

North American Securities Administrators Association

NASAA

Enforcement Report



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NASAA Enforcement Section
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About NASAA's Enforcement Section

NASAA's Enforcement Section tracks and addresses trends in securities fraud and dishonest/ethical behavior among securities professionals, and manages collaborative state investigations. The Section acts as a point of contact for federal agencies such as the U.S. Securities & Exchange Commission, the Federal Bureau of Investigation, and the Department of Justice, as well as self-regulatory organizations.

The Enforcement Section oversees the activities of eight Project Groups, including: Attorney/Investigator Training, Enforcement Publications, Internet Fraud Investigations, Litigation Forum, Oil/Gas Ventures, Reg D Investigations, Securities Investigation Database and Enforcement Zones.

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Summary

The North American Securities Administrators Association (NASAA) began soliciting responses to its annual enforcement survey in March 2012. This year, 48 U.S. NASAA members responded to the survey request, a response rate of 94 percent. The data, statistics and trends included in this summary give a general overview of state enforcement efforts. This summary does not include enforcement statistics from every single state, and thus the numbers provided herein are necessarily conservative.

Highlights

- The survey revealed several important trends in investor protection and securities regulation, including continued investor reliance on state regulators to address **both traditional areas of securities fraud and emerging issues**.
- State securities regulators conducted **6,121 investigations** in the 2011 reporting period.
- **More than 2,600 administrative, civil and criminal enforcement actions** involving **nearly 3,700 respondents and defendants** were reported by the states.
- The states reported **criminal actions** resulting in **1,662 years of incarceration**, a **47 percent increase** over the previous year, and **470** years of probation.
- States **imposed more than \$2.2 billion in investor restitution orders** and levied **finances or penalties and collected costs in excess of \$290 million**.
- State regulators took important action to remove or bar unscrupulous actors from the licensed community. A total of **nearly 2,800 licenses were withdrawn due to state action**, and **774 licenses were denied, revoked, suspended or conditioned**.
- Majority of fraud cases featured **unregistered individuals selling unregistered securities**. More than **800** reported actions involved unregistered securities, and more than **800** actions involved unregistered firms or individuals.
- The single most reported violation and a longstanding problem in the area of securities fraud: **Rule 506 or Reg D offerings**. **Real estate investment schemes** follow close behind.
- The survey indicates a substantial increase in actions against **investment adviser firms** with a total of **399** actions reported, nearly doubling the number of actions from the prior year.

Enforcement Statistics at a Glance	
Complaints Fielded by Regulators	11,302
Investigations:	6,121
Enforcement Actions	2,602
Investor Restitution Ordered	\$2.2 billion
Fines, Penalties, Payments and Costs	\$290 million
Jail Time Sentenced	1,662 Years
Licenses Withdrawn, Denied, Revoked, Suspended or Conditioned:	3,570
Actions against Investment Adviser Firms	399

Table 1: Enforcement Statistics at a Glance

Overview

The North American Securities Administrators Association (NASAA) began soliciting responses to its annual enforcement survey in March 2012. The survey traditionally gauges the extent and prevalence of enforcement efforts by state securities regulators, and identifies trends and issues in national investor protection.

This year, 48 U.S. NASAA members responded to the survey request. This is a strong response and the numbers generated thereby are an effective portrayal of nationwide enforcement efforts. The data, statistics and trends included in this summary give a general overview of state enforcement efforts. Still, this summary does not include enforcement statistics from every single state, and thus the numbers provided herein are necessarily conservative.

In every instance, the actual number of incidents, actions or resolutions is more than reported here; each of the non-responding states has some level of enforcement program, and thus the addition of their statistics would increase the overall numbers. Despite this small but relevant hole in the data, the statistics included herein remain a fine representation of the important, effective and widespread work of state securities regulators.

The survey also is subject to the variances in tracking, categorization and counting employed by the states. In several instances, states altered their policies for counting and tracking certain enforcement measures, resulting in material differences in the figures reported this year compared to previous years. To account for these changes, certain numbers from last year's NASAA Enforcement Report have been adjusted to reflect the approaches.

