NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
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February 25, 2025

The Honorable French Hill (R-AR)
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters (D-CA)
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

RE: NASAA Urges Lawmakers to Strengthen Not Weaken the Role of Securities Regulators in Capital Formation

Dear Chairman Hill and Ranking Member Waters:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to communicate our preliminary feedback on the 36 discussion drafts posted on February 21, 2025.[2] As you will read below, we respectfully disagree with legislation that, if enacted, would (i) expand opaque private markets while simultaneously (ii) making those markets even more opaque and (iii) preempting or restricting the role of securities regulators in those darker markets. We urge all lawmakers to consider the predictable harm that will come with expanding access to illiquid, risky investments for retail investors while simultaneously further restricting regulatory oversight. Any additional retail investor access to dark markets should come with complementary private securities disclosures and continued robust authorities for state and federal securities regulators.

I. NASAA Strongly Opposes Laws That Would Weaken Investor Protection and Preempt State Efforts to Promote Responsible Capital Formation.

NASAA strongly opposes four (4) bills published on February 21, 2025, that would severely constrain states in their efforts to protect investors and administer laws to promote responsible capital formation. The draft bills are (1) The Unlocking Capital for Small Business Act of 2025, (2) the Small Entrepreneurs' Empowerment and Development Act (or SEED Act) of 2025, (3) the Restoring the Secondary Trading Market Act, and (4) the Improving Crowdfunding Opportunities Act. The text is the same or similar to titles included in H.R. 2799,

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

[2] We commend lawmakers and their congressional staff for publishing discussion drafts first. *See* Hearing Entitled: The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital, U.S. House Committee on Financial Services (Feb. 26, 2025).

the Expanding Access to Capital Act, as amended, which 205 members of the U.S. House of Representatives (the "House") voted against.[3]

As explained in our letter dated May 17, 2023 (attached),[4] NASAA fundamentally believes these four (4) bills would be counterproductive to our collective efforts to right-size local efforts designed to promote responsible capital formation for the next generation of American small businesses and the individual investors who provide much of the operating capital for these businesses. State securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach communities. State securities regulators use this information to enhance their education and outreach programming for entrepreneurs and small businesses.

NASAA also strongly opposes eight (8) bills published on February 21, 2025, to amend the SEC's accredited investor definition.[5] As explained in our letter dated June 15, 2023 (attached),[6] NASAA fully agrees that the SEC's accredited investor definition requires reform. However, we fundamentally believe that building markets that are more trustworthy to more people starts with ensuring that additional access to our markets comes with additional transparency.

In turn, none of these eight (8) bills should become law without Congress first incorporating complementary private securities disclosure requirements into the legislation to strengthen investor protection and provide more information on these companies and this market. For example, NASAA would be pleased to assist lawmakers with legislation to require the filing of (1) a Form D in the U.S. Securities and Exchange Commission ("SEC") Rule 506(c) offering before the issuer engages in general solicitation (a so-called "Advance Form D"), (2) an amendment to the Advance Form D with the remaining information required by Form D within

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[3] *See* Roll Call 78 | H.R. 2799, 118th Congress, 2nd Session, Clerk of the U.S. House of Representatives (Mar. 8, 2024).

[4] *See* NASAA Letter to House Leadership Expressing Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended (May 17, 2023).

[5] They are (1) the Fair Investment Opportunities for Professional Experts Act, (2) the Accredited Investor Definition Review Act, (3) the Equal Opportunity for All Investors Act of 2025, (4), the Increasing Investor Opportunities Act, (5) a bill to exclude qualified institutional buyers and institutional accredited investors from the record holder count for mandatory registration, (6) the Risk Disclosure and Investor Attestation Act, (7) the Investment Opportunity Expansion Act, and (8) the Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act.

[6] *See* NASAA Urges Senate Leadership to Promote Trust in Our Capital Markets (June 15, 2023).

15 calendar days after the date of the first sale of securities in the Rule 506(c) offering, and (3) a closing amendment to the Form D after the termination of any Rule 506 offering.[7]

NASAA will be reviewing these 12 bills more closely. We will reach out to the introducing lawmakers of the preemption bills and selected accredited investor bills outlined above. While we strongly oppose these bills as presented in draft form, we will offer technical corrections to the introducing lawmakers.

II. NASAA Opposes the Remaining Market Structure Proposals.

A majority of the remaining proposals are market structure proposals that are aimed at boosting the private markets and weakening the disclosure regime central to the public markets.[8] As explained above and in our 2023 letters, we do not believe these policy goals will result in more public offerings by well-run businesses. To the contrary, the results likely will be larger private securities markets that expose retail and institutional investors and the public alike to the direct and indirect consequences of fraud and scams that have metastasized in the opacity of these markets. Moreover, these larger, dark markets may have systemic consequences for our financial markets and undermine our management of financial markets stability.

By their nature, private markets are opaque and minimally regulated. Expanding these markets would exacerbate an already critical problem for our nation and our capital markets—nobody, including businesses, investors, legislators, and regulators, has a clear line of sight into

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[7] The law governing private securities offering disclosure is weak. Generally, private companies do not have to make their offering disclosures accessible to the SEC. Instead, they can submit an 8-page form notice ("Form D notice") to the SEC and the applicable states where securities have been sold without registration under the Securities Act of 1933 in an offering based on a claim of a qualifying exemption. The notice is published in a public database called EDGAR and includes basic information regarding the securities issuer, the offering, the investors, and related fees. It also includes a disclaimer that the notice may contain inaccurate or incomplete information. In the case of FTX for example, there is no doubt that stronger disclosure and corporate governance requirements in the private securities markets would have made it easier to spot or prevent the alleged fraud and other misconduct earlier. By way of illustration, under existing law, FTX Trading Ltd. submitted Form D notices to the SEC after raising over $1.4 billion in capital from dozens of investors. Moreover, in these notices, the corporation only had to disclose basic information regarding it, the offering, the investors, and related fees. Had the law required more timely and fulsome disclosure, regulators and other market watchers may have identified the gaps and weaknesses in FTX's corporate governance earlier. *See*, *e.g.*, NASAA Federal Policy Agenda for the 119th Congress (Feb. 12, 2025); 2024 NASAA Enforcement Report (Feb. 27, 2024); U.S. Securities and Exchange Commission Investor Advisory Committee Panel Discussion Regarding Exempt Offerings under Regulation D, Rule 506 (Sep. 21, 2023); NASAA Letter to Committee Leadership Regarding Lessons from the FTX Bankruptcy (Nov. 30, 2022);

[8] *See*, *e.g.*, (1) the Encouraging Public Offerings Act of 2025; (2) a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes; (3) a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes; (4) a bill to expand WKSI Eligibility; (5) Smaller Reporting Company, Accelerated Filer, and Large Accelerated Filer Thresholds; (6) Regulation A+ Improvement Act of 2025; (7) the Developing and Empowering our Aspiring Leaders Act; and (8) Amendment for Crowdfunding Capital Enhancement and Small-business Support (ACCESS) Act of 2025. *See also* NASAA Letter to Congress Urging a No Vote on H.R. 2799, the Expanding Access to Capital Act of 2023, As Amended (Mar. 6, 2024); NASAA Urges Senate Leadership to Promote Trust in Our Capital Markets (June 15, 2023); NASAA Letter to House Leadership Expressing Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended (May 17, 2023).

these ever-larger markets. In these dark markets, all but the most sophisticated, well-funded investors lack access to adequate information about the businesses and operations of the private companies in which they are investing. Public and private companies alike struggle to account for private companies when they conduct risk assessments for themselves and, as applicable, provide disclosures. Importantly, regulators and legislators, who are charged in different ways with protecting the investing public, lack the basic information necessary to know how investors are faring in these markets and whether private markets are operating in a fair, orderly, and efficient manner. In fact, they lack information necessary to identify risks that, if addressed, could prevent or mitigate the next financial crisis. This combination of blindfolds undermines our shared goal of having free markets that, because of regulation and appropriate transparency, are fair, orderly, and efficient. Passing legislation or adopting rules to further reduce the information the government has regarding private offerings and funds would only make it more difficult for the government to sustain stable markets.

III. Next Steps

As noted, we will be reaching out to selected offices about certain bills. At the same time, we welcome and urge offices to contact us with any questions or requests they have about any of the bills under discussion on February 26, 2025.

Thank you for your time and consideration. Should you have questions or wish to engage on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Leslie M. Van Buskirk

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NASAA President and
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Wisconsin Department of Financial
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May 17, 2023

The Honorable Kevin McCarthy (R-CA)
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Scalise (R-LA)
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Katherine Clark (D-MA)
Democratic Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Emmer (R-MN)
Majority Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Pete Aguilar (D-CA)
Democratic Caucus Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Elise Stefanik (R-NY)
Republican Conference Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James Clyburn (D-MD)
Assistant Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gary Palmer (R-AL)
Republican Policy Committee Chairman
U.S. House of Representatives
Washington, D.C. 20515

Re: NASAA Calls on House Leadership to Join NASAA in Its Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended

Dear Speaker McCarthy and Republican and Democratic leaders:

Maintaining robust public capital markets is critical to the financial futures of Americans and the global economy. The regulatory structures established in state and federal securities laws have resulted in the United States having the deepest and most liquid markets in the world. However, efforts are underway to pass legislation that would harm the public capital markets and preempt state investor protection laws to the detriment of entrepreneurs, small businesses, and individual investors.

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I write to urge you and your colleagues to oppose H.R. 2799, the Expanding Access to Capital Act, as amended ("H.R. 2799"). As explained below, NASAA strongly opposes four (4) titles in H.R. 2799 because they would make it impossible or more difficult, depending on the bill in question, for state securities regulators to promote responsible capital formation and protect investors in their states. The titles are Division B, Title I (the Unlocking Capital for Small Businesses Act of 2023), Title IV (the Small Entrepreneurs' Empowerment and Development ("SEED") Act of 2023), Title VII (the Improving Crowdfunding Opportunities Act), and Title VIII (the Restoring the Secondary Trading Market Act). As also explained below, NASAA opposes other titles in this legislation except Division A, Title III (SEC and PCAOB Auditor Requirements for Newly Public Companies). When combined, this legislation will only weaken investor protection and add to the explosive growth of unregulated private securities markets and private funds, thereby depriving the public securities markets and the investors that rely on them opportunities to build secure financial futures.[2]

A. NASAA Strongly Opposes Laws That Would Weaken Investor Protection and Preempt State Efforts to Promote Responsible Capital Formation.

NASAA strongly opposes the four anti-state regulation titles in H.R. 2799. They would be a gigantic step backwards in our collective efforts to right-size local efforts designed to promote responsible capital formation for the next generation of American small businesses and the individual investors who provide much of the operating capital for these businesses. State securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach community members. State securities regulators use this information to

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[2] On April 24, 2023, Chairman Patrick McHenry (R-NC) of the U.S. House Committee on Financial Services ("HFSC") introduced H.R. 2799, the Expanding Access to Capital Act of 2023. As of May 16, H.R. 2799 had no cosponsors. On April 26, 2023, the HFSC held a mark-up session during which Chairman McHenry offered an amendment in the nature of a substitute ("ANS") to H.R. 2799. The HFSC recorded a partisan vote of 28 ayes (Rs) to 21 nays (Ds) on H.R. 2799 and a voice vote on the ANS to H.R. 2799 (or "H.R. 2799, as amended"). H.R. 2799, as amended, removed the following five (5) titles from H.R. 2799: **(1)** H.R. 1807, the Improving Disclosure for Investors Act of 2023; **(2)** H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; **(3)** H.R. 1553, the Helping Angels Lead Our Startups Act of 2023; **(4)** H.R. 2627, the Increasing Investor Opportunities Act; and **(5)** H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023. In short, NASAA opposes the first four bills and is reviewing the fifth. *See, e.g.*, 2022-2023 NASAA Past-President Melanie Senter Lubin, Written Testimony before the House Financial Services Committee Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans (Apr. 19, 2023).

enhance their education and outreach programming for entrepreneurs and small businesses.

