AMERICAN BAR ASSOCIATION
SECTION OF BUSINESS LAW

COMMITTEE ON STATE REGULATION OF SECURITIES

REPORT OF THE SUBCOMMITTEE ON ENFORCEMENT, LITIGATION AND ARBITRATION

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Alan M. Parness, Esquire
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Dear Alan:

I am pleased to submit the 2009 Report of the Subcommittee on Enforcement, Litigation and Arbitration. This report is the result of labor by lawyers from across the United States and focuses on administrative enforcement actions and related proceedings by state securities regulators. I expect next year's report to reflect the Subcommittee's newly broadened mandate and address private securities litigation and arbitration as well.

State regulators uniformly advise our reporters of the increasing complexity of securities enforcement actions: more investors, more products and, clearly the most pronounced trend in enforcement, more jurisdictions. Multi-state "task forces" have negotiated settlements now totaling into billions of dollars in connection with auction-rate securities. As our committee meets, news has just come that the Merrill Lynch unit of Bank of America will pay up to $26.5 million in a settlement with a "multi-state task force" stemming from its use of unregistered representatives to sell securities. Other joint enforcement actions that combine state, federal and self-regulatory agencies are now commonplace.

Members of the Committee on State Regulation of Securities are invited to join our Subcommittee to share their insights, no longer just about law enforcement, but about all aspects of securities litigation and arbitration.

Sincerely,

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Chair, Subcommittee on Enforcement,
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ALABAMA

Alabama reports another active enforcement year. Ten months into the current fiscal year, the Alabama Securities Commission has obtained 25 felony convictions. Most of these resulted from plea agreements with only a handful going to trial, but the total number is more than double that reported in the past several full years.

Enforcement Trends

Commission legal staff advise that there is some element of Ponzi scheme in nearly all the current criminal cases. Experienced regulators doubt there is more fraud than in the past, and instead think it more likely that economic conditions are causing faster collapse of the schemes, and publicity of Madoff, Sanford, Nadel and others too numerous to name may be causing victims to investigate or complain sooner than in the past.

The Alabama Commission, which has direct prosecutorial authority as well as concurrent authority with the Attorney General and district attorneys, has for many years taken a very effective cooperative approach to prosecutions. The Commission generally takes its investigative reports to the local district attorneys and conducts joint prosecutions with them. The D.A. has expertise with his court, judges and local court rules, and Commission lawyers provide specialized assistance with indictments, trial briefs, jury instructions as well as general support with the evidence.

Commission staff is gratified that recent legislation, effective September 1, 2009, has increased criminal securities fraud from a class C to class B felony, which means the jail sentence range increases from one to ten years to two to twenty years, plus increased fines. Habitual offender provisions in Alabama (generally third conviction) also apply to felony convictions under the Securities Act.

Of particular interest this year are three instances in which lawyers or former lawyers were defendants. A disbarred lawyer who already had prior theft convictions was convicted in July on six counts of fraud and three of sales by an unlicensed agent in a bizarre case involving, among other things, forging a judge's signature. An additional criminal securities fraud case in which the defendant promoter is a lawyer is still pending. In June the Commission filed for a temporary restraining order against a debt management business operated by a one-man law firm, and the court soon thereafter appointed a receiver to act on behalf of customers/clients, the attorney's license to practice having been suspended soon after the TRO action was filed.

Other than continually increasing numbers and severity of cases, the enforcement staff reports that they are seeing nothing really new. Cold calling in 506 offerings remains a significant a problem area. The Commission's position is that the absence of any pre-existing relationship, combined with a large number of offerees, is a strong indication of general solicitation, which if proven will invalidate the 506 covered security exemption. *Buist v. Time Domain Corp.,* 926 So.2d 290 (Ala. 2005). Not surprisingly, a fair number of cases that began as

blown exemptions due to general solicitation also turn into fraud cases, as well. The next most often encountered problem in the 506 offerings continues to be unregistered dealers.

Oil and gas deals once again this year lead the list among industries running afoul of registration requirements, reflecting not only economic conditions but the pervasive belief in the oil patch business that the best deals are secret , and certainly not the subject of thorough disclosure documents. As always, a fair number of these also involve fraud.

Investor Education and Outreach

Commission staff participated in 74 different workshops, seminars and other in-person events last year as part of their investor education outreach activities. The staff is enthusiastic about its new Military Outreach Program, which is the latest extension of the Commission's active educational effort intended to help citizens avoid being victimized. Finding that military service members are increasingly becoming targets of con artists, the Commission is trying with this program to focus information resources to military families. In addition to online and free printed reading resources, Commission staff are available to provide seminars on site at installations/units on a variety of topics about personal finance, investor education and fraud prevention.

Regulatory Policy

Commission Director Joe Borg is also busy working with regulatory reform at the national level, in his NASAA leadership roles as well as directly on behalf of Alabama. He recently outlined his position in an update to the Alabama Legislature as follows:

> We all know by now that problems on Wall Street spell trouble on Main Street here in Alabama. Our agency's actions on local, state, national and international matters, have given us an unique experience on the front lines of investor protection. Clearly, our system of financial services regulation must be improved to better protect our investors, our markets and our economy as a whole. To serve all of these vital interests, Congress and the Administration, working together with federal and state regulators, as well as self-regulatory organizations, should take steps to ensure that our new approach is strong, comprehensive, collaborative and efficient.

Federal policymakers can achieve these objectives by applying the following core principles of regulatory reform:

> Preserve the system of state/federal collaboration while streamlining where possible.
>
> Close regulatory gaps by subjecting all financial products and markets to regulation.
>
> Strengthen standards of conduct, and use "principles" to complement rules, not replace them.

Improve oversight through better risk assessment and interagency communication.

Toughen enforcement and shore up private remedies.

Additional Information

Administrative proceedings and news releases summarizing noteworthy enforcement actions are contained on the Commission's website at http://asc.state.al.us.

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CALIFORNIA

In 2009, the California Department of Corporations (the "Department") issued Consent Orders to three large securities broker-dealers, Wachovia Securities LLC, Citigroup Global Markets, Inc., and Banc of America Securities LLC, all regarding the manner in which auction rate securities ("ARS") were marketed and sold to consumers. In the fall of 2007, many ARS auctions experienced failures caused primarily by credit quality concerns related to the ARS, which often involved underlying assets of collateralized debt obligations (including subprime mortgages). Notwithstanding evidence that ARS were becoming increasingly risky as early as in the fall of 2007, the Department asserted that these financial institutions continued to market ARS as safe, cash-like investments to consumers through early 2008. The Department, in its Consent Orders, was extremely critical of the marketing practices of all three institutions.

In other news, the Department took action against funds that ceased making monthly interest payments and failed to return investors' principal when requested after loan maturity.

Auction Rate Securities

Wachovia Securities

In March 2008, Wachovia Securities LLC customers filed complaints with the California Department of Corporations when they were unable to access their ARS funds held with Wachovia. At that time, California customers had ARS holdings totaling over $1.5 billion that were purchased from Wachovia. In early March 2009, after investigating the matter, the Department issued a Consent Order to Wachovia stating that it violated Title 10, Ch. 3, section 260.218 of the California Code of Regulations for failure to observe high standards of commercial honor and just and equitable principles of trade by inappropriately marketing and selling ARS. The Department asserted that Wachovia did not adequately inform their customers of the increased risks of illiquidity associated with the securities and instead fostered the misconception that ARS were cash-like instruments.

While Wachovia sold ARS as conservative, cash-like investments until February 2008, Wachovia had knowledge that several auctions had failed in the fall of 2007 and early in 2008, prior to the massive failures in February 2008 that led to the inaccessibility of ARS funds complained by customers to the Department in March 2008. The Department asserted that Wachovia knew, or should have known, of the increased risks and the recent volatility in the ARS market and that ARS were becoming illiquid—yet still marketed ARS as a safe cash-like investment to its customers. In the Order, the Department highlighted Wachovia's practice of referring to ARS, even well after the market disruptions began to occur, as "cash equivalents," "completely safe," "liquid at any time," "same as money markets," and "same as cash." The Order states that Wachovia's practices amounted to "a manipulative or deceptive scheme, device or contrivance with regard to inducing the purchase or sale of securities in violation of California Corporations Code section 25216(a)" and that the Department therefore had grounds to revoke Wachovia's registration under 25212.

The Order required Wachovia to, *inter alia*, buy back from investors at par plus accrued and unpaid interest or dividends eligible ARS for which auctions are in failed mode (where there is not a buyer available for every ARS being offered for sale at the auction) plus any resulting consequential damages, as well as pay administrative penalties to the Department in the sum of $5.5 million.

Citigroup Global Markets

In late March 2009, in a similar fashion to the Wachovia Order, the Department issued a Consent Order to Citigroup Global Markets, Inc. (which includes Smith Barney, hereinafter "CGMI"), for inappropriately marketing and selling ARS to consumers.

The Department scrutinized in detail the marketing practices of CGMI. The Department took issue with statements such as, "[f]rom an investor's perspective, and subject to the conditions discussed in more detail below [including the risk of a failed auction and liquidity risk], ARS are generally viewed as an alternative to money market funds," and "To date, CGMI, as lead manager, has never been involved in a failed auction." Moreover, the Department took

issue with the presentation of CGMI's customer account statements, noting that CGMI listed certain ARS under a heading of "Money market and auction instruments." Also criticized was the manner in which CGMI listed ARS under customers' account summary "Portfolio Review" which provided a snapshot of clients' asset allocations and historical performance. Under the Portfolio Review, ARS were listed under "Cash" (if the ARS reset period was seven days or less) or "Cash Equivalents." Last, the Department condemned CGMI for not providing its financial advisers with the training and information necessary to explain adequately ARS products or the mechanics of the auction process to its clients. Taken as a whole, the Department found that CGMI violated Title 10, Ch. 3, section 260.218 of the California Code of Regulations for failure to observe high standards of honor and just and equitable principles of trade by engaging in activities that inappropriately under-informed consumer of the increased risks associated with holding ARS. Further, the Department found that CGMI violated Title 10, Ch. 3, section 260.218.4(a) of the CA Code of Regulations by failing to supervise its employees with regard to the sale of securities.

The Order required, *inter alia*, CGMI to buy back from investors at par plus accrued and unpaid interest or dividends eligible ARS for which auctions are in failed mode plus any resulting consequential damages. CGMI was fined $7.3 million and was also required to make best efforts to identify any customers who sold ARS below par and compensate them for the difference between par and the selling price, plus interest.

Banc of America Securities

In May 2009, the Department issued a Consent Order to Banc of America Securities LLC ("BAS"). The Department found that, much like Wachovia and CGMI, BAS violated Title 10, Ch. 3, section 260.218 of the California Code of Regulations for failure to observe high standards of commercial honor and just and equitable principles of trade by not adequately informing their customers of the increased risks of illiquidity associated with ARS.

The Department asserted in its Consent Order that BAS should have had knowledge that during the fall of 2007 and winter of 2008 that auction markets were not functioning properly and were at significantly increased risk of failure. The Department found further that during that time period BAS artificially propped up the market by making increased support bids and created the illusion that the auction rate market was functioning as normal. Notwithstanding these conditions, BAS engaged in a concerted effort to market and sell ARS underwritten by BAS without informing customers of the elevated risk associated with holding these securities. In February 2008, BAS without notifying its customers, stopped supporting the auctions for which BAS was the lead broker-dealer, leaving thousands of its customers with illiquid ARS.

The Department ordered BAS, *inter alia*, to pay administrative penalties of nearly $10 million to the California State Corporations Fund and $50 million to the Commonwealth of Massachusetts, the State of New York, and other states that approve the terms of the settlement, to be allocated at the states' discretion. The Department also required BAS to cause its associate Blue Ridge Investments to buy back from investors at par plus accrued and unpaid interest or dividends eligible ARS for which auctions are in failed mode plus any resulting consequential damages.

Hard Money Lenders

Hurst Financial

In January 2009, the Department entered into a settlement agreement with Hurst Financial Corporation wherein the California finance lender agreed to the issuance by the Commissioner of an order revoking the Corporation's finance lenders license pursuant to Section 22714 of the California Finance Lenders Law. The Department accused Hurst of extending loans after the maturity date without the approval of investors, failing to return investors' principle when requested after the loan maturity, and disbursing to borrowers "all net proceeds" on loans instead of using the "draw system" in contradiction to agreements with investors. The Department also claimed that Hurst told investors that construction was starting on certain projects and investors relied on that representation when deciding whether to invest in the securities offered by Hurst.

Estate Financial

In May 2008, the Department revoked the permit of Estate Financial Mortgage Fund, LCC ("EFM") and summarily suspended the permit of Estate Financial, Inc. under Corporations Code section 25113 to offer and sell securities. The Department claimed that EFM failed to disclose that it was no longer making monthly interest payments to investors in EFM, failed to provide prospective investors with the subscription agreement, operating agreement, and suitability questionnaire prior to accepting investment funds, failed to disclose that loans to affiliated companies (Estate Financial, Inc.) exceeding 15% of EFM's total assets, and failed to disclose that more than 5% of EFM's loans were to affiliated companies of the EFM manager (Republican Properties, Inc., First Press Partners, LLC, and Second Press Partners, LLC).

Broker-Dealer Licensure Requirements for Officers and Directors of Issuers

The Department published a release in October 2008 to provide some clarity regarding licensure requirements for directors and officers of issuers who do not receive commissions for effecting securities transactions (California Department of Corporations Release No. 119-C). A California Court of Appeal opinion, *People v. Cole* (2007) 156 Cal. App. 4th 452, prompted the need for such clarification.

California Broker-Dealer Licensure Framework

A director or officer of an issuer of securities can in certain circumstances be subject to licensure as a broker-dealer or its agent. The Corporate Securities Law of 1968, as amended, ("CSL") in Section 25210 sets forth broker-dealer licensure requirements. Section 25210 provides that no broker-dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in California unless the broker-dealer has first obtained from the Commissioner a certificate, authorizing that person to act in that capacity.

The term "broker-dealer" means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. The term “engaged in the business” is not defined in the CSL. However, the term “engaged in the business” generally implies a “…business activity of a frequent or continuous nature” (Commissioner’s Opinion No. 98/1C; *Advance Transformers Co. v. Superior* Court (1974) 44 Cal. App. 3d 127, 134). This is in contrast to a single or occasional disconnected act. Thus, an officer or director can fall outside the definition of the term “broker-dealer,” if the person’s effects securities transactions on a single or occasional basis.

A notable exception to the definition of broker-dealer exists for “agents” who are employees of broker-dealers and issuers. CSL subsection 25003(a) defines an agent as any individual, other than a broker-dealer or a partner of a licensed broker-dealer, who represents a broker-dealer or who for compensation represents an issuer, in effecting or attempting to effect purchases or sales of securities in this state. With regard to an issuer’s officers and directors, the “agent exclusion” is qualified by a requirement that directors and officers cannot receive compensation specifically related to purchases or sales of securities (e.g., “commissions”).

The Department has stated in past Commissioner’s Opinions that directors and officers of issuers who are not otherwise engaged in the business of securities, and do not receive commissions for effecting securities transactions of the issuer, are not “agents.” Similarly, the Department has clarified that such directors and officers can be excluded from the definition of “broker-dealer” so long as they do not receive compensation specifically relating to the offer and sale of securities and they are not otherwise engaged in the securities business. (Commissioner’s Opinion No. 5266).

In summary, under the CSL an officer or director of an issuer can be:

- Included in the definition of broker-dealer if he or she engages in the business of effecting transactions in securities.

- Excluded from the definition of broker-dealer if he or she does not engage in the business of effecting transactions in securities.

- An agent, if he/she is included in the definition of broker-dealer, and receives commission specific to effecting transactions in securities.

- Excluded from the definition of broker-dealer if he or she engages in the business of effecting securities transactions, but does not receive commission specific to effecting securities transactions.

Recent California Case Law

A California criminal case, *People v. Cole* (2007) 156 Cal. App. 4th 452, examined broker-dealer licensure requirements for an issuer’s directors and officers. In this case, the defendants formed a corporation that sold its own promissory notes. Among many securities law violations, the defendants also violated the CSL’s broker-dealer licensure requirements. As

noted in the *Cole* opinion, the transactions appear to have been systematically structured to perpetrate fraud upon California investors, many of whom were elderly investors with very limited financial resources.

The defendants in Cole were convicted of selling securities without a broker-dealer license. The Cole defendants conceded that they fell within the general definition of the term broker-dealer, but argued that they were within the "agent" exclusion to the definition of broker-dealer.

The court held that since the defendants did not receive commissions for the sale of securities, they were not "agents" of the issuer. Accordingly, the court never examined the entire licensure framework and instead analyzed the broker-dealer definition only as necessary, to interpret the "agent" exclusion. Thus, the court's holding appears to relate solely to whether the defendants were "agents." The court's holding in this regard is consistent with a plain reading of the statute and Commissioner's Opinions.

