



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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July 12, 2016

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Re: National Securities Exchange Regulatory Parity Act (H.R. 5421) as Placed on House Suspension Calendar

Dear Speaker Ryan and Leader Pelosi:

On behalf of the North American Securities Administrators Association (NASAA),¹ I write to express concern regarding H.R. 5421, the National Securities Exchange Regulatory Parity Act, which would amend Section 18 of the Securities Act of 1933 to allow the SEC to recognize a national securities exchange of any size or quality as “covered” under Section 12(b)(1) of the Securities Act, thereby preempting currently applicable state laws.²

H.R. 5421 would fundamentally alter core tenets of modern securities market regulation. Under existing law, as established by the National Securities Markets Improvement Act of 1996 (NSMIA), the benchmark for preemption of securities listed on a national exchange is that an exchange must have rigorous listing standards “substantially similar” to those of the major national stock exchanges, such as the New York Stock Exchange (NYSE), as the SEC may determine by rule. The rationale for this requirement is that investors purchasing securities listed on an exchange that has sufficiently rigorous listing standards do not require the added protection afforded by blue sky registration and review.³ This bill would upend the balance struck in NSMIA and potentially remove vital investor protections afforded by state securities laws.

NASAA appreciates that the version of H.R. 5421 that is scheduled to be considered by the House today includes amendments that improve the bill relative to the version of the legislation that was approved by the Committee on Financial Services on June 16, 2016. Most notably, the revised bill would require the SEC to establish by rule “minimum core quantitative listing standards” for national securities exchanges that enjoy “covered” status, and to assure public notice and comment in this process. While this is an improvement, we are dismayed that the revised bill

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

² See: Section 18(b)(1)(A)-(B)) of the Securities Act of 1933 and Rule 146.

³ Exchanges with less stringent listing standards (e.g., the Miami International Securities Exchange) do not provide “covered” status.

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does not similarly require minimum *qualitative* listing standards, which are central to investor protection. We also note that the amended bill clarifies that such exchanges would remain subject to the requirements of Section 6 of the Securities Exchange Act of 1934.

NASAA believes that the appropriate balance regarding the level of rigorousness in listing standards that would afford such “covered security” status and preemption of state law was reached in 1996, with the enactment of NSMIA. Further, current law also allows the creation of exchanges with varied listing requirements, including alternative marketplaces.⁴ However, unless those exchanges, including local or regional exchanges, have rigorous or “substantially similar” listing standards to the major national exchanges, they are not exempt from state-level review. By removing the statutory references to recognized national securities exchanges like the NYSE, and the attendant requirement that all national securities exchanges with covered security status maintain meaningful listing standards that are “substantially similar,” H.R. 5421 undercuts the distinction between these different types of exchanges, to the detriment of investors. It may also create confusion with alternative trading systems, a secondary trading platform.⁵

For these reasons, NASAA opposes H.R. 5421, and we urge you not to support the legislation when it is considered the House today.

Thank you for your consideration of NASAA’s views. Please do not hesitate to contact me or Anya Coverman, NASAA’s Deputy Director of Policy and Associate General Counsel, at (202) 737-0900, if you have any questions, or if NASAA may be of additional assistance.

Sincerely,



Judith M. Shaw
NASAA President and Maine Securities Administrator

CC: The Honorable Jeb Hensarling
Chairman, House Committee on Financial Services

The Honorable Maxine Waters
Ranking Member, House Committee on Financial Services

⁴ Various alternative marketplaces currently exist, such as the OTCQX, OTCQB, and OTC Pink. In fact, OTC Markets refers to the OTCQB as “The Venture Marketplace”.

⁵ If an entity is conducting secondary trading and meets the criteria of a national securities exchange, they must register under Section 6 of the Securities Exchange Act of 1934. An entity that does not meet the criteria of a national securities exchange, depending on their activities and trading volume, may alternatively register as a broker-dealer and comply with Regulation ATS.