

NASAA INSIGHT

THE VOICE OF STATE & PROVINCIAL SECURITIES REGULATION

NASAA Members Show Strong, Flexible Regulatory Response to Novel Coronavirus Pandemic

As the novel coronavirus spread throughout North America, state and provincial securities regulators responded with appropriate regulatory flexibility while maintaining vigilance to protect retail investors.

In the days following the announcement of COVID-19 as a pandemic in March, NASAA formed a working group of state securities regulators to assist member agencies in providing limited regulatory relief necessary to ensure continued operations of the financial services industry.

“We are sensitive to the challenges that the pandemic has created for the registered community and our constituents,” said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities. “While state securities authorities work to help financial professionals withstand our current difficulties and continue to serve their customers, NASAA members remain focused on our mission to protect investors,” Gerold said.

NASAA members have been responsive and receptive to requests for extensions and other appropriate forms of regulatory relief arising from service and staff disruptions occasioned by COVID-19.

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“While state and provincial securities authorities are working to help financial professionals withstand our current difficulties and continue to serve their customers, NASAA members also remain focused on our mission to protect investors.”

*Christopher Gerold
NASAA President
Chief, New Jersey Bureau of Securities*

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North American Securities Administrators Association
750 First Street NE, Suite 1140 | Washington, DC 20002

PRESIDENT'S MESSAGE



Welcome to the *NASAA Insight* newsletter. You'll notice this issue features more than just a new look. We also are pleased to provide a greater range of content, including more news from member state and provincial securities regulators. We hope you find this information useful.

Like most of you, NASAA has been closely monitoring ongoing developments related to COVID-19. This is new territory for us all.

With the health and safety of our members, NASAA staff and others foremost in mind, NASAA moved our member and public meetings online through the remainder of the year.

We are disappointed that we cannot hold in-person meetings and trainings, however, we believe that the decision is appropriate in light of public health concerns regarding the COVID-19 pandemic, guidance from the public health officials, and various state and provincial travel restrictions.

This year's Annual Meeting will be held entirely online and I hope you can join us September 1-2 for our first-ever virtual Annual Meeting.

While NASAA and its members are actively addressing a wide range of matters related to the pandemic, including the launch of our COVID-19 Enforcement Task Force, other significant work has taken place, as you'll see in the pages of this publication.

For example, NASAA is working on two pieces of model legislation to assist states in establishing programs to award and protect whistleblowers and to provide a restitution assistance fund for victims of securities law violations.

We have continued work on a proposed continuing education program for investment adviser representatives.

And we have significantly expanded the Electronic Filing Depository (EFD) System to accept a wider range of filings and in doing so have provided greater efficiencies for issuers and NASAA members.

With a little more than half of 2020 behind us, let us hope the second half of the year won't be as "interesting" as the first. In the midst of the recent uncertainty, NASAA and its members have demonstrated that we remain focused on our mission to protect investors.

**NASAA
2020
ANNUAL
MEETING**

**Join us
online!**

SEPTEMBER 1-2, 2020

To register, visit:
[nasaa.org](https://www.nasaa.org)

Join us for NASAA's Annual Meeting, the premier fall event for the securities industry. This year we're bringing the meeting to you. Held entirely online, this year's meeting will consist of two afternoon sessions featuring panels on topics of interest to investment advisers, broker-dealers, and securities issuers, as well as updates on current enforcement trends and investor education topics.

NASAA NEWS

NASAA Supreme Court Amicus Brief Supported SEC's Ability to Seek Disgorgement in Civil Enforcement Proceedings

NASAA filed an amicus curiae brief with the U.S. Supreme Court in *Liu vs. SEC* in January supporting the Securities and Exchange Commission's authority to seek disgorgement in its civil enforcement proceedings.

The trial court had found petitioners liable for securities fraud related to the EB-5 Immigrant Investor Program and imposed remedies including disgorgement of approximately \$26.7 million.

On appeal, the petitioners argued that the SEC lacked the authority to obtain a disgorgement award.

NASAA's amicus brief to the Court argued that the SEC does have — and must have — the ability to seek disgorgement because this remedy is critical to securities regulators' ability to deter fraud and compensate victims. Fortunately for investors, the Supreme Court agreed and rejected petitioner's argument in its June 22 decision. NASAA's brief is available [here](#).

NASAA Franchise Project Group Honored by National Association

The American Association of Franchisees and Dealers (AAFD) has awarded the NASAA Franchise Project Group with its Chairman's Award for Distinguished Achievement for the Franchising Community.

"We appreciate this recognition of our continuing work to strengthen protections for investors and prospective franchisees through enhanced disclosures," said Dale Cantone, Maryland Deputy Securities Commissioner and Chair of the NASAA Franchise Project Group.

The project group was recognized for its comprehensive two-year project to overhaul financial representation requirements at the state level, AAFD said.

NASAA Issues Annual Report on State-Registered Investment Advisers

The 2020 Annual Report from NASAA's Investment Adviser Section, available on the NASAA website, provides a statistical snapshot of the state-registered investment adviser industry and the related regulatory activities of state securities regulators.

Highlights of [this year's report](#) include an updated profile of state-registered investment advisers; a discussion of updates to NASAA's cybersecurity checklist, including the development of detailed guidance on each area of the checklist, and a separate data inventory checklist. The report also showcases proactive outreach initiatives to state-registered investment advisers by NASAA member agencies.

