S T A T E O F N E W Y O R K

4497--A

2011-2012 Regular Sessions

I N S E N A T E

April 7, 2011

Introduced by Sens. LIBOUS, PARKER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to enacting the "institutional investor recovery act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "institutional investor recovery act".

S 2. The general business law is amended by adding a new section 353-b to read as follows:

S 353-B. ACTION BY CERTAIN PUBLIC RETIREMENT SYSTEMS AND MULTI-EMPLOYER HEALTH AND WELFARE RETIREMENT PLANS ORGANIZED UNDER THE TAFT-HARTLEY ACT. (A) ANY PUBLIC RETIREMENT SYSTEM AS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION FIVE HUNDRED ONE OF THE RETIREMENT AND SOCIAL SECURITY LAW, OR ANY MULTI-EMPLOYER HEALTH AND WELFARE RETIREMENT PLAN ORGANIZED UNDER THE TAFT-HARTLEY ACT AND INCORPORATED UNDER THE LAWS OF THIS STATE OR WHICH MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, THAT IS DAMAGED IN CONNECTION WITH THE PURCHASE OR SALE OF A SECURITY AS A RESULT OF THE COMMISSION OF ANY ACT PROHIBITED BY SECTION THREE HUNDRED FIFTY-TWO-C OF THIS ARTICLE, MAY BRING AN ACTION FOR DAMAGES AGAINST ANY PERSON, PARTNERSHIP, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, TRUST, OR ASSOCIATION THAT COMMITTED, AIDED OR ABETTED OR IN ANY WAY PARTICIPATED IN THE COMMISSION OF SUCH PROHIBITED ACT.

(B) NO PUBLIC RETIREMENT SYSTEM OR MULTI-EMPLOYER HEALTH AND WELFARE RETIREMENT PLANS ORGANIZED UNDER THE TAFT-HARTLEY ACT THAT HAD FEWER THAN ONE HUNDRED BENEFICIARIES AT THE TIME OF THE PURCHASE OR SALE OF THE SECURITY MAY BRING AN ACTION UNDER THIS SECTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(C) NO SUCH ACTION MAY BE BROUGHT MORE THAN SIX YEARS FROM THE TIME THE PLAINTIFF DISCOVERED THE ALLEGEDLY PROHIBITED ACT OR COULD, WITH REASONABLE DILIGENCE, HAVE DISCOVERED IT.

(D) AFTER SUCH ACTION HAS BEEN BROUGHT, NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DISCLOSURE AND RELATED PROCEEDINGS SHALL NOT BE STAYED DURING THE PENDENCY OF ANY MOTION TO DISMISS, UNLESS THE COURT SO DIRECTS.

S 3. Section 353 of the general business law is amended by adding a new subdivision 4 to read as follows:

4. NOTHING IN THIS ARTICLE SHALL PREEMPT ANY PURCHASER OR SELLER OF SECURITIES OR COMMODITIES FROM BRINGING ANY COMMON LAW CLAIMS CONCERNING ANY ALLEGED DECEPTION, MISREPRESENTATION, CONCEALMENT, SUPPRESSION, FRAUD, FALSE PRETENSE OR FALSE PROMISE MADE IN CONNECTION WITH THE SALE OR PURCHASE OF SUCH SECURITIES OR COMMODITIES AS DESCRIBED IN SECTION THREE HUNDRED FIFTY-TWO OF THIS ARTICLE.

S 4. This act shall take effect immediately and shall apply to causes of action accruing and actions pending before, on, or after its effective date.