

NATIONAL SECURITIES EXCHANGE REGULATORY PARITY
ACT OF 2016

JULY 12, 2016.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5421]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5421) to amend the Securities Act of 1933 to apply the exemption from State regulation of securities offerings to securities listed on a national security exchange that has listing standards that have been approved by the Commission, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Ed Royce on June 9, 2016, H.R. 5421, the National Securities Exchange Regulatory Parity Act, is a simple and technical amendment to the Securities Act of 1933 (“Act”). Specifically, H.R. 5421 amends Section 18 of the Act, which provides what is known as a “blue sky” exemption for securities listed and traded on specified national securities exchanges: New York Stock Exchange (NYSE), American Stock Exchange and NASDAQ. The legislation would eliminate the specific references to those venues, and instead provide blue sky exemption for any security listed on a “national securities exchange” registered with the Securities and Exchange Commission (SEC). This statutory change

better reflects today's markets in that the NYSE and NASDAQ are not the only trading venues that list securities.

BACKGROUND AND NEED FOR LEGISLATION

The Securities Act of 1933 ("Act") exempts certain securities from individual state-by-state registration, which is commonly known as the "blue sky" exemption. The blue sky exemption is found in Section 18(b)(1) of the Act and applies based on where a particular security is listed for trading. In that regard, the Act specifically enumerates certain exchanges with national listings programs that were in existence when the provision was added to the Act by the National Securities Markets Improvement Act (NSMIA) in 1996.

The blue sky exemption in the Act applies to securities listed on the NYSE, the American Stock Exchange (which no longer exists as a stand-alone exchange), or the National Market System of the Nasdaq Stock Market ("NASDAQ") as well as any national securities exchange the SEC determines by rule has "substantially similar" listing standards. Since the exemption's enactment, additional securities exchanges have registered with the SEC, including, for example the Bats BZX Exchange ("Bats").

In 2012, the SEC amended its Rule 146 issued under the Act to designate Bats as an exchange that has substantially similar listing standards as the NYSE and NASDAQ. Consequently, securities listed on Bats are granted blue sky exemption under the Act. However, because Bats is not specifically listed in Section 18(b)(1) of the Act, the SEC must first make a formal finding that with any proposed changes to Bats' listing standards, those standards remain "substantially similar" to those of either NYSE or NASDAQ.

The statutory construction provides preferential treatment to the exchanges listed in Section 18(b)(1) of the Act, and limits innovation with respect to listings standards. The competition for listing securities is a global business and the presence of multiple U.S. listing venues gives issuers options regarding the brand with which they choose to associate and protects them against unreasonably high listings fees. Unfortunately, the Act requires the SEC to consider an innovative listing standard proposal against standards that may have been in effect at the time of NSMIA. This treatment is an inherently unfair two-step process for the unlisted exchanges and creates a competitive disadvantage amongst exchanges. Issuers, broker-dealers, investment bankers and analysts should decide which listing venue would best serve the needs of the company's shareholders. Listing venues should develop listing standards that are consistent with the Securities Exchange Act of 1934 and the SEC should not approve standards which do not meet this standard, however, the law should not place the SEC in a favorable position to limit innovation and competition to certain exchanges. H.R. 5421 corrects this disparity and amends the Act to represent today's capital markets, given that there are more listing venues than NYSE and NASDAQ currently in existence.

HEARING

The Committee on Financial Services held no hearings examining matters relating to H.R. 5421.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 15, 2016 and June 16, 2016, and ordered H.R. 5421 to be reported favorably to the House without amendment by a recorded vote of 47 yeas to 12 nays (recorded vote no. FC-113), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 47 yeas to 12 nays (Record vote no. FC-113), a quorum being present.

Record vote no. FC-113

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa	X		
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher				Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5421 will level the playing field for identically regulated securities exchanges and eliminate additional burdens and costs for companies, by amending Section 18 of the Securities Act of 1933 to provide an exemption from state registration for any security listed on a “national securities exchange” registered with the SEC.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 2016.

