



“HEDGE FUND TRANSPARENCY ACT” INTRODUCED IN U.S. SENATE

On January 29, 2009, Senators Carl Levin (D - Michigan) and Charles E. Grassley (R - Iowa) introduced a bill referred to as the “Hedge Fund Transparency Act” (the “Act”), which proposes to revise the Investment Company Act of 1940, as amended (the “1940 Act”), to require funds now exempt from registration to register with the Securities and Exchange Commission (the “SEC”). While targeting hedge funds, the Act will encompass all funds currently relying on an exclusion from the definition of “investment company” pursuant to either Section 3(c)(1) (the “100-Investor Exclusion”) or 3(c)(7) (the “Qualified Purchaser Exclusion”) of the 1940 Act. As proposed, funds will no longer be excluded from the definition of investment company but would rather be subject to newly added Sections 6(a)(6) and 6(a)(7) of the 1940 Act (together, the “Exemptions”), which provide for further exemptions from the obligations under the 1940 Act and substantially mirror the provisions of the 100-Investor Exclusion and the Qualified Purchaser Exclusion, respectively. The Act will require the registration of funds formerly relying upon either the 100-Investor Exclusion or the Qualified Purchaser Exclusion, except for funds that have assets, or assets under management, of less than \$50,000,000.

LARGE INVESTMENT COMPANIES

Large investment companies with assets, or assets under management, of not less than \$50,000,000 will now be required to comply with certain additional reporting requirements in order to avail themselves of the Exemptions. A large investment company will continue to be exempt only if that company (i) registers with the SEC, (ii) files an information form with the SEC, (iii) maintains such books and records as the SEC may require, and (iv) cooperates with any SEC examination or request for information. The information form must be filed electronically not less frequently than once every twelve (12) months and must include the following information:

- The name and current address of:
 - Each natural person who is a beneficial owner of the investment company;
 - Any company with an ownership interest in the investment company; and
 - The primary accountant and primary broker used by the investment company;
- An explanation of the structure of ownership interests in the investment company;
- Information on any affiliation that the investment company has with another financial institution;
- A statement of any minimum investment commitment required of a limited partner, member, or other investor;
- The total number of any limited partners, members, or other investors; and
- The current value of:
 - The assets of the investment company; and
 - Any assets under management by the investment company.

The information form will be made available by the SEC to the public at no cost and in an electronic, searchable format. Thus, as currently written, the Act seems to require public disclosure of all investors in an investment fund.

ANTI-MONEY LAUNDERING OBLIGATIONS

Further, the Act requires that an investment company relying on the Exemptions must establish an anti-money laundering program and must report suspicious transactions. This requirement will take effect one year after the date of enactment of the Act.

The full text of the Act is available at:

<http://levin.senate.gov/newsroom/supporting/2009/hedgfundsbill.012909.pdf>



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