NASAA *Insight*

The Voice of State & Provincial Securities Regulators

NASAA

Fall 2015

Judith Shaw Elected NASAA President

Maine Securities Administrator Judith M. Shaw embarked upon a one-year term as president of the North American Securities Administrators Association (NASAA).

In her inaugural address at NASAA's 98th Annual Conference in September, Shaw encouraged NASAA members to strengthen their coordinated efforts and to explore new opportunities to work more closely with fellow regulators.

"In this age of technology and electronic marketing, borders are virtually nonexistent. We will find ways to leverage our available resources and support one another in the interest of investor protection," Shaw said. "In the coming year I believe that we can increase collaboration with our federal partners in both the regulatory and self-regulatory spaces. Opportunities abound. We share the same mission and should be strong partners in the fight to protect investors and generate renewed confidence in the capital markets."

NASAA President and Maine Securities Administrator Judith Shaw addresses NASAA's 2015 Annual Conference.

"We have a long history of partnering with our federal counterparts in the area of investor education and I am glad to expand that to industry outreach but outreach is not enough. We must identify the barriers to full and meaningful partnership and collaboration in enforcement, examination, and capital formation as well," Shaw said.

Looking ahead, Shaw said no issue lends itself better to coordination, collaboration, and cooperation than the protection of senior investors.

Shaw also announced NASAA's leadership for the 2015-2016 year. The new Board of Directors includes: President-elect Michael Rothman of Minnesota; Past President William Beatty of Washington; Treasurer Kathryn Daniels of Ontario; Secretary Gerald Rome of Colorado; Director Joseph Borg of Alabama; Director Diana Foley of Nevada; Director Jack Herstein of Nebraska; and Director John Morgan of Texas.

(See Page 7 for details)

NASAA Receives Comments on Proposal to Protect Vulnerable Adults from Financial Exploitation

NASAA's ongoing initiative to address senior issues took a significant step forward with the release for comment of a proposed model act to address issues faced by broker-dealer and investment adviser firms and their employees when confronted with suspected financial exploitation of seniors and other vulnerable adults.

The proposed model act facilitates reporting to regulators and Adult Protective Services; respects the dignity and independence of older investors by encouraging firms to develop financial advanced directives for execution by clients; permits the delay in disbursement of funds when financial exploitation is suspected; and provides immunity from administrative and civil liability for taking actions permitted under the model.

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New Model Fee Schedule Released to Help Investors Compare Miscellaneous BD Fees

A working group convened by NASAA and consisting of state securities regulators, representatives of the Financial Industry Regulatory Authority (FINRA), the Securities Industry and Financial Markets Association (SIFMA), the Financial Services Institute (FSI), LPL Financial LLC, Morgan Stanley Smith Barney LLC, Prospera Financial Services, and Signator Investors, Inc. has developed a model fee disclosure schedule to help investors better understand and compare various broker-dealer service and maintenance-related fees and guidelines to make fee disclosure accessible and transparent.

"This has been a collaborative and voluntary effort between securities regulators and industry to promote accessible, standardized and transparent disclosure of miscellaneous broker-dealer fees," said Bill Beatty,

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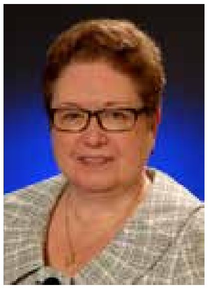
President's Message: Judith Shaw



Thanks to all of you who joined us in September at NASAA's 98th Annual Conference.

I want to extend a special word of gratitude to the Commonwealth of Puerto Rico for hosting this amazing conference. And a special thanks to our conference chairs – Damaris Mendoza and Joe Borg for providing us with such a rich experience.

My NASAA journey started in late 2008 and I must thank those who have supported me along the way starting with the Commissioner of Maine's Department of Professional and Financial Regulation, Anne Head, for all of her support and encouragement.

