



# NASAA Insight

The Voice of State & Provincial Securities Regulation  
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## NASAA, CFTC Sign MOU For Info Sharing Between CFTC & State Securities Regulators

Commodity Futures Trading Commission (CFTC) Chairman J. Christopher Giancarlo and North American Securities Administrators Association (NASAA) President Joseph P. Borg on May 21 signed a mutual cooperation agreement to establish a closer working relationship between the federal commodities regulator and state securities agencies.

The agreement provides a framework for the sharing of confidential information between the CFTC and state securities regulators.

The purpose of the information-sharing agreement is to assist participants in enforcing the Commodity Exchange Act, which state securities regulators and state attorneys general are statutorily authorized to do alongside the CFTC. But information shared under the MOU also could generate enforcement actions under state securities laws, state commodity codes, or other areas of law.

“State securities regulators look forward to strengthening our bond with the CFTC to enhance investor protection and prevent fraud,” NASAA President Borg said.

“This agreement provides the CFTC and NASAA an opportunity to build on our long-standing cooperative relationship,” said CFTC Chairman Giancarlo.



CFTC Chairman Christopher Giancarlo (left) and NASAA President Joseph Borg at the MOU signing ceremony in Washington, D.C.

## NASAA Urges Congress to Reject The Securities Fraud Act of 2018

NASAA in June urged Congress to reject legislation that would tie the hands of states in policing fraud involving the securities of publicly traded companies.

“H.R. 5037 is a misguided and dangerous bill,” testified NASAA President Joseph P. Borg in reference to “The Securities Fraud Act of 2018.” The bill and other measures were the subject of a hearing conducted by the House Subcommittee on Capital Markets, Securities, and Investment examining securities law enforcement.

“In more than 24 years as a securities regulator, I don’t believe that I’ve ever seen a legislative proposal that so alarms and offends me,” Borg testified.

“Should Congress pass this bill, my office’s efforts, as well as those of my colleagues, to protect investors from serious violations of the securities laws would be eviscerated,” Borg said. “Real investors and real people will suffer as a result of this misguided and irresponsible legislation.”

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## From the Leadership

### President's Message: Joseph Borg



Every year, tens of millions of Main Street American investors pour their hard-earned money into a wide variety of investments to help secure their financial future.

They operate on the belief that participating in America's well-regulated capital markets does not expose them to undue risk of fraud when they try to make the best decisions for themselves, their

families or their small businesses. Investor confidence in our capital markets should never be taken for granted.

State securities regulators understand the importance of investor confidence in our markets and that is why for more than a century we have worked to protect investors from losses caused as the result of fraud and abuse.

All that could change, however, if Congress moves forward on the Securities Fraud Act of 2018 (H.R. 5037).

This bill was introduced in the name of spurring capital formation. In reality, this bill is about weakening investor protections in favor of companies or individuals suspected of committing securities fraud. That is why I testified before a subcommittee of the House Financial Services Committee in June in opposition to this dangerous bill.

H.R. 5037 would undercut the long-standing authority of state securities regulators by pre-empting our civil anti-fraud authority for certain violations of state securities law, while also hampering and preventing state prosecutions of criminal securities fraud.

***"H.R. 5037 is a direct attack on the authority of states to protect investors from fraud and misconduct."***

**▶ NASAA President Joseph P. Borg**

Enacting laws that would make it more difficult, and in some cases impossible, for state regulators to hold wrongdoers accountable, including the most powerful companies on Wall Street, serves no valid public interest.

Far from being a burden, state anti-fraud provisions are a powerful complement to the federal regulatory oversight of the Securities and Exchange Commission (SEC). These laws serve as a potent deterrent to improper conduct, and incentivize market participants to provide investors with complete and accurate information essential to making informed investment decisions.



