The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

May 19, 2010

Ms. Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Room N-5655
United States Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: EBSA, 29 CFR 2550, RIN 1210-AB35, "Investment Advice -- Participants and Beneficiaries," Proposed Rule; and EBSA, 29 CFR Parts 2509, 2520, and 2550, RIN 1210-AB33, "Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans"

Dear Ms. Borzi:

This letter is in reference to two requests for public comments relating to 401(k) and similar retirement plans and Individual Retirement accounts ("IRAs") recently published by the U.S. Department of Labor: (1) Employee Benefits Security Administration, 29 CFR 2550, RIN 1210-AB35, "Investment Advice -- Participants and Beneficiaries," Proposed Rule; and (2) Employee Benefits Security Administration, 29 CFR Parts 2509, 2520, and 2550, RIN 1210-AB33, "Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans," Request for Information.

The Office of the Massachusetts Secretary of the Commonwealth enforces the Massachusetts Uniform Securities Act, and it includes the Massachusetts Securities Division. As such, the Secretary of the Commonwealth is the chief securities regulator for Massachusetts.

In my roles as a public official and securities regulator I hear regularly from members of the public who are seriously concerned about protecting their retirement savings and getting an appropriate return on those assets. As the Department is aware, for those households that have accumulated any retirement savings, the majority of such assets are 401(k)-type[1] and IRA accounts. Working people have typically sacrificed to accumulate retirement savings, so it is understandable that they will want to protect those assets, and will be wary about any changes in the rules relating to those accounts.

1) Investment Advice in Connection with Retirement Accounts. We are supportive of the Department's efforts to provide basic investment advice to the holders of retirement accounts.

Based on the kinds of misconduct we have seen securities salespeople engage in and the Securities Division's enforcement actions, we share the Department's concerns about the conflicts of interest that arise from the varying levels of compensation payable for different investment products. In many cases, bad sales and advisory practices are driven by the structure of compensation. Unfortunately, some brokers and advisers will recommend inappropriate products precisely because they generate high commissions and fees.

We urge that anyone providing such investment advice must always be held to the highest fiduciary standard. In the context of securities law, investment advisers have a fiduciary duty to their customers, not just the obligations of fair dealing and suitability that brokers currently must meet. It is particularly important to hold all advisers to a fiduciary standard when retirement assets are at stake, because most investors would not be able to recover from a loss of their retirement assets.

As the Department of Labor is undoubtedly aware, there are now proposals under active consideration to require that all financial professionals, both investment advisers and broker-dealers, be true fiduciaries to their customers. In many cases, customers do not have a clear understanding of whether they are dealing with an investment adviser or a broker-dealer or whether their financial professional is a fiduciary

My office supports initiatives to require financial professionals to be fiduciaries to their customers, particularly for professionals who deal with individual investors and with less sophisticated investors like municipalities and public entities. The Chair of the U.S. Securities and Exchange Commission, Mary Schapiro, has also gone on record urging that both investment advisers and broker-dealers providing the same advisory services should meet the same high fiduciary standard, especially for retail investors.[2]

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[1] Including Sec. 403(b) plans for employees of non-profit entities, and Sec. 457 plans for employees of governmental entities.

[2] Speech by SEC Chairman, Keynote Address at the Compliance and Legal Society of the Securities Industry and Financial Markets Association 2010 Annual Seminar, May 6, 2010, http://www.sec.gov/news/speech/2010/spch050610mls.htm

2) Annuitization of Retirement Funds. We commend the Department for taking on the complex issues of preventing retirees from running out of money during retirement. Based on lengthening life spans, increasing costs of living, and the diminishment of traditional retirement resources, particularly Social Security and defined benefit pensions, we can expect to see a growing trend of retirees outliving their retirement assets.

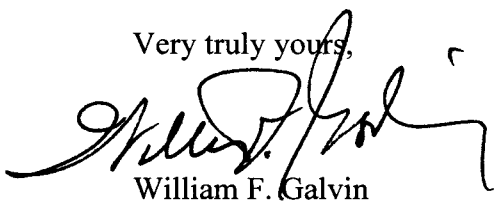
We note that, at this time, an annuity may not be an effective tool to create a stream of revenue to support retirees. The payouts from fixed annuities are substantially based on prevailing interest rates, and in the current low interest rate environment those payouts will tend to be low.

Annuities can also be problematic because they are often complex, high-commission, and high-fee products. The Securities Division has seen multiple instances where securities salespeople and advisers have sold older customers annuity products, particularly variable annuities, that were unsuitable for them. My office has taken enforcement action in several such cases.[3] All too often, the high selling compensation payable for these annuities drove these inappropriate recommendations.

We appreciate this opportunity to comment on the important issue of protecting investors' retirement assets. We particularly urge the Department to be vigilant about conflicts of interest on the part of advisers and the sponsors of financial products.

If you have questions about this letter or my office can assist in any way please contact me or Bryan Lantagne, Director, Massachusetts Securities Division at (617) 727-3548

Very truly yours,



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[3] In the Matter of Citizens Investment Services Corp., Docket No E-2004-0050, http://www.sec.state.ma.us/sct/sctcit/citidx.htm ; In the Matter of Investors Capital Corporation, E-2005-0090, In the matter of Steven Michael Anzuoni and Fairway Financial Insurance, Inc. Docket No. E-2007-0026, http://www.sec.state.ma.us/sct/sctanzmal/anzuoni_complaint.pdf