Hon. JEB HENSARLING, *Chairman,*
Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5421, the National Securities Exchange Regulatory Parity Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5421—National Securities Exchange Regulatory Parity Act of 2016

Under current law, the Securities and Exchange Commission (SEC) exempts certain securities from state regulation. H.R. 5421 would expand the exemption to allow any security listed on a national exchange that is registered with the SEC to be exempt from state regulation.

On the basis of information from the SEC, CBO estimates that implementing H.R. 5421 would have an insignificant effect on the agency's costs. Under the bill the SEC would have to review any future changes to the rules of national exchanges and rescind a current SEC rule, but the cost of that work would not be significant. Moreover, the SEC is authorized to collect fees sufficient to offset its appropriation; therefore, CBO estimates that implementing H.R. 5421 would have a negligible effect on net discretionary costs, assuming appropriation actions consistent with that authority.

Enacting H.R. 5421 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 5421 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5421 would preempt state laws that govern the state-level registration of securities. Preemptions are mandates as defined in the Unfunded Mandates Reform Act (UMRA) because they limit the authority of states to apply their own laws. However, CBO estimates that the preemption would not affect the budgets of state, local, or tribal governments because it would impose no duty on states that would result in additional spending or a revenue loss.

H.R. 5421 contains no private-sector mandates as defined in UMRA.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 5421 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 5421 establishes or re-authorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 5421 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

This section cites H.R. 5421 as the “National Securities Exchange Regulatory Parity Act of 2016.”

Section 2: Application of exemption

This section amends Section 18 of the Securities Act of 1933 by eliminating the specific references to the New York Stock Exchange, the American Stock Exchange and NASDAQ, and instead, extending the “blue sky” exemption for any security listed on a “national securities exchange” registered with the SEC and whose listing standards were approved by the SEC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

TITLE I—SHORT TITLE

* * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

- (A) is a covered security; or
 (B) will be a covered security upon completion of the transaction;
- (2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—
- (A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or
 (B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer;
- (3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).
- (b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:
- (1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—
- (A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);
 (B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards [that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A)] *that has been approved by the Commission*; or
 (C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) [or (B)].
- (2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.
- (3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.
- (4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(4);

(C) section 4(6);

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange;

or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996; or

(G) section 4(a)(7).

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker or dealer; and

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative ac-

tion of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) OFFERING DOCUMENT.—The term “offering document”—

(A) has the meaning given the term “prospectus” in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

(3) STATE.—The term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

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MINORITY VIEWS

H.R. 5421 is intended to be a technical fix that would amend a 1996 law to take into account the existence of additional national securities exchanges today. It does so by removing the requirement that the Securities and Exchange Commission (SEC), in determining whether to preempt state regulation, finds that an exchange's proposed listing standards for securities are equal to or greater than the robust standards that existed at the New York Stock Exchange (NYSE), the American Stock Exchange (now NYSE AMEX), or Nasdaq in 1996.

However, the bill does nothing to guide the SEC in how it should otherwise determine whether to preempt our state securities regulators. Rather, H.R. 5421 would remove the baseline standard and with it, how the SEC interprets that standard to require certain core quantitative thresholds relating to, for example, revenue, market capitalization, number of shareholders, and share price.

Removing the current framework and replacing it with nothing will at best create confusion and at worst encourage a race-to-the-bottom as exchanges try to compete for business by lowering their listing standards. Moreover, if the SEC were to approve Venture Exchanges, whose very business model is based on lower listing standards for smaller companies, it would have to preempt the states, notwithstanding the fact that their oversight over these companies may be more appropriate.

For these reasons, we do not believe that H.R. 5421 is a so-called technical fix and oppose it.

MAXINE WATERS.
EMANUEL CLEAVER.
KEITH ELLISON.
GWEN MOORE.
STEPHEN F. LYNCH.
JOYCE BEATTY.
AL GREEN.
WM. LACY CLAY.

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