Ohio Securities Commissioner Andrea Seidt began a one-year term as NASAA President in October, pledging to lead the organization in the pursuit of “smart regulation” that protects investors and businesses alike.

“Importantly, it isn’t more or less regulation that we seek. It is simply smarter regulation,” she said.

“Regulation that does not shy away from the reality that new technologies, even new modes of investing, are moving forward and will continue to evolve, but affirmatively seeks solutions in light of that reality to protect both businesses and investors from fraud, liability and loss,” Seidt said in a speech at NASAA’s annual conference in Salt Lake City.

In addition to promoting the role of state and provincial regulation, Seidt said she will focus the association’s attention on modernizing state and provincial regulation.

Seidt highlighted NASAA’s development of an electronic filing system for multi-state offerings.

“My vision is for there to be a one-stop, automated filing system for every type of corporate finance offering filed in multiple states,” Seidt said.

NASAA already has taken the first major step in that direction by setting up the Electronic Filing Depository (EFD) for Form D notice filings, a system set to launch in the coming year.

“I am on a mission to see the system expanded to include Reg A and SCOR filings soon thereafter,” Seidt said.

**NASAA Outlines Plan for Streamlined Multi-State Review of JOBS Act Offerings to Senate Panel**

In testimony before a Senate panel in October, NASAA said state securities regulators are developing a streamlined multi-state review system to ease regulatory compliance costs on small companies attempting to raise capital under a provision of the Jumpstart Our Business Startups (JOBS) Act.

“NASAA shares Congress’ desire to improve the United States economy by, in part, spurring private investment in small business. However, we believe this goal is best achieved through restoring investor confidence, and it is our hope that the JOBS Act will be implemented with a balanced approach that reflects smarter regulation,” NASAA Deputy General Counsel Rick Fleming said in testimony before the Senate Banking Committee’s Securities, Insurance, and Investment Subcommittee.

Title IV of the JOBS Act requires the SEC to adopt a rule to provide an exemption for certain offerings up to $50 million.

Because of its similarity to the current exemption under Regulation A, which is capped at $5 million, the new exemption is commonly known as Regulation A+.

These offerings will be exempt from SEC registration, but they will be subject to registration at the state level unless the securities are listed on a national securities exchange or sold to a qualified purchaser as defined by the SEC.

“Given the inherently risky nature of these offerings, and the primacy of the states’ role in policing small size offerings, NASAA believes state oversight is critically important for investor protection and responsible capital formation,” Fleming said.

“However, we also recognize that in some instances this process can be costly and particularly burdensome upon small companies.”

**Continued on p. 4 >>**
The NASAA Corporate Office congratulates President Seidt on her timely inaugural remarks. We look forward to working with her to achieve her pursuit of "smarter regulation" that protects both businesses and investors. We also want to help ensure the accomplishment of her expressed vision for there to be a one-stop, automated system for every type of corporation finance offering filed in multiple states.

Toward this end, I want to call your attention to the recent testimony by NASAA Deputy General Counsel Rick Fleming. During his testimony, Rick walked the Senate Banking Subcommittee on Securities, Insurance and Investments through NASAA’s proposed review system that President Seidt envisions.

Throughout his testimony and in the questioning that followed, Rick’s background as a 17-year veteran of the Office of the Kansas Securities Commissioner provided a level of credibility that informed the Senators that NASAA is fully committed to the success of the JOBS Act’s Reg A+ provision.

Rick set the tone at the outset of his testimony by assuring the Senators that in his former role as General Counsel of the Office of the Kansas Securities Commissioner, both he and his colleagues throughout the NASAA membership “had no interest in throwing up needless barriers to economic development.” “The trick,” Rick correctly said, “is to balance the legitimate interests of investors with the legitimate goals of entrepreneurs, and to adopt policies that are fair to both.”

