

Senate Financial Institutions and Insurance Committee

January 25, 2017

Testimony in Opposition to Section 11

SENATE BILL No. 23

David Brant

Former Kansas Securities Commissioner (1996-2003)

Executive Vice President – Central National Bank

Thank you for this opportunity to express my opposition to SB 23 – Section 11 which would empower the Insurance Commissioner to appoint the state securities regulator.

As for my background: I am an attorney and for the first twelve years of my career I worked with cities and counties in issuing municipal bonds and I held both a Series 7 and a municipal principal license. I then served as the Securities Commissioner for seven years from April 1996 through June 2003. For the past thirteen years, I've been with Central National Bank which is a community bank based in Junction City. In my thirty year career, I've learned plenty about securities and banking regulation and I've had a good exposure to insurance regulation which I'll explain further.

A year ago, I met with and expressed my concerns to both the Securities and Insurance Commissioners, Josh Ney and Ken Selzer. I am adamantly opposed to Section 11 of this bill because of the potential risks of weakening consumer protection. It appears this proposal is a holdover from Aaron Jack who resigned as the Securities Commissioner in 2013 while he was raising campaign funds and preparing to run for Insurance Commissioner.

Government efficiency: Consolidation will result in modest savings.

I fully support efficiency in government when it is good public policy. I know firsthand as I helped with the merger of Consumer Credit with the Banking department in 1999. Among other benefits, that merger helped Kansas to combat unscrupulous out-of-state mortgage brokers. Let us be realistic and honest... there are some efficiencies to be gained by merging the Securities office with another agency, but the amount of cost savings will be modest. Also, please remember that Securities is a fee-funded (not General Fund) agency.

Consolidation of the state's regulatory agencies has been studied numerous times by Legislative Post Audit and I worked with an interim committee in the late 90's which studied consolidation. In a number of states, securities regulation is part of a larger agency. But listen carefully... it is the exception, and **not** a growing trend, for the elected Insurance Commissioner to control securities regulation. In my tenure, there were two states with Insurance controlling, Iowa and Montana, and I met with both of those Insurance regulators. Historically, if you look at statistics on securities enforcement actions, Iowa and Montana were not leaders. Whereas, Kansas has long had a national reputation for being tough in securities enforcement and criminal prosecution.

Regulatory coordination: Strong Functional Regulators best protect consumers.

Kansas consumers are best protected and the financial firms are best served by functional regulation with banking services overseen by bank regulators; investments subject to securities regulation; and insurance subject to insurance regulation. Among the functional regulators, the goals should be consumer protection through "reasonable" (not burdensome or duplicative) regulation.

Each functional regulator has a primary purpose and a unique “culture”: bank regulators examine the “safety and soundness” of a bank to protect depositors; insurance regulators examine the “solvency” of insurance companies and they investigate “insurance fraud” (fraud against insurance companies); and securities regulators combat “securities fraud” (investment fraud against consumers).

I’m not sure that everyone understands that the role of the Securities Commissioner is not regulatory busywork. Just more than a hundred years ago, the state of Kansas enacted the first “blue sky” law. As history records... some Kansans were losing their life’s savings as they were sold worthless stocks in fictitious companies. Unfortunately, even today, still too many Kansans become victims due to fraud, breach of fiduciary duty, an unsuitable investment, misrepresentations, and abusive sales practices. The Securities Commissioner is the “local cop on the beat” to handle complaints, to impose enforcement actions, and to bring criminal prosecution.

Here are two cases from my tenure which were heart-breaking: the first case was an 85-year-old Navy veteran who was duped into investing \$54,000 in an oil and gas scheme when he needed investment income to care for his bed-ridden wife who was suffering from Alzheimer’s disease. Eventually, the promoter was convicted of securities fraud and went to jail. In another case... a broker was convicted for selling bogus investments to his clients including an elderly couple from Herington who lost \$295,000. Please understand these cases did not involve collecting on an insurance policy. These were cases where the victims lost their retirement savings due to securities fraud. The state of Kansas was successful in helping these victims because we had strong securities laws, investigators with law enforcement experience, and attorneys with criminal prosecution authority.

Securities and Insurance regulators should coordinate and work together as needed.

