



NASAA

NASAA Insight

The Voice of State & Provincial Securities Regulation

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NASAA Members Lead Effort to Provide Relief For Auction-Rate Securities Investors

As winter set in earlier this year, investors began receiving chilling news from their brokers: their funds were frozen.

Soon, state securities regulators began receiving hundreds of complaints from Main Street investors alleging that several Wall Street firms had misled them by falsely assuring that investments in auction rate securities were as safe and liquid as cash.

The widespread marketing of auction rate securities as cash equivalents, followed by the collapse of the ARS auction market in February, left thousands of investors without access to their money. Individuals, small businesses, and institutional investors have all suffered financial hardship, ranging from the inability to close on home purchases to shortfalls in payroll.

As investor complaints to states increased, the North American Securities Administrators Association (NASAA) announced in April the formation of a multi-state Task Force, comprised of securities regulators in 12 states, to investigate whether the nation's

Prominent Wall Street firms had systematically misled investors when placing them in auction rate securities. To date, the state-led investigations have resulted in settlements with 11 major Wall Street firms, which have agreed to return more than \$50 billion to ARS investors.

"Given the current economic situation and turmoil on Wall Street, these settlements represent a step toward providing a measure of relief for thousands of Main Street investors," said NASAA President Fred Joseph.

The investigations also attracted attention on Capitol Hill, where the House Financial Services Committee held a hearing on September 18 to examine the problem and potential solutions to the ARS situation. Committee Chairman Barney Frank (D-MA) opened

the hearing with strong support of the role of state securities regulators, stating that "[I]t has been the state securities officials . . . that have taken the lead."

[Special Report Inside >>](#)

"Anyone who wants some evidence that it would be a mistake to wipe out the state role or even substantially diminish it, can look at the history of this issue. It has been the state securities officials . . . that have taken the lead."

Rep. Barney Frank
Chairman
House Financial Services Committee

Colorado Securities Commissioner Fred Joseph New NASAA Chief

Colorado Securities Commissioner Fred Joseph has been elected to a one-year term as President of the North American Securities Administrators Association (NASAA). He succeeds North Dakota Securities Commissioner Karen Tyler. Texas Securities Commissioner Denise Voigt Crawford will serve as NASAA's President-elect.

In an address at NASAA's 91st annual conference, Joseph said he will continue NASAA's longstanding advocacy of the important investor protection role served by state and provincial securities regulators. "In the year ahead, I will pick up where

my predecessors left off – by continuing to serve as a strong advocate for investors and for the state and provincial securities regulators who protect them," he said.

Joseph also stressed that NASAA members and members of the financial services industry share a significant function in the lives of investors. "All of us – regulators and industry alike – are on a mission to serve the best interests of investors," Joseph said.

Joseph has served as NASAA's president-elect. Previously, he served as a member of NASAA's Board of Directors and as



New NASAA President Fred Joseph outlines his agenda at the 91st NASAA Annual Conference

NASAA's Treasurer. Joseph has been with the Colorado Division of Securities since 1992. He has been a regulator in the financial services arena for 25 years. Prior to that, he worked in the banking industry.

NASAA Insight is a publication of the North American Securities Administrators Association, Inc. For more information, visit: www.nasaa.org

President's Message: Fred Joseph

We're on a Mission



All of us – regulators and industry alike – are on a mission to serve the best interests of investors. We are on a mission to help investors throughout North America maintain their confidence in our securities markets. We are on a mission to educate and inform investors so that they can make appropriate financial decisions. And we are on a mission to protect investors from those who seek to cheat them of their hard-earned savings.

NASAA members are on this mission because we believe that every investor deserves protection. For example, this includes a cease and desist order issued by Hawaiian securities regulators to stop an unregistered oil and gas scheme. It includes civil penalties and prison sentences for those individuals who defrauded 8,000 South Carolina investors out of \$275 million in an investment scheme. And it includes an investigation by securities regulators in British Columbia and Manitoba of a company claiming to offer an 87% return on investment.

In each of these examples and many more, NASAA member jurisdictions have stepped in to help and to protect investors. Day in and day out, the professionals working in state, provincial and territorial securities agencies throughout North America carry out their mandate of investor protection with dedication and commitment.

Whether through your expertise in registration or examinations, investigations or education, all contribute to the mission.

