

115TH CONGRESS  
1ST SESSION

# S. 327

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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, 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

1           (4) provide that a covered investment fund re-  
2 search report shall not be subject to section 24(b) of  
3 the Investment Company Act of 1940 (15 U.S.C.  
4 80a–24(b)) or the rules and regulations thereunder,  
5 except that such report may still be subject to such  
6 section and the rules and regulations thereunder to  
7 the extent that it is otherwise not subject to the con-  
8 tent standards in the rules of any self-regulatory or-  
9 ganization related to research reports, including  
10 those contained in the rules governing communica-  
11 tions with the public regarding investment compa-  
12 nies or substantially similar standards.

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

15           (1) the applicability of the antifraud or  
16 antimanipulation provisions of the Federal securities  
17 laws and rules adopted thereunder to a covered in-  
18 vestment fund research report, including section 17  
19 of the Securities Act of 1933 (15 U.S.C. 77q), sec-  
20 tion 34(b) of the Investment Company Act of 1940  
21 (15 U.S.C. 80a–33(b)), and sections 9 and 10 of the  
22 Securities Exchange Act of 1934 (15 U.S.C. 78i,  
23 78j); or

24           (2) the authority of any self-regulatory organi-  
25 zation 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.*

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