

103D CONGRESS  
1ST SESSION

**S. 423**

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**AN ACT**

To provide for recovery of costs of supervision and regulation of investment advisers and their activities, and for other purposes.

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## AN ACT

To provide for recovery of costs of supervision and regulation of investment advisers and their activities, 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 “Investment Adviser  
5        Oversight Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the activities of investment advisers are of  
4 continuing national concern;

5 (2) increased supervision of investment advisers  
6 by the Securities and Exchange Commission (here-  
7 after in this Act referred to as the “Commission”)  
8 is necessary to protect investors from fraud and  
9 other illegal conduct;

10 (3) additional resources are necessary to re-  
11 cover the Commission’s costs of an enhanced pro-  
12 gram for the oversight of investment advisers and  
13 their activities, including the costs of registration  
14 and inspections; and

15 (4) because the direct beneficiaries of these ac-  
16 tivities are investment advisers, it is appropriate for  
17 investment advisers to pay fees for such activities.

18 **SEC. 3. REGISTERED INVESTMENT ADVISER FEES.**

19 (a) IN GENERAL.—The Investment Advisers Act of  
20 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting  
21 after section 203 the following new section:

22 **“SEC. 203A. FEES FOR REGISTRANTS AND APPLICANTS.**

23 “(a) IN GENERAL.—The Commission is authorized,  
24 in accordance with this section, to collect fees to recover  
25 the costs of enhanced efforts to register all persons re-  
26 quired to be registered under this title and enhanced su-

1 pervision and regulation of investment advisers and their  
2 activities. Such fees shall be collected and shall be made  
3 available only to the extent provided in advance in appro-  
4 priations Acts. Such fees shall be deposited as an offset-  
5 ting collection to the Commission's appropriation and shall  
6 remain available until expended. The costs covered by such  
7 fees shall be the costs of Commission expenses for the reg-  
8 istration and inspection of investment advisers and related  
9 activities.

10       “(b) TIME FOR PAYMENT.—

11               “(1) APPLICANTS.—At the time of filing an ap-  
12 plication for registration under this title, the appli-  
13 cant shall pay to the Commission the fee directed in  
14 advance in appropriations Acts to be collected as  
15 specified in subsection (c). No part of such fee shall  
16 be refunded to the applicant. The filing of an appli-  
17 cation for registration under this title shall not be  
18 deemed to have occurred unless the application is ac-  
19 companied by the fee required under this section.

20               “(2) INVESTMENT ADVISERS.—Each investment  
21 adviser whose registration is effective on the last day  
22 of its fiscal year shall pay such fee to the Commis-  
23 sion not later than 90 days after the end of its fiscal  
24 year, or at such other time as the Commission, by  
25 rule, shall determine, unless its registration has been

1 withdrawn, canceled, or revoked prior to that date.  
 2 No part of such fee shall be refunded to the invest-  
 3 ment adviser.

4 “(c) SCHEDULE OF FEES.—The amount of fees due  
 5 from investment advisers in accordance with paragraphs  
 6 (1) and (2) of subsection (b) shall be determined according  
 7 to the following schedule:

<b>“Assets under management</b>	<b>Fee due:</b>
Less than \$10,000,000 .....	\$300
\$10,000,000 or more, but less than \$25,000,000 .....	\$500
\$25,000,000 or more, but less than \$50,000,000 .....	\$1,000
\$50,000,000 or more, but less than \$100,000,000 .....	\$2,500
\$100,000,000 or more, but less than \$250,000,000 .....	\$4,000
\$250,000,000 or more, but less than \$500,000,000 .....	\$5,000
\$500,000,000 or more .....	\$7,000.

8 “(d) SUSPENSION FOR FAILURE TO PAY.—The Com-  
 9 mission, by order, may suspend the registration of any in-  
 10 vestment adviser if it finds (after notice) that such invest-  
 11 ment adviser has failed to pay when due any fee required  
 12 by this section. The Commission shall reinstate such reg-  
 13 istration upon payment of the fee (and any penalties due),  
 14 if such suspension was based solely on the failure to pay  
 15 the fee.

16 “(e) RULEMAKING.—The Commission may adopt  
 17 such rules and regulations as are necessary to carry out  
 18 this section.”.

19 (b) EFFECTIVE DATE.—This section (and the  
 20 amendment made by this section) shall become effective  
 21 upon the adoption by the Commission of implementing

1 rules and regulations, under section 203A(e) of the Invest-  
2 ment Advisers Act of 1940, as added by subsection (a).

3 **SEC. 4. FACILITIES FOR FILING RECORDS AND REPORTS.**

4 Section 204 of the Investment Advisers Act of 1940  
5 (15 U.S.C. 80b-4) is amended—

6 (1) by inserting “(a)” after “SEC. 204.”; and

7 (2) by adding at the end the following:

8 “(b) The Commission, by rule, may require any in-  
9 vestment adviser—

10 “(1) to file with the Commission any fee, appli-  
11 cation, report, or notice required by this title or by  
12 the rules issued under this title through any person  
13 designated by the Commission for that purpose; and

14 “(2) to pay the reasonable costs associated with  
15 such filing.”.

16 **SEC. 5. BOND REQUIREMENT.**

17 (a) IN GENERAL.—Section 208 of the Investment  
18 Advisers Act of 1940 (15 U.S.C. 80b-8) is amended by  
19 adding at the end the following:

20 “(e)(1) The Commission may require, by rules and  
21 regulations for the protection of investors, any investment  
22 adviser registered under section 203 that—

23 “(A) is authorized to exercise investment discre-  
24 tion, as defined in section 3(a)(35) of the Securities  
25 Exchange Act of 1934, with respect to an account;

1           “(B) has access to the securities or funds of a  
2           client; or

3           “(C) is an investment adviser of an investment  
4           company, as defined in section 2(a)(20) of the In-  
5           vestment Company Act of 1940,

6           to obtain a bond from a reputable fidelity insurance com-  
7           pany against larceny and embezzlement in such reasonable  
8           amounts and covering such officers, partners, directors,  
9           and employees of the investment adviser as the Commis-  
10          sion may prescribe.

11          “(2) In implementing paragraph (1), the Commission  
12          shall consider—

13                 “(A) the degree of risk to client assets that is  
14                 involved;

15                 “(B) the cost and availability of fidelity bonds;

16                 “(C) existing fidelity bonding requirements;

17                 “(D) any alternative means to protect client as-  
18                 sets; and

19                 “(E) the results, findings, and conclusions of  
20                 the study required by paragraph (3).

21          “(3) Before implementing paragraph (1), the Com-  
22          mission shall study (and shall make such study and its  
23          conclusions and findings available to the public)—

24                 “(A) the availability of fidelity bonds, both for  
25                 large-scale and small-scale investment advisers, and

1 also for investment advisers not located in urban  
2 areas; and

3 “(B) the impact of the provisions of paragraph  
4 (1) on the competitive position of small-scale invest-  
5 ment advisers.

6 “(4) The Commission shall not require investment  
7 advisers to obtain a fidelity bond if—

8 “(A) fidelity bonds are not readily or reasonably  
9 available in the urban or rural areas in which such  
10 investment advisers are located; or

11 “(B) the cost of obtaining a fidelity bond would  
12 have a substantial adverse impact on such invest-  
13 ment advisers’ competitive positions.”.

Passed the Senate November 20 (legislative day, No-  
vember 2), 1993.

Attest:

*Secretary.*