

Mr. GARRETT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

FAIR ACCESS TO INVESTMENT RESEARCH ACT OF 2016

Mr. GARRETT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5019) to direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5019

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Access to Investment Research Act of 2016”.

SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) **EXPANSION OF THE SAFE HARBOR.**—Not later than the end of the 45-day period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall propose, and not later than the end of the 180-day period beginning on such date, the Commission shall adopt, upon such terms, conditions, or requirements as the Commission may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation, revisions to section 230.139 of title 17, Code of Federal Regulations, to provide that a covered investment fund research report that is published or distributed by a broker or dealer—

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

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

(b) **IMPLEMENTATION OF SAFE HARBOR.**—In implementing the safe harbor pursuant to subsection (a), the Commission shall—

(1) not, in the case of a covered investment fund with a class of securities in substantially continuous distribution, condition the safe harbor on whether the broker’s or dealer’s publication or distribution of a covered investment fund research report constitutes such broker’s or dealer’s initiation or reinitiation of research coverage on such covered investment fund or its securities;

(2) not—

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

(B) impose a minimum float provision exceeding that referenced in paragraph (a)(1)(i)(A)(1)(i) of section 230.139 of title 17, Code of Federal Regulations;

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

(A) prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or

(B) prohibit the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities; and

(4) provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)) or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

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

(1) the applicability of the antifraud or antimanipulation provisions of the Federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act of 1933 (15 U.S.C. 77q), section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-33), and sections 9 and 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j); or

(2) the authority of any self-regulatory organization to examine or supervise a member’s practices in connection with such member’s publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public.

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

(1) **IN GENERAL.**—From and after the 180-day period beginning on the date of enactment of this Act, if the Commission has not adopted revisions to section 230.139 of title 17, Code of Federal Regulations, as required by subsection (a), and until such time as the Commission has done so, a broker or dealer distributing or publishing a covered investment fund research report after such date shall be able to rely on the provisions of section 230.139 of title 17, Code of Federal Regulations, and the broker or dealer’s publication of such report shall be deemed to satisfy the conditions of subsection (a)(1) or (a)(2) of section 230.139 of title 17, Code of Federal Regulations, if the covered investment fund that is the subject of such report satisfies the reporting history requirements (without regard to Form S-3 or Form F-3 eligibility) and minimum float provisions of such subsections for purposes of the Commission’s rules and regulations under the Federal securities laws and the rules of any self-regulatory organization, as if revised and implemented in accordance with subsections (a) and (b).

(2) **STATUS OF COVERED INVESTMENT FUND.**—After such period and until the Commission has adopted revisions to section 230.139 and

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

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

(1) The term “covered investment fund research report” means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but not including a research report to the extent that it is published or distributed by the covered investment fund or any affiliate of the covered investment fund.

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

(A) an investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 and that has filed a registration statement under the Securities Act of 1933 for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

(B) a trust or other person—

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

(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(iii) that provides in its registration statement under the Securities Act of 1933 that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

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

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

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. GARRETT) and the gentleman from Massachusetts (Mr. CAPUANO) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey.

GENERAL LEAVE

Mr. GARRETT. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and include any other extraneous material on this bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. GARRETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5019, the Fair Access to Investment Research Act of 2016. I want to thank the gentleman from Arkansas (Mr. HILL), who will be speaking in a little bit, for his diligent work on this piece of legislation, as well as for his valued work and his input that he has brought all

year long to the Subcommittee on Capital Markets and Government Sponsored Enterprises.

Mr. Speaker, one of the most positive developments in our economy over the last several decades is what has been dubbed the “democratization” of our capital markets. Because of the advances in technology and market competition, more Americans than ever have the ability to take control of their own investments and have access to products that used to be reserved for the rich and the professionals.

The \$200 trade has now become the \$7 trade, and many investment funds have become more cost-effective over the years as well. One of these products is the exchange-traded fund or the ETF.

What are ETFs?

Well, ETFs are securities made up of a basket of stocks or bonds and which trade over an exchange like an individual stock. Because of their diversity and cost-effectiveness, they have become increasingly popular with investors. In fact, ETFs now hold roughly \$2 trillion in assets, and some 5.7 million households hold ETFs as part of their investment portfolio.

That being said, unfortunately, due to a longstanding technicality in securities law, there is a dearth of research on ETFs’ availability to investors, depriving them of valuable information they need to make their informed decisions. The SEC, in the past, has provided safe harbors under securities law for brokers that provide research reports for listed stocks or corporate debt.

Despite this and despite broad public support, the SEC has not provided a similar safe harbor for ETF research reports. Because of this, brokers are hesitant to publish reports out of fear for legal action either from the SEC or another private party.

