



General Assembly

Amendment

January Session, 2009

LCO No. 7975

SB0095307975SR0

Offered by:
SEN. MCKINNEY, 28th Dist.

To: Subst. Senate Bill No. 953 File No. 171 Cal. No. 180

(As Amended)

"AN ACT CONCERNING HEDGE FUNDS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective January 1, 2011*) (a) As used in this
4 section, "private investment fund" means any investment company, as
5 defined in Section 3(a)(1) of the Investment Company Act of 1940, (1)
6 that claims an exemption under Section 3(c)(1) or Section 3(c)(7) of the
7 Investment Company Act of 1940; (2) whose offering of securities is
8 exempt under the private offering safe harbor criteria in Rule 506 of
9 Regulation D of the Securities Act; (3) that offers or sells securities in
10 this state or is located in this state; and (4) that meets any other criteria
11 as may be established by the Banking Commissioner in regulations
12 adopted under section 2 of this act. A private investment fund is
13 located in this state if such fund has an office in this state where
14 employees regularly conduct business on behalf of the private

15 investment fund.

16 (b) Any investment adviser to a private investment fund, regardless
17 of whether such investment adviser is registered with the United
18 States Securities and Exchange Commission, shall comply with the
19 disclosure requirements of Rule 204-3 under the Investment Advisers
20 Act of 1940, 15 USC 806-1 et seq., as amended from time to time,
21 provided nothing in this subsection shall require the disclosure of any
22 information other than material conflicts of interest of the investment
23 adviser.

24 Sec. 2. (NEW) (*Effective from passage*) If federal regulations or
25 changes to the Investment Advisers Act of 1940 are not adopted by
26 December 31, 2010, to regulate investment advisers to private
27 investment funds, the Banking Commissioner may adopt regulations,
28 in accordance with chapter 54 of the general statutes, to implement the
29 provisions of section 1 of this act. No private investment fund or
30 investment adviser to a private investment fund shall be required to
31 comply with the provisions of section 1 of this act until the Banking
32 Commissioner has adopted such implementing regulations.

33 Sec. 3. Section 36b-3 of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective January 1, 2011*):

35 As used in sections 36b-2 to 36b-33, inclusive, and sections 1 and 2
36 of this act, unless the context otherwise requires:

37 (1) "Agent" means any individual, other than a broker-dealer, who
38 represents a broker-dealer or issuer in effecting or attempting to effect
39 purchases or sales of securities. "Agent" does not include an individual
40 who represents an issuer in (A) effecting transactions in a security
41 exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or (22) of
42 subsection (a) of section 36b-21, (B) effecting transactions exempted by
43 subsection (b) of section 36b-21, except for transactions exempted by
44 subdivisions (10), (13) or (14) of said subsection, (C) effecting
45 transactions with existing employees, partners or directors of the
46 issuer if no commission or other remuneration is paid or given directly

47 or indirectly for soliciting any person in this state, or (D) effecting
48 transactions in any covered security, except for covered securities
49 within the meaning of Sections 18(b)(2) or 18(b)(4)(D) of the Securities
50 Act of 1933. "Agent" does not include such other persons not within
51 the intent of this subdivision as the commissioner may by regulation or
52 order determine. A general partner, officer or director of a broker-
53 dealer or issuer, or a person occupying a similar status or performing
54 similar functions, is an agent only if such person otherwise comes
55 within this definition and any compensation that such person receives
56 is directly or indirectly related to purchases or sales of securities.

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

59 (3) "Blank check company" means any company that (A) devotes
60 substantially all of its efforts to establishing a new business in which
61 planned principal operations have not commenced or, that has
62 commenced planned principal operations, but has not derived
63 significant revenue from such operations; and (B) has no specific
64 business plan or purpose or has indicated that its business plan is to
65 engage in a merger or acquisition with an unidentified company or
66 companies, or other entity or person.

