



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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October 4, 2021

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Re: NASAA's Support for Legislative Proposals

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),¹ I am writing to express support for legislative proposals that the House Financial Services Committee ("HFSC" or the "Committee") noticed in connection with the October 5, 2021, hearing entitled, "Oversight of the Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat." As you know, NASAA called on Congress earlier this year to place the interests of investors front-and-center, prioritize measures to protect and empower retail investors, promote policies designed to enhance diversity and inclusion in all aspects of the capital markets, and take steps to prevent the exploitation of elderly investors.² We are pleased that the Committee is considering legislation consistent with these principles.

I. The Empowering States to Protect Seniors from Bad Actors Act (Discussion Draft)

This bill would establish a grant program that would enhance existing efforts by state securities and insurance regulators to protect senior investors and policyholders from financial fraud. Importantly, with respect to the grant program, the bill would: (A) make the Office of the Investor Advocate ("OIA") at the U.S. Securities and Exchange Commission ("SEC" or the "Commission") the program administrator; (B) give the SEC OIA the authority and tools necessary to operate a data-driven grant program; (C) empower the SEC OIA to make grants to state regulators from across the United States; (D) authorize an appropriation of \$15,000,000 to the Investor Advocate for each of the fiscal years 2023 through 2033 to make such grants; (E) require the SEC OIA to cap each grant at \$500,000; and (F) effectively create more opportunities

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

² [NASAA's Legislative Agenda Calls for Congress to Prioritize Investor Protection](#) (Mar. 8, 2021) ("NASAA Legislative Agenda").

for federal and state securities regulators to communicate and coordinate in their efforts to protect senior investors.

NASAA strongly supports this discussion draft dated September 29, 2021. To understand why NASAA supports the idea of establishing a grant program at the SEC, it is important to understand the history behind this bill and the important role that state securities regulators play in our capital markets.

Securities regulators have been a leading voice in protecting seniors and other vulnerable adults from financial exploitation. Recognizing the importance of these efforts, state regulators have built strategic partnerships with fellow regulators, state and federal law enforcement, and organizations focused on serving seniors. Since 2006, when then-SEC Chair Christopher Cox hosted the SEC's first Seniors Summit, securities regulators have prioritized senior investor protection. At the SEC, every Chair since Mr. Cox has prioritized senior-focused education, outreach, examination, and enforcement.³ At NASAA, we have made similar investments ranging from our initiatives to identify and stop abusive sales practices at so-called "free lunch" or "free dinner" seminars to our efforts to implement NASAA's Model Act to Protect Vulnerable Adults from Financial Exploitation, which 32 states have now adopted in whole or in part.⁴

During this same timeframe, Congress has encouraged the regulatory community to do more to protect seniors. Of note, in 2010, Congress authorized a program at the Consumer Financial Protection Bureau ("CFPB") to make grants available to state securities regulators for the enhanced protection of seniors. Unfortunately, the leadership of the CFPB during the Obama and Trump administrations declined to fund the program for legal and budgetary reasons that have not changed.⁵

Given this history, NASAA firmly believes the Empowering States to Protect Seniors from Bad Actors Act is an appropriate, necessary step that should be taken without delay. In our view, the SEC is the appropriate agency to administer this grant program. While NASAA and its

³ See, e.g., Stephen Deane, [How the SEC Works to Protect Senior Investors](#) (May 2019). See also Christopher Cox, [Opening Statement at the Seniors Summit](#) (July 17, 2006); [Protecting Senior Citizens from Investment Fraud](#) (Sept. 5, 2007) (testimony before the U.S. Senate Special Committee on Aging); and [Protecting Senior Investors in Today's Markets](#) (Sept. 22, 2008).

⁴ See, e.g., [AARP and NASAA Launch "Free Lunch Seminar Monitor" Program](#) (Oct. 14, 2008); [FINRA, NASAA and SEC OIEA Urge Investors to Establish a Trusted Contact to Increase Investor Protection](#) (Sept. 28, 2021); [NASAA Releases Annual Enforcement Report](#) (Sept. 29, 2021). For a list of the 32 states, see [NASAA Seniors Model Act, State Enactment](#).

