



Senate

General Assembly

File No. 171

January Session, 2009

Substitute Senate Bill No. 953

Senate, March 25, 2009

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HEDGE FUNDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (e) of section 36b-6 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (e) The following investment advisers are exempted from the
5 registration requirements under subsection (c) of this section: Any
6 investment adviser that (1) is registered or required to be registered
7 under Section 203 of the Investment Advisers Act of 1940; (2) is
8 excepted from the definition of investment adviser under Section
9 202(a)(11) of the Investment Advisers Act of 1940; or (3) has no place of
10 business in this state, [and, during the preceding twelve months, has
11 had no more than five clients who are residents of this state.] Any
12 investment adviser claiming an exemption pursuant to subdivision (1)
13 or (2) of this subsection that is not otherwise excluded under
14 subsection (11) of section 36b-3, as amended by this act, shall first file
15 with the commissioner a notice of exemption together with a consent

16 to service of process as required by subsection (g) of section 36b-33 and
17 shall pay to the commissioner or to any person designated by the
18 commissioner in writing to collect such fee on behalf of the
19 commissioner a nonrefundable fee of two hundred fifty dollars. The
20 notice of exemption shall contain such information as the
21 commissioner may require. Such notice of exemption shall be valid
22 until December thirty-first of the calendar year in which it was first
23 filed and may be renewed annually thereafter upon submission of
24 such information as the commissioner may require together with a
25 nonrefundable fee of one hundred fifty dollars. If any investment
26 adviser that is exempted from registration pursuant to subdivision (1)
27 or (2) of this subsection fails or refuses to pay any fee required by this
28 subsection, the commissioner may require such investment adviser to
29 register pursuant to subsection (c) of this section. For purposes of this
30 subsection, a delay in the payment of a fee or an underpayment of a
31 fee which is promptly remedied shall not constitute a failure or refusal
32 to pay such fee.

33 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) As used in this section,
34 "hedge fund" means any investment company, as defined in Section
35 3(a)(1) of the Investment Company Act of 1940, located in this state (1)
36 that claims an exemption under Section 3(c)(1) or Section 3(c)(7) of the
37 Investment Company Act of 1940; (2) whose offering of securities is
38 exempt under the private offering safe harbor criteria in Rule 506 of
39 Regulation D of the Securities Act; and (3) that meets any other criteria
40 as may be established by the Banking Commissioner in regulations
41 adopted under subsection (c) of this section. A hedge fund is located in
42 this state if such fund has an office in this state where employees
43 regularly conduct business on behalf of the hedge fund.

44 (b) Any investment adviser to a hedge fund shall disclose to each
45 investor or prospective investor in such hedge fund, not later than
46 thirty days before any such investment, any financial or other interests
47 the investment adviser may have that conflict with or are likely to
48 impair the investment adviser's duties and responsibilities to the fund
49 or its investors.

50 (c) The Banking Commissioner may adopt regulations, in
51 accordance with chapter 54 of the general statutes, to implement the
52 provisions of this section.

53 Sec. 3. Section 36b-3 of the general statutes is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2009*):

55 As used in sections 36b-2 to 36b-33, inclusive, as amended by this
56 act, and section 2 of this act, unless the context otherwise requires:

57 (1) "Agent" means any individual, other than a broker-dealer, who
58 represents a broker-dealer or issuer in effecting or attempting to effect
59 purchases or sales of securities. "Agent" does not include an individual
60 who represents an issuer in (A) effecting transactions in a security
61 exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or (22) of
62 subsection (a) of section 36b-21, (B) effecting transactions exempted by
63 subsection (b) of section 36b-21, except for transactions exempted by
64 subdivisions (10), (13) or (14) of said subsection, (C) effecting
65 transactions with existing employees, partners or directors of the
66 issuer if no commission or other remuneration is paid or given directly
67 or indirectly for soliciting any person in this state, or (D) effecting
68 transactions in any covered security, except for covered securities
69 within the meaning of Sections 18(b)(2) or 18(b)(4)(D) of the Securities
70 Act of 1933. "Agent" does not include such other persons not within
71 the intent of this subdivision as the commissioner may by regulation or
72 order determine. A general partner, officer or director of a broker-
73 dealer or issuer, or a person occupying a similar status or performing
74 similar functions, is an agent only if such person otherwise comes
75 within this definition and any compensation that such person receives
76 is directly or indirectly related to purchases or sales of securities.

