IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2012

No. 51

WILLIAM H. MATHEWS,
Appellant,

v.

CASSIDY TURLEY MD., INC., *et al.*,
Appellees.

On Appeal from the Circuit Court for Baltimore County
(Dana M. Levitz, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals of Maryland

---

BRIEF OF MARYLAND SECURITIES COMMISSIONER AND NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. AS *AMICI CURIAE* IN SUPPORT OF APPELLANT, WILLIAM H. MATHEWS

DOUGLAS F. GANSLER
Attorney General of Maryland

T. WEBSTER BRENNER
KATHARINE M. WEISKITTEL
Assistant Attorneys General
200 Saint Paul Place
Baltimore, Maryland 21202
(410)576-7059
wbrenner@oag.state.md.us
kweiskittel@oag.state.md.us

*JOSEPH J. OPRON, III
Illinois ARDC #6304405
North American Securities Administrators
Association, Inc.
750 First Street, NE, Suite 1140
Washington, D.C. 20002
(202)737-0900
jjo@nasaa.org

Attorneys for *Amici Curiae*

October 12, 2012

*Motion for Special Admission Pending

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2012

No. 51

WILLIAM H. MATHEWS,
Appellant,

v.

CASSIDY TURLEY MD., INC., *et al.*,
Appellees.

On Appeal from the Circuit Court for Baltimore County
(Dana M. Levitz, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals of Maryland

---

BRIEF OF MARYLAND SECURITIES COMMISSIONER AND NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. AS *AMICI CURIAE* IN SUPPORT OF APPELLANT, WILLIAM H. MATHEWS

INTEREST OF *AMICI CURIAE*

As stated in the motion for leave to file this brief *amici curiae*, the Maryland Securities Commissioner ("Commissioner"), as the principal executive officer of the Securities Division in the Office of the Attorney General of Maryland, is the State official charged with regulating securities transactions in Maryland and enforcing the Maryland Securities Act, Title 11 of the Corporations and Associations Article of the Maryland Code; *see* Md. Code Ann., Corps. & Ass'ns § 11-201. ("Act" or "Securities Act"). The

Commissioner has an interest in cases brought under the Act, especially when, as in this case, the questions presented involve the very definition of a security.

The North American Securities Administrators Association, Inc. ("NASAA") is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and Mexico. It has 67 members, including the securities regulators in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Formed in 1919, NASAA is the oldest international organization devoted to protecting investors from fraud and abuse in connection with the offer and sale of securities. The members of NASAA include the state agencies, such as the Securities Division in the Office of the Maryland Attorney General, that are responsible for regulating securities transactions under state securities statutes, commonly referred to as "Blue Sky" laws. NASAA members' fundamental mission is protecting investors, and they have broad authority to regulate the offer and sale of securities within their respective jurisdictions.

In this brief, the Commissioner and NASAA will address the first two questions presented in the Appellant's brief, the resolution of which may have a profound effect on enforcement of the statutory protections afforded investors in Maryland and potentially could affect investors in other jurisdictions across the nation. First, to advance the purposes of the Maryland Securities Act and similar statutes enforced by members of NASAA, the Commissioner and NASAA seek to ensure that the protections provided by securities laws are applied to tenancy-in-common interests ("TICs") issued by DBSI, Inc., and to TICs generally. Second, the Commissioner and NASAA believe the Court should adopt the Appellant's position that the tolling provisions of § 5-203 of the Courts

Article apply to the Act and specifically to the limitations provision in § 11-703(f) of the Act, because this interpretation of applicable law best advances the investor protection purposes of the Act.

STATEMENT OF THE CASE

Amici adopt the statement of the case as set forth in Appellant's brief.

QUESTIONS PRESENTED

Amici adopt questions 1 and 2 of the questions presented as set forth in Appellant's brief.

STATEMENT OF FACTS

Amici adopt the statement of facts as set forth in Appellant's brief.

STANDARD OF REVIEW

Amici adopt the standard of review as set forth in Appellant's brief.

ARGUMENT

I. THE TENANCY-IN-COMMON INTERESTS OFFERED AND SOLD BY APPELLEES ARE "INVESTMENT CONTRACT" SECURITIES UNDER THE MARYLAND SECURITIES ACT.

