

# The Pillars of Protection



**2012 | 2013 Report**

North American Securities Administrators Association

[www.nasaa.org](http://www.nasaa.org)

# About NASAA

State and provincial securities regulators have been protecting investors from fraud and abusive sales practices since the passage of the first “blue sky” law in Kansas in 1911 and since 1912 in Canada when Manitoba became the first province to approve securities legislation. In the United States, state securities regulation preceded federal securities laws, including the creation of the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), formerly the NASD.

Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association with a membership consisting of securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.

As the preeminent organization of securities regulators, NASAA is committed to protecting investors from fraud and abuse, educating investors, supporting capital formation, and helping ensure the integrity and efficiency of financial markets.

NASAA represents and serves its members through advocacy, education, subject-matter expertise, communication and coordination. NASAA values investor protection, education, respect for diverse views, building consensus, being proactive, and active participation by all members of the organization. NASAA has a long history of advocating for federal and state securities legislation, rulemaking and coordinated enforcement actions that advance the goal of protecting investors.

## 4 Leadership Letter

A message from A. Heath Abshire and Jack E. Herstein.

## 6 On the Frontlines

NASAA members are an investor's first line of defense in the fight against investment fraud.

## 16 NASAA Overview

Government Affairs  
Legal & Regulatory Affairs  
Communications & Investor Education  
Conferences & Events  
Training & Technology

## 22 Section Reports

Broker-Dealer  
Corporation Finance  
Enforcement  
Investment Adviser  
Investor Education

## 27 NASAA Awards

## 28 NASAA Lists

Board of Directors  
Board Committees  
Staff

## *Issue Focus:* The Pillars of Protection

8 NASAA's five **core principles** provide a strong foundation for the pillars of protection necessary for investors and industry alike.

1. *Promote Investor Confidence*
2. *Balance Capital Formation and Investor Protection*
3. *Implement the Investor Protection Provisions of the Dodd-Frank Act*
4. *Maintain Governmental Oversight Responsibilities*
5. *Expand State Authority*

# Leadership Letter

Securities regulators in the states, provinces and territories of North America have a proud tradition of delivering effective protection for investors and efficient regulation for industry. We serve a distinguished role in safeguarding the assets and maintaining the confidence of investors throughout North America.

For more than 100 years, state and provincial securities regulators have developed a strong system to help protect the dream of a better financial future. Throughout the years, our commitment to investor protection through education and strong enforcement of state securities laws has remained unchanged.

We are in the trenches every day, stepping up when and where others may be unlikely to act.

Last year alone, NASAA members conducted more than 6,000 investigations, which led to more than 2,600 enforcement actions, \$2.2 billion ordered returned to investors and more than 1,600 years of jail time for securities law violators.

The Dodd-Frank Wall Street Reform and Consumer Protection Act recognized NASAA's leadership and record of accountability and gave state securities regulators new authority to address the challenges facing 21st century investors.

Under the law, approximately 2,100 mid-sized investment advisers switched in 2012 from federal to state regulation. When the switch is completed, states will have regulatory responsibility for approximately 17,000 investment advisers, while about 10,500 investment advisers will be under federal oversight.

This switch is currently the largest single regulatory event involving a coordinated effort by the states and the SEC. NASAA members prepared for the switch for more than two years. This preparation helped foster a smooth

transition and enabled state regulators to implement intelligent, efficient and responsive regulation.

The investment adviser switch is just one of Dodd-Frank's many meaningful and tangible reforms. But a number of key issues remain to be resolved.

For example, NASAA continues to encourage the SEC to develop a rule that applies a fiduciary standard of care and loyalty to all who provide investment advice, and to ensure that this standard is as strong as the existing fiduciary duty of the Investment Advisers Act.

We will continue our efforts to ensure that Dodd-Frank is implemented to provide strong investor protections without posing unnecessary burdens on business or impeding legitimate capital formation efforts.

Financial markets will continue to become more sophisticated, complex, and global in their reach. The changing dynamics of our financial markets will require a similar regulatory evolution.

But that evolution must focus on providing a balance between investor protection and economic growth. One must not outweigh the other.

NASAA members should remain vigilant to identify and seek to remedy unfairness in laws, regulations or administrative procedures that threaten to harm investors. When appropriate, we must speak on behalf of small investors whose voices cannot be heard over the din of the lobbyists and industry.

In all of this, we have to speak with the one voice of reason; the one unbiased voice that strikes the most appropriate balance between industry and investor.

Considering our illustrious history, our excellent track record, our universal reputation for fighting the good fight, and our physical presence throughout all of North America, we stand poised to be the most thoughtful, appropriate, and

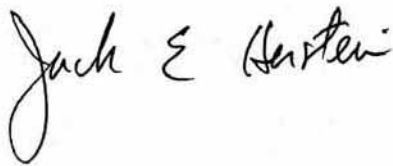
influential voice whenever changes to the system of securities regulation are being considered.

Together, we build on the foundation of professionalism and integrity of those who served before us and set the standard for those who follow.

If we harness our potential and speak as one, we will be the most reasonable, trusted, and influential securities regulator in North America.

The securities markets are too large and too diverse for one government regulator to oversee. It is woefully shortsighted to assume that one government regulator can be the most useful resource for all broker-dealers, all investment advisers, all issuers, and all investors of any size, from the ExxonMobils to the sole proprietorships, from the Calpers to the widowed retiree on Social Security.

Given the size and complexity of the market, we are presented with a unique opportunity. We should consider the changes to securities regulation brought about by globalization and rapidly changing technologies, and stake our claim to those areas where we are the most efficient, effective, and appropriate regulator—the regulator most likely to serve as a valuable resource to issuers, investors, and the industry.



**Jack E. Herstein**  
Nebraska  
NASAA President  
2011-2012



**A. Heath Abshire**  
Arkansas  
NASAA President  
2012-2013

# On the Frontlines of Investor Protection

*“We are committed to investor protection through strong enforcement of our securities laws. We are in the trenches every day to protect Main Street investors.”*

**- Jack E. Herstein**  
2011-2012 NASAA President  
Asst. Director, Nebraska Department of  
Banking & Finance, Bureau of Securities

State and provincial securities regulators have protected hometown investors from fraud for more than 100 years, longer than any other securities regulator. Strong enforcement of state and Canadian securities laws is a hallmark of NASAA members.

In October 2012, NASAA's Enforcement Section, led by Maine Securities Administrator Judith Shaw, reported a significant increase in enforcement actions against investment adviser firms in 2011 and a sharp rise in prison time for securities law violators.

Indeed, states are the undisputed leaders in criminal prosecutions of securities violators. In 2011 alone, state securities regulators conducted more than 6,000 investigations, leading to 2,600 enforcement actions, including more than 430 criminal actions. Moreover, in 2011, more than 3,500 licenses of brokers and investment advisers were withdrawn, denied, revoked, suspended, or conditioned due to state action.

The report noted that financial abuse of seniors was identified in nearly 600 reported enforcement actions. Prison time resulting from state-initiated actions totaled 1,662 years, up 47 percent from the year before.

State-initiated enforcement actions resulted in more than \$2.2 billion in investor restitution orders in 2011. Much of this restitution is attributable to repurchases of auction rate securities (ARS) stemming from state-led actions.

## A Strong Record of Investor Protection

### Enforcement Statistics at a Glance

Complaints Fielded by State Regulators:	11,302
Investigations:	6,121
Enforcement Actions:	2,602
Investor Restitution Ordered:	\$2.2 billion
Fines, Penalties, Payments & Costs:	\$290 million
Jail Time Sentenced:	1,662 years
Licenses Withdrawn, Denied, Revoked, Suspended or Conditioned:	3,570

### Most Reported Products in Enforcement Actions

1. Rule 506 Offerings
2. Real Estate Investments or Interests
3. Ponzi Schemes
4. Oil & Gas Investments or Interests
5. Structured Products

## Key Findings: NASAA 2012 Enforcement Report

Investors continue to rely on state securities regulators for protection as evidenced by a consistently high number of complaints (11,302) and investigations (6,121).

State securities regulators are cracking down on the worst offenders. Activity and assistance in criminal prosecutions resulted in 1,662 years in prison sentences and 434 years of probation.

Enforcement by-products of the Dodd-Frank and JOBS Acts are beginning to emerge in the form of increased actions or enforcement efforts relating to investment advisers, Internet offerings, crowdfunding and Reg D issues.

The states' historic commitment to finding investor-focused resolutions to the auction rate securities meltdown of 2008 were quite fruitful, and now, several years later, the states are wrapping up the administrative orders stemming from those activities.

New or novel threats to investors are emerging in the form of crowdfunding, investment adviser problems and EB-5 visa-for-investment issues, while persistent and "traditional" threats such as Reg D fraud, oil and gas scams, and real estate investment schemes remain prevalent.

