

# NASAA Insight

*The Voice of State & Provincial Securities Regulation*



**NASAA**

## Regulatory Reform Bill Signed into Law

On Wednesday, July 21, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, which recognizes and enhances the strong investor protection role of state securities regulators.

"President Obama has ushered in a new era of investor protection and financial market oversight. State securities regulators are eager to help fulfill this important mission on behalf of Main Street investors," NASAA President and Texas Securities Commissioner Denise Voigt Crawford said following the bill signing ceremony, which she attended.

The Dodd-Frank bill addresses a number of NASAA's key issues by increasing state regulatory oversight of investment advisers; updating the accredited investor definition; incorporating a "bad boy" disqualifier to prevent securities law violators from conducting securities offerings



*NASAA President and Texas Securities Commissioner Denise Voigt Crawford greets House Financial Services Committee Chairman and primary author of the financial reform bill Barney Frank (D-MA) at the presidential signing ceremony in Washington, D.C. on July 21.*

under SEC Regulation D, Rule 506; and including state securities, banking and insurance regulators as nonvoting members of the Financial Stability Oversight Council. The legislation also creates a grant program for up to \$500,000 for a

state that has adopted the NASAA and NAIC model rules on senior designations, and includes a state securities regulator as a member of the SEC's Investor Advisory Committee.

However, in two other NASAA priority areas, fiduciary duty and arbitration, the legislation grants broad discretion to the SEC, which has been authorized or directed to conduct studies or rulemaking.

"Our work is not complete," Crawford said. "With the focus now shifting from the legislative process to the 67 studies and more than 200 rulemakings authorized by the legislation, our task as regulators is to now work cooperatively to ensure that the studies, rules and implementation procedures of the Dodd-Frank legislation actually help investors and strengthen investor confidence," Crawford said.

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## NASAA Policy Conference Spotlights Key Reform Issues

State and provincial securities regulators convened in Washington, D.C., in April 2010 for NASAA's Spring Policy Conference as Congress intensified debate over the most significant changes in the regulatory structure of financial services in decades.

"The timing of this year's meeting could not be better as all eyes are focused on how Washington policymakers are responding to the ongoing financial crisis facing Main Street investors," said NASAA President and Texas Securities Commissioner Denise Voigt Crawford.

Barry Ritholtz, noted financial commentator and author of the acclaimed book, "Bailout Nation: How Greed and Easy Money Corrupted Wall Street and Shook the World Economy," delivered the keynote address.

This year's conference featured two panel discussions: "Reining in Risk on Wall Street" and "What Regulatory Reform Means to Main Street Investors." The first panel brought together experts from industry and academia to address how the inability of the private sector to provide systemic safety, coupled with weak federal



*Noted financial commentator Barry Ritholtz delivers the keynote address at NASAA's Spring Policy Conference in Washington, D.C., on April 13. The conference brought together state securities regulators, media, industry and academics in a wide-ranging discussion of proposals to reform regulation and better protect Main Street investors.*

oversight, demonstrates that deregulation is no longer a presumptive policy prescription to achieve liquidity, stability and reliability in a well-functioning financial system.

During the second discussion, state securities regulators examined Congressional reform packages and outlined what investor protections are still needed.

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**President’s Message: Denise Voigt Crawford**



With the signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act, investors won several notable victories.

NASAA commends Congress for adopting a number of key investor protection provisions, including the creation of a grant program to provide funding to the states to protect senior citizens from securities fraud; an increase in the assets under management threshold for state-registered investment advisers to \$100 million from \$25 million; and a provision to stop securities law violators from conducting private

securities offerings under the SEC’s Regulation D, Rule 506, a regulatory exemption for private securities transactions.

The debate over the most dramatic overhaul of our financial system since the Great Depression has been long and contentious, but the intense public scrutiny has helped educate investors about their rights and the reforms they need and deserve.

State securities regulators remain dedicated to encouraging our lawmakers to stand up and do the right thing for investors.

Our work is far from over. NASAA will be very active throughout the rulemaking process to secure the best possible investor protections are put in place.

