I

114TH CONGRESS
1ST SESSION

H. R. 2356

To direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2015

Mr. HILL (for himself and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Financial Services

---

A BILL

To direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Access to Investment Research Act of 2015''.

SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) EXPANSION OF SAFE HARBOR.—Not later than the end of the 45-day period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall propose, and not later than the end of the 120-

day period beginning on such date, the Commission shall adopt, upon such terms, conditions, or requirements as the Commission may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation, revisions to section 230.139 of title 17, Code of Federal Regulations, to provide that a covered investment fund research report—

(1) shall be deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933, not to constitute an offer for sale or an offer to sell a security that is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, even if the broker or dealer is participating or will participate in the registered offering of the covered investment fund's securities; and

(2) shall be deemed to satisfy the conditions of subsection (a)(1) or (a)(2) of section 230.139 of title 17, Code of Federal Regulations, or any successor provisions, for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization.

(b) IMPLEMENTATION OF SAFE HARBOR.—In implementing the safe harbor pursuant to subsection (a), the Commission shall—

(1) not, in the case of a covered investment fund with a class of securities in substantially continuous distribution, condition the safe harbor on whether the broker's or dealer's publication or distribution of a covered investment fund research report constitutes such broker's or dealer's initiation or reinitiation of research coverage on such covered investment fund or its securities;

(2) not—

(A) require the covered investment fund to have been registered as an investment company under the Investment Company Act of 1940 or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 for any period exceeding twelve months; or

(B) impose a minimum float provision exceeding that referenced in subsection (a)(1)(i)(A)(1)(i) of section 230.139 of title 17, Code of Federal Regulations;

(3) provide that a self-regulatory organization may not maintain or enforce any rule that would—

(A) condition the ability of a member to publish or distribute a covered investment fund research report on whether the member is also participating in a registered offering or other distribution of any securities of such covered investment fund;

(B) condition the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund on whether the member has published or distributed a covered investment fund research report about such covered investment fund or its securities; or

(C) require the filing of a covered investment fund research report with such self-regulatory organization; and

(4) provide that a covered investment fund research report shall not be subject to sections 24(b) or 34(b) of the Investment Company Act of 1940 or the rules and regulations thereunder.

(c) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed as in any way limiting—

(1) the applicability of the antifraud provisions of the Federal securities laws; or

(2) the authority of any self-regulatory organization to examine or supervise a member's practices in connection with such member's publication or distribution of a covered investment fund research re-

port for compliance with otherwise applicable provisions of the Federal securities laws or self-regulatory organization rules.

(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—From and after the 120-day period beginning on the date of enactment of this Act, if the Commission has not met its obligations pursuant to subsection (a) to adopt revisions to section 230.139 of title 17, Code of Federal Regulations, and until such time as the Commission has done so, a covered investment fund research report published or distributed by a broker or dealer after such date shall be deemed to meet the requirements of section 230.139 of title 17, Code of Federal Regulations, and to satisfy the conditions of subsection (a)(1) or (a)(2) thereof for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization, as if revised and implemented in accordance with subsections (a) and (b).

(e) DEFINITIONS.—For purposes of this Act:

(1) COVERED INVESTMENT FUND RESEARCH REPORT.—The term "covered investment fund research report" means a research report published or distributed by a broker or dealer about a covered investment fund or any of its securities.

(2) COVERED INVESTMENT FUND.—The term ‘‘covered investment fund’’ means—

(A) an investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 and that has filed a registration statement under the Securities Act of 1933 for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

(B) a trust or other person—

(i) that has a class of securities listed for trading on a national securities exchange;

(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(iii) that allows its securities to be purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(3) RESEARCH REPORT.—The term ''research report'' has the meaning given to that term under section 2(a)(3) of the Securities Act of 1933, except that such term shall not include an oral communication.

(4) SELF-REGULATORY ORGANIZATION.—The term ''self-regulatory organization'' has the meaning given to that term under section 3(a)(26) of the Securities Exchange Act of 1934.

○