



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

September 27, 2011

The Honorable Spencer Bachus
Chairman
House Financial Services Committee
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
House Financial Services Committee
Washington, DC 20515

The Honorable Scott Garrett
Chairman
Capital Markets and Government-
Sponsored Enterprises Subcommittee
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Capital Markets and Government-
Sponsored Enterprises Subcommittee
Washington, DC 20515

RE: *H.R. 2930 - "Entrepreneur Access to Capital Act of 2011"*
H.R. 2940 - "Access to Capital for Job Creators Act of 2011"

Dear Chairman Bachus, Ranking Member Frank, Subcommittee Chairman Garrett and Subcommittee Ranking Member Waters:

On behalf of the North American Securities Administrators Association (NASAA) I am writing to express my strong concerns regarding legislation recently introduced in the House that will preempt state investor protection laws. As my colleague, Arkansas Securities Commissioner Heath Abshire, testified to the House Capital Markets Subcommittee on September 21, if enacted, H.R. 2930, the Entrepreneur Access to Capital Act, and H.R. 2940, the Access to Capital Job Creators Act, will undermine protections for investors and prevent state securities regulators from enforcing meaningful parts of their state's investor protection laws.

The desire to facilitate access to capital for new and small businesses is a worthy goal. However, if Congress is to legislate in this area, it is vital that it do so in a careful and deliberate fashion that balances capital formation and investor protection. Investors must be assured that they are protected to the fullest extent possible. This will in turn promote investor confidence in the very markets Congress is seeking to grow.

I understand that H.R. 2930 and H.R. 2940 could be considered by the Subcommittee on Capital Markets as early as October 5th. It is my sincere hope that you and other Members of the Subcommittee will work with NASAA and the states to remedy the concerns raised by Commissioner Abshire and other state securities commissioners prior to any such vote in the Subcommittee. Until these important problems with H.R. 2930 and H.R. 2940 are corrected, NASAA cannot support either bill.

The Entrepreneur Access to Capital Act of 2011 (H.R. 2930)

H.R. 2930 would amend the securities laws to provide for registration exemptions for certain crowdfunded securities. Specifically, the bill would exempt offerings of less than \$5 million, where the

President: Jack Herstein (Nebraska)
President-Elect: Preston DuFauhard (California)
Past-President: David Massey (North Carolina)
Executive Director: Russel Iuculano

Secretary: Rick Hancox (New Brunswick)
Treasurer: Fred Joseph (Colorado)
Ombudsman: Matthew Neubert (Arizona)

Directors: Steven D. Irwin (Pennsylvania)
Andrea Seidt (Ohio)
Patricia D. Struck (Wisconsin)
Franklin L. Widmann (Florida)

maximum individual investor contribution is the lesser of 10 percent of an investor's annual income or \$10,000 per investor.

Section 4 of H.R. 2930 expressly preempts state law for the proposed new crowdfunding exemption by classifying these offerings as "covered securities." It is crucial that the states retain full authority to review securities offerings, particularly in this area, as there has been and continues to be significant fraud in this segment of the market. Moreover, because securities offered under H.R. 2930 will also not be subject to federal registration, and because such companies do not issue ongoing reports like true public reporting companies, the protections provided by state review are even more essential.

State regulators have been vigilant in their efforts to protect retail investors from the risks associated with smaller, speculative investments. Further, as crowdfunding centers on community investment, the oversight should be vested in the regulator with the most direct interest in protecting that community. State authority to continue to review and police these investments must be preserved.

The Access to Capital for Job Creators Act of 2011 (H.R. 2940)

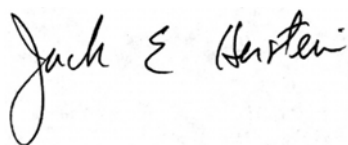
H.R. 2940 would expand the exemption under Regulation D Rule 506 by requiring the SEC to remove the long-standing prohibition against the general solicitation of these offerings. Such an action would exacerbate the regulatory black-hole created in 1996, when Congress passed the National Securities Markets Improvement Act (NSMIA) and stripped the states of their authority to fully regulate in this area.

Since the enactment of NSMIA, Regulation D, Rule 506 offerings, which are designed to be private offerings, have received virtually no regulatory scrutiny. Given state experience with these offerings and the significant fraud and investor losses associated with them, NASAA opposes H.R. 2940.

State securities regulators have protected Main Street investors from fraud for the past 100 years, longer than any other securities regulator. Our primary goal is to act for the protection of investors, especially those who lack the expertise, experience, and resources to protect their own interests.

Thank you for your attention to these issues. Please don't hesitate to contact me or Mike Canning, NASAA's Co- Director of Policy, if we may be of assistance.

Respectfully,



Jack E. Herstein
NASAA President
Assistant Director, Nebraska Department of Banking & Finance, Bureau of Securities

cc: House Financial Services Committee Members
Heath Abshure, Securities Commissioner, Arkansas Securities Department