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INVESTOR ADVOCATES URGE GREATER SHAREHOLDER EMPOWERMENT TO FILL REGULATORY GAPS, AS CONGRESS HEARS FROM TREAS. SEC. PAULSON & FED CHAIR BERNANKE

WASHINGTON, DC, November 18 -- In a statement sent today to key Members of Congress, the National Association of Shareholder and Consumer Attorneys (NASCAT) urged greater empowerment of shareholders to help police financial markets and corporate governance by restoring investor legal rights lost during the past 15 years. The statement comes as the House Committee on Financial Services hears testimony today from Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke on the Treasury Department's \$700 billion Troubled Asset Relief Fund (TARP).

"As Congress and the in-coming Obama Administration consider the costly TARP bailout program and much needed financial regulatory reforms, we must all recognize that government cannot do the job alone," explained Carol Gilden, NASCAT's President and a former enforcement attorney in the Chicago office of the Securities and Exchange Commission (SEC). "Private investors form a key front-line defense against financial fraud and abuse because they are in a unique position to quickly identify and take action against unlawful conduct by corporate issuers and Wall Street marketers of securities."

While investor civil actions help police the securities markets and deter fraud and abuse, these "enforcement actions" do not require federal regulatory or enforcement funding.

"Private investors act in their own self interest to achieve an important public purpose," Ms. Gilden continued. "Recent Supreme Court decisions and lower court rulings interpreting those decisions, however, have taken investor cops off the beat in many situations and Congress could quickly clear these legal impediments, enabling our nation's individual and institutional investors to better fulfill their traditional role."

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Traditionally, securities market regulation and law enforcement relied upon a “three legged stool” of the SEC, federal and state attorneys general and investor actions. In recent years, however, two legs of the regulatory stool were weakened by laxity in enforcement of federal securities law and Supreme Court decisions, and lower court rulings interpreting those decisions, have curtailed investors’ rights of action. NASCAT said Congress could quickly correct the problems caused by these three Supreme Court decisions:

-- In 1993, the Court found that investors have no right of action against those who “aid and abet” securities fraud (*Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*). This immunity from private liability applies even to those who knowingly help the primary actors perpetrate fraud.

-- In 2005, the Court issued a ruling that in and of itself was not objectionable (*Dura Pharmaceuticals v. Broudo*). The Court decided that in their complaints injured investors must plead that a fraud actually caused a particular loss. The Court clearly said it did not intend this requirement to become a heavy burden upon harmed shareholders seeking recovery of their losses. Unfortunately, lower courts have too narrowly interpreted this decision and raised artificial obstacles for defrauded investors seeking recovery. In the process these restrictive interpretations of *Dura* have immunized corporate wrongdoers who cleverly separate the timing of the release of bad news leading to stock drops from any possible later disclosure that the bad news was caused by deceit.

-- And, in 2008, the Court imposed an overly restrictive view of the circumstances under which investors may take action against secondary actors who knowingly engage in schemes to defraud the investing public (*Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*) Nevertheless, in the underlying Charter Communications fraud at issue in *Stoneridge*, the fraud could not have occurred without the active, knowing participation of the defendant actors -- each of whom engaged in conduct that was inherently deceptive itself, not ordinary business acts that merely aided the fraud.

Shields Against Accountability Emboldened Financial Wrongdoers

“These Court decisions and their interpretations by lower courts have erected strong shields against accountability for those who perpetrate and knowingly aid and abet fraud or engage in schemes to defraud the investing public,” Ms. Gilden said. “In so-doing, courts have eroded the deterrent value of investor lawsuits that the SEC itself has long considered ‘a necessary supplement to the Commission's efforts.’ ”

Since 1993, NASCAT said, many corporate and financial players believed themselves to be “judgment proof” and, over the years, were emboldened to engage in massive wrongdoing and take trillion dollar risks at the expense of investors, homeowners and, now, taxpayers in our greatest economic crisis since the Great Depression.

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Nation's Largest Pension Funds are our "Investor Policemen"

Who are the shareholders who “police” the markets? Most significant private actions for securities fraud are brought by our nation’s largest private and public pension fund investors that provide retirement security for millions of Americans ranging from policeman and firemen to elementary school teachers and university professors.

Indeed, in the top three securities fraud class actions filed in the past ten years, the lead plaintiffs were the Board of Regents of the University of California (lead plaintiff in Enron Corp. suit), New York State Common Retirement Fund (lead plaintiff in WorldCom suit), and the California Public Employees Retirement System, New York State Common Retirement Fund and New York City Funds, which served as co-plaintiffs in the Cendant Corporation fraud case. Currently, the New York State Common Retirement Fund and the New York City Pension and Retirement Funds are prosecuting the securities class action against Countrywide Finance Corporation and others involved in the massive sub-prime mortgage-related fraud allegedly perpetrated against investors in that company.

The National Association of Shareholder and Consumer Law Attorneys is a nonprofit organization comprised of about 100 law firms representing consumers and investors - including pension funds and individuals - in cases of securities fraud and other forms of "white collar" wrongdoing and criminal activity.

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