



**Written Testimony before the
U.S. Senate Committee on Banking, Housing, and Urban Affairs**

Regarding

**Protecting Investors and Savers:
Understanding Scams and Risks in Crypto and Securities Markets**

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Submitted by

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NASAA

Organized in 1919, the North American Securities Administrators Association (“NASAA”) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the 13 provincial and territorial securities regulators in Canada, and the securities regulator in México. In the United States, NASAA is the voice of state securities agencies that protect investors, promote responsible capital formation, and support inclusion and innovation in the capital markets. U.S. NASAA members license firms and their agents, investigate alleged violations of securities laws, file enforcement actions when appropriate, and educate the public about investment fraud. NASAA members also participate in multi-state enforcement actions and information sharing. For more information, visit:

www.nasaa.org.

I. Introduction

I am Melanie Senter Lubin. I want to start by thanking the entire Committee and its dedicated staff for organizing this hearing. I am honored to share the perspective of the North American Securities Administrators Association, or NASAA for short, regarding the primary threats to investors in today's securities markets and ways to mitigate these threats.

I am a 36-year veteran of the Division of Securities within Maryland's Office of the Attorney General. In 1998, I became the Maryland Securities Commissioner. The primary goal of the Maryland Securities Division is to protect Maryland investors from investment fraud and misrepresentation. My team uses all the tools that securities regulators have—investor education, registration, examination, and enforcement—to protect investors, promote responsible capital formation, and support inclusion and innovation in the capital markets.¹

I also am a 36-year veteran of NASAA. During my career, I have been involved in essentially every aspect of our collective mission. At present, I am a member of NASAA's Board of Directors and its 2021-2022 President. I also am a member of four committees—the Federal Legislation Committee, the Investment Adviser Representative Continuing Education Committee, the Regulation Best Interest Implementation Committee, and the Steering Committee for the Central Registration Depository and the Investment Adviser Registration Depository systems. Since 2015, I have served as NASAA's non-voting representative to the Financial Stability Oversight Council ("FSOC"). Earlier this year, the Public Company Accounting Oversight Board ("PCAOB") appointed me to its new Standards and Emerging Issues Advisory Group.²

The breadth and depth of NASAA's work is tremendous. Approximately 300 volunteers from member agencies serve on 54 NASAA committees and project groups. At home and as part of these committees, our members protect investors from financial fraud and abuse, educate investors working to build secure financial futures, support responsible capital formation by businesses, and help ensure the integrity and efficiency of the capital markets that power our economies. To support these efforts, we work through NASAA to train regulator-members to perform their duties and coordinate on everything from investor education to reviews of securities offerings to rulemaking to enforcement. In addition, we facilitate engagement on policy proposals with many stakeholders. In all that we do, we strive to ensure that present and future generations of state, provincial, and territorial regulators can continue NASAA's century-old investor protection mission.

II. Summary of NASAA's Written Testimony

The purpose of this hearing is to examine scams and other risks facing investors. In my testimony, I will highlight NASAA member activity involving both registered and unregistered persons and firms, and cover the following four key points:

¹ [Maryland Securities Division, What We Do](#).

² NASAA, [Maryland Securities Commissioner Melanie Senter Lubin Takes Helm as 104th President of North American Securities Administrators Association](#) (Sept. 21, 2021); PCAOB, [Standards and Emerging Issues Advisory Group Members](#); NASAA, [Maryland Securities Commissioner Lubin to Represent NASAA on Financial Stability Oversight Council](#) (Oct. 22, 2015).

1. At this time and based on available information, we believe that the top threats to retail investors are (1) fraudulent investments tied to digital assets; (2) fraudulent offerings related to promissory notes; (3) scams offered through social media; (4) scams otherwise offered online; and (5) financial schemes connected to self-directed individual retirement accounts (“SDIRAs”).³
2. To ensure our markets are around for generations to come, we need to do an even better job at promoting lasting trust in, and informed use of, our regulated capital markets. Sadly, a concerning amount of distrust in our regulated markets persists nearly 15 years after the 2008-2009 Financial Crisis. Moreover, evidence suggests distrust is higher among communities of color than among white Americans and that black Americans are less likely to view cryptocurrency as risky than their white counterparts.⁴
3. Promoting lasting trust starts with making improvements in how we prevent and detect investor harm and ensuring that those charged with enforcing the law have the tools needed to do the job.
4. Promoting lasting trust also means that we must oppose legislation that would weaken investor protection and thereby fuel additional distrust in securities regulators and securities regulation. This is true regardless of whether the legislation pertains to traditional or emerging areas of our markets.

III. The Top Threats to Retail Investors

At NASAA, we use tools such as member surveys to gather data to inform our priorities and activities. Most years, we conduct a survey of our members to help us better understand present and emerging threats to investors. We encourage them to respond based on investor complaints, ongoing investigations, and current enforcement trends in their jurisdictions. The survey is voluntary, and a large majority of NASAA members participate.

³ So-called SDIRAs are individual retirement accounts (“IRAs”) held by a custodian that allow investment in a broader set of assets than is permitted by other types of IRAs. The broader set of options may include real estate, promissory notes, tax lien certificates, private placement securities, precious metals, and digital assets such as cryptocurrencies, coins, and tokens. Generally, the SDIRA custodians do not (1) research, investigate, or recommend investments to accountholders; (2) verify the accuracy of information on the investor’s statements; (3) ensure a full and accurate disclosure of all details regarding the investment; or (4) hold the investment funds or assets. Moreover, in most cases, the so-called “alternative” or “unconventional” investments permitted in SDIRAs are subject to fewer disclosure requirements than conventional IRA investments such as stocks and bonds. To learn more about the regulatory framework applicable to SDIRAs, see the December 2021 [Recommendation Regarding Individual Retirement Accounts](#) by the Investor Advisory Committee of the U.S. Securities and Exchange Commission (“SEC”).

⁴ See Taylor Nicole Rogers, [Crypto Collapse Reverberates Widely Among Black American Investors](#), Financial Times (July 5, 2022); Morning Consult, [Tracking Trust in U.S. Institutions](#) (July 2022); Ariel-Schwab Black Investor Survey, [Report of Findings](#) (Apr. 2022); Lorie Konish, [Why U.S. Minority Communities May Turn to Cryptocurrencies to Pay Their Bills](#), CNBC (Feb. 8, 2022); Bankrate, [Survey: More Than Half of Investors Think the Stock Market Is Rigged Against Individuals](#) (Mar. 2021); P. Sapienza and L. Zingales, [Financial Trust Index](#) (Feb. 5, 2020).

At NASAA, we believe that education and information are an investor’s best defense. In turn, every year, we publish the results of our survey and work with the media to spread awareness of them. We also encourage members of Congress to review the results and share the information with their constituents.⁵

For each of the last three years (2019, 2020, 2021), the respondents to our survey identified ‘investments tied to digital assets’ as a top threat to investors. As background, the nature of the threat has evolved over the last five years or so. In early 2018, investors and con artists alike returned to cryptocurrency-related investment products looking for quick profits following news surrounding surging prices and a new product backed by Facebook.⁶ Then, in early 2020, criminals and other bad actors started to take advantage of the COVID-19 pandemic as they do every other natural or man-made disaster. Moreover, a persistent concern the last five years has been the promotion of the digital assets space. Marketing that promises ‘high returns’ or ‘high interest rates’ to investors is a red flag of possible false, misleading, or other illegal activity.⁷

Throughout these and other developments in the markets, NASAA continued its ongoing work to educate and engage with the general public and a wide range of stakeholders. In addition, in early 2018, we organized a task force, called Operation Cryptosweep, to begin a coordinated series of investigations into initial coin offerings and other cryptocurrency-related investment products.⁸ In early 2020, we continued the work of Operation Cryptosweep but rebranded and supplemented it. Our new COVID-19 Enforcement Task Force worked to disrupt many COVID-19-related threats to investors, including marketing directed toward older investors that promised lucrative guaranteed returns.⁹

For several reasons, I expect ‘investments tied to digital assets’ will be a top threat again when we publish the survey results for 2022. To begin with, in 2022, more digital asset companies enlisted celebrities and sports stars to market their platforms or products. For example, during Super Bowl LVI, an estimated 208 million-plus viewers watched comedy icon Larry David in an FTX commercial and NBA legend LeBron James in a Crypto.com commercial. In addition, they watched a Coinbase ad with a QR code bouncing from corner to corner of the TV screen. When scanned, the code brought viewers to Coinbase’s promotional

⁵ See, e.g., John F. Wasik, [Why Crypto Cons Top The List of Investment Scams](#), Forbes (Apr. 11, 2022); Greg Iacurci, [Regulators Want to Make It Easier for Americans to Buy Risky Investments](#) (Dec. 20, 2019).

