



NASAA

# NASAA Insight

The Voice of State & Provincial Securities Regulation

Winter, 2008

## Inside this issue:

President's Message 2

Executive Director's Message 2

NASAA's Pro-Investor Legislative Agenda 3

NASAA Responds to Treasury Request for Comment on Regulatory Structure Review 7

NASAA Develops Model Rule on Use of Senior Designations 7

NASAA, SEC, FINRA Set Next Steps in Efforts to Protect Senior Investors 8

## NASAA Outlines 2008 Pro-Investor Legislative Priorities

NASAA recently identified the key pro-investor legislative priorities it will advocate during the second session of the 110th Congress.

"Collectively, the priorities that frame our legislative agenda reflect NASAA's belief that every investor deserves protection," said NASAA President and North Dakota Securities Commissioner Karen Tyler.

Tyler said the 11-point legislative agenda supports the efforts of NASAA members to advance investor protection and promote an efficient and effective regulatory environment necessary to

maintain investor confidence in the capital markets.

"NASAA's legislative agenda reflects our venerable mission of investor protection and our long-standing role in assisting Members of Congress in their efforts to ensure that America's investors prosper in a regulatory environment that provides the strongest investor protections," Tyler said.

"In our ongoing efforts to protect investors and preserve investor confidence in our markets, we look forward to continuing our work with the leadership of the 110th Congress," Tyler said.

(Details on Page 3)

## NASAA Urges Securities Arbitration Reform; Study Shows Investors View System as Biased

NASAA has renewed its call upon the Financial Industry Regulatory Authority (FINRA) and the Securities and Exchange Commission (SEC) to take immediate action to improve the fairness of the system of securities arbitration, beginning with the removal of the mandatory industry representative from arbitration panels used to resolve securities disputes involving customers and industry.

NASAA's call follows the February 6 release by the Securities Industry Conference on Arbitration (SICA) of its survey of the participants in NASD and NYSE arbitrations: *An Empirical Study: Perception of Fairness of Securities Arbitration*.

"The study overwhelmingly demonstrates that investors view the securities arbitration forum as biased and unfair," said Karen Tyler, North Dakota Securities Commissioner and President of NASAA.

Previously, in testimony before a U.S. Senate Judiciary Subcommittee, Illinois Securities Director Tanya Solov expressed NASAA's support of S. 1782, the Arbitration Fairness Act of 2007

introduced by Sen. Russ Feingold (D-WI), saying that it is "a positive step in the right direction" toward improving the fairness of the system of securities arbitration.

"As long as securities arbitration remains mandatory, investors will continue to face a system that is not fair and transparent to all," Solov testified on NASAA's behalf.

According to the SICA study:

- Nearly half of the customers who expressed their views believed their arbitration panel was biased;

- 62 percent believed the arbitration process was unfair;
- 70 percent were dissatisfied with the outcome;

- 49 percent stated that the arbitration process was too expensive, and;

- A striking 75 percent of customers who compared their arbitration process to their civil litigation process indicated that arbitration was "very unfair" or "somewhat unfair" compared to court.

"The SICA study's results are disturbing, and they support what state regulators have been hearing from investors in their states –

(Continued on Page 7)



Karen Tyler, NASAA President and North Dakota Securities Commissioner testifies during U.S. Senate Banking Committee investor protection hearing.

## NASAA Reminds Investors to Make Informed Decisions

In testimony before the U.S. Senate Banking Committee and through an Investor Alert, NASAA President Karen Tyler addressed the dangers investors face when financial predators take advantage of economic uncertainty to promote high-risk speculative investments.

"State securities regulators are concerned that this predatory conduct, combined with a convergence of financial challenges - higher energy prices, a volatile stock market, lower housing values, and general economic unrest - may lead individuals to make hasty, ill-informed decisions in the pursuit of higher returns on their investments," Tyler told the Banking Committee during a December 13 hearing.