So we have this today, the Fair Access to Investment Research Act, which would correct this anomaly by providing a safe harbor for ETFs similar to the ones that currently exist for equities or corporate debt. This is a simple, yet much-needed, piece of legislation to help investors, particularly your mom-and-pop type investors, to understand more about the products that they are putting their hard-earned money into.

Again, I thank Mr. HILL not only for his work on this legislation but, truly, for all the expertise and advice that he has brought to the committee this session.

Mr. Speaker, I reserve the balance of my time.

Mr. CAPUANO. Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware (Mr. CARNEY), the primary Democratic sponsor of this bill.

Mr. CARNEY. Mr. Speaker, first I want to thank the gentleman from Massachusetts (Mr. CAPUANO) for yielding me this time. I would also like to thank all those who have worked hard to improve this bill. I would like to

recognize and thank the gentleman from Arkansas (Mr. HILL) for introducing this legislation. I appreciate his continued willingness to work with me on this important issue and to fine-tune this bill to address concerns that we have heard, particularly from Members on this side of the aisle.

The FAIR Act has a very simple purpose, to provide investors better access to research on exchange-traded funds and other similar products. ETFs are one of the fastest-growing investment vehicles in the market. Net assets in ETFs have grown from \$102 billion in 2002 to \$1.8 trillion in 2014. The number of ETFs on the market has increased 23 percent over the same period of time, but compared to other asset classes, there is limited research about them available. As interest in ETFs continues to grow, we need to make sure that investors have access to reliable information on these funds and on their underlying investments.

The SEC has been looking at expanding a safe harbor for ETF research for over 15 years, and every time this issue has come up before the SEC, it has received favorable feedback. In fact, during the Subcommittee on Capital Markets and Government Sponsored Enterprises hearing, there was unanimous agreement among the witnesses—which is not easy to come by in our subcommittee—that the SEC should promulgate a rule providing a safe harbor for ETF research.

Since this legislation was originally introduced, a lot has gone into improving it. We have worked very closely with Ranking Member WATERS, the SEC, and FINRA to ensure this legislation does what it is intended to do. We have taken their suggestions to improve numerous provisions of the bill, and I want to thank Mr. HILL again for his flexibility in doing that.

This new version reflects a year of collaboration among Democrats, Republicans, and the regulators. The finished product is a clarified, more effective version of the original bill. I am proud to say I believe that we have arrived at an agreement that works for everyone.

Again, I would like to thank Mr. HILL for his leadership on this issue. I urge all my colleagues to vote “yes” on this legislation.

Mr. GARRETT. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas (Mr. HILL), the sponsor of this legislation.

Mr. HILL. Mr. Speaker, I thank the gentleman from New Jersey for his leadership of the Subcommittee on Capital Markets and Government Sponsored Enterprises. I appreciate greatly the kind comments, sponsorship, and good work of my friend, the gentleman from Delaware (Mr. CARNEY).

Mr. Speaker, today I rise in support of H.R. 5019, the FAIR Act, Fair Access to Investment Research Act. This bill is similar to a bill that I introduced with Mr. CARNEY that passed the House

as a part of H.R. 1675 and passed our committee by a strong bipartisan vote.

□ 1515

As my friend from Delaware said, we have worked diligently to improve this legislation and we have worked carefully with our colleagues in the minority to make sure that this bill fully represents the bipartisan consensus on the intent of the FAIR Act.

This bill is very simple: it allows broker-dealers involved in a distribution to issue research reports on the rapidly growing medium of the exchange-traded funds, or the ETF, market.

Since I started my most recent investment firm in the late 1990s, I have personally seen the ETF market grow from about 100 funds and \$100 billion in assets to over 1,400 funds and nearly \$2 trillion in assets. And some reports predict an additional \$1 trillion might shift into ETFs should the Department of Labor’s recent fiduciary rule actually go into effect.

Further, today’s ETFs frequently are more complicated and require more analysis on the part of investors. Yet despite their rapid appreciation and growth in popularity and increasing importance to retail investors, most broker-dealers do not publish research on ETFs due to anomalies in the securities laws and regulations that Mr. GARRETT so ably discussed.

Throughout this process, there has been essentially universal support for increasing investor knowledge and access to information on ETFs—that a safe harbor in this regard simply makes good sense.

As Mr. CARNEY said, this issue is not unfamiliar to the Commission, as it has been raised both to the SEC and by the SEC several times over the past 17 years, most recently in 2004.

As a part of its Securities Offering Reform proposal, the Commission requested comment on whether “reliance on proposed rule 139 should be permitted if the issuer is an open-end management investment company or other investment company.” The comments were universally supported, but the rule was never adopted.

