

Legislative Agenda for the 114th Congress



North American Securities Administrators Association
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The North American Securities Administrators Association, Inc. (NASAA) was organized in 1919, and is the oldest international organization devoted to investor protection. 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, and its mission is to serve as the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

State securities regulators have protected Main Street investors for the past 100 years, longer than any other securities regulator. Ten state securities regulators are appointed by Secretaries of State, five are under the jurisdiction of their states' Attorney General, several are appointed by their Governors and cabinet officials and others work for independent commissions or boards. State securities regulators closely interact with the business community and investors in their state, fostering a collaborative relationship with compliant registrants through accessibility and communication.

Collectively and individually, state securities regulators enforce state securities laws by investigating suspected investment fraud, and, where warranted, pursuing enforcement actions that may result in fines, restitution to investors and jail time. State securities regulators ensure honest financial markets by licensing registrants – both firms and investment professionals – and conducting ongoing compliance inspections and examinations. They work with issuers to ensure that securities offerings include legally required disclosures, thus resulting in a transparent and fluid securities market. State securities regulators also design and implement investor education programs and materials for their communities.

This Legislative Agenda¹ is comprised of four overarching principles:

- Expand and Strengthen Protections for Senior Investors;
- Promote Investor Confidence Through Effective Regulation;
- Promote a Fair and Transparent Marketplace for Retail Investors; and
- Facilitate Capital Formation Through Federal-State Partnerships.

Within each principle are specific areas for Congressional action, investigation and consideration. This Agenda highlights NASAA's policy priorities for the 114th Congress. Fulfillment of these policy goals will help in the prosecution of investment fraud, ensure open, honest and transparent markets, and allow smart, efficient capital formation, even for the smallest of companies.



NASAA's Legislative Agenda for the 114th Congress

❖ **Expand and Strengthen Protections for Senior Investors**

- Establish Senior Investor Protection Partnership Grant Program
- Reduce Reliance on Payment Systems Most Conducive to Fraud
- Diminished Capacity Legislation

❖ **Promote Investor Confidence Through Effective Regulation**

- SEC Examination of Federally Registered Investment Advisers
- Sustained Federal-State Coordination Regarding Cybersecurity Challenges
- Law Enforcement Access to Information Stored on ISPs
- Deterring Fraud With Effective Civil Penalties

❖ **Promote a Fair and Transparent Marketplace for Retail Investors**

- Uniform Fiduciary Standard for Financial Professionals
- Information Disparities and Conflicts-of-Interest that Harm Ordinary Investors
- Equitable Recourse & Mandatory Arbitration Contracts
- Standardized Disclosure of Broker-Dealer Fees

❖ **Facilitate Capital Formation Through Federal-State Partnerships**

- State Leadership in Innovation to Promote Capital Formation
- Implementation of the JOBS Act Consistent with Congressional Intent
- Review the Accredited Investor Definition

❖ **Expand and Strengthen Protections for Senior Investors**

Senior financial exploitation is a serious and growing societal issue. As America's population ages at an unprecedented rate, older investors continue to be targeted by unscrupulous financial professionals and, in certain instances, family members or caregivers. Medical conditions that affect cognitive ability are also more prevalent among seniors. Meanwhile, more and more wealth is concentrated in the hands of seniors. These trends all contribute to the unfortunate acceleration of senior financial fraud.

State securities regulators are on the frontline of protecting investors through financial education and enforcement efforts. However, given the factors noted above, we believe that a collaborative approach is needed to address the unique challenges that come with preventing and addressing financial exploitation and fraud perpetrated against senior investors. Congress should explore ways in which state and federal regulators and law enforcement can coordinate on initiatives to expose scam artists and protect vulnerable seniors and older Americans.

Establish Senior Investor Protection Partnership Grant Program

State securities regulators are well positioned to partner with local and national businesses, senior organizations, and law enforcement agencies to identify scams, fraud and exploitation occurring in their communities. Similarly, federal regulators and federal law enforcement agencies are well positioned to leverage resources on a national and international scale. Congress should investigate ways in which state and federal regulators and law enforcement agencies can combine resources, share information, and collaborate in new and innovative ways to prevent and combat elder financial exploitation.

