

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 910  
OFFERED BY MR. HILL OF ARKANSAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Fair Access to Invest-  
3 ment Research Act of 2017”.

**4 SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.**

5       (a) EXPANSION OF THE SAFE HARBOR.—Not later  
6 than the end of the 180-day period beginning on the date  
7 of enactment of this Act, the Securities and Exchange  
8 Commission shall propose, and not later than the end of  
9 the 270-day period beginning on such date, the Commis-  
10 sion shall adopt, upon such terms, conditions, or require-  
11 ments as the Commission may determine necessary or ap-  
12 propriate in the public interest, for the protection of inves-  
13 tors, and for the promotion of capital formation, revisions  
14 to section 230.139 of title 17, Code of Federal Regula-  
15 tions, to provide that a covered investment fund research  
16 report that is published or distributed by a broker or deal-  
17 er—

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

10           (2) shall be deemed to satisfy the conditions of  
11           subsection (a)(1) or (a)(2) of section 230.139 of title  
12           17, Code of Federal Regulations, or any successor  
13           provisions, for purposes of the Commission's rules  
14           and regulations under the Federal securities laws  
15           and the rules of any self-regulatory organization.

16           (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-  
17           menting the safe harbor pursuant to subsection (a), the  
18           Commission shall—

19           (1) not, in the case of a covered investment  
20           fund with a class of securities in substantially con-  
21           tinuous distribution, condition the safe harbor on  
22           whether the broker's or dealer's publication or dis-  
23           tribution of a covered investment fund research re-  
24           port constitutes such broker's or dealer's initiation

1 or reinitiation of research coverage on such covered  
2 investment fund or its securities;

3 (2) not—

4 (A) require the covered investment fund to  
5 have been registered as an investment company  
6 under the Investment Company Act of 1940  
7 (15 U.S.C. 80a–1 et seq.) or subject to the re-  
8 porting requirements of section 13 or 15(d) of  
9 the Securities Exchange Act of 1934 (15  
10 U.S.C. 78m, 78o(d)) for any period exceeding  
11 the period of time referenced under paragraph  
12 (a)(1)(i)(A)(1) of section 230.139 of title 17,  
13 Code of Federal Regulations; or

14 (B) impose a minimum float provision ex-  
15 ceeding that referenced in paragraph  
16 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,  
17 Code of Federal Regulations;

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

20 (A) prohibit the ability of a member to  
21 publish or distribute a covered investment fund  
22 research report solely because the member is  
23 also participating in a registered offering or  
24 other distribution of any securities of such cov-  
25 ered investment fund; or

1 (B) prohibit the ability of a member to  
2 participate in a registered offering or other dis-  
3 tribution of securities of a covered investment  
4 fund solely because the member has published  
5 or distributed a covered investment fund re-  
6 search report about such covered investment  
7 fund or its securities; and

8 (4) provide that a covered investment fund re-  
9 search report shall not be subject to section 24(b) of  
10 the Investment Company Act of 1940 (15 U.S.C.  
11 80a–24(b)) or the rules and regulations thereunder,  
12 except that such report may still be subject to such  
13 section and the rules and regulations thereunder to  
14 the extent that it is otherwise not subject to the con-  
15 tent standards in the rules of any self-regulatory or-  
16 ganization related to research reports, including  
17 those contained in the rules governing communica-  
18 tions with the public regarding investment compa-  
19 nies or substantially similar standards.

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

22 (1) the applicability of the antifraud or  
23 antimanipulation provisions of the Federal securities  
24 laws and rules adopted thereunder to a covered in-  
25 vestment fund research report, including section 17

1 of the Securities Act of 1933 (15 U.S.C. 77q), sec-  
2 tion 34(b) of the Investment Company Act of 1940  
3 (15 U.S.C. 80a-33), and sections 9 and 10 of the  
4 Securities Exchange Act of 1934 (15 U.S.C. 78i,  
5 78j); or

6 (2) the authority of any self-regulatory organi-  
7 zation to examine or supervise a member's practices  
8 in connection with such member's publication or dis-  
9 tribution of a covered investment fund research re-  
10 port for compliance with applicable provisions of the  
11 Federal securities laws or self-regulatory organiza-  
12 tion rules related to research reports, including those  
13 contained in rules governing communications with  
14 the public, or to require the filing of communications  
15 with the public the purpose of which is not to pro-  
16 vide research and analysis of covered investment  
17 funds.

