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Before the

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“Enhancing Investor Protection and the Regulation of Securities Markets”

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Chairman Dodd, Ranking Member Shelby, and members of the Committee,

I'm Fred Joseph, Colorado Securities Commissioner and President of the North American Securities Administrators Association, Inc. (NASAA). [1] I am honored to be here today to discuss legislative and regulatory changes that are most relevant to the millions of Main Street Americans who are looking to regulators and lawmakers to help them rebuild and safeguard their financial security. At this critical time in the nation's history, it's imperative that our system of financial services regulation be improved to better protect investors, markets, and the economy as a whole. I commend the Banking Committee for its deliberative approach of holding comprehensive hearings, briefings and meetings to determine how best to modernize our financial regulatory system.

In November 2008, NASAA released its Core Principles for Regulatory Reform in Financial Services and subsequently issued a pro-investor legislative agenda for the 111th Congress that responds to universal calls for increased responsibility, accountability, and transparency, and offers a series of positive and proactive policy recommendations to better protect investors and restore confidence in our financial markets. Today, I would like to highlight the recommendations that we feel are most vital to sound regulatory reform and strong investor protection.

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

State Securities Regulatory Overview

The securities administrators in your states are responsible for enforcing state securities laws, the licensing of firms and investment professionals, registering certain securities offerings, examining broker-dealers and investment advisers, pursuing cases of suspected investment fraud, and providing investor education programs and materials to your constituents. Ten of my colleagues are appointed by state Secretaries of State, five fall under the jurisdiction of their states' Attorneys General, some are independent commissions and others, like me are appointed by their Governors and Cabinet officials. We are often called the "local cops on the securities beat," and I believe that is an accurate characterization.

NASAA's Core Principles for Regulatory Reform in Financial Services

The unique experiences of state securities regulators on the front lines of investor protection provide the framework for NASAA's Core Principles for Regulatory Reform, which I want to discuss today. We believe Main Street investors deserve a regulatory structure that is collaborative, efficient, comprehensive, and strong and we have developed specific recommendations to help achieve those objectives.

We urge you to consider and implement the following five guiding principles, which we believe will create a strong and practical foundation for an enhanced regulatory framework that better serves investors and our markets as a whole.

- Preserve the system of state/federal collaboration while streamlining where possible.

- Close regulatory gaps by subjecting all financial products and markets to regulation.
- Strengthen standards of conduct, and use "principles" to complement rules, not replace them.
- Improve oversight through better risk assessment and interagency communication.
- Toughen enforcement and shore up private remedies.

Congressional Action that will Advance the Core Principles

Implementing NASAA's Core Principles will require a broad range of actions, both legislative and regulatory, but at the heart is a call for decisive Congressional leadership. Here are our specific legislative recommendations, set forth in the context of our core principles.

Core Principle One:
Preserve State/Federal Collaboration While Continuing to Streamline the Regulatory System Where Appropriate

With so much at stake for investors and the United States' economy, NASAA's top legislative priority is to protect investors by preserving state securities regulatory and enforcement authority over those who offer investment advice and sell securities to their residents. In some areas, the states' authority should be increased.

Support a Strong State Regulatory Structure for Capital Markets.

State regulation is an essential component of our current regulatory structure and it must be preserved. In the area of securities regulation, the states bring experience, resources, and passion to the job of licensing professionals, conducting examinations, and bringing enforcement actions – both civil and criminal – against those who prey on our nation's citizens. The states also serve as a local resource that investors can turn to for help when they have been exploited.

Our proximity to individual investors puts us in the best position, among all law enforcement officials, to deal aggressively with securities law violations. State securities regulators respond to investors who typically call them first with complaints, or request information about securities firms or financial professionals. They work on the front lines, investigating potentially fraudulent activity and alerting the public to problems. Because they are closest to the investing public, state securities regulators are often first to identify new investment scams and to bring enforcement actions to halt and remedy a wide variety of investment related violations. The $60 billion returned to investors to help resolve the demise of the Auction Rate Securities (ARS) market is the most recent example of the states initiating a collaborative approach to a national problem.

Attached to my testimony is a chart, "*States: On the Frontlines of Investor Protection*," which illustrates many examples where the states initiated investigations, uncovered illegal securities activity, then worked with federal regulators or with Congress to achieve a national solution.