State regulators have worked to form these partnerships through outreach to prosecutors, police units, other regulators, and adult protective service units. In some states, that outreach includes partnerships with banks, brokers, investment advisers, doctors, lawyers, and other service providers who may be able to identify senior exploitation. We encourage Congress to consider creating a grant program funded through the U.S. Department of Health and Human Services or other appropriate agency that would allow state regulators to deepen and accelerate those partnerships, to further investor education, and to better combat senior financial exploitation. We also note that Congress has recognized the acute need to enhance resources in this area, and enacted bipartisan legislation providing for precisely such grants, but that up to now such grants have not been funded.²

Reduce Reliance on Payment Systems Most Conducive to Fraud

State securities regulators encourage Congress to explore methods to prevent the unauthorized theft of sensitive financial information from investors, particularly seniors or investors with diminished capacity. Some prepaid debit card companies have taken such steps, such as using an in-person swipe method to reload cards rather than the "PIN" method. We believe opportunities exist to prevent the flow of funds from investment portfolios of senior investors. We encourage Congress to explore and investigate those opportunities.

Diminished Capacity Legislation

State securities regulators are investigating legislative and regulatory changes that can address diminished capacity issues in the context of senior financial exploitation. With at least a third of its members' enforcement actions involving senior investors,³ NASAA formed a Board-level committee dedicated to tackling the challenges confronting senior investors, regulators and securities industry professionals. The Committee on Senior Issues and Diminished Capacity, which is comprised of representatives from a broad cross-section of NASAA members, seeks to work with broker-dealer and investment adviser firms, as well as senior advocates, to develop regulatory, enforcement, and investor education initiatives to prevent the financial exploitation of seniors.

Addressing senior exploitation requires a holistic approach, and NASAA has formed an advisory council of experts from government, business, senior advocacy organizations, academia and medical and legal practitioners to ensure diverse input.⁴ We look forward to sharing the results of our investigation with Congress, and also encourage Congress to reexamine the Gramm-Leach-Bliley Act to ensure that important privacy provisions do not inadvertently allow scam artists to exploit investors with diminished capacity.⁵

❖ Promote Investor Confidence Through Effective Regulation

Public confidence in the financial markets is one of America's greatest competitive advantages, drawing capital investment to businesses and creating a robust economic marketplace. Effective regulation of those markets requires sufficient resources, access to information critical to investigations, effective civil penalties, and sustained federal-state coordination. It also requires that regulators maintain sufficient independence to act in the interests of the investing public. We encourage Congress to consider each of these priorities in its agenda for the 114th Congress.

SEC Examination of Federally Registered Investment Advisers

State securities regulators urge Congress to provide sufficient resources to the U.S. Securities and Exchange Commission (SEC) in order to improve the oversight of federally registered investment advisers (IAs). Due to a combination of appropriations shortfalls and growth in the SEC's responsibilities following the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act and other statutes, approximately 40% of all SEC registered investment advisers have never been examined.⁶ During fiscal year 2014, the SEC was able to conduct annual examinations of only 10% of the roughly 11,000 federally registered IAs nationwide.⁷ At this rate, a federally registered IA is examined only once every 10 years, which is simply inadequate to detect or credibly deter fraud.⁸

Section 914 of the Dodd-Frank Act directed the SEC to study the options and costs of enhancing IA oversight. The report's first recommendation was that Congress authorize the SEC to assess "user fees" on IAs it examines and use the revenue derived from such fees to fund additional IA examinations.⁹ In November 2013, the SEC's Investor Advisory Committee (IAC) voted unanimously to adopt a resolution urging the SEC to formally seek Congressional authorization to augment its examination program through revenue derived from user fees.

State securities regulators strongly support the user fee approach recommended by the SEC staff in the agency's Section 914 report and the recommendation of the IAC. This position is supported by a broad and diverse group of industry associations, consumer and investor advocacy organizations, the SEC's Investor Advocate, and certain SEC Commissioners.¹⁰ We encourage Congress to address this policy priority in the 114th Congress.

Sustained Federal-State Coordination Regarding Cybersecurity Challenges

State securities regulators regulate almost two-thirds of the investment adviser population, and are focused on ensuring that those firms and their representatives are addressing cybersecurity risks inherent in their business model.¹¹ As Congress considers or creates new structures to allow information sharing regarding cybersecurity among law enforcement agencies and regulators, and between government and the financial services industry, we strongly urge Congress to include state securities, insurance, and banking regulators in those discussions and in any new framework. Congress should further ensure that states have immediate access to information affecting their jurisdiction, whether maintained by federal regulators or self-regulatory organizations.

