



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

November 3, 2011

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, DC 25015

Dear Mr. Speaker and Madam Leader:

I am writing on behalf of the North American Securities Administrators Association (NASAA) to express my opposition to H.R. 2930, the Entrepreneur Access to Capital Act, which is scheduled to be voted on by the House of Representatives this week.

This legislation is well intended, but structurally flawed. While intended to promote an internet-based fundraising technique known as "crowd-funding" as a tool for investment, this legislation will needlessly preempt state securities laws and weaken important investor protections.

Crowd-funding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been promoted as a way of assisting small businesses and start-ups looking for investment capital to help get their business ventures off the ground.

State securities regulators are acutely aware of today's difficult economic environment and its effects on job growth. Small businesses are important to job growth and to improving the economy. However, by placing unnecessary limits on the ability of state securities regulators to protect retail investors from the risks associated with smaller, speculative investments, Congress is poised to enact policies intended to strengthen the economy that will very likely have precisely the opposite effect. If this legislation is enacted in its present form it will prohibit states from enforcing laws designed to minimize the risks to investors. As currently written, H.R. 2930 would only allow states to address investor losses after they occur. Under this scenario, the public will lose confidence in this business funding method, thus, hurting the efforts to make crowd-funding a viable means for raising capital.

Preemption of State Law

Section 4 of H.R. 2930 would preempt state laws requiring disclosures or reviewing exempted investment offerings before they are sold to the public. The authority to require such filings is critical to the ability of states to get "under the hood" of an offering to make sure that it is what it says it is. Moreover, as a matter of principle and policy, NASAA ardently believes that review

President: Jack E. Herstein (Nebraska)
President-Elect: Preston DuFauchard (California)
Past-President: David Massey (North Carolina)
Executive Director: Russel Luculano

Secretary: Rick Hancox (New Brunswick)
Treasurer: Fred Joseph (Colorado)
Ombudsman: Matthew Neubert (Arizona)

Directors: Steven D. Irwin (Pennsylvania)
Andrea Seidt (Ohio)
Patricia D. Struck (Wisconsin)
Franklin L. Widmann (Florida)

of offerings of this size should remain primarily the responsibility of the states. As the securities regulators closest to the investing public, and in light of our demonstrated record of effectiveness, states are the most appropriate regulator in this area. State regulators are closer, more accessible, and more in touch with the local and regional economic issues that affect both the issuer and the investor in a small business offering.

NASAA sincerely appreciates the effort of Congressman Ed Perlmutter (D-CO) to work with the bill's sponsor to produce a bipartisan amendment that would alleviate states concerns with the preemptive provisions of H.R. 2930. Unfortunately, the Perlmutter-McHenry amendment that was made in order by the Rules Committee on November 2 falls far short of this goal. By simply clarifying that states "retain jurisdiction...to investigate and bring enforcement actions with respect to fraud or deceit," the amendment essentially restates the preemptive provisions as they existed in the original bill. **The Perlmutter-McHenry amendment fails to address the fundamental concern that states have had with H.R. 2930 since its introduction: the preemption of state authority to review securities prior to their offering.**

Congress should refrain from preempting state law. Preempting state authority is a very serious step and not something that should ever be undertaken lightly or without careful consideration, including a thorough examination of all available alternatives. In the case of crowd-funding, state securities regulators are not only capable of acting, but indeed, are acting, and Congress should allow them the opportunity to continue to protect retail investors from the risks associated with smaller, speculative investments.

Individual Investment Cap

One of the fundamental tenets of securities law is that an investor is protected when the seller of securities is required to disclose sufficient information so that an investor can make an informed decision. Post-sale antifraud remedies provide little comfort to an investor who has lost a significant sum of money that is unrecoverable. Any effort to remove or weaken the up-front registration and disclosure process should not happen without adequate alternative safeguards.

NASAA appreciates that the concept of crowd-funding is appealing in many respects because it provides small, innovative enterprises, access to capital that might not otherwise be available. Indeed, this is precisely the reason that states are now considering adopting a model rule that would establish a more modest exemption for crowd-funding as it is traditionally understood, with individual investments capped at several hundred dollars per investor.

By contrast, H.R. 2930 goes far beyond anything that is being contemplated by the states or traditional advocates of crowd-funding. By setting an individual investment cap of 10 percent of annual income, or \$10,000, H.R. 2930 will create an exemption that will expose many more American families to potentially catastrophic financial harm. Given that most U.S. households have a relatively modest amount of savings, a loss of \$10,000, in even a single case, can be financially crippling.

Aggregate Investment Cap

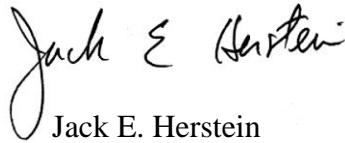
H.R. 2930 would permit businesses to solicit investments of up to \$2 million, in increments of \$10,000 per investment. Such a high cap on aggregate investment makes the bill inconsistent

with the expressed rationale for the crowd-funding exception. A company that is sufficiently large to warrant the raising of \$2 million in investment capital is also a company that can afford to comply with the applicable registration and filing requirements.

Registration and filing requirements at both the state and federal level exist to protect investors, and any company raising up to \$2 million can afford to comply with them.

Thank you for your consideration of these important issues. If you have any questions, please feel free to contact me or Michael Canning, Co-Director of Policy, at the NASAA Corporate Office at (202) 737-0900.

Sincerely,

A handwritten signature in black ink that reads "Jack E. Herstein". The signature is written in a cursive style with a large, looping initial "J".

Jack E. Herstein
President