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COLORADO

Since July 2008, the Colorado Securities Division (the "Division") initiated and/or resolved four administrative actions against licensees or applicants, 14 cease and desist order proceedings and 10 injunctive relief proceedings. The Division also pursued 2 criminal cases in which sentences were handed down. Additionally, there were settlements made by two companies as a result of the 2008 market freeze in Auction Rate Securities. This report is based primarily on the matters and press releases published on the Division's website: www.dora.state.co.us/Securities.

Administrative Actions

The four administrative proceedings did not involve any issues of particular note this year. The administrative actions involved revocation of securities sales representative licenses or denial of applications for misleading statements and incomplete disclosure.

Cease and Desist Order Proceedings ("C&D")

In the last year, there were 14 C&D proceedings, all of which involved unregistered securities. Of the 14, six involved real estate securities investment and seven involved varied business opportunities. For example, in one proceeding the Commissioner ordered a Canadian real estate company to stop the sale of unregistered securities in real estate development and construction of condominiums in Belize that promised a 16% return for five years on a $40,000 investment. Additionally, the business opportunities included a wireless internet service provider serving rural and underserved communities, production of a computer animated remake of "The Wizard of Oz," investment in oil and gas and securities in the form of membership interests in a limited liability company.

It is also interesting to note that of the matters in which C&D orders were issued, some came to the attention of the Division Staff through advertisements in newspapers, airplane magazines and website postings on sites such as www.CraigsList.com.

Injunctive Proceedings

Ten injunctive relief actions were commenced during the last 12 months. The first proceeding involved a failed money market fund in which a local government investment fund invested over $525 million in the money market fund which promised that proceeds from a redemption request would be transmitted to the investor within the next business day, which was not the case. The representations regarding liquidity were of primary importance to the investor and the misrepresentation constituted fraud in violation of the antifraud provisions of the Colorado Securities Act.

The second proceeding involved unregistered securities and fraud due to material omissions and misrepresentations in which the defendant engaged in a scheme to defraud investors through the sale of real estate opportunities. The representations to investors by the defendant were false in that the defendant diverted investor funds to personal use, and saddled investors with catastrophic losses of the investment. The defendant told investors that they would receive ownership interests in the real estate and existing real estate projects, that they would receive lien interests to secure their investments and that their investments would be protected by both secured real estate and an insurance bond.

The third proceeding involved a settlement against a California company whose principals had already been barred from the securities industry. The California company allegedly used a front man as a broker-dealer to market and sell securities of a Colorado company in order to avoid detection of securities regulators. Investors were told that the funds would be used for a bait calling device for lobster fisherman.

In the fourth proceeding, the Commissioner alleged that since at least 2004, a company and its agents raised thousands of dollars through the sale of viatical agreements to individuals in Colorado. The company failed to register these securities and failed to make disclosures necessary to determine the value of the policy being sold to them. As a result, summary judgment was entered in favor of the Commissioner finding that the defendant sold unregistered securities without a proper license.

The fifth proceeding involved a defendant who had placed advertisements promising investors a 12% return on a 24-month term loan, or 10% return on a 12-month term loan. The advertisement stated that the investment was a solid security not affected by the stock market and was secured and recorded on a deed of trust in the investor's name. The defendant violated the registration, licensing and antifraud provisions of the Colorado Securities Act. As a result, an injunction and appointment of a receiver were obtained.

In the sixth proceeding, the defendant entered into loan agreements with investors in which the investors would loan money to the defendant, usually evidenced in the form of written promissory notes. The defendant forwarded investor funds to brokerage accounts held in his own name, traded in publicly traded securities and engaged in the business of advising others as to the value of the securities or as to the advisability of investing, purchasing or selling of the securities. The investors were promised the principal of the loans plus the greater of either annual interest or percentage of profits earned. The defendant was liable for being an unlicensed investment adviser and a receiver was appointed to take control of the assets and documents related to the business.

In the seventh proceeding, there were allegations of securities fraud and the sale of unregistered securities in the form of shares of stock and/or investment contracts to raise capital for a proposed development project. Investor funds were to be used to ensure feasibility of the project in order to attract wealthy investors. The investors were told that their investment would yield a high rate of return in a short period of time and that the development project was imminent. The defendant's representations were misleading because the funds were used for the defendant's personal use and investors have not been returned their money. Additionally, the

defendant did not disclose his prior bankruptcy, federal tax lien or his prior defaults on investor expectations of return on investment in prior dealings.

In the eighth proceeding, the defendant made representations to investors that animated sports related characters were being developed which would be sold to the National Football League and sports teams and that his business was about to "take off." The defendant told investors that he had spoken to the Denver Broncos about a certain character and that investors would earn substantial profits. Investors believed that their funds would be used to fund and promote the idea of selling animated characters to professional sports teams and leagues. The defendant failed to provide information about the risks, financial condition of his business and various share prices offered to different investors. In addition, the defendant used investor funds for other business and personal expenses and was held responsible for the sale of unregistered securities and securities fraud.

In the ninth proceeding, the defendant employed a scheme to defraud investors through misleading statements and misappropriation of investor funds. Defendant offered a low-risk investment opportunity where two companies would be organized for the purpose of pooling investor money to purchase and develop real property. Investor funds would be used to purchase lots for the purpose of building custom homes. The defendant promised investors interest and 19% return when the properties were sold but failed to disclose that he intended to use investor funds to settle existing lawsuits, and misappropriated the majority of investor funds for personal and other business expenses. Defendant was liable for securities fraud, sale of unregistered securities and unlicensed sales representative activity.

In the tenth proceeding, the defendant employed a scheme to defraud at least 30 investors through the use of leveraged or margin investments in United States treasury bonds. Investors were induced to invest with a promise of low or no risk investment, short redemption period, and a rate of return over 16%. The defendants made false and misleading representations regarding the prior losses suffered by earlier investors in the leveraged treasury bonds and defendants failed to disclose numerous personal bankruptcies, judgments and investigations by the Internal Revenue Service, and a prior C&D for violation of the securities laws in another state. As a result, the defendant was liable for violations of the securities laws, sale of unregistered securities, unlicensed sales representative activity and fraudulently obtained funds.

Criminal Actions

Criminal charges were filed against a defendant in the Jefferson County District Court charging him with 11 counts of securities fraud and theft. The defendant stole thousands of dollars from investors by enticing them to invest in a business in exchange for a stock certificate for shares in the business. The defendant failed to inform investors that the funds would be used for the defendant's personal expenses, that the defendant had several felony convictions for fraud and theft and did not return to investors the money they had invested.

In another criminal matter, a grand jury indicted the defendant on 24 counts of fraud and theft. The defendant solicited millions of dollars from investors, telling them that they could take part in an electronics business. Investors were told that their money would be used to purchase electronics and appliances from a Japanese firm and resell them at a significantly

higher price, but the defendant used investor funds to pay interest payments to other investors and for personal expenses.

Settlements

Wachovia settled a multi-state enforcement action involving the marketing of Auction Rate Securities ("ARS"). Under the terms of the settlement, Wachovia agreed to buy back $157 million worth of ARS from Colorado investors who found themselves unable to sell their securities after they had been frozen in the ARS market. The settlement concludes an investigation by the Division that Wachovia misled its clients by falsely assuring them that ARS were as safe and liquid as cash. The ARS markets froze resulting in investor complaints when they could not withdraw money from their accounts.

Citigroup also settled a multistate enforcement action involving funds tied up in the frozen ARS which concludes an investigation by the Division into allegations that Citigroup misled its clients by falsely assuring them that ARS were as safe as liquid cash. Under the terms of the settlement, Citigroup will offer to repurchase at par all of the ARS purchased by Citigroup customers which were held at the time the ARS market froze in 2008. Colorado investors will receive $1.24 million as part of the settlement.

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CONNECTICUT

Connecticut's Banking Commissioner emphasizes that strong enforcement is the backbone of any effective securities regulatory program. That emphasis on enforcement is seen every year at the Banking Department, and this year is no different. During the first quarter of 2009, the Connecticut Banking Commissioner issued 6 consent orders, 5 cease and desist orders, and 1 revocation order. In the first quarter of 2009, the Banking Commissioner imposed approximately $150,000 in monetary sanctions and ordered approximately $4.5 million in restitution or other monetary relief.

Administrative Actions, Consent Orders and Settlements

From January 2009 through March 2009, there were a total of 8 administrative actions, consent orders and stipulations and agreements. The following are summaries of many of those matters.

Press-A-Print International LLC – Business Opportunity Registration Applicant Fined $25,000 for Prior Unregistered Sales

On March 23, 2009, the Banking Commissioner entered a Consent Order with respect to Press-A-Print International LLC of Idaho Falls, Idaho. The entity had filed for registration under the Connecticut Business Opportunity Investment Act. The Consent Order alleged that 1) from 2000 forward, the company sold at least five unregistered business opportunities in Connecticut in contravention of Sections 36b-65(a) and 36b-67(1) of the Act; 2) the disclosure document filed by the company in connection with its business opportunity registration application contained deficiencies, including a failure to disclose the Commissioner's January 29, 1996 Order to Cease and Desist and Notice of Right to Hearing against the firm's predecessor, Press-A-Print, Inc.; 3) the disclosure document was inconsistent with the seller's promotional materials with respect to financing offered, the use of public figures to promote the business opportunity and the extent of training support; and 4) in violation of Section 36b-80 of the Act, the company filed with the Commissioner a document representing that purchaser-investors had a license to use the company's registered trademark when that was not the case.

The Consent Order directed Press-A-Print International LLC to cease and desist from regulatory violations and to pay a $25,000 fine. In addition, the Consent Order required that the company 1) consult with legal counsel periodically for three years regarding compliance with Connecticut's business opportunity law; 2) notify those Connecticut residents who purchased a business opportunity from 2006 forward of their rights and remedies under the Connecticut Business Opportunity Investment Act and supply them with a copy of the Consent Order; 3) notify the Division Director for three years of any change in the seller's executive officers, control persons or affiliated entities; 4) include a description of the March 23, 2009 Consent Order in the disclosure document; and 5) for three years, advise the department in writing each quarter of any complaints, actions or proceedings involving Connecticut residents.

Morgan Stanley & Co. Incorporated Assessed $85,879 Following Allegations of Unregistered Securities Sales; $4.4 Million Rescission Offer Extended to Connecticut Investors

On March 9, 2009, the Banking Commissioner entered a Consent Order with respect to Morgan Stanley & Co. Incorporated, a Connecticut-registered broker-dealer with its principal office in New York, New York. The agency investigation culminating in the entry of the Consent Order focused on the firm's sale of unregistered non-exempt securities from approximately 1995 to May 2005, and was part of a coordinated investigation conducted by a multi-state task force of the North American Securities Administrators Association, Inc. ("NASAA"). Following discovery of the problem, Morgan Stanley & Co. Incorporated self-reported the unregistered sales to NASAA and to affected states. The global resolution capping the investigations resulted in $8.5 million allocated to the states, $85,879 of which represented Connecticut's proportionate share.

The Consent Order acknowledged that, in furtherance of its desire to informally resolve the matter, the firm had extended a $4.4 million rescission offer to affected Connecticut residents.

The Consent Order directed the firm to cease and desist from regulatory violations and required that it pay $85,879 to the State of Connecticut. Of that amount, $50,000 would be paid

directly to the State of Connecticut Department of Social Services to promote financial literacy initiatives for the benefit of low-income and/or elderly persons in Connecticut; $25,000 would be paid to the Department of Banking as an administrative fine; and $10,879 would be applied to defray the Division's investigative costs.

Euro Pacific Capital, Inc. Assessed $7,500 For Alleged Sales of Unregistered Securities and Failing to Promptly Provide Records to Agency

On February 20, 2009, the Banking Commissioner entered a Consent Order with respect to Euro Pacific Capital, Inc., a Connecticut-registered broker-dealer located in Darien, Connecticut. The Consent Order alleged that the firm 1) violated Section 36b-16 of the Connecticut Uniform Securities Act by effecting transactions in unregistered non-exempt securities; and 2) acted in contravention of Section 36b-14(d) of the Act and Section 36b-31-14f(b) of the Regulations under the Act by failing to promptly provide records to the Division when requested. The Consent Order directed the firm to cease and desist from regulatory violations and required that it retain an independent consultant to review its internal supervisory and compliance procedures for conformity with legal requirements. The Consent Order also required that the firm pay $7,500 to the department. Of that amount, $6,500 constituted an administrative fine and $1,000 would be applied to reimburse the Division for agency examination costs.

Chapin, Davis, Inc. Assessed $12,500 Following Allegations of Unregistered Broker-dealer and Agent Activity

On January 21, 2009, the Banking Commissioner entered a Consent Order with respect to Chapin, Davis, Inc., an applicant for broker-dealer registration located in Baltimore, Maryland. The Consent Order alleged that, from at least July, 2003 forward, the firm 1) violated Section 36b-6(a) of the Connecticut Uniform Securities Act by effecting securities transactions for multiple Connecticut customers at a time when the firm was not registered as a broker-dealer in Connecticut; and 2) employed multiple unregistered agents in contravention of Section 36b-6(b) of the Act.

The Consent Order required that the firm remit $12,500 to the department. Of that amount, $9,500 constituted an administrative fine, $1,500 represented past due registration fees; and $1,500 represented reimbursement for agency investigative costs. In addition, the Consent Order directed the firm to implement revised supervisory procedures to improve regulatory compliance and to refrain from regulatory violations.

Laidlaw & Company (UK) Ltd., f/k/a Sands Brothers International Ltd. Assessed $60,000 for Allegedly Filing Misleading Reports With the Agency

On January 20, 2009, the Banking Commissioner entered a Consent Order with respect to Laidlaw & Company (UK) Ltd. f/k/a Sands Brothers International Ltd. of London, England. The firm had been a signatory to a November 29, 2004 Consent Order (the "2004 Consent Order") involving Martin Scott Sands, then a broker-dealer agent of Laidlaw & Company (UK) Ltd.'s predecessor and an investment adviser agent of Sands Brothers Asset Management LLC. The

2004 Consent Order obligated Laidlaw & Company (UK) Ltd. to file periodic reports with the agency concerning disciplinary matters involving Martin Scott Sands.

On May 18, 2007, the Commissioner issued an Order to Cease and Desist, Notice of Intent To Fine and Notice of Intent to Revoke Laidlaw & Company (UK) Ltd.'s Connecticut broker-dealer registration. The May 18, 2007 action alleged that Laidlaw & Company (UK) Ltd. violated the 2004 Consent Order as well as Section 36b-23 of the Connecticut Uniform Securities Act by filing incomplete or inaccurate reports with the department regarding Martin Sands' disciplinary background.

The January 20, 2009 Consent Order resolved the matters alleged in the May 18, 2007 Order to Cease and Desist, Notice of Intent to Fine and Notice of Intent to revoke the firm's broker-dealer registration. The 2009 Consent Order fined the firm $50,000 and required that it reimburse the department an additional $10,000 for investigative costs for a total of $60,000. In addition, the 2009 Consent Order required that the firm retain an independent consultant to conduct semi-annual reviews of the firm's supervisory procedures for two years. The 2009 Consent Order also directed the firm to cease and desist from regulatory violations.

Casimir Capital L.P. Assessed $15,000 for Registration, Recordkeeping and Supervisory Violations

On January 15, 2009, the Banking Commissioner entered a Consent Order with respect to Casimir Capital L.P., a Connecticut-registered broker-dealer located in New York, New York. The Consent Order acknowledged Casimir Capital L.P.'s representation that the firm had decided in the summer of 2008 to cease retail securities brokerage operations, and that such operations had, in fact, ceased.

The Consent Order alleged that the firm 1) violated Section 36b-6 of the Connecticut Uniform Securities Act by employing at least one unregistered agent; 2) violated Section 36b-16 of the Act by selling non-exempt, unregistered securities in the state; 3) in contravention of FINRA Rule 1031, employed unregistered "cold callers" who pre-qualified customers; 4) failed to exercise adequate supervisory controls over its agents; and 5) failed to keep accurate books and records.

The Consent Order directed the firm to cease and desist from regulatory violations and required that it pay $15,000 to the department. Of that amount, $12,500 constituted an administrative fine and $2,500 represented reimbursement for the Division's investigative costs. The Consent Order also required that the firm provide the department with at least thirty days advance written notice before the firm reestablished retail brokerage operations and conducted solicited, retail brokerage business in the accounts of Connecticut customers.

Prosper Marketplace, Inc.

This order emanated from a nationwide investigation by various state securities regulators. (See the description of facts in the Ohio enforcement analysis.) Connecticut's portion of the fine was 12,602.

Jesse John Hinkley

Hinkley was subject to a cease and desist order based on his status as an unregistered salesman for a registered broker-dealer. Hinkley was also cited for the use of scripts which contained false and misleading information. Hinkley agreed to settle the matter with the following sanctions:

1. For a period of ten (10) years commencing on the date this Consent Order is issued by the Commissioner, Hinkley is **barred** from acting in Connecticut as a broker-dealer, agent, investment adviser or investment adviser agent, as such terms are defined in the Act.

