

NASAA Insight

The Voice of State & Provincial Securities Regulation



David Massey of North Carolina to Lead NASAA through Implementation of Dodd-Frank Reforms

North Carolina Deputy Securities Administrator David Massey began a one-year term as president of the North American Securities Administrators Association (NASAA) at the organization's annual conference in Baltimore, Maryland, Sept. 28.

"Our primary goal has been – and remains – to advocate and act for the protection of investors, especially those who lack the expertise, experience and resources to adequately protect their own interests. Our job is to make sure investors get a fair deal based on full and accurate information," Massey said.

Massey emphasized that he will build on the organization's accomplishments during the legislative phase of the landmark



NASAA President and North Carolina Deputy Securities Administrator David Massey delivers the presidential address at NASAA's 2010 Annual Conference in Baltimore, Md. on Sept. 29.

Dodd-Frank Wall Street Reform and Consumer Protection Act to ensure that the reform bill's investor protection intent is reflected in the ongoing rulemaking and study process.

Past-President and Texas Securities Commissioner Denise Voigt Crawford outlined the challenges ahead for Massey.

"Dave is assuming the leadership of our organization at a pivotal time for regulators, industry and investors," she said. "The signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21 ushered in a new era of investor protection and financial market oversight, but that was just the beginning. President Massey faces the unenviable task of shepherding us through the 67 studies and more than 200 rulemakings authorized by the legislation. I have every confidence that his knowledge and humor will lead NASAA through another seminal year for investor protection."

NASAA Annual Conference Charts New Course for Regulation

NASAA's 93rd annual conference brought regulators, industry, academics and the media to Baltimore, Md., for a three-day discussion of the impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Sept. 26-28 event featured three panels, each designed to address the particular concerns of one of the three main groups affected by the Dodd-Frank Act: regulators, industry and investors.

Featured speakers included Rep. Elijah Cummings, (D-MD), a senior member of the U.S. House Oversight & Government Reform Committee and the House-Senate Conference Committee on financial regulation that produced the Dodd-Frank Act; Maryland Attorney General Douglas F. Gansler; Harvard University economist David Laibson; and distinguished congressional and presidential scholar Professor James Thurber, director of the Center for Congressional and Presidential Studies at American University School of Public Affairs.

NASAA President David Massey outlined his vision for the year ahead in his presidential address. ***See p. 4 >>***



Jennifer McHugh, Senior Advisor to the Chairman of the SEC; Marc Menchel, FINRA's Executive Vice President and General Counsel of Regulation; and Dean Shahinian, Senior Counsel, Senate Committee on Banking, Housing, and Urban Affairs, explore the regulatory initiatives that will ultimately reach investors and govern industry actions at a panel moderated by Rex Staples, NASAA General Counsel. Tanya Solov, Illinois Director of Securities, also participated in the panel.

From the Leadership

President's Message: David Massey



Throughout these interesting times, NASAA members have all continued to do what we do best, and that is serving as the investor's first line of defense.

Our commitment to investor protection is what has earned the recognition by Congress of the capabilities of NASAA members. NASAA members have devoted countless hours to strengthening state and provincial securities regulation, to maintaining the integrity of our financial markets and to providing much-needed investor education in our communities throughout North America.

Whether the goals of regulatory reform will be reached will be determined in the coming years as the implementation phase of Dodd-Frank takes place. NASAA intends to seize every opportunity to provide input to the SEC throughout this process.

I want to make sure that everyone has a meaningful opportunity to participate in the work and the direction of NASAA. I am going to do everything I can to make sure that the service of state and provincial securities regulators on the frontlines of investor protection continues to be recognized and respected as we enter this new era of financial services regulation together. NASAA will take all necessary steps to preserve and strengthen the role of state and provincial securities regulators in an integrated structure of investment regulation.

We must also recognize the interests of the investment industry as we focus on investor protection. This is critical to supporting and facilitating investment capital formation throughout North America. NASAA members are sensitive to the cost and complexity of regulatory compliance, and where possible, we will continue our efforts toward reducing both. We want to work cooperatively with everybody to identify areas of common interest and opportunities for improvement.

