INTERNATIONALIZATION OF THE SECURITIES

Statement of the North American Securities Administrators Association[1]
Adopted, April 29.1989.

I. Introduction

The number and dollar amount of securities transactions among the world's securities markets soared during the 1980s. This phenomenon was precipitated by the convergence of several factors. Most dramatic, perhaps were technological advances witnessed in global telecommunications and fund transfer systems operated by international banking systems.

During this period, significant shifts were observed in official government policy of many countries towards injecting competition into the private sector by dismantling domestic monopolies and withdrawing support from nationalized industries. This policy was manifested by several large flotations on the stock markets of shares of nationalized companies being privatized, most notably those in Great Britain. Also, public policy in countries outside North America now encourage individual share owning.

Governments realized, however, that individual investors needed protection from unscrupulous promoters and sharp business practices of brokers. Therefore, most embarked on either implementing a new comprehensive scheme of securities regulation or substantially strengthened existing regulation. Governments understood that the public would participate only in markets which were perceived as fair and honest due to investor protections afforded by a regime of effective securities regulation.

Another, but sinister, participant in the internationalization of the securities markets has been the criminal element. Launderers of drug monies, insider trading rings, and securities defrauders operating from protected havens have expanded their activities into the emerging international securities markets. Domestic markets which traditionally have been concerned with protecting investors from unscrupulous persons operating within their own jurisdiction now are confronted with threats to the integrity of their markets emanating from countries far from their borders.

The foregoing developments pose numerous challenges to the mission of securities regulators of maintaining the integrity of their capital markets through enforcement of investor protection standards while simultaneously according investor and market access to legitimate capital-raising activities spanning national borders.

II. Investor Protection

The development and growth of international securities require that minimum standards of investor protection be established and made applicable to issuers, broke] dealers, investment advisers and other securities professionals dealing with investors ii international securities transactions.

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[1] NASAA is an organization representing the 50 state securities administrators. In the United States, there is a dual state/federal approach to securities regulation. State securities statutes provide for registration of the offer and sale of securities within each state and for licensing of persons effecting transactions in securities or advising on the purchase or sale of securities. Compliance with both federal and state law is mandatory.

A. Securities Registration and Disclosure

Investors participating in international securities transactions should be protected by registration and prospectus requirements. Although-such requirements may vary according to the type of transaction or sophistication of the investor, certain minimum standards should be established. Such standards would address disclosure, financial information prepared under commonly accepted accounting principles, auditing standards, auditor independence and other principles consistent with the protection of public investors.[2]

In addition, regulators should support the requirement of continous disclosure to the securities markets by issuers whose securities are freely traded. Monitoring and compliance with public disclosure requirements should be vested in a government regulator.

Regulatory review of private placements, or according a right of access by the regulator to disclosure documents being used in a private placement should be maintained. A recent survey of one rather large NASAA state indicated that of all filings made by foreign issuers with that jurisdiction during the last 6 months, over 509) of such filings were private placements and therefore exempt from review by the U.S. Securities and Exchange Commission (SEC). As evidenced by the number of such enforcement cases brought annually by NASAA jurisdictions, regulators also have experienced a significant amount of enforcement problems in this area.

B. Broker-Dealer and Investment Adviser Regulation

All firms engaged in the business of effecting transactions in, or advising on the purchase or sale of, securities should be required to obtain a license for the conduct of such business from a securities regulator. The regulator should have authority to deny a license if the applicant does not possess sufficient capital to enter the business or its principals lack minimum knowledge and experience in the securities business.

Similarly, a record of past serious securities law violations of any jurisdiction, rules of a self-regulatory organization or significant evidence of customer abuse or dishonest or unethical practices in the securities business should constitute grounds for denial of a license. Disclosure to prospective customers of prior securities law violations should be mandatory.

As broker-dealers and investment adviser activities expand across national borders and subsidiaries are established in other national jurisdictions, securities regulators must work together to develop consistent capital adequacy standards for such firms to ensure stability and liquidity. Special attention must be paid to those jurisdictions which permit banks or bank subsidiaries to engage in the securities business.

For those firms with foreign subsidiaries, the relevant regulators should establish open lines of communication among counterparts in the parent company's domicile and other jurisdictions where foreign subsidiaries have been established to become better informed about the global

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[2] In the U. S., the regulatory philosophies underlying federal and state securities laws are similar, but not identical. The federal approach, described as "full disclosure," requires disclosure of all material facts about the security, the issuer and the offering. State law requires compliance with full disclosure but issuers also may have to meet additional investor protection standards imposed under state law. Such standards as prohibition on issuance of non-voting stock to the public or escrowing of deeply-discounted promotional shares held by insiders generally are applied in only a small number of offerings.

activities of such firms. Thus, regulators would be in a better position to respond to events which might have an adverse effect on the financial and operational activities of such firms in their domestic markets.

C. Cooperative Enforcement Efforts

Criminal elements also are taking advantage of the internationalization of the securities markets. It is now not uncommon that illegal activities occurring in the domestic market of one country, or multiple countries, are being controlled by persons resident in another country, often in a jurisdiction which affords protection to such persons through blocking statutes and bank secrecy laws. Those countries should seek to narrow the application of such laws only to bona fide and legitimate purposes and permit exceptions where regulators are able to indicate that those laws are being used to shield unscrupulous activity. Further, countries which require that an activity must be illegal in its jurisdiction before rendering enforcement assistance should reconsider such a policy which acts as a deterrent to cooperative law enforcement efforts.

Securities regulators should recognize that their enforcement programs must include an international dimension. Responses to inquiries from foreign regulators should be made with dispatch. Establishment of agreements governing on-going exchanges of investigatory and regulatory information should be encouraged.