77 (2) "Associated person" has the meaning given to that term in
78 Section 3(a)(21) of the Securities Exchange Act of 1934.

79 (3) "Blank check company" means any company that (A) devotes
80 substantially all of its efforts to establishing a new business in which
81 planned principal operations have not commenced or, that has

82 commenced planned principal operations, but has not derived
83 significant revenue from such operations; and (B) has no specific
84 business plan or purpose or has indicated that its business plan is to
85 engage in a merger or acquisition with an unidentified company or
86 companies, or other entity or person.

87 (4) "Branch office" means any location other than the main office at
88 which an agent or investment adviser agent regularly conducts
89 business on behalf of a broker-dealer or investment adviser, or any
90 location that is held out as such, excluding: (A) Any location that is
91 established solely for customer service or back-office-type functions
92 where no sales activities are conducted and that is not held out to the
93 public as a branch office, (B) any location that is the agent's or
94 investment adviser agent's primary residence, provided (i) only agents
95 or investment adviser agents who reside at the location and are
96 members of the same immediate family conduct business at the
97 location, (ii) the location is not held out to the public as an office and
98 the agent or investment adviser agent does not meet with customers at
99 the location, (iii) neither customer funds nor securities are handled at
100 that location, (iv) the agent or investment adviser agent is assigned to a
101 designated branch office, and such designated branch office is reflected
102 on all business cards, stationery, advertisements and other
103 communications to the public by such agent or investment adviser
104 agent, (v) the agent's or investment adviser agent's correspondence
105 and communications with the public are subject to the supervision of
106 the broker-dealer or investment adviser with which such agent or
107 investment adviser agent is associated, (vi) electronic communications,
108 including e-mail, are made through the electronic system of the broker-
109 dealer or investment adviser, (vii) all orders for securities are entered
110 through the designated branch office or an electronic system
111 established by a broker-dealer that is reviewable at the branch office,
112 (viii) written supervisory procedures pertaining to supervision of
113 activities conducted at the residence are maintained by the broker-
114 dealer or investment adviser, and (ix) a list of the residence locations is
115 maintained by the broker-dealer or investment adviser, (C) any
116 location, other than a primary residence, that is used for securities or

117 investment advisory business for less than thirty business days in any
118 one calendar year, provided the broker-dealer or investment adviser
119 complies with the provisions of subparagraph (B)(ii), (iii), (iv), (v), (vi),
120 (vii) and (viii) of this subdivision, (D) any office of convenience, where
121 associated persons occasionally and exclusively by appointment meet
122 with customers, which is not held out to the public as an office, (E) any
123 location that is used primarily to engage in nonsecurities activities and
124 from which the agent or investment adviser agent effects no more than
125 twenty-five securities transactions in any one calendar year, provided
126 any advertisement or sales literature identifying such location also sets
127 forth the address and telephone number of the location from which the
128 agent or investment adviser agent conducting business at the
129 nonbranch locations is directly supervised, (F) the floor of a registered
130 national securities exchange where a broker-dealer conducts a direct
131 access business with public customers, (G) a temporary location
132 established in response to the implementation of a business continuity
133 plan, or (H) any other location not within the intent of this subdivision
134 as the commissioner may determine. As used in this subdivision, the
135 term "business day" does not include any partial business day,
136 provided the agent or investment adviser agent spends at least four
137 hours on such day at the designated branch office of such agent or
138 investment adviser agent during the hours that such office is normally
139 open for business.

140 (5) "Broker-dealer" means any person engaged in the business of
141 effecting transactions in securities for the account of others or for such
142 person's own account. "Broker-dealer" does not include (A) an agent,
143 (B) an issuer, (C) a bank, as defined in Section 3(a)(6) of the Securities
144 Exchange Act of 1934, when conducting activities that would except it
145 from the definitions of "broker" or "dealer" under Sections 3(a)(4) or
146 3(a)(5) of the Securities Exchange Act of 1934, (D) a person who has no
147 place of business in this state if such person effects transactions in this
148 state exclusively with or through (i) the issuers of the securities
149 involved in the transactions, (ii) other broker-dealers, or (iii) a bank
150 and trust company, a national banking association, a savings bank, a
151 savings and loan association, a federal savings bank, a federal savings

152 and loan association, a credit union, a federal credit union, a trust
153 company, an insurance company, an investment company as defined
154 in the Investment Company Act of 1940, a pension or profit-sharing
155 trust, or other financial institution or institutional buyer, whether
156 acting for itself or as trustee, or (E) such other persons not within the
157 intent of this subdivision as the commissioner may by regulation or
158 order determine.

