



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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### Keeping Securities Safe | July 24, 2022 | OAS Episode 165

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures, the people in them, the policies, process, and politics that shape them. I’m your host, Ed Smith.

ML: *We play a critical role in protecting investors large and small from investment fraud and abuse.*

Ed: That was Melanie Senter Lubin, the securities commissioner in Maryland and president of the North American Securities Administrators Association. She is one of my guests on the podcast.

Our focus in this podcast is state’s securities administrators. These are the agencies in every state that oversee investor protection and efficient capital formation. Their key focus is protecting consumers with purchase investment advice for securities. Also on the podcast is Faith Anderson, the chief of Registration and Regulatory Affairs of the Securities Division of the Washington State Department of Financial Institutions.

They discuss the various roles states securities regulators play, the assistance they can offer state legislators and legislative staff, and how state regulators work with their federal counterparts. They also sketched out their perspective on a variety of policy topics including licensing and digital currency. Both Lubin and Anderson also wanted legislators to know that the securities regulators in your state are always available to answer questions for you or your constituents.

Here is our discussion:

Melanie, Faith, welcome to the podcast. Thanks to both of you for coming on to talk about state securities regulators. Now, I'll confess, when I started working on this podcast, I knew just a little bit about states securities regulators, and I think I know a fair amount about state government. So, let's start there Melanie. What's the role of state securities regulators and how much does the role differ from state to state?

ML: There are all kinds of things states securities regulators do and I'm not surprised that you might not know about us all that much. But we play a critical role in protecting investors large and small from investment fraud and abuse. States securities regulators are responsible for the licensing of firms and investment professionals, registration of some securities offerings, branch office sales practice audits, investor education and most importantly the enforcement of states securities laws. Because many of their issues facing each state are different, each has different laws and regulations protecting investors in their jurisdictions. The vast majority of our laws are based on the Uniform Securities Act and it's important to know that the focus of states securities regulators is to keep all investors including older investors or investors with diminishing capacity safe from financial abuse.

As you mentioned, I'm the securities commissioner in Maryland and our state has securities regulations specific to the need of Marylanders. But each state isn't an island and very frequently the needs of investors in one state are very similar to the needs of investors in other jurisdictions. All states as well as the provinces and territories of Canada, the country of Mexico are members of the North American Securities Administrators Association or NASAA like the space folks with an extra A at the end. NASAA regularly brings together each territory, state and province to discuss investor protection trends, enforcement of our laws, capital formation issues and regulation needs that can affect that could affect investment advisors and investment advisor representatives, broker dealers and their representatives. Most people know then the stockbrokers and the firms that they work for. Securities issuers and franchise owners as well as many other issues that affect states securities regulation. From my perspective, each jurisdiction is stronger when working together to help facilitate legislation that better protects investors.

Again, the primary goal has always been and will remain to advocate and act for the protection of investors especially those who might lack experience, education or resources to protect their own financial interests. NASAA member states are driven by the conviction that every investor deserves protection, and that the welfare of investors must not be sacrificed in the process of capital formation.

*(TM): 04:22*

Ed: Much of our audience is state legislators and legislative staff and I wonder if you could talk a bit about how securities regulators work with the legislature.

ML: There are some similarities and some differences across the 50 states securities regulators. To some degree, the nature of the working relationship between them and their state legislature turns on first where the regulators are situated within the state's government. And second applicable rules and processes related to their legislation. And third, everybody's boss has a preference with how you relate to the legislature. But one similarity is that we all hope to serve as a source of technical expertise regarding any future or pending state legislation that would or may affect states securities regulators or states securities regulation. I spend hours and hours and hours with the pre-files and our legislation session seeing what's out there to see, you know, is there a purposeful or more importantly, an inadvertent, effect on the securities act or any of the other statutes we enforce.

