

# NASAA 2018

## Enforcement Report

Based on 2017 Data



# Introduction

For more than 100 years, North American Securities Administrators Association (NASAA) members — state, provincial, and territorial securities regulators in the United States, Canada and Mexico — have cooperated and shared information with one another to fulfill their mission of protecting investors and ensuring the integrity of the securities markets.

One of the ways NASAA members seek to accomplish their mission is through the vigorous enforcement of their respective civil and criminal securities laws.

While the securities markets are global, securities are sold locally. NASAA members, as the “cops on the beat,” are often the first line of defense against investment fraud in their respective jurisdictions. Although not all of the enforcement actions brought by NASAA members receive national headlines, they all directly impact their communities and, as a whole, impact the global securities markets.

As such, each year NASAA conducts a survey of NASAA U.S. members<sup>1</sup> to quantify the tremendous impact that NASAA members have by conducting investigations and bringing legal actions against those who harm investors and our securities markets. NASAA’s Canadian members participate in a different enforcement survey; an overview is provided on page 10.

This report provides a summary of the enforcement actions of its members in 2017. And while the amount of money returned to investors, financial sanctions, and years in prison identified in this report are the direct result of NASAA members’ enforcement actions, the numbers do not reflect the deterrent effect these actions have on would-be fraudsters or the confidence that NASAA members help instill in the markets.

This report also identifies enforcement trends, highlights the cooperation among NASAA members in multi-jurisdictional investigations and combatting frauds involving emerging technologies, and notes the ways that NASAA members are responding to securities frauds involving seniors.

Securities fraud is a constant, ongoing, ever-evolving battle that will always pose a risk to investors. But as this report demonstrates, NASAA members are well-prepared, well-organized, and ready to continue aggressively protecting investors from fraud and policing the integrity of our capital markets.

Sincerely,

Christopher W. Gerold  
NASAA Enforcement Section Chair  
Bureau Chief, New Jersey Bureau of Securities

<sup>1</sup> The survey requests that each NASAA U.S. member provide statistics using that member’s most recent full reporting year. Some members collect and report data on a calendar basis, while other members collect and report data on a fiscal year basis. This report is based on data collected from 51 NASAA U.S. members.

# Enforcement Overview

*The results from this year’s enforcement survey demonstrate that NASAA U.S. members continue to play a critical role in protecting investors and holding securities law violators responsible for the damage that they cause to individual investors specifically and to the integrity of our capital markets in general.*

