

114TH CONGRESS
2D SESSION

S. 3092

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 SENATE OF THE UNITED STATES

JUNE 23, 2016

Mr. HELLER (for himself and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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
9 of enactment of this Act, the Securities and Exchange

1 Commission shall propose, and not later than the end of
2 the 180-day period beginning on such date, the Commis-
3 sion shall adopt, upon such terms, conditions, or require-
4 ments as the Commission may determine necessary or ap-
5 propriate in the public interest, for the protection of inves-
6 tors, and for the promotion of capital formation, revisions
7 to section 230.139 of title 17, Code of Federal Regula-
8 tions, to provide that a covered investment fund research
9 report that is published or distributed by a broker or deal-
10 er—

11 (1) shall be deemed, for purposes of sections
12 2(a)(10) and 5(c) of the Securities Act of 1933 (15
13 U.S.C. 77b(a)(10), 77e(c)), not to constitute an
14 offer for sale or an offer to sell a security that is the
15 subject of an offering pursuant to a registration
16 statement that is effective, even if the broker or
17 dealer is participating or will participate in the reg-
18 istered offering of the covered investment fund’s se-
19 curities; and

20 (2) shall be deemed to satisfy the conditions of
21 paragraph (a)(1) or (a)(2) of section 230.139 of title
22 17, Code of Federal Regulations, or any successor
23 provisions, for purposes of the Commission’s rules
24 and regulations under the Federal securities laws
25 and the rules of any self-regulatory organization.

1 (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-
 2 menting the safe harbor pursuant to subsection (a), the
 3 Commission shall—

4 (1) not, in the case of a covered investment
 5 fund with a class of securities in substantially con-
 6 tinuous distribution, condition the safe harbor on
 7 whether the broker’s or dealer’s publication or dis-
 8 tribution of a covered investment fund research re-
 9 port constitutes such broker’s or dealer’s initiation
 10 or reinitiation of research coverage on such covered
 11 investment fund or its securities;

12 (2) not—

13 (A) require the covered investment fund to
 14 have been registered as an investment company
 15 under the Investment Company Act of 1940
 16 (15 U.S.C. 80a–1 et seq.) or subject to the re-
 17 porting requirements of section 13 or 15(d) of
 18 the Securities Exchange Act of 1934 (15
 19 U.S.C. 78m, 78o(d)) for any period exceeding
 20 the period of time referenced under paragraph
 21 (a)(1)(i)(A)(1) of section 230.139 of title 17,
 22 Code of Federal Regulations; or

23 (B) impose a minimum float provision ex-
 24 ceeding that referenced in paragraph

1 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,
2 Code of Federal Regulations;

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

5 (A) prohibit the ability of a member to
6 publish or distribute a covered investment fund
7 research report solely because the member is
8 also participating in a registered offering or
9 other distribution of any securities of such cov-
10 ered investment fund; or

11 (B) prohibit the ability of a member to
12 participate in a registered offering or other dis-
13 tribution of securities of a covered investment
14 fund solely because the member has published
15 or distributed a covered investment fund re-
16 search report about such covered investment
17 fund or its securities; and

18 (4) provide that a covered investment fund re-
19 search report shall not be subject to section 24(b) of
20 the Investment Company Act of 1940 (15 U.S.C.
21 80a–24(b)) or the rules and regulations thereunder,
22 except that such report may still be subject to such
23 section and the rules and regulations thereunder to
24 the extent that it is otherwise not subject to the con-
25 tent standards in the rules of any self-regulatory or-

1 ganization related to research reports, including
2 those contained in the rules governing communica-
3 tions with the public regarding investment compa-
4 nies or substantially similar standards.

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 or
8 antimanipulation provisions of the Federal securities
9 laws and rules adopted thereunder to a covered in-
10 vestment fund research report, including section 17
11 of the Securities Act of 1933 (15 U.S.C. 77q), sec-
12 tion 34(b) of the Investment Company Act of 1940
13 (15 U.S.C. 80a–33(b)), and sections 9 and 10 of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78i,
15 78j); or

16 (2) the authority of any self-regulatory organi-
17 zation to examine or supervise a member’s practices
18 in connection with such member’s publication or dis-
19 tribution of a covered investment fund research re-
20 port for compliance with applicable provisions of the
21 Federal securities laws or self-regulatory organiza-
22 tion rules related to research reports, including those
23 contained in rules governing communications with
24 the public.

25 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

1 (1) IN GENERAL.—From and after the 180-day
2 period beginning on the date of enactment of this
3 Act, if the Commission has not adopted revisions to
4 section 230.139 of title 17, Code of Federal Regula-
5 tions, as required by subsection (a), and until such
6 time as the Commission has done so, a broker or
7 dealer distributing or publishing a covered invest-
8 ment fund research report after such date shall be
9 able to rely on the provisions of section 230.139 of
10 title 17, Code of Federal Regulations, and the
11 broker or dealer’s publication of such report shall be
12 deemed to satisfy the conditions of paragraph (a)(1)
13 or (a)(2) of that section if the covered investment
14 fund that is the subject of such report satisfies the
15 reporting history requirements (without regard to
16 Form S-3 or Form F-3 eligibility) and minimum
17 float provisions of such subsections for purposes of
18 the Commission’s rules and regulations under the
19 Federal securities laws and the rules of any self-reg-
20 ulatory organization, as if revised and implemented
21 in accordance with subsections (a) and (b).

22 (2) STATUS OF COVERED INVESTMENT FUND.—
23 After such period and until the Commission has
24 adopted revisions to section 230.139 of title 17,
25 Code of Federal Regulations, and FINRA has re-

1 vised rule 2210, for purposes of subsection (c)(7)(O)
 2 of such rule, a covered investment fund shall be
 3 deemed to be a security that is listed on a national
 4 securities exchange and that is not subject to section
 5 24(b) of the Investment Company Act of 1940 (15
 6 U.S.C. 80a–24(b)). Communications concerning only
 7 covered investment funds that fall within the scope
 8 of such section shall not be required to be filed with
 9 FINRA.

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

11 (1) The term “covered investment fund re-
 12 search report” means a research report published or
 13 distributed by a broker or dealer about a covered in-
 14 vestment fund or any securities issued by the cov-
 15 ered investment fund, but does not include a re-
 16 search report to the extent that the research report
 17 is published or distributed by the covered investment
 18 fund or any affiliate of the covered investment fund.

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

21 (A) an investment company registered
 22 under, or that has filed an election to be treated
 23 as a business development company under, the
 24 Investment Company Act of 1940 (15 U.S.C.
 25 80a–1 et seq.) and that has filed a registration

1 statement under the Securities Act of 1933 (15
2 U.S.C. 77a et seq.) for the public offering of a
3 class of its securities, which registration state-
4 ment has been declared effective by the Com-
5 mission; and

6 (B) a trust or other person—

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

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

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

21 (3) The term “FINRA” means the Financial
22 Industry Regulatory Authority.

23 (4) The term “research report” has the mean-
24 ing given that term under section 2(a)(3) of the Se-
25 curities Act of 1933 (15 U.S.C. 77b(a)(3)), except

1 that such term shall not include an oral communica-
2 tion.

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

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