67 (4) "Branch office" means any location other than the main office at
68 which an agent or investment adviser agent regularly conducts
69 business on behalf of a broker-dealer or investment adviser, or any
70 location that is held out as such, excluding: (A) Any location that is
71 established solely for customer service or back-office-type functions
72 where no sales activities are conducted and that is not held out to the
73 public as a branch office, (B) any location that is the agent's or
74 investment adviser agent's primary residence, provided (i) only agents
75 or investment adviser agents who reside at the location and are
76 members of the same immediate family conduct business at the
77 location, (ii) the location is not held out to the public as an office and
78 the agent or investment adviser agent does not meet with customers at
79 the location, (iii) neither customer funds nor securities are handled at

80 that location, (iv) the agent or investment adviser agent is assigned to a
81 designated branch office, and such designated branch office is reflected
82 on all business cards, stationery, advertisements and other
83 communications to the public by such agent or investment adviser
84 agent, (v) the agent's or investment adviser agent's correspondence
85 and communications with the public are subject to the supervision of
86 the broker-dealer or investment adviser with which such agent or
87 investment adviser agent is associated, (vi) electronic communications,
88 including e-mail, are made through the electronic system of the broker-
89 dealer or investment adviser, (vii) all orders for securities are entered
90 through the designated branch office or an electronic system
91 established by a broker-dealer that is reviewable at the branch office,
92 (viii) written supervisory procedures pertaining to supervision of
93 activities conducted at the residence are maintained by the broker-
94 dealer or investment adviser, and (ix) a list of the residence locations is
95 maintained by the broker-dealer or investment adviser, (C) any
96 location, other than a primary residence, that is used for securities or
97 investment advisory business for less than thirty business days in any
98 one calendar year, provided the broker-dealer or investment adviser
99 complies with the provisions of subparagraph (B)(ii), (iii), (iv), (v), (vi),
100 (vii) and (viii) of this subdivision, (D) any office of convenience, where
101 associated persons occasionally and exclusively by appointment meet
102 with customers, which is not held out to the public as an office, (E) any
103 location that is used primarily to engage in nonsecurities activities and
104 from which the agent or investment adviser agent effects no more than
105 twenty-five securities transactions in any one calendar year, provided
106 any advertisement or sales literature identifying such location also sets
107 forth the address and telephone number of the location from which the
108 agent or investment adviser agent conducting business at the
109 nonbranch locations is directly supervised, (F) the floor of a registered
110 national securities exchange where a broker-dealer conducts a direct
111 access business with public customers, (G) a temporary location
112 established in response to the implementation of a business continuity
113 plan, or (H) any other location not within the intent of this subdivision
114 as the commissioner may determine. As used in this subdivision, the

115 term "business day" does not include any partial business day,
116 provided the agent or investment adviser agent spends at least four
117 hours on such day at the designated branch office of such agent or
118 investment adviser agent during the hours that such office is normally
119 open for business.

120 (5) "Broker-dealer" means any person engaged in the business of
121 effecting transactions in securities for the account of others or for such
122 person's own account. "Broker-dealer" does not include (A) an agent,
123 (B) an issuer, (C) a bank, as defined in Section 3(a)(6) of the Securities
124 Exchange Act of 1934, when conducting activities that would except it
125 from the definitions of "broker" or "dealer" under Sections 3(a)(4) or
126 3(a)(5) of the Securities Exchange Act of 1934, (D) a person who has no
127 place of business in this state if such person effects transactions in this
128 state exclusively with or through (i) the issuers of the securities
129 involved in the transactions, (ii) other broker-dealers, or (iii) a bank
130 and trust company, a national banking association, a savings bank, a
131 savings and loan association, a federal savings bank, a federal savings
132 and loan association, a credit union, a federal credit union, a trust
133 company, an insurance company, an investment company as defined
134 in the Investment Company Act of 1940, a pension or profit-sharing
135 trust, or other financial institution or institutional buyer, whether
136 acting for itself or as trustee, or (E) such other persons not within the
137 intent of this subdivision as the commissioner may by regulation or
138 order determine.

139 (6) "Commissioner" means the Banking Commissioner or any
140 person appointed or designated by the Banking Commissioner to
141 administer sections 36b-2 to 36b-33, inclusive.

