

NASAA Insight

The Voice of State & Provincial Securities Regulation



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Ohio Securities Commissioner Andrea Seidt Pledges Pursuit of 'Smart Regulation' as NASAA President

Ohio Securities Commissioner Andrea Seidt began a one-year term as NASAA President in October, pledging to lead the organization in the pursuit of "smart regulation" that protects investors and businesses alike.

"Importantly, it isn't more or less regulation that we seek. It is simply smarter regulation," she said.

"Regulation that does not shy away from the reality that new technologies, even new modes of investing, are moving forward and will continue to evolve, but affirmatively seeks solutions in light of that reality to protect both businesses and investors from fraud, liability and loss," Seidt said in a speech at NASAA's annual conference in Salt Lake City.

In addition to promoting the role of state and provincial regulation, Seidt said she will focus the association's attention on modernizing state and provincial regulation.

Seidt highlighted NASAA's development of an electronic

filing system for multi-state offerings.

"My vision is for there to be a one-stop, automated filing system for every type of corporate finance offering filed in multiple states," Seidt said.

NASAA already has taken the first major step in that direction by setting up the Electronic Filing Depository (EFD) for Form D notice filings, a system set to launch in the coming year.

"I am on a mission to see the system expanded to include Reg A and SCOR filings soon thereafter," Seidt said.



NASAA President Andrea Seidt

NASAA Outlines Plan for Streamlined Multi-State Review of JOBS Act Offerings to Senate Panel

In testimony before a Senate panel in October, NASAA said state securities regulators are developing a streamlined multi-state review system to ease regulatory compliance costs on small companies attempting to raise capital under a provision of the Jumpstart Our Business Startups (JOBS) Act.

"NASAA shares Congress' desire to improve the United States economy by, in part, spurring private investment in small business. However, we believe this goal is best achieved through restoring investor confidence, and it is our hope that the JOBS Act will be implemented with a balanced approach that reflects smarter regulation," NASAA Deputy General Counsel Rick Fleming said in testimony before the Senate Banking Committee's Securities, Insurance, and Investment Subcommittee.

Title IV of the JOBS Act requires the SEC to adopt a rule to provide an exemption for certain offerings up to \$50 million.

Because of its similarity to the current exemption under Regulation A, which is capped at \$5 million, the new exemption is commonly known as Regulation A+.

These offerings will be exempt from SEC registration, but they will be subject to registration at the state level unless the securities are listed on a national securities exchange or sold to a qualified purchaser as defined by the SEC.

"Given the inherently risky nature of these offerings, and the primacy of the states' role in policing small size offerings, NASAA believes state oversight is critically important for investor protection and responsible capital formation," Fleming said.

"However, we also recognize that in some instances this process can be costly and particularly burdensome upon small companies."



NASAA Deputy General Counsel Rick Fleming testifies before a subcommittee of the Senate Banking Committee.

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President's Message: Andrea Seidt



A key to preserving and expanding our role in the securities markets is our willingness to modernize state and provincial regulation. Only by working closely with small businesses, industry and our fellow regulators in embracing today's technology will we ever reach our full potential.

As we did with the creation of a centralized, web-based system for processing federal and state licensing applications, we need to focus our energies on the development of an equivalent of a CRD/IARD system for multi-state offerings — a one-stop, automated filing system that has NASAA guidelines, forms, and core state requirements embedded in its design, a system in which all regulatory and industry users can track the filing status of an offering in all states in real time.

One-stop electronic state registration, if done right, will be the smartest way for businesses to raise capital here in the United States. Experienced issuers and their counsel already know the value and enjoy the benefits of state review. State examiners routinely improve the quality of deals, help issuers avoid costly disclosure

mishaps, and screen the market for frauds that reduce the amount of capital available to legitimate business interests.

The advent of new "public private offerings" under Rule 506 and crowdfunding are expected to create a tsunami of new investment opportunities for investors. Just peruse the web today for any kind of investment opportunity — real estate, oil, gas, gold, you name it — and you can see it already developing. Yes, there are good deals out there, probably some real gems, but it will become increasingly difficult to find those gems amongst the real gambles and, well, real losers that are also out there for general consumption.

