



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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November 18, 2009

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing,
and Urban Development
Washington, D.C. 20510

The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing,
and Urban Development
Washington, D.C. 20510

RE: "Restoring American Financial Stability Act of 2009" Discussion Draft

Dear Chairman Dodd, Ranking Member Shelby and Members of the Committee:

The members of the North American Securities Administrators Association (NASAA)¹ offer their support for the thoughtful and well-crafted approach to regulatory reform embodied in the Restoring American Financial Stability Act of 2009 Discussion Draft dated November 10, 2009. State securities regulators strongly support the following provisions included in the Discussion Draft and urge the Committee to resist amendments that are already being suggested by the financial services industry that would weaken these important investor protections.

Section 410. State and Federal Responsibilities; Asset Threshold for Federal Registration of Investment Advisers.

Currently, the threshold that separates the registration of advisers between state securities regulators and the Securities and Exchange Commission ("SEC") stands at \$25 million in assets under management, and has remained unchanged for over 12 years.

State securities regulators are ready to accept the increased responsibility for the oversight of investment advisers with up to \$100 million in assets under management. The state system of investment adviser regulation has worked well with the \$25 million threshold since it was mandated in 1996 and states have developed an effective regulatory structure and enhanced technology to oversee investment advisers. While government never has enough resources to do everything, it's clear that states have done a much better job at deploying their limited resources.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

For example, states are working on ways to better deploy their resources through technology, increased cooperation and pre-registration reviews. An increase in the threshold would allow the SEC to focus on larger investment advisers while the smaller advisers would continue to be subject to strong state regulation and oversight.

Section 412. Adjusting the Accredited Investor Standard for Inflation.

Because this standard has remained unchanged since its adoption in 1982, inflation has rendered it meaningless. NASAA has long advocated for adjusting the definition of “accredited investor” in light of inflation and has expressed concern at the length of time the thresholds contained in the definition have remained static. Raising the standard for individual investors will provide greater protection for investors and will aid state regulators in enforcement activities by furthering more accurate suitability determinations for those individuals who choose to take greater risks.

Section 911. Investor Advisory Committee.

Currently, the immediate past-president of NASAA is an ex officio member of the SEC’s Investor Advisory Committee and has been a voice for investors regarding issues before the Commission. Including a state securities administrator as a member of the Committee will enhance our ability to ensure that the perspective of investors is heard on the multitude of subjects under consideration by the Commission.

Section 913. Regulation of Brokers, Dealers and Investment Advisers.

NASAA has long advocated that broker-dealers providing investment advice should be subject to a fiduciary duty standard and more specifically it should be the same standard applicable to investment advisers under the Investment Advisers Act of 1940. We strongly support the Discussion Draft’s clean, straightforward approach of removing the broker-dealer exclusion from the Advisers Act, ensuring that brokers who offer investment advice meet the same standards as other investment advisers.

Section 914. Office of the Investor Advocate.

NASAA believes establishing an Office of Investor Advocate at the SEC with authority to identify problem areas and propose changes to the Commission to mitigate those problems would provide a greater voice for investors in Commission and SRO policy.

Section 921. Authority to Restrict Mandatory Predispute Arbitration.

It is a common industry practice for financial services intermediaries - broker-dealers and investment advisers - to include in their customer agreements a mandatory predispute arbitration provision that forces public investors to submit all disputes that they may have with the firm and/or its associated persons to arbitration. NASAA believes the “take-it-or-leave it” clause in client contracts is inherently unfair to investors, and that it is time to end mandatory, industry-run arbitration. State securities regulators support requiring that the SEC conduct a rulemaking to prohibit (or condition) mandatory, predispute arbitration thereby providing investors with a meaningful choice between binding arbitration and civil litigation.

Section 926. Aiding and Abetting Authority Under the Securities Act and the Investment Company Act.

One of the purposes of the Securities Act of 1933 and the Investment Company Act of 1940 was to establish higher standards of conduct in the securities industry than already existed in common law. Section 926 of the Discussion Draft does much to further this purpose by explicitly providing the SEC the authority to prosecute those secondary actors who aid and abet violations of these Acts.

Regulators often seek restitution to help make injured investors whole. However, given the large number of investors in the market today, private civil cases are a necessary and important complement to state and federal actions. Section 927 of the Discussion Draft is a positive step in restoring the ability of defrauded investors to seek damages from all of the entities that substantially participated in the fraud.

Section 928. Restoring the Authority of State Regulators Over Regulation D Offerings.

State securities regulators strongly support reinstating state regulatory oversight of all Rule 506 offerings by repealing Subsection 18(b)4(D) of the Securities Act of 1933. In 1996, Congress preempted the states from subjecting these private offerings under Rule 506 of Regulation D to regulatory review. These offerings also enjoy an exemption from registration under federal securities law, so they receive virtually no regulatory scrutiny even where the promoters or broker-dealers have a criminal or disciplinary history. As a result, Rule 506 offerings have become the favorite vehicle under Regulation D, and many of them are fraudulent. Although Congress preserved the states' authority to take enforcement actions for fraud in the offer and sale of all "covered" securities, including Rule 506 offerings, this power is no substitute for a state's ability to scrutinize offerings for signs of potential abuse and to ensure that disclosure is adequate *before* harm is done to investors.

Section 989A – Senior Investor Protections.

One of the highest priorities of NASAA's membership is to protect vulnerable senior investors from investment fraud. We have long been concerned with the use of misleading professional designations that convey an expertise in advising seniors on financial matters. Many of these designations in reality reflect no such expertise but rather are conveyed to individuals who pay to attend weekend seminars and take open book, multiple choice tests. Our concern led us to promulgate a model rule designed to curb abuses in this area. Nineteen NASAA members have adopted a rule governing the use of these designations.

Section 989A recognizes the harm to seniors posed by the use of such misleading activity and establishes a mechanism for providing grants to states as an incentive to adopting the NASAA model rule. The grants are designed to give states the flexibility to use funds for a wide variety of senior investor protection efforts, such as hiring additional staff to investigate and prosecute cases; funding new technology, equipment and training for regulators, prosecutors, and law enforcement; and providing educational materials to increase awareness and understanding of designations.

Conclusion

We appreciate this opportunity to share our views on key provisions of the Restoring American Financial Stability Act of 2009 Discussion Draft, and we look forward to continuing our work with you as Congress reshapes our financial regulatory landscape.

Sincerely,

A handwritten signature in cursive script that reads "Denise Voigt Crawford". The signature is written in black ink and is positioned below the word "Sincerely,".

Denise Voigt Crawford
Texas Securities Commissioner and
NASAA President