



NASAA Insight

1919 - 2019: 100 Years of Investor Protection
2019 | Volume 1

NASAA Unveils Legislative Agenda Focused on Putting Investor Interests Front & Center

NASAA released its legislative agenda for the 116th Congress in March at a standing-room-only briefing on Capitol Hill.

The agenda contains bipartisan policies that put the interests of America's retail investors first and ensures our nation's securities and financial markets remain vibrant and secure in the 21st century.

"NASAA's legislative agenda lays out a series of actions Congress and other agencies can take to prioritize retail investor interests and ensure the integrity of the capital markets. We have developed specific recommendations for promoting investor protection, safer capital formation and innovation in the modern securities marketplace to help inform Congressional action to the benefit of American investors," Michael Pieciak, NASAA President and Vermont Commissioner of Financial Regulation said at the briefing.

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"Our message today remains as simple and as powerful as it was 100 years ago — when the interests of Main Street investors are put first, our capital markets, our economy and our country all succeed," said NASAA President and Vermont Financial Regulation Commissioner Michael Pieciak during a Capitol Hill briefing to release NASAA's legislative agenda.

NASAA Submits Additional Comments on SEC's Reg BI Proposal

On February 19, 2019, NASAA provided supplemental comments to the SEC on the agency's proposed Regulation Best Interest.

Michael Pieciak, NASAA President and Vermont Commissioner of Financial Regulation, said the supplemental comment letter expands on suggestions raised in NASAA's two previous letters. Those suggestions called for the the SEC to reform its interpretive guidance of proposed rule 240.15I-1 to support a robust interpretation and implementation consistent with the rule's intended investor protection purpose.

"NASAA supports the work of the Commission and other agencies to raise the standard of care for broker-dealers," Pieciak wrote. "However, any such attempt should do so in a way that aligns the rhetoric of the standard with results for investors."

NASAA's February 19 letter highlights practices by broker-dealers that NASAA believes would be consistent with a best interest standard and those that would not and urges the Commission to adopt a final rule accompanied by an adopting release that articulate meaningful disclosure, care, and conflict obligations.

The letter also addresses the advocacy by industry groups in support of disclosure as sufficient mitigation for conflicts and other problematic practices and urges the Commission to reject this approach.

NASAA's letter closes with a discussion of investment adviser fiduciary duty standards and how the standard should ensure that investors interests are put first.

A copy of NASAA's comment letter is on NASAA's website, www.nasaa.org.

From the Leadership

President's Message: Michael Pieciak



With a new Congress comes new priorities and new opportunities for collaboration to protect investors and strengthen our capital markets. But where to start?

In early March, NASAA unveiled its legislative agenda for the 116th Congress, which advocates for bipartisan policymaking that puts the interests of Main Street investors first.

For more than 100 years, NASAA members have served on the frontlines of investor protection, safeguarding the financial futures of hardworking Americans and assisting local businesses and entrepreneurs seeking to raise investment capital.

Our message today remains as simple and as powerful as it was a 100 years ago – when the interests of Main Street investors are put first, our capital markets, our economy, and our country all succeed.

Our unique position as the closest regulators to the public provides a window into the concerns of Main Street investors and small businesses. With this insight, we offered recommendations on concrete steps Congress can take to protect and empower investors.

First, Congress must place the interests of the investing public front-and-center by strengthening investor protection and participation in the U.S. capital markets.

One way to accomplish this is by supporting enhanced standards of conduct for broker-dealers. When investors seek financial advice, they deserve to know that they are working with a financial professional who is acting in their best interest. Congress must continue to actively oversee the SEC's Regulation BI rulemaking process to ensure that the standard of conduct is strengthened and implemented quickly and fully.

Second, Congress must promote the integrity of capital markets by ensuring regulators at the state and federal levels have the resources and tools they need to prevent and deter fraud and other forms of misconduct. Strong and independent state and federal securities regulators are critical for investors to trust capital markets. Congress must not infringe on the ability of state regulators to stop and punish bad actors operating in our own backyards.