1. NASAA Strongly Opposes the Unlocking Capital for Small Businesses Act.

Despite the title, the Unlocking Capital for Small Businesses Act (the "Unlocking Capital Act") would do little to facilitate the sustainable growth of small businesses. Rather, it will facilitate the further growth of unregulated markets and weaken the government's oversight of those who market risky investments to retail investors. In short, the legislation would establish two categories of investment professionals, private placement brokers and finders, and allow them to engage in many activities that have for decades been regulated because of investor protection concerns. To do this, the title would implement the following changes to state and federal securities law:

a. Amend Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") to add a registration safe harbor and disclosure regime for private placement brokers.

b. Amend Exchange Act Section 15 to add a nonregistration safe harbor for finders.

c. Amend the definition of "financial institution" in Section 5312 of Title 31, United States Code, to remove "private placement broker" from the universe of SEC-registered brokers that can be considered financial institutions.[3]

d. Amend Exchange Act Section 3(a)(4), which defines "broker," to add "private placement brokers" to the list of exceptions from the Exchange Act broker definition.[4]

e. Amend Exchange Act Section 29 to protect issuers from voided contracts if they obtain a self-certification by the private placement broker and/or finder of their status and the issuer did not know or had no reasonable basis to believe the self-certification was false.[5]

f. Amend Exchange Act Section 15 to preempt state governments from enforcing "any law, rule, regulation, or other administrative action that imposes greater registration, audit, financial recordkeeping, or reporting requirements on a private placement broker or finder [than those required by the Unlocking Capital Act]."[6]

This title would establish a registration safe harbor for private placement brokers. To establish the safe harbor, the title directs the SEC to promulgate regulations that are "no more stringent than those imposed on funding portals" and "require the rules of any national securities

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[3] *See* 31 U.S.C. § 5312.

[4] *See* 15 U.S.C. § 78c(a)(4).

[5] *See* 15 U.S.C. § 78cc.

[6] On April 13, 2023, Representative Andrew Garbarino (R-NY) introduced the same or similar legislation as H.R. 2590. As of May 16, the bill had no cosponsors.

association [such as the Financial Industry Regulatory Authority ("FINRA")] to allow a private placement broker to become a member of such national securities association subject to reduced membership requirements".[7] The title also defines "private placement broker" in three parts. First, such brokers are persons who receive transaction-based compensation for effecting a transaction by introducing an issuer of securities and a buyer of securities either **(A)** for the sale of a business effected through the sale of securities or **(B)** for the placement of securities that are exempt from registration requirements under the Securities Act of 1933 ("Securities Act").[8] Second, with respect to a transaction for which such transaction-based compensation is received, private placement brokers cannot handle or take possession of funds or securities or engage in any activity that requires registration under state or federal law as an investment adviser. Third, private placement brokers cannot be a finder as defined by the Unlocking Capital Act. By virtue of the above-described amendment to Exchange Act Section 29, private placement brokers would be encouraged under this title to self-certify their status as a private placement broker.

The Unlocking Capital Act would establish a disclosure regime for private placement brokers. Specifically, the legislation directs these brokers to disclose in clear, conspicuous writing to all transaction parties the broker's role in the transaction, the compensation to the broker in connection with the transaction, the person to whom any such payment is made, and the direct or indirect beneficial interest in the issuer of the broker, an associated person of the broker, or the immediate families of the broker or the associated person.

In addition, the Unlocking Capital Act would establish a nonregistration safe harbor for finders. Specifically, the title exempts finders from registration requirements under Exchange Act Section 15 and directs voluntary participation if any in national securities associations such as FINRA. The title defines "finders" to be private placement brokers who **(A)** receive transaction-based compensation of equal to or less than $500,000 in any calendar year; **(B)** receive transaction-based compensation in connection with transactions that result in a single issuer selling securities valued at equal to or less than $15 million in any calendar year; **(C)** receive transaction-based compensation in connection with transactions that result in any combination of issuers selling securities valued at equal to or less than $30 million in any calendar year; or **(D)** receive transaction-based compensation in connection with fewer than 16 transactions that are not part of the same offering or are otherwise unrelated in any calendar year. Again, by virtue of the amendment to Exchange Act Section 29, finders would be encouraged to self-certify their status as a finder.

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[7] Title III of the Jumpstart Our Business Startups ("JOBS") Act enacted in 2012 contains provisions relating to securities offered or sold through crowdfunding. The SEC's Regulation Crowdfunding ("CF") and FINRA corresponding set of Funding Portal Rules set forth the principal requirements that apply to funding portal members. Funding portals must register with the SEC and become a member of FINRA. Broker-dealers contemplating engaging in the sale of securities in reliance on Title III of the JOBS Act must notify FINRA in accordance with FINRA Rule 4518. *See* FINRA, Funding Portals and Crowdfunding Offerings and SEC, Registration of Funding Portals.

[8] The legislation further states that the transaction-based compensation cannot be for a transaction with respect to "(I) a class of publicly traded securities; (II) the securities of an investment company (as defined in section 3 of the Investment Company Act of 1940); or (III) a variable or equity-indexed annuity or other variable or equity-indexed life insurance product".

Last and importantly, the Unlocking Capital Act would amend Exchange Act Section 15 to prevent state governments from imposing registration and other requirements on private placement brokers and finders that are greater than the new safe harbors. Stated differently, state governments seeking to register private placement brokers would need to set up new bespoke registration and regulatory regimes for private placement brokers. In addition, state governments could no longer require finders to apply to be registered or licensed with the state before they begin to solicit investors in the states.

NASAA strongly opposes the Unlocking Capital Act. This title would take away the authority of states to decide how best to structure a regulatory framework appropriate for the types of activities conducted by these investment professionals. Prior to conducting business in a state, most securities brokers must apply for registration to demonstrate that they have the requisite knowledge, skills, and business background to solicit and sell securities to investors. State securities regulators cannot protect investors or otherwise support responsible capital formation if they lack a line of sight into who is promoting securities in their states. While NASAA is pursuing or otherwise supporting sensible changes that would right-size the licensing and registration process for these investment professionals, we likely would need the collaboration and cooperation of the SEC and FINRA to align applicable SEC and FINRA rules with any changes advanced by state securities regulators. To this point, we continue to urge Congress to call on the SEC and FINRA to work with state securities regulators to evaluate potential changes to the existing regulatory framework.[9]

2. NASAA Strongly Opposes the Small Entrepreneurs' Empowerment and Development Act.

Division B, Title IV of H.R. 2799 is the SEED Act of 2023. This title would sow further opportunities to defraud investors by making the following counterproductive changes to the law:

a. Amend Securities Act Section 4 to establish yet another overly broad, federal exemption (or safe harbor) for so-called "micro-offerings." Specifically, the safe harbor would exempt the sale of securities from registration requirements under the Securities Act if **(A)** the aggregate amount of all securities sold by the issuer

[9] NASAA has long opposed the Unlocking Capital for Small Businesses Act. *See, e.g.*, NASAA Letter to Congress Regarding H.R. 6127, the Unlocking Capital for Small Businesses Act of 2018 (Nov. 19, 2018). For the same reasons, NASAA opposed unsuccessful efforts by the SEC in 2020 to establish a federal broker-dealer exemption for private placement finders. *See* NASAA, NASAA Outlines Opposition to SEC's Proposed Federal Broker-Dealer Exemption for Private Placement Finders (Nov. 13, 2020). *See also* NASAA Letter to Committee Leadership Regarding Opportunities to Strengthen Diversity in Our Capital-Markets (Dec. 12, 2022); NASAA Letter to Appropriations Committee Leadership Regarding Securities Policy Riders (Dec. 1, 2022); NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data (Sept. 2022) at 7 ("In 2021, U.S. members were highly successful in fulfilling their gatekeeper role. They denied 232 applications for licensure (an increase of 76% from 2020), conditioned the approval of 278 applications (an increase of 67% from 2020) and suspended 26 securities professionals (an increase of 13% from 2020). They also revoked licenses of 50 securities professionals and barred 61 individuals from the industry."); and Maryland Securities Division Commissioner Melanie Senter Lubin, Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Regarding Protecting Investors and Savers: Understanding Scams and Risks in Crypto and Securities Markets (July 28, 2022).

(including all entities controlled by or under common control with the issuer), including any amount sold in reliance on the safe harbor during the 12-month period preceding the sale, does not exceed $250,000 and **(B)** the issuer is not disqualified as a bad actor.

b. Direct the SEC to issue a new bad actor rule governing these micro-offerings within 270 days of the law's enactment and to make the new rule substantially similar to existing federal bad actor provisions.

c. Amend Securities Act Section 18(b)(4) to add micro-offerings as a covered security thereby preempting state registration or qualification requirements with respect to micro-offerings.[10]

By way of background, presently, issuers of securities can offer and sell securities through many types of offerings *without* registering those securities with the SEC. For example, issuers can use any of the following 10 types of offerings up to the stated limits: **(1)** Section 4(a)(2) (no offering limit); **(2)** Rule 506(b) of Regulation D (no offering limit); **(3)** Rule 506(c) of Regulation D (no offering limit);[11] **(4)** Regulation A: Tier 1 ($20 million); **(5)** Regulation A: Tier 2 ($75 million); **(6)** Rule 504 of Regulation D ($10 million); **(7)** Regulation CF, Section 4(a)(6) ($5 million); **(8)** Intrastate: Section 3(a)(11) (no federal limit but states usually have limits between $1 and $5 million); **(9)** Intrastate: Rule 147 (no federal limit but states usually have limits between $1 and $5 million); and **(10)** Intrastate: Rule 147A (no federal limit but states usually have limits between $1 and $5 million).[12]

In addition, during the last three decades, Congress and the SEC have enacted laws and regulations to further expand the ways and amounts that issuers can offer and sell securities without registering them with the state governments. In 1996, the federal government enacted the National Securities Markets Improvement Act (the "NSMIA"). This legislation preempted much state regulation of securities offerings. Among other changes, NSMIA preempted state registration of "covered securities" such as nationally traded securities and mutual funds.

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[10] *See* 15 U.S.C. § 77r(c)(1) and 15 U.S.C. § 77r(c)(2)(A). On April 13, 2023, Chairman Patrick McHenry (R-NC) of the HFSC introduced the same or similar legislation as H.R. 2609. As of May 16, the bill had one cosponsor: Representative Tom Emmer (R-MN).

[11] For information regarding related enforcement actions, see NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data (Sept. 2022) at 10 ("Although legitimate businesses may rely on private offering exemptions to lawfully raise capital, illegitimate issuers continue to exploit the exemptions to defraud the general public. Regulation D ensures that illegitimate issuers no longer need to file registration statements with federal regulators, and for all practical purposes their actions are exempt from federal review. Coupled with the federal preemption of state regulation, Regulation D allows white-collar criminals and bad actors to act in a regulatory vacuum – devoid of meaningful oversight and mechanisms to prevent abuse. Not surprisingly, state regulators reported numerous instances of misconduct tied to Regulation D private offerings. In 2020, state securities regulators opened 196 investigations and 67 enforcement actions involving offerings reliant upon the law. This includes 69 investigations and 24 enforcement actions relating to Rule 506(c), which generally permits issuers to publicly advertise unregistered securities so long as they limit sales to accredited investors.").

[12] *See* SEC Overview for Exemptions to Raise Capital (last updated Apr. 6, 2023) (setting forth a chart that provides certain regulatory information and requirements that govern 10 different avenues for raising capital under existing exemptions from federal securities laws).

However, NSMIA still permitted state review and registration of non-covered securities and requirements to submit notice filings to state securities regulators of covered securities. In subsequent years, Congress repeatedly forced its priorities and policies on states by adding to the list of covered securities and thereby further restricting the ability of state governments to decide whether and how to regulate certain securities offerings.

