NASAA

NASAA Insight

The Voice of State & Provincial Securities Regulation

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In This Issue:

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NASAA: Strong Regulation Helps Support Strong Capital Markets

The North American Securities Administrators Association has launched an active campaign to counter a number of recent reports from industry-supported commissions that paint a dire picture of diminished fortunes and ominous consequences facing Wall Street in the wake of the corporate reforms that rose from the ashes of Enron and other corporate scandals.

"There is no need to weaken the investor protection laws, but that hasn't stopped the companies that are behind these commissions," said Ed Mierzwinski, Consumer Program Director for the U.S. Public Interest Research Group. "Their goal is to roll back the investor protection laws and I would encourage NASAA to speak out with a loud voice."

NASAA did just that. First, in March, NASAA sponsored a symposium at the National Press Club in Washington, D.C. bringing together leading securities industry experts to challenge suggestions that U.S. capital markets are losing their competitiveness due to increased regulation and the cost of complying with those regulations.

In May, NASAA's Public Policy Conference again focused attention on the calls for rolling back investor protections.

Conference Chair and Delaware Securities Commissioner Jim Ropp said the goal of the conference was to provide participants with "a deeper understanding of the dynamic and interdependent relationship between investor protection, economic prosperity, and the integrity of our nation's financial sector."

"And along the way," Ropp continued, "I hope you gain insights into why we, the state and provincial securities regulators of North America, do what we do. Simply put: it's because we believe that every investor deserves protection."

As part of the conference, NASAA sponsored a Public Policy Forum examining investor protection through effective enforcement and regulation. The forum provided insights from state securities regulators, leaders of the securities industry, consumer organizations, the labor movement and securities attorneys.

NASAA President Joseph P. Borg said state securities regulators will remain vigilant as this important policy debate unfolds.

NASAA Outlines Securities Industry SRO Merger Concerns

NASAA President Joseph P. Borg told a Senate panel on May 17 that improved investor protection, rather than regulatory streamlining, should be the primary objective of the upcoming merger of two securities industry self-regulatory organizations (SRO).

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

Borg said in testimony before the U.S. Senate Banking Committee's Subcommittee on Securities, Insurance and Investment during a hearing examining the merger of the NASD and the New York Stock Exchange-Regulation.

NASAA President Joe Borg makes a point during testimony before Senate panel.

"While 'streamlining' current rules and regulatory structures may create some savings and efficiencies, the needs of investors must come first," Borg said.

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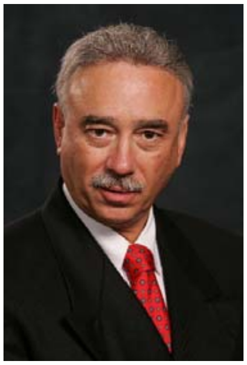


President's Message: Joseph P. Borg

"We must ensure that the successful and cooperative regulatory relationship between state, federal and industry regulators remains as strong as possible."

— Joseph P. Borg

This issue of *NASAA Insight* focuses largely on our response to various reports that seek to eliminate or reduce state regulatory authority, including the Committee on Capital Markets Regulation's Interim Report, the McKinsey Report, and a report sponsored by the U.S. Chamber of Commerce.

We all agree that investor confidence is the cornerstone of the success of our capital markets. A key component of investor confidence is a regulatory framework that provides strong investor protection.

Some on Wall Street and in Washington are calling for weakening this framework in an attempt to do away with laws and regulations that require accountability and punish wrongdoing.

It seems out of place to hear these calls when the news out of Wall Street is filled with record corporate profits and skyrocketing bonuses and as the echoes of Enron still reverberate throughout the land.

NASAA supports a strong and effective regulatory structure for capital markets and to do so requires the preservation of the authority of state securities regulators, the first line of defense on the securities beat. It also requires a strong Securities and Exchange Commission to properly implement laws, and it requires a strong SRO for efficient compliance. It takes all three of us working in equal partnership to maintain investor confidence in the world's deepest and most transparent markets.

Market globalization has for so long the mantra of Wall Street for loosening regulation. Globalization is here, with stronger, deeper foreign markets, technology equivalent to ours, and a populace willing to invest in their own domestic markets.

Predictably, Wall Street is attempting to blame "burdensome regulation" for increased competition. It should be noted, however, that numerous journalists, academics and other experts have questioned the premises, "conclusions" and "recommendations" of these reports – and rightfully so.

In light of the consolidation of the NASD and the NYSE Regulation, the need for strong state securities regulatory authority is only heightened. With more than 100 million investors relying on our securities markets to meet their financial goals – and on regulators to keep those markets well policed – we must ensure that the successful and cooperative regulatory relationship between state, federal, and industry regulators remains as strong as possible.

And, of course, state securities regulators will continue to vigorously defend our authority to regulate at the state level and bring enforcement actions seeking appropriate remedies against those firms and individuals that violate securities laws and thereby harm investors.