The number of actions against brokers and broker agents remain relatively consistent, while there was a sizeable increase reported this year in actions against investment adviser firms.

Reg D and real estate schemes remain the most common type of violative products or practices.

## Key Findings: CSA Enforcement Report

In February 2012, the Canadian Securities Administrators (CSA) released its 2011 Enforcement Report that outlines how Canadian securities regulators are working to detect and disrupt misconduct in Canada's capital markets.

Enforcement action against wrongdoing in Canada's capital markets is a top priority for Canadian securities regulators, who concluded 124 cases in 2011 involving 237 individuals and 128 companies.

Of these cases, 24 were conducted in court proceedings, which resulted in jail sentences against eight individuals.

Illegal distributions made up over half of all concluded enforcement cases. Cases of illegal distributions often involve Ponzi schemes.

Concluded cases resulted in fines and administrative penalties of more than \$52 million and nearly \$50 million in restitution, compensation and disgorgement.

Canadian securities regulators reported 63 interim orders restricting trading and/or freezing the assets against 109 individuals and 108 companies.

To read the full NASAA Enforcement report, visit the NASAA website at [www.nasaa.org](http://www.nasaa.org). To review the CSA's full enforcement report, go to the CSA's website at [www.securities-administrators.ca](http://www.securities-administrators.ca), as well as the websites of NASAA's Canadian members.

## Pillars of Protection

*“If the JOBS Act is any indication, lawmakers appear willing to sacrifice reasonable regulation for perceived economic growth.”*

A. Heath Abshure  
2012-2013 NASAA President  
and Arkansas Securities Commissioner



Throughout 2012 and into 2013, NASAA and its members advanced a policy agenda that balanced the twin goals of investor protection and economic growth. NASAA did so by focusing on five core principles, or pillars, of protection.

- Promote Sustained Investor Confidence by Ensuring Market Transparency, Enhancing Investor Education, and Imposing Strong Penalties
- Policies Intended to Spur Capital Formation Must Balance the Need to Maintain Investor Protection
- Support Strong and Complete Implementation of the Investor Protection Provisions in the Dodd-Frank Act by the Conclusion of the 113th Congress
- Regulation is an Inherently Public Function that Should be Performed by Government Regulators, not Outsourced to an Industry Self-Regulatory Organization
- State Authority Should Not Be Preempted and Should Instead Be Expanded

### Promote Sustained Investor Confidence

Trust in the financial markets is one of our nation's greatest competitive advantages, drawing capital investment to businesses and creating a robust economic system that is fair to all.

The financial crisis and recent scandals involving Ponzi schemes, insider trading and market manipulation have shaken investor confidence. Investors throughout North America continue to question the fairness and stability of U.S. capital markets.

NASAA considers it imperative that policymakers take decisive steps to bolster market confidence and thereby lay a foundation for sustained economic growth.

### **Improve Market Transparency and Level the Playing Field**

The statutory and regulatory framework for the offer, sale and purchase of securities is designed to enhance investor confidence through full disclosure. Informed investors promote confidence in the market through discerning investment decisions. Transparency reduces market inefficiency and reduces opportunities for market manipulation and other types of investor abuse.



NASAA supports efforts to ensure that complete transparency occurs regarding securities offerings.

Recent years have seen the proliferation of new and complex financial products in the global financial marketplace. As more complicated securities products enter the market, transparency regarding these products will be critical, as both a means of deterring fraud and as a way to help ensure that investors do not assume more risk than they can understand or tolerate. For markets to respond to these new products in a rational way, full disclosure and transparency are essential.

NASAA also is committed to working with policymakers to better protect retail investors from the adverse effects of market manipulation.

In recent years, advances in technology and other factors have made it increasingly easy for sophisticated market participants—hedge funds, dark pools, high-frequency traders, and others—to identify and exploit informational asymmetries in order to maximize profits, often at the expense of retail “mom and pop” investors.

One market phenomenon that is of particular concern to NASAA members is High-Frequency Trading (HFT), which refers to the use by some market participants of powerful computers to buy and sell enormous amounts of securities at incredibly high speeds. Such trading appears to have potentially dangerous implications for ordinary “mom and pop” investors.

Congress has the authority to investigate HFT and other opaque market actors, and NASAA urges the 113th Congress to make full and expeditious use of this authority to bring greater transparency to these areas. The investing public should be able to understand the nature of this phenomenon and judge its risk.

### **Strengthen Penalties for Securities Law Violators**

The economic recession and turmoil of the last half-decade was caused in significant measure by fraudulent financial activity. Widespread mortgage fraud, unscrupulous fixed-income departments, and accounting fakery all contributed to the financial meltdown. Fraud destroys trust in the financial system, while fairness and integrity build it.

Not long ago, going to jail for financial fraud was a real risk. For decades, the credible threat of prosecution was sufficient to convince financial executives to keep their businesses simple and transparent. In recent decades, however, even as rules have multiplied to keep up with new and more complex ways to invest, the punishments meted out to those who commit major financial frauds have become notably less frequent and severe.

One of the most striking features of the 2008 financial crisis

is how few of those who were most culpable were punished for their conduct.

For enforcement to be an effective deterrent, there must be a real risk of punishment for those who mislead investors or otherwise perpetrate fraud and abuse. Scandals involving securities transactions undermine investor confidence, whether they arise in the form of insider trading, misrepresentations in connection with securities offerings, the purchase or sale of securities, self-dealing through undisclosed related party transactions, or other methods. Aggressive enforcement activities—including efforts to deter wrongdoing, to disgorge ill-gotten gains from wrongdoers, and, where possible, to provide restitution for aggrieved investors—is the only proven antidote.

In 2012, NASAA supported *The Stronger Enforcement of Civil Penalties Act* (S. 3416), sponsored by Senators Jack Reed (D-RI) and Charles Grassley (R-IA). This legislation would have substantially raised the financial stakes for repeat offenders of our nation’s securities laws by raising the limits on civil monetary penalties and linking the penalties to the scope of harm and associated investor losses. In 2013, NASAA will intensify its efforts to secure the enactment of this or similar legislation.

### **Strengthen Private Remedies for Victims of Fraud**

Congressional action to extend private remedies to victims of securities fraud is particularly urgent in light of SEC Chairman Elisse Walter’s announcement on January 18, 2013, that the SEC will soon proceed with rulemakings to implement the Jumpstart Our Business Startups Act (JOBS Act), which will legalize equity “crowdfunding” and allow the advertising of private placements.

The JOBS Act will greatly increase the number of small investments in small, private companies. As a result, a single instance of fraud might easily result in damages to a large number of people. At the same time, however, the losses may be small enough that a private legal action by a single victim is not economically feasible.

To ensure that victims of securities fraud will have recourse, NASAA urges the 113th Congress to explore amending federal law to ensure that all investors, especially those investing small amounts, have a reasonable avenue to seek recovery. Failure to provide recourse to defrauded investors may have a chilling effect on future investment in these offerings and capital raising efforts generally.

While NASAA remains committed to ensuring that arbitration forums and procedures create an even playing field, NASAA also believes that arbitration should not be the sole forum available to aggrieved investors. Aggrieved investors should be able to

# Pillars of Protection

seek relief in any forum and not be forced into an expensive arbitration that could foreclose the ability to obtain relief. Accordingly, state securities regulators urge the 113th Congress to take steps to ensure that private remedies for securities frauds are strengthened and expanded.

## **Increase Resources to Protect Senior Investors**

A robust statutory framework for investor protection is critical to protecting seniors and other vulnerable citizens who are routinely targeted by predatory con artists.

Shockingly, one out of five Americans over the age of 65 has been a victim of financial exploitation, and the problem is growing. To combat such senior exploitation, the states have banded together to develop innovative fraud prevention programs and to cooperate closely on major fraud investigations. State securities regulators encourage the 113th Congress to do its part by increasing resources dedicated to protecting seniors and other vulnerable citizens.

One important way that Congress can provide greater protection for seniors is by enhancing and refining the penalties for those who defraud them. In the 111th and 112th Congress, NASAA supported *The Senior Investor Protection Enhancement Act*, which sought to impose higher penalties on those who target seniors with abusive sales practices. In the 113th Congress, NASAA will continue to push for enactment of this legislation. NASAA also calls on Congress to fund the Senior Investor Protection grant program to be established by the Office of Financial Education at the Consumer Financial Protection Bureau.

## **Weigh Investor Protection, Privacy and Social Media**

As Congress considers updating the *1986 Electronic Communications Privacy Act* to refine and expand privacy protections in the age of social media, NASAA will work with policymakers to ensure that legislation does not inadvertently compromise investor protection, including the obligation of securities firms to supervise, record, and maintain business-related communications as required by regulators.

