ABA ANNUAL MEETING
Blue Skies and the Big Apple
The State Regulation of Securities Committee will meet in New York City on Saturday, July 8, from 2:30 PM until 4:30 PM, in conjunction with the 2000 Annual Meeting of the ABA, which will be in session from July 6 through July 12, 2000 in New York and from July 15 through July 20 in London, England.

NASAA ANNUAL FALL CONFERENCE
Blue Skies, Berets, Baguettes
The State Regulation of Securities Committee will meet in conjunction with the NASAA Annual Conference, to be held in Montreal, Quebec, Canada, from September 17 through 20, 2000. The sessions will be held at The Queen Elizabeth Hotel.
Start brushing up on your French right now.

WORD FROM THE CHAIR
by Alan Baden

Uniform Securities Act. A drafting committee of NCCUSL is working on a new version of the Uniform Securities Act. The Reporter is Dean Joel Seligman of the Washington University School of Law. The Chair of the drafting committee is Dick Smith, a retired partner of Davis, Polk & Wardwell and a former SEC commissioner. I have been representing the ABA as an advisor to the drafting committee.

The drafting committee has met three times. Representatives of NASAA, the SEC, the NASD, the SIA and the ICAA have participated in the meetings. One of the goals of the drafting committee is to draft a statute that is acceptable to those jurisdictions that currently do not have a version of the Uniform Securities Act, such as New York, California, Texas, Illinois, Florida and others. The committee’s review of the first draft covered exemptions and registration provisions. At the last meeting in February of this year, a review of the second draft covered the remainder of the act, including broker-dealer and agent licensing and the civil liability provisions. As one might imagine, there are philosophical differences between the groups represented as to how this statute should work. For those interested in the process, you can access the drafts through NCCUSL’s web site, www.nccusl.org. I would be delighted to pass along comments from any interested party to the drafting committee.

ABA Spring Meeting. Our committee met in late March at the ABA Spring Meeting in Columbus, Ohio. Tom Geyer, the Commissioner of Securities of the Ohio
Division of Securities, and several of his staff members attended the meeting and made a presentation of their current activities. Those activities include their novel OASIS system, through which filers can electronically submit applications for licensing. We look forward to additional opportunities to host securities regulators and allow them to present their programs to interested parties with the committee’s meetings as a forum.

Our next meeting will be in New York during the ABA’s Annual Meeting. We hope to have updates on the NCCUSL process, the progress of SMIA through Congress, and reports from our standing subcommittees.

NEW YORK ATTORNEY GENERAL TAKES THE LEAD IN REPORTING ON ONLINE BROKERS' SYSTEMS PROBLEMS

by Robert A. Boresta
Battle Fowler LLP (New York)

By far the most significant regulatory issue which has emerged from the explosive growth of online brokerage has been the capability of securities brokerage firms to speedily and efficiently process the avalanche of transactions which has ensued since the Internet empowered individual investors to place their own trade orders. The Investor Protection and Securities Bureau and Internet Bureau of the Office of the New York Attorney General (the "Office") focused on this concern in a report issued on November 22, 1999. The report, entitled "From Wall Street to Web Street: A Report on the Problems and Promise of the Online Brokerage Industry," (hereinafter, the "Report"), represents the most in-depth public study to date by a regulator of the systems capacity problems experienced by many online brokers. (Office of the New York Attorney General Eliot Spitzer, Investor Protection and Securities Bureau, Internet Bureau, "From Wall Street to Web Street: A Report on the Problems and Promise of the Online Brokerage Industry" (November 22, 1999) available at http://www.oag.state.ny.us/investors/1999_online_brokers/brokers.html

"The Market Storm of 1999" was the name given to the period from late 1998 to the spring of 1999 which was characterized by volatile markets and huge, unprecedented trading volumes. The Market Storm led to a surge of investor complaints, to the Office's inquiry into the practices of online brokerage firms and, ultimately, to the issuance of the Report.

The Report presents a comprehensive analysis from a regulator's perspective of the operations and limitations of online trading and identifies several factors which have contributed to what the Office perceives as online brokerage's performance problems and investor dissatisfaction. In addition, it makes recommendations to the industry and investors and discusses investor education initiatives which the Office and the Securities Industry Association have agreed to implement.

Commendably, the Office refrained from commencing any enforcement actions or recommending new laws, but indicated that it would continue to monitor the performance of online brokerage firms.

According to the Report, the following factors contributed to the online brokerage performance problems: (i) the gap between what online investors expect - unfettered, direct and immediate market execution - and what firms can actually provide - only a faster mechanism for placing orders; (ii) aggressive advertising campaigns which
fuel unrealistic investor expectations
with the message of convenience, speed, easy wealth, and the risk of "being left
behind" in the new online era; (ii)
deficiencies or "glitches" in online
brokerage information systems and
constraints on firm capacity; and (iii)
firms' inadequate responses to systems'
problems.

