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Top Securities Cop in Alabama Addresses Senate Panel that needs of investors must come first

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NASAA Outlines Key Concerns About Merger of Securities Industry Self-Regulatory Organizations
Borg: "The needs of investors must come first."

WASHINGTON, D.C.—North American Securities Administrators Association (NASAA) President Joseph P. Borg today told a Senate panel that improved investor protection, rather than regulatory streamlining, should be the primary objective of the upcoming merger of two securities industry self-regulatory organizations (SRO).

"Today, 100 million Main Street Americans buy and sell securities locally through their state-licensed brokers. But, as a whole, the financial services industry itself has become increasingly more global in scope. A merger of certain self-regulatory functions makes sense," Borg said in testimony before the U.S. Senate Banking Committee's Subcommittee on Securities, Insurance and Investment during a hearing examining the merger of the NASD and the New York Stock Exchange-Regulation.

"We hear a great deal about regulatory efficiency, including the three capital markets reports, but we must remember that efficiency at the expense of effective regulation is not in our national interest," Borg said. "Our markets will remain strong if our shareholders and investors are confident that, in cooperation with federal and state regulators, their brokers and the capital markets will be adequately policed by the new self-regulatory organization. Scaling back a system of regulation that has vigorously protected U.S. investors for decades could have profound and costly consequences."

"While 'streamlining' current rules and regulatory structures may create some savings and efficiencies, the needs of investors must come first," Borg said. "With one less regulator dealing with the public, state securities regulators urge the new SRO to demonstrate that any rule changes they propose will protect investors from fraudulent and manipulative acts and practices."

Borg outlined five key concerns of state securities regulators regarding the new consolidated SRO.

First, the NYSE's proposal on the harmonization of its rules with those of the NASD raises concerns that the rule harmonization project will favor the interests of member firms of the newly consolidated SRO over the adoption of provisions that protect investors. "Rules harmonization must offer the greatest investor protection, not the least," Borg said.

Second, the new SRO must be tough and effective and willing to make hard decisions that will not be popular with its members. "In the past, the NASD has been under great pressure not to embrace some initiatives that serve investors' interest if its members raise objections," Borg said, citing the recent disclosure rules for the NASD's BrokerCheck system.

Third, the merger will eliminate one arbitration forum for the resolution of disputes between public customers and the securities industry, “which raises the stakes for getting it right,” Borg emphasized, noting that NASAA has been at the forefront of trying to make certain the securities arbitration system is fair and transparent to all.

Fourth, Borg told the panel that there must be consultation between the newly consolidated SRO and state securities regulators before relevant rule proposals and Notices to Members are announced.

Fifth, Borg noted that the NASD and NYSE currently each have surveillance and enforcement programs designed to detect and punish a wide variety of fraudulent conduct and other abuses by broker-dealers and registered representatives. “Consolidation may result in a less effective enforcement regime.”

Borg reminded the panel that the merger of NASD and NYSE-R comes at a time when some on Wall Street and certain business interests in Washington are calling for the weakening of the nation’s current regulatory framework. “A strong and effective regulatory structure requires preserving the authority of state securities regulators, a strong SEC, and a tough SRO for efficient compliance. It takes all three working in equal partnership to maintain investor confidence in the world’s deepest and most transparent markets,” he said.

“I believe investors deserve a regulatory system that commands and deploys the resources, expertise, and philosophy necessary to vigorously enforce securities laws and maintain fair and transparent capital markets,” Borg said. “State securities regulators are committed to working with Congress, the SEC and the new SRO to ensure that our nation’s investors continue to prosper in a regulatory environment that provides the strongest investor protections.”

NASAA is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the provinces and territories of Canada, and Mexico.

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