NASAA Insight is a publication of the North American Securities Administrators Association, Inc. For more information, visit: [www.nasaa.org](http://www.nasaa.org)



**“These initiatives represent critical protection issues for our investor constituents and will continue to be a priority focus for our members.”**

— NASAA  
President  
Karen Tyler

## President’s Message: Karen Tyler

Although this issue of *NASAA Insight* focuses largely on our pro-investor legislative agenda for the 110th Congress, NASAA has been very active on several additional fronts. In particular, much of our recent attention has been focused on three key issues: the fairness of the securities arbitration system, preserving and strengthening the regulatory structure that protects more than 100 million North American investors, and our continuing efforts to protect senior investors.

I am pleased that significant progress has been made in each of these critical areas. For example, I call to your attention, *An Empirical Study: Perception of Fairness of Securities Arbitration*, a report of the Securities Industry Conference on Arbitration (SICA), of which NASAA is a member.

This significant study, designed by academics at Pace University with the assistance of Cornell University’s Survey Research Institute, clearly demonstrates that investors believe the current system of securities arbitration to be biased and unfair. I thank NASAA’s representative to SICA, Massachusetts Securities Director and NASAA Arbitration Project Group Chair Bryan Lantagne, as well as Illinois Securities Director Tanya Solov, for their dedicated efforts on behalf of NASAA toward improving the fairness of the arbitration system for investors.

In November, NASAA answered the U.S. Treasury Department’s call for comments regarding its ongoing review of the regulatory structure regarding financial institutions. Our response is unambiguous: the existing regulatory structure, particularly as it pertains to the

securities markets, needs no fundamental restructuring. I would like to thank NASAA General Counsel Rex Staples for his tireless work on this issue, which we look forward to amplifying in greater detail at our April 1 Public Policy Conference in Washington, DC.

The latest developments in NASAA’s ongoing efforts to protect senior investors are represented in a proposed *Model Rule on the Use of Senior-Specific Certifications and Professional Designations*. The proposed model rule, developed by the NASAA Task Force on Senior Designations, offers an aggressive regulatory solution to a growing problem plaguing senior investors — the use of illegitimate senior-specific designations and certifications. I want to extend my deepest appreciation to the task force: Maryland Securities Commissioner Melanie Lubin (chair), Massachusetts Securities Director Bryan Lantagne, Nebraska Securities Bureau Assistant Director Jack Herstein, California Corporations Commissioner Preston DuFauchard, Florida Office of Financial Regulation Commissioner Don Saxon, and Colorado Securities Commissioner Fred Joseph.

Finally, I want to thank Delaware Securities Commissioner Jim Ropp, who chairs NASAA’s Federal Legislation Committee, and NASAA Director of Policy Debbie House, for their efforts in bringing our pro-investor legislation agenda to fruition.

All of these initiatives represent critical protection issues for our investor constituents, and will continue to be a priority focus for our members.



## Executive Director’s Message: Russ Iuculano

On January 3, the SEC received the text of the RAND Corporation’s final report on practices in the investment adviser and broker-dealer industries. In announcing the SEC’s 2008 agenda, Chairman Cox said this will be the year that “the confusing thicket of intertwining broker-dealer and investment adviser regulation will be cut down to size.” He has tasked the Divisions of Investment Management and Trading and Markets to work together to reconcile the “seemingly ancient statutes [the Investment Adviser Act of 1940 and the Securities Exchange Act of 1934] with today’s marketplace realities.”

It is likely that the RAND study will provide a basis for the SEC, through a combination of rulemaking and working with Congress, to substantially change the distinctions between broker-dealers and investment advisers. NASAA

will continue to work diligently to assure that fiduciary protections and state regulatory authority are not weakened in the process.

In the coming months, we can also expect continued national attention on senior investor protection issues on the part of Congress, other regulators, consumer advocates and the media in large part due to NASAA’s proposed model rule on the use of senior designations.

I am confident that the development of this model rule will prove to be invaluable in curbing abusive sales practices targeting seniors. Clearly, this is a historic opportunity for NASAA.

Before closing, I want you to know that we have put together an outstanding group of speakers for our April 1 Public Policy Conference and we look forward to seeing you in Washington.

