

Calendar No. 277

103D CONGRESS
1ST SESSION

S. 423

[Report No. 103-177]

A BILL

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

NOVEMBER 10 (legislative day, NOVEMBER 2), 1993

Reported with amendments

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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

NOVEMBER 10 (legislative day, NOVEMBER 2), 1993

Reported by Mr. RIEGLE, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Investment Adviser
3 Oversight Act of 1993”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) the activities of investment advisers are of
7 continuing national concern;

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

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

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

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

22 (a) IN GENERAL.—The Investment Advisers Act of
23 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting
24 after section 203 the following new section:

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

2 “(a) IN GENERAL.—The Commission is authorized,
3 in accordance with this section, to collect fees to recover
4 the costs of enhanced efforts to register all persons re-
5 quired to be registered under this title and enhanced su-
6 pervision and regulation of investment advisers and their
7 activities. Such fees shall be collected and shall be made
8 available only to the extent provided in advance in appro-
9 priations Acts. Such fees shall be deposited as an offset-
10 ting collection to the Commission’s appropriation and shall
11 remain available until expended. The costs covered by such
12 fees shall be the costs of Commission expenses for the reg-
13 istration and inspection of investment advisers and related
14 activities.

15 “(b) TIME FOR PAYMENT.—

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

25 “(2) INVESTMENT ADVISERS.—Each investment
26 adviser whose registration is effective on the last day

1 of its fiscal year shall pay such fee to the Commis-
 2 sion not later than 90 days after the end of its fiscal
 3 year, or at such other time as the Commission, by
 4 rule, shall determine, unless its registration has been
 5 withdrawn, canceled, or revoked prior to that date.
 6 No part of such fee shall be refunded to the invest-
 7 ment adviser.

8 “(c) SCHEDULE OF FEES.—The amount of fees due
 9 from investment advisers in accordance with paragraphs
 10 (1) and (2) of subsection (b) shall be determined according
 11 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.

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

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

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

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

10 Section 204 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b-4) is amended—

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

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

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

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

20 “(2) to pay the reasonable costs associated with
21 such filing.”.

22 **SEC. 5. BOND REQUIREMENT.**

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

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

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

7 “(B) has access to the securities or funds of a
8 client; or

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

12 to obtain a bond from a reputable fidelity insurance com-
13 pany against larceny and embezzlement in such reasonable
14 amounts and covering such officers, partners, directors,
15 and employees of the investment adviser as the Commis-
16 sion may prescribe.

17 “(2) In implementing paragraph (1), the Commission
18 shall consider—

19 “(A) the degree of risk to client assets that is
20 involved;

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

22 “(C) existing fidelity bonding requirements;

23 “(D) any alternative means to protect client as-
24 sets; and

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

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

6 “(A) the availability of fidelity bonds, both for
7 large-scale and small-scale investment advisers, and
8 also for investment advisers not located in urban
9 areas; and

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

13 “(4) *The Commission shall not require investment ad-
14 visers to obtain a fidelity bond if—*

15 “(A) *fidelity bonds are not readily or reasonably
16 available in the urban or rural areas in which such
17 investment advisers are located; or*

18 “(B) *the cost of obtaining a fidelity bond would
19 have a substantial adverse impact on such investment
20 advisers’ competitive positions.*”.

21 **SEC. 6. CERTAIN PROHIBITED TRANSACTIONS.**

22 Section 11(a)(1) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78k(a)(1)) is amended—

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

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

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

5 (4) by inserting after subparagraph (G) the fol-
6 lowing new subparagraph:

7 “~~(H)~~ any transaction for an account with re-
8 spect to which such member or an associated person
9 thereof exercises investment discretion if such mem-
10 ber—

11 “~~(i)~~ has obtained, from the person or per-
12 sons authorized to transact business for the ac-
13 count, express authorization for such member
14 or associated person to effect such transactions
15 prior to engaging in the practice of effecting
16 such transactions;

17 “~~(ii)~~ furnishes the person or persons au-
18 thorized to transact business for the account
19 with a statement at least annually disclosing
20 the aggregate compensation received by the ex-
21 change member in effecting such transactions;
22 and

23 “~~(iii)~~ complies with any rules the Commis-
24 sion has prescribed with respect to the require-
25 ments of clauses ~~(i)~~ and ~~(ii)~~; and”.