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NASAA Insight

The Voice of State & Provincial Securities Regulation

NASAA

> *"NASAA Members are all true believers in the demonstrated power of state and provincial securities regulators to protect our citizens from fraud and abuse. It is the passion for our mission that is crucial for our success."*
>
> **Denise Voigt Crawford**
> *NASAA President*
> *Texas Securities Commissioner*

Texas Securities Commissioner Elected New NASAA President

Texas Securities Commissioner Denise Voigt Crawford opened her one-year term as President of the North American Securities Administrators Association (NASAA) with an ambitious agenda to promote and enhance the investor protection role of state and provincial securities regulators.

Crawford succeeded Colorado Securities Commissioner Fred Joseph as NASAA president on September 15. North Carolina Deputy Securities Administrator David Massey will serve as NASAA President-elect.

Crawford has served as the Texas Securities Commissioner since 1993. Prior to that, she served as the Texas Securities Board's general counsel.

She previously held the NASAA presidency for the 1997-1998 term, using her position to help catapult the issue of financial literacy to the national stage.

In an address at NASAA's 92nd annual conference in Denver on September 15, Crawford said NASAA would continue to seek to influence the direction of financial regulatory reform "so that it works for, not against, investors."

Texas Securities Commissioner Denise Voigt Crawford delivers her first presidential address as NASAA's 2009-2010 President. See p. 4 for excerpts.

NASAA Testifies to Congress on Regulatory Reform Plans

NASAA President and Texas Securities Commissioner Denise Voigt Crawford outlined the key elements of financial services regulatory reform in Oct. 6 testimony before the House Financial Services Committee.

"The record of state securities regulators demonstrates clearly that we have the will and ability to regulate," Crawford said. "While the recent financial crisis was the result of many failures, I am very proud to say that a failure of state securities regulation was not one of them."

NASAA President Denise Voigt Crawford testifies before the House Financial Services Committee on the regulatory reforms necessary for investor protection.

Crawford's testimony focused on three proposals in the Investor Protection Act that are of utmost importance to individual investors: the establishment of a fiduciary duty for broker-dealers who provide investment advice, restricting mandatory pre-dispute arbitration and removing some of the hurdles facing private plaintiffs who seek damages for securities fraud. She argued in favor of a provision to restore investors' right to bring private actions against aiders and abettors of corporate deception and fraud (see p. 3).

Crawford called for enhanced information sharing among state and federal regulators, recommending that state and federal regulators work together on a systemic risk council to establish a crisis management protocol with clear lines of communication.

Crawford also underscored state securities regulators' willingness to assume regulatory responsibility over investment advisers with up to $100 million in assets under management to relieve some of the SEC's burden.

"We are committed to working with you as you continue your efforts to enhance and improve our financial services regulatory framework," Crawford told the committee.

President's Message: Denise Voigt Crawford

When the NASAA membership gathered in Denver, Colorado, for our 92nd Annual Conference in September, Colorado Securities Commissioner Fred Joseph welcomed us to his hometown and handed to me the reins of the organization he had so ably led through this challenging year. I thank him for his leadership and for always staying true to our mission of putting investors first.

All of us know that this is going to be a seminal year for investors. The economic crisis has touched us all, indiscriminately slashing balances on retirement funds, college savings plans and corporate reserves. As the economy slowly recovers from this crisis, we cannot miss the window of opportunity to overhaul a financial system that let us down.

NASAA is committed to working with lawmakers, federal regulators and industry to achieve necessary reforms.

One of our top priorities is reforming the arbitration process to give investors a fair chance to hold brokerage firms accountable for misconduct and recover their losses (see p. 3).

NASAA is also on track to expand our efforts to protect seniors from fraud and abuse through partnerships with medical professionals and social services, as well as through legislation (see p. 3).

Helping NASAA further our mission are the dedicated members of the 2009-2010 Board of Directors (meet the new board on p. 7). I look forward to working with them, the NASAA membership and all who share our goal of a safer, more secure marketplace for investors. Together we are going to accomplish great things in advancing NASAA's mission to protect Main Street investors.

What's Inside

Executive Director's Message: Russ Iuculano

The NASAA Corporate Office in Washington has a front-row seat to the regulatory reform debate on Capitol Hill. We were pleased that the House Financial Services Committee approved a bill (39-29 vote) on Oct. 22 to create a new Consumer Financial Protection Agency (CFPA), with amendments that addressed our concerns about possible preemption.