I view the mission of the securities industry as helping investors reach their long-term financial goals, whether that is a down-payment for a first home, a college education, care for an elderly family member, or a financially secure retirement. The industry can help fulfill this mission by taking every opportunity to strengthen its compliance and supervision efforts, not only at the major Wall Street firms, but also at small firms and remote branch offices where many Main Street investors do business.

It is not my intent to shift the direction of NASAA in the upcoming year. In fact, it is my intent to build on the

accomplishments achieved over the past years under the leadership of my predecessors, Karen Tyler, Joe Borg, Patty Struck and Frank Widmann to make sure that the importance of our mission is understood by those who seek to change the financial services regulatory structure.

I am grateful that I will not shoulder this effort alone. It gives me great pleasure to introduce NASAA's leadership for the coming year. NASAA's new Board of Directors includes:

- President-elect Denise Voigt Crawford, of Texas;
- Past President, Karen Tyler, of North Dakota;
- Chris Biggs, of Kansas;
- Joe Borg, of Alabama;
- Glenda Campbell, of Alberta;
- Melanie Lubin, of Maryland;
- David Massey, of North Carolina; and
- Michael Stevenson, of Washington.

I look forward to working together with all of you to strengthen our association and fulfill our mission.

Reporting to the Board will be the chairs of each of NASAA's five sections, each of which is dedicated to strengthening the effectiveness and efficiency of state and provincial securities regulation.

NASAA's Broker-Dealer Section will continue to be under the leadership of Arizona Securities Director Matt Neubert. Jack Herstein, my colleague from Nebraska, will head the Corporation Finance section. Delaware's Jim Ropp will continue to lead NASAA's Enforcement Section. NASAA's Investment Adviser Section again will benefit from the leadership of Wisconsin's Patty Struck. And my colleague from New Mexico, Bruce Kohl, will lead NASAA's effort to educate all investors as chair of the Investor Education Section.

While the work of our Sections and their project groups is at the core of NASAA's structure, I'd be remiss if I did not mention that none of their efforts would be realized without the support of NASAA's Corporate Office staff in Washington.

I look forward to the year ahead with enthusiasm for helping our association fulfill its mission of investor protection. I am honored by the confidence the membership has shown in me to represent and protect the interests of more than 100 million Main Street investors.

Executive Director's Message: Russ Iuculano



The magnitude of the upheaval in the financial markets and the passage of a \$700 billion emergency rescue plan have combined to place reform of the financial regulatory system at the top of the agenda for the new President and Congress. Both presidential candidates have called for a regulatory overhaul. The

inevitability of change was further affirmed when Federal Reserve Chairman Bernanke stated that a "comprehensive review of our regulatory structures is an essential task in the coming year." Congressional hearings on this topic already are underway.

Change is likely to result in more regulation and supervision and the industry is expected to argue that any regulatory overhaul must include key components of the Treasury Department's "blueprint," which consolidates and centralizes federal regulation.

As Congress conducts its review and develops a stronger system of regulation and oversight, NASAA and its members must be proactive and heighten the awareness of elected representatives and other policy makers about the states' essential role in regulating the securities markets to assure that it not only preserved, but enhanced.

NASAA members have provided national leadership on a range of investor protection issues, such as auction rate securities, misleading senior designations, and mandatory arbitration. This record of success must not be swept aside.

State Securities Regulators Offer Assistance to Puzzled Investors



Members of the North American Securities Administrators Association have taken an active role in reaching out to investors within their jurisdictions with a word of caution in tough economic times as the unprecedented turmoil on Wall Street arrived on doorsteps on Main Street in September.

“We know from past experience that con artists follow the headlines to prey on the worries and fears of everyday investors,” said NASAA President and Colorado Securities Commissioner Fred Joseph. “With the current economic situation, state securities regulators are concerned that scammers are gearing up to promote various investment schemes with promises of big returns. If history is any guide, these investments will be worth less than the paper on which they are printed.”

Joseph and several other NASAA members urged investors to make informed decisions about their long-term financial holdings and to seek the advice of a trusted investment adviser or financial planner before making any sudden moves with their money.

“Investors should be wary of unsolicited financial advice or investment opportunities,” he said. “In times of confusion, fear and uncertainty, there are always those who will try to prey on the investing public. Investors should resist the temptation to make hasty decisions about their investments or finances.”

