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RTC Funding Approved By Senate, House Panel

The full Senate and the House Banking Committee both approved $18.3 billion for the Resolution Trust Corporation in May in what is hoped will be the final round of the savings and loan salvage operation.

In a key victory for consumers, the House Banking Committee eliminated a $12 billion appropriation for the new Savings Association Insurance Fund, which is to take over responsibility for thrifts that fail after September 30.

"Providing $12 billion in pre-paid insurance premiums would relieve the industry of coming up with the cash," explained CFA Legislative Representative Chris Lewis. "The cash, instead of going for insurance premiums, would be pocketed in the form of executive salaries and expense accounts and dividend payments to stockholders — all courtesy of the taxpayers."

Instead, the House panel adopted a compromise crafted by Chairman Henry B. Gonzalez (D-TX) and Ranking Republican Jim Leach (R-IA) that would ensure that the thrift industry is required to make the maximum contribution to the SAIF before any tax money is used.

CFA had endorsed an amendment by Rep. Leach in subcommittee to eliminate the proposed $17 billion in SAIF appropriations, but it was defeated by panel Democrats, who agreed to reduce, but not eliminate, such funding.

Under the compromise approved by the Banking Committee, $16 billion would be authorized to capitalize the SAIF, but the money could not be used unless the Chairman of the Federal Deposit Insurance Corporation certified, in written findings, that the thrifts themselves were unable to provide the required funds.

In such a circumstance, the first resort would be a loan from the emergency line of credit established at the Treasury under FDICIA, the 1991 legislation to recapitalize the Bank Insurance Fund and strengthen bank regulation. The industry would be required to pay off the loan within 15 years.

Tax money would only be used to recapitalize the fund if the FDIC certified that raising premiums to pay off the loan would cause too many institutions to fail.

"This is a vast improvement over the taxpayer-first approach of the legislation reported by the subcommittee," Lewis said in a May letter to Chairman Gonzalez.

Senate Bill Calls For SAIF Study

Although the bill that passed the Senate was improved over the version approved by the Senate Banking Committee, it still contains an $8.5 billion appropriation for the SAIF, along with an additional $7.5 billion authorization. And it fails to set the hurdles for spending tax money that the House bill contains.

As such, "it would remove badly needed discipline from the banking system — discipline that would require that the industry tighten its belt and that regulators make a better effort to minimize and control future losses among the thrift members of SAIF," Lewis wrote in a May letter to Senate Banking Committee Chairman Donald Riegle (D-MI).

"A grant up front, as provided in S. 714, leaves little incentive for the industry to shape up, control stockholder dividends and limit its unnecessary expenses for executive salaries, jet airplanes, lobbying and entertainment, and related non-banking activities," he wrote.

He added that there is no evidence that an immediate bailout is needed. "Contrary to the propaganda being spread by lobbyists for the thrift industry, we do not believe that there is an emergency that requires SAIF appropriations today," he said.

Although it left the SAIF funding in the bill, the Senate did give voice vote approval to an amendment by Sen. Paul Wellstone (D-MN) and Patty Murray (D-WA) to require a General Accounting Office report on the ability of the thrift industry to bear the cost of capitalizing the SAIF through increased premium payments.

Such a study will help to provide a factual basis for determining whether a further taxpayer bailout of the thrift industry is needed, Lewis said.

The SAIF funding issue is considered the biggest difference between the two bills to be worked out in conference later this summer.

Bills Contain Additional Reforms

Both the House and Senate bills contain additional reforms designed to improve management of the RTC, including improving its procedures for providing small investors an opportunity to purchase assets, preventing fraud and abuse by agency contractors, and improving its record in providing contracts to minority and women owned businesses.

For example, to improve small investors' ability to purchase assets, the Senate bill would require the RTC to try to sell assets from failed thrifts on an individual basis for 90 days before they could be packaged in one of the agency's bulk sales.

The House bill would raise the limits on the value of properties eligible for the FDIC and RTC affordable housing programs, give preference to homeless families in obtaining homes through the programs, and give tenants the right of first refusal to buy homes they are renting.

