

## Supplemental Enforcement Institutions-States Discussion Outline

*Note:* Possible recommendations have been narrowed to those that appeared to receive substantial support from four or more Commissioners during the deliberation meeting on May 23 2006, or on which additional discussion was sought. Indications of support for particular recommendations are based on AMC Staff's recording of discussions during and the transcripts of the deliberation meeting on May 23. No Commissioner is bound by the indications reflected in this document, and it is understood that Commissioners may change their positions from those tentatively indicated in initial deliberations.

I. <i>What role should state attorneys general play in merger enforcement?</i>
--

[1] No change is appropriate to the current roles of states and federal enforcement agencies in merger enforcement.

*[5 Commissioners tentatively favored: BB, SC, JJ, DV, JY. Not present: MD]*

[2] Recommend statutory change that allocates merger enforcement activity between the federal and state enforcement agencies.

*[6 Commissioners tentatively favored: DC, DG, DK, SL, JS, JW. Not present: MD]*

[a] Recommend that merger enforcement be exclusively conducted by federal enforcers.

*[5 Commissioners tentatively favored: DC, DG, DK, SL, JW]*

[b] Recommend division of merger review depending on the locus of harm. When the effects of a merger are national (or not limited to a single state or small group of states), states would not have the authority to investigate the merger.

*[6 Commissioners tentatively favored: DC, DG, DK, SL, JS, JW]*

[c] Recommend a federal right of first refusal on merger enforcement. No state would be permitted to investigate a merger if a federal enforcer is already doing so.

*[4 Commissioners tentatively favored: DC, DK, SL, JW]*