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115TH CONGRESS
1ST SESSION

H. R. 910

[Report No. 115-]

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

FEBRUARY 7, 2017

Mr. HILL (for himself and Mr. FOSTER) introduced the following bill; which was referred to the Committee on Financial Services

MARCH --, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 7, 2017]

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”.*

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

7 *(a) EXPANSION OF THE SAFE HARBOR.—Not later*
8 *than the end of the 180-day period beginning on the date*
9 *of enactment of this Act, the Securities and Exchange Com-*
10 *mission shall propose, and not later than the end of the*
11 *270-day period beginning on such date, the Commission*
12 *shall adopt, upon such terms, conditions, or requirements*
13 *as the Commission may determine necessary or appropriate*
14 *in the public interest, for the protection of investors, and*
15 *for the promotion of capital formation, revisions to section*
16 *230.139 of title 17, Code of Federal Regulations, to provide*
17 *that a covered investment fund research report that is pub-*
18 *lished or distributed by a broker or dealer—*

19 *(1) shall be deemed, for purposes of sections*
20 *2(a)(10) and 5(c) of the Securities Act of 1933 (15*
21 *U.S.C. 77b(a)(10), 77e(c)), not to constitute an offer*
22 *for sale or an offer to sell a security that is the subject*
23 *of an offering pursuant to a registration statement*
24 *that is effective, even if the broker or dealer is partici-*

1 *pating or will participate in the registered offering of*
2 *the covered investment fund's securities; and*

3 *(2) shall be deemed to satisfy the conditions of*
4 *subsection (a)(1) or (a)(2) of section 230.139 of title*
5 *17, Code of Federal Regulations, or any successor pro-*
6 *visions, for purposes of the Commission's rules and*
7 *regulations under the Federal securities laws and the*
8 *rules of any self-regulatory organization.*

9 *(b) IMPLEMENTATION OF SAFE HARBOR.—In imple-*
10 *menting the safe harbor pursuant to subsection (a), the*
11 *Commission shall—*

12 *(1) not, in the case of a covered investment fund*
13 *with a class of securities in substantially continuous*
14 *distribution, condition the safe harbor on whether the*
15 *broker's or dealer's publication or distribution of a*
16 *covered investment fund research report constitutes*
17 *such broker's or dealer's initiation or reinitiation of*
18 *research coverage on such covered investment fund or*
19 *its securities;*

20 *(2) not—*

21 *(A) require the covered investment fund to*
22 *have been registered as an investment company*
23 *under the Investment Company Act of 1940 (15*
24 *U.S.C. 80a-1 et seq.) or subject to the reporting*
25 *requirements of section 13 or 15(d) of the Securi-*

1 *ties Exchange Act of 1934 (15 U.S.C. 78m,*
2 *78o(d)) for any period exceeding the period of*
3 *time referenced under paragraph (a)(1)(i)(A)(1)*
4 *of section 230.139 of title 17, Code of Federal*
5 *Regulations; or*

6 *(B) impose a minimum float provision ex-*
7 *ceeding that referenced in paragraph*
8 *(a)(1)(i)(A)(1)(i) of section 230.139 of title 17,*
9 *Code of Federal Regulations;*

10 *(3) provide that a self-regulatory organization*
11 *may not maintain or enforce any rule that would—*

12 *(A) prohibit the ability of a member to pub-*
13 *lish or distribute a covered investment fund re-*
14 *search report solely because the member is also*
15 *participating in a registered offering or other*
16 *distribution of any securities of such covered in-*
17 *vestment fund; or*

18 *(B) prohibit the ability of a member to par-*
19 *ticipate in a registered offering or other distribu-*
20 *tion of securities of a covered investment fund*
21 *solely because the member has published or dis-*
22 *tributed a covered investment fund research re-*
23 *port about such covered investment fund or its*
24 *securities; and*

1 (4) *provide that a covered investment fund re-*
2 *search report shall not be subject to section 24(b) of*
3 *the Investment Company Act of 1940 (15 U.S.C. 80a-*
4 *24(b)) or the rules and regulations thereunder, except*
5 *that such report may still be subject to such section*
6 *and the rules and regulations thereunder to the extent*
7 *that it is otherwise not subject to the content stand-*
8 *ards in the rules of any self-regulatory organization*
9 *related to research reports, including those contained*
10 *in the rules governing communications with the pub-*
11 *lic regarding investment companies or substantially*
12 *similar standards.*

13 (c) *RULES OF CONSTRUCTION.—Nothing in this Act*
14 *shall be construed as in any way limiting—*

15 (1) *the applicability of the antifraud or*
16 *antimanipulation provisions of the Federal securities*
17 *laws and rules adopted thereunder to a covered invest-*
18 *ment fund research report, including section 17 of the*
19 *Securities Act of 1933 (15 U.S.C. 77q), section 34(b)*
20 *of the Investment Company Act of 1940 (15 U.S.C.*
21 *80a–33), and sections 9 and 10 of the Securities Ex-*
22 *change Act of 1934 (15 U.S.C. 78i, 78j); or*