These high profile national cases receive greater public attention, but they should not obscure the more routine and numerically much larger caseload representing the bulk of the states' enforcement work, which affects everyday citizens in local communities across the country. In the past three months alone, the Washington State Division of Securities, working with the Federal Bureau of Investigation and the IRS Criminal Investigation Division, broke up a $65 million oil and gas investment Ponzi scheme; Hawaii's securities commissioner, with the assistance of the SEC and CFTC, shuttered a suspected Ponzi scheme targeting the deaf community in Hawaii, parts of the mainland and Japan; an investigation by the Texas State Securities Board resulted in a 60-year prison sentence for a Ponzi scheme operator who stole at least $2.6 million from investors; and the Arizona Corporation Commission stopped a religious affinity fraud ring and ordered more then $11 million returned to investors. Since January 1, 2009, the Alabama Securities Commission has announced the conviction of nine different individuals convicted of securities fraud.

Just one look at our enforcement statistics shows the effectiveness of state securities regulation. During our three most recent reporting periods, ranging from 2004 through 2007, state securities regulators have conducted investigations that led to more than 8,300 enforcement actions, which led to $178 million in monetary fines and penalties, more than $1.8 billion ordered returned to investors, and jail sentences totaling more than 2,700 years.

Last year, in my own state of Colorado, my office conducted investigations that led to 246 administrative, civil and criminal actions, resulting in $3 million ordered to be returned to investors and 434 years of prison time for fraudsters. And just last month, a Ponzi scheme investigation launched by my office resulted in a prison sentence of 132 years for the main perpetrator and a court order to repay investors $3.4 million.

In light of the demonstrable value of state securities regulation, we urge Congress to reject any attempts to preempt or otherwise restrict the role of state securities regulators.

Restore the Authority of State Securities Regulators Over Offerings under Rule 506 of Regulation D.

In thinking about the role of state and federal enforcement authorities, it is instructive to look back at the regulatory responses to the major financial scandals over the past decade. From the investigation into the role of investment banks in the Enron fraud, to exposing securities analyst conflicts of interest, "market timing" in mutual funds, and the recent auction rate securities cases, state securities regulators have consistently been in the lead.

Because we are the local cop on the beat, state securities regulators are often first to discover and investigate our nation's largest frauds. Also, it has been shown that in cases where state and federal regulators work cooperatively, the actions of state securities regulators cause a significant increase in the penalty and restitution components of the federal regulator's enforcement efforts.[2]

And yet, over a number of years there has been a concerted assault on state securities regulation, targeting both regulatory and enforcement activities. For example, in 1996, the National Securities Markets Improvement Act (NSMIA) preempted much of the states' regulatory apparatus for securities traded in national markets, and although it left state anti-fraud enforcement largely intact, it limited the states' ability to address fraud in its earliest stages before massive losses have been inflicted on investors.

A prime example is in the area of private offerings under Rule 506 of Regulation D. Even though these securities do not share the essential characteristics of the other national securities offerings addressed in NSMIA, Congress nevertheless precluded the

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[2] Eric Zitzewitz, *An Eliot Effect? Prosecutorial Discretion in Mutual Fund Settlement Negotiations*, 2003-7, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091035.

states from subjecting them to regulatory review. These offerings also enjoy an exemption from registration under federal securities law, so they receive virtually no regulatory scrutiny. Thus, for example, NSMIA has preempted the states from prohibiting Regulation D offerings even where the promoters or broker-dealers have a criminal or disciplinary history. Some courts have even held that offerings made under the guise of Rule 506 are immune from scrutiny under state law, regardless of whether they actually comply with the requirements of the rule.[3]

As a result, since the passage of NSMIA, we have observed a steady and significant rise in the number of offerings made pursuant to Rule 506 that are later discovered to be fraudulent. Further, most hedge funds are offered pursuant to Rule 506, so state securities regulators are prevented from examining the offering documents of these investments, which represent a huge dollar volume. Although Congress preserved the states' authority to take enforcement actions for fraud in the offer and sale of all "covered" securities, including Rule 506 offerings, this power is no substitute for a state's ability to scrutinize offerings for signs of potential abuse and to ensure that disclosure is adequate *before* harm is done to investors. In light of the growing popularity of Rule 506 offerings and the expansive reading of the exemption given by certain courts, NASAA believes the time has come for Congress to reinstate state regulatory oversight of all Rule 506 offerings by repealing Subsection 18(b)4(D) of the Securities Act of 1933.

[3] *See, e.g.*, *Temple v. Gorman*, 201 F. Supp. 2d 1238 (S.D. FL. 2002).

Broaden the States' Regulatory and Enforcement Authority over Investment Advisers.

