

Union Calendar No. 540

114TH CONGRESS
2^D SESSION

H. R. 5424

[Report No. 114-698]

To amend the Investment Advisers Act of 1940 and to direct the Securities and Exchange Commission to amend its rules to modernize certain requirements relating to investment advisers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2016

Mr. HURT of Virginia (for himself, Mr. VARGAS, Mr. FOSTER, and Mr. STIVERS) introduced the following bill; which was referred to the Committee on Financial Services

JULY 21, 2016

Additional sponsors: Ms. SINEMA and Mr. HULTGREN

JULY 21, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 9, 2016]

A BILL

To amend the Investment Advisers Act of 1940 and to direct the Securities and Exchange Commission to amend its rules to modernize certain requirements relating to investment advisers, 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 Advisers*
5 *Modernization Act of 2016”.*

6 **SEC. 2. MODERNIZING CERTAIN REQUIREMENTS RELATING**
7 **TO INVESTMENT ADVISERS.**

8 *(a) INVESTMENT ADVISORY CONTRACTS.—*

9 *(1) ASSIGNMENT.—*

10 *(A) ASSIGNMENT DEFINED.—Section*
11 *202(a)(1) of the Investment Advisers Act of 1940*
12 *(15 U.S.C. 80b–2(a)(1)) is amended by striking*
13 *“; but” and all that follows and inserting “; but*
14 *no assignment of an investment advisory con-*
15 *tract shall be deemed to result from the death or*
16 *withdrawal, or the sale or transfer of the inter-*
17 *ests, of a minority of the members, partners,*
18 *shareholders, or other equity owners of the invest-*
19 *ment adviser having only a minority interest in*
20 *the business of the investment adviser, or from*
21 *the admission to the investment adviser of one or*
22 *more members, partners, shareholders, or other*
23 *equity owners who, after such admission, shall be*
24 *only a minority of the members, partners, share-*

1 *holders, or other equity owners and shall have*
2 *only a minority interest in the business.”.*

3 (B) *CONSENT TO ASSIGNMENT BY QUALI-*
4 *FIED CLIENTS.—Section 205(a)(2) of the Invest-*
5 *ment Advisers Act of 1940 (15 U.S.C. 80b-*
6 *5(a)(2)) is amended by inserting before the semi-*
7 *colon the following: “, except that if such other*
8 *party is a qualified client (as defined in section*
9 *275.205–3 of title 17, Code of Federal Regula-*
10 *tions, or any successor thereto), such other party*
11 *may provide such consent at the time the parties*
12 *enter into, extend, or renew such contract”.*

13 (2) *NOT REQUIRED TO PROVIDE FOR NOTIFICA-*
14 *TION OF CHANGE IN MEMBERSHIP OF PARTNER-*
15 *SHIP.—Section 205 of the Investment Advisers Act of*
16 *1940 (15 U.S.C. 80b–5) is amended—*

17 (A) *in subsection (a)—*

18 (i) *in paragraph (1), by striking the*
19 *semicolon and inserting “; or”;*

20 (ii) *in paragraph (2), by striking “;*
21 *or” and inserting a period; and*

22 (iii) *by striking paragraph (3); and*

23 (B) *in subsection (d), by striking “para-*
24 *graphs (2) and (3) of subsection (a)” and insert-*
25 *ing “subsection (a)(2)”.*

1 **(b) ADVERTISING RULE.—**

2 **(1) IN GENERAL.—***Not later than 90 days after*
3 *the date of the enactment of this Act, the Commission*
4 *shall amend section 275.206(4)–1 of title 17, Code of*
5 *Federal Regulations, to provide that paragraphs*
6 *(a)(1) and (a)(2) of such section do not apply to an*
7 *advertisement that an investment adviser publishes,*
8 *circulates, or distributes solely to persons described in*
9 *paragraph (2) of this subsection.*

10 **(2) PERSONS DESCRIBED.—***A person is described*
11 *in this paragraph if such person is, or the investment*
12 *adviser reasonably believes such person is—*

