

112TH CONGRESS  
2D SESSION

# H. R. 4624

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2012

Mr. BACHUS (for himself and Mrs. MCCARTHY of New York) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

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

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 Oversight Act of 2012”.

6 **SEC. 2. REGISTRATION AND OVERSIGHT OF NATIONAL IN-**  
7 **VESTMENT ADVISER ASSOCIATIONS.**

8 The Investment Advisers Act of 1940 (15 U.S.C.  
9 80b–1 et seq.) is amended by inserting after section 203A  
10 the following new sections:

1 **“SEC. 203B. REGISTRATION OF NATIONAL INVESTMENT AD-**  
2 **VISER ASSOCIATIONS.**

3 “(a) **REGISTRATION REQUIREMENT.**—Except as pro-  
4 vided in subsection (b), it shall be unlawful for any invest-  
5 ment adviser registered under section 203 or that is regu-  
6 lated or required to be regulated as an investment adviser  
7 in a State in which it maintains its principal office and  
8 place of business to make use of the mails or any means  
9 or instrumentality of interstate commerce in connection  
10 with the person’s business as an investment adviser unless  
11 the investment adviser has applied to be a member of a  
12 registered national investment adviser association reg-  
13 istered in accordance with this section and section 203C  
14 within the time period provided by the Commission under  
15 subsection (f). No investment adviser shall be required to  
16 be a member of more than one registered national invest-  
17 ment adviser association.

18 “(b) **EXEMPTIONS.**—The provisions of subsection (a)  
19 shall not apply to the following investment advisers:

20 “(1) Any investment adviser one or more of  
21 whose clients is an investment company registered  
22 under the Investment Company Act of 1940.

23 “(2) Any investment adviser that has total as-  
24 sets under management 90 percent or more of which  
25 are attributable individually or in the aggregate to  
26 one or more of the following persons with which the

1 investment adviser has entered into a written invest-  
2 ment advisory agreement:

3 “(A) A client that is not ‘in the United  
4 States’ in accordance with the definitions in  
5 section 202.

6 “(B) A qualified purchaser as defined in  
7 section 2(a)(51) of the Investment Company  
8 Act of 1940.

9 “(C) An issuer that would be an invest-  
10 ment company, as defined in section 3 of the  
11 Investment Company Act of 1940, but for sec-  
12 tion 3(c)(10) of that Act.

13 “(D) An issuer that would be an invest-  
14 ment company, as defined in section 3 of the  
15 Investment Company Act of 1940, but for sec-  
16 tion 3(c)(11) of that Act.

17 “(E) A private fund.

18 “(F) An issuer that would be an invest-  
19 ment company, as defined in section 3 of the  
20 Investment Company Act of 1940, but for sec-  
21 tion 3(c)(5)(C) of that Act.

22 “(G) An issuer that would be an invest-  
23 ment company, as defined in section 3 of the  
24 Investment Company Act of 1940, but for Rule

1 3a-7 issued under that Act (17 C.F.R. 270.3a-  
2 7).

3 “(H) A company that has elected to be a  
4 business development company pursuant to sec-  
5 tion 54 of the Investment Company Act of 1940  
6 and has not withdrawn its election.

7 “(I) An investment adviser registered  
8 under section 203 or that is regulated or re-  
9 quired to be regulated as an investment adviser  
10 in a State in which it maintains its principal of-  
11 fice and place of business.

12 “(J) A broker or dealer registered under  
13 section 15 of the Securities Exchange Act of  
14 1934; and

15 “(K) An employees’ securities company  
16 that has been granted an exemption under sec-  
17 tion 6(b) of the Investment Company Act of  
18 1940 and any such company that has filed an  
19 application for an exemption under that section  
20 and that, under Commission rule, is exempt  
21 pending final determination of such application  
22 by the Commission.

23 “(3) Any investment adviser that is controlling,  
24 controlled by, or under common control with one or  
25 more investment advisers described in paragraph (1)

1 or (2) (hereafter referred to as ‘affiliated investment  
2 advisers’) if the affiliated investment advisers and all  
3 such investment advisers described in such para-  
4 graph, have combined assets under management 90  
5 percent or more of which are attributable to one or  
6 more of the types of clients described in paragraph  
7 (1) and subparagraphs (A) through (K) of para-  
8 graph (2), unless the Commission, by order, deter-  
9 mines that such affiliated investment adviser is an  
10 independent affiliate.

11 “(4) Any investment adviser that is a member  
12 of any other national investment adviser association  
13 registered with the Commission.

14 “(5) Any other investment adviser or class of  
15 investment advisers that the Commission may ex-  
16 empt by rule or regulation consistent with section  
17 206A.

