POLICING PUBLIC COMPANIES: AN EMPIRICAL EXAMINATION OF THE ENFORCEMENT LANDSCAPE AND THE ROLE PLAYED BY STATE SECURITIES REGULATORS

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Abstract

Multiple different securities law enforcers can pursue U.S. public companies for the same misconduct. These enforcers include a variety of federal agencies, class action attorneys, and derivative litigation attorneys, as well as fifty separate state regulators. Scholars and policy makers have increasingly questioned whether the benefits of this multi-enforcer approach are worth the costs, or whether a more coordinated and streamlined securities enforcement regime might lead to efficiency gains. How serious are these concerns? And what role do state regulators play in the enforcement mix? Whereas the enforcement efforts of the Securities and Exchange Commission and class action lawyers have been well-studied, almost no empirical research has been done on state enforcement.

This Article provides an empirical foundation for considering these questions. We reviewed the Item 3 "material litigation" disclosures in the fiscal year 2004–2006 Form 10-Ks filed by every domestic public company that listed common stock on the New York Stock Exchange at any time from 2000–2010—a total of 5,441 Form 10-Ks filed by 1,977 distinct companies. In our unique dataset, 72% of companies disclosed some form of material litigation over the span of the three-year period examined, and 27% disclosed some form of securities litigation. Remarkably, well over half of the companies that disclosed securities litigation reported facing two or more different forms of securities litigation, and nearly 30% reported facing three or more.

The securities-related state matters disclosed in our dataset share some interesting characteristics. They tended to target out-of-state firms (68%) and to involve scandals that beset the financial industry (85%). Overwhelmingly, they were accompanied by a related federal action or investigation (91%), and very often were accompanied by related

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* Associate Professor, Vanderbilt University Law School. For insightful comments and guidance on earlier drafts, I owe a debt of gratitude to Ryan Bubb, Ed Cheng, Joni Hersch, Paige Skiba, Randall Thomas, and numerous attendees at presentations given at Vanderbilt University Law School, the University of Virginia Law School, the University of Colorado Law School's 2011 Junior Business Law Conference, and Hastings College of the Law's 2011 Roger J. Traynor Summer Professorship Program. I also owe a debt of gratitude for excellent research support to Donna Baldry, Lindsay Cote Donald, John Drake, Gary Peeples, Leopoldo Ignacio Sarria, and especially Tristan Tucker. Finally, I would like to thank NYSE Archivist Janet Linde for her assistance in the data collection process.

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private litigation (67%). Whereas only 34% of states have an elected (as opposed to appointed) securities regulator, these states were responsible for 80% of the state matters disclosed. We ran regressions controlling for other variables that might influence a state's level of enforcement activity. Our statistically significant results indicate that states with elected enforcers brought securities-related matters at more than four times the rate of other states, and states with an elected Democrat serving as the securities regulator brought matters at nearly seven times the rate of other states.

Our findings bring into focus several important public policy questions concerning the use of multiple securities law enforcers in general, and the social value of state enforcement in particular, that merit further exploration.

INTRODUCTION

American public companies frequently complain that they operate in an "overly litigious" business environment. While the litigation risk they face spans a dizzying array of areas, securities litigation risk is often singled out for especially harsh criticism. This is due in part to America's use of multiple securities law enforcers. These enforcers include a variety of federal public and quasi-public bodies (such as the Securities and Exchange Commission (SEC), Department of Justice (DOJ), and Financial Industry Regulatory Authority (FINRA)), as well as private class action attorneys, private derivative litigation attorneys, and fifty separate state regulators. Each of these enforcers may act independently of the others, giving rise to the possibility of expensive duplicate litigation and inconsistent enforcement policies. While the intensity of U.S. securities law enforcement likely plays an important role in keeping the cost of capital low for U.S. listed firms, numerous scholars have questioned whether more streamlined enforcement efforts

might achieve the same or better results at lower cost.[1]

What is missing from this debate is a good sense of the magnitude of the potential problem. How often do U.S. public companies experience litigation generally, and securities litigation specifically? And how often are they targeted by multiple securities law enforcers? Also missing from the debate is a good sense of the enforcement role played by *state* securities regulators. While the role of federal public enforcement and private class action enforcement of the securities laws has been well-studied,[2] almost no empirical research has been done on state enforcement.[3] Congress broadly preempted *ex ante* state regulation of public companies' securities offerings and disclosure documents in the National Securities Markets Improvement Act of 1996 (NSMIA), but explicitly preserved state authority to bring government enforcement actions against these companies "[for] fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions."[4] The targeting of public companies by Eliot Spitzer and his

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1. *See, e.g.*, William W. Bratton & Michael L. Wachter, *The Political Economy of Fraud on the Market*, 160 U. PA. L. REV. 69, 69–70 (2011) (arguing that fraud-on-the-market securities class actions should be eliminated and replaced with stepped-up public enforcement efforts); John C. Coffee, Jr., *Law and the Market: The Impact of Enforcement*, 156 U. PA. L. REV. 229, 304 (2007) (suggesting that flaws in private securities enforcement may warrant increased reliance on public enforcement); Jessica M. Erickson, *Overlitigating Corporate Fraud: An Empirical Examination*, 97 IOWA L. REV. 49, 81 (2011) (arguing for more targeted deterrence of corporate fraud); Howell E. Jackson & Mark J. Roe, *Public And Private Enforcement of Securities Laws: Resource-Based Evidence*, 93 J. FIN. ECON. 207, 209 (2009) (questioning the effectiveness of private enforcement relative to public enforcement); Amanda M. Rose, *The Multienforcer Approach to Securities Fraud Deterrence: A Critical Analysis*, 158 U. PA. L. REV. 2173, 2176 (2010) (questioning whether the preconditions for efficient use of multiple securities law enforcers exist in the United States and arguing for greater centralization of enforcement efforts); Amanda M. Rose, *Reforming Securities Litigation Reform: Restructuring the Relationship Between Public and Private Enforcement of Rule 10b-5*, 108 COLUM. L. REV. 1301–02 (2008) (arguing that SEC oversight of securities class actions would lead to efficiency gains); *see also* COMM. ON CAPITAL MKTS. REGULATION, INTERIM REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION 9–10, 68–69 (2006), http://www.capmktsreg.org/pdfs/11.30 Committee_Interim_ReportREV2.pdf (recommending reforms to encourage greater coordination between state and federal securities regulators).

2. For helpful summaries of the extant literature, see James D. Cox & Randall S. Thomas, *Mapping the American Shareholder Litigation Experience: A Survey of Empirical Studies of the Enforcement of the U.S. Securities Laws*, 6 EUR. CO. & FIN. L. REV. 164, 170 (2009). For an older survey focused on private enforcement, see Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 VAND. L. REV. 1465, 1468–1504 (2004).

3. Some recent empirical work has been done on private enforcement under state law. *See, e.g.*, Erickson, *supra* note 1, at 53; Jennifer J. Johnson, *Securities Class Actions in State Court*, 80 U. CIN. L. REV. 349, 349–53 (2012). Our focus here, however, is on public enforcement by state regulators.

4. *See infra* note 42 and accompanying text. In 1998, Congress also broadly preempted securities class actions based on state law, with important carve-outs for traditional corporate

successors as New York Attorney General has led some to praise and others to criticize NSMIA's "fraud carve-out," as it has come to be known. But beyond anecdotal accounts of New York's high-profile enforcement efforts, we know little about how states have utilized their preserved authority.

This Article responds to these important foundational questions. We examined the fiscal year (FY) 2004, FY 2005, and FY 2006 Form 10-Ks filed by every domestic U.S. company that listed common stock on the New York Stock Exchange (NYSE) at any point in the last decade—a total of 5,441 Form 10-Ks filed by 1,977 different firms. Specifically, we examined the "material litigation" disclosures found in Item 3 of these Form 10-Ks, recording whether the companies disclosed any material litigation and, if so, whether they disclosed securities litigation.[5] If a company disclosed securities litigation, we tracked which of the following four forms of securities litigation it disclosed: a class action; a derivative action; a federal regulatory action or investigation; or a state regulatory action or investigation. We also recorded additional information about the securities-related state enforcement actions and investigations disclosed, such as the identity of the enforcing state, their topic, and whether they overlapped with related federal or private enforcement efforts.

Our findings support the contention that American public companies operate in a highly litigious business environment generally, and that they confront significant enforcement in the securities law area in particular—often at the hands of multiple different enforcers. Of the companies in our dataset, 72% disclosed that they faced some form of material litigation over the course of the three years examined and 27% disclosed some form of securities litigation—with two in every ten disclosing a securities class action. Remarkably, 56% of the companies that disclosed securities litigation reported at least two forms of securities litigation, and 28% reported three or more. Moreover, nearly 40% of companies that disclosed a federal regulatory action or investigation at the hands of the SEC also disclosed that at least one other federal regulator, such as the DOJ, had targeted them. One cannot conclude from these findings that the securities laws are being overly

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law litigation. *See infra* note 39 and accompanying text.

5. Form 10-K filers are required to disclose any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which they, a subsidiary, or their property is subject. *See* 17 C.F.R. § 229.103 (2012). We focused on Form 10-Ks filed for the fiscal years 2004–2006 because these were the most recent that would disclose mostly completed securities litigation. *See, e.g.*, Jordan Milev, Robert Patton & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2011 Mid-Year Review*, NERA ECON. CONSULTING 14, Fig. 16 (2011), http://www.nera.com/nera-files/PUB_Mid-Year_Trends_0711(3).pdf.

enforced, but the findings do suggest that policymakers should consider seriously whether more streamlined enforcement efforts might lead to efficiency gains.

Our findings also illuminate the enforcement role state securities regulators play. Just 8% of the companies in our dataset that disclosed some form of securities litigation disclosed a securities-related state enforcement action or investigation, as compared to 74% for class actions, 48% for derivative actions, and 45% for a federal regulatory action or investigation. Although few in number, the disclosed securities-related state enforcement actions and investigations share several interesting characteristics. They were largely: directed at out-of-state companies (that is, those neither headquartered nor incorporated in the enforcing state) (68%); targeted at firms in the financial sector (93%); and aimed at misconduct implicating an industry-wide scandal, as opposed to isolated instances of firm-specific misconduct (85%). Moreover, the vast majority involved at least one overlapping investigation or action by another securities law enforcer (93%).

Our findings also reveal important differences in state securities enforcement behavior. A clear majority of the states (thirty-two) were not identified as pursuing any securities enforcement efforts against the public companies in our dataset. Fourteen states were identified as pursuing between one and four distinct enforcement actions or investigations, while four states—New York, West Virginia, Connecticut, and Massachusetts—were responsible for 70% of the total number of state actions and investigations disclosed, each bringing between eight and thirty-one.

There was also a marked difference between the enforcement behavior of states with elected securities regulators and that of states with appointed securities regulators. Whereas 36% of states have an elected securities regulator, these states were responsible for 80% of the matters disclosed. We ran regressions controlling for other variables that might influence a state's level of enforcement activity. Our statistically significant results indicate that states with elected enforcers brought matters at more than four times the rate of states with appointed enforcers. Notably, states with an elected Democrat serving as the securities regulator brought matters at nearly seven times the rate of other states. Our findings thus support the claim that states' pursuit of public companies for securities-related misconduct has a partisan political dimension.[6]

This Article represents an important first step in understanding the role state regulators play in policing public companies for securities-

6. In the time frame studied, both the SEC and the Presidency were controlled by Republicans.

related misconduct. Additional research, both theoretical and empirical, would help answer the key questions this Article brings into focus. For example, is it wise to rely on elected state regulators to supplement the enforcement efforts of the SEC, an agency that was specifically designed to remain insulated from political pressures? And what motivates certain states to police public companies in this area, while the vast majority chooses not to? Better understanding state motivations would help in determining the likely social value of NSMIA's fraud carve-out, and might inform expectations about state enforcement behavior vis-à-vis public companies in other important legal areas.

The remainder of this Article proceeds as follows: Part I describes our data collection process and offers descriptive statistics on the companies in our dataset. Part II provides descriptive statistics on the litigation disclosed by the companies in our dataset, with a detailed focus on the extent and types of securities litigation experienced. Part III provides background on the role of state securities regulators in policing public companies and offers statistics on the state securities enforcement efforts disclosed by the companies in our dataset, including the results of our regressions. The Article then briefly concludes, highlighting avenues of further research that our dataset open up.

I. OVERVIEW OF DATASET

A. *Data Collection Process*

One of our primary goals in conducting this research was to find out more about the role that state regulators have played in policing public companies for securities fraud. No one has previously compiled comprehensive information about state securities enforcement efforts targeting this population of firms, and this information is not readily available through state-based sources. We therefore chose to consult the Form 10-K that public companies are required to file with the SEC on an annual basis and which is readily available on the SEC's website.[7] Specifically, Part I, Item 3, of the Form 10-K requires filers to

7. In the time frame examined, a company could become obligated to file a Form 10-K in three ways: (1) if its stock traded on a national securities exchange, 15 U.S.C. § 78m(a) (2006); (2) if it had more than $10 million in assets and equity securities held by more than 500 record owners, *id.* § 78m(f); or (3) if it had filed a registration statement with the SEC that had gone effective pursuant to the Securities Act of 1933. *Id.* § 78o(d). Companies who triggered reporting obligations in the first way could subsequently avoid them by delisting. Companies who triggered them in the second way could subsequently avoid them if the number of owners of their equity securities dropped below 300, or if for three years they consistently had fewer than 500 such owners and fewer than $10 million in assets, 17 C.F.R. § 240.12g-4 (2011). Finally, reporting obligations triggered in the third manner described above could be suspended one year after the offering if (and so long as) the number of owners of the securities to which the registration statement related was below 300, 15 U.S.C. § 78o(d).