## SPECIAL REPORT: A Pro-Investor Legislative Agenda



### Preamble

For 88 years the North American Securities Administrators Association (NASAA) has worked on initiatives impacting state and federal legislation, rulemaking, and coordinated enforcement actions all with the common goal of protecting investors and maintaining investor confidence in our markets. NASAA is committed to continuing its venerable mission and to that end announces its legislative agenda for the second session of the 110<sup>th</sup> Congress. The items in this agenda fall into five broad categories: 1) Preserving the authority of state regulators to protect investors, and evaluating the negative effects of preemption of certain state laws; 2) Strengthening the mechanisms currently in place that provide redress to investors for wrongdoing by industry participants; 3) Maintaining federal laws designed to insure corporate accountability and shareholder confidence; 4) Promoting sound and effective regulatory initiatives; and, 5) Improving the scope and breadth of investor education efforts.

### 1. Support a Strong and Effective Regulatory Structure for Capital Markets.

State securities regulators have a proud tradition of protecting investors. In their continued effort to accomplish this mission, state regulators will continue to vigorously defend their authority to regulate at the state level and bring enforcement actions seeking appropriate remedies against those firms and individuals that violate securities laws in their jurisdictions. NASAA members will remain vigilant in fighting attempts, such as the three Capital Markets Competitiveness Reports issued during the last year. Those three reports — “*The Interim Report of the Committee on Capital Markets Regulation*” (The Glenn Hubbard/Hal Scott Report), the “*Commission on the Regulation of U.S. Capital Markets in the 21<sup>st</sup> Century*” (The U.S. Chamber of Commerce Report) and “*Sustaining New York’s and the U.S.’ Global Financial Services Leadership*” (The Schumer/Bloomberg or McKinsey Report) seek to neutralize state regulators who aggressively protect investors, the bedrock of our market confidence.

Most recently, in November 2007, the Financial Services Roundtable released its “*Blueprint for U.S. Financial Competitiveness*.” The Blueprint calls for the creation of an optional national securities charter that would subject a firm to examination and enforcement by a national regulatory authority, not any individual state authority and greatly weaken the states’ ability to uncover wrongdoing and maintain the integrity of the marketplace.

NASAA believes that the complementary state-federal-industry regulatory relationship has a proven record of serving investors well. In light of the recent consolidation of the NASD and NYSE Regulation into the Financial Industry Regulatory Authority (FINRA), the need for strong state securities regulatory authority is heightened. With more than 100 million investors relying on our securities markets to meet their financial goals – and on regulators to keep those markets well-policed – we must ensure that this successful and cooperative regulatory relationship remains as strong as possible and NASAA would support legislative initiatives designed to facilitate and strengthen this cooperation.

NASAA jurisdictions have a strong record of working cooperatively with fellow regulators, which NASAA believes are vital to effective and efficient regulation. The current level of cooperation is reflected by NASAA’s participation in a joint national initiative with the SEC and FINRA to protect seniors from investment fraud and sales of unsuitable securities. These synergies serve as building blocks for other cooperative efforts. For instance, NASAA looks forward to working with the SEC

as it continues to study the various regulatory schemes affecting both broker-dealers and investment advisers. NASAA also looks forward to strengthening its partnership with industry SROs especially in the area of public disclosure of information on the disciplinary history of industry participants.

### 2. Restore Fairness and Balance in the Securities Arbitration System.

Every year thousands of investors file complaints against their stockbrokers. If these disputes aren’t settled, investors are left with only one avenue to pursue their claims – arbitration – and for all practical purposes only one arbitration forum. This system, which is administered by an affiliate of FINRA, should be examined to ensure it is fair and transparent to all.

During the first session of the 110<sup>th</sup> Congress, elected officials began to realize that the scales of justice had begun to tilt unevenly away from consumers. In an attempt to rectify this situation, S. 1782/H.R. 3010, the “Arbitration Fairness Act of 2007,” was introduced. This proposal makes mandatory arbitration predispute agreements to arbitrate employment, consumer, franchise or civil rights disputes unenforceable. NASAA submitted a letter in support of the legislation and suggested that it be amended to clarify that its provisions extend to securities arbitration. In December 2007, NASAA testified before the U.S. Senate Committee on the Judiciary Constitution Subcommittee and recommended the enactment of S. 1782.