Our strong history of responsiveness, aggressiveness and cooperation in the pursuit of investor protection is what defines us. During the coming year, NASAA will be recognizing our history of 100 years of investor protection. We have 100 years of experience and expertise to contribute to a cohesive regulatory system, and we welcome the opportunity to work with other regulators to achieve our common investor protection goals.

Executive Director's Message: Russ Iuculano



I would like to thank the NASAA membership and our distinguished guests from government, industry, academia and the media for participating in NASAA's 93rd annual conference in Baltimore, Md., in September. The conference provided an invaluable opportunity for us to come together in a frank discussion of the challenges we all face during the implementation of the Dodd-Frank Wall Street Reform

and Consumer Protection Act. Congratulations to Melanie Senter Lubin, Maryland Securities Commissioner and chair of this year's conference, for a job well done.

I would also like to congratulate President Massey on his timely inaugural remarks at the conference.

The NASAA Corporate Office looks forward to working with him to achieve his goal that "investors and state securities regulators emerge from the implementation process in a strong position." We also share his commitment to wanting "the rules developed during the implementation stage of Dodd-Frank to strengthen investor confidence and actually help investors."

A highlight of the conference was the impassioned and compelling speech delivered by Rep. Elijah Cummings (D-MD), who urged state securities regulators to "continue your tremendous efforts to make the implementation of Dodd-Frank as significant as its passage." The crowd was moved by Rep. Cummings's support for our mission of investor protection, and we assure him that we share his commitment to proceeding with the real work of rebuilding the marketplace. See p. 5 for excerpts of his remarks.

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NASAA Launches New Educational Programs for Women, Students



The NASAA Investor Education Section launched two new investor education outreach initiatives at the annual conference in Baltimore, Md.

For Women Investors

The Women in Transition program is a new investor education initiative designed to empower women

investors to take control of their financial futures. Many women face particularly daunting money challenges during periods of financial transition — marriage, divorce, job loss, retirement, sending kids off to college and other changes to their own or their family's financial circumstances. Through specifically tailored investor education resources, on-site presentations to women's groups and a public awareness campaign, NASAA aims to help women invest with confidence and steer clear of investment fraud. A key element of the program is the "Invest in Yourself" presentation, which encourages women to evaluate their relationship with money and take the first step toward more proactively managing their investments. The program was developed by the Women in Transition Outreach Project Group and is available on the NASAA website at www.nasaa.org.

For Middle School Students

The Live "Stock" Adventure is a fun and educational activity for middle school students in grades six to eight. The Youth Outreach Project Group devised the adventure as a learning tool that not only raises students' awareness of the value of saving and investing, but also reinforces grade-level math skills such as calculating percentages and computing multi-digit numbers. Teachers can bring the adventure to life in their classrooms with a standard deck of 52 playing cards and the free materials available for download from the NASAA website at www.nasaa.org.



Live "Stock" Adventure

NASAA News Briefs

IARD System Fee Waiver

NASAA announced that it will waive the initial set-up and annual system fees paid by investment adviser firms and investment representatives to maintain the Investment Adviser Registration Depository (IARD) system.

"The ongoing success of the IARD system as a consistent and streamlined registration process for investment advisers and their representatives has allowed us to maintain the system fee waivers put in place in 2005 for investment adviser firms and also to fully waive for a third consecutive year the system fees paid by investment adviser representatives," said David Massey, NASAA President and North Carolina Deputy Securities Administrator.

The IARD system is an Internet-based national database sponsored by NASAA and the SEC and operated by FINRA in its role as a vendor. IARD provides investment advisers and representatives a single source for filing state and federal registration and notice filings and serves state and federal regulators as a nationwide database for the collection and dissemination of information about individuals and firms in the investment advisory field.

Best Practices for Broker-Dealers

NASAA conducted coordinated examinations of broker-dealers throughout the United States to identify the top compliance deficiencies and develop a series of recommended best practices for broker-dealers to consider in order to improve their compliance practices and procedures.

