

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5424

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Investment Advisers  
3 Modernization Act of 2016”.

4 **SEC. 2. MODERNIZING CERTAIN REQUIREMENTS RELATING**  
5 **TO INVESTMENT ADVISERS.**

6 (a) INVESTMENT ADVISORY CONTRACTS.—

7 (1) ASSIGNMENT.—

8 (A) ASSIGNMENT DEFINED.—Section  
9 202(a)(1) of the Investment Advisers Act of  
10 1940 (15 U.S.C. 80b–2(a)(1)) is amended by  
11 striking “; but” and all that follows and insert-  
12 ing “; but no assignment of an investment advi-  
13 sory contract shall be deemed to result from the  
14 death or withdrawal, or the sale or transfer of  
15 the interests, of a minority of the members,  
16 partners, shareholders, or other equity owners  
17 of the investment adviser having only a minor-  
18 ity interest in the business of the investment  
19 adviser, or from the admission to the invest-  
20 ment adviser of one or more members, partners,  
21 shareholders, or other equity owners who, after  
22 such admission, shall be only a minority of the  
23 members, partners, shareholders, or other eq-  
24 uity owners and shall have only a minority in-  
25 terest in the business.”.

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

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

16 (A) in subsection (a)—

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

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

21 (iii) by striking paragraph (3); and

22 (B) in subsection (d), by striking “para-  
23 graphs (2) and (3) of subsection (a)” and in-  
24 serting “subsection (a)(2)”.

25 (b) ADVERTISING RULE.—

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

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

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

21                   (B) a knowledgeable employee (as defined  
22 in section 270.3c–5 of title 17, Code of Federal  
23 Regulations) of any private fund to which the  
24 investment adviser acts as an investment ad-  
25 viser;

1 (C) a qualified purchaser (as defined in  
2 section 2(a) of the Investment Company Act of  
3 1940 (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  
6 Regulations), determined as if the investment  
7 adviser were the issuer of securities referred to  
8 in such section and the time of the publication,  
9 circulation, or distribution of the advertisement  
10 were the sale of such securities.

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

14 (a) FORM PF.—Not later than 90 days after the date  
15 of the enactment of this Act, the Commission shall amend  
16 section 275.204(b)-1 of title 17, Code of Federal Regula-  
17 tions, to provide that an investment adviser to a private  
18 fund is not required to report any information beyond that  
19 which is required by sections 1a and 1b of Form PF, un-  
20 less such investment adviser is a large hedge fund adviser  
21 or a large liquidity fund adviser (as such terms are defined  
22 in such Form).

23 (b) CUSTODY RULE.—Not later than 90 days after  
24 the date of the enactment of this Act, the Commission  
25 shall amend section 275.206(4)-2 of title 17, Code of Fed-

1 eral Regulations, consistent with, and expanding on, IM  
2 Guidance Update No. 2013–04, titled “Privately Offered  
3 Securities under the Investment Advisers Act Custody  
4 Rule”, published by the Division of Investment Manage-  
5 ment of the Commission, with respect to the exception for  
6 certain privately offered securities in paragraph (b)(2) of  
7 such section, so as to—

8           (1) remove the requirement of clause (i)(B) of  
9           such paragraph (relating to the uncertificated nature  
10          and recordation of ownership of the securities); and

11          (2) remove the requirement of clause (ii) of  
12          such paragraph (relating to audit and financial  
13          statement distribution requirements with respect to  
14          securities of pooled investment vehicles).

15          (c) PROXY VOTING RULE.—Not later than 90 days  
16 after the date of the enactment of this Act, the Commis-  
17 sion shall amend section 275.206(4)–6 of title 17, Code  
18 of Federal Regulations, to provide that such section does  
19 not apply to any voting authority with respect to client  
20 securities that are not public securities.

21 **SEC. 4. FACILITATING ROBUST CAPITAL FORMATION BY**  
22 **PREVENTING REGULATORY MISMATCH.**

23          The Commission may not—

24           (1) amend section 230.156 of title 17, Code of  
25          Federal Regulations, to extend the provisions of

1 such section to offerings of securities issued by pri-  
2 vate funds; or

3 (2) adopt rules applicable to offerings of securi-  
4 ties issued by private funds that are substantially  
5 the same as the provisions of such section.

6 **SEC. 5. EXCLUSION OF ADVISORY SERVICES TO REG-**  
7 **ISTERED INVESTMENT COMPANIES.**

8 This Act shall not apply with respect to advisory serv-  
9 ices provided, or proposed to be provided, to an investment  
10 company registered under the Investment Company Act  
11 of 1940 (15 U.S.C. 80a–1 et seq.).

12 **SEC. 6. REFERENCES TO REGULATIONS.**

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

15 **SEC. 7. DEFINITIONS.**

16 In this Act:

17 (1) PUBLIC SECURITY.—The term “public secu-  
18 rity” means a security issued by an issuer that—

19 (A) is required to submit reports under  
20 section 13(a) or 15(d) of the Securities Ex-  
21 change Act of 1934 (15 U.S.C. 78m(a);  
22 78o(d)); or

23 (B) has a security that is listed or traded  
24 on any exchange or organized market operating  
25 in a foreign jurisdiction.

1           (2) TERMS DEFINED IN INVESTMENT ADVISERS  
2           ACT OF 1940.—The terms defined in section 202(a)  
3           of the Investment Advisers Act of 1940 (15 U.S.C.  
4           80b–2(a)) have the meanings given such terms in  
5           such section.

          Passed the House of Representatives September 9,  
2016.

Attest:

*Clerk.*



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