A. Maryland Securities Law Follows the *Howey* Test to Determine Whether a Tenancy-In-Common Interest is a Security.

This case involves a controversy over whether the tenancy-in-common interests at issue are "securities" under the Maryland Securities Act. In Maryland, as in other states, a security is defined to include any "investment contract." Md. Code Ann., Corps. & Ass'ns § 11-101(r). To determine whether a tenancy-in-common interest is an "investment contract," Maryland follows the test first set out in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). *Ak's Daks Commc'ns, Inc. v. Maryland Sec. Div.*, 138 Md. App.

314, 328 (2001). Under this test, commonly known as the "*Howey* test," an investment contract is any agreement or transaction in which there is: 1."an investment of money[; 2.] in a common enterprise [; and 3.] . . . an expectation of profits derived solely from the efforts of others." *Ak's Daks Commc'ns Inc.*, 131 Md. App. at 328.

B. The Tenancy-In-Common Interests at Issue in the Instant Case are Securities Under the Maryland Securities Act.

Only the third element of the *Howey* test is arguably at issue in this case. When considering this element, the Court of Special Appeals has held, consistent with Supreme Court precedent, that it considers the word "solely" in the third part of the test to be non-determinative. *Ak's Daks Commc'ns Inc.*, 131 Md. App. at 496, n.6. Instead, the court held that the expectation of profits analysis is a "fact-driven approach to determin[e] whether managerial efforts by those other than the investor are the significant efforts." *Id.* at 496. In doing so, the court looks to the "economic realities of the transaction over the form of the transaction." *Id.*

The economic reality of the DBSI transactions involved in this case is that the managerial powers were intended to be and actually were held by DBSI, not Mr. Mathews. To ensure this arrangement, the Tenants-in-Common Agreement required that the parties "confirm their desire to lease the entire Project to DBSI Housing … on a long-term . . . basis whereby . . . [DBSI] operates the Project." (E. 178.) Mr. Mathews was simply a passive investor who never wanted to manage the properties, never anticipated having to act as a property manager, and lacked the ability to do so. The simple fact of the matter is that all significant managerial efforts were undertaken by DBSI. Therefore, because all the elements of the *Howey* investment contracts test are satisfied, the interests at issue are investment contract securities.

The Appellees, Cassidy Turley Md., Inc., *et al.*, argue that Mr. Mathews had managerial control because he and the other co-owners had the contractual right to vote to terminate DBSI as manager. However, as the Court of Special Appeals has stated, "minimal efforts by the investor will not preclude an interest from being classified as an investment contract … [t]he investors must have an actual, practical ability to exercise management rights and control over the business." *Id*. The Appellees' argument that the minimal managerial authority granted to owners is sufficient to overcome any assertion that these investments are securities has been rejected by courts and other regulatory bodies. The Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization for brokerage firms, has issued formal guidance to the securities industry stating that "authority to terminate a management contract … [does] not demonstrate that . . . [a] TIC interest is not an investment contract." FINRA Notice to Members 05-18, https://www.finra.org/Industry/Regulation/Notices/2005/p013456 (last visited Oct. 11, 2012). Moreover, in a case directly on point, the Montana Supreme Court recently found investment interests identical to those at issue in this case to be investment contract securities. *Redding v. Montana First Judicial Dist. Ct.*, 931 P.2d 1327 (Mont. 2012). The court opined that the authority to terminate a management contract did not constitute "meaningful control" over the investment. *Id.* at 200-01.

C. The Circuit Court's Holding Would Make Maryland a Safe Haven for Frauds Structured as Tenancies-in-Common.

Financial fraud threatens the integrity of the U.S. free market system, by costing investors tens of billions of dollars per year. *See* Department of Justice, Investor Fraud Summits Across the Country Arm Consumers with Information to Protect Retirement Funds and Life Savings, http://www.justice.gov/opa/pr/2012/October/12-ag-1780.html (last visited Oct. 11, 2012). Moreover, fraud undermines investor confidence, thereby discouraging investment of capital that could otherwise be used to start new business ventures that contribute to the health of our economy.

Those individuals perpetrating complex and lucrative financial frauds are often very sophisticated in their methods. The greatest challenge of financial regulators is to keep pace with unscrupulous actors who are agile and creative in seeking new ways to circumvent investor protection laws and regulations.