18 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

19 (1) IN GENERAL.—From and after the 270-day  
20 period beginning on the date of enactment of this  
21 Act, if the Commission has not adopted revisions to  
22 section 230.139 of title 17, Code of Federal Regula-  
23 tions, as required by subsection (a), and until such  
24 time as the Commission has done so, a broker or  
25 dealer distributing or publishing a covered invest-

1       ment fund research report after such date shall be  
2       able to rely on the provisions of section 230.139 of  
3       title 17, Code of Federal Regulations, and the  
4       broker or dealer's publication of such report shall be  
5       deemed to satisfy the conditions of subsection (a)(1)  
6       or (a)(2) of section 230.139 of title 17, Code of Fed-  
7       eral Regulations, if the covered investment fund that  
8       is the subject of such report satisfies the reporting  
9       history requirements (without regard to Form S-3  
10      or Form F-3 eligibility) and minimum float provi-  
11     sions of such subsections for purposes of the Com-  
12     mission's rules and regulations under the Federal  
13     securities laws and the rules of any self-regulatory  
14     organization, as if revised and implemented in ac-  
15     cordance with subsections (a) and (b).

16           (2) STATUS OF COVERED INVESTMENT FUND.—  
17     After such period and until the Commission has  
18     adopted revisions to section 230.139 and FINRA  
19     has revised rule 2210, for purposes of subsection  
20     (c)(7)(O) of such rule, a covered investment fund  
21     shall be deemed to be a security that is listed on a  
22     national securities exchange and that is not subject  
23     to section 24(b) of the Investment Company Act of  
24     1940 (15 U.S.C. 80a-24(b)).

1           (3) COVERED INVESTMENT FUNDS COMMUNICA-  
2           TIONS.—

3           (A) IN GENERAL.—Except as provided in  
4           subparagraph (B), communications that con-  
5           cern only covered investment funds that fall  
6           within the scope of section 24(b) of the Invest-  
7           ment Company Act of 1940 (15 U.S.C. 80a-  
8           24(b)) shall not be required to be filed with  
9           FINRA.

10          (B) EXCEPTION.—FINRA may require the  
11          filing of communications with the public if the  
12          purpose of those communications is not to pro-  
13          vide research and analysis of covered invest-  
14          ment funds.

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

16           (1) The term “covered investment fund re-  
17           search report” means a research report published or  
18           distributed by a broker or dealer about a covered in-  
19           vestment fund or any securities issued by the cov-  
20           ered investment fund, but not including a research  
21           report to the extent that it is published or distrib-  
22           uted by the covered investment fund or any affiliate  
23           of the covered investment fund.

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

1           (A) an investment company registered  
2 under, or that has filed an election to be treated  
3 as a business development company under, the  
4 Investment Company Act of 1940 and that has  
5 filed a registration statement under the Securi-  
6 ties Act of 1933 for the public offering of a  
7 class of its securities, which registration state-  
8 ment has been declared effective by the Com-  
9 mission; and

10           (B) a trust or other person—

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

15           (ii) the assets of which consist pri-  
16 marily of commodities, currencies, or deriv-  
17 ative instruments that reference commod-  
18 ities or currencies, or interests in the fore-  
19 going; and

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



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

3           (4) The term “research report” has the mean-  
4           ing given that term under section 2(a)(3) of the Se-  
5           curities Act of 1933 (15 U.S.C. 77b(a)(3)), except  
6           that such term shall not include an oral communica-  
7           tion.

8           (5) The term “self-regulatory organization” has  
9           the meaning given to that term under section  
10          3(a)(26) of the Securities Exchange Act of 1934 (15  
11          U.S.C. 78c(a)(26)).