*NASAA President Joseph Borg (right) and Rep. Tom MacArthur (R-NJ) discuss Rep. MacArthur's "Securities Fraud Act" after a hearing before the House Subcommittee on Capital Markets, Securities and Investment in June.*

What's more, H.R. 5037 is premised on the erroneous assertion that state securities enforcement is detrimental to the public interest and somehow disincentivizes the raising of capital — this premise is not supported by either logic or fact.

In fact, 2018 has seen a surge in initial public offerings (IPOs) by a variety of firms ranging across different industries. Observers see this trend continuing into 2019.

H.R. 5037 is a direct attack on the authority of states to protect investors from fraud and misconduct.

And while we work very closely with our federal counterparts, the simple fact of the matter is that the SEC does not have the resources to take on additional enforcement cases.

Ultimately, H.R. 5037 is a misguided and dangerous bill that places the interests of big companies above those of the hardworking Americans who look to our capital markets to help build a secure retirement.

I can only hope that our leaders in Congress recognize how critically important it is to reject this legislation and continue to make the protection of American investors our first priority.

## State Securities Regulators Announce \$26 Million LPL Financial Settlement

In May, NASAA announced that a settlement has been reached between LPL Financial LLC and state securities regulators requiring the firm to repurchase from investors certain securities sold since October 2006 and to pay civil penalties that could total more than \$26 million.

The settlement stems from an investigation led by state securities regulators in Alabama and Massachusetts regarding LPL's failure to establish and maintain reasonable policies and procedures to prevent the sale of unregistered, non-exempt securities.

Under the terms of the settlement, LPL agreed to offer to repurchase from investors securities held in LPL accounts determined to have been unregistered, non-exempt equity or fixed-income securities sold since October 1, 2006. Each offer will include 3 percent simple interest per year. Other requirements were agreed upon for investors who purchased the securities subsequently or where the securities were transferred away from LPL.

"This investigation is representative of the aggressive and coordinated enforcement actions of state securities regulators and demonstrates the important investor protection role states serve in safeguarding investors nationwide," said Joseph P. Borg, NASAA President and Director of the Alabama Securities Commission.

"The action today represents the states at their best – working together on an extremely important investor protection matter. Because of the states' combined efforts, thousands of investors will benefit and be given the right to have their money returned plus interest," said Secretary of the Commonwealth William F. Galvin, who serves as the top securities regulator in Massachusetts.

## Bipartisan SeniorSafe Act Signed to Help Stop Financial Exploitation

The SeniorSafe Act, bipartisan legislation authored by U.S. Senators Susan Collins (R-ME) and Claire McCaskill (D-MO) to help protect seniors from financial exploitation and fraud, was signed into law on May 24.

The legislation, long a NASAA legislative priority, provides support for regulators, financial institutions, and legal organizations to educate their employees about how to spot and stop suspected senior financial exploitation.

"The Senior Safe Act is a significant step forward in the ongoing fight against senior financial exploitation. The Senior Safe Act addresses barriers financial professionals face in reporting suspected senior financial exploitation or abuse to authorities," said NASAA President Joseph P. Borg.

Borg noted that the legislation complements similar legislation passed by 16 states based on the NASAA Model Act to Prevent Vulnerable Adults From Financial Exploitation.

"On behalf of NASAA, I commend Senator Susan Collins of Maine and Senator Claire McCaskill of Missouri for their persistent pursuit to secure passage of this bipartisan legislation and for their efforts to protect seniors from financial exploitation," Borg said.

"I also want to recognize Maine Securities Administrator Judith Shaw for her leadership of NASAA's Senior Issues Committee, which has developed a series of resources, such as the NASAA Model Act, to protect seniors and vulnerable adults from financial abuse. Through the committee, NASAA and its members have worked collaboratively with industry and academia to effectively advance senior investor protection."

