

As Passed
by the Senate Conference

June 15, 2010

**** Draft Senate Counteroffer ****

Title: Title IV

Matter: Regulation of Advisers to Private Funds and Others

1. Add House provision that requires registration with the SEC of Commodity Trading Advisers (CTAs) who advise private funds (House Bill § 5003, page 1204, lines 1-7)

Reject.

2. Add House provision which requires disclosure of certain private fund information to investors, prospective investors, counterparties and creditors. (House bill § 5004, page 1209, lines 1-10)

Reject.

3. Add new provision which provides a savings clause to ensure that the new registration requirements for advisers to private funds under the Act does not absolve these advisers of their existing registration requirements, as applicable, under the Commodity Exchange Act. (Add new language to Senate bill § 406, page 463)

Accept

4. Strike Senate exemption of investment advisers to private equity firms from registration with the SEC (Senate bill § 408, page 464)

Counterproposal to exempt private equity fund advisers with more than \$1 billion in assets under management

5. Add House provision to exempt investment advisers of private funds with less than \$150 million in assets under management (House bill § 5007, page 1212)

Accept

6. Amend Senate exemption for the investment advisers of venture capital firms. Though exempt from registration with the SEC, require the advisers of venture capital firms to keep records and provide reports to the SEC (House bill § 5006, page 1212, lines 3-8)

Accept

7. Strike and replace Senate provision defining state and federal responsibilities for investment advisers. Replace with House provision that requires investment advisers who qualify to register with their home state (i.e. less than \$100 million in assets under management) to register

Accept

with the SEC should their home state not perform examinations. (Strike Senate bill § 410 page 466 and replace with House bill § 7418, page 1377)

Counterproposal – Reed amendment 4078 from Senate Floor

8. Strike and replace Senate provision for custodial assets. Replace with House provision that prohibits an investment adviser from providing custodial services for customer accounts. The SEC may provide an exception from this prohibition if the customer assets are verified by an entity that has a fiduciary duty to the client. (Strike Senate bill § 411, page 466 and replace with House bill § 7419, page 1378)

Reject

9. Add House provision which requires the SEC to index for inflation the dollar amount measures to determine who is a qualified client for purposing of paying a performance fee to a registered investment adviser. It also calls for a rounding to the nearest \$100,000 when making the determination. (House bill § 5011, page 1216)

Accept