While this is a positive development, it is just the beginning of a long process. In fact, the Committee made several significant changes to the Obama administration's original proposal, including eliminating the mandatory offer of so-called "plain vanilla" products and exempting non-financial businesses and community banks from CFPA scrutiny.

The removal of these provisions was in response to intense lobbying from business groups. Thanks to Committee Chairman Barney Frank's support for restoring state authority to enforce consumer protection laws, industry's vigorous efforts to gut the bill's anti-preemption provisions were not successful.

Financial industry lobbyists are reportedly focusing their attention more on the Senate, where they may have a better chance of defeating or weakening the agency due to Senate rules and allies on the Senate Banking Committee. The industry wants "uniform national standards," and the CFPA bill's provisions stipulating the authority of the states to protect consumers will be a target of their lobbying efforts.

NASAA is concerned about the CFPA's potential jurisdiction over state-registered investment advisers. The original bill included a broad exemption stating that the CFPA would have no jurisdiction over any "person regulated by" the SEC, but state securities regulators were not explicitly included in this provision. NASAA successfully engaged officials in the administration and Congress on this issue to ensure the inclusion of an amendment excluding state-regulated investment advisers from CFPA jurisdiction.

State securities regulators have a distinguished record of successfully protecting retail investors. We must retain our independent regulatory and enforcement authority.

Stopping Elder Financial **Abuse**

NASAA Supports Congressional Efforts to Protect Senior Investors from Fraud

NASAA announced its strong support for two bicameral bills introduced in Congress aimed at protecting senior investors.

The Senior Investment Protection Act would create a new grant program to assist states in their efforts to protect seniors from misleading financial adviser designations by encouraging them to adopt NASAA's model rule. The Senior Investor Protection Enhancement Act would enhance penalties for violations of securities laws involving senior victims.

Colorado Securities Commissioner Fred Joseph, NASAA's then-president, commended Senators Herbert Kohl (D-WI), Robert Casey (D-PA) and Kirsten Gillibrand (D-NY), as well as Representatives Paul Hodes (D-NH) and Gwen Moore (D-WI), for spotlighting the growing threat of elder financial abuse and taking steps to protect our nation's seniors.

"NASAA believes the predators who intentionally seek to deprive retirees of the savings they have worked their lifetime to accumulate should be subject to enhanced penalties," Joseph said. "These two bills will assist state securities regulators in their mission to protect every investor, especially seniors who are most vulnerable to fraud and abuse."

State Securities Regulators Build New Partnerships to End Elder Exploitation

NASAA President and Texas Securities Commissioner Denise Voigt Crawford has pledged to expand nationwide a Texas pilot program that trains health-care professionals to spot elder financial abuse.

With help from an Investor Protection Trust grant, state securities regulators and the Baylor College of Medicine developed a guide for clinicians outlining the red flags of elder financial abuse, how to discuss finances with seniors and where to turn if they suspect a senior patient is being financially exploited.

Crawford said NASAA is committed to developing partnerships in the fight to end elder financial abuse. In June, NASAA joined forces with NAPSA, the National Adult Protective Services Association, to tackle the issue. "State securities regulators and adult protective services workers are natural partners because we operate at a local level in service to our elderly citizens, and are often the first responders to abuse or financial fraud," Crawford said.

Arbitration Reform

NASAA Urges Congress to Give Investors More Choices than Mandatory Arbitration

NASAA has taken a strong stance against mandatory pre-dispute arbitration clauses in brokerage contracts. The process is inherently unfair to investors, NASAA told Congress in a Sept. 15 written statement to the House Commercial and Administrative Law Subcommittee in support of the "Arbitration Fairness Act of 2009."

Investors currently are forced to resolve their disputes with their brokers in an industry-run forum with at least one industry member hearing the case.

In addition to the advantage of a friendly forum, brokerage firms also have significantly more resources to fight investor claims and much more experience navigating the arbitration process.

The option to litigate in an independent judicial forum would go a long way towards bringing balance to the process and helping wronged investors in their attempts to recover their losses, NASAA has argued.

The Price of **Aiding** and **Abetting** Securities Fraud

NASAA Supports Congressional Proposal to Restore Liability for Aiders and Abettors

Tanya Solov, Director of the Illinois Securities Department, testified on behalf of NASAA in support of a bill to restore investors' right to bring private actions against aiders and abettors of corporate deception and fraud.

"The integrity of the U.S. markets depends on accurate information and our laws must send the message to corporate management, as well as their lawyers, accountants, investment bankers and other so-called 'secondary actors,' that they will be held accountable for aiding and abetting in deception and fraud," Solov said in her Sept. 17 statement to the Senate Committee on the Judiciary's Subcommittee on Crime and Drugs.