⁶ See Chaim Gartenberg, [Facebook Reportedly Plans to Launch Its Own Cryptocurrency](#), The Verge (May 11, 2018).

⁷ See, e.g., Hannah Lang, Carolina Mandl, and Elizabeth Howcroft, [How Crypto Lender Celsius Stumbled on Risky Bank-like Investments](#), Reuters (June 15, 2022).

⁸ See Daniel Kuhn, [Maryland Targets Trading Platform Fraud as It Joins 'Cryptosweep' Effort](#), CoinDesk (Aug. 15, 2019); [NASAA Updates Coordinated Crypto Crackdown](#) (Aug. 7, 2019); [NASAA Updates Coordinated Crypto Crackdown](#) (Aug. 28, 2018); Joseph P. Borg, Alabama Securities Commission Director and former NASAA President, [Ensuring Effectiveness, Fairness, and Transparency in Securities Law Enforcement](#) (June 13, 2018); NASAA, [State and Provincial Securities Regulators Conduct Coordinated International Crypto Crackdown](#) (May 21, 2018).

⁹ See Amanda Senn, Alabama Securities Commission Chief Deputy Director and NASAA Cybersecurity Committee Chair, [Cybercriminals and Fraudsters: How Bad Actors Are Exploiting the Financial System During the COVID-19 Pandemic](#) (June 16, 2020) (“Senn Testimony”); [NASAA Updates COVID-19 Enforcement Task Force Actions](#) (June 16, 2020); Christopher W. Gerold, then-Chief of New Jersey Bureau of Securities and 2019-2020 NASAA President, [Examining the Impacts of the COVID-19 Pandemic on U.S. Capital Markets](#) (May 26, 2020); [NASAA Forms COVID-19 Enforcement Task Force](#) (Apr. 28, 2020).

website, offering a limited-time promotion of \$15 worth of free Bitcoin to new sign-ups, along with a \$3 million giveaway that customers could enter. These ads all appeared to work. In the case of Coinbase, it saw installs of its app jump 309% week-over-week after the ad aired on Sunday, February 13, 2022, and then climb by another 286% on February 14.¹⁰

In the months that followed, we have seen a dramatic decline in the value of cryptocurrencies and other digital assets. By way of illustration, between February 13 and July 24, 2022, the total market capitalization of cryptocurrency fell from approximately \$1.9 trillion to approximately \$1 trillion. Excluding Bitcoin, the decline during that same period was from approximately \$1.1 trillion to approximately \$600 billion.¹¹

In addition, we have seen several bankruptcies and collapses relating to digital assets. Though the facts are still emerging, it appears the eventual implosion of Terra and the loss of over \$50 billion in the values of Terra LUNA and TerraUSD over a three-day period had cascading, interconnected consequences for many market participants.¹² By way of example, in June 2022, a court in the British Virgin Islands ordered Three Arrows Capital (“3AC”), a Singapore-based hedge fund that once managed as much as \$10 billion in assets, into liquidation.¹³ Days later, 3AC filed for bankruptcy under Chapter 15 of the U.S. bankruptcy code, which allows a foreign debtor to deal with their U.S. assets. On July 5, Voyager Digital Holdings, Inc. (“Voyager”), a cryptocurrency brokerage that allowed customers to buy, sell, trade, and store cryptocurrency on a single platform, filed for Chapter 11 bankruptcy protection. At the time of bankruptcy, Voyager had over 3.5 million active users of its mobile application and over \$5.9 billion of cryptocurrency assets held.¹⁴ A few days later, another trading platform, Celsius Network (“Celsius”) declared bankruptcy. Celsius had approximately 1.7 million registered users and

¹⁰ See Francesca Fontana, [The Crypto Firms That Bought Those Super Bowl Ads Aren't So Super Anymore](#) (June 18, 2022); NFL, [Super Bowl LVI Total Viewing Audience Estimated at Over 208 Million](#) (Mar. 1, 2022); Sarah Perez, [Super Bowl Ads Boosted Crypto App Downloads by 279%, Led by Coinbase](#), TechCrunch (Feb. 17, 2022); Chaim Gartenberg, [Coinbase's Bouncing QR Code Super Bowl Ad Was So Popular It Crashed the App](#) (Feb. 13, 2022); [The Moment of Truth | Crypto.com](#) (Feb. 13, 2022); [Don't Miss Out on Crypto: Larry David FTX Commercial](#) (Feb. 13, 2022).

¹¹ See CoinMarketCap charts, available at <https://coinmarketcap.com/charts/>.

¹² See [Declaration of Alex Mashinsky](#), Chief Executive Officer of Celsius Network, LLC, In Support of Chapter 11 Petitions and First Day Motions, Case No. 22-10964 (July 14, 2022) (“By July 2022, Celsius had approximately 1.7 million registered users and approximately 300,000 active users with account balances of more than \$100, and approximately \$6.0 billion in assets and was preparing to go forward with an initial public offering of Debtor Celsius Mining LLC”).

¹³ See Grady McGregor, [Founders Who 'Cannot Be Trusted' and a \\$50 Million Yacht: New Three Arrows Capital Bankruptcy Filing Sheds Light on the Crypto Hedge Fund's Epic Demise](#), Fortune (July 19, 2022); Yiwen Lu, [Judge Freezes Assets of Crypto Hedge Fund Three Arrows Capital](#) (July 13, 2022).

¹⁴ See *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. July 5, 2022); [Declaration of Stephen Ehrlich, Chief Executive Officer of the Debtors](#) (July 26, 2022). In March 2022, the Alabama Securities Commission gave Voyager 28 days to show cause why it should not be directed to cease and desist from selling unregistered securities in Alabama. State securities regulators in Indiana, Kentucky, New Jersey, Oklahoma, Texas, Vermont, and Washington took the same or similar action against Voyager. See, e.g., Danny Nelson, [State Regulators Crack Down on Voyager Digital's Crypto Interest Offering](#) (Mar. 29, 2022); Danny Nelson and David Morris, [Behind Voyager's Fall: Crypto Broker Acted Like a Bank, Went Bankrupt](#), CoinDesk (July 13, 2022).

approximately 300,000 active users with account balances of more than \$100, and approximately \$6 billion in assets.¹⁵