Methodology

As noted above, 48 U.S. NASAA members provided responses for the 2012 survey, a 94 percent response rate. The year before, 45 U.S. NASAA members participated in the survey, an 88 percent response rate; and in 2009, 44 U.S. NASAA members participated for a response rate of 86 percent.

Annual Survey Response Rate	
Survey Year	Annual Response Rate
2011	94 percent
2010	88 percent
2009	86 percent

Table 2: Annual Survey Response Rate

The survey request asked each state administrator to provide statistics using that state's most recent full reporting year. Some states collect and report data on a calendar basis, while others collect data on a fiscal year basis. For the 2012 survey, 37 responding states reported statistics from the 2011 calendar year; and 11 states provided numbers from the 2010-2011 fiscal year.

The 2012 survey requested responses in a number of categories or areas:

- the number of complaints or inquiries received, and investigations and actions a state has conducted or initiated;
- information on penalties, payments, costs and restitution resulting from enforcement actions;
- the results from state securities regulators' efforts and assistance to prosecute criminal violations, including years sentenced and years of probation; and
- the type of actions brought, the most common products or practices at the bottom of these actions and the most common type of actors targeted by these efforts.

Key Findings

- Investors continue to rely on state securities regulators for protection as evidenced by a consistently high number of complaints¹ (11,302, compared to 10,485 the year before) and investigations (6,121 for the 2011 reporting period, compared to 6,356 for 2010, and 6,565 for 2009).²
- State securities regulators are cracking down on the worst offenders. Activity and assistance in criminal prosecutions resulted in 1,662 years in prison sentences, and 434 years of probation.
- Enforcement by-products of the Dodd-Frank and JOBS Acts are beginning to emerge in the form of increased actions or enforcement efforts relating to investment advisers, Internet offerings, crowdfunding and Reg D issues.
- The states' historic commitment to finding investor-focused resolutions to the auction rate securities meltdown of 2008 were quite fruitful, and now, several years later, the states are wrapping up the administrative orders stemming from those activities.
- New or novel threats to investors are emerging in the form of crowdfunding, investment adviser problems and EB-5 visa-for-investment issues, while persistent and "traditional" threats such as Reg D fraud, oil and gas scams, and real estate investment schemes remain prevalent.
- The number of actions against brokers and broker agents remain relatively consistent, while there was a sizeable increase reported this year in actions against investment adviser firms.
- Reg D and real estate schemes remain the most common type of violative products or practices.

Investigations, Actions, Investor Relief & License Activity

Investigations

In the 2011 reporting period, state securities regulators conducted 6,121 investigations. Based upon the 2011 survey question on this issue, these investigations are distinguishable from the thousands of other efforts made to informally resolve complaints, referrals or other items in the enforcement area.

Large population states reported up to 800 investigations. State securities regulators also were particularly active partners with other law enforcement agencies in 2011, reporting 970 formal referrals to other agencies.

Annual Investigations by State Securities Regulators	
Reporting Year	Number of Investigations
2011	6,121
2010	6,356
2009	6,565

Table 3: Annual Investigations

Enforcement Actions

These investigations led to an impressive number of formal enforcement actions initiated or assisted by state securities regulators. In the relevant reporting period, more than 2,500 enforcement actions were reported by state securities regulators, including criminal actions involving roughly 450 defendants.

The bulk of state actions reported for 2011 were administrative actions, those most often handled internally and solely by the state securities administrator.

Annual Reported Enforcement Actions by State Securities Regulators				
Survey Year	Total	Administrative Actions	Civil Actions	Criminal Actions
2011	2,602	1,970	196	436
2010	3,475	2,018	324	1,133
2009	2,294	1,604	306	384

Table 4: Annual Enforcement Actions

Investor Relief & Measures of Accountability, Fines & Penalties

Investor relief and measures of accountability were at the center of these actions. The states levied fines or penalties of \$126 million. In addition and most important to investors, the states ordered \$2.2 billion in investor restitution.³ Much of this restitution is attributable to the repurchases of auction rate securities. The states also recovered or collected more than \$160 million in costs or expenses.

