Written Testimony before the
House Financial Services Committee

Regarding

Beyond Silicon Valley: Expanding Access to Capital Across America

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Submitted by

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NASAA
Organized in 1919, the North American Securities Administrators Association ("NASAA") is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of the securities regulators in the 50 states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, the 13 provincial and territorial securities regulators in Canada, and the securities regulator in México. In the United States, NASAA is the voice of state securities agencies that protect investors, promote responsible capital formation, and support inclusion and innovation in the capital markets. U.S. NASAA members license firms and their agents, investigate alleged violations of securities laws, file enforcement actions when appropriate, and educate the public about investment fraud. NASAA members also participate in multi-state enforcement actions and information sharing. For more information, visit: www.nasaa.org.

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I. Professional Background

I serve as the Director of the Alabama Securities Commission ("ASC") where I have been employed since 2008. I am responsible for advising the ASC on securities-related matters, investigating and prosecuting fraudulent actions surrounding the sales of securities throughout the state of Alabama, and coordinating and litigating numerous multi-jurisdictional administrative, civil, and criminal matters. I am responsible for helping Alabamians with understanding their options for raising capital in compliance with state securities laws. To that end, our staff routinely meets with industry participants, or those desiring to enter the industry, to provide guidance, which helps them and, by extension, Alabama investors. During these meetings, we may discuss fundraising options and opportunities for expansion, challenges with technology, cybersecurity, and protecting sensitive data, communication and marketing issues, and plans for starting a business. I also serve as a legislative liaison for the ASC. In that capacity, I advocate for investor protection, market integrity, and the promotion of responsible capital formation in Alabama.

I am proud to lead and work with a team of approximately 70 colleagues who carry out the important work of the ASC. The ASC administers and enforces the following Alabama statutes: The Alabama Securities Act, The Industrial Revenue Bond Act, The Alabama Monetary Transmission Act, The Pre-Issue Procedures for Industrial Revenue Bonds, The Protection of Vulnerable Adults from Financial Exploitation Act, and Lisa's Law. The ASC is comprised of seven (7) Commissioners, consisting of the Attorney General, the Superintendent of Banks, the Commissioner of Insurance, two (2) State Bar Association licensed attorneys and two (2) Certified Public Accountants. The ASC is functionally divided into the following seven (7) divisions: (1) Directorate; (2) Legal; (3) Accounting/Personnel; (4) Information Technology; (5) Education and Public Affairs; (6) Enforcement; and (7) Licensing and Registration/Audits and Examinations.[1]

In 2024, the ASC added a Financial Innovation Division ("FID"). FID serves as a central resource for industry, investors, entrepreneurs, and small businesses in Alabama. It works to build relationships, conduct outreach and education, including educating innovators and small businesses on business practices and compliance requirements when offering private securities in Alabama, and provide strategic advice on policy issues. FID also focuses on industry outreach, primarily related to technology and the use of artificial intelligence, to determine how firms are utilizing these tools, how these tools can better serve investors, and how these tools may affect regulations governing the industry.[2]

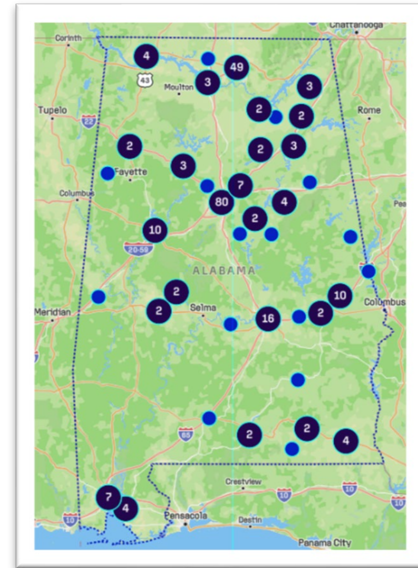
I am involved in various organizations at the local and state levels. Illustrative examples are as follows:

- I offer advice and other support to Alabama's State Small Business Credit Initiative programs, which are a catalyst for Alabama's entrepreneurial ecosystem. Notably, the Innovate Alabama Co-Investment Program invests directly in high-growth startups and small businesses alongside private investors that meet certain criteria. The Innovate Alabama Fund Program makes limited partner investments in seed to

[1] ASC, FY 2022-2023 Annual Report (July 2024).

[2] ASC, About the Financial Innovation Division (Last Accessed: Mar. 21, 2025).

early-stage venture capital funds committed to investing in Alabama.[3] These programs, called InvestAL for short, operate as an early-stage venture capital fund and fund of funds platform to support high growth, venture backable startups with headquarters in Alabama. All equity and limited partner investments require a minimum of a 1:1 private investment, must complete extensive due diligence, and agree to quarterly and annual reporting with the Treasury Department. Direct investment checks range from $5,000 to $1 million in exchange for equity (some ownership) of the company. Fund of fund investments are for established venture capital funds and generally range from $500,000 to $1 million.[4] There is a conscientious effort made in Alabama to reach across the state to provide direct funding. I have included an impact map as an illustration of the great work through Innovate Alabama. Related efforts to reach underserved communities are made by our depository institutions through the Community Development Financial Institutions ("CDFI") Initiatives, which Innovate Alabama's LendAL program leverages to generate economic growth and opportunity in some of the state's most underserved communities. According to CUCollaborate, a credit union consulting firm, in Alabama alone, there are 10 CDFI credit unions that serve over 300,000 members, supporting $2.9 billion in loans and $3.7 billion in deposits. These credit unions have provided nearly $18 million in total financial benefits to underserved communities.[5]



- I am vice chair of the Alabama Blockchain Study Commission, created in May 2024 by a state legislative resolution, which ASC helped pass. The Alabama Blockchain Study Commission's initial scope of study includes the regulation of blockchain technology and cryptocurrency, ways to protect the public, and the best applications of blockchain technology for the public and the private sectors. A final report is due in the 2026 legislative session.[6]

- I am the immediate past-president of the Alabama Association of Regulatory Boards ("AARB"). Membership is open to any consumer protection agency that issues

[3] Alabama operates the following five (5) small business financing programs: one (1) collateral support program, one (1) loan guarantee program, one (1) loan participation program, and two (2) equity/venture capital programs. The Alabama Department of Finance is the implementing entity that contracted with Innovate Alabama, a public corporation focused on entrepreneurship, technology and innovation, to administer all programs. Innovate Alabama has engaged the Alliance Capital Corporation to assist in loan administration. See U.S. Department of the Treasury ("Treasury Department"), Capital Program Summaries (Last Accessed: Mar. 21, 2025) to learn more about Alabama's programs.

[4] *See* Innovate Alabama, Governor Ivey Announces Innovate Alabama Awarded Nearly $98 Million to Support Alabama Small Businesses (June 18, 2024) and Innovate Alabama, State Small Business Credit Initiative: Boosting Small Business (Last Accessed: Mar. 21, 2025).

