



Risk Management Update October 2010

NASAA: PROVIDING GUIDANCE ON THE LATEST STATE DEVELOPMENTS IMPACTING B-Ds, RIAs AND PRIVATE FUNDS

The North American Securities Administrators Association, (“NASAA”) recently inaugurated its 94th president amidst a year of heavy financial reform. The new President, David S. Massey, will have a full agenda as NASAA works through the various provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and support the stipulations set forth for state securities departments. Those registered investment advisers transitioning to state regulation should keep a pulse on NASAA’s developments to foreshadow what likely lies ahead for their businesses.

Role of NASAA as an Overseeing Body

NASAA is best described as “the oldest international organization devoted to investor protection...[with] membership consist[ing] of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.”¹ Unlike the Securities and Exchange Commission, (“SEC”) and the Financial Industry Regulatory Agency (“FINRA”), NASAA is not a regulatory body. Rather, NASAA is the voice of the combined states that endeavors to provide protection to investors purchasing securities or seeking investment advice.

NASAA works with state regulators by licensing brokers, registering securities, investigating investor complaints and enforcing state securities laws. Similar to SEC and FINRA inspections of registrants and members, NASAA, too, investigates brokerage and investment advisory firms for violations of state securities laws, filing enforcement actions where appropriate.² With jurisdictional authority to review non-exempt offerings, NASAA also works to educate investors and advocate consistent state securities laws and regulation.

Current Agenda for NASAA

With the new array of federal rules and regulations to consider, NASAA has highlighted the following as key focus areas on its agenda for the upcoming year:

¹ Available at: http://www.nasaa.org/NASAA_Newsroom/Current_NASAA_Headlines/13382.cfm

² Please see: http://www.nasaa.org/About_NASAA/

- Investment Adviser Regulation
- Private Offerings
- SEC Rule Making
- Auction Rate Securities

Each of these areas are more fully described below.

1. Investment Adviser Regulation

With the shift of registration requirements for investment advisory firms, now advisers with less than \$100 million in assets under management must register with the states. NASAA estimates that over 4,000 firms will transition from SEC to state registration. Consequently, NASAA will be instrumental in providing support for the influx of state registrations by facilitating training and cooperative audits among the states. Each of the 50 states, including the District of Columbia, have signed a memorandum of understanding, which formalized the cooperation of the states in the regulation of investment advisers.

Importantly, what does this mean for firms?

In addition to advocating investor rights and supporting state regulatory agencies, NASAA is a beneficial tool for investment advisers. As currently found on their website,³ NASAA is offering an “IA Switch Resource Center,” which is geared towards aiding those investment advisers transitioning from SEC to State registration. The online center includes resources such as:

- A Calendar of Events
- Directory of State BD/IA Registration & Examination Contacts
- Frequently Asked Questions

NASAA provides similar resources for broker-dealers, with valuable information such as statements of policy, model rules, comment letters and considerations for regulatory actions. For more information, visit www.nasaa.org.

2. Private Offerings

In response to the cited increase in fraudulent activity in the private offering arena, NASAA was a heavy proponent for reforming Rule 506 offerings. Congress responded by increasing the threshold for accredited investors, as well as imposing disqualifications of bad actors from using Rule 506 as a safe harbor exemption.

As NASAA supports state security departments, issuers of private placements can benefit by accessing the free educational and other resources provided. NASAA provides a ‘one-stop-shop’

³Available at: <http://www.nasaa.org/home/>

for those seeking information regarding state security laws across the nation. Through its website, NASAA offers a contact directory⁴ of the various state securities departments, in addition to notifications of state rule proposals and other pertinent securities announcements.

3. SEC Rule Making

As an advocate for investor rights, NASAA was a promoter for various areas of regulation with the passing of the Dodd Frank Act, including fiduciary standards for broker-dealers and mandatory pre-dispute arbitration clauses in brokerage contracts. As new rule proposals continue to develop this Fall and beyond, be sure to follow state regulatory activities as well as legislative activity impacting the financial industry by visiting

http://www.nasaa.org/issues_answers/Regulatory_Activity/.

4. Auction Rate Securities

The market for Auction Rate Securities (ARS), which typically involve corporate or municipal bonds with a long-term nominal maturity, has been frozen since February of 2008, as a result of market events causing security holders inability to dispose of their holdings. NASAA responded by organizing a task force for organizing, investigating and negotiating global settlements for the illiquid ARS holdings. For broker-dealers involved in such settlements, this meant increased reporting requirements to the states as well as heightened requirements to use best-efforts to find liquidity solutions for their institutional clients with these holdings. NASAA continues to be heavily active in reviewing compliance of these broker-dealers and working towards buybacks for individual investors.

As many firms continue to operate with ARS, updates provided by NASAA can be insightful and guiding with regard to current activities and regulations affecting such securities. For more information on NASAA's involvement with ARS, please visit

http://www.nasaa.org/issues_answers/Auction_Rate_Securities/.

Important Information for the BD and IA Community

Importantly, as both NASAA and its new president will continue to support state regulatory efforts through securities rules and regulations, it is prudent for BDs and IAs alike to follow NASAA's developments. By going to <http://www.nasaa.org/home/> you can request daily updates in the latest news which may impact your firm. Additionally, by utilizing the above mentioned resources, firms can stay ahead of the curve as the regulations governing the financial industry continue to evolve.

For more information on financial reform resources, please do not hesitate to contact Core Compliance and Legal Services, Inc. at (619) 278-0020, info@corecls.com or visit www.corecls.com.

⁴Available at: http://www.nasaa.org/industry_regulatory_resources/Directory_of_Securities_Laws_Regulations/

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