18 “(c) INDEPENDENT AFFILIATE DEFINITION AND  
19 DETERMINATION.—

20 “(1) DEFINITION.—For purposes of subsection  
21 (b)(3), the term ‘independent affiliate’ means any  
22 affiliated investment adviser with compliance pro-  
23 grams, operations, and businesses that are suffi-  
24 ciently independent from those of the investment ad-  
25 visers described in subsection (b)(1) or (2) that

1 membership by any such affiliated investment ad-  
2 viser in a registered national investment adviser as-  
3 sociation is necessary in the public interest and for  
4 the protection of investors or in furtherance of the  
5 purposes of this title.

6 “(2) DETERMINATION.—The Commission’s de-  
7 termination under such subsection (b)(3) shall be  
8 made by order at the earlier of 180 days from re-  
9 ceipt by the Commission of a request from any na-  
10 tional investment adviser association or investment  
11 adviser for such a determination, or the date of the  
12 first on-site examination of such affiliated invest-  
13 ment adviser conducted by the Commission after the  
14 date of enactment of this section. The Commission  
15 may, by order, determine that an investment adviser  
16 that the Commission had previously determined to  
17 be an independent affiliate is no longer an inde-  
18 pendent affiliate due to changes in its compliance  
19 programs, operations, or businesses.

20 “(3) NOTIFICATION.—The Commission shall  
21 promptly notify all national investment adviser asso-  
22 ciations of any determination that an investment ad-  
23 viser is an independent affiliate. In addition to the  
24 authority to determine by order that a particular in-  
25 vestment adviser is an independent affiliate, the

1 Commission shall have authority from time to time  
2 to exempt by rule, regulation or order, any class of  
3 investment advisers that the Commission determines  
4 are independent affiliates.

5 “(d) PROCEDURE FOR REGISTRATION.—An associa-  
6 tion of investment advisers may be registered as a national  
7 investment adviser association by filing with the Commis-  
8 sion an application for registration in such form, and con-  
9 taining the rules of the association and such other infor-  
10 mation and documents, as the Commission, by rule, may  
11 prescribe as necessary or appropriate in the public interest  
12 or for the protection of investors or otherwise in further-  
13 ance of the provisions of this title.

14 “(e) REQUIREMENTS FOR REGISTRATION.—An asso-  
15 ciation of investment advisers shall not be registered as  
16 a national investment adviser association unless the Com-  
17 mission determines that—

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

24 “(2) the rules of the association—

1           “(A) assure a fair representation of the  
2 public interest and the association’s members in  
3 the selection of the association’s board of direc-  
4 tors and the administration of its affairs and  
5 provide that a majority of its directors shall not  
6 be associated with any member of the associa-  
7 tion or other self-regulatory organization reg-  
8 istered under the Securities Exchange Act of  
9 1934, or any investment adviser, broker, or  
10 dealer;

11           “(B) are designed to prevent fraudulent  
12 and manipulative acts and practices, to protect  
13 investors and the public interest, and to pro-  
14 mote business conduct standards for its mem-  
15 bers consistent with their obligations to inves-  
16 tors under this title and the rules thereunder  
17 and are not designed to impose any schedule or  
18 fixed rates of fees to be charged by its members  
19 or to regulate by virtue of any authority con-  
20 ferred by this title matters not related to the  
21 purposes of this title or the administration of  
22 the association;

23           “(C) are necessary in furtherance of, and  
24 are consistent with, the principles and provi-  
25 sions of this title and the rules thereunder, and



1 the fiduciary standards applicable to investment  
2 advisers under this title or State law, and do  
3 not unnecessarily duplicate, overlap, or conflict  
4 with any existing provision of this title or the  
5 rules thereunder;

6 “(D) are necessary or appropriate in light  
7 of the business of registered investment advis-  
8 ers and do not impose any burden on the ability  
9 of members to compete in the market for finan-  
10 cial services that is not necessary or appro-  
11 priate in the public interest or for the protec-  
12 tion of investors or otherwise in furtherance of  
13 the provisions of this title;

14 “(E) provide for periodic examinations of  
15 its members and persons associated with its  
16 members to determine compliance with the ap-  
17 plicable provisions of this title, the rules and  
18 regulations thereunder, and the rules of the as-  
19 sociation, and for consultation with the Com-  
20 mission in the development of such an examina-  
21 tion program, except that the association—

22 “(i) shall not conduct periodic exami-  
23 nations of any investment adviser in a  
24 State—

1           “(I) in which the investment ad-  
2           viser is regulated or required to be  
3           regulated and maintains its principal  
4           office and place of business; and

5           “(II) that has adopted a plan to  
6           conduct an on-site examination of all  
7           such investment advisers on average  
8           at least once every four years (here-  
9           after referred to as a ‘State examina-  
10          tion plan’); and

11          “(ii) may conduct examinations for  
12          cause of any such investment adviser that  
13          is a member of the association and may  
14          conduct a periodic examinations of any  
15          such investment adviser that is a member  
16          of the association and that is also reg-  
17          istered as a broker or dealer under section  
18          15 of the Securities Exchange Act of 1934  
19          or that is controlling, controlled by, or  
20          under common control with such a broker  
21          or dealer;

