

Statement of NASAA President Christopher Gerold
On behalf of the North American Securities Administrators Association
“Examining the Impacts of the COVID-19 Pandemic on U.S. Capital Markets”
House Financial Services Committee; Subcommittee on Investor Protection,
Entrepreneurship and Capital Markets
Roundtable Discussion
May 26, 2020

Introduction:

Good Afternoon Mr. Chairman, Mr. Ranking Member, and members of the Committee. My name is Christopher Gerold, and I am the President of the North American Securities Administrators Association, or NASAA, which is the association of U.S. state and territorial securities regulators.¹

I appreciate the opportunity to join you and my fellow panelists today to discuss the impact of the COVID-19 Pandemic (“Pandemic”) on the capital markets.

Overview of State Securities Regulatory Responses to COVID-19 Pandemic:

In the days following the announcement of COVID-19 as a pandemic, NASAA formed a working group of state regulators to assist our members in providing limited regulatory relief necessary to ensure continued operations of the financial services industry. Members of the working group also continued ongoing coordination with the SEC and FINRA. NASAA also formed a COVID-19 Enforcement Task Force, with nearly all jurisdictions participating, to identify and stop potential fraudulent offerings and schemes related to the Pandemic.² On the legislative front, we have urged Congress to pass the “Senior Security Act” and introduce the draft “Empowering States to Protect Seniors from Bad Actors Act” – measures we believe necessary to protect seniors from opportunistic frauds associated with this Pandemic.³

Perspective and Recommendations to Congress:

As we consider proposals during our discussion today, I think it is important to remember that neither the securities laws nor the functioning of the capital markets are the root cause of the present economic distress. Prior to the Pandemic, the securities laws and our capital markets were

¹ The oldest international organization dedicated to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² See: “NASAA Forms COVID-19 Enforcement Task Force.” (Press Release – April 28, 2020). Accessible at: <https://www.nasaa.org/54844/nasaa-forms-covid-19-enforcement-task-force/?qoid=current-headlines>.

³ A copy of the draft legislation entitled “The Empowering States to Protect Seniors from Bad Actors Act of 2020,” is included in the “Background Materials” submitted to the Committee in connection with today’s panel. Further, on October 19, 2019, the HFSC noticed and considered similar legislation in connection with a full Committee hearing.

serving their intended purposes – the protection of investors and allocation of investment capital. This has remained true during the height of the Pandemic and remains true today.

In fact, at a time when many of our national institutions appeared to be underprepared, the securities markets and most financial services firms have functioned – and continue to function – capably and without significant interruption, playing their appropriate role in our economy and financial system.⁴

Congress has taken significant steps to address the adverse impact of the Pandemic on small businesses. Perhaps more can and should be done along the lines of previous measures designed to assist small companies struggling to make payroll and cover rent. However, Congress should be *very skeptical* of proposals that would *weaken* the securities laws in the name of the crisis.

NASAA recently made legislative recommendations to Congress in the wake of COVID-19.⁵ They represent sound policy and set forth concrete steps that Congress can take to close gaps in investor protection. I have included a copy of these recommendations as “background materials,” and I will be pleased to discuss them during the Q&A today, especially on the draft bill that would make important technical corrections to the “Senior Investor Protection Grant Program” and empower states to ramp up “Main Street” investor protections during the Pandemic.

For now, however, I would like to briefly address the principles and priorities that I believe Congress should keep front-of-mind as it contemplates additional legislation in the aftermath of the Pandemic.

First, Congress should support increased transparency in the private marketplace. As a result of the transparency that is integral to the public markets, we have a clear understanding of how these markets have functioned during the Pandemic. The same cannot be said for the private markets. In 2018, the SEC estimated that approximately \$2.9 trillion was raised through exempt offerings,⁶ surpassing the capital raised in the public markets. Yet we know very little about how these markets function.

Second, and relatedly, Congress should seriously consider imposing a “pause” on major SEC rulemakings, especially on efforts designed to expand private offerings and private markets. In September 2019, NASAA and others expressed strong concern about the dramatic expansion of private markets, even in the robust economy that existed at that time.⁷ Despite the fact that the

⁴ With some exceptions, such as Robinhood’s outage issues, national securities exchanges and market participants have generally remained open and operational during this COVID-19 pandemic despite experiencing unprecedented volatility.

⁵ A copy of NASAA’s April 2020 recommendations to Congress are included in the “Background Materials” submitted to the Committee in connection with today’s panel.

⁶ See: SEC Concept Release on Harmonization of Exempt Offerings. (P. 16). Accessible at: <https://www.sec.gov/rules/concept/2019/33-10649.pdf>.

⁷ See: Hearing on Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment before the HFSC Subcomm. on Investor Protection, Entrepreneurship, and Capital Markets, 116th Cong. (Sep. 11, 2019). (Statement of Michael Pieciak) accessible at: <https://www.nasaa.org/wp-content/uploads/2019/09/NASAA-Written-Testimony-HFSC-IPECM-Commissioner-Michael-Pieciak.pdf>.

economy has changed profoundly since then, the SEC so-far appears intent on proceeding with a deregulatory agenda, as if little has changed.⁸ This is baffling and should concern the Committee.

Third, we need to ensure continued and, where necessary, expanded disclosures by public companies. Our public markets themselves remain *invaluable* because they are transparent and well-regulated – they are the gold-standard for investors across the globe. Now more than ever, Congress must support and work in partnership with state securities regulators to keep fraud out of our capital markets.

Conclusion:

Thank you again for the invitation to participate in today’s panel. I look forward to the Q&A.

⁸ See: e.g., Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, 85 Fed. Reg. 17,956 (proposed Mar. 4, 2020); Amending the “Accredited Investor” Definition, 85 Fed. Reg. 2,574 (proposed Dec. 18, 2019).