NASAA Upgrades Web-based Exam Resource for State Securities Examiners

State securities examiners are using an upgraded web-based software application to conduct examinations of state-registered investment advisers and broker-dealers within their jurisdictions.

Released in late 2019, the significantly enhanced [NASAA Examinations Module](#) (NEMO) enables NASAA to deliver a product to state securities examiners designed to enhance the effectiveness of examinations of broker-dealers and investment advisers.

"Our new system will help securities regulators to quickly identify and address compliance trends to better protect investors," said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities. "The application's new and robust data generation and reporting capability will assist NASAA in assessing the health of the industry, formulating policy initiatives, and publishing examination priorities."

NASAA NEWS

Broker-Dealer Errors and Omissions Insurance Could Provide Relief for Investors with Unpaid Arbitration Awards



A [NASAA report](#) encourages broker-dealers to use errors and omissions (E&O) insurance as a resource to help meet their potential obligations to pay arbitration awards to their customers.

Arbitration is the most frequently used method to resolve securities disputes between investors and broker-dealer firms. Almost all broker-dealers include arbitration provisions in their customer account agreements that require any disputes between the customer and the broker-dealer or its agents to be resolved through arbitration rather than in the courts. Unfortunately, even when customers that prevail in arbitration, they often are unable to collect their awards from the broker-dealer.

“Investors who prevail in an arbitration should be able to collect that award,” said Christopher Gerold, NASAA President and Chief of the New Jersey Bureau of Securities. “Yet, unpaid arbitration awards remain an unresolved and well-documented investor protection concern. In failing to pay arbitration awards, broker-dealers breach their legal, regulatory and ethical obligations.”

The Financial Industry Regulatory Authority (FINRA) reports that arbitration awards totaling \$199 million went unpaid between 2012 and 2016. Research by the Public Investors Arbitration Bar Association (PIABA) shows that in 2017 alone, 36 percent of investors who won their arbitration cases collected nothing. “We appreciate that this issue is complicated and are pleased

that FINRA and others are studying it. But this problem is not fixing itself,” Gerold said, adding that a survey of investors conducted earlier this year on NASAA’s behalf showed that Congress would find broad public support should it act to reduce or eliminate unpaid arbitration awards.

Gerold said that while NASAA recognizes E&O insurance cannot provide a complete solution to this problem (such as when an award falls outside a policy’s coverage), greater use of E&O insurance in the broker-dealer industry could lead to fewer unpaid awards.

A NASAA survey found that more than two-thirds of the 64 responding firms carried E&O insurance and at least 28 insurance companies offered these policies. While all the insurance policies contained limitations and exclusions, the survey showed covered claims generally were being paid – suggesting that at least some firms are using E&O insurance to meet their potential arbitration obligations. Notably, only 4% of broker-dealers without coverage cited the cost of coverage as the reason for not obtaining it and only 9% of broker-dealers with coverage considered the coverage expensive. “This rebuts blanket assertions that E&O insurance is too expensive or too difficult for smaller firms to obtain,” said Leslie Van Buskirk, Wisconsin Securities Administrator and Chair of NASAA’s Broker-Dealer Section.

NASAA NEWS

NASAA Expands Electronic Filing Depository System to Accept Wide Range of Filings, Including Mutual Fund Notice Filings

NASAA's Electronic Filing Depository (EFD) System was expanded in late May to accept additional corporation finance and other state filing materials. The system's expanded functionality allows the electronic submission of various corporation finance filings, mutual fund notice filings and associated state fees. The new functionality is particularly important as regulators and industry rely more heavily on remote working arrangements following the spread of COVID-19. Many of these filings were previously

paper based. "We are pleased to continue to modernize and streamline the filing process and offer additional efficiencies for issuers," said NASAA President Christopher W. Gerold.

Through its EFD Steering Committee, led by Washington Securities Director William Beatty, NASAA built and launched the new functionality, referred to as the "Universal Filing Type," to enable submission of electronic filings with states for a variety of corporation finance offerings.

These offerings include, among others, registrations by coordination and qualification, Regulation A (Tier 1 and Tier 2) offerings,

intrastate crowdfunding and and state franchise filings. The expanded functionality also facilitates the filing of materials such as issuer-agent registrations. Also included in the UFT functionality are mutual fund notice filings.

Developed by NASAA, the EFD System was launched in 2014 and was initially used for the electronic filing with state securities regulators of Form D for Regulation D, Rule 506 offerings.

The system was expanded last year to accommodate the electronic filing of Form NF-UIT notice filings for unit investment trusts (UITs). Future system enhancements are being considered including additional functionality for franchise filings and Form NF-Mutual Funds. EFD is available at www.efdnasaa.org.

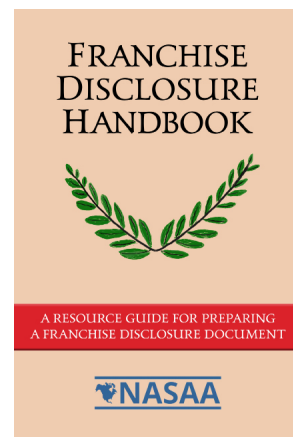


NASAA Franchise Disclosure Handbook Now Available

NASAA has released an updated version of its [Franchise Disclosure Document Handbook](#), which is designed to improve the quality of franchise disclosures.

