



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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June 7, 2021

Mr. Tim Storey  
Executive Director  
National Conference of State Legislatures  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001

**Re: Request for Assistance with Nonprofit Member Privacy Legislation**

Dear Mr. Storey:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I am writing in reference to a series of recent state legislative proposals that seek to prohibit or otherwise restrict the ability of state agencies to request or access information about the members and donors of entities that are organized as nonprofit organizations and are exempt from federal taxation under Section 501(c) of the U.S. Internal Revenue Code (“IRC”).<sup>2</sup> Importantly, NASAA takes no position on the merits of such provisions where appropriately drawn. However, an overly broad application of these policies could inadvertently compromise the ability of state securities regulators to protect investors. We appreciate your attention to this important matter.

State and federal securities regulators, as well as industry Self-Regulatory Organizations (“SROs”), protect investors in part by providing them with basic information about the entities and professionals who register with the SROs to conduct business in a particular area or field of our capital markets. Several SROs happen to be organized as nonprofit organizations that are exempt from federal taxation under IRC Section 501(c)(6).<sup>3</sup> To the extent the recently enacted or

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<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

<sup>2</sup> **Enacted as of May 21, 2021:** Arkansas ([Act 1021](#)); Iowa ([H.F. 309](#)); Louisiana ([Act 123](#)); Oklahoma ([H.B. 3613](#)); South Dakota ([S.B. 103](#)); Utah ([S.B. 171](#)); West Virginia ([S.B. 16](#)). **Introduced:** Michigan ([SB 1176](#)); Mississippi ([SB 2852](#)); Missouri ([HB 1030](#) and [SB 464](#)); North Carolina ([SB 685](#) and [SB 636](#)); Nebraska ([LB370](#)); Tennessee ([HB0159](#) and [SB 1608](#)); Texas ([H.B. 4275](#) and [S.B. 1678](#)); Wyoming ([SF0153](#)).

<sup>3</sup> For example, the Financial Industry Regulatory Authority, Inc. (FINRA), a major SRO, is a Delaware nonstock corporation that is exempt from federal taxation under IRC Section 501(c)(6). The Municipal Securities Rulemaking Board (“MSRB”), which is also an SRO, oversees the approximately \$4 trillion municipal bond market and is organized as a Virginia nonstock corporation that is exempt from federal taxation under IRC Section 501(c)(6). For a copy of their most recent *Form 990 Return of Organization Exempt from Income Tax* (“Form 990”) available on

introduced state proposals can be construed to prohibit state securities administrators from requesting, using or sharing SRO registrant information with the investing public, as has happened for decades, NASAA opposes these proposals.<sup>4</sup>

Further, it should be noted that many of the state legislative proposals at issue appear to be based on a resolution that was developed and approved by the American Legislative Exchange Council (“ALEC”) in 2017.<sup>5</sup> While the purpose of ALEC’s 2017 Resolution is “to proactively safeguard nonprofit 501c [sic] organizations against the erosion of nonprofit donor privacy standards,” the Resolution’s failure to differentiate between traditional Section 501(c) organizations and SROs means that at least some state laws and pending bills may be construed in a manner that impairs the ability of state regulators to protect investors.

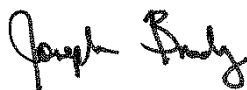
Again – NASAA takes no position on any state law or legislative proposal that seeks to enhance the privacy of the members and donors of traditional Section 501(c) organizations. However, as NCSL members continue to introduce and consider legislation dealing with nonprofit privacy rights on the basis of ALEC’s 2017 Resolution, they should take care to ensure these bills do not unduly limit the information that regulators may share with the investing public. One way to achieve this important goal is to include language like the provision below.

*“Nothing in this [act/section] shall be interpreted as precluding [insert the name of the division, department, office or other type of public agency that is the state securities administrator] from requesting, using or disclosing ‘personal information’ for purposes of carrying out its mandate.”*

As you know, NASAA has a committee called the NASAA State Legislation Committee that focuses on state legislative matters. The Committee welcomes the opportunity to discuss these concerns around nonprofit member privacy legislation in further detail and other issues of mutual interest to NASAA and NCSL.

Thank you again for your attention to NASAA’s views. Should you or any of your members have questions or require additional information, please do not hesitate to contact me or Michael Canning, NASAA’s Director of Policy & Government Affairs, at (202) 737-0900.

Sincerely,



Joey Brady  
NASAA Executive Director

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the Internal Revenue Service’s website, see [FINRA’s 2018 Form 990](#) and the [MSRB’s 2019 Form 990](#). Learn more about the corporate structures of [FINRA](#) and the [MSRB](#).

<sup>4</sup> For examples of the way information is shared, see FINRA’s [BrokerCheck®](#) and the MSRB’s [lists of registrants](#).

<sup>5</sup> ALEC, [Resolution in Support of Nonprofit Donor Privacy](#), last amended on May 5, 2017 (“ALEC’s 2017 Resolution” or “Resolution”).