

Mr. REED. Mr. President, today I introduce the Private Fund Transparency Act of 2009, which requires investment advisers to private funds, including hedge funds, private equity funds, venture capital funds, and others, to register with the Securities and Exchange Commission, SEC.

The current financial crisis has reinvigorated my long-held concern that the regulation of hedge funds and other pooled investment vehicles should be improved to provide more information to regulators to help them address fraud and prevent systemic risk in our capital markets.

Hedge funds and other private investment funds generally operate under exemptions in federal securities laws that recognize that not all investment pools require the same close scrutiny demanded of retail investment products like mutual funds. Hedge funds generally cater to more sophisticated investors who are responsible for ensuring the integrity of their own investments, and as a result are permitted to pursue somewhat riskier investment strategies. Indeed, these funds play an important role in enhancing liquidity and efficiency in the market, and subjecting them to fewer limitations on their activities has been and continues to be a reasonable policy choice.

However, the existing regulatory regime for these funds has enabled them to operate largely outside the framework of the financial regulatory system even as they have become increasingly interwoven with the rest of the country's financial markets. As a result, there is no data on the number and nature of these firms or ability to calculate the risks they pose to America's broader economy. Over the past decade the SEC has recognized there are risks to our capital markets posed by some of these entities, and it has attempted to require at a minimum that advisers to these funds register under the Investment Advisers Act so that SEC staff can collect basic information from and examine these private pools of capital. The SEC's rulemaking in this area, however, was rejected by a federal court in 2006. As a result, without statutory changes, the SEC is currently unable to examine private funds' books and records or to take sufficient action when it suspects fraud. In addition, no regulator is currently able to collect information on the size and nature of hedge funds or other funds to identify and act on systemic risks that may be created by these pools of capital.

The bill I introduce today is crafted carefully to eliminate these regulatory gaps without unnecessarily limiting the beneficial aspects of such pools. It would require all hedge fund and other investment pool advisers that manage more than \$30 million in assets to register as investment advisers with the SEC. It would also provide the SEC with the authority to collect information from these entities, including information about the risks they may

pose to the financial system. Finally, it authorizes the SEC to require hedge funds and other investment pools to maintain and share with other Federal agencies any information necessary for the calculation of systemic risk.

The financial crisis is a stark reminder that transparency and disclosure are essential in today's marketplace. Improving oversight of hedge funds and other private funds is vital to their sustainability and to our economy's stability. These statutory changes will help modernize our outdated financial regulatory system, protect investors, and prevent fraud. I hope my colleagues will join me in improving the oversight of hedge funds and other private pools of capital by cosponsoring this legislation and supporting its passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1276

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Private Fund Transparency Act of 2009".

**SEC. 2. DEFINITION OF FOREIGN PRIVATE ADVISERS.**

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 '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) fewer than 15 clients in the United States; and

"(ii) assets under management attributable to clients in 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 an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn its election."

**SEC. 3. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS.**

Section 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)(3)) is amended to read as follows:

"(3) any investment adviser that is a foreign private adviser;"

**SEC. 4. COLLECTION OF SYSTEMIC RISK DATA; ANNUAL AND OTHER REPORTS.**

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

(1) in subsection (a), by adding at the end the following: "The Commission is authorized to require any investment adviser registered under this title to maintain such records and submit such reports as are necessary or appropriate in the public interest for the supervision of systemic risk by any Federal department or agency, and to provide or make available to such department

or agency those reports or records or the information contained therein. The records of any company that, but for section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, would be an investment company, to which any such investment adviser provides investment advice, shall be deemed to be the records of the investment adviser if such company is sponsored by the investment adviser or any affiliated person of the investment adviser or the investment adviser or any affiliated person of the investment adviser acts as underwriter, distributor, placement agent, finder, or in a similar capacity for such company.";

(2) adding at the end the following:

"(d) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any supervisory report or information contained therein required to be filed with the Commission under subsection (a). Nothing in this subsection shall authorize the Commission to withhold information from Congress or prevent the Commission from complying with 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 an order of a court of the United States in an action brought by the United States or the Commission. 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."

