

TESTIMONY OF WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth of Massachusetts

**Before the
United States Senate,
Special Committee on Aging**

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I am William Galvin, Secretary of State and chief securities regulator of The Commonwealth of Massachusetts. I want to commend Senators Kohl and Smith for calling today's hearing to examine the complicated and evolving nature of senior investment fraud. I submit this testimony based on my experience as the head of the Massachusetts Securities Division.

Senior investment fraud, and in particular the aggressive and deceptive marketing of annuities and other financial products to senior citizens, has been an area of compelling concern in The Commonwealth of Massachusetts. Through Securities Division investigations and complaints from the public, we have become aware of a widespread pattern of purported senior specialists using sophisticated marketing tools to give senior citizens the impression that they are acting as their unbiased, knowledgeable and independent advisor when the real objective is to convince them to purchase a product the specialist offers. Often the product purchased is a high-commission annuity that is unsuitable to the senior citizen due to lengthy lock-up periods and large surrender fees.

A. Examples of Deceptive Marketing Tools Geared Towards Senior Citizens

Examples of the marketing tools we have seen in this context are as follows:

- A number of annuity salesmen are using the **Certified Senior Advisor** designation to give the impression that they have specialized expertise in senior affairs and that they are acting as the senior citizen's advisor. For example, one insurance agent and security broker-dealer representative stated in his advertising materials that he "is one of 7,000 Certified Senior Advisors (CSA) in the U.S. and therefore is well trained in many issues especially senior finances." Another agent stated that he "became a Certified Senior Advisor, and as such, he is uniquely qualified to help seniors protect their assets from nursing home costs, stock market volatility, and probate costs through proper planning and diversification." Our investigation into the Certified Senior Advisor designation indicated that it was primarily a marketing tool, and that CSAs did not receive meaningful training on financial issues involving seniors.

- A number of annuity and insurance salesmen are using the **Piece of Pie** sales model, which trains them to “eliminate other advisors from the picture” and thus facilitate the sale of annuities and other insurance products. Piece of Pie seminars specifically try to scare seniors away from the financial products they currently own while the new “advisor” gains their trust. For example, Piece of Pie’s presentation includes slides warning that banks may not be safe, that the average rate of return in the stock market is “a big lie”, that the idea that stocks protect you from inflation “is a myth” and that stock brokers will gamble “your money . . . not just their own”. It also includes slides discussing the “problem with variable annuities” and the “problem with bonds”. In addition, Piece of Pie materials bootstrap their scare tactics to other concerns that seniors might have, such as bird flu and identity theft. After the initial seminar, a salesman using the Piece of Pie model will have two or three meetings with the client, in order to gain the client’s trust, prior to pitching the annuity or other insurance product he is selling. The Piece of Pie materials and exclusive marketing territories are available only to agents who agree to sell at least \$3,000,000 of annuities and insurance annually.
- A number of annuity salesmen marketing themselves as unbiased advisors to seniors have brandished the “Seal of Trust” from the **National Ethics Bureau**, a for-profit company that allegedly certifies to the ethical caliber of a person the NEB has approved. One salesman (against whom the Massachusetts Securities Division has alleged a wide range of dishonest and unethical practices and who had previously been fired by his broker-dealer for selling unapproved products) received the NEB’s Seal of Trust, which attested to his “exemplary record of business ethics.” Another agent received the NEB Seal of Trust in 2006 despite a long record of customer complaints and personal financial distress in the 1990s, including an NASD arbitration proceeding for the churning of stocks and options, claims for damages of more than \$77,000 due to unsuitable purchases and misrepresentations of OTC stocks, Massachusetts Department of Revenue tax liens of \$30,000 against the agent personally, Chapter 11 bankruptcy of a business partnership in which the agent was a partner, and a customer complaint regarding the unauthorized trading of bonds. Our investigation has uncovered that the application for the NEB Seal of Trust is a five-to-ten minute online application with no interview or contact with a human being, and that NEB’s inquiry into the background of the recipients of its Seal of Trust is cursory and minimal.
- We have also seen the proliferation of third-party publishing companies that provide agents with pre-written books, articles and newsletters which are used to give prospective clients the impression that an agent has specialized expertise that he or she does not really have. According to the **Javelin Marketing** website, when you purchase its series of “SeniorFinance” newsletters (and insert your name and picture before sending it out to your clients) “you position yourself as a desirable specialist . . . For example, the General SeniorFinances newsletter positions you as a retirement specialist, the annuity newsletter as an annuity specialist, etc.” Seniors often assume that a book, article or newsletter provided

to them by an agent which has agent's picture and name on it was written by the agent and therefore assume that the agent has a certain level of specialized expertise.

