



NASAA

---

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street, NE, Suite 1140  
Washington, D.C. 20002  
202/737-0900  
Fax: 202/783-3571  
[www.nasaa.org](http://www.nasaa.org)

June 9, 2009

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of our nation's state securities regulators, the North American Securities Administrators Association<sup>1</sup> applauds your effort to reverse the anti-investor preemption policies of previous administrations.

Your May 20 directive setting limits on regulatory preemption impressively affirms the vital role that state regulators play in protecting the health, safety, and financial security of citizens throughout the United States. You have sent a strong signal that our nation's citizens are served best when the state-federal partnership works harmoniously and with mutual respect to "*provide independent safeguards for the public.*" Furthermore, we sincerely appreciate your recognition that states have frequently been more aggressive than the national government in protecting the public's interest.

In the area of securities regulation, the states have a century-long track record of investor protection. One of the hallmarks of state securities regulation is its proven ability to detect misconduct, both large and small, in the early stages. Our members enjoy a unique proximity to investors and to the industry participants within their state borders. As a result, state securities regulators are often the first to investigate and uncover our nation's latest and most damaging frauds. Examples include investigating the role of investment banks in the Enron fraud, exposing profound conflicts of interest among Wall Street stock analysts, addressing late trading and market timing in mutual funds, and recently helping to ensure that investors receive over \$50 billion in redemptions for frozen auction rate securities that had been marketed as safe and liquid investments.

And yet, over a number of years, there has been a concerted effort to preempt state regulation. In the securities field, much of that effort has originated in Congress. For example, in 1996, Congress passed the National Securities Markets Improvement Act (NSMIA), which dramatically curtailed the authority of our members to regulate many aspects of the securities markets, ranging from private offerings under Regulation D to investment advisers with over \$25 million in assets under management.

As your recent order recognizes, federal agencies have compounded the problem by extending the scope of preemption beyond Congressionally intended boundaries and in ways that pose serious threats to investor and consumer protections under state law. Two striking examples are found in the banking area.

The Office of the Comptroller of the Currency (OCC) has repeatedly adopted regulations that aggressively preempt the states' authority to protect consumers through licensing requirements or enforcement actions. The impact has been felt largely in the mortgage lending field—where illegal underwriting practices helped trigger the current financial crisis. In a case now pending before the U.S.

---

<sup>1</sup> NASAA is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

Supreme Court, the Second Circuit aptly characterized the OCC as an agency that “accretes a great deal of regulatory authority to itself at the expense of the states through rulemaking lacking any real intellectual rigor or depth.” *Clearing House Ass’n, L.L.C. v. Cuomo*, 510 F.3d 105,119 (2d Cir. 2007) (although upholding the OCC’s limits on state visitorial powers under binding precedent). In the *Cuomo* case, the OCC actually sought an injunction to prevent the New York Attorney General’s Office from investigating discriminatory lending practices by various national banks and their operating subsidiaries.

The Office of Thrift Supervision (OTS) has also issued broadly preemptive regulations. Relying on those rules, the OTS has taken the position that even independent agents used by thrift institutions to market mortgages or certificates of deposit are immune from all substantive state regulations aimed at protecting consumers. The OTS’s opinion was articulated in an October 25, 2004 opinion letter. The OTS position has a direct impact on our members, to the extent it authorizes thrifts to market securities products, such as jumbo CDs, without complying with the licensing requirements applicable under state securities laws.

These examples and others affirm the need not only to rein in, but also to reverse, instances of state law preemption. An important corollary is making sure that the states are adequately represented in any regulatory reforms that your administration and Congress may fashion to address our current economic crisis. Plainly, our system of financial services regulation must be more effective. The enormous challenge of regulating our financial markets can only be met through the combined efforts of state and federal regulators, working together to protect both investors and the integrity of the marketplace. Any regulatory reforms should incorporate this guiding principle.

For that reason, to address what many regard as the most urgently needed reform, we endorse the creation of a Systemic Risk Council, comprised of representatives from all federal and state regulators in securities, banking, and insurance, and tasked with the responsibility for monitoring and limiting the accumulation of risk in our financial markets. With our unique position on the frontlines of investor protection, state regulators are essential to the success of any remedy aimed at controlling systemic risk. We provide ground-level detection by gathering a huge volume of information through examinations of industry participants and complaints from investors. When that information reveals risks and abuses, we take appropriate action. The Council approach, with full state representation, takes advantage of these strengths. We would ask that you carefully evaluate the benefits of this model as you weigh alternative solutions to the difficult problem of systemic risk.

NASAA is committed to working with your Administration and the 111th Congress to ensure that the nation’s financial services regulatory structure undergoes the important changes that are necessary to enhance protections for Main Street investors. Your recent directive on agency preemption is a very important step, and as you move forward with other regulatory reforms, we hope you will continue to recognize the enormous value of state regulation in our system of federalism.

Sincerely,



Fred Joseph  
President  
North American Securities Administrators Association  
Colorado Securities Commissioner