2. A fine of $2,500.

STIPULATIONS AND AGREEMENTS

Williams Trading, LLC Assessed $2,500 for Agent Registration Lapse

On March 19, 2009, the Banking Commissioner entered into a Stipulation and Agreement with Williams Trading, LLC, a Connecticut-registered broker-dealer located in Stamford, Connecticut. The Stipulation and Agreement alleged that, from at least May 2007 to June 2008, the firm employed two agents at a time when their Connecticut registrations were not effective. Williams Trading, LLC maintained that the prior registrations for the two agents had been terminated in error. The agents in question have since been re-registered under the Connecticut Uniform Securities Act.

Pursuant to the Stipulation and Agreement, the firm agreed to pay $2,000 to the department. Of that amount, $1,500 constituted an administrative fine and $500 represented reimbursement for past due agent registration fees as well as for agency investigative costs. The firm also agreed to comply with all statutory requirements governing the registration of affected personnel as broker-dealer agents, and to implement revised supervisory procedures.

New Stream Securities, LLC Assessed $1,500 For Employing an Unregistered Agent

On March 6, 2009, the Banking Commissioner entered into a Stipulation and Agreement with New Stream Securities, LLC, a Connecticut-registered broker-dealer located in Ridgefield, Connecticut. The Stipulation and Agreement alleged that, from March 2005 forward, the firm employed an unregistered agent in contravention of Section 36b-6(a) of the Connecticut Uniform Securities Act. The firm represented to the Division that the agent, who subsequently became registered under the Act, serviced only institutional and accredited investors. Pursuant to the Stipulation and Agreement, New Stream Securities, LLC agreed to pay $1,500 to the department. Of that amount, $1,000 constituted an administrative fine and $500 represented reimbursement for past due agent registration fees as well as the costs associated with the Division's investigation of the matter. The Stipulation and Agreement also required that the firm comply with all statutory requirements governing the registration of affected personnel as

broker-dealer agents and implement such supervisory procedures as would be necessary to ensure such compliance.

American Capital Partners

American Capital Partners, LLC is a Hauppauge, New York broker dealer. This agreement is typical of the kinds of agreements which the staff uses to settle matters which are not as serious or in which the Respondent has shown cooperation and a willingness to remedy the wrongdoing.

1. No later that the date of this Stipulation and Agreement is executed by the Commissioner, ACP shall designate and retain an independent consultant sufficiently experienced in securities regulatory and compliance issues and not unacceptable to the Division Director to conduct a review of ACP's internal procedures for compliance with the Act and the Regulations and issue a written report thereon. The consultant's review shall pinpoint the following additional subject areas: (a) increased training to branch managers concerning their responsibilities in timely producing records in response to a regulatory examination; (b) increased training to firm personnel concerning the activities that would require registration on the part of agents and “cold callers”; (c) increased training on state registration requirements applying where representatives share a “rep number” and/or receive an override based on other representatives' production; and (d) increased training to firm personnel and improved supervisory controls with respect to sales communications with the public. The independent consultant shall initiate his or her review within three (3) months following the Commissioner’s execution of this Stipulation and Agreement or by July 1, 2009, whichever occurs first, and shall complete such review and issue a report thereon no later than sixty (60) days after the review has been initiated. No later than forty-five days after the report is issued, ACP shall provide the Division Director with a complete copy of the consultant’s report, including a summary of those recommendations that were implemented and, for any recommendations not implemented, the reasons therefor. The consultant’s report shall be returned to ACP following completion of the Division’s review;

2. For two years, commencing on the date this Stipulation and Agreement is executed by the Commissioner, ACP shall submit to the Division Director a written report each calendar quarter 1) describing any securities-related written reprimands, censures or warnings issued by ACP to its personnel and involving Connecticut securities activity (such written reprimands, censures or warnings referred to collectively as “Reprimands”) and any securities-related complaints, actions or proceedings (including arbitrations) (such complaints, actions or proceedings referred to collectively as “Complaints”) involving entities and individuals located in Connecticut and initiated against ACP or any of ACP’s members, control persons, agents, employees or representatives for the quarter; 2) providing information on the disposition of any such Reprimands or Complaints, or on any Reprimands or Complaints reflected in an earlier report filed pursuant to this paragraph; and 3) attaching copies of such Complaints or Reprimands and any dispositional documents. If no securities-related Complaints or Reprimands exist for the quarter, the report shall so indicate. The first such report shall be due no later than ten business days following the close of the quarter ending June 30, 2009, and the final report

shall be due no later than ten business days following the close of the quarter ending June 30, 2011;

3. $20,000 payment to the Treasurer of the State of Connecticut as administrative fine and examination cost;

4. ACP shall pay the expenses associated with one or more examinations of its office or offices conducted by the Division within twenty four (24) months following the Commissioner's execution of this Stipulation and Agreement. Such expenses shall be in accordance with state travel regulations, and shall not exceed three thousand dollars ($3,000) in the aggregate.

CEASE AND DESIST ORDERS

Robert Tarini

On July 16, 2009 the Commissioner issued a cease and desist order with an intent to impose a fine of $100,000 on the president of a public company whom the Commissioner accuses of lying about his knowledge of the activities of an unregistered salesman of securities. The Banking Department staff claimed that Tarini lied when he stated that the subject consultant did not participate in solicitation of investors for the company as it claims that he knew that however, the Staff claimed that Tarini knew that the consultant actively solicited investments from new investors, regularly sent out and received documents regarding this solicitation, including term sheets, and actively participated in negotiations with investors. Similarly, the staff claimed that Tarini testified that the consultant did not represent the company in negotiations with a hedge fund investor. The staff claims that Tarini knew that the consultant had represented Markland in negotiating the terms of transactions on multiple occasions and omitted to state that Verdi had, in fact, represented Markland in its negotiations with the Hedge Fund.

Resilient Partners; Carlos M. Garcia

On July 1, 2009 the Banking Commissioner issued a cease and desist order against Resilient Partners and Carlos M. Garcia. Garcia was the manager of Resilient which solicited investors and gave investment advice in behalf of a fund named Paramount Equity Partners, LLC. Resilient rendered advice to paramount from Connecticut through Garcia. At no time was Garcia or Resilient registered as an investment adviser in Connecticut. Apparently a fearing was requested and scheduled for September 15, 2009. In the cease and desist order the Commissioner states that he intends to fine the Respondents $900,000 or $100,000 per violation.

Commonwealth Exploration Corporation, Derek Lofton, and Carlos E. Conde

Commonwealth is a Florida corporation with an office in Atlanta, Georgia. Conde is its president and Lofton a salesman. From at least March 2007 to at least August 2007, Commonwealth was an issuer of securities in the form of interests in Perimeter Summit, LLP, a limited liability partnership organized under the laws of Georgia (“Perimeter”). Perimeter is a

partnership formed to acquire oil and gas development projects in Kentucky. Lofton is subject to a 2002 consent order based on the sale of unregistered securities in Connecticut.

On or about April 23, 2007, August 16, 2007 and August 31, 2007, Lofton, on behalf of Commonwealth, effected three sales of interests in Perimeter to a Connecticut investor ("Connecticut Investor") for a total of Twenty-four Thousand Five Hundred Dollars ($24,500). In connection with each of the three purchases of the interests in Perimeter, the Connecticut Investor received, inter alia: a questionnaire; a brochure; a limited liability partnership agreement; and a subscription agreement, including power of attorney and an execution page, that set forth the terms of the investment (collectively "Offering Documents"). The Offering Documents failed to disclose, inter alia: any financial information about the performance of prior interests in oil and gas rights in which Commonwealth was the manager; any risk factors; that Lofton was not registered to sell securities in the state of Connecticut; that the interests in Perimeter that were offered and sold by Respondents were never registered in Connecticut; that Lofton was subject to the Order that became permanent on June 27, 2002; or that Lofton was fined Twenty Thousand Dollars ($20,000) by the Commissioner on July 30, 2002.

The interests in Perimeter were not registered in Connecticut and neither was Lofton. The Commissioner intends to fine each of the Respondents $900,000.

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DELAWARE

Delaware does not report its enforcement actions online; however, James B. Ropp, the Delaware Securities Commissioner, reported that investor complaints against broker-dealers and their agents have increased ten to twenty percent in 2009. The most frequent complaints concern excessive trading, unauthorized trading, unsuitable investments, and dishonest or unethical conduct. The Securities Division of the Department of Justice has been carefully investigating the complaints and, when violations of the Delaware Securities Act and Rules are discovered, taking the requisite enforcement actions.

Additionally, the Securities Division spent a lot of time and energy this year providing relief to investors whose funds were frozen in the auction rate securities market. The Delaware Department of Justice Securities Task Force participated in a Multi-State Task Force established

by the North American Securities Administrators Association to investigate whether Wall Street Firms had systematically misled investors who purchased auction rate securities. In settlements, eleven investment firms agreed to repurchase more than fifty billion dollars of auction rate securities from investors. The Delaware Department of Justice recently published a media release to remind investors to take advantage of the repurchase opportunities created by the settlement as the repurchase opportunity will expire and future repurchase offers are unlikely.

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DISTRICT OF COLUMBIA

In the past twelve months, the DC Department of Insurance, Securities and Banking ("DISB") seems to have focused its efforts on investigating compliance with laws and regulations regarding the origination of mortgage loans and the sale of unregistered securities. The following is a summary of the three enforcement actions that were published during this time period.

The DISB participated in a multi-state investigation which led to an agreement between DISB and Taylor, Bean & Whitaker ("TBW") regarding its mortgage lending practices for "nontraditional" loans, including interest-only mortgages, payment option adjustable rate mortgages, and stated income loans made in the District of Columbia in 2006 and 2007.

The investigation revealed problems with TBW's underwriting standards, compliance and risk management, and internal control procedures. The alleged practices included multiple submissions of loan applications by third party originators through automated underwriting programs resulting in altered income and asset information for prospective borrowers in order to qualify applicants for mortgage loans.

The agreement, dated June 22, 2009, will result in TBW's adoption of the federal loan modification program to assist struggling homeowners and the payment of nine million dollars to assist the fourteen states and the District of Columbia in their oversight of mortgage origination practices. As part of the agreement, TBW will reach out to impacted consumers who qualify for the Making Home Affordable program and offer the consumers loan modifications.

On October 11, 2008 Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc. (formerly known as Dean Witter Reynolds, Inc.) (collectively "Morgan Stanley") consented to

the entry of and Administrative Consent Order against the entities for their failure to maintain adequate systems to reasonably ensure compliance with Blue Sky laws which resulted in the sale of unregistered securities in violation of the D.C. Official Code.

The Commissioner of DISB ordered Morgan Stanley to cease and desist from violating the D.C. Securities Act in connection with the sales of unregistered securities, and ordered it to pay eighteen thousand two hundred and ten dollars to the District of Columbia as a civil monetary penalty.

The Administrative Consent Order reveals that in 2005, upon the hiring of a new compliance employee, Morgan Stanley discovered deficiencies in some order entry systems that permitted the execution of transactions for certain types of securities without checking to determine whether the transactions complied with applicable Blue Sky Laws. Morgan Stanley investigated the issue, provided the results to a multi-state task force, and self reported the Blue Sky problem to all effected state and federal regulations.

Morgan Stanley identified the transactions which were in violation of the Blue Sky laws and offered rescission to customers with terms and conditions that were consistent with the Securities Act of 2000. Morgan Stanley has since adopted policies and procedures designed to ensure compliance with all legal and regulator requirements regarding Blue Sky laws.

On May 6, 2009, the Commissioner of DISB ordered One World Corporation ("OWC"), Mary Hicklin-Hurley ("Mary"), and Anthony Hurley ("Anthony") to immediately cease and desist from offering or selling unregistered and non-exempt securities in the District of Columbia, and from directly or indirectly aiding or assisting other individuals or entities from offering or selling unregistered and non-exempt securities from the District of Columbia.

Neither OWC, Mary, nor Anthony is registered to offer securities in or from the District of Columbia. Nonetheless, through the internet, telephone, email, and advertisements in the Washington Post they sought investments to acquire property in the Dominican Republic by offering a one hundred percent return on a five hundred thousand dollar minimum investment. The securities they offered were not registered in the District of Columbia and were not exempt from registration.

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FLORIDA

The appointment in August 2009 of J. Thomas Cardwell, long-time General Counsel of the Florida Bankers Association, to head the Florida Office of Financial Regulation ("OFR") ended a year-long transaction following the forced retirement of Don B. Saxon. A *Miami Herald* exposé of lax regulation of mortgage brokers at OFR ended Saxon's career in September 2008 and had a chilling effect on registration of securities and investment advisory professionals in Florida. In 2008, the average time to register a new Florida branch office of a broker-dealer was about seven days. By January of 2009, the average processing time had doubled to two weeks. Florida officials explained the delays were largely caused by implementation of OFR's Regulatory Enforcement and Licensing ("REAL") system, which replaced OFR's interface with the CRD system. Still, it could not have helped that reporters from the *Miami Herald* were looking over the regulators' shoulders hoping to expose new problems at OFR. The Securities Division must have been relieved when the *Miami Herald* eventually pointed to an agreement years before in OFR's Division of Banking with accused fraudster Robert Allen Stanford for its latest criticism of OFR.

Still dealing with a registration backlog, Florida Securities officials were charged by the state's legislature to further tighten standards for registration of broker-dealers, investment advisers and their representatives. Effective July 1, 2009, HB483 amended several provisions of Chapter 517, Florida Statutes, to provide additional grounds for denial of registration, to authorize suspension for registration for non-cooperation with examiners and to authorize the Florida Attorney General to assist in securities law enforcement. The same enactment introduced a statutory disqualification for agents or firm principals with criminal records, now implemented by Rule 69W-600.0021, Florida Administrative Code, and required publication of express guidelines for disciplinary actions. The guidelines have been promulgated as Rule 69W-1000.001, Florida Administrative Code.

William F. Reilly, Chief of the Bureau of Securities Regulation in OFR's Division of Securities stresses the increasing complexity of state securities enforcement actions. As examples, he points to Florida's chain of settlements brought about through its participation in the NASAA task force on auction-rate securities, to which Florida has now added J. P. Morgan Chase & Co., Merrill Lynch and Banc of America Securities LLC.

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GEORGIA

On July 1, 2009, the Georgia Uniform Securities Act of 2008 took effect, thus replacing the prior act enacted in 1973. The Act contains significant changes regarding the registration of securities and of broker-dealers and investment advisors.

Implementation of The Georgia Uniform Securities Act of 2008

The Georgia Uniform Securities Act of 2008 is based upon the Uniform Securities Act of 2002, which was created as a model act by the National Conference of Commissioners on Uniform State Law. This Act is intended to increase coordination with federal securities laws and create a modernized system within Georgia. The changes primarily effect the registration of securities and of broker-dealers and investment advisors, the statute of limitations for civil actions, and enforcement administration. More information can be found in an article posted on the Georgia Secretary of State's Web Site at http://www.sos.ga.gov/securities/.

Auction Rate Securities

Georgia participated in the multi-state ARS task force and initial settlements have been reached with 11 firms, including Wachovia Securities, Citibank, Banc of America, Ameriprise Financial Services, Deutsche Bank, Goldman Sachs, JP Morgan, Merrill Lynch, Morgan Stanley and UBS.

The investment firms were taken to task due to the misrepresentations made to potential investors regarding the liquidity of ARS, which came to light after massive "failed" auctions occurred in early 2008. Although investors were told ARS were "same as cash" and "completely safe," thousands of investors across the country were left without access to their money when the auctions failed and total illiquidity resulted.

Investigations were planned to continue in order to ensure that consumers were more informed as to the risks involved in ARS, and to potentially recover an even greater majority of their investments that were lost.

Miscellaneous Investment Scams

Investment and securities scams are aggressively pursued by the State of Georgia and there have been two recent instances of disciplinary action substantiating the State's position.

First, a company in the suburban area of Marietta was ordered to cease and desist repeated violations of the Securities Act, which included the sale of promissory notes totalling $29,000,000 for real estate investments that never came into fruition.

Similarly, the State issued a cease-and-desist order to a construction company in South Georgia that had also sold investment contracts under the illusion of being used for a real estate development project, which resulted in multiple violations of the Securities Act. Additionally, the company and its principal were permanently barred from associating with a registered dealer, a limited dealer, or an investment advisor in Georgia.

Most recently, a group of approximately 125 retirees were swindled out of nearly $28,000,000 in yet another Ponzi scheme, which led to a Mr. Robert C. Copeland being dubbed as a "Mini-Madoff." Although Mr. Copeland was not the first to utilize the Ponzi scheme in Georgia, he was the first to employ a network of financial planners in order to attract more clients and paid nearly $4,000,000 in commission. In August, Mr. Copeland was sentenced to 10 years in prison for his actions.

Charities Fraud

On September 29, 2008, Secretary Handel issued a complaint against an Atlanta City Council Member that alleged multiple violations of the Georgia Charitable Solicitations Act. The allegations included an unregistered charitable foundation accepting donations as well as the comingling of donations with personal and election campaign accounts. As a result, Secretary Handel suggested measures that should be taken prior to donating to a charitable organization that primarily focused on exercising caution and conducting research with due diligence using a variety of resources available through the State. For more detailed guidelines, please refer to the information at http://www.sos.ga.gov/securities/TIPS%20for%20giving%20051807.pdf.

