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NASAA

May 26, 2010

The Honorable Barney Frank
Chairman
Financial Services Committee
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Financial Services Committee
Washington, DC 20515

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

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

Dear Chairmen and Ranking Members:

On behalf of NASAA[1], I want to express our appreciation for the important and much needed investor protection provisions included in both the House and Senate passed versions of H.R. 4173, the Restoring American Financial Stability Act of 2010/Wall Street Reform and Investor Protection Act of 2009. The passage of these measures provides an unprecedented opportunity to restore investor confidence in our financial markets. With that goal in mind, state securities regulators are pleased to offer the following recommendations to strengthen the bill as the conference committee works to reconcile the differences between the two bills.

Fiduciary Duty. (House Sec. 7103) There is no doubt that Sec. 7103 passed by the House is the single most important investor provision in the bill and should replace the Senate passed study. This section simply directs the SEC to conduct a rulemaking to require broker-dealers giving investment advice to act in their clients' best interests and to disclose conflicts of interest that bias their recommendations. This is not a new standard but rather one that has been in place for over fifty years and is currently applicable to investment advisers. Investors, particularly senior investors, need help and clarity now. The Senate bill calls for a study of issues that have already been studied extensively and does not provide for the SEC to address known disparities in the protections that apply when brokers or insurance agents give investment advice. Recent Senate hearings regarding the Goldman Sachs case show the inherent harm investors must face when firms are permitted to act in their own best interest at the expense of their customers.

America's investors should not be forced to wait for several years for protection from biased investment advice.

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

Regulatory reform will leave Main Street outraged and foster further distrust of Wall Street unless Congress embraces extending fiduciary duty to all financial professionals who provide investment advice about securities to investors.

The House provision will NOT limit customer choice, raise costs or limit access to products and services as some industry groups claim. Customers who want to buy stocks and bonds can continue to do so while those who want investment advice will have access to that information as well. It will eliminate a regulatory gap that has long exposed investors to abusive sales practices such as incentive programs that encourage brokers to push more costly and poorer performing products over others. Insurance agents who make recommendations to senior citizens to buy securities could only do so if it was in the best interest of their senior client and, for products such as variable annuities, would be required to disclose the fees and commissions they are paid for the transaction. In short, it will ensure that brokers and agents put their clients' interests ahead of their own.

Regulation D/Accredited Investors. (Senate Secs. 412 and 926) NASAA strongly supports efforts to prevent recidivist violators of the law from conducting securities offerings under Regulation D, a regulatory exemption for private securities transactions. This change would provide investor protection from securities law violators and would not hamper legitimate issuers, including small businesses, who use Regulation D, Rule 506 to raise capital.

NASAA also supports strengthening the "accredited investor" standard. As established under SEC rules, the current "accredited investor" definition is satisfied if a natural person has an individual net worth, or joint net worth with their spouse, of $1,000,000, or if that person has an individual income of $200,000, or joint income with their spouse of $300,000. This definition hasn't been updated since it was established in 1982 and has been severely weakened by inflation in the intervening years. We support excluding the investor's primary residence from the $1 million net worth standard, and encourage the SEC to use the authority in this provision to review the "accredited investor" standard in the context of modern economic realities and to make the necessary adjustments to insure that investors are better protected.

State Investment Advisers' Assets Under Management. (Senate Sec. 410) Both bills contain a provision to increase the assets under management threshold for state-registered investment advisers from $25M to $100M. House Sec. 7418 added language to allow a state-registered investment adviser required to register with five or more states to maintain its registration with the SEC. That option could result in large numbers of investment advisers who are currently registered in three or four states to avoid state oversight by simply filing to do business in one or two additional states. This would contradict the objective of this provision; to allow the SEC to focus on the largest investment advisers while the smaller advisers would continue to be subject to strong state regulation and oversight. The SEC is on record that it is unable to timely and effectively examine the 4,000 smaller advisory firms in the $25M to $100M range and has chosen to focus on the larger advisory firms with billions of dollars under management presenting higher risk to investors. Specifically, SEC staff has reported that there are 3000 SEC-registered IA firms that have never been examined.

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. We prefer Senate Sec. 410 for the reasons stated above.

Financial Stability Oversight Council. (House Sec. 1001) We support including a state securities, banking and insurance regulator as non voting members of the FSOC to formalize regulatory cooperation and communication among all federal and state regulators, resulting in more effective oversight of our intertwined financial markets. For example, a state securities regulator would bring to the Oversight Council the insights of a team of "first responders" who see trends developing at the state level, which have the potential to impact the larger financial system. This holistic approach is effective and efficient. It creates a body with access to all relevant information regarding the accumulation of risk in our financial system, and it draws upon the existing expertise and proficiency of each functional regulator.

Arbitration. (House Sec. 7201) State securities regulators support the House provision that provides the SEC with authority to conduct a rulemaking that gives investors the right to choose whether arbitration is the proper course of action for their situation. NASAA believes investors deserve choice and that mandatory securities arbitration must end now.

Both bills give the SEC authority to conduct a rulemaking on the use of mandatory predispute arbitration agreements if it finds the action is in the public interest and for the protection of investors. Senate Sec. 921 adds language that gives the SEC authority to "reaffirm" the use of mandatory predispute arbitration, which denies investors the option to choose between an industry-run arbitration system and filing a case in court.

Again, we thank you for the attention given to these issues, and we look forward to continuing to work closely with you during the House/Senate conference proceedings.

Sincerely,

Denise Voigt Crawford

Denise Voigt Crawford
Texas Securities Commissioner
NASAA President

cc: U.S. Senate conferees