I also want to thank my entire staff especially our General Counsel Karla Black, Assistant Securities Administrator Paige Turney, Examiner-in-Charge Ed Moran, and my Administrative Assistant Dona Garippa. I couldn't be more fortunate to work with all of the talented folks in my office. They all assure our mission moves forward no matter where in the world I might be.

Finally, I must thank the three most important people in my life. I want to share some important lessons they have taught me. I am talking about my three children.

From my youngest son, Sam, a 22-year-old college student, volunteer, and tireless advocate for disadvantaged youth, I have learned the importance of pursuing your passion and never giving up.

From my daughter, Claire, also a 22-year-old college student and self-professed science nerd, I have learned the importance of being a lifelong learner and avid reader – and she has taught me the value of a well-played snarky comment.

And from my oldest son, United States Marine Corps Corporal Benjamin Chamberlain, I have learned the true meaning of service.

When Ben left for Parris Island, I decided to read about what he would be experiencing at boot camp. I found that there is a question that recruits are asked sometimes several times a day – "Recruit – why did you join the Marine Corps?" That's how they talk at Parris Island.

So when I saw Ben at his graduation, I asked him why he joined the Marine Corps.

He responded, "Mum, someone in our family has served in every war since the American Revolution and it's just my turn."

And so it is my turn to stand as NASAA's 98th President.

Senior$afe Act of 2015 Introduced in Senate

NASAA recently commended Senators Susan Collins (R-ME) and Claire McCaskill (D-MO) for their efforts to protect vulnerable adults from financial exploitation through the introduction of the bipartisan *Senior$afe Act of 2015*.

"On behalf of NASAA, I want to commend Senators Collins and McCaskill on their efforts to shine a light on the critical problem of senior financial exploitation. The 'Senior$afe Act of 2015' addresses some of the barriers to reporting experienced by financial professionals on the frontlines of this fight. I also want to thank both Senators for their recognition of the valuable role state securities regulators play and for taking an approach that complements NASAA's efforts," said Judith M. Shaw, NASAA President and Maine Securities Administrator.

Protecting seniors and other vulnerable adults from financial exploitation is a priority for NASAA members. "We look forward to working closely with Senators Collins and McCaskill as the legislation is considered by the Senate," Shaw said.

SEC Approves Federal Crowdfunding; Seeks Comment on Intrastate Crowdfunding Proposals

The Securities and Exchange Commmission (SEC) on October 30 voted to approve rules and forms related to the offer and sale of securities through crowdfunding as mandated by Title III of the Jumpstart Our Business Startups Act and to propose amendments to Securities Act Rule 147 and Rule 504.

"NASAA is reviewing the final rules adopted by the SEC to implement federal crowdfunding under Title III of the JOBS Act and looks forward to commenting on the proposed revisions to Rules 147 and 504," NASAA President and Maine Securities Administrator Judith Shaw said.

"Any initiative to develop new or expand existing capital formation tools must include significant and meaningful investor protections. We also look forward to working closely with the Commission on the implementation of the final crowdfunding rules and finalizing revisions to Rules 147 and 504 that will facilitate responsible capital formation for local businesses," Shaw said.

States Report Seniors Continue as Top Target for Investment Schemes

Senior investors continue to be a primary target for fraudulent investment pitches, according to NASAA's 2015 Enforcement Report on 2014 Data.

The report noted that affinity fraud and unregistered securities scams disproportionately affect seniors. More than half of all reported enforcement actions that involved a senior victim featured unregistered securities, the report found.

According to the report, which includes responses from 49 jurisdictions throughout the United States, seniors were targeted in one-quarter of the enforcement actions taken in 2014 by states that track victims by age. This number is conservative, in part, because of a reluctance by victims to approach authorities.

The NASAA report also said state securities regulators conducted 4,853 investigations in 2014 and took 2,042 enforcement actions. These actions led to $405 million in restitution ordered returned to investors, fines of $174 million and prison sentences of 1,629 years.

EFD Reaches Milestone

In August, NASAA's Electronic Filing Depository (EFD) had been used to facilitate 10,000 notice filings with state securities regulators since its December 2014 launch. By October 21, 2015, that number grew to 18,000 notice filings, NASAA Executive Director Joseph Brady said.