22          “(F) provide for the equitable allocation of  
23          reasonable dues, fees, and other charges among  
24          members and other persons using any facility

1 or system that the association operates or con-  
2 trols;

3 “(G) provide for the issuance by the asso-  
4 ciation of an annual report on the operations,  
5 performance, and financial condition of the as-  
6 sociation and any financial arrangement be-  
7 tween the association and any company directly  
8 controlling, controlled by, or under common  
9 control with the association, and for the sub-  
10 mission of the report to the Commission and for  
11 the publication of the report;

12 “(H) establish appropriate procedures and  
13 criteria for investment advisers to become mem-  
14 bers of the association;

15 “(I) establish appropriate procedures to  
16 register persons associated with members, to re-  
17 quire supervisory systems for members and per-  
18 sons associated with members, and to discipline  
19 its members and persons associated with its  
20 members for violations of the provisions of this  
21 title or the rules and regulations thereunder,  
22 and the rules of the association;

23 “(J) provide for substantively equivalent  
24 regulation and oversight of members and asso-  
25 ciated persons of members, including with re-

1 spect to business conduct requirements and ex-  
2 aminations, as provided under the rules of any  
3 other national investment adviser association  
4 registered with the Commission; and

5 “(K) require the association to—

6 “(i) implement and maintain a com-  
7 prehensive information security program  
8 that meets administrative, technical, and  
9 physical safeguards as the Commission  
10 shall by rule determine, and that contains  
11 strong and risk-based information security  
12 controls to protect all information that the  
13 association is required to protect from un-  
14 authorized internal or external disclosure  
15 or dissemination (including, without limita-  
16 tion, a member’s confidential or propri-  
17 etary information, or examination or in-  
18 spection reports and documents prepared  
19 by the association or other regulatory au-  
20 thority);

21 “(ii) obtain, every 3 years, a com-  
22 prehensive, independent review of the asso-  
23 ciation’s information security program and  
24 the association’s compliance with its infor-  
25 mation security policies and procedures

1 conducted by an independent reviewer who  
2 is qualified data security professional;

3 “(iii) within 45 days after the receipt  
4 of such independent reviewer’s report on  
5 the association’s information security pro-  
6 gram and the association’s compliance with  
7 its security policies and procedures, submit  
8 the annual report to the Commission to-  
9 gether with the independent reviewer’s at-  
10 testation in writing that addresses—

11 “(I) whether the association’s in-  
12 formation security policies and proce-  
13 dures conform to the Commission’s in-  
14 formation security standards;

15 “(II) whether the strength of the  
16 association’s information security con-  
17 trols meet recognized industry stand-  
18 ards;

19 “(III) whether the independent  
20 reviewer’s tests revealed any material  
21 weaknesses in the association’s infor-  
22 mation security controls;

23 “(IV) whether the association  
24 complies with its information security  
25 policy and procedures; and

1                   “(V) any other requirements as  
2                   the Commission may by rule deter-  
3                   mine; and

4                   “(iv) provide notice promptly to the  
5                   Commission, any affected member, or any  
6                   affected person associated with any mem-  
7                   ber of any unauthorized access to—

8                   “(I) the association’s information  
9                   systems; or

10                   “(II) the confidential or propri-  
11                   etary information of the member or  
12                   associated person.

13           “(f) TIME PERIOD FOR MEMBERSHIP APPLICA-  
14 TION.—A Commission determination to permit the reg-  
15 istration of a national investment adviser association shall  
16 establish a reasonable period of time following the effective  
17 date of such registration for investment advisers to apply  
18 for membership in accordance with the rules of the asso-  
19 ciation.

20           “(g) RULES OF CONSTRUCTION.—

21                   “(1) NON-PREEMPTION OF STATE AUTHOR-  
22 ITY.—Nothing in this section shall be construed to  
23 limit or detract from or otherwise preempt the au-  
24 thority of any State securities commission (or any  
25 agency or office performing similar functions) to

1 adopt rules, investigate possible violations of State  
2 law, initiate enforcement proceedings, or otherwise  
3 regulate any investment adviser that is subject to  
4 State authority under section 203A(a).

5 “(2) INFORMATION SHARING.—Nothing in this  
6 Act shall be construed to limit the authority of any  
7 national investment adviser association, whether or  
8 not it is also a self-regulatory organization reg-  
9 istered under the Securities Exchange Act of 1934,  
10 to share any information in its possession with a  
11 Federal, State, or local governmental agency, nor  
12 shall the sharing of information be construed to be  
13 the action of such an agency.

