)has fewer than 15 clients ~~in~~who are domiciled in or residents of the United States; ~~and~~

“(ii)has assets under management attributable to clients ~~in~~who are domiciled in or residents of the United States of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

“(C) neither holds itself out generally to the public in the United States as

“(i) an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of ~~1940,~~1940; or

“(ii) 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development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-~~53~~), and has not withdrawn its election.””.

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;
LIMITED EXEMPTION FOR FOREIGN PRIVATE
ADVISERS; LIMITED INTRASTATE EXEMPTION.

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

(~~a~~1) in paragraph (1), by inserting “~~“~~, ~~except other than~~ an investment adviser who acts as an investment adviser to any private fund,” ~~after “investment adviser” the first time it appears;~~ ~~“~~ before “all of whose”;

(~~b~~2) by ~~amending~~~~striking~~ paragraph (3) ~~to read as follows:~~ ~~and inserting the following:~~

“~~“(3) any investment adviser that is a foreign private adviser;”~~”; and (~~e~~3) in paragraph (6)—

(~~1~~A) in subparagraph (A), by striking “~~“or”;~~” ~~at the end;~~

(~~2~~B) in subparagraph (B), by striking the period at the end and ~~adding “inserting “; or”~~; and

(~~3~~C) by adding at the end the following ~~new subparagraph:~~

“~~“(C) a private fund.”~~”

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS;
DISCLOSURES.

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

(~~a~~1) by redesignating subsections (b) and (c) as subsections (c) and (d), ~~respectively~~; and (~~b~~2) by inserting after subsection (a) the following ~~new subsection (b)~~:

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

“~~“(1) IN GENERAL.—The Commission is authorized to~~~~may~~ require any investment adviser registered under this ~~Act~~~~title—~~

~~“(A) to maintain such records of,~~ and ~~submit to file with~~ the Commission such reports regarding private funds advised by the investment adviser, ~~as are necessary~~ ~~or~~ ~~and~~ appropriate in the public ~~interest~~~~interest~~ and ~~for the protection of investors, or~~ for the assessment of systemic risk by the ~~Board of Governors of the Federal Reserve System and the~~~~Agency for~~ Financial ~~Services Oversight Council,~~~~Stability;~~ and

~~“(B) to provide or make available to the~~ ~~Board of Governors of the Federal Reserve System and the~~~~Agency for~~ Financial ~~Services Oversight Council~~~~Stability~~ those reports or records or the information contained therein.

“~~“(2) TREATMENT OF RECORDS.—The records and reports of any private fund would~~ ~~be provided to~~ an investment ~~company, to which any such investment~~ adviser ~~registered under~~

this title who provides investment advice, ~~maintained or filed by an investment adviser registered under this Act to that private fund~~ shall be deemed to be the records and reports of the investment adviser.

~~“(23) REQUIRED INFORMATION.—The records and reports required to be filed with the Commission under this subsection shall include but shall not be limited to the following information,~~ for each private fund advised by the investment adviser:— a description of—

~~“(A) the~~ amount of assets under management, use of leverage;

~~(including off-balance sheet leverage);“(B) counterparty credit risk exposures;~~ exposure;

~~“(C) trading and investment positions; and;~~

~~“(D) valuation methodologies of the fund;~~

~~“(E) types of assets held;~~

~~“(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;~~

~~“(G) trading practices; and~~

~~“(B) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines~~ Agency for Financial Stability, deems necessary ~~or~~ and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

~~“(34) MAINTENANCE OF RECORDS.—An investment adviser registered under this Act is required to~~ title shall maintain ~~and keep~~ such records of private funds advised by the investment adviser for such period or periods as the Commission, by ~~rules and regulations~~ rule, may prescribe as necessary ~~or~~ and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

~~“(45) EXAMINATION OF RECORDS.—~~

~~“(A) PERIODIC AND SPECIAL EXAMINATIONS.—All~~ The Commission—

~~“(i) shall conduct periodic inspections of all~~ records of ~~a~~ private fund ~~maintained by an investment adviser registered under this Act shall be subject~~ title in accordance with a schedule established by the Commission; and

~~“(ii) may conduct~~ at any time and from time to time ~~to~~ such ~~periodic~~ additional, special, and other examinations ~~by the Commission, or any member or representative thereof,~~ as the Commission may prescribe: as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

~~“(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this Act~~title 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.