**SEC. 5. ELIMINATION OF PROVISION.**

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

**SEC. 6. CLARIFICATION OF RULEMAKING AUTHORITY.**

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

(1) by striking the second sentence; and

(2) by striking 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. For the purposes of its rules and regulations, the Commission may—

"(1) classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters; and

"(2) 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."

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 185—SUPPORTING THE GOALS AND IDEALS OF NATIONAL ALZHEIMER'S DISEASE AWARENESS MONTH AND NATIONAL MEMORY SCREENING DAY, INCLUDING THE DEVELOPMENT OF A NATIONAL HEALTH POLICY ON DEMENTIA SCREENING AND CARE

Mr. WARNER submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 185

Whereas Alzheimer's disease is a slow, progressive disorder of the brain that results in loss of memory and other cognitive function and, eventually, death;

Whereas Alzheimer's disease is the sixth leading cause of death in the United States and currently affects an estimated 2,400,000 to 4,500,000 people in the United States;

Whereas the stigma associated with the disease results in a delay of diagnosis, in some cases up to 6 years;

Whereas Alzheimer's disease takes an enormous toll on family members, with an estimated 1 in 4 people in the United States acting as caregivers for each individual with the disease;

Whereas caregivers for individuals with Alzheimer's disease suffer more stress, depression, and health problems than caregivers of people with other illnesses;

Whereas recent advancements in scientific research have demonstrated the benefits of early medical treatment for individuals with Alzheimer's disease, as well as the benefits of early access to counseling and other support services for their caregivers;

Whereas with early diagnosis, individuals with the disease can avoid or correct contributing medical problems, commence available therapy, organize current and future care, and enhance self-determination, and caregivers can identify and embrace community support services;

Whereas in direct response to research breakthroughs, National Memory Screening Day was established by the Alzheimer's Foundation of America ("AFA") as a collaborative effort with local organizations and health care professionals across the country to promote awareness, early detection, and early diagnosis of memory impairment, so that individuals can obtain proper medical treatment, social services, and other resources related to their condition;

Whereas National Memory Screening Day is held by AFA each November in recognition of National Alzheimer's Disease Awareness Month and on this day, qualified health care professionals administer free, confidential, face-to-face memory screenings at thousands of sites throughout the United States;

Whereas memory screening is not used to diagnose any illness but is used as an indicator to determine whether a person might benefit from further examination by a qualified health care provider;

Whereas memory screenings are a safe and cost-effective intervention to direct at-risk individuals to appropriate clinical resources, thus reducing the costs of long-term care or hospitalization resulting from undiagnosed complications; and

Whereas screenings also greatly benefit those with normal scores, by checking their memory, allaying fears, and promoting chronic disease prevention and successful aging: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the seriousness of Alzheimer's disease and the toll it takes on individuals with the disease and their caregivers;

(2) acknowledges that more outreach and education is needed to eliminate the stigma associated with the disease and assist individuals and their caregivers in identifying available screenings, treatments and support;

(3) encourages all people in the United States with memory concerns or who want to check their memory to have annual memory screenings at National Memory Screening Day sites or by other qualified health care professionals;

(4) congratulates State and local organizations representing individuals with memory problems, caregivers, and health care professionals for their commitment to improve the quality of life of individuals and families confronting dementia by providing optimal care and services; and

(5) supports the goals and ideals of National Alzheimer's Disease Awareness Month

and National Memory Screening Day, including the development of a national health policy on dementia screening and care.

Mr. WARNER. Mr. President, I rise today to introduce a resolution in support of the goals and ideals of National Alzheimer's Disease Awareness Month and National Memory Screening Day, including the development of a national health policy on dementia screening and care.

As co-chair of the bipartisan Congressional Task Force on Alzheimer's Disease, and as someone with a mother who has been diagnosed with disease, I strongly believe that our health care system needs to do a much better job of promoting early detection of dementia and other memory problems. Events such as National Memory Screening Day are a meaningful step in raising the awareness needed to move us in that direction.