NASAA strongly opposes the SEED Act for five key reasons. First, this legislation is contrary to the purposes of the securities laws necessary for well-regulated capital markets and investor confidence. Second, it is simply unnecessary. There are many paths to raise capital, especially for an offering of $250,000 or less. Third, this legislation injects new complexity into an exemption framework that is complex already.[13] Fourth, registration and notice filings are the regulatory tools regulators use to know who is operating in their states. They cannot protect investors without a line of sight into companies selling these securities. They also cannot help entrepreneurs and small businesses if they do not know they are operating in their jurisdiction. Fifth, absent these filings (which essentially are communications to the states), state securities regulators may first learn about the transactions through other communications such as a call from a concerned citizen or investor and be obligated to open an investigation, all without the benefit of the information that would have been communicated through these filings. For some issuers, it may require more resources to respond to the investigation than it would have required to prepare a basic filing. At the end of the day, all this legislation would do is reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

3. NASAA Strongly Opposes the Improving Crowdfunding Opportunities Act.

Division B, Title VII is the Improving Crowdfunding Opportunities Act. In short, this title would enact a mix of provisions that weaken requirements for various participants in crowdfunding transactions.

a. SEC Regulation Crowdfunding

Crowdfunding refers to a financing method in which money is raised through soliciting relatively small individual investments or contributions from a large number of people. If a company would like to offer and sell securities through crowdfunding, they must comply with state and federal securities laws. State legislatures and regulators were first to enact tailored crowdfunding laws and did so with the twin goals of benefiting local businesses and the Main Street investors who would be asked to invest in them. Subsequently, Congress enacted a one-size-fits-all federal version of crowdfunding and directed the SEC to promulgate rules to implement yet another path for issuers to circumvent applicable securities laws.[14]

SEC Regulation CF sets forth requirements for raising capital through crowdfunding. By

[13] *See, e.g.,* SEC Overview for Exemptions to Raise Capital (last updated Apr. 6, 2023).

[14] *See generally* NASAA Enforcement Report: 2014 Report on 2013 Data (Oct. 2014) at 8 ("For the first time, NASAA members identified six investigations where crowdfunding was used. This last development is of high concern, given state efforts to improve and support capital formation opportunities. Legitimate capital formation should not be compromised by unrelated fraudulent activity.").

way of example, Regulation CF requires all transactions under Regulation CF to occur online through an SEC-registered intermediary, which can be either a broker-dealer or a funding portal; permits certain companies to raise a maximum aggregate amount of $5 million through crowdfunding offerings in a 12-month period; limits the amount individual non-accredited investors can invest across all crowdfunding offerings in a 12-month period; and requires disclosure of information in filings with the SEC and to investors and the intermediary facilitating the offering.

Presently, for various investor protection reasons, Regulation CF deems several types of issuers ineligible to rely on Regulation CF to conduct a transaction. These include issuers that must file reports under Exchange Act Section 13(a) or 15(d), investment companies, blank check companies, disqualified 'bad actor' issuers, and issuers that have failed to file the annual reports under Regulation CF during the two years immediately preceding the filing of the offering statement cannot rely on Regulation CF.[15]

Crowdfunding was meant to allow individual investors to invest in small, local businesses and the idea that pooled investments made through a special purpose vehicle ("SPV") or fund organized to invest in, or lend money to, a single company was particularly controversial. According to SEC staff in 2019, many issuers elected not to pursue an offering under Regulation CF due to the inability to conduct a transaction with an SPV as a co-issuer. In short, without an SPV, a large number of investors on an issuer's capitalization table can be unwieldly and potentially impede future financing.[16]

Beginning in 2021, the SEC permitted the use of certain SPVs in Regulation CF transactions. Specifically, following notice and comment, the SEC amended SEC Rule 3a-9 under the Investment Company Act of 1940 ("Investment Company Act") to add a new exclusion for limited-purpose crowdfunding SPVs and to include conditions for crowdfunding SPVs that are designed to ensure that the vehicle acts solely as a conduit for investments in a crowdfunding issuer. In short, when a crowdfunding SPV is used, the crowdfunding issuer and the crowdfunding vehicle are co-issuers under the Securities Act. Both must comply with the requirements of Regulation CF and other applicable securities laws.[17]

Further, Regulation CF presently sets offering limits for individual non-accredited investors whereas no limits exist for accredited investors.[18] Specifically, individual non-accredited investors can be sold either **(i)** the greater of $2,500, or 5 percent of the greater of the investor's annual income or net worth, if either the investor's annual income or net worth is less than $124,000; or **(ii)** ten percent of the greater of the investor's annual income or net worth, not to exceed an amount sold of $124,000, if both the investor's annual income and net worth are

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[15] *See* 17 CFR § 227.100(b).

[16] *See* SEC, Report to the Commission Regulation Crowdfunding (June 18, 2019) at 57-59.

[17] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 156-181.

[18] *See* SEC, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets (last updated Nov. 30, 2022).

equal to or more than $124,000.[19]

For similar reasons to the SPV issue, the investment limits on non-accredited investors have been the subject of much policy debate in recent years. For example, some market participants want to increase the limits and allow more individual investments into the marketplace. In addition, for similar reasons, some market participants want the limits to apply on a per-investment basis rather than across all crowdfunding offerings.[20] These efforts overlook the fact that growth in the market, or the lack thereof, is driven by the quality of the issuers.

Beginning in 2021, the SEC amended the calculation method for the investment limits for non-accredited investors. The purpose of the change was to allow them to use the *greater* of their annual income or net worth rather than the *lesser* of their annual income or net worth. The change conformed Regulation CF with Tier 2 of SEC Regulation A and applied a consistent approach to limited potential losses investors may incur in offerings conducted in reliance on the two exemptions. When making the change, the SEC stated, "[W]e are not aware of evidence since Regulation Crowdfunding's adoption to indicate this market requires a more stringent approach to investment limits than other exemptive regimes."[21]

With respect to required disclosures under Regulation CF transactions, the offering statement must include specified information, including a discussion of the issuer's financial condition and financial statements. The requirements applicable to financial statement disclosures are scaled and based on the amount offered and sold in reliance on Regulation CF within the preceding 12-month period. For example, for issuers offering $124,000 or less, they only need to disclose the financial statements of the issuer and certain information from the issuer's federal income tax returns, both certified by the principal executive officer of the issuers, unless audited financial statements are available.[22]

b. State Securities Laws Related to Crowdfunding

Securities Act Section 18(b), as amended, preempts state securities laws' registration and qualification requirements for crowdfunding offerings made pursuant to Securities Act Section 4(a)(6).[23] Nevertheless, states can require that notice filings be made for offerings conducted under Regulation CF. Also, many states do in fact require such notice filings for offerings conducted in their jurisdictions.[24]

In addition to requiring notice filings of federal crowdfunding offerings, over three dozen

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[19] *See* 17 CFR § 227.100(a)(2).

[20] *See* SEC, Report to the Commission Regulation Crowdfunding (June 18, 2019) at 40.

[21] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 155.

[22] *See* 17 CFR § 227.201(t). *See also* SEC, Fact Sheet: JOBS Act Inflation Adjustments (Sept. 9, 2022).

[23] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 147-148.

[24] *See* NASAA, UFT Acceptance Matrix (last updated Aug. 18, 2022).

state governments have enacted rules or other requirements specific to crowdfunding transactions involving investors in their states. These capital raising paths under state laws are tied to federal raising capital paths where the federal government has not preempted state registration or qualification. Specifically, most state crowdfunding laws are linked to the federal "intrastate" offering exemption, namely Securities Act Section 3(a)(11) and its corresponding Rule 147. A few state laws are tied to the federal exemption in Rule 504 of Regulation D.[25]

c. The Consequences of the Improving Crowdfunding Opportunities Act

The Improving Crowdfunding Opportunities Act would water down the minimal investor protections that exist today for crowdfunded offerings and make other significant changes to an already scaled back regulatory framework. Specifically, the legislation would direct the following amendments:

1. Amend Securities Act Section 18(b)(4)(A) to preempt state registration or qualification of secondary transactions by adding "section 4A(b) or any regulation issued under that section" as a type of report filed with the SEC that triggers application of covered security status under Section 18(b)(4)(A). As background, Securities Act Section 4A required among other things that issuers and intermediaries that facilitate transactions between issuers and investors in reliance on Securities Act Section 4(a)(6) provide certain information to investors and potential investors, take other actions, and provide other information to the SEC. Securities Act Section 18(b)(4)(C), as amended, separately preempted state securities laws' registration and qualification requirements for offerings made pursuant to Section 4(a)(6).

2. Amend Securities Act Section 4A(c) to make funding portals liable for fraud or misrepresentation by issuers only if the funding portals participated in the fraud or were negligent in discharging their due diligence obligations. As background, this change would reverse an SEC interpretation of Regulation CF that treats funding portals as issuers for liability purposes.[26]

3. Amend Securities Act Section 4A(a) and the definition of "financial institution" in Section 5312 of Title 31, United States Code, to make clear funding portals are not subject to anti-money laundering, "Know Your Customer," and associated Bank Secrecy Act requirements.

4. Amend Exchange Act Section 3(a) to repeal restrictions on curation by allowing funding portals to offer impersonal investment advice by means of written material, or an oral statement, that does not purport to meet the objectives or needs of a specific individual or account.

5. Amend paragraph (t)(1) of section 227.201 of Title 17, Code of Federal Regulations (which governs the financial statement requirements for offerings that, together with

[25] *See* NASAA, Intrastate Crowdfunding Resources.

[26] *See* 17 CFR § 227.503(a)(3)(ii).

all other amounts of offerings sold within the preceding 12-month period, have, in the aggregate target offering amounts of $124,000), to increase the permitted target offering amount to no more than $250,000 and direct documentation around the unavailability of financial statements that have been reviewed or audited by an independent public accountant.

6. Amend Securities Act Section 4A(f) to permit certain investment companies to rely on the SEC's crowdfunding exemption.

7. Amend Securities Act Section 4(a)(6) to codify and increase the offering limit from $1,000,000 to $10,000,000.[27]

8. Amend Securities Act Section 4(a)(6) to reverse recent SEC changes to the investment limits for individual non-accredited investors and codify a new "does not exceed 10 percent of the annual income or net worth of such investor" standard that omits a cap on the maximum aggregate amount that can be sold to investors.

9. Make technical corrections throughout the Securities Act to fix flawed references to Section 4(a)(6) and Section 4(6)(B).[28]

For several reasons, NASAA strongly opposes the Improving Crowdfunding Opportunities Act. While the SEC's mission includes the facilitation of capital formation and the protection of investors, the SEC does not take the kind of grassroots approach to this work that is typical of state agencies. The SEC was slow to establish a new regime for crowdfunding transactions,[29] has been slow or unwilling to take enforcement actions in crowdfunding-related cases that involve losses under $1 million, and lacks the resources to engage with startups throughout the United States regarding their options for raising capital under state and federal crowdfunding laws.[30] Given the SEC's record of deprioritizing crowdfunding issuers and investors, Congress should understand that further preemption of the states in this area would expand the *de facto* regulatory gap that exists with respect to the regulation of crowdfunding transactions. That gap, coupled with the protections for funding portals contemplated under this proposal, will lead to more aggressive practices by funding portals targeted investors, fewer

[27] The Commission adopted Regulation CF in 2015. Regulation CF initially provided an exemption from registration for certain crowdfunding transactions that raise up to $1,070,000 in a 12-month period. Effective March 2021, the Commission increased Regulation CF's offering limit from $1,070,000 to $5,000,000. As this increase was far in excess of the inflation-based increase that would otherwise have occurred, the SEC has not since increased Regulation CF's offering limit for inflation. *See* SEC, Fact Sheet: JOBS Act Inflation Adjustments (Sept. 9, 2022).

[28] On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2607. As of May 16, the bill had no cosponsors.

[29] The SEC adopted final rules permitting companies to offer and sell securities through crowdfunding in 2015, three years after enactment of the JOBS Act 1.0. *See* Press Release 2015-249, SEC Adopts Rules to Permit Crowdfunding (Oct. 30, 2015).

[30] Roughly two dozen states enacted crowdfunding laws before the SEC implemented Regulation CF. *See* Stacy Cowley, Tired of Waiting for U.S. to Act, States Pass Crowdfunding Laws and Rules (June 3, 2015) ("Twenty-two states and the District of Columbia have enacted such rules, nine of them in the last six months. Eleven states are considering creating such laws and procedures. Three more states — Florida, Illinois and New Mexico — have rules or legislation awaiting the governor's signature.").

remedies for harmed investors, and ultimately damage the credibility of all offerings made under the SEC's Regulation CF.