Investor Relief & Measures of Accountability			
Survey Year	Investor Restitution	Fines & Penalties	Costs Recovered
2011	\$2.2 billion	\$126 million	\$165m
2010	\$14.1 billion	\$171 million	\$32m
2009	\$4.7 billion	\$245 million	n/a ⁴

Table 5: Measures of Accountability

The states did not demand accountability solely in monetary form, however. In the 2012 survey, responding jurisdictions reported 1,662 years of incarceration sentenced through the efforts of state securities regulators, a 47 percent increase over the figures reported in 2011.

Years of Incarceration	
Survey Year	Years of Incarceration
2011	1,662
2010	1,134
2009	1,786

Table 6: Years of Incarceration

State regulators also took important action to remove or bar unscrupulous actors from the licensed community. A total of 2,800 licenses were withdrawn due to state action, and 774 licenses were denied, revoked, suspended or conditioned.

Licenses Withdrawn, Denied, Revoked, Suspended or Conditioned		
Survey Year	Licenses Withdrawn	Licenses Denied / Revoked / Suspended or Conditioned
2011	2,796	774
2010	2,595	647
2009	3,353	531

Table 7: Licenses Withdrawn, Denied, Revoked, Suspended

Types of Cases

The 2012 survey also sheds light on the nature of those actions and the firms or individuals targeted in those actions.⁵ The survey requested that states indicate the “type” of violation that triggered or was at the center of an action. In the relevant reporting period, more than 1,400 state enforcement cases involved fraud, traditionally marked by material misrepresentations, false statements or a scheme designed to defraud or deceive an investor.⁶

While these fraud cases could, and in many instances did, involve registered brokers or investment advisers (or their agents or representatives), it appears that the majority of these fraud cases featured unregistered individuals selling unregistered securities. More than 1,000 reported actions involved unregistered securities, and more than 900 actions involved unregistered firms or individuals.

The 2012 survey indicates that the states launched hundreds of investigations against registered members of the securities industry. The survey found 240 suitability investigations were reported, the most common of the reported industry investigations, followed closely by the 237 reported investigations into dishonest or unethical practices. In addition, nearly 150 failure-to-supervise investigations were reported. The states also reported dozens of investigations triggered by suspected violations in each of the following categories: books and records; unauthorized trading; selling away; and churning.

The most common type of actor in or “target” of state securities enforcement actions were unregistered individuals. A total of 632 reported actions involved unregistered individuals, and 485 actions involved unregistered firms. This compares to 399 reported actions against investment adviser firms, the largest number of actions in any registered category and nearly double the reported investment adviser actions the year before. There were 359 reported actions against registered broker-dealers and 297 actions against registered broker-dealer agents.⁷ In addition, 151 actions were taken against investment adviser representatives.

Actions by Type of Industry Participant	
Actor	Number of Reported Actions
Investment Adviser Firms	399
Broker-Dealer Firms	359
Broker-Dealer Agents	297
Investment Adviser Representatives	151
Insurance Firm or Agent	72

Table 8: Actions by Type of Industry Participant

Types of Products

State securities regulators also reported the most common products that led to or were at the center of enforcement actions.⁸

Regulation D offerings and real estate investments were the most frequent source of cases handled by NASAA members.

Two specific products or investments were identified by state regulators far more than any other specific item. States brought more than 200 actions involving Rule 506 or Reg D offerings, and reported a similar number of cases involving real estate investments or interests.⁹ More than 100 cases involving oil/gas investments or interests also were reported.

In the area of broker-based products, structured products were reported the most widely. There also were dozens of cases reported involving variable or equity indexed annuities, and 16 states reported a total of 47 actions involving hedge funds or private equity funds. The inclusion of these products in this summary is no surprise, as the items referenced above have led the list of most common products at the center of enforcement actions for years.

Most Reported Products 2011 <i>(In order of frequency reported by states)</i>
1. Rule 506 Offerings
2. Real Estate Investments or Interests
3. Ponzi Schemes
4. Oil & Gas Investments or Interests
5. Structured Products

Table 9: Most Reported Products

Senior Investor Protection

The survey also sought data on the type and nature of enforcement actions involving senior citizen investors. The states reported 577 enforcement actions involving abuse of senior citizens. As with many statistics reported throughout this report, this figure is conservative and the actual number of cases involving senior abuse is undoubtedly greater.

