

October 2025

Champion the States as Essential Investor Protectors in the New Federal Market Structure

Background

The Responsible Financial Innovation Act dated September 5, 2025 (“RFIA”) is aimed at overhauling the U.S. securities and commodities regulatory frameworks by creating new laws, regulations, and rules primarily for the regulation of digital assets. In crafting and enacting such laws, Congress must be sure to maintain state authorities to combat fraud and protect investors. Unfortunately, as drafted, the RFIA would strip away many of the protections currently in place:

1. **Directly** through preemption provisions that eliminate critical investor protections at the state level.
2. **Functionally** by redefining “investment contracts,” reallocating oversight of certain securities intermediaries away from the states and carving decentralized finance firms out of many of the same laws and regulations applicable to other securities firms.

Congress has a straightforward solution – **NASAA’s Support Anti-Fraud Enforcement (“SAFE”) Act 2.0** – a short compilation of commonsense changes to the RFIA that would preserve critical state authorities to protect investors and fight fraud. The SAFE Act 2.0 is a supplement to the changes that NASAA initially recommended based on earlier versions of market structure bills.

Strengthening Investor Protection and Avoiding Harmful Consequences: Why Congress Must Incorporate NASAA’s SAFE Act 2.0.

- **Protect Retail Investors and Retirement Savers**
 - NASAA’s SAFE Act 2.0 includes amendments to Section 109 that would preserve state anti-fraud authority and help ensure that bad actors and fraudulent products do not slip through the cracks and harm investors.
 - The SAFE Act 2.0 revisions include removal of Section 105, a key change that will ensure states are not hindered from continuing their good work fighting “pig butchering” scams, Bitcoin ATM schemes, and similar misconduct. Provisions like Section 105 will make it very difficult for securities regulators to address scams and will strip savers of their strongest fraud fighters at the worst time.
- **Preserve State Budgets and Economies**
 - Section 109 threatens state licensing revenues, eliminating critical funding that sustains state securities and related programs including investor education and outreach, law enforcement, and small-business development programs. The SAFE Act 2.0 fixes that by adhering more closely to the National Securities Markets Improvement Act of 1996 (“NSMIA”), which preserves state notice filing and fees.
 - Ultimately, it will be the taxpayers who pick up the tab if Section 109 is not fixed. States secure millions of dollars in restitution awards to fraud victims every year. Without this lifeline, fraud victims will likely have to rely on public assistance to get by.

➤ **Ensure Fair Markets**

- Provisions such as Section 109, Title V, and Section 406 favor the use of digital ledger technologies and tilt regulation in favor of the digital asset marketplace, which would disadvantage traditional finance and create fragmented regulation and gaps in market oversight.

The Solution: NASAA's SAFE Act 2.0

- **Revise Section 109(f)** (*Preemption for Ancillary Asset Activities Under the Securities Exchange Act*) to align it more closely to the regulation of broker-dealers and investment advisers established in NSMIA to preserve vital investor protection guardrails and conduct standards.
- **Revise Section 109(e)** (*Preemption for Exemptions and Digital Asset Activities Under the Securities Act*) to treat securities that offer, sell, or distribute digital assets as covered securities under NSMIA in line with other similar types of securities.
- **Strike Section 105** (*Investment Contract Rulemaking*) in its entirety and make conforming changes throughout the RFIA, to ensure regulators can address emerging scams.
- **Insert a robust securities and commodities anti-fraud savings clause** to preserve existing state authority.
- **Amend Section 406(a)(2)** (*Real-World Asset*) to ensure the definition of “real-world asset” does not create a loophole that circumvents securities laws.
- **Strike Title V** (*Protecting Software Developers and Software Innovation*) and make conforming changes throughout the RFIA to promote a level playing field in our capital markets and ensure that firms engaged in offering and selling securities comply with investor protection requirements.

NASAA may revise the SAFE Act 2.0 as new text becomes available.

Request to Communicate Support for NASAA's SAFE Act 2.0.

Promptly communicate to Chair Tim Scott of the U.S. Senate Committee on Banking, Housing, and Urban Affairs and his staff that lawmakers should accept NASAA's changes. Messages can be sent to Ammon Simon, Chief Counsel, at ammon_simon@banking.senate.gov.

Conclusion

The RFIA, as written, strips away proven state protections and jeopardizes investors, retirees, state budgets, and fair markets. Congress should adopt NASAA's changes to safeguard Main Street and preserve the states' role as champions of investor protection.

Should you have questions or seek to review NASAA's amendments to RFIA (referred to in short as NASAA's SAFE Act 2.0), please do not hesitate to contact Kristen Hutchens, NASAA's Director of Policy and Government Affairs, at khutchens@nasaa.org.

NASAA SAFE Act 2.0

Proposed Amendments to RFIA

In _____, insert the following:

“Sec. xxx. Empowerment of the States as Fraud Fighters.

