



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 17, 2023

The Honorable Kevin McCarthy (R-CA)
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Scalise (R-LA)
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Katherine Clark (D-MA)
Democratic Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Emmer (R-MN)
Majority Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Pete Aguilar (D-CA)
Democratic Caucus Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Elise Stefanik (R-NY)
Republican Conference Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James Clyburn (D-MD)
Assistant Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gary Palmer (R-AL)
Republican Policy Committee Chairman
U.S. House of Representatives
Washington, D.C. 20515

Re: NASAA Calls on House Leadership to Join NASAA in Its Strong Opposition to H.R.
2799, the Expanding Access to Capital Act, As Amended

Dear Speaker McCarthy and Republican and Democratic leaders:

Maintaining robust public capital markets is critical to the financial futures of Americans and the global economy. The regulatory structures established in state and federal securities laws have resulted in the United States having the deepest and most liquid markets in the world. However, efforts are underway to pass legislation that would harm the public capital markets and preempt state investor protection laws to the detriment of entrepreneurs, small businesses, and individual investors.

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write to urge you and your colleagues to oppose H.R. 2799, the Expanding Access to Capital Act, as amended (“H.R. 2799”). As explained below, NASAA strongly opposes four (4) titles in H.R. 2799 because they would make it impossible or more difficult, depending on the bill in question, for state securities regulators to promote responsible capital formation and protect investors in their states. The titles are Division B, Title I (the Unlocking Capital for Small Businesses Act of 2023), Title IV (the Small Entrepreneurs’ Empowerment and Development (“SEED”) Act of 2023), Title VII (the Improving Crowdfunding Opportunities Act), and Title VIII (the Restoring the Secondary Trading Market Act). As also explained below, NASAA opposes other titles in this legislation except Division A, Title III (SEC and PCAOB Auditor Requirements for Newly Public Companies). When combined, this legislation will only weaken investor protection and add to the explosive growth of unregulated private securities markets and private funds, thereby depriving the public securities markets and the investors that rely on them opportunities to build secure financial futures.²

A. NASAA Strongly Opposes Laws That Would Weaken Investor Protection and Preempt State Efforts to Promote Responsible Capital Formation.

NASAA strongly opposes the four anti-state regulation titles in H.R. 2799. They would be a gigantic step backwards in our collective efforts to right-size local efforts designed to promote responsible capital formation for the next generation of American small businesses and the individual investors who provide much of the operating capital for these businesses. State securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach community members. State securities regulators use this information to

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, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

² On April 24, 2023, Chairman Patrick McHenry (R-NC) of the U.S. House Committee on Financial Services (“HFSC”) introduced H.R. 2799, the Expanding Access to Capital Act of 2023. As of May 16, H.R. 2799 had no cosponsors. On April 26, 2023, the HFSC held a mark-up session during which Chairman McHenry offered an amendment in the nature of a substitute (“ANS”) to H.R. 2799. The HFSC recorded a partisan vote of 28 ayes (Rs) to 21 nays (Ds) on H.R. 2799 and a voice vote on the ANS to H.R. 2799 (or “H.R. 2799, as amended”). H.R. 2799, as amended, removed the following five (5) titles from H.R. 2799: **(1)** H.R. 1807, the Improving Disclosure for Investors Act of 2023; **(2)** H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; **(3)** H.R. 1553, the Helping Angels Lead Our Startups Act of 2023; **(4)** H.R. 2627, the Increasing Investor Opportunities Act; and **(5)** H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023. In short, NASAA opposes the first four bills and is reviewing the fifth. *See, e.g.*, 2022-2023 NASAA Past-President Melanie Senter Lubin, [Written Testimony before the House Financial Services Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans](#) (Apr. 19, 2023).

enhance their education and outreach programming for entrepreneurs and small businesses.

1. NASAA Strongly Opposes the Unlocking Capital for Small Businesses Act.

Despite the title, the Unlocking Capital for Small Businesses Act (the “Unlocking Capital Act”) would do little to facilitate the sustainable growth of small businesses. Rather, it will facilitate the further growth of unregulated markets and weaken the government’s oversight of those who market risky investments to retail investors. In short, the legislation would establish two categories of investment professionals, private placement brokers and finders, and allow them to engage in many activities that have for decades been regulated because of investor protection concerns. To do this, the title would implement the following changes to state and federal securities law:

- a. Amend Section 15 of the Securities Exchange Act of 1934 (“Exchange Act”) to add a registration safe harbor and disclosure regime for private placement brokers.
- b. Amend Exchange Act Section 15 to add a nonregistration safe harbor for finders.
- c. Amend the definition of “financial institution” in Section 5312 of Title 31, United States Code, to remove “private placement broker” from the universe of SEC-registered brokers that can be considered financial institutions.³
- d. Amend Exchange Act Section 3(a)(4), which defines “broker,” to add “private placement brokers” to the list of exceptions from the Exchange Act broker definition.⁴
- e. Amend Exchange Act Section 29 to protect issuers from voided contracts if they obtain a self-certification by the private placement broker and/or finder of their status and the issuer did not know or had no reasonable basis to believe the self-certification was false.⁵
- f. Amend Exchange Act Section 15 to preempt state governments from enforcing “any law, rule, regulation, or other administrative action that imposes greater registration, audit, financial recordkeeping, or reporting requirements on a private placement broker or finder [than those required by the Unlocking Capital Act].”⁶

This title would establish a registration safe harbor for private placement brokers. To establish the safe harbor, the title directs the SEC to promulgate regulations that are “no more stringent than those imposed on funding portals” and “require the rules of any national securities

³ See [31 U.S.C. § 5312](#).

⁴ See [15 U.S.C. § 78c\(a\)\(4\)](#).

⁵ See [15 U.S.C. § 78cc](#).

