

106TH CONGRESS
1ST SESSION

H. R. 2924

To require unregulated hedge funds to submit regular reports to the Board of Governors of the Federal Reserve System, to make such reports available to the public to the extent required by regulations prescribed by the Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1999

Mr. BAKER (for himself, Mr. KANJORSKI, Mr. LEACH, Mr. LAFALCE, Mr. MCCOLLUM, Mr. CASTLE, Mr. RILEY, Mr. JONES of North Carolina, Mr. HINCHEY, and Mr. CAPUANO) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Commerce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require unregulated hedge funds to submit regular reports to the Board of Governors of the Federal Reserve System, to make such reports available to the public to the extent required by regulations prescribed by the Board, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hedge Fund Dislo-
3 sure Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

6 (1) Hedge funds currently operate largely out-
7 side the framework of substantive United States
8 banking, securities, and futures laws and regula-
9 tions.

10 (2) The recent crisis of a large hedge fund dem-
11 onstrated several ways in which the condition of
12 major financial institutions in the United States, in-
13 cluding many banks with federally insured deposits,
14 reflects the success or failure of various hedge funds.

15 (3) Among other things, financial institutions
16 often invest in hedge funds, lend to hedge funds, act
17 as counterparties in securities and derivatives trans-
18 actions with hedge funds, and conduct proprietary
19 trading activities that mirror the investment strate-
20 gies of leading hedge funds.

21 (4) In several cases, hedge funds utilize finan-
22 cial leveraging practices to a greater degree than do
23 many regulated financial institutions and this high
24 degree of leverage exacerbates the extent to which
25 such hedge funds potentially pose a threat to the

1 safety and soundness of the United States and inter-
2 national financial systems.

3 (5) Given that most of the institutions and
4 wealthy individuals that invest in hedge funds are
5 highly sophisticated, market forces, rather than gov-
6 ernment regulations, are the best tools for con-
7 straining hedge funds from engaging in excessive le-
8 verage.

9 (6) Market forces are similarly the most effec-
10 tive means of disciplining financial institutions that
11 have allowed hedge fund dealings to threaten their
12 stability.

13 (7) The United States Government must insure
14 that the failure of 1 or more hedge funds never
15 causes a severe burden on the United States finan-
16 cial system or the United States payments system
17 and that Federal resources are not squandered in ef-
18 forts to salvage collapsed hedge funds.

19 (8) Market forces cannot properly function with
20 respect to hedge fund risks without a minimum of
21 reliable information about hedge funds activities.

22 **SEC. 3. DEFINITIONS.**

23 (1) BOARD.—The term “Board” means the
24 Board of Governors of the Federal Reserve System.

1 (2) FEDERAL BANKING AGENCIES.—The term
2 “Federal banking agency” has the meaning given to
3 such term in section 3(z) of the Federal Deposit In-
4 surance Act.

5 (3) UNREGULATED HEDGE FUND.—The term
6 “unregulated hedge fund” means—

7 (A) any pooled investment vehicle that—

8 (i) has capital of \$3,000,000,000 or
9 more;

10 (ii) is privately organized, adminis-
11 tered by professional investment managers,
12 and not widely available to the public; and

13 (iii) is not registered as an investment
14 company under the Investment Company
15 Act of 1940; and

16 (B) any group or family of pooled invest-
17 ment vehicles described in clauses (ii) and (iii)
18 of subparagraph (A) that has total assets under
19 management of \$20,000,000,000 or more.

20 **SEC. 4. PUBLIC REPORTS REQUIRED.**

21 (a) IN GENERAL.—Before the end of the 15-day pe-
22 riod beginning at the end of each calendar quarter, each
23 unregulated hedge fund shall submit a report to the Board
24 which shall include the following information:

1 (1) The total assets of the fund, the total no-
2 tional amount of the fund's derivatives position, and
3 the balance sheet leverage ratio of assets to liabil-
4 ities, as of the end of the calendar quarter.

5 (2) Meaningful and comprehensive measures of
6 market risk (such as value-at-risk or stress test re-
7 sults) as of the end of the calendar quarter.

8 (3) Such other information as the Board, in
9 consultation with the Secretary of the Treasury, the
10 Chairman of the Securities and Exchange Commis-
11 sion, the Chairperson of the Commodities Futures
12 Trading Commission, and the Federal banking agen-
13 cies, may require by regulation.