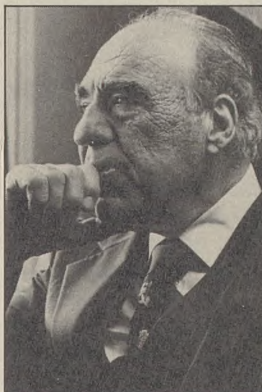
The Senate adopted an amendment by Sen. Howard Metzenbaum (D-OH) to give the RTC five years after taking over a failed thrift to file suit against its officials. The current statute of limitations for RTC suits is three years.

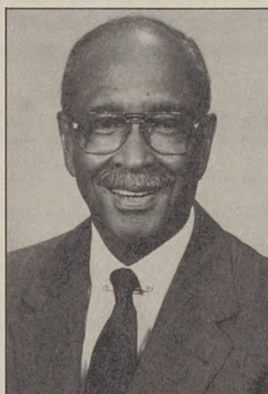
The Housing Banking Committee narrowly adopted a companion amendment by Rep. Joseph P. Kennedy (D-MA), earning the bill a referral to Judiciary Committee, where it is expected to be modified.

"The Kennedy and Metzenbaum amendments to extend the statute of limitations will ensure that taxpayers are tapped only after all possible legal actions have been taken to force S&L wrongdoers to pay first," Lewis said.

23rd Annual Awards Dinner

Sen. Barbara Mikulski


Rep. Henry Gonzalez


Alexander Grant

Barbara Gregg

Andrew Tobias

The Consumer Federation of America will honor distinguished consumer service at its 23rd Annual Awards Dinner Tuesday, June 15.

Sen. Barbara A. Mikulski (D-MD), Rep. Henry B. Gonzalez (D-TX), and Alexander Grant, Associate Commissioner for Consumer Affairs in the Food and Drug Administration, will receive Philip Hart Public Service Awards. The Esther Peterson Distinguished Consumer Service Award will be presented to Barbara B. Gregg, Director of the Montgomery County, Maryland Office of Consumer Affairs. Andrew Tobias, author and columnist for *Time* magazine, will receive the Outstanding Consumer Media Service Award.

The awards dinner will be held at the Capital Hilton Hotel in Washington, D.C.

NAIC Consumer Participation A Success

Now in its second year, the National Association of Insurance Commissioners' consumer participation program has been judged a success by consumers and commissioners alike.

"By giving consumers a voice, the program has begun to transform NAIC meetings," said CFA Executive Director Stephen Brobeck. "Previously, regulators heard only from insurers. Now they hear from consumer advocates as well."

"Input from consumers is not only desired, it is vital," concurred NAIC President Steven Foster. He called the program "one of our biggest successes."

In December 1991, the NAIC established a dedicated fund of $50,000 from its own budget to improve consumer participation in NAIC meetings by awarding grants to consumer representatives to reimburse them for their travel expenses.

The fund is administered by a seven-member Consumer Participation Board of Trustees, made up of five commissioners and two consumer advocates — Brobeck and Consumers Union's Mary Griffin.

Last year, 13 consumer representatives received the travel grants. This year the number has grown to 18.

Consumer Reps Provide Broader Perspective

The idea behind the program is that those consumer representatives who receive the grants will be able to provide a consumer perspective when state regulators debate issues affecting consumers.

The consumer representatives "have helped shape regulatory approaches to a broad range of issues critical to insurance consumers," Foster said.

"They are definitely providing a strong consumer presence," Griffin agreed. "Having consumer representatives there allows for a broader spectrum of views to be represented."

One of the consumers' goals where considerable progress has already been made is in getting NAIC to address broader policy issues.

Last year, the consumer reps helped organize a forum on insurance red-lining, and the grants program paid for the participation of a consumer expert from ACORN. NAIC has since formed a subgroup which is working on trying to get information about red-lining from insurers.

This year, consumer reps are helping to organize and participate in a forum on health care reform, in which a panel of insurance commissioners and a consumer representative will question a panel of health insurance industry representatives.