Last, on top of the issues occurring with platforms such as BlockFi,¹⁶ Celsius, and Voyager, we are seeing unregistered sales of securities in or relating to the “metaverse,” which we presently view as an umbrella marketing term for efforts to deliver more virtual reality and augmented reality experiences through computers, games, phones, and other systems. By way of example, in April 2022, the Alabama Securities Commission and the Texas State Securities Board entered cease-and-desist orders against Sand Vegas Casino Club and its cofounders, Martin Schwarzberger and Finn Ruben Warnke. The orders accused the respondents of illegally offering securities in the form of non-fungible tokens (“NFTs”) to fund the development of a virtual casino in the metaverse.¹⁷ In May 2022, the Alabama Securities Commission, Kentucky Department of Financial Institutions, New Jersey Bureau of Securities, Texas State Securities Board, and Wisconsin Department of Financial Institutions simultaneously filed cease-and-desist orders against Flamingo Casino Club. The enforcement actions accused Flamingo Casino Club of scamming people through fraudulently selling NFTs that purport to convey ownership of a metaverse casino with alleged ties to Russia and give investors a right to share in the profits of the casino when other users play virtual games such as craps, blackjack, or roulette.¹⁸

During the last three years (2019, 2020, 2021), our survey respondents have identified four additional types of threats at least two out of the last three years. Specifically, survey respondents identified (1) fraudulent offerings related to promissory notes; (2) financial schemes connected to SDIRAs; (3) scams offered through social media; and (4) scams otherwise offered online.¹⁹

With respect to other online or digital threats, the potential harm to investors cannot be understated. In the last decade, an overwhelming majority of Americans have become Internet

¹⁵ See [Declaration of Alex Mashinsky](#), Chief Executive Officer of Celsius Network, LLC, In Support of Chapter 11 Petitions and First Day Motions, Case No. 22-10964 (July 14, 2022). In June 2022, several state securities regulators, including the Alabama Securities Commission and the Texas State Securities Board, made public their investigations into Celsius’ decision to halt customer withdrawals. The investigations were designed to build on earlier work by state regulators to urge Celsius to comply with state and federal law. See Francis Yue, [‘I Just Wake Up and Cry’: Voyager and Celsius Bankruptcies Have Destroyed Some Crypto Investors’ Confidence in Centralized Platforms](#), MarketWatch (July 15, 2022); Maria Ponnezhath and Tom Wilson, [Major Crypto Lender Celsius Files for Bankruptcy](#), Reuters (July 14, 2022); Cheyenne Ligon, [Texas, Other States Open Investigation Into Celsius Network Following Account Freeze](#) (June 16, 2022); [New Jersey Bureau of Securities Orders Cryptocurrency Firm Celsius to Halt the Offer and Sale of Unregistered Interest-Bearing Investments](#) (Sept. 17, 2021).

¹⁶ See Jay Zhuang, [Zac Prince Confronts Claims Comparing BlockFi to Celsius and Voyager](#), CryptoPotato (July 13, 2022). Prior to 2022, state securities regulators initiated a comprehensive review and investigation of BlockFi focused on the sale of unregistered securities to retail investors through BlockFi interest accounts. This work, which the SEC later assisted with, ultimately led to a settlement with BlockFi. See [NASAA and SEC Announce \\$100 Million Settlement with BlockFi Lending, LLC](#) (Feb. 14, 2022).

¹⁷ See, e.g., [Sand Vegas Casino Club Located in the Metaverse Is Soliciting Investors to Invest Real Money in Un-Registered Investments](#) (Apr. 13, 2022). Sand Vegas Casino Club has no affiliation with the Las Vegas Sands Corporation.

¹⁸ See, e.g., [Five States File Enforcement Actions to Stop Russian Scammers Perpetrating Metaverse Investment Fraud](#) (May 11, 2022). Flamingo Casino Club has no relationship or affiliation with Flamingo Las Vegas.

¹⁹ See [NASAA Reveals Top Investor Threats for 2022](#) (Jan. 10, 2022); [NASAA Announces Top Investor Threats for 2021](#) (Mar. 3, 2021); [NASAA Announces Top Investor Threats for 2020](#) (Dec. 23, 2019).

users who own a smartphone.²⁰ Meanwhile, criminals and other fraudsters still tend to go wherever potential victims are likely to be.

As state securities regulators in a constantly evolving landscape, we have adapted time-tested investigatory techniques to online communications. By way of illustration, in June 2021, the Texas State Securities Board issued a cease-and-desist order against an unregistered person who was impersonating ARK Invest and the ARK Innovation ETF in the financial services sections of Craigslist, a U.S. classified advertisements website. The order accused the individual of leveraging public interest in ARK Invest and the ARK Innovation ETF to bait-and-switch investors with fraudulent securities issued by an unrelated unincorporated entity. The individual used fake advertisements with false and misleading information to promote a cryptocurrency product supposedly generating profits of 40% per month. The advertisements encouraged readers to act quickly, a move designed to play on COVID-19, stimulus payments, a potential economic meltdown, and FOMO (an acronym for Fear of Missing Out).²¹

With respect to the financial schemes occurring through SDIRAs, for years, state securities regulators have received reports or complaints of fraudulent investment schemes that use a SDIRA as a key feature. Experience indicates that fraudsters prey on and amplify any misperceptions that SDIRA owners have regarding the duties and responsibilities of SDIRA custodians or investment promoters.

To protect prospective and existing SDIRA owners, we have published multiple educational resources to warn investors of the potential risks associated with investing in risky products through SDIRAs. In addition, we have brought enforcement actions where appropriate.²² For example, in March 2021, the state of Missouri ordered Retire Happy LLC and two individuals to pay \$6.21 million in civil penalties, in excess of \$700,000 in restitution with interest, and more than \$52,000 in investigation costs. In the first part of the scheme, the defendants influenced and assisted investors to facilitate rollovers of their retirement accounts from well-known financial institutions where investors' funds were invested in traditional investments such as stocks, bonds, and mutual funds, to a relatively unknown and unconventional custodian that would allow investments in a wider array of products not generally permitted by well-established financial institutions. Once the rollovers were completed and the investors' retirement account investments had been liquidated to cash, investors were solicited to reinvest their savings into highly illiquid and highly risky alternative investments. These were principally unsecured and unregistered promissory notes in fledgling companies. In the end, Missouri investors lost more than \$700,000 of their retirement savings in these alternative investments while defendants

²⁰ See Andrew Perrin, [Mobile Technology and Home Broadband 2021](#), Pew Research Center (June 3, 2021); Pew Research Center, [Internet/Broadband Fact Sheet](#) (Apr. 7, 2021); Jason Wallace, [U.S. State Securities Regulators Label Social Media as “New Cold Call,” Ripe for Fraud](#), Reuters (Oct. 22, 2020).

²¹ Texas State Securities Board, [Securities Commissioner Stops Fraudster from Impersonating ARK Invest and an ETF Managed by Cathie Wood](#) (June 17, 2021). [Read the order.](#)

²² See, e.g., CFTC Press Release, [CFTC and 30 States Charge Los Angeles Precious Metals Dealers in Ongoing \\$185 Million Fraud Targeting the Elderly](#), Rel. No. 8254-20 (Sept. 25, 2020) (30 states and the CFTC obtained an asset freeze and a receivership in a \$185 million precious metals scam targeting senior citizens nationwide that made use of SDIRAs to execute the scheme); NASAA, [Informed Investor Advisory: Third-Party Custodians of Self-Directed IRAs and Other Qualified Programs](#) (Dec. 2014); NASAA and the SEC, [Self-Directed IRAs and the Risk of Fraud](#) (Sept. 28, 2011).

pocketed tens of thousands of dollars of investor money through undisclosed commissions and fees.²³

Last, while not a ‘top threat’ in our surveys, a major, persistent theme from our threats surveys over the years is the extent of the harm that occurs in private offerings. While a private offering is a popular way for companies to raise capital in the United States, state securities regulators dedicate significant resources to respond to fraud and other violations involving offerings under Regulation D of the Securities Act of 1933. In 2020, we opened at least 196 investigations and 67 enforcement actions involving offerings reliant upon the law. This includes at least 69 investigations and 24 enforcement actions relating to Regulation D, Rule 506(c), which generally permits issuers to publicly advertise unregistered securities so long as they limit sales to accredited investors.²⁴

In or about September 2022, NASAA anticipates releasing its figures from its most recent enforcement survey. In the meantime, to view additional data regarding NASAA’s top threats surveys and an illustrative list of state enforcement actions involving private offerings, see Tables A and B of the Appendix.

