

**WRITTEN STATEMENT OF MIKE ROTHMAN  
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**AND**

**MINNESOTA COMMISSIONER OF COMMERCE**

**BEFORE THE**

**U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES**

**SUBCOMMITTEE ON CAPITAL MARKETS, CAPITAL MARKETS AND  
INVESTMENT**

**“The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the  
U.S. Capital Markets”**

**MARCH 22, 2017**

**WASHINGTON, DC**

Good Afternoon, Chairman Huizenga, Ranking Member Maloney, and Members of the Subcommittee. On behalf of the North American Securities Administrators Association, Inc. (NASAA), I am pleased to submit this statement for inclusion in the record of the hearing entitled “The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets,” held on March 22, 2017 by the Subcommittee on Capital Markets, Securities and Investment.

NASAA was organized in 1919, and 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. State securities regulators have protected Main Street investors for the past 100 years, longer than any other securities regulator. State securities regulators are responsible for administering state securities laws that both serve to protect investors and provide a regulatory framework through which businesses can raise capital.

As Congress and this Subcommittee evaluate the JOBS Act on its five-year anniversary, NASAA members continue to provide a level of accessibility to local, small business issuers and investors that is unavailable from federal regulators. State securities regulators provide important information that businesses need to know if they are contemplating raising capital. By providing this information and conducting outreach programs, state regulators help to raise awareness among businesses of the laws and rules that govern how companies raise money from investors.

State securities regulators enforce state securities laws by investigating suspected investment fraud, and, where warranted, pursuing enforcement actions that may result in fines, restitution to investors and in some instances jail time. Keeping the bad actors out of the markets serves not only the interests of investors, but the businesses that rely on markets to raise money. State securities regulators also ensure honest financial markets by licensing registrants – both firms and investment professionals – and conducting ongoing compliance inspections and examinations.

## **I. Goals of the JOBS Act of 2012**

On April 5, 2012, the Jumpstart Our Business Startups Act JOBS Act was signed into law by President Obama. The JOBS Act was designated as “A bill to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.” President Obama made the following remarks at the JOBS Act signing:

*Here’s what’s going to happen because of this bill. For business owners who want to take their companies to the next level, this bill will make it easier for you to go public. And that’s a big deal because going public is a major step towards expanding and hiring more workers. It’s a big deal for investors as well, because public companies operate with greater oversight and greater transparency. . . .*

*Because of this bill, start-ups and small business will now have access to a big, new pool of potential investors -- namely, the American people. For the first time, ordinary Americans will be able to go online and invest in entrepreneurs that they believe in.*

*Of course, to make sure Americans don't get taken advantage of, the websites where folks will go to fund all these start-ups and small businesses will be subject to rigorous oversight. The SEC is going to play an important role in implementing this bill. And I've directed my administration to keep a close eye as this law goes into effect and to provide me with regular updates.<sup>1</sup>*

The goal of JOBS Act was thus to lessen regulation governing capital formation, including the process by which companies go public, to ultimately create jobs for American workers. A secondary goal was to “democratize” access to capital markets by enabling ordinary investors to participate more directly in the private securities markets.

While the JOBS Act was broadly designed to facilitate access to capital, it ultimately had competing priorities – allowing more companies to stay private, while at the same time encouraging a greater number of companies to become public. Despite the JOBS Act’s well-intentioned goals, recent studies have shown that the number of U.S. listed public companies has continued to decline significantly since its peak in 1997.<sup>2</sup> Some have argued that a fundamental and permanent shift in the types of businesses that are created today, rather than over-regulation, explains the declining IPO market.<sup>3</sup>

## **II. NASAA Perspectives on the JOBS Act and Related Legislation**

NASAA was an early and active contributor to the debate regarding many of the changes to federal securities laws that would eventually be enacted under the JOBS Act. Prior to the law’s passage, NASAA leaders testified about many of the law’s provisions before subcommittees of the House Financial Services Committee and the Senate Banking Committee. As the primary regulator of many small-sized offerings, especially offerings to retail investors, states had an obligation to share with Congress their perspective on how the changes contemplated by the 2012 law would affect investors and capital markets.

During the timeframe Congress was considering the JOBS Act, and subsequently following, NASAA urged Congress to take a balanced approach to policies aimed at spurring capital formation. Then, as now, the best policies are those that promote fairness and efficiency, meet the legitimate and evolving needs of the marketplace, and maintain or expand investor protection. As explained by then-NASAA President and Nebraska Securities Director Jack Herstein during Congress’s consideration of legislation that ultimately became the JOBS Act, “Main Street investors should not be treated as the easiest source of funds for the most speculative business ventures.” While my former colleague Mr. Herstein acknowledged the utility of new and “creative ways to spur economic development and job creation,” he reiterated the premise that “the

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<sup>1</sup> Barack H. Obama, “REMARKS BY THE PRESIDENT AT JOBS ACT BILL SIGNING” (2012).

