Written Testimony of

John Morgan
Securities Commissioner
State Securities Board

Interim Committee Charge 3

Before the
Texas House Committee on Investments and Financial Services
March 29, 2016

On behalf of the State Securities Board, I am pleased to provide information to the House Investments and Financial Services Committee relating to one of the Committee's interim charges:

> *Charge 3:*
> *"Evaluate what policies are currently in place to prevent the financial exploitation and financial abuse of aging Texans, and determine what changes need to be made to strengthen protections for this vulnerable population".*

Background

The State Securities Board is charged with administering the Texas Securities Act.[1] The Act includes comprehensive provisions designed to protect the investing public -- including registration of securities, registration of firms and individuals selling securities or rendering investment advice, inspections of registered entities, and administrative, civil, and criminal enforcement authority.

Texas is an exceptionally large and vibrant market for legitimate businesses seeking to raise capital in the state. Unfortunately it is also a large target for promoters of fraudulent investment schemes and seniors are often the victims. The accumulated savings of seniors appears to place them at a greater risk for financial fraud. The effect of this fraud on this group can be particularly devastating because they often lack time and the corresponding earnings capability necessary to fully recover from substantial losses of their life savings.

Taking steps to help protect older Texans from financial exploitation assumes added importance when viewed in the context the changing population. Published estimates indicate that each day an average of 10,000 Americans reach retirement age. Like the U.S. population as a whole, the number of Texas seniors is increasing rapidly. From

---

[1] The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-44. (West 2010 & Supp. 2015).

2010 to 2050, the number of Texans over 65 years of age is projected to more than triple.[2]

The following are examples of enforcement actions in recent years involving seniors:

- A Dallas-area man convicted of operating a half-million dollar scheme to convince elderly women to liquidate securities held in their brokerage accounts and sell other assets in order to purchase annuities that did not exist. He was sentenced to a 40-year prison term.
- Seven Houston-area men convicted for their role in a company that orchestrated the sale of over $100 million in life settlement investments to 800 investors, many of them elderly. One of the executives at the company received a prison term of 60 years, another received a 45-year prison term. ·
- Two Harris County men convicted of defrauding individuals who invested nearly $30 million in securities purportedly backed by the death benefits of life insurance policies. Each was sentenced to a 10-year prison term.
- A Hays County man convicted of defrauding a woman over 90 years of age who invested $200,000 in non-existent oil and gas projects in North Dakota. He was sentenced to a 25-year prison term.
- A Hood County man sentenced to an 85-year prison term for the fraudulent sale of stock and promissory notes. An elderly woman lost more than $117,000.

Through close working relationships with other state and federal regulatory and law enforcement agencies, the Agency has also become aware of other types of fraudulent schemes targeting senior citizens that do not necessarily involve securities offerings.

In the context of regulatory oversight of registered firms, the State Securities Board closely examines sales practices and supervision controls to identify potential issues that may directly affect seniors and works cooperatively with other regulators in the region and throughout the nation to share information and develop regulatory initiatives to help protect this group of customers.

[2] Texas Population Projections, 2010 to 2050, Office of the State Demographer, November 2014

The Agency has also conducted outreach to senior groups throughout the state and maintains content on its website dedicated to seniors. Topics include:

- Senior self-defense: The questions seniors should ask when they are solicited to make an investment and resources to help them avoid fraudulent investment schemes;
- What investment professionals, family members, friends, and caregivers need to know to recognize the signs of diminished capacity and how to address it;
- A list of financial scams that are often target senior investors;
- The growing problem of misleading financial designations used by investment promoters, which can confuse investors; and
- The top state and federal resources for senior investors and their families.

Possible Changes to Strengthen Protections

The current efforts to help protect older Texans from financial exploitation are beneficial but there is more that could be done. The Agency has found that there are often warning signs in sales literature or the plan of business of fraudulent investment schemes that would be apparent to persons with expertise in finance or investments, such as registered dealers and investment advisers who manage and monitor their clients' financial assets. If these registered firms and individuals have a reasonable basis to believe that their clients' funds are about to be fraudulently dissipated, they may be better able to prevent harm if a clear mechanism exists to permit them to hold funds for a brief period of time, contact regulators, and avoid potential liability for doing so.

Securities regulators and representatives of the securities industry are currently discussing proposals to address this issue. These are set forth in Appendix A of this testimony. Several states have already passed legislation in this area (Appendix B). Other states have recently filed legislation based largely on the proposal by the North American Securities Administrators Association (Appendix C). Collectively, this information may provide useful models for any legislative changes determined to be appropriate in Texas.

The staff of the State Securities Board is available as a resource to the Committee to provide whatever assistance may be required in studying issues associated with elder financial abuse and the potential steps that may be taken to help better protect older Texans from financial exploitation.