

2009 Presidential Speech, Texas Securities Commissioner Denise Voigt Crawford

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NASAA ANNUAL CONFERENCE
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Good afternoon colleagues, fellow regulators and distinguished guests. I am honored to speak to you today as NASAA's incoming President at our 92nd annual conference.

Before I begin, I want to thank my friend from Colorado, Fred Joseph, not only for welcoming us to his hometown, but also for his leadership over the past year as NASAA's President. Please join me in thanking Fred for always staying true to our mission of putting investors first.

I would also like to take this opportunity to introduce the NASAA leadership team for the coming year:

BOARD OF DIRECTORS:

- Past President, Fred Joseph, Colorado
- President-Elect, David S. Massey, North Carolina
- Secretary, Rick Hancox, New Brunswick
- Treasurer, Mark Connolly, New Hampshire
- Director, Chris Biggs, Kansas
- Director, Joe Borg, Alabama
- Director, Bruce Kohl, New Mexico
- Director, Melanie Senter Lubin, Maryland

I am planning on naming the following members as Section Chairs, subject to Board approval:

SECTION CHAIRS:

- Broker-Dealer, Ralph Lambiase, Connecticut
- Corporation Finance, Jack Herstein, Nebraska
- Enforcement, James Ropp, Delaware
- Investment Adviser, Patricia D. Struck, Wisconsin
- Investor Education, Tung Chan, Hawaii

Finally, I also plan on naming, subject to Board approval, Robert M. Lam of Pennsylvania as New Member Advocate and Matthew J. Neubert of Arizona as Ombudsman.

As a career public servant, I believe that regulation is the proper province of government. It is not a profit-driven business and cannot be subject to a traditional cost benefit analysis. After all, how do you measure the benefit of restoring to an elderly investor her life savings?

We NASAA Members are all true believers in the demonstrated power of state and provincial securities regulators to protect our citizens from fraud and abuse. It is the passion for our mission that is crucial for our success.

Lately I have been reflecting on how dramatically the world's appreciation of the importance of sound financial regulation has evolved as a result of the Great Recession. Virtually all developed countries are reforming their financial regulation, which failed to identify, much less rein in, unlimited risk-taking, industry practices based upon flawed economic models, and the inability or unwillingness of national governments to address these matters.

While this catastrophe was the result of many failures, I am very proud to say that a failure of state securities regulation was not one of them.

As you know, the history of state securities regulation began in Kansas in 1911 and our story continues to be written today. Through the years states have been the undisputed leaders in criminal prosecutions of securities

violators because we believe in serious jail time for securities-related crimes. We have successfully exposed and addressed the profound conflicts of interest among Wall Street stock analysts by requiring changed behavior. We led all regulators on late trading and market timing in mutual funds. We address on a daily basis abusive sales practices targeting vulnerable senior investors.

We continue to lead the effort to ensure that investors receive redemptions for their frozen auction rate securities that were marketed as safe and liquid investments, an effort that already has resulted in the largest return of funds to investors in history. In the last few years, it has been state and provincial securities regulators who have been at the forefront of investor protection. Our record demonstrates clearly that we have the will and ability to regulate. In Texas, we have a saying, "It ain't braggin' if it's true."

Our credibility as effective governmental regulators is at its zenith. Today, as your incoming President, I pledge to you that we will use our good reputation in every way possible to influence the direction of financial regulatory reform so that it works for, not against, investors.

The future looks bright. The Obama Administration's position in support of state regulation and the comments of key members of Congress reflect recognition of the vital protections state regulators provide. This has not always been the case.

Years ago, states used to be able to cap mutual fund fees. States had the legal authority to question, and revise if appropriate, the level of executive compensation in many initial public offerings of securities. States could review and stop bad actors such as those with prior convictions for securities fraud from relying on SEC Regulation D, Rule 506.

