

111TH CONGRESS
1ST SESSION

S. 344

To require hedge funds to register with the Securities and Exchange Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2009

Mr. GRASSLEY (for himself and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require hedge funds to register with the Securities and Exchange Commission, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hedge Fund Trans-

5 parency Act”.

6 **SEC. 2. HEDGE FUND REGISTRATION REQUIREMENTS.**

7 (a) DEFINITION OF INVESTMENT COMPANY.—Sec-

8 tion 3(c) of the Investment Company Act of 1940 (15

9 U.S.C. 80a–3(c)) is amended—

10 (1) by striking paragraph (1);

1 (2) by striking paragraph (7);

2 (3) by redesignating paragraphs (2) through
3 (6) as paragraphs (1) through (5), respectively; and
4 (4) by redesignating paragraphs (8) through
5 (14) as paragraphs (6) through (12), respectively.

6 (b) ADDITIONAL EXEMPTIONS.—Section 6 of the In-
7 vestment Company Act of 1940 (15 U.S.C. 80a–6) is
8 amended—

9 (1) in subsection (a), by adding at the end the
10 following:

11 “(6)(A) Subject to subsection (g), any issuer
12 whose outstanding securities (other than short-term
13 paper) are beneficially owned by not more than 100
14 persons, and which is not making and does not pres-
15 ently propose to make a public offering of its securi-
16 ties.

17 “(B) For purposes of this paragraph and para-
18 graph (7), beneficial ownership—

19 “(i) by a company shall be deemed to be
20 beneficial ownership by one person, except that,
21 if the company owns 10 percent or more of the
22 outstanding voting securities of the issuer, and
23 is or, but for the exemption provided for in this
24 paragraph or paragraph (7), would be an in-
25 vestment company, the beneficial ownership

1 shall be deemed to be that of the holders of the
2 outstanding securities (other than short-term
3 paper) of such company; and

4 “(ii) by any person who acquires securities
5 or interests in securities of an issuer described
6 in this paragraph shall be deemed to be bene-
7 ficial ownership by the person from whom such
8 transfer was made, pursuant to such rules and
9 regulations as the Commission shall prescribe
10 as necessary or appropriate in the public inter-
11 est and consistent with the protection of inves-
12 tors and the purposes fairly intended by the
13 policy and provisions of this title, where the
14 transfer was caused by legal separation, di-
15 vorce, death, or any other involuntary event.

16 “(7)(A) Subject to subsection (g), any issuer,
17 the outstanding securities of which are owned exclu-
18 sively by persons who, at the time of the acquisition
19 of such securities, are qualified purchasers, and
20 which is not making and does not at that time pro-
21 pose to make a public offering of such securities. Se-
22 curities that are owned by persons who received the
23 securities from a qualified purchaser as a gift or be-
24 quest, or in a case in which the transfer was caused
25 by legal separation, divorce, death, or any other in-

1 voluntary event, shall be deemed to be owned by a
2 qualified purchaser, subject to such rules, regula-
3 tions, and orders as the Commission may prescribe
4 as necessary or appropriate in the public interest or
5 for the protection of investors.

6 “(B) Notwithstanding subparagraph (A), an
7 issuer is exempt under this paragraph if—

8 “(i) in addition to qualified purchasers,
9 outstanding securities of that issuer are bene-
10 ficially owned by not more than 100 persons
11 who are not qualified purchasers, if—

12 “(I) such persons acquired any por-
13 tion of the securities of such issuer on or
14 before September 1, 1996; and

15 “(II) at the time at which such per-
16 sons initially acquired the securities of
17 such issuer, the issuer was exempt under
18 paragraph (6); and

19 “(ii) prior to availing itself of the exemp-
20 tion provided by this paragraph—

21 “(I) such issuer has disclosed to each
22 beneficial owner that future investors will
23 be limited to qualified purchasers, and that
24 ownership in such issuer is no longer lim-
25 ited to not more than 100 persons; and

1 “(II) concurrently with or after such
2 disclosure, such issuer has provided each
3 beneficial owner with a reasonable oppor-
4 tunity to redeem any part or all of their in-
5 terests in the issuer, notwithstanding any
6 agreement to the contrary between the
7 issuer and such persons, for the propor-
8 tionate share of that person of the net as-
9 sets of the issuer.