Third, Congress should reexamine recently enacted laws and rules designed to expand private markets to ensure that Main Street investors have not been left behind. Specifically, Congress should hold hearings to examine the impact of the JOBS Act and other laws that have expanded private markets, perhaps to the detriment of the public markets, with an eye toward promoting a responsible and cohesive framework that serves investors and issuers. We look forward to engaging with Congress on proposals to help small businesses back home raise capital and create jobs.

Fourth, Congress must reaffirm the rights of investors in the modern securities marketplace and ensure our securities laws effectively protect these rights. Investor confidence in fair and equitable recourse is critical to the success of the securities markets. To that end, we urge Congress to ban the use of mandatory arbitration clauses in client contracts and work to ensure these contracts do not proliferate.

Congress also should take steps toward making harmed investors whole by reducing unpaid awards resulting from disputes between investors and securities firms. FINRA data indicates that in recent years more than one-in-four of all arbitration awards go unpaid. We applaud FINRA's recent work and progress in this area, yet more must be done.

My colleagues and I look forward to engaging with members on both sides of the aisle to continue our advocacy to protect Main Street investors and ensure our capital markets remain the world's most secure, transparent and successful.



NASAA Comments on Nevada Standard of Care Proposal

State legislatures and other policymakers in Nevada, New Jersey and Maryland are stepping up to address the very important investor protection issue of raising the standard of care for broker-dealers.

In Nevada, the state Securities Division has proposed a rule in response to Nevada Senate Bill No.383, which imposed a fiduciary duty on broker-dealers, broker-dealer sales representatives, investment advisers, and investment adviser representatives. Meanwhile, the New Jersey Bureau of Securities, acting upon a directive from Gov. Phil Murphy, is developing a similar proposal. Standard-of-care legislation also was introduced in Maryland.

In a recent comment letter to the Nevada Securities Division, NASAA outlined its support of the right of state securities regulators to take actions necessary to protect investors.

“NASAA applauds the Division’s efforts in this regard and supports Nevada’s right to protect its investors,” wrote Michael Pieciak, NASAA President and Vermont Commissioner of Financial Regulation.

NASAA’s comments came in a March 7, 2019 letter on the division’s draft regulations. “Investor protection should always be the *sine qua non* of securities regulation,” Pieciak wrote. “The draft regulations should curb abusive sales practices in Nevada.” Pieciak also noted “the securities industry has proven itself adaptive and can accommodate these new regulations.”

NASAA’s EFD Functionality Expanded to Accept UIT Notice Filings

NASAA’s Electronic Filing Depository (EFD) System has been expanded to accommodate the electronic filing of Form NF-UIT notice filings for unit investment trusts (UITs) with state securities regulators. Filers are now able to submit Form NF-UIT notice filings and pay fees through the EFD System to the initial 31 jurisdictions that have successfully completed the onboarding process. A list of participating jurisdictions is available on the EFD system website and will be updated as additional jurisdictions complete the onboarding process.

“We are pleased to offer additional efficiencies for issuers to help meet state Form NF filing requirements,” said Michael S. Pieciak, NASAA President and Vermont Commissioner of Financial Regulation. “We are confident the EFD system will modernize and streamline the filing process for Form NF-UIT as it has for Form D.”

Developed by NASAA, the EFD System was launched in 2014 and was initially used to facilitate the filing of Form D for Regulation D, Rule 506 offerings with state securities regulators and to pay related fees. To date, nearly 47,000 filer-initiated Form D notices have been processed on EFD resulting in more than 250,000 notices filed with state securities regulators (including initial filings, amendments, terminations, and renewals).

Pieciak noted that 48 NASAA member jurisdictions are currently participating in the online EFD system for Form D. “We will continue to work with the remaining jurisdictions to bring them on to EFD to reach our goal of 100 percent participation,” he said. Future system enhancements are being considered to accommodate the electronic filing of Form NF-Mutual Funds and franchise filings, Pieciak said.

The EFD website also enables the public to search and view, free of charge, filings made through EFD with state securities regulators. EFD is available at: <https://www.efdnasaa.org>.