159 (6) "Commissioner" means the Banking Commissioner or any
160 person appointed or designated by the Banking Commissioner to
161 administer sections 36b-2 to 36b-33, inclusive, as amended by this act.

162 (7) "Covered security" has the meaning given to that term in Section
163 18(b) of the Securities Act of 1933.

164 (8) "Fraud", "deceit" and "defraud" are not limited to common-law
165 deceit.

166 (9) "Guaranteed" means guaranteed as to payment of principal,
167 interest or dividends.

168 (10) "International banking institution" means an international
169 financial institution, as defined in 22 USC 262r, as from time to time
170 amended, of which the United States is a member and whose securities
171 are exempt from registration under the Securities Act of 1933.

172 (11) "Investment adviser" means any person who, for compensation,
173 engages in the business of advising others, either directly or through
174 publications or writings, as to the value of securities or as to the
175 advisability of investing in, purchasing or selling securities, or who, for
176 compensation and as a part of a regular business, issues or
177 promulgates analyses or reports concerning securities. "Investment
178 adviser" does not include (A) an investment adviser agent; (B) a bank,
179 as defined in Section 202(a)(2) of the Investment Advisers Act of 1940,
180 or a bank holding company, as defined in the Bank Holding Company
181 Act of 1956, that is excepted from the definition of "investment
182 adviser" in Section 202(a)(11) of the Investment Advisers Act of 1940;

183 (C) a lawyer, accountant, engineer, or teacher whose performance of
184 these services is solely incidental to the practice of such person's
185 profession; (D) a broker-dealer whose performance of these services is
186 solely incidental to the conduct of such person's business as a broker-
187 dealer and who receives no special compensation for them; (E) a
188 publisher of any bona fide newspaper, news magazine, or business or
189 financial publication of general, regular, and paid circulation; (F) a
190 person whose advice, analyses or reports relate only to securities
191 exempted by subdivision (1) of subsection (a) of section 36b-21; (G) any
192 insurance company under the supervision of the Insurance
193 Commissioner or any affiliate thereof, as defined in subsection (b) of
194 section 38a-129, when providing services to separate accounts of that
195 insurance company or registered investment companies all of whose
196 shares are owned by such insurance company or its insurance
197 company affiliates or by the separate accounts of that insurance
198 company or its insurance company affiliates; and (H) such other
199 persons not within the intent of this subdivision as the commissioner
200 may by regulation or order designate.

201 (12) (A) "Investment adviser agent" includes (i) any individual,
202 including an officer, partner or director of an investment adviser, or an
203 individual occupying a similar status or performing similar functions,
204 employed, appointed or authorized by or associated with an
205 investment adviser to solicit business from any person for such
206 investment adviser in this state and who receives compensation or
207 other remuneration, directly or indirectly, for such solicitation; or (ii)
208 any partner, officer, or director of an investment adviser, or an
209 individual occupying a similar status or performing similar functions,
210 or other individual employed, appointed, or authorized by or
211 associated with an investment adviser, who makes any
212 recommendation or otherwise renders advice regarding securities to
213 clients and who receives compensation or other remuneration, directly
214 or indirectly, for such advisory services.

215 (B) "Investment adviser agent" does not include an individual
216 employed, appointed or authorized by, associated with or acting on

217 behalf of an investment adviser exempt from registration under
218 subdivision (1) or (2) of subsection (e) of section 36b-6, as amended by
219 this act, who is a "supervised person", as defined in Section 202(a)(25)
220 of the Investment Advisers Act of 1940, unless such supervised person
221 is an "investment adviser representative", as defined in Securities and
222 Exchange Commission Rule 203A-3, 17 CFR 275.203A-3.

223 (C) "Investment adviser agent" does not include such other
224 individuals not within the intent of this subdivision as the
225 commissioner may by regulation or order designate.

