NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
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March 8, 2022

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

Re: NASAA's Core Principles for Evaluating State Legislation Relating to Digital Assets

Dear Mr. Storey:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing to commend you and your colleagues for your efforts to track legislative proposals relating to digital assets and educate your members regarding associated technologies, products, and professionals.[2] As you continue these important efforts in 2022, I want to urge NCSL to raise awareness of *NASAA's Core Principles for Evaluating State Legislation Relating to Digital Assets* (enclosed). In addition, I want to urge you and your colleagues to continue advising state legislators to seek early counsel from state securities regulators regarding legislative proposals that would or may affect the authority the regulator has to protect investors and promote responsible capital formation.

At NASAA, we believe in prioritizing investor protection and supporting inclusion and innovation. We have ample experience and expertise in the difficult work of maintaining an even playing field in our capital markets for all types of investment products, professionals, practices, and technologies, new and old. By way of example, during her 35 years with NASAA and the Maryland Securities Division, NASAA's current president, Melanie Senter Lubin, personally has used the elasticity of the securities regulatory framework to support and otherwise address all kinds of new approaches to capital formation and investment, including online crowdfunding.

NASAA believes it is important to continue to work to ensure that the latest innovations in our capital markets occur within the well-established regulatory framework that supports investor protection and capital formation. At the federal level, we continue to urge federal

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's 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 grassroots investor protection and efficient capital formation.

[2] *See, e.g.*, NCSL, Cryptocurrency 2022 Legislation (last updated Feb. 8, 2022); NCSL, Cryptocurrency 2021 Legislation (last updated Dec. 16, 2021).

legislators and regulators to consider the expertise and perspective of state securities regulators when developing any legislative and regulatory proposals relating to digital assets. In addition, we have urged the U.S. Congress to oppose legislation that is inconsistent with *NASAA's Core Principles for Evaluating Federal Legislation Relating to Digital Assets*.[3] At the state level, we continue to engage with a broad range of professionals and organizations regarding the importance of encouraging compliance, registration, regulatory coordination, and investor education and outreach.[4]

We look forward to working with NCSL on efforts to raise awareness of *NASAA's Core Principles for Evaluating State Legislation Relating to Digital Assets*. In addition, we look forward to providing any support that NCSL or state legislators may require in identifying the state securities regulator in their jurisdiction. While we encourage everyone to use NASAA's Contact Your Regulator directory, we are happy to try to assist with requests for introductions.

Thank you for your time and consideration. Should you have any questions regarding NASAA's principles, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Joey Brady
NASAA Executive Director

Enclosure

[3] *See, e.g.,* NASAA and SEC Announce $100 Million Settlement with BlockFi Lending, LLC (Feb. 14, 2022); NASAA Letter to SBC and HFSC Leadership Regarding NASAA's Core Principles for Evaluating Federal Legislation Relating to Digital Assets (Jan. 28, 2022); Amanda Senn, Alabama Securities Commission Chief Deputy Director and NASAA Cybersecurity Committee Chair, Cybercriminals and Fraudsters: How Bad Actors Are Exploiting the Financial System During the COVID-19 Pandemic (June 16, 2020).

[4] *See, e.g.*, NASAA Reveals Top Investor Threats for 2022 (Jan. 10, 2022); NASAA Announces Top Investor Threats for 2021 (Mar. 3, 2021); NASAA Announces Speakers and Agenda for 2021 Fintech and Cybersecurity Symposium (Dec. 7, 2021); NASAA Announces Agenda for Fintech and Cybersecurity Symposium (Oct. 14, 2020); NASAA Announces Agenda for Fintech and Cybersecurity Symposium (Oct. 4, 2019); NASAA Updates Coordinated Crypto Crackdown (Aug. 7, 2019); NASAA Updates Coordinated Crypto Crackdown (Aug. 28, 2018); NASAA Announces Agenda and Speakers for 2018 Fintech Forum (May 10, 2018); Speakers Announced for NASAA Public Policy Roundtable (Apr. 9, 2018); Rise of Fintech Raises New Concerns for Securities Regulators (Feb. 15, 2018).

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NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

NASAA'S CORE PRINCIPLES FOR EVALUATING STATE LEGISLATION RELATING TO DIGITAL ASSETS

Introduction: For over a century, state securities regulators have been on the frontlines of innovations that have made our capital markets safer, more efficient, and more inclusive. Today, securities regulators continue to work hard to ensure that the latest innovations occur within the well-established regulatory framework for supporting investor protection and responsible capital formation. To aid state legislators who are drafting or reviewing legislative proposals, NASAA, the voice of state securities regulators, is publishing its core principles for evaluating state legislation relating to digital assets. The principles reflect input from academics, industry representatives, investors, and other stakeholders. NASAA urges state legislators to contact the state securities regulator in their jurisdiction to seek early input on any legislative proposals that would or may affect state securities laws, including proposals relating to digital assets and associated technologies.