4. NASAA Strongly Opposes the Restoring the Secondary Trading Market Act.

Division B, Title VIII, the Restoring the Secondary Trading Market Act, would erase oversight in the secondary sales of offerings by state governments, including offerings made under Tier 2 of the SEC's Regulation A.[31] Specifically, this title would make the following changes:

a. Amend Securities Act Section 18(a) to prohibit state governments from regulating the "off-exchange secondary trading (as such term is defined by the Commission) in securities of an issuer that makes current information publicly available". The title does not specify which if any existing SEC definition of "off-exchange secondary trading" to use.

b. Specify that making "current information publicly available" includes "the information required in the periodic and current reports described under paragraph (b) of Section 230.257 of Title 17, Code of Federal Regulations." Section 230.257 refers to periodic and current reporting for Regulation A, Tier 2 offerings of securities such as annual reports on Form 1-K.[32]

c. Specify that making "current information publicly available" also includes "the documents and information required with respect to Tier 2 offerings, as defined in Section 230.251(a) of Title 17, Code of Federal Regulations." Section 230.251(d) of Title 17, Code of Federal Regulations, refers to various offering conditions applicable to Regulation A, Tier 2 offerings, including the filing of an offering statement with the SEC.[33]

Companies that trade on national exchanges must register their securities with the SEC and meet stringent exchange listing requirements. Those that do not meet these requirements must comply with applicable state securities laws that require, for instance, that the company disclose important financial information about the company's operations. Where appropriate, states have adopted disclosure-based "manual exemptions" from state registration requirements for secondary transactions. Generally, these manual exemptions allow for secondary trading of qualifying companies so long as certain financial standards are met and key information about the company is published in a nationally recognized securities manual or its electronic equivalent. In other words, investors would have access to the types of information that the company would have to make to retail investors through the state registration process. Historically, manuals were printed publications that investors could access in their local library

[31] *See* SEC Report to Congress: Access to Capital and Market Liquidity (Aug. 2017) at 53 ("Additionally, a lack of secondary market liquidity may discourage investors from participating in Regulation A offerings at valuations that the issuer finds attractive.").
[32] *See* 17 CFR § 230.257.

[33] On April 6, 2023, Representative Dan Meuser (R-PA) introduced the same or similar legislation as H.R. 2506. As of May 16, the bill had no cosponsors.

or through their investment professionals. Today, manuals generally are easily accessible sources of online information.

NASAA strongly opposes the Restoring the Secondary Trading Act. This legislation is unnecessary. As explained above, a majority of states, including the Commonwealth of Pennsylvania where the introducing lawmaker resides, maintain a manual exemption to facilitate secondary trading.[34] In many states, the SEC's Electronic Data Gathering, Analysis, and Retrieval (or EDGAR) system can be a designated source for purposes of the manual exemption. In addition, NASAA is committed to further reviews of the existing manual exemptions and, if appropriate, promulgating a model rule for states to consider and determine if changes to their existing rules are warranted. In April 2023, NASAA published a concept release to seek comment to inform NASAA's rulemaking on this front. In addition to other input, the request for comment seeks data on the use of the manual exemption and suggestions for how the exemption could be improved from an investor protection standpoint.[35]

Setting aside the concern of necessity, NASAA also strongly opposes this title because it will not solve the longstanding illiquidity problems in the Regulation A market.[36] As a threshold matter, secondary trading does not provide liquidity to the issuer but to the selling security holder. Further, the federal government preempted the states from reviewing primary offerings conducted under Tier 2, Regulation A because it believed such preemption would stimulate use of this pathway for raising capital. Yet, this market still suffers from a lack of demand among other reasons because investors want to avoid high costs, high information asymmetries, and high investment minimums associated with these deals.[37] Similarly, a variety of factors having nothing to do with state regulations, including inefficiencies in share transfer recordkeeping and the fact that the issuer usually has a right of first refusal, still hinder the secondary trading of these securities. Inaction with respect to those factors, coupled with further preemption of state governments, would not spur additional demand for these securities.[38] If Congress wanted to

[34] *See* Exemptions, Pennsylvania Department of Banking and Securities.

[35] *See* NASAA, Notice of Request for Comment Regarding the Uniform Securities Act Manual Exemption (Apr. 26, 2023).

[36] In August 2020, the SEC issued a report—as mandated by Congress—on the performance of Regulation A and Regulation D. SEC staff examined Regulation A offerings conducted between June 2015 and the end of 2019. During this time period, the total amount raised under Regulation A was $2.4 billion, including $2.2 billion under Tier 2 and $230 million under Tier 1. Issuers sought an average of $30.1 million in Tier 2 offerings but raised on average only $15.4 million. In Tier 1 offerings, issuers sought an average of $7.2 million and raised $5.9 million. Data is not available to show the extent to which retail investors other than accredited investors were participants in these offerings. SEC staff found that the typical issuer does not experience an improvement in profitability, continuing to realize a net loss in the years following an offering that utilizes Regulation A. This was based on available data, which necessarily overstated the success rate because it only included issuers that continued to file periodic reports after the offerings and not those that ceased operations and reporting. Despite the infusion of capital, only 45.8 percent of issuers continued filing periodic reports for three years following the offering. *See* SEC, Report to Congress on Regulation A / Regulation D Performance As Directed by the House Committee on Appropriations in H.R. Rept. No. 116-122 (Aug. 2020) at 88, 89, 91, 94, and 98.

[37] *See* Faith Anderson, Prepared Remarks of Faith Anderson for the SEC Investor Advisory Committee Regarding the Growth of Private Markets (Mar. 2, 2023) at 4.

[38] *See* Andrea Seidt, Prepared Remarks of Andrea Seidt for the SEC SBCFAC Regarding Secondary Market Liquidity (Aug. 2, 2022) at 2.

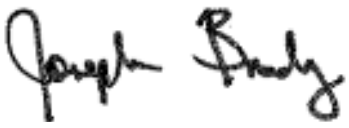
take additional action with respect to the Regulation A market, it would be useful to direct the SEC research and analyze whether it even makes sense to maintain the Regulation A regulatory framework given the persistent lack of demand for these deals and the overall poor performance of many of the companies that have relied on Regulation A

B. NASAA Opposes the Remaining Titles in H.R. 2799.

With the exception of Division A, Title III, NASAA opposes the remaining titles in H.R. 2799 as outlined in Appendices A, B, and C to this letter. As explained in NASAA's recent testimony before the HFSC, NASAA strongly believes that policies aimed at boosting the private markets and weakening the disclosure regime central to the public markets will not result in more public offerings by well-run businesses. To the contrary, the results likely will be larger private securities markets that expose retail and institutional investors and the public alike to the direct and indirect consequences of fraud and scams that have metastasized in the opacity of these markets. Moreover, these larger, dark markets may have systemic consequences for our financial markets and undermine our management of financial markets stability.[39]

Thank you for your time and consideration. Should you have any questions or wish to seek NASAA's technical feedback on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
NASAA Executive Director

Enclosure

[39] *See* 2022-2023 NASAA Past-President Melanie Senter Lubin, Written Testimony before the House Financial Services Committee Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans (Apr. 19, 2023).

Appendix A – NASAA Positions on Division A Titles of H.R. 2799[40]

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**REMOVE ABERRATIONS IN THE MARKET CAP TEST FOR TARGET COMPANY FINANCIAL STATEMENTS.** This title would direct the SEC to revise regulations to permit an issuer, when determining its market capitalization for purposes of testing the significance of an acquisition or disposition, to calculate the registrant's aggregate worldwide market value based on the applicable trading value, conversion value, or exchange value of all of the registrant's outstanding classes of stock (including preferred stock and non-traded common shares that are convertible into or exchangeable for traded common shares) and not just the voting and non-voting common equity of the registrant. On April 6, 2023, Representative French Hill (R-AR) introduced the same or similar legislation as H.R. 2497. As of May 16, the bill had no cosponsors.	Oppose
II	**HELPING STARTUPS CONTINUE TO GROW.** This title would make it easier for emerging growth companies ("EGC") to remain EGCs longer. Presently, a company qualifies as an EGC if it has total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: (1) its total annual gross revenues are $1.07 billion or more; (2) it has issued more than $1 billion in non-convertible debt in the past three years; or (3) it becomes a "large accelerated filer," as defined in Exchange Act Rule 12b-2. Under this legislation, EGCs would have seven years instead of five years to undertake certain additional	Oppose

[40] H.R. 2799, as amended, removed the following titles from H.R. 2799: **(1)** H.R. 1807, the Improving Disclosure for Investors Act of 2023, which would direct the SEC to promulgate a rule within one year of enactment of the legislation to allow for certain covered entities to satisfy their obligations to deliver regulatory documents required under securities laws to investors using electronic delivery; **(2)** H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; **(3)** H.R. 1553, the Helping Angels Lead Our Startups Act of 2023, which would direct the SEC to revise the SEC's Regulation D to not extend the prohibition on general solicitation or general advertising to events with specified kinds of sponsors, including angel investor groups unconnected to broker-dealers or investment advisers, so long as certain conditions are met; **(4)** H.R. 2627, the Increasing Investor Opportunities Act, which would amend the Investment Company Act to prohibit the SEC from placing a limit, as they currently do, on closed-end companies investing in private funds; and **(5)** H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023, which would amend federal securities laws to authorize the use of collective investment trusts within 403(b) plans and for other purposes. In short, NASAA opposes the first four bills (H.R. 1807, H.R. 2622, H.R. 1553, and H.R. 2627) and is reviewing H.R. 3063.

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	disclosure requirements applicable to more mature public companies. In addition, the triggers for losing EGC status would be relaxed. In particular, the legislation would raise the total annual gross revenue limit for an EGC from $1 billion to $1.5 billion and eliminate the "large accelerated filer" trigger for loss of EGC status. On April 13, 2023, Representative Bryan Steil (R-WI) introduced the same or similar legislation as H.R. 2624. As of May 16, the bill had no cosponsors.	
III	**SEC AND PCAOB AUDITOR REQUIREMENTS FOR NEWLY PUBLIC COMPANIES.** This title would permit the auditor of a private company transitioning to public company status to comply with Public Company Accounting Oversight Board ("PCAOB") and SEC independence rules for only the latest fiscal year as long as the auditor is independent under standards established by the American Institute of Certified Public Accountants or home-country standards for earlier periods. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2606. As of May 16, the bill had no cosponsors.	Support
IV	**EXPAND THE PROTECTION FOR RESEARCH REPORTS TO COVER ALL SECURITIES OF ALL ISSUERS.** This title would extend the protection for research reports about EGCs to research reports about all securities of all issuers. The new text would read as follows: "The publication or distribution by a broker or dealer of a research report ~~about an emerging growth company~~ *an issuer* that is the subject of a proposed public offering of ~~the common equity~~ *any* securities of ~~such emerging growth company~~ *such issuer* pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and Section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision." On April 13, 2023, Representative Roger Williams (R-TX) introduced the same or similar legislation as H.R. 2576. As of May 16, the bill had no cosponsors.	Oppose
V	**EXCLUDE QUALIFIED INSTITUTIONAL BUYERS AND INSTITUTIONAL ACCREDITED INVESTORS FROM THE**	Oppose

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	RECORD HOLDER COUNT FOR MANDATORY REGISTRATION. This title would amend Exchange Act Section 12(g) to exclude qualified institutional buyers and institutional accredited investors from calculations of holders of record. In addition, the bill would prohibit the SEC from issuing rules to reverse these changes by amending rules to reduce the number of holders of record or modify related calculations. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2605. As of May 16, the bill had no cosponsors.	
VI	**EXPAND WKSI ELIGIBILITY.** This title would lower the aggregate market value of voting and non-voting common equity necessary for an issuer of securities to qualify as a well-known seasoned issuer ("WKSI") from $700 million to $250 million. The issuer would also be able to qualify as a WKSI if it otherwise satisfies the other requirements of the WKSI definition without reference to any requirement related to minimum worldwide market value of outstanding voting and non-voting common equity held by non-affiliates. On April 13, 2023, Representative Steil introduced the same or similar legislation as H.R. 2625. As of May 16, the bill had no cosponsors.	Oppose
VII	**SMALLER REPORTING COMPANY, ACCELERATED FILER, AND LARGE ACCELERATED FILER THRESHOLDS.** This title essentially would codify a 2020 SEC rule, albeit with modifications in favor of issuers. With this legislation, the SEC would adjust the public float threshold in Section 229.10(f)(1)(i) of Title 17, Code of Federal Regulations, from $250 million to $500 million, the annual revenue threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from $100 million to $250 million, and the public float threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from $700 million to $900 million. The SEC would use three-year rolling average revenues instead of annual revenues for "smaller reporting companies." The SEC would also amend the definition of "large accelerated filer" to increase the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates threshold in Section 240.12(b)-2(2)(i) of Title 17, Code of Federal Regulations, from $700 million to $750 million, the accelerated filer exit threshold in Section 240.12(b)-2(3)(ii) of Title 17, Code of Federal Regulations, from $60 million to $75 million, and the large accelerated filer exit threshold in Section 240.12(b)-2(3)(iii) of Title 17, Code of Federal Regulations, from $560 million to $750 million. Last, the SEC would revise the definitions of an "accelerated filer" and a "large	Oppose

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	accelerated filer" to exclude any issuer that is a "smaller reporting company." On April 13, 2023, Representative Blaine Luetkemeyer (R-MO) introduced the same or similar legislation as H.R. 2603. As of May 16, the bill had no cosponsors.	