IV. Promoting Trust in Our Regulated Capital Markets

Nearly 15 years after the 2008-2009 Financial Crisis, a concerning amount of distrust in our regulated capital markets persists. In a survey conducted in July 2022 by *Morning Consult*, the percentages of Gen Z, Millennial, Gen X, and Baby Boomer respondents who expressed trust in Wall Street were 33%, 32%, 34%, and 36%, respectively. In a survey conducted in March 2021 by *Bankrate*, among those invested in the stock market (including those invested through retirement plans), 56% agreed the market is rigged against individual investors (20% strongly agreed and 35% somewhat agreed). Moreover, distrust of our regulated markets appears to be higher among communities of color than among white Americans.²⁵

As state securities regulators, we are not well-positioned to study all the various reasons why there continues to be a persistent lack of trust in our regulated markets. However, based on our experience working with victims and conversations with other key stakeholders such as peer regulators, we can state confidently that the proliferation and persistence of scams and offers that are ‘too good to be true’ are key contributing factors to the erosion of trust.

To combat the distrust, we work tirelessly to educate entrepreneurs and investors, register professionals and their products, write rules, conduct examinations, and, if needed, hold firms

²³ See, e.g., [Ashcroft’s Securities Division Orders Las Vegas Company to Pay \\$6.9 Million](#) (Mar. 16, 2021). State securities regulators in other jurisdictions, including Massachusetts, Michigan, and Nevada, also sued Retire Happy, LLC. See Travis Anderson, [Sec. of State Galvin’s Office Sanctions Retire Happy Company for Allegedly Defrauding Senior Citizens and Retirees](#), Boston Globe (Dec. 22, 2020).

²⁴ See [NASAA 2021 Enforcement Report](#) at p. 9.

²⁵ See Taylor Nicole Rogers, [Crypto Collapse Reverberates Widely Among Black American Investors](#), Financial Times (July 5, 2022); Morning Consult, [Tracking Trust in U.S. Institutions](#) (July 2022); Ariel-Schwab Black Investor Survey, [Report of Findings](#) (Apr. 2022); Lorie Konish, [Why U.S. Minority Communities May Turn to Cryptocurrencies to Pay Their Bills](#), CNBC (Feb. 8, 2022); Bankrate, [Survey: More Than Half of Investors Think the Stock Market Is Rigged Against the Individual](#) (Mar. 24, 2021); P. Sapienza and L. Zingales, [Financial Trust Index](#) (Feb. 5, 2020).

and professionals accountable for harming investors. Whenever possible, we work collaboratively with academics, consumer groups, peer regulators, trade associations, and other external partners to inform and advance our efforts.²⁶ Often, we collaborate with organizations and individuals with a physical or otherwise active presence in our states.

When working with investors who may be new to the capital markets, we are careful to use our entire regulatory toolkit. By way of example, during the last decade, we have invested considerable resources into educating investors of all ages and backgrounds about investing basics, including the basics related to digital assets.²⁷ We also have convened policymakers and industry participants several times, both in open-door and closed-door settings, to discuss trends and regulatory issues relating to the emergence of digital assets.²⁸ Last, though we always prefer to use our resources on education and regulatory services, we have had to invest resources into enforcing the law. Indeed, as explained earlier in my testimony, NASAA members have led efforts in the United States to investigate and, if appropriate, pursue action against hundreds of companies and individuals for fraud or similar misconduct relating to digital assets.²⁹

V. Passing Legislation and Conducting Congressional Oversight that Inspires Trust in Regulated Capital Markets

NASAA urges Congress to act on a swift, bipartisan basis to pass a package of bills and conduct oversight that will help to foster lasting trust in, and informed use of, the regulated capital markets. In doing so, Congress should prioritize proposals that would empower all of us to better prevent harm to investors before it occurs, better detect harm to investors before it spreads, and better address violations of the law. The following is a representative list of proposals and oversight actions to advance:

²⁶ Among other collaborative efforts, we have released numerous educational resources for older investors, as well as training materials for financial firms that serve them. *See, e.g.*, [NASAA, SEC to Jointly Host First Older Investor Roundtable Focused on Emerging Issues and Protection Challenges](#) (Apr. 25, 2022); [NASAA Releases Annual Enforcement Report](#) (Sept. 29, 2021); [FINRA, NASAA and SEC OIEA Urge Investors to Establish a Trusted Contact to Increase Investor Protection](#) (Sept. 28, 2021); [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); [NASAA, SEC & FINRA Issue Senior Safe Act Fact Sheet to Help Promote Greater Reporting of Suspected Senior Financial Exploitation](#) (May 23, 2019); SEC and NASAA, [Making Sense of Financial Professional Titles](#) (Sept. 2013); [AARP and NASAA Launch “Free Lunch Seminar Monitor” Program](#) (Oct. 14, 2008); *See generally* [SEC Chair Gensler Testifies Before U.S. House Financial Services Subcommittee](#) (May 19, 2022) (“Without examination against and enforcement of our rules and laws, we can’t instill the trust necessary for our markets to thrive. Stamping out fraud, manipulation, and abuse lowers risk in the system. It protects investors and reduces the cost of capital. The whole economy benefits from that.”).

²⁷ *See, e.g.*, NASAA, [Informed Investor Advisory: Decentralized Finance \(DeFi\) Defined](#) (Dec. 6, 2021); [Informed Investor Advisory: Protecting Your Online Accounts](#) (Sept. 16, 2021); [Informed Investor Advisory: Social Media, Online Trading and Investing](#) (Apr. 1, 2021); [Informed Investor Advisory: Initial Coin Offerings](#) (Apr. 16, 2018); [Informed Investor Advisory: Cryptocurrencies](#) (Apr. 13, 2018); [Informed Investor Advisory: The Next Big Thing](#) (Nov. 9, 2015); [Informed Investor Advisory: Virtual Currency](#) (Apr. 29, 2014).

²⁸ *See, e.g.*, [NASAA Announces Speakers and Agenda for 2021 Fintech and Cybersecurity Symposium](#) (Dec. 7, 2021); [NASAA Announces Agenda for Fintech and Cybersecurity Symposium](#) (Oct. 14, 2020); [NASAA Announces Agenda for Fintech and Cybersecurity Symposium](#) (Oct. 4, 2019); [NASAA Announces Agenda and Speakers for 2018 Fintech Forum](#) (May 10, 2018); [Speakers Announced for NASAA Public Policy Roundtable](#) (Apr. 9, 2018); [NASAA Public Policy Conference to Explore Challenges to Forecasting Markets and Investor Participation](#) (Mar. 20, 2014).

²⁹ *See, e.g.*, Senn Testimony.