"[d]escribe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is subject."[8] Filers are instructed to provide certain basic information about such proceedings, as well as about "any such proceedings known to be contemplated by governmental authorities."[9] We examined the Item 3 disclosures in the FY 2004, FY 2005, and FY 2006 Form 10-Ks filed by U.S. companies that listed common stock on the NYSE at some point in the first decade of the twenty-first century.[10] The NYSE is by far the largest U.S. stock exchange in terms of market capitalization; focusing on firms that listed common stock on that exchange over a ten-year period thus gives us a window into the litigation experiences of a broad set of U.S. public companies.[11] We focused on these firms' disclosed litigation experiences in the fiscal years 2004–2006 in order to maximize the likelihood that the litigation would be completed.[12]

To identify the companies whose Form 10-Ks we would examine, we consulted three sources of NYSE data. First, we consulted the NYSE's online directory of U.S. companies listing common stock.[13] Each company listed in that directory on December 9, 2010, is captured in our dataset if it filed a Form 10-K for the years 2004, 2005, or 2006.[14] Second, we consulted the NYSE's March 2000 issue of *Stocks & Bonds on the New York Stock Exchange*, which catalogues all firms listing common stock on the NYSE on February 29, 2000. We then added to the dataset any U.S. firms identified by that source, provided that they had filed a Form 10-K for the year 2004, 2005, or 2006. Lastly, we added to the dataset U.S. firms identified on the NYSE's annual year-end "New Common Stock Listings" roll for any of the years 2000 through 2010, as long as they filed a Form 10-K for the year

8. *See supra* note 5.

9. *Id.*

10. We treat as a 2004 10-K any 10-K filed for fiscal years ending after March 31, 2004 and on or before March 31, 2005; we treat as a 2005 10-K any 10-K filed for fiscal years ending after March 31, 2005 and on or before March 31, 2006; we treat as a 2006 10-K any 10-K filed for fiscal years ending after March 31, 2006 and on or before March 31, 2007.

11. The market capitalization of firms listed on the NYSE was $12.4 trillion, as compared to $3.5 trillion for firms listed on the NASDAQ, as of March 2010. *See The 15 Largest Stock Markets and Exchanges*, TODAY FORWARD (Apr. 27, 2010), http://todayforward.typepad.com/todayforward/2010/04/the-15-largest-stock-markets-and-exchanges.html.

12. Securities litigation can be quite lengthy. NERA Economic Consulting reports that for settled securities class actions filed between January 2000 and June 2011, the average time from filing to completion is 4.4 years. *See* Milev, et al., *supra* note 5, at 15.

13. *See Listings Directory*, NYSE (Sept. 27, 2012, 5:03 PM) http://www.nyse.com/about/listed/lc_ny_issuetype_1076458359969.html?ListedComp=US.

14. We drop from the dataset any company whose 10-Ks disclose a place of incorporation or principal executive offices outside one of the fifty U.S. states.

2004, 2005, or 2006.[15] To the extent these sources are accurate and complete, our collection process yielded a comprehensive list of all U.S. companies that both (1) had common stock listed on the NYSE at any point between February 29, 2000, and December 31, 2010, and (2) filed a 2004, 2005, or 2006 Form 10-K.

We examined each of the FY 2004–2006 Form 10-Ks filed by the companies we identified and recorded the following information in an Excel database:

- Company name;
- Year of report;
- State of incorporation;
- State of principal executive offices;
- Whether any material litigation is disclosed in Item 3 (including by reference);[16]
- If material litigation is disclosed, whether any of it is securities-related;[17]
- If securities-related material litigation is disclosed:
  - Whether a securities-related class action is disclosed;
  - Whether a derivative action is disclosed;

15. These publications can be accessed online for the years 2003–2007. *New Common Stock Listings, 200x*, NYSE TECHNOLOGIES, http://www.nyxdata.com/nysedata/NYSE/Facts Figures/tabid/115/Default.aspx (search "new common stock listings," then follow "Listed Companies" hyperlink). We obtained them for the years 2000–2002 and 2008–2010 directly from the NYSE's archivist.

16. We treated a company as disclosing "material litigation" in Item 3 if it provided some specific information about at least one piece of litigation (against the firm, one of its subsidiaries, or one of its officers or directors), even if the company did not disclose all of the details required by Item 3, and even if the company also stated that it did not think the litigation was material. We did not treat a company as disclosing material litigation, however, if the disclosure was mere boilerplate (for example, "from time to time, the company is subject to a variety of claims involving *X*, *Y*, and *Z*"). In addition to material litigation, companies must disclose environmental proceedings and regulatory investigations. These, if they meet the requirement of specificity noted above, were counted even if the investigation had not led to the initiation of a formal proceeding against the company. If the company disclosed that a shareholder had presented to the company's board of directors a demand to bring suit, we did not treat this as material litigation unless the shareholder had already filed a derivative suit in court.

17. We construed "securities-related" broadly to include not just securities fraud suits, but also any investigations or actions initiated by the SEC (which include actions brought under the Foreign Corrupt Practices Act), corporate law breach of fiduciary duty suits, litigation challenging a merger or acquisition, and shareholder derivative litigation. We did not treat ERISA matters as securities-related. Cases involving insurance presented a challenge, as some but not all insurance products have an investment component and have been treated as securities by the SEC. We treated as securities-related insurance matters that involved variable annuities, indexed annuities, and other "nontraditional" insurance products. Matters that were focused primarily on traditional fixed insurance products, or on the marketing of insurance generally (such as state investigations into contingent commissions and "bid rigging" in the insurance industry) were not treated as securities-related.

- Whether a securities-related federal regulatory investigation or action is disclosed,[18] and if so, the identity of said regulator(s);
- Whether a securities-related state regulatory investigation or action is disclosed,[19] and if so, the identity of the responsible state(s), and the topic of the investigation(s) or action(s); and
- If a securities-related state regulatory investigation or action is disclosed and a securities-related class action, derivative action, or securities-related federal regulatory investigation or action is disclosed, whether they are related.[20]

The dataset we created is comprehensive and provides a great deal of useful information about the litigation experiences of an important group of public companies. However, it has certain limitations that should be acknowledged at the outset. First, it leaves out certain categories of companies. We chose to look at the litigation experiences of all *U.S.* companies that traded *common stock* on the *NYSE* at some point between 2000 and 2010 and filed 10-Ks for the year *2004*, *2005*, or *2006*. We therefore did not examine firms that traded common stock on the NYSE at some point between 2000 and 2010 but did *not* file 10-Ks for the year 2004, 2005, or 2006.[21] Foreign firms and firms that traded only securities other than common stock on the NYSE from 2000–2010 were likewise excluded from the analysis. And because we examined only the litigation experiences of U.S. companies that traded common stock on the NYSE at some point between 2000 and 2010, firms that traded exclusively on the NASDAQ or another exchange during that time period were also excluded from the analysis. The litigation experiences of the firms excluded from the dataset may differ from those of the firms we analyzed.

Second, we focused on firms' litigation experiences in the fiscal years 2004, 2005, and 2006.[22] Enforcement patterns may change with the times, especially with the economic climate (with more aggressive enforcement generally thought to occur in the wake of a financial crisis). A different picture might emerge if instead we examined the 10-

18. These would include matters brought by the SEC, securities-related criminal matters brought by the DOJ (including U.S. Attorneys), and enforcement matters initiated by SEC supervised self-regulatory organization (SROs) (which at the time included the NASD and NYSE, since consolidated into FINRA).

19. We do not count actions brought by state pension funds or otherwise brought by states in a proprietary capacity to recover investment losses suffered by the state. Instead, we are focused on actions brought by the state in its sovereign capacity.

20. To answer this question sometimes required investigating additional sources outside the 10-K.

21. This means that firms that failed, were acquired, or "went dark" prior to 2004 are excluded from the analysis. It also means that firms that obtained public company status for the first time only after 2006 are excluded.

22. *See supra* note 12 and accompanying text.

Ks filed by the same set of companies in a different period.

Third, it is important to note that Item 3 disclosures cannot provide a perfect picture of the litigation experiences of the companies in the dataset. For one thing, the Item 3 disclosure obligation is subject to a "materiality" standard. The SEC has provided some guidance on the type of litigation that firms should treat as material. For example, firms are instructed that they need not include information about litigation involving "primarily a claim for damages" if the amount involved does not exceed 10% of the company's current assets.[23] But the concept of materiality remains hazy and subject to interpretation, and companies seeking to avoid the release of negative information may interpret it in a self-serving way—at the very least, companies are likely to interpret the materiality standard in nonuniform ways.[24] In addition, some companies may voluntarily disclose information about legal proceedings even if they consider them immaterial, whereas other companies may not.

To gauge the quality and consistency of the Item 3 disclosures by the companies in our dataset, we compared our results with the database of federal securities class actions maintained by the Stanford Law School Securities Class Action Clearinghouse. The Stanford database indicates that federal securities class actions were filed against a total of 215 NYSE listed firms in the years 2004–2006. Of these 215 firms, 176 are in our dataset (not all are in our dataset because some failed to meet our criteria for inclusion—for example, they were foreign, or did not file Form 10-Ks in any of the years 2004, 2005, or 2006.). Of the 176 firms in our dataset, 169 filed Form 10-Ks in the year the Stanford database indicates a federal securities class action was filed against them. We recorded 157 of these 169 firms as having disclosed a securities-related class action in that year—indicating a disclosure rate of 92.9%.[25]

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23. *See supra* note 5, Instruction 2. It is unlikely that actions brought by state regulators would be treated as involving "primarily" a claim for "damages." First, if states sought a monetary recovery it would be a fine or penalty, not "damages." *See supra* note 19. Second, a final order by a state securities commissioner or like state agency finding a securities law violation can have serious collateral consequences for a firm. For example, it may limit the firm's ability to participate in certain exempt securities offerings. *See, e.g.*, 17 C.F.R. § 230.262(a)(4) (2012) (disqualification provision of Regulation A); *id.* 230.505(b)(2)(iii) (adopting Regulation A's disqualification provision for Rule 505 offerings under Regulation D); *see also* 15 U.S.C. § 80b-3(e)(9) (2006) (SEC may censure, deny, or suspend registration of investment advisor subject to final order by state securities commissioner based on fraud, deception, or manipulative conduct); *id.* § 78o(b)(4)(H) (same for brokers and dealers).

24. *See* Basic Inc. v. Levinson, 485 U.S. 224, 231–32 (1988) (defining information as material if a "reasonable investor" would consider it significant in making an investment decision).

25. The actual disclosure rate is arguably even higher, at 94.67% (160/169). This is because three of the twelve companies we did not record as having disclosed a securities class action in their Form 10-K in the same year as the Stanford database in fact made disclosures

Finally, it is important to note that Item 3 asks companies to disclose material litigation proceedings to which they are subject, as well as to include "similar information as to any such proceedings known to be *contemplated* by governmental authorities."[26] When considering the results of our data analysis, one should keep this in mind. What we count as a federal or state regulatory matter may involve nothing more than a subpoena or request for information from the company that never amounts to a formal prosecution.[27]

In addition to the foregoing company information culled from the Form 10-Ks, we collected a variety of census data related to each of the fifty states. We also determined whether the primary securities enforcer in each state was appointed or elected.[28]

B. *Descriptive Statistics on Companies in Dataset*

The data collection process described above resulted in the identification of 1,977 distinct companies and the examination of 5,441 Form 10-Ks. The number of Form 10-Ks we examined is less than three times the number of companies, because not all companies filed Form

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likely referencing the securities class action, but due to vagueness we did not record them as class actions.

26. *See supra* note 5 (emphasis added).

27. A recent decision clarifies, however, that companies are required to disclose regulatory investigations only when they "mature[] to a point where litigation is apparent and substantially certain to occur." Richman v. Goldman Sachs Grp., Inc., 2012 U.S. Dist. LEXIS 86556, *21 (S.D.N.Y. 2012).