Several NASAA investor education specialists recently toured the New York Stock Exchange while meeting in New York to develop new investor outreach tools for use by NASAA members. NASAA members pictured include (from left): Anna Rushton, South Carolina Office of the Attorney General; Arlene Ferris-Waks, New Jersey Bureau of Securities; Bernice Geiger, New Mexico Securities Division; Beatrice Medina, New Mexico Securities Division; Jennifer Shaw, Oklahoma Securities Commission; Kelly May, Kentucky Department of Financial Institutions; Amanda Blanks, Virginia Corporation Commission; Kathleen Tittsworth, Connecticut Department of Banking; and Dan Lord, Alabama Securities Commission.

NASAA's Legislative Agenda for the 116th Congress

Putting Investor Interests First

Agenda Sets a Clear Path for Policies to Place the Interests of Investors Front and Center

(continued from front page)

Pieciak outlined four overarching principles that state securities regulators will support in legislation introduced in the 116th Congress:

- Put Main Street Investors First
- Ensure the Integrity of our Capital Markets
- Foster Capital Formation and Market Transparency
- Ensure Investor Rights in a 21st Century Marketplace

"NASAA's four legislative principles offer Congress a roadmap to shaping policy that will benefit Main Street investors, safeguard shareholder rights, protect our capital markets and encourage small business formation," Pieciak said. "However this is not to suggest we hold all of the answers. We look forward to engaging with Congress and other interested stakeholders to help craft policies that will best serve investors and our capital markets."

Claire McHenry, Chair of NASAA's Federal Legislation Committee and Deputy Director of the Nebraska Securities Bureau, said NASAA has not wavered in its message to Congress over the years.

"Our message to Congress has been consistent: Encourage responsible financial innovation without compromising essential protections for investors, at both the federal and state levels," she said.

"For 100 years, and during all administrations in Washington, D.C., state securities regulators have worked hard to protect investors in small towns and large cities across America and to provide a regulatory framework for responsible capital formation," McHenry said.

NASAA greets the start of each new Congress with a series of policy recommendations to protect investors and promote a regulatory framework for small businesses and others seeking to raise investment capital.

"As the securities regulators closest to Main Street investors, as well as many startup and small businesses, NASAA members have a unique perspective on national policy issues. This perspective has helped frame our legislative priorities," said Michael Canning, NASAA's Director of Policy and Government Affairs.

The complete agenda is available on NASAA's website in the Issues and Advocacy section. For details, visit www.nasaa.org.

Congressional staff, industry representatives and the media listen as NASAA President Michael Pieciak responds to questions about NASAA's legislative agenda.



During a Capitol Hill briefing, NASAA President Michael Pieciak unveils NASAA's legislative agenda, which was developed by NASAA's Federal Legislation Committee chaired by Claire McHenry, Deputy Director of the Nebraska Bureau of Securities (background).



NASAA Legislative Agenda For the 116th Congress At a Glance

PRINCIPLE 1: PUTTING MAIN STREET INVESTORS FIRST

In crafting and prioritizing policies that affect securities markets and securities professionals, Congress must place the interests of the investing public front-and-center by strengthening investor protection and participation in the U.S. capital markets.

Priorities:

Support Enhanced Standards of Conduct for Broker-Dealers | Encourage, Monitor, and Responsibly Regulate Financial Innovation | Address Intergenerational Investor Issues

PRINCIPLE 2: ENSURING THE INTEGRITY OF OUR CAPITAL MARKETS

Congress must protect the U.S. capital markets by fully supporting state and federal efforts to prevent and deter fraud and other forms of misconduct.

Priorities:

Maintain Enforcement Independence of State Securities Regulators | Protect Regulatory Remedies | Ensure Oversight of Private Placement Brokers and Finders | Provide State Securities Regulators Access to Suspicious Activity Reporting | Prevent and Deter Fraud through Effective Penalties

PRINCIPLE 3: FOSTERING CAPITAL FORMATION & MARKET INTEGRITY

Congress must examine the relationship between public securities markets, quasi-public securities markets and private securities markets, and promote more cohesive policies that balance investor protection and capital formation.