Preventing Investor Harm

- **[The Empowering States to Protect Seniors from Bad Actors Act](#)** (H.R. 5914 | S. 3529): This bicameral, bipartisan legislation, which the House of Representatives (“House”) passed on May 11, 2022, 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 SEC the program administrator; (B) give the SEC the authority and tools necessary to operate a data-driven grant program; (C) empower the SEC to make grants to state regulators from across the United States; (D) authorize an appropriation of \$10,000,000 to the SEC for each of the fiscal years 2023 through 2028 to make such grants; (E) require the SEC to cap each grant at \$500,000; and (F) effectively create more opportunities for federal and state securities regulators to communicate and coordinate in their efforts to protect senior investors.³⁰ On July 14, 2022, the House passed H.R. 7900, the National Defense Authorization Act, as amended. The legislation included H.R. 5914 as an amendment.³¹
- **[The Insider Trading Prohibition Act](#)** (H.R. 2655 | S. 3990): S. 3990 would make it easier for market participants, courts, and other stakeholders to identify, follow, and enforce the law by creating a codified definition of illegal insider trading. In short, the bill would make it unlawful for a person to trade while aware of material, non-public information if that person knows, or has reason to know, that the information was obtained wrongfully. In addition, the bill would prohibit a person with material, non-public information from wrongfully passing along that information to others, or tipping them, if the person is aware that the communication would result in trading and the recipient in fact trades based on that communication. In May 2021, the House passed H.R. 2655 by a vote of 350 to 75.³²
- **[The 8-K Trading Gap Act of 2021](#)** (H.R. 4467 | S. 2360): This bicameral legislation, which received bipartisan support last Congress, would close a loophole by requiring the SEC to prohibit corporate insiders from making trades during the four-day period they have between the occurrence of a significant event – such as bankruptcy or an acquisition – and the public company’s legally-mandated disclosure. The SEC requires public companies to file an 8-K to announce significant events relevant to shareholders. Companies have four business days to file an 8-K for most specified items.³³

³⁰ See NASAA, [Letter to Senate Banking Committee Leadership Regarding S. 3529, the Empowering States to Protect Seniors from Bad Actors Act](#) (Jan. 25, 2022); NASAA, [Letter to House Financial Services Committee Leadership Regarding H.R. 5914, the Empowering States to Protect Seniors from Bad Actors Act](#) (Nov. 15, 2021).

³¹ See [H.R. 7900 - National Defense Authorization Act for Fiscal Year 2023](#).

³² See generally NASAA, [Letter to Senate Banking Committee Leadership Regarding Trust in Our Capital Markets](#) (Apr. 5, 2022); NASAA, [Letter to Rep. Himes Regarding H.R. 2655](#) (May 17, 2021); Written testimony of Melanie Senter Lubin, [Putting Investors First: Reviewing Proposals to Hold Executives Accountable](#) (Apr. 3, 2019).

³³ The House passed [The 8-K Trading Gap Act of 2019](#) by a vote of 384 to 7. See [Van Hollen, Maloney Introduce Bicameral Legislation to Help Eliminate Corporate Insiders’ Unfair Advantage in Stock Sales](#) (July 15, 2021).

- **Request a Study by the Government Accountability Office (“GAO”) Regarding Opportunities to Strengthen the Regulatory Framework Applicable to SDIRAs.**

Presently, the government divides the responsibility for overseeing SDIRAs among several federal, state, and independent entities. The U.S. Department of Labor, the SEC, the Financial Industry Regulatory Authority, Inc., the state securities regulators, the Office of the Comptroller of the Currency, state banking regulators, and the Internal Revenue Service (“IRS”)³⁴ all provide some oversight of some aspect of SDIRA-related investing. The specific mix of regulators varies depending on the type of financial institution that provides the account, the state in which the financial institution conducts the business, and the type of plan offered.³⁵ When GAO examines the framework, it should examine closely the practical and other consequences of federal and state securities regulators having no authority over SDIRA custodians. In the experience of state securities regulators, fraudsters portray SDIRA custodians to prospective investors as fiduciaries but then the custodians do not undertake the work of a fiduciary. Additionally, or alternatively, fraudsters lull victims into fraudulent schemes by using the general public’s familiarity with IRAs against them.

Detecting Investor Harm

- **[The Financial Exploitation Prevention Act of 2021](#)** (H.R. 2265): This bipartisan legislation, which the House passed in October 2021, would require registered open-end investment companies and the transfer agents who service them to contact customers who hold non-institutional accounts directly with the company to request information for a trusted contact who can be notified if the company or transfer agent identifies possible financial exploitation. It also would allow the company or transfer agent in limited circumstances to postpone the date of payment upon redemption of any redeemable security. Among other requirements, the company or transfer agent must reasonably believe the redemption was requested through the financial exploitation of a security holder. Also, the security holder must be (i) an individual age 65 or older or (ii) an adult who the company or agent reasonably believes cannot protect their own interests due to the adult’s mental or physical impairment (collectively, Specified Adults). Third, H.R. 2265 would require the SEC, in consultation with NASAA and other policymakers, to submit a report to Congress that includes recommendations regarding the regulatory and legislative changes necessary to address the financial exploitation of security holders who are Specified Adults. NASAA has proposed some improvements to the text that still need to be addressed.³⁶

³⁴ The IRS maintains an electronic list of entities approved, under Treasury Regulation Section 1.408-2(e), to serve as nonbank trustees or custodians. See IRS, [Approved Nonbank Trustees and Custodians](#); Treasury Inspector General for Tax Administration, Oversight of Nonbank Trustees Has Improved, but Resources Expended on the Program Should be Reevaluated, 2012-10-055 (May 11, 2012); GAO, [Individual Retirement Accounts: IRS Could Better Inform Taxpayers about and Detect Noncompliance Related to Unconventional Assets](#), GAO-20-210 (Jan. 2020) at 7.

³⁵ See GAO, [Retirement Security: Improved Guidance Could Help Account Owners Understand the Risks of Investing in Unconventional Assets](#), GAO-17-102 (Dec. 2016) at 11-13.

³⁶ We urge lawmakers to clarify the relationship between this legislation and state law so that nothing in this legislation can be construed to preempt or limit any provisions of state law unless the legislation provides a greater level of protection to investors. Lawmakers may wish to use the ‘no preemption provision’ in the 2018 Senior Safe

- [SEC Whistleblower Reform Act of 2022](#) (S. 3977): This bipartisan legislation would protect whistleblowers from retaliation if they reported violations to a direct superior. Currently, they are only protected if they report directly to the SEC or certain select officials.³⁷ In addition, the bill would ensure that claims and awards are processed in a timely manner. Although the SEC has been improving, they previously had a backlog of claims and awards that was several years long.³⁸ Last, the bill would clarify that whistleblowers cannot waive their rights through a pre-dispute arbitration agreement.

Legislation to Foster Accountability

- [The FAIR Act of 2022](#) (H.R. 963 | S. 505): The House approved this bicameral, bipartisan legislation by a vote of 222 to 209. The bill was referred to the Senate Committee on the Judiciary. Among other things, this legislation would prohibit broker-dealers and registered investment advisers from including pre-dispute arbitration clauses in customer contracts as well as invalidate any standing mandatory pre-dispute arbitration clauses in current employment and customer agreements.³⁹
- [Stronger Enforcement of Civil Penalties Act of 2021](#) (S. 2147): This bipartisan legislation would make several changes that are all designed to deter misconduct by bad actors. Specifically, the bill would broaden the SEC’s options to tailor penalties to the particular circumstances of a given violation. In addition to raising the per violation caps for severe, or “third tier,” violations to \$1 million per offense for individuals and \$10 million per offense for entities, the legislation would give the SEC more options to collect greater penalties based on the ill-gotten gains of the violator or on the financial harm to investors. Moreover, the bill would authorize the SEC to triple the penalty cap applicable to recidivists who have been held

Act as a model for drafting a preemption provision. *See* 12 U.S.C. § 3423(c) (“Relationship to State law. Nothing in this section shall be construed to preempt or limit any provision of State law, except only to the extent that subsection (a) provides a greater level of protection against liability to an individual described in subsection (a)(2)(A) or to a covered financial institution described in subsection (a)(2)(B) than is provided under State law.”). We also urge lawmakers to incorporate a requirement that, if a company or transfer agent reasonably believes that financial exploitation of a Specified Adult may have occurred, may have been attempted, or is being attempted, it must promptly notify the SEC, the relevant state securities regulator, and the relevant adult protective services agency. Lawmakers may wish to use language from the NASAA model act to draft an equivalent notification requirement for this legislation. *See* NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation, [Section 7 and its associated legislative commentary](#).