For an overview of the road ahead for the key reform provisions advocated by NASAA, see page 4.

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**Executive Director’s Message: Russ Iuculano**



The Dodd-Frank Wall Street Reform Bill, in many respects, recognizes the strong investor protection role of NASAA members and addresses a number of our priority issues. However, because of political compromises on certain highly contentious issues, the law’s passage marks the beginning of a very important process, since it grants broad discretion to the SEC and GAO to conduct dozens of

studies (some with six-month time frames) and authority to implement rules.

Several of these studies call for an evaluation of the resources and effectiveness of state regulators, and clearly their outcome will have a profound impact on NASAA members.

Recognizing the need to be an active participant in the study process, the NASAA Board has approved

the formation of a 16-member Dodd-Frank Studies Working Group. I am pleased that Missouri Securities Commissioner Matt Kitzi will chair this group and that incoming NASAA President David Massey of North Carolina will serve as an ex-officio member so that he will be in a position to present the group’s work product to the SEC, Congress or the media at the appropriate time.

The overall mission of the Working Group is to ensure that NASAA is an active participant in both the study and rulemaking processes and affirmatively provide relevant information to the respective decision makers that will underscore the important investor protection role of state securities regulators.

I also invite you to mark your calendars for our conference in Baltimore, Maryland, September 26-29 as our panels and speakers will discuss the many implementation challenges of the Dodd-Frank bill.

## States Gearing Up For Increased IA Oversight Authority

In anticipation of increased regulatory oversight over investment advisers as part of the landmark financial reform legislation, state securities regulators have been at work gearing up for this added responsibility.

Currently, state oversight of investment advisers is limited to those with assets under management (AUM) of \$25 million or less. The Dodd-Frank reform legislation increases the \$25 million cap to \$100 million, and will bring approximately 4,000 additional investment advisers under state oversight.

NASAA and its members have taken several steps to prepare for the increase. First, in December 2009, NASAA developed a memorandum of understanding calling for state securities agencies, when necessary, to assist one another with IA examinations.

"The MOU embodies the long-standing practice among NASAA members to work together to protect investors," said NASAA President and Texas Securities Commissioner Denise Voigt Crawford. "We are pleased that NASAA members are actively engaged in sharing resources, including staff expertise, in an effort to bolster examination programs."

The SEC staff has reported that there are 3,000 SEC-registered IA firms that have never been examined. The agency also has said that it is unable to timely and effectively examine the 4,000 smaller advisory firms in the \$25 million to \$100 million range and has chosen to focus on the larger advisory firms with billions of dollars under management presenting higher risk to investors. "The states will try to get this done since we can conduct exams more efficiently," Crawford said. "The bottom line: investors will be better served."

Crawford said innovative and flexible approaches to examinations are in the best interests of both the investing public and investment advisers. To that end, NASAA has asked its IA Operations and Training project groups to recommend and provide training on nontraditional examination approaches and solutions to the NASAA membership and to engage in cooperative discussions with NASAA members and other governmental regulators about new and productive ways to conduct examinations.

States also are developing better ways to deploy their resources through technology. For example, NASAA's Standardized Training, Certification and Technology Committee has developed a Distance Education program to allow states to receive training on-demand through the NASAA website.

## Financial Literacy Month

*Education Is an Investor's Best Defense Against Investment Fraud*

President Obama declared April "National Financial Literacy Month," noting that the nation's increasingly complex financial system has "left too many Americans behind, unable to build a secure financial future for themselves and their families. For many, financial literacy can mean economic prosperity and protection against fraud and predatory banking practices."

NASAA President Denise Voigt Crawford used the month to emphasize that education is an investor's best defense against investment fraud.

State securities regulators offer a wealth of investor education programs and tools to help Americans learn how to avoid investment fraud and answer the president's call "to improve their understanding of financial principles and practices" during National Financial Literacy Month, Crawford said.

NASAA also launched a new series of investor education materials in April to address complicated and topical securities matters such as variable annuities and derivatives. The Informed Investor Outreach Project Group of NASAA's Investor Education Section will continually add new product briefs to the series.