(a) Title.—This section may be cited as the “Support Anti-Fraud Enforcement (“SAFE”) Act”

(b) Definitions.—In this section:

(1) THE ACT.—The term “Act” means the “[insert title of final federal market structure legislation].”

(2) STATE SECURITIES REGULATOR.—The term “State securities regulator” means the securities commission (or any agency or office performing like functions) in one of the 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

(c) Relationship with State Law for Anti-Fraud Purposes.—Notwithstanding any other provision of law, State securities regulators and State law enforcement agencies may use State securities laws, regulations, and rules to investigate and bring administrative, civil, and criminal anti-fraud enforcement actions, in regard to any asset, product or intermediary regulated pursuant to the federal securities laws or the Commodity Exchange Act, as modified by this Act or the amendments made by this Act, including investment contracts and other securities, digital commodities, ancillary assets, tradable assets and any transaction involving any of the foregoing.

(d) Rule of Construction.—Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit or limit any State from pursuing anti-fraud cases for violations of the anti-fraud provisions of the Commodity Exchange Act or state commodities laws.

(e) Rule of Construction.—Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit or limit any State law, regulation or rule that enables State securities regulators or

State law enforcement agencies to investigate and bring enforcement actions against any person involved in fraudulent, deceptive, or manipulative conduct in regard to an ancillary asset, an investment contract or other form of security, including a security that is issued, recorded, or transferred using distributed ledger technology, or any transaction involving the foregoing assets or any derivatives thereof.

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Strike Section 105 and reorder subsequent sections.

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Strike section 109(e), and insert the following:

PREEMPTION FOR EXEMPT ANCILLARY ASSET ACTIVITIES UNDER THE SECURITIES ACT.—Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) is amended—

(1) in subsection (b)—

(A) insert as paragraph (5) “A security is a covered security if such security is a security that offers, sells, or otherwise distributes an ancillary asset in a primary or secondary transaction to a person through an arrangement that constitutes an investment contract in accordance with section 77d-2 of this title.”

* * *

Strike Section 109(f) and insert the following:

PREEMPTION FOR ANCILLARY ASSET ACTIVITIES UNDER THE SECURITIES EXCHANGE ACT.— Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

“(p) Limitations on State Law Regarding Ancillary Assets.—

“(1) Definitions.—In this subsection, the term ‘ancillary asset’ has the meaning given that term in section 2 of the Responsible Financial Innovation Act of 2025.

“(2) Limitations.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish any capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements on any person registered with the Commission (or, with respect to such persons registered with the Commission, on any supervised person, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)), or any person associated with a broker or dealer) in connection with that portion of a person’s business that transacts in or advises in ancillary assets. Other than the restrictions applicable to ancillary assets as specified in this subsection, nothing in this subsection shall preempt any requirement of any State law, rule or regulation applicable to persons engaged in activities involving investment contracts or any other form of security, including securities issued, recorded, represented, or transferred using distributed ledger technology.

“(3) Enforcement permitted.—Nothing in this section shall prohibit any State or political subdivision thereof from investigating and bringing enforcement actions with respect to fraud, manipulation or deceptive practices, or unlawful conduct, including, unethical or dishonest conduct or practices in connection with any person registered or required to be registered with the Commission under this title or the securities law of any State or political subdivision thereof (or, with respect to any registered person, on any supervised person, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) or State law, or any person associated with a broker or dealer) that transacts or advises in ancillary assets, investment contracts or any other

form of security, including securities issued, recorded, represented, or transferred using distributed ledger technology.

“(4) Notice Filings Permitted.—Nothing in this subsection shall prohibit any State or political subdivision thereof from requiring the notice filing of any document filed with the Commission in connection with any registered person’s business in ancillary assets, investment contracts or any other form of security, including securities issued, recorded, represented, or transferred using distributed ledger technology, together with a consent to service of process and any required fee.”

“(5) Rule of Construction.—Nothing in this section or the amendments made by this section may be construed to limit the existing authority reserved to a securities commission (or any agency or office performing like functions) of any State with respect to any person registered with the Commission that transacts in or offers advice about an ancillary asset, an investment contract or any other form of security, including securities issued, recorded, represented, or transferred using distributed ledger technology, or with respect to any person supervised by or associated with any person registered with the Commission, within the meaning of section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)), section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), or section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

* * *

In section 406(a)(2)(A) after “property right” and before “; and” strike “, including real estate, a physical commodity, equipment, or a contractual right”, and insert “such as real estate, a physical commodity, or equipment, that does not delegate entrepreneurial or managerial control to an enterprise and does not

create a reasonable expectation of profits from the participation or return on investment, earnings, operating results, or capital appreciation of an enterprise managing the property or property right”.

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Strike TITLE V and reorder subsequent titles.

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