

example, cases involving deception may be difficult to pursue under the Commission's standard. Moreover, cases that typically are pursued by a rigorous Attorney General or state securities division, may not trigger the Commission's or the U.S. Attorney's inquiry or involvement, particularly given that the Commission only audits smaller investments once every four years.

Additionally, the Commission should proceed cautiously before implementing rules which may have an adverse impact on state revenue, and more importantly may place broad and unwise restrictions on the ability of state regulators, securities agencies and legislatures to police the licensing of and prosecute fraudulent brokers, dealers, advisers, planners and their agents. In particular, the definition proposed by the Commission seeks to limit state registration and licensing requirements to include only those "investment adviser representatives" who provide advice to clients who are "natural persons." This specifically excludes "investment adviser representatives," whose clients are investment companies, businesses, educational institutions, charitable institutions and other entities, but who historically have been regulated by the states, not the Commission. Indeed, this would preempt even minimal criteria established by securities enforcement authorities in virtually all states which often protects less-sophisticated retail entities, such as small businesses and charitable institutions. In the wake of the New Era debacle and other large-scale scams targeting our non-profit sector, I urge the Commission not to leave our public charities easy prey to abusive sales practices in the investment area.

The Commission's definition of "place of business" limiting state registration and qualifications to those who have "regular" contact with residents of Massachusetts also is troublesome in light of the telemarketing and Internet activities by unscrupulous investment advisers, many of whom prey on the elderly and less sophisticated investors. Of questionable legality in our federalist system, this limitation on the reach of state law to protect its own citizens may make it even more difficult for state prosecutors to target and punish fraudulent out of state telemarketers who frequently relocate and purposefully avoid physical presence in various states. This proposed federal definition of "place of business" inevitably will cause confusion and legal challenge given that jurisdictional issues raised by Internet activities remain unresolved. Without a more comprehensive definition, this could result in unfettered telephone or Internet-directed contact to any Massachusetts residents given the uncertainties surrounding where a person who sends out a general message on the Internet is doing business. Courts only now are beginning to address such questions arising out of where the computer is located, where the home page is listed, and where all or some of the customers or potential customers reside.

Finally, in the Commission's otherwise prudent efforts to streamline and eliminate duplicative state/Commission registering and de-registering within the same year, it proposes a standard by which new applicants could avoid state qualification (and registration) based on a "reasonable expectation" they will exceed \$25 million in assets. However, this standard is subject to manipulation, may be difficult to monitor, may result in arbitrary enforcement, and may become vulnerable to abuse by unscrupulous advisers seeking to avoid state regulation and authority.

Congress attempted to maintain the correct balance while promoting uniform regulation and more efficient division of respon-

sibility for regulation between the Federal and State governments. The Commission should avoid now setting forth sweeping and legally unsound federal preemption standards, that could endanger elderly and other small dollar investors by adversely impacting state enforcement of state securities anti-fraud and consumer protection statutes. In addition, the continued state-level registration and review of small dollar/regional securities offerings, investment advisers and financial planners is essential to consumer protection.

I urge the Commission to promulgate rules that will ensure that federal laws continue to permit states to gather the resources and retain the authority to effectively and comprehensively continue their role in securing investor protection and market integrity.

Thank you for your consideration.

Sincerely,

SCOTT HARSHBARGER,
Attorney General.

Mr. GILLMOR. Mr. Speaker, will the gentleman yield to me under his reservation for an explanation?

Mr. MANTON. I yield to the gentleman from Ohio.

Mr. GILLMOR. Mr. Speaker, I thank the gentleman for yielding. As the gentleman has said, this bill does provide a 90-day extension of the effective date of title III of the National Securities Markets Improvement Act of 1996. The reason for the extension, which has been requested by SEC Chairman Arthur Levitt, is necessary to ensure the orderly implementation of the provisions of the Investment Advisers Supervision Coordination Act, which is title III of the Improvement Act.

Pursuant to that act, the regulatory status of over 22,000 investment advisors in the country will change. The SEC has proposed rules that will guide the investment advisors as to whether they are subject to either Federal or State regulation under the act, as opposed to being subject to regulation at both the Federal and State levels under the current law.

Chairman Levitt has expressed concerns that the effective date of title III, which is April 9, will not permit adequate time to permit investment advisors to consult with counsel to determine their regulatory status, and to submit the necessary forms to the commission to deregister if they are deemed to be small advisors and therefore subject to State, rather than Federal, regulation.

Lack of sufficient time would cause these small investment advisors, who are intended by the act to be regulated by the States, to be unable to deregister from the Commission prior to the effective date. That would result in the State being preempted from regulating the very advisors that they are intended to regulate under the act.

Accordingly, the Chairman has requested this extension in a letter to the gentleman from Virginia [Mr. BILLEY], the Chairman of the Committee on Commerce, dated February 12. This is a responsible request that I strongly support. I think Congress in the last session marked a significant achievement with the passage of the improvement act, which is going to bring

greater efficiency and effectiveness to the regulation of U.S. security markets, including the regulation of investment advisors, and I would urge my colleagues to support S. 410.

Mr. MANTON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 410

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF EFFECTIVE DATE.

Section 308(a) of the Investment Advisers Supervision Coordination Act (110 Stat. 3440) is amended by striking "180" and inserting "270".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider to laid on the table.

GENERAL LEAVE

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 410.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule 1, the pending business is the question de novo of the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House a communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 18, 1997.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Under Clause 4 of Rule III of the Rules of the U.S. House of Representatives, in addition to Ms. Julie Perrier, Assistant Clerk, I herewith designate Ray Strong, Assistant Clerk, to sign any and all papers and do all other acts for me under the name of the Clerk of the House which he would be authorized to do by virtue of this designation, except such as are provided by statute, in case of my temporary absence or disability.

This designation shall remain in effect for the 105th Congress or until modified by me.

With warm regards,

ROBIN H. CARLE,
Clerk, House of Representatives.