Unregistered securities, in the form of promissory notes, private offerings or investment contracts, were clearly the most common product involved in senior abuse cases, accounting for more than half of all reported senior-related enforcement actions and outnumbering the reported cases involving “traditional securities” by about three to one.

Affinity fraud remains a continuing trend in the types of reported senior abuse cases, while variable annuities continued as the most commonly reported specific product, followed closely by viaticals or life settlement products. Free lunch investment seminars and the use of misleading designations remain as issues of interest to state securities regulators.

Enforcement Trends

In addition to requesting statistics on the number of actions related to a list of specified products or practices, administrators also were asked to identify the top five trends or developments most relevant in their state in terms of securities enforcement actions. This was posed as an open-ended, subjective question.

Promissory notes, increasingly sold via the Internet, are trending products threatening to trap investors.

Many of the same products that ranked at the top of the statistical reporting lists also appeared on the list of trends and developments. For example, Rule 506 offerings, real estate investments and oil/gas ventures easily had the highest number of reported violations, and were at the top of the “trends and developments” list, too. But more states reported promissory notes as a top trend or development as reported real estate or oil/gas (roughly half of the reporting states). In addition to trending products, states noted the increased presence of questionable securities offerings made available via the internet.

The following were each included by at least five states, as well: affinity fraud, gold and precious metals, Ponzi schemes, and variable annuities.

2012 NASAA Top Investor Threats

NASAA 2012 Top Investor Threats	
New Threats	Persistent Threats
Crowdfunding & Internet Offers	Gold and Precious Metals
Inappropriate Advice or Practices from Investment Advisers	Risky Oil and Gas Drilling Programs
Scam Artists Using Self-Directed IRAs to Mask Fraud	Promissory Notes
EB-5 Investment-for-Visa Schemes	Real Estate Investment Schemes
	Regulation D Rule 506 Private Offerings
	Unlicensed Salesmen Giving Liquidation Recommendations

Table 10: NASAA 2012 Top Investor Threats

New Threats

Crowdfunding and Internet Offers. The 2012 JOBS Act makes significant changes to the methods startup businesses and entrepreneurs may employ to bring their ventures to the investing market, and investors must be wary of the attendant risks. Also, many more rules and mechanisms must be put into place for those changes to actually take effect. For example, the relaxed rules governing registration of relatively small securities deals, public solicitation for private funds, and disclosure of information to investors over the Internet are not yet written. So, the JOBS Act provisions related to crowdfunding, a much-publicized method for startups seeking capital, are not yet available – and will not be until sometime in 2013 – to legitimate businesses. Even when the relaxed rules and registration exemptions are effective, they will not make investments in small businesses less risky – just more prevalent. And the JOBS Act provisions do not eliminate fraud, an unfortunate common feature of Internet securities activity.

Many states and provinces report a recent increase in active investigations or recent enforcement actions involving Internet fraud, and JOBS Act-triggered activity is likely to elongate this trend. Investors must remember that small startups are among the riskiest of investment categories under the best of situations. The crowdfunding and Internet investing marketplaces in North America will develop and undergo major changes in the next year, and investors should monitor this emerging capital formation community with a wary eye.

Inappropriate Advice or Practices from Investment Advisers. The Bernie Madoff case opened a number of eyes and ears to the problems that could exist undetected in an investment advisory firm. Investment advisers are licensed to give specific investment advice and owe their clients a fiduciary duty, unlike brokers that may merely effect suitable securities transactions for their clients. The regulatory environment for investment advisers is shifting, and Madoff has led to increased scrutiny from both state regulators and the U.S. Securities and Exchange Commission. The 2010 Dodd-Frank Act laid the groundwork for a major regulatory shift, transferring thousands of mid-sized investment advisers to primary supervision by state regulators, rather than the SEC. The states are working with these mid-sized investment advisers, assisting them in complying with state registration requirements and applying already robust examination programs.