28. If the department or agency primarily responsible for enforcing the state's securities laws is headed by an elected (appointed) official, we treat the securities regulator as elected (appointed). California, Connecticut, New Hampshire, and Virginia presented special cases. The California Department of Corporations, headed by an appointed official, has historically had primary responsibility for enforcing California's securities laws; California's elected attorney general could step in only upon referral by the Department of Corporations. In October 2003, however, a law was enacted giving the California attorney general broad concurrent authority to enforce the state's securities laws. *See* Nicholas Campins, A New Paradigm for Securities Regulation in California: Senate Bill 434 and its Implications (unpublished student paper, National State Attorneys General Program, Columbia University), https://www.law.columbia.edu/center_program/ag/resources/studentpapers. We therefore treat California as a state with an elected securities regulator. We also classified Connecticut as a state with an elected securities enforcer although its appointed banking commissioner has primary formal responsibility for enforcing the state's securities laws. We did so because 90% of the securities-related enforcement actions Connecticut was disclosed to have brought involved not its banking commissioner but instead its elected attorney general. With respect to no other state did a majority of the disclosed securities-related enforcement actions involve an elected (appointed) state regulator when the state regulator with formal primary authority over securities enforcement was appointed (elected). New Hampshire and Virginia were special cases because the securities regulators in those states are "elected" by the state legislature rather than appointed by the state governor; we believe it is appropriate to group them in the appointed category because the regulators are not directly exposed to popular election. The elected or appointed status of each state's securities regulator is reported *infra* at Table 6.

10-Ks in each of the three years examined.[29] We examined 1,843 FY 2004 Form 10-Ks, 1,820 FY 2005 Form 10-Ks, and 1,778 FY 2006 Form 10-Ks. Out of the 1,977 companies in the dataset, 1,822 filed Form 10-Ks in at least two of the years examined and 1,642 filed Form 10-Ks in all three years.

Table A.1 lists by state the percentage of companies in our dataset that disclosed each state as their state of incorporation.[30] Not surprisingly, Delaware dominates, serving as the state of incorporation to 59% of the companies. Maryland, the next highest, is light-years away with only 9%. Table A.3 lists by state the percentage of companies that disclosed each state as the location of their principal executive offices.[31] Texas, New York, and California dominate here, with Texas taking first—home to the principal executive offices of 12% of the companies in our dataset.

As reported in Table A.5, roughly 30% of the companies in our dataset disclosed that their principal executive offices were located in their state of incorporation. If companies incorporated in Delaware are excluded, the number jumps to nearly 70%. This means that nearly 70% of companies not incorporated in Delaware were incorporated in the state where their principal executive offices were located. Where were those companies in the dataset with their principal executive offices in their states of incorporation located? Table A.6 shows the percentage of companies that disclosed each state as both the state of their principal executive offices and incorporation.[32] Ohio tops the list, home to 10% of this group of companies. Table A.8 reports on the subset of companies disclosing states different from their state of incorporation as the location of their principal executive offices. Specifically, it shows the percentage of these companies incorporated in each state.[33]

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29. A variety of reasons could explain this. For example, a company that filed a 10-K in one of the years of interest might have ceased to exist in the subsequent year (because it was acquired, or because it went bankrupt). A company might also have escaped any obligation to file a 10-K by losing its public company status ("going dark"). See *supra* note 7 for the ways in which a company can do this. It is also possible that a company filed fewer than three reports because it went public for the first time in 2005 or 2006.

30. To compute these percentages, we totaled the number of times the state was identified as a state of incorporation in the 5,441 Form 10-Ks examined and divided by 5,441. Year-by-year results are reported in the appendix at Table A.2.

31. To compute these percentages, we totaled the number of times the state was identified as the location of a company's principal executive offices in the 5,441 Form 10-Ks examined and divided by 5,441. Year-by-year results are reported in the appendix at Table A.4.

32. To compute these percentages, we totaled the number of times the state was identified as the location of both a company's principal executive offices and state of incorporation in the 5,441 Form 10-Ks examined and divided by the total number of Form 10-Ks disclosing the same state as the location of a company's principal executive offices and state of incorporation. Year-by-year results are reported in the appendix at Table A.7.

33. To compute these percentages, we totaled the number of times the state was identified

Delaware's showing is predictably even stronger here as compared to Table A.1; it claims the incorporations of more than 81% of the companies in our dataset incorporated outside their headquarters state.

II. THE LITIGATION LANDSCAPE

Our review of the Item 3 disclosures by the companies in our dataset strongly supports the claim that U.S. public companies face significant litigation risk, and in particular securities litigation risk—often at the hands of multiple different enforcers. This Part describes the crowded litigation landscape painted by our data.

Table 1, Column A, shows the percentage of companies in the dataset that disclosed, in at least one of their examined Form 10-Ks, each type of litigation for which we recorded data (year-by-year results are reported in the Appendix at Table A.10.). Striking is the fact that 72% of companies disclosed some form of material litigation over the course of the three-year period examined, and more than a quarter disclosed some form of securities litigation—with approximately two in every ten disclosing a securities class action.[34] Column B reports on the subset of companies disclosing material litigation and Column C reports on the smaller subset disclosing securities litigation. Whereas 27% of all companies disclosed some form of securities litigation, 38% of the subset of companies that disclosed material litigation also disclosed some form of securities litigation. Of the smaller subset disclosing securities litigation, 74% disclosed a securities class action, 48% disclosed a derivative action, 45% disclosed a securities-related federal regulatory investigation or action, and 8% disclosed a securities-related

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as the location of a company's state of incorporation but not its principal executive offices in the 5,441 Form 10-Ks examined and divided by the total number of reports disclosing a state of incorporation different than the location of a company's principal executive offices. Year-by-year results are reported in the appendix at Table A.9.

34. A total of 399 of the 1,977 firms in our dataset disclosed a securities class action in at least one of their reports (20.18%). We did not track whether the disclosed securities class action was brought under federal or state law. According to our search of the Stanford Law School Securities Class Action Clearinghouse database, however, at least 255 of these 399 firms had a federal securities class action filed against them in the 2002–2006 timeframe—approximately 64%. The percentage of the 399 firms disclosing a federal securities class action is likely higher, however, for two reasons. First, the Stanford database only allowed us to sort for firms listed on the NYSE in the year the complaint was filed, whereas our dataset includes all firms that were listed on the NYSE at any point in 2000–2010 (if they met our other criteria for inclusion). *Stanford Law School Securities Class Action Clearinghouse*, STANFORD LAW SCHOOL, http://securities.stanford.edu. Second, some of the firms in our dataset may have been reporting on federal securities class actions filed prior to 2002. *See supra* note 12. Even taking this into account, however, our data suggests a nontrivial amount of *state* securities class action litigation took place in this time period, a finding that is consistent with other empirical studies. *See* Johnson, *supra* note 3, at 25 Fig.1 (indicating that over 250 state law securities class actions were filed in the 2002–2006 timeframe against all, not just NYSE-listed, companies).

state regulatory investigation or action.

Table 1. Item 3 Litigation Disclosures by Type

	A	B	C
	All Cos. (*n*=1977)	Cos. Disclosing Material Litigation (*n*=1420)	Cos. Disclosing Securities Litigation (*n*=538)
Any Material Litigation	72%	--	--
Securities Litigation	27%	38%	--
Class Action	20%	28%	74%
Derivative Action	13%	18%	48%
Federal Regulatory	12%	17%	45%
State Regulatory	2%	3%	8%

Table 2 shows how often companies in the dataset disclosing securities litigation disclosed multiple different forms of securities litigation over the span of the three-year period examined.[35] Well over half disclosed facing securities litigation at the hands of at least two different types of enforcers, and well over a quarter disclosed facing securities litigation at the hands of at least three. Table 2 also shows how often companies that disclosed being the target of a securities-related state regulatory investigation or action disclosed multiple different forms of securities litigation over the span of the three-year period. The rates are dramatically higher for this subgroup—nearly all disclosed facing securities litigation at the hands of multiple enforcers.

35. The forms we tracked are (1) class action, (2) derivative action, (3) federal regulatory investigation or action, and (4) state regulatory investigation or action.

Table 2. Disclosure of Multiple Forms of Securities Litigation*		
	Cos. Disclosing Securities Litigation	Cos. Disclosing a Securities-Related State Regulatory Matter
≥ 2 Forms of Securities Litigation	56% (*n*=256/457)	98% (*n*=41/42)
≥ 3 Forms of Securities Litigation	28% (*n*=126/457)	76% (*n*=32/42)
*Note: Limited to companies filing reports in all three years.		

Table 3 focuses on the 243 companies that disclosed being the target of one or more securities-related federal regulatory investigations or actions, reporting how often these companies identified various federal regulators as being involved. The SEC was the dominant federal regulator, involved 98% of the time.

Table 3. Securities-Related Federal Regulatory Matters by Enforcer	
	Cos. Disclosing a Securities-Related Federal Regulatory Matter
Targeted by SEC	97.94% (*n*=238/243)
Targeted by DOJ	30.04% (*n*=73/243)
Targeted by NASD	11.11% (*n*=27/243)
Targeted by NYSE	5.76% (*n*=14/243)

Of the 238 companies in our dataset that disclosed being the target of an SEC investigation or action, ninety-four—nearly 40%—reported that they were also targeted by at least one other public or quasi-public federal regulator, such as the DOJ or the National Association of Securities Dealers (NASD).

III. STATE ENFORCEMENT EFFORTS

Though states retain significant enforcement authority, their role in securities regulation is relatively limited today. The National Securities Markets Improvement Act of 1996 (NSMIA) broadly preempted state authority to regulate the offering of "covered securities"—which include securities traded on national exchanges—as well as the ongoing disclosure obligations of the firms issuing them.[36] In connection with NSMIA's adoption, the Joint Explanatory Statement of the Committee of Conference described dual state–federal securities regulation as "redundant, costly, and ineffective," and noted testimony that it "tends to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets."[37] Through its preemption provisions, NSMIA sought "to firmly ensconce the SEC as 'the exclusive regulator of national offerings of securities.'"[38] Two years after NSMIA's adoption, Congress enacted the Securities Litigation Uniform Standards Act of 1998 (SLUSA),[39] which precluded most state law fraud class actions involving "covered

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36. NSMIA provides that:

> no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—
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> (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—
> (A) is a covered security; or
> (B) will be a covered security upon completion of the transaction;
> (2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—
> (A) with respect to a covered security . . . , any offering document that is prepared by or on behalf of the issuer; or
> (B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o-3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or
> (3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

15 U.S.C. § 77r(a) (2006).

37. H.R. REP. NO. 104-864, at 39 (1996).

38. Jonathan R. Macey, *Wall Street in Turmoil: State-Federal Relations Post-Eliot Spitzer*, 70 BROOKLYN L. REV. 117, 125 (quoting H.R. REP. NO. 104-622, at 16 (1996)).

39. Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105-353, 112 Stat. 3227 (codified as 15 U.S.C. §§ 77p & 78bb) (2006).

securit[ies],"[40] similarly defined to include securities traded on national exchanges.[41] SLUSA was a reaction to charges that class action lawyers were filing securities fraud claims under state law as a way to avoid new restrictions on federal securities class actions created by the Private Securities Litigation Reform Act of 1995. Importantly, both NSMIA and SLUSA expressly preserved the authority of state securities commissions (or like state agencies) to bring enforcement actions with respect to fraud or deceit.[42]

It was NSMIA's fraud carve-out that allowed Eliot Spitzer to bring his high-profile enforcement actions to remedy perceived Wall Street abuses during his tenure as attorney general of New York. Spitzer utilized his preserved authority to initiate numerous actions against nationally traded companies pursuant to New York's turbocharged Martin Act.[43] For example, Spitzer pursued major brokerage houses for allegedly producing biased analyst research.[44] He also pursued

40. 15 U.S.C. §§ 77p(b) & 78bb(f)(1) (2006). SLUSA contains important carve-outs for traditional state corporate law litigation. *Id.* §§ 77p(d) & 78bb(f)(3).

41. *See id.* §§ 77p(f)(3) & 78bb(f)(5)(E).

42. *Id.* § 77r(c)(1) ("Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.") (NSMIA); *id.* § 77p(e) ("The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.") (SLUSA). Companies whose shares trade nationally are necessarily within the potential jurisdictional reach of all fifty states. *See* Michael A. Perino, *Fraud and Federalism: Preempting Private State Securities Fraud Causes of Action*, 50 STAN. L. REV. 273, 326 (1998).

43. The Martin Act grants the New York attorney general broad powers to investigate securities fraud. *See* N.Y. GEN. BUS. LAW § 352 (2012); N.Y. EXEC. LAW § 63 (2012). Prosecutions under the Act require no showing of scienter or intent to defraud, and its use of the term "fraud" and "fraudulent practices" is read to "include all deceitful practices contrary to the plain rules of common honesty." People v. Cadplaz Sponsors, Inc., 330 N.Y.S.2d 430, 432 (1972).