NASAA members provided the following tips for investors:

- >> Contact your state or provincial securities regulator with any questions about an investment firm, professional or product.
- >> Make sure that both the seller and investment are licensed and registered. If they are not, they may be operating illegally.
- >> Use common sense. Some things really are too good to be true. Get a professional, trusted third-party opinion when presented with investment opportunities that seem to offer unusually high returns in comparison to other investment options.
- >> Request written information that fully explains the investment, such as a prospectus or offering circular. The documentation should contain enough clear and accurate information to allow you or your financial adviser to evaluate and verify the particulars of the investment.
- >> If you participate in an employer-sponsored retirement plan, such as a 401(k) plan, get unbiased advice and guidance before making any significant changes to your long-term savings and investment strategy.

NASAA also developed a series of resources to help investors with questions about their long-term investments. Joseph also reminded investors that the Securities Investor Protection Corporation (SIPC) maintains a special reserve fund authorized by Congress to help investors at failed brokerage firms.

A Message to Investors:

The economic problems our nation faces amid the turbulence on Wall Street has left Main Street investors concerned about the safety of their brokerage and retirement account assets. Because there are those who will try to prey on the investing public in times of confusion, fear and uncertainty, investors should resist the temptation to make uninformed and hasty decisions about their investments.

NASAA President Fred Joseph

NASAA Outlines Elements to Safeguard Main Street Investors in Economic Stabilization Legislation

In the days leading to Congressional approval of the unprecedented \$700 economic stabilization legislation, NASAA President Fred Joseph wrote to the chairmen and ranking members of the U.S. Senate Banking Committee and the U.S. House Committee on Financial Services to stress that the plan must safeguard the interests of Main Street investors and taxpayers.

NASAA outlined three key elements required for the plan to be effective, fair and credible. Each of these elements was subsequently adopted.

First, the plan should ensure that the government’s authority to purchase, manage, and sell distressed assets, using taxpayer money, is subject to close scrutiny and accountability.

Second, the plan should mitigate the cost of the rescue by giving the government, and thus all taxpayers, an ownership interest in any company that avails itself of this extraordinary opportunity to off-load distressed assets.

Finally, the plan should impose appropriate limits on the compensation of executives at companies participating in the plan.

Joseph noted that once some measure of calm is restored to financial markets, the nation’s system of financial regulation must be reassessed and strengthened. “NASAA looks forward to working with the Congress and the Administration as we consider reforms to the financial services regulatory structure,” Joseph wrote. “Any changes must preserve the vital role that state securities regulators play in protecting Main Street investors—a role that has served the public well for nearly 100 years.”

SPECIAL REPORT: Auction Rate Securities

What began with a number of investor complaints to state securities regulators about a complex and little understood financial instrument during Winter, sprouted into a series of investigations by Spring and bloomed into settlements promising to return billions of dollars to beleaguered investors in the Summer and Fall.

The auction rate securities investigations and settlements are examples of well-coordinated, collaborative efforts among state and federal regulators. They come only a few years after many of the same Wall Street firms were involved in the analysts' conflict

"Our goal is to ensure that that investors harmed by auction rate securities are provided relief."

*Karen Tyler
North Dakota Securities
Commissioner*

of interest global settlement with the states, SEC, NYSE and the NASD (now FINRA).

These examples of widespread misconduct in the financial services industry prove that now is the time to strengthen, not weaken our unique complementary regulatory system of state, federal and industry

regulation. More than 100 million investors – many of them wary and cynical – expect regulators to remain vigilant – and to make sure that Wall Street puts investors first.

The Investigations

State securities regulators began responding to auction rate securities (ARS) related complaints soon after the auction rate securities market froze in February 2008.

State offices received complaints from a wide range of outraged investors – young families saving for a first home, small business owners, retirees, and people with parents in nursing homes – whose financial lives have literally been put on hold because the money they were told was "cash-like" was tied up in the frozen market and inaccessible to them. NASAA members have logged hundreds of complaints from individuals holding frozen auction rate securities valued at over \$600 million.

Given the growing number and the serious nature of the complaints received around the country, state securities regulators initiated a collaborative approach to investigate the marketing and sale of auction rate securities by various broker-dealers.

On April 13, 2008, NASAA announced the formation of its Auction Rate Task Force, chaired by Bryan Lantagne, Director of the Massachusetts Securities Division. The original Task Force members included state securities regulators from Florida, Georgia, Illinois, Massachusetts, Missouri, New Hampshire, New Jersey, Texas, Virginia and Washington.