14 (b) AVAILABILITY OF REPORTS.—Upon receipt of re-
15 ports under subsection (a), the Board shall—

16 (1) immediately transmit copies of the reports
17 to the Secretary of the Treasury, the Chairman of
18 the Securities and Exchange Commission, the Chair-
19 person of the Commodities Futures Trading Com-
20 mission, and the Federal banking agencies; and

21 (2) subject to subsection (c), make the reports
22 available to the public on a timely basis.

23 (c) SEQUESTRATION OF ANY PROPRIETARY INFOR-
24 MATION.—If, in order to provide a complete and meaning-
25 ful report under subsection (a), an unregulated hedge fund

1 includes any proprietary information concerning invest-
2 ment strategies and positions in the report, such informa-
3 tion may, to the extent and in the manner provided in
4 regulations prescribed by the Board, in consultation with
5 the Secretary of the Treasury, the Chairman of the Securi-
6 ties and Exchange Commission, the Chairperson of the
7 Commodities Futures Trading Commission, and the Fed-
8 eral banking agencies, be segregated in a confidential sec-
9 tion of the report which shall not be available to the public
10 under subsection (b)(2).

11 (d) REGULATION TIME-FRAME.—The Board shall—

12 (1) publish proposed regulations under this sec-
13 tion in the Federal Register before the end of the
14 90-day period beginning on the date of the enact-
15 ment of this Act, to allow for public comment; and

16 (2) prescribe such regulations in final form be-
17 fore the end of the 90-day period beginning on the
18 date the proposed regulations are so published, un-
19 less the Board determines that additional time, not
20 to exceed 60 days, for comment on the proposed reg-
21 ulations is necessary.

22 (e) ORDERS.—The Board may issue an order to any
23 unregulated hedge fund to comply with the requirements
24 of this section and the regulations prescribed under this
25 section.

1 **SEC. 5. JUDICIAL ENFORCEMENT OF ORDERS.**

2 (a) IN GENERAL.—The Board may, in the sole dis-
3 cretion of the Board, apply to—

4 (1) the United States district court within the
5 jurisdiction of which the principal office of the un-
6 regulated hedge fund is located; or

7 (2) in the case of an unregulated hedge fund
8 which is a person of a foreign country (as defined
9 in section 3502(d) of the Omnibus Trade and Com-
10 petitiveness Act of 1988) and borrows from, accepts
11 investments by, or is a counterparty to any person
12 who resides within or is organized under the laws of
13 the United States or any State, the United States
14 District Court for the District of Columbia,
15 for the enforcement of any effective and outstanding order
16 issued under section 3 or 4, and such court shall have
17 jurisdiction and power to order and require compliance
18 therewith.

19 (b) NO JUDICIAL REVIEW.—No court shall have ju-
20 risdiction to affect by injunction or otherwise the issuance
21 or enforcement of any order under section 4 or to review,
22 modify, suspend, terminate, or set aside any such order.

1 **SEC. 6. PUBLIC DISCLOSURE OF DIRECT MATERIAL EXPO-**
2 **SURES TO SIGNIFICANTLY LEVERAGED FI-**
3 **NANCIAL INSTITUTIONS.**

4 (a) SENSE OF THE CONGRESS.—It is the sense of the
5 Congress that each public company, including financial in-
6 stitutions, should regularly and publicly disclose a sum-
7 mary of direct material exposures of the company, whether
8 in the form of equity, loans, or other credit exposure, to
9 significantly leveraged financial institutions, including
10 commercial banks, investment banks, finance companies,
11 and unregulated hedge funds.

12 (b) REGULATIONS AUTHORIZED.—The Securities
13 and Exchange Commission, the Commodities Futures
14 Trading Commission, and the Federal banking agencies
15 shall prescribe regulations to require the disclosures de-
16 scribed in subsection (a).

17 **SEC. 7. ENHANCED COUNTERPARTY RISK MANAGEMENT BY**
18 **DEPOSITORY INSTITUTIONS.**

19 Section 39(a)(1) of the Federal Deposit Insurance
20 Act (12 U.S.C. 1831s(a)(1)) is amended—

21 (1) by redesignating subparagraphs (E) and
22 (F) as subparagraphs (F) and (G); and

23 (2) by inserting after subparagraph (D) the fol-
24 lowing new subparagraph:

25 “(E) counterparty risk management;”.