



## Consumer Federation of America

February 2, 2022

The Honorable Brad Sherman  
2181 Rayburn House Office Building  
Washington, D.C. 20515

### **Re: Support for Amendment #573 to H.R. 4521**

Dear Congressman Sherman:

On behalf of the Consumer Federation of America (CFA), I am writing to express support for your amendment to H.R.4521,<sup>1</sup> the America COMPETES Act of 2022. By requiring certain privately held issuers to disclose basic information to the U.S. Securities and Exchange Commission (SEC), your amendment will promote additional transparency in the “private placement” market and enhance investor protection.<sup>2</sup>

CFA has long been concerned about the rapid expansion and relative opacity of the private securities markets.<sup>3</sup> Under the current exempt offering framework,<sup>4</sup> foreign and domestic issuers can access virtually unlimited amounts of private capital without ever having to register with the SEC or engage in ongoing reporting under the Securities Exchange Act of 1934. Moreover, many other stakeholders, including state securities regulators,<sup>5</sup> SEC Commissioners,<sup>6</sup> leading academics and practitioners, and others - have echoed CFA’s concerns in this regard.<sup>7</sup>

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<sup>1</sup> [https://amendments-rules.house.gov/amendments/COMPETES\\_Mgrs\\_Exempt\\_xml220201114928419.pdf](https://amendments-rules.house.gov/amendments/COMPETES_Mgrs_Exempt_xml220201114928419.pdf).

<sup>2</sup> The “private placement market” refers to the market for securities issued by companies that do not make registered public offerings or engage in ongoing reporting pursuant to the Securities Exchange Act of 1934.

<sup>3</sup> See e.g., CFA, Comment Letter Re: File Number S7-05-20, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets (June 4, 2020).

<sup>4</sup> For purposes of this letter, the term “exempt offering framework” refers to the series of exemptions from registration requirements established by SEC Regulation D and SEC Regulation A.

<sup>5</sup> Written testimony of Vermont Commissioner of Financial Regulation and NASAA President Michael Pieciak. House Committee on Financial Services (September 11, 2019), <https://www.nasaa.org/wp-content/uploads/2019/09/NASAA-Written-Testimony-HFSC-IPECM-Commissioner-Michael-Pieciak.pdf>.

<sup>6</sup> See SEC Commissioner Allison Herren Lee, *Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy* (Oct. 12, 2021), <https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12>.

<sup>7</sup> Letter to President Biden (January 21, 2021), <https://www.nasaa.org/wp-content/uploads/2021/01/Letter-to-President-Biden-on-Securities-Laws-and-Stimulus-012121.pdf>.

In December of 2020, Congress passed the Holding Foreign Companies Accountable Act, which requires that any U.S. exchange-listed foreign company be delisted if, for three consecutive years, the PCAOB is unable to inspect the primary auditor of that company. As hearings held by the House Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets have established, in the event that foreign issuers – and especially issuers based in the People’s Republic of China (PRC) – are prevented from listing on U.S. securities exchanges pursuant to the Holding Foreign Companies Accountable Act, it is possible and indeed likely that such issuers may attempt to utilize the exempt offering framework as a means to continue to raise large amounts of capital from U.S. investors. Your amendment anticipates this possibility and takes important steps to discourage it.

In summary, your amendment will enact important reforms to the exempt offering framework to enhance transparency for the investing public with respect to privately issued securities sold by foreign issuers. Such reforms are commendable in-and-of themselves. Your amendment would also compliment the Holding Foreign Companies Accountable Act by making it more difficult for foreign issuers to ignore its requirements while continuing to raise capital from U.S. investors. For those reasons, CFA is pleased to support your amendment.

Thank you for your attention to CFA’s views. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dylan Bruce', with a stylized flourish at the end.

Dylan Bruce  
Financial Services Counsel  
Consumer Federation of America

CC: The Honorable Maxine Waters  
The Honorable Patrick McHenry