NASAA

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June 7, 2018

The Honorable Jeb Hensarling	The Honorable Maxine Water
Chairman	Ranking Member
House Committee on Financial Services	House Committee on Financial Services
Washington, D.C. 20515	Washington, D.C. 20515

Re: June 7, 2018 - Full Committee Markup (H.R. 5877, the "Main Street Growth Act of 2018")

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the North American Securities Administrators Association,[1] I write to express concerns with H.R. 5877, the "Main Street Growth Act of 2018", which would amend Section 6 of the Securities Exchange Act of 1934 to establish an alternative regulatory framework for National Securities Exchanges that elect to be treated as "venture exchanges." We share Congress's interest in exploring avenues of capital formation for small companies, but we object to the provisions in H.R. 5877 that would weaken investor protection in these new "venture exchanges" as contemplated in the legislation. In order to be successful, efforts to expand access to capital for small companies must also include strong investor protections including state review and registration of the offerings. We therefore ask that the bill be amended to remove provisions that would preempt state registration and review laws and that the Committee make further adjustments to the bill as set out below.

Venture markets for small and emerging companies have existed for a long time. For decades, the U.S. has maintained a robust venture market utilizing an over-the-counter (OTC) or multi-dealer model subject to full state registration and oversight. NASAA's members have acquired significant experience in this area of the capital markets by virtue of their oversight of securities traded on America's OTC venture markets as well as our Canadian members' oversight of Canada's TSX and other venture exchanges. This experience affords NASAA a unique perspective on the venture marketplace.

NASAA appreciates that a U.S. "venture exchange," as contemplated by H.R. 5877, would hold some attraction as a way to serve smaller and startup companies. Such a system may provide smaller companies with access to public capital and offer retail investors access to investments in small and early-stage companies. At the same time, however, investments in "venture securities" are highly risky. Securities listed on the venture exchanges envisioned by H.R. 5877 could include securities not presently listed on a national exchange, and transacted on an over-the-counter (OTC) basis, as well as securities listed on a national securities exchange as an "emerging growth company." The most notable common features of these types of securities are that they are likely to be volatile and illiquid. In weighing the implications of these heightened risks, Congress must also be cognizant of the fact that a venture exchange will

[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.

disproportionately rely on retail investors to support the marketplace and provide the liquidity it requires to operate.[2]

One of the most troubling provisions of the H.R. 5877 is the exemption from state Blue Sky laws, which would prevent states from conducting their usual review of the securities offerings that would be listed on a venture exchange. Given that issues listed on venture exchanges will involve the types of offerings that are riskier and more prone to fraud than those listed on traditional National Securities Exchanges, state review of these offerings will be necessary and important.

We are also concerned that the bill as currently written provides that an exchange shall be deemed a venture exchange if it elects to be treated as such at the time it applies to be a registered exchange, and that the SEC may deny approval only during a six-month period *after* it is notified. Thus, under H.R. 5877, any exchange could operate as a venture exchange up to six months without affirmative SEC approval. This apparent oversight would prove problematic and should be rectified. In addition, H.R. 5877 appears to afford identical treatment to securities offered under "Tier 1" of SEC Regulation A (which are not subject to ongoing reporting requirements) as for Tier 2 (which are subject to ongoing reporting under Reg. A), while also not being subject to the registration requirements under Section 5 of the Securities Act of 1933. This is problematic as it would allow Tier 1 securities to trade on an exchange while providing little-if-any current information to investors.

Furthermore, we urge Congress to correct certain important operational provisions found in H.R. 5877. For example, in an effort to generate additional liquidity for securities listed on National Securities Exchanges that elect to become "venture exchanges," H.R. 5877 would exempt "venture securities" from various reporting and disclosure requirements and would establish new trading rules specifically for securities listed on venture exchanges, including rules that would allow higher tic-sizes. The bill would also prohibit the exchange from extending to any venture security Unlisted Trading Privileges or UTP, which allow one exchange to trade a security even though it may be listed or registered on another exchange. While it is possible that such regulatory engineering could attenuate certain problems that have stymied previous efforts to establish venture exchanges in the U.S., these generous regulatory accommodations also stand to introduce a host of new inefficiencies into the venture marketplace, and under H.R. 5877, these significant new costs would be borne almost entirely by retail investors participating in the venture exchange.[3]

In summary, NASAA appreciates Congress's interest in expanding the means by which small and emerging businesses can access capital, including through public securities offerings. However, at this time we do not support H.R. 5877. The U.S. currently supports a robust venture market in the form of the OTC marketplace.[4] Further, Congress must consider that the central features of the "venture exchanges" proposed as National Securities Exchanges serving retail investors – newer, untested companies, reduced disclosure, limited liquidity, and comparatively high rates of failure or bankruptcy and investment loss –

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2 The low market capitalization of the issues listed on a venture exchange and other factors prevent most institutional investors from investing in the smaller and more speculative issues like those that would be listed on a venture exchange. In the absence of institutional capital, the venture exchange would rely heavily on capital from individual investors – including passive and "self-directed" retail investors, to capitalize the venture exchange.

3 Written Statement of William Beatty, NASAA President and Washington Securities Division Director, delivered to the Subcommittee on Securities, Insurance and Investment of the Senate Committee on Banking, Housing and Urban Affairs. "Venture Exchanges and Small-Cap Companies." March 10, 2015. Accessible at nasaa.org/34863/venture-exchanges-and-small-cap-companies.

4 Currently, in the U.S. OTC Markets Group's OTCQX and OTCQB markets function as de facto public venture markets for more than 1,300 companies

are opposite the robust disclosure and transparency regime that define America's modern capital markets. In NASAA's view, the modest and indirect benefit of these exchanges, which would accrue to particular types of issuers, is vastly outweighed by the risks of inviting our national exchanges to function as venture markets for new and unproven companies.

Thank you for considering NASAA's views on H.R. 5877. Please do not hesitate to contact me or Mike Canning, NASAA's Director of Policy & Government Affairs, at (202) 737-0900.

Sincerely,

Joseph P. Borg
NASAA President and Alabama Securities Commission Director