

Securities Regulation Daily Wrap Up, BROKER-DEALERS—Senators introduce bill to match House focus on ETF research availability, (Jun. 27, 2016)

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Senators Dean Heller (R-Nev) and Gary Peters (D-Mich) have introduced legislation designed to increase the availability to investors of research and information on exchange traded funds to aid in informed decision-making. As companion legislation to H.R. 5019, which passed the House by a vote of 411-6, the Fair Access to Investment Research Act, S. 3092, would provide a safe harbor for brokers and dealers to publish research reports on ETFs in a manner similar to the protections available for other asset classes without those reports being considered an offering of ETF shares.

The text of H.R. 5019 also appears as Subtitle E in the recently released discussion draft of the Financial CHOICE Act, the Republican plan to replace Dodd-Frank.

Provision highlights. Under existing law, issuers are prohibited from offering securities for sale without filing a registration statement with the SEC. Under Securities Act Section 5, investment research reports technically can be considered an "offer," and the SEC has created safe harbors for research reports covering many asset classes, but not for ETFs. With ETFs becoming one of the fastest-growing investment products, legislators determined that parity between products is necessary.

To be eligible for the safe harbor under the legislation, the research report must relate to an ETF issuer that has a class of securities listed on a national securities exchange for at least 12 months before the distribution of the report and that has an aggregate market value of at least \$75 million. In addition, the ETF issuer must be either an open-end company or a trust whose assets consist primarily of interests in commodities, currencies, or derivative instruments referencing commodities or currencies. The broker or dealer would be required to distribute the report in the regular course of business.

"From workers investing for retirement or young families saving for their future, everyone will benefit by having more information readily available on ETFs," Sen. Heller said.

Industry support. SIFMA CEO and President Kenneth E. Bentsen, Jr. applauded the senators' effort to reduce the burdens imposed on dissemination of ETF research. "As the ETF market continues to grow, this bill's common sense clarifications will allow broker-dealers to share research on ETFs, providing consumers with greater access to information and fueling capital formation," he said.

Investment Company Institute General Counsel David Blass echoed these sentiments, noting that the legislation would allow important broker research to proliferate while increasing the amount of ETF information available to investors.

Companies: Securities Industry and Financial Markets Association; Investment Company Institute

LegislativeActivity: BrokerDealers InvestmentCompanies