We look forward to working with other regulators, members of Congress and the small business community to make sure that we get that balance right as we strive to protect both the investors and small businesses on Main Street.
NASAA Strongly Supports **Investor Choice Act** of 2013

NASAA strongly supports The Investor Choice Act of 2013 (H.R. 2998), which would prohibit the use of mandatory pre-dispute agreements by broker-dealers and investment advisers that force investors to arbitrate disputes or otherwise surrender their right to pursue recourse in a forum of their choosing.

NASAA praised the leadership of the bill’s author and member of the House Financial Services Committee Rep. Keith Ellison (D-MN) for introducing the legislation.

The Investor Choice Act of 2013 will level the playing-field for retail investors by amending Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to statutorily prohibit the use of mandatory pre-dispute agreements in broker-dealer and investment adviser customer contracts that restrict investors' ability to pursue claims in the lawful forum of their choosing.

The Investor Choice Act of 2013 would not in any way prevent investors from voluntarily electing to resolve a dispute through arbitration or mediation after the facts and circumstances of the dispute have been discovered.

“Those who use mandatory pre-dispute agreements abuse investor choice — it’s all about preserving investor choice and ending an investor protection gap,” said Heath Abshure, NASAA Past President and Arkansas Securities Commissioner.

“Investors want to get back in the market, but they’re rightly wary that the game is rigged against them,” Rep. Ellison said. “The Investor Choice Act helps level the playing field. Investors shouldn’t have to sign away their rights in order to work with a financial advisor or broker dealer to build a secure retirement. By removing some of the unfair advantages, consumers will be more eager to invest, which will create jobs and strengthen our economy.”

**Top 10 Threats**

**JOBS Act Implementation Prompts Additions of Threats to Small Business Owners**

NASAA expanded its annual listing of financial products, practices and services that threaten to trap unsuspecting investors to include lurking dangers facing small business owners.

“With the rollout of rules required by the JOBS Act, investors and small business owners alike must be on heightened alert for questionable investment offers and services,” said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

Seidt said NASAA members are concerned that the recent lifting of an 80-year-old ban on the advertising of private offerings, mandated by the JOBS Act, will lead to greater abuse by unscrupulous promoters. The implementation of the JOBS Act also has created opportunities for unregulated third parties to provide ancillary services.

The following list of the Top 10 financial products and practices that threaten to trap unwary investors and small business owners was compiled by the securities regulators in NASAA’s Enforcement Section:

**Persistent Investor Threats**
- Private Offerings
- Real Estate Investment Schemes
- High-Yield Investment & Ponzi Schemes
- Affinity Fraud
- Scam Artists Using Self-Directed IRAs to Mask Fraud
- Risky Oil & Gas Drilling Programs

**New Investor Threats**
- Proxy Trading Accounts
- Digital Currency

**New Small Business Threats**
- Capital-raising Pitfalls
- Unregulated Third-party Service Providers

**NASAA Enforcement Report Showcases Vital State Investor Protection Role**

NASAA recently reported a significant rise in the number of licenses of unscrupulous stockbrokers and investment advisers withdrawn due to state action.

According to NASAA's annual enforcement survey, the number of licenses withdrawn due to state enforcement actions increased by 27 percent to 3,564 from 2,796.

The increase is attributable in part to the completion of the investment adviser “switch,” where as many as 2,100 investment advisers transitioned from federal to state oversight as mandated by the Dodd-Frank Act.

“Closers scrutiny of licensing applications has resulted in a noticeable increase in the number of licensing withdrawals in the past year,” said Andrea Seidt, NASAA President and Ohio Securities Commissioner. “Our survey shows several important trends in investor protection and securities regulation, including continued investor reliance on state regulators to address both traditional areas of securities fraud and emerging issues.”