³⁷ *See* *Digital Realty Trust, Inc. v. Somers*, Case No. 16-1276 (S. Ct. Feb. 21, 2018); SEC, [Frequently Asked Questions: Whistleblower Rule Amendments](#).

³⁸ In 2015, *The Wall Street Journal* reported that data it had obtained showed that of the 297 individuals who had applied for whistleblower awards, 247 – or roughly 83 percent – had not yet received a decision from the SEC as to whether they will receive an award. Some claimants had been waiting for a decision from the Commission for over two years. *See* Rachel Louise Ensign and Jean Eaglesham, [SEC Backlog Delays Whistleblower Awards](#), *Wall St. Journal* (May 4, 2015). Fortunately, the SEC appears to be addressing the backlog. *See* Erika Kelton, [Watch Out, Wall Street – Record Number of Whistleblowers Flock to the SEC](#), *Forbes* (Nov. 30, 2021).

³⁹ *See generally* NASAA, [Letter to Senate Banking Committee Leadership Regarding Mandatory Arbitration Agreements in Our Capital Markets](#) (Mar. 12, 2022) (explaining that NASAA believes Congress should act now on a swift, bipartisan basis to empower investors and give them a choice when it comes to resolving disputes with securities firms and professionals).

either criminally or civilly liable for securities fraud within the previous five years. Last, the bill would allow the SEC to seek civil penalties against those who violate existing federal court or SEC orders, an approach that would be more efficient, effective, and flexible than the current civil contempt remedy.

VI. Opposing Legislation that Weakens Regulatory Authority and Undermines Trust in Our Regulated Capital Markets

As set out previously, NASAA believes that Congress should act on a swift, bipartisan basis to pass a package of bills and conduct oversight that will help foster trust and spur participation in the regulated capital markets. Conversely, Congress should work on a bipartisan basis to oppose legislation that would undermine these important goals.

Pending Legislation Relating to Digital Assets

Efforts are underway on potential legislative proposals aimed at regulating digital assets. As a general matter, NASAA is concerned that pending federal legislation would only serve to foster additional distrust in our regulated capital markets. Of particular concern are the proposals that would generate cascading costly consequences for everyone and preempt or restrict the authority of state securities regulators.⁴⁰

Importantly, NASAA firmly believes that we would all be taking a gigantic step in the wrong direction if legislation were to create new terms for the federal securities laws that are redundant of existing ones. The core terms in the federal securities laws—security, investment contract, broker, dealer, investment adviser, and so forth—have been used time and again for decades to bring new practices, products, professionals, and technologies into and under the securities regulatory framework. Creating terms and frameworks unique to digital assets but redundant of the core structure would have costly consequences for everyone, including investors, regulated entities, regulators, and taxpayers.

In addition, NASAA firmly opposes the establishment of a self-regulatory organization (“SRO”) or other regulatory body specific to digital assets. SROs, which are inherently conflicted, divert resources away from the public regulatory agencies and exacerbate the communication and coordination challenges that regulators and regulated entities and professionals face. Further, given cascading bankruptcies, continual losses through hacking and theft likely resulting from insufficient cybersecurity practices, and the constant threat of Ponzi schemes being conducted through digital asset businesses, it is clear that this industry has demonstrated it cannot regulate itself.⁴¹

Finally, to strengthen regulation in the digital asset space and restore the trust of the investors who have been harmed in this space already, the government must be even more effective in its efforts to educate, refresh and write rules, enforce the law, and, if needed, pass legislation.

⁴⁰ See, e.g., [S. 4356](#), Lummis-Gillibrand Responsible Financial Innovation Act; [H.R. 1628](#), Token Taxonomy Act of 2021.

⁴¹ See, e.g., [NASAA Letter to Senate Banking Committee Leadership with NASAA’s Core Principles](#) (Jan. 28, 2022).

These efforts should prioritize investor and consumer protection.

With respect to legislation, NASAA is not advocating for rushed legislation meant to foster the responsible development of digital assets. Put simply, we do not believe the best path forward is rushed legislation that fails to consider and reinforce the well-established securities regulatory framework and the important roles of state and federal securities regulation in our economy. Rather, NASAA believes that, before passing laws relating to digital assets that may be in place for years or even decades to come, Congress should allow the full policymaking process to occur and, when engaging in this process, seek to better understand and preserve the important role of the states.

On NASAA's part, we are engaging in processes associated with the March 2022 Executive Order on Ensuring Responsible Development of Digital Assets ("Executive Order") through our participation in FSOC, as well as direct engagement with senior staff at the SEC and the Department of the Treasury.⁴² In addition, we have had preliminary talks with senior SEC staff regarding the rulebook project that SEC Chair Gensler and his staff are spearheading. In those talks, we have urged the SEC to work expeditiously and continue to engage with NASAA as more details about the project come together.⁴³ Generally, we agree that, in order to bring transparency and investor protection into these markets, we need to work toward registration of all trading platforms and systems subject to securities laws and further agree that it is highly unlikely that unregistered platforms with dozens of products being traded on them do not have at least one security being traded on them.⁴⁴

In addition, while letting the full policymaking process occur, we are continuing to do the following:

- First, we are looking for and acting on opportunities to expand awareness of investing in our regulated capital markets among people of all ages and backgrounds while encouraging informed, goal-oriented, investment decision-making.
- Second, we are using clear, consistent messages to entrepreneurs and investors that issuers of digital assets and intermediaries and individuals handling digital assets must register promptly with the appropriate securities regulator or seek appropriate relief from them. As Congress knows well, these registration laws have helped establish the most trusted capital markets in the world. Moreover, our securities laws are at their most effective when new participants in the capital markets are using them. Last, it costs significantly more for everyone, including companies, investors, regulators, and taxpayers, to bring a mature, unregistered entity or professional than a new one into compliance with securities laws.
- Third, we are underscoring to market participants that they will be treated fairly. Today, most digital assets that are securities are structured the same way. Entrepreneurs seek to raise money from the public by selling an asset to an investor who is expecting a profit from the efforts of the entrepreneur. To allow digital asset-issuers more time to disclose

⁴² White House, [Executive Order on Ensuring Responsible Development of Digital Assets](#) (Mar. 9, 2022).

⁴³ See, e.g., Stefanie Palma and Patrick Jenkins, [SEC Chair Urges 'One Rule Book' for Crypto to Avoid Gaps in Oversight](#), Financial Times (June 24, 2022).

⁴⁴ See, e.g., SEC Chair Gensler, [Remarks Before the Aspen Security Forum](#) (Aug. 3, 2021).

material facts to investors and to otherwise provide them special treatment under state and federal securities laws would undermine the public securities markets, disaggregate regulation of essentially identical securities offerings, and give certain businesses an unfair competitive advantage. Such an approach would be contrary to our fundamental, longstanding promises to entrepreneurs and investors, including our promise to maintain *fair* markets.

We urge Congress to join NASAA in sending the above clear, consistent messages, particularly to the next generation of entrepreneurs and investors.

Pending Legislation Relating to Traditional Capital Formation

Similarly, efforts are underway to pass legislation that would restrict the role of regulation, particularly state regulation, in capital formation. Notably, these proposals would expand the private capital markets at the expense of the public markets in the United States.⁴⁵ As I will explain, any further erosion of the public capital markets and the authority of state securities regulators is simply dangerous for businesses, investors, and capitalism more generally, and thus is a recipe for producing additional distrust in our regulated capital markets.