NASAA's Principles: NASAA supports investor protection, innovation, and inclusion. In our view, policymakers must:

- **Protect investors by encouraging compliance within the existing regulatory framework.** The best path forward is to encourage compliance with existing securities laws and, if needed, engagement with regulators on requests for limited relief. Such engagement would be a fraction of the cost, ultimately born by taxpayers and investors, of legislation that would force regulators to develop new rules, forms, and similar resources exclusively for digital assets.
- **Protect investors and support lasting use of innovations by encouraging registration.** The best way to protect investors and promote innovation is to urge unregistered participants to register themselves and their activities, products, and professionals promptly. Registration triggers processes whereby investors receive important information and regulators can examine activities, entities, products, and professionals for compliance. These processes foster trust, which in turn attracts capital and customers.
- **Protect investors and support innovation by fostering better regulatory coordination.** Regulators, particularly state securities regulators, the SEC, and the CFTC, communicate about and agree on many issues. However, more can be done to foster regulatory coordination. For example, state regulators such as state banking regulators, as well as state working groups, task forces, and similar bodies, must seek input from state securities regulators, especially before issuing reports or proposing regulatory frameworks to the state legislature.
- **Support inclusion and protect investors by encouraging informed, goal-oriented investment decision-making.** Regulators must continue to expand awareness of our capital markets among people of all ages and backgrounds, ensure disclosures and educational resources are available, and encourage investors to take the time to understand investments and their risks. Speculative or impulse investing, particularly when it poses excessive financial risk to the investor in the short term, can have devastating consequences.

Contact Your Regulator
U.S. Directory

Contact NASAA

Kristen Hutchens
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Learn More

Explainer: pp. 2-3
NASAA Resources: p. 3

NASAA'S CORE PRINCIPLES FOR EVALUATING STATE LEGISLATION RELATING TO DIGITAL ASSETS

Protect investors by encouraging compliance within the existing regulatory framework.

- The securities regulatory framework in the United States has long facilitated innovation. Examples include changes in investment products, communication platforms, and business models that governments, businesses, and people have used and, in many cases, still use.
- The best path forward is to encourage compliance with existing securities laws and, if needed, engagement with regulators on requests for limited relief. Regulators, who have long recognized that compliance and innovation are not mutually exclusive, carefully consider requests for relief and support an even playing field for all market participants.
- No compelling reason exists that would justify state legislatures injecting more complexity into the regulatory compliance and examination processes, particularly when existing legal terms (for example, investment contract) are applicable and evergreen. Ultimately, taxpayers and investors would bear the costs of unnecessary changes.
- Adopting legislation with new legal terms exclusively for digital assets and associated activities, platforms, and professionals would necessitate the preparation of new rules, forms, and other resources, which in turn would necessitate the preparation of new policies and procedures by regulated entities and professionals. Additionally, new statutory terms would trigger significant work for professionals focused on investor education.
- Regulators are skilled at making appropriate adjustments to the securities regulatory framework by, for example, creating or updating existing rules and forms.

Protect investors and support lasting use of innovations by encouraging registration.

- Encouraging registration is the single most effective way for state legislatures to protect investors and promote innovation. Unregistered participants must register themselves and their activities, products, and professionals as promptly as possible with the appropriate state and federal regulators. Registration triggers two important processes. First, as a result of registration, investors receive important disclosure information, including conflicts, fees, and risks. Second, regulators can examine activities, entities, products, and professionals for compliance. These processes foster trust, which in turn attracts capital and consumers.
- New regulatory bodies, such as a self-regulatory organization (SRO) exclusive to digital assets and digital assets participants, are unnecessary. The existing regulatory framework includes state and federal agencies and other organizations with significant experience and expertise relevant to digital assets. In the case of state securities regulators, NASAA and many of its members have made considerable investments in investor, industry, and regulator resources to address the emergence and growth of the digital assets industry.
- SROs typically fund themselves through income sources such as membership fees and data subscriptions. Inevitably, the SRO and its members would share or pass on their expenses to third parties such as peer regulators and investors.

Protect investors and support innovation by fostering better regulatory coordination.

- Regulators, particularly state securities regulators, the SEC, and the CFTC, communicate about and agree on many issues. For example, NASAA and the SEC announced a $100 million settlement in which the defendant-institution agreed to stop selling its products in the United States unless and until they are registered in compliance with state and federal law. However, more can be done on the regulatory coordination front.
- Federal agencies, including the SEC, CFTC, and GAO, must seek input from state securities regulators before issuing reports, especially reports to the U.S. Congress. The insights and opinions of state securities regulators reflect their positions on the frontlines of protecting Main Street investors and engaging with small business owners.
- Similarly, state regulators such as state banking regulators working on digital assets and related issues must seek input from state securities regulators, especially before they issue reports or develop regulatory frameworks to present to state legislatures or legislative committees. In addition, convening bodies such as state working groups and task forces must include representation from state securities regulators. Changes to other areas of the law, especially state banking laws, can have unintended consequences for state securities laws and the investors these laws protect.

Support inclusion and protect investors by encouraging informed, goal-oriented investment decision-making.

- Regulators must continue to expand awareness of our capital markets among people of all ages and backgrounds. In these efforts, regulators must be even more strategic, agile, and creative in their communications and outreach.
- Regulators must continue to ensure disclosures and educational resources are available. Educational resources must encourage investors to understand how an investment works and evaluate the risks associated with buying, selling, or holding it.
- NASAA releases an annual list of top investor threats based on the results of a survey that invites North American state and provincial securities regulators to identify the most problematic products, practices, or schemes. Investments tied to digital assets are the top threat to investors for 2022.
- Speculative or impulse investing in any type of investment, particularly ones that pose excessive financial risks to the investor in the short term, can have devastating consequences for individuals, families, businesses, and the capital markets.

NASAA Resources for State Lawmakers and Their Constituents

- **Enforcement**
  - Operation Cryptosweep
  - Enforcement Statistics
  - Top Investor Threats
- **Policy Center**
  - Letters
  - NASAA Model Acts
  - Testimony
- **Investor Education**
  - DeFi and Digital Assets
  - Online Trading
  - Millennial Money

About NASAA. In the United States, NASAA is the voice of state securities regulators responsible for efficient capital formation and grass-roots investor protection. Their fundamental mission is protecting investors who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud. Visit nasaa.org.