

118TH CONGRESS
1ST SESSION

S. 3286

To require the Securities and Exchange Commission to amend the rules of the Commission relating to disclosures by advisers of private funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2023

Mr. CASEY (for himself and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the Securities and Exchange Commission to amend the rules of the Commission relating to disclosures by advisers of private funds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Disclosing Investments
5 in Foreign Adversaries Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (2) COUNTRY OF CONCERN.—The term “country
4 of concern”—

5 (A) has the meaning given the term “covered
6 nation” in section 4872(d) of title 10,
7 United States Code; and

8 (B) includes a jurisdiction that the Com-
9 mission, in consultation with the Secretary of
10 State and the Secretary of the Treasury, deter-
11 mines to be subject to the political and legal
12 control of a covered nation, as defined in sec-
13 tion 4872(d) of title 10, United States Code.

14 (3) COVERED ENTITY.—The term “covered en-
15 tity” means an entity or person that is required to
16 file Form PF.

17 (4) EXEMPT REPORTING ADVISER.—The term
18 “exempt reporting adviser” means an investment ad-
19 viser described in section 275.204–4(a) of title 17,
20 Code of Federal Regulations, or any successor regu-
21 lation.

22 (5) FORM ADV.—The term “Form ADV”
23 means the form described in section 279.1 of title
24 17, Code of Federal Regulations, or any successor
25 regulation.

1 (6) FORM PF.—The term “Form PF” means
2 the form described in section 279.9 of title 17, Code
3 of Federal Regulations, or any successor regulation.

4 (7) PRIVATE FUND.—The term “private fund”
5 has the meaning given the term in section 202(a) of
6 the Investment Advisers Act of 1940 (15 U.S.C.
7 80b–2(a)).

8 (8) PRIVATE FUND ASSETS.—The term “private
9 fund assets” has the meaning given the term in sec-
10 tion 275.204(b)–1 of title 17, Code of Federal Regu-
11 lations, or any successor regulation.

12 **SEC. 3. ENHANCED DISCLOSURE REQUIREMENTS FOR AD-**
13 **VISERS OF PRIVATE FUNDS.**

14 (a) REQUIREMENTS.—

15 (1) IN GENERAL.—Not later than 1 year after
16 the date of enactment of this Act, the Commission
17 shall amend Form PF and Form ADV, and the
18 rules of the Commission governing the submission of
19 Form PF and Form ADV, to, subject to paragraph
20 (2), require each covered entity and each exempt re-
21 porting adviser to annually disclose when submitting
22 Form PF or Form ADV, respectively, the total pri-
23 vate fund assets in countries of concern attributable
24 to the private funds advised by the covered entity or
25 exempt reporting adviser, as applicable, which shall

1 be broken down by the percentage of those assets in
2 each country of concern.

3 (2) APPLICATION.—For the purposes of para-
4 graph (1), the Commission shall determine whether
5 a private fund asset is in a country of concern based
6 on—

7 (A) the amount of capital that is invested
8 in an entity (including a subsidiary of an enti-
9 ty)—

10 (i) that has a physical presence or em-
11 ployees in that country of concern; or

12 (ii) the plurality of the sales of which
13 are from that country of concern; and

14 (B) the proportion of the total assets and
15 liabilities of an entity described in subpara-
16 graph (A) that are located in that country of
17 concern.

18 (b) REPORTING BY COMMISSION.—

19 (1) PUBLICLY AVAILABLE REPORTS.—

20 (A) IN GENERAL.—Not later than 1 year
21 after the date on which the Commission makes
22 the amendments required under subsection (a),
23 and not less frequently than annually there-
24 after, the Commission shall prepare and make
25 publicly available a report containing a list of

1 covered entities and exempt reporting advisers
2 that, for the period covered by the report, have
3 disclosed more than 0 private fund assets under
4 Form PF or Form ADV (as amended pursuant
5 to that subsection) in at least 1 country of con-
6 cern, which shall be aggregated by the covered
7 entity or exempt reporting adviser making that
8 disclosure.

9 (B) ADDITIONAL REQUIREMENTS.—Each
10 report prepared and made available by the
11 Commission under subparagraph (A) shall—

12 (i) be aggregated by covered entity or
13 exempt reporting adviser; and

14 (ii) include the percentage of private
15 fund assets disclosed by a covered entity or
16 exempt reporting adviser, as applicable.

17 (2) RULE OF CONSTRUCTION.—Nothing in this
18 subsection may be construed to permit the Commis-
19 sion to make available any information that appears
20 on Form PF or Form ADV other than the informa-
21 tion that is included on Form PF or Form ADV as
22 a result of the requirements under subsection (a).