44. The analyst research scandal involved alleged conflicts of interest between brokerage firms' investment banking and securities research arms. Specifically, these firms were alleged to have disseminated biased research that favored their investment banking clients and helped to attract future underwriting business. Eliot Spitzer, acting as NYAG, is widely credited with bringing the scandal to the public's attention in 2002, though the SEC had been actively studying the problem of analyst conflicts of interest and appropriate regulatory responses since 1999. *See* Regulation Analyst Certification, [Rel. No. 33-8119] (proposed Aug. 2, 2002) (to be codified at 17 C.F.R. pt. 242), *available at* http://www.sec.gov/rules/proposed/33-8119.htm#. Spitzer's investigation of Merrill Lynch uncovered sensational internal emails in which analysts derided as pieces of "junk" companies whose securities they rated as a buy. Spitzer's efforts caught the attention of other regulators, and a coordinated investigation into the rest of the industry was launched, with the SEC, NASD, NYSE, NYAG, and nine other states splitting up the investigative burden. *See The Investigation: How Eliot Spitzer Humbled Wall Street*, THE NEW YORKER 54 (Apr. 7, 2003), *available at* http://www.newyorker.com/archive/2003/04/07/03

several major mutual fund advisors for allegedly permitting favored fund investors to engage in late trading and market timing, undisclosed practices that diluted the returns of longer-term investors.[45] Some lauded Spitzer's actions as promoting the goal of optimal

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0407fa_fact_cassidy?currentPage=all. In 2003, ten of the largest Wall Street brokerage firms reached a "global settlement" to resolve biased research allegations with the SEC, NASD, NYSE, National Association of State Securities Administrators (NASAA), and regulators from all fifty states. *See SEC Fact Sheet on Global Analyst Research Settlements*, SEC (Apr. 28, 2003), http://www.sec.gov/news/speech/factsheet.htm. The settlement involved an unprecedented collective payment in excess of $1.4 billion and sweeping structural reforms to prevent the firms' investment banking arms from unduly influencing analyst research. *See* Press Release, N.Y. State Office of the Attorney Gen., Sec, NY Attorney General, NASD, NASAA, NYSE and State Regulators Announce Historic Agreement To Reform Investment Practices (Dec. 20, 2002), *available at* http://www.ag.ny.gov/press-release/sec-ny-attorney-general-nasd-nasaa-nyse-and-state-regulators-announce-historic (describing the terms of the settlement). The settlement also banned the settling firms from allocating IPO shares to corporate officials in a position to influence their company's hiring of investment bankers—a practice known as "IPO Spinning." *See id.* In addition to these regulatory efforts, Spitzer's revelations also led to the filing of 313 class actions related to biased analyst research as well as 68 class actions related to the allocation of shares in IPOs. *See generally Stanford Law School Securities Class Action Clearinghouse*, STANFORD LAW SCHOOL, http://securities.stanford.edu.

45. Market timing and late trading are trading strategies that exploit the way open-end mutual fund shares are priced. *See* Janus Capital Grp., Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2300 n.1 (2011). Both practices can dilute the value of a mutual fund to the detriment of its other investors. On September 3, 2003 then-NYAG Eliot Spitzer publicly released a complaint against (and simultaneous $40 million settlement with) hedge fund Canary Capital Partners, accusing Canary of late trading certain Bank of America mutual funds in collusion with the funds' investment advisor. *See* Press Release, N.Y. State Office of the Attorney Gen., State Investigation Reveals Mutual Fund Fraud (Sept. 3, 2003), *available at* http://www.ag.ny.gov/press-release/state-investigation-reveals-mutual-fund-fraud. The Canary Complaint also accused numerous other mutual fund investment advisors of allowing favored investors to engage in market timing in violation of policies spelled out in the managed funds' prospectuses. In return for this privilege, the favored investors allegedly promised to invest so-called "sticky assets" in high-fee money market or hedge funds also managed by the investment advisor. *See* Complaint at 3–4, 12, State v. Canary Capital Partners, LLC, (N.Y. Sup. Ct. 2003), *available at* http://www.ag.ny.gov/sites/default/files/press-releases/archived/canary_complaint.pdf. Spitzer's complaint against Canary garnered significant media attention and prompted the SEC to conduct a large-scale examination of the mutual fund industry. *See* Stephen M. Cutler, SEC Director, Div. of Enforcement, Speech by SEC Staff: Remarks Before The National Regulatory Services Investment Adviser and Broker-Dealer Compliance/Risk Management Conference (Sept. 9, 2003), *available at* http://www.sec.gov/news/ speech/spch090903smc.htm. By the end of 2004, the SEC had brought twenty-nine market timing cases and ordered a total of $552 million in disgorgement and an additional $480 million in penalties. *See SEC 2004 Performance & Accountability Report*, SEC, 24 (May 2005), *available at* http://www.sec.gov/about/secpar/secpar04.pdf. Spitzer's release of the Canary Complaint also prompted a flood of private litigation—according to court records, a total of 438 cases were consolidated into market timing multi-district litigation proceedings in the District of Maryland. *MDL Statistics Report—Distribution of Pending MDL Dockets*, UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, http://www.jpml.uscourts.gov/Pending_MDL_Dockets-By-District-January-2013.pdf (last visited Feb. 19, 2013) (on file with authors).

deterrence at a time when the SEC was asleep at the switch; others criticized his actions as politically motivated and ultimately harmful to the U.S. capital markets.[46] The New York Attorney General's office continues to make controversial enforcement decisions, provoking calls for reform by industry groups.[47] For example, during his recent stint as New York Attorney General, Andrew Cuomo grabbed headlines by filing a lawsuit against Bank of America for fraud in connection with its acquisition of Merrill Lynch, notwithstanding that the SEC had already taken related action against the firm.[48] He also opened investigations into the adequacy of disclosures by investment banks that sold mortgage-backed securities, a topic that has likewise gained the attention of the SEC and DOJ.[49]

One thing the ongoing debate over the efficacy of NSMIA's fraud carve-out has been missing is a more complete picture of the role state securities regulators have played in policing public companies. While we are generally aware of New York's activity, what—if anything—have the rest of the states been doing? What type of public companies have they targeted, and for what sort of misconduct? Is there a political dimension to states' observed enforcement activity? In this Part, we report statistics generated by our data that shed light on these and other questions.

As reported in Table 4, the companies in our dataset disclosed 102 distinct securities-related state regulatory investigations or actions, by which we mean unique company–state–topic combinations.[50] This understates the true number, because companies occasionally disclosed that they were responding to subpoenas and other requests for information from "state regulators," or that they had reached a settlement with "state regulators," without specifying these regulators'

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46. *See* Eric Zitzewitz, *An Eliot Effect? Prosecutorial Discretion in Mutual Fund Settlement Negotiations* 2–3 nn.1–3 (Dartmouth Coll., Working Paper, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091035 (collecting news stories reflecting these views).

47. *See, e.g.*, Robert A. McTamaney, *New York's Martin Act: Preemption Delayed is Justice Denied*, 26 WASH. LEGAL FOUND. LEGAL BACKGROUNDER 1, 2 (Mar. 25, 2011).

48. *See* Kara Scannell & Dan Fitzpatrick, *SEC Clashes With Cuomo Over Firing In BofA Case*, WALL ST. J., Feb. 18, 2010, at C1, *available at* http://online.wsj.com/article/SB10001424052748703444804575071372283031624.html.

49. *See* John C. Coffee, *The Spitzer Legacy And The Cuomo Future*, N.Y. L.J. 1, 2 (Mar. 20, 2008); Amir Efrati, et al., *Prosecutors Widen Probes Into Subprime*, WALL ST. J., Feb. 8, 2008, at C1, *available at* http://online.wsj.com/article/SB120244312394153109.html. A joint federal–state task force has recently been created to deal with these issues. *See* Attorney General Eric Holder, Attorney General Holder Speaks at the Announcement of the Financial Fraud Enforcement Task Force's New Residential Mortgage-Backed Securities Working Group (Jan. 27, 2012), *available* at http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120127.html.

50. Several companies reported being targeted by multiple states, or by the same state with respect to different types of misconduct. *See infra* note 72.

identities. When a company made such a disclosure, and we could not identify the specific states by reviewing the company's earlier or later public filings, we counted it only once for purposes of this tally and we did not attribute the action to any particular state. Also, occasionally a company listed a variety of states that were investigating multiple different matters, some securities-related and others not.[51] When this occurred and we could not disentangle the regulators by reviewing the company's earlier or later public filings, we counted each disclosed securities-related matter once for purposes of this tally and we did not attribute the action to any particular state. As a result, we did not attribute a total of twelve securities-related state regulatory matters to any state. Therefore, a total of ninety are attributable to a particular state.

Table 4. Number of Disclosed Securities-Related State Regulatory Matters

Total	102
Attributable to Particular States	90

While slightly understated, these figures are clearly extremely small. As Table 5 shows, the average number of attributed securities-related state actions or investigations disclosed in the dataset on a per state basis is only 1.8; it drops to 1.2 if New York is excluded. And this covers a *three-year* time period.

Table 5. Disclosed Securities-Related State Regulatory Matters: Per State Average

	Mean (Standard Deviation)
Including All States	1.8 (5.0)
Excluding New York	1.2 (2.7)

51. For example, insurance companies sometimes lumped state investigations into their contingent commission arrangements together with investigations into their sale of "nontraditional" insurance products—allegedly sold to help companies cook their books. As explained *supra* in note 17, we treat the latter but not the former as "securities-related."

But as the standard deviations also reported in Table 5 suggest, there is considerable variation across states. Table 6, which breaks down in descending order of prevalence the disclosed securities-related state matters attributable to each state, makes this variation apparent. As one might predict, New York tops the list as the most active state, responsible for 34% of these matters. More surprisingly, West Virginia comes in second with 16%. Connecticut and Massachusetts also have relatively strong showings, but the remaining forty-six states show much less activity—indeed, thirty-two states were not reported to have brought *any* securities-related enforcement actions or investigations against the companies in our dataset.[52] Table 6 also reports whether the primary securities regulator in each state is appointed or elected and, if elected, whether the regulator during the time frame examined was a Republican or a Democrat.[53]

52. Of course, this does not mean that these states' securities regulators were not hard at work; the more appropriate inference is that they were directing their scarce resources to securities-related misconduct of a more local ilk. For example, states have played an important role in protecting elders from securities scams as well as in policing for fraud in the sale of unregistered securities. *See* N. AM. SEC. ADM'RS ASSOC. ENFORCEMENT SECTION, 2010 ENFORCEMENT REP. 2, *available at* http://www.nasaa.org/wp-content/uploads/2011/08/2010-Enforcement-Report.pdf (reporting that a majority of states' securities fraud cases "featured unregistered individuals selling unregistered securities").

53. If the party affiliation of the elected official with primary responsibility for enforcing a state's securities laws changed over the time period examined (2004–2006), we used the party of the enforcer that served during a majority of the time period. This was an issue with respect to only two states. In Delaware, a Republican stepped down as attorney general at the end of 2005 and was replaced with a Democrat (we thus treat Delaware as having a Republican enforcer); in Missouri, a Democrat was elected Secretary of State in November 2004 to replace a Republican (we thus treat Missouri as having a Democrat enforcer). Arizona is unique in that the regulator with primary securities enforcement authority is a popularly elected five-person commission; because all commissioners were Republican during the time period examined, we treat Arizona as having a Republican enforcer.

Table 6. Disclosed Securities-Related State Regulatory Matters by State

State	E (R/D) or A	No.	%	State	E (R/D) or A	No.	%
N.Y.	E (D)	31	34.4%	Iowa	A	0	0.0%
W.Va.	E (D)	14	15.6%	Ky.	A	0	0.0%
Conn.	E (D)	10	11.1%	La.	A	0	0.0%
Mass.	E (D)	8	8.9%	Me.	A	0	0.0%
Fla.	A	4	4.4%	Md.	E (D)	0	0.0%
Ill.	E (D)	4	4.4%	Mich.	A	0	0.0%
N.J.	A	3	3.3%	Miss.	E (D)	0	0.0%
Vt.	A	3	3.3%	Mo.	E (D)	0	0.0%
Ga.	E (D)	2	2.2%	Mont.	E (D)	0	0.0%
Minn.	A	2	2.2%	Neb.	A	0	0.0%
N.H.	A	2	2.2%	Nev.	E (R)	0	0.0%
Cal.	E (D)	1	1.1%	N.M.	A	0	0.0%
Colo.	A	1	1.1%	N.C.	E (D)	0	0.0%
Ind.	E (R)	1	1.1%	N.D.	A	0	0.0%
Kan.	A	1	1.1%	Ohio	A	0	0.0%
Okla.	A	1	1.1%	Or.	A	0	0.0%
S.C.	E (R)	1	1.1%	Pa.	A	0	0.0%
Utah	A	1	1.1%	R.I.	A	0	0.0%
Ala.	A	0	0.0%	S.D.	A	0	0.0%
Alaska	A	0	0.0%	Tenn.	A	0	0.0%
Ariz.	E (R)	0	0.0%	Tex.	A	0	0.0%
Ark.	A	0	0.0%	Va.	A	0	0.0%
Del.	E (R)	0	0.0%	Wash.	A	0	0.0%
Haw.	A	0	0.0%	Wis.	A	0	0.0%
Idaho	A	0	0.0%	Wyo.	E (R)	0	0.0%

Elected state regulators differ from appointed state regulators in a variety of ways. They are directly accountable to voters. They must run a potentially costly campaign to obtain and retain their positions, an endeavor which may require them to seek contributions from various interest groups. Elected state regulators may be more likely to aspire to higher elected office than their appointed counterparts. Do the political forces that only elected enforcers confront lead to differences in enforcement behavior? Our data suggest they might. As demonstrated in

Table 7, the percentage of matters brought against the public companies in our dataset attributable to states with an elected securities regulator far exceeds the percentage of states with an appointed securities regulator. States with elected securities regulators remain overrepresented even if we exclude New York.[54]

Table 7. Disclosed Securities Enforcement Activity by States with an Elected Securities Regulator

	All States	Excluding NY
States with Elected Official	36.0% (*n*=18/50)	34.7% (*n*=17/49)
Actions Attributable to States with Elected Official	80.0% (*n*=72/90)	69.5% (*n*=41/59)

During the time period we examined, the SEC and the Presidency were both controlled by Republicans. Did the enforcement behavior of states with an elected Democrat serving as the state securities regulator differ from the enforcement behavior of other states? Our data suggest that party affiliation may indeed have affected the enforcement behavior of elected state securities regulators. As reported in Table 8, our data indicates that states with elected Democrats serving as their primary securities regulator were much more active in policing public companies for securities-related misconduct than their representation among all states, or even among the subset of states with elected enforcers, would predict. Specifically, 24% of states had an elected Democrat serving as the state securities regulator, yet these states were responsible for 78% of the total number of state regulatory matters attributable to particular states. Whereas 66% of the subset of states with an elected securities regulator had a Democrat serving in the position during the time period examined, states with elected Democrats were responsible for 97% of the state regulatory matters attributable to states with an elected regulator. States with an elected Democrat serving as securities regulator remain overrepresented even if we exclude New York.