Securities firms must be able to access social and digital media accounts involving business communications. Otherwise, firms may not be able to detect serious problems that put consumers at risk, including misleading claims by an employee; insider trading, Ponzi schemes and other fraudulent activity; and inappropriate conduct such as the selling of investment products that the firm has not approved.

## Balancing Capital Formation and Investor Protection

The facilitation of access to capital for new and small businesses is a worthy goal. Small businesses, including startups with high growth potential, continue to have difficulty obtaining access to capital, and policymakers are justified in exploring new and innovative ways to help them. However, if Congress legislates in this area, it is imperative that it do so in a careful and deliberate fashion that balances the goals of capital formation with investor protection.

State securities regulators support the idea that the opportunity to invest in small businesses, including emerging businesses, should exist for all investors as long as they understand the risk involved and have the financial ability to absorb attendant losses. However, small and emerging businesses, by definition, carry extreme risk, and it is very difficult for most retail investors to evaluate or price this risk. Indeed, statistics show that roughly 50 percent of small businesses fail within the first five years. Moreover, within this risky sector of small business investment, start-up businesses without a track record are particularly speculative and subject to failure.

If efforts to promote access to investment capital for small businesses are to be successful, investors need to be confident that they are protected to the fullest extent possible from fraud and undisclosed risk. Such assurance encourages investment, and in turn, increases the availability of investment capital. Conversely, hasty and ill-considered deregulation of public securities offerings, even when undertaken with the best intentions, can have devastating consequences for investors and businesses alike. In the absence of adequate attention to investor protection, policies that are intended to aid small businesses by helping them attract capital are likely to have precisely the opposite effect.

## **Minimize the JOBS Act's Enormous Potential for Abuse**

In 2012, Congress passed the JOBS Act in an effort to make it easier for small and emerging companies to raise capital and grow.

In doing so, many Members of Congress expressed concern about the deterioration of long-standing investor protections. In 2013, Congress should take steps to enhance investor protections; otherwise, investors will distrust the market, and the intent to increase capital for small businesses will be thwarted.

The removal of the ban on “general solicitation” in offerings conducted under Rule 506, as mandated in Title II of the JOBS Act, dismantles an important investor protection.

NASAA believes that elimination of the ban warrants a corresponding increase in dollar thresholds in the accredited investor definition, and that Congress should mandate such a change. Congress also should ensure that clear guidance is given to issuers regarding the reasonable steps that are necessary to verify that purchasers are accredited investors. In addition, a Form D should be filed prior to the use of any general solicitation, and reasonable restrictions should be placed on advertising, including performance advertising for private funds.

SEC rulemaking on crowdfunding offerings, as authorized under Title III of the JOBS Act, should similarly reflect a uniform and balanced regulatory approach. For crowdfunding to be successful, regulations must create a framework that minimizes unnecessary burdens on small businesses while simultaneously insulating investors from fraud and abuse. Given the potential for huge numbers of unsophisticated investors to participate in crowdfunded offerings, and in view of the anticipated lack of regulatory oversight these public offerings will receive, NASAA believes that high standards must be in place for issuers and funding portals or intermediaries.

### **Stop Recidivists from Conducting Private Securities Offerings under Rule 502 of Regulation D**

In Section 926 of the Dodd-Frank Act, Congress set forth a process to disqualify “felons and other bad actors” from conducting private securities offerings under Rule 506 of Regulation D. The adoption of a disqualification provision would provide much needed investor protection and would not be detrimental to legitimate issuers. Recidivists rightfully should not be allowed to conduct private securities offerings under the safe harbor exemption provided by Rule 506.

NASAA welcomes this change, especially after state regulators were preempted under the National Securities Markets Improvement Act (NSMIA) in 1996 from weeding out recidivists from Rule 506 offerings.

In the post-NSMIA era, small business issuers are using Rule 506 almost exclusively for Regulation D offerings. Although properly used by many legitimate issuers, the exemption has become an attractive option for individuals who would otherwise be prohibited from engaging in the securities business.

Today, the exemption is being misused to steal millions of dollars from investors through false and misleading

representations in offerings that provide the appearance of legitimacy without any meaningful scrutiny of regulators. NASAA believes that Congress should require similar disqualification provisions to all other offerings made under Regulation D. This will assist states in keeping recidivists from selling securities to residents of their states.

Congress also can protect investors by requiring the filing of a Form D for each Rule 506 offering. Under current federal securities law, filing a Form D with the SEC and state securities regulators is not a condition to the availability of the Rule 506 exemption. In fact, because filing a Form D currently is not a condition of any Regulation D exemptions, it is hard for regulators and the public to use the filing or non-filing of a Form D as an indicator of securities law compliance. The fact that filing is not currently a condition of the exemptions at the federal level also creates confusion as to the necessity of filing with the SEC as well as the states and serves as a roadblock to enforcement efforts.

### **Allow Private Civil Actions for Aiding and Abetting Violations of Federal Securities Laws**

The 113th Congress should enact The Liability for Aiding and Abetting Securities Violations Act. This important legislation, first proposed in 2009 by former Sen. Arlen Specter and reintroduced in 2010 by Rep. Maxine Waters, would amend the 1934 Act to establish a private right of action for aiding and abetting violations of federal securities laws.

Congress always has recognized private actions as a means of achieving the investor protection goals underlying securities laws. Private actions afford victims of fraud the best and often only hope of recovering their losses, which governmental enforcement programs are ill-equipped to do on a large scale. By exposing all parties responsible for fraud, including those who provide substantial assistance, such legislation will not only help deter future violations, but may afford some recovery to those who have lost their investments and often their life savings.

Allowing private litigants to bring fraud claims against those who have aided and abetted such fraud will ensure that investors have meaningful private remedies in federal court.

Given the marked rise in corporate fraud and securities law violations affecting large classes of investors and because alternate forums for aggrieved investors remain limited, it is especially important that Congress provide meaningful remedies to victims of securities fraud.

## Support Complete Implementation of Investor Protections in Dodd-Frank

Full implementation of the investor protection provisions in the Dodd-Frank Act is one of the most important steps that the federal government can take to protect investors and promote confidence in U.S. capital markets.

NASAA urges the SEC and other federal agencies to complete the Act's implementation prior to the conclusion of the 113th Congress, in January 2015, and to resist efforts to repeal the Act's reforms or impede their implementation. Specifically, NASAA supports provisions in the Act that increase state regulatory oversight of investment advisers, safeguard seniors from unqualified advisers, prevent securities law violators from conducting securities offerings under Regulation D, and authorize the SEC to mandate greater choice of forum and enhanced remedies for investors.

NASAA also strongly advocates provisions in the Act that empower the SEC to expand the fiduciary standard of care currently applicable to investment advisers to broker-dealers, who provide investment advice, as well as provisions designed to make capital markets more transparent by authorizing regulators to prescribe guidelines for certain structured products, limit speculative trading, and require that most derivatives be traded on exchanges. State securities regulators are particularly dedicated to swift adoption of policy reforms embodied in the Act that directly benefit retail investors.

### ***A Uniform Fiduciary Standard for Financial Professionals Who Offer Personalized Investment Advice***

Section 913 of the Dodd-Frank Act (the 913 Study) directed the SEC to study differences in the standards of care required of broker-dealers and investment advisers who provide personalized investment advice. The 913 Study, which was completed in 2011, found that while investment advisers are subject to a strict "fiduciary duty" standard, broker-dealers are

subject to more lenient standards governing their conduct. For example, in meeting their duty of loyalty, investment advisers cannot place their own interests ahead of those of their clients. Broker-dealers, however, are not subject to a similar constraint. To remedy this disparity, the Dodd-Frank Act empowered the SEC to harmonize the standards of care to require that all providers of financial advice to investors be true fiduciaries.

The establishment of a uniform fiduciary duty standard governing the conduct of broker-dealers and their agents is crucial for the protection of investors. Most investors cannot distinguish broker-dealers from investment advisers, nor do they understand the different legal standards applicable to either. As a result, many investors are unable to make informed decisions as to the best type of financial professional to retain.

A fiduciary standard for broker-dealers will guarantee that all financial professionals providing investment advice will act in the best interests of their clients and in turn enhance investor confidence in the financial services industry and securities markets.

NASAA urges the SEC to pursue the course recommended by the 913 Study to subject broker-dealers to the same fiduciary duty standard currently applied to investment advisers when those brokers offer personalized investment advice to retail investors and other customers.

### ***Implementation of Investor Protection Provisions in the Dodd-Frank Act Must Not be Subject to Redundant or Dilatory Regulatory Analyses Requirements***

In the two-and-a-half years since enactment, one of the potential obstacles emerging to successful implementation of the Dodd-Frank Act's investor protection provisions has been the use of regulatory analytical requirements to delay and frustrate the ability of regulators to promulgate rules under the Act.

