

NASAA Insight

The Voice of State & Provincial Securities Regulation

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NASAA's Streamlined Multi-State Coordinated Review Program For Regulation A Offerings Open for Business

The small business community received good news in May when NASAA announced the launch of its new coordinated multi-state review program to ease regulatory compliance costs on small businesses attempting to raise capital under Regulation A.

"Our modernized system is designed to review Regulation A filings in a timely and efficient manner in order to reduce regulatory hurdles and compliance costs for filers without sacrificing investor safeguards," said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

Interested applicants can find more information about the program on the NASAA website.

Under the program, Regulation A filings can be made in one place and distributed electronically to all states. Lead examiners will serve as the primary point of contact for a filer and each state will be given 10 business days for review. Lead examiners alone will interact with issuers to resolve any deficiencies. If there are no deficiencies in the application, no comments will be necessary and the registration will be cleared by the lead examiners within 21 business days after it is filed.

The program was initiated in response to Title IV of the JOBS Act, which raised to \$50 million from \$5 million the amount that can be raised through offerings exempt from registration under Regulation A.

Congress directed the Securities and Exchange Commission (SEC) to adopt a rule implementing this JOBS Act provision.

However, the SEC's proposed rule, contrary to Congressional intent, would broadly preempt state authority to review Regulation A offerings before they are sold to the public.

"While filers will not be able to take advantage of the increased \$50 million offering amount until SEC rules are finalized, the states are ready to put our new review system to work under existing Regulation A to help small businesses access the capital they need to help provide jobs and grow our economy," Seidt said.

For details about NASAA's concerns regarding the SEC's proposed Regulation A rule, visit NASAA's Regulation A Resource Center at www.nasaa.org.

NASAA Outlines Support for Balanced, Sensible Policy Reforms as New Capital Formation Proposals Emerge

In Congressional testimony, NASAA reminded lawmakers of the importance of balancing the needs of capital formation with investor protection when considering additional legislation to revise or repeal provisions of the Jumpstart Our Business Startups (JOBS) Act of 2012.

"State securities regulators share Congress' desire to improve the economy by spurring private investment for small businesses. However, we believe this goal is best achieved through restoring investor confidence in the markets and market participants, and it is our hope that Congress and state securities regulators can work together to pursue balanced and sensible policy reforms that reflect smarter regulation," NASAA President-elect and Washington Securities Administrator William Beatty said during testimony on May 1 before the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises.

The hearing was called to examine three draft legislative proposals focusing on areas of the JOBS Act concerning crowdfunding, Regulation A small business

offerings, and general solicitation of Regulation D private placement offerings.

"State securities regulators are broadly concerned about the overarching deregulatory nature of these proposals, the primary impact of which would be to weaken various federal securities laws and reduce state and federal oversight of small public companies," Beatty testified.

"While we wholeheartedly share the Subcommittee's stated goal of promoting capital formation, assisting small



NASAA President-elect and Washington Securities Director Bill Beatty listens to members of the House Financial Services Committee's Capital Markets Subcommittee.

President's Message: Andrea Seidt



While no system of regulation is perfect, NASAA and the states have worked very hard this past year to improve and modernize state filing processes and policies in the Regulation A context.

As part of NASAA's new Coordinated Review Program, officially launched in May, Regulation A filings now can be sent to one state for electronic distribution to all states with a 21-day review turnaround from start to finish for filings without deficiencies. The lead examiner's decision to clear the offering will be binding on all other participating states, a critical difference from earlier NASAA programs, so there will not be 50 different state results.

Moving Regulation A from a one-year proposition closer to a one-month model is an exciting concept and, in NASAA's view, is the best way to revitalize this exemption. While filers will not be able to take advantage of the increased \$50 million offering amount called for by the JOBS Act until the SEC rule is finalized, the streamlined state

review system is available to work under existing Regulation A to help small businesses access up to \$5 million to help provide jobs and grow our economy.

By sharing oversight, the states and the SEC can leverage their resources to make sure the process works for filers and investors alike.

