



# NASAA Insight

The Voice of State & Provincial Securities Regulation  
Fall, 2017

## Alabama Securities Commission Director Joseph Borg Elected as NASAA President

Alabama Securities Commission Director Joseph P. Borg began a one-year term in September after having been elected president of the North American Securities Administrators Association (NASAA), becoming the first securities administrator to lead the organization for a third term.

In his inaugural address at NASAA's 2017 Annual Conference in Seattle, Washington, Borg set the tone for his presidency:

Addressing members of the audience from the financial services industry, Borg stated, "We appreciate that the vast majority of financial professionals are doing the right thing for the right reason and we encourage you to work with us to identify those who are not. This mutual trust is one of our strongest assets in the fight against fraud. We may not agree on every issue and there are unresolved matters on our table that we need to address, including unpaid arbitration awards. But we have shown that our solid working relationships throughout the industry enable us to work together to do what's right for investors."

Calling enforcement "the heart of our work," Borg noted that in the past five years alone, NASAA member agencies were responsible for sending criminals away for almost 6,500 years behind bars and having \$2.4 billion ordered returned to investors.



*"NASAA's very existence is a testament to the importance of collaboration between regulators from jurisdictions in the United States, Canada and Mexico. But as any local cop will tell you, the single most important relationship you can build is one with the community you are responsible to serve and protect," said NASAA President and Alabama Securities Commission Director Joseph Borg at NASAA's 2017 Annual Conference in Seattle.*

### Coordinated Exams Uncover IA Cybersecurity Deficiencies

A series of more than 1,200 coordinated examinations of state-registered investment advisers by state securities examiners uncovered nearly 700 deficiencies involving cybersecurity, NASAA announced in releasing its 2017 Investment Adviser Coordinated Examination results.

NASAA also announced a new resource to help state-registered investment advisers gauge their cybersecurity preparedness. The NASAA Cybersecurity Checklist for Investment Advisers includes 89 assessment areas to help state-registered investment advisers identify, protect, and detect cybersecurity vulnerabilities and to respond to and recover from cyber events.

*(continued on page 3)*

# From the Leadership

## President's Message: Joseph Borg



I'd like to begin my term with words of praise and thanks.

First, I commend NASAA members in Texas, Florida, the U.S. Virgin Islands, Puerto Rico, and Mexico for your perseverance in the face of recent natural disasters. Your fellow state and provincial securities regulators stand ready to assist in any way.

I also want to congratulate Bill Beatty and everyone who worked so hard to deliver such a well-run, well-organized annual conference last month in Seattle. The speakers and panels were excellent and each of our forums showcased the best that NASAA has to offer.

I also want to thank Past President Mike Rothman for his leadership of NASAA over the past year. In the year ahead, I look forward to working with Mike and all of NASAA's Board of Directors, including:

- President-elect Mike Pieciak of Vermont,
- Treasurer Tom Cotter of Alberta,
- Secretary Shonita Bossier of Kentucky,
- Pam Epting of Florida,
- Bryan Lantagne of Massachusetts,
- Melanie Lubin of Maryland, and
- Tanya Solov of Illinois.

This year's strong leadership team also includes our section chairs:

- Bill Beatty of Washington, Corporation Finance;
- Frank Borger-Gilligan of Tennessee, Broker-Dealer;
- Andrea Seidt of Ohio, Investment Adviser;
- Karen Tyler of North Dakota, Investor Education; and
- Keith Woodwell of Utah, Enforcement.

I am eager to begin our work to continue moving this great association forward.

You see a lot of continuity and experience in our leadership team. The same can be said for NASAA's home office. We are fortunate to such a strong team in place under NASAA Executive Director Joey Brady.

Both throughout the membership and within the home office, NASAA is focused on building on the progress we've made, adapting to meet new challenges and strengthening the collaborations and partnerships made in recent years to provide a stronger safety net for investors of all ages and to continue promoting efficient regulatory frameworks for effective capital formation.



*NASAA President Joseph Borg (right) is joined by President-elect Michael Pieciak of Vermont (center) and NASAA Executive Director Joseph Brady at NASAA's 2017 Annual Conference in Seattle, Washington.*

As I said in my speech in Seattle, it is important to remember that as regulators we do not work in a vacuum. NASAA's very existence is a testament to the importance of collaboration between regulators from jurisdictions in the United States, Canada and Mexico. But as any local cop will tell you, the single most important relationship you can build is one with the community you are responsible to serve and protect. As the cops on the securities beat, some of our most important resources aren't only fellow regulators but the many upstanding actors in the industry we regulate.