If legislative staff need expertise, historical insights, legislative testimony or anything like that, they really should consider contacting their states securities regulator at the earliest possible point in the whole policymaking process. Also, if the staff is trying to identify people to serve on public policy counsels or commissions, they should keep their states securities regulators in mind. And if you don't know how to get in touch with your state's securities regulators, go to NASAA's, website which is at [www.NASAA.org](http://www.NASAA.org). Click on the contact your regulator button in the upper righthand corner of the website's main page and that will get to your jurisdiction. Click on that and you will find the information about how to get in touch with your local regulator.

Now about the differences in how we engage with state legislators, I learned early in my 35-year career as a states securities regulator to be careful about talking about the approaches of my peer regulators because things differ from jurisdiction to jurisdiction. So, we all prefer to describe our own offices. So, I can talk a bit about Maryland and then turn it over to Faith to talk a bit about her office in Washington state. So, Maryland is a little bit different. We are one of five securities divisions that is housed in the State Attorney General's office. But we've got regulators can be all over the place. Some are in financial services, regulatory agencies. Some that may house banking and insurance. House all three of us. House one or two. We could be in the Secretary of State's office. We could be in the State Auditor's office. There are just different. Or we could be freestanding offices in and of itself. So, we could be in all kinds of different places. In Maryland, because we are part of the AG's office, we coordinate with the rest of the AG's legislative agenda. But we also raise proposals to members together with members of our General Assembly and that frequently arises because our legislators have an interest in the area, and they pay attention to model legislation or regulations that are developed through NASAA. So, we are often called upon to help legislators and

legislative staff with legislation they are contemplating. Or we reach out to them directly, as I said before, if I see pending legislation that might affect something going on in our office or something that we have an interest in for another reason. So as an example, you know when NASAA developed the model legislation to protect seniors and vulnerable adults from financial exploitation, we worked with Maryland legislators at both Houses on a bill that would not only adopt that legislation but would also add it or amend other provisions of the Securities Act that helped industry with compliance with certain provisions that have become difficult or had changed because federal law had changed. And we also were able to work into that bill some other changes that help our office with our compliance enforcement and investor protection efforts.

We've also been able to help legislators with other bills that they were proposing and made sure that those provisions accomplished what they wanted to accomplish and weren't inconsistent with other provisions in the statute that might have created unintended consequences for that legislation. So, things like that came up when we were working on a model senior designation provisions from NASAA model legislation that had become that had been proposed in Maryland. And we made sure that that already worked with some similar provisions that we already had in the Statute and wouldn't run contrary to other things that we had either in our Statute or our regulations.

So, as I had mentioned before, it's different in different states and maybe Faith can talk a little bit about how it works in Washington State.

*(TM): 09:01*

Ed: Yeah Faith. Why don't you explain how it works in Washington?

FA: My team sits within Washington State's Department of Financial Institutions or DFI for short. DFI has four regulatory divisions that regulate a wide range of financial enterprises and individuals such as our state-chartered banks, state-chartered credit unions, mortgage brokers, penny lenders and securities issuers and salespeople. DFI is a cabinet agency at state government with our director appointed by our governor. Under Washington law, public funds generally may not be used for the lobbying of state legislators by state agencies. However, this does not prevent officers or employees of agency from communicating with a member of the legislature on the request of that member or communicating to the legislature through the proper official channel's requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business are actually made in the proper performance of their official duties. Our agency collaborates with the Office of Financial Management, an office within the office of the governor concerning draft or pending legislation in our

operating budget. Any legislation our agency requests from the legislature must have the prior approval of this office. We provide information to legislative members as well to inform legislation under consideration. In a limited number of situations, we may support or oppose legislation. But for the most part, we remain neutral. One example of our engagement with legislators concerned our state crowd funding legislation that was passed in 2014. We provided legislators with information about the legislation that was under consideration, and we also provided suggestions for how to improve the legislation from an investor protection standpoint.

Another example is from 2020 where we successfully requested legislation to repeal Washington's Debenture Company Act. This was an act that opposed safety and soundness measures on certain issuers of debt securities. We determined that that legislation had become obsolete. Requested that it be repealed, and we were successful.

Ed: So, it sounds like a lot of the roles these would be the legislators offering your expertise. Melanie, I'm wondering if you can explain the relationship between states securities regulators and federal securities regulators?

