NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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September 8, 2014

The Honorable Joe Manchin
306 Hart Senate Office Building
Washington, DC 20510

The Honorable David Vitter
516 Hart Senate Office Building
Washington, DC 20510

Re: The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014 (S. 1923)

Dear Senator Manchin and Senator Vitter:

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I am writing to express concern with S. 1923, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014. While NASAA shares your interest in establishing a more streamlined framework for the oversight of persons serving as brokers in mergers and acquisitions ("M&A") deals that involve the transfer of securities, we are concerned that S. 1923 forgoes a number of important and reasonable investor protections. As such, NASAA cannot support the legislation in its present form.

Over the past four years, state securities regulators have worked closely with the American Bar Association, M&A practitioners, and other stakeholders, to fashion a streamlined registration framework for persons acting as M&A brokers. These collaborations served as the basis for legislation introduced in the House of Representatives on June 6, 2013 by Rep. Bill Huizenga (R-Mich). As proposed, Rep. Huizenga's legislation, H.R. 2274, would establish 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 supported H.R. 2274 when it was introduced because it struck a good balance between the legitimate interests of all stakeholders while maintaining vital protections for

1 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.

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investors and businesses. Unfortunately, when H.R. 2274 was considered by the House Financial Services Committee on November 14, 2013, the Committee adopted an amendment that removed key investor protection features, 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.[2] This amended version of H.R. 2274 was passed by the House of Representatives on January 14, 2014, and was subsequently introduced in the Senate as S. 1923, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014.

Due to the removal of the investor protections described above, including the inexplicable removal from the bill of a basic and critical provision disqualifying "bad actors" from qualifying for the registration exemption established by the bill, NASAA cannot support H.R. 2274 and S. 1923. Although state securities administrators are disappointed that we cannot support the legislation, 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 the basis for such legislation could be derived from the framework set forth in the "no-action" letter issued in final form by the SEC on February 4, 2014.[3] However, should Congress consider legislation modeled on the SEC's no-action letter, it should broaden the "bad-actor" disqualification to include not only persons having violated specific securities laws or SRO rules, but also other types of unlawful or unethical conduct. We would be grateful for the opportunity to work with you and other members of the Senate toward this end.

Thank you for your consideration of NASAA's views. If I may be of additional assistance, please do not hesitate to contact me, or Michael Canning, NASAA Director of Policy, at (202) 683-2307.

Sincerely,

A. Heath Abshure
NASAA Federal Legislation Committee Chairman
Arkansas Securities Commissioner

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

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2 See: H. Rept. 113-326

3 Although the SEC's "no-action" letter does not define the parameters of the registration exemption according to the amount of revenue or earnings reported by the companies involved in transaction, such "size caps" are very important features of H.R. 2274 and S. 1923, and NASAA strongly urges that they be retained in any final bill.