Our work together to confront the exploitation of seniors and vulnerable investors is a case in point.

Through NASAA's Seniors and Diminished Capacity Committee, chaired by Judith Shaw of Maine, we have worked closely with a diverse group from industry, academia, adult protective services, law enforcement, and senior advocacy organizations to help bring senior financial exploitation out of the shadows. We also are encouraged by the industry's response to the NASAA Model Fee Disclosure Schedule. This effort, under the leadership of Bryan Lantagne of Massachusetts, would not have been possible without the spirit of collaboration that propelled a working group that included FINRA, securities firms and their associations: the Financial Services Institute (FSI) and the Securities Industry Financial Markets Association (SIFMA). We look forward to working with FSI and SIFMA in the coming year to encourage the use of the NASAA model fee schedule by even more of their members and to identify other collaborative projects with the securities industry to benefit investors.

I appreciated the kind words I heard throughout this year's conference and want you all to know that I am humbled to lead this great organization for a third time. My door is always open and you can call me any time.

## Use of NASAA Model Fee Disclosure Schedule Grows

Several broker-dealer firms recently joined the growing list of firms using a fee schedule based on a model developed by NASAA's Model Fee Disclosure Working Group to enhance disclosure to investors.

NASAA President and Alabama Securities Commission Director Joseph P. Borg on September 26 commended the following 14 firms for agreeing to enhance the transparency of their fee disclosure by using the NASAA Model Fee Disclosure Schedule:

**Merrill Lynch, Pierce, Fenner & Smith Inc.; Voya Financial Advisors, Inc.; Cetera Financial Group** (*Cetera Advisors, Denver; Cetera Advisor Networks, El Segundo, California; Cetera Financial Institutions, St. Cloud, Minnesota; Cetera Financial Specialists, Schaumburg, Illinois; First Allied Securities, Inc., San Diego; Girard Securities, Inc., San Diego; and Summit Brokerage Services, Inc., Boca Raton, Florida*); and **Ladenburg Thalmann Financial Services Inc.** (*Ladenburg Thalmann & Co., Inc., New York, New York; Investacorp, Inc., Miami Lakes, Florida; KMS Financial Services, Inc., Seattle; Securities America, Inc., La Vista, Nebraska; Securities Service Network, Inc., Knoxville, Tennessee; and Triad Advisors, Inc., Norcross, Georgia*).

"We are pleased to see the growing acceptance and use of the NASAA Model Fee Disclosure Schedule and I look forward to working with SIFMA, the FSI, and members of the securities industry to gain even wider use of the model next year," Borg said.

The addition of these firms brings to 27 the number of firms using the model fee schedule. The other firms are: 1st Global; Cambridge Investment Research Inc.; Commonwealth Financial Network; Fidelity Investments; FSC Securities Corp.; LPL Financial LLC; Morgan Stanley Smith Barney LLC; Prospera Financial Services; Prudential Financial, Inc.; Royal Alliance Associates Inc.; SagePoint Financial Inc.; Signator Investors, Inc.; and Woodbury Financial Services Inc.

## IA Coordinated Exams . . .

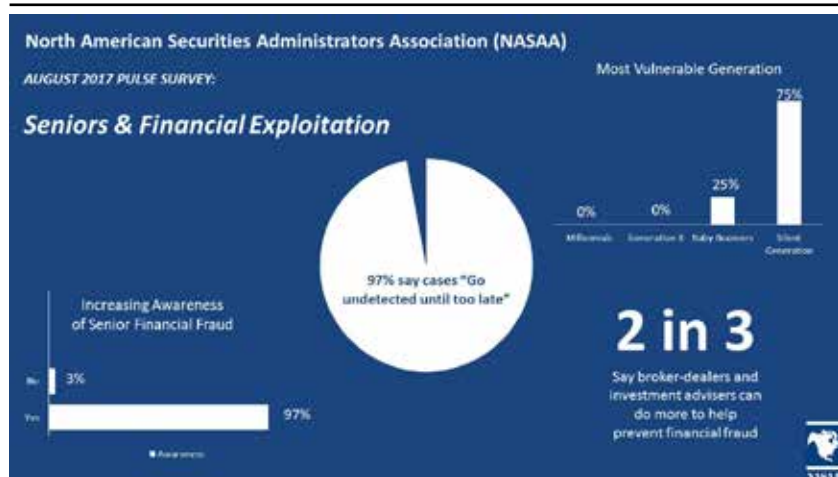
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In their examinations of state-registered IAs in 37 U.S. jurisdictions, state examiners found 698 deficiencies relating to cybersecurity. The top five deficiencies included: no or inadequate cybersecurity insurance, no testing of cybersecurity vulnerability, lack of procedures regarding securing or limiting access to devices, no technology specialist or consultant, and a lack of procedures regarding hardware and software updates or upgrades.

