



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

December 8, 2015

The Honorable Jeb Hensarling  
Chairman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

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

Re: December 8, 2015 Full Committee markup of H.R. 2187, The Fair Investment Opportunities for Professional Experts Act

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I write to offer comments on H.R. 2187, as amended by Rep. David Schweikert’s Substitute Amendment,<sup>2</sup> which will be the subject of a legislative markup in the House Financial Services Committee this week.

As currently defined by the Securities and Exchange Commission (“Commission” or “SEC”) pursuant to Rule 501 of Regulation D, the term “accredited investor”- includes: (i) any natural person whose individual net worth, or joint net worth with that person’s spouse at the time of his purchase, exceeds \$1,000,000 (with exclusions related to the value of the person’s primary residence) or (ii) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years, or joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

The Fair Investment Opportunities for Professional Experts Act, as amended by the Substitute Amendment, would expand the definition of “accredited investor”, to include, without regard to income or net worth, two additional categories of individuals: (i) natural persons who are licensed or registered as a broker-dealer or investment adviser by the SEC, or by any state division responsible for licensing or registering individuals in connection with securities activities; and (ii) natural persons who the SEC determines, by regulation, have “demonstrable education or job experience to qualify such persons as having professional knowledge of a subject related to a particular investment.” In addition, H.R. 2174 would codify the income and net worth standards that are currently in effect pursuant to Rule 501.

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

<sup>2</sup> This letter discusses H.R. 2187, as the bill is expected to be amended by an Amendment in the Nature of Substitute, posted by the Financial Services Committee on December 3, 2015. The substitute amendment is accessible at <http://financialservices.house.gov/uploadedfiles/bills-114hr-hr2187-s001183-amdt-001.pdf>

President: Judith M. Shaw (Maine)  
President-Elect: Michael Rothman (Minnesota)  
Past-President: William Beatty (Washington)  
Executive Director: Joseph Brady

Secretary: Gerald Rome (Colorado)  
Treasurer: Kathryn Daniels (Ontario)  
Ombudsman: Keith M. Woodwell (Utah)

Directors: Joseph P. Borg (Alabama)  
Diana Foley (Nevada)  
Jack E. Herstein (Nebraska)  
John Morgan (Texas)

In June, NASAA expressed significant concerns about an earlier version of H.R. 2187. We are pleased that the revised bill does not include several of the most worrisome features of the previously proposed legislation, including a provision that would have granted accredited investor status to *any* person who retained and used the services of a registered broker-dealer to make an investment decision, regardless of the person’s financial sophistication, and a second provision that would have permitted persons to become “licensed” as an accredited investor by the Financial Industry Regulatory Authority (“FINRA”).

While NASAA appreciates the significant improvements that have been made to H.R. 2187 by the sponsor, we do not support the bill’s proposal to codify the income and net worth standards of the accredited investor definition currently in effect. These income and net worth standards were established in 1982, and have not been adjusted for inflation.<sup>3</sup> Moreover, as the Government Accountability Office and many others have noted, dollar thresholds have never been an accurate proxy for investor sophistication.<sup>4</sup> In our view, Congress should refrain from embedding such flawed metrics into our securities laws. Rather, the SEC should be allowed to complete its study and publish its findings regarding potential revisions to the accredited investor definition as mandated under the Dodd-Frank Act.<sup>5</sup>

In addition, NASAA strongly believes that, before making any adjustments to the accredited investor definition, Congress and the SEC should gather additional information about the Regulation D private placement market, about which very little is known, despite its rivaling the public markets in size.<sup>6</sup> As a first step, Congress should urge the SEC to adopt the rules proposed in July 2013, which would require additional disclosures by issuers selling securities in reliance on Rule 506, including filings of Form D, both preceding and subsequent to the offering.<sup>7</sup> These rules are of crucial importance, and long overdue.

Thank you for your consideration of NASAA’s views. Should you have any questions, please do not hesitate to contact me or Michael Canning, NASAA Director of Policy, at (202) 737-0900.

Sincerely,



Judith M. Shaw  
NASAA President and Maine Securities Administrator

---

<sup>3</sup> According to the U.S. Bureau of Labor Statistics, \$200,000 had the same buying power in 1982 as \$492,928.50 in 2015. Similarly, \$1,000,000 had the same buying power in 1982 as \$2,464,642.49 in 2015.

<sup>4</sup> United States Government Accountability Office Report. “Alternative Criteria for Qualifying As An Accredited Investor Should Be Considered.” GAO-13-640. (July, 2013)

<sup>5</sup> The SEC staff is in the midst of conducting this comprehensive review of the accredited investor definition. As of December 3, 2015, 413 comment letters dealing with the accredited definition had been received. See: Comments on Proposed Rule: Amendments to Regulation D, Form D and Rule 156 under the Securities Act [Release Nos. 33-9416, 34-69960, IC-30595; File No. S7-06-13]. Available at: <http://www.sec.gov/comments/s7-06-13/s70613.shtml>

<sup>6</sup> As the Commission noted in the release for the final rule lifting the ban on general solicitation in Rule 506 offerings, it has “relatively little information on the types and number of investors in Rule 506 offerings.”

<sup>7</sup> The SEC’s Proposing Release notes that the pre-filing requirement is intended, in part, to enhance the SEC’s understanding of the Rule 506 market by improving compliance with Form D filing requirements. See, SEC Release 33-9416, 34-69960, IC-30595, Amendments to Regulation D, Form D and Rule 156 (July 10, 2013), 78 Fed. Reg. 44806 (July 24, 2013). <http://www.gpo.gov/fdsys/pkg/FR-2013-07-24/html/2013-16884.htm>