Written Testimony of Michael S. Pieciak

NASAA Past-President and Vermont Commissioner of Financial Regulation

On behalf of

The North American Securities Administrators Association

September 11, 2019

United State House of Representatives

Committee on Financial Services

Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets

I. Introduction

Good morning Chairwoman Maloney, Ranking Member Huizenga, and Members of the Subcommittee. Thank you for the opportunity to testify today. My name is Mike Pieciak. I currently serve as the Commissioner of the Vermont Department of Financial Regulation, and I am the Immediate Past-President of the North American Securities Administrators Association ("NASAA"). NASAA's membership includes the agencies responsible for administering state securities laws.

NASAA members are literally on the frontlines of investor protection. We safeguard the financial futures of hardworking Americans and provide regulatory pathways for local businesses and entrepreneurs seeking to raise investment capital. As the regulators closest to the investing public, we have a unique view into the concerns of Main Street investors and small businesses.

State securities regulators bring civil and administrative enforcement actions and may bring criminal prosecutions or provide substantial assistance with those cases. Our most recently compiled enforcement statistics reflect that in 2018 alone, state securities regulators conducted 5,320 investigations, leading to more than 2,000 enforcement actions (including 218 criminal prosecutions). Of these enforcement actions, 149 involved broker-dealer agents, 138 involved investment adviser representatives, 119 involved broker-dealers, and 233 involved investment advisers.

I am honored to testify before the Committee today about NASAA's perspective on private market exemptions as a barrier to initial public offerings and retail investment.

II. The Role of the Securities Act of 1933 and Securities Exchange Act of 1934 and State Blue Sky Laws

The Securities Act of 1933 (the "Securities Act") requires that every offer or sale of securities be registered with the Securities and Exchange Commission ("SEC" or "the Commission") or exempt from registration.[1] The Securities Exchange Act of 1934 (the "Exchange Act") works in tandem with the Securities Act and requires ongoing reporting of sufficiently "large" and widely held companies.[2] Collectively, these two laws form the bedrock of the federal securities laws governing the offer and sale of securities.

For the purposes of my testimony today, I'll refer to companies whose offerings are registered with the Commission and who engage in ongoing public reporting under the Exchange Act as "public" companies. I will refer to companies that sell securities pursuant to the numerous exemptions provided in federal law as "private" companies.

As Congress made clear at the time of their adoption, the purpose of the Securities Act and the Exchange Act was to provide the investing public with critical information about securities offerings and the companies conducting securities offerings.[3] These provisions essentially protect all types of investors

[1] 15 U.S.C. § 77a et seq.
[2] 15 U.S.C. § 78a et seq.
[3] H.R. Rep. No. 73-85 (1933).

by requiring issuers provide everyone in the markets with essential information in a consistent and timely fashion. However, they also help ensure the efficient allocation of capital needed to drive our economy.[4]

State securities laws and rules complement this federal regulatory regime, but in some cases, our authority has been limited through preemptive federal action. For example, when a company makes a private offering of securities pursuant to certain federal exemptions from registration, the states may have limited authority to collect essential information about the offering, the investors, and subsequent activities and events related to the company.[5]

Lastly, before we begin the substantive discussion about the relative changes in the capital markets, it's important that we note a significant caveat—and that is that most of the information we think we know about the private markets is just that—what we *think* we know. In the SEC's recently published comprehensive Concept Release on Harmonization of Securities Offerings Exemptions, the agency acknowledges that even the dollars raised are estimated.[6] That's because neither the SEC nor the state regulators have detailed information about who invests how much and pursuant to what terms in the so-called private markets, despite the fact that this market now comprises the vast majority of all capital raised. It is incredible that so little is known about such an apparently large driver of our economy.

We believe that one of the first actions by Congress and the SEC should be to remedy this lack of information. Regulators should have sufficient data to oversee the markets they police, and policymakers like yourselves should have the information necessary to make decisions based on facts and not ideological conjecture.

II. The Growth of Private Markets and the Impact on the Number of Public Companies and Initial Public Offerings

The expansion of private markets is a primary driver of the decline in IPOs.

The number of public companies in the U.S. capital markets today is less than half the number just twenty years ago. This comes despite the fact that the valuation of the public stock market has boomed in recent years.[7] This change has left investors in the public markets more concentrated in increasingly larger companies.

At the same time, offerings conducted pursuant to exemptions from registration established by Congress and the SEC have swelled, both overall and as a share of capital raised.

Private offerings once comprised just a small fraction of the overall market for securities. However, today, they serve as the primary source of investment capital for many businesses and have vastly exceeded the capital raised in public markets. According to the SEC, in 2018, public offerings accounted for $1.4 trillion of new capital, compared to approximately $2.9 trillion that the SEC has estimated was raised through exempt offering channels.[8]

---

[4] See generally Jeffrey Wurgler, *Financial Markets and the Allocation of Capital*, Yale ICF Working Paper No. 99-08 (Aug. 5, 1999) ("countries with stock markets that impound more firm-specific information into individual stock prices exhibit a better allocation of capital").
[5] National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290; Jumpstart Our Business Startups Act, Pub. L. No. 112-106.
[6] See generally SEC Concept Release on Harmonization of Securities Offering Exemptions (using estimated numbers on capital raised in exempt and registered offerings).
[7] Caroline Rasmussen, *Where have all the public companies gone?*, CNBC (Oct. 25, 2017), available at https://www.cnbc.com/2017/10/25/where-have-all-the-public-companies-gone.html.
[8] SEC Concept Release, p. 16.

This means that today, the majority of capital raised by businesses is done outside the protections provided through the regulatory framework of public offerings. The growth of the private offering marketplace and decline in the number of public companies should come as little surprise to Congress or federal securities regulators. Congress and the Commission have taken great efforts over several decades to create the regulatory framework that has propelled markets in this direction.

As far back as the 1960s, the SEC began expanding the availability of exemptions for issuers, but it was not until the agency adopted Regulation D that meaningful gaps emerged in the federal securities law framework.[9] Previously, the protections afforded by registration and ongoing reporting were thought to apply to everyone except in limited situations where the companies were small and the investors were otherwise capable of obtaining access to material information about the companies.[10] Regulation D and various other exceptions, some of which were imposed by Congress, established a new framework in which issuers could avoid registration and disclosure obligations if investors were deemed sufficiently "sophisticated." For decades since, Congress and the SEC have worked within this framework to expand and redefine which investors and offerings fall outside the protections afforded by the federal securities laws for investors in public companies.