These states led the national effort and continue to serve, with California and Pennsylvania, as leads in the investigative process. Many other states are functioning in supporting capacities.

From its inception, the goal of the task force members has been to restore liquidity to ARS investors and, as of today, the firms have agreed to buy back an estimated more than \$50 billion of the securities from investors. When all is said and done, this will be the single largest repayment to investors in the history of the capital markets.

The investigations covered the breadth of the problem from underwriting, to the auction process, to marketing, sales practices and the conflicts of interest that arose between the firms and their customers.

Enforcement Actions

On June 26, 2008, the Massachusetts Securities Division of the Secretary of the Commonwealth filed the first ARS related enforcement action, which was against UBS Financial Services (UBS). The case highlights the profound, undisclosed conflict of interest that arose between UBS and its customers: The firm was promoting ARS securities to its clients at the same time that it was desperate to reduce its own inventory, based on concerns about potential problems in the ARS auction market. The complaint also describes the pattern of deceptive sales practices that UBS agents used to sell ARS securities to unsuspecting clients.

The Massachusetts Securities Division followed the UBS complaint with one against Merrill Lynch, Pierce, Fenner & Smith on July 31, 2008, addressing the manner in which Merrill Lynch conducted its ARS business, as well as how it interacted with its research department. It charges the firm with separate counts of fraud and dishonest and unethical conduct for creating and implementing a sales and marketing scheme that significantly misstated not only the nature of auction rate securities, but also the overall stability of the auction market, resulting in thousands of investors being abandoned with illiquid investments.

"The resolution that the states were able to obtain for investors, in conjunction with our federal counterparts, underscores the important role of state securities regulators, who are often the day-to-day first responders to customer complaints and who can work with agility and aggressiveness to resolve large issues such as this one."

*William Galvin
Massachusetts Secretary of the
Commonwealth*

The Settlements

Through early October, 11 Wall Street firms had reached settlements in principle to restore an estimated \$50 billion of liquidity to nearly 190,000 investors across the nation.

Members of the NASAA Task Force, working in conjunction with the New York Attorney General and the Securities and Exchange Commission (SEC), negotiated settlements in principle with Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, JP Morgan, Merrill Lynch, Morgan Stanley, UBS, and Wachovia. Settlement negotiations are ongoing with several additional firms.

The terms of the settlements are not identical because there were different and varying degrees of alleged wrongdoing uncovered at each firm.

In addition to restoring liquidity to investors, the common elements of the settlements include, among other provisions: establishing of a special arbitration procedure; refunding certain refinancing fees to municipal auction rate issuers; and assessing fines and penalties payable to the states reflecting the firms' dishonest and unethical marketing and sale of ARS securities to investors.

STATES CONTINUE EFFORTS TO PROTECT SENIORS FROM INVESTMENT FRAUD

NASAA Model Rule: Growing Number of States Adopt Provisions Based on NASAA Model on Senior Certifications and Designations

California Governor Arnold Schwarzenegger recently became the second governor to sign into law important senior investor protection legislation based on NASAA's Model Rule on the Use of Senior Certifications and Professional Designations, following similar legislation signed by New Hampshire Governor John Lynch. In addition, Alabama, Colorado, Texas, Virginia, Washington, and Wisconsin have adopted new rules based on the NASAA model and eight other states are poised to take action in the months ahead.

Approved by the NASAA membership on April 1, 2008, the model rule prohibits the misleading use of senior and retiree designations, a problem first recognized and addressed by state securities regulators.

NASAA President Fred Joseph said the use of a senior designation by salespersons, whether registered or not, confers an impression that the salesperson has special qualifications or specialized education in addressing the needs of senior citizens or retirees, particular areas of finance, financial planning, estate planning, or investing.

"We believe the NASAA model rule represents a responsible and aggressive regulatory solution to strengthening protections for our most heavily targeted and vulnerable investor constituents – seniors," Joseph said, noting that Massachusetts led the way for NASAA with its pioneering work in this area and was the first state to adopt rulemaking affecting the use of senior specialist designations.

NASAA's model rule also is the cornerstone of federal legislation introduced in April by Sen. Herb Kohl (D-WI), chair of the U.S. Senate Special Committee on Aging. The "Senior Investor Protection Act of 2008,"

cosponsored by Sens. Barbara Boxer (D-CA), Blanche Lincoln (D-AR), and Claire McCaskill (D-MO), would provide grants to states to enhance the protection of seniors from being misled by false designations.