"If aiding and abetting liability is not restored by Congress, innocent victims of investment fraud will be left without a remedy against the entities that assisted in perpetrating the fraud."

Sen. Arlen Specter (D-PA), chair of the Subcommittee on Crime and Drugs, sponsored the "Liability for Aiding and Abetting Securities Violations Act of 2009."

"Given the recent financial scandals and corporate fraud, this legislation is a positive step in restoring accountability and the integrity of the U.S. markets," Solov said.

On the State of Regulatory Reform

Newly elected NASAA President Denise Voigt Crawford, Texas Securities Commissioner, outlines the contributions of state securities regulators and lays out a wide-ranging agenda for reform in a September 15, 2009 NASAA Presidential Address at the 92nd Annual Conference in Denver, Colorado. The following is an excerpt. Full remarks are available at www.nasaa.org.

As a career public servant, I believe that regulation is the proper province of government. It is not a profit-driven business and cannot be subject to a traditional cost-benefit analysis. After all, how do you measure the benefit of restoring to an elderly investor her life savings?

NASAA Members are all true believers in the demonstrated power of state and provincial securities regulators to protect our citizens from fraud and abuse. It is the passion for our mission that is crucial for our success.

Lately I have been reflecting on how dramatically the world's appreciation of the importance of sound financial regulation has evolved as a result of the Great Recession. Virtually all developed countries are reforming their financial regulation, which failed to identify, much less rein in, unlimited risk-taking, industry practices based upon flawed economic models and the inability or unwillingness of national governments to address these matters.

While this catastrophe was the result of many failures, I am very proud to say that a failure of state securities regulation was not one of them.

...Through the years, states have been the undisputed leaders in criminal prosecutions of securities violators because we believe in serious jail time for securities-related crimes. We have successfully exposed and addressed the profound conflicts of interest among Wall Street stock analysts by requiring changed behavior. We led all regulators on late trading and market timing in mutual funds. We address on a daily basis abusive sales practices targeting vulnerable senior investors.

While this catastrophe was the result of many failures, I am very proud to say that a failure of state securities regulation was not one of them.

We continue to lead the effort to ensure that investors receive redemptions for their frozen auction rate securities that were marketed as safe and liquid investments, an effort that already has resulted in the largest return of funds to investors in history. In the last few years, it has been state and provincial securities regulators who have been at the forefront of investor protection. Our record demonstrates clearly that we have the will and ability to regulate. ...

Our credibility as effective governmental regulators is at its zenith. ... We will use our good reputation in every way possible to influence the direction of financial regulatory reform so that it works for, not against, investors.

The future looks bright. The Obama Administration's position in support of state regulation and the comments of key members of Congress reflect recognition of the vital protections state regulators provide. This has not always been the case.

Years ago, states used to be able to cap mutual fund fees. States had the legal authority to question, and revise if appropriate, the level of executive compensation in many initial public offerings of securities. States could review and stop bad actors such as those with prior convictions for securities fraud from relying on SEC Regulation D, Rule 506.

The areas of state law preemption often mirror the types of fraud and abuse inflicted on investors. This is not a coincidence. Without question, the most harmful area of state securities preemption has been Regulation D offerings. Since they also enjoy an exemption from registration under federal securities law, Reg D offerings receive virtually no regulatory pre-screening at any level of government. Only enforcement actions are brought and they are rare.

As a result of short-sighted state law preemption, investors have been exposed to far more risk in private placement offerings than Congress likely could have imagined. Investors deserve better than this. At a minimum, Congress should reinstate state regulatory oversight of all Rule 506 offerings.

The need for a systemic risk regulator to identify and address risks across the economic spectrum is being debated, as is who or what could best do the job. Some support giving this additional responsibility to the Federal Reserve, others, including NASAA, support the creation of a new "Systemic Risk Council" made up of federal and state financial regulators in the securities, insurance and banking sectors. ...

A one-size-fits-all model of regulation is not the best model. It results in an insular culture that stifles creative regulatory insights and responses. It also invites regulatory capture by becoming too closely aligned with the industry it is set up to regulate. A large, overly centralized regulatory scheme can also get bogged down in bureaucracy and become slow to act. Sadly, we have seen all this happen at the SEC.

State and provincial regulators, on the other hand, are decentralized, directly accountable and can respond swiftly to investors' complaints before their money and confidence are gone. This was illustrated most recently in how we handled the auction rate securities investigations. We were quick, innovative, and aggressive. These are the hallmarks of effective regulation and are typical attributes of NASAA members.