Law Enforcement Access to Information Stored on ISPs

State securities regulators appreciate Congress' bipartisan interest in modernizing privacy protections relating to information stored on Internet service providers (ISPs), but urge Congress not to inadvertently or unjustifiably curtail crucial investigatory authorities utilized by state regulators.¹²

As civil law enforcement agencies, many state securities regulators rely on subpoenas, not warrants, to obtain critical information for their investigations; in fact, many state regulators have no independent authority to obtain a search warrant from a court. Federal legislation that would—in all cases—require a search warrant to access information stored on ISPs would also prevent state securities regulators from accessing such information even under the most urgent and compelling circumstances. Such restrictions would impede states' ability to conduct civil and criminal cases, thereby harming investors.

We understand that the 114th Congress may consider legislation requiring state governmental entities to obtain a search warrant before accessing the contents of an electronic communication from an ISP. However, we strongly recommend that Congress include a mechanism to enable civil law enforcement agencies, including state securities regulators, to maintain access to such information through subpoenas. SEC Chair Mary Jo White proposed a limited subpoena authority during the 113th Congress, whereby civil law enforcement agencies without the ability to obtain a warrant could maintain access to investigatory information by issuance of subpoenas subject to a heightened evidentiary standard, and we believe that this proposal strikes a sensible balance.¹³

Deterring Fraud With Effective Civil Penalties

Federal securities laws limit the amount of civil penalties that the SEC can impose on an institution or individual. For enforcement to be an effective deterrent, there must be a real risk of punishment. Aggressive administrative, civil and criminal enforcement activities, including efforts to

deter wrongdoing, to disgorge ill-gotten gains, and to provide damages and restitution for aggrieved investors, are the only proven remedy.

Hearings in the wake of the financial crisis established that the present statutory limitation on the SEC's authority to pursue civil penalties significantly ties the hands of the SEC in performing its enforcement duties—a view that SEC Chair Mary Jo White has recently echoed.¹⁴ NASAA supported bipartisan legislation, the Stronger Enforcement of Civil Penalties Act, sponsored by Senators Jack Reed (D-RI) and Charles Grassley (R-IA), in the 113th Congress and will continue to support similar legislation in the 114th Congress. This legislation would increase the monetary penalties in administrative and civil actions involving securities law violations, raise the financial stakes for repeat offenders, and link penalties to the scope of harm and associated investor losses. NASAA also supports extending the time period the SEC has to seek civil penalties for securities law violations from five to ten years, and allowing the SEC to impose tougher consequences for “bad actors”.¹⁵

❖ Promote a Fair and Transparent Marketplace for Retail Investors

State securities administrators are committed to fostering a fair and transparent marketplace. Transparency makes markets more efficient and reduces opportunities for manipulation and fraud. Similarly, informed investors increase overall market confidence, which encourages ordinary retail investor participation. State securities regulators are, however, increasingly concerned that advances in technology and other factors have made it possible for sophisticated market participants—hedge funds, high-frequency traders, proprietary dark pools, and others—to identify and exploit informational asymmetries in order to maximize profits, often to the detriment of retail investors.

NASAA hopes to work with the 114th Congress to bolster and expand fairness and transparency in many important areas, including improved investor dispute resolution, access to market information, and disclosure of investment fees charged by broker-dealers.

Uniform Fiduciary Standard for Financial Professionals

Section 913 of the Dodd-Frank Act directed the SEC to study differences in the standards of care required of broker-dealers and investment advisers who provide personalized investment advice. The study found that while investment advisers are subject to a strict “fiduciary duty” standard, broker-dealers are subject to more lenient standards governing their conduct.¹⁶ The establishment of a uniform fiduciary duty standard governing the conduct of broker-dealers and their agents is crucial for the protection of investors.¹⁷ A fiduciary standard for broker-dealers will guarantee that all financial professionals providing investment advice to retail investors will act in the best interests of their clients and, in turn, enhance investor confidence in the securities markets. NASAA urges the 114th Congress to exercise its oversight authority to encourage the SEC to conduct rulemaking to subject broker-dealers to the same fiduciary duty standard currently applicable to investment advisors when offering personalized investment advice to retail investors.