10 “(C) Each person that elects to redeem under
11 subparagraph (B)(ii)(II) shall receive an amount in
12 cash equal to the proportionate share of that person
13 of the net assets of the issuer, unless the issuer
14 elects to provide such person with the option of re-
15 ceiving, and such person agrees to receive, all or a
16 portion of the share of that person in assets of the
17 issuer. If the issuer elects to provide such persons
18 with such an opportunity, disclosure concerning such
19 opportunity shall be made in the disclosure required
20 by subparagraph (B)(ii)(I).

21 “(D) An issuer that is exempt under this para-
22 graph shall nonetheless be deemed to be an invest-
23 ment company for purposes of the limitations set
24 forth in subparagraphs (A)(i) and (B)(i) of section
25 12(d)(1) (15 U.S.C. 80a-12(d)(1) (A)(i) and (B)(i))

1 relating to the purchase or other acquisition by such
 2 issuer of any security issued by any registered in-
 3 vestment company and the sale of any security
 4 issued by any registered open-end investment com-
 5 pany to any such issuer.

6 “(E) For purposes of determining compliance
 7 with this paragraph and paragraph (6), an issuer
 8 that is otherwise exempt under this paragraph and
 9 an issuer that is otherwise exempt under paragraph
 10 (6) shall not be treated by the Commission as being
 11 a single issuer for purposes of determining whether
 12 the outstanding securities of the issuer exempt
 13 under paragraph (6) are beneficially owned by not
 14 more than 100 persons, or whether the outstanding
 15 securities of the issuer exempt under this paragraph
 16 are owned by persons that are not qualified pur-
 17 chasers. Nothing in this subparagraph shall be con-
 18 strued to establish that a person is a bona fide
 19 qualified purchaser for purposes of this paragraph
 20 or a bona fide beneficial owner for purposes of para-
 21 graph (6).”; and

22 (2) by adding at the end the following:

23 “(g) LIMITATION ON EXEMPTIONS FOR LARGE IN-
 24 VESTMENT COMPANIES.—

1 “(1) IN GENERAL.—An investment company
 2 with assets, or assets under management, of not less
 3 than \$50,000,000 is exempt under subsection (a)(6)
 4 or (a)(7) only if that company—

5 “(A) registers with the Commission;

6 “(B) files an information form with the
 7 Commission under paragraph (2);

8 “(C) maintains such books and records as
 9 the Commission may require; and

10 “(D) cooperates with any request for infor-
 11 mation or examination by the Commission.

12 “(2) INFORMATION FORM.—The information
 13 form required under paragraph (1) shall be filed at
 14 such time and in such manner as the Commission
 15 shall require, and shall—

16 “(A) be filed electronically;

17 “(B) be filed not less frequently than once
 18 every 12 months;

19 “(C) include—

20 “(i) the name and current address
 21 of—

22 “(I) each natural person who is a
 23 beneficial owner of the investment
 24 company;

1 “(II) any company with an own-
2 ership interest in the investment com-
3 pany; and

4 “(III) the primary accountant
5 and primary broker used by the in-
6 vestment company;

7 “(ii) an explanation of the structure
8 of ownership interests in the investment
9 company;

10 “(iii) information on any affiliation
11 that the investment company has with an-
12 other financial institution;

13 “(iv) a statement of any minimum in-
14 vestment commitment required of a limited
15 partner, member, or other investor;

16 “(v) the total number of any limited
17 partners, members, or other investors; and

18 “(vi) the current value of—

19 “(I) the assets of the investment
20 company; and

21 “(II) any assets under manage-
22 ment by the investment company; and

23 “(D) be made available by the Commission
24 to the public at no cost and in an electronic,
25 searchable format.”.

1 **SEC. 3. IMPLEMENTING GUIDANCE AND RULES.**

2 (a) FORMS AND GUIDANCE.—Not later than 180
3 days after the date of enactment of this Act, the Securities
4 and Exchange Commission shall issue such forms and
5 guidance as are necessary to carry out this Act.

