



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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The Honorable Michael Oxley
Chairman
House Committee on Financial Services
2129 RHOB
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
House Committee on Financial Services
B-301C RHOB
Washington, DC 20515

Dear Chairman Oxley and Ranking Member Frank:

On behalf of the North American Securities Administrators Association (NASAA),¹ I want to convey our support for your ongoing efforts to enact a strong national security breach notification and a security freeze law. The mission of state securities regulators is to protect investors. We undertake our responsibilities by implementing strong enforcement programs to punish and deter those who violate securities laws, as well as comprehensive investor education programs designed to enhance the investors' defenses against fraud and abuse. As a result of both our enforcement and education efforts, we have been made acutely aware of the investing public's concern with security of their personal data and protection from identity theft.

Heightened congressional interest in security breach legislation follows the enactment of laws in a number of states requiring institutions to notify affected consumers following a data security breach. In fact, more than twenty states have enacted data breach disclosure laws. These efforts by state legislatures have resulted in a heightened awareness by the general public of the deficiencies in the security of electronic information in general, and of numerous security breaches at some of the nation's largest firms in particular.

Both the primacy and importance of state privacy laws were specifically recognized and embraced by Congress in Title V of Gramm-Leach-Bliley Act (GLBA). NASAA and state securities regulators have been instrumental in facilitating compliance with the privacy provisions in the GLBA. Upon the adoption of rules by the Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC), NASAA provided its member states with a comprehensive explanation of the requirements for broker-dealers and state investment advisers under the GLBA. In addition, state securities regulators have provided guidance to state licensed investment advisers regarding their obligations under the GLBA. Further, state regulators routinely review compliance with privacy requirements during examinations of investment advisers and broker-dealers. The privacy of consumer financial information is an important issue for state securities regulators, as evidenced by our active roles in the implementation of the privacy provisions of the GLBA.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

The level of federal preemption in the various data security breach bills varies from a narrowly focused preemption to a near total preemption of state laws in the privacy area. State securities regulators have vast experience in coordinating their enforcement activity with federal and state regulatory counterparts in an effective, nonduplicative manner. It would be a considerable loss to your constituents should any aspect of that oversight be preempted. While we strongly believe that preemption of any state laws is both unnecessary and potentially detrimental in this situation, should Congress decide to preempt state law, NASAA urges that the preemption be narrowly drafted such that investors are not deprived of the protections that state laws currently provide.

We are concerned that the unintended consequences of a broad preemption provision could eliminate effective investor protection measures at the state level. For example, of the 50 states, the District of Columbia, Guam and Puerto Rico, 48 have adopted rules/statutes concerning the unethical business practices of investment advisers. NASAA Model Rule 102(a)(4)-1 – The Unethical Business Practices of Investment Advisers – (the “Rule”) was developed by NASAA to help its members and state registered investment advisers understand what types of business conduct would be considered unethical. The Rule is a comprehensive document designed to help prevent investment advisers from committing unethical business practices and to hold them accountable for violations of their fiduciary obligations to their clients. The following component of the Rule notifies investment advisers of their responsibility to prevent the misuse of nonpublic information:

Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

As stated above, state securities examiners currently conduct examinations of both investment advisers and broker-dealers to ensure compliance with all applicable privacy requirements. We conduct these examinations in order to protect the privacy of persons who give investment advisers and broker-dealers their personal information, whether in the course of doing business or when considering doing business. NASAA believes it is of importance to the protection of the investing public to ensure our authority is not inadvertently preempted in a data security breach law.

Thank you for considering the views of NASAA. We look forward to assisting the Congress as you continue to develop data security legislation that would protect consumers and investors without surrendering their other safeguards under state and federal law. Please do not hesitate to contact me, Jim Ropp, Delaware Securities Commissioner and Chair of the Federal Legislation Project Group, or Deborah House, NASAA’s Director of Policy, if we may be of assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia D. Struck', with a long horizontal stroke extending to the right.

Patricia D. Struck
NASAA President
Wisconsin Securities Administrator