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ADVISING SENIORS ABOUT THEIR MONEY: WHO IS QUALIFIED—AND WHO IS NOT?

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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ADVISING SENIORS ABOUT THEIR MONEY: WHO IS QUALIFIED—AND WHO IS NOT?

WEDNESDAY, SEPTEMBER 5, 2007

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 3:05 p.m., in room SD–628, Dirksen Senate Office Building, Hon. Herb Kohl (chairman of the committee) presiding.

Present: Senators Kohl, Salazar, Casey, McCaskill, Smith, Coleman, and Vitter.

OPENING STATEMENT OF SENATOR HERB KOHL, CHAIRMAN

The CHAIRMAN. Good afternoon. We welcome you all this afternoon to today's hearing. We particularly want to thank our witnesses for taking time out of their busy schedules to be here with us.

Today, we intend to examine the nationally growing problem of poorly trained "senior investment specialists" and take the first step toward much-needed reform. Many seniors are discovering that their life savings will not see them through their Golden Years, and they are turning to investments to increase their retirement income.

With the intent of investing wisely and knowledgably, older Americans often turn to financial advisors. An investigation conducted by this Committee has found that many seniors are losing their retirement income and savings by placing their trust in so-called "advisors" who, in many cases, may not deserve that moniker.

More and more individuals are representing themselves as certified "senior" investment specialists when they often have limited or no education, no experience in extremely complicated financial matters. It is estimated that there are thousands of individuals holding themselves out as "senior" specialists. Although some may have legitimate credentials, oftentimes they do not.

We know that an attorney must go to school for 3 years and pass a State Bar Exam. A CPA must have a college degree, an additional year of study, and must also pass a national exam. Neither can offer their professional services without these credentials.

Seniors should be able to trust the people who invest their money. They should not be worried that the title after their advisor's name is oftentimes scarcely more than a marketing ploy, and that it was not earned through sufficiently rigorous financial education or financial training.

You can see from the poster that we have here today, there are many different designations, and they all sound very official. These are just a handful of those being marketed today.

You would be very surprised to know that, in order to obtain some of them, all it takes is a weekend and as many cracks at an open book, multiple-choice exam that is needed. We can't tell the difference between the more legitimate titles and those with less rigorous standards.

We can't tell. Can you? More importantly, can our seniors?

During this hearing, we will also take a look at how some of these so-called "senior advisors" and other inadequately trained sales agents are placing seniors' money in investments unsuitable for their needs. We want to make it clear at the outset that we are not taking any position on the benefits or relative value of any financial products.

However, some investment products are extremely complex and require a trained expert to explain their costs and their benefits. Unfortunately, many seniors are not receiving these clear and unbiased explanations when they receive financial advice.

To be fair and to gain as wide a perspective as possible, we have invited a number of financial and insurance-related organizations to provide their written views on these issues, and we have made those statements available.

While it is true that many financial advisors hold reputable designations, far too many do not. More importantly, having too many designations and certifications out there can only serve to confuse our seniors.

Older Americans need to know whom they can trust. To address this problem, we intend to develop legislation that will provide a uniform standard for the accreditation of senior financial advisors.

In the months to come, we will also be working with the financial and investment industries to reform the use of designations. We are pleased that increasing concern surrounding this issue has already caused a number of companies to ban or limit the use of "Senior Specialist" designations by their employees.

So once again, we thank all of our witnesses for being willing to take part in this Committee's work. With that, I would like to call upon the Members here today to make whatever opening comments they would like. We would start with the first one who arrived, David Vitter.

OPENING STATEMENT OF SENATOR DAVID VITTER

Senator VITTER. Thank you, Mr. Chairman. I want to thank you and Ranking Member Smith for calling this hearing. It is a very serious issue and, therefore, a very necessary and important hearing.

I just want to briefly say on my opening statement that I know from personal conversations and visits, I know that this is a very real problem in Louisiana, as elsewhere. In fact, given events and circumstances over the last couple of year, particularly the hurricanes, I think it may be even more challenging in Louisiana.

The hurricanes Katrina and Rita have put enormous burdens on all of our citizens, including so many seniors. It has also put enormous strains on the criminal justice system, and that has meant

less ability to look at these sorts of fraud issues and cases versus violent crime.

At the same time, the latest census data shows that Louisiana has over 370,000 households with one or more seniors in them. This problem and this challenge hasn't abated simply because all of those other challenges are there.

So it is very real problem that I have heard about directly, and I certainly look forward to the hearing, and look forward to being part of constructive solutions.

Thank you.

The CHAIRMAN. Thank you very much, Senator Vitter.

Senator McCaskill.

OPENING STATEMENT OF SENATOR CLAIRE MCCASKILL

Senator MCCASKILL. Thank you, Mr. Chairman.

This is an incredibly important topic, and I am glad that we have several panels. I want to apologize. At my pay grade, Mr. Chairman, I have to go preside, and so I have to leave the hearing at 4 and will not be here for some of the——

So I want to bring to the attention of the other Members of the Committee that might be here how important it is, I think, to talk to the certified senior advisors witness. Because, in looking at the marketing materials that this group puts out, let me read just a couple of things for—and particularly for our first witness, because I think it is relevant to his job, certainly.

Basically, one of the things said to a group of seniors that were asked to come have lunch, "Wall Street, stocks, bonds, mutual funds. Tired of losing money? Learn how to invest in the stock market without risk to your principal." "Retirees are doing this in record numbers." "How to grow in a volatile stock market without giving back your gains." "How to take advantage of an automatic strategy indicating when to buy and when to sell." Now, the interesting thing is, when you go to the marketing for CSA—and why someone should come and pay $1,195 to get this certification—they talk about marketing, and marketing, and marketing and marketing. In fact, if you look at the list of things they learn about, very few of the chapters involve any kind of financial expertise whatsoever.

I think maybe the most telling part of their marketing is they list the group of people that should buy this $1,195 course, over the Internet, to become a certified senior advisor. They say—they list all the people that can benefit from it, clergy, CPAs, doctors, nurses, pharmacists. Perhaps the one that is most telling about how low they may be willing to go, gravesite managers.

I just think that there are people taking advantage here, and I think there are things we can do without interfering in solid business practices for many financial planners that are out there. I know the certified financial planner designation is a serious and significant one. I know it is a very difficult exam. I know it involves serious study.

So I want to make sure that we don't paint too broad a brush here and indict good, hardworking people that are knowledgeable, that are trying to help seniors with—and so that is the delicate balance we have got to find, Mr. Chairman, is how can we ferret out

people who are willing to take advantage because they are trying to make more money, and those who are really trying to get educated so that they can advise seniors in the most serious and responsible way.

I am glad you are having this hearing. I hope I have an opportunity to stay for as much of it as possible. Thank you for giving me an opportunity to open with a few comments.

The CHAIRMAN. Thank you, Senator McCaskill.

Senator Coleman.

OPENING STATEMENT OF SENATOR NORM COLEMAN

Senator COLEMAN. Thank you, Mr. Chairman. I come to this hearing not just as a Senator, but as the son of a senior parent. We all care deeply about—others in my generation about their parents' well-being. These kind of issues become very personal.

I would like to note the Minnesota presence at today's hearing. Chairman Cox, who was born in my home city of St. Paul, the Minnesotas Attorney General, Lori Swanson, and Gary Bhojwani, who is the president of Golden Valley, Minnesota-based Allianz Life Insurance. So Minnesota is well represented.

Mr. Chairman, as more and more seniors seek to preserve and protect their savings for their Golden Years, they have turned increasingly to financial products such as annuities, and there is no question that these annuities can play a positive role in a senior's financial well-being. But in certain circumstances, they also serve as financial deathtraps to seniors.

We have had a lot of media interest in this issue, legal developments, which highlight some questionable, if not illegal, practices. I am troubled by what I see is, in some instances, a betrayal of trust.

We have titles. They are very fancy-sounding, but what is behind them? For a senior, what do they think that they are getting with this, which should be a trust relationship?

My State, Mr. Chairman, provides strong protection for consumers in terms of performance suitability, licensing and exam requirements, but my State has also seen its share of problems.

Just last month, the State's Department of Commerce, which regulates insurance companies, levied a $1.4 million fine, the third largest fine in history, on American Investors Life Insurance Company and two of its subsidiaries, AmerUs Life and Senior Benefit Services, for practices relating to the sale of annuities. As many as 5,000 Minnesotans were affected by the sales, according to the Department.

Just last year, the same Department imposed the largest fine ever, in the amount of $2.5 million, on Conseco Life Insurance for illegal practices relating to their sale of insurance products, including annuities.

These are troubling. I would argue that it is in the bottom-line interest of the industry to do its part to inspire trust and confidence. In the end, no one wins when consumers are hurt and trust is lost in important and worthwhile financial products.

In the end, there is a trust issue here. There are good products out there, but I think everyone is a loser. We continue to have these issues of a lack of trust and a lack of confidence.

I was struck by a comment made last month to our Star-Tribune, the Minneapolis-based Statewide paper, by the Department of Commerce Chief Examiner, Paul Hanson. He said, "There is less abuse of annuities today, but the practice still goes on."

I would say, "Mr. Chairman, that that is unacceptable." Although I am encouraged that some in the industry appear to be seeking to address the concerns and problems that have been raised by seniors and policymakers, we must do more, and I think this hearing is a reflection of that.

I thank the Chairman for holding the hearing. I look forward to hearing from the witnesses as to how further abuses can be prevented from happening again, and then what we as policymakers need to do to provide greater trust and greater confidence and greater security for our seniors in this very important area.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Coleman.

At this time we will turn to our first panel, and we are very pleased to have Chris Cox, who is Chairman of the Securities and Exchange Commission, as our individual here.

Chairman Cox has served as the SEC Chairman since August of 2005 and, before that, he was a distinguished Member of the House of Representatives for many years. So, we welcome you back to the Hill, Chairman Cox. We look forward to your testimony.

Just before you speak, we will ask the two distinguished Senators who just arrived to make some comments, if they wish, Senator Salazar and Senator Casey.

OPENING STATEMENT OF SENATOR BOB CASEY

Senator CASEY. Mr. Chairman, thank you very much, and I appreciate Senator Salazar letting me go ahead of him. I was in the door 1 minute before him, so I made it under the line.

Thank you, Mr. Chairman, for calling this hearing. It is important that we focus on this issue, for a whole variety of reasons.

We appreciate the witnesses who will be here. Chairman Cox is our first witness. Thank you for your service in the Congress, as well as now in a different position in the Federal Government.

I come from a State where we have just about—we are either second or third now in the percent of Pennsylvanians over the age of 65 compared to every other State. We have got a little more than 15.5 percent of our population over 65, 1.9 million Pennsylvanians.

We know that in Pennsylvania, the highest—or I should say the fastest-growing population are those over age 85 and up, so this is a major challenge for all of us. We all know some of the terminology that is applied to people sometimes who have very little experience, may have taken a very limited course, maybe 4 hours on the Internet, and all of a sudden they are supposed to be an expert to advise older Americans on highly complex matters.

I am going to submit my whole statement for the record. But I know that one of our witnesses will speak about Arthur Moyer, a former machinist from Pennsylvania who is now deceased, who was tragically misled by an individual who presented himself as a senior "expert," and induced Mr. Moyer into investing $500,000 in a deferred annuity that Mr. Moyer could not touch for a period of 10 years. Mr. Moyer was 79 years old at the time he received this.

To say it is misinformed is an understatement. Terribly misinformed advice. It certainly was not in the best interest of Mr. Moyer, nor would it be for any American.

Less than a year after this, Mr. Moyer died, and his family claims the stress and the impact of this incident contributed to his decline, his health decline, and his death. Yet, the financial "expert" who induced Mr. Moyer to take these actions, is still in business.

So this is serious business. This isn't just an academic hearing. It is a hearing about how unscrupulous and unethical people have an impact on people's lives. Sometimes their life physically, but certainly financially.

So with that, I am grateful to have this opportunity to learn more about this and to question our witnesses. Mr. Chairman, I thank you for calling the hearing.

[The prepared statement of Senator Casey follows:]

PREPARED STATEMENT OF SENATOR ROBERT P. CASEY

Thank you, Chairman Kohl, for holding this very important hearing. The issue we are here to discuss is extremely disturbing and one that has received too little attention. I'm grateful we have this opportunity to shed some increased light on this issue today and examine the potential solutions.

Prior to being elected to the Senate, I spent 10 years as a public servant in Pennsylvania, as Auditor General and Treasurer. During this time, I fought numerous battles for the safety and protection of our older citizens. As our population lives longer, the number of older individuals is increasing—last year, there were more than 37 million citizens age 65 and older. Pennsylvania has the third largest population of older citizens in the country—1.9 million. Nothing is more important to me on the domestic front than ensuring that our seniors do not fall prey to unscrupulous, unethical or even fraudulent practices like the type we are here today to examine.

Specifically, we are addressing the issue of so-called senior financial "experts" who may have had as little as a four-hour course on the internet to prepare them for advising seniors on highly complex financial investment decisions. Yet, with such minimal—practically non-existent—training, they wield impressive titles like "Certified Senior Advisor." They engage in practices such as "free lunches" to draw in retirees, provide them fancy written materials to further establish professional credibility and then induce seniors into what have often turned out to be unwise and even disastrous financial investments. These "Certified Senior Advisors" get hefty commissions. In return, our older citizens may lose their life savings to unwise investments that they often cannot touch for long periods of time—in some cases up to 10 or 15 years—without incurring enormous penalties.

Even those of us who are not grappling with the challenges of growing older can be mystified by the many available options for financial investments. Everywhere you look there are advertisements for financial investment assistance. For an individual seeking financial assistance with retirement and living expenses and perhaps facing limited income options, a professional with the title "Certified Senior Advisor" sounds pretty credible and reliable. Apparently that is exactly what these "experts" are hoping they will believe. According to the AARP, seniors control more than $14 trillion in assets—they are an attractive target for unscrupulous schemes.

Mr. Arthur Moyer, a former machinist from PA—now deceased—was tragically misled by an individual who presented himself as a senior "expert" and induced Mr. Moyer into investing $500,000 in a deferred annuity that Mr. Moyer then could not touch for a period of ten years. Mr. Moyer was 79 at the time he received this extremely misinformed advice. It certainly was not in his best interests. Less than a year later, Mr. Moyer died. His family claims the stress and upset from this incident contributed to his health decline and death. Yet the financial "expert" who induced Mr. Moyer is still in business.

I know seven states are releasing the results of investigations into these practices and I look forward to learning the results of these investigations and continuing such examinations in other states. The bottom line is that this kind of practice should not be happening and we need to protect our older citizens. There are legitimate financial advisors out there—who are doing their jobs and looking out for the

interests of their clients but there are far too many unqualified individuals who are not. I am glad to see that the Securities and Exchange Commission is sponsoring a Summit next week on this issue and that I look forward to other testimony concerning efforts underway in the states. I look forward to working with you all to ensure that our older citizens get the education and assistance they need to be safe from these practices in the future. Thank you.

The CHAIRMAN. Thank you, Senator Casey.

Senator Salazar.

OPENING STATEMENT OF SENATOR KEN SALAZAR

Senator SALAZAR. Thank you very much, Chairman Kohl, for holding this hearing on this very important issue. Let me just say thank you as well to the witnesses who are here today. I have a statement for the record that I will submit for the record, and I will just supplement that, Mr. Chairman, with a couple of comments.

First, during my 6-year tenure as Colorado Attorney General, one of the things that I tried to focus on was to make sure that we were doing everything we could to protect our seniors from financial exploitation. That financial exploitation comes in many dresses and many forms.

It comes in sweepstakes fraud. It comes in contractor fraud. It comes in a whole host of ways in which seniors are victimized in every single community and every single State across our Nation.

I always found it to be a frontal assault to one of the values that we ought to hold dear as Americans, and that is the value of respecting our elders. It was in that regard that I joined with AARP as Attorney General in forming a program called AARP Elder Watch, which was an effort to try to educate seniors with respect to the things that they ought to be watching out for so that their life would not end up in the kind of victimization and tragedy that we will hear recounted here today, I am sure, from witnesses.

So I would hope that one of the things, Mr. Chairman, that comes out of this Committee is that we can help our Congress, our Nation, figure out ways of honoring that value, of respecting our elders and protecting seniors from the financial exploitation that often victimizes many seniors across America.

I would venture to say that there is not a person alive who has not watched seniors in their own family be victimized, whether it is through charitable fraud, whether it is through sweepstakes fraud, or whether it is through the kind of financial exploitation and consulting practices that we will hear about more today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Salazar.

Our distinguished Ranking Member has just arrived, Senator Smith, and we would love to hear from you.

OPENING STATEMENT OF SENATOR GORDON SMITH, RANKING MEMBER

Senator SMITH. Thank you, Mr. Chairman. So appreciate your convening this hearing on this important topic.

Recently, the Wall Street Journal indicated that $12 trillion suits in U.S. investment and insurance accounts earmarked for retirement. In the next 40 years, boomers are poised to inherit $7 trillion from their parents. With that kind of money at stake, it is clearly easy to see why many would be targeting it for fraud.

Again this backdrop, states report a marked increase in the number of complaints relating to the use of professional designations that claim to provide expertise in the area of seniors' finances. Many States, including my own State of Oregon, have issued consumer alerts warning investors about financial advisors who hold themselves out as senior specialists.

That in mind, Mr. Chairman, I recently charged several of my staffers on the Aging Committee to take the exam, to see what it took to qualify themselves as specialists. One of them took the CSA exam.

She read all the material in 1 hour. She sat for a 3-hour exam and, in 1½ hours, she obtained a passing score of 82 percent. I wonder how much of a specialist she really is in that, even though I know her to be a very brilliant person. Wonder if the standard is high enough to establish her as a specialist?

Misuse of specialist designations, lack of transparency in investment transactions and the Nation's declining savings rate have created a perfect storm for financial exploitation of America's seniors.

Therefore, it is no surprise to hear that complaints are on the rise. I hope that today's witnesses can shed some light on the legitimacy and utility of specialist designations. Ultimately, I hope the message emerges that, while we must combat investment scams and other types of financial fraud and abuse, we must ensure that we do not discourage Americans from saving and investing in their future.

To the contrary, our country needs to save and invest more. So I will do my part, Mr. Chairman, to help increase the financial literacy of seniors, and I am working on all kinds of bills to that effect with Democratic colleagues on the Finance Committee, to make sure that the investment community that is out there is safe for seniors to go into so they can prepare for their retirements.

To that end, I am developing, along with Democratic colleagues on the Finance Committee, a bill that is targeted toward improving financial literacy. So I look forward to hearing from our witnesses, their recommendations for additional assistance that Congress might be able to provide, to prevent fraud among investors and to help victims recover their assets.

So thank you, Mr. Chairman, for this hearing.

The CHAIRMAN. Thank you, Senator Smith.

At this time, we do turn to Chris Cox for your testimony. We appreciate your being here.

STATEMENT OF CHRISTOPHER COX, CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, DC

Mr. COX. Thank you very much, Chairman Kohl, Ranking Member Smith, and Members of the Committee. I am pleased to be here today to discuss the important work that the SEC is doing to protect our Nation's senior citizens.

Financial fraud against the elderly is a topic that I, my fellow SEC Commissioners, and every professional staff member at the SEC care deeply about. That is why, since I became Chairman, I have made protecting senior citizens and their investments one of our top priorities at the Commission.

Some Census numbers that were released earlier this year will add to what you have already elucidated in your opening statements about the magnitude of this issue. In 2006 there were over 37 million Americans age 65 and older. That accounts for 12 percent of the population. That is as if the entire State of California, every man, woman and child, were over 65 in the largest State, most populous State, in our country.

In addition, longevity is increasingly the norm in our country. In the 21st century, Americans are going to be living increasingly longer, significantly longer than their parents, and significantly longer than most of them planned for when they were planning their retirements.

It is estimated that Americans 65 and older currently hold over $15 trillion in assets. That already is an all-time record. Yet nearly a third of that group say that they don't have enough money even to meet their basic living needs.

Those who do have sufficient funds to invest may be tempted to take greater risks with their investments because they have to achieve higher returns in order to make their savings stretch out and last over a longer period than they or anyone else expected. That makes them prime targets for scam artists and securities swindlers, and that is why the SEC is so deeply interested in this.

It is a tragic fact that investment fraud hurts older Americans more than any other group because, when a senior citizen loses his or her life savings, they lose everything for good. They simply don't have enough years left to make it back, to earn once again that nest egg for a safe and secure retirement.

Taking care of my own parent's finances, I have grappled with these issues very directly. Before my mother died a few years ago, she was pestered by a seemingly endless barrage of annuity schemes and mortgage offers.

Despite the fact that she was suffering from throat cancer and could barely speak, she received repeated, unsolicited telephone pitches, over the phone and even in person. Even though my father was suffering from Alzheimer's disease, the brokers hit on him, as well.

The products that these brokers were pushing weren't just unsuitable, but affirmatively harmful to anyone in my parents' circumstances. Both during my time in Congress and since I have become Chairman of the SEC, I have heard hundreds of similar stories from constituents and from colleagues.

It is heartbreaking to see a loved one ripped off by underhanded tactics that may comply with the letter, but certainly not the spirit,

of the law. That is why at the Securities and Exchange Commission we are always doing our best to protect all investors as if they were our own parent or relative.

Since I have become Chairman, we have been attacking the problem from all angles, from investor education to targeted examinations to aggressive enforcement efforts. We have partnered with other organizations, many of whom you have invited here as your witnesses today, such as the AARP, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, as well as regulators in the 50 States on seniors-related initiatives.

Working with all of these partners, the SEC held our first-ever Seniors Summit last summer in 2006 to coordinate our Nation's efforts to protect older Americans from investment fraud and abuses. At the 2007 Seniors Summit, which will be held next week on September 10, we will gather together even more of the Nation's resources to protect seniors.

One important part of that event, which by the way is open to the public, will be a "Lunch and Learn" program focused on how to combat investment fraud by understanding the persuasion tactics most often used by fraudsters to prey upon senior investors. We will kick off this year's event with a presentation on the findings of the SEC's examination of "free lunch" sales seminars aimed a seniors. This has been a joint effort among the SEC and State law enforcement.

We will also discuss the best ways to educate seniors about the latest investments pitfalls, and we will hear about recent SEC and State enforcement efforts that are going after fraud on seniors.

At the SEC, we are also arming senior investors with information that they can use to identify and avoid potentially fraudulent schemes. We are giving them tools to deal with aggressive sales tactics and to assess the financial products that are being offered to them.

These efforts, I should point out, aren't just aimed at seniors. They are also intended to reach caregivers, including children, grandchildren, and trusted loved ones. They are designed for younger workers who are just now beginning to plan for their retirement strategies and getting ready to deal with contingencies later in life.

In the last year we have placed significant emphasis on investor education initiatives directed toward older Americans. We have partnered with other regulators and with consumer organizations, including AARP, to sponsor over 40 events to educate seniors across the United States. So far, over 50,000 senior citizens have attended these events.

We have also devoted a significant portion of the SEC's website to the unique issues facing senior investors. Since not all seniors are Web-savvy, or perhaps they once were but now they can no longer read the fine print on computer screens, we have also packaged all of our online seniors materials into a single hard copy senior's guide with large, easy-to-read fonts that we will make available to anyone by mail upon request.

Last year as part of our new initiative to help protect senior investors, our Office of Compliance Inspections and Examinations

joined together with State securities regulators, as well as with the NASD and the New York Stock Exchange, in a coordinated series of examinations of financial firms that sponsor free lunch sales seminars, often at local restaurants and hotels. The final and complete results of these exams will be released at the second Senior Summit next week.

But even at this point it is clear that we were right to identify these free lunch seminars as posing special risks to senior investors. Our examinations have found that, despite being advertised as educational, or touting the claim that nothing will be sold, the purpose of these seminars is usually to convince anyone who shows up to open new accounts with the sponsoring firm and, ultimately, to sell them financial products.

Over the past 2 years alone, the SEC's Division of Enforcement has brought over 40 enforcement actions involving fraud against seniors. A good example of these kinds of cases to protect seniors is SEC against D.W. Heath & Associates, where the SEC worked with the Riverside County District Attorney's office to crack down on a $145 million Ponzi scheme that lured elderly victims in Southern California to workshops with the promise of free food. After providing them with a nice meal, they then proved the truth of the old adage that there is, in fact, no such thing as a free lunch by bilking these older investors out of their retirement money in exchange for what they said were safe and guaranteed notes.

In just the past 2 months, we have brought three significant enforcement actions targeting seniors, two of which were emergency actions, to halt ongoing activities. The first of these was in July, when we filed the emergency action against AmeriFirst and their principals.

Our complaint alleged that AmeriFirst sales agents lured elderly investors and others saving for their retirement with advertisements for relatively high-yielding FDIC-insured Certificates of Deposit. Then, using the tried-and-true bait-and-switch, they convinced the investors to purchase instead so-called Secured Debt Obligations, or SDOs.

Fortunately the SEC was able to get preliminary injunctions and asset freezes. But, as in too many cases like this, much of the money was spent before we got there.

In another case this July, SEC against Earthly Mineral Solutions, we sued two Nevada companies and their officers for allegedly convincing a number of senior investors, some who were saving for their retirements, others who were seniors, to liquidate their personal IRAs and invest in what the company said were completely safe mining interests.

A few weeks ago, in SEC against Secure Investment Services, we took emergency action to shut down an alleged $25 million father-daughter Ponzi scheme that targeted hundreds of senior and other investors nationwide. The father-daughter team in this case pocketed over $700,000 of the investor's money for their own personal use.

Each of these cases is different, of course, but they all have in common that the victims are older Americans whose few remaining years don't allow them enough time to ever recover from securities fraud. What we are increasingly finding through our examination

sweeps of investment advisors and brokers who market their wares to seniors is that the fraud artists and swindlers among them who prey on older investors often have the same MO.

They call themselves "Senior Experts" in order to gain the victim's trust. They use fancy designations, such as "Certified Senior Investment Planner," or "Registered Senior Investment Advisor" to give the impression that they have older investors' best interests at heart. But all too often these are just clever marketing ploys to bait the hook so that they can reel in another sucker. They sound like genuine designations that require months or years of study and rigorous examinations. But in reality, they may be issued by some fly by-night operator on the Internet, or they might be the pure invention of the broker or the investment advisor.

Mr. Chairman, I have long believed that there is a special place in Hell for those who would swindle older Americans out of their life savings. That is why I am so pleased that this Committee has focused on this issue of senior professional designations. It is why the SEC is working hard to forge a national solution to this urgent problem.

At our Seniors Summit next week, we will tackle this problem with our fellow regulators from the States, some of whom you will hear from on your next panel. This is an issue you are very properly highlighting in this hearing, and I commend you for doing so. We need to do everything that we can to ensure that seniors are well informed about the experience, the background and the expertise of those who are advising them about their investments.

Mr. Chairman, these are important issues that will only become more important in the years ahead. We are facing now the biggest demographic wave in our Nation's history; some 76 million Americans will soon retire. We can be sure that the fraud artists, following the Willie Sutton Principle, will go where the money is.

Men and women who have worked all their lives, saved for their retirement, just as they should have, and now need to rely on trustworthy investment advisors and brokers to help them manage their savings through their retirement years, deserve better than that. It is up to all of us to work to see to it that their life savings are protected.

So thank you again for the national attention that you are bringing to this issue, and for the opportunity that you have given me to testify today.

I would be happy to take your questions.

The CHAIRMAN. Thank you very much, Chairman Cox.

In your testimony, you state that you are looking into whether the SEC State regulators and/or Congress should be doing more to address the growing problems associated with "Senior Professional Designations," the multiplicity of them and, in many cases, the inadequacy of what it is that they know and what they are trying to do.

Can you tell us a little bit more about some of the potential solutions that you may well be considering?

Mr. COX. Yes. Thank you, Mr. Chairman.

Just as you and this Committee are concerned about this issue, so are State legislatures, the securities regulators in the States, and the Securities & Exchange Commission.

What we have is a cacophony. There is a lot of alphabet soup, and it is very confusing. You don't have to be long in the tooth, and perhaps have a difficult time reading the fine print or perhaps be a little forgetful, to run into problems trying to understand what you are dealing with here.

It is just plain confusing to anybody, and so it cries out for something a little bit more consumer-friendly. This is true for consumers of any age.

Part of the problem is that there are so many different organizations, even legitimate organizations, issuing legitimate designations.

So one question that I think we should all ask ourselves is, "Is this a case where there is need for uniformity?" Is this a case where a national approach and a Federal solution might contribute something? Is this a case, if not that, where some model form of regulation would make sense?

I think you will hear shortly from the president of the North American Securities Administrators Association, Joe Borg, that that is in the works.

At our Seniors Summit next week, we are going to focus our attention on this issue. We will bring the SEC, the State regulators and others together in a meeting to try and hammer out some more solutions to this. We have talked about it before in the past, and I think, working with you and the Congress, we should be able to make short work of this.

The CHAIRMAN. Thank you very much.

Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Chris, good to see you again. Thank you for being here, and the job that you are doing at the SEC.

Chris, like the Chairman, I wonder if we are doing enough to increase financial literacy as people retire. I was struck recently by something I read that showed that the basic understanding of financial literacy was about 1 percent.

One percent of investors understand basic investing principles. The survey said an astounding 43 percent would take the bait of "you can't lose" investment scams. Sixty-six percent would meet with a financial advisor without checking his or her credentials. Only 33 percent who have used a financial planner have actually checked the planner's background. Forty seven percent of investors do not have a financial planner to determine how much to save and invest for retirement.

I wonder if you have any additional ideas you would like us to turn into legislation for how we can increase financial literacy among seniors. I do have a bill that would require the Social Security Administration to provide for someone, when they become eligible to Social Security, a handbook, a pamphlet, the basic financial terms so that they can be better informed.

I hope I am not just adding to all the mail that they get in their mailbox. But I wonder if there is some way we can break through this because, otherwise, this problem the Committee's addressing today is just simply going to grow.

Mr. COX. Well, you are very right to focus on this issue. At the Securities and Exchange Commission, because we understand that

investor education is such an important part of success in this area, we have recently announced a significant expansion of our Office of Investor Education and Advocacy.

We have created within that office a dedicated director for the Office of Investor Education, and we are going to give that director more resources to focus directly on this effort.

As I mentioned during my formal testimony, we participate in a great number of activities across the country. Just in the senior area, we have had over 50,000 attendees at the events that we are sponsoring or participating in, and we are going to continue to do that. But it is a big country, and trying to reach 300 million people with a consistent message and trying to get people to pay attention when they are very busy and, ironically, trying to earn a living—where they will earn the money that we are hoping that they will wisely save——

Senator SMITH. The Seniors Conference you are doing, is that in Washington?

Mr. COX. Yes, it is here.

Senator SMITH. Do you take those around the country?

Mr. COX. Yes. This is meant to draw a lot of attention, and also put together a lot of expertise so we can truly forge a solution here.

Senator SMITH. Who is invited to it?

Mr. COX. First of all, all of us who are responsible for securities regulation at the Federal and the State levels. Second, private sector nonprofit organizations and for-profit organizations, and the public who are concerned and interested.

Senator SMITH. You heard my description of my staffer who I had take this test to certify as a specialist. She would tell you, if she were here, that she is not a specialist, but read the materials provided. She did it in an hour and she took the exam in half the time that was allocated, and got a B on the test.

What do you think of that? Do we need to strengthen that standard for what is required to become a specialist?

Mr. COX. Absolutely. Seventy years ago, the Congress decided that uniform national regulation of our securities markets was an important national objective.

Now, I think we have long since gotten over the question of whether or not there is a role here for the Federal Government. There is. It is very, very important in this case for there to be some consistency, uniformity and, ultimately, a standard against which you can enforce.

We have very broad authority at the SEC already to bring fraud charges, and I outlined just some of the cases. We brought another case involving seniors just this morning, and a big one. We are going to continue to do that.

What you just described might not quite make it to the point where we could say that is garden-variety securities fraud, but it makes you uncomfortable. So one of the things that we might do is tighten up in this area so there is a bright line that you can enforce against.

Senator SMITH. Is that something you can do without an act of Congress?

Mr. COX. I don't know. One of the things that we are going to be focused on at the Seniors Summit is whether an act of Congress

is something that we should be seeking. But we hope to have an answer for you on that very soon.

Senator SMITH. I would appreciate learning what you find out.

Mr. Chairman, maybe we can pursue it. Thank you.

The CHAIRMAN. Very good. Thank you very much, Senator Smith.

Senator McCaskill.

Senator MCCASKILL. I notice in the testimony of the individual who is going to testify after I leave, from the Society of Certified Senior Advisors, that he represents in this that, in fact, your representatives have gone through their training, and represents that the training is adequate.

The other interesting thing he represents in here, that "The Society of Certified Senior Advisors is not a company that qualifies or certifies anyone as a specialist in senior investments." Now, then you go down the page, and it references over and over again "Certified Seniors Advisors" after he has said within the same document that they are not certifying anyone on financial investment. So you think, "Well, what are they certified in" if they are saying it is not financial investments?

Now, the interesting part is you get down the same page, and it says, "Finally, beginning January 1, 2008, any Certified Senior Advisor who is not currently using disclosure" that he references, that they don't certify anyone, "Is going to be required to provide the disclosure prior to the completion of a transaction."

So clearly embodied in this is the idea that there are transactions going on, and most of the transactions that are even tangentially touched upon in the book they have are financial. So it is a bunch of double-speak, and I think that we are going to have to be much more aggressive than we have been, and I know a lot of States have. I know in our State, just a month ago or so, there was a cease-and-desist order against someone using this designation, inappropriately marketing insurance products, telling people to switch investments.

I just want—do you feel comfortable pushing the SEC to go further in going after these designations that they admit don't certify anything in terms of financial advice, but yet they want them to disclose that prior to the completion of a transaction?

Mr. COX. Absolutely. That is why we are so happy to be here today as part of this hearing that you are putting together, and it is why we are so happy to be here as part of a group of people you have called together who, coincidentally, are many of the same people that will be working together at the Seniors Summit next week.

This is an issue that the SEC and the State regulators have been focused on for some time. Now, there has been some good work that has been done in this area. Some States have been enacting reforms, but I think it is time that we take a look at this from a national perspective.

Senator MCCASKILL. The other thing I might talk about just for a minute before I go is the education of seniors. In this testimony and some of the other testimony this morning, and even in your testimony, there is talk about the websites.

Well, I think—I know that I have finally gotten my mother to the point that she will play bridge and e-mail, and she is probably

going to be furious that I said that out loud. But she is e-mailing, and now she is beginning to use Google a little bit.

But this was a push, and it took a lot. I think most seniors that are going to be victimized by this, they are not the seniors that are on the Web. Do you have any suggestions as to ways we could use the Social Security Administration or other senior organizations, or administration officials that touch seniors on a daily basis?

Maybe it is through the Medicare program. Maybe it is through Social Security, but some way that we can at least put a warning out, a simple warning, "Beware of Designations. Do not rely on designations unless your Secretary of State's office in your State indicates to you that it is a valid certification in terms of financial advice."

Mr. COX. Well, first I think you are very right to be sensitive to the notion that not all seniors, and indeed not all people of any age, have facility with the Internet. That is obviously changing. We can imagine where people that are 8, 9, and 10 years old today will be when they are 75. They will probably be quite proficient.

Senator MCCASKILL. Our kids will be great.

Mr. COX. They will be behind in some other technologies, however, that will have overtaken what we have today.

It might well be, as I mentioned earlier, that someone formerly proficient with computers, for whatever reason can't do it anymore, and so we have to make sure that we are reaching people in any number of ways, including the old-fashioned way, in writing.

But, also, we want to make sure that we recognize the opportunity that we have with older Americans to touch the caregiver, the person that they trust, that they talk to about their investments. Sometimes that is a child. Sometimes that is another relative. Sometimes it is a trusted friend of the family.

Sometimes, in addition, we find that those very people are the source of fraud against seniors. All too often, the child is the one ripping off the parent. I wish I weren't here as Chairman of the SEC to highlight that now well-known fact, but that is also something we have to work around.

So no single way of doing this is ever going to be right, and creative solutions such as the one that you have suggested are things we have to be open to.

Senator MCCASKILL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCaskill.

Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman.

First of all, thank you, Chris, for all of your leadership on this and other issues. I have enormous confidence in it based on your service in the House, among other things.

This poster obviously gets to pretty much the central question of this discussion. We have been dancing around it a little bit. What are your thoughts about what the best solution is? Specifically, let us start with the obvious question. Do we need one or more titles and sets of criteria embodied in Federal law?

Mr. COX. That is the right question to ask, or one of the right questions to ask. Even though that is the topic of this hearing, even though the SEC and our staff have been working on this for a long time, as have the men and women from the State law en-

forcement and securities regulatory agencies who are here with us today, I don't know that the answer to that question is definitively yes or no. But I am absolutely certain that there is a role for the Federal Government here.

I am very encouraged by the fact that there is model regulation being considered and developed. In fact I am encouraged by the general notion that that is possible. There are, after all, a number of private organizations that legitimately issue these designations, and there is an awful lot of complexity in the financial markets.

Being an expert in one product may be worth the designation, and we don't want to step on that necessarily by saying there is going to be one size that fits all, and thus underserve consumers.

But we will be very particular and careful about it. I think what you should ask of us is that, without wasting too much more time—not that we have wasted any at all, but with alacrity—that we come back to you with a sturdy recommendation and an answer to that very question.

Senator VITTER. OK. As sort of a preview to that process, what would some of the obvious alternatives be? One is what I just said. I mean, one obvious alternative is one or more Federal—one or more titles and sets of criteria embodied in Federal law.

Short of that, I guess there could be model State legislation, model regulation short of legislation. What is the sort of menu of options that we are likely to consider?

Mr. COX. Well, a very standard Federal approach is to recognize some, one or more reliable, trusted arbiters who could be State regulators, private organizations, self-regulatory organizations, who keep abreast of this constantly, and to say that this is the source of reliability and truth and accuracy in this area. For this purpose, that will satisfy SEC requirements.

Another approach would be to be even more free-form about it and let not only States but private organizations develop, as they will, these designations, but require some basic methodology for accrediting a certification so that you could be certified in something we can't even imagine right now. But, if you are so certified, you would have gone through a rigorous training program that must include this much time in and so on, to deal with Senator Smith's concern that this is 5 minutes and you are finished.

Senator VITTER. OK, and another inquiry, in terms of your enforcement actions.

We could quadruple your budget, and obviously the SEC would still only be able to touch a relatively small percentage of the bad actors out there. So in that context, seems to me important that the penalties are very meaningful, not cost of doing business. do you think the penalties available to you are adequate now in that context?

Mr. COX. Yes. Since Congress passed the Remedies Act, the SEC has had abundant authority in this area. Particularly when it comes to making the people who are responsible for the wrongdoing and the fraud pay and pay dearly, the law gives SEC law enforcement that authority.

Senator VITTER. Right.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Vitter.

Senator Casey.

Senator CASEY. Thank you, Mr. Chairman.

I wanted to pick up on the enforcement questions. In particular, Chairman Cox, in your testimony you talk about 40 enforcement actions involving fraud on seniors in the last 2 years. Is that correct?

Mr. COX. Yes, over that. Over 40.

Senator CASEY. You are satisfied with the regulatory or legal authority you have? You think it is ample enough, the authority itself?

Mr. COX. Well, that is a broad question, and we actually do seek additional authorities in a variety of areas, and ask our authorizing committees in the House and Senate for it annually. So I don't want to suggest that there aren't improvements possible. But, with respect to going after fraud in this space, absolutely. We have abundant authority to go after garden-variety fraud.

Senator CASEY. I realize a lot of this is you have got to work with, is—as I think is constructive to work with State regulators, State securities commissions and others, other State officials and offices.

I want to understand better. When you say we filed an emergency action, can you tell us what that means and how it plays out in the—sometimes we know when a civil suit is filed in our system of justice, even criminal matters can take an awful long time. But I just want to get a sense from you what the process is, once you institute an emergency action, how that plays out.

Mr. COX. Well, we will rush into court and ask for a TRO, an asset freeze. We want to make sure, that once we realize that people are bleeding off the money that they said was going to go for one purpose and in fact it is not, it is going to pay for their yacht or going to other investors in a Ponzi scheme. We want to stop the bleeding and preserve as much of the investors' original money as we possibly can. Courts are generally sympathetic to the Federal Government coming in and asking for that kind of relief.

Senator CASEY. So you get injunctive relief initially?

Mr. COX. Exactly.

Senator CASEY. When you reach the point where you have been able to prosecute or pursue an action against a particular entity or individual, to the point where there is a judgment or to the point where it is resolved, what kind of penalties are we talking about, just to give everyone here a sense of what penalties can be leveled?

I guess the follow-up to that is do you think the penalties that you have available to you, or the sanctions, are adequate to deal with this particular problem?

Mr. COX. Yes to the second question. The sanctions that we seek, and normally are successful in obtaining, include civil money penalties. They include what we call disgorgement, which is paying back any ill-gotten gains.

Penalties are separate and on top of that. They include what we informally refer to as "time-outs," suspensions from practice before the Commission, which means your professional opportunity to be a lawyer or an accountant or an investment advisor, what have you.

In addition to suspensions, we can simply bar people. We can give them lifetime bars. We can make sure that they never serve on the Board of Directors of a public company or as an officer. So we have a variety of sanctions that go directly to the person and, in totality on the civil side, I think they are abundantly adequate.

We also very frequently partner with criminal authorities—in the Federal Government, the Department of Justice, the U.S. Attorneys, and also in the States. It is not at all uncommon for us to jointly announce civil and criminal charges. Within the bounds of the law, we cooperate with the criminal authorities in bringing their cases as we bring ours, and that has been very successful, as well.

Senator CASEY. You referred to civil monetary penalties. What are those amounts, or what are the thresholds or triggers that would drive the amount that that individual or that entity is sanctioned with? Is there a way to describe how those—what those amounts are or what triggers a certain amount?

Mr. COX. Yes. In general, the penalties are tiered based upon the egregiousness of the conduct, and there are guidelines, if you will, for issuing penalties in particular amounts based on each occurrence of the offense. There are also occasions in which the penalties are intended to be tied to the extent of the benefit that was received by the fraud, and tied to the amounts of the disgorgement in those cases.

Senator CASEY. There is nothing as it pertains to those civil monetary penalties that you would change, or that you think needs more legislative action to increase or to enhance the civil monetary penalties?

Mr. COX. No. I think we have the authority that we need in the civil monetary penalty area.

Senator CASEY. Thank you very much.

The CHAIRMAN. Thank you very much, Senator Casey.

Mr. Cox, we really want to thank you for coming here today and talking to us, talking about all the things you know, your knowledge, your expertise, the plans that you have to work together with us at the SEC to do something significant about this issue. We are looking forward to working with you to get something done. Again, we thank you for being here today.

Mr. COX. Thank you very much, Mr. Chairman. We at the SEC appreciate your leadership on this issue and look forward to working with you, as well.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Cox follows:]

TESTIMONY
OF

CHRISTOPHER COX, CHAIRMAN
U.S. SECURITIES AND EXCHANGE COMMISSION

PROTECTING SENIOR CITIZENS FROM INVESTMENT FRAUD

BEFORE THE
SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

SEPTEMBER 5, 2007

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Protecting Senior Citizens from Investment Fraud

Chairman Christopher Cox
U.S. Securities and Exchange Commission

Before the Special Committee on Aging

United States Senate

September 5, 2007

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

I am pleased to be here today to discuss the important work the Securities and Exchange Commission is doing to protect investors, including our nation's senior citizens. Financial fraud against the elderly is a topic that I, my fellow SEC Commissioners, and the SEC staff care about deeply.

Protecting senior investors is one of the most important issues of our time – and I've made it one of my highest priorities since becoming Chairman of the SEC. Some Census numbers released earlier this year give us a sense of the magnitude of this issue. In 2006, there were more than 37 million Americans age 65 and older, accounting for 12% of the total population. There were five million people age 85 and older, nearly two million in their nineties, and over 73,000 Americans age 100 or older. Longevity is now the norm in our country, and for that we can all be grateful – but it also means we need to be prepared. Every year, as medical miracles allow us to enjoy a larger population of senior citizens, the task of protecting retirement nest eggs grows in importance.

In the 21st century, Americans will live significantly longer than their parents – and longer than most of them planned for their retirement. A number of older Americans will face difficulties in making their retirement assets last an extra decade or more. It is estimated that Americans 65 and older hold $15 trillion in assets, an all-time record. Yet nearly a third of that group say they do not have enough money even to meet their basic living expenses. Those with sufficient funds to invest may be tempted to take higher risks with their investments in order to achieve higher returns, instead of switching into low-yield, safe investments like the retirees of yesteryear. That will make them prime targets for scam artists and securities swindlers.

Just as the notorious Willie Sutton described the bank robber's propensity to "go where the money is," securities fraudsters will follow the money, too. Households led by people over 40 already own 91 percent of America's net worth, and Americans aged 55-64 have the highest income and the highest net worth of any age group, according to the Federal Reserve's Survey of Consumer Finances. As the baby boomers continue to age,

it will be a very short while before the vast majority of the nation's savings are in the hands of America's elderly.

We have long known that the elderly are especially vulnerable to the financially devastating impact of frauds and scams, and there are several reasons for this. A recent study by a researcher from the Federal Reserve and a professor at the University of Texas is only the most recent of many to suggest that one reason is the declining mental faculties of senior investors, which negatively impacts their personal financial management.[1] And investment fraud hurts seniors more than any other group, because when seniors lose their life's savings, they lack the time to rebuild a nest egg.

Taking care of my own parents' finances, I have grappled with this important issue on a very personal level. Before my mother died a few years ago, she was pestered by a seemingly endless barrage of annuity schemes and mortgage offers. Despite the fact that she was suffering from throat cancer and could barely speak, she received repeated unsolicited sales pitches over the phone and even in person. Even though my father was suffering from Alzheimer's disease, the brokers preyed upon him as well.

The products these brokers were pushing weren't just unsuitable, but affirmatively harmful to anyone in my parents' circumstances. The annuity products they purchased locked up their modest savings with huge penalties. I particularly remember one persistent salesman who called more than a dozen times, pestering my mother to refinance her safe, low-rate 30-year mortgage with a short-term loan that had a balloon and a teaser rate. That would have cost my parents their home when it came due. Even though I personally warned him never to call her again, he continued.

Both during my time in Congress and since I've become Chairman of the SEC, I've heard hundreds of similar stories from constituents and colleagues. It is heartbreaking to see a loved one ripped off by underhanded tactics that may comply with the letter but not the spirit of the law. That's why, at the Commission, we're always doing our best to protect all investors as if they're our own mother or relative.

A Multifaceted Approach

The SEC is the investor's advocate – and when it comes to senior investors, we have a special responsibility. We need to do everything we can to ensure that seniors are well-educated about the important choices they make, and that they are treated fairly and appropriately by brokers, investment advisers, and others in the securities industry. And we need to see that anyone who takes advantage of seniors through investment scams is brought to justice swiftly. Since I became Chairman, we have been attacking the problem from a number of angles – from investor education, to targeted examinations, to aggressive enforcement efforts. In this initiative, we have partnered with other organizations.

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[1] Korniotis, George M. and Kumar, Alok, "Does Investment Skill Decline Due to Cognitive Aging or Improve With Experience?" (July 2007). Available at SSRN: http://ssrn.com/abstract=767125

Working Effectively with Partners

Helping our nation's seniors is not a task that can be undertaken solely by the federal government. Efforts by multiple parties are necessary to protect them from investment fraud, as well as to equip them with the necessary skills to identify and avoid possible investment scams. That's why the SEC has initiated efforts to partner with other organizations, such as the AARP, the Financial Industry Regulatory Authority (FINRA), and the North American Securities Administrators Association (NASAA) on seniors-related initiatives.

Working together, we held our first Seniors Summit in July 2006 to coordinate our efforts to protect older Americans from investment fraud and abusive sales practices.

At the 2006 Summit, the NASD Investor Education Foundation unveiled a new study on investment fraud. The study explored the reasons the elderly are victimized by fraud, and offered some very interesting findings. Fraudsters, the study found, use hundreds of sophisticated social influence tactics to get their victims to sign on and often bombard their victims using a combination of these tactics. Among the most common social influence tactics are "phantom fixation" (the con artist dangles the prospect of wealth or prizes to tantalize the victim), "social consensus" (the con artist convinces a victim that peers, neighbors, and other respected people in the community are all making this particular investment), "scarcity" (the con artists makes the investment seem rare so the victim will feel pressured to act quickly), and "reciprocity" (the con artist provides a small favor, such as a free lunch, to induce the victim to return the favor in kind by buying the investment).

At the 2007 Seniors Summit, which will be held next week on September 10th, we will gather even more of the nation's resources to protect seniors. One important part of the event, open to the public, will be a "lunch and learn" program focused on how to combat investment fraud by understanding the persuasion tactics most often used by fraudsters who prey on seniors. This is one lunch seminar that won't be a come-on to deceptive sales tactics.

But to shine a spotlight on how free meals are used as a lure to attract senior investors, we will kick off this year's event with a presentation of the findings of the SEC's examination of "free lunch" sales seminars aimed at seniors, which has been a joint effort among federal and state law enforcement. We will also discuss how best to educate seniors about investments and hear about recent enforcement actions to address fraud on seniors.

Education

A major part of the Commission's program to prevent fraud against seniors is investor education. Indeed, investor education and outreach are critical parts of every aspect of the Commission's work. In this regard, the Commission has sought to arm senior investors with information that they can use to identify and avoid potential fraudulent

investment schemes, to deal with aggressive sales tactics, and to assess the financial products available to them. These efforts are aimed not only at seniors, but also their caregivers – as well as pre-retirement workers, who are encouraged to plan for contingencies later in life.

In the last year, we've placed significant emphasis on investor education initiatives directed towards seniors, and partnered with other regulators and consumer organizations, including AARP, to sponsor over 40 events to educate senior investors across the U.S. So far, more than 50,000 seniors have attended.

We have also devoted a portion of the SEC website specifically to the issues facing senior investors (http://www.sec.gov/investor/seniors.shtml). The site provides links to critical information on investments that are commonly marketed to seniors, and detailed warnings about common scam tactics. Realizing that not all seniors are web savvy, and many are unable to read the small print on computer screens, we have also packaged all of our online senior-related materials into a single hard-copy Seniors Guide with large, easy to read fonts. The SEC's Office of Investor Education and Advocacy will mail the 108-page investment fraud guide to any investor, free of charge, upon request.

Earlier this summer, I announced a significant expansion of the Office of Investor Education and Advocacy (OIEA). A new focus for OIEA will be assessing the views and needs of retail investors, including seniors, and ensuring that those views inform the Commission's regulatory policies and disclosure programs. The new Director of OIEA, Kristi Kaepplein, is bringing new energy and ideas to the Commission's longstanding program of protecting seniors and other individual investors.