54. New York's uniquely powerful Martin Act may set it apart from other states. *See supra* note 43.

Table 8. Disclosed Securities Enforcement Activity by States with an Elected Democrat as Securities Regulator

	All States	All States Excluding NY	States with Elected Securities Regulators	States with Elected Securities Regulators Excluding NY
States with Elected Democrat Regulator	24.0% (*n*=12/50)	22.5% (*n*=11/49)	66% (*n*=12/18)	65% (*n*=11/17)
Actions Attributable to these States	77.8% (*n*=70/90)	66.1% (*n*=39/59)	97% (*n*=70/72)	95% (*n*=39/41)

Any relationship between the elected status of a state's securities enforcer, or his status as an elected Democrat, and the level of a state's observed enforcement activity might, of course, be attributable to random chance. It might also disappear if other state characteristics likely to impact enforcement intensity are taken into account. Such characteristics might include population, as states with larger populations internalize a larger portion of the harm caused by public companies' securities-related misconduct, and thus might invest more in deterrence. Per capita government expenditures might also influence enforcement intensity; states that spend more likely devote more resources to securities enforcement vis-à-vis all companies, including public companies. The level of a state's enforcement activity might also change with the number of public companies headquartered in the state, or the percentage of state GDP attributable to the financial sector, though it is difficult to know in which directions these particular factors will cut.[55]

55. The number of public companies headquartered in a state might bear a positive relationship to the level of a state's enforcement activity, if being home to public companies makes a state more sensitive to the cost of capital, and if greater enforcement helps reduce the cost of capital (by, for example, increasing investors' confidence in company disclosures). Similarly, the dependence of a state's economy on the financial sector might bear a positive relationship to the level of a state's enforcement activity, if greater enforcement benefits the financial sector (by, for example, increasing confidence in the markets and hence the number of financial transactions). Conversely, both factors might bear a negative relationship to enforcement activity if they increase the likelihood that a state is "captured" by managerial interests who prefer lax enforcement, or if greater enforcement is not in fact beneficial in the ways assumed above.

We ran regressions to account for these possibilities. We selected a negative binomial model because our variable of interest is over-dispersed count data, specifically the number of state actions and investigations brought by each state.[56] In our first regression, the independent variables were: (1) whether the state enforcer was elected rather than appointed;[57] (2) the log of the state population;[58] (3) state general expenditures per capita;[59] (4) the number of companies in our dataset headquartered in the state;[60] and (5) the percentage of state GDP attributable to the financial sector.[61] The results, reported in the Appendix at Table A.12, show a statistically significant relationship between the elected status of a state's enforcer and the number of enforcement actions and investigations brought by the state. No other independent variable had a statistically significant impact. The coefficients in a negative binomial regression are difficult to interpret, as they represent the difference in the logs of expected counts of the dependent variable given a change in the particular independent variable to which the coefficient attaches.[62] It is therefore useful to convert the coefficients into incident rate ratios (IRRs). In this regression, the IRR for the elected state enforcer independent variable was 4.26. This means

56. *See, e.g.*, A.C. CAMERON AND P.K. TRIVEDI, REGRESSION ANALYSIS OF COUNT DATA 70–71 (1998). This model fit better than alternatives we tried, including Poisson. The p-value for the chi-square was 0.0321 in the first regression discussed in the text and 0.0071 in the second, suggesting that in both cases the model as a whole was statistically significant.

57. *See supra* note 28; *supra* Table 6.

58. We took the 2004–2006 average of each state's population, data we obtained from the Census Bureau's website. *See* U.S. CENSUS BUREAU, http://www.census.gov/ (last visited Nov. 5, 2012).

59. We took the 2004–2006 average of each state's general expenditures, data we also obtained from the Census Bureau's website, and divided by the 2004–2006 average population. *See id.*; *see also, e.g.*, *States Ranked by Revenue and Expenditure Total Amount and Per Capita Total Amount: 2004*, U.S. CENSUS BUREAU (May 14, 2010), http://www.census.gov/govs/state/04rank.html.

60. We took the 2004–2006 average of the figures reported in Table A.4.

61. We took each state's total 2004–2006 GDP attributable to companies falling under the North American Industry Classification System's (NAICS) code for "finance and insurance" and divided by each state's total 2004–2006 annual GDP, data we obtained from the website of the U.S. Bureau of Economic Analysis. *See* BUREAU OF ECON. ANALYSIS, www.bea.gov (last visited Nov. 5, 2012). The NAICS defines the finance and insurance sector as comprising "establishments primarily engaged in financial transactions (transactions involving the creation, liquidation, or change in ownership of financial assets) and/or in facilitating financial transactions." *See 2007 NAICS Definition*, U.S. CENSUS BUREAU, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code= 52&search=2007 NAICS Search (last visited Nov. 5, 2012).

62. In a negative binomial regression, "the dependent variable is a count variable that is either over- or under-dispersed, and the model models the log of the expected count as a function of the predictor variables." *State Annotated Output Negative Binomial Regression*, UCLA ACAD. TECH. SERVS., http://www.ats.ucla.edu/stat/stata/output/stata_nbreg_output.htm (last visited Nov. 5, 2012).

that states with an elected securities regulator brought enforcement actions and investigations at a rate more than four times that of states with an appointed securities regulator, holding the other variables in the model constant.[63]

We ran a second regression to explore the relationship between partisan affiliation and enforcement behavior. In this regression we used the same variables as in the first, except we replaced the dummy variable "elected rather than appointed" with the dummy variable "elected and Democrat."[64] The results, reported in the Appendix at Table A.13, show a highly statistically significant relationship between the status of a state's securities regulator as an elected Democrat and the number of actions and investigations brought by the state. The IRR for the elected Democrat independent variable was 6.84, meaning that states with elected Democrats serving as their securities regulator brought enforcement actions and investigations at a rate nearly seven times that of other states, holding the other variables in the model constant.[65] This finding is highly statistically significant at the 0.01 level. Again, no other independent variable displayed a statistically significant relationship to the number of enforcement actions brought.[66]

Another notable characteristic of the disclosed state actions and investigations concerns the frequency with which they overlapped with other enforcement efforts. As noted in Part II, nearly 100% of the companies that disclosed being the target of a state regulatory investigation or action reported being targeted by at least one other securities enforcer over the course of the three-year period examined (as compared to 56% for all companies disclosing some form of securities

63. These results persisted when New York was excluded as an outlier, except the model overall lost statistical significance.

64. Another approach would have been to include the political affiliation of the enforcer (Democrat or Republican) and the type of enforcer (appointed or elected) and create interaction variables. But assigning a political affiliation to appointed enforcers is an uncertain task. Should an appointed enforcer's *personal* political affiliation be referenced, or rather the political affiliation of the person or entity that appointed him? The former data is not consistently available, and is likely less relevant to enforcement behavior than the political affiliation of the appointing person or entity. But if the political affiliation of the appointing person or entity were used, the political affiliation variable would not have a consistent meaning across enforcer types. We had too few observations to run a meaningful regression focused only on the subset of states with elected enforcers.

65. It is possible that state securities regulators who are elected Democrats are always more active than securities regulators who are either elected Republicans or appointed, or it may be the case that they are more active when the SEC and the Presidency are controlled by Republicans—which was the case during the 2004–2006 time frame examined. Without data on state enforcement efforts during a time period when the SEC and the Presidency were controlled by Democrats, we cannot separate out these two possibilities.

66. Again, these results persisted when New York was excluded as an outlier, except the model overall lost statistical significance.

litigation).[67] As Table T.9 demonstrates, our review of these companies' disclosures reveals that they were targeted by at least one other securities enforcer with respect to the same or related misconduct a remarkable 93% of the time. They faced overlapping enforcement by public or quasi-public federal regulators 91% of the time and by private enforcers 67% of the time.

Table 9. Disclosed Securities-Related State Regulatory Matters: Percentage Involving Overlapping Enforcement Efforts

Related Litigation by at Least One Other Enforcer	93.14%
Related Federal Regulatory Matter	91.18%
Related Private Litigation	66.67%

This degree of overlap is perhaps more understandable once the topics of the state investigations and actions are taken into consideration. As reported in Figure 1, 85% of the disclosed state investigations and actions related to just four highly publicized industry-wide scandals, each scandal at a slightly different stage of its life cycle in the time period examined: (1) the mutual fund industry scandal over market timing and late trading (46%);[68] (2) the insurance industry scandal involving the use of nontraditional insurance products to manipulate financial results (17%);[69] (3) the investment banking scandal

67. *See supra* Table 2 and accompanying text.

68. *See supra* note 45.

69. The SEC began investigating the use of so-called "nontraditional" or "finite" insurance products to manipulate financial results in early 2001. *See* Stipulated Order on Application to Enforce Administrative Subpoenas and Prevent Destruction of Documents at 1, SEC v. Greenburg, No. M-18-304 (S.D.N.Y. Apr. 7, 2005), *available at* http://www.sec.gov/litigation/complaints/comp 19176.pdf (indicating that the SEC had "issued a formal order of investigation in the Matter of Certain Loss Mitigation Unit Insurance Products" in March 2001). Finite insurance (and reinsurance) limits substantially the loss the insurer (or reinsurer) can suffer. Typically, a corporation will pay a large premium likely to cover all losses into an account held with the insurer; "[i]f the cost of losses turns out to be less than the premium, the carrier gives back the difference to the insured; if the losses turn out to be greater, the insured pays an additional premium to the insurer." David M. Katz, *Finite Insurance: Beyond the Scandals*, CFO.COM (Apr. 14, 2005), http://www3.cfo.com/article.cfm/3860547?currpage=0. Finite products thus can resemble a deposit–loan arrangement more than a true risk-shifting insurance transaction, but allow purchasers to utilize the different accounting treatment that applies to insurance. *See generally The Regulatory Implications of Finite Reinsurance* (Nov. 2005), http://www.freshfields.com/publications/pdfs/2005 /13067.pdf. In 2003, the SEC brought suit against American International Group (AIG) and Brightpoint, Inc., alleging that AIG had

over biased analyst research and IPO allocation practices (9%);[70]; and (4) the mutual fund industry scandal over certain marketing practices, such as directed brokerage (8%).[71] An additional six actions (6%)

fashioned and sold Brightpoint "a purported 'insurance' product that Brightpoint used to report false and misleading financial information to the public." *See* Press Release, SEC, SEC Charges American International Group and Others in Brightpoint Securities Fraud (Sept. 11, 2003), *available at* http://www.sec.gov/news/press/2003-111.htm. The action, which AIG and Brightpoint ultimately settled for $10 million and $450,000 in civil penalties, respectively, heightened regulatory interest in the use of finite insurance products, and led to further investigations of (and enforcement actions against) AIG by the SEC, DOJ, and NYAG, as well as a broader probe of the insurance industry by these and other regulators. *See, e.g.*, Patrick Jenkins, *Spitzer Probe Hits Finite Reinsurance*, FIN. TIMES (Aug. 12, 2005), *available at* http://www.ft.com/intl/cms/s/0/baaf6aae-0a9b-11da-aa9b-00000e2511c8.html#axzz2BTKwftrk (observing that "[d]ozens of reinsurers, primary insurers and brokers have been drawn into the investigation"); *SEC's Insurance Inquiry Includes General Re*, L.A. TIMES (Dec. 31, 2004), *available at* http://articles.latimes.com/2004/dec/31/business/fi-berkshire31 ("Regulators, including New York Attorney General Eliot Spitzer, have subpoenaed or requested information from several insurers on [finite] policies, which are being scrutinized as a possible way for companies to hide losses.").

70. *See supra* note 44.

