

**Prepared Remarks of Andrea Seidt, NASAA Representative and Ohio Securities  
Commissioner, for the SEC Small Business Capital Formation Advisory Committee  
Regarding Secondary Market Liquidity for Investors in Regulation A and Regulation  
Crowdfunding Companies and for Smaller Public Companies**

**August 2, 2022**

**Introduction**

Thank you, Carla and Sebastian, for organizing the meeting today. I have not had too many opportunities to engage with a lot of the Committee members this year due to conflicts on my end, but when I have been able to participate, I have tried to not be too disruptive. Aside from a dissenting footnote that the Committee graciously extended to me on the accredited investor letter, I think I've been fairly quiet.<sup>1</sup> I apologize in advance if my comments today seem disruptive, but the Committee is considering action on policy that I strongly oppose – namely, a Committee recommendation or support for preemption of my agency's authority (and the authority of all state securities regulators) to oversee secondary sales of Reg A, Reg CF, and perhaps even other exempt offerings.

**The Duties of the SEC Small Business Capital Formation Advisory Committee**

I understand (and NASAA<sup>2</sup> understands) that small business capital formation is incredibly important to our financial markets.<sup>3</sup> I respect this Committee's mission to promote it. Personally, I have been moved by every small business who has joined us this year to share their capital formation successes and their struggles. I live in a Midwestern town that has grown into a thriving tech and startup hub because of small businesses just like them. And while capital formation is important work, it's not the only work that this Committee is charged with. Beyond capital formation, our Committee Charter states that we are supposed to provide the Commission with advice respecting the Commission's "mission of protecting investors" and its mission of

---

<sup>1</sup> See [Accredited Investor Recommendation by the SEC Small Business Capital Formation Advisory Committee](#) (March 12, 2022).

<sup>2</sup> Organized in 1919, the North American Securities Administrators Association ("NASAA") is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the 13 provincial and territorial securities regulators in Canada, and the securities regulator in México. In the United States, NASAA is the voice of state securities agencies that protect investors, promote responsible capital formation, and support inclusion and innovation in the capital markets. U.S. NASAA members license firms and their agents, investigate alleged violations of securities laws, file enforcement actions when appropriate, and educate the public about investment fraud. NASAA members also participate in multi-state enforcement actions and information sharing. For more information, visit: <https://www.nasaa.org/>.

<sup>3</sup> See [NASAA Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Regarding Protecting Investors and Savers: Understanding Scams and Risks in Crypto and Securities Markets](#) (July 28, 2022) ("NASAA Testimony"), at p. 16 ("As I will explain, any further erosion of the public capital markets and the authority of state securities regulators is simply dangerous for businesses, investors, and capitalism more generally, and thus is a recipe for producing additional distrust in our regulated capital markets."). See also Michael Pieciak, former Vermont Commissioner of Financial Regulation and 2018-2019 NASAA President, [Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment](#) (Sept. 11, 2019).

“maintaining fair, orderly, and efficient markets.”<sup>4</sup> Any proposal that does not take all aspects of the SEC’s mission into account is not ready for the Commission’s attention.

## **The Dangers of State Securities Preemption**

You will not be surprised to hear that I do not believe preempting state authority over secondary sales of Reg A and Reg CF offerings will either (a) protect investors or (b) lend itself in any way to fair, orderly, and efficient markets. I’m sure the Commission staff and other Committee members like Sarah will speak up if they disagree, but industry compliance with Reg A and Reg CF exemptions tends to fall on the spotty side. We see on-going reporting and advertising violations, financial statement issues, and notice filing and fee mistakes as just a few of the soft areas. And while we are on the topic, unregistered secondary sales are very likely another danger zone, but I am not aware of any states bringing cases in that area, at least not yet. No matter how hard those small businesses tug at my heart strings, my job as a regulator is to fairly apply the rules to all businesses.

My job also requires me to protect investors from fraud and loss, and these offerings pose high risks for investors. Investors, by the way, also tug at my heart strings. Investors file complaints that my team is duty-bound to investigate when those risks materialize. One of the risks we are especially concerned about in secondary sales is the risk that company insiders and the wealthier, sophisticated investors will “exit” bad deals by dumping their shares on more vulnerable, unsophisticated investors. Our Committee Charter demands that we consider those risks as we weigh options today.

In addition to investor protection, our Committee Charter directs us to think about the larger market impact that blanket state preemption would have on the secondary space for Reg A and Reg CF deals. This impact is admittedly hard to assess because we don’t have good data about the primary offerings, at least not from the investor’s vantage point. We just celebrated the 10-year anniversary of the JOBS Act. I’ve heard a lot about how much money has been raised in Reg A and Reg CF deals over the past 10 years, but I have heard nothing about the fail rate for those deals. Without cherry-picking deals from the pickiest platform, can anyone tell me how much money has been lost in these deals over the course of the last 10 years? Or, what percentage investors have made as a return on their investment on the deals that we count as successes? I am pretty concerned about what happens in the secondary market with the 98% of deals that SeedInvest rejects as too risky or too low in quality to list on its platform. I am also concerned that portals are not subject to the full scope of the laws and regulations of broker-dealers that are written to protect investors, including suitability and Regulation Best Interest requirements.

