NASAA Insight

The Voice of State & Provincial Securities Regulation

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NASAA

NASAA Offers Pro-Investor Legislative Agenda

As the policy debate continues over the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, NASAA released its 2011 legislative agenda during a news conference at the National Press Club in Washington, DC led by NASAA President and North Carolina Deputy Securities Administrator David Massey and Pennsylvania Securities Commissioner Steven Irwin, who also chairs NASAA's Federal Legislative Committee.

NASAA Executive Director Russ Iuculano introduces NASAA President and North Carolina Deputy Securities Administrator David Massey and Pennsylvania Securities Commissioner Steven Irwin at the news conference launching NASAA's 2011 legislative agenda on Feb. 2, 2011, in Washington, DC.

"Our legislative agenda provides the new Congress with a blueprint of five core principles that will enable policymakers to continue their commitment to investors by providing the protection they deserve," Massey said. "These legislative and policy recommendations are designed to ensure that the investor protections included in the Dodd-Frank Act are not weakened or delayed by funding constraints."

Irwin said this year's agenda takes on renewed urgency given anticipated challenges facing the Dodd-Frank Act in the new Congress.

"Dodd-Frank was born out of necessity and not out of a desire for regulation for regulation's sake," Irwin said. "Congress must not repeal Dodd-Frank and rip open the regulatory gaps it seeks to close. The trust that formerly supported our markets must be restored if the heart of our system of capital formation is to thrive," Irwin said.

"We look forward to working cooperatively with Senate Banking Committee Chairman Tim Johnson and House Financial Services Committee Chairman Spencer Bachus, as well as all members of Congress and fellow regulators, to ensure that the studies, rulemakings and implementation procedures of the Dodd-Frank Act actually protect investors and strengthen investor confidence," Massey said.

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Dodd-Frank Round 2: Regulators Release Studies

Three highly anticipated studies mandated by the Dodd-Frank Act could spur policymakers to reshape the regulatory landscape for investment advisers, broker-dealers and financial planners.

The two studies released by the SEC staff in January concern the regulatory oversight of investment advisers and the obligations brokers, dealers and investment advisers owe to their clients. Another study, by the Government Accountability Office, examined the regulation of financial planners.

The SEC studies addressed two hard-fought and hotly debated issues that have long divided investor advocates and Wall Street.

In the first study, the SEC staff recommended that Congress consider three approaches to address what it called "capacity constraints" facing the SEC's investment adviser examination program. The approaches include user fees on SEC-registered IAs and two variations involving self-regulatory organizations (SRO).

In its analysis of these options, the report highlights the advantages of the first alternative – user fees – and notes the drawbacks of outsourcing IA regulation to an industry SRO, concerns shared by NASAA and others.

"Investment adviser oversight has always been a partnership between state and federal regulators, both of which are directly accountable to the investing public. This should not change," said NASAA President David Massey.

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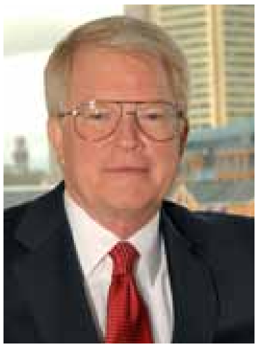
President's Message: David Massey



NASAA's 2011 legislative agenda provides the new Congress with a blueprint of five core principles that will enable policymakers to provide investors with strong regulation and meaningful changes to demonstrate to the financial services industry that "business as usual" has gone the way of the three-martini lunch.

These legislative and policy recommendations also are designed to ensure that the investor protections included in the Dodd-Frank Act are not weakened or delayed by attempts to squeeze federal agencies of the funding they need to fulfill their duties.

In order to ensure the strong implementation of the Dodd-Frank Act, Congress must be willing to refuse to undermine the new Dodd-Frank regulatory authority, either directly through legislative repeals or indirectly through a lack of appropriate funding or delayed execution. For that reason, we urge Congress to support President Obama's proposed budget of $1.4 billion for the SEC to allow the agency to fulfill its expanded duties under Dodd-Frank and better protect investors.

It pays to remember that the Dodd-Frank Act was born out of necessity in the wake of the near collapse of our financial markets – not out of a desire for regulation for regulation's sake.

This comprehensive law was crafted to promote stronger investor protection and more effective financial market oversight to help prevent another economic crisis from occurring.

But the hard-fought legislative battles over Dodd-Frank did not end when President Obama signed the bill into law last summer.

