

Legal Updates & News

Legal Updates

Connecticut Lawmakers Modify Proposed Legislation Regulating Private Funds

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by [Kenneth W. Muller](#), [Thomas Devaney](#), [Kim Tomsen Budinger](#)

Lawmakers in Connecticut's General Assembly are proposing legislation that would increase the regulatory obligations of private funds operating in Connecticut.^[1] Since being introduced, the proposed legislation, *An Act Concerning Hedge Funds*, has been subject to review and modification by the General Assembly's Banks Committee.^[2] A summary of the proposed legislation, as modified, follows.

Private Funds Regulated by *An Act Concerning Hedge Funds*

An Act Concerning Hedge Funds seeks to regulate private funds (including hedge funds, private equity funds, and venture capital funds) that:

- have a Connecticut office where employees regularly conduct business on behalf of the fund;
- privately offer securities in reliance on Regulation D under the Securities Act of 1933; and
- are not registered as "investment companies" with the Securities and Exchange Commission pursuant to the exceptions set forth in either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940.

Summary of *An Act Concerning Hedge Funds*

Investment Adviser Registration Requirements. The proposed legislation exempts from registration with Connecticut's Department of Banking all investment advisers without a Connecticut place of business. Currently, investment advisers without a Connecticut place of business must register with the Department of Banking if they, during the preceding twelve months, have had six or more clients who are Connecticut residents.

Disclosure Obligations Relating to Regulated Private Funds. The proposed legislation requires that investment advisers to regulated private funds disclose to prospective and current investors, no later than thirty days prior to any investment, any conflicts of interest with, or that are likely to impair duties and

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responsibilities owed to, a regulated private fund or its investors.^[3]

If enacted, the proposed legislation would become effective October 1, 2009.

Conclusion

The proposed legislation pending in the Connecticut General Assembly must be passed before the General Assembly adjourns in June if it is to take effect this year.

We believe Connecticut lawmakers will continue to monitor the progress of this year's proposed federal legislation aimed at regulating private funds and fund managers, such as the *Hedge Fund Transparency Act* introduced in the United States Senate by Senators Chuck Grassley (R-Iowa) and Carl Levin (D-Mich.) earlier this year.^[4] If heightened regulation of private funds is enacted by Congress at the federal level, it is possible that the proposed legislation may not be approved by this year's General Assembly.

We will continue to track the progress of *An Act Concerning Hedge Funds*, and will update you regarding any significant developments. If you have questions regarding this Client Alert, please contact a member of the [Private Equity Fund Group](#) at Morrison & Foerster LLP.

Footnotes

^[1] Connecticut lawmakers first introduced the proposed legislation in February 2009. (Please see our March 2009 Legal Update, "[Connecticut-Based Private Funds Continue to Face Increased Regulation](#)," for additional information relating to the original proposed legislation.) The proposed legislation has since been modified as described in this Legal Update.

^[2] The modified text of *An Act Concerning Hedge Funds* is available at:
<http://www.cga.ct.gov/2009/FC/2009SB-00953-R000171-FC.htm>.

^[3] The current version of the proposed legislation no longer requires (i) written disclosure regarding any material change in the fund's investment strategy and philosophy, the departure of certain key persons, the existence of any side letters, and major litigation or governmental investigation involving the fund; or (ii) on an annual basis, written disclosure regarding fees paid by the fund (e.g., management, brokerage, and trading fees), together with a financial statement indicating that the investor's capital account was audited by an independent auditing firm. In addition, the proposed legislation no longer provides for minimum natural person investor qualifications.

^[4] Please see our February 2009 Legal Update, "[Regulating Private Funds and Their Investment Advisers: A Summary of Recently Proposed Legislation](#)," for additional information.