These are just a few of the marketing tools that the Massachusetts Securities Division has seen. Often the insurance company that underwrites the annuity or other product will sponsor or subsidize the agent's acquisition of these marketing tools and credentials from the third-party vendors that provide them. This allows the insurance companies to enjoy the benefits of increased sales while preserving their ability to distance themselves from any negative association with the marketing materials.

Our investigation into many of the sponsors of the marketing materials described above proved quite difficult, because many of those sponsors are located outside of The Commonwealth of Massachusetts and were not forthcoming in their responses to our requests for information. Moreover, a number of them questioned our jurisdiction over entities not based in Massachusetts.

B. Examples of Harm to Elderly Citizens

I am truly alarmed at the level of deceptiveness and the aggressive sales tactics employed against unsuspecting seniors who are looking for someone to guide them through their financial concerns. Our office has been flooded with countless stories of harm to seniors resulting from the unscrupulous use of these questionable credentials. As one example, two weeks ago we filed an administrative complaint resulting from allegations by a terminally ill eighty-six-year-old man who did not have access to sufficient cash to properly attend to wrapping up his estate because most of his money was locked up in three annuities that were sold to him by a "Certified Senior Advisor". The victim was a World War II fighter pilot with the Distinguished Flying Cross and a retired banker. According to these allegations, the advisor sold him the first annuity two weeks after his wife died and immediately after he had undergone hip-replacement surgery. In addition to being a CSA, the salesman had received the National Ethics Bureau's "Seal of Trust", advertised himself as a "Certified Elder Planner" (another meaningless designation) and claimed to have co-authored a financial planning book, which book in reality was one that had been written by Broker's Choice of America, an annuity selling platform. (The salesman merely appended his name, photograph and biography to the book to make it appear that he had written it.) One of the high-commission annuities sold to this man (at age 84) locked his money up for 13 years and subjected it to an initial surrender fee of 15 %. The victim complained to the annuity company, Allianz, but his complaint was denied. He recently passed away without having obtained the relief he requested.

The Division also filed another recent complaint against an annuity salesman who uses the Trojan horse of a purported senior-services-oriented nonprofit organization to gain entry to senior centers that do not allow for-profit solicitations and to gain the trust of potential clients. He then uses sophisticated marketing tools (including the CSA, National Ethics Bureau, Piece of Pie and ghostwritten books and articles) geared towards

senior citizens to portray himself as an investment adviser with specialized expertise in advising senior citizens in a full range of financial matters. Attendees of his purported non-profit seminars are asked to fill out an evaluation form and may request a free consultation, which is supposedly given on behalf of the nonprofit organization. However, the consultation, in fact, is the vehicle through which the salesman advises the potential client to sell assets and purchase the particular products he sells.

As another example, under the guise of a “full financial review,” a salesman using the CSA and the “Certified Elder Planning Specialist” designations recommended and sold a seventy-one year old customer two equity-indexed annuities totaling more than \$700,000. Both equity-indexed annuities had surrender periods of fifteen years and both required a twenty-five percent surrender penalty during the first five years. The customer subsequently expressed that she expected to be required to surrender at least one of the equity-indexed annuities to meet her current income needs, and will be forced to pay surrender fees of possibly twenty-five percent, totaling amounts in excess of \$175,000. These are but some of the many examples of senior financial abuse we have been confronted with.

C. Conclusion

The Commonwealth of Massachusetts and other state regulators would welcome the opportunity to work with you to determine how to best address these issues. The Massachusetts Securities Division has initiated a series of enforcement actions (some of which are discussed above) seeking to prevent investment fraud against seniors. In addition, Massachusetts has recently adopted a regulation prohibiting broker-dealer agents and investment adviser representatives from using purported credential or professional designation that indicates or implies that a broker-dealer agent has special certification or training in advising or servicing senior investors, unless such credential or professional designation has been accredited by a reputable national accreditation organization (such as the National Commission for Certifying Agencies or the American National Standards Institute). We are hopeful that this regulation will become a nationwide model.

Thank you for the opportunity to provide this testimony today.