

Combating the Financial Exploitation of Older Adults

Commissioner Luis A. Aguilar

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Let me start by welcoming the members of the Investor Advisory Committee ("IAC"). Your work is important to the Commission's efforts in fulfilling its core mission of protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation. I also extend a welcome to the audience attending today's meeting—whether in person or remotely.

The IAC will discuss many important topics today, but I want to particularly applaud the IAC for including in today's meeting a discussion of the exploitation of elderly investors. This issue is increasingly urgent because our nation's growing rank of seniors and retirees are among the most vulnerable members of our society.

As many of you are aware, this issue is of significant concern to me and, in early February this year, I organized an all-day conference focused on the issue of elder financial abuse.^[1] The conference was attended by experts from across the public and private sectors, including staff from the divisions and offices throughout the SEC. During the conference, we discussed some of the most important topics facing elderly investors, including the link between diminished capacity and elder financial abuse, retirement issues unique to certain minority groups, and regulatory initiatives designed to protect the financial future of seniors and retirees. I want to thank my staff and the SEC University for helping me organize the conference. The positive feedback we received from the conference has already resulted in planning for a similar conference next year.

I also note that the Office of the Investor Advocate recently submitted its very first Report on Objectives^[2] and that its *Policy Agenda for Fiscal Year 2015* included a section dedicated to Elder Abuse. That section outlined many of the issues discussed at the February conference, as well as plans to review various initiatives to protect seniors from financial abuse.^[3] I look forward to working with the Office of the Investor Advocate to achieve progress on this issue.

It is clear that there is an urgent need to address the issue of elder financial abuse. A 2012 survey showed that 84% of experts specializing in investment fraud and financial exploitation of American senior citizens agree that the problem of fraud targeting the elderly was getting worse.^[4] Nearly all of those experts said that elderly Americans are vulnerable to financial swindles, and that the problem of investment fraud against seniors is serious.^[5] Indeed, it has been estimated that about one in five Americans aged 65 or older—that's about 7.3 million senior citizens—already have been victimized by financial fraud.^[6] Older adults are attractive targets for financial exploitation because they tend to possess more wealth than other potential targets—wealth that in many instances has been accumulated over their lifetime through hard work and conscientious saving.^[7]

The growth of the elderly population also exacerbates the problem of elder financial abuse. For example, the 65 or older age group numbered 41.4 million in 2011—an increase of 6.3 million, or 18%, since 2000.^[8] This segment is equivalent to about 13.3%, or one-eighth, of the total U.S. population.^[9] Given these statistics, it is imperative for regulators to work even harder to protect vulnerable elderly investors.

Today, we are very fortunate to be joined by Kathy Greenlee, the Assistant Secretary for Aging at the U.S. Department of Health and Human Services and the Administrator of the Department's Administration for Community Living.^[10] Kathy brings a wealth of experience to the task of assisting our senior citizens.^[11] It is a pleasure to have her here today, and I acknowledge how lucky we are that someone with Kathy's passion and commitment leads the federal government's efforts to protect the elderly.

Assistant Secretary Greenlee is also responsible for overseeing and coordinating the efforts of the Elder Justice Coordinating Council, or the EJCC,^[12] a council created by Congress in 2009^[13] to identify and propose solutions to the problems surrounding elder abuse.^[14] In particular, the EJCC is charged with coordinating the efforts of federal, state, and local governments—and of private entities, as well—to address the problem of elder abuse, neglect, and exploitation.^[15]

The EJCC represents an unprecedented opportunity for federal agencies involved in the fight against elder abuse to come together and develop, for the first time, a unified national response to this epidemic. As the U.S. Government Accountability Office has noted, federal leadership in this area has been lacking, and the federal response to elder abuse has been too fragmented to have a meaningful impact.^[16] The EJCC is responding to that fragmentation. The mission of the EJCC is a vital one, but it cannot effectively fulfill its mission without cooperation and active participation across federal agencies, including the SEC.^[17]

Though early, the EJCC has begun to make progress in addressing the needs of the elderly.^[18] For example, the EJCC has provided guidance by developing a set of eight recommendations for strengthening federal involvement in the response to elder abuse.^[19] One of these recommendations is to combat elder financial exploitation "through federal enforcement activities ... oversight and education, and by collaborating with industry to enhance fraud detection and provide resources for victims."^[20] The focus on financial exploitation provides the SEC a critical and unique opportunity to contribute to the federal government's response to elder financial abuse.