State enforcement actions increased as well: in 2011, state actions against investment adviser firms nearly doubled over the previous year, and focused both on compliance in the firms' general business practices and advice to clients. As the states implement regular examination schedules and analyze investment advisers that have not been audited in many years, more problems are likely to be discovered. The increased frequency of exams will benefit investors, however, as state regulators will work to ensure that investors have access to investment advisers who meet their fiduciary duty and cure discovered deficiencies.

Scam Artists Using Self-Directed IRAs to Mask Fraud. Scam artists, forever on the lookout for new ways to entice investors, are using self-directed IRAs to increase the appeal of their fraudulent schemes. State

securities regulators have investigated numerous cases where a self-directed IRA was used in an attempt to lend credibility to a bogus venture. Fraud promoters pushing a Ponzi scheme or other investment fraud can misrepresent the responsibilities of self-directed IRA custodians to deceive investors into believing that their investments are legitimate or protected against losses. While a scam artist may suggest that self-directed IRA custodians analyze and validate investments, those custodians only hold the assets in a self-directed IRA and generally do not evaluate the quality or legitimacy of any investment.

Fraudsters also exploit the tax-deferred characteristics of self-directed IRAs, and know that the financial penalty for early withdrawal may cause investors to be more passive or to keep funds in a fraudulent scheme longer than those who invest through other means. Self-directed IRAs also allow investors to hold alternative investments such as real estate, mortgages, tax liens, precious metals, and private placement securities; financial and other information necessary to make a prudent investment decision may not be as readily available for these alternative investments. While self-directed IRAs can be a legitimate way to hold retirement assets, investors should be mindful of potential fraudulent schemes when considering investments for their self-directed IRA. Custodians and trustees of self-directed IRAs may have limited duties to investors, and generally will not evaluate the quality or legitimacy of an investment or its promoters.

EB-5 Investment-for-Visa Schemes. The Immigrant Investor Program, also known as EB-5, is an immigration program linked to job-creation that is growing in popularity. However, investors must beware of promoters who falsely claim that an investment in their venture is safer or guaranteed due to an influx of foreign cash. The EB-5 immigration category is a 20-year-old program that grants a U.S. visa to foreign nationals who invest a minimum of \$500,000 into a new commercial enterprise (The equivalent Canadian Immigrant Investor Program (IIP), requires a C\$800,000 investment). This job-creation effort has attracted investors from around the world, and as with any investment approach, increased interest has been accompanied with new challenges. All investments with an EB-5 component are subject to traditional securities laws, and investors need to be alert to the foreign-funding feature.

Unscrupulous promoters may seek to prop up the plausibility of their scheme by highlighting a connection with a federal jobs program. Similarly, investors may be intrigued by the prospect of big funding from investors in China or other foreign countries with traditional or growing economic power. In a recent case, the developer of a failed artificial sweetener factory planned for a small Missouri town sought Chinese investors through the EB-5 program, and made that a key component in pitching and then selling the underlying government bonds issued for the project. While the existence of Chinese funding may have seemed promising to the city issuing the bonds and the investors who bought them, the developer defaulted on the first bond payment, leaving the city and investors out millions of dollars. Investors considering any enterprise with an EB-5 or IIP feature should make sure to obtain full information on every component of the venture, including all funding sources and the background of all promoters.

Persistent Threats

Gold and Precious Metals. The hype surrounding gold, silver and other precious metals continues despite both the fact that these investments are just as vulnerable to risk as others, and signs that some precious metal markets are declining or increasingly turbulent. The promise of continuing increases in value pitched by high-profile celebrities on television, radio or the Internet too often lure unsuspecting investors into any number of scams. Often, scams begin with an unsolicited communication such as an email or telephone call offering to sell investors gold coins, bullion, bars or other forms of the precious metal that the promoter will hold in safekeeping for the investor. Far too often, the gold simply does not exist.

Increases in the value of precious metals during the recession have led unwary consumers to believe that the value will perpetually increase. Like any risky investment, there are no guarantees. In fact, gold declined by 15 percent between March and June of 2012 (a drop in value of more than \$200 per ounce), settling at its lowest point since July of 2011.

