

## Calendar No. 11

115TH CONGRESS  
1ST SESSION**S. 327**

To direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

Mr. HELLER (for himself, Mr. PETERS, and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

MARCH 13, 2017

Reported by Mr. CRAPO, with amendments

[Omit the part struck through and insert the part printed in italic]

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**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”.

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

2 (a) EXPANSION OF THE SAFE HARBOR.—Not later  
 3 than the end of the ~~45-day~~ *180-day* period beginning on  
 4 the date of enactment of this Act, the Securities and Ex-  
 5 change Commission shall propose, and not later than the  
 6 end of the ~~180-day~~ *270-day* period beginning on such date,  
 7 the Commission shall adopt, upon such terms, conditions,  
 8 or requirements as the Commission may determine nec-  
 9 essary or appropriate in the public interest, for the protec-  
 10 tion of investors, and for the promotion of capital forma-  
 11 tion, revisions to section 230.139 of title 17, Code of Fed-  
 12 eral Regulations, to provide that a covered investment  
 13 fund research report that is published or distributed by  
 14 a broker or dealer—

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

24 (2) shall be deemed to satisfy the conditions of  
 25 paragraph ~~(a)~~(1) or ~~(a)~~(2) of section 230.139 *(a)* of  
 26 title 17, Code of Federal Regulations, or any suc-

1 cessor provisions, for purposes of the Commission's  
 2 rules and regulations under the Federal securities  
 3 laws and the rules of any self-regulatory organiza-  
 4 tion.

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

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

16 (2) not—

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

1           (a)(1)(i)(A)(1) of title 17, Code of Federal Reg-  
2           ulations; or

3           (B) impose a minimum float provision ex-  
4           ceeding that referenced in paragraph  
5           ~~(a)(1)(i)(A)(1)(i)~~ of section 230.139  
6           (a)(1)(i)(A)(1)(i) of title 17, Code of Federal  
7           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(b)), 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 provide*  
 6 *research and analysis of covered investment funds.*

7 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

8 (1) IN GENERAL.—From and after the ~~180-day~~  
 9 *270-day* period beginning on the date of enactment  
 10 of this Act, if the Commission has not adopted revi-  
 11 sions to section 230.139 of title 17, Code of Federal  
 12 Regulations, as required by subsection (a), and until  
 13 such time as the Commission has done so, a broker  
 14 or dealer distributing or publishing a covered invest-  
 15 ment fund research report after such date shall be  
 16 able to rely on the provisions of section 230.139 of  
 17 title 17, Code of Federal Regulations, and the  
 18 broker or dealer's publication of such report shall be  
 19 deemed to satisfy the conditions of paragraph ~~(a)~~(1)  
 20 or ~~(a)~~(2) of ~~that~~ section *230.139(a) of title 17, Code*  
 21 *of Federal Regulations*, if the covered investment  
 22 fund that is the subject of such report satisfies the  
 23 reporting history requirements (without regard to  
 24 Form S-3 or Form F-3 eligibility) and minimum  
 25 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)). ~~Communications concerning only covered investment funds that fall within the scope of such section shall not be required to be filed with FINRA.~~

(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.*

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

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

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

15                  (2) The term “covered investment fund”  
 16                  means—

17                       (A) an investment company registered  
 18                       under, or that has filed an election to be treated  
 19                       as a business development company under, the  
 20                       Investment Company Act of 1940 (15 U.S.C.  
 21                       80a–1 et seq.) and that has filed a registration  
 22                       statement under the Securities Act of 1933 (15  
 23                       U.S.C. 77a et seq.) for the public offering of a  
 24                       class of its securities, which registration state-



ment 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.

(2) *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 dis-*

1       *tributed by the covered investment fund or any affil-*  
2       *iate of the covered investment fund.*

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

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

10          (5) The term “self-regulatory organization” has  
11       the meaning given ~~to~~ that term under section  
12       3(a)(26) of the Securities Exchange Act of 1934 (15  
13       U.S.C. 78c(a)(26)).



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