## 2017 NASAA U.S. Member Enforcement Activities at a Glance



## COMPLAINTS & INVESTIGATIONS

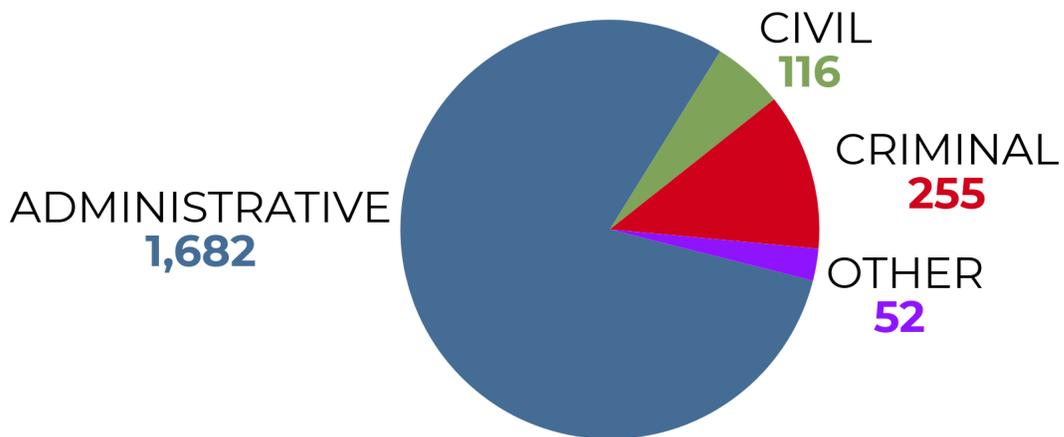
**COMPLAINTS  
RECEIVED  
7,988**

**INVESTIGATIONS  
INITIATED  
4,790**

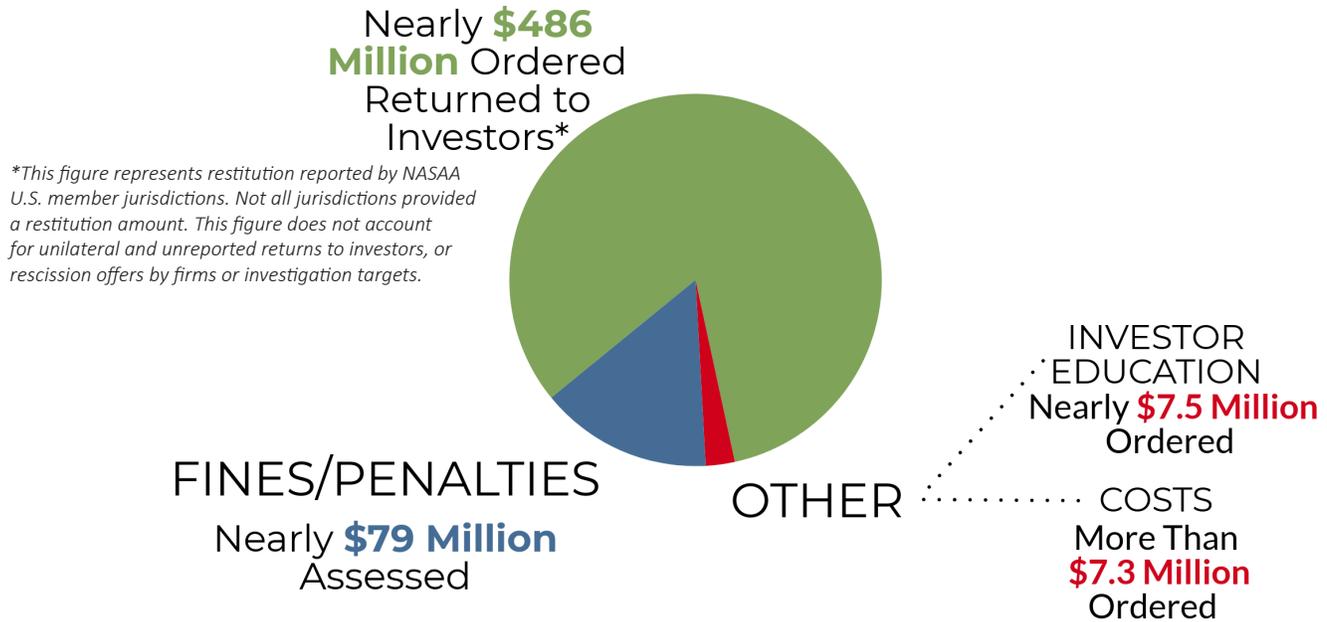
### COMPLAINTS & INVESTIGATIONS

The statistics above reflect the number of complaints received and investigations initiated. These formal investigations are supplemented by extensive efforts to informally resolve complaints and referrals. As such, investigations differ widely in their complexity and in the number of respondents and victims involved, the amount of time required to conduct an investigation can range from a few weeks to multiple years.

