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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

parency Act”.

SEC. 2. HEDGE FUND REGISTRATION REQUIREMENTS.

(a) Definition of Investment Company.—Sec-

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

U.S.C. 80a–3(c)) is amended—

(1) by striking paragraph (1);
(2) by striking paragraph (7);

(3) by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively; and

(4) by redesignating paragraphs (8) through (14) as paragraphs (6) through (12), respectively.

(b) ADDITIONAL EXEMPTIONS.—Section 6 of the Investment Company Act of 1940 (15 U.S.C. 80a–6) is amended—

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

“(6)(A) Subject to subsection (g), any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and which is not making and does not presently propose to make a public offering of its securities.

“(B) For purposes of this paragraph and paragraph (7), beneficial ownership—

“(i) by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 percent or more of the outstanding voting securities of the issuer, and is or, but for the exemption provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership
shall be deemed to be that of the holders of the
outstanding securities (other than short-term
paper) of such company; and

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

“(7)(A) Subject to subsection (g), any issuer,
the outstanding securities of which are owned exclu-
sively by persons who, at the time of the acquisition
of such securities, are qualified purchasers, and
which is not making and does not at that time pro-
pose to make a public offering of such securities. Se-
curities that are owned by persons who received the
securities from a qualified purchaser as a gift or be-
quest, or in a case in which the transfer was caused
by legal separation, divorce, death, or any other in-
voluntary event, shall be deemed to be owned by a
qualified purchaser, subject to such rules, regula-
tions, and orders as the Commission may prescribe
as necessary or appropriate in the public interest or
for the protection of investors.

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

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

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

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

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

“(I) such issuer has disclosed to each
beneficial owner that future investors will
be limited to qualified purchasers, and that
ownership in such issuer is no longer lim-
ited to not more than 100 persons; and
“(II) concurrently with or after such
disclosure, such issuer has provided each
beneficial owner with a reasonable oppor-
tunity to redeem any part or all of their in-
terests in the issuer, notwithstanding any
agreement to the contrary between the
issuer and such persons, for the propor-
tionate share of that person of the net as-
sets of the issuer.

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

“(D) An issuer that is exempt under this para-
graph shall nonetheless be deemed to be an invest-
ment company for purposes of the limitations set
forth in subparagraphs (A)(i) and (B)(i) of section
12(d)(1) (15 U.S.C. 80a–12(d)(1) (A)(i) and (B)(i))
relating to the purchase or other acquisition by such
issuer of any security issued by any registered in-
vestment company and the sale of any security
issued by any registered open-end investment com-
pany to any such issuer.

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

(2) by adding at the end the following:

“(g) LIMITATION ON EXEMPTIONS FOR LARGE IN-
VESTMENT COMPANIES.—
“(1) IN GENERAL.—An investment company with assets, or assets under management, of not less than $50,000,000 is exempt under subsection (a)(6) or (a)(7) only if that company—

“(A) registers with the Commission;

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

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

“(D) cooperates with any request for information or examination by the Commission.

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

“(A) be filed electronically;

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

“(C) include—

“(i) the name and current address of—

“(I) each natural person who is a beneficial owner of the investment company;
“(II) any company with an ownership interest in the investment company; and
“(III) the primary accountant and primary broker used by the investment company;
“(ii) an explanation of the structure of ownership interests in the investment company;
“(iii) information on any affiliation that the investment company has with another financial institution;
“(iv) a statement of any minimum investment commitment required of a limited partner, member, or other investor;
“(v) the total number of any limited partners, members, or other investors; and
“(vi) the current value of—
“(I) the assets of the investment company; and
“(II) any assets under management by the investment company; and
“(D) be made available by the Commission to the public at no cost and in an electronic, searchable format.”.
SEC. 3. IMPLEMENTING GUIDANCE AND RULES.

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

(b) RULES.—The Securities and Exchange Commission may make a rule to carry out this Act.

SEC. 4. ANTI–MONEY LAUNDERING OBLIGATIONS.

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

(b) IN GENERAL.—An investment company that relies on paragraph (6) or (7) of section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a) (6) and (7)), as amended by this Act, as the basis for an exemption under that Act shall establish an anti-money laundering program and shall report suspicious transactions under subsections (g) and (h) of section 5318 of title 31, United States Code.

(c) RULEMAKING.—

(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, shall, by rule, establish the policies, procedures, and controls necessary to carry out subsection (b).
(2) CONTENTS.—The rule required by paragraph (1)—

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

(i) use risk–based due diligence policies, procedures, and controls that are reasonably designed to ascertain the identity of and evaluate any foreign person (including, where appropriate, the nominal and beneficial owner or beneficiary of a foreign corporation, partnership, trust, or other foreign entity) that supplies or plans to supply funds to be invested with the advice or assistance of such investment company; and

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

(B) may incorporate elements of the proposed rule for unregistered investment companies published in the Federal Register on Sep-
tember 26, 2002 (67 Fed. Reg. 60617) (relat-
ing to anti-money laundering programs).

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

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

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

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

SEC. 5. TECHNICAL CORRECTIONS.

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

(1) in paragraph (2)—

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

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

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

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


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

(A) in paragraph (12)(A)—

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

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

and

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

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

and

(C) in paragraph (54)(A)—

(i) in clause (ii), by striking “exclusion from the definition of investment company pursuant to section 3(c)(7)” and in-
serting “exemption under section 6(a)(7)”;

and

(ii) in clause (vii), by striking “section 3(c)(2)” and inserting “section 3(c)(1)”;

(2) in section 3(g) (15 U.S.C. 78c(g)) by striking “section 3(c)(14)” each place that term appears and inserting “section 3(c)(12)”;

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

(A) in subparagraph (D), by striking “section 3(c)(10)(B)” and inserting “section 3(c)(8)(B)”;

(B) in subparagraph (H), by striking “section 3(c)(14)” and inserting “section 3(c)(12)”.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

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

(A) in subparagraph (A)(i), by striking “excepted under section 3(c)(7)” and inserting “exempt under section 6(a)(7)”;

(B) in subparagraph (C)—

(i) by striking “that, but for the exceptions provided for in paragraph (1) or (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
by section 3(c)(1)” and inserting “exempt under section 6(a)(6)”;

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

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

(d) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

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

(A) in paragraph (4) by striking “section 3(c)(10)” each place that term appears and inserting “section 3(c)(8)”;

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

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

(A) in paragraph (2)(B), by striking “section 3(c)(11)” and inserting “section 3(c)(9)”;

and

(B) in paragraph (4), by striking “excepted from the definition of an investment
company under section 3(c)(7)” and inserting “exempt under section 6(a)(7)”.

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

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