

SMALL BUSINESS CAPITAL FORMATION ENHANCEMENT ACT

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of S. 416 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 416) to amend the Small Business Investment Incentive Act of 1980 to require an annual review by the Securities and Exchange Commission of the annual government-business forum on capital formation.

There being no objection, the Senate proceeded to consider the bill.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 416) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 416

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 “Small Business Capital Formation Enhancement Act”.

SEC. 2. ANNUAL REVIEW OF GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION.

Section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1) is amended by adding at the end the following:

“(e) The Commission shall—

“(1) review the findings and recommendations of the forum; and

“(2) each time the forum submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the forum; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.”.

FAIR ACCESS TO INVESTMENT RESEARCH ACT OF 2017

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 11, S. 327.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 327) to direct the Securities and Exchange Commission to provide a safe harbor related to certain investment fund research reports, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in *italics*.)

S. 327

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 2017”.

SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) **EXPANSION OF THE SAFE HARBOR.**—Not later than the end of the **[45-day]** *180-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]** *270-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 paragraph **[(a)]**(1) or **[(a)]**(2) of section 230.139 (a) 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 (a)(1)(i)(A)(1) of title 17, Code of Federal Regulations; or

(B) impose a minimum float provision exceeding that referenced in **[paragraph (a)(1)(i)(A)(1) of]** section 230.139 (a)(1)(i)(A)(1) 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(b)), 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, *or to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.*

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

(1) **IN GENERAL.**—From and after the **[180-day]** *270-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 paragraph **[(a)]**(1) or **[(a)]**(2) of **[that]** section 230.139(a) 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 of title 17, Code of Federal Regulations, 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.]**

(3) **COVERED INVESTMENT FUNDS COMMUNICATIONS.**—

(A) **IN GENERAL.**—*Except as provided in subparagraph (B), communications that concern only covered investment funds that fall within*

the scope of section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)) shall not be required to be filed with FINRA.

(B) EXCEPTION.—FINRA may require the filing of communications with the public if the purpose of those communications is not to provide research and analysis of covered investment funds.

(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 does not include a research report to the extent that the research report 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 (15 U.S.C. 80a-1 et seq.) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(2) 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 does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund.

(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)).

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee-reported amendments be considered; the Warren-Heller amendment at the desk be considered and agreed to; the committee-reported amendments, as amended, be agreed to; the bill, as amended, be considered read a third time and passed; and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 935) was agreed to, as follows:

(Purpose: To improve the bill)

On page 2, line 14, insert “, other than a broker or dealer that is an investment ad-

viser to the fund or an affiliated person of the investment adviser to the fund” before the dash.

On page 8, strike line 6 and insert the following:

(e) EXCEPTION.—The safe harbor under subsection (a) shall not apply to the publication or distribution by a broker or a dealer of a covered investment fund research report, the subject of which is a business development company or a registered closed-end investment company, during the time period described in section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations, except where expressly permitted by the rules and regulations of the Securities and Exchange Commission under the Federal securities laws.

(f) DEFINITIONS.—For purposes of this Act:

(1) The term “affiliated person” has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

On page 8, line 15, strike “(1)” and insert “(2)”.

On page 9, line 20, strike “(2)” and insert “(3)”.

On page 10, line 2, insert “, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund” before the period at the end.

On page 10, line 3, strike “(3)” and insert “(4)”.

On page 10, after line 4, add the following:

(5) The term “investment adviser” has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

On page 10, line 5, strike “(4)” and insert “(6)”.

On page 10, line 10, strike “(5)” and insert “(7)”.

The committee-reported amendments, as amended, were agreed to.

The bill (S. 327), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 327

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 2017”.

SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) EXPANSION OF THE SAFE HARBOR.—Not later than the end of the 180-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 270-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, other than a broker or dealer that is an investment adviser to the fund or an affiliated person of the investment adviser to the fund—

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

(B) impose a minimum float provision exceeding that referenced in section 230.139(a)(1)(i)(A)(1) 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(b)), 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, or to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.

(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

(1) IN GENERAL.—From and after the 270-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 paragraph (1) or (2) of section 230.139(a) 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 of title 17, Code of Federal Regulations, 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)).

(3) COVERED INVESTMENT FUNDS COMMUNICATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), communications that concern only covered investment funds that fall within the scope of section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(b)) shall not be required to be filed with FINRA.

(B) EXCEPTION.—FINRA may require the filing of communications with the public if the purpose of those communications is not to provide research and analysis of covered investment funds.

(e) EXCEPTION.—The safe harbor under subsection (a) shall not apply to the publication or distribution by a broker or a dealer of a covered investment fund research report, the subject of which is a business development company or a registered closed-end investment company, during the time period described in section 230.139(a)(1)(i)(A)(1) of title 17, Code of Federal Regulations, except where expressly permitted by the rules and regulations of the Securities and Exchange Commission under the Federal securities laws.

(f) DEFINITIONS.—For purposes of this Act:

(1) The term "affiliated person" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

(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 (15 U.S.C. 80a-1 et seq.) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) 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 (15 U.S.C. 77a et seq.) 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 "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 does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.

(4) The term "FINRA" means the Financial Industry Regulatory Authority.

(5) The term "investment adviser" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

(6) 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.

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

SUPPORTING AMERICA'S INNOVATORS ACT OF 2017

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 12, S. 444.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 444) to amend the Investment Company Act of 1940 to expand the investor limitation for qualifying venture capital funds under an exemption from the definition of an investment company.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 444) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 444

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 "Supporting America's Innovators Act of 2017".

SEC. 2. INVESTOR LIMITATION FOR QUALIFYING VENTURE CAPITAL FUNDS.

Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "(or, in the case of a qualifying venture capital fund, 250 persons)" after "one hundred persons"; and

(2) by adding at the end the following:

"(C)(i) The term 'qualifying venture capital fund' means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital, with such dollar amount to be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000.

"(ii) The term 'venture capital fund' has the meaning given the term in section 275.203(l)-1 of title 17, Code of Federal Regulations, or any successor regulation."

SECURITIES AND EXCHANGE COMMISSION OVERPAYMENT CREDIT ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 13, S. 462.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 462) to require the Securities and Exchange Commission to refund or credit certain excess payments made to the Commission.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 462) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 462

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 "Securities and Exchange Commission Overpayment Credit Act".

SEC. 2. REFUNDING OR CREDITING OVERPAYMENT OF SECTION 31 FEES.

(a) DEFINITIONS.—In this section—

(1) the term "Commission" means the Securities and Exchange Commission;

(2) the term "national securities association" means an association that is registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3); and

(3) the term "national securities exchange" means an exchange that is registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(b) CREDIT FOR OVERPAYMENT OF FEES.—Notwithstanding section 31(j) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee(j)), and subject to subsection (c) of this section, if a national securities exchange or a national securities association has paid fees and assessments to the Commission in an amount that is more than the amount that