

MEMO# 23601

July 1, 2009

SEC Files Action Against Broker-Dealer for Unsuitable Sales of Variable Annuities

[23601]

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TO: VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 13-09
BROKER/DEALER ADVISORY COMMITTEE No. 37-09 RE: SEC FILES ACTION AGAINST
BROKER-DEALER FOR UNSUITABLE SALES OF VARIABLE ANNUITIES

The Securities and Exchange Commission instituted an enforcement action against a broker-dealer firm and several representatives and supervisors (“Respondents”) for their alleged roles in deceiving senior citizens into purchasing unsuitable variable annuities. [\[1\]](#) Specifically, the complaint alleges that the Respondents lured senior citizens to private appointments at the firm through free-lunch seminars. Once at the firm, the respondents presented sales pitches allegedly concealing high costs, lock-in periods, and other material terms of the variable annuities. The Respondents also allegedly provided incomplete or inaccurate disclosures and altered paperwork after it was signed by the customer.

The SEC’s Order Instituting Administrative and Cease-and-Desist Proceedings concludes that, from approximately November 1999 through February 2007, the Respondents committed fraud, failed to supervise, and committed books and records violations pursuant to Section 17(a) of the Securities Act of 1933 and Sections 10(b), 15(b)(4)(E), 15(c) and 17(a) of the Securities Exchange Act of 1934 and Rules 10b-5 and 17a-3 thereunder. In particular, the SEC alleges that many of the variable annuities sold to senior citizens were unsuitable investments for the customers due to their age, liquidity, and investment objectives. The SEC alleges that at least twenty-three customers were induced to buy at least thirty-five variable annuities, investing an aggregate of nearly \$5 million.

The SEC also alleges that the variable annuities sold by the Respondents paid approximately six percent in total sales commissions, compared to other investment products that generally paid less than three percent in total commissions, earning respondents millions of dollars in sales commissions. Lastly, the SEC claims that the Respondents (1) failed to implement the firm's supervisory procedures in a way that would be expected to detect and prevent the alleged violations; (2) failed to reasonably supervise the firm representatives even in the face of numerous red flags of wrongdoing; (3) failed to implement a system of responding to customer complaints; and (4) failed to implement a system to comply with state regulatory orders, such as the revocation and restriction of representatives' insurance licenses.

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endnotes

[1] See *New York-Based Firm and Brokers Charged with Fraudulent Sales of Variable Annuities*, SEC Press Release 2009-145, dated June 30, 2009. The press release is available at <http://www.sec.gov/news/press/2009/2009-145.htm>. See also SEC Administrative Proceeding File No. 3-13532, *In the Matter of Prime Capital Services, Inc., Gilman Ciocia, Inc., Michael P. Ryan, Rose M. Rudden, Christie A. Andersen, Eric J. Brown, Matthew J. Collins, Kevin J. Walsh and Mark W. Wells*, June 30, 2009.

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