Consumer representatives also have more specific priorities, such as getting better standards for long-term care insurance, improving standards for life insurance sales to seniors, and reforming credit insurance, auto insurance, and worker's compensation.

And they are continuing to work on issues related to red-lining and insurance fraud.

By participating in the program, the representatives develop a much better understanding of how the insurance industry is regulated, which has traditionally been "a mysterious and shrouded process," Griffin said.

This is particularly true since, at the consumer representatives' request, NAIC added a training component to the program, she said.

Training Program Improves Understanding of Regulatory Process

The first such training program was held in February, and "everyone, including the representatives from last year, found it incredibly helpful and educational," Griffin said.

The training program covered the various different areas of insurance, issues that NAIC is involved in, and state insurance issues.

Particularly helpful was the information it provided on how the NAIC operates, how consumer representatives can participate, and how to advocate a position through the process.

"By ensuring effective consumer participation, the NAIC program has allowed regulators to assert their independence from insurer representatives who previously were the only non-regulators present," Brobeck said.

Consumers Urged To Challenge Cable Rates

In response to the Federal Communications Commission's May release of cable rate regulation rules, CFA is urging consumer groups to mobilize to challenge rates for non-basic tiers of cable service and to get local franchising authorities certified to regulate basic service.

Under the FCC's two-tiered approach to rate regulation, basic cable services and equipment charges will be subject to automatic regulation by local franchising authorities, who must be certified by the FCC.

The FCC will regulate all other non-premium tiers of service (such as enhanced basic service) in response to complaints from local consumers or the local franchising authority.

The FCC will begin granting certifications and considering complaints June 21.

As a first step, consumer groups should speak to their local franchising authorities to urge that they file for certification as soon as possible, said CFA Legislative Counsel Bradley Stillman. "This is necessary to get the ball rolling for the reduction of basic cable service and equipment rates," he said.

If a city does not have the necessary resources or manpower to carry out the regulation, it should still inform the FCC of its desire to have basic service regulated and its inability to do so itself, he said. That will give the FCC the authority it needs to regulate basic rates itself.

"Otherwise, if a city doesn't ask to be certified or doesn't ask the FCC to regulate basic service, there will be no regulation of the lowest priced tier of basic service," Stillman said.

In addition to filing for certification, the local franchising authority must: 1) put procedures in place that give the local cable operator the means to challenge a rate decision made by the local authorities, and 2) pass a local ordinance stating that the franchising authority will carry out the regulatory scheme adopted by the FCC for basic cable rates.

Although the regulations are quite detailed, "concerns about the burden of implementing the regulations are unfounded," Stillman said. "Any accountant or economist would be able to complete the necessary documentation with little trouble."

CFA is also encouraging consumer groups to have their members file complaints with the FCC about current rates for non-basic tiers of service. Complaints about current rates will be accepted from June 21 through December 17.

After December 17, complaints will only be accepted for 45 days following notice of a rate increase or service change.

Complaint forms will be available in mid-June from the FCC, local franchising authorities, and a variety of consumer groups, including CFA.

All complaints must be filed on an official complaint form. The complaint must include a copy of the consumer's latest cable bill. And copies of the complaint must be sent to the cable company, the local franchising authority, and the FCC.

"The complaint procedure appears to be quite straightforward," Stillman said.

"The sooner consumers begin to file complaints, the sooner rates will go down," he added. But no complaints should be filed before June 21, as they will be returned by the FCC.

If you would like additional information or help in coordinating a grassroots complaint filing effort, contact Stillman at (202) 387-6121.

Bill Would Reform Mortgage Escrow Accounts

Legislation to clean up abuses in today's escrow market is needed if consumers are to receive the full protections Congress intended when it passed the Real Estate Settlement Procedures Act (RESPA) in 1974, said CFA Legislative Representative Chris Lewis in May testimony before the House Subcommittee on Housing and Community Development.

Lewis called on Congress to enact H.R. 27, the "Escrow Account Reform Act of 1993," introduced by House Banking Committee Chairman Henry B. Gonzalez (D-TX).