The National Institute on Aging, NIA, estimates that between 2.4 million and 4.5 million Americans have Alzheimer's disease—a progressive degenerative disorder that attacks the brain's nerve cells, resulting in loss of memory, thinking and language skill, behavioral changes, and ultimately, death. Alzheimer's disease is not a normal part of aging; however, age is the greatest known risk factor with the incidence doubling for every, 5 year interval beyond age 65.

Alzheimer's disease exacts a huge toll on caregivers. Nearly 60 percent of individuals with the disease live at home under the care of family members. Caregivers of individuals with Alzheimer's disease face a variety of challenges and spend more time providing assistance than caregivers of people with other types of diseases, from helping loved ones with bathing and dressing to managing their legal and financial affairs.

Alzheimer's disease drains more than \$148 billion from the nation's economy each year. If the prevalence of Alzheimer's disease continues to increase as expected, the \$91 billion spent in 2005 on Medicare costs for care of individuals with Alzheimer's disease and dementia patients is projected to increase to \$189 billion by 2015.

There are serious deficiencies in our current healthcare system related to diagnosis of Alzheimer's disease and related dementias. A 2006 editorial in the *Journal of the American Geriatric Society* estimated that missed diagnoses represent greater than 25 percent of the dementia cases and may be as high as 90 percent. This precludes many from getting early treatment which most researchers agree leads to optimal therapy with available and emerging medications.

Screening is a simple and safe evaluation tool that assesses memory and other intellectual functions to determine whether additional testing is necessary. Memory screening can be done in a medical environment, e.g. dementia clinic, physician's office, or in a community setting, e.g. senior center,

pharmacy. Such screenings are not a diagnosis, but can indicate whether a complete medical evaluation would be beneficial. Memory can be affected by a number of factors, ranging from stress, lack of sleep, vitamin deficiencies, depression and thyroid problems, to such illnesses as Alzheimer's disease and vascular dementia. In general, the earlier the diagnosis, the easier it is to treat these conditions.

Memory screenings are one of the major focal points of the Alzheimer's Foundation of America's, AFA, national initiatives. Since 2003, AFA has sponsored National Memory Screening Day, NMSD, annually in collaboration with community organizations to promote early detection of memory problems as well as Alzheimer's disease and related illnesses, and encourage appropriate intervention. It has been held each November to coincide with National Alzheimer's Disease Awareness Month. On November 18, 2008, qualified health care professionals at nearly 2,200 sites nationwide offered free confidential memory screenings to an estimated 54,000 participants, as well as follow-up resources and educational materials about dementia and successful aging. In 2009, AFA will hold National Memory Screening Day on November 17.

Most people are not inclined to discuss memory concerns with their health care providers. A survey conducted during AFA's 2007 National Memory Screening Day found that 68 percent of respondents had concerns about their memory. However, while more than 44 percent had visited their primary care physician within the last 6 months, fewer than one in four of those with self-identified memory problems had discussed the issue with their physician. Primary care providers might be more likely to recommend further evaluation if individuals presented their abnormal memory screening results from events like National Memory Screening Day. Community screenings such as National Memory Screening Day generally educate participants about questions to ask their health care providers and empower them to begin a dialogue.

With this resolution I hope we can draw attention to these efforts and further this important cause. I urge my colleagues to join me in support of National Alzheimer's Disease Awareness Month and National Memory Screening Day by cosponsoring this measure.

SENATE RESOLUTION 186—CONDEMNING THE MURDER OF ARMY PRIVATE WILLIAM ANDREW "ANDY" LONG AND THE WOUNDING OF ARMY PRIVATE QUINTON EZEAGWULA, WHO WERE SHOT OUTSIDE THE ARMY-NAVY CAREER CENTER IN LITTLE ROCK, ARKANSAS ON JUNE 1, 2009

Mrs. LINCOLN (for herself, Mr. PRYOR, and Mr. LIEBERMAN) submitted