AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3383
OFFERED BY MS. WATERS

Page 1, strike line 1 and all that follows and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Increasing Investor Opportunities Act".

SEC. 2. CLOSED-END COMPANY AUTHORITY TO INVEST IN PRIVATE FUNDS.

(a) IN GENERAL.—Section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) is amended by adding at the end the following:

"(d) CLOSED-END COMPANY AUTHORITY TO INVEST IN PRIVATE FUNDS.—

"(1) IN GENERAL.—Except as otherwise prohibited or restricted by this Act (or any rule issued under this Act), the Commission may not prohibit or otherwise limit a closed-end company from investing any or all of the assets of the closed-end company in securities issued by private funds.

"(2) OTHER RESTRICTIONS ON COMMISSION AUTHORITY.—

"(A) IN GENERAL.—Except as otherwise prohibited or restricted by this Act (or any rule issued under this Act) or to the extent permitted by subparagraph (B), the Commission may not impose any condition on, restrict, or otherwise limit—

"(i) the offer to sell, or the sale of, securities issued by a closed-end company that invests, or proposes to invest, in securities issued by private funds; or

"(ii) the listing of the securities of a closed-end company described in clause (i) on a national securities exchange.

"(B) UNRELATED RESTRICTIONS.—The Commission may impose a condition on, restrict, or otherwise limit an activity described in clause (i) or (ii) of subparagraph (A) if that condition, restriction, or limitation is unrelated to the underlying characteristics of a private fund or the status of a private fund as a private fund.

"(3) APPLICATION.—Notwithstanding section 6(f), this subsection shall also apply to a closed-end company that elects to be treated as a business development company pursuant to section 54.".

(b) DEFINITION OF PRIVATE FUND.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

"(55) The term 'private fund' means an issuer that would be an investment company, but for section 3(c)(1) or 3(c)(7).".

(c) TREATMENT BY NATIONAL SECURITIES EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(m)(1) Except as otherwise prohibited or restricted by rules of the exchange that are consistent with section 5(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(d)), an exchange may not prohibit, condition, restrict, or impose any other limitation on the listing or trading of the securities of a closed-end company when the closed-end company invests, or may invest, some or all of the assets of the closed-end company in securities issued by private funds.

"(2) In this paragraph—

"(A) the term 'closed-end company'—

"(i) has the meaning given the term in section 5(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)); and "(ii) includes a closed-end company that elects to be treated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53); and

"(B) the term 'private fund' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).".

(d) INVESTMENT LIMITATION.—Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), in the second sentence, by striking "subparagraphs (A)(i) and (B)(i)" and inserting "subparagraphs (A)(i), (B)(i), and (C)"; and

(2) in paragraph (7)(D), by striking "subparagraphs (A)(i) and (B)(i)" and inserting "subparagraphs (A)(i), (B)(i), and (C)".

SEC. 3. PARITY IN REDEMPTION AND RESALE RIGHTS FOR ACCREDITED INVESTORS.

(a) EQUAL TERMS.—An issuer, or any affiliate or third party acting on behalf of an issuer, may not offer to sell or sell any security to an accredited investor that is not a qualified institutional buyer (as defined in Rule 144A under the Securities Act of 1933) on terms that provide such investor with resale, redemption, or other liquidity rights that are more favorable than the terms provided to any other investor in the same class of securities.

(b) COMMISSION RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules to carry out subsection (a).

SEC. 4. FAIR VALUATION REQUIREMENTS FOR FUNDS OFFERED BY REGISTERED INVESTMENT ADVISERS.

(a) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 206 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6) is amended by adding at the end the following new subsection:

"(d) FAIR VALUE OBLIGATIONS FOR CERTAIN PRIVATE FUNDS.—With respect to any pooled investment vehicle advised by an investment adviser that—

"(1) is not a registered investment company, and

"(2) includes one or more investors that are not qualified institutional buyers,

the investment adviser shall, in any communication of the value of such vehicle or its portfolio holdings to investors or prospective investors, determine the fair value of each security that is not traded on an established securities market in accordance with section 2(a)(41) of the Investment Company Act of 1940 (15 U.S.C. 80a 2(a)(41)) and any rules issued thereunder.''.

(b) RULEMAKING.—The Commission shall adopt such rules as are necessary to implement subsection (a), which shall, to the greatest extent practicable, align valuation practices for such funds with the requirements applicable to registered investment companies under Rule 2a-5 (17 CFR 270.2a-5).

SEC. 5. RULES OF CONSTRUCTION.

(a) Nothing in this Act or the amendments made by this Act may be construed to limit or amend any fiduciary duty owed to a closed-end company (as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2))) or by an investment adviser (as defined under section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a))) to a closed-end company.

(b) Nothing in this Act or the amendments made by this Act may be construed to limit or amend the valuation, liquidity, or redemption requirements or obligations of a closed-end company (as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2))) as required by the Investment Company Act of 1940.