Appendix B – NASAA Positions on Division A Titles of H.R. 2799

NASAA Positions on Division B Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**UNLOCKING CAPITAL FOR SMALL BUSINESSES.** Please see Section A of this letter for a description.	Oppose
II	**SMALL BUSINESS INVESTOR CAPITAL ACCESS.** This title would amend the private fund adviser exemption under the Investment Advisers Act of 1940 ("Investment Advisers Act") to adjust the threshold for inflation since the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 and then adjust the threshold thereafter annually to reflect the changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor. On April 13, 2023, Representative Andy Barr (R-KY) introduced the same or similar legislation as H.R. 2578. As of May 16, the bill had no cosponsors.	Oppose
III	**IMPROVING CAPITAL ALLOCATION FOR NEWCOMERS.** This title would modify and expand the Qualifying Venture Capital Fund Exemption under Investment Company Act Section 3(c)(1). Specifically, it would increase the cap on aggregate capital contributions and uncalled capital commitments from $10 million to $150 million and increase the allowable number of beneficial owners from 250 to 600. It also would increase the current beneficial owners limit for funds that rely on the broader exemption in Section 3(c)(1) from 100 to 200 beneficial owners. On April 13, 2023, Representative William Timmons (R-SC) introduced the same or similar legislation as H.R. 2790. As of May 16, the bill had no cosponsors.	Oppose
IV	**SMALL ENTREPRENEUERS' EMPOWERMENT AND DEVELOPMENT.** Please see Section A of this letter for a description.	Oppose
V	**REGULATION A+ IMPROVEMENT.** This title would amend the federal securities laws to increase the dollar limit of certain securities offerings presently exempt from federal registration requirements to $150 million annually, adjusted for inflation every two years. The title contains no state preemption provisions because Congress previously took away the choice of the states to review and register these offerings. Rather than codifying the SEC's decision in 2020 to increase the maximum offering amount under Tier 2, Regulation A from $50 million to $75 million, this legislation would increase the cap to $150 million. On April 17, 2023, Representative Erin Houchin (R-IN) introduced the same or similar legislation as H.R. 2651. As of May 16, the bill had no cosponsors.	Oppose

NASAA Positions on Division B Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
VI	**DEVELOPING AND EMPOWERING OUR ASPIRING LEADERS.** This title would require the SEC to expand the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act. Specifically, the SEC would be required to include equity securities issued by qualifying portfolio companies, as well as investments in other venture capital funds, as qualifying investments. This title would also direct the Comptroller General of the United States to issue a report to Congress on the risks and impacts of concentrated sectoral counterparty risk in the banking sector. In addition, it would require the Advocate for Small Business Capital Formation to issue a report to Congress and the SEC examining access to banking services for venture funds and companies funded by venture capital, especially those outside of California, Massachusetts, and New York, and propose any related policy recommendations. On April 13, 2023, Representative Barr introduced the same or similar legislation as H.R. 2579. As of May 16, the bill had no cosponsors.	Oppose
VII	**IMPROVING CROWDFUNDING OPPORTUNITIES.** Please see Section A of this letter for a description.	Oppose
VIII	**RESTORING THE SECONDARY TRADING MARKET.** Please see Section A of this letter for a description.	Oppose

Appendix C – NASAA Positions on Division C Titles of H.R. 2799

NASAA Positions on Division C Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**GIG WORKER EQUITY COMPENSATION.** This title would extend SEC Rule 701, which exempts certain sales of securities made to compensate employees, consultants, and advisors, to apply to gig workers providing goods for sale, labor, or services for renumeration to either an issuer or customers of an issuer to the same extent as such exemptions apply to the employees of the issuer. This title also would direct the SEC to annually adjust the $10 million disclosure threshold for inflation and preempt state law with respect to wage rates or benefits that creates a presumption that an individual is an employee. Within three years of enactment of this title, the Government Accountability Office would have to produce a report studying the impacts of this title. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2612. As of May 16, the bill had no cosponsors.	Oppose
II	**INVESTMENT OPPORTUNITY EXPANSION.** This title would add additional investment thresholds for an individual to qualify as an accredited investor. The legislation would direct the SEC to treat any individual whose aggregate investment, at the completion of such transaction, in securities with respect to which there has not been a public offering is not more than 10 percent of the greater of (i) the net assets of the individual or (ii) the annual income of the individual as an accredited investor. On April 17, 2023, Representative Alexander Mooney (R-WV) introduced the same or similar legislation as H.R. 2652. As of May 16, the bill had no cosponsors.	Oppose
III	**RISK DISCLOSURE AND INVESTOR ATTESTATION.** This title would amend the Securities Act to direct the SEC within one year of enacting the legislation to issue rules that permit individuals to qualify as accredited investors by attesting to the issuer that the individual understands the risks of investment in private issuers, using the form that the Commission adopts by rulemaking, which may not be longer than two pages in length. On March 14, 2023, Representative Warren Davidson (R-OH) introduced the same of similar legislation as H.R. 1574. As of May 16, the bill had no cosponsors.	Oppose
IV	**ACCREDITED INVESTORS INCLUDE INDIVIDUALS RECEIVING ADVICE FROM CERTAIN PROFESSIONALS.** This title would revise the definition of "accredited investor" to include individuals receiving individualized investment advice or individualized investment recommendations from investment adviser professionals. This	Oppose

	title also would direct the SEC to revise 17 CFR § 203.501(a) and any other definition of "accredited investor" in a rule from the Commission to conform to the changes set forth in the title. On April 20, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2773. As of May 16, the bill had no cosponsors.	

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June 15, 2023

The Honorable Charles Schumer (D-NY)
Majority Leader
U.S. Senate
Washington, D.C. 20515

The Honorable Mitch McConnell (R-KY)
Minority Leader
U.S. Senate
Washington, D.C. 20515

The Honorable Richard Durbin (D-IL)
Majority Whip
U.S. Senate
Washington, D.C. 20515

The Honorable John Thune (R-SD)
Minority Whip
U.S. Senate
Washington, D.C. 20515

The Honorable Sherrod Brown (D-OH)
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Tim Scott (R-SC)
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Robert Menendez (D-NJ)
Chairman
Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Mike Rounds (R-SD)
Ranking Member
Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

Re: NASAA Urges Senate Leadership to Promote Trust in Our Public Capital Markets

Dear Majority Leader Schumer and Democratic and Republican leaders:

Maintaining robust public capital markets is critical to the financial futures of Americans and the global economy. The regulatory structures established in state and federal securities laws have resulted in the United States having the deepest and most liquid markets in the world. However, efforts are underway to enact legislation that would harm the public capital markets and preempt state investor protection laws to the detriment of entrepreneurs, small businesses, and individual investors. At the end of the day, all this legislation would do is reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I write to urge you and your colleagues to only support and advance legislation that helps rather than harms entrepreneurs, small businesses, and individual investors. In support of your work, NASAA has reviewed the 18 bills passed by the U.S. House of Representatives (the "House") as of June 7, 2023 and referred to the U.S. Senate Committee on Banking, Housing, and Urban Affairs (the "Senate Banking Committee"). Below, we set forth and describe the seven (7) bills[2] we support and the six (6) bills[3] we respectfully do not support. At this time, we take no position on five (5) of the House-passed bills.[4]

As you will read, the reason we respectfully oppose several bills is that the weight of the evidence shows they would undermine our common goal of efficient capital formation for entrepreneuers and small businesses in the United States consistent with robust protection for the individual investors who often provide this capital. Investor protection is critical to fostering the trust that will fuel our capital markets for generations to come.

A. NASAA Urges Congress to Help Older Investors.

The House recently passed two (2) bills that specifically call on all of us to better protect older and sometimes vulnerable persons from financial fraud. NASAA supports both of them.

As background, state securities regulators have been at the forefront of crafting state and federal measures aimed at protecting older and vulnerable investors from financial exploitation. During the last decade, NASAA has urged Congress to (i) update and strengthen the authority of the U.S. Securities and Exchange Commission (the "SEC," "agency," or "Commission" as appropriate below) to impose civil penalties on securities law violators, particularly recidivists;[5] (ii) establish a federal senior investor taskforce within the SEC to consult with state securities regulators and law enforcement authorities;[6] (iii) direct the U.S. Government Accountability

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[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

[2] NASAA supports H.R. 2593, the Senior Security Act of 2023; H.R. 500, the Financial Exploitation Prevention Act of 2023; H.R 2796, the Promoting Opportunities for Non-Traditional Capital Formation Act; H.R. 298, the Expanding Access to Capital for Rural Job Creators Act; H.R. 2792, the Small Entity Update Act; H.R. 2812, the Middle Market IPO Underwriting Cost Act; and H.R. 2795, the Enhancing Multi-Class Share Disclosures Act.

[3] NASAA opposes H.R. 835, the Fair Investment Opportunities for Professional Experts Act; H.R. 1579, the Accredited Investor Definition Review Act; H.R. 2797, the Equal Opportunity for All Investors Act of 2023; H.R. 2608, To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes; H.R. 2610, To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes; and H.R. 2793, the Encouraging Public Offerings Act of 2023.

[4] NASAA takes no position at this time on H.R. 388, Securities and Exchange Commission Real Estate Leasing Authority Revocation Act; H.R. 400, Investing in Main Street Act of 2023; H.R. 582, the Credit Union Modernization Act; H.R. 1076, Preventing the Financing of Illegal Synthetic Drugs Act; and H.R. 1156, China Financial Threat Mitigation Act of 2023.

[5] *See* S. 837, Stronger Enforcement of Civil Penalties Act of 2023, 118th Congress, 1st Session.

[6] *See* H.R. 2593, Senior Security Act of 2023, 118th Congress, 1st Session.

Office ("GAO") to study the costs, causes, and barriers to reporting the financial exploitation of seniors;[7] (iv) amend the Victims of Crime Act of 1984 to establish eligibility for seniors victimized by financial exploitation to be reimbursed from state victim compensation programs;[8] and (v) enact the Empowering States to Protect Seniors from Bad Actors Act, which would fund a federal grant program that state securities regulators can access to protect senior investors through education, rulemaking, and enforcement.[9]

As presently written, NASAA supports H.R. 2593, the Senior Security Act of 2023, as amended ("H.R. 2593"), and H.R. 500, the Financial Exploitation Prevention Act of 2023, as amended ("H.R. 500"). They both enjoy bipartisan, bicameral support. On June 5, 2023, the House passed H.R. 2593 by voice vote. Representative Josh Gottheimer (D-NJ) introduced the legislation. Representatives Ann Wagner (R-MO) and Michael Lawler (R-NY) are cosponsors. On January 30, 2023, the House passed H.R. 500 by a vote of 419 to zero (0). Representative Ann Wagner (R-MO) introduced the legislation. Four (4) Democrats and nine (9) Republicans are cosponsors. Further, both bills have Senate companion bills with the same or similar text and bipartisan cosponsors. On March 23, 2023, Senator Kyrsten Sinema (I-AZ), joined by Senator Susan Collins (R-ME), introduced S. 955, the Senior Security Act of 2023. On May 9, 2023, Senator Bill Hagerty (R-TN) introduced S. 1481, the Financial Exploitation Prevention Act of 2023. Senators Jon Tester (D-MT) and Susan Collins (R-ME) are cosponsors.

