Senate Bill Would Require Registration of Hedge, PE and VC Funds

As has been reported in the media, Senators Carl Levin (D – Michigan) and Chuck Grassley (R – Iowa) introduced in the Senate on January 29, 2009, a bill that would require SEC registration (and other disclosure) of hedge funds having at least $50 million in assets. Importantly, and despite the sponsors' and media's focus on hedge funds, the bill would apply to all private funds, including private equity, venture capital and distressed debt funds.

Noteworthy Points

Firms operating private funds should be aware of the following:

- The bill is only proposed legislation; it is difficult to handicap at this point the likelihood or timing of it becoming law. The bill will be referred to the Senate Banking Committee, where it may undergo substantial changes. The bulk of the bill is a version of a bill filed two years ago by Senator Grassley but never considered by Congress.
- It requires registration of funds, not firms, and the $50 million threshold applies fund-by-fund.
- In addition to SEC registration, the bill would require funds to maintain books and records in accordance with SEC rules, and annually disclose specified information including names and addresses of fund investors and the value of the assets of the fund.
- Other than required annual disclosure of the value of the fund assets (which appears to be on an aggregate, rather than investment-by-investment, basis), the bill would not require disclosure of, or otherwise substantively regulate, fund investments.
- The bill would require funds to establish an anti-money laundering program.

Key Provisions of Bill

The bill amends Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (which currently exempt from registration under the '40 Act funds that have less than 100 investors or whose investors are only "qualified purchasers") by moving the exemptions, verbatim, to Section 6(a) of the '40 Act and by requiring funds with at least $50 million of assets (or assets under management) that rely on either exemption to (i) register with the SEC, (ii) file an annual information form, which would be publicly available, (iii) maintain books and records in accordance with SEC rules, (iv) cooperate with SEC examinations or requests for information, and (v) establish an anti-money laundering program.

Registration would be effected by filing a simple form with the SEC containing basic information about the fund and its advisor.

The annual information form would include (i) the name and address of each natural person that is a beneficial owner of the fund, each company with an ownership interest in the fund, and the primary accountant and primary broker of the fund, (ii) the fund ownership structure, (iii) any affiliations with other financial institutions, (iv) any minimum investment commitment required of investors, (v) the number of investors, and (vi) the current value of fund assets or assets under management.

Funds relying on these exemptions would be required to establish, within one year of the bill becoming law, an anti-money laundering program in accordance with rules promulgated by the Secretary of the Treasury.

For more information about fund registration and other responsibilities under the proposed legislation, please contact your usual Ropes & Gray attorney.