Tenancy-in-common investments have long been an instrument of choice for those seeking to defraud investors. In 2009, NASAA created a task force specifically to address the outbreak of these types of frauds, and, in 2011, it listed tenancy-in-common investments among the "Top Investor Traps and Threats." Con Artists Find Profit in Get-Rich Schemes Tied to Economic Uncertainty, http://www.nasaa.org/3809/con-artists-find-profit-in-get-rich-schemes-tied-to-economic-uncertainty (last visited Oct. 11, 2012).

Investor protection laws, such as those requiring securities offerings and industry professionals to be registered with state securities regulators, provide a crucial layer of protection for the investing public. Where there is the opportunity for review before the offer and sale, there is a good chance that regulators will spot red flags and the fraud will be averted. However, when unscrupulous actors are allowed to operate under the radar of regulators, all too often the money is gone before the defrauded investor discovers that he has been swindled.

If the Court were to deem these TIC contracts not to be investment contract securities, it would make Maryland a safe haven for fraudulent activity. Those seeking to defraud investors would see Maryland as a place where they could avoid review by the state securities regulator and misappropriate investors' hard-earned money before any red flags are spotted simply by structuring their fraudulent investment opportunities as tenancies-in-common. Therefore, it is imperative that this Court reverse the circuit court holding that the TIC interests in the instant case are not investment contract securities.

D. The Circuit Court's Holding Could Erode Investor Protections Nationwide

NASAA is particularly concerned about the potential nationwide consequences that would follow if this Court were to affirm the circuit court's finding that the tenancy-in-common interests in this case were not securities. The circuit court's decision, if affirmed, would place Maryland well outside the existing mainstream of jurisprudence involving state securities laws, or "blue sky laws." The vast majority of blue sky jurisdictions recognize an investment contract as a form of security, and many states, including Maryland, look to other state's jurisprudence for guidance in interpreting blue sky laws. *See* Uniform Securities Act 1956; Uniform Securities act 2002; *Baker, Watts & Co. v. Miles & Stockbridge*, 95 Md. App. 145, 167 (1993) (considering the definition of the term “agent” as defined by other state jurisdictions). Accordingly, a holding adverse to the investor here poses the threat that it may be treated as persuasive authority by courts in other jurisdictions. This Court can and should avert that deleterious consequence by reversing the circuit court and holding that the DBSI’s tenancy-in-common interests were investment securities under the Maryland Securities Act.

II. THE COURT SHOULD APPLY MD. CTS. & JUD. PROC. § 5-203 TO THE DISCOVERY RULE IN INTERPRETING THE LIMITATIONS PROVISION FOR PRIVATE CLAIMS OF VIOLATIONS UNDER THE MARYLAND SECURITIES ACT.

The Commissioner and NASAA also urge the Court to adopt the Appellant’s construction of the appropriate application of the statute of limitations provision in the Act in light of Maryland’s generally applicable discovery rule, as established by statute and this Court’s precedent. The important legislative purposes of the Maryland Securities Act are best served by application of § 5-203 of the Courts Article and the discovery rule in determining when a right of action accrues under the limitations provision of the Securities Act, § 11-703(f). Applying these principles will further the Act’s objective of protecting investors through its statutory private right of action, will foster investor confidence in the fair and vigilant enforcement of the securities laws by regulators and courts, and will help the Securities Commissioner achieve her goal of continuing to enforce the Securities Act effectively in this era of fiscal challenges.

In recent years, the need to apply the established statutory and common law discovery rule for the protection of victimized investors has been dramatized by the exploits of the notorious Bernie Madoff. In that infamous chapter in the history of fraud, Madoff perpetrated and profited from a large-scale investment scheme that took billions of dollars from the investors he defrauded over a period of many years, when all the while the wholesale fraud remained undetected by regulators and investors alike, until Madoff ultimately confessed. Madoff was a known and respected figure in the investment industry, a registered broker, who took in billions of dollars in investments while reassuring investors by making regular account reports that purported to show everyone was making money. It all was a sham, a Ponzi scheme. Except for those who fortuitously invested within three years of Madoff's confession, no investors could have known within three years of investing that they were being defrauded.