ML: It's a really good question because your listeners probably don't know this. I don't think most people know this, but states securities regulation predates federal securities regulation. NASAA was founded in 1919. The first states securities laws were adopted in 1909. And then Congress didn't create the SEC until 1934 and actually used the state laws as a model for what was put into the Securities Act in 1933.

Ed: Well, we all know that states are where things get done so I'm not too surprised by that.

ML: During the last 88 years the federal government unfortunately has chipped away the authority of states securities regulators to protect investors and promote capital formation. So, my colleagues and I have opposed many of those changes because we believe protecting investors is a significant challenge and no single regulatory agency could really do it by themselves. To that point and notwithstanding the efforts by our federal counterparts to restrict our authority, we continue to try and partner with the SEC and other federal partners on everything from investor education to examination to enforcement. And we also coordinate our rules obviously with our rules with their rules because we either have overlapping jurisdiction in a slot of spaces or jurisdiction where someone might start out as a state level advisor or state level issuer and then eventually have to coordinate with federal laws, so we try to keep the requirements consistent.

By way of an example, we are working with the SEC on enforcement. This past February NASAA and the SEC announced a major enforcement action with a joint \$100 millionr

settlement with a company called BlockFi Lending, LLC. And that case involved BlockFi's Lending products and practices. And a lot of the state's securities regulators agreed to the term of the settlement with BlockFi to resolve its past unregistered activities and more states are expected to follow.

*(TM): 13:40*

Ed: Now that you've given us some notion of how states securities regulators work, I wonder if we could talk about some of the key issues of concern to NASAA and state regulators generally. I'd like to hear from both of you on this. Melanie, why don't you start?

ML: NASAA has got a very robust policy agenda. And I'll provide two highlights and then turn it over to Faith to talk about you know key issues that NASAA State Legislative Committee that she serves on is working on. First at NASAA we continue to devote a lot of time and resources to making sure that government enforces regulations best interest. So, for your listeners who don't know it, the SEC's regulations best interest which is also called Reg BI establishes a best interest standard of conduct for broker dealers and their associated persons. Again, those are the stockbrokers and the firms they work for. What Reg BI requires is oversight and that they act in a client's best interest when they make a recommendation to a retail customer of any securities transaction or investment strategy that involves securities and that also includes making recommendations of the types of accounts customers ought to open or have.

Late last year NASAA published the results of a nationwide survey that we that states securities regulators conducted that provided the first comprehensive look at broker dealer industry policies and practices following the implementation of Reg BI. We had done a survey before the regulation went into place to try and see what was the baseline with the firms about their practices and then we did a follow up to see what has changed. The survey showed that there was some improvements, but most firms were operating in the same manner as they had prior to the SEC's adoption of Reg BI especially in the area of harmful compensation conflicts. We are continuing to engage with senior SEC staff about opportunities to strengthen the enforcement of Reg BI. It's a really important role and we are also working on getting the word out to industry about where we see problems and working now on a follow-up examination to go see you know what have the firms actually done on site and how have they come into compliance with Reg BI.

Another area where NASAA has devoted significant resources is protecting older and sometimes vulnerable investors. As many of your listeners know, we and other state government actors have played a leadership role in the decades long fight to protect

these investors. A work in the area draws on all of our areas of expertise including investor education, policymaking, examination where it's appropriate enforcement work. And at the state and federal level, we've both been proactive and reactive. By way of an example and we brought this statute up already, in 2016 we finalized the Model Act called NASAA's Model Act to protect vulnerable adults from financial exploitation. The Model Act gives industry participants and state regulators tools to help us all detect and prevent the financial exploitation of vulnerable adults. So, the Act mandates reporting to a state's securities regulator and state adult protective services agencies when a qualified individual has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred. The Act also allows the financial services firm to disclose to third parties in instances where there is someone designated who can receive the disclosure that there could be a problem. And beyond that, the Acts direct the disclosure that cannot be made to a third party who is the suspected abuser or the person who might be conducting the financial exploitation. So, since that model of legislation was passed by NASSA, at least 34 states have passed legislation based in whole or in part on that Model Act. And thanks to you know Faith's hard work and other members of NASAA State Legislation Committee and NASAA's Senior Issues and Diminished Capacity Committee, we've gotten significant uptake and other states are also considering adopting that those provisions.