Developed by NASAA, EFD is an online system that allows issuers to submit a Form D for a Regulation D, Rule 506 offering to state securities regulators.

The EFD website also enables the public to search and view, free of charge Form D filings made with state securities regulators through EFD.

NASAA Names New GC

A. Valerie Mirko has been named to serve as NASAA's General Counsel. She reports to NASAA Executive Director Joseph Brady.

"Throughout her tenure at NASAA, Valerie has consistently demonstrated she has a strong understanding of state and federal securities laws and a heartfelt commitment to the work of NASAA and its members to protect investors," Brady said.

Mirko joined NASAA in 2012 and most recently served as NASAA Deputy General Counsel. "The Board and I are pleased to see Valerie's career progression with NASAA," stated NASAA President Judith Shaw. "We are fortunate to have the benefit of her knowledge and ability."

Books & Records Top List of Deficiencies Among State-Registered IAs

Books and records continue to be the most problematic compliance area for state-registered investment advisers, accounting for more than twice as many deficiencies found by state examiners as the next highest problem area, while the number of total deficiencies uncovered declined from the previous series of state coordinated examinations, NASAA recently reported.

Every two years, state securities examiners voluntarily report sample data from their investment adviser examinations. The 2015 sample examination data was provided by 42 jurisdictions between January and June 2015. The 1,170 reported state examinations uncovered 4,983 deficiencies in 22 compliance areas; down 30 percent from the 6,482 deficiencies in 20 compliance areas reported in 2013.

Rounding out the top five problem areas for state-registered investment advisers were: contracts, registration, fees, and custody issues.

NASAA Task Force, LPL Conclude Non-Traded REIT Settlement

Members of the NASAA Non-Traded Reit Task Force and LPL Financial LLC recently concluded a settlement in connection with an investigation of LPL's failure to implement an adequate supervisory system regarding its sale of non-traded REITS and its failure to enforce its written procedures for the sale of these products.

The settlement, which followed a multi-state investigation led by the Nevada Secretary of State Securities Division, calls for LPL to remediate losses for all non-traded REITS it sold from January 1, 2008 through December 31, 2013 in violation of prospectus standards, state concentration limits or LPL's own guidelines. LPL agreed to retain an independent third party to review and verify its executed sales transactions for violations during this period, believed to be more than 2,000. LPL will make offers of remediation upon completion of the third-party review.

LPL also agreed to pay civil penalties of $1.425 million to be distributed among 48 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

LPL reached a separate settlement with Massachusetts securities regulators in 2013 and faces a separate action by New Hampshire securities regulators.

NASAA Recieves Comments on Proposed Model Act

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The proposed model, entitled "An Act to Protect Vulnerable Adults From Financial Exploitation," was developed by the NASAA Board-level Committee on Senior Issues and Diminished Capacity and published for comment on September 29, 2015.

The proposed model act would:

- Require qualified employees of broker-dealers and investment advisers who reasonably believe that financial exploitation of a vulnerable adult may have occurred, been attempted, or is being attempted, to promptly notify Adult Protective Services and their state securities regulator. These employees also may notify any third party previously designated by the vulnerable adult as long as that party is not suspected of participating in the financial exploitation.
- Enable broker-dealers or investment advisers to delay disbursements from an account of a vulnerable adult if financial exploitation is suspected.
- Allow qualified employees of broker-dealers or investment advisers to provide records that are relevant to the suspected or attempted financial exploitation to relevant authorities, and
- Provide immunity from administrative or civil liability for broker-dealers and investment advisers for taking actions permitted under the act.

The model act defines "qualified employee" as any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

The act would apply to instances where there is a reasonable belief of financial exploitation of individuals age 60 and older as well as individuals protected by state Adult Protective Services laws.

The full text of the proposed model act and comments received by NASAA are available on the NASAA website.