Importantly, H.R. 2593 would solve two (2) longstanding problems—information gathering and sharing. Specifically, the bill would establish a "Senior Investor Taskforce" (the "Taskforce") at the SEC for 10 years. The Taskforce would "(A) identify challenges that senior investors encounter, including problems associated with financial exploitation and cognitive decline; (B) identify areas in which senior investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations; (C) coordinate, as appropriate with other offices within the Commission, other taskforces that may be established within the Commission, self-regulatory organizations, and the Elder Justice Coordinating Council; and (D) consult, as appropriate, with State securities and law enforcement authoritys, State insurance regulators, and other Federal agencies." Every two (2) years, the Taskforce would submit a report to Congress outlining trends and innovations that negatively affect this population. The bill would require the SEC to use existing funds to complete this work.

Moreover, H.R. 2593 would require the GAO to submit to Congress and the Taskforce the results of its study of financial exploitation of senior citizens. The study would cover (i) the economic costs of the financial exploitation of senior citizens; (ii) the frequency of senior financial exploitation and correlated or contributing factors; and (iii) policy responses and reporting of senior financial exploitation.

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[7] *See* H.R. 2593, Senior Security Act of 2023, 118th Congress, 1st Session.

[8] *See* S. 3487, Edith Shorougian Senior Victims of Fraud Compensation Act, 116th Congress, 2nd Session.

[9] *See* H.R. 5914, Empowering States to Protect Seniors from Bad Actors Act, 117th Congress, 2nd Session. Representative Josh Gottheimer (D-NJ) has committed to introducing the same or similar legislation during the 118th Congress. *See* Gottheimer Release: Gottheimer Announces New Steps for Seniro Security Strategy to Combat Financial Scams (Feb. 3, 2023).

Similarly, H.R. 500 would support information gathering and sharing, all to the end of better protection of older Americans. First, it would require registered open-end investment companies and the transfer agents who serve those companies, including mutual funds, to contact customers who hold non-institutional accounts directly with the company to request information for a trusted contact who can be notified if the company or transfer agent identifies possible financial exploitation.[10] Second, it would allow the company or transfer agent in limited circumstances to postpone the date of payment upon redemption of any redeemable security. Among other requirements, the company or transfer agent must reasonably believe the redemption was requested through the financial exploitation of a security holder. Also, the security holder must be (i) an individual age 65 or older or (ii) an adult who the company or agent reasonably believes cannot protect their own interests due to the adult's mental or physical impairment ("Specified Adults").[11] Third, H.R. 500 would require the SEC, in consultation with NASAA and other policymakers, to submit a report to Congress that includes recommendations regarding the regulatory and legislative changes necessary to address the financial exploitation of security holders who are Specified Adults.[12]

To be clear, NASAA sees opportunities for improvements in both bills. With respect to H.R. 2593, state securities regulators appreciate that it can be costly for regulators to organize taskforces and prepare reports to Congress. It may or may not be realistic for the SEC to undertake this additional work without additional funding. With respect to H.R. 500, NASAA strongly encourages Congress to clarify the relationship between this legislation and state law so that nothing in this legislation can be construed to preempt or limit any provisions of state law unless the legislation provides a greater level of protection to investors. Lawmakers should consider using the 'no preemption provision' in the 2018 Senior Safe Act as a model.[13] In addition, NASAA strongly encourages Congress to incorporate a requirement that, if a company or transfer agent reasonably believes that financial exploitation of a Specified Adult may have occurred, may have been attempted, or is being attempted, it must promptly notify the SEC, the relevant state securities regulator, and the relevant adult protective services agency. Lawmakers

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[10] Open-end investment companies offer securities in pooled investment vehicles such as mutual funds.

[11] These provisions in H.R. 500 are broadly consistent with the SEC staff's 2018 no-action letter and the 2016 NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation, which is now the basis for law and regulation in at least 35 states. *See* Jennifer Palmer, Senior Counsel in the SEC's Division of Investment Management, Investment Company Act of 1940 – Section 22(e), Investment Company Institute No Action Letter (June 1, 2018); NASAA, NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (adopted Jan. 22, 2016); NASAA's list of jurisdictions that have enacted legislation or regulations based on the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation (last updated May 2023). *See generally* FINRA, SEC Approves Rules Relating to Financial Exploitation of Seniors, Reg. Notice 17-11 (Mar. 30, 2017).

[12] This requirement recognizes the longstanding efforts of state and federal policymakers to provide Congress with recommendations and information regarding senior financial exploitation. *See, e.g.*, Stephen Deane, Engagement Adviser in the SEC's Office of the Investor Advocate, Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead (June 2018).

[13] *See* 12 U.S.C. § 3423(c) ("Relationship to State law. Nothing in this section shall be construed to preempt or limit any provision of State law, except only to the extent that subsection (a) provides a greater level of protection against liability to an individual described in subsection (a)(2)(A) or to a covered financial institution described in subsection (a)(2)(B) than is provided under State law.").

may wish to use language from the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation to write an equivalent notification requirement for this legislation.[14]

In sum, we urge the Senate to act swiftly. We believe these bills even as presently written would go a long way to increasing protection for older investors.

B. NASAA Urges Congress to Expand Access to Capital for Entrepreneurs and Small Businesses in Rural Areas and Other Underserved Communities.

Also pending are two (2) House-passed bills that expressly call on all of us to better serve entrepreneuers and small businesses in rural areas and other underserved communities. NASAA is pleased to support both bills.

As background, state securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. For example, state securities regulators facilitate networking opportunities for businesses to raise capital, attend venture capital or entrepreneurs fairs (*e.g.*, the MIT Entrepreneur Forum), collaborate on outreach efforts with other regulators, and support the trainings conducted by nonprofit organizations (*e.g.*, venturecapital.org). The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach community members. State securities regulators use this information to enhance their education and outreach programming for entrepreneurs and small businesses.

As presently written, NASAA supports H.R. 2796, the Promoting Opportunities for Non-Traditional Capital Formation Act, as amended ("H.R. 2796"), and H.R. 298, the Expanding Access to Capital for Rural Job Creators Act, as amended ("H.R. 298"). On May 20, 2023, the House passed H.R. 2796 by a strong bipartisan vote of 309 to 67. Ranking Member Maxine Waters (D-CA) introduced the legislation. No Senator has introduced a companion bill for H.R. 2796. On January 30, 2023, the House passed H.R. 298 by voice vote. Representative Alexander Mooney (R-WV) introduced the legislation. Four (4) Democrats and eight (8) Republicans are cosponsors. H.R. 298 has a Senate companion bill, S. 294. On February 7, 2023, Senator John Kennedy (R-LA) introduced S. 294. Four (4) Democrats and one (1) Republican are cosponsors.

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[14] *See* NASAA Model Act to Protect Vulenable Adults from Financial Exploiation, Section 7 and its associated legislative commentary. The NASAA Model Act to Protect Vulenable Adults from Financial Exploiation provides broker-dealers and investment advisers with the authority to delay disbursing funds from an eligible adult's account for up to 15 business days if the broker-dealer or investment adviser reasonably believes that a disbursement would result in the financial exploitation of the eligible adult. If the broker-dealer or investment adviser delays a disbursement, it must notify people authorized to transact business on the account (unless these individuals are suspected of the financial exploitation), notify the state securities regulator and the adult protective services agency, and undertake an internal review of the suspected exploitation. The state securities regulator or adult protective services agency may request an extension of the delay for an additional 10 business days. Extensions beyond that could be ordered by a court.

Importantly, H.R. 2796 and H.R. 298 are complementary. To begin, H.R. 2796 would amend Section 4 of the Securities Exchange Act of 1934 ("Exchange Act") to require the SEC's Advocate for Small Business Capital Formation (the "Advocate") to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses and businesses located in rural areas.[15] In addition, it would require the Advocate to meet at least annually with representatives of state securities commissions to discuss opportunities for collaboration and coordination with respect to these efforts.[16] In support of this coordinated education and outreach, H.R. 298 would amend Section 4 of the Exchange Act to require the Advocate to identify any unique challenges that "rural-area small businesses" have with securing access to capital and report annually to Congress on the most serious issues encountered by "rural-area small businesses" and their investors.

In sum, we urge the Senate to act without delay. Both bills would strengthen our common goal of tailoring governmental efforts to support hard-to-reach entrepreneurs and small businesses throughout the United States. As then-SEC Commissioner Michael Piwowar said in 2017, "For a capital formation agenda to succeed, it is essential that state and federal regulators work together to support the businesses that seek to engage in these offerings while also protecting investors."[17]

C. NASAA Urges Congress to Level the Playing Field.

This Congress, the House has passed two (2) bills that aspire to level the playing field for smaller participants in our capital markets. NASAA commends lawmakers for acting on longstanding competition concerns. We are pleased to support both bills.

The bills are H.R. 2792, the Small Entity Update Act, as amended ("H.R. 2792"), and H.R. 2812, the Middle Market IPO Underwriting Cost Act, as amended ("H.R. 2812"). On May 30, 2023, the House passed H.R. 2792 by a vote of 367 to eight (8). Representative Ann Wagner (R-MO) introduced the legislation. Four (4) Democrats, as well as one (1) Republican, are cosponsors. On June 5, 2023, the House passed H.R. 2812 by a vote of 390 to 10. Representative Jim Himes (D-CT), joined by Representative Michael Lawler (R-NY), introduced the legislation. No Senator has introduced a companion bill for either H.R. 2792 or H.R. 2812.

H.R. 2792 would move the needle on an important recurring issue—specifically, legislators and regulators assign different meanings to the term "small entity" in ways that create confusion and undermine our collective efforts. For state securities regulators, "small" typically means America's smallest businesses found on Main Street. It does not mean an emerging growth company ("EGC") or a similarly large business. Specifically, the bill would direct the

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[15] As context, Section 19(d) of the Securities Act of 1933 ("Securities Act") requires the Commission to "conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate."

[16] While we appreciate the efforts of the prior Advocate to engage state regulators, we believe an annual meeting requirement would ensure such engagement occurs on a more regular basis.

[17] *See* SEC Commissioner Michael Piwowar, Opening Remarks at 2017 SEC/NASAA Annual Section 19(d) Conference (May 9, 2017).

SEC to conduct a study of the definition of the term "small entity" and publish a report to Congress with its findings and recommendations. The bill also would direct the SEC to engage in rulemaking to implement the recommendation, repeat the study in five (5) years, and adjust all dollar figures under the definition of small entity for inflation every five (5) years.

In a similar vein, H.R. 2812 would help to address a longstanding disadvantage faced by middle market businesses—specifically, in the United States, middle market businesses typically pay what effectively is a seven (7) percent tax before they can access our public capital markets. Meanwhile, larger businesses do not pay this tax.[18] In support of maintaining fair markets, which is an element of the SEC's present mission, this legislation would direct the Comptroller General of the United States, in consultation with the SEC and the Financial Industry Regulatory Authority ("FINRA"), to study the costs associated with underwriting initial public offerings ("IPOs") and Regulation A, Tier 2 offerings for small- and medium-sized companies. The bill also would direct the SEC to issue a report to Congress with findings and recommendations.

As stated, NASAA is pleased to support both bills. At the same time, we urge Congress to consider requiring the SEC to prepare a comprehensive study on private and public markets, including without limitation the SEC's latest data and research on the performance of offerings under Regulation A, Regulation D, and Regulation Crowdfunding, as well as the effect of recent changes to the SEC's "accredited investor" definition. It has been 60 years since the SEC led the preparation of a comprehensive report on the state of our capital markets.[19] Though Congress requests many studies from the SEC and the GAO, members of Congress rarely coordinate these requests. Among other benefits, a comprehensive study of the private and public capital markets would help regulators and legislators, as well as other stakeholders, better understand issues within their greater context for purposes of advancing helpful laws and rules. Moreover, we urge Congress to improve H.R. 2792 and H.R. 2812 by amending the legislation to direct the SEC to invite a representative of state securities commissions to consult on the SEC's research and reports to Congress.