226 (13) "Issuer" means any person who issues or proposes to issue any
227 security; except that (A) with respect to a certificate of deposit, a
228 voting-trust certificate, or a collateral-trust certificate, or with respect
229 to a certificate of interest or a share in an unincorporated investment
230 trust not having a board of directors or persons performing similar
231 functions or of the fixed, restricted management, or unit type, "issuer"
232 means any person performing the acts and assuming the duties of
233 depositor or manager pursuant to the provisions of the trust or other
234 agreement or instrument under which the security is issued; (B) with
235 respect to an equipment trust certificate or similar security serving the
236 same purpose, "issuer" means any person who uses or will use the
237 property, any person to whom the property or equipment is or will be
238 leased or conditionally sold or any person who is otherwise
239 contractually responsible for assuring payment of the certificate; and
240 (C) with respect to a fractional undivided interest in oil, gas or other
241 mineral leases or in payments out of production under a lease, right or
242 royalty, "issuer" means any owner of an interest in the lease or in
243 payments out of production under a lease, right or royalty, whether
244 whole or fractional, who creates fractional interests for the purpose of
245 sale.

246 (14) "Nonissuer" means not directly or indirectly for the benefit of
247 the issuer.

248 (15) "Person" means an individual, a corporation, a limited liability
249 company, a partnership, a limited partnership, a limited liability

250 partnership, an association, a joint-stock company, a trust where the
251 interests of the beneficiaries are evidenced by a security, an
252 unincorporated organization, a government or a political subdivision
253 of a government.

254 (16) (A) "Sale" or "sell" includes every contract of sale of, contract to
255 sell, or disposition of, a security or interest in a security for value. (B)
256 "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
257 solicitation of an offer to buy, a security or interest in a security for
258 value. (C) Any security given or delivered with, or as a bonus on
259 account of, any purchase of securities or any other thing shall be
260 conclusively presumed to constitute a part of the subject of such
261 purchase and to have been sold for value. (D) Nothing in this
262 subdivision shall limit or diminish the full meaning of the terms "sale",
263 "sell", "offer" or "offer to sell" as construed by the courts of this state.
264 (E) A purported gift of assessable stock is considered to involve an
265 offer and sale. (F) Every sale or offer of a warrant or right to purchase
266 or subscribe to another security of the same or another issuer, as well
267 as every sale or offer of a security which gives the holder a present or
268 future right or privilege to convert into another security of the same or
269 another issuer, is considered to include an offer of the other security.
270 (G) The terms defined in this subdivision do not include: (i) Any bona
271 fide pledge or loan; (ii) any stock dividend, whether the corporation
272 distributing the dividend is the issuer of the stock or not, if nothing of
273 value is given by stockholders for the dividend other than the
274 surrender of a right to a cash or property dividend when each
275 stockholder may elect to take the dividend in cash or property or in
276 stock; (iii) any act incident to a class vote by security holders on a
277 merger, exchange of securities for securities, consolidation,
278 reclassification of securities, or sale of assets in consideration of the
279 issuance of securities or securities and cash of another person other
280 than an individual; or (iv) any security which is issued in exchange for
281 one or more bona fide outstanding securities, claims or property
282 interests, or partly in such exchange and partly for cash, where the
283 terms and conditions of such issuance and exchange are approved by
284 any state or federal court.

285 (17) "Securities Act of 1933", "Securities Exchange Act of 1934",
286 "Public Utility Holding Company Act of 1935", "Investment Advisers
287 Act of 1940" and "Investment Company Act of 1940" mean the federal
288 statutes of those names, as from time to time amended.

289 (18) "Securities and Exchange Commission" means the United States
290 Securities and Exchange Commission.

291 (19) "Security" means any note, stock, treasury stock, security future,
292 bond, debenture, evidence of indebtedness, certificate of interest or
293 participation in any profit-sharing agreement, interests of limited
294 partners in a limited partnership, collateral-trust certificate,
295 preorganization certificate or subscription, transferable share,
296 investment contract, voting-trust certificate, certificate of deposit for a
297 security, fractional undivided interest in oil, gas or other mineral
298 rights, put, call, straddle, option, or privilege on any security or group
299 or index of securities, including any interest in or based on the value of
300 such security, group or index, put, call, straddle, option or privilege
301 entered into on a national securities exchange relating to foreign
302 currency, or, in general, any interest or instrument commonly known
303 as a "security", or any certificate of interest or participation in,
304 temporary or interim certificate for, receipt for, guarantee of, or
305 warrant or right to subscribe to or purchase, any of the foregoing.
306 "Security" includes (A) a certificated and an uncertificated security,
307 and (B) as an "investment contract", an interest in a limited liability
308 company or limited liability partnership, but does not include any
309 insurance or endowment policy or annuity contract issued by an
310 insurance company that is subject to regulation by the Insurance
311 Commissioner.

