



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

November 1, 2017

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Re: H.R. 1585 – The Fair Investment Opportunities for Professional Experts Act

Dear Speaker Ryan and Leader Pelosi:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write to express concern regarding H.R. 1585, The Fair Investment Opportunities for Professional Experts Act, as reported, which is scheduled to be considered by the House of Representatives this week. The legislation would expand private securities markets in a manner that favors issuers over retail investors and promotes illiquid and inefficient markets to the detriment of public markets.

The members of NASAA are the state-level securities regulators who partner with the Securities and Exchange Commission in policing the private offering marketplace. As the regulators who are closest to small investors throughout the United States, we frequently receive complaints from those who are victimized in “private” offerings conducted under SEC Regulation D, Rule 506.²

The main effect of H.R. 1585 will be to increase the size of the marketplace for “private” securities sold pursuant to SEC Regulation D, Rule 506 by expanding the categories of persons who qualify as “accredited investors.” Accredited investors are those persons who are deemed to have the financial wherewithal because of their income or net worth to invest in these illiquid products. The current income and net worth standards were established by the SEC in 1982, and have not been adjusted to reflect the impact of inflation.³ H.R. 1585 largely fails to modernize these outdated income and net-worth standards. The legislation would codify the 1982 standards and only index them to inflation on a *going forward basis based on data that is 35 years old*. This approach wholly ignores over three decades of inflationary impact on the current standards. Furthermore, the bill fails to make reforms to enhance transparency in the private marketplace, including simple reforms to SEC filing

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 Private placement offerings allow companies to raise money by selling stocks, bonds and other instruments. Such offerings may be exempt from federal securities registration requirements. This exemption allows a company to raise business capital without having to comply with the registration requirements of a public securities offering.

³ Had the thresholds been adjusted for inflation when they were put in place by the SEC in 1982, the income threshold today would be approximately \$500,000 and the net worth threshold would be approximately \$2.5 million.

requirements that are necessary to help regulators effectively police this growing segment of the marketplace.⁴

NASAA is not wholly opposed to efforts to modernize the accredited investor standard, and appreciates that modest improvements were made to the bill by amendments adopted during its consideration by the Financial Services Committee. We have offered suggestions to the SEC and Congress as to how to revise the current accredited investor definition such that it more accurately measures investor sophistication and at the same time improves regulatory oversight of this important segment of our markets. For instance, if the current income and net worth standards are maintained, other investor protection tools such as investment limits should be put into place to account for the effects of not adjusting the standards for 35 years. With the appropriate suggested modifications based on updated data, NASAA could support this legislation. Further, we could also then support certain efforts to include individuals who have attained specified professional credentials to the extent the credential is coupled with relevant experience.

Private securities once comprised just a fraction of the overall marketplace, but today they serve as a major source of investment capital for certain businesses, rivaling or exceeding public markets. Unfortunately, these markets are inherently inefficient and risky. Indeed, private securities offerings routinely rank among the most common products or schemes leading to enforcement actions in surveys of state securities regulators, and lack many essential features of public markets, such as liquidity, transparency, third-party research, and accurate valuation information. The premise that private markets should be expanded to the potential detriment of public markets is not well supported.

NASAA appreciates Congress's interest in expanding access to capital and investment opportunities. However, we have learned that efforts to spur successful capital formation must reflect a balanced regulatory approach that minimizes unnecessary costs and burdens on small businesses while protecting investors from fraud and abuse. Unfortunately, without additional modest modifications to the standards, H.R. 1585 does not reflect this approach and as such we urge the House not to approve the legislation in its current form.

Thank you for your consideration of NASAA's views. Please do not hesitate to contact me, or Michael Canning, NASAA Director of Policy & Government Affairs, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,



Joseph P. Borg
NASAA President and Alabama Securities Director

⁴ NASAA has repeatedly expressed support for amendments the SEC proposed in July 2013 that would make modest changes to Rule 506 and Form D that will significantly enhance the ability of the SEC and NASAA members to protect investors while minimizing the burdens to the small businesses who utilize the rule to raise capital. See: nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Letter-re-Form-D.pdf.