As a general matter, we oppose policies designed to expand the opaque, less regulated private markets. Put simply, expanding the private markets by relaxing or repealing capital formation requirements would exacerbate an already critical problem for our nation and our capital markets—nobody, including businesses, investors, legislators, and regulators, has a clear line of sight into these private (and dark) markets. In these dark markets, all but the most sophisticated, well-funded investors typically lack adequate information about the business and operations of the private companies in which they are investing. Public and private companies alike typically struggle to account for private companies when they conduct risk assessments and as applicable provide disclosures. Last, regulators and legislators, who are charged in different ways with overseeing these markets, lack the information necessary to know if the next financial crisis is coming.⁴⁶ This combination of blindfolds undermines our shared goal of having free markets that, through and because of regulation, are fair, orderly, and efficient.

With respect to the active efforts to expand the private markets, we are especially concerned with the Small Entrepreneurs' Empowerment and Development (SEED) Act, the Improving Crowdfunding Opportunities Act, and the Facilitating Main Street Offering Act.⁴⁷

- The SEED Act would exempt so-called “micro-cap offerings” – or offerings valued at \$500,000 or less in a single year – from core regulatory protections of the Securities Act of 1933, including registration and disclosure protections, and preempt the authority of states to require registration with or notice to the states of these offerings.

⁴⁵ See, e.g., [Banking Republicans Roll Out Capital Formation Legislation to Mark 10th Anniversary of JOBS Act](#) (Apr. 4, 2022).

⁴⁶ See SEC Commissioner Allison Herren Lee, [Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy](#) (Oct. 12, 2021).

⁴⁷ [S. 3939](#), Small Entrepreneurs' Empowerment and Development (SEED) Act of 2022; [S. 3967](#), The Improving Crowdfunding Opportunities Act; and [S. 3966](#), Facilitating Main Street Offerings Act.

- The Improving Crowdfunding Opportunities Act would prohibit state governments from requiring securities issuers to report information to the state regarding trades of their securities made through funding portals.
- The Facilitating Main Street Offering Act would undermine responsible capital formation and investor protection by preempting state securities regulation of secondary trading of Regulation A securities issued in Tier 2 offerings.

NASAA’s opposition is two-fold. First, we fundamentally disagree with the principle that the way to pursue more capital raising is to take away the choice of state governments to decide if and how their securities regulators will review securities offering materials for compliance with basic fairness standards and/or the choice of receiving notification of an offering or sale that has occurred within their state. This is especially so when these offerings will be offered and sold by businesses in our communities to investors in our communities. State securities regulators regularly witness firsthand the value that comes from having small businesses engage directly with local regulators regarding small-dollar offerings. This engagement helps entrepreneurs better understand their options for raising capital. It also deters fraud and other misconduct that can harm business owners and investors alike. Last, it facilitates investor access to information necessary to make informed investment decisions, thus enhancing the fairness and efficiency of our capital markets. Again, any further erosion of the authority of state securities regulators is clearly dangerous to businesses and investors and counter-productive to the goal of promoting responsible capital formation.⁴⁸

Second, the explosive growth of America’s marketplace for private securities offerings the last several decades has created significant 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. This challenge would not exist, or at least not exist to the

⁴⁸ In 1996, the National Securities Markets Improvement Act (“NSMIA”) added Section 28 to the Securities Act of 1933, 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 to avail themselves of exemptions available under state law for exchange-listed securities. In 2012, the Jumpstart Our Business Startups Act (“JOBS Act”) enacted provisions that increased the attractiveness of exempt offerings relative to initial public offerings 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 the company is required go public; removed a long standing prohibition against the use of general solicitation for private offerings under Regulation D, Rule 506 and Rule 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 of 1933, 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. *See* Michael Pieciak, former Vermont Commissioner of Financial Regulation and 2018-2019 NASAA President, [Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment](#) (Sept. 11, 2019) (“Pieciak Testimony”).

extent it does, if we had not spent decades investing in regulation and legislation that tilts the markets heavily in favor of private securities and funds.⁴⁹

Rather than proposals like the ones I described, NASAA would urge Congress to develop legislation that would foster responsible capital formation and preserve the important role that state securities regulators play in it. For example, NASAA urges members of Congress to support [The Promoting Opportunities for Non-Traditional Capital Formation Act](#) (H.R. 7977). In short, this bill would require the SEC’s Advocate for Small Business Capital Formation (the “Advocate”) to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses and businesses located in rural areas. In addition, it would require the Advocate to meet at least annually with representatives of state securities regulators to discuss opportunities for collaboration and coordination with respect to these efforts.⁵⁰ While NASAA appreciates the efforts of the prior Advocate to engage state regulators, NASAA believes an annual meeting requirement would ensure such engagement occurs on a more regular basis. Moreover, it potentially would prompt ongoing discussions and collaboration between the Advocate and state securities regulators. As then-SEC Commissioner Michael Piowar said in 2017, “For a capital formation agenda to succeed, it is essential that state and federal regulators work together to support the businesses that seek to engage in these offerings while also protecting investors.”⁵¹

VII. Conclusion

Thank you again for the opportunity to testify. I hope I have provided a helpful roadmap for how we collectively can work together on a swift, bipartisan basis to promote lasting trust in, and informed use of, our regulated capital markets. I look forward to your questions.

⁴⁹ See, e.g., SEC Commissioner Allison Herren Lee, [Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy](#) (Oct. 12, 2021); Pieciak Testimony.

⁵⁰ See [NASAA Letter to House Financial Services Committee Leadership Regarding H.R. 7977](#) (June 10, 2022).

⁵¹ SEC Commissioner Michael Piowar, [Opening Remarks at 2017 SEC/NASAA Annual Section 19\(d\) Conference](#) (May 9, 2017).

VIII. Appendix, Tables A and B

Table A – Results of NASAA Member Surveys Regarding Top Investor Threats⁵²			
Threat Categories	Top Threat		
	2021	2020	2019
1. Financial schemes connected to self-directed individual retirement accounts	X	X	
2. Foreign exchange-related schemes		X	
3. Fraudulent offerings related to promissory notes	X		X
4. Fraudulent investments tied to digital assets	X	X	X
5. Ponzi schemes			X
6. Scams offered through social media	X	X	X
7. Scams otherwise offered online	X	X	X
8. Scams relating to precious metals		X	
9. Scams relating to real estate investments			X

⁵² Most years, we conduct a survey of our members to help us better understand present and emerging threats to investors. We encourage them to respond based on investor complaints, ongoing investigations, and current enforcement trends in their jurisdictions. The survey is voluntary, and a large majority of NASAA members participate. The list of participants varies slightly each year. *See also* [NASAA Reveals Top Investor Threats for 2022](#) (Jan. 10, 2022); [NASAA Announces Top Investor Threats for 2021](#) (Mar. 3, 2021); [NASAA Announces Top Investor Threats for 2020](#) (Dec. 23, 2019).

Table B: Illustrative Examples of 2021 State Administrative Matters Relating to Private Offerings

Note: As reported in the online Lexis Advance database. States may have actions that are not included in this database.

Source: Research paper presented at the 2022 ALI Regulation D Conference by NASAA member and Ohio Securities Commissioner Andrea Seidt.