Targeted Examinations

The SEC's examination program conducts on-site compliance examinations of securities firms to foster compliance with the federal securities laws. Our Office of Compliance, Inspections and Examinations (OCIE) uses risk-based techniques to focus on activities that pose the greatest compliance risk to investors and the integrity of the markets. Last year, as part of our new initiative to help protect senior investors, OCIE joined with state securities regulators in Florida, California, Arizona, Texas, North Carolina, South Carolina, and Alabama, as well as with the NASD and NYSE, in a coordinated series of examinations of financial firms that sponsor "free lunch" sales seminars, often at local restaurants and hotels.

Final and complete results of the OCIE examinations will be released by the SEC, NASAA, and the Financial Industry Regulatory Authority (FINRA) at the second annual SEC "Seniors Summit" next week, and will also be posted on the SEC's website. But even at this point it is clear that we were right to identify these "free lunch" sales seminars as posing serious risks to senior investors. Many of the advertisements and mailers used to solicit seniors to attend these events were confusing or misleading about the intent of the event. Our examinations have found that, despite being advertised as "educational" or touting "nothing will be sold," the purpose of these seminars is to

convince attendees to open new accounts with the sponsoring firm – and ultimately, to sell financial products to seniors.

While we can look forward to seeing the full results of these examinations next week, this work is already helping regulators understand how sales seminars are used to target seniors, and how we can better help protect seniors from being victims of unsuitable sales of securities. Our "free lunch" examinations are also a terrific example of what can be achieved when the SEC partners with others, and we thank our partners at NASAA and FINRA for working collaboratively on this important project.

Aggressive Enforcement

Over the past two years alone, the SEC's Division of Enforcement has brought at least 40 enforcement actions involving fraud on seniors. Many of these actions were coordinated with state authorities. In one notable case, *SEC v. D.W. Heath and Associates*, the Commission worked 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 – and then bilked them out of their retirement money by purporting to sell them safe, guaranteed notes.

In just the past two months we have brought three significant enforcement actions targeting seniors – two of which were emergency actions to halt ongoing activities. First, in July we filed an emergency action against AmeriFirst Funding, Inc., AmeriFirst Acceptance Corporation, and their principals alleging that they defrauded investors of approximately $55 million through the fraudulent offer and sale of so-called Secured Debt Obligations (SDOs). The Commission's complaint alleges that AmeriFirst sales agents lured elderly investors, and others saving for retirement, with advertisements for relatively high-yielding FDIC-insured certificates of deposit, then convinced the investors to purchase the SDOs instead. The complaint further alleges that the defendants misrepresented the safety of the SDOs by falsely asserting, among other claims, that the investment had little or no risk because accounts were guaranteed by a commercial bank, protected by many layers of insurance coverage, and fully secured by collateral. In other words, rather than promising outlandish returns – a common ploy of Ponzi operators – the defendants allegedly played on the conservative nature of retirees and near retirees with low risk thresholds. Defendants also touted the credentials of one of the principals of AmeriFirst, while failing to disclose his long history of financial irresponsibility and securities-related sanctions, including personal bankruptcies and a permanent bar from associating with any broker-dealer. In the AmeriFirst action, we secured preliminary injunctions and asset freezes, but as in too many such cases, much of the money appears to have been spent before we got there.

In another notable case, *SEC v. Earthly Mineral Solutions, et al.*, this July we sued two Nevada companies and their officers for allegedly perpetrating a $20 million Ponzi scheme involving mining interests. Like AmeriFirst, the defendants in Earthly Mineral Solutions allegedly played on the tendency of senior investors to be more conservative and "guaranteed" investors a fairly modest 7% to 9% annual return on their investments.

The Commission's complaint alleges that the defendant's actions convinced a number of investors saving for retirement to liquidate personal IRAs to invest in the purportedly safe mining interests.

Finally, just weeks ago, in *SEC v. Secure Investment Services, et al.*, we took emergency action to shut down an alleged $25 million Ponzi scheme that targeted hundreds of senior and other investors nationwide who bought fractional ownership interests in life insurance policies. The Commission's complaint alleges that the father/daughter team that operated Secured Investment Services falsely promised investors safe, secure, and profitable interests in life insurance policies known as "viaticals" while failing to disclose the dire financial condition of the investment venture. The defendants allegedly pocketed $700,000 of investor funds for their personal use while the venture was on the verge of collapse.

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, with the goal of preventing further investor harm.

Fighting Unethical Sales Practices

In addition to coordinating and improving efforts in our current three-pronged approach for protecting seniors against investment fraud, one goal for this year's Seniors Summit is to identify new areas of focus for protecting the financial interests of seniors. One possibility is improving broker-dealer sales practices by identifying principles of conduct to help firms and their personnel establish and maintain high standards in their interactions with investors.

Broker-dealers are already subject to numerous specific sales practice obligations. These obligations are primarily spelled out in the rules of the self-regulatory organizations, particularly FINRA. The rules establish strong baseline standards for sales practices, but good business practices should inevitably lead a firm to even higher standards of conduct in dealing with their customers. The Commission, as well as the self-regulatory organizations and the securities industry, can help firms in this regard as they work to develop principles of conduct with respect to the sale of securities to seniors and with respect to the many other special issues that surround senior investors.

Another important Commission initiative is to consider whether the different regulatory structures applicable to the two main types of securities intermediaries that we regulate – broker-dealers and investment advisers – are confusing to senior investors, and whether they continue to make sense in light of how the securities business has evolved. In 2006, the Commission awarded a contract to the RAND Corporation to conduct factual research and analysis for a major study comparing the levels of protection afforded retail customers of broker-dealers and investment advisers. The study is well underway, and a final report is due at the end of this year. We expect to use the findings of the study as an empirical foundation for evaluating the current legal and regulatory environment for the

provision of financial products, accounts, programs, and services to senior investors by broker-dealers and investment advisers.

One particular source of potential investor confusion is the use of "senior" professional designations by brokers, investment advisers, and others – an issue you are rightly highlighting in this hearing. I commend the Committee for raising awareness regarding the use and abuse of senior professional designations. We need to do everything we can to ensure that seniors are well informed about the experience, background, and expertise of financial professionals they use. We also want to ensure that seniors are treated fairly and appropriately by brokers and others throughout the securities industry.

As you know, some financial professionals use designations that imply that they are experts at helping seniors with financial issues. Many seniors, however – and many investors of all ages – don't understand the alphabet soup of initials that may follow the names of these financial professionals. Titles such as "senior specialist" or "retirement advisor" often bespeak nothing but a clever attempt to lure senior investors to purchase questionable investment services.

The education, experience, and other requirements for receiving and maintaining a "senior" designation vary greatly from mere self description to mandatory completion of rigorous exams and work in a designated field for several years. In many cases, even state-approved designations may be relatively easy to obtain in terms of time and effort, even for an individual with no relevant experience.

The SEC does not endorse any particular designation, but we do encourage investors to do their homework with respect to professional designations, and we are looking into whether we, our counterpart regulators in the states, or state legislators and the Congress should do more. In the SEC's online brochure on senior designations (available at www.sec.gov/investor/pubs/senior-profdes.htm), we refer investors to "*Understanding Investment Professional Designations*" on FINRA's website, which provides the education and experience requirements for many professional designations. Our investor education materials also remind investors that understanding a financial professional's designation is just one step investors should take when they evaluate his or her credentials.

Conclusion

Before I conclude, I would like to share a personal story. As I briefly mentioned, my mother passed away several years ago. As hard as it was to accept my mother's death, it was harder still to see my father so vulnerable. So it was nice that it seemed to help both of us to spend some time going through old pictures and mementos in Mom and Dad's apartment.

And in that enjoyable scavenger hunt, I came across a small framed check, made out to my grandfather. It was for $3.36 — representing 56/1,000 of 1% of the hard-earned savings he'd earnestly entrusted, in 1929, to the debentures of Insull Utility Investments.

That was the eventually notorious holding company of Samuel Insull, the Ken Lay of his day — who combined scores of power utilities to create a corporate pyramid.

It all came crashing down in 1932, and hundreds of thousands of investors, including my grandfather, lost their savings as a result. The Insull abuses, which FDR railed against in the 1932 campaign, helped give birth to the Securities and Exchange Commission in 1934.

I have hung that small frame with my grandfather's check on my office wall. It serves as a reminder that being the investor's advocate means standing up for the little guy. It means never forgetting that the cost of securities fraud is measured not just in accounting losses and diminished stock prices, but in people's lives — in their dashed hopes, and their squandered savings; in retirement dreams that might never materialize, or doctor bills that can't be paid.

As Chairman of the Securities and Exchange Commission, I have had the opportunity to devote myself to the cause of the ordinary investor. I look forward to continue working with this Committee and our many state and federal partners to protect and educate our nation's senior investors.

Thank you again for this opportunity to appear before the Committee. I would be happy to answer any questions you may have.

The CHAIRMAN. May we now move to the second panel? Our first witness on the second panel will be Lori Swanson, who is the attorney general of the State of Minnesota. Attorney General Swanson has served in that position since January, and previously served as Minnesota's solicitor general and deputy attorney general. Strong advocate, she is, for the public in areas, including financial fraud against the elderly, and also consumer protection.

Then we will hear from William Galvin, who is secretary of the Commonwealth of Massachusetts. Secretary Galvin serves as the State's chief securities regulator. He has earned a national reputation for aggressively protecting investors.

Next witness will be Joseph Borg, who is president of the North American Securities Administrators Association, known as NASAA. He is also director of the Alabama Securities Commission. NASAA is the oldest international organization devoted to investor protection. Its fundamental mission is protecting our consumers who purchase securities or investment advice.

Then, we will have Nicholas Nicolette, who is a Certified Financial Planner and president of the Financial Planning Association (FPA). The FPA is an advocacy organization whose stated aim is to be a community that fosters the value of financial planning and advances the financial planning profession. Mr. Nicolette has been an SEC registered investment advisor since 1992, and he has substantial experience in the industry that we are examining today.

Our next witness will be introduced by Senator Smith.

Senator SMITH. Thank you, Senator.

Commissioner Sandy Praeger is our final witness, and she is the Commissioner of Insurance for the State of Kansas. She is testifying today on behalf of the National Association of Insurance Commissioners.

Ms. Praeger will testify on steps necessary to provide training, competence and suitability standards for investment planners, and the NAIC's efforts to protect seniors from financial fraud.

The CHAIRMAN. That is good. We thank you very much, and we appreciate the witnesses being here today.

Ms. Swanson, we will take your testimony.

STATEMENT OF LORI SWANSON, ATTORNEY GENERAL, STATE OF MINNESOTA, ST. PAUL, MN

Ms. SWANSON. Good afternoon. My name is Lori Swanson. I am the attorney general of the State of Minnesota, and I thank you, Chairman Kohl, Ranking Member Smith and the entire Committee for your leadership in conducting these important hearings today.

When asked why he robbed banks, Jesse James once replied, "Because that is where the money is." Well, for the same reasons today, our senior citizens are often targeted with financial opportunism.

This Committee on Aging knows the demographics well, and so does the insurance industry. Consider these statements by one company, Allianz, when training its agents on how to conduct sales seminars. "The increasing number of seniors brings a huge market opportunity." "Senior citizens represent 80 percent of all money in U.S. savings and loan institutions, and own 77 percent of all financial assets in America."

Now, some insurance agents make very high commissions for selling some of these long-term deferred annuities of up to 9 to 12 percent, plus other incentives. An agent who sells $100,000 annuity may receive a commission of $9,000 to $12,000 for just a few hours of work.

To recoup the large commission, the insurance company often imposes hefty and long surrender penalties that go for many years if a senior withdraws their money early. Our office, like others around the country, has seen agents using titles like "Certified Senior Advisor," "Senior Specialist," "Senior Counselor," to suggest that the agent has some type of special credentials as it relates to senior citizens, or is looking out for seniors' best interest when, in fact, these titles are simply nothing more than marketing gimmicks.

Several insurance companies, including Allianz and American Equity, have been gold sponsors of the so-called Million Dollar Academy, which holds a 2-day annuity university. The opportunistic practices of the Million Dollar Academy have been profiled and exposed in the Wall Street Journal and the New York Times. Our office is currently trying to help, through pending litigation, senior citizens who became sitting ducks for agents trained at the Million Dollar Academy.

This includes, for example, a 75-year-old retired teacher and pastor from suburban Minnesota. They attended one of these free dinner seminars sponsored by an agent who called himself an Elder Counselor, and he put $30,000 of $50,000 in liquid assets into a long-term annuity with surrender periods for 10 years supposedly to shield their money if they had to go into a nursing home. The problem with that is the wife has cancer, cognitive disabilities, needs the money but can't get access to it without paying a hefty surrender penalty.

In March, my office filed the lawsuit against American Family Prepaid Legal Corporation and Heritage Marketing Insurance Services. Our lawsuit—and other attorney generals have sued them, too—and our lawsuit alleges that these companies sold living trusts to senior citizens that they didn't need, and then used the entry of the living trust to go on and sell annuities.

The person would come to their door saying that they were an asset preservation specialist. In fact what they were really—was an insurance agent, and then aggressively sold annuities on behalf of at least five very well known national insurance companies.

A training manual from that case told its agents things like "Never ask a closing question like, "What do you think," or, "Would you like to sign up for the plan." These are yes/no questions that never work. Remember, the prospective client does not want to buy anything. Questions like these rarely lead to sales. Instead, always assume the close." Then, it says just pick up your pen and start filling up the application. Don't ask the senior, "Do you want to buy the annuity?"

The manual tells agents how to mislead the senior by describing the annuity as "Very similar to a savings account at the bank." Heritage even trained agents how to stop seniors from talking to their kids before they made a purchase.

In January, we filed a lawsuit against Allianz Life Insurance Company, whose deferred annuities imposed surrender periods of up to 12 years and surrender fees of up to 15 percent for early withdrawal. Our office has received over 250 complaints about the sale of Allianz' annuities, which is a remarkable number since only a small fraction of aggrieved senior citizens ever file complaints.

In April we filed a similar lawsuit against American Equity Investment Life Insurance Company, whose annuities imposed surrender charges of up to 25 percent and surrender periods as long as 16 years. Both of these insurers sold senior citizens long-term deferred annuities that were not suitable for their needs and, in many cases, misrepresented the terms of the annuity.

Long-term annuities were sold to senior citizens in their 70's and 80's even though the senior would need access to their very limited savings in order to meet future health and long-term care expenses.

For example, an 86-year-old woman from rural Minnesota worked as a nurse's aide before she retired. She managed to save up in her life $49,000 in retirement savings and, of that, almost all of it was put into an annuity with a 12-year surrender period that lasts until she is 94 years old. She wants to move into an assisted living facility, can't because her money is tied up in this long-term annuity.

Likewise, an 86-year-old guy from rural Minnesota, he was a retired farm laborer, gets a little less than $500 a month from Social Security, lives in public housing, had the same thing happen to him. When he was 80, American Equity put $24,000, most of his liquid net worth, into an annuity with a 15-year surrender penalty.

Now, the fellow had to cash it in just to pay for his living expenses, but he had to pay $6,800, or almost a quarter of his net worth, in order to cash it in just so he could afford to live.

Insurance companies like these that sell unsuitable long-term deferred annuities to senior citizens are turning a blind eye to, and indeed encouraging and profiting the most from the aggressive sales practices of their agents. Before selling a 70- or 80-year-old an annuity that may lock up a senior citizen's life savings for as long as 12 to 16 years, insurance companies should make proper inquiry into whether the senior can really afford to have their money tied up that long, or whether the senior might instead need access to their money to pay for the kinds of expenses we face as we age.

Thank you.

[The prepared statement of Ms. Swanson follows:]

TESTIMONY OF
MINNESOTA ATTORNEY GENERAL LORI SWANSON

SENIOR FRAUD AND THE SALE OF ANNUITIES

Before The United States
Senate Special Committee On Aging

September 5, 2007

ROOM 628 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, D.C.

GOOD AFTERNOON. MY NAME IS LORI SWANSON, AND I AM THE ATTORNEY GENERAL OF THE STATE OF MINNESOTA. I THANK CHAIRMAN KOHL, RANKING MEMBER SMITH, AND THE SENATE SPECIAL COMMITTEE ON AGING FOR CONDUCTING THESE IMPORTANT HEARINGS ON THE TOPIC OF ANNUITY SALES AND SENIOR FRAUD.

I. THE SENIOR CITIZEN MARKET.

WHEN ASKED BY A REPORTER WHY HE ROBBED BANKS, JESSE JAMES SUPPOSEDLY REPLIED: "BECAUSE THAT'S WHERE THE MONEY IS." FOR THE SAME REASON, OUR SENIOR CITIZENS ARE OFTEN CONSIDERED PRIME TARGETS FOR THE SALE OF PRODUCTS.

BY SOME ESTIMATES, TWO-THIRDS OF THE INDIVIDUAL WEALTH IN THIS COUNTRY IS OWNED BY PEOPLE OVER THE AGE OF 55. THE NUMBER OF SENIOR CITIZENS IN THE UNITED STATES WILL DOUBLE BY THE YEAR 2020. BECAUSE MANY SENIOR CITIZENS HAVE BEEN ABLE TO SAVE UP A NEST EGG FOR THEIR RETIREMENT YEARS, THEY ARE OFTEN TARGETED WITH FRAUD IN A WAY THAT YOUNGER PEOPLE WITH NO SAVINGS ARE NOT.

INSURANCE COMPANIES UNDERSTAND THE MONEY TO BE MADE BY SELLING ANNUITIES TO SENIOR CITIZENS. CONSIDER, FOR EXAMPLE, THIS STATEMENT BY ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA ON HOW TO CONDUCT SALES SEMINARS:

> The increasing number of seniors brings a huge market opportunity. Our aging population accounts for a large portion of America's wealth, controlling nearly $43 trillion. Senior citizens represent 80% of all the money in U.S. savings and loan institutions, and own 77% of all financial assets in America.[1]

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY DESCRIBES THE MARKET SIMILARLY IN ITS FORM 10-Q:

> We believe that significant growth opportunities exist for annuity products because of favorable demographic and economic trends. According to the U.S. Census Bureau, there were 35 million Americans age 65 and older in 2000, representing 12% of the U.S. population. By 2030, this sector of the population is expected to increase to 20% of the total population.[2]

SOME SENIOR CITIZENS CAN BE PARTICULARLY VULNERABLE TO DECEPTIVE OR AGGRESSIVE SALES PRACTICES. IN SOME CASES, SENIORS ARE SUFFERING FROM VARIOUS STAGES OF DEMENTIA. IN OTHER CASES, SENIORS ARE SIMPLY LONELY. IN OTHER CASES, THE SENIOR CITIZEN, WHO GREW UP IN A DIFFERENT ERA, IS TOO "NICE" OR TOO TRUSTING TO TERMINATE A HIGH-PRESSURE SALES PITCH.

II. AGENTS USE VARIOUS DEVICES TO PITCH ANNUITIES.

WITH BILLIONS OF DOLLARS IN SALES TO BE MADE, SOME INSURANCE COMPANIES OFFER LARGE COMMISSIONS AND OTHER INCENTIVES TO AGENTS WHO SELL LONG-TERM DEFERRED ANNUITIES TO SENIOR CITIZENS. TYPICALLY, THE LONGER THE SENIOR'S MONEY IS TIED UP IN THE ANNUITY, THE LARGER THE COMMISSION THE AGENT RECEIVES FROM THE INSURER. SOME INSURANCE COMPANIES THAT SELL LONG-TERM DEFERRED ANNUITIES TO SENIOR CITIZENS PAY THEIR AGENTS COMMISSIONS AS HIGH AS 9-12 PERCENT. AN AGENT WHO SELLS THE SENIOR CITIZEN A $100,000 ANNUITY MAY RECEIVE, FOR EXAMPLE, A COMMISSION OF UP TO $9,000 TO $12,000 FOR NO MORE THAN A FEW HOURS OF HIS TIME. IN ORDER TO RECOUP THE LARGE FIRST YEAR COMMISSION, THE INSURANCE COMPANY IMPOSES SUBSTANTIAL SURRENDER PENALTIES IF THE SENIOR WITHDRAWS MONEY EARLY.

WITH SO MUCH MONEY AT STAKE, IT IS NOT SURPRISING THAT SOME AGENTS AND INSURERS DEVISE CREATIVE AND AGGRESSIVE WAYS TO SELL ANNUITIES TO SENIOR CITIZENS. THEY START BY BUILDING TRUST WITH THE SENIOR CITIZEN. IN MINNESOTA, LIKE ELSEWHERE IN THE COUNTRY, SOME AGENTS GIVE THEMSELVES TITLES SUCH AS "CERTIFIED SENIOR ADVISOR," "SENIOR SPECIALIST," "SENIOR REPRESENTATIVE," OR OTHER SIMILAR DESIGNATIONS TO LEAD THE SENIOR CITIZEN TO BELIEVE THE AGENT IS LOOKING OUT FOR SENIORS' BEST INTERESTS. OFTENTIMES, AGENTS CONDUCT "SENIORS ONLY" FINANCIAL SEMINARS UNDER THE GUISE OF EDUCATING THE SENIOR--WHO OFTEN MAY FEEL UNCERTAIN OR KNOW VERY LITTLE ABOUT INVESTMENTS--ABOUT ESTATE PLANNING, PROBATE, OR THE LIKE. THE SEMINAR IS THE PORTAL OF ENTRY TO SELL ANNUITIES. ALLIANZ, FOR EXAMPLE, HAS INSTRUCTED ITS AGENTS THAT, "ONE OF THE BEST WAYS TO INITIATE RELATIONSHIPS WITH ANNUITY CLIENTS IS BY INVITING THEM TO SEMINARS."[3] SENIORS MAY NOT BE TOLD THAT THE REAL PURPOSE OF THE SEMINAR IS FOR THE AGENT TO FIND MARKETING "LEADS" TO SELL ANNUITIES. AGENTS MAY HOLD THESE SEMINARS AT A RESTAURANT IN WHICH A FREE LUNCH OR DINNER IS PROVIDED.

SEVERAL INSURANCE COMPANIES, INCLUDING ALLIANZ AND AMERICAN EQUITY, HAVE BEEN IDENTIFIED AS "GOLD SPONSORS" OF THE "MILLION DOLLAR ACADEMY" SEMINARS, WHICH TRAIN AGENTS HOW TO BE A "SUCCESS IN THE SENIOR MARKET." THE *MILLION DOLLAR ACADEMY* HOLDS A TWO-DAY "*ANNUITY UNIVERSITY*." IN 2002, A REPORTER FOR THE *WALL STREET JOURNAL*[4]

ATTENDED "ANNUITY UNIVERSITY," AT WHICH THE FOLLOWING ADVICE WAS GIVEN TO AGENTS ON HOW TO PUSH ANNUITIES ON SENIOR CITIZENS:

- "TREAT THEM LIKE THEY'RE BLIND TWELVE-YEAR-OLDS."
- "THERE'S THE TECHNICAL ANSWER, AND THERE'S THE SENIOR ANSWER. TELL THEM IT'S LIKE A CD--IT'S SAFE, IT'S GUARANTEED."
- "YOU'RE THERE TO SOLVE THEIR PROBLEMS, BUT YOU HAVE TO CREATE THOSE PROBLEMS FIRST. NO PROBLEM, NO SALE. SO AT THE SEMINARS, YOU'RE CREATING PROBLEMS, AND YOU TEASE THEM WITH THE SOLUTIONS...."
- "THEY THRIVE ON FEAR, ANGER AND GREED. SHOW THEM THEIR FINANCES ARE ALL SCREWED UP SO THAT THEY THINK, 'OH, NO, I'VE DONE IT ALL WRONG.' THIS WILL MAKE YOU MONEY."
- "TELL THEM YOU CAN PROTECT THEIR LIFE SAVINGS FROM NURSING HOME AND MEDICAID SEIZURE OF ASSETS. THEY DON'T KNOW WHAT IT IS, BUT IT SOUNDS SCARY. IT'S ABOUT PUTTING A PITCHFORK IN THEIR CHEST."

SOME COMPANIES FIND OTHER WAYS TO PUSH ANNUITIES. IN MARCH, 2007, OUR OFFICE FILED A LAWSUIT AGAINST AMERICAN FAMILY PREPAID LEGAL CORPORATION AND HERITAGE MARKETING INSURANCE SERVICES, INC. THESE COMPANIES HAVE ALSO BEEN SUED BY THE PENNSYLVANIA AND NORTH CAROLINA ATTORNEYS GENERAL. OUR LAWSUIT ALLEGES THAT THESE COMPANIES OPERATED A LIVING TRUST MILL. SENIORS WERE INITIALLY LURED IN BY DECEPTIVE ADS ABOUT HOW TO EDUCATE THEMSELVES REGARDING

PROBATE, ESTATE TAXES, AND THEIR FINANCES. AGENTS THEN CAME TO THE SENIOR'S HOME, EXAGGERATING AND DISTORTING THE COSTS AND PITFALLS OF PROBATE. AFTER CREATING GREAT FEAR IN THE SENIOR ABOUT LOSING THEIR MONEY TO PROBATE, THE COMPANIES CONVINCED THE SENIOR TO PURCHASE A $2,000 BOILERPLATE LIVING TRUST. THE LIVING TRUST WAS THEN DELIVERED BY AN INSURANCE AGENT CALLING HIMSELF AN "ASSET PRESERVATION SPECIALIST." THE AGENT USED THE ACCESS TO THE SENIOR CITIZEN AND KNOWLEDGE ABOUT HIS OR HER FINANCIAL CONDITION TO PUSH ANNUITIES OF AT LEAST FIVE LARGE, WELL-KNOWN INSURANCE COMPANIES.

HERITAGE INSURANCE, THE INSURANCE AGENCY NAMED IN OUR LAWSUIT, DISTRIBUTED TO ITS AGENTS A TRAINING MANUAL ON HOW TO SELL ANNUITIES. AMONG OTHER THINGS, IT ADVISED ITS AGENTS TO:

> Never ask a closing question like "What do you think?" or "Would you like to sign up for the plan?" These are yes/no questions that never work. Remember the prospective client does not want to buy anything. Questions like these rarely lead to sales. Instead, always assume the close.[5]

THE HERITAGE TRAINING MANUAL ALSO INSTRUCTED ITS AGENTS HOW TO MISLEAD THE SENIOR AS TO THE NATURE OF AN ANNUITY BY DESCRIBING THE PRODUCT AS FOLLOWS:

> It is actually a product that is very similar to the concept of having a savings account at the bank. You basically place your money into this product and begin earning interest. There are no fees or charges to open up the account. Now the only main difference is that instead of having this account with the bank or credit union, this money is actually with an insurance company.

HERITAGE EVEN TRAINED ITS AGENTS HOW TO OVERCOME OBJECTIONS THE SENIOR MAY HAVE ABOUT BUYING AN ANNUITY, SUCH AS "I WANT TO

TALK TO MY KIDS." THE AGENT IS INSTRUCTED TO RESPOND TO THIS QUESTION AS FOLLOWS:

> I don't understand. This is simple. Remember all we're talking about here is basically like opening up a savings account. Taking your money and moving it from one safe place to another better safe place. It doesn't cost you a dime to move it. I mean we're not talking about investing your whole life savings in some oil rig in Texas. In that case you better talk to your kids about it. You have already stated that Option #2 [buying an annuity] was the best choice, and you already know that Option #1 is your current situation. Mr. & Mrs. Smith, in my professional opinion, and I meet with folks just like yourselves every day, day in and day out, this is the absolute best decision you could ever make for yourself. So let's get this going. It will only take a few minutes to get this done here. (Immediately begin completing the application paperwork).

INDEED, WE HAVE SEEN NUMEROUS CASES IN OUR OFFICE WHERE SENIORS ARE DISCOURAGED FROM HAVING THEIR CHILDREN, FAMILY MEMBERS, OR TRUSTED ADVISORS PRESENT WHEN THE SALE IS MADE. IN ONE CASE, FOR EXAMPLE, AN ELDERLY RURAL MINNESOTA WOMAN WANTED THE INSURANCE AGENT TO MEET HER AT HER LOCAL BANK TO DISCUSS THE ANNUITY, BUT THE AGENT REFUSED TO DO SO AND WOULD ONLY COME TO HER HOME WITHOUT HER CHILDREN PRESENT.

III. AGGRESSIVE SALES PRACTICES LEAD TO UNSUITABLE SALES.

SO WHAT DO THESE AGGRESSIVE SALES PRACTICES MEAN?

IN JANUARY, 2007 OUR OFFICE FILED A LAWSUIT AGAINST ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA ("ALLIANZ"). ALLIANZ'S DEFERRED ANNUITIES IMPOSE SURRENDER PERIODS OF UP TO 12 YEARS AND SURRENDER FEES OF UP TO 15 PERCENT IF THE SENIOR WITHDRAWS HIS OR HER MONEY EARLY. WHILE OUR LAWSUIT CITES 12 MERELY ILLUSTRATIVE EXAMPLES, OUR OFFICE HAS RECEIVED OVER 250 COMPLAINTS ABOUT THE SALE OF ALLIANZ

ANNUITIES. THIS IS A REMARKABLE NUMBER, SINCE IT IS WELL-KNOWN THAT ONLY A MINISCULE FRACTION OF AGGRIEVED CONSUMERS COMPLAIN TO A STATE ATTORNEY GENERAL'S OFFICE. THIS IS PARTICULARLY TRUE WHEN DEALING WITH SENIOR CITIZENS. SOME SENIORS DO NOT COMPLAIN BECAUSE THEY DO NOT WANT THEIR CHILDREN TO KNOW THEY MADE A MISTAKE. OTHERS DO NOT WANT TO CAUSE A FUSS BY COMPLAINING TO THE GOVERNMENT, OR DO NOT KNOW WHERE OR HOW TO COMPLAIN.

IN APRIL, 2007 OUR OFFICE FILED A SIMILAR LAWSUIT AGAINST AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY ("AMERICAN EQUITY"). AMERICAN EQUITY ANNUITIES IMPOSE SURRENDER CHARGES OF UP TO 25 PERCENT AND SURRENDER PERIODS OF UP TO 16 YEARS.

MINNESOTA LAW REQUIRES THAT AN ANNUITY BE SUITABLE FOR THE PURCHASER'S NEEDS AND REQUIRES THAT THE INSURER MAKE REASONABLE INQUIRY INTO THE FACTS NECESSARY TO DETERMINE THAT THE ANNUITY IS SUITABLE FOR THE PARTICULAR CONSUMER. THE PRIMARY BASES FOR BOTH LAWSUITS IS THAT THE INSURERS SOLD MANY LONG-TERM DEFERRED ANNUITIES THAT WERE NOT SUITABLE FOR THE NEEDS OF THE SENIOR CITIZENS TO WHOM THEY WERE SOLD, DID NOT MAKE PROPER INQUIRIES TO DETERMINE SUITABILITY, AND IN MANY CASES MISREPRESENTED THE TERMS OF THE ANNUITY. IN SOME CASES, ANNUITIES WERE SOLD TO SENIOR CITIZENS EVEN THOUGH THE DURATION OF THE ANNUITY EXCEEDED THE SENIOR CITIZEN'S LIFE EXPECTANCY. IN OTHER CASES, ANNUITIES WERE SOLD TO SENIORS WHO

WERE ILL OR IN DECLINING HEALTH AND WOULD LIKELY NEED ACCESS TO THEIR MONEY TO PAY FOR HEALTH CARE OR NURSING HOME EXPENSES.

LET ME GIVE YOU A FEW EXAMPLES:

IN SOME CASES, THE ANNUITY WAS NOT SUITABLE BECAUSE THE SENIOR CITIZEN HAS LIMITED ASSETS WHICH THE SENIOR NEEDS TO SUSTAIN THEMSELVES. IN 2003 WANDA W. OF MINNESOTA WAS A 75 YEAR OLD RETIRED TEACHER. SHE AND HER HUSBAND, GORDAN, A RETIRED PASTOR, ATTENDED A "FREE DINNER" SEMINAR SPONSORED BY AN INSURANCE AGENT WHO IS A FEATURED PROMOTER AT THE "MILLION DOLLAR ACADEMY" FOR HAVING MADE $9 MILLION IN ANNUITY SALES. THE AGENT TOLD WANDA AND GORDAN THAT HE WAS AN "ELDER COUNSELOR" AND THAT, BY PURCHASING AN ANNUITY, THEY COULD PROTECT THEIR MONEY IN THE EVENT THAT ONE OF THEM HAD TO GO INTO A NURSING HOME. THE AGENT CONVINCED THE COUPLE TO PUT OVER $30,000 OF ABOUT $50,000 IN LIQUID ASSETS INTO AN ALLIANZ ANNUITY. THE ANNUITY HAD SURRENDER CHARGES FOR 10 YEARS IF THE COUPLE WITHDREW THEIR MONEY EARLY. BECAUSE WANDA HAS BREAST CANCER, KIDNEY CANCER, HIGH BLOOD PRESSURE, DIABETES, AND COGNITIVE DIFFICULTIES, THE COUPLE NEEDS ACCESS TO THEIR MONEY. THEY CANNOT GET IT WITHOUT INCURRING A SUBSTANTIAL SURRENDER PENALTY.

IN SOME CASES, THE ANNUITY WAS NOT SUITABLE BECAUSE THE SENIOR CITIZEN IS SO OLD AND INFIRM THAT THE SENIOR CANNOT HAVE THEIR MONEY TIED UP FOR A LENGTHY PERIOD OF TIME. GERTRUDE B. IS 86 YEARS OLD AND WORKED AS A NURSE'S AIDE BEFORE SHE RETIRED. IN 2002, AN

INSURANCE AGENT CONVINCED HER TO PUT $49,000--ALMOST ALL OF HER LIQUID ASSETS--INTO AN ALLIANZ ANNUITY. SHE WAS 82 YEARS OLD AT THE TIME. THE ANNUITY HAS A SURRENDER PERIOD OF 12 YEARS. GERTRUDE ONLY HAS ABOUT $1,000 IN OTHER SAVINGS. SHE NEEDS TO MOVE INTO AN ASSISTED LIVING FACILITY BUT CANNOT AFFORD TO DO SO UNLESS SHE CASHES IN HER ALLIANZ ANNUITY AND INCURS HEFTY SURRENDER PENALTIES.

LORRAINE H. HAS A SIMILAR STORY. LORRAINE IS 83 YEARS OLD AND RECEIVES ABOUT $1,000 A MONTH IN SOCIAL SECURITY INCOME. AT A "FINANCIAL EDUCATION" SEMINAR IN 2003, SHE AND HER NOW DECEASED HUSBAND MET AN AGENT WHO SOLD THEM AN $85,000 AMERICAN EQUITY DEFERRED ANNUITY. ABOUT 75 PERCENT OF THEIR NET WORTH WAS PUT IN THE ANNUITY. THE SURRENDER PERIOD WAS NINE YEARS. LORRAINE WAS 79 YEARS OLD AT THE TIME. IN 2006, THE COUPLE CASHED IN THE ANNUITY BECAUSE THEY NEEDED TO BUY A ONE-LEVEL HOME TO ACCOMMODATE THE HUSBAND'S DIABETES-RELATED DISABILITY. THEY INCURRED SURRENDER CHARGES OF OVER $10,000. THE COUPLE WAS ABOUT 80 YEARS OLD WHEN THE ANNUITY WAS SOLD TO THEM, AND THE AGENT KNEW THEY WERE IN DECLINING HEALTH.

IN SOME CASES, THE ANNUITY WAS NOT SUITABLE BECAUSE THE SENIOR NEEDED TO USE THE MONEY IN THE ANNUITY TO MEET DAILY LIVING EXPENSES. NORMAN P. OF MINNESOTA IS 86 YEARS OLD. HE IS A RETIRED FARM AND CONSTRUCTION LABORER. HE GETS $488 A MONTH FROM SOCIAL SECURITY AND LIVES IN PUBLIC HOUSING. IN 2000, WHEN HE WAS 80 YEARS

OLD, AN INSURANCE AGENT SOLD HIM A $24,000 AMERICAN EQUITY DEFERRED ANNUITY, WHICH COMPRISED MOST OF HIS NET WORTH. BECAUSE NORMAN NEEDED THE MONEY TO MEET HIS DAILY LIVING NEEDS, HE CASHED OUT THE ANNUITY AND PAID A SURRENDER CHARGE OF $6,800.

IN STILL OTHER CASES, THE SENIOR COULD NOT EVEN MEANINGFULLY CONSENT TO THE SALE BECAUSE THE SENIOR WAS SUFFERING FROM DEMENTIA. IN 2003, FLORINE L. WAS DIAGNOSED WITH ALZHEIMER'S. IN 2004, WHEN SHE WAS ALMOST 80 YEARS OLD, AN INSURANCE AGENT SOLD HER A $155,000 AMERICAN EQUITY ANNUITY. THE ANNUITY IMPOSED SURRENDER CHARGES FOR 16 YEARS--UNTIL FLORINE WAS 95 YEARS OLD--WITH EARLY SURRENDER CHARGES OF UP TO 17 PERCENT.

IV. INSURANCE COMPANIES CAN PUT AN END TO THESE PRACTICES.

ULTIMATELY, IT IS INSURANCE COMPANIES THAT PROFIT THE MOST FROM THESE UNSUITABLE SALES. INSURANCE COMPANIES LIKE THE ONES MENTIONED ABOVE AND OTHERS THAT SELL UNSUITABLE LONG-TERM DEFERRED ANNUITIES TO SENIOR CITIZENS ARE TURNING A BLIND EYE TO, AND INDEED ENCOURAGING, THE AGGRESSIVE SALES PRACTICES OF THEIR AGENTS. THIS IS DRAWING REGULATORY SCRUTINY. FOR EXAMPLE, IN DECEMBER 2006, THE NATIONAL ASSOCIATION OF SECURITIES DEALERS FINED ALLIANZ'S BROKER-DEALER ARM $5 MILLION FOR NOT ADEQUATELY SUPERVISING ITS AGENTS. IN NOVEMBER, 2006 THE CALIFORNIA DEPARTMENT OF INSURANCE BROUGHT ADMINISTRATIVE CHARGES AGAINST ALLIANZ FOR IMPROPER SALES

OF DEFERRED ANNUITIES TO SENIOR CITIZENS. THESE PRACTICES SHOULD DRAW THE SCRUTINY OF CONGRESS TOO.

ULTIMATELY, INSURANCE COMPANIES THAT ENGAGE IN THESE PRACTICES CAN PUT A STOP TO THESE UNSUITABLE SALES. WITH ALL THE MONEY TO BE MADE FROM UNSUITABLE SALES, HOWEVER, SOME INSURANCE COMPANIES CHOOSE TO ADOPT AN OSTRICH-LIKE APPROACH, STICKING THEIR HEAD IN THE SAND AND CHOOSING TO REMAIN INTENTIONALLY IGNORANT OF THEIR AGENTS' SALES PRACTICES, OR EVEN ACTIVELY ENCOURAGING THOSE PRACTICES.

INSURERS CAN EASILY MAKE PROPER INQUIRY INTO, AND GIVE PROPER CONSIDERATION TO, THE SENIOR'S AGE AND CURRENT AND ANTICIPATED FUTURE FINANCIAL NEEDS AND CIRCUMSTANCES TO ENSURE THAT SALES ARE APPROPRIATE. WHILE CURRENT INCOME AND NET WORTH ARE RELEVANT TO THE SUITABILITY DETERMINATION, JUST AS IMPORTANT, AND PERHAPS MORE SO, ARE THE SENIOR'S ANTICIPATED FUTURE CHANGES IN INCOME, EXPENSES, NEEDS, AND LIQUIDITY. AS PEOPLE AGE, THEY ARE MORE SUSCEPTIBLE TO ILLNESS, DISEASE, AND POOR HEALTH THAT OFTEN REQUIRES EXPENSIVE MEDICAL CARE. MOST SENIORS ARE ON A FIXED INCOME AND HAVE NO FUTURE EARNING POTENTIAL. AS A RESULT, TAPPING INTO THEIR ASSETS IS OFTEN THE ONLY WAY THEY CAN PAY FOR THEIR LIVING EXPENSES AND HEALTH CARE NEEDS. IN MY EXPERIENCE, SENIORS ARE GENERALLY AWARE OF THEIR FINANCIAL NEEDS IN THIS REGARD AND CAN PROVIDE IMPORTANT INFORMATION THAT THE INSURANCE COMPANY SHOULD ASK FOR IN MAKING A

VALID SUITABILITY DETERMINATION. THE SAME IS TRUE OF THE SENIOR'S ANTICIPATED CHANGES IN INCOME AND OTHER EXPENSES, WHICH IS HIGHLY RELEVANT TO WHETHER THE SALE OF A LONG-TERM DEFERRED ANNUITY TO THE SENIOR CITIZEN IS APPROPRIATE. SOME ANNUITY ISSUERS FAIL TO ASK THESE QUESTIONS, HOWEVER, BECAUSE IT WOULD REDUCE SALES TO SENIORS AND IMPACT THEIR FINANCIAL BOTTOM LINE.

THANK YOU. I WOULD BE HAPPY TO TAKE ANY QUESTIONS YOU MAY HAVE.

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[1] "The Growing Senior Market," Annuity Seminar Selling System, p. 1, Allianz Life Insurance Company of North America.
[2] Form 10-K, American Equity Investment Life Holding Company, Filed March 13, 2007, p. 3.
[3] "The Growing Senior Market," Annuity Seminar Selling System, p. 2, Allianz Life Insurance Company of North America.
[4] *The Wall Street Journal,* "Annuities 101: How to sell to senior citizens," July 2, 2002, p. C-1.
[5] Heritage Marketing, "Agent Training Materials."

The CHAIRMAN. Thank you very much, Ms. Swanson.
Mr. Galvin.

STATEMENT OF WILLIAM GALVIN, SECRETARY OF THE COMMONWEALTH, BOSTON, MA

Mr. GALVIN. Thank you.

Chairman Kohl and Ranking Member Smith, I am William Galvin. I am the secretary of the Commonwealth of Massachusetts. As head of the Massachusetts Securities Division, I am the chief securities regulator in Massachusetts.

I want to applaud your decision to investigate the deceptive marketing of annuities and other financial products for senior citizens. This is an area of compelling concern in Massachusetts, and I know in other States, as well.

Through investigations and complaints from the public, my office has become aware of very troubling sales tactics. A veritable army of alleged "Senior Specialists" have been using sophisticated marketing tools to give senior citizens the impression that they are acting as their unbiased and skilled advisors. However, the real objective is to convince them to purchase a specific product that the specialist offers. Often the product is a high-commission annuity which has been sold under false pretenses and which the purchaser does not fully understand.

Although annuities may be a valuable tool in one's financial portfolio, often the annuities that we have seen sold to seniors are unsuitable due to lengthy lockup periods, as you just heard, large surrender fees, and negative tax implications. Many of these disadvantages are not disclosed or explained by the so-called senior specialists.

In an effort to cloak themselves with legitimacy as financial advisors, many annuities salespersons have used titles such as "Certified Elder Planning Specialist," which was conferred by an entity called Brokers Choice, which required nothing more than payment to Brokers Choice and 96 hours of self-study, all done through the mail.

Brokers Choice also created senior financial survival workshops, where the purported advisor gives a free financial planning seminar on a whole range of senior-specific topics, all of which were geared toward deceiving and frightening the elderly into purchasing annuities with exorbitant commissions.

As another example, annuity salesmen have been using the Certified Senior Advisor designation to give the impression that they have specialized expertise in senior financial affairs, and that they are acting in the role of an advisor.

For example, one agent stated in his advertising materials that he is the one of 7,000 Certified Senior Advisors in the U.S., and is therefore well trained on many issues, especially senior finances. However, my office's investigation into this designation indicated that it was primarily a marketing tool, and CSAs did not receive meaningful training on financial issues involving seniors.

As another example, a number of salespeople are using the so-called "Piece Of Pie" sales model—I don't know if that is trademarked or not, but it is what they call it—which is also geared toward senior citizens. The Piece Of Pie seminars specifi-

cally try to scare seniors away from the financial products they currently own, or are currently involved with, and to cast doubt on the competence of the person's existing advisor.

For example, Piece Of Pie's presentation includes slides warning that banks may not be safe, and that the average rate of return in the stock market is "A big lie." In addition, the Piece Of Pie materials bootstrap their scare tactics to other concerns that seniors might have, such as bird flu, identity theft, retirement, long-term care, and the cost of prescription drugs and nursing home care.

After gaining the client's confidence and trust through a series of meetings, the annuity is offered as the recommended solution to the client's concerns. We have also seen a proliferation of third-party publishing companies that provide agents with prewritten books, articles and newsletters, which are often used to give seniors the impression that the agent has specialized expertise that he or she does not really have.

For example, Javelin Marketing sells a monthly series of SeniorFinance—that is one word—newsletters, which allow the agent to insert his name and picture before sending it out to clients, implying that he indeed has authored it. Oftentimes, this is a misconception that is promoted to the seniors.

These are merely a few of the marketing tools that the Massachusetts Securities Division has seen. Often, the insurance company that underwrites the product will sponsor the agent's acquisition of these marketing tools from the third-party vendors that provide them. This allows the insurance companies to enjoy the benefit of increasing sales while preserving the ability to distance themselves from any negative association with the marketing materials.

I am truly alarmed at the level of deception 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, and I could go into several examples which would only repeat some of the statements you have already heard, most especially taking advantage of people late in their years at a time when they need access and liquidity to their money where they are being deprived of it, not to mention the high fees.

This has come across the board. It is men and women. It is people who have some experience in financial expertise, and some who have absolutely none.

I know that the purpose of today's hearing is to discuss what we can do, and that is why I would like to proceed to that part of my testimony where it talks about what we have done in Massachusetts.

We indeed have already adopted regulations that apply to all of our broker-dealers and financial advisors that address the issue of questionable credentials. The regulation that we have now put in place prohibits the use of senior-specific credentials or professional designations unless the credential has been accredited by a reputable national accreditation organization. Examples of such organizations are the American National Standards Institute and the National Organization of Competency Assurance, both of which accredit personal certification programs.

During the comment period on our regulation, our rule met with a favorable response from industry participants, as well as senior citizens and consumer advocacy groups.

I want to thank the Chairman and each Member of the Committee for the opportunity to appear and provide this testimony, and I look forward to answering any questions you may have and providing you with additional information you may request.

I can't stress how important it is that we move promptly. I think we see the marketing continuing to evolve here. As quickly as we uncover one particular set of terms, another one emerges.

I also think it is important to bear in mind as we put together a plan, whether it be at the State level or the national level, that we have to put something out that is going to stand the test that inevitably it is going to have in the courts or commercial-free speech allegations and other such things.

In Massachusetts, our experience has been based on qualifying the material based upon our past experience, qualifying it based on specific accreditation. I do think you are going to need that flexibility in any effort, whether it be regulatory or legislative.

[The prepared statement of Mr. Galvin follows:]

TESTIMONY OF WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth of Massachusetts

Before the
United States Senate,
Special Committee on Aging

September 5, 2007

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 marking 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.

The CHAIRMAN. Very good, Mr. Galvin.
Mr. Borg.

STATEMENT OF JOSEPH BORG, PRESIDENT, NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, WASHINGTON, DC

Mr. BORG. Chairman Kohl, Ranking Member Smith, we commend you for your ongoing investigation of investment fraud targeting our Nation's seniors. We share your outrage at the practices used to swindle seniors out of their hard-earned money that they need for a secure retirement.

State regulators, as the first line of defense for investors, are at the forefront in detecting the problem of senior abuse and responding to it aggressively. We believe the most effective weapons against fraud are vigorous enforcement, investor education and innovative regulation. The States have been active in all of these areas.

NASAA and its members have led the effort to educate the public about senior fraud. In 2003 NASAA created the Senior Investor Resource Center on our website. The fourth episode in our Alert Investor podcast, "How To Talk To Your Parents About Senior Investment Fraud," was released this May. NASA members also partner with grassroots organizations such as AARP.

One successful example is the Senior Sleuth checklist program, in which AARP volunteers attend free lunch seminars targeting seniors and report their findings back to State securities regulators.

There are two types of senior abuse that we find especially troubling—the free lunch seminars and the misleading professional designations, and we are responding. We have all been invited to a free lunch or other dinner investment seminar that you just can't afford to miss, according to the ads. As you can see from the posters, there are recurrent themes in these enticing ads.

A free gourmet meal, tips on how to earn great returns while eliminating market risk, and a warm welcome to spouses of the invitees. Nothing will be sold. There is no cost or obligation, except the high-pressure sales pitch comes with a call a few days later from a Senior Specialist salesman.

The violations we see range from outright lies and the conversion of investor funds to more sophisticated forms of abuse. Often, the salesman recommends liquidating securities positions and using the proceeds to purchase indexed or variable annuity products, which are often grossly unsuitable for senior citizens. These recommendations also may constitute the dissemination of financial advice for compensation without an investment adviser license, a violation of State securities laws.

Since 2003, State securities regulators have been actively investigating and bringing cases to stop the spread of abusive sales practices that often emanate from these events. From steakhouses in Arizona to country clubs in Virginia, the retirement savings of seniors, as well as of those nearing retirement, are being targeted by salesmen who put their own personal interests ahead of those of their clients. There is no such thing as a free lunch.

For example, in June 2007, Missouri Securities took action against an Ozark man for misleading senior investors by conducting seminars targeting older investors, discussing tax investment issues, insurance matters, but not the facts and the risks about the investments—or his felony fraud conviction, for that matter. He took in $1.3 million over a 2-year period, and there is only $12,000 that remains.

Colorado, securities and law enforcement authorities won a securities fraud conviction and a 20-year prison sentence of a con man who defrauded mostly older adults of almost $600,000 in retirement savings through free lunch programs at retirement centers.

California, Department of Corporations charged an individual with fraudulently operating as an investment adviser after he made recommendations primarily to seniors who invested $15 million through seminars with free lunches at country clubs and high-end restaurants.

As Chairman Cox mentioned, in 2007, seven States joined forces with the SEC and FINRA in examinations to detect abusive sales tactics aimed at seniors during the free lunch seminars. Our full report on these exams will be released next week, as the Chairman mentioned. But preliminary findings confirm that the seniors attending the free lunch seminars are often subject to fraud, misrepresentations, and other violations of the securities laws.

State securities regulators continue to see the use of impressive sounding but often highly misleading titles and professional designations, many of which imply a special expertise in addressing the financial needs of seniors, all for the purpose of gaining a senior's trust. Often, these designations are used in conjunction with the free lunch seminars, or highlighted in mass mailings, business cards and other promotional materials.

NASAA created a task force to address the senior designations problem. We found that a substantial number of our regulators had taken enforcement actions against individuals who had used the senior designation in a deceptive manner. Investigations, I assure you, are continuing.

We are also responding to the problem of senior designations with regulatory solutions. I want to commend Massachusetts's secretary of the Commonwealth, Bill Galvin, for his leadership in addressing the problem not only through effective enforcement, but also through innovative rulemaking.

The multi-front offensive launched by State and Federal securities regulators and today's hearing is a testament to the fact that senior citizens remain a target for unscrupulous salespersons, and further action is necessary to punish and deter the wrongdoing. The NASAA task force has been working on a model rule suitable for adoption by every NASAA member, which—would create a separate violation of law to use a designation to mislead investors. We will urge its adoption in every jurisdiction.

