To amend the Investment Advisers Act of 1940 to provide for the registration and oversight of national investment adviser associations.

IN THE HOUSE OF REPRESENTATIVES

Mr. BACHUS introduced the following bill; which was referred to the Committee on

A BILL

To amend the Investment Advisers Act of 1940 to provide for the registration and oversight of national investment adviser associations.

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 2011”.
SEC. 2. REGISTRATION AND OVERSIGHT OF NATIONAL INVESTMENT ADVISER ASSOCIATIONS.

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

“SEC. 203B. REGISTRATION OF NATIONAL INVESTMENT ADVISER ASSOCIATIONS.

“(a) Registration Requirement.—Except as provided in subsection (b), it shall be unlawful for any investment adviser registered under section 203 or that is subject to a state authority under section 203A(a) of this title to make use of the mails or any means or instrumentality of interstate commerce in connection with the person’s business as an investment adviser unless the investment adviser is a member of a registered national investment adviser association.

“(b) Exemptions.—Except as provided in paragraph (c), the provisions of subsection (a) shall not apply to—

“(1) any investment adviser that has assets under management 90 percent or more of which are attributable to one or more of the following types of clients:

“(A) investment companies registered under the Investment Company Act of 1940;
“(B) clients that are not ‘U.S. persons’ as defined in rule 902(k) of regulation S under the Securities Act of 1933;

“(C) clients that in the aggregate own not less than $25,000,000 in investments;

“(D) entities defined in section 3(c)(10) of the Investment Company Act of 1940;

“(E) entities defined in section 3(c)(11) of the Investment Company Act of 1940;

“(F) private funds as defined in section 202(a)(29) of this title; and

“(G) venture capital funds, as that term is defined by the Commission pursuant to section 203(l) of this title;

“(2) any investment adviser that is controlling, controlled by, or under common control with an investment adviser described in subsection (b)(1), if the Commission finds that the compliance programs, operations and businesses of such investment advisers are sufficiently integrated that membership in a registered national investment adviser association would necessitate inappropriate duplicative examination by the Commission and the association, or otherwise would not be necessary in the public interest
and for the protection of investors or in furtherance of the purposes of this title; or

“(3) any other investment adviser or class of investment advisers that the Commission may exempt by rule or regulation consistent with section 206A of this title.

“(e) APPLICATION OF EXEMPTIONS.—The exemptions in subsection (b) shall not apply to any investment adviser that is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 or that is controlled by an officer, director, or employee of, or any other natural person who is registered with, such a broker-dealer.

“(d) PROCEDURE FOR REGISTRATION.—An association of investment advisers may be registered as a national investment adviser association by filing with the Commission an application for registration in such form, and containing the rules of the association and such other information and documents, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors or otherwise in furtherance of the provisions of this title.

“(e) STAY PENDING APPROVAL.—No proposed rule of any national investment adviser association, and no proposed rule change of such an association, including any
rule or proposed rule change concerning any assessment, fee or other charge imposed by the association, shall take effect unless approved by the Commission after publication and opportunity for public comment.

“(f) EFFECTIVE DATE.—Notwithstanding subsection (e), no proposed rule of any national investment adviser association shall take effect within 1 year after the date of enactment of this section, unless the Commission determines that an earlier effective date is appropriate to facilitate the effective operation of the association’s examination or enforcement programs, the organization and management of the association, or the Commission’s oversight of the association.

“(g) REQUIREMENTS FOR REGISTRATION.—An association of investment advisers shall not be registered as a national investment adviser association unless the Commission determines that—

“(1) such association is so organized and has the capacity to be able to carry out the purposes of this title and to enforce compliance by its members and persons associated with its members with the provisions of this title, the rules and regulations thereunder, and the rules of the association; and

“(2) the rules of the association—
“(A) assure a fair representation of the public interest and the investment adviser industry in the selection of its directors and the administration of its affairs and provide that a majority of its directors shall not be associated with any member of the association or any investment adviser or broker-dealer;

“(B) are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest;

“(C) are necessary in furtherance of, and are consistent with, the principles and provisions of this title and the rules thereunder and the fiduciary standards applicable to investment advisers under this title or state law, and do not unnecessarily duplicate, overlap or conflict with any existing provision of this title or the rules thereunder;

“(D) are necessary and appropriate in light of the business of registered investment advisers and do not impose any burden on the business of investment advisers or on their ability to compete in the market for financial services that is not necessary or appropriate in the public interest or for the protection of investors
or otherwise in furtherance of the provisions of this title;

“(E) provide for periodic examinations of its members and persons associated with its members to determine compliance with the applicable provisions of this title, the rules and regulations thereunder, and the rules of the association, for consultation with the Commission in the development of such an examination program, and for the coordination of those examinations with examinations by the Commission and state securities regulatory authorities in a manner that promotes efficiency and avoids unnecessary burdens on its members;

“(F) provide for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system that the association operates or controls;

“(G) provide for the issuance of an annual financial report, and for the submission of the report to the Commission and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives;
“(H) establish appropriate procedures and
criteria for investment advisers to become mem-
bers of the association; and

“(I) establish appropriate procedures to
discipline its members and persons associated
with its members for violations of the provisions
of this title or the rules and regulations there-
under, and the rules of the association.