Rulemaking processes to which the SEC and other federal regulators must adhere in implementing the Dodd-Frank Act are set forth in the Administrative Procedure Act (APA) and

*In 2013, the largest single regulatory event involving a coordinated effort by the states and the SEC was successfully completed when 2,100 mid-sized IAs switched from federal oversight to state jurisdiction. The switch was mandated by Dodd-Frank in recognition of the effectiveness of state securities regulators.*

other statutes. In addition to such mandates arising under the APA, the SEC has a unique additional obligation to consider the effect of a proposed rule upon “efficiency, competition, and capital formation.”

State securities regulators appreciate the importance of the rigorous regulatory analyses to which independent agency rules are subjected.

However, NASAA is concerned that misuse of these analyses could severely impede the ability of independent federal agencies, such as the SEC, to implement important investor protections in the Dodd-Frank Act, as well as future laws designed to protect investors and the public.

NASAA was alarmed by the introduction of several legislative proposals in the 112th Congress that would create numerous new regulatory analytical hurdles for federal financial regulators charged with implementing the Dodd-Frank Act.

The 113th Congress must be vigilant in ensuring that dilatory or redundant regulatory analytical requirements are not successfully employed to delay or disrupt implementation of the Dodd-Frank Act and other important investor protection laws.

### **Improve the Fairness of the Securities Arbitration Process**

NASAA members long have sought to improve the arbitration forum that currently serves a significant portion of the securities industry, and NASAA will aggressively advocate legislation in the 113th Congress to further improve the arbitration process for investors.

Section 921 of the Dodd-Frank Act provided the SEC with rulemaking authority to prohibit or impose conditions on the use of mandatory pre-dispute arbitration agreements if it determines it is in the interest of the public or investors. Pursuant to this provision, Congress should encourage the SEC to exercise its authority to propose or adopt rules prohibiting or conditioning pre-dispute agreements mandating arbitration.

In recent years, states also have seen the emergence of mandatory pre-dispute arbitration clauses in contracts between state-registered investment advisers and their clients, despite the fiduciary duty imposed upon investment advisers.

In the 113th Congress, NASAA will seek legislation empowering state regulators to curtail the use of such clauses and to take the steps necessary to provide investors with a choice for dispute resolution.

## **Regulation of Investment Advisors is an Inherent Public Function that Should be Performed by Government Regulators, not Outsourced to Industry**

Since the passage of NSMIA in 1996 and the Dodd-Frank Act in 2010, the division of federal and state regulatory responsibility over investment advisers has been clearly delineated according to the amount of investors’ assets under management.

NSMIA bifurcated regulatory responsibility between the states, which were given authority to oversee investment advisers with up to \$25 million in assets, and the SEC, which oversaw all other investment advisers.

In 2010, the Dodd-Frank Act acknowledged the important and successful role states play in investment adviser regulation and increased the states’ regulatory responsibility by transferring to them oversight of mid-sized investment advisers—those with assets under management between \$25 million and \$100 million.

From the perspective of states securities regulators, this division of state and federal regulatory responsibility for investment advisers has worked very well.

States have robust and dynamic regulatory oversight programs. States, unlike the SEC, regulate both investment advisers and investment adviser representatives. Almost every state performs on-site examinations, on a routine and for-cause basis, often using sophisticated examination modules. The majority of states conduct examinations on average at least once every four years.

In contrast to the states’ experience regulating small and mid-sized investment advisers, in the post-NSMIA era, the SEC has struggled to adequately examine the large federally registered investment adviser firms for which it is responsible. The problems that exist with the SEC’s oversight of federally registered investment advisers have been characterized as a “regulatory gap.”

NASAA recognizes that this gap places investors at risk and believes that Congress should address it by providing the SEC with the resources to do the job, or a mechanism to gain these resources, and not outsource the responsibility to an industry-funded, self-regulatory organization (SRO). NASAA urges the 113th Congress to reject proposals to establish additional SROs, and instead to enable federal regulators with the resources they need to effectively monitor the firms and representatives under their jurisdiction.

# Pillars of Protection

## **NASAA Vigorously Opposes the Creation of an SRO for State-Regulated Investment Advisers**

When it comes to the regulation of investment advisers, government regulators have decades of experience unmatched by any other authority or entity. NASAA sees little benefit in constructing and imposing a new layer of bureaucracy, with its attendant, well-documented expenses. The goal is to strengthen investor protection by improving the oversight of SEC-regulated investment advisers, and the best way to do this is to adequately fund federal regulators.

The existing securities industry SRO model—as typified by FINRA—also lacks accountability and is replete with conflicts of interest. Even where there is an independent Board of Directors, SROs remain organizations built on the premise of self-rule and are, as a matter of first principle, accountable to their members, not the investing public. Indeed, the Section 914 of the Dodd-Frank Act study (the 914 Study) underscored this point when it noted that an SRO containing “industry representatives” in its governance structure could have an elevated vulnerability to industry capture. No matter how many safeguards are instituted, an SRO lacks accountability and has substantial and inherent conflicts of interest that governmental regulators do not.

SROs also are more costly and inefficient than direct government oversight. For example, the establishment of an SRO for investment advisers would create a duplicative regulatory structure, with the SEC being responsible for the oversight of the SRO, and the SRO in turn being responsible for the oversight of investment advisers. Establishing an SRO will likely be more expensive, both initially and over the long-term, than funding a more robust SEC to oversee the industry.

Finally, aside from structural concerns raised by legislation establishing an SRO for investment advisers, most state-registered investment advisers are small businesses employing only a few people. The majority of their clients are not wealthy individuals or institutions, but hard-working Americans trying to plan for retirement or their children’s education. State securities regulators are extremely concerned about the impact that legislation requiring investment advisers to join an SRO would have on state-registered investment advisers and their clients. In short, any legislation that would require small and mid-sized investment advisers to join an SRO has the very real potential to be a job killer.

## **Congress Should Authorize the SEC to Assess “User Fees” to Fund Improved Oversight of Federally Registered Investment Advisers**

State securities regulators continue to believe that best way for Congress to improve the oversight of federally registered investment advisers is to provide the SEC with the resources it needs to do the job. Unfortunately, the SEC still lacks the necessary funding to adequately oversee the investment advisers it regulates.

Recognizing current political realities, NASAA believes the best way for Congress to improve the oversight of federally registered investment advisers is to enact legislation authorizing the SEC’s Office of Compliance Inspections and Examinations (OCIE) to collect user fees from the investment advisers it examines. The revenue derived from such user fees, which would not come at any cost to taxpayers, could then be used by OCIE to fund additional examinations of federally registered investment advisers.

In the 112th Congress, NASAA supported *The Investment Adviser Examination Improvement Act*, sponsored by Rep. Maxine Waters (D-CA), which would have authorized the SEC to assess user fees on investment advisers to fund an expansion of its adviser examinations. In the 113th Congress, state securities regulators will continue to strongly support and advocate for the enactment of *The Investment Adviser Examination Improvement Act* or similar legislation.



*Texas Securities Commissioner John Morgan testifies before the House Financial Services Committee. In his June 6, 2012 testimony, Commissioner Morgan said NASAA members are “adamantly opposed” to the creation of an SRO for state-registered investment advisers.*

## State Authority Should Not Be Preempted and Should Instead Be Expanded

As a matter of principle, Congress should refrain from preempting state law.

For most investors, states are far-and-away the most responsive, accessible, and attuned regulators. Congress has recognized the performance and relevance of state securities regulators by expanding state responsibilities for the oversight of investment advisers and ensuring that state financial services regulators had a voice on the Financial Stability Oversight Council. Nevertheless, recent federal legislation has threatened to preempt the authority of the states.

### ***Congress Should Defer to the States in Prescribing Policies to Regulate Small Offerings, Which States are Most Capable of Policing***

State regulators are closest to the investing public and understand the complex challenges faced by small businesses seeking to raise capital. State regulators are members of the communities they serve, and see first-hand how the public is optimally served by policies that strike a reasonable balance between the interests of issuers and investors.

Further, it is important to note that the SEC has neither the mandate nor the resources to police small offerings. Federal policies that vest rulemaking responsibilities exclusively with the SEC effectively separate the rulemaking from the enforcement responsibility. From a public policy standpoint, such arrangements are highly inefficient and sometimes dysfunctional.

Prior to the Dodd-Frank Act, consumer protection responsibilities had been spread across various federal banking regulatory agencies, with the Federal Reserve having sole authority to adopt rules to protect consumers from “unfair and deceptive practices,” and individual prudential bank regulators like the Federal Deposit Insurance Corporation and the Comptroller of the Currency having the sole power to enforce those rules. This resulted in rulemakings that did not take into account lessons learned from enforcement actions and enforcement actions that were delayed due to a misunderstanding of regulations.