Also, Congress should explore proposals to assist law enforcement, to ensure that those who take advantage of our Nation's elderly will be held accountable. Problems will remain as long as the benefits to the perpetrators outweigh the costs. Enhanced penalties for senior abuse, ranging from fines to jail terms, should help raise

those costs, deter law violations and punish those who would exploit senior investors.

In conclusion, this Committee's examination of investment fraud against the growing senior population is an important step in highlighting a serious problem and working toward solutions. The entire community of State securities regulators will continue to play an active role in protecting seniors through enforcement, education and regulation.

Thank you again for the opportunity to appear today. I look forward to answering any questions you may have and providing any assistance that we can in the future. Thank you.

[The prepared statement of Mr. Borg follows:]

TESTIMONY OF JOSEPH P. BORG

Director, Alabama Securities Commission
and
President
North American Securities Administrators Association, Inc.

Before the
Special Committee on Aging
United States Senate

"Advising Seniors About Their Money: Who Is Qualified - and Who Is Not?"

September 5, 2007

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

I'm Joe Borg, Director of the Alabama Securities Commission and President of the North American Securities Administrators Association, Inc. (NASAA).[1] I commend you for your Committee's ongoing investigation of investment fraud targeting our nation's seniors. State securities regulators share your outrage at the practices used by unscrupulous brokers and other predators who swindle seniors out of the hard-earned money they need for a secure retirement. State securities regulators are considered the first line of defense for investors, and it should come as no surprise that we have been at the forefront in detecting the problem of senior abuse and responding to it aggressively.

We believe the most effective weapon against fraud is: vigorous enforcement, investor education, and innovative regulation. The states have been active in all of these areas. For example, our enforcement data confirms the trend toward senior investment abuse and it also reflects the states' role in taking enforcement action against the perpetrators. According to our 2005 NASAA enforcement survey, 28 percent of all investor complaints submitted to state securities agencies came from seniors, 26 percent of all state enforcement actions involved the financial exploitation of seniors, and 34 percent of all cases of senior exploitation involved variable or equity index annuities. Preliminary results from our most recent survey show that the percentage of senior investor complaints has risen to 44 percent. Later I'll highlight some specific enforcement actions addressing senior abuse. These cases represent just a small sampling from the states' campaign against senior investment fraud.

NASAA and its members have also led the effort to educate the public about senior fraud. For example, in 2003, NASAA recognized the investor protection challenges raised by the growth in our senior population and announced the creation of the "Senior Investor Resource Center" on our website. One of our more recent initiatives is "The Alert Investor," a series of podcasts produced by NASAA to provide individuals with investor protection news and information. The fourth episode in our podcast series, "How to Talk to Your Parents about Senior Investment Fraud," was released this May in conjunction with National Older Americans Month.

In addition, NASAA members actively bring important investor protection and awareness information to seniors in each of our jurisdictions through workshops, forums, and other public events. We also partner with grassroots organizations, such as AARP, to help reach even more seniors. One successful example of this outreach partnership is the Senior Sleuth Checklist program, in which AARP volunteers attend "free lunch" seminars targeting seniors and report their findings to state securities regulators.

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[1] The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was founded in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

The states have been in the vanguard developing innovative regulatory responses that will help states crack down on senior fraud. For example, Massachusetts adopted a rule limiting the use of professional designations that state or imply a special expertise in senior financial affairs and money management. These designations are often used to gain trust and perpetrate fraud against seniors. NASAA is helping to address the problem of senior designations through a model rule that will serve as a useful rulemaking guide for all state securities regulators.

After a brief overview of state securities regulation, I'd like to focus on two specific types of senior abuse that we find especially troubling: "free lunch" seminars and misleading professional designations. On each of these fronts, the states are responding with all three of the important weapons I mentioned above: enforcement, education, and rulemaking.

State Securities Regulatory Overview

The securities administrators in your states are responsible for enforcing state securities laws, licensing firms and investment professionals, registering certain securities offerings, examining broker-dealers and investment advisers, and providing investor education to your constituents. Some of my colleagues are appointed by their Governors and Cabinet officials; ten are appointed by their Secretaries of State; five fall under the jurisdiction of the state Attorney General; and others, like my office, are independent commissions. But regardless of how they are organized, state securities regulators share a profound and common goal: to protect investors from fraud and abuse in the offer and sale of securities.

Like the securities administrators in your states, the Alabama Securities Commission devotes much of its resources to enforcement. State securities regulators bring civil actions, administrative proceedings, and even criminal prosecutions against the companies and individuals who exploit investors. Our goals are to halt violations through injunctions, punish violators through fines and criminal sanctions, and help make investors whole through restitution. We also protect the public by suspending or revoking the licenses of the firms and individuals who have violated the law.

Free Lunch/Dinner Seminars

Let me now turn to two of our efforts in the war on senior fraud. Most of us over the age of 50 have received a card in the mail inviting us to a "free lunch" or dinner investment seminar that we are told we can't afford to miss. As you can see from the poster, there are recurrent themes in these enticing ads: a free gourmet meal, tips on how to earn great returns while eliminating market risk, and a warm welcome to spouses of the invitees. Nothing will be sold, they proclaim, and there is NO cost or obligation. In reality, the high-pressure sales pitch usually comes in the form of a follow-up call a few days after the meal from a salesman with a title such as "senior specialist."

Our members are seeing a variety of violations associated with many of these events, ranging from outright lies and the conversion of investor funds to more sophisticated forms

of abuse. Often, the salesman recommends liquidating securities positions and using the proceeds to purchase indexed or variable annuity products that the specialist offers. These products are often grossly unsuitable for senior citizens, and this is one way that the "free lunch" seminars can cause harm to investors. These recommendations also may constitute the dissemination of investment advice for compensation. If the salesman is not properly licensed, then he or she is offering investment advice as an unregistered investment adviser, which is yet another violation of state securities law.

Since 2003, when NASAA first identified the risk that seniors face at "free lunch" investment seminars, state securities regulators have been actively investigating and bringing cases to stop the spread of abusive sales practices that often emanate from these events. From steakhouses in Sun City, Arizona, to country clubs in Fredericksburg, Virginia, the retirement savings of seniors, as well as those nearing retirement, are being targeted by well-trained salesmen who, in too many cases, put their own personal interests ahead of those of their clients. As the following state enforcement actions demonstrate, there is no such thing as a "free lunch".

For example, in June, 2007, the Missouri Securities Division issued a Cease and Desist Order against an Ozark man for allegedly misleading senior investors and using their money for personal expenses, such as credit card and country club bills. The individual, who previously served time in federal prison for fraud, generated potential clients by conducting seminars targeting older investors. During the seminars he would discuss tax, investment, and insurance issues with the participants – but not important facts and risks about the investments he was offering or his felony fraud conviction. The state's investigation found that $1.3 million was transferred between accounts controlled by this individual over a two-year period, and only $12,000 remains.

In Utah, World Group Securities, a broker-dealer based in Duluth, Georgia, agreed to pay a $50,000 fine and strengthen its supervisory practices after two of its agents were found offering "free lunch" seminars for seniors and misrepresenting the credentials of one of the agents. An investigation by the Utah Division of Securities found that the two agents generated their senior clients through investment seminars, where inaccurate and misleading information was presented in an attempt to persuade the seniors to transfer their investment accounts to one of the agents. For example, one agent told seniors that due to his skills, one of his clients could now afford to take three vacations a year and had invited him and his family to join the client on vacation. In truth, the client with whom the agent vacationed was his father.

In Colorado, the state's Division of Securities and county law enforcement authorities won a securities fraud conviction and 20-year prison sentence of a conman who defrauded at least 25 people – older adults for the most part – of almost $600,000 in retirement savings. Between 1999 and December 2002, the fraudster solicited money primarily through "free lunch" seminars and presentations at retirement and senior centers in Colorado and New Mexico.

In California, the Department of Corporations charged an individual with fraudulently operating as an investment adviser after he made recommendations to some 40 clients,

primarily seniors, who invested $15 million in mutual funds. This investment activity generated an average of at least $150,000 annually in commissions for the "adviser" who hosted seminars where seniors commonly received free lunches at country clubs, golf courses, and high-end restaurants. Not only did this individual lack a state license to operate as an investment adviser, but he also had a history of disciplinary actions by the NASD.

In addition to bringing individual state enforcement actions, NASAA and seven states joined forces with the SEC, as well as the NASD and NYSE Regulation (now consolidated as the Financial Industry Regulatory Authority or "FINRA"), in targeted examinations to detect abusive sales tactics aimed at seniors during "free lunch" seminars. A full report on these examinations will be released next week, but the preliminary findings confirm that seniors attending "free lunch" seminars are often subject to fraud, misrepresentations and other violations of the securities laws.

The Senior Designation Problem

State securities regulators continue to see another disturbing trend in the area of senior abuse. Increasingly, licensed securities professionals, insurance agents, and unregistered individuals are using impressive-sounding but sometimes highly misleading titles and professional designations. Many of these designations imply that whoever bears the title has a special expertise in addressing the financial needs of seniors.

While some of these designations reflect bona fide credentials in the field of advising seniors, many do not. These titles can serve as an easy way for an unscrupulous sales agent or adviser to gain a senior's trust, which is the first step in a successful fraud. Often these designations are used in conjunction with the "free lunch" seminars I discussed earlier. In other cases, they are highlighted in mass mailings, business cards, and other promotional materials.

It is exceedingly difficult for prospective investors – particularly senior citizens – to determine whether a particular designation represents a meaningful credential by the agent or simply an empty marketing device. Use of such professional designations by anyone who does not actually possess special training or expertise is likely to deceive investors.

Earlier this year, the NASAA Board of Directors created a task force to address the growing problem of what we call "senior designations." One of the first actions of the task force was to survey the NASAA membership to understand the nature and scope of the problem. We found that nearly half of the respondents had taken an enforcement action against individuals who had used a senior designation in a deceptive manner, and other members were investigating such allegations.

NASAA and its members are also responding to the problem of senior designations with regulatory solutions. One prominent example is Massachusetts, which recently issued a rule prohibiting the use of senior designations that have not been properly accredited by a recognized accrediting organization. I want to commend Massachusetts Secretary of the

Commonwealth Bill Galvin for his leadership in addressing the problem not only through effective enforcement but also through innovative rulemaking. In addition, Nebraska has issued a special notice addressing the use of designations and Washington State is soliciting comments on possible rule amendments aimed at the use of professional designations relating to senior citizens.

Recommendations

Notwithstanding the multi-front offensive launched by state and federal securities regulators, today's hearing is a testament to the fact that senior citizens remain a target for unscrupulous sales persons. What further action is necessary to punish and deter the wrongdoing?

As I mentioned earlier, the NASAA Task Force has been working on a model rule that would be suitable for adoption by every NASAA member confronting the misuse of senior designations. The model currently under consideration would attack the problem by making it a separate violation of law to use a designation or certification to mislead investors. Once the model rule has been released for public comment and ultimately approved by the NASAA membership, we will urge its adoption in every jurisdiction.

NASAA also believes that Congress should explore proposals to assist law enforcement and prosecutors to ensure that those who take advantage of our nation's elderly will be held accountable. Fraudulent investment sales to seniors will remain a problem of epidemic proportions as long as the benefits to the perpetrators outweigh the costs. Enhanced penalties for senior abuse – ranging from fines to jail terms – should help to raise those costs, deter law violations and punish appropriately those who exploit senior investors.

Conclusion

This Committee's examination of investment fraud against the growing senior population is an important step in highlighting a serious problem and working toward solutions. The financial victimization of seniors is simply intolerable, and the entire community of state securities regulators will continue to play an active role in protecting seniors through enforcement, education, and regulation.

I thank the Chairman and each member of this Committee for allowing me the opportunity to appear today. I look forward to answering any questions you have and providing additional assistance to you in the future.

The CHAIRMAN. Thank you, Mr. Borg.
Mr. Nicolette.

STATEMENT OF NICHOLAS NICOLETTE, PRESIDENT, FINANCIAL PLANNING ASSOCIATION, WASHINGTON, DC

Mr. NICOLETTE. Thank you, Chairman Kohl and Ranking Member Smith, for providing me the opportunity to add my voice to the chorus of concern raised in the testimony you have heard today.

I am Nicholas Nicolette, president of the Financial Planning Association, which represents over 28,000 financial planning professionals. In my day job I am a partner in Sterling Financial Group, a small financial planning firm in Sparta, NJ, and I reside in Port Jervis, NY.

FPA strongly commends this Committee for investigating the perplexing world of senior financial designations and shining a spotlight on the alphabet soup of certifications and designations that leaves too many elderly consumers vulnerable to incompetent or fraudulent financial advice. I am proud to lead an organization of professionals who are committed to adhering to the highest standards of professional competence and ethics.

Our position on consumer protection is as simple as it is unwavering. Financial planners have a fiduciary duty to their clients. Put another way, we are obliged to act in the best interest of our clients, even if it is to our own detriment. There is no higher standard.

I am also proud to say that, like most FPA members, I hold the Certified Financial Planner certification, or CFP. FPA supports the CFP mark, administered by CFP Board of Standards, as the highest standard for competent, ethical financial planners. CFP professionals have clearly demonstrated that they possess the four Es—Education, Examination, Experience and Ethics.

CFP certification is not the only credential that can or should be trusted by the public, but it represents so much of what is missing from some of the other 100-plus designations and certifications this Committee has investigated. Without these basic criteria, rigorous education and examination, experience and enforceable ethics, you cannot sustain credibility or the public trust.

The tragic stories we have heard so far today are all-too-common and cast a pall over the entire financial services industry. I have heard from a number of our Members who have helped reassemble the shattered lives of senior citizens, victims of these pseudo-financial experts. These seniors have spent a lifetime working hard, raising and educating their children, and saving with the goal of living their retirement years with dignity and respect.

One particular tragic case that came to my attention from an FPA member in Pennsylvania involved an elderly man who was victimized by an annuity salesman carrying a Senior Certification. You may have read about it in this morning's Washington Post, or as Senator Casey referenced.

The 79-year-old man was persuaded by the salesman to sign a Power Of Attorney, giving the agent access to the individual's CDs, cash and mutual funds. The assets, not coincidentally, ended up in unsuitable annuities.

When the victim learned he had been cleaned out, his family said that he went into a deep depression and died a few months later. The insurance company offered the gentleman his money back in a letter which arrived on the day of his funeral. His family buried him with the letter in his pocket.

Sadly, this insurance salesman is still doing business today despite being sanctioned several times by State insurance officials.

In contrast to the product-driven process employed by this agent, FPA supports a client-centered process. CFP practitioners, for example, are required by their ethics code to use six clearly defined steps in the planning process to help people achieve their life goals.

In the case of this unfortunate victim, we would have created a budget plan and identified cash-flow needs for daily needs and emergencies before looking at strategies and possible product solutions for ensuring that he did not outlive his resources. We would be required to clearly disclose all conflicts of interest and, just as important, how we are paid. so how can we help our seniors from those who would prey on them? A combination of well-crafted regulation, vigorous enforcement action and education are the key.

Today, individuals are required to make more financial decisions that impact the quality of their lives than ever before. We have a responsibility to create an environment in which they can seek guidance and make decisions with confidence that their interests are being put first.

Director Borg has discussed NASAA's plans to adopt a model regulation that we hope will discourage the use of bogus credentials. We look forward to working with NASAA toward that end.

Regulators must also continue to be vigilant and act decisively when they see early indications of fraud. In some ways, though, their hands are tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products.

State insurance laws are now only playing catch-up to securities laws by establishing suitability requirements in certain product sales. If an insurance agent, or any professional, uses a title or marketing materials suggesting he or she acts in the client's best interest, then they should be held to a fiduciary standard.

Finally, we must help investors, young and old alike, to educate themselves about the background of the person with whom they are investing their assets and their trust.

Thank you again for allowing me to testify today, and I will be happy to respond to your questions later.

[The prepared statement of Mr. Nicolette follows:]

Testimony of

Nicholas A. Nicolette, CFP®
President of the
Financial Planning Association®

on

"Advising Seniors about Their Money: Who's Qualified—and Who's Not?"

Before the Special Committee on Aging

of the

United States Senate

September 5, 2007

Thank you, Chairman Kohl, Ranking Member Smith, and other distinguished members of the Special Committee, for providing me the opportunity to add my voice to the chorus of concern raised in the testimony that you've heard today.

I am Nicholas Nicolette, president of the Financial Planning Association®,[1] which represents more than 28,000 financial planning professionals. In my day job, I am a partner in Sterling Financial Group, a small financial planning firm in Sparta, New Jersey. I reside in Port Jervis, New York.

FPA strongly commends this committee for investigating the perplexing world of senior financial designations and shining a spotlight on the alphabet soup of certifications and designations that leaves too many elderly consumers vulnerable to incompetent or fraudulent financial advice.

I am proud that I have the opportunity to lead an organization of professionals who are committed to adhering to the highest standards of professional competence, ethical conduct and clear, complete disclosure for financial planning professionals. Our position on consumer protection is as simple as it is unwavering – financial planners have a fiduciary duty to their clients. Put another way, we are obliged to act in the best interests of our clients – even if it is to our own detriment. There is no higher standard.

I'm also proud to say that like most FPA members, I hold the CERTIFIED FINANCIAL PLANNER™ certification, administered by Certified Financial Planner Board of Standards Inc. (CFP Board).[2]

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[1] The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms. Most of FPA's 28,000 members are affiliated with investment adviser firms registered with the Securities and Exchange Commission, state securities administrators, or both. FPA is incorporated in Washington, D.C. where it maintains an advocacy office, with headquarters in Denver, Colorado.

[2] Certified Financial Planner Board of Standards Inc. (CFP Board) is a separate nonprofit organization whose goal is to benefit and protect the public by establishing and enforcing education, examination, experience and ethics requirements for persons authorized to use its certification marks. CFP Board is the largest such organization in the U.S. with more than 55,000 CFP® certificants.

FPA supports the CFP mark as the highest standard for competent, ethical financial planners. CFP® professionals have met the well-established and rigorous education, examination, experience and ethical requirements of the CFP certification process. The CFP certification is not the only credential that can or should be trusted by the public. But it represents so much of what is missing from some of the other 100-plus designations and certifications this committee has investigated - rigorous education and examination, enforceable ethical standards, and experience. Without these basic criteria, you cannot sustain credibility or the public trust.

CFP certification candidates must pass a comprehensive 10-hour, two-day examination on all aspects of personal finance, including retirement planning for persons of all ages. The exam is extremely rigorous. Only about 55 percent of applicants pass in their first attempt. If they do not have previous financial planning experience, applicants are required to obtain three years of qualifying full-time work experience after passing the exam. They also must undergo a full background investigation and abide by a stringent code of ethics and ongoing continuing education requirements.

In short, it's tough, very tough, to get and stay certified. And that is why the mark is used proudly by those who receive it, why it is waived from testing requirements by state securities regulators, and why it translates into public trust.

But rather than undergo this difficult, but not impossible process, too many simply claim an expertise in financial planning - or in the issue before this Committee, senior financial planning. The tragic stories we have heard so far today are all too common and cast a pall over the entire financial services industry. I have heard from a number of our members who have helped reassemble the shattered lives of senior citizens - victims of these pseudo-financial experts. These seniors have spent a lifetime working hard, raising and educating their children and saving for their retirement. For most, their

financial goal is not to live a lavish lifestyle, but to enjoy their retirement years with dignity and respect.

One particularly tragic case that came to my attention from an FPA member in Pennsylvania involved an elderly man who was victimized by an annuity salesman carrying a senior certification. The 79-year-old man was persuaded by the agent to sign a power of attorney, giving the agent access to the victim's CDs, cash and mutual funds. The assets, not coincidentally, ended up in unsuitable annuities. When the victim learned he had been cleaned out, his family said he went into a deep depression and died a few months later. The insurance company did attempt to rectify this horrible situation by offering the gentleman his money back. The offer was made in a letter which arrived on the day of his funeral. His family buried him with the letter in his pocket.

Sadly this salesman is still doing business, despite being sanctioned several times by state insurance officials.

In contrast to the product-driven process employed by this agent, FPA supports a client-centered process. CFP practitioners, for example, are required by their ethics code to use six clearly defined steps in the financial planning process to help people achieve their life goals, regardless of their stage of life.[3] A CFP professional must first establish and define his or her relationship with the client and gather relevant information, including the client's goals, needs and priorities, as well as financial data. The planner will then evaluate the client's financial situation and develop and present his or her recommendations. Specifically, in the case of this unfortunate victim, who had limited resources and was living on a fixed income, we would have worked with him first on a budget plan and identified cash flow for daily needs and emergencies. Only then, as part of the larger planning process, would we have looked at strategies and possible product solutions for ensuring that he did not outlive his resources. Annuities,

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[3] See the CFP Board's *Code of Ethics, Rules of Conduct, Practice Standards* and *Disciplinary Rules*. http://www.cfp.net/Downloads/2008Standards.pdf

or any other particular product, may or may not fit into the plan recommendations. If a planner is to be involved in implementing the plan and monitoring, these final two steps are also subject to the CFP Board's Practice Standards. Adherence to these standards is *required* of CFP certificants and is enforceable by CFP Board's Disciplinary and Ethics Commission.

Though these high standards are followed by tens of thousands of financial planners, including many who are not CFP practitioners, there are others who seek to take advantage of the most vulnerable in our society. So, how can we help protect our seniors from those who would prey on them? A combination of well-crafted regulation, vigorous enforcement and education are key.

Today, individuals are required to make more financial decisions that affect the quality of their lives than ever before. We have a responsibility – no, an obligation - to create an environment in which they can seek guidance and make decisions with confidence that their interests are being put first. Director Borg has discussed NASAA's plans to adopt a model regulation that we hope will discourage the use of bogus credentials. We look forward to working with NASAA toward that end. Regulators must also continue to be vigilant and act decisively when they see early indications of fraud. In some ways, though, their hands are tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products. State insurance laws are only now playing 'catch up' to securities laws by establishing suitability requirements in certain product sales.[4]

Additionally, if an insurance agent, or any professional, uses a title or marketing materials suggesting he or she acts in a position of implicit trust on behalf of the client,

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[4] In 2003, the National Association of Insurance Commissioners proposed a model regulation for states to adopt on suitability in annuity transactions with seniors.
See, http://www.naic.org/Releases/2003_docs/senior_protection_annuity.pdf. In 2006, the model was amended to apply to annuity transactions with all persons, regardless of age.

and has the expertise to help clients meet their objective, then they should be held to an adviser's fiduciary standard.

Finally, we must help investors – young and old alike – to educate themselves about the background of the person with whom they are investing their assets and their trust.

Thank you again for allowing me to testify today and I will be happy to respond to any questions you may have.

The CHAIRMAN. Thank you, Mr. Nicolette.
Ms. Praeger.

STATEMENT OF SANDY PRAEGER, INSURANCE COMMISSIONER, TOPEKA, KS, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Ms. PRAEGER. Thank you, Chairman Kohl and Ranking Member Smith. I really appreciate the opportunity to be here today representing the Kansas Insurance Department, but also as president-elect of the National Association of Insurance Commissioners. We really applaud you for holding this important hearing.

As you know, a recent series of news articles have really highlighted the problems with the use of these professional designations, such as Certified Senior Advisor, Certified Retirement Financial Advisor, Chartered Senior Financial Planner, and Certified Financial Gerontologist—I thought a gerontologist was a physician, but I guess not—that imply expertise in providing investment advice to senior citizens.

In the experience of State regulators, these designations involve very little actual training regarding the needs of this vulnerable population. It appears that these designations, which are granted by for-profit entities, serve more as marketing tools than as actual evidence of education or professional development.

Most of the problems that have been reported with those using these credentials in marketing materials have dealt with the sale of unsuitable annuities to senior citizens. Through the adoption of the suitability guidelines in Kansas and our enforcement activities, we are beginning to see a decline in the number of complaints that we are dealing with in our department. But we have also observed that companies have instituted more aggressive training requirements and compliance efforts with the producers that are authorized to sell their products, and we hope this is a trend that will continue.

The NAIC has also taken specific action to require that agents and companies selling annuities to senior citizens—and actually to all Americans, for that matter—take affirmative steps to ensure the suitability of the annuity for the consumer. In 2000, the NAIC adopted a white paper calling for the development of suitability standard for non-registered products similar to those that existed for some time under the Security and Exchange Commission for registered products.

The resulting senior protection and annuities transaction model regulation, or the suitability model, was adopted by the NAIC in 2003. This new model was another tool that regulators could use to protect consumers from inappropriate sales practices in addition to the NAIC's annuity disclosure model regulation, which had been adopted a few years earlier, which provides consumers the basic questions they should ask before purchasing an annuity.

Because purchasing life insurance and annuity products is often a complicated and confusing process for consumers of all ages, not just for seniors, the NAIC overwhelmingly adopted revisions to the suitability model in 2006 to have its requirements apply to all consumers, regardless of age. The suitability model imposes duties and

responsibilities on insurers and insurance producers regarding the suitability of a sale or exchange of an annuity to a consumer.

Specifically, in recommending to a consumer the purchase of an annuity or the exchange of annuity, the insurance producer must have reasonable grounds for believing that the recommendation is suitable for that consumer. Prior to the execution of a purchase or exchange of the recommended annuity, the insurance producer or insurer must make all reasonable efforts to obtain information concerning, (1) the consumer's financial status, (2) the consumer's tax status, (3) the consumer's investment objectives, and (4) any other information used or considered to be reasonable in making the recommendation to the consumer.

To ensure compliance with these requirements, an insurer must establish and maintain a system of supervision that includes maintaining written procedures and conducting periodic reviews of its records that must be reasonably designed to assist in detecting and preventing violations of the suitability model. Should a producer or an insurer fail to meet their obligations under the model, the Commissioner may order an insurer or producer to take corrective action, and may also impose fines.

Approximately 32 States have adopted the suitability model or similar suitability regulations. Some States, Kansas and Missouri for example, had already enacted laws covering all consumers, regardless of age, prior to the 2006 revisions. Other States, such as Iowa and Wisconsin, have also included life insurance products in the suitability standards.

As insurance commissioner, I take my responsibility for the enforcement of these regulations seriously. Since taking office in January 2003, our department has received 506 annuity complaints and have recovered more than $7.3 million for individuals who have had problems with those annuity products. The complaints range from misleading advertising and marketing to claims handling, with the most frequent category of complaint being misrepresentation of the product being purchased.

As demonstrated by our experience in Kansas, State regulators have acted diligently to ensure that injured consumers are made whole. My counterparts in other States have also been engaged on this issue. While the total number of complaints remains low relative to other lines of insurance, the complaints are still significant and show a troubling trend over time.

For the States that have reported data on annuity sales to the NAIC, there has been a marked increase in the number of total complaints in the categories of suitability, agent handling and misrepresentation over the past 3 years. The total number of annuity complaints reported in these categories rose from approximately 1,400 in 2004 to more than 2,300 in 2006. The proportion of these complaints attributed to suitability issues has also increased each year from just over 10 percent in 2005 to more than 18 percent in the data reported thus far in 2007.

To be clear, each and every complaint is reviewed and investigated by the State Department of Insurance. Since 2004, more than 75 percent of these annuity complaints have been—that have been reported to State regulators and to the NAIC have been resolved in favor of the consumer.

There is no doubt that abuses do exist and that State and Federal officials entrusted with the responsibility of protecting consumers must remain vigilant in their oversight of annuity sales. To this end, insurance commissioners have issued a consumer alert to warn senior citizens about abusive sales practices and to urge them to be sure that they fully understand the product they are purchasing before signing the contract.

I appreciate the opportunity to testify before the Committee today, and thank you for your attention to this really important issue. I would stand ready to answer questions.

[The prepared statement of Ms. Praeger follows:]

Testimony of Sandy Praeger,
Kansas Insurance Commissioner and NAIC President-Elect

Before the Senate Select Committee on Aging
September 5, 2007

Good afternoon Chairman Kohl, Ranking Member Smith, and Members of the Committee. My name is Sandy Praeger, and I am the Kansas Insurance Commissioner and President-Elect of the National Association of Insurance Commissioners (NAIC). The NAIC represents the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. The association's primary objective is to protect consumers and promote vibrant insurance markets. Thank you for holding this hearing to examine the qualifications of investment advisors who make recommendations to seniors on the investment of their money.

A recent series of news articles in the New York Times and the Wall Street Journal have pointed to problems with the use of professional designations, such as "Certified Senior Adviser," "Certified Retirement Financial Adviser," "Chartered Senior Financial Planner" and "Certified Financial Gerontologist," that imply expertise in providing investment advice to senior citizens. However, those designations in our experience involve very little actual training regarding the needs of this vulnerable population. It appears from these news articles that these designations, which are granted by for-profit entities, serve more as marketing tools than as actual evidence of education or professional development. Most of the problems that have been reported with those using these credentials in marketing materials have dealt with the sale of unsuitable annuities to senior citizens. Annuities are complex financial instruments. State and federal regulators must remain vigilant in monitoring annuity sales to ensure that producers and insurers sell suitable products.

Insurance Commissioners across the country closely examine the background and training of all those selling annuities and insurance. In addition, our department has developed training programs for producers on the various aspects of the different annuity products. We then can use the information to conduct seminars around the state. Licensing requirements provide the foundation of the state regulator's efforts. Producers selling annuities and insurance must meet minimum standards with regard to knowledge of the products they sell, as well as the laws, regulations and guidelines that govern their sale. Insurance commissioners also ensure that those with criminal records and histories of fraud or other unacceptable conduct are not selling insurance and annuities to our seniors and to other residents of our states. Through the adoption of our suitability guidelines in Kansas and our enforcement activities we have seen a decline in the number of complaints that we are dealing with in our department. We have observed that companies have instituted more aggressive training requirements and compliance efforts with the producers authorized to sell their products.

The NAIC has also taken specific action to require that agents and companies selling annuities to senior citizens, and to all Americans, for that matter, take affirmative steps to ensure the suitability of the annuity for the consumer. In 2000, the NAIC adopted a white paper calling for the development of suitability standards for non-registered products, similar to those that existed for some time under the Securities and Exchange Commission (SEC) for registered products. The result of that white paper was a working group under the Life Insurance and Annuities Committee that drafted a model setting suitability standards for all life insurance and annuity products.

The committee decided to focus first on the area that had been identified as subject to the greatest abuse: the inappropriate sales of annuities to persons over the age of 65. The resulting Senior Protection in Annuity Transactions Model Regulation ("Suitability Model") was adopted by the NAIC in 2003. This new model was another tool that regulators could use to protect consumers from inappropriate sales practices in addition to the NAIC's Annuity Disclosure Model Regulation.

Purchasing life and annuity products is often a complicated and confusing process for consumers of all ages, not just for seniors, and there was a strong feeling among regulators that the protections of the Suitability Model should not be limited only to seniors. To address this issue, in 2006, the NAIC membership overwhelmingly adopted revisions to the Suitability Model to have its requirements apply to all consumers regardless of age.

The Suitability Model imposes certain duties and responsibilities on insurers and insurance producers regarding the suitability of a sale or exchange of an annuity to a consumer. Specifically, in recommending to a consumer the purchase of an annuity or the exchange of an annuity, the insurance producer, or the insurer if no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer. This is based on facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs. To ascertain the product's suitability, prior to the execution of a purchase or exchange of the recommended annuity, the insurance producer, or insurer if no producer is involved, must make all reasonable efforts to obtain information concerning: (1) the consumer's financial status; (2) the consumer's tax status; (3) the consumer's investment objectives; and (4) any other information used or considered to be reasonable in making the recommendation to the consumer.

Approximately 32 states have adopted the Suitability Model or similar suitability regulations. Some states, Kansas and Missouri, for example, had already enacted laws covering all consumers regardless of age prior to the 2006 revisions. Other states, such as Iowa and Wisconsin, also have included life insurance products. As Insurance Commissioner, I take my responsibility in this regard very seriously. Since taking office in January of 2003, our department has received 506 annuity complaints and we have recovered more than $7.3 million for individuals with annuity problems. The complaints range from misleading advertising and marketing to claims handling with the most frequent category of complaint

being misrepresentation of the product being purchased. As demonstrated by our experience in Kansas, state regulators have acted diligently to ensure that injured consumers are made whole.

To ensure compliance with these requirements, an insurer must establish and maintain a system of supervision that includes maintaining written procedures and conducting periodic reviews of its records that must be reasonably designed to assist in detecting and preventing violations of the model. Should a producer or insurer fail to meet their obligations under the model, the commissioner may order an insurer or producer to take corrective action and may also impose fines.

Every complaint is investigated and corrective action is taken when warranted. Over the past several years, Insurance Commissioners have been closely monitoring complaints from consumers regarding annuity sales. While the total number of complaints remains low relative to other lines of insurance, the complaints are still significant and show a troubling trend over time. For the states that have reported data on annuity sales to the NAIC, there has been a marked increase in the number of total complaints in the categories of suitability, agent handling, and misrepresentation over the past three years. The total numbers of complaints reported in these categories rose from approximately 1400 in 2004 to more than 2300 in 2006. The proportion of these complaints attributed to suitability issues has also increased each year, from just over 10% of that total in 2005, to more than 18% in the data reported thus far in 2007. Each and every complaint is reviewed and investigated by the state Department of Insurance. Since 2004, more than 75% of these annuity complaints reported by state regulators to the NAIC have been resolved in favor of the consumer.

There is no doubt that abuses do exist and that state and federal officials entrusted with the responsibility of protecting consumers must remain vigilant in their oversight of annuity sales. To this end, the NAIC continues to track trends and provide insurance regulators and consumers with the tools they need to identify and stop unfair practices. In addition, Insurance Commissioners and the NAIC have issued a

Consumer Alert to warn senior citizens about abusive sales practices and to urge them to be sure that they fully understand the product they are purchasing before signing the contract. All consumers should verify that they are dealing with a licensed agent when purchasing an annuity by following three simple steps: Before buying an annuity, they should stop, call their state insurance department, and confirm that the producer is properly licensed. I appreciate the opportunity to testify before the committee today and thank you for your attention to this important issue. I look forward to answering any questions you might have.

Attachment One

NAIC Consumer ALERT
making progress . . . together

Annuities and Senior Citizens

Senior Citizens Should Be Aware Of Deceptive Sales Practices When Purchasing Annuities

Annuity sales to senior citizens have significantly increased in recent years. However, as annuity sales have risen, so has a sense of confusion among consumers. This is due, in part, to questionable or deceptive sales practices employed by companies and agents looking to take advantage of uninformed consumers. It is extremely important, when considering whether or not to buy an annuity, to take the necessary precautions in order to make an informed decision that is best for you.

What is an Annuity?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income, and can pay an income that can be guaranteed to last as long as you live.

What are the Different Kinds of Annuities?

There are several types of annuities, all of which carry varying levels of risk and guarantees. To get the most out of an annuity, it is imperative that you know the different options available to you, as well as the benefits each type provides.

- **Single Premium Annuity**: An annuity in which you pay the insurance company only one premium payment.
- **Multiple Premium Annuity**: An annuity in which you pay the insurance company multiple premium payments.
- **Immediate Annuity**: An annuity in which you begin to receive income payments no later than one year after you pay the premium.
- **Deferred Annuity**: An annuity in which you begin to receive income payments many years later.
- **Fixed Annuity**: An annuity in which your money, less any applicable charges, earns interest at rates set by the insurance company or in a way specified in the annuity contract.
- **Variable Annuity**: An annuity in which the insurance company invests your money, less any applicable charges, into a separate account based upon the risk you want to take. The money can be invested in stocks, bonds or other investments. If the fund does not do well, you may lose some or all of your investment.

Understand the Product You are Buying

When it comes to annuities, inappropriate sales practices can occur in many ways and come from a variety of sources. Anyone can be a victim, but senior citizens remain a prime target. Here are a few ways to protect yourself:

- Always review the contract before you decide to buy an annuity. Terms and conditions of each annuity contract will vary.
- You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so the charges don't take too much of the money you invest.
- Compare information for similar contracts from several companies. Comparing products may help you make a better decision.
- Ask your agent and/or the company for an explanation of anything you don't understand.
- Remember that the quality of service you can expect from the company and the agent should be an important factor in your decision.
- Verify that the company and agent are licensed. In order to sell insurance in your state, companies and agents must be licensed. To confirm the credibility of a company or agent, contact your state insurance department.
- Check the company's credit rating. Legitimate insurers have their "creditworthiness" rated by independent agencies such as Standard & Poor's, A.M. Best Co. or Moody's Investors Services. An "A+++" or "AAA" rating is a sign of a company's strong financial stability. You can check a company's rating online or at your local library.
- The proof is in the paperwork. As you complete your research and decide to purchase a particular policy, it's important to keep detailed records. Get all rate quotes and key information in writing. Once you've made a purchase, keep a copy of all paperwork you

- **Equity-Indexed Annuity**: A variation of a fixed annuity in which the interest rate is based on an outside index, such as a stock market index. The annuity pays a base return, but it may be higher if the index increases.

Is an Annuity Right for You?

To find out if an annuity is right for you, think about what your financial goals are for the future. Analyze the amount of money you are willing to invest in an annuity, as well as how much of a monetary risk you are willing to take. You shouldn't buy an annuity to reach short-term financial goals. When determining whether an annuity would benefit you, ask yourself the following questions:

- How much retirement income will I need in addition to what I will get from Social Security and my pension plan?
- Will I need supplementary income for others in addition to myself?
- How long do I plan on leaving money in the annuity?
- When do I plan on needing income payments?
- Will the annuity allow me to gain access to the money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

complete and sign, as well as any correspondence, special offers and payment receipts.

Avoid Being Fooled by Deceptive Sales Practices

Watch for the following red flags, which serve as warnings of possible deceptive sales practices:

- *High-pressure sales pitch.* If a particular group or agent has contacted you repeatedly, offering a "limited-time" deal that makes you uncomfortable or aggravated, trust your instincts and steer clear.
- *Quick-change tactics.* Skilled scam artists will try to prey on your "time fears." They may try to convince you to change coverage quickly without giving you the opportunity to do adequate research.
- *Unwilling or unable to prove credibility.* A licensed agent will be more than willing to show adequate credentials.
- Remember, if it seems too good to be true, it probably is!
- If you suspect you've been a victim of deceptive sales practices, or you have a specific question and can't get the answers you need from an agent or the insurance company, contact your state insurance department. You can link to its Web site by visiting

The CHAIRMAN. Thank you, Ms. Praeger.

As you know, the hearing today is entitled, "Advising Seniors About Their Money—Who Is Qualified And Who Is Not," and all the various ways you have testified on this issue. But in terms of that question, who is qualified and who is not, advising seniors about their money, I would like to ask each of you to tell me the one thing, or maybe the two things, that are most important, that we need to put in place, that we need to do to improve this whole area of advice that is being given to seniors on how to invest their money.

How do we improve that whole thing, one or two things? Ms. Swanson?

Ms. SWANSON. Sure, Chairman Kohl. Again, thank you for your leadership in this. as we heard from the testimony, it is incredibly important.

The agents who are out there are not rogue insurance agents. I think it is important that we recognize that none of these sales would happen unless there was an insurance company also selling the product. Insurance companies could borrow from the war on drugs and "Just Say No" when you do have an agent out there who is using the misrepresentations, who is out hustling policies, these free lunch seminars.

Insurance companies, when the application comes in, they can stop it right there, and I think it is important that they be ultimately held accountable. They are the ones making the most money. I do think it is important that Congress also pass regulations to deal with the abuse of titles that we are seeing, these Certified Senior Representatives and so on, because those titles do lure the senior citizen into believing that that agent is looking out for their best interest as opposed to that agent's bottom line.

Similarly, some of the abusive marketing that we have seen with regard to the free lunches and whatnot, I mean, senior citizens are lured to those, No. 1. Many are lonely. It is a social event for them. No. 2, many are on fixed incomes. They don't get to go out to lunch and dinner but for these type of offers. I think cracking down and reining in on those practices would be helpful as well.

The CHAIRMAN. Very good.

Mr. Galvin.

Mr. GALVIN. Mr. Chairman, I think obviously the need to somehow regulate the title is very important. That is why Massachusetts has taken action and, as you have heard from other speakers today, the idea is that there should be some requirement of something meaningful being behind the titles that are used.

I would also echo what the attorney general has said, that I think it is important that the beneficiaries, in the sense those who make money out of these practices, have to pay. These people are, in fact, agents of larger entities that are making money. I certainly think that, by making sure that they pay, that they will certainly curtail some of the actions of their agents.

Last, I think there has to be some opportunity for rescission. I think what we have heard, apart from the horror stories of individuals who have been taken advantage of, is the difficulty of getting rescission once this is uncovered. I think perhaps some national legislative effort, or some coordinated effort that would make it

clear that, once there is a showing that there has been misrepresentation or fraud or deceit of some kind, that there should be a period that the individual can, or their legal representatives, can get rescission of the contract.

This is particularly appropriate in the case of annuities, which seems to be the biggest problem here, but I think there could be other types of financial products. The Chairman of the SEC referred to some of those other products, as well.

I think we have to keep in mind that the industry that we are seeking to regulate, while very dynamic and, indeed, beneficial to many people in our country, also has the capacity to morph rather regularly into new variants. So if we calibrate our legislative effort or our regulatory effort only to one particular problem, we will find that they will move on before we have a chance to catch up.

So I think there has to be somehow a permanent right of rescission when fraud or deceptive practices is shown.

The CHAIRMAN. That is good.

Mr. Borg.

Mr. BORG. Thank you, Mr. Chairman. Let me add to what Attorney General Swanson and Secretary Galvin said.

A couple of things come to mind. Certainly what the FPA has talked about, the overall fiduciary standard. The violation of a fiduciary standard allows civil and criminal penalties in most States of some type or another. However, if you limit it strictly to the agent speaking and do not go up the chain, you are not solving the problem. So an overall fiduciary standard would certainly enhance civil and criminal penalties.

Now, although that may be an end results with the civil penalties, let us remember what we are trying to accomplish here. We are all at this table putting out forest fires, and there are raging forest fires trying to stop these things. We have got to figure out who is holding the match and blow out the match before that forest fire starts.

From that point of view, we have to add certain qualities. Up-the-chain liability, as Secretary Galvin has mentioned, is important. The companies need to be responsible for the actions of their agents.

Further, I think education is important, but a slightly different twist on the education. General education that is disseminated across the board has limited effect.

One of the programs we are using in my State is a special program that seniors watch. It is a cable TV that is called The Time Of Your Life. It starts with a clock that goes 60, 70, 80. It is a very, very popular show that is getting a lot of attention.

That type of education where you have a TV show or a cable show, something they can watch as opposed to read, is very, very important. Certainly working with the AARP and other groups of that nature is very helpful, as well.

I would add one more. We have to stop the problem 30 years from now by starting in our school system now. We have been advocating investor education, financial information in the school system now, not just for seniors, but let us face it, our children become seniors down the road. We have to start now. One of the ways to do that is mandate financial education as part of the curriculum,

and let us get away from, "Teenagers who ask, how can I be out of money? I still have checks in my checkbook." That type of education, must start early, not only on the senior level, but——with school-aged children.

Thank you very much.

The CHAIRMAN. All right. I would like to just throw out another question here, and you may decide you want to comment or not. Our next panel is going to consist of president and CEO of Allianz Life Insurance of North American. Are you all familiar with Allianz?

Mr. BORG. Yes.

The CHAIRMAN. You are? They are the ones who market these products, have agents that market these products. I mean, you think they are doing a great job? You think they are doing a lousy job?

If you were here sitting in this chair today—I mean, you have talked about getting up the food chain, you know, get to those people, hold them accountable. I will start with you, Ms. Praeger, Allianz. One of your favorite companies in the world? Something less? A, B, C, D, what?

Ms. PRAEGER. I think the market for annuity products has definitely grown. There is no question. Allianz leads the—in the development of those products.

But I think as seniors—as the Baby Boom generation ages, and we all want to—I kind of view that period from 1965 to 1985 as another career. I want to become really good at living my retirement years. People are concerned about having the sufficient income.

So I think the products—and we do certainly scrutinize the products before they go into our market—the problem really is the aggressive way that agents sell the products, and I think some of the commissions that encourage perhaps the inappropriate sales. So I really—and I think the titles, these designations which imply trust and try to garner trust, are really one of the problems.

So I think the focus needs to be on where the agent and the consumer interact.

The CHAIRMAN. Good.

Mr. Nicolette.

Mr. NICOLETTE. Well, I would like to address that.

One, clearly the State commissioners are in a great position, and the insurance regulators, to oversee insurance companies. That needs to be done right up to the—at the very top and held them—be held accountable.

But there is a huge impact of all this I would like to address because it doesn't impact just the senior, which is a horrible thing. It impacts their family. It impacts their community. It does impact our society.

I think that is why we are all here. It is not just about the product sale, because that is one of the things, obviously, is the issue here on a big aspect.

It is not just investments. It is not just insurance product. It is really, regardless of those two things, it is about advice.

All of these individuals are utilizing designations and sales seminars and luncheons to allow people to believe that they are going

to receive objective advice. I think that is one area that we can all work together, is to be able to help oversee and to bring together universal standards of care that all people who give advice will be held accountable to, not the sale of a product, but how you provide advice. The SEC has been doing a very good job in terms of how they look at that.

As a financial planner, if I provide advice, I have a different set of standard than if I just sell a product. I think what we are seeing are people using a designation to make people feel they are receiving advice, that they can trust the person that is giving them advice, and then they are selling them an insurance product that is not covered by the Advisors Act that the SEC oversees. These commissioners and all of us together I think can work to make sure there is a universal standard that they would be held accountable, that anyone providing advice would be held accountable, too.

The CHAIRMAN. All right.

Mr. Borg, you know anything about Allianz?

Mr. BORG. Yes, sir. I think the question was am I a fan of Allianz, or do I know about their products. Now, their biggest single product I think to date is the Allianz Master Dex 10 product. It has, for example, features that are never explained to the customer, and they wouldn't understand it anyway. Half the time, the agents who sell it don't understand it.

Let me give you a hypothetical on the Master Dex 10. For example, if you put in $100,000, at the end of 10 years it is worth $241,000 annuitized.

Now, to the average investor, that means at the end of 10 years I get my $241,000. Oh, no. It doesn't work that way.

If you cash out any time within the 10 years, you lose all the bonuses. You lose all the benefits, and you have to pay a surrender charge that's approximately 12.5 percent.

If you cash out at the end of 10 years, that $100,000, would return approximately $101,800 back to the investor. So, for 10 years, you made $1,800 because you cashed it out. What you have to do then is hold it for another 10 years and take out a payout over 10 years as an annuity, 10 percent each year.

Now, there are some other factors. You can take out some up front, some out back. The other thing is a lot of folks don't annuitize. Well, what do they want to do with their money? They are going to leave it to their grandkids or grandchildren.

What happens if they cash out of this product at death? Guess what? You have to annuitize then, too, otherwise you don't get the market bonus. You have to pay fees, because it basically has an interminable surrender charge if you cash it out at any time.

So there you are—I would be happy to supply more information on this product to the Committee if you would so choose.

The CHAIRMAN. Good. Good.

Mr. Galvin, you want to say—you know anything about Allianz, because they are going to be testifying afterwards.

Mr. GALVIN. Yes, sir. Obviously they were involved—well, they have been involved in some of the cases. They are providers of some of the products we are concerned about. Our focus has largely been on the sales tactics.

The CHAIRMAN. Yes.

Mr. GALVIN. Obviously the underlying products present some of the problems you have heard today. As I said in my earlier remarks, I think it is important to focus on the tactics because the products are going to change. The products are going to adjust. People are going to try to make money. We understand that.

Clearly, when there is a product that has some of the deceptive qualities that have been just described to you, that presents a real problem. The fact that people, no matter how sophisticated they are or think they are, may not really understand them.

But I do think it is important that we think about the sales practices, because that is where I think we can best protect the public.

The CHAIRMAN. Good.

Last comment, Ms. Swanson.

Ms. SWANSON. Chairman Kohl, I do. Allianz is a Minnesota company. I am in litigation with them right now, because what they have done is they have taken a boatload of senior citizens and sold them very, very unsuitable long-term annuities.

In Minnesota we have a suitability law that applies not just to the agent but to the insurance company. It says that they need to make reasonable inquiry before the sale is made as to whether it is suitable, and then before it is sold, determine is it suitable. That has not happened with regard to Allianz.

The biggest problem we have seen is misrepresentations in the sale of the policies, but then also just putting seniors on very modest incomes and very modest net worth into these incredibly long-term policies where they are going to need access to that money to pay for healthcare or prescription drugs or groceries.

I suspect Allianz is going to say, "But we make plain English disclosure statements to these senior citizens." If I could beg just a moment's indulgence and read your part of one, here is a plain English disclosure, part of a three-page document written in about eight or nine-point font.

"The cash surrender value is equal to the greater of the guaranteed minimum value or the accumulation value less the applicable surrender charge and multiplied by the market value adjustment. The market value adjustment is the factor by which the full surrender, partial surrenders are adjusted. During the surrender period, the market value adjustment equals A over B, where A is one plus the guaranteed initial rate, B is one plus the current new business interest rate plus .5 percent, and T is the number of days." I could go on and on.

But, the point is, when you give this to an ordinary senior citizen, they are not going to understand it. Frankly, Chairman Kohl, I have a hard time understanding it. Insurance companies can stop these practices.

There will always be insurance agents bent on making improper sales. The insurance companies can just say, "We are not going to tolerate those products. We may lose a little profit, but we are not going to do it because our senior citizens deserve better."

The CHAIRMAN. OK.

You have been a great panel. You have really added a lot to the very important subject, and we appreciate your being here.

All right, last panel. First witness will be Gary Bhojwani, who is, believe it or not, the president and CEO of Allianz. They dis-

tribute individual insurance products through over 240,000 independent agents, registered representatives and financial planners nationwide. Mr. Bhojwani, thank you so much for being here.

Our second witness will be Edwin Pittock, who is president and founder of the Society of Certified Senior Advisors, which is a company that trains and credentials people as certified senior advisors, CSAs. Since the designation's creation in 1996, approximately 25,000 people have enrolled in this training.

Mr. Pittock, we are glad you are here, too.

Mr. PITTOCK. Thank you, Senator Kohl.

The CHAIRMAN. We would love to hear your testimony.

Mr. Bhojwani, would you like to speak first?

STATEMENT OF GARY BHOJWANI, PRESIDENT AND CEO, ALLIANZ INSURANCE OF NORTH AMERICA, MINNEAPOLIS, MN

Mr. BHOJWANI. That would be great. Thank you.

Good afternoon, Chairman Kohl. My name is Gary Bhojwani. I am the president and CEO of Allianz Life Insurance Company.

I appreciate the opportunity to be here today on behalf of our employees, the independent agents who sell our products, and the consumers who hold nearly a million policies with us. We are very proud of the important role our annuity products play in providing financial security for individuals.

Annuities play a vital role for seniors. With changing demographics, the decline of defined benefit pension plans and the challenges faced by social security, the issue of outliving ones assets is becoming a more acute concern for millions of Americans.

Annuities can play a critical role in retirement planning because they are the only product that can guarantee a stream of income for life. They are also valuable products for tax planning and transfer of wealth to beneficiaries.