"We have flagged these deficiencies to help broker-dealers reduce the risk for regulatory violations by strengthening their internal compliance programs. Our best practices are designed to support broker-dealers in meeting their compliance challenges and providing better services to their clients," said David Massey, NASAA President and North Carolina Deputy Securities Administrator.

The greatest number of deficiencies found during the 290 examinations conducted by 30 NASAA jurisdictions were in the areas of books and records, sales practices, supervision, registration and licensing, and operations.

NASAA's list of ten best practices for broker-dealers includes developing effective standards and criteria for determining suitability and ensuring that adequate procedures are in place to prohibit and detect unauthorized private securities transactions (selling away). Download the full examination report and list of best practices at www.nasaa.org.

Charting a New Course

Highlights from NASAA's 93rd Annual Conference



Professor James Thurber, director of the Center for Congressional and Presidential Studies at the American University School of Public Affairs, analyzes the implications for financial regulatory reform of a Republican victory in the November 2010 midterm elections. Thurber delivered the keynote address at NASAA's annual conference in Baltimore, Md.



North Carolina Deputy Securities Administrator David Massey accepts the gavel from NASAA Past-President and Texas Securities Commissioner Denise Voigt Crawford at NASAA's 2010 annual conference in Baltimore in September. Massey will serve a one-year term as NASAA's president.



Professor David Laibson, noted Harvard University economist, warns about the dangers of poor financial decision-making in older investors. In a speech at NASAA's annual conference, Laibson made the case for more regulations to help older Americans protect their financial security.



Connecticut Director of Securities Ralph Lambiase (center) moderates a panel on the "Practical Consequences of Re-forming Your Business Model" at NASAA's annual conference. Panelists, from left: Gary Klein, Executive Vice President and Deputy General Counsel of Regulation, LPL Financial Corporation; Kristina Staples, Chief Compliance Officer, JER Partners; Susan MacMichael John, Chair of NAPFA and President, Financial Focus, Inc.; and David Montague, Associate General Counsel, Bank of America.

Rep. Cummings: "We Share the Same Paramount Objectives"

Rep. Elijah Cummings (D-MD) welcomed NASAA to Baltimore with a rousing speech commending the efforts of state securities regulators to reform the securities marketplace in the best interests of investors. Excerpts of the speech follow.

I am honored to be with you today because I believe we share the same paramount objectives. I believe that the most urgent tasks before us are protecting the public, and restoring the public's confidence in the markets and the American economy.

Your philosophy, your mission, as I understand it, is "putting investors first." Our collective goals are inseparable, and fully achievable, but challenges remain.

I want to take this moment to thank you, the state regulators, because without you, we would be much worse off today than we are. Without your vigilance, the marketplace would be even more saturated with toxic financial products and risky deals. Without your tireless work, the historic legislation that we enacted on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, would be neither as strong nor as comprehensive as it is.

Throughout the past decades, Congress chipped away at your authority and deregulated at the federal level, but you were steadfast in using the power you do have to protect consumers and keep the marketplace honest. So thank you.

The Oversight and Government Reform Committee, on which I serve, is the primary investigative committee for Congress. One of the Committee's primary duties is to ensure the honest and efficient use of tax dollars. Therefore, when the previous President requested that Congress make \$700 billion dollars available to rescue the nation's financial system, and the taxpayers became investors in some of our nation's largest corporations, the Oversight Committee was instantly involved.

Wall Street had become a casino, where the House always wins. Regular Americans had put their money in the market, trusting that their investment advisor, their broker-dealer, their pension fund manager and their mortgage broker were acting in their favor. They found out overnight that they were not. The actual terms of an infinite number of contracts that were created throughout the past decade were revealed to be, "heads, I win; tails, you lose." That is not what America is supposed be.

Congress investigated every aspect of the economic collapse. Through the Wall Street Reform legislation, we began to take the steps needed to protect our economy for the future of our children and for generations yet unborn. It was a chance to help make the American dream a reality again, and to restore faith in government and in our country. It was crucial that we got this right.