D. NASAA Urges Congress to Strengthen the Ability of Individual Investors to Protect Themselves.

Last month, the House passed H.R. 2795, the Enhancing Multi-Class Share Disclosures Act, as amended ("H.R. 2795"), by a vote of 347 to 30. In short, NASAA supports the legislation as presently written because it would enhance transparency by requiring issuers with multi-class share structures to make certain disclosures regarding certain shareholders' voting power.

As background, a multi-class share structure occurs when a company issues two (2) or more classes of shares that have different voting rights. For example, a company may issue one (1) class of shares with no or few voting rights for the public and another class with more voting rights for company founders and executives.

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[18] *See* Robert Jackson, The Middle-Market IPO Tax (Apr. 25, 2018).

[19] *See* SEC, Report of Special Study of Securities Markets of the Securities and Exchange Commission (Apr. 3, 1963).

Multi-class share structures have existed in the United States since the late 1800s. The original intent of these structures was to allow companies, particularly family-run businesses, to maintain voting control without having to own the majority of equity in their company. Stated differently, insiders could control the company while owning a smaller number of shares than would be necessary in a traditional one-share, one-vote structure. For example, in 1925, the owners of the Dodge Brothers, an auto maker, had total voting control while holding only 1.7 percent of equity.[20]

In recent decades, the use of multi-class shares has risen in popularity. Since 1980, nearly 10 percent of all new initial public offerings ("IPOs") have used the structure. In addition, the percentage of IPOs using this structure has trended upward.[21]

As further background, in 2018, the SEC's Investor Advisory Committee ("IAC") and others determined that these structures may pose significant risks for investors, including limiting investors' abilities to influence management, direct strategy, and hold misaligned boards accountable. In their view, the current disclosure regime around such arrangements is simply inadequate given the significant risks associated with multi-class governance structures.[22]

In short, H.R. 2795 responds to this trend and associated concerns with a focus on closing well-documented disclosure gaps involving multi-class governance structures. Specifically, the bill would require issuers of securities with multi-class share structures to disclose certain information in any proxy solicitation or consent solicitation material for an annual meeting of the shareholders of the issuer or any other filing as the Commission determines appropriate. The disclosure would include (i) the number of shares of all classes of securities entitled to vote in the election of directors beneficially owned by specified persons and (ii) the amount of voting power held by specified persons. The specified persons would be each person who is a director, director nominee, or named executive officer of the issuer, or who is the beneficial owner of securities with five (5) percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors.

Introduced by Gregory Meeks (D-NY), this legislation presently has no cosponsors or a Senate companion bill. However, bipartisan support for this legislation is evident in the decision of the House Financial Services Committee ("HFSC") decision on May 24, 2023 to report the bill favorably by a vote of 48 to one (1). Further, the legislation received bipartisan support during prior Congresses.[23]

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[20] *See* House Report 115-879, Enhancing Multi-Class Share Disclosures Act, 115th Congress, 2nd Session. *See also* Congressional Research Service, Dual Class Stock: Background and Policy Debate (Dec. 8, 2021) (describing the public outcry that ensued after a stock issuance by the Dodge Brothers and the New York Stock Exchange's response thereto).

[21] *See* Jay Ritter, Initial Public Offerings: Dual Class Structure of IPOs Through 2022 (Apr. 24, 2023).

[22] See Recommendation of the SEC Investor Advisory Committee regarding Dual Class and Other Entrenching Governance Structures in Public Companies (approved Mar. 8, 2018).

[23] *See* H.R. 6322, Enhancing Multi-Class Share Disclosures Act, 115th Congress, 2nd Session. On July 11, 2018, H.R. 6322 was reported favorably out of the HFSC by a voice vote.

In conclusion, Congress should move quickly to enact this bill into law. This legislation would provide important disclosures for shareholders.

E. NASAA Urges Congress to Keep Investor Protection Top of Mind When Expanding the SEC's Definition of an "Accredited Investor."

Recently, the House passed three (3) measures intended to expand the number of investors qualified to purchase private securities by amending the SEC's definition of an "accredited investor." The proposals are H.R. 835, the Fair Investment Opportunities for Professional Experts Act, as amended ("H.R. 835"), H.R. 1579, the Accredited Investor Definition Review Act, as amended ("H.R. 1579"), and H.R. 2797, the Equal Opportunity for All Investors Act of 2023, as amended ("H.R. 2797").

As a threshold matter, NASAA supports well-designed efforts to expand access to and participation in our securities markets by investors of all ages and backgrounds. We agree that in many cases wealth measures are an inadequate screening criterion for measuring the type of sophistication necessary to invest in private markets, especially with respect to natural persons who meet the current thresholds simply by accumulating retirement savings over time.

That said, implicit in these proposals is a notion that individual investors are clamoring to invest in private offerings, individual investors are locked out of participating in the most promising startups, and legitimate private companies with bona fide products or services are eager to sell securities to individual investors. The weight of the evidence supports none of these ideas.[24] On the contrary, the promising or successful private companies generally attract capital from a small number of wealthy backers such as venture capital funds. For these companies, this is the simplest, easiest, and cheapest way to raise money.[25]

A question must therefore be asked as to what sort of companies are eager to raise capital from a new population of individual accredited investors. Evidence suggests that it will be the private companies that first fail to attract interest from angel investors, venture capital firms, investment banks, or hedge funds.[26] For example, we already know that, even though the law already allows private companies using certain pathways to raise capital to accept investments from non-accredited investors, the vast majority of such offerings fail to seek capital from non-

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[24] *See* Letter from Rick A. Fleming, SEC Office of the Investor Advocate, to Vanessa Countryman, Re: Concept Release on Harmonization of Securities Offerings (July 11, 2019) (summarizing data from the U.S. Federal Reserve and private researchers to show that companies will be unlikely to want to seek out investments from individual investors who do not already qualify as accredited and that "small-dollar investors may be driven into investment structures in which they bear the downside risk of losing their entire principal while their potential for profits is severely restricted").

[25] *See* Dana Olsen, The State of U.S. Venture Capital in 15 Charts, Pitchbook.com (Oct. 29, 2018); Bain & Co., Global Private Equity Report 2020 (2020) at 11 (stating that private equity uncalled capital "has been rising since 2012" and "hit a record high of $2.5 trillion in December 2019 across all fund types").

[26] *See* SEC Division of Economic and Risk Analysis, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009- 2017 (Aug. 2018) at 34 ("2018 DERA Report") (stating that "[t]he mean number of investors per offering (14) is significantly larger than the median (4), indicating the presence of a small number of a small number of offerings with a large number of investors. Offerings by pooled investment funds and REITs have the largest average number of investors (both accredited and non-accredited) per offering, while those by non-financial issuers have the smallest.").

accredited investors.[27] As succinctly explained by Professor Elisabeth de Fontenay, "[r]etail investors are not needed to provide capital to emerging companies, and promising companies do not appear to want them."[28] Furthermore, in the realm of the private markets, retail investors are pitted against well-heeled institutional investors who have the means and resources to extract the best deals from the most promising opportunities, thus leaving retail investors with the riskiest of the risky deals.

In addition, a separate but related question must be asked as to which individual investors actually have the types of financial resources that companies need. Consider the amount of financial assets—which include all bank accounts, certificates of deposit, cash value life insurance, stocks, bonds, and pooled investment funds (including retirement accounts)—held by American households. For the households in the bottom quartile of household net worth, the median value of financial assets held is a mere $1,380.72. For the next quartile of households (those between the 25th and 50th percentiles of net worth), the median value of financial assets held is $11,220. The next quartile up (between the 50th to 75th percentiles) is a bit better off, but the median value of financial assets held is still only $61,000. For three-fourths of American households, then, it is hard to imagine that there would be a significant demand for securities sold in the private markets. Indeed, their investments in high risk, illiquid, unregistered offerings are more likely to be the result of unscrupulous sales tactics rather than sound financial judgment.

Of course, the portion of the population lying just below the current accredited investor thresholds—which would likely include households between the 75th and 90th percentiles in terms of net worth—is more likely to have the financial wherewithal to invest in private offerings. For these households, the median value of financial assets held is $301,000. Consider, however, the investment portfolios of these households. For this segment of the population, the median value of retirement accounts is $192,000, which means that most of these households' financial assets are in retirement accounts. Moreover, barely one (1) in four (4) of these households hold stocks directly, and for those that do, the median value of the holdings is $30,000.[29]

Understanding this, Congress should appreciate that expanding the SEC's "accredited investor" definition as proposed probably would serve as a conduit, at best, for lackluster companies to waste the hard-earned savings of Americans. At worst, these proposals could become an engine for even more fraudulent exploitation of vulnerable investors.

Respectfully, we urge Congress to pause further consideration of H.R. 835, H.R. 1579, and H.R. 2797 until the SEC's Division of Corporation Finance has determined whether to recommend to the Commission that the agency amends the definition of an "accredited

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[27] *See* 2018 DERA Report at 34-35 (stating that between 2009-2017, only seven (7) percent of Rule 506(b) offerings had at least one non-accredited investor). It may be that private issuers do not exercise this option because of the enhanced disclosure obligations that must be met for sophisticated, but not non-accredited investors.

[28] *See* Elisabeth de Fontenay, Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment, Written Testimony Before the U.S. House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets (Sep. 11, 2019).

[29] *See* Board of Governors of the Federal Reserve System, Survey of Consumer Finances, 1989-2019.

investor."[30] We understand that, pursuant to the SEC's Unified Agenda of Regulatory and Deregulatory Actions (also commonly referred to as the "Reg Flex Agenda"), the SEC's Director of the Division of Corporation Finance is considering whether to recommend such changes to the Commission. The forthcoming proposed rulemaking may incorporate one (1) or more of the ideas set forth in these bills and have the benefit of the SEC staff's review of the effects of the changes the SEC made in 2020.

Should Congress disagree with our call for delay and oversight rather than premature legislation, NASAA offers the background and comments below regarding H.R. 835, H.R. 1579, and H.R. 2797. In addition, we highlight two (2) specific changes that we believe would have the greatest impacts on investor protection and ultimately the efficient allocation of capital.

To begin, H.R. 835 would amend the Securities Act to modify the definition of an "accredited investor" to codify the SEC's existing definition, incorporate new requirements to adjust net worth and income standards for inflation, and make it possible to qualify as an accredited investor based on education or job experience. The amended definition under H.R. 835 would include (i) an individual whose net worth or joint net worth with their spouse exceeds $1 million (adjusted for inflation), excluding from the calculation of their net worth their primary residence and a mortgage secured by that residence in certain circumstances; (ii) an individual whose income over the last two (2) years exceeded $200,000 (adjusted for inflation) or joint spousal income exceeded $300,000 (adjusted for inflation) and who has a reasonable expectation of reaching the same income level in the current year; (iii) an individual who is licensed or registered with the appropriate authorities to serve as a broker or investment adviser; and (iv) an individual determined by the SEC to have qualifying education or job experience and whose education or job experience is verified by FINRA. The bill also would direct the SEC to revise the definition of "accredited investor" in Regulation D of the Securities Act, which exempts certain offerings from SEC registration requirements, to conform to the changes in H.R. 835.

H.R. 835 had limited bipartisan support in the House. Representative French Hill (R-AR) introduced the legislation. The bill has one (1) Democratic cosponsor and six (6) Republican cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably by voice vote. No Senator has introduced a companion bill.

In a similar vein, H.R. 1579 would amend the law to codify the SEC's 2020 rulemaking with respect to the decision to permit qualification based on certain certifications, designations, or credentials and to direct the SEC to review and adjust or modify the list of certifications, designations, and credentials accepted with respect to meeting the requirements of the definition of "accredited investor" within 18 months of the date of the bill's enactment and then not less frequently than once every five (5) years thereafter.[31]

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[30] The SEC Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, and Form D. *See* SEC, Regulation D and Form D Improvements (Fall 2022).

[31] *See* SEC Final Rule, Accredited Investor Definition, Rel. No. 33-10824 (Aug. 26, 2020).

H.R. 1579 had limited bipartisan support in the House. Representative Bill Huizenga (R-MI) introduced the legislation. Representative Michael Lawler (R-NY) is a cosponsor. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably by a recorded vote of 41 yeas to two (2) nays. No Senator has introduced a companion bill.