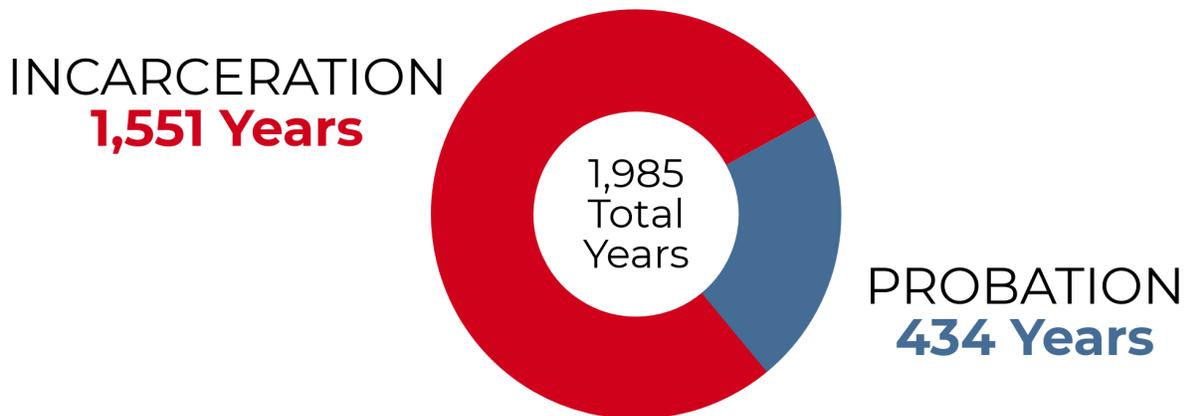
## ENFORCEMENT ACTIONS



## MONETARY RELIEF



## CRIMINAL RELIEF



### RELIEF ORDERED

The sanctions imposed by state securities regulators can vary considerably from year to year, depending on the nature of the cases pursued. In addition to monetary restitution to investors, common types of sanctions include fines and penalties, criminal sentences, and restrictions or prohibitions on participation in the securities industry. In 2017, NASAA U.S. members reported nearly \$486 million ordered returned to investors and reported a continued high level of specific and general deterrence through criminal sanctions. The number of overall licensing sanctions increased over recent years, and is detailed below at pages 7-8 and 11.

# Enforcement Coordination Among NASAA Members

State and provincial securities regulators coordinate their enforcement efforts to maximize their collective ability to protect the investing public. This cooperative approach to enforcement ensures that NASAA members can leverage their resources for enhanced efficiency and investor protection by working together.

For example, in early 2018 NASAA members in the United States and Canada launched a coordinated international initiative focused on cryptocurrencies and initial coin offerings (ICOs). Separately, a 2017 investigation led by state securities regulators from Alabama and Massachusetts led to a significant multistate settlement.



## From the Files . . .

### OPERATION CRYPTOSWEEP

In May 2018, U.S. state securities regulators joined with Canadian securities regulators to launch a coordinated international sweep of promoters and issuers of illegal and fraudulent cryptocurrency offerings. NASAA organized the participation of more than 40 agencies in “Operation Cryptosweep,” an initiative that included more than 200 inquiries and investigations of suspicious cryptocurrency offerings.

NASAA members quickly uncovered extensive fraud in this new market. Regulators secured voluminous evidence proving many promoters were not complying with registration laws and were concealing important information from investors, including the significant risks associated with investing in the cryptocurrency market, the true identity of the promoters and managers of investment programs, the actual location of issuers’ business operations, and the premises for promises of lucrative profits and returns.

Operation Cryptosweep resulted in the entry of many enforcement actions to stop these illegal and fraudulent schemes, including nearly 50 as of the date of this report. As NASAA President Joe Borg pointed out when he announced the sweep, these actions “are just the tip of the iceberg” and members will continue to pursue legal remedies to protect investors in this emerging market.

### MULTISTATE INVESTIGATION & SETTLEMENT

In March 2017, a representative of LPL Financial LLC contacted a representative of the Massachusetts Securities Division regarding the firm’s intent to offer rescission of five transactions in Massachusetts that it had belatedly identified as not being compliant with state securities law. The matter was referred to NASAA’s Enforcement Section.

In July 2017, NASAA established a task force with **Massachusetts** and **Alabama** as lead states to investigate the firm’s failure to establish and maintain reasonable policies and procedures to prevent the sale of unregistered, non-exempt securities by LPL to its customers. LPL fully cooperated with the NASAA task force.

The investigation focused on LPL’s retention, use, and subsequent cancellation of certain third-party services integral to LPL’s compliance with state securities registration requirements. State securities regulators also looked into certain other legacy deficiencies within LPL’s compliance structure related to LPL’s controls, monitoring and reporting tools, and escalation protocols regarding the firm’s response to significant compliance issues.

State securities regulators concluded that LPL offered and sold unregistered, non-exempt securities and failed to reasonably supervise the flow of information to ensure full and proper compliance with state securities registration requirements.

The lead states negotiated a settlement with LPL that was executed in May 2018. Terms of the settlement included a Cease and Desist Order, customer restitution back to October 1, 2006 and an administrative fine of \$499,000 to each participating jurisdiction, totaling \$26 million.



# Continued Focus on Bad Actors

This year’s enforcement survey reflects a large increase in enforcement actions against unregistered individuals and firms. NASAA U.S. members reported actions in 2017 against 675 unregistered individuals and firms (an increase of 24 percent over the prior year) and 647 registered individuals and firms (a 9 percent increase). The surge in cases against unregistered actors reversed a two-year trend in which registered individuals and firms in the securities industry (broker-dealers and investment advisers) had constituted the majority of respondents in state enforcement actions.