As you know, the Act begins to address the discrepancy between the fiduciary duties of investment advisors and broker-dealers. I understand that just last month, NASAA provided comments on this vitally important issue to the SEC, which is in the process of conducting the study required by Section 913 of the Dodd-Frank Act. I believe that this issue – defining the fiduciary duties of professionals who



Rep. Elijah Cummings (D-MD) receives a plaque from Melanie Senter Lubin, Maryland Securities Commissioner and chair of NASAA's 2010 annual conference, thanking him for his support of the important investor protection role served by state securities regulators. Rep. Cummings delivered a stirring address at the NASAA conference in Baltimore, Md., on Sept. 27, where he urged state securities regulators to "continue your tremendous efforts to make the implementation of Dodd-Frank as significant as its passage."

assist consumers with investing their money – goes to the heart of the financial collapse and why financial reform is necessary.

The free market works when people are informed, not when they are misinformed, duped or misled. However, you know as well as I do that much work remains.

The topic of this conference – "Charting the Course for the Future of Financial Regulation" – so accurately describes where we are today. As you well know, passing Dodd-Frank was the beginning of the rebuilding of the marketplace, and the economy. Now the real work must proceed.

The broker-dealer standard represents one issue out of hundreds for which the rules have yet to be written. The financial services industry spent \$600 million dollars lobbying on the Dodd-Frank Wall Street Reform and Consumer Protection Act and I guarantee you, they won't stop there. Even after all that happened, at every step, we heard their opposition on the grounds that everything we were attempting would tighten markets, reduce credit and limit profits.

We know that before the ink was dry on the bill, the industry was looking for the loopholes and plotting its strategy to avoid and subvert the new rules.

Everything has changed, and yet not much has changed. Therefore, I don't need to tell you that the regulatory process that follows is critical. I urge you to continue your tremendous efforts to make the implementation of Dodd-Frank as significant as its passage.

NASAA Urges SEC to Put Investors First

Study Obligations of Investment Advisers, Brokers Provides Opportunity to Close Regulatory Gaps

Among the dozens of studies included in the Dodd-Frank Wall Street Reform and Consumer Protection Act is a six-month SEC study in Section 913 of the differing standards of care owed to retail investors by investment advisers and broker-dealers when offering investment advice. While investment advisers must adhere to the fiduciary standard requiring them to put their clients' best interests first and disclose any conflicts of interest, fees and commissions, broker-dealers currently operate under the lesser standard of suitability, which does not require similar disclosures or that they place investor interests ahead of their own.

NASAA then-President Denise Voigt Crawford, Texas Securities Commissioner, and NASAA President-elect David Massey, North Carolina Deputy Securities Administrator, submitted a comment letter urging the SEC to put investors first by extending the fiduciary duty to all who provide investment advice about securities – investment advisers and broker-dealers alike.

"When receiving investment advice, investors deserve and should be afforded the same level of protection and care no matter which type of securities professional they engage," Crawford and Massey wrote. "As the brokerage business has evolved to include more advisory activities, having two separate and differing standards governing

Key Investor Survey Findings

97 percent of U.S. investors agree that "when you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice."

Two out of three U.S. investors are incorrect in thinking that stockbrokers are held to a fiduciary duty.

the provision of investment advice no longer makes sense."

NASAA also joined the Consumer Federation of America, AARP and several leading investment adviser and financial planning organizations in commissioning a study of investors' views of the obligations of financial professionals who offer investment advice. The survey found that investors overwhelmingly agree that their interests should come first when they receive investment advice.

Regulators Gather to Monitor Systemic Risk

The nation's top financial regulators convened Oct. 1 for the first meeting of the Financial Stability Oversight Council (FSOC). The FSOC is charged with coordinating financial regulators in order to identify systemic risks to the nation's financial stability. The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes a state insurance commissioner, a state banking supervisor and a state securities administrator to serve as non-voting members of the FSOC, a recognition of the important role that state regulators serve in the financial system.

State securities regulators were represented by NASAA President and North Carolina Deputy Securities Administrator David Massey.

"As a state securities regulator, Dave will bring to the FSOC the insights of a 'first responder' who sees trends developing at the state level that have the potential to impact the larger financial system," said NASAA Past-President and Texas Securities Commissioner Denise Voigt Crawford. "NASAA has been a long and ardent supporter of including state regulators as members of the Council and I am glad that we will have such a well-qualified representative."