"This important legislation recognizes the impact and importance of the NASAA model rule on senior specialist designations and makes grant funding available to states that have adopted the rule. We are grateful to Senator Kohl for his efforts and strongly support his proposed legislation," Joseph said.

"We believe the NASAA model rule represents a responsible and aggressive regulatory solution to strengthening protections for our most heavily targeted and vulnerable investor constituents — seniors."

Fred Joseph
NASAA President

AARP, NASAA Launch Program to Monitor Free Lunch Seminars

A new national campaign from AARP and NASAA is giving individuals an opportunity to fight back against unscrupulous promoters by reporting possibilities of investment fraud in their communities to state securities authorities for investigation.

Under the Free Lunch Monitor program, individuals attending a free lunch seminar can bring a checklist to help assure that both the products promoted at free investment seminars, as well as the promoters, conform to securities laws and regulations. Information from the checklists will be forwarded to individual state securities regulators for evaluation.

"By empowering individuals with knowledge and information, we aim to create an educated and financially savvy investor who can spot a scam when they are being targeted," said Jean Setzfand, Director of Financial Security Outreach at AARP.

"We appreciate the opportunity to work closely with AARP to put unscrupulous salespeople on notice that the victimization of senior investors will not be tolerated," said NASAA President Fred Joseph.

For more information and to download the monitor checklist, please visit www.aarp.org/nofreelunch.

New Report from NASAA, SEC, & FINRA Helps Firms Serve Seniors

A new report from NASAA, the Securities and Exchange Commission and the Financial Industry Regulatory Authority outlines practices that financial services firms can use to strengthen their policies and procedures for serving older investors as they approach and enter retirement.

The regulators' joint report – *Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Investors* – provides practical examples of proactive steps being taken by financial services firms in serving senior investors.

"The practices outlined in this report, combined with strong regulation, effective industry compliance and supervision, and increased investor awareness, help ensure that the financial needs of our growing senior population are being met by brokers, investment advisers and others in the financial services industry," said NASAA President Fred Joseph. "We appreciate the efforts of those in the industry who shared their successful programs with us and we look forward to continue working with the SEC, FINRA, and the financial services industry in the fight against senior investment fraud."

The report is available on the NASAA website.

NASAA Hosts Forum on Securities Arbitration

NASAA recently brought together leading arbitration experts for a public forum to discuss the current securities arbitration system and to offer constructive steps to ensure that the system is fair, balanced and provides choice to investors seeking to settle broker-related disputes.

Moderated by Massachusetts Securities Division Director Bryan Lantagne, the forum included panelists: Barbara Roper, Director of Investor Protection for the Consumer Federation of America; Theodore G. Eppenstein, Senior Partner, Eppenstein & Eppenstein; Tanya Solov, Director, Illinois Securities Department; Jill Gross, Professor of Law, Pace University School of Law; and F. Paul Bland, Jr., Staff Attorney, Public Justice. This article was adapted from a portion of that discussion.

Lantagne: This has been a very interesting year in the area of arbitration. There is movement underway to address one of the principal problems in today's arbitration system -- voluntariness. The Arbitration Fairness Act (S. 1782 and H.R. 3010) is pending in both houses of Congress. These bills would ban pre-dispute arbitration clauses in consumer contracts and in securities contracts. In addition, the Securities Industry Conference on Arbitration (SICA), recently released a report on the participants' perception of fairness in the SRO arbitration forum. This is the first time this issue has been addressed since the GAO studies in 1992 and in June of 2000. The SICA study determined that a majority of investors found that the process they were forced to participate in was unfair and biased. Investor protection mandates that the current arbitration forum be fixed to make it fair and transparent to all.

"We suggest that the industry remove the requirement of an industry arbitrator from the customer disputes and just have three arbitrators, all of whom are chosen from a common pool. We urged the forum to explore ways to increase the transparency of arbitration awards and we certainly asked the regulators in the forum to educate investors to correct the lack of knowledge that was so striking."

*Prof. Jill Gross
Pace University School of Law*

you need to make an informed decision. How do you feel about being in that system? I think they ought to be looking at other methods to provide that expertise to the panel, rather than just creating a system that, by its very nature, builds in one panel. And plus, I've been in these groups where the industry person has the expertise. That is an extraordinarily powerful position.