To date, the SEC's efforts in this area has been through enforcement actions in cases involving elderly victims,^[21] by announcing that the detection of elder financial exploitation will be a focus for its 2014 examination program,^[22] and by providing some education^[23] to seniors about the risk of financial exploitation.^[23]

Given the growing problem of elder abuse, I believe the SEC should do more to focus on elder financial abuse and to effectively protect investors and prevent fraud. For example, the SEC could:

- Establish a permanent, internal elder financial abuse working group comprised of members of the relevant divisions and offices, including the Division of Enforcement, the Office of Compliance Inspections and Examinations, the Office of Investor Education and Advocacy, and the Office of the Investor Advocate.
- Host an annual conference focused on issues and solutions relating to elder financial abuse, similar to the conference I helped put together last February.
- Keep issues impacting elderly investors in consideration when engaged in the rulemaking process, for example, by ensuring that the Commission's rules take into consideration enhanced protections for elderly investors.
- Increase outreach to elderly investors through better coordination with self-regulatory organizations and other regulators.

The SEC should also improve its data collection and analysis efforts in tracking enforcement actions and tips, complaints, and referrals involving elderly investors. This information would be useful in evaluating the scope of the problem of elder financial abuse, monitoring the effectiveness of efforts to protect elderly investors, conducting research on issues important to seniors and retirees, and determining the appropriate next steps.

Clearly, as the primary regulator of the capital markets, the Commission has a lot to offer to a coordinated federal effort to address elderly financial abuse, especially with regard to the problem of the financial exploitation of older adults. To that end, the SEC should adopt clear goals, set specific objectives, outline concrete timelines, and provide periodic updates on its progress in addressing issues pertaining to retirees and the elderly, as well as on its participation in the EJCC. The important mission of the EJCC can only be achieved with the active participation of the SEC and the other federal agencies.

Conclusion

I will end my remarks by thanking the IAC for bringing attention to the tragedy of elder financial abuse, and I ask the IAC to continue to work toward progress on this issue. Elder financial abuse is a problem that is growing exponentially. Addressing this problem effectively *now* is the responsibility of all federal agencies. The IAC's efforts in this area can help support, protect, and empower our seniors and retirees.

Thank you.

[1] See The American Retirement Initiative Winter 2014 Summit—Retirement: It's About People! (Feb. 4, 2014), available at <http://www.americanretirementinitiative.org/2014-02-04-winter-summit/>; see also, Commissioner Luis A. Aguilar, *Protecting the Financial Future of Seniors and Retirees* (Feb. 4, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370540744550>; Commissioner Luis A. Aguilar, *Why Seniors Are More Vulnerable Now As Targets for Financial Abuse* (Mar. 15, 2012), available at <http://www.sec.gov/News/Speech/Detail/Speech/1365171490074>; and Commissioner Luis A. Aguilar, *Improving the Quality and Outcomes of Retirement Planning* (Nov. 3, 2011), available at <http://www.sec.gov/news/speech/2011/spch110311laa.htm>.

[2] U.S. Securities and Exchange Commission, Office of the Investor Advocate, *Report on Objectives: Fiscal Year 2015* (June 30, 2014), available at <http://www.sec.gov/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2015.pdf>.

[3] *Id.* at pp. 12-13.

[4] Investor Protection Trust, *Survey: More than 4 Out of 5 Experts Say Financial Abuse of Elderly is Getting Worse* (June 13, 2012), available at http://investorprotection.org/downloads/IPT_Elder_Fraud_Survey_News_Release_06-13-12.pdf.

[5] See *id.*

[6] Investor Protection Trust, *Survey: Elder Investment Fraud and Financial Exploitation*, pp. 3, 26 (June 15, 2010), available at http://www.investorprotection.org/downloads/EIFFE_Survey_Report.pdf.

[7] See U.S. Government Accountability Office, GAO-13-110, Report to Congressional Requesters, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, p. 5 (Nov. 2012), available at <http://www.gao.gov/assets/660/650074.pdf>.

[8] U.S. Department of Health and Human Services, Administration on Aging Administration for Community Living, *A Profile of Older Americans: 2012*, p. 1, available at http://www.aoa.gov/AoARoot/Aging_Statistics/Profile/2012/docs/2012profile.pdf.