Recent scandals have highlighted the need for more examination and enforcement in the area of investment adviser regulation. The Madoff case illustrates the horrific consequences we face when an investment adviser's illegal activity goes undetected and unchecked for an extended period. NASAA recommends two changes to enhance the states' role in policing investment advisers. First, the Securities Exchange Commission (SEC) should expand the class of investment advisers that are subject to state registration and oversight. In NSMIA, adopted in 1996, Congress provided that the states would regulate investment advisers with up to $25 million in assets under management, while the SEC would regulate the larger investment advisers. Congress further intended that the SEC would periodically review this allocation of authority and adjust it appropriately. The $25 million "assets under management" test should now be increased to $100 million. This adjustment is appropriate in light of changes in the economic context. Today, even small investment advisers typically have more that $25 million under management. In addition, this increase will reduce the number of federally registered investment advisers, thereby permitting the SEC to better focus its examination and enforcement resources on the largest advisers.

Congress should also increase the states' enforcement authority over large investment advisers. Currently, a state can only take enforcement action against a federally registered investment adviser if it finds evidence of fraud. This authority should be broadened to encompass any violations under state law, including, dishonest and unethical practices. This enhancement will deter all forms of abuse by the large investment advisers, without interfering with the SEC's exclusive authority to register and oversee the activities of the large investment advisers.

Core Principle Two:
Close Regulatory Gaps by Subjecting All Financial Products and Markets to Regulation.

An enormous amount of capital is traded through esoteric investment instruments on opaque financial markets that are essentially unregulated. Our system must be more comprehensive and transparent, so that all financial markets, instruments, and participants—from derivatives to hedge funds—are subject to effective regulation through licensing, oversight, and enforcement.

Increase Transparency of Derivative Instruments.

The lack of regulation governing the over-the-counter derivatives market is a regulatory gap that Congress must close. The hands-off approach to these financial instruments can be traced largely to the Commodity Futures Modernization Act, passed by Congress in 2000, which specifically exempted swaps from regulatory oversight. This lack of oversight was a contributing cause of the financial crisis and must be addressed.

NASAA believes that Congress, at a minimum, should pass legislation to subject derivatives to much more comprehensive regulation. NASAA supports recent efforts to provide clearing services for certain credit default swap contracts, but suggests that Congress explore the necessity of imposing a much broader range of regulatory safeguards over the derivative markets. Regulatory requirements that deserve careful consideration include mandatory exchange trading, licensing of market participants, capital requirements, recordkeeping obligations, conduct standards, enforcement remedies, and even prohibition, where appropriate.

Authorize Regulation of Hedge Funds.

NASAA has long supported regulation of hedge fund advisers in a manner that will provide greater transparency to the marketplace while not overburdening the hedge fund industry. Advisers to hedge funds should be subject to the same standards of examination as other investment advisers.

Because they qualify for a number of exemptions to federal and state registration and disclosure laws, hedge funds remain largely unregulated today. The SEC has attempted to require hedge fund managers to register as investment advisers, but that attempt has been rejected.[4] Therefore, Congress should give the SEC explicit statutory authority to regulate hedge fund advisers as investment advisers. In addition, Congress should grant the SEC authority to require hedge funds to disclose their portfolios, including positions, leverage amounts, and identities of counterparties to the appropriate regulators.

Core Principle Three:
Strengthen Standards of Conduct, and Use "Principles" to Complement Rules, Not Replace Them.

At the heart of any regulatory system are strong and clear standards of conduct. In the area of securities regulation, we should impose the fiduciary duty—in addition to existing standards—on all securities professionals who dispense investment advice, including broker-dealers. We must also recognize that a "principles-based" approach to regulation is no substitute for a clear and strong system of prescriptive rules. Broadly framed standards of conduct can serve as helpful guides for industry as well as useful enforcement tools for regulators, but standing alone, they leave too much room for abuse.

[4] *See Goldstein v. SEC,* 451 F.3d 873 (D.C. Cir. 2006).

Impose the Fiduciary Duty on Broker-Dealers as well as Investment Advisers.

Over the last two decades, broker-dealers have increasingly engaged in services traditionally rendered by investment advisers. The conduct of investment advisers, broker-dealer agents and financial planners has become increasingly blurred in recent years, and most investors do not understand the legal obligations that each have to their clients. The financial services industry today continues to expose investors to vast differences in competency exam requirements, education requirements, product knowledge, regulatory structures, and investor protections—including vast differences in the standard of care owed to the client.

