

[DISCUSSION DRAFT]

May 4, 2015

114TH CONGRESS  
1ST SESSION

H. R. \_\_\_\_\_

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to provide a safe harbor related to certain exchange-traded fund research reports and investment company research reports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HILL introduced the following bill; which was referred to the Committee on \_\_\_\_\_

A BILL

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to provide a safe harbor related to certain exchange-traded fund research reports and investment company 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Access to Invest-  
3 ment Research Act of 2015”.

4 **SEC. 2. SAFE HARBOR FOR ETF RESEARCH.**

5 (a) SECURITIES ACT OF 1933.—Section 5 of the Se-  
6 curities Act of 1933 (15 U.S.C. 77e) is amended by adding  
7 at the end the following:

8 “(f) ETF RESEARCH REPORTS.—

9 “(1) SAFE HARBOR.—A covered ETF research  
10 report shall be deemed, for purposes of subsection  
11 (c) and section 2(a)(10), not to constitute an offer  
12 for sale or an offer to sell a security that is the sub-  
13 ject of an offering pursuant to a registration state-  
14 ment that the issuer proposes to file, or has filed, or  
15 that is effective, even if the broker or dealer is par-  
16 ticipating or will participate in the registered offer-  
17 ing or other distribution of the issuer’s securities.

18 “(2) SELF-REGULATORY ORGANIZATION  
19 RULES.—A self-regulatory organization may not  
20 maintain or enforce any rule that would—

21 “(A) condition the ability of a member to  
22 publish or distribute a covered ETF research  
23 report about an issuer or the securities of an  
24 issuer on whether the member is also partici-  
25 pating in a registered offering or other distribu-  
26 tion of any securities of such issuer;

1           “(B) condition the ability of a member to  
2 participate in a registered offering or other dis-  
3 tribution of securities of an issuer on whether  
4 the member has published or distributed a cov-  
5 ered ETF research report about such issuer or  
6 its securities; or

7           “(C) require the filing with such self-regu-  
8 latory organization of a covered ETF research  
9 report about an issuer or the securities of an  
10 issuer.

11           “(3) OTHER APPLICABLE PROVISIONS.—

12           “(A) IN GENERAL.—Notwithstanding any  
13 other provision of law, rule or regulation, or  
14 rule of any self-regulatory organization, a cov-  
15 ered ETF research report shall not be consid-  
16 ered an offer, solicitation, or inducement of any  
17 person to purchase or sell any security, nor sub-  
18 ject to any filing requirement with the Commis-  
19 sion or any self-regulatory organization.

20           “(B) RULE OF CONSTRUCTION.—Nothing  
21 in subparagraph (A) shall be construed as lim-  
22 iting in any way the applicability of the anti-  
23 fraud provisions of the securities laws.

24           “(4) DEFINITIONS.—For purposes of this sub-  
25 section:

1           “(A) COVERED ETF RESEARCH REPORT.—

2           The term ‘covered ETF research report’ means  
3           a research report published or distributed by a  
4           broker or dealer about an issuer or the securi-  
5           ties of an issuer where—

6                   “(i) the issuer is an exchange-traded  
7                   fund;

8                   “(ii) the issuer has a class of securi-  
9                   ties that—

10                           “(I) has been listed for trading  
11                           on a national securities exchange for  
12                           at least 12 months prior to the re-  
13                           search report being published or dis-  
14                           tributed; and

15                           “(II) had an aggregate market  
16                           value of \$75,000,000 or more as of  
17                           the end of the issuer’s most recent fis-  
18                           cal year;

19                           “(iii) the issuer either—

20                                   “(I) is required to file reports  
21                                   under section 30 of the Investment  
22                                   Company Act of 1940, and has filed  
23                                   such reports for at least 12 months  
24                                   prior to the research report being  
25                                   published or distributed; or

1                   “(II) meets the requirement  
2                   under paragraph (a)(3) of section  
3                   239.13 of title 17, Code of Federal  
4                   Regulations, or paragraph (a)(2) of  
5                   section 239.33 of title 17, Code of  
6                   Federal Regulations; and

7                   “(iv) the broker or dealer publishing  
8                   or distributing the research report does so  
9                   in the regular course of its business, re-  
10                  gardless of whether the research report  
11                  constitutes the initiation or re-initiation of  
12                  research coverage on the issuer or its secu-  
13                  rities.