During my tenure... there were cases of mutual concern to Securities and Insurance. In the late 90’s, we handled numerous complaints about investments in viatical settlements in life insurance policies taken out on patients with HIV/AIDS who were expected to die. Most of these cases involved fraud and misrepresentations and salesmen were getting paid high commissions to sell these high-risk unregistered investments.

In addition, complaints about variable annuities increased after the “dotcom stock bubble of 2000”. I still have copies of letters from victims. Some retirees had cashed out bank CDs or taken their pensions to buy variable annuities (“VA”) with high-commissions... and they didn’t realize that the variable products put their retirement savings at risk by investing in high-risk Internet stocks. That is... they didn’t realize the risk until they lost 35% or more of their savings when the Internet bubble burst. One agent tried to console a victim’s wife by assuring her that the VA guarantee would make up the loss if and when her husband would die.

I chaired a national committee of state securities regulators to study the problem... and we reached out to the National Association of Insurance Commissioners (NAIC) which also formed a committee. For over two years... we worked on trying to close the gap in state regulation over the sales practices of variable annuities and I attended NAIC conventions and met with state insurance regulators from across the country.

Insurance industry influence could weaken securities consumer protections.

The insurance industry has a powerful influence over state insurance regulation. The insurance industry and their agents can exercise influence most directly through campaign donations.

In a 2011 report to the recently-created Federal Insurance Office, the Consumer Federation of America wrote:

“There are four main reasons why state insurance commissioners rarely succeed in adequately protecting consumers: lack of authority, lack of will, lack of resources and lack of sufficient power to balance the overwhelming influence of the insurance industry at the state level.”

The most glaring example of insurance industry influence over state securities regulation is in regard to the sale of variable annuities. Variable annuities are “securities” under federal law... but the insurance industry has

succeeded in keeping variable annuities defined as “insurance” under state law. This contradiction does not benefit consumers. Kansans who invest in variable products and in mutual funds both deserve the same quality of state protection in the regulation of agents selling these virtually identical forms of investments – not a disjointed regulatory structure devised through the exercise of insurance industry influence. And the irony now is that some Insurance Commissioners, such as Kansas, have added some suitability guidelines (which are duplicative of securities regulations) over VA sales to seniors in an effort to appear as if insurance regulators have taken action. However the important question should be “what’s best for consumer protection?” And the answer is functional regulation.

Kansans don’t want their securities regulator to become a puppet of the insurance industry.

I ask the Legislature to consider the victims of securities fraud and to do what’s best for Kansas consumers. Please be cautious in regard to efficiency or consolidation for the sake of modest cost savings... as Section 11 in Senate Bill 23 could result in weaker securities regulation.

Thank you for your consideration.



David Brant
800 SE Quincy Street
Topeka, Kansas 66612
dbrant@centralnational.com
785.231.1408 office

Articles and references:

Carpenter, Tim. "Former Kan. Securities Chief: Crash of a Political Career." *The Topeka Capital Journal* 7 May 2013: 1. *Cjonline.com*. 7 May 2013. Web.

Payne, Will. "How Kansas Drove Out a Set of Thieves." *The Saturday Evening Post* [Philadelphia] 2 Dec. 1911. Print.

Wenske, Paul. "Surprised Investors Find Their Nest Eggs Are Variable and Vanishing." *The Kansas City Star* 25 May 2003. Print.

Hansard, Sara. "Battle Lines Being Drawn in Annuity Sales Skirmish." *Investment News* 6.11 (March 18, 2002): 3. Print.

Brant, David, and Royce Griffin. "What's Reasonable for Investor Protection and for Agents Selling Variable Annuities?" *The Journal of Investment Compliance* 3.4 (Spring 2003). Print.

Hunter, J. Robert. "Consumer Protection Needs in Insurance Regulation." *Statement before the Federal Information Office*, December 9, 2011. *consumerfed.org*. Consumer Federation of America. Web.

Gurwitt, Rob. "The Riskiest Business." *Governing* (2001). *Governing.com*. 19 Mar. 2001. Web.

Former Kan. securities chief: Crash of a political career

Agency overhaul runs afoul; critics say Jack abused his authority

Posted: May 7, 2013 - 9:22pm

By Tim Carpenter

timothy.carpenter@cjonline.com

Up-and-coming tea party conservative Aaron Jack parlayed the election of Republican Sam Brownback as governor into his appointment as top administrator at the Kansas Securities Commission.