The primary purpose of the Investment Advisers Act of 1940 was to protect the public and investors from unscrupulous practices by those who dispense investment advice about securities for compensation. Congress set out to accomplish this goal in large part by establishing a federal fiduciary standard to govern the conduct of investment advisers. The fiduciary duty is the obligation to place the client's interests first, to eliminate any conflicts of interest and to make full and fair disclosure to clients. NASAA urges Congress to apply the fiduciary duty standard of care to all financial professionals who give investment advice regarding securities—broker-dealers and investment advisers alike. This step will enhance investor protection, eliminate confusion, and even promote regulatory fairness by establishing conduct standards according to the nature of the services provided, not the licensing status of the provider. We urge Congress to ratify the highest standard of care. For all financial professionals, the interests of the client must come first at all times. Investors deserve no less.

Core Principle Four:
Improve Oversight Through Better Risk Assessment and Interagency Communication.

Enhancing our ability to detect and manage risk in all financial markets is one of our most important—and difficult—challenges. The single most effective remedy for excessive risk accumulation is closing regulatory gaps, as set forth in Core Principle Two. If we ensure that every financial product is subjected to strong oversight by competent regulators, we will have taken a major step toward better risk assessment and control. Some additional steps are necessary, however. Congress should establish an independent risk assessment body, and it should eliminate fundamental conflicts of interest that have undermined the objectivity and reliability of our credit rating agencies.

Establish an Independent Body to Monitor the Accumulation of Risk and Recommend Corrective Measures.

NASAA believes that Congress should establish an independent risk assessment body comprised of representatives from the state and federal agencies that regulate securities, banking, and insurance. Their task would be to monitor the accumulation of risk in all financial markets, to advise the regulators who have primary jurisdiction over those markets, and to recommend decisive corrective measures when necessary. They would also be charged with identifying the emergence of new financial products that require regulation. This approach is preferable to vesting broad risk assessment authority in an existing federal agency. A new body with diverse and balanced representation offers more expertise, more objectivity, and greater resistance against industry influence or "regulatory capture."

On a more informal level, to facilitate communication and coordination on all financial services issues, NASAA believes the President's Working Group on Financial Markets should be expanded to include representatives from the state agencies that regulate banking, insurance, and securities.

Eliminate Conflicts within Nationally Recognized Statistical Rating Organizations ("NRSROs")

Nationally Recognized Statistical Rating Organizations ("NRSROs"), or credit rating agencies, play a vital role in our capital market. Their evaluations of the creditworthiness of companies and securities help hedge funds, mutual funds, pension funds, and individual investors make their investment decisions, and their ratings are used for a variety of regulatory purposes as well. As our financial markets have become more complex, the role of NRSROs has grown in significance. However, it is now clear that NRSROs contributed to the turmoil in our credit markets with inaccurate ratings due in large part to a faulty business model. NASAA regards the SEC's recently finalized rules, which were intended to curb conflicts of interest and increase transparency and accountability, as a constructive first step, but they may not go far enough. Also, the SEC's upcoming roundtable should yield additional proposals to enhance oversight of the ratings industry. Still, Congress must examine the models that rating agencies use and the assumptions they rely upon in determining ratings to ensure that they accurately reflect risks. Congress should also examine the issuer-pay business model that contains inherent conflicts of interest and that lends itself to "ratings shopping," and should consider legislative solutions that are beyond the reach of the SEC's regulatory authority.

Core Principle Five:
Toughen Enforcement and Shore up Private Remedies.

Enforcement is one of the most effective tools for deterring lawless behavior in our markets, but for years, it has received far less support than it deserves. We should toughen punishments for those who violate the law and increase enforcement budgets for state and federal regulators, including the SEC. We must remember that the private rights and remedies of injured consumers are an essential complement to government enforcement efforts aimed at deterring fraud. The pendulum has swung too far in the direction of limiting private rights of action, and now Congress should legislatively reverse some of the Supreme Court's most ill-conceived and anti-consumer decisions.

Reexamine and Remove Some of the Hurdles Facing Private Plaintiffs Who Seek Damages for Securities Fraud

Private actions are the principal means of redress for victims of securities fraud, but they also play an indispensable role in deterring fraud and complementing the enforcement efforts of government regulators and prosecutors. Congress and the courts alike have recognized this fact. The Senate Report accompanying the Private Securities Litigation Reform Act of 1995 (PSLRA) described the importance of private rights of action as follows:

> The SEC enforcement program and the availability of private rights of action together provide a means for defrauded investors to recover damages and a powerful deterrent against violations of the securities laws. As noted by SEC Chairman Levitt, "private rights of action are not only fundamental to the success of our securities markets, they are an essential complement to the SEC's own enforcement program." [citation omitted][5]

The problem, of course, is that over the last 15 years, Congress and the U.S. Supreme Court have restricted the ability of private plaintiffs to seek redress in court for securities fraud. These restrictions have not only reduced the compensation available to those who have been the victims of securities fraud, they have also weakened a powerful deterrent against misconduct in our financial markets.

