NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
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NASAA

February 14, 2013

Mr. William T. Pound
Executive Director
The National Conference of State Legislatures
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001

Dear Mr. Pound:

On behalf of the North American Securities Administrators Association (NASAA)1, I am writing to call your attention to social media privacy legislation that is presently under consideration in a number of states.2 Though NASAA does not have a position regarding policies intended to enhance personal privacy protections for users of social media, a number of bills now pending in state legislatures stand to adversely impact the supervisory and record-keeping responsibilities of broker-dealers and investment advisers that state securities regulators are charged with regulating. Unless amended, these bills would in some cases prevent state securities regulators from enforcing investor protection laws and regulations, thus harming investors who increasingly rely on social media outlets to gather information about their investments.

State laws and regulations require broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives to maintain books and records relating to the firm's business, which can include business communications made or transmitted using social media. To comply with these requirements, broker-dealers and investment advisers must be able to access social media accounts used by employees for *business* purposes. Legislation under consideration by certain states may prove problematic because, absent an appropriate carve-out, such laws would place broker dealers and investment-advisers in a precarious position where compliance with state privacy laws might cause them to run afoul of their supervisory and record-keeping responsibilities under state and federal securities laws and regulations, and vice-versa.

1 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, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for investor protection and efficient capital formation.

2 Enclosed is a list of all states now considering social media privacy bills. The list additionally identifies bill numbers and bill sponsors. It is important to note that the bills included on this list are not identical, and some of them may not present the policy concerns identified in this letter.

I want to reiterate that NASAA has no objection to privacy laws covering social media accounts used for *personal* purposes. However, in order for state securities regulators to enforce investor protection laws and regulations, including the supervision of business-related communications, it is imperative that state social media privacy legislation provide carve-outs that will allow broker-dealers and investment advisers to access the social media accounts of their agents, representatives, and other employees, in instances where such social media accounts are used for *business* purposes.

To this end, I respectfully request that the Conference of State Legislatures apprise its membership of my concerns, and where appropriate, consider urging the inclusion of one of the following two model language options be inserted in social media legislation. Both model language options create an exclusion which allows broker-dealers and investment advisers to access employees' social media accounts when those accounts are used to conduct business and are, therefore, subject to federal and state securities laws and regulations and, if applicable, FINRA regulations.

Model Legislation Language Option #1[3]

> Nothing in this [act/section] shall be construed to prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.

Model Legislation Language Option #2[4]

> This [act/section] does not prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal or state law or by a self-regulatory organization, as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 USC 78c(a)(26).

Thank you for your attention to these concerns. Should you or any of your members have questions or require additional information, please do not hesitate to contact me or Michael Canning, NASAA's Director of Policy, at (202) 737-0900.

Sincerely,

A. Heath Abshure

A. Heath Abshure
NASAA President and Arkansas Securities Commissioner

3 This model language is based on an exclusion included in New Jersey Assembly Bill 2868.

4 This model language is based on an exclusion included in Michigan Enrolled House Bill 5523, though NASAA has edited the language to include an exclusion for state law.