⁵ To learn more about the CFPB program, see, e.g., Amanda Senn, Chief Deputy Director at the Alabama Securities Commission, [Written Testimony](#), HFSC Subcommittee on National Security, International Development and Monetary Policy hearing entitled, "Cybercriminals and Fraudsters: How Bad Actors Are Exploiting the Financial System During the COVID-19 Pandemic." (June 16, 2020) at 8-9; Christopher Gerold, [Congress should pass funding to protect seniors from financial exploitation](#), THE HILL (Dec. 18, 2019).

members work regularly with the SEC,⁶ our engagement with the CFPB is less frequent. Moreover, the SEC OIA is willing to administer the program.⁷

II. A bill to amend the Securities and Exchange Act of 1934 with respect to the Office of the Investor Advocate, and for other purposes (Discussion Draft)

In short, this bill would amend Section 4(g) of the Securities Exchange Act of 1934 (“Exchange Act”) to address requests and concerns that the SEC OIA communicated to Congress last year.⁸ Specifically, in addition to making several other changes relating to the SEC OIA, this bill would: (A) require the Commission to transmit to the President a proposed budget that includes an aggregate request for the SEC OIA and any comments of the Investor Advocate with respect to the proposal; (B) authorize the Investor Advocate to make a finding that investor research and investor testing programs are in the public interest so that, in effect, the Commission cannot veto certain projects at the outset; and (C) grant the Investor Advocate the authority to publish the results of any investor research and investor testing program, excluding personally identifiable information.

NASAA applauds the Committee for its efforts to strengthen the tools and operations of the SEC OIA. NASAA supports the spirit and much of the text of this discussion draft dated September 24, 2021. For example, we strongly support the provisions that would remove barriers to research and testing efforts as part of the rulemaking process because such efforts would help policymakers, including state securities regulators, ensure that investors can make informed decisions based on the disclosures and other information provided to them. We look forward to dialogue regarding this proposal.

III. The Investor Choice Act of 2021 (H.R. 2620)

The Investor Choice Act of 2021 would amend the Exchange Act, the Securities Act of 1933, and the Investment Advisers Act of 1940 to create key new protections for investors. In particular, the bill would: (A) prohibit issuers of securities from mandating arbitration for a dispute between the issuer and its shareholders in any governing document or contract; (B) make it “unlawful” for any broker, dealer, funding portal, municipal securities dealer, or investment adviser to mandate arbitration with customers, limit a customer’s ability to select or designate a forum, or limit a customer’s ability to pursue a claim on an individual or class action basis; and (C) apply retroactively to agreements that mandate arbitration, include forum selection clauses, or limit class actions.

⁶ By way of example, the SEC and NASAA have released numerous education resources for senior investors, as well as training materials and other resources for financial firms that serve senior investors. *See, e.g.*, SEC and NASAA, [Making Sense of Financial Professional Titles](#) (Sept. 2013); [NASAA, SEC & FINRA Issue Senior Safe Act Fact Sheet to Help Promote Greater Reporting of Suspected Senior Financial Exploitation](#) (May 23, 2019); [NASAA, SEC and FINRA Offer Free Resource to Securities Firms to Assist in Detection, Prevention, and Reporting of Financial Exploitation of Seniors](#) (June 15, 2021).

⁷ *See* [SEC Office of the Investor Advocate Report on Activities Fiscal Year 2020](#) (Dec. 2020) at 17-18 (making the point that placing the program at the SEC would enhance congressional oversight).

⁸ *See* [SEC Office of the Investor Advocate Report on Activities Fiscal Year 2020](#) (Dec. 2020).

NASAA strongly supports H.R. 2620, as we have earlier versions of legislation with similar provisions. The existing framework for protecting investors consists of (i) federal and state securities regulators using their authorities to detect, punish, and deter financial fraud and (ii) investors using the judicial process to seek recoveries for violative conduct and supplement the work of regulators. These principles form the bedrock of investor trust that is essential to the growth and success of the capital markets. As NASAA has said for years now, Congress should ban forced arbitration clauses because they undermine the second, critical prong of the investor protection framework.⁹

IV. The Whistleblower Protection Reform Act of 2021 (Discussion Draft)

The Whistleblower Protection Reform Act of 2021 would amend Section 21F of the Exchange Act to extend protections from retaliation to individuals who make disclosures to certain individuals at their place of employment regarding conduct in violation of any law under the SEC's jurisdiction. As a result of the U.S. Supreme Court's 2018 holding in *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018), these protections currently apply to individuals who report information directly to the SEC, but not to individuals who report it directly to their employers.

NASAA strongly supports the discussion draft dated September 29, 2021.¹⁰ As a point of reference, in recognition of the fact that whistleblowers and internal reporters often risk retaliation, NASAA incorporated anti-retaliation provisions into its Model Act to Award and Protect Whistleblowers. Under the act, employers cannot retaliate against employees who report a possible violation of state or federal securities laws, participate in an investigation or enforcement action, make disclosures required or protected under the federal securities laws, or make disclosures to supervisors on matters subject to the jurisdiction of the state securities regulator or the SEC.¹¹ We encourage Congress to protect internal reporters under federal law too.