Further Information

Georgia publishes their Securities & Business Regulation Public Orders along with further information that can be located by accessing https://secure.sos.state.ga.us/SBROrders.

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HAWAII

Securities Related Rules and Regulations

New Hawaii Administrative Rules Relating to Securities

In the 2008 fiscal year, the Business Registration Division ("Division") of the Department of Commerce and Consumer Affairs implemented new administrative rules relating to the securities industry. The new rules, Chapter 39, Title 16, Hawaii Administrative Rules ("HAR"), replace the existing administrative rules set forth in Title 16-38, HAR and are meant to conform to the new Hawaii Uniform Securities Act that was passed in 2006 and became effective July 1, 2008. The new rules substantively correspond to the new law and include the deletion of outdated text and the reordering of the rules. Chapter 39, Title 16, HAR was adopted and became effective June 30, 2008. FY09 is the first year of implementation of the new law and rules.

Enforcement Activities

The Securities Enforcement Branch of the Division took the following administrative actions against individuals and entities for violations of the Hawaii Uniform Securities Act during fiscal year ended June 30, 2009.

The total penalties imposed during the fiscal year ending June 30, 2009 were $3,389,940.

Preliminary Orders to Cease and Desist

- Offer/sale of unregistered securities and fraud
  1. JAIC Retirement Services, Inc. & Andrew Steger
  2. American Oil & Gas, George Crandlemire & Dennis Stutes
  3. Sheila Turner
  4. Glenn Gates
  5. Jeffery Garman & Webznet, Inc.
  6. Theodore Chinen, Teddy Tanaka, Teddy Tanaka Associates & Trinity National, LLC.
  7. Marvin Cooper & Billion Coupons, Inc.
  8. Stuart William Jones, Payton Jones Lowe and WeCorp, Inc.
  9. Pointclik.com, Inc. & Edward Yates
  10. Glenn Gates & Gates Motor Corp. (Amended Prel. C&D)

Consent Orders

Unregistered transactions

1. Morgan Stanley
2. Larry Goto & Financial Management
3. A Nanny on the Net & Army Hardison (Franchise)
4. Diversified Planning Concepts
5. Oak Tree Securities
6. Theodore Chinen, Teddy Tanaka, Teddy Tanaka Associates & Trinity National, LLC

Final Orders

1. JAIC Retirement & Andrew Steger
2. Marvin Cooper & Billion Coupons, Inc.
3. The Swiss Group, Joseph Sullivan & Chad Morisato
4. Stuart William Jones, Payton Jones Lowe and WeCorp, Inc.

Consent Agreements

Unregistered transactions

1. Golden Beneficial
2. Five Star Franchise (Franchise)
3. Soccertots (Franchise)
4. Pacific Films LLC; Pacific Films Investors V, LLC
5. Maxwell, Noll, Inc.
6. Dennis Wong & Assoc., Inc.
7. King LombardiAcquisitions, Inc. (Franchise)
8. NWT Financial Group, LLC

The Securities Enforcement Branch continues to devote a great deal of resources to the failed auction rate securities market and expects penalties of over $3.8 million this fiscal year as well as rescission for victims. The Securities Enforcement Branch has also been active in prosecuting a number of large ponzi schemes, both local as well as national.

The Division's Investor Education Program expanded over the past year to reach over 30,000 people in Hawaii. The IE Program also helped developed an outreach program for union members that has now achieved national traction. As a result, the professional staff continues their part by giving presentations to seniors, working families, the military and others throughout Hawaii. The staff also continues to focus efforts on complaints involving senior citizens and the sale of unsuitable products to seniors, whether they are unsuitable long-term variable annuities, viaticals or other products.

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IDAHO

Marilyn Chastain has served as the Securities Bureau Chief for Idaho's Department of Finance for the past 14 years. Idaho's Department of Finance had three securities analysts until this past year when a fourth analyst was hired. The analysts have recently paid special attention to ponzi-schemes and real estate cases. Over the last year, the Department of Finance of the State of Idaho filed approximately 20 civil, criminal and administrative actions. A detailed description of the proceedings can be found by viewing the agency's website at http://finance.idaho.gov/AdministrativeActions.aspx.

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ILLINOIS

The Illinois Securities Department (the "Department") has continued its enforcement activities at a moderate pace. The following summarizes some of the significant actions taken by the Commission between August 1, 2008 and July 31, 2009.

Order of Suspension

On, February 18, 2009, the Department issued an Order of Suspension against Bernard L. Madoff ("Madoff") and Bernard L. Madoff Investment Securities, LLC ("BMIS"), suspending Madoff's registration as a salesperson, and BMIS's registration as a dealer, in the State of Illinois. The Securities and Exchange Commission (the "Commission") found that Madoff and BMIS had conducted a massive Ponzi-scheme through the investment adviser services of BMIS. The Commission determined that Madoff and BMIS violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, Rule 10b-5 of the Exchange Act, and Sections 206(1) and 206(2) of the Investment Advisers Act. Pursuant to Section 8.E(1)(k) of the Illinois Securities Act (the "Act"), the registration of a salesperson or dealer may be suspended if the Secretary of State finds that such salesperson or dealer has had any order entered against it after notice and opportunity for hearing by a securities agency of any state, any foreign government or agency

thereof, the Commission, or the Commodities Futures Trading Commission arising from any fraudulent or deceptive act or a practice in violation of any statute, rule, or regulation administered or promulgated by the such agencies or commissions. Accordingly, the Department determined that Madoff's registration as a salesperson, and BMIS's registration as a dealer in the State of Illinois were subject to suspension pursuant to Section 8.E(1)(k) of the Act, and ordered that the registrations of Madoff and BMIS be suspended in the State of Illinois.

Consent Orders

On September 12, 2008 the Department entered into a Consent Order in In the Matter of ING Financial Partners, Inc. The Department alleged that ING Financial Partners, Inc., ("ING") failed to adequately supervise two registered representatives and in doing so failed to uncover certain misconduct by such registered representatives. ING is a broker-dealer registered with the Department as an entity engaged in the business of offering, selling or otherwise engaging in the dealing or trading of securities. Nevin Gillette and Richard Wells were registered representatives of ING. Investigations revealed that Gillette and Wells procured funds from investors by telling them that they would invest such funds in so-called guaranteed investment contracts and mutual bond trusts. In reality, however, Gillette and Wells converted the funds for their own personal use. Pursuant to Section 8.E(1)(e)(iv) of the Act, the registration of a dealer, such as ING, may be subject to sanctions for failing to maintain and enforce written procedures to supervise the types of business in which it engages, and to supervise the activities of its salespersons, that are reasonably designed to achieve compliance with applicable securities laws and regulations. Accordingly, in order to avoid further administrative action by the Department, ING entered into a consent order in which it agreed to (i) pay $110,000 to the Secretary of State's Investor Education Fund, and (ii) make settlement offers to former customers of Gillette in the amount of $4,230,538 and settlement offers to certain former customers of Wells in the amount of $336,788.22.

Orders of Prohibition

On, August 26, 2008 the Department issued an Order of Prohibition against Ultimate Fantasy Football League ("UFFL") and Doug Diershow ("Diershow"), prohibiting both UFFL and Diershow from offering or selling securities in the State of Illinois. The Department alleged that UFFL and Diershow solicited investors to purchase "equity interests" in UFFL at a price of $1 for each equity interest, with a minimum $50,000 subscription. Such solicitations were achieved through newspaper advertisements, presentations and individual meetings. At least three Illinois residents purchased an interest in UFFL. The Department determined that UFFL and Diershow violated the Act by selling unregistered securities in the State of Illinois. As a result, the Department prohibited UFFL and Diershow from offering or selling securities in the state of Illinois until further ordered by the Department.

Temporary Orders of Prohibition

On January 12, 2009 the Department issued a Temporary Order of Prohibition against Wextrust Capital, LLC ("Wextrust") and Joseph Shereshevsky ("Shereshevsky"). Shereshevsky was the managing member of Wextrust, an Illinois corporation. In connection with a private

offering of securities, Wextrust distributed a private placement memorandum that described Shereshevsky's credentials and his role as Wextrust's managing member. However, the private placement memorandum failed to disclose that Shereshevsky was charged with, and plead guilt to, bank fraud in the State of New York in 2003. Pursuant to Section 12.G of the Act, it is a violation for any person to obtain money or property through the sale of securities by means of an untrue statement of material fact or any omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading. Based upon the foregoing, the Department determined that Wextrust and Shereshevsky violated Section 12.G of the Act (among others) by failing to disclose Shereshevsky's bank fraud in Wextrust's private placement memorandum. Accordingly, the Department prohibited Wextrust and Shereshevsky from offering and/or selling securities in or from the State of Illinois until further Order of the Department.

Revocation Orders

On February 27, 2009 the Department revoked the registration of Paul B. Bulgajewski ("Bulgajewski") as a securities salesperson in the State of Illinois. The Department found that Bulgajewski engaged in a check kiting scheme in violation of NASD Rule 2110 and was barred by FINRA from associating with any FINRA member in any capacity. Under the Act, the registration of a salesperson may be revoked if such salesperson has been suspended by any self-regulatory organization such as FINRA. Accordingly, since Bulgajewski was suspended by FINRA, the Department revoked his registration as a salesperson in the State of Illinois.

Cease and Desist Orders

On February 3, 2009 the Department issued an order to cease and desist against Bankcard Empire ("Bankcard") from offering or selling business opportunities in the State of Illinois. The Department found that Bankcard offered and/or sold to at least one Illinois resident an opportunity to purchase supplies, equipment or services purportedly sufficient to enable the Illinois resident to start a business, including but not limited to, radio advertisement, a professional website, business cards, a media package, client referral services, and a marketing plan in exchange for payments totaling $30,000. The Illinois Business Opportunity Sales Law of 1995 (the "Business Opportunity Act") defines a business opportunity as a "contract or agreement, between a seller and a purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any product, equipment, supplies or services enabling the purchaser to start a business when the purchaser is required to make a payment to the seller, or a person recommended by the seller, and the seller represents directly or indirectly, orally or in writing, that the seller will provide a marketing plan." Further, the Business Opportunity Act provides that it is unlawful to offer or sell any business opportunity in the state of Illinois unless the business opportunity is registered under the Act or is exempt from registration. As a result, the Department found that Bankcard offered and sold unregistered business opportunities, and ordered Bankcard to cease and desist from offering and selling such business opportunities.

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INDIANA

The enforcement by the Indiana Securities Division has been very active, visible and worth following. Probably one of the most interesting was the Marcus Schrenker case involving Mr. Schrenker flying his airplane from Indiana to Florida, bailing out in an attempt to deceive people of his disappearance and attempt to deceive investors. This nationwide news items has resulted in the State of Florida bringing criminal charges against Mr. Schrenker and Indiana who has filed two felony accounts against him, as well as civil action brought by the Indiana Securities Division, to recover investors' funds. From information published in our State, it appears that a Ponzi scheme was being operated and commingling funds among various investments of Mr. Schrenker. Indiana, at the present, awaits the outcome of the Florida criminal case.

The most interesting cases for attorneys involves the State of Indiana charging Chrysler Corp. of committing civil security fraud by failing to inform government officials of full and complete information supplied to Tipton County, Indiana, in advance of their issuance of infrastructure improvement bonds to support a new transmission plant owned and operated by GETRAG of Germany. The day after the bonds were issued, Chrysler disclosed it could not make guarantees to GETRAG necessary for the German company to secure funding for the project. In November of 2008, GETRAG filed for Chapter 11 bankruptcy protection. The civil security fraud complaint filed with the Indiana Security Commissioner is seeking the return and restitution to the County issuing the bonds.

In the past six months, several additional cases have been brought by the State of Indiana against persons who have marketed unregistered securities, real estate securities and Ponzi schemes, involving criminal as well as civil complaints.

One particular case involves probably the second largest issuer of church bonds in the United States. Alanar, a registered broker-dealer packaging and selling the church bonds around the United States, is charged with the commingling of various bond issues and the use of funds by the principals. Criminal charges are pending against the principals of the company. In the Alanar case, ex-pastor Vaughan Reeves allegedly used his position in the community to gain the trust of his victims. According to Court documents, Alanar management created training materials to distribute to church members who were encouraged to sell bonds to their fellow

church members. The materials relied heavily on the religious convictions of the victims. For example, the church members were trained to open the sales call with a prayer, "Bible scripture during sales calls and to never sell the facts, sell warm stewardship and the Lord."

The adoption by legislation this year in Indiana produced further definitiveness of the frequency of examinations of broker-dealers registered or required to be registered in Indiana. It states as follows:

> Sec. 11.5.(a) As used in this section, "office of supervisory jurisdiction" has the meaning set forth in the National Association of Securities Dealers Conduct Rule 3010(g) (as in effect on January 1, 2009).
>
> (b) A broker-dealer registered or required to be registered under this article may not be selected for completion of a compliance report under section 11(i) of this chapter in consecutive years unless the commissioner has reason to believe that the broker-dealer has committed a violation of this article.
>
> (c) The commissioner may not select for completion of a compliance report under section 11(i) of this chapter any office that:
>
> > (1) reports to an office of supervisory jurisdiction located within Indiana;
> >
> > (2) reflects the address of the office of supervisory jurisdiction described in subdivision (1) on all of the office's business cards, stationery, advertisements, and other communications to the public; and
> >
> > (3) is included in the definition of branch office under the National Association of Securities Dealers Conduct Rule 3010(g) because the office:
> >
> > > (A) handles funds or securities as described under the National Association of Securities Dealers Conduct Rule 3010(g)(2)(A)(ii)(c); or
> > >
> > > (B) uses the residential address on all business cards, stationery, advertisements, or other communications to the public under the National Association of Securities Dealers Conduct Rule 3010(g)(2)(A)(ii)(d).

The Indiana Securities Division website is to commence a method to search for any and all Orders issued by the Division. For those of you who have attempted in the past to search for such information, it has simply not been online. This new open ability to search for past actions

is a significant improvement in an attempt to develop consistency in the approach by the Indiana Securities Division.

In the past six months or since the first of the year, I am unaware of any significant arbitration or judicial decisions that deserve reporting in this report.

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LOUISIANA

The Louisiana Securities Division website contains basic information that is of use to the general public (FAQ section, etc) more than the practitioner, though the site does contain an extensive contact list. However, some of that information may be dated.

Enforcement Priorities:

The Securities Division has been concentrating on identifying and acting against Ponzi schemes. The Division Office has stated that there have been no significant published decisions in this area recently; there are however a number of enforcement actions in progress that are expected to create some movement upon their resolution. The Division Office was unable to further specify as of the date of this report. The Division is also seeking to amend the state code to increase the penalties for violation of State securities law, and has been successful in several instances as stated below.

Statutory Changes Affecting Enforcement:

Louisiana has incorporated unlawful acts under the State securities law as specified at R.S. 51:712 into the State racketeering statute as of 2008. The maximum sentence for the commission of one of these unlawful acts under the State racketeering act is 50 years imprisonment and a $1 million fine. In 2009, the legislature instituted a minimum penalty for the commission of an unlawful act falling under the State racketeering act at five years imprisonment. There was previously no minimum penalty.

For criminal securities law violations prosecuted outside of the State racketeering act, the maximum penalty has also increased. Previously there was a maximum penalty of three years imprisonment and a $5,000 fine, which has increased to a maximum of $5 years imprisonment and a $10,000 fine.

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http://www.ofi.louisiana.gov/securit.htm

MAINE

Judith Shaw took over as Securities Administrator for the Maine Office of Securities in November, 2008. Despite challenges due to budget constraints, including the loss of the Deputy position responsible for the enforcement program, and more recently, furlough days, the agency's enforcement program kept up its aggressive enforcement approach.

Securities Administrator Shaw provided the following information regarding the agency's enforcement efforts this year.

OVERVIEW OF ENFORCEMENT ACTIVITY FY 2008-2009

During the fiscal year ending June 30, 2009 the Maine Office of Securities conducted 75 investigations.

Investigations by the Maine Office of Securities resulted in two criminal indictments in the most recent fiscal year.

In Kennebec County, a grand jury indicted Donald R. Shields, Jr. of Augusta on May 22, 2009 on four felony theft charges in connection with an alleged advance-fee scam. The indictment alleges that Shields solicited payments from people who were seeking commercial loans after falsely representing that he had the ability and intent to obtain the loans for them.

In Hancock County, a grand jury indicted Eric S. Murphy, Jr. of Ellsworth on June 3, 2009 on charges arising from an investment scam Murphy allegedly ran in conjunction with his residential construction loan business. Murphy, who operated under the name "Murphy Home Loans," allegedly took money from investors to fund mortgage loans for consumers. The indictment alleges that instead of using the monies received for the stated purpose, Murphy used

the bulk of the proceeds for his own business and personal purposes. The charges against Murphy, securities fraud, theft, and forgery, resulted from an investigation by the Office of Securities.