What is your position on making the industry arbitrator a voluntary position, so that the parties agree unanimously to have an industry arbitrator if they want?

Roper: I would say that if we need to build in an inherent bias to the panel in order to get the knowledge to decide the case, that tells us something is fundamentally wrong with the system of arbitration. It may well be that we have arbitrators who don't have the expertise to decide these cases, that two of the three members of the panel don't have the knowledge that

Lantagne: Ted, do you see that as a benefit for the consumer today to have a choice between court and arbitration?

Eppenstein: Let's go back to the future. Let's go to the system that we had before, which was working fine, where the investor could choose if he or she wanted to bring a case in arbitration or bring a case to court. There has to be a reason, over all these years, why the vast majority of the plaintiffs' attorneys in this area would prefer to have the court choice. And almost uniformly, all of the broker dealers, and everyone in the investment industry is very content and happy to have the investor go to the industry to arbitrate their cases.

And why is that? Well, just take a look at the statistics. In 1992 when the GAO issued their report, 60 percent of the investors won and they won about 60 percent of the time. However, we've been on a slippery slope downward from 2002 to today. In 2002, we were over 50 percent win rate; today, we're down to less than 37 percent. And if you look at the recovery rates, we were at 60 percent in 1992 and today the expected recovery rate is \$0.22 on \$1.00 and it's about \$0.12 on \$1.00 if you go up against one of the major broker dealers.

Lantagne: Tanya, you've been fighting the good fight for NASAA in this area for a number of years. Do you want to weigh in on the issue of a voluntary forum between the court and arbitration?

Solov: Our position is that arbitration, in fact, should be voluntary.

Lantagne: Does making it voluntary, however, remove the possibility of bias, the appearance of bias?

Solov: I think there are many different situations. Certainly, if you have an arbitration between two brokerage firms, maybe they want a panel of all three industry arbitrators. That's really not our concern. But when you have investors involved, I think some investors may believe that with the type of claim that they have, maybe they want an industry person on there. I think if both sides agree, and that's truly an agreement on both sides, then they can do it.

Eppenstein: I have a little different take. First of all, of course, I agree we should ban mandatory arbitration in this area, as in the other consumer areas. But when I testified before Congress in October of last year, I also recommended that we establish an independent arbitration forum outside of the industry with SEC oversight.

Bland: The overwhelming consensus of plaintiff lawyers have said having the three-arbitrator panel is much less likely to give you a significant judgment or award, that it has a depressing effect by itself. But having one arbitrator who's

NASAA FORUM ON SECURITIES ARBITRATION

coming in with an initial figure of 10 where the next one is at 1,000 and the next one is at a million, the 10 certainly has a depressing effect on the overall figure. Having somebody come in who is for a defense verdict at the outset really significantly depresses the overall value of the case is the widespread perception.

Eppenstein: We're losing something else by having to have our cases heard behind closed doors, and that is the public isn't learning about the evils that go on in Wall Street. I mean, these go on every single day. There are thousands of cases that come into arbitration. There may be a little award that comes out or no award that comes out. Once in a while, the press will pick up on something like a case where someone lost everything out of their retirement fund and how bad it is.

Lantagne: Professor Gross, you and your colleague, Professor Barbara Black from the University of Cincinnati, College of Law, recently designed a survey for the Securities Industry Conference on Arbitration to investigate the participants' perception of fairness in the SRO arbitration. Please give us a summary of your recommendations.

Gross: Professor Black and I suggest that the industry remove the requirement of an industry arbitrator from the customer disputes and just have three arbitrators, all of whom are chosen from a common pool. We urged the forum to explore ways to increase the transparency of arbitration awards and we certainly asked the regulators in the forum to educate investors to correct the lack of knowledge that was so striking.

Lantagne: If you had a crystal ball and you could look in the future, what do you think the chances of the Fairness Arbitration Act is of passing this year?

Bland: This year, none. But next year, it'll be very interesting. I wouldn't be surprised if it comes in with one of the top numbers, like if it's S-1 through 10 or HR-1 through 10. I wouldn't be surprised to see the leadership in both Houses behind it.

Roper: I think it is an uphill path, but not impossible and it may take a little while, but it's certainly a fight that's worth fighting.