71. An open-end mutual fund's investment advisor benefits when brokers successfully market fund shares, because the advisor's compensation is typically based on total fund assets under management—and fund assets grow as fund shares are sold. A mutual fund's investment advisor also generally controls which brokers the fund selects to effect commission-generating transactions in its underlying securities. Thus, a potential conflict of interest exists, as a fund's investment advisor may direct the fund's brokerage needs not based on what is in the best interest of the fund, but instead based on the efforts brokers have made to market the fund's shares. The investment advisor can also reward brokers for their marketing efforts in other ways that are not always transparent to fund investors or the public. *See* John P. Freeman, *The Mutual Fund Distribution Expense Mess*, 32 J. CORP. L. 739, 791–99 (2007) (discussing the use of revenue-sharing and soft-dollar arrangements). This, in turn, can incentivize brokers to push their clients to select mutual funds based not on what is in the client's best interest, but instead based on which funds have promised the broker the best reward. A complex web of SEC and NASD rules have long existed to deal with these structural conflicts, and both regulators had been reviewing their efficacy prior to the release of Spitzer's Canary Complaint in September 2003. But in the wake of the Canary Complaint, and the increased public scrutiny of the mutual fund industry it prompted, regulatory focus on the conflicts surrounding mutual fund marketing intensified. *See* Stephen Labaton, *S.E.C. Has Found Payoffs in Sales of Mutual Funds*, N. Y. TIMES, Jan. 14, 2004, at A1 (noting that the SEC had been focusing on these issues since April 2003, but the inquiries "gained urgency" in September); *see also* D. Bruce Johnsen, *The SEC's Mistaken Ban on Directed Brokerage: A Transaction Cost Analysis*, 40 ARIZ. ST. L.J. 1241, 1247–67 (2008). The SEC and NASD brought numerous enforcement actions against fund managers and brokers for failing to adequately disclose the basis upon which the funds' brokerage business was directed, *see* George Serafeim, *Directed Brokerage No More: The Effects of New Regulation in the Mutual Fund Industry*, at Table 1 (Harvard Bus. Sch. Working Papers Series, July 10, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157917 (identifying forty-three such actions, resulting in over $426 million in fines); new rules were enacted, *see Prohibition on the Use of Brokerage Commissions to Finance Distribution*, 69 Fed. Reg. 54728, 54728 (Sept. 9, 2004); state regulatory interest in the matter was piqued, *see, e.g.*, Tom Lauricella, *California Tackles Disclosure Issues at Mutual Funds*, WALL ST. J. , Sept. 16, 2004, at C1; and class actions were filed, *see, e.g.*, *Edward Jones Agrees to Settle 9 Lawsuits*,

related to one of the two mutual fund industry scandals just mentioned, but ambiguity in the disclosures made it impossible for us to determine which. The remaining 15% of the disclosed state regulatory investigations and actions involved other types of misconduct. This subset also involved a large degree of overlap with federal regulatory efforts (73%), but less than did the group of state regulatory matters overall (91%).

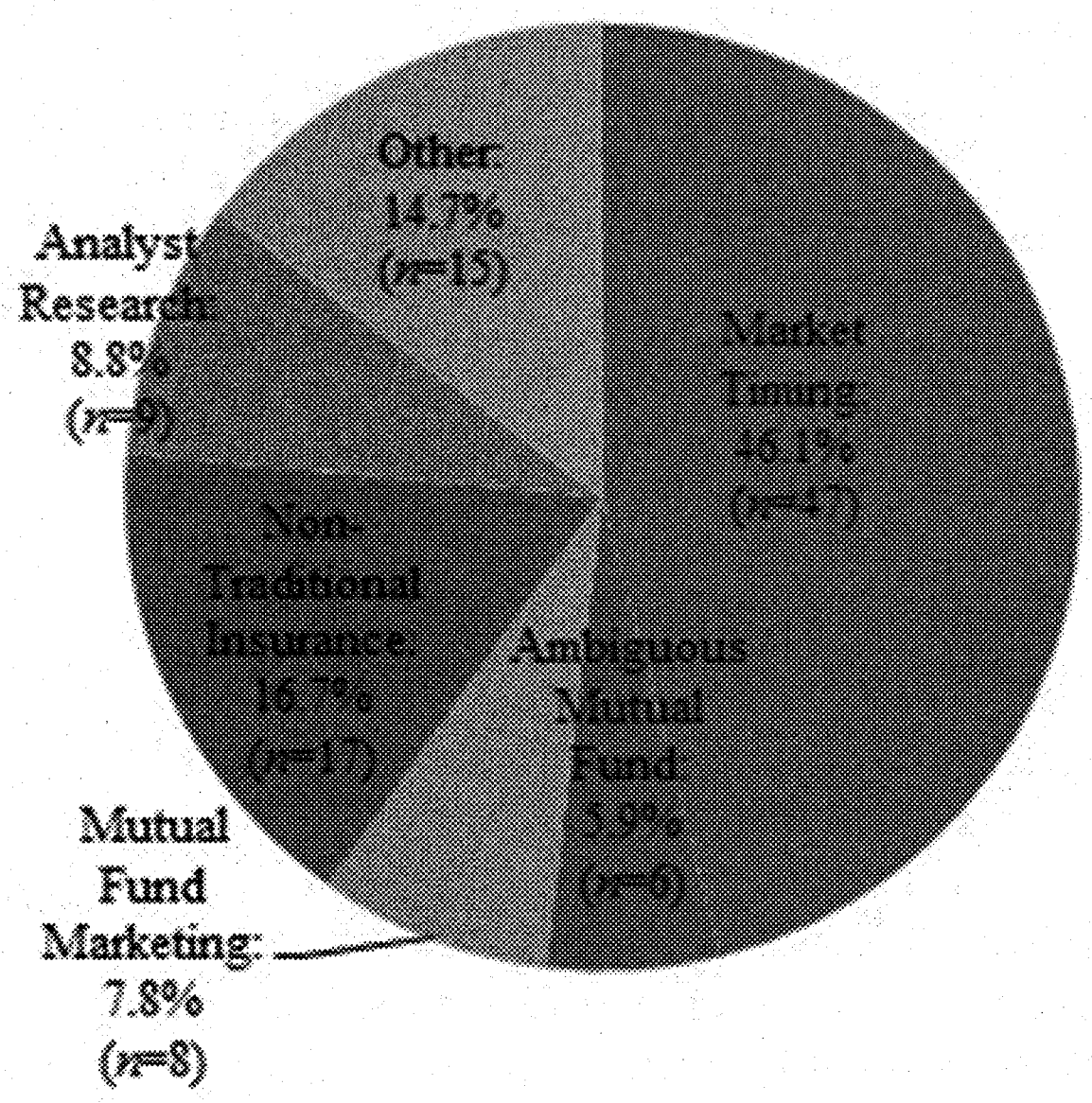

Figure 1

Which types of companies did the states target? A couple of clear trends emerge from the data. First, 93% of the targeted firms hail from the financial sector, a result that is not surprising given that the topics of most of the state regulatory matters concerned scandals that beset that sector.[72] Second, states most often targeted firms that were neither headquartered nor incorporated in their state, doing so in 68% of the disclosed matters attributable to particular states.[73]

WALL ST. J., Sept. 1, 2006, at C2.

72. When we refer to firms in the "financial sector," we are referring to firms which the SEC's Edgar database indicate have Standard Industrial Classification (SIC) codes falling under "Division H: Finance, Insurance, And Real Estate" in the Occupational Safety & Health Administration's SIC Manual. *See Division H: Finance, Insurance, And Real Estate*, OCCUPATIONAL SAFETY & HEALTH ADMIN., http://www.osha.gov/pls/imis/sic_manual.html (last visited Nov. 5, 2012). Although there are 102 distinct state regulatory matters disclosed in our dataset, these were directed at only forty-two firms. The targeted firms, and their SIC codes, are reported in the appendix at Table A.11.

73. In calculating this figure, we considered a state as targeting a company headquartered

CONCLUSIONS & EXTENSIONS

This Article substantiates the claim that U.S. public companies experience significant amounts of material litigation. In particular, they experience high levels of securities litigation—often at the hands of multiple different enforcers. Of the 1,977 public companies whose Form 10-Ks we reviewed, 72% disclosed some form of material litigation over the three-year period examined, and 27% disclosed some form of securities litigation. Well over half of the companies that disclosed securities litigation reported facing two or more different forms of securities litigation over the course of the three-year period examined, and nearly 30% reported facing three or more. Many of these companies were likely targeted by different securities law enforcers with respect to the same or related misconduct. We know, for example, that the subset of companies disclosing a securities-related state regulatory action or investigation were targeted by another securities law enforcer with respect to the same or related misconduct a remarkable 93% of the time.

These striking figures suggest it is worthwhile for policymakers to rethink the allocation of securities law enforcement authority in the United States—an allocation that currently has more to do with historical happenstance than thoughtful design choices.[74] Questions worthy of further exploration include: What value is added when multiple enforcers target public firms for the same misconduct? Do different securities enforcers vindicate different normative aspirations? When it comes to imposing sanctions on public companies for securities-related misconduct, the argument has been made that the only sensible goal is deterrence, whether the litigation takes the form of a civil regulatory action, a criminal prosecution, or a private class action lawsuit.[75] If this is the case, how does the use of multiple enforcers advance (or retard) the goal of optimal deterrence? One obvious response is that it guards against the underdeterrence that might arise should a single entity, such as the SEC, be granted an enforcement monopoly. But that answer is too facile, as it ignores the real costs that

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or incorporated within the state if the reporting company was headquartered or incorporated within the enforcing state or if the action related to a subsidiary of the reporting company that was headquartered or incorporated within the enforcing state.

74. *See, e.g.*, Rose, *Reforming Securities Litigation Reform*, *supra* note 1, at 1310–15 (discussing the historically contingent evolution of Rule 10b-5 class action enforcement).

75. *See, e.g.*, *id.* at 1312–13 (discussing the consensus view that securities fraud class actions cannot be justified on compensatory grounds). A more nuanced version of this argument is that corporate sanctions can be justified as a means of deterring *managers* whose misbehavior is best viewed as a form of agency cost; holding the corporate entity (and, ultimately, its public shareholders) liable may aid in this endeavor if doing so produces information that allows shareholders to better discipline management. *See* Amanda M. Rose & Richard Squire, *Intraportfolio Litigation*, 105 NW. U. L. REV. 1679, 1680–81 (2011).

can result from the use of multiple enforcers.[76] Further thought should be given to whether there are more efficient ways to guard against underdeterrence.[77]

This Article also sheds light on what has heretofore been an empirical lacuna: the role played by state regulators in policing public companies for securities-related misconduct. Our data reveals that, at least in the time frame examined, state regulators were significantly less active than their private and federal counterparts. Most states were not identified as having brought any enforcement actions or investigations against the public companies in our dataset. The states that were so identified tended to target out-of-state firms (68%) and to focus their efforts on scandals that beset the financial industry and also caught the attention of other securities law enforcers. In 91% of the disclosed state matters, there was an overlapping federal action or investigation, and in 67% there was overlapping private litigation. This does not reveal whether the state actions were largely redundant, or whether they mostly added value—by, for example, first exposing misconduct that would have otherwise gone undetected. Further research, including a qualitative review of the state matters disclosed in our dataset, could help shed light on the social value of NSMIA's fraud carve-out, as well as provide insights into state regulatory behavior more broadly.[78]

One thing our analysis does make clear is that, at least in the time period examined, state securities enforcement activity against public firms was more likely if the state securities enforcer served in an elected position than if he served in an appointed position, and more likely still if the enforcer was an elected Democrat. The statistically significant results of our regressions show that these sets of enforcers brought enforcement actions and investigations at roughly four and seven times the rate, respectively, of other enforcers, when controlling for other variables likely to influence enforcement intensity. This raises interesting questions worthy of further reflection. Why are these enforcers more active? What do their unique incentives tell us about the likely social value of state enforcement? The SEC was deliberately designed to be a politically insulated independent administrative agency. Might unleashing elected state regulators to supplement the SEC's efforts upset the policy goals underlying that choice? If so, is this

76. *See supra* note 1, Rose, *The Multienforcer Approach to Securities Fraud Deterrence*, at 2176 (exploring the costs of a multi-enforcer approach to securities fraud deterrence).

77. *See, e.g.*, *id.* (exploring this question); Rose, *Reforming Securities Litigation Reform*, *supra* note 1, at 1349 (suggesting ways to efficiently restructure the relationship between public and private securities fraud enforcement).

