

115TH CONGRESS  
1ST SESSION

# H. R. 910

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## AN ACT

To direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, 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 “Fair Access to Invest-  
3 ment Research Act of 2017”.

4 **SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.**

5 (a) **EXPANSION OF THE SAFE HARBOR.**—Not later  
6 than the end of the 180-day period beginning on the date  
7 of enactment of this Act, the Securities and Exchange  
8 Commission shall propose, and not later than the end of  
9 the 270-day period beginning on such date, the Commis-  
10 sion shall adopt, upon such terms, conditions, or require-  
11 ments as the Commission may determine necessary or ap-  
12 propriate in the public interest, for the protection of inves-  
13 tors, and for the promotion of capital formation, revisions  
14 to section 230.139 of title 17, Code of Federal Regula-  
15 tions, to provide that a covered investment fund research  
16 report that is published or distributed by a broker or deal-  
17 er—

18 (1) shall be deemed, for purposes of sections  
19 2(a)(10) and 5(c) of the Securities Act of 1933 (15  
20 U.S.C. 77b(a)(10), 77e(c)), not to constitute an  
21 offer for sale or an offer to sell a security that is the  
22 subject of an offering pursuant to a registration  
23 statement that is effective, even if the broker or  
24 dealer is participating or will participate in the reg-  
25 istered offering of the covered investment fund’s se-  
26 curities; and

1           (2) shall be deemed to satisfy the conditions of  
2           subsection (a)(1) or (a)(2) of section 230.139 of title  
3           17, Code of Federal Regulations, or any successor  
4           provisions, for purposes of the Commission's rules  
5           and regulations under the Federal securities laws  
6           and the rules of any self-regulatory organization.

7           (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-  
8           menting the safe harbor pursuant to subsection (a), the  
9           Commission shall—

10           (1) not, in the case of a covered investment  
11           fund with a class of securities in substantially con-  
12           tinuous distribution, condition the safe harbor on  
13           whether the broker's or dealer's publication or dis-  
14           tribution of a covered investment fund research re-  
15           port constitutes such broker's or dealer's initiation  
16           or reinitiation of research coverage on such covered  
17           investment fund or its securities;

18           (2) not—

19           (A) require the covered investment fund to  
20           have been registered as an investment company  
21           under the Investment Company Act of 1940  
22           (15 U.S.C. 80a-1 et seq.) or subject to the re-  
23           porting requirements of section 13 or 15(d) of  
24           the Securities Exchange Act of 1934 (15  
25           U.S.C. 78m, 78o(d)) for any period exceeding

1 the period of time referenced under paragraph  
2 (a)(1)(i)(A)(1) of section 230.139 of title 17,  
3 Code of Federal Regulations; or

4 (B) impose a minimum float provision ex-  
5 ceeding that referenced in paragraph  
6 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,  
7 Code of Federal Regulations;

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

10 (A) prohibit the ability of a member to  
11 publish or distribute a covered investment fund  
12 research report solely because the member is  
13 also participating in a registered offering or  
14 other distribution of any securities of such cov-  
15 ered investment fund; or

16 (B) prohibit the ability of a member to  
17 participate in a registered offering or other dis-  
18 tribution of securities of a covered investment  
19 fund solely because the member has published  
20 or distributed a covered investment fund re-  
21 search report about such covered investment  
22 fund or its securities; and

23 (4) provide that a covered investment fund re-  
24 search report shall not be subject to section 24(b) of  
25 the Investment Company Act of 1940 (15 U.S.C.

1 80a–24(b)) or the rules and regulations thereunder,  
2 except that such report may still be subject to such  
3 section and the rules and regulations thereunder to  
4 the extent that it is otherwise not subject to the con-  
5 tent standards in the rules of any self-regulatory or-  
6 ganization related to research reports, including  
7 those contained in the rules governing communica-  
8 tions with the public regarding investment compa-  
9 nies or substantially similar standards.

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

12 (1) the applicability of the antifraud or  
13 antimanipulation provisions of the Federal securities  
14 laws and rules adopted thereunder to a covered in-  
15 vestment fund research report, including section 17  
16 of the Securities Act of 1933 (15 U.S.C. 77q), sec-  
17 tion 34(b) of the Investment Company Act of 1940  
18 (15 U.S.C. 80a–33), and sections 9 and 10 of the  
19 Securities Exchange Act of 1934 (15 U.S.C. 78i,  
20 78j); or

21 (2) the authority of any self-regulatory organi-  
22 zation to examine or supervise a member’s practices  
23 in connection with such member’s publication or dis-  
24 tribution of a covered investment fund research re-  
25 port for compliance with applicable provisions of the

1 Federal securities laws or self-regulatory organiza-  
2 tion rules related to research reports, including those  
3 contained in rules governing communications with  
4 the public, or to require the filing of communications  
5 with the public the purpose of which is not to pro-  
6 vide research and analysis of covered investment  
7 funds.