6 (b) RULES.—The Securities and Exchange Commis-
7 sion may make a rule to carry out this Act.

8 **SEC. 4. ANTI-MONEY LAUNDERING OBLIGATIONS.**

9 (a) PURPOSE.—It is the purpose of this section to
10 safeguard against the financing of terrorist organizations
11 and money laundering.

12 (b) IN GENERAL.—An investment company that re-
13 lies on paragraph (6) or (7) of section 6(a) of the Invest-
14 ment Company Act of 1940 (15 U.S.C. 80a–6(a) (6) and
15 (7)), as amended by this Act, as the basis for an exemp-
16 tion under that Act shall establish an anti-money laun-
17 dering program and shall report suspicious transactions
18 under subsections (g) and (h) of section 5318 of title 31,
19 United States Code.

20 (c) RULEMAKING.—

21 (1) IN GENERAL.—The Secretary of the Treas-
22 ury, in consultation with the Chairman of the Secu-
23 rities and Exchange Commission and the Chairman
24 of the Commodity Futures Trading Commission,
25 shall, by rule, establish the policies, procedures, and
26 controls necessary to carry out subsection (b).

1 (2) CONTENTS.—The rule required by para-
2 graph (1)—

3 (A) shall require that each investment
4 company that receives an exemption under
5 paragraph (6) or (7) of section 6(a) of the In-
6 vestment Company Act of 1940 (15 U.S.C.
7 80a–6(a) (6) and (7)), as amended by this Act,
8 shall—

9 (i) use risk-based due diligence poli-
10 cies, procedures, and controls that are rea-
11 sonably designed to ascertain the identity
12 of and evaluate any foreign person (includ-
13 ing, where appropriate, the nominal and
14 beneficial owner or beneficiary of a foreign
15 corporation, partnership, trust, or other
16 foreign entity) that supplies or plans to
17 supply funds to be invested with the advice
18 or assistance of such investment company;
19 and

20 (ii) be subject to section 5318(k)(2) of
21 title 31, United States Code; and

22 (B) may incorporate elements of the pro-
23 posed rule for unregistered investment compa-
24 nies published in the Federal Register on Sep-

1 tember 26, 2002 (67 Fed. Reg. 60617) (relat-
2 ing to anti-money laundering programs).

3 (3) PUBLICATION DATE.—The Secretary of the
4 Treasury, shall—

5 (A) propose the rule required by this sub-
6 section not later than 90 days after the date of
7 enactment of this Act; and

8 (B) issue the rule required by this sub-
9 section in final form not later than 180 days
10 after the date of enactment of this Act.

11 (d) EFFECTIVE DATE.—Subsection (b) shall take ef-
12 fect 1 year after the date of enactment of this Act, wheth-
13 er or not a final rule is issued under subsection (c), and
14 the failure to issue such rule shall in no way affect the
15 enforceability of this section.

16 **SEC. 5. TECHNICAL CORRECTIONS.**

17 (a) SECURITIES ACT OF 1933.—Section 3(a) of the
18 Securities Act of 1933 (15 U.S.C. 77c(a)) is amended—

19 (1) in paragraph (2)—

20 (A) by striking “section 3(c)(3)” and in-
21 serting “section 3(c)(2)”; and

22 (B) by striking “section 3(c)(14)” and in-
23 serting “section 3(c)(12)”;

1 (2) in paragraph (4), by striking “section
2 3(c)(10)(B)” and inserting “section 3(c)(8)(B)”;
3 and

4 (3) in paragraph (13), by striking “section
5 (3)(c)(14)” and inserting “section 3(c)(12)”.