We recognize the responsibility we have to the individuals who place their hard-earned savings with us. Our products provide financial peace of mind for hundreds of thousands of consumers.

Our processes, including the steps we take to protect seniors, have earned Allianz high customer satisfaction ratings in the marketplace. We take great pride in our complaint ratio of less than one-half of 1 percent.

Allianz Life is a market leader in fixed index annuity sales. We also sell variable annuities, life insurance and long-term care insurance. We have been an industry leader in developing a robust set of controls and consumer safeguards.

We recognize that there are many factors that determine whether or not an annuity is suitable for an individual. Our processes ensure that our products are clearly described to consumers, and that they are purchased only when suitable.

First, Allianz introduced the first plain English point-of-purchase disclosure for fixed annuities, which we call a "Statement of Understanding," not because we are required to do so, but because we believe it is critical that individuals understand the products they purchase.

In addition, 2 years ago we developed an internal suitability process for every fixed annuity purchase nationwide. The process also requires our agents to collect other financial data and other in-

formation so we can evaluate the suitability of every purchase. We will not issue a policy without a completed and signed disclosure and suitability form.

Our internal review process is thorough, utilizing a suitability rules engine for every policy and an escalated review process when needed. We do not accept business that does not meet our rigorous suitability requirements.

The process looks at many factors, including net worth. In fact, the median net worth for an Allianz policyholder age 75 or above is $500,000 excluding their home.

They purchase our annuities for numerous reasons, including tax-deferred growth, as an estate planning tool, and because their principal is protected. Our procedures exceed the requirements of any State suitability law or regulation, and we believe it is a best practice in the industry.

Last year, we implemented a post-purchase survey process in partnership with LIMRA, an independent third-party organization, to help ensure that consumers understand the product they purchase from Allianz and to evaluate the purchase process itself.

When there appears to be confusion about the product features or a concern about service, we follow up directly with the consumer. In addition, we are today announcing that we will institute a process by which Allianz employees will call every fixed annuity purchaser aged 75 or older to go through the features of the product with them and to be certain that those features are understood. As a part of these verification calls, we will offer refunds upon request.

Allianz offers training to our duly licensed agents to help them understand our products, our practices and their obligation to consumers. When we determine that an agent has engaged in improper sales practices, we terminate the agent immediately.

We are also announcing today that we are developing a list of approved designations that we will allow our agents to use when they market Allianz products. The use of designations that are not on this list will be prohibited in association with the purchase of an Allianz product.

Finally, we are in the process of hiring a chief suitability officer, another first in the industry. This person will report directly to me and will lead our ongoing efforts to help ensure that any product purchased by any consumer is suitable for their needs. Each of these processes, and several others that we employ, are continually revised and improved, and we are committed to doing even more because we believe that satisfied customers are the key to our reputation and our sustainability.

Chairman Kohl, thank you again for providing me with the opportunity to testify today. We applaud the work being performed by the Committee. SEC Chairman Cox has said that there needs to be greater coordination between Federal and State officials. We strongly agree, and we think that there is an important role for industry grounds to play, as well.

I appreciate the opportunity to share with the Committee the actions that Allianz Life announced today, allowing only certain designations and making verification calls to customers above the age of 75. There are further steps that we are taking to ensure that

customers understand and are satisfied with the products they purchase from us.

I will be pleased to answer any questions that you may have.

[The prepared statement of Mr. Bhojwani follows:]

Statement of
Gary Bhojwani
President & CEO
Allianz Life Insurance Company of North America

Before the
Senate Special Committee on Aging
Regarding:

Advising Seniors About Their Money:
Who Is Qualified – and Who Is Not?

September 5, 2007

Introduction
Thank you for inviting me to participate in today's hearing. My name is Gary C. Bhojwani and since February of this year, I have been the president and CEO of Allianz Life Insurance Company of North America.

Founded in 1896 and based in Minneapolis, Allianz Life provides fixed and variable annuities, life insurance policies, and long term care insurance products in the United States. Allianz products are offered through a network of independent financial professionals. The company is part of Allianz SE, a global financial services group that is the 16th largest corporation in the world based on revenue (Fortune, August 2006).

The testimony that follows provides information about the changing retirement landscape* and the important role that Allianz and our deferred annuity products can play in meeting the financial needs of consumers, including seniors.

In addition, we will present a description of the steps we take to help ensure that every customer fully understands the product he or she purchases from Allianz, and that every sale is appropriate for that customer.

Annuities Serve a Real Market Need
Annuities serve a real need in the market. As life expectancies continue to rise, individuals have legitimate concerns about Social Security, the decline of traditional corporate pensions, and outliving their retirement savings. Individuals need to take action to adequately prepare themselves for their retirement years.

The concern about outliving one's assets is becoming more acute. For example, for a healthy couple age 65, there is a 50% chance that one of them will live to age 92. Equally significant, there is a 25% chance that one of the partners will live to be 97. This means that retirements could last more than 30 years. Preparing for a longer retirement than historically was the case is a reality.

We at Allianz are committed to ensuring that our products meet the needs of the people who entrust their hard-earned savings to us. Our products provide financial peace of mind for thousands of consumers. In addition, our processes – including the steps we take to protect seniors – have earned Allianz high customer satisfaction ratings in the marketplace.

Allianz is Committed to Offering Valuable Products to Seniors

As the nation's Baby Boomers enter retirement, senior citizens are becoming a growing segment of our population. Our products – including deferred annuities – can offer significant benefits to seniors.

The average age of the purchasers of our deferred annuity products is 59. These consumers are often in the final years of their working lives, and they want to ensure that they will have enough income to see them through their retirement years.

Each consumer has unique financial objectives and circumstances. Annuities are just one of the financial products that can help a consumer meet their needs. Allianz has strong processes in place to ensure that we understand the needs of our customers, and that our customers have the information they need to make informed and appropriate decisions.

Annuities Meet Consumer Needs

Although Allianz also issues variable annuities, traditional deferred annuities, and immediate annuities, we are the market leader in the fixed index annuity segment.

The fixed index annuity marketplace emerged in the aftermath of the major stock market declines that occurred during the dot.com bust of 2001. Many individuals lost a substantial portion of their savings, and were looking for a more secure financial product that also provided a guarantee against loss of principal with an opportunity to earn interest linked to stock market performance. Regardless of stock market performance, if held to maturity, our fixed index annuities provide safety and protection of principal. Fixed index annuities also provide higher potential returns than fixed rate annuities. And, like other deferred annuities, they provide tax-deferred growth during the period of time the funds are held by the insurer.

For millions of consumers, annuities are one component of a well-diversified portfolio.
Annuities are the ***only product*** that can offer guaranteed income for the entire life of the annuitant. Individuals who purchase our products know that at least one portion of their financial portfolio comes with this guarantee.

Deferred annuities are not only a valuable product for retirement income; they are well-suited for consumers – including seniors – who wish to safely accumulate assets for the purpose of transferring wealth to their heirs and beneficiaries.

How Deferred Annuities Compare to Other Financial Products

Every financial product has different attributes and is designed to achieve different financial objectives.

There are three key attributes to consider when determining whether or not a particular product is right for an individual and his or her situation:

1. Volatility
2. Liquidity
3. Risk of loss of principal/return on investment

A product purchase decision involves balancing these attributes and assessing a consumer's priorities, including their risk tolerance.

For example:

- A traditional savings account is completely liquid and has very low volatility—but the return is relatively low.
- A Certificate of Deposit (CD) is even less volatile due to the guaranteed interest rate, and provides a somewhat higher return than the savings account. It also has less liquidity because the funds must remain in the CD for a specified period of time. The longer the purchaser is willing to hold his or her money in a CD, the higher return he or she will typically earn.
- In contrast, a mutual fund is liquid, and has the potential for a very high return. It is also extremely volatile and is exposed to the risk of loss of principal and/or gains obtained in the account.
- Real estate, particularly the home, is for many people the single most valuable asset they own. It is fairly liquid, though not as liquid as a savings account or mutual fund. As we have seen recently it can also be fairly volatile. In typical times it has the potential for a good, though not spectacular, return.

Deferred annuities
Deferred annuities are not as liquid as some other financial products, for example a CD or savings account. To obtain the full benefits, the annuity must be held for a defined period, generally five to ten years. Depending on the features of the particular product, it is possible to withdraw funds without penalty after a specified period of time, or to withdraw funds if certain significant events or hardships occur.

A deferred annuity also has relatively low volatility. It is an insurance product that includes important guaranteed features including a specified minimum return and a guarantee of no loss of principal if held to maturity. It provides returns that historically have been higher than a savings account or a CD, and at times higher and at times lower than a mutual fund.

An insurance company can provide this unique combination of features precisely because it knows that it will have the funds for a specified period of time. This allows the insurance company to hedge against interest rate risk and "lock in" a guaranteed rate of return for the purchaser. No other financial product provides this particular combination of lack of volatility and rate of return.

Two professors from The Wharton School of Business recently conducted a research project on the value of immediate annuities versus other retirement investment options. The results of this research highlight how the long-term horizon of the annuity is well suited for the longer-time horizon of the retiring population. Many of the value concepts for immediate annuities articulated in this paper also have important implications for deferred annuities. (See http://www.crai.com/pubs/pub_7593.pdf).

Product performance
To illustrate the performance our fixed index annuities provide to consumers, which is of course one of the key features of our products, we have calculated the returns received by Allianz Life policyholders over the past three years for our most popular fixed index annuity product. The chart below illustrates the average annualized returns for policies that have reached their first, second, and third policy anniversary during the period of August 1, 2006, to July 31, 2007. It also shows the highest and lowest annualized return an individual could have received. The figures only account for the index credits (e.g., the credits linked to market performance) credited to the policy. These figures assume that the consumer elected to have 75% of the index credits linked to the performance of the S&P 500 and 25% linked to the performance of the Nasdaq-100.

Credits	Average Return	Highest Return	Lowest Return
One anniversary credit	8.7%	19.4%	0.3%
Two anniversary credit	6.1%	9.8%	2.8%
Three anniversary credits	6.6%	8.8%	4.7%

The return realized by a consumer varies depending on the date the policy is issued and the index allocations elected by the consumer. The average return in future years will depend on the future performance of the markets and is not guaranteed. Any interest already credited, however, is guaranteed to never be lost due to any future declines in market. In addition, the principal is protected when the annuity is held to maturity.

Allianz Processes Ensure Proper Sales of Products

Allianz has been an industry leader in developing processes, controls, and safeguards to ensure that the benefits and risks of our products are clearly and accurately disclosed, and that our products are sold only if they are appropriate for an individual purchaser and his or her financial situation. We develop and continually improve our practices not simply to comply with the minimum standard set by statute or regulation, but to do what is right for consumers and our policyholders.

Point-of-Sale Disclosure
Allianz requires that the benefits and risks of our products are fully and accurately disclosed to all consumers during the sales process. Each purchaser receives a plain-English disclosure at the point of sale called a "Statement of Understanding" – the first of its kind in the industry – which describes how the product works, how its value is determined, and under what circumstances funds can be withdrawn, either with or without penalty. It provides examples of what the value of the annuity will be over time, and answers the questions anyone considering the purchase of an annuity should ask. Before Allianz accepts an annuity application, the agent must review the Statement of Understanding with the consumer, and the consumer must sign it.

While this document and process are not required by any statute or regulation, we believe that it is important that consumers receive and acknowledge understandable disclosures before they purchase an Allianz product. A copy of an Allianz Statement of Understanding is attached as Exhibit 1.

Product suitability form
While only required in 36 states, Allianz conducts a suitability review for every new deferred annuity product purchase. Prior to making a recommendation for the purchase of an annuity product, Allianz requires the agent to have reasonable grounds for believing the recommendation is suitable. We require the agent to obtain relevant information regarding the consumer's needs and financial objectives. In addition, we require that this information be documented on a product suitability form prior to submitting an application. Every applicant must complete and sign a suitability form.

This form requires the agent to obtain information from the consumer on:

- Household income;
- Net worth exclusive of homes and autos;
- Financial objectives;
- Liquidity (how much money the consumer has available for emergencies);
- The source of funds is for the annuity (and whether it is replacing another annuity);
- How the consumer anticipates taking money out of the annuity;
- When the consumer anticipates taking money out of the annuity; and
- How the amount that is in the annuity at the time of the consumer's death will be paid out to his or her beneficiaries (in a lump sum or over a period of years)

This form is then reviewed by our suitability rules engine, which analyzes the data and triggers further review in the event that the data indicates a potential problem or question about whether the product sold is suitable for the consumer. We do not accept cases that do not pass our rigorous suitability screening. A copy of an Allianz Life Product Suitability Form is attached as Exhibit 2.

Customer survey
Allianz is committed to ensuring that our customers understand their purchases and that the product is appropriate. This commitment extends beyond the completion of the sale. Within a few months of a sale, we partner with LIMRA, an independent organization that partners with many insurance companies, to survey every consumer to verify their understanding of the product and to ask about their overall satisfaction with the sales process. If the survey results raise concerns, we contact the consumer to address the issue raised by the response. Also, as described below we will begin calling every customer over the age of 75 who purchases one of our products.

A step-by step explanation of our process for managing new annuity policies can be found in Exhibit 3.

Our agents
All of the agents who sell our products are licensed in the state(s) in which they do business. We provide training to our agents to ensure that they understand our products, our practices, and their obligations to their customers. We monitor complaints and provide additional counseling and training when needed. Whenever we determine that an agent has engaged in improper sales practices, that agent is terminated.

Summary
These policies and procedures help explain why the number of complaints Allianz Life receives in connection with annuity sales is low. Our complaint ratio of less than one half of one percent is a record we are proud to share.

When we receive a complaint, we take it seriously, and we take action. All complaints undergo a review. If our review determines that the complaint is justified, we provide a full refund, plus interest.

Illustration of Suitability Analysis

Allianz Life recognizes that our products are not appropriate for every consumer or every senior. Below is an example of how our suitability analysis works to prevent purchases that would not be appropriate for a particular consumer. This example is taken from a real case, although the name of the consumer has been changed to protect his privacy.

Mr. Pederson was 77 years old when he sought to purchase one of our annuities. He attempted to purchase an annuity for $33,500. Mr. Pederson indicated that his income was approximately $25,500 per year and that he had approximately $500,000 of assets (excluding his home). Mr. Pederson indicated that the funds he intended to use to purchase the annuity were the proceeds of another annuity he intended to liquidate. Although Mr. Pederson's income and assets would support the purchase of the product, our suitability process identified that he would incur an 11% surrender charge on the annuity he intended to liquidate. Given this, we determined that the source of funds for this product made the purchase unsuitable and we declined to issue the policy.

We can point to many other examples of business that we have declined a result of our suitability process.

Allianz Commitment to Continuous Improvement

We are pursuing several enhancements to our already strong internal consumer safeguards.

We are instituting a process whereby we will call every purchaser of an annuity over age 75 to review the features of the product her or she has purchased to verify he or she understands them. If we determine that the customer did not understand his or her purchase, we will offer a refund, with interest.

We have also announced that we will appoint a Chief Suitability Officer. We are in the process of interviewing several well-qualified candidates now and expect to appoint someone to this role in the fourth quarter of 2007.

We are developing a list of approved certifications that we will allow our agents to use and will prohibit the use of any non-approved certification when marketing our products.

Conclusion

In closing, I want to again thank you for providing me with the opportunity to testify today. Forums such as the Senate Aging Committee's public hearing provide an important venue to address the isolated, anecdotal stories about the sale of deferred annuities that have recently been in the press.

Allianz is proud of our industry leadership position and the responsibilities that come along with it – including our focus on continual improvement of our products, policies, and processes to meet the needs of today's consumers.

We applaud the work being performed by the Securities and Exchange Commission, the National Association of Insurance Commissioners as well as the North American Securities Administrators Associations, all of whom are testifying today, to protect consumers – particularly seniors.

SEC Chairman Cox has said that there needs to be greater coordination between federal and state officials. We strongly agree. We believe there is a strong role for industry groups to play in this dialogue as well.

Allianz as an organization is dependent upon our strong track record of integrity, performance, and service. Simply put, satisfied customers are the key to our financial success and sustainability.

* An excellent overview of some of the emerging challenges and implications of an aging population for social, financial, health care and retirement systems is provided in a presentation by Anna Rappaport at the inaugural conference on **The Future of Life-Cycle Saving & Investing** sponsored by the Federal Reserve Bank of Boston, Boston University and the Research Foundation of the CFA Institute. http://smg.bu.edu/exec/elc/lifecycle/pdf/RappaportFedPaperPostConfFinal.pdf

The entire conference can be reached at
http://smg.bu.edu/exec/elc/lifecycle/

Exhibit 1

Allianz Life Insurance Company
of North America
PO Box 59060
Minneapolis, MN 55459-0060
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Allianz

MasterDex 10® Annuity
Statement of Understanding

Thank you for considering the MasterDex 10 Annuity from Allianz. We want to be sure that you are aware of the benefits, features, costs, and risks associated with the purchase of your contract.

Please read the following summary. If you need additional clarification on any of the items listed below, please refer to the MasterDex 10 Annuity contract.

Once you have read this summary, please sign the last page to confirm you understand the contract you are considering.

How does the MasterDex 10 Annuity work?

The MasterDex 10 Annuity is a fixed index insurance product. That means indexed interest is credited to your annuity's value based on one or more nationally recognized indexes that track the ups and downs of the stock market.

You can choose between the S&P 500 and Nasdaq-100® index options, or you can designate your premium to earn fixed interest. You can allocate all of your money to any of these three alternatives, or allocate your money (in 25% increments) to any combination of these three options.

Does the MasterDex 10 Annuity have a bonus?

Yes, the MasterDex 10 Annuity offers a premium bonus. This means that each time you make a premium payment during the first five contract years, we will add a premium bonus to your annuitization value. This bonus will equal 10% of each premium payment. Keep in mind that bonus annuities may have a higher contract penalty upon surrender than you would get from similar annuities without the bonus feature.

How do I choose – and change – the way my annuity's value is allocated?

Shortly after each contract anniversary you will receive an annual report. It will include a form that allows you to change your current allocations. If that is your intention, you must complete the allocation change form and return it to the Home Office within 21 days of your contract's anniversary. This will lock in your request and determine how your contract values are allocated over that contract year. If the form is not received within 21 days of your contract's anniversary, your changes will not take effect until the next contract anniversary.

Assuming I choose fixed interest, how is the fixed interest calculated and credited to my contract?

If you don't want 100% of your contract value to be based on changes in an index, the MasterDex 10 Annuity allows you to allocate, or designate, some of your annuity's value to a fixed interest option. This fixed interest option credits your contract with predictable interest based on established rates that are independent of the markets. Your initial interest rate is guaranteed for the first contract year and will be no less than 2% in all contract years. Your interest is calculated and credited daily.

Assuming I allocate my money to one index or both, how is my indexed interest calculated and credited to my contract?

We capture the current value of the market index on the date you purchased your contract, as well as on each contract's "monthiversary." So if your contract is dated the seventh of the month, for example, your monthiversary will be the seventh day of every succeeding month throughout the life of the contract.

Monthly returns are calculated in two steps. First, the change from the previous month's index value to the current month's index value is divided by the previous month's index value. This amount is then multiplied by the participation rate.

The calculation looks like this:

$$\frac{(\text{current month's index value} - \text{previous month's index value})}{\text{previous month's index value}} \times \text{participation rate} = \text{monthly return}$$

Monthly returns may be positive or negative. In any given month, a positive monthly return may exceed your annuity's stated monthly cap, or maximum. In that case, the capped return will be used in the indexed interest calculation. The monthly cap is established on every contract anniversary, and is guaranteed for the next contract year.

At the end of each contract year, the capped monthly returns are added together to calculate your indexed interest for that year. If this sum is negative, the indexed interest for that year will be zero.

Although there is a monthly cap on positive monthly returns, there is no established limit on negative monthly returns. This means that a large decrease in one month could negate several monthly increases. Actual annual indexed interest may be lower (or zero) if the market index declines from one monthiversary to the next, even if the market index experienced an overall gain for the year.

Although an external index may affect your contract values, the contract does not directly participate in any stock or investments. You are not buying any shares of stock or shares of an index. The market index value does not include the dividends paid on the stocks underlying the market index. These dividends are also not reflected in the interest credited to your contract.

Can the monthly cap be changed?

Yes. Each contract year we have the option to change the monthly cap – either up or down – for the following year and the monthly cap is guaranteed not to change for that contract year. You will be informed of any changes in the monthly cap on your contract's annual report. We guarantee that your monthly cap will never be lower than 1%.

What is a participation rate?

The participation rate decides how much of the increases in your selected market index(es) will be used to calculate indexed interest. The participation rate on the MasterDex 10® Annuity is 100%, and is guaranteed for the life of the contract. Keep in mind the amount of any monthly gains allowed by your contract's participation rate will still be subject to a monthly cap.

Can you show me how all of this works?

This chart shows monthly positive and negative changes in a hypothetical index, how they are affected by the monthly cap, and how they add up to the annual indexed interest.

Month	1	2	3	4	5	6	7	8	9	10	11	12
Index growth (%)	5.0	-5.0	2.0	-1.0	2.0	2.0	4.0	2.0	0.0	-2.0	5.0	0.0
Monthly cap (%)	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
Monthly index rate (%)	+2.6	-5.0	−2.0	-1.0	+2.0	+2.0	+2.6	+2.0	+0.0	-2.0	+2.6	+0.0

At the end of the contract year, the 12 individual monthly index rates are added up to determine that year's annual indexed interest:

+2.6 + (-5.0) + 2.0 + (-1.0) + 2.0 + 2.0 + 2.6 + 2.0 + 0.0 + (-2.0) + 2.6 + 0.0 = **7.8%**

Please note that if the monthly cap is 1.0%, your indexed interest would be 0% under the assumptions outlined in the chart above.

Can my annuity's value go down due to losses in the index(es) I choose?

No. If the index(es) suffer a loss in any given year, your principal (the money you put into the annuity) and bonus are protected. Any interest credited (either as the result of increases in your selected market index(es), or as the result of earning interest in the fixed interest allocation) that has been locked in previously is also safe from index losses. However, your annuity's value will be affected by when – and how – you decide to take money out of the contract.

Besides this, what other factors impact the value of my annuity contract?

The first thing you should know is that, throughout the life of your annuity contract, your MasterDex 10 Annuity will actually have **three separate values.** Which one you receive will depend on when – and how – you take money out of the annuity. Those values are the contract's:

- Annuitization value
- Cash surrender value
- Guaranteed minimum value

Annuitization value. The annuitization value equals the premium you pay into the contract, plus a 10% premium bonus and any annual indexed increases (which we call indexed interest) and/or fixed interest earned. This will usually be your contract's highest value. Withdrawals will decrease your contract's annuitization value.

Cash surrender value. The cash surrender value is equal to 87.5% of premium paid (minus any withdrawals) accumulated at 1.5% interest compounded annually. The cash surrender value does not receive premium bonuses or indexed interest. **The cash surrender value will never be less than the guaranteed minimum value (which we define below).**

Guaranteed minimum value. The guaranteed minimum value will generally be your lowest contract value. The guaranteed minimum value equals 87.5% of premium submitted, minus any withdrawals. The guaranteed minimum value grows at an annual interest rate that will be no less than 1% and no greater than 3%, depending upon your selection of index and/or interest allocations.

How do I avoid contract penalties and get my contract's full annuitization value?

To receive your contract's annuitization value, let your money accumulate for a minimum of five contract years, then take (A) 10 years of interest-only payments or (B) equal payments of both principal and interest over a 10-year period (or longer). **This is what is meant by "annuitization." Once you begin taking your annuitization value as annuity payments, it will no longer receive interest based on any potential index growth.** The various annuitization options available on the MasterDex 10 Annuity are described directly below.

Please note, regardless of which value you receive from your MasterDex 10 Annuity, there may still be tax consequences when money is withdrawn from your annuity. See "Are there any tax consequences if I withdraw money?" later in this document.

What are my options for receiving annuity payments?

After you keep your contract in deferral for at least five contract years, you can choose to receive annuity payments in any of the following ways:

- **Interest only** – You have the option to receive interest-only annuity payments for 10 years. Interest will be paid as earned based on your then-current annuitization value. After 10 years of taking interest-only payments, you may then take your annuitization value as a lump-sum payment.
- **Installments for a guaranteed period** – You can choose to receive annuity payments in equal installments for a period from 10 to 30 years. Each installment would consist of part principal and part interest.
- **Installments for life** – You have the option to receive annuity payments in equal installments for the rest of your life. Payments end upon your death.
- **Installments for life with a guaranteed period** – You can choose to receive annuity payments in equal installments for the rest of your life. Upon your death, the balance of the guaranteed period, if any, will be paid the same way as previously selected for your beneficiary.

- **Installments for a selected amount** – You may select to receive annuity payments in equal installments of an amount that you choose, as long as the payments last for at least 10 years. Payments continue until your annuitization value and interest are gone.
- **Joint and survivor** – You can select to have equal installments paid until your death with additional payments to your named survivor. In this case, payments to your named survivor would continue until his or her death as 100%, 2/3, or 1/2 of your original installments, based on your selection.

Are there any options for receiving annuity payments without waiting for five contract years? [1]

Yes, our Flexible Annuity Option Rider allows you to receive your annuitization value (**less the 10% bonus and/or interest earned on that bonus**) anytime after the first contract year but before the sixth contract year over a specific period of 10 to 30 years. Or, at the higher ages shown in the table included in the Flexible Annuity Option Rider, you may request this value in equal installments for a specific period of less than 10 years. Each installment will consist of part benefit and part interest. There is no charge for this rider.

Can I take money out of my annuity without incurring a penalty while the contract is in deferral?

It's quite possible you will want money from your annuity contract somewhere down the road. But you may not need it all. We have a variety of ways you can get money out of your annuity without contract penalties, including:

- Free withdrawals
- Systematic Withdrawal of Credits
- Contract loans
- Required minimum distributions
- Our Nursing Home Benefit
- Our Systematic Withdrawal Benefit

How can I take a free withdrawal from my contract?

Our free withdrawal option lets you access a portion of your contract's value without incurring a contract penalty. Under this option, as long as 12 months have passed since your last premium contribution, you can withdraw up to 10% of your premium each year--until you have withdrawn a maximum of 50% of the premium you've paid into the contract.

Free withdrawals will avoid contract penalties provided that:

- No more than one withdrawal is taken within a 12-month period.
- You don't add any additional premium to the contract within the 12 months prior to or following the taking of a free withdrawal.
- You don't request a full (or partial) surrender or begin to receive annuity payments within 12 months after taking a free withdrawal.

A free withdrawal is eligible to receive partial indexed interest at the end of the contract year. Partial indexed interest is based on the annual indexed interest and the amount of time during that year before the free withdrawal was taken.

If, within 12 months of a free withdrawal, the contract is surrendered or annuitized, another withdrawal is taken, or additional premium is added, we will retroactively apply contract penalties to that free withdrawal. Withdrawals will decrease the annuitization value, cash surrender value, and guaranteed minimum value of the contract and its death benefit.

What is Systematic Withdrawal of Credits?

Systematic Withdrawal of Credits allows you to keep your contract in deferral and receive payments of indexed interest. You can select to receive payments after your fifth contract year. Payments will be based on indexed interest applied to your contract after the request is received. You may take this Systematic Withdrawal of Credits without contract penalties, and your contract continues to benefit from potential indexed interest. To qualify for this option, your contract must be held at least five contract years and still be in deferral. Taking Systematic Withdrawal of Credits will lower the annuitization value and value of death benefits.

What if I need to take a contract loan?

Loans are available on nonqualified annuities and some tax-qualified annuities (TSAs). You can borrow up to 50% of your contract's cash surrender value (up to a $50,000 maximum). Like any loan, contract loans are subject to an annual interest charge, but they are contract-penalty-free as long as they are repaid with interest. Please note: Loans on nonqualified annuities may be taxable as ordinary income at distribution.

I understand I may have to take required minimum distributions someday. Does my annuity allow these?

Based on your age (usually 70½ or older) and the tax designation of your contract (IRA, SEP, etc.) you may have to take required minimum distribution payments. If they are taken annually in December or monthly throughout the year, required minimum distributions (RMDs) are contract-penalty-free, although they will reduce the amount available for free withdrawals. You may not exceed the annual RMD amount specified by the IRS, which will be based on your age and the value of your contract. Allianz will only send a required minimum distribution for the contracts you have with us.

How can your Nursing Home Benefit help me access my money without contract penalties?

After the first contract anniversary, if you are the contract owner and become confined to a nursing home for 30 out of 35 consecutive days, your full annuitization value can be paid to you in annuitization payments over as little as five years.

[1] Not available in all states.

What is the Systematic Withdrawal Benefit?

Beginning on your sixth contract anniversary, you can take a portion of your annuitization value each year, while the balance continues to earn indexed interest (or fixed interest).

Based on how long the contract has been in deferral, these systematic withdrawals can range from 5% of your annuitization value (taken over 20 years) to 10% of your annuitization value (taken over 10 years). While you are receiving your payments, your contract's indexed interest (or fixed interest) is distributed as it is earned. This means your contract's complete annuitization value will be liquidated to zero over the life of your scheduled payments.

You can stop your Systematic Withdrawal Benefit payments at any time. If you wish, you can then resume Systematic Withdrawal Benefit payments once two years have passed since your last payment. The allowed percentage will then be based on the contract year and annuitization value at that point.

Are there any other ways to make free withdrawals?

We've just outlined six ways you can receive a portion of your annuitization value without a contract penalty. **If you take a partial surrender any other way**, the amount of your partial surrender will be deducted from your contract's cash surrender value. A proportionately larger deduction, equal to the amount of the partial surrender multiplied by the ratio of annuitization value divided by cash surrender value, will also be made from your contract's annuitization value. As a result, **you will lose a portion of the indexed interest and/or fixed interest your contract has earned, and you may lose some of your initial principal and bonus.**

What happens if I cancel my contract?

That depends on when you cancel it. This contract is designed for people who are willing to allow their assets to build for at least five years, and then take annuitization payments over 10 years (or longer). As we've discussed, if you fully (or partially) surrender your contract at any point, you will receive its cash surrender value rather than its annuitization value. This could result in the loss of some or all of your premium bonus, indexed interest, fixed interest, and a partial loss of principal. For information about possible tax consequences see "Are there any tax consequences if I withdraw money?"

Are there any tax consequences if I withdraw money?

Regardless of whether the distribution is contract-penalty-free or subject to a contract penalty, when you take money out of your annuity it may be taxed as ordinary income. In addition, any distribution you receive from an annuity prior to age 59½ may be subject to a 10% IRS penalty. These taxes and IRS penalties may result in a partial loss of principal. They may also reduce any indexed or fixed interest earned previously. Allianz does not provide legal counsel or tax advice, so please consult a tax or legal advisor.

Can I add money to my MasterDex 10® Annuity down the road?

Yes. Additional money (or premium) may be added to your annuity at any time within the first five contract years. The additional premium you pay during a contract year will automatically be credited with a 10% bonus and then placed in an interim interest account where it will earn fixed interest – guaranteed to be at least 2.0% – until your next contract anniversary. It will then be distributed according to your premium allocation choices.

How will I know how my contract is doing?

You will receive an annual report following each contract anniversary. This report will show your contract's current annuitization value (including any bonus, indexed interest and/or fixed interest earnings applied to it), along with its cash surrender value, premium payments, and withdrawals.

What happens if I die while my MasterDex 10 Annuity is still in deferral? [1]

Regardless of whether your beneficiary(ies) select to receive a lump-sum payment, or choose to receive payments over the course of five years (or longer), they will receive the greater of the contract's annuitization value or guaranteed minimum value.

Are there any other important points I should know about annuities like the MasterDex 10 Annuity?

If you are purchasing our MasterDex 10 Annuity to replace an annuity you currently own, compare the two products carefully. The benefits and guarantees offered by the two products may be different. Keep in mind that you may incur a surrender charge when you cancel your existing annuity to purchase your MasterDex 10 Annuity.

Purchasing the MasterDex 10 Annuity within an IRA or other qualified retirement plan that already provides tax deferral under the Internal Revenue Code results in no additional tax benefit to you. If you are considering the purchase of a MasterDex 10 Annuity in a qualified retirement plan, you should therefore base your decision on its other benefits and features as well as its risks and costs.

Are there tax implications if I purchase or exchange an annuity?

The purchase or exchange of an annuity contract may have tax implications. We recommend that you consult your tax advisor prior to purchasing or exchanging an annuity contract.

[1] In some states, the death benefit will be equal to the annuitization value only if it is paid to your beneficiaries over at least five years. Otherwise, your beneficiaries will receive the greater of your total premium paid minus any withdrawals, or the cash surrender value.

Can I see all the various values and factors that impact the value of my MasterDex 10® Annuity?

The following chart shows hypothetical values for a MasterDex 10 Annuity that was purchased with an initial premium of $100,000 with 100% allocated to an index option and an assumed monthly cap of 2.6%. You can track the $100,000 initial premium and 10% bonus as it is impacted by hypothetical changes in the monthly index.

Assuming a 1% cap, which is the minimum that we guarantee, your annuitization value at the end of contract year 10 will be significantly lower than the annuitization value shown below.

End of contract year	Sum of monthly index rates	Annual index rate (cannot be negative)	Annual index adjustment (cannot be negative)	Annuitization value	Cash surrender value	Guaranteed minimum value
Issue				$110,000	$87,500	$87,500
1	-8%	0%	_	=> $110,000	$88,813	$88,375
2	16%	16%	+ $17,600	=> $127,600	$90,145	$89,259
3	12%	12%	+ $15,312	=> $142,912	$91,497	$90,151
4	4%	4%	+ $5,716	=> $148,628	$92,869	$91,053
5	-12%	0%	_	=> $148,628	$94,262	$91,963
6	11%	11%	+ $16,349	=> $164,978	$95,676	$92,883
7	12%	12%	+ $19,797	=> $184,775	$97,111	$93,812
8	4%	4%	+ $7,391	=> $192,166	$98,568	$94,750
9	-10%	0%	_	=> $192,166	$100,047	$95,697
10	13%	13%	+ $24,982	=> $217,147	$101,547	$96,654

I have read the information above. It has been explained to me by the agent. I have also received and read the MasterDex 10 Annuity consumer brochure. I understand that any values shown, other than guaranteed minimum values, are not guarantees, promises, or warranties. I understand that I may return my contract within the free look period (shown on the first page of my contract) if I am dissatisfied for any reason.

Owner _____ Date _____

I have presented and provided a signed copy of this disclosure to the owner. I have not made statements that differ from the disclosure form and no promises or assurances have been made about the future values of the contract.

Agent _____ Date _____

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Not FDIC insured • May lose value • No bank or credit union guarantee • Not a deposit • Not insured by any federal government agency or NCUA/NCUSIF

Exhibit 2

Allianz Life Insurance Company
of North America
PO Box 59060
Minneapolis, MN 55459-0060

Allianz

Product Suitability Form

Thank you for your interest in an Allianz annuity. Before we can process your application and issue your policy, we need to confirm that your annuity purchase suits your current financial situation and long-term goals. **Please complete this form in its entirety and submit with your application.**

Owner's name	Age	Product name
Joint owner's name	Age	Estimated premium amount

Annuity type ☐ Qualified ☐ Nonqualified

Your privacy is a high priority to us. The information you provide will be treated with the highest degree of confidentiality.

Financial status 1. Approximate annual **household income** $_____

2. **Net worth** - equal to total assets (including premium for this contract, not including home or automobile) minus total debt (not including mortgages or primary residence) $_____

Marginal federal tax rate ☐ 0% ☐ 10% ☐ 15% ☐ 25% ☐ 28% ☐ 33% ☐ 35%

Financial objectives

1. What are your **financial objective(s)** in purchasing this product? **(check all that apply)**
   ☐ Tax-deferred growth ☐ Income now ☐ Growth followed by income ☐ Growth, possible income
   ☐ Pass on to beneficiaries ☐ Guarantees provided ☐ Other _____
2. After purchase of this annuity, how much **money** (or liquid assets) do you have available without penalty for emergencies?
   Please specify amount $_____
3. What other **financial products** do you own or have you previously owned? **(check all that apply)**
   ☐ None ☐ Certificates of deposit ☐ Fixed annuities ☐ Variable annuities ☐ Stocks/bonds/mutual funds
4. What is your **source** for this annuity's premium? **(check all that apply)**
   ☐ Annuity ☐ Life insurance ☐ Certificates of deposit ☐ Other investments
   ☐ Reverse mortgage/home equity loan ☐ Savings/checking
5. Is this a **replacement** of an annuity or life contract? ☐ Yes ☐ No **If yes,** what type(s)? ☐ Fixed ☐ Fixed index ☐ Variable
   Is there a **surrender charge**? ☐ Yes ☐ No **If there is a charge**, what is it on each contract being replaced? ___% ___% ___% ___%

Accessing your money

1. **How** do you anticipate taking **distributions** from this annuity? **(check all that apply)**
   ☐ Annuitize ☐ Required minimum distribution ☐ Instant cash bonus ☐ Free/systematic withdrawals
   ☐ Loans ☐ Partial surrenders ☐ Lump sum ☐ Leave to beneficiary
2. **When** do you anticipate taking your **first distribution** from this annuity? **(choose one)**
   ☐ Less than one year ☐ Between one and five years ☐ Between six and nine years ☐ 10 or more years ☐ None anticipated
3. **How** will contract **values**, if any, be **paid at death?**
   ☐ Payment to beneficiary in lump sum ☐ Payment to beneficiary over a period of five or more years

NOTE: If this form is not completed, signed, and dated, we cannot consider your application.

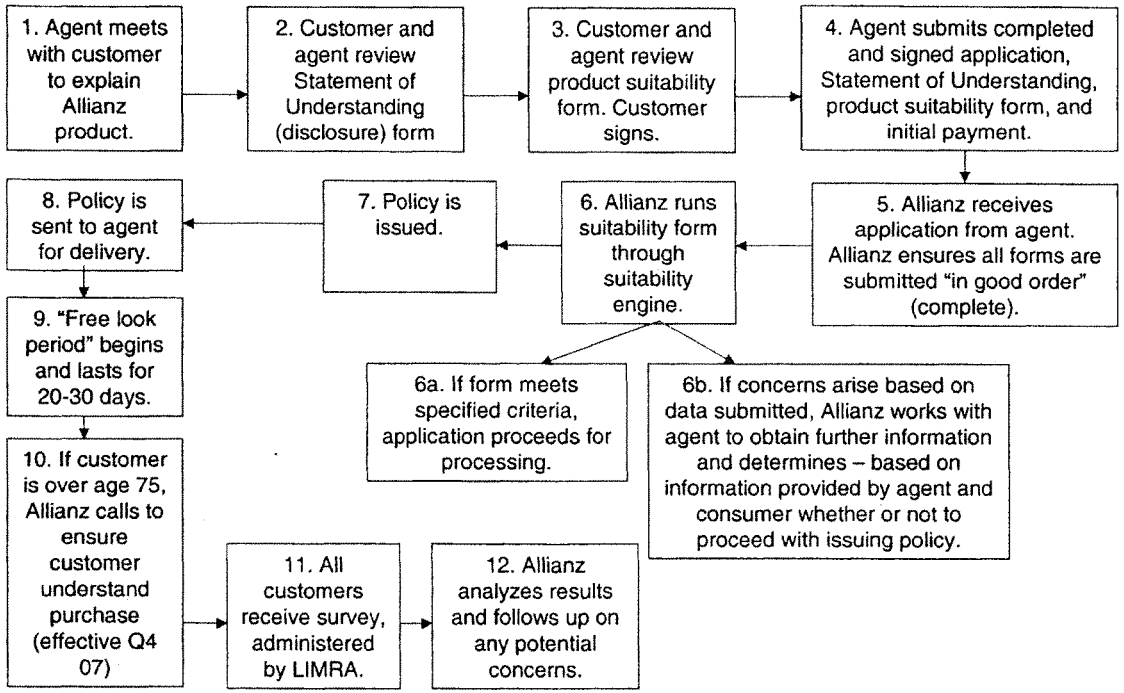
I acknowledge that I have read the Statement of Understanding for the product listed and believe it meets my needs at this time. To the best of my knowledge and belief, the information above is true and complete.

Owner signature		Date
Joint owner signature		Date
Agent signature	Agent number	Date

Submit with application

Allianz

EXHIBIT 3



The CHAIRMAN. Thank you so much for your testimony, and thank you for being here.

Mr. Pittock.

STATEMENT OF EDWIN PITTOCK, PRESIDENT, SOCIETY OF CERTIFIED SENIOR ADVISORS, DENVER, CO

Mr. PITTOCK. Chairman Kohl, I am Ed Pittock, president of Society of Certified Senior Advisors, and thank you for the invitation to provide the Senate Special Committee on Aging with information about our organization and its Certified Senior Advisor designation training.

My organization's purpose is to equip professionals to serve and benefit seniors through better communication, deeper understanding, greater empathy and more knowledge of the resources available to meet seniors' needs.

If seniors were not different and did not face circumstances all their own, there would be no need for this Committee. But seniors are different, and that is why there is a need for education about aging, and education about aging is what my organization provides.

America's seniors deserve to work with persons who made the effort to learn something about seniors and the unique challenges and changes aging presents. SCSA teaches realtors, financial planners, healthcare providers and others about those challenges, and they in turn use that knowledge to supplement their own vocational abilities.

In the discussion of designations and credentials, that has been a common mistake to compare the CSA designation with financial designations. Such comparisons are simply inaccurate and unfair.

Comparing the CSA designation to a financial designation is like comparing learning Spanish to getting a degree in business. Learning Spanish can't make you a businessperson but, if you are a businessperson who wants to work in the Spanish-speaking community, it is a valuable supplement. Both are very useful, depending on what you want to do.

But the fact that the business degree took more time, cost more money and involved more testing in no way diminishes the value of learning Spanish. The same principle applies to credentials.

So let me emphasize this. The CSA designation is not an investment or a financial designation, and we do not hold ourselves—our training or our designation out as experts simply because they have our credential.

Because of the special nature of our credential, we have developed a disclosure statement that clearly defines what our CS credential is and what it is not. It states, "Certified Senior Advisors have supplemented their individual professional licenses, credentials and education with knowledge about aging and working with seniors.

Know what those licenses, credentials and education signify. The CSA designation alone does not imply expertise in financial health or social matters." Details, www.csa.us.

While our disclosure statement is clear about what a CSA, it can't adequately describe what one learns to become a CSA. Toward that end, we enthusiastically encourage any Members of the

Senate Special Committee on Aging or its staff to go through our entire training, as a number of regulators and others have done.

We hold CSAs to a high ethical standard and enforce it vigorously. Over the past 5 years, the independent CSA Board of Standards heard 127 cases, resulting in 33 revocations of the designation, and 27 suspensions.

We continually solicit the advice of regulators and others about how we can better achieve our common goal of protecting seniors. We fully recognize the potential of any credential to be misused or misrepresented.

Unscrupulous people do unscrupulous things. When someone crosses the line, it is more than a betrayal of trust to the public. It is a betrayal of trust to the schools where they were educated, to the companies that hired to them, to the agencies that license them, and to the organizations that credentialed them.

We believe that the problem of persons misrepresenting their credentials, can be addressed with two steps. First, there should be a requirement of all designations to adopt a disclosure statement. No senior can be expected to know what someone's credentials mean.

This lack of understanding makes it incumbent on credentialing organizations to spell out what they confer and what they don't. The answer is not to limit the number of credentials or to discourage the education behind them or to require that someone conceal their credentials and education.

Full disclosure limits the ability of an unscrupulous person to misrepresent a credential and increases the consumer's ability to make informed choices about whom they work with. Second, as the North American Securities Administrators Association proposes, there should be a single national standard for credentials, to give clear rules of the road to professionals, companies credentialing organizations and the public.

On behalf of Society of Certified Senior Advisors and our 12,000-plus member CSAs and the seniors they serve, I thank you for your interest and commitment to our mutual goal of providing our Nation's seniors with attention they deserve.

[The prepared statement of Mr. Pittock follows:]

TESTIMONY OF EDWIN J. PITTOCK

President

Society of Certified Senior Advisors

Before the
Special Committee on Aging
United States Senate

"Educating Professionals To Serve Seniors Better"

September 5, 2007

Providing worthy advice to seniors on any product or service entails more than regulation; it entails education as well. Increasingly, regulation recognizes that seniors are a group apart who need special protections. It is now time to realize that educating professionals about aging is equally important. Yet our resources for teaching people about aging, the challenges it brings and the resources available to help, have not kept pace with a growing senior population. There is only a one in six chance that an American university offers one or more courses in gerontology. Few companies who have seniors as customers require any education for their employees. SEC Chairman Cox put it well at last year's Senior Summit when he asked what companies were doing to train their employees to work with an aging client base. The answer? Not much. Seniors deserve better.

Whatever work a professional does with seniors, he or she will do it better by supplementing their knowledge with training from an organization such as Society of Certified Senior Advisors. Just as learning a foreign language is helpful when working with people who speak that language, so is learning about seniors helpful when working with seniors. Conversely, learning a language doesn't qualify someone to practice medicine, law, etc. SCSA is not a licensing authority.

We are an education company that awards the Certified Senior Advisor (CSA)® designation upon successful completion of our complete training program, including:

- three online ethics modules,
- an online module on the *CSA Code of Professional Responsibility*
- and a comprehensive final exam.

Our training teaches people how to work with seniors and gives them information that is useful personally as well. It does not teach them a profession or qualify them to do investment counseling, home health care, estate law or any other specific professional pursuit. No CSA can use the designation alone, for example, to sell securities or insurance.

SCSA is a credentialing organization that educates, tests and certifies persons as a Certified Senior Advisor (CSA)®. I formed SCSA was formed in 1997 with the help and guidance of gerontologists, doctors, attorneys, accountants, financial planners and other experts who believed there was a need for a standardized education for professionals who work with seniors. What emerged from their work was a

curriculum designed to give professionals who work with seniors a greater understanding and appreciation of the challenges facing seniors, and to:

- Help seniors by adding and applying senior-specific knowledge to their own professional skills
- Add value to their interactions with seniors through improved communication, better appreciation of senior-specific issues, increased empathy, better understanding and greater awareness of resources available to seniors.

SCSA is predicated on the belief that a combination of health, financial and social factors dominates the lives of the majority of seniors. We believe that understanding what these factors consist of -- and how they work together -- can enable professionals to be of greater value to seniors (including where to find professional help if a senior's needs are outside the CSA's area of functional expertise). Understanding these dynamics benefits both the senior and the professional who has gone though the CSA curriculum.

The CSA Designation Program covers 23 subject areas that, taken as a whole, define and describe the lives of the majority of today's seniors. The CSA textbook, *Working With Seniors: Health, Financial, and Social Issues*, is divided into six parts with these chapters:

PART 1: AGING	
Chapter 1	Trends in Aging
Chapter 2	Aging and Society
Chapter 3	Physiological Changes of Aging
Chapter 4	Mental Health, Grief, and Loss in Later Life
Chapter 5	The Experience of Aging
PART 2: AGING WITHIN THE FAMILY AND COMMUNITY	
Chapter 6	The Family and Social Support Systems
Chapter 7	Caregivers and Caregiving in America
Chapter 8	Housing
Chapter 9	Home and Community-Based Services
PART 3: HEALTH AND MENTAL HEALTH	
Chapter 10	Chronic Illness in Seniors
Chapter 11	Senior Nutrition, Fitness, and Healthy Lifestyles
Chapter 12	Cognitive Aging

Chapter 13	Spirituality and Aging
Chapter 14	End-of-Life Planning
PART 4: FINANCIAL LITERACY	
Chapter 15	Estate Planning
Chapter 16	Financial Choices and Challenges for Seniors
Chapter 17	Long-Term Care Coverage
Chapter 18	Funeral Planning
PART 5: MEDICARE, MEDICAID, AND SOCIAL SECURITY	
Chapter 19	Medicare
Chapter 20	Medicaid and Seniors
Chapter 21	Social Security and Supplemental Security Income
PART 6: THE COMMUNITY OF CERTIFIED SENIOR ADVISORS	
Chapter 22	Ethics in Doing Business with Seniors
Chapter 23	Marketing to Seniors
Chapter 24	Now That You Are a CSA

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The CSA designation is a value-added education and skill set in aging that improves the quality of a professional's interactions with seniors. A CSA adds senior-specific knowledge to their existing professional skills and abilities to:

- Better understand the age-related needs of seniors
- Better communicate with seniors
- Have a wider knowledge of the resources available to seniors and their families
- Understand the ethical standards of working with seniors
- Be more empathetic to seniors
- Have more informed transactions with seniors

Not everyone understands every one of the hundreds of designations available to professionals, including CSA. We are therefore committed to taking all necessary steps to inform people about what we teach and what CSAs do, some of which are detailed below.

The CSA Designation. The CSA Designation Program teaches people from all walks of life how to benefit seniors through better communication, greater empathy, wider understanding of seniors' circumstances and the resources available to them.

We believe that seniors deserve to work with professionals who have demonstrated enough of a commitment to seniors that they have gained education about aging. SCSA is not a company that "qualifies" or "certifies" anyone "as a specialist in senior investments," nor do we represent ourselves as such. CSAs who represent themselves as such based solely on their holding the CSA credential are subject to action by the independent CSA Board of Standards, including revocation of their designation. CSAs also may not charge fees solely on the basis of the CSA designation.

To better understand what the CSA designation is, it's important to know what it is not: the CSA designation is not a designation that qualifies someone to give financial advice, sell financial products, treat illnesses, buy and sell real estate, give legal advice, etc. In no way is it a substitute for any state or federal licensing requirement. SCSA has always maintained that the Certified Senior Advisor (CSA)® designation is a supplement to a professional's existing licenses and credentials. Although many CSAs are financial professionals (about 650 CFPs, for instance, have added our training), many are not. Others are attorneys, health care professionals, funeral directors, and social workers.

SCSA Disclosure. As an affirmative step to create broader understanding of the CSA designation, SCSA developed a first-of-its-kind disclosure statement in early 2007. We developed it in part based on our communication with regulators. The Disclosure Statement dispels any confusion about the CSA designation and reduces the potential for someone to wrongfully use it:

Certified Senior Advisors (CSA) have supplemented their individual professional licenses, credentials and education with knowledge about aging and working with seniors. Know what those licenses, credentials and education signify. The CSA designation alone does not imply expertise in financial, health or social matters. Details: www.csa.us

Inquiring about licenses, credentials and education is precisely what regulators advise consumers to do.

We post our Disclosure Statement prominently on multiple pages on our web site. We display it in our printed publications: *CSA Journal, Significant Summaries* and *Senior Spirit*. We present it on educational brochures we produce for seniors, including *You Deserve Professional Senior Advice, Aging Wisdom for Ageless Living* and *Social Security, Medicare, Medicare Supplements, Medicaid, In-Home Care, Long-Term Care Insurance Basics*. The Disclosure Statement also appears on a brochure we use to interest potential enrollees in our training. Finally, beginning January 1, 2008, any CSAs not already using the disclosure will be required to provide the disclosure in writing to clients prior to the completion of a transaction.