The economic devastation wrought by Madoff is most pertinent to this appeal, because under the circuit court's application of the statute of limitations, Marylanders victimized by Madoff would be time-barred and unable to sue for compensation under the Maryland Securities Act. The similarity of Madoff's fraud to the facts of this case is striking: an investment made years ago, offered by a seemingly reliable source, with regular payments during intervening years, followed by a loss of the investment. The purpose of the statute of limitations is to prevent "stale or fraudulent claims" and discourage delay in bringing otherwise meritorious claims "when it is *practicable to assert rights*." *Harig v. Johns-Manville Prod. Corp.*, 284 Md. 70, 75 (1978) (emphasis added). That objective is not implicated when, as in this case, victims do not know of the fraud or the injury they have suffered, and the purpose of the Securities Act is not served when, as in the circuit court's decision below, application of the statute of limitations effectively immunizes the successful con artist who has concealed wrongdoing at the expense of the investor.

A. Applying § 5-203 and the Discovery Rule Will Advance the Securities Act's Purpose of Protecting Investors.

The Securities Act is remedial in nature and, like other securities laws, the Act is to be interpreted broadly for purposes of investor protection. *See, e.g.*, *Maryland Secs. Comm'r v. U.S. Secs. Corp.*, 122 Md. App. 574, 591 (1998); *Ak's Daks Commc'ns, Inc.*, 138 Md. App. at 327. To that end, the Securities Act expressly provides victims of fraud a private right of action to remedy violations of the Act. *See* Md. Code Ann., Corps. & Ass'ns §11-703. To encourage the pursuit of claims by injured investors, the right of action provision provides for the payment of an investor's attorney fees, a statutory exception to the usual "American rule" under which litigants bear their own fees. The General Assembly's decision to provide for an award of attorney's fees underscores the clear legislative intent that investors be allowed access to the courts to seek redress for the financial harm they have suffered. In a case of known fraud, the investor has three years in which to file suit under the Act. When the fraud is hidden, the accrual of that right and the beginning of the running of that period must be determined on a case by case basis.

In today's trading venues, whether they be conventional regulated markets or the internet, three years is rarely enough time to enable the investor to learn of the fraud and commence a lawsuit. A clever con artist can hide the loss, or theft, of an investor's money until that time has run. In this case, for example, Mr. Mathews regularly received the promised seven percent interest payments for years. (E. 273, 277.) Many "deals" in oil and gas, private venture capital pools, and other securities proclaim at the time of sale that it will take at least three years before the oil is drilled, the gold discovered, or the start-ups become profitable. An investor, no matter how educated or prudent, may not learn within three years that her money is lost as a result of fraud, and thus may find herself frozen out of court, unless she is afforded the benefit that other Maryland litigants typically enjoy under § 5-203 of the Courts Article and the generally applicable discovery rule. Absent the assurance that a right of action will be tolled pending discovery of fraud, the decision of prudent investors may be to avoid investing in even legitimate opportunities that necessarily promise a delayed return on the investment. Such a decision not only will eliminate potential profit to many investors, but also will deprive honest business enterprises of needed investment capital. On the other hand, a less prudent, or less knowledgeable, investor may not recognize the risk at all, and may proceed to invest at the urging of unscrupulous actors who will take comfort in knowing that their fraud need only escape detection for a mere three years before the possibility of an investor suit is extinguished.

Where the fraud has remained hidden, a draconian reading of the limitations provision of the Securities Act, such as that applied by the circuit court below, threatens to deprive investors of the protection the Act is intended to provide. In alternative investments, such as those involving natural resources or a global marketplace, or real estate as in the case of Mr. Mathews, it may take longer to discover the fraud because of the time frame in which the investment is supposed to perform. The circuit court's interpretation of the statute of limitations provision will encourage schemers to promise performance only after three years, just beyond the statute of limitations. In an era when more Americans than ever have their own retirement investments, which are intended to remain untouched until the investor reaches retirement age, all can be lost before the investor knows of the fraud. Meaningful investor protection requires that victims of securities fraud, subject always to requirements of evidence and burdens of proof, should be allowed to bring their action based on the time when they discover the fraud, not based on the passage of time during which they have been successfully deceived or lulled into a false sense of financial well-being.

B. A Realistic Recognition of the "Accrual" of a Private Cause of Action Is Necessary for Investor Protection and Confidence.