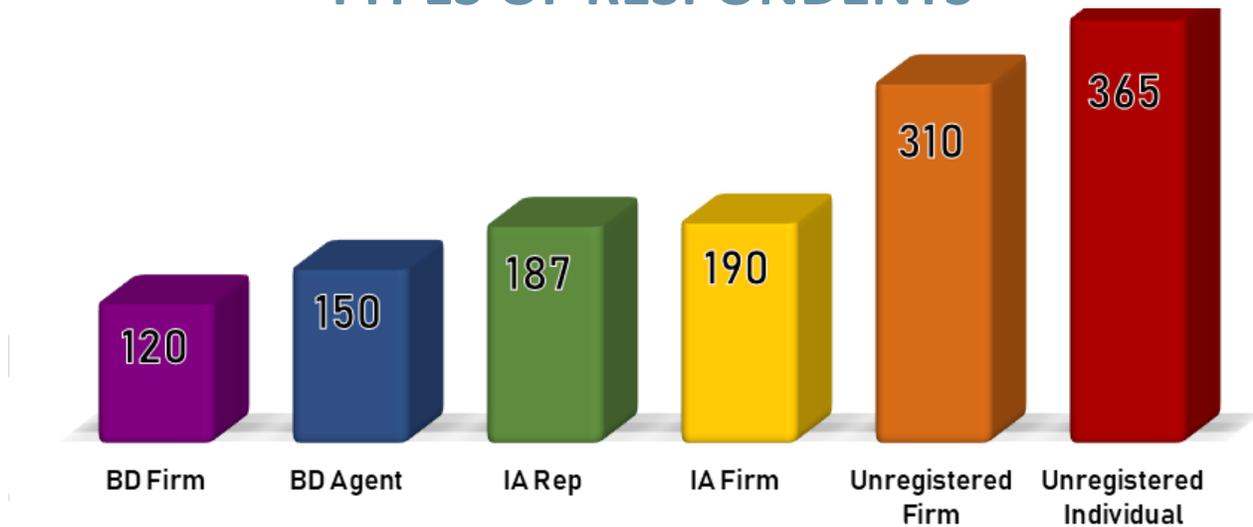
2017 was also the first year in which investment adviser (IA) firms and representatives significantly outnumbered broker-dealer (BD) firms and agents as respondents in state enforcement actions. Over the three-year period from 2014 to 2016, NASAA U.S. members reported taking actions against roughly an even number of BD firms and agents (1,050 total) and IA firms and representatives (982 total). In 2016, however, participating jurisdictions reported that the number of IA firms and representatives under investigation had increased by nearly a third year-over-year. Those investigations bore fruit in 2017, resulting in 377 IA firms and representatives named in enforcement actions, a 32 percent increase over the prior year. In contrast, the number of BD firms and agents named as respondents in 2017 enforcement actions fell to 270, an 11 percent decline year-over-year.

Overall, state securities regulators continued to take strong steps to prevent bad actors from operating within the licensed securities industry, and to condition the activity of licensees and registrants. In 2017, NASAA U.S. members revoked, barred or suspended the licenses/registrations of more than 300 individuals and firms, and denied or conditioned the licenses/registrations of more than 575 others.

In addition, nearly 3,600 license/registration requests were withdrawn as a result of state action or attention, the most in the last 4 years. While not always the case, many license/registration requests are withdrawn as a state is preparing to take action to deny, suspend, condition, or revoke a license/registration.

NASAA U.S. members also reported a growing number of investigations of unregistered individuals. For 2017, participating jurisdictions reported 515 unregistered individuals were the subjects of pending investigations. This number has climbed steadily in recent years, increasing nearly 40 percent between 2015 and 2017. In light of recent state enforcement efforts against fraudulent activity involving cryptocurrencies, it would not be surprising to see a sustained high level of investigations and actions against unregistered individuals and firms in the coming months.