312 (20) "Self-regulatory organization" means a national securities
313 exchange, a national securities association of broker-dealers or a
314 clearing agency registered under the Securities Exchange Act of 1934
315 or the Municipal Securities Rulemaking Board established under the
316 Securities Exchange Act of 1934.

317 (21) "Shell company" or "dormant company" means any company

318 which does not pursue nor has the financial capacity to pursue a
319 business plan or purpose.

320 (22) "State" means any state, territory or possession of the United
321 States, the District of Columbia and Puerto Rico.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	36b-6(e)
Sec. 2	October 1, 2009	New section
Sec. 3	October 1, 2009	36b-3

BA Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Banking Dept.	BF - Cost	Potential	None

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill results in a potential cost of as much as \$25,000 to the Department of Banking (DOB) in FY 10. These costs are associated with the potential development of regulations by the DOB. Since the development of regulations concerning hedge funds is not required under the bill the DOB could develop such regulations over time and thus avoid any actual costs.

OLR Bill Analysis**sSB 953*****AN ACT CONCERNING HEDGE FUNDS.*****SUMMARY:**

Current law exempts investment advisers from registering with the Connecticut Banking Department if they have a place of business in the state and five or fewer Connecticut resident clients during the preceding 12 months. The bill eliminates the client number requirement; thus, any investment adviser without a place of business in the state is exempt. Also exempt from Connecticut registration, and unchanged by the bill, are investment advisers required to register with the Securities and Exchange Commission (SEC) and those excluded from the SEC's definition of the term.

The bill also defines the term hedge fund and requires any investment adviser to a hedge fund to disclose to each investor or prospective investor in the fund, at least 30 days before their investment, any financial or other interests the investment adviser may have that conflicts with or are likely to impair his or her duties and responsibilities to the fund or its investors. The bill allows the banking commissioner to adopt regulations to implement this requirement.

EFFECTIVE DATE: October 1, 2009

HEDGE FUND DEFINITION***Hedge Fund Definition***

The bill defines the term "hedge fund" as any investment company, as defined under the Investment Company Act of 1940, located in this state:

1. that claims an exemption under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940;

2. whose offering of securities is exempt under the private offering safe harbor criteria in Rule 506 of Regulation D of the Securities Act; and
3. that meets any other criteria the banking commissioner establishes in the regulation he adopts to implement the bill.

A hedge fund is located in the state if it has an office in this state where employees regularly conduct business on the fund's behalf.

BACKGROUND

Investment Company Registration Exemptions

Under Section 3(c)(1) of the federal Investment Company Act, an issuer (1) whose outstanding securities are beneficially owned by 100 or fewer persons and (2) who does not plan to make public offerings is exempt from registering as an investment company.

There is also a "sophisticated investor" exemption under Section 3(c)(7) of the Investment Company Act. Issuers are exempt from registering under this section if (1) their outstanding securities are owned by "qualified purchasers" and (2) they do not make a public offering of securities. A "qualified purchaser" is defined as an (1) individual who owns \$5 million worth of investments and (2) certain entities that own \$25 million worth of investments.

Offering Registration Exemption and the Regulation D "Safe Harbor"

Since hedge fund interests are considered securities under the Securities Act of 1933, they would ordinarily be subject to SEC regulation. However, the 1933 act provides an exception to the registration requirements if the interests are not sold in a "public offering." Under federal regulations, offers and sales of securities by an issuer that satisfy certain conditions are deemed to be transactions not involving any public offering (and therefore, exempt from registration requirements.)

To meet the commonly used "safe harbor" in Regulation D, hedge

funds may sell their interests to an unlimited number of “accredited investors.” This term includes:

1. a natural person who has individual net worth, or joint net worth with the person’s spouse, that exceeds \$1 million at the time of the purchase;
2. a natural person with income exceeding \$200,000 in each of the two most recent years, or joint income with a spouse, exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;
3. institutional investors (corporations and other corporate entities must have \$5 million in assets); and
4. an officer of the company selling the securities. Regulation D also allows an issuer to sell its interests to a limited number of non-accredited investors (up to 35) if they have sufficient financial knowledge.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 15 Nay 1 (03/10/2009)