Risky Oil and Gas Drilling Programs. Investors considering alternatives to traditional securities may be attracted to the lucrative returns often associated with investments in oil and gas drilling programs. These investments also may appeal to those who are frustrated with the volatility of the stock market or skeptical of the culture of Wall Street. Unfortunately, energy investments often prove to be a poor

substitute for traditional retirement planning. Investments in oil and gas drilling programs typically involve a high degree of risk and are suitable only for investors who can bear the loss of the entirety of their principal. Moreover, some promoters will conceal these risks, using high pressure sales tactics and deceptive marketing practices to peddle worthless investments in oil wells to the investing public.

In a recent survey of the states, oil and gas fraud was ranked as the fourth most common product or practice leading to investigations and enforcement actions. There are active investigations into suspect oil and gas investment programs in over two dozen states and in every region of the U.S. and Canada. Investors should therefore conduct thorough due diligence and appraise their own tolerance for considerable risk when considering the purchase of interests in oil and gas programs.

Promissory Notes. Promissory notes are often promoted as a safe and secure way for investors to earn returns in excess of those prevailing on conventional investments. Promoters flaunt high returns from private loan agreements, interim short term financing or startup capital opportunities. Investors must be wary of promises of security and liquidity in these promissory notes, which are very often false or overstated. Investments of this nature are highly speculative and the risk of total loss of the funds invested is high. But issuers often use notes and prior relationships with investors to downplay the true nature and risk of these investments. Sales of promissory notes are very often the favored investment vehicle for Ponzi schemes. In a recent survey, 20 states identified promissory notes as one of the top five most common products or features in fraudulent schemes, and notes are a commonly reported violation to Canadian regulators. Promissory notes, for the most part, are securities and are subject to state and provincial regulation. As with all investment opportunities, investors are encouraged to do their due diligence, ask questions and check with state or provincial regulators.

Real Estate Investment Schemes. As news of a possible bottom being reached in the U.S. housing market has spread, the popularity of investment offerings involving distressed real estate has continued to increase. While legitimate real estate investments can be an important component of a diversified portfolio, investors should be aware that schemes related to buying, renovating, flipping or pooling distressed properties also are popular with con artists. In a recent survey of the states, real estate fraud was ranked as the third most common product or practice leading to investigations and enforcement actions.

Even with legitimate real estate investments, there are substantial risks with properties that are bank-owned, pending short-sale, or in foreclosure. And the field is littered with non-legitimate scam artists intent on fleecing middle-class investors. In October 2011, Utah regulators took action against a man that solicited \$4 million from investors to purchase and refurbish properties and provide a “diversified portfolio” of hard-money loans. Investors were given personal guarantees and promised minimum returns of 18 percent per year in an investment with risk that was “literally zero,” but in reality, the funds were directed to a single, highly leveraged development project that went bust. As with all investments, careful vetting and due diligence is a must with real estate investments.

Regulation D Rule 506 Private Offerings. In the most recent survey of state securities regulators, fraudulent private placement offerings were ranked as the most common product or scheme leading to investigations and enforcement actions. These offerings also are commonly referred to as Regulation D Rule 506 offerings (the exemption in federal securities laws that allows private placements to be sold to investors without registration). By definition these are limited investment offerings that are highly illiquid, generally lack transparency and have little regulatory oversight. While Regulation D Rule 506 offerings are used by many legitimate companies to raise capital, these investment offerings are high-risk and may not be suitable for many individual investors. The 2012 JOBS Act significantly relaxed the restrictions on the manner in which Regulation D Rule 506 offerings can be marketed to the general public, eliminating the previous ban on general solicitations (advertising). Once the rules implementing this change are finalized by the SEC, investors will begin to see a variety of advertisements related to private placement offerings, even though only a very small percentage of the population will be eligible to invest.

Unlicensed Salesmen Giving Liquidation Recommendations. As in years past, the liquidation of securities by insurance-licensed firms or agents who are not registered to sell securities is a significant source of complaints and inquiries for the states. Fifteen states pursued actions against insurance companies or agents in 2011, with the most common issue being liquidation of traditional securities holdings to fund annuity purchases. With losses in their retirement funds due to market fluctuations, senior investors are

often enticed to shift their investments from traditional securities to annuities sold with the promise of guaranteed income and a mechanism for easy transfer of the value of the annuity to beneficiaries upon death. While annuities may be appropriate retirement products for some, they are not suitable for all investors and the liquidation of securities holdings is not always the best approach to funding an annuity purchase.