The 366-page book, available for purchase or download on Amazon, is a compilation of the various rules, commentaries, and guidance from the Federal Trade Commission and NASAA governing the preparation of Franchise Disclosure Documents. These disclosure documents are presented to prospective buyers of franchises as part of the purchasing process.

"We hope that the Franchise Disclosure Handbook is useful to the franchise community and that it assists in the effort to provide each prospective franchisee with important information about one of the most important investment decisions most of them will ever make," said Dale Cantone, Chair of NASAA's Franchise Project Group and Maryland Deputy Securities Commissioner.



SPECIAL REPORT: CORONAVIRUS RESPONSE

NASAA Urges Congress to Remain Skeptical of Proposals to Weaken Securities Laws in Response to Pandemic

NASAA took its investor protection message to Capitol Hill in May to remind Congress to guard against proposals that will weaken securities laws as policymakers consider legislative responses to address the effects the novel coronavirus is having on the nation's capital markets.

“It is important to remember that neither the securities laws nor the functioning of the capital markets is the root cause of the present economic distress. Prior to the pandemic, the securities laws and our capital markets were serving

their intended purposes – the protection of investors and allocation of investment capital. This has remained true during the height of pandemic and remains true today,” said NASAA President Christopher W. Gerold.

Gerold's [remarks](#) came during a roundtable discussion convened by the House Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets to examine the impacts of the COVID-19 pandemic on U.S. capital markets. “Now more than ever, Congress must support and work in partnership

with state securities regulators to keep fraud out of our capital markets,” Gerold told lawmakers.

Noting that the nation's securities markets and most financial services firms continue to function capably and without significant interruption, Gerold said Congress “should be very skeptical of proposals that would weaken the securities laws in the name of the crisis.” Gerold also advised that Congress consider imposing a “pause” on major SEC rulemakings especially efforts designed to expand private offerings and private markets.

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This temporary regulatory relief was combined with a strong enforcement effort to protect investors from those who would seek to profit from the pandemic.

“State securities regulators have been working together to provide financial service professionals with the temporary relief needed to withstand challenges caused by the COVID-19 outbreak, while at the same time ensuring that investors are protected from frauds,” Maryland Securities Commissioner Melanie Lubin told the Financial Stability Oversight Council (FSOC) at its [public meeting](#) on March 26.

Following state and provincial guidance, the offices of many NASAA member were closed to the public with most regulatory and enforcement work proceeding remotely.

For example, licensing staff continued to process licensing/registration applications through the CRD/IARD systems, while agencies conducted streamlined, remote examinations using phone and email correspondence in lieu of traditional on-site examinations.

In the enforcement area, much of the in-person contact with witnesses and regulatory partners was limited,

but enforcement officials throughout the states and provinces took advantage of technology to complete their work in a virtual environment.

In June, NASAA focused congressional attention on the investor protection work of state and provincial securities regulators. In testimony before a House subcommittee, Amanda Senn, Chief Deputy Director of the Alabama Securities Commission and Chair of NASAA's Cybersecurity Committee, outlined how NASAA members are using various technologies to gather intelligence and conduct online investigations to fight investment fraud during the pandemic.

SPECIAL REPORT: CORONAVIRUS RESPONSE

NASAA Members Launch International Initiative to Fight Fraudsters Seeking to Profit from Pandemic-related Schemes

Con artists have long followed the headlines to use current events to give their schemes an air of legitimacy. According to a task force of state and provincial securities regulators formed this spring by NASAA, the COVID-19 pandemic is no exception.

Modeled after NASAA's successful Operation Cryptosweep of 2018, the [COVID-19 Enforcement Task Force](#) is led by NASAA's Enforcement Section and its Enforcement Technology Project Group. The Task Force is using online investigative techniques to identify websites and social media posts that may be offering or promoting fraudulent offerings, investment frauds, or improper unregistered regulated activities.

As part of its work, the task force is examining a spike in internet domain names linked to the pandemic. The task force has identified as many as 200,000 coronavirus-related domains as of April 20, 2020. Most of these domain names appear to have been created since the beginning of the year.

To date, more than 100 investigators from 44 NASAA members in the United States, Canada and Mexico have identified more than 200 schemes and have taken more than 200 distinct actions. The task force also has referred about 70 suspected schemes to other regulators and entities.

"The objective of the task force is to proactively identify COVID-19-related threats to investors, including but not limited to fraudulent offerings, investment frauds, and unregistered regulated activities, within the jurisdiction of NASAA member states and provinces, and to disrupt, discourage and deter those activities," said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities.

"Fraudsters are ramping up as a result of this crisis and our goal is to get and stay ahead of the curve," said Joseph Borg, Chair of NASAA's Enforcement Section and Director of the Alabama Securities Commission.

Get in the Know: New Video Offers Investor Protection Tips to Help Investors Steer Clear of COVID-19 Scams

The latest video in NASAA's *Get in the Know* series offers tips on how to spot and avoid investment schemes related to the COVID-19 pandemic.

The video is available on NASAA's website, [here](#).



Watch the video on NASAA's new YouTube channel, [here](#).



