

Memorandum

To: Members of the Committee on Financial Services
From: Financial Services Committee Majority Staff
Date: March 6, 2017
Subject: March 9, 2017, Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures at 1:30 p.m. on Thursday, March 9, 2017, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

H.R. 910, the “Fair Access to Investment Research Act of 2017”

Representatives French Hill and Bill Foster introduced H.R. 910, the “Fair Access to Investor Research Act of 2017,” which directs the SEC to provide a safe harbor for research reports that cover Exchange Traded Funds (ETFs) so that these reports are not considered “offers” under Section 5 of the Securities Act of 1933. The bill requires the Securities and Exchange Commission (SEC) to finalize the rules within 180 days and if the deadline is not met, an interim safe harbor will take effect until the SEC’s rules are finalized.

H.R. 1219, the “Supporting America’s Innovators Act of 2017”

Introduced by Representatives Patrick McHenry and Nydia Velazquez, the “Supporting America’s Innovators Act of 2017” amends an exemption from registration under the Investment Company Act of 1940 by increasing the investor limitation from 100 to 250 persons for a qualifying venture capital fund. A qualifying venture capital fund may not purchase more than \$10 million in securities in any one issuer, adjusted for inflation.

H.R. 1257, the “Securities and Exchange Commission Overpayment Credit Act”

Under Section 31 of the Securities Exchange Act of 1934, national securities exchanges and other self-regulatory organizations (SROs) owe proportional transaction fees to the SEC for the cost of supervising and regulating such transactions. In 2008, the Chicago Stock Exchange discovered it had overpaid \$154,048 for 2007 Section 31 fees. Similarly, in 2014, NASDAQ discovered it had overpaid almost \$750,000 for 2013 Section 31 fees. These exchanges overpaid out of an abundance of caution, rather than risk an enforcement action for underpayment.

The SEC, however, has not refunded these overpayments. The SEC has kept these overpayments because the SEC has interpreted the Exchange Act as not granting the SEC the authority to refund the overpayment of Section 31 fees. To correct this problem, Representatives Gregory Meeks and Randy Hultgren have introduced H.R. 1257, which allows the SROs to offset Section 31 overpayments made prior to enactment against future Section 31 fees, under a 10-year statute of limitations.

H.R. 1312, the “Small Business Capital Formation Enhancement Act”

Introduced by Representatives Bruce Poliquin and Juan Vargas, the “Small Business Capital Formation Enhancement Act” requires the SEC to respond to any findings and recommendations put forth by the SEC’s annual Government-Business Forum on Small Business Capital Formation. This statutory requirement is consistent with the current obligations related to findings and recommendations submitted by the Investor Advisory Committee as required by Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

H.R. 1343, the “Encouraging Employee Ownership Act of 2017”

Introduced by Representatives Randy Hultgren, John Delaney, Brian Higgins, Thomas MacArthur, Kyrsten Sinema, and Steve Stivers, H.R. 1343, the “Encouraging Employee Ownership Act of 2017,” would amend SEC Rule 701, originally adopted in 1988 under Section 3(b) of the Securities Act of 1933 and last updated in 1999. Under current law, if an issuer sells, in the aggregate, more than \$5 million of securities in any consecutive 12-month period, the issuer is required to provide additional disclosures to investors, such as risk factors, the plans under which offerings are made, and certain financial statements. H.R. 1343 would require the SEC to increase that threshold from \$5 million to \$10 million and index the amount for inflation every five years.

H.R. __, the “U.S. Territories Investor Protection Act of 2017”

Introduced by Representative Velasquez, the “U.S. Territories Investor Protection Act of 2017” amends Section 6(a)(1) of the Investment Company Act of 1940 to terminate an exemption for investment companies located in Puerto Rico, the Virgin Islands, and any other possession of the United States. Under current law, such entities are exempt so long as they sell their shares only to the residents of the territory or possession in which they operate. The bill provides a three-year safe harbor for investment companies that currently enjoy this exemption. Additionally, the bill authorizes the SEC to further delay the effective date (or end of the exemption) for a maximum of three years following the initial three year safe harbor.

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