BEFORE THE SENATE FINANCIAL AND INSURANCE COMMITTEE
JANUARY 25, 2017
TESTIMONY IN OPPOSITION OF SB 23
BY ROGER N. WALTER

Background

My name is Roger N. Walter. I was General Counsel for the Office of the Kansas Securities Commissioner from 1986 through May of 1999. At that time I left the State and went into private practice as a lawyer. My practice to a substantial extent has involved securities regulation issues representing consumers, investors and regulated persons and entities. Combined, I have approximately 30 years experience in dealing with securities regulation as an attorney.

As General Counsel to the Kansas Securities Commissioner, I was involved in the North American Securities Administration Association ("NASAA"). NASAA is the national organization of the all state security regulators. In NASAA I served as vice chair of the Small Business Capital Formation Committee. Also as a member of the Broker-Dealer Regulation Committee. I served on numerous special task forces including the Lloyds of London Task Force and the Viatical Settlement Task Force.

I also have taught securities regulation at Washburn University Law School for 13 years, and securities regulation at the University of Kansas Law School for two years. I have extensive experience and background in the area of securities regulation. It has been a life long passion of mine.

Consolidation of government agencies

If the goal of SB 23 Section 11 is the consolidation of administrative functions of the offices of the Insurance Commissioner and Securities Commissioner the question becomes what is the policy function being served by such actions. I anticipate the goal of this consolidation and cross-appointment of employees is budgetary savings. Based on my knowledge of both the Insurance Commissioner's office and the Office of the Kansas Securities Commissioner I think any budgetary savings would be extremely modest.

The two agencies have two completely separate functions. The offices require separate staff with separate expertise and skill. There is almost no overlap in regulatory function. It is not clear to me how this act would achieve any substantial budgetary savings.

If the feeling is the current staff of both agencies are overstaffed, the remedy would be to eliminate staff positions. It is not at all clear to me how a particular individual or persons could function effectively in both agencies.

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Strong functional regulation best protects consumers

I completely concur in the written testimony of former Securities Commissioner David Brant. As he said Kansas consumers are best protected and the financial firms regulated are best served by functional regulation with banks overseen by bank regulators; investment professionals overseen by securities regulators; and insurance subject to insurance regulation.

Also as Commissioner Brant stated, each functional regulator has a primary purpose and unique culture: bank regulators examine the safety and soundness of banks to protect depositors; insurance regulators examine the solvency of insurance companies and investigate insurance fraud (fraud against insurance companies); and securities regulation investigates securities fraud, investment fraud where consumers are the victims, and regulates the professionals selling investment products and investment advice.

Throughout my tenure as a employee of the Office of the Kansas Securities Commissioner and my involvement in NASAA it has been my perception that Kansas has been viewed as the model of superior, strong and effective securities regulation. Its independence as a separate free-standing sub-cabinet agency, its regulatory authority to commence criminal prosecution, and its ability to act quickly unencumbered by bureaucratic constraints typically associated with large offices have made it the gold standard for effective and common sense regulation.

Insurance regulation and securities regulation if consolidated under the Insurance Commissioner would represent a clash of cultures. Insurance regulators for the most part provide little regulation of sales practices of insurance agents selling insurance products to consumers. The focus of their regulatory efforts are on the solvency of insurance carriers and protecting insurance companies from fraud.

On the other hand securities regulators' primary function is to regulate the sales practices of broker-dealers, agents and investment advisors in offering investment products and services to consumers. State securities regulators now have the primary responsibility, apart from the SEC, in examining and regulating investment advisors who manage assets of $100 million or less. All of this requires specialized training and expertise unique to the securities regulatory agencies.

I have serious concerns that consolidating the Office of the Kansas Securities Commissioner with the Office of the Kansas Insurance Commissioner will dilute and blur its focus on protecting investment fraud, and undermine its independence, effectiveness and ability to act quickly without bureaucratic interference.

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The influence of the insurance industry would not benefit securities regulation

Securities regulation is a shared responsibility between state governments, the federal government (Securities & Exchange Commission) and self-regulatory organizations (FINRA). Insurance regulation on the other hand is solely a matter of state law and state regulation. There is no federal regulation or law which regulates insurance. The fact that that is the case in this day and age is a testament to the power and influence of the insurance industry. The National Association of Insurance Regulators (NAIC) is largely funded by the insurance industry. I believe there is little question that the insurance industry has significant influence on state insurance regulation.

I am very leery of the impact this influence could have on the mission and effectiveness of securities regulation at the state level. State securities regulators provide a unique function in regulating small scale consumer investment fraud involving individual consumers. State securities regulators are the local cop on the beat. This function could not be served at the federal level by the SEC. It just does not have the resources or staff to address these local matters on an ongoing basis. State securities regulators provide a very important and indispensable function in providing consumer protection to the consumers of financial services and products. I do not want to see that compromised.

Thank you for your consideration.

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