In the case now before the Court, Mr. Mathews discovered the fraud only after being alerted by the Securities Division. A decision that his suit was barred by the three-year limitations provision of the Act, without tolling or analysis of Maryland's discovery rule, denies him the protection the securities laws are intended to offer. Statutes of limitation are intended to prevent "stale or fraudulent claims" or "delay when it is practicable to assert rights," *Harig*, 284 Md. at 75, but, statutes of limitation are not intended to permit those perpetrating a fraud to benefit from their deceit at the expense of those who are "'blamelessly ignorant' of the fact that a tort has occurred and thus, ought not be charged with slumbering on rights they were unable to ascertain." *Poffenberger v. Risser*, 290 Md. 631, 635 (1981) (quoting *Harig*, 284 Md. at 83). Instead, this Court has insisted that "'[a]voiding possible injustice in such cases outweighs the desire for repose and administrative expediency, which are the primary underpinnings of the limitations statute.'" *Poffenberger*, 290 Md. at 636 (quoting *Harig*, 284 Md. at 80). Application of tolling under § 5-203 of the Courts Article, in conjunction with the discovery rule, would prevent the same type of "possible injustice" the Court has sought to avoid through its established case law that has embraced and repeatedly reaffirmed the discovery rule.

In this case, the circuit court opined that Mr. Mathews should have conducted an extensive investigation into the DBSI TICs after his investment and that, had he done so, he would have uncovered the fraud within the three-year limitations period applied by the court. (E. 635-636.) The circuit court's analysis does not take into account the economic realities of the investment. Mr. Mathews was sold these securities by the Appellees, Cassidy Turley and its agents and related entities, who represented themselves to be experts in the field. (E. 272, 274.) Mr. Mathews paid the Cassidy Turley firm $93,000 for the privilege of benefitting from their purported expertise. (E. 274.) Mr. Mathews had every right to rely on the firm's due diligence, representations, and assurances, until he was ultimately contacted by the Securities Division and was told that he may have been defrauded.

The circuit court's interpretation of the statute would require all investors to begin investigating their investments as soon as they act on their brokers' recommendation and purchase a security. Following the circuit court's ill-considered and unrealistic advice would require investors to hire additional "brokers," "auditors," and "accountants" to police their investments, even when there is no indication of fraud. (E. 636:15-18.) That approach does not align with the investor protection purposes of the Act, nor does it encourage an efficient use of capital in the markets. The circuit court's interpretation does not reflect the economic realities of investing in a modern world when fraudulent transactions can all too easily be covered up for more than three years. As the Court of Special Appeals has recognized, the Act should be applied in a way that reflects "the economic realities" of investing and "with some flexibility, so as to further the purpose of the securities laws and ensure that they are not easily circumvented." *Ak's Daks Commc'ns, Inc.*, 131 Md. App. at 328.

Under the circuit court's interpretation, fraudulent solicitors can simply take the money and run after three years. The scheme perpetrated in this case, like most other Ponzi schemes, was designed to prevent discovery of the fraud and to encourage investor patience and complacency by making small but regular payments (funded by the investment of successive waves of investors) to create the false but believable appearance of success. Frightened by recession, foreclosures and mortgage scams, and scandals on Wall Street, investors large and small must be assured that there will be an opportunity to seek redress if their investments turn out to be fraudulent. The nation's recovery from its worst economic crisis since the Great Depression may well depend on it. This is not the time to adopt an interpretation of the Securities Act that rewards the successful fraud perpetrator at the expense of investors.

C. Allowing Additional Private Actions to Proceed to Trial Will Aid the Securities Commissioner's Goal of Protecting Investors While Avoiding Increased Demand on Limited State Resources.

Though actions brought by the Commissioner are not barred by any limitations provision, *U.S. Secs. Corp.*, 122 Md. App. at 592, the Commissioner's ability to fulfill the purposes of the Securities Act will nonetheless be impaired by an unduly strict application of the three-year limitations period. The Commissioner receives, often by way of referral from private attorneys, many complaints from investors who have been defrauded but did not discover the fraud until more than three years after the investment was acquired or the fateful investment advice was received. These calls usually prompt an investigation by Securities Division staff to determine if there is an ongoing violation that must be stopped. If a violation is evident, the Commissioner must determine if administrative or civil action is warranted. Often these complaints involve limited transactions with losses that might be recompensed by private litigation. If the victims are barred at the courthouse door, as was Mr. Mathews, the victims often turn to the Commissioner in their quest for justice.