The areas of state law preemption often mirror the types of fraud and abuse inflicted on investors. This is not a coincidence. Without question, the most harmful area of state securities preemption has been Regulation D offerings. Since they also enjoy an exemption from registration under federal securities law, Reg D offerings receive virtually no regulatory pre-screening at any level of government. Only enforcement actions are brought and they are rare.

As a result of short-sighted state law preemption, investors have been exposed to far more risk in private placement offerings than Congress likely could have imagined. Investors deserve better than this. At a minimum, Congress should reinstate state regulatory oversight of all Rule 506 offerings.

The need for a systemic risk regulator to identify and address risks across the economic spectrum is being debated, as is who or what could best do the job. Some support giving this additional responsibility to the Federal Reserve, others, including NASAA, support the creation of a new "Systemic Risk Council" made up of federal and state financial regulators in the securities, insurance and banking sectors. Subject matter expertise and actual regulatory experience must be brought to bear to systemic risk analysis. The Systemic Risk Council would provide a broader and less centralized perspective on systemic risk. We will continue to work with the administration and Congress to try to make this a reality.

A one size fits all model of regulation is not the best model. It results in an insular culture that stifles creative regulatory insights and responses. It also invites regulatory capture by becoming too closely aligned with the industry it is set up to regulate. A large, overly centralized regulatory scheme can also get bogged down in bureaucracy and become slow to act. Sadly, we have seen all this happen at the SEC.

State and provincial regulators, on the other hand, are decentralized, directly accountable and can respond swiftly to investors' complaints before their money and confidence are gone. This was illustrated most recently in how we handled the auction rate securities investigations. We were quick, innovative, and aggressive. These are the hallmarks of effective regulation and are typical attributes of NASAA members.

Attempts to centralize regulatory authority are not limited to the United States. In June, Canada announced a proposed transition to a national securities regulator. Canada's provincial securities regulators, all members of NASAA, have built a strong foundation for investor protection. We will support our Canadian colleagues to ensure that the strengths of the current system remain intact.

In the coming months, we will focus on several areas of investment adviser regulation that cry out for change.

NASAA has long called upon Congress to extend the fiduciary duty standard to all financial professionals who give

investment advice regarding securities. Currently investment advisers have this duty but broker-dealers do not. What is fiduciary duty? It is simply the duty to put the client's interest first. Differing standards of care create confusion and distrust and do not serve the best interests of investors.

We recognize that so-called "harmonization" of standards is simply code for adoption of a lower standard and is therefore unacceptable. We will work with the Obama Administration and Congress to either impose the fiduciary standard directly through statutory language or, if left to the SEC's rule-making process, require that the SEC establish the fiduciary duty standard for broker-dealers, rather than simply authorize the agency to do so.

Also with regard to investment advisers, the current dividing line between federal and state regulation of investment advisory firms is \$25 million of assets under management. The SEC might increase this to \$100 million of assets under management. Given the difficulty the SEC has in examining such a large number of investment advisory firms, I think this is a good idea. NASAA has endorsed such a change and will work closely with the SEC to make this happen.

Finally, NASAA's position regarding investment adviser regulation is that it should continue to be the responsibility of state and federal governments that are accountable to the investing public. We each must be funded adequately to carry out our responsibilities. A self-regulatory organization for investment advisers is inappropriate because it embodies a flawed approach to regulation since a self-regulatory organization is inherently conflicted and is not independent.

Another area of concern is arbitration. We all know arbitration is not working. It is time to end mandatory, industry-run arbitration for investors. The harmful effects of mandatory arbitration have been well-documented in numerous studies. Both houses of Congress have responded with legislation that would prohibit the use of mandatory arbitration clauses in a wide range of consumer services, including securities. No further studies are necessary. Mandatory arbitration clauses should be banned without delay and investors should have the right to choose between litigation or arbitration as the forum for resolving disputes with their financial services firms. And if investors elect arbitration, they should be able to choose an independent arbitration forum, not just a forum operated by the industry.

