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NASAA

Submitted Electronically

November 29, 2007

Mr. Jeffrey Stoltzfoos
Senior Advisor
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U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
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Mr. Mario Ugoletti
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U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
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Re: TREAS-DO-2007-0018

Dear Sirs:

The North American Securities Administrators Association (NASAA)[1] appreciates the opportunity to comment on the Treasury Department's "Review of the Regulatory Structure Associated with Financial Institutions." As the voice of state securities agencies, NASAA endeavors to ensure that matters pertaining to the regulation of financial institutions are resolved in a manner that does not impede the ability of NASAA members to accomplish their fundamental investor protection mission.

In the United States, NASAA members protect consumers who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public. State securities regulators also have a special appreciation for the plight of everyday investors who are confronted with a bewildering array of new and complex investment products. NASAA members interact with, and advocate for, individual investors on a daily basis.

State securities regulation predates the creation of the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The role of state securities

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1 Organized in 1919, NASAA consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

regulators has become increasingly important as more than 100 million Americans now rely on the securities markets to prepare for their financial futures, such as a secure and dignified retirement or a college education for children. Securities markets are global but securities are sold locally by professionals who are licensed in states where they conduct business.

For at least the past 75 years, there have been innumerable petitions to restructure our financial regulatory system. There have been 24 major proposals for regulatory restructuring that have been made (but not acted on) since the bulk of the federal regulatory system was instituted in the early 1930s.[2] Each set of proposed reforms was proclaimed with equal vigor to be "essential," and the fate of the United States capital markets and/or banks supposedly hung in the balance. Ultimately, our regulatory system—*without* these reforms—has facilitated the development and growth of the world's most robust financial markets.

However, having been in the business of financial regulation since 1919, NASAA understands that fast moving innovations in technology and product design make it appropriate to reevaluate the adequacy of our current regulatory system from time to time.

While most calls for wholesale structural revision have fallen victim to their advocates' self-serving agendas, many thoughtful proposals have found their way into legislation. As a result, a system of regulation has developed that has allowed our financial institutions to thrive. This is in large part due to the high standards placed on prospective entrants as well as our provisions for ongoing compliance, enforcement, and redress in the courts. By fostering issuer and investor confidence, these regulations attract capital. Yet, because these strong investor protection measures are minimized by other major world markets in favor of concessions to the profit motive, the United States maintains its leadership position by a wide margin.

We are eager to offer our comments to the Treasury Department in the hope that they may provide some assistance during your review of the current regulatory structure for financial institutions. Overall, NASAA takes a position directly contrary to those who advocate substantive "regulatory reform." The arguments that our system of regulation imposes unnecessary burdens," creates "impediments to capital formation," impairs "the competitiveness of our markets," and represents "a disservice to investors" are simply and demonstrably false. They are premised on bad data and they follow unsound logic. Further, we dispute the contention that alternative models of regulation have proven to be either more efficient or more effective. NASAA believes that pressuring for a significant overhaul of our current system at a time when our relationships abroad and our domestic economy are under extraordinary pressure is imprudent.

NASAA supports a strong and effective regulatory structure for our capital markets. That requires preserving the authority of state securities regulators, the local cops on the securities beat. It also requires a strong SEC to properly implement the laws, and it requires a strong SRO

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2 *See* Kushmeider, Rose M., "The U.S. Federal Financial Regulatory System: Restructuring Federal Bank Regulation," FDIC Banking Review, Vol. 17, No. 4, 2005, *available at* SSRN: http://ssrn.com/abstract=882091.

for efficient compliance. It takes all three working in equal partnership to maintain investor confidence in the world's deepest and most transparent markets.

Of course, NASAA is not opposed to change simply for the sake of opposition. We have always been willing to discuss regulatory reforms that strike the appropriate balance between regulatory efficiency and protections for all investors. We favor prudent changes where necessary to preserve or enhance the health of our markets. But regulatory reform, as the concept is currently framed, is neither. Our existing regulatory structure, particularly as it pertains to the securities markets, needs no fundamental restructuring.