Myths about CSA. Any suggestion that the CSA designation alone is sufficient for someone to sell real estate, insurance, health care, estate planning or anything else

is both ridiculous and false. The belief that our exam is "easy" is belied by the fact that 22% of students fail it and do not become designated. Also false is the suggestion that SCSA represents Certified Senior Advisors as "expert" by virtue of their CSA designation (the Disclosure Statement above is crystal clear on this point). Any implication that the name of our designation in and of itself is "misleading" or "confuses seniors" is unsupported by any empirical data and contrary to the plain meaning of the language ("certified" meaning "having met a standard," "senior" meaning persons over age 65, and "advisor" meaning "one who offers advice within a profession and direction to resources outside their expertise.")

State and Federal Action on Designations. The issues about the designation noted above may be a moot point, because, as you may know, the Commonwealth of Massachusetts Securities Division believes that a way to protect seniors is to require any designation with certain words in its name (including "senior") to become accredited through one of two national organizations. It enacted a rule to this effect earlier this year. The North American Securities Administrators Association (the oldest international organization devoted to investor protection) has stated they most likely will advocate this Fall that other states adopt a similar standard. We intend to comply with these rules just as we have always complied with every other state and federal rule. We have already begun the process to achieve accreditation for the CSA Designation Program through the National Commission for Certifying Agencies.

Transparency of Training. We also intend to remain among the most open and transparent of designations. A number of state and federal regulators have gone through our training at our expense. We have a standing invitation to insurance and securities regulators and to compliance officers from a variety of companies to do the same. Representatives from the Securities and Exchange Commission and NASD (now FINRA) also have gone through our training. In June, 2006, shortly after he was assigned to the Senate Special Committee on Aging, we invited our home state senator, Ken Salazar, to send a representative of his staff through our training in Denver. We would be happy to have the members of the Senate Special Committee on Aging or their representatives go through our training.

Seniors As a Special Class. As states seek special protections for seniors regarding sales of products and services, it is becoming increasingly acknowledged that seniors are a special group that is particularly vulnerable and susceptible to financial abuse. We agree completely with that premise. Yet we are unaware of any state or federal requirement that anyone working with seniors gain even a minimal amount of knowledge (unless it is within their own discipline) about how seniors are different and the optimal ways to work with them, such as determining whether a client has dementia and being able to recognize factors that can lead to abuse. We believe that seniors deserve to work with persons who have knowledge about seniors' differences.

It seems illogical to us (and, we would hope, to the Committee) that seniors can simultaneously be recognized as needing special and separate protections, yet no additional education is required of those who work with them. It is even more illogical for someone to argue that if one does seek additional training that is not required by any regulatory agency, that training is inadequate, invalid or lacks "rigor." The fact is that many persons who present themselves as qualified to work with seniors have little or no specific education or training in aging issues. Both the Securities and Exchange Commission and the NASD (now FINRA) have stated their belief that it does require additional knowledge and skills to work with seniors.

The CSA Board of Standards and the *CSA Code of Professional Responsibility*. Cases in which the CSA designation is misused—whether brought to our attention via regulatory action, a public complaint, or our own investigation—are brought before the independent, non-profit CSA Board of Standards for disciplinary review. Actions the Board takes against CSAs are posted on our website, www.csa.us.

The CSA Board *of* Standards performs monthly reviews of cases that allege violations of the 26-page *CSA Code of Professional Responsibility* ("CSA Code") on the part of CSAs.

All CSAs must sign and agree to follow the standards, rules, and guidelines presented in the CSA Code.

The Code is clear about the nature of the CSA designation:

> The CSA credential is a broad-based, value-added designation that enhances the registrations, licenses and credentials a professional already holds. The credential bestows on the individual who earns it a deeper understanding of seniors and the issues important to them, but it is neither designed nor intended to be a substitute for professional credentials.

Multiple Code rules disallow misrepresentation:

> Rule 103. A CSA designee shall limit his or her professional advice or services to those areas in which he or she is competent. Otherwise, as warranted, such CSA designee shall direct his or her client to obtain, or shall obtain on their behalf, professional advice and/or services from other individuals qualified to provide them.
>
> Rule 104. A CSA designee shall not perform, offer to perform, or imply in advertising or other communication an ability to legitimately perform professional services that are outside the scope of the designee's professional practice, license, or credential.

> Rule 202. A CSA designee shall not solicit clients through false or misleading communications or advertisements, whether written, oral, or electronic. This includes misrepresentation via an incomplete description of a product or service. See Appendix A, Advertising Guidelines for CSAs, for more detailed definitions and advertising rules.

Multiple Code rules require ethical business conduct:

> Rule 302. A CSA designee shall secure client approval and authorization, in a form compliant with such CSA's credentialing or licensing guidelines, of all products and services prior to their delivery.
>
> Rule 305. A CSA designee shall confirm that his or her senior clients fully understand the terms and risks of a particular product or service.
>
> Rule 306. A CSA designee shall act in the best interest of the client, and shall make reasonable effort to fulfill every promise he or she has made to the client.
>
> Rule 507. A CSA designee shall carefully evaluate a client's or potential client's financial or medical circumstances (according to the designee's field of expertise) prior to providing advice and/or services, and the designee shall provide only the advice and/or services to such client that are appropriate to each client's particular circumstances.

In short, CSAs are obligated to conduct their business affairs fairly and ethically, and keep the best interests of their (senior) clients first and foremost in mind.

Enforcement of the CSA Code of Professional Responsibility. Over the past five years, the CSA Board of Standards has heard 127 cases, resulting in 33 revocations of the designation and 27 suspensions.

State and Federal Actions Involving CSAs. When persons are the subject of an enforcement action, it is a betrayal of all of us: the schools that educated then, the companies that hired them, the regulators who licensed them and the credentialing organizations that conferred on them their designations.

CSAs are taught to conduct themselves legally and ethically. We have noted the cases of those few who do receive complaints in Board of Standards actions in an enclosure.

No regulator has ever cited something we included in the course, or something we excluded from the course, as the cause of harm done to a senior.

On a more anecdotal level, we note with regret that one CSA was among the 321 total registered representatives disciplined by the NASD in 2006 in the states of Massachusetts, Florida , Arizona, California and Texas. Four of those states are where regulators conducted examinations of so-called "free lunch" seminars aimed at seniors (*Wall St. Journal*, "Seniors Seminars Get Scrutiny," May 30, 2007). SCSA referred the information about the single CSA identified to the CSA Board of Standards, where the case is now under investigation.

A separate effort in April to match records of state insurance and securities enforcement actions with the 12,000-plus membership of SCSA resulted in SCSA filing complaints against nine CSAs for "intentional nondisclosure."

"Intentional nondisclosure" means that a CSA did not disclose a government, regulatory, or administrative action, as required, on his or her enrollment application or yearly renewal questionnaire. To determine whether this occurred, SCSA scoured publicly posted enforcement action data from state regulatory web sites to identify whether any CSAs were the subject of those actions. For those states that do not post enforcement data, SCSA encourages regulators to notify it of any actions taken against SCSA members.

If SCSA discovers that a CSA has made a false statement on a renewal form, he or she is subject to having their designation revoked by the CSA Board of Standards.

Relationships with Other Companies and Products. SCSA does not endorse any products or services.

Development of the CSA Curriculum. The CSA curriculum was developed by gerontologists, geriatric M.D.s, elder law attorneys, clergy and senior health care professionals. Among the contributors to the SCSA textbook, *Working with Seniors: Health, Financial, and Social Issues*, were:

- Robert C. Atchley, PhD, Chair, Department of Gerontology and Director, Research Office, Naropa University, in Boulder, Colorado. His gerontology interests include adult development, spiritual development, long-term care, public policy, work and retirement, health change and disability, and family issues. Dr. Atchley was President of the American Society on Aging from 1988 to 1990 and has also served in numerous leadership positions in the Gerontological Society of America and the Association for Gerontology in Higher Education. He is associate editor of the Encyclopedia of Gerontology and was founding editor of the journal, Contemporary Gerontology. From 1974 to 1998, he was director of the Scripps Gerontology Center at Miami University in Oxford, Ohio. He has received more than a dozen awards for his scholarship, teaching, and professional service in the field of aging. He is author of over 100 articles and book chapters in social gerontology literature

and more that a dozen books and research monographs, including "Understanding American Society" (1970), "The Sociology of Retirement "(1976), "Aging: Continuity and Change "(1987),"Continuity and Adaptation in Aging: Creating Positive Experiences" (1999), and his tenth edition of his introductory gerontology text, "Social Forces and Aging" (2003).

- Harry R. Moody, PhD, director of academic affairs, AARP; senior associate with the International Longevity Center-USA and Senior Fellow of Civic Ventures. Dr. Moody is the author of over 100 scholarly articles and book chapters, as well as a number of books including: "Abundance of Life: Human Development Policies for an Aging Society" (Columbia University Press, 1988); "Ethics in an Aging Society" (Johns Hopkins University Press, 1992); and "Aging: Concepts and Controversies", a gerontology textbook now in its 3rd edition. His most recent book, "The Five Stages of the Soul," was published by Doubleday Anchor Books (1997) and has been translated into seven languages worldwide. A graduate of Yale (1967) and a Ph.D. in philosophy from Columbia University (1973), Dr. Moody taught philosophy at Columbia, Hunter College, New York University, and the University of California at Santa Cruz. From 1999 to 2001 he served as National Program Director of the Robert Wood Johnson Foundation's Faith in Action and, from 1992 to 1999, was Executive Director of the Brookdale Center at Hunter College. Before coming to Hunter, he served as Administrator of Continuing Education Programs for the Citicorp Foundation and later as Co-Director of the National Aging Policy Center of the National Council on Aging in Washington, DC.He is known nationally for his work in older adult education and recently stepped down as Chairman of the Board of Elderhostel. He has also been active in the field of biomedical ethics and holds appointment as an Adjunct Associate of the Hastings Center.

- Gregory A. Hinrichsen, PhD, director of psychology training, the Zucker Hillside Hospital and associate professor of psychiatry, Albert Einstein College of Medicine. During 30 years in the field of aging, he has provided clinical services, conducted research, directed psychology internship and fellowship programs, and had leadership roles in state and professional organizations. He is past president of APA's Division 12, Section II (The Society of Clinical Geropsychology) and past chair of APA's Committee on Aging. Author of over 60 articles, his research work has addressed family issues in late-life depression, dementia, and first-episode schizophrenia; adaptation to medical problems; and geropsychological education. He has clinical expertise in the application of Interpersonal Psychotherapy (IPT) to older adults. He consults on and conducts IPT workshops and seminars nationally and internationally. In September, Dr. Hinrichsen will begin a congressional fellowship sponsored by the American Psychological Association during which he will work in the office of a senator or congressman advising on public policy and aging issues.

- Stephen M. Golant, PhD, Center for Gerontological Studies, University of Florida; Previously, he was an Associate Professor in the Committee on Human Development (Department of Behavioral Sciences) and in the Department of Geography at the University of Chicago (1972 - 1980). He received his PhD in social geography and social gerontology from the University of Washington in 1972 and his B.A. (1968) and M.A. degrees (1969) in geography from the University of Toronto. Dr. Golant has been conducting research on the housing, care, mobility, and transportation needs of the elderly population for most of his academic career. He is a Fellow of the Gerontological Society of America, serves on the editorial boards of the *Journal of Gerontology: Social Sciences, Journal of Aging Studies, CSA Journal (Society of Certified Senior Advisors)* and *Journal of Housing for the Elderly.* He was formerly Secretary-Treasurer of the Behavioral and Social Sciences Section of the Gerontological Society of America, Editor-in-Chief of the magazine, *Responses to an Aging Florida*, published by the Florida Council on Aging, and on the Board of Trustees of the Florida Council on Aging. He has written or edited over 100 papers and books, including *Housing America's Elderly: Many Possibilities, Few Choices* (Sage Publications, 1992) and the *CASERA Report* (Creating Affordable and Supportive Elder Renter Opportunities), 1999.
  He has been a consultant or adviser to various consulting firms, universities, state government agencies, and national organizations including Hearst Business Communications Corporation; the American Association of Homes for the Aging; the American Association for Retired Persons; Bloomington Hospital, Indiana; Buehler Center on Aging, McGaw Medical Center, Northwestern University, Chicago; the Florida Department of Transportation; the Florida Department of Education; the Florida Council on Aging; Margaret Lynn Duggar and Associates; the Quantum Foundation; Palm Beach county, Florida, Area Agency on Aging; Palm Beach County, Florida, Health Care District; the Shimberg Center for Affordable Housing, University of Florida; the Florida Policy Exchange Center, University of South Florida; the Florida Task Force on Availability and Affordability of Long-Term Care Report to the Florida Legislature; Assisted Living Options Hawaii, and Econometrica.

- Elizabeth Vierck, M.S.; Former analyst, researcher, writer working for the US Senate. Author of "America in Transition: A Demographic Analysis of the Elderly" U.S. Senate Special Committee on Aging (1985), "The Long-Term Care Challenge" U.S. Senate Special Committee on Aging (1990), "Paying for Health Care After Age 65" (1990) and a number of other books and articles. Currently writing "American Seniors: A Factbook on Demographics, Health, and Aging."

- Lee E. Norrgard, Senior Program Coordinator in the membership cluster of AARP. He frequently serves as spokesman for the Association on the consumer needs of older adults. Norrgard has authored many consumer publications, magazines and journal articles. He has co-authored several books including *Final Details: Making End of Life Decisions, and Consumer Fraud.* In 1998, the National Association of the Attorneys General (state attorneys general) honored him with their Presidents Award. In 1999, the Inspector General of the Department of Health and Human Resources presented Norrgard with a Cooperative Achievement award, and in 2000, AARP conferred him with awards for Sustained Excellence in teamwork.

- Michael Snowdon, professor of financial planning and insurance at the College for Financial Planning in Greenwood Village, Colo. He has been the senior director of corporate sales, managed the College's CFP Professional Education program and has written and contributed to several financial planning texts for the College, National Underwriter, and the CSA Society. In addition to leading training sessions at a number of financial services companies, Snowdon has written and contributed to articles for several financial publications and Web sites, including *AP Primetime, Bloomberg Wealth Manager, Forefield Advisor, Insure.com, Insweb.com* and *OnMoney.com.* Prior to joining the College, Snowdon was a general principal and financial planning specialist for an international financial services company. He also had his own financial planning firm. Snowdon is a CFP certificant and also holds the Chartered Mutual Fund Counselor (CMFC) designation.

- Erin E. Emery, PhD, Rush University Medical Center, with practice emphasis in geropsychology, health psychology, psychotherapy with older adults and psychotherapy with medically ill adults.

- Mary Jean Kindschuh, Esq., attorney and counselor at law, is a member of the Trusts and Estates Section and Elder Law Section for the Colorado Bar Association. She served as a member of the governing Council of the Trusts and Estates Section of the Colorado Bar Association during 2002 and 2003. She is also a member of the Elder Law Institute Advisory Board at the University of Denver College of Law. Ms. Kindschuh has served on various committees of the Trusts and Estates Section of the Colorado Bar Association, including the Continuing Legal Education Committee, and as the CLE Luncheon Coordinator for the Section. She served as co-chair of the 2000 Advanced Elder Law Institute continuing legal education seminar presented by the Elder Law Institute Advisory Board and the University of Denver College of Law.

- V. Raymond Ferrara is a Registered Principal with the NASD, a Certified Financial Planner licensee, and a Certified Senior Advisor. He has served on

the Board of Directors for the Financial Planning Association (FPA), Institute of Certified Financial Planners (ICFP), and National Advisor's Trust Company (NATC). He is a member of the Board for Great Companies, LLC, a private money manager, Morton Plant Mease HealthCare, BayCare Health System, and the Clearwater Regional Chamber of Commerce.

Standards. The CSA Designation Program is an entry-level introduction to the health, social and financial issues of aging that affect the majority of seniors in the U.S. It supports the protection and ethical treatment of seniors by setting the requirement that a CSA puts the senior's best interests first, regardless of any financial or other gain to the CSA, and treats the senior with dignity, respect and fairness. This requirement is stated clearly throughout the course in various ways and reinforced in the *Critical Issues in Aging* online courses that are part of CSA designation requirements.

The CSA course design is based on our belief that awareness of the three aspects of aging is necessary to meet this expectation. The course does not teach professionals how to sell a product; rather, it teaches professionals to serve seniors as people who have common and diverse needs, thus preparing professionals to:

- Recognize and discuss the health, financial and social aspects of aging with seniors
- More accurately and easily identify seniors' needs
- Better relate to and communicate with seniors
- Advise seniors where to find help if their needs are outside the CSA's specialty

To assure that it is accurate and relevant, the CSA course is, written, edited and reviewed by experts in aging and experienced professionals who work with senior clients (see list of textbook contributors).To maintain the currency of these standards, SCSA continues to use experts to review and update the course content as needed in response to changes in the environment such as Medicare and Medicaid rules, and to student questions and feedback (orally and through written course evaluations). The CSA exam tests what is in the textbook, follows industry standards for item writing (for example, the CSA exam does not contain negatively-worded questions such as "NOT," "EXCEPT"), is reviewed by a psychometrician before being administered, and is also updated as needed.

In addition, the CSA course is designed and delivered using adult learning principles, for example, a variety of media and instructional strategies are used such as PowerPoint lectures, stories and examples that illustrate key concepts, experiential demonstrations of the experience of aging, print materials (textbook, PowerPoint, note-taking book), CDs, and review questions. There are also lists of community and government resources at the end of the textbook chapters that CSAs can use to guide seniors to services and information that are outside of the CSA's specialty.

Continuing Education Requirements. SCSA requires 18 hours of continuing education every three years from its members. Members can meet the requirement through 18 hours of ethics training, or through six hours of ethics training and 12 hours of volunteer service to a non-profit agency devoted to serving seniors.

Background Checks. We have expanded background checks to confirm the accuracy of statements applicants for our training make on their applications. We believe this is the exception rather than the rule for educational programs.

Third Party Acknowledgement of the CSA Designation Program. Departments of Insurance in 46 states award continuing education credit for the program. Our program is also recognized and approved for CE credit by the National Association of State Boards of Accountancy, which upholds certification and continuing education standards for Certified Public Accountants; the Certified Financial Planner Board of Standards, Inc.; the National Continuing Education Review Service of the National Association of Boards of Examiners for Long-Term Care Administrators; and American College PACE recertification.

Summary. SCSA a responsible organization dedicated to serving the public and deserving of the public's trust.

- SCSA does whatever regulators ask of us and even goes beyond that by soliciting regulator input regarding our policies, procedures and members.
- SCSA's curriculum was developed by some of the top people in the field of aging in the country. We teach what we say we're going to teach and test to ensure comprehension. Twenty-two percent of students fail our exam.
- We perform background checks on applicants for our training. These checks, done at the time of application, confirm that an applicant has answered the questions on our disclosure questionnaire honestly.
- We accurately describe what the Certified Senior Advisor (CSA) credential represents and what it does not represent through a disclosure statement and in all materials.
- We have a Code of Professional Responsibility enforced by an independent Board of Standards that disciplines members who violate the Code. We publicly list disciplinary actions.
- We intend to further demonstrate that the public can have confidence in CSAs by becoming accredited by the National Organization of Certifying Agencies.
- Most states, and a number of other organizations, give continuing education credit for our curriculum.
- We comb through state and federal regulatory databases daily to identify any CSAs who have been charged with rules infractions. Regulatory data show few blemishes on the record of CSAs.

- We make our channels of communication available to regulators and find ways for regulators to talk to our members and others who work with seniors about proper practices.
- We invite regulators to attend our course to see for themselves what we teach.
- We request that regulators inform us of any CSAs who they believe are acting in an unethical or unscrupulous manner, or who they have brought actions against.
- We regularly remind CSAs not to present themselves as more than they are and to involve regulators in their activities, such as inviting regulators to any public meetings the CSA may organize.
- We have added three online ethics courses to our curriculum over the past two years.
- We developed a program for CSAs to present to the public on how seniors can avoid financial abuse. State and federal regulators have applauded that initiative.

The CHAIRMAN. Thank you so much.

Mr. Bhojwani, I want to make it clear that your company is by no means the only firm that is alleged to have problems with the type of sales and marketing practices outlined by the Minnesota Attorney General today and by other State regulatory officials, and in—also in recent critical media accounts.

Your representatives have outlined to the Committee staff an impressive set of written guidelines and oversight procedures as you have, governing the sale by your agents of certain complex financial products such as annuities, and your testimony was very impressive in that respect.

Yet, the question is, if these rules are being followed or enforced so well, then why are State regulatory officials relating such a considerable volume of alleged abuses to us about your company?

Mr. BHOJWANI. Chairman Kohl, thank you for the question, and thank you for the acknowledgement of our efforts, as well as the industry issues at large.

We take great pride in the efforts that we take. We believe we have a valuable product to offer. We believe we have very stringent processes in place. The reality is we are part of a much larger company and a much larger industry.

If we look at our company solely, our parent company comprises the 16th largest company in the world. We have a dominant market share in this space. The reality of American business today, you are going to attract a certain number of problems and complaints by sheer virtue of size. I want to be clear that even one complaint, even one concern, is taken seriously, and it is unacceptable. We have a litany of processes that we go through, and those processes continue to improve every day. I would love the opportunity to share some of those processes with you in detail, if I may.

The CHAIRMAN. Go ahead.

Mr. BHOJWANI. First of all, 6 years ago we introduced and made mandatory a Statement of Understanding. Now, what this statement requires is that the consumer, the purchaser of our product, goes through with their agent, with their representative, an explanation in detail in as plain English as can be made possible, what the product does, what some of the features are, what some of the problems are.

It goes through that in a great deal of detail, and it is required that the consumer sign and acknowledge that. We won't take an application without that.

Two years ago we introduced a detailed suitability process. The suitability process captures a variety of detailed information on what it takes to purchase our products and just assesses whether or not the product is suitable for that particular consumer. We look at things like household income, net worth, financial objectives, liquidity, the source of the annuities funds, and so on and so forth.

If any one of those variables in that suitability process are out of line, each application goes through a suitability engine, the application is then submitted and selected for elevated review, where we have a panel of experts within the company that go through that. We have approximately 130 applications a week that are taken to this elevated review process. We take the suitability issue very seriously.

In addition to the suitability engine, we have a variety of training that we ask our agents to go through. We don't require it, but it is provided. The reality is that our best agents, the agents that produce the most business with us, are the ones who take advantage of this training.

We have a team of 75 licensed insurance agents on our staff. We call it the FAST team, Fast Accurate Service Team. Those agents are designated to answer detailed questions for consumers or agents that call in. That is all they do, to make sure that the product is represented accurately.

We have a post-survey process. LIMRA, an independent third party, reaches out to the consumers that purchase our products and gives us the data on the understanding of the product itself as well as the sales process.

I have announced today that we will be taking the additional steps of calling out to any purchasers of our product over the age of 75 and offering refunds where it is appropriate.

We have also announced today our efforts relative to designations. I couldn't agree more with most of the testimony I have heard today about the importance of making sure that designations that are used with our seniors are accurate and well understood. We firmly support that, and we have announced today that we will be providing that list and only allowing that list to be used in the marketing of our products.

We also have announced previously the appointment of a chief suitability officer. This officer's job is to make sure that we are always mindful of the consumer perspective.

The processes that we have implemented as early as 6 years ago continue to evolve. I am hopeful that the processes we will be talking about 2 years from now are even better than today's.

The reality is we need to keep working at this. We take this very seriously. Even one complaint is unacceptable, and we will do everything we can to make sure the number's as close as possible to zero.

The CHAIRMAN. That is very good. Thank you.

Mr. Pittock, we appreciate your invitation to the Committee staff to visit your facilities, undergo your Certified Senior Advisor, the CSA training program, which according to your testimony disclaimer, seeks only to enhance knowledge of senior issues of various types. However, our concern today relates more to the actions of agents and others, because that is your CSA designation rather than anything you or your immediate staff may be doing.

How do you oversee individuals once they have earned your CSA designation? How do you oversee them?

Mr. PITTOCK. Thank you, Senator Kohl.

There are several activities that take place. Each year our CSAs have to complete a disclosure statement that says they have had no regulatory or legal activities against them during the past year. We get reports working with regulators, and we also go to regulator websites to see if a CSA appears on that website for any action, even before the 1-year reporting comes up.

Then we have self-reporting, that the CSA has to tell us immediately, according to our CSA Code of Professional Responsibility,

which is 26 pages long. But if they have an issue, legally or with a regulator, they are to report that to us immediately.

Now, when I say "us," that goes to our independent CSA Board of Standards. That Board of Standards then will investigate, normally if there is a regulatory action that takes place, there will be an immediate suspension, administrative suspension, while the investigation goes along, and then that could lead to either a revocation or permanent suspension.

The CHAIRMAN. Well, you have heard testimony today that State authorities, such as Secretary Galvin, consider your CSA designation to be very little more than a marketing tool to gain access to seniors' money, and not a useful educational credential. How do you respond to what he said?

Mr. PITTOCK. Our education really builds a lot of empathy for seniors, and it does help for anybody that is working with seniors. The disclosure statement that we require makes it very clear that it is not a marketing device, that this designation is a supplement. It is a supplement to one's knowledge or credential or license that they hold, and the CSA designation alone does not imply expertise in health, financial or social issues.

The CHAIRMAN. Well, when a person goes out and says to potential clients, "I am a Certified Senior Advisor," that sounds pretty important, doesn't it? I mean, you—people who hear that, a certified senior advisor, I have been trained, I have gone through a program, I have a designation, I—people who he comes into contact with, particularly seniors, oftentimes might understandably look at that person as being someone who is very, very well qualified to assist them in their financial planning.

In fact, isn't that what you are attempting? Don't you want your CSAs to be regarded as such? Isn't that the purpose of your program?

Mr. PITTOCK. What we want them to be regarded as and known as is somebody that has gone the extra step to understand the issues that seniors face, and that we all face as we age.

The CHAIRMAN. Right.

Mr. PITTOCK. There are really three parts to this aging process. It is not just the financial or the economic.

The CHAIRMAN. But would you describe them as real experts in this whole field? Your CSAs?

Mr. PITTOCK. No. the CSA designation alone does not represent expertise in health, financial or social issues.

The CHAIRMAN. Do you think that there is some people who come into contact with your CSAs who are under the impression that it does represent expertise?

Mr. PITTOCK. If the CSA represents himself correctly, as our statement says they are to do, there should be no misunderstanding. If they do mislead or misuse the designation in any way, that designation will be revoked, and they won't have the option to use it any further.

The CHAIRMAN. Really? How many designations are revoked all the time?

Mr. PITTOCK. There have been 33 revoked.

The CHAIRMAN. In what period of time?

Mr. PITTOCK. That is in the past 5 years.

The CHAIRMAN. In 5 years?

Mr. PITTOCK. Yes.

The CHAIRMAN. You have how many total CSAs?

Mr. PITTOCK. There are approximately 12,000.

The CHAIRMAN. Twelve thousand. Thirty-three have been revoked.

Mr. PITTOCK. Yes.

The CHAIRMAN. That is almost zero. That is close to being zero.

Mr. PITTOCK. The number of cases——

The CHAIRMAN. It would have to be—these must be really egregious violations if 33 out of 12,000.

Mr. PITTOCK. Well, our code of professional responsibility is very clear that they can't mislead a senior in any way. They have got to follow the rules and the regulations of their own license.

Since this hearing dealt with the financial aspects of licenses and so on, those people area obligated to follow the rules of whether it is a securities or an insurance license. If in any way they violate that, then the designation will be revoked.

The CHAIRMAN. OK, good.

Well, gentlemen, anything you would like to say? We appreciate your being here, and you have provided good testimony, and to—you have been frank and honest and informative, and it has been very good for this panel.

But I would like to give you a chance, as I have with the other panelists, to say a word or two before we let you go today. Mr. Bhojwani, would you like to say something?

Mr. BHOJWANI. I would. Thank you, Chairman, Kohl.

I want to emphasize what you have heard many of your previous panelists talk about. There is clearly a change in demographics. There is clearly a change in the needs of this country's retirees.

Be they 59 years old, 65 years old or 75 years old, there is clearly a trend, where many of these retirees have a very real chance, a very real likelihood of outliving their assets. There are a variety of solutions to this. There is no one single solution that will solve all of these needs.

But we believe very strongly that our products, our annuities, our life insurance products, have a role to play. Not the only role and not a one-size-fits-all role, but we have a role to play, and we very much look forward to being part of the solution as we move forward to collectively deal with these very real needs for our retiring Americans.

Thank you.

The CHAIRMAN. Thank you so much.

Mr. Pittock.

Mr. PITTOCK. Senator Kohl, I would like to say this, that our training benefits seniors. We give professionals the information they need to communicate better, understand more effectively and find seniors the resources that they need, because there are a lot of issues that we all face with aging.

So seniors deserve to work with professionals that have gone the extra step to learn about the whole aging process, which is the health, the economic and the social aspects of aging. They all are important. You can't just succeed in one.

We work closely with regulators to ensure that our efforts are very transparent, and we work to protect the seniors with the regulators. We developed a seminar, "Nine Tips To Avoid Financial Fraud," that our members have given hundreds of these around the country. They are strictly to help people understand how to avoid financial fraud.

So one of the reasons that we developed the disclosure statement was to make it clear exactly what the designation confers. I think every designation should approach this with that in mind.

Thank you for inviting me.

The CHAIRMAN. Well, we thank you both for being here, as well as all the other panelists today. Clearly, we are talking about a very important issue in our society, our seniors and what kind of information they get based—to make decisions on, in many cases their meager resources, and trying to make them last their lifetime.

There is a lot of work to be done, and the information you have provided us is going to be very helpful. So again, we thank you for coming.

With that, this hearing is adjourned.

[Whereupon at 5:17 p.m., the Committee was adjourned.]

APPENDIX

RESPONSES TO SENATOR KOHL'S QUESTIONS FROM SECRETARY GALVIN

Question. Some of the senior designations' sponsors have represented to the Committee that their titles do not necessarily confer any special financial expertise. While that may be technically correct, isn't it also true that many sales agents holding these same designations represent themselves as financial experts to vulnerable elderly customers?

Answer. Yes. Despite the fact that the sponsors of senior-specific designations have recently been representing that their designations do not necessarily confer any special financial expertise, The Commonwealth of Massachusetts has seen many instances of sales agents using these designations to present themselves as financial experts to elderly customers.

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." (emphasis added). After receiving numerous customer complaints, the Massachusetts Securities Division initiated an administrative action against this agent and his broker-dealer, alleging that the agent had engaged in dishonest and unethical business practices by presenting himself as an unbiased and objective advisor to seniors when he, in fact, had the primary objective of selling as many high-commission annuities as possible.[1] Many of these products were sold without regard to suitability for the particular client's age, tax situation or cash flow needs. This agent made more than $700,000 in commissions selling annuities and other financial products in 2005, one of the years that he held his CSA designation. One of the complainants in this case (a woman in her seventies) indicated that the CSA designation was instrumental in her decision to purchase the annuity products the agent was selling.

Similarly, the Massachusetts Securities Division received another complaint regarding another annuity salesman who stated in his advertising materials 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." (emphasis added).[2] We have spoken with a number of customers of this "advisor", all of whom thought they were going to see a qualified investment advisor, and all of whom were sold annuities and other insurance products by that agent. In August of this year, the Division field an administrative complaint against this Certified Senior Advisor 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 his agent. The victim was a World War II fighter pilot with the Distinguished Flying Cross and a retired banker. According to these allegations, the agent sold him the first annuity two weeks after his wife died and immediately after he had undergone hip-replacement surgery. 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.

As yet another example, the Massachusetts Securities Division filed another administrative complaint against another insurance salesman that was holding him-

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[1] *In the Matter of Michael DelMonico, Workman Securities Corporation, Paul Maxa and Robert Vollbrecht*, Docket Number E–2007–0020 (March 6, 2007), available on the Massachusetts Securities Division's website (www.sec.state.ma.us/sct/sctidx.htm).

[2] *In the Matter of Steven Michael Anzuoni and Fairway Financial Insurance Agency, Inc.,* Docket No. E–2007–0026 (August 22, 2007).

self out as an objective and unbiased, knowledgeable advisor.[3] His promotional materials stated that he "is a Certified Senior Advisor who has spent 15 years in the study, presentation and service of Finance and financial related products." (Emphasis in original). In fact, the only study he engaged in after college was the minimal study required to obtain the CSA designation. In the same promotional materials he listed the telephone number of the Society of Certified Senior Advisors, along with the Better Business Bureau, the Massachusetts Division of Insurance and Massachusetts Securities Division. The Division took testimony of a customer of this agent who was in her seventies who had expressed concern about an annuity that he had sold her. When the customer was attempting to determine whether to follow the agent's advice (and purchase the equity-indexed annuity he was selling), she called the Society of Certified Senior Advisors and was informed that he checked out as a senior financial advisor. She testified as follows:

A. . . . There's one of these, Denver, CO, here Society of Senior Advisors. I told him I had contacted them about him.

Q. What was the nature of that conversation?

A. Well that was—see somebody gave me their name. Well there are the four places that he said I could call and check on him so I looked up that and I called them *and she said that he had passed whatever tests or exams they take to become a senior financial advisor* . . . She just said they had no problem with him. That everything that he went through with them was fine.

Q. And by they you mean this Society of Senior—

A. Society of Senior Advisors out in Denver, CO.

In a subsequent telephone conversation with Division personnel, this customer indicated that she thought the agent had the proper state registrations to provide investment advice, based on her telephone conversation with the Society of Certified Senior Advisors—despite the fact the he was not registered as an investment adviser representative with the Division. This led her to decide to follow the agent's advice and purchase the annuities he was selling. The customer subsequently expressed concern she did not understand how the interest rate worked or that the product was not FDIC insured, and the surrender fees and lock-up period has not been explained to her.

Question. I would like your recommendations on how state regulators and other "continuing education" -approving organizations could best modify their policies regarding "continuing education" accreditation in order to limit the incentives that may be fueling the exponential growth in these senior designations. I would note that the CFP Board has undertaken a study of this issue in regard to its own policies, which is outlined in their written statement to the Committee.

Answer. The Massachusetts Securities Division does not have any specific experience with the approval of continuing education accreditation. However, the Division believes that the exponential growth of bogus professional designations referred to in the question has directly resulted from the enormous commissions that can be made from selling certain annuity products. Those commissions, obtained by selling products such as variable annuities and equity-indexed annuities, often range between 7 and 9 percent of the amount invested, and might, in some instances, be higher. These larger commissions have fueled the quest for ever-more sophisticated—and often deceptive—marketing tools to facilitate the sale of these products. Ironically, while the purported advisor has enormous financial incentives to sell certain high-commission products (as opposed to other, lower commission products) and to put a large amount of elderly person's money into those products (because the commission is based on the amount of the product sold), the professional designations are often used to give the impression that the so-called advisor is acting objectively, independently and for the benefit of the elderly client.

RESPONSES TO SENATOR SMITH'S QUESTIONS FROM SECRETARY GALVIN

Accreditation Standards

Question 1. In Secretary Galvin's statement, he suggests that one level of assurance regarding the credibility of a specialty designation is accreditation by a national organization, such as the National Commission for Certifying Agencies. It is my understanding that CSA currently is undergoing that very accreditation process. If SCSA is able to obtain accreditation for the CSA designation, will that assuage your concerns about the CSA designation?

Answer. Under the new Massachusetts regulations, a credential or professional designation that indicates or implies special certification or training in advising or

[3] *In the Matter of John Christopher Huck*, Docket Number 2006–0109 (March 6, 2007).

servicing senior investors cannot be used by broker-dealer agents or investment adviser representatives unless the entity granting the credential has been accredited by a nationally-recognized accreditation organization.[1]

According to information submitted by the Society of Certified Senior Advisors ("SCSA") to the Massachusetts Securities Division, SCSA has not officially applied for accreditation with any recognized accreditation organization, but has had communications with the National Commission for Certifying Agencies ("NCCA") indicating that it intends to submit an application in the near future. Assuming that the SCSA were to successfully obtain accreditation, the designation could then be used by broker-dealer agents and investment-adviser representatives in The Commonwealth of Massachusetts without violating the new regulations.

The new regulations do not limit the Commonwealth's authority under existing provisions of law to address dishonest, unethical or fraudulent conduct if such a situation were to arise.

Question 2. Does the accreditation process really provide sufficient assurances regarding the credibility and utility of a specialty designation?

Answer. Information received by the Massachusetts Securities Division from the American National Standards Institute ("ANSI") and the National Commission for Certifying Agencies ("NCAA") indicates that they have rigorous accreditation process that could not be met by a sponsor of the designation unless the designation had rigorous training, testing, disciplinary and recertification processes.

ANSI is a 501(c)(3) nonprofit organization based in Washington, DC. It accredits personnel certifications programs that satisfy the requirements set forth in its "Policy and Procedures for Accreditation of Personnel Certification Programs". These principles require certification programs to demonstrate high level of integrity and technical and administrative quality, to serve the public interest and to have a tangible value. Applicants for accreditation are required to submit an application providing detailed information regarding the applicant's organizational structure and credentialing programs. ANSI reviews these materials and also conducts an on-site audit. ANSI will often identify deficiencies and require corrective actions to be taken prior to granting accreditation. ANSI has accredited a number of designations in a variety of disciplines, such as, for example, the Board of Certified Safety Professionals' "Certified Safety Professional" designation and the Construction Manager Certification Institute's "Certified Construction Manager" designation.

NOCA is a 501(c)(3) nonprofit organization based in Washington, DC. NCCA, which is NOCA's separately governed accreditation arm, accredits certification programs that satisfy its "Standards for the Accreditation of Certification Programs". The mission of NCAA is to "ensure the health, welfare, and safety of the public through the accreditation of a variety of certification programs/organizations that assess professional competency". NCCA uses a peer review process to establish accreditation standards, evaluate compliance with the standards, recognize organizations/programs which demonstrate compliance and serve as a resource on quality certification. NCCA's standards address the structure and governance of the certifying agency, the characteristics of the certification program, the information required to be available to applicants, certificants and the public, and the recertification initiatives of the certifying agency. Applicants for accreditation are required to submit an application providing detailed information regarding the applicant's organizational structure and credentialing programs and must explain how they comply or will comply with NCAA's standards for accreditation. NCCA has accredited a number of designations in a variety of disciplines, such as, for example, the American Association of Medical Assistants' "Certified Medical Assistant" designation, the American College of Sports Medicine's "Certified Personal Trainer", "Exercise Specialist" and "Health/Fitness Instructor" designations, and many others, including the Certified Financial Planner Board of Standards, Inc.'s "Certified Financial Planner" designation.

Complaint Data

Question 3. In preparation for this hearing I asked several state and federal entities to provide my staff with data on the number of investment fraud complaints received, and the amount of money lost to investment scams. Most entities were not able to provide particularly specific or useful data. This concerns me, because federal and state partners can't craft intelligent solutions to address investment fraud if they can't even adequately define the magnitude of the problem. Can you please explain what type of complaint data your organization collects?

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[1] The newly-adopted regulations and the administrative record supporting those regulations are available on the Massachusetts Securities Division's website (www.sec.state.ma.us/sct/sctidx.htm).

Answer. Each year, the Massachusetts Securities Division compiles information on the number of complaints received, inquiries opened and closed, investigations opened and closed types of violations, products used in connection with defrauding investors, the amount of money returned to investors, fines and penalties imposed and the number of administrative hearings held.

Question 4. With what entities is this information shared, e.g., with which federal and/or state law enforcement partners?

Answer. The Massachusetts Securities Division shares the information described in response 3 above with the North American Securities Administrators Association and would share such information with any state or federal enforcement partner that requested it.

Question 5. In as much detail as possible, please provide the Committee with all relevant data and trend analysis on investment fraud complaints received and/or investigated by your organization for years 2003 through 2007.

Answer. In 2006, the Massachusetts Securities Division responded to approximately 5,400 investor complaints via our toll-free hotline. It opened 250 inquiries and closed 241 inquires, opened 106 investigations and closed 92 investigations, returned $2,700,300,000 to investors, imposed fines in the aggregate amount of $6,257,356, and held 10 administrative hearings. The enforcement actions that were successfully concluded involved fraud, unlicensed individuals or entities, unregistered securities, failure to supervise, unsuitability, unauthorized trading, books and records and abuse of senior citizens. Abuse of senior citizens factored into approximately 37 percent of enforcement actions. Products involved in the enforcement actions we have undertaken include variable annuities, equity-indexed annuities, certificates of deposited or similar bank-related products and other products. The products used to defraud seniors included traditional stocks and bonds, unregistered securities and variable of equity-indexed annuities.

These figures are comparable to figures for other calendar years.

Question 6. Do you have any estimates regarding how much money investors lose each year to investment fraud?

Answer. The Massachusetts Securities Division does not have any estimates regarding how much money investors lose each year to investor fraud.

Mandatory Sales Disclosures

Question 1. Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?

Answer. Regulations promulgated under the Massachusetts Uniform Securities Act set forth principles to ensure integrity in client communications, which would include point-of-sale disclosures to investors. For example, 950 Code of Massachusetts Regulations ("CMR"), Section 12.205(9)(c)(8) lists certain dishonest and unethical practices for investment advisers. Included in this list is:

Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made not misleading.

Similarly, 950 CMR Section 12.204(1)(a)(18) lists certain dishonest and unethical sales practices for broker-dealer agents. Included in the list is "making any advertising or sales presentation, either in written or oral form, in such a fashion as to be deceptive or misleading."

In addition, FINRA Rule 2210 ("Standards Applicable to All Communications with the Public") sets forth the guiding principles for customer communications by broker dealers and investment advisers. These principles are further refined by interpretive releases published by FINRA, such as IM–2210–1 ("Guidelines to Ensure That Communications With the Public Are Not Misleading") and IM–2210–2 ("Communications with the Public About Variable Life Insurance and Variable Annuities"). For example, one of the guidelines in IM–2210–1 states: "Members must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed." Massachusetts has incorporated Rule 2210 into its regulations covering securities broker dealers and investment advisers.

Massachusetts also has certain specific disclosure obligations. For example, 950 CMR Section 12.205(8)(e) requires investment advisors to disclose, before the purchase or sale of a security with respect to which investment advice has been rendered, the total amount of sales commission or other fees to be charged. Similarly, FINRA has certain rules providing disclosure requirements for certain products. For example, FINRA's new rule, Rule 2821, pertaining to sales of variable annuities, includes the requirements that the customer be informed of various features of de-

ferred variable annuities, such as the potential surrender periods and surrender charges, potential tax penalties for early redemption, mortality and expense fees, advisory fees and potential charges for and features of riders.

Question 2. It is my understanding that there are various model documents circulating in the industry that establish point of sale disclosures that must be made to prospective investors. While many of these documents seem to provide useful information regarding the investment product, I am troubled that consumers don't seem to have easy access to information that would help them determine whether their sales agent has improper motives or conflicts of interest, for example, sales commission structures. It seems that transparency in investment transactions is a key element to preventing fraud. Therefore, should state and federal regulators impose more stringent and comprehensive disclosure requirements on agents, brokers, producers, advisors, etc.?

Answer. The Massachusetts Securities Division has received a number of complaints, and has initiated and adjudicated a number of administrative proceedings, involving purported advisors to senior citizens who have consistently steered those citizens to high-commission annuity products. Often the product is unsuitable to the senior citizen due to lengthy lock-up periods and large surrender fees. Time and time again we have heard from seniors that they were not aware that the agent had received such a high commission on the product, which commissions can range from 7 to 9 percent of the amount invested, and might, in some instances, be higher. Rather, the senior is told that the advisor's services will not cost the senior citizen anything.

We have seen that these enormous commissions often strongly influence that chose of products the so-called senior advisor recommends. For many annuity products, there appears to be a correlation between size of the commission and certain characteristics of the product that are disadvantageous to the consumer, such as lengthy lock-up periods, high surrender fees, low interest rates or, for equity-indexed annuities, a low participation in the increase of the equity index that the annuity is tied to. In many instances, we have seen purported advisors putting almost every senior that comes to them for advice into the same high commission products, as a one-size-fits-all approach that does not properly factor in the specifics of the customer's circumstances.

Accordingly, I believe that up front, point-of-sale disclosure of the commissions the agent stands to receive on the various products recommends or sold would make those transactions (and the motives underlying them) more transparent.

In addition, the Massachusetts Securities Division has seen many instances of seniors purchasing annuities based on initial teaser interest rates, which rates fall precipitously after the first year and remain low for the lengthy remainder of the annuity's lock-up period. Recently, we have heard from many senior citizens who have found themselves locked into an annuity product which ties up their money for many years but which pays an annual interest rate that is a full two percentage points less than a CD that would tie up their money for one year. Seniors are also often wooed by an up front "bonus" that, in fact, is only collectable if the product is held for a very long period of time. The true nature of these interest rates and bonuses, should be clearly disclosed.

The disclosures described above should be in a stand-alone, easy to read format, because if they are buried in fifty pages of dense fine print, they will not be meaningful. The customer should sign the disclosure to indicate that the customer has, in fact read the disclosure. Of course, it should be remembered that the risk of the disclosure-based approach is that the agent could quickly gloss over the documents when making the sale, have the trusting senior sign the document on the agent's representation that it is just paperwork, and then the agent would have the signed disclosure in the file as a defense if the consumer were to complain in the future.

Question 3. What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what sources can they obtain this information?

Answer. Please see response to question 2, immediately above.

Question 4. Under state and federal law, what recourse do consumers have if misled in the sale of an investment product, for example, does current law provide for rescission rights?

Answer. Under Massachusetts law, any person who offers and sells a security by means of any untrue statement of a material fact or by omitting a material fact is liable in a private action to the buyer of the security. Analogously, under federal law, there is a private right of action under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.

In addition, in many of the enforcement actions brought by the Massachusetts Securities Division involving misleading and deceptive sales practices, the Division

seeks restitution for investors. For example, in its recently-settled case against Investors Capital Corporation ("ICC"),[1] the Division had alleged that this broker-dealer had not properly supervised its many agents. Those agents, who were not registered or properly qualified as investment advisers, were using such titles as "Certified Senior Advisor" to hold themselves out as investment advisers and convincing senior citizens to sell financial products and purchase high-commission equity-indexed and other annuities. In many instances, the annuity product was unsuitable for senior citizens due to lengthy lock-up periods, high surrender fees and potentially disadvantageous tax consequences. In its ultimate settlement with the Division, ICC agreed to reimburse purchasers of those annuities in Massachusetts who chose to surrender the annuities all early withdrawal penalties, in an amount such that they would receive, at a minimum, their principal amount invested plus 3 percent annual interest.

Differences in Regulation of Securities Compared to Insurance Products

Question 5. In Mr. Nicolette's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?

Answer. I am not the principal regulator of insurance products in The Commonwealth of Massachusetts. However, I will note that a number of enforcement actions that the Massachusetts Securities Division has initiated have involved insurance agents using sham professional designations to cloak themselves as senior specialists and to misleadingly hold themselves out as investment advisors and advising senior citizens to purchase fixed annuities and other insurance products. Those annuities are often unsuitable to the senior citizen client due to high surrender fees, lengthy lock-up periods and potentially disadvantageous tax consequences.

Question 6. Are insurance products under-regulated?

Answer. Please see response to question number 5 immediately above.

Question 7. Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?

Answer. The Massachusetts Securities Division believes that the SEC and state governments should work together to address the problem of deceptive or misleading professional designations geared towards senior citizens. The Massachusetts Securities Division has initiated a number of enforcement actions against purported senior specialists using sophisticated and misleading marketing tools (including senior-specific professional designations) to convince senior citizens to purchase unsuitable annuity products. Based on conversations with regulators in other states, it is our understanding that these abusive marketing tactics have been replicated in many states. We believe that a coordinated approach with the SEC and other states would lead to a stronger and more uniform attack on these deceptive marketing platforms nationwide.

In addition, Massachusetts has recently adopted a regulation prohibiting broker-dealer agents and investment adviser representatives from using a 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).[2] We are hopeful that this regulation will become a nationwide model and that the SEC would work with the states to help coordinate enforcement of this rule.

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[1] *In the Matter of Investors Capital Corp. & Investors Capital Holdings, Ltd.,* Consent Order, Docket Nos. E–2005–0190 & E–2006–0060 (December 19, 2006).

[2] The newly-adopted regulations and the administrative record supporting those regulations are available on Massachusetts Securities Division's website (www.sec.state.ma.us/sct/sctidx.htm).

Questions for the Record from Senator Kohl

Responses from Joseph P. Borg, NASAA President

Q: Your organization formed a task force on the issue of "senior designations" earlier this year and you have announced today a policy that would make it a violation of the law to use a designation to mislead investors. I think that is an important step to reducing these types of frauds. What could be done at federal level to help fix this type of abuse aimed at our vulnerable seniors?

A: In our experience, a substantial number of the financial frauds perpetrated against seniors are violations of the criminal laws as well as the civil securities laws. We believe that Congress could provide significant assistance by enacting a law to provide for substantial sentencing enhancements in those cases where seniors were victimized. Another issue that should be considered is harmonizing the definitions of "securities" with respect to products being sold as "investments", i.e., Variable Annuities (VAs) and Equity Indexed Annuities (EIAs).

Q: I would like your recommendations on how state regulators and other "continuing education"-approving organizations could best modify their policies regarding "continuing education" accreditation in order to limit the incentives that may be fueling the exponential growth in these senior designations. I would note that the CFP Board has undertaken a study of this issue in regard to its own policies, which is outlined in their written statement to the Committee.

A: NASAA believes that continuing education is an essential component of accreditation, as do the nationally-recognized accrediting organizations in the United States, such as the American National Standards Institute (ANSI) and the National Commission for Certifying Agencies (NCCA). The modification by state regulators to require a rigorous accreditation program accompanied by frequent and substantive continuing education requirements would serve to limit the incentives that fuel the proliferation of specious designations in two primary ways. Further insurance companies, as well as Broker-Dealers and IAs must monitor and approve use of designations and "free lunch" programs before allowing their use.

First, those programs whose purpose is to provide the salesperson with a designation that bestows a spurious level of expertise which is then used to gain the trust and confidence of vulnerable citizens will be unable to meet the rigorous guidelines of nationally-recognized accrediting organizations. For them, the aim is to provide a means to manipulate the senior, not to legitimately advance the profession. As a result, the effort and expense required to gain accreditation will result in their departure.

Secondly, those individuals who purchase and use these specious designations do so as an easy way to establish rapport and credibility with unsuspecting and trusting seniors. Given the outrageous sales practice abuses we have seen by individuals who have purchased and used these specious designations, we believe that this is a population of salespersons who are not possessed of either the interest or inclination to undergo an ongoing, rigorous program of professional development. In their view, the sale is paramount. As a result, we believe accreditation and continuing education requirements will serve as a de facto bar to salespersons who merely wish to "buy a sales tool" to assist them in pushing product at any price.