One of the strengths of state and provincial securities regulation is our commitment to improving how we perform our statutory duties. In this regard, we continue to be mindful of the cost and complexity of regulatory compliance. Where possible and appropriate, we will work to reduce both.

Some of you may remember a NASAA uniformity project, the "Green Project," of a few years ago. It was set up to examine state licensing requirements and increase the uniformity of licensing processes among the states. That project increased efficiency and reduced costs without harming investors. This year, we will launch the "Emerald Project" - you know, emerald is an even better green - to focus on state broker-dealer registration requirements and to work toward streamlining the broker-dealer registration process without compromising investor protection.

We will review the various state broker-dealer registration requirements with an eye toward evaluating their usefulness and eliminating unnecessary, non-essential requirements where possible. I am confident that the Emerald Project will help promote efficiency in broker-dealer registration and ultimately reduce compliance costs for industry applicants.

I commend our Canadian members who just this summer completed a project to adopt a new nationwide system to streamline and modernize the registration requirements for Canadian brokers and advisers. The new Canadian registration regime, along with the Emerald Project, reflects the responsiveness of the provincial and state securities regulators to legitimate concerns raised by industry.

I always welcome hearing from industry representatives when they share our goal of doing what is right for investors. While we may not agree on every issue, we can usually find common ground through open and honest dialogue.

I am pleased – and frankly a bit surprised -- to find myself in agreement with the Investment Company Institute on an important question concerning money market mutual fund reform. For most working families, mutual funds are the cornerstone of their plans for a financially secure retirement. Money market mutual funds, in particular, have served as a primary investment vehicle for the majority of Main Street investors. Required to maintain a net asset value of \$1 per share, they have been used for decades as a safe haven for cash, accounting for nearly 20 percent of all U.S. household cash balances.

However, these funds are not risk-free. When The Reserve Primary Fund “broke the buck” last year, shockwaves rippled through the credit markets. Thousands of investors cast a jaundiced eye over the entire industry when they could not redeem their holdings in the fund at the \$1 NAV they had come to expect. In June, the SEC responded with a series of proposals designed to strengthen standards for credit quality, liquidity and maturity for money market fund holdings. Among the proposals was a request for comment on changing one of the hallmarks of money market funds – the stable \$1 NAV – in exchange for a floating NAV. I join with the ICI in opposing this change and echo the industry’s concerns that such a move would only serve to encourage investors seeking a stable NAV to turn to products that offer fewer investor protections.

One of the greatest contributions we make to investors is investor education, which I always point out, originated with state securities regulators. It is now embraced by everyone from the President of the United States, members of Congress and Governors, to unions, colleges, and classroom teachers. Regulators and the securities industry can and do work together to ensure that misinformation is not disseminated to investors under the guise of teaching them how to better protect themselves and make wise investment decisions. To that end the Securities Industry and Financial Markets Association has been a great partner with NASAA and we look forward to collaborating with them on investor education projects.

If we are to advance economically as a society, we regulators must devote even more of our resources to helping increase financial literacy in our jurisdictions. Because we strongly believe that non-commercial investor education is a key driver of unbiased programs, we will work to strengthen our relationships with those parties and devote significant time and effort to educate investors, especially those who are at greatest risk.

One of our key demographics for the foreseeable future is aging investors. We have a pilot program in Texas, funded by the non-profit Investor Protection Trust, whereby doctors and other caregivers identify and assist individuals at risk of elder investment fraud due to cognitive impairment.

This is but one example of the many ways that NASAA and its members will expand the list of those who help us to prevent senior investment fraud. In short, we will continue the great work NASAA has done so far in protecting investors, especially older investors.

All of us know that this is going to be a seminal year for investors. Together we are going to accomplish great things in advancing NASAA’s mission to protect those investors. In closing, I want to sincerely thank my staff at home in Texas, as well as the NASAA staff in Washington for your incredible support. I especially want to thank the talented, dedicated members of NASAA for giving me this great honor. I will do my very best to live up to the faith you have placed in me.

Thank you.

September 15, 2009