In 1996, the National Securities Markets Improvement Act ("NSMIA") added Section 28 to the Securities Act, providing the SEC with significant flexibility to tailor the exempt offering framework by giving the Commission authority to exempt persons, securities, and transactions, or classes thereof, from registration. NSMIA also preempted state registration requirements with respect to offerings conducted under SEC Regulation D Rule 506, which had the effect of dis-incentivizing companies from pursuing exchange listings in order to avail themselves of exemptions available under state law for exchange-listed securities.

More recently, in 2012, the "Jumpstart Our Business Startups Act" (or "JOBS Act") enacted provisions that increased the attractiveness of exempt offerings relative to IPOs and played a significant role in companies choosing to stay private. In particular, the JOBS Act raised the number of holders of record that a company can have, from 500 to 2,000, before it is required go public; removed a long standing prohibition against the use of general solicitation for private offerings under Regulation D, Rule 506 and 144A; raised offering limits from $5 million to $50 million under Regulation A; preempted state registration of Regulation A+ offerings, if the securities are offered or sold to a qualified purchaser; created a new exemption for crowdfunding; and relieved emerging growth companies from certain regulatory and disclosure requirements during an initial public offering. In 2015, the FAST Act created a new Section 4(a)(7) under the Securities Act, which preempted state law to establish a nonexclusive safe harbor for private resales under the so-called "Section 4(a)(1½)" exemption to facilitate secondary trading. Collectively, these changes made it easier for companies to raise money outside the registration framework and further reduced incentives for companies to go public.

Another contributing and notable factor is the issuance of SEC no-action letters that green light expansive offerings under the private offering exemptions beyond what was contemplated under Sec. 4(a)(2) of the Securities Act of 1933.[11] In recent years, the staff have further contributed to the

---

[9] See Revision of Certain Exemptions from Registration for Transactions Involving Limited Offers and Sales, SEC, 47 Fed. Reg. 11251 (Mar. 16, 1982). See also Business Investment Incentive Act of 1980, 94 Stat. 2275 (1980).
[10] SEC v. Ralston Purina Co., 346 U.S. 119 (1953).
[11] See, e.g., SEC No-Action Letter, Bateman Eichler, Hill Richards, Inc., 1985 WL 55679 (Dec. 3, 1985) (the prohibition on general solicitation in an exempt private offering is not violated where a broker-dealer uses generic advertisements to solicit prospective investors if it waits to make a specific offering to the investor until after it has gathered information about the prospective investor's sophistication and financial circumstances); SEC No-Action Letter, IPONET, 1996 WL 431821 (Jul. 26, 1996) (dissemination of offering through internet platform does not violate the prohibition on general solicitation where

liberalization of the prohibition on general solicitation through the publication of Compliance and Disclosure Interpretations.[12]

In other words, due in significant part to policy decisions by Congress and the SEC, issuers now have more options to raise money through private securities offerings than at any other time in our history. It's also easier for companies to avoid ongoing reporting obligations as a "public" company, meaning that these companies can stay private longer. In fact, whole new business models have been created to allow for, as one company calls it, "Private markets for the Public."[13]

The unprecedented growth of the private securities marketplace in recent years coincides with a decline in IPOs during the same period. There has been much discussion of the decline in IPOs by policymakers, including previous hearings held by the House Financial Services Committee, and there is reason to believe that a variety of factors are contributing to the decline. [14] Nevertheless, the most significant factor, by far, seems to be the ability for many companies to access virtually unlimited amounts of private capital without ever having to register with the SEC, or engage in ongoing reporting under the Exchange Act.[15]

Policies resulting in the expansion of private markets have created new challenges.

The explosive growth of America's marketplace for private securities offerings has created significant new policy challenges for Congress, as well as for state and federal securities regulators.

One facet of the challenge is the widespread and growing disparity in access to investment opportunities: last year, approximately 88 percent of Americans were functionally excluded from directly participating in more than two-thirds of securities issued in U.S. capital markets. This would not be the case if the regulatory framework noted above did not tilt so heavily in favor of private offerings. The question now is whether the policies promoting the growth of the private marketplace have resulted in an outsized benefit to early backers to the detriment of the public markets or retail investors. A question we believe is answered in the affirmative.

Another public policy concern is the efficient allocation of capital, which is one of the aims of securities regulation. For the benefit of investors and the public at large, investment capital should be allocated to the best investment opportunities and at prices that accurately reflect the risks and opportunity for profit. When a company goes public, it is put through a fulsome vetting process that serves to ensure accurate disclosure is provided to investors, the pricing of the company's securities is reflective of the risks and prospective rewards, and that the company is prepared to be accountable to its investors. In contrast, the lack of transparency and accountability in the private markets' cuts against the efficient allocation of capital. The fact that valuations of so-called unicorns and other private companies

---

prospective investors cannot view offerings until after an investor questionnaire is completed). The Bateman Eichler, Hill Richards, Inc. No-Action Letter and its progeny endorse the manufacture of so-called pre-existing substantive relationships by broker-dealers, investment advisers, internet offering platforms, and even issuers themselves, to avoid an offering being considered a public offering that would otherwise be subject to registration under Section 5.

[12] https://www.sec.gov/divisions/corpfin/guidance/fast-act-interps.htm

[13] EquityZen, Private Markets for the Public (Mar. 18, 2019) (a promoted post on Facebook.com) ("Investors that previously couldn't access late-stage private companies due to investment minimums can now invest in private growth companies.").

[14] See HFSC Subcommittee on Capital Markets, Securities, and Investment hearings entitled, "Legislative Proposals to Help Fuel Capital and Growth on Main Street" (May 23, 2018) and "The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets" (Mar. 22, 2017).

[15] For example, in a poll of approximately 175 predominantly sophisticated investors (including pension fund investors, asset managers, underwriters, and traders operating in the U.S. markets) taken at the 19th Annual Portfolio Management and Market Structure Conference, 74% of attendees expressed the view that expanded access to the private equity market is "the most important factor in the shrinking public equity market (Nov. 2018).

often do not hold up when the companies go public is evidence that capital has not been efficiently allocated, as are outright frauds such as *Theranos*.[16]

A third issue that must be examined is that the venture capital commonly associated with successful companies in the startup boom of recent years is disproportionately concentrated on the coasts, and particularly Silicon Valley. This may be problematic, especially for entrepreneurs located in the American heartland, who are often ignored by coastal venture funds.

