

Remarks of NASAA President Christopher Gerold to the SEC Investor Advisory Committee

Written **Remarks** of NASAA President Christopher W. Gerold

SEC Investor Advisory Committee Meeting

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Introduction:

Good Afternoon. I'm Christopher Gerold, Chief of the Bureau of Securities in the Office of the New Jersey Attorney General and the President of the North American Securities Administrators Association, or NASAA. NASAA is the association of U.S. state securities regulators.

Many of you are already familiar with NASAA; and my colleague Craig Goettsch, who has represented state regulators on the IAC virtually since its inception.

NASAA members are on the frontlines of investor protection, working to safeguard the financial futures of hardworking Americans and provide regulatory pathways for local businesses seeking to raise investment capital. As the regulators closest to the investing public, with an office in every state, we have a unique view into the issues and concerns of Main Street investors and small businesses.

Thank you very much for the invitation to speak at today's IAC meeting on the impact of the COVID-19 virus on retail investors and our nation's securities markets.

Discussion of Regulatory Steps Taken & Underway by State Regulators:

The past few weeks have been challenging for investors, regulators, and the financial services industry. My remarks today will be focused on the actions taken by states in response to the COVID -19 pandemic and what we anticipate in the weeks and months ahead.

Update on State Regulators' Operational Status and Challenges

NASAA's U.S. member regulators are operating through the present crisis consistent with state and federal directives and guidance related to social distancing. This means

that, like our federal counterparts, our staffs are primarily working remotely and taking advantage of technology to carry out our statutory responsibilities.

The NASAA Board of Directors has established a COVID-19 working group to help coordinate states' responses to COVID-19 related issues, to engage with other regulators, and to facilitate the sharing of information with registrants and investors alike. This group has been meeting regularly via conference call to address the needs of the membership and respond to what can best be described as a fluid situation.

Update on State Regulatory Relief Actions and Coordination

States are acting within their authority to assist registrants as they weather the impact of the COVID-19 virus, and coordinate where possible. These actions include providing a variety of regulatory relief by, for instance, extending certain deadlines and other regulatory requirements that are especially onerous in light of the displacements caused by the spread of COVID-19. In many instances, this relief marries similar relief provided by other regulators, including the SEC and FINRA.

To help facilitate this effort, NASAA has developed a new webpage with information dedicated to the COVID-19 crisis, and states' response. The purposes of this webpage include (1) serving as a resource to industry as a way to monitor state orders and actions related to the financial services industry; and, (2) serving as a resource for states as they contemplate the types of relief that may be requested by registrants.

Importantly, state securities regulators are maintaining essential regulatory operations. While virtually all state offices are closed to the public, their staffs are teleworking and are generally available through the normal communication channels of state phone and email systems.

Enforcement investigations are proceeding forward, although in-person contact is being limited as states maximize the use of virtual technologies.

Virtually all states report they continue to process licensing applications via CRD/IARD systems with little or no disruption. Examinations and audits of firms have shifted from on-site to remote or are being deferred when necessary.

Very few states are reporting service disruptions but, when reported, they tend to involve the processing of mail and paper filings. Although the mechanism varies from state to state, nearly all states are providing regulatory relief to licensees/registrants adversely impacted by COVID-19.

While state securities authorities are working to help financial professionals withstand our current difficulties and continue to serve their customers, we remain focused on our mission to protect investors.

Discussion of State Work to Push Out Information to Retail Investors:

Past experience tells us that opportunistic scam artists will undoubtedly prey on the fears and concerns of retail investors in the midst of a crisis, and we see no reason to believe that will not be the case for COVID-19. To try and combat these schemes, NASAA, and many individual state regulators, are highly focused on providing investors with information to help navigate COVID-19 and its unique risks.

Investor alerts

NASAA has already issued several regulatory bulletins and investor alerts, including two alerts directly related to the COVID-19 virus, and the types of opportunistic frauds we anticipate may arise in the coming weeks.

For example, our most recent advisory contained information from state enforcement officials outlining the top coronavirus-related threats they expect investors will face and steps they can take to protect themselves. NASAA has made this information available to all of its members to be used in press releases to help raise investor awareness in their jurisdictions. NASAA also has been pushing information out through its own social media channels and press releases to reach as many investors as possible.

Some of the frauds and schemes we anticipate seeing include the following:

Micro-cap Fraud

NASAA is concerned that some micro-cap companies may try to manipulate their stock price by circulating information or misinformation related to COVID-19 – for instance the company finding a vaccine, manufacturing personal protective equipment, or finding an

alternative to toilet paper. Now, the real reason they may be doing this is to merely pump up their stock price, so insiders can dump the stock on unsuspecting investors.

