

Executive Summary

“Investment Adviser Examination Improvement Act of 2012,” H.R. 6204¹

I. Background

- a. Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), passed by Congress in July 2010, required the Securities and Exchange Commission (“SEC” or “Commission”) to review and report back to Congress on the frequency of its exam cycle for federally registered investment advisers (“RIAs”). The report was issued in January 2011 and reviewed the SEC’s oversight program over the last five years. Two options considered by the report for increased frequency of inspections were: 1) authorize the SEC to create one or more self-regulatory organizations (“SROs”) to examine federal RIAs; and 2) authorize the SEC to impose user fees on federal RIAs.²

II. Purpose

- a. The legislation would authorize the SEC to impose user fees on federal RIAs to increase the frequency of its exam cycle from the current average of once every 11 years.

It is a legislative alternative to H.R. 4624 by Rep. Spencer Bachus, R-Ala., chairman of the House Committee on Financial Services. H.R. 4624 would provide for SRO oversight of investment advisers. On July 25, Rep. Bachus announced his bill would not move forward “unless and until there is consensus,”³ which appears unlikely before the end of the session.

¹ See The Library of Congress, *Bill Summary and Status*, available at <http://thomas.loc.gov>, H.R. 6204.

² See *Study on Enhancing Investment Adviser Examinations*, January 2011, available at <http://www.sec.gov/news/studies/2011/914studyfinal.pdf> (July 2012).

³ Mark Schoeff, Jr., “SRO bill dead for now: Bachus says no adviser oversight legislation will move forward without bipartisan support; that’s not likely,” *Investment News*, July 25, 2012, available at <http://www.investmentnews.com/article/20120725/FREE/120729949> (July 2012).

III. Short Title and Bill Status.

- a. Title: “Investment Adviser Examination Improvement Act of 2012,” H.R. 6204
- b. Bill status: Sponsored by Rep. Maxine Waters, D-Calif., on July 25, 2012, with two co-sponsors, Rep. Barney Frank, D-Mass., Ranking Member of the House Committee on Financial Services, and Rep. Michael Capuano, D-Mass. Bill is likely to be referred to Financial Services committee.

IV. Scope of Coverage.

- a. The Commission would collect an annual fee from federal RIAs for the specific purpose of defraying the cost of inspections.⁴
- b. State RIAs would not be subject to fees or inspections, and continue to subject to inspection by state securities administrators.

(Note: Advisory firms with a principal place of business in Wyoming are subject to SEC registration and would be subject to the new SEC fee assessment.)

V. Fee Amounts.

- a. Aggregate fees collected would be used to offset the estimated cost of increased inspections of federal RIAs each fiscal year.

(Note: A specific goal for the increased inspection cycle is not cited.)

VI. Fee Calculation Formula.

- a. The formula for collecting fees assessed against individual advisory firms shall be established by rule and take into account the following factors:
 - a. Frequency
 - b. Firm size, including assets under management
 - c. Number and type of clients
 - d. Risk characteristics

⁴ Existing exemptions under the Investment Advisers Act of 1940 include banks, limited exemptions for teachers, lawyers, accountants, family offices, and for advisers with less than \$100 million in assets under management.

- b. Fee calculations shall be reviewed prior to the end of each fiscal year and, following public comment, fees adjusted for the next fiscal year.

VII. Public Disclosures.

- a. Formula used to determine fee assessment and any adjustments.
- b. Factors used to determine the formula.

VIII. Audit.

- a. Every two years the General Accountability Office (“GAO”) shall conduct an audit of the fees collected, calculation formula, and adjustments.
- b. The GAO report shall be submitted to House and Senate committees with jurisdiction over the SEC.

IX. Restrictions on Fees.

- a. Adviser fees shall not be used for any other purpose except for inspections.
- b. Adviser fees shall be considered supplemental to any other amounts appropriated by Congress.