State securities regulators believe Congress should also review the manner in which arbitrations are conducted to determine if there is sufficient disclosure of potential conflicts by panel members; to determine if selection, qualification, and composition of the panels is fair to the parties; whether the arbitrators receive adequate training; if explanations of awards are sufficient; if the system is fast and economical for investors; and if the entire arbitration process should be optional, not mandatory, for investors.

### 3. Increase Sanctions for Crimes Against Senior Citizens.

Notwithstanding the multi-front offensive launched by state and federal securities regulators, senior citizens remain a target for unscrupulous scam artists. State securities regulators recently announced that 26 percent of all enforcement actions during 2004-2005 involved the financial exploitation of seniors. Preliminary results from our most recent survey show that the percentage of senior investor complaints has risen to 44 percent.

(Continued on Next Page)

## SPECIAL REPORT: A Pro-Investor Legislative Agenda

Investment fraud targeting seniors is an ongoing concern, and NASAA believes that Congress should explore proposals to assist law enforcement and prosecutors to ensure that those who take advantage of our nation's elderly will be held accountable. Fraudulent investment sales to seniors will remain a problem of epidemic proportions as long as the benefits to the perpetrators outweigh the costs. Enhanced penalties for senior abuse – ranging from fines to jail terms – should help to raise those costs, deter law violations and punish appropriately those who exploit senior investors.

In 2007, state securities regulators in Hawaii, with the assistance from AARP, recognized the importance of placing stricter penalties on those who target seniors with abusive sales tactics by supporting legislation that establishes additional securities violations when the act is directed against seniors (62 or older) to include imposing administrative penalties not to exceed \$50,000 and civil penalties not to exceed \$50,000 for each violation. While at the federal level, NASAA will continue to work with Senators and Congressmen to prepare legislation that increases sanctions for crimes committed against seniors relating to securities fraud.

#### 4. Define Equity Indexed Annuities as Securities.

The sale of equity-indexed annuities (EIAs) has risen dramatically since 1995, when they first appeared on the market. Estimates are that \$25 billion of these products were sold in 2005. This increase in sales volume has been driven largely by the high commissions that sales agents earn on EIAs. As financial media commentators have said repeatedly — these products are not bought but sold. Problems have arisen, however, because EIAs are extremely complex and they have a number of onerous features, including long accumulation periods and high surrender charges. State securities regulators, as well as the SEC and the SROs, are receiving an increasing number of complaints about EIAs.

Although EIAs may be legitimate investment vehicles for some people, NASAA is concerned that these products are unsuitable for many investors and that they are often associated with deceptive marketing tactics. Particularly troubling is the sale of EIAs to senior citizens, who are being aggressively targeted through investment seminars nationwide.

The status of EIAs as securities remains uncertain. The SEC first solicited public comment on the appropriate treatment of EIAs under federal securities law in 1997 but the agency has not yet issued guidance on the issue. FINRA has cautioned its members that EIAs may well constitute securities, depending upon the facts and circumstances in each case, and it requires member firms to follow special precautions when their associated persons sell EIAs, regardless of whether they are deemed to be securities. However, FINRA has expressly declined to address the legal status of EIAs.

NASAA believes that it is time to remove the legal uncertainty surrounding EIAs and that it is appropriate to classify these investment products as securities. This is conceptually sound under current law, at least in instances where EIAs are promoted and sold primarily as investments

rather than insurance products. This is especially appropriate from the standpoint of investor protection, given the level of sales abuse associated with these products and the unique ability of securities regulators at both the state and federal level to address those abuses at the point of sale.

The strong suitability standards found in the state and federal securities laws will help ensure that EIAs are sold only to investors for whom they are appropriate. The application of the securities laws to the sale of these products also will help ensure that investors receive complete, understandable, and accurate information regarding all material aspects of these products prior to purchase and that investors are afforded remedies if they are defrauded or harmed by other abusive sales practices.

#### 5. Uphold State Role in Data Security Breach Protection.

As a result of both our enforcement and education efforts, state securities regulators have been made acutely aware of the investing public's concern with security of their personal data and protection from identity theft. Heightened congressional interest in security breach legislation follows the enactment of laws in a number of states requiring institutions to notify affected consumers following a data security breach.