NASAA's response focuses on the following questions relating to the jurisdiction of state securities regulators. Rather than address each question individually, we have formulated our responses in an integrated analysis that we believe will be more helpful in this important public policy debate.

1.1 What are the key problems or issues that need to be addressed by our review of the current regulatory structure for financial institutions?

1.2 Over time, there has been an increasing convergence of products across the traditional "functional" regulatory lines of banking, insurance, securities, and futures. What do you view as the significant market developments over the past two decades (e.g. securitization, institutionalization, financial product innovation and globalization) and please describe what opportunities and/or pressures, if any, these developments have created in the regulation of financial institutions?

> *1.2.1 Does the "functional" regulatory framework under which banking, securities, insurance, and futures are primarily regulated by respective functional regulators lead to inefficiencies in the provision of financial services?*
>
> *1.2.3 Many countries have moved towards creating a single financial market regulator (e.g., United Kingdom's Financial Services Authority; Japan's Financial Services Agency; and Germany's Federal Financial Supervisory Authority (BaFin)). Some countries (e.g., Australia and the Netherlands) have adopted a twin peaks model of regulation, separating prudential safety and soundness regulation and conduct-of-business regulation. What are the strengths and weaknesses of these structural approaches and their applicability in the United States? What ideas can be gleaned from these structures that would improve U.S. capital market competitiveness?*

1.3.5 Would the U.S. financial regulatory structure benefit if there was a uniform set of basic principles of regulation that were agreed upon and adopted by each financial services regulator?

1.5 What role should the States have in the regulation of financial institutions? Is there a difference in the appropriate role of the States depending on financial system protection or consumer and investor protection aspects of regulation?

2.3.4 What is the optimal role for the states in securities and futures regulation?

I. <u>THE U.S. CAPITAL MARKETS REMAIN A MAGNET FOR CAPITAL</u>

A common argument put forward to justify "regulatory reform" is that our capital markets cannot maintain competitiveness because alternative regulatory structures abroad are more reasonably regulated. They are "principles-based" as distinct from our system of rules and regulations. The argument for adopting a principles-based system in its entirety is made by asserting there has been a substantial decline in the number of U.S. based initial public offerings ("IPOs"). This is followed by the observation that the number of domestic IPOs in other countries is either holding steady, rising, or experiencing some combination thereof. This leads to the conclusion that our system of regulation is the cause of the supposed decline in domestic IPOs, and that mimicking the foreign regulatory approach would revive our competitiveness. However, the facts themselves argue the opposite.

This argument is profoundly wrong because it is based on incorrect data. Both 2006 and 2007 to date have been record years for global IPO activity. In 2006, U.S.-based companies generated the *largest number of IPOs globally* and *raised the second-largest amount of capital* ($34.2 billion) through November. This was an increase of 14 percent over the $29.9 billion raised during the same period in 2005. The 2006 IPO year through November yielded the *largest amount of capital raised* by U.S. domiciled companies since 2000. The final year-end reporting shows that *U.S. IPO volume increased to $43 billion in 2006*—a 26% increase over the previous year. Additionally, investors in U.S. IPOs were rewarded with above-market returns for the fourth straight year. From 2003 to 2006, investors in IPOs at the offering price earned no less than 18%, and as much as 34%, in total returns. Even aftermarket returns reached as high as 21% during this period.

Recent data indicates that this year will be even better for the United States in IPOs. The latest report by PricewaterhouseCoopers, dated November 14, 2007, while restricted to IPOs on U.S. exchanges, certainly paints something other than a gloomy picture. From January through September 2007, non-U.S. issuers raised a total of $10.8 billion from 31 IPOs on US exchanges. This was more than double the capital raised by all foreign IPOs on U.S. exchanges combined. The report concludes that IPO activity in U.S. markets will continue to increase with the pipeline heading into the fourth quarter poised to exceed the fourth quarter of 2006 (when 89 IPOs raised almost $20 billion).[3]

So, when the actual data is examined, it becomes clear that the U.S. regulatory structure currently serving financial institutions has not dampened the desire of foreign issuers to participate in our markets. In fact, the opposite is true: foreign issuers continue to view our markets as extremely attractive venues for raising capital.