142 (7) "Covered security" has the meaning given to that term in Section
143 18(b) of the Securities Act of 1933.

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

146 (9) "Guaranteed" means guaranteed as to payment of principal,

147 interest or dividends.

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

152 (11) "Investment adviser" means any person who, for compensation,
153 engages in the business of advising others, either directly or through
154 publications or writings, as to the value of securities or as to the
155 advisability of investing in, purchasing or selling securities, or who, for
156 compensation and as a part of a regular business, issues or
157 promulgates analyses or reports concerning securities. "Investment
158 adviser" does not include (A) an investment adviser agent; (B) a bank,
159 as defined in Section 202(a)(2) of the Investment Advisers Act of 1940,
160 or a bank holding company, as defined in the Bank Holding Company
161 Act of 1956, that is excepted from the definition of "investment
162 adviser" in Section 202(a)(11) of the Investment Advisers Act of 1940;
163 (C) a lawyer, accountant, engineer, or teacher whose performance of
164 these services is solely incidental to the practice of such person's
165 profession; (D) a broker-dealer whose performance of these services is
166 solely incidental to the conduct of such person's business as a broker-
167 dealer and who receives no special compensation for them; (E) a
168 publisher of any bona fide newspaper, news magazine, or business or
169 financial publication of general, regular, and paid circulation; (F) a
170 person whose advice, analyses or reports relate only to securities
171 exempted by subdivision (1) of subsection (a) of section 36b-21; (G) any
172 insurance company under the supervision of the Insurance
173 Commissioner or any affiliate thereof, as defined in subsection (b) of
174 section 38a-129, when providing services to separate accounts of that
175 insurance company or registered investment companies all of whose
176 shares are owned by such insurance company or its insurance
177 company affiliates or by the separate accounts of that insurance
178 company or its insurance company affiliates; and (H) such other
179 persons not within the intent of this subdivision as the commissioner
180 may by regulation or order designate.

181 (12) (A) "Investment adviser agent" includes (i) any individual,
182 including an officer, partner or director of an investment adviser, or an
183 individual occupying a similar status or performing similar functions,
184 employed, appointed or authorized by or associated with an
185 investment adviser to solicit business from any person for such
186 investment adviser in this state and who receives compensation or
187 other remuneration, directly or indirectly, for such solicitation; or (ii)
188 any partner, officer, or director of an investment adviser, or an
189 individual occupying a similar status or performing similar functions,
190 or other individual employed, appointed, or authorized by or
191 associated with an investment adviser, who makes any
192 recommendation or otherwise renders advice regarding securities to
193 clients and who receives compensation or other remuneration, directly
194 or indirectly, for such advisory services.

195 (B) "Investment adviser agent" does not include an individual
196 employed, appointed or authorized by, associated with or acting on
197 behalf of an investment adviser exempt from registration under
198 subdivision (1) or (2) of subsection (e) of section 36b-6, who is a
199 "supervised person", as defined in Section 202(a)(25) of the Investment
200 Advisers Act of 1940, unless such supervised person is an "investment
201 adviser representative", as defined in Securities and Exchange
202 Commission Rule 203A-3, 17 CFR 275.203A-3.

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

206 (13) "Issuer" means any person who issues or proposes to issue any
207 security; except that (A) with respect to a certificate of deposit, a
208 voting-trust certificate, or a collateral-trust certificate, or with respect
209 to a certificate of interest or a share in an unincorporated investment
210 trust not having a board of directors or persons performing similar
211 functions or of the fixed, restricted management, or unit type, "issuer"
212 means any person performing the acts and assuming the duties of
213 depositor or manager pursuant to the provisions of the trust or other

214 agreement or instrument under which the security is issued; (B) with
215 respect to an equipment trust certificate or similar security serving the
216 same purpose, "issuer" means any person who uses or will use the
217 property, any person to whom the property or equipment is or will be
218 leased or conditionally sold or any person who is otherwise
219 contractually responsible for assuring payment of the certificate; and
220 (C) with respect to a fractional undivided interest in oil, gas or other
221 mineral leases or in payments out of production under a lease, right or
222 royalty, "issuer" means any owner of an interest in the lease or in
223 payments out of production under a lease, right or royalty, whether
224 whole or fractional, who creates fractional interests for the purpose of
225 sale.

