

CLIENT ALERT

Hedge Fund Transparency Act of 2009

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On January 29, 2009, Senators Chuck Grassley of Iowa and Carl Levin of Michigan proposed the Hedge Fund Transparency Act of 2009 ("HFTA") as an amendment to the Investment Company Act of 1940 ("ICA"). The purpose of the HFTA is two-fold. First, it would authorize SEC registration of hedge funds. Second, it would require hedge funds to implement anti money laundering programs and to report suspicious transactions. This proposed legislation is being considered by the Senate Committee on Banking, Housing and Urban Affairs.

A. SEC Registration of Hedge Funds

1. Definition of an "Investment Company"

Hedge funds have withstood SEC registration by claiming to be exceptions from the definition of an "investment company" in §3(c) of the ICA. The legislation would delete the relevant provisions of §3(c) thereby removing the asserted bases for excluding hedge funds from the registration requirements. Instead, the §3(c) provisions at issue would be relocated in the ICA to §6(a) whereby they will be transformed into "exemptions" that must be maintained by meeting specific requirements.

2. The New ICA Exemptions

The HFTA proposes creating new ICA §6(a)(6) and §6(a)(7), tracking the deleted provisions of §3(c) that would exempt investment companies from the standard filing and registration requirements if certain conditions are met. For large investment companies covered by §6(a) with managed assets of \$50,000,000 or more, the exemption would only apply where the investment company:

- a. registers with the SEC;
- b. files an information form with the SEC;
- c. maintains books and records as the SEC may require;
- d. cooperates with any request for information or examination by the SEC.

3. The New Information Form

The requirements of the SEC information form will include:

- a. electronic filing;
- b. a filing at least once every year;
- c. name and current address of the beneficial owners of the investment company;
- d. name and current address of companies with ownership interests in the investment company;
- e. name and current address of the primary accountant and primary broker used by the investment company;
- f. an explanation of the structure of ownership interests in the investment company;
- g. information on affiliations by the investment company with any other financial institution;

- h. a statement of minimum investment commitments required of a limited partner, member or other investor;
- i. total number of limited partners, members or other investors; and
- j. current value of the investment of the investment company and any assets managed by the investment company.

B. Anti-Money Laundering Obligations

1. General Purpose

Investment companies exempted under §§6(a)(6) and (7) are required to establish an anti-money laundering program and report suspicious transactions under 31 U.S.C.A. §5318(g) and (h).

2. Rulemaking

The Secretary of the Treasury is authorized to create a Rule establishing policies, procedures and controls of the anti-money laundering program. The contents of the rule must include that the exempted investment company:

- a. employs risk-based due diligence procedures and control to identify and evaluate any foreign person, corporation, partnership or other foreign entity supplying or planning to supply funds to be invested with the advice or assistance of the investment company;
- b. complies with the requirements on financial institutions to produce records, as is required by 31 U.S.C.A. §5318(k)(2).

3. Publication Date

The Secretary of the Treasury must propose the Rule at least 90 days after enactment of the HFTA and issue the Rule at least 180 days after enactment of the Act.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.