

INVESTMENT FUNDS ALERT

SENATE BILL PROPOSES INVESTMENT COMPANY ACT “REGISTRATION LITE” FOR HEDGE FUNDS AND PRIVATE EQUITY FUNDS

On January 29, 2009, Sens. Charles Grassley, R-Iowa, and Carl Levin, D-Mich., introduced the Hedge Fund Transparency Act (HFTA). The HFTA would revise the Investment Company Act of 1940, as amended (“Company Act”) to require certain hedge funds, private equity funds, venture capital funds, real estate funds that invest in securities and other privately offered securities investment funds and vehicles with assets of \$50 million or more to register with the Securities and Exchange Commission (SEC) as investment companies. Most private investment funds currently rely upon an exemption from the Company Act’s registration requirements by either limiting the number of investors to not more than 100 or admitting only “qualified purchasers.” Under HFTA, in order to remain exempt from the substantive provisions of the Company Act, funds that have assets of \$50 million or more would have to (1) register with the SEC, (2) file at least annually an information form that will be publicly available, (3) maintain prescribed books and records and (4) cooperate with requests for information or examination from the SEC. In addition, all funds, whether registered with the SEC or not, would be required to adopt an anti-money laundering program and report certain suspicious transactions.

INFORMATION FORM

The information form would include information regarding—

- (1) the name and current address of each natural person or company that is a beneficial owner of the fund
- (2) the name and address of the primary broker and accountant used by the fund
- (3) an explanation of the structure of ownership interests in the fund
- (4) any affiliation with another financial institution
- (5) the minimum investment commitment required of an investor
- (6) the total number of investors in the fund
- (7) the total assets and assets under management of the fund.

The SEC would be required to promulgate related rules and appropriate forms within 180 days of the passage of the HFTA. The form would be required to be filed electronically with the SEC and be made available to the public in an electronic searchable format at no cost.

ANTI-MONEY LAUNDERING REQUIREMENTS

In addition, the HFTA would reverse the recent action of the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) and subject all funds to the requirement to establish a risk-based anti-money laundering program and to report suspicious transactions under the Bank Secrecy Act. The Department of the Treasury would be required to promulgate regulations within 90 days of enactment of the HFTA.

CONCLUSION

The HFTA differs from previously proposed regulations by imposing a registration and disclosure regime directly on hedge funds and other private investment funds (including private equity funds and venture capital funds) instead of requiring fund managers to register as investment advisers. The bill, as currently drafted, leaves many key questions unanswered and contains some obvious and significant defects. The bill has been referred to the Senate Banking Committee. The SEC has not yet expressed any public views regarding the proposed legislation.

CONTACT INFORMATION

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