In addition, the Office obtained judgments from two prior criminal indictments. In the first case Portland, Maine are attorney Thomas Acker was sentenced to twelve years of incarceration with all but two years six months suspended to be followed by a period of three years probation. Acker was found guilty of unlicensed sales of securities, theft by misapplication of property, and securities fraud and deception.

The second case involved Jonathan Rosenbloom who was found guilty of theft by deception and securities fraud involving fraudulent real estate transactions. Rosenbloom was sentenced to twelve years of incarceration with all but four years suspended to be followed by a three year period of probation.

In addition to the criminal enforcement actions, the Securities Administrator issued six consent orders and two cease and desist orders, and entered into three consent agreements to resolve enforcement actions. The consent orders include three orders, Citigroup, Wachovia and Bank of America, entered into as a result of multi-jurisdictional settlements negotiated through NASAA intended to resolve issues involving the sale of auction rate securities.

Other Regulatory Action:

The Office of Securities adopted the model rule regarding use of senior designations, Chapter 512, "Prohibition Against the Use of Misleading Senior Designations" found on the agency's website, along with all rules for the Office of Securities, at http://www.maine.gov/pfr/securities/proprules.htm.

As part of the agency's investor education program, Ms. Shaw invited SEC Commissioner Elise Walters to join her in a Maine Public Broadcasting television presentation, "Maine Watch" in May warning Maine investors to investigate before investing and highlighting recent scams in Maine. In the half hour presentation, Shaw and Walters identified warning signs for scams and gave tips on checking out investments.

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MICHIGAN

Notable Enforcement Actions from August 15, 2008 to July 31, 2009

Actions: Commissioner's Orders can be found at http://www.michigan.gov/dleg/0,1607,7-154-10555_20594_20598---,00.html.

Final Decisions of the Commissioner are available at http://www.michigan.gov/dleg/0,1607,7-154-10555_20594_20595---,00.html.

Administrative Enforcement Proceedings

On September 18, 2008, OFIR reached a settlement with Comerica Bank regarding $1.46 billion in Auction Rate Securities (ARS). The settlement requires Comerica Bank to offer full buybacks to any customer who purchased an ARS from Comerica Securities (a subsidiary of Comerica Bank), to pay a civil penalty of $10,000 to the State of Michigan, and to pay $100,000 to the Michigan Investor Protection Trust Fund. ARS were represented as a safe and secure investment option to buyers in lieu of money market investments, and were said to have the same liquidity as cash. When the market for ARS collapsed in 2008, investors learned their accounts were frozen and that they no longer had access to their money. According to OFIR, the direct result for many investors was money was no longer available to support ongoing business operations. For the full press release go to:
http://www.michigan.gov/dleg/0,1607,7-154-10555_13222_13250-200280--,00.html.

On March 6, 2009, the SEC, with the assistance of the OFIR, obtained a court order freezing the assets of Diversified Lending Group (DLG), Applied Equities, Inc. (AEI), and their principal, Bruce Friedman. The SEC alleges that DLG, AEI, and Friedman raised at least $216 million from hundreds of investors nationwide, many of whom are senior citizens, by promising guaranteed high returns through real estate-related investments. Instead, the complaint alleges, Friedman diverted substantial investor money to ventures unrelated to real estate and misappropriated at least $17 million to support his lavish lifestyle, including purchases of a luxury home, cars, vacations, jewelry, and designer clothing for himself and an alleged girlfriend, who is named as a relief defendant. To read the full press release go to:
http://www.michigan.gov/dleg/0,1607,7-154-10555_13222_13250-210271--,00.html.

On March 11, 2009, OFIR ordered "Communal Credit Union," an entity claiming to be a Dearborn-based credit union, to cease and desist from doing business. The fraudulent financial institution was encouraging customers to apply for loans by providing personal information including social security and financial account numbers. OFIR believes that Communal, through its website, www.communalcreditunion.com, is posing as a legitimate credit union and may be attempting to steal consumers' money and identity. To read the full press release go to:
http://www.michigan.gov/dleg/0,1607,7-154-10555_13222_13250-210596--,00.html.

On March 24, 2009, OFIR ordered "Capita Management Group," an entity claiming to be a Southfield-based mortgage company, to cease and desist from doing business. The fraudulent financial institution was encouraging customers to apply for loans by providing personal information including social security and financial account numbers. OFIR believes that Capita,

through its website, www.capitamanagement.com, is posing as a legitimate credit union and may be attempting to steal consumers' money and identity. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-211315--,00.html

On April 9, 2009, OFIR announced that it has ordered an entity claiming to be a Pennsylvania-based credit union called "Firststar Credit Union" to cease and desist from doing business. OFIR believes that Firststar, through its website, www.firststarlendingservices.com, is posing as a legitimate credit union and may be attempting to steal consumers' money and identity. The fraudulent financial institution, which advertised in Michigan newspapers, is encouraging customers to apply for loans by providing upfront payments and personal information. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10555-212473--,00.html.

On April 15, 2009, OFIR announced that it has reached a settlement with Citigroup Global Markets Inc. and Wachovia Capital Markets regarding Auction Rate Securities (ARS). The settlement requires Citi and Wachovia to offer full buybacks to any eligible customer who purchased an ARS from the brokerage firms, including up to $717 million from Citi and up to $159 million from Wachovia. The settlement also requires Citi and Wachovia to pay an administrative fine of $1.72 million and $654,000, respectively, of which 90 percent will be deposited immediately in the State of Michigan's general fund, as required by law, and the remaining ten percent will go to OFIR's Michigan Investor Protection Trust. The settlement resolves a multi-state investigation into allegations that Citi and Wachovia misled investors regarding the liquidity risks associated with investing into ARS. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-212798--,00.html

On May 13, 2009, OFIR announced that it has ordered a Grosse Ile woman to cease and desist from the sale of unregistered investment products. The agency determined that Rita Gosselin and her company, RG Properties and Investments, LLC, were not licensed to sell securities products in Michigan and the products sold were not registered with the state. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-214725--,00.html

On June 9, 2009, OFIR announced that it has placed Northwestern Financial Corporation into conservatorship and named OFIR Director of Receiverships James Gerber as conservator. The Commissioner also directed that the company cease and desist from doing business. The Commissioner's actions were prompted by the agency's discovery that Northwestern was improperly servicing its mortgages by failing to service these loans in accordance with the servicing contracts. The order allows the conservator to operate Northwestern and stabilize the company's mortgage servicing operations. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-216260--,00.html

On July 1, 2009, OFIR announced that it has reached a settlement with Merrill Lynch and Bank of America (BOA) regarding Auction Rate Securities (ARS). The settlement requires Merrill and BOA to offer full buybacks to any eligible customer who purchased an ARS from the brokerage firms, including up to $670 million from Merrill and up to $122 million from BOA.

The settlement also requires Merrill and BOA to make a settlement payments of $3.09 million and $468,000, respectively, of which 90 percent will be deposited immediately in the State of Michigan's general fund, as required by law, and the remaining ten percent will go to OFIR's Michigan Investor Protection Trust. The settlement resolves a multi-state investigation into allegations that Merrill and BOA misled investors regarding the liquidity risks associated with investing into ARS. The settlement with Merrill and BOA is in addition to OFIR's previous ARS settlements with Citigroup, Comerica and Wachovia. In total, OFIR settlements have resulted in offers for full buybacks of more than $3 billion to Michigan consumers and settlement payments of more than $6 million to the State of Michigan. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-217621--,00.html

On July 22, 2009, OFIR announced that it has ordered a Detroit man to cease and desist from the sale of unregistered investment products. The agency determined that Bruce Schlussel and his company, Gannon Real Estate, were not licensed to sell securities products in Michigan and the products sold were not registered with the state. OFIR alleges that Schlussel issued fake real estate promissory notes to investors and promised to pay them the initial investment amount plus 12% interest. Schlussel allegedly received payments of over $430,000 from two investors, but failed to return to the investors their initial principle investment or interest. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-218692--,00.html

On July 29, 2009, the OFIR announced its role in connection with the SEC's court order against an alleged Ponzi scheme in the Detroit, Michigan, involving John Bravata, Brighton, Michigan, and Richard Trabulsy and their companies BBC Equities LLC and Bravata Financial Group, LLC. The SEC alleges that Bravata and Trabulsy raised more than $50 million from at least 440 investors by offering them membership interests in a purported real estate investment fund with promised annual returns of 8 to 12 percent. However, not even half of the money raised was actually spent acquiring real estate, and Bravata and Trabulsy used money from new investors to make Ponzi-like payments to earlier investors. The SEC alleges that no more than $20.7 million of the more than $50 million raised since May 2006 through the sale of membership interests in BBC Equities was actually spent on real estate acquisitions. Furthermore, this real estate portfolio is highly leveraged with mortgages and other liabilities exceeding $128 million, and BBC Equities has never been profitable. The SEC alleges that Bravata and Trabulsy spent approximately $7.2 million of investor money for their own personal benefit. In order to keep their scheme afloat, they paid out $11.3 million in Ponzi-like payments by using new investment proceeds to pay distributions to earlier investors. They also spent $14 million soliciting and marketing the offering in order to continue the scheme. SEC's litigation release: http://www.sec.gov/litigation/litreleases/2009/lr21155.htm

OFIR notified the SEC earlier in 2009 about the alleged Ponzi scheme after receiving consumer complaints and conducting its own investigation into BBC and Bravata. In March, OFIR ordered the companies to cease and desist from selling unregistered securities in the state. The defendants challenged OFIR's order and the issue is scheduled to be heard before an administrative law judge in October. OFIR's order: http://www.michigan.gov/documents/dleg/BBC_Equities_-_Cease__Desist_273078_7.pdf

On August 3, 2009, OFIR announced that it has ordered American Consumers Insurance (ACI), an entity claiming to be a legitimate health carrier and Real Benefits Association (RBA), an entity claiming to be a legitimate insurance agency to immediately cease and desist from the sale of any line of insurance in Michigan. The entities violated the Michigan Insurance Code by selling fraudulent health insurance policies and doing business without an insurance agency license. To read the full press release go to: http://www.michigan.gov/dleg/0,1607,7-154-10573_11472-219327--,00.html

Securities-related Case Law Developments

In re *Trade Partners, Inc. Investors Litigation*, the Plaintiffs, relying on the Michigan Court of Appeals holding in *Michelson v Voison*, 254 Mich App 691, 697 (2003), moved for summary judgment arguing that viatical settlements are securities under Michigan law. The court granted Plaintiffs' motion for partial summary judgment stating that viatical settlements are securities under Michigan law. Slip Copy, 2008 WL 3992168 WD Mich, 2008 August 22, 2008.

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MISSOURI

During the period July 1, 2008 to June 30, 2009, the Securities Division of the Office of Secretary of State of Missouri continued to be one of the more active state securities regulators in enforcement.

The Commissioner issued numerous cease and desist orders against individuals and entities for violating securities, broker-dealer and agent registration requirements, usually also involving alleged fraudulent conduct. Types of securities included securities related to real estate programs, insurance premium funding program, and promissory notes.

The Securities Division also entered into numerous consent orders, many relating to alleged suitability violations by registered agents and failures to supervise by broker-dealers involving offers and sales of variable annuities and closed-end and open end funds, as well as allegations that registered agents signed customers' names to documents and technical errors by an investment adviser in registering its representatives.

Consent Orders also included multi-state settlements involving auction rate securities. Missouri is part of NASAA'a auction rate securities task force and led the negotiations in one of the early settlements.

The Secretary of State also filed a lawsuit in Missouri state court against a broker-dealer and a number of its registered agents with respect to offers and sales of auction rate securities, alleging untrue statements, misleading omissions and fraud and deception in the offer and sale of those securities. Relief sought includes restitution, disgorgement of compensation received from the sales and monetary penalties. The defendants' answer is not yet due.

Going forward, it is expected that enforcement actions involving variable insurance products sales by registered agents and broker-dealers will continue, as well as actions involving securities, broker-dealer and agent registration violations and related fraudulent conduct.
Missouri adopted a Senior Investor Protection Act, which increases the penalties for financial fraud committed against seniors and the disabled.

Enforcement Orders are posted on the Division's web site, www.sos.mo.gov/securities

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MONTANA

Lynee Egan has served as the Securities Bureau Chief for the Montana Securities Division since 2000 and the Deputy Commissioner of Securities since 2006. In both capacities, she oversees securities enforcement related matters. The Montana Securities Division has two analysts and one contract analyst that is uses on an as-needed basis. The Montana Securities Division's enforcement procedures are generally on a case-by-case basis and, if needed, it implements new procedures as necessary. Over the last year, the Montana Securities Division has taken legal action in approximately 25 cases. A detailed description of the proceedings can be found by viewing the agency's website at http://www.sao.mt.gov/legal/index.asp.

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NEBRASKA

The State of Nebraska, specifically the Department of Banking and Finance, took legal actions and issued administrative orders in the past year in an attempt to reduce the occurrence of securities fraud in the state.

General Trend

The Bureau of Securities reported that most investor complaints are regarding fraud by unregistered broker/dealers. The bureau further affirmed that the department's current focus is on fraud relating to stream of income, such as profit-sharing schemes or interest payments coming from promissory notes that seem to be unsecured and yet provide an extraordinarily high interest rate. Ultimately, the department continues to caution investors and encourages them to obtain more information on the source through which income is to be potentially earned.

Combating Ponzi Schemes

The Bureau of Securities issued a cease and desist order to stop a Nebraska businessman from selling securities without properly being registered as a broker/dealer. The alleged ponzi scheme involved promoter, Stephen Bowman, persuading more than 150 investors to send money in 2006-2007 for an investment program that would in turn invest the funds in a prime bank trading program, guaranteeing investors the initial sum plus profits between 20-70% per month. Instead of providing investors with the promised returns, Bowman used the funds towards his personal expenses. While a few investors were repaid their initial investment without profits, the U.S. Securities and Exchange Commission (the "SEC") suspects them to be ponzi payments coming from newer investors' contributions rather than a successful investment scheme. The case against Mr. Bowman is pending review.

Miscellaneous

The SEC charged a Nebraska investment adviser with misappropriating nearly $775,000 in client assets. Between August 2008 and April 2009, the principal of the firm fraudulently deducted fees from numerous client accounts. The SEC alleges that the funds were misappropriated both for the principal's personal expenses as well as the operation of the investment advising firm. The fraudster destroyed documents and other evidence in an attempt to conceal his actions. The SEC obtained a temporary restraining order as well as an emergency court order freezing the assets of the principal perpetrator, the firm, and all its subsidiaries.

Moreover, the court ordered a complete and thorough accounting, expedited discovery, and prevention of any further destruction or alteration of documents. This case is pending review.

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NEW HAMPSHIRE

Not surprisingly, the Bureau of Securities Regulation experienced a rising number of complaints about auction rate securities this past year. Many of these products were underwritten by the now defunct Lehman Brothers Holdings, Inc. When the auction market froze in February 2008, New Hampshire investors suffered along with the rest of the financial world. Since then, the Bureau has responded to investor complaints against Wachovia Securities, E*Trade, and UBS Securities, LLC.

The Bureau also reports a rise in complaints by senior investors, specifically those holding annuities. An enforcement official commented that the annuity concept was not functioning well for many senior investors because of the cost associated with accessing principal. The Bureau secured the enactment of an amendment to the New Hampshire Securities Act adopted from the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations.

The Bureau reports a continuation of the standard suitability and fraudulent promotion complaints. These include fraudulent private placement offerings, speculative real estate promotions, and oil and gas investment scams. Unscrupulous promoters have also increasingly been selling worthless securities in entities ostensibly formed to develop new technologies that increase energy efficiency or extract energy from sources previously thought uneconomic.

Recent Actions:

In the Matter of: UBS Securities, LLC, No. COM 08-10, COM 08-12, and COM 08-13, August 14, 2008. The Bureau brought this action against respondents alleging that they failed to disclose material information with respect to student loan auction rate securities that they sold to the New Hampshire Higher Education Loan Corporation (NHHELCO), New Hampshire's largest student loan provider. The Bureau alleged that by failing to disclose material information, UBS fraudulently misrepresented bonds it sold to NHHELCO, engaged in dishonest and unethical business practices, and violated its fiduciary duty as underwriter, investment banker, and broker-dealer for NHHELCO.

The Bureau alleged that UBS had been advising NHHELCO to stay in the failing auction rate securities market, while at the same time, UBS was preparing to extract itself from that market. The Bureau alleged that the investment bank division of UBS led NHHELCO to believe that the bank would continue to ease instability in the auction market as it had done in the past.

When UBS and other banks stopped supporting auctions in February of 2008, the market froze and investors were unable to access their money. As a result of NHHELCO being unable to access its funds, it was unable to provide loans for thousands of students.