No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
1	Alioski	AL	Y	Y	Y	X	X		
2	Reflect Bitcoin	AL	Y	N	N	X			
3	BlockFi	AL	Y	Y	N	X			
4	Carson	AL	Y	Y	N			X	
5	Celsius Network LLC	AL	Y	Y	N	X			
6	Acoin Trading	AL	Y	Y	Y	X			
7	Arbirate LLC	AR	Y	Y	Y	X			
8	Mycapitaltradefx.com	AR	Y	Y	Y	X			
9	French	AZ	Y	Y	Y				X
10	Verdugo Enterprise LLC	AZ	Y	Y	Y				
11	Okoye	AZ	Y	Y	Y	X			X
12	Family Tree Estate Planning LLC	AZ	Y	Y	Y				
13	Jardine	AZ	Y	Y	N	X			
14	Global Capital and Equity LLC	AZ	Y	Y	Y	X	X		
15	Automata FX Ltd	AZ	Y	Y	Y	X			
16	Grand Oak Enters LLC	AZ	Y	Y	Y			X	
17	Marketing Dynamics Inc	AZ	Y	Y	Y			X	

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No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
18	Hawkins	AZ	Y	Y	Y			X	
19	My Trader Coin	AZ	Y	Y	Y	X			
20	Meta 1 Coin Trust	AZ	Y	Y	Y	X	X		
21	D2D Fin LLC	AZ	Y	Y	Y	X		X	
22	Day	AZ	Y	Y	Y			X	
23	Wenima Dev LLC	AZ	Y	Y	Y	X			
24	Comet Confections PBC	CA	Y	N	N			X	
25	TradersFXinc.com	CA	Y	Y	Y	X			
26	Rivas	CA	Y	N	N			X	
27	Zhang	CO	Y	Y	N				
28	Renison	CT	Y	Y	Y				
29	Endeavor Global Partners Corp	CT	Y	Y	Y				
30	Maida	FL	Y	N	Y				
31	Hoagland	ID	Y	Y	Y			X	
32	Blalock	IL	Y	Y	Y				
33	Charles Winn LLC	IL	Y	Y	Y				X
34	Market Master LLC	IL	Y	Y	Y	X	X		

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No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
35	McGuar	IL	Y	Y	Y			X	
36	Region Home Buyers LLC	IN	Y	N	Y	X			
37	Wright	KY	Y	Y	Y	X			
38	BlockFi	KY	Y	Y	N	X			
39	Celsius Network LLC	KY	Y	Y	N	X			
40	Fuqua	KY	Y	Y	Y				
41	Zipbox Inc	MA	Y	Y	Y				
42	Davis	MD	Y	Y	Y	X			
43	Beasley	MD	Y	Y	Y	X	X	X	
44	Fusting	MD	Y	Y	Y			X	
45	Carlini	MD	Y	Y	Y			X	
46	Divel	MD	Y	Y	Y			X	
47	Plug N Go Electrix LLC	MD	Y	Y	N		X		
48	Ekane	MD	Y	Y	Y	X			
49	Retire Happy LLC	MO	Y	Y	Y			X	
50	Kucera	MO	Y	Y	Y			X	
51	Monarch Capital Inv Fund LLC	MO	Y	Y	Y			X	

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Source: Research paper presented at the 2022 ALI Regulation D Conference by NASAA member and Ohio Securities Commissioner Andrea Seidt.

No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
52	Marg	MO	Y	Y	Y			X	
53	Green Clinic LLC	MO	Y	N	N				
54	Peabody	MO	Y	Y	Y			X	
55	Brendaleetrades.com	MO	N	Y	Y	X	X		
56	WCO Holdings LLC	MO	Y	Y	N			X	
57	Cryotherm USA Inc	MO	Y	Y	N			X	
58	Myers	MO	Y	Y	Y			X	
59	VonKahle	NH	Y	Y	Y	X			
60	Chamberlain	NJ	Y	Y	Y			X	
61	Frimer	NJ	Y	Y	Y			X	
62	BlockFi Inc	NJ	Y	Y	N	X			
63	Celsius Network LLC	NJ	Y	Y	N	X			
64	RealBitcoreMining	NJ	Y	Y	Y	X			
65	Bulk Inv	NJ	Y	Y	Y	X			
66	Forte Trade Ltd	NJ	Y	Y	Y	X			
67	Dilna Inv Ltd	NJ	Y	Y	Y	X			
68	FileFxOption	NJ	Y	Y	Y	X			

Table B: Illustrative Examples of 2021 State Administrative Matters Relating to Private Offerings

Note: As reported in the online Lexis Advance database. States may have actions that are not included in this database.

Source: Research paper presented at the 2022 ALI Regulation D Conference by NASAA member and Ohio Securities Commissioner Andrea Seidt.

No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
69	Valentine	NJ	Y	Y	Y				X
70	Howley	NJ	Y	Y	Y			X	
71	Diversified Capital Inc	NM	Y	Y	N				
72	New Age Wall Street LLC	NM	Y	Y	N	X			
73	Rodriguez	OH	N	Y	N				X
74	TMTE Inc	OH	Y	Y	N				X
75	Alverson	OH	Y	N	Y				
76	Wright	OH	Y	Y	Y	X			
77	Cryptobravos	OH	Y	N	Y	X			X
78	Full Logic Solutions LLC	OH	Y	N	N		X		
79	Carson	OK	Y	Y	Y				
80	Binary Active Stock Trade Ltd	OK	Y	Y	Y	X			
81	Geiger	OR	Y	Y	Y			X	
82	Fx Trader Stock	SC	Y	Y	Y	X	X		
83	Abend	SC	Y	Y	N			X	
84	Southern Union Revolving Fund Inc	TN	Y	N	N			X	
85	Digitaly Invest	TX	Y	Y	Y	X		X	

Table B: Illustrative Examples of 2021 State Administrative Matters Relating to Private Offerings

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Source: Research paper presented at the 2022 ALI Regulation D Conference by NASAA member and Ohio Securities Commissioner Andrea Seidt.

No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
86	Delta Crypt Ltd	TX	Y	Y	Y	X			
87	Dailyforex247	TX	Y	Y	Y	X			
88	Bitles Ltd	TX	Y	Y	Y	X			
89	Hyperion Trust LLC	TX	Y	Y	Y	X			
90	Esco Capital	TX	Y	Y	Y	X			
91	Affort Projects SA	TX	Y	Y	Y	X			
92	Key Wealth Management Worldwide	TX	Y	Y	Y	X		X	
93	Prestige Asset Management LLC	TX	Y	Y	Y	X			
94	Wichkoski	TX	Y	Y	Y	X			
95	Riek Capital	TX	Y	Y	Y				
96	Hopkins	TX	Y	Y	N			X	
97	Trussel	TX	Y	N	Y			X	
98	Treasure Growth LLC	TX	Y	Y	Y	X	X		
99	Yuschik	VA	Y	Y	N				
100	Kim	VA	Y	Y	N				
101	Bouchereau	VA	Y	Y	Y			X	
102	Wealthbridge Inc	VA	Y	N	Y			X	

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			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
103	US Data Mining Group Inc	VA	Y	N	N				
104	BlockFi Inc	VT	Y	Y	N	X			
105	Wesleyan Inv Fdn Inc	WA	Y	N	N			X	
106	Charles Winn LLC	WA	Y	Y	Y				X
107	Trademining Inc	WA	Y	Y	Y	X	X		
108	Powell	WA	Y	Y	Y			X	
109	Guardian Data Sys LLC	WA	Y	Y	Y			X	
110	Symboli Blockchain LLC	WA	Y	N	Y				
111	NMJ Group	WA	Y	N	Y			X	
112	Coinchainbtc.com	WA	Y	N	Y	X	X		
113	Worldofcryptomining.com	WA	Y	N	Y	X			
114	24Xploittrade	WA	Y	N	Y	X	X		
115	FX-Bittrade	WI	Y	Y	Y	X	X		
116	Adkins	WI	Y	Y	Y	X			
117	BoomFX	WI	Y	Y	Y	X	X		
118	Charles Winn LLC	WI	Y	Y	Y				X
119	Smiley	WI	Y	Y	Y			X	

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No.	Respondent in State Action	State	Types of Violations			Frequent Modes of Solicitation			
			Registration	Licensing	Fraud(like)	Website	Social Media	Direct Solicitation	Phone
120	Behuz Inv	WI	Y	Y	Y	X	X		
121	Frigates	WI	Y	Y	Y		X		