

117TH CONGRESS
2D SESSION

S. 3948

To amend the Investment Company Act of 1940 to prohibit limitations on closed-end companies investing in private funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2022

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

A BILL

To amend the Investment Company Act of 1940 to prohibit limitations on closed-end companies investing in private funds, 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 Investor
5 Opportunities Act”.

6 **SEC. 2. CLOSED-END COMPANY AUTHORITY TO INVEST IN**
7 **PRIVATE FUNDS.**

8 (a) IN GENERAL.—Section 5 of the Investment Com-
9 pany Act of 1940 (15 U.S.C. 80a–5) is amended by add-
10 ing at the end the following:

1 “(d) CLOSED-END COMPANY AUTHORITY TO INVEST
2 IN PRIVATE FUNDS.—

3 “(1) IN GENERAL.—The Commission may not
4 limit a closed-end company from investing any or all
5 of the assets of the company in a private fund solely
6 or primarily because of the status of the fund as a
7 private fund.

8 “(2) APPLICATION.—Notwithstanding section
9 6(f), this subsection shall apply to a closed-end com-
10 pany that elects to be treated as a business develop-
11 ment company pursuant to section 54.”.

12 (b) DEFINITION OF PRIVATE FUND.—

13 (1) INVESTMENT COMPANY ACT OF 1940.—Sec-
14 tion 2(a) of the Investment Company Act of 1940
15 (15 U.S.C. 80a–2(a)) is amended by adding at the
16 end the following:

17 “(55) The term ‘private fund’ means an issuer
18 that would be an investment company but for the ex-
19 ception provided for in paragraph (1) or (7) of sec-
20 tion 3(c).”.

21 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
22 tion 202(a) of the Investment Advisers Act of 1940
23 (15 U.S.C. 80b–2(a)) is amended—

1 (A) by redesignating the second paragraph
2 (29) (relating to “commodity pool” and other
3 terms) as paragraph (31); and

4 (B) by amending paragraph (29) to read
5 as follows:

6 “(29) The term ‘private fund’ has the meaning
7 given the term in section 2(a) of the Investment
8 Company Act of 1940 (15 U.S.C. 80a–2(a)).”.

9 (c) TREATMENT BY NATIONAL SECURITIES EX-
10 CHANGES.—Section 6(b) of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78f(b)) is amended by adding at the
12 end the following:

13 “(11)(A) The rules of the exchange do not pro-
14 hibit the listing or trading of securities of a closed-
15 end company by reason of the amount of the invest-
16 ment by the company of assets in private funds.

17 “(B) In this paragraph—

18 “(i) the term ‘closed-end company’—

19 “(I) has the meaning given the term
20 in section 5(a) of the Investment Company
21 Act of 1940 (15 U.S.C. 80a–5(a)); and

22 “(II) includes a closed-end company
23 that elects to be treated as a business de-
24 velopment company under section 6(f) of

1 the Investment Company Act of 1940 (15
2 U.S.C. 80a-6(f)); and

3 “(ii) the term ‘private fund’ has the mean-
4 ing given the term in section 2(a) of the Invest-
5 ment Company Act of 1940 (15 U.S.C. 80a-
6 2(a)).”.

7 (d) INVESTMENT LIMITATION.—Section 3(c) of the
8 Investment Company Act of 1940 (15 U.S.C. 80a-3(e))
9 is amended—

10 (1) in paragraph (1), in the matter preceding
11 subparagraph (A), in the second sentence, by strik-
12 ing “subparagraphs (A)(i) and (B)(i)” and inserting
13 “subparagraphs (A)(i), (B)(i), and (C)”; and

14 (2) in paragraph (7)(D), by striking “subpara-
15 graphs (A)(i) and (B)(i)” and inserting “subpara-
16 graphs (A)(i), (B)(i), and (C)”.

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