



---

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140  
Washington, D.C. 20002  
202-737-0900  
www.nasaa.org

April 5, 2022

The Honorable Sherrod Brown  
Chairman  
Senate Committee on Banking, Housing,  
and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick J. Toomey  
Ranking Member  
Senate Committee on Banking, Housing,  
and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Promoting Trust in Our Capital Markets

Dear Chairman Brown and Ranking Member Toomey:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I am writing to commend the U.S. Senate Committee on Banking, Housing, and Urban Affairs for holding a hearing to examine illegal insider trading legislation. As explained below, while NASAA supports swift passage of legislation to combat illegal insider trading, we also urge Congress to pass a package of reforms that will foster greater trust in our capital markets.

At NASAA, we work independently and collaboratively with many external partners such as academics, consumer advocates, legislators, regulators, and trade associations to help ensure that entrepreneurs, investors, and others trust our capital markets and will continue to use them for generations to come. To encourage the trust of America’s hard-working entrepreneurs and investors in our capital markets, we protect investors, promote responsible capital formation, and support inclusion and innovation. Yet, nearly 15 years after the 2008-2009 Financial Crisis, a concerning amount of distrust in our capital markets persists. Indeed, large numbers of U.S. adults across all age demographics remain skeptical of Wall Street’s institutions, professionals, and products.<sup>2</sup>

As stated above, Congress should act on a swift, bipartisan basis to pass legislation, including insider trading legislation, that will help to foster trust and participation in the regulated markets. In doing so, Congress should prioritize proposals that strengthen accountability, compliance, investor education, registration, regulatory coordination, and transparency. The following is a representative list of proposals to approve:

---

<sup>1</sup> Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s 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 grassroots investor protection and responsible capital formation.

<sup>2</sup> For various reasons, we know that many U.S. adults do not trust our capital markets. For example, in a survey conducted in March 2022, the percentages of Gen Z, Millennial, Gen X, and Baby Boomer respondents who expressed trust in Wall Street were 20%, 39%, 31%, and 40%, respectively. See Morning Consult, [Tracking Trust in U.S. Institutions](#) (Mar. 2022). See also Bankrate, [Survey: More than half of investors think the stock market is rigged against individuals](#) (Mar. 2021) and P. Sapienza and L. Zingales, [Financial Trust Index](#) (Feb. 5, 2020).

1. [\*\*The Empowering States to Protect Seniors from Bad Actors Act\*\*](#) (H.R. 5914 | S. 3529): This bicameral, bipartisan bill, which the House Financial Services Committee approved by a voice vote in November 2021, would establish a grant program that would enhance existing efforts by state securities and insurance regulators to protect senior investors and policyholders from financial fraud. Importantly, with respect to the grant program, the bill would: (A) make the U.S. Securities and Exchange Commission (“SEC”) the program administrator; (B) give the SEC the authority and tools necessary to operate a data-driven grant program; (C) empower the SEC to make grants to state regulators from across the United States; (D) authorize an appropriation of \$10,000,000 to the SEC for each of the fiscal years 2023 through 2028 to make such grants; (E) require the SEC to cap each grant at \$500,000; and (F) effectively create more opportunities for federal and state securities regulators to communicate and coordinate in their efforts to protect senior investors.<sup>3</sup>

2. [\*\*The Insider Trading Prohibition Act\*\*](#) (H.R. 2655 | S. 3990): S. 3990 would make it easier for market participants, courts, and other stakeholders to identify, follow, and enforce the law by creating a codified definition of illegal insider trading. In short, the bill would make it unlawful for a person to trade while aware of material, non-public information if that person knows, or has reason to know, that the information was obtained wrongfully. In addition, the bill would prohibit a person with material, nonpublic information from wrongfully passing along that information to others, or tipping them, if the person is aware that the communication would result in trading and the recipient in fact trades based on that communication. In May 2021, the U.S. House of Representatives (“House”) passed H.R. 2655 by a vote of 350 to 75.<sup>4</sup>