Intuitively, investors and securities professionals will be looking for ways to separate good deals from bad. Many will consider whether an offering was subject to regulatory review or not. And, if not, they will ask themselves whether the opportunity is a safe enough bet in which to invest their hard-earned money or on which to bank their reputation.

If they don't already realize it, shrewd investors and securities professionals will soon see that state review generally yields safer opportunities for them on the whole than opportunities floated in a market with little or no review. Over time, savvy businesses will seize upon this in deciding whether or not to register their securities. If they are given a convenient, one-stop state option that is simpler but has greater integrity than the methods they have available at the federal level, I believe their choice will be clear.

I welcome anyone with an interest in the issue of centralized state filing to contact me with your thoughts on this important initiative.

Executive Director's Message: Russ Iuculano



The NASAA Corporate Office congratulates President Seidt on her timely inaugural remarks. We look forward to working with her to achieve her pursuit of "smarter regulation" that protects both businesses and investors. We also want to help ensure the accomplishment of her expressed vision for there to be a one-stop, automated system

for every type of corporation finance offering filed in multiple states.

Toward this end, I want to call your attention to the recent testimony by NASAA Deputy General Counsel Rick Fleming. During his testimony, Rick walked the Senate Banking Subcommittee on Securities, Insurance and Investments through NASAA's proposed review system that President Seidt envisions.

Throughout his testimony and in the questioning that followed, Rick's background as a 17-year veteran of the Office of the Kansas Securities Commissioner provided a level of credibility that informed the Senators that NASAA is fully committed to the success of the JOBS Act's Reg A+ provision.

Rick set the tone at the outset of his testimony by assuring the Senators that in his former role as General Counsel of the Office of the Kansas Securities Commissioner, both he and his colleagues throughout the NASAA membership "had no interest in throwing up needless barriers to economic development."

"The trick," Rick correctly said, "is to balance the legitimate interests of investors with the legitimate goals of entrepreneurs, and to adopt policies that are fair to both."

We look forward to working with other regulators, members of Congress and the small business community to make sure that we get that balance right as we strive to protect both the investors and small businesses on Main Street.

Top 10 Threats

JOBS Act Implementation Prompts Additions of Threats to Small Business Owners

NASAA expanded its annual listing of financial products, practices and services that threaten to trap unsuspecting investors to include lurking dangers facing small business owners.

"With the rollout of rules required by the JOBS Act, investors and small business owners alike must be on heightened alert for questionable investment offers and services," said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

Seidt said NASAA members are concerned that the recent lifting of an 80-year-old ban on the advertising of private offerings, mandated by the JOBS Act, will lead to greater abuse by unscrupulous promoters. The implementation of the JOBS Act also has created opportunities for unregulated third parties to provide ancillary services.

The following list of the Top 10 financial products and practices that threaten to trap unwary investors and small business owners was compiled by the securities regulators in NASAA's Enforcement Section:

Persistent Investor Threats

- Private Offerings
- Real Estate Investment Schemes
- High-Yield Investment & Ponzi Schemes
- Affinity Fraud
- Scam Artists Using Self-Directed IRAs to Mask Fraud
- Risky Oil & Gas Drilling Programs

New Investor Threats

- Proxy Trading Accounts
- Digital Currency

New Small Business Threats

- Capital-raising Pitfalls
- Unregulated Third-party Service Providers

NASAA Strongly Supports Investor Choice Act of 2013

NASAA strongly supports The Investor Choice Act of 2013 (H.R. 2998), which would prohibit the use of mandatory pre-dispute agreements by broker-dealers and investment advisers that force investors to arbitrate disputes or otherwise surrender their right to pursue recourse in a forum of their choosing.

NASAA praised the leadership of the bill's author and member of the House Financial Services Committee Rep. Keith Ellison (D-MN) for introducing the legislation.

