



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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March 1, 2016

The Honorable Keith Ellison
2263 Rayburn House Office Building
Washington, D.C. 20515

Re: Ellison Amendment to H.R. 3798, the Due Process Restoration Act

Dear Congressman Ellison:

On behalf of the North American Securities Administrators Association (NASAA),¹ I am writing to express support for your amendment to H.R. 3798, the Due Process Restoration Act.

The Due Process Restoration Act would establish that all respondents named in an SEC administrative action would have a right to remove to federal district an SEC administrative action. These respondents include regulated entities such as brokerage firms, investment advisers and investment companies, and persons associated with such entities. While the primary impact of the legislation would be to impair the SEC's ability to effectively pursue many securities law violations, proponents of the legislation have characterized the bill as necessary in order to "ensure that all Americans are given due process by allowing defendants the option of having their case heard before a federal court."²

As you know, thousands of ordinary retail investors continue to be denied the very relief the Due Process Restoration Act now seeks to give to respondents in SEC enforcement actions. These investors are ordinary retail investors who are barred from accessing the judicial system due to the mandatory pre-dispute agreements used by broker-dealers and investment advisers in customer agreements.

Your amendment would deny the "right to remove" established by H.R. 3798 to any person who uses mandatory pre-dispute arbitration clauses in customer agreements. Ultimately, your amendment will incentivize brokerage and advisory firms to abandon the unfair practice of forcing their customers and clients to consent on a "take it or leave it" basis to mandatory pre-dispute arbitration contracts as a condition of any business relationship. Your amendment will make it clear that the firms that want to secure the right to have their cases adjudicated in court must

¹ 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.

² See: Statement of U.S. Rep. Scott Garrett. "Garrett Introduces Bill to Restore Due Process Rights for All Americans." Press release. October 22, 2015. Accessible at: <https://garrett.house.gov/media-center/press-releases/garrett-introduces-bill-to-restore-due-process-rights-for-all-americans>

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provide the same option for their customers. NASAA has long been concerned with the widespread use of mandatory pre-dispute arbitration clauses in customer contracts used by broker-dealers and investment advisers, and we applaud your amendment to address this concern.

NASAA believes that investors must have a choice of forum when it comes to resolving disputes with their investment professionals. Investor confidence in fair and equitable recourse is critical to the stability of the securities markets and long-term investments by retail investors. While NASAA is opposed to H.R. 3798, and would remain opposed to the bill even upon the adoption of your amendment as the legislation would have a negative impact on the enforcement of securities laws violations, we welcome its introduction. In addition to improving the bill, your amendment helps to underscore the fundamentally incongruous approach that H.R. 3798 takes toward the right to access a judicial forum – guaranteeing such access for persons who are subject to an SEC administrative enforcement action, on the one hand, while denying the same principle to ordinary investors who seek similar judicial redress.

NASAA is pleased to have the opportunity to comment on your amendment to H.R. 3798. Please do not hesitate to contact me or Michael Canning, NASAA's Director of Policy, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,



Judith M. Shaw
NASAA President and Maine Securities Administrator