Fourth, more of America's most promising young companies stay private longer and raise more and more of their capital through private offerings, as opposed to IPOs. As a result, U.S. public markets lose diversity, vibrancy, and appeal to both investors and issuers. The number of publicly-listed companies today is half what it was in 1996.

The answers to these challenges do not lie in policies designed to expand the number of potential retail investors in private offerings, or creating new exemptions, or eliminating critical investor protection measures designed to foster investor confidence in our public markets, as some have proposed. Such proposals would only serve to attract companies, capital, and investors away from the public marketplace. Furthermore, these approaches are contrary to the goal of expanding opportunities for retail investors to build wealth through investments in well-regulated and robust capital markets.

Over eighty years ago Congress implemented the securities laws in large part to require companies to disclose information investors need to make informed investment decisions and properly allocate capital to grow businesses and our economy. Additional changes to the federal securities laws aimed at further expanding unregistered offerings are unnecessary, and in some instances, risk profound damage to our capital markets. Congress would be mistaken to shift policy further in this direction. Instead, Congress's focus must be on ways to reinvigorate and grow our public securities markets in ways that preserve existing investor protection measures, to keep them vibrant and open to investors of all sizes and levels of wealth and sophistication, and the envy of the world.

III. Features of the Public, Private, and Quasi-Private Securities Markets

I will now review the key differences between public and private offerings. My hope is that this will serve to illustrate why America's public securities markets are uniquely important and valuable – to investors of all types, and most especially retail investors, as well as to the nation broadly – and why Congress must act to restore balance and minimize their displacement by the expansion of the private placement markets. I will also examine the emergence of the so-called "quasi-private" securities marketplace, which was dramatically expanded in the JOBS Act of 2012 and the FAST Act of 2015.[17]

The Public Securities Marketplace

The public securities marketplace consists of securities that are registered with the SEC under the Securities Act or are subject to ongoing reporting obligations under the Exchange Act. This marketplace affords liquid investment opportunities for all individuals, households, and institutions. Like many financial markets, the U.S. public securities markets serve as a source of corporate financing, and a way

[16] U.S. Attorney's Office for the Northern District of California, *Theranos Founder and Former Chief Operating Officer Charged in Alleged Wire Fraud Schemes* (Jun. 15, 2018), available at https://www.justice.gov/usao-ndca/pr/theranos-founder-and-former-chief-operating-officer-charged-alleged-wire-fraud-schemes.

[17] The Jumpstarting Our Business Startups Act of 2012 ("JOBS Act") and the Fixing America's Surface Transportation Act ("FAST Act"). The FAST Act added Section 4(a)(7) to the Securities Act [15 U.S.C. 77d(a)(7)], providing a new exemption for private resales of securities.

that individual investors can hedge against the economic risk associated with an individual investment. Unlike many other financial markets, however, in the U.S. public securities markets the law demands that issuers provide investors with full and fair disclosure of material information, so that they are able to make informed investment and voting decisions. The initial and ongoing disclosure and governance requirements provided by the federal securities laws are intended to generally ensure that investors have all relevant information about securities at the time of their offer and thereafter.[18]

The result of public registration and ongoing reporting is competitively determined prices, transparent valuations, and timely reporting of material information about the future prospects of businesses.[19] The public securities markets thus allocate capital with an exceptionally high degree of efficiency and help guide decision making in the real economy. In this, these markets are not only a source of investment opportunity for purchasers and investment capital for businesses – they are a major contributor to the efficiency of our domestic economy and its capacity to spur and support innovation-based growth.

To illustrate what the public markets mean for individual investors, here is an example.

If you like Amazon's stock, you can buy some. You can easily pick up your phone and check the price per share. You can buy as many shares as you want or can afford.

If a hedge fund manager likes Amazon's stock, she can buy some, too. The price on her phone is going to be the same as the price on yours. She can probably afford to buy a lot more than you; but regardless, if she buys at the same time as you, she pays the same price as you.

Even in the context of the public securities marketplace, a sophisticated investor like the hedge fund manager will likely benefit from certain advantages that you and other retail investors will generally lack. For example, she may have access to proprietary research, or access to a so-called "dark pool" through which to execute trades. Still, in most respects, and in comparison to all other types of securities offerings, despite the enormous differences between you and the hedge fund manager in terms of capital to deploy, you are investing on roughly equal terms, enjoying similar access to timely and material information about your investment, and paying the same price for your investment.[20]

Again, the key feature of the public marketplace is that retail "mom and pop" investors and sophisticated or institutional investors are for the most part offered the same investment opportunities, based on the same information, on the same terms, and at the same cost. Investors of all levels of wealth and sophistication can participate, and when they do, they can get the same types of shares of the same company with the same amount of risk and the same amount of potential return.

The Private Securities Marketplace

[18] SEC, *What We Do* ("The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions. The result of this information flow is a far more active, efficient, and transparent capital market that facilitates the capital formation so important to our nation's economy.").

[19] The registration process also serves to ensure an unbiased review of information by regulators.

[20] In fact, SEC Regulation Fair Disclosure prohibits the hedge fund manager from gaining access to material, non-public information that the average retail investor does not have access to.

Private companies are those that do not make registered public offerings or engage in ongoing reporting pursuant to the Securities Exchange Act of 1934.[21] There are a number of distinctions between the securities issued by private companies and those that are in the "public" or "quasi-private" markets, including limitations on whom may purchase these securities, what information and rights are afforded to those investors, and the ability to trade those securities in secondary transactions. For example, a significant portion of private offerings are largely limited to the roughly 16 million Americans who qualify as "accredited investors" by virtue of having in excess of $1 million of assets or an annual income more than $200,000. Today, as the SEC has recently noted, the private offering framework established by exemptions is not only large, but also extraordinarily complicated and inefficient.[22]

Important data on private offerings is limited, thereby hampering informed policymaking in the oversight of these markets. It would be unwise to encourage further expansion of a market about which little is known or to expand the reach of the market to retail investors.