Eliminating existing state registration requirements that give investors basic disclosures about Reg A and Reg CF deals at re-sale would make an opaque part of our U.S. securities markets yet another shade darker. I would call it something like opaque-squared (or opaque<sup>2</sup>) for the investing public. It would remove yet another incentive for American companies to list and be

---

<sup>4</sup> See [Charter of the SEC Small Business Capital Formation Advisory Committee](#) (April 23, 2019).

fairly and publicly valued. It would also increase the potential for fraud and abusive insider sales. Those don't sound like positive developments for our financial system to me. To make balanced and informed policy decisions, the Committee needs much better data than it currently has. This includes data showing that the proposed secondary market exemption will positively impact the primary market and the financial success of these issuers *and* data that such a proposal would not frustrate the Commission's equally laudable goal of facilitating a robust and thriving *public* market.<sup>5</sup>

Lastly, I worry that preemption will ultimately lead to harsher and more negative enforcement outcomes for the small businesses and other unsophisticated private market participants that I know you want to help. With this particular proposal, I worry about issuers and resellers. I know that some of you have supported preemption proposals in the past because you think that state registration is a bad and costly thing for issuers and intermediaries, but I see it quite differently. I believe an ounce of prevention is worth a pound of cure. State examiners help unsophisticated issuers identify weaknesses and other red flags in their offerings before any damage is done – weaknesses and red flags that could cost issuers dearly if not identified prior to sales.<sup>6</sup>

We see a lot of compliance mistakes, a lot of sloppiness, by issuers and intermediaries in the private market. Many times, it's unintentional, just businesspeople who are unfamiliar with securities laws operating outside their lane. Other times, it can be fraudulent. We see outdated, inaccurate financials; unrealistic projections; misleading advertising; and a consistent effort by issuers and intermediaries across the board to gloss over the downside risks of these high-risk offerings. These are common – but damaging – rookie mistakes that we don't see by large, publicly traded companies.

## **The Value of State Registration**

As it stands now, registration gives states the opportunity to identify and fix those problems early and comparatively cheaply. Without state registration, however, it is much less likely that those issuer and reseller mistakes will be identified early on. States probably won't hear about most of those mistakes until after there is investor harm and complaint. It will be too late for states to

---

<sup>5</sup> See NASAA Testimony, at p. 16 (“NASAA’s opposition is two-fold. First, we fundamentally disagree with the principle that the way to pursue more capital raising is to take away the choice of state governments to decide if and how their securities regulators will review securities offering materials for compliance with basic fairness standards and/or the choice of receiving notification of an offering or sale that has occurred within their state. This is especially so when these offerings will be offered and sold by businesses in our communities to investors in our communities. State securities regulators regularly witness firsthand the value that comes from having small businesses engage directly with local regulators regarding small-dollar offerings. This engagement helps entrepreneurs better understand their options for raising capital. It also deters fraud and other misconduct that can harm business owners and investors alike. Last, it facilitates investor access to information necessary to make informed investment decisions, thus enhancing the fairness and efficiency of our capital markets. Again, any further erosion of the authority of state securities regulators is clearly dangerous to businesses and investors and counter-productive to the goal of promoting responsible capital formation.”).

<sup>6</sup> See NASAA Testimony, Appendix B, Illustrative Examples of 2021 State Administrative Matters Relating to Private Offerings.

help the issuers and resellers then. As you all know, mistakes and sloppiness regarding risk disclosure and financial disclosure are really hard for regulators to ignore, and those are *exactly* the kinds of mistakes and sloppiness that we should expect to see in secondary sales of Reg A and Reg CF offerings. Problems that could have been identified and corrected at the registration stage can turn into fraud cases with disqualifiers that boot some issuers and resellers out of the private markets entirely. I would much prefer states preserve their gatekeeping function to avoid foreseeable outcomes like these.

## **Conclusion**

Lastly, should any of you conclude, as I do, that it would be a mistake to preempt state registration of secondary sales – not only a mistake for investors, but a mistake for issuers and resellers as well – then I hope that you will reach out to me or others at NASAA to see what we can do together to promote *safe* secondary sales of Reg A and Reg CF offerings. Safe for investors, safe for issuers and resellers, too. While I’m probably not the one who will move that ball forward for the states, I work closely with the folks who will, including Faith Anderson from Washington state. I had suggested to staff that we invite Faith to speak today – to provide a more balanced presentation of the pros and cons of the proposed preemption policy – but my suggestion was obviously declined. I respectfully ask that the Committee defer any vote on this proposal – any preemption proposal – and defer issuance of any related recommendations until Faith or another speaker who can more effectively present state options is heard. Thank you so much for your time.

xx