



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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October 14, 2026

Submitted by Email (smallbusiness@sec.gov)

Marcia Dawood, Chair
Small Business Capital Formation
Advisory Committee
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Submitted by [SEC Webform](#)

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**RE: September 30, 2026, Recommendation of the Small Business Capital Formation
Advisory Committee Regarding the Registered Offering Reform Proposal**

Dear Ms. Dawood and Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing in response to a recommendation made by the Small Business Capital Formation Advisory Committee (the “Committee”) on August 6, 2026, which was memorialized in the Committee’s September 30, 2026, recommendation letter.²

While discussing the Securities and Exchange Commission’s (the “Commission”) [Registered Offering Reform](#) proposal (the “Proposal”), particularly the proposal to preempt states from reviewing unlisted SEC-registered offerings, the Committee recommended that the Commission review and confirm that this aspect of the Proposal would facilitate small business capital formation without “unintended consequences.”³ As a Committee member explained, the Committee has previously supported preemption of state securities regulation requirements for the

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, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² [Letter from Small Business Capital Formation Advisory Committee to Paul Atkins, SEC Chair, Re: recommendations approved by the Committee on July 21 and August 8, 2026 \(Sept. 30, 2026\) \(“SBCFAC Recommendation”\)](#).

³ YouTube, Securities and Exchange Commission, [08-06-2026 SBCFAC](#) (“August 6th Webcast”) at 1:49:16 through 1:50:55 (recommendation as articulated and adopted by the Committee); *see also* SBCFAC Recommendation, *supra* note 2, at 2.

purposes of facilitating capital formation “with guardrails.”⁴ Concerns raised over the proposed removal of the guardrails provided by state review caused the Committee to recommend that “[w]hile the Committee reaffirms that it is broadly supportive of state preemption to facilitate small business capital formation, the Committee requests that the Commission review and confirm that its efforts to preempt state regulation achieve the Commission’s goals without unintended consequences from removing state-level review from the offering processes.”⁵

NASAA appreciates the Committee’s concerns. We believe there are unintended consequences for nontraded real estate investment trust (“REIT”) and business development company (“BDC”) offerings in particular, and unknown but logical unintended consequences associated with future issuers who will be drawn to unlisted offerings by the light touch of SEC disclosure review coupled with the lack of any augmenting substantive protections.

I. Unintended Consequences for Nontraded REIT and BDC Issuers and Selling Intermediaries.

The Proposal could undermine the market for nontraded REIT and BDC offerings, which would be contrary to the Commission’s goal of encouraging greater public market capital formation. NASAA’s July 27, 2026, comment letter explained that direct participation programs, including nontraded REITs and BDCs, carry unique risks for retail investors due to high fees, opacity, illiquidity, and redemption limitations.⁶ State registration helps to ensure that such risks are addressed, either through better disclosures or by ensuring through substantive registration requirements that such offerings are not unfair to investors due to weak corporate governance that allows unmitigated conflicts of interest, or provisions that limit investor voting rights.

⁴ August 6th Webcast, *supra* note 3, at 1:40:20 through 1:40:55.

⁵ SBCFAC Recommendation, *supra* note 2, at 2.

⁶ [Letter from Marni Gibson, NASAA President, to Vanessa Countryman, SEC Secretary, Re: File No. S7-2026-17: Registered Offering Reform](#) (July 27, 2026) at 3-5 (“Registered Offering Reform Comment Letter”). Further, both the Commission and the Financial Industry Regulatory Authority, Inc. (“FINRA”) have made efforts to warn investors of the risks associated with these investments, and they have been the subject of examination and enforcement action. See SEC, [Investor Bulletin: Non-traded REITs](#) (Aug. 31, 2015) (describing investment risks, *inter alia*); SEC, [Non-Publicly Traded Business Development Companies \(BDCs\): Investor Bulletin](#) (Dec. 13, 2024) (same); FINRA, [Regulatory Notice 13-18, FINRA Provides Guidance on Communications With the Public Concerning Unlisted Real Estate Investment Programs](#) (May 2, 2013) (providing guidance on communications with the public regarding REIT investments in light of deficiencies found in FINRA reviews); FINRA, [Targeted Examination Letter on Non-Traded Business Development Companies](#) (Aug. 2016) (describing examination sweep requests); FINRA, [Real Estate Investment Trusts: Alternatives to Ownership](#) (Aug. 2, 2022) (describing REIT investments and warning of fraud from, *inter alia*, sales tactics using false information); SLCG Economic Consulting, LLC, [FINRA Fines and Suspends David Lerner for Apple REIT Ten Misrepresentations](#) (Oct. 2012) (describing FINRA enforcement action against David Lerner Associates for charging excessive markups and misleading investors in a non-traded REIT investment).