## NASAA Report Confirms BD Firms Devoted Compliance Resources in Anticipation of DOL Rule's Implementation

A NASAA report on the multi-billion dollar Individual Retirement Account (IRA) rollover market shows that broker-dealer firms were making progress in revising their policies and procedures and developing resources to better inform investors making retirement decisions in anticipation of the full implementation of the U.S. Department of Labor's (DOL) 2016 conflict of interest rule. The rule would have treated as fiduciaries broker-dealers that make recommendations to customers regarding their IRA rollovers. The full report is available [here](#).

"The report's findings spotlight the real and tangible good that came from the Department of Labor's fiduciary rule," said Joseph P. Borg, NASAA President and Alabama Securities Commission Director.

The report by NASAA's Broker-Dealer Section was based on a nationwide survey of 96 large, mid-size and small broker-dealer firms to determine steps the firms were taking in anticipation of the rule's implementation. Adopted in June 2016 and initially scheduled for implementation by April 2017, the rule was vacated by the U.S. Fifth Circuit Court of Appeals on March 15, 2018.

The report clearly demonstrates that, before the court's decision to vacate the rule, none of the surveyed firms was providing a standard of care other than suitability to IRA rollovers. However, after the rule's adoption, many firms reported taking significant steps and expending considerable time and resources to modify their policies and practices for handling IRA rollovers to bring these activities into compliance with the rule's best interests standards.

"From a regulatory perspective, there is absolutely no merit to the concept that rollover dollars should be treated differently under the law than they were as a part of an employer-sponsored retirement plan," Borg said.

# NASAA Brings Together Regulators and Industry Experts to Focus on Financial Technology Impacts

*The following article is adapted from remarks delivered by Michael Pieciak, NASAA President-elect and Vermont Commissioner of Financial Regulation, to open the 2018 Fintech Forum in Washington, D.C. on May 21.*

Financial technology is a priority for NASAA and its members, the state, provincial and territorial securities regulators in the United States, Canada and Mexico.

Technology touches almost every aspect of our daily life, including how we use financial services. Fintech encompasses a wide range of tools designed to provide consumers and investors with greater convenience – think of mobile banking apps or increasingly popular robo-adviser services designed to help with automating investing activities – as well as innovations like blockchain and cryptocurrencies.

While these new services and products may promise convenience and a greater variety of choices for investors and consumers, they also present significant potential for fraud or excess risk due to their technological sophistication, complexity, and in some cases, their unpredictability.

As has long been the case, investors benefit when regulators and industry work together to achieve balanced and effective solutions. This approach should be no different when it comes to fintech.

A recent survey of state and provincial securities regulators by NASAA underscores why regulators, industry and investors need to step up and be vigilant in navigating the many recent advances in financial technology.

To be clear, this is an issue where the good needs to be weighed against the bad, and one where regulators are fairly split for now. Roughly one-third (34 percent) of

NASAA members surveyed said the rapid development of financial technology is positive for investors, while 20 percent expressed concern with the potential negative impact of fintech on investors.

But nearly half (46 percent) said that it is still too soon to tell, citing benefits such as lower costs and greater accessibility to investments for groups underserved by traditional investment channels, while cautioning that sufficient investor protections must be in place to prevent this easier access from leading to greater exposure to risk or fraud.

I'd like to emphasize a point NASAA President Borg has made about these types of investment opportunities. Not every ICO or cryptocurrency-related investment is fraudulent. But technology does tend to run faster than regulation. For this reason, we remind investors to approach any initial coin offering or cryptocurrency-related investment product with extreme caution.

In recent years, NASAA has been known for its tenacious work in protecting seniors and vulnerable adults from financial exploitation. We are increasingly concerned that another generation may be facing similar exploitation and excessive exposure to the risk of fraud.

Generational differences come into play when it comes to fintech. NASAA's recent fintech survey identified Millennials as most at risk of falling prey to fintech fraud.



Regulators viewed Millennials as both most likely to use fintech products (84 percent) and also as most at risk of fraud from fintech products (41 percent).

Securities regulators at all levels of government in the United States and elsewhere are stepping up and intensifying regulatory and investor education initiatives around financial technology.