I am concerned by recent developments on Capitol Hill that threaten to derail, or at least delay, some of the Act's important investor protections. For example, legislation has been introduced to repeal the entire Dodd-Frank Act. Other members of Congress are threatening to "throttle" Dodd-Frank reforms by stalling the funding process.

Congress must not repeal Dodd-Frank and tear open the regulatory gaps it seeks to close. The best way for Congress to restore investor confidence is to push for the strong and timely implementation of the Dodd-Frank Act.

What's Inside

Executive Director's Message: Russ Iuculano

The future of financial regulatory reform is in the balance with the implementation of the Dodd-Frank Act underway and groups on both sides of the issues mobilizing.

Consider what occurred just days after the SEC staff released its 208-page report recommending that broker-dealers and insurance brokers put their clients' interest first when providing personalized investment advice about securities.

A group of more than 200 insurance agents and financial advisers descended on Capitol Hill to deliver their message that a universal standard of care would increase costs and potential legal liability.

It is fair to assume that additional pressure from financial services industry interests will be applied to members of the new Congress, especially in the House, to delay or de-emphasize the significance of the recommendations for a uniform fiduciary standard made by the SEC staff in its January 22 report to Congress.

The highly anticipated report required under Section 913 of the Dodd-Frank Act was six months in the making.

During that time, the SEC established a cross-divisional task force, which received more than 3,500 comment letters.

In addition, the task force, as well as individual commissioners, held 67 meetings with interested parties.

These letters and meetings provide the SEC staff with a firm foundation to develop policy recommendations in the best interest of investor protection, while also taking into consideration the needs of the financial services industry.

NASAA and its members intend to aggressively counter the efforts of those who seek to diminish the importance of this well-crafted report's recommendations.

NASAA Encourages Investors to **Investigate** Before Investing

Sunday, Feb. 20 marked the start of America Saves Week, the annual seven-day campaign to encourage Americans to save for a secure retirement.

NASAA is a proud partner of the Consumer Federation of America's America Saves Week, which often spurs investors to revisit their investment portfolios and consider new ways to put their savings to work for them.

Throughout the week, state securities regulators reach out to investors to caution them to "investigate before they invest."

"The first step toward becoming an informed investor is to contact your state securities regulator," said NASAA President and North Carolina Deputy Securities Administrator David Massey. "State securities regulators can help you check out the licensing and background of anyone offering investment advice or selling investments and help you verify that an investment is properly registered for sale in your state."

Contact information for each state securities regulator is available at www.nasaa.org.

NASAA also supports National Consumer Protection Week (NCPW). The March 6-10 awareness week is designed to help consumers access federal, state and nonprofit consumer-oriented information and resources. NCPW hosted an information fair on Capitol Hill to connect members of Congress to the many ways NCPW partner agencies can help them serve their constiuents.

Diana Defino (right), NASAA's assistant government affairs manager, speaks with a congressional staffer at National Consumer Protection Week's consumer fair on Capitol Hill. NASAA staffed a booth featuring the NASAA's Investor Education Section's newest investor alerts and initiatives.

NASAA Investor **Alerts**

NASAA offers resources to help investors assess popular investment opportunities

Many investors have watched their portfolios take a hit in recent years and have begun considering alternative ways to recover their losses and rebuild their savings. NASAA cautions investors to do their homework before hopping on the latest investment bandwagon.


Are you an informed investor?
PEER-TO-PEER LENDING

NASAA offers free online investor education resources at www.nasaa.org to help investors evaluate the risks of various investment opportunities and spot the red flags of fraud. NASAA's Informed Investor Alerts can help investors assess popular investment opportunities, such as:

Franchises. High unemployment rates may spur would-be entrepreneurs to start a business. Investing in an established franchise can be an attractive path for investors interested in becoming their own boss. But NASAA advises investors to be aware of potential pitfalls and learn how to protect themselves should the venture not take off as planned.

Gold-related Investments. It is a myth to say that gold is a safe investment. Gold is a commodity, and, like other commodities, its price can fluctuate. NASAA warns that investors should read up on the many ways to invest in gold before deciding to invest.

Peer-to-Peer Lending. Peer-to-peer lending services allow individuals and small businesses to receive loans that would otherwise be difficult or costly to obtain from traditional banks. Investors fund these loans based on the promise of a capital return. The risk of the borrower defaulting on the loan is often quite high, and there are several other risks to take into account before getting involved.