Our comment letter also explained that similar substantive protections are provided for other registered offerings by exchange listing rules or registered investment company regulations imposed through SEC rules.⁷ For unlisted offerings, such guardrails are provided only by state registration. State regulators shared these concerns with the Commission and highlighted the outsized investor risks associated with these offerings.⁸ Other commenters, including retail investor advocates, raised similar concerns.⁹

⁷ Registered Offering Reform Comment Letter, *supra* note 6, at 5-9 (describing example exchange listing requirements and registered investment company rules).

⁸ See [Letter from KC Mohseni, Commissioner, California Department of Financial Protection and Innovation, to Vanessa Countryman, SEC Secretary](#), Re: DFPI Comment Letter to SEC Registered Offering Reform (File No. S7-2026-17) (July 27, 2026); [Letter from Melanie Senter Lubin, Maryland Securities Commissioner, Maryland Office of the Attorney General, to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-2026-17: Registered Offering Reform (July 24, 2026); [Letter from William Francis Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, to Vanessa Countryman, SEC Secretary](#), Re: Opposition to Preemption of State Registration and Qualification Requirements - Proposed Rule for Registered Offering Reform (File Number S7-2026-17) (July 27, 2026); [Letter from Claire McHenry, Deputy Director – Securities Bureau, Nebraska Department of Banking and Finance, to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-2026-17: Registered Offering Reform (July 27, 2026); [Letter from Elaine F. Marshall, Secretary of State, North Carolina, to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-2026-17: Registered Offering Reform (July 27, 2026); [Letter from Andrea Seidt, Securities Commissioner, Ohio Department of Commerce, to Vanessa Countryman, SEC Secretary](#), Re: Preemption of State Registration and Qualification Requirements for Costly, Complex, and Risky Nontraded Products (File No. S7-2026-17) (July 27, 2026); [Letter from Melanie Hall, Administrator, Oklahoma Department of Securities, to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-2026-17: Registered Offering Reform (July 24, 2026); [Letter from TK Keen, Administrator, Division of Financial Regulation, Oregon Department of Consumer and Business Services](#), Re: File No. S7-2026-17: Registered Offering Reform (July 27, 2026); and [Letter from Faith L. Anderson, Securities Administrator, Washington Department of Financial Institutions, to Vanessa Countryman, SEC Secretary](#), Re: Registered Offering Reform File No. S7-2026-17 (July 22, 2026).