[5] *See generally* CUCollaborate (Last Accessed: Mar. 23, 2025).

[6] *See* Government Technology, Alabama Considers Blockchain, Crypto Use and Regulation (July 31, 2024).

professional or occupational licenses to individuals or companies conducting business in Alabama.[7]

- I help to address issues and promote awareness of elder abuse and investment fraud by participating in groups such as the Alabama Interagency Council for the Prevention of Elder Abuse. This council aims to strengthen partnerships, raise awareness, and advocate for the protection of elders through education, advocacy, and outreach, with the goal of preventing elder abuse.[8]

- I have served on the Montgomery Chamber of Commerce Board of Directors, helping me to understand the needs of our business community.

My passion for helping entrepreneurs, investors, small businesses, and startups throughout Alabama comes in part from my upbringing and family. I was born in Montgomery, Alabama, and have been a lifelong resident of the state of Alabama. Most of my family is from a rural, under-resourced area of our great state. I have spent much time in that remote southwestern part of our state. I am acutely aware of the challenges such communities face and the benefits that can come from having a state agency like mine go the extra mile to help them fully participate in our economy.

I also am actively involved in the North American Securities Administrators Association ("NASAA") where I am Co-Chair of the NASAA Enforcement Section and teach a securities litigation course for state securities regulators. Previously, I led NASAA's Cybersecurity Committee and NASAA's Broker-Dealer Section's Market and Regulatory Policy and Review Project Group.

The breadth and depth of NASAA's work is tremendous. More than 300 volunteers from member agencies serve on dozens of NASAA committees and project groups, including on NASAA's Corporation Finance Section Committee and Federal Legislation Committee. At home and as part of these committees, NASAA members protect investors from financial fraud and abuse, educate investors working to build secure financial futures, support responsible capital formation by businesses, and help ensure the integrity and efficiency of the capital markets that power the economy.

I am proud of my NASAA colleagues across the country. It is an honor for me and the ASC to be a part of the NASAA team of state securities administrators and other state agencies and offices that serve similar functions.

II. The Role of State Securities Regulation

The heavy responsibility of state securities regulation grew out of a recognized need by a state legislature over a century ago to promote transparency and honesty in the offer and sale of securities. Many of the principles of state securities regulation would soon be adopted in nearly all then-existing states, followed by adoption as well at the federal level to address the Stock Market Crash of 1929, also known as the Great Crash, which marked the beginning of the worldwide Great Depression.

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[7] *See* AARB, About Us (Last Accessed: Mar. 21, 2025).

[8] *See* Alabama Code § 38-9D-3.

In the decades since, the U.S. capital markets have flourished overall, in part because we have used a state-federal system of securities regulation similar to the dual system of regulation used for banking.[9] Throughout this period, state governments have served critical roles in our dual system of regulation, including roles promoting innovation and detecting malfeasance. The states have been leaders in creating new ways to regulate securities offerings and transactions and associated intermediaries. Concurrently, the states have been leaders in detecting new threats against America's businesses and investors.

III. Summary of NASAA's Written Testimony

The purpose of this hearing is to examine legislation that intends to help entrepreneurs and small businesses, increase opportunities for all investors, and strengthen public markets. We certainly support these goals and understand the importance of healthy capital markets.

At this time, we at NASAA remain concerned that most of these proposals will not serve the laudable goals that we all share because they would continue to apply a theory that has not worked in practice as intended, specifically the theory that relaxing requirements for raising public and private capital will lead to more public companies. Since the initial Jumpstart Our Business Startups ("JOBS") Act of 2012 ("2012 JOBS Act"), researchers have shown that the 2012 JOBS Act failed to reduce costs of issuance and lead to a sustained recovery in initial public offering ("IPO") activity.[10] Further, there is evidence that pre-IPO valuation premiums for emerging growth companies ("EGCs") are concentrated in EGCs that take advantage of the reduced-accounting disclosure provision. These reduced-accounting EGCs have more speculative valuation profiles, lower institutional ownership, and a higher probability to destroy long-term shareholder value.[11]

In particular, NASAA remains very concerned with (i) the proposals that would preempt state securities authority and (ii) the proposals that would expand access to risky, opaque, and illiquid markets without making complementary enhancements to private securities disclosures. In turn, we will cover the following key areas of concern:

First, Congress should empower state governments that are helping entrepreneurs, small businesses, and startups, especially in underserved communities. Legislation such as (1) H.R. ___, the Small Entrepreneurs' Empowerment and Development ("SEED") Act; (2) H.R. ___, the Improving Crowdfunding Opportunities Act; (3) H.R. ___, the Restoring the Secondary Trading Market Act; and (4) H.R. ___, the Unlocking Capital for Small Businesses Act, would preempt state securities regulators, making it even more difficult for them to remain on the frontlines of supporting capital formation. As explained below, preemption has consequences for the preempted, our peer state and federal regulators, entrepreneurs and small businesses, and investors. Importantly, state governments likely would reduce funding for the great work that

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[9] *See* NASAA, Our Story (Last Accessed: Mar. 23, 2025).

[10] *See* Maryland Securities Division Commissioner 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) and NASAA, NASAA Report and Recommendations for Reinvigorating Our Capital Markets (Feb. 7, 2023).

[11] Omri Even-Tov, Panos N. Patatoukas, and Young S. Yoon, The Jobs Act Did Not Raise IPO Underpricing (Written: Sept. 30, 2020, Posted: Jun. 29, 2021, Last Revised: Nov. 22, 2024).

state securities regulators presently perform to educate and otherwise support entrepreneurs and small business leaders. Meanwhile, Congress may not increase resources for the federal government to fill the regulatory gap created by preemption.

Second, Congress should empower efforts by state governments that are helping to prevent and mitigate financial fraud and similar harms to investors. NASAA fully agrees that the U.S. Securities and Exchange Commission's ("SEC") definition of "accredited investor" requires reform. However, we fundamentally believe that building markets that are more trustworthy to more people throughout the United States starts with ensuring that additional access to private markets comes with additional transparency. In turn, as outlined below, we believe that none of the accredited investor bills under discussion should become law without Congress first incorporating private securities disclosure requirements into the legislation to strengthen investor protection and provide more information on these companies. For example, NASAA would be pleased to assist lawmakers with legislation to require improvements to the SEC's Form D regime.