Now at the federal level, we continue to advocate the passage of S3529 which is called the Empowering States to protect seniors from bad actor's act. It is bicameral bipartisan legislation which the House passed in May 2022. And it would establish a grant program at the SEC to enhance existing efforts by states securities and insurance regulators to protect senior investors and policyholders from financial fraud. Lastly, we continue to work with a diverse group of partners including AARP, the SEC, the Consumer Financial Protection Bureau, FENRA and a whole lot of other groups to spread the word about the resources we have that you know we've set up as a service to the securities industry on how financial professionals can detect and prevent potential other financial exploitations, how others who deal with seniors and potentially vulnerable adults can detect it. And ways that you know, they can get in touch with us. How they follow provisions of the law, investor education material to help people detect and prevent this and it goes on and on. So those are just you know two of NASAA priority areas and Faith can talk a little bit more about some of the other areas.

*(TM): 19:26*

Ed: Melanie thanks. We are going to take a quick break and come back with the rest of our discussion.

*(Music/Advertisement)*

Ed: I'm back with Melanie Senter Lubin, the securities commissioner in Maryland and president of the North American Securities Administrators Association. Also with me is Faith Anderson with the Securities Division of the Washington State Department of Financial Institutions. Faith, Melanie was just talking about policy priorities, and I wonder about your perspective. I'd be particularly interested in your thoughts in the area of occupational licensing.

FA: Well, I can talk about the work of the State Legislation Committee in particular. During the last two years, we have devoted significant time and resources to improving government policies in the areas of whistle blower protection, investor compensation and professional licensing. I can start with the professional licensing bills. Last year, we reviewed various bills that were pending in state legislators that would limit the discretion of states securities regulators, excuse me, to review applications of financial professionals including those from individuals with criminal convictions. So, unless amended, these bills would prevent states securities regulators from denying applications by individuals convicted of plainly disqualifying conduct such as securities fraud, forgery, theft or embezzlement. Such a result would be contrary to the investor protection role that we play as states securities regulators. That role that we have carried out for decades. So, following the review of the state laws, the state bills that were pending, we wrote to NCSL in April 2021 to raise awareness of these bills and we included some model legislative language to address the issue in our letter. If state legislative staff haven't had an opportunity to review that letter, I would encourage them to review it and seek counsel from their own state's securities regulators. The letter is on NASAA's website, and I believe it is also included in the podcast materials. I wasn't sure if you wanted me to talk about our Model Whistleblower Award and Protection Act.

Ed: Yes. Why don't you talk about the Whistleblower policy?

FA: Yes. So, this is a Model Act that NASAA passed in 2020. The formal title of the Act is NASAA Model Whistleblower Award and Protection Act. As its name suggests, this Model Act provides a states securities regulator with authority to make monetary awards to whistleblowers. And it also establishes protections against retaliation by employers. We drew from the whistleblower award provisions that were contained in section 922 of the Dodd Frank Wallstreet Reform and Consumer Protection Act that was passed in 2010. We also drew from the SEC's rules they adopted thereunder in Regulation 21F and whistleblower laws that had previously been enacted in Indiana and Utah. Depending on the jurisdiction, the Act can either be adopted as legislation during a regular legislative session or implemented by regulation.

Ed: I think another area our audience would be interested in is the regulation of crypto currency and digital assets generally. There has been a lot of attention to that sector recently because of some wide fluctuations in the market. In fact, NCSL is planning a session on the topic at the upcoming Legislative Summit in early August. I am wondering what the role of state regulators is in this emerging space.