Executive Director's Message: Russ Iuculano

Over the past several months, the NASAA staff has worked with its members to defend against several high-profile and well-concerted campaigns in Congress to weaken state securities enforcement authority. Clearly, more work needs to be done, and your help in the form of congressional visits will be requested as Congressional committees devote more attention to the various "competitiveness" reports, the current mandatory arbitration system, and the treatment of broker-dealers providing investment advice. While we continue to tackle these issues, it is important not to lose sight of some significant victories dealing with variable annuities that have been won at the state legislative level.

In Hawaii, a two-year effort by certain segments of the life insurance industry to repeal the state securities commissioner's oversight over variable annuity sales practices was defeated. In May, the Legislature passed a bill enacting the NAIC model suitability rule, with an amendment supported by both the securities and insurance commissioners that expressly preserves the securities commissioner's authority.

In Oregon, hotly contested legislation to include variable annuities with the definition of "security," was signed into law on June 14. NASAA submitted written testimony supporting the legislation and the views of Director of the Oregon Department of Consumer & Business Services Cory Streisinger that the bill would provide stronger enforcement tools to regulate variable annuity sales. Also supporting the legislation included the Oregon Chapter of AARP, and the NASD.

Let's hope that the victories (and lessons learned) from the battles in Hawaii and Oregon provide the necessary momentum for other states considering this important issue. One lesson learned from these victories is the value of having solid enforcement data to counter the industry's argument that no problem exists in this area. Without question, the result in Hawaii was bolstered by Hawaii Securities Commissioner Tung Chan's testimony that of all of her division's cases with senior victims in the last year, more than half related to variable annuities.

NASAA Symposium Focuses Attention on Protecting Investors and the Integrity of the Financial Markets

During a public symposium in Washington, D.C., representatives of the the North American Securities Administrators Association, securities law experts and investor advocates challenged claims that Wall Street is losing its luster due to increased regulation in the wake of Enron and other corporate scandals regulators who are aggressively protecting investors.

NASAA President Joseph Borg opened the symposium by noting that strong, effective securities laws and regulations protects both investors and the integrity of our nation's financial markets.

"Investor confidence is the cornerstone of the success of our capital markets. A key component to maintaining that investor confidence is a regulatory framework that provides strong investor protection," Borg said.

The symposium, held at the National Press Club, was moderated by University of Mississippi Law professor Mercer Bullard, and featured James D. Cox, Professor, Duke University School of Law; Tanya Solov, Illinois Director of Securities; Willis Riccio, Partner, Adler, Pollock & Sheehan; Nancy Smith, Vice President, Investment Services, AARP Financial; and former Enron employee Charles Prestwood.

Opening the discussion, Bullard noted the irony of Wall Street's fears of losing its competitiveness at a time when many large investment banking firms are posting record profits.

"Judging from these earnings, it would appear that competition is alive and well on Wall Street," he said.

Professor Cox said there is much misinformation about the status of Wall Street's competitiveness in the global economy. "This is not to say we should ignore capital market competitiveness. We need to get regulation right. We need to evaluate it and see where we can strengthen it, but very few of the reports are focusing on the right areas," he said.

"I find it really amazing that 'Sarbanes-Oxley' has become a dirty word."
— James Cox
Duke University

"I find it really amazing how 'Sarbanes-Oxley' has become a dirty word," he said. "Do we really want to go back to the day when the outside auditors were maintaining the very books of the companies that they are supposed to audit?"

Smith, of AARP Financial, cautioned against weakening the investor protections brought about by the Sarbanes-Oxley Act.

"If we roll back the protections we adopted in the wake of Enron – if we lighten up on enforcement and weaken internal controls requirements – there is every reason to believe we will have to learn, yet again, that strong investor protections are worth paying for and are a lot less of a burden on our markets' competitiveness than another epidemic of corporate fraud," she said.

From a regulator's perspective, Solov reminded the audience that Enron, WorldCom and other corporate scandals are "not ancient history." She added, "Now is not the time to roll back regulation or quash enforcement actions."

The audience also heard from former Enron employee Charles Prestwood, who worked for 30 years as a natural gas pipeline operator and saw the value of his retirement portfolio virtually disappear after the company's December 2001 bankruptcy.

"When you go from rags to riches back to rags again, something happened, something was wrong," Prestwood said.

Borg Tells Senate Panel: "The Needs of Investors Must Come First"

(Continued from Page 1)

Borg told the panel that "With one less regulator dealing with the public, state securities regulators urge the new SRO to demonstrate that any rule changes they propose will protect investors from fraudulent and manipulative acts and practices."

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

First, the NYSE's proposal on the harmonization of its rules with those of the NASD raises concerns that the rule harmonization project will favor the interests of member firms of the newly consolidated SRO over the adoption of provisions that protect investors.

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

Third, the merger will eliminate one arbitration forum for the resolution of disputes between public customers and the securities industry.

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

Fifth, Borg noted that consolidation may result in a less effective enforcement regime.

"A strong and effective regulatory structure requires preserving the authority of state securities regulators, a strong SEC, and a tough SRO for efficient compliance. It takes all three working in equal partnership to maintain investor confidence in the world's deepest and most transparent markets," he said.