⁹ See [Letter from Americans for Financial Reform Education Fund to Vanessa Countryman, SEC Secretary](#), Re: Registered Offering Reform; Release Nos. 33-11418; 34-105513; IC-36160; File No. S7-2026-17 (July 27, 2026) at 14 (stating that preemption would “eliminate[] the sole remaining gatekeeper for the riskiest category of registered offerings”); [Letter from G. Phillip Rutledge to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-20217 (the “Release”), Section II.F, Responding to Comment Nos. 108-111 (July 27, 2026) at 1-2 (describing concerning features of certain direct participation program offerings); [Letter Oliver Fines, Kurt N. Schacht and Fan Yang, CFA Institute Research and Policy Center, to Vanessa Countryman, SEC Secretary](#), Re: Comment Letter on Proposed Registered Offering Reform (File No. S7-2026-17) (July 27, 2026) at 4 (stating that “[r]emoving this multi-layered framework exposes retail investors to asymmetric operational risks that macro-level federal review frameworks are not structurally staffed to monitor concurrently”); [Letter from Public Citizen to Paul Atkins, SEC Chair, and Vanessa Countryman, SEC Secretary](#), Re: Proposed Rule – Registered Offering Reform (File Number S7-2026-17) (July 27, 2026) at 4 (describing state protections and noting that non-traded REITs and BDCs are facing liquidity and performance issues); [Letter from Michael Bixby, President of Public Investors Advocate Bar Association, to Vanessa Countryman, SEC Secretary](#), Re: File No. S7-2026-17; Registered Offering Reform (July 24, 2026) at 1-2 (describing concerns with certain direct participation program offerings); [Letter from Marc L. Steinberg, Rupert and Lillian Radford Professor of Law, Southern Methodist University](#), Re: File No. S7-2026-17 (Registered Offering Reform) (June 1, 2026) at 1 (stating that preemption of unlisted registered offerings is “unacceptable” because “the likelihood of fraud in such offerings is more likely”).

Without the guardrails provided by state registration processes, nontraded REIT and BDC offerings are likely to become more unfair to retail investors.¹⁰ States cannot ignore the risks to their citizens posed by such offerings. If states are deprived of the ability to proactively address problematic offerings, they will have little choice but to rely on enforcement and examination tools, including conducting post-offering investigations or examinations of intermediaries. Concerns with such products may also cause state regulators to focus on the activities of broker-dealers or sales agents who recommend these products to retail customers, which could impose significant costs for these offerings.¹¹ Removing states from registration review would not eliminate long-standing concerns regarding these offerings, but it would create new and unwelcome challenges for issuers, intermediaries, and investors as states seek other means to prevent or address investor harms.

Concerns about the deterioration of offering terms if state registration is preempted are well-founded. The state letters make clear that nontraded REIT and BDC offerings are already an outsized source of customer complaints and arbitrations and are sometimes associated with fraud.¹² Once states are prevented from serving as gatekeepers, these issues are likely to proliferate.

Intermediaries will therefore need to devote more effort to determine which of these products can be safely recommended and sold to retail investors, and to the supervision of their associated persons. This could result in broker-dealers becoming more restrictive when selling unlisted securities, either by limiting the number and type of products they will offer, or by imposing more stringent concentration limits to reduce their exposure to investor complaints. To some extent, firms already impose such measures today to control regulatory risks to their businesses. Changing the definition of “qualified purchaser” as proposed will exacerbate these risks and cause firms to impose greater sales controls.

¹⁰ Indeed, it is already the case that issuers will sometimes seek to remove state substantive protections after state registration. *See, e.g.,* [Lightstone REITs Seek Shareholder Approval of Proxies which will Strip Shareholders of Meaningful Rights](#), FACTRIGHT, Weekly Update 10/21/2022 (describing proxy proposals that would amend REIT charters to remove multiple NASAA shareholder protections); [More Non-traded REIT Perfidy: The Roll-Up Grift](#), SLGC ECONOMIC CONSULTING (Nov. 2015) (describing the means by which certain REIT issuers made changes to their bylaws or charters during mergers to remove certain NASAA guideline protections required by states).

¹¹ August 6th Webcast, *supra* note 2, at 1:37:00 through 1:37:21.

¹² *See, e.g.,* [Letter from Andrea Seidt, Securities Commissioner, Ohio Department of Commerce, to Vanessa Countryman, SEC Secretary, Re: Preemption of State Registration and Qualification Requirements for Costly, Complex, and Risky Nontraded Products \(File No. S7-2026-17\)](#) (July 27, 2026) at 3-4 (describing frauds and regulatory actions related to nontraded registered offerings); and [Letter from William Francis Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, to Vanessa Countryman, SEC Secretary, Re: Opposition to Preemption of State Registration and Qualification Requirements - Proposed Rule for Registered Offering Reform \(File Number S7-2026-17\)](#) (July 27, 2026) at 5 (describing enforcement actions).

