STATEMENT

BEFORE THE

COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS

OF THE

UNITED STATES SENATE

ON

"THE ROLE OF STATE SECURITIES REGULATORS IN PROTECTING INVESTORS"

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WASHINGTON, D.C.

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Good morning Chairman Shelby, ranking Member Sarbanes, and Members of the Committee on Banking, Housing and Urban Affairs. My name is Charles Leven. I am AARP Vice President for Board Governance and Chair of our Board of Directors. I appreciate this opportunity to testify on a matter of keen interest to us – investor protection. My testimony today focuses on the role that state securities regulation and regulators, and the North American Securities Administrators Association (NASAA), play in securing essential marketplace conditions of fair play and practice.

Your letter of invitation asked for AARP's perspective on the role played by state securities regulators in restoring public trust and providing effective oversight of investment markets. More specifically, you asked for our views on the:

- Enforcement actions state securities regulators have taken,
- Coordination efforts they have made with federal regulators, and
- Investor education programs they have undertaken.

The rapid growth in investment activity over the past decade has severely taxed the resources of federal and state securities commissions. According to NASAA there are at least 20,000 investment advisor firms in the U.S. Approximately 8,000 of these are larger firms that register with the U.S. Securities and Exchange Commission (SEC) because they have more than $25 million in assets under management or are active in at least 30 states. The remaining smaller firms are registered with the states. NASAA also estimates that 150,000 to 175,000 individuals hold state licenses to act as investment advisor representatives.

According to the 2001 Federal Reserve's Survey of Consumer Finances, the percentage of households that own stocks, either directly or indirectly (through mutual funds, retirement accounts and other managed assets), increased from 32 percent in 1989 to 52 percent in 2001. The shift to defined contribution plans places significant responsibilities on individuals to make appropriate investment choices so that they will have adequate income when they reach retirement. It also heightens their risk if losses are incurred due to bad advice, abusive practices or fraud.

In recent years, stock markets have weathered a sluggish economy, the steep market declines exacerbated by the September 11th terrorist attacks, trade deficits, and reports of numerous scandals – ranging from illegal corporate accounting practices to insider trading. These shocks to the securities marketplace have resulted in serious consequences for ordinary saver-investors. Suffice it to say, a lifetime's worth of saving is not a renewable resource for older Americans[1] A recent 2004 survey of investors by AARP confirms a reduced confidence in financial services professionals, continuing concerns about the fairness of stock market conditions and practices, and the desire for

[1] See: "Impact of Stock Market Decline on 50-70 Year Old Investors," an AARP survey report published, December, 2002 (available at: http://research.aarp.org).

stronger regulation of the securities industry.[2] This is the legacy from a still recovering marketplace.

Others can speak more authoritatively about the evolution of the federal-state relationship over time – including the periodic tensions that have surfaced between state and federal regulators. We can understand how some differences might surface with federal regulators – and among states – when a timely response to an emerging market problem is needed. Nevertheless, we are reminded by recent market history just how vital the state securities commissions are in our dual system of market regulation and investor protection. The sensitivities and concern associated with 'prior consultation' will no doubt periodically resurface.

For us, however, the goal of providing American investors with market conditions of fair play and practice is advanced by promoting harmonization wherever possible within our concurrent federal-state system of securities regulation. Clearly state securities regulatory commissions and NASAA must and are playing an essential role. We believe state regulatory authority must be maintained as an integral component of our concurrent system, and refreshed as evolving market circumstances warrant.

State regulation of securities is based on statutes that serve three primary functions. These are the:

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[2] See: "Investor Perceptions and Preferences Toward Selected Stock Market Conditions and Practices: An AARP Survey of Stock Owners Ages 50 and Older," published March, 2004 (available at: http://research.aarp.org).

1. Registration of certain securities;
2. Registration of broker-dealers and their agents and more recently of investment advisers and investment adviser representatives; and
3. Enforcement of fraud and other remedies.

The state securities regulators are responsible for the licensing of firms and investment professionals, the registration of some securities offerings, branch office sale practice audits, investor education and most importantly, the enforcement of state securities laws. Securities regulatory commissions are located in all 50 states, the District of Columbia and Puerto Rico.

