



NASAA

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August 20, 2012

Via Electronic Mail

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2012-0018, Request for Information Regarding Senior Financial Exploitation

Dear Ms. Jackson:

The North American Securities Administrators Association, Inc. (NASAA)¹ appreciates the opportunity to comment on consumer financial products and services, financial literacy efforts, and fraudulent or deceptive practices affecting the lives of older Americans and their families.

State securities regulators are considered the first line of defense for investors, and have been at the forefront in detecting the problem of senior investor abuse and responding to it aggressively.

Based on first-hand experience dealing with financial frauds targeting older Americans, state securities regulators have concluded that the most effective weapons against fraud are vigorous enforcement, investor education, and innovative regulation. As this comment letter will show, states have been active in all of these areas. For example, our enforcement data confirms the trend toward senior investor abuse and also reflects the states' myriad enforcement action against the perpetrators of such abuse. According to NASAA's 2010 enforcement survey, 35 percent of all enforcement actions initiated by state securities agencies involved senior victims. These cases represent just a small sampling from the states' campaign against senior investment fraud.

NASAA and its members have also led the effort to educate the public about senior fraud. For example, in 2003, NASAA recognized the investor protection challenges presented by the growth in our senior population and announced the creation of the "Senior Investor Resource Center" on our website. The states also have been in the vanguard developing innovative regulatory responses that help states crack down on senior fraud.

In addition, NASAA members actively bring important investor protection and awareness information to seniors in each of our jurisdictions through workshops, forums, and other public events. We also partner with grassroots organizations, such as AARP, to reach even more seniors. One successful example of this outreach partnership is the Free Lunch Monitor program, in which

1 NASAA is the association of all state, provincial and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

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AARP volunteers attend “free lunch” seminars targeting seniors and report their findings to state securities regulators.

Evaluation of Senior Financial Advisor Certifications and Designations

Seniors are particularly vulnerable to fraud and financial abuse on a number of fronts, none more deceptive than the abuse of trust that comes from the misleading use of designations and certifications meant to convey expertise in dealing with the unique financial stresses faced by older Americans. The use of a so-called senior designation by salespersons, whether registered or not, confers an impression that the salesperson has special qualifications or specialized education in addressing the needs of senior citizens or retirees, particularly in the areas of finance, financial planning, estate planning, or investing. The requirements to obtain these designations and certifications vary greatly, as can the processes for monitoring compliance with a code of conduct or ethics, if any, adopted by the organization that awards the designation or certification.

The use of senior designations that misleadingly imply an expertise in the financial needs of seniors often result in unsuitable investments being sold to unsuspecting seniors by apparent “experts” who are only salespersons with little or no expertise and who do not know the specific needs of seniors or understand the product being sold.

NASAA first focused national attention on this deceptive practice in December 2005 through an investor alert urging seniors to carefully check the credentials of individuals claiming to be “senior specialists.” This widespread deception, often combined with free-meal seminars, was identified by state securities regulators following investor complaints in various regions of the United States.

After detecting this growing problem for senior investors and raising awareness of it among seniors and regulators, NASAA responded aggressively with a regulatory solution. In March 2008, NASAA’s membership adopted a then-new model rule concerning the use of senior designations. The model rule addresses the abusive practice of using designations meant to confer expertise where none actually exists, while providing a means for a state securities administrator to recognize the certain accredited designations.

The NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations prohibits the use of certifications or professional designations obtained from a designating or certifying organization that: (i) is primarily engaged in the business of instruction in sales and/or marketing; (ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants; (iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or (iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

Under the Model Rule, a designating or certifying organization is not disqualified when the organization has been accredited by The American National Standards Institute, The National Commission for Certifying Agencies, or an organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the issued designation or credential does not primarily apply to sales and/or marketing.

To date, 30 states have adopted the NASAA Model Rule and two additional states adopted similar rules prior to the NASAA model. This rule represents the culmination of an effort NASAA and its members launched in 2003 to focus national attention on unscrupulous behavior targeting senior investors.