At the very least, this likely set of outcomes could cause the issuers of such products to become less competitive as the need to offer higher commissions raises their cost of capital.¹³ That is especially true for nontraded REITs and BDCs, which lack organic investor demand and therefore must rely heavily on intermediary sales efforts to raise money.

Indeed, the Proposal could drive up issuer costs well beyond the expenses associated with state registration, while at the same time diminishing the public market for these offerings generally if they are deemed unsuitable for investment, especially given the availability of more transparent, exchange-traded alternatives.¹⁴ Access is necessary for strong capital formation, and the Proposal risks choking off access to parts of the public market by allowing these offerings to become unacceptable for retail investment.

II. Unintended Consequences Created by the Unlimited Scope of the Proposal.

Further – and of potentially greater concern both to investor protection and the integrity of the public capital markets generally – there are unknown but logical unintended consequences that flow from the fact that the proposed definition of “qualified purchaser” under Securities Act Section 18(b)(3) would not be limited to any particular offering type, but rather would cover any offering registered with the Commission, but not listed on an exchange. As NASAA noted in its comment letter, Commission disclosure review is limited in availability (due to resource constraints) and scope (because such review does not scrutinize the fairness of offering terms). Those limitations are mitigated for other registered offerings by the substantive protections provided by exchange listing rules and registered investment company rules.

Because none of those protections apply to unlisted offerings, and because there is nothing to prevent an issuer from seeking only to register with the Commission before offering products to retail investors, the Commission may be creating a moral hazard for issuers with weak businesses or bad intentions to seek access to retail investors through a weakly guarded channel of

¹³ Because such consequences would harm efficiency, competition and capital formation, which the Commission must consider under Section 2(b) of the Securities Act of 1933 and Section 3(f) of the Securities Exchange Act of 1934, the Commission will need to determine that such consequences do not obviate the case for preemption. *See Business Roundtable et al. v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011) (vacating rule after finding that the Commission “neglected its statutory responsibility to determine the likely economic consequences of Rule 14a-11 and to connect those consequences to efficiency, competition, and capital formation”); and *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (holding that it was unreasonable for administrative agency to ignore costs of regulatory action, particularly where costs greatly outweighed benefits).

¹⁴ As the Public Investors Arbitration Bar Association (“PIABA”) put it in their comment letter on the Proposal, “Regulation Best Interest and fiduciary duty govern recommendations, not offering structures, and it is difficult to see how a financial professional could recommend an unlisted product stripped of the statement of policy protections when comparable exchange-listed alternatives exist with listing standards intact and historically better returns. The disputes generated by these recommendations will arrive in arbitration only after the losses are suffered, which is when PIABA’s members meet these investors.” [Letter from Michael Bixby, PIABA President, to Vanessa Countryman, SEC Secretary, Re: File No. S7-2026-17; Registered Offering Reform](#) (July 24, 2026) at 4-5.

the public capital markets. Indeed, unlike exempt offerings, registered offerings do not contain bad actor disqualification provisions. Without saying so in the Proposal, the Commission's position boils down to an assertion that Commission review alone is sufficient protection for an undefined universe of registered offerings, both as they exist today and as may become the case once issuers understand that unlisted status is a materially less stringent route to retail sales. As was pointed out during the discussion of the Committee's recommendation, preemption without guardrails could "erode public trust" and thereby harm capital formation.¹⁵

The Commission cannot know how severely the Proposal would erode public trust as it is an unknown as to how the market will respond to the investor protection gap that the Proposal creates. All it can know is that the Proposal would create incentives for exploitation and fraud by removing the primary safeguard that currently exists to keep those consequences from materializing. And the Commission could undermine the public capital markets in the process. This is not an outcome the Commission intends.

CONCLUSION

NASAA appreciates the opportunity to respond to concerns raised by the Small Business Capital Formation Advisory Committee. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth H. Bowling".

Elizabeth H. Bowling
NASAA President

¹⁵ August 6th Webcast, *supra* note 2, at 1:40:20 through 1:40:55.