



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

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The Honorable Mike Crapo
Chairman
Senate Committee on Banking, Housing and Urban Affairs
538 Dirksen Senate Office Building
Washington, DC 20510

Re: Section 212 of S. 2155 (National Securities Exchange Parity)

Dear Chairman Crapo:

On behalf of the North American Securities Administrators Association (NASAA),¹ I write to express concern regarding Section 212 of S. 2155, the Economic Growth Regulatory Relief and Consumer Protection Act of 2017, or the “National Securities Exchange Parity.” This provision eliminates standards designed to protect investors purchasing securities on national exchanges and would fundamentally alter core tenets of modern securities market regulation without the benefit of a hearing before this Committee.

Section 212 of S. 2155 amends Section 18 of the Securities Act of 1933 to allow the SEC to recognize a national securities exchange with any minimum listing standard as a “covered” security under Section 12(b)(1) of the Securities Act, thereby preempting currently applicable state laws.² Under existing law, as established by the National Securities Markets Improvement Act of 1996 (NSMIA), the benchmark for preemption of state law for 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) and NASDAQ. 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 remove investor protections afforded by state securities laws.

NASAA appreciates that the “National Securities Exchange Parity” provision included in Section 212 of S. 2155 incorporates improvements relative to other legislation pending in the House.⁴ Specifically, the Senate bill provides that a security listed on a National Securities Exchange may only

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 do not provide “covered” status (e.g., the Miami International Securities Exchange).

⁴ National Securities Exchange Regulatory Parity Act of 2016. See: <https://www.congress.gov/bill/114th-congress/house-bill/5421>

be considered a “federal covered” security if it is listed on a national exchange that is a member of the National Market System. However, the significant fact for Congress remains that Section 212 removes all references to listing standards from Section 18(b) of the Securities Act.


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.⁵ 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.

Fair and rigorous listing standards are essential. Such listing standards give investors a voice when it comes to important decisions, ensure independent directors are in place to watch out for investors, provide oversight of conflicts of interest to ensure investors have a chance at earning a return. By removing the statutory references to the listing standards of “named” National Securities Exchanges in 18(b) of the Securities Act, Section 212 threatens to undercut the distinction between different types of exchanges with potentially different types of listing standards to the detriment of investors.

For these reasons, NASAA opposes Section 212, and we urge that the provision be improved, clarified, or removed prior the Banking Committee’s approving S. 2155. We also urge the Committee to hold hearings on the question of exchange regulatory parity, and consider whether other, better ways Congress could act to provide regulatory flexibility sufficient to allow fair competition between major exchanges.

Thank you for your consideration of NASAA’s views. If I may be of further assistance, please don’t hesitate to contact me or Michael Canning, NASAA’s Director of Policy and Government Affairs, at (202) 683-2307.

Sincerely,



Joseph P. Borg
NASAA President and Alabama Securities Director

CC: The Honorable Sherrod Brown, Ranking Member
CC: Members of the Senate Committee on Banking, Housing & Urban Affairs

⁵ 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”