The Investor Choice Act of 2013 will level the playing field for retail investors by amending Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to statutorily prohibit the use of mandatory pre-dispute agreements in broker-dealer and investment adviser customer contracts that restrict investors' ability to pursue claims in the lawful forum of their choosing.

The Investor Choice Act of 2013 would not in any way prevent investors from voluntarily electing to resolve a dispute through arbitration or mediation after the facts and circumstances of the dispute have been discovered.

"This legislation is all about preserving investor choice and ending an investor protection gap," said Heath Abshire, NASAA Past President and Arkansas Securities Commissioner.

"Investors want to get back in the market, but they're rightly wary that the game is rigged against them," Rep. Ellison said. "The Investor Choice Act helps level the playing field. Investors shouldn't have to sign away their rights in order to work with a financial advisor or broker dealer to build a secure retirement. By removing some of the unfair advantages, consumers will be more eager to invest, which will create jobs and strengthen our economy."

NASAA Enforcement Report Showcases Vital State Investor Protection Role

NASAA recently reported a significant rise in the number of licenses of unscrupulous stockbrokers and investment advisers withdrawn due to state action.

According to NASAA's annual enforcement survey, the number of licenses withdrawn due to state enforcement actions increased by 27 percent to 3,564 from 2,796.

The increase is attributable in part to the completion of the investment adviser "switch," where as many as 2,100 investment advisers transitioned from federal to state oversight as mandated by the Dodd-Frank Act.

"Closer scrutiny of licensing applications has resulted in a noticeable increase in the number of licensing withdrawals in the past year," said Andrea Seidt, NASAA President and Ohio Securities Commissioner. "Our survey

shows several important trends in investor protection and securities regulation, including continued investor reliance on state regulators to address both traditional areas of securities fraud and emerging issues."

Overall, state securities regulators conducted 5,865 investigations in 2012, which led to 2,496 criminal, administrative and civil enforcement actions. The report noted that 15 percent of state enforcement actions involved financial abuse of seniors. Prison time resulting from state-initiated actions totaled 1,361 years. State-initiated enforcement actions resulted in nearly \$700 million in investor restitution orders in 2012. State securities regulators also levied fines or penalties and collected costs in excess of \$157 million.

Regulation A+ in the Spotlight

States to focus on 'smart regulation' to help small companies

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To help small companies comply with the regulation, NASAA is developing a new filing and review process for multi-state securities offerings, including but not limited to Regulation A+.

Fleming said NASAA's proposed multi-state review program seeks to strike the best possible balance so that Regulation A+ will be an attractive option for both the small business that needs capital and the investor who is asked to provide it.

"If we are successful in striking such a balance . . . small businesses will find that smart, efficient, twenty-first century regulation can be beneficial for their capital formation efforts," Fleming said.

Fleming concluded his testimony by assuring Senators that NASAA has been working "expeditiously and diligently" to prepare for the new multi-state review program for Regulation A+ offerings.

"We are optimistic that the new rules will lead to investor confidence and renewed participation in the markets," he said.

Inside the Coordinated Review Proposal

An Overview of Proposed Multi-state Review for Reg A+ Offerings

The proposed coordinated review program contemplates a one-stop filing for all states in which registration is required through the Electronic Filing Depository (EFD) system currently in development by NASAA.

The program administrator would select a lead merit examiner and a lead disclosure examiner from among the states in which registration is sought. If the issuer is not applying for registration in a state that applies merit standards, then only a lead disclosure examiner would be identified.

The lead examiner would be responsible for drafting and circulating a comment letter to the participating jurisdictions. The lead examiner also would be responsible for seeking resolution of those comments with the issuer or issuer's counsel.

As with existing coordinated review programs for registered public offerings, the issuer would have the option of withdrawing from select states or from coordinated review altogether. It is currently contemplated that Washington would serve as the program administrator.

By having the lead merit and disclosure examiners draft the initial comment letter, NASAA believes there will be greater uniformity and less duplication of efforts among the states as compared to existing coordinated review programs. In the existing coordinated review programs, which include those for direct participation programs and equity offerings that are federally registered, each participating state submits comments to the lead

examiner based on each state's individual review of the offering materials. This can result in a significant duplication of effort and varying comments.

