



NASAA

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The Honorable Mike Capuano  
1414 Longworth House Office Building  
Washington, D.C. 20515

Re: Capuano Amendment to Financial CHOICE Act of 2017 (Sec. 391)

Dear Congressman Capuano:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I am writing to express strong support for your amendment to remove the term “State authorities” from Section 391 of the Financial CHOICE Act of 2017.<sup>2</sup> Section 391’s reference to “State authorities” is both unnecessary in light of the existing voluntary collaboration, described below, as well as wholly unworkable because of Supreme Court case law that delineates state and federal authority in law enforcement.

State and federal securities regulators currently collaborate on a voluntary basis, usually at the regional level, with common goals of sharing information and leveraging resources efficiently. Collaboration includes ongoing informal quarterly or monthly meetings; regulators working on investigations and enforcement cases when the nature of the case warrants collaboration;<sup>3</sup> and other initiatives, such as Memorandums of Understanding (“MOUs”). Recently, in conjunction with new rules to facilitate intrastate crowdfunding offerings and regional offerings taking effect, the SEC and NASAA signed an information-sharing MOU.<sup>4</sup> The agreement is intended to facilitate the sharing of information to ensure that the new exemptions are indeed serving their intended purposes of facilitating access to capital for small businesses. Such collaborative efforts are long-standing. For example, from 2011 to 2013, the SEC and state securities regulators worked closely to facilitate and streamline the process by which 2,100 investment advisers transitioned, pursuant to the Dodd-Frank Act, from federal to state oversight.<sup>5</sup>

<sup>1</sup> The oldest international organization devoted to investor protection, NASAA 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> Section 391 seeks to require federal agencies, including the SEC, to implement policies to (1) minimize duplication between federal and state authorities in bringing enforcement actions; (2) determine when joint investigations and enforcement actions are appropriate; and (3) designate a process to establish a lead agency for joint investigations and enforcement actions.

<sup>3</sup> This type of collaboration generally requires formalizing the relationship through access letters and other joint memoranda.

<sup>4</sup> See “SEC, NASAA Sign Info-Sharing Agreement for Crowdfunding and Other Offerings.” Press Release. Feb. 17, 2017, Available at <https://www.sec.gov/news/pressrelease/2017-50.html>.

<sup>5</sup> For additional information see NASAA report entitled “A Successful Collaboration to Enhance Investor Protection,” Available at <http://www.nasaa.org/23169/ia-switch-report/>.

This current system of voluntary collaboration ensures that resources are focused on productive collaboration, rather than working through federal bureaucratic processes and red-tape before the actual work can begin. Furthermore, voluntary collaboration can be based on the needs of a situation and take geography into account. Not every state has a federal securities regulatory presence, but every state has a state securities regulator, ensuring a boots-on-the-ground approach wherever a bad actor may be perpetrating fraud. Voluntary collaboration ensures that the jurisdictional reach of federal and state securities regulators remains unhindered and that harmful conduct is addressed in a direct and efficient manner without the need to work through federal bureaucratic obstacles.

In addition to being inefficient, Section 391's inclusion of "State authorities" is opposite to the Supreme Court's holding in *Printz v. United States*, which upholds the separation between federal and state authority. Specifically, in *Printz*, the Court held that the federal government could not compel state law enforcement offices to participate in a federal handgun regulation program.<sup>6</sup> Therefore, the SEC would be unable to impose its policies and procedures on state securities regulators.

Finally, as Maryland Securities Commissioner Melanie Senter Lubin noted in her testimony to the Committee last week,<sup>7</sup> the inclusion of "state authorities" in Section 391 threatens to impose Washington's red tape and priorities on the states. Moreover, because state securities regulators prioritize the protection of retail investors, forcing states to take a back-seat during investigations that involve more than one agency would put these "mom and pop" investors more directly in harm's way.

Again, NASAA strongly supports your amendment, which will remove the reference to state authorities from Section 391. Please do not hesitate to contact me or Michael Canning, NASAA's Director of Policy, at (202) 737-0900, if NASAA may be of any further assistance.

Sincerely,



Mike Rothman  
NASAA President and Minnesota Commerce Commissioner

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<sup>6</sup> *Printz v. United States*, 521 U.S. 898, 935 (1997).

<sup>7</sup> See Written Testimony of Melanie S. Lubin, Maryland Securities Commissioner, before the House Committee on Financial Services. "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs," April 28, 2017. Available at <http://www.nasaa.org/41990/legislative-proposal-create-hope-opportunity-investors-consumers-entrepreneurs-2/>.