8 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

9 (1) IN GENERAL.—From and after the 270-day  
10 period beginning on the date of enactment of this  
11 Act, if the Commission has not adopted revisions to  
12 section 230.139 of title 17, Code of Federal Regula-  
13 tions, as required by subsection (a), and until such  
14 time as the Commission has done so, a broker or  
15 dealer distributing or publishing a covered invest-  
16 ment fund research report after such date shall be  
17 able to rely on the provisions of section 230.139 of  
18 title 17, Code of Federal Regulations, and the  
19 broker or dealer’s publication of such report shall be  
20 deemed to satisfy the conditions of subsection (a)(1)  
21 or (a)(2) of section 230.139 of title 17, Code of Fed-  
22 eral Regulations, if the covered investment fund that  
23 is the subject of such report satisfies the reporting  
24 history requirements (without regard to Form S-3  
25 or Form F-3 eligibility) and minimum float provi-

1 sions of such subsections for purposes of the Com-  
2 mission's rules and regulations under the Federal  
3 securities laws and the rules of any self-regulatory  
4 organization, as if revised and implemented in ac-  
5 cordance with subsections (a) and (b).

6 (2) STATUS OF COVERED INVESTMENT FUND.—

7 After such period and until the Commission has  
8 adopted revisions to section 230.139 and FINRA  
9 has revised rule 2210, for purposes of subsection  
10 (c)(7)(O) of such rule, a covered investment fund  
11 shall be deemed to be a security that is listed on a  
12 national securities exchange and that is not subject  
13 to section 24(b) of the Investment Company Act of  
14 1940 (15 U.S.C. 80a-24(b)).

15 (3) COVERED INVESTMENT FUNDS COMMUNICA-  
16 TIONS.—

17 (A) IN GENERAL.—Except as provided in  
18 subparagraph (B), communications that con-  
19 cern only covered investment funds that fall  
20 within the scope of section 24(b) of the Invest-  
21 ment Company Act of 1940 (15 U.S.C. 80a-  
22 24(b)) shall not be required to be filed with  
23 FINRA.

24 (B) EXCEPTION.—FINRA may require the  
25 filing of communications with the public if the

1           purpose of those communications is not to pro-  
2           vide research and analysis of covered invest-  
3           ment funds.

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

5           (1) The term “covered investment fund re-  
6           search report” means a research report published or  
7           distributed by a broker or dealer about a covered in-  
8           vestment fund or any securities issued by the cov-  
9           ered investment fund, but not including a research  
10          report to the extent that it is published or distrib-  
11          uted by the covered investment fund or any affiliate  
12          of the covered investment fund.

13          (2) The term “covered investment fund”  
14          means—

15                (A) an investment company registered  
16                under, or that has filed an election to be treated  
17                as a business development company under, the  
18                Investment Company Act of 1940 and that has  
19                filed a registration statement under the Securi-  
20                ties Act of 1933 for the public offering of a  
21                class of its securities, which registration state-  
22                ment has been declared effective by the Com-  
23                mission; and

24                (B) a trust or other person—



1 (i) issuing securities in an offering  
2 registered under the Securities Act of 1933  
3 and which class of securities is listed for  
4 trading on a national securities exchange;

5 (ii) the assets of which consist pri-  
6 marily of commodities, currencies, or deriv-  
7 ative instruments that reference commod-  
8 ities or currencies, or interests in the fore-  
9 going; and

10 (iii) that provides in its registration  
11 statement under the Securities Act of 1933  
12 that a class of its securities are purchased  
13 or redeemed, subject to conditions or limi-  
14 tations, for a ratable share of its assets.

15 (3) The term “FINRA” means the Financial  
16 Industry Regulatory Authority.

17 (4) The term “research report” has the mean-  
18 ing given that term under section 2(a)(3) of the Se-  
19 curities Act of 1933 (15 U.S.C. 77b(a)(3)), except  
20 that such term shall not include an oral communica-  
21 tion.

22 (5) The term “self-regulatory organization” has  
23 the meaning given to that term under section

1 3(a)(26) of the Securities Exchange Act of 1934 (15  
2 U.S.C. 78c(a)(26)).

Passed the House of Representatives May 1, 2017.

Attest:

*Clerk.*



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