Priorities:

Examine Public and Private Offering Regimes | Enact Responsible Policies to Encourage Small Business Capital Formation | Modernize the Accredited Investor Definition | Reduce Fraud and Improve Transparency in the Private Markets

PRINCIPLE 4: ENSURING INVESTOR RIGHTS IN A 21st CENTURY MARKETPLACE

Congress must reaffirm the rights of investors in the modern securities marketplace and ensure our securities laws effectively protect these rights.

Priorities:

Secure Investor Choice and Transparency in Dispute Resolution | Make Harmed Investors Whole | Safeguard Shareholder Rights | Data Security and Privacy

Standards of Care

(Adapted from NASAA President Michael Pieciak's March 14, 2019, written statement to the House Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets for a hearing on the SEC's proposed Regulation Best Interest.)

NASAA has long advocated for raising the standard of care applicable to broker-dealers. In the debate over legislative proposals that were ultimately enacted under Sec. 913 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act, NASAA supported the enactment of a fiduciary duty standard for broker-dealers when providing investment advice to customers.

Unfortunately, eight-and-a-half years after Dodd-Frank's enactment, the suitability standard remains in place and broker-dealers are still not required to act in their client's best interest when making investment recommendations.

This problem persists despite overwhelming evidence that many retail investors do not understand the differences between investment advisers and broker-dealers, find the different standards of care confusing, or are uncertain about the meaning of the various titles and designations used by investment advisers and broker-dealers.

Retail investors expect that financial services professionals – both investment advisers and broker-dealers – will act in their best interests, or incorrectly believe that their financial advisers, including broker-dealers, are acting in a fiduciary type relationship.

It is necessary to raise the standard of care applicable to investment professionals, to reflect the evolution of how financial advice is delivered to customers, where broker-dealers are acting as de facto investment advisers to such customers. Further, as a practical matter, such reforms stand to protect Main Street investors to the tune of \$17 billion or more in unnecessary costs annually.

We are now eight-and-a-half years since the enactment of Dodd-Frank and the SEC has published a proposal that, while not extending a fiduciary duty to broker-dealers, is aimed at raising the current suitability standard. The benefit of a heightened standard of care should be a regulatory paradigm that enacts meaningful reform for the benefit of investors. It cannot be a conflicts disclosure regime, but should be one where the provider of advice must act in the best interest of the investor.

While disclosing and managing conflicts of interest is an important component of any professional relationship, to truly raise the broker-dealer standard of care, the Proposed Rule must recognize that significant conflicts of interest cannot simply be disclosed away. To this end, NASAA continues to emphasize that such conflicts of interest must be prohibited.

NASAA supports and appreciates the SEC's effort to raise the standard of conduct for broker-dealers. NASAA also supports the SEC's efforts beyond the Proposed Rule itself, including the SEC's proposals to improve fee transparency, restrict the use of potentially misleading professional titles, and clarify investment adviser conflict of interest obligations.

Further, NASAA agrees that the Commission's approach of raising the standard for broker-dealers, while not weakening the current standard applicable to investment advisers, is the correct one. In essence, the Proposed Rule itself says that brokers have an overarching obligation to act in the best interests of their clients, which is very similar to the fiduciary duty that investment advisers owe to their clients. Fundamentally, that obligation should lead both brokers and investment advisers to recommend the best, most cost-effective investment options for their clients that are tailored to those clients' individual needs. This is not the case today, especially in the brokerage industry where financial incentives often rule the day.

NASAA believes that the Proposed Rule itself represents a first big step forward, and with some key modifications, forms the basis for a strong and effective final rule.

NASAA recommends the following modifications, among others, to the Proposed Rule: (1) define the "best interest" standard, rather than allow the industry to comply with their own interpretation; (2) apply the standard to all investors with only minor exceptions; (3) apply the standard to recommendations regarding account type, since such decisions are part of an overall investment strategy; and (4) explicitly include the word "cost" as a factor that must be evaluated when making a recommendation, since costs have an adverse impact on investor returns.

Additional information about NASAA's perspective on the Proposed Rule, including how we believe the Commission should define the "best interest standard," as well as related SEC proposals, can be found in our comment letters to the SEC.