## Financial Literacy Day on Capitol Hill



Michelle Greene, Treasury's Deputy Assistant Secretary for Financial Education and Financial Access, pictured with Jump\$tart Executive Director Laura Levine, announces the debut of the Financial Literacy Education Commission's newly redesigned website, mymoney.gov, at Jump\$tart's annual Financial Literacy Day on Capitol Hill. Hosted by Senators Daniel Akaka (D-HI) and Mike Enzi (R-WY) with Representatives Judy Biggert (R-IL) and Ruben Hinojosa (D-TX), Financial Literacy Day drew more than 300 attendees. NASAA distributed fraud prevention and investor education resources at the event.

# The Road Ahead for Regulatory Reform

**Lawmakers from both sides of Capitol Hill met in conference committee in late June to hammer out the final shape of the financial reform bill. The negotiations ultimately resulted in a bill that passed the House by a vote of 237 to 192 and narrowly passed the Senate 60 to 39. With President Obama's signature on Wednesday, July 21, the reform bill officially became law. The chart below outlines the legislative compromises on NASAA's priority investor protection issues and maps out the road ahead for these critical provisions.**

Issue	Congressional Solution	Next Steps
<b>Fiduciary Duty</b> <i>The obligation to act in the clients' best interests. Currently applies to investment advisers, not broker-dealers.</i>	Directs SEC to conduct 6-month study and report to Congress on effectiveness of existing standards of care for those who provide investment advice. Study must, among other considerations, evaluate resources and effectiveness of state regulators, SEC and FINRA in examining investment professionals and enforcing standards of care.	SEC is empowered to promulgate a rule to address the standards of care for brokers, investment advisers and associated persons providing personalized investment advice about securities to retail investors as necessary or appropriate in the public interest and for the protection of retail customers.
<b>Regulation D</b> <i>Exempts private placements from regulatory scrutiny.</i>	Excludes securities law violators from Reg D exemption. Related provision excludes primary residence from accredited investor net worth standard.	SEC to issue rulemaking on recidivist disqualifier not later than one year after enactment of law. Accredited investor standard adjusted upon enactment and re-evaluated every four years.
<b>AUM Cap</b> <i>Assets under management (AUM) threshold at which an investment adviser is either registered with the states or the SEC.</i>	Increases AUM threshold for state-registered investment advisers to \$100M from \$25M. Allows IAs who would be required to register in 15+ states to register with the SEC.	Effective one year after date of enactment. NASAA has a team in place to ensure a smooth switch from federal to state registration.

Issue	Congressional Solution	Next Steps
<p><b>Risk Council</b></p> <p><i>New Financial Stability Oversight Council to identify risks to U.S. financial stability and promote market discipline.</i></p>	<p>Creates a council of federal and state financial regulators chaired by Treasury Secretary to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy. State securities, banking and insurance regulators to serve as nonvoting council members.</p>	<p>Effective upon enactment. The voting and nonvoting members to be selected.</p>
<p><b>Arbitration</b></p> <p><i>Mandatory pre-dispute arbitration clauses prevent investors from seeking redress in alternative forums.</i></p>	<p>Provides SEC with authority to conduct a rulemaking to prohibit or impose conditions or limitations on the use of mandatory predispute arbitration agreements.</p>	<p>After SEC findings, agency may act if it determines that such rulemaking would serve the public interest and protect investors.</p>

## NASAA Urges Congress to Address Executive Compensation, Restore Investor Confidence

Pennsylvania Securities Commissioner Steven Irwin urged Congress to help restore investors' confidence in the financial markets by addressing perceived failures of inadequate corporate governance and executive compensation standards.

Testifying on behalf of NASAA on April 21, Irwin, who also chairs NASAA's Federal Legislation Committee, told the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises that restoring public confidence in financial institutions is "the single most important task that confronts legislators and securities regulators."

As the regulators closest to investors, state securities regulators have witnessed firsthand the withdrawal of Main Street investors from the markets due to fear, distrust and anger. "The person in the street sees salaries of corporate decision makers constantly increasing to a level viewed as obscene, while at the same time the corporations being managed are decreasing in value, losing money, failing in competition and eliminating productive jobs," Irwin said.