Responses to Questions for the Hearing Record
From Joseph P. Borg
NASAA President

Accreditation Standards

1. **In Secretary Galvin's statement, he suggests that one level of assurance regarding the credibility of a specialty designation is accreditation by a national organization, such as the National Commission for Certifying Agencies. It is my understanding that CSA currently is undergoing that very accreditation process. If SCSA is able to obtain accreditation for the CSA designation, will that assuage your concerns about the CSA designation?**

   Out of an exercise of caution, we would reserve judgment until such accreditation becomes fact. In the interim, we believe it is important to observe the conduct of those individuals who currently possess the designation.

2. **Does the accreditation process really provide sufficient assurances regarding the credibility and utility of a specialty designation?**

   While there may be "optimizations" that would be appropriate to augment the accreditation process, accreditation is clearly the only long-term, workable approach regarding the use of meaningless designations to further dishonest, unethical, and fraudulent acts in connection with the use of such designations. Additionally, accreditation is, at a bare minimum, more that sufficient when compared with the cavalier, caveat emptor approach to certain designations currently in place. It will not solve the entire problem. There will always be those who seek to take advantage of others through the use of their "special expertise." By combining the accreditation "gatekeeper" function with strong tools for enforcement (including clarifying that Equity Indexed Annuities (EIAs) and Variable Annuities (VAs) are securities for state regulatory purposes) we can help control the problem.

Complaint Data

3. **In preparation for this hearing I asked several state and federal entities to provide my staff with data on the number of investment fraud complaints received, and the amount of money lost to investment scams. Most entities were not able to provide particularly specific of useful data. This concerns me, because federal and state partners can't craft intelligent solution to address investment fraud if they can't even adequately define the magnitude of the problem. Can you please explain what type of complaint data your organization collects?**

NASAA collects data on enforcement actions, remedies and violations through an Enforcement Survey that is sent to each of its jurisdictions on an annual basis. The annual enforcement survey collects the number of complaints that each jurisdiction receives as well as the number of complaints received specifically from senior citizens. NASAA's most recent survey[1] reported a total of 13, 145 complaints received from citizens with 3, 671 (or nearly 28%) of those coming from senior citizens.

In addition to complaint data, NASAA collects information regarding the number of investigations the states conduct, deficiency letters issued, individuals and firms sanctioned, cease and desist orders, injunctions, licensing sanctions, conduct remedies, fines or penalties, and the allocation of fines and restitution. Starting in the 2004/2005 reporting period, NASAA collected data on the number of enforcement cases in which certain products were used to defraud seniors.

4. With what entities is this information shared, e.g., with federal and/or state law enforcement partners?

On December 12, 2006, NASAA posted general results of the most recently completed survey on its website in a release entitled, "State Securities Regulators Report Increases in Enforcement Actions, Money Ordered Returned to Investors & Years of Incarceration for Securities Law Violations."
http://www.nasaa.org/NASAA_Newsroom/Current_NASAA_Headlines/5981.cfm

We will release the aggregate enforcement information collected from our survey to federal and state regulators per their request.

5. In as much detail as possible, please provide the Committee with all relevant data and trend analysis on investment fraud complaints received and/or investigated by your organization for years 2003 through 2007.

NASAA traditionally releases an annual list of the "Top Ten Traps Facing Investors," which is a forecast of the fraud trends that state securities regulators are witnessing through their complaint and enforcement data. This year's release was posted on the NASAA website on May 17, 2007 and included the following trends, in alphabetical order:

Affinity Fraud. Con artists are increasingly targeting religious, ethnic, cultural and professional groups. Some may be members of the group or pretend to be members in order to gain trust. Con artists often recruit a respected member of a community or religious congregation to promote their schemes by convincing them that a fraudulent investment is legitimate. In many cases, even these leaders become victims of what turns out to be a Ponzi scheme. *Remember: Investigate before you invest – no matter who is selling.*

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1 *All data are for the 2004/2005 reporting period, which is reflected either as calendar year 2005 or most recent fiscal year, July 1, 2004 through June 30, 2005. Totals are based on responses from 42 of 53 U.S. jurisdictions.*

Foreign Exchange Trading. Foreign exchange (forex) trading can be legitimate for governments and businesses concerned about fluctuations in international currencies, and it can even be appropriate for some individual investors. But the average investor should be wary when it comes to these complex markets. Forex scams attract customers with sophisticated-sounding offers placed in newspaper advertisements, radio promotions, or on Internet sites. *Remember: If you don't understand an investment, don't invest.*

Internet Fraud. Scamsters continue to take advantage of technology to lure investors into "pump-and-dump" stock schemes. Be wary of investments being pitched through unsolicited e-mails, instant messages, and phony websites. *Remember: The internet can be a con artist's dream – easy access to you and your money, with no "return address" if the deal goes sour.*

Investment Seminars. Promoters of unsuitable investments are increasingly seeking potential investors, particularly seniors, by offering seminars, many of them promising a free meal along with "higher returns and little or no risk." Unfortunately, in many of the cases that securities regulators see, it's just the opposite: high risk and no returns, just disastrous losses. *Remember: There's no such thing as a free lunch.*

Oil and Gas Scams. Rising oil and natural gas prices have made a variety of traditional and alternative energy projects attractive to investors. Most of these investments are highly risky and not appropriate for smaller investors. *Remember: Con artists tend to follow the headlines.*

Prime Bank Schemes. Often promising high-yield, tax-free returns, promoters of these schemes offer to let the "little guy" in on what they claim are financial instruments from elite overseas banks usually offered only to the world's wealthiest investors. Prime banks do not exist and the scam artists have no intention of creating a profit for anyone but themselves. *Remember: Often the most sophisticated sounding investments are just false promises in fancy garb.*

Private Securities Offerings. Con artists are turning increasingly to private securities offerings under Rule 506 Regulation D of the Securities Act of 1933 to attract investors without having to go through the full registration process. Although sometimes legitimate, these offerings are often associated with fraud. *Remember: Especially with lightly regulated investment offerings, it pays to consult a trusted financial adviser.*

Real Estate Investment Contracts. Despite the recent decline in property values, investments in real estate long have been viewed as a "sure thing," one with little downside risk and the potential for substantial returns. Some real estate investments are securities subject to full regulation under the state and federal securities laws, including registration requirements and antifraud rules. *Remember: Just because an investment involves real estate – or pay phones or worm farms – it still may be a security, so check with your state securities regulator.*

Unlicensed Individuals & Unregistered Products. Anyone selling securities or providing investment advice about buying or selling securities must be appropriately licensed. Anyone

engaging in these activities without a valid license to do so should be a red alert for investors. Con artists also bypass stringent state registration requirements to pitch viatical settlements, pay telephone and ATM leasing contracts, and other investment contracts with the promise of "limited or no risk" and high returns. *Remember: Carefully check out anyone offering to help you buy or sell securities or providing investment advice.*

Unsuitable Sales. What might be a suitable investment for one investor might not be right for another. Securities professionals must know their customers' financial situation and refrain from recommending investments that they have reason to believe are unsuitable. For example, variable and equity indexed annuities are often unsuitable for senior citizens because those products are generally long-term investments that limit access to invested funds. But sales agents stand to earn high commissions on these investment products so they don't always adhere to the suitability standards – with dire consequences for seniors. *Remember: Make sure your investments match up with your age, your need for access to money,* and your risk tolerance.

6. Do you have any estimates regarding how much money investors lose each year to to investment fraud?

Estimated annual losses to investment fraud are difficult to ascertain because not all cases are reported to authorities. However, in its 2006 Financial Crime Report, the Federal Bureau of Investigation reported that losses from securities and commodities fraud total approximately $40 billion per year. While state securities regulators do not track the amount lost each year in investment fraud cases, NASAA has reported that state securities enforcement actions resulted in nearly $1 billion ($911 million) ordered returned to investors in the form of restitution, rescission, and disgorgement during the 2004/2005 reporting period.

Responses from Joseph P. Borg, NASAA President

Mandatory Sales Disclosures

1. **Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?**

   Generally, state law contains requirements governing both the timing and content of certain disclosures. Some of these disclosures must be made prior to or at the point of sale. For example, states universally require salespersons of broker-dealers to disclose the intent to effect any transaction prior to execution, the fact that a transaction will be executed in a margin account, among others. More broadly, as to salespersons of broker-dealers, states require that pre-sale and point-of-sale materials be factual and accurate. [Note: Violations of state law may include misrepresentations or omissions of material fact, in addition to suitability of product issues.]

   Again, as a general proposition, the states do not require specific, written point-of-sale disclosures regarding particular products. However, we do set forth particularized content for advertising materials. As a result, if these materials were to be used as a proxy for a point-of-sale disclosure (which they often are at the current time), they would be violative of the state securities laws to the extent they contained prohibited content. For example, Comparison charts or graphs showing distorted, unfair or unrealistic relationships between the issuer's past performance and that of another company, business, industry or investment media; Formatting used so as to attract attention to favorable or incomplete portions of the advertising matter; Materials which tend to present an accumulative or composite picture or impression of certain or exaggerated potential profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser; and distribution of any nonfactual or inaccurate data or material by any means would all constitute violations of state securities laws.

   On the investment advisory side, most states do require a specific, written point of sale disclosure. Most states have adopted NASAA model rule 203(b) – commonly known as the "Brochure Rule" – wherein an investment adviser is required to deliver Part II of its Form ADV to each prospective and actual advisory client: (1) not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or (2) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract. In addition, the investment adviser must deliver or offer to deliver Part II of its Form ADV annually to its clients. Form ADV Part II contains information regarding the advisory services and fees, types of investments, education and business background, and other information deemed critical to the investor's ability to reach an informed decision regarding any potential dealings with an adviser.

Finally, most states have adopted a provision which makes the failure to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers (FINRA) or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission a violation of that state's Act. As an example of how this operates in practice, if a registrant failed to comply with FINRA's Rule 2821, pertaining to disclosures in connection with the sales of variable annuities, the state could bring an action based on that violation.

In all cases, any misrepresentations or omissions of material fact, dishonest or unethical practices or sale of unsuitable securities products may give rise to state violations.

2. **It is my understanding that there are various model documents circulating in the industry that establish point of sale disclosures that must be made to prospective investors. While many of these documents seem to provide useful information regarding the investment product, I am troubled that consumers don't seem to have easy access to information that would help them determine whether their sales agent has improper motives or conflicts of interest, for example, sales commission structures. It seems that transparency in investment transactions is a key element to preventing fraud. Therefore, should state and federal regulators impose more stringent and comprehensive disclosure requirements on agents, brokers, producers, advisors, etc.?**

   NASAA strongly believes that disclosure documents, when presented separately from any other offering document, written in plain English, and clearly enumerating the potential and inherent risk to investors would reduce the incidence of victimization and should be a required component of every transaction. Currently in many situations, disclosure documents, while legally compliant, are difficult to understand, are "glossed over" by sales agents and therefore are generally unread since the consumer is encouraged to "trust" the agent and wrongly believes that the agent is under a duty to watch out for his best interests. Therefore, any disclosure document, no matter how effective in theory is ultimately inferior to the imposition of strict sales practice rules (as distinct from guidelines).

3. **What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what sources can they obtain this information?**

   Product knowledge – currently obtained from complex offering documents (How does the salesperson get paid? How much of my initial investment is actually invested? Do the purported benefits actually apply in my situation? Does the investment vehicle truly comport with my risk tolerance and both current and potential financial needs?), CRD/IARD history, ADV Part II (if applicable). Are there other cheaper products that are just as suitable or even more suitable? This information is currently best obtained from state regulators.

4. **Under state and federal law, what recourse do consumers have if misled in the sale of an investment product, for example, does current law provide for rescission rights?**

   (Note: Equity Indexed Annuities are not yet defined as securities and variable annuities, although defined as securities under federal law have not been so designated in many states.) Under current state law, any person who offers and sells a security by means of any untrue statement of a material fact or by omitting a material fact is liable in a private action to the buyer of the security. Analogously, under federal law, there is a private right of action under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. However, the federal section is more difficult to use in practice. In addition, many of the enforcement actions brought by state securities regulators seek restitution and/or rescission for investors.

Differences in Regulation of Securities Compared to Insurance Products

5. **In Mr. Nicolette's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?**

   We note that a significant number of enforcement actions taken by state securities regulators involve insurance agents using the most outrageous dishonest and unethical conduct, including sham professional designations to misleadingly hold themselves out as investment advisers and advising patently unsuitable purchases of variable annuities and other insurance products to highly vulnerable seniors, often with catastrophic consequences. We are unaware of any similar actions taken under the insurance codes. The securities regulatory scheme is well-equipped at the present time to deal with such abuses when securities are involved (see "Note" in 4 above).

6. **Are insurance products under-regulated?**

   See answer to Question 5 above.

   Also, the issue is that insurance regulators are not generally familiar with "sales practices" abuse or "point of sale" marketing -- they, in many cases, have sufficient regulatory authority to examine insurance companies for safely and soundness.

7. **Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?**

We believe that the SEC and state governments should work together to address the problem of deceptive or misleading professional designations geared towards senior citizens. The states, in particular Massachusetts, have initiated a number of enforcement actions against purported senior specialists using sophisticated and misleading marketing tools (including senior-specific professional designations) to convince senior citizens to purchase unsuitable annuity products. These abusive marketing tactics have been replicated in many states. We believe that a coordinated approach with the SEC and the states would lead to a stronger and more uniform attack on these deceptive marketing platforms nationwide.

In addition, NASAA has recently published for internal comment a Model Rule, for adoption by every state, that would prohibit broker-dealer agents and investment adviser representatives from using a purported credential or professional designation that indicates or implies 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 believe that this Model Rule will be adopted nationwide and hope that the SEC would work with the states to help coordinate enforcement of this Rule.

As a practical matter, states have the ability to act on an individual basis when particular complaints arise. For true effectiveness, local enforcement by the states should match, but remain independent of, the SEC's material approach to this issue.

RESPONSES TO SENATOR KOHL'S QUESTIONS FROM NICHOLAS NICOLETTE

Question. What are you and your colleagues prepared to do to protect the credibility of legitimate designations and separate them from those that do not?

Answer. I don't believe this question is applicable to a voluntary membership organization such as the Financial Planning Association. However, we would encourage state and federal regulators to do the utmost possible to protect what is probably the most vulnerable consumer segment in response to abusive marketing and sales practices.

Question. In your view, how many of the hundreds of designations are worthy of credibility with seniors?

Answer. I believe that each designation, specialty or broad-based, is best left to the discretion of state and federal regulators in terms of evaluating abusive or misleading marketing and sales practices. FPA does not have the resources to properly evaluate the hundreds of designations available in the marketplace, other than it has always supported the CFP® designation as an appropriate means of delivering competent and ethical financial planning advice to the public.

We elaborate on a possible solution to the question of how to determine the credibility of a designation—irrespective of abusive marketing practices—in response to Question 7 by Ranking Member Smith.

Question. You've mentioned that the insurance industry seems to have a lesser regulatory burden than in the securities arena. What else needs to be done here to make what you'd regard as a level playing field to fully protect the interests of our seniors?

Answer. I believe that an appropriate standard of care with respect to advice offered on insurance products is conspicuously lacking in the present scheme of state regulation. Insurance regulation, in my view, has always been focused on monitoring the solvency of insurance companies, i.e., actuarial data applied to a company's ability to pay out claims, not on how to effective oversee abusive sales or marketing practices. To complicate matters, there are gaps in regulation between insurance and securities regulators in the sale of hybrid products, and sometimes overlap in products. For example, equity index annuities are insurance products that are often marketed as providing policy holders the ability to participate in stock market returns without the risks. However, there is risk in losing money in these complex products, mostly from churning practices, and there is typically a cap on the rate of return that doesn't mirror the full return of their benchmarks in the stock market. We believe these products do hold risk to policyholders and should be subject to oversight by securities regulators. Conversely, variable annuities are regulated by both insurance and federal regulators, but contain elements of both an investment and annuity product. Both equity index and variable annuity products can serve the same purpose of providing income to a senior in retirement. Why should they be subject to different standards of care?

As mentioned above, the challenge for Congress is addressing the old regulatory framework that permits insurance products and advice to be the responsibility of state insurance regulators, and securities products and investment advice the jurisdiction of state and federal securities regulators. In addition, retirement advice is regulated by the U.S. Department of Labor, and falls under separate congressional committee oversight than for securities and banking regulators. None of these areas of product sales and advice are harmonized so that seniors and other investors receive level standards of protection.

Since many insurance and securities firms are delivering vastly different product solutions to address the same client needs, there is a critical need for regulation to be harmonized and applied in a uniform manner so that seniors better understand their options across industry sectors. Eliminating bias in the sales process and applying uniform standards to advice-givers would thus require an act of Congress and major regulatory reform. To fully protect our seniors, and for that matter, all Americans, the level playing field in regulation should ideally center not on standards applied to individual product solutions, but on the delivery of integrated financial advice covering all aspects of a person's financial objectives. The individuals holding out as experts, with the implication that they are providing objective advice—whether in regard to the specific needs of a retirement person, or broad financial solutions at any stage in life—should be held to a fiduciary standard, be subject to relevant standards of competency, and always be required to disclose conflicts of interest.

RESPONSES TO SENATOR SMITH'S QUESTIONS FROM NICHOLAS NICOLETTE

Accreditation Standards

Question 1. In Secretary Galvin's statement, he suggests that one level of assurance regarding the credibility of a specialty designation is accreditation by a national organization, such as the National Commission for Certifying Agencies. It is my understanding that CSA currently is undergoing that very accreditation process. If SCSA is able to obtain accreditation for the CSA designation, will that assuage your concerns about the CSA designation?

Answer. Referring to written comments by the Financial Planning Association to the Massachusetts Securities Division, FPA is on record supporting the Division's proposal to limit the use of designations to those that meet a commonly understood baseline, such as accreditation by the National Commission for Certifying Agencies (NCCA). Whether such a baseline is appropriate for all designations may depend on whether the individual holds other credentials that provide an appropriate framework of competency and knowledge in which to apply the learning from a specialty designation. In the case of the CSA, for example, if the individual also holds the CFP designation, which is accredited by the NCCA and serves as a solid foundation to provide personal financial advice, additional accreditation may not be needed in order to further one's knowledge about a specific area of practice, as long as the specialty designation meets a baseline educational standard. In general, per my testimony, we believe that rigorous education, examination, enforceable ethical standards, and experience are all basic criteria that should be applied to any designation. Without these, you cannot sustain credibility or the public trust.

Question 2. Does the accreditation process really provide sufficient assurances regarding the credibility and utility of a specialty designation?

Answer. I would refer back to my previous comment that in order for any accreditation process to be truly effective, the four 'E's are needed with any designation: rigorous education, examination, ethics and experience requirements.

Complaint Data

Question 3. In preparation for this hearing I asked several state and federal entities to provide my staff with data on the number of investment fraud complaints received, and the amount of money lost to investment scams. Most entities were not able to provide particularly specific or useful data. This concerns me, because federal and state partners can't craft intelligent solutions to address investment fraud if they can't even adequately define the magnitude of the problem. Can you please explain what type of complaint data your organization collects?

Answer. FPA collects only complaint data that it receives, or that comes to its attention, regarding members of the association. We do not maintain any specific categories of complaints such as senior fraud.

Question 4. With what entities is this information shared, e.g., with which federal and/or state law enforcement partners?

We do not share this information with federal or state authorities unless we believe a crime has been committed that has been previously unreported, or unless such information is requested from a regulatory body.

Question 5. In as much detail as possible, please provide the Committee with all relevant data and trend analysis on investment fraud complaints received and/or investigated by your organization for years 2003 through 2007.

Answer. FPA is a voluntary membership organization with no authority to investigate fraud complaints from the public except in connection with ethics complaints against its own members.

Question 6. Do you have any estimates regarding how much money investors lose each year to investment fraud?

Answer. We do not maintain such statistics.

Mandatory Sales disclosures

Question 1. Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?

Answer. Point-of-sale disclosure rules vary by state, by industry, and under federal law. These rules apply to registrants under those jurisdictions in their capacities as licensed agents, brokers, or advisers. Financial planners are not per se regulated by federal or state authorities. However, many carry licenses as securities and insurance brokers, and investment advisers. In addition, FPA requires individual members to comply with a strict code of ethics, which requires disclosure of conflicts of interests and all sources of compensation in their role as financial planners. The code of ethics largely mirrors that of the CFP Board of Standards for CFP certificants.

Question 2. It is my understanding that there are various model documents circulating in the industry that establish point of sale disclosures that must be made to

prospective investors. While many of these documents seem to provide useful information regarding the investment product, I am troubled that consumers don't seem to have easy access to information that would help them determine whether their sales agent has improper motives or conflicts of interest, for example, sales commission structures. It seems that transparency in investment transactions is a key element to preventing fraud.Therefore, should state and federal regulators impose more stringent and comprehensive disclosure requirements on agents, brokers, producers, advisors, etc.?

Answer. I would draw a distinction between comprehensive and meaningful disclosure. Consumers can receive extensive disclosure in fine print, and ignore it. More important than simply requiring additional disclosure is subjecting the adviser to a fiduciary duty that requires him or her to effectively disclose these conflicts, and to remedy potential problems so that these are resolved in the interest of the client.

Question 3. What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what sources can they obtain this information?

Answer. The most important pieces of information that investors should obtain from their sales agent or adviser are about qualifications (learning and experience); disciplinary history; business and personal relationships that may pose conflicts; sources of compensation; scope of engagement; and responsibilities of each party to undertake the recommendations of the adviser/agent.

Question 4. Under federal and state law, what recourse do consumers have if misled in sale of investment products? Does current law provide for rescission rights?

Answer. I cannot provide a comprehensive response to consumer recourse for injury under all financial services laws. Under the Investment Advisers Act of 1940, you have a right to sue the firm and/or individual in court unless there is a binding arbitration agreement. The law, as I understand it, provides only for a rescission of fees paid to the adviser under certain conditions, not for investor losses.

Differences in Regulation of Securities Compared to Insurance Products.

Question 5. In Mr. Nicolette's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?

Answer. N/A, since you are inviting opinion on FPA's assessment regarding the need for reform of insurance regulation.

Question 6. Are insurance products under-regulated?

Answer. Insurance regulators traditionally have focused on solvency of insurance companies and their ability to pay out for losses and their ability to provide income streams through the life of a fixed annuity policy. Insurance products are under-regulated in the areas of sales practices and advice on insurance products. Prior to the consolidation of financial services firms under one roof offering a variety of services and products, the average consumer understood the role of the insurance agent. Today, the average life insurance agent no longer holds out in that manner. Caveat emptor is no longer a way to provide the consumer with fair warning that there is an inherent and obvious conflict. If the consumer is confused or uncertain over the standard of care to be applied in the relationship, and the agent is unqualified to give advice or unwilling to disclose conflicts of interest or act in the client's best interest, then the laws should be reformed, and new ways of enforcement considered. Presently there is no blanket fiduciary duty or transparency in the sale of insurance products, although insurance regulators in recent years have begun to move in that direction by imposing limited suitability standards.

Question 7. Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?

Answer. I believe there is an opportunity for a shared private sector and public responsibility in the review of specialty designations, and such a review should be approached in a balanced way that preserves fundamental guarantees to the right of commercial speech, but at the same time protection for the public from abusive marketing practices. Preferably, a group of peers on a professional regulatory board, independent and free of conflicts of interest, accountable to a public agency, such as the SEC or a state authority, and with the appropriate expertise and knowledge, should have the ability to respond quickly and effectively in reviewing specialty designations, and be able to make objective, authoritative recommendations to the appropriate enforcement authority with regard to any discrepancies in the curriculum, exam content, and any experience requirements.

It would then be up to the appropriate enforcement authority to go through a three-step process. First, determine whether to accept the recommendations of the professional peer group in evaluating the intrinsic value of the specialty designation, and second, if it is a legitimate designation, determine whether any private sector ethics procedures are in place and working effectively to protect the public. If the regulator finds that there is an inadequate disciplinary process, and a systemic problem with fraud and deceit in the marketplace, then appropriate enforcement measures obviously should be taken to eliminate fraud and deceit. Further, the regulator should also work with the peer review body to determine whether any changes are needed to the educational, testing, ethics and disciplinary requirements associated with the designation.

FPA does not have a position on whether this authority should be left primarily to the SEC, to the states, or should be a shared authority. Our primary concern is that because many firms in the four primary regulated areas of financial services—insurance, banking, securities and investment advisers—are offering many of the same services, that uniform standards for the delivery of advice (not the sale of products, necessarily) should apply to all advice-givers.

Senate Special Committee on Aging Hearing
"Advising Seniors About Their Money: Who Is Qualified and Who Is Not?
September 5, 2007

Questions for Sandy Praeger
President-Elect, NAIC
Commissioner, Kansas Department of Insurance

Chairman Herb Kohl

- The Committee has discovered that in many cases, by earning a senior designation, insurance agents and other professionals can also earn "continuing education" credits subject to the approval of state insurance regulators. Do you think that this practice might be fueling the growth we are seeing in the number of senior designations, by providing an additional incentive for individuals to obtain them, and by conferring legitimacy upon the designations themselves?

  State regulators believe strongly that training for agents and brokers is very important. States require agents and brokers to participate in continuing education programs to ensure they keep up with the current trends in the insurance market. To ensure the training they receive is appropriate, States require the education programs must be certified by the State Department of Insurance. Granting agents and brokers credit for taking a certified course that focuses on the needs of seniors is not the problem. In fact, more education on the specific insurance issues of seniors is a very good idea. A problem arises when an agent or broker uses a designation to mislead a senior, pushes an unsuitable product, or receives a designation from a non-certified program. This is what states are addressing through the enforcement of existing laws and regulations and, when necessary, new laws and regulations.

- Can you address how the NAIC and individual states might be able to remove this incentive, or otherwise limit the growth of illegitimate senior designations?

  States must remain diligent in its oversight of certified continuing education programs to ensure they are providing accurate and appropriate instruction and not encouraging illegal or unethical practices. States must also educate agents, brokers and consumers about the existence of illegitimate programs and the proper use of any designations. As stated in my testimony, several states are also enacting new laws and regulations to curtail the use of senior designations and to ensure only suitable annuities are sold. The NAIC is looking at its Suitability Model to determine whether improvements are necessary and will be working with consumers, industry and producer reps, and other interested parties to enhance oversight.

- I would like your recommendations on how state regulators and other "continuing education"-approving organizations could best modify their policies regarding "continuing education" accreditation in order to limit the incentives that may be fueling the exponential growth in these senior designations. I would note that the CFP Board has undertaken a study of this issue in regard to its own policies, which is outlined in their written statement to the Committee.

  State regulators agree with the Certified Financial Planner Board that continuing education and designations are important, but a review is needed to ensure they are not being misused

and that the instruction provided is accurate and appropriate. Commissioners are also commencing such reviews in their states and the NAIC is also looking into this issue and will be developing recommendations.

Ranking Member Gordon H. Smith

Accreditation Standards

1. In Secretary Galvin's statement, he suggests that one level of assurance regarding the credibility of a specialty designation is accreditation by a national organization, such as the National Commission for Certifying Agencies. It is my understanding that CSA currently is undergoing that very accreditation process. If SCSA is able to obtain accreditation for the CSA designation, will that assuage your concerns about the CSA designation?

   Accreditation is important, assuming the accreditation is based on appropriate standards. In addition, States must remain vigilant to ensure agents and brokers do not mischaracterize the designation, misuse the designation, or sell unsuitable products.

2. Does the accreditation process really provide sufficient assurances regarding the credibility and utility of a specialty designation?

   Accreditation of education and training programs is intended to ensure the information provided is accurate and appropriate. Such accreditation would help assure "free lunch" programs that focus on sales tactics are not considered as real training. However, the real question is how the agent or broker will characterize their expertise and, more importantly, whether they will push an unsuitable product. While we can take steps to discourage the proliferation of programs that teach unethical practices, regulators will always face the problem of those few unethical agents and brokers. This will need to be addressed through consumer education, strong oversight, and swift action against wrongdoers.

Complaint Data

3. Can you explain what type of complaint data your organization collects?

   The NAIC request that each state submit complaint data via an "NAIC Standard Complaint Data" form. This is self-reported data this is not audited by the NAIC. The form provides standardized categories, although how each state defines a complaint can differ. How often a state submits the information can also differ. The data can be manipulated to determine both the type of product and type of complaint, as well as whether the complaint was legitimate. For example, the NAIC can list, by state and year, how many complaints have been received regarding annuities, and how many of those complaints involved suitability or agent sales practices.

   However, since this is not audited information and the way states submit the information can differ (for example, a state may list a single complaint in several categories, while another may not) it is best used to determine trends and highlight growing problems.

4. With what entities is this information shared, e.g., with which federal and/or state law enforcement partners?

This information is available on the NAIC website and may be accessed by anyone. In addition, states share complaints involving fraud with law enforcement partners.

5. In as much detail as possible, please provide the Committee with all relevant data and trend analysis on investment fraud complaints received and/or investigated by your organization for years 2004 through 2007.

   The NAIC does not receive complaints nor does it investigate complaints. Attached is a report based on the complaints received and closed by the State Departments of Insurance that provide information to the NAIC.

6. Do you have any estimates regarding how much money investors lose each year to investment fraud?

   No, we do not have that kind of information.

Mandatory Sales Disclosures

7. Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?

   The NAIC's Annuity Disclosure Model Regulation requires for face-to-face meetings at the time of application for an annuity that the applicant be given a specified disclosure document and a copy of the NAIC's Annuity Buyer's Guide. If there is no face-to-face meeting, the regulation requires that this information be provided no later than five business days after the completed application is received by the insurer. See Section 5B of the model regulation (attached). The NAIC is in the process of updating the Buyer's Guide.

8. Should state and federal regulators impose more stringent and comprehensive disclosure requirements on agents, brokers, producers, advisors, etc?

   The NAIC includes comprehensive disclosure requirements in is its model regulation related to the sale of annuity products. However, as part of the NAIC's work to update the Annuity Buyer's Guide, the NAIC will examine the appropriateness and feasibility of adding disclosures about potential conflicts of interest related to the sale of an annuity product, such as producer sales commissions.

9. What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what source can they obtain this information?

   The consumer can request commission information from the agent or broker. The consumer can also contact the State Department of Insurance and request information about any complaints or actions taken against the agent or broker.

10. Under state and federal law, what recourse do consumers have if mislead in the sale of an investment product, for example, does current law provide for rescission rights?

Yes, after investigating a complaint(s), and evidence of fraud or deception in the sale is found, then the insurance department and/or the state attorney general's office will require full restitution to the consumer. In some cases, the insurance department will conduct a targeted market conduct examination to determine if the insurer has engaged in this conduct with other consumers. If widespread misconduct is found (evidence of unfair trade practice), the insurance department will order the insurer to take certain specific actions to find other consumers who may have been harmed and also may require the insurer to establish certain administrative practices to prevent this conduct from happening in the future (example is the Allianz settlement in Minnesota attached).

Differences in Regulation of Securities Compared to Insurance Products

11. In Mr. Nicolette's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice on the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?

    I do not agree with Mr. Nicolette's characterization. States have the authority to regulate the sales practices of all agents and brokers and have developed disclosure, education, and suitability requirements that provide important protections for consumers. Of course, there will always be a handful of unethical agents and brokers that will attempt to take advantage of seniors and other vulnerable populations. State laws allow regulators to take corrective actions and punish unethical actors. Can more be done? Of course, and states and the NAIC continue to monitor laws and regulations to ensure they remain sufficient in the current marketplace.

12. Are insurance products under-regulated? *No*

13. Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should the SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?

    As has been demonstrated in other areas, such as Medicare Advantage, states are best equipped to identify and correct problems in the marketplace. States are closer to the consumer, have more resources dedicated to consumer protection, and have greater expertise in handling complaints. While coordination and communication between federal and state regulators can always be improved, the primary regulator of agents and brokers must remain with the states that license them.

Individual Suitability Complaints

(complaint code 0415)

	2004						2005						2006						2007					
	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All
Reason	903		910		915		903		910		915		903		910		915		903		910		915	
AA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AK	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AL	0	0	1	1	2	2	0	0	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0
AP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AZ	0	0	14	19	16	20	13	13	18	19	20	21	20	21	20	21	14	14	4	4	4	5	12	12
CA	0	0	20	26	54	90	23	31	19	23	99	139	30	55	16	38	100	133	22	32	7	11	53	63
CN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CO	0	0	1	1	0	0	0	0	0	0	0	0	0	2	0	0	0	4	1	5	0	0	3	9
CT	0	0	0	0	0	0	0	0	0	0	1	1	0	0	2	2	20	33	0	0	1	1	17	40
DC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GA	0	0	0	0	1	1	0	0	1	1	1	1	0	0	0	0	0	0	0	0	1	1	1	1
GU	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HI	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0
IA	0	0	22	24	14	15	0	0	30	31	21	21	0	0	13	13	15	16	0	0	0	0	6	6
ID	0	0	4	4	4	4	0	0	2	3	0	1	0	0	8	11	2	5	0	0	2	3	2	4
IL	0	0	3	3	0	0	0	0	2	2	3	3	0	0	1	1	4	4	0	0	0	0	0	0
IN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
KS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
KY	0	0	0	1	1	1	0	0	0	0	2	2	0	0	1	1	5	5	0	0	3	5	4	6
LA	0	0	1	3	3	3	0	0	1	11	0	1	0	0	0	0	0	0	0	0	0	0	0	0
MA	0	0	4	4	2	2	0	0	2	2	2	2	0	0	1	1	2	2	0	0	1	1	4	5
MD	0	0	0	0	0	0	2	2	0	0	1	1	0	1	0	0	0	1	0	0	1	1	1	1
ME	0	0	0	0	0	0	0	0	1	1	1	2	0	0	0	0	0	0	0	0	0	0	0	0
MI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
MO	0	0	3	6	10	17	3	7	1	3	5	13	20	31	3	3	19	45	10	13	5	6	13	16
MP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MT	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NC	0	0	4	4	6	6	0	0	3	3	9	9	1	1	0	0	20	23	1	1	0	0	7	7
ND	0	0	0	0	0	0	0	0	0	0	2	2	0	0	0	0	3	3	0	0	0	0	1	1
NE	2	2	17	18	4	4	10	11	21	22	17	17	9	13	23	28	17	20	8	10	18	19	13	15
NH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NJ	0	0	1	2	1	2	0	0	4	5	1	1	6	6	3	3	5	6	2	2	3	3	0	0
NM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NV	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	1	1	0	0	0	0	0	0

location: G:/data/mis team/amj_suitability_congressional_hearing date created: 08/27/2007 Author: Angela Jett

Individual Suitability Complaints

(complaint code 0415)

	2004						2005						2006						2007					
	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All	Confirmed	All
NX	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OH	0	0	0	0	1	4	0	0	2	3	1	1	0	0	0	0	0	0	0	1	0	1	0	0
OK	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OR	0	0	15	16	11	11	0	0	6	6	14	15	1	1	3	3	15	17	9	9	2	2	9	9
OT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	3	9	11	0	0	1	2	0	0
PR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SC	0	0	1	1	0	1	1	1	2	2	0	0	0	0	1	1	2	2	0	0	1	1	1	1
SD	0	0	1	1	0	0	0	0	0	0	1	1	0	0	1	2	5	6	0	0	0	0	0	0
SO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0
TX	0	0	6	6	9	9	0	0	8	9	5	5	0	0	8	9	20	20	0	0	11	12	11	11
UT	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	1	5	7	0	0	1	2
VA	0	0	1	2	2	11	0	0	7	8	4	6	0	0	8	11	6	10	0	0	4	5	10	12
VI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
VT	0	0	1	2	1	2	0	0	3	3	0	0	0	0	7	8	3	3	1	1	0	1	0	0
WA	0	0	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WI	0	0	53	93	37	58	0	0	42	76	37	55	0	0	51	71	55	66	0	0	35	49	17	22
WV	0	0	2	3	3	6	1	1	5	9	6	6	1	3	5	6	4	6	0	1	2	3	3	4
WY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	1	1	0	0	0	0	0	0

location: G:/data/mis team/amj_suitability_congressional_hearing date created: 08/27/2007 Author: Angela Jett

ANNUITY DISCLOSURE MODEL REGULATION

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Section 1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

Section 3. Applicability and Scope

This regulation applies to all group and individual annuity contracts and certificates except:

A. Registered or non-registered variable annuities or other registered products;

B. Immediate and deferred annuities that contain no nonguaranteed elements;

C. (1) Annuities used to fund:

(a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,

(c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

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(2) Notwithstanding Paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

D. Structured settlement annuities;

E. [Charitable gift annuities; and]

F. [Funding agreements].

Drafting Note: States that regulate charitable gift annuities should exempt them from the requirements of this regulation. States that recognize or regulate funding agreements as annuities should exempt them from the requirements of this regulation.

Section 4. Definitions

For the purposes of this regulation:

A. ["Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.]

B. "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

C. "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

D. ["Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.]

E. "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

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F. "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

G. "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

H. "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

Section 5. Standards for the Disclosure Document and Buyer's Guide

A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and the Buyer's Guide contained in Appendix A.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

(a) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(b) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.

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(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(2) The insurer's name and address;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(a) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(b) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(c) Periodic income options both on a guaranteed and non-guaranteed basis;

(d) Any value reductions caused by withdrawals from or surrender of the contract;

(e) How values in the contract can be accessed;

(f) The death benefit, if available and how it will be calculated;

(g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(h) Impact of any rider, such as a long-term care rider.

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(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 6. Report to Contract Owners

For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

A. The beginning and end date of the current report period;

B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

Drafting Note: States adopting this regulation with an effective date before July 1, 2000 should consider a delayed effective date for including the cash surrender value that is after June 30, 2000 because it appears programming changes may be required for many insurers.

C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

D. The amount of outstanding loans, if any, as of the end of the current report period.

Section 7. Penalties

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Section [cite state's unfair trade practices act].

Section 8. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

Section 9. Effective Date

This regulation shall become effective [insert effective date] and shall apply to contracts sold on or after the effective date.

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APPENDIX—BUYER'S GUIDE TO FIXED DEFERRED ANNUITIES

Drafting Note: The language of the Fixed Deferred Annuity Buyer's Guide is limited to that contained in the following pages, or to language approved by the commissioner. Companies may purchase personalized brochures from the NAIC or may request permission to reproduce the Buyer's Guide in their own type style and format.

[The face page of the Fixed Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Reprinted by. . .

It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A *deferred* annuity has two parts or *periods*. During the *accumulation period*, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the *payout period*, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and

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the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity. There are two kinds of multiple premium annuities. One kind is a *flexible premium* contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a *scheduled premium* annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred* annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

- Fixed

During the accumulation period of a *fixed deferred* annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

- Variable

During the accumulation period of a *variable* annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. **Usually, what these rates will be is entirely up to the insurance company.**

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Current Interest Rate

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

- The *initial rate* is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

- The *renewal rate* is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

Minimum Guaranteed Rate

The *minimum guaranteed interest rate* is the lowest rate your annuity will earn. This rate is stated in the contract.

Multiple Interest Rates

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. **You get only one of the accumulated values depending on which benefit you choose.**

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a *withdrawal* charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a *surrender* charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bail-out* option.

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In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a *rolling* surrender or withdrawal charge.

Some annuity contracts have a *market value adjustment* feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited *free withdrawal* feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

Contract Fee

A contract fee is a flat dollar amount charged either once or annually.

Transaction Fee

A transaction fee is a charge per premium payment or other transaction.

Percentage of Premium Charge

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

Premium Tax

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

Annuity Income Payments

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's *benefit rate* in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

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There is a table of guaranteed benefit rates in each annuity contract. Most companies have *current* benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

- Life Only - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

- Life Annuity with Period Certain - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This *period certain* is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.

- Joint and Survivor - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the *survivor* feature is an added benefit, each income payment is smaller than in a life-only option.

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

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Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

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WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?
- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

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Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this *before* any free look period ends.

Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

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APPENDIX I—EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (**Note:** S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

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Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

Floor on Equity Index-Linked Interest

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

Averaging

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

Interest Compounding

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest

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during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

Margin/Spread/Administrative Fee

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% (10% - 2.25% = 7.75%). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

Vesting

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

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WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer *preset* combinations of features. You may have to make trade-offs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset	
Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.	Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.
High-Water Mark	
Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.	Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Low-Water Mark	
Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.	Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Point-to-Point	
Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.	Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

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WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

Cap on Interest Earned

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

Averaging

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

Participation Rate

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

Interest Compounding

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

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Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?

Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

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Final Points to Consider

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.

Legislative History (all references are to the Proceedings of the NAIC).

1998 Proc. 4th Quarter 15, 17, 608, 628, 629-632 (adopted).

This model replaced an earlier version:

1978 Proc. II 31, 34, 295, 380, 382, 388-391 (adopted).
1980 Proc. I 34, 38, 406, 516, 518 (amended).
1982 Proc. II 505-512 (copy of most amendments adopted 1983 Proc. I).
1983 Proc. I 6, 35, 447, 569, 572-579 (amended; incorrectly reprinted).
1983 Proc. II 16, 22, 554, 613 (Buyer's Guide modified).
1988 Proc. I 9, 19-20, 601, 603-609 (adopted technical amendments; reprinted).
1988 Proc. II 5, 12, 478, 490-497 (amended and reprinted).
1998 Proc. 3rd Quarter 15, 518, 542, 545-553 (Buyer's Guide amended and reprinted).

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18. Annuity Issuer Settles with Minnesota
National Underwriter
By Allison Bell
Oct. 9, 2007

An insurer has resolved an investigation in the Midwest by agreeing to offer refunds to thousands of older annuity buyers and to add a screening process for future buyers.

Allianz Life Insurance Company of North America, Golden Valley, Minn., a unit of Allianz S.E., Munich, has accepted the restitution process to settle a lawsuit filed by Minnesota Attorney General Lori Swanson in a state court in Minnesota in January 2007, the company says.

Judge Kevin Burke, a state court judge in Hennepin County, Minn., approved the settlement agreement Monday, according to officials in Swanson's office.

Swanson filed the Minnesota suit in connection with allegations that Allianz Life had sold deferred annuities to Minnesota senior citizens without first determining whether the annuities were suitable investments for the seniors.

The annuities restricted the seniors' access to their assets in the annuities for as long as 15 years, and, in some cases, the terms of the annuities may have been misrepresented, Swanson alleged.

"The settlement process with Attorney General Swanson was a difficult one, but it soon became clear that the common ground we share is a sincere desire to protect the needs of consumers in the state of Minnesota," Allianz Life President Gary Bhojwani says in a statement about the agreement.

"With this settlement, Allianz is taking yet another step to continue to earn the trust and confidence that our consumers place in us every day," Bhojwani says. "I want to express my gratitude for the unwavering support of our 2,200 employees and our distribution customers as we continue to enhance our consumer safeguards and suitability practices."

Under the terms of the settlement agreement, Allianz Life has agreed to pay the state $500,000 in fees and expenses.

In addition, 7,000 Minnesota consumers ages 65 and older who bought Allianz deferred annuities between Jan. 1, 2001, and the present will receive a letter from the attorney general giving them the opportunity to submit a claim for a full refund without penalties.

If it is determined that the sale was unsuitable or based on misrepresentations, the consumer will be offered a refund of their premium, without a surrender charge, plus 4.15% interest, officials say.

In the future, Allianz Life will get detailed information about the finances of older annuity prospects to make sure they have enough liquid assets and disposable income to pay for ongoing living expenses and emergencies without having access to all of the money in the deferred annuity, officials say.

The suitability process will include questions about a senior's income, living expenses, liquid assets and anticipated changes in finances.

Some answers will trigger closer scrutiny. If, for example, an applicant would have less than $75,000 in liquid assets after buying an annuity, Allianz Life will have to look more closely at the application, officials say.

Questions for the Record from Senator Kohl

Gary Bhojwani, President and CEO, Allianz (al-E-anz) Life Insurance of North America

Your representatives have outlined to the Committee staff an impressive set of written guidelines and oversight procedures governing the sale by your agents of certain complex financial products such as annuities. Yet if these rules are being followed or enforced, then why are state regulatory officials relating such a volume of alleged abuses and even fraud to us about your company? Please outline for us how and when you intend to correct these continuing problems.

Answer:

We feel the empirical data we collect does not point to "continuing problems" with our procedures. Our complaint ratio is extremely low, customers keep their policies with us at a higher percentage than much of the industry and our average customer has a median net worth (not including real estate) of over $ 400,000 while the average policy size is $ 50,000. Nevertheless, we are continuously working with regulators and others to address any concern that is raised and have announced significant additions to our already stringent practices.

For example, consider Minnesota Attorney General Lori Swanson's lawsuit against Allianz Life for alleged violations of Minnesota's suitability law. We strongly disagree with the assertion that we violated the statute. Nevertheless, we have recently resolved that lawsuit. The settlement documents maintain our denial of any legal impropriety, and that was not an impediment to reaching a settlement. Instead, the focus of the settlement is on our common goal of ensuring that consumers - including seniors - purchase products that are suitable for their individual financial goals and circumstances. The result of the settlement is further enhancements to our suitability process, which will continue to evolve over time.

As was mentioned during my testimony before the committee, certain concerns raised by various parties related to sales practices are legitimate and are by no means limited to Allianz. Due to our leadership position within the fixed indexed annuity market, we have been the focus of several of these investigations. We are hopeful that some of our peers in the industry take an increasingly active role in addressing these issues.

We will continue to work proactively and cooperatively with any regulator who has concerns about sales practices.

To: **Panels 2 and 3 – All Panel 2 and Panel 3 Witnesses**
From: **Ranking Member Gordon H. Smith**
Re: **Senate Special Committee on Aging Hearing "Advising Seniors About Their Money: Who Is Qualified – and Who Is Not?"**

Questions for the Hearing Record

Mandatory Sales Disclosures

1. Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?

2. It is my understanding that there are various model documents circulating in the industry that establish point of sale disclosures that must be made to prospective investors. While many of these documents seem to provide useful information regarding the investment product, I am troubled that consumers don't seem to have easy access to information that would help them determine whether their sales agent has improper motives or conflicts of interest, for example, sales commission structures. It seems that transparency in investment transactions is a key element to preventing fraud. Therefore, should state and federal regulators impose more stringent and comprehensive disclosure requirements on agents, brokers, producers, advisors, etc.?

3. What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what sources can they obtain this information?

4. Under state and federal law, what recourse do consumers have if misled in the sale of an investment product, for example, does current law provide for rescission rights?

Differences in Regulation of Securities Compared to Insurance Products

5. In Mr. Nicolette's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?

6. Are insurance products under-regulated?

7. Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?

To: **Panel 3 – Gary Bhojwani, President and CEO, Allianz**
From: **Ranking Member Gordon H. Smith**
Re: **Senate Special Committee on Aging Hearing "Advising Seniors About Their Money: Who Is Qualified – and Who Is Not?"**

Questions for the Hearing Record

1. You indicate in your statement that Allianz is developing a list of approved certifications that the company will allow its agent to use. What are the criteria by which you are evaluating these designations?

2. How will consumers be assured they are being sold appropriate products?

3. What recourse will consumers have if misled in the sale of one of your products?

4. On August 30, 2007, my staff submitted thirteen written questions via email for your response. To date I have not received a response to those questions. Please provide answers, and all related documentation, as part of your response to the questions for the hearing record.

5. In as much detail as possible, please provide the Committee with all relevant data and trend analysis on complaints received and/or investigated by your organization for years 2003 through 2007.

6. Do you have any estimates regarding how much money investors lose each year to investment fraud?

Answers:

Questions for Panels 2 & 3 from Sen. Smith

Question 1

Generally speaking, states that have adopted the NAIC model disclosure law require that consumers purchasing annuities receive a disclosure document at or near the point of sale. Approximately 14 states have adopted the current version of the NAIC model disclosure regulation and approximately 9 other states have an early version of the NAIC model. Additionally, many of the states that have adopted the model disclosure regulation also require that a copy of the NAIC or similar state "Buyer's Guide" be provided to consumers. This document provides generic consumer education and information about annuities. Finally, if the sale involves an exchange from another insurance product, state laws require the use of replacement disclosure notice.

Although a point-of-sale disclosure document is not required by law in all jurisdictions, Allianz Life has required the use of such a document for several years. We will not issue a fixed annuity contract without a disclosure document that has been signed by both the consumer and the agent.

The sale of variable annuities, unlike the sale of fixed annuities, is subject to federal regulation in addition to the requirements of state law. FINRA and SEC regulations require disclosure through a prospectus, which must be provided at or before the time of application if an application is used or with confirmation of the sale if an application is not used. The consumer will also be provided with a prospectus for the investment options sold through the variable insurance product at the time the sale is confirmed. Similar to fixed product sales, if the sale involves an exchange from another insurance product, state law also requires the use of a replacement disclosure notice.

Question 2

Allianz believes strongly that the consumer benefits when they have clear information to make an informed choice about the products or service they are purchasing. The history of financial services regulation over the last thirty years, as well as industry practices, has moved progressively forward in favor of allowing the consumer to make informed purchase decisions. Allianz supports the efforts of SEC, FINRA, and state insurance regulators that allow consumers to better understand the product and the sale of the product to them.

Question 3

Consumers are e2titled to ask about how and agent or brokers is compensated. They should not be reluctant to do so.

Question 4

There are a variety of legal remedies for consumers who believe they have been misled in the purchase of insurance products. These remedies may be both civil and criminal, and may be pursued by individual consumers, the SEC, FINRA, the Department of Justice, and/or state insurance departments and attorneys general.

In the context of variable insurance products, federal law prohibits material misstatements or omissions in product marketing. Both the SEC and FINRA have authority to bring actions for misstatements and omissions or unsuitable recommendations. The Department of Justice has (relatively rarely exercised) authority to enforce the Federal securities laws as criminal statutes.

In the context of both variable and fixed insurance products, state insurance departments have authority under state law to bring regulatory actions against companies for misrepresenting products. Because fixed annuities are insurance products and not "investment products," however, the federal regulations described above do not apply.

Consumers can file civil lawsuits, and most states have general consumer protection statutes that provide recourse for consumers who believe they have been misled. This recourse typically includes the right to obtain damages, often including rescission.

For most consumers, however, litigation is not the most efficient way of seeking to resolve a complaint related to misrepresentation. Consumers have the ability to file a complaint Allianz Life if they believe they were misled, they can also file a complaint with their state insurance regulator and, in the case of a variable product, with the SEC or FINRA. When Allianz Life is informed of a complaint, our team of complaint handlers will conduct a thorough review of the case. If it is determined that the consumer was misled, Allianz Life will offer a rescission of the contract with a refund, including interest, to the consumer.

Question 5

The current insurance regulatory system is based in part on laws that were passed decades ago, when the insurance marketplace looked quite different than it does today. This is true not only in terms on the types of products offered, but also in terms of the consumers who purchase those products. Today's consumers are more mobile geographically, and are also more interested in shopping among companies to find the right product to fit their insurance, investment and retirement needs.

State regulators have made strides to modernize the regulatory system in recent years, and this should be commended. However, the regulatory system has not always kept pace with the changing economic and demographic trends. In addition, the state-based regulatory system lacks uniformity, so insurers must many times offer different products in different states to meet the regulatory requirements of individual states. This does not always inure to the benefit of consumers, particularly in the increasingly national marketplace for diverse insurance products. Consumers may find fewer choices for products depending upon where they live.

