NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
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April 29, 2025

Svent Bossart
Clerk
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

RE: March 25, 2025, Hearing, "Beyond Silicon Valley: Expanding Access to Capital Across America"

Dear Mr. Bossart:

Enclosed please find NASAA's responses to the four (4) questions for the record that we received in connection with the March 25 hearing. Should you or Ranking Member Waters have any questions regarding these responses, please do not hesitate to contact Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Leslie M. Van Buskirk
NASAA President and
Administrator, Division of Securities
Wisconsin Department of Financial Institutions

CC: Amanda W. Senn
Director, Alabama Securities Commission
NASAA Enforcement Section Co-Chair

Enclosures

Questions for Ms. Amanda W. Senn, Director, Alabama Securities Commission, from Ranking Member Waters:

1. **Which of the following options best describes your self-identified race? (you may choose more than one)**
   a. **White or Caucasian**
   b. Black or African American
   c. Hispanic/Latinx
   d. Asian
   e. Middle Eastern/North African
   f. Choose not to answer
   g. Prefer to self-describe (please specify)

2. **Which of the following options best describes your gender identity?**
   a. **Woman**
   b. Man
   c. Non-binary
   d. Transgender Man
   e. Transgender Woman
   f. Choose not to answer
   g. Prefer to self-describe (please specify)

Questions for NASAA from Ranking Member Waters:

3. **Ms. Senn, back in 115th and 116th Congress, I had a bill to close some loopholes related to SEC's Form D. Your written testimony also discusses how the SEC's Form D needs reforms. For those in this room or watching, SEC's Form D is a notice that companies are supposed to file with the SEC and states securities' regulators every time they raise capital without registering the security. Investor advocates and regulators have raised concerns that not only is Form D in need of reform, but even the existing requirements of the notice are rarely enforced. Could you discuss in some detail how reforming Form D could enhance transparency, reduce the risk of mispricing companies, and reduce fraud which should promote healthier capital formation and market stability?**

A. NASAA Urges Congress to Reform Form D

NASAA prepared draft legislation called the Fixing Our Risky Markets Disclosures Act of 2025, also known as the FORM D Act (see Appendix). As you will see, the enactment of the FORM D Act would make improvements such as the following:

1. A requirement that issuers submit an initial Form D in Rule 506(b) and 506(c) offerings (a so-called "Advance Form D") that contains information to help the SEC and state securities regulators understand the marketplace and protect investors;

2. A requirement that issuers amend their Advance Form Ds (which effectively is a Form D at this point) with the remaining information required by Form D no later than 15 calendar days after the date of the first sale of securities in the Rule 506(b) or 506(c) offering;

3. A requirement that issuers file a closing amendment to the Form D after the termination of any Rule 506 offering;

4. Additional information collected through Form D to align with industry practices and the informational needs of investors and regulators; and

5. The loss by the issuer of the ability to claim the exemptions under Regulation D, Rule 506 if the issuer fails to comply with the Form D requirements.

B. NASAA Encourages Congress to Consider the Benefits of Enhanced, Timely Data Regarding Rule 506 Offerings

The FORM D Act would empower several market stakeholders with earlier and better information, all to the betterment of our capital markets. In particular, regulators, lawmakers, investors, and companies would benefit.

First, regulators and lawmakers could use the improved information for research and monitoring. For example, the data could inform new federal legislation, regulations, and rules related to the federal exemption offering framework. It also could help the government identify risks to the financial system and better manage financial stability. The earlier and additional data required by the FORM D Act also would help the government to prevent or mitigate fraudulent schemes, all to the benefit of industry and investors.[1]

Regarding this last point, the best tool that the government presently has to distinguish between a legitimate capital raise and a scam is Form D. While some scamsters file Form Ds with the government, in part to make their offerings appear legitimate to investors and regulators, most scamsters do not. In turn, the failure to file a Form D can be a red flag.

Fraud issues aside, we as state securities regulators regularly encounter situations where the submission of a Form D earlier in the offering would have helped the issuer to avoid costs and other burdens. Typically, the situation involves an investor complaint to us about the offering. We take all such inquiries seriously. If we cannot resolve the inquiry ourselves, we contact the issuers, which normally prompts the immediate hiring of lawyers and similar activities with associated costs. Had a Form D been on file, the investor may never have contacted us in the first place. Where the complaint still occurred, we may have been able to resolve it using the Form D.

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[1] *See* Craig McCann, Chuan Qin, and Mike Yan, Regulation D Offerings: Issuers, Investors, and Intermediaries (Sept. 2023) ("Securities relying on Reg D exemptions (Reg D securities) are more opaque, less liquid, charge higher fees, and have a greater potential for losses due to issuer failure and fraud compared with registered securities.").