1 **SEC. 4. EXEMPTED TRANSACTIONS.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 13A (15 U.S.C. 78m–1) the following:

5 **“SEC. 13B. DISCLOSURE REQUIREMENTS RELATING TO**
6 **CERTAIN EXEMPTED TRANSACTIONS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) BENEFICIAL OWNER.—The term ‘bene-
9 ficial owner’ means a person that is determined to
10 be a beneficial owner under section 240.13d–3 of
11 title 17, Code of Federal Regulations, or any suc-
12 cessor regulation.

13 “(2) COUNTRY OF CONCERN.—The term ‘coun-
14 try of concern’—

15 “(A) has the meaning given the term ‘cov-
16 ered nation’ in section 4872(d) of title 10,
17 United States Code; and

18 “(B) includes a jurisdiction that the Com-
19 mission, in consultation with the Secretary of
20 State and the Secretary of the Treasury, deter-
21 mines to be subject to the political and legal
22 control of a covered nation, as defined in sec-
23 tion 4872(d) of title 10, United States Code.

24 “(3) COVERED EXEMPTED TRANSACTION.—The
25 term ‘covered exempted transaction’ means an offer
26 or sale of a security that is—

1 “(A) exempt from registration under sec-
2 tion 5 of the Securities Act of 1933 (15 U.S.C.
3 77e); and

4 “(B) structured or intended to comply
5 with—

6 “(i) section 230.506(b) of title 17,
7 Code of Federal regulations, or any suc-
8 cessor regulation;

9 “(ii) sections 230.901, 230.902, and
10 230.903 of title 17, Code of Federal Regu-
11 lations, or any successor regulations; or

12 “(iii) section 230.144A of title 17,
13 Code of Federal Regulations, or any suc-
14 cessor regulation.

15 “(b) REQUIREMENT.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of law, in the case of an issuer that con-
18 ducts a covered exempted transaction described in
19 paragraph (2), that issuer shall provide to the Com-
20 mission, at such time and in such manner as the
21 Commission may prescribe, the following informa-
22 tion:

23 “(A) The identity of the issuer.

24 “(B) The place of incorporation of the
25 issuer.

1 “(C) Whether the issuer is associated with
2 at least 1 consolidated entity, the plurality of
3 the assets of which are in a country of concern.

4 “(D) Whether the issuer is associated with
5 at least 1 consolidated entity that is incor-
6 porated in a country of concern.

7 “(E) The amount of securities sold pursu-
8 ant to the covered exempted transaction and
9 the net proceeds to the issuer.

10 “(F) The beneficial owners of the issuer.

11 “(G) The intended use of the proceeds
12 from the covered exempted transaction, includ-
13 ing each country in which the issuer intends to
14 invest those proceeds, which shall be broken
15 down by the percentage of net proceeds by in-
16 dustry within each such country.

17 “(H) The exemption the issuer relies on
18 with respect to the covered exempted trans-
19 action.

20 “(2) PARTICULAR COVERED EXEMPTED TRANS-
21 ACTION DESCRIBED.—A covered exempted trans-
22 action described in this paragraph is, with respect to
23 the issuer offering or selling the security that is the
24 subject of the covered exempted transaction, either
25 of the following instances:

1 “(A) An offer or sale of securities in an
2 amount that is not less than \$25,000,000.

3 “(B) An offer or sale of a security such
4 that the offer or sale, together with all covered
5 exempted transactions by that issuer during the
6 1-year period preceding the date on which the
7 issuer offers or sells the security, constitutes of-
8 fers or sales in the aggregate of an amount that
9 is not less than \$50,000,000.

10 “(c) AUTHORITY TO REVISE AND PROMULGATE
11 RULES, REGULATIONS, AND FORMS.—The Commission
12 shall, for the protection of investors and fair and orderly
13 markets—

14 “(1) revise and issue such rules, regulations,
15 and forms as may be necessary to carry out this sec-
16 tion; and

17 “(2) issue rules to set conditions that limit the
18 future use of covered exempted transactions for
19 issuers that do not comply with the disclosure re-
20 quirements of this section.

21 “(d) APPLICABILITY.—This section shall apply with
22 respect to any covered exempted transaction that occurs
23 on or after the date that is 1 year after the date of enact-
24 ment of this section.

1 “(e) REPORTS.—The Commission shall, on a quar-
2 terly basis, prepare and make publicly available a report
3 that includes all information submitted by an issuer under
4 this section during the quarter covered by the report, if
5 that issuer—

6 “(1) is—

7 “(A) incorporated in a country of concern;

8 or

9 “(B) incorporated outside of a country of
10 concern and is associated with at least 1 con-
11 solidated entity—

12 “(i) the plurality of the assets of
13 which are in a country of concern; or

14 “(ii) that is incorporated in a country
15 of concern; or

16 “(2) discloses in a filing made pursuant to this
17 section that the issuer intends to invest the proceeds
18 from a covered exempted transaction in a country of
19 concern.”.

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