In real estate transactions, the consumer is often required to set up an escrow account with the mortgage lender out of which the lender pays property taxes and insurance.

Chairman Gonzalez has estimated that nearly two thirds of the nation's homeowners are being overcharged on their escrow accounts by an average of $170 a year. A recent study by the Department of Housing and Urban Development, using very conservative assumptions, found that as many as six million homeowners are being required to make excess escrow payments.

"Despite the best effort of the Congress, RESPA has failed to end the problem of banks' and other mortgage lenders' requiring homeowners to keep huge sums in mortgage escrow accounts in excess of those actually required to pay taxes and insurance premiums," Lewis said.

H.R. 27 would:

- require that escrow accounts bear interest, as other restricted use deposit accounts do;
- require standardized "aggregate" accounting of escrow balances;
- restore homeowners' right to terminate their escrow account agreements and pay their own taxes and insurance; and
- vastly improve enforcement tools to protect consumers from ongoing abuses in the marketplace.

"Paying interest will take the profit out of excess escrow deposits," Lewis said. "If a bank is required to pay the same interest rate on escrow deposits as it pays on passbook savings, virtually all of the financial incentive to require excess deposits would be eliminated."

Lewis suggested the following additions to improve the bill: reduction of the one-sixth escrow account "cushion," which banks are permitted to collect above the amount that is needed to pay taxes and insurance, to one-twelfth; and mandating that mortgage lenders make timely payment of property taxes and insurance premiums.

In addition, Lewis recommended that the subcommittee hold hearings "to explore the tragic reentry of kickbacks into the mortgage settlement process." These kickbacks have been sanctioned by HUD in its recent rulemaking on the 1983 Controlled Business amendments to RESPA, he said.

Congress should explore the impact of the rule on consumers and take legislative action to remedy any conflict between the rule and the intent of Congress in enacting RESPA and the 1983 amendments, he said.

CFAnews

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Product Safety Update:

Court of Appeals Denies ATV Petition

In April, the United States Court of Appeals for the District of Columbia Circuit denied CFA and U.S. Public Interest Research Group's petition challenging CPSC's termination of the all-terrain vehicle (ATV) rulemaking.

The groups — which sought a ban on the sale of adult-sized ATVs for use by children — had filed their petition for judicial review in September. They contended that the Consumer Product Safety Commission's May 1991 decision to terminate its ATV rulemaking was "arbitrary and capricious" in light of the agency's own evidence that the agreement had proved ineffective in preventing ATV-related deaths and injuries.

In particular, the groups charged that, in its cost-benefit analysis, the CPSC: made no effort to evaluate the effectiveness of a ban, stating only that it "was not clear" that a ban would be more effective than existing age recommendations; included a cost-estimate for enforcing a ban of $1 million annually, without any data to support its estimate; and included as a cost the "lost utility" to children from imposition of a ban, despite the fact that the agency itself has concluded that children should never ride adult-sized ATVs.

The court ruled against the petition, however, "in view of the Commission's ongoing efforts to check ATV safety hazards by other means, and the CPSC's indication that it will reconsider the rulemaking route if current responses to ATV hazards prove inadequate."

According to the decision written by Judge Ruth B. Ginsburg, a critical factor in the court's decision was the lack of adequate experience under the consent decree to enable the CPSC to judge the impact of the decree on ATV casualty rates. A ban on the sale of adult-sized ATVs for use by children could not be implemented "absent a finding that 'less burdensome' requirements were inadequate to deal with the problem," the decision states.

However, the CPSC's own studies have found that death rates on four-wheel ATVs have risen from 97 in 1986 to 165 in 1992, and that youth death rates on four-wheel ATVs showed no statistically significant decrease between the start of the consent decree in 1986 and 1989.

Furthermore, despite manufacturers' promises that they would terminate the franchises of dealers who fail to abide by age recommendations, a nationwide CPSC survey in 1989 found that 56 percent of dealers persisted in ignoring the minimum age prescriptions.

Despite this evidence that the consent decree has been ineffective, Judge Ginsburg wrote, "We are not persuaded . . . that the Commission was 'arbitrary' or 'capricious' in preferring to test and evaluate the efficacy of the Consent Decree before considering additional regulation."

