

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO**  
**H.R. 2356**  
**OFFERED BY MS. MAXINE WATERS OF**  
**CALIFORNIA**

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 2015”.

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

5       (a) EXPANSION OF SAFE HARBOR.—Not later than  
6 the end of the 45-day period beginning on the date of en-  
7 actment of this Act, the Securities and Exchange Commis-  
8 sion shall propose, and not later than the end of the 120-  
9 day period beginning on such date, the Commission shall  
10 adopt, upon such terms, conditions, or requirements as the  
11 Commission may determine necessary or appropriate in  
12 the public interest, for the protection of investors, and for  
13 the promotion of capital formation, revisions to section  
14 230.139 of title 17, Code of Federal Regulations, to pro-  
15 vide that a covered investment fund research report that  
16 is published or distributed by a broker or dealer—

1           (1) shall be deemed, for purposes of sections  
2           2(a)(10) and 5(e) of the Securities Act of 1933, not  
3           to constitute an offer for sale or an offer to sell a  
4           security that is the subject of an offering pursuant  
5           to a registration statement that the issuer proposes  
6           to file, or has filed, or that is effective, even if the  
7           broker or dealer is participating or will participate  
8           in the registered offering of the covered investment  
9           fund's securities; 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 or  
7 subject to the reporting requirements of section  
8 13 or 15(d) of the Securities Exchange Act of  
9 1934 for any period exceeding the date de-  
10 scribed under paragraph (a)(1)(A)(1)(i) of sec-  
11 tion 230.139 of title 17, Code of Federal Regu-  
12 lations; or

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

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

19 (A) prohibit any member from publishing  
20 or distributing any covered investment fund re-  
21 search report within any prescribed period of  
22 time prior to or following an offering, other  
23 than the initial public offering of the covered  
24 investment fund;

1 (B) condition 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 on whether the member has published or  
5 distributed a covered investment fund research  
6 report about such covered investment fund or  
7 its securities; or

8 (C) require the filing of a covered invest-  
9 ment fund research report with such self-regu-  
10 latory organization; and

11 (4) provide that a covered investment fund re-  
12 search report shall not be subject to section 24(b) of  
13 the Investment Company Act of 1940 or the rules  
14 and regulations thereunder, except that such report  
15 may still be subject to such section and the rules  
16 and regulations thereunder to the extent that it is  
17 otherwise not subject to the content standards in the  
18 rules of any self-regulatory organization related to  
19 communications with the public regarding invest-  
20 ment companies or substantially similar standards.

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

23 (1) the applicability of the antifraud or  
24 antimanipulation provisions of the Federal securities  
25 laws and rules adopted thereunder to such covered

1 investment fund research report, including section  
2 17 of the Securities Act of 1933, section 34(b) of  
3 the Investment Company Act, and sections 9 and 10  
4 of the Securities Exchange Act of 1934; or

5 (2) the authority of any self-regulatory organi-  
6 zation to examine or supervise a member's practices  
7 in connection with such member's publication or dis-  
8 tribution of a covered investment fund research re-  
9 port for compliance with applicable provisions of the  
10 Federal securities laws or self-regulatory organiza-  
11 tion rules, including those governing research re-  
12 ports and communications with the public.

13 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—  
14 From and after the 120-day period beginning on the date  
15 of enactment of this Act, if the Commission has not met  
16 its obligations pursuant to subsection (a) to adopt revi-  
17 sions to section 230.139 of title 17, Code of Federal Regu-  
18 lations, and until such time as the Commission has done  
19 so, a broker or dealer distributing or publishing a covered  
20 investment fund research report after such date shall be  
21 able to rely on the provisions of section 230.139 of title  
22 17, Code of Federal Regulations, and shall be deemed to  
23 satisfy the conditions of subsection (a)(1) or (a)(2) if the  
24 covered investment fund that is the subject of the covered  
25 investment fund research report satisfies the reporting

1 history requirements (without regard to Form S-3 or  
2 Form F-3 eligibility) and minimum float provisions of  
3 such subsections for purposes of the Commission's rules  
4 and regulations under the Federal securities laws and the  
5 rules of any self-regulatory organization, as if revised and  
6 implemented in accordance with subsections (a) and (b).

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

8 (1) COVERED INVESTMENT FUND RESEARCH  
9 REPORT.—The term “covered investment fund re-  
10 search report” means a research report published or  
11 distributed by a broker or dealer about a covered in-  
12 vestment fund or any of its securities that is being  
13 published or distributed by such broker or dealer  
14 and not published or distributed by any other offer-  
15 ing participant, including the covered investment  
16 fund.

17 (2) COVERED INVESTMENT FUND.—The term  
18 “covered investment fund” means—

19 (A) an investment company registered  
20 under, or that has filed an election to be treated  
21 as a business development company under, the  
22 Investment Company Act of 1940 and that has  
23 filed a registration statement under the Securi-  
24 ties Act of 1933 for the public offering of a  
25 class of its securities, which registration state-

1           ment has been declared effective by the Com-  
2           mission; and

3                 (B) a trust or other person—

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

8                     (ii) the assets of which consist pri-  
9                     marily of commodities, currencies, or deriv-  
10                    ative instruments that reference commod-  
11                    ities or currencies, or interests in the fore-  
12                    going, provided such assets are not securi-  
13                    ties; and

14                    (iii) that provides in its registration  
15                    statement under the Securities Act of 1933  
16                    that its securities are purchased or re-  
17                    deemed, subject to conditions or limita-  
18                    tions, for a ratable share of its assets.

19           (3) RESEARCH REPORT.—The term “research  
20           report”—

21                 (A) except as provided under subparagraph  
22                 (B), has the meaning given that term under  
23                 section 2(a)(3) of the Securities Act of 1933,  
24                 except that such term shall not include an oral  
25                 communication; and

1 (B) for purposes of subsections (b)(3),  
2 (b)(4), and (d), has the meaning given that  
3 term under section 15D(d)(2) of the Securities  
4 Exchange Act of 1934.

5 (4) SELF-REGULATORY ORGANIZATION.—The  
6 term “self-regulatory organization” has the meaning  
7 given to that term under section 3(a)(26) of the Se-  
8 curities Exchange Act of 1934.