For more online investor alerts and tips from state securities regulators, visit the NASAA website at www.nasaa.org and click on "Investor Education."

A Blueprint for Reform

NASAA releases 5 core principles to guide the 112th Congress

On Wednesday, July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, which demonstrates the recognition by federal lawmakers of the strong investor protection role of state securities regulators.

The Dodd-Frank Act ushered in a new era of heightened investor protection and strong financial market oversight to help prevent another economic crisis from occurring. State securities regulators are eager to help accomplish this important mission on behalf of Main Street investors throughout the country.

NASAA's work is far from complete. State securities regulators have 100 years of experience and expertise to contribute to a cohesive regulatory system. NASAA is engaged in ongoing dialogue with regulators, policymakers, industry professionals and investors to ensure that the implementation phase of the Dodd-Frank Act succeeds in helping investors and strengthening investor confidence.

In February 2011, NASAA released the Pro-Investor Legislative Agenda for the 112th Congress to provide the new Congress with a blueprint of five core principles that will enable policymakers to demonstrate their continued commitment to investors.

The focus of NASAA's 2011 legislative agenda is to ensure that the investor protections included in the Dodd-Frank Act are not weakened, delayed or constrained by funding limits.

The complete text of NASAA's "Pro-Investor Legislative Agenda for the 112th Congress is available on the NASAA website at www.nasaa.org.

1
Support Strong Implementation of the Dodd-Frank Act

- At a minimum, we support funding the SEC at the $1.3 billion level authorized by Dodd-Frank to carry out the functions, powers and duties of the Commission for FY 2011.
- State securities regulators strongly supported inclusion of the Senior Investor Protection Program and will work to see that the $8 million annual authorization for these grants is funded by Congress.
- The Dodd-Frank Act made state regulators a more equal partner in the task of securities regulation by shifting mid-sized investment advisers from federal to state oversight. We object to any measures that would have the effect of weakening the states' important role in protecting our investors.

2
Reserve Regulation for Regulators

- NASAA urges Congress to reject proposals to establish additional SROs and to provide federal and state regulators with the resources they need to effectively monitor the firms and representatives under their jurisdiction. Another mechanism to fund the SEC's examination of investment advisers is through the use of user fees, as recommended by the SEC's staff in its recent Section 914 report to Congress.

3

Strengthen Collaboration Between State and Federal Regulators

- Given FINRA's present attempt to regulate investment advisers, now is a key time for state and federal regulators to enhance the state/federal regulatory structure to demonstrate a unified ability to regulate all aspects of the securities industry.
- An enhanced state/federal regulatory structure should include joint trainings, examinations, enforcement actions, prosecutions and investor education programs. There should be more regional meetings, monthly regional enforcement conference calls, possibly a joint investor complaint center, as well as more sharing of information and resources.
- State securities regulators appreciate congressional action to include in Dodd-Frank a provision to strengthen investor protection from securities law violators by including the disqualifier language to prevent recidivist violators of the law from conducting securities offerings under SEC Regulation D, Rule 506.

4

Impose a Fiduciary Duty on all Financial Professionals When Providing Investment Advice About Securities

- The Sec. 913 SEC staff study is complete and the report has been submitted to Congress. NASAA recommends that the SEC use its authority under Section 913(f) of the Act to establish rules to address the standards of care for broker-dealers and investment advisers.
- The SEC now has unprecedented rulemaking authority to extend the fiduciary standard of conduct to broker-dealers who provide personalized investment advice about securities to retail customers, requiring them to act as fiduciaries and as such, to put investors' best interests before their own.
- Applying the fiduciary standard to broker-dealers is necessary to protect investors from abuses fostered by current fragmented industry standards. The time has come to end this confusion and close the longstanding gaps in industry standards. The SEC must act without delay.

5

Provide Transparency, Enhance Protections and Reserve Choice of Forum for Investors

- ***Forum Choice:*** Pursuant to Section 921 of Dodd-Frank, Congress should urge the SEC to revisit the arbitration issue, prohibit the mandatory nature of pre-dispute securities arbitration, and allow investors the choice they ought to have between arbitration and litigation in an independent judicial forum.

- ***Transparency:*** NASAA recommends that Congress enact legislation, proposed by the PCAOB, which would amend the Sarbanes-Oxley Act so that the PCAOB disciplinary proceedings will be open to the public, unless the Board orders otherwise in a particular case.