Insurance agents who are not also licensed securities professionals do not have the training and have not demonstrated the expertise necessary to determine the suitability of liquidating securities products to fund the purchase of an insurance product. A specific license is required before anyone can recommend the purchase *or sale* of securities. Being licensed as an insurance agent is not a substitute for a securities license. Investors should demand to see proof that a salesperson is licensed to make a recommendation to sell securities before agreeing to any transaction involving securities.

2012 Canadian Securities Administrators Enforcement Survey

In February 2012, the Canadian Securities Administrators (CSA) released its 2011 Enforcement Report that outlines how Canadian securities regulators are working to detect and disrupt misconduct in Canada's capital markets.

This year's report demonstrates that enforcement action against wrongdoing in Canada's capital markets is a top priority for Canadian securities regulators. CSA members concluded a total of 124 cases in 2011, involving 237 individuals and 128 companies. Of these cases, 24 were concluded in court proceedings, which resulted in jail sentences against eight individuals.

Again in 2011, illegal distributions made up over half of all concluded enforcement cases. An illegal distribution is a sale or attempted sale of securities to investors that does not comply with securities law registration, trading or disclosure requirements. Illegal distributions often involve Ponzi schemes.

Highlights of the 2011 CSA Enforcement Report

- 66 of the concluded cases involved illegal distributions, which represented the largest category of concluded cases.
- 124 concluded cases involved a total of 237 individual and 128 companies that resulted in:
 - Fines and administrative penalties of more than \$52 million
 - Nearly \$50 million in restitution, compensation and disgorgement
 - Jail sentences against eight individuals
- 63 interim orders restricting trading and/or freezing the assets against 109 individuals and 108 companies.
- 126 matters commenced against a total of 231 individuals and 121 companies.
- 47 of the 124 concluded cases were concluded by a contested hearing before a tribunal.
- 31 appealed cases, an increasing number.

These are just some of the results found in the CSA's 2011 Enforcement Report. To review the report, go to the CSA website at www.securities-administrators.ca, as well as the websites of various CSA members.

The CSA is the council of the securities regulators of Canada's provinces and territories. The CSA coordinates and harmonizes regulation for the Canadian capital markets.

REFERENCE NOTES

¹ Not all complaints result in formal investigations. Some can be resolved through communications with a firm and some result in referrals to other state or federal agencies.

² The number of investigations reported for 2010 and 2009 in prior NASAA Enforcement Reports were adjusted to account for a modified statistical methodology used by some jurisdictions for the 2012 survey reporting period. The figures appearing in this report reflect that adjustment in order to provide a more accurate comparison.

³ This figure, despite its large size, is likely conservatively low. Only 38 of the 48 reporting jurisdictions provided a restitution amount. This figure also does not account for unilateral and unreported returns to investors by firms or investigative targets, and many states did not report as restitution repurchases of auction rate securities by the dozen firms that agreed to global settlements requiring more than \$60 billion in buybacks.

⁴ States were not asked to report costs recovered in the 2010 survey of 2009 activities.

⁵ Because state securities enforcement actions are complex and often involve multiple issues, a single case might involve several different types of actions or respondents. Therefore, cases reflected in the states' responses to the 2012 Survey often fit into, and thus were recorded, in more than one category or case type.

⁶ Section 501 of the 2002 Uniform Securities Act, titled "General Fraud," states that it is unlawful, in connection with the offer, sale or purchase of a security, to employ a device, scheme or artifice to defraud; to make an untrue statement of material fact; to omit to state a material fact; or to engage in an act, practice or course of business that operates as a fraud or deceit upon another person.

⁷ As stated previously in this summary, cases often involve multiple respondents or investigative targets, and many reported cases involve both a firm and one or more agents or individuals.

⁸ Seven of the states that responded to the 2012 Survey did not report any products or practice information.

⁹ It is possible and even probable that many of the reported cases involving a Rule 506 private offering were also counted in the real estate investments or interests category.