SPECIAL REPORT: CORONAVIRUS RESPONSE

NASAA, SEC and FINRA Join to Raise Awareness of Risks From COVID-19 Related Early Withdrawals from Retirement Accounts

NASAA joined FINRA and the staff of the SEC's Office of Investor Education and Advocacy to warn investors about promoters targeting retirement accounts, as well as to provide considerations for investors thinking of using 401(k) withdrawals or loans to purchase securities.

The federal CARES Act of 2020 provides significant relief for businesses and individuals affected by the COVID-19 pandemic. This includes allowing retirement affected investors to gain access to up to \$100,000 of their retirement savings without being subject to early withdrawal penalties and with an expanded window for paying the income tax they owe on the amounts they withdraw.

Unfortunately, unscrupulous promoters have used these CARES Act benefits to encourage investors to take money from their 401(k)s or traditional IRAs, not for current emergency financial needs, but to buy investments (often riskier ones) in an account benefitting the promoter.

The [joint advisory](#) cautions investors that if they are contacted by a promoter or investment professional who recommends they withdraw funds from their retirement savings to invest in securities—either through their firm or into a self-directed investment account—be sure to first confirm whether they are licensed to give advice or sell investments. Investors can verify the status of investment professionals and find out whether they have a history of customer harm by contacting state securities regulators or using tools available for free from the SEC and FINRA.

Factors to Consider Before Selling or Borrowing Against Your Retirement Accounts to Make New Investments in Securities

► You May Pay High Fees to the Promoter.

► It May be Difficult or Costly to Sell the Promoted Investment.

► Selling at Low Prices Locks in Your Losses.

► You May Lose Out on Compounding and Significantly Increase Your Risk.

Source: NASAA, SEC, FINRA Joint Advisory, June 3, 2020

New Guidance for Historical Franchise Performance Representations Reflecting COVID-19 Impacts

NASAA's Franchise Project Group has issued [guidance](#) regarding franchisors' use of historical financial performance metrics in lights of the current COVID-19 pandemic.

The guidance includes factors franchisors should consider when determining current and future use of historical financial performance representations, while cautioning that franchisors cannot avoid obligations to update franchise disclosure documents by including disclaimer language suggesting that franchisees should not rely on disclosures that do not reflect the impact of COVID-19.

The guidance also notes that franchisors should be prepared to respond to comments from state franchise examiners asking for an explanation of how a franchise performance representation based on data compiled in 2019 complies with franchise law requirements.

SPECIAL REPORT: CORONAVIRUS RESPONSE

COVID-19 Update Center Provides Updates From NASAA Members Regarding Regulatory Response and Operations

VISIT NASAA'S COVID-19 UPDATE CENTER

This resource provides information about the operational status of state securities regulators and regulatory relief granted in response to the ongoing COVID-19 crisis.

"The most important message we're hearing is that state securities regulators are maintaining essential regulatory operations," said Christopher Gerold, NASAA President.

Access the Update Center [here](#).

Home > COVID-19 Updates

Novel Coronavirus COVID-19 Updates

NASAA has established this resource page to collect COVID-19-related updates from state and provincial securities regulators. At this time, NASAA is not aware of any state or provincial securities regulator that is not providing services. If you any questions, please contact the relevant state or provincial securities regulator. Contact information is available [here](#).

UPDATES

June 30, 2020
<p>TEXAS</p> <p>Extension: Waiver by the Securities Commissioner – Temporary office and work locations – Filing relief for securities professionals</p>

ADDITIONAL RESOURCES

CHART:
NASAA Member COVID-19 Regulatory Response Overview

For NASAA Members
Coronavirus Update Center

For Investors
COVID-19-Related Investment Schemes Anticipated: What to Watch for and How to Protect Yourself

Other Resources:
U.S. Securities and Exchange Commission Coronavirus (COVID-19) Response



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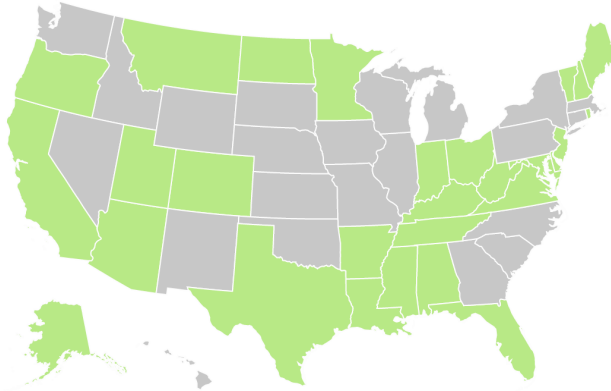
SENIOR MATTERS

State “Report and Hold” Laws Show Positive Impact

Reports of suspected senior financial exploitation are increasing in jurisdictions that have enacted legislation or regulations based on NASAA’s Model Act to Protect Vulnerable Adults From Financial Exploitation.

“We are pleased that the NASAA model act is helping states in their fight against senior financial exploitation. The model act is on a course to become operative in a majority of states this year and as more states enact legislation based on this model, we expect to see additional reporting leading to more enforcement actions and greater protections for seniors and other vulnerable adults,” said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities.

Twenty-eight jurisdictions throughout the United States have adopted legislation or regulations based on or similar to the NASAA model act since NASAA members voted to adopt the model act in 2016. This past June, Florida became the latest state to enact a law based on the NASAA model act, while several additional states are expected to consider legislation based on the model act soon. A list of all jurisdictions that have enacted laws based on or similar to the NASAA model act is available on NASAA’s Serve Our Seniors website, [here](#).