"I believe investors deserve a regulatory system that commands and deploys the resources, expertise, and philosophy necessary to vigorously enforce securities laws and maintain fair and transparent capital markets," Borg said.

(See Pages 10-12 for Text of Testimony)

NASAA Public Policy Conference Report

U.S. Senator Casey Offers Support for Voluntary Arbitration; Calls for Increased Penalties for Crimes Against Seniors

United States Senator Robert Casey Jr. spoke out in strong support of state securities regulators in a speech opening the 2007 NASAA Public Policy Conference on May 8.

The freshman Senator from Pennsylvania serves on the Senate's Banking, Housing, and Urban Affairs Committee, as well as the committee's Securities, Insurance and Investment Subcommittee. He also serves Senate's Special Committee on Aging, among other assignments.

As a former two-term Pennsylvania Auditor General and Pennsylvania State Treasurer, Senator Casey said he appreciates the value of state government and respects the role state securities regulators served in protecting investors.

"Federal regulators, as you know, do a lot of work on investor protection, but they don't live in the communities you live in, they don't live in the states you live in, and they don't have the first-hand experience that you have as state regulators, and they don't have a better feel for what's going on in neighborhoods and communities," he said. "That's why I think it is critically important for anyone in this town talking about regulation, talking about securities and investor protection, to focus on, listen to, and act upon the advice you give us, and the advocacy you bring to bear on these questions."

Casey said he would oppose any efforts to weaken the "innovative regulation and enforcement" authority of state securities regulators.

"Moves to limit the role of securities commissioners in Pennsylvania or in any other state, do not help investors," he said. "And I for one, as a member of the Unites State Senate am going to oppose those efforts to take power away from you."

"The innovation and path that you've charted at the state level is what Washington should be listening to," Casey continued.

"In fact, many of our states are leading the way when it comes to innovation and investor protection. And the worst thing that Washington could do is stifle that innovation and turn a blind eye to what you're doing every day of the week."

Casey urged his federal colleagues to recognize and appreciate the role of state securities regulators. "We've got to be very flexible in Washington and creative when we're listening to you, whether its investor protection or any other kind of regulation, you can be sure we're listening to what you've told us," he said.

Turning to the issue of arbitration, Casey said he joins the efforts of Sens. Leahy (D-VT) and Feingold (D-WI) in asking the Securities and Exchange Commission to ban mandatory arbitration.

"Just as we can't afford to stifle the states in their efforts to protect investors, we can't block individual investors from seeking remedies when they are taken advantage of," he said. "It's one thing to have an inexpensive and accessible dispute resolution process or system, it's quite another to stack the deck against consumers. We see this all the time in Washington. They put in place a process that seems consumer friendly, that seems like it's giving the little guy his or her day in court, so to speak, but the result is something contrary to that. So we've got to make sure that those seeking real redress have that opportunity to do that."

Casey also indicated an interest in developing legislation to increase criminal penalties for those who defraud seniors. "We're just beginning to work on this," he said. "People who target older Americans and their retirement savings, should face even stiffer penalties," he said. "We've got an obligation to do more than has already been done."

> ***"The innovation and path that you've charted at the state level is what Washington should be listening to."***
>
> — *Sen.* Robert Casey Jr.

Finally, Casey discussed the importance of the Sarbanes-Oxley Act and the "substantial step forward" it represents in reforming corporate governance.

"There are changes that people are demanding. What we have to do when we examine changes to Sarbanes-Oxley is to make sure that we don't scale down, or water down the changes that were made to impact the larger-scale frauds," he said. "There are people in Washington who want to make sure that happens. I think that would be a mistake. We need to make sure we protect the rules that ensure those frauds aren't perpetrated."

"Sometimes what's lost in (calls for reforming) Sarbanes-Oxley and what's lost in any reform, is the impact of one instance of fraud on the life of one family or one individual, especially on older citizens," Casey said. "So when we're thinking about changes to any legislation or any changes in legislation, we have to bear that in mind."

Goldschmid: The Evidence Suggests That No Part of the Sky is Falling

The following article is adapted from the May 8, 2007 Keynote Speech delivered by former SEC Commissioner Harvey Goldschmid at NASAA's Public Policy Conference.

I titled my remarks "Sense and Nonsense in the Current Business Backlash" and I'm afraid the emphasis is on the nonsense. There have, of course, been the three reports referred to this morning. Each of them has a common theme: excessive regulation, overly aggressive regulation, burdensome regulation. We've got to talk about the reality of those themes.

I want to discuss the combination of these reports, and the publicity and pressures that have gone with them and whether or not anything will be enacted or regulated out of them. I hope the answer is "no," but it is dangerous. Whether or not anything comes of it, they are having a serious counterproductive effect.

Let me start with the global competitive concerns. Common ground for everyone is that our markets have been the most efficient, most liquid, and largest in the world and they play a vital role. The Paulson Committee talked about our markets as the lifeblood of the economy of the world and they are clearly right. The reports go on to worry that the harsh regulatory environment has encouraged foreign IPOs to turn elsewhere. They point to the successful competition from Hong Kong and London. These views and these factual statements are the driving force for the radical proposals that these reports put forth. But there is little basis for the global competitiveness concerns.