In the Matter of: UBS Financial Services, Inc., No. COM 8-027, June 2, 2009. The Bureau brought this Cease and Desist action against UBS alleging that it engaged in unfair sales practices and unsatisfactory supervisory procedures and had recommended unsuitable investments to more than 40 New Hampshire investors. The action related to "structured products" underwritten by the now defunct Lehman Brothers Holdings Inc. and sold to the public by UBS. Many of these investment vehicles were sold with promises of principal protection and without an adequate explanation of their loss potential or the declining condition of Lehman Brothers, which would affect the principal protection on the investment. The Bureau alleged that by failing to adequately disclose the risk associated with these products, UBS violated a long-standing legal requirement that a broker must recommend investments that meet the goals of the investor and are within his or her tolerance for risk.

Additional Information:

Enforcement proceedings and news releases are contained on the Bureau's website at http://www.sos.nh.gov/securities

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NEW JERSEY

The New Jersey Bureau of Securities (NJBOS) enforces the securities laws in New Jersey and periodically during the year provided summaries of its activity.

In August of 2008, the NJBOS and the Securities Exchange Commission (SEC) concluded an investigation of Citigroup into allegations that Citigroup misled its clients by falsely assuring them that auction rate securities (ARS) were as safe and liquid as cash. The NJBOS and SEC reached a settlement with Citigroup, which gave thousands of Citigroup clients,

including New Jersey investors, access to billions of dollars in funds that have been frozen in the ARS market. Under the terms of the settlement, Citigroup will offer to repurchase at par all auction rate securities from all Citigroup retail customers who held those securities at the time the auction market failed on February 12, 2008. In addition, Citigroup will pay a $50 million penalty to the States, with a pro-rata share payable to New Jersey, as well as an additional $50 million penalty to New York State.

On August 14, 2008, the NJBOS, as part of a national task force with other state regulators, reached a settlement with Morgan Stanley and J.P. Morgan Chase and Co. ("J.P. Morgan"), which will give thousands of affected clients, including New Jersey investors, access to over $7 billion in funds that have been frozen in the ARS market. Morgan Stanley will pay a civil penalty in the amount of $35 million to the states and J.P. Morgan will pay $25 million. In addition, Morgan Stanley will provide liquidity to its retail investors who purchased auction rate securities through Morgan Stanley before February 13, 2008, and were unable to sell those securities because of failed auctions, by offering to buy back the securities at par. J.P. Morgan and its affiliates, including Bear Sterns & Co., Inc., will offer to repurchases no later than November 12, 2008, all illiquid auction rate securities from all JP Morgan individual investors, charities, non-for-profit companies and small to mid-seized businesses.

In its fourth settlement in August 2008, on August 15, 2008, the NJBOS reached a settlement agreement with Wachovia Securities that will give thousands of affected clients access to $9 billion in funds that have been frozen in the auction rate securities markets. In addition, Wachovia will pay a $50 million penalty to be apportioned among the states. The four settlements, with Wachovia, Morgan Stanley, J. P. Morgan and Citigroup, resulted in $210 million in civil penalties that the states will share.

On August 8, 2008, The NJBS file suit against three men who allegedly conned investors, including members of a Wyckoff church, out of an estimated $500,000 by promising their investments would fund charitable purposes and the purchase of a new church building. In its five count complaint, the NJBOS alleged that David A. Talbot, Robert Schroy and Kenneth Simmons committed multiple violations of the state's Uniform Securities Law from May to October 2007. Rather than investing the monies, the defendants allegedly transferred the funds between bank accounts that they controlled and ultimately spent the money on personal items including furniture, electronic appliances, hotel stays, restaurant meals and auto leases, among others. The NJBOS reached a settlement with these three men on May 28, 2009. They are now permanently restrained and enjoined from working in the securities industry in New Jersey. In addition, the three men and the companies they controlled were ordered to pay civil penalties.

Similarly, on August 27, 2008, the NJBOS filed a four-count complaint against Michael R. Scian, Jr. who allegedly sold unregistered securities and defrauded at least five investors out of an estimated $200,000. The four-count complaint alleges that Scian violated the New Jersey Uniform Securities Law by making false or misleading statements or omitting materials facts when communicating with investors; employing any device, scheme or artifice to defraud; engaging in any act or practice which would operate as a fraud or deficit; and selling unregistered securities. The state is seeking restitution for investors, disgorgement of any profits that resulted and levying civil penalties.

On November 25, 2008, in two separate actions, the NJBOS revoked the registrations of two agents, Hudson Etienne Sr. and Jeffrey Southard, who defrauded elderly investors of approximately $1.4 million by offering them fictitious investments and then used the invested funds to pay personal expenses. The revocation orders effectively bar Etienne and Southard from working, in any capacity, in the New Jersey securities industry.

Etienne offered a widow a guaranteed 20 to 23 percent annual rate through an investment in a Real Estate Investment Trust that did not exist. The widow invested $100,000 with Etienne, with the intention of using the investment to pay for her great-grandchildren's college education, but her annual proceeds check bounced for insufficient funds in 2005. Southard offered investors, who wanted a conservative investment to fund their retirements, supplement their social security and provide money for their grandchildren, an "Ohio bond," which did not exist. Instead, Southard used the invested funds for personal expenses, including $236,678 in private school tuition for his five children; $270,142 toward his mortgage; $58,334 in car payments; $87,002 in ATM withdrawals, and $36,175 in debit card purchases. In a related matter, on December 18, 2008, Southard was arrested on criminal charges of money laundering and theft charges and accused of defrauding South Jersey investors out of $1.3 million through the same Ponzi scheme.

On December 23, 2008, Attorney General Anne Milgram and Criminal Justice Director Deborah Gramiccione announced that John Mullins plead guilty to a criminal accusation charging him with third-degree misapplication of entrusted property. As a trustee of a non-profit foundation, Mullins had access to the foundation's funds. In pleading guilty, Mullins admitted to purchasing gift certificates with the foundation's credit card and using them for personal use. In February 2008, the NJBOS suspended Mullins' agent and investment advisory registration. The action regarding a permanent revocation of Mullins' registration is pending with the Office of Administrative Law.

On February 2, 2009, the NJBOS evoked the registration of three broker-dealers, Christopher Chung, Kevin Brunnock and William Savino, and permanently barred each from working in the securities industry, after finding each had engaged in market timing of trades in mutual funds in violation of New Jersey's Securities Laws. In addition, they were collectively ordered to pay $1.1 million in civil penalties, under the terms of the administrative consent order. The firms that employed these three individuals, UBS Financial Services and Merrill Lynch, were also held accountable, and the NJBOS ordered them to pay $24.75 million and $10 million in penalties, respectively, for failure to properly supervise them.

On March 9, 2009, the NJBOS seized records and computers from Serafino Holdings, LLC, an investment company charged with defrauding investors and being operated by an unregistered individual, Anthony Lucchetto Jr. Rather than investing monies in Commercial Bridge Loans for construction projects, Leccheto and Serafino Holdings, LLC are accused of putting most investors' monies into a fund turned out to be a Ponzi scheme. The state is seeking restitution to consumers and will determine what assets the defendants have following review of the seized records. The state is also seeking to permanently bar Lucchetto from working in the securities industry in New Jersey and the assessment of civil penalties.

On May 20, 2009, the NJBOS signed a final Consent Order that requires Citigroup Global Markets, Inc. to complete or confirm its repurchase of auction rate securities (ARS) from New Jersey clients to settle allegations that the firm's securities dealers failed to disclose risks of the ARS market. Although marketed and sold to investors as safe, liquid and cash-like investments, ARSs are actually long-term investments subject to a complex auction process that failed in early 2008, revealing illiquidity and lower interest rates than investors were promised. Under this settlement, 2,873 individual investors in New Jersey are eligible to have $623.5 million in ARS repurchased. The Consent Order further requires Citigroup to pay a $3,300,932.67 civil penalty to New Jersey.

On July 21, 2009, Attorney General Anne Milgram announced that Samuel M. Serritella was charged with defrauding hundreds of investors out of more than $1.7 million, by selling unregistered shares of stocks in his startup horseshoe manufacturing company. Serritella allegedly stole more than $350,000 in investor funds to pay personal expenses, which included, airline and hotel bills, tavern bills and medical costs. The NJBOS issued an order assessing a penalty of $20,000 against Serritella for violation of the New Jersey Uniform Securities Law, for selling these unregistered shares of stock.

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NEW MEXICO

In 2009, the New Mexico Securities Division filed actions in the following two cases:

- Ted Hogan, 64, of Sedona, Arizona, a member and former official of the Crow tribe, was indicted on May 28, 2009, on charges of securities fraud, embezzlement, forgery, and conspiracy to commit racketeering, following an undercover operation conducted by the State's Securities Division of the Regulation and Licensing Department. Three others were indicted as well, including two Crow tribe members. Mr. Hogan and his co-defendants are accused of running a multi-million dollar scheme in which they solicited money from investors in seventeen states to develop minerals on the Crow reservation in southern Montana. No minerals have been developed.

- A Utah man, Keith Debus, was indicted on March 9, 2009 after an investigation by the Securities Division and the Santa Fe District Attorney's office on two counts of securities fraud. He was

charged with defrauding a woman of $25,000 in an alleged commodities trading scheme. Mr. Debus is currently on probation for a previous fraud conviction in Utah. The Commodities Futures Trading Commission was also involved in the investigation, and claims that Debus defrauded four other individuals in other states of over $500,000 during the same period.

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NEW YORK

Auction-Rate Securities

Auction-rate securities, which were represented to investors as highly-liquid cash equivalents which could easily be redeemed at scheduled auctions, have been the subject of numerous investigations by state and federal regulators since auctions of the first such securities issued by municipalities failed on February 13, 2008, in the credit crunch. New York Attorney General Andrew Cuomo, along with the North American Securities Administrators Association and the Securities and Exchange Commission, among others, have been responsible for negotiating settlements with eleven financial services companies and their affiliates to buy back from their customers at par billions of dollars worth of these illiquid securities, which had been sold to retail investors, charities and small- to mid-size businesses. As a result of his investigation, the Attorney General claims to have negotiated over $61 billion in investor buy-backs, creating the largest consumer recovery in history. The settlements were reached with the following firms: Bank of America, Citigroup, Deutsche Bank, Goldman Sachs Group, JP Morgan Chase & Co. (including Bear Stearns & Co.), Merrill Lynch & Co., Morgan Stanley, Royal Bank of Canada, UBS and Wachovia. In addition, the Attorney General reached settlements with two so-called downstream brokerages (those firms which sold but did not underwrite the securities), Fidelity Investments and TD Ameritrade, and commenced a fraud case on August 17, 2009, for deceptive misrepresentation against a third, Charles Schwab & Co., which has refused to settle. The settlements are formally memorialized in an assurance of discontinuance under section 63(15) of the Executive Law, which recites that the firm's acts and practices constitute violations of the Martin Act, section 349 of the General Business Law and section 63(12) of the Executive Law and that scienter need not be proven. In addition to the buy-backs, the settlements generally provide for civil penalties and injunctive relief.

Wall Street Bonuses

Andrew Cuomo has used the subpoena power of the Martin Act to expose to whom bonuses have been paid by companies which have been receiving federal bailout moneys. In a report released on July 30, 2009, the Attorney General provided data showing that nine banks that received government aid money paid out bonuses of nearly $33 billion last year, including

more than $1 million apiece to nearly 5,000 employees. Although overall compensation and benefits at the nine banks fell 11% in 2008 compared with 2007, because of the decline in net revenues, the percentage of the firms' revenues dedicated to compensation rose to 45% last year from 41% in 2007.

In particular, the American International Group, the recipient of nearly $200 billion in government loans, was found to have given bonuses totaling $165 million to 418 employees. The company paid the bonuses, including more than $1 million each to 73 people, to almost all of the employees in the Financial Products Group, the unit responsible for creating the exotic derivatives that caused AIG's near collapse and started the government rescue to avoid a global financial crisis. Although variously described as "retention" bonuses, $33.6 million were paid to 52 people who have left the company.

The Attorney General has also subpoenaed information about Merrill Lynch & Co.'s highest-paid employees in connection with his investigation into $3.6 billion in bonuses in cash and stock paid by Merrill in the days before it was taken over by Bank of America Corp. For all of 2008, the 10 highest-paid Merrill executives received a total of $209 million, and 11 were paid more than $10 million each, while Merrill incurred a net loss of $27.6 billion. BofA attempted to keep the pay data confidential by filing a petition in New York State Supreme Court but was rebuffed by the court in a ruling on March 18, 2009. In part the court's ruling was based upon the conclusion that the case law is clear that the Martin Act "vests in the Attorney General the authority to decide whether the information he gathers as part of his investigation should be kept secret or [made] public." Mr. Cuomo was investigating whether the bonuses violated securities laws, in that BofA and Merrill did not disclose, when the takeover deal was announced last September, their agreement to a bonus payout of as much as $5.8 billion.

The Attorney General's investigation also sparked controversy when he reported to Congress, in a letter dated April 23, 2009, that former Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke had threatened to try to remove the senior management and directors of BofA, including Chief Executive Officer Kenneth Lewis, if the bank did not go through with the merger with Merrill. The letter contained a chronology of events based upon testimony that the Attorney General's office received from Mr. Lewis and an interview it conducted with Secretary Paulson.

With the threat of publicly disclosing the names of employees at AIG and Merrill receiving bonuses, the quest for transparency raised a privacy issue. In an interview published in *The New York Times* on March 19, 2009, Mr. Cuomo said that he was putting pressure on the financial sector to adopt more transparent practices, especially since so many companies had received government money. Apparently consideration has been given to developing some sort of on-line database to feature the highest bonuses of companies that accepted taxpayer money. As for security threats against individual employees, Mr. Cuomo's office said that he planned to address such threats on a case-by-case basis and would take them seriously. To date he has not revealed any names.

Following up on these disclosures, the Securities and Exchange Commission filed a complaint against BofA in the United States District Court for the Southern District of New York

on August 3, 2009, charging it with misrepresenting to its shareholders that it would not pay year-end bonuses to Merrill executives. In the lawsuit, BofA agreed to pay $33 million to settle the charges that it misled shareholders in seeking their approval to acquire financially troubled Merrill last year. However, Judge Jed S. Rakoff took the highly unusual step of rejecting the settlement agreement, stating that it "would leave uncertain the truth of the very serious allegations" in the SEC's complaint. The judge directed the parties to respond to his misgivings, but, after receiving their briefs, issued an order on August 25, 2009, indicating that he was still not satisfied with their responses, particularly as to why the SEC did not bring charges against individual executives because they relied entirely on their attorneys in drafting the challenged proxy materials. The judge directed the SEC and BofA to respond to his objections by September 9, 2009.

"Pay-To-Play"

In an investigation that has been ongoing for about two years, Attorney General Cuomo has uncovered corruption in the way in which certain middlemen introduce investment managers to officials at the New York State Common Retirement Fund ($121.9 billion in assets), which, unlike many other states' pension funds, has its investments controlled by a single state official, the State Comptroller. Alan Hevesi served as the Comptroller from 2003 to 2006. In these "pay-to-play" kickback schemes, middlemen receive so-called placement fees which are highly disproportionate to the work they perform. A former hedge fund manager, Barrett Wissman, who operated through an entity known as Flandana Holdings Ltd., pled guilty to Martin Act felony charges on February 3, 2009, and also settled related charges brought by the Securities and Exchange Commission. Mr. Cuomo asserted that Mr. Wissman obtained $12 million through kickbacks from investment management firms seeking to manage some of the assets held by the state fund. The former head of the state's Liberal Party and two former state officials – the former chief investment officer and the Comptroller's former top political adviser and chief fundraiser – were also charged by the Attorney General and the SEC in the same scheme. On April 30, 2009, Saul Meyer, founder of Dallas-based Aldus Equity Partners LP, was arrested on state criminal charges that asserted that he had engaged in fraudulent activity in an effort to steer investments from the fund to his firm in exchange for kickbacks. On May 1, 2009, the Attorney General announced that his office had issued more than 100 subpoenas to investment firms and their agents in his expanding investigation. Mr. Cuomo also told reporters that up to 50% of the intermediaries, or placement agents, that were involved with investments made by state and New York City pension funds were not registered as securities brokers with the SEC or as lobbyists. On May 14, 2009, the Attorney General announced that private equity firm Carlyle Group agreed to make a $20 million payment and adopt a newly established code of conduct for investment firms as a result of its involvement with the state pension fund. Carlyle had retained Mr. Hevesi's top political adviser as a placement agent to obtain investments from the fund and paid a broker-dealer associated with him nearly $13 million for its services. An unregistered, Los Angeles-based associate of the adviser pled guilty on May 12, 2009, to state securities fraud charges stemming from his alleged role in the "pay-to-play" kickback scheme. The New York City Comptroller, William C. Thompson, Jr., on May 19, 2009, called on the trustees of the five city pension funds to adopt a code of conduct that bans the use of placement agents and other intermediaries when the funds are making investment decisions. The current State Comptroller, Thomas DiNapoli, signed a policy statement on April 21, 2009, stating that his office would

immediately stop using the placement agents. Mr. DiNapoli is working with the New York State Insurance Department on making regulations final that would ban the use of agents permanently, regardless of who is State Comptroller.