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... In the coming months, we will focus on several areas of investment adviser regulation that cry out for change.

NASAA has long called upon Congress to extend the fiduciary duty standard to all financial professionals who give investment advice regarding securities. Currently investment advisers have this duty but broker-dealers do not. What is fiduciary duty? It is simply the duty to put the client's interest first. Differing standards of care create confusion and distrust and do not serve the best interests of investors.

We recognize that so-called "harmonization" of standards is simply code for adoption of a lower standard and is therefore unacceptable. ...

Also with regard to investment advisers, the current dividing line between federal and state regulation of investment advisory firms is $25 million of assets under management. The SEC might increase this to $100 million of assets under management. ... NASAA has endorsed such a change and will work closely with the SEC to make this happen.

NASAA President Denise Voigt Crawford addresses attendees of NASAA's 92nd Annual Conference in Denver, Colorado.

Finally, NASAA's position regarding investment adviser regulation is that it should continue to be the responsibility of state and federal governments that are accountable to the investing public. We each must be funded adequately to carry out our responsibilities. A self-regulatory organization for investment advisers is inappropriate because it embodies a flawed approach to regulation since a self-regulatory organization is inherently conflicted and is not independent.

Another area of concern is arbitration. We all know arbitration is not working. It is time to end mandatory, industry-run arbitration for investors. ... Investors should have the right to choose between litigation or arbitration as the forum for resolving disputes with their financial services firms.

...One of the greatest contributions we make to investors is investor education, which I always point out, originated with state securities regulators. It is now embraced by everyone from the President of the United States, members of Congress and Governors, to unions, colleges and classroom teachers. Regulators and the securities industry can and do work together to ensure that misinformation is not disseminated to investors under the guise of teaching them how to better protect themselves and make wise investment decisions.

If we are to advance economically as a society, we regulators must devote even more of our resources to helping increase financial literacy in our jurisdictions. Because we strongly believe that non-commercial investor education is a key driver of unbiased programs, we will work to strengthen our relationships with those parties and devote significant time and effort to educate investors, especially those who are at greatest risk.

One of our key demographics for the foreseeable future is aging investors. ... We will continue the great work NASAA has done so far in protecting investors, especially older investors.

Dispatches from Denver

NASAA members gathered with academics, industry representatives, federal regulators and media at the 92nd Annual Conference in Denver, Colorado, to discuss how to reform financial services regulation so that it starts ***putting investors first***.

Conference Chair and Massachusetts Securities Division Director Bryan Lantagne opens the conference with a strong affirmation of the investor protection role of state and provincial securities regulators, noting that the theme of the conference, "The STATE of Regulatory Reform: Putting Investors First," reflects both a legacy of important contributions and an ongoing role in the debate over the modernization of financial services regulation.

Delaware Securities Commissioner Jim Ropp (far left) moderates a panel on ways to enhance regulatory cooperation to strengthen investor protection. Panelists included (from left): Mark Connolly, New Hampshire Director of Securities Regulation; Emily Gordy, Senior Vice President, Department of Enforcement, FINRA; Robert Khuzami, Director, Division of Enforcement, U.S. Securities and Exchange Commission; and Neal Sullivan, Partner, Bingham McCutchen, LLP.

Pennsylvania Securities Commissioner Steven Irwin (center) moderates a lively panel examining the role of state regulators in the new financial services regulatory landscape. Panelists included (from left): Preston DuFauchard, Commissioner, California Department of Corporations; Marc I. Steinberg, Esq., Professor, Southern Methodist University Dedman School of Law; Irwin; David Bergers, Boston Regional Director, U.S. Securities and Exchange Commission; and Barbara Roper, Director of Investor Protection, Consumer Federation of America. Professor Steinberg voiced his support of state securities regulation, saying, "I'm in favor of providing the states with as much authority as possible. The states are leading the way in forcing the SEC to become more proactive." NASAA's 92nd Annual Conference also featured panels on regulating third party finders and the investor protection issues arising since the preemption of states in Rule 506 transactions.

Joseph M. Morales, Chief Deputy District Attorney, Denver District Attorney's Office (left) and University of Denver Sturm College of Law professor J. Robert Brown, Jr. deliver passionate and compelling remarks as the conference's two featured speakers.