States That Have Enacted Laws Using NASAA’s Model Act to Protect Vulnerable Adults From Financial Exploitation

More than half of all states have enacted legislation based on NASAA’s Model Act to Protect Vulnerable Adults From Financial Exploitation. More states are expected to consider taking similar action this year.

The model act provides industry participants and state regulators with additional tools to help detect and prevent financial exploitation of vulnerable adults. In particular, the model act offers broker-dealer and investment adviser firms qualified immunity for delaying disbursements when the firm complies with provisions in the statute in instances where the firm reasonably believes financial exploitation could result.

The act also mandates reporting to a state securities regulator and state adult protective services agency when a qualified individual such as an investment adviser has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred.

NASAA’s 2019 Enforcement Report for the first time documents the effectiveness of the model act.

In 2018, the latest available data, states that have enacted legislation based on the NASAA model act received more than 400 reports from broker-dealers and investment advisers of potential financial abuse. These reports shed light on victims of securities fraud, elder exploitation, and others who need some form of assistance.

States have taken action to prevent or stop senior financial exploitation, to punish those responsible, and have also referred reports to more appropriate agencies and sometimes even sought to refer seniors to non-investigative services. Based on 426 received reports, state securities regulators opened 81 investigations, and initiated 32 formal enforcement actions. Reporting firms also delayed the disbursements of funds 57 times.

SENIOR MATTERS

New NASAA Report Examines Issues Related to Financial Professionals with Diminished Capacity

A new NASAA report examines issues related to diminished capacity and cognitive impairment that may affect financial professionals.

The report was based on a series of discussions between state and provincial securities regulators with broker-dealers, investment advisers, and compliance consultants to understand how the industry handles issues related to diminished capacity and cognitive impairment of financial professionals.

“Discussions with industry members and other regulators clearly indicate that firms are encountering financial professionals with diminished capacity or cognitive issues that stem from a variety of factors, including an aging workforce,” said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities.

Financial professionals experiencing diminished capacity raise complex issues of ensuring effective client service and compliance with their duties under the securities laws, the report said. Important issues include standards of conduct, supervision, books and records, continuing education and the prevention of fraud.

The methods and resources used to address sensitive situations where financial professionals exhibited signs of cognitive impairment varied by firm size and structure. The report summarizes how firms are managing these situations through communication, education, and succession planning.

The report identified several areas for firms to consider, including whether appropriate staff are trained to recognize the red flags of diminished capacity and cognitive impairment. The report also suggested firms encourage or even require all financial profes-

FINANCIAL PROFESSIONALS WITH DIMINISHED CAPACITY

FINANCIAL PROFESSIONALS WITH DIMINISHED CAPACITY

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

July, 2020



sionals to establish a succession plan regardless of their age. Those interviewed throughout the industry believe there are roles for regulators to play in identifying the problem and setting guidelines and goals on how to address it.

“Addressing financial professionals with cognitive impairment or diminished capacity requires sensitivity and respectfulness. Each situation will present differently and firms will have varying resources to address these concerns,” notes the report, which was prepared by a working group chaired by Claire McHenry, Deputy Director of the Nebraska Bureau of Securities, within NASAA’s Board-level Committee on Senior Issues and Diminished Capacity, chaired by Deborah Gillis of the New Brunswick Financial and Consumer Services Commission.

INVESTOR OUTREACH

State and Provincial Securities Regulators Develop Initiative to Offer Resources Addressing Unique Investing Issues Facing Women



NASAA has developed an outreach program designed to help state and provincial securities regulators provide investor education that delivers practical tools addressing the unique investing issues faced by women today.

Through NASAA's [Financial Empowerment for Women](#) initiative, state and provincial securities regulators in the United States, Canada and Mexico will work with local partners to offer free workshops to help women think about their financial profile, risk tolerance and financial goals.

"It is extremely important that women have the tools to plan for their financial future," said Christopher W. Gerold, NASAA President and Chief of the New Jersey Bureau of Securities. "Our goal is to provide these tools and resources to help women strengthen their financial confidence and avoid becoming victims of investment fraud."

"Research shows that nearly all women will be financially responsible for themselves or their families at some point in their lives. But many are underprepared to face these challenges," said Lisa Hopkins, NASAA President-elect and West Virginia's Senior Deputy Commissioner of Securities.

"All too often the financial deck is still stacked against women due to unique challenges such as longer life spans, filling the role as full-time caregivers for children and parents, and the gender pay gap," said Lynne Egan, Montana's Deputy Securities Commissioner and Chair of the NASAA's Investor Education Section, which developed the new outreach initiative.

PENNSYLVANIA IS 'INVESTING IN WOMEN'

The Pennsylvania Department of Banking and Securities has announced 'Investing in Women,' an initiative aimed at providing women with important information about banking, credit, saving and investing, while offering practical resources to navigate their finances.

The department is encouraging women in Pennsylvania, stakeholders, and partners to get involved. Among other components, the initiative includes presentations across the state on common financial challenges for women.

