



Consumer Federation of America

February 12, 2018

Vote NO on H.R. 3978, the “TRID Improvement Act,” now including the following extraneous, anti-investor bills:

- H.R. 1645, the “Fostering Innovation Act;”
- H.R. 3948, the “Protection of Source Code Act;” and
- H.R. 4546, the “National Securities Exchange Regulatory Parity Act.”

Dear Representative:

We understand the House is scheduled to vote this week on H.R. 3978, the “TRID Improvement Act.” While we did not take a position on this bill when it came before the House Financial Services Committee, we urge you to oppose it now that it includes the following extraneous, anti-investor bills: H.R. 3948, the “Protection of Source Code Act;” H.R. 1645, the “Fostering Innovation Act;” and H.R. 4546, the “National Securities Exchange Regulatory Parity Act.” Each of these bills would harm investors and undermine the integrity of our capital markets.

- **H.R. 1645, the “Fostering Innovation Act,” would make financial accounting fraud more likely.**

This legislation would extend the period of time in which certain public companies would be exempt from a requirement that provides important protections against financial reporting errors, including errors that are the result of fraud. That is the requirement under Section 404(b) of the Sarbanes-Oxley Act that requires auditors, as part of their audits of public company financial statements, to assess and attest to the adequacy of the company’s internal controls to ensure accurate financial reporting. This bill would extend this exemption for up to five years to a class of companies, including those that have gone public but may be struggling to produce significant revenues, that could have a particular incentive to manipulate their financial statements in order to attract more capital. Companies should not be permitted to raise capital in the public markets if they do not have adequate controls in place to prevent financial reporting errors and fraud. And auditors cannot reasonably attest to the accuracy of a company’s financial statements without carefully assessing those controls. Requiring auditors to attest to the adequacy of those controls as part of the financial statement audit contributes to the market transparency and integrity that is essential to a healthy capital formation process. Moreover, the number and severity of financial restatements has declined since the requirement was adopted, which demonstrates that these requirements have benefited the market significantly. Because this legislation would make financial accounting fraud more likely, we oppose it. Furthermore,

because this legislation is being attached to the TRID bill, we urge you to oppose the entire package.

- **H.R. 3948, the “Protection of Source Code Act,” would weaken SEC oversight of algorithmic trading and hamstringing the agency from responding quickly to flash crashes or other market breakdowns.**

At a time when algorithmic trading is taking on increased importance in our capital markets, this bill would make it more difficult for the SEC to properly oversee such trading. The bill would require the SEC to first issue a subpoena before it could compel a person to produce or furnish to the SEC algorithmic trading source code or “similar intellectual property.” This would undermine the SEC’s examination authority by creating a gaping hole in its ability to gain access to firm records relevant to the examination. It would also have a devastating effect on the agency’s ability to respond quickly in the event of another “flash crash” or other such events in the future. In order to oversee the markets effectively, the SEC needs to be able to accurately and efficiently reconstruct order entry and trading activity, including for algorithmic traders. Because this legislation would weaken SEC oversight of algorithmic trading and hamstringing the agency from responding quickly to flash crashes or other market breakdowns, we oppose it. Furthermore, because this legislation is being attached to the TRID bill, we urge you to oppose the entire package.

- **H.R. 4546, the “National Securities Exchange Regulatory Parity Act,” would drastically weaken standards for securities to be listed and traded on exchanges.**

H.R. 4546 would change the terms on which securities are deemed “covered securities,” and thus exempt from state oversight. It would do so by removing any requirement that these securities have to meet conditions comparable to the current listing standards on leading national exchanges. Instead, any security listed on an exchange that is a member of the National Market System (NMS) would be exempt from state regulation and oversight. Because the bill would not establish any core quantitative or qualitative requirements for covered securities to replace those eliminated by the bill, it would likely accelerate an already troubling race to the bottom in listing standards among NMS members. Moreover, the bill does not sufficiently protect against the possibility that a venture exchange could eventually be established specifically to meet the bill’s requirements for state preemption. If this were to occur, smaller, more local offerings typically overseen by states could be “designated as qualified for trading” on such an exchange without any assurance that they can meet basic quantitative and qualitative standards designed to ensure investors are appropriately protected. In short, this bill would eliminate protections afforded by state oversight, fail to replace the current meaningful protections afforded by high listing standards with a comparable alternative, and leave investors without any reasonable hope that the SEC will be able to provide effective oversight at the federal level. Because this legislation would drastically weaken standards for securities to be listed and traded on exchanges, we oppose it. Furthermore, because this legislation is being attached to the TRID bill, we urge you to oppose the entire package.

The TRID bill should not be used as a vehicle to pass extraneous, anti-investor bills. Because the bills attached to the TRID bill would harm investors and undermine the integrity of

our capital markets, we urge you to vote no on the entire package when H.R. 3978 comes to the floor this week.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Roper".

Barbara Roper
Director of Investor Protection

A handwritten signature in cursive script that reads "Micah Hauptman".

Micah Hauptman
Financial Services Counsel