Overall, the 1,203 reported examinations of state-registered investment advisers uncovered 7,907 deficiencies in 25 compliance areas, compared to 4,983 deficiencies in 22 compliance areas uncovered by 1,170 examinations in 2015. This sample data from state securities examiners is collected every two years and reported voluntarily to NASAA's Investment Adviser Operations Project Group.

Most of the increase in deficiencies reported in 2017 can be attributed to the addition of three compliance areas for examination, including cybersecurity, and enhanced efficiencies in the state examination process. "Training and technology have combined to enable state examiners to conduct more examinations and better detect deficiencies," said Andrea Seidt, Ohio Securities Commissioner and chair of NASAA's Investment Adviser Section.

Ranked by number of deficiencies found, books and records (2,625 deficiencies) continued to be the most problematic compliance area for state-regulated investment advisers, accounting for more than twice as many deficiencies found by state examiners as the next highest problem area, registration (1,165 deficiencies). Contracts (921 deficiencies), cybersecurity (698 deficiencies), and custody matters (364 deficiencies) rounded out the top five areas of deficiencies.



## NASAA Pulse Survey

A survey of NASAA members shows more can be done to protect seniors from financial fraud. The takeaways from NASAA's Pulse Survey on senior financial fraud, conducted July 24 to August 4, include:

- most cases are detected too late;
- awareness of senior investment fraud is up;
- fraud is not decreasing;
- broker-dealers and investment advisers must step up to do more to help prevent senior fraud;
- legislators can play an important role by enacting laws based on NASAA's Model Act to Protect Vulnerable Adults from Financial Exploitation.



# 2017 Annual Conference

## The Technology Revolution in Financial Services

*Seattle Conference Explores the Rapid Pace of Change and Innovation in the Delivery of Financial Services and the Regulation of the Industry*



*Bill Beatty, Conference Chair and Washington Securities Director welcomes attendees to Seattle.*



*NASAA Executive Director Joseph Brady addresses the audience as he opens the 2017 Annual Conference.*



*Under the theme, "The Technology Revolution in Financial Services," NASAA's 2017 annual conference came to Seattle for a three-day exploration of how innovative technology is shaking up the world of financial services and securities regulation. The conference opened with a presentation by fintech expert Sujit "Bob" Chakravorti (above), who set the stage with an overview of how financial institutions, technology firms, and fintech startups are using innovative approaches to facilitate more efficient and accessible financial services for consumers and businesses.*



*Tennessee Assistant Commissioner for Securities Frank Borger-Gilligan (left) and Pat Chaukus, Chief of the Ontario Securities Commission's OSC Launchpad (right) listen as Ryan Rafols, founder and CEO of fintech startup NewChip, makes a point during a discussion examining new technologies that are likely to bring change to the financial services marketplace.*



*Then-NASAA President Mike Rothman led a NASAA Newsmaker Interview with national cybersecurity expert Dr. Barbara Endicott-Popovskiy of the University of Washington's Center for Information Assurance and Cybersecurity. Together, they discussed the impact of technology on the financial services industry and current cybersecurity threats.*

## 2017 Annual Conference



Wisconsin Securities Administrator Leslie Van Buskirk (left) leads a discussion exploring what the fintech revolution means for financial service firms with Jennifer Klass, a Partner at Morgan Lewis & Bockius LLP. Other panelists included: Seth Rosenbloom, Associate General Counsel at Betterment; and David Feeney, Vice President of Corporate Strategy at LPL Financial.



Gregory Strong, Delaware's Director of Investor Protection (left), leads a discussion among other securities law enforcement experts on how "big data" is used to investigate securities fraud. Panelists included (from left) Justin Arnold, Assistant U.S. Attorney in the Western District of Washington; Jay Chua, FINRA's Director of Advanced Analytics; Katherine Milgram, New York Investor Protection Bureau Chief; Scott Walster, SEC Assistant Director of the Office of Litigation Economics; and Christina Wolf, Chief Economist of the British Columbia Securities Commission.