14 “(h) ANNUAL CONFERENCE.—

15 “(1) REQUIREMENT.—In order to foster co-  
16 operation between national investment adviser asso-  
17 ciations and any association composed of duly con-  
18 stituted representatives of State governments one of  
19 whose primary assignment is the regulation of in-  
20 vestment advisers within those States (hereafter re-  
21 ferred to as ‘State securities administrators associa-  
22 tion’), each national investment adviser association  
23 shall conduct an annual conference as well as such  
24 other meetings as are determined necessary, to  
25 which representatives from the State securities ad-

1 administrators association and the Commission shall  
2 be invited to participate.

3 “(2) PURPOSE.—One purpose of the conference  
4 shall be the discussion by the State securities admin-  
5 istrators association, each national investment ad-  
6 viser association and the Commission, concerning  
7 those States that have adopted a State examination  
8 plan under subsection (e)(2)(E)(i) and the proposed  
9 methodology of those State examinations.

10 “(3) REPORT.—Promptly following each con-  
11 ference, each national investment adviser association  
12 shall submit a report to Congress, describing those  
13 States that the State securities administrators asso-  
14 ciation has identified as having adopted a State ex-  
15 amination plan, and providing any information avail-  
16 able to the national investment adviser association  
17 concerning the States’ proposed methodology of their  
18 examinations and the extent to which those States  
19 have been able to meet their previously submitted  
20 State examination plans.

21 **“SEC. 203C. OVERSIGHT OF NATIONAL INVESTMENT AD-  
22 VISER ASSOCIATIONS.**

23 “(a) PROCEDURES FOR APPROVAL OF REGISTRA-  
24 TION.—



1           “(1) IN GENERAL.—The Commission shall,  
2           upon the filing of an application for registration as  
3           a national investment adviser association pursuant  
4           to section 203B, publish notice of the filing and af-  
5           ford interested persons an opportunity to submit  
6           written data, views, and arguments concerning such  
7           application. Within 90 days of the date of publica-  
8           tion of such notice (or within such longer period as  
9           to which the applicant consents), the Commission  
10          shall—

11                       “(A) by order, grant such registration; or

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

14           “(2) PROCEEDINGS FOR DENIAL.—The pro-  
15           ceedings to determine whether registration should be  
16           denied shall include notice of the grounds for denial  
17           under consideration and opportunity for hearing and  
18           shall be concluded within 180 days of the date of  
19           publication of notice of the filing of the application  
20           for registration. At the conclusion of such pro-  
21           ceedings, the Commission, by order, shall grant or  
22           deny registration. The Commission may extend the  
23           time for conclusion of such proceedings for up to 90  
24           days if it finds good cause for such extension and

1 publishes its reasons for so finding or for such  
2 longer period as to which the applicant consents.

3 “(3) BASIS FOR APPROVAL.—The Commission  
4 shall grant such registration if it finds that the re-  
5 quirements of this title and the rules and regulations  
6 thereunder with respect to the applicant are satis-  
7 fied. The Commission shall deny such registration if  
8 it does not make such finding.

9 “(4) WITHDRAWAL.—A national investment ad-  
10 viser association may, upon such terms and condi-  
11 tions as the Commission, by rule, considers nec-  
12 essary or appropriate in the public interest and for  
13 the protection of investors or otherwise in further-  
14 ance of the purposes of this title, withdraw from reg-  
15 istration by filing a written notice of withdrawal  
16 with the Commission. If the Commission finds that  
17 any national investment adviser association is no  
18 longer in existence or has ceased to do business in  
19 the capacity specified in its application for registra-  
20 tion, the Commission, by order, shall cancel its reg-  
21 istration.

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

24 “(1) FILING AND PUBLICATION BY COMMIS-  
25 SION.—

1           “(A) FILING.—Each national investment  
2           adviser association shall file with the Commis-  
3           sion, in accordance with such rules as the Com-  
4           mission may prescribe, any proposed rule or  
5           any proposed change in, addition to, or deletion  
6           from the rules of the association (in this para-  
7           graph collectively referred to as a ‘proposed rule  
8           change’) accompanied by a concise statement of  
9           the basis and purpose of, and the terms of sub-  
10          stance of, or a description of the subjects and  
11          issues involved with, the proposed rule change.

12          “(B) EXPLANATION AND COMMENTS.—The  
13          national investment adviser association shall ex-  
14          plain in its public filing with the Commission  
15          the nature of comments that it received, includ-  
16          ing those from the industry or consumer  
17          groups, concerning the potential costs or bene-  
18          fits of the proposed rule or proposed rule  
19          change, and shall provide a response to those  
20          comments in its public filing with the Commis-  
21          sion, including an explanation of any amend-  
22          ments to the proposed rule or proposed rule  
23          change that were made in response to those  
24          comments and a description of significant alter-  
25          natives to the proposed rule change that were

1 suggested in those comments and the reasons  
2 that the national investment adviser association  
3 did not any propose them.

4 “(C) PUBLICATION.—The Commission  
5 shall, as soon as practicable upon the filing of  
6 any proposed rule change, publish notice there-  
7 of together with the terms of substance of the  
8 proposed rule change or a description of the  
9 subjects and issues involved. The Commission  
10 shall give interested persons an opportunity to  
11 submit written data, views, and arguments con-  
12 cerning such proposed rule change.