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3 *See* PricewaterhouseCoopers, US transaction services US IPO watch report: "2007 set to exceed 2006", Nov. 14, 2007

II. THE CALL FOR A "PRINCIPLES-BASED" REGIME IS LARGELY AN EMOTIONAL APPEAL, NOT A SUBSTANTIVE ONE

NASAA believes that those who frame the debate regarding regulatory change by using the term "principles-based" regulation are engaged in a rhetorical exercise, not a substantive analysis of the merits of such a system. The "principles-based" model has a naturally seductive quality, one that instantly conjures up appealing notions of "simplicity," "efficiency," and lighter "burdens." But the hard evidence does not support the claim that principles-based regulation is superior to our current system. Perhaps because their arguments favoring structural overthrow have been so thoroughly undermined by the facts, they must resort to argument by evocation. However, the millions of investors in this country – for the most part hardworking, middle class citizens, not Wall Street CEO's – deserve a much better justification for a regulatory overhaul if their financial futures are to be placed at risk.

Setting aside the rhetoric, the proponents of a principles-based system have not proven their case. Anyone arguing responsibly for change has an obligation to demonstrate two things: that the current system is inadequate, *and* that the proffered alternative is better. The advocates of major regulatory reform in securities fall short on both counts. They mischaracterize the nature of the current system, and they fail to account for what lies ahead if a shift to "principles-based" regulation occurs. For example, the notion that the United States is solely rules-based and that the Sarbanes-Oxley Act of 2002 is excessive and repellant is simply wrong. In point of fact, the whole of the federal and state securities laws are less voluminous than the laws of many other regulators, including the FSA. And as for the Sarbanes-Oxley Act itself, its passage afforded investors in U.S. securities the most significant protections enacted throughout the globe since the 1930s.

Investors throughout the world revere the Sarbanes-Oxley Act for what it offers them. Furthermore, they have demonstrated a willingness to pay a premium for its protections. The Sarbanes-Oxley Act is a magnet for foreign capital investment in the U.S. The protections of the Sarbanes-Oxley Act are a primary reason why large foreign institutional investors invest in U.S. equities.

Currently, the Sarbanes-Oxley Act is being replicated in countries around the world. To the extent it ever posed an actual problem, the issue of the audit requirement for internal controls under Section 404 has been remedied by management guidance and the AS5 standard issued by the PCAOB. As mentioned earlier, the number of foreign IPOs on U.S. exchanges in 2007 will surpass the existing record, which was set just last year.

We also note that European hedge funds have gone public in the U.S. this year. In terms of proceeds, non-US issuers comprised 44% of the total value in the third quarter of this year, up from 18% in the second quarter and up 11% versus the third quarter of 2006. If our regulatory structure is so repellant and punitive, then why is this so? Foreign participants in our markets uniformly report two primary drivers. First, the cost of capital is low. Secondly, they want to demonstrate to investors that they meet the highest standards in the world. Indeed, studies consistently show that shares cross-listed in the U.S. will sell at a premium of 15-30% greater than the shares in home markets.

The proponents also fail to address the consequences of a shift in regulatory structure. Ironically, such a change will erode confidence, not shore it up. If regulatory agencies stop thinking as regulators and instead adopt the belief that our current system is antiquated and flawed, it is at that moment when the belief becomes a self-fulfilling prophesy. Because the wholesale restructuring typically suggested would necessitate a myriad of concessions to foreign participants, regulatory agencies would lose the confidence of a significant portion of the domestic market almost immediately. The perception that a regulator has compromised its fundamental mission will necessarily call its integrity into question. The belief that our regulatory system has been damaged because of a bias toward foreign issuers merely to attract additional capital is simply wrong and could, in fact, drain capital from our markets faster than any reform could hope to draw it in. Further, because of America's shift from a traditional industrial economy to a finance economy, it is our surest path to third-tier economic status.