According to the National Conference of State Legislatures (NCSL), at least thirty-five states have enacted some form of data breach disclosure laws. These efforts by state legislatures have resulted in a heightened awareness by the general public of the deficiencies in the security of electronic information in general, and of numerous security breaches at some of the nation's largest firms and governmental agencies. Currently, state securities examiners are conducting examinations of not only investment advisers but also broker-dealers to ensure the privacy of persons who give them personal information in the course of doing business or considering doing business. NASAA wants to ensure our authority is not inadvertently preempted in a data security breach law.

The level of federal preemption in the various data security breach bills introduced during the first session of the 110<sup>th</sup> Congress varies from a narrowly focused preemption proposal to a near total preemption of state laws in the privacy area. Any federal bill dealing with data security breaches should preserve state laws that address problems surrounding data security. A state role is vital to effective consumer protection, and we strongly support a continuation of the enforcement role of the state attorneys general in this area.

In addition, should Congress decide to preempt certain state laws, high standards should be enacted in their place, including strong provisions for national security breach notification and when a consumer can impose a security freeze on access to his/her consumer credit report and credit score. Without such a strong federal substitute, consumers will be deprived of the protections that state laws currently provide.

*(Continued on Next Page)*

## 6. Maintain Strong Investor Protection Provisions of the Sarbanes-Oxley Act (SOX).

Investors were right to be outraged by the frauds of Enron, WorldCom and others and Congress was right to pass tough corporate accountability legislation in response. The industry-created scandals of recent years caused Main Street investors to lose billions of dollars and gave our nation's corporate reputation a black eye in the world community.

Legislation passed in response to these corporate debacles was appropriate. In fact, the legislation has been successful as reflected by the continued rise in indexes that measure investor confidence in the markets. NASAA believes that weakening of Sarbanes-Oxley will drive investors from the market place and serve only to erode our capital markets.

While numerous capital market reports have been openly critical of certain SOX requirements, there has been no empirical evidence that suggests the U.S. capital markets have suffered as a result of these requirements. NASAA continues to oppose changes to the fundamental principles of the Act, but recognizes that its regulatory requirements for small firms may require some modification.

## 7. Advance and Increase Financial Education Efforts.

The securities regulators that form the NASAA membership are firmly committed to promoting and supporting financial literacy, and are firmly committed to delivering investor education for all consumers. We believe we have an ongoing obligation to help our constituents develop the knowledge they need to make good personal financial decisions. NASAA members use a variety of channels to engage investors of all ages from presentations, exhibits, publications, and also new technology with NASAA's new podcast series, *The Alert Investor*, and the recently launched innovative online program *FSI: Fraud Scene Investigator*, which teaches students how to fight investment fraud firsthand.

The rising tide of baby boomers entering retirement also necessitates the need to educate seniors about investment fraud. Truly our seniors have the most to lose when it comes to fraud with little time to re-coup the losses such a devastating fraud produces. It remains our fundamental belief that financial education is the first and best defense against financial fraud, abuse, and exploitation.

State securities agencies are leaders in grass-roots investor outreach and education and look for opportunities to join forces with other members of the financial education community who also share a commitment to investor protection. NASAA urges Congress to fund programs to cultivate financial education partnerships among federal, state and nonprofit entities and encourage dialogue among these groups such as the newly created National Financial Education Network of the U.S. Treasury Department's Financial Literacy Education Commission (FLEC). NASAA continues to support Congressional efforts to designate April as Financial Literacy month and encourage events such as Financial Literacy Day on Capitol Hill.

## 8. Reinstate State Regulatory Authority of Regulation D 506 Offerings.

The scope of covered securities in Section 18(b) of the 1933 Act has expanded since the National Securities Markets Improvement Act of 1996 (NSMIA) was enacted, even though the definition has technically remained the same. More issuers are using Rule 506 and the listing standards on some of the exchanges are

deteriorating, so more securities that fall within the definition of covered security are being offered to the public with little or no scrutiny.