FA: I think that's a great question, Ed, and I'll do my best to give you a quick answer. When digital assets emerged over a decade ago, states securities regulators just expanded the portfolio of work that we do to educate, engage and examine and if appropriate enforce the laws. So, I'll give you a few examples of our work. During the last 10 years, we have published at least four to five investor advisories regarding digital assets and associated technologies and all of those are like the other materials available on NASAA's website at [NASAA.org](http://NASAA.org). In addition, we engage with peer regulators and the industry through formal and informal meetings. NASAA has a fin tech committee, that's another board level committee, and they have spearheaded some of that work.

In 2018, NASAA organized a task force of its member regulators to conduct coordinated investigations of alleged violations. This was called operation crypto sweep. This effort generated a first of its kind enforcement and action by state regulators across the country. And last and perhaps most on point for this audience, we recently published NASAA's Core Principles for Evaluating State Legislation relating to digital assets. In a nutshell, our core principles set forth NASAA's vision for policymaking in this area. We believe that we should be number one encouraging registration and compliance within the securities regulatory framework to fostering better regulatory coordination particularly between state regulators, the SEC and the CFTC. And finally encouraging informed goal-oriented investment decision making in our capital markets.

*(TM): 26:23*

Ed: Well, that's some very specific information that I think our audience can use. As we wrap up, I'd like to return to a basic question for both of you. Do you see your role as balancing regulation while at the same time encouraging capital formation? And how do you talk to legislators about that? Faith, why don't you go first.

FA: Ah the quick answer is that I don't view myself as balancing anything. To take a step back, we've had a securities regulatory framework in the United States for over a hundred years now as Melanie pointed out earlier. This framework has long facilitated capital formation and associated innovations. Examples include changes investment products, communication platforms and business models that governments, businesses and people have used. And in many cases still use. A key component of a regulatory framework is something called registration. What is registration? In the United States

and I'm oversimplifying here a bit, we require participants in our capital markets such as broker dealers and investment advisors to register themselves as well as their activities, products and professionals with the government. Registration helps to ensure that people with capital that is investors receive important information from a person or entity who might not otherwise provide relevant information. Registration also allows regulators like me to examine the activities, entities, products and professionals for compliance with various laws and rules designed to make our capital markets operate in a fair, orderly and efficient manner. So going back to your question, Ed, I view our securities regulatory framework as the primary reason entrepreneurs and investors have continued to use our capital markets time and again over the last 100 years. In my office, I'm not the primary point of contact for engaging directly with state legislators. However, I know my colleagues would echo a similar message to state and federal legislators.

Ed: And Melanie, what's your perspective on that? You get the last word here.

ML: Thanks and before I miss the opportunity to say so, we really appreciate you inviting NASAA to participate in this podcast episode. If anybody needs additional information, go to the website. You can figure out how to reach us or reach our corporate office and they could direct you to the appropriate state. Or if you have a question that's at the state level or talk to you or direct you to the appropriate person to talk to about any of the things we've talked about. So, my final thoughts, I've been a states securities regulator, not to date myself but I will, for over 35 years. If I've learned anything, its that it really takes a village to protect investors, to foster capital formation and to support inclusion and innovation in our capital markets. I can't emphasize enough that state legislators and their staff should seek early input on any proposals that would or might affect states securities regulators or states securities laws. We can help you and your staff understand how your idea would or wouldn't affect you know a very well-established regulatory framework both in the U.S. at the state level and also at the federal level. How it will affect supporting investor protection. How it will affect supporting responsible capital formation. Also depending on the nature of the idea, lots of people have great ideas. It might be something that we want to tell other states securities regulators about so that they can look at adopting it in their own jurisdictions and be able to you know pursue the same or similar policy for their state. So again Ed, thanks so much for inviting us on today and we are available if anybody needs any follow-up.

Ed: Well thanks to both of you. I think those in our audience and certainly myself know a lot more about states securities regulators than when we started. Thanks for educating us. Take care.

And that concludes this episode of our podcast. We encourage you to review and rate NCSL podcasts on Apple podcasts, Google Play, Pocket Casts, Stitcher or Spotify. We also encourage you to check out our other podcasts: *Legislatures: The Inside Story* and the special series *Building Democracy*. Thanks for listening.

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