3. [\*\*The 8-K Trading Gap Act of 2021\*\*](#) (H.R. 4467 | S. 2360): This bicameral legislation, which received bipartisan support last Congress, would close a loophole by requiring the SEC to prohibit corporate insiders from making trades during the four-day period they have between the occurrence of a significant event – such as bankruptcy or an acquisition – and the public company’s legally-mandated disclosure. The SEC requires public companies to file an 8-K to announce significant events relevant to shareholders. Companies have four business days to file an 8-K for most specified items.<sup>5</sup>

4. [\*\*The FAIR Act of 2022\*\*](#) (H.R. 963 | S. 505): Last month, the House approved this bicameral, bipartisan legislation by a vote of 222 to 209. The bill was referred to the Senate Committee on the Judiciary. Among other things, this legislation would prohibit broker-dealers and registered investment advisers from including pre-dispute arbitration clauses in customer

---

<sup>3</sup> See NASAA, [Letter to SBC Leadership Regarding S. 3529, the Empowering States to Protect Seniors from Bad Actors Act](#) (Jan. 25, 2022); NASAA, [Letter to HFSC Leadership Regarding H.R. 5914, the Empowering States to Protect Seniors from Bad Actors Act](#) (Nov. 15, 2021).

<sup>4</sup> See generally NASAA, [Letter to Rep. Himes Regarding H.R. 2655](#) (May 17, 2021); Written testimony of Melanie Senter Lubin, [Putting Investors First: Reviewing Proposals to Hold Executives Accountable](#) (Apr. 3, 2019).

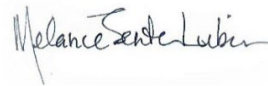
<sup>5</sup> The House passed [The 8-K Trading Gap Act of 2019](#) by a vote of 384 to 7. See [Van Hollen, Maloney Introduce Bicameral Legislation to Help Eliminate Corporate Insiders’ Unfair Advantage in Stock Sales](#) (July 15, 2021).

contracts as well as invalidate any standing mandatory pre-dispute arbitration clauses in current employment and customer agreements.<sup>6</sup>

Notably, at this time, we are not recommending that Congress pass the [Promoting Transparent Standards for Corporate Insiders Act](#) (H.R. 1528 | S. 2211). In short, this bill would direct the SEC to study and report on possible revisions to regulations regarding Rule 10b5-1 trading plans and to revise regulations consistent with the results of the study. Though NASAA called on Congress to conduct oversight with respect to Rule 10b5-1 plans and expressed support for this bill in early 2021,<sup>7</sup> the SEC has since published a proposed rule relating to Rule 10b5-1 plans and insider trading. On April 1, 2022, NASAA submitted a comment letter stating that we generally support the proposal. Our comment letter suggested ways in which the SEC could improve the proposal to make it a more meaningful enhancement of the insider trading laws.<sup>8</sup>

Thank you for your consideration of NASAA's comments. Should you have any questions, please do not hesitate to contact Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at [khutchens@nasaa.org](mailto:khutchens@nasaa.org).

Sincerely,



Melanie Senter Lubin  
NASAA President  
Maryland Securities Commissioner

---

<sup>6</sup> See generally NASAA, [Letter to SBC Leadership Regarding Mandatory Arbitration Agreements in Our Capital Markets](#) (Mar. 12, 2022) (explaining that NASAA believes Congress should act now on a swift, bipartisan basis to empower investors and give them a choice when it comes to resolving disputes with securities firms and professionals).

<sup>7</sup> See NASAA, [Legislative Agenda for the 117<sup>th</sup> Congress](#), at p. 14; NASAA, [Letter to HFSC Leadership Regarding the Promoting Transparent Standards for Corporate Insiders Act](#) (Mar. 8, 2021).

<sup>8</sup> NASAA, [Comment Letter Regarding SEC Rule 10b5-1 and Insider Trading Proposal](#) (Apr. 1, 2022).