The Commissioner, however, cannot be the attorney of last resort for time-barred investors. As an officer of the State and a part of the Office of the Attorney General, the Commissioner cannot represent individuals. *See* Md. Code Ann., State Gov't § 6-106(b) (authorizing the Attorney General to "represent and otherwise perform all of the legal work for each officer and unit of the State government"); *id*. § 12-304(a)(authorizing the Attorney General to represent "a State officer or State employee"). Any fine imposed by the Commissioner goes to the State, not to the investors. Although the Commissioner is authorized to bring an action in circuit court seeking court-ordered restitution or rescission under § 11-702(b) of the Act, the practical ability to do so is limited because the Commissioner must concentrate her expenditure of finite public resources toward the prevention of ongoing or far-reaching violations. Pursuing restitution actions for the benefit of all injured investors deemed time-barred under the circuit court's construction of the Act would soon overwhelm the Securities Division staff and exhaust the Commissioner's appropriations for enforcement.

As a regulator, rather than a buyer or seller, the Commissioner will not necessarily have the legal ability to pursue the same claims as a private litigant. The Commissioner's goal is to halt violations and impose appropriate sanctions. Restoring investors' money, however desirable that remedy might be, is typically not an option for the Commissioner except by settlement of administrative cases. To plug that gap, the Securities Act authorizes private actions and provides for an award of attorney's fees to a prevailing party. Through such private actions, the Act advances its investor protection purpose, while sparing the expenditure of the Commissioner's time, staff, and budget. The statute of limitations should be construed to allow statutory private actions to perform their important work of compensating victims and discouraging those who might otherwise be tempted to engage in fraud.

With the expected widespread unregulated offering of investments as a result of the recently enacted Jumpstart Our Business Startups Act[1] ("JOBS Act") of 2012, Pub. L. No. 112-106, 126 Stat. 306, countless numbers of investors may be left without the protection that regulation would provide. If and when the unregulated investments turn

---

[1] Through NASAA, state securities administrators have warned of the potential dangers to the investing public as a result of the recently enacted JOBS Act, which permits virtually unregulated use of "crowdfunding" - internet solicitations that are virtually unregulated except in after-the-fact fraud enforcement actions. *See* Issue Focus, The JOBS Act Relaxes Key Investor Protection Safeguards, www.nasaa.org/issues-and-advocacy/issue-focus/ (last visited Oct. 12, 2012).

out to be fraudulent, the Securities Commissioner anticipates that many of those investors may turn to the Securities Division for help as well as pursue private actions for restitution. It is more important than ever that investors have a private right of action that will provide a meaningful remedy, one that does not evaporate merely because the perpetrator succeeds in concealing the fraud for three years.

For these reasons, the Securities Commissioner supports the Appellant's argument that the statute of limitations contained in §11-703 of the Securities Act should be read in conjunction with §5-203 of the Courts Article and with the judicially crafted discovery rule. Applying these well-established principles of accrual and tolling will help protect investors and advance sound public policy, while taking into account the reality of contemporary investing and enabling the Commissioner to make the most effective use of public resources.

CONCLUSION

For the reasons stated, *amici* respectfully request that the Order of the Circuit Court for Baltimore County granting judgment in favor the Appellees be reversed and the case against Appellees be remanded for trial.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

T. WEBSTER BRENNER
KATHARINE M. WEISKITTEL
Assistant Attorneys General
200 St. Paul Place
Baltimore, Maryland 21202
(410) 576-7059
wbrenner@oag.state.md.us
kweiskittel@oag.state.md.us

*JOSEPH J. OPRON, III
Illinois ARDC #6304405
North American Securities
Administrators Association, Inc.
750 First Street, NE
Suite 1140
Washington, D.C. 20002
(202) 737-0900
jjo@nasaa.org
Attorneys for *Amici Curiae*

October 12, 2012

*A motion for special admission pursuant to Rule 14 of the Rule Governing Admission to the Bar of Maryland is being filed with this brief.

Pursuant to Md. Rule 8-504(a)(8), this motion has been printed with proportionally spaced type: Times New Roman - 13 point.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October 2012, two copies of the foregoing were mailed to:

Jeffrey P. Reilly, Esquire
Matthew S. Sturtz, Esquire
Miles & Stockbridge, P.C.
One West Pennsylvania Avenue
Suite 900
Towson, Maryland 21204

Attorneys for Appellees Cassidy Turley Maryland, Inc.
and Stephen C. Weiss

Thomas C. Costello, Esquire
Ann L. Preston, Esquire
Costello Law Group
409 Washington Avenue, Suite 410
Towson, Maryland 21204

____
T. Webster Brenner
Assistant Attorney General