Third, Congress should continue to empower state governments to have broader authority and resources for investor and issuer education and outreach, as well as for enforcement. State securities regulators have a unique advantage relative to our federal counterparts for education and outreach, specifically the fact that we have physical offices in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Investing in the states as hubs for investor and issuer education and outreach would help all of us achieve this shared vision of empowering all Americans, particularly those in hard-to-reach areas of the country, to participate more fully in our economy. Another advantage unique to the states is that we learn about new threats to businesses and investors simply by virtue of being members of the communities we serve. In combatting fraud, time is of the essence. To give regulators the best chance of recovering victims' losses, we must empower state governments to serve as early detectors of threats and give them the enforcement authority and tools necessary to prevent or mitigate harm.

IV. Congress Should Empower State Governments Serving America's Entrepreneurs and Small Business Leaders

A. Overview

As noted previously, state securities regulators play several vital roles in capital formation. Of note, we are on the frontlines of helping Main Street businesses understand their capital-raising options and on the frontlines of responding to inquiries about how to raise capital in a compliant way. For example, while the nature of the services varies across jurisdictions, it is common for our regulators to maintain websites or webpages devoted to capital formation resources, collaborate with local organizations to conduct seminars for small businesses, and respond to issuer inquiries. Variance of the types of services and engagement can occur for several reasons, including resources available in each state to support issuer education and outreach.

B. The Small Entrepreneurs' Empowerment and Development Act

To begin, Congress is considering the SEED Act alongside several proposals that would strengthen the SEC's capabilities around issuer outreach. NASAA remains supportive of proposals

that would enhance our dual system of securities regulation and the derivative partnership between state governments and the SEC. Strong state-federal coordination around issuer outreach enhances the registration process, minimizes disruption to businesses, and maximizes investor protection.

NASAA is pleased once again to support H.R. 1190, the Expanding Access to Capital for Rural Job Creators Act. This bill would amend Section 4(j) of the Securities Exchange Act of 1934 ("Exchange Act") to require the SEC's Office of the Advocate for Small Business Capital Formation to report on capital access issues faced by rural small businesses and women-owned small businesses.[12]

NASAA is also pleased once again to support H.R. ___, the Promoting Opportunities for Non-Traditional Capital Formation Act. This bill would require the SEC's Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses and businesses located in rural areas. In addition, it would require the Advocate for Small Business Capital Formation to meet at least annually with representatives of state securities regulators to discuss opportunities for collaboration and coordination with respect to these efforts.[13]

NASAA looks forward to reviewing more closely the draft legislation posted on March 21, 2025, that would amend Section 4 of the Exchange Act to direct the SEC to establish, within each division of the SEC that performs rule writing activities, an Office of Small Business, which would coordinate with the Office of the Advocate for Small Business Capital Formation on rules and policy priorities related to capital formation.[14] Initially, we are sympathetic to the suggestion that the SEC should consider additional ways to strengthen internal coordination because it could make their external communications with stakeholders, including state securities regulators, even more effective.

To continue and build on the above points, NASAA urges Congress to reconsider the SEED Act and specifically the net-negative consequences it would have for both small businesses and investors. In short, this bill would disempower the very securities regulators who are doing the most work to educate issuers about so-called "micro-offerings" (offerings up to $250,000), while also sowing further opportunities to defraud investors.[15] Specifically, the legislation would make the following changes:

- Amend Section 4 of the Securities Act of 1933 ("Securities Act") to establish a broad federal exemption (or safe harbor) for 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 (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.

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[12] *See* H.R. 1190, the Expanding Access to Capital for Rural Job Creators Act, 119th Congress, 1st Session (Feb. 11, 2025).

[13] *See* NASAA, NASAA Letter to HFSC Leadership Regarding HR 7977 Promoting Opportunities for Non-Traditional Capital Formation Act (June 10, 2022).

[14] *See* Discussion Draft of H.R. ___, SEC Small Business Offices, 119th Congress, 1st Session (Mar. 21, 2025).

[15] *See* Discussion Draft of H.R. ___, SEED Act of 2025, 119th Congress, 1st Session (Mar. 24, 2025).

- 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.

- Amend Section 18(b)(4) of the Securities Act to add micro-offerings as a federal covered security thereby preempting state registration or qualification requirements with respect to micro-offerings.[16]

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. They are exempt from registration. For example, issuers can use any of the following 10 types of federally exempt 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);[17] (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).[18]

During the last three (3) 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 state governments. In 1996, the federal government enacted the National Securities Markets Improvement Act ("NSMIA"). This legislation preempted much state regulation of securities offerings. Among other changes, NSMIA preempted state registration of federal "covered securities" such as nationally traded securities and mutual funds. However, NSMIA still permitted state review and registration of non-covered securities and requirements to submit notice filings to state securities regulators of certain federal covered securities. In subsequent years, Congress continued to erode state authority by adding to the list of federal covered securities and thereby further restricting the ability of state governments to decide whether and how to regulate certain securities offerings.

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

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[16] *See* 15 U.S.C. § 77r(c)(1) and 15 U.S.C. § 77r(c)(2)(A).

[17] See NASAA, NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data (Sep. 2022) at 10 for information regarding related enforcement actions ("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.").

[18] *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).

complexity into an exemption framework that is complex already.[19] 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 companies selling these securities. State regulators cannot help entrepreneurs and small business leaders if they do not know who is 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.

In sum, we continue to support enhancements to the SEC's ability to conduct issuer outreach and coordinate and communicate with state securities regulators in this area. Separately but relatedly, we cannot support the SEED Act and the preemptive consequences that it would have for state securities regulators. We remain open to discussion about state small company offering registrations and ways to improve related processes.[20]

C. The Improving Crowdfunding Opportunities Act

To begin, the history related to crowdfunding regulation in the United States is important. The history speaks to why state securities regulators cannot support H.R. ___, the Improving Crowdfunding Opportunities Act.

As background, state governments have long been supporters of innovation in capital raising. For example, over a decade ago, state legislatures and regulators were the first to enact tailored crowdfunding laws. They did so with the twin goals of benefiting local businesses and the Main Street investors who would be asked to invest in them.[21]

Subsequently, Congress enacted a one-size-fits-all federal version of crowdfunding and directed the SEC to promulgate rules to implement another capital raising path for issuers. Today, SEC Regulation Crowdfunding ("Regulation CF") sets forth requirements for raising capital through crowdfunding. By 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 reasons, Regulation CF deems several types of issuers ineligible to

[19] *See*, *e.g.*, SEC Overview for Exemptions to Raise Capital (Last Updated: Apr. 6, 2023).

[20] *See* NASAA, Small Company Offering Registration (SCOR) (Last Accessed: Mar. 21, 2025).

[21] In short, 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.

rely on Regulation CF to conduct a transaction. These include issuers that must file reports under Sections 13(a) or 15(d) of the Exchange Act, 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 (2) years immediately preceding the filing of the offering statement.[22]

Crowdfunding was meant to allow individual investors to invest in small, local businesses. The idea to pool 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 unwieldly and potentially impede future financing.[23]

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.[24]

Further, Regulation CF presently sets offering limits for individual non-accredited investors whereas no limits exist for accredited investors.[25] 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) 10 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 equal to or more than $124,000.[26]

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.[27] These efforts overlook the fact that growth in the market, or the lack thereof, is normally 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

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[22] *See* 17 CFR § 227.100(b).