Groups Urge Increased CPSC Funding

In May, CFA joined with 27 other consumer, health, and insurer organizations in calling on Congress to increase funding for the Consumer Product Safety Commission over the amount requested in the president's 1994 budget.

The president's proposed funding level of $42.3 million would require a reduction of 13 full-time equivalent staff positions (FTEs). CPSC staffing reached an all-time high of 978 FTEs in 1980. The Clinton budget would reduce staffing to 502 FTEs.

"The CPSC's severely limited budget has become an indirect culprit in the thousands of deaths and hundreds of thousands of injuries suffered each year by American consumers from unsafe products," the groups wrote in a letter to the Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies.

"[B]ecause of reduced funds and staff, CPSC is forced to spread investigations over several years, and in some cases turn its back completely on fatal hazards."

The groups who signed on to the letter support a $55 million budget for the CPSC. "While that particular figure may be unobtainable in one year, it should be the ultimate goal in order to revitalize this agency," they wrote.

They also urged the subcommittee to "be tougher on this agency to assure that American tax dollars are well spent. We believe you should demand results and ask the agency what it is doing to address specific hazards," they wrote.

"[T]hese actions will help reduce the enormous health care bill consumers pay each year for product-related injuries, will help reduce insurance and other costs resulting from property damage (particularly from fire losses), and will begin to alleviate the pain and disruption that injuries invoke on families across our nation," they concluded.

Administration Endorses Indoor Air Bills

For the first time since Congress began considering indoor air quality and radon legislation, the bills have received the support of the administration.

The Environmental Protection Agency testified in support of S. 656, the "Indoor Air Quality Act of 1993," and S. 657, the "Indoor Radon Abatement Reauthorization Act of 1993," at a May hearing before the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Regulation.

Also testifying at the hearing in support of the two bills was CFA Product Safety Director Mary Ellen Fise, who identified as "cornerstones" of the indoor air bill its provisions on indoor air contaminant health advisories and a national indoor air quality response plan.

"The development of indoor air health advisories . . . will provide a useful base of information for consumers and others," she said. "The national response plan will create a road map for both the public and private sectors in addressing indoor air pollutants."

The bill's provision for assessing the effectiveness, feasibility, and cost of various control technologies is "critical to determining indoor air solutions," Fise added. She asked that this provision be strengthened to specifically include consumer products marketed to reduce or eliminate indoor air effects.

"Consumers do not have the ability to evaluate these type of products' efficacy and thus may be more vulnerable to misleading indoor air marketing claims," she said.

Fise also praised the creation of an Indoor Air Quality Clearinghouse. "Having a source to call for reliable information is very important to consumers, particularly on indoor air, since there is little consumer knowledge and there is confusion about what action to take," she said.

Fise strongly endorsed S. 657, the radon bill. "While the Environmental Protection Agency Radon Division has made great strides in creating an effective risk communication strategy for radon, it is clear that much remains to be accomplished," she said.

She cited a recent study by the Conference of Radiation Control Program Directors which found that, although 67 percent of respondents are aware of radon, only nine percent have tested their homes, and only one percent have mitigated for radon.

By reauthorizing key components of EPA's existing radon program, and adding new requirements for school radon testing and to encourage adoption of model construction standards, "S. 657 appropriately addresses the risk communication and management challenges still posed by the presence of indoor radon," Fise said.

Fise praised the sponsors for including provisions related to radon disclosure during real estate transactions, but she suggested that the provision be strengthened specifically to require disclosure of whether the home has been tested for radon and, if so, when and what the radon level was.

"Testing a home for radon is akin to having a home inspection to determine how long the hot water heater will last, whether the roof is in good condition, or whether the home is infested with termites," she said.

Limits on Malpractice Victim Rights Opposed

As the White House prepares to release its massive health care reform proposal, there are reports that the administration is seriously considering proposals to limit the legal rights of medical malpractice victims as a way to control health care costs.