Eliminating state review and limiting regulatory resources through preemption will benefit no one. Either the Commission's review will be cut short at the expense of investors – clearly, the experience with Reg D filings – or too protracted to timely serve the needs of filers – reverting to or even extending the year-long proposition that currently exists.

NASAA will continue to advocate for the states' role in the shared oversight of these smaller offerings in accordance with the statute.

This oversight will not be duplicative, unduly costly, or burdensome if the SEC and all other interested parties work with the states on the process.

Those with constructive suggestions on improving that process in accordance with the JOBS Act need only reach out to me or NASAA Executive Director Russ Iuculano. We look forward to the dialogue.

Executive Director's Message: Russ Iuculano



NASAA's full-scale campaign to convince the SEC to substantially revise its proposed Regulation A rulemaking to remove language preempting state authority garnered strong support from 20 members of Congress.

In a June 3 letter to SEC Chair Mary Jo White led by Rep. Steve Lynch (D-MA) and Maxine Waters (D-CA), the members

expressed "alarm" with the SEC's decision to propose rules that effectuate sweeping preemption on the ability of state securities regulators to review Regulation A Plus offerings.

"The Commission has no authority to substitute its own preference for the clear judgment of Congress regarding the preemption of state law – to do so is both unlawful and likely unconstitutional," the members wrote.

The letter concludes by urging the SEC to withdraw the proposed preemptions, "consistent with both the

interests of investors and businesses and clearly expressed intent of Congress," prior to adopting final rules to implement Title IV of the JOBS Act.

"Given the States' historic role as the primary regulators of smaller offerings, the Commission's strained resources, and express congressional intent to preserve the States' authority over Regulation A Plus securities, we believe the Commission has significantly overstepped its authority in proposing its qualified purchaser definition," the members wrote.

This strong level of support is a reflection of the direct outreach undertaken by NASAA members and staff in the days and weeks following NASAA's Public Policy Conference.

The engagement of NASAA members also served to underscore and validate the key messages in President-elect Bill Beatty's May 1 testimony to the House Capital Markets Subcommittee.

In his testimony, Bill offered a spirited defense of state securities regulation and strong support for NASAA's core mission of promoting capital formation. This fight is far from over. Stay tuned.

NASAA Issues Advisory on Virtual Currencies

NASAA in April issued an advisory cautioning investors to consider the risks associated with virtual currencies. NASAA also joined in a separate alert with the Conference of State Bank Supervisors.

"Unlike traditional currency, these alternatives typically are not backed by tangible assets, are not issued by a governmental authority and are subject to little or no regulation," said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

"The value of virtual currencies is highly volatile and the concept behind the currency is difficult to understand even for sophisticated financial experts," Seidt said. "Investors should be aware that investments that incorporate virtual currency present very real risks."

Virtual currency is an electronic medium of exchange that can be bought or sold through virtual currency exchanges and used to purchase goods or services where accepted. These currencies are stored in an electronic wallet, also known as an e-Wallet, which is a digital system that allows payments online via a computer or mobile device such as a smartphone.

Virtual currency, which includes digital and crypto-currency are gaining in both popularity and controversy. Growing numbers of merchants, businesses and other organizations currently accept Bitcoin, one example of crypto-currency, in lieu of traditional currency.

NASAA Pleased by FINRA Decision on Schwab

In April, FINRA's Board of Governors found that Charles Schwab & Co., Inc. violated FINRA rules when the firm attempted to prevent its customers from participating in class-action lawsuits.

In an amicus brief filed last year with FINRA's National Adjudicatory Council, NASAA argued that the hearing panel erred by refusing to enforce FINRA rules prohibiting the use of class action waivers in customer agreements. In doing so, NASAA argued, the hearing panel placed investors in imminent harm by precluding their ability to seek redress for small dollar claims.

"State securities regulators are pleased that today's decision by FINRA's Board of Governors recognizes the danger in Charles Schwab's attempt to unilaterally change its customer account agreements to force its clients to waive their rights to participate in class-action lawsuits," said NASAA Executive Director Russ Iuculano.