The bifurcation of rulemaking and enforcement authority

that failed to protect consumers at the federal level in the years preceding the 2008 Financial Crisis is no more likely today to succeed in protecting investors from fraud in small offerings. Thus, in areas where state securities regulators are expected to initiate and perform virtually all enforcement activity, Congress also should permit the states to exercise rulemaking authority.

### ***States Must be Permitted to Preserve and Improve their Capacity to Undertake Coordinated Action when Circumstances Require Uniformity***

With 53 independent jurisdictions in the United States and its territories, states operate with substantial and ever-increasing efficiency, and they have a strong track record of working together in a coordinated manner on a wide range of issues.

Advances in technology have resulted in automation of the registration process for individuals and firms, and coordinated reviews for securities registrations and mid-size or regional investment advisory firm examinations are becoming the norm rather than the exception.

Regulatory efforts involving interstate misconduct are routinely coordinated nationally to leverage state resources and reduce the cost and burden to the businesses involved (e.g., in the cases of sales practice violations relating to Auction Rate Securities).

The year 2012 saw the highly successful “Switch” of federally covered advisers to state registration. Earlier, NASAA adopted a model rule prohibiting deceptive senior-specific professional designations. Continuing to make progress in this area will be a high priority for state securities regulators as well as NASAA in the 113th Congress, and this progress should not be stultified by the threat of federal preemption.



## Activities & Accomplishments

*The primary mission of NASAA is to represent and serve its members through **advocacy, education, subject-matter expertise, communication and coordination** as they protect investors from fraud and abuse. **2012** saw a number of challenges to investor protection, and NASAA and its members worked collaboratively to advance our common goal of providing a reasonable balance between the needs of investors and industry.*

### Government Affairs

The primary issues affecting NASAA's membership in 2012 arose from legislation intended to improve the examination frequency of federally registered investment advisers and the implementation of the Jumpstart Our Business Startups (JOBS) Act, which became law on April 12, 2012.

Despite the JOBS Act being propelled by election-year political concerns, bipartisan and bicameral support in Congress, and decisive support from the White House, NASAA's government affairs team worked relentlessly through the Spring of 2012 to improve the legislation.

Through a series of letters and independent visits to Congressional members and staff, NASAA conveyed its strong opposition to the JOBS Act. More than 20 individual NASAA members directly registered their concerns to the JOBS Act through calls and letters to members of their state Congressional delegations.

This outreach campaign culminated in the appearance and testimony of a NASAA witness at a Congressional hearing on capital formation.

Following the enactment of the JOBS Act, NASAA's government affairs team turned its attention to the issue of investment adviser examinations. The team successfully secured Rep. Maxine Waters as a featured speaker at the 2012 Public Policy Conference, where she echoed NASAA's concerns with creating a self-regulatory organization (SRO) for investment advisers. She also noted her preference for a user-fee option and recognized the important role of states in examining small and mid-sized investment advisers and the burden that an SRO would place on those advisers.

Following the introduction of legislation authorizing the SEC to designate an SRO for investment advisers, NASAA voiced its concerns through letters and visits with the Chair of the House

Financial Services Committee, one of the principle supporters of the proposal. In the following weeks, NASAA's government affairs team conducted more than 40 visits with members of the House Financial Services and Senate Banking committees. These meetings were followed by more than 25 meetings between NASAA members and members of Congress.

NASAA's strong message earned a seat at the witness table during a hearing held by the full House Financial Services Committee. Texas Securities Commissioner John Morgan outlined NASAA's opposition to the SRO bill at the hearing.

Faced with resistance from NASAA and allied advocacy groups, House Financial Services Committee Chairman Spencer Bachus acknowledged on July 25, 2012, that the SRO bill was effectively dead for the remainder of the 112th Congress.

Throughout this very dynamic and active year, NASAA and its members made their voices heard through testimony, comment letters and joint outreach with other national organizations.

### NASAA Testimony | 2012

- ***The JOBS Act: The Importance of Prompt Implementation for Entrepreneurs, Capital Formation, and Job Creation***

A. Heath Abshire, NASAA President  
Arkansas Securities Commissioner  
House Financial Services Subcommittee on Capital Markets and the House Oversight Subcommittee on TARP, Financial Services, and Bailouts  
September 13, 2012

- ***Investment Adviser Oversight Act of 2012***

John Morgan  
Texas Securities Commissioner  
House Financial Services Committee  
June 6, 2012



## Legal & Regulatory Affairs

Throughout 2012, NASAA's legal department dedicated significant resources aimed at facilitating the switch from SEC regulation to state regulation as mandated by the Dodd-Frank Act.

The NASAA legal department also actively engaged in thorough regulatory and legislative analysis to help advance NASAA's concerns about the JOBS Act and a Congressional proposal to establish an SRO for investment advisers. In addition, NASAA's legal team worked with many NASAA project groups and section committees to develop recommendations for the SEC and FINRA in their rulemakings under the JOBS Act.

### The Legal Voice of NASAA

NASAA's legal staff has taken the lead in representing the views of NASAA and the membership through public comment on critical regulatory rule proposals. In 2012, NASAA filed 9 comment letters with the SEC, FINRA and the Consumer Financial Protection Bureau on a wide range of issues, including senior investor protection; the proposed regulation of crowdfunding activities by broker-dealers and funding portals; advocating that the SEC not enact a temporary or interim rule regarding general solicitation of Regulation D, Rule 506 offerings; the scope, methods and data sources for a study of pre-dispute arbitration agreements; the expungement process for individuals who are not specifically named in customer complaints; the valuation of direct-participation programs and real estate investment trusts in customer account statements; and disclosures to investors in private placements.

In addition, NASAA's legal team serves the membership by providing legal counsel and representing their positions as amicus curiae in significant cases brought by private plaintiffs (see box at right).

NASAA's legal staff also provides support for NASAA's representative on the Financial Stability Oversight Council (FSOC) and the SEC's Investor Advisory Committee, (IAC) both mandated by the Dodd-Frank Act. NASAA is represented on the FSOC by North Carolina Deputy Securities Administrator David S. Massey and on the IAC by Iowa Securities Counsel and Director of Investor Education and Consumer Outreach Craig Goettsch.

## NASAA Legal Briefs | 2012

- ***Mathews v. Cassidy Turley, Inc.***

NASAA filed an amicus brief jointly with the Maryland Securities Commissioner in the Maryland Court of Appeals arguing that: the tenant-in-common interests at issue were "investment contracts" and, therefore, securities under the Maryland Securities Act; and private causes of action for fraud under the Maryland Securities Act are subject to the tolling provisions of Md. Cts. & Jud. Proc. §5-203 or the "Discovery Rule" recognized by Maryland common law. | [October 12, 2012](#)

- ***State of Ohio v. Willan***

NASAA filed a Memorandum in Support of Jurisdiction to the Ohio Supreme Court, arguing that: a finding of reliance is not required to support a securities fraud conviction; a statement made for the purposes of registering a securities offering is material if a reasonable investor would consider it important in deciding whether to invest; and registration and licensing regulations are to be construed broadly in order to protect the investing public. | [March 6, 2012](#)

- ***Mitchell v. Securities America***

NASAA filed a Memorandum in Opposition to the Defendant's Motion for Temporary Restraining Order and Permanent Injunction, arguing against a Federal District Court enjoinder of a state enforcement action under the All-Writs Act. | [February 10, 2012](#)

- ***Mathers Family Trust, et al v. Cagle, et al***

NASAA brief to the Colorado Supreme Court argued that public policy and the anti-waiver provision of the Colorado Securities Act preclude the use of a forum selection clause. | [January 9, 2012](#)

## Communications & Investor Education

NASAA's communications program largely focused on proactively advocating NASAA's policy positions regarding various aspects of the JOBS Act, with an emphasis on the legislation's crowdfunding and Reg D Rule 506 general solicitation provisions, promoting NASAA's opposition to legislation to create an SRO for investment advisers, and raising awareness of the IA Switch. Throughout these efforts, NASAA's communications goal was to position NASAA and its members as a leading voice of investor protection and a reliable source of relevant information.

Through 30 news releases, two media tours and two news conferences, NASAA's communications staff supported NASAA leadership as they delivered a message that balanced the interests of investor protection and capital formation.

This effort led to an 11 percent increase in NASAA media coverage, (1,505 articles through the first eight months of the year) from the same period the year before.

### Media Outreach

The communications team arranged interviews for NASAA senior leadership with leading national and international publications, including *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *USA Today*, *The Financial Times*, Dow Jones, Reuters, and Bloomberg.