Overall, state securities regulators conducted 5,865 investigations in 2012, which led to 2,496 criminal, administrative and civil enforcement actions. The report noted that 15 percent of state enforcement actions involved financial abuse of seniors. Prison time resulting from state-initiated actions totaled 1,361 years. State-initiated enforcement actions resulted in nearly $700 million in investor restitution orders in 2012. State securities regulators also levied fines or penalties and collected costs in excess of $157 million.
The proposed coordinated review program contemplates a one-stop filing for all states in which registration is required through the Electronic Filing Depository (EFD) system currently in development by NASAA. The program administrator would select a lead merit examiner and a lead disclosure examiner from among the states in which registration is sought. If the issuer is not applying for registration in a state that applies merit standards, then only a lead disclosure examiner would be identified.

The lead examiner would be responsible for drafting and circulating a comment letter to the participating jurisdictions. The lead examiner also would be responsible for seeking resolution of those comments with the issuer or issuer's counsel.

As with existing coordinated review programs for registered public offerings, the issuer would have the option of withdrawing from select states or from coordinated review altogether. It is currently contemplated that Washington would serve as the program administrator.

By having the lead merit and disclosure examiners draft the initial comment letter, NASAA believes there will be greater uniformity and less duplication of efforts among the states as compared to existing coordinated review programs. In the existing coordinated review programs, which include those for direct participation programs and equity offerings that are federally registered, each participating state submits comments to the lead examiner based on each state’s individual review of the offering materials. This can result in a significant duplication of effort and varying comments.

While individual states would continue to be afforded the opportunity to suggest additional comments and to ask for the inclusion of comments specific to an individual state’s laws, each individual state would not be required to draft duplicative comments on the same issues.

For example, where an issuer is required to have independent directors, the lead examiner would draft that initial comment instead of having every participating state draft the same comment.

The coordinated review program would not be restricted to common stock offerings.

“If we are successful in striking such a balance . . . small businesses will find that smart, efficient, twenty-first century regulation can be beneficial for their capital formation efforts,” Fleming said.

Fleming concluded his testimony by assuring Senators that NASAA has been working “expeditiously and diligently” to prepare for the new multi-state review program for Regulation A+ offerings.

“We are optimistic that the new rules will lead to investor confidence and renewed participation in the markets,” he said.

Public Comments are due by November 30, 2013

For more information, see the Notice of Request for Comment Proposed Coordinated Review Program for Section 3(b)(2) Offerings on the NASAA website at: www.nasaa.org/regulatory-activity/nasaa-proposals/
NASAA Asks Congress to take ‘Balanced Approach’ to Legislative Proposals to Boost Capital Formation

In testimony before a subcommittee of the House Financial Services Committee, NASAA urged lawmakers to proceed cautiously when considering additional legislation to reduce impediments to capital formation on the heels of The Jumpstart Our Business Startups (JOBS) Act of 2012.

"The states are committed to fostering responsible capital formation, which, in turn, strengthens investor confidence and leads to job growth. At the same time, capital formation will be impeded when investors are not adequately protected," NASAA Past President and Arkansas Securities Commissioner Heath Abshure said during an Oct. 23 hearing before the House Subcommittee on Capital Markets and Government Sponsored Enterprises.

"NASAA shares the goal of Congress to improve the United States economy by spurring private investment in small businesses. However, we are concerned that the Committee may be attempting to reach this goal through a strictly one-sided approach – namely, by eliminating sensible regulations that appear to be burdensome to businesses that want to raise capital," Abshure said.

"We encourage the Committee to take a more balanced approach and to consider reforms that will restore investor confidence in the markets. What we need is smarter regulation, not merely deregulation," he said.

The hearing was called to examine seven legislative proposals related to capital formation, including proposals to streamline registration requirements of "merger and acquisition brokers;" further ease reporting requirements applicable to "Emerging Growth Companies" or EGCs; and relax portfolio strictures, leverage limits, and other regulations for business development companies (BDCs). They also include proposals to reduce "red tape" that adds to the compliance costs of small and startup businesses, such as the SEC's requirement that certain filings be made using eXtensible Business Reporting Language (XBRL).