For example, in the PSLRA, Congress imposed stringent pleading requirements and other limitations on plaintiffs seeking damages for fraud under the securities acts. The intent of the Act was to protect companies from frivolous lawsuits and costly

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[5] *See* S. Rep. No. 104-98, at 8 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 687; *see also Basic Inc. v. Levinson*, 485 U.S. at 230-31 (observing that the private cause of action for violations of Section 10(b) and Rule 10b-5 constitutes an "essential tool for enforcement of the 1934 Act's requirements").

settlements. Many observers, however, believe that PSLRA has placed unrealistic burdens on plaintiffs with meritorious claims for damages.

The Supreme Court has compounded the problem by issuing decisions that further limit the rights of private plaintiffs in two important ways. The Court has narrowed the class of wrongdoers who can be held liable in court, and at the same time, it has expanded the pleading burdens that plaintiffs must satisfy to survive immediate dismissal of their claims. As Justice Stevens lamented in his dissent in Stoneridge, the Court has been on “a continuing campaign to render the private cause of action under Section 10(b) toothless.”[6]

In short, the pendulum has swung too far in the direction of limiting private rights of action. Congress should therefore hold hearings to examine whether private plaintiffs with claims for securities fraud have fair access to the courts. In that process, Congress should re-evaluate the Private Securities Litigation Reform Act and should furthermore consider reversing some of the Supreme Court’s most anti-investor decisions. One case that undoubtedly deserves to be revisited is the Court’s holding in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 114 S.Ct. 1439 (1994). The Court ruled that the private right of action under Section 10(b) of the Securities Exchange Act of 1934 cannot be used to recover damages from those who aid and abet a securities fraud, only those who actually engage in fraudulent acts. The Court’s decision insulates a huge class of wrongdoers from civil liability for their often critical role in support of a securities fraud.

Other cases that warrant legislative re-evaluation include Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761, 779 (2008) (severely limiting

[6] Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., 128 S. Ct. 761, 779 (2008).

the application of Section 10(b) in cases involving fraudulent conduct); and Tellabs, Inc. v. Makor Issues & Rights, Ltd., 127 S. Ct. 2499 (2007) (establishing burdensome requirements for pleading scienter).

It bears repeating that removing excessive restrictions on access to the courts would not only provide more fair and just compensation for investors, it would also benefit regulators by restoring a powerful deterrent against fraud and abuse: the threat of civil liability.

Restore Fairness and Balance in the Securities Arbitration System

Every year thousands of investors file complaints against their stockbrokers. Almost every broker-dealer presently includes in their customer agreements a predispute mandatory arbitration provision that forces those investors to submit all disputes that they may have with the firm and/or its associated persons to mandatory arbitration.

If these disputes are not settled with a given firm, investors are left with only one avenue to pursue their claims—arbitration—and for all practical purposes only one arbitration forum. This system, which is administered by an affiliate of FINRA, should be revised to ensure it is fair and transparent to all.

The first step toward ensuring fundamental fairness is to make arbitration optional. Members of Congress have seen that the scales of justice have tilted away from consumers in arbitration proceedings. In an attempt to rectify this situation, the "Arbitration Fairness Act of 2007," was introduced. S. 1782, offered last year by Senator Russ Feingold (D-WI), had seven cosponsors and its House counterpart, H.R. 3010, introduced by Congressman Hank Johnson (D-GA), is currently supported by 43 cosponsors. This proposal makes predispute mandatory arbitration agreements to arbitrate employment, consumer, franchise, or civil rights disputes unenforceable. NASAA supports this legislation and suggests that it be amended just to make clear that its provisions extend to securities arbitration.

Even if the decision to participate in arbitration becomes truly voluntary, other changes are necessary to ensure that the arbitration process is fair. NASAA believes a major step toward improving the integrity of the arbitration system is the removal of the mandatory industry arbitrator. This mandatory industry arbitrator, with their industry ties, automatically puts the investor at an unfair disadvantage. State securities regulators believe Congress should also review other aspects of arbitration, to determine, for example, if there is sufficient disclosure of potential conflicts by panel members; if the selection, qualification, and composition of the panels is fair to the parties; if arbitrators receive adequate training; if explanations of awards are sufficient; and if the system is fast and economical for investors. Where deficiencies are found, Congress should act to ensure that the system is improved.

