



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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December 1, 2022

The Honorable Patrick Leahy
Chairman
Senate Appropriations Committee
Room S-128, The Capitol
Washington, D.C. 20510

The Honorable Richard Shelby
Vice Chairman
Senate Appropriations Committee
Room S-128, The Capitol
Washington, D.C. 20510

The Honorable Rosa DeLauro
Chair
House Committee on Appropriations
H-307, The Capitol
Washington, D.C. 20510

The Honorable Kay Granger
Ranking Member
House Committee on Appropriations
1036 Longworth House Office Building
Washington, D.C. 20510

Re: NASAA Urges Caution in the Appropriations Process on Securities Policy Riders

Dear Chairman Leahy, Vice Chairman Shelby, Chair DeLauro, and Ranking Member Granger:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write to urge you and your colleagues to review all proposed policy riders related to the securities markets carefully. As explained below, we are especially concerned that the appropriations process may be used to advance provisions in the draft JOBS Act 4.0 that would take away the authority of state governments to protect investors by further restricting state laws to register and regulate certain offerings, professionals, and transactions. These proposals include S. 3939, Small Entrepreneurs’ Empowerment and Development (SEED) Act; S. 3967, Improving Crowdfunding Opportunities Act; S. 3966, Facilitating Main Street Offerings Act; and S. 3922, Unlocking Capital for Small Businesses Act. Instead of allowing these deregulatory proposals to move forward, we urge you and your colleagues to support pro-investor proposals. Specifically, as explained below, S. 3529, Empowering States to Protect Seniors Against Bad Actors Act, and S. 3391, Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, should become federal law at the earliest opportunity.

I. Congress Should Oppose Bills in the JOBS Act 4.0 That Would Deregulate the Securities Markets in the United States

For over a century, state securities regulators have been on the frontlines of innovations that have made our capital markets safer, more efficient, and more inclusive. Today, we continue

¹ 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.

to work hard to ensure that the latest innovations occur within the well-established regulatory framework for supporting investor protection and responsible capital formation. Among other activities, we license firms and their agents, investigate violations of the law, file enforcement actions when appropriate, and educate the public about investment fraud.

Efforts are underway to pass legislation that would restrict the role of regulation, particularly state regulation, in responsible capital formation. In April 2022, lawmakers included 29 of these bills, many of which have been introduced in the current and recent congresses, in a discussion draft of the JOBS Act 4.0 package.² Since April, various lawmakers have promoted the JOBS Act 4.0 and tried to include bills from it in legislative packages pending before Congress.³

As you may know, NASAA has a long history of opposing deregulatory proposals that are the same or similar to the ones in the JOBS Act 4.0. In short, much like the JOBS Act 1.0 and JOBS Act 2.0 that became law in 2012 and 2015 respectively, we believe the JOBS Act 4.0 would be a gigantic step backwards in our collective efforts to protect and educate investors and promote responsible capital formation.⁴

II. Congress Should Preserve the Authority of State Securities Regulators

Of the 29 bills in the JOBS Act 4.0, we oppose 17 of them and are especially concerned about four (4) of those 17 bills. With respect to the remaining 12 bills, we either support them or have no position on them currently.⁵

² See, e.g., [Banking Republicans Roll Out Capital Formation Legislation to Mark 10th Anniversary of JOBS Act](#) (Apr. 4, 2022).

³ At the end of September 2022, Patrick McHenry, the top Republican on the House Financial Services Committee (“HFSC”), released the HFSC Republicans’ capital formation agenda. See, e.g., [McHenry Announces Committee Republicans’ Capital Formation Agenda](#) (Sept. 27, 2022).

⁴ See, e.g., [Written Testimony of NASAA President and Maryland Securities Commissioner Melanie Senter Lubin delivered to the U.S. Senate Committee on Banking, Housing, and Urban Affairs](#) (July 28, 2022); Mike Rothman, NASAA President and Minnesota Commissioner of Commerce, [The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets](#) (Mar. 22, 2017); NASAA, [The JOBS Act: an Investor Protection Disaster Waiting to Happen](#) (Mar. 22, 2012).