“(h) **Time Period for Membership Application.**—A Commission determination to permit the reg-
istration of a national investment adviser association shall
establish a reasonable period of time following the effective
date of such registration for investment advisers to apply
for membership in accordance with the rules of the asso-
ciation.

“(i) **Rule of Construction.**—Nothing in this Act
shall be construed to limit or detract from the authority
or the ability of any State to regulate any investment ad-
viser that is otherwise subject to state authority under sec-
tion 203A(a) of this title.

**SEC. 203C. OVERSIGHT OF NATIONAL INVESTMENT ADVISER ASSOCIATIONS.**

“(a) **Procedures for Approval of Registration.**—
“(1) PUBLICATION AND INITIAL DETERMINATION.—The Commission shall, upon the filing of an application for registration as a national investment adviser association pursuant to section 203B of this title, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within 90 days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

“(A) by order grant such registration; or

“(B) institute proceedings to determine whether registration should be denied.

“(2) PROCEEDINGS FOR DENIAL.—The proceedings to determine whether registration should be denied shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 180 days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such
longer period as to which the applicant consents. The Commission shall grant such registration if it finds that the requirements of this title and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

“(3) WITHDRAWAL.—A national investment adviser association may, upon such terms and conditions as the Commission, by rule, considers necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this title, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any national investment adviser association is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration.

“(b) PROCEDURES FOR APPROVAL OF RULES AND RULE CHANGES.—

“(1) FILING AND PUBLICATION BY COMMISSION.—Each national investment adviser association shall file with the Commission, in accordance with such rules as the Commission may prescribe, any proposed rule or any proposed change in, addition
to, or deletion from the rules of the association (in this paragraph collectively referred to as a ‘proposed rule change’) accompanied by a concise statement of the basis and purpose of, and the terms of substance of or a description of the subjects and issues involved with, the proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

“(2) Determination.—Within 35 days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate if it finds a longer period to be appropriate and publishes its reasons for so finding or as to which the national investment adviser association consents, the Commission shall:
“(A) by order approve the proposed rule change; or

“(B) institute proceedings to determine whether the proposed rule change should be disapproved.

“(3) PROCEEDINGS FOR DISAPPROVAL.—The proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of the proceedings, the Commission, by order, shall approve or disapprove the proposed rule change. The Commission may extend the time for conclusion of the proceedings for up to 60 days if it finds good cause for the extension and publishes its reasons for so finding or for such longer period to which the national investment adviser association consents.

“(4) CRITERIA FOR APPROVAL.—The Commission shall approve a proposed rule change of a national investment adviser association if it finds that the proposed rule change is consistent with the requirements of this title and the rules and regulations applicable to the national investment adviser associa-
tion. The Commission shall disapprove a proposed rule change of a national investment adviser association if it does not make this finding. The Commission shall not approve any proposed rule change before the thirtieth day after the date of publication of notice of its filing, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

“(5) SUMMARY EFFECTIVENESS.—(A) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

“(B) Any proposed rule change of a national investment adviser association which has taken effect under subparagraph (A) may be enforced by the national investment adviser association to the extent it is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of filing of a proposed rule change in accordance
with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the association made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 213 of this title nor deemed to be final agency action for purposes of section 704 of title 5, United States Code. The Commission, by rule, may abrogate, add to, and delete from (in this subsection collectively referred to as ‘amend’) the rules of an association as the Commission deems necessary or appropriate to ensure the fair administration of the national investment adviser association, to conform its rules to requirements of this title and the rules and regulations applicable to such national investment adviser association, or otherwise
in furtherance of the purposes of this title, in the
manner provided for in paragraphs (6) through (8).

“(6) Notification and opportunity to comment.—The Commission shall notify the national investment adviser association and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the association and a statement of the Commission’s reasons, including any pertinent facts, for commencing the proposed rulemaking. The Commission may give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

“(7) Statement of basis for determination.—A rule adopted under this subsection shall incorporate the text of the amendment to the rules of the association and a statement of the Commission’s basis for and purpose in amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination to amend the rules of the association to be based, including the reasons for the Commission’s
conclusions as to any of such facts which were dis-
puted in the rulemaking.

