



## **OBAMA ADMINISTRATION DELIVERS HEDGE FUND REGISTRATION PROPOSAL**

Yesterday the Obama administration delivered to Capital Hill proposed legislation that, if passed, would require all advisers to hedge funds and other private pools of capital to register with the Securities and Exchange Commission. The legislation, entitled the “Private Fund Investment Advisers Registration Act of 2009”, was drafted by the U.S. Department of the Treasury and was introduced yesterday by Assistant Treasury Secretary for Financial Institutions Michael Barr during a speech on financial regulation before the Exchequer Club.

The main elements of the Treasury's proposed bill are as follows:

### **1. *Require advisers to register with the SEC.***

Investment advisers with more than \$30 million of assets under management will be required to register with the SEC. Once registered, investment advisers will become subject to:

- Periodic, confidential reporting requirements with respect to the assets, leverage, borrowing, counterparty risk and off-balance sheet exposure of their advised private funds;
- Disclosure requirements with respect to investors, creditors, and counterparties of their advised private funds;
- Conflict-of-interest and anti-fraud prohibitions;
- SEC examination and enforcement authority and recordkeeping requirements; and
- Requirements to establish a comprehensive compliance program.

### **2. *Increased disclosure and monitoring for potential systemic risk.***

- The Administration's legislation would include confidential reporting to the SEC (which can be shared with the Federal Reserve and the Financial Services Oversight Council) of amount of assets under management, borrowings, off-balance sheet exposures, counterparty credit risk exposures, trading and investment positions, and other information relevant to determining potential systemic risk and potential threats to the overall financial stability of the economy.
- The SEC would be required to conduct regular examinations to monitor compliance with these requirements and to assess potential risk and would share the disclosure reports received from funds with the Federal Reserve and the Financial Services Oversight Council. Information provided by the SEC to the Board or Council would be kept confidential.
- To address systemic risk, hedge funds that are found to be so large, leveraged, or interconnected that they pose a threat to overall financial stability will be

supervised and regulated as Tier 1 Financial Holding Companies, subject to more stringent requirements regarding capital, liquidity, and risk management.

- The legislation does not detail exactly what size, how much leverage or what level of interconnectedness would trigger the need for a fund to be classified as a Tier 1 Financial Holding Company. That “will be a judgment made on the basis of criteria established by the Congress,” Assistant Treasury Secretary Barr said yesterday, taking questions from reporters after his speech.

At this point it is unclear whether the Treasury intends for its proposal to supplement, replace, or otherwise amend the legislation that is currently pending before both the Senate and the House, including the Private Fund Transparency Act (S. 1276), which was introduced on June 16 by Senator Jack Reed (D-RI) concurrently with the release of President Obama's financial regulatory reform plan.

As usual, we at HedgeOp are monitoring this situation very closely and will keep you posted on any further developments.

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