The FSOC adopted several governing documents and resolutions at its inaugural meeting, including bylaws, a transparency policy and an implementation roadmap for the council and its member agencies. The FSOC also issued a request for public and industry comment on the "Volcker Rule," which would prohibit proprietary trading. The Dodd-Frank Act requires the FSOC to study the "Volcker Rule" and make recommendations by January 22, 2011.

IA Switch

By signing the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, President Obama set in motion a change for many mid-sized investment adviser firms. Under the law, approximately 4,000 IAs with assets under management of less than \$100 million will switch from federal to state regulation by July 21, 2011.

State securities regulators are not waiting until next summer to prepare for the added responsibilities of registering, examining, and regulating more advisers and their representatives. Working through NASAA, state securities regulators began gearing up for this additional responsibility as the regulatory reform debate played out in Congress.

NASAA appointed an internal IA Switch team, which met in July to develop a comprehensive roadmap to handle the migration of investment advisers. Work is underway in several areas to help regulators and industry prepare for the switch.

Some firms have switched before when their assets rose above or fell below the previous threshold of \$25 million, so switching between federal and state regulation is nothing new. Most advisers should find the switch to be a smooth process. State registration also is nothing new to firms that operated before 1996 — when most RIAs were required to register with the SEC and in each state in which they did business.

Firms switching to state regulation for the first time can expect thorough inspections, generally on a more frequent basis, than they may have experienced before. Most advisers should find that thorough regulatory inspections and strong internal compliance benefit customer and firm alike.

State securities regulators are developing effective ways to deploy resources through enhanced technology. NASAA also is talking with the SEC in an effort to minimize any burdens associated with the switch.

NASAA President and North Carolina Deputy Securities Administrator David Massey has pledged his commitment to enhance communication between NASAA members and the regulated community and to remain sensitive to the cost and complexity of regulatory compliance. My door is open and I look forward to hearing from you in the year ahead to identify areas of common interest and opportunities for improvement," Massey said.

To keep updated with the latest developments in the IA Switch, find answers to frequently asked questions, access a calendar of IA Switch seminars and workshops, and download a directory of registration and examination contacts, visit NASAA's IA Switch Resource Center at www.nasaa.org.

New Form ADV Part 2

Investment advisers and regulators alike are preparing for the use of a new Form ADV Part 2, which became effective in October 2010.

The new Part 2 requires registered investment advisers to provide new and prospective clients with a brochure and brochure supplements written in plain English. Blank templates are available on the NASAA Form ADV webpage.

NASAA has recommended that states that have adopted the Form ADV for use in the investment adviser registration process and for disclosure purposes should begin using the new Part 2 according to the following schedule:

- Between October 12, 2010 and December 31, 2010, new applicants filing Form ADV and currently licensed investment advisers filing amendments to their Part II of Form ADV may use either the old Part II or the new Part 2.
- After January 1, 2011, all new investment advisers registering for the first time in any state or for initial registration in a new state should submit the new Part 2 through the IARD to the states in which registration is being sought. Those already registered will need to incorporate the new Part 2 with their next filing of an amendment to Form ADV or their annual updating amendment to Form ADV, whichever occurs first. Each investment adviser with a fiscal year end of December 31, 2010, who hasn't already filed an updated Part 2, must file an annual updating amendment in IARD with the new Part 2 brochures no later than March 31, 2011.



NASAA: Because Every Investor Deserves Protection

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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NASAA Leadership

New Team to Guide NASAA in 2010-2011



NASAA President David Massey (pictured, left) announced NASAA's 2010-2011 Board of Directors at the NASAA annual conference in Baltimore, Md., in September. The board includes: Past President Denise Voigt Crawford, Texas (pictured, center); President-Elect Jack Herstein, Nebraska (pictured, right); Secretary, Rick Hancox, New Brunswick; Treasurer Fred Joseph, Colorado; Joseph Borg, Alabama; Preston DuFauchard, California; Patricia Struck, Wisconsin; and Franklin Widmann, Florida.