“(8) ADA RULEMAKING PROCEDURES.—(A) Ex-
cept as provided in paragraphs (1) through (3) of
this subsection, rulemaking under this subsection
shall be in accordance with the procedures specified
in section 553 of title 5, United States Code, for
rulemaking not on the record.

“(B) Nothing in this subsection shall be con-
strued to impair or limit the Commission’s power to
make, or to modify or alter the procedures the Com-
mission may follow in making rules and regulations
pursuant to any other authority under this title.

“(C) Any amendment to the rules of an associa-
tion made by the Commission under this subsection
shall be considered for all purposes of this title to
be part of the rules of the association and shall not
be considered to be a rule of the Commission.

“(c) DISCIPLINE OF MEMBERS.—

“(1) IN GENERAL.—In any proceeding by a na-
tional investment adviser association to determine
whether a member or person associated with a mem-
ber should be disciplined (other than a summary
proceeding pursuant to paragraph (3)), the national
investment adviser association shall bring specific
charges, notify the member or person associated
with a member of, and give the member or person
an opportunity to defend against, such charges, and
keep a record. A determination by the national in-
vestment adviser association to impose a disciplinary
sanction shall be supported by a statement setting
forth—

“(A) any act or practice in which the mem-
ber or person associated with a member has
been found to have engaged, or which the mem-
ber or person associated with a member has
been found to have omitted;

“(B) the specific provision of this title, the
rules or regulations thereunder, or the rules of
the association which any such act or practice,
or omission to act, is deemed to violate; and

“(C) the sanction imposed and the reason
for it.

“(2) PROCEDURES AND DETERMINATION.—In
any proceeding by a national investment adviser as-
association to determine whether a person shall be de-
nied membership, barred from becoming associated
with a member, or prohibited or limited with respect
to access to services offered by the national invest-
ment adviser association, the national investment
adviser association shall notify the person of, and
give such person an opportunity to be heard on, the
specific grounds for denial, bar, prohibition or limi-
tation under consideration, and keep a record. A de-
termination by the national investment adviser asso-
ciation to deny membership, bar a person from be-
coming associated with a member, or prohibit or
limit a person with respect to access to services of-
fered by the national investment adviser association
shall be supported by a statement setting forth the
specific grounds on which the denial, bar, or prohibi-
tion or limitation is based.

“(3) SUMMARY SUSPENSION AND SUBSEQUENT
PROCEDURES.—A national investment adviser asso-
ciation may summarily—

“(A) suspend a member or person associ-
ated with a member who has been and is ex-
pelled or suspended from any self-regulatory or-
organization or barred or suspended from being
associated with a member of any self-regulatory
organization;

“(B) suspend a member who is in such fi-
nancial or operating difficulty that the national
investment adviser association determines and
so notifies the Commission that the member
cannot be permitted to continue to do business
as a member and serve the interest of investors,
creditors, other members, or the national in-
vestment adviser association; or

“(C) limit or prohibit any person with re-
spect to access to services offered by the na-
tional investment adviser association if subpara-
graph (A) or (B) is applicable to such person
or, in the case of a person who is not a mem-
ber, if the national investment adviser associa-
tion determines that such person does not meet
the qualification requirements or other pre-
requisites for such access and such person can-
not be permitted to continue to have such ac-
cess and serve the interest of investors, credi-
tors, members, or the national investment ad-
viser association.

Any person aggrieved by any such summary action
shall be promptly afforded an opportunity for a
hearing by the national investment adviser associa-
tion in accordance with the provisions of paragraph
(1) or (2) of this subsection. The Commission, by
order, may stay any such summary action on its own
motion or upon application by any person aggrieved
thereby, if the Commission determines summarily or
after notice and opportunity for hearing (which
hearing may consist solely of the submission of affi-
davits or presentation of oral arguments) that such
stay is consistent with the public interest and the
protection of investors.

“(d) Final Disciplinary Sanction.—(1) If any
national investment adviser association imposes any final
disciplinary sanction on any member, denies membership
to any applicant, or prohibits or limits any person in re-
spect to access to services offered by the national invest-
ment adviser association, or if any national investment ad-
viser association imposes any final disciplinary sanction on
any person associated with a member, or bars any person
from becoming associated with a member, the national in-
vestment adviser association shall promptly file notice
thereof with the Commission. The notice shall be in such
form and contain such information as the Commission, by
rule, may prescribe as necessary or appropriate in further-
ance of the purposes of this title.