One of the defining features of private offerings is that they are not open to all investors; instead, the issuer gets to choose whom to sell stock to and on what terms. Moreover, investors are not treated equally; those investors who have the most to offer or promise get access to the best deals or companies on the most favorable terms. The issuer gets to choose to whom it will sell stock and on what terms. Favored investors may get better pricing, greater rights, and often greater information. Further, even if investors are treated equally at the time of an offering, there may be differences in how investors are treated afterwards. Unlike in the public markets, where the reporting obligations of the Exchange Act and Regulation FD, and other protections ensure investors are all treated relatively equally, the private markets offer no such protections.

This may best be illustrated by a recent example. On August 20th, the SEC settled an enforcement action against a public company for selectively disclosing material, non-public information to two research analysts.[23] Because the company was "public," these selective disclosures violated the Exchange Act and Reg. FD. However, if the same situation occurred at a company that was a "private" company, the selective disclosure would have likely not violated any federal securities laws. Even further, such a disclosure – and even subsequent trading that may have resulted – would have not likely violated any state laws.

In the private markets, favored investors or third parties may – and often do – receive selective information that can directly and materially impact the value of their securities and their investment returns. This is precisely the opposite of the level playing field that the federal securities laws were designed to provide. Less well-heeled or connected investors are thus at significantly greater risk.

Of course, the lack of initial and ongoing transparency, as well as consistent rights and terms, leads to several other potential risks for investors in public markets. One of the most basic pieces of information about a security is its price, and yet, even that can be difficult to ascertain. Again, a recent enforcement action by the SEC can prove illustrative.

---

[21] The term "private offering" as used in this section of testimony generally refers to offers made under Reg. D, as distinct from the term "quasi-private offering," which generally refers to Reg. A+ and Reg. CF.

[22] SEC Concept Release, p. 5-6 ("[T]he current exempt offering framework is complex and made up of differing requirements and conditions, which may be difficult for issuers, who bear the burden of demonstrating the availability of any exemption, to navigate.") and p. 12-13 ("The current exemptions were not adopted as part of one cohesive regulatory scheme but rather developed and evolved over time through Commission rules and legislative changes.").

[23] SEC Cease and Desist Order, In the Matter of TherapeuticsMD, Inc., No. 34-86708 (Aug. 20, 2019), available at https://www.sec.gov/litigation/admin/2019/34-86708.pdf.

On August 20th, the Commission settled an action in which a company failed to supervise a trader who deliberately provided inflated quotes used to assign inaccurate values to illiquid, private securities.[24] As the settlement order explained, the company "used those marks in conjunction with other so-called levers to inflate the value of the securities it held, at times by more than 100%, and to report inflated monthly valuations and net asset values for several funds to investors in those funds."[25]

These types of schemes where financial firms inflated values of illiquid securities were common during the financial crisis and persisted across various private markets. Investors are much more susceptible to these frauds when, like in the private markets, there is not consistent provision of information about the security, including key factors used to calculate a valuation, as well as the price of the security itself. In a public company, investors can see prices at which the securities could be purchased or sold. There is a benchmark, and the benchmark is based on public knowledge of offers and sales, that are themselves informed by significant, high-quality information about the issuer, its governance, and its financials.

Even further, broker commissions and implementation costs for trading private companies in the secondary market are typically much greater and less transparent.[26] At a time when many pensions are struggling to meet their obligations to beneficiaries, the private markets essentially offer significantly higher transaction costs. If the costs of buying 100 shares of a stock in public markets may be measured in terms of pennies, or even fractions of a penny per share, the costs of buying 100 shares of a similar stock in the private markets are often orders of magnitude greater.[27]

Yet, in practice, private offerings are seldom offered to all or most persons qualifying as "accredited investors."[28] Even then, only a small fraction of insiders and professional investors have the opportunity to invest in the deal. The first and often only call that an attractive issuer may ever need to make to sell its equity is to one or more favored venture capital ("VC") funds. If the issuer is sufficiently attractive, VC funds may compete to offer the issuer the best terms, such as promises to advise or assist the company's development, in exchange for favorable pricing, favorable shares, seats on the company's board, or timely access to critical information about the company.

If all goes according to plan, the issuer in a private offering benefits from securing investment capital at the valuation it wants, on favorable terms, and while avoiding or at least delaying the regulatory and investor demands imposed by the public markets. This includes not just more information, but also greater investor rights. This may include the rights to petition the company for governance or business practice changes (e.g., through the proxy process) or even sue the company for fraud. The VC fund and its accredited investors benefit too, emerging from the deal in a privileged position – poised to exert more influence on the company than other prospective investors, access more information about the company than other investors, and reap large returns if and when the company conducts a follow-on private offering and/or conducts an IPO. In fact, one common facet of these VC investors is that they may – and

---

[24] SEC Order Instituting Administrative Proceedings, In the Matter of Mosaic Capital, LLC, No. 34-86712 (Aug. 20, 2019), available at https://www.sec.gov/litigation/admin/2019/34-86712.pdf.
[25] Mosaic Capital, LLC, at 3.
[26] Testimony of Tyler Gellasch, Executive Director of the Healthy Markets Association, Hearing on Legislative Proposals to Help Fuel Capital and Growth on Main Street Before the House Financial Services Committee, Subcommittee on Capital Markets, Securities and Investment, 6 (May 23, 2018), available at https://healthymarkets.org/wp-content/uploads/2018/06/05-23-18-HM-letter-Fuel-Capital-Growth.pdf.
[27] Id.
[28] One exception is Rule 506(c), which was amended to allow for general solicitation and advertising if all purchasers are accredited investors.

often do – work with issuers to exploit their positions to dilute or otherwise diminish the value and returns of other, less-connected investors.

