

**TESTIMONY OF  
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MANAGEMENT  
U.S. SECURITIES AND EXCHANGE COMMISSION  
  
CONCERNING ELDERLY INVESTMENT FRAUD  
  
BEFORE THE SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE**

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Chairman Smith, Ranking Member Kohl, and Members of the Committee:

**I. Introduction**

On behalf of the Securities and Exchange Commission, thank you for the opportunity to testify today about our efforts to protect and educate investors, including our nation's senior citizens.

One of the most important things I want to communicate to you today is that the subject of your hearing – financial fraud on the elderly – is one that our Chairman, our Commissioners, and I personally all care about deeply. We not only care about it, but we are rolling up our sleeves and doing our absolute best to protect its victims. Some of the cases we see—involving seniors bilked out of all their savings at the time of their lives when they need them most and can not recover—are heartbreaking. Financial fraud erodes the trust on which our entire financial system is premised. Scam artists end up hurting far more people than they targeted. As Chairman Cox noted just last week, this issue is daily becoming more pressing for us because the Baby Boom generation will soon start retiring. No fewer than 75 million Americans are due to turn 60 over the next 20 years, more than 10,000 every day. And these people will have a lot of assets. As Willie Sutton is famous for saying that he robbed banks “because that’s where the money is,” our older population has been and will continue to be a tempting target for securities fraudsters.

So let me tell you what the SEC is doing about this – in the enforcement arena, in our oversight operations, in our inspections, and from a consumer education perspective – keeping in mind that our efforts on behalf of the elderly will only grow in the months and years ahead.

The SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. We actively seek to detect problems in the securities markets, prevent and deter violations of the federal securities laws, and alert investors to possible wrongdoing. When violations occur, the SEC aims to take prompt action to halt the misconduct, sanction wrongdoers effectively, and, where possible, return funds to harmed investors.

While our programs aim to foster fair markets for all investors, we have seen that some securities industry professionals target identifiable groups, such as seniors, for inappropriate products or opportunities, and that fraud artists frequently prey on the elderly. We're taking a three-pronged approach to combat fraud in all its manifestations, including elderly investment fraud: enforcement, examinations, and education.

I am the Director of the SEC's Office of Investor Education and Assistance. My Office is the "front door" to the Commission for individual investors. Every year, my staff handles tens of thousands of complaints and questions from investors who contact the SEC. And nearly every day, my staff fields telephone calls and receives letters and emails from seniors or from the children and care-givers of seniors.

These calls and letters tell sad stories of seniors who succumbed to sales pitches for products that simply were not appropriate or who did not understand key features of an investment. Here are a couple of cases that illustrate the kinds of problems involving the elderly that we see every day. We heard from the grandson of a gentleman — now deceased — who had struggled for more than 6 years to reverse the purchase of a variable annuity. The agent who sold the product had emphasized features, including a roll-up provision, that the investor was not even eligible for because of his age at the time he signed the contract. Only after the investor's death was the matter resolved. While most complaints we receive are not quite so egregious, they never seem to stop. We recently helped an elderly, disabled gentleman in Florida who had been trying unsuccessfully for nearly six months to close out his deceased mother's brokerage account. Time and again, we see seniors who encounter serious difficulties in effecting what should be routine securities transactions or otherwise dealing with financial professionals. A major portion of my office's efforts is directed at helping those seniors.

My office captures key information about the complaints and questions we receive in an extensive database. While we typically do not know the ages of those who contact us, we do record the products, people, firms, and types of behavior involved. We use that information to inform other divisions at the SEC, so that the agency can better deploy its investigative and enforcement resources, and better identify the next problem down the road.

## **II. Investments and Scams Targeted at the Elderly**

In our experience, one of the two most common challenges senior investors face involves how to fend off high pressure sales pitches for legitimate, but arguably unsuitable products. These include "free lunch" seminars that encourage seniors to purchase variable annuities and other complex, manufactured products with contract

riders promising guaranteed death benefits. We have also heard anecdotes from conservative investors and seniors who've been told that they "can't lose money" investing in equity-indexed annuities or who have been led to believe that ultra-short bond funds are a low-risk alternative to money market funds or insured certificates of deposit. These assertions are simply not true. Investors can lose money buying an equity-indexed annuity, especially if the investor needs to cancel the annuity early. Ultra-short bonds can vary significantly in their risks and rewards.