In July, the communications team worked with then-Enforcement Section Chair Matt Kitzi to develop a webinar sponsored by NASAA and the Retirement Industry Trust Association (RITA) to raise public awareness of how to avoid fraud when considering investing in self-directed Individual Retirement Accounts. The webinar attracted 155 participants and resulted in several news articles, including articles in *USA Today*, *Forbes* and the *Wall Street Journal*.

This event was followed in August by a news teleconference to promote the 2012 list of Top Investor Threats. Attended by reporters from *USA Today*, ABC News, Reuters, Bloomberg, *Investment News*, *IA Week*, BNA and *Investment Adviser* magazine, the event produced widespread media coverage, including an article on the front of the Money Section of *USA Today*, the nation's largest newspaper, and reprinted in 45 newspapers nationwide.

To further spread NASAA's media message, the communication team launched a Twitter feed: @NASAA\_News.



### Investor Education

In addition to promoting NASAA's policy positions in the media, the NASAA communications staff continued to emphasize the importance of investor education. The communications department provides support for the work of the Investor Education Section and its project groups. NASAA maintains ongoing relationships with national partners in investor education, including the American Savings Education Council and the Jump\$tart Coalition for Personal Financial Literacy.

## Training & Technology

NASAA continues to enhance its use of technology to provide resources for its membership. At the same time, the association maintains a strong series of innovative training programs to keep the membership abreast of the latest developments within securities regulation and the financial services industry.

In 2012, NASAA launched the NASAA Electronic Examination Modules (NEMO) software application, which enables examiners to conduct broker-dealer and investment adviser examinations in a secure, digital environment.

Training NASAA members to use the NEMO application efficiently and effectively was a key objective of NASAA's training program in 2012, as was the development of an enhanced investment adviser training program to better prepare NASAA members for their increased responsibilities resulting from the IA switch.

Throughout the year, NASAA continued to strengthen its distance education program to provide online training on demand to NASAA members.

## Conferences & Events

NASAA hosted two major conferences in 2012, bringing together regulators, industry representatives, policymakers, media and others.

State and provincial securities regulators convened in Washington, D.C., in May for NASAA's Public Policy Conference and in Coronado, California, in September for NASAA's Annual Conference. Highlights of both events are illustrated over the next three pages.

## 2012 Public Policy Conference: Washington, D.C.



Indiana Securities Commissioner Chris Naylor, chair of NASAA's 2012 Public Policy Conference, delivers opening remarks.



Arkansas Securities Commissioner A. Heath Abshire (right), then NASAA's President-elect, moderates a panel of legal and industry experts in a discussion of the impact of the JOBS Act on investor protection and capital formation. From left: Robert Pozen, senior lecturer of business administration, Harvard Business School; William Black, associate professor of economics and law, University of Missouri-Kansas City School of Law; Lynn Turner, managing director, LitiNomics, and former SEC chief accountant; Jeffrey Mahoney, general counsel, Council of Institutional Investors; and Commissioner Abshire.



New York Investor Protection Bureau Chief Marc Minor (right) listens as Mitchell Bompey of Morgan Stanley Smith Barney outlines the firm's social media practices. Other panelists included Scott Peterson, co-founder of Relay Social Media LLC, and Thomas Selman, executive vice president of regulatory policy, FINRA.



Rep. Maxine Waters (D-CA) delivering the keynote address outlining her legislation in support of user fees to help promote strong SEC oversight of investment advisers.

## 2012 Annual Conference: Coronado, California



Jack E. Herstein of Nebraska reflects on a year of accomplishment as NASAA President before introducing his successor, A. Heath Abshire of Arkansas, as NASAA's new President.

Frank Partnoy (right), the George E. Barrett Professor of Law and Finance and the Founding Director of the Center for Corporate and Securities Law for University of San Diego, speaks about his book, *Wait: the Art and Science of Delay*, which discusses how decisions, especially those related to securities and investing, benefit from being made at the last possible moment.



Irving Fought (left), Oklahoma Securities Administrator and 2012 Annual Conference Chair, opens the 95th Annual Fall Conference in Coronado, California.



Securities regulators, legal experts and crowdfunding advocates explore the impact of the JOBS Act on the capital formation and investor protection. Moderated by Washington Securities Division Director William Beatty (left), the panel includes (from right): Rick Fleming, Deputy General Counsel for NASAA; William Rice, Alberta Securities Commission Chair and Chief Executive Officer; Yoichiro "Yokum" Taku, Corporate and Securities Partner at Wilson Sonsini Goodrich & Rosati; and Alice Ning, Management Consultant and Founder of TapCaps.



*Pennsylvania Securities Commissioner Steven Irwin (right) moderates a panel on how the presidential election will affect Main Street and Wall Street. Panelists included noted political scientists Carl Luna (center), of Mesa College and the University of San Diego, and Jonathan Rodden, a national fellow at the Hoover Institution at Stanford University, where he also serves as associate professor.*



*Arkansas Securities Commissioner A. Heath Abshure delivers the presidential address at NASAA's 2012 annual conference in Coronado, California. Abshure's one-year term runs through September 2013.*



*Securities experts and reform advocates discuss the progress of Dodd-Frank since its passage. Moderated by Oregon Division of Finance & Corporate Securities Administrator David Tatman (center), the panel includes (from left): Jennifer Taub, Associate Professor of Law at Vermont Law School; Ken Bentsen, Executive Vice President, Public Policy and Advocacy for the Securities Industry and Financial Markets Association (SIMFA); David Min, Assistant Professor of Law, Irvine School of Law, University of California; Akshat Tewary, Founding Member of Occupy the SEC; and Thomas Quaadman, Vice President of the U.S. Chamber of Commerce for Capital Markets Competitiveness.*

## Broker-Dealer Section

### Overview

The point-of-sale contact that broker-dealers have with investors makes the work of the Broker-Dealer Section critical in achieving NASAA's mission of investor protection. This Section focuses on issues involving broker-dealers and agents, such as arbitration, qualification and licensing requirements, record keeping and compliance requirements, continuing education, and practices involving investors. The Section offers official comments on rule proposals; participates in discussions with industry, SROs, and federal regulators regarding trends and concerns in the brokerage industry; and provides guidance to states on broker-dealer issues. In addition to overseeing the activities of its project groups, the Broker-Dealer Section works closely with the CRD/IARD Steering Committee.

### Spotlight Activity

The Broker-Dealer Section's Operations Project Group conducted its bi-annual coordinated examinations of broker-dealers in 2012 and released its findings at NASAA's Annual Conference in September.

The nationwide series of examinations of broker-dealers, conducted by state securities examiners from 24 NASAA jurisdictions in the United States, revealed a significant number of problem areas.

A total of 236 examinations conducted between January 1 and June 30, 2012, found 453 types of violations in five compliance areas. The greatest frequency of violations (29 percent) involved books and records, followed by supervision (27 percent), sales practices (24 percent), registration & licensing (14 percent), and operations (6 percent).

The top five types of violations found involved: failure to follow written supervisory policies and procedures, suitability, correspondence/e-mail, maintenance of customer account information, and internal audits.

About half (44 percent) of the examinations involved one-person branch offices; 23 percent were home offices; 20 percent were branch offices with two to five agents; 11 percent were branch offices with more than five agents; and 2 percent were non-branch offices.

#### 2012-2013 Section Committee

John Cronin (VT), Chair  
Marc Minor (NY), Vice-Chair  
Bryan Lantagne (MA)  
Tanya Solov (IL)  
Michael Youngberg (SD)  
Chris Besko (MB)  
Joe Opron (NASAA)

#### 2012-2013 Project Groups & Chairs

Leslie Van Buskirk (WI)  
*Arbitration*  
John Cronin (VT)  
*Continuing Education*  
William Cahill (MA)  
*Broker-Dealer Exams Advisory*  
Carol Anne Foehl (MA)  
*Investment Products/Services*  
Carolyn Mendelson (PA)  
*Market & Reg. Policy/Review*  
Tanya Solov (IL)  
*Mergers & Acquisitions/Finders*  
James Nix (IL)  
*Operations*  
Mark Kissler (WA)  
*Variable Annuities*

#### 2011-2012 Section Committee

John Cronin (VT), Chair  
Marc Minor (NY), Vice Chair  
Bryan Lantagne (MA)  
Chris Naylor (IN)  
Michael Youngberg (SD)  
Douglas Brown (MB)  
Joe Opron (NASAA)

#### 2011-2012 Project Groups & Chairs

Leslie Van Buskirk (WI)  
*Arbitration*  
John Cronin (VT)  
*Continuing Education*  
William Cahill (MA)  
*Exams Advisory*  
Marc Minor (NY)  
*Investment Products/Services*  
Carolyn Mendelson (PA)  
*Market & Reg. Policy/Review*  
William Reilly (FL)  
*Operations*  
Mark Kissler  
*Variable Annuities*

### BD Coordinated Exams at a Glance

Number of Exams: 236

Violation Types: 453

Most Frequent Violations: Books & Records (29%)  
Supervisions (27%)  
Sales Practices (24%)  
Registration/Licensing (14%)  
Operations (6%)

Source: NASAA Broker-Dealer Operations Project Group

# Corporation Finance Section

## Overview

NASAA members have long helped facilitate capital formation at the state and local level. NASAA members assist entrepreneurs with their business plans and help them obtain resources to grow their enterprises and create local jobs. The Corporation Finance Section also develops and monitors policies for the registration of securities under state law. The Section oversees the activities of six Project Groups: Coordinated Interpretations, Business Organizations & Accounting, Corporation Finance Policy, Direct Participation Programs Policy, Franchise and Business Opportunities, and Small Business/Limited Offerings.