Jack's GOP pedigree, legal education and decade in the financial industry landed him a plum job leading the agency responsible for protecting the interests of Kansans placing faith in investment advisers.

He said his objective was to break the commission's slothful, unprofessional culture. Employees unwilling to be "rehabilitated" had to go, he said. To that end, Jack presided over the firing, resignation or retirement of 70 percent of his staff.

"We had attorneys who were literally not qualified to go to court," Jack said.

Jack burnished credentials as a foe of regulation by producing an enforcement record half as robust as predecessors. He authorized an agency-funded \$566,000 marketing blitz featuring himself. With airwaves crackling with Jack's voice, he launched a campaign for Kansas insurance commissioner.

While Jack's engine of political advancement generated momentum, criticism of his methods began to percolate. Apprehension about Jack's conduct reached the highest level of state government.

"As a pattern of unprofessional behavior and disturbing employment practices emerged under Commissioner Jack, I demanded immediate changes," said Landon Fulmer, Brownback's chief of staff. "As a part of those changes, Commissioner Jack was given the opportunity to either resign immediately or be fired, and he chose to resign."

Jack's course correction Feb. 12 pushed his campaign for insurance commissioner into a three-month death spiral. On Monday, for the first time, Jack confirmed he would withdraw from the race.

Jack's political reversal came as no surprise to some who worked with him. A bipartisan reaction: What took so long?

"They've turned the agency into a dysfunctional pro-industry political bastion," said securities examiner David Ruhnke, whose 23-year career at the commission ended under Jack. "One of the best securities agencies in the country has been wiped out."



HOW KANSAS DROVE OUT A SET OF THIEVES



NOT less than a hundred million dollars, in the opinion of those most competent to judge, is stolen from the people in this country every year by the sale of fake and wildcat "securities." The Post-Office Department puts the sum rather higher. Virtually every one of the swindling concerns that prey upon ignorance and credulity to this staggering extent is "duly incorporated" and possesses a charter under the great seal of some sovereign state, qualifying it to go out and rob as many suckers as it can find.

Though nearly every state and territory, with the greatest good nature in the world, will incorporate any sort of rank swindle that comes along, only one state, so far as I know, seriously attempts to protect its citizens from these stock-peddling pirates.

In every state, of course, a purchaser of fake stock may sue for the recovery of his money—which is about as satisfactory as the privilege of suing a pickpocket for the recovery of your watch. There are also general statutes against obtaining money under false pretenses; but nine times out of ten the fake stock scheme is framed up with sufficient ingenuity to make conviction extremely doubtful, and almost always the victim simply pockets his loss. Generally speaking, it's as safe as taking candy from unprotected infants.

With the exception that I am about to describe, the Post-Office Department is the only effectual barrier between credulous people with money to lose and harpies with wildcat stocks to sell. If the fraud involves use of the mails, and a complaint is made to the Post-Office Department, prosecution will follow—and most of the prosecutions end in conviction; but, unless the fraud does involve use of the mails, the Department has no power to intervene; and in any event it cannot intervene until the swindling operation is actually under way—which almost always means not until a great many people have lost their money.

A state official recently remarked: "Of course ninety-nine per cent of the mining companies that go round peddling stock are either rank frauds or mere wildcat prospects in which the investor is pretty certain to lose his money. Every intelligent person knows that; but if people are foolish enough to buy such stuff I don't see how you are going to keep them from doing it."

That is the prevailing view. It is, of course, exactly equivalent to saying: "Why, if a merchant is silly enough to take a counterfeit bill let him stand the loss. Why should we try to protect him by passing laws to prevent counterfeiting? If a bank teller doesn't know any better than to pay a forged check why should the state try to save him from the consequences of his own blundering?"

In Kansas they have taken an entirely different view of this fake stock swindle. They have not only done something about it, but have virtually stopped it so far as the limited power of any single state can accomplish that end.

The credit for this Kansas innovation belongs mainly to J. N. Dolley, state bank commissioner. Mr. Dolley stands, I should judge, rather better than six feet and possesses an adequate chest development. His shoulders are as big with his coat off—and it is rather apt to be off in business hours—as with it on. He has a chin. No person with any skill in reading physiognomy would pick him out as a promising subject with whom to stir up gratuitous trouble.