## TYPES OF RESPONDENTS





## From the Files . . .

The **Maine Office of Securities** recently helped bring a fugitive Ponzi-scheme fraudster to justice after more than a decade at large. In the early 2000s, Maine investigated insurance agent Robert Edmunds III for the unlicensed sale of risky unregistered securities. In 2004, the Office of Securities entered into a consent judgment with Edmunds that required him to repay certain investor losses. Shortly afterwards, Maine learned that Edmunds was continuing to sell investments in known Ponzi schemes. After receiving a follow-up subpoena from the Office of Securities, Edmunds sold his house and business, divorced his wife, and fled the state, taking up residence for a time in Belize. Office of Securities Senior Investigator Jackie Drouin never stopped trying to locate Edmunds. Thanks to her persistent and determined efforts, Edmunds was arrested in Virginia in late 2016. He pled guilty to several counts of violating Maine’s securities laws, and in 2017 was sentenced to an 18-month term of imprisonment.

The **Wisconsin Department of Financial Institutions** recently entered into a consent order and payment agreement with Malorie Berceau, her company MFB Investments, LLC, and her accomplices Martin Berceau and Travis Ebert after the trio conned family and friends out of \$350,000. Ms. Berceau claimed the investors’

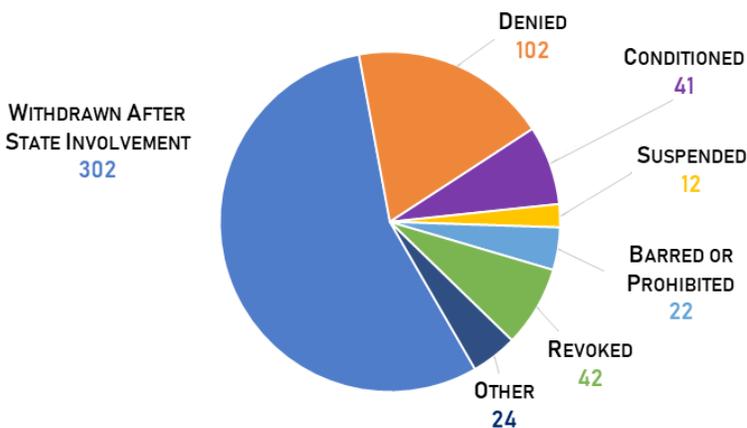
funds would be invested in binary options, penny stocks, and foreign currency exchanges. Despite never having been registered, Ms. Berceau held out MFB Investments as an investment adviser, and sometimes falsely claimed to be a current or former employee of Merrill Lynch. Ms. Berceau represented that potential investors could earn a 200 percent return in as little as 90 days.

None of the money Ms. Berceau obtained was ever invested in any legitimate security on behalf of investors; instead, Ms. Berceau deposited the funds into accounts she and Ebert controlled and spent the money on personal expenditures. To further the fraud, Ms. Berceau created false account documents using the logos of legitimate financial companies. She also created brokerage and bank accounts under investors’ names without their consent, substituting her own contact information for that of the investors. In at least one case, Ms. Berceau impersonated one of her investors using a falsified power of attorney which Mr. Berceau and Mr. Ebert signed as witnesses, and forged the investor’s signature on multiple transfer forms.

Following an investigation, DFI entered a summary cease and desist order in October 2017. Ms. Berceau, Mr. Ebert, and Mr. Berceau later agreed to the entry of a consent order in which Ms. Berceau admitted liability, Ms. Berceau and Mr. Ebert agreed to pay over \$200,000 in restitution and a \$30,000 civil penalty, and Mr. Berceau agreed to pay over \$68,000 in restitution and a \$10,000 civil penalty. All three respondents also agreed to cease and desist from the offering of unregistered securities and from violating Wisconsin securities laws.

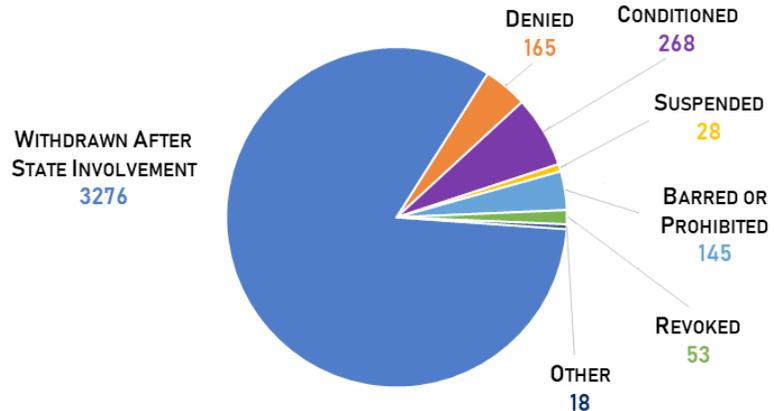
### LICENSING SANCTIONS: FIRM

#### FIRM



### LICENSING SANCTIONS: INDIVIDUAL

#### INDIVIDUAL



# Investor Threats Stemming From Emerging Financial Technologies

NASAA members recognize that bad actors often attempt to capitalize on the hype associated with exciting new markets and trendy financial products.

