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Tonight, Senator Grassley attempted to offer his amendment giving the SEC statutory authority to register hedge funds to S. 4, the 9/11 commission recommendations bill. The bill manager objected, citing a backlog of pending amendments. Senator Grassley then submitted his prepared statement into the record, with an addition.

The addition:

I was not surprised by the objection today. But, for the record, I want everyone to know that this morning when I said I intended to offer this amendment, my phones started ringing off the hook. Lots of powerful people don't want to see an amendment like this, but Americans want their government to know who is running these funds.

The floor statement:

Floor Statement of U.S. Sen. Chuck Grassley of Iowa  
Amendment #386 — Hedge Fund Registration

Mr. President, I'd like to offer another amendment to S.4 that seeks to strengthen our nation's homeland security by closing a loophole in our securities laws. My amendment would amend section 203(b)(3) of the Investment Advisers Act of 1940 and would narrow an exemption from registration for certain investment advisers. There is a homeland security element to this fix because it can sometimes be important to know who is managing large sums of money for wealthy foreign investors. For example, it was recently reported that a Boston-based private equity firm, Overland Capital Group, Inc, is under investigation by the IRS and DOJ counterterrorism division. Such firms, which manage hundreds of millions of dollars for wealthy investors in total secrecy, ought to have to at least register with the SEC.

Currently, section 203(b)(3) of the Investment Advisers Act provides a statutory exemption from registration for any investment adviser who had fewer than fifteen clients in the preceding 12-month period and who does not hold himself out to the public as an investment adviser. This amendment would narrow this exemption which is currently used by large, private pooled investment vehicles, commonly referred to as hedge funds. These hedge funds use this section of the securities laws to avoid registering with the Securities and Exchange Commission (SEC).

Much has been reported during the last few years regarding hedge funds and the market power they yield because of the large amounts of capital they invest. In fact, some estimates are that these pooled investment vehicles are trading nearly 30 percent of the daily trades in U.S. financial markets. The power this amount of volume has is not some passing fad, but instead represents a new element in our financial markets. Congress needs to ensure that we know who is running these large vehicles to ensure the security of those markets.

The failure of Amaranth and the increasing interest in hedge funds as investment vehicles for public pension money means that this isn't just a high stakes game for the super rich. It affects regular investors. Indeed, it affects the markets as a whole. My recent oversight of the SEC has convinced me that the Commission and the Self-Regulatory Organizations (SROs) need much more information about the activities of hedge funds in order to protect the markets from institutional insider trading and other potential abuses. This is one small and simple step toward greater transparency – to require that hedge funds register and tell the regulators who they are. This is not a burden, but rather a simple, common sense requirement for organizations that wield hundreds of billions of dollars in market power every day. The SEC has already attempted to do this by regulation.

Congress needs to act because of a decision made last year by a federal appeals court, the D.C. Circuit Court of Appeals. In 2006, the D.C. Circuit Court of Appeals overturned a SEC administrative rule that required registration of hedge funds. This decision effectively ended all registration of hedge funds with the SEC.

My amendment would narrow the statutory exemption from registration and bring much needed transparency to hedge funds. The amendment would authorize the SEC to require investment advisers to register unless the advisor: (1) had \$50,000,000 or less in assets under management, (2) had fewer than fifteen clients, (3) did not hold himself out to the public as an investment advisor, and (4) managed the assets of fewer than fifteen investors, regardless of whether the investors participate directly or through a pooled investment vehicle, such as a hedge fund.

This amendment is a first step in ensuring that the SEC has the needed statutory authority to do what it attempted to do for the last two years. I urge my colleagues to support this amendment as we work to protect investors large and small.