By Will Payne

would hear of one of these swindles—that somebody had lost his money through buying stock in a fake mine, or in a Central American plantation that was nine parts imagination, or in some wonderful investment company that was going to pay forty per cent dividends. Sometimes I knew the man or woman who had been swindled. Of course I thought it was an outrage, but I don't know as it occurred to me then that there was any way to stop it.

"After I was appointed bank commissioner I heard more reports and complaints of fake stock swindles than ever. The banks hear of such cases because usually the victim draws money out of a bank to buy his wildcat mining shares or his stock in a lunar oil company, or whatever it may be. Kansas has been prosperous of late years, you know; the people have accumulated money. If you go back fifteen years you will see that all the state banks in Kansas then held less than fourteen million dollars of the people's deposits. Now they hold ninety millions and the national banks of the state sixty millions. That's fat picking.

"So reports of these stock swindles drifted in to me. I received complaints and inquiries direct from people who had been swindled, wanting me to look up the company and see if they couldn't get their money back—after they had parted with the money! An old farmer I used to know came up to Topeka to see me. He'd sold his Kansas farm and had the money in the bank. A couple of smooth gentlemen came along and persuaded him to invest the money in developing a magnificent tract in New Mexico that was just about to be irrigated. He invested; and, after waiting patiently a good many months for the promised returns, he came up to see me. I advised him to invest some more money in a railroad ticket and go down and look at his land personally. He did go down there. He got off at the railroad station that was to be their shipping point and walked half a day through the sagebrush, and then climbed some bare, mountainous hills until his wind gave out. The land he'd invested in was still higher up. The only way to irrigate it would be from the moon. That was only one instance out of a good many. There was no law to reach the sharks—except, of course, that a man might sue them or prosecute them for getting money under false pretenses; but a man couldn't do either until after he had lost his money. So far as the law went there seemed nothing to do by way of protecting him from losing his money; but I made up my mind I'd do something."

I may mention here that doing something in this connection was no part of the official duty of the state bank commissioner. So far as law and custom went his duties consisted in supervising the state banks. There are—or were at the date of the last annual report—eight hundred and sixty-two of them scattered throughout the state, holding a hundred and twenty-five million dollars of assets. To supervise them under the law is a fairly full-sized man's job. I may also mention that Kansas does not specially encourage her bank commissioner to go outside of his official duties for the purpose of discovering extra burdens to assume, for she pays him only the very modest salary of twenty-five hundred dollars a year. Mr. Dolley did not touch upon these phases of the situation. Evidently, however, there is a well-defined theory at Topeka

Surprised investors find their nest eggs are **VARIABLE AND VANISHING**



By PAUL WENSKE
The Kansas City Star

After putting two children through college, Tim and Kay Plumlee still expected a comfortable retirement with help from \$126,000 remaining in Tim's profit-sharing plan at work.

But when a broker told them how they could boost that tidy sum with a guaranteed 6 percent annual return by investing in a variable annuity, the Plumlees, of Ulysses, Kan., jumped at what seemed a profitable, risk-free investment.

"It seemed too good to be true," Kay Plumlee said.

Two years later their retirement nest egg has dwindled to \$60,000. The couple, who are in their 60s, have put on hold their dreams of fixing up their house and taking a cruise.

"That was our savings," she said.

William Stapp, 58, of Overland Park lost even more. He placed his \$433,000 Hallmark pension in a variable annuity in 2000; that investment is now worth \$190,000.

To be sure, many people have lost money in the stock market in the past two years. And insurance industry officials say the market's collapse is the real culprit here.

But regulators say many aggressive insurance agents and brokers oversold thousands of people such as the Plumlees on the hazy virtues of variable annuities, often described as mutual funds wrapped in an insurance policy. They say consumers were not warned of risks or told that the complex contracts carry large commissions, hidden fees and steep surrender

See FINANCES, A-9

PROMISING PROFIT — BUT FOR WHOM?

Glossy promotional materials — some aimed at consumers — tout the benefits of such investments. But regulators say consumer complaints about variable annuities far outpace other securities complaints.