[9] *Id.* Moreover, the size of the 65 and over age group is expected to more than double to 92 million by 2060. *Id.*

[10] U.S. Department of Health and Human Services, Administration for Community Living, *Leadership*, p. 1, available at http://www.acl.gov/About_ACL/Organization/Leadership.aspx.

[11] See AllGov, *Assistant Secretary for Aging: Who is Kathy Greenlee?* (July 28, 2009) (noting that, prior to joining the Department of Health and Human Services, Assistant Secretary Greenlee served as Secretary for the Kansas Department on Aging and as Kansas's Long Term Care Ombudsman), available at <http://www.allgov.com/news/appointments-and-resignations/assistant-secretary-for-aging-who-is-kathy-greenlee?news=839271>.

[12] The Elder Justice Act designates the Secretary of the U.S. Department of Health and Human Services as the Chair of the Elder Justice Coordinating Council. 42 U.S.C. §1397k(d). On June 4, 2012, the Secretary delegated to the Administrator for the Administration for Community Living and the Assistant Secretary for Aging the authority to oversee and administer the operations of the Elder Justice Coordinating Council. U.S. Department of Health and Human Services, Administration for Community Living, Delegation of Authority (June 4, 2012), 79 Fed. Reg. 37412, 37412-13 (June 21, 2012).

[13] Elder Justice Act of 2009, Pub. L. No. 111-148, § 2021, 124 Stat. 119, 786-87 (codified at 42 U.S.C. § 1397k).

[14] U.S. Department of Health and Human Services, Administration on Aging, Elder Justice Coordinating Council, available at http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/Index.aspx.

[15] 42 U.S.C. § 1397k(f)(1).

[16] U.S. Government Accountability Office, GAO-11-208, Report to the Chairman, Special Committee on Aging, U.S. Senate, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, p. 34 (Mar. 2011), available at <http://www.gao.gov/assets/320/316224.pdf>. The GAO report noted a number of pressing needs in the elder justice area, particularly the need for a definitive set of national priorities. See *id.* at p. 31. According to the report, other needs in this area include a national elder abuse training curriculum, guidelines for effective interventions and practices, a study to measure the nationwide incidence of elder abuse, and a national system for collecting and disseminating data on elder abuse. The EJCC can play an important role in addressing these shortcomings by devising and implementing a concerted federal response, and by helping to establish a comprehensive multidisciplinary system for elder justice. *Id.* at pp. 31-36.

[17] This need for cooperation and participation was noted in the November 2012 report by the U.S. Government Accountability Office ("GAO") calling for a national strategy to address elder financial exploitation. See *supra* note 6. The GAO's review focused on several federal agencies, including the SEC, and concluded, "[a] clearly articulated national strategy is needed to coordinate and optimize ... federal efforts to effectively prevent and respond to elder financial exploitation...." *Id.* at pp. 6, 38. Elder financial exploitation is a problem of shifting complexity, and one that continues to grow. See *id.* at p. 38. A cohesive and coordinated approach by federal agencies would ensure that, among other things, gaps in nationwide efforts are identified, resources are effectively allocated, and federal agencies are held accountable for meeting their responsibilities. See *id.* The GAO concluded its report by recommending that the EJCC develop a national strategy for combating the problem of elder financial exploitation. See *id.* at p. 39. A subsequent GAO report, issued in July 2013, echoed the same conclusion and called for more federal coordination and public awareness in addressing elder abuse. See U.S. Government Accountability Office, GAO-13-498, Report to Congressional Requesters, *Elder Justice: More Federal Coordination and Public Awareness Needed*, (July 2013), available at <http://www.gao.gov/assets/660/655820.pdf>. In addition, the report concluded that, "[u]ntil common objectives and outcomes for federal elder justice programs are defined, agencies may be working at cross purposes." *Id.* at p. 30.