<sup>2</sup> See, e.g., Maureen Farrell, “America’s Roster of Public Companies Is Shrinking Before Our Eyes”, *The Wall Street Journal*, Jan. 6, 2017, available at [wsj.com/articles/americas-roster-of-public-companies-is-shrinking-before-our-eyes-1483545879](http://wsj.com/articles/americas-roster-of-public-companies-is-shrinking-before-our-eyes-1483545879).

<sup>3</sup> See, e.g., Gerald Davis, *Capital markets and job creation in the 21st century*, December 2015, The Brookings Institution, December 2015, available at [brookings.edu/wp-content/uploads/2016/07/capital\\_markets.pdf](http://brookings.edu/wp-content/uploads/2016/07/capital_markets.pdf), and *Post-Corporate: the Disappearing Corporation in the New Economy*, Third Way NEXT, Feb 1, 2017, available at [s3.amazonaws.com/content.thirdway.org/publishing/attachments/files/000/001/047/NEXT-post-corporate.pdf?1485968086](http://s3.amazonaws.com/content.thirdway.org/publishing/attachments/files/000/001/047/NEXT-post-corporate.pdf?1485968086).

law should not provide lesser protections to the investors who can least afford to lose their money.”<sup>4</sup> This remains NASAA’s position.

In the five years since the JOBS Act became law, NASAA has remained closely engaged with Congress, testifying before this and other Congressional committees. In our testimony, we have shared our perspectives on the law’s implementation, proposals intended to build upon the provisions that make up the JOBS Act, and proposals aimed at addressing potential shortcomings. In a number of cases, Congress has acted to improve legislation as a result of information provided by state securities regulators acting through NASAA. We also remain engaged in the work of our counterparts at the SEC and with several federal advisory forums that serve to organize and consider proposals for improving capital formation.

State securities regulators look forward to continuing this constructive dialogue with the 115<sup>th</sup> Congress, as well as with businesses, issuers and others directly affected by these policies.

### **III. State Securities Regulation under the JOBS Act**

The provisions of the JOBS Act, while primarily focused on changes to federal securities laws, resulted in changes to state regulatory authority over certain securities offerings. Specifically, Title IV of the JOBS Act added a new Section 3(b)(2) to the Securities Act of 1933 and directed the U.S. Securities and Exchange Commission (“SEC”) to adopt a new exemption from registration by rule for public offerings of up to \$50 million (which became known as Regulation A+). Final SEC rules were adopted on March 25, 2015, over NASAA’s objections to certain aspects of the rules, including the agency’s regulatory preemption of state review authority in Tier 2 offerings contrary to Congressional intent.<sup>5</sup>

NASAA, however, instituted a new coordinated, multistate review system designed specifically for Regulation A+, Tier 1 offerings. NASAA’s “Multi-State Coordinated Review Program” was implemented in April 2014 prior to the SEC’s final rule adoption. The Coordinated Review Program has been used by issuers to raise capital under Tier 1, and NASAA continues to explore ways that the program can be further improved and utilized.

As industry participants awaited final rule adoption of Title III of the JOBS Act (i.e., federal crowdfunding), many states adopted laws in the form of intra-state crowdfunding exemptions. These exemptions allow small businesses to access capital from investors in their communities. As of today, 31 states and the District of Columbia have enacted state-based “equity” crowdfunding laws, or other limited offering exemptions, and additional states are finalizing rulemaking and/or legislation.<sup>6</sup> Although equity crowdfunding on a federal level was not yet legal

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<sup>4</sup> Written Testimony of Jack E. Herstein, NASAA President and Nebraska Bureau of Securities Assistant Director to Senate Banking Committee, 12/2011. [www.nasaa.org/wp-content/uploads/2011/12/NASAA-Testimony-Senate-Banking-Crowdfunding-12-1-2011.pdf](http://www.nasaa.org/wp-content/uploads/2011/12/NASAA-Testimony-Senate-Banking-Crowdfunding-12-1-2011.pdf)

<sup>5</sup> Letter from Andrea Seidt, NASAA President and Ohio Securities Commissioner, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated Mar. 24, 2014, available at [www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-File-S7-11-13-03242014.pdf](http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-File-S7-11-13-03242014.pdf).

<sup>6</sup> Alabama, Alaska, Arizona, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, Vermont.

until final rules were adopted in May 2016, states found creative ways as early as 2011 to work within existing federal exemptions to enable their local businesses to reach potential investors while maintaining important investor protections. Local businesses such as breweries, grocery stores, gyms, restaurants, senior care facilities, real estate platforms, and others have turned to intrastate crowdfunding laws to raise seed capital for their businesses.