~~“(5) INFORMATION SHARING.— The Commission shall make available to the Board of Governors of the Federal Reserve System and the Agency for Financial Services Oversight Council~~Stability copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under ~~section 204(b)~~this subsection as the ~~Board or the Council~~Agency for Financial Stability may consider necessary for the purpose of assessing the systemic risk ~~of posed by~~ a private fund ~~or assessing whether a private fund should be designated a Tier 1 financial holding company.~~ All Information in all such reports, documents, records, and information ~~obtained by the Board or the Council from the Commission under~~in this subsection shall be kept strictly confidential.

~~“(6) DISCLOSURES BY PRIVATE FUND.— 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 rules and regulations, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.~~

~~“(7) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission shall~~may not be compelled to disclose any supervisory report or information contained therein required to be filed with the Commission under this subsection ~~(b). Nothing, except that nothing~~ in this subsection ~~shall authorize~~authorizes the Commission—

~~“(A) to withhold information from Congress,~~ upon an agreement of confidentiality; or

~~“(B) prevent the Commission from complying with—~~

~~“(i) 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~~

~~“(ii) an order of a court of the United States in an action brought by the United States or the Commission.~~

~~“(8) PUBLIC INFORMATION EXCEPTION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.”~~

~~“(9) REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.”~~

SEC. 405. DISCLOSURE PROVISION ELIMINATED.

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

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

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

(1) in subsection (a)— (A) by striking the second sentence; ~~and~~ (B) by ~~striking~~inserting before the period at the end of the first sentence ~~and inserting~~ the following: ~~““~~, including rules and regulations defining technical, trade, and other terms used in this title. ”;

(C) by inserting “(1) IN GENERAL.—” before “The Commission”; and
(D) by adding at the end the following:

“(2) COMMISSION AUTHORITY.—For the purposes of its rules and regulations, the Commission may—

“(1A) classify persons and matters within its jurisdiction and prescribe different requirements

“(2B) ascribe different meanings to terms (including the term ‘client’) 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) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the ~~Board of Governors of the Federal Reserve System, within~~ Agency for Financial Stability, not later than 6 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 subsection 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 et seq.) and the Commodity Exchange Act (7 U.S.C. 1a et seq.).”

SEC. 407. EXEMPTIONS OF 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:

“(1) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules to identify and define the term ‘venture capital fund’ for purposes of this subsection.”

SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRIVATE EQUITY 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:

“(m) EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.—

“(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund.

“(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules—

“(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary and appropriate in the public interest and for the protection of investors; and

“(B) to identify and define the term ‘private equity fund’ for purposes of this subsection.”

SEC. 409. FAMILY OFFICES.

Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking “or (G)” and inserting the following: “(G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)”

SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a)(1)(A) of the Investment Advisers Act (15 U.S.C. 80b-3a(a)(1)(A)) is amended by striking “\$25,000,000” and inserting “\$100,000,000”.

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

“SEC. 223. INDEPENDENT CUSTODY OF CLIENT ASSETS.

“The Commission shall prescribe rules requiring investment advisers registered under this title to use an independent custodian to hold client assets, where necessary and appropriate in the public interest and for the protection of investors.”

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD FOR INFLATION.

The Commission shall, by rule—

(1) increase the financial threshold for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, by calculating an amount that is greater than the amount in effect on the date of enactment of this Act of \$200,000 income for a natural person (or \$300,000 for a couple) and \$1,000,000 in assets, as the Commission determines is appropriate and in the public interest, in light of price inflation since those figures were determined; and (2) adjust that threshold not less frequently than once every 5 years, to reflect the percentage increase in the cost of living.

SEC. 413. STUDIES AND REPORTS.

The Comptroller General of the United States shall conduct a study on—

(1) the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in hedge funds, and shall submit a report to Congress on the results of such study not later than 1 year after the date of enactment of this Act;

(2) the feasibility of forming a self-regulatory organization to oversee hedge funds, private equity funds, and venture capital funds, and shall submit a report to Congress on the results of such study not later than 1 year after the date of enactment of this Act; and

(3) the state of short selling in the stock market, with particular attention to the impact of recent rule changes and the incidence of the failure to deliver shares sold short, and shall submit a report to Congress on the results of such study not later than 2 years after the date of enactment of this Act.

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