

EXPANDING INVESTMENT OPPORTUNITIES ACT

JANUARY 16, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 4279]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4279) to direct the Securities and Exchange Commission to revise any rules necessary to enable closed-end companies to use the securities offering and proxy rules that are available to other issuers of securities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Expanding Investment Opportunities Act”.

SEC. 2. PARITY FOR CLOSED-END COMPANIES REGARDING OFFERING AND PROXY RULES.

(a) REVISION TO RULES.—Not later than the end of the 180 period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall propose and, not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall finalize any rules, as appropriate, to allow any closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5), that is registered as an investment company under such Act, and is listed on a national securities exchange or that makes periodic repurchase offers pursuant to section 270.23c-3 of title 17, Code of Federal Regulations, to use the securities offering and proxy rules, subject to conditions the Commission determines appropriate, that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the Commission takes pursuant to this subsection shall consider the availability of information to investors, including what disclosures constitute adequate information to be designated as a “well-known seasoned issuer”.

(b) TREATMENT IF REVISIONS NOT COMPLETED IN A TIMELY MANNER.—If the Commission fails to complete the revisions required by subsection (a) by the time required by such subsection, any registered closed-end company that is listed on a na-

tional securities exchange or that makes periodic repurchase offers pursuant to section 270.23c-3 of title 17, Code of Federal Regulations, shall be deemed not to be an ineligible issuer under the final rule of the Commission titled “Securities Offering Reform” (70 Fed. Reg. 44722; published August 3, 2005).

(c) RULES OF CONSTRUCTION.—

(1) NO EFFECT ON RULE 482.—Nothing in this section or the amendments made by this section shall be construed to impair or limit in any way a registered closed-end company from using section 230.482 of title 17, Code of Federal Regulations, to distribute sales material.

(2) REFERENCES.—Any reference in this section to a section of title 17, Code of Federal Regulations, or to any form or schedule means such rule, section, form, or schedule, or any successor to any such rule, section, form, or schedule.

PURPOSE AND SUMMARY

On November 15, 2017, Representative Trey Hollingsworth introduced H.R. 4279, the “Expanding Investment Opportunities Act” to direct the Securities and Exchange Commission (SEC) to amend its rules to enable closed-end funds that meet certain requirements to be considered “well-known seasoned issuers” (WKSIs) and to conform the filing and offering regulations for closed-end funds to those of traditional operating companies, which will simplify the registration process and enable these funds to more easily provide information to investors.

BACKGROUND AND NEED FOR LEGISLATION

Closed-end funds are important retirement savings and investment vehicles for retail investors. According to the Investment Company Institute’s 2017 Investment Company Fact Book, in 2016, approximately 2.8 million U.S. households owned closed-end funds to meet many investment needs. These funds can enhance income and cash flow, which is particularly important for retirees, and can maximize after-tax efficiency by investing in municipal securities or other tax-free investments. They also improve diversification by investing in specialized asset classes. Moreover, like mutual funds and other registered funds, closed-end funds help promote job creation, research and development, and economic growth by serving as a long-term source of capital for operating companies.

Specifically, closed-end funds are types of investment companies whose shares are listed on a stock exchange or are traded in the over-the-counter market. Investment companies professionally manage the assets of a closed-end fund in accordance with the fund’s investment objectives and policies and may be invested in equities, bonds, and other securities. The market price of a closed-end fund share fluctuates like that of other publicly traded securities and is determined by supply and demand in the marketplace. Investors typically buy and sell closed-end fund shares on an exchange like corporate stock, and not directly from the fund.

An investment company creates a registered closed-end fund when it issues a fixed number of common shares to investors during an initial public offering. Subsequent issuances of common shares can occur through secondary or follow-on offerings, at-the-market offerings, rights offerings, or dividend reinvestments. Once issued, shares of a registered closed-end fund generally are bought and sold by investors in the open market and are not purchased or redeemed directly by the fund, although some registered closed-end funds may adopt stock repurchase programs or periodically tender for shares.

Notwithstanding their many benefits, there has been a steady decline in the number of closed-end funds over the last several years. According to the Investment Company Institute, since 2007, there has been a decrease in the number of closed-end funds from 662 funds to 530 funds in 2016, a decline of 20 percent. The number of new closed-end fund offerings also has dropped. In 2007, there were 42 new closed-end fund issuances; in 2016, there were 8—an 81% decline.

A significant cause of the decline in closed-end funds is that registered closed-end funds are subject to burdensome regulations under the Investment Company Act of 1940, other federal securities laws, and related SEC regulations. The Investment Company Act restricts, among other things, a closed-end fund's ability to use leverage and engage in affiliated transactions, and it imposes strict requirements on the custody, diversification, and transparency of fund assets. Registered closed-end funds also must have a board of directors that consists of at least a majority of directors who are independent of the fund's manager, which oversees the management of the fund. Further, registered closed-end funds must have a chief compliance officer that oversees the day-to-day operations of the fund under a board-approved fund compliance program and related policies.

H.R. 4279 would help reverse the trend of the declining issuance of closed-end funds as it would reduce onerous filing and offering regulations and conform the applicable regulations for such funds to ones for traditional operating companies. This bill would simplify the registration process for closed-end funds offerings with the SEC, and closed-end funds would be able to provide information to their investors and potential investors more easily both before and during the offering periods. The legislation's reforms would reduce costs borne by fund shareholders for the prospectus delivery.

