

115TH CONGRESS
1ST SESSION

H. R. 910

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

FEBRUARY 7, 2017

Mr. HILL (for himself and Mr. FOSTER) 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.

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 “Fair Access to Invest-
5 ment Research Act of 2017”.

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

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

1 the 180-day period beginning on such date, the Commis-
2 sion shall adopt, upon such terms, conditions, or require-
3 ments as the Commission may determine necessary or ap-
4 propriate in the public interest, for the protection of inves-
5 tors, and for the promotion of capital formation, revisions
6 to section 230.139 of title 17, Code of Federal Regula-
7 tions, to provide that a covered investment fund research
8 report that is published or distributed by a broker or deal-
9 er—

10 (1) shall be deemed, for purposes of sections
11 2(a)(10) and 5(c) of the Securities Act of 1933 (15
12 U.S.C. 77b(a)(10), 77e(c)), not to constitute an
13 offer for sale or an offer to sell a security that is the
14 subject of an offering pursuant to a registration
15 statement that is effective, even if the broker or
16 dealer is participating or will participate in the reg-
17 istered offering of the covered investment fund's se-
18 curities; and

19 (2) shall be deemed to satisfy the conditions of
20 subsection (a)(1) or (a)(2) of section 230.139 of title
21 17, Code of Federal Regulations, or any successor
22 provisions, for purposes of the Commission's rules
23 and regulations under the Federal securities laws
24 and the rules of any self-regulatory organization.

1 (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-
2 menting the safe harbor pursuant to subsection (a), the
3 Commission shall—

4 (1) not, in the case of a covered investment
5 fund with a class of securities in substantially con-
6 tinuous distribution, condition the safe harbor on
7 whether the broker’s or dealer’s publication or dis-
8 tribution of a covered investment fund research re-
9 port constitutes such broker’s or dealer’s initiation
10 or reinitiation of research coverage on such covered
11 investment fund or its securities;

12 (2) not—

13 (A) require the covered investment fund to
14 have been registered as an investment company
15 under the Investment Company Act of 1940
16 (15 U.S.C. 80a–1 et seq.) or subject to the re-
17 porting requirements of section 13 or 15(d) of
18 the Securities Exchange Act of 1934 (15
19 U.S.C. 78m, 78o(d)) for any period exceeding
20 the period of time referenced under paragraph
21 (a)(1)(i)(A)(1) of section 230.139 of title 17,
22 Code of Federal Regulations; or

23 (B) impose a minimum float provision ex-
24 ceeding that referenced in paragraph

1 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,
2 Code of Federal Regulations;

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

5 (A) prohibit the ability of a member to
6 publish or distribute a covered investment fund
7 research report solely because the member is
8 also participating in a registered offering or
9 other distribution of any securities of such cov-
10 ered investment fund; or

11 (B) prohibit the ability of a member to
12 participate in a registered offering or other dis-
13 tribution of securities of a covered investment
14 fund solely because the member has published
15 or distributed a covered investment fund re-
16 search report about such covered investment
17 fund or its securities; and

18 (4) provide that a covered investment fund re-
19 search report shall not be subject to section 24(b) of
20 the Investment Company Act of 1940 (15 U.S.C.
21 80a–24(b)) or the rules and regulations thereunder,
22 except that such report may still be subject to such
23 section and the rules and regulations thereunder to
24 the extent that it is otherwise not subject to the con-
25 tent standards in the rules of any self-regulatory or-

1 ganization related to research reports, including
2 those contained in the rules governing communica-
3 tions with the public regarding investment compa-
4 nies or substantially similar standards.

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

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

16 (2) the authority of any self-regulatory organi-
17 zation to examine or supervise a member’s practices
18 in connection with such member’s publication or dis-
19 tribution of a covered investment fund research re-
20 port for compliance with applicable provisions of the
21 Federal securities laws or self-regulatory organiza-
22 tion rules related to research reports, including those
23 contained in rules governing communications with
24 the public.

25 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

1 (1) IN GENERAL.—From and after the 180-day
2 period beginning on the date of enactment of this
3 Act, if the Commission has not adopted revisions to
4 section 230.139 of title 17, Code of Federal Regula-
5 tions, as required by subsection (a), and until such
6 time as the Commission has done so, a broker or
7 dealer distributing or publishing a covered invest-
8 ment fund research report after such date shall be
9 able to rely on the provisions of section 230.139 of
10 title 17, Code of Federal Regulations, and the
11 broker or dealer’s publication of such report shall be
12 deemed to satisfy the conditions of subsection (a)(1)
13 or (a)(2) of section 230.139 of title 17, Code of Fed-
14 eral Regulations, if the covered investment fund that
15 is the subject of such report satisfies the reporting
16 history requirements (without regard to Form S-3
17 or Form F-3 eligibility) and minimum float provi-
18 sions of such subsections for purposes of the Com-
19 mission’s rules and regulations under the Federal
20 securities laws and the rules of any self-regulatory
21 organization, as if revised and implemented in ac-
22 cordance with subsections (a) and (b).

23 (2) STATUS OF COVERED INVESTMENT FUND.—
24 After such period and until the Commission has
25 adopted revisions to section 230.139 and FINRA

1 has revised rule 2210, for purposes of subsection
2 (c)(7)(O) of such rule, a covered investment fund
3 shall be deemed to be a security that is listed on a
4 national securities exchange and that is not subject
5 to section 24(b) of the Investment Company Act of
6 1940 (15 U.S.C. 80a–24(b)). Communications con-
7 cerning only covered investment funds that fall with-
8 in the scope of such section shall not be required to
9 be filed with FINRA.

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

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

19 (2) The term “covered investment fund”
20 means—

21 (A) an investment company registered
22 under, or that has filed an election to be treated
23 as a business development company under, the
24 Investment Company Act of 1940 and that has
25 filed a registration statement under the Securi-

ties 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) issuing securities in an offering registered under the Securities Act of 1933 and which class of securities is 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 provides in its registration statement under the Securities Act of 1933 that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

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

(4) The term “research report” has the meaning given that term under section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)), except

1 that such term shall not include an oral communica-
2 tion.

3 (5) The term “self-regulatory organization” has
4 the meaning given to that term under section
5 3(a)(26) of the Securities Exchange Act of 1934 (15
6 U.S.C. 78c(a)(26)).

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