Minority Views on H.R. 4852,
"Private Placement Improvement Act"

H.R. 4852 places limits on the Securities and Exchange Commission's (SEC) ability to finalize investor protections proposed in 2013. Specifically, H.R. 4852 places a number of prohibitions on the SEC, including barring it from requiring issuer pre-filing of a simple notice form when they sell unregistered securities, to imposing rules that stipulate how private funds are required to portray past income and losses to investors, and others. Because of these concerns, Democrats on the Committee unanimously voted against H.R. 4852, as well as identical legislation in the 113th Congress.

Democrats worked with Republicans to lift the ban on general solicitation and advertising under the Jumpstart Our Business Startups (JOBS) Act of 2012. Under Section 201(a) of the Act, issuers were afforded the opportunity to sell unregistered securities under a new Rule 506(c) exemption using means of solicitation and advertising. This includes publishing ads in newspapers and magazines, using public websites and emails, broadcasting communications over television and radio, and hosting seminars where attendees have been invited by general solicitation or general advertising.

When the SEC implemented this provision in July of 2013, the Commission proposed alongside that regulatory relief some very simple investor protections. The thinking expressed by the SEC Chair and certain SEC Commissioners at the time was that, if Congress and the Commission were going to end a decades-long prohibition on general solicitation and advertising, it would be appropriate to also move forward on several proposed amendments to enhance investor protection.

To date, the SEC has not finalized those proposed amendments; H.R. 4852 would prevent the SEC from ever doing so. Specifically, the bill would impede the Commission from requiring companies to file a simple notification form before using general solicitation or advertising to sell their unregistered securities – a crucial step to alert regulators to the existence of these unregistered offerings. H.R. 4852 would also prohibit the SEC from requiring companies to file their advertising materials with the SEC – a measure that would give regulators a view into potential misleading statements made by issuers. Finally, the bill would stop the SEC from applying the same rules that apply to mutual funds to hedge funds and private equity funds in terms of how they report performance of their fund to investors when they use the Rule 506(c) exemption.

The Democratic witness at the hearing in which this bill was considered, Mr. William Beatty, Washington State Securities Division Director, testified that the North American Securities Administrators Association ("NASAA") opposes this bill as well as "any action by Congress to diminish the ability of the SEC to undertake prudent steps to limit the risks to investors resulting from the lifting of the ban on general solicitation. Further, it would be a mistake for Congress to weaken the few existing investor protections in Rule 506, as this bill would in important ways." Mr. Beatty furthered testified that NASAA's concern is informed by the fact that Rule 506 fraud was the second most common type of fraud reported by their state members.

H.R. 4852 is likewise opposed by the Consumer Federation of America, as well as Americans for Financial Reform.

Because this legislation would tie the hands of the SEC, and prevent them from finalizing certain investor protections which are in the public interest, the Minority opposes H.R. 4852.