V. A bill to amend the Securities and Exchange Act of 1934 to improve the governance of multi-class stock companies, to require issuers to make annual diversity disclosures, and for other purposes (Discussion Draft)

This bill would amend the Exchange Act in several ways. Specifically, the bill would require the SEC to issue rules to: (A) permit an issuer to register multiple classes of shares of stock even if the voting power of shares in each class of stock is not proportional to the percentage of share ownership among shares of all classes; (B) require, with limited exception, the elimination of any distinctions between share ownership and voting power of such shares no later than the end of the seven-year period following the date of the initial public offering of the

⁹ See, e.g., [NASAA Strongly Supports the Investor Choice Act of 2013](#) (Aug. 2, 2013); Melanie Senter Lubin, NASAA Board Member and Maryland Commissioner of Securities, [Written Testimony](#), HFSC Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets hearing entitled, "Putting Investors First: Reviewing Proposals to Hold Executives Accountable." (Apr. 3, 2019) ("Lubin Testimony").

¹⁰ See, e.g., Lubin Testimony (expressing support for 2019 version of this legislation).

¹¹ [NASAA Model Act to Award and Protect Whistleblower](#) (adopted in August 2020).

issuer; (C) direct each issuer required to file an annual report to include certain specified diversity disclosures; and (D) prohibit a national securities exchange from listing any security of an issuer that is in violation of these sunset and diversity disclosure requirements. Moreover, the bill would (E) authorize the Commission “to issue such rules and regulations governing national securities exchanges and national securities associations as the Commission determines necessary or appropriate in the public interest for the protection of investors or to promote fair corporate suffrage.”

NASAA applauds this Committee for advancing ideas to better regulate multi-class stock companies, national securities exchanges, and national securities associations. Regarding the multi-class stock provisions in this discussion draft dated September 24, 2021, NASAA believes the legislative text is an excellent first step for ending a market practice that is antithetical to the spirit of democratic accountability that exists throughout our capital markets.¹² In regard to the diversity disclosure requirements, NASAA has supported similar requirements set forth in other legislation and repeatedly called for Congress to examine the current state of corporate board composition with an eye toward encouraging greater diversity.¹³ In turn, we are generally supportive of the diversity provisions in this discussion draft. Last, while NASAA supports the spirit of the provision that would grant the SEC rulemaking authority with respect to national exchanges and securities associations, we take no position at this time on whether the SEC in fact needs such authority. We look forward to further discussion on this topic.

VI. The Investor Justice Act of 2021 (Discussion Draft)

The Investor Justice Act of 2021 would establish a grant program, administered by the SEC OIA, to fund qualified investor advocacy clinics. Similar to the Empowering States to Protect Seniors from Bad Actors Act, this legislation would provide the SEC OIA with the authority and tools necessary to operate a data-driven grant program. Under this program, the maximum aggregate amount of grants permitted each fiscal year would be \$5,000,000.

NASAA strongly supports this discussion draft dated September 29, 2021. As explained in a 2018 recommendation by the SEC’s Investor Advisory Committee, investor advocacy clinics, such as clinical programs within law schools, are an important tool because they provide legal representation to retail investors who cannot afford to hire counsel or whose claims are too small for most attorneys to entertain.¹⁴ NASAA agrees that clinics are a valuable tool and this program would provide protections for investors who might otherwise be left without recourse.

¹² See, e.g., NASAA Legislative Agenda; SEC Commissioner Robert J. Jackson, Jr., [Perpetual Dual-Class Stock: The Case Against Corporate Royalty](#) (Feb. 15, 2018) (“If you run a public company in America, you’re supposed to be held accountable for your work—maybe not today, maybe not tomorrow, but someday. So one problem with perpetual dual-class is it removes entrenched managers—and their kids, and their kids’ kids—from the discipline of the market forever. Simply put: asking investors to put eternal trust in corporate royalty is antithetical to our values as Americans.”).

¹³ NASAA, [Letter to Speaker Pelosi and Leader McCarthy regarding H.R. 1187, the Corporate Governance and Investor Protection Act of 2021](#) (June 15, 2021).

¹⁴ SEC Investor Advisory Committee, [Financial Support for Law School Clinics that Support Investors](#) (Mar. 2018).

Thank you again for your consideration of NASAA's comments. Should you have any questions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Deputy Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

A handwritten signature in black ink that reads "Melanie Senter Lubin". The signature is written in a cursive style with a horizontal line underneath.

Melanie Senter Lubin
NASAA President
Maryland Securities Commissioner

CC: The Honorable Brad Sherman
The Honorable Bill Huizenga