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

[24] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Rel. Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 156-81.

[25] *See* SEC, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets (Last Updated: Nov. 30, 2022).

[26] *See* 17 CFR § 227.100(a)(2).

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

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 limit potential losses investors may incur in offerings conducted in reliance on the two (2) 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."[28]

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.[29]

As noted above, states have a limited but important role with respect to crowdfunding. Section 18(b) of the Securities Act, as amended, preempts state securities laws' registration and qualification requirements for crowdfunding offerings made pursuant to Section 4(a)(6) of the Securities Act.[30] Nevertheless, states can and often do require that notice filings be made for offerings conducted under Regulation CF.[31] In addition to requiring notice filings of federal crowdfunding offerings, over three (3) dozen 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 capital raising 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 Section 3(a)(11) of the Securities Act and its corresponding Rule 147. A few state laws are tied to the federal exemption in Rule 504 of Regulation D.[32]

As noted, NASAA cannot support H.R. ___, the Improving Crowdfunding Opportunities Act. This legislation would weaken the minimal investor protections that exist today for crowdfunding offerings, make other significant changes to an already scaled back regulatory framework, and preempt state securities law requiring registration for secondary transactions.[33] Specifically, the legislation would direct the following amendments:

- Amend Section 18(b)(4)(A) of the Securities Act 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, Section 4A of the

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

[29] *See* 17 CFR § 227.201(t). *See also* SEC, Fact Sheet: JOBS Act Inflation Adjustments (Sep. 9, 2022).

[30] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Rel. Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 147-48.

[31] *See* NASAA, UFT Acceptance Matrix (Last Updated: Oct. 12, 2023).

[32] *See* NASAA, Intrastate Crowdfunding Resources (Last Accessed: Mar. 21. 2025).

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

Securities Act required, among other things, that issuers and intermediaries that facilitate transactions between issuers and investors in reliance on Section 4(a)(6) of the Securities Act provide certain information to investors and potential investors, take other actions, and provide other information to the SEC. Section 18(b)(4)(C) of the Securities Act, as amended, separately preempted state securities laws' registration and qualification requirements for offerings made pursuant to Section 4(a)(6).

- Amend Section 4A(c) of the Securities Act 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.[34]

- Amend Section 4A(a) of the Securities Act 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.

- Amend Section 3(a) of the Exchange Act 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.

- 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 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 to direct documentation around the unavailability of financial statements that have been reviewed or audited by an independent public accountant.

- Amend Section 4A(f) of the Securities Act to permit certain investment companies to rely on the SEC's crowdfunding exemption.

- Amend Section 4(a)(6) of the Securities Act to codify and increase the offering limit from $1 million to $10 million.[35]

- Amend Section 4(a)(6) of the Securities Act 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.

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[34] *See* 17 CFR § 227.503(a)(3)(ii).

[35] The SEC adopted Regulation CF in 2015. Regulation CF initially provided an exemption from registration for certain crowdfunding transactions that raise up to $1.07 million in a 12-month period. Effective March 2021, the SEC increased Regulation CF's offering limit from $1.07 million to $5 million. 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 (Sep. 9, 2022).

- Make technical corrections throughout the Securities Act to fix flawed references to Section 4(a)(6) and Section 4(6)(B).

NASAA cannot support this legislation for several reasons. 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 used by the states to support issuers and investors in the crowdfunding market. The SEC was slow to establish a new regime for crowdfunding transactions,[36] has been slow or unwilling to take enforcement actions in crowdfunding-related cases that involve losses under $1 million, and has lacked the resources to engage with startups throughout the United States regarding their options for raising capital under state and federal crowdfunding laws.[37] 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, 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.

As noted above, NASAA continues to invite discussions with lawmakers and stakeholders on viable pathways for promoting responsible capital formation for the benefit of investors and businesses alike.

D. The Restoring the Secondary Trading Market Act

As highlighted above, NASAA and its members play a critical role in the regulation of secondary trading of certain securities. In short, the law provides automatic preemption from state laws for the secondary trading of securities that are listed and traded on a national securities exchange. Appropriately, the secondary trading of securities for issuers not subject to SEC reporting requirements must comply with state securities laws.

Collectively, NASAA and its members endeavor to make compliance with applicable secondary trading requirements as easy as possible for industry by administering the "manual exemption" approach. In short, historically, manuals were printed publications with financial information about unlisted securities that investors could access in their local library or through their investment professionals. Today, manuals generally are easily accessible sources of online information. The states allow for secondary trading of securities without repeating processes associated with the initial securities offering where qualifying companies meet certain financial standards and key information about the company is published in a nationally recognized securities manual or its electronic equivalent. With this approach, investors have access to the types of information that the company would have to make to retail investors through the state securities registration process.

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[36] 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).

[37] Roughly two (2) 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 [22] states and the District of Columbia have enacted such rules, nine [9] of them in the last six [6] months. Eleven [11] states are considering creating such laws and procedures. Three [3] more states — Florida, Illinois and New Mexico — have rules or legislation awaiting the governor's signature.").

Given that the above-outlined approach exists, NASAA urges Congress to reconsider H.R. ___, the Restoring the Secondary Trading Market Act.[38] This legislation would erase oversight by state governments in the secondary sales of offerings, including offerings made under Tier 2 of the SEC's Regulation A.[39] Specifically, this bill would make the following changes:

- Amend Section 18(a) of the Securities Act to prohibit state governments from regulating the "off-exchange secondary trading in securities of an issuer that makes current information publicly available". The bill does not specify which, if any, existing SEC definition of "off-exchange secondary trading" to use.

- Specify that making "current information publicly available" includes "the information required in the periodic and current reports described under paragraph (b) of [S]ection 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.[40]

- Specify that making "current information publicly available" also includes "the documents and information specified in paragraph (b) of section 240.15c2–11 of title 17, Code of Federal Regulations." Section 240.15c2–11 of Title 17, Code of Federal Regulations, requires broker-dealers to review and maintain current information about the issuer of a security before publishing price quotes in the over-the-counter market.

This legislation is unnecessary given the deliberate and conscientious efforts by states to streamline certain processes while ensuring investors have the information they need to make informed decisions. As explained above, a majority of states maintain a manual exemption to facilitate secondary trading. In many states, the SEC's Electronic Data Gathering, 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.[41] As a threshold matter, secondary trading does not provide liquidity to the

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

[39] *See* SEC, 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.").

[40] *See* 17 CFR § 230.257.