"Schwab's decision to include class action waivers in the arbitration provisions of its customer contracts is yet another example of the harmful effects of mandatory arbitration clauses and heightens the need to pass the Investor Choice Act (H.R. 2998) introduced by Rep. Keith Ellison (D-MN)," Iuculano said.

Report Spotlights Fee Disclosure and Markups

A new NASAA report uncovered a wide disparity in how broker-dealers disclose the fees they charge their customers and questionable practices regarding broker-dealer fee charges and markups.

"The report raises concerns regarding the transparency and reasonableness of broker-dealer fee practices. State regulators will be examining these issues more closely, but welcome the opportunity to work with industry to ensure that fees are reasonable and fairly disclosed to investors. Improved fee disclosure will help investors compare fees effectively and efficiently," said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

The report recommends that NASAA work with FINRA and the broker-dealer industry to develop a model fee disclosure that is simple to read, easily accessible, and can be used effectively by investors to understand and compare fees.

The report is based on a survey by the Investment Products and Services Project Group within NASAA's Broker-Dealer Section. The survey, which collected select fee data from 34 broker-dealers starting in 2012, found:

- **Diverse disclosure methods.** Disclosures explaining fees to clients ranged from a single paragraph to seven pages in length. Initial fee disclosures lack uniformity whether by method of disclosure, terminology used, or location of the disclosure.
- **Questionable markups on fees charged to investors.** For example, mark-ups on transfer fees ranged from 100 percent to 280 percent above the wholesale cost to the broker-dealer.

NASAA Honors Four with Service Awards



NASAA recognized the significant contributions of four former members and staff during an award ceremony at the Spring Conference, including the presentation of NASAA's highest honor, the Blue Sky Cube, to former Deputy Executive Director/Controller John Lynch (right). Other award recipients include, from left: Glenda Campbell, Alberta, Outstanding Service; Rick Fleming, former NASAA Deputy General Counsel, Distinguished Service; and former Vermont Securities Director John Cronin, Outstanding Service.

2014 NASAA Public Policy Conference

Digital Currency & Capital Market Structure Take Center Stage



NASAA President and Ohio Securities Commissioner Andrea Seidt used the conference luncheon to make a strong case for why the SEC should reverse its stance on preemptioⁿ of state authority in its proposed Regulation A rulemaking.



Conference Chair Lisa Hopkins of West Virginia opens the keynote luncheon by welcoming her homestate Senator, Joe Manchin, to the podium.



SEC Commissioner Kara Stein (left) meets the press following her speech, in which she expressed her disappointment that the SEC's proposed Regulation A rule "unwisely precludes the states from their critical oversight function."



Senator Joe Manchin (D-WV) outlines his concerns about digital currency during his keynote address.

NASAA Executive Director Russ Iuculano (left) and SEC Investor Advisory Committee member Jay Brown following Prof. Brown's panel presentation.



Policy Conference



Moderator and Utah Securities Director Keith Woodwell (left) with David Woo, Managing Director and Head of Global Rates & Currencies Research, Bank of America/Merrill Lynch; Joe Rotunda, Enforcement Division Director, Texas State Securities Board; Moad Fahmi, Financial Markets Specialist, Quebec Autorite des marches financiers; and Charles A. Vice, Kentucky Department of Financial Institutions Commissioner and then-chair of the Conference of State Bank Supervisors, explore the phenomenon of digital investments, focusing on Bitcoin and other new and emerging types of digital currency.



Utah's Woodwell (left) and Texas' Rotunda (right) listen as currency research expert Woo discusses the growth potential of Bitcoin and other virtual currencies.



Moderator and Minnesota Commerce Commissioner Mike Rothman (left) with Paul Jiganti, Managing Director, Market Structure and Client Advocacy, TD Ameritrade; Ken Bentsen, President and CEO, SIFMA; and Professor Jay Brown, Sturm College of Law at the University of Denver, discuss the challenges facing the securities industry in convincing Main Street investors to return to the markets.