Model Fee Disclosure Schedule Approved by Working Group

(continued from page 1)

Past NASAA President and Washington Securities Director. "I commend all of the parties that have worked to develop this template and applaud the firms that have committed to using this template for the benefit of investors."

"FINRA was pleased to participate in this collaborative effort and believes that the product of the Working Group will promote better understanding and comparison of fees paid by retail investors," said Philip Shaikun, FINRA Vice President, Office of General Counsel.

"SIFMA was pleased to participate in this collaborative effort with NASAA, FINRA and industry to promote transparency and investor understanding of miscellaneous broker-dealer fees," said Kenneth E. Bentsen, Jr., SIFMA president and CEO. "The voluntary template and investor access guidelines achieve these objectives, and we encourage firms to consider these components as they review their own disclosures."

"FSI members are committed to transparency in the fees paid by investors for the array of services they receive from financial advisors and firms," said Dale Brown, FSI President & CEO. "We appreciated the opportunity to be a part of this working group. It is an example of how all of us – both regulators and the industry – can come together to collaboratively develop solutions and ultimately better serve investors."

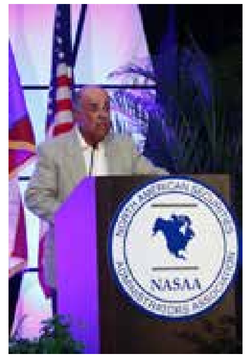
The voluntary model fee disclosure schedule can be customized consistent with a firm's branding and should include all miscellaneous account and service fees, including account maintenance fees. It does not include commissions, mark-ups, commission equivalents, or advisory fees.

In addition to the model fee disclosure schedule, the Working Group developed a series of guidelines to make fee disclosure readily accessible and transparent for retail investors, both online and offline. The broker-dealer firms within the Working Group have adopted and are in the process of implementing both the model fee disclosure and the investor access guidelines.

Annual Conference: Photo Gallery

Marketing, demographic and financial experts discuss how different generations invest for retirement in a discussion led by Vermont Deputy Securities Commissioner Michael Pieciak (left). Panelists included, from left: Emily Pachuta, BlackRock; Catherine Collinson, Transamerica Center for Retirement Studies; Sean McDermott, Corporate Insight; and personal finance writer John Waggoner.

Conference co-chair Damaris Mendoza of Puerto Rico opens the 98th Annual Conference.



Rafael Blanco, Puerto Rico Commissioner of Financial Institutions, welcomes NASAA.

Conference co-chair Joe Borg provides a conference overview during the opening session.

NASAA Broker-Dealer Section Chair Bryan Lantagne (left) and members of the Fee Working Group unveil a model fee disclosure schedule to help investors better understand and compare broker-dealer service and maintenance-related fees.

Financial author Chris Farrell opens the conference with a look at how Baby Boomers are reinventing retirement.

Luis Clemente, son of baseball legend Roberto Clemente, welcomes NASAA to Puerto Rico.

Panelists trace the arc of financial regulation from the creation of the SEC to the launch of the CFPB in a discussion led by New Jersey Securities Bureau Chief Laura Posner. Panelists included, from left: James Barth, Auburn University; Eric Dinallo, Debevoise & Plimpton LLP; and James Cox, Duke University.

Securities experts discuss the development of investment products and how they are sold in a conversation moderated by Colorado Securities Commissioner Gerald Rome (left). Panelists included, from left: Craig McCann, SLCG; Micah Hauptman, Consumer Federation of America; Kevin Carroll, SIFMA; and Douglas Cumming, York University.

Arthur Levitt: Keynote Speech

The following is adapted from remarks by Arthur Levitt, former chair of the U.S. Securities and Exchange Commission at NASAA's Annual Conference, September 28, 2015.

I have a great admiration for this organization and the men and women who lead it. State regulators form a critical part of our regulatory fabric, and play a meaningful role in protecting the investing public… investigating bad actors in the markets … preventing fraud… and informing all market participants of their responsibilities.

Even when the agendas of federal and state regulatory agencies have different priorities, I always believed that we had to talk to each other and share insights. And those discussions always proved valuable.