Of course, oftentimes private offerings do not go according to plan.[29] By their very nature, such offerings are typically illiquid, speculative, and highly risky. The private securities market contains two features that make it less liquid than its public counterpart: constraints on transferability and the lack of developed exchanges. In other words, an investor in a private offering may have to wait for the company to go public or be acquired to see a return on their investment. In addition to the inherent risk of these investments, some of these offerings have also been associated with fraud. State securities regulators have reported late Form D filings, a number of cases involving violations of general solicitation restrictions (such as cold calls to retail investors and postings on publicly accessible websites and social media), or issuers failing to verify accredited investor status in accepting investments.[30]

The Quasi-Private Securities Marketplace

Finally, since the enactment of the JOBS Act of 2012 and the FAST Act of 2015, the U.S. securities marketplace has featured a greatly-expanded third pathway for issuers to raise investment capital that blends elements of both public offerings and private offerings, sometimes known as "quasi-private" offerings or "mini-IPOs." These relatively new and still experimental types of registration exemptions, typified by Regulation A+ and by Regulation CF, aim to create a means for small and mid-sized companies to raise investment capital from non-accredited, retail investors, while at the same time avoiding the need to register under the Securities Act or comply with the ongoing reporting obligations under the Exchange Act. The size of the marketplace for quasi-private offerings remains small compared to the multi-trillion marketplace for private offerings under Regulation D and Rule 144A, and their impact on the number of IPOs is likely relatively marginal compared to that of Regulation D.[31] However, due to its reliance on retail investors, this marketplace calls out for Congressional scrutiny.

The Regulation A+ framework, which was first adopted by the JOBS Act, may have been well-intentioned as an additional method by which companies could raise capital. However, the results of the offerings made under this framework have proven to be quite poor. In early 2018, Barron's conducted a study of these offerings.[32] There were two notable points from that study. First, because the final rule required so little information about the securities after the initial offerings, the study was unable to examine who invested in the majority of these offerings or their performance. Second, of the Reg A+ offerings that elected to list on NYSE or Nasdaq (which meant that they were also voluntarily subjecting themselves to higher listing standards and ongoing reporting obligations), the performance for investors was abysmal. Excluding one wildly over-performing stock, the study found that "the average Reg A+ stock fell 40% in the six months after its mini-IPO and has underperformed the raging bull market surrounding them by nearly 50 percentage points." Even worse, the one outlier stock that was excluded

[29] There is little data regarding the success or failure of most private offerings due to the opacity that plagues the marketplace. One of the draft bills that the Subcommittee is considering today – "The Private Securities Transparency and Reform Act" – would address this by requiring the SEC to take steps to try collect such data.
[30] Andrea L. Seidt, "A Sideline View of Exempt Offerings in 2017" (Feb. 13, 2017).
[31] SEC DERA White Paper on Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings (2009-2017), https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf (see graph on p. 8 showing that Reg. A and Reg. CF offerings, along with offerings made under Section 4(a)(2) and Reg. S, together raised less than $100 billion in 2017; Reg. D raised over $1.8 trillion during the same year).
[32] Bill Alpert, Brett Arends, and Ben Walsh, Most Mini-IPOs Fail the Market Test, Barron's (Feb. 13, 2018), available at https://www.barrons.com/articles/most-mini-ipos-fail-the-market-test-1518526753.

from that calculation is currently being sued by the SEC as part of a bitcoin-related fraud.[33] That is not the "capital formation" or "investor protection" to which anyone should aspire.

Notably, although we are just a few years into the Regulation A+ experiment, both NYSE and Nasdaq have already significantly decreased their appetites for listing these offerings. In June 2019, the SEC approved Nasdaq's proposal to heighten its listing standards for Regulation A+ securities in part due to concerns with the quality of past listings.[34] We are skeptical that these modest changes will be sufficient to address concerns with these offerings.

NASAA has repeatedly expressed significant concern regarding the viability and necessity of a marketplace for quasi-private securities offerings, especially on the scale envisioned by Regulation A+.[35] Such a marketplace is difficult to police and has the potential to become a magnet for fraud. Moreover, by furnishing means for non-accredited investors to invest in early-stage companies that would otherwise be considered too risky for offer to the public, Reg. A+ not only entails objectively increased investment risk but puts retail investors into a position of essentially competing with sophisticated investors for access to investment opportunities in attractive pre-IPO companies. Not surprisingly, retail investors are at a steep structural disadvantage and oftentimes end up with the short end of the stick – that is, they assume significant risk without gaining access to most attractive deals, or to more favorable terms and prices available to venture funds and other "accredited investors" under Regulation D.

Congress should revisit the rationale for quasi-private offerings under Regulation A+ and consider whether the framework makes sense. Increasingly, as securities exchanges and investors lose confidence in the companies that use Regulation A+, the premise of these hybrid offerings seems dubious and unlikely to succeed.[36] As one law professor recently observed, "These reforms [established by the JOBS Act and FAST Act] are a brave experiment, but one likely to end poorly. In creating these pathways, Congress has ignored economic principles relating to the market-destroying information asymmetries between potential investors and the issuing firm."[37]

Congress should also revisit Regulation CF with an eye toward improving the exception to ensure the small issuers are not unduly penalized for availing themselves of it early in their growth cycle.

Unlike Regulation A+, which allows issuers to raise as much as $50 million and for that reason is sometimes characterized as a "mini-IPO," crowdfunding permits a maximum raise of $1 million, and therefore, does not appeal to issuers that might under different circumstances be contemplating public offerings. Indeed, as of March 2019, 35 states including the District of Columbia have enacted crowdfunding exemptions tied to the federal intrastate exemption, and our experience has been that this

---

[33] Complaint, SEC v. Longfin Corp., (S.D.N.Y. 2019) (No. 19-CV-5296), available at https://www.sec.gov/litigation/complaints/2019/comp24492.pdf.

[34] SEC Order Granting Approval of a Proposed Rule Change to Adopt Additional Requirements for Listings in Connection with an Offering Under Regulation A of the Securities Act, The Nasdaq Stock Market LLC, Exch. Act Rel. No. 34-86246 (Jun. 28, 2019), available at https://www.sec.gov/rules/sro/nasdaq/2019/34-86246.pdf.

[35] See NASAA's Letter to HFSC and Capital Markets Subcommittee Leadership Regarding H.R. 1070 and H.R. 1082 (Jun. 15, 2011); NASAA's Written Testimony for Senate Banking Committee hearing entitled, "Spurring Job Growth through Capital Formation While Protecting Investors" (Dec. 1, 2011), and for the HFSC Subcommittee on Capital Markets and Government Sponsored Enterprises hearing entitled, "Legislative Proposals to Facilitate Small Business Capital Formation and Job Creation" (Sept. 21, 2011).

[36] Alexander Osipovich, *Exchanges Shy Away From Mini-IPOs After Fraud Concerns*, WSJ (Jun. 10, 2019), available at https://www.wsj.com/articles/exchanges-shy-away-from-mini-ipos-after-fraud-concerns-11560177205.

