

1 **TITLE IV—REGISTRATION OF ADVISERS TO**
2 **PRIVATE FUNDS**

3 **SEC. 401. SHORT TITLE.**

4 This Act may be cited as the “Private Fund Investment Advisers Registration Act of
5 2009”.

6 **SEC. 402. DEFINITIONS.**

7 Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended
8 by adding at the end the following:

9 “(29) The term ‘private fund’ means an investment fund that—

10 “(A) would be an investment company (as defined in section 3 of the
11 Investment Company Act of 1940 (15 U.S.C. 80a-3)), but for section 3(c)(1) or
12 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) or 80a-
13 3(c)(7)); and

14 “(B) either—

15 “(i) is organized or otherwise created under the laws of the United
16 States or of a State; or

17 “(ii) has 10 percent or more of its outstanding securities owned by
18 U.S. persons.

19 “(30) The term ‘foreign private adviser’ means any investment adviser who—

20 “(A) has no place of business in the United States;

21 “(B) during the preceding 12 months has had—

22 “(i) fewer than 15 clients in the United States; and

1 “(ii) assets under management attributable to clients in the United
2 States of less than \$25,000,000, or such higher amount as the Commission
3 may, by rule, deem appropriate in accordance with the purposes of this
4 title; and

5 “(C) neither holds itself out generally to the public in the United States as
6 an investment adviser, nor acts as an investment adviser to any investment
7 company registered under the Investment Company Act of 1940, or a company
8 which has elected to be a business development company pursuant to section 54
9 of the Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not
10 withdrawn its election.”.

11 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED**
12 **EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED**
13 **INTRASTATE EXEMPTION.**

14 Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is
15 amended—

16 (a) in paragraph (1), by inserting “, except an investment adviser who acts as an
17 investment adviser to any private fund,” after “investment adviser” the first time it appears;

18 (b) by amending paragraph (3) to read as follows:

19 “(3) any investment adviser that is a foreign private adviser;”; and

20 (c) in paragraph (6)—

21 (1) in subparagraph (A), by striking “or”;

22 (2) in subparagraph (B), by striking the period at the end and adding “; or”; and

23 (3) by adding at the end the following new subparagraph:

1 “(C) a private fund.”

2 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS;**
3 **DISCLOSURES.**

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

5 (a) by redesignating subsections (b) and (c) as subsections (c) and (d); and

6 (b) by inserting after subsection (a) the following new subsection (b):

7 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

8 “(1) IN GENERAL.—The Commission is authorized to require any investment
9 adviser registered under this Act to maintain such records of and submit to the
10 Commission such reports regarding private funds advised by the investment adviser as
11 are necessary or appropriate in the public interest and for the assessment of systemic risk
12 by the Board of Governors of the Federal Reserve System and the Financial Services
13 Oversight Council, and to provide or make available to the Board of Governors of the
14 Federal Reserve System and the Financial Services Oversight Council those reports or
15 records or the information contained therein. The records and reports of any private fund
16 would be an investment company, to which any such investment adviser provides
17 investment advice, maintained or filed by an investment adviser registered under this Act
18 shall be deemed to be the records and reports of the investment adviser.

19 “(2) REQUIRED INFORMATION.—The records and reports required to be filed with
20 the Commission under this subsection shall include but shall not be limited to the
21 following information for each private fund advised by the investment adviser:

22 “(A) amount of assets under management, use of leverage (including off-
23 balance sheet leverage), counterparty credit risk exposures, trading and

1 investment positions, and trading practices; and

2 “(B) such other information as the Commission, in consultation with the
3 Board of Governors of the Federal Reserve System, determines necessary or
4 appropriate in the public interest and for the protection of investors or for the
5 assessment of systemic risk.

6 “(3) MAINTENANCE OF RECORDS.—An investment adviser registered under this
7 Act is required to maintain and keep such records of private funds advised by the
8 investment adviser for such period or periods as the Commission, by rules and
9 regulations, may prescribe as necessary or appropriate in the public interest and for the
10 protection of investors or for the assessment of systemic risk.

11 “(4) EXAMINATION OF RECORDS.—

12 “(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private
13 fund maintained by an investment adviser registered under this Act shall be
14 subject at any time and from time to time to such periodic, special, and other
15 examinations by the Commission, or any member or representative thereof, as the
16 Commission may prescribe.

17 “(B) AVAILABILITY OF RECORDS.—An investment adviser registered under
18 this Act shall make available to the Commission or its representatives any copies
19 or extracts from such records as may be prepared without undue effort, expense or
20 delay as the Commission or its representatives may reasonably request.

21 “(5) INFORMATION SHARING.— The Commission shall make available to the
22 Board of Governors of the Federal Reserve System and the Financial Services Oversight
23 Council copies of all reports, documents, records and information filed with or provided

1 to the Commission by an investment adviser under section 204(b) as the Board or the
2 Council may consider necessary for the purpose of assessing the systemic risk of a
3 private fund or assessing whether a private fund should be designated a Tier 1 financial
4 holding company. All such reports, documents, records and information obtained by the
5 Board or the Council from the Commission under this subsection shall be kept
6 confidential.

7 “(6) DISCLOSURES BY PRIVATE FUND.—An investment adviser registered under
8 this Act shall provide such reports, records and other documents to investors, prospective
9 investors, counterparties, and creditors, of any private fund advised by the investment
10 adviser as the Commission, by rules and regulations, may prescribe as necessary or
11 appropriate in the public interest and for the protection of investors or for the assessment
12 of systemic risk.

13 “(7) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law,
14 the Commission shall not be compelled to disclose any supervisory report or information
15 contained therein required to be filed with the Commission under subsection (b).
16 Nothing in this subsection shall authorize the Commission to withhold information from
17 Congress or prevent the Commission from complying with a request for information from
18 any other Federal department or agency or any self-regulatory organization requesting the
19 report or information for purposes within the scope of its jurisdiction, or complying with
20 an order of a court of the United States in an action brought by the United States or the
21 Commission. For purposes of section 552 of title 5, United States Code, this subsection
22 shall be considered a statute described in subsection (b)(3)(B) of such section 552.”

23 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

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

3 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

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

5 (1) in subsection (a)—

6 (A) by striking the second sentence; and

7 (B) by striking the period at the end of the first sentence and inserting the
8 following:

9 “, including rules and regulations defining technical, trade, and other terms used in this title. For
10 the purposes of its rules and regulations, the Commission may—

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

13 “(2) ascribe different meanings to terms (including the term ‘client’) used in
14 different sections of this title as the Commission determines necessary to effect the
15 purposes of this title.”; and

16 (2) by adding at the end the following new subsection:

17 “(e) The Commission and the Commodity Futures Trading Commission shall, after
18 consultation with the Board of Governors of the Federal Reserve System, within 6 months after
19 the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly
20 promulgate rules to establish the form and content of the reports required to be filed with the
21 Commission under subsection 204(b) and with the Commodity Futures Trading Commission by
22 investment advisers that are registered both under the Investment Advisers Act of 1940 (15
23 U.S.C. 80b *et seq.*) and the Commodity Exchange Act (7 U.S.C. 1a *et seq.*).”.