This problem will be exacerbated as more baby boomers retire and look for ways to ensure that they will not outlive their retirement savings and help them transfer wealth to their beneficiaries. They will be looking for products that provide security and flexibility and may not want to be limited to purchasing the products that are permitted by the regulator in the jurisdiction in which they live. The insurance regulatory system must take these changes into account and seek to provide insurers with greater opportunities to develop products that consumers want and need and provide consumers with greater opportunities to purchase these products regardless on where they live.

Question 6

We do not believe that insurance products are under-regulated. Insurance products must undergo a rigorous state review before coming to the marketplace. State insurance regulators have also begun to focus in more recent years on the sales process for annuities and their suitability for the consumers who purchase them. We support efforts taken by regulators to ensure that the consumers' interests are protected.

Question 7

As you know, the regulation of financial products, including insurance, is dependent upon the unique features of the product being sold. This has meant that certain products such as fixed annuities are regulated by state insurance regulators; others such as variable annuities and securities by FINRA, under the auspices of the SEC as well as state securities regulators. During the past two years, the SEC, FINRA, the National Association of Insurance Commissioners and the North American Securities Administrators Association have been working increasingly to ensure greater collaboration between and among them and to make certain that industry outliers do not escape regulatory scrutiny. Allianz Life supports this. Since the apparent abuse of special designations cuts across lines of regulation, it only makes sense that federal and state regulators share responsibility for protecting consumers – including seniors - against those who abuse their trust by using misleading and specious designations.

Questions for Panel 3 from Sen. Smith

Question 1

We anticipate finalizing our approved designation list in November. We have, however, established criteria by which we will determine what designations will be permitted. The criteria include:

1) Agents may not use designations that do not exist or are self-conferred. Any designation used must comply with state law in the state where the producer is marketing our products.

2) The designation must be conferred by an institution that is accredited by the U.S. Department of Education or by an entity that is authorized by an accredited institution to issue the designation.

3) Generally speaking, Allianz will distinguish between certifications and certificates. Allianz will permit approved certifications to be used, but will not allow agents to use designations granted pursuant to a certificate course. Both certifications and certificates that imply expertise relating to seniors will receive heightened review.

4) The designation of a post-secondary degree earned by an institution accredited by the U.S. Department of Education, e.g., MBA, JD, Ph.D, etc., would also be accepted.

We will be publishing a list of approved designations to our distribution in November. After that list is published and becomes effective, agents will not be permitted to use designations that have not been approved when representing Allianz Life. We will review and update our approved designation list periodically. Also, we will consider adding additional designations that are not on our approved list if an agent identifies a particular designation that meets our criteria.

Question 2

Although there is no single process used to assure that a consumer purchases a product that meets his or her financial objectives, the primary process used by Allianz is our suitability program.

Allianz Life developed its internal suitability program in the summer of 2005 and has enhanced it several times over the past two years. Our program exceeds the requirements of the NAIC model suitability law and we recently announced several new enhancements to our program. The program is designed to provide us with a high degree of assurance that the suitability determination being made by the agent at the time the product is applied for is one with which we agree. Our process utilizes a multi-step approach – (1) agent assessment; (2) automated review by Allianz Life's suitability "rules engine" at the time we receive the application; and (3) a manual elevated review if any of the thresholds in our rules engine are triggered.

As we mentioned at the September 5th hearing, we will begin making calls to all new Allianz life policyholders age 75 and older to verify that they understand the features of the product they are purchasing. If that call identifies a consumer who does not understand the product, we will offer to rescind the contract with interest.

Following the hearing, we announced several new modifications to our suitability rules engine that result in additional cases being submitted for elevated review. These modifications will go into effect in first quarter 2008 and pertain to cases in which the consumer is 65 or older and:

1. the consumer has liquid assets, after purchase of the annuity, of less than or equal to $75,000; or
2. the consumer anticipates a significant increase in living expenses or a significant reduction in net income or liquid assets during the annuity's deferral or surrender charge period, whichever is longer; or
3. the premium the consumer paid for the annuity exceeds 25 percent of the consumer's net worth (excluding the consumer's home); or
4. the consumer's annual income is less than or equal to $20,000; or
5. the premium the consumer paid for the annuity is greater than four times the annual income of the consumer.

We believe that these enhancements will provide further assurance that consumers purchase products that meet their financial objectives.

Question 3

Allianz does not tolerate the misrepresentation of its products. If a consumer has been misled, we refund the consumer's money with interest and will take immediate action with the agent – up to and including termination of their appointment as an Allianz agent.

Question 4
We have spoken with Chris Hinkle regarding these answers and will get them to her under separate cover.

Question 5

Although at Allianz we believe that one consumer complaint is too many, we are proud of the fact that our complaint ratio is less than one half of one percent. This reflects all complaints received by the company from consumers directly or from the various state departments of insurance. It is not discounted for those complaints that either the department of insurance or the company determine are not justified. Our complaint ratio has increased very slightly (approximately .1%) since 2003, however, it remains below .5%.

Because the raw data is proprietary and contains a significant amount of private personal financial information, Allianz is unable to provide specific numbers or data at this time. We would be willing to work with the Committee to provide additional detail so long as it could be done in a manner that would ensure that this protected information was not compromised.

Question 6

We do not have any estimates regarding how much money investors lose annually in investment fraud. It may a very difficult number to track down given the many types of investment fraud that exist. The SEC may have information regarding losses for securities investment fraud, and the FTC may have information regarding losses in other types of investment fraud.

RESPONSES TO SENATOR SMITH'S QUESTIONS FROM EDWIN PITTOCK

Question. One of my staff members recently sat for the proctored CSA certification exam. She has no specialty training or academic background on the topics covered in your exam. Yet with only 1 hour of preparation, she completed your 3 hour exam in 1½ hours and obtained a passing score of 82 percent. No disrespect to my staffer, but I am troubled by the ease with which she passed your exam. Are you?

Answer. No. Almost one-fourth of persons who take the exam fail it. It is not surprising at all that a highly educated person immersed in senior issues and qualified to serve an important staff role on the Senate Special Committee on Aging would be able to pass an exam that measures general, broad knowledge of issues facing seniors.

Question. In response to the concerns raised at the hearing, do you anticipate making changes to your certification process to make it more rigorous? If yes, please describe.

Answer. Yes. It is unclear at this point exactly how the emerging regulation envisioned by the North American Securities Administrators Association pertaining to so-called "senior" designations will affect our certification process. We intend to meet or exceed whatever requirements and standards come out of NASAA's efforts in this regard.

Question. Under state and federal law, what point-of-sale disclosures must agents, brokers, producers, advisors, etc. make to investors?

Answer. In addition to following all applicable state and federal laws and company regulations, CSAs must provide this disclosure in writing to clients before the completion of a transaction: Certified Senior Advisors (CSA) have supplemented their individual professional licenses, credentials and education with knowledge about aging and working with seniors. Know what those licenses, credentials and education signify. The CSA designation alone does not imply expertise in financial, health or social matters. Details: *www.csa.us.*

Question. What are the most important pieces of information that investors should obtain to determine whether their sales agent has improper motives or conflicts of interest, and from what sources can they obtain this information?

Answer. Although we believe that disclosure is inherently helpful and that all designations should have a disclosure statement, we are not an investment designation and therefore would not claim to be qualified to answer this question. In general, we believe appropriate regulators are the best neutral source of information about any industry.

Question. Under state and federal law, what recourse do consumers have if misled in the sale of an investment product, for example, or does current law provide for rescission rights?

Answer. As an education company focused on people instead of products or professions, we are not qualified to answer.

Question. In Mr. Nicollete's statement, he indicates that regulators' hands are "tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products" as compared to securities. Do you agree with this assessment, that is, is the regulatory system antiquated?

Answer. We are not part of the insurance industry, do not endorse any products and are not well-versed in the regulations of various industries, so we are not qualified to answer.

Question. Are insurance products under-regulations?

Answer. It appears to us, as one who is exposed to insurance products only peripherally and as they pertain to various regulatory actions taken against Certified Senior Advisors, that there is considerable friction between the securities industry and the insurance industry over the extent to which certain annuity products should be regulated and who should be allowed to sell them. Whether the problem is the products themselves or some aspect of regulation, we do not know. However, the independent CSA Board of Standards will hold all CSAs to the highest standards and regulations promulgated.

Question. Notwithstanding the current legislative and regulatory landscape, what ideally should be the SEC's role in authenticating, regulating, and/or conscripting use of specialty designations, i.e., should SEC assume primary enforcement responsibility, is enforcement responsibility best left to state regulators, or should federal and state regulators share enforcement responsibilities?

Answer. We agree with Chairman Cox's observation that any regulation should take into account Constitutional protections of commercial speech and would refer the Committee to *Peel v. Attorney Registration and Disciplinary Commission of Illinois,* 496 U.S. 91 (1990) and *Ibanez v. State of Florida, Board of Accountancy (1994).*

Frank Keating
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August 2, 2007

The Honorable Herbert H. Kohl
Chairman, Special Committee on Aging
United States Senate
G31 Dirksen Senate Office Building
Washington, DC 20510-6400

Dear Chairman Kohl:

On behalf of the hundreds of companies that are members of ACLI and that issue annuities to millions of Americans, it is painful to read stories like the one written in The New York Times early in July, alleging an inappropriate sale of an annuity to a senior citizen by an individual using questionable sales tactics.

As 77 million baby boomers turn 65 in the coming years, it is clear that annuities will play an increasingly important role in their retirements—retirements that will last much longer than those of previous generations. Many baby boomers are using annuities today to supplement their savings for future income needs, while others will use annuities to secure a steady stream of retirement income they cannot outlive.

That is why, with the full support of our member companies, and under the close direction of a CEO Task Force, ACLI has embarked on a multi-phased project that will help to ensure sales of annuities are suitable for consumers of all ages and that purchasers understand their annuity, how it works, its benefits and risks and the key fees, expenses and other charges.

One of ACLI's top priorities is to encourage states to adopt two National Association of Insurance Commissioners (NAIC) model regulations that deal with annuity sales. The first, the Suitability in Annuity Transactions Model Regulation (adopted in 20 states so far), establishes procedures for annuity recommendations to ensure that consumers' insurance needs and financial objectives are appropriately addressed at the time of the transaction. The second, the Annuity Disclosure Model Regulation (adopted in 14 states to date), provides standards for the disclosure of certain minimum information to protect consumers and foster education. State adoption of these initiatives will ensure seniors—and all consumers—better understand their commitment under an annuity contract and give them the security in knowing that their purchase decision is an informed one.

To support better disclosure and transparency for annuity purchasers, ACLI also is working diligently on a standardized summary disclosure for all annuities. These summary disclosures reflect focus group feedback from consumers—retirees in particular—as well as agents and brokers. In addition, ACLI has received invaluable input from consumer advocates on how best to present this important information to maximize consumer understanding. These summaries will provide product

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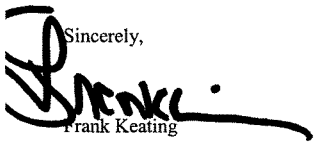
specific information, explaining, for example, how the annuity accumulates earnings, the nature of its investment risks, specific surrender charges and periods, and fees and expenses. While the summary disclosure is designed to give consumers a sense of how the specific annuity works and its key features, we also believe that it will enable consumers to become more engaged in the sales process. Armed with a base of knowledge about the product, a consumer will be better able to raise questions or concerns with their agent or advisor.

ACLI is seeking to have these summary disclosures adopted as regulatory requirements and we have received encouragement from state and federal regulators. It is in the interest of all parties that annuity sales be well supervised and that consumers understand what they are purchasing. Those are our goals as well as the goals of our regulators. We would be happy to discuss these issues and other retirement security topics as the Committee exercises its responsibility over issues affecting America's seniors.

Sincerely,



Frank Keating

Brian K. Atchinson
President and CEO

INSURANCE MARKETPLACE
STANDARDS ASSOCIATION

Committed to honesty,
integrity and ethics

August 30, 2007

The Honorable Herbert H. Kohl
Chairman, US Senate Special Committee on Aging
United States Senate
G31 Dirksen Senate Office Building
Washington, DC 20510

Mr. Jack Mitchell
Chief of Investigations
US Senate Special Committee on Aging
United States Senate
G31 Dirksen Senate Office Building
Washington, DC 20510

Re: Insurance Marketplace Standards Association (IMSA)

Dear Chairman Kohl and Mr. Mitchell:

I am writing on behalf of The Insurance Marketplace Standards Association (IMSA), the premier market conduct and compliance standards-setting organization serving the life insurance marketplace. Life insurance companies that have attained IMSA qualification serve as the recognized benchmark of excellence in the life insurance industry. Through their demonstrated commitment to high ethical practices, IMSA-qualified companies help to achieve the type of sound marketplace practices that are sought by all consumers of life insurance, annuity and long-term care insurance products. Today, IMSA qualified companies represent 73% of the admitted assets of the top 20 life insurers in the United States.

IMSA has been a leader in developing standards to address compliance issues facing the life insurance industry. During 2006, IMSA introduced a new suitability standard for annuities and long-term care insurance products and developed suitability, disclosure and producer training standards for indexed annuity products. IMSA will continue to monitor the marketplace to identify other areas for further standards development.

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Tel: (240) 744-3020 Fax: (240) 744--3031
www.imsaethics.org

IMSA Qualification:

Attaining IMSA qualification has become a well-regarded mark of achievement for a life insurance company. In order to become an IMSA-qualified company, a life insurance company must undergo an independent review by a Qualified Independent Assessor authorized by IMSA to conduct a third-party, independent assessment to determine whether the company has complied with IMSA standards. A company attains IMSA qualification for a three year period of time. In order retain qualification, at the end of each three-year period the company must undergo another independent assessment that looks, not just at current policies and procedures but back over the prior qualification period.

IMSA Standards:

IMSA's standards are premised upon six broad Principles of Ethical Market Conduct:

Principle 1: To conduct business according to high standards of honesty and fairness and to render that service to its customers which, in the same circumstances, it would apply to or demand for itself.

Principle 2: To provide competent and customer-focused sales and service.

Principle 3: To engage in active and fair competition.

Principle 4: To provide advertising and sales materials that are clear as to purpose and honest and fair as to content.

Principle 5: To provide for fair and expeditious handling of customer complaints and disputes.

Principle 6: To maintain a system of supervision and monitoring that is reasonably designed to demonstrate the company's commitment to and compliance with IMSA's Principles and Code of Ethical Market Conduct.

These Principles are designed to address issues related to the marketing, sales and service of product lines within IMSA's scope: namely, individual life insurance, annuities and long-term care insurance. For each subject matter or topic within IMSA's standards, a company is required to establish and maintain appropriate policies and procedures, assign responsibility to an individual or team for those policies and procedures, communicate these policies and procedures, apply them on a consistent basis, monitor their use and take corrective action to address any deviations identified through the monitoring process. These concepts are designed to promote a "continuous improvement" culture of compliance within IMSA qualified life insurance companies.

IMSA's standards apply to the following subject matters or topics within a life insurance company:

- Market Conduct Training for Producers.
- Needs-Based Selling.
- Suitability.
- General Compliance.
- Advertising Compliance.
- Complaint Compliance.
- Fair Competition.
- Producer Selection Criteria.
- Licensing and Appointment.
- Support for IMSA's Principles and Code.
- Product Training.
- Replacement Information.
- Replacement Review.
- Disclosures.
- Sales Materials.
- Illustrations.
- Customer Complaints.
- Root Cause Analysis.
- Complaint Resolution.
- Supervision.
- Monitoring.
- Continuing Education.

IMSA's Standards Development Process:

Since its inception in 1996, IMSA has played a leading role in identifying market conduct and compliance issues in the life insurance marketplace. IMSA develops and reviews its standards on a regular basis to address current market conduct and compliance issues in the marketplace. IMSA standards are developed through consultations with representatives of IMSA-qualified companies as well as IMSA's Qualified Independent Assessors who, through observation of best practices in the life insurance marketplace, can help to identify exemplary practices that should be incorporated into current IMSA standards or new market conduct and compliance areas that may be ripe for new standards. IMSA maintains a Standards Advisory Committee comprised of representatives from the NAIC, FINRA, AARP, financial rating agencies (Standard & Poor's and A.M. Best and Company), and producer organizations (the National Association of Insurance and Financial Advisors (NAIFA), the National Association of Independent Life Brokerage Agencies (NAILBA), and the Million Dollar Roundtable (MDRT)) to capture as many viewpoints as possible when developing its final standards.

During 2006, IMSA completed a comprehensive review of its standards through publication of a revised version of IMSA's Assessment Handbook. Through this process, IMSA adopted important standards designed to address sales to seniors. Foremost among these were standards pertaining to suitability of sales for all annuities and long-term care insurance products and additional, more specific standards pertaining to indexed annuity sales for suitability, disclosure and producer training.

Needs-Based Selling/Suitability:

IMSA has always maintained standards to promote sales designed to meet the insurable needs and financial objectives of customers. IMSA's needs-based selling standard for life insurance sales requires IMSA-qualified companies to enter into life insurance transactions

which assist the customer in meeting his or her insurable needs and financial objectives. As the marketplace for life insurance products has evolved, IMSA has modified its existing standards and introduced new standards to address the contemporary market conduct and compliance challenges posed by the life insurance marketplace.

During 2006, IMSA developed a new suitability standard applicable to annuity and long-term care insurance product sales that captures the essential elements of the NAIC Suitability in Annuity Transactions Model Regulation and the NAIC Long-Term Care Insurance Model Act. By introducing these new standards, IMSA-qualified companies voluntarily demonstrated their commitment to high ethical practices by instituting practices on a nationwide basis which are designed to promote suitable sales of annuity and long-term care insurance products -- even before applicable suitability-related NAIC Model Law and Regulations are formally adopted by all states. This commitment to treating customers with honesty and fairness through compliance with IMSA standards provides a uniform, comprehensive framework of consumer protections on a nationwide basis for individual life insurance, annuity and long-term care sales by all IMSA-qualified companies.

Indexed Annuity Standards:

IMSA has been a leader in working with regulators to rapidly develop standards designed to address potential market conduct and compliance issues in the life insurance marketplace. IMSA has now become recognized as an organization that can affect marketplace change in a timely manner through its standards development process.

In early 2006, state insurance regulators contacted IMSA to examine growing concerns in the marketplace regarding the sale of indexed annuity products. IMSA's analysis determined that the sales of indexed annuity products could benefit from specific suitability, disclosure and producer training standards. Through its standards development process, IMSA identified current best practices in the indexed annuity marketplace pertaining to suitability, disclosure and producer training and incorporated these practices into a new set of standards that became effective in October 2006. By doing so, IMSA once again was able to demonstrate its leadership in standards development by introducing these new standards into the marketplace in less than seven months and thereby promoting timely change in marketplace behavior.

Copies of IMSA's needs-based selling/suitability and indexed annuity standards are attached.

Conclusion:

IMSA will continue to examine issues in the life insurance marketplace that may be ripe for the introduction of new standards. For example, IMSA is currently examining whether to develop standards applicable to long-term care insurance product claims activities. We also will be sponsoring forums between regulators and the life insurance industry to promote uniform interpretation and enforcement of existing laws and regulations to prompt sound compliance practices to protect all consumers.

IMSA welcomes the opportunity to provide information to the US Senate Special Committee on Aging as it examines issues associated with sales of life insurance, annuity and long-term care insurance products to seniors. Please do not hesitate to contact us if we can provide more information about IMSA and our standards to promote sound marketplace practices.

Sincerely,

Brian K. Atchinson

Enclosures

August 31, 2007

The Honorable Senator Herb Kohl, Chairman
Senate Special Committee on Aging, G-31
Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Kohl and Committee Members:

On behalf of CEASE, a national Coalition to End Elder Financial Abuse, I would like to express our appreciation for this opportunity to submit testimony regarding the impact of misleading designations on senior estate planning, and request your consideration of the recommendations we put forth.

About the Coalition

The Coalition is composed of California Advocates for Nursing Home Reform (CANHR), National Adult Protective Services Association (NAPSA), and Women's Institute for a Secure Retirement (WISER). CANHR has had 25 years of experience in elder abuse issues; is the sponsor of groundbreaking legislation on consumer protections and elder abuse; and received the California Attorney General's 2005 Distinguished Service Award for Elder Abuse Prevention by a Community-Based Organization. NAPSA is the national coordinating organization for state Adult Protective Service Agencies, the front line professionals preventing and protecting elder abuse. WISER is a nationally recognized leader in developing and disseminating information on a wide range of financial issues for women.

Seniors and Financial Abuse

Elder financial issues and Medicaid regulations for long-term care have become increasingly more complicated. The justifiable fears of elders of going into nursing homes or outliving their assets is leading to an increase in elder financial abuse. The Coalition works on a daily basis with seniors who have been victimized by financial predators. We have become very familiar with some of the most pernicious practices. Sadly, we are witnessing a steady increase in the numbers of seniors who are being misled into purchasing unsuitable financial products or estate planning services that have decimated their estates.

Misleading Designations

Central to the problem of elders placing trust in a financial predator is the misleading "designation". Elders searching for reliable information about estate planning and long-term care are naturally drawn to senior seminars where they encounter presenters parading designations indicating expertise on senior issues. These

designations give such presenters immediate (but unwarranted) credibility and establish an instant degree of trust with seniors. Typically, the designation will state that the presenter is certified, registered or endorsed by the state or some reputable institute or non-profit entity. Once the seniors trust the predators, they allow them to review their estate plans. Once a predator gains access to the financial and personal information included in an estate plan, the elder is very much at risk of being financially abused.

Misleading designations are relatively inexpensive and readily available to anyone, for whatever reason. Designations can be purchased for a few hundred dollars and are given out after attending a seminar or taking a course. These designations are intentionally crafted to give seniors a sense of security and a belief that the holders of the designation have a level of education or expertise they don't actually possess and that there is some form of oversight by the state or federal government.

Increasingly, some insurance agents are using designations solely as a means of enhancing their creditability with seniors. During their initial contacts with seniors, these insurance agents immediately draw attention to their designations. Their calling cards and promotional materials are replete with designations but seldom indicate any connection to the sale of annuities or insurance products. These agents understand how important the designation is with the seniors, the imperative of keeping the seniors focused on the designation, and the necessity of keeping the seniors unaware of their true business for as long as they possibly can.

Deceptive Designations at Senior Seminars

"Welcome to our Senior Financial Survival Workshop...Nothing is sold at our workshop.... I will explain the six main financial dilemmas which can threaten the financial peace of mind of senior citizens." (Sponsored by the Senior Benefits Network)

Some of the worst elder financial abuses begin at a senior seminar. Predators know that seniors are eager for advice on estate planning and long-term care issues. Purveyors of elder financial abuse have historically reached their target market through senior centers and other venues where seniors tend to gather. Such predators typically follow a scheme whereby they cast themselves as experts in their field and as trusted advisors. All too often the predator is an insurance agent using the seminar as the opening of a sophisticated sales campaign.

This is how former California Department of Insurance Commissioner, now Lt. Governor John Garamendi, described the problem in connection with the sale of annuities:

> "The Department of Insurance is aware of a number of unlawful marketing schemes designed to accomplish the sale of annuities principally to senior citizens through the use of misrepresentation of identity and/or purpose. The initial approach to clients may be to solicit senior citizens at 'seminars,' purportedly to educate participants about the benefits of living trusts, retirement planning, long - term nursing care and explanations of Medicare Part D. The approach may be

> through mass mailing, telemarketing, door-to-door solicitation, or even while providing entertainment at senior related functions. Sometimes high CD rates or reverse mortgages are offered in newspaper ads or in banks in a classic bait and switch. Regardless the initial area of interest to the senior, the senior is eventually sold an annuity.
>
> Seniors characteristically perceive the agent as a legal advisor or estate planner and not as an insurance agent because the representatives misrepresent themselves as experts in the initial subject area. They gain the trust and confidence of the senior, and then misuse that trust to sell an annuity that is oftentimes unsuitable for the senior.
>
> Because of this perception that the salesperson has their best interests in mind, seniors may conclude that they need not totally understand what the pros and cons of an annuity are for their specific situation. They may not be told, or if told, they may not understand, the impact of surrender penalties on their net worth, or far-off annuitization dates on their liquidity, or the impact of the sale of an annuity or other investment to buy the annuity offered on the taxes they will owe."

It is also common for predators to identify themselves with misleading organization names that imply that they are advocates or protectors of the rights of seniors. They often are able to secure the use of senior center facilities for their presentations by misrepresenting that their "free seminars" provide seniors with valuable educational information and materials relating to estate planning, Medicaid eligibility, financial advice, and matters of similar interest to seniors. Senior Centers promote these presentations by publicizing events in newsletters, bulletins, and announcements, and often duplicate and distribute presenters' promotional materials. (see attached samples)

As described by former Commissioner Garamendi, the predators' primary objective is to promote themselves as trusted and reputable professionals and encourage seniors to later contact them for individualized assistance. In these subsequent contacts, predators are able to obtain detailed financial information from seniors upon which they can solicit the sale of expensive and unsuitable, inappropriate, and sometimes patently fraudulent goods and services.

The motivation for the annuity salesperson is the staggering commissions their products pay them. The commissions can range from ten to fifteen percent. For these sales persons, the commissions they receive outweigh the suitability of the products they offer. Twenty-year deferred annuities are being sold to seniors. We are increasingly receiving reports of eighty-year olds who have purchased unsuitable annuities. In one outrageous case, a 92 - year old was talked into purchasing a $650,000 annuity that doesn't mature until the year 2063.

Recommendations:

It is important for policymakers to take steps that will help prevent senior citizens from the risks of losing their financial assets to financial predators. We would hope the Senate Special Committee on Aging will agree with the following five recommendations:

1. Designations indicating that a sales person is "certified" or "registered" should be prohibited unless the designation is issued directly from or approved by a governmental entity.

2. Designations indicating that a sales person is endorsed by or connected to any organization, institute, or non-profit should be prohibited unless a governmental entity expressly approves of such an endorsement.

3. It should be mandatory for all individuals licensed to sell insurance to state on their business cards, letterheads and promotional materials the words "insurance agent" immediately next to their names and in the exact same font and type size, as well as the license number issued by the state.

4. Penalties need to be crafted in order to assure compliance. The recommendation would be for fines and revocation of the offender's license for repeat or willful violations.

5. The government should declare, as a matter of public policy, that elders who have been victimized by predators using misleading designations have a private cause of action for financial elder abuse.

Conclusion

Clearly, much needs to be done to protect seniors from financial predators. The use of deceptive designations is a dishonest practice that places an elder at a psychological disadvantage. Senior Americans will continue to be unnecessarily placed at risk of losing control of their estates so long as deceptive designations are tolerated.

Thank you.

Prescott Cole, Esq.
CEASE, Coalition to End Elder Financial Abuse
(415) 974-5171 or prescott@canhr.org

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS

Hearing Statement

United States Senate Special Committee on Aging

"Advising Seniors About Their Money: Who is Qualified and Who is Not?"

September 5, 2007

The members of the National Association of Insurance and Financial Advisors (NAIFA) have a keen interest in the subject matter of today's hearing and appreciate the opportunity to share our perspective on the importance of ethics and the qualifications of those engaged in offering insurance and other related financial services to our nation's seniors.

NAIFA is a national nonprofit organization representing the interests of more than 60,000 insurance and financial advisors nationwide, through its federation of over 750 state and local associations. Founded in 1890 as the National Association of Life Underwriters, NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. NAIFA members specialize in the areas of life insurance and annuities, health insurance and employee benefits, multi-line insurance, and financial advising and investments.

There has been an increasing amount of discussion recently with respect to issues concerning the provision of financial advice to senior Americans and the types of financial products being purchased by seniors. These issues revolve around concerns that (i) the use of certain designations and certifications by insurance agents and advisors may imply the existence of some level of expertise in senior affairs and financial matters and (ii) seniors may be purchasing inappropriate investments and financial products, particularly annuities.

NAIFA members believe that the possession or use of a particular professional designation or certification by an advisor should not, in and of itself, create a presumption about the qualifications or ethics of the advisor. Designations and certifications can be helpful tools for consumers and regulators alike because they can provide a sense of an advisor's educational background and training. Some require advisors to undertake years of rigorous classroom and independent study, and pass a comprehensive examination. Others require less study. Thus, different designations and certifications can mean different levels of expertise and different areas of knowledge.

It is important to keep in mind that, although designations and certifications are helpful tools, there are many regulatory processes and requirements in place to ensure that advisors are qualified to sell products and provide advice to consumers. And there are statutory and regulatory protections in place to make sure consumers – particularly the most vulnerable consumers – are protected from bad actors.

All insurance producers are required to be licensed by the states and, in many cases, depending on the products and services they offer, by the Financial Industry Regulatory Authority (FINRA, formerly the NASD). At the state level, they may be licensed by both the state insurance regulator and the state securities commissioner. Prior to licensing, applicants are required to pass an examination, and in many states they must take pre-licensing education courses. Post-licensure, most if not all states impose continuing education requirements. Although the requirements vary from state to state, in general an insurance producer is required to complete approximately 24 hours of continuing education every two years, including 3 or 4 hours of ethics. In some states, certain designations and certifications are recognized as

satisfying some of these education requirements. To the extent a state does so, it is only after reviewing the criteria that must be met to earn the designation or certification.

In addition to the licensing and education requirements that must be met to obtain and retain insurance producer and advisor licenses, the states perform background checks on applicants in order to see if the applicant has any past infractions that could indicate that he or she is not qualified to hold a license. Once licensed, an advisor is subject to state unfair trade practices laws, which prohibit false or misleading statements.

NAIFA strongly opposes the inappropriate sale of annuities and other financial products. To ensure the protection of all consumers, NAIFA supports the adoption in the states of the NAIC's Suitability in Annuity Transactions Model Regulation, which has been adopted—either in its current version, prior version, or a similar type of regulation—by over 35 states; and the NAIC Annuity Disclosure Model Regulation, which has been adopted in either its current version or a previous version by over 20 states. These two regulations, along with FINRA's general suitability rule (Rule 2310, which applies to all securities transactions, including variable annuities) and state unfair trade practices acts, provide state and federal regulators with substantial authority to protect seniors from unscrupulous advisors and inappropriate or unsuitable sales.

In addition, NAIFA believes that full and easy to understand disclosure of all the pertinent facts about insurance and financial products is in the public's best interest. Furthermore, all NAIFA members subscribe to a Code of Ethics which requires that they always act in their client's best interest based upon full knowledge of the facts of that client's situation.

While NAIFA does oppose the inappropriate sale of annuities, we believe it is important to point out that annuities, both deferred and immediate, can play a vital and valid role in sound financial and retirement planning. It is not the products that are abusive. Rather, it is the use or misuse to which they are sometimes put.

Each person's financial situation and needs are unique and must be evaluated and addressed in the context of what is best for the individual client. In fact, deferred annuities are an excellent vehicle for accumulating tax deferred money over a long period of time in the context of a sound financial plan; and they may be an appropriate product for a younger retiree who is facing a retirement that could last 20, 30 years or more and wants to defer and grow a portion of his or her savings for later years. In addition, immediate annuities are outstanding products for guaranteeing a lifetime income to a retiree and, if they so choose, his or her spouse. Deferred annuities can become immediate annuities if the annuitant so chooses.

Going Forward

NAIFA is not convinced that additional statutory or regulatory activity is necessary to address the above-referenced concerns. However, we do believe that the insurance-based financial services industry can and should address this issue. Towards this goal, we support the creation of an industry-wide task force composed of representatives from the insurer and producer communities, consumer groups, as well as IMSA, the Insurance Marketplace Standards Association. The goal of such a task force would be to develop and recommend a meaningful response to concerns regarding the proliferation of advisor designations. We believe that the industry, working together, can develop an approach that will benefit consumers, insurers, advisors and regulators, and we look forward to working with our colleagues to that end.

Thank you, again, for the opportunity to submit for the hearing record our thoughts on these issues that are so important to consumers as well as our industry.

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC.

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CFP Board Written Statement to the Senate Special Committee on Aging

September 5, 2007

Executive Summary

In the summer of 2007, the Certified Financial Planner Board of Standards, Inc. ("CFP Board"), a professional regulatory organization that works in the public interest to set standards for personal financial planning in the United States, created a Task Force on Continuing Education and Competency. The Task Force is endowed with a mandate to review CFP Board's standards for the continuing education (CE) it requires of professionals who hold CFP® certification. The Terms of Reference of the Task Force are located within Appendix I (page 4). CFP Board's CE requirements were first established nearly 20 years ago as a process to encourage ongoing professional competency among the 55,000 financial planners who hold CFP® certification. At present, thousands of CE courses on financial planning topics have been registered with CFP Board by more than 2,500 organizations, subject to CFP Board's Terms and Conditions of Continuing Education Sponsor Registration (summarized within Appendix II, page 6).

The Task Force has been granted the imprimatur of CFP Board leadership to undertake a comprehensive review of CFP Board's CE standards and the enforcement of standards related to CE courses currently registered with CFP Board. In creating the Task Force, CFP Board has commited itself to ensuring and upholding the integrity of the CFP® marks for the benefit of the public at-large.

The Task Force's mission is three-fold: 1) To determine if the continuing education requirements for CFP® certification adequately encourage the availability of quality financial planning training and professional development opportunities appropriate for CFP Board's high standards; 2) To review the marketing and end use of CE courses registered with CFP Board, with special attention given to those CE courses connected with credential-granting programs; and 3) To recommend any changes to CFP Board's continuing education requirements that might be necessary to better protect the public interest and minimize public confusion about credentials other than CFP® certification.

The Task Force, along with several other initiatives, was requested by Kevin R. Keller as part of his assumption of duties as CFP Board's CEO. The focus of the Task Force received additional impetus from the July 8, 2007 article in *The New York Times* ("For Elderly Investors, Instant Experts Abound") concerning questionable and misleading financial designations. Since early August 2007, CFP Board has actively communicated with the Senate Special Committee on Aging in pursuit of the shared goal of protecting the public interest.

Overview of CFP Board

Certified Financial Planner Board of Standards, Inc. (CFP Board) is a professional regulatory organization that sets professional standards for personal financial planning in the United States. Founded in 1985 as a non-profit 501(c)(3) corporation, CFP Board's mission is to foster professional standards in financial planning so that the public values and has access to competent and ethical financial planning. To accomplish its mission, CFP Board has set rigorous standards for financial planners and awards use of its certification marks (CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP) to financial planners in the U.S. who complete CFP Board's initial and ongoing certification requirements.

CFP Board's certification program has received accreditation from the National Commission for Certifying Agencies (NCCA) of NOCA, and more than 55,000 financial professionals in the U.S. are currently authorized by CFP Board to use the CFP® marks. Each mark holder has voluntarily agreed to adhere to highest standards of competence and ethical practices for financial planning, as established by CFP Board.

The Most Rigorous Standards in the Financial Planning Profession

The public's growing need for objective financial planning advice, combined with the rigorous ethical and professional standards demanded of CFP® certificants, has placed the CFP® certification at the forefront of the financial planning profession. The CFP® certification has become the most widely recognized financial planning credential among consumers. In the absence of uniform government regulation of financial planners, this certification reassures the public that those financial planners who hold CFP® certification have pledged to abide by a rigorous set of ethical standards and are subject to enforcement of those ethical standards by CFP Board.

The requirements to attain CFP® certification include the four "Es": education, examination, experience, and ethics.

Education

The educational requirement requires knowledge in all areas of CFP Board's financial planning topic list, which is updated every few years through a Job Analysis Study of the topics used by CFP® professionals whose primary business is delivering personal financial planning services to clients. The topic list currently contains 89 primary topics, and each topic includes several sub-categories. More than 300 educational programs at more than 200 institutions across the country have registered with CFP Board to deliver programs covering these topics. These programs range from non-degree programs to post-graduate degree programs, and each program's curriculum must be the equivalent of at least 15 semester credit hours. Applicants must also hold a bachelor's degree from an accredited institution, or its equivalent, before obtaining CFP® certification.

Examination

Those who successfully complete the education requirement are eligible to take the CFP® Certification Examination, which is designed to assess the ability to apply financial planning knowledge, in an integrated format, to financial planning situations. Exam questions and case studies are meant to measure the critical thinking and problem-solving ability, with emphasis on the higher cognitive levels of evaluation, analysis and

synthesis. The exam is administered nationally three times a year and is delivered for 10 hours over two days, and the cumulative pass rate since its inception in 1991 is 57%. Combined with the education and experience requirements, the exam is designed to assure the public that those passing it have met a level of competency appropriate for professional practice.

Experience
Applicants are required to complete three years of financial planning work experience (the supervision, direct support, teaching, or personal delivery of the personal financial planning process to clients) before they may attain CFP® certification.

Ethics
CFP Board has established fitness standards that bar applicants from becoming certified if they have engaged in unacceptable conduct, such as revocation of a financial professional license or felony convictions for financially-based crimes. CFP Board has also established high standards of ethical conduct for those who hold CFP® certification and requires all applicants to agree to abide by those standards before certification is granted. In May 2007, an updated set of ethical standards was adopted to strengthen key ethical standards in a way that better benefits the public, such as the requirement that all CFP® certificants act in the best interest of the client when providing financial planning services. CFP Board has an active ethics enforcement process and conducts investigations of potential misconduct and, when appropriate, issues disciplines ranging from cautionary letters to the permanent revocation of certification. Certain disciplines are made publicly available through national news releases and on CFP Board's Web site.

Continuing Education Requirements
Each CFP® professional is required to complete no fewer than 30 hours of CE every two years – one of the strongest continuing education benchmarks in the financial services industry. In order to facilitate this requirement for continuing professional competency among CFP® certificants, thousands of CE courses on financial planning topics have been registered with CFP Board by more than 2,500 organizations for purposes of meeting this CE requirement, subject to CFP Board's Terms and Conditions of Continuing Education Sponsor Registration. The rigorous requirements for CFP® certification have resulted in the CFP® marks becoming the certification most sought after by consumers and financial planners alike.

Appendix I. Terms of Reference for Task Force on Continuing Education and Competency

In the interest of protecting the public, CFP Board has appointed a Task Force on Continuing Education and Competency to address the critical issue of whether CFP Board's continuing education (CE) requirements remain relevant and in line with their purpose to encourage the ongoing professional competency of CFP® professionals, especially given the widespread proliferation of financial credentials and the resultant confusion among the public. The Task Force will review the following:

1) CFP Board's procedures for registering CE courses;
2) Emerging patterns in the content and marketing of CE courses connected to credential-granting programs;
3) Current end-use of CE courses;
4) Best practices and guidelines concerning the content and purpose of CE courses, as well as the qualifications of the individual delivering the CE course;
5) Best practices and guidelines for how a CE course may be marketed; and
6) Enforcement procedures related to violation of CFP Board's standards concerning CE courses.

The Task Force's recommendations will also include concrete policy options for CFP Board's Board of Director's consideration as they relate to the overall mission of CFP Board and its emphasis on the public interest.

The Task Force will also address the following key questions:

- Does CFP Board's practice of registering CE programs contribute to confusion by the public, particularly when the end-purpose of certain CE programs is the awarding of less than rigorous financial credentials?
- How do credential-granting organizations market their relationship with CFP Board in an attempt to legitimize their credentials?
- Do current efforts by CFP Board to enforce its CE standards need to be strengthened?

Methodology
The Task Force will produce its study based on an audit of CE courses currently registered with CFP Board, including CE courses that are part of credential-granting programs, consultations with like-minded organizations and associations, and a review of current best practices within the CE field. The Task Force shall deliver its initial findings to the CFP Board's Board of Directors with its recommendations.

Deliverables
The Task Force will be responsible for delivering a report of findings related to the issues outlined above, including a list of policy options for consideration by CFP Board.

Duration and Timeline
The Task Force is expected to complete this charge in accordance with the following timetable:

- August 1, 2007: Task Force named
- March 2008: First Draft of Report due
- July 1, 2008: Final Report released

Composition
Dan Candura, CFP®, Task Force Chair
The Candura Group/PennyTree Advisers, LLC
Braintree, MA
Current Board of Directors
2002 Chair of CFP Board's Board of Professional Review

Alan Goldfarb, CFP®
Weaver and Tidwell Financial Advisors, Ltd.
Dallas, TX
Current Board of Directors member
2006 Chair of CFP Board's Board of Professional Review

Terry L. Lister, JD
Waddell & Reed, Inc.
Shawnee Mission, KS
Joining CFP Board's Board of Directors in 2008

Charles D. Robinson, CFP®
Northwestern Mutual
Milwaukee, WI
Joining CFP Board's Board of Directors in 2008

Appendix II: Summary of CFP Board's Continuing Education Program Registration Requirements

CFP Board registers continuing education (CE) programs that deliver content designed to further the professional competency of those who attend the programs. CE sponsors that deliver CE programs registered with CFP Board must agree to the Terms and Conditions of Continuing Education Sponsor Registration and follow the guidelines and requirements of CFP Board's *CFP® Certification: Policies, Renewal Requirements and Continuing Education Standards.*

CE providers attest that the CE programs they submit to CFP Board for registration cover topics contained in CFP Board's financial planning topic list and that the programs have, among other things, the following attributes:

a) Programs contribute to increasing the professional competency of participants;
b) Programs are developed by persons qualified in the subject matter;
c) Program content is current, correct and presented in appropriate design and format;
d) Programs are not specific to public accounting, computer hardware and software, marketing, practice management, sales or specific company or product presentations;
e) Program titles accurately represent the course content and purpose; and
f) Programs are reviewed by a qualified person, other than the preparer, to ensure compliance with the above.

Most CE program registrations are completed through CFP Board's Web site. The registration process requires CE sponsors to provide the following information:

- Information about the CE program, including the title, the program ID number, one or two paragraphs describing the content of the program, and contact information from the program contact person.
- The method of delivery for the program (live, self-study or internet).
- The number of CE hours the program will be accepted for, including an identification of the financial planning topics are related to the hours (General Principles of Financial Planning, Insurance Planning and Risk Management, Employee Benefits Planning, Investment Planning, Income Tax Planning, Retirement Planning or Estate Planning).
- The start date of the program.
- A $50 program registration fee (unless the organization has provided CFP Board with documentation of its not-for-profit status and qualifies for reduced fees of $25 or $0, based on whether attendees are charged).
- An acknowledgement that the program meets CFP Board's CE standards.

Registration of a CE program lasts for two years. CE program sponsors are also required to maintain records about each presentation of the programs registered with CFP Board, and the agreement specifies that those records are subject to audit and review by CFP Board.

Marketing of CE programs registered with CFP Board is limited by a prohibition from stating or implying that CFP Board has made a determination on the merits or quality of any Program that is intended to meet its continuing education requirements, unless separately authorized by CFP Board. CFP Board allows CE sponsors to describe a program's registration with CFP Board only as being "accepted by CFP Board" for a certain number of CE hours or that a certain number of CE hours are "granted by CFP Board" for program participants. When notified of prohibited or potentially misleading statements about a the registration of a CE program with CFP Board, CFP Board's trademark department contacts the program sponsor to remedy the issue.

Written Testimony Regarding Use of Credentials by Financial Advisors
U.S. Senate Special Committee on Aging

Submitted by Walt Woerheide, Ph.D., CFP®
Vice President of Academics and Dean, The American College
September 5, 2007

The American College appreciates the opportunity to submit this written testimony regarding the use of credentials by financial advisors. We thank Chairman Kohl, Senator Smith and the other members serving on this Committee for conducting this important hearing. As a nonprofit public charity with 80 years of experience in this field, The American College strongly believes that promoting quality professional education benefits not only financial advisors but also the consumers they serve, including seniors. Not all professional education programs are equal in stature, however, and the distinctions we will discuss today are significant.

By way of background, Dr. Solomon S. Huebner of the Wharton School, with creation of the prestigious Chartered Life Underwriter™ (CLU®) designation, founded The American College in 1927. Since that time, more than 160,000 people have earned graduate degrees or financial services designations from The American College. We are also the largest educator of people who sit for the Certified Financial Planner® (CFP®) Exam.

In the financial services industry, designations have become the primary vehicle for demonstrating competency, knowledge, and ethical behavior. We know that professionals who earn quality designations have the type of training they need to reduce the risk of legal and ethical problems and are better able overall to help their clients achieve their financial planning goals. Everyone benefits when agents are better educated.

In recent years, some financial advisors have become more interested in attaining the appearance of expertise offered by a credential than in mastering the actual knowledge that only comes through rigorous educational programs and examinations. Since there have been no regulations anywhere prior to this year regarding the proper use of designations, some for-profit organizations have found that they can take advantage of this trend by creating weekend programs or seminars resulting in "rogue" designations. Today, there are a number of highly profitable businesses that offer these credentials that have little educational content or content that focuses primarily on making sales. Unscrupulous sales people are able to use these rogue designations to misrepresent their actual level of expertise to clients. While they look impressive, these credentials are basically meaningless. The President of our College first warned about this problem in 2003, and he continues to speak out about the potential for consumers to be confused about the qualifications of advisors. This includes appearances on CNN, ABC Television, and in dozens of print interviews. We are pleased to see the growing concern about this important issue from both the federal and state governments.

The critical question facing us today is how do we shut down rogue designations that mislead or even deceive consumers without discouraging financial professionals from becoming better educated? Can we agree to a set of standards that will establish which credentials are credible and better protect consumers – especially seniors?

There are several ways to address this issue, but we must strive to reach a single standard. We can rely on federal, state, or industry regulation to accomplish this goal. If change is to be successfully implemented at the state level, then model legislation must be developed by NAIC and NASAA and implemented nationwide. If companies face different rules in each state and Puerto Rico regarding the use of designations, then they most likely will simply discourage their associates from earning designations and becoming better educated in order to avoid the significant costs associated with monitoring and complying with 51 different sets of rules.

Two states have already established regulations for the use of designations by associates selling to senior citizens, Nebraska and Massachusetts, but their approaches are radically different. Massachusetts allows producers who sell financial service products to seniors to use only designations offered by regionally accredited colleges or universities and whose titles do not misrepresent the applicable program of study or designations that are accredited by NOCA or ANSI. Nebraska asks the entities awarding the designation to provide information and course content to the Securities Division, who reviews the material and establishes a list of approved designations. The Nebraska approach removes uncertainty for consumers and the financial community because it clearly articulates which designations are acceptable, but Nebraska has not published the criteria it uses for approving these credentials. In addition, there is ambiguity regarding the use of designations not appearing on the approved list, especially if these designations have nothing to do with selling financial service products to seniors. Although Massachusetts indicates the criteria for allowing designations, it will not publish a list of the designations that are in fact acceptable. The Massachusetts approach can create uncertainty among financial professionals and the public as to whether or not a particular designation is approved. The College believes both approaches have merit, but that neither is the final answer, particularly if other states adopt different rules as to which designations are or are not acceptable.

While industry self-regulation is another option, progress on this front would need to be quick to head off increasing activity by individual state regulators. Preemptive federal regulation is a third approach that could address this issue promptly and efficiently.

The American College is not as interested in who creates the legislation or regulations, but in seeing that the rules are effective in weeding out rogue designations from quality ones. This is ultimately a consumer issue. Consumers are better served by educated financial advisors, and encouraging ongoing professional education is in consumers' best interests.

As many different types of educational programs have some merit, the real emphasis should be on what constitutes a designation and when such credentials meet a defined standard for "public use." "Public use" means usage that indicates expertise to consumers – on business cards, stationery, office signage/displays, electronic communications, biographical summaries shared with consumers, or in other promotional material. Designations meeting the standard of public use:

- should only be awarded by entities who are either regionally accredited colleges or universities, or should be individually accredited by NOCA or ANSI;
- should contain academic rigor, which is equivalent to at least nine undergraduate semester credit hours (as validated by an entity such as the American Council on Education), have proctored exams, have pass rates no higher than 80 percent, and be based on a job analysis;
- should have an ethics pledge, on-going monitoring in the form of continuing education, and designees should be required to advise clients on how to file ethics complaints; and
- should provide information about the designation on their websites for the benefit of consumers and the appropriate state enforcement agencies.

We appreciate the opportunity to share our thoughts with the Committee. Thank you for your consideration.

Regulations for Public Use of Financial, Insurance and Investment Planning Designations and Credentials

Purpose

Professional advisors play a critical role in helping consumers achieve financial security in retirement. Seniors and other consumers, in turn, rely on the perceived expertise of these individuals as conveyed in part through the public display of professional credentials in advertising, on business cards and by other means. This regulation establishes national standards for how such credentials may be used with consumers, including older Americans. These standards will help consumers by providing clarity in the marketplace, lessening the risk of misrepresentation and encouraging the quality education of financial advisors.

Definitions

When used in this regulation, unless the context otherwise requires, the following definitions shall apply:

(1) "Accrediting Body" means the National Commission for Certifying Agencies (NCCA); the American National Standards Institute (ANSI) or any other comparable credential accrediting body subsequently recognized for the purpose of this regulation by the Financial Industry Regulatory Authority (FINRA) or by the Insurance Marketplace Standards Association (IMSA).

(2) "Advisor" refers to any individual who, either singly or as a part of a practice or firm, represents himself or herself to the public as being qualified to provide Guidance in making insurance, financial or investment decisions. An Advisor may be a person functioning in any capacity, either independently or within an organization, who interacts with consumers or representatives of business entities *and* provides such Guidance.

(3) "Appropriate State Enforcing Agency" refers to the state-specific body with jurisdiction over the Advisor involved in any infraction of this regulation, whether the Department of Insurance, the Department of Banking and Finance or other similar state agency.

(4) "Code of Ethics" describes a written or electronic document a Grantor provides to each recipient of a Covered Credential requiring compliance with expressed rules of business conduct and professional behavior.

(5) "Contact with Consumers or Businesses" refers to meaningful interaction with either individual decision makers or those gathering information in preparation for making a financial, insurance or investment decision, whether such decision is contemplated or made on behalf of an individual or a business entity.

(6) "Continuing Education" refers to courses taken and credits earned during a prescribed period of time to satisfy specified requirements for keeping the knowledge base of a Covered Credential current.

(7) "Covered Credential" includes any professional designation, certificate or certification under consideration for potential Public Use, regardless of the source of issuance or the nature of the Grantor. Degrees from accredited colleges and universities are not included.

(8) "Experience Requirements" are prerequisites to the awarding of a Covered Credential that are established by the Grantor, requiring a minimum of two years of professional experience in a field relevant to the subject matter of the Covered Credential prior to the granting of said Covered Credential.

(9) "Financial, Insurance or Investment Decisions" are those which either an individual consumer or a representative of a business entity contemplates or makes, the process of which could reasonably be expected to be benefited by the Guidance of a professional Advisor.

(10) "Guidance" refers to the verbal or written offering by a professional Advisor of purported expertise, insight or the prediction of a probable outcome following a suggested action during the process whereby an individual or the representative of a business entity is contemplating or making a financial, insurance or investment decision.

(11) "Grantor" is the institution or organization that confers a Covered Credential.