We also use the Form D filings to foster compliance with the securities laws. For example, we have used the information in Form D filings to identify individuals who have started investment funds without realizing that their activities necessitated registration as an investment adviser.

Second, investors could use enhanced data to make more informed decisions, leveraging the information for better market research and investment research. Notably, the earlier and better information required by the FORM D Act would help investors minimize or avoid paying more than the true value of an asset.

Third, public and private companies could use enhanced data to prepare more accurate disclosures about their own risks. Presently, companies disclosing risks may be using incomplete information about private companies to ascertain whether the private companies pose any operational, reputational or other risks.

4. Ms. Senn, as a securities regulator in Alabama, you've been on the front lines protecting investors while facilitating capital formation in your state. Several proposals before this Committee would preempt state securities authorities. From your experience, could you explain why state regulators are often better positioned to identify local securities fraud and misconduct that federal regulators might miss? In your professional judgment, would undermining state securities regulation lead to increased fraud, reduced investor confidence, and ultimately lead to capital destruction in states like yours?

A. <u>NASAA Urges Congress to Empower State Regulators to Prevent and Detect Fraud</u>

State securities regulators are in a better position than our federal partners to identify local securities fraud and misconduct. The following are illustrative examples of contributing factors:

First, we have a unique advantage in identifying local securities fraud and misconduct. Specifically, we have a physical presence in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Second, we are actively engaged in our communities whether it be speaking at local social or civic clubs, interacting with organizations that provide resources to small businesses, or conducting investor and financial education programs in schools and senior centers. With this physical infrastructure and robust, ongoing outreach to communities, we learn earlier about new threats to businesses and investors.

Third, we communicate and collaborate regularly with each other. When an issue in one jurisdiction appears to be present in several jurisdictions, we normally work together to investigate the issue and resolve the matter. Where the matter has a federal nexus, we communicate and collaborate with our federal partners. Often, the states handle the work that benefits from having physical infrastructure and contacts throughout the United States.

State securities regulators take seriously their responsibility to share information regarding local securities fraud and misconduct. For example, through NASAA, we publish the results of an annual enforcement survey, investor alerts on new and emerging scams, and a top list of investor threats.[2]

State securities regulators would be in an even better position to identify local securities fraud and misconduct if the federal government had not enacted laws such as the National Securities Markets Improvement Act of 1996 ("NSMIA") and the Jumpstart Our Business Startups Act of 2012 ("2012 JOBS Act"). These laws preempted the states' ability to review and register most securities offerings.[3] In the absence of such preemption, entrepreneurs and small business owners would be even more incentivized to engage with their state regulators in ways that ultimately protect them and their investors from fraud and misconduct.

B. NASAA Urges Congress to Consider the Consequences of Preemption for Entrepreneurs, Small Businesses, and Investors

As your question alludes to, Congress is considering proposals that, at best, would make it more difficult for state securities regulators to fulfill their missions to protect investors. More likely, these preemptive measures would affect businesses and investors adversely and decrease trust in our markets. The proposals are outlined as follows:

1. The Small Entrepreneurs' Empowerment and Development ("SEED") Act

The SEED Act would establish a broad federal exemption (or safe harbor) for so-called "micro-offerings" (offerings up to $250,000) and add micro-offerings as a federal covered security, thereby preempting state registration or qualification requirements with respect to micro-offerings. The SEED Act would disempower the very securities regulators who are doing the most work to educate issuers about micro-offerings, while also sowing further opportunities to defraud investors.[4]

NASAA urges Congress to reconsider the SEED Act for five (5) 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.[5] Fourth, registration and notice filings (which essentially are brief communications to the states) are the regulatory tools that state regulators need and use to identify who is operating in their states. Regulators cannot protect investors without a line of sight into the companies selling these securities. State regulators cannot help entrepreneurs and small business leaders if they do not know who is

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[2] To see the most recent survey results, access NASAA Highlights Top Investor Threats for 2025 (Mar. 6, 2025).
[3] *See, e.g.,* NSMIA, Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996). *See also* 2012 JOBS Act, Pub. L. No. 112-106, 126 Stat. 306 (Apr. 5, 2012).
[4] See Discussion Draft of H.R. ___, SEED Act of 2025, 119th Congress, 1st Session (Mar. 24, 2025).
[5] *See* SEC Overview for Exemptions to Raise Capital (Last Updated: 2024).

operating in their jurisdictions. Fifth, absent any registration or notice filing 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, this legislation would reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

2. The Improving Crowdfunding Opportunities Act

The Improving Crowdfunding Opportunities Act would preempt state registration or qualification of secondary transactions, weaken the minimal investor protections that exist today for crowdfunding offerings, and make other significant changes to an already scaled back regulatory framework.[6]

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 secondary transactions. The SEC was slow to establish a new regime for crowdfunding transactions and has been slow or unwilling to take enforcement actions in crowdfunding-related cases that involve losses under $1 million.[7] Given the SEC's record of deprioritizing crowdfunding, one could argue that there is no meaningful federal equivalent of the state requirements to protect investors. That gap, coupled with the deregulation of funding portals contemplated under this proposal, would lead to more aggressive practices by funding portals targeting investors, fewer remedies for harmed investors, and ultimately damage the credibility of all offerings made under the SEC's Regulation CF.

