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

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HEARING

before the

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

WASHINGTON, DC

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

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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 1\1/2\ 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 at 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.

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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 enforcement 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:]

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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:]

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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 specifically 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:]

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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:]

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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:]

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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:]

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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 distribute 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 one's 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 information 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:]

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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:]

<GRAPHIC OMMITTED> See the end of the file for all omitted graphics

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.

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

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 are 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.]

A P P E N D I X

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.

\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).

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.

\2\ In the Matter of Steven Michael Anzuoni and Fairway Financial Insurance Agency, Inc., Docket No. E-2007-0026 (August 22, 2007).

As yet another example, the Massachusetts Securities Division filed another administrative complaint against another insurance salesman that was holding himself 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:

\3\ In the Matter of John Christopher Huck, Docket Number 2006-0109 (March 6, 2007).

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 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\

\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).

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 NCCA 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 NCCA'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?

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 inquiries, 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 advisers 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 deferred 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 choice 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"), 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.

\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).

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.

\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).

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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 effectively 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.

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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 1\1/2\ 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. Niccollete'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).

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