[41] 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.

issuer but to the selling security holder. Further, the federal government preempted the states from reviewing primary offerings conducted under Regulation A, Tier 2 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.[42] 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.[43] 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.

To emphasize, NASAA remains 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 sought data on the use of the manual exemption and suggestions for how the exemption could be improved from an investor protection standpoint.[44] NASAA received one (1) comment letter, from OTC Markets Group Inc.[45]

In sum, NASAA continues to invite discussions with lawmakers and stakeholders.

E. The Unlocking Capital for Small Businesses Act

To begin, it is important to recall that NASAA and its members play a critical role in the licensing and registration of investment professionals, including broker-dealer agents and investment adviser representatives. Our work helps to ensure that the brokerage and investment advisory industries can be trusted with other people's money. Given that licensing and registration is a core state function, NASAA is especially concerned with any legislative or regulatory efforts to reduce our role.

In that vein, we are justifiably concerned about H.R. ___, the Unlocking Capital for Small Businesses Act (the "Unlocking Capital Act").[46] Rather than facilitating the sustainable growth of small businesses, it would facilitate the further growth of unregulated markets and weaken the government's oversight of those who market risky investments to retail investors.

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[42] *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.

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

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

[45] *See* OTC Markets, Comment Letter to Notice of Request for Comment Regarding The Uniform Securities Act Manual Exemption (May 26, 2023).

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

In short, the legislation would establish the following two (2) categories: private placement brokers and finders. The bill would allow these new registrants to engage in many activities that have been regulated for decades because of investor protection concerns.

Regarding the first category, this bill would establish a registration safe harbor for private placement brokers. To establish the safe harbor, the bill would direct the SEC to promulgate regulations that are "no more stringent than those imposed on funding portals" and "require the rules of any national securities 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".[47] The bill also defines "private placement broker" in three (3) 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.[48] 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 Section 29 of the Exchange Act, private placement brokers would be encouraged under this bill to self-certify their status as a private placement broker.

Moreover, the Unlocking Capital Act would establish a disclosure regime for private placement brokers. Specifically, the legislation would direct 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.

Regarding the second category, the Unlocking Capital Act would establish a nonregistration safe harbor for finders. Specifically, the bill would exempt finders from registration requirements under Section 15 of the Exchange Act and would direct voluntary participation, if any, in national securities associations such as FINRA. The bill 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

[47] Title III of the 2012 JOBS Act enacted contains provisions relating to securities offered or sold through crowdfunding. The SEC's Regulation 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 2012 JOBS Act must notify FINRA in accordance with FINRA Rule 4518. *See* FINRA, Funding Portals and Crowdfunding Offerings (Last Accessed: Mar. 21, 2025) and SEC, Registration of Funding Portals (Last Updated: Jan. 18, 2017).

[48] 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".

virtue of the amendment to Section 29 of the Exchange Act, finders would be encouraged to self-certify their status as a finder.

Last and importantly, the Unlocking Capital Act would amend Section 15 of the Exchange Act 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.

The above-outlined reforms would require several changes to the law. Specifically, the bill would implement the following changes:

- Amend Section 15 of the Exchange Act to add a registration safe harbor and disclosure regime for private placement brokers.

- Amend Section 15 of the Exchange Act to add a nonregistration safe harbor for finders.

- 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.[49]

- Amend Section 3(a)(4) of the Exchange Act, which defines "broker," to add "private placement brokers" to the list of exceptions from the Exchange Act broker definition.[50]

- Amend Section 29 of the Exchange Act 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.[51]

- Amend Section 15 of the Exchange Act 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]."

To emphasize, this bill 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.

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[49] *See* 31 U.S.C. § 5312.

[50] *See* 15 U.S.C. § 78c(a)(4).

[51] *See* 15 U.S.C. § 78cc.

In sum, NASAA continues to invite discussions with lawmakers and stakeholders. Here, we continue to welcome the support of lawmakers in facilitating the cooperation of the SEC and FINRA to develop a right-sized regulatory framework for finders that preserves state authority.[52] This approach would place the states, the SEC, and FINRA on a level playing field and be consistent with how the United States has approached the licensing of securities professionals for decades.

V. Congress Should Empower Efforts by State Governments to Continue to Prevent and Mitigate Financial Fraud and Similar Harms to Investors

NASAA and its members aim to protect the investing public from financial harm. Securities regulators routinely initiate enforcement actions to protect investors in their jurisdictions from the sale of unregistered securities and the provision of unlicensed investment advice to the sale of unsuitable products and flat-out fraud. State securities regulators are on the frontlines working to stop unlawful schemes, seek relief for investors, deter bad conduct, and obtain justice for victims.[53] In 2023, state securities regulators reported initiating 1,186 enforcement actions against 2,660 parties, including 909 administrative actions against 2,322 respondents, 102 civil actions against 131 defendants, and 121 criminal cases against 145 defendants. The top three (3) violations charged were the offer or sale of securities/investment advice by unlicensed parties (394 actions), the offer or sale of unregistered securities (386 actions), and securities fraud (374 actions).[54]

Informed by our members' frontline observations of investor harm, NASAA has long invested resources into trying to strengthen both the SEC's definition of "accredited investor" and the body of private securities disclosures that accredited investors must navigate. At this time, it is our view that none of the accredited investor bills under discussion should become law without Congress first incorporating private securities disclosure requirements into the legislation to strengthen investor protection and provide more information on these companies and this market.

A. The Definition of "Accredited Investor"

To underscore, NASAA fully agrees that the SEC's definition of "accredited investor" requires reform. As a threshold matter, NASAA commends lawmakers for their efforts to expand access to and participation in our securities markets by investors of all ages and

[52] 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 (Sep. 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).

[53] *See generally* NASAA, NASAA Enforcement Report 2024 Edition (Oct. 2024).

[54] *See* NASAA, NASAA Enforcement Report 2024 Edition (Oct. 2024) at 3.

backgrounds. We agree that in many cases wealth measures are an inadequate screening criterion for measuring the type of sophistication necessary to invest in private markets, especially with respect to natural persons who meet the current thresholds simply by accumulating retirement savings over time.