The proposed rule was developed by the NASAA Task Force on Senior Designations and has proven to be an effective weapon in the fight against senior investment fraud. NASAA enforcement statistics show that between 2008 and 2010, state securities regulators reported 61 enforcement actions involving senior designations. Of that total, 56 actions came from states that adopted the NASAA model rule. During the same period, states brought a total of 97 cases involving free lunch seminars. Of that total, 93 came from states that adopted the NASAA model rule.

The model rule addresses the growing use of financial designations or certifications that ostensibly convey expertise in advising seniors and retirees. Investors often have insufficient information when trying to determine whether so-called “senior designations” represent meaningful educational achievement by the salesperson or are merely marketing tools. In addition, NASAA worked with the National Association of Insurance Commissioners (NAIC) on the development of its model rule on senior designations.

State securities regulators urge the CFPB to continue its efforts to develop a program authorized by the Dodd-Frank Act to provide grants to states that have adopted either the NASAA or NAIC model rules on the use of senior designations. These grants would help states to fund additional resources, education materials and staff dedicated to cracking down on meaningless titles used by unscrupulous investment professionals to mislead investors about their expertise in senior financial issues.

Investor Education Role of State Securities Regulators

State securities regulators recognized long ago that education is a key weapon in the fight against investor fraud. The NASAA Investor Education Section was created in 1997 by the NASAA Board of Directors to help support the investor education efforts of our members. The Investor Education Section, along with a network of professionals from across the NASAA membership, is responsible for developing, delivering, coordinating, and supporting investor education initiatives that can be used by state securities regulators in their ongoing endeavor to improve the level of financial literacy in their jurisdictions.

Most state and provincial securities regulators have established investor education departments or divisions within their agencies. The result is an effective network of dedicated professionals delivering unbiased, relevant, and free investor education programming at the grassroots level. Our investor education professionals can be found at work in such venues as the classroom, the workplace, senior centers, and at trade and professional organization events reaching thousands of people who otherwise would not have ready access to such information.

Successful State Senior Investor Education Programs and Resources

NASAA specifically targeted senior investment fraud with the introduction in 2003 of the Senior Investor Resource Center, an online clearinghouse of senior-specific investor education materials developed by NASAA. The Senior Investor Resource Center includes a wealth of tips to help seniors protect their financial resources, such as information on misleading senior designations, how to protect your nest egg and other tips to avoid investment fraud, NASAA’s annual list of top investor threats, a series of “conversation starters” designed for seniors to help families have “the money talk,” helpful links to senior-specific resources provided by NASAA members and others, as well as information on two flagship programs produced in conjunction with partner organizations: the Free Lunch Monitor program and the Elder Investment Fraud and Financial Exploitation (EIFFE) program.

NASAA partnered with AARP in October 2008 to introduce the Free Lunch Monitor program, which seeks to empower seniors to fight fraud. This national campaign is designed to monitor the use of deceptive designations and whether senior investors are being pressured into purchasing

inappropriate or unsuitable investments such as equity indexed annuities when they attend a lunch or dinner seminar promising financial advice.

The Free Lunch Monitor program gives individuals who attend these events an opportunity to fight back against unscrupulous promoters by completing a “What to Listen for Checklist” that allows them to report questionable sales practices to state securities regulators.

After a year of collecting checklists, Free Lunch Monitor volunteers reported that many seminars focused on different types of annuities, with 39 percent encouraged to purchase an annuity. Nearly half indicated that the speaker did not discuss the risks associated with the annuity. Attendees were consistently promised that products were “low risk” or that they would yield “high rates of return.”²

For attendees of these free seminars, the potential cost can be quite high. Of the volunteers who attended a seminar, more than three out of four expected that the free financial seminar would center on opportunities to learn more about financial issues. However, once at the seminar, half of seminar attendees said the presenter asked them for personal information, such as their contact information or information about their finances, and 46 percent reported that the presenter attempted to make a follow-up appointment at their home.

NASAA also developed partnerships with adult protective services workers and leading medical associations to increase awareness among doctors and medical professionals of elder financial abuse.