Information Disparities and Conflicts-of-Interest that Harm Ordinary Investors

Investor confidence in the U.S. financial markets is based on the perception of transparency, accountability and a level playing field. From revelations of collusive rigging of benchmark interest rates, to allegations that financial institutions provide undisclosed, unfair advantages to an elite class of high-frequency traders, recent events have revealed serious issues undermining the confidence in our financial system.

We encourage the 114th Congress to investigate these issues, including equity market structure, in order to identify conflicts of interest that operate to the detriment of ordinary retail investors. This inquiry could include oversight of the SEC's "holistic review"¹⁸ of U.S. equity market structure¹⁹ and the creation and implementation of its proposed consolidated audit trail.²⁰ It could cover potential conflicts of interest for broker-dealers who own and operate dark pools, and who profit from volume in such pools. Another area ripe for investigation is conflicts of interest inherent in the "maker taker" system and payment for order flow arrangements.²¹ Finally, Congress might investigate conflicts of interest in for-profit exchanges that are simultaneously seeking to increase shareholder earnings while acting as self-regulatory organizations, responsible for enforcing compliance with their rules and the federal securities laws.²²

Equitable Recourse & Mandatory Arbitration Contracts

Every year thousands of investors file complaints against their stockbrokers. However, almost every brokerage firm, and an increasing number of investment adviser firms, include mandatory pre-dispute arbitration clauses in their customer account agreements. These clauses require investors to submit all disputes that they may have with the brokerage firm to arbitration. If cases are not settled, the only alternative is arbitration administered by the Financial Industry Regulatory Authority (FINRA).

State securities regulators believe that investor confidence in fair and equitable recourse is critical to the health of our securities markets and long-term investments by retail investors. Although Congress gave the SEC rulemaking authority to act in this area,²³ in the more than four years since the Dodd-Frank Act was signed into law the SEC has not conducted rulemaking or begun to examine the impact of mandatory pre-dispute arbitration clauses on the public and investors. NASAA urges the SEC to exercise its authority, but in the absence of such action, supports Congressional action to codify Section 921 of the Dodd-Frank Act by prohibiting the use of mandatory pre-dispute arbitration clauses. At a minimum, we urge Congress to exercise its oversight authority and investigatory responsibility to require the SEC to gather quantitative and qualitative data that would establish the analytical foundation for future rulemaking.

Standardized Disclosure of Broker-Dealer Fees

Transparency is a cornerstone of a properly functioning market because it allows market participants to quickly and easily compare prices, products and firms. NASAA recently issued a report examining fee disclosure practices in the brokerage industry. The study uncovered disparities in how broker-dealers disclose the maintenance and service fees they charge their customers. While broker-dealers may be complying with the technical requirements governing fee disclosures, NASAA's report concluded that the disclosures lose their effectiveness when hidden in small print, embedded in lengthy account opening documents, or varied in terminology that does not define the service provided.

NASAA has convened a working group consisting of state securities regulators and representatives of FINRA, the Securities Industry and Financial Markets Association (SIFMA), the Financial Services Institute (FSI), and representatives of broker-dealer firms to develop improved broker-dealer fee disclosure. NASAA similarly encourages Congress to request that the Government Accountability Office study the impact of fee disclosure practices on investors and consumers.

❖ Facilitate Capital Formation Through Federal-State Partnerships

State securities regulators share Congress' desire to improve the U.S. economy through improved access to capital for small and emerging businesses. The reality of new technologies, new modes of investing and a global, interconnected marketplace requires new ideas and creative solutions. It also requires the partnership of Congress, the SEC and state securities regulators.

Toward this shared goal, state securities regulators and NASAA have provided assistance in crafting "intrastate" crowdfunding laws in a growing number of states, and have successfully designed a modernized and simplified process—a Coordinated Review program—for Regulation A and Regulation A+ offerings. NASAA and the states also have implemented an electronic filing system called the Electronic Filing Depository (EFD),²⁴ which interfaces with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, to allow private company issuers to electronically file their Form D in multiple states. This system is expected to expand to include other state securities filings.