NASAA, the SEC, and other securities regulators have endorsed the Cooperative Enforcement Resolution passed by the International Organization of Securities Commissions (IOSCO) in 1987. In addition, NASAA members, as well as the SEC, have entered into several Memoranda of Understanding with foreign securities regulators to facilitate an ongoing exchange of regulatory and enforcement information. This activity should continue.

In 1968, NASAA began exploring, through a written survey among global securities regulators and law enforcement agencies, the feasibility of establishing an International Securities Law Violators Data Base. This would serve as a clearinghouse of *public* actions taken against securities law violators submitted by program participants. It is further evidence of the multinational cooperation required to be effective regulators in the 1990s.

III. Facilitating Legitimate Transnational Capital Formation

Securities regulators should encourage legitimate capital raising activities which span national borders. Artifical barriers to entry into domestic markets by foreign competitors should be eliminated to produce a level playing field for all participants. The level playing field, however, should be governed by minimum rules to ensure investor protection. Regulation S proposed by the SEC and the participation of NASAA with the SEC and Canada in development of the multijurisdictional securities registration project evidence such activity.

Regulators should look to methods to ease administrative burdens which may accompany compliance with such rules.[3] Among other things, consideration should be given to establishment of centralized depositories for receipt of licensing and securities registration documents which would be re-distributed to appropriate regulatory authorities for review, comment and approval.

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[3]The states have initiated various steps to reduce unnecessary regulatory burdens. For example, the majority of states currently provide a process called "coordination". When an issuer files a securities offering with the SEC, it may "coordinate" by filing identical documentation with each state in which the securities are to be offered. Coordination provides for a simpler and faster review by

Given continued technological advances, it is conceivable that the foregoing would be facilitated through a computerized system with access afforded the applicants/registrants in their own offices by means of a desktop computer terminal.

Both NASAA and the SEC have been long involved in such efforts. NASAA spearheaded the development of the Central Registration Depository which centrally receives and then re-distributes documentation for broker-dealer and agent licensure in the United States. NASAA also has worked alongside the SEC in the development of the EDGAR program which aims to centralize filing of securities registration and disclosure documents.

IV. Coordination, Mutual Assistance and Consultation

A. Coordination

Coordination and acceptance of a common standard by securities regulators in the following several areas are crucial if a truly international securities market is to develop: accounting principles for the presentation of financial information; auditing standards; auditor independence principles; capital adequacy ratios for brokerage firms (including definitive treatment of bank and non-bank firms) routing, execution, clearance and settlement systems; and securities registration systems. Regulators should participate in international organizations such as IOSCO and the International Accounting Standards Committee to develop commonly acceptable rules.

B. Mutual Assistance

Securities regulators should provide assistance to other government agencies, international organizations, self-regulatory organizations and other bodies whose goal is providing investor protection in the international securities markets. Those organizations which possess a long history of experience in regulating the securities markets have a unique opportunity to assist other jurisdictions which recently have enacted a scheme of securities regulation or are attempting to foster legitimate capital markets in their own countries as a means of increasing their economic vitality. Those regulators should view positively such opportunities recognizing, however, that the culture and economic realities of another jurisdiction may not be suitable for transplanting intact the regulatory regime of one country to another. Relating experiences, rather than form, is more important.

C. Consultation

Securities regulation and regulatory structures have evolved based upon national history, political realities and accepted business practices in each particular culture. In many jurisdictions, regulatory authority is shared, either with private corporations with public responsibilities (e.g., stock exchanges and self-regulatory organizations) or other governmental authorities. Each regulator has a valuable history of regulatory experience, but more importantly, a legal duty to acquit certain public responsibilities.

(Footnote Continued) [4]

[4] state authorities and effectiveness generally is concurrent with the SEC. NASAA also provides a forum for discussion of regulatory issues among the states and with the SEC to facilitate standardization of regulation to the greatest extent possible.

In the consultative process, which must occur if an integrated, functional international securities market is to be achieved, great care should be taken not to overlook the views and potential contributions of all regulatory bodies. The tasks are so enormous that no one regulator or privileged group of regulators could possibly address all the nuances of each issue requiring examination.

Although some organizations undoubtedly will emerge in a leadership role, the fruits of the process depend directly upon the concrete contributions made. As securities regulators with over 70 years experience, the government agencies comprising the NASAA membership have made, and will continue to make, important contributions toward the internationalization process consistent with their statutory mandate of providing investor protection.

NASAA has been alert to the issues implicit in the internationalization of the securities markets and has addressed many of them. It intends to be a partner with all other securities regulators in the consultative process which no doubt will continue well into the next decade.

The views expressed by NASAA in this Statement on Internationalization of the Securities Markets are designed to stimulate discussion concerning regulation of the international securities markets. It does not necessarily reflect the position of any individual NASAA jurisdiction.

Comments may be addressed to Mr. John C. Baldwin, NASAA President and mailed to the NASAA Corporate Office at 555 New Jersey Ave., N.W., Suite 750, Washington, D.C. 20001, with a copy to Mr. Wayne Klein, Chair, NASAA Internationalization Committee, Idaho Securities Bureau, 700 W. State St., Boise, ID 83720.

Anyone issuing securities in the United States must comply with state securities laws with respect to offering or selling securities, effecting transactions in securities or advising on the purchase or sale of securities. As the representative of the state securities administrators, NASAA is able to provide guidance as to whom to contact in each state jurisdiction with respect to the applicability of state securities law to any securities-related issue, transaction or activity. To receive such information, contact the NASAA Corporate Office at the aforementioned address or telephone (202) 737-0900 or FAX (202) 783-3571.