Various scholars, the Wall Street Journal, Goldman Sachs itself, Thomson Financial, among others, all have evaluated the competitive concerns and have concluded that powerful global forces are the cause of the basic downturn in any U.S. markets. We're talking about more prosperity elsewhere, higher corporate governance disclosure standards. Large privatizations have indicated this morning in China and France the pressures to go with their local markets. Thomson Financial, which studied the past 20 years of IPOs, concluded that there doesn't really appear to be any significant deterioration of the IPO market.

The reality is that Wall Street is thriving. Aggregate trading on U.S. exchanges is roughly 50 percent of the world total and has increased – not decreased – in the past few years. The premium, and I underscore this, the premium for foreign firms cross listing on U.S. markets is extraordinarily high. That premium is being paid because of the quality – the investment confidence that comes with the quality – of the U.S. regulatory scheme.

Could it be that our aggressive and effective regulatory and enforcement system for securities actually creates the premium for cross listing? And more importantly, provides the investor confidence that makes our securities markets the envy of the world.

The evidence suggests that no part of the sky is falling. Competitive concerns provide no basis for the radical weakening of our securities regulatory system that have been proposed.

Now let me turn to claims about our supposedly overly aggressive regulatory and enforcement system. According to the Paulson Report, we need more intense cost benefit analysis prior to SEC rulemakings; principles based, rather than a regime of prescriptive rules; a larger role for the President's Working Group

on Financial Markets; and an end to the considerable uncertainty about many of the elements of Rule 10b-5 liability. Please understand that the recommendations in these reports would increase uncertainty, would dramatically weaken the SEC; and would politicized the securities regulatory process by strengthening the President's Working Group, which is very much a political operation.

The reports create new safe harbors, open new opportunities for indemnification, they roll back the SEC's civil money penalty. They would dramatically diminish SEC and DOJ enforcement and they cripple private enforcement and they cripple the role of state securities regulators. The reports are dangerous and they remain dangerous. I'm outside Washington, D.C. and can say bluntly there's not much wisdom in the reports. But there is an enormous amount of pressure and power that will propel them forward and NASAA and everyone else ought to remain vigilant in this kind of world.

I took office as a Commissioner on July 31, 2002, the day after Sarbanes-Oxley was signed into law. If helping to restore public trust and confidence had been the only accomplishment of Sarbanes-Oxley and the SEC's efforts to implement and build on Sarbanes-Oxley, I would gently praise what has been done. But far more than the atmosphere has been changed. Why try to turn the clock back now? If rollback efforts are successful, what price will we pay in terms of the public's willingness to invest and the general acceptability of our system.

In short, our system is working. We're keeping our standards high, making appropriate corrections, and meeting legitimate needs. Overseas, they are hearing too much hyperbole, too much loud, and at times ugly, noise. There is real harm being done to U.S. financial markets by the "sky is falling" hyperbole in these reports.

"How can we ease regulatory burdens without entering into a race to the bottom in regulatory protections?"
Matt Neubert
Forum Moderator
Director
Arizona Securities Division

NASAA Public Policy Forum: Sound Bites

Matt Neubert / Arizona Securities Division

In the past few months, there have been multiple studies and reports that suggest that America's capital markets are becoming uncompetitive globally due to over regulation and over aggressive enforcement by state and federal securities regulators.

Others are responding by reminding us that our markets are the strongest in the world because of our strict policing of those markets and investor confidences rises because of that regulation.

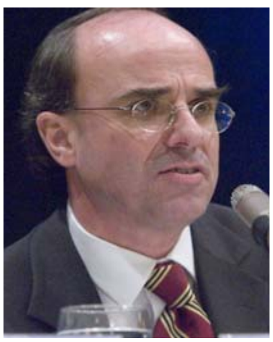
These and other issues are at the forefront of one of the most significant crossroads in our history.

Are we too soon forgetting the major scandals of the last five years that demanded such sweeping regulatory changes like Sarbanes-Oxley?

Are we in a rush to deregulate in the name of competitiveness while overlooking the impact this may have on shareholders and investors?

Yet how can we ease regulatory burdens without entering into a race to the bottom in regulatory protections?

NOTE: A complete transcript of remarks by all panelists is available on the NASAA website at *www.nasaa.org/NASAA_Newsroom/NASAA_Forums/*



"The benefits of our investor protection activities more than outweigh the costs of compliance."
Bryan Lantagne
Director
Massachusetts Div. of Securities

Bryan Lantagne / Massachusetts Division of Securities

The U.S. capital markets have been and will continue to be strong, especially in times of stress or under volatile conditions, because they are largely fair and transparent. This inherent strength exists primarily because the U.S. capital markets and their players are policed — not because they are lightly regulated.

The estimated $6 billion in Sarbanes-Oxley Act compliance costs pale in comparison to industry compensation levels. Last year, Wall Street bonuses reached a record $23.9 billion.