The bills under discussion are as follows:

1. H.R. ___, the Fair Investment Opportunities for Professional Experts Act, would amend the Securities Act to modify the definition of an "accredited investor" to codify the SEC's existing definition, incorporate new requirements to adjust net worth and income standards for inflation, and make it possible to qualify as an accredited investor based on education or job experience. The amended definition under the Fair Investment Opportunities for Professional Experts Act would include (A) an individual whose net worth or joint net worth with their spouse exceeds $1 million (adjusted for inflation), excluding from the calculation of their net worth their primary residence and a mortgage secured by that residence in certain circumstances; (B) an individual whose income over the last two (2) years exceeded $200,000 (adjusted for inflation) or joint spousal income exceeded $300,000 (adjusted for inflation) and who has a reasonable expectation of reaching the same income level in the current year; (C) an individual who is licensed or registered with the appropriate authorities to serve as a broker or investment adviser; and (D) an individual determined by the SEC to have qualifying education or job experience and whose education or job experience is verified by FINRA. The bill also would direct the SEC to revise the definition of "accredited investor" in Regulation D of the Securities Act to conform to the changes set forth in the Fair Investment Opportunities for Professional Experts Act.[55]

2. H.R. ___, the Accredited Investor Definition Review Act, would amend the Securities Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to codify the SEC's 2020 rulemaking with respect to the decision to permit qualification based on certain certifications, designations, or credentials, and to direct the SEC to review and adjust or modify the list of certifications, designations, and credentials accepted with respect to meeting the requirements of the definition of "accredited investor" within 18 months of the date of the bill's enactment and then not less frequently than once every five (5) years thereafter.[56]

3. H.R. ___, the Equal Opportunity for All Investors Act, would amend the Securities Act to add a new way for individuals to qualify as an accredited investor. Specifically, individuals of any net worth or income level could qualify by passing an examination designed to ensure the individual understands and appreciates the risks of investing in private companies, as well as ensure the individual "with financial sophistication or training would be unlikely to fail." The SEC would have two (2) years from the date the legislation becomes law to establish this examination. A registered national securities

[55] *See* Discussion Draft of H.R. ___, the Fair Investment Opportunities for Professional Experts Act, 119th Congress, 1st Session (Feb. 20, 2025).

[56] *See* Discussion Draft of H.R. ___, the Accredited Investor Definition Review Act, 119th Congress, 1st Session (Feb. 20, 2025).

association such as FINRA could administer the examination.[57]

4. **4.** H.R. ___, the Increasing Investor Opportunities Act, 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. Specifically, the legislation would prohibit the SEC from restricting the investments of closed-end funds in private funds solely or primarily because of the private funds' status as private funds and restrict exchanges from prohibiting the listing or trading of a closed-end fund's securities solely or primarily by reason of the amount of the company's investment in private funds.[58]

5. H.R. ___, a bill to exclude QIBs and IAIs From the Record Holder Count for Mandatory Registration, would amend Section 12(g) of the Exchange Act 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.[59]

6. H.R. 145, the Risk Disclosure and Investor Attestation Act, would amend the Securities Act to direct the SEC within one (1) 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 SEC adopts by rulemaking, which may not be longer than two (2) pages in length.[60]

7. H.R. ___, the Investment Opportunity Expansion Act, would amend the Securities Act to 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 (A) the net assets of the individual or (B) the annual income of the individual as an accredited investor.[61]

8. H.R. ___, the Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act, would amend the Securities Act to expand the definition of "accredited investor" to include individuals receiving individualized investment advice or individualized investment recommendations with respect to a private offering from a professional who qualifies as an accredited investor. The legislation would also direct the SEC to issue rules consistent with the legislation, including establishing the form required under the legislation, within one (1) year after enactment.[62]

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[57] *See* Discussion Draft of H.R. ___, the Equal Opportunity for All Investors Act of 2025, 119th Congress, 1st Session (Feb. 20, 2025).

[58] *See* Discussion Draft of H.R. ___, the Increasing Investor Opportunities Act, 119th Congress, 1st Session (Feb. 20, 2025).

[59] *See* Discussion Draft of H.R. ___, a bill to exclude QIBs and IAIs From the Record Holder Count for Mandatory Registration, 119th Congress, 1st Session (Feb. 20, 2025).

[60] *See* H.R. 145, the Risk Disclosure and Investor Attestation Act, 119th Congress, 1st Session (Jan. 2, 2025).

[61] *See* Discussion Draft of H.R. ___, the Investment Opportunity Expansion Act, 119th Congress, 1st Session (Feb. 20, 2025).

[62] *See* Discussion Draft of H.R. ___, the Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act, 119th Congress, 1st Session (Feb. 5, 2025).

9. H.R. ___, a bill to amend the Securities Act to expand the ability of individuals to become accredited investors, and for other purposes, would amend Section 2 of the Securities Act to permit any individual who passes an accredited investor examination described within the legislation to qualify as an accredited investor. This bill would direct the SEC to, not later than the end of the 24-month period beginning on the date of enactment of the legislation, establish and administer an accredited investor examination that tests the understanding of individuals of the aspects of investing in unregistered securities, private companies, or private funds. This bill would amend Section 2(a)(15) of the Securities Act to permit an individual that has, within the past 15-years, passed the Securities Industry Essentials examination offered by FINRA, a successor examination, or any similar examination (as determined by the SEC) offered by another national securities association, to qualify as an accredited investor. This bill would direct the SEC to revise Section 230.501(a) of title 17, Code of Federal Regulations, to exclude retirement assets and retirement income assets in any calculation of a natural person's net worth, joint net worth with that person's spouse or spousal equivalent, income, or joint income with that person's spouse or spousal equivalent for the purposes of qualifying as an accredited investor.[63]

In March 2023, NASAA shared its views regarding changes to the SEC's definition of an "accredited investor" with the Director of the SEC's Division of Corporation Finance. Specifically, we explained that, if the SEC were to amend its definition of an "accredited investor," the SEC should (A) exclude assets accumulated or held in defined contribution plans from inclusion in natural person accredited investor net worth calculations and (B) adjust the income and net worth thresholds to account for inflation since 1982 and index those thresholds going forward. By way of background, around the same time the natural person accredited investor thresholds were established, there was a marked shift in the benefits employers offered to employees. The increased use of defined contribution plans over defined benefit plans now leaves most workers responsible for providing the bulk of their own retirement savings.[64] It should be a priority to guard these assets from exposure to the riskiest offerings in our markets. Like a primary residence, which Congress excluded from accredited investor net worth calculations, retirement assets are not appropriate for speculative private investing. Older investors in particular cannot afford the losses because they lack the time horizon necessary to recover from such losses.[65]

NASAA repeated these views later that year in September. I had the opportunity to testify before the SEC Investor Advisory Committee on possible changes to the SEC's definition of an accredited investor as well as Regulation D, Rule 506 improvements.[66]

B. SEC Regulation D, Form D Improvements

At this time, it is our view that none of the accredited investor bills under discussion should become law without Congress first incorporating private securities disclosure requirements into the

[63] *See* Discussion Draft of H.R. ___, Accredited Investor Definition Reforms, 119th Congress, 1st Session (Mar. 21, 2025).

[64] *See* Congressional Budget Office, The Role of Defined Benefit and Defined Contribution Plans in the Distribution of Family Wealth (Nov. 18, 2020).

[65] *See* NASAA, NASAA Comment Letter to the SEC Regarding Private Market Reforms (Mar. 7, 2023).

