H. R.____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Hill introduced the following bill; which was referred to the Committee on ________________

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 2016”.
6 SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.
7 (a) EXPANSION OF THE SAFE HARBOR.—Not later
8 than the end of the 45-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 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 subsection (a)(1) or (a)(2) of section 230.139 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 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 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), 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.

(d) **INTERIM EFFECTIVENESS OF SAFE HARBOR.**—

(1) **IN GENERAL.**—From and after the 180-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 Regula-
tions, as required by subsection (a), and until such
time as the Commission has done so, a broker or
dealer distributing or publishing a covered invest-
ment 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 subsection (a)(1)
or (a)(2) of section 230.139 of title 17, Code of Fed-
eral 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 provi-
sions of such subsections for purposes of the Com-
mision’s rules and regulations under the Federal
securities laws and the rules of any self-regulatory
organization, as if revised and implemented in ac-
cordance 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 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.

(e) Definitions.—For purposes of this Act:

(1) 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 not including a research report to the extent that it is published or distributed by the covered investment fund or any affiliate of the covered investment fund.

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

(A) an investment company registered under, or that has filed an election to be treated
as a business development company under, the
Investment Company Act of 1940 and that has
filed a registration statement under the Securi-
ties Act of 1933 for the public offering of a
class of its securities, which registration state-
ment has been declared effective by the Com-
mission; and

(B) a trust or other person—

(i) issuing securities in an offering
registered under the Securities Act of 1933
and which class of securities is listed for
trading on a national securities exchange;

(ii) the assets of which consist pri-
marily of commodities, currencies, or deriv-
ative instruments that reference commod-
ities or currencies, or interests in the fore-
going; and

(iii) that provides in its registration
statement under the Securities Act of 1933
that a class of its securities are purchased
or redeemed, subject to conditions or limi-
tations, for a ratable share of its assets.

(3) The term “FINRA” means the Financial
Industry Regulatory Authority.
(4) The term “research report” has the meaning given that term under section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)), except that such term shall not include an oral communication.

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