⁶ On April 13, 2023, Representative Andrew Garbarino (R-NY) introduced the same or similar legislation as H.R. 2590. As of May 16, the bill had no cosponsors.

association [such as the Financial Industry Regulatory Authority (“FINRA”)] to allow a private placement broker to become a member of such national securities association subject to reduced membership requirements”.⁷ The title also defines “private placement broker” in three parts. First, such brokers are persons who receive transaction-based compensation for effecting a transaction by introducing an issuer of securities and a buyer of securities either **(A)** for the sale of a business effected through the sale of securities or **(B)** for the placement of securities that are exempt from registration requirements under the Securities Act of 1933 (“Securities Act”).⁸ Second, with respect to a transaction for which such transaction-based compensation is received, private placement brokers cannot handle or take possession of funds or securities or engage in any activity that requires registration under state or federal law as an investment adviser. Third, private placement brokers cannot be a finder as defined by the Unlocking Capital Act. By virtue of the above-described amendment to Exchange Act Section 29, private placement brokers would be encouraged under this title to self-certify their status as a private placement broker.

The Unlocking Capital Act would establish a disclosure regime for private placement brokers. Specifically, the legislation directs these brokers to disclose in clear, conspicuous writing to all transaction parties the broker’s role in the transaction, the compensation to the broker in connection with the transaction, the person to whom any such payment is made, and the direct or indirect beneficial interest in the issuer of the broker, an associated person of the broker, or the immediate families of the broker or the associated person.

In addition, the Unlocking Capital Act would establish a nonregistration safe harbor for finders. Specifically, the title exempts finders from registration requirements under Exchange Act Section 15 and directs voluntary participation if any in national securities associations such as FINRA. The title defines “finders” to be private placement brokers who **(A)** receive transaction-based compensation of equal to or less than \$500,000 in any calendar year; **(B)** receive transaction-based compensation in connection with transactions that result in a single issuer selling securities valued at equal to or less than \$15 million in any calendar year; **(C)** receive transaction-based compensation in connection with transactions that result in any combination of issuers selling securities valued at equal to or less than \$30 million in any calendar year; or **(D)** receive transaction-based compensation in connection with fewer than 16 transactions that are not part of the same offering or are otherwise unrelated in any calendar year. Again, by virtue of the amendment to Exchange Act Section 29, finders would be encouraged to self-certify their status as a finder.

⁷ Title III of the Jumpstart Our Business Startups (“JOBS”) Act enacted in 2012 contains provisions relating to securities offered or sold through crowdfunding. The SEC’s Regulation Crowdfunding (“CF”) and FINRA corresponding set of Funding Portal Rules set forth the principal requirements that apply to funding portal members. Funding portals must register with the SEC and become a member of FINRA. Broker-dealers contemplating engaging in the sale of securities in reliance on Title III of the JOBS Act must notify FINRA in accordance with FINRA Rule 4518. See FINRA, [Funding Portals and Crowdfunding Offerings](#) and SEC, [Registration of Funding Portals](#).

⁸ The legislation further states that the transaction-based compensation cannot be for a transaction with respect to “(I) a class of publicly traded securities; (II) the securities of an investment company (as defined in section 3 of the Investment Company Act of 1940); or (III) a variable or equity-indexed annuity or other variable or equity-indexed life insurance product”.

Last and importantly, the Unlocking Capital Act would amend Exchange Act Section 15 to prevent state governments from imposing registration and other requirements on private placement brokers and finders that are greater than the new safe harbors. Stated differently, state governments seeking to register private placement brokers would need to set up new bespoke registration and regulatory regimes for private placement brokers. In addition, state governments could no longer require finders to apply to be registered or licensed with the state before they begin to solicit investors in the states.

NASAA strongly opposes the Unlocking Capital Act. This title would take away the authority of states to decide how best to structure a regulatory framework appropriate for the types of activities conducted by these investment professionals. Prior to conducting business in a state, most securities brokers must apply for registration to demonstrate that they have the requisite knowledge, skills, and business background to solicit and sell securities to investors. State securities regulators cannot protect investors or otherwise support responsible capital formation if they lack a line of sight into who is promoting securities in their states. While NASAA is pursuing or otherwise supporting sensible changes that would right-size the licensing and registration process for these investment professionals, we likely would need the collaboration and cooperation of the SEC and FINRA to align applicable SEC and FINRA rules with any changes advanced by state securities regulators. To this point, we continue to urge Congress to call on the SEC and FINRA to work with state securities regulators to evaluate potential changes to the existing regulatory framework.⁹

2. NASAA Strongly Opposes the Small Entrepreneurs’ Empowerment and Development Act.

Division B, Title IV of H.R. 2799 is the SEED Act of 2023. This title would sow further opportunities to defraud investors by making the following counterproductive changes to the law:

- a. Amend Securities Act Section 4 to establish yet another overly broad, federal exemption (or safe harbor) for so-called “micro-offerings.” Specifically, the safe harbor would exempt the sale of securities from registration requirements under the Securities Act if (A) the aggregate amount of all securities sold by the issuer

⁹ NASAA has long opposed the Unlocking Capital for Small Businesses Act. *See, e.g.*, [NASAA Letter to Congress Regarding H.R. 6127, the Unlocking Capital for Small Businesses Act of 2018](#) (Nov. 19, 2018). For the same reasons, NASAA opposed unsuccessful efforts by the SEC in 2020 to establish a federal broker-dealer exemption for private placement finders. *See* NASAA, [NASAA Outlines Opposition to SEC’s Proposed Federal Broker-Dealer Exemption for Private Placement Finders](#) (Nov. 13, 2020). *See also* [NASAA Letter to Committee Leadership Regarding Opportunities to Strengthen Diversity in Our Capital-Markets](#) (Dec. 12, 2022); [NASAA Letter to Appropriations Committee Leadership Regarding Securities Policy Riders](#) (Dec. 1, 2022); [NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data](#) (Sept. 2022) at 7 (“In 2021, U.S. members were highly successful in fulfilling their gatekeeper role. They denied 232 applications for licensure (an increase of 76% from 2020), conditioned the approval of 278 applications (an increase of 67% from 2020) and suspended 26 securities professionals (an increase of 13% from 2020). They also revoked licenses of 50 securities professionals and barred 61 individuals from the industry.”); and Maryland Securities Division Commissioner Melanie Senter Lubin, [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).

(including all entities controlled by or under common control with the issuer), including any amount sold in reliance on the safe harbor during the 12-month period preceding the sale, does not exceed \$250,000 and **(B)** the issuer is not disqualified as a bad actor.

