



**NASAA**

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

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March 15, 2004

Jonathan Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

Via e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: File No. S7-04-04; Release Nos. IA-2209, IC-26337  
Investment Adviser Codes of Ethics**

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. (NASAA)<sup>1</sup> is pleased to submit comments regarding the above-referenced rulemaking. We appreciate the opportunity to comment on the Commission's request for ideas on new rule 204A-1, and related rule amendments, proposed under the Investment Advisers Act of 1940, requiring advisers to adopt and enforce a code of ethics applicable to supervised persons.

NASAA supports the Commission's desire to keep advisers from committing unethical business practices and hold them accountable for violations of their fiduciary obligations to their clients. NASAA supports advisers having a written Code of Ethics as a best practice. However, we do not believe that a regulatory mandate of a written Code of Ethics is the most appropriate method for ensuring compliance with the existing fiduciary duties of investment advisers. NASAA also fears that advisers may characterize the Code of Ethics as an official imprimatur from regulators that a firm has been recognized as meeting a higher standard of conduct.

By itself, the creation of a Code of Ethics amounts to a cosmetic method of addressing the real problem: conflicts of interest and unethical business practices. In 1997, NASAA adopted model rules regarding unethical and dishonest advisory business practices. Those rules contain a laundry list of unethical practices that, if committed, are actionable in and of themselves. Enforcement of these and other rules has proven very effective in curtailing violations by state-registered investment advisers. NASAA encourages the Commission to consider similar rules to curb potential investment industry abuses.

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

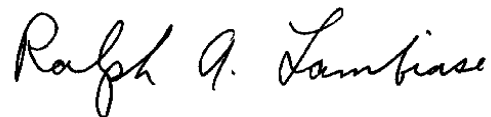
NASAA also is concerned with the proposed provisions deeming certain records non-public. We believe that this proposal, unless clarified, could make it more difficult for regulators to perform their duties in protecting the public. Should the SEC move forward with this portion of the proposal, NASAA suggests that it include language clarifying the rights of examination and investigative staff, at both the federal and state levels, to obtain the protected information.

The proposal to require personal trading reports from “access persons” of the adviser is insufficient. The Commission should consider expanding the review and reporting function to the trading accounts of all employees with access, while exempting sole proprietors from the “reporting” provision – but not the recordkeeping portion – of the rule.

Additionally, we encourage the Commission to consider some measure short of the proposed total prohibition of purchases of IPOs and private placement by investment advisers. NASAA believes that this portion of the proposal is problematic, in part because most advisers that manage hedge funds also participate in the private placement of those funds.

Thank you for consideration of these comments. Should you have questions about NASAA’s comments, please feel free to contact Patricia Struck, Chair of the NASAA Investment Adviser Section and Director of the Wisconsin Division of Securities or Kristina Kneip, Chair of NASAA’s Investment Adviser Regulatory Policy and Review Project Group and Senior Examination Attorney with the Washington State Securities Division.

Sincerely,

A handwritten signature in cursive script that reads "Ralph A. Lambiase".

Ralph A. Lambiase  
NASAA President and  
Director, Connecticut Division of Securities