

**AMENDMENT TO H.R. 5485, AS REPORTED**  
**OFFERED BY MR. HILL OF ARKANSAS**

At the end of title XII (before the short title) insert  
the following:

1       SAFE HARBOR FOR INVESTMENT FUND RESEARCH

2       SEC. 1202. (a) EXPANSION OF THE SAFE HAR-  
3 BOR.—Not later than the end of the 45-day period begin-  
4 ning on the date of enactment of this section, the Securi-  
5 ties and Exchange Commission shall propose, and not  
6 later than the end of the 180-day period beginning on such  
7 date, the Commission shall adopt, upon such terms, condi-  
8 tions, or requirements as the Commission may determine  
9 necessary or appropriate in the public interest, for the pro-  
10 tection of investors, and for the promotion of capital for-  
11 mation, revisions to section 230.139 of title 17, Code of  
12 Federal Regulations, to provide that a covered investment  
13 fund research report that is published or distributed by  
14 a broker or dealer—

15               (1) shall be deemed, for purposes of sections  
16       2(a)(10) and 5(c) of the Securities Act of 1933 (15  
17       U.S.C. 77b(a)(10), 77e(c)), not to constitute an  
18       offer for sale or an offer to sell a security that is the  
19       subject of an offering pursuant to a registration

1 statement that is effective, even if the broker or  
2 dealer is participating or will participate in the reg-  
3 istered offering of the covered investment fund's se-  
4 curities; and

5 (2) shall be deemed to satisfy the conditions of  
6 subsection (a)(1) or (a)(2) of section 230.139 of title  
7 17, Code of Federal Regulations, or any successor  
8 provisions, for purposes of the Commission's rules  
9 and regulations under the Federal securities laws  
10 and the rules of any self-regulatory organization.

11 (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-  
12 menting the safe harbor pursuant to subsection (a), the  
13 Commission shall—

14 (1) not, in the case of a covered investment  
15 fund with a class of securities in substantially con-  
16 tinuous distribution, condition the safe harbor on  
17 whether the broker's or dealer's publication or dis-  
18 tribution of a covered investment fund research re-  
19 port constitutes such broker's or dealer's initiation  
20 or reinitiation of research coverage on such covered  
21 investment fund or its securities;

22 (2) not—

23 (A) require the covered investment fund to  
24 have been registered as an investment company  
25 under the Investment Company Act of 1940

1 (15 U.S.C. 80a–1 et seq.) or subject to the re-  
2 porting requirements of section 13 or 15(d) of  
3 the Securities Exchange Act of 1934 (15  
4 U.S.C. 78m, 78o(d)) for any period exceeding  
5 the period of time referenced under paragraph  
6 (a)(1)(i)(A)(1) of section 230.139 of title 17,  
7 Code of Federal Regulations; or

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

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

14 (A) prohibit the ability of a member to  
15 publish or distribute a covered investment fund  
16 research report solely because the member is  
17 also participating in a registered offering or  
18 other distribution of any securities of such cov-  
19 ered investment fund; or

20 (B) prohibit the ability of a member to  
21 participate in a registered offering or other dis-  
22 tribution of securities of a covered investment  
23 fund solely because the member has published  
24 or distributed a covered investment fund re-

1 search report about such covered investment  
2 fund or its securities; and

3 (4) provide that a covered investment fund re-  
4 search report shall not be subject to section 24(b) of  
5 the Investment Company Act of 1940 (15 U.S.C.  
6 80a–24(b)) or the rules and regulations thereunder,  
7 except that such report may still be subject to such  
8 section and the rules and regulations thereunder to  
9 the extent that it is otherwise not subject to the con-  
10 tent standards in the rules of any self-regulatory or-  
11 ganization related to research reports, including  
12 those contained in the rules governing communica-  
13 tions with the public regarding investment compa-  
14 nies or substantially similar standards.

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

17 (1) the applicability of the antifraud or  
18 antimanipulation provisions of the Federal securities  
19 laws and rules adopted thereunder to a covered in-  
20 vestment fund research report, including section 17  
21 of the Securities Act of 1933 (15 U.S.C. 77q), sec-  
22 tion 34(b) of the Investment Company Act of 1940  
23 (15 U.S.C. 80a–33), and sections 9 and 10 of the  
24 Securities Exchange Act of 1934 (15 U.S.C. 78i,  
25 78j); or

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

10       (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

11           (1) IN GENERAL.—From and after the 180-day  
12           period beginning on the date of enactment of this  
13           Act, if the Commission has not adopted revisions to  
14           section 230.139 of title 17, Code of Federal Regula-  
15           tions, as required by subsection (a), and until such  
16           time as the Commission has done so, a broker or  
17           dealer distributing or publishing a covered invest-  
18           ment fund research report after such date shall be  
19           able to rely on the provisions of section 230.139 of  
20           title 17, Code of Federal Regulations, and the  
21           broker or dealer's publication of such report shall be  
22           deemed to satisfy the conditions of subsection (a)(1)  
23           or (a)(2) of section 230.139 of title 17, Code of Fed-  
24           eral Regulations, if the covered investment fund that  
25           is the subject of such report satisfies the reporting

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

8 (2) STATUS OF COVERED INVESTMENT FUND.—

9 After such period and until the Commission has  
10 adopted revisions to section 230.139 and FINRA  
11 has revised rule 2210, for purposes of subsection  
12 (c)(7)(O) of such rule, a covered investment fund  
13 shall be deemed to be a security that is listed on a  
14 national securities exchange and that is not subject  
15 to section 24(b) of the Investment Company Act of  
16 1940 (15 U.S.C. 80a-24(b)). Communications con-  
17 cerning only covered investment funds that fall with-  
18 in the scope of such section shall not be required to  
19 be filed with FINRA.

20 (e) DEFINITIONS.—For purposes of this section:

21 (1) The term “covered investment fund re-  
22 search report” means a research report published or  
23 distributed by a broker or dealer about a covered in-  
24 vestment fund or any securities issued by the cov-  
25 ered investment fund, but not including a research

1 report to the extent that it is published or distrib-  
2 uted by the covered investment fund or any affiliate  
3 of the covered investment fund.

4 (2) The term “covered investment fund”  
5 means—

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

15 (B) a trust or other person—

16 (i) issuing securities in an offering  
17 registered under the Securities Act of 1933  
18 and which class of securities is listed for  
19 trading on a national securities exchange;

20 (ii) the assets of which consist pri-  
21 marily of commodities, currencies, or deriv-  
22 ative instruments that reference commod-  
23 ities or currencies, or interests in the fore-  
24 going; and

1 (iii) that provides in its registration  
2 statement under the Securities Act of 1933  
3 that a class of its securities are purchased  
4 or redeemed, subject to conditions or limi-  
5 tations, for a ratable share of its assets.

6 (3) The term “FINRA” means the Financial  
7 Industry Regulatory Authority.

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

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

