



NASAA

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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

April 18, 2016

The Honorable Paul Ryan  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Nancy Pelosi  
Democratic Leader  
U.S. House of Representatives  
Washington, D.C. 20515

Re: The Criminal Code Improvement Act of 2015 (H.R. 4002)

Dear Speaker Ryan and Leader Pelosi:

On behalf of the North American Securities Administrators Association (NASAA),<sup>1</sup> I write to express concern about H.R. 4002, the Criminal Code Improvement Act, which would provide for a default “mens rea,” or “state of mind” standard on the part of the defendant in the prosecution of violations of federal criminal laws. As presently constituted, H.R. 4002 would make it significantly more difficult for federal and state law enforcement authorities, including state securities regulators, to protect the investing public and hold bad-actors accountable.

The Criminal Code Improvement Act, as ordered reported by the House Judiciary Committee on November 18, 2015, contains provisions that would establish a default “mens rea” requirement for all federal criminal offenses. The “mens rea” standard established by H.R. 4002 would apply universally to federal criminal offenses for which no other statutory “mens rea” requirement is specified. H.R. 4002 would require that to prove violation of a federal criminal law, “the state of mind the Government must prove is knowing.” In addition, the bill provides for a heightened “knowing” standard that “if the offense consists of conduct that a reasonable person in the same or similar circumstances would not know, or would not have reason to believe, was unlawful, the Government must prove that the defendant knew, or had reason to believe, the conduct was unlawful.”<sup>2</sup>

Federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934, have long held that a person may be convicted of a crime if his or her conduct is “willful.”<sup>3</sup> Many states have securities laws that similarly rely upon a “willful” standard. Some state securities laws independently provide for such a standard, however, other state securities laws indirectly rely on federal standards by referencing federal securities laws. While states can and do set the applicable standards for violations of their laws either by statute or through state court

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

<sup>2</sup> H.R. 4002, the Criminal Code Improvement Act of 2015. Section 2, Subchapter C.

<sup>3</sup> Securities Act of 1933 § 24, 15 U.S.C. § 77x; Securities Exchange Act of 1934 § 32, 15 U.S.C. § 78ff.

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decisions, we are concerned that defendants may attempt to escape state prosecution efforts by pointing to the language of the Criminal Code Improvement Act, should it become law.

The investor protection framework that exists in America, as embodied by state and federal securities laws, has been in place for many decades. This framework has proven to be resilient and successful. Every year, numerous persons are successfully prosecuted, convicted and imprisoned for “willful” violations of securities laws. The success of this framework is due in part to robust enforcement of securities laws at both the state and federal level. Such enforcement is integral to protecting both America’s retail investors, and the integrity of America’s financial markets.

State securities regulators do not oppose bicameral efforts in Congress to enact criminal justice reform legislation this year. However, by establishing a heightened “knowing” standard that would be universally applicable to all federal criminal offenses, including to violations of securities laws, we believe H.R. 4002 threatens to upend securities law enforcement and make it substantially more difficult for state and federal prosecutors to enforce securities laws and police America’s financial markets. NASAA is not alone in this concern. Indeed, similar views have been voiced by other law enforcement authorities, including by the U.S. Department of Justice, which recently testified to the Senate Judiciary Committee that establishment of a default federal “mens rea” requirement “would...undermine the enforcement of many criminal laws, and allow defendants charged with serious crimes [to] potentially escape liability for very serious criminal conduct.”<sup>4</sup> For these reasons, NASAA strongly urges the House to remove any provisions establishing a default “mens rea” standard from H.R. 4002, or any similar legislation, prior to its passage.

Thank you for your consideration of NASAA’s views. Please do not hesitate to contact me or Michael Canning, NASAA’s Director of Policy, at (202) 737-0900, if you have any questions, or if NASAA may be of additional assistance.

Sincerely,



Judith M. Shaw  
NASAA President and Maine Securities Administrator

CC: The Honorable Bob Goodlatte, Chairman  
House Committee on the Judiciary

The Honorable John Conyers Jr., Ranking Member  
House Committee on the Judiciary

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<sup>4</sup> Testimony of Assistant Attorney General Leslie R. Caldwell. United States Senate Committee on the Judiciary Hearing Entitled “The Adequacy of Criminal Intent Standards in Federal Prosecutions.” Washington, DC. January 20, 2016. Accessible at [justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-testifies-senate-judiciary-committee-hearing](http://justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-testifies-senate-judiciary-committee-hearing)