

TO AMEND THE INVESTMENT ADVISERS ACT OF 1940 TO CODIFY CERTAIN  
SECURITIES AND EXCHANGE COMMISSION NO-ACTION LETTERS THAT  
EXCLUDE BROKERS AND DEALERS COMPENSATED FOR CERTAIN RE-  
SEARCH SERVICES FROM THE DEFINITION OF INVESTMENT ADVISER,  
AND FOR OTHER PURPOSES

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JULY 11, 2023.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2622]

The Committee on Financial Services, to whom was referred the bill (H.R. 2622) to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. EXTENSION OF NO-ACTION LETTER; STUDY.**

(a) FINDINGS.—Congress finds the following:

(1) The Securities and Exchange Commission staff first granted temporary no-action relief in 2017, prior to the implementation of European rules designed to protect European investors from excessive costs and conflicts of interest.

(2) The Commission staff did not engage in any meaningful cost-benefit analysis of the issues raised by the no-action relief requested either prior to or following the granting of no-action relief in 2017.

(3) The Commission staff revised and extended the temporary no-action relief in 2019, again without any meaningful cost-benefit analysis of the issues raised by the no-action relief requested prior to or following the granting of the relief.

(4) There are currently approximately 15,300 registered investment advisers, including affiliates that provide the vast majority of investment research.

(5) The Commission has received complaints from investors and investor advocacy groups expressing concerns with the no-action relief, as it currently exists.

(6) The Commission has received concerns from broker-dealers related to the potential expiration of the no-action relief.

(b) EXTENSION OF NO-ACTION LETTER.—The Commission shall provide an additional 6-month extension of the October 26, 2017, Securities Industry and Financial Markets Association, SEC Staff No-Action Letter, set to expire on July 3, 2023.

(c) **STUDY REQUIRED.**—After the announcement extending the expiration date of the no-action letter under subsection (b), the Commission shall conduct, through notice and comment, a study of the impact of allowing the no-action letter’s expiration or maintenance of the no-action letter, and give due regard to any comments received in conducting the study. The Commission or delegated staff shall report their findings and conclusions, including findings related to the expiration of the no-action relief, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(d) **CONTENTS OF STUDY.**—The study required under subsection (c) shall include potential impacts on the research market for smaller issuers, including—

- (1) the availability of such research, including—
  - (A) the number and types of firms who provide such research;
  - (B) the volume of such research over time; and
  - (C) competition in the research market;
- (2) any unique challenges faced by minority-owned, women-owned, and veteran owned small issuers in obtaining research coverage;
- (3) the impact on the availability of research coverage for small issuers due to Commission rules;
- (4) a cost-benefit analysis of regulatory options that will support research coverage of small entities and increase transparency in the cost of research provided by broker-dealers;
- (5) the impact of the no-action relief on investors in registered investment companies and exempt investment funds, pension funds, endowments, and other asset owners, investment advisers, broker-dealers that provide both investment research and trading services, independent investment advisers that do not provide trading services, broker-dealers that do not provide investment research, and other market participants, including issuers of securities; and
- (6) the potential impacts of the expiration of the no-action relief on investors in registered investment companies and exempt investment funds, pension funds, endowments, investment advisers, and other asset owners, broker-dealers that provide both investment research and trading services, independent investment advisers that do not provide trading services, broker-dealers that do not provide investment research, and other market participants, including issuers of securities.

#### PURPOSE AND SUMMARY

Introduced on April 13, 2023, by Representative Pete Sessions, H.R. 2622, a *bill to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes*, would codify certain Securities and Exchange Commission no-action letters that allow broker-dealers to continue accepting cash or “hard dollar” payments for research reports, in order to comply with international regulations such as MiFID and MiFID II.

#### BACKGROUND AND NEED FOR LEGISLATION

In general, MiFID II is a European Union Directive that affects investment managers located outside of the European Union and the United Kingdom. Non-U.S. investment managers rely on research provided by U.S. broker-dealers, and U.S. investors invest in funds that are managed by investment managers that are subject to MiFID II. MiFID II requires, among other things, the unbundling of research payments from trade execution payments.

However, the receipt of payments for research services, directly or indirectly out of an investment manager’s own money, subjects broker-dealers’ research services to the *Investment Advisers Act* (the Act). The Act has different requirements and subjects broker-dealers to an additional and entirely different regulatory regime, as well as the broker-dealers’ current regulatory regimes overseen by

the SEC and the Financial Industry Regulatory Authority (FINRA). The availability of research is essential to well-functioning capital markets, but there has been a reduction in the amount of research available since the introduction of MiFID II. Given the importance of research in creating markets for small- and medium-sized companies, it is important to codify the SEC’s no-action letters, which are set to expire in July, that have provided relief from MiFID II and allow broker-dealers to receive cash payments for research without being deemed to be subject to the Act. Codifying the SEC staff’s no-action letter relief would forestall further negative impacts while necessary additional regulatory changes are assessed and evaluated.

#### HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 2622: The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing on March 9, 2023, titled “U.S. Public Markets Built for the 21st Century: Exploring Reforms to Make Our Public Markets Attractive for Small and Emerging Companies Raising Capital.”

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 24, 2023, and ordered H.R. 2622 to be reported favorably to the House as amended by a recorded vote of 45 ayes to 2 nays (Record vote no. FC–72), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Sessions 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 order to report legislation and amendments thereto. H.R. 2622 was ordered reported favorably to the House as amended by a recorded vote of 45 ayes to 2 nays (Record vote no. FC–72), a quorum being present.

An amendment offered by Mr. Gottheimer, no. 13, was agreed to by a voice vote, a quorum being present.

## Record vote no. FC- 72

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velazquez	X	—	—
Mr. Lucas	X	—	—	Mr. Sherman	X	—	—
Mr. Sessions	X	—	—	Mr. Meeks	X	—	—
Mr. Posey	X	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	X	—	—
Mr. Huelskamp	X	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	X	—	—
Mr. Barr	X	—	—	Mr. Himes	—	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	X	—	—
Mr. Emmer	—	—	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	X	—	—	Mr. Vargas	—	—	—
Mr. Mooney	—	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	X	—	—	Mr. Gonzalez	X	—	—
Mr. Rose	X	—	—	Mr. Casten	X	—	—
Mr. Steil	X	—	—	Ms. Pressley	—	X	—
Mr. Timmons	X	—	—	Mr. Horsford	X	—	—
Mr. Norman	X	—	—	Ms. Tlaib	—	X	—
Mr. Meuser	X	—	—	Mr. Torres	X	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	X	—	—
Mr. Garbarino	X	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	X	—	—	Ms. Petersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	—	—	—				

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) 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 goal of H.R. 2622 is to codify certain Securities and Exchange Commission no action letters that allow broker-dealers to continue accepting cash or “hard dollar” payments for research reports, to comply with international regulations such as MiFID and MiFID II.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate. However, once an estimate has been prepared, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee will adopt 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 1973.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office, once it has been prepared.

#### FEDERAL MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

#### 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 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

Pursuant to 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 a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Definition of investment adviser amended to exclude brokers and dealers compensated for certain research services*

This section amends Section 202(a)(11) of the Investment Advisers Act of 1940 by clarifying that the term “special compensation” does not include compensation provided by any person who is an investment adviser, who would be an investment advisor, or is an insurance company, for research services whether paid from the resources of such person or the resources of a client of such person.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2622 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) of rule XIII of the House of Representatives.