

103^D CONGRESS
1ST SESSION

S. 423

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. SHELBY, Mr. KERRY, Mr. BRYAN, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for recovery of costs of supervision and regulation of investment advisors 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”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the activities of investment advisers are of
9 continuing national concern;

1 (2) increased supervision of investment advisers
2 by the Securities and Exchange Commission (here-
3 after referred to as the “Commission”) is necessary
4 to protect investors from fraud and other illegal
5 conduct;

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

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

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

15 (a) IN GENERAL.—The Investment Advisers Act of
16 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting
17 after section 203 the following new section:

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

19 “(a) IN GENERAL.—The Commission is authorized,
20 in accordance with this section, to collect fees to recover
21 the costs of enhanced efforts to register all persons re-
22 quired to be registered under this title and enhanced su-
23 pervision and regulation of investment advisers and their
24 activities. Such fees shall be collected and shall be made
25 available only to the extent provided in advance in appro-

1 priations Acts. Such fees shall be deposited as an offset-
2 ting collection to the Commission's appropriation and shall
3 remain available until expended. The costs covered by such
4 fees shall be the costs of Commission expenses for the reg-
5 istration and inspection of investment advisers and related
6 activities.

7 “(b) TIME FOR PAYMENT.—

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

17 “(2) INVESTMENT ADVISERS.—Each investment
18 adviser whose registration is effective on the last day
19 of its fiscal year shall pay such fee to the Commis-
20 sion not later than 90 days after the end of its fiscal
21 year, or at such other time as the Commission, by
22 rule, shall determine, unless its registration has been
23 withdrawn, canceled, or revoked prior to that date.
24 No part of such fee shall be refunded to the invest-
25 ment adviser.

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

“Assets under management	Fee due:
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.

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

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

16 (b) EFFECTIVE DATE.—This section (and the
 17 amendment made by this section) shall become effective
 18 upon the adoption by the Commission of implementing
 19 rules and regulations, under section 203A(e) of the Invest-
 20 ment Advisers Act of 1940, as added by subsection (a).

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

2 Section 204 of the Investment Advisers Act of 1940
3 (15 U.S.C. 80b-4) is amended—

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

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

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

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

12 “(2) to pay the reasonable costs associated with
13 such filing.”.

14 **SEC. 5. BOND REQUIREMENT.**

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

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

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

24 “(B) has access to the securities or funds of a
25 client; or

1 “(C) is an investment adviser of an investment
2 company, as defined in section 2(a)(20) of the In-
3 vestment Company Act of 1940,
4 to obtain a bond from a reputable fidelity insurance com-
5 pany against larceny and embezzlement in such reasonable
6 amounts and covering such officers, partners, directors,
7 and employees of the investment adviser as the Commis-
8 sion may prescribe.

9 “(2) In implementing paragraph (1), the Commission
10 shall consider—

11 “(A) the degree of risk to client assets that is
12 involved;

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

14 “(C) existing fidelity bonding requirements;

15 “(D) any alternative means to protect client as-
16 sets; and

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

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

22 “(A) the availability of fidelity bonds, both for
23 large-scale and small-scale investment advisers, and
24 also for investment advisers not located in urban
25 areas; and

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

4 **SEC. 6. CERTAIN PROHIBITED TRANSACTIONS.**

5 Section 11(a)(1) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78k(a)(1)) is amended—

7 (1) in subparagraph (E), by striking “(other
8 than an investment company)”;

9 (2) in subparagraph (G), by striking “and” at
10 the end;

11 (3) by redesignating subparagraph (H) as sub-
12 paragraph (I); and

13 (4) by inserting after subparagraph (G) the fol-
14 lowing new subparagraph:

15 “(H) any transaction for an account with re-
16 spect to which such member or an associated person
17 thereof exercises investment discretion if such mem-
18 ber—

19 “(i) has obtained, from the person or per-
20 sons authorized to transact business for the ac-
21 count, express authorization for such member
22 or associated person to effect such transactions
23 prior to engaging in the practice of effecting
24 such transactions;

1 “(ii) furnishes the person or persons au-
2 thorized to transact business for the account
3 with a statement at least annually disclosing
4 the aggregate compensation received by the ex-
5 change member in effecting such transactions;
6 and

7 “(iii) complies with any rules the Commis-
8 sion has prescribed with respect to the require-
9 ments of clauses (i) and (ii); and”.

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