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January 23, 2019

The Honorable Maxine Waters
Chair
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

RE: H.R. 624, the Promoting Transparent Standards for Corporate Insiders Act

Dear Chair Waters and Ranking Member McHenry:

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I am writing to express support for H.R. 624, the Promoting Transparent Standards for Corporate Insiders Act, which the House is scheduled to consider later this week.

Illegal insider trading generally refers to the buying or selling of a security on the basis of material nonpublic information regarding the security in breach of a duty of trust and confidence owed to the source of the information.[2] The securities laws prohibit insider trading because, among other things, it undermines investor confidence in the fairness and integrity of our securities markets.

Securities and Exchange Commission ("SEC") Rule 10b5-1[3] provides an affirmative defense to insider trading liability for insiders who, in good-faith, enter into prearranged plans to buy or sell securities in the future and who are not at the time in possession of material nonpublic information. Although simple in concept, the rule has proven extremely difficult to enforce. As a practical matter, because all information related to Rule 10b5-1 trading plans is maintained by a corporation, insiders – *i.e.*, the corporate officers or directors – are in effect policing themselves. It is comparatively easy for corporate insiders to manipulate the rule in order to engage in conduct that is tantamount to insider trading by, for example, belittling the potential materiality of nonpublic information or instituting trading plans that can be modified or cancelled prior to execution.

The Promoting Transparent Standards for Corporate Insiders Act would require the SEC to more closely scrutinize practices of corporate insiders by mandating that the SEC study whether the adoption of certain amendments to Rule 10b5-1 would enhance existing prohibitions against insider

[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] *See* SEC, *Insider Trading*, *available at* https://www.investor.gov/additional-resources/general-resources/glossary/insider-trading.

[3] 17 C.F.R. § 240.10b5-1.

trading. Specifically, H.R. 624 would direct the SEC to examine the benefit of new restrictions, including: when issuers and issuer insiders can establish trading plans within an issuer-adopted trading window, how many trading plans they can adopt, and the number of modifications to those trading plans.

NASAA strongly shares Congress's interest in preventing insider trading and strengthening protections for retail investors within the securities marketplace. The study required by H.R. 624 is an important step in this direction.[4] We are pleased to support the bill, and we urge its passage.

Thank you for your attention to 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,

Michael S. Pieciak
NASAA President
Commissioner, Vermont Department of Financial Regulation

[4] NASAA notes that Section 2(a)(1)(C) and (D) contemplates amending Rule 10b5-1 to "establish a mandatory delay between the adoption of a trading plan and the execution of the first trade pursuant to such a plan . . ." and "limit the frequency that issuers and issuer insiders may modify or cancel trading plans[.]" Based on that line of reasoning, Congress may wish to consider whether the bill should be amended to also include a delay between a modification to a trading plan and the first trade executed after such modification.