14                  “(B) EXCHANGE-TRADED FUND.—The  
15                  term ‘exchange-traded fund’ means an issuer  
16                  that—

17                         “(i) has a class of securities listed for  
18                         trading on a national securities exchange;

19                         “(ii) allows such securities to be pur-  
20                         chased or redeemed, subject to conditions  
21                         or limitations, for a ratable share of the  
22                         assets held by such issuer; and

23                         “(iii) is either—

24                                 “(I) a unit investment trust or  
25                                 an open-end company (as such terms

1 are defined under sections 4 and 5 of  
2 the Investment Company Act of 1940,  
3 respectively) registered with the Com-  
4 mission under such Act; or

5 “(II) a trust or other person  
6 whose assets consist primarily of in-  
7 terests in commodities, currencies, or  
8 derivative instruments referencing  
9 commodities or currencies.

10 “(C) RESEARCH REPORT.—The term ‘re-  
11 search report’ has the meaning given that term  
12 under section 2(a)(3).

13 “(D) SELF-REGULATORY ORGANIZATION.—  
14 The term ‘self-regulatory organization’ has the  
15 meaning given that term under section 3(a)(26)  
16 of the Securities Exchange Act of 1934.”.

17 (b) INVESTMENT COMPANY ACT OF 1940.—The In-  
18 vestment Company Act of 1940 (15 U.S.C. 80a-1 et seq.)  
19 is amended—

20 (1) in section 24(b), by adding at the end the  
21 following flush-left text: “This subsection shall not  
22 apply, nor shall any rule or regulation of the Com-  
23 mission adopted under this subsection apply, to a re-  
24 search report described under section 230.139 of  
25 title 17, Code of Federal Regulations, that satisfies

1 the conditions in paragraph (a)(1) and (a)(2) of  
2 such section.”; and

3 (2) in section 31(a)(1), by adding at the end  
4 the following: “This paragraph shall not apply, nor  
5 shall any rule or regulation of the Commission  
6 adopted under this paragraph apply, to a research  
7 report described under section 230.139 of title 17,  
8 Code of Federal Regulations, that satisfies the con-  
9 ditions in paragraph (a)(1) and (a)(2) of such sec-  
10 tion.”.

11 **SEC. 3. REVISIONS TO RULE 139.**

12 (a) IN GENERAL.—Not later than the end of the 90-  
13 day period beginning on the date of the enactment of this  
14 Act, upon such terms, conditions, or requirements as the  
15 Securities and Exchange Commission may determine nec-  
16 essary or appropriate in the public interest, for the protec-  
17 tion of investors, and for the promotion of capital forma-  
18 tion, the Commission shall revise section 230.139 of title  
19 17, Code of Federal Regulations, to provide that both a  
20 covered ETF research report (as defined in section 5(f)(4)  
21 of the Securities Act of 1933) and a research report about  
22 an issuer that is an investment company registered under  
23 the Investment Company Act of 1940 (or any of the secu-  
24 rities of such an issuer) that is published or distributed  
25 by a broker or dealer shall be deemed to be a research

1 report described under section 230.139 of title 17, Code  
2 of Federal Regulations, that satisfies the conditions in  
3 paragraph (a)(1) and (a)(2) of such section.

4 (b) LIMITATIONS.—The revisions made pursuant to  
5 subsection (a)—

6 (1) may not contain any condition to the effect  
7 that any such broker or dealer may not initiate or  
8 re-initiate publication or distribution of such a re-  
9 search report regarding securities, such as an open-  
10 end company or exchange-traded fund that custom-  
11 arily engages in a continuous distribution, during a  
12 time when such broker or dealer is participating in  
13 the registered offering or other distribution of the  
14 issuer's securities; and

15 (2) with respect to a covered ETF research re-  
16 port as defined in section 5(f)(4) of the Securities  
17 Act of 1933, may not impose any limitations or con-  
18 ditions more stringent than those provided in section  
19 5(f) of such Act.