If this kind of money can be spent to reward industry participants, some monies surely can be spent to protect the very people whose retirement and pension funds are making Wall Street so much money.

State securities regulators fill a vital role in protecting Main Street America through our regulatory and enforcement activities. The benefits of our investor protection activities more than outweigh the costs of compliance. Gatekeepers and regulators are necessary to keep the market efficient. Any attempt to limit or circumscribe the state's police authority will do more long-term harm to the U.S. capital markets than perceived competitive threats from any foreign exchange.

"America needs strong investor protection cops and strong investor protection laws."
Ed Mierzwinski
Consumer Program Director
U.S. PIRG

Ed Mierzwinski / U.S. Public Interest Research Group

The underlying fundamental premise of the reports is extremely flawed. These reports are based on a hodge-podge of statistics that are picked out and carefully chosen to make a point.

These reports sound more academic than they actually are. They sound more independent than they actually are. And they sound more investor protective than they actually are. What they actually represent is an attempt to roll back investor protection laws.

The reason that the companies that are behind these reports give for their alleged problems is, of course, that we have too many private enforcement actions, we have too many lawsuits, we have too much bureaucracy.

Again, if you look at the numbers, you will find that fraud is up and there are fewer investor protection lawsuits. There is no problem with additional lawsuits. There is no need to weaken the investor protection laws. But that hasn't stopped the companies behind these commissions.

Even though the reports are flawed, there is a lot of money and "juice" behind the reports. There are a lot of spin doctors repeating the falsehoods that have come out of these reports. We must work together to make sure the message is clear – America needs strong investor protection cops and strong investor protection laws.

Damon Silvers / ALF-CIO

You've been hearing that there is a very serious crisis in our land, one that requires the full mobilization of the business leadership of our nation, powerful politicians, and the media. What is that crisis?

Is the crisis that real wages are falling in this country? No.

Is it the crisis that there are 40 million uninsured Americans who can't get health care? No.

The crisis that has mobilized America's business community is the prospect that Chinese companies may list their IPOs in China, and that European companies may list their IPOs in Europe. And what is their solution? It is protectionism. Not for steelworkers, not for textile workers, nurses, radiologists or computer programmers. But protectionism for investment bankers. Protectionism for people who make $50 million a year.

It is removing regulatory protection that benefits all of us in the interest of protecting the wages of investment bankers.

I don't think that very many of the things in those reports will come to pass. But all of us who have an interest in investor protection need to be vigilant nonetheless because Washington is a very dangerous town and very dangerous things can happen if good people do not remain vigilant. I'd like to remind you that in my lifetime there has been just one moment of serious threat to the competitiveness and functioning of our capital markets. And that moment was not after the passage of Sarbanes Oxley, but before it.

"All of us who have an interest in investor protection need to be vigilant."
Damon Silvers
Associate General Counsel
AFL-CIO

Ira Hammerman / SIFMA

Our real objective should be to examine what changes we can make to improve our current system so it better serves investors and the securities industry as a whole.

Despite some arguments to the contrary, I believe the U.S. capital markets are in danger of losing their edge. There is not a single factor causing the problem, but a variety of developments have converged to drive the trend at this point in time. The increased attractiveness and accessibility of the foreign capital markets cannot be denied. Technology has made accessing those markets easier and less expensive than ever before, thus increasing the pressure on U.S. firms to innovate and provide the best products and services available anywhere.

Let me be clear. We do not support the notion of eviscerating the power of the state attorneys general to litigate securities actions, nor do we support the proposal in the Hal Scott report, which would require states to pre-clear securities actions with the SEC.

SIFMA simply encourages improved communication between the SEC and the state attorneys general and securities regulators so that the regulators are aware of what each is doing to help reduce the duplication of efforts by both the regulators and the firms.

"I believe the U.S. capital markets are in danger of losing their edge."
Ira Hammerman
General Counsel
SIFMA

Jake Zamansky / Zamansky & Associates

I've reviewed the Paulson Report and the Bloomberg Report and I find these reports do not serve the interests of ordinary investors.

If you start by examining who are the members of the committees, it is a virtual "Who's Who" of Wall Street and Corporate America. I see no investor advocates represented. To me, when you have a group like that, it is pretty obvious what type of report you are going to see.

I'm particularly concerned about the arbitration area. There is an arbitration proposal buried inside the Paulson and Bloomberg reports. We now have the class action system. They want to do away with that or have arbitration of investor cases against issuers, such as Enron and investment banks, the underwriters.

I have a lot problems with having an arbitration system that is flawed used to protect investors in these cases.

I think the Congress needs to look at arbitration seriously. Investors are required to arbitrate with their brokerage firms. At the very least, we need to have a system that is fair.

Too many investors are complaining that they didn't get their day in court, that they didn't have a fair panel, that the deck was stacked against them.

"I find these reports do not serve the interests of ordinary investors."
Jake Zamansky
Principal
Zamansky & Associates

NASAA Legal Brief

One of the core functions of NASAA is representing the membership's position, as *amicus curiae*, in significant cases brought by private plaintiffs, as well as government regulators, involving the interpretation of the securities laws and the rights of investors.