### 2012-2013 Section Committee

William Beatty (WA), Chair  
 Peter Cassidy (MA), Vice-Chair  
 Michael Benson (PA)  
 Anetria Connell (KY)  
 Colleen Monahan (CA)  
 Susan Powell (NB)  
 Rick Fleming (NASAA)

### 2012-2013 Project Groups & Chairs

Marlene Sparkman (TX), *Coordinated Interpretations*  
 Seth Hertlein (OH), *Business Organizations and Accounting*  
 Dennis Britson (IA), *Corporation Finance Policy*  
 Mark Heurman (OH), *Direct Participation Programs Policy*  
 Dale Cantone (MD), *Franchise and Business Opportunities*  
 Faith Anderson (WA), *Small Business/Limited Offerings*

### 2011-2012 Section Committee

William Beatty (WA), Chair  
 Michael Benson (PA)  
 Anetria Connell (KY)  
 Peter Cassidy (MA)  
 Susan Powell (NB)  
 Rick Fleming (NASAA)

### 2011-2012 Project Groups & Chairs

Marlene Sparkman (TX), *Coordinated Interpretations*  
 Brian Ardire (PA), *Business Organizations/Accounting*  
 Dennis Britson (IA), *Corporation Finance Policy*  
 Mark Heurman (OH), *Direct Participation Programs Policy*  
 Dale Cantone (MD), *Franchise & Business Opportunities*  
 Faith Anderson (WA), *Small Business/Limited Offerings*

## Activity Spotlight

Throughout 2012, the focus of the corporation finance world was on Congress as it considered what became known as the JOBS Act.

During this period, NASAA established the Small Business/Capital Formation Committee, made up of representatives from the Corporation Finance and Broker-Dealer sections, to focus on issues related to the JOBS Act. The committee worked extensively on a proposal to establish a new, state-administered crowdfunding exemption in an effort to combat the preemption provisions of the JOBS Act.

The Corporation Finance Section, through its Direct Participation Program and Business Organizations and Accounting project groups, prepared a NASAA comment letter in general support of FINRA's proposal concerning the valuation of unlisted REITs and business development companies (BDCs) on customer account statements.

The Section also published an informal solicitation of comments concerning whether NASAA should develop a Statement of Policy tailored to BDCs and revise the REIT Guidelines to address certain issues.

# Section Overview

## Enforcement Section

### Overview

NASAA members have a significant history of bringing enforcement actions, including criminal prosecutions. NASAA assists its members in coordinating enforcement efforts regarding multi-state frauds by facilitating the sharing of information and leveraging the resources of the states more efficiently. NASAA's Enforcement Section acts as a point of contact for federal agencies and self-regulatory organizations, such as the SEC, the FBI, the Postal Inspectors, and FINRA, and helps identify new fraud trends. The Section oversees the activities of several Project Groups, including: Attorney/Investigator Training, Litigation Forum, Oil/Gas Ventures, Reg D Investigations and Enforcement Zones.

### Activity Spotlight

In addition to conducting the annual enforcement survey, NASAA's Enforcement Section also prepares an annual list of top investor threats.

#### 2012 Top Investor Threats

New Threats	Persistent Threats
Crowdfunding & Internet Offers	Gold & Precious Metals
Inappropriate Advice or Practices from Investment Advisers	Risky Oil & Gas Drilling Programs
Scam Artists Using Self-Directed IRAs to Mask Fraud	Promissory Notes
EB-5 Investment-for-Visa Schemes	Real Estate Investment Schemes
	Regulation D Rule 506 Private Offerings
	Unlicensed Salesmen Giving Liquidation Recommendations

Source: NASAA Enforcement Section

#### 2012-2013 Section Committee

Judith Shaw (ME), Chair  
Keith Woodwell (UT), Vice-chair  
Kevin Anselm (AK)  
Joe Rotunda (TX)  
Abbe Tiger (NJ)  
R. Scott Peacock (NS)  
Rick Fleming (NASAA)

#### 2012-2013 Project Groups & Chairs

T. Webster Brenner (MD),  
*Enforcement Publications*  
Tracy Meyers (SC) & Jeffrey Spill (NH),  
*Enforcement Training*  
Robert Moilanen (MN), *Internet Fraud Investigations*  
Gerald Rome (CO), *Litigation Forum*  
Chad Harlan (KY), *Oil/Gas Ventures*  
Allan Russ (NC), *Reg D Investigations*  
Charles Kaiser (OK) & Rodney Griess (NE), *SID Database*  
Jake van der Laan (NB), *Enforcement Zones*

#### 2011-2012 Section Committee

Matt Kitzi (MO), Chair  
Keith Woodwell (UT), Vice Chair  
Kevin Anselm (AK)  
Colleen Keefe (KY)  
Joe Rotunda (TX)  
R. Scott Peacock (NS)

#### 2011-2012 Project Groups & Chairs

T. Webster Brenner (MD),  
*Enforcement Publications*  
Tracy Meyers (SC) & Jeffrey Spill (NH),  
*Enforcement Training*  
Gerald Rome (CO), *Litigation Forum*  
Ricky Locklar (AL), *Oil/Gas Ventures*  
Allan Russ (NC), *Reg D Investigations*  
Charles Kaiser (OK), *SID Database*  
Jake van der Laan (NB), *Enforcement Zones*



## Investment Adviser Section

### Overview

NASAA's Investment Adviser Section develops policies and monitors state registration and regulation of firms and professionals in the investment advisory business. The Section also develops uniform policies for ethical business practices and model rules to enforce the investment advisory provisions of state law. The Section oversees the activities of the Exams Advisory, Operations, Regulatory Policy and Review, Training, and Investment Adviser Zones project groups and works closely with the CRD/IARD Steering Committee.

#### 2012-2013 Section Committee

Andrea Seidt (OH), Chair  
 Linda Cena (MI), Vice-chair  
 Shonita Bossier (MS)  
 Theodore Miles (DC)  
 Ronak Patel (TX)  
 Susan Pawelek (ON)  
 A. Valerie Mirko (NASAA)

#### 2012-2013 Project Groups & Chairs

Sheila Cahill (NE), *Investment Adviser Exams Advisory*  
 Michael Huggs (MS), *Investment Adviser Operations*  
 Gregory Abram (MA), *Regulatory Policy and Review*  
 William Carrigan (VT), *Investment Adviser Training*  
 Maurice Kamhi (CA), *Investment Adviser Training*  
 David Swafford (CO), *Investment Adviser Zones*

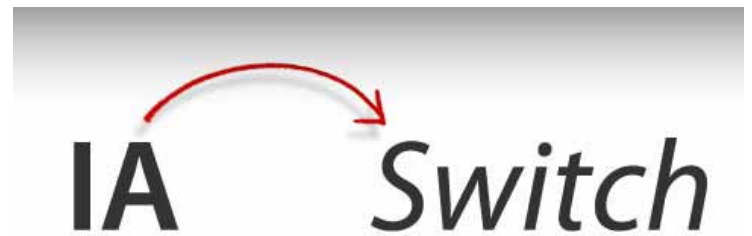
#### 2011-2012 Section Committee

Linda Cena (MI), Chair  
 Shonita Bossier (KY), Vice Chair  
 Michael Huggs (MS)  
 Theodore Miles (DC)  
 Abbe Tiger (NJ)  
 Susan Pawelek (ON)  
 Joseph Brady (NASAA)

#### 2011-2012 Project Groups & Chairs

Sheila Cahill (NE), *Investment Adviser Exams Advisory*  
 Michael Huggs (MS), *Investment Adviser Operations*  
 Ronak Patel (TX), *Regulatory Policy & Review*  
 William Carrigan (VT), *Investment Adviser Training*  
 Maurice Kamhi (CA), *Investment Adviser Training*  
 Oscar Gonzalez (TX), *Investment Adviser Zones*

### Activity Spotlight



The Investment Adviser Section concentrated its efforts in 2012 on assisting NASAA members as they “switched” mid-sized investment advisers from SEC to state regulation, as mandated by the Dodd-Frank Act.