While individual states would continue to be afforded the opportunity to suggest additional comments and to ask for the inclusion of comments specific to an individual state's laws, each individual state would not be required to draft duplicative comments on the same issues.

For example, where an issuer is required to have independent directors, the lead examiner would draft that initial comment instead of having every participating state draft the same comment.

The coordinated review program would not be restricted to common stock offerings.

Public Comments are due by November 30, 2013

For more information, see the Notice of Request for Comment Proposed Coordinated Review Program for Section 3(b)(2) Offerings on the NASAA website at: www.nasaa.org/regulatory-activity/nasaa-proposals/

NASAA Asks Congress to take ‘Balanced Approach’ to Legislative Proposals to Boost Capital Formation

In testimony before a subcommittee of the House Financial Services Committee, NASAA urged lawmakers to proceed cautiously when considering additional legislation to reduce impediments to capital formation on the heels of The Jumpstart Our Business Startups (JOBS) Act of 2012.

“The states are committed to fostering responsible capital formation, which, in turn, strengthens investor confidence and leads to job growth. At the same time, capital formation will be impeded when investors are not adequately protected,” NASAA Past President and Arkansas Securities Commissioner Heath Abshure said during an Oct. 23 hearing before the House Subcommittee on Capital Markets and Government Sponsored Enterprises.

“NASAA shares the goal of Congress to improve the United States economy by spurring private investment in small businesses. However, we are concerned that the Committee may be attempting to reach this goal through a strictly one-sided approach – namely, by eliminating sensible regulations that appear to be burdensome to businesses that want to raise capital,” Abshure said.

“We encourage the Committee to take a more balanced approach and to consider reforms that will restore investor confidence in the markets. What we need is smarter regulation, not merely deregulation,” he said.

The hearing was called to examine seven legislative proposals related to capital formation, including proposals to streamline registration requirements of “merger and acquisition brokers;” further ease reporting requirements applicable to

“What we need is smarter regulation, not merely deregulation.”

— NASAA

“Emerging Growth Companies” or EGCs; and relax portfolio strictures, leverage limits, and other regulations for business development companies (BDCs). They also include proposals to reduce “red tape” that adds to the compliance costs of small and startup businesses, such as the SEC’s requirement that certain filings be made using eXtensible Business Reporting Language (XBRL).

“NASAA’s view regarding this new collection of bills is mixed,” Abshure said, noting that state securities regulators generally support the proposed Small

Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2013 (H.R. 2274) sponsored by Rep. Bill Huizenga (R-MI).

“This legislation would establish a simplified and streamlined registration process for broker-dealers engaged solely in the business of effecting the transfer or sale of privately held companies,” Abshure said.

“NASAA is optimistic that this legislation will encourage registration and regulatory compliance by M&A brokers.”

Abshure told lawmakers that NASAA remains concerned about other proposals regarding emerging growth companies and business development companies.

“Most notably, NASAA is troubled by the proposal to further expand what are basically new, untested regulatory carve-outs for EGCs as well as proposals that would increase leverage and conflicts of interests in the BDC space,” Abshure said.

Three bills pending before the Subcommittee – H.R. 31, H.R. 1800, and H.R. 1973 – would repeal the provisions of the Investment Company Act of 1940 (ICA) that limit the ability of a BDC to invest in investment advisers. Two of these bills, H.R. 31 and H.R. 1800, additionally would ease the leverage limits for BDCs established by the ICA, allowing such firms to maintain a greater ratio of debt-to-asset valuation on their balance sheets.

Abshure emphasized that NASAA’s concern also extended to narrower bills that would allow BDC investment only in investment adviser firms.

“That proposal would create a significant conflict of interest,” Abshure said. “If an advisory firm were among a BDC’s portfolio of companies, an incentive would exist for the investment adviser to recommend, or even push, their clients toward investments in the BDC or its other portfolio companies, even if such investments were not in the client’s best interest,” Abshure said. “No such conflicts of interest exist now.”



