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TRIAL LAWYERS

January 23, 2017

Senator Jeff Longbine, Chairman
Financial Institutions and Insurance Committee
Kansas Statehouse, Room 341-E
300 SW 10th Street
Topeka, Kansas 66612
E-mail: *Jeff.Longbine@senate.ks.gov*

Re: Opposition to Senate Bill 23

Dear Senator Longbine:

Thank you for this opportunity to express my opposition to Senate Bill 23, which would empower the Insurance Commissioner to appoint the state securities regulator.

As for my background, I am an attorney in private practice and my practice is focused on representing defrauded investors. At the beginning of my legal career, I was an associate and partner in a large law firm in Kansas City, and taught securities law at Washburn law school. I have represented investors in securities fraud litigation and arbitration for over twenty five years. I served on the advisory committee to the Securities Commissioner for four years and was President of the Public Investors Arbitration Bar Association, the national association of attorneys who represent defrauded investors.

I write in opposition to Senate Bill 23, a bill that I believe would, if passed, result in no savings to Kansas and would consolidate two disparate state commissions which enforce very different laws and have very different cultures and approaches.

My clients are victims of securities fraud—usually people who have been duped by securities sales people and have lost their life savings, people whose accounts have been "churned" to generate large commissions, or trust accounts or not for profits that have been sold very risky investments that have failed. Unfortunately, there have been some serious Ponzi schemes that have affected Kansans, in which they have lost most of their savings. The perpetrators paid "interest" to old investors from the "new investors." There are also cases in which brokers have sold their own stock holdings to their clients when the stock was about to collapse—causing their clients to lose much of their retirement savings. These are serious cases with life-altering consequences. Some of my clients have faced eviction, have not been able to afford medicines, and have had to work at Walmart or in low paying jobs during their retirement years. In addition, I have been appointed by judges to represent groups of investors who have all been defrauded as shareholders of corporations.

I have found the Kansas Securities Commissioner's office to be professional and diligent in its approach to potential securities violations that I have reported to it. Many times people cannot afford an attorney, or there is no money from which to recover their losses. In those circumstances, I have referred them to the Kansas Securities Commissioner. The Commissioner's office has been diligent in investigating these frauds. They have worked with the local district attorney's offices to prosecute these con men and women so that the wrongdoer cannot continue to fleece people. A recent case in Wichita involving a securities broker is a good example of this: he had taken funds from a large annuity he had sold to his in-laws without their knowledge. He also had taken money from other customers by asking that they make checks payable to him, which he said he would deposit with the brokerage firm. He kept their money. Thanks to the work done by the Kansas Securities Commission staff, working in conjunction with the local district attorney, he is now in jail. A similar situation occurred in Kansas City recently. A woman running a cleaning business convinced a stockbroker to help her raise money to buy a historic building in downtown Kansas City. He convinced his clients to take money from their IRA's in exchange for short term promissory notes. Of course, the notes were not repaid. Again, the Kansas Securities Commission staff worked with federal prosecutors to prosecute her because she had been selling securities throughout the Midwest.

The securities commissioner's office also is a gatekeeper. It regulates which securities can be offered to Kansans, and licenses the people who can sell securities to Kansans. Kansas was the first state in the country to pass a "blue sky" law. It did so after a major bond scandal which caused many Kansans to lose their savings in bonds with no assets behind them. Unlike the federal securities laws, which are based on the concept of "full disclosure", the Kansas securities statute looks at the actual security to be sold and determines whether or not it should be allowed to be sold in Kansas. Securities must either be registered for sale in Kansas, or fall under one of the registration exemptions under the Kansas statute. In addition, only people who pass exams, have no previous criminal convictions of a serious nature, and have high ethical standards can obtain a license from the Kansas securities commission to sell securities to Kansans. This is an important protection for Kansans. This gatekeeper function has prevented some unscrupulous brokers from the "hotbeds" of financial fraud, such as Boca Raton and Salt Lake City, from calling potential investors in Kansans. I was once told by a Kansas securities commissioner that when they raided a so-called "penny stock firm" in Missouri, their investigators found a note on the wall "DO NOT CALL ANYONE IN KANSAS." Kansas has been a bellwether state in passing and enforcing tough securities laws to prevent its citizens from being defrauded.

I believe it would be a mistake for the Kansas Securities Commission to operate under the aegis of the Kansas Insurance Commission. Unlike the securities office, the insurance office:

1. Enforces only state law. There is no federal statute that regulates insurance. It is only state regulated. Therefore, the people working in the Insurance Commissioner's office are only focused on Kansas law. The Securities Commission, on the other hand, often works with the SEC, and with the Financial Industry Regulatory Agency ("FINRA") in regulating securities sales and sales people under both the state and federal regulatory structure and laws. Merrill Lynch, Goldman Sachs, Morgan Stanley, Citibank, etc., are enormous companies operating nationwide. They have immense assets and it is important that the Kansas regulator work hand-in-hand with federal regulators to try to ensure that they do not defraud Kansans. Frauds uncovered by one state's regulators are shared with other state's regulators. This coordination is the only effective way of trying to protect investors.

2. The applicable state law is very different in the insurance area. The anti-fraud provisions that are the heart of the Kansas Uniform Securities Act do not exist as to insurance. The Kansas Insurance Commissioner, therefore, while it can address complaints by people about insurance sales practices, largely works to ensure that insurance companies and products are approved for sale in the state. The “mentality” of the office is not to prevent unscrupulous brokers from convincing people to part with their life savings in investment products. Rather, it is to investigate cases of fraud by policyholders who might be attempting to recover under an insurance policy by defrauding the insurance company. Solvency of insurance companies is a paramount mandate of the Insurance Commissioner. Therefore, the “mind-set” of the two offices is very different.

The Kansas Securities Commission is self-supporting and every year generates revenue for the state treasury. It needs its investigators and staff attorneys to be constantly auditing branches of large brokerage firms, reviewing prospectuses and private placement memoranda. In doing so, a revenue stream is created. The industry is wealthy, and the fees assessed it for the privilege of doing business in the state are simply a cost of doing business. I have heard no complaints by the industry as to these fees. Any diminution in the securities office’s resources would, in fact, cost the state money. Simply looked at as a business proposition, money spent funding staff people for the Securities Commissioner’s office is money well spent. It is a profit center. The fines, fees and registration fees from the enormously profitable securities business support the consumer protection efforts by the Securities Commission.

With an aging population, Kansas needs more, not less, investor protection. This can be funded by its robust enforcement and regulation activities of the Kansas Securities Commissioner’s office. I believe that this would be jeopardized by consolidation and that any cost savings would be meager and ill-advised.

Thank you for your consideration. I regret that I will not be able to appear in person, but would be happy to discuss these issues with you at your convenience.

Sincerely,

/s/Diane A. Nygaard

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DAN/lp

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