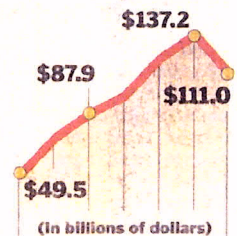
WHAT IS A VARIABLE ANNUITY?

Insurance companies sell annuities through agents and brokers. You can buy them with a single payment or a series of payments. The insurance company contracts to make periodic payments to you, beginning either immediately or in the future.

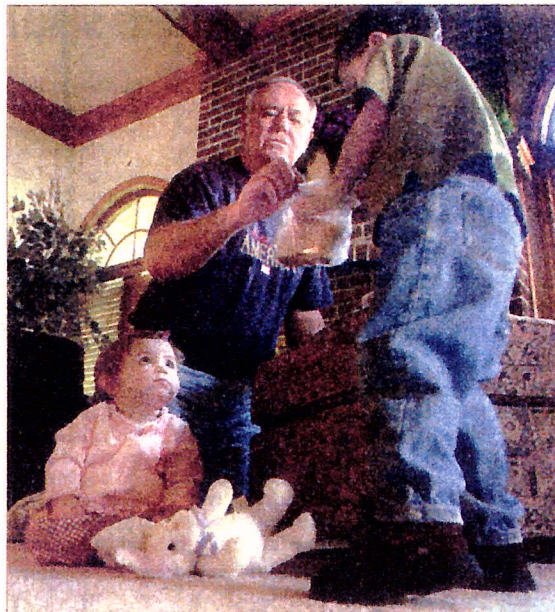
With a variable annuity, the insurance company puts your money in subaccounts, which are often invested in mutual funds, which in turn invest in stocks.

Popular investments

Sales of variable annuities took off from 1995 to 2000 as many baby boomers rolled pension plans into these investments during the stock market's heyday.



(In billions of dollars)
Source: LIMRA International
The Kansas City Star



JEFF ROBERSON/The Kansas City Star

Retirement enabled William Stapp to spend time with grandchildren Macy and Parker, but much of the money he had planned to use for that retirement was lost in a variable annuity.



BEFORE YOU BUY

The Securities and Exchange Commission and investment experts offer these tips:

- **Be sure** of your long-term goals and how long you are willing to tie up your money without paying surrender charges.
- **Be aware** that taking money already in a tax-deferred plan and rolling it into a variable annuity carries no tax advantage.
- **Understand** that your account value may decrease if the underlying mutual fund performs badly.
- **Ask your** agent or broker about fees and expenses.
- **Make your** priorities and limits clear.
- **If a guaranteed** return is promised, get in writing exactly what that means.
- **Be aware** that if your agent or broker wants to move you from one annuity to another, it may be because of another commission.

■ *State securities regulators want oversight authority*

Battle lines being drawn in annuity sales skirmish

By Sara Hansard

State securities regulators, backed by the Financial Planning Association and consumer groups, are pushing to regulate sales of variable-insurance products, and license the agents who sell them.

The insurance industry and life insurance agents oppose the proposal, saying it would create a duplicate layer of regulation without evidence of a significant number of problems with variable-product sales.

While the battle lines have been drawn, hostilities remain a long way off. Assuming the proposal wins approval, supporters still face the time-consuming process of lobbying each state to adopt the model law.

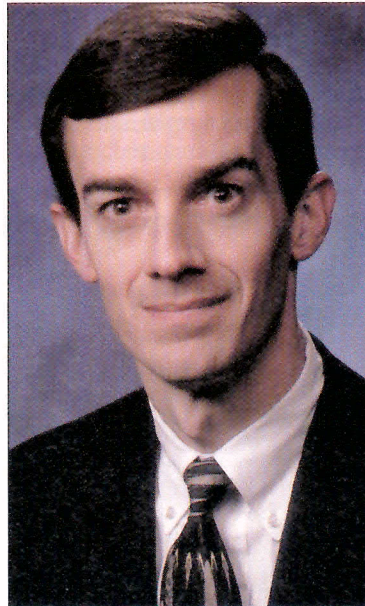
NUMEROUS PROBLEMS

Last Friday, the North American Securities Administrators Association Inc. in Washington held a round table to discuss the issue. The NASAA is pushing a proposal by the National Conference of Commissioners on Uniform State Laws in Chicago — a model law that the commissioners' group is expected to vote on this summer.