78. One of the authors has undertaken such an effort. *See* Amanda M. Rose, *State Enforcement of National Policy: A Contextual Approach (with Evidence from the Securities Realm)*, 97 MINN. L. REV. 1343.

cost outweighed by other benefits of state enforcement? Further qualitative review of the state actions disclosed in our dataset could help illuminate the answers to these important questions as well.[79]

79. *See id.*

APPENDIX

Table A.1. Percentage of Incorporations by State

1	Delaware	58.7%	26	Kansas	0.3%
2	Maryland	8.6%	27	Oklahoma	0.3%
3	New York	3.1%	28	Arizona	0.2%
4	Ohio	3.1%	29	Hawaii	0.2%
5	Pennsylvania	2.4%	30	Louisiana	0.2%
6	Texas	2.0%	31	Utah	0.2%
7	Florida	1.7%	32	Vermont	0.2%
8	Virginia	1.7%	33	Alabama	0.1%
9	Nevada	1.6%	34	Colorado	0.1%
10	Georgia	1.4%	35	Idaho	0.1%
11	Wisconsin	1.4%	36	Kentucky	0.1%
12	Massachusetts	1.2%	37	Mississippi	0.1%
13	New Jersey	1.2%	38	Nebraska	0.1%
14	Minnesota	1.1%	39	New Hampshire	0.1%
15	California	1.0%	40	New Mexico	0.1%
16	Indiana	1.0%	41	Rhode Island	0.1%
17	Michigan	1.0%	42	South Carolina	0.1%
18	North Carolina	1.0%	43	South Dakota	0.1%
19	Missouri	0.8%	44	Wyoming	0.1%
20	Washington	0.8%	45	Alaska	0.0%
21	Tennessee	0.7%	46	Arkansas	0.0%
22	Illinois	0.5%	47	Maine	0.0%
23	Oregon	0.5%	48	Montana	0.0%
24	Iowa	0.4%	49	North Dakota	0.0%
25	Connecticut	0.3%	50	West Virginia	0.0%

Note: For the method of computation, see *supra* note 30.

Table A.2. Incorporations by State: Year by Year Results

	2004		2005		2006	
States	#	%	#	%	#	%
Alabama	3	0.2%	2	0.1%	2	0.1%
Alaska	0	0.0%	0	0.0%	0	0.0%
Arizona	4	0.2%	3	0.2%	3	0.2%
Arkansas	1	0.1%	1	0.1%	0	0.0%
California	19	1.0%	18	1.0%	17	1.0%
Colorado	2	0.1%	2	0.1%	3	0.2%
Connecticut	6	0.3%	6	0.3%	6	0.3%
Delaware	1066	57.8%	1067	58.6%	1063	59.8%
Florida	35	1.9%	31	1.7%	29	1.6%
Georgia	26	1.4%	25	1.4%	23	1.3%
Hawaii	4	0.2%	4	0.2%	4	0.2%
Idaho	2	0.1%	2	0.1%	2	0.1%
Illinois	9	0.5%	9	0.5%	8	0.5%
Indiana	19	1.0%	19	1.0%	18	1.0%
Iowa	8	0.4%	8	0.4%	8	0.5%
Kansas	5	0.3%	5	0.3%	5	0.3%
Kentucky	2	0.1%	2	0.1%	1	0.1%
Louisiana	4	0.2%	3	0.2%	3	0.2%
Maine	2	0.1%	0	0.0%	0	0.0%
Maryland	161	8.7%	162	8.9%	145	8.2%
Massachusetts	24	1.3%	23	1.3%	21	1.2%
Michigan	17	0.9%	18	1.0%	17	1.0%
Minnesota	21	1.1%	21	1.2%	20	1.1%
Mississippi	2	0.1%	1	0.1%	1	0.1%
Missouri	15	0.8%	14	0.8%	15	0.8%
Montana	0	0.0%	0	0.0%	0	0.0%
Nebraska	3	0.2%	2	0.1%	2	0.1%
Nevada	29	1.6%	28	1.5%	29	1.6%
New Hampshire	1	0.1%	1	0.1%	1	0.1%
New Jersey	22	1.2%	21	1.2%	21	1.2%
New Mexico	1	0.1%	1	0.1%	1	0.1%

Table A.2. Incorporations by State: Year by Year Results (cont'd)						
	2004		2005		2006	
States	#	%	#	%	#	%
New York	59	3.2	57	3.1	55	3.1
North Carolina	18	1.0%	18	1.0%	17	1.0%
North Dakota	0	0.0%	0	0.0%	0	0.0%
Ohio	57	3.1%	57	3.1%	54	3.0%
Oklahoma	6	0.3%	6	0.3%	7	0.4%
Oregon	9	0.5%	9	0.5%	9	0.5%
Pennsylvania	44	2.4%	43	2.4%	41	2.3%
Rhode Island	1	0.1%	1	0.1%	1	0.1%
South Carolina	3	0.2%	3	0.2%	2	0.1%
South Dakota	1	0.1%	1	0.1%	2	0.1%
Tennessee	13	0.7%	13	0.7%	11	0.6%
Texas	38	2.1%	36	2.0%	35	2.0%
Utah	4	0.2%	4	0.2%	4	0.2%
Vermont	3	0.2%	3	0.2%	3	0.2%
Virginia	32	1.7%	31	1.7%	31	1.7%
Washington	14	0.8%	14	0.8%	13	0.7%
West Virginia	0	0.0%	0	0.0%	0	0.0%
Wisconsin	26	1.4%	24	1.3%	24	1.4%
Wyoming	2	0.1%	1	0.1%	1	0.1%
Note: For the method of computation, see *supra* note 30.						

Table A.3. Percentage of Headquarters by State

1	Texas	12.4%	26	Oklahoma	0.9%
2	New York	10.6%	27	Iowa	0.8%
3	California	10.0%	28	Louisiana	0.8%
4	Illinois	5.8%	29	Oregon	0.8%
5	Pennsylvania	5.3%	30	Kentucky	0.7%
6	Ohio	4.9%	31	Nebraska	0.7%
7	New Jersey	4.3%	32	Delaware	0.5%
8	Florida	3.8%	33	South Carolina	0.5%
9	Georgia	3.2%	34	Utah	0.5%
10	Connecticut	3.0%	35	Arkansas	0.4%
11	Massachusetts	2.8%	36	Hawaii	0.4%
12	Virginia	2.8%	37	Kansas	0.4%
13	Michigan	2.6%	38	Idaho	0.3%
14	Missouri	2.3%	39	Mississippi	0.3%
15	Minnesota	2.2%	40	New Hampshire	0.3%
16	North Carolina	2.1%	41	Rhode Island	0.3%
17	Tennessee	1.9%	42	Maine	0.2%
18	Colorado	1.8%	43	Vermont	0.2%
19	Indiana	1.6%	44	Montana	0.1%
20	Maryland	1.6%	45	New Mexico	0.1%
21	Wisconsin	1.5%	46	North Dakota	0.1%
22	Arizona	1.2%	47	South Dakota	0.1%
23	Washington	1.1%	48	Alaska	0.0%
24	Alabama	1.0%	49	West Virginia	0.0%
25	Nevada	1.0%	50	Wyoming	0.0%

Note: For the method of computation, see *supra* note 31.

Table A.4. Headquarters by State: Year by Year Results

	2004		2005		2006	
States	**#**	**%**	**#**	**%**	**#**	**%**
Alabama	13	0.7%	13	0.7%	11	0.6%
Alaska	0	0.0%	0	0.0%	0	0.0%
Arizona	24	1.3%	21	1.2%	21	1.2%
Arkansas	8	0.4%	7	0.4%	7	0.4%
California	195	10.6%	186	10.2%	164	9.2%
Colorado	33	1.8%	33	1.8%	31	1.7%
Connecticut	56	3.0%	54	3.0%	54	3.0%
Delaware	10	0.5%	9	0.5%	9	0.5%
Florida	73	4.0%	69	3.8%	65	3.7%
Georgia	60	3.3%	61	3.4%	55	3.1%
Hawaii	7	0.4%	7	0.4%	6	0.3%
Idaho	6	0.3%	6	0.3%	5	0.3%
Illinois	102	5.5%	107	5.9%	104	5.9%
Indiana	32	1.7%	29	1.6%	28	1.6%
Iowa	14	0.8%	14	0.8%	13	0.7%
Kansas	7	0.4%	6	0.3%	8	0.5%
Kentucky	13	0.7%	14	0.8%	12	0.7%
Louisiana	16	0.9%	16	0.9%	14	0.8%
Maine	3	0.2%	3	0.2%	3	0.2%
Maryland	27	1.5%	31	1.7%	29	1.6%
Massachusetts	56	3.0%	53	2.9%	46	2.6%
Michigan	47	2.6%	48	2.6%	48	2.7%
Minnesota	40	2.2%	41	2.3%	40	2.3%
Mississippi	7	0.4%	6	0.3%	6	0.3%
Missouri	44	2.4%	40	2.2%	39	2.2%
Montana	1	0.1%	1	0.1%	1	0.1%
Nebraska	14	0.8%	13	0.7%	11	0.6%
Nevada	19	1.0%	17	0.9%	17	1.0%
New Hampshire	7	0.4%	6	0.3%	5	0.3%
New Jersey	76	4.1%	78	4.3%	82	4.6%
New Mexico	2	0.1%	2	0.1%	2	0.1%
New York	190	10.3%	194	10.7%	195	11.0%

Table A.4. Headquarters by State: Year by Year Results (cont'd)						
	2004		2006		2006	
States	#	%	#	%	#	%
North Carolina	36	2.0%	39	2.1%	40	2.3%
North Dakota	1	0.1%	1	0.1%	1	0.1%
Ohio	90	4.9%	89	4.9%	88	5.0%
Oklahoma	16	0.9%	16	0.9%	17	1.0%
Oregon	14	0.8%	14	0.8%	13	0.7%
Pennsylvania	95	5.2%	94	5.2%	97	5.5%
Rhode Island	7	0.4%	6	0.3%	5	0.3%
South Carolina	9	0.5%	9	0.5%	8	0.5%
South Dakota	2	0.1%	2	0.1%	3	0.2%
Tennessee	34	1.9%	35	1.9%	35	2.0%
Texas	224	12.2%	219	12.0%	230	12.9%
Utah	9	0.5%	9	0.5%	9	0.5%
Vermont	4	0.2%	3	0.2%	3	0.2%
Virginia	52	2.8%	52	2.9%	51	2.9%
Washington	19	1.0%	20	1.1%	19	1.1%
West Virginia	0	0.0%	0	0.0%	1	0.1%
Wisconsin	28	1.5%	27	1.5%	27	1.5%
Wyoming	1	0.1%	0	0.0%	0	0.0%

Table A.5. Percentage of Companies Headquartered and Incorporated in a Single State		
Year	All Companies	Excluding Companies Incorporated In Delaware
2004	29.1%	67.8%
2005	28.5%	67.7%
2006	27.7%	67.6%

Table A.6. Percentage of Companies Headquartered and Incorporated in a Single State by State					
1	Ohio	9.9%	26	Connecticut	0.8%
2	New York	7.9%	27	Hawaii	0.8%
3	Texas	7.0%	28	Arizona	0.6%
4	Pennsylvania	6.9%	29	Louisiana	0.6%
5	Florida	5.6%	30	Utah	0.6%
6	Wisconsin	4.7%	31	Vermont	0.6%
7	Georgia	4.4%	32	South Carolina	0.5%
8	Virginia	4.1%	33	Nebraska	0.5%
9	Massachusetts	3.6%	34	Alabama	0.4%
10	Minnesota	3.5%	35	Idaho	0.4%
11	Michigan	3.4%	36	Kentucky	0.3%
12	California	3.2%	37	Kansas	0.3%
13	Maryland	3.2%	38	Mississippi	0.3%
14	New Jersey	3.0%	39	South Dakota	0.3%
15	Indiana	2.8%	40	New Hampshire	0.2%
16	North Carolina	2.8%	41	New Mexico	0.2%
17	Washington	2.5%	42	Rhode Island	0.2%
18	Missouri	2.3%	43	Maine	0.1%
19	Tennessee	2.2%	44	Colorado	0.1%
20	Nevada	1.9%	45	Alaska	0.0%
21	Delaware	1.7%	46	Arkansas	0.0%
22	Oregon	1.7%	47	Montana	0.0%
23	Iowa	1.6%	48	North Dakota	0.0%
24	Illinois	1.5%	49	West Virginia	0.0%
25	Oklahoma	1.0%	50	Wyoming	0.0%
Note: For the method of computation, see *supra* note 32.					