The second challenge is avoiding outright scams. Fraud comes in many flavors and fraudsters can turn on a dime when it comes to tailoring their pitches to capitalize on the latest trends, from hedge fund investing to charity schemes. But most frauds are not new. Instead, they're the same old con jobs wrapped up in new packaging. The frauds targeted at seniors mirror the frauds aimed at broader audiences: "Ponzi" or pyramid schemes; "promissory notes" sold to retail investors; other questionable debt instruments that are pitched as providing guaranteed income; and classic "pump and dump" market manipulations. A Ponzi scheme is a type of illegal pyramid scheme in which money from new investors is used to pay off earlier investors until the whole scheme collapses. In a pump and dump scheme, fraudsters drive up the price of a company's stock (typically a microcap or penny stock) using false and misleading statements and then sell at a peak. Once the fraudsters quit touting the stock, the price typically plummets, leaving investors holding worthless or next to worthless securities.

### **III. Recent Enforcement Efforts Aimed at Protecting Seniors**

Over the past two years alone, the SEC's Division of Enforcement has brought at least 26 enforcement actions aimed specifically at protecting elderly investors. Many of these actions were coordinated with state authorities. In one notable case, *SEC v. D.W. Heath and Associates*, the Commission coordinated with the Riverside County District Attorney's Office to crack down on a \$144.8 million Ponzi scheme that lured elderly victims in southern California to workshops with the promise of free food. The fraudsters then bilked them out of their retirement money by purporting to sell them safe, guaranteed notes.

Earlier this month, in *SEC v. Reinhard et al.*, the Commission obtained an injunction halting another alleged Ponzi scheme, this time in Allentown, Pennsylvania. The Commission's complaint alleges that the defendants raised more than \$3.9 million from at least 50 investors in several states by claiming to sell certificates of deposit that did not exist. The complaint further alleges that the primary salesman lured investors, many of whom are elderly, with promises of above-market rates on FDIC-insured CDs purportedly issued by a non-existent entity called the "Liberty Certificate of Deposit Trust Fund;" and that the defendants distributed fictitious investment documents and account statements to attract investors and to ensure they continued to invest in the scheme.

The SEC's enforcement staff will continue to aggressively investigate and file actions against those who prey upon senior citizens. In particular, the SEC will continue

to bring emergency actions to shut down ongoing offering frauds and thereby prevent further investor harm and recover assets. These cases often involve frauds that lure prospective investors with claims of outlandish returns and purportedly risk free investments. These schemes involve investments of all types – e.g., limited partnerships or other interests in oil and gas, real estate or other ventures, promissory notes, and “fake certificates of deposit,” to name just a few.

#### **IV. Examination Initiatives**

Our examination program aims to detect fraud and other possible violations of the federal securities laws; foster compliance with these laws; and inform the Commission and its staff of compliance issues. The Commission’s Office of Compliance Inspections and Examinations (OCIE) uses risk-based techniques to focus resources on those activities that could pose the greatest compliance risk to investors and the integrity of the markets.

As our Chairman recently announced, OCIE, along with the NASD and the State of Florida, will soon be conducting a series of examinations of broker-dealers and advisers that lure seniors to attend sales seminars, sometimes at fancy hotels and restaurants, with promises of a free lunch. While these sales seminars may be perfectly fine and may provide a free meal, the fact is that sometimes they are used to pitch unsuitable products, using high pressure sales tactics. Our examiners will be conducting examinations of the firms that sponsor these seminars to see whether these sales seminars are supervised, that salespeople are not making wild claims of possible returns on investment, and that the risks inherent in any investment are disclosed to prospective investors. And, more broadly, regulators will also be sharing customer complaints in an effort to identify firms that may be using inappropriate sales tactics to sell securities to seniors.

#### **V. The SEC’s Investor Education Program**

We passionately believe in the importance of educating all Americans so that they can optimize their chances to reach their personal savings and investing goals. With nearly one-third of all U.S. investors between 50 and 64 years of age it is critical that older Americans get the facts they need to make wise financial decisions and avoid costly mistakes.

My office’s contacts with investors underscore that, in the context of a sale of a financial product, it can often be difficult for investors, especially seniors citizens, to evaluate the product’s features and real costs, to determine whether the information in sales literature or disclosure documents is accurate and complete, and to weigh the product’s risks and rewards. It can be harder still to ascertain what incentives the salesperson has in the deal and to assess whether the salesperson’s representation of the product might be clouded by his or her potential financial gain. That’s why at the SEC we spend a great deal of time creating and disseminating neutral, unbiased information directed at helping people make wise investment choices and avoid fraud.