There is another problem with the "regulatory reform" project. Each permutation shares a universal set of "improvements" – each designed to ease the "burdens" on industry. Each reform package offers industry less bureaucracy, fewer constraints, and wide latitude in matters of conduct. We are troubled, however, by the lack of discussion about the effects of these reforms on the retail investor. We observe a lack of principle within "principled regulation" models that have nothing to say about investor protection.

NASAA believes that in the general frenzy to attract market participants, the raison d'être for regulation has gone missing. It is a truism that the preponderance of capital will seek markets that provide safety, quality, and *reasonable* returns. Because our current regulatory structure provides sound regulation, fair and strong enforcement, and dependable remedies under law, our markets keep capital well protected and produce liquidity. As a result, participants from around the globe have chosen to place their capital into our markets. America's markets have shown that capital and liquidity are positively correlated to the quantity and quality of participants attracted. Even so, we remain concerned that the salesmanship by financial institutions and their proxies may have already induced regulators into a clever race to the bottom.

We present these facts to support our fundamental premise: protecting investors and capital alike, along with the maintenance of high standards will create and maintain successful markets. Thomas Friedman, one of the foremost authorities regarding the global economy, has said that significant relaxation of regulation is akin to removing all signs and markings on a freeway. It is *caveat emptor* in the most brutal fashion. We encourage the Treasury not to lose sight of the regulator's primary function: to protect investors and capital. We believe that "regulatory reform" should seek to ease needless burdens on market participants. It should aim to speed and improve understanding of and reaction to product and market innovations. Ultimately, we believe that any "reform" should, as a matter of first principle, seek to maintain the critical balance required to protect investors and capital alike. Thus far, our adherence to this basic mission has forged the success of our markets.

III. THE STATES MUST RETAIN A PROMINENT ROLE IN FINANCIAL SERVICES REGULATION

We believe that is both appropriate and wise for states to continue to play an integral role in the regulation of financial institutions that do business within their borders. States are well suited to provide both prudential and conduct regulation, both from an intellectual and a practical standpoint. There are certain basic functions performed by all financial services regulatory agencies, whether state or federal. They include providing prudential regulation for the safety and soundness as well as the prudential supervision of regulated entities, the establishment of conduct regulations, the management and resolution of crises, and resolution of issues related to market integrity. While there is a need to ensure that regulations are not literally duplicative, it seems to us unwise to artificially divide state and federal regulations based on system versus consumer protection when both are inextricably linked and states clearly have a compelling interest in all aspects of financial services regulation.

Optimally, we believe that states should be equal participants in all areas pertaining to the regulation of securities and/or futures within the states. This is not to suggest that the states are desirous of duplicating existing federal regulations or supplanting federal law. However, we believe that if states do not maintain their role as regulator and supervisor of all state licensed institutions and individuals, that investor protection would be seriously imperiled. Further, we believe that regulated entities and individuals would be economically disadvantaged if the protection offered to investors was diminished or the remedies available to their state regulator were subject to review in any fashion. Having already been stripped of numerous protections at nearly every level of government, we believe consumers would continue to lose faith in the integrity of the markets, which could threaten the overall vitality of our capital markets.

We also wish to remind the Treasury that one of the hallmarks of our system of securities regulation is its effectiveness in early detection of misconduct, both large and small. A cornerstone of this effectiveness is the traditional cooperation between state securities regulators and the SEC. The combination of complimentary yet unique skills and strengths works as a multiplier for efficiency and effectiveness. We would quote SEC Chairman Christopher Cox, when he spoke to this uniquely effective and beneficial relationship:

> Another principle of our approach to enforcement is cooperation with other levels of government and other authorities.
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> From federal and state criminal authorities to our counterpart securities regulators in the states, we've got to share intelligence and exploit our respective strengths in order to achieve the maximum level of investor protection. For this reason, we're working closely with the blue sky authorities in the 50 states and territories, including your Attorney General's office here in New York, and with every federal and state department and office that's concerned with business and finance.