Rule 506 of Regulation D offerings are provided the special status of private placements and are exempt from federal and state securities registration laws. As a result of this special status, there is no regulatory review of the 506 offerings at either the federal or state level. Thus, for example, NSMIA has preempted the states from prohibiting Regulation D offerings even where the promoters or broker-dealers have a criminal or disciplinary history. Some courts have even held that offerings made under the guise of Rule 506 are immune from scrutiny under state law, regardless of whether they actually comply with the requirements of the rule.

As a result, state securities regulators have seen a transition of practically all Reg D offerings to Rule 506. If the SEC does not implement ineligibility provisions applicable to issuers making sales through bad actors, Congress should act to protect investors from recidivist violators who are currently free to participate in Rule 506 offerings.

In light of the growing popularity of the offering and the expansive reading of the exemption given by certain courts, NASAA believes the time has come for Congress to reinstate state regulatory oversight of all Regulation D offerings.

## 9. Update and Strengthen the Accredited Investor Definition.

Recently, the Securities and Exchange Commission proposed two rules that would require natural persons investing in hedge funds and other private funds that claim an exemption under 1940 Investment Company Act Section 3(c) (1) to meet additional financial criteria beyond the "accredited investor" standards. Specifically, the proposed rules would require that natural persons have "investments" of \$2.5 million (excluding personal residence and property used in a trade or business) and satisfy the current "accredited investor" standards.

The current "accredited investor" standard is satisfied if a natural person has an individual net worth, or joint net worth with their spouse, of \$1,000,000 or if that person has an individual income of \$200,000, or joint income with their spouse of \$300,000. Since this standard has remained unchanged since its adoption in 1982, inflation has rendered it meaningless. NASAA has repeatedly encouraged the Commission to increase these levels to adjust for the effects of inflation on wealth and income, and to provide for adjustments on an ongoing basis. NASAA will continue to comment on this issue, and believes the accredited investor standard should be revised in all its applications, rather than limited to investments in certain private funds.

Raising the standard for individual investors would provide greater protection for investors and would aid state regulators in enforcement activities by furthering the suitability determination for those individuals who choose to take greater risks. In order to insure that those representing themselves as "accredited investors" do in fact meet the definition, NASAA suggests implementing, either by rule or by statute, a requirement that industry participants be required to independently verify a potential investor's representation that he or she meets the financial guidelines.

(Continued on Next Page)

## SPECIAL REPORT: A Pro-Investor Legislative Agenda

### 10. Encourage Hedge Fund Transparency and Pension Protection.

NASAA supports efforts to regulate hedge funds in a manner that will provide greater transparency to investors while not overburdening the hedge fund industry. With over 8,000 funds in existence and assets in excess of \$1 trillion, the fact that this industry remains, for the most part, unregulated is worrisome for investors and the U.S. markets in general.

ERISA rules make hedge funds and their managers “trustees” if more than 25% of the fund’s assets are pension assets. The Pension Protection Act of 2006 removed public pension funds from the 25% calculation.

State securities regulators question the wisdom of this change and they believe this is an issue that should be closely monitored. State securities regulators want to ensure that public pension plan monies are not subject to undue risk through investment in unregulated pooled vehicles.

### 11. Preserve the Authority of State Securities Regulators.

The Gramm-Leach-Bliley Act (GLBA) affirmatively preserves the authority of the Securities and Exchange Commission and state securities regulators to investigate and bring enforcement actions with respect to fraud and deceit or unlawful conduct by any person when the activities are conducted in a functionally regulated subsidiary of a depository institution. Clearly, Congress understood weakening the authority of state regulators in this area would be harmful to investors.

Congress should undertake a review of recent activities by both the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC) for compliance with federal law. Specifically, these two agencies have in one instance promulgated rules and in another issued an opinion letter with sweeping preemption provisions, which have been upheld in several federal court decisions.

Congress should consider adopting legislation that disapproves of such legislative-style activity by a few federal regulators and that expressly preserves the authority of state regulators to protect consumers from fraud and abuse in the banking and securities sectors.

