

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Company Act of 1940 with respect to the authority of closed-end companies to invest in private funds.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Investment Company Act of 1940 with respect to the authority of closed-end companies to invest in private funds.

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 “Increasing Investor
5 Opportunities Act”.

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

3 (a) IN GENERAL.—Section 5 of the Investment Com-
4 pany Act of 1940 (15 U.S.C. 80a–5) is amended by add-
5 ing at the end the following:

6 “(d) CLOSED-END COMPANY AUTHORITY TO INVEST
7 IN PRIVATE FUNDS.—

8 “(1) IN GENERAL.—Except as otherwise pro-
9 hibited or restricted by this Act (or any rule issued
10 under this Act), the Commission may not prohibit or
11 otherwise limit a closed-end company from investing
12 any or all of the assets of the closed-end company
13 in securities issued by private funds.

14 “(2) OTHER RESTRICTIONS ON COMMISSION AU-
15 THORITY.—

16 “(A) IN GENERAL.—Except as otherwise
17 prohibited or restricted by this Act (or any rule
18 issued under this Act) or to the extent per-
19 mitted by subparagraph (B), the Commission
20 may not impose any condition on, restrict, or
21 otherwise limit—

22 “(i) the offer to sell, or the sale of, se-
23 curities issued by a closed-end company
24 that invests, or proposes to invest, in secu-
25 rities issued by private funds; or

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

4 “(B) UNRELATED RESTRICTIONS.—The
5 Commission may impose a condition on, re-
6 strict, or otherwise limit an activity described in
7 clause (i) or (ii) of subparagraph (A) if that
8 condition, restriction, or limitation is unrelated
9 to the underlying characteristics of a private
10 fund or the status of a private fund as a private
11 fund.

12 “(3) APPLICATION.—Notwithstanding section
13 6(f), this subsection shall also apply to a closed-end
14 company that elects to be treated as a business de-
15 velopment company pursuant to section 54.”.

16 (b) DEFINITION OF PRIVATE FUND.—Section 2(a) of
17 the Investment Company Act of 1940 (15 U.S.C. 80a-
18 2(a)) is amended by adding at the end the following:

19 “(55) The term ‘private fund’ has the meaning
20 given in section 202(a) of the Investment Advisers
21 Act of 1940 (15 U.S.C. 80b-2(a)).”.

22 (c) TREATMENT BY NATIONAL SECURITIES EX-
23 CHANGES.—Section 6 of the Securities Exchange Act of
24 1934 (15 U.S.C. 78f) is amended by adding at the end
25 the following:

1 “(m)(1) Except as otherwise prohibited or restricted
2 by rules of the exchange that are consistent with section
3 5(d) of the Investment Company Act of 1940 (15 U.S.C.
4 80a–5(d)), an exchange may not prohibit, condition, re-
5 strict, or impose any other limitation on the listing or
6 trading of the securities of a closed-end company when
7 the closed-end company invests, or may invest, some or
8 all of the assets of the closed-end company in securities
9 issued by private funds.

10 “(2) In this subsection—

11 “(A) the term ‘closed-end company’—

12 “(i) has the meaning given the term in sec-
13 tion 5(a) of the Investment Company Act of
14 1940 (15 U.S.C. 80a–5(a)); and

15 “(ii) includes a closed-end company that
16 elects to be treated as a business development
17 company pursuant to section 54 of the Invest-
18 ment Company Act of 1940 (15 U.S.C. 80a–
19 53); and

20 “(B) the term ‘private fund’ has the meaning
21 given the term in section 2(a) of the Investment
22 Company Act of 1940 (15 U.S.C. 80a–2(a)).”.

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

1 (1) in paragraph (1), in the matter preceding
2 subparagraph (A), in the second sentence, by strik-
3 ing “subparagraphs (A)(i) and (B)(i)” and inserting
4 “subparagraphs (A)(i), (B)(i), and (C)”; and

5 (2) in paragraph (7)(D), by striking “subpara-
6 graphs (A)(i) and (B)(i)” and inserting “subpara-
7 graphs (A)(i), (B)(i), and (C)”.

8 (e) RULES OF CONSTRUCTION.—

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

17 (2) Nothing in this section or the amendments
18 made by this section may be construed to limit or
19 amend the valuation, liquidity, or redemption re-
20 quirements or obligations of a closed-end company
21 (as defined in section 5(a)(2) of the Investment
22 Company Act of 1940 (15 U.S.C. 80a–5(a)(2))) as
23 required by the Investment Company Act of 1940.