13 **(A)** *a qualified client (as defined in section*
14 *275.205–3 of title 17, Code of Federal Regula-*
15 *tions), determined as of the time of the publica-*
16 *tion, circulation, or distribution of the advertise-*
17 *ment rather than immediately prior to or after*
18 *entering into the investment advisory contract*
19 *referred to in such section;*

20 **(B)** *a knowledgeable employee (as defined in*
21 *section 270.3c–5 of title 17, Code of Federal Reg-*
22 *ulations) of any private fund to which the in-*
23 *vestment adviser acts as an investment adviser;*

1 (C) a qualified purchaser (as defined in sec-
2 tion 2(a) of the Investment Company Act of 1940
3 (15 U.S.C. 80a-2(a)); or

4 (D) an accredited investor (as defined in
5 section 230.501 of title 17, Code of Federal Regu-
6 lations), determined as if the investment adviser
7 were the issuer of securities referred to in such
8 section and the time of the publication, circula-
9 tion, or distribution of the advertisement were
10 the sale of such securities.

11 **SEC. 3. REMOVING DUPLICATIVE BURDENS AND APPRO-**
12 **PRIATELY TAILORING CERTAIN REQUIRE-**
13 **MENTS.**

14 (a) *BROCHURE DELIVERY.*—Not later than 90 days
15 after the date of the enactment of this Act, the Commission
16 shall amend section 275.204-3(c) of title 17, Code of Federal
17 Regulations, to provide that an investment adviser is not
18 required to deliver a brochure or brochure supplement to
19 a client that is a limited partnership, limited liability com-
20 pany, or other pooled investment vehicle for which each lim-
21 ited partner, member, or other equity owner has received,
22 before purchasing a security issued by the pooled investment
23 vehicle, a prospectus, private placement memorandum, or
24 other offering document containing (to the extent material
25 to an understanding of the pooled investment vehicle, the

1 *business of the pooled investment vehicle, and the securities*
2 *being offered by the pooled investment vehicle) substantially*
3 *the same information as would be required by Part 2A or*
4 *2B of Form ADV at the time of delivery of the brochure*
5 *or brochure supplement, as the case may be.*

6 **(b) FORM PF.**—*Not later than 90 days after the date*
7 *of the enactment of this Act, the Commission shall amend*
8 *section 275.204(b)–1 of title 17, Code of Federal Regula-*
9 *tions, to provide that an investment adviser to a private*
10 *fund is not required to report any information beyond that*
11 *which is required by sections 1a and 1b of Form PF, unless*
12 *such investment adviser is a large hedge fund adviser or*
13 *a large liquidity fund adviser (as such terms are defined*
14 *in such Form).*

15 **(c) CUSTODY RULE.**—*Not later than 90 days after the*
16 *date of the enactment of this Act, the Commission shall*
17 *amend section 275.206(4)–2 of title 17, Code of Federal*
18 *Regulations, as follows:*

19 **(1)** *The Commission shall provide additional ex-*
20 *ceptions to the independent verification requirement*
21 *of paragraph (a)(4) of such section for an investment*
22 *adviser with respect to funds and securities of a lim-*
23 *ited partnership (or a limited liability company or*
24 *other type of pooled investment vehicle), as follows:*

1 (A) *An exception that applies if the out-*
2 *standing securities (other than short-term paper,*
3 *as defined in section 2(a) of the Investment Com-*
4 *pany Act of 1940 (15 U.S.C. 80a-2(a)) of the*
5 *pooled investment vehicle are beneficially owned*
6 *exclusively by—*

7 (i) *the investment adviser;*

8 (ii) *affiliated persons of the investment*
9 *adviser;*

10 (iii) *supervised persons of the invest-*
11 *ment adviser;*

12 (iv) *officers, directors, and employees*
13 *of the affiliated persons of the investment*
14 *adviser;*