J.J. MacNab, an independent insurance analyst who operates MacNab Consulting of Bethesda, Md., says she sees numerous problems with the sale of variable products.

She says many elderly variable-annuity investors write to her, and she also consults in cases that are litigated.

The biggest problem, she says, is churning. "The insurance compa-



DAVID BRANT: *Wants federal and state laws to be consistent.*

nies are making it easier and easier by coming out with bonus rates," says Ms. MacNab.

Investors who buy the controversial bonus annuities get upfront bonuses of as much as 8% of the investment, but the contracts typically have higher mortality and other charges, higher surrender fees and longer non-surrender periods.

Another problem Ms. MacNab encounters is the selling of tax-deferred annuities inside other tax-deferred retirement plans, which raises fees without conferring any additional tax benefit. Elderly investors also are being put into investments that are inappropriately risky, she says.

The problems have surfaced over the last two years as the market has declined. "I'm not sure abuse is up," she says. "People are just now finding" the problems.

David Brant, the Kansas securities commissioner who leads the NASAA's project group on variable annuities, says the main reason to adopt the commissioners' proposal is to make federal and state law consistent. Variable products are regulated as securities at the federal level. "It's time to get both sets of law consistent," he says.

"Historically, securities commissioners can be more active on suspensions and licensing actions" than state insurance regulators, Mr. Brant says. "It seems to be a slower process on the insurance regulation side."

NASD Regulation Inc. of Washington, the regulatory arm of the National Association of Securities Dealers, also supports defining variable products as securities.

ENFORCEMENT

After conducting special exams focused on the sale of variable contracts in 1999 and 2000, NASDR brought eight enforcement actions last year stemming from improper marketing and sale of variable annuities. Monetary sanctions totaled more than \$250,000.

"Variable products' sales-related problems parallel those of mutual funds and other securities," Mary Schapiro, NASDR's president, wrote last year in supporting the commissioners' legislation before the

Continued on Page 25

Functional Regulation in the 21st Century: *What's Reasonable for Investor Protection and for Agents Selling Variable Annuities?*

DAVID BRANT AND ROYCE GRIFFIN

DAVID BRANT
is Kansas Securities
Commissioner.

ROYCE GRIFFIN
is general counsel,
North American Securities
Administrators Association,
Inc. in Washington, DC.
rg@nasaa.org

*The North American
Securities Administrators
Association (NASAA),
organized in 1919, is the
oldest international organi-
zation devoted to investor
protection. NASAA
includes the securities
administrators in the
50 states, the District of
Columbia, Canada,
Mexico, and Puerto Rico.*

If complaints about an agent's sale of "ABC" mutual fund are handled by the state securities commissioner... Why should complaints about the same agent's sale of a variable annuity invested in "ABC" mutual fund be handled exclusively by the state insurance commissioner? Are state laws enacted 35 years ago still relevant today when most agents who sell variable annuities are also licensed to sell mutual funds?

These questions and others are being discussed within the context of functional regulation and its application to agents who sell variable annuities and variable life insurance. The National Conference of Commissioners on Uniform State Laws (NCCUSL) has drafted the new Uniform Securities Act (2002) which allows the option to define variable products as securities under state law, while exempting such products from state securities registration.

One of the goals of NCCUSL is to make state laws consistent with federal law and to allow the states the option to provide for state functional regulation of agents selling variable products, since variable annuities and variable life insurance are hybrid products that are marketed as investments.

The purpose of this article is to provide background information about the NCCUSL proposal and to address a number of concerns raised by the insurance industry. The North American Securities Administrators Association (NASAA) has been working with the National Association of Insurance Commis-

sioners (NAIC) to share information and to discuss these issues.

THE EVOLUTION OF "FUNCTIONAL REGULATION"

The collapse of the stock market in 1929 and the ensuing economic hard times of the Great Depression generated a distrust of large, opaque financial institutions exercising unfettered financial discretion in the markets. In addition to stimulating the creation of the Securities and Exchange Commission (SEC) and the passage of the Securities Act of 1933 and the Exchange Act of 1934, these events also resulted in passage of the Banking Act of 1933 (Glass-Steagall). The primary intended effect of Glass-Steagall was to separate commercial banking from investment banking and to prevent misjudgments by the latter again causing the collapse of the former.