In response, CFA Legislative Director Gene Kimmelman and Consumers Union's Linda Lipsen wrote to the President and Hillary Rodham Clinton in late March to urge them to consider other alternatives to address legitimate concerns about the legal system "without denying consumers their right to full compensation for injuries resulting from medical negligence."

The most commonly proposed "malpractice reforms" include caps on pain and suffering, limits on punitive damages, shortened statutes of limitation, restricted expert testimony, denial of trial-by-jury, and expanded immunity from legal challenge.

These "reforms" are "arbitrary and fundamentally unfair to the most severely injured victims of medical negligence," they wrote. "By reducing financial penalties for the most egregious medical misbehavior, these 'malpractice reforms' would reduce market incentives to promote the highest quality of medical care at the lowest price," and any savings would be minuscule, they wrote.

Costly and unnecessary procedures are likely to be the result of physician profiteering, not defensive medicine, they noted. CFA studies have found, for example, that doctors who have a financial stake in testing facilities order twice as many tests at prices up to 40 percent higher than those charged by independent labs.

"Eliminating this wasteful treatment is more likely than caps on pain and suffering to save money and reduce 'defensive medicine,'" they wrote.

Furthermore, there is no indication that malpractice awards are out of control. In fact, the number of malpractice claims has declined since 1985, and malpractice insurance premiums have been falling.

According to several studies, only a very small percentage of negligent acts by doctors result in the filing of a malpractice claim. A recent Harvard study, for example, found that fewer than two percent of medical malpractice victims ever file suit.

An American College of Physicians' study concluded that inappropriate and unjustified malpractice awards are "uncommon," and that the size of awards was most closely correlated to the degree of physician negligence, not the degree of patient injury.

"Despite these facts, we recognize that there is a perceived problem with malpractice awards and that much could be done to improve the adversarial legal process to benefit consumers," they wrote.

To that end, they urged the Clintons to consider promoting "balanced alternative dispute resolution mechanisms that offer malpractice victims an opportunity to receive adequate compensation without pursuing costly litigation."

House Passes Investment Adviser Bill

In May, the administration endorsed and the House gave voice vote approval to legislation to improve regulatory oversight of and to enhance consumer protections in the investment adviser industry.

H.R. 578, the "Investment Adviser Regulatory Enhancement and Disclosure Act of 1993," is virtually identical to legislation which passed the House late last year but died when the Senate refused to accept its stronger investor protections.

"The House bill is not perfect, but it makes substantial progress toward bringing the Investment Adviser Act of 1940 up to date and addressing the risks that exist in today's marketplace," said Barbara Roper, CFA Director of Investor Protection. "Unfortunately, instead of looking for ways to improve the House bill, Senate sponsors have delayed taking action and have refused to consider even those investor protections that won such strong bipartisan support in the House."

Increased Fees Fund Improved Oversight

H.R. 578 would improve SEC oversight of advisers by:

- replacing the current one-time, $150 per firm registration fee for investment advisers with a higher annual fee based on assets under management and using the additional revenues to fund more frequent inspections of advisory firms;
- requiring the SEC to conduct more frequent inspections of advisers whose disciplinary history or risky practices pose serious risks to clients, conduct early inspections of newly registered advisers, and conduct follow-up inspections where serious deficiencies are uncovered; and
- requiring the commission to establish a program to detect and punish registration violations.

H.R. 578 also adds new consumer protections under the Investment Adviser Act. Most important of these are the bill's disclosure requirements, which would give consumers more information with which to assess the magnitude of any conflict that might bias their adviser's recommendations.

Disclosure Requirements Strengthened

Under the House bill, the adviser would have to provide up-front prominent disclosure in writing of the existence of any compensation arrangements that may create a conflict of interest.

Before effecting a transaction on behalf of the client, the adviser would have to disclose a reasonable estimate of the total amount of fees, commissions, or other charges in connection with the transaction. If the adviser will receive compensation from a source other than the client, this fact also would have to be disclosed.

After the transaction, the adviser would have to provide a written confirmation detailing the commissions, fees, or other charges in connection with the transaction, as well as whether any compensation was received from a source other than the client.