The Report includes several
recommendations to the industry, other
regulators and investors to harness the
growth of online investing without
destroying it. With respect to the
industry, the Report recommended the
following: (i) tell the truth about
technology and services - the Report
suggests that disclosure of online firms'
information systems should allow for
"apples to apples" comparisons of
technology performance, customer
services, and technology development
processes, preferably through a
combination of standardized self-
reporting and independent third party
reviews; (ii) continually assess and
improve quality assurance; and (iii)
 improving disclosure of events occurring
in the course of trading, such as
slowdowns and outages, heightened
margin requirements, and extreme
volatility. The Report also suggested
that the Securities and Exchange
Commission and self-regulatory bodies
(but not state authorities) should
consider adopting requirements
regarding the documentation and
retention of system outage information,
system performance standards, and
customer service data. The Report
suggested certain caveats that investors
should adhere to before they trade, e.g.,
making a trade is not the same as
executing a trade.

Included in the Report are several
initiatives of the Office and the
Securities Industry Association ("SIA")
which include forming an online brokers
committee to be comprised of senior
legal counsel of top online firms,
publishing educational materials, and
creating and funding advertisements to
educate investors to be published in
major papers and on the Office's and
SIA's Web sites.

In conclusion, the Report represents an
important step in addressing a significant
issue which has emerged in a still-
developing business. Importantly, while
the Office might have taken action
which had the effect of derailing the
growth of online brokerage at the
expense of investors, its cautious
approach allows the industry time to
solve its own problems.

JOIN THE BLUESKY LISTSERVE
To add your e-mail address to the Listserv,
send an email message to Mary Cornaby at
“cornaby@law.vill.edu”. The text of your
message should read, “subscribe blue sky”,
and include your first and last name.

DISTRICT OF COLUMBIA MAY
REGISTER SECURITIES
by Michele Kulerman
Hogan & Hartson LLP (Washington D.C.)

The staff of the Securities Bureau and
members of the Securities Advisory
Committee have completed their review of
the proposed District of Columbia Securities
Act (the "D.C. Act") and submitted their
proposed changes, together with explanations
for each change, for consideration by the
Corporation Counsel.

In a major shift in regulation of securities
sales within the District, the revisions are
expected to include provisions that would
require the registration of securities.
Currently, the District does not require
registration of securities, but only the registration or licensing of persons selling securities, with some exemptions. The notice filing provisions for federal covered securities, as defined by NSMIA, will be incorporated. The proposed D.C. Act is expected to receive the Mayor's approval and become effective by Summer 2000, with a phase-in of the provisions requiring notice and/or registration of securities.

NY PROPOSES MARTIN ACT CHANGES

by Ellen Lieberman
DeBevoise & Plimpton

New York Bureau Drafts Bill. The New York Department of Law, Bureau of Investor Protection and Securities, has proposed changes to New York's blue sky law, the Martin Act (GBL § 352 et seq.). The "Investor Protection Act of 1999" [A. 07898 and its companion S. 4791], was introduced in the New York State Legislature in early 1999 but remains in Committee. The legislation addresses fraudulent micro-cap sales practices, the subject of 1997 hearings and a subsequent report issued by the Attorney General, by providing additional tools and resources for the investigation, prosecution, and prevention of securities fraud violations. The legislation also brings investment advisor registration requirements into line with those adopted under the National Securities Markets Improvement Act of 1996, as amended ("NSMIA"). While some of the provisions would merely modernize Martin Act language, other provisions would grant broad new powers to the Attorney General.

NYS Bar Association Committee Disapproves the Bills. On May 26, 1998, the New York State Bar Association Committee on Securities Regulation submitted a Legislation Report ("Report") in opposition to the bills. While recognizing that the Martin Act is in need of revision, the Report emphasized that the bills do not address questions which are unique to New York law. Further, the Committee believes that to adopt this legislation would divert valuable legislative time and effort from a more thoroughgoing and thoughtful effort to conform New York's securities law to current federal law, thus providing the uniformity that is necessary in today's financial marketplace. The Uniform Securities Act is currently being revised by the National Conference of Commissioners on Uniform State Laws. With considerable input from knowledgeable securities professionals and regulators, the drafting committee, under the chairmanship of Richard B. Smith (former SEC Commissioner), has a real opportunity to draft an Act that can be successfully passed in New York. Unlike the bills introduced by the Department of Law, the Uniform Securities Act is being revised in consultation with the SEC and the NASD to take into account the many layers of regulation in the securities industry that cross state and national boundaries, particularly in this age of global and electronic commerce. While New York regulators rightfully wish to effectively regulate the brokerage industry, the bills may be unnecessarily intrusive and, because of the unique definitions in the Martin Act, would likely have unintended consequences affecting both legitimate members of the brokerage community and issuers.