NASAA Announces New Board of Directors, Section Chairs for 2009-2010 Term

Texas Securities Commissioner Denise Voigt Crawford receives the NASAA presidential gavel from outgoing President and Colorado Securities Commissioner Fred Joseph at the 92nd Annual Conference in Denver, Colorado. Joseph will continue to serve on the NASAA Board of Directors as past-president.

NASAA President and Texas Securities Commissioner Denise Voigt Crawford announced the organization's new Board of Directors and Section Chairs at the 92nd annual conference in Denver in September.

In addition to President-elect and North Carolina Deputy Securities Administrator David Massey, Board members are: Fred Joseph, Past President and Colorado Securities Commissioner; Rick Hancox, Executive Director of the New Brunswick Securities Commission; Mark Connolly, New Hampshire Director of Securities Regulation; Chris Biggs, Kansas Securities Commissioner; Joe Borg, Director of the Alabama Securities Commission; Bruce Kohl, Director of the New Mexico Securities Division; and Melanie Senter Lubin, Maryland Securities Commissioner.

Robert M. Lam of Pennsylvania has been nominated as New Member Advocate, and Matthew J. Neubert of Arizona has been tapped to serve as Ombudsman.

NASAA also announced the leadership team for its five sections. Ralph Lambiase, Director of the Connecticut Division of Securities, will chair the Broker-Dealer Section. Jack Herstein, Nebraska Bureau of Securities, will return as chair of the Corporation Finance Section. Jim Ropp, Delaware Securities Commissioner, will continue to helm the Enforcement Section. Patricia Struck, Wisconsin Securities Division Administrator, will return as chair of the Investment Adviser Section. Tung Chan, Hawaii Commissioner of Securities, will lead the Investor Education Section.

On the Hill

New NASAA President Launches National Outreach

NASAA President and Texas Securities Commissioner Denise Voigt Crawford traveled to Washington, DC, and New York in her first weeks in office to meet with federal regulators, congressional offices and national media. The trip was designed to advance NASAA's investor protection agenda at a critical point in the regulatory reform debate.

"Intense lobbying by certain business groups is spurring modifications to the Obama Administration's regulatory reform plan, and every day that passes makes our job more difficult," Crawford said.

She met with the lawmakers and congressional staff who are drafting reform legislation.

Crawford sat down with senior advisers to Senators Chris Dodd (D-CT) and Susan Collins (R-ME) and Rep. Barney Frank (D-MA) to discuss reform issues, including systemic risk. NASAA supports the Council model and advocates adding representatives from the state securities, insurance and banking regulatory agencies to bring their ground-level view of systemic risk to the table. Other items discussed included the proposed Consumer Financial Protection Agency and the fiduciary standard for all investment professionals who offer advice.

Crawford also met with Sen. Jack Reed (D-RI), chairman of the Senate Banking Committee's Subcommittee on Securities, Insurance and Investment, and she paid a visit to SEC Chairman Mary Schapiro.

In meetings with Bloomberg News, USA Today, and an on-camera interview with the Associated Press, Crawford outlined NASAA's top priorities and weighed in on the prospects for meaningful reform.

Traveling to New York, President Crawford met with the New York Times, Wall Street Journal, Financial Times, and Fox Business News, among other media outlets.

NASAA: Because Every Investor Deserves Protection

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About Us

The North American Securities Administrators Association (NASAA) is a voluntary association of securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.

Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

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.

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IE Corner

NASAA Targets Pre-Retirees with New Workplace Investor Education Initiative

State securities regulators have created a new educational toolkit, “Planning Your Retirement With Confidence,” to bring investor education to the workplace.

The initiative was developed primarily to help prepare pre-retirees for the financial challenges they will face in retirement. NASAA recognized and responded to a growing concern that increasing numbers of workers are preparing to retire.

> *“With the decline in defined benefit pension plans, the responsibility for financial security in retirement rests largely on the shoulders of today’s workers.”*
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> *NASAA President*
> *Texas Securities Commissioner*

“With the decline in defined benefit pension plans, the responsibility for financial security in retirement rests largely on the shoulders of today’s workers,” said NASAA President and Texas Securities Commissioner Denise Voigt Crawford. “State and provincial securities regulators want to make sure that these workers are provided with accurate and unbiased financial information.”

The toolkit was prepared by the NASAA Investor Education Section’s Pre-Retiree Outreach Project Group to provide investor education coordinators within the NASAA membership with the tools necessary to conduct workplace presentations covering all phases of pre-retirement and retirement.

The “Planning Your Retirement With Confidence” toolkit was created to complement the information contained in the NASAA Sandwich Generation investor education initiative, which was released last year.