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Preserve State Registration of Micro-Offerings and Finders

- *A critical component of investor protection is the registration of entities, products, and professionals. Registration promotes transparency and triggers regulatory gate-keeping processes. Investors receive important information about securities firms and their activities, products, and professionals. Access to this information empowers investors to educate and defend themselves. Regulators also can examine activities, entities, products, and professionals for compliance. Examinations support the efforts of regulators and many financial institutions to prevent investor harm before it occurs and promote confidence in our markets.*
- *Today, the sheer scope and nature of the registration gaps in our markets make it difficult for regulators to fulfill their missions. While the exemption of a type of firm, product, or professional from registration may make sense in isolation, the cumulative effect of such deregulatory measures over the decades has been a net-negative for investor protection and responsible capital formation.*

Background on Registration of Micro-Offerings and Finders

Over the decades, state securities regulators have watched many federal lawmakers praise the important work of state regulators, scold the federal government for not supporting small businesses and investors enough, and then take contrary positions in favor of legislation that took away the authority state securities regulators need to conduct this important work. By way of example, in 1996, the federal government significantly curtailed state authority to regulate investment advisers and mutual funds by enacting the National Securities Markets Improvement Act. In 2012 and 2015, the federal government significantly restricted state authority to review and register securities offerings by enacting the Jumpstart Our Business Startups Act and amendments thereto.

State securities regulators generally require securities, unless specifically exempted, to be registered before being offered or sold to investors in the state. Registration may take various forms. Registration by “notification” or “filing” is a simplified procedure that is available to certain issuers.¹ Registration by “coordination” is available where a registration statement has been filed with the U.S. Securities and Exchange Commission (“SEC”) for the security to be distributed, such registration statement having been filed in connection with the same offering being registered under state laws. All other non-exempt securities that are to be offered or sold in nonexempt transactions must be registered by “qualification,” which requires filing substantially more specific information and documentation than is required under either of the two simplified procedures.

Securities laws also regulate the conduct of organizations in the securities business. The main categories of regulated securities firms are investment advisers and broker-dealers. In general, investment advisers with over \$100 million in assets under management (“AUM”) or that advise registered investment companies

¹ See National Conference of Commissioners on Uniform State Laws, [Official Comments to the Uniform Securities Act of 2002](#) (Feb. 10, 2003) (“The little used ‘registration by notification’ in the 1956 Act Section 302 or ‘registration by filing’ in RUSA Section 302 are omitted from this Act because of the notice filing approach required by Section 18(b)(2) of the Securities Act of 1933 for federal covered securities, which, in essence, replaces the need for registration by notification.”).

such as mutual funds must register with the SEC, whereas investment advisers with under \$100 million AUM must register with the states.² Nearly all broker-dealers must register with the SEC and be a member of a self-regulatory organization called the Financial Industry Regulatory Authority (“FINRA”). A state can require an SEC-registered broker-dealer doing business in the state to register.

Securities laws also regulate the conduct of selected professionals. The main categories of regulated individuals are investment adviser representatives (“IARs”) and broker-dealer agents. IARs provide ongoing investment advice to their clients, whereas broker-dealer agents offer recommendations to buy and sell securities. Generally, IARs are registered only in the states in which they serve clients. Generally, broker-dealer agents, including a subset of agents called finders, must be registered with FINRA and the states in which they serve clients. Finders are paid to help issuers of securities identify potential investors.

Rationale for Preserving the State Registration Regime

Preemption is counterproductive to the goals of protecting investors and promoting responsible capital formation. Preserving the ability of the states to review and register offerings, including so-called micro-offerings of \$250,000 or less, and investment professionals, including finders, is a win for small businesses, investors, and the public. States can educate their citizens about options for raising capital and serving in the industry while also protecting investors by fostering fair and accurate securities disclosures and high standards of professional conduct. States also can use the data in registration and regulatory filings to improve their processes and services and support better policymaking.

Decades of deregulating capital markets has eroded important investor protections and weakened the trust that is vital for sustainable economic growth. Respectfully, we believe that, rather than rushing to enact laws that further this trend, policymakers should consider the adverse impact of deregulation on the capital markets and investors. Congress should advance policies that ensure financial professionals meet important competency standards and that investors have access to information to mitigate potential risks.

Key Points

- *A robust registration regime will protect investors and promote responsible capital formation. Anti-registration legislation in effect would place blindfolds on investors and state regulators.*
- *Further erosion of the authority of state governments to register offerings with the states before securities are sold, require notices to the states of securities transactions, register investment professionals, and otherwise promote responsible capital formation would be dangerous for investors and small businesses.*

² See NASAA, [Letter to the Congress](#) (Sept. 14, 2022) (explaining state registration requirements for small and mid-sized investment advisers).