

[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Advisers Act of 1940 to modernize certain requirements relating to investment advisers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Investment Advisers Act of 1940 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 Adviser
5 Alignment Act”.

1 **SEC. 2. MODERNIZING CERTAIN REQUIREMENTS RELATING**
2 **TO INVESTMENT ADVISERS.**

3 (a) PROVIDING INVESTOR TRANSPARENCY.—Section
4 205(a) of the Investment Advisers Act of 1940 (15 U.S.C.
5 80b-5(a)) is amended—

6 (1) in paragraph (2), by striking “or” at the
7 end;

8 (2) in paragraph (3), by striking the period and
9 inserting a semicolon; and

10 (3) by adding at the end the following:

11 “(4) fails to provide, in substance, with respect
12 to a private equity adviser, that in connection with
13 any examination, inquiry, or enforcement action by
14 the Commission—

15 “(A) the private equity adviser will provide
16 notice to all investors in any private fund man-
17 aged by such private equity adviser; and

18 “(B) upon request from any investor in a
19 private fund managed by the private equity ad-
20 viser, the private equity adviser will provide,
21 electronically or otherwise, any and all informa-
22 tion received from the Commission by such pri-
23 vate equity adviser (or by any agents, advisors,
24 affiliates, or representatives on behalf of the
25 private equity adviser) with respect to such ex-
26 amination, inquiry, or enforcement action, in-

1 including any and all correspondence or other
2 communications between the Commission and
3 such private equity adviser in the course of
4 such action;”.

5 (b) ENSURING FIDUCIARY DUTY IS NOT WAIVED
6 AND CONFLICTS OF INTEREST CANNOT BE ELIMINATED
7 BY MERE DISCLOSURE.—Section 205(a) of the Invest-
8 ment Advisers Act of 1940 (15 U.S.C. 80b-5(a)), as
9 amended by subsection (a), is further amended by adding
10 at the end the following:

11 “(5) provides, in any manner, with respect to
12 any private equity adviser—

13 “(A) for the elimination of any duty aris-
14 ing out of section 206, or any fiduciary duty
15 under State or Federal law owed to the inves-
16 tors in any private fund managed by the private
17 equity adviser or any other party retaining the
18 private equity adviser with respect to such pri-
19 vate fund, including such private equity advi-
20 sor’s duty of loyalty, duty of care, and the duty
21 to act in good faith and in the best interest of
22 such investors;

23 “(B) for the elimination of any liability of
24 the private equity adviser with respect to ac-

1 tions or omissions that constitute negligence
2 under applicable Federal or State law; or

3 “(C) for the inference by the private equity
4 adviser of implicit consent or waiver by inves-
5 tors in a private fund managed by the private
6 equity adviser to any existing or prospective
7 conflict of interest, based solely upon the disclo-
8 sure of material facts with respect to such pri-
9 vate fund, or the inference of continuing explicit
10 or implicit consent or waiver by such investors
11 where the material facts with respect to such
12 conflict of interest have changed since such con-
13 sent or waiver was obtained; or”.

14 (c) ALLOWING INVESTORS TO COMMUNICATE.—Sec-
15 tion 205(a) of the Investment Advisers Act of 1940 (15
16 U.S.C. 80b-5(a)), as amended by subsection (b), is further
17 amended by adding at the end the following:

18 “(6)(A) fails to require a private equity adviser
19 to provide full and fair disclosure to the investors in
20 a private fund managed by such private equity ad-
21 viser of all material facts relating to such private
22 fund;

23 “(B) restricts any investor in such private fund
24 from communicating with one or more other inves-
25 tors in the private fund; or

1 “(C) does not require the private equity adviser
2 to share with investors in such private fund any in-
3 formation reasonably requested that relates to the
4 services that the private equity adviser provides to
5 such private fund, including the names of other in-
6 vestors in such private fund and the amount of their
7 financial commitments, unless any such investor ex-
8 plicitly requests in writing that the identity of such
9 investor be kept confidential by such private equity
10 adviser.”.

11 (d) REQUIRING QUARTERLY REPORTING OF ALL
12 FEES AND EXPENSES.—

13 (1) IN GENERAL.—Section 204(b)(3) of the In-
14 vestment Advisers Act of 1940 (15 U.S.C. 80b-
15 4(b)(3)) is amended—

16 (A) in subparagraph (G), by striking
17 “and” at the end; and

18 (B) by redesignating subparagraph (H) as
19 subparagraph (I); and

20 (C) by inserting after subparagraph (G)
21 the following:

22 “(H) all direct and indirect fees and ex-
23 penses with respect to the private fund, includ-
24 ing any fees and expenses that were, directly or
25 indirectly, charged or allocated to the private

1 fund (or any subsidiary or special purpose vehi-
2 cle formed in relation to such private fund's in-
3 vestments) by any affiliated person or affiliated
4 company (as defined in section 2 of the Invest-
5 ment Company Act of 1940) of the private eq-
6 uity adviser on a quarterly basis; and”.

7 (2) FILING OF RECORDS.—Paragraph (5) of
8 section 204(b) of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-4(b)) is amended to read as
10 follows:

11 “(5) FILING OF RECORDS.—The Commission
12 shall issue rules—

13 “(A) requiring each private equity adviser
14 to file reports with the Commission with respect
15 to each private fund managed by such private
16 equity adviser and provide such reports to the
17 investors in such private fund, in each case con-
18 taining such information as the Commission de-
19 termines necessary and appropriate in the pub-
20 lic interest and for the protection of investors in
21 private funds or for the assessment of systemic
22 risk;

23 “(B) requiring each private equity adviser
24 to provide reports and information to the inves-
25 tors in a private fund managed by such private

1 equity adviser that contain the information de-
2 scribed under section 204(b)(3)(H), on a quar-
3 terly basis and based on generally accepted in-
4 dustry standards and methods; and

5 “(C) with respect to an investment adviser
6 to a private fund that is not a private equity
7 adviser, requiring each such investment adviser
8 to file reports containing such information as
9 the Commission determines necessary and ap-
10 propriate in the public interest and for the pro-
11 tection of investors or for the assessment of
12 systemic risk.”

13 (e) **REQUIRING FORM PF TO BE PROVIDED TO IN-**
14 **VESTORS.**—Not later than 180 days after the date of the
15 enactment of this Act, the Securities and Exchange Com-
16 mission shall amend section 275.204(b)–1 of title 17, Code
17 of Federal Regulations, to provide that an investment ad-
18 viser to a private fund is required to electronically share
19 Form PF with all investors and prospective investors in
20 such private fund within 30 days after the form is filed
21 with the Commission.

22 (f) **DEFINITION OF A PRIVATE EQUITY ADVISER.**—
23 Section 202(a) of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b-2(a)) is amended—

1 (1) by redesignating the second paragraph (29)
2 as paragraph (31); and

3 (2) by adding at the end the following:

4 “(32) The term ‘private equity adviser’ means
5 any investment adviser who—

6 “(A) advises a private fund; and

7 “(B) the private fund it advises—

8 “(i) is formed for the purpose of and
9 is engaged exclusively in the business of in-
10 vesting in shares, assets, and ownership in-
11 terests of financial and nonfinancial com-
12 panies for resale or other disposition;

13 “(ii) is not an operating company;

14 “(iii) does not provide redemption
15 rights in the ordinary course of operations;
16 and

17 “(iv) has a limited term and, upon in-
18 corporation or organization, is not in-
19 tended by the private equity adviser and
20 the investors to be perpetual in nature.”.