13 “(2) DETERMINATION.—Not later than 35 days  
14 after the date of publication of notice of the filing  
15 of a proposed rule change in accordance with para-  
16 graph (1), or within such longer period as the Com-  
17 mission may designate if it finds a longer period to  
18 be appropriate and publishes its reasons for so find-  
19 ing or as to which the national investment adviser  
20 association consents, the Commission shall—

21 “(A) by order, approve the proposed rule  
22 change; or

23 “(B) institute proceedings to determine  
24 whether the proposed rule change should be dis-  
25 approved.

1           “(3) PROCEEDINGS FOR DISAPPROVAL.—The  
2           proceedings to determine whether the proposed rule  
3           change should be disapproved shall include notice of  
4           the grounds for disapproval under consideration and  
5           opportunity for hearing and shall be concluded with-  
6           in 180 days of the date of publication of notice of  
7           the filing of the proposed rule change. At the conclu-  
8           sion of the proceedings, the Commission, by order,  
9           shall approve or disapprove the proposed rule  
10          change. The Commission may extend the time for  
11          conclusion of the proceedings for up to 60 days if it  
12          finds good cause for the extension and publishes its  
13          reasons for so finding or for such longer period to  
14          which the national investment adviser association  
15          consents.

16          “(4) BASIS FOR APPROVAL.—The Commission  
17          shall approve a proposed rule change of a national  
18          investment adviser association if it finds that the  
19          proposed rule change is consistent with the require-  
20          ments of this title, the rules thereunder, and the  
21          rules and regulations applicable to the national in-  
22          vestment adviser association. The Commission shall  
23          disapprove a proposed rule change of a national in-  
24          vestment adviser association if it does not make this  
25          finding. The Commission shall not approve any pro-

1 posed rule change before the 30th day after the date  
2 of publication of notice of its filing, unless the Com-  
3 mission finds good cause for so doing and publishes  
4 its reasons for so finding.

5 “(5) STAY PENDING APPROVAL.—No proposed  
6 rule of any national investment adviser association,  
7 and no proposed rule change of such an association,  
8 including any rule or proposed rule change con-  
9 cerning any assessment, fee, or other charge im-  
10 posed by the association, shall take effect unless ap-  
11 proved by the Commission after public notice and  
12 opportunity for comment.

13 “(6) EFFECTIVE DATE.—Notwithstanding para-  
14 graph (5), no proposed rule of any national invest-  
15 ment adviser association shall take effect within 1  
16 year after the date of enactment of this section, un-  
17 less the Commission determines that an earlier effec-  
18 tive date is appropriate to facilitate the effective op-  
19 eration of the association’s examination or enforce-  
20 ment programs, the organization and management  
21 of the association, or the Commission’s oversight of  
22 the association.

23 “(7) SUMMARY EFFECTIVENESS.—

24 “(A) IN GENERAL.—Notwithstanding any  
25 other provision of this subsection, a proposed

1 rule change may be put into effect summarily  
2 if it appears to the Commission that such ac-  
3 tion is necessary for the protection of investors  
4 or the safeguarding of securities or funds. Any  
5 proposed rule change so put into effect shall be  
6 filed promptly thereafter in accordance with the  
7 provisions of paragraph (1).

8 “(B) AMENDMENTS.—Any proposed rule  
9 change of a national investment adviser associa-  
10 tion which has taken effect under subparagraph  
11 (A) may be enforced by the national investment  
12 adviser association to the extent it is not incon-  
13 sistent with the provisions of this title, the rules  
14 and regulations thereunder, and applicable Fed-  
15 eral law. The Commission, by rule, may abro-  
16 gate, add to, and delete from (in this subsection  
17 collectively referred to as ‘amend’) the rules of  
18 an association as the Commission considers nec-  
19 essary or appropriate to ensure the fair admin-  
20 istration of the national investment adviser as-  
21 sociation, to conform its rules to requirements  
22 of this title and the rules and regulations appli-  
23 cable to such national investment adviser asso-  
24 ciation, or otherwise in furtherance of the pur-

1           poses of this title, in the manner provided for  
2           herein.

3           “(8) NOTIFICATION AND OPPORTUNITY TO  
4           COMMENT.—The Commission shall notify the na-  
5           tional investment adviser association and publish no-  
6           tice of any proposed rulemaking in the Federal Reg-  
7           ister. The notice shall include the text of the pro-  
8           posed amendment to the rules of the association and  
9           a statement of the Commission’s reasons, including  
10          any pertinent facts, for commencing the proposed  
11          rulemaking. The Commission shall give interested  
12          persons an opportunity for a hearing.

