

SMALL BUSINESS CAPITAL
FORMATION ENHANCEMENT ACT

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of S. 416 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 416) to amend the Small Business Investment Incentive Act of 1980 to require an annual review by the Securities and Exchange Commission of the annual government-business forum on capital formation.

There being no objection, the Senate proceeded to consider the bill.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 416) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 416

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 “Small Business Capital Formation Enhancement Act”.

SEC. 2. ANNUAL REVIEW OF GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION.

Section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1) is amended by adding at the end the following:

“(e) The Commission shall—

“(1) review the findings and recommendations of the forum; and

“(2) each time the forum submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the forum; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.”.

**FAIR ACCESS TO INVESTMENT
RESEARCH ACT OF 2017**

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 11, S. 327.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (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.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 327

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 **[45-day]** *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 **[180-day]** *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—

(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 **[(a)](1)** or **[(a)](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 **[paragraph (a)(1)(i)(A)(1) of]** 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 **[paragraph (a)(1)(i)(A)(1)(i) of]** 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 **[180-day]** *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 **[(a)](1)** or **[(a)](2)** of **[that]** 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)). **[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*