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NASAA

May 20, 2015

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

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 O'Neil Federal Office Building
Washington, DC 20515

Re: Legislation to be considered by the House Financial Services Committee on May 20, 2015

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the North American Securities Administrators Association ("NASAA"),1 I am pleased to provide comment and recommendations regarding two bills the House Financial Services Committee will consider this week. I respectfully invite you and all members of the Committee to refer to NASAA's Written Statement for a detailed summary of NASAA's views on many of the other bills that the Committee will consider on Wednesday.[2] In addition, I appreciate your consideration of my comments regarding the legislative proposals discussed below.

(1) The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (H.R. 686)

Over the past five years, state securities regulators have worked closely with the American Bar Association, merger and acquisitions practitioners, and other stakeholders, to fashion a streamlined registration framework for persons serving as brokers in certain merger and acquisition deals ("M&A brokers"). These collaborations served as the basis for both the development of a NASAA Model Rule which reduces the regulatory burden on M&A firms by exempting them from state securities registration pursuant to certain conditions designed to protect investors,[3] as well as for legislation that was introduced in the 113th Congress, H.R. 2274.

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

2 Written Statement of William Beatty, President of the North American Securities Administrators Association, Inc., and Washington Securities Division Director, before a hearing of the Subcommittee on Capital Markets and Government Sponsored Enterprises of the Committee on Financial Services. U.S. House of Representatives. April 29, 2015. Washington, D.C. Accessible at http://www.nasaa.org/wp-content/uploads/2015/04/Written-Statement-of-William-Beatty-HFSC-4-29-2015-Subcommittee-Hearing-FINAL-as-Filed-4-28-2015-PDF.pdf

3 Notice of Request for Additional Comment Regarding a Proposed NASAA Model Rule Exempting Certain Merger and Acquisition Brokers From Registration Pursuant to State Securities Acts. (April 16,, 2015). Accessible at http://www.nasaa.org/35234/notice-of-request-for-additional-comments-regarding-a-proposed-nasaa-model-rule-exemption-certain-merger-and-acquisition-brokers-from-state-registration/

As originally proposed in the 113th Congress, H.R. 2274 would have established a statutory exemption for M&A brokers, subject to key features, including: (1) the establishment of a streamlined electronic registration requirement with the Securities and Exchange Commission ("SEC"); (2) the disqualification of any broker or an associated person who is subject to suspension or revocation of registration; (3) the inapplicability of the exemption to any M&A transaction where one party or more is a shell company; and (4) the inapplicability of the exemption to M&A transactions involving a company with earnings in excess of $25 million, and gross revenue in excess of $250 million.

NASAA was pleased to support H.R. 2274 when it was introduced in the 113th Congress as it struck a good balance between the legitimate interests of all stakeholders while maintaining vital protections for investors and businesses. Unfortunately, when that bill was considered by the Financial Services Committee on November 14, 2013, the Committee adopted an amendment that removed key investor protections, including the bill's statutory "bad actor" disqualification provision, prohibitions on "shell" transactions, and a requirement for electronic registration by notice filing with the SEC.[4] These changes prevented NASAA from supporting the legislation when it was considered by the full House on January 14, 2014.

The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015, H.R. 686, is identical to the amended version of H.R. 2274 that passed the House in the 113th Congress. Therefore, NASAA regrets it cannot support the bill as drafted. In its current form, the legislation lacks the key investor protection features discussed above, including a basic and critical provision disqualifying "bad actors" from the registration exemption established by the bill. In addition, through receipt of comment letters to the proposed NASAA Model Rule, it has recently come to NASAA's attention that certain commenters believe there may be room in the definition of an "M&A Broker" to permit unregistered M&A Brokers to participate in an issuer capital raise using Regulation D, Rule 506 for something other than a bona fide merger and acquisition transaction. This is wholly inconsistent with the intent of the NASAA Model Rule, and we call it to your attention because we believe there may be a similar risk if the language in H.R. 686 is read too broadly.[5]

In conclusion, although state securities administrators are disappointed that we cannot support H.R. 686 as presently constituted, we continue to recognize a valid basis for a responsible statutory exemption from registration for persons acting as a broker in many M&A transactions. Moreover, we note that there appears to be consensus among many stakeholders that there could be bipartisan support in Congress for legislation that restores the investor protections noted above, and that NASAA also could support. Indeed, NASAA recently expressed support for bipartisan legislation introduced in the Senate that mirrors many of the provisions in H.R. 686, but restores the aforementioned bad-actor disqualification and prohibition on "shell transactions," consistent with the earlier House bill.[6] Should the House amend H.R. 686 to restore these key protections, and clarify that nothing under the bill would permit an unregistered M&A broker to participate in an issuer capital raise using Regulation D, Rule 506 for something other than a merger and acquisition transaction, NASAA would be pleased to revisit its position on the bill.