NASAA and state securities regulators also worked with members of Congress to seek changes to the federal securities framework on which intra-state crowdfunding relies. On October 7, 2016, Rep. Tom Emmer (R-MN), along with 14 other members of the House Financial Services Committee sent a letter to the SEC requesting that it update and modernize federal Rule 147 and 504. In the letter, Congress suggested specific revisions while also preserving important investor protections, including existing state authority.<sup>7</sup> On October 26, 2016, the SEC issued final rules implementing those changes.

NASAA has been working on other initiatives over the last several years to help streamline state filing requirements. For instance, in 2014, NASAA implemented an electronic filing system, the Electronic Filing Depository (EFD), to allow private company issuers to electronically file a Form D for Regulation D, Rule 506 securities offerings in one or more states. This system interfaces with the SEC's EDGAR system and enhances the efficiency of the regulatory filing process for certain exempt securities offerings. It also allows the public to search and view, free of charge, state Form D filings.

NASAA also hosts a yearly Capital Formation Roundtable in Washington, D.C. that brings together state securities regulators and stakeholders from private industry and the public sector. The annual Roundtable is attended by small business owners, entrepreneurs, corporate finance practitioners, representatives of venture capital and several major exchanges, academia, investor advocates and others. One goal of the Roundtable is to learn more about the priorities of these various stakeholders, and discuss how state and provincial securities regulators may work effectively with investors, the regulated community, and advocates for both in shaping the future of state and provincial capital formation regulation.

#### **IV. New & Future Legislative Proposals**

One of the purposes of today's hearing is to examine whether there are steps Congress and regulators can take to identify "issues that are hampering the competitiveness of the U.S. capital markets and what actions should be taken to address those issues."

To the extent that our national securities and capital markets may be enhanced by making these markets more efficient and open and fair for investors, then NASAA supports the goal, and

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The following states are working on legislation and/or rulemaking: Arkansas, California, North Carolina, Ohio and Wyoming,

<sup>7</sup> Letter to SEC Chair Mary Jo White, Oct. 7, 2016, from Reps. Tom Emmer, Gwen Moore, Patrick McHenry, John Carney, Scott Garrett, Denny Heck, Randy Neugebauer, Terri Sewell, Luke Messer, Keith Ellison, Peter King, Robert Hurt, Robert Pittenger, Roger Williams and Stephen Fincher, *available at* <https://www.sec.gov/comments/s7-22-15/s72215-34.pdf>.

hopes to work with the 115<sup>th</sup> Congress in furtherance of the effort. We are optimistic that a number of areas exist that are conducive to such collaboration.

For example, NASAA supports Chairman Huizenga's legislation to establish a new and limited exemption for M&A brokers, and we look forward to working with him to get the bill passed this year. NASAA has long shared Congress's interest in establishing a more streamlined regulatory framework for persons serving as brokers in M&A deals that involve the transfer of securities. NASAA recently adopted a Model Rule which exempts M&A brokers from state securities registration pursuant to certain conditions.<sup>8</sup>

We also strongly support the SeniorSafe Act legislation, sponsored in the House by Reps. Sinema (D-AZ) and Poliquin (R-ME), and hope to work with the Committee to see the legislation enacted promptly. The SeniorSafe Act's objectives and benefits are far-reaching. Older Americans stand to benefit directly from such reporting, because early detection and reporting will minimize their financial losses from exploitation, and because improved protection of their finances ultimately helps preserve their financial independence and their personal autonomy.

NASAA looks forward to collaborating with Congress on the enactment of laws that put the interests of investors first and provide for the strong enforcement of securities laws. These are the hallmarks of healthy and vibrant markets. However, legislation that could weaken investor protection or regulators' efforts to maintain the integrity of the marketplace remain a concern for NASAA. For example, proposals that would make it more difficult for states to police "private" securities offerings, both in the context of Rule 506 offerings to accredited investors, and other offerings made directly to retail purchasers pose significant potential investor protection concerns. Congress has an obligation when creating these markets to provide regulators with all the tools they require to keep the markets clean and to deter and punish fraud. NASAA also questions the basis for proposals to establish certain new or overly broad securities registration exemptions, and to expand demand and liquidity for these types of offerings through the regulatory engineering of certain small-sized exchanges, especially if such exchanges are to be exempted from state securities laws.

In conclusion, state securities regulators look forward to working with the 115<sup>th</sup> Congress, and appreciate the opportunity to share their perspective with the Subcommittee today. While the state and federal perspectives are often complimentary, they sometimes may differ. Nevertheless, as the Subcommittee investigates how to further the competitiveness of America's capital market through policy innovation, state securities regulators will be very pleased to offer advice and perspective on any important questions that Congress may confront.

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<sup>8</sup> On September 29, 2016, NASAA adopted a Model Rule Exempting Certain Merger & Acquisition Brokers from Registration. The NASAA Model Rule is available at [nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept-29-2015-corrected.pdf](https://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept-29-2015-corrected.pdf).