13          “(9) STATEMENT OF BASIS FOR DETERMINA-  
14          TION.—A rule adopted under this subsection shall  
15          incorporate the text of the amendment to the rules  
16          of the association and a statement of the Commis-  
17          sion’s basis for and purpose in amending such rules.  
18          This statement shall include an identification of any  
19          facts on which the Commission considers its deter-  
20          mination to amend the rules of the association to be  
21          based, including the reasons for the Commission’s  
22          conclusions as to any of such facts which were dis-  
23          puted in the rulemaking.

24          “(10) APA RULEMAKING PROCEDURES.—



1           “(A) Except where a hearing is provided in  
2 paragraphs (1) through (9), rulemaking under  
3 this subsection shall be in accordance with the  
4 procedures specified in section 553 of title 5,  
5 United States Code, for notice-and-comment  
6 rulemaking.

7           “(B) Nothing in this subsection shall be  
8 construed to impair or limit the Commission’s  
9 power to make, or to modify or alter the proce-  
10 dures the Commission may follow in making  
11 rules and regulations pursuant to any other au-  
12 thority under this title.

13           “(C) Any amendment to the rules of a na-  
14 tional investment adviser association made by  
15 the Commission under this subsection shall be  
16 considered for all purposes of this title to be  
17 part of the rules of the association and shall not  
18 be considered to be a rule of the Commission.

19           “(c) DISCIPLINE OF MEMBERS.—

20           “(1) IN GENERAL.—In any proceeding by a na-  
21 tional investment adviser association to determine  
22 whether a member or person associated with a mem-  
23 ber should be disciplined (other than a summary  
24 proceeding pursuant to paragraph (3)), the national  
25 investment adviser association shall bring specific

1 charges, notify the member or person associated  
2 with a member of, and give the member or person  
3 an opportunity to defend against, such charges, and  
4 keep a record. A determination by the national in-  
5 vestment adviser association to impose a disciplinary  
6 sanction shall be supported by a statement setting  
7 forth—

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

13 “(B) the specific provision of this title, the  
14 rules or regulations thereunder, or the rules of  
15 the association which any such act or practice,  
16 or omission to act, violates; and

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

19 “(2) PROCEDURES AND DETERMINATION.—In  
20 any proceeding by a national investment adviser as-  
21 sociation to determine whether a person shall be de-  
22 nied membership, barred from becoming associated  
23 with a member, or prohibited or limited with respect  
24 to access to services offered by the national invest-  
25 ment adviser association, the national investment

1 adviser association shall notify the person of, and  
2 give such person an opportunity to be heard on, the  
3 specific grounds for denial, bar, prohibition, or limi-  
4 tation under consideration, and keep a record. A de-  
5 termination by the national investment adviser asso-  
6 ciation to deny membership, bar a person from be-  
7 coming associated with a member, or prohibit or  
8 limit a person with respect to access to services of-  
9 fered by the national investment adviser association  
10 shall be supported by a statement setting forth the  
11 specific grounds on which the denial, bar, prohibi-  
12 tion, or limitation is based.

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

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

22 “(B) suspend a member who is in such fi-  
23 nancial or operating difficulty that the national  
24 investment adviser association determines and  
25 so notifies the Commission that the member

1 cannot be permitted to continue to do business  
2 as a member and serve the interest of investors,  
3 creditors, other members, or the national in-  
4 vestment adviser association; or

5 “(C) limit or prohibit any person with re-  
6 spect to access to services offered by the na-  
7 tional investment adviser association if subpara-  
8 graph (A) or (B) is applicable to such person  
9 or, in the case of a person who is not a mem-  
10 ber, if the national investment adviser associa-  
11 tion determines that such person does not meet  
12 the qualification requirements or other pre-  
13 requisites for such access and such person can-  
14 not be permitted to continue to have such ac-  
15 cess and serve the interest of investors, credi-  
16 tors, members, or the national investment ad-  
17 viser association. Any person aggrieved by any  
18 such summary action shall be promptly afforded  
19 an opportunity for a hearing by the national in-  
20 vestment adviser association in accordance with  
21 the provisions of paragraph (1) or (2). The  
22 Commission, by order, may stay any such sum-  
23 mary action on its own motion or upon applica-  
24 tion by any person aggrieved thereby, if the  
25 Commission determines summarily or after no-

1           tice and opportunity for hearing (which hearing  
2           may consist solely of the submission of affida-  
3           vits or presentation of oral arguments) that  
4           such stay is consistent with the public interest  
5           and the protection of investors.

6           “(d) FINAL DISCIPLINARY SANCTION.—

7           “(1) NOTICE.—If any national investment ad-  
8           viser association imposes any final disciplinary sanc-  
9           tion on any member, denies membership to any ap-  
10          plicant, or prohibits or limits any person in respect  
11          to access to services offered by the national invest-  
12          ment adviser association, or if any national invest-  
13          ment adviser association imposes any final discipli-  
14          nary sanction on any person associated with a mem-  
15          ber, or bars any person from becoming associated  
16          with a member, the national investment adviser as-  
17          sociation shall promptly file notice thereof with the  
18          Commission and publish the notice. The notice shall  
19          be in such form and contain such information as the  
20          Commission, by rule, may prescribe as necessary or  
21          appropriate in furtherance of the purposes of this  
22          title.