⁵ NASAA opposes the following proposals in the draft JOBS Act 4.0: **(1)** H.R. 3448, Helping Startups Continue to Grow Act; **(2)** S. 3919, Reporting Requirements Reduction Act of 2022; **(3)** S. 3945, Restoring Shareholder Transparency Act of 2022; **(4)** S. 3965, Increasing Access to Adviser Information Act; **(5)** S. 3097/H.R. 5795, Main Street Growth Act; **(6)** S. 3976, Expanding American Entrepreneurship Act; **(7)** S. 3914/H.R. 4227, Developing and Empowering Our Aspiring Leaders Act of 2022; **(8)** S. 3939/H.R. 5458, Small Entrepreneurs’ Empowerment and Development Act; **(9)** S. 3922/H.R. 8998, Unlocking Capital for Small Businesses Act of 2022; **(10)** S. 4292, Small Business Audit Correction Act of 2022; **(11)** S. 3961/H.R. 5598, Access to Small Business Investor Capital Act; **(12)** S. 3931/H.R. 2990, Gig Worker Equity Compensation Act; **(13)** S. 3948/H.R. 4262, Increasing Investor Opportunities Act; **(14)** S. 3967, Improving Crowdfunding Opportunities Act; **(15)** S. 3966, Facilitating Main Street Offerings Act; **(16)** S. 3916, Increasing Opportunities for Retail Investors Act; and **(17)** S. 3930, Administrative Enforcement Fairness Act of 2022. We continue to review several proposals in the package, including S. 3921/H.R. 4776, Equal Opportunity for all Investors Act. We also support several proposals, including S. 3391/H.R. 935, Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act.

The bills that are of most concern to NASAA are the ones that would strip state governments of important investor protection and capital formation authority to register and regulate certain securities offerings, professionals, and transactions. They are summarized below.

Anti-State Authority Legislation in the JOBS Act 4.0	
S. 3939, Small Entrepreneurs’ Empowerment and Development (SEED) Act	Exempts so-called “micro-cap offerings” – or offerings valued at \$500,000 or less in a single year – from core regulatory protections of the Securities Act of 1933, including registration and disclosure protections, and preempts the authority of states to require registration with or notice to the states of these offerings.
S. 3967, Improving Crowdfunding Opportunities Act	Prohibits state governments from requiring securities issuers to report information to the state regarding trades of their securities made through funding portals.
S. 3966, Facilitating Main Street Offerings Act	Undermines responsible capital formation and investor protection by preempting state securities regulation of secondary trading of Regulation A securities issued in Tier 2 offerings.
S. 3922, Unlocking Capital for Small Businesses Act	Exempts “finders” from registration under federal law and prohibits the states from registering “finders,” and imposes a broker-dealer-light regulatory regime on private placement brokers.

In our experience, the states are better positioned than the federal government to decide whether it would be helpful to the entrepreneurs, small businesses, and investors in the state to impose these types of regulatory requirements in addition to federal requirements. In many jurisdictions, the state government has imposed one or more of these requirements.

While the reasoning varies, states generally have exercised their authority because they have witnessed firsthand the value that comes from having small businesses and investment professionals engage directly with local regulators in their state, especially 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.

III. Congress Should Pair and Pass the Empowering States to Protect Seniors from Bad Actors Act and the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act

There are two bills pending before Congress that should become federal law at the earliest opportunity. Both have strong, bipartisan support, as well as NASAA's support.

First, S. 3529/H.R. 5419, Empowering States to Protect Seniors from Bad Actors Act, would establish a senior investor protection grant program at the SEC. The SEC, as the program administrator, could make grants to state securities and insurance regulators from across the United States to support efforts to protect and educate older investors against fraud and other misconduct. In May 2022, the U.S. House of Representatives ("House") passed this legislation on a strong, bipartisan basis. The House again approved the legislation as an amendment to H.R. 7900, the National Defense Authorization Act for Fiscal Year 2023, as amended.⁶

Second, S. 3391/H.R. 935, Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, would allow certain brokers, called merger and acquisition brokers, to organize sales and purchases of ownership and control of private companies without registering as "broker-dealers" with the U.S. Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority, Inc. The legislation would codify the regulatory relieve envisioned in a no-action letter that SEC staff issued in January 2014 and a NASAA model rule adopted in September 2015. In May 2022, the House passed this legislation unanimously. Earlier versions of this bill have passed the full House unanimously in prior congresses.⁷

Thank you for your time and consideration. If NASAA can be of assistance at any point in these discussions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
Executive Director

⁶ See, e.g., [House Passes Gottheimer's Bipartisan Bill to Help States Protect Seniors from Financial Scams](#) (May 11, 2022); [Van Hollen, Scott, Warnock, Lummis Introduce Bipartisan Bill to Protect Seniors from Fraud](#) (Jan. 20, 2022); [Gottheimer's Bipartisan Bill to Help States Protect Seniors from Financial Scams Passes Out of Financial Services Committee](#) (Nov. 17, 2021).

⁷ See Rep. Bill Huizenga, [Bipartisan Bill Will Help Level the Playing Field for Small Businesses](#), THE HILL (July 21, 2021).