- b. Direct the SEC to issue a new bad actor rule governing these micro-offerings within 270 days of the law’s enactment and to make the new rule substantially similar to existing federal bad actor provisions.
- c. Amend Securities Act Section 18(b)(4) to add micro-offerings as a covered security thereby preempting state registration or qualification requirements with respect to micro-offerings.¹⁰

By way of background, presently, issuers of securities can offer and sell securities through many types of offerings *without* registering those securities with the SEC. For example, issuers can use any of the following 10 types of offerings up to the stated limits: **(1)** Section 4(a)(2) (no offering limit); **(2)** Rule 506(b) of Regulation D (no offering limit); **(3)** Rule 506(c) of Regulation D (no offering limit);¹¹ **(4)** Regulation A: Tier 1 (\$20 million); **(5)** Regulation A: Tier 2 (\$75 million); **(6)** Rule 504 of Regulation D (\$10 million); **(7)** Regulation CF, Section 4(a)(6) (\$5 million); **(8)** Intrastate: Section 3(a)(11) (no federal limit but states usually have limits between \$1 and \$5 million); **(9)** Intrastate: Rule 147 (no federal limit but states usually have limits between \$1 and \$5 million); and **(10)** Intrastate: Rule 147A (no federal limit but states usually have limits between \$1 and \$5 million).¹²

In addition, during the last three decades, Congress and the SEC have enacted laws and regulations to further expand the ways and amounts that issuers can offer and sell securities without registering them with the state governments. In 1996, the federal government enacted the National Securities Markets Improvement Act (the “NSMIA”). This legislation preempted much state regulation of securities offerings. Among other changes, NSMIA preempted state registration of “covered securities” such as nationally traded securities and mutual funds.

¹⁰ See [15 U.S.C. § 77r\(c\)\(1\)](#) and [15 U.S.C. § 77r\(c\)\(2\)\(A\)](#). On April 13, 2023, Chairman Patrick McHenry (R-NC) of the HFSC introduced the same or similar legislation as H.R. 2609. As of May 16, the bill had one cosponsor: Representative Tom Emmer (R-MN).

¹¹ For information regarding related enforcement actions, see [NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data](#) (Sept. 2022) at 10 (“Although legitimate businesses may rely on private offering exemptions to lawfully raise capital, illegitimate issuers continue to exploit the exemptions to defraud the general public. Regulation D ensures that illegitimate issuers no longer need to file registration statements with federal regulators, and for all practical purposes their actions are exempt from federal review. Coupled with the federal preemption of state regulation, Regulation D allows white-collar criminals and bad actors to act in a regulatory vacuum – devoid of meaningful oversight and mechanisms to prevent abuse. Not surprisingly, state regulators reported numerous instances of misconduct tied to Regulation D private offerings. In 2020, state securities regulators opened 196 investigations and 67 enforcement actions involving offerings reliant upon the law. This includes 69 investigations and 24 enforcement actions relating to Rule 506(c), which generally permits issuers to publicly advertise unregistered securities so long as they limit sales to accredited investors.”).

¹² See [SEC Overview for Exemptions to Raise Capital](#) (last updated Apr. 6, 2023) (setting forth a chart that provides certain regulatory information and requirements that govern 10 different avenues for raising capital under existing exemptions from federal securities laws).

However, NSMIA still permitted state review and registration of non-covered securities and requirements to submit notice filings to state securities regulators of covered securities. In subsequent years, Congress repeatedly forced its priorities and policies on states by adding to the list of covered securities and thereby further restricting the ability of state governments to decide whether and how to regulate certain securities offerings.

NASAA strongly opposes the SEED Act for five key reasons. First, this legislation is contrary to the purposes of the securities laws necessary for well-regulated capital markets and investor confidence. Second, it is simply unnecessary. There are many paths to raise capital, especially for an offering of \$250,000 or less. Third, this legislation injects new complexity into an exemption framework that is complex already.¹³ Fourth, registration and notice filings are the regulatory tools regulators use to know who is operating in their states. They cannot protect investors without a line of sight into companies selling these securities. They also cannot help entrepreneurs and small businesses if they do not know they are operating in their jurisdiction. Fifth, absent these filings (which essentially are communications to the states), state securities regulators may first learn about the transactions through other communications such as a call from a concerned citizen or investor and be obligated to open an investigation, all without the benefit of the information that would have been communicated through these filings. For some issuers, it may require more resources to respond to the investigation than it would have required to prepare a basic filing. At the end of the day, all this legislation would do is reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

3. NASAA Strongly Opposes the Improving Crowdfunding Opportunities Act.

Division B, Title VII is the Improving Crowdfunding Opportunities Act. In short, this title would enact a mix of provisions that weaken requirements for various participants in crowdfunding transactions.

a. SEC Regulation Crowdfunding

Crowdfunding refers to a financing method in which money is raised through soliciting relatively small individual investments or contributions from a large number of people. If a company would like to offer and sell securities through crowdfunding, they must comply with state and federal securities laws. State legislatures and regulators were first to enact tailored crowdfunding laws and did so with the twin goals of benefiting local businesses and the Main Street investors who would be asked to invest in them. Subsequently, Congress enacted a one-size-fits-all federal version of crowdfunding and directed the SEC to promulgate rules to implement yet another path for issuers to circumvent applicable securities laws.¹⁴

SEC Regulation CF sets forth requirements for raising capital through crowdfunding. By

¹³ See, e.g., [SEC Overview for Exemptions to Raise Capital](#) (last updated Apr. 6, 2023).

¹⁴ See generally [NASAA Enforcement Report: 2014 Report on 2013 Data](#) (Oct. 2014) at 8 (“For the first time, NASAA members identified six investigations where crowdfunding was used. This last development is of high concern, given state efforts to improve and support capital formation opportunities. Legitimate capital formation should not be compromised by unrelated fraudulent activity.”).

way of example, Regulation CF requires all transactions under Regulation CF to occur online through an SEC-registered intermediary, which can be either a broker-dealer or a funding portal; permits certain companies to raise a maximum aggregate amount of \$5 million through crowdfunding offerings in a 12-month period; limits the amount individual non-accredited investors can invest across all crowdfunding offerings in a 12-month period; and requires disclosure of information in filings with the SEC and to investors and the intermediary facilitating the offering.