The Madoff Fraud

After earlier pleading guilty to 11 criminal fraud charges, Bernard L. Madoff was sentenced on June 29, 2009, by the United States District Court for the Southern District of New York to 150 years in prison for perpetrating the largest known Ponzi scheme in history. As one aspect to the fallout, Attorney General Cuomo commenced a civil fraud action on April 6, 2009, against J. Ezra Merkin, a money manager who funneled $2.4 billion from universities and nonprofit organizations into Bernard Madoff's firm, for having "betrayed hundreds of investors" by repeatedly lying to them about how he invested his money. Mr. Merkin, a New York philanthropic leader and the former chairman of finance company GMAC, raised billions of dollars for his three hedge funds, telling clients he was managing the money himself when in fact, according to the complaint, he was channeling much of it to Mr. Madoff. Mr. Merkin collected hundreds of millions of dollars in fees over more than a decade while weaving a "panoply of lies" to conceal the true nature of what was going on, according to Mr. Cuomo. The Attorney General did not allege that Mr. Merkin was aware that Mr. Madoff was running a multi-billion dollar Ponzi scheme. Mr. Merkin's lawyer called the lawsuit "hasty and ill-conceived." Although he has the authority to bring criminal charges, the Attorney General's charges were civil.

Insider Trading

On October 7, 2008, the Attorney General announced a $6.5 million settlement with David Aufhauser, former general counsel of UBS AG and general counsel of its investment bank, regarding his insider trading of auction-rate securities. While traveling on the Amtrak Acela train from New York to Washington in the early-evening hours of Friday, December 14, 2007, Mr. Aufhauser opened an e-mail message sent earlier in the day from UBS' chief risk officer containing material, non-public information concerning UBS' position and intentions in the ARS market. That led to Mr. Aufhauser's selling $250,000 worth of ARS within a few days. His trading and conduct violated section 352-c of the General Business Law by committing fraud in connection with a securities transaction by misappropriating confidential information for securities trading purposes in breach of a duty owed to the source of the information. His payment included his 2008 discretionary incentive compensation of $6 million plus an additional $500,000 as civil penalties. In addition, Mr. Aufhauser agreed for two years not to be employed by a securities firm, not to serve as a director or officer of a public company, and not to practice law in the State of New York.

Attorney Misconduct

A New York attorney who pleaded guilty to a federal conspiracy to commit securities fraud charge over his role in an insider trading scheme must be disbarred and may not voluntarily resign, the New York Supreme Court, Appellate Division, ruled on April 28, 2009. His request

to the Disciplinary Committee to voluntarily resign from the New York bar should be denied, the court said, since upon his felony conviction, he ceased to be an attorney authorized to practice law in the state. Although a conviction for a federal felony by itself is not an automatic trigger for disbarment, it would be so if the offense were to constitute a felony under the New York Penal Law. The federal felony need not be identical to the New York felony but it must be essentially similar. Amir Rosenthal was charged with insider trading in the stock of Taro Pharmaceutical Industries Ltd., a company where his father worked and from whom he obtained non-public, material information. "Here, respondent's admitted conduct corresponds to the New York insider trading statute General Business Law § 352-c(5) and (6) and, therefore, automatic disbarment is proper," the court said.

(*Sources:* http://www.oag.state.ny.us; Sec. Reg. & L. Rep. (BNA); N.Y. Times; Wall St. J.)

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NORTH CAROLINA

Legislation, Rules and Budget:

The administrative rules at Chapter 6 of Title 18 have been recodified at Title 18 as Chapter 6A and new Chapters 6B and 6C have been added. Chapter 6C entitled "Investigations, Enforcement And Hearings" of the Administrative Rules of the Secretary of State (see 18NCAC. 06C) was adopted effective April 1, 2009. Rules encaptioned Letters of Inquiry, Investigations, Administrative Hearings, Settlement, Article 3A Contested Case Procedures; Temporary Orders; Conduct of Hearings; and Final Order outline procedures for administrative investigations and enforcement proceedings (see 18NCAC 06C.0101-8).

The only reported legislation enacted in this year's General Assembly was found in a revenue bill increasing the salesman registration fee to $125.00.

The Securities Division has increased its staff by the addition of three attorneys, three investigators and an investment adviser auditor to keep up with the increasing enforcement case load and to assist with investment adviser oversight.

Case Load:

The Securities Division has seen an upsurge in enforcement activity this past fiscal year concluded on June 30, 2009. The Securities Division reports receiving 1,450 complaints against securities representatives for fiscal year which is up from approximately 1,000 last fiscal year. Additionally, investigations initiated 08-09 fiscal year total 259 up from 202 last fiscal year.

Cooperative efforts in criminal investigations and prosecutions with local district attorneys and federal prosecutors continue to be a priority of the Securities Division. Individuals charged with securities crimes totaled eight, up from five the prior fiscal year. The Securities Division has assisted in the investigation and/or prosecution of several unregistered notes cases and ponzi schemes where proceeds were diverted to other uses, including personal uses. Two separate criminal convictions involved brokers who misappropriated client funds.

Cease and desist orders are reported on the Securities Division page of the Secretary of State's website. Many of the cease and desist orders were issued due to the sale of unregistered promissory notes and the respondents in several of these cases were the subject of criminal charges.

The Securities Division has stepped up investment adviser regulation and audits.

NASAA:

The Securities Division continues its efforts in conjunction with other states through NASAA to address the auction rate securities ("ARS") market freeze resulting in scores of investor complaints. The Secretary of State recently announced on August 7, 2009 the entry of a settlement with Credit Suisse Securities, including the buyback of ARS held by individual investors. The Securities Division had served as the lead state on the NASAA task force investigating Credit Suisse Securities. ARS settlements have also been reached with Citigroup Global Markets, Inc.; Wachovia Securities, LLC and Wachovia Capital Markets, LLC; and RBC Capital Markets Corporation.

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OHIO

In recent years Ohio has had significant civil, criminal, and administrative matters. The new Commissioner of Securities, Andrea Seidt, appears to have continued that policy.

Criminal and civil actions

James A. Stamp

Stamp was indicted on January 14, 2009 by a Summit County grand jury on thirteen counts. The indictment was the result of a referral from the Ohio Division of Securities to the Summit County Prosecutor. Stamp was charged with three counts of selling unregistered securities, three counts of securities fraud, three counts of false representation in the sale of securities, three counts of deception to secure documents, and one count of grand theft. The .charges stem from Stamp's sale of $20,000 in membership interests in Shema Capital partners LLC to three Summit County investors. Stamp had been a certified public accountant whose license had been revoked by the Ohio Accountancy Board in 2007.

Louis Peter Olcese

Olcese was found guilty on September 4, 2008 of first degree aggravated theft. He was sentenced to five years in jail. Olcese created an investment scheme to obtain $1,400,000 form a Rootstown, Ohio couple over a three and one-half year period. Olcese had been indicted by a Portage County grand jury for one count of theft and one first degree count of engaging in a patter of corrupt activity with one of the predicate acts being a violation of Section 1707.44(B)(5), or false representations in conjunction with advising for compensation in the sale of securities. Olcese had never been licensed as an investment adviser. Olcese had originally been indicted in 2005 and fled the Untied States to live in Panama. He was apprehended on a layover in Atlanta.

James D. Powell, Capital Investments, Great Miami Real Estate, LLC, and Great Miami Debenture, LLC

On February 4, 2009 the Division of Securities obtained a preliminary injunction against Powell and the entities. The Court also appointed a receiver for the entities which are all controlled by Powell. In December 2008 the Division obtained an agreed preliminary injunction

against David Cowell of Hamilton, Ohio, now deceased, Kevin Miller of Fairfield, Ohio, Hubert Jackson Rials of Cunningham, Kentucky, and Stephen Chatsworth Jacobs of Hamilton, Ohio. These individuals had all sold securities through Powell's companies.

The Division alleged that the defendants sold unregistered securities, sold securities without a license, and misrepresented to investors that the investments were safe, risk-free, and backed by the FDIC or otherwise insured. The Division also alleged that the Defendants were not licensed to sell securities, the securities were unregistered, and that Colwell and Miller had previously been subject to cease and desist orders issued by the Division. The preliminary injunction bars the defendants from selling securities, engaging in deceptive or manipulative acts, and buying, selling, or transferring any real or persona property without the court's prior approval. The defendants were also barred from destroying or altering records as well as dispersing any assets derived from the sale of securities.

Administrative Actions

Morgan Stanley

Ohio issued a cease and desist order stemming from this firm's predecessor's failure to register securities due to a program which did not properly account for state securities registrations. Ohio was part of a nationwide coordinated action against Morgan Stanley and received a proportionate share of the fine assessed in the global settlement.

Key Resource cases

As in other states the principals and salesmen of Key Resource Group of Wichita, Kansas came under the scrutiny of the Ohio Securities Division. Various entities and individuals were named in a cease and desist order which alleged sales of unregistered securities, unlicensed sales of securities, and other violations of the Ohio Securities Act. Individuals and entities involved included: Rush County 6 Joint Venture, which had its principal place of business at 155 North Market Street, Suite 100, Wichita, Kansas 67202; Key Resource Group, LLC, which operated at 155 North Market Street, Suite 900, Wichita, Kansas 67202; Dale C. Lucas, whose last known address was 155 North Market Street, Suite 900, Wichita, Kansas 67202; Mike McNaul), whose last known address was 155 North Market Street, Suite 900, Wichita, Kansas 67202; George Phillips, whose last known address was 17555 Ventura Blvd. #200, Encino, CA 91316; Ron Metrakas, whose last known address was 155 North Market Street, Suite 900, Wichita, Kansas 67202; Melesia Duvall, whose last known address was 3002 Dow Avenue, Suite 202, Tustin, CA 92780; Jeff Watkins, whose last known address was 3002 Dow Avenue, Suite 202, Tustin, CA 92780; and Brian Walsh"), whose last known address was 3002 Dow Avenue, Suite 202, Tustin, CA 92780, Howard Groves ,whose last known address was 155 North Market Street, Suite 900, Wichita, Kansas 672020; Corey Rubin, whose last known address was 8334 Clairemont Mesa Blvd., Suite 214, San Diego CA 92111; Ron Folkinga, whose last known address was 2514 E. 3810 North, Twin Falls, ID 83301; Greg Hunter, whose last known address was 4676 Lakeview Avenue, Yorba Linda, CA 92886; The Heartland Joint Venture, which had its principal place of business at 155 North Market Street, Suite 900, Wichita, Kansas 67202.

Jeffrey J. Riggans

The Division issued a cease and desist order against Riggans for the sale of Universal Leases which amounted to timeshares without registration and without licensure as a securities salesman in violation of the Ohio Securities Act.

Timothy W. Hyde a/k/a Joseph Dino Bonanno

Hyde received an investment adviser license in Ohio in March 2009. Shortly after that time a fingerprint check showed that Hyde had the same fingerprints as someone named Bonanno who had been arrested on larceny charges in Massachusetts and who was subject to an outstanding arrest. The Division suspended Hyde's license and gave him notice that it intended to revoke for filing a false statement with the Division with automatic revocation if no hearing was requested.

Julie Mae Jarvis

Ms. Jarvis was a registered investment adviser who defrauded elderly clients of over $2,300,000. suits were brought against her by her clients and by the United States Securities and Exchange Commission. These actions alleged that she had failed to inform her clients that she had misappropriated their funds. The Division issued an order to suspend Ms. Jarvis' license with an intention to revoke which would become automatic if she did not request a hearing.

Prosper Marketplace, Inc.

This Delaware corporation had its principal place of business in San Francisco, California. It was licensed as a California licensed lender and as an Ohio consumer finance company. Prosper operated a lending platform which involved matching borrowers and lenders. Individual lenders did not make loans directly to borrowers. Each potential lender bid on the right to make loans. Prosper made approximately $174 million loans nationwide using this platform and loaned over $3 million in Ohio. Prosper did not disclose normal risks of investment in connection with the issuance of notes. The Division alleged the sale of unregistered securities and fined Prosper approximately $18,800 as part of a nationwide settlement.

Notices of Intent to Deny

Ohio's common practice is to issue notices of intent to deny applications for licensure and then to accept withdrawals. It issues orders memorializing both of these events. During 2009 it issued over 20 of these orders.

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PENNSYLVANIA

The Pennsylvania Securities Commission (the "Commission") has continued its aggressive enforcement activities, through cease and desist orders and final compliance orders. The following summarizes some of the significant actions taken by the Commission in 2009 alone.

Cease and Desist Orders

The Commission reports the issuance of thirty-nine (39) cease and desist orders between January 1, 2009 and the present date. Many of these actions were brought by the Commission against issuers who sold unregistered securities to non-accredited investors in Pennsylvania. The orders cover solicitations in a variety of investment vehicles, including stock in corporations, interests in limited partnerships and limited liability companies, and promissory notes. In many instances, respondents' transgressions occurred over the Internet. A few examples are provided below.

A number of orders related to investment schemes involving motion pictures. On July 20, 2009, the Commission issued a cease and desist order against The Savaged LLC and Julia Dagovich to halt the offer and sale of unregistered securities. The respondents maintained addresses in Las Vegas, Nevada. Through their web site, they solicited investments from "angel investors," who were promised to receive 40% of the net profits of the film. Unbeknownst to investors, Dagovich had filed for bankruptcy protection in 2007. Finding that respondents attempted to sell to non-accredited investors under Rule 501 of Regulation D, the Commission directed the respondents to stop offering or selling securities in Pennsylvania.

Similarly, on July 20, 2009, the Commission issued a cease and desist order against Mind's I Productions and Gary M. Lumpp, an Illinois entity and a resident of Illinois, to halt the offer and sale of unregistered securities in a "feature film." Again, the respondents offered to sell securities over the Internet, promising investors a share in the profits of the film. Mr. Lumpp failed to disclose to investors that he had previously filed for bankruptcy protection. The Commission directed the respondents to stop offering and selling the investment program, which consisted of unregistered securities, in Pennsylvania.

On no less than five other occasions, the Commission issued cease and desist orders against out of state respondents who solicited investments in Pennsylvania relating to alleged film projects, through e-mail or over the Internet, to non-accredited investors. In each case, the Commission found violations of Pennsylvania's Blue Sky Laws through the respondents' attempts to sell unregistered securities in the state. The Commission found that often the solicitations included material misrepresentations or omissions. In each case, the Commission directed respondents to stop any further violations of the Pennsylvania Securities Act of 1972, including any further solicitations or sales of those securities in Pennsylvania. See, e.g. Doggie Boogie Movie, LLC and Romanu Wolter (June 19, 2009); LoverBoy Entertainment, Inc. and

Anton V. Lewis-Smith (May 22, 2009); Code Enforcer, L.P., Doorcall, LLC, Greg Dorchak and Steve Cauley (May 22, 2009); Morrow Road Productions, LLC and Inverted House Productions LLC (April 28, 2009); T&H Northwest, LLC d/b/a HellHouse Media Network and Ty Gonty (March 27, 2009).

The Commission also issued cease and desist orders against respondents who sold unregistered securities in companies purportedly involved in oil and gas drilling projects, or alternative energy businesses. In each instance unregistered securities were offered or sold to Pennsylvania residents. The latter case involved an advertisement on an Internet message board. See, Jenco Energy, Inc. and Angela Smith (May 26, 2009); Solar Energy Alternatives, LLC and Terrell Newby (June 19, 2009); Couch Oil & Gas, Inc. and Charles Couch (July 20, 2009).

Final Compliance Orders

Between January, 2009 and the present date, the Commission entered final compliance orders against fourteen (14) different respondents relating to various acts in violation of the Pennsylvania Blue Sky laws, including the anti-fraud provisions, selling unregistered securities, selling unsuitable securities, and failure to supervise. The various censures included temporarily and permanently barring individuals from acting as broker-dealers, investment advisors, or in any way offering or selling securities in the Commonwealth of Pennsylvania, ordering the return of funds to former customers, and issuing administrative assessments, including obligations to pay investigative and legal costs.

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SOUTH CAROLINA

Legislation, Rules and Budget:

No significant budget or personnel changes were reported this year and no legislation or rule changes have been adopted.

Administrative Proceedings:

During the past fiscal year ending June 30, 2009, the Securities Division entered the following administrative orders:

1. Morgan Stanley & Co., Inc.

In coordination with a NASAA task force and global state settlement, the Attorney General entered in a Consent Order dated August 25, 2008, alleging the sale of unregistered securities. After self reporting and a voluntary rescission offer to affected investors, Morgan Stanley was ordered to cease and desist and pay an administrative fine.

2. Wachovia Securities, LLC and Wachovia Capital Markets, LLC

In coordination with a NASAA task force and global state settlement, the Attorney General entered into a Consent Order dated April 13, 2009 regarding the Auction Rate Securities (ARS) market freeze and resulting investor complaints wherein respondents were ordered to cease and desist, pay an administrative fine and offer an ARS buy-back program to eligible investors.

3. Louis H Rivas and the Forex Project

Louis H Rivas and the Forex Project were ordered on April 27, 2009 to cease and desist violation of the registration and antifraud provisions of the Securities Act and to pay a fine and costs subject to the timely request for a hearing based on conducting training seminars regarding foreign currency trading and a promissory notes offering with a guarantee return derived from foreign currency investments.