"SHE LEADS" PAVING THE WAY IN GEORGIA

Georgia is taking a lead in providing financial empowerment information and resources for women through its "She Leads" financial literacy series, part of Secretary of State Brad Raffensperger's financial literacy series. Administered through the state's Securities and Charities Division these free workshops feature expert speakers, interactive exercises, and facilitate group discussions designed to increase attendees' knowledge of financial issues. "Three seminars were held in 2019 and five seminars have been livestreamed so far this year until in-person events can resume," Georgia Securities Director Noula Zaharis said.

PODCAST TAKES LISTENERS INSIDE INVESTIGATIONS BY NASAA MEMBERS

Go inside real cases of investment fraud with NASAA's new "Real Life Regulators" podcast series. "By taking listeners through the investigative process, we provide an insider's view of how to identify an investment scam, which is one key to investor protection," said Lynne Egan, Montana's Deputy Securities Commissioner and Chair of NASAA's Investor Education Section. The first episode, "The Advisor and the Widow," is available now on NASAA's website, iTunes and Google Podcasts.



COMPLIANCE MATTERS

Business Continuity and Succession Planning: Where to Start

An investment adviser's fiduciary duty includes an obligation to its clients to have policies and procedures in place that minimize risk and ensure your clients' access to their assets. A business continuity and succession plan (BCS Plan) is a plan for a situation where a key person is unexpectedly unable to perform his or her assigned functions for the investment adviser. The specifics of a BCS Plan will vary depending on the firm's business model, but should reduce the risk of being unable to serve clients following an unplanned business interruption or emergency.

When developing your BCS Plan, investment advisers should consider the following steps:

Step 1. Identify the Risk

The first step in developing a BCS Plan is to identify the risks that could cause a service interruption. Such risks may include:

- A service provider interruption (such as a power outage);
- A natural disaster (such as storms, earthquakes or flooding);
- Terrorist acts;
- Equipment failures (such as a cybersecurity event); or

The death or disability of a key employee (including you).



Step 2. Parties Involved in the Plan

When designing a BCS Plan, consider who to designate to help implement the plan. Designated individuals should be trustworthy, responsible, and capable of carrying out their assigned duties. For those who will be taking over advisory functions, make sure they are licensed.

Advance written consent from clients will be required if the plan contemplates the assignment to advisory accounts to a third party permanently or temporarily. Additionally, securing written contractual assurances from other parties involved in implementing the plan is an essential component of the overall plan and necessary to document their responsibilities.

Step 3. Put it in Writing

A BCS Plan should be in writing and stored in an accessible place or places. Copies of the plan should be maintained in a way that ensures that all office locations have access to the information.

Among other considerations, your BCS Plan should address:

- The back-up of the adviser's data and books and records;
- Alternate means of communication with customers, employees, and regulators;
- Possible office relocation;
- How clients will be informed of the implementation of the plan; and
- How clients will have access to their securities or funds.

This is one of a series of compliance-related articles prepared for state-registered investment advisers by NASAA's Investment Adviser Resources and Publications Project Group.

POLICY MATTERS

NASAA Proposes Model Acts to Help States Address Whistleblower Protection and Victim Restitution Assistance

NASAA has proposed two model acts that, if adopted by its membership, would provide a roadmap for jurisdictions in the United States to establish whistleblower programs and restitution assistance funds.

Both proposed model acts were developed by NASAA's State Legislation Committee, which is chaired by Lynne Egan, Montana's Deputy Commissioner of Securities. It is anticipated that the model acts will be presented to the NASAA membership for consideration during the association's Annual Meeting in September.

The first proposed model act would help states provide a mechanism for individuals to come forward to report suspected wrongful securities practices to state securities regulators and potentially be rewarded for such reports.

"Information from those with knowledge of securities law violations is a valuable enforcement tool to help regulators detect financial fraud and wrongdoing," NASAA President Gerold said. "Providing a safe environment for whistleblowers to come forward can lead to the earlier detection of securities law violations, which, in turn, provides regulators with a greater opportunity to stop the misconduct and prevent further harm."

Among other provisions, the proposed model act would provide

a state's securities regulator with the authority to make monetary awards to whistleblowers based on the amount of monetary sanctions collected in any related administrative or judicial action, up to 30 percent of the amount recovered. The model act also would protect whistleblower confidentiality, prohibit retaliation by an employer against a whistleblower, and create a cause of action and provide relief for whistleblowers retaliated against by their employer.

The proposed model act draws from the Dodd-Frank Wall Street Reform and Consumer and Investor Protection Act of 2010, as well as current state laws in Indiana and Utah.

The second model act would assist states in creating a restitution assistance fund for victims of securities law violations.

Among other provisions, this model act would establish a state securities restitution assistance fund, outline eligibility requirements for victims seeking restitution assistance, set payment caps on the amount of restitution assistance awards, prohibit and forfeit awards in certain circumstances, and provide for recovery mechanisms. The model act caps restitution assistance awards at the lesser of \$25,000 or 25% of the amount of unpaid restitution awarded, or the lesser of \$50,000 or 50% of the amount of unpaid restitution awarded, if the victim is a vulnerable person, subject to waivers for good cause.

The model act draws upon state restitution legislation in Indiana, Montana, Vermont, Kansas and Maine. Indiana and Montana enacted this type of legislation nearly a decade ago and report their restitution assistance programs are successful.