> One of our most important cooperative ventures is our joint initiative, announced last month, with the North American Securities Administrators Association, to curb fraud against America's senior citizens. This is going to be a comprehensive program including on-site examinations of firms that target senior citizens with often deceptive sales pitches. We're also stepping up information-sharing with state agencies, and intensifying our focus on investor education. With NASAA's help, we can reach into every state to protect our burgeoning population of older Americans.[4]

NASAA would also remind the Treasury that the history of successful cooperation between the states and the SEC in the investigation and resolution of some of our nation's largest financial scandals can serve as a useful guide to the role the states should have in the regulation of financial services institutions. A recent exemplar is California's collaboration with the SEC against fraud committed on a national scale by a mutual fund complex that failed to disclose shelf space arrangements to its investors. When the California Attorney General first announced the filing of this action, he confirmed that his office had been "working closely with the SEC" on the case and acknowledged the SEC's "substantial assistance and cooperation."[5]

Two other examples illustrate the value of state enforcement work in addressing large scale misconduct by securities firms. In 2003, the New York Attorney General uncovered two illegal trading schemes that had become widespread in the mutual fund industry. Mutual funds were allowing favored companies and individuals to engage in practices known as "late trading" and "market timing," to the detriment of average citizens holding mutual fund shares, and in contravention of prospectus language disavowing such practices.

New York brought the first enforcement action addressing these violations against a hedge fund known as Canary Capital Partners, LLC, and its affiliates. The case was based upon New York's antifraud provisions and it resulted in a settlement that included restitution payments of $30 million for the benefit of injured investors and a fine of $10 million.[6]

The SEC and other experts in the securities field applauded New York for its aggressive work on behalf of the nation's investors. Stephen Cutler, then Director of the SEC's Division of enforcement, publicly acknowledged New York's contribution: "The most recent evidence of conflicts run amok is Attorney General Spitzer's action against Canary Capital Partners relating to its transactions in mutual funds . . . . Mr. Spitzer has taken an important step in bringing this action, and I commend him for it."[7]

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4 *See*, Remarks by Chairman Christopher Cox, U.S. Securities and Exchange Commission, the American Securitization Forum, Grand Hyatt Hotel, New York, New York June 7, 2006

5 *See* Press Release, Office of the Attorney General, "Attorney General Lockyer Sues American Funds For Not Telling Investors Truth About Broker Payments," at 2 (Mar. 23, 2005)

6 S*ee State of New York v. Canary Capital Partners, LLC,* Complaint, at 41-43 *Available at* http://www.oag.state.ny.us/press/2003/sep/canary_complaint.pdf

7 *See* Stephen M. Cutler, Remarks Before the National Regulatory Services Investment Adviser and Broker-Dealer Compliance/Risk Management Conference, at 1 (Sept. 9, 2003).[25]

In testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Mr. Cutler emphasized that the SEC was aggressively pursuing wrongdoing in the mutual fund industry and would "continue to work closely and cooperatively with state officials who also are taking steps to protect investors."[8]

Another example of the states' work in cooperatively addressing large scale misconduct by securities firms arose in 2002. The states joined forces with the SEC and the SROs to investigate and remediate some of the most unseemly fraud that has emerged on Wall Street in the modern era. The states and their federal counterparts discovered that research analysts at the country's leading investment banking firms were issuing false stock ratings in order to attract and keep lucrative underwriting business from the companies being rated by the analysts. Emails obtained in the investigation revealed instances of analysts internally deriding stocks as pieces of "junk," but brazenly assigning them high stock ratings for public consumption, all because the company being rated was an investment banking client.[9]