4. Reginald B. Lesley d/b/a Reggie's Service, Inc.

On May 13, 2009 the Attorney General entered a Consent Order to cease and desist any aspect of the securities business for five years and to make restitution to investors solicited for the construction of a recreational complex and water park.

5. Kenneth Oakley Bush

On March 25, 2009 the Attorney General entered a Consent Order wherein the respondent agrees to cease doing business in South Carolina as a broker-dealer agent and investment adviser representative for 180 days and ordered to pay an administrative fine in settlement of a Revocation Notice alleging dishonest and unethical practices and fraud among other charges related to accepting a Power of Attorney and check writing authority from an elderly client and writing checks payable to cash which were personally endorsed while failing to notify his employing broker-dealer of this authority and activity.

Administrative Orders are available on the Securities page of the Attorney General's website.

Criminal Cases:

Criminal investigations and prosecutions continue to be a priority of the Attorney General.

1. "Three Hebrew Boys"

This case has been ongoing for several years beginning with the Attorney General obtaining a restraining order and asset freeze along with state criminal charges in 2007 against Tony B. Pough, Timothy McQueen and Joseph Brunson, principals of Capital Consortium Group, Inc. and 3 Hebrew Boys, LLC alleging the fraudulent and unregistered sales of securities to be invested in foreign currency and various other programs either guarantying returns or the payment of mortgage, auto and credit card debts for the investor. It is estimated that 7,000 investors from two dozen states invested over $80 million with little of the proceeds being invested as promised. Solicitations were conducted through churches and the military. Federal criminal charges have since been brought and are currently pending.

2. Home Gold Financial, Inc.

The collapse of Home Gold Financial, Inc in March 2003 resulted in the largest bankruptcy ever in South Carolina and left some 12,000 investors with a total loss of $275 million. The company engaged in high risk home mortgage business promising investors substantial returns until the market for high risk mortgages crashed. The sixth (and final) company officer, Jack Sterling, former Chairman, to face criminal charges was convicted by a jury in March 2009 on a single count of securities fraud. All six executives were either convicted or plead guilty to securities fraud or conspiracy counts concluding the criminal probe first initiated by the Attorney General in 2006 then referred to as the largest white collar crime case in South Carolina's history.

3. Harriet E. Wilmeth

In June 2009 disbarred attorney Harriet E. Wilmeth was sentenced to 30 months in prison, five years probation and $228,000.00 in restitution. She plead guilty to state charges prosecuted by the Attorney General of securities fraud for making misleading representations while raising capital about the financial condition of two business she owned (both are now bankrupt) and of breach of trust for conversion of law clients money for her own use.

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TEXAS

Joe Rotunda has served as the Director of the Enforcement Division of the Texas State Securities Board since March 2007. The Enforcement Division has 5 financial examiners and 19 attorneys. Bennett Zivley has served as the Director of the Inspections and Compliance Division of the Texas State Securities Board since 2003. The Inspections and Compliance Division has 14 financial examiners and 3 attorneys. Both the Enforcement Division and the Inspections and Compliance Division are responsible for detecting and preventing violations of the law. The Inspections and Compliance Division generally focuses on individuals and entities that are registered to sell securities or render investment advice in Texas. The Enforcement Division handles all other remaining matters.

The Texas State Securities Board recently adopted new regulations designed to stop the use of misleading "senior" or "retirement" designations that may falsely imply expertise in the investment needs of elderly investors. Sections 115.16 and 116.16 of the Rules and Regulations of the Texas State Securities Board became effective in October 2008. These provisions relate to the use of Section-Specific Certifications and Professional Designations by securities dealers, agents, investment advisers and investment adviser representatives. The agency issued a release that describes the impact of these rules. The release can be accessed at http://www.ssb.state.tx.us/News/files/11-17-08_press.php.

The Enforcement Division has continued to focus on preventing and detecting violations of the Texas Securities Act. The Enforcement Division's investigations have led to enforcement actions against individuals and companies that are alleged to have violated the registration provisions or the anti-fraud provisions of state securities laws. A number of these enforcement actions have involved the sale of investments in oil and gas drilling programs. Other enforcement actions involve the marketing and sale of prime bank schemes, offerings of debt instruments and the issuance of various other securities. The Inspections and Compliance Division has continued to work on matters related to the sale of Auction Rate Securities. Over the last year, the Texas State Securities Board filed approximately 40 civil, criminal and administrative actions. A detailed description of the proceedings can be found by viewing the agency's website at http://www.ssb.state.tx.us/Enforcement/Recent_Enforcement_Actions.php.

The Texas State Securities Board would like to note that, during fiscal year 2009, a number of criminal actions have been brought as a result of investigations that resulted in substantial prison sentences for the defendants. These cases include the following matters:

1. In November, Saulo Munoz was sentenced to serve twenty-five (25) years in prison by the 41st District Court of El Paso County, Texas. The case involves a trader who falsely represented purported profits from his activities.

2. In January, Ronald Keith Owens was sentenced to serve sixty (60) years in prison by the 29th Judicial District Court of Palo Pinto County, Texas. The case involved the sale of investments in a prime bank trading scheme.

3. In May, William Lester Seelye was sentenced to serve ninety-nine (99) years on prison by the 219th District Court of Collin County, Texas. The case involved the sale of investments in oil and gas drilling programs.

4. In August, Charles Goist was sentenced to serve forty-six (46) years in prison by a Collin County District Court. The case involved the sale of investments in a fraudulent real estate scheme involving property along the Pacific Coast of Mexico.

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VERMONT

Actions: The Securities Bureau has brought a few enforcement actions since September 1, 2008, the date of the last report as follows:

1. *In the Matter of Carol Ann Geski*, Docket No. 09-003-S.

Ms. Geski admitted that she had forged a client's signature on a signature page of a new transfer agreement with her client's authorization. Ms. Geski acknowledged her actions and that it was a serious mistake.

A Consent Order Imposing Sanctions and Consent to Same was entered on January 27, 2009. Pursuant to the order, Ms. Geski agreed to: (i) pay an administrative fine of $750.00, and (ii) cease and desist from any further violations of the Vermont Uniform Securities Act.

2. *In the Matter of Prosper Marketplace, Inc.*, Docket No. 09-061-S.

Prosper was found to have sold securities to Vermont residents that were not registered with the State of Vermont in violation of 9 V.S.A. §5301. Prosper was also found to have failed to include or failed to describe in the manner typically required of a securities registrant certain business or loan information including investment risk factors, that would have aided investors.

An Administrative Consent Order was entered on May 18, 2009. Pursuant to the order, Proposer agreed to: (i) cease and desist from offering and/or selling securities to persons in the State of Vermont in violation of the Vermont Uniform Securities Act; and (ii) pay the sum of $1,268 to the Securities Bureau.

3. *In the Matter of Woodbury Financial Services*, *Inc.*, Docket No. 09-68-S
In the Matter of Stuart Gerald Hunt, Docket No. 09-69-S
In the Matter of Donald Porter Hunt, Docket No. 09-70-S

In these three related matters, the broker dealer agents were alleged to have recommended identical subaccount allocations to numerous clients in connection with the sale of variable annuity products. These allocations may have been unsuitable for one or more of those customers based upon the customer's circumstances. The broker dealer's procedures were not sufficient to adequately review variable annuity subaccount allocations. As a result, Woodbury Financial Services, Inc. failed to adequately supervise the agents.

Administrative Consent Orders were entered on July 2, 2009. Pursuant to the orders, each broker dealer agent agreed to: (i) pay an administrative penalty of $2,000; (ii) pay the costs of enforcement of $500; and (iii) review and discuss with each of his customers the suitability of the subaccount allocations for the variable products and report the results to Woodbury Financial Services. Woodbury Financial Services agreed to: (i) pay an administrative penalty of $12,000; (ii) pay the costs of enforcement of $3,000; (iii) submit a written report to the Commissioner detailing its review of its supervisory procedures with respect to surveillance of subaccount allocations for variable products, any changes recommended as a result of the review and remedial changes it has made to address the recommendations and issues set forth in the Order; and (iv) submit a written report detailing the efforts of its agent Stuart G. Hunt to review and discuss with each of his customers the suitability of subaccount investment allocations for their variable products.

The Division's enforcement actions are available on its website at: http://www.bishca.state.vt.us/SecuritiesDiv/RegsBulls/Secregindex.htm and Westlaw.

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WASHINGTON

Department of Financial Institutions, Securities Division – www.wa.gov/dfi/securities
Enforcement Priorities and Trends

The Securities Division continues to focus enforcement resources on unregistered securities, Ponzi schemes, unlicensed persons, and sales practices. The recent financial crisis has resulted in a number of investigations and actions against those marketing real estate backed or related investments. The Securities Division has also focused its enforcement resources on sales practices relating to the sale of auction rate securities and other illiquid investments.

Administrative Enforcement Actions of Interest

Wells Fargo Investments, LLC; Wells Fargo Brokerage Services, LLC; and Wells Fargo Institutional Securities, LLC

On November 20, 2008, the Securities Division entered a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Offer Restitution, Impose Fines, Recover Costs, and Suspend Registrations against Wells Fargo Investments, LLC, Wells Fargo Brokerage Services, LLC and Wells Fargo Institutional Securities, LLC (collectively "Respondents"). At the time of the market failures in February 2008, customers of Respondents were holding an estimated $3.93 billion in frozen auction rate securities ("ARS"). It is alleged that Respondents misrepresented and failed to disclose material information to their customers, and made unsuitable recommendations. It is also alleged that Respondents failed to reasonably supervise their salespersons in the sale of ARS. The Securities Division ordered Respondents to cease and desist from violating the anti-fraud and suitability provisions of the Securities Act of Washington. The Securities Division gave notice of its intent to order restitution, to impose fines, to recover

costs, and to suspend registrations in the event of non-compliance with an order of the Securities Administrator. Respondents have requested a hearing in the matter.

Bernard L. Madoff, Bernard L. Madoff Investment Securities LLC,

The Securities Division revoked the Securities Salesperson and Broker-Dealer Registration of Bernard Madoff and Bernard L. Madoff Investment Securities LLC. The Division found that Bernard L. Madoff engaged in dishonest and unethical practices by operating a Ponzi scheme through Bernard L. Madoff Investment Securities LLC in which investors lost billions of dollars. Bernard L. Madoff Investment Securities LLC was found to be insolvent and to have failed to supervise its securities salesperson Bernard L. Madoff.

Court Enforcement Actions of Interest

Beverlee P. Kamerling, Tolan Furusho et al.

Beverlee Kamerling was sentenced in Seattle U.S. District Court for the Western District of Washington in Seattle in connection with a "pump and dump" securities fraud scheme in which more than 3,300 investors lost over $2.4 million. Kamerling received a seven and a half year sentence. As part of the scheme, the conspirators acquired publicly traded "shell" companies, hid their association with the companies, falsified and concealed material information on disclosure documents made available to the investing public, and then used faxes and press releases to try to boost the stock price. The conspirators then sold stock through nominees at a profit and laundered the money overseas. Eight other co-conspirators, including attorney Tolan S. Furusho, have been sentenced. Furusho was sentenced to thirteen months imprisonment, three years of supervised release, restitution of $39,615.59, and a criminal fine in the amount of $3,000.00. Disbarred attorney Furusho pled guilty to conspiracy to commit securities fraud for his role in the securities and mail fraud conspiracy, and to two counts of failure to file federal income tax returns. One more co-conspirator awaits sentencing.

Barry A. Hammer

Barry A. Hammer, a former attorney, was sentenced U.S. District Court for the Western District of Washington in Seattle to 36 months in prison, with three years of supervised release and 250 hours of community service. Hammer had pleaded guilty to one count of federal wire fraud. Hammer offered and sold promissory notes to his clients without disclosing that he was converting their funds to his own use. He pleaded guilty to defrauding clients of up to $1 million in his failed real estate ventures. Hammer resigned from the Washington State Bar Association in lieu of disbarment.

Charles Nolon Bush, Hulaman Management Services, & Global Dominion Financial Services

Charles Nolon Bush, formerly of Port Orchard, Washington, was sentenced to 30 years in prison for running a $35,000,000 Ponzi scheme. Bush was convicted of one count of securities fraud, eight counts of wire fraud, three counts of mail fraud and 15 counts of money laundering U.S. District Court for the Western district of Washington in Tacoma. Bush, who was charged in

August 2006 and extradited from Warsaw, Poland in January 2008, was found guilty of orchestrating a Ponzi scheme from December 1998 to January 2002 in which he raised in excess of $35,000,000 from over 450 investors from across the county. Bush told investors that they would receive returns of over 100% per year by trading in "medium term notes" and through a resort development in Baja, Mexico. Bush used the funds to help continue the scheme by paying promoters and paying investor back supposed profits.

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WEST VIRGINIA

This report summarizes enforcement developments in this jurisdiction as of September 1, 2009.

The Enforcement Section initiated investigation of 90 complaints in the fiscal year 2008-2009. These complaints included the following breakdown of products and claims: 8 annuity complaints, 43 fraudulent practice claims, 29 broker/dealer claims, 3 oil and gas investments, and 7 miscellaneous products and services. Of these complaints 9 are claims made by senior citizens. Of the 90 new investigations during the fiscal year, the Enforcement Section was able to close 43.

The Section continued to investigate 46 complaints which were initiated in prior years and was able to close 43 of those cases. The remaining cases are in various stages of investigation, preparation for further action or resolution. Thirty-three (33) Cease and Desist Orders and 1 Agreed Order were issued in the fiscal year and all have become final.

The Division concluded a multiple complaint investigation into the annuity sales practices of a major national investment firm. This investigation resulted in a settlement which

included full restitution to investors as well as modification to the firm's training program and sales documentation. Documentation in this case has not yet been released to the public record.

After extensive investigation and review, the Section on July 30, 2009, issued an Order in a multi-year, multi-jurisdiction investigation into an oil and gas scheme involving multiple millions of dollars and numerous investors. The case: *In The Matter of Appalachian Energy Partners 2001-D-LLP*, *et al.,* involved 16 respondents, including our old friends Blue Flame Energy Co., LLC, the subject of the Ohio decision on interest offerings, and Martin Twist, the prime mover and shaker in a number of questionable oil and gas offerings over a span of a number of years. Ohio alone has about 15 C & Ds issued against Twist.

During the 2008-2009 fiscal year, the Section worked on the development of a training program for West Virginia prosecutors to simplify and demystify the process of securities fraud prosecution. A number of meetings with staff and subject matter experts resulted in a draft training program which the Division hopes to implement in the fiscal year 2009-2010.

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WISCONSIN

The following represents a summary of the enforcement matters concluded by the Wisconsin Division of Securities (the "Division") during the period of July 1, 2008 through June 30, 2009 (the "Reporting Period").

During the Reporting Period, the Division closed 22 matters through the issuance of administrative orders. Of those 22 matters, 10 were resolved by the persons accused of wrong doing in the matter ("Respondents') agreeing or consenting to the issuance of an order while 12 of the matters were closed by the issuance of a "summary" order by the Division. Generally, summary orders are issued prohibiting further illegal conduct when the target was non responsive to Division inquiries regarding the alleged unlawful conduct.
Staff allegations within the 22 matters consisted primarily of the offer or sale of unregistered and non-exempt securities, broker-dealer and securities agent licensing or rule violations, and fraudulent activities.

According to Leslie Van Buskirk, Supervising Attorney of the Division's Bureau of Enforcement, this year has been busier than last year in terms of opened files. The cases are getting more complex and stretch the limited resources of the Bureau of Enforcement. The staff has received several complaints regarding oil and gas, high-yield investment programs, real estate offerings including tenant-in-common (TIC) offerings, and promissory note offerings.

In addition to the administrative matters summarized above, the staff referred 3 cases for criminal prosecution during the Reporting Period.

Specific information pertaining to each of the administrative matters within the Reporting Period may be obtained at http://www.wdfi.org/newsroom/admin.orders.

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WYOMING

Karen Wheeler has served as the Director of Wyoming's Compliance Division for the past year. Prior to becoming the Director, Ms. Wheeler specialized in investment fraud as a financial analyst in Wyoming's Securities Division for 22 years. As a result of recent restructuring in the Wyoming Secretary of State's office, the Securities Division is now a part of the Compliance Division, which is responsible for regulating the issuance and sale of securities and the regulation and enforcement of broker-dealers and registered agents. Wyoming's current Compliance Division has a staff of five individuals, including one auditor. While no new enforcement procedures have been adopted over the past year, the Compliance Division has continued to take a very proactive approach in enforcing the Wyoming Securities Act. Over the last year, the Compliance Division has filed four administrative actions, including revoking broker-dealer registrations and Consent Orders for broker-dealer settlements, and four criminal actions, including the sale of unregistered securities, wire fraud, mail fraud and money laundering. A detailed description of the proceedings can be found by viewing the agency's website at http://soswy.state.wy.us/Compliance/Enforcement.aspx.

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