ENFORCEMENT

One of the principle virtues of our concurrent system of securities regulation is state securities commission authority to investigate and bring enforcement actions with respect to fraud or deceit or unlawful conduct in connection with securities transactions. State securities administrators are frequently the first point of contact when an investor has a securities transaction-related complaint. State regulators often work very closely with criminal prosecutors at the federal, state and local levels to punish those who violate our securities laws.

The New York State criminal case against research analysts, initiated in early 2003, is a useful illustration of the significant role that state securities regulators can play in enforcement. Precisely because the states also had investigatory and enforcement powers, one state was able to take the initiative in what became a $1.4 billion settlement with ten leading broker-dealer firms. Ultimately NASAA, the State of New York and the federal regulators worked cooperatively on the Global Research Analyst Settlement.

Later in 2003, the securities regulators in Massachusetts began what would become a series of investigations by other state and federal regulators into the nation's $7.6 trillion mutual fund industry. Clearly, these examples serve to validate the rationale for maintaining a well balanced and concurrent securities regulatory system.

From our perspective, the most serious ongoing state enforcement issue is inadequate enforcement budgets – a challenge not unknown to federal regulators. We support increased state budgets to combat the significant increases in fraud being found in many states. We believe that Congressional and judicial oversight can mitigate disagreements that periodically emerge.

COORDINATION

State regulators have been active in coordinating reviews of filings, developing a uniform registration statement for offerings that are exempt at the federal level, and in crafting policy statements on a number of review issues that strengthen uniformity of review in the states. There are over 60 of these NASAA statements of policy which have been adopted at the state law level as state rules or guidelines. These statements of policy provide flexibility in the rapidly changing securities marketplace, and can provide a basis for federal-state cooperation and coordination.

Two additional examples of the cooperative role that NASAA has played with federal regulators involve working with:

- NASD to computerize and maintain the licensing and disciplinary histories on more than 650,000 securities professionals (broker-dealers) and 5,200 securities firms (referred to as CRD for Central Registration Depository); and more recently with the

- SEC to develop a licensing, registration and enforcement database for investment advisors. This database, the Investment Adviser Registration Depository (referred to as IARD), provides employment and disciplinary histories on more than 11,000 investment adviser firms and 173,000 individual investment advisers.

In 2002, a new version of the Uniform Securities Act was adopted by the National Conference of Commissioners on Uniform State Laws. The Uniform Securities Act has been the model for nearly 40 states' securities laws including a reciprocal provision to the Securities Act of 1933 that provides that the securities administrators "shall, in its discretion, take into consideration in carrying out the public interest . . . maximizing uniformity in federal and state regulatory standards."

As a practical matter, the SEC's annual conference on federal securities regulation, to which state securities regulators are invited, provides a forum for addressing a range of mutual concerns. And NASAA has been a frequent and influential commenter on SEC rule and form proposals, and state regulators are often called to testify before Congress on matters pertaining to securities regulation.

EDUCATION

AARP recognizes state securities regulators and NASAA for their impressive efforts to enhance the capacity of individual investors and their agencies to detect, report and eliminate abusive and fraudulent behavior. This effort at capacity-building is based on better investor education and through improved agency staff training. Investor education is the ordinary investor's first and sometimes their ultimate line of defense against exploitive securities sales practices. Our dynamic stock market makes upgrading investment skills a necessity.

Last year, complementing its existing Investor Education Section, NASAA initiated a major education campaign aimed at older investors by launching an online "Senior Investor Resource Center". NASAA also offers training to its Members on an average of one seminar a month. It also offers K through 12 teacher training academies.

CONCLUSION

While a range of statutory conventions and informal policy discussion venues are available for harmonizing federal-state regulatory enforcement, stimulating coordination and upgrading investor education and investment skills, this does not mean that every difference of view can or should be summarily resolved. By the same token, our dual system of securities regulation provides a great deal of flexibility for each state to address local concerns. There may be modest costs associated with the concurrent system of regulation, as well as redundant regulatory efforts including multiple fees for securities issuers and professionals. But we believe that there are demonstrated benefits to the dual system, and to the role and value of state securities regulators. State securities regulatory authority helps fill what would otherwise be important enforcement gaps.

I appreciate this opportunity to testify on behalf of AARP on the important role that state securities commissions play in efforts to secure marketplace conditions of fair play and practice. We look forward to working with Members of this Committee in pursuit of these shared goals. I would be happy to answer any questions you may have.