Not surprisingly, enforcement personnel began increasingly focusing their efforts on cryptocurrencies, as the price of Bitcoin sharply increased from approximately \$2,364 in July 2017 to nearly \$20,000 in December 2017, and the market capitalization of all cryptocurrencies skyrocketed to more than \$500 billion during the same time period.

Although some legitimate businesses were attempting to properly raise capital by selling securities tied to cryptocurrencies and related blockchain technologies, state authorities quickly learned the market was saturated with fraud.

NASAA members began conducting swift investigations of suspect ICOs and other investments involving cryptocurrencies, and they started pursuing those enforcement actions necessary to protect the investing public from imminent harm.



## From the Files . . .

On December 20, 2017, the **Texas State Securities Board** secured an emergency action against USI-Tech Limited, the first state enforcement action against a promoter of illegal and fraudulent investments tied to cryptocurrencies. Around the same time, the **Securities Division of the North Carolina Department of the Secretary of State** and the Texas State Securities Board began investigating BitConnect's offer of investments in a cryptocurrency lending program.

The agencies learned that BitConnect promised investors that the purchase of an investment in the cryptocurrency lending program would entitle them to upwards of 40 percent interest per month over a specified term and an additional rate of interest calculated on a daily basis.

Although these investments constituted securities, the regulators found that BitConnect was failing to comply with the appropriate securities and dealer registration laws. They also found that BitConnect was engaging in fraud by failing to disclose important material facts, including the identity of the principals of BitConnect, the true location of BitConnect's operations and

management, and financial information that may provide a basis for its promise to pay investors extraordinary returns.

North Carolina and Texas swiftly entered emergency actions to protect the investing public from BitConnect.

These enforcement actions not only stopped BitConnect's scheme to defraud residents of North Carolina and Texas, but also led to the swift collapse of the fraudulent investment scheme.

Immediately before the entry of both orders, BitConnect claimed a market capitalization of more than \$2.5 billion. On January 16, 2018, BitConnect publicly recognized its receipt of the orders entered by state securities regulators, and it promptly stopped unlawfully selling investments in its cryptocurrency lending program. Over the next few weeks, BitConnect's market capitalization plummeted, falling more than 98.5 percent before its cryptocurrencies were delisted from public exchanges.

# 2017 Canadian NASAA Member Enforcement Activity

Canadian Securities Administrators' (CSA) investigation and enforcement teams work efficiently and collaboratively to protect the integrity of Canada's capital markets, and protect Canadian investors from unfair, improper, or fraudulent practices. Enforcement efforts comprise a number of specialized committees, task forces and working groups.

## Combatting Binary Options Fraud

In 2017 and 2018, the CSA's Binary Options Fraud Task Force led global discussions on best practices, and worked closely with investor education and communications divisions to build and launch a wide-reaching public awareness campaign across Canada.

The Task Force built stronger connections with finance and tech industry companies like Google, Facebook, Apple, Visa, and MasterCard. These connections were vital in efforts to block fraudsters from accessing digital channels and online advertising, and to reduce or block payments to fraudulent companies. The Task Force's work resulted in a multilateral ban on offering, selling or trading binary options shorter than 30 days with any individual in Canada, and a reduction in complaints and advertisements/activities involving binary options in Canada.

## CSA Enforcement Summits

The first-ever Canadian Pump-and-Dump Summit for securities regulators and law enforcement agencies was held in Calgary, Alberta, in September 2017. Enforcement specialists from across Canada, the U.S. Securities and Exchange Commission, and the FBI, explored innovative, effective approaches to detecting and investigating pump-and-dump schemes, which cause substantial loss to investors and reputational damage to Canada's capital markets each year.