23          “(2) REVIEW.—Any action with respect to  
24          which a national investment adviser association is  
25          required by paragraph (1) to file notice shall be sub-

1       ject to review by the Commission, on its own motion,  
2       or upon application by any person aggrieved thereby  
3       filed within 30 days after the date such notice was  
4       both filed with the Commission and received by such  
5       aggrieved person, or within such longer period as the  
6       Commission may determine. Application to the Com-  
7       mission for review, or the institution of review by the  
8       Commission on its own motion, shall not operate as  
9       a stay of the action unless the Commission otherwise  
10      orders, summarily or after notice and opportunity  
11      for hearing on the question of a stay (which hearing  
12      may consist solely of the submission of affidavits or  
13      presentation of oral arguments). The Commission  
14      may establish for appropriate cases an expedited  
15      procedure for consideration and determination of the  
16      question of a stay.

17      “(e) REVIEW OF FINAL SANCTION.—

18             “(1) IN GENERAL.—In any proceeding to review  
19      a final disciplinary sanction imposed by a national  
20      investment adviser association on a member or a  
21      person associated with a member, after notice and  
22      opportunity for hearing (which hearing may consist  
23      solely of consideration of the record before the na-  
24      tional investment adviser association and oppor-

1 tunity for the presentation of supporting reasons to  
2 affirm, modify, or set aside the sanction)—

3 “(A) if the Commission finds that such  
4 member or person associated with a member  
5 has engaged in such acts or practices, or has  
6 omitted such acts, as the national investment  
7 adviser association has found him or her to  
8 have engaged in or omitted that such acts or  
9 practices, or omissions to act, are in violation of  
10 such provisions of this title, the rules or regula-  
11 tions thereunder, or the rules of the association,  
12 as have been specified in the determination of  
13 the national investment adviser association, and  
14 that such provisions are, and were applied in a  
15 manner, consistent with the purposes of this  
16 title, the Commission, by order, shall so declare  
17 and, as appropriate, affirm the sanction im-  
18 posed by the national investment adviser asso-  
19 ciation, modify the sanction in accordance with  
20 paragraph (2), or remand to the national in-  
21 vestment adviser association for further pro-  
22 ceedings; or

23 “(B) if the Commission does not make any  
24 such finding it shall, by order, set aside the  
25 sanction imposed by the national investment ad-

1           viser association and, if consistent with the pur-  
2           poses of this title, remand to the national in-  
3           vestment adviser association for further pro-  
4           ceedings.

5           “(2) REDUCTION OR REVOCATION OF SANC-  
6           TION.—If the Commission, having due regard for  
7           the public interest, the protection of investors, and  
8           the policies and purposes of this title, finds after a  
9           proceeding in accordance with paragraph (1) that a  
10          sanction imposed by a national investment adviser  
11          association on a member or person associated with  
12          a member imposes any burden on competition not  
13          necessary or appropriate in furtherance of the pur-  
14          poses of this title or is excessive or oppressive, the  
15          Commission may cancel, reduce, or require the rev-  
16          ocation of such sanction.

17          “(f) REVIEW OF DENIAL OF MEMBERSHIP.—In any  
18          proceeding to review the denial of membership in a na-  
19          tional investment adviser association to any applicant, the  
20          barring of any person from becoming associated with a  
21          member, or the prohibition or limitation by a national in-  
22          vestment adviser association of any person with respect  
23          to access to services offered by the national investment  
24          adviser association—



1           “(1) if the Commission, after notice and oppor-  
2           tunity for hearing (which hearing may consist solely  
3           of consideration of the record before the national in-  
4           vestment adviser association and opportunity for the  
5           presentation of supporting reasons to dismiss the  
6           proceeding or set aside the action of the national in-  
7           vestment adviser association) finds that the specific  
8           grounds on which the denial, bar, prohibition or lim-  
9           itation is based exist in fact, that the denial, bar,  
10          prohibition, or limitation is in accordance with the  
11          rules of the association, and that the rules are and  
12          were applied in a manner consistent with the pur-  
13          poses of this title, the Commission, by order, shall  
14          dismiss the proceeding; or

15          “(2) if the Commission does not make any such  
16          finding or it finds that the denial, bar, prohibition  
17          or limitation imposes any burden on competition not  
18          necessary or appropriate in furtherance of the pur-  
19          poses of this title, the Commission, by order, shall  
20          set aside the action of the national investment ad-  
21          viser association and require it to admit the appli-  
22          cant to membership or participation, permit the per-  
23          son to become associated with a member, or grant  
24          the person access to services offered by the national  
25          investment adviser association.