With a strong and united effort from regulators and industry, we can make a real difference in providing a regulatory framework that enables new technologies to flourish while providing investors with the protections they deserve.

We are looking at new ways to provide resources for regulators and industry members to address fintech issues.

We also will continue to work as collaboratively as we can so that we are all better equipped to work toward solutions that promote both innovation and investor protection.

# 2018 Public Policy Conference



NASAA President Joseph Borg (right) discusses NASAA priorities and the importance of maintaining state regulatory authority in a wide-ranging interview conducted by NASAA President-elect Michael Pieciak.



NASAA Executive Director Joseph Brady opens the Public Policy Conference with welcoming remarks.



Michael Pieciak (second from left), NASAA President-elect and Vermont Commissioner of Financial Regulation, leads a discussion focused on what the rise of cryptocurrency means for investor protection. Panelists include (from left) Robert Cohen, Chief of the SEC's Cyber Unit; Travis Iles, Texas State Securities Commissioner; and Washington Post technology reporter Brian Fung.

Illinois Securities Division Director Tanya Solov (left) moderates a panel discussion focused on current topics in securities arbitration, with a focus on changes that may be on the horizon. Joining Director Solov are (from left): Andrew Stoltmann, President, PIABA; Joseph Punturo, Assistant Attorney General, New York Office of the Attorney General Investor Protection Bureau; Tracey L. McNeil, Ombudsman, U.S. Securities and Exchange Commission; and Richard Berry, Executive Vice President and Director of Dispute Resolution, FINRA.



# Operation Cryptosweep

## Coordinated International Crypto Crackdown

In May, NASAA announced one of the largest coordinated series of enforcement actions taken by state and provincial securities regulators in the United States and Canada to crack down on Initial Coin Offerings (ICOs), cryptocurrency-related investment products, and those behind them.

NASAA members from more than 40 jurisdictions throughout North America participated in “Operation Cryptosweep,” which, as of the date of its announcement, generated nearly 70 inquiries and investigations and 35 pending or completed enforcement actions related to ICOs or cryptocurrencies.

NASAA members are conducting additional investigations that may result in additional enforcement actions. Many NASAA members also are conducting public outreach initiatives to warn investors in their jurisdictions of the risks associated with ICOs and cryptocurrencies.

“The persistently expanding exploitation of the crypto ecosystem by fraudsters is a significant threat to Main Street investors in the United States and Canada, and NASAA members are committed to combating this threat,” said Joseph P. Borg, NASAA President and Director of the Alabama Securities Commission.

In April 2018, NASAA organized a task force of its member state and provincial securities regulators to begin a coordinated series of investigations into ICOs and cryptocurrency-related investment products. Regulators identified many cryptocurrency-related products and as part of its work the task force identified hundreds of ICOs in the final stages of preparation before being launched to the public. These pending ICOs were advertised and listed on ICO aggregation sites to attract investor interest. Many have been examined and some were determined to warrant further investigation. A number of these investigations are ongoing and others have resulted in enforcement actions.

“The actions announced today are just the tip of the iceberg,” Borg said, noting that the task force also found approximately 30,000 crypto-related domain name registrations, the vast majority of which appeared in 2017 and 2018.



NASAA President and Alabama Securities Commission Director Joseph P. Borg (left); NASAA Enforcement Section Chair and New Jersey Securities Bureau Chief Christopher Gerold (center) and NASAA Enforcement Section Vice Chair and Texas State Securities Board Enforcement Director Joe Rotunda (right) announce Operation Cryptosweep at a Washington, D.C. news conference.



Above: Screenshot from BTCRUSH website, courtesy of the Texas State Securities Board. Below: Stock photo available online for purchase.



Above: Screenshot from Wind Wide Coin website, featuring images of Prince Charles and Jennifer Aniston for purported investor testimonials. Photo courtesy of the Texas State Securities Board.