In addition to the court decision in *Financial Planning Association v. The United States Securities and Exchange Commission* (see Page 9), NASAA aligned with the successful outcome in two significant recent decisions.

>> Victory in *Life Partners, Inc. v. Morrison*, No. 06-1370, 2007 WL 1240301 (4th Cir. Apr. 30, 2007) – A declaratory judgment action brought by a viatical settlement company challenging the Virginia Viatical Settlement Act, which protects viators from fraud and abuse. The court held that the Act is immune from attack under the Commerce Clause because it "relates to the business of insurance" within the meaning of the McCarran-Ferguson Act.

>> Victory in *Capital Research & Management Co. v. Brown*, No. B189249, 2007 WL 195785 (Cal. Ct. App. Jan. 26, 2007) (known as the "American Funds" case) – An enforcement action brought by the California Attorney General against a mutual fund distributor for failing adequately to disclose shelf-space agreements. The court held that NSMIA did not preempt the action because it fell under the savings clause expressly preserving the states' right to bring actions for fraud and deceit, 15 U.S.C. § 77r(c).

Also, in March, NASAA submitted a brief in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, No. 06-484 (U.S. S.Ct. Mar. 9, 2007), a class action lawsuit alleging fraud under federal securities law. NASAA argued that when a court determines if a complaint establishes a "strong inference of scienter" under the Private Securities Litigation Reform Act, it should not be required to weigh competing inferences arising from the complaint, because such a test unfairly burdens plaintiffs and violates Rule 12(b)(6) of the Fed. R. Civ. P. as well as the Seventh Amendment right to trial by jury. In June, the U.S. Supreme Court issued a decision that strikes a middle ground: courts must balance inferences, but the inference of scienter need not be *stronger* than exculpatory inferences for the case to survive a motion to dismiss.

IN THE SPOTLIGHT

STONERIDGE INVESTMENT PARTNERS, LLC, Petitioner, v. SCIENTIFIC-ATLANTA, INC. & MOTOROLA, INC., Respondents.

Excerpt

NASAA and its members have an interest in the outcome of this appeal because it will profoundly affect the ability of investors to seek redress in cases where unscrupulous companies and individuals have actively participated with issuers in schemes to defraud the securities markets. The Eighth Circuit incorrectly held that any defendant who does not make a fraudulent misstatement or omission, or who does not engage in manipulative trading of securities, cannot be held liable as a primary violator of Section 10(b) of the Securities Exchange Act of 1934.

The lower court adopted the narrow view that absent those specific forms of misconduct, a defendant is at most an aider and abettor immune from suit under Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994). If this Court affirms the lower court and thus insulates a broad range of deceptive practices from the reach of Section 10(b), many victims of securities fraud with meritorious claims will lose the opportunity to recover damages resulting from undeniably culpable behavior.

As advocates for the rights of investors to seek redress, NASAA and its members have an interest in supporting reversal and restoring an interpretation of the law that is more in keeping with its language, intent, and underlying purposes.

This Court's decision will also have a pivotal effect on the role of private actions as a deterrent against securities fraud. Private actions by defrauded investors are an enormously important complement to regulatory enforcement actions as a means of policing the securities marketplace. State and federal securities regulators work tirelessly to detect, enjoin, and punish financial fraud. However, private actions not only provide the principal means of compensation for victims of securities fraud, they also play a vitally important role in protecting the integrity of the marketplace through deterrence, a fact often noted by this Court.

The burgeoning growth in large-scale securities fraud over the past decade shows that a broad interpretation of Section 10(b), in keeping with its remedial purposes, is just as important today as it was in 1934, perhaps more so. To the extent that the Court erects unwarranted barriers to recovery in private actions—such as immunity for those who participate in fraudulent schemes through deceptive acts, not words—the Court will undermine an important deterrent that benefits the marketplace as a whole. For this additional reason, NASAA and its members support reversal of the circuit court's decision.

Summary of the Argument

The lower court erred when it dismissed the Petitioner's claims and held that Section 10(b) of the Exchange Act and Rule 10b-5 encompass only misstatements and omissions of material fact and not deceptive acts performed as part of a scheme to defraud the securities markets. The lower court's narrow construction conflicts with the plain language of the statute, Congress's intent that the antifraud provisions of the Exchange Act be construed broadly, and this Court's decisions recognizing that Section 10(b) applies to deceptive actions as well as misstatements and omissions.

(Continued on Next Page)

NASAA Says Court Decision on SEC Fee-based Brokerage Exemption Rule is "a Positive Step"

On March 30, 2007, the U.S. Court of Appeals for the District of Columbia Circuit struck down the Securities and Exchange Commission's fee-based brokerage exemption rule.

In its ruling, in *The Financial Planning Association v. The United States Securities and Exchange Commission*, the court said the SEC "exceeded its authority" by exempting fee-based brokerage accounts from the Investment Advisers Act, which requires detailed disclosures of conflicts of interest, disciplinary history, and also requires advisers to act in the best interest of their clients.

NASAA filed an amicus brief in support of the FPA's ultimately successful position.