While we cannot tell investors which products to purchase, we can and do arm them with the information they need to assess various products and investment strategies. The dominant theme of the SEC's investor education materials is “investigate *before* you invest.” We encourage individuals to ask questions and to check out the background and credentials of any salesperson or financial professional they use. In addition, we give investors resources for researching companies and tips for avoiding fraud. We do not copyright any of our materials, and we make them freely available to all, in both Spanish and English. Our goal is to empower investors, to give them the tools they need to evaluate their investment options and make informed decisions.

We know that many seniors, and many children and caregivers of seniors, use the Internet to search for information on investing. That is why we created a page on our website aimed specifically at senior citizens. This page provides links to critical information on investments that are commonly marketed to seniors — including variable annuities, equity-indexed annuities, promissory notes, and certificates of deposit. It also warns against the dangers of listening to the sales pitches of cold-callers and alerts seniors to the very real threat of affinity fraud — scams that prey upon members of identifiable groups, such as religious or ethnic communities, professional groups, or the elderly. Senior citizens who want to learn more can browse through our “Senior Care Package,” a collection on our website of our most popular brochures for seniors (which are also available in hard-copy). Illustrative examples of brochures that we publish that might be of special interest to seniors include: *Cold Calling* and *Variable Annuities: What You Should Know*.

One of the most successful educational tools that we have found in recent years has been — if you will — running our own con on gullible investors. Experience has shown us that some investors troll the Internet to identify the next “big thing,” the next sure-fire investment winner. We have discovered that these folks, some of whom turn out to be victims in the enforcement actions we bring, did not visit [www.sec.gov](http://www.sec.gov) to get the benefit of our prudent, sensible advice before investing in a get-rich-quick scheme. Knowing all of this, we go to our audience, instead of expecting them to come to us. We run a series of fake investment scams on the Internet, all designed to illustrate the warning signs of on-line investment fraud. Each scam boasts a “can't-miss” investment, offering truly unbelievable returns. If the user clicks to invest, he or she gets a message from us about the necessity of researching before investing. Our goal is to warn investors about fraud *before* they lose their money.

Our most recent foray into the world of Internet fraud is a Katrina-related “fake scam site” at [GrowthVenture.com](http://GrowthVenture.com). Like our other fake scam sites, Growth Venture purports to be a no-brainer investment. But if you click to invest, you'll get a stern warning from us, the FBI, U.S. Postal Inspection Service, and NASD. Our other fake scam sites cover initial public offerings, hedge funds, mutual funds, and online newsletters that tout emerging technology and pharmaceutical companies.

## **VI. Coordination with Other Parties**

Helping our nation's seniors is not a task that can be undertaken solely by the federal government. Efforts by multiple parties play an important role in equipping consumers with needed financial skills. Coordinated actions can efficiently reach seniors with high-quality, unbiased information. That's why the SEC works with others to leverage our efforts.

All those with authority should focus enforcement, examination, and investor education efforts in areas where seniors may be most vulnerable. On the education front, we and our colleagues at NASD recently have targeted efforts to reach seniors, including those who are being asked to attend these "free lunch" seminars. We are also reaching out to state regulators to support their Seniors Against Investment Fraud (SAIF) programs, starting first in California and Florida. Within the limits of staffing and budget constraints, we attend investor fairs and speak at gatherings, including those organized by senior groups. For example, we regularly participate in AARP's National Event & Expo, reaching thousands in a targeted forum designed specifically for seniors. Whenever possible, my staff and staff in the Commission's field offices also meet with smaller gatherings of seniors.

SEC regional and district offices will work closely with self-regulatory organizations as well as federal, state, and local criminal and civil agencies to identify possible fraudulent offerings that target seniors. As part of our examination initiative, the SEC will also coordinate with other regulators, including with self-regulatory organizations and state securities regulators, with respect to examinations of broker-dealers and advisers. Regional examination planning "summit meetings" will include sharing information with respect to firms that specialize in recommending securities or providing advice to seniors. In particular, regulators will share customer complaints and other information that may indicate that firms are targeting seniors for inappropriate sales of securities, and will conduct on-site examinations of these firms.

We welcome any suggestions from our fellow panelists today and from the Committee as to coordination ideas we might employ in the future to enhance senior protection.

## **VII. Conclusion**

In closing, I would like to thank the Committee members for recognizing the importance of the Commission's efforts in helping our nation's seniors to rest more easily with their investment decisions. I appreciate your inviting me to speak on behalf of the Commission, and I would be happy to answer any questions that you may have.