- ***Enhance Investor Protection:*** NASAA supports the Senior Investor Protections Enhancement Act, which places higher penalties on those who target seniors with abusive sales tactics. The legislation, introduced by Senators Herb Kohl and Bob Casey in the last Congress, would impose additional penalties when violations are directed against seniors (62 or older), including administrative penalties of up to $50,000 and civil penalties up to $50,000 for each violation. We will work with Senators Casey and Kohl as this proposal moves through the legislative process.

- ***Enhance Investor Protection:*** Section 929Z of the Dodd-Frank Act provides for a GAO study on the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws. NASAA urges Congress to carefully consider the findings of this study. The pendulum has swung too far in the direction of limiting private rights of action for securities fraud, rather than protecting investors who have suffered losses. NASAA urges Congress to respect the principle that every wrong should have a remedy, and restore an effective private right of action under federal securities laws.

Dodd-Frank Round 2: **The Studies**

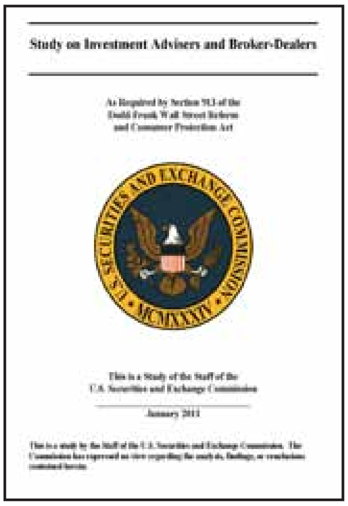
Policymakers weigh several options to reshape the financial services regulatory landscape

Continued from p. 1

"We share the SEC staff's concerns about the disadvantages inherent in allowing industry to regulate itself," Massey said. "Our primary concerns with the creation of a new SRO for the oversight of investment advisers are the lack of accountability, the lack of transparency and the conflicts of interest inherent to the SRO model of regulation."

The debate over investment adviser oversight now shifts back to Congress and NASAA will continue its efforts to promote a legislative approach that allows investment adviser oversight to remain under governmental authority.

"We believe this approach is in the best interest of protecting investors, and could be the least burdensome and least expensive for the investment advisers," Massey said.



In the second study, the SEC staff recommended that when broker-dealers and insurance brokers provide personalized investment advice about securities to their customers, they need to put their client's interests first.

By accepting the staff recommendation, the SEC can enhance investor protection, eliminate confusion and promote regulatory fairness by establishing conduct standards according to the nature of the services provided, not the licensing status of the provider.

"NASAA applauds this recommendation and urges the SEC to act without delay," Massey said. "I commend the SEC staff for its excellent work and look forward to assisting the Commission as it develops the staff recommendation of a uniform fiduciary standard that is 'no less stringent' than that currently applied to investment advisers."

NASAA has consistently urged policymakers to protect investors by requiring all who provide investment advice about securities to be held to the fiduciary duty currently applicable to investment advisers under the Investment Advisers Act of 1940.

"Our primary concerns with the creation of a new SRO for the oversight of investment advisers are the lack of accountability, the lack of transparency and the conflicts of interest inherent to the SRO model of regulation."

David Massey
NASAA President
North Carolina Deputy
Securities Administrator

"This could have a significant positive impact on investors," Massey said. "State securities regulators routinely see the financial devastation caused when the interests of investors do not come first."

In a separate examination of the financial regulatory landscape, the GAO conducted an extensive review of the regulatory coverage of financial planners and concluded that additional regulation is not needed.

"The GAO concluded that a new layer of regulation is not needed for financial planners, since they are already subject to regulation by state securities, insurance or banking regulators," Massey said. "We agree and also concur with the GAO's recommendation that the SEC and state regulators work together on financial planning issues involving investment advisers."

To help follow NASAA action to ensure the strong implementation of the Dodd-Frank Act, NASAA has developed an online Dodd-Frank Implementation Resource Center on its website at www.nasaa.org. The site features NASAA's 2011 legislative agenda, as well as comment letters, news releases and other information related to Dodd-Frank.

Learn more about the Dodd-Frank studies and rulemakings and their impact on investors by visting the NASAA website at www.nasaa.org.

State Securities Regulators Help IAs Make the Switch to State Regulation

States Host Switch Seminars

Under the Dodd-Frank Act, approximately 4,000 investment advisers with assets under management of less than $100 million will switch from federal to state regulation by July 21, 2011.