15 (v) *family members and former family*
16 *members (as such terms are defined in sec-*
17 *tion 275.202(a)(11)(G)-1 of title 17, Code of*
18 *Federal Regulations) of persons described in*
19 *clause (iii) or (iv); or*

20 (vi) *officers, directors, employees, or af-*
21 *iliated persons of, or persons who provide,*
22 *have provided, or have entered into a con-*
23 *tract to provide services to—*

24 (I) *the investment adviser of the*
25 *pooled investment vehicle;*

1 (II) one or more clients of the in-
2 vestment adviser of the pooled invest-
3 ment vehicle; or

4 (III) issuers from which the
5 pooled investment vehicle or any other
6 client of the investment adviser of the
7 pooled investment vehicle has acquired
8 securities, such as the portfolio com-
9 pany of a private fund.

10 (B) An exception that applies if the pooled
11 investment vehicle has been established to hold
12 only the securities of a single issuer in which one
13 or more pooled investment vehicles managed by
14 the investment adviser have acquired a control-
15 ling interest.

16 (2) Consistent with, and expanding on, IM
17 Guidance Update No. 2013–04, titled “Privately Of-
18 fered Securities under the Investment Advisers Act
19 Custody Rule”, published by the Division of Invest-
20 ment Management of the Commission, the Commis-
21 sion shall, with respect to the exception for certain
22 privately offered securities in paragraph (b)(2) of
23 such section—

24 (A) remove the requirement of clause (i)(B)
25 of such paragraph (relating to the uncertificated

1 *nature and recordation of ownership of the secu-*
2 *rities); and*

3 *(B) remove the requirement of clause (i) of*
4 *such paragraph (relating to audit and financial*
5 *statement distribution requirements with respect*
6 *to securities of pooled investment vehicles).*

7 *(d) PROXY VOTING RULE.—Not later than 90 days*
8 *after the date of the enactment of this Act, the Commission*
9 *shall amend section 275.206(4)–6 of title 17, Code of Fed-*
10 *eral Regulations, to provide that such section does not apply*
11 *to any voting authority with respect to client securities that*
12 *are not public securities.*

13 **SEC. 4. FACILITATING ROBUST CAPITAL FORMATION BY**
14 **PREVENTING REGULATORY MISMATCH.**

15 *The Commission may not—*

16 *(1) amend section 230.156 of title 17, Code of*
17 *Federal Regulations, to extend the provisions of such*
18 *section to offerings of securities issued by private*
19 *funds; or*

20 *(2) adopt rules applicable to offerings of securi-*
21 *ties issued by private funds that are substantially the*
22 *same as the provisions of such section.*

1 **SEC. 5. EXCLUSION OF ADVISORY SERVICES TO REG-**
2 **ISTERED INVESTMENT COMPANIES.**

3 *This Act shall not apply with respect to advisory serv-*
4 *ices provided, or proposed to be provided, to an investment*
5 *company registered under the Investment Company Act of*
6 *1940 (15 U.S.C. 80a-1 et seq.).*

7 **SEC. 6. REFERENCES TO REGULATIONS.**

8 *In this Act, any reference to a regulation shall be con-*
9 *strued to refer to such regulation or any successor thereto.*

10 **SEC. 7. DEFINITIONS.**

11 *In this Act:*

12 (1) *PUBLIC SECURITY.*—*The term “public secu-*
13 *urity” means a security issued by an issuer that—*

14 (A) *is required to submit reports under sec-*
15 *tion 13(a) or 15(d) of the Securities Exchange*
16 *Act of 1934 (15 U.S.C. 78m(a); 78o(d)); or*

17 (B) *has a security that is listed or traded*
18 *on any exchange or organized market operating*
19 *in a foreign jurisdiction.*

20 (2) *TERMS DEFINED IN INVESTMENT ADVISERS*
21 *ACT OF 1940.*—*The terms defined in section 202(a) of*
22 *the Investment Advisers Act of 1940 (15 U.S.C. 80b-*
23 *2(a)) have the meanings given such terms in such sec-*
24 *tion.*

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