After a coordinated state, federal, and SRO investigation, ten of the country's largest investment banks reached a global settlement, resolving claims for fraud and other misconduct in connection with their false and misleading analyst reports. The firms agreed to pay a total of almost $1.4 billion in restitution, fines, and investor education support, and further agreed to institute reforms designed to eliminate conflicts of interest between their investment banking and research departments. In their statements, officials from the agencies involved cited not only the benefits for investors, but also the extraordinary importance of collaboration between state regulators and the SEC and SROs in tackling large scale frauds. The then-Chairman and CEO of the NYSE stated that "[t]he partnership between the SEC, state regulators, and the SROs and our lawmakers remains the best and most effective system of market regulation, and the global settlement reflects that."[10] In subsequent Congressional testimony, then President of NASAA, Christine Bruenn, highlighted the essential role of state regulators in the analyst cases, while also issuing a reminder that in cases involving the national markets, the states' role is one of enforcement, not rule-making:

> I believe it represents a model for state-federal cooperation that will serve the best interests of investors nationwide. As they did with penny stock fraud, microcap fraud, day trading and other areas, the states helped to spotlight a problem and worked with national regulators on market-wide solutions.[11]

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8 *See Testimony Concerning Recent Commission Activity to Combat Misconduct Relating to Mutual Funds, Hearing Before the Sen. Comm. on Banking, Housing, and Urban Affairs,* at 5, 9 (Nov. 20, 2003) (statement of Stephen M. Cutler, Director, Division of Enforcement, SEC).

9 *See* Press Release, Office of New York State Attorney General, Merrill Lynch Stock Rating System Found Biased by Undisclosed Conflicts of Interest, at 1 (Apr. 8, 2002), and supporting documents.

10 *See* Joint Press Release, SEC, NASD, NYSE, and NASAA, "Ten of Nation's Top Investment Firms Settle Enforcement Actions Involving Conflicts of Interest Between Research and Investment Banking " (Apr. 28, 2003) at 5.

11 *Wall Street Analysts Conflicts of Interest Global Settlement, Hearing Before the Sen. Comm. on Banking, Housing, and Urban Affairs,* at 2 (May 7, 2003) (statement of Christine A. Bruenn, Maine Securities Administrator, and President, NASAA).

> It bears repeating that the states, in these cases and otherwise, investigate and bring enforcement actions – they do not engage in rulemaking for the national markets. That is rightly the purview of the SEC and the SROs. None of the regulators who were involved in this global settlement could have done it on its own.

More recently, SEC Chairman Cox, delivered a keynote speech at NASAA's Spring Conference in which he praised the collaborative enforcement efforts of the SEC and state securities regulators, citing the analyst settlement and a long list of other successes in large scale cases: "Partly as a result of our improved coordination in allocating enforcement resources, the SEC and state regulators have recently achieved some spectacular results in a number of high profile cases. The historic global analyst settlement is an excellent example of how much we can accomplish working together."[12]

We would ask Treasury to remain mindful of Congress' intent when it enacted the National Securities Markets Improvement Act (NSMIA). There, Congress clearly intended to preserve the robust – indeed indispensable – role that the states' have historically played with respect to national as well as local securities offerings. As stated by one commentator:

> Many schemes to defraud investors involve locally generated pyramid schemes, misrepresentations, and scams. Without state regulation accompanied by civil and criminal enforcement of the law in state courts, there would be little hope of redress for many victimized investors. State enforcement is also available when there are fraudulent schemes involving federal covered securities. In effect, Congress and the SEC have acknowledged that federal regulators are unable to cope with all the enforcement that needs to be done.[13]

IV. A DEGREE OF REGULATORY OVERLAP IS BOTH INEVITABLE AND USEFUL

While evolutionary changes in the nature of the capital markets may create some areas of overlap, we do not view a functional regulatory scheme as creating inefficiencies. Our experience has been to the contrary. Where the occasional overlap occurs, we have found that it is invariably in an area where Congress was explicitly concerned with the protection of individual investors. Thus, we view an overlap as a net benefit to investors rather than a burden to regulated entities. In fact, although we have yet to see any demonstrable evidence of such a burden, we have directly observed and documented the net benefit to investors. When regulatory agencies cooperatively discuss matters where overlap has arisen, the investor has the dual benefits of the resources and thought processes of two regulators at the outset and the skill and expertise of the most appropriate regulator to actually handle the matter once discussions have concluded.