Quebec financial markets specialist Fahmi (left) listens as Commissioner Vice outlines the priorities of the CSBS Emerging Payments Task Force.



Minnesota's Rothman and TD Ameritrade's Jigante discuss the need for increased transparency in securities markets to encourage greater equity ownership.



SIFMA CEO Ken Bentsen (left) and Prof. Jay Brown, a member of the SEC Investor Advisory Committee, discuss how to reform the structure of capital markets to help bring Main Street investors back to Wall Street.

SEC Commissioner Kara Stein Delivers Conference Keynote Address

The following is adapted from remarks delivered by SEC Commissioner Kara Stein at NASAA's Public Policy Conference on April 8, 2014.



The Securities and Exchange Commission has long relied upon and benefited from your work. We are partners, and we must continue to be. Particularly now as the Commission is engaged in implementing some of the most dramatic revisions to our securities laws in decades. Some of them are in response to the financial crisis and the subsequent Dodd-Frank Wall Street Reform and Consumer Protection Act. Others are in response to Congressional directives in the Jumpstart Our Business Startups Act (JOBS Act) to make it easier for businesses to raise capital.

As the Commission considers these changes, we must also revisit our partnership at every step. We must assess how we can leverage our scarce resources to effectively encourage businesses, while also protecting college savings and family retirement. In the months ahead, the Commission will continue its efforts to finalize rules called for by the JOBS Act. In that regard, I would be particularly interested in hearing from all of you regarding three specific areas: general solicitation, crowdfunding, and Regulation A.

Congress directed the Commission to remove the ban on general solicitation in Rule 506 offerings. For the first time, a so-called private offering can be advertised publicly — on a billboard or in a television commercial during the Superbowl. This is a sea change. We must wade carefully and thoughtfully into these waters, with investor protection serving as a beacon, so we ensure that the law facilitates capital formation, and not fraud.

We also must learn from our past mistakes. In 1992, the Commission tried a similar experiment when we changed another Reg D provision, Rule 504. The Commission lifted the ban on general solicitation hoping to help smaller issuers acquire "seed capital." Instead, fraudsters cheated a lot of investors out of their hard earned savings. After several years of

abuses, the Commission reversed course and ended the use of unrestricted general solicitation. What did we learn? Among other things, we learned that when we permit unrestricted general solicitation, fraud increases. It's been said that those who do not learn from history are doomed to repeat it. We must not allow that to happen.

How do we do it? I think we can best do it by establishing some simple and basic requirements and providing vigorous enforcement. Basic filing obligations that are simple to fill out, and easy for issuers to complete, can help weed out the honest from the dishonest. Form D filings should be of little moment to the legitimate issuer, while giving serious pause to those intending fraud. While firms are required to file Forms D now, that obligation is rarely enforced. If an issuer, attempting to raise millions of dollars, cannot even meet the most basic of requirements to complete and submit its Form D filings, should that issuer be allowed to rely on the Rule 506 exemption for that offering? Honest mistakes by issuers can be quickly and easily cured, or even, when appropriate, waived by the Commission. . . .

The Commission has another great opportunity in its rulemaking for crowdfunding. Crowdfunding holds the promise of harnessing the power of the internet to provide capital for start-ups and small businesses that otherwise lack access to such capital. But with that opportunity also comes risk. . . .

Reasonable investor caps, based on an investor's ability to bear the risk, are also critical. We must carefully consider how to calculate these caps and how to ensure that they are enforced. We also must carefully consider the role of crowdfunding portals and our ability to properly oversee them. They can provide a critically important gatekeeping function. Finally, we must ensure that these small issuers have the information and tools they need to cost effectively meet their recordkeeping and disclosure obligations. If we are mindful of the needs, costs and burdens amongst these three groups -- investors, portals and issuers -- and balance them carefully, we will have a better chance of making this new capital raising vehicle a success.