NASAA members participated in a team-building exercise that brought both a new bicycle and a smile to the faces of children from the local Boys and Girls Clubs of Seattle.



NASAA Past President Mike Rothman (left) passes the gavel to new President Joseph Borg at the beginning of his term.



NASAA President-elect Michael Pieciak of Vermont addresses the audience during the Presidential Luncheon.



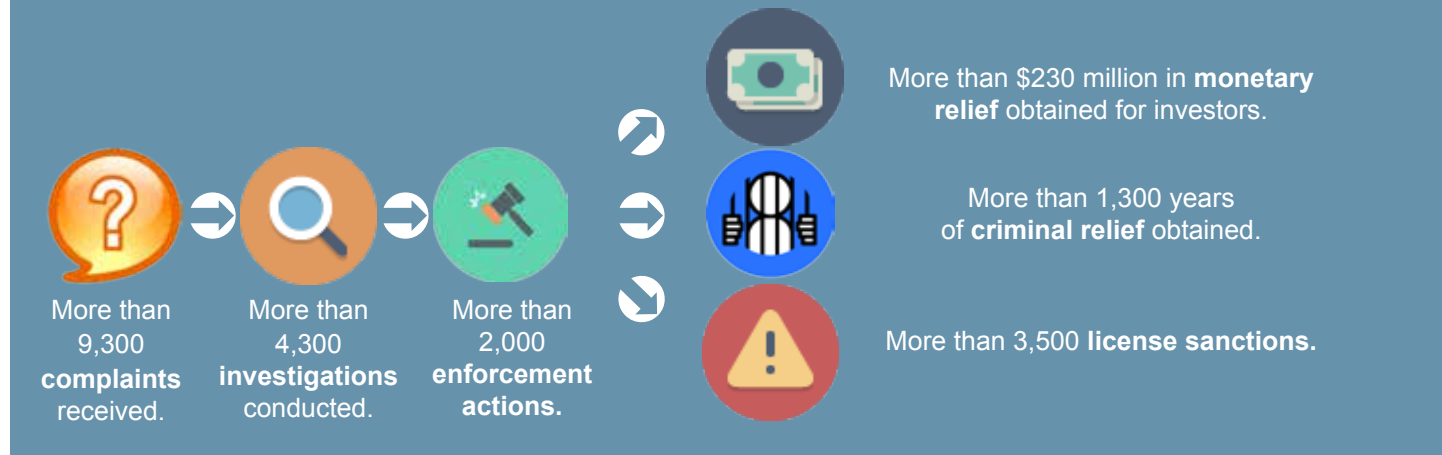
NASAA President Joseph Borg delivers his inaugural address at NASAA's Presidential Luncheon.



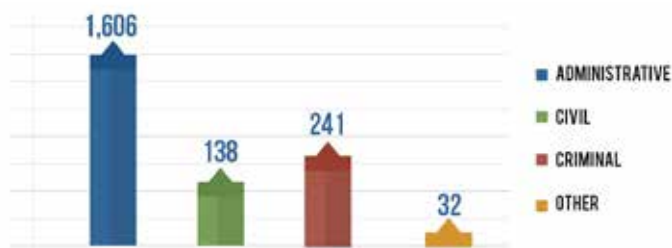
# NASAA 2017 Enforcement Report Highlights

Based on 2016 Data

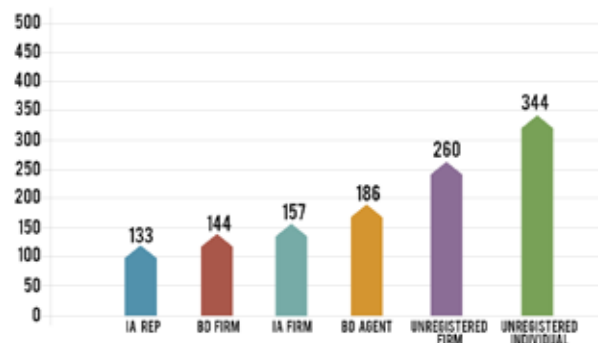
## NASAA Member Enforcement Actions at a Glance



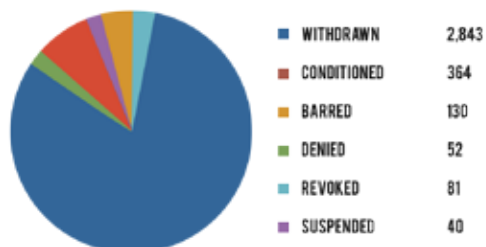
### ENFORCEMENT ACTIONS BROUGHT



### TYPES OF RESPONDENTS



### LICENSE SANCTIONS



NASAA annually conducts an enforcement survey of its U.S. members, analyzes the data and identifies trends. This year, 50 U.S. jurisdictions responded to the survey. The results demonstrate that NASAA members aggressively protect the integrity of financial markets and investors from fraud.