#### NASAA Board of Directors

Karen Tyler, North Dakota *President*

Fred Joseph, Colorado *President-Elect*

Joseph Borg, Alabama *Past-President*

David Massey, North Carolina *Treasurer*

Glenda Campbell, Alberta *Secretary*

Christopher Biggs, Kansas *Director*

Denise Voigt Crawford, Texas *Director*

Melanie Lubin, Maryland *Director*

Michael Stevenson, Washington *Director*

Don Saxon, Florida *Ombudsman*



#### NASAA Federal Legislation Committee

James Ropp, Delaware, *Chair*

Rick Fleming, Kansas

Melanie Lubin, Maryland

Tom Michlovic, Pennsylvania

Michael Vargon, New Mexico

David Weaver, Texas

#### NASAA Director of Policy

Deborah House

## Securities Regulatory Structure Needs No Fundamental Restructuring

NASAA continues to voice strong support for the current regulatory structure for the securities industry and cautioned the U.S. Department of the Treasury against a significant overhaul in an effort to enhance the competitiveness of U.S. capital markets.

“The millions of investors in this country – for the most part hardworking, middle class citizens, not Wall Street CEOs – deserve a much better justification for a regulatory overhaul if their financial futures are to be placed at risk,” NASAA President Karen Tyler wrote in a comment letter to Treasury Department regarding its *Review of the Regulatory Structure Associated with Financial Institutions*.

“We look forward to working with the Department of Treasury to ensure that investor and consumer

protections are not sacrificed in the name of regulatory reform.”

NASAA favors prudent changes where necessary to preserve or enhance the health of our markets. “We have always been willing to discuss regulatory reforms that strike the appropriate balance

**“We encourage Treasury not to lose sight of the regulator’s primary function: to protect investors and capital.”**

between regulatory efficiency and protections for all investors,” Tyler wrote. “But regulatory reform, as the concept is currently framed, is neither. Our existing regulatory structure, particularly as it

pertains to the securities markets, needs no fundamental restructuring. NASAA believes that pressuring for a significant overhaul of our current system at a time when our relationships abroad and our domestic economy are under extraordinary pressure is imprudent.”

NASAA noted that recent calls for regulatory reform share a universal set of “improvements” designed to ease perceived industry burdens. “Each reform package offers industry less bureaucracy, fewer constraints, and wide latitude in matters of conduct. We are troubled, however, by the lack of discussion about the effects of these reforms on the retail investor,” Tyler wrote. “We encourage the Treasury not to lose sight of the regulator’s primary function: to protect investors and capital.”

## NASAA Develops Model Rule on Use of Senior Designations

Demonstrating its continued leadership in the national effort to protect senior investors, NASAA’s membership is set to vote on a proposed *Model Rule on the Use of Senior-Specific Certifications and Professional Designations*.

The proposed rule represents the culmination of an effort NASAA and its members launched in 2003 to focus national attention on dangers faced by senior investors. It also received considerable attention at the September 2007 Senate Special Committee on Aging hearing, which turned the spotlight on problems arising from misleading professional designations.

During the hearing, Committee Chairman Herb Kohl (D-WI) pledged to support strengthening the governance of senior specialist designations.

The proposed rule, developed by the NASAA Task Force on Senior Designations, was released for public comment in November 2007.

“Through a process informed by member and public comment, they have produced a model rule that will provide state securities regulators with an effective weapon in the fight against senior investment fraud,” NASAA President Karen Tyler said.

“This is an unprecedented opportunity for NASAA to highlight the leadership and value state securities regulators bring to investor protection,” Tyler said. “We have detected a growing problem for senior investors and responded to it aggressively with a regulatory solution.”

## Arbitration *(continued from Page 1)*

investors believe that the arbitration forum they are forced to participate in is rigged against them,” said Bryan Lantagne, Director of the Massachusetts Securities Division and chair of NASAA’s Arbitration Project Group.

Currently, almost every broker-dealer includes in their customer agreements a predispute arbitration provision that forces public investors to submit all disputes that they may have with the firm and/or its associates to mandatory arbitration.