NASAA 91st Annual Conference at a Glance



Texas Securities Commissioner Denise Voigt Crawford questions Obama Presidential Campaign adviser Roel Campos (center) and McCain Presidential Campaign adviser Peter Wallison to learn what a new administration would mean for financial services regulation.

Noted political commentator Norman Ornstein (right) offered an entertaining and insightful outlook for the upcoming presidential and congressional elections.



Florida Commissioner Don Saxon (center) is joined by Karen Tyler and Fred Joseph upon receiving NASAA's top honor, the Blue Sky Cube.



California Corporations Commissioner Preston DuFauchard (right) listens as former SEC Accountant Lynn Turner (left) discusses the credit crisis and the lessons learned from a failure to adequately recognize risk in today's financial markets.

LEGAL CORNER:

Court Decision a Major Victory for Investors

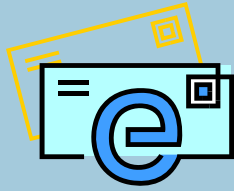
A federal appellate court handed investors a major victory in a decision involving a stockbroker's attempt to remove customer complaint information from his state-owned disciplinary record.

In its July 15 decision in *Karsner v. Lothian*, the U.S. Court of Appeals for the District of Columbia, in an appeal brought by Maryland Attorney General Douglas Gansler, reversed the lower court and held that the State of Maryland had a right to intervene in a stockbroker's attempt to have a customer's complaint against him purged from his record.

In that case, an arbitration panel had recommended – pursuant to a settlement agreement – that the investor's complaint and the ensuing arbitration be expunged, or removed, from the disciplinary record of the broker, who was licensed in Maryland. The appellate court held that the state had a right to intervene in the court confirmation proceeding and to resist the broker's attempt to purge his record.

The ultimate issue is when, and under what circumstances, customer complaint information may be expunged from the Central Registration Depository (CRD), a centralized system used by states and other regulators to process applications for securities industry licenses. NASAA maintains and administers the CRD database pursuant to an agreement with FINRA, the securities industry's self-regulatory organization.

"State securities regulators are pleased that the Court of Appeals has upheld that the State of Maryland has the opportunity to protect the integrity of its public records," said then-NASAA President Karen Tyler.



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Stay on top of the latest NASAA developments by subscribing to the NASAA E-mail update service. This free resource is available on the homepage of NASAA's website at www.nasaa.org.

**Save the Date:
NASAA Public
Policy Conference
April 27-29, 2009
Washington, DC**

Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud.

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NASAA Endorses SEC Equity-Indexed Annuities Proposal

NASAA has endorsed a proposed rule by the U.S. Securities and Exchange Commission that would subject equity-indexed annuities (EIAs) to regulation under the federal securities laws and would help protect millions of investors across the country, many of them senior citizens, from the fraud and abuse that is taking place in the sale of EIAs.

"NASAA strongly supports the SEC's proposed rule. Equity-indexed annuities are extremely complex investment products that have often been used as instruments of fraud and abuse. Although these products are securities, they remain largely unregulated under federal securities law," said then NASAA President Karen Tyler.

"For years, they have taken an especially heavy toll on our nation's most vulnerable investors, our senior citizens," Tyler said. "We commend the SEC and Chairman Cox in particular for taking this important step, and we urge the SEC to adopt the proposed rule expeditiously so that the investing public can benefit from the protections it will afford."

In a comment letter filed with the SEC, Tyler wrote: "The proposed rule will enable the SEC to address these abuses with the regulatory tools available under the federal securities laws, ranging from mandatory registration and

disclosure requirements to strong suitability standards and antifraud remedies."

NASAA said regulating EIAs as securities is "clearly appropriate" from the standpoint of legal and economic analysis. "Contrary to insurance industry claims, EIAs impose significant risks upon investors, including fluctuations in the applicable equity index and potential loss of principal. In addition, issuers and agents routinely market EIAs as investments, not insurance products," Tyler wrote.

Further, Tyler wrote, attempts to disparage the rule as part of a regulatory "turf" battle are also wrong. "Critics who level that charge ignore the fact that the rule will not interfere with the continued regulation of EIAs by state insurance commissioners," Tyler wrote. "The rule expressly provides that it will only apply to EIAs that are 'subject to regulation under the insurance laws.' Nor will the rule impose unreasonable burdens on industry. It will simply require compliance with the same regulatory standards that have applied to issuers for the past 75 years. In short, the rule will provide much needed protections for investors without unfairly burdening industry."