In November, CSA members met in Toronto for a two-day Data Analytics Think Tank. The forum highlighted the critical role data analytics plays in enforcement. The conference gathered experts from prominent data-driven organizations from around the world to discuss topics such as artificial intelligence, open-source technology solutions, building data-science-driven teams, and storing and analyzing evidence in the cloud.

## CSA Enforcement Overview

From January 1 to December 31, 2017, CSA members concluded 111 matters involving 259 respondents (individuals and companies). The largest number of respondents by category was 149 for illegal distribution, 23 for fraud, 23 for market manipulation, and 21 for registrant misconduct.

Cooperation across provincial borders played a key role in a range of cases in 2017, with CSA members providing formal assistance to one another 88 times, and referring 35 files (*fiscal year 2017/2018*) to other jurisdictions for further enforcement action.

Securities regulators and courts ordered total fines, administrative penalties, and voluntary payments of \$69 million. Fraud represented \$20.5 million of this total, followed by market manipulation (\$19.9 million), and illegal distribution (\$13.6 million). Restitution, disgorgements, and investor compensation ordered amounted to \$68 million in 2017. Fraud offences represented much of this total (\$13.8 million), as well as disclosure violations (\$10 million), while no-contest settlements represented \$37.3 million.

There has also been an increase in CSA members' enforcement efforts in the courts. Efforts to prosecute serious cases in the courts resulted in several significant jail terms in 2017. Canadian courts ordered jail terms for 17 individuals, ranging from 30 days to five years, for a total of over 33 years of jail time handed down to offenders.

Other preventive measures were interim cease-trade and asset-freeze orders. Under the 49 interim and asset freeze orders issued, trading and other restrictions were placed on 127 respondents. In 2017, 30 asset-freeze orders were issued relating to 50 respondents, including a total of \$88 million in bank accounts and property liens.

CSA members issued 54 investor alerts during the calendar year to warn Canadians not to invest with certain individuals, companies, or types of investments.

# U.S. NASAA Member Enforcement Activity 2013-2017

Category	2013	2014	2015	2016	2017	5-Year Total
<b>Investigations</b>	5,302	4,853	4,112	4,341	4,790	23,398
<b>Overall Enforcement Actions<sup>1</sup></b>	2,184	2,042	2,060	2,017	2,105	10,408
<i>Administrative</i>	1,740	1,634	1,593	1,606	1,682	8,255
<i>Civil</i>	183	137	151	138	116	725
<i>Criminal</i>	262	271	261	241	255	1,290
<i>Other</i>	<i>not collected</i>	<i>not collected</i>	55	32	52	139
<b>Overall Criminal Relief<sup>2</sup></b>	2,495 years	2,122 years	1,246 years	1,346 years	1,985 years	9,194 years
<i>Incarceration</i>	1,816 years	1,624 years	838 years	824 years	1,551 years	6,653 years
<i>Probation</i>	679 years	498 years	408 years	522 years	434 years	2,541 years
<b>Restitution<sup>3</sup></b>	\$494 million	\$405 million	\$536 million	\$231 million	\$486 million	\$3 billion
<b>Fines/Penalties<sup>4</sup></b>	\$71 million	\$174 million	\$230 million	\$682 million	\$79 million	\$1.2 billion
<b>Overall License Sanctions<sup>5</sup></b>	3,657	3,585	4,265	3,500	4,498	19,515
<i>Withdrawn</i>	2,498	2,857	3,380	2,843	3,578	15,156
<i>Denied/Revoked/ Suspended/ Conditioned/Barred</i>	1,159	728	885	657	878	4,307

Notes: 1) Includes administrative, civil, criminal and other actions. 2) Includes prison time sentenced and probation. 3) Money ordered returned to investors by state securities regulators. 4) The method for reporting fines/penalties data was modified beginning with the data collected in 2016. 5.) Includes individual and firm licenses withdrawn, conditioned, barred, denied, revoked or suspended as a result of state action or attention.

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# NASAA

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.

In the United States, NASAA is the voice of state securities agencies responsible for efficient capital formation and grass-roots investor protection. Their fundamental mission is protecting investors who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public. 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. Through the association, NASAA members also participate in multi-state enforcement actions and information sharing.

For more information, visit: [www.nasaa.org](http://www.nasaa.org)