"We have to make clear that a position in management

does not represent an entitlement to steal from the corporate owners, the shareholders," Irwin said. "We must assure adequate incentive for creative management while at the same time tying that incentive to actual production of long-term value for shareholders, rather than manipulation to achieve short-term financial results."

Irwin said increasing disclosure requirements to give shareholders access to full and accurate information is part of the solution. He pointed to NASAA's 2007 resolution on executive compensation disclosures and the Securities and Exchange Commission's recent amendments to proxy disclosure rules that require disclosure of risks arising

from compensation policies.

In addition to expanding disclosure rules, Irwin advocated empowering shareholders by establishing legal mechanisms by which issues of executive compensation and other corporate governance matters can be raised and decided by those who have a real interest in the outcome.

The full testimony is available on the NASAA website at [www.nasaa.org](http://www.nasaa.org).

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**Steven Irwin**

*Pennsylvania Securities Commissioner  
NASAA Federal Legislation Chair*

# NASAA Conference Spotlights the Regulatory Road to Recovery

***Those who attended NASAA's Public Policy Conference in April had an opportunity to hear firsthand about the steps leading to the ongoing financial crisis and those needed to get the nation back on the road to recovery.***

Nearly 200 participants, including securities regulators, policymakers and industry representatives from throughout the United States and Canada convened in Washington on April 13 as the Senate's regulatory reform proposals continued inching toward completion.

In a news briefing before the conference, NASAA President and Texas Securities Commissioner Denise Voigt Crawford called on the full Senate to strengthen the package of financial regulatory reforms approved by the Senate Banking Committee in order to provide Main Street investors with the protections they need to invest with confidence in the markets.

"This is the time for real reform that brings accountability and increased transparency to our financial markets. Investors deserve more from Congress than legislation driven by industry interests," she said. "Congress must not waste this opportunity to provide meaningful investor protection reforms."

The need for greater accountability and transparency in financial markets was illustrated in keynote speaker Barry Ritholtz's overview and analysis of the actions leading up to and fueling the meltdown that engulfed Wall Street and took with it a significant portion of the financial security amassed by Main Street investors.

Ritholtz, author of "Bailout Nation" and Chief Executive Officer of Fusion IQ, stressed that policymakers must take this opportunity to "prohibit banks and Wall Street from having their way with the American public."

Mark Connolly, this year's conference chair and director of New Hampshire's Bureau of Securities Regulation, built on Ritholtz's analysis by offering

conference attendees two panel discussions spotlighting the vital role of state securities regulators as Congress moves forward with financial services regulatory reform.

"Our program this year showcased the key areas where Congress can focus as it moves forward toward our shared goal of protecting our nation's investors and restoring their faith and confidence in financial regulators and markets," Connolly said.

The first panel, "Reining in Risk on Wall Street," was moderated by Utah Securities Division Director Keith Woodwell and brought together experts to offer national and international perspectives on the efforts of the government and private sector to provide systemic safety to achieve liquidity, stability and reliability in a well-functioning financial system.

Panelist Arthur E. Wilmarth, Jr., a professor of law at the George Washington University, argued that when the



*Utah Securities Division Director Keith Woodwell moderates a panel on systemic safety featuring Arthur E. Wilmarth, Jr., George Washington University law professor; Rick Hancox, Executive Director of the New Brunswick Securities Commission; and Gary Teran of First Western Advisors. The panel was a highlight of NASAA's 2010 Spring Policy Conference in Washington, D.C.*

SEC "lost their way" and became too close with industry, states stepped up for investors. "We need a group of tough-minded, vigorous state enforcers," he said. "It's a lot harder to capture 50 regulators than it is to capture one."

Another panelist, New Brunswick Securities Commission Executive Director Rick Hancox addressed the debate in Canada over the creation of a national securities regulator and highlighted the provinces' measures to minimize the impact of the global economic collapse.

