

<ul style="list-style-type: none"> ■ Requirements applicable to advisers to private funds <ul style="list-style-type: none"> ➤ Advisers to private funds would be required to register under the Investment Advisers Act (subject to exceptions noted below). ➤ Private fund advisers would be required to comply with various new recordkeeping, reporting, and disclosure rules, as described below. ➤ For advisers to “mid-sized” private funds (which term is not defined), any registration and examination procedures adopted by the SEC for such funds must reflect the level of systemic risk posed by the funds. ■ Dollar threshold that triggers registration under Advisers Act <ul style="list-style-type: none"> ➤ Raised from \$25 million (current statutory threshold) to \$100 million of assets under management. ■ Exemptions from Advisers Act registration <ul style="list-style-type: none"> ➤ <u>Foreign private fund adviser</u> - any adviser who: (i) has no place of business in U.S.; (ii) doesn’t hold self out to public in U.S. as investment adviser or act as adviser to registered investment company; and (iii) during last 12 months, had (a) fewer than 15 clients and investors in U.S. in private funds advised by the adviser, <u>and</u> (b) assets under management attributable to clients and investors in U.S. in private funds advised by the adviser of less than \$25 million. ➤ <u>Advisers to SBIC’s</u> - advisers who solely advise: (i) small business investment companies; (ii) entities that have been notified by the SBA that they may proceed to qualify for a license as a SBIC; and (iii) applicants for a SBIC license that are related to another licensed SBIC. 	<ul style="list-style-type: none"> ■ Same ■ Same ■ Not included ■ Same ■ Included, with slightly different wording that makes the exemption somewhat broader in the Senate bill. ■ Same
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<ul style="list-style-type: none"> ➤ <u>Venture capital fund advisers</u> - any adviser to a “venture capital fund” (with such term to be defined by SEC through rulemaking process). However, these advisers would be subject to annual report and other reporting requirements to be specified by SEC. ➤ <u>Private equity fund advisers</u> - Not included. ➤ <u>Advisers to smaller private funds</u> - any adviser acting solely as adviser to private funds with assets under management in the U.S. below \$150 million. ➤ <u>New limitation on exemption for commodity trading advisers</u> - under existing law, a commodity trading adviser registered with the Commodity Futures Trading Commission and whose business does not consist primarily of acting as an investment adviser is exempt from registration under the Advisers Act. However, the House bill makes this exemption unavailable if the adviser acts as an investment adviser to a private fund. ■ Recordkeeping and reporting requirements <ul style="list-style-type: none"> ➤ The SEC is authorized to establish recordkeeping and reporting requirements for registered advisers to private funds. 	<ul style="list-style-type: none"> ■ Included, but does not require any annual or other reporting by such advisers. ■ Included - provides exemption from registration for advisers to private equity funds (with such term to be defined by SEC through rulemaking process). These advisers would be subject to recordkeeping and annual report and other reporting requirements to be specified by SEC, taking into account fund size, governance, investment strategy, risk, and other factors. ■ Not included. ■ Not included - the Senate bill does not contain the limitation pertaining to commodity trading advisers acting as investment advisers to private funds. ■ Generally the same, but the Senate bill provides that information in the various specific categories must be maintained by the adviser and will be subject to inspection by the SEC, as opposed to being required to be “reported” to the SEC (as the House bill provides).
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<ul style="list-style-type: none"> ➤ These requirements are to cover information about the private funds relating to: <ul style="list-style-type: none"> ○ amount of assets under management ○ use of leverage (including off balance sheet) ○ counterparty credit risk exposure ○ trading and investment positions ○ trading practices ○ other information as determined by SEC ■ Disclosures to other parties <ul style="list-style-type: none"> ➤ SEC authorized to establish rules requiring registered advisers to private funds to make disclosures to investors, prospective investors, counterparties and creditors, as necessary or appropriate in the public interest and for the protection of investors or the assessment of systemic risk. ■ Protection of confidential and proprietary information provided to SEC <ul style="list-style-type: none"> ➤ Reports, records and other information provided to the SEC, the new Financial Services Oversight Council or any other governmental agency or any self-regulatory organization would be excluded from the scope of Freedom of Information Act (FOIA) requests. ➤ “Proprietary information” of an investment adviser (including information regarding investment or trading strategies and analytical or research methodologies) ascertained by the SEC from any report filed with the SEC by a registered investment adviser would be subject to the same limitations on public disclosure as facts ascertained during an examination of the adviser as provided by Section 210(b) of the Advisers Act. 	<ul style="list-style-type: none"> ■ Also, the Senate bill would expand the categories of information about the fund required to be maintained by advisers, to also include: <ul style="list-style-type: none"> ➤ valuation policies and practices ➤ types of assets held ➤ side arrangements/side letters giving some investors in fund “more favorable rights or entitlements” than others ■ Not included. ■ Same ■ Same
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<ul style="list-style-type: none"> ■ SEC rulemaking authority <ul style="list-style-type: none"> ➤ The SEC’s authority to issue rules under the Advisers Act would be clarified. ➤ The SEC would be prohibited from defining the term “client” to include an investor in a private fund managed by a registered investment adviser, where such private fund has an advisory contract with such adviser. ■ Definition of “investment adviser” <ul style="list-style-type: none"> ➤ No change from current law ■ “Qualified client” standard under Investment Advisers Act <ul style="list-style-type: none"> ➤ Any SEC rules that define “qualified client,” for purposes of the Investment Advisers Act, by reference to a dollar amount test would be required to be adjusted for the effects of inflation every five years. ■ “Accredited investor” standard under Securities Act <ul style="list-style-type: none"> ➤ Not included. ■ New self-regulatory organization for private funds <ul style="list-style-type: none"> ➤ Not included. 	<ul style="list-style-type: none"> ■ Same ■ New language excluding “family office” (to be defined by SEC through rulemaking process, consistent with the SEC’s previous exemptive orders for family offices). ■ Not included. ■ SEC directed to modify the “net worth” test for determining accredited investor status for natural persons to exclude the value of a person’s primary residence. SEC would also be required to review the entirety of the accredited investor definition at least every four years to determine whether the definition should be adjusted, including in light of the economy. ■ GAO would be directed to conduct a study on the feasibility of forming a self-regulatory organization to oversee private funds.
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<ul style="list-style-type: none">■ Transition period<ul style="list-style-type: none">➤ Amendments effective one year after date of enactment	<ul style="list-style-type: none">■ Same
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If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

Tim Clark	212.841.1089	tclark@cov.com
David Engvall	202.662.5307	dengvall@cov.com
Kerry Burke	202.662.5297	kburke@cov.com
Lisa Mondschein	212.841.1200	lmondschein@cov.com

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