Whenever we worked together, we had an opportunity to discuss areas of regulatory concern and new trends in the markets. We learned how to divide our regulatory responsibilities as efficiently as possible. And we multiplied our regulatory reach, which given the limits of our resources, produced far better outcomes than we would have managed on our own.

I raise that issue today because we are now in a period where the work of regulators is being held to more scrutiny than I believe is deserving. In Washington, the congressional overseers do not see the work of regulators as critical or deserving of greater support – especially budgetary support.

The passage of the JOBS Act in particular has been indicative of this trend. The JOBS Act gutted significant protections of the investing public, all in the name of supporting the ill-defined and amorphous goal of American market competitiveness.

As someone with a stake in supporting early-stage companies, often at the leading edge of technology and innovation, I can assure you that no worthy company wants to raise capital in public markets under any standard other than the highest.

Yes, the costs are greater. Yes, the expectations are higher. But reaching that stage is the goal for which the founders, managers and early-stage funders all work towards.

It is my experience that companies worthy of public investment do not resent regulatory oversight. Rather, they recognize that regulation – like all other aspects of building a business and entering a market – is part of the process.

The regulatory framework around raising capital, to give just one example, is in a sense a proving ground. Going through the early stages of financing, and moving up to broader and more regulated forms of capital-raising, is a valuable process. It signals to potential investors and other market participants a level of seriousness and care in the building of the business.

Levitt: "Today, regulators are out of fashion. But sadly, we will come back into fashion when our work is needed – I suspect that moment will occur when the investing public is burned on those issues now being given an easy pass."

So the traditional binary way of thinking of regulation versus innovation isn't quite right, at least in my view. Innovative companies benefit from a regulatory framework which most of all helps protect access to financial markets essential to business formation and growth.

Lowering the standard, which is what the JOBS Act did – among other things – was precisely the wrong message to send to the investing public. And in the long run, it will hurt the capacity of companies to raise capital.

In my view, the idea of capital markets with lower-standards is an invitation to a permanent regulatory underclass – a place where market participants expect less than what they should, and therefore get less of what they should. There's a reason why Congress and state legislators have established a crucible of regulatory requirements before companies can raise capital from the broader investing public.

But when we lower those requirements to satisfy some artificial expectation that all young companies should have broad access to capital, we cheapen the entire process. Every company that previously met regulatory demands has lost something in the bargain.

And it goes without saying that investors lose, as well.

When I was at the SEC, I frequently counseled my counterparts in other nations not to race to the bottom of regulatory requirements. It was tempting, I understood, to set the lowest-common denominator ever lower in an effort to create a haven for investors comfortable with fewer protections.

But as we have seen, where regulatory demands are concerned, there is always someone willing to bid lower. And in my view, that is a bidding process we should all be happy to lose.

Judith Shaw: Presidential Address

The following is adapted from the inagural address of NASAA President and Maine Securities Administrator Judith M. Shaw, delivered at NASAA's Annual Conference, September 29, 2015.

For more than 100 years state, provincial and territorial securities regulators have been committed to investor protection. Before there were federal regulators and before the advent of the self-regulatory organization, NASAA and its members were advocating for and actively protecting the interests of all investors regardless of sophistication, expertise, experience, or resources.

Since its first meeting in Chicago in 1918, NASAA members have tirelessly pursued their grassroots mission of investor protection as the true cops on the beat. As NASAA's 85th President, Chris Bruenn said in her presidential remarks in 2002, "No one can police the retail point of sale better than we can."

I couldn't agree with Chris more. We are the people who get the frantic calls from the retired wife begging us to come take her husband's computer because he has day traded away their retirement funds. We are the people who identify systemic issues involving auction rate securities or conflicted analyst issues that affect our friends, family, and neighbors. We are the people who highlight emerging issues like digital currency and EB-5 visa scams before anyone else is talking about it. We are on the front line offering protection and education not to some but all of those who fall within our borders.

