



Consumer Federation of America



December 7, 2015

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

We are writing in advance of this week's mark-up to express our concerns regarding two of the bills scheduled for consideration – H.R. 2187, the Fair Investment Opportunities for Professional Experts Act and H.R. 3784, the SEC Small Business Advocate Act. Both bills require significant amendments, described below, to ensure that they do not undermine essential investor protections. Unless those changes are adopted, we urge you to oppose these bills.

### **H.R. 2187, the Fair Investment Opportunities for Professional Experts**

The accredited investor definition is long overdue to be updated. The current approach, which relies exclusively on financial thresholds, is ineffective in identifying a population of investors capable of fending for themselves without the protections afforded in the public markets. Moreover, we support the concept behind this legislation, that individuals who have the expertise and experience to knowledgeably assess the risks and benefits of private offerings should be able to qualify as accredited investors without regard to their income or assets, in cases where such expertise and experience is extensive and has been thoroughly verified. Indeed, the SEC's Investor Advisory Committee adopted a recommendation to update the definition that encourages adoption of a standard that both recognizes financial expertise as a qualification and provides additional flexibility around the financial thresholds. We commend that recommendation to your consideration.

Should the Committee determine to move forward on the more limited approach adopted in H.R. 2187, however, additional changes are needed to ensure that it doesn't undermine needed investor protections. We greatly appreciate the improvements to the legislation reflected in the amendment in the nature of a substitute. In particular, the elimination of the original bill's provision to allow individuals to qualify as accredited investors simply by virtue of reliance on financial professionals who aren't bound by a fiduciary duty, may have a significant financial

stake in the offering, and in some cases aren't even subject to securities regulatory oversight addresses our most pressing concern with the original bill.

Unfortunately, the substitute amendment includes a new and highly problematic provision to incorporate the existing financial thresholds in the statutory language. Because it does not include any provision to allow for those thresholds to be adjusted to reflect inflation going forward, this approach ensures that the protective value of the thresholds will continue to be eroded over time. Moreover, it denies the SEC any ability to adjust those thresholds in the future if it determines that they do not adequately protect investors. We do not believe it is wise to incorporate the thresholds in the statute, and this is especially true at current levels, since these have not been adjusted for inflation for so long. If the Committee none the less wants to incorporate the financial thresholds in the statute we urge you to also include an automatic adjustment for inflation to ensure that the thresholds do not further lose value over time. The bill should also give the SEC authority to raise those thresholds in the future if it finds that they do not adequately protect investors. Unless that change is adopted, we urge you to oppose the bill.

### **H.R. 3784, the SEC Small Business Advocate Act**

This bill would create an Office for the Advocate of Small Business Capital Formation within the SEC and a Small Business Capital Formation Advisory Committee to advise the agency. A key role of the office would be to identify issues and propose changes to statutes, regulations, and rules to benefit small businesses and their investors and facilitate capital formation. The legislation is at best unnecessary and at worst harmful if, in the name of capital formation, it advocates policies that further erode protections for investors in small companies.

The design of the office and the committee mirrors that of the Office of Investor Advocate and Investor Advisory Committee established under the Dodd-Frank Act. That office was established in response to concerns that investor voices were not being included during the Commission's development of policies that affected their interests. We've seen no evidence that small companies have suffered a similar difficulty in getting their concerns addressed at the Commission. On the contrary, the Commission's excessive responsiveness to small company concerns has led to rulemakings to implement provisions of the JOBS Act that contradict congressional intent (e.g., with regard to state preemption of state authority over Regulation A offerings) and provide weak or non-existent protections for investors in small companies (e.g., rules to permit general solicitation in Regulation D offerings without any provisions to mitigate the potentially harmful impact on investors). Creating a new office in the Commission to advocate on behalf of small companies is likely simply to exacerbate this problem.

We appreciate that the legislation requires the Office to consult with the Investor Advocate and to advocate not just on behalf of small companies but also small company investors, a group that has been sorely neglected in recent policy discussions. Since small companies naturally show greater profit volatility than larger companies, and less financial

information may be available for such companies, small company investors are an especially vulnerable class of investor.

It is unclear, however, how significant the focus on investor concerns is likely to be in an office headed by an advocate on behalf of small companies themselves, whose interests may in some cases differ from those of small company investors. If the Committee insists on moving forward with this bill, we urge you at least to require that the office include a senior level employee with expertise and experience advocating on behalf of investors and responsibility for ensuring that concerns of small company investors are addressed. In addition, much as the Investor Advisory Committee includes a number of industry representatives, we urge you to require robust representation for investors and investor advocates on the Small Business Capital Formation Advisory Committee in order to ensure that the interests of the providers of capital to small companies are given full and fair consideration.

Without these changes to ensure that the office and committee do not devolve into yet another set of advocates to undermine the interests of investors in small companies, we urge you to oppose the bill.

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Thank you for your attention to our concerns. If you have any questions about our position on this issue, please feel free to contact either CFA Director of Investor Protection Barbara Roper (719-543-9468, bnroper@comcast.net) or Marcus Stanley, Policy Director for Americans for Financial Reform (202-466-3672, marcus@ourfinancialsecurity.org).

Respectfully submitted,

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Consumer Federation of America

Marcus Stanley, Policy Director  
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