The latest data from the SEC puts the number of switching advisers at about 2,100 firms. The SEC estimates that it will have oversight responsibility for about 10,500 investment advisers while about 17,000 investment advisers will be registered with state securities regulators.

To help advance the switch, the IA Section focused on four primary goals throughout 2012:

- Help NASAA members with their mission of regulating investment advisers by providing training and regulatory resources.
- Facilitate communication among NASAA members on regulatory issues and practices.
- Implement a multifaceted plan to support the increase in assets under management.
- Implement a plan to support uniformity in investment adviser and investment adviser representative licensing and examination practices.

## Investor Education Section

### Overview

The Investor Education Section provides resources to help increase awareness of frauds and to build sound financial habits. Recognizing that education is a key weapon in the fight against investment fraud, the NASAA Investor Education Section was created in 1997 by the NASAA Board of Directors to help support the financial education efforts of the membership. The Section oversees the activities of four Project Groups: Alerts & Advisories, Outreach, Promotion & Coordination, and Social Media & Online Outreach.

### Activity Spotlight

The main efforts to the Investor Education Section in 2012 included the creation of a new outreach toolkit to bring investor education resources to Native American and First Nation populations in the United States and Canada.



The initiative was developed to help reduce the risk of investment fraud following two large financial settlements reached between Native American plaintiffs and the federal government.

Recognizing the growing use and importance of social media, the Social Media & Online Outreach Project Group developed a social media handbook for NASAA IE coordinators.

The Promotion & Coordination Project Group released the second edition of its IE Resource Calendar to provide NASAA members with creative ways to expand their IE outreach.

To respond to emerging trends and issues, the Alerts & Advisories Project Group focused on crowdfunding through a series of alerts to provide protective and informative messages for investors, small businesses and entrepreneurs.

#### 2012-2013 Section Committee

Daphne Smith (TN), Chair  
Marissa Rignanesi (NB), Vice-Chair  
Lynne Egan (MT)  
Bernice Geiger (NM)  
Christina Kotsalos (PA)  
Diane Young-Spitzer (MA)  
Jaime Brockway (NASAA)

#### 2012-2013 Project Groups & Chairs

Diane Young-Spitzer (MA), Alerts & Advisories  
Bernice Geiger (NM), Investor Outreach  
Christina Kotsalos (PA), Promotion & Coordination  
Marissa Rignanesi (NB), Online Outreach & Social Media

#### 2011-2012 Section Committee

Daphne Smith (TN), Chair  
Marissa Rignanesi (NB), Vice-chair  
Lynne Egan (MT)  
Tanya Webber (MS)  
Diane Young-Spitzer (MA)  
Leah Szarek (NASAA)

#### 2011-2012 Project Groups & Chairs

Diane Young-Spitzer (MA), Alerts & Advisories  
Bernice Geiger (NM), Investor Outreach  
Christina Kotsalos (PA), Promotion & Coordination  
Marissa Rignanesi (NB), Online Outreach & Social Media  
(from February 2012)  
Natalie MacLellan (NS) Online Outreach & Social Media  
(through February 2012)



## NASAA Awards

### Blue Sky Cube

**Jack E. Herstein**  
Nebraska

*The Blue Sky Cube, NASAA's highest honor, recognizes career achievement and distinguished contributions to securities regulation. It is named for Blue Sky Law, the umbrella term for state laws throughout the United States that regulate the offering and sale of securities. Kansas enacted the first Blue Sky Law in 1911 to protect investors from speculative schemes that, in the words of a judge of the period, had no more substance than so many feet of "blue sky."*



*Jack E. Herstein, 2011-2012 NASAA President and Assistant Director of the Nebraska Department of Banking & Finance, Bureau of Securities, was the recipient of the 2012 Blue Sky Cube, which was presented during NASAA's Annual Conference in Coronado, California.*

### Outstanding Service Award

Preston DuFauchard, California  
Michael Huggs, Mississippi  
Thomas A. Michlovic, Pennsylvania  
William F. Reilly Jr., Florida  
Franklin L. Widmann, Florida  
Benette Zivley, Texas

### Distinguished Service Award

Dale Clements, Tennessee

### Outstanding Team Service Award

#### **Bankers Life Task Force:**

Judith Shaw, Maine  
Karla Black, Maine  
Michael Colleran, Maine  
Matt Kitzi, Missouri  
Mary Hosmer, Missouri  
Judi Lahr, Missouri  
Jeff Spill, New Hampshire  
John Cronin, Vermont

## Board of Directors

NASAA's Board of Directors, elected annually from the ranks of the membership, is responsible for the association's planning and policy development.

### 2012-2013 Board

A. Heath Abshure, Arkansas, President  
Steve Irwin, Pennsylvania, President-elect  
Jack E. Herstein, Nebraska, Past President  
Chris Naylor, Indiana, Secretary  
Fred J. Joseph, Colorado, Treasurer  
Douglas Brown, Manitoba  
Melanie Senter Lubin, Maryland  
John Morgan, Texas  
Patricia Struck, Wisconsin

### 2011-2012 Board

Jack E. Herstein, Nebraska, President  
A. Heath Abshure, Arkansas, President-elect  
David Massey, North Carolina, Past President  
Rick Hancox, New Brunswick, Secretary  
Fred J. Joseph, Colorado, Treasurer  
Steve Irwin, Pennsylvania  
Melanie Senter Lubin, Maryland  
Andrea Seidt, Ohio  
Patricia Struck, Wisconsin



*Throughout 2012-2013, NASAA was led by Jack E. Herstein, Assistant Director of the Nebraska Department of Banking & Finance, Bureau of Securities, (right) and A. Heath Abshure, Arkansas Securities Commissioner (left). Mr. Herstein served as NASAA's 2011-2012 president. He was succeeded by Mr. Abshure in September 2012. Mr. Abshure's term runs through September 2013, when he will be succeeded by Pennsylvania Banking and Securities Commissioner Steven Irwin.*



## Board Committees

### 2012-2013 Board Committee Chairs

#### Awards

Craig Goettsch, Iowa

#### CRD/IARD Steering

Melanie Senter Lubin, Maryland

#### CRD/IARD Forms and Process

Pam Epting, Florida

#### Electronic Filing Depository

Jack E. Herstein, Nebraska

#### Federal Legislation

Steve Irwin, Pennsylvania

#### Finance and Audit

Patricia McKenna, Maryland

#### International

Joseph Borg, Alabama

#### Legal Services

Chris Naylor, Indiana

#### NEMO Training & Support

Michael Huggs, Mississippi

#### Standardized Training & Technology

Rick Hancox, New Brunswick

#### Uniform Securities Act

Cragi Goettsch, Iowa

### 2011-2012 Board Committee Chairs

#### Awards

Craig Goettsch, Iowa

#### CRD/IARD Steering

Melanie Senter Lubin, Maryland

#### CRD/IARD Forms and Process

Pam Epting, Florida

#### Federal Legislation

Steve Irwin, Pennsylvania

#### Finance and Audit

Patricia McKenna, Maryland

#### International

Joseph Borg, Alabama

#### Legal Services

Debra Bollinger, Virginia

#### Life Settlements

Fred Joseph, Colorado

#### Mergers & Acquisitions/Finders

Tanya Solov, Illinois

#### NEMO Training and Support

Michael Huggs, Mississippi

#### Reg. D Electronic Filings

A. Heath Abshure, Arkansas

#### Small Business/Capital Formation

A. Heath Abshure, Arkansas

#### Standardized Training & Technology

Judith Shaw, Maine

#### Uniform Securities Act

Craig Goettsch, Iowa

## Corporate Office Staff

### *Executive and Administrative Office*

**Russ Iuculano**  
Executive Director

**John H. Lynch**  
Deputy Executive Director/Controller

**Gina Haidle**  
Membership Services and Finance Manager

**Jennifer Marsoni**  
Executive Assistant, Office Manager  
& Benefits Coordinator

**Josephine Oundo**  
Receptionist

### *Legal*

**Joseph Brady**  
General Counsel

**Rick Fleming**  
Deputy General Counsel

**A. Valerie Mirko**  
Assistant General Counsel

**Joseph Opron**  
Counsel

**Faye Gordon**  
Paralegal

### *Government Affairs*

**Michael Canning**  
Director of Policy

**Anya Coverman**  
Deputy Director of Policy

**Zachary Israel**  
Government Affairs Assistant

### *Communications & Investor Education*

**Bob Webster**  
Director of Communications

**Jaime Brockway**  
Communications & Investor Education  
Manager

### *Conferences & Events*

**Lonnie Martin**  
Membership & Meetings Manager

**Danielle North**  
Membership & Meetings Assistant

### *Training & Technology*

**Jason Wolf**  
Training & Technology Manager

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