[37] Merritt Fox, *Regulating Public Offerings of Truly New Securities: First Principles*, Harvard Law School Forum on Corporate Governance and Financial Regulation (Feb. 9, 2018), available at https://corpgov.law.harvard.edu/2018/02/09/regulating-public-offerings-of-truly-new-securities-first-principles/.

marketplace truly is niche, and those who avail themselves of it – both the issuers and investors – are frequently motivated at least in part by considerations other than simply return-on-investment or profit.

Finally, Congress must repeal or revise the "qualified purchaser" definition.[38] The JOBS Act and NSMIA accorded the SEC with broad authority to define the scope of "qualified purchasers," to whom securities may be sold without registration under Section 18(b) of the Act. But whereas Congress evidently intended the SEC to use a regulatory scalpel and carve out precise exemptions for certain categories of investors, the SEC has applied a cudgel. The scope of "qualified purchasers" encompassed by SEC regulations (namely, Rule 256 of Regulation A, 17 C.F.R. § 230.256), which encompasses *all investors*, makes a farce of Congressional intent.

IV. NASAA's Perspective on Proffered Legislation

As discussed above, NASAA is concerned that our current regulatory regime has gone too far in favoring private capital raising over public markets. Moreover, we are deeply concerned over the lack of information about private markets that now dwarf the public markets in size, leaving policymakers without the data necessary to facilitate informed policymaking. As such, we strongly support measures, such as two of the bills under consideration today, that would provide that necessary data.

We urge Congress to go no further in expanding or adding new exemptions until a more careful study of the impact on public markets and investor protection can be undertaken.

1. The Private Securities Transparency and Reform Act (Draft):

The Private Securities Transparency and Reform Act would establish additional requirements for issuers offering securities in reliance on Regulation D. Specifically, the bill would mandate filing of Form D before the date of the first sale in an offering conducted under SEC Rule 506(b), and filing before the earlier of the date of the first sale or the date of the first use of general solicitation, for an offering being conducted under SEC Rule 506(c).

State securities regulators have a direct interest in promoting transparency and reform in the private offering marketplace. This interest stems from the work of state securities regulators supporting responsible capital formation, policing Regulation D (including Rule 506 offerings) through state antifraud authority, and the proximity of state regulators to members of the investing public.

NASAA has long encouraged Congress and the SEC to take steps to update the Regulation D, Rule 506 regulatory framework.[39] Specifically, NASAA has advocated for improving the Regulation D, Rule 506 framework through enhanced filing requirements designed to allow for better investor protection and increased information to the SEC and state securities regulators, including via both pre-filing and closing amendment requirements.[40]

[38] NASAA urges Congress to limit the imprudent level of discretion that the SEC presently enjoys when defining the term "qualified purchaser" in the Securities Act of 1933 for purposes of rulemaking. Additional information about the problem and suggestions for a legislative remedy are available on the NASAA website: https://s30730.pcdn.co/wp-content/uploads/2013/10/NASAA-Submission-to-Senate-Banking-Committee-RFP041417.pdf.
[39] See NASAA's Letter to Mr. Brent Fields (May 25, 2016), available at https://s30730.pcdn.co/wp-content/uploads/2011/07/NASAA-Accredited-Investor-Comment-Letter-05252016.pdf.
[40] See Comment Letter from William Beatty, NASAA President Elect and Washington Securities Director, to Chairman Hensarling & Ranking Member Waters to House Committee on Financial Services (May 6, 2014), available at http://www.nasaa.org/wp-content/uploads/2013/10/NASAA-JOBS-2-0-Markup-Letter-Final-Draft.pdf.

The information contained in Form D is crucial to state securities regulators who regularly encourage investors to "inform yourself before you invest."[41] When investors contact their state regulators, particularly after hearing about the offering through an advertisement or solicitation, states must be able to point to timely, relevant information.[42]

Similarly, a post-offering closing amendment with sales data would provide an important source of information about private offerings for both the SEC and state securities regulators. A Form D closing amendment would allow regulators to better understand the relative success of a Rule 506 offering and who is investing in specific offerings. This would in turn provide the Commission and the states with important information regarding potential future enhancements to the accredited investor definition, a process which will have to be repeated, and to the use of Regulation D generally.

Finally, pre-filing requirements and post-closing amendments must be mandatory so that issuers have an incentive to meet the requirements. The bill would establish an appropriate penalty for an issuer's failure to meet the filing requirements, including potential loss of the exemption.

NASAA strongly supports the Private Securities Transparency and Reform Act and looks forward to working with the Subcommittee and the Congress to secure its passage.

2. SEC Study for Rulemakings to Expand or Create Registration Exemptions (Draft):

The bill list for today's hearing includes untitled draft legislation that would require the SEC to submit a report to Congress about securities exempted from registration under the Securities Act before finalizing any change to its rules that would create a new registration exemption or expand an existing registration exemption. The purpose of the bill would seem to be to ensure that the SEC is able to answer key questions about the implications of a proposed new exemption prior to such exemption being adopted or becoming effective. If passed, one practical effect of the bill would be to require the SEC to gather significantly more basic information about the private offering marketplace. A second effect would be to inform certain rulemaking that could arise from the SEC's recent Concept Release while the Commission gathers the information required for the analysis.

We agree that SEC rulemakings pertaining to registration exemptions suffer severely due to a lack of data, and we applaud provisions in the bill that seek to ensure the SEC captures and evaluates such data prior to completing any new and relevant rulemakings. We support the bill.

3. The Rare Disease Fund Act (Draft)

The Rare Disease Fund Act would direct the SEC to organize under the laws of a state a corporation to be known as the "Rare Disease Therapeutics Corporation," with the purpose of acquiring and managing a portfolio of biomedical research assets on behalf of the Corporation. Ultimately, as envisioned by the bill, the Corporation would purchase rights to, fund the development of, and once developed, sell ownership interests in rare disease therapeutics.

The goals of the Rare Disease Fund Act are certainly laudatory, but there are aspects of the legislation that Congress should further scrutinize. In the event that Congress determines to proceed with such legislation, NASAA would urge that it refrain from tasking the Commission with establishing and

[41] A Form D notifies the state that the issuer is conducting the offering and anticipates relying on an exemption from registration. The information on Form D is often the only data readily available about the issuer (e.g., business address, officers, directors, business type) that is provided to an investor, and it allows state regulators to look for "red flags" indicative of a potentially fraudulent offering.