Launched in 2010 and funded by the Investor Protection Trust, the EIFFE program educates professionals who provide front-line elder care about how to refer at-risk seniors to the appropriate authorities, whether by reporting investment fraud to securities regulators or suspected abuse to adult protective services workers.

As part of this effort state securities regulators helped develop a pocket-sized guide, which serves as a quick reference tool for medical practitioners outlining the red flags of investment fraud, tips for discussing financial capacity with senior patients, and resources for reporting suspected abuse. NASAA also assisted in the development of an educational brochure for senior patients and their families highlighting ways to protect themselves from elder financial fraud and where to get help.

To date, 28 NASAA members are participating in the EIFFE program, which has held 43 continuing medical education (CME) events across the nation to train nearly 3,000 doctors and other medical practitioners on how to detect and report suspected senior investment fraud among their patients.

Several states also maintain specific investor outreach campaigns to bring increased investor awareness to seniors within their jurisdictions. For example, NASAA’s member in California, the California Department of Corporations, developed a highly successful anti-fraud education program in 2001 that uses peer-based volunteerism. The Seniors Against Investment Fraud program (SAIF) provides seniors with a toll-free call center to use before purchasing or investing in any type of “financial” product. More than 1,500 volunteers have been trained to carry this anti-fraud program to seniors. Volunteers include seniors, law enforcement professionals, consumer and advocacy groups, and senior service providers. NASAA’s Investor Education Section developed a best practices blueprint based on the SAIF program to facilitate the rollout of this peer-based, volunteer education program across our member jurisdictions.

² See Nov. 12, 2009 NASAA/AARP News Release: “The Most Dangerous Piece of Mail You’ll Get All Year is For a Free Lunch,” at <http://www.nasaa.org/5077/the-most-dangerous-piece-of-mail/>

In another example, the Missouri Securities Division developed an initiative designed to educate and protect the state's growing senior population. Missouri securities regulators formed a special unit in the Enforcement Section of the Securities Division – the Senior Investor Protection Unit – staffed by individuals specially trained and qualified in the area of senior investor protection. This special protection unit includes attorneys, investigators, auditors and education specialists. The Senior Investor Protection Unit staff investigates new cases with senior-specific issues, provides investor education, and holds outreach and education events.

Financial Exploitation of Older Americans

Investment fraud involving seniors is a perpetual problem, and given the growing senior population in the United States, this problem only can be expected to grow.

Recent NASAA surveys show that over the past three years, state securities regulators have reported 2,310 enforcement actions involving senior investors. As with many statistics, these numbers are conservative and the actual number of unreported cases involving senior abuse is undoubtedly greater.

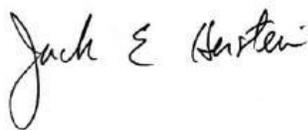
NASAA enforcement statistics show that unregistered securities, in the form of promissory notes, private offerings or investment contracts, were clearly the most common product involved in senior abuse cases, outnumbering the reported cases involving “traditional securities” five to one.

Affinity fraud was a clear trend in senior abuse cases, while variable annuities were the most commonly reported specific product. In fact, states reported 81 variable annuity cases involving senior investors in the most recent (2010) survey, up from 24 in the previous year. Sales programs marketed as free lunch investment “seminars” continue to be a prevalent issue, with states reporting 38 cases in 2010, up from 13 the year before. Cases involving the misuse of professional designations rose to 22 in 2010, up from 14 in the previous year.

Conclusion

State securities regulators traditionally have been and remain an extremely effective resource in the fight against senior investor abuse and in efforts to raise awareness of the threats facing senior investors. NASAA members form a nationwide network of experts on the front lines of investor protection and education. We commend the Consumer Financial Protection Bureau for joining this fight and we welcome further questions and an ongoing dialogue about effective strategies to help seniors avoid investment fraud.

Sincerely,



Jack E. Herstein
NASAA President
Assistant Director
Nebraska Department of Banking & Finance, Bureau of Securities