Securities arbitration cases are heard by a three-member panel that includes one “non-public” or securities industry member, and two “public” members, who may have worked in the industry. Neither of the public arbitrators is required to be an investor advocate, even though the non-public arbitrator is required to be an industry representative. FINRA, the industry SRO, selects who is qualified to be in the arbitrator pool.

The SICA study was initiated pursuant to the recommendations of the 2002 Perino Report to the SEC. It was designed by academics at Pace University with the assistance of Cornell University’s Survey Research Institute with participation from members of SICA to ensure

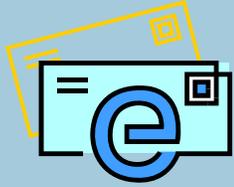
that the questions were appropriate and relevant.

“The study is sound and accurate,” Lantagne said. “The study’s responses were compiled in a scientific manner, which provided a factual foundation for its results.”

NASAA urged FINRA to act immediately on this study. “The first step toward improving the integrity of the arbitration system must be the removal of the mandatory industry arbitrator and a prohibition on ties to the industry on the part of the public arbitrator,” Tyler said. “NASAA has long held that a choice between arbitration and the courts for resolving disputes should be a fundamental right for investors. Because the arbitration system has evolved into a mandatory condition imposed by the industry, it is imperative that the system of dispute resolution be fair, transparent and free from bias,” Tyler said.

NASAA believes that investors should be given a choice of forums to bring their investment disputes. “However, where there is no choice but arbitration through a program administered by FINRA, then investors must have confidence in the substantive fairness of the process,” Tyler said.

The report has been posted on the Pace Law School website: [www.law.pace.edu/files/finalreporttosica.pdf](http://www.law.pace.edu/files/finalreporttosica.pdf).



### Sign-up for NASAA E-mail Updates

Stay on top of the latest NASAA developments by subscribing to the NASAA E-mail update service.

This free resource is available on the homepage of NASAA's website at [www.nasaa.org](http://www.nasaa.org).

To subscribe, click the "E-mail Updates" link.

### Save the Date: NASAA Annual Conference 9.15-17.08

Las Vegas, Nevada

Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud.

**Phone:** 202-737-0900  
**Fax:** 202-783-3571  
**Online:** [www.nasaa.org](http://www.nasaa.org)



North American Securities  
Administrators Association Inc.  
750 First Street, N.E.  
Suite 1140  
Washington, D.C. 20002

## NASAA, SEC & FINRA Set Next Steps to Protect Senior Investors

NASAA, the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) have launched a new initiative as part of securities regulators' efforts to protect senior investors. The goal of the initiative is to identify effective practices used by financial services firms in dealing with senior investors, and to provide information about these practices publicly.

SEC staff, NASAA, and FINRA will solicit input from all interested parties in order to identify strong supervisory, compliance and other practices used by financial services firms serving seniors in the following areas: marketing and advertising to seniors; account opening; product and account review; ongoing review of the relationship and appropriateness of products; discerning and meeting the changing needs of customers as they age; surveillance and compliance reviews; and training for firm employees. The findings will be published so all firms can improve their service to older investors. SEC Chairman Christopher Cox said, "It's important to maximize the cutting-edge practices being developed by financial services firms to ensure that America's senior investors are being protected and well-

served by brokers, investment advisers, and others in the securities industry."

NASAA President Karen Tyler said, "Strong regulation and heightened investor awareness, combined with effective industry compliance and supervisory systems, are necessary elements in the fight against senior investment fraud. Through this

initiative we intend to spotlight successful industry practices from which others may benefit."

FINRA Chief Executive Officer Mary Schapiro said, "This initiative will reinforce and expand recent efforts by FINRA, the SEC and NASAA to make certain the entire industry serves the needs of senior customers."

The goal of the initiative is not to impose new regulatory requirements, but to help firms better meet their current obligations to their senior customers, as well as to better serve them.

This effort is part of the multifaceted coordinated national initiative to protect seniors from investment fraud and sales of unsuitable securities that was announced by the SEC, NASAA, and FINRA in May 2006. The initiative has several components, including targeted examinations, enforcement of the securities laws in cases of fraud against seniors, and active investor education and outreach.

*"We intend to spotlight successful industry practices from which others may benefit."*

— Karen Tyler