



## S. 327 – Fair Access to Investment Research Act (Sen. Heller, R-NV)

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### FLOOR SCHEDULE:

Expected to be considered on September 27, 2017, under a suspension of the rules, which require a 2/3 majority for passage.

### TOPLINE SUMMARY:

[S. 327](#) would direct the SEC to revise a regulation to create a safe harbor for research reports on exchange traded funds (ETFs) so that the reports are not considered offers under the Securities Act of 1933. This legislation is similar to the House passed version, [H.R. 910](#).

### COST:

The Congressional Budget Office (CBO) [estimates](#) “that implementing S. 327 would cost \$2 million over the 2017-2022 period. However, under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.”

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

Under current law, the SEC prohibits an issuer from offering securities for sale unless a registration statement is filed with the agency. Exchange Traded Funds (ETFs) are investment vehicles, similar to mutual funds, whose shares are traded intraday on exchanges with market-determined prices. Though investor interest in ETFs has grown exponentially, there are anomalies in the SEC’s safe-harbor rules that have served to discourage broker-dealers from publishing research reports on ETFs.

This legislation would, within 180 days following enactment, require the SEC to propose and, within 270 days, adopt revisions to [section 230.139 of title 17 of the Code of Federal Regulations](#) regarding safe harbor, to provide that a covered investment research fund report does not constitute an offer for sale or an offer to sell. This would not be conditioned upon whether, in the case of covered investment funds with a class of securities in substantially continuous distribution, the broker or dealer’s publication is an initiation or re-initiation of research coverage on a covered investment fund or its securities.

To qualify for safe harbor, a broker or dealer [would](#) be required to distribute a research report in the regular course of business, which relates to an Exchange Traded Fund issue “that: (1) has a class of securities listed on a national securities exchange for at least 12 months prior to the publishing or distribution of the report, (2) has an aggregate market value of at least \$75 million; and (3) is either a unit investment or an open-ended company or a trust whose assets consist primarily of interests in commodities, currencies, or derivative instruments referring commodities or currencies.” The Senate-passed bill would clarify the conflicts of interest provision by precluding dealers from issuing research reports on exchange traded funds.

In implementing safe harbor, the SEC would not be able to require the covered investment fund to have been registered as an investment company under the [Investment Company Act of 1940](#) or be subject to reporting requirements under the [Securities Exchange Act of 1934](#), nor would they be able to impose a minimum threshold for the number of traded share in excess of that in title 17 of the Code of Federal Regulations.

This section would provide that a self-regulatory organization may not enforce any rule that would condition a member’s ability to publish a research report on whether they are also participating in a registered offering or distribution of any securities or condition the ability of a member to participate in a registered offering or securities distribution on whether they have published a research report on such a covered investment report of its securities. A covered research report would not be subject to sections 24(b) or 34(b) of the Investment Company Act.

If the SEC does not revise the rule within 270 days to implement the legislation, this section would provide an interim safe harbor. Until the commission has adopted revisions, and the Financial Industry Regulatory Association (FINRA) has revised rule 2210, a covered investment fund would be deemed to be a security that is listed on a national exchange, and is therefore not subject to certain requirements under the Investment Company Act. Any communications that concern only covered investment funds that fall within [15 U.S.C. 80a-24\(b\)](#) would not be required to be filed with FINRA, unless the purpose of the communications is not to provide research and analysis of covered investment funds.

The Senate bill would provide an exception to the safe harbor provision, excluding the provision from application to the publication or distribution of a covered investment fund research report by a broker or dealer of a covered fund, whose subject is a business development company or a registered closed-end investment company during the [prescribed](#) period, unless SEC rules expressly permit. This carve out would include business development companies.

### **COMMITTEE ACTION:**

S. 327 was introduced on February 7, 2017, and passed the Senate by Unanimous Consent on September 11, 2017.

The House version of S. 327, H.R. 910, passed on May 1, 2017, by a [vote](#) of 405-2. The Legislative Bulletin can be found [here](#). Similar legislation was included in the package, H.R. 1675, the Encouraging Employee Ownership Act of 2015, which passed on February 3, 2016, by [265-159](#). A past Legislative Bulletin can be found [here](#).

### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not available.

### **CONSTITUTIONAL AUTHORITY:**

A constitutional authority statement is not required for Senate legislation.



## **H.R. 3229 - To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes (Rep. Jeffries, D-NY)**

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### **FLOOR SCHEDULE:**

Expected to be considered on September 27, 2017, under a suspension of the rules, which require a 2/3 majority for passage.

### **TOPLINE SUMMARY:**

[H.R. 3229](#) would amend the Ethics in Government Act to extend the authority of the Judicial Conference to redact sensitive information in the financial disclosure reports of judicial officers and employees, if it is determined that not doing so would endanger the individual. This authority would be extended from its expiration date of December 31, 2017 to December 31, 2027.

### **COST:**

The Congressional Budget Office (CBO) "[estimates](#) that implementing H.R. 3229 would have no significant effect on the federal budget. Enacting H.R. 3229 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply."

### **CONSERVATIVE CONCERNS:**

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### **DETAILED SUMMARY AND ANALYSIS:**

The Ethics in Government Act requires government officials to file public financial disclosure reports detailing their financial and employment history. This legislation would permit the Judicial Conference to continue to redact sensitive information of certain employees that would be endangered should the information be disclosed.

### **COMMITTEE ACTION:**

H.R. 3229 was introduced on July 13, 2017 and was referred to the House Committee on the Judiciary, where it was reported by voice vote on September 7, 2017.

**ADMINISTRATION POSITION:**

A Statement of Administration Policy is not available.

**CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article 1, Section 1: All legislative powers vested in a Congress Article 1, Section 8, Clause 18: To make all laws necessary and proper.

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