## NASAA Honors Members with Blue Sky Cube, Outstanding Service Awards at Policy Conference

NASAA presented its highest honor, the Blue Sky Cube, to Tennessee's Daphne Smith at the 2010 Spring Policy Conference in Washington, D.C. The honor recognized Smith's "integrity and hard work, curiosity and commitment, and serene determination" throughout her many years of service as a member of NASAA's Board of Directors, chair of the Investor Education Section and Communications Committee, vice chair of the Investment Adviser Section, and chair of the Investment Adviser Zone Project Group.

NASAA also honored several members with the Outstanding Service Award. Chris Biggs, who is leaving the Kansas Office of the Securities Commissioner to serve as interim secretary of state,



*NASAA President Denise Voigt Crawford presents the Blue Sky Cube to Tennessee Securities Commissioner Daphne Smith at NASAA's 2010 Policy Conference.*

was recognized for his service on NASAA's Board of Directors and

as vice chair of the Enforcement Section and chair of the Litigation Forum Project Group. Bruce Kohl of New Mexico was recognized for his "unwavering commitment and enthusiasm for educating the investing public" as a former chair of the Investor Education Section and NASAA board member. Delaware's Jim Ropp was lauded for his wise counsel as a board member and chair of the Enforcement Section and Federal Legislation Committee. Mike Stevenson of Washington was commended for his leadership as board member and as chair of the Corporation Finance Section, Regulation D Electronic Filing Committee, Small Business/Limited Offering Project Group and as a member of the Uniform Securities Act Committee.

The second panel on "What Regulatory Reform Means to Main Street Investors" allowed state securities regulators to examine both the House and Senate regulatory reform packages. Panel moderator and West Virginia Auditor Glen Gainer led a spirited discussion of how investors will benefit from the legislation and what protections are still needed.

During the discussion, Indiana Securities Commissioner Chris Naylor called the expansion of the fiduciary duty to brokers who offer investment advice the "single most important protection for investors" and made a compelling case for why it needs to be restored to the bill on the Senate floor. "NASAA is looking for clear rules for the road," he said. Naylor also made a clear case for the inclusion of provisions in both the House and Senate bills to increase state regulatory authority of investment advisers by raising the assets under management threshold for state-regulated advisers to \$100 million from the current cap of \$25 million. "States are ready to take on the challenge," he said. "This is a good distribution of regulation and there will be substantial benefits for investors."

Pennsylvania Securities Commissioner Steven Irwin addressed the "disheartening" erosion of state authority over Rule 506 private placement offerings, noting that the NSMIA preemption essentially "leaves investors

to fend for themselves."

Turning to another key issue for Main Street investors, New Jersey Bureau of Securities Chief Marc Minor argued that investors are not well served by industry-run mandatory arbitration and deserve a choice. "It is not in the best interests of investors on Main Street to delay the end of predispute mandatory securities arbitration by requiring another study," Minor said.



*West Virginia Auditor Glen Gainer and New Jersey Bureau of Securities Chief Marc Minor discuss the implications of regulatory reform for Main Street investors at NASAA's 2010 Spring Policy Conference in Washington, D.C.*

## 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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### NASAA 2010 Annual Conference

**Marriott Waterfront  
Baltimore, Maryland**

**September 26-29, 2010**

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

*NASAA Insight is a quarterly publication of the North American Securities Administrators Association.*

### NASAA Remembers

#### *David Weaver*

#### General Counsel, Texas State Securities Board

*The NASAA family was deeply saddened by the tragic news that David Weaver, General Counsel of the Texas State Securities Board for the past 14 years, passed away unexpectedly in his sleep on Tuesday, June 1.*

*David was an outstanding contributor to the Corporate Finance Section, Federal Legislation and Reg D Electronic Filing Committees during his long and distinguished association with NASAA.*

*We extend our deepest sympathies and condolences to the Weaver family and David's colleagues at the TSSB.*

*"Investors have lost a good friend and passionate state securities regulator," said NASAA President and Texas Securities Commissioner Denise Voigt Crawford. "David was a great friend and colleague to many in the NASAA family. He never met a stranger and will be greatly missed."*