"The Court's decision is a positive step toward removing investor and industry confusion stemming from the SEC's rule, which exempted broker-dealers that provide investment advice to clients with fee-based accounts from regulation under the 1940 Investment Advisers Act," said NASAA President Joseph Borg.

Borg said the SEC's rule sparked confusion regarding the differences between broker-dealers and investment advisers, and placed investors at a disadvantage in the perplexing world of financial products and investment advice.

"The court's decision comes at a time when the public needs simplification and clarity in financial services," he said.

On May 14, 2007, the SEC announced that it would not appeal the court's decision and submitted a motion to the court for a 120 day stay of the mandate. The court is expected to grant the motion.

Research firm Cerulli Associates estimates that the nearly one-million fee-based accounts affected by the court's decision held about $277 billion in assets in 2006.

Regulators Join Forces on Forex Fraud Alert

NASAA and the Commodity Futures Trading Commission (CFTC) issued a joint investor alert in May to warn of the dangers facing retail investors who are lured into foreign currency (forex) trading frauds.

The regulators cautioned investors that off-exchange forex trading by retail investors is at best extremely risky, and at worst, plagued by outright fraud.

"The damage forex fraud has caused the investing public and the victims of forex scams is incalculable," said CFTC Commissioner Michael V. Dunn.

NASAA Identifies Top 10 Traps Facing Investors

NASAA recently released its annual forecast of the Top 10 Traps likely to ensnare investors. "The path to safe investing is littered with traps that are likely to catch unwary investors," NASAA President Joseph Borg said.

NASAA's Top 10 Traps for Investors are listed below in alphabetical order:

> Affinity Fraud
> Forex Trading
> Internet Fraud
> Investment Seminars
> Oil and Gas Scams
> Prime Bank Schemes
> Private Securities Offerings
> Real Estate Investment Contracts
> Unlicensed Individuals & Unregistered Products
> Unsuitable Sales.

Stoneridge *(from Page 8)*

The lower court also erred by ignoring the public policy implications of its interpretation of the law. The boundless ingenuity of those who commit fraud and the need to protect investors from fraud and abuse together make it imperative that Section 10(b) be applied to all types of deceptive devices.

. . . Companies have partnered not just with their accountants, but also with their investment banks (as in Enron) and their outside vendors (as in this case) in deceptive schemes designed to add credibility and camouflage to those misleading reports. The Court in Central Bank acknowledged that in complex securities fraud cases, "there are likely to be multiple violators." Allowing investors to seek recourse in such cases will discourage the participation of such consultants and outside business partners in fraudulent schemes.

Reversal of the lower court's narrow interpretation of Section 10(b) will also help investors recover their losses arising from securities fraud. Often the companies directly responsible for the dissemination of false financial statements have collapsed under the weight of the fraud, leaving the other participants in the scheme to answer for the losses that investors have suffered. By exposing all parties responsible for the fraud to civil liability, the law will afford at least some chance of recovery to those who have lost their investments—often their life savings—as a result of the defendants' culpable behavior.

. . . In short, Congress has adopted legislative measures that are more than adequate to protect industry from abusive lawsuits. Where claims of fraud lie well within the statutory boundaries that Congress has set, as they do here, there is no justification for a narrow interpretation of the law that further limits the ability of investors to seek relief.

At a time when large scale financial fraud shows little sign of abating, this Court should ensure that injured investors have the opportunity to seek relief in federal court. For these reasons, the Court should reverse the lower court's decision and reinstate the Petitioner's claims.

Note: The Stoneridge amicus brief is on the NASAA website at the following link: *www.nasaa.org/issues___answers/enforcement___legal_activity/968.cfm*

NASAA Launches New Podcast Series: *The Alert Investor*

Continuing its tradition of providing information that every investor can use, NASAA recently launched an investor awareness podcast series, The Alert Investor.

The ongoing series of podcasts address timely topics for investors of all ages in succinct, two-to-three minute episodes. Listeners can hear the podcasts on their personal computers or MP3 players.

The Alert Investor is available on the NASAA website (www.nasaa.org) and through iTunes.

TESTIMONY OF JOSEPH P. BORG Director Alabama Securities Commission and NASAA President

Before the United States Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance and Investment

"Consolidation of NASD and the Regulatory Functions of the NYSE: Working Towards Improved Regulation"

May 17, 2007

NASAA Testimony: Consolidation of NASD and the Regulatory Functions of the NYSE

Today, 100 million Main Street Americans buy and sell securities locally through their state-licensed brokers. But, as a whole, the financial services industry itself has become increasingly more global in scope. A merger of certain self-regulatory functions makes sense.

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

While "streamlining" current rules and regulatory structures may create some savings and efficiencies, the needs of investors must come first. And, since this merger will result in one less regulator overseeing securities firms that deal with the public, state securities regulators urge the new SRO to demonstrate that any rule changes they propose will protect investors and the public interest, promote just and equitable principles of trade, and prevent fraudulent and manipulative acts and practices.

