



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

February 3, 2016

The Honorable Bill Huizenga  
1217 Longworth House Office Building  
Washington DC, 20515

**Re: Huizenga Amendment to H.R. 1675, the Capital Markets Improvement Act of 2016**

Dear Congressman Huizenga:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I write to express support for the amendment you will be offering to H.R. 1675, the Capital Markets Improvements Act of 2016 (“the bill”). If adopted, your amendment would make several important changes to Title III of the bill, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, which would establish an exemption from registration requirements under federal securities laws for persons serving as brokers in certain merger and acquisition deals (“M&A brokers”).<sup>2</sup> Specifically, your amendment would clarify: (1) the disqualification from the exemption of any broker or associated person who is a “bad actor,” or subject to suspension or revocation of registration; and (2) the inapplicability of the exemption to any M&A transaction where one party or more is a shell company.<sup>3</sup>

As you know, state securities administrators share your interest in establishing a more streamlined regulatory framework for persons serving as brokers in M&A deals that involve the transfer of securities. To provide state securities regulators with support in providing such a streamlined framework, NASAA recently adopted a Model Rule (“Model Rule”) which exempts M&A brokers from state securities registration pursuant to certain conditions. Model rules are promulgated by NASAA and may be adopted by state securities regulators. In several respects, this Model Rule mirrors your amendment.<sup>4</sup> Importantly, the NASAA Model Rule also includes critical provisions prohibiting “bad actors” from qualifying for the exemption, and precluding the application of the new exemption to M&A transactions involving “shell” companies. Unfortunately, because these provisions were not included in earlier legislation passed by the House during the 113<sup>th</sup> Congress establishing a federal M&A exemption,<sup>5</sup> or in legislation that was

---

<sup>1</sup> The oldest international organization devoted to investor protection, 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.

<sup>2</sup> Title III of H.R. 1675, as published by the Committee on Rules, is identical to H.R. 686, which was introduced in the House on February 3, 2015, and reported by the Financial Services Committee on May 20, 2015.

<sup>3</sup> This letter addresses Amendment #5 to H.R. 1675, as filed by Rep. Huizenga and posted on the website of the House Committee on Rules on February 1, 2016. The amendment is accessible at [http://amendments-rules.house.gov/amendments/MWB\\_719\\_xml2116140228228.pdf](http://amendments-rules.house.gov/amendments/MWB_719_xml2116140228228.pdf)

<sup>4</sup> On September 29, 2016, NASAA adopted a Model Rule Exempting Certain Merger & Acquisition Brokers from Registration. The NASAA Model Rule is available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept.-29-2015.pdf>.

<sup>5</sup> The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014 (H.R. 2274 – 113<sup>th</sup> Congress) was passed by the House on January 14, 2014.

---

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)

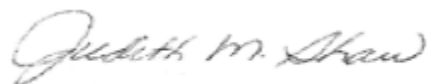
introduced in the 114<sup>th</sup> Congress and approved by the House Financial Services Committee in May, 2015,<sup>6</sup> NASAA remained unable to support those federal bills.

NASAA believes that your amendment to H.R. 1675 would significantly improve Title III of the bill. Further, your amendment will make Title III of H.R. 1675 broadly consistent with the Model Exemption adopted by NASAA in 2015, as well as with the bipartisan legislation sponsored in the Senate by Senators Joe Manchin (D-WV) and David Vitter (R-LA).<sup>7</sup>

While NASAA strongly supports the improvements made by your amendment to H.R. 1675, we are aware that some have raised concern that the bill could be read to permit unregistered M&A Brokers to participate in an issuer capital raise using Regulation D, Rule 506 *for something other than a Merger and Acquisition transaction*. While we do not believe this is the intent of the bill, we note that some confusion about this point was voiced by at least one commenter during NASAA's consideration of its Model Rule in 2015, as well as during hearings on the federal legislation held by the House Financial Services Committee in April, 2015.<sup>8</sup> Therefore, we respectfully urge Congress to clarify this important question, in the legislative history and otherwise, prior to enacting a final version of the legislation.

NASAA looks forward to continuing to work with Congress on legislation that would establish a federal exemption for M&A brokers that mirrors the state-level exemption established by the NASAA Model Rule. Should you have any questions, please do not hesitate to contact me or NASAA's Director of Policy, Michael Canning, at (202) 683-2307.

Sincerely,



Judith M. Shaw  
NASAA President and Maine Securities Administrator

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

The Honorable Maxine Waters, Ranking Member  
Committee on Financial Services

---

<sup>6</sup> The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (H.R. 686 – 114<sup>th</sup> Congress) was favorably reported by the House Financial Services Committee on May 20, 2015.

<sup>7</sup> The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (S. 1010)

<sup>8</sup> For example, in her testimony on the legislation before the House Financial Services Subcommittee on Capital Markets, Professor Theresa A. Gabaldon of The George Washington University Law School noted that: "Proposed Subsection 15(b)(13)(D) 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. It could be improved by changing 'transfer of ownership' to 'transfer of ownership representing control.'" This concern mirrors the views expressed by a small number of public commenters following NASAA's proposal of the Model Rule in January, 2015. Ultimately, NASAA adopted changes to clarify this point in the final version of the Model Rule prior to its adoption on September 29, 2015.