[66] *See* Amanda Senn, Written Statement Before the U.S. Securities and Exchange Commission Investor Advisory Committee "Panel Discussion Regarding Exempt Offerings under Regulation D, Rule 506" (Sept. 21, 2023).

legislation to strengthen investor protection and provide more information on these companies and this market. NASAA fundamentally believes that building markets that are more trustworthy to more people throughout the United States starts with ensuring that additional access to our markets comes with additional transparency. The proposals under discussion are imperfect tools for preventing investor losses, making it important that we improve transparency before expanding access to these opaque markets.

Specifically, NASAA is seeking improvements to the SEC Regulation D, Form D regime. The history of the regime is important to understanding NASAA's requests.

In short, the path toward the primacy of our unregistered Regulation D market in the United States began in roughly the early 1980s. Key developments occurred in 1982, 1996, 2010, and 2020, as briefly outlined below.

In 1982, the SEC decided to exempt Rule 506 offerings from registration with the SEC.[67] At that time, the SEC believed the change would allow sales to a limited number of people. Importantly, these individuals would have bargaining power or financial wherewithal such that they could "fend for themselves" in the absence of the protections inherent in registration requirements that reduce the normal informational asymmetries between buyers and sellers of securities.[68] In general, the new Rule 506 provided that sales of securities to unlimited numbers of accredited investors and up to 35 sophisticated non-accredited investors would not be considered a public offering that requires registration but only if the offeror did not use any form of general solicitation. Accredited investors were defined as natural persons with a net worth in excess of $1 million (either alone or together with a spouse) or an income of $200,000 per year (or married couples with a combined income of $300,000).

In 1996, Congress passed NSMIA and, in so doing, preempted state review and qualification of Rule 506 offerings.[69] Thereafter, companies were allowed to raise unlimited amounts of capital from unlimited numbers of accredited investors with no specific disclosure obligations and no regulatory review at either the federal or state level.

In 2010, pursuant to Section 413(a) of the Dodd-Frank Act, Congress required the SEC to update the definition of "accredited investor" to exclude the value of a person's primary residence for purposes of determining whether the person qualifies as an accredited investor on the basis of having a net worth in excess of $1 million.[70] Neither Congress nor the SEC has since changed the income and net worth thresholds of the SEC's definition. In turn, and given inflation, an exemption that originally allowed unregistered securities to be sold to 1.8 percent of

[67] *See* SEC Final Rule, Revision of Certain Exemptions from Registration for Transactions Involving Limited Offers and Sales, Rel. No. 33-6389, 47 FED. REG. 51 (Mar. 16, 1982) at 11251.

[68] *See, e.g.,* Consumer Federation of America, Comment Letter Regarding the SEC Concept Release on Harmonization of Securities Offering Exemptions (Oct. 1, 2019) at 9-13. *See also* Craig McCann, Susan Song, Chuan Qin, and Mike Yan, SLCG Economic Consulting, HJ Sims Reg D Offerings: Heads, HJ Sims Wins - Tails, Their Investors Lose, (Last Updated: Dec. 15, 2022). *See also* Craig McCann, Chuan Qin, and Mike Yan, Inactive and Delinquent Reg D Issuers (2022); Regulation D Offerings Summary Statistics (2022) and Craig McCann, Chuan Qin, and Mike Yan, Broker-Sold Regulation D Offerings Summary Statistics (2022).

[69] *See* NSMIA, Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996).

[70] *See* Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) at § 413(a).

U.S. households in the early 1980s now allows those sales to occur to approximately 18.5 percent of U.S. households.[71]

Meanwhile, Congress and the SEC have made changes since 2010 to relax and effectively expand the scope of the exemption for Rule 506 offerings. Of note, the SEC adopted Rule 506(c) in 2013 to satisfy a 2012 JOBS Act mandate.[72] Rule 506(c) provides that a company can broadly solicit and generally advertise an offering and still be deemed in compliance with the exemption of Rule 506 provided the company takes steps to verify that all investors are accredited investors.[73] As explained above, the SEC adopted changes in 2020 to the definitions of an "accredited investor" that allow individuals for the first time to qualify as accredited investors by virtue of their financial sophistication and without regard to their financial wherewithal.[74]

Moreover, Congress and the SEC have made it easier to trade Rule 506 securities.[75] Together, these changes have reduced the need for companies to turn to the public markets to provide a way for founders, early investors, and employees to sell their shares. Also, these changes have allowed unregistered securities to be more widely distributed.

As the above illustrates, the expansion of the private markets has occurred in a piecemeal, incremental fashion during the last four (4) decades without a critical assessment of the cumulative effect these changes have had on our capital markets. Today, the exemption under federal securities laws for Rule 506 offerings no longer meaningfully limits offerings to the type of investor that the Supreme Court, Congress, and the SEC once envisioned as able to "fend for

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[71] *See* SEC, Review of the "Accredited Investor" Definition under the Dodd-Frank Act (Dec. 14, 2023). According to SEC staff, if changes were not made to the accredited investor financial criteria, 30.2 percent of the U.S. households would qualify as accredited investors by 2032, 47.3 percent of the U.S. households would qualify as accredited investors by 2042, and 63.8 percent of the U.S. households would qualify as accredited investors by 2052.

[72] *See* 2012 JOBS Act, Pub. L. No. 112-106, 126 Stat. 306 (Apr. 5, 2012) at § 201.

[73] *See* SEC, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings: A Small Entity Compliance Guide (Last Updated: Sept. 20, 2013).

[74] *See* SEC Final Rule, Accredited Investor Definition, Rel. Nos. 33-10824 and 34-89669 (Aug. 26, 2020). *See also* SEC, SEC Harmonizes and Improves "Patchwork" Exempt Offering Framework, Press Release 2020-273 (Last Updated: Jan. 5, 2021) ("When issuers use various private offering exemptions in parallel or in close time proximity, questions can arise as to the need to view the offerings as "integrated" for purposes of analyzing compliance. This need results from the fact that many exemptions have differing limitations and conditions on their use, including whether the general solicitation of investors is permitted. If exempt offerings with different requirements are structured separately but analyzed as one [1] "integrated" offering, it is possible that the integrated offering will fail to meet all the applicable conditions and limitations. The amendments establish a new integration framework that provides a general principle that looks to the particular facts and circumstances of two or more offerings, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.")