Visit [www.nasaa.org](http://www.nasaa.org) for the full report.

# NASAA Proposals

## Proposed Account Access Rule Amendment

The proposed amendment to the NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers Model Rule would make it an unethical business practice in violation of the model rule for investment advisers to access clients' accounts through the clients' own electronic usernames and passwords.

NASAA released the proposed rule amendment for public comment in July.

The proposed rule amendment addresses the practice of investment advisers and investment adviser representatives accessing various client accounts with the client's own unique identifying information (such as username and password), rather than accessing these accounts through a separate log-in created specifically for the adviser.

As many investment advisers need access to a host of different client retirement accounts, brokerage accounts, and other online accounts to inform their advice, some advisers accept or specifically ask clients for their own usernames and passwords to access their online accounts.

When an investment adviser accesses a client's account in this manner, the investment adviser is in effect impersonating the client and has the same access to the account as the client.

There are multiple concerns with this type of access, including but not limited to fraud, custody and recordkeeping obligations, as well as violations of the clients' own user agreements.

In addition to the risk of fraud, problems are inherent in the use of customer account access information. This type of access may cause clients to violate their user agreements with the custodian of the assets. This, in turn, may void the client's online accounts fraud protections. It is a common cybersecurity measure for user agreements to prohibit clients from providing another person with their username and password.

This type of access may represent a violation of the company's online fraud policies (which may be outside of the client's agreement with the company), creating the potential for both client and company liability.

## NASAA Issues Recommended Best Practices for Investment Advisers

*Based on the sample data collected during the 2017 coordinated examinations of investment advisers, NASAA recommends the following "Best Practices" as a guide to assist investment advisers in developing compliance practices and procedures.*

- 1 Prepare and maintain all required records, including financial records. Back-up electronic data and protect records. Document checks forwarded.
- 2 Prepare and maintain client profiles or other client suitability information.
- 3 Review and revise Form ADV and disclosure brochure annually to reflect current and accurate information.
- 4 Review and update all client advisory contracts.
- 5 Calculate and document fees correctly in accordance with contracts and Form ADV.
- 6 Implement appropriate custody safeguards, especially for direct fee deduction.
- 7 Formulate and document cybersecurity policies, procedures, and measures.
- 8 Keep accurate and current financials. File timely with the jurisdiction. Maintain surety bond if required.
- 9 Review all advertisements, including website and performance advertising, for accuracy.
- 10 Prepare a written compliance and supervisory procedures manual relevant to the type of business to include business continuity plan.

## NASAA: Because Every Investor Deserves Protection

### About NASAA

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.



North American Securities  
Administrators Association  
750 First Street NE  
Suite 1140  
Washington, D.C. 20002

### Contact NASAA

Phone: 202-737-0900  
Fax: 202-783-3571

### Visit NASAA online:

[www.nasaa.org](http://www.nasaa.org)

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## NASAA Honors Significant Accomplishments

At its annual conference in Seattle, NASAA presented several awards to recognize the accomplishments of those who have dedicated their service to help advance the association's goals.

NASAA Past President Mike Rothman received the association's highest honor, the Blue Sky Cube, for his leadership and record of investor protection.

This year's ceremonies marked the debut of NASAA's Investor Champion Award, which was presented to Robert S. Banks for his service on behalf of investor rights and state securities regulation.



*Mike Rothman (right) presents Jack Herstein with NASAA's Lifetime Achievement Award.*

Former NASAA President and Nebraska securities regulator Jack E. Herstein was honored as the second recipient of NASAA's Lifetime Achievement Award for his many years of service to NASAA.

NASAA's Outstanding Service Awards were presented to former administrators Rosanne Mead of Iowa, Michael Youngberg of South Dakota, and to Anna Dennis, Securities Division Compliance Branch Manager for the Kentucky Department of Financial Institutions, for her work on NASAA's model fee disclosure schedule. Former administrator Alexis Lotero received NASAA's Distinguished Service Award.



*Mike Rothman (left) presents Robert Banks with NASAA's first Investor Champion Award.*