“(2) Any action with respect to which a national in-
vestment adviser association is required by paragraph (1)
of this subsection to file notice shall be subject to review
by the Commission, on its own motion, or upon application
by any person aggrieved thereby filed within 30 days after
the date such notice was both filed with the Commission
and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission may establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

“(e) Review of Final Sanction.—(1) In any proceeding to review a final disciplinary sanction imposed by a national investment adviser association on a member or a person associated with a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the national investment adviser association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

“(A) if the Commission finds that such member or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the national investment adviser association has found him or her to have engaged in or omitted,
that such acts or practices, or omissions to act, are
in violation of such provisions of this title, the rules
or regulations thereunder, or the rules of the asso-
ciation, as have been specified in the determination
of the national investment adviser association, and
that such provisions are, and were applied in a man-
ner, consistent with the purposes of this title, the
Commission, by order, shall so declare and, as ap-
propriate, affirm the sanction imposed by the na-
tional investment adviser association, modify the
sanction in accordance with paragraph (2) of this
subsection, or remand to the national investment ad-
viser association for further proceedings; or

“(B) if the Commission does not make any such
finding it shall, by order, set aside the sanction im-
posed by the national investment adviser association
and, if appropriate, remand to the national invest-
ment adviser association for further proceedings.

“(2) If the Commission, having due regard for the
public interest, the protection of investors, and the policies
and purposes of this title, finds after a proceeding in ac-
cordance with paragraph (1) that a sanction imposed by
a national investment adviser association on a member or
person associated with a member imposes any burden on
competition not necessary or appropriate in furtherance
of the purposes of this title or is excessive or oppressive, the Commission may cancel, reduce, or require the revocation of such sanction.

“(f) Review of Denial of Membership.—In any proceeding to review the denial of membership in a national investment adviser association to any applicant, the barring of any person from becoming associated with a member, or the prohibition or limitation by a national investment adviser association of any person with respect to access to services offered by the national investment adviser association, if the Commission, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the national investment adviser association and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the national investment adviser association) finds that the specific grounds on which the denial, bar, prohibition or limitation is based exist in fact, that the denial, bar, prohibition, or limitation is in accordance with the rules of the association, and that the rules are and were applied in a manner consistent with the purposes of this title, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or it finds that the denial, bar, prohibition or limitation imposes any burden on competition not necessary
or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the action of the national investment adviser association and require it to admit the applicant to membership or participation, permit the person to become associated with a member, or grant the person access to services offered by the national investment adviser association.

“(g) COMPLIANCE.—(1) Every registered national investment adviser association shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and (subject to the provisions of paragraph (2) and the rules thereunder) absent reasonable justification or excuse, enforce compliance with such provisions by its members and persons associated with a member. The Commission shall conduct regular and routine inspections, at least annually, of the registered national investment adviser association, to ensure that the association complies with the provisions of this title and the rules and regulations thereunder.

“(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other policies and purposes of this title, may relieve any national investment adviser association of any responsibility under this title to enforce compliance with any provision of this title or the rules or regulations thereunder by any member
of the national investment adviser association or any class of such members or persons associated with a member.

“(h) **Enforcement Authority of the Commission.**—

“(1) **Suspension, censure, limitation on associations.**—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding 12 months or revoke the registration of a national investment adviser association, or to censure or impose limitations upon the activities, functions, and operations of the national investment adviser association, if the Commission finds, on the record after notice and opportunity for hearing, that the national investment adviser association has violated or is unable to comply with any provision of this title, the rules or regulations thereunder, or its own rules, or without reasonable justification or excuse has failed to enforce compliance with any such provision by a member or a person associated with a member.

“(2) **Suspension and expulsion of members.**—The Commission is authorized, by order, if
in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding 12 months or expel from a national investment adviser association any member, if the member is subject to an order of the Commission pursuant to section 203(e) of this title or if the Commission finds, on the record after notice and opportunity for hearing, that the member has willfully violated, or has participated in any transaction with or for any other person who the member had reason to believe was violating with respect to such transaction, any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, or the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board.

“(3) OTHER BARS.—The Commission is authorized, by order, if in its opinion, such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or to bar any person
from being associated with a member of a national investment adviser association, if the person is subject to an order of the Commission under section 203(f) of this title or if the Commission finds, on the record after notice and opportunity for hearing, that the person has willfully violated, or has participated in any transaction with any other person who the person associated with a member had reason to believe was violating with respect to the transaction, any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, or the rules or regulations under any of those statutes, or the rules of the Municipal Securities Rulemaking Board.

“(4) Removal or censure of officers and directors.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to remove from office or censure any officer, director or any person performing similar functions of a national investment adviser association, if the Commission finds, on the record after notice and opportunity for hearing, that such person
has willfully violated any provision of this title, the rules or regulations thereunder, or the rules of the national investment adviser association, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any such provision by any member or person associated with a member.”.