[75] Originally, the purchaser of a security in an offering under Rule 506 was restricted from reselling the security for a period of two (2) years. In 1997, the SEC amended Rule 144(d) under the Securities Act to reduce the holding period for restricted securities from two (2) years to one (1) year, thereby increasing the attractiveness of Regulation D offerings to investors and to issuers. In 2007, the SEC made additional changes, again to ease the trading of these securities. In 2015, Congress codified an informal exemption that securities practitioners had been using for private resales of securities by non-issuers (such as employees, executive officers, directors, and large shareholders) that were acquired in a private offering. The new Section 4(a)(7) exemption under the Securities Act permitted private resales of restricted securities to accredited investors where no general solicitation is used and certain information concerning the issuer and the transaction is provided to the purchaser of the security.

themselves." Also, the regulatory requirements for these so-called "non-public offerings" often do not reflect the size, economic importance, or disparate ownership of the company issuing the securities.

As a result of the Dodd-Frank Act, the United States now has better systems in place for identifying and monitoring potential threats to the stability of our financial markets. Nevertheless, we respectfully submit that these systems may not be working effectively enough with respect to the growth and now dominance of the private securities and funds markets. While certain officials at the SEC are concerned by this issue, and the Office of Financial Research at the Treasury Department is monitoring it as best it can without sufficient data, it may well be the case that policymakers are not taking the threat seriously enough.

C. The Need to Improve SEC Form D Processes and Filings

As a general matter, the overall quality of certain key aspects of our markets has declined in recent decades. First, the overall quality of disclosure in our markets is worse than it was decades ago. This is in large part because of the deregulation of Rule 506 offerings and the policy decision to allow companies to raise an unlimited amount of money under this exemption. Second, as a general matter, corporate governance and internal controls in our early-stage markets are weaker than in decades past. Last, the overall quality of market regulation and policymaking – from rulemaking to examination to enforcement to investor education to federal legislation – suffers when legislators, regulators, and other key stakeholders lack a clear line of sight into our securities markets.[76]

Today, few disclosures are required or made voluntarily under Rule 506 of SEC Regulation D. Generally, private companies raising capital under Rule 506 do not have to make their offering disclosures accessible to the SEC or state securities regulators. Instead, they can submit an 8-page form notice known as a Form D notice to the SEC and the applicable states where securities have been sold without registration under the Securities Act in an offering based on a claim of a qualifying exemption. The notice is published in EDGAR and includes basic information regarding the securities issuer, the offering, the investors, and related fees. Of note, Form D itself includes a disclaimer designed to make clear to investors that the information in the notice may contain inaccurate or incomplete information. In addition to the weaknesses of the required Rule 506 disclosures, voluntary disclosures made in Rule 506 offerings about business plans and projections often are tainted with inaccuracies or overly optimistic assessments.

Importantly, the decline in the overall quality of our disclosures has consequences for businesses and regulators tasked with managing the stability of our financial markets. By way of example, the limited regulatory oversight of Rule 506 disclosures, coupled with what is often inaccurate and incomplete information in the disclosures, can and often does lead to the mispricing of the securities and inflated valuations. This occurs notwithstanding the presumed ability of the investors to "fend for themselves" in these transactions. The extent of mispricing can cause widespread harm to investors and non-investors alike when the bubbles finally burst. An illustrative example of such events is the recent mispricing and ultimate collapse of FTX

[76] *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.").

Trading Ltd. and its affiliates.[77]

Similarly, the overall qualities of corporate governance and internal controls in our early-stage markets are weaker than in decades past. Founder-friendly terms that are common in private offerings can and often do lead to a culture of weak corporate governance and internal controls at these companies, making fraud or other misconduct more likely. In addition, the overall reduction in disclosure in our markets makes it more difficult even for diligent public companies to prepare accurate financial statements and financial risk disclosures. By way of example, issuers that rely on private and public companies for supplies may have trouble assessing their own risks if they cannot access timely, accurate information about the financial health and risks of their commercial partners.

Last, the overall quality of market regulation and policymaking – from rulemaking to examination to enforcement to investor education to federal legislation – suffers when legislators, regulators, and other key stakeholders lack a clear line of sight into our securities markets. In a 2021 speech, a former SEC commissioner commented on this problem. She stated, "The increasing inflows into these [private] markets have also significantly increased the overall portion of our equities markets and our economy that is non-transparent to investors, markets, policymakers, and the public…. [I]nvestors, policymakers, and the public know relatively little about them compared to their public counterparts…. And here we are again watching a growing portion of the US economy go dark, a dynamic the Commission has fostered – both by action and inaction."[47]

D. NASAA's Requests

To address such problems, Congress should direct the SEC to require issuers under Regulation D to submit Form D pre-issuance and post-closing sales reports to the SEC. Advance Form Ds along the lines of the SEC's 2013 Advance Form D proposal would empower state and federal securities regulators to make smarter decisions when they see advertised offerings. Absent Advance Form Ds, investors and regulators who see an advertised offering have no easy way of knowing whether the issuer is engaged in a compliant offering or a scam. Separately but relatedly, requiring a closing filing would provide more complete information of the total amounts of capital raised in Regulation D offerings and the methods used to verify accredited investor status. This would provide regulators and investors more complete information about exempt offerings and a more accurate assessment of the overall size and quality of private markets. Any legislation should result in a loss of the exemption if the issuer does not comply with the submission requirements.

NASAA has prepared draft Form D legislation. We have shared it with congressional offices. We are aware of some interest in pursuing the legislation.

VI. Congress Should Continue to Support the State-Federal Partnerships

As emphasized throughout my testimony, I firmly believe that Congress should continue to empower state governments to have broader authority and resources for investor and issuer education and outreach, as well as for enforcement. Empowering state governments is not only a win for businesses and investors but also taxpayers who benefit from a more efficient use of their

[77] *See* NASAA, NASAA Letter to Committee Leadership Regarding Lessons from the FTX Bankruptcy (Nov. 30, 2022).

tax dollars.

Though markets are largely digital now, the fact remains that securities and investment advice continue to be sold to investors on Main Street. It is critical to have regulators with boots on the ground to perform the investor protection work vital for both businesses and investors. We, as state securities regulators, have a unique advantage relative to our federal counterparts for education and outreach, specifically the fact that we have physical offices in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Investing in the states as hubs for investor and issuer education and outreach would help all of us achieve this shared vision of empowering all Americans, particularly those in hard-to-reach areas of the country.

Similarly, it remains critical to have regulators who are part of the communities they serve. We, as state securities regulators, talk to constituents regularly and learn about new threats to businesses and investors simply by being members of the communities we serve. In combatting fraud, time is of the essence. To give regulators the best chance of recovering victims' losses, we must empower state governments to serve as early detectors of threats and give them the enforcement authority and tools necessary to prevent or mitigate the harm.

NASAA continues to monitor developments at the federal level. No single regulator has all the resources it needs, but we will continue our long history of working collaboratively amongst ourselves and with our federal partners to carry out our work to protect investors and build trust in the capital markets.

VII. Conclusion

Thank you again for the opportunity to testify. I hope I have provided a helpful overview of the state role in capital formation and the ways they help protect the investing public.