NASAA Proposes Model Rule Regarding Investment Adviser Written Procedures

NASAA is finalizing a proposed model rule to require investment advisers to establish, maintain, and enforce written policies and procedures tailored to the investment adviser's business model.

Requiring state-registered investment advisers to establish, maintain, and enforce comprehensive written procedures is intended to facilitate compliance with state securities laws, rules, and regulations.

Ultimately, an enhanced culture of investment adviser regulatory compliance minimizes the effects of conflicts and other risks unique to investment advisers; minimizing the effects of these conflicts and risks serves to protect the investing public.

POLICY MATTERS

Proposed Investment Adviser Representative Continuing Education Program in Final Stages of Review

Following input from members and industry representatives, NASAA's Investment Adviser Representative Continuing Education (IAR CE) Committee is progressing in its work to create a continuing education program for investment adviser representatives.

Released for public comment in February, the proposal generated significant feedback from industry representatives and other stakeholders.

NASAA President Christopher Gerold called the proposed continuing education program "responsive and relevant" to help investment adviser representatives better serve their clients and keep their skills sharp by remaining knowledgeable of current regulatory requirements and best practices. Details of the framework for the program and the proposed model rule are included in the Notice of Request for Public Comment on NASAA's website, [here](#).

NASAA IAR CE Survey: Does Industry Think IAR CE Is Important and Needed?

- **50 percent indicated IAR CE was important or very important.**
- **75 percent indicated IAR CE was at least somewhat important.**
- **Nearly 40 percent said IAR CE was needed or critically needed.**
- **Almost 70 percent said IAR CE was at least somewhat needed in their jurisdiction.**

"Investment adviser representatives play an important role in the financial lives of millions of Americans, yet unlike most financial services professionals they are not required to meet a continuing education requirement to maintain their state licenses. We are proposing a program to close this education and investor protection gap," said Indiana Securities Commissioner Alex Glass, Chair of NASAA's Investment Adviser Section.

Working with a leading education and testing vendor, NASAA in 2017 surveyed state securities regulators about an IAR CE program. Given the strong support among state securities regulators, NASAA launched the industry-focused survey in early 2018 and met with industry and regulatory stakeholders to discuss IAR CE. This outreach also demonstrated significant support for the creation of a mandatory IAR CE program.

"This type of regulatory initiative benefits greatly from input. We look forward to receiving additional feedback through the public comment period to ensure that any final continuing education program and accompanying model rule properly addresses both investor protection and industry impact," said Linda Cena, Chair of NASAA's IAR CE Committee and Examination and Registration Manager for the Michigan Corporation, Securities and Commercial Licensing Bureau.

NASAA Signals Strong Support for Legislaton Prohibiting Mandatory Pre-Dispute Arbitration in Securities Contracts

NASAA recently signaled its continued strong support for legislation to prohibit mandatory pre-dispute arbitration in customer contracts with broker-dealers and investment advisers. In a [letter](#) to the bill's author, Sen. Jeff Merkley (D-OR), NASAA President Christopher Gerold noted that the bill, known as the "Investor Choice Act of 2019," "will significantly benefit the investing public by protecting investors' ability to pursue claims in the forum of their choice"

NASAA has long been concerned with the widespread use of mandatory pre-dispute arbitration clauses in customer contracts used by broker-dealers and, where applicable, investment advisers. "These 'take it or leave it' provisions deny retail investors important choices in resolving disputes with their investment professionals. They also serve as a shield against broader, public insight into potential misconduct by firms and investment professionals," Gerold said.

AROUND THE STATES

VERMONT LEVIES FIRST ENHANCED PENALTIES IN SENIOR CASE

Vermont Department of Financial Regulation (DFR) Commissioner Michael Pieciak ordered a \$100,000 penalty and other sanctions against two financial professionals and their firm in connection with conduct involving a vulnerable Vermonter living in a memory care facility. The settlement is the first to involve statutory authority provided to DFR in 2017 to enhance penalties for fraudulent conduct against a vulnerable adult. “These enhanced penalties are an important tool to help deter fraudulent conduct against those at the greatest risk.” Commissioner Pieciak said.

A DFR investigation determined the two financial advisers traveled from Massachusetts to meet with the client shortly after learning she had been diagnosed with dementia. During the meeting, the two financial advisers persuaded the client to substantially alter her multimillion-dollar trust including amending it to ensure the two financial professionals would continue managing her assets, (and for a substantial fee,) decades after her death. Fortunately, the next day, the client became aware of the amendment, which she did not remember signing, and she told her caregivers she had been scammed.

MASSACHUSETTS ADOPTS STATE FIDUCIARY STANDARD OF CARE

New regulations went into effect in Massachusetts on March 6 to require broker-dealers and broker-dealer agents to provide investment advice and recommendations without regard to the interests of anyone but the customer. The state will begin enforcing the amended regulations on September 1, 2020. “Enacting this rule will provide stronger protections for Massachusetts investors, by imposing a heightened duty of care and loyalty on broker-dealers and agents,” said Massachusetts Secretary of the Commonwealth William Galvin in announcing the rule.

INDIANA'S ONE-STOP BUSINESS PORTAL TOPS 500,000 USERS

As it approached its four-year anniversary, Indiana’s INBiz platform reached a new milestone. Since April 2016, more than 500,000 users have signed up to do business through Indiana’s one-stop business portal. “With more than half a million users registered on INBiz, this confirms that business owners and entrepreneurs are responding to our efforts,” said Secretary of State Connie Lawson. Through INBiz, users can easily register, start, and expand their businesses, while ensuring they are compliant with state laws and regulations.

