

Section-by-Section Analysis of Title IV

Registration of Advisers to Private Funds

Section 401. Short Title.

Section 402. Definitions.

This section adds a definition of “private fund” and a definition of “foreign private adviser” to the Investment Advisers Act of 1940.

Section 403. Elimination of Private Adviser Exemption; Limited Exemption for Foreign Private Advisers; Limitation on Intrastate Exemption.

This section eliminates the registration exemption for investment advisers that have fewer than 15 clients, do not hold themselves out to the public as investment advisers, and do not act as investment advisers to registered investment companies or business development companies. In its place, this section adds an exemption from registration for an investment adviser that is a foreign private adviser. This section also excludes from the intrastate exemption investment advisers that advise private funds.

Section 404. Collection of Systemic Risk Data; Reports; Examinations; Disclosures.

This section adds a new subsection to the Investment Advisers Act of 1940 that authorizes the Commission to require an investment adviser that advises a private fund to maintain records and submit reports to the Commission regarding the private funds. The Commission must make available the reports and records to the Board of Governors of the Federal Reserve System and to the Financial Services Oversight Council for an assessment of systemic risk. The records are subject to periodic and special examination by the Commission. This section also authorizes the Commission to require an investment adviser to provide reports, records and other documents to investors, creditors, and counterparties of the private funds it advises.

Section 405. Disclosure Provision Eliminated.

This section eliminates the provision that limits the authority of the Commission to obtain information from an investment adviser on the identity, investments or affairs of any client of the investment adviser unless the disclosure was necessary or appropriate in an enforcement proceeding or investigation.

Section 406. Clarification of Rulemaking Authority.

This section authorizes the Commission when prescribing rules and regulations to define technical, trade and other terms used in the Investment Advisers Act of 1940, and to prescribe different requirements for different classes of persons or matters. In addition, this section authorizes the Commission to give different meanings to terms used in different sections of the Investment Advisers Act of 1940 as necessary to effect the purpose of the Act. This section also directs the Commission and the Commodity Futures Trading Commission, after consultation

with the Board of Governors of the Federal Reserve System, to jointly promulgate rules to establish the form and content of the reports required to be filed under this title by investment advisers that are registered both under the Investments Advisers Act of 1940 and the Commodity Exchange Act.