Presently, for various investor protection reasons, Regulation CF deems several types of issuers ineligible to rely on Regulation CF to conduct a transaction. These include issuers that must file reports under Exchange Act Section 13(a) or 15(d), investment companies, blank check companies, disqualified ‘bad actor’ issuers, and issuers that have failed to file the annual reports under Regulation CF during the two years immediately preceding the filing of the offering statement cannot rely on Regulation CF.¹⁵

Crowdfunding was meant to allow individual investors to invest in small, local businesses and the idea that pooled investments made through a special purpose vehicle (“SPV”) or fund organized to invest in, or lend money to, a single company was particularly controversial. According to SEC staff in 2019, many issuers elected not to pursue an offering under Regulation CF due to the inability to conduct a transaction with an SPV as a co-issuer. In short, without an SPV, a large number of investors on an issuer’s capitalization table can be unwieldy and potentially impede future financing.¹⁶

Beginning in 2021, the SEC permitted the use of certain SPVs in Regulation CF transactions. Specifically, following notice and comment, the SEC amended SEC Rule 3a-9 under the Investment Company Act of 1940 (“Investment Company Act”) to add a new exclusion for limited-purpose crowdfunding SPVs and to include conditions for crowdfunding SPVs that are designed to ensure that the vehicle acts solely as a conduit for investments in a crowdfunding issuer. In short, when a crowdfunding SPV is used, the crowdfunding issuer and the crowdfunding vehicle are co-issuers under the Securities Act. Both must comply with the requirements of Regulation CF and other applicable securities laws.¹⁷

Further, Regulation CF presently sets offering limits for individual non-accredited investors whereas no limits exist for accredited investors.¹⁸ Specifically, individual non-accredited investors can be sold either **(i)** the greater of \$2,500, or 5 percent of the greater of the investor’s annual income or net worth, if either the investor’s annual income or net worth is less than \$124,000; or **(ii)** ten percent of the greater of the investor’s annual income or net worth, not to exceed an amount sold of \$124,000, if both the investor’s annual income and net worth are

¹⁵ See [17 CFR § 227.100\(b\)](#).

¹⁶ See SEC, [Report to the Commission Regulation Crowdfunding](#) (June 18, 2019) at 57-59.

¹⁷ See SEC Final Rule, [Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#), Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 156-181.

¹⁸ See SEC, [Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#) (last updated Nov. 30, 2022).

equal to or more than \$124,000.¹⁹

For similar reasons to the SPV issue, the investment limits on non-accredited investors have been the subject of much policy debate in recent years. For example, some market participants want to increase the limits and allow more individual investments into the marketplace. In addition, for similar reasons, some market participants want the limits to apply on a per-investment basis rather than across all crowdfunding offerings.²⁰ These efforts overlook the fact that growth in the market, or the lack thereof, is driven by the quality of the issuers.

Beginning in 2021, the SEC amended the calculation method for the investment limits for non-accredited investors. The purpose of the change was to allow them to use the *greater* of their annual income or net worth rather than the *lesser* of their annual income or net worth. The change conformed Regulation CF with Tier 2 of SEC Regulation A and applied a consistent approach to limited potential losses investors may incur in offerings conducted in reliance on the two exemptions. When making the change, the SEC stated, “[W]e are not aware of evidence since Regulation Crowdfunding’s adoption to indicate this market requires a more stringent approach to investment limits than other exemptive regimes.”²¹

With respect to required disclosures under Regulation CF transactions, the offering statement must include specified information, including a discussion of the issuer’s financial condition and financial statements. The requirements applicable to financial statement disclosures are scaled and based on the amount offered and sold in reliance on Regulation CF within the preceding 12-month period. For example, for issuers offering \$124,000 or less, they only need to disclose the financial statements of the issuer and certain information from the issuer’s federal income tax returns, both certified by the principal executive officer of the issuers, unless audited financial statements are available.²²

b. State Securities Laws Related to Crowdfunding

Securities Act Section 18(b), as amended, preempts state securities laws’ registration and qualification requirements for crowdfunding offerings made pursuant to Securities Act Section 4(a)(6).²³ Nevertheless, states can require that notice filings be made for offerings conducted under Regulation CF. Also, many states do in fact require such notice filings for offerings conducted in their jurisdictions.²⁴

In addition to requiring notice filings of federal crowdfunding offerings, over three dozen

¹⁹ See [17 CFR § 227.100\(a\)\(2\)](#).

²⁰ See SEC, [Report to the Commission Regulation Crowdfunding](#) (June 18, 2019) at 40.

²¹ See SEC Final Rule, [Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#), Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 155.

²² See [17 CFR § 227.201\(t\)](#). See also SEC, [Fact Sheet: JOBS Act Inflation Adjustments](#) (Sept. 9, 2022).

²³ See SEC Final Rule, [Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#), Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 147-148.

²⁴ See NASAA, [UFT Acceptance Matrix](#) (last updated Aug. 18, 2022).

state governments have enacted rules or other requirements specific to crowdfunding transactions involving investors in their states. These capital raising paths under state laws are tied to federal raising capital paths where the federal government has not preempted state registration or qualification. Specifically, most state crowdfunding laws are linked to the federal “intrastate” offering exemption, namely Securities Act Section 3(a)(11) and its corresponding Rule 147. A few state laws are tied to the federal exemption in Rule 504 of Regulation D.²⁵

c. The Consequences of the Improving Crowdfunding Opportunities Act

The Improving Crowdfunding Opportunities Act would water down the minimal investor protections that exist today for crowdfunded offerings and make other significant changes to an already scaled back regulatory framework. Specifically, the legislation would direct the following amendments:

1. Amend Securities Act Section 18(b)(4)(A) to preempt state registration or qualification of secondary transactions by adding “section 4A(b) or any regulation issued under that section” as a type of report filed with the SEC that triggers application of covered security status under Section 18(b)(4)(A). As background, Securities Act Section 4A required among other things that issuers and intermediaries that facilitate transactions between issuers and investors in reliance on Securities Act Section 4(a)(6) provide certain information to investors and potential investors, take other actions, and provide other information to the SEC. Securities Act Section 18(b)(4)(C), as amended, separately preempted state securities laws’ registration and qualification requirements for offerings made pursuant to Section 4(a)(6).
2. Amend Securities Act Section 4A(c) to make funding portals liable for fraud or misrepresentation by issuers only if the funding portals participated in the fraud or were negligent in discharging their due diligence obligations. As background, this change would reverse an SEC interpretation of Regulation CF that treats funding portals as issuers for liability purposes.²⁶
3. Amend Securities Act Section 4A(a) and the definition of “financial institution” in Section 5312 of Title 31, United States Code, to make clear funding portals are not subject to anti-money laundering, “Know Your Customer,” and associated Bank Secrecy Act requirements.
4. Amend Exchange Act Section 3(a) to repeal restrictions on curation by allowing funding portals to offer impersonal investment advice by means of written material, or an oral statement, that does not purport to meet the objectives or needs of a specific individual or account.
5. Amend paragraph (t)(1) of section 227.201 of Title 17, Code of Federal Regulations (which governs the financial statement requirements for offerings that, together with

²⁵ See NASAA, [Intrastate Crowdfunding Resources](#).

²⁶ See [17 CFR § 227.503\(a\)\(3\)\(ii\)](#).

all other amounts of offerings sold within the preceding 12-month period, have, in the aggregate target offering amounts of \$124,000), to increase the permitted target offering amount to no more than \$250,000 and direct documentation around the unavailability of financial statements that have been reviewed or audited by an independent public accountant.

6. Amend Securities Act Section 4A(f) to permit certain investment companies to rely on the SEC’s crowdfunding exemption.
7. Amend Securities Act Section 4(a)(6) to codify and increase the offering limit from \$1,000,000 to \$10,000,000.²⁷
8. Amend Securities Act Section 4(a)(6) to reverse recent SEC changes to the investment limits for individual non-accredited investors and codify a new “does not exceed 10 percent of the annual income or net worth of such investor” standard that omits a cap on the maximum aggregate amount that can be sold to investors.
9. Make technical corrections throughout the Securities Act to fix flawed references to Section 4(a)(6) and Section 4(6)(B).²⁸

For several reasons, NASAA strongly opposes the Improving Crowdfunding Opportunities Act. While the SEC’s mission includes the facilitation of capital formation and the protection of investors, the SEC does not take the kind of grassroots approach to this work that is typical of state agencies. The SEC was slow to establish a new regime for crowdfunding transactions,²⁹ has been slow or unwilling to take enforcement actions in crowdfunding-related cases that involve losses under \$1 million, and lacks the resources to engage with startups throughout the United States regarding their options for raising capital under state and federal crowdfunding laws.³⁰ Given the SEC’s record of deprioritizing crowdfunding issuers and investors, Congress should understand that further preemption of the states in this area would expand the *de facto* regulatory gap that exists with respect to the regulation of crowdfunding transactions. That gap, coupled with the protections for funding portals contemplated under this proposal, will lead to more aggressive practices by funding portals targeted investors, fewer

²⁷ The Commission adopted Regulation CF in 2015. Regulation CF initially provided an exemption from registration for certain crowdfunding transactions that raise up to \$1,070,000 in a 12-month period. Effective March 2021, the Commission increased Regulation CF’s offering limit from \$1,070,000 to \$5,000,000. As this increase was far in excess of the inflation-based increase that would otherwise have occurred, the SEC has not since increased Regulation CF’s offering limit for inflation. See SEC, [Fact Sheet: JOBS Act Inflation Adjustments](#) (Sept. 9, 2022).

²⁸ On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2607. As of May 16, the bill had no cosponsors.

²⁹ The SEC adopted final rules permitting companies to offer and sell securities through crowdfunding in 2015, three years after enactment of the JOBS Act 1.0. See Press Release 2015-249, [SEC Adopts Rules to Permit Crowdfunding](#) (Oct. 30, 2015).

³⁰ Roughly two dozen states enacted crowdfunding laws before the SEC implemented Regulation CF. See Stacy Cowley, [Tired of Waiting for U.S. to Act, States Pass Crowdfunding Laws and Rules](#) (June 3, 2015) (“Twenty-two states and the District of Columbia have enacted such rules, nine of them in the last six months. Eleven states are considering creating such laws and procedures. Three more states — Florida, Illinois and New Mexico — have rules or legislation awaiting the governor’s signature.”).

remedies for harmed investors, and ultimately damage the credibility of all offerings made under the SEC's Regulation CF.

4. NASAA Strongly Opposes the Restoring the Secondary Trading Market Act.

Division B, Title VIII, the Restoring the Secondary Trading Market Act, would erase oversight in the secondary sales of offerings by state governments, including offerings made under Tier 2 of the SEC's Regulation A.³¹ Specifically, this title would make the following changes:

- a. Amend Securities Act Section 18(a) to prohibit state governments from regulating the “off-exchange secondary trading (as such term is defined by the Commission) in securities of an issuer that makes current information publicly available”. The title does not specify which if any existing SEC definition of “off-exchange secondary trading” to use.
- b. Specify that making “current information publicly available” includes “the information required in the periodic and current reports described under paragraph (b) of Section 230.257 of Title 17, Code of Federal Regulations.” Section 230.257 refers to periodic and current reporting for Regulation A, Tier 2 offerings of securities such as annual reports on Form 1-K.³²
- c. Specify that making “current information publicly available” also includes “the documents and information required with respect to Tier 2 offerings, as defined in Section 230.251(a) of Title 17, Code of Federal Regulations.” Section 230.251(d) of Title 17, Code of Federal Regulations, refers to various offering conditions applicable to Regulation A, Tier 2 offerings, including the filing of an offering statement with the SEC.³³

Companies that trade on national exchanges must register their securities with the SEC and meet stringent exchange listing requirements. Those that do not meet these requirements must comply with applicable state securities laws that require, for instance, that the company disclose important financial information about the company's operations. Where appropriate, states have adopted disclosure-based “manual exemptions” from state registration requirements for secondary transactions. Generally, these manual exemptions allow for secondary trading of qualifying companies so long as certain financial standards are met and key information about the company is published in a nationally recognized securities manual or its electronic equivalent. In other words, investors would have access to the types of information that the company would have to make to retail investors through the state registration process. Historically, manuals were printed publications that investors could access in their local library

³¹ See [SEC Report to Congress: Access to Capital and Market Liquidity](#) (Aug. 2017) at 53 (“Additionally, a lack of secondary market liquidity may discourage investors from participating in Regulation A offerings at valuations that the issuer finds attractive.”).

