NASAA

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December 4, 2013

The Honorable John Boehner
Speaker
U. S. House of Representatives
H-232, The Capitol
Washington DC, 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington DC, 20515

Re: The Small Business Capital Access and Job Preservation Act (H.R. 1105)

Dear Speaker Boehner and Leader Pelosi:

On behalf of the North American Securities Administrators Association (NASAA),[1] I'm writing to reiterate concerns the association previously expressed regarding H.R. 1105, the "Small Business Capital Access and Job Preservation Act," which the House is scheduled to consider later this week.

Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), investment advisers to private funds with fewer than 15 clients were not required to register with the U.S. Securities and Exchange Commission (SEC) and precious little was known about the capital market activities of these funds and other shadow banking actors.[2]

Title IV of the Dodd-Frank Act closed this regulatory gap by requiring nearly all advisers to private funds with more than $150 million in regulatory assets under management (RAUM) within the United States to register with the SEC.[3] Advisers to private funds with less than $150 million in RAUM were exempted from SEC registration but required to report basic data and risk metrics on a confidential basis. The SEC finalized the rules to implement the registration and reporting requirements in November 2011 and, for the two years since, advisers to private funds have been subject to the regulatory oversight of the SEC.

Private fund advisers wishing to return to the shadows of the unregulated financial services industry have argued that the new registration and reporting requirements are burdensome and provide little benefit in monitoring systemic risk within our financial markets. While any regulation entails some measure of cost, the costs in this context are specifically scaled to the size of the adviser – limited, basic disclosure on the Form ADV for exempt reporting advisers and scaled-down disclosure on the Form PF for certain registered private equity fund advisers. Only private fund advisers managing at least a billion

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1 The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

2 By counting each fund as a "client," most fund managers qualified for this private adviser exemption and were therefore able to avoid registering with the Securities and Exchange Commission.

3 The Dodd-Frank Act created three new limited exemptions to registration for private fund advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80b): (1) 202(a)(30) and 203(b)(3) exemption for foreign private advisers; (2) 203(l) exemption for advisers that "solely advise" venture capital funds; and (3) 203(m) exemption for advisers managing less than $150 million in RAUM.

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dollars in specific asset class funds are required to complete the more detailed sections of Form PF. For those large firms handling billions of dollars, which is the case for approximately a third of all private equity funds, cost arguments become specious at best.[4]

In terms of systemic risk, private equity fund advisers reported managing approximately $1.6 trillion as of May 2013. While individual fund outcomes are not expected to cause catastrophic loss, most would agree the market as a whole is sizeable enough to warrant some oversight. Those in doubt should consider a number of recent SEC enforcement actions that illustrate the kinds of misconduct that were occurring in the unregulated private equity space prior to the SEC oversight before taking any steps to cloak that market in darkness once more.[5]

Investor confidence in our markets is strengthened through prudent regulations that bring transparency to the marketplace and promote accountability. Any concerns regarding the structure or costs associated with the SEC's regulation of advisers to private equity firms is best addressed to the SEC in rulemaking that can adjust the reporting, registration, and examination requirements accordingly.

For the reasons advanced previously and set forth above, we respectfully urge you to oppose H.R. 1105 in its present form. Should you have any questions, please feel free to contact me or Michael Canning, NASAA's Director of Policy, at (202) 737-0900.

Sincerely,

Russ Iuculano

Russ Iuculano
NASAA Executive Director

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[4] According to the SEC's 2013 Annual Staff Report Relating to the Use of Data Collected from Private Fund Systemic Risk Reports (July 25, 2013), there were a total of 5,928 private equity funds managing approximately $1.603 trillion in regulatory AUM (RAUM). 1,931 of those private equity funds, nearly a third, were run by large advisers who individually managed in excess of $2 billion in RAUM.

[5] *See* Comments of Bruce Karpati, SEC Chief of Asset Management Unit, at the Private Equity International Conference (January 23, 2103) (citing *In re Crisp*, SEC Adm. Proc. File No. 3-14520 (instituted Aug. 30, 2012) (unauthorized diversion of investment opportunity to co-managed fund); *In re Pinkas*, SEC Adm. Proc. File No. 3-14759 (instituted Feb. 15, 2012) (misallocation of expenses); *In re Advanced Equities, Inc.*, SEC Adm. Proc. File No. 3-15031 (instituted Sept. 18, 2012) (misstatements to investors regarding fund performance); *SEC v. Resources Planning Group*, No. 12-cv-9509 (N.D. Ill. Filed Nov. 23, 2012) (ponzi scheme); *SEC v. Onyx Capital Advisors, LLC*, No. 10-cv-11633 (E.D. Mich. Filed April 22, 2010) (improper fee, misappropriation); *SEC v. Gowrish*, No. 09-cv-5883 (N.D. Cal. Filed Dec. 16, 2009) (insider trading); *SEC v. Yorkville Advisors*, No.12 Civ. 7728 (S.D.N.Y. filed Oct. 17, 2012) (inflated asset valuations); *In re KCAP Financial, Inc.*, SEC Adm. Proc. File No. 3-15109 (instituted Nov. 28, 2012) (valuation manipulation).