23 (2) *the authority of any self-regulatory organiza-*
24 *tion to examine or supervise a member’s practices in*
25 *connection with such member’s publication or dis-*

1 *tribution of a covered investment fund research report*
2 *for compliance with applicable provisions of the Fed-*
3 *eral securities laws or self-regulatory organization*
4 *rules related to research reports, including those con-*
5 *tained in rules governing communications with the*
6 *public, or to require the filing of communications*
7 *with the public the purpose of which is not to provide*
8 *research and analysis of covered investment funds.*

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

10 *(1) IN GENERAL.—From and after the 270-day*
11 *period beginning on the date of enactment of this Act,*
12 *if the Commission has not adopted revisions to section*
13 *230.139 of title 17, Code of Federal Regulations, as*
14 *required by subsection (a), and until such time as the*
15 *Commission has done so, a broker or dealer distrib-*
16 *uting or publishing a covered investment fund re-*
17 *search report after such date shall be able to rely on*
18 *the provisions of section 230.139 of title 17, Code of*
19 *Federal Regulations, and the broker or dealer's publi-*
20 *cation of such report shall be deemed to satisfy the*
21 *conditions of subsection (a)(1) or (a)(2) of section*
22 *230.139 of title 17, Code of Federal Regulations, if the*
23 *covered investment fund that is the subject of such re-*
24 *port satisfies the reporting history requirements*
25 *(without regard to Form S-3 or Form F-3 eligi-*

1 *bility) and minimum float provisions of such sub-*
2 *sections for purposes of the Commission's rules and*
3 *regulations under the Federal securities laws and the*
4 *rules of any self-regulatory organization, as if revised*
5 *and implemented in accordance with subsections (a)*
6 *and (b).*

7 (2) *STATUS OF COVERED INVESTMENT FUND.—*
8 *After such period and until the Commission has*
9 *adopted revisions to section 230.139 and FINRA has*
10 *revised rule 2210, for purposes of subsection (c)(7)(O)*
11 *of such rule, a covered investment fund shall be*
12 *deemed to be a security that is listed on a national*
13 *securities exchange and that is not subject to section*
14 *24(b) of the Investment Company Act of 1940 (15*
15 *U.S.C. 80a-24(b)).*

16 (3) *COVERED INVESTMENT FUNDS COMMUNICA-*
17 *TIONS.—*

18 (A) *IN GENERAL.—Except as provided in*
19 *subparagraph (B), communications that concern*
20 *only covered investment funds that fall within*
21 *the scope of section 24(b) of the Investment Com-*
22 *pany Act of 1940 (15 U.S.C. 80a-24(b)) shall*
23 *not be required to be filed with FINRA.*

24 (B) *EXCEPTION.—FINRA may require the*
25 *filing of communications with the public if the*

1 *purpose of those communications is not to pro-*
2 *vide research and analysis of covered investment*
3 *funds.*

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

5 (1) *The term “covered investment fund research*
6 *report” means a research report published or distrib-*
7 *uted by a broker or dealer about a covered investment*
8 *fund or any securities issued by the covered invest-*
9 *ment fund, but not including a research report to the*
10 *extent that it is published or distributed by the cov-*
11 *ered investment fund or any affiliate of the covered*
12 *investment fund.*

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

14 (A) *an investment company registered*
15 *under, or that has filed an election to be treated*
16 *as a business development company under, the*
17 *Investment Company Act of 1940 and that has*
18 *filed a registration statement under the Securi-*
19 *ties Act of 1933 for the public offering of a class*
20 *of its securities, which registration statement has*
21 *been declared effective by the Commission; and*

22 (B) *a trust or other person—*

23 (i) *issuing securities in an offering*
24 *registered under the Securities Act of 1933*

1 *and which class of securities is listed for*
2 *trading on a national securities exchange;*

3 (iii) *the assets of which consist pri-*
4 *marily of commodities, currencies, or deriv-*
5 *ative instruments that reference commod-*
6 *ities or currencies, or interests in the fore-*
7 *going; and*

8 (iii) *that provides in its registration*
9 *statement under the Securities Act of 1933*
10 *that a class of its securities are purchased*
11 *or redeemed, subject to conditions or limita-*
12 *tions, for a ratable share of its assets.*

13 (3) *The term “FINRA” means the Financial In-*
14 *dustry Regulatory Authority.*

15 (4) *The term “research report” has the meaning*
16 *given that term under section 2(a)(3) of the Securities*
17 *Act of 1933 (15 U.S.C. 77b(a)(3)), except that such*
18 *term shall not include an oral communication.*

19 (5) *The term “self-regulatory organization” has*
20 *the meaning given to that term under section 3(a)(26)*
21 *of the Securities Exchange Act of 1934 (15 U.S.C.*
22 *78c(a)(26)).*