State Leadership in Innovation to Promote Capital Formation

By virtue of our proximity and accessibility to local businesses and investors, state regulators are at the forefront of homegrown innovation. Since passage of the JOBS Act, sixteen states and the District of Columbia have enacted state-based crowdfunding laws or regulations and other forms of limited offering exemptions for small businesses, through exemptions and registrations.²⁵ At least a dozen other states are actively considering similar exemptions and/or registrations.²⁶

State securities administrators understand that Congress is concerned about the utility of Title III of the JOBS Act for certain issuers. We encourage Congress and the SEC to work with NASAA and use our experience with intrastate crowdfunding to inform any new federal policymaking in this area. We also encourage Congress to evaluate the best use of the SEC's resources, and the steps that states have taken to facilitate access to capital for small and emerging businesses, in considering any state preemption legislation. Further, to the extent that Congress continues to consider the needs of entrepreneurs and small and emerging companies, it should remove any impediments to state-driven capital formation initiatives.

Implementation of the JOBS Act Consistent with Congressional Intent

In 2012, Congress passed the Jumpstart Our Business Startups (JOBS) Act, a law designed to facilitate access to capital for small and emerging businesses, and to create job growth. The JOBS Act imposed complicated changes to the securities laws, and required the SEC to address new and untested

issues in its rulemaking. We anticipate the finalization of those rules, and plan to work with the SEC to implement the rules, including Titles II, III and IV.

With regard to Title IV (commonly referred to as Regulation A+), we urge the SEC to implement the law consistent with legislative intent and pursuant to a Congressional directive to maintain state registration authority for those offerings.²⁷ We strongly oppose the SEC's proposed definition of "qualified purchaser," which is contrary to the plain meaning of the term in the Securities Act of 1933, its legislative history and prior SEC pronouncements.²⁸ The intent of Congress that the definition refer to purchaser qualification rather than the specified type of security is without question. Finally, we encourage Congress to review NASAA's Coordinated Review program—a streamlined and simplified 21-day review process—which is designed to encompass both Regulation A and Regulation A+ filings.

In the 113th Congress, NASAA commented on additional legislative proposals commonly referred to as "JOBS Act 2.0."²⁹ We strongly encourage the 114th Congress to consider and evaluate the full impact of the JOBS Act, after implementation and rulemaking, before proposing additional changes to the federal securities laws. We believe the best approach to facilitate small business access to capital is smart regulation, and we hope to work with the 114th Congress to fulfill that mission.

Review the Accredited Investor Definition

Section 413 of the Dodd-Frank Act gave the SEC a clear mandate to undertake a review of the definition of accredited investor every four years, and to make adjustments or modifications for the protection of investors, in the public interest, and in light of the economy. In recent years the amount of capital invested in the private markets has significantly expanded. This trend, away from public offerings toward private placements, underscores the importance of examining this critically important definition to ensure that it is effective and reflects the current economy.

State securities regulators recommend that the 114th Congress use its oversight authority to encourage the SEC to review and evaluate the definition of accredited investor, and to obtain any data the SEC needs to assess the current definition, including the number and types of investors, and the amounts being raised, in the current private placement market. We further support the SEC's proposed amendments to Regulation D and Form D filings in order to better evaluate market practices in Rule 506 offerings, which continue to be among the most common investment product or scheme involved in state enforcement efforts.³⁰ We believe that a firm understanding of private offerings and microcap issuers will allow the SEC to make any necessary adjustments to the accredited investor definition.

Notes:

¹ The recommendations contained in this Agenda were developed by NASAA's Federal Legislation Committee, in close consultation with NASAA's Board of Directors and leadership. We also sought input from numerous stakeholders.

² In July 2010, Congress enacted legislation to establish a program within the Consumer Financial Protection Bureau (CFPB) to award grants to states for the purpose of protecting investors. Unfortunately, although Congress authorized funding for such grants, the CFPB's exclusion from the Congressional appropriations process precluded Congress from appropriating resources for the program. Nonetheless, the basic framework envisioned by Congress in 2010 was sound and, had the program been implemented and funded as intended, senior investors would have benefitted greatly. See Section 989A, "Senior Investor Protections," of the Dodd-Frank Act, *available at* http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_989A.html.

³ 34 percent of enforcement actions taken by state securities regulators from 2008-2013 have involved senior victims among states that track victims by age, according to NASAA enforcement statistics. Of the 10,526 enforcement actions initiated by states that track victims by age between 2008 and 2013, 3,548 involved victims age 62 and older. This amount is conservative as it does not include cases from states that do not report the age of victims and many senior victims simply do not come forward.