So with the creation of the SEC, the enactment of Glass-Steagall, and the 1945 McCarran-Ferguson Act awarding custody of the insurance industry to the state insurance commissions, our financial institutions had distinct roles to play and each their own band of regulators with expertise and skills to oversee their activities. The U.S. had developed a structure that carved out authorized activities that each industry—banking, insurance, and securities—could pursue without the worry of competition from the others, and a friendly regulatory environment wherein at least



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

**STATEMENT OF
J. ROBERT HUNTER, DIRECTOR OF INSURANCE**

**BEFORE THE
FEDERAL INSURANCE OFFICE**

**REGARDING
CONSUMER PROTECTION NEEDS IN INSURANCE REGULATION**

DECEMBER 9, 2011

Good morning. I am Bob Hunter, Director of Insurance for the Consumer Federation of America (CFA). I appreciate the opportunity to discuss with you this morning what the Federal Insurance Office (FIO) can do to improve insurance regulation for consumers. I request that you please put my written remarks in the record of this conference.

Consumers are facing far-reaching problems in the property/casualty insurance market today. Today I will touch on several concerns: (1) the unaffordability of auto insurance for many low- to moderate-income consumers, caused in part by insurers' use of rating and classifications' practices that have a disparate impact; (2) the continuing adverse impact on consumers and competition of the McCarran-Ferguson Act's antitrust exemption for insurers; (3) the use of unregulated "black boxes" by insurers to price policies and pay claims and, (4) the unjustifiably high cost of credit-related insurance caused by market failures and insurer "kickbacks" paid to lenders.

As you listen to insurance representatives talk about the need for regulatory uniformity this morning, I urge you to ask them what they really mean. Words like "modernization," "excessiveness," and "outdated" are often dangerous as used by insurers, because their end-goal is often deregulation that does not adequately protect consumers. We vigorously disagree. Our research shows that strong regulation significantly improves results for consumers and increases competition. This does not mean that consumer organizations support regulatory inefficiency, as consumers pay for that. But any move toward regulatory uniformity for consumer protection must be at the highest levels, not a low level. In fact, we have noticed that insurer' enthusiasm for uniformity seems to disappear when the discussion involves raising standards to the level of states like California. We believe a strong case exists for consumer protections, including prior approval of classes and rates.

STATE REGULATION IS INADEQUATE TO PROTECT CONSUMERS

The Riskiest Business

Under attack by the feds, the insurance companies they regulate and the consumers they're supposed to protect, state insurance commissioners are running out of friends.

BY ROB GURWITT | MARCH 2001

He set up dummy corporations and Swiss bank accounts. He used a Rolodex's worth of aliases. For nine years during the 1990s, Martin Frankel looted \$200 million from insurance companies he owned and whose funds he was supposed to be investing. When Frankel absconded with his ill-gotten gains, the international manhunt for him became one of the biggest financial stories of 1999.

In an effort to figure out how he'd been able to get away with a crime that was so huge and affected insurance carriers in at least five different states, the U.S. Congress asked the General Accounting Office to investigate. The GAO's report, issued last fall, pointed its finger at the system that regulates insurers all across the country: the 51 insurance commissioners in the states and the District of Columbia. Weaknesses in some insurance departments, as well as at the National Association of Insurance Commissioners, had, the report said, allowed Frankel's activities to go undetected for nearly a decade. "We observed repeated instances of inadequate tools, policies, procedures and practices," the federal analysts wrote, "as well as a lack of information-sharing among different regulators, within and outside the insurance industry."

The need for tightening state oversight could not have been stated more clearly, yet there was really only one response the state insurance departments could give to the GAO: Take a number.

State insurance commissioners are under fire from every direction at the moment. Washington is intrigued with the idea of junking the entire structure of state insurance oversight and switching to a federal regulatory system. Powerful companies see state regulation as slow and antiquated. The Frankel case tarnished their record as guardians of the public good, as did lawsuits that reveal questionable practices by insurers that regulators had nothing to do with uncovering. Meanwhile, they are scrambling to respond to changes in the industry wrought by globalization and the passage in 1999 of the federal Financial Services Modernization Act, which broke down legal barriers between banking, securities and insurance. And they are trying to balance all these pressures while grappling with inadequate resources and state legislatures that seem, at times, intent on undercutting them.