# NASAA Section Committee Activities

## Revisions to Corporation Finance Statements of Policy

*The following revisions to four NASAA Corporation Finance Statements of Policy have been approved by the NASAA membership as part of an ongoing review of NASAA's guidelines and policy statements regarding corporation finance.*

### **Corporate Securities Definitions**

The definitions have been placed in alphabetical order and a few other editorial changes have been made. The substantive changes include deleting the definition of "Insolvent," which has been replaced by the definition for "Unsound Financial Condition." A conforming amendment to the definition of "Promoter's Equity Investment" has been made to reflect prior amendments to that NASAA Statement of Policy. The definitions of "Selling Expenses" and "Underwriting Expenses" have been merged into a single definition.

### **Loans and Other Material Transactions**

Proposed revisions to this statement of policy were primarily in response to comments received from the ABA Regulation A+ Working Group, which objected to including "counsel" under the required representations in the disclosure document (that the issuer's officers, directors and counsel will consider their due diligence and make other representations). Generally, under federal securities laws, counsel is not obligated to affirmatively perform due diligence concerning disclosures in the offering materials. The provision was amended to remove the need for these representations from counsel. The independent director provision within Section VI has been revised to provide if the issuer only has two independent directors on its Board, both must be disinterested in and approve loans and other material affiliated transactions. Finally, the policy was reorganized to improve readability.

### **Underwriting and Selling Expenses, Underwriter's Warrants, and Selling Security Holders**

The definitions of "Selling Expenses" and "Underwriting Expenses" were merged and the separate limits of 1) 20 percent for selling expenses and 2) 17 percent for underwriting expenses were merged into a single overall limit of 17 percent to make the policy less complex and avoid potential confusion. Revisions to the valuation formula of underwriter's warrants were made in order to comport with FINRA's proposed change to the valuation methodology within FINRA Rule 5110.1. The proposed revision allows the issuer to choose the valuation methodology they wish to use, but the issuer must file with the Administrator a description of the methodology chosen demonstrating the method is commercially available and appropriate for the warrants under valuation. If the issuer does not choose their own valuation method, they must use the formula provided within the policy.

### **Unsound Financial Condition**

The revisions made to this Statement of Policy are in response to NASAA's concern that the typical legal definition of the term "Insolvent" is different from the way the term is used within this statement of policy and could lead to confusion. The revision uses a definition of "Unsound Financial Condition" instead, which was the approach used prior to 2008. In addition, the suitability standards have been updated to be consistent with inflation since 2008.

## **NEW NASAA REPORT FOCUSES ON STATE-REGISTERED INVESTMENT ADVISERS**

NASAA recently released its first annual report identifying the contours of the state-registered investment adviser population and the related regulatory activities of state securities regulators.

"This report provides for the first time a snapshot of the state-registered investment adviser population in the United States and also showcases the tremendous amount of activity and resources state securities regulators bring to help these small- and mid-size businesses continue to succeed and both understand and comply with state securities laws," said Joseph P. Borg, NASAA President and Director of the Alabama Securities Commission.

The NASAA 2018 Investment Adviser Section Annual Report also spotlights the initiatives that NASAA's Investment Adviser Section Committee and related Project Groups have completed over the course of the past year. The full report is available on NASAA's website, [www.nasaa.org](http://www.nasaa.org).

## NASAA: Because Every Investor Deserves Protection

### About NASAA

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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## Join Us At NASAA's 100th Annual Meeting



This year's panels and speakers will explore the opportunities for investors and challenges for regulators in an ever-evolving financial marketplace. The program will start with a discussion of standards of care for broker-dealers, with an emphasis on the SEC's proposed Regulation Best Interest. The second panel will examine the impact on investors, industry and regulators from new investment opportunities created by advances in technology, a changing legal landscape, and the rise of socially responsible investing. The final panel will explore the age of the "unicorn," with a look at the shift toward private markets and how the tremendous growth in this area is affecting regulators and investors alike. **Details on [www.nasaa.org](http://www.nasaa.org)**