Given the importance of ETFs to today’s market, steps to facilitate research and allow investors access to this useful information is long overdue.

The FAIR Act directs the SEC to provide a safe harbor for research reports that cover ETFs so that these reports are not considered “offers” under section 5 of the Securities Act of 1933. This mirrors other research safe harbors implemented by the SEC for other categories.

The bill also helps the SEC organize, in my view, its “50 front burners” and holds it accountable to follow Congress’ direction by requiring the Commission to finalize rules within 180 days or an interim safe harbor will take effect until the rule is proposed and finalized. With close to 6 million U.S. households holding ETFs, investors need access to this research to be

better informed and make better long-term investment decisions.

Again, I would like to thank the chairman, Mr. CARNEY; Mrs. MALONEY, the ranking member; and all of the staff on both the majority and minority side for working to develop this commonsense proposal to provide more information to American investors. I encourage all of my colleagues to support this commonsense bill.

Mr. CAPUANO. Mr. Speaker, I yield back the balance of my time.

Mr. GARRETT. Mr. Speaker, having no further speakers at this time and appreciating the fact that this prioritizes the 50 front burners at the SEC, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. GARRETT) that the House suspend the rules and pass the bill, H.R. 5019.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. GARRETT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

FLOOD INSURANCE MARKET PARITY AND MODERNIZATION ACT

Mr. ROSS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2901) to amend the Flood Disaster Protection Act of 1973 to require that certain buildings and personal property be covered by flood insurance, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2901

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Flood Insurance Market Parity and Modernization Act".

SEC. 2. PRIVATE FLOOD INSURANCE.

(a) MANDATORY PURCHASE REQUIREMENT.—

(1) AMOUNT AND TERM OF COVERAGE.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by striking "Sec. 102. (a)" and all that follows through the end of subsection (a) and inserting the following:

"SEC. 102. (a) AMOUNT AND TERM OF COVERAGE.—After the expiration of sixty days following the date of enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance: Provided, That the amount of flood insurance (1) in the case of Federal flood insurance, is at least equal to the development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal

balance of the loan, or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (2) in the case of private flood insurance, is at least equal to the development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal balance of the loan, or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less: Provided further, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property."

(2) REQUIREMENT FOR MORTGAGE LOANS.—Subsection (b) of section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended—

(A) by striking the subsection designation and all that follows through the end of paragraph (5) and inserting the following:

"(b) REQUIREMENT FOR MORTGAGE LOANS.—

"(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance: Provided, That the amount of flood insurance (A) in the case of Federal flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (B) in the case of private flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less.

"(2) FEDERAL AGENCY LENDERS.—

"(A) IN GENERAL.—A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in accordance with paragraph (1). Each Federal agency lender may issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

"(B) REQUIREMENT TO ACCEPT FLOOD INSURANCE.—Each Federal agency lender shall accept flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) if the flood insurance coverage meets the requirements for coverage under that subparagraph.

"(3) GOVERNMENT-SPONSORED ENTERPRISES FOR HOUSING.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is—

"(A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Administrator as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

"(B) purchased or guaranteed by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept flood insurance as satisfaction of the flood insurance coverage requirement under paragraph (1) if the flood insurance coverage provided meets the requirements for coverage under that paragraph and any requirements established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, respectively, relating to the financial strength of private insurance companies from which the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation will accept private flood insurance, provided that such requirements shall not affect or conflict with any State law, regulation, or procedure concerning the regulation of the business of insurance.

"(4) APPLICABILITY.—

"(A) EXISTING COVERAGE.—Except as provided in subparagraph (B), paragraph (1) shall apply on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

"(B) NEW COVERAGE.—Paragraphs (2) and (3) shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994. Paragraph (1) shall apply with respect to any loan made, increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

"(C) CONTINUED EFFECT OF REGULATIONS.—Notwithstanding any other provision of this subsection, the regulations to carry out paragraph (1), as in effect immediately before the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of such Act take effect.

"(5) RULE OF CONSTRUCTION.—Except as otherwise specified, any reference to flood insurance in this section shall be considered to include Federal flood insurance and private flood insurance. Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to establish requirements relating to the financial strength of private insurance companies from which the entity or agency will accept private flood insurance, provided that such requirements shall not affect or conflict with any State law, regulation, or procedure concerning the regulation of the business of insurance."; and

(B) by striking paragraph (7) and inserting the following new paragraph:

"(7) DEFINITIONS.—In this section:

"(A) FLOOD INSURANCE.—The term 'flood insurance' means—

"(i) Federal flood insurance; and

"(ii) private flood insurance.

"(B) FEDERAL FLOOD INSURANCE.—the term 'Federal flood insurance' means an insurance policy made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).