Revoke Registration. The Attorney General would have power to deny, suspend or revoke broker, dealer or investment advisor registration for enumerated reasons related to fraudulent practices. The enumerated reasons are broad in scope. For example, a registrant would be subject to denial, suspension or revocation if the registrant (including, under New York's definition of "dealer," an issuer or other company not involved in the brokerage business), or any of its partners, officers, directors or controlling persons, (1) failed to comply with a provision of the Martin Act or a rule or order thereunder, (2) refused to answer any material question or produce a relevant paper if so ordered by the Attorney
General, or (3) had a securities or banking license or registration denied, revoked or suspended within the past two years (provided the facts would be grounds for a similar order in New York).

**Issue Cease-and-Desist Orders.** The Attorney General would have power to issue cease-and-desist orders to prevent future violations of securities fraud provisions, after notice and opportunity for hearing, except that a temporary order could be entered without such due process if the Attorney General deemed it otherwise impracticable or contrary to the public interest. Orders could be issued against a broker, dealer, issuer, investment advisor, salesperson, or investment advisor representative or a person who is or was an agent, employee, registered representative, associated person, or seeking to become associated with, any of the foregoing. To the contrary, the Uniform Securities Act (1985) excludes the issuer of securities from the definition of "dealer" and permits a cease-and-desist order to be imposed only after notice and opportunity for hearing, unless the securities or seller are not, but should be, registered or licensed in the state.

**Reciprocal Subpoenas.** There would be reciprocity with other states for the issuance and enforcement of subpoenas in securities fraud investigations. Unlike the provisions in the Uniform Securities Act (1985), reciprocity would not be limited to activities that would violate the Martin Act had the activities occurred in New York.

**Inspections.** The Attorney General would have authority to conduct on-site inspections, interviews and inquiries of the records and operations of every securities or commodities broker, dealer, investment advisor, salesperson or other agent, registered or required to be registered in New York. While an exception is made for a person who may be deemed to be a "dealer" by reason of offering or selling its own securities solely to, from, or through any bank, dealer, or broker, this exception is not particularly useful. Again, based on the broad definition of "dealer," companies not involved in the brokerage business (as well as their employees and other agents) could be subject to such inspections and inquiries, and such companies could be required to provide access to a private, enclosed area on their premises for the purpose of conducting employee interviews if requested by the Attorney General.

**Fines, Penalties and Fees.** The amount of the fine a court could award in an injunctive action for fraudulent practices would increase from $2,000 to $10,000, and a new civil penalty of up to $500,000 could be imposed if a person is found by a court to have violated the Martin Act. Up to $1 million, annually, of the civil penalties collected would be available to pay financial analysts, economists and other experts for Martin Act enforcement, and up to $1 million, annually, of registration fees collected under the Martin Act would be available for an investor education fund.

**Investment Advisor Provisions.** The number of investment advisory clients in New York triggering the definition of "investment advisor" would be cut from 40 to five. In addition, registration would be required of "investment advisor representatives" of both New York and federally registered advisors. Neither the proposed new de minimus exclusion nor the definition of investment advisor representative for New York-registered advisors exactly mirrors the federal provisions under NSMIA. Registration and filing fees for advisors would increase, fees would be imposed in connection with registration of investment advisor representatives and the Attorney General would be permitted to impose examination requirements on investment advisor representatives.
COMMITTEE CONVENES IN COLUMBUS
by Alan M. Parness
Cadwalader, Wickersham & Taft

The State Regulation of Securities Committee met in Columbus, Ohio on Saturday, March 25, 2000, in conjunction with the Spring Meeting of the ABA Section of Business Law.

Written reports from subcommittee chairs and reports from liaisons for 19 states and the District of Columbia, outlining current events in the blue sky world, were distributed.

Committee Chairman Alan Baden opened the meeting with a discussion of the progress of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) ongoing project to rewrite the Uniform Securities Act (the “Act”). Chairman Baden acts as an ABA Advisor to NCCUSL. He noted that NCCUSL is now reviewing the second revised draft, and that it has been a very slow and deliberate process. By March, 2000, NCCUSL had discussed only broker-dealer, investment adviser and civil liability provisions of the Act, and it had not yet considered the securities registration and exemption provisions. At this point, Chairman Baden stated, he is monitoring the progress of NCCUSL and is reluctant to espouse a substantive position on behalf of the ABA. The draft of proposed revisions is accessible through the University of Pennsylvania’s Website.