³² See [17 CFR § 230.257](#).

³³ On April 6, 2023, Representative Dan Meuser (R-PA) introduced the same or similar legislation as H.R. 2506. As of May 16, the bill had no cosponsors.

or through their investment professionals. Today, manuals generally are easily accessible sources of online information.

NASAA strongly opposes the Restoring the Secondary Trading Act. This legislation is unnecessary. As explained above, a majority of states, including the Commonwealth of Pennsylvania where the introducing lawmaker resides, maintain a manual exemption to facilitate secondary trading.³⁴ In many states, the SEC’s Electronic Data Gathering, Analysis, and Retrieval (or EDGAR) system can be a designated source for purposes of the manual exemption. In addition, NASAA is committed to further reviews of the existing manual exemptions and, if appropriate, promulgating a model rule for states to consider and determine if changes to their existing rules are warranted. In April 2023, NASAA published a concept release to seek comment to inform NASAA’s rulemaking on this front. In addition to other input, the request for comment seeks data on the use of the manual exemption and suggestions for how the exemption could be improved from an investor protection standpoint.³⁵

Setting aside the concern of necessity, NASAA also strongly opposes this title because it will not solve the longstanding illiquidity problems in the Regulation A market.³⁶ As a threshold matter, secondary trading does not provide liquidity to the issuer but to the selling security holder. Further, the federal government preempted the states from reviewing primary offerings conducted under Tier 2, Regulation A because it believed such preemption would stimulate use of this pathway for raising capital. Yet, this market still suffers from a lack of demand among other reasons because investors want to avoid high costs, high information asymmetries, and high investment minimums associated with these deals.³⁷ Similarly, a variety of factors having nothing to do with state regulations, including inefficiencies in share transfer recordkeeping and the fact that the issuer usually has a right of first refusal, still hinder the secondary trading of these securities. Inaction with respect to those factors, coupled with further preemption of state governments, would not spur additional demand for these securities.³⁸ If Congress wanted to

³⁴ See [Exemptions](#), Pennsylvania Department of Banking and Securities.

³⁵ See NASAA, [Notice of Request for Comment Regarding the Uniform Securities Act Manual Exemption](#) (Apr. 26, 2023).

³⁶ In August 2020, the SEC issued a report—as mandated by Congress—on the performance of Regulation A and Regulation D. SEC staff examined Regulation A offerings conducted between June 2015 and the end of 2019. During this time period, the total amount raised under Regulation A was \$2.4 billion, including \$2.2 billion under Tier 2 and \$230 million under Tier 1. Issuers sought an average of \$30.1 million in Tier 2 offerings but raised on average only \$15.4 million. In Tier 1 offerings, issuers sought an average of \$7.2 million and raised \$5.9 million. Data is not available to show the extent to which retail investors other than accredited investors were participants in these offerings. SEC staff found that the typical issuer does not experience an improvement in profitability, continuing to realize a net loss in the years following an offering that utilizes Regulation A. This was based on available data, which necessarily overstated the success rate because it only included issuers that continued to file periodic reports after the offerings and not those that ceased operations and reporting. Despite the infusion of capital, only 45.8 percent of issuers continued filing periodic reports for three years following the offering. See SEC, [Report to Congress on Regulation A / Regulation D Performance As Directed by the House Committee on Appropriations in H.R. Rept. No. 116-122](#) (Aug. 2020) at 88, 89, 91, 94, and 98.

³⁷ See Faith Anderson, [Prepared Remarks of Faith Anderson for the SEC Investor Advisory Committee Regarding the Growth of Private Markets](#) (Mar. 2, 2023) at 4.

³⁸ See Andrea Seidt, [Prepared Remarks of Andrea Seidt for the SEC SBCFAC Regarding Secondary Market Liquidity](#) (Aug. 2, 2022) at 2.

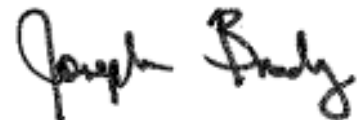
take additional action with respect to the Regulation A market, it would be useful to direct the SEC research and analyze whether it even makes sense to maintain the Regulation A regulatory framework given the persistent lack of demand for these deals and the overall poor performance of many of the companies that have relied on Regulation A

B. NASAA Opposes the Remaining Titles in H.R. 2799.

With the exception of Division A, Title III, NASAA opposes the remaining titles in H.R. 2799 as outlined in Appendices A, B, and C to this letter. As explained in NASAA's recent testimony before the HFSC, NASAA strongly believes that policies aimed at boosting the private markets and weakening the disclosure regime central to the public markets will not result in more public offerings by well-run businesses. To the contrary, the results likely will be larger private securities markets that expose retail and institutional investors and the public alike to the direct and indirect consequences of fraud and scams that have metastasized in the opacity of these markets. Moreover, these larger, dark markets may have systemic consequences for our financial markets and undermine our management of financial markets stability.³⁹

Thank you for your time and consideration. Should you have any questions or wish to seek NASAA's technical feedback on any legislative proposals, 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
NASAA Executive Director

Enclosure

³⁹ See 2022-2023 NASAA Past-President Melanie Senter Lubin, [Written Testimony before the House Financial Services Committee Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans](#) (Apr. 19, 2023).

