

112TH CONGRESS
2D SESSION

H. R. 6204

To amend the Investment Advisers Act of 1940 to require certain investment advisers to pay fees to help cover the costs of inspecting and examining investment advisers under such Act.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2012

Ms. WATERS (for herself, Mr. FRANK of Massachusetts, and Mr. CAPUANO) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Investment Advisers Act of 1940 to require certain investment advisers to pay fees to help cover the costs of inspecting and examining investment advisers under such Act.

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 Examination Improvement Act of 2012”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of the Congress that the Securities
3 and Exchange Commission should increase the number
4 and frequency of examinations of investment advisers.

5 **SEC. 3. INSPECTION AND EXAMINATION FEES.**

6 Section 204 of the Investment Advisers Act of 1940
7 (15 U.S.C. 80b-4) is amended by adding at the end the
8 following new subsection

9 “(e) INSPECTION AND EXAMINATION FEES.—

10 “(1) IN GENERAL.—The Commission shall col-
11 lect an annual fee from investment advisers that are
12 subject to inspection or examination by the Commis-
13 sion under this title to defray the cost of such in-
14 spections and examinations.

15 “(2) EXEMPTIONS FOR CERTAIN STATE-REGU-
16 LATED INVESTMENT ADVISERS.—No fees shall be
17 collected under this subsection from any investment
18 adviser that is prohibited from registering with the
19 Commission under section 203 by reason of section
20 203A.

21 “(3) FEE AMOUNTS.—

22 “(A) AMOUNT TO BE COLLECTED.—

23 “(i) IN GENERAL.—The Commission
24 shall seek to ensure that the aggregate
25 amount of fees collected under this sub-
26 section with respect to a specific fiscal year

1 are equal to the estimated cost of the Com-
2 mission in carrying out additional inspec-
3 tions and examinations for such fiscal
4 year.

5 “(ii) ADDITIONAL INSPECTIONS AND
6 EXAMINATIONS DEFINED.—For purposes
7 of this subparagraph and with respect to a
8 fiscal year, the term ‘additional inspections
9 and examinations’ means those inspections
10 and examinations of investment advisers
11 under this title for such fiscal year that ex-
12 ceed the number of inspections and exami-
13 nations of investment advisers under this
14 title conducted during fiscal year 2011.

15 “(B) FEE CALCULATION FORMULA.—The
16 Commission shall establish by rulemaking a for-
17 mula for determining the fee amount to be as-
18 sessed against individual investment advisers,
19 which shall take into account the following fac-
20 tors:

21 “(i) The anticipated costs of con-
22 ducting inspections and examinations of in-
23 vestment advisers under this title, includ-
24 ing the anticipated frequency of such in-
25 spections and examinations.

1 “(ii) The investment adviser’s size, in-
2 cluding the assets under management of
3 the investment adviser (excluding any as-
4 sets under management attributable to any
5 of the adviser’s clients that are a reg-
6 istered investment company).

7 “(iii) The number and type of clients
8 of the investment adviser.

9 “(iv) Such other objective factors,
10 such as risk characteristics, as the Com-
11 mission determines to be appropriate.

12 “(C) ADJUSTMENT OF FORMULA.—Prior
13 to the end of each fiscal year, the Commission
14 shall review the fee calculation formula and, if,
15 after allowing for a period of public comment,
16 the Commission determines that the formula
17 needs to be revised, the Commission shall revise
18 such formula before fees are assessed for the
19 following fiscal year.

20 “(4) PUBLIC DISCLOSURES.—The Commission
21 shall make the following information publicly avail-
22 able, including on the Web site of the Commission:

23 “(A) The formula used to determine the
24 fee amount to be assessed against individual in-

1 vestment advisers, and any adjustment made to
2 such formula.

3 “(B) The factors used to determine such
4 formula, including any additional objective fac-
5 tors used by the Commission pursuant to para-
6 graph (3)(B)(iv).

7 “(5) AUDIT.—

8 “(A) IN GENERAL.—The Comptroller Gen-
9 eral of the United States shall, every 2 years,
10 conduct an audit of the use of the fees collected
11 by the Commission under this subsection, the
12 reviews of the formula used to calculate such
13 fees, and any adjustments made by the Com-
14 mission to such formula.

15 “(B) REPORT.—After conducting each
16 audit required under subparagraph (A), the
17 Comptroller General shall issue a report on
18 such audit to the Committee on Financial Serv-
19 ices of the House of Representatives and the
20 Committee on Banking, Housing, and Urban
21 Affairs of the Senate.

22 “(6) TREATMENT OF FEES.—

23 “(A) IN GENERAL.—Funds derived from
24 fees assessed under this subsection shall be
25 available to the Commission, without further

1 appropriation or fiscal year limitation, to pay
2 any costs associated with inspecting and exam-
3 ining investment advisers that are subject to in-
4 spection and examination under this title.

5 “(B) FUNDS NOT PUBLIC FUNDS.—Funds
6 derived from fees assessed under this subsection
7 shall not be construed to be Government or
8 public funds or appropriated money. Notwith-
9 standing any other provision of law, funds de-
10 rived from fees assessed under this subsection
11 shall not be subject to apportionment for the
12 purpose of chapter 15 of title 31, United States
13 Code, or under any other authority.

14 “(C) FUNDS SUPPLEMENTAL TO OTHER
15 AMOUNTS.—Funds derived from fees assessed
16 under this subsection shall supplement, and be
17 in addition to, any other amounts available to
18 the Commission, under a regular appropriation
19 or otherwise, for the purpose described in sub-
20 paragraph (A).”.

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