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S. 327

One Hundred Fifteenth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and seventeen

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.

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 2017".

SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) EXPANSION OF THE SAFE HARBOR.—Not later than the end of the 180-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 270-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 that is published or distributed by a broker or dealer, other than a broker or dealer that is an investment adviser to the fund or an affiliated person of the investment adviser to the fund—

(1) shall be deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10), 77e(c)), 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 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 paragraph (1) or (2) of section 230.139(a) 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 (15 U.S.C. 80a–1 et seq.) or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) for any period exceeding the period of time referenced under section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations; or

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

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

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

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

(4) provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

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

(1) the applicability of the antifraud or antimanipulation provisions of the Federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act of 1933 (15 U.S.C. 77q), section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–33(b)), and sections 9 and 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j); 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 report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public, or to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.

(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

(1) IN GENERAL.—From and after the 270-day period beginning on the date of enactment of this Act, if the Commission

has not adopted revisions to section 230.139 of title 17, Code of Federal Regulations, as required by subsection (a), and until such time as the Commission has done so, a broker or dealer distributing or publishing a covered investment fund research report after such date shall be able to rely on the provisions of section 230.139 of title 17, Code of Federal Regulations, and the broker or dealer's publication of such report shall be deemed to satisfy the conditions of paragraph (1) or (2) of section 230.139(a) of title 17, Code of Federal Regulations, if the covered investment fund that is the subject of such report satisfies the reporting history requirements (without regard to Form S–3 or Form F–3 eligibility) and minimum float provisions of such subsections 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).

(2) STATUS OF COVERED INVESTMENT FUND.—After such period and until the Commission has adopted revisions to section 230.139 of title 17, Code of Federal Regulations, and FINRA has revised rule 2210, for purposes of subsection (c)(7)(O) of such rule, a covered investment fund shall be deemed to be a security that is listed on a national securities exchange and that is not subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)).

(3) COVERED INVESTMENT FUNDS COMMUNICATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), communications that concern only covered investment funds that fall within the scope of section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) shall not be required to be filed with FINRA.

(B) EXCEPTION.—FINRA may require the filing of communications with the public if the purpose of those communications is not to provide research and analysis of covered investment funds.

(e) EXCEPTION.—The safe harbor under subsection (a) shall not apply to the publication or distribution by a broker or a dealer of a covered investment fund research report, the subject of which is a business development company or a registered closed-end investment company, during the time period described in section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations, except where expressly permitted by the rules and regulations of the Securities and Exchange Commission under the Federal securities laws.

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

(1) The term "affiliated person" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).

(2) 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 (15 U.S.C. 80a–1 et seq.) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) 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 "covered investment fund research report" means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.

(4) The term "FINRA" means the Financial Industry Regulatory Authority.

(5) The term "investment adviser" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).

(6) 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 that such term shall not include an oral communication.

(7) The term "self-regulatory organization" has the meaning given that term under section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)).

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.