NEVADA LATEST STATE TO ACT AGAINST PRECIOUS METALS COMPANY

In May, the Nevada Securities Division became the latest state agency to take action against Metals.com, an unregistered Beverly Hills, Calif.-based firm accused by multiple states of preying on older individuals. The states allege Metals.com persuaded elderly investors to liquidate their holdings at other firms and use the proceeds to invest in precious metals through Metals.com.

To date, nine state securities regulators have acted against Metals.com. Two states, Texas and Colorado, reached agreements in which Metals.com offered full rescission to residents in those states who purchased precious metals and opened a self-directed Individual Retirement Account for the assets.

The state enforcement activity began in 2019 when the Texas State Securities Board issued an emergency cease-and-desist order against TMTE Inc., known as Metals.com. Similar orders were issued securities regulators in Arkansas, Colorado, Georgia, Alabama, Kentucky, Missouri, and Massachusetts.

The majority of Metals.com’s clients are 65 to 90 years old, according to evidence secured by the Enforcement Division of the State Securities Board.

AROUND THE PROVINCES

Canadian Securities Regulators Publish Additional Guidance for Entities Facilitating the Trading of Crypto Assets

The Canadian Securities Administrators (CSA) in January published Staff Notice 21-327 to help entities that facilitate trading in crypto assets determine where securities legislation may or may not apply. “The evolving landscape of the industry prompts us to clarify our regulatory framework so as to better support fintech businesses seeking to offer innovative products, services and applications in Canada,” said Louis Morisset, CSA

2019/2020 Enforcement Snapshot

The Canadian Securities Administrators (CSA) recently released its fiscal year 2019/20 Enforcement Report, which outlines how securities regulators are protecting investors and the integrity of Canada’s capital markets.

Highlights from the fiscal year 2019/20 Enforcement Report include:

- ▶ 66 Investor Alerts were issued to warn the public about possible investment scams;
- ▶ 65 individuals were banned from participating;

- ▶ 95 interim cease-trade and asset-freeze orders were issued;

- ▶ Four individuals received a combined total of 18 years and 11 months years of jail time through regulators’ support of Criminal Code case investigations;

- ▶ 23 fraud cases were concluded, resulting in over \$3 million in penalties; and

- ▶ 291 whistleblower tips were received.

Chair and President and CEO of the Autorité des marchés financiers.

“As we continue to consider the comments and responses to the consultation we launched last year, the staff notice published today will help platform operators to determine whether their activities are subject to securities legislation,” he said.

For example, securities legislation may apply to platforms that facilitate the buying and selling of crypto assets that are commodities, because the user’s contractual right to the crypto asset may itself constitute a derivative, a security or both.

NATIONALLY HARMONIZED CROWDFUNDING RULES PROPOSED

The Canadian Securities Administrators (CSA) is reviewing public comment on proposed harmonized rules for start-up securities crowdfunding. Proposed National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions would replace and enhance the requirements currently in effect in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

“This proposed National Instrument would introduce a single, harmonized set of rules, and increase the thresholds for capital-raising and investing, while still providing appropriate investor protection.” said Louis Morisset, Chair of the CSA and President and CEO of the Autorité des marchés financiers.

Among other changes, the proposal would increase to C\$1 million (from C\$500,000) the maximum total amount that could be raised by a business under the crowdfunding prospectus exemption per year; and increase to \$2,500 (from \$1,500) the maximum investment a purchaser could make in an offering, with a higher limit of \$5,000 if the purchaser obtains advice from a registered dealer that the investment is suitable for the purchaser.

THE BACK PAGE

NASAA MEMBER ANNOUNCEMENTS



COLORADO . . . Tung Chan was appointed Commissioner of the Colorado Division of Securities.

DISTRICT OF COLUMBIA . . . Karima Woods was confirmed as Commissioner for the Washington, D.C. Department of Insurance, Securities and Banking.

FLORIDA . . . Russell Weigel was appointed Commissioner of the Florida Office of Financial Regulation.

IDAHO . . . Patricia Highley has been appointed Idaho Department of Finance Securities Bureau Chief.

MICHIGAN . . . Linda Clegg was named Interim Director of the Michigan Corporation, Securities and Commercial Licensing Bureau.

NEW BRUNSWICK . . . New Brunswick Financial and Consumer Services Commission (FCNB) has named **Kevin Hoyt**, previously Vice-President and Executive Director of Securities, as its Chief Executive Officer.

NEW MEXICO . . . Benjamin Schrope was named Acting Director of the New Mexico Securities Division.

ONTARIO . . . Grant Vingoe was named Acting Chair of the Ontario Securities Commission.

PENNSYLVANIA . . . Richard Vague was appointed Acting Secretary of the Pennsylvania Department of Banking and Securities.



UPCOMING EVENTS

Annual Meeting
(Members & Public)
September 1-2

Fintech & Cybersecurity Symposium
Washington, D.C.
October 27

Corporation Finance Training
(Members)
November 17-18

Franchise & Business Opportunities Training
(Members)
November 18-19

All NASAA events for the remainder of the year will be held virtually.



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