(12) "Job Analysis" means a study conducted once every seven years by which the Grantor of any Covered Credential must identify and document all of the major components of a job as performed by the typical or target earner of the relevant Covered Credential, matching the components of the job to the Learning Objectives of the course work for the Covered Credential. The examination(s) for the associated modules or courses or the comprehensive exam for the Covered Credential must be designed to test the critical components of the job or series of tasks for which the Covered Credential indicates expertise.

(13) "Learning Objectives" are clearly identified subject matter points, the mastery of which is represented by the granting of the relevant Covered Credential.

(14) "Professional Education" refers to courses of study that are geared toward knowledge that will benefit a profession, job or career track. Traditional degree programs are not included.

(15) "Public Use" refers to the placement of a Covered Credential on business cards, on stationery, in advertisements, in direct mail, on websites, in e-mail communications, on public display or in any vehicle that will result in holding the Covered Credential out as an indication of knowledge or expertise in support of an Advisor's offering or potential offering of Guidance.

(16) "Regional Accreditation" means that a College or University is accredited by one of the following organizations recognized by the Department of Education: Middle States Association of Colleges and Schools, Commission on Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Southern Association of Colleges and Schools, Commission on Colleges; and the Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(17) "Standards for Public Use" refers to the body of this legislation and the criteria set forth herein.

Scope

This regulation applies to the Public Use of Covered Credentials by any Advisor who is in contact with seniors and other consumers or the representatives of businesses for the purpose of providing Guidance in making or preparing to make financial, insurance or investment decisions. The regulation does not in any way evaluate or limit specific programs of Professional Education, but it does regulate the Public Use of any Covered Credentials earned.

Requirements for Public Use of Covered Credentials

Prior to the Public Use by an Advisor of an earned and granted Covered Credential, the following conditions must be satisfied:

(1) Standard of Quality: The Covered Credential must have been issued by a college or university with Regional Accreditation, or the Covered Credential itself must have been accredited by an appropriate Accrediting Body.

(2) Academic Rigor: Covered Credentials must contain at a minimum nine undergraduate semester credit hours from a college or university with Regional Accreditation or the equivalent as validated by The American Council on Education's College Credit Recommendation Service (CREDIT).

(3) Examinations: The examinations for all Professional Education programs that result in a Covered Credential, whether testing for a component course, a module or for comprehensive mastery of the subject matter, must be administered in a controlled, proctored environment.

(4) Pass rates: The aggregate pass rates for any given Professional Education program leading to a Covered Credential cannot exceed an average of 80%. If an individual course or modular exams are involved, the average total pass rate on all associated exams cannot exceed the 80% benchmark. If a single comprehensive exam is required to earn a Covered Credential, the average pass rate on that exam cannot exceed the 80% benchmark.

(5) Job Analysis and Learning Objectives: A comprehensive Job Analysis and clear Learning Objectives for any Covered Credential must be developed and available for review by the Appropriate State Enforcing Agency and the general public via the website of the Grantor.

(6) Monitoring of Use: Each Covered Credential available for Public Use must encompass requirements for Continuing Education, Experience Requirements, an associated Code of Ethics and a means of ensuring compliance with these requirements, including a procedure for revoking Covered Credentials when appropriate.

(7) Consumer Clarity: Each Grantor of a Covered Credential must provide on its website for easy consumer access a database of professionals approved to use that Covered Credential. A definition of the specialized or general expertise represented by the Covered Credential and the requirements to earn and use it – including Continuing Education, Experience Requirements and the associated Code of Ethics – must be clearly displayed.

(8) Disclosure: Advisors using any Covered Credential must provide each client with a statement describing the associated Code of Ethics and the process for filing an ethics complaint with the Grantor. In addition, Advisors must provide each client with details regarding where to view information about the Covered Credential on the Grantor's website.

(9) Responsibility of Grantor to Confirm Availability for Public Use: The Grantor must issue a statement to the recipient of each Covered Credential indicating whether or not the Covered Credential meets the Standards for Public Use and must clearly indicate on the Grantor's website the Public Use status of each Covered Credential.

(10) Misrepresentation Prohibited: Misrepresentation of Covered Credentials is strictly prohibited. Enforcement of any infraction of this regulation will be managed by the Appropriate State Enforcing Agency. Inappropriate Public Use of Covered Credentials could result in a substantial fine or other penalties levied against the specific Advisor involved in such inappropriate use.

(11) Expressed Preemptive National Standard: The Public Use of Covered Credentials will be subject to the high national standard embodied in this regulation, with no alternate standards being promulgated by the various States. Enforcement will be managed by the Appropriate State Enforcing Agency.

"Promoting Excellence in Competency Assurance"

National Organization For Competency Assurance

Statement for the Record

Submitted by
James Kendzel MPH, SPHR
Executive Director,
National Organization for Competency Assurance (NOCA)

To the
Special Committee on Aging
United States Senate
Washington, DC

Regarding its Hearing
Advising Seniors About Their Money: Who Is Qualified - and Who Is Not?

September 5, 2007

2025 M Street, NW ■ Suite 800 ■ Washington, DC 20036
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The National Organization for Competency Assurance (NOCA) appreciates the opportunity to submit testimony to the Senate Special Committee on Aging regarding its hearing on the use of credentials or designations that indicate special competency, expertise or training in advising or servicing senior investors.

This important issue was brought to NOCA's attention last year when the Securities Division of the Massachusetts Secretary of the Commonwealth requested public comment on its proposal to bring further regulatory oversight to broker-dealer agents and investment advisor representatives working with seniors. As we indicated in our comments[1] on the Massachusetts proposal that was eventually adopted, NOCA supports this additional oversight as a means to provide an added layer of consumer protection to seniors.

In general, NOCA is supportive of proposals that would prohibit the use of credentials or professional designations purporting to indicate special expertise or training in advising or servicing senior investors, except where such credentials or designations have been developed and are administered in a manner that is consistent with nationally accepted standards such as those developed by the National Commission for Certifying Agencies (NCCA), the standards and accrediting division of NOCA. In addition, NOCA supports third-party verification through accreditation indicating that the credentialing program is occupationally relevant and provides a credible measure of competence resulting in increased health, welfare, and safety of the public—most directly, that of employers, consumers, government regulators, and business partners of the credential holder. In this way, reputable credentialing organizations help further serve the public interest.

What is Certification?

The certification of professional and occupational skill-sets affirms a knowledge and experience base for practitioners in a particular field, their employers, and the public at large. Certification represents a declaration of a particular individual's professional competence. In some professions certification is a requirement for employment or practice. Doctors, mechanics, accountants, surveyors and many others establish their credentials and capabilities through certification. In all instances, certification enhances the employability and career advancement of the individual practitioner or employee.

"Credential" is a broad term that encompasses professional certification (of individuals by a non-governmental organization), accreditation (of organizations, institutions, facilities, or programs, by a non-governmental organization), licensure (of individuals by a government agency), and registration. Essentially, a legitimate credential is verification by an authoritative third party that the credential holder has met predetermined, standardized, and uniformly applied criteria that measure appropriate job qualifications.

A number of occupational certifications have been deemed so rigorous by state regulatory bodies that passage of the certification examination itself is often used as the basis of licensure. Many

[1] Available at http://www.noca.org/portals/0/NOCA%20comments%20on%20950%20Code%20of%20MA%20Regulations.pdf.

occupations, such as doctors, nurses, accountants, and physical therapists require certifications in order to obtain licenses at the state level. Certification is distinct from licensure in that it is voluntary and requires recertification to maintain the credential. Recertification can frequently take the form of continual education and sometimes testing. Recertification provides a reaffirmation of competency assurance by ensuring the certificant is up to date with the latest training techniques, research and methods for a particular field.

As noted in *The NOCA Guide to Understanding Credentialing Concepts*:

> . . . when conducted according to legally defensible and psychometrically sound methods and standards, credentialing . . . assures that a highly qualified, objective, recognized third party (the credentialing body) has examined this person, program, product or service and found it to meet defined, published, psychometrically sound, and legally defensible standards.[2]

The benefits of credentialing include:

- Consumer confidence and safety through verification of competence.
- Protecting the general public from incompetent and unfit practitioners.
- Establishment of professional standards for individuals in a particular field.
- Assisting consumers in making informed decisions about qualified providers.
- Assisting employers in making more informed hiring decisions.
- A more productive and highly trained workforce for employers.

Driven in part by the proven reliability of high-profile, national credentialing programs (such as the Certified Financial Planner™), and in part by the "nationwide trend whereby state regulatory agencies are getting out of the testing business, and instead recognizing professional certifications as meeting state regulatory requirements,"[3] the credentialing industry has grown steadily over the past thirty years. From 1999 to 2005, the estimated number of certified individuals in the U.S. increased from approximately 9 million to over 15 million.[4] In the same six-year period, NOCA membership increased almost 60% and the number of NCCA accredited programs grew 150%.[5]

Historically, as a new occupation comes into being and evolves, its body of knowledge develops and becomes accepted by the individuals performing that job, by employers, and by customers. The emergence of a defined body of knowledge and a specific vocabulary are important steps in the development and definition of an occupation. As a profession's body of knowledge becomes commonly accepted, the profession typically becomes regulated, either by the profession itself or by a government agency. In order to regulate appropriately—that is, to regulate in a legally defensible way—skill sets must be defined, and knowledge and skills competencies must be assessed and validated. Credentialing programs perform those functions, helping an occupation mature and become stable. This longstanding process, culminating with the development and acceptance of professional credentials, is especially imperative in occupations in which public protection is of primary importance.

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[2] Cynthia C. Durley, National Organization for Competency Assurance, *The NOCA Guide to Understanding Credentialing Concepts* (William Kersten *et al.*, eds., 2005), 5.
[3] American Educational Research Association (AERA), American Psychological Association (APA), and National Council on Measurement in Education (NCME), *The Standards for Educational and Psychological Testing*, 1999. Note 1 at 10.
[4] Wade Delk, *Trends in Certification*, CM News, Aug. 2006, at 19.
[5] Id.

Accreditation of National Voluntary Credentialing Programs

The National Commission for Certifying Agencies (NCCA) is the accreditation arm of NOCA. Accreditation provides a mechanism for certification organizations to demonstrate to the profession it represents and the general public it serves that its credentialing program has been reviewed by a panel of impartial experts that have determined that the certification program has met the stringent standards of NCCA. NCCA accreditation provides certification programs and many NOCA members with a way to answer the question, "who reviewed your certification program?" a question often posed by members of an occupation, employers, and sometimes, the courts.

An important part of the accreditation process is a review of a certification body's enforcement mechanism. Most certification programs have imposed a disciplinary system that requires certificants to adhere to a Code of Ethics. Violations of the Code may reported and reviewed by the credentialing body. If necessary, suspensions or revocations of the credential may take place. These self-enforcing mechanisms provide a further layer of consumer protection.

Credentialing programs may apply and be accredited by the NCCA if they demonstrate compliance with each of the *NCCA Standards for the Accreditation of Certification Programs*, which exceed the requirements set forth by the American Psychological Association, et al.[6] and by the United States Equal Employment Opportunity Commission.

We note that Edwin Pittock, President of the Society of Certified Senior Advisors (SCSA), indicates in his testimony before the Committee that his organization has applied for accreditation from NOCA's accreditation arm, the National Commission for Certifying Agencies (NCCA).[7] As of this writing, we confirm receipt of SCSA's letter of intent[8] to apply for NCCA accreditation. NCCA has not received SCSA's actual accreditation application. SCFA has until September 30 to apply, otherwise the next deadline for submission is January 31, 2008.

About the National Organization for Competency Assurance (NOCA)

NOCA, the oldest and largest organization representing certification agencies, testing companies, consulting firms and individuals involved in professional certification, was created in 1977 as the National Commission for Health Certifying Agencies (NCHCA) with federal funding from the Department of Health and Human Services. Its mission was to develop standards for quality certification in the allied health fields and to accredit organizations that met those standards. With the growing use of certification in other fields, NCHCA's leaders recognized that what is essential for credible certification of individuals in the healthcare sector is equally essential for other sectors. With this vision, NCHCA evolved into the National Organization for Competency

[6] American Educational Research Association (AERA), American Psychological Association (APA), and National Council on Measurement in Education (NCME), *The Standards for Educational and Psychological Testing*, 1999.

[7] "We have already begun the process to achieve accreditation for the CSA Designation Program through the National Commission for Certifying Agencies." Testimony of Edwin J. Pittock, Society of Certified Senior Advisors, before the Senate Special Committee on Aging, Sept. 5, 2007, at 6. Available at http://aging.senate.gov/events/hr179ep.pdf.

[8] SCSA indicates in its letter of intent that they grant their "permission to discuss the letter of intent and SCSA's application process with state and federal officials".

Assurance. NOCA is a non-profit, 501(c)(3) organization, committed to serving the public interest by ensuring adherence to standards that ensure the highest competence of certification programs.

NOCA's membership is composed of more than 600 organizations responsible for certifying specific skill sets and knowledge bases of professions and occupations at the national and international level. Through certification, NOCA members represent more than 15 million individuals around the world and include certification programs of some 150 professions and occupations, including 60 healthcare professions. NOCA members certify individual skills in fields as diverse as construction, healthcare, automotive, and finance. A current roster of NOCA members is included in the appendix.

NOCA's mission is to promote excellence in competency assurance for individuals in all occupations and professions. No other organization has the presence in or commits the resources to the field of certification. NOCA is proud of its position as the international leader in competency assurance for certification programs, as well as its role in promoting excellence in competency assurance for practitioners in all occupations and professions.

Please feel free to contact NOCA at 202-367-1165 should you require additional information.

Respectfully Submitted,
James Kendzel, MPH, SPHR
Executive Director
National Organization for Competency Assurance (NOCA)
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Washington, DC 20036

APPENDIX

NOCA Organizational Members

NOCA's Organizational Members consist of the following associations, certifying organizations, customer groups, and government agencies:

- AACE International
- Academy of Ambulatory Foot and Ankle Surgery
- Academy for Certification of Vision Rehabilitation and Education Professionals
- Academy of Lactation Policy and Practice
- Accrediting Bureau of Health Education Schools
- Aerobics and Fitness Association of America
- Alliance of Information and Referral Systems
- American Academy of Health Care Providers in the Addictive Disorders
- American Academy of Nurse Practitioners
- American Academy of Micropigmentation
- American Academy of Pain Management
- American Academy of Wound Management
- American Association for Medical Transcription
- American Association for Respiratory Care
- American Association of Clinical Coders and Auditors
- American Association of Colleges of Nursing
- American Association of Critical-Care Nurses Certification Corporation
- American Association of Medical Assistants
- American Association of Medical Audit Specialists
- American Association of Physician Specialists
- American Association of Poison Control Centers
- American Board for Certification in Orthotics and Prosthetics, Inc.
- American Board for Certification of Teacher Excellence, Inc.
- American Board for Occupational Health Nurses
- American Board of Cardiovascular Perfusion
- American Board of General Dentistry
- American Board of Industrial Hygiene
- American Board of Lower Extremity Surgery
- American Board of Multiple Specialties in Podiatry
- American Board of Nursing Specialties
- American Board of Opticianry
- American Board of Pain Medicine
- American Board of Registration of Electroencephalographic and Evoked Potential Technologists, Inc.
- American Board of Surgical Assistants
- American Board of Transplant Coordinators
- American Board of Veterinary Practitioners
- American Certification Agency for Healthcare Professionals
- American Chiropractic Board of Radiology
- American Chiropractic Board of Sports Physicians
- American Chiropractic Neurology Board
- American Chiropractic Registry of Radiologic Technologists
- American Clinical Board of Nutrition
- American College of Sports Medicine

- American College of Veterinary Ophthalmologists
- American Construction Inspectors Association
- American Council on Exercise
- American Fitness Professionals and Associates
- American Health Information Management Association
- American Hospital Association Certification Center
- American Institute of Certified Public Accountants
- American Indoor Air Quality Council
- American Manual Medicine Association
- American Medical Massage Association
- American Medical Technologists
- American Midwifery Certification Board
- American Nurses Credentialing Center Commission on Certification
- American Occupational Therapy Association
- American Optometric Association Commission on Paraoptometric Certification
- American Organization for Bodywork Therapies of Asia
- American Physical Therapy Association
- American Registry for Diagnostic Medical Sonographers
- American Registry of Magnetic Resonance Imaging Technologists
- The American Registry of Radiologic Technologists
- American Society for Bariatric Surgery
- American Society for Clinical Pathology
- American Society of Anesthesia Technologists and Technicians
- American Society of Military Comptrollers
- American Speech-Language-Hearing Association
- American Staffing Association
- American Veterinary Chiropractic Association, Inc.
- American Veterinary Medical Association
- APICS - The Association for Operations Management
- Aquatic Exercise Association, Inc.
- Architectural Woodwork Institute
- Art Therapy Credentials Board
- ASIS International
- Association for Death Education and Counseling
- Association for Investment Management and Research
- Association of Christian Alcohol and Drug Counselors
- Association of Government Accountants
- Association of Regulatory Boards of Optometry
- Association of Surgical Technologists, Inc.
- Association of Water Technologies, Inc.
- Axiom Resource Management, Inc.
- Behavior Analyst Certification Board
- Biofeedback Certification Institute of America
- Board for Certification in Clinical Anaplastology
- Board for Certification of Addiction Specialists
- Board for Certification in Pedorthics
- Board for Orthotist/Prosthetist Certification
- Board of Canadian Registered Safety Professionals
- Board of Certification for Emergency Nursing
- Board of Certification in Professional Ergonomics
- Board of Certification of Medical Illustrators

- Board of Certified Safety Professionals
- Board of Environmental, Health & Safety Auditor Certifications
- Board of Pharmaceutical Specialties
- Board of Registered Polysomnographic Technologists
- Breining Institute
- California Association for Alcohol and Drug Educators
- California Association of Alcoholism and Drug Abuse Counselors (CAADAC) and the California Certification Board of Alcohol and Drug Counselors (CCBADC)
- California Association of Drinking Driver Treatment Programs
- California Certifying Board for Medical Assistants
- California-Nevada Section, American Water Works Association
- California Water Environment Association
- Canadian Alliance of Physiotherapy Regulators
- Canadian Board for Respiratory Care, Inc.
- Canadian Chiropractic Examining Board
- Canadian Council of Professional Engineers
- Canadian Nurses Association
- Center for Credentialing and Education
- Certification Board for Music Therapists
- Certification Board for Radiology Practitioner Assistants
- Certification Board for Sterile Processing and Distribution
- Certification Board for Infection Control and Epidemiology
- Certification of Disability Management Specialists Commission
- Certified Financial Planner Board of Standards, Inc.
- Certified Fund Raising Executive International
- Certified General Accountants Association of Canada
- Certified Mine Safety Professional Certification Board
- Certifying Board for Dietary Managers
- Chartered Realty Investor Society
- College and Association of Registered Nurses of Alberta
- College of Massage Therapists of Ontario
- College of Medical Laboratory Technologists of Ontario
- College of Medical Radiation Technologists of Ontario
- College of Occupational Therapists of Ontario
- College of Pharmacists of British Columbia
- College of Physiotherapists of Ontario
- College of Respiratory Therapists of Ontario
- Commission for Case Manager Certification
- Commission for Certification in Geriatric Pharmacy
- Commission on Dietetic Registration of the American Dietetic Association
- Commission on Graduates of Foreign Nursing Schools
- Commission on Rehabilitation Counselor Certification
- Competency and Credentialing Institute
- Convergys
- The Cooper Institute
- Council of Landscape Architectural Registration Boards
- Council on Certification of Health, Environmental, and Safety Technologists
- Council on Certification of Nurse Anesthetists
- Council on Licensure, Enforcement and Regulation
- Council on Professional Standards for Kinesiotherapy
- Crane Operator Certification Authority

- CFA Institute
- CSI Global Education
- Dental Assisting National Board
- Department of Environment and Labor Province of Nova Scotia
- Entertainment Technician Certification Program (ETCP-ESTA)
- Esthetic Skin Institute
- Examination Board of Professional Home Inspectors
- Financial Planning Standards Board
- Financial Planners Standards Council
- Financial Planning Association of Australia
- Florida Certification Board
- Fundação Luis Eduardo Magalhães
- Hand Therapy Certification Commission, Inc.
- The Healing Oasis Wellness Center
- Healthcare Compliance Certification Board
- Healthcare Financial Management Association
- Healtcare Information and Management Systems Society
- Healthcare Quality Certification Board
- Human Resource Certification Institute
- Illinois Department of Financial & Professional Regulation
- Infocomm International
- International Medical University of Natural Education (IMUNE)
- Indian Alcoholism Commission of California
- Infusion Nurses Certification Corporation
- Institute for Safety and Health Management
- Institute of Certified Construction Financial Professionals
- Institute of Certified Management Accountants
- Institute of Hazardous Materials Management
- Institute for Supply Management
- International Accounts Payable Professionals, Inc.
- International Air Filtration Certifiers Association
- International Alliance for Fitness Professionals
- International Association for Colon Hydrotherapy
- International Association of Eating Disorders Professionals Association
- International Association of Forensic Nurses
- International Association of Healthcare Central Service Materiel Management
- International Board of Lactation Consultant Examiners
- International Code Council
- International Executive Housekeepers Association, Inc.
- International Fitness Association
- International Lactation Consultant Association
- International Pilates Certification
- International Society for Clinical Densitometry
- International Society of Arboriculture
- International Society for Performance Improvement
- Irrigation Association
- ISA, The Instrumentation, Systems, and Automation Society
- Joint Commission on Allied Health Personnel in Ophthalmology
- Kassian Dyck & Associates
- Knowledge Assessment Calculator (formerly American Payroll Association)
- Lamaze International

- Liaison Council on Certification for the Surgical Technologist
- Marketing Research Association
- Medical Massage National Certification Board
- Michigan Institute for Health Enhancement
- NAA Education Institute
- NAADAC - The Association for Addiction Professionals
- National Academy of Sports Medicine
- National Alliance Wound Care
- National Assistant at Surgery Council
- National Association of Medical Staff Services
- National Association for Health Professionals
- National Association of Boards of Pharmacy
- National Association of Certified Valuation Analysts
- National Association of College Stores
- National Association of Federal Credit Unions
- National Association of Forensic Counselors
- National Association of Legal Assistants
- National Association of Mortgage Brokers
- National Association of Social Workers
- National Association of State Contractors Licensing Agencies
- National Asthma Educator Certification Board, Inc.
- National Athletic Trainer's Association Board of Certification
- National Board for Certification in Hearing Instrument Sciences
- National Board for Certification of Hospice and Palliative Nurses
- National Board for Certification of Orthopaedic Technologists
- National Board for Certification in Occupational Therapy
- National Board for Certification of Orthopedic Physician Assistants
- National Board for Certified Counselors
- National Board for Professional Teaching Standards
- National Board for Respiratory Care
- National Board of Certification for Community Association Managers, Inc.
- National Board of Chiropractic Examiners
- National Board of Examiners in Optometry
- National Board of Nutrition Support
- National Board of Orthodontics, U.S.
- National Board of Surgical Specialists
- National Business Aviation Association
- National Center for Competency Testing
- National Certification Board for Diabetes Educators
- National Certification Board for Therapeutic Massage and Body Work
- National Certification Commission for Acupuncture and Oriental Medicine
- National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties
- The National Commission for Health Education Credentialing
- National Commission for Certification of Continuing Medical Education Professionals
- National Commission for the Certification of Crane Operators
- National Concrete Masonry Association
- National Contact Lens Examiners
- National Council for Interior Design Qualification
- National Council for Therapeutic Recreation Certification, Inc.
- National Council of Architectural Registration Boards

- National Council of Examiners for Engineering and Surveying
- National Council of State Boards of Nursing, Inc.
- National Council on Strength and Fitness
- National Credentialing Agency for Laboratory Personnel
- National Dental Hygiene Certification Board
- National Enrichment Teachers Association
- National Examining Board of Ocularists
- National Exercise Trainers Association (NETA)
- National Exercise and Sports Trainers Association (NESTA)
- National Federation of Professional Trainers
- National Ground Water Association
- National Healthcareer Association
- National Institute for Automotive Service Excellence
- National Institute for Certification in Engineering Technologies
- National Institute for Metalworking Skills
- National Kitchen and Bath Association
- National League for Nursing
- National Occupational Competency Testing Institute
- National Paramedical for Technician and Assistants
- National Recreation and Parks Association
- National Registry of Emergency Medical Technicians
- National Registry of Food Safety Professionals
- National Strength and Conditioning Association (NSCA) Certification Commission
- Natural Therapies Certification Board
- Nephrology Nursing Certification Commission
- North American Board of Certified Energy Practitioners
- North American Registry of Midwives
- North Carolina Substance Abuse Practice Board
- The Nuclear Medicine Technology Certification Board
- Oncology Nursing Certification Corporation
- Ontario College of Pharmacists
- Ontario College of Social Workers and Social Service Workers
- Ophthalmic Photographers' Society, Inc. Board of Certification
- Pediatric Nursing Certification Board
- Petrofac Training International
- Pharmacy Examining Board of Canada
- Pharmacy Technician Certification Board
- Pilates Method Alliance, Inc.
- Professional Golfers' Association of America
- Professional Healthcare Institute of America
- Professional Landcare Network
- Professional Photographers of America
- Psychiatric Rehabilitation Certification Program
- Radiology Coding Certification Board
- Registry of Interpreters for the Deaf, Inc.
- Rehabilitation Engineering and Assistive Technology Society of North America
- Rocky Mountain Masonry Institute
- School Nutrition Association
- Society of Actuaries
- Society of American Foresters
- Society of Cable Telecommunications Engineers

- Society of Certified Senior Advisors
- The Society of the Plastics Industry
- Society of Tribologists and Lubrication Engineers
- Software Engineering Institute
- Southern California Crane and Hoisting Certification Program
- Transportation Professional Certification Board, Inc.
- UCSD - Center for Criminality Addiction Research, Training, and Application (CCARTA)
- Universal Public Purchasing Certification Council
- U.S. Green Building Council
- Veterinary Hospital Managers Association
- The Wedding Planning Institute
- Wound, Ostomy, and Continence Nurses Certification Board

TESTIMONY OF STEVEN R. MCCARTY AND JEFFREY S. KOPITZ

Chairman and President of the National Ethics Bureau

Before the
United States Senate,
Special Committee on Aging

September 7, 2007

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

The National Ethics Bureau welcomes the Special Committee's efforts to address the issue of senior investment fraud. As industry advocates for ethics and transparency, we support your efforts to identify and root out those who victimize seniors in the financial-services marketplace.

We are extremely proud of our organization and of the background checks that we conduct as a requirement for membership. Therefore, we are compelled to respond to allegations raised in testimony yesterday by Commissioner William Francis Galvin, Secretary of the Commonwealth of Massachusetts. Commissioner Galvin, in effect, questioned the legitimacy of our organization and the integrity of the background checks we perform on prospective members. His statements reflect a flawed understanding of our mission and of the procedures we follow. We respectfully submit the following testimony to ensure that the Committee has a balanced and accurate view of our organization.

Following are the allegations raised by Commissioner Galvin, along with our responses.

Commissioner Galvin suggested that the National Ethics Bureau is an example of a "Deceptive Marketing Tool Geared Toward Senior Citizens."

NEB response: Not true.

We are a membership organization of background-checked advisors. All members have passed our comprehensive, seven-year background checks and have agreed to maintain our standards for membership. We are proponents of transparency at the highest level. We are not a designation, nor do we provide any sort of "senior specialist" certification. We are similar to the Better Business Bureau, but with more stringent requirements for membership. In addition, we are industry advocates for professional ethics, providing guidance to members and non-members in four industry magazines on the very subjects that are being proposed by this committee.

1. **Galvin suggested that NEB has granted a "Seal of Trust" to two financial advisors who were alleged to have engaged in dishonest and unethical sales practices.**

NEB response: Misleading.

Financial Advisor #1: Galvin's description of an NEB member who was fired for "selling unapproved products" (plural) is misleading. In fact, this individual sold one product that was approved by the state of Massachusetts, but which was outside his broker dealer's list for compensation ("unapproved"). We admitted the individual because, according to the regulator's own report, the reason for discharge was not egregious, but rather only a "violation of company policy." The regulatory record clearly showed that there were no aggravating or consumer-trust related circumstances involved, it was not the result of a client-initiated complaint, and there was no evidence that a consumer was harmed in any way.

Financial Advisor #2: Galvin's raising the matter of another NEB member with "a long record of customer complaints and personal financial distress in the 1990s..." is also misleading. In fact, when we reviewed this person's background prior to granting membership, we discovered he had a total of four complaints filed over 32 years in business, the most current being ***over 10 years ago***. All of these complaints were either denied, closed, rejected, or settled "*without any conclusion of wrongdoing,*" according to the NASD, the predecessor organization to FINRA. Not only did the complaints fall outside the scope of our seven-year look-back, but based on our evaluation, they did not warrant membership denial.

Furthermore, according to the public record, the representative's "personal financial distress" was the result of the 1990s real estate meltdown, coupled by a divorce that was legally resolved in its entirety by filing bankruptcy ***over 16 years ago.*** These were unfortunate situations, but not necessarily a reflection of the person's current professional ethics. We did not believe that either these personal matters—or the client complaints described earlier—merited a membership denial.

Finally, "Seal of Trust" is a phrase that formerly described NEB's logo. The use of that phrase was discontinued in April 2007.

2. **Galvin alleged that all a financial professional has to do to become an NEB member is complete a five-to-ten minute online application, and that NEBs background checks are "cursory and minimal".**

NEB response: An uninformed view of our process.

Galvin's statement reflects a fundamental misunderstanding of how NEB operates. Prospective members do fill out an online application or call to speak to one of our staff, who takes their application. Either approach generates the key facts we need to initiate our background checks. It takes only 10 to 15 minutes because that's all the time it takes to secure this initial information. After the person applies for membership, we initiate our full background check process. This is handled by NEB staff members and typically takes between 10-30 business days to complete, sometimes longer. Following is a description of the checks we currently perform on each and every applicant.

Criminal Background Check (7) Years
Nationwide skip-trace provided by Acxiom Information Security Services, a world leader in security information technology. This checks for any pending or confirmed felonies or disqualifying misdemeanors.

Civil Background Check (7) Years
Nationwide investigation provided by TransUnion, a global leader in information technology. This checks the civil courts for any pending or confirmed disqualifying violations that have resulted in a judgment, fine, or award.

Professional License Check (7) Years
NEB verifies the existence of one or more recognized state or federal regulated licenses to offer financial services. This may include insurance, securities, mortgage, real estate, and other industry-type professional licensing.

Department of Insurance (7) Years
NEB checks with state departments of insurance for resident and non-resident license(s) listed by the applicant. This check verifies that all licenses are correct and up to date, that they have no disqualifying violations, and that the advisor has stayed current with continuing education requirements.

Financial Industry Regulatory Authority (Formerly NASD) (7) Years
NEB reviews all CRD disclosure reports for any disqualifying violations for both active and inactive licenses.

Securities and Exchange Commission (7) Years
NEB performs a monthly cross-check for any disqualifying violations that result from SEC disclosure of any Administrative Law Judge initial decisions and orders, administrative proceedings, reports of investigations, and litigation releases.

State Securities Administrators (7) Years
NEB checks with each state securities division to uncover any ongoing investigations or disqualifying violations in addition to those discovered by other regulatory agencies.

Other Federal, State and Private Agencies (7) Years
NEB utilizes other agencies, designation-granting or membership organizations, private investigation firms, and other resources for further investigation as needed.

Bankruptcy Check (4) Years
NEB utilizes TransUnion to conduct a comprehensive credit check. This check verifies that all members have not declared bankruptcy effective June 1, 2007.

For what reasons do we deny membership to an applicant?

According to our written procedures, a "disqualifying violation" occurs when a state or federal agency has found that an advisor is guilty of conduct against public trust, which may include, but is not limited to, theft, forgery, fraud, false statements, misappropriation, embezzlement, deceit, unsuitable recommendations, misrepresentation, or other prohibited, illegal, or criminal sales practice. Certain clerical or administrative-type infractions, preventative orders, or settled complaints (where there is no conclusion of guilt or wrongdoing) may not automatically disqualify an advisor from NEB membership. However, NEB reserves the right to disclose such marks on the member's public profile.

Once we complete these checks, we fully document our findings in the applicant's or member's file. ***And this information is available to any regulator or member of this Special Committee upon request.***

Once a financial professional is admitted, the person must re-qualify for membership every year. In other words, we conduct a full background check on an annual basis with all NEB members.

Once again, our business model is similar to the Better Business Bureau (with much stronger requirements), which has served consumers and businesses successfully for decades. For Galvin to suggest that our background check process is "cursory and minimal" flies in the face of the rigorous and uncompromising checks we perform every day.

In conclusion, Commissioner Galvin makes a strong case for the need to address senior investment fraud in America. But like commercial fishermen who ensnare innocent dolphins in their nets, he has entangled NEB's good name in his efforts to capture unethical financial professionals in Massachusetts and across the nation. We respectfully request that this Committee distinguish between the sharks that prey on seniors and the organizations such as the National Ethics Bureau that are committed to helping consumers avoid shark-infested waters.

We thank the Committee for giving us this opportunity to clarify the facts regarding our organization, and we welcome all further inquiries into this matter.

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Securities Division

September 13, 2007

Chairman Herb Kohl
Special Committee on Aging
United States Senate
G31 Dirksen Senate Office Building
Washington, DC 20510

Re: Reply to National Ethics Bureau's Testimony

Dear Chairman Kohl:

I am the Director of the Massachusetts Securities Division. I write in reply to the Testimony of Steven R. McCarty and Jeffrey S. Kopitz, Chairman and President of the National Ethics Bureau (the "NEB Testimony") in which the National Ethics Bureau (the "NEB") challenged certain statements that Secretary Galvin made in his written testimony to the Committee.

Secretary Galvin suggested that the NEB is an example of a deceptive marketing tool geared towards senior citizens based on facts uncovered during the Massachusetts Securities Division's investigations of potential violations of the Massachusetts securities laws. Among those facts are the following:

- Until it recently changed its certificates, the NEB's "Certificate of Approval" stated that the recipient "has maintained an exemplary record of business ethics". Similarly, the NEB's website claimed to be "an independent organization that promotes consumer confidence by providing a one-stop source to verify the business ethics of insurance and financial advisors". These claims to verify the business ethics of the financial advisor stand in contrast to the claims in the NEB Testimony that it is merely "a membership organization of background-checked advisors."

- The NEB Certificate of Approval was given to Michael DelMonico (referred to as "Financial Advisor #1" in the NEB Testimony). In addition to the deceptive marketing and unsuitable sales to senior citizens alleged in our complaint filed March 6, 2007 (and available on the Massachusetts Securities Division's website), Mr. Delmonico had previously been fired from his prior broker-dealer for selling

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www.state.ma.us/sec/sct

unapproved products. The Massachusetts Securities Division considers "selling away" to be a serious issue and certainly not consistent with "exemplary" business ethics.

- As alleged in our recent complaint (filed August 22, 2007 and also available on our website) against Steven Anzuoni, Mr. Anzuoni, also had received a Certificate of Approval from the National Ethics Bureau. In addition to all of the deceptive sales practices and unsuitable products sold to senior citizens as alleged in the complaint, Mr. Anzuoni stated in his 2006/2007 National Ethics Bureau Professional Profile that he sold variable annuities and mutual funds—products which he has not been licensed to sell since 2004. This Professional Profile appeared on handouts provided by NEB and on NEB's website, yet NEB apparently had no mechanism to screen out this misinformation, despite its claim to have checked Mr. Anzuoni's professional licenses.

- The NEB appears to have engaged in a pattern of supplementing its files with respect to people to whom it has granted its Certificate of Approval only after having become subject to regulatory scrutiny. On July 24, 2006, the Massachusetts Securities Division sent a letter to the NEB requesting: "Copies of all NEB documentation and information regarding the following members and/or their associated entities: . . ." The letter then listed five registered representatives who held the NEB Certificate of Approval (including the one referred to as Financial Advisor # 2 in the NEB Testimony). On July 27, 2006—three days later—the Commonwealth received a public records request from the NEB for "disclosure reports on the following individuals" and listed the very same five individuals that the Division had asked about three days prior. The urgent need for this information after a request from regulators appears to undercut NEB's assertions that it routinely checks with state securities regulators <u>prior to</u> granting the Certificate of Approval.

- Similarly, the NEB produced to the Division what it represented to be all files with respect to Financial Advisor #2. Those files do not evidence that the analysis that appears in the NEB Testimony with respect to Financial Advisor #2 was undertaken prior to granting the Certificate of Approval—this analysis appears to have been constructed after the fact. Finally, it should also be noted that the most recent complaint against Financial Advisor # 2 was settled in 1998, which was only five years before he obtained the NEB Certificate of Approval in 2003, thus undercutting the statement in the NEB Testimony that those "complaints fall outside the scope of our seven-year look back".

- The Division has taken testimony indicating the cursory nature of the NEB application process, which is discussed in the DelMonico and Anzuoni complaints, as well as the complaint filed against James Maltz on August 22, 2007, which is also available on the Division's website (www.sec.state.ma.us/sct/sctidx.htm). The testimony taken was from persons

who were testifying under oath, each of whom had undergone the NEB application process.

Please contact me if I can provide you with additional information or if I can assist you in any other way.

Sincerely,

Bryan J. Lantagne
Director
Massachusetts Securities Division

September 19, 2007

To: Mr. Jack Mitchell (202) 224-5364

From: Kim O'Brien, Executive Director

RE: Information on fixed annuities

The National Association for Fixed Annuities (NAFA) has been made aware that Senator Herb Kohl, Chairman of the Senate Special Committee on Aging (Committee), have requested information as part of the Committee's ongoing review of investment fraud targeting our nation's seniors. NAFA supports any activity that protects individuals from purchasing products the do not help fulfill their financial and retirement objectives and strongly opposes fraudulent, unscrupulous, or misleading sales methods ***of any kind.***

However, we were concerned to discover that you were relying on a recent NY Times article, "For Elderly Investors, Instant Experts Abound" (Charles Duhigg, July 8, 2007), to shed further light on what you concluded is a growing practice. Unfortunately, Mr. Duhigg's reporting was significantly one-sided and information that would help his readers to understand and be more informed was left out or misrepresented. We responded to Mr. Duhigg with clarification and expressed these concerns. We have included a copy of our response in this communication for your review.

NAFA has also recently completed its White Paper on Fixed Indexed Products the general purpose of which is to contribute to the public's knowledge about fixed annuities, including fixed indexed annuities and other fixed indexed insurance products ("FIPs"). The White Paper focus on fixed indexed annuities initially explores:

- Their background, evolution and popular appeal;
- The public's demand for – and benefit from - guarantees, flexibility and diversity in financial products; and
- The need for the manufacturers, issuers, distributors, regulators and the media to contribute to the flow of information about fixed indexed annuities

We gladly share it with you for the Committee's use. We will soon be publishing our Position Paper on Suitability and have provided an advance copy for the Committee.

Also, NAFA, at the request of its Board of Directors, has formed a Market Conduct/Best Practices Committee whose members include executives from major fixed annuity carriers and marketing organizations. The committee is in the process of developing Market Conduct Guidelines and Best Practices Standards. It will also develop a 4-hour education course for insurance agents on Fixed Indexed Products. The course curriculum will include the different types of annuities, the annuity contract provisions, insurance elements and interest crediting methods, the advantages and disadvantages of for individuals under 65 and again for those over 65, and suitability and marketing standards and best practices. We have been working in conjunction with the Iowa Insurance Department and their new FIP

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September 19, 2007

training requirement which will be required of all agents who want to sell Fixed Indexed Products on or after January 1, 2008. We have attached the Iowa Insurance Department training outline which contains much of the sections and content of the NAFA White Paper on Fixed Indexed Products

As the only association dedicated exclusively to fixed annuities, we understand the product, the market, and the distribution of these unique products. NAFA is working with the ACLI, NAVA, NAILBA, IMSA, LIMRA and NAIFA directly to advance public policy on retirement income security issues. With this background, we respectfully request that the Committee consider inviting NAFA as an expert witness. When individuals are tricked, pressured or fraudulently convinced to buy any financial product, obviously it is not good for them or their interests, but it is also harmful to the millions of legitimate sales personnel, the many companies offering quality products, and the entire financial services industry.

Declared rate and indexed fixed annuities are responsible for protecting billions of dollars worth of retirement assets and have saved many a contract owner from losses in riskier vehicles. They provide tax deferred growth, solid return potential, minimum guarantees and eventually something no other financial product can provide, an income you can't outlive. These benefits fulfill the conservative promises of safety and minimum guarantees for which many people are looking. NAFA would like to help the Committee to ensure that individuals enjoy a competitive and legitimate sales environment so that they may make the right decisions to secure their financial future.

Respectfully,

Kim O'Brien
Executive Director

Attachments: NAFA White Paper
NAFA Suitability Position
NAFA response to New York Times, Charles Duhigg
IIA Training Outline

Cc: Senator Herb Kohl
NAFA Members

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NAFA Submission to Special Committee on Aging Hearing
August 29, 2007

TO: Senator Herb Kohl
Chairman, Special Committee on Aging

FROM: Kim O'Brien,
Executive Director, NAFA

RE: September 5th Hearing –
Advising Seniors about Their Money: Who Is Qualified - and Who Is Not?

Cc: Jack Mitchell

The National Association for Fixed Annuities (NAFA) sincerely thanks the Committee for its offer to submit information and be a part of this important hearing. NAFA specifically thanks Jack Mitchell for his time and assistance in explaining the purpose of the hearing and the Committee's responsibility to seniors. NAFA is respectful and supportive of the Committee's focal point for discussion and debate on matters relating to older citizens and is grateful for their offer to consider our remarks. It is the association's desire that the information may be helpful to the Committee and its goals.

Recently we were made aware of the committee's interest in two articles published in the Wall Street Journal and the New York Times and NAFA has responded to each with amplifications and corrections to the journalists' statements and conclusions. NAFA and the fixed annuity insurance industry are concerned about the inaccuracies of the press because of their obvious dependence on the goodwill of the public and serving them responsibly. In short, it is important to the industry and NAFA to ensure the well being of seniors and their financial aspirations.

Mr. Mitchell highlighted the fact that the newspaper articles which the Committee is relying on for information and background had stated that annuities are perhaps unsuitable for seniors, we would also like to submit information that discusses the many guarantees and features that make these particular products highly suitable and a preferable financial product for some older Americans as an integral part of a economically secure retirement package. NAFA believes that fixed annuities are suitable for some seniors because they offer lifetime guarantees and benefits that separate them from other financial products.

NAFA fully supports any activity that protects individuals from purchasing products that do not help fulfill their financial and retirement objectives and it strongly opposes fraudulent, unscrupulous, or misleading sales methods ***of any kind.*** As the Committee is aware there are many designations and certifications available to anyone who sells registered security products and regulated insurance products. NAFA highly recommends continuous and rigorous education and training for everyone selling these products. One simply cannot be ***too*** educated or trained.

NAFA promotes and recommends to marketers and producers that they should inquire about their specific state insurance and securities regulations to ensure that they have the licenses appropriate for their business. Insurance agents, producers, financial planners, and investment advisors should seek the licensing and education that are required based upon their sales and related activities. Designations and certification continuing education programs typically provide the curriculum needed to meet state insurance and securities licensing. This requires the filing of the curriculum for approval and compliance with all state and federal laws and regulations. In addition to supporting these state and federal educational requirements for licensing and license renewals, NAFA believes that any program that qualifies an individual to give financial and retirement planning advice must contain the following:

2300 E Kensington Blvd ♦ Milwaukee, WI 53211 ♦ 888-884-NAFA

NAFA was created to foster a better understanding of traditional, payout and indexed annuities. It is the only independent, non-profit organization dedicated solely to the promotion and preservation of these unique products. *Permission to distribute and/or reproduce this document is given to NAFA members only. Any unauthorized distribution is strictly prohibited.*

- A published Code of Ethics and Professional Duties or Responsibilities that provide standards defining conduct to which the designee must adhere in his or her business practice plus rules which relate to each standard detailing the specific application and behavior pertinent to each standard.
- An established Board of Standards, Market Conduct, or Compliance that reviews and resolves complaints lodged against a designee or certified individual for alleged violations of the group's code.
- Posting of individuals on whom disciplinary action or revocation has been taken that is easily accessible and available to the general public.
- Ongoing and robust re-certification requirements of education annually or, at a minimum, every two years. Education curriculum should not only include specific training in all aspects of the designee's practice, but it must also include re-certification of the knowledge and understanding of the Code of Ethics and Standards or Duties.
- The designation or certification company must publicly endorse, support, and assist state and federal insurance and securities regulators to ensure that all designees follow the applicable state insurance laws or securities regulations and conduct themselves in accordance with the Standards.
- Written and enforced standards and rules regarding the use of designation and certification labels, marks, insignias, and logos which prohibit the holder from:
    - Referencing nonexistent or self-conferred degrees or designations or referencing legitimate degrees or designations in a misleading manner.
    - Performing or offering to perform professional services that are outside the scope of the designee's professional practice, license, or education
    - Implying in advertising or other communication an ability to legitimately perform professional services which are outside the scope of the designee's professional practice, license, or education
    - Implying endorsement of a company, product, or plan or suggesting competence or training

NAFA, at the request of its Board of Directors, has formed a Market Conduct and Best Practices Committee whose members include executives from insurance companies, marketing organizations, and insurance professionals. The Market Conduct Standards and Best Practices Committee's purpose is to foster an understanding and adherence to best market conduct and business practices in the distribution, recruiting, marketing, and sales of fixed annuities. This include developing a Standard on the use of designations and a list of industry designations with helpful links for consumers to use when considering a professional with a specific designation(s).

The Committee may already be aware that the AARP has good information about Understanding Financial Credentials with links to help individuals find professionals, determine the type of professional they need and what questions should be asked of a professional.

As the only association dedicated exclusively to fixed annuities, NAFA's members understand the product itself, as well as the marketing and distribution of these unique products. Declared rate and indexed fixed annuities are responsible for protecting billions of dollars worth of retirement assets and have saved many a contract owner from losses in riskier vehicles. They provide tax deferred growth, solid return potential, minimum guarantees, and eventually something no other financial product can provide -- an income that can't be outlived. These benefits fulfill the conservative promises of safety and minimum guarantees for which many people are looking. NAFA would like to work with the Committee to ensure that individuals enjoy a competitive and safe purchasing environment to help them make the right decisions for their secure financial future whether that includes owing a fixed annuity or not.

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September 19, 2007

The Honorable Herb Kohl
Chairman
Special Committee on Aging
Dirksen Building, Room G-31
United States Senate
Washington, DC 20510

Re: *OMFN's Policy on Use of Designations by Independent Agents*

Dear Chairman Kohl:

I am writing on behalf of Old Mutual Financial Network ("OMFN")[1] to inform you of the recent policy adopted by the company with respect to the use of professional designations in connection with the promotion of OMFN's products by independent agents.

OMFN supports and encourages continuing education by independent agents and the use of credentials properly reflecting the pursuit of robust continuing professional education curricula. At the same time, OMFN shares the Special Committee on Aging's concern about individuals' use of credentials that may represent little actual coursework or instruction to sell financial products to seniors. All consumers, regardless of age, deserve honesty and integrity from financial representatives making recommendations with respect to their hard-earned savings. For these reasons, OMFN announced September 10, 2007 the policy described in the attached press release, effective immediately.

According to the policy, independent producers are prohibited from using designations other than those approved by OMFN, or issued by certain organizations approved by OMFN, in connection with the promotion of OMFN's products. OMFN is familiar with the course of study involved in these approved designations and has confidence in the organizations that administer them. OMFN is satisfied with the rigor and integrity of the course work and the organizations. Violation of the policy will result in discipline including potential penalties and termination of the producer's appointment to sell

[1] Old Mutual Financial Network or OMFN is the marketing name for OM Financial Life Insurance Company, OM Financial Life Insurance Company of New York, and Americom Life and Annuity Insurance Company.

September 19, 2007

OMFN products. From time to time OMFN may review other designations and will update this policy accordingly.

OMFN believes this policy will serve its customers well and is consistent with the company's values of respect, integrity, and accountability. We also believe that in adopting the policy, OMFN is furthering the efforts of the Special Committee on Aging to promote the financial well-being of our nation's seniors.

Please let me know if you have any questions about this policy.

Sincerely,

Tom McDonald
Partner
Baker Hostetler

OLD MUTUAL FINANCIAL NETWORK ANNOUNCES PROFESSIONAL DESIGNATION POLICY

ATLANTA, GA, September 10, 2007 – Old Mutual Financial Network (OMFN) announced that, effective immediately, independent producers representing OMFN insurance products are permitted to use financial/insurance designations and/or designations issued by professional organizations as listed below exclusively:

Financial/Insurance Designations
- CLU Chartered Life Underwriter
- ChFC Chartered Financial Consultant
- FLMI Fellow, Life Management Association
- CFP Certified Financial Planner*
- LUTCF Life Underwriting Training Counsel Fellow
- MSFS Master of Science in Financial Services
- RHU Registered Health Underwriter
- CEBS Certified Employee Benefit Specialist
- CRPC Chartered Retirement Planning Counselor
- CFA Chartered Financial Analyst
- CRPS Chartered Retirement Plans Specialist
- REBC Registered Employee Benefits Consultant
- CPC Certified Pension Consultant
- CPCU Certified Property Casualty Underwriter
- CPA Certified Public Accountant

Professional Organizations
- The American College
- Life Office Management Assc (LOMA)
- LIMRA International, Inc.
- Certified Financial Planner Board of Standards, Inc.
- The International Society of Certified Employee Benefit Specialists
- The College for Financial Planning
- American Society of Pension Actuaries
- American Institute of Certified Public Accountants
- CFA Institute

OMFN also permits independent agents to highlight post-graduate degrees in the course of representing OMFN products, but only if the degree directly relates to accounting, finance, tax or insurance.

OMFN is an advocate of continuing education for independent agents, and approves the use of those professional credentials that reflect the successful completion of rigorous and relevant continuing education curricula. Consistent with this, OMFN is opposed to the use of designations obtained from credentials programs with only limited coursework or abbreviated instruction. OMFN's professional designation policy restricts independent producers from using any designation not on the approved list in any promotion of OMFN products.

OMFN expects to review other designations, as necessary, and will update its designation policy accordingly.

*It has always been OMFN's practice to permit the use of the CFP designation, provided that it not be used by an insurance producer in such a way as to imply that the producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such actually is the case.

About Old Mutual Financial Network
Old Mutual Financial Network (OMFN) is the marketing name for the U.S. life insurance and annuity operations of Old Mutual plc, including OM Financial Life Insurance Company (variable annuity products offered through Old Mutual Financial Network Securities, Inc.). Headquartered in London, England, Old Mutual plc was founded in 1845, is one of the world's largest insurers, ranks as a Fortune Global 500 company and employs nearly 50,000 people worldwide. OMFN has the knowledge, expertise and resources a global powerhouse can provide and is committed to delivering innovative and balanced financial solutions. OM Financial Life Insurance Company outside of New York and OM Financial Life Insurance Company of New York within New York are solely responsible for their respective contractual guarantees and commitments.

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