Private placements and off-market securities

Similar to micro-cap fraud NASAA is concerned that some will take advantage of concerns with the regulated securities market to promote private offerings related to COVID-19 – using the same techniques used to pump up a stock – vaccine, personal protective equipment, etc. Because private securities transactions ostensibly sold pursuant to certain Rule 506 exemptions are not subject to review by federal or state regulators, these offerings are a vector for fraudulent offerings to masquerade as all types of investment opportunities. We are also particularly concerned that people will be pitched on private placements because they appear more stable because there is no secondary market, and they are not being repriced on a daily basis, the same way the public securities are.

Gold and silver scams

In times of market volatility like these, some are sure to try to take advantage of the decline in the public securities markets by selling fraudulent investments in gold, silver, and other commodities that are not tied to the stock market. These assets may also be attractive because they are often promoted as a “safe” or a “guaranteed” hedge against inflation and mitigating systematic risks.

Outreach to Elderly Investors:

NASAA and its members are also exploring ways to expand outreach to elderly investors further, especially where lengthy quarantines have been imposed, resulting in potentially unprecedented social isolation.

Areas for Further Focus/Continued Monitoring:

In my remaining time, I’d like to highlight some of the risks we see on the horizon and summarize some of the issues and products we consider potentially problematic.

NASAA members are also monitoring potential risks directly associated with recent market volatility, and the uncertainty regarding the government response to COVID-19 – especially the CARES Act. For example:

Retirement Assets

The recently passed CARES Act allows workers to withdraw up to \$100,000 from their retirement accounts (401(k)s and the like) without the 10% penalty. It's fair to expect that some promoters may try to use this as a way to get at investors' money, saying that this a time to buy a particular scam investment while the prices of many assets are low.

Stimulus Checks

In several weeks, many millions of Americans will be receiving stimulus checks worth anywhere from \$1,200 to \$5,000 and more. Some recipients are sure to be targets of "government imposter" and other sophisticated schemes.

Margin Accounts

In the coming weeks, I expect that we will see a significant increase in complaints related to suitability, specifically use of margin in retail accounts. While some will have been suitable, I expect many will have been unsuitable that will require investigation.

Private Markets

While we have a clear understanding of the market volatility and impact COVID-19 on in the public markets, NASAA members are deeply concerned that we have no insight into the impact of COVID-19 on the private markets, especially those private companies that have retail investors. We would hope that the Commission shares these concerns.

Market Disruptions that Damage Retail Investors

Regulators must closely monitor how market intermediaries such as broker-dealers and investment advisers are operating during this crisis. Processes, procedures, and staff must be in place so that investors can reach their financial professional to ask questions, raise concerns, and discuss investment options. Systems must be sufficiently robust to deal with the likely prolonged increase in this engagement and continued market volatility.

Other COVID-19 related items for Commission and other regulators to monitor include:

There are various operational issues impacting investors, including: strains on call center volume; we're heard from clients who are frustrated and confused; inability of clients to access brokers, leaving messages that are not promptly returned, etc.; delays

in trade executions; and delays in fund transfers, including transfers of accounts (ACAT).

Monitoring Firms and Providing Important Information About the Safety of Investments:

Finally, businesses, including broker-dealers and investment advisers, are likely to experience significant financial distress as a result of what is essentially a pause in many of the activities that drive our economy.

Regulators should closely monitor the firms they regulate and be prepared to provide information to investors in a proactive manner such as in the unlikely event a broker-dealer fails. Communications should include information about SIPC and the ways in which it does and does not offer protection for investments. Now is the time for investors to understand what types of entities and investments are covered under SIPC and, perhaps more importantly, those that may not be covered.

Policy Recommendations:

Finally, the Commission, FINRA, and various states have granted appropriate, temporary regulatory relief, the solution to the present crisis is not to weaken the securities laws.

The main focus of the Commission must be protecting retail investors and the operations of our markets; the solution to the present challenge is not to weaken the securities laws.

Many market participants and many leading members of Congress have urged the SEC to “pause” major rulemakings, particularly rulemaking related to the SEC’s Concept Release on Exempt Offerings, for at least 90 days. NASAA agrees that a pause is necessary and appropriate and would urge the SEC to act in this regard.

Conclusion:

Thank you very much for the invitation to share NASAA's views on the implication of COVID-19 on our securities markets and retail investors I would be please to answer any questions you may have.