"NASAA's view regarding this new collection of bills is mixed," Abshure said, noting that state securities regulators generally support the proposed Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2013 (H.R. 2274) sponsored by Rep. Bill Huizenga (R-MI).

"This legislation would establish a simplified and streamlined registration process for broker-dealers engaged solely in the business of effecting the transfer or sale of privately held companies," Abshure said. "NASAA is optimistic that this legislation will encourage registration and regulatory compliance by M&A brokers."

Abshure told lawmakers that NASAA remains concerned about other proposals regarding emerging growth companies and business development companies.

"Most notably, NASAA is troubled by the proposal to further expand what are basically new, untested regulatory carve-outs for EGCs as well as proposals that would increase leverage and conflicts of interests in the BDC space," Abshure said.

Three bills pending before the Subcommittee – H.R. 31, H.R. 1800, and H.R. 1973 – would repeal the provisions of the Investment Company Act of 1940 (ICA) that limit the ability of a BDC to invest in investment advisers. Two of these bills, H.R. 31 and H.R. 1800, additionally would ease the leverage limits for BDCs established by the ICA, allowing such firms to maintain a greater ratio of debt-to-asset valuation on their balance sheets.

Abshure emphasized that NASAA's concern also extended to narrower bills that would allow BDC investment only in investment adviser firms.

"That proposal would create a significant conflict of interest," Abshure said. "If an advisory firm were among a BDC's portfolio of companies, an incentive would exist for the investment adviser to recommend, or even push, their clients toward investments in the BDC or its other portfolio companies, even if such investments were not in the client's best interest," Abshure said. "No such conflicts of interest exist now."

"What we need is smarter regulation, not merely deregulation." — NASAA
“You don’t get to play with others’ money,” said Washington Securities Director Bill Beatty during a discussion of the JOBS Act’s impact on privately placed securities.

North Carolina Deputy Securities Administrator and conference chair David Massey welcomes regulators and industry to NASAA’s annual conference in Salt Lake City, Utah.

Duke University School of Law Professor James Cox (left) led a panel discussion examining the demand for liquidity in privately placed securities in the wake of the JOBS Act. Panelists included (from left) Professor Jennifer Johnson, Lewis & Clark Law School; Vince Molinari, Gate Technologies; Annemarie Tierney, SecondMarket Holdings; Sarah Hanks, CrowdCheck; and Bill Beatty, Washington Securities Director.
State and provincial securities regulators through NASAA stand united in their commitment to their core missions of investor protection and capital formation.

~ Andrea Seidt
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.

Investment Advisers

**IARD System Fee Waiver Continuation Approved**

NASAA recently announced the waiver of the Investment Adviser Registration Depository (IARD) system fees for investment adviser firms and the continuation of substantially reduced initial set-up and annual system fees paid by investment adviser representatives (IARs).

“The continuation of substantially reduced IARD fees for individual investment adviser representatives enables state securities regulators to ensure that the IARD system maintains a sufficient reserve for operations and enhancements without charging firms, many of which are small, local businesses,” said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

For 2014, the initial IARD set-up and renewal fee will be $10 for IARs. These fees were $45 when the IARD system first became operational.

**NASAA Finds Similarities in Deficiencies of IAs**

State securities regulators found little difference in the type or frequency of deficiencies between existing state investment advisers and those advisers who switched from federal to state oversight as a result of the Dodd-Frank Act.

As part of NASAA’s 2013 Coordinated Examination Program, sample examination data was reported by 44 state and provincial securities examiners between January and June 2013. The 1,130 reported examinations uncovered 6,482 deficiencies in 20 compliance areas.

The top five deficiencies for advisers with less than $30 million in assets under management involved books and records, registration, contracts, privacy and brochure delivery. The top five deficiencies found among investment advisers with more than $30 million in assets under management involved: books and records, registration, contracts, advertising and fees.