[42] Currently, the information on Form D is generally filed with states only within 15 days after the first securities sale – if at all.

administering the Corporation, as it would create conflicts of interest for the SEC to oversee securities and offerings that it is itself issuing. Such a framework also raises questions regarding the Commission's liability as an issuer of securities.

In addition, while one of the stated purposes of the bill is to attract institutional investors, the bill ultimately allows any accredited investor to purchase these securities. Given that the current accredited investor definition is not a very good proxy for sophistication or the ability to withstand loss, it would seem that a more rigorous standard would be more appropriate. On the other hand, to the extent the fund issues bonds guaranteed by the U.S. government, there is no reason to limit sales of those bonds.[43]

4. The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act (H.R. 609)

The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act would establish an exemption from registration requirements under federal securities laws for persons serving as brokers in certain merger and acquisition deals ("M&A brokers"). The exemption envisioned by the legislation is broadly consistent with a Model Exemption that NASAA approved in 2016, and with the de-facto federal policy that has existed since the issuance of a "no-action" letter by the Staff of the Commission on Feb. 4, 2014.[44]

State securities regulators share Congress's interest in establishing a more streamlined regulatory framework for persons serving as M&A brokers in deals that involve the transfer of securities, subject to certain conditions.[45] Moreover, we believe H.R. 609 appropriately balances the legitimate interests of all stakeholders, while maintaining significant safeguards for investors and small business owners.[46]

Further, while the framework established by H.R. 609 has been largely in place since 2014, federal legislation remains necessary due the limited legal effect of SEC staff "no-action" letters.

NASAA supports H.R. 609, and we look forward to working with Ranking Member Huizenga and other members of the Subcommittee to facilitate its consideration and passage.

5. The Crowdfunding Amendments Act (H.R. 6380, 115th Congress)

The Crowdfunding Amendments Act would amend the Securities Act and the Investment Company Act of 1940 to allow crowdfunding investors to pool their money together into a special fund or legal entity advised by a registered investment advisor (RIA). Specifically, the bill establishes and defines the term "crowdfunding vehicle" or "CV" in the Securities Act as a kind of special purpose vehicle (SPV) for crowdfunding. The bill also provides that CVs are authorized investors in

[43] The bill authorizes the Corporation to issue securities that are guaranteed by the U.S. Government (Section 3(e)(1)(A)). The bonds are not to be treated as government securities (Section 3(f)(1)), and hence, presumably would be functionally akin to debt issued by government-sponsored enterprises.

[44] SEC No Action Letter on M&A Brokers (Jan. 31, 2014), https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf.

[45] These conditions include: (1) the disqualification from the exemption of any broker or associated person who is a "bad actor," or subject to suspension or revocation of registration; and (2) the inapplicability of the exemption to any M&A transaction where one party or more is a shell company.

[46] The bill's inclusion of size caps on eligible privately held companies, which the SEC is expressly authorized to adjust, as an example of the legislation's balancing of public policy considerations. Given that the SEC no-action letter contains no size caps, we view this feature of H.R. 609 as an improvement over the "no action" framework.

crowdfunding offerings and can act as vehicles that enable a group of investors to unify and pool their resources to invest in startups that want to raise capital through crowdfunding.

The Crowdfunding Amendments Act includes a number of safeguards intended to protect investors. Specifically, to qualify as a CV under the bill, the SPV must satisfy a number of requirements, such as (1) that its purpose be limited to acquiring, holding, and disposing of securities in a single company for only one class of securities; (2) that it receives no compensation in connection with the acquisition, holding, or disposition of securities; (3) that it must be advised by a registered investment adviser; (4) that it disclose to the investors of the company any fees charged by the investment adviser; and (5) that any increase in such fees be approved by a majority of the CVs investors.

NASAA has previously called on Congress to consider limited adjustments to federal crowdfunding laws, including authorizing certain SPVs in the fundraising process, subject to adequate investor protections.[47] Such a modification stands to benefit the extremely small-sized issuers and small-dollar investors who use Regulation CF by enabling such issuers to keep their capital tables relatively free, and thereby avoid being penalized by later-stage investors, including venture capital, in the event their business is successful. Further, the involvement of an RIA also has the potential to increase the likelihood that an issuer would raise the capital sought.

While NASAA is generally supportive of the bill, it is imperative that the RIA that administers the SPV have the authority and the duty to act on behalf of the investors in relation to the issuer. We also recommend that the provision authorizing the SEC to "tailor requirements" for crowdfunding vehicles "as necessary or appropriate for the protection of investors" be amended to *require* the SEC tailor requirements in this manner.

6. The Fair Investment Opportunities for Professional Experts Act (H.R. 1585, 115th Congress)

The Fair Investment Opportunities for Professional Experts Act would amend the Securities Act to add specified, inflation-adjusted income and net-worth standards to the "accredited investor" definition. In addition, the provision would extend "accredited investor" status to new categories of natural persons who would qualify as "accredited" irrespective of income or net worth.

Notwithstanding NASAA's belief that Congress's primary focus at this time must be on reinvigorating our public markets, as opposed to facilitating additional private offerings to additional investors, NASAA supports the modernization of the "accredited investor" definition. The framework has not been changed in a meaningful way since it was adopted in 1982, and modernization is long overdue.

However, we do not support the legislation in its present form, and we believe Congress can and should do better.

As a preliminary matter, the current income and net worth standards in the SEC's definition of "accredited investor" were established in 1982 and have not been adjusted to reflect the impact of inflation. During the intervening time, the percentage of the U.S. population that qualifies as "accredited" has increased dramatically – from 1.87 percent at the time the definition was adopted to almost 13 percent today. While the bill as proffered would affect a modest improvement by indexing the standards for

[47] See NASAA Legislative Agenda for the 116th Congress, Principle III, p. 6., available at https://s30730.pcdn.co/wp-content/uploads/2019/06/NASAA-Legislative-Agenda-for-116th-Congress-1.pdf

inflation on a *going forward* basis, given the erosive effects of more than 36 years of inflation on these standards, we urge Congress to take this opportunity to significantly update these standards.