NASAA members are holding seminars in the months leading up to the IA switch to help investment advisers within their jurisdictions prepare to change to state regulation. Events already have been held in Kansas, Michigan, Nevada, North Carolina and Utah. Additional events are scheduled in Indiana, Kentucky, Michigan, Ohio and Vermont, with others to be announced soon.

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 inspections and strong internal compliance benefit customer and firm alike.

NASAA Supports Relief for Advisers on the Bubble

With the IA switch on the horizon, securities regulators continue working to ensure that the transition goes as seamlessly as possible.

Advisers are telling NASAA members and the SEC they are concerned that they might be required to register with the Commission and then within a short timeframe be required to withdraw their SEC registration because of the statutory asset under management (AUM) threshold increase required by Dodd-Frank.

To address this concern, NASAA supports an SEC proposal to allow advisers currently registered with one or more states and that are approaching the current $30 million AUM threshold to remain with the states. This relief would extend to newly registered advisers, too. The SEC's proposed plan contemplates that the agency will not object if a state-registered or newly registered adviser is not registered with the SEC if, on or after January 1, 2011 until October 19, 2011, the adviser reports on its ADV that it has between $30 million and $100 million in assets under management, provided that the adviser is properly registered with the appropriate state and that it has a reasonable belief that it is required to be so registered.

To help advisers avoid switching registrations multiple times because of fluctuating AUM, NASAA opposes the SEC's plan to eliminate the current "$5 million buffer," which provides an element of regulatory flexibility important to advisers when determining when they should move their registration from one or more states to the SEC or vice versa.

IA Switch Calendar of Events

May 19: IA Orientation Presented by the Ohio Division of Securities | 10:30 a.m. | Cincinnati, Ohio

April 20: IA Orientation Presented by the Ohio Division of Securities | 10:30 a.m. and 1:30 p.m. Cleveland, Ohio

March 31: IA Switch Conference Presented by the Indiana Securities Division | 1:30 p.m. | Indianapolis, Indiana

March 29: IA Town Meeting Presented by Kentucky Division of Securities | 9:30 a.m. | Owensboro, Kentucky

March 22: IA Town Meeting Presented by Kentucky Division of Securities | 9:30 a.m. | Louisville, Kentucky

March 21: IA Seminar presented by the Michigan Securities Division | 8:30 a.m. and 1 p.m. | Troy, Michigan

March 18: IA Orientation Presented by the Ohio Division of Securities | 10 a.m. | Columbus, Ohio

March 16: IA Town Meeting Presented by Kentucky Division of Securities | 9:30 a.m. | Florence, Kentucky

March 10: IA Switch Workshop Presented by Vermont Securities Division | 12 p.m. | Montpelier, Vermont

Visit the NASAA website at www.nasaa.org and click on "IA Switch Resources" for an updated calendar of IA switch events.

NASAA suggested to the SEC that since the AUM threshold increased from $25 million to $100 million, the "buffer" should increase from $5 million to $20 million. As a result, advisers with AUM of $100 million to $120 million would have the option of registering with the SEC or one or more states.

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 Annual Conference
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100 Years of Protection

State Securities Regulators Observe Centennial of First State Securities Law

State securities regulators throughout the United States are observing 100 years of protecting investors.

The nation's first state securities law was adopted in March 1911.

NASAA members are proud to continue building on the century-old foundation of putting fraudsters behind bars, returning lost money to investors and teaching our neighbors to spot and report the red flags of investment fraud.

The most recent NASAA statistics show that, in 2009, state securities regulators collectively initiated nearly 2,300 enforcement actions, which led to more than $4.7 billion ordered returned to defrauded investors and 1,786 years in jail for convicted con artists. State securities regulators also conducted more than 1,800 investor education presentations nationwide.

As the regulators closest to "mom and pop" investors, state securities regulators are often first to receive investor complaints, allowing state investigators to identify and stop emerging frauds, prevent harm to other investors, recover stolen funds, and penalize the scam artists.

NASAA members also encourage investors to get in touch before parting with their hard-earned money. State securities regulators can help investors make sure that a prospective investment is properly registered for sale in the state and that the promoters have the appropriate licenses and clean disciplinary and criminal histories.

For 100 years, state securities regulators have served on the front lines of investor protection to ensure a level playing field and a fair deal for all. We remain dedicated to standing strong for investors as state securities regulators enter our next century of investor protection.

NASAA plans to celebrate the centennial at its annual conference, September 11-13, 2011, in Wichita, Kansas.