Table A.7. Companies Headquartered and Incorporated in a Single State by State: Year by Year Results

	2004		2005		2006	
States	#	%	#	%	#	%
Alabama	2	0.0%	2	0.0%	2	0.0%
Alaska	0	0.0%	0	0.0%	0	0.0%
Arizona	4	1.0%	3	1.0%	3	1.0%
Arkansas	0	0.0%	0	0.0%	0	0.0%
California	18	3.0%	17	3.0%	15	3.0%
Colorado	1	0.0%	0	0.0%	0	0.0%
Connecticut	4	1.0%	4	1.0%	4	1.0%
Delaware	9	2.0%	9	2.0%	9	2.0%
Florida	31	6.0%	28	5.0%	27	5.0%
Georgia	24	4.0%	23	4.0%	21	4.0%
Hawaii	4	1.0%	4	1.0%	4	1.0%
Idaho	2	0.0%	2	0.0%	2	0.0%
Illinois	8	1.0%	8	2.0%	7	1.0%
Indiana	15	3.0%	15	3.0%	14	3.0%
Iowa	8	1.0%	8	2.0%	8	2.0%
Kansas	2	0.0%	1	0.0%	1	0.0%
Kentucky	2	0.0%	2	0.0%	1	0.0%
Louisiana	4	1.0%	3	1.0%	3	1.0%
Maine	2	0.0%	0	0.0%	0	0.0%
Maryland	16	3.0%	19	4.0%	15	3.0%
Massachusetts	20	4.0%	19	4.0%	17	3.0%
Michigan	17	3.0%	18	3.0%	17	3.0%
Minnesota	18	3.0%	18	3.0%	18	4.0%
Mississippi	2	0.0%	1	0.0%	1	0.0%
Missouri	12	2.0%	12	2.0%	12	2.0%
Montana	0	0.0%	0	0.0%	0	0.0%
Nebraska	3	1.0%	2	0.0%	2	0.0%
Nevada	10	2.0%	9	2.0%	10	2.0%
New Hampshire	1	0.0%	1	0.0%	1	0.0%
New Jersey	16	3.0%	15	3.0%	15	3.0%
New Mexico	1	0.0%	1	0.0%	1	0.0%

Table A.7. Companies Headquartered and Incorporated in a Single State by State: Year by Year Results (cont'd)						
	2004		2005		2006	
States	#	%	#	%	#	%
New York	42	8.0%	41	8.0%	39	8.0%
North Carolina	15	3.0%	15	3.0%	14	3.0%
North Dakota	0	0.0%	0	0.0%	0	0.0%
Ohio	52	10.0%	52	10.0%	49	10.0%
Oklahoma	5	1.0%	5	1.0%	6	1.0%
Oregon	9	2.0%	9	2.0%	9	2.0%
Pennsylvania	36	7.0%	36	7.0%	34	7.0%
Rhode Island	1	0.0%	1	0.0%	1	0.0%
South Carolina	3	1.0%	3	1.0%	2	0.0%
South Dakota	1	0.0%	1	0.0%	2	0.0%
Tennessee	12	2.0%	12	2.0%	10	2.0%
Texas	38	7.0%	36	7.0%	35	7.0%
Utah	3	1.0%	3	1.0%	3	1.0%
Vermont	3	1.0%	3	1.0%	3	1.0%
Virginia	22	4.0%	21	4.0%	20	4.0%
Washington	13	2.0%	13	3.0%	12	2.0%
West Virginia	0	0.0%	0	0.0%	0	0.0%
Wisconsin	25	5.0%	24	5.0%	23	5.0%
Wyoming	0	0.0%	0	0.0%	0	0.0%

Table A.8. Percentage of Incorporations by State: Companies Incorporated Outside their Headquarters' State

Delaware	81.4%	Wisconsin	0.1%
Maryland	10.7%	Wyoming	0.1%
Nevada	1.5%	Alabama	0.0%
New York	1.3%	Alaska	0.0%
Virginia	0.8%	Arizona	0.0%
Pennsylvania	0.6%	Hawaii	0.0%
New Jersey	0.5%	Idaho	0.0%
Ohio	0.4%	Iowa	0.0%
Indiana	0.3%	Kentucky	0.0%
Kansas	0.3%	Louisiana	0.0%
Massachusetts	0.3%	Maine	0.0%
Colorado	0.2%	Michigan	0.0%
Connecticut	0.2%	Mississippi	0.0%
Florida	0.2%	Montana	0.0%
Georgia	0.2%	Nebraska	0.0%
Minnesota	0.2%	New Hampshire	0.0%
Missouri	0.2%	New Mexico	0.0%
North Carolina	0.2%	North Dakota	0.0%
Arkansas	0.1%	Oregon	0.0%
California	0.1%	Rhode Island	0.0%
Illinois	0.1%	South Carolina	0.0%
Oklahoma	0.1%	South Dakota	0.0%
Tennessee	0.1%	Texas	0.0%
Utah	0.1%	Vermont	0.0%
Washington	0.1%	West Virginia	0.0%

Note: For the method of computation, see *supra* note 33.

Table A.9. Incorporations by State of Companies Incorporated Outside their Headquarters' State: Year by Year Results

	2004		2005		2006	
States	#	%	#	%	#	%
Delaware	1057	81.1%	1058	81.4%	1054	82.0%
Maryland	145	11.1%	143	11.0%	130	10.1%
Nevada	19	1.5%	19	1.5%	19	1.5%
New York	17	1.3%	16	1.2%	16	1.2%
Virginia	10	0.8%	10	0.8%	11	0.9%
Pennsylvania	8	0.6%	7	0.5%	7	0.5%
New Jersey	6	0.5%	6	0.5%	6	0.5%
Ohio	5	0.4%	5	0.4%	5	0.4%
Indiana	4	0.3%	4	0.3%	4	0.3%
Massachusetts	4	0.3%	4	0.3%	4	0.3%
Kansas	3	0.2%	4	0.3%	4	0.3%
Florida	4	0.3%	3	0.2%	2	0.2%
North Carolina	3	0.2%	3	0.2%	3	0.2%
Minnesota	3	0.2%	3	0.2%	2	0.2%
Missouri	3	0.2%	2	0.2%	3	0.2%
Colorado	1	0.1%	2	0.2%	3	0.2%
Connecticut	2	0.2%	2	0.2%	2	0.2%
Georgia	2	0.2%	2	0.2%	2	0.2%
California	1	0.1%	1	0.1%	2	0.2%
Wyoming	2	0.2%	1	0.1%	1	0.1%
Illinois	1	0.1%	1	0.1%	1	0.1%
Oklahoma	1	0.1%	1	0.1%	1	0.1%
Tennessee	1	0.1%	1	0.1%	1	0.1%
Utah	1	0.1%	1	0.1%	1	0.1%
Washington	1	0.1%	1	0.1%	1	0.1%
Arkansas	1	0.1%	1	0.1%	0	0.0%
Wisconsin	1	0.1%	0	0.0%	1	0.1%
Alabama	1	0.1%	0	0.0%	0	0.0%
Alaska	0	0.0%	0	0.0%	0	0.0%
Arizona	0	0.0%	0	0.0%	0	0.0%
Hawaii	0	0.0%	0	0.0%	0	0.0%
Idaho	0	0.0%	0	0.0%	0	0.0%
Iowa	0	0.0%	0	0.0%	0	0.0%
Kentucky	0	0.0%	0	0.0%	0	0.0%
Louisiana	0	0.0%	0	0.0%	0	0.0%
Maine	0	0.0%	0	0.0%	0	0.0%

Table A.9. Incorporations by State of Companies Incorporated Outside their Headquarters' State: Year by Year Results (cont'd)						
	2004		2005		2006	
States	#	%	#	%	#	%
Michigan	0	0.0%	0	0.0%	0	0.0%
Mississippi	0	0.0%	0	0.0%	0	0.0%
Montana	0	0.0%	0	0.0%	0	0.0%
Nebraska	0	0.0%	0	0.0%	0	0.0%
New Hampshire	0	0.0%	0	0.0%	0	0.0%
New Mexico	0	0.0%	0	0.0%	0	0.0%
North Dakota	0	0.0%	0	0.0%	0	0.0%
Oregon	0	0.0%	0	0.0%	0	0.0%
Rhode Island	0	0.0%	0	0.0%	0	0.0%
South Carolina	0	0.0%	0	0.0%	0	0.0%
South Dakota	0	0.0%	0	0.0%	0	0.0%
Texas	0	0.0%	0	0.0%	0	0.0%
Vermont	0	0.0%	0	0.0%	0	0.0%
West Virginia	0	0.0%	0	0.0%	0	0.0%

Table A.10. Item 3 Litigation Disclosures: Year by Year Results						
	2004		2005		2006	
Litigation Type	#	%	#	%	#	%
Any Material Litigation	1169	63.4%	1180	64.8%	1139	64.1%
Securities Litigation	371	20.1%	380	20.9%	383	21.5%
• Class Action	273	14.8%	277	15.2%	274	15.4%
• Derivative Action	160	9.0%	172	9.0%	183	10.0%
• Federal Regulatory	155	8.4%	169	9.3%	171	9.6%
• State Regulatory	36	2.0%	33	1.8%	29	1.6%
Note: Our dataset included a total of 1843 Form 10-Ks from FY 2004, 1820 from FY 2005, and 1778 from FY 2006.						

Table A.11. Firms Targeted in Disclosed Securities-Related State Regulatory Matters with SIC Codes

	Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
Williams Companies, Inc.	4922—Natural Gas Transmission
The AES Corporation/IPALCO	4991—Cogeneration Services & Small Power Producers
	Division F: Wholesale Trade
Michael Stores, Inc.	5945—Retail-Hobby, Toy, & Game Shops
	Division H: Finance, Insurance, And Real Estate
	Major Group 60: Depository Institutions
Bank of America Corporation	6021—National and Commercial Banks
Citigroup Inc.	6021—National and Commercial Banks
JPMorgan Chase & Co.	6021—National and Commercial Banks
KeyCorp	6021—National and Commercial Banks
PNC Financial Services Group Inc.	6021—National and Commercial Banks
	Major Group 61: Non-depository Credit Institutions
American Express Co./Ameriprise	6199—Finance Services
The Bear Stearns Company	6189—Asset-Backed Secutities
Astoria Financial Corporation	6035—Savings Institution, Federally Chartered
	Major Group 62: Security And Commodity Brokers, Dealers, Exchanges, And Services
AllianceBernstein Holding L.P.	6282—Investment Advice
Federated Investors, Inc.	6282—Investment Advice
Franklin Resources Inc.	6282—Investment Advice
Janus Capital Group Inc.	6282—Investment Advice
Legg Mason Inc.	6282—Investment Advice
BlackRock Inc.	6211—Security Brokers, Dealers, & Flotation Companies
GAMCO Investors, Inc.	6211—Security Brokers, Dealers, & Flotation Companies
Goldman Sachs Group Inc.	6211—Security Brokers, Dealers, & Flotation Companies
Morgan Stanley	6211—Security Brokers, Dealers, & Flotation Companies

Table A.11. Firms Targeted in Disclosed Securities-Related State Regulatory Matters with SIC Codes (cont'd)	
Piper Jaffray Companies	6211—Security Brokers, Dealers, & Flotation Companies
Waddell & Reed Financial, Inc.	6211—Security Brokers, Dealers, & Flotation Companies
A.G. Edwards, Inc.	6211—Security Brokers, Dealers, & Flotation Companies
Merrill Lynch & Co., Inc.	6211—Security Brokers, Dealers, & Flotation Companies
The Charles Schwab Corporation	6211—Security Brokers, Dealers, & Flotation Companies
Credit Suisse First Boston, Inc.	6200—Security & Commodity Brokers, Dealers, Exchanges & Services
	Major Group 63: Insurance Carriers
American International Group Inc.	6331—Fire, Marine & Casualty Insurance
Berkshire Hathaway Inc.	6331—Fire, Marine & Casualty Insurance
Chubb Corporation	6331—Fire, Marine & Casualty Insurance
Travelers Companies Inc.	6331—Fire, Marine & Casualty Insurance
Bristol West Holdings, Inc.	6331—Fire, Marine & Casualty Insurance
UnitedHealth Group Inc.	6324—Hospital & Medical Service Plans
CNO Financial Group, Inc.	6321—Accident & Health Insurance
Lincoln National Corp.	6311—Life Insurance
MetLife, Inc.	6311—Life Insurance
Prudential Financial, Inc.	6311—Life Insurance
AXA Financial, Inc.	6311—Life Insurance
Nationwide Financial Servs., Inc.	6311—Life Insurance
Phoenix Companies Inc.	6311—Life Insurance
	Major Group 64: Insurance Agents, Brokers, And Service
Marsh & McLennan Cos., Inc.	6411—Insurance Agents, Brokers & Services
MBIA Inc.	6351—Surety Insurance
	Major Group 65: Real Estate
W. P. Carey & Co. LLC	6500—Real Estate

Table A.12. Negative Binomial Regression Results for State Characteristics, Including Status of Enforcer as Elected versus Appointed, on Number of Enforcement Matters Brought

Number of Observations	50			
Independent Variable	Coefficient	Std. Error	Incident Rate Ratio	Std. Error.
Elected Securities Regulator	1.4497**	0.6116	4.2617**	2.6063
No. Headquarters in State	0.0102	0.0144	1.0103	0.0146
State Population (Log)	-0.0334	0.6860	0.9672	0.6634
State Per Capita General Exp.	0.1706	0.4207	1.1860	0.4990
% State GDP – Finance Sector	0.7910	8.9752	2.2056	19.7960
Constant	-1.2441	11.5069	0.2882	3.3164
Note. * p≤0.10, ** p≤0.05, *** p≤0.01				

Table A.13. Negative Binomial Regression Results for State Characteristics, Including Status of Enforcer as Elected Democrat or Not, on Number of Enforcement Matters Brought

Number of Observations	50			
Independent Variable	Coefficient	Std. Error	Incident Rate Ratio	Std. Error
Elected Democrat Securities Regulator	1.9225***	0.6233	6.8383***	4.2626
No. Headquarters in State	0.0056	0.0122	1.0057	0.01223
State Population (Log)	0.0973	0.6097	1.1022	0.6720
State Per Capita General Exp.	0.1630	0.3703	1.1770	0.4358
% State GDP – Finance Sector	1.3607	7.4017	3.8989	28.8580
Constant	-3.1301	10.1980	0.04371	0.4458
Note: * p≤0.10, ** p≤0.05, *** p≤0.01				