Heath Abshure, Arkansas

NASAA 2013 Annual Conference: "Protecting Investors"



David Wright, Secretary General of the International Organization of Securities Commissioners (IOSCO), stresses the importance of international cooperation and collaboration.



North Carolina Deputy Securities Administrator and conference chair David Massey welcomes regulators and industry to NASAA's annual conference in Salt Lake City, Utah.



"You don't get to play with others' money," said Washington Securities Director Bill Beatty during a discussion of the JOBS Act's impact on privately placed securities.



Duke University School of Law Professor James Cox (left) led a panel discussion examining the demand for liquidity in privately placed securities in the wake of the JOBS Act. Panelists included (from left) Professor Jennifer Johnson, Lewis & Clark Law School; Vince Molinari, Gate Technologies; Annemarie Tierney, SecondMarket Holdings; Sarah Hanks, CrowdCheck; and Bill Beatty, Washington Securities Director.

in the Evolving Landscape of Securities Regulation”



Maine Securities Administrator Judith Shaw (left) moderates a diverse panel of experts from industry, the bar, academia and Canadian securities regulators to examine how the arbitration system can be enhanced to assure an equitable forum for investors. Panelists include (from left) Douglas Brown, Manitoba Securities Commission; Ira Hammerman, Securities Industry and Financial Markets Association; Robert Banks, Banks Law Office; Andrew Pincus, Mayer Brown; and Professor Barbara Black, University of Cincinnati College of Law.



Maine Securities Administrator Judith Shaw leads an exploration of securities arbitration issues.



Heath Abshure (left), NASAA Past President and Arkansas Securities Commissioner, leads a panel of securities law experts in a discussion of whether the regulation of securities offerings should be divided to give states primary jurisdiction over smaller securities offerings. Panelists include (from left), Professor Manning Warren, University of Louisville Brandeis School of Law; Faith Anderson, Washington Securities Division; and Mike Liles, Karr Tuttle Campbell.

Senator Judd Gregg, CEO of the Securities Industry and Markets Association (SIFMA), delivers the conference keynote address, outlining the importance of a capital market system that helps, “people on Main Street across the nation thrive and prosper.”



“State and provincial securities regulators through NASAA stand united in their commitment to their core missions of investor protection and capital formation.”

~ Andrea Seidt



Changing of the Guard: Heath Abshure (right) completes his term as NASAA President by handing the gavel to Andrea Seidt of Ohio.



About Us

The North American Securities Administrators Association (NASAA) is a voluntary association of securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.

Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

As the preeminent organization of securities regulators, NASAA is committed to protecting investors from fraud and abuse, educating investors, supporting capital formation and helping ensure the integrity and efficiency of financial markets.



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Investment Advisers

IARD System Fee Waiver Continuation Approved

NASAA recently announced the waiver of the Investment Adviser Registration Depository (IARD) system fees for investment adviser firms and the continuation of substantially reduced initial set-up and annual system fees paid by investment adviser representatives (IARs).

"The continuation of substantially reduced IARD fees for individual investment adviser representatives enables state securities regulators to ensure that the IARD system maintains a sufficient reserve for operations and enhancements without charging firms, many of which are small, local businesses," said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

For 2014, the initial IARD set-up and renewal fee will be \$10 for IARs. These fees were \$45 when the IARD system first became operational.

NASAA Finds Similarities in Deficiencies of IAs

State securities regulators found little difference in the type or frequency of deficiencies between existing state investment advisers and those advisers who switched from federal to state oversight as a result of the Dodd-Frank Act.

As part of NASAA's 2013 Coordinated Examination Program, sample examination data was reported by 44 state and provincial securities examiners between January and June 2013. The 1,130 reported examinations uncovered 6,482 deficiencies in 20 compliance areas.

The top five deficiencies for advisers with *less than* \$30 million in assets under management involved books and records, registration, contracts, privacy and brochure delivery. The top five deficiencies found among investment advisers with *more than* \$30 million in assets under management involved: books and records, registration, contracts, advertising and fees.