3. The Restoring the Secondary Trading Market Act

The Restoring the Secondary Trading Market Act would prohibit state governments from regulating the "off-exchange secondary trading in securities of an issuer that makes current information publicly available."[8] The bill identifies information presently required under federal law that would constitute "current information publicly available."

This legislation is unnecessary given the deliberate and conscientious efforts by states to streamline certain processes for compliance with state laws while ensuring investors have the information they need to make informed decisions. A majority of states maintain a manual exemption to facilitate secondary trading. In many states, the SEC's Electronic Data Gathering,

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[6] *See* Discussion Draft of H.R. ___, the Improving Crowdfunding Opportunities Act, 119th Congress, 1st Session (Feb. 5, 2025).

[7] The SEC adopted final rules permitting companies to offer and sell securities through crowdfunding in 2015, three (3) years after enactment of the 2012 JOBS Act. *See* SEC, SEC Adopts Rules to Permit Crowdfunding, Press Release 2015-249 (Oct. 30, 2015).

[8] *See* Discussion Draft of H.R. ___, the Restoring the Secondary Trading Market Act, 119th Congress, 1st Session (Feb. 20, 2025).

Analysis, and Retrieval ("EDGAR") system can be a designated source for purposes of the manual exemption.

In addition, this legislation would not solve the longstanding illiquidity problems in the Regulation A market.[9] 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 laws, would not spur additional demand for these securities.

This legislation would lead to more aggressive practices targeting investors, fewer remedies for harmed investors, and ultimately damage to the credibility of offerings made under the SEC's Regulation A. If Congress wanted to take additional action with respect to the Regulation A market, it would be useful to direct the SEC to research and analyze whether it even makes sense to maintain the Regulation A regulatory framework at all 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.

4. The Unlocking Capital for Small Businesses Act

Last and importantly, this bill would prevent state governments from registering or licensing finders with the state and would otherwise constrain the ability of state governments to protect businesses and investors from bad actors in the private placement market. 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.[10] State registration requirements, in effect, are the line of sight.

States have been leaders for decades in registering and licensing investment professionals. States continue to be sensitive to the burdens of registration for industry, maintaining manageable fees and adopting exemptions from registration where appropriate given the risks involved for investors. States remain open to discussing the establishment of a tailored registration regime for finders and working in collaboration with the SEC and FINRA to

[9] 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 (3) 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.

[10] *See* Discussion Draft of H.R. ___, the Unlocking Capital for Small Businesses Act, 119th Congress, 1st Session (Feb. 20, 2025).

establish the lighter-touch regime.[11] States, however, remain strongly opposed to the idea that finders would be professionals unregistered with the states. Such unregistered activity would increase the risk of fraud, among other dangers to our markets.

[11] NASAA has long opposed the Unlocking Capital for Small Businesses Act. *See, e.g.,* NASAA, 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, NASAA Letter to Committee Leadership Regarding Opportunities to Strengthen Diversity in Our Capital-Markets (Dec. 12, 2022); NASAA, NASAA Letter to Appropriations Committee Leadership Regarding Securities Policy Riders (Dec. 1, 2022); NASAA, 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."); *see* 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).

Appendix

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H.R. ____

To establish a way for investors to evaluate whether a Regulation D securities offering is a scam and make Regulation D securities markets more transparent for the benefit of all market participants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

———————— introduced the following bill; which was referred to the Committee on————————

A BILL

To establish a way for investors to evaluate whether a Regulation D securities offering is a scam and make Regulation D securities markets more transparent for the benefit of all market participants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the ‘‘Fixing Our Risky Markets Disclosures Act of 2025’’ or the “FORM D Act of 2025”.

SEC. 2. DEFINITIONS.

For the purposes of this Act, the term "Commission" means the U.S. Securities and Exchange Commission.

SEC. 3. FORM D IMPROVEMENTS.