Our preliminary review of the NYSE's proposal on the harmonization of its rules with those of the NASD raises concerns that the harmonized rules will favor the interests of member firms of the new SRO over the adoption of provisions that protect investors.

My written testimony contains several examples. Each of them taken alone may not cause concern. Taken as a whole, however, the examples appear to reflect a trend to weaken certain rule provisions to the detriment of investors. Rules harmonization must offer the greatest investor protection not the least.

This new SRO must be a tough and effective regulator willing to make hard decisions that will not be popular with its members. In the past, the NASD has been under great pressure not to embrace some initiatives that serve investors' interest if its members raise objections.

For example, the NASD proposed various revisions to its public disclosure system that reveals the disciplinary history of stockbrokers. Initially, its proposal to the SEC included the enhanced disclosure of certain disciplinary history on BrokerCheck. Various NASD members and particularly the SIA, now SIFMA, opposed the disclosure of this information. Subsequently, the NASD amended its proposal and removed the enhanced disclosure that the industry found objectionable. The entire disciplinary history is available from state regulators, and is an essential tool for investors when deciding whom they should trust with their life savings. The NASD should match state regulators and make the complete history publicly available.

On another subject, NASAA has been at the forefront of trying to make certain the securities arbitration system is fair and transparent to all. The NASD and NYSE dispute resolution forums, although quite similar, have different rules, procedures, and administrative practices, all of which can have a significant procedural impact on an arbitration proceeding. The new SRO will eliminate one

NASAA President Joseph Borg (left) delivers testimony as SIFMA CEO Marc Lackritz and Columbia University Law Professor John Coffee listen.

Working Towards Improved Regulation

arbitration forum, which raises the stakes for getting it right.

As long as arbitration panels include a mandatory industry representative of the securities industry and include public arbitrators who maintain significant ties to the industry, the arbitration process will be both perceptively and fundamentally unfair to investors. NASAA urges the removal of mandatory industry arbitrators from the arbitration process, and for public arbitrators to have no ties to the industry. This change will bring greater fairness to securities arbitration and instill greater confidence in retail investors that their complaints will be heard in a fair and unbiased forum.

State securities regulators often hear directly from investors, and it is important to allow NASAA to be an official observer at the National Arbitration and Mediation Committee (NAMC) meetings where the new SRO will address arbitration rules and procedures.

The merger of the two SROs will impact state securities regulation, and there must be consultation between the entities involved and state regulators before relevant rule proposals and Notices to Members are announced. Failure to consider the impact of the merger on state laws and regulations is evidenced by a NASD Notice to Members earlier this year. This notice, without any advance discussion with state regulators, proposed the elimination of the term, "Office of Supervisory Jurisdiction (OSJ)," and changes to the definition and registration of branch offices.

This proposal was particularly troublesome in light of the fact that NASAA, NASD, and NYSE worked together to establish a branch office registration program and promulgated a form to facilitate the registration of these offices.

Since the proposed modification would impact state registration requirements, NASAA submitted a comment letter opposing the proposed change and offering an alternative solution. NASD's stated intent could have been easily achieved had NASD consulted with NASAA prior to the Notice to Members being released for public comment.

We believe advance discussion will generate further efficiencies and streamlining in the development of the new SRO rules.

Currently, NASD and NYSE-R each have surveillance and enforcement programs. The merger raises the very serious concern that consolidation of these programs may result in a less effective enforcement regime and therefore less protection for the investing public.

We believe the following questions must be addressed if the merger is to serve the public's

ever-present need for strong enforcement of the securities laws.

Will the new entity embrace an aggressive enforcement philosophy that protects the public as effectively as possible from abuses in the securities markets, both in the short and long-term?

Will the new entity allocate sufficient monetary and staff resources to ensure that its unified enforcement program is at least as robust as the two current programs that NASD and NYSE currently operate?

Will the new entity work cooperatively with state securities regulators on enforcement matters?

A strong and effective regulatory structure requires preserving the authority of state securities regulators, a strong SEC, and a tough SRO for efficient compliance. It takes all three working in equal partnership to maintain investor confidence in the world's deepest and most transparent markets.

I believe investors deserve a regulatory system that commands and deploys the resources, expertise, and philosophy necessary to vigorously enforce securities laws and maintain fair and transparent capital markets.

State securities regulators are committed to working with Congress, the SEC and the new SRO to ensure that our nation's investors continue to prosper in a regulatory environment that provides the strongest investor protections.

" While streamlining current rules and regulatory structures may create some savings and efficiencies, the needs of investors must come first."

— Joseph P. Borg

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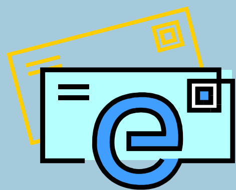

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Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud.

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Make Plans Now to Attend the 2007 NASAA Annual Conference in Seattle

NASAA's 90th Annual Conference, at the Westin Seattle, will offer an opportunity to discuss the latest trends and issues of interest to state and provincial securities regulators and securities industry professionals.

This year's conference is scheduled from September 30 through October 3.

Conference registration information is available on the NASAA website at *www.nasaa.org.*