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

228 (15) "Person" means an individual, a corporation, a limited liability
229 company, a partnership, a limited partnership, a limited liability
230 partnership, an association, a joint-stock company, a trust where the
231 interests of the beneficiaries are evidenced by a security, an
232 unincorporated organization, a government or a political subdivision
233 of a government.

234 (16) (A) "Sale" or "sell" includes every contract of sale of, contract to
235 sell, or disposition of, a security or interest in a security for value. (B)
236 "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
237 solicitation of an offer to buy, a security or interest in a security for
238 value. (C) Any security given or delivered with, or as a bonus on
239 account of, any purchase of securities or any other thing shall be
240 conclusively presumed to constitute a part of the subject of such
241 purchase and to have been sold for value. (D) Nothing in this
242 subdivision shall limit or diminish the full meaning of the terms "sale",
243 "sell", "offer" or "offer to sell" as construed by the courts of this state.
244 (E) A purported gift of assessable stock is considered to involve an
245 offer and sale. (F) Every sale or offer of a warrant or right to purchase
246 or subscribe to another security of the same or another issuer, as well

247 as every sale or offer of a security which gives the holder a present or
248 future right or privilege to convert into another security of the same or
249 another issuer, is considered to include an offer of the other security.

250 (G) The terms defined in this subdivision do not include: (i) Any bona
251 fide pledge or loan; (ii) any stock dividend, whether the corporation
252 distributing the dividend is the issuer of the stock or not, if nothing of
253 value is given by stockholders for the dividend other than the
254 surrender of a right to a cash or property dividend when each
255 stockholder may elect to take the dividend in cash or property or in
256 stock; (iii) any act incident to a class vote by security holders on a
257 merger, exchange of securities for securities, consolidation,
258 reclassification of securities, or sale of assets in consideration of the
259 issuance of securities or securities and cash of another person other
260 than an individual; or (iv) any security which is issued in exchange for
261 one or more bona fide outstanding securities, claims or property
262 interests, or partly in such exchange and partly for cash, where the
263 terms and conditions of such issuance and exchange are approved by
264 any state or federal court.

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

269 (18) "Securities and Exchange Commission" means the United States
270 Securities and Exchange Commission.

271 (19) "Security" means any note, stock, treasury stock, security future,
272 bond, debenture, evidence of indebtedness, certificate of interest or
273 participation in any profit-sharing agreement, interests of limited
274 partners in a limited partnership, collateral-trust certificate,
275 preorganization certificate or subscription, transferable share,
276 investment contract, voting-trust certificate, certificate of deposit for a
277 security, fractional undivided interest in oil, gas or other mineral
278 rights, put, call, straddle, option, or privilege on any security or group
279 or index of securities, including any interest in or based on the value of

280 such security, group or index, put, call, straddle, option or privilege
 281 entered into on a national securities exchange relating to foreign
 282 currency, or, in general, any interest or instrument commonly known
 283 as a "security", or any certificate of interest or participation in,
 284 temporary or interim certificate for, receipt for, guarantee of, or
 285 warrant or right to subscribe to or purchase, any of the foregoing.
 286 "Security" includes (A) a certificated and an uncertificated security,
 287 and (B) as an "investment contract", an interest in a limited liability
 288 company or limited liability partnership, but does not include any
 289 insurance or endowment policy or annuity contract issued by an
 290 insurance company that is subject to regulation by the Insurance
 291 Commissioner.

292 (20) "Self-regulatory organization" means a national securities
 293 exchange, a national securities association of broker-dealers or a
 294 clearing agency registered under the Securities Exchange Act of 1934
 295 or the Municipal Securities Rulemaking Board established under the
 296 Securities Exchange Act of 1934.

297 (21) "Shell company" or "dormant company" means any company
 298 which does not pursue nor has the financial capacity to pursue a
 299 business plan or purpose.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2011</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>January 1, 2011</i>	36b-3