

118TH CONGRESS  
1ST SESSION

# S. 2141

To require the Securities and Exchange Commission to extend a no-action determination relating to the provision of research services by broker-dealers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mr. MORAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To require the Securities and Exchange Commission to extend a no-action determination relating to the provision of research services by broker-dealers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Increasing Access to  
5 Adviser Information Act”.

6 **SEC. 2. EXTENSION OF NO-ACTION DETERMINATION;**  
7 **STUDY.**

8 (a) FINDINGS.—Congress finds the following:

1           (1) In 2017, staff of the Securities and Ex-  
2           change Commission (referred to in this section as  
3           the “Commission”) first granted temporary no-ac-  
4           tion relief regarding compliance with the provisions  
5           related to research in the Markets in Financial In-  
6           struments Directive II (commonly referred to as  
7           “MiFID II”) and related implementing rules and  
8           regulations, before the implementation of European  
9           rules designed to protect European investors from  
10          excessive costs and conflicts of interest.

11          (2) Staff of the Commission did not engage in  
12          any meaningful cost-benefit analysis of the issues  
13          raised by the no-action relief described in paragraph  
14          (1) either before or after the granting of that relief.

15          (3) In 2019, staff of the Commission revised  
16          and extended the temporary no-action relief de-  
17          scribed in paragraph (1), again without any mean-  
18          ingful cost-benefit analysis of the issues raised by  
19          the no-action relief either before or after the grant-  
20          ing of that relief.

21          (4) As of the date of enactment of this Act,  
22          there are approximately 15,300 registered invest-  
23          ment advisers, including affiliates that provide the  
24          vast majority of investment research.

1           (5) The Commission has received complaints  
2           from investors and investor advocacy groups express-  
3           ing concerns with the no-action relief described in  
4           paragraph (1), as it exists on the date of enactment  
5           of this Act.

6           (6) The Commission has received concerns from  
7           broker-dealers relating to the potential expiration of  
8           the no-action relief described in paragraph (1).

9           (b) EXTENSION OF NO-ACTION DETERMINATION.—  
10          The Commission shall provide an additional 180-day ex-  
11          tension of the no-action determination described in the let-  
12          ter sent on November 4, 2019, from the Chief Counsel’s  
13          Office of the Division of Investment Management of the  
14          Commission to the Securities Industry and Financial Mar-  
15          kets Association, entitled “Investment Advisers Act of  
16          1940—Section 202(a)(11)” (referred to in this section as  
17          the “no-action determination”), set to expire on July 3,  
18          2023.

19          (c) STUDY REQUIRED.—

20                 (1) IN GENERAL.—After the announcement of  
21                 the extension, pursuant to subsection (b), of the ex-  
22                 piration date of the no-action determination, the  
23                 Commission shall—

24                         (A) after providing notice and the oppor-  
25                         tunity for comment, conduct a study of the im-

1           pact of allowing the no-action determination to  
2           expire or of maintaining the no-action deter-  
3           mination; and

4                   (B) in carrying out the study required  
5           under subparagraph (A), give due regard to any  
6           comments received under that subparagraph.

7           (2) CONTENTS.—The study required under  
8           paragraph (1) shall include potential impacts on the  
9           research market for smaller issuers, including the  
10          following:

11                   (A) The availability of that research, in-  
12          cluding—

13                           (i) the number and types of firms that  
14                           provide that research;

15                           (ii) the volume of that research over  
16                           time; and

17                           (iii) competition in the research mar-  
18                           ket.

19                   (B) Any unique challenges faced by minor-  
20           ity-owned, women-owned, or veteran-owned  
21           small issuers in obtaining research coverage.

22                   (C) The impact on the availability of re-  
23           search coverage for small issuers due to rules of  
24           the Commission.

1 (D) A cost-benefit analysis of regulatory  
2 options that will support research coverage of  
3 small entities and increase transparency in the  
4 cost of research provided by broker-dealers.

5 (E) Impacts of the no-action determination  
6 on—

7 (i) investors in—

8 (I) registered investment compa-  
9 nies and exempt investment funds;

10 (II) pension funds; and

11 (III) endowments;

12 (ii) other asset owners;

13 (iii) investment advisers;

14 (iv) broker-dealers that provide both  
15 investment research and trading services;

16 (v) independent investment advisers  
17 that do not provide trading services;

18 (vi) broker-dealers that do not provide  
19 investment research; and

20 (vii) other market participants, includ-  
21 ing issuers of securities.

22 (F) Potential impacts of the expiration of  
23 the no-action determination on the parties de-  
24 scribed in subparagraph (E).

1           (3) REPORT.—Not later than 18 months after  
2           the date of enactment of this Act, the Commission,  
3           or delegated staff of the Commission, shall submit to  
4           the Committee on Banking, Housing, and Urban Af-  
5           fairs of the Senate and the Committee on Financial  
6           Services of the House of Representatives a report  
7           containing the findings and conclusions from the  
8           study conducted under this subsection, including  
9           findings relating to the expiration of the no-action  
10          determination.

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