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4 See: H. Rept. 113-326

5 This concern was recently echoed by Professor Theresa A. Gabaldon, Lyle T. Alverson Professor of Law at the George Washington University Law School, who noted in testimony to House Financial Services Subcommittee that "Proposed Subsection 15(b)(13)(D) [of H.R. 686] also defines 'M&A broker.' The first part of the definition literally permits the sale of securities without being limited to the M&A context." See: Written Testimony Professor Theresa A. Gabaldon. Hearing before the Subcommittee on Capital Markets and Government Sponsored Entities of the Committee on Financial Services entitled "Legislative Proposals to Enhance Capital Formation and Reduce Regulatory Burdens." April 29, 2015. Available at http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-wstate-tgabaldon-20150429.pdf

6 See: NASAA Letter to Sen. Manchin (D-WV) and Sen. Vitter (R-LA) Regarding the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (S. 1010). May 5, 2015. Available at http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2013/10/NASAA-Letter-Regarding-S.-1010-114th-Congress-Final-05.05.2015-PDF.pdf

(2) The Small Company Disclosure Simplification Act of 2015 (H.R. 1965)

Extensible Business Reporting Language ("XBRL") is an electronic reporting language that assigns unique electronic identifiers to individual items in an issuer's financial reports, thereby making such data more interactive. XBRL is based on the same language that Congress uses to draft proposed legislative measures. This interactive financial data can allow investors, analysts and regulators to retrieve and use financial information in documents filed with the SEC. Any investor with a computer and an internet connection will have the ability to acquire and download interactive financial information that has generally been available only to large institutional users. In early 2009, the SEC published three final rules requiring XBRL tagging of certain disclosure information for operating companies, mutual funds, and credit rating agencies.[7] The Small Company Disclosure Simplification Act would delay by five years from its enactment the date by which those rules would become effective for companies with total annual revenues of less than $250 million. The bill would further require the SEC to analyze the costs and benefits of requiring companies of this size to file reports in XBRL format.

As a general matter, like the SEC's Investor Advocate and the SEC's Investor Advisory Committee, NASAA favors requirements regarding the use of XBRL and other protocols that maximize meaningful disclosure and improve its usefulness to investors. At the same time, as NASAA previously testified, state securities regulators agree that the cost of XBRL reporting requirements should be reasonable, and that these costs should yield a justifiable benefit.

NASAA supports and encourages the SEC to provide sufficient regulatory analysis of the costs and benefits associated with XRBL reporting. However, we do not believe that Congress should enact legislation to unnecessarily further delay implementation of XBRL reporting for many companies that would be covered by H.R. 1965, the effect of which would be to exclude the XBRL filing requirements for more than 60 percent of all public companies.[8] As SEC Investor Advocate Rick Fleming noted in discussing similar legislation considered in Congress earlier this year: "We should not expect the next generation of American investors to scroll through hundreds pages of disclosure to find the information they need to make investment decisions. Private companies would not display critical information to their customers in this manner, and American investors have a right to expect their government to do better."[9]

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

Sincerely,

William Beatty
NASAA President and Washington Securities Director

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7 U.S. Securities and Exchange Commission. Final Rule on Interactive Data to Improve Financial Reporting. 17 CFR Parts 229, 230, 232, 239, 240 and 249. [Release Nos. 33-9002; 34-59324; 39-2461; IC-28609; File No. S7-11-08]. April 13, 2009. https://www.sec.gov/rules/final/2009/33-9002.pdf

8 Daniel Castro and Josh New, Congress Should Not Undo Progress on Financial Data Reform, The Hill Blog, http://itk.thehill.com/blogs/pundits-blog/finance/232417-congress-should-not-undo-progress-on-financial-data-reform

9 See written Remarks Rick A. Fleming, Investor Advocate, U.S. Securities and Exchange Commission, in reference to Sec. 701 of H.R. 37, 114th Congress. "Effective Disclosure for the 21st Century Investor." Washington, DC. February 20, 2015. Available at http://www.sec.gov/news/speech/022015-spchraf.html#_ftn7