⁴ On September 16, 2014, NASAA announced the formation of the NASAA Advisory Council on Seniors and Diminished Capacity. Additional information about the Council, and a list of its members, may be accessed at <http://www.nasaa.org/32633/nasaa-appoints-advisory-council-work-regulators-committee-senior-issues-diminished-capacity/>.

⁵ The Gramm-Leach-Bliley Act (the "Act") requires financial institutions to explain their information-sharing practices to their customers and to safeguard sensitive data. On September 24, 2013, the Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, CFPB, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and the Securities and Exchange Commission issued guidance clarifying that the statute permits financial institutions to report suspected elder financial abuse to appropriate local, state or federal agencies. See Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, *available at* http://files.consumerfinance.gov/f/201309_cfpb_elder-abuse-guidance.pdf. Congress may consider modifications to the Act to ensure that it is consistent with the Interagency Guidance, and that reports are made by financial institutions to appropriate local, state or federal agencies.

⁶ SEC, FY 2016 Congressional Justification & FY 2014 Annual Performance Report and FY 2016 Annual Performance Plan, at 68 (2015), *available at* <http://www.sec.gov/about/reports/secfy16congbudgetjust.pdf>.

⁷ SEC, Agency Financial Report Fiscal Year 2014, at 54 (2014), *available at* <http://www.sec.gov/about/secpar/secufr2014.pdf>.

⁸ The FY 2015 enacted funding level for the SEC is \$1.5 billion, a \$150 million increase from the SEC's FY 2014 budget. The FY 2015 SEC budget dedicates \$305 million to its Office of Compliance Inspections and Examinations (OCIE), which will allow OCIE to hire 105 additional examiners, 72 of whom will examine investment advisers and investment companies. Additionally, the SEC's proposed FY 2016 budget would allow OCIE to hire an additional 225 examiners, 180 of whom would examine investment advisers and investment companies. The hiring of these additional OCIE examiners increases the likelihood that the SEC-registered IA examination rate will increase. However, this will still likely not remedy the overall IA examination shortfall at the federal level. See "SEC Would Hire 431 Under Obama's 2016 Budget" *ThinkAdvisor.com* 2 Feb. 2015, *available at* <http://www.thinkadvisor.com/2015/02/02/sec-would-hire-431-under-obamas-2016-budget>.

⁹ Staff of the of the U.S. Securities and Exchange Commission, Study on Enhancing Investment Adviser Examinations (Jan. 12, 2011). *Available at* www.sec.gov/news/studies/2011/914studyfinal.pdf.

¹⁰ Organizations that have endorsed a "user fee" policy include the American Association of Retired Persons, the Consumer Federation of America, the Investment Adviser Association, the Certified Financial Planner Board of Standards, the National Association of Professional Financial Advisers, and the North American Securities Administrators Association. Similar proposals have been championed by SEC Investor Advocate Rick Fleming, SEC Commissioners Luis Aguilar and Kara Stein, House Financial Services Committee Ranking Member Maxine Waters (D-CA), and former House Financial Services Committee Chairman Spencer Bachus (R-AL). In the 113th Congress, legislation based on "user fee" policy was sponsored in the House of

Representatives by Reps. Waters, John Delaney (D-MD), and 24 cosponsors (H.R.1627, the Investment Adviser Examination Improvement Act of 2013).

¹¹ NASAA is a member of the Financial and Banking Information Infrastructure Committee (FBIIIC), which is chartered under the President's Working Group on Financial Markets. The FBIIIC is responsible for identifying critical infrastructure assets of importance to the financial system, identifying their potential vulnerabilities, and establishing secure communications capability among the financial regulators and protocols for communicating during an emergency.

¹² Currently, 18 U.S.C. § 2703(b) authorizes a governmental entity, after providing a customer notice, to use an administrative subpoena to obtain the contents of a wire or electronic communication from a provider of remote computing service.

¹³ Letter from SEC Chair Mary Jo White to former Senate Judiciary Committee Chairman Patrick Leahy (D-VT) regarding S. 607, the Electronic Communications Privacy Act Amendments Act of 2013. April 24, 2013. *Available at* <https://www.cdt.org/files/file/SEC%20ECPA%20Letter.pdf>.

¹⁴ White, Mary Jo. (2014, Nov. 10). *One-on-One with SEC Chair Mary Jo White*. Speech presented at the SIFMA Annual Meeting 2014, New York, NY.