Tami Reed of the Investment Company Institute and Phil Feigin, who is currently serving as a consultant to NASAA, also commented on the revision project. Mr. Feigin commented that the revised Act is targeted at the six states which have not adopted a version of the existing Act. However, Mr. Feigin foresees political problems in convincing the states to enact a revised Act law, particularly since most states recently revised their statutes and related regulations as a result of the NSMIA.

Chairman Baden noted the possible introduction of a "Securities Markets Enhancement Act" in Congress, hopefully designed, at a minimum, to repair some of the ambiguities and other interpretive problems wrought by NSMIA. He suggested that the Committed consider a recommendation to Congress that it coordinate any securities legislation with the NCCUSL project.

The highlight of the meeting was a presentation by Thomas E. Geyer, the Ohio Commissioner of Securities, and other members of the staff of the Ohio Division of Securities. Commissioner Geyer noted that the Division was actively implementing its investment adviser registration provisions. He commented that the Division was also analyzing the effect of the new federal Gramm-Leach-Bliley Act, in coordination with the Ohio Division of Financial Institutions. He also reported that Ohio corporations can now use electronic proxies. Of interest was his comment that Division attorneys has assigned attorneys to monitor the Internet for illegal securities offerings. Commissioner Geyer recommended that members visit the website of the Ohio Division of Securities for additional information.

[http://www.securities.state.oh.us].

Several subcommittee chairpersons and state liaisons reported on new developments.

Mike Liles reported his understanding that Nasdaq was no longer accepting irrevocable proxies from significant shareholders with disciplinary histories in satisfaction of staff objections to listing companies with such shareholders. Mr. Liles commented that listing applications submitted by companies with officers and directors having disciplinary histories would be rejected outright in most cases.

Don Rett reported that Florida is still trying to resolve a legislative-mandated reorganization of the Division of Securities and certain other agencies. He reminded members that the due date for all Florida dealer branch office renewals was
approaching, and that the renewal date is not waivable by the Division staff. He commented that pending legislation would delete a rescission right based on a customer dealing with an unregistered branch.

Tami Reed reported that Puerto Rico recently revised its laws governing filings by investment adviser representatives. Phil Feigin noted that Colorado had recently indicted a registered representative of an investment adviser for conversion, and indicted the representative’s supervisor for failure to supervise. Ellen Lieberman reported that New York was now requiring attorneys to file a "Notice of Appearance" for most filings with the Attorney General’s office.

**BLUE SKY BITS AND BITES**

by Ellen Lieberman

**William Mohr** has left his position as Assistant Attorney General and Chief of Enforcement at the New York State Department of Law, Bureau of Investor Protection & Securities, and has joined the General Counsel’s office at Datek Securities.

**Tanya Solov** is the new Director of the Illinois Securities Department. Formerly she was the Assistant Director, Enforcement.

**Guy Lander** joined the New York office of Goodman Phillips & Vineberg as of February 1, 2000. He is Chair of the New York State Bar Association Committee on Securities Regulation and was previously with Rosenman & Colin LLP.

**Philip Feigin** began work as Special Counsel at Rothgerber Johnson & Lyons LLP in Denver, Colorado, on January 10. He will focus initially on financial services modernization. Phil was Executive Director of NASAA. Marc Beauchamp, previously Communications Director of NASAA, was named as its new Executive Director.


**Peter W. LaVigne** joined Sullivan & Cromwell as Senior Counsel on February 2, 2000, where he will be practicing in the areas of broker-dealer regulation and state securities law. He was previously with Paul, Hastings, Janofsky & Walker LLP.

**James W. Fischer**, after many years of dedicated service with the Wisconsin Bureau of Securities, most recently as Director, Registration and Enforcement Section, retired from state service on February 4, 2000.

**Leslie Scott**, who supervised the Mississippi Securities Division for the last four years, was re-assigned to run the Elections Division.

**Ben Indek** was elected partner of Morgan, Lewis & Bockius LLP. He is resident in the firm's New York office and continues to focus his practice on representing broker-dealers and their employees in SEC, SRO and state enforcement matters.

**Fred Bunker Davis** reports that he is in a state of “retirement . . . but available” to Kutak Rock, and that his activities since retirement have been mostly related to the “but available” part rather than the retirement part.

**Ellen Lieberman** was named Chair of the New York State Bar Association Special Committee on Public Trust and Confidence in the Legal System.
OFFICERS
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Chair: Alan P. Baden
Co-Vice Chairs: Ellen Lieberman, Martin R. Miller
Secretary: Alan Parness

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## STATE LIAISONS

ABA STATE REGULATION OF SECURITIES COMMITTEE
SUBCOMMITTEE ON LIAISON WITH SECURITIES ADMINISTRATORS
AND THE NASD

by Roger G. Fein, Chair

Committee members are invited to contact state liaison attorneys with questions or with information regarding blue sky law and procedures in the relevant jurisdiction.

### AS OF MARCH 20, 2000

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