1 “(g) COMPLIANCE.—

2 “(1) IN GENERAL.—Every registered national  
3 investment adviser association shall comply with the  
4 provisions of this title, the rules and regulations  
5 thereunder, and its own rules, and (subject to the  
6 provisions of paragraph (2) and the rules there-  
7 under) absent reasonable justification or excuse, en-  
8 force compliance with such provisions by its mem-  
9 bers and persons associated with a member. The  
10 Commission shall conduct regular and routine in-  
11 spections, at least annually, of the registered na-  
12 tional investment adviser association, to ensure that  
13 the association complies with the provisions of this  
14 title and the rules and regulations thereunder.

15 “(2) RELIEF OF RESPONSIBILITY.—The Com-  
16 mission, by rule, consistent with the public interest  
17 and the protection of investors, and the other poli-  
18 cies and purposes of this title, may relieve any na-  
19 tional investment adviser association of any respon-  
20 sibility under this title to enforce compliance with  
21 any provision of this title or the rules or regulations  
22 thereunder by any member of the national invest-  
23 ment adviser association or any class of such mem-  
24 bers or persons associated with a member.

1       “(h) ENFORCEMENT AUTHORITY OF THE COMMIS-  
2 SION.—

3               “(1) SUSPENSION, CENSURE AND LIMITATION  
4 ON ASSOCIATIONS.—If in its opinion such action is  
5 necessary or appropriate in the public interest, for  
6 the protection of investors, or otherwise in further-  
7 ance of the purposes of this title, the Commission  
8 may, by order, suspend for a period not exceeding  
9 12 months or revoke the registration of a national  
10 investment adviser association, or to censure or im-  
11 pose limitations upon the activities, functions, and  
12 operations of the national investment adviser asso-  
13 ciation, if the Commission finds, on the record after  
14 notice and opportunity for hearing, that the national  
15 investment adviser association has violated or is un-  
16 able to comply with any provision of this title, the  
17 rules or regulations thereunder, or its own rules, or  
18 without reasonable justification or excuse has failed  
19 to enforce compliance with any such provision by a  
20 member or a person associated with a member.

21               “(2) SUSPENSION AND EXPULSION OF MEM-  
22 BERS.—If in its opinion such action is necessary or  
23 appropriate in the public interest, for the protection  
24 of investors, or otherwise in furtherance of the pur-  
25 poses of this title, the Commission may, by order,

1 suspend for a period not exceeding 12 months or  
2 expel from a national investment adviser association  
3 any member, if the member is subject to an order  
4 of the Commission pursuant to section 203(e) or if  
5 the Commission finds, on the record after notice and  
6 opportunity for hearing, that the member has will-  
7 fully violated, or has participated in any transaction  
8 with or for any other person who the member had  
9 reason to believe was violating with respect to such  
10 transaction, any provision of the Securities Act of  
11 1933, the Securities Exchange Act of 1934, the In-  
12 vestment Company Act of 1940, this title, the Com-  
13 modity Exchange Act, or the rules or regulations  
14 under any of such statutes, or the rules of the Mu-  
15 nicipal Securities Rulemaking Board.

16 “(3) OTHER BARS.—If in its opinion, such ac-  
17 tion is necessary or appropriate in the public inter-  
18 est, for the protection of investors, or otherwise in  
19 furtherance of the purposes of this title, the Com-  
20 mission may, by order, suspend for a period not ex-  
21 ceeding 12 months or bar any person from being as-  
22 sociated with a member of a national investment ad-  
23 viser association, if the person is subject to an order  
24 of the Commission under section 203(f) or if the  
25 Commission finds, on the record after notice and op-

1 portunity for hearing, that the person has willfully  
2 violated, or has participated in any transaction with  
3 any other person who the person associated with a  
4 member had reason to believe was violating with re-  
5 spect to the transaction, any provision of the Securi-  
6 ties Act of 1933, the Securities Exchange Act of  
7 1934, the Investment Company Act of 1940, this  
8 title, or the rules or regulations under any of those  
9 statutes, or the rules of the Municipal Securities  
10 Rulemaking Board.

11 “(4) REMOVAL OR CENSURE OF OFFICERS AND  
12 DIRECTORS.—If in its opinion such action is nec-  
13 essary or appropriate in the public interest, for the  
14 protection of investors, or otherwise in furtherance  
15 of the purposes of this title, the Commission may, by  
16 order, remove from office or censure any officer, di-  
17 rector or any person performing similar functions of  
18 a national investment adviser association, if the  
19 Commission finds, on the record after notice and op-  
20 portunity for hearing, that such person has willfully  
21 violated any provision of this title, the rules or regu-  
22 lations thereunder, or the rules of the national in-  
23 vestment adviser association, willfully abused his au-  
24 thority, or without reasonable justification or excuse  
25 has failed to enforce compliance with any such provi-

1 sion by any member or person associated with a  
2 member.”.

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