¹⁵ The SEC adopted, on July 10, 2013, "bad actor" disqualification provisions for issuers and other "covered persons" under Rule 506 of Regulation D. See 17 CFR 230.506(d) and (e). Those provisions implemented Section 926 of the Dodd-Frank Act.

¹⁶ Staff of the U.S. Securities and Exchange Commission, Study on Investment Advisers and Broker-Dealers (Jan. 11, 2011). *Available at* www.sec.gov/news/studies/2011/913studyfinal.pdf.

¹⁷ For additional information, see NASAA comment letter regarding Framework for Rulemaking under Section 913 of the Dodd-Frank Act; Duties of Brokers, Dealers and Investment Advisers; File No. 4-606. July 5, 2013. *Available at* <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Fiduciary-Duty-Letter-final-07052013.pdf>.

¹⁸ See http://www.sec.gov/News/Speech/Detail/Speech/1370542966151#_edn6.

¹⁹ See SEC Concept Release, announcing "a broad review of the current equity market structure" which will include "an evaluation of equity market structure performance in recent years and an assessment of whether market structure rules have kept pace with, among other things, changes in trading technology and practices." *Available at* <http://www.sec.gov/rules/concept/2010/34-61358.pdf>. See also: Remarks of SEC Chair Mary Jo White at Sandler O'Neill & Partners, L.P. Global Exchange and Broker Conference, New York, NY, June 5, 2014. *Available at* <http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VIYAMSe6TZc>.

²⁰ See <http://www.sec.gov/divisions/marketreg/rule613-info.htm>.

²¹ See <http://www.levin.senate.gov/newsroom/press/release/levin-calls-on-sec-to-take-action-against-stock-market-conflicts-of-interest>.

²² For a list of SEC Self-Regulatory Organizations, see <http://www.sec.gov/divisions/marketreg/mrexchanges.shtml>. See also SEC Concept Release 34-50700, *available at* <http://www.sec.gov/rules/concept/34-50700.htm> and <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1365171515546#.VIYk6ie6TZc>.

²³ Congress enacted Section 921 of the Dodd-Frank Act in response to a concern that mandatory pre-dispute arbitration agreements may be unfair to investors. Section 921 provides the SEC with the authority to prohibit or impose limitations on the use of mandatory pre-dispute arbitration clauses in broker-dealer and investment adviser customer contracts if it finds that such prohibitions or limitations are in the public interest and for the protection of investors. See Section 921, "Authority to Restrict Mandatory Pre-Dispute Arbitration," of the Dodd-Frank Act, *available at* http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_921.html.

²⁴ On December 15, 2014, NASAA announced the launch of the online Electronic Filing Depository (EFD) to enhance the efficiency of the regulatory filing process for certain exempt securities offerings. Developed by NASAA, EFD is an online system that allows an issuer to submit a Form D for a Regulation D, Rule 506 offering to state securities regulators and pay related fees. The EFD website also enables the public to search and view, free of charge, Form D filings made with state securities regulators through EFD.

²⁵ As of the date of this publication, those states and jurisdictions include Alabama, the District of Columbia, Georgia, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Nebraska, Oregon, Tennessee, Texas, Vermont, Washington, and Wisconsin. For update to date information, please visit <http://www.nasaa.org/industry-resources/corporation-finance/intrastate-crowdfunding-resource-center/>.

²⁶ States that have introduced new exemptions and/or registrations for state-based crowdfunding or other forms of limited offering issuances include Connecticut, Florida, Hawaii, Iowa, Kentucky, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Utah, Virginia and Washington.

²⁷ See Letter from NASAA to Elizabeth Murphy, Secretary, S.E.C. (March 24, 2014), *available at* <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-File-S7-11-13-03242014.pdf>.

²⁸ *Id.* at 7-9.

²⁹ Beatty, William. "Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies, Part II," written testimony, May 1, 2014, before the U.S. House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises. *Available at* <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-wbeatty-20140501.pdf>.

³⁰ Release Nos. 33-9458, 33-9416, 34-70538, IC-30737 (File No. S7-06-13), "Amendments to Regulation D, Form D and Rule 156 under the Securities Act" (Sept. 27, 2013). *Available at* <http://www.sec.gov/rules/proposed/2013/33-9458.pdf>.