**Minority Views on H.R. 4850,**
**"The Micro-Offering Safe Harbor Act"**

Democrats overwhelmingly oppose H.R. 4850, the so-called "Micro-Offering Safe Harbor Act of 2016" because it would likely harm both investors and the integrity of capital formation for small businesses everywhere. Specifically, the bill as amended eliminates all of the existing investor protections for crowdfunding and Regulation A offerings, provided that the securities: 1) are sold to purchasers with a substantive pre-existing relationship with individuals affiliated with the company, including controlling investors; 2) involve 35 or fewer purchasers; 3) do not exceed more than $500,000, annually; and 4) do not involve a person who has violated the securities laws.

Generally, if a company wants to publicly advertise its securities, it needs to either register them with the Securities and Exchange Commission (SEC) or make use of one of the several exemptions that balance costs to the company with the protection of investors, some which are specifically designed to assist smaller businesses. These include equity crowdfunding, in which companies can raise up to $1 million annually and Regulation A, in which companies can raise up to $50 million annually. Both exemptions permit small businesses to issue shares while still providing investors with relevant disclosures to make investing decisions. In addition, under both exemptions, companies can publicly advertise when offering their securities to retail investors. However, to protect such less sophisticated investors, both offerings also limit the amount of securities individual investors can purchase. H.R. 4850 significantly reduces investor protections afforded under these exemptions.

History suggests that the approach of H.R. 4850 is wrought with danger for investors. In the past, Rule 504 of Regulation D permitted a company to generally solicit and sell up to $1 million in securities without registration with either the states or the SEC. In addition, such securities were considered unrestricted and thus freely tradable upon receipt. However, in 1999 after examining the market and bringing enforcement actions, the SEC concluded that "the freely tradable nature of these securities may have facilitated some later fraudulent secondary transactions in the over-the-counter markets for securities of 'microcap' companies." In particular, Rule 504 had been used in fraudulent "pump-and-dump schemes." Following on these findings, the SEC required such securities to be registered with the states if the company wanted to publicly advertise them, and restricted their resale.

Recognizing that history and prudence require that H.R. 4850 be improved to prevent future fraud, Democrats offered an amendment to require the most basic protections for investors. Mr. Hinojosa's amendment would have set limits on retail investor exposure, require a simple 11-page notice filing of the offering and basic disclosures for investors, and restrict the resale of the securities. Such modest changes would have prevented this unnecessary exemption

from creating new avenues for fraud, and enabled the state securities regulators to oversee these smaller issuances. And yet, Republicans rejected this good faith amendment by a partisan vote.

According to the Commission, "[f]raud in the microcap stock markets is of increasing concern to regulators as such markets have proven to be fertile grounds for fraud and abuse. This is, in part, because accurate information about microcap stocks may be difficult for the average investor to find, since many microcap companies do not file financial reports with the Commission." Democrats do not support creating statutory exemptions that further reduce the ability of investors to understand these micro-cap companies.

For these reasons, we oppose H.R. 4850.

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