6 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
8 is amended—

9 (1) in section 3(a) (15 U.S.C. 78c(a))—

10 (A) in paragraph (12)(A)—

11 (i) in clause (iii), by striking “section
12 3(c)(3)” and inserting “section 3(c)(2)”;

13 (ii) in clause (v), by striking “section
14 3(c)(10)(B)” and inserting “section
15 3(c)(8)(B)”;

16 (iii) in clause (vi), by striking “section
17 3(c)(14)” and inserting “section 3(c)(12)”;

18 (B) in paragraph (12)(C), by striking “sec-
19 tion 3(c)(14)” and inserting “section 3(c)(12)”;
20 and

21 (C) in paragraph (54)(A)—

22 (i) in clause (ii), by striking “exclu-
23 sion from the definition of investment com-
24 pany pursuant to section 3(c)(7)” and in-

1 serting “exemption under section 6(a)(7)”;

2 and

3 (ii) in clause (vii), by striking “section

4 3(c)(2)” and inserting “section 3(c)(1)”;

5 (2) in section 3(g) (15 U.S.C. 78c(g)) by strik-

6 ing “section 3(c)(14)” each place that term appears

7 and inserting “section 3(c)(12)”;

8 (3) in section 12(g)(2) (15 U.S.C. 78l(g)(2))—

9 (A) in subparagraph (D), by striking “sec-

10 tion 3(c)(10)(B)” and inserting “section

11 3(c)(8)(B)”;

12 (B) in subparagraph (H), by striking “sec-

13 tion 3(c)(14)” and inserting “section 3(c)(12)”.

14 (c) INVESTMENT COMPANY ACT OF 1940.—The In-

15 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)

16 is amended—

17 (1) in section 2(a)(51) (15 U.S.C. 80a–

18 2(a)(51))—

19 (A) in subparagraph (A)(i), by striking

20 “excepted under section 3(c)(7)” and inserting

21 “exempt under section 6(a)(7)”;

22 (B) in subparagraph (C)—

23 (i) by striking “that, but for the ex-

24 ceptions provided for in paragraph (1) or

25 (7) of section 3(c), would be an investment

company (hereafter in this paragraph referred to as an ‘excepted investment company’))” and inserting “that is exempt under paragraph (6) or (7) of section 6(a) (hereafter in this paragraph referred to as an ‘exempt investment company’)”;

(ii) by striking “section 3(c)(1)(A)” and inserting “section 6(a)(6)(B)(i)”; and

(iii) by striking “excepted” each place that term appears and inserting “any exempt”;

(2) in section 6 (15 U.S.C. 80a-6)—

(A) in subsection (a)—

(i) in paragraph (2), by striking “section 3(c)(1)” and inserting “section 6(a)(6)”; and

(ii) in paragraph (5)(A)(iv), by striking “that would be an investment company except for the exclusions from the definition of the term ‘investment company’ under paragraph (1) or (7) of section 3(c)” and inserting “that is exempt under paragraph (6) or (7) of section 6(a)”; and

(B) in subsection (f), by striking “excluded from the definition of an investment company

1 by section 3(c)(1)” and inserting “exempt
2 under section 6(a)(6)”;

3 (3) in section 7(e) (15 U.S.C. 80a–7(e)), by
4 striking “section 3(c)(10)(B)” and inserting “section
5 3(c)(8)(B)”;

6 (4) in section 30 (15 U.S.C. 80a–29) in each of
7 subsections (i) and (j), by striking “section
8 3(c)(14)” each place that term appears and insert-
9 ing “section 3(c)(12)”.

10 (d) INVESTMENT ADVISERS ACT OF 1940.—The In-
11 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
12 is amended—

13 (1) in section 203(b) (15 U.S.C. 80b–3(b))—

14 (A) in paragraph (4) by striking “section
15 3(c)(10)” each place that term appears and in-
16 serting “section 3(c)(8)”;

17 (B) in paragraph (5), by striking “section
18 3(c)(14)” and inserting “section 3(c)(12)”;

19 (2) in section 205(b) (15 U.S.C. 80b–5(b))—

20 (A) in paragraph (2)(B), by striking “sec-
21 tion 3(c)(11)” and inserting “section 3(c)(9)”;
22 and

23 (B) in paragraph (4), by striking “ex-
24 cepted from the definition of an investment

1 company under section 3(c)(7)” and inserting
2 “exempt under section 6(a)(7)”.

3 (e) INTERNAL REVENUE CODE OF 1986.—Section
4 851(a)(2) of the Internal Revenue Code of 1986 (relating
5 to the definition of regulated investment company) is
6 amended by striking “section 3(c)(3)” and inserting “sec-
7 tion 3(c)(2)”.

○