



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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July 22, 2003

The Honorable Michael G. Oxley
Chairman
Committee on Financial Services
2128 RHOB
Washington, DC 20515

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

Dear Chairman Oxley and Ranking Member Frank:

Although NASAA supports seven of eight provisions of the Securities Fraud Deterrence and Investor Restitution Act, we oppose the legislation because of our strong opposition to amended Section 8(b) of H.R. 2179.

The amended language in Section 8(b) would prohibit the states from imposing conduct remedies, even by consent, which differ from NYSE, NASD and SEC rules. This is a significant broadening of the preemption provisions of the National Securities Markets Improvement Act of 1996 (NSMIA). Federal law, as amended by NSMIA already prohibits the states from passing laws or promulgating rules, regulations and orders in certain areas that are different from federal laws or regulations. Section 8(b) would expand those restrictions by preempting the states in agreements and judgments, and would add "disclosure" and "conflicts of interest" to the list of preempted subject areas. This expansion of preemption may not appear to be significant, but it cuts directly into the daily regulatory and enforcement activities of the state securities offices in your states. The amendment would hurt investor protection initiatives in the future.

Section 8(b) would restrict state securities enforcement authority to tailor a specific corrective action against individual brokers or firms based on the unique circumstances of each case of wrongdoing. Our members do not write rules for the national markets, but they do impose conduct remedies on broker-dealers that are needed to correct the misconduct that has been perpetrated on the citizens of our states.

The facts speak for themselves. There has been no balkanization in the past and there is no threat of it now. The states spoke up early and brought enforcement actions regarding problems with micro-cap fraud, online trading, day trading and the research analysts. After initial enforcement actions, we joined the SEC, the NASD and the NYSE to contribute in the rulemaking process overseen by the SEC for the national marketplace.

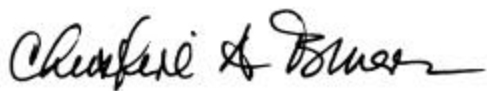
We are committed to remedying problems we find in our jurisdictions and leaving the national rulemaking to the SEC.

States currently have authority to fashion remedies for a variety of problems. We can require firms to conduct special supervision, re-educate brokers, monitor trading, make special disclosures to investors, conduct special audits or reviews, and produce reports to state regulators to demonstrate compliance. All of these measures could be prohibited by this amendment. Certainly, this is not the intent of Congress.

In addition, the intent of Section 8(b)(1)(B) of H.R. 2179 purports to provide the states comfort by adding a preservation of authority section to Section 15 of the Securities Exchange Act of 1934. But the material omission of not expressly articulating that the states have the authority to bring enforcement actions based on “the unlawful conduct by a broker or dealer” (Section 18(c)(1) of the Securities Act of 1933) brings into question which activities come under the jurisdiction of the states’ anti-fraud authority. If this section of H.R. 2179 is not clarified by adding that the states do have jurisdiction to enforce against unlawful conduct by a broker or dealer some may argue that states may not enforce broker-dealer suitability rules, unregistered activity and other activities that states securities regulators have been pursuing for over seventy years. This has the potential to devastate core securities regulatory requirements such as “failure to supervise” standards, or “dishonest or unethical business practices.” The latter standard provides the authority for a host of state securities rules, including the most fundamental requirement, that securities sold to a customer be “suitable.”

We stand ready to work with you to ensure that state securities regulators maintain the authority to regulate at the local level and bring enforcement actions with appropriate remedies against those firms that violate securities laws in their jurisdictions. I urge you to eliminate Section 8(b) from H.R. 2179.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine A. Bruenn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christine A. Bruenn
NASAA President
Maine Securities Administrator