Ultimately, Reg BI is meant to better protect investors and align their expectations for the services and advice they receive from broker-dealers. Investors have waited nearly a decade for the SEC to enact a strong standard of care for investment professionals. The SEC can and should seize the present opportunity to align the promise of the Proposed Rule with results for investors.

NASAA Proposals

Cybersecurity for IAs

NASAA's Board has forwarded to the membership for vote a proposed investment adviser model rule to address information security and privacy, a proposed amendment to the investment adviser NASAA model Recordkeeping Requirements rule, and a proposed amendment to the NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers model rule.

The proposal was released for public comment in September 2018.

Secondary Trading

NASAA's Board has approved for a membership vote two proposed model rules that would facilitate secondary trading in securities of issuers about which there is certain publicly available information.

The first proposed model rule would designate certain sources as nationally recognized securities manuals or their electronic equivalent for purposes of the so-called "manual exemption" from registration under state law. This proposed model rule is intended to address issues that have arisen as a result of the discontinuation of the manual previously published by Standard & Poor's.

The second proposed model rule would provide two alternative options for providing an exemption for secondary trading in securities of issuers that have previously sold securities in an offering under Tier 2 of Regulation A and that remain current in their ongoing reporting requirements under federal law. The second proposal is designed to facilitate secondary trading in securities of Regulation A – Tier 2 issuers.

The proposals were released for public comment in July 2018.

Small Company Offering Registration SOP & Form

NASAA's Board has approved a membership vote for proposed updates to the Small Company Offering Registration (SCOR) Statement of Policy and the SCOR Form (Form U-7). These were last updated in 1996 and 1999, respectively.

NASAA is proposing updates to the SCOR Statement of Policy to increase the offering limit from \$1 million to \$5 million and to incorporate many of the investor protections that have been put in place under state and federal crowdfunding laws, including investment limits, sales report requirements, and ongoing reporting requirements. NASAA is also proposing a comprehensive update of the SCOR Form. The proposed SCOR Form includes updates drawn from intrastate crowdfunding forms, federal Form C, word processing features, and changes in federal law.

The proposal was released for public comment in November 2018.

Franchise Disclosure

NASAA's Board has approved a membership vote for an update to the instructions in the NASAA Franchise Registration and Disclosure Guidelines for filing the state cover page to Franchise Disclosure Documents. This proposal seeks to amend Part III, Section B of the Franchise Guidelines by requiring three cover sheets: "How to Use This Franchise Disclosure Document," "What You Need to Know About Franchising Generally," and "Special Risk(s) to Consider About This Franchise."

The proposal also includes new instructions that promote uniformity and reduce repetition in the presentation of risk factors. The proposal was released for public comment in June 2018.

NASAA: 100 Years of Investor Protection

Tune in to NASAA's New Podcast



As part of our 100-year anniversary activities, NASAA introduces *NASAA Talks*, a podcast featuring conversations with NASAA leadership and others on topics of interest to securities regulators, policymakers and industry.

In our first two episodes NASAA President Michael Pieciak and NASAA's Director of Policy and Government Affairs Michael Canning discuss NASAA's legislative agenda for the 116th Congress. Tune in at www.nasaa.org/newsroom/nasaa-podcast-archive.



About NASAA

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.

Join us to Celebrate NASAA's 100th Anniversary

NASAA's Public Policy Roundtable is the nation's premier spring event for the securities industry. We are planning a robust lineup of speakers and panels that are guaranteed to teach you something new, and (hopefully) entertain you a bit.

Oh, and did we say networking? Strong representation is expected from NASAA members, who are eager to network with you and other members of the securities industry!

If you register to participate in-person, you will be able to attend the presentations by our featured speaker(s), two public policy roundtable panels, the luncheon where we will begin our celebration of NASAA's 100-year anniversary, and the reception that evening.

If you don't have time to travel to Washington DC you can register to attend the Public Policy Roundtable online the comfort of your home or office. NASAA will stream a webcast of the featured speaker(s) and the two roundtable discussions.



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