Shaw: "If we are serious about honoring and protecting the most vulnerable among us – we must be willing to take some risks and step outside of our comfort zones."

There are 1.33 million people in the State of Maine and every single one is my responsibility. I assure you that my colleagues feel the same way. I stand here because I am passionate and committed to that mission and, in the words of my son, it is just my turn to lead. . . .

Much like boot camp, I learned that there is one question the NASAA President-elect gets asked over and over again – what will the focus of your presidency be? I have been thinking about this for a year and here is what I came up with – there is nothing new to see here, people. For the past 98 years the message and focus has been consistent, strong and effective. As former NASAA President Ralph Lambiase said, "Market conditions may change, but our priorities must always remain the same – we are here to serve and protect investors." And as the great Commish, Fred Joseph said in his presidential speech at my very first NASAA annual conference, "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."

So, I suggest the question you all should be asking is not what is my focus, but, rather, how do I plan on accomplishing the tried-and-true mission of an organization dedicated to investor protection.

We will accomplish our mission with the same passion and commitment that we have brought since the inception of state and provincial securities regulation. In the next year, NASAA members will move forward with a renewed purpose identifying opportunities to work together and leveraging our resources in a coordinated fashion. . . .

Last May NASAA held its first capital formation roundtable in Washington, DC to provide an opportunity for an open dialogue around issues important to issuers, investors, and regulators. If we are to regulate effectively, we cannot regulate in a vacuum. The roundtable provided an opportunity for us to take a critical look at our role in regulating the capital markets.

We play an important role in helping to facilitate responsible capital formation which, in turn, protects our investors on Maine Street as well as our local businesses. To that end, I will be asking the Board to support a second roundtable to be held in 2016 to continue this important dialogue. Additionally, I will be supporting efforts to expand the use of the electronic filing depository carrying forward the vision of smart regulation championed by former President Andrea Seidt.

NASAA members have forged ahead in adopting crowdfunding models and we will continue our momentum in the year ahead.

In the coming year I believe that we can increase collaboration with our federal partners in both the regulatory and self-regulatory spaces. Opportunities abound. We share the same mission and should be strong partners in the fight to protect investors and generate renewed confidence in the capital markets.

We have a long history of partnering with our federal counterparts in the area of investor education and I am glad to expand that to industry outreach but outreach is not enough. We must identify the barriers to full and meaningful partnership and collaboration in enforcement, examination, and capital formation as well. . . . We are on the same team – we share common goals – together we can accomplish so much more.

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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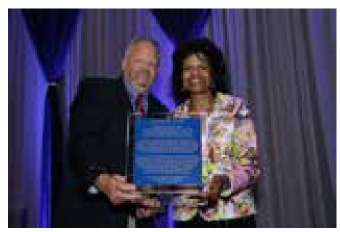
NASAA Recognizes Accomplishments of Members

Massey, Smith, Beatty Receive NASAA's Highest Award



Past NASAA President Bill Beatty presents NASAA's highest honor to Daphne Smith (above) and to David Massey (below) in ceremonies at NASAA's Annual Conference.

During ceremonies at NASAA's 98th Annual Conference, the association honored eight individuals for their outstanding contributions toward advancing NASAA's goals.

NASAA's highest award, the Blue Sky Cube, was presented to **David Massey**, former North Carolina Deputy Securities Administrator and former NASAA President; **Daphne Smith**, former Tennessee Deputy Securities Commissioner; and outgoing NASAA President **Bill Beatty**.

Massey was recognized for his "commitment to investor protection and enlightened approach to regulation."

Smith was honored as a "passionate advocate for the right of all investors to be treated with honesty, fairness and respect."

Beatty was cited for "advancing NASAA's reputation as an intelligent advocate of investor protection and capital formation."

In addition, Outstanding Services Awards were presented to **Tung Chan** of Hawaii and **Carol Mihalik** of Indiana. Meritorious Service Awards were presented to **Gary MacDougall** of Northwest Territories; **Alan Schefke**, of Michigan; and **Karen Wheeler** of Wyoming.