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12 *See* Christopher Cox, Chairman, SEC, Remarks to the North American Securities Administrators Association, at 2 (May 9, 2006).

13 Richard B. Smith, *A New Uniform Securities Act,* 6 No. 9 GLWSLAW 8, at 2 (Westlaw database) (Feb. 2003).

V. NO DEFINITIVE IMPROVEMENTS CAN BE EXTRACTED FROM OTHER REGULATORY REGIMES

NASAA believes it is neither practical nor wise at the present time to embark on a quest to improve U.S. capital market competitiveness. As a threshold matter, we note that the current push is inherently flawed due to the biases of those who seek change not for the public good, but for their own financial benefit. Even if an objective evaluation of alternatives were possible, we believe that few, if any, lessons can be learned from the experience of other countries that have adopted different regulatory regimes. No alternative system has been fully operational in first-world nations for a period of time long enough to ensure the utility and durability of any given concept upon export.

We note that there is a wide diversity of institutional arrangements for financial regulation currently operating effectively. Not only is there is no consensus model for optimal institutional structure, there is no single model that countries are preferentially adopting. There are advantages and disadvantages of all forms of institutional structure, including our own, most of which are jurisdictionally specific by design.

As to direct comparative analysis with integrated or unified agencies, the literature suggests that the results are, at best, mixed. The Financial Services Authority has recently begun to move towards more rules due to, among other things, complaints of a lack of clarity on the part of regulated persons and entities regarding permissible conduct. The "twin peaks" approach as implemented in Australia has been subject to criticism for inefficiency and decreased investor protection due to bureaucratic process issues and inter-agency political squabbles. Ultimately, we believe that it is premature to reach a conclusion as to whether or not the structure of financial regulation ultimately has any bearing on the efficiency or effectiveness of financial regulation or any impact on the wider economy.

We agree that, in concept, a set of "basic principles" could be useful insofar as such principles were applied along functional lines. While securities regulators could certainly agree on certain "basic principles", it seems unlikely that banking regulators would find the same principles useful. We do not believe that "basic principles" are appropriate if intended to apply to all financial institutions. Such "basic principles" would necessarily be so broad that beyond some formulation of the principle, they would serve no practical purpose. Additionally, there appears to be a high probability that principles written so broadly would cause confusion as to interpretation and application, thus leading to inefficiencies.

VI. CONCLUSION

We thank you for the opportunity to comment on this important issue. We look forward to working with the Department of Treasury to ensure that investor and consumer protections are not sacrificed in the name of regulatory reform. Should you have questions, please contact me at (701) 328-4702.

Sincerely,

Karen Tyler
NASAA President and North Dakota Securities Commissioner

cc: The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
House Committee on Financial Services

The Honorable Paul E. Kanjorski
Chairman
The Honorable Deborah D. Pryce
Ranking Minority Member
House Subcommittee on Capital Markets, Insurance & Government Sponsored Enterprises

The Honorable Christopher Dodd
Chairman
The Honorable Richard Shelby
Ranking Minority Member
Senate Committee on Banking, Housing and Urban Affairs

The Honorable Herb Kohl
Chairman
The Honorable Gordon Smith
Ranking Minority Member
Senate Special Committee on Aging

The Honorable Jack Reed
Chairman
The Honorable Wayne Allard
Ranking Minority Member
Senate Sub-Committee on Securities, Insurance and Investment

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission