

Union Calendar No. 304

114TH CONGRESS
2^D SESSION

H. R. 2356

[Report No. 114-401]

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

MAY 15, 2015

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

JANUARY 28, 2016

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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 2015”.

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

7 (a) EXPANSION OF SAFE HARBOR.—Not later than
8 the end of the 45-day period beginning on the date of en-
9 actment of this Act, the Securities and Exchange Commis-
10 sion shall propose, and not later than the end of the 120-
11 day period beginning on such date, the Commission shall
12 adopt, upon such terms, conditions, or requirements as the
13 Commission may determine necessary or appropriate in
14 the public interest, for the protection of investors, and for
15 the promotion of capital formation, revisions to section
16 230.139 of title 17, Code of Federal Regulations, to pro-
17 vide that a covered investment fund research report—

18 (1) shall be deemed, for purposes of sections
19 2(a)(10) and 5(c) of the Securities Act of 1933, not
20 to constitute an offer for sale or an offer to sell a
21 security that is the subject of an offering pursuant
22 to a registration statement that the issuer proposes
23 to file, or has filed, or that is effective, even if the
24 broker or dealer is participating or will participate

1 in the registered offering of the covered investment
2 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
6 provisions, for purposes of the Commission's rules
7 and regulations under the Federal securities laws
8 and the 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
13 fund with a class of securities in substantially con-
14 tinuous distribution, condition the safe harbor on
15 whether the broker's or dealer's publication or dis-
16 tribution of a covered investment fund research re-
17 port constitutes such broker's or dealer's initiation
18 or reinitiation of research coverage on such covered
19 investment fund or 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 or
24 subject to the reporting requirements of section
25 13 or 15(d) of the Securities Exchange Act of

1 1934 for any period exceeding twelve months;
2 or

3 (B) impose a minimum float provision ex-
4 ceeding that referenced in subsection
5 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,
6 Code of Federal Regulations;

7 (3) provide that a self-regulatory organization
8 may not maintain or enforce any rule that would—

9 (A) condition the ability of a member to
10 publish or distribute a covered investment fund
11 research report on whether the member is also
12 participating in a registered offering or other
13 distribution of any securities of such covered in-
14 vestment fund;

15 (B) condition the ability of a member to
16 participate in a registered offering or other dis-
17 tribution of securities of a covered investment
18 fund on whether the member has published or
19 distributed a covered investment fund research
20 report about such covered investment fund or
21 its securities; or

22 (C) require the filing of a covered invest-
23 ment fund research report with such self-regu-
24 latory organization; and

1 (4) provide that a covered investment fund re-
2 search report shall not be subject to sections 24(b)
3 or 34(b) of the Investment Company Act of 1940 or
4 the rules and regulations thereunder.

5 (c) RULES OF CONSTRUCTION.—Nothing in this Act
6 shall be construed as in any way limiting—

7 (1) the applicability of the antifraud provisions
8 of the Federal securities laws; or

9 (2) the authority of any self-regulatory organi-
10 zation to examine or supervise a member’s practices
11 in connection with such member’s publication or dis-
12 tribution of a covered investment fund research re-
13 port for compliance with otherwise applicable provi-
14 sions of the Federal securities laws or self-regulatory
15 organization rules.

16 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—
17 From and after the 120-day period beginning on the date
18 of enactment of this Act, if the Commission has not met
19 its obligations pursuant to subsection (a) to adopt revi-
20 sions to section 230.139 of title 17, Code of Federal Regu-
21 lations, and until such time as the Commission has done
22 so, a covered investment fund research report published
23 or distributed by a broker or dealer after such date shall
24 be deemed to meet the requirements of section 230.139
25 of title 17, Code of Federal Regulations, and to satisfy

1 the conditions of subsection (a)(1) or (a)(2) thereof for
2 purposes of the Commission’s rules and regulations under
3 the Federal securities laws and the rules of any self-regu-
4 latory organization, as if revised and implemented in ac-
5 cordance with subsections (a) and (b).

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

7 (1) COVERED INVESTMENT FUND RESEARCH
8 REPORT.—The term “covered investment fund re-
9 search report” means a research report published or
10 distributed by a broker or dealer about a covered in-
11 vestment fund or any of its securities.

12 (2) COVERED INVESTMENT FUND.—The term
13 “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
20 class of its securities, which registration state-
21 ment has been declared effective by the Com-
22 mission; and

23 (B) a trust or other person—

1 (i) that has a class of securities listed
2 for trading on a national securities ex-
3 change;

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

9 (iii) that allows its securities to be
10 purchased or redeemed, subject to condi-
11 tions or limitations, for a ratable share of
12 its assets.

13 (3) RESEARCH REPORT.—The term “research
14 report” has the meaning given to that term under
15 section 2(a)(3) of the Securities Act of 1933, except
16 that such term shall not include an oral communica-
17 tion.

18 (4) SELF-REGULATORY ORGANIZATION.—The
19 term “self-regulatory organization” has the meaning
20 given to that term under section 3(a)(26) of the Se-
21 curities Exchange Act of 1934.

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