In addition, NASAA urges Congress to seriously consider enactment of one or more other reforms to more accurately measure investor sophistication and ability to withstand loss. For example, in the past, NASAA has advocated: (1) use of an "investments owned" test; (2) indexing of income and net worth thresholds to account for some or all inflation since 1982; (3) qualitative improvement of net-worth standards through reference in the definition to the type and liquidity of the asset counted for purposes of determining accredited status (for example, retail assets vs. retirement assets vs. real property assets other than a primary residence); and (4) elimination and replacement of income and net-worth standards on the ground that such standards are inherently flawed proxies for sophistication.

State securities regulators have a very large stake in any legislative changes that would affect the private securities markets. As NASAA has previously testified to the Subcommittee, we strongly believe that any legislation which effects the expansion of private securities markets must also take steps to improve the oversight of these markets by providing regulators with better and more accurate information about the issuers and investors participating in this marketplace. And, as I have explained in addressing other legislation considered by the hearing, including specifically the Private Securities Transparency and Reform Act, such information will also better equip regulators to address fraud and misconduct.

7. The Family Office Technical Corrections Act (H.R. 3972, 115th Congress)

This bill provides that family offices are accredited investors as set forth by the SEC in Regulation D, allowing such investors to purchase certain unregistered securities. The purpose of the bill is to provide a technical clarification to ensure that the federal securities laws consider family offices to be accredited investors under Regulation D.

A family office is a private entity formed and controlled by the family it serves to manage its personal and financial needs. The Dodd-Frank Act empowered the SEC to adopt Rule 202(a)(11)(G)-1, the Family Office Rule, under the Investment Advisers Act of 1940 ("Advisers Act"). The Family Office Rule allows a family office to give investment advice to a "family client" without registering under the Advisers Act. The public policy rationale to support this exclusion is based on the notion that members of a family will protect each other and that the investor protections of the Advisers Act do not need to apply in this unique situation.[48] In extending "accredited investor" status to family offices, H.R. 3972 extends this same logic to family offices by recognizing them as accredited investors for purposes of Regulation D. The bill would apply only when a family office has more than $5,000,000 in assets under management and has not been formed for the specific purpose of acquiring the securities offered.

8. The Main Street Growth Act (H.R. 2899)

The Main Street Growth Act would amend Section 6 of the Securities Exchange Act to establish an alternative regulatory framework for National Securities Exchanges that elect to be treated as "venture exchanges." The new exchange would serve as a means for venture stage investors, executives, and other insiders, to exit positions in venture companies by selling into an unsophisticated investor pool.

While the prospect of a U.S. "venture exchange" may hold theoretical attraction as a way to serve startup companies, the U.S. already has a robust venture market utilizing an over-the-counter (OTC) or multi-dealer model, so it is not clear that such an exchange would be beneficial or necessary. On the other

---

[48] H.R. Report. 115-362 on The Family Office Technical Correction Act of 2017, available at https://www.congress.gov/congressional-report/115th-congress/house-report/362/1?overview=closed.

hand, such an exchange would expose non-accredited individuals to greater risks. For example, the quality of the securities listed on such exchange would be risky relative to traditional listings,[49] and the exchange would need to rely disproportionately on retail investors to provide capital and liquidity.[50]

There is reason to believe that, unless properly configured, legislation such as H.R. 2899 stands to reduce incentives to go public, further reducing the number of public companies, and in turn reducing investment opportunities for retirement funds and similar institutional investors.

Congress should carefully consider whether establishment of such a venture exchange is consistent with the goal of reinvigorating public securities markets, or whether other steps might make more sense for issuers of this size. Congress should also consider whether legislation is even necessary to establish a venture exchange, given that the SEC already has ample authority to recognize such exchanges under its existing authorities, which Congress expanded considerably under provisions enacted in 2018.[51]

A better place to start may be legislation such as the Middle Market IPO Act,[52] which would require the SEC to conduct a study of the direct and indirect underwriting fees, including gross spreads, for middle-market IPOs.[53] Such legislation passed the House overwhelmingly in 2018, and NASAA would strongly support this proposal if it were reintroduced in the 116th Congress.

V. Conclusion

Public markets have historically been a significant source of capital and liquidity for growing companies and their shareholders, but the distinctions between public and private markets have been gradually diminishing. While Congress has previously enacted and continues to propose legislation with the intent of helping small businesses access capital by lowering barriers in several areas of the securities laws, the unintended effect is that it has incentivized companies to stay private. Now is the time for Congress to reverse these effects by removing incentives for companies to stay private for long periods of time.

One step that Congress could take is by amending Section 12(g) of the Exchange Act to lower the number of holders of record from 2,000, which triggers registering securities with the SEC. The Commission has interpreted the term "held of record" to narrowly mean only those shareholders listed on corporate records. The vast majority of shareholders of public companies are not listed on corporate records; instead, their stock is held through custodians such as banks and brokerage firms who hold shares through accounts at a depository company, and it is the depository company that is listed as the registered holder in corporate records.

---

[49] The types of securities that would be most likely to trade on a venture exchange include many securities currently transacted on an over-the-counter (OTC) basis, as well securities sold pursuant to a registration exemption that requires some modicum of ongoing reporting, such as Regulation A+.

[50] The limited float of issuers of securities listed on any venture exchange, among other factors, limits the willingness and ability of institutional investors to invest, "thus leaving this market largely to retail investors and brokers." See CFA Institute, *United States Venture Market: Has the Time Come?*, May 2016, p. 12, available at https://www.cfainstitute.org/-/media/documents/.../united-states-venture-market.ashx.

[51] S. 2155 (115th Congress)

[52] S. 488 (Title XXXI).

[53] According to research, the gross spread for middle-market IPOs in recent history often has been around 7 percent of the issuer's value, whereas the gross spread for underwriting a larger IPO has been substantially less. As SEC Commissioner Robert Jackson has observed, this considerable "IPO tax" on mid-sized companies may be one of the reasons there are fewer small and medium sized companies pursuing IPOs today than was true a generation ago. (See SEC Commissioner Robert Jackson's April 25, 2018 Speech, "The Middle Market IPO Tax," available at https://www.sec.gov/news/speech/jackson-middle-market-ipo-tax.)

Thank you for the opportunity to testify. I will be pleased to answer your questions.