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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Investment Adviser Oversight Act of 1993''.

SEC. 2. FINDINGS.

The Congress finds that—

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

(2) increased supervision of investment advisers by the Securities and Exchange Commission (hereafter *in this Act* referred to as the ''Commission'') is necessary to protect investors from fraud and other illegal conduct;

(3) additional resources are necessary to recover the Commission's costs of an enhanced program for the oversight of investment advisers and their activities, including the costs of registration and inspections; and

(4) because the direct beneficiaries of these activities are investment advisers, it is appropriate for investment advisers to pay fees for such activities.

SEC. 3. REGISTERED INVESTMENT ADVISER FEES.

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

"SEC. 203A. FEES FOR REGISTRANTS AND APPLICANTS.

''(a) IN GENERAL.—The Commission is authorized, in accordance with this section, to collect fees to recover the costs of enhanced efforts to register all persons required to be registered under this title and enhanced supervision and regulation of investment advisers and their activities. Such fees shall be collected and shall be made available only to the extent provided in advance in appropriations Acts. Such fees shall be deposited as an offsetting collection to the Commission's appropriation and shall remain available until expended. The costs covered by such fees shall be the costs of Commission expenses for the registration and inspection of investment advisers and related activities.

''(b) TIME FOR PAYMENT.—

''(1) APPLICANTS.—At the time of filing an application for registration under this title, the applicant shall pay to the Commission the fee directed in advance in appropriations Acts to be collected as specified in subsection (c). No part of such fee shall be refunded to the applicant. The filing of an application for registration under this title shall not be deemed to have occurred unless the application is accompanied by the fee required under this section.

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

of its fiscal year shall pay such fee to the Commission not later than 90 days after the end of its fiscal year, or at such other time as the Commission, by rule, shall determine, unless its registration has been withdrawn, canceled, or revoked prior to that date. No part of such fee shall be refunded to the investment adviser.

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

''(d) SUSPENSION FOR FAILURE TO PAY.—The Commission, by order, may suspend the registration of any investment adviser if it finds (after notice) that such investment adviser has failed to pay when due any fee required by this section. The Commission shall reinstate such registration upon payment of the fee (and any penalties due), if such suspension was based solely on the failure to pay the fee.

''(e) RULEMAKING.—The Commission may adopt such rules and regulations as are necessary to carry out this section.''.

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

SEC. 4. FACILITIES FOR FILING RECORDS AND REPORTS.

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

(1) by inserting ''(a)'' after ''SEC. 204.''; and

(2) by adding at the end the following:

''(b) The Commission, by rule, may require any investment adviser—

''(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any person designated by the Commission for that purpose; and

''(2) to pay the reasonable costs associated with such filing.''.

SEC. 5. BOND REQUIREMENT.

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

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

''(A) is authorized to exercise investment discretion, as defined in section 3(a)(35) of the Securities Exchange Act of 1934, with respect to an account;

''(B) has access to the securities or funds of a client; or

''(C) is an investment adviser of an investment company, as defined in section 2(a)(20) of the Investment Company Act of 1940,

to obtain a bond from a reputable fidelity insurance company against larceny and embezzlement in such reasonable amounts and covering such officers, partners, directors, and employees of the investment adviser as the Commission may prescribe.

''(2) In implementing paragraph (1), the Commission shall consider—

''(A) the degree of risk to client assets that is involved;

''(B) the cost and availability of fidelity bonds;

''(C) existing fidelity bonding requirements;

''(D) any alternative means to protect client assets; and

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

''(3) Before implementing paragraph (1), the Commission shall study (and shall make such study and its conclusions and findings available to the public)—

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

''(B) the impact of the provisions of paragraph (1) on the competitive position of small-scale investment advisers.''~~.~~

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

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

''(B) the cost of obtaining a fidelity bond would have a substantial adverse impact on such investment advisers' competitive positions.''.

~~SEC. 6. CERTAIN PROHIBITED TRANSACTIONS.~~

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

~~(1) in subparagraph (E), by striking ''(other than an investment company)'';~~

~~(2) in subparagraph (G), by striking ''and'' at the end;~~

~~(3) by redesignating subparagraph (H) as subparagraph (I); and~~

~~(4) by inserting after subparagraph (G) the following new subparagraph:~~

~~''(H) any transaction for an account with respect to which such member or an associated person thereof exercises investment discretion if such member—~~

~~''(i) has obtained, from the person or persons authorized to transact business for the account, express authorization for such member or associated person to effect such transactions prior to engaging in the practice of effecting such transactions;~~

~~''(ii) furnishes the person or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and~~

~~''(iii) complies with any rules the Commission has prescribed with respect to the requirements of clauses (i) and (ii); and''.~~