Appendix A – NASAA Positions on Division A Titles of H.R. 2799⁴⁰

<u>NASAA Positions on Division A Titles of H.R. 2799</u>		
<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
I	REMOVE ABERRATIONS IN THE MARKET CAP TEST FOR TARGET COMPANY FINANCIAL STATEMENTS. This title would direct the SEC to revise regulations to permit an issuer, when determining its market capitalization for purposes of testing the significance of an acquisition or disposition, to calculate the registrant’s aggregate worldwide market value based on the applicable trading value, conversion value, or exchange value of all of the registrant’s outstanding classes of stock (including preferred stock and non-traded common shares that are convertible into or exchangeable for traded common shares) and not just the voting and non-voting common equity of the registrant. On April 6, 2023, Representative French Hill (R-AR) introduced the same or similar legislation as H.R. 2497. As of May 16, the bill had no cosponsors.	Oppose
II	HELPING STARTUPS CONTINUE TO GROW. This title would make it easier for emerging growth companies (“EGC”) to remain EGCs longer. Presently, a company qualifies as an EGC if it has total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: (1) its total annual gross revenues are \$1.07 billion or more; (2) it has issued more than \$1 billion in non-convertible debt in the past three years; or (3) it becomes a “large accelerated filer,” as defined in Exchange Act Rule 12b-2. Under this legislation, EGCs would have seven years instead of five years to undertake certain additional	Oppose

⁴⁰ H.R. 2799, as amended, removed the following titles from H.R. 2799: (1) H.R. 1807, the Improving Disclosure for Investors Act of 2023, which would direct the SEC to promulgate a rule within one year of enactment of the legislation to allow for certain covered entities to satisfy their obligations to deliver regulatory documents required under securities laws to investors using electronic delivery; (2) H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; (3) H.R. 1553, the Helping Angels Lead Our Startups Act of 2023, which would direct the SEC to revise the SEC’s Regulation D to not extend the prohibition on general solicitation or general advertising to events with specified kinds of sponsors, including angel investor groups unconnected to broker-dealers or investment advisers, so long as certain conditions are met; (4) H.R. 2627, the Increasing Investor Opportunities Act, which would amend the Investment Company Act to prohibit the SEC from placing a limit, as they currently do, on closed-end companies investing in private funds; and (5) H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023, which would amend federal securities laws to authorize the use of collective investment trusts within 403(b) plans and for other purposes. In short, NASAA opposes the first four bills (H.R. 1807, H.R. 2622, H.R. 1553, and H.R. 2627) and is reviewing H.R. 3063.

NASAA Positions on Division A Titles of H.R. 2799

<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
	disclosure requirements applicable to more mature public companies. In addition, the triggers for losing EGC status would be relaxed. In particular, the legislation would raise the total annual gross revenue limit for an EGC from \$1 billion to \$1.5 billion and eliminate the “large accelerated filer” trigger for loss of EGC status. On April 13, 2023, Representative Bryan Steil (R-WI) introduced the same or similar legislation as H.R. 2624. As of May 16, the bill had no cosponsors.	
III	SEC AND PCAOB AUDITOR REQUIREMENTS FOR NEWLY PUBLIC COMPANIES. This title would permit the auditor of a private company transitioning to public company status to comply with Public Company Accounting Oversight Board (“PCAOB”) and SEC independence rules for only the latest fiscal year as long as the auditor is independent under standards established by the American Institute of Certified Public Accountants or home-country standards for earlier periods. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2606. As of May 16, the bill had no cosponsors.	Support
IV	EXPAND THE PROTECTION FOR RESEARCH REPORTS TO COVER ALL SECURITIES OF ALL ISSUERS. This title would extend the protection for research reports about EGCs to research reports about all securities of all issuers. The new text would read as follows: “The publication or distribution by a broker or dealer of a research report about an emerging growth company <i>an issuer</i> that is the subject of a proposed public offering of the common equity <i>any securities of such emerging growth company</i> <i>such issuer</i> pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and Section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term ‘research report’ means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.” On April 13, 2023, Representative Roger Williams (R-TX) introduced the same or similar legislation as H.R. 2576. As of May 16, the bill had no cosponsors.	Oppose
V	EXCLUDE QUALIFIED INSTITUTIONAL BUYERS AND INSTITUTIONAL ACCREDITED INVESTORS FROM THE	Oppose

NASAA Positions on Division A Titles of H.R. 2799

<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
	<p>RECORD HOLDER COUNT FOR MANDATORY REGISTRATION. This title would amend Exchange Act Section 12(g) to exclude qualified institutional buyers and institutional accredited investors from calculations of holders of record. In addition, the bill would prohibit the SEC from issuing rules to reverse these changes by amending rules to reduce the number of holders of record or modify related calculations. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2605. As of May 16, the bill had no cosponsors.</p>	
<p>VI</p>	<p>EXPAND WKSI ELIGIBILITY. This title would lower the aggregate market value of voting and non-voting common equity necessary for an issuer of securities to qualify as a well-known seasoned issuer (“WKSI”) from \$700 million to \$250 million. The issuer would also be able to qualify as a WKSI if it otherwise satisfies the other requirements of the WKSI definition without reference to any requirement related to minimum worldwide market value of outstanding voting and non-voting common equity held by non-affiliates. On April 13, 2023, Representative Steil introduced the same or similar legislation as H.R. 2625. As of May 16, the bill had no cosponsors.</p>	<p>Oppose</p>
<p>VII</p>	<p>SMALLER REPORTING COMPANY, ACCELERATED FILER, AND LARGE ACCELERATED FILER THRESHOLDS. This title essentially would codify a 2020 SEC rule, albeit with modifications in favor of issuers. With this legislation, the SEC would adjust the public float threshold in Section 229.10(f)(1)(i) of Title 17, Code of Federal Regulations, from \$250 million to \$500 million, the annual revenue threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from \$100 million to \$250 million, and the public float threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from \$700 million to \$900 million. The SEC would use three-year rolling average revenues instead of annual revenues for “smaller reporting companies.” The SEC would also amend the definition of “large accelerated filer” to increase the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates threshold in Section 240.12(b)-2(2)(i) of Title 17, Code of Federal Regulations, from \$700 million to \$750 million, the accelerated filer exit threshold in Section 240.12(b)-2(3)(ii) of Title 17, Code of Federal Regulations, from \$60 million to \$75 million, and the large accelerated filer exit threshold in Section 240.12(b)-2(3)(iii) of Title 17, Code of Federal Regulations, from \$560 million to \$750 million. Last, the SEC would revise the definitions of an “accelerated filer” and a “large</p>	<p>Oppose</p>

NASAA Positions on Division A Titles of H.R. 2799

<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
	accelerated filer” to exclude any issuer that is a “smaller reporting company.” On April 13, 2023, Representative Blaine Luetkemeyer (R-MO) introduced the same or similar legislation as H.R. 2603. As of May 16, the bill had no cosponsors.	

