



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

July 29, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington D.C., 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: FY 2021 Financial Services and General Government Appropriations Act (H.R. 7668)

Dear Speaker Pelosi and Leader McCarthy:

On behalf of the North American Securities Administrators Association (NASAA),¹ I write to express support for H.R.7668, the FY 2021 Financial Services and General Government Appropriations Act. In particular, NASAA strongly supports Section 540 of the legislation, which will encourage the U.S. Securities and Exchange Commission (“SEC” or “Commission”) to adopt overdue reforms to Regulation D, Rule 506(b) and 506(c), to enhance transparency and accountability in the ever-growing private offering marketplace.²

NASAA members are on the frontlines of investor protection, and work to safeguard the financial futures of hardworking Americans and provide pathways for local businesses and entrepreneurs to responsibly raise investment capital. As the regulators closest to the investing public – with offices in every state, we have a unique view into the concerns of Main Street investors and small businesses, including the private offering marketplace. Further, by virtue of their antifraud authority, NASAA members have a unique and vital interest in the private offering framework.

Since mid-2019, the SEC has conducted rulemaking in what the Commission describes as an effort to harmonize the federal securities registration exemptions framework.³ While NASAA agrees that the framework would benefit from modernization, NASAA is deeply concerned that the SEC’s rule proposals, to date, fail to include any meaningful investor protection measures including modest proposals to address the lack of transparency that has plagued the private markets for decades.

¹ The oldest international organization devoted to investor protection, NASAA was organized in 1919. Its membership consists of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² SEC Proposed Rule: Amendments to Regulation D, Form D and Rule 156 under the Securities Act. [Release Nos. 33-9416, 34-69960, IC-30595; File No. S7-06-13]. (July 6, 2013).

³ See: “SEC Seeks Public Comment on Ways to Harmonize Private Securities Offering Exemptions.” Press Release. (June 18, 2019). Accessible at: <https://www.sec.gov/news/press-release/2019-97>

This lack of transparency and limited data on private offerings has hampered informed policy and rulemaking in this area, which has resulted in Commission rulemaking based on ideological preferences and speculation at the risk of retail investor harm. The absence of such reforms in recent Commission rulemaking is conspicuous and egregious, considering that the Commission has recognized these shortcomings and acknowledged the need to address them.⁴ The additional information that would be available to the Commission and states under the reforms would prove invaluable to policymakers and regulators alike.

By requiring that the Commission to adopt certain modest reforms to private offerings advertised and sold without registration pursuant to SEC Rule 506(b) and 506(c), Section 540 of H.R. 7668 will help ensure that any additional regulatory expansion of the private offering marketplace occurs in tandem with long-awaited reforms to improve oversight of this marketplace. Notably, the bulk of the reforms that would be mandated by Section 540 would require little, if any, additional burdens on issuers, but would significantly help regulators police the private securities markets, and shield vulnerable investors from the inherent risks of private securities offerings.

In summary, the modest package of reforms referenced in Section 540 would provide important protections for investors, and information to regulators, with only minimal burdens for issuers. NASAA appreciates the House Appropriations Committee's decision to incorporate these reforms into the FY 2021 Financial Services and General Government Appropriations Act. NASAA supports the bill and urges the House to approve the legislation with Section 540 intact.

Thank you for your consideration of NASAA's views. Should you have any questions, please contact Mike Canning, NASAA's Director of Policy and Government Affairs, at (202) 737-0900.

Sincerely,



Christopher W. Gerold
NASAA President and New Jersey Securities Bureau Chief

⁴ For example: (1) See: SEC Concept Release on Harmonization of Securities Offering Exemptions, SEC Release No. 33-10649, at 23 (Jun. 18, 2019), available at <https://www.sec.gov/rules/concept/2019/33-10649.pdf> (“Due to data limitations, it is difficult to draw rigorous conclusions about the extent of fraud in exempt securities offerings.”); id. at 24 (“Due to data limitations, it is also difficult to draw rigorous conclusions about the average magnitude of investor gains and losses in exempt securities offerings.”); id. at 36 (“We estimate households and not individuals due to data limitations because the database underlying our analysis measures wealth and income at the household level.”). (2) the SEC’s Inspector General has observed that the SEC “does not substantively review Form D filings, determine whether issuers appropriately use the Regulation D exemptions, and generally does not take action when [SEC Corporation Finance Division] staff learn that issuers are non-compliant with the rules of Regulation D. There are many different types of abuses and non-compliance issues involving Regulation D, including illegal securities offerings...[and] there are simply no tangible consequences when a company fails to file a Form D.” (See: U.S. Securities and Exchange Commission, Office of Inspector General, Office of Audits, “Regulation D Exemption Process,” Report No. 459. (March 31, 2009)).

CC: The Honorable Maxine Waters
The Honorable Patrick McHenry
The Honorable Rosa DeLauro
The Honorable Kay Granger