

Public Law 86-750

AN ACT

To amend certain provisions of the Investment Advisers Act of 1940, as amended.

September 13, 1960
[S. 3773]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph 12 of subsection (a) of section 202 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

Investment Ad-
visers Act of 1940,
amendment.

54 Stat. 847.
15 USC 80b-2.

“(12) ‘Investment company’, affiliated person, and ‘insurance company’ have the same meanings as in the Investment Company Act of 1940. ‘Control’ means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.”

(b) Paragraph (18) of section 202(a) of the Investment Advisers Act of 1940, as amended, is amended by striking out “the Philippine Islands.”

SEC. 2. Clause (F) of paragraph (1) of section 203(c) of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

15 USC 80b-3.

“(F) whether such investment adviser, or any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d), and”

Registration ap-
plication.
Information re-
quired.

SEC. 3. (a) Paragraph (2) of subsection (c) of section 203 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

“(2) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services.”

(b) Subsection (d) of section 203 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

“(d) The Commission shall, after appropriate notice and opportunity for hearing, by order deny registration to, or suspend for a period not exceeding twelve months or revoke the registration of, an investment adviser, if it finds that such denial, suspension, or revocation is in the public interest and that (1) such investment adviser, whether prior or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such, (A) has willfully made or caused to be made in any application for registration or report filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or who has omitted to state in any such application or report any material fact which is required to be stated therein; or (B) has been convicted within ten years preceding the filing of the application or at any time thereafter of any felony or misdemeanor which the Commission finds (i) involves the purchase or sale of any security, (ii) arises out of the conduct of the business of a broker, dealer, or investment adviser, (iii) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities, or (iv) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code, as heretofore or hereafter amended; or (C) is perma-

Denial or sus-
pension of regis-
tration.

62 Stat. 643.

nently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security; or (D) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, as any of such statutes heretofore have been or hereafter may be amended, or of any rule or regulation under any of such statutes; or (E) has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Securities Exchange Act of 1934, or of this title, as any of such statutes heretofore have been or hereafter may be amended, or of any rule or regulation under any of such statutes."

SEC. 4. Subsection (e) of section 203 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

"(e) The commencement of a proceeding to deny registration under this section shall operate to postpone the effective date of registration for a period of ninety days, or until final determination whether such registration shall be denied if that determination is made within such ninety-day period; but if, after appropriate notice and opportunity for hearing, it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration beyond such ninety-day period and until final determination of whether such registration shall be denied, the Commission shall so order. Upon request of any interested party, made more than ninety days after the effective date of such order, the Commission shall consider whether such postponement should continue, and shall take such action, if any, with respect thereto as in its discretion is necessary or appropriate in the public interest or for the protection of investors."

SEC. 5. Subsection (g) of section 203 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

"(g) Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person."

SEC. 6. Section 204 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

"SEC. 204. Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b)), shall make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors."

48 Stat. 74, 881.
15 USC 77a, 78a.

15 USC 80b-3.
Commencement
of proceedings.

Withdrawal from
registration.

15 USC 80b-4.

Records and re-
ports.

15 USC 80b-3.

SEC. 7. The introductory paragraph of section 205 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

15 USC 80b-5.

"SEC. 205. No investment adviser, unless exempt from registration pursuant to section 203(b), shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—".

Investment advisory contracts.

SEC. 8. The introductory paragraph of section 206 of the Investment Advisers Act of 1940, as amended, is amended by striking out "registered under section 203".

15 USC 80b-6.

SEC. 9. Section 206 of the Investment Advisers Act of 1940, as amended, is amended by changing the period at the end thereof to a semicolon and by adding the following new paragraph:

Prohibitions.

"(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative."

SEC. 10. The caption of section 208 of the Investment Advisers Act of 1940, as amended, is amended by striking out "UNLAWFUL REPRESENTATIONS" and inserting in lieu thereof "GENERAL PROHIBITIONS".

15 USC 80b-8.

SEC. 11. (a) Subsection (c) of section 208 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

"(c) It shall be unlawful for any person registered under section 203 of this title to represent that he is an investment counsel or to use the name 'investment counsel' as descriptive of his business unless (1) his or its principal business consists of acting as investment adviser, and (2) a substantial part of his or its business consists of rendering investment supervisory services."

(b) Section 208 of the Investment Advisers Act of 1940, as amended, is amended by adding the following new subsection:

"(d) It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this title or any rule or regulation thereunder."

SEC. 12. Subsection (e) of section 209 of the Investment Advisers Act of 1940, as amended, is amended by striking out "has engaged or is about to engage" in the first and in the second sentences and inserting in lieu thereof "has engaged, is engaged, or is about to engage"; by inserting in the first sentence after "any rule, regulation, or order hereunder," the first time that phrase appears, the following: "or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation,"; and by inserting in the second sentence, after "such act or practice," the following: "or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice,".

15 USC 80b-9.

SEC. 13. Subsection (b) of section 210 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

"(b) Subject to the provisions of subsections (c) and (e) of section 209, the Commission, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this title is being conducted, or the results of or any facts

15 USC 80b-10.

Disclosure of information.
Restriction.

ascertained during any such examination or investigation; and no member, officer, or employee of the Commission shall disclose to any person other than a member, officer, or employee of the Commission any information obtained as a result of any such examination or investigation except with the approval of the Commission. The provisions of this subsection shall not apply—

15 USC 80b-12. “(1) in the case of any hearing which is public under the provisions of section 212; or

“(2) in the case of a resolution or request from either House of Congress.”

15 USC 80b-11.

Rules and regulations.

SEC. 14. Subsection (a) of section 211 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

“(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.”

15 USC 80b-17.

Penalty.

SEC. 15. Section 217 of the Investment Advisers Act of 1940, as amended, is amended to read as follows:

“SEC. 217. Any person who willfully violates any provision of this title, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall, upon conviction, be fined not more than \$10,000, imprisoned for not more than two years, or both.”

SEC. 16. The Investment Advisers Act of 1940, as amended, is amended by adding the following new section:

“STATE CONTROL OF INVESTMENT ADVISERS

“SEC. 222. Nothing in this title shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder.”

Approved September 13, 1960.

Public Law 86-751

AN ACT

September 13, 1960
[S. 1740]

To amend section 202(b) of the Communications Act of 1934 in order to expand the Federal Communications Commission's regulatory authority under such section.

Communications Act of 1934, amendment.
48 Stat. 1070.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 202 of the Communications Act of 1934 (47 U.S.C. 202(b)) is amended to read as follows:

“(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.”

Approved September 13, 1960.