Appendix B – NASAA Positions on Division A Titles of H.R. 2799

<u>NASAA Positions on Division B Titles of H.R. 2799</u>		
<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
I	UNLOCKING CAPITAL FOR SMALL BUSINESSES. Please see Section A of this letter for a description.	Oppose
II	SMALL BUSINESS INVESTOR CAPITAL ACCESS. This title would amend the private fund adviser exemption under the Investment Advisers Act of 1940 (“Investment Advisers Act”) to adjust the threshold for inflation since the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 and then adjust the threshold thereafter annually to reflect the changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor. On April 13, 2023, Representative Andy Barr (R-KY) introduced the same or similar legislation as H.R. 2578. As of May 16, the bill had no cosponsors.	Oppose
III	IMPROVING CAPITAL ALLOCATION FOR NEWCOMERS. This title would modify and expand the Qualifying Venture Capital Fund Exemption under Investment Company Act Section 3(c)(1). Specifically, it would increase the cap on aggregate capital contributions and uncalled capital commitments from \$10 million to \$150 million and increase the allowable number of beneficial owners from 250 to 600. It also would increase the current beneficial owners limit for funds that rely on the broader exemption in Section 3(c)(1) from 100 to 200 beneficial owners. On April 13, 2023, Representative William Timmons (R-SC) introduced the same or similar legislation as H.R. 2790. As of May 16, the bill had no cosponsors.	Oppose
IV	SMALL ENTREPRENEURS’ EMPOWERMENT AND DEVELOPMENT. Please see Section A of this letter for a description.	Oppose
V	REGULATION A+ IMPROVEMENT. This title would amend the federal securities laws to increase the dollar limit of certain securities offerings presently exempt from federal registration requirements to \$150 million annually, adjusted for inflation every two years. The title contains no state preemption provisions because Congress previously took away the choice of the states to review and register these offerings. Rather than codifying the SEC’s decision in 2020 to increase the maximum offering amount under Tier 2, Regulation A from \$50 million to \$75 million, this legislation would increase the cap to \$150 million. On April 17, 2023, Representative Erin Houchin (R-IN) introduced the same or similar legislation as H.R. 2651. As of May 16, the bill had no cosponsors.	Oppose

NASAA Positions on Division B Titles of H.R. 2799

<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
VI	<p>DEVELOPING AND EMPOWERING OUR ASPIRING LEADERS. This title would require the SEC to expand the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act. Specifically, the SEC would be required to include equity securities issued by qualifying portfolio companies, as well as investments in other venture capital funds, as qualifying investments. This title would also direct the Comptroller General of the United States to issue a report to Congress on the risks and impacts of concentrated sectoral counterparty risk in the banking sector. In addition, it would require the Advocate for Small Business Capital Formation to issue a report to Congress and the SEC examining access to banking services for venture funds and companies funded by venture capital, especially those outside of California, Massachusetts, and New York, and propose any related policy recommendations. On April 13, 2023, Representative Barr introduced the same or similar legislation as H.R. 2579. As of May 16, the bill had no cosponsors.</p>	Oppose
VII	<p>IMPROVING CROWDFUNDING OPPORTUNITIES. Please see Section A of this letter for a description.</p>	Oppose
VIII	<p>RESTORING THE SECONDARY TRADING MARKET. Please see Section A of this letter for a description.</p>	Oppose

Appendix C – NASAA Positions on Division C Titles of H.R. 2799

<u>NASAA Positions on Division C Titles of H.R. 2799</u>		
<u>Title</u>	<u>Description</u>	<u>NASAA Position</u>
I	GIG WORKER EQUITY COMPENSATION. This title would extend SEC Rule 701, which exempts certain sales of securities made to compensate employees, consultants, and advisors, to apply to gig workers providing goods for sale, labor, or services for remuneration to either an issuer or customers of an issuer to the same extent as such exemptions apply to the employees of the issuer. This title also would direct the SEC to annually adjust the \$10 million disclosure threshold for inflation and preempt state law with respect to wage rates or benefits that creates a presumption that an individual is an employee. Within three years of enactment of this title, the Government Accountability Office would have to produce a report studying the impacts of this title. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2612. As of May 16, the bill had no cosponsors.	Oppose
II	INVESTMENT OPPORTUNITY EXPANSION. This title would add additional investment thresholds for an individual to qualify as an accredited investor. The legislation would direct the SEC to treat any individual whose aggregate investment, at the completion of such transaction, in securities with respect to which there has not been a public offering is not more than 10 percent of the greater of (i) the net assets of the individual or (ii) the annual income of the individual as an accredited investor. On April 17, 2023, Representative Alexander Mooney (R-WV) introduced the same or similar legislation as H.R. 2652. As of May 16, the bill had no cosponsors.	Oppose
III	RISK DISCLOSURE AND INVESTOR ATTESTATION. This title would amend the Securities Act to direct the SEC within one year of enacting the legislation to issue rules that permit individuals to qualify as accredited investors by attesting to the issuer that the individual understands the risks of investment in private issuers, using the form that the Commission adopts by rulemaking, which may not be longer than two pages in length. On March 14, 2023, Representative Warren Davidson (R-OH) introduced the same of similar legislation as H.R. 1574. As of May 16, the bill had no cosponsors.	Oppose
IV	ACCREDITED INVESTORS INCLUDE INDIVIDUALS RECEIVING ADVICE FROM CERTAIN PROFESSIONALS. This title would revise the definition of “accredited investor” to include individuals receiving individualized investment advice or individualized investment recommendations from investment adviser professionals. This	Oppose

	<p>title also would direct the SEC to revise 17 CFR § 203.501(a) and any other definition of “accredited investor” in a rule from the Commission to conform to the changes set forth in the title. On April 20, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2773. As of May 16, the bill had no cosponsors.</p>	
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