

115TH CONGRESS
1ST SESSION

S. 327

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, other than a broker or dealer that is an investment
18 adviser to the fund or an affiliated person of the invest-
19 ment adviser to the fund—

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

1 istered offering of the covered investment fund’s se-
2 curities; and

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

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

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

20 (2) not—

21 (A) require the covered investment fund to
22 have been registered as an investment company
23 under the Investment Company Act of 1940
24 (15 U.S.C. 80a–1 et seq.) or subject to the re-
25 porting requirements of section 13 or 15(d) of

1 the Securities Exchange Act of 1934 (15
2 U.S.C. 78m, 78o(d)) for any period exceeding
3 the period of time referenced under section
4 230.139(a)(1)(i)(A)(1) of title 17, Code of Fed-
5 eral Regulations; or

6 (B) impose a minimum float provision ex-
7 ceeding that referenced in section
8 230.139(a)(1)(i)(A)(1)(i) of title 17, Code of
9 Federal Regulations;

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

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

18 (B) prohibit the ability of a member to
19 participate in a registered offering or other dis-
20 tribution of securities of a covered investment
21 fund solely because the member has published
22 or distributed a covered investment fund re-
23 search report about such covered investment
24 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

1 in connection with such member's publication or dis-
2 tribution of a covered investment fund research re-
3 port for compliance with applicable provisions of the
4 Federal securities laws or self-regulatory organiza-
5 tion rules related to research reports, including those
6 contained in rules governing communications with
7 the public, or to require the filing of communications
8 with the public the purpose of which is not to pro-
9 vide research and analysis of covered investment
10 funds.

11 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

12 (1) IN GENERAL.—From and after the 270-day
13 period beginning on the date of enactment of this
14 Act, if the Commission has not adopted revisions to
15 section 230.139 of title 17, Code of Federal Regula-
16 tions, as required by subsection (a), and until such
17 time as the Commission has done so, a broker or
18 dealer distributing or publishing a covered invest-
19 ment fund research report after such date shall be
20 able to rely on the provisions of section 230.139 of
21 title 17, Code of Federal Regulations, and the
22 broker or dealer's publication of such report shall be
23 deemed to satisfy the conditions of paragraph (1) or
24 (2) of section 230.139(a) of title 17, Code of Fed-
25 eral Regulations, if the covered investment fund that

1 is the subject of such report satisfies the reporting
2 history requirements (without regard to Form S-3
3 or Form F-3 eligibility) and minimum float provi-
4 sions of such subsections for purposes of the Com-
5 mission's rules and regulations under the Federal
6 securities laws and the rules of any self-regulatory
7 organization, as if revised and implemented in ac-
8 cordance with subsections (a) and (b).

9 (2) STATUS OF COVERED INVESTMENT FUND.—

10 After such period and until the Commission has
11 adopted revisions to section 230.139 of title 17,
12 Code of Federal Regulations, and FINRA has re-
13 vised rule 2210, for purposes of subsection (c)(7)(O)
14 of such rule, a covered investment fund shall be
15 deemed to be a security that is listed on a national
16 securities exchange and that is not subject to section
17 24(b) of the Investment Company Act of 1940 (15
18 U.S.C. 80a-24(b)).

19 (3) COVERED INVESTMENT FUNDS COMMUNICA-
20 TIONS.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), communications that con-
23 cern only covered investment funds that fall
24 within the scope of section 24(b) of the Invest-
25 ment Company Act of 1940 (15 U.S.C. 80a-

1 24(b)) shall not be required to be filed with
2 FINRA.

3 (B) EXCEPTION.—FINRA may require the
4 filing of communications with the public if the
5 purpose of those communications is not to pro-
6 vide research and analysis of covered invest-
7 ment funds.

8 (e) EXCEPTION.—The safe harbor under subsection
9 (a) shall not apply to the publication or distribution by
10 a broker or a dealer of a covered investment fund research
11 report, the subject of which is a business development
12 company or a registered closed-end investment company,
13 during the time period described in section
14 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regu-
15 lations, except where expressly permitted by the rules and
16 regulations of the Securities and Exchange Commission
17 under the Federal securities laws.

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

19 (1) The term “affiliated person” has the mean-
20 ing given the term in section 2(a) of the Investment
21 Company Act of 1940 (15 U.S.C. 80a–2(a)).

22 (2) The term “covered investment fund”
23 means—

24 (A) an investment company registered
25 under, or that has filed an election to be treated

1 as a business development company under, the
2 Investment Company Act of 1940 (15 U.S.C.
3 80a–1 et seq.) and that has filed a registration
4 statement under the Securities Act of 1933 (15
5 U.S.C. 77a et seq.) for the public offering of a
6 class of its securities, which registration state-
7 ment has been declared effective by the Com-
8 mission; and

9 (B) a trust or other person—

10 (i) issuing securities in an offering
11 registered under the Securities Act of 1933
12 (15 U.S.C. 77a et seq.) and which class of
13 securities is listed for trading on a national
14 securities exchange;

15 (ii) the assets of which consist pri-
16 marily of commodities, currencies, or deriv-
17 ative instruments that reference commod-
18 ities or currencies, or interests in the fore-
19 going; and

20 (iii) that provides in its registration
21 statement under the Securities Act of 1933
22 (15 U.S.C. 77a et seq.) that a class of its
23 securities are purchased or redeemed, sub-
24 ject to conditions or limitations, for a rat-
25 able share of its assets.

1 (3) The term “covered investment fund re-
2 search report” means a research report published or
3 distributed by a broker or dealer about a covered in-
4 vestment fund or any securities issued by the cov-
5 ered investment fund, but does not include a re-
6 search report to the extent that the research report
7 is published or distributed by the covered investment
8 fund or any affiliate of the covered investment fund,
9 or any research report published or distributed by
10 any broker or dealer that is an investment adviser
11 (or an affiliated person of an investment adviser) for
12 the covered investment fund.

13 (4) The term “FINRA” means the Financial
14 Industry Regulatory Authority.

15 (5) The term “investment adviser” has the
16 meaning given the term in section 2(a) of the Invest-
17 ment Company Act of 1940 (15 U.S.C. 80a-2(a)).

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

23 (7) The term “self-regulatory organization” has
24 the meaning given that term under section 3(a)(26)

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

Passed the Senate September 11, 2017.

Attest:

Secretary.

115TH CONGRESS
1ST Session

S. 327

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.