We also are poised to improve capital raising under Regulation A, with our new proposal known as "Reg A+." I have made no secret of my views that we need to work with you, our state partners here, and can benefit greatly from your unique expertise and ability. I want to take a moment to commend and congratulate NASAA and the states for voting to implement your new Coordinated Review Program. It's my understanding that it is essentially ready to go. Well done.

I remain concerned that the proposed Reg A+ does not provide workable options for smaller issuers, and that it unwisely precludes the states from their critical oversight function. I look forward to a continued dialogue with NASAA and others to find a better way to continue our partnership in the new Reg A+ framework. We have an opportunity here to provide a nuanced and thoughtful capital raising model that works, both for businesses and those seeking to fund them. Let's not squander the opportunity.

NASAA’s Beatty Testifies in Support of ‘Smarter Regulation’

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businesses, and spurring economic growth, we believe that many aspects of the drafts before the Subcommittee today would shift policies in the wrong direction,” Beatty said. “Over-regulation did not cause our financial markets to collapse. A weakened regulatory system has not contributed to our capital market system being viewed as the ‘gold’ standard. Investor confidence in our system is what fuels economic growth and job creation.”

Beatty focused much of his testimony on crowdfunding and the significant progress states have made to promote greater use of Regulation A offerings for small businesses – both provisions of the JOBS Act awaiting final rulemaking by the Securities and Exchange Commission.

He noted that many crowdfunding advocates that have grown frustrated with the pace of federal rulemaking and, in some cases, dissatisfied with the federal exemption itself, are seeking state-level crowdfunding exemptions.

“The enactment of the JOBS Act unfortunately precluded the states from playing a leading role in crowdfunding,” Beatty said, noting that as a result, work on a NASAA model rule that would have enabled states to play the leading role in establishing a new marketplace for raising capital through crowdfunding was deferred.

“State securities regulators share Congress’ desire to improve the economy by spurring private investment for small businesses . . . It is our hope that Congress and state securities regulators can work together to pursue balanced and sensible policy reforms that reflect smarter regulation.”

— Bill Beatty

Nevertheless, to date, 12 states have passed crowdfunding laws under the intrastate offering exemption of the Securities Act of 1993, and more than a dozen other states are actively considering adopting exemptions to facilitate crowdfunding.

“Such actions demonstrate decisively that, had Congress allowed the states to proceed with our efforts, there could be an emerging, vibrant, and functioning crowdfunding market operating today,” Beatty said.

Beatty testified that NASAA has strong concerns about the “Equity Crowdfunding Improvement Act of 2014,” proposed by Rep. Patrick McHenry (R-NC), to repeal the existing crowdfunding framework under Title III of the JOBS Act and replace it with a new



NASAA President-elect and Washington Securities Director Bill Beatty testifying before the House Financial Services Committee’s Capital Markets Subcommittee.

version. Despite these concerns, Beatty said NASAA also recognizes that there may be provisions in Title III that may limit its utility for certain issuers.

“Until the final rules are implemented and issuers are able to participate in crowdfunding, however, it is impossible to evaluate the impact Title III will have on capital formation, job creation and investors’ willingness to invest through crowdfunding,” Beatty said. “We caution that a number of the changes proposed by the draft bill would decrease protections that Congress included to minimize severe investor risk, and that are vital to encouraging their participation and confidence in crowdfunding.”

Beatty said another draft under consideration by the subcommittee, “The Startup Capital Modernization Act of 2014,” would substantially weaken investor protection by preempting states from playing a role in Regulation A securities offerings. During its consideration of the JOBS Act, Congress concurred that states should serve a role in this promising area for helping small and local businesses obtain investment capital to grow and create jobs.

Over the past 18 months, in anticipation of the SEC’s implementation of Title IV of the JOBS Act, states, working through NASAA, have successfully taken unprecedented steps to modernize and streamline the state process for reviewing Regulation A offerings. “The states are ready-to-go, provided that Congress and the SEC don’t short-circuit our efforts by preempting our role,” Beatty said.

NASAA: Because Every Investor Deserves Protection

About Us

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.



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