(a) ENHANCED FORM D DATA.—Not later than one (1) year after the enactment of this Act, the Commission shall amend Regulation D (sections 230.500 through 230.508 of title 17, Code of Federal Regulations) to make the following improvements:

(1) ITEM 4, INDUSTRY GROUP.—Create a "Real Estate" category. Require disclosure about the type of real estate such as residential, commercial, construction, finance, REITs, and other, the legal entity, if any, used to purchase the real estate, and the ownership structure such as single- or fractionalized ownership and member- or manager-managed. If 'other' is selected, require a brief explanation of the type;

(2) ITEM 5, ISSUER SIZE.—Eliminate the Decline to Disclose option;

(3) ITEM 9, TYPE(S) OF SECURITIES OFFERED.—Make such changes as are necessary to capture securities that are issued or traded using distributed ledger technologies that would not be captured already by Item 9;

(4) ITEM 12, SALES COMPENSATION.—Retitle as "Sales Compensation and Fees" or a similar such title that captures fees. Make such changes as are necessary in Item 12 and in other items to capture fees and other information associated with the investment advisers, if any, who serve the issuer. Add a checkbox to check if a promoter has received sales compensation or fees. Add a checkbox to check if a promoter received compensation or fees from the proceeds disclosed in Item 16, Use of Proceeds;

(5) ITEM 15, SALES COMMISSIONS AND FINDERS FEES' EXPENSES.—Retitle as "Sales Commissions, Finders Fees' Expenses, and Investment Advisers' Fees". Add a box for investment advisers' fees and a checkbox to indicate if applicable that the fees are an estimate;

(6) ITEM 16, USE OF PROCEEDS.—Amend Item 16 to capture the amount of the proceeds, if any, used to pay the compensation or fees of employees or contractors of the issuer. Add a box for the amount, a checkbox to indicate if applicable that the amount is an estimate, and a box for a clarification of the response if necessary;

(7) INVESTMENT ADVISERS.—Amend Form D as needed to collect information regarding investment advisers to the issuer,

including at minimum name, principal business address, IARD number, status (such as exempt reporting adviser), and type of investment adviser (such as venture fund adviser or private fund adviser);

(8) SYMBOL.—Amend Form D as needed to collect the symbol or other tracker used for the security if it is traded on an exchange, alternative trading system or a similar platform or system;

(9) ONLINE LOCATION.—Amend Form D as needed to collect the issuer's website or, if different, the primary online location from which it publishes information about its business results and performance; and

(10) BENEFICIAL OWNERSHIP.—Amend Form D as needed to collect information regarding the beneficial owners of 10% or more of a class of an issuer's equity securities.

(b) ENHANCED TIMING OF FORM D DATA.—Not later than one (1) year after the enactment of this Act, the Commission shall amend Regulation D (sections 230.500 through 230.508 of title 17, Code of Federal Regulations) to make the following improvements:

(1) AMEND FORM D FOR ADVANCE PURPOSES.—Amend Form D as may be necessary so that issuers of Rule 506(b) and Rule 506(c) offerings can use it and file it with the Commission as an Advance Form D;

(2) TIMING.—Advance Form Ds for Rule 506(b) offerings shall be filed with the Commission before any sale of such securities. Advance Forms Ds for Rule 506(c) offerings shall be filed with the Commission at least 15 calendar days before the earlier of the first use of general solicitation or general advertising for the offering, or the sale of such securities;

(3) DISCLOSURES IN ADVANCE FORM D.—In amending Regulation D, the Commission shall determine the information needed from each issuer in each Advance Form D to allow the Commission to understand the overall marketplace for Rule 506(b) and Rule 506(c) securities offerings and amend Form D as needed to capture such information; and require issuers to provide all information solicited by Form D that is available at the time they file the Advance Form D; and

(4) FORM D SUBMISSION.—In amending Regulation D, the Commission shall require issuers to submit a Form D not later than 15 calendar days after the first sale of the securities in the offering. The Form D submission shall function as an amendment to the Advance Form D. Any interim, partial amendments to the Advance Form D, such as an amendment to correct a material mistake of fact, shall not constitute the filing of the full Form D.

(c) ENHANCED FORM D RECORD.—Not later than one (1) year after the enactment of this Act, the Commission shall amend Regulation D (sections 230.500 through 230.508 of title 17, Code of Federal Regulations) to define the term "termination of an offering" and require Rule 506(b) and Rule 506(c) issuers to file a closing amendment to their Form D not later than 30 calendar days after the termination of the offering unless the Form D indicated that it would serve as the closing amendment as well to Form D for the offering.

SEC. 4. CONSEQUENCES FOR NONCOMPLIANCE.

(a) LOSS OF EXEMPTION.—Not later than one (1) year after the enactment of this Act, the Commission shall amend Regulation D (sections 230.500 through 230.508 of title 17, Code of Federal Regulations) to specify that the failure of an issuer who offers securities in reliance on sections 230.506(b) or 230.506(c) of title 17, Code of Federal Regulations to comply with the Form D requirements, as amended, shall result in the loss of the exemption from registration for the offering for which the issuer failed to comply.

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