Finally, the adviser would have to provide written periodic reports that include all commissions, fees, or other charges paid by the client and the actual amount of third-party compensation received by the adviser in relation to recommended transactions.

"These disclosure requirements could be strengthened, but they are a significant improvement over the current requirement that the adviser disclose his method of compensation at the outset of the advisory engagement," Roper said.

It would be particularly helpful to investors if the information in the transaction reports were required to be disclosed, in writing, at the time recommendations are made, not simply before a transaction occurs, so that the investor could more easily factor it into the decision-making process, she said. In addition, the transaction report should have to include a reasonable estimate of expected third-party compensation.

"With this information, the investor could more easily determine when the adviser is self-dealing. This would help to discourage this abuse, which pervades financial planning and often goes undetected," Roper said.

Other important protections in the bill include an explicit requirement that advisers make suitable recommendations based on a reasonable inquiry into the client's financial situation; a provision enabling the SEC to go after individuals responsible for fraud directly, instead of through the firm; a fidelity bond requirement for certain advisers who take custody of or have discretionary authority over client funds; an expansion of the list of conduct that can disqualify individuals from registration as advisers; and improved confidentiality protections for client information.

SRO Provision Should Be Deleted

During its consideration of the legislation, the House added a provision to allow the SEC to designate securities self-regulatory organizations to inspect the investment advisory activities of certain of their members and affiliates.

"The SROs have proved unable, even unwilling, to detect, deter, and adequately punish widespread abuses within the mainstream brokerage industry," Roper said. "Congress should be looking for ways to improve the SROs' performance of their primary duties, not assigning them new responsibilities."

"By allowing these ineffective, industry-run agencies to police the activities of advisers, including many with serious conflicts of interest, this provision will detract from, rather than enhance, investor protections. It should be stripped from the bill," she said.

Elimination of Baseball's Antitrust Exemption Urged

The Consumer Federation of America has joined with the Major League Baseball Player's Association and a number of fans' organizations to support legislation to eliminate baseball's antitrust exemption.

"By making sports subject to the same antitrust laws that all other businesses abide by . . . and by letting the fresh air of the free market replace the owners' stuffy cartel boardroom," S. 500 — sponsored by Sens. Howard Metzenbaum (D-OH), Connie Mack (R-FL), Bob Graham (D-FL) — and H.R. 108 — sponsored by Reps. Michael Bilirakis (R-FL) and Jim Bunning (R-KY) — would help ensure that baseball's television contracts make more games available to consumers at a lower price, said CFA Legislative Director Gene Kimmelman.

Recent proposed television sports contracts dramatically illustrate the need for this legislation, he said. In May, Major League Baseball announced a new national television contract that will reduce "game of the week" telecasts from 16 to 12 (down from 44 in 1980) and will televise less than half of the potential post-season playoff games.

Furthermore, as part of its national television deal, Major League Baseball will black out competing local broadcasts, including those on superstations WTBS, WGN and WWOR. "When NBC or ABC televises regional games in 1994, fans will no longer be able to see their local team on free TV or the Braves, Mets, Cubs, or White Sox on cable," Kimmelman said. "The result for fans is fewer televised games and less choice in viewing options."

"With cable TV expanding to 500 channels and 200-channel satellite systems preparing to compete with cable later this year, professional sports should be announcing an explosion in viewing options," he said. "Unfortunately for fans, Major League Baseball does not live by competitive market rules."

By eliminating competition, Major League Baseball hopes to drive up advertising rates for its telecasts, Kimmelman said. "Like any profit-maximizing monopolist, the owners know that if they limit the supply of games available, and make it impossible for fans to pick between two simultaneously televised games, more eyeballs will be glued to one game, and advertisers will pay a higher price for this captive audience."

Several commentators have speculated that the real, long-term motive behind the deal is to increase demand for pay-per-view broadcasts of games no longer available on free TV. "The owners may be looking to pay-per-view as the best way to squeeze the maximum payment from the fans who demonstrate withdrawal symptoms from this reduction in televised professional sports," Kimmelman concurred.

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