Last, H.R. 2797 would amend the Securities Act to add a new way for individuals to qualify as an accredited investor. Specifically, individuals of any net worth or income level could qualify by passing an examination designed to ensure the individual understands and appreciates the risks of investing in private companies, as well as ensure the individual "with financial sophistication or training would be unlikely to fail." The SEC would have two (2) years from the date the legislation becomes law to establish this examination. A registered national securities association such as FINRA could administer the examination.

H.R. 2797 had bipartisan support in the House. Representative Mike Flood (R-NE) introduced the legislation. Two (2) Democrats and one (1) Republican are cosponsors. On May 31, 2023, the House passed the legislation by a vote of 383 to 18. On April 26, 2023, the HFSC reported the bill favorably by a recorded vote of 42 yeas to one (1) nay. No Senator has introduced a companion bill.

To begin with, these three bills would require the SEC to amend or expand the SEC's definition of an "accredited investor" in ways that the SEC decided not to during its 2020 rulemaking.[32] In 2020, the SEC opted to permit qualification for a small set of professional certifications. The SEC considered but ultimately did not approve (i) qualification by additional professional certifications; (ii) qualification by education or job experience; or (iii) qualification by examination.[33] As a related aside, the SEC staff also considered these ideas when the agency issued a report in 2015 on the definition of an "accredited investor."[34]

Respectfully, NASAA cannot support any of these bills at this time. However, we may be able to support some of these ideas upon review of the SEC's findings from its ongoing review of the SEC's "accredited investor" definition. As a general matter, NASAA agrees that certain certifications can be one (1) aspect in assessing an investor's financial sophistication. However, such standards should be coupled with demonstrable experience.[35] NASAA also generally agrees

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[32] When the SEC took up these ideas through rulemaking in 2020, only three (3) of the five (5) Commissioners voted to approve the final rule. *See* SEC, Final Commission Votes for Agency Proceedings, Calendar Year 2020 (last updated Aug. 18, 2021).

[33] *See*, *e.g.*, SEC Final Rule, Accredited Investor Definition, Rel. No. 33-10824 (Aug. 26, 2020)("Although other professional certifications, designations, and credentials, such as other FINRA exams, a specific accredited investor exam, other educational credentials, or professional experience received broad commenter support, we are taking a measured approach to the expansion of the definition and including only the Series 7, 65, and 82 in the initial order. While we recognize that there may be other professional certifications, designations, and credentials that indicate a similar level of sophistication in the areas of securities and investing, we believe it is appropriate to consider these other credentials after first gaining experience with the revised rules.").

[34] *See* SEC, Report on the Review of the Definition of "Accredited Investor" (Dec. 18, 2015).

[35] *See* Letter from Christopher Gerold to Vanessa Countryman re: Amending the "Accredited Investor" Definition (Mar. 16, 2020).

that rigorous examinations, coupled with continuing education or retesting requirements, can be one (1) aspect in assessing an investor's financial sophistication.

At this time, NASAA can support two (2) specific changes to the SEC's "accredited investor" definition. First, we believe the SEC's definition should exclude assets accumulated or held in retirement accounts from inclusion in natural person accredited investor net worth calculations. Around the same time the natural person accredited investor thresholds were established in 1982, there was a marked shift in the benefits employers offered to employees. The increased use of defined contribution plans over defined benefit plans now leaves most workers responsible for providing the bulk of their own retirement savings. It should be a priority for Congress and the Commission to guard these assets from exposure to the riskiest offerings in our markets. The retirement accounts with the largest balances are generally held by older investors who are especially vulnerable to losses that they cannot recoup over time. Further, this population can ill-afford to invest in the types of illiquid securities offered in many private deals. Like a primary residence, which Congress excluded in 2010 from the SEC's accredited investor net worth calculations, these are assets that as a class and given their defining purpose are not appropriate for speculative private investing.

Second, we believe the SEC should adjust the income and net worth thresholds to account for inflation since 1982 and then index those thresholds going forward. The natural person accredited investor thresholds—specifically, $1 million in net worth, an individual annual income of $200,000, or a combined income of $300,000—have not changed since 1982, except for the exclusion of primary residences from net worth calculations. In 1982, these thresholds applied to 1.6 percent of American households. Although a poor proxy for sophistication and the ability to bear losses, the number of qualifying households in 1982 kept the risks of private market investing within a rung of investors most likely to be able to bear speculative losses. That is no longer true; today, these thresholds qualify approximately 13 percent of American households to engage in private market investments.

Any adjustment to the income and net worth thresholds must take into account the role inflation has played in eroding their protective aims. The Commission previously acknowledged that in failing to adjust the "dollar-amount thresholds upward for inflation, we've effectively lowered the thresholds in term of real purchasing power."[36] Without adjustment, the protective barrier that these thresholds are meant to represent will become further eroded, exposing more vulnerable investors to unnecessary risks.

In sum, we urge Congress to delay further action until the SEC staff have concluded their inquiry of possible changes to the SEC's definition. We further urge Congress to keep the protection of investors top of mind when making any changes to the SEC's definition. NASAA remains open to discussions with Congress, the SEC, and other stakeholders about additional reforms to the SEC's definition that take into account the ability of investors to bear losses.

[36] *See* SEC Proposed Rules, Revisions to Limited Offering Exemption in Regulation D, Rel. No. 33-8828 at 42 (Aug. 3, 2007).

F. NASAA Urges Congress to Reject Proposals That Would Relax Obligations for EGC Issuers and Extend EGC Privileges to All Issuers.

The remaining three (3) bills passed by the House are intended to reduce disclosure requirements for issuers, particularly EGCs, to increase IPOs and improve the quality of public offerings. These proposals are H.R. 2608, To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes, as amended ("H.R. 2608"); H.R. 2610, To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes, as amended ("H.R. 2610"); and H.R. 2793, the Encouraging Public Offerings Act of 2023 ("H.R. 2793").

NASAA appreciates efforts by lawmakers to increase IPOs, add useful clarity to the securities regulatory framework, and improve the quality of public offerings. We agree that our public markets have deteriorated over the last several decades and that reforms are needed to reinvigorate them. However, these proposals are premised on deregulatory approaches that degrade the quality and quantity of publicly information about issuers, an approach that we know does not work.

To begin, H.R. 2608 would make clear that EGCs would not have to present acquired company financial statements for any period prior to the earliest audited period of the EGC presented in connection with its IPO. Also, in no event would an EGC that loses its EGC status be required to present financial statements of the issuer or the acquired company for any period prior to the earliest audited period of the EGC presented in connection with the IPO.

H.R. 2608 had bipartisan support in the House. Representative Patrick McHenry (R-NC) introduced the legislation. The bill has no cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably on a 41 to zero (0) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2608, as presently written, on the basis that any ambiguity should be resolved in favor of investors and the SEC. There very well may be circumstances where it does make sense to have the EGC provide audited financial statements for a period earlier than two (2) years, including in the case of acquired company financial statements and for follow-on offerings involving an EGC that lost its EGC status during the IPO registration. This legislation would prohibit the SEC from exercising judgment where needed to require this additional information.

In a similar vein, H.R. 2610 would make clear that the registration statement of the EGCs need not include profit and loss statements for more than the preceding two (2) years rather than the three (3) preceding fiscal years. This bill also would amend the law to permit any issuer to submit to the Commission a draft registration statement for confidential nonpublic review by SEC staff prior to public filing, provided that the initial confidential submission and all amendments thereto are publicly filed with the Commission no later than 10 days before the issuer's requested date of effectiveness of the registration statement. The SEC presently accepts

voluntary draft registration statement submissions from all issuers for nonpublic review provided certain procedures are followed.[37]

H.R. 2610 had bipartisan support in the House. Representative Patrick McHenry (R-NC) introduced the legislation. The bill has no cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably on a 42 to zero (0) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2610 as presently written. NASAA has no concerns currently with the idea of reducing the amount of time that EGCs have between seeking registration on a confidential basis and the first road show. Presently, an EGC is permitted to begin registration on a confidential basis if the EGC publicly files its previously confidential registration statement at least 15 days before conducting a road show. This provision is intended to facilitate public review of the registration statement between the first public filing and IPO pricing. The proposed change to 10 days would appear to enhance efficiency and transparency, all to the benefit of our markets. However, the proposed legislation also contemplates that lawmakers would codify, with modifications, the SEC's present practice of accepting voluntary draft registration statement submissions from all issuers for nonpublic review provided certain procedures are followed. When Congress established the mechanism for EGCs to obtain confidential SEC review of registration documents under the Jumpstart Our Business Startups Act ("JOBS Act"), its expressed purpose was to encourage companies to go public. It is not clear why the privilege should now be extended statutorily to companies that, by definition, have already successfully completed an IPO.

Last, H.R. 2793 would extend certain EGC privileges to all issuers and require the SEC to submit a report to Congress before it conducts a rulemaking. Specifically, H.R. 2793 would make clear that the SEC has authority to issue rules that would extend the testing-the-waters provisions for EGCs to all issuers. As background, in 2012, Congress created Section 5(d) of the Securities Act.[38] Section 5(d) permits an EGC and any person acting on its behalf to engage in oral or written communications with potential investors that are qualified institutional buyers ("QIBs") and institutional accredited investors ("IAIs") before or after filing a registration statement to gauge such investors' interest in a contemplated securities offering. In 2019, the SEC approved a new rule that extended this testing-the-waters accommodation to non-EGCs.[39] Under Securities Act Rule 163B, any issuer, or any person authorized to act on its behalf, can engage in oral or written communications with potential investors that are, or are reasonably believed to be, QIBs or IAIs, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering.[40] In addition, H.R. 2793 would extend the confidential review of draft registration statements to all issuers. Subject to a public notice and comment period and, prior to any rulemaking, the submission of a report to Congress containing a list of the findings supporting

[37] *See* SEC, Draft Registration Statement Processing Procedures Expanded (last updated June 24, 2020).

[38] *See* JOBS Act 1.0 at § 105.

[39] *See* SEC Final Rule, Solicitations of Interest Prior to a Registered Public Offering, Rel. No. 33-10699 (Sept. 25, 2019).

[40] *See* 17 CFR § 230.163(b).

the basis of the rulemaking, the legislation would permit the SEC to impose other terms, conditions, or requirements on testing-the-water communications and the confidential review of draft registration statements with respect to non-EGC issuers.

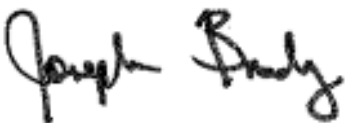
H.R. 2793 had bipartisan support in the House. Representative Ann Wagner (R-MO) introduced the legislation. The bill has three (3) Democratic and one (1) Republican cosponsors. On June 5, 2023, the House passed the legislation on a 384 to 13 vote. On April 26, 2023, the HFSC reported the bill favorably on a 38 to one (1) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2793 as presently written. Respectfully, this legislation would reinforce the sort of deregulatory creep that NASAA submits would be a step in the wrong direction if we in fact want to maintain the reputational primacy of the public markets in the United States. In addition to our concerns regarding confidential reviews of registration materials outlined above, NASAA strongly encourages Congress to reconsider and abandon the idea of directing an independent federal agency to submit a report to Congress before it conducts a rulemaking. While we encourage Congress to use its robust oversight tools and submit letters when the SEC issues proposals for public comment, we believe it would interfere with existing administrative procedures to insert Congress in between a federal agency and the public from whom the agency will seek data and other information, as well as opinions, that can inform the agency's decisions. Moreover, there are legitimate concerns regarding testing-the-waters campaigns. Issuers that test the waters without any regulatory oversight willingly or unwittingly may engage in fraud and precondition the market based on fraudulent statements. Prior regulatory review of testing-the-waters materials serves to mitigate or eliminate such risks.

In sum, we urge Congress to reject these bills. Rather than passing legislation that would only make our markets more opaque, we should focus on pro-investor measures like the ones outlined earlier in this letter and previous NASAA communications to Congress, including our 2023 Report and Recommendations on Reinvigorating Our Capital Markets.[41]

Thank you for your time and consideration. Should you have any questions or wish to seek NASAA's technical feedback on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
NASAA Executive Director

[41] Please visit NASAA's Policy Center at nasaa.org to find our recent letters to Congress and testimony, as well as our Federal Policy Agenda.