[18] For example, at its inaugural meeting, the EJCC received testimony and white papers from a number of nationally recognized experts regarding issues of paramount importance to elder abuse. See Elder Justice Coordinating Council Meeting (Oct. 11, 2012), available at http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/Meetings/2012_10_11.aspx (for a list of the experts who testified at the inaugural meeting, see *Agenda, Elder Justice Coordinating Council Meeting* (Oct. 11, 2012), available at

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/Meetings/docs/Agenda%20Oct%2011.pdf). The testimony was grouped into four areas: (i) financial exploitation of elders; (ii) public policy and awareness of elder abuse; (iii) enhancing the response to elder abuse; and (iv) advancing research on elder abuse. Videos and transcripts of the testimony can be found on the Administration on Aging's website, at the following address:

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/Meetings/2012_10_11.aspx. Copies of the white papers can be found on the Administration on Aging's website, at the following address:

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/Meetings/2012_10_11.aspx. These experts recommended a set of priorities for federal agencies, suggested new ways that federal agencies could coordinate their activities while also leveraging existing resources to combat elder abuse, and emphasized the need for additional education and research. See, e.g., William F. Benson & Kathleen Quinn, *Federal Responses Needed to Meet the Significant Challenges Facing State and Local Adult Protective Services*, National Adult Protective Services Association (Oct. 31, 2012), available at http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Benson_White_Paper.pdf; Bob Blancato, *The Elder Justice Act: Coordinating Federal Agencies' Response to Elder Mistreatment*, Elder Justice Coalition (Oct. 31, 2012), available at

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Blancato_White_Paper.pdf; Marie-Therese Connolly, *An Orchard of Low Hanging Fruit: Weaving Elder Justice Measures into Existing Federal Activities* (Oct. 31, 2012), available at

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Connolly_white_paper.pdf; Robert B. Wallace, MD, MSc, *Research Directions in Elder Mistreatment Research*, Departments of Epidemiology and Internal Medicine, College of Public Health, University of Iowa, available at

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Wallace_White_Paper.pdf. One of these experts indicated that the financial services industry could play a singular role in detecting and preventing the financial exploitation of senior citizens. See BITS Financial Services Roundtable, *Protecting the Elderly from Financial Fraud and Exploitation*, pp. 2-3 (Nov. 2, 2012), available at http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Smocer_White_Paper.pdf.

[19] U.S. Department of Health and Human Services, Administration on Aging, Elder Justice Coordinating Council, *Eight (8) Recommendations for Increased Federal Involvement In Addressing Elder Abuse, Neglect and Exploitation*, available at

http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Eight_Recommendations_for_Increased_Federal_Involvement.pdf.

[20] *Id.*

[21] The SEC's Enforcement Division has worked to uncover and pursue claims against individuals who prey upon those most vulnerable to fraud, our senior citizens. In one recent case, the defendant, who ran a company that helped senior citizens find placement in care facilities, exploited his relationship with certain of his clients to draw them into a Ponzi scheme. *In the Matter of Richard D. Hicks*, Securities Exchange Act Release No. 71298 (Jan. 14, 2014), available at

<http://www.sec.gov/litigation/admin/2014/33-9511.pdf>. The defendant persuaded these clients to hand over portions of their retirement savings by promising them a high rate of return with little risk. The Enforcement Division stopped this individual's activities but, as is all too often the case, the defendant was unable to compensate his victims because he had already squandered their savings.

[22] The inability to obtain disgorgement from many fraudsters, among other things, makes the detection and prevention of elder financial exploitation of vital importance. Accordingly, the SEC's response to the financial exploitation of seniors involves the Office of Compliance Inspections and Examinations, or OCIE, which has focused on uncovering evidence of such exploitation. OCIE's National Examination Priorities for 2014 emphasize the importance of detecting affinity frauds targeting seniors, as well as the need to monitor closely the sale of higher risk financial products, such as variable annuities, to retired or elderly investors. U.S. Securities and Exchange Commission, National Exam Program, Office of Compliance Inspections and Examinations, *Examination Priorities for 2014*, pp. 5, 7,

(Jan. 9, 2014), available at <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf>. OCIE's 2014 priorities also focus on possible conflicts of interest by investment advisors and brokers involving the rollover of employer-sponsored 401(k) plans into higher cost investments, such as individual retirement accounts offered by the advisor or broker. *Id.* at p. 3.

[23] The SEC is also working to educate seniors and others about the heightened risks seniors face. The Commission's website includes a page devoted exclusively to the needs of seniors, which provides helpful information on how to avoid being the victim of financial fraud. See U.S. Securities and Exchange Commission website, *Seniors*, available at <http://investor.gov/seniors> (last visited July 3, 2014). The website provides educational materials regarding how seniors can protect themselves from investment scams, the types of questions seniors should ask before investing, and the important characteristics of investments commonly purchased by seniors, such as variable annuities.

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