Conclusion

State securities regulators believe that enhancing our securities laws and regulations and ensuring they are being vigorously enforced is the key to the restoring investor confidence in our markets. NASAA and its members are committed to working with the Committee to ensure that the nation's financial services regulatory regime undergoes the important changes that are necessary to enhance Main Street investor protection, which state securities regulators have provided for nearly 100 years.

States: On the Frontlines of Investor Protection

PROBLEM: $2 billion/yr. Losses in Penny Stocks	
State Initiative	**1989:** States determined penny stock offerings by newly formed shell companies to be per se fraudulent. These "blank check" companies had no business plan except a future merger with an unidentified company.
National Response	**1990:** Congress passed Penny Stock Reform Act, which mandated SEC to adopt special rules governing sale of Penny Stocks (<$5.00 per share) and public offerings of shares in blank check companies (SEC Rule 419).
PROBLEM: $6 billion/yr. Losses in Micro-cap Stocks	
State Initiative	**1996-97:** 33 States participated in sweep of 15 broker-dealer firms that specialized in aggressively retailing low priced securities to individual investors. States found massive fraud in firms' manipulation of shares of start-up companies, most of which had no operating history.
National Response	**1997-98:** Congress held hearings on fraud in the micro-cap securities markets (shares selling between $5-10). **2002:** Congress passed Sarbanes-Oxley Act, which made certain state actions a basis for federal statutory disqualification from the securities industry.
PROBLEM: Risks of Securities offerings on the Internet	
State Initiative	**1996-97:** States issued uniform interpretative guidance on use of Internet for legitimate securities offerings and dissemination of product information by licensed financial services professionals.
National Response	**1998:** SEC issued interpretative guidance based on the States' Model on the use of Internet for securities offerings and dissemination of services and product information by licensed financial services professionals.
PROBLEM: Risks of Online Trading	
State Initiative	**1999:** In a report on trading of securities on the Internet, States found that investors did not appreciate certain risks, including buying on margin and submitting market orders.
National Response	**2001:** SEC approved a new NASD rule requiring brokers to provide individual investors with a written disclosure statement on the risks of buying securities on margin.
PROBLEM: Risks of Day Trading	
State Initiative	**1999:** In a report on individuals engaged in day trading, States found that day trading firms failed to tell prospective investors that 70% of day traders would lose their investment while the firm earned large trading commissions.
National Response	**2000:** SEC approved new NASD rules making day trading firms give written risk disclosure to individual investors. **2001:** SEC approved new NASD and NYSE rules governing margin extended to day traders.
PROBLEM: Research Analyst Conflict of Interest	
State Initiative	**2002-03:** States investigated and helped focus attention on conflicts of interest between investment analysts and major Wall Street firms.
National Response	**2002-03:** The SEC, NASD, NYSE, and states reached a landmark $1.4 billion global settlement and firms agree to reform practices.
PROBLEM: Illegal Mutual Fund Trading Practices	
State Initiative	**2003:** States uncovered illegal trading schemes that had become widespread in the mutual fund industry.
National Response	**2003-2004:** SEC, NASD and NYSE launch investigations; reform legislation introduced in Congress but fails to gain support; SEC initiates wide-ranging effort to reform certain fund regulations.
PROBLEM: Senior Investment Fraud	
State Initiative	**2008:** After calling attention to widespread fraud against senior investors, NASAA members approved a model rule prohibiting the misleading use of senior and retiree designations and numerous states have adopted the model through legislation or regulation.
National Response	**2008:** Sen. Herb Kohl, chair of the U.S. Senate Special Committee on Aging, introduced legislation that would provide grants to states to enhance the protection of seniors from being misled by false designations.
PROBLEM: Auction Rate Securities	
State Initiative	**2008:** Based on investor complaints, states launched a series of investigations into the frozen market for auction rate securities. The investigations led to settlements with 11 major Wall Street firms to return $50 billion to ARS investors.
National Response	**2006:** SEC looked into underwriting and sales practices of auction rate securities. While it did discover and try to remedy certain manipulative practices, the SEC failed to identify or correct fundamental conflicts of interest and self dealing that pervaded the auction rate market.

SOURCE: North American Securities Administrators Association
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