The SEC's 2005 rules that significantly modernized and streamlined the registration, communications, and offering processes for traditional offering companies reflect the type of relief that H.R. 4279 will offer closed-end funds. These 2005 reforms have been very successful, and many companies today rely on them. They were primarily designed to streamline the securities registration process—especially for large reporting issuers referred to as WKSIs; liberalize the flow of information from issuers to investors before and during offering periods; and implement a new model for prospectuses based on electronic availability of the prospectuses, instead of physical delivery. But at the time, the SEC excluded registered closed-end funds from these reforms.

To help reduce the declining trend of closed-end funds, H.R. 4279 builds on the success of the SEC's 2005 reforms by simplifying the registration process for registered closed-end funds by directing the SEC to revise its rules to enable closed end funds to use the securities offering and proxy rules that are available to other issuers of securities.

For example, WKSIs already enjoy a streamlined registration process that gives them the flexibility to take advantage of market conditions when offering securities, specifically by allowing WKSIs to file "automatic shelf registration statements" that become effective immediately upon filing without the SEC staff's review and comment. Allowing qualifying closed-end funds to use this process

will help those funds better evaluate and assess the market for their offerings and would enable them to more quickly access the capital markets.

In addition, registration statements from WKSIs and other qualifying issuers—generally those that have greater than \$75 million in public float—can incorporate by reference information from shareholder reports filed with the SEC. Issuers, such as registered closed-end funds, that cannot incorporate on a forward basis must amend their existing registration statements to specifically reference each shareholder report or filing that is made after their registration statement is declared effective to incorporate information from those shareholder reports into the registration statement. Permitting closed-end funds to incorporate by reference will provide cost and time savings by eliminating unnecessary filings and associated costs.

H.R. 4279 also enables closed-end funds to provide information to their investors more easily before and during the offering periods, allowing closed-end funds to rely on the same safe harbors that traditional operating companies rely on when communicating with the public. Closed-end funds that fall under these very technical safe harbors would be able to communicate with investors more freely during the preparation and filing periods for a registered offering and would be better able to provide additional information during an offering. The safe harbors permit investors to obtain more information about a closed-end fund during the offering, and the additional information should assist investors in making more informed purchasing decisions. By directing the SEC to revise its rules to allow closed-end funds to rely on the exemptions provided to similar, traditional operating companies, closed-end funds will be allowed to conduct their offerings efficiently and resulting in cost and time savings.

H.R. 4279 also holds the SEC accountable to revise its rules as provided in section two of the legislation. If the SEC fails to complete its revisions and finalize rules within one year of enactment, closed-end funds would be deemed eligible to use the SEC's 2005 offering reform rules.

In short, as Investment Company Institute President Paul Stevens stated at a November 3, 2017 Capital Markets Subcommittee Hearing:

The bill that Mr. Hollingsworth has in view at the margin at least provides a modernization for closed-end funds with respect to the way they can respond to market developments, bring their new issuances to market, inform their investors and will make them at least marginally more competitive . . . These modest reforms that are in the view here will continue to make them an attractive option for investors without sacrificing any protections.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4279 on November 3, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2017, and November 15, 2017, and ordered H.R. 4279 to be reported favorably to the House as amended by a recorded vote of 58 yeas to 2 nays (Record vote no. FC-114), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Foster by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House with amendment. The motion was agreed to by a recorded vote of 58 yeas to 2 nays (Record vote no. FC-114), a quorum being present.

Record vote no. FC-114

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4279 will reduce unnecessary burdens that raise costs to investors and enhance the ability of closed-end funds to act as a source of financing in the economy by simplifying the closed-end fund offering process and liberalizing existing restrictions on communications.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 16, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4279, the Expanding Investment Opportunities Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4279—Expanding Investment Opportunities Act

Under current law, the Securities and Exchange Commission (SEC) allows certain public companies, called well-known seasoned issuers (WKSIs), to use streamlined registration, reporting, and communication when issuing securities. The effects of that streamlined process include: having certain securities' registration statements take effect automatically when filed and without SEC re-

view, the ability to exclude certain information from securities' registration statements, and the ability to communicate certain information to investors before statements are filed. Certain types of investment companies currently cannot be granted WKSJ status, even if they meet the other requirements. H.R. 4279 would direct the SEC to allow closed-end companies that meet certain requirements to be considered WKSJs.

Using information from the SEC, CBO estimates that implementing H.R. 4279 would cost less than \$500,000 over the 2018–2022 period for the agency to conduct a rulemaking to implement the bill. Moreover, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 4279 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4279 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4279 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the SEC increases fees or premiums to offset the costs associated with implementing the bill, H.R. 4279 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of the mandate would be small and below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires one directed rulemaking to require the SEC to revise its rules to enable any closed-end fund that is registered as an investment company to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13 of section 15(d) of the Securities Exchange Act of 1934.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4279 as the “Expanding Investment Opportunities Act”.

Section 2. Parity for closed-end companies regarding offering rules

This section directs the SEC to revise any rules necessary to enable closed